

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

CASE NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton, Chad Webb and Amy Webb..... Appellants

vs.

Prestwick Land Limited Partnership; Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle Beach; South Carolina Department of Transportation;
Horry County; Myrtle Beach Air Force Base Redevelopment Authority; Nelson L.
Hardwick & Associates, Inc.; Bermuda Gardens Homeowners' Association d/b/a
Homeowners of Ocean Walk Property Owners Association; Campgrounds, Inc.; and
Prestwick Property Owners Association, Inc., Defendants

OF WHICH:

Prestwick Land Limited Partnership, Jackson Companies and
Campgrounds, Inc. are Respondents

City of Myrtle Beach, Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves, Third-Party Defendants,
Counterclaimants, Cross-Claimants..... Appellants

**RECORD ON APPEAL
VOLUME I**

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INDEX

VOLUME I

Order Granting Summary Judgment filed April 1, 2019	1
Order (Form 4) Denying Plaintiff's Motion for Reconsideration filed May 29, 2019	9
Motion for Reconsideration filed April 9, 2019.....	12
Complaint filed October 4, 2016 (2016-CP-26-6495)	17
Answer of Prestwick Land Limited Partnership, Jackson Companies filed November 22, 2016	35
Answer of City of Myrtle Beach and Third-Party Complaint filed November 28, 2016.....	42
Answer, Counterclaim and Cross-Claim of Eaves filed May 10, 2017.....	62
Amended Complaint filed September 26, 2017.....	84
Answer to Amended Complaint and Third-Party Complaint of City of Myrtle Beach filed October 17, 2017.....	104
Answer of Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc. to Amended Complaint October 19, 2017	123
Motion for Summary Judgment, Memorandum in Support with Affidavit of Dennis Wade and October 10, 1997 SCDHEC letter filed April 6, 2018	132
Motion for Summary Judgment, Memorandum in Support with Affidavit of Dennis Wade and October 10, 1997 SCDHEC letter filed October 24, 2018.....	145
Affidavit of Gene M. Connell, Jr. filed February 26, 2019	158
Affidavit of Cornell Patton filed October 10, 2018.....	161
Affidavit of Robert Taylor filed November 27, 2017	165
Complaint filed February 24, 2000; Case No. 2000-CP-26-765 <i>Patton v. Prestwick Land Limited Partnership, et al.</i>	167
Complaint filed February 24, 2000; Case No. 2000-CP-26-780; <i>Eaves v. Prestwick Land Limited Partnership, et al.</i>	180
Settlement Agreement and Release dated September 2, 2005; Case Nos. 2000-CP-25-765 (<i>Patton</i>) and 2000-CP-26-780 (<i>Eaves</i>)	193

Stipulation of Dismissal filed September 26, 2005; Case Nos. 2000-CP-25-765 (<i>Patton</i>) and 2000-CP-26-780 (<i>Eaves</i>)	199
Deposition of Robert Taylor November 19, 2018	203
Exhibit 1 Affidavit of Robert Taylor	450
Exhibit 2 Copy of photograph	452
Exhibit 3 Handwritten notes	453
Exhibit 4 Portion of previous deposition of Robert Taylor	454
Exhibit 5 Letter from Horry County to Prestwick Homeowners	455
Exhibit 6 Thomas & Hutton Study	457
Exhibit 7 Copies of photographs	469
Exhibit 8 Copies of photographs	470
Exhibit 9 June 14, 2001 Affidavit	471
Exhibit 10 Storm Water Report for Bermuda Cottages dated May 26, 2005	474
Exhibit 11 Google maps	480
Exhibit 12 Google maps	481
Exhibit 13 Google maps	482
Exhibit 14 Diagram of Outfall	483

VOLUME II

Transcript of Hearing February 27, 2019 and Exhibit P-1	484
Transcript of Hearing (Reconsideration) May 29, 2019	521
Plaintiff's P-1 Exhibit to Motion for Summary Judgment Hearing February 27, 2019	553
Stipulation of Dismissal filed September 26, 2005; Case Nos. 2000-CP-25-765 (<i>Patton</i>) and 2000-CP-26-780 (<i>Eaves</i>)	554
Settlement Agreement and Release dated September 2, 2005; Case Nos. 2000-CP-25-765 (<i>Patton</i>) and 2000-CP-26-780 (<i>Eaves</i>)	558
Summons and Complaint filed February 24, 2000; Case No. 2000-CP-26-765 <i>Patton v. Prestwick Land Limited Partnership, et al.</i>	565
Summons and Complaint filed February 24, 2000; Case No. 2000-CP-26-790 <i>Eaves v. Prestwick Land Limited Partnership, et al.</i>	580
Prestwick Property Report June 23, 1993	594
Affidavit of Cornell Patton 10-10-18	625
Deposition of Robert K. Taylor November 19, 2018 (condensed)	629
Thomas & Hutton Drainage Study August 6, 2013 and prior reports	709
Certificate of Counsel	896

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,
Chad Web and Amy Webb,

Plaintiffs,

vs.

**ORDER GRANTING
SUMMARY JUDGMENT**

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies;
City of Myrtle Beach;
South Carolina Department of Transportation;
Horry County;
Myrtle Beach Air Force Base Redevelopment
Authority;
Nelson L. Hardwick & Associates, Inc.;
Bermuda Gardens Homeowners'
Association d/b/a Homeowners of
Ocean Walk Property Owners Association;
Campgrounds, Inc.; and
Prestwick Property Owners Association,
Inc.

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants.
Counterclaimants/Cross-Claimants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants.)
 Counterclaimants/Cross-Claimants.)
 _____)

This matter is before me upon Motion for Summary Judgment of the Defendants, Prestwick Land Limited Partnership, LLC, Jackson Companies and Campgrounds, Inc. (hereinafter collectively referred to as “the Prestwick Defendants”). A hearing on this matter was held on February 27, 2019 and present at the hearing were Doug Baxter, Esquire on behalf of these Defendants and Gene Connell, Esquire on behalf of the Plaintiffs and the Third-Party Defendants (hereinafter collectively referred to as “property owners”).

In support of this motion, the Prestwick Defendants submitted a memorandum and an Affidavit of Dennis Wade and request that the Court take judicial notice of pleadings filed in Civil Action Nos. 2000-CP-26-0765 (Pattons) and 2000-CP-26-0780 (Eaves). In opposition to this motion, an attorney for the property owners submitted the 2005 Settlement Agreement, Thomas & Hutton Storm Water Drainage Study, and the deposition transcript of Robert Taylor. Based upon my view of the memorandum, various documents submitted by the parties and arguments presented at the hearing, I find as follows:

Findings of Fact

Prestwick Land Limited Partnership is a South Carolina limited partnership, and it was created on or about February 24, 1993. Prestwick Land Limited Partnership was terminated by agreement on September 30, 2007 and the termination was filed with the Secretary of State on or about October 3, 2007. Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time that it was dissolved and it is named as a defendant pursuant to §33-41-370 of the Code of Laws of South Carolina; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision. Jackson Companies is not a

legal entity and it is merely a general name for several affiliated entities, which included Prestwick Land Limited Partnership.

Prestwick Land Limited Partnership was the developer of the Prestwick subdivision. Construction of the storm water management system for Phase 4-C and Phase 4-D began on or after February 3, 1997, and the work was completed in the fall of 1997. On October 10, 1997, the office of Ocean Coastal Resource Management (SC DHEC) issued final approval for the as-built storm water management system.

Through a series of quitclaims deeds, all of the roads, common areas, open areas and easements for the Prestwick subdivision were conveyed to Prestwick Property Owners Association, Inc., and as of March 24, 2000, Prestwick Land Limited Partnership had relinquished control of the Board of Directors for the Prestwick Property Owners Association. In 2004, Prestwick Land Limited Partnership sold the last residential lot which it owned in the Prestwick subdivision.

On or about July 28, 1998 Prestwick Land Limited Partnership conveyed to Jack Cornell Patton and Melissa Jo Patton that lot 360, Prestwick Phase IV-D. On or about May 28, 1999, Lot 362, Prestwick Phase IV-D was conveyed to Phillip Eaves and Betty Eaves, and on August 16, 2007, the Eaves conveyed the property to Chad Webb and Amy Webb. Both lots are located in Phase IV-D of the Prestwick subdivision.

In 2000, the Pattons (2000-CP-26-0765), Eaves (2000-CP-26-0780) and other property owners filed lawsuits naming various Defendants, including Prestwick Land Limited Partnership and the Jackson Companies alleging flooding problems (hereinafter referred to as "2000 lawsuits"). After a rather protracted litigation, a settlement was reached among the parties, and a Settlement Agreement and Release was executed on or about September 2, 2005. On or about

September 26, 2005, the lawsuits against Prestwick Land Limited Partnership and Jackson Companies were dismissed with prejudice.

FINDINGS OF LAW

Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Once the moving party carries its initial burden, opposing party must, under Rule 56(e), “do more than simply show that there is some metaphysical doubt as to the material facts” but “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

Statute of Repose

Section 15-3-640 of the South Carolina Code of Laws, as amended (commonly referred to as the Statute of Repose), provided that an action may not be brought more than 13 years after substantial completion of the improvement; effective July 1, 2005, the statute was amended to provide for an 8 year limitation. In the present case, the storm water management system constructed by Prestwick Land was completed on or before October 2, 1998 which is more than 13 years prior to the commencement of this action.

The property owners raised the provisions of §15-3-670 as a defense to the Statute of Repose; however, they presented no evidence in support of this. In fact, Robert Taylor, the property owners’ engineering expert, testified that he could give no opinion as to whether the

Prestwick storm water management system plans or the as-built condition failed to meet the minimum requirements of the South Carolina Storm Water Management System, and in his testimony he identifies no violation of any law, statute or regulation. Plaintiff's counsel also asserted that evidence may later develop to support the argument; however, a party cannot escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). Pursuant to Section 15-3-640, the property owners are barred from recovering damages related to the design and/or construction of the subdivision, including the storm water management system.

Res Judicata

The following elements must be shown in order to establish the defense of *res judicata*:

- 1) The Parties must be the same or their privy;
- 2) The subject matter must be the same; and
- 3) Generally the precise point must be ruled yet where the parties are the same or in

privity the judgement is an absolute bar not only of what was decided but what might have been decided. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986). A dismissal with prejudice indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986).

When determining whether *res judicata* applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. Nelson v. QHG of South Carolina, Inc., 580 S.E.2d 171 (Ct. App. 2003).

The current claims against the Prestwick Defendants are identical to those asserted in the 2000 lawsuits. The Plaintiffs' expert testified that he is unaware of any deficiencies related to the storm water drainage system in the Prestwick subdivision not previously identified in conjunction with his investigation for the 2000 lawsuits. Additionally, the Prestwick Defendants' alleged failure to adequately disclose that the lots were in the flood zone was raised in the 2000 lawsuits. Accordingly, the claims against the Prestwick Defendants are barred by res judicata.

Settlement

In South Carolina jurisprudence, settlement agreements are viewed as contracts. Abel v. SCDHEC, 798 S.E.2d 445 (Ct. App. 2017). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Id. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Id.

As part of the 2000 Settlement Agreement and Release, the "landowners" released all claims which they had, including those "relating to the claims, demands and allegations which were or could have been set forth and asserted in the above-referenced actions or which otherwise arise out of those matters described in the pleadings in the above-referenced actions".

In the 2000 lawsuits, the Plaintiffs asserted:

"That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants."

Accordingly, per the Settlement Agreement and Release, the “landowners” released not only damages they had already incurred, but also future damages, including diminution in value, and the impact on the sale due to their property’s continued flooding; therefore, the Plaintiffs are precluded from seeking to recover these same damages.

The settlement agreement also provided that the landowners were to disclose the flooding issues to subsequent purchasers. At the time the settlement agreement was signed, Prestwick Defendants had conveyed the common elements to the Homeowners Association and no longer exercised control of the property. The property owners argue that a landowner’s liability for the condition of its property extends indefinitely, even after it relinquishes control of the property; however, the property owners present no law to support this argument.

Based upon the foregoing, all of the claims which could be asserted against the Prestwick Defendants were ended as a result of the settlement agreement. It is therefore

ORDERED, ADJUDGED AND DECREED that Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc.’s Motion for Summary Judgment as to the claims asserted against them in this lawsuit is granted, and they are hereby dismissed from this action with prejudice.

[SIGNATURE PAGE TO FOLLOW]



Horry Common Pleas

Case Caption: Cornell Patton , plaintiff, et al VS Prestwick Land Limited Partnership , defendant, et al

Case Number: 2016CP2606495

Type: Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-03-28 16:38:58 page 8 of 8

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP2606495

Cornell Patton et al
PLAINTIFF(S)

Prestwick Land Limited Partnership et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Rose Real Estate Inc. Motion/Amend Answer of Rose Real Estate is GRANTED by consent of the parties.

Plaintiff's Motion/Reconsider is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/29/2019 .

Prestwick Property Owners Associates Inc
Bermuda Gardens Homeowners Association
Elizabeth 3Rd Party Eaves
Prestwick Homeowners Association Inc
Phil 3Rd Party Eaves
3Rd Party Myrtle Beach City of
Fourth Party Homeowners of Ocean Walk Property Owners Association

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Cornell Patton , plaintiff, et al VS Prestwick Land Limited Partnership , defendant, et al ✓
Case Number: 2016CP2606495
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-05-29 16:09:17 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; Myrtle
Beach Air Force Base Redevelopment
Authority; Nelson L. Hardwick &
Associates, Inc.; Homeowners of Ocean
Walk Property Owners Association;
Campgrounds, Inc.; and Prestwick
Property Owners Association, Inc.,

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

vs.

Homeowners of Ocean Walk Property
Owners Association,

Defendant/Fourth-Party Plaintiff,

vs.

Rose Real Estate, Inc.,

Fourth-Party Defendant.

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiffs, will, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, move this Court for an order reconsidering the grant of summary judgment to Defendants Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc. The Order of this Court was filed April 1, 2019. Plaintiffs move pursuant to SCRCP 59(e) that the Court reconsider its ruling granting summary judgment to Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc. The basis of this motion is as follows:

1. The trial court erred in hearing the motion for summary judgment when discovery had not been completed. The trial court's order does not address the affidavit of Plaintiffs' filed February 26, 2019, nor does it address the issue that Plaintiffs' counsel brought up at the hearing which was that discovery was not complete and that even the Plaintiffs' expert's deposition had not been completed.¹ Also, Plaintiffs had not yet taken the Defendants' employees or experts depositions. South Carolina follows the rule that a party opposing summary judgment must have a full and fair opportunity to complete discovery before summary judgment is considered since it is a drastic remedy. See *Cunningham v. Anderson County*, 402 S.C. 432, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part, 414 S.C. 292, 778 S.E.2d 884 (2013). (Plaintiff did not have a full and fair opportunity to complete discovery).

2. The order of the trial court does not address the Plaintiff's argument that if the defendant creates a hazard which injures the plaintiff, it is responsible as a matter of law. See *Garvin v. Bi-Lo*, 343 S.C. 625, 541 S.E.2d 831 (2001) (when defendant or defendant's employees create the condition, defendant is liable). *Cook v. Food Lion*, 328 S.C. 324, 491 S.E.2d 690 (Ct. App. 1997). Defendants Prestwick Land Limited Partnership, Jackson

¹ The Defendants took all of the Plaintiffs' depositions over four days and took Plaintiffs' expert's deposition for one day (it was recessed after seven hours).

Companies and their successor, Campgrounds, Inc. built the dangerous and improper drainage structure.

3. The trial court erred in holding that S.C. Code § 15-3-670 did not apply in light of the evidence that Plaintiffs presented at the hearing.

4. The trial court erred in holding that Plaintiffs were barred from bringing this suit under the doctrine of *res judicata*. The error being that the incident in this case was a wholly separate incident (a new flood event from the one that was brought in the previous lawsuit).

5. The trial court erred in holding that the 2000 settlement agreement barred the Plaintiffs' claims. The error being the intention of a settlement agreement is not a question of law for the court, but a question of fact and thus a jury issue.

6. The trial court erred in holding the Plaintiffs released any future claims for flooding. The issue being future flooding was specifically reserved in the release and the Plaintiffs did not release any claim for future flooding.

7. The language of the settlement agreement does not bar future damages for future flooding events. The court erred in finding otherwise.

8. The trial court erred in holding that a landowner's liability for real property ends when it relinquishes control or sells the property. The error being a property owner who creates and/or builds a dangerous condition is liable until the condition is repaired.

9. The trial court erred in failing to rule on the argument that if an owner of real property fails to disclose a dangerous defect to the new property owner, the previous property owner is still liable as a matter of law.

10. The trial court erred in granting summary judgment based on the ground that Defendant no longer owned the property and thus was not liable. The error being that this is a

novel issue in South Carolina and discovery had not been completed, thus summary judgment should not have been granted.

11. The trial court in holding an order of dismissal with prejudice of the earlier 2000 action precludes future litigation regarding a new flooding claim between the same parties.

12. The trial court erred in holding the Statute of Repose applied when South Carolina law holds that claims for gross negligence is an exception to the Statute of Repose. (See deposition of Robert Taylor, Plaintiffs' expert, previously presented.)

13. The trial court erred in holding that the Statute of Repose applies to this case. The error being that the Statute of Repose must be measured from the last day that Defendant had control which is an issue of fact. The further error being that Defendants did not terminate their control of the property until September 30, 2017. In any event, it was a factual matter.

14. The trial court erred in holding that the release between the parties for the 2000 case released the parties for future claims. The error being that the language of the release provides from the beginning of the world up to the date of execution of the release and thus the release did not bar future claims.

15. The trial court did not consider the depositions of Cornell Patton, Melissa Patton and Chad Webb which all described in detail the flooding of their homes as a result of inadequate drainage built by these Defendants.

16. The trial court did not rule on Plaintiffs' claim that each new flooding event has a different statute of limitations based on the date of the event.

17. The trial court did not rule on Plaintiffs' claim that Defendants made express representations when the property was sold that it did not flood and as such were continuously liable for future floods.

WHEREFORE, Plaintiffs request that the Court issue its order reconsidering its prior grant of summary judgment and vacating that order and for such other and further relief as the court may deem just, necessary and proper.

KELAHHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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April 9, 2019
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26- 6495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; and Myrtle
Beach Air Force Base Redevelopment
Authority,

Defendants.

COMPLAINT

(Negligence/Declaratory Judgment/
Trespass/Nuisance/Inverse Condemnation/
Breach of Easement/Mandatory Injunction)

JURY TRIAL

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are all owners and residents of real property in the Prestwick Subdivision, located in Myrtle Beach, South Carolina.
2. The Defendant, Prestwick Land Limited Partnership, is, upon information and belief, a partnership organized and existing pursuant to the laws of the State of South Carolina and doing business as a developer of the Prestwick Subdivision.
3. The Defendant, Prestwick Homeowners Association, Inc., is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a homeowners association.
4. The Defendant, Jackson Companies, is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, and upon further information and belief, is the sole partner and/or owner of Prestwick Land Limited Partnership which is dissolved.

5. The Defendant, City of Myrtle Beach, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a City.

6. The Defendant, Horry County, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a County.

7. The Defendant, Myrtle Beach Air Force Base Redevelopment Authority, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business in Horry County.

8. That the Plaintiffs are all owners of homes in the Prestwick Subdivision located in Myrtle Beach, South Carolina.

9. That the Plaintiffs have their personal residences in Prestwick Subdivision all of which each property abuts a drainage canal which runs from the old Myrtle Beach Air Force Base property and the airport to the Atlantic Ocean under U.S. Highway 17.

10. That the Plaintiffs were provided with a Property Report which states that "None of the lots or any portion of any lot are covered by water at any time of the year." The Property Report further states that "None of the lots in this Property Report are located within a flood plain." Also, the Property Report states that "None of the lots in the subdivision required drainage."

11. That based on the above representations and other representations the Plaintiffs purchased their homes.

12. That, in fact, this property has been subject to periodic flooding from a drainage canal which was represented to the Plaintiffs as "a creek" previous to the Plaintiffs purchasing the property.

13. That since 1999 these properties have continually flooded and all of the Defendants have used the drainage canal for drainage for properties upland to the Plaintiffs' property.

14. That the Plaintiffs properties flooded on October 4 - 5, 2015 and September 2, 2016.

15. That the Defendants, Prestwick Land Limited Partnership; Prestwick Homeowners Association, Inc.; Jackson Companies; City of Myrtle Beach; South Carolina Department of Transportation; and Horry County, were aware of flooding from the drainage easement and have continued to allow additional subdivisions and properties to hook on to the drainage ditch which in fact has flooded the Plaintiffs' properties.

16. That these Defendants, through their officers, agents and/or employees, were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to inform Plaintiffs that the drainage easement would flood their property;
- b. in providing the Plaintiffs with a Property Report which stated that no flooding had ever occurred when this was, in fact, not true;
- c. in providing the Plaintiffs with a Property Report which stated that the property had never been under water when, in fact, this was not true;
- d. in failing to advise the Plaintiffs that the property sometimes flooded and, in fact, had been under water;
- e. in failing to warn, advise and inform the Plaintiffs that the drainage easement sometimes flooded;
- f. in failing to advise the Plaintiffs that the creek on the back of the property drained the entire Air Force Base property;
- g. in failing to inform the Plaintiffs that during times of heavy rains their property would flood;
- h. in failing to inspect the property to make sure that it would not flood prior to purchase by the Plaintiffs;
- i. in designing the creek in such a way so that all the water from Prestwick would flow through the Plaintiffs' property and cause flooding;
- j. in connecting a series of ditches and pipes so that all the water would flow through the drainage easement unto the Plaintiffs' property;
- k. in channeling water in such a way that would flood the Plaintiffs' home and property;

- l. in failing to devise a method for channeling water away from the Plaintiffs' property;
- m. in failing to advise the Plaintiffs that water would channel over their property;
- n. in failing to drain water into spillways and/or divert water away from the Plaintiffs' property; and
- o. in failing to follow a drainage assessment report which was written and funded by Horry County as to how to fix and/or repair drainage in the Prestwick area.

17. That as a direct and proximate result, the Plaintiffs continued to suffer severe and catastrophic damage to their home and residence, including having floodwaters inside their homes on a regular basis, to include damage to floors, walls, electrical, baseboards, air conditioning, heating, tile, and other aspects of their home as well as damage to their personal property.

18. That the Plaintiffs are unable to sell their homes because of continual flooding of their homes on a regular basis and have lost the entire value of their homes such that the homes cannot be sold for fair market value.

19. That the Plaintiffs ask for judgment against all Defendants for actual damages, punitive damages, and for the costs of this action.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Nuisance)

20. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

21. All of the above-named Defendants' conduct in channeling surface water through various artificial pipes and ditches onto the Plaintiffs' property resulted in an unreasonable interference with Plaintiffs' use and enjoyment of their property, which reoccurs when there is heavy rain.

22. The aforementioned action is a nuisance and severe damage has been done to the Plaintiffs' homes as outlined in the First Cause of Action.

23. The Plaintiffs ask for judgment against these Defendants for actual damages, for punitive damages, for nuisance and also request a permanent injunction requiring these Defendants to not channel water through ditches and the like onto or near the Plaintiffs' property.

FOR A THIRD CAUSE OF ACTION
AS TO DEFENDANT SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
(Negligence)

24. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

25. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, operates a bridge downstream from the Plaintiffs' property on U.S. Highway 17; such bridge has undersized pipes and allows the water to back up onto Plaintiffs' property during periods of inclement weather.

26. That the bridge downstream operated, built and owned by the Defendant South Carolina Department of Transportation across U.S. Highway 17 acts as a dam failing to allow the water to drain properly underneath U.S. Highway 17 into the ocean.

27. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, is negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to repair a known flooding defect which this Defendant has actual knowledge of;
- b. in failing to have an engineer size the pipes in such a manner so that the water would not back up on the Plaintiffs' property;
- c. in putting in undersized pipes so that the water would not drain;

- d. in failing to provide such engineering that the entire creek did drain as it had before the road was placed across;
- e. in failing to have proper engineering advice or expertise before building the road and placing the pipes underneath the road;
- f. in failing to warn the Plaintiff of the undersized pipes;
- g. in failing to inspect the work to make sure that undersized pipes were not placed under the road;
- h. in failing to take reasonable care to make sure that steps were taken to keep from damaging Plaintiff's property; and
- i. in failing to use generally accepted construction practices to prevent flooding on property upstream from Plaintiffs' property.

28. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their house and property and continue to suffer severe and catastrophic damage to their house and property; that a cause of this damage is the Defendant South Carolina Department of Transportation's antiquated bridge and undersized pipes which block the downstream drainage making Plaintiffs' homes worthless; that Plaintiffs' property continues to have property damage as soon as inclement weather occurs including rainfall over two inches; and that Plaintiffs have been unable to sell their house because of the permanent stigmatization of the continuous flooding on the property.

29. That Plaintiffs ask for judgment against Defendant South Carolina Department of Transportation for actual damages, punitive damages and for the costs of this action.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Breach of Easement/Negligence)

30. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

31. The drainage ditch which abuts the Plaintiffs' property is, in fact, the drainage ditch which goes all the way from the former Myrtle Beach Air Force Base into the Atlantic Ocean through Pirateland Campground.

32. That the Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, have an agreement with the United States Air Force to assume any and all rights and liabilities of the United States Air Force when the property was turned over to these Defendants.

33. That an easement exists as of October 30, 1958 wherein the United States Air Force was to maintain an easement for water drainage through a channel that would go by the Plaintiffs' property through Pirateland Campground and into the Atlantic Ocean.

34. The Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority assumed responsibility for this easement when they took over the former Myrtle Beach Air Force Base property.

35. That this easement provided that the United States Air Force and its successors in interest, the City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, were to maintain the easement including to trim all underbrush, remove any trees and obstructions, including vegetation structures or obstacles within the limits of the right of way as is necessary to provide adequate clearance and to eliminate interference with it. Further, these Defendants have legal responsibility to prevent downstream flooding.

36. That the aforementioned drainage easement was never maintained by the City of Myrtle Beach, Horry County or the Myrtle Beach Air Force Base Redevelopment Authority and numerous private property owners were allowed to use this canal when it was already overburdened.

37. That the Defendants failed to follow the written recommendation of the Horry County Stormwater Management program and the comprehensive engineering report provided to the Defendants to fix and/or repair the drainage area in question to prevent downstream flooding.

38. That the Defendants, through their officers, agents and/or employees, were negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. in failing to maintain the easement;
- b. in failing to keep the underbrush out of the drainage easement;
- c. in failing to maintain the easement on a regular basis;
- d. in allowing other developments to drain into this ditch/canal;
- e. in failing to inspect the easement for obstruction;
- f. in failing to perform under the terms of the easement;
- g. in failing to have regular work crews clean the easement;
- h. in failing to follow the proper stormwater drainage protocol and to follow Horry County's comprehensive plan;
- i. in failing to act so that Plaintiffs' property would not be damaged; and
- j. in failing to take that degree of skill and care which a reasonable person would do.

39. That as a direct and proximate result the Plaintiffs suffered severe damage to their homes by waters which came onto their property and into their house. That Plaintiffs have suffered depreciation to their property, loss of personal property, loss of real property, damage to the interior and exterior of their home, and will continue to have these problems for the remainder of the time they live on the aforementioned property.

40. That Plaintiffs ask for judgment against Defendants for actual damages, punitive damages, and the costs of this action.

FOR A FIFTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, Horry County AND
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
(Breach of Easement)

41. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

42. That Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, as successors in interest to United States of America did breach their agreement to Plaintiffs to keep the aforementioned easement clean, maintained, inspected and improved so that water would move in an unobstructed manner through the drainage easement.

43. The Plaintiffs ask for damages against the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for breach of its easement as more particularly described in the aforementioned cause of action.

44. The Plaintiffs ask for judgment against these Defendants for breach of easement for actual damages, attorney's fees and for costs.

FOR A SIXTH CAUSE OF ACTION
AS TO DEFENDANTS
JACKSON COMPANIES, PRESTWICK LAND LIMITED PARTNERSHIP
AND PRESTWICK HOMEOWNERS ASSOCIATION, INC.
(Negligence)

45. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

46. That the Defendants Jackson Companies along with Prestwick/Prestwick Land Limited Partnership are the owners of many areas upstream from Plaintiffs' property.

47. That the Defendant Jackson Companies along with Prestwick Land Limited Partnership Corporation has constructed many artificial drainage ditches throughout their property,

including Prestwick and Crystal Lakes. That these drainage ditches all connect to the drainage ditch which continually floods Plaintiffs' property.

48. That these Defendants did channel water directly into the drainage ditch which damaged Plaintiffs' property by artificial means.

49. That the Defendant Jackson Companies was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in building artificial channels to direct water to Plaintiffs' property;
- b. in failing to warn Plaintiffs;
- c. in failing to maintain drainage easement;
- d. in failing to do a drainage study before connecting ditches to the ditch which caused damage to Plaintiffs' property; and
- e. in failing to inspect, engineer, investigate, and advise Plaintiffs that this Defendant was connecting other ditches upstream which would dump water on the Plaintiffs' property.

50. That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants.

51. That Plaintiffs ask for damages against Prestwick Land Limited Partnership, Prestwick Homeowners Association, Inc. and Jackson Companies for actual and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Trespass)

52. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

53. That water from all Defendants' properties was channeled artificially onto the Plaintiffs' property.

54. That the aforementioned channeling is a trespass and has caused damage to the Plaintiffs' property, caused erosion, and has threatened Plaintiffs' home and lot.

55. That Defendants through a master drainage stormwater management system have in effect devised and/or connected all ditches such that water flows over Plaintiffs' property.

56. That after each rain Plaintiffs have significant erosion and damage to their property and, thus, there is a continual trespass on Plaintiffs' property.

57. That Plaintiffs have tried to mitigate their damages, but have been unable to do so.

58. That stormwater from all the Defendants' property is physically moved onto the Plaintiffs' property in a deliberate scheme and/or plan.

59. That the aforementioned affirmative acts by all Defendants invade the Plaintiffs' property in an intentional manner and cause great and grievous irreparable harm to the Plaintiffs' property.

60. That Plaintiffs asks for an injunction requiring all Defendants to immediately cease and desist from channeling artificially any water into other ditches which flow through the Plaintiffs' property since this causes irreparable harm to Plaintiffs' property.

61. That Plaintiffs further asks this Court to issue its Order requiring all Defendants to halt this continuing trespass immediately.

62. Further, the Plaintiffs ask for damages to their home, their real property, for depreciation because they are unable to sell their house, for loss of use of the property and for a fix moving the water away from Plaintiffs' property.

63. That Plaintiffs ask this Court issue its order awarding actual and punitive damages to the Plaintiffs and to enjoin all Defendants from dumping water artificially into the easement and for such other and further relief as the Court may deem just, necessary and proper.

FOR AN EIGHTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, HORRY COUNTY
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Inverse Condemnation)

64. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

65. That the Defendants City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation, through affirmative, aggressive, governmental acts, have effectively condemned Plaintiffs' property by allowing all of the stormwater from Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs' property.

66. That these governmental Defendants entered into a common scheme or plan whereby all of the water from the Myrtle Beach Air Force Base, Crystal Lakes, and Prestwick was channeled through various pipes and ditches to the Plaintiffs' home.

67. That these acts by these Defendants were affirmative, positive and aggressive acts and were taken on behalf of the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for a public purpose and that they are, in fact, permanent since the drainage system for the entire Myrtle Beach Air Force Base runs next to the Plaintiffs' property.

68. That Plaintiffs believe that their property has been inversely condemned as mentioned in the first cause of action each time heavy rains occur and Plaintiffs suffer irreparable harm and erosion.

69. That the Defendants are aware and participated in a comprehensive engineering stormwater management plan and report prepared by Horry County (available at office of Plaintiffs' counsel) and refused to implement that plan and alleviate damage to Plaintiffs homes and other property in the area.

70. That the Plaintiffs have suffered damages as outlined in the first cause of action and further suffer continuing irreparable harm and ask that the Court issue its Order awarding actual damages to Plaintiffs and also enjoining these Defendants from channeling any water through the pipes and/or ditches under and around the Plaintiffs' property.

71. Further, that this is a taking of private property for public purpose in violation of the United States and South Carolina Constitutions and that Plaintiffs request actual damages, punitive damages, an injunction and attorney's fees as required by state law.

FOR AN NINTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, HORRY COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Declaratory Judgment- Non Jury)

72. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

73. That this action is for declaratory judgment pursuant to the South Carolina Declaratory Judgment Act and requests that the Court issue its Order determining the legal ownership, maintenance, repair, operation and responsibility for the drainage canal which adjoins the Plaintiffs' property . Further, specifically Plaintiffs request a Court Order determining who is the legal owner of the subject drainage canal.

74. That the Plaintiffs are informed and believe that the Defendants have continually operated the drainage canal for the public interest through a common scheme and have allowed various landowners to connect their drainage into the drainage canal which flows over the Plaintiffs' property all of which overwhelms the capacity of the drainage canal.

75. That the Defendants, through affirmative, positive and aggressive acts, have used Plaintiffs' property for a public purpose in that flooding continually occurs and it injures Plaintiffs' property during each event and thus a taking of the Plaintiffs' property by these governmental entities.

76. That the Defendants did commission the Crystal Lake Alternative Improvement Study on August 6, 2013 prepared by Thomas & Hutton Engineers for the Lakewood/Pirateland Swash.

77. That the Defendants did obtain opinions of probable costs of repairing the system through the study a copy of which is available for review by the Defendants.

78. That Horry County, consistent with the study "intended to implement a three phased approach to provide drainage relief in Lakewood/Crystal Lake/Pirateland watershed basin.

79. That the study including the ownership of the drainage canal has not been determined by any court as to who has responsibility for the drainage canal in question.

80. That further, Plaintiffs are informed and believe that Federal Emergency Management Authority (FEMA) has offered to pay 90% of the cost of destroying Plaintiffs' homes and returning this property to a natural wetlands.

81. That Plaintiffs have requested of County officials that because of the constant flooding that they file a Federal Emergency Management Authority (FEMA) application which Defendants have refused to do despite Plaintiffs' repeated requests.

82. That Plaintiffs have been, and continue to be willing, to accept the 90% Federal Emergency Management Authority (FEMA) would pay to demolish these properties and return the property to its normal wetlands state; however, Plaintiffs cannot require Federal Emergency Management Authority (FEMA) to fill out and/or prepare an application since only county, state or governmental entity can do so under federal law.

83. That Plaintiffs seek a declaratory judgment action requiring that the owner of the canal be identified by this court and that that particular owner be required to fill out an application with Federal Emergency Management Authority (FEMA) such that Federal Emergency Management Authority (FEMA) will pay to demolish these properties and return this real property to its wetlands state.

84. Further, Plaintiff have agreed not seek any additional damages from any Defendant should the county, state or city have a Federal Emergency Management Authority (FEMA) approved application for 90% of Plaintiffs damages.

85. That Plaintiffs have been in touch with Federal Emergency Management Authority (FEMA) Coordinator Jennifer Artz of South Carolina Department of Natural Resources who has indicated that a Federal Emergency Management Authority (FEMA) grant can be obtained but only through application by a governmental entity.

86. That Plaintiffs seeks a ruling of this Court requiring the owner of the canal, whoever it be, to apply with Federal Emergency Management Authority (FEMA) through the program run by South Carolina Department of Natural Resources to immediately obtain a Federal Emergency Management Authority (FEMA) grant.

87. Plaintiffs specifically ask for a mandatory injunction and declaratory judgment requiring the governmental entity who is the owner to apply for such a grant because such flooding will continually occur on the Plaintiffs' property into the future.

88. The Plaintiffs bring this cause of action for declaratory judgment and request that this court determine as a matter of law the legal ownership of the drainage canal to include the requirements of maintenance, construction, repair and upgrading of that canal.

89. The Plaintiffs further request this court determine the rights and liabilities of the parties as stated herein and for an order determining who is legally responsible for the drainage canal in question.

FOR AN TENTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, HORRY COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Mandatory Injunction)

90. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

91. The Plaintiffs requests this Court issue a mandatory junction requiring the governmental entity that that is the owner of the canal/ditch in question to apply for a grant with FEMA to have Plaintiffs' properties demolished and to have Plaintiffs paid 90% of the value of their property.

92. That Plaintiffs have agreed to release all governmental Defendants upon approval of the grant and have agreed not to seek the additional 10% in damages in order that these properties may be returned to their natural wetlands state.

93. That Plaintiffs mandatory injunction is necessary against the governmental Defendants because of the emergency situation in that Plaintiffs' property continually floods and will continue to flood in the future.

94. That Plaintiffs have no other remedy since they cannot sell their homes and thus all legal remedies are inadequate as a matter of law.

95. That Plaintiffs bring this cause of action for a mandatory injunction requiring the governmental Defendants who are responsible for the canal/ditch to immediately apply for a government grant through Federal Emergency Management Authority (FEMA).

96. That Plaintiffs request a mandatory injunction and for such other and further relief as the Court may deem just, necessary and proper.

WHEREFORE, Plaintiffs request judgment as follows:

A. On the First Cause of Action against all Defendants for actual damages, punitive damages and the costs of this action.

B. On the Second Cause of Action as to all Defendants for actual damages, punitive damages and the costs of this action.

C. On the Third Cause of Action as to Defendant South Carolina Department of Transportation for actual damages, punitive damages and the costs of this action.

D. On the Fourth Cause of Action as to all Defendants for actual and punitive damages.

E. On the Fifth Cause of Action as to Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for actual and punitive damages.

F. On the Sixth Cause of Action as to Defendants Jackson Companies and Prestwick for actual and punitive damages.

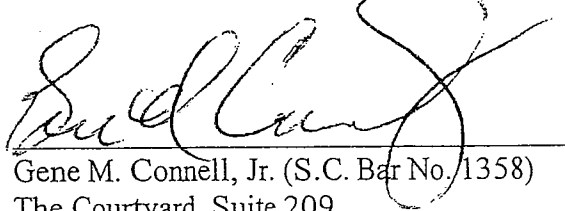
G. On the Seventh Cause of Action against all Defendants for actual and punitive damages and to enjoin Defendants from further trespass on their property.

H. On the Eighth Cause of Action against the Defendants City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation for actual damages, punitive damages, and attorney fees.

I. On the Ninth Cause of Action for declaratory judgment determining the rights and responsibilities of the parties as set forth in this cause of action.

J. On the Tenth Cause of Action for a mandatory injunction against the governmental entities responsible for the canal/ditch and an order that they apply with Federal Emergency Management Authority (FEMA) to obtain a grant to resolve this crisis and for such other and further relief as the Court may deem just, necessary and proper.

KELAHHER, CONNELL & CONNOR, P.C.



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Attorney for Plaintiffs

September 27, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,
Chad Web and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies;
City of Myrtle Beach;
South Carolina Department of Transportation;
Horry County; and
Myrtle Beach Air Force Base Redevelopment
Authority;

Defendants.

ANSWER OF DEFENDANTS,
PRESTWICK LAND LIMITED
PARTNERSHIP AND
JACKSON COMPANIES

(Jury Trial Demanded)

2016 NOV 22 PM 4:30
HORRY COUNTY

Defendants, Prestwick Land Limited Partnership and Jackson Companies, respond to the
Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 1 of the Complaint, and, therefore, demand strict proof thereof.
3. With regard to Paragraph 2 of the Complaint, these Defendants would show that Prestwick Land Limited Partnership was a "limited partnership" which was organized and existed pursuant to the laws of the State of South Carolina; however, Prestwick Land Limited Partnership was dissolved with the South Carolina Secretary of State on or about October 3, 2007.

4. These Defendants, upon information and belief, admit the allegations as contained in Paragraph 3 of the Complaint.
5. With regard to Paragraph 4 of the Complaint, these Defendants would show that there is no such entity as Jackson Companies, and the allegations contained in this paragraph are hereby denied.
6. These Defendants, upon information and belief, admit the allegations as contained in Paragraphs 5, 6 and 7 of the Complaint.
7. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 8, 9, 10, 11, 12, 13 and 14 of the Complaint and, therefore, demand strict proof thereof.
8. These Defendants deny the allegations as contained in Paragraphs 15, 16, 17, 18 and 19 of the Complaint.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

9. To the extent the allegations contained in Paragraphs 21 and 22 of the Complaint pertain to these Defendants, then same are denied.
10. These Defendants deny the allegations as contained in Paragraph 23 of the Complaint.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION

11. These Defendants would show that the allegations as contained in Paragraphs 24, 25, 26, 27, 28, and 29 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE FOURTH CAUSE OF ACTION

12. These Defendants, upon information and belief, admit the allegations as contained in 31 of the Complaint.
13. With regard to Paragraphs 32 and 33 of the Complaint, these Defendants admit that there is a drainage easement and would show that the document speaks for itself.
14. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 34, 35 and 36 of the Complaint, and, therefore, demand strict proof thereof.
15. These Defendants would show that the allegations as contained in Paragraphs 37, 38 and 39 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.
16. These Defendants deny the allegations as contained in Paragraph 40 of the Complaint.

FOR A FIRST DEFENSE AS TO THE FIFTH CAUSE OF ACTION

17. These Defendants would show that the allegations as contained in Paragraphs 41, 42, 43 and 44 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE SIXTH CAUSE OF ACTION

18. These Defendants deny the allegations as contained in Paragraphs 46, 47, 48, 49, 50 and 51 of the Complaint.

FOR A FIRST DEFENSE AS TO THE SEVENTH CAUSE OF ACTION

19. These Defendants would show that the allegations as contained in Paragraphs 53, 54 and 55 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE EIGHTH CAUSE OF ACTION

20. With regard to Paragraph 56 of the Complaint, these Defendants specifically deny that their conduct constitutes a trespass on Plaintiff's property.

21. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 57 of the Complaint, and, therefore demands strict proof thereof.

22. These Defendants would show that the allegations as contained in Paragraphs 58 and 59 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

23. These Defendants deny the allegations as contained in Paragraphs 60, 61, 62 and 63 of the Complaint.

FOR A FIRST DEFENSE AS TO THE NINTH CAUSE OF ACTION

24. To the extent the allegations contained in Paragraphs 64, 65, 66, 67, 68, 69, 70 and 71 of the Complaint pertain to these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE TENTH CAUSE OF ACTION

25. To the extent the allegations contained in Paragraphs 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89 of the Complaint pertain to these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE ELEVENTH CAUSE OF ACTION

26. These Defendants would show that the allegations as contained in Paragraphs 90, 91, 92, 93, 94, 95 and 96 do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A SECOND DEFENSE

27. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

28. These Defendants would show that the Complaint fails to set out sufficient allegations to constitute a cause of action against these Defendants, and, therefore, request that this action be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR A THIRD DEFENSE

29. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

30. These Defendants would show that the Plaintiffs and/or their predecessors in title entered into a settlement agreement pertaining to the matters set out in the Complaint, and these Defendants, therefore, assert release as an affirmative defense.

FOR A FOURTH DEFENSE

31. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

32. These Defendants would show that the Plaintiffs and/or their predecessors in title previously brought a lawsuit pertaining to the same matters asserted in this lawsuit and that lawsuit was

dismissed with prejudice; therefore, these Defendants assert collateral estoppel as an affirmative defense.

FOR A FIFTH DEFENSE

33. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

34. These Defendants assert equitable estoppel as an affirmative defense.

FOR A SIXTH DEFENSE

35. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

36. These Defendants assert the equitable defenses of waiver and laches as affirmative defenses.

FOR A SEVENTH DEFENSE

37. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

38. These Defendants assert the Statute of Limitations as an affirmative defense and a complete bar to this action.

FOR AN EIGHTH DEFENSE

39. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

40. These Defendants assert the Statute of Repose as an affirmative defense and a complete bar to this action.

FOR A NINTH DEFENSE

41. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

42. These Defendants assert assumption of risk as an affirmative defense.

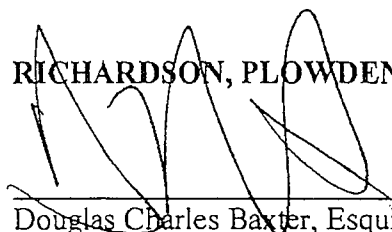
FOR A TENTH DEFENSE

43. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

44. These Defendants would show that the Plaintiff's alleged damages were caused by a third party or parties for whom these Defendants cannot be held liable.

Wherefore, having fully responded to the Complaint of the Plaintiff, Defendants, Prestwick Land Limited Partnership and Jackson Companies, request that same be dismissed with prejudice, together with the costs and disbursements in the defense of this matter, and for such other and further relief as this Court deems just and proper.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



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dbaxter@richardsonplowden.com

Attorney for Defendants Prestwick Land Limited
Partnership and Jackson Companies

November 18, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-26-6495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership,
Prestwick Homeowners Association,
Inc., Jackson Companies, City of
Myrtle Beach, South Carolina
Department of Transportation, Horry
County and Myrtle Beach Air Force
Base Redevelopment Authority,

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants,

ANSWER OF DEFENDANT
CITY OF MYRTLE BEACH TO COMPLAINT
AND THIRD-PARTY COMPLAINT

CLERK OF COURT
2016 NOV 28 PM 1:33
Horry County

Defendant City of Myrtle Beach hereby answers Plaintiffs' Complaint as follows:

1. Defendant City of Myrtle Beach denies each and every allegation and averment of the Complaint which is not admitted, qualified, or explained in this Answer.
2. Defendant City of Myrtle Beach admits paragraphs 1 upon information and belief.
3. Defendant City of Myrtle Beach admits paragraphs 2, 3, 4, 5, 6, and 7.
4. Defendant City of Myrtle Beach admits paragraph 8 upon information and belief.

5. As to paragraph 9, Defendant City of Myrtle Beach admits, upon information and belief, that Plaintiffs are in possession of certain pieces of land located in the Prestwick Subdivision. Defendant City of Myrtle Beach denies the remainder of this paragraph.

6. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraphs 10 and 11.

7. Defendant City of Myrtle Beach denies paragraphs 12, 13, 14, 15, 16, 17, 18, and 19.

Second Cause of Action

8. Paragraph 20 is a pleading paragraph to which no response is required.

9. Defendant City of Myrtle Beach denies the allegations contained in paragraphs 21, 22, and 23.

Third Cause of Action

10. Paragraph 24 is a pleading paragraph to which no response is required.

11. In so much as the allegations of paragraphs 25, 26, 27, 28, and 29 are not directed at this Defendant, Defendant City of Myrtle Beach is not required to respond thereto. To the extent any allegations concern this Defendant, the same are denied.

Fourth Cause of Action

12. Paragraph 30 is a pleading paragraph to which no response is required.

13. As to paragraph 31, Defendant City of Myrtle Beach avers that the watercourse which abuts Plaintiffs' property, begins at or near that portion of the former Myrtle Beach Air Force Base which was used to house Air Force personnel and is now known as Sea Gate Village and that this watercourse only drains this portion of the former Air Force Base. This watercourse also drains certain surrounding property that is outside of the former Air Force Base and outside

of the corporate limits of the City of Myrtle Beach. The watercourse flows from that above referenced portion of the former Base, under U.S. Highway 17, through Pirateland Campground and into the Atlantic Ocean. Any allegation in paragraph 29 to the contrary is denied.

14. As to paragraph 32, Defendant City of Myrtle Beach denies that it has any agreement with the United States Air Force as to the easement in question. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

15. As to paragraph 33, Defendant City of Myrtle Beach admits that on or about October 20, 1958, The United States of America was granted an easement regarding the United States government's use of the existing "ditch or branch." The language of the easement speaks for itself. Defendant City of Myrtle Beach denies that the United States Air Force had a duty to maintain such easement. Defendant City of Myrtle Beach avers that the "drainage ditch" in the easement is a naturally occurring watercourse that pre-existed the easement. Defendant City of Myrtle Beach is informed and believes that the center line of the watercourse is Plaintiffs' property boundary. Defendant City of Myrtle Beach admits that the watercourse goes through Pirateland Campground and into the Atlantic Ocean. Defendant City of Myrtle Beach denies any allegation in paragraph 33 that is inconsistent therewith.

16. As to paragraph 34, Defendant City of Myrtle Beach denies it assumed any responsibility for this easement. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph and therefore denies the same.

17. As to paragraph 35, the easement speaks for itself. Defendant City of Myrtle Beach denies that it is a successor-in-interest to the United States Air Force. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph and denies the same.

18. Defendant City of Myrtle Beach denies paragraph 36.

19. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraph 37 and therefore denies the same.

20. Defendant City of Myrtle Beach denies paragraphs 38, 39, and 40.

Fifth Cause of Action

21. Paragraph 41 is a pleading paragraph to which no response is required.

22. Defendant City of Myrtle Beach denies paragraphs 42, 43, and 44.

Sixth Cause of Action

23. Paragraph 45 is a pleading paragraph to which no response is required.

24. In so much as the allegations of paragraphs 46, 47, 48, 49, 50, and 51 are directed at this Defendant, Defendant City of Myrtle Beach is not required to respond thereto. To the extent any allegations concern this Defendant, the same are denied.

Seventh Cause of Action

25. Paragraph 52 is a pleading paragraph to which no response is required.

26. Defendant City of Myrtle Beach denies paragraphs 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 63.

Eighth Cause of Action

27. Paragraph 64 is a pleading paragraph to which no response is required.

28. Defendant City of Myrtle Beach denies paragraphs 65, 66, 67, 68, 69, 70, and 71.

Ninth Cause of Action

29. Paragraphs 72 and 73 are pleading paragraphs to which no response is required.

30. Defendant City of Myrtle Beach denies paragraphs 74 and 75.

31. As to paragraph 76, Defendant City of Myrtle Beach denies that it commissioned the referenced Study. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

32. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraphs 77, 78, 79, 80, 81, and 82.

33. As to paragraph 83, Defendant City of Myrtle Beach denies that it is the owner of the watercourse. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

34. Paragraph 84 is a pleading paragraph to which no response is required.

35. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraph 85 and therefore denies the same.

36. As to paragraph 86, Defendant City of Myrtle Beach denies that it is the owner of the watercourse. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

37. Defendant City of Myrtle Beach denies paragraphs 87, 88, and 89.

Tenth Cause of Action

38. Paragraph 90 is a pleading paragraph to which no response is required.

39. As to paragraph 91, Defendant City of Myrtle Beach denies that any mandatory injunction should issue against this Defendant.

40. As to paragraph 92, Defendant City of Myrtle Beach is informed and believes that Plaintiffs and their predecessors-in-interest have released Defendant City of Myrtle Beach. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

41. Defendant City of Myrtle Beach denies paragraphs 93, 94, 95, and 96.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

42. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

43. Defendant City of Myrtle Beach is informed and believes that this action fails to state a claim upon which relief may be granted and therefore Plaintiffs' claim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Join Indispensable Party)

44. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

45. Defendant City of Myrtle Beach is informed and believes Plaintiff has failed to join indispensable parties in this matter including, but not limited to, all owners of any property which drain into the referenced watercourse.

46. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter should be dismissed pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Res Judicata)

47. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

48. On or about February 24, 2000, Plaintiffs Cornell and Melissa Patton brought suit against Defendant City of Myrtle Beach and others in that case entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-

0765, in which they raised substantially identical allegations as those contained in this present suit.

49. Additionally, on or about February 24, 2000, Plaintiffs Chad and Amy Webb's predecessor-in-interest brought suit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780, in which the Plaintiff raised substantially identical allegations as those contained in this present suit.

50. Each of the prior suits were dismissed with prejudice against Defendant City of Myrtle Beach.

51. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter must be dismissed under the doctrine of res judicata.

FOR A FIFTH DEFENSE
(Collateral Estoppel)

52. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

53. On or about February 24, 2000, Plaintiffs Cornell and Melissa Patton brought suit against Defendant City of Myrtle Beach and others in that case entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765, in which they raised substantially identical allegations as those contained in this present suit.

54. Additionally, on or about February 24, 2000, Plaintiffs Chad and Amy Webb's predecessor-in-interest brought suit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-

26-0780, in which the Plaintiff raised substantially identical allegations as those contained in this present suit.

55. Each of the prior suits were dismissed with prejudice against Defendant City of Myrtle Beach.

56. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter must be dismissed under the doctrine of collateral estoppel.

FOR A SIXTH DEFENSE
(Accord and Satisfaction)

57. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

58. On or about September 2, 2005, the City of Myrtle Beach and others entered into a Settlement Agreement and Release with Plaintiffs Cornell and Melissa Patton and Phil and Elizabeth Eaves.

59. The Settlement Agreement and Release was intended to and did resolve all of those allegations raised in those lawsuits, among others, entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765 and Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780. Both of these suits raised substantially identical allegations to the present matter.

60. Pursuant to this Settlement Agreement and Release, the City of Myrtle Beach paid \$123,333.33 to resolve:

ANY AND ALL CLAIMS for property damage/inverse condemnation, nuisance, breach of easement/negligence/trespass arising out of or in connection with drainage from the drainage easement which abutted the property of the Landowners located at Prestwick Subdivision located in Horry County, South Carolina and any and all other claims arising out of or in connection with Civil Action Nos. 2000-CP-26-0765; 2000-CP-26-0775; 2000-CP-

26-0780; 2001-CP-26-2540 filed with the Clerk of Court for Horry County, South Carolina.

61. By and through that deed dated August 15, 2007, and filed on August 16, 2007, in Deed Book 3269 at Page 2296, the Eaves transferred the property which was subject to the prior litigation to the Plaintiffs Michael C. Webb and Amy Causey Webb.

62. Defendant City of Myrtle Beach is informed and believes that this payment made by Defendant City of Myrtle Beach was in full accord and satisfaction of all claims which are now being litigated by the Plaintiffs.

63. Therefore, Defendant City of Myrtle Beach is informed and believes that the Complaint should be dismissed under the doctrine of accord and satisfaction.

FOR A SEVENTH DEFENSE
(Release)

64. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

65. On or about September 2, 2005, the City of Myrtle Beach and others entered into a Settlement Agreement and Release with Plaintiffs Cornell and Melissa Patton and Phil and Elizabeth Eaves.

66. The Settlement Agreement and Release was intended to and did resolve all of those allegations raised in those lawsuits, among others, entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765 and Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780. Both of these suits raised substantially identical allegations to the present matter.

67. Pursuant to the Settlement Agreement and Release, Plaintiff Cornell Patton and Melissa Patton and Plaintiff Chad Webb and Amy Webb's predecessor-in-interest released the

City of Myrtle Beach from “any and all claims and causes of action of any nature whatsoever, whether known or unknown, which landowners now have, had or may have relating to the claims, demands, and allegations which were or could have been set forth and asserted in the above referenced actions or which otherwise arise out of those matters described in the pleadings in the above referenced actions”.

68. Defendant City of Myrtle Beach is therefore informed and believes that Plaintiffs have fully released any and all claims they now raise in the present litigation.

FOR AN EIGHTH DEFENSE
(Sovereign Immunity)

69. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

70. Defendant City of Myrtle Beach asserts its sovereign immunity as a complete defense to this action.

FOR A NINTH DEFENSE
(Tort Claims Act)

71. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

72. Defendant City of Myrtle Beach asserts the provisions of S.C. Code Ann. § 15-78-60 as a complete bar to this action.

FOR A TENTH DEFENSE
(Tort Claims Act)

73. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

74. Defendant City of Myrtle Beach asserts the liability limitation provisions found in S.C. Code Ann. § 15-78-120 as a complete bar to a recovery or recoveries in excess thereof, and as a complete bar to recovery of punitive or exemplary damages or pre-judgment interest.

FOR AN ELEVENTH DEFENSE
(Tort Claims Act/Statute of Limitations)

75. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

76. Defendant City of Myrtle Beach asserts the two year statute of limitations provision found in S.C. Code Ann. § 15-78-110 as a complete bar to any act or omission alleged or which contributed to the allegations contained in this Complaint occurring on or before October 4, 2014.

FOR A TWELFTH DEFENSE
(Statute of Limitations)

77. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

78. Defendant City of Myrtle Beach asserts the statute of limitations as contained in S.C. Code Ann. § 15-3-530 as a complete bar to any act or omission alleged or which contributed to the allegations contained in this Complaint occurring on or before October 4, 2013.

FOR A THIRTEENTH DEFENSE
(Statute of Limitations)

79. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

80. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred under the statute of limitations contained in S.C. Code Ann. § 15-3-380 in that for over forty years, the watercourse a) has been used to drain property within its drainage field including property

located at the former Air Force Base, b) has not been maintained, and c) has backed-up and flooded as natural conditions dictated.

FOR A FOURTEENTH DEFENSE
(Laches/Waiver/Estoppel/Unclean Hands)

81. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

82. Defendant City of Myrtle Beach asserts Plaintiffs' claims are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands in that the watercourse has not been cleared in decades. Additionally, the existence of the drainage easement and its obstructed condition is readily ascertainable upon a reasonable inspection, and that prior to purchasing or coming into possession of the property, Plaintiffs should have conducted such a reasonable inspection.

FOR A FIFTEENTH DEFENSE
(Assumption of Risk)

83. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

84. Defendant City of Myrtle Beach asserts Plaintiffs' claims are barred by the assumption of the risk in that Plaintiffs knowingly and voluntarily purchased property located adjacent to a natural watercourse.

FOR A SIXTEENTH DEFENSE
(Intervening/Superceding Cause)

85. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

86. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred because even if Defendant City of Myrtle Beach committed the misfeasances and nonfeasances alleged in

the Complaint which Defendant City of Myrtle Beach specifically denies, the intervening and/or superceding acts of God are the direct and proximate cause of the damages suffered by the Plaintiffs.

87. Additionally, City of Myrtle Beach asserts that Plaintiffs' claims are barred because of the intervening and superceding misfeasance and nonfeasance of persons other than Defendant City of Myrtle Beach.

FOR A SEVENTEENTH DEFENSE
(Comparative Negligence)

88. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

89. Defendant City of Myrtle Beach asserts that any harm occurring to Plaintiffs resulted from Plaintiffs' own negligence to exercise reasonable care, and therefore Plaintiffs' own negligence must be measured against that of Defendant City of Myrtle Beach, if any, and Plaintiffs' damages must be reduced accordingly.

FOR AN EIGHTEENTH DEFENSE
(No Proximate Cause)

90. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

91. Upon information and belief, Plaintiffs assign blame to Defendant City of Myrtle Beach by virtue of that License Agreement dated September 30, 1997, between the City and the Department of the Air Force.

92. Although the City specifically denies that the drainage canal in question is a part of such Agreement, if it is, then the City's only duty under the Agreement is to maintain the canal in the condition it was in at as of September 30, 1997. That upon information and belief,

the condition of the canal did not appreciable deteriorate from September 30, 1997, to the dates of the damages claimed by Plaintiffs.

FOR A NINETEENTH DEFENSE
(No Duty to Maintain)

93. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

94. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that Defendant City of Myrtle Beach had no duty either under the easement or under the law to maintain the watercourse and keep it free from obstructions.

FOR A TWENTIETH DEFENSE
(Natural Watercourse)

95. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

96. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that the watercourse and the "obstructions" therein are of a natural and unadulterated origin, and therefore Defendant City of Myrtle Beach had no duty to maintain the same.

FOR A TWENTY-FIRST DEFENSE
(Prescriptive Easement)

97. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

98. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that for well over twenty years, the watercourse a) has been used to drain property within its drainage field including property located at the former Air Force Base, b) has not been maintained, and c) has backed-up and flooded as natural conditions dictated.

99. Defendant City of Myrtle Beach is informed and believes that there is a prescriptive right to use the watercourse for drainage and not maintain the same. Defendant City of Myrtle Beach is likewise informed and believes that there is a prescriptive right to use the Plaintiffs' property as an overflow for the watercourse itself. Therefore, Plaintiffs' claims should be barred.

FOR A TWENTY-SECOND DEFENSE
(Environmental)

100. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

101. Defendant City of Myrtle Beach asserts any and all rights, privileges, immunities, and defenses available to it pursuant to the South Carolina Pollution Control Act, South Carolina Stormwater Management and Sediment Reduction Act, South Carolina Erosion and Sediment Reduction Act, South Carolina Coastal Zone Management Act, the Regulation enacted pursuant to those Acts, similar Federal Statutes and Regulations, and the Common Enemy Rule.

FOR A TWENTY-THIRD DEFENSE
(Election of Remedies)

102. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

103. Defendant City of Myrtle Beach is informed and believes that Plaintiffs must elect whether the actions of Defendants are of a permanent or temporary character prior to any trial on this matter so as to determine the nature and scope of relief available to Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE
(Inverse Condemnation)

104. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

105. If Defendant City of Myrtle Beach's actions constitute "inverse condemnation," which this Defendant expressly denies, then this Defendant is informed and believes that it is entitled to an order of this Court granting this Defendant permanent possession of Plaintiffs' property, or alternatively, an interest therein allowing this Defendant to engage in and use Plaintiffs' property in the manner that Plaintiffs' have alleged that this Defendant has in fact used this property, to wit" "allowing all of the stormwater from the Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs' property."

FOR A TWENTY-FIFTH DEFENSE
(Lack of Subject Matter Jurisdiction)

106. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

107. Plaintiffs' lawsuit calls on the court to order a mandatory injunction and declaratory judgment relief requiring the Defendants to enter into alleged emergency relief programs provided by the Federal Emergency Management Authority ("FEMS"). (See paragraph 87 of Complaint).

108. This Court lacks the jurisdiction to order a government entity to apply for or undertake any specific Federal duties and Defendant City of Myrtle Beach asks that this claim be dismissed.

FOR A TWENTY-SIXTH DEFENSE
(Mootness)

109. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

110. Plaintiffs' requests for injunctive relief cannot be resolved by a court of law because they require the Defendant City of Myrtle Beach to purchase and undertake the duties of

property ownership. Even if the court were to fully grant all of the Plaintiffs' requests, it would have no authority to force this on behalf of the Plaintiffs.

FOR A TWENTY-SEVENTH DEFENSE
(Failure to Exhaust Administrative Remedies)

111. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

112. The Plaintiffs have administrative remedies under state law, which they have not exhausted prior to bringing this action, and therefore, one or more of their claims should be dismissed.

FOR A TWENTY-EIGHTH DEFENSE AND THIRD-PARTY COMPLAINT
(Breach of Contract)

113. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

114. Defendant City of Myrtle Beach is a municipal corporation organized and existing under the laws of the State of South Carolina.

115. Upon information and belief, Third-Party Plaintiffs Phil Eaves and Elizabeth Eaves ("Eaves") are citizens and residents of Horry County, South Carolina.

116. On or about February 24, 2000, Phil Eaves brought a lawsuit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., with civil action number 2000-CP-26-0780. The allegations contained in this lawsuit are substantially similar to the allegations contained in this present suit.

117. On or about September 2, 2005, the Eaves and others, as "Landowners", entered into a Settlement Agreement with the City of Myrtle Beach and others, as "Defendants",

whereby the Defendants agreed to pay to the Landowners certain specified sums as set forth in the Settlement Agreement and Release.

118. As part of the Settlement Agreement and Release, the Eaves promised as follows:

3. The Landowners, their heirs, executors, administrators, assigns and successors, covenant and agree that when selling the property, they must provide a purchaser a "Residential Property Condition Disclosure settlement" as required under Title 27, Chapter 50 of the South Carolina Code of Laws. The Landowners, theirs heirs, executors, administrators and assigns and successors, must check "Yes" to Question 11, "Drainage, grading or stability of soil or retaining structure" and "Yes" to Question 22, "Flood hazards of that property is in a federally-designated flood plain." Should the present form of the Disclosure Statement change, Plaintiffs shall check "yes" to any question which is substantially similar to those set forth in the preceding sentence. Under the Explanation section of the Disclosure Statement, Plaintiff shall disclose that:

. . . .

AS TO LANDOWNERS EAVES: Due to Hurricane Floyd, floodwaters covered the first floor of the home while it was under construction. Additionally, the garage and yard experience periodic flooding. This flooding has damaged property located in the garage and the yard, including landscaping. The berm located at the rear of the property was constructed by the homeowner and the sole responsibility for its upkeep shall be with the owner of this property. Further information may be reviewed in Civil File 2000-CP-26-780 at the Horry County Courthouse.

119. The City of Myrtle Beach has fulfilled all of its duties under this Settlement Agreement and Release.

120. By and through that deed dated August 15, 2007, and filed on August 16, 2007, in Deed Book 3269 at Page 2296, the Eaves transferred the property which was subject to the prior litigation to the Plaintiffs Michael C. Webb and Amy Causey Webb.

121. According to the allegations contained in Plaintiffs' complaint, the Webbs were not given any disclosures that the property they were purchasing was subject to flooding.

Additionally, the Plaintiffs allege that they purchased the property based upon the representation that this property has never flooded.

122. The Eaves breached the Settlement Agreement and Release by failing to disclose to the Plaintiffs Chad and Amy Webb that their property may be subject to periodic flooding and that the same had flooded in the past.

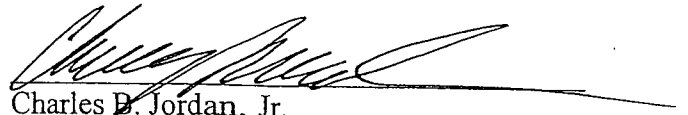
123. As a direct and proximate result of the Eaves' failure to make the required disclosures to the Webbs, the Webbs purchased the property, and have brought suit against the City of Myrtle Beach and others for damage to their property resulting from flooding of the same. As a direct and consequential result, the City has been forced to retain counsel to defend it in this suit and has incurred other damages arising out of the filing of this suit by the Webbs, including any funds paid in settlement or by judgment to the Webbs.

124. Therefore, the City of Myrtle Beach is informed and believes it is entitled to judgment for actual damages against the Eaves in an amount to be determined by a jury.

WHEREFORE, having answered Plaintiffs' Complaint, Defendant City of Myrtle Beach prays:

- A. That the Complaint be dismissed;
- B. For judgment for actual damages against Third Party Defendants.
- C. That Defendant City of Myrtle Beach be granted the costs of this action;
and
- D. That Defendant City of Myrtle Beach be granted such other relief as this Court may deem just and proper.

THOMAS & BRITTAIN, P.A.



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Beach*

November 18, 2016

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,
Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; and Myrtle
Beach Air Force Base Redevelopment
Authority,
Defendants.

City of Myrtle Beach,
Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,
Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

ANSWER, COUNTERCLAIM AND
CROSS-CLAIM OF
THIRD PARTY DEFENDANTS
PHIL AND ELIZABETH EAVES

The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, answering the allegations of the Third-Party Plaintiff's Complaint, state as follows:

1. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, deny each and every allegation not hereinafter specifically admitted and demand strict proof thereof.
2. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, see no reason to answer the allegations of Paragraphs 1 through 112 as they are defenses and thus are denied.
3. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, admit the allegations of Paragraphs 113, 114 and 115 of the Third-Party Complaint.

4. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, admit that a lawsuit was brought on or about February 24, 2000. The remaining allegations are denied.

5. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, admit the allegations of Paragraphs 117.

6. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, admit the allegations of Paragraph 118 that all provisions of the settlement agreement have been adhered to by these Third-Party Defendants.

7. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, deny the allegations of Paragraph 119 of the Third-Party Complaint.

8. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, admit so much of Paragraph 120 which states that the property was transferred and further state that the transfer was proper and appropriate and that the Plaintiffs Michael C. Webb and Amy Webb were fully aware of the condition of the property.

9. The Third-Party Defendants, Phil Eaves and Elizabeth Eaves, deny the allegations of Paragraph 121, 122, 123 and 124 of the Third-Party Complaint.

FOR A SECOND DEFENSE AND
FIRST COUNTERCLAIM AS TO THE CITY OF MYRTLE BEACH AND
FIRST CROSS-CLAIM AS TO PRESTWICK LAND LIMITED PARTNERSHIP;
PRESTWICK HOMEOWNERS ASSOCIATION, INC.; JACKSON COMPANIES;
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; Horry COUNTY AND
MYRTLE BEACH REDEVELOPMENT AUTHORITY
 (Negligence)

10. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, are owners of a certain lot of land in Prestwick sub-division, said property is between the property of Cornell Patton, Melissa Patton, Chad Webb and Amy Webb.

11. Further said property is currently being used as a drainage area and overflow area for the ditch which is the subject of this lawsuit.

12. That said property is jointly owned by Phil Eaves, Elizabeth Eaves, Cornell Patton and Melissa Patton and said lot of land is entirely worthless and without any value because it continually floods.

13. That Phil Eaves and Elizabeth Eaves hereby assert all causes of action asserted by Cornell Patton, Melissa Patton, Chad Webb and Amy Webb as asserted in the main Complaint. That these causes of action follow:

14. That these Defendants, through their officers, agents and/or employees, were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to inform Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that the drainage easement would flood their property;
- b. in providing the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves with a Property Report which stated that no flooding had ever occurred when this was, in fact, not true;
- c. in providing the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves with a Property Report which stated that the property had never been under water when, in fact, this was not true;
- d. in failing to advise the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that the property sometimes flooded and, in fact, had been under water;
- e. in failing to warn, advise and inform the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that the drainage easement sometimes flooded;
- f. in failing to advise the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that the creek on the back of the property drained the entire Air Force Base property;
- g. in failing to inform the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that during times of heavy rains their property would flood;
- h. in failing to inspect the property to make sure that it would not flood prior to purchase by the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves;

- i. in designing the creek in such a way so that all the water from Prestwick would flow through the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves property and cause flooding;
- j. in connecting a series of ditches and pipes so that all the water would flow through the drainage easement unto the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves property;
- k. in channeling water in such a way that would flood the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves property;
- l. in failing to devise a method for channeling water away from the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves property;
- m. in failing to advise the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves that water would channel over their property;
- n. in failing to drain water into spillways and/or divert water away from the Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves property; and
- o. in failing to follow a drainage assessment report which was written and funded by Horry County as to how to fix and/or repair drainage in the Prestwick area.

15. That as a direct and proximate result, the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, continued to suffer severe and catastrophic damage to their lot, including having floodwaters on their lot on a regular basis.

16. That the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves are unable to sell their lot because of continual flooding of their lot on a regular basis and have lost the entire value of their homes such that the lot cannot be sold for fair market value.

17. That the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for judgment against all Defendants for actual damages, punitive damages, and for the costs of this action.

FOR A SECOND COUNTERCLAIM/CROSS-CLAIM
AS TO THIRD-PARTY PLAINTIFF AND ALL DEFENDANTS
(Nuisance)

18. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

19. All of the above-named Defendants' conduct in channeling surface water through various artificial pipes and ditches onto the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property resulted in an unreasonable interference with Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, use and enjoyment of their property, which reoccurs when there is heavy rain.

20. The aforementioned action is a nuisance and severe damage has been done to the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot as outlined in the First Counterclaim/Cross-Claim.

21. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for judgment against these Defendants for actual damages, for punitive damages, for nuisance and also request a permanent injunction requiring these Defendants to not channel water through ditches and the like onto or near the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

FOR A THIRD CROSS-CLAIM
AS TO DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Negligence)

22. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

23. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, operates a bridge downstream from the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property on U.S. Highway 17; such bridge has undersized pipes and allows the water to back up onto Plaintiffs' property during periods of inclement weather.

24. That the bridge downstream operated, built and owned by the Defendant South Carolina Department of Transportation across U.S. Highway 17 acts as a dam failing to allow the water to drain properly underneath U.S. Highway 17 into the ocean.

25. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, is negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to repair a known flooding defect which this Defendant has actual knowledge of;
- b. in failing to have an engineer size the pipes in such a manner so that the water would not back up on the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property;
- c. in putting in undersized pipes so that the water would not drain;
- d. in failing to provide such engineering that the entire creek did drain as it had before the road was placed across;
- e. in failing to have proper engineering advice or expertise before building the road and placing the pipes underneath the road;
- f. in failing to warn the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, of the undersized pipes;
- g. in failing to inspect the work to make sure that undersized pipes were not placed under the road;
- h. in failing to take reasonable care to make sure that steps were taken to keep from damaging Plaintiff's property; and

- i. in failing to use generally accepted construction practices to prevent flooding on property upstream from Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

26. That as a direct and proximate result, the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, suffered severe and catastrophic damage to their lot and property and continue to suffer severe and catastrophic damage to their property; that a cause of this damage is the Defendant South Carolina Department of Transportation's antiquated bridge and undersized pipes which block the downstream drainage making Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot worthless; that Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property continues to have property damage as soon as inclement weather occurs including rainfall over two inches; and that Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have been unable to sell their lot because of the permanent stigmatization of the continuous flooding on the property.

27. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for judgment against Defendant South Carolina Department of Transportation for actual damages, punitive damages and for the costs of this action.

FOR A FOURTH COUNTERCLAIM/CROSS-CLAIM
AS TO THIRD-PARTY PLAINTIFF AND ALL DEFENDANTS
(Breach of Easement/Negligence)

28. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

29. The drainage ditch which abuts the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property is, in fact, the drainage ditch which goes all the

way from the former Myrtle Beach Air Force Base into the Atlantic Ocean through Pirateland Campground.

30. That the Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, have an agreement with the United States Air Force to assume any and all rights and liabilities of the United States Air Force when the property was turned over to these Defendants.

31. That an easement exists as of October 30, 1958 wherein the United States Air Force was to maintain an easement for water drainage through a channel that would go by the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property through Pirateland Campground and into the Atlantic Ocean.

32. The Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority assumed responsibility for this easement when they took over the former Myrtle Beach Air Force Base property.

33. That this easement provided that the United States Air Force and its successors in interest, the City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, were to maintain the easement including to trim all underbrush, remove any trees and obstructions, including vegetation structures or obstacles within the limits of the right of way as is necessary to provide adequate clearance and to eliminate interference with it. Further, these Defendants have legal responsibility to prevent downstream flooding.

34. That the aforementioned drainage easement was never maintained by the City of Myrtle Beach, Horry County or the Myrtle Beach Air Force Base Redevelopment Authority and numerous private property owners were allowed to use this canal when it was already overburdened.

35. That the Defendants failed to follow the written recommendation of the Horry County Stormwater Management program and the comprehensive engineering report provided to the Defendants to fix and/or repair the drainage area in question to prevent downstream flooding.

36. That the Defendants, through their officers, agents and/or employees, were negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. in failing to maintain the easement;
- b. in failing to keep the underbrush out of the drainage easement;
- c. in failing to maintain the easement on a regular basis;
- d. in allowing other developments to drain into this ditch/canal;
- e. in failing to inspect the easement for obstruction;
- f. in failing to perform under the terms of the easement;
- g. in failing to have regular work crews clean the easement;
- h. in failing to follow the proper stormwater drainage protocol and to follow Horry County's comprehensive plan;
- i. in failing to act so that Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property would not be damaged; and
- j. in failing to take that degree of skill and care which a reasonable person would do.

37. That as a direct and proximate result the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, suffered severe damage to their lot by waters which came onto their property. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have suffered depreciation to their property, loss of real property, and will continue to have these problems for the remainder of the time they own the aforementioned property.

38. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for judgment against Defendants for actual damages, punitive damages, and the costs of this action.

FOR A FIFTH COUNTERCLAIM/CROSS-CLAIM
AS TO CITY OF MYRTLE BEACH, HORRY COUNTY AND
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
(Breach of Easement)

39. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

40. That Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, as successors in interest to United States of America did breach their agreement to Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, to keep the aforementioned easement clean, maintained, inspected and improved so that water would move in an unobstructed manner through the drainage easement.

41. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for damages against the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for breach of its easement as more particularly described in the aforementioned cause of action.

42. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for judgment against these Defendants for breach of easement for actual damages, attorney's fees and for costs.

FOR A SIXTH CROSS-CLAIM
AS TO JACKSON COMPANIES, PRESTWICK LAND LIMITED PARTNERSHIP
AND PRESTWICK HOMEOWNERS ASSOCIATION, INC.
(Negligence)

43. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

44. That the Defendants Jackson Companies along with Prestwick/Prestwick Land Limited Partnership is the owner of many areas upstream from Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

45. That the Defendant Jackson Companies along with Prestwick Land Limited Partnership Corporation has constructed many artificial drainage ditches throughout their property, including Prestwick and Crystal Lakes. That these drainage ditches all connect to the drainage ditch which continually floods Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

46. That these Defendants did channel water directly into the drainage ditch which damaged Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property by artificial means.

47. That the Defendant Jackson Companies was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in building artificial channels to direct water to Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property;
- b. in failing to warn Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves,;
- c. in failing to maintain drainage easement;
- d. in failing to do a drainage study before connecting ditches to the ditch which caused Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, to Plaintiffs' property; and
- e. in failing to inspect, engineer, investigate, and advise Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth

Eaves, that this Defendant was connecting other ditches upstream which would dump water on the Plaintiffs' property.

48. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants.

49. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for damages against Prestwick Land Limited Partnership, Prestwick Homeowners Association, Inc. and Jackson Companies for actual and punitive damages.

FOR A SEVENTH COUNTERCLAIM/CROSS-CLAIM
AS TO THIRD-PARTY PLAINTIFF AND ALL DEFENDANTS
(Trespass)

50. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

51. That water from all Defendants' properties was channeled artificially onto the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

52. That the aforementioned channeling is a trespass and has caused damage to the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property, caused erosion, and has threatened Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot.

53. That Defendants through a master drainage stormwater management system have in effect devised and/or connected all ditches such that water flows over Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

54. That after each rain Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have significant erosion and damage to their property and, thus, there is a continual trespass on Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

55. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have tried to mitigate their damages, but have been unable to do so.

56. That stormwater from all the Defendants' property is physically moved onto the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property in a deliberate scheme and/or plan.

57. That the aforementioned affirmative acts by all Defendants invade the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property in an intentional manner and cause great and grievous irreparable harm to the Plaintiffs' property.

58. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, asks for an injunction requiring all Defendants to immediately cease and desist from channeling artificially any water into other ditches which flow through the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property since this causes irreparable harm to Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

59. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, further asks this Court to issue its Order requiring all Defendants to halt this continuing trespass immediately.

60. Further, the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask for damages to their lot, their real property, for depreciation because they are unable to sell their lot, for loss of use of the property and for a fix moving the water away from Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

61. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, ask this Court issue its order awarding actual and punitive damages to the Plaintiffs and to enjoin all Defendants from dumping water artificially into the easement and for such other and further relief as the Court may deem just, necessary and proper.

FOR AN EIGHTH COUNTERCLAIM/CROSS-CLAIM
AS TO CITY OF MYRTLE BEACH; HORRY COUNTY;
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Inverse Condemnation)

62. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

63. That the Defendants City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation, through affirmative, aggressive, governmental acts, have effectively condemned Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property by allowing all of the stormwater from Myrtle Beach Air Force Base to be channeled artificially along the rear of Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

64. That these governmental Defendants entered into a common scheme or plan whereby all of the water from the Myrtle Beach Air Force Base, Crystal Lakes, and Prestwick was

channeled through various pipes and ditches to the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot.

65. That these acts by these Defendants were affirmative, positive and aggressive acts and were taken on behalf of the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for a public purpose and that they are, in fact, permanent since the drainage system for the entire Myrtle Beach Air Force Base runs next to the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property.

66. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, believe that their property has been inversely condemned as mentioned in the first cause of action each time heavy rains occur and Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, suffer irreparable harm and erosion.

67. That the Defendants are aware and participated in a comprehensive engineering stormwater management plan and report prepared by Horry County (available at office of Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, counsel) and refused to implement that plan and alleviate damage to Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot and other property in the area.

68. That the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have suffered damages as outlined in the first cause of action and further suffer continuing irreparable harm and ask that the Court issue its Order awarding actual damages to Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, and also enjoining these Defendants from channeling any water through the pipes and/or ditches under and around the Plaintiffs' property.

69. Further, that this is a taking of private property for public purpose in violation of the United States and South Carolina Constitutions and that Plaintiffs request actual damages, punitive damages, an injunction and attorney's fees as required by state law.

FOR A NINTH COUNTERCLAIM/CROSS-CLAIM
AS TO CITY OF MYRTLE BEACH, HORRY COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
 (Declaratory Judgment- Non Jury)

70. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

71. That this action is for declaratory judgment pursuant to the South Carolina Declaratory Judgment Act and requests that the Court issue its Order determining the legal ownership, maintenance, repair, operation and responsibility for the drainage canal which adjoins the Plaintiffs' property. Further, specifically Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, request a Court Order determining who is the legal owner of the subject drainage canal.

72. That the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, are informed and believe that the Defendants have continually operated the drainage canal for the public interest through a common scheme and have allowed various landowners to connect their drainage into the drainage canal which flows over the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property all of which overwhelms the capacity of the drainage canal.

73. That the Defendants, through affirmative, positive and aggressive acts, have used Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property for a public purpose in that flooding continually occurs and it injures Plaintiffs' property

during each event and thus a taking of the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property by these governmental entities.

74. That the Defendants did commission the Crystal Lake Alternative Improvement Study on August 6, 2013 prepared by Thomas & Hutton Engineers for the Lakewood/Pirateland Swash.

75. That the Defendants did obtain opinions of probable costs of repairing the system through the study a copy of which is available for review by the Defendants.

76. That Horry County, consistent with the study "intended to implement a three phased approach to provide drainage relief in Lakewood/Crystal Lake/Pirateland watershed basin.

77. That the study including the ownership of the drainage canal has not been determined by any court as to who has responsibility for the drainage canal in question.

78. That further, Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, are informed and believe that Federal Emergency Management Authority (FEMA) has offered to pay 90% of the cost of destroying Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, lot and returning this property to a natural wetlands.

79. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have requested of County officials that because of the constant flooding that they file a Federal Emergency Management Authority (FEMA) application which Defendants have refused to do despite Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, repeated requests.

80. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have been, and continue to be willing, to accept the 90% Federal Emergency Management Authority (FEMA) would pay to demolish these properties and return the property to

its normal wetlands state; however, Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, cannot require Federal Emergency Management Authority (FEMA) to fill out and/or prepare an application since only county, state or governmental entity can do so under federal law.

81. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, seek a declaratory judgment action requiring that the owner of the canal be identified by this court and that that particular owner be required to fill out an application with Federal Emergency Management Authority (FEMA) such that Federal Emergency Management Authority (FEMA) will pay to demolish these properties and return this real property to its wetlands state.

82. Further, Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have agreed not to seek any additional damages from any Defendant should the county, state or city have a Federal Emergency Management Authority (FEMA) approved application for 90% of Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, damages.

83. That Plaintiffs have been in touch with Federal Emergency Management Authority (FEMA) Coordinator Jennifer Artz of South Carolina Department of Natural Resources who has indicated that a Federal Emergency Management Authority (FEMA) grant can be obtained but only through application by a governmental entity.

84. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, seeks a ruling of this Court requiring the owner of the canal, whoever it be, to apply with Federal Emergency Management Authority (FEMA) through the program run by South Carolina Department of Natural Resources to immediately obtain a Federal Emergency Management Authority (FEMA) grant.

85. Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, specifically ask for a mandatory injunction and declaratory judgment requiring the governmental entity who is the owner to apply for such a grant because such flooding will continually occur on the Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property into the future.

86. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, bring this cause of action for declaratory judgment and request that this court determine as a matter of law the legal ownership of the drainage canal to include the requirements of maintenance, construction, repair and upgrading of that canal.

87. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, further request this court determine the rights and liabilities of the parties as stated herein and for an order determining who is legally responsible for the drainage canal in question.

FOR A TENTH COUNTERCLAIM/CROSS-CLAIM
AS TO CITY OF MYRTLE BEACH, HORRY COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Mandatory Injunction)

88. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

89. The Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, requests this Court issue a mandatory junction requiring the governmental entity that that is the owner of the canal/ditch in question to apply for a grant with FEMA to have Plaintiffs' properties demolished and to have Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, paid 90% of the value of their property.

90. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have agreed to release all governmental Defendants upon approval of the grant and have agreed not to seek the additional 10% in damages in order that these properties may be returned to their natural wetlands state.

91. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, mandatory injunction is necessary against the governmental Defendants because of the emergency situation in that Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, property continually floods and will continue to flood in the future.

92. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, have no other remedy since they cannot sell their homes and thus all legal remedies are inadequate as a matter of law.

93. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, bring this cause of action for a mandatory injunction requiring the governmental Defendants who are responsible for the canal/ditch to immediately apply for a government grant through Federal Emergency Management Authority (FEMA).

94. That Third-Party Defendants/Counterclaimants/Cross-Claimants, Phil Eaves and Elizabeth Eaves, request a mandatory injunction and for such other and further relief as the Court may deem just, necessary and proper.

WHEREFORE, Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves respectfully request judgment as follows:

- A. That the Third-Party Complaint by the Defendant City of Myrtle Beach be denied.
- B. That Third-Party Defendants/Counterclaimants/Cross-Claimants Phil Eaves and Elizabeth Eaves have judgment against the City of Myrtle Beach, Prestwick Land Limited Partnership, Prestwick Homeowners Association, Inc.; Jackson Companies, City of Myrtle

Beach, South Carolina Department of Transportation, Horry County and Myrtle Beach Air Force Base Redevelopment Authority on all Counterclaims and Cross-Claims.

C. On the First Counterclaim/Cross-Claim against the Third-Party Plaintiff and all Defendants for actual damages, punitive damages and the costs of this action.

B. On the Second Counterclaim/Cross-Claim as to the Third-Party Plaintiff and all Defendants for actual damages, punitive damages and the costs of this action.

C. On the Third Cross-Claim as to Defendant South Carolina Department of Transportation for actual damages, punitive damages and the costs of this action.

D. On the Fourth Counterclaim/Cross-Claim as to the Third-Party Plaintiff and all Defendants for actual and punitive damages.

E. On the Fifth Counterclaim/Cross-Claim as to City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for actual and punitive damages.

F. On the Sixth Cross-Claim as to Defendants Jackson Companies, Prestwick Land Limited Partnership and Prestwick Homeowners Association, Inc. for actual and punitive damages.

G. On the Seventh Counterclaim/Cross-Claim as to the Third-Party Plaintiff and all Defendants for actual and punitive damages and to enjoin Defendants from further trespass on their property.

H. On the Eighth Counterclaim/Cross-Claim as to City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation for actual damages, punitive damages, and attorney fees.

I. On the Ninth Counterclaim/Cross-Claim for declaratory judgment determining the rights and responsibilities of the parties as set forth in this cause of action.

J. On the Tenth Counterclaim/Cross-Claim for a mandatory injunction against the governmental entities responsible for the canal/ditch and an order that they apply with Federal

Emergency Management Authority (FEMA) to obtain a grant to resolve this crisis and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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Third-Party Defendants

May 10, 2017

Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,
Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; Myrtle
Beach Air Force Base Redevelopment
Authority; Nelson L. Hardwick &
Associates, Inc.; Bermuda Gardens
Homeowners' Association d/b/a
Homeowners of Ocean Walk Property
Owners Association; Campgrounds, Inc.;
and Prestwick Property Owners
Associates, Inc.,

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

AMENDED COMPLAINT

(Negligence/Declaratory Judgment/
Trespass/Nuisance/Inverse Condemnation/
Breach of Easement/Mandatory Injunction)

JURY TRIAL

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are all owners and residents of real property in the Prestwick Subdivision, located in Myrtle Beach, South Carolina.

2. The Defendant, Prestwick Land Limited Partnership, is, upon information and belief, a partnership organized and existing pursuant to the laws of the State of South Carolina and doing business as a developer of the Prestwick Subdivision.

3. The Defendant, Prestwick Homeowners Association, Inc., is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a homeowners association.

4. The Defendant, Jackson Companies, is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, and upon further information and belief, is the sole partner and/or owner of Prestwick Land Limited Partnership which is dissolved.

5. The Defendant, City of Myrtle Beach, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a City.

6. The Defendant, Horry County, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a County.

7. The Defendant, Myrtle Beach Air Force Base Redevelopment Authority, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business in Horry County.

8. The Defendant, Nelson L. Hardwick & Associates, Inc., is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as an engineering firm which helped design and/or change the canal behind the Plaintiffs' homes.

9. The Defendant, Bermuda Gardens Homeowners Association d/b/a Homeowners of Ocean Walk Property Owners Association, is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a

homeowners association and is adjacent to the ditch which now places additional water in the ditch from their drainage plan.

10. That the Defendant Campgrounds, Inc. is a South Carolina corporation and owns the assets and liabilities of Defendant Prestwick Land Limited Partnership.

11. That Defendant Prestwick Property Owners Association, Inc. is a South Carolina corporation and is named because it may have liability based on a Quit Claim Deed as owner of all open spaces, drainage easements and roads in Prestwick.

12. That the Plaintiffs are all owners of homes in the Prestwick Subdivision located in Myrtle Beach, South Carolina.

13. That the Plaintiffs have their personal residences in Prestwick Subdivision all of which each property abuts a drainage canal which runs from the old Myrtle Beach Air Force Base property and the airport to the Atlantic Ocean under U.S. Highway 17.

14. That the Plaintiffs were provided with a Property Report which states that "None of the lots or any portion of any lot are covered by water at any time of the year." The Property Report further states that "None of the lots in this Property Report are located within a flood plain." Also, the Property Report states that "None of the lots in the subdivision required drainage."

15. That based on the above representations and other representations the Plaintiffs purchased their homes.

16. That, in fact, this property has been subject to periodic flooding from a drainage canal which was represented to the Plaintiffs as "a creek" previous to the Plaintiffs purchasing the property.

17. That since 1999 these properties have continually flooded and all of the Defendants have used the drainage canal for drainage for properties upland to the Plaintiffs' property.

18. That the Plaintiffs properties flooded on October 4 - 5, 2015 and September 2, 2016.

19. That all the Defendants either own the canal (or developed property which abuts the canal), maintain the canal, place water into the canal, artificially channel water into the canal, dump water onto the Plaintiffs' properties and allowed water to be added by the Defendants to canal which made the flooding worse and continues to flood on moderate rains.

20. That these Defendants, through their officers, agents and/or employees, were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to inform Plaintiffs that the drainage easement would flood their property;
- b. in providing the Plaintiffs with a Property Report which stated that no flooding had ever occurred when this was, in fact, not true;
- c. in providing the Plaintiffs with a Property Report which stated that the property had never been under water when, in fact, this was not true;
- d. in failing to advise the Plaintiffs that the property sometimes flooded and, in fact, had been under water;
- e. in failing to warn, advise and inform the Plaintiffs that the drainage easement sometimes flooded;
- f. in failing to advise the Plaintiffs that the creek on the back of the property drained the entire Air Force Base property;
- g. in failing to inform the Plaintiffs that during times of heavy rains their property would flood;
- h. in failing to inspect the property to make sure that it would not flood prior to purchase by the Plaintiffs;
- i. in designing the creek in such a way so that all the water from Prestwick would flow through the Plaintiffs' property and cause flooding;
- j. in connecting a series of ditches and pipes so that all the water would flow through the drainage easement unto the Plaintiffs' property;
- k. in channeling water in such a way that would flood the Plaintiffs' home and property;
- l. in failing to devise a method for channeling water away from the Plaintiffs' property;

- m. in failing to advise the Plaintiffs that water would channel over their property;
- n. in failing to drain water into spillways and/or divert water away from the Plaintiffs' property;
- o. in failing to follow a drainage assessment report which was written and funded by Horry County as to how to fix and/or repair drainage in the Prestwick area;
- p. in failing to follow its consultant's advice;
- q. In failing to devise an alternative flood plan;
- r. in failing to properly design and/or engineer the canal so that it would not flood the Plaintiffs;
- s. in failing to use accepted engineering practices to change the course of the canal behind the Plaintiffs' houses;
- t. in failing to use generally accepted engineering practices in changing the course of the ditch/canal;
- u. in failing to use appropriate and reasonable storm calculations in deciding to change the course of the ditch/canal;
- v. in changing the course of the canal in such a manner as to damage Plaintiffs' property;
- w. in changing the direction of the canal which causes more flooding;
- x. in allowing additional individuals and businesses to place water in the canal such that it would flood the Plaintiffs';
- y. in redesigning the canal/ditch in such a manner that it would damage the Plaintiffs' property;
- z. in placing more water in the ditch without designing it such that it would flood the Plaintiffs' property;
- aa. in engineering Bermuda Gardens in such a manner that additional water was placed into the relocated canal which floods the Plaintiffs;
- bb. in placing additional water into the ditch by the Bermuda Gardens Homeowners Association without authority;

- cc. in placing additional water by the Bermuda Gardens Homeowners Association's officers, agents and/or employees into the relocated canal/ditch and that such water is more than the capacity of the canal;
- dd. in placing high volumes of water into the canal by the Bermuda Gardens Homeowners Association which causes flooding the Plaintiffs'
- ee. in artificially channeling additional water into the ditch/relocated canal which floods the Plaintiffs.
- ff. in selling property these Defendants knew flooded;
- gg. in selling property without disclosing the flooding.

21. That as a direct and proximate result, the Plaintiffs continued to suffer severe and catastrophic damage to their home and residence, including having floodwaters inside their homes on a regular basis, to include damage to floors, walls, electrical, baseboards, air conditioning, heating, tile, and other aspects of their home as well as damage to their personal property.

22. That the Plaintiffs are unable to sell their homes because of continual flooding of their homes on a regular basis and have lost the entire value of their homes such that the homes cannot be sold for fair market value.

23. That the Plaintiffs ask for judgment against all Defendants for actual damages, punitive damages, and for the costs of this action.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Nuisance)

24. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

25. All of the above-named Defendants' conduct in channeling surface water through various artificial pipes and ditches onto the Plaintiffs' property resulted in an unreasonable interference with Plaintiffs' use and enjoyment of their property, which reoccurs when there is heavy rain.

26. The aforementioned action is a nuisance and severe damage has been done to the Plaintiffs' homes as outlined in the First Cause of Action.

27. The Plaintiffs ask for judgment against these Defendants for actual damages, for punitive damages, for nuisance and also request a permanent injunction requiring these Defendants to not channel water through ditches and the like onto or near the Plaintiffs' property.

FOR A THIRD CAUSE OF ACTION
AS TO DEFENDANT SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
(Negligence)

28. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

29. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, operates a bridge downstream from the Plaintiffs' property on U.S. Highway 17; such bridge has undersized pipes and allows the water to back up onto Plaintiffs' property during periods of inclement weather.

30. That the bridge downstream operated, built and owned by the Defendant South Carolina Department of Transportation across U.S. Highway 17 acts as a dam failing to allow the water to drain properly underneath U.S. Highway 17 into the ocean.

31. The Defendant South Carolina Department of Transportation, through its officers, agents and/or employees, is negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to repair a known flooding defect which this Defendant has actual knowledge of;
- b. in failing to have an engineer size the pipes in such a manner so that the water would not back up on the Plaintiffs' property;
- c. in putting in undersized pipes so that the water would not drain;

- d. in failing to provide such engineering that the entire creek did drain as it had before the road was placed across;
- e. in failing to have proper engineering advice or expertise before building the road and placing the pipes underneath the road;
- f. in failing to warn the Plaintiff of the undersized pipes;
- g. in failing to inspect the work to make sure that undersized pipes were not placed under the road;
- h. in failing to take reasonable care to make sure that steps were taken to keep from damaging Plaintiff's property; and
- i. in failing to use generally accepted construction practices to prevent flooding on property upstream from Plaintiffs' property.

32. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their house and property and continue to suffer severe and catastrophic damage to their house and property; that a cause of this damage is the Defendant South Carolina Department of Transportation's antiquated bridge and undersized pipes which block the downstream drainage making Plaintiffs' homes worthless; that Plaintiffs' property continues to have property damage as soon as inclement weather occurs including rainfall over two inches; and that Plaintiffs have been unable to sell their house because of the permanent stigmatization of the continuous flooding on the property.

33. That Plaintiffs ask for judgment against Defendant South Carolina Department of Transportation for actual damages, punitive damages and for the costs of this action.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
 (Breach of Easement/Negligence)

34. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

35. The drainage ditch which abuts the Plaintiffs' property is, in fact, the drainage ditch which goes all the way from the former Myrtle Beach Air Force Base into the Atlantic Ocean through Pirateland Campground.

36. That the Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, have an agreement with the United States Air Force to assume any and all rights and liabilities of the United States Air Force when the property was turned over to these Defendants.

37. That an easement exists as of October 30, 1958 wherein the United States Air Force was to maintain an easement for water drainage through a channel that would go by the Plaintiffs' property through Pirateland Campground and into the Atlantic Ocean.

38. The Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority assumed responsibility for this easement when they took over the former Myrtle Beach Air Force Base property.

39. That this easement provided that the United States Air Force and its successors in interest, the City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, were to maintain the easement including to trim all underbrush, remove any trees and obstructions, including vegetation structures or obstacles within the limits of the right of way as is necessary to provide adequate clearance and to eliminate interference with it. Further, these Defendants have legal responsibility to prevent downstream flooding.

40. That the aforementioned drainage easement was never maintained by the City of Myrtle Beach, Horry County or the Myrtle Beach Air Force Base Redevelopment Authority and numerous private property owners were allowed to use this canal when it was already overburdened.

41. That the Defendants failed to follow the written recommendation of the Horry County Stormwater Management program and the comprehensive engineering report provided to the Defendants to fix and/or repair the drainage area in question to prevent downstream flooding.

42. That the Defendants, through their officers, agents and/or employees, were negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. in failing to maintain the easement;
- b. in failing to keep the underbrush out of the drainage easement;
- c. in failing to maintain the easement on a regular basis;
- d. in allowing other developments to drain into this ditch/canal;
- e. in failing to inspect the easement for obstruction;
- f. in failing to perform under the terms of the easement;
- g. in failing to have regular work crews clean the easement;
- h. in failing to follow the proper storm water drainage protocol and to follow Horry County's comprehensive plan;
- i. in failing to act so that Plaintiffs' property would not be damaged; and
- j. in failing to take that degree of skill and care which a reasonable person would do.

43. That as a direct and proximate result the Plaintiffs suffered severe damage to their homes by waters which came onto their property and into their house. That Plaintiffs have suffered depreciation to their property, loss of personal property, loss of real property, damage to the interior and exterior of their home, and will continue to have these problems for the remainder of the time they live on the aforementioned property.

44. That Plaintiffs ask for judgment against Defendants for actual damages, punitive damages, and the costs of this action.

FOR A FIFTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, HORRY COUNTY AND
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
(Breach of Easement)

45. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

46. That Defendants, City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority, as successors in interest to United States of America did breach their agreement to Plaintiffs to keep the aforementioned easement clean, maintained, inspected and improved so that water would move in an unobstructed manner through the drainage easement.

47. The Plaintiffs ask for damages against the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for breach of its easement as more particularly described in the aforementioned cause of action.

48. The Plaintiffs ask for judgment against these Defendants for breach of easement for actual damages, attorney's fees and for costs.

FOR A SIXTH CAUSE OF ACTION
AS TO DEFENDANTS
JACKSON COMPANIES, PRESTWICK LAND LIMITED PARTNERSHIP
AND PRESTWICK HOMEOWNERS ASSOCIATION, INC.
(Negligence)

49. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

50. That the Defendants Jackson Companies along with Prestwick/Prestwick Land Limited Partnership are the owners of many areas upstream from Plaintiffs' property.

51. That the Defendant Jackson Companies along with Prestwick Land Limited Partnership Corporation has constructed many artificial drainage ditches throughout their property,

including Prestwick and Crystal Lakes. That these drainage ditches all connect to the drainage ditch which continually floods Plaintiffs' property.

52. That these Defendants did channel water directly into the drainage ditch which damaged Plaintiffs' property by artificial means.

53. That the Defendant Jackson Companies was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in building artificial channels to direct water to Plaintiffs' property;
- b. in failing to warn Plaintiffs;
- c. in failing to maintain drainage easement;
- d. in failing to do a drainage study before connecting ditches to the ditch which caused damage to Plaintiffs' property; and
- e. in failing to inspect, engineer, investigate, and advise Plaintiffs that this Defendant was connecting other ditches upstream which would dump water on the Plaintiffs' property.

54. That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants.

55. That Plaintiffs ask for damages against Prestwick Land Limited Partnership, Prestwick Homeowners Association, Inc. and Jackson Companies for actual and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Trespass)

56. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

57. That water from all Defendants' properties was channeled artificially onto the Plaintiffs' property.

58. That the aforementioned channeling is a trespass and has caused damage to the Plaintiffs' property, caused erosion, and has threatened Plaintiffs' home and lot.

59. That Defendants through a master drainage stormwater management system have in effect devised and/or connected all ditches such that water flows over Plaintiffs' property.

60. That after each rain Plaintiffs have significant erosion and damage to their property and, thus, there is a continual trespass on Plaintiffs' property.

61. That Plaintiffs have tried to mitigate their damages, but have been unable to do so.

62. That stormwater from all the Defendants' property is physically moved onto the Plaintiffs' property in a deliberate scheme and/or plan.

63. That the aforementioned affirmative acts by all Defendants invade the Plaintiffs' property in an intentional manner and cause great and grievous irreparable harm to the Plaintiffs' property.

64. That Plaintiffs asks for an injunction requiring all Defendants to immediately cease and desist from channeling artificially any water into other ditches which flow through the Plaintiffs' property since this causes irreparable harm to Plaintiffs' property.

65. That Plaintiffs further asks this Court to issue its Order requiring all Defendants to halt this continuing trespass immediately.

66. Further, the Plaintiffs ask for damages to their home, their real property, for depreciation because they are unable to sell their house, for loss of use of the property and for a fix moving the water away from Plaintiffs' property.

67. That Plaintiffs ask this Court issue its order awarding actual and punitive damages to the Plaintiffs and to enjoin all Defendants from dumping water artificially into the easement and for such other and further relief as the Court may deem just, necessary and proper.

FOR AN EIGHTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, HORRY COUNTY
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Inverse Condemnation)

68. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

69. That the Defendants City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation, through affirmative, aggressive, governmental acts, have effectively condemned Plaintiffs' property by allowing all of the storm water from Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs' property.

70. That these governmental Defendants entered into a common scheme or plan whereby all of the water from the Myrtle Beach Air Force Base, Crystal Lakes, and Prestwick was channeled through various pipes and ditches to the Plaintiffs' home.

71. That these acts by these Defendants were affirmative, positive and aggressive acts and were taken on behalf of the Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for a public purpose and that they are, in fact, permanent since the drainage system for the entire Myrtle Beach Air Force Base runs next to the Plaintiffs' property.

72. That Plaintiffs believe that their property has been inversely condemned as mentioned in the first cause of action each time heavy rains occur and Plaintiffs suffer irreparable harm and erosion.

73. That the Defendants are aware and participated in a comprehensive engineering stormwater management plan and report prepared by Horry County (available at office of Plaintiffs' counsel) and refused to implement that plan and alleviate damage to Plaintiffs homes and other property in the area.

74. That the Plaintiffs have suffered damages as outlined in the first cause of action and further suffer continuing irreparable harm and ask that the Court issue its Order awarding actual damages to Plaintiffs and also enjoining these Defendants from channeling any water through the pipes and/or ditches under and around the Plaintiffs' property.

75. Further, that this is a taking of private property for public purpose in violation of the United States and South Carolina Constitutions and that Plaintiffs request actual damages, punitive damages, an injunction and attorney's fees as required by state law.

FOR A NINTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, Horry COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Declaratory Judgment- Non Jury)

76. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

77. That this action is for declaratory judgment pursuant to the South Carolina Declaratory Judgment Act and requests that the Court issue its Order determining the legal ownership, maintenance, repair, operation and responsibility for the drainage canal which adjoins the Plaintiffs' property . Further, specifically Plaintiffs request a Court Order determining who the legal owner of the subject drainage canal is.

78. That the Plaintiffs are informed and believe that the Defendants have continually operated the drainage canal for the public interest through a common scheme and have allowed

various landowners to connect their drainage into the drainage canal which flows over the Plaintiffs' property all of which overwhelms the capacity of the drainage canal.

79. That the Defendants, through affirmative, positive and aggressive acts, have used Plaintiffs' property for a public purpose in that flooding continually occurs and it injures Plaintiffs' property during each event and thus a taking of the Plaintiffs' property by these governmental entities.

80. That the Defendants did commission the Crystal Lake Alternative Improvement Study on August 6, 2013 prepared by Thomas & Hutton Engineers for the Lakewood/Pirateland Swash.

81. That the Defendants did obtain opinions of probable costs of repairing the system through the study a copy of which is available for review by the Defendants.

82. That Horry County, consistent with the study "intended to implement a three phased approach to provide drainage relief in Lakewood/Crystal Lake/Pirateland watershed basin.

83. That the study including the ownership of the drainage canal has not been determined by any court as to who has responsibility for the drainage canal in question.

84. That further, Plaintiffs are informed and believe that Federal Emergency Management Authority (FEMA) has offered to pay 90% of the cost of destroying Plaintiffs' homes and returning this property to a natural wetlands.

85. That Plaintiffs have requested of County officials that because of the constant flooding that they file a Federal Emergency Management Authority (FEMA) application which Defendants have refused to do despite Plaintiffs' repeated requests.

86. That Plaintiffs have been, and continue to be willing, to accept the 90% Federal Emergency Management Authority (FEMA) would pay to demolish these properties and return the property to its normal wetlands state; however, Plaintiffs cannot require Federal Emergency

Management Authority (FEMA) to fill out and/or prepare an application since only county, state or governmental entity can do so under federal law.

87. That Plaintiffs seek a declaratory judgment action requiring that the owner of the canal be identified by this court and that that particular owner be required to fill out an application with Federal Emergency Management Authority (FEMA) such that Federal Emergency Management Authority (FEMA) will pay to demolish these properties and return this real property to its wetlands state.

88. Further, Plaintiff have agreed not seek any additional damages from any Defendant should the county, state or city have a Federal Emergency Management Authority (FEMA) approved application for 90% of Plaintiffs damages.

89. That Plaintiffs have been in touch with Federal Emergency Management Authority (FEMA) Coordinator Jennifer Artz of South Carolina Department of Natural Resources who has indicated that a Federal Emergency Management Authority (FEMA) grant can be obtained but only through application by a governmental entity.

90. That Plaintiffs seeks a ruling of this Court requiring the owner of the canal, whoever it be, to apply with Federal Emergency Management Authority (FEMA) through the program run by South Carolina Department of Natural Resources to immediately obtain a Federal Emergency Management Authority (FEMA) grant.

91. Plaintiffs specifically ask for a mandatory injunction and declaratory judgment requiring the governmental entity who is the owner to apply for such a grant because such flooding will continually occur on the Plaintiffs' property into the future.

92. The Plaintiffs bring this cause of action for declaratory judgment and request that this court determine as a matter of law the legal ownership of the drainage canal to include the requirements of maintenance, construction, repair and upgrading of that canal.

93. The Plaintiffs further request this court determine the rights and liabilities of the parties as stated herein and for an order determining who is legally responsible for the drainage canal in question.

FOR A TENTH CAUSE OF ACTION
AS TO DEFENDANTS
CITY OF MYRTLE BEACH, Horry COUNTY,
MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
AND SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Mandatory Injunction)

94. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

95. The Plaintiffs requests this Court issue a mandatory junction requiring the governmental entity that that is the owner of the canal/ditch in question to apply for a grant with FEMA to have Plaintiffs' properties demolished and to have Plaintiffs paid 90% of the value of their property.

96. That Plaintiffs have agreed to release all governmental Defendants upon approval of the grant and have agreed not to seek the additional 10% in damages in order that these properties may be returned to their natural wetlands state.

97. That Plaintiffs mandatory injunction is necessary against the governmental Defendants because of the emergency situation in that Plaintiffs' property continually floods and will continue to flood in the future.

98. That Plaintiffs have no other remedy since they cannot sell their homes and thus all legal remedies are inadequate as a matter of law.

99. That Plaintiffs bring this cause of action for a mandatory injunction requiring the governmental Defendants who are responsible for the canal/ditch to immediately apply for a government grant through Federal Emergency Management Authority (FEMA).

100. That Plaintiffs request a mandatory injunction and for such other and further relief as the Court may deem just, necessary and proper.

WHEREFORE, Plaintiffs request judgment as follows:

A. On the First Cause of Action against all Defendants for actual damages, punitive damages and the costs of this action.

B. On the Second Cause of Action as to all Defendants for actual damages, punitive damages and the costs of this action.

C. On the Third Cause of Action as to Defendant South Carolina Department of Transportation for actual damages, punitive damages and the costs of this action.

D. On the Fourth Cause of Action as to all Defendants for actual and punitive damages.

E. On the Fifth Cause of Action as to Defendants City of Myrtle Beach, Horry County and Myrtle Beach Air Force Base Redevelopment Authority for actual and punitive damages.

F. On the Sixth Cause of Action as to Defendants Jackson Companies and Prestwick for actual and punitive damages.

G. On the Seventh Cause of Action against all Defendants for actual and punitive damages and to enjoin Defendants from further trespass on their property.

H. On the Eighth Cause of Action against the Defendants City of Myrtle Beach, Horry County, Myrtle Beach Air Force Base Redevelopment Authority and South Carolina Department of Transportation for actual damages, punitive damages, and attorney fees.

I. On the Ninth Cause of Action for declaratory judgment determining the rights and responsibilities of the parties as set forth in this cause of action.

J. On the Tenth Cause of Action for a mandatory injunction against the governmental entities responsible for the canal/ditch and an order that they apply with Federal Emergency

Management Authority (FEMA) to obtain a grant to resolve this crisis and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

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**Attorney for Plaintiffs and Third-Party
Defendants/Counterclaimants/Cross-Claimants**

September 26, 2017
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-26-6495

Cornell Patton, Melissa Patton,)
Chad Webb and Amy Webb,)
Plaintiffs,)

vs.)

Prestwick Land Limited Partnership,)
Prestwick Homeowners Association,)
Inc., Jackson Companies, City of)
Myrtle Beach, South Carolina)
Department of Transportation, Horry)
County and Myrtle Beach Air Force)
Base Redevelopment Authority,)
Defendants.)

City of Myrtle Beach,)
Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)
Third-Party Defendants,)

ANSWER OF DEFENDANT
CITY OF MYRTLE BEACH
TO AMENDED COMPLAINT
AND THIRD-PARTY COMPLAINT

Defendant City of Myrtle Beach hereby answers Plaintiffs' Amended Complaint as follows:

1. Defendant City of Myrtle Beach denies each and every allegation and averment of the Complaint which is not admitted, qualified, or explained in this Answer.
2. Defendant City of Myrtle Beach admits paragraphs 1 upon information and belief.
3. Defendant City of Myrtle Beach admits paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.
4. Defendant City of Myrtle Beach admits paragraph 12 upon information and belief.

5. As to paragraph 13, Defendant City of Myrtle Beach admits, upon information and belief, that Plaintiffs are in possession of certain pieces of land located in the Prestwick Subdivision. Defendant City of Myrtle Beach denies the remainder of this paragraph.

6. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraphs 14 and 15.

7. Defendant City of Myrtle Beach denies paragraphs 16, 17, 18, 19, 20, 21, 22, and 23.

Second Cause of Action

8. Paragraph 24 is a pleading paragraph to which no response is required.

9. Defendant City of Myrtle Beach denies the allegations contained in paragraphs 25, 26, and 27.

Third Cause of Action

10. Paragraph 28 is a pleading paragraph to which no response is required.

11. In so much as the allegations of paragraphs 29, 30, 31, 32, and 33 are not directed at this Defendant, Defendant City of Myrtle Beach is not required to respond thereto. To the extent any allegations concern this Defendant, the same are denied.

Fourth Cause of Action

12. Paragraph 34 is a pleading paragraph to which no response is required.

13. As to paragraph 35, Defendant City of Myrtle Beach avers that the watercourse which abuts Plaintiffs' property, begins at or near that portion of the former Myrtle Beach Air Force Base which was used to house Air Force personnel and is now known as Sea Gate Village and that this watercourse only drains this portion of the former Air Force Base. This watercourse also drains certain surrounding property that is outside of the former Air Force Base and outside

of the corporate limits of the City of Myrtle Beach. The watercourse flows from that above referenced portion of the former Base, under U.S. Highway 17, through Pirateland Campground and into the Atlantic Ocean. Any allegation in paragraph 29 to the contrary is denied.

14. As to paragraph 36, Defendant City of Myrtle Beach denies that it has any agreement with the United States Air Force as to the easement in question. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

15. As to paragraph 37, Defendant City of Myrtle Beach admits that on or about October 20, 1958, The United States of America was granted an easement regarding the United States government's use of the existing "ditch or branch." The language of the easement speaks for itself. Defendant City of Myrtle Beach denies that the United States Air Force had a duty to maintain such easement. Defendant City of Myrtle Beach avers that the "drainage ditch" in the easement is a naturally occurring watercourse that pre-existed the easement. Defendant City of Myrtle Beach is informed and believes that the center line of the watercourse is Plaintiffs' property boundary. Defendant City of Myrtle Beach admits that the watercourse goes through Pirateland Campground and into the Atlantic Ocean. Defendant City of Myrtle Beach denies any allegation in paragraph 37 that is inconsistent therewith.

16. As to paragraph 38, Defendant City of Myrtle Beach denies it assumed any responsibility for this easement. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph and therefore denies the same.

17. As to paragraph 39, the easement speaks for itself. Defendant City of Myrtle Beach denies that it is a successor-in-interest to the United States Air Force. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph and denies the same.

18. Defendant City of Myrtle Beach denies paragraph 40.

19. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraph 41 and therefore denies the same.

20. Defendant City of Myrtle Beach denies paragraphs 42, 43, and 44.

Fifth Cause of Action

21. Paragraph 45 is a pleading paragraph to which no response is required.

22. Defendant City of Myrtle Beach denies paragraphs 46, 47, and 48.

Sixth Cause of Action

23. Paragraph 49 is a pleading paragraph to which no response is required.

24. In so much as the allegations of paragraphs 50, 51, 52, 53, 54, and 55 are directed at this Defendant, Defendant City of Myrtle Beach is not required to respond thereto. To the extent any allegations concern this Defendant, the same are denied.

Seventh Cause of Action

25. Paragraph 56 is a pleading paragraph to which no response is required.

26. Defendant City of Myrtle Beach denies paragraphs 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.

Eighth Cause of Action

27. Paragraph 68 is a pleading paragraph to which no response is required.

28. Defendant City of Myrtle Beach denies paragraphs 69, 70, 71, 72, 73, 74 and 75.

Ninth Cause of Action

29. Paragraphs 76 and 77 are pleading paragraphs to which no response is required.

30. Defendant City of Myrtle Beach denies paragraphs 78 and 79.

31. As to paragraph 80, Defendant City of Myrtle Beach denies that it commissioned the referenced Study. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

32. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraphs 81, 82, 83, 84, 85, and 86.

33. As to paragraph 87, Defendant City of Myrtle Beach denies that it is the owner of the watercourse. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

34. Paragraph 88 is a pleading paragraph to which no response is required.

35. Defendant City of Myrtle Beach lacks sufficient information to respond to paragraph 89 and therefore denies the same.

36. As to paragraph 90, Defendant City of Myrtle Beach denies that it is the owner of the watercourse. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

37. Defendant City of Myrtle Beach denies paragraphs 91, 92, and 93.

Tenth Cause of Action

38. Paragraph 94 is a pleading paragraph to which no response is required.

39. As to paragraph 95, Defendant City of Myrtle Beach denies that any mandatory injunction should issue against this Defendant.

40. As to paragraph 96, Defendant City of Myrtle Beach is informed and believes that Plaintiffs and their predecessors-in-interest have released Defendant City of Myrtle Beach. Defendant City of Myrtle Beach lacks sufficient information to respond to the remainder of this paragraph.

41. Defendant City of Myrtle Beach denies paragraphs 97, 98, 99, and 100.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

42. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

43. Defendant City of Myrtle Beach is informed and believes that this action fails to state a claim upon which relief may be granted and therefore Plaintiffs' claim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Join Indispensable Party)

44. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

45. Defendant City of Myrtle Beach is informed and believes Plaintiff has failed to join indispensable parties in this matter including, but not limited to, all owners of any property which drain into the referenced watercourse.

46. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter should be dismissed pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Res Judicata)

47. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

48. On or about February 24, 2000, Plaintiffs Cornell and Melissa Patton brought suit against Defendant City of Myrtle Beach and others in that case entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765, in which they raised substantially identical allegations as those contained in this present suit.

49. Additionally, on or about February 24, 2000, Plaintiffs Chad and Amy Webb's predecessor-in-interest brought suit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780, in which the Plaintiff raised substantially identical allegations as those contained in this present suit.

50. Each of the prior suits were dismissed with prejudice against Defendant City of Myrtle Beach.

51. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter must be dismissed under the doctrine of res judicata.

FOR A FIFTH DEFENSE
(Collateral Estoppel)

52. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

53. On or about February 24, 2000, Plaintiffs Cornell and Melissa Patton brought suit against Defendant City of Myrtle Beach and others in that case entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765, in which they raised substantially identical allegations as those contained in this present suit.

54. Additionally, on or about February 24, 2000, Plaintiffs Chad and Amy Webb's predecessor-in-interest brought suit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780, in which the Plaintiff raised substantially identical allegations as those contained in this present suit.

55. Each of the prior suits were dismissed with prejudice against Defendant City of Myrtle Beach.

56. Therefore, Defendant City of Myrtle Beach is informed and believes that this matter must be dismissed under the doctrine of collateral estoppel.

FOR A SIXTH DEFENSE
(Accord and Satisfaction)

57. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

58. On or about September 2, 2005, the City of Myrtle Beach and others entered into a Settlement Agreement and Release with Plaintiffs Cornell and Melissa Patton and Phil and Elizabeth Eaves.

59. The Settlement Agreement and Release was intended to and did resolve all of those allegations raised in those lawsuits, among others, entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765 and Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780. Both of these suits raised substantially identical allegations to the present matter.

60. Pursuant to this Settlement Agreement and Release, the City of Myrtle Beach paid \$123,333.33 to resolve:

ANY AND ALL CLAIMS for property damage/inverse condemnation, nuisance, breach of easement/negligence/trespass arising out of or in connection with drainage from the drainage easement which abutted the property of the Landowners located at Prestwick Subdivision located in Horry County, South Carolina and any and all other claims arising out of or in connection with Civil Action Nos. 2000-CP-26-0765; 2000-CP-26-0775; 2000-CP-26-0780; 2001-CP-26-2540 filed with the Clerk of Court for Horry County, South Carolina.

61. By and through that deed dated August 15, 2007, and filed on August 16, 2007, in Deed Book 3269 at Page 2296, the Eaves transferred the property which was subject to the prior litigation to the Plaintiffs Michael C. Webb and Amy Causey Webb.

62. Defendant City of Myrtle Beach is informed and believes that this payment made by Defendant City of Myrtle Beach was in full accord and satisfaction of all claims which are now being litigated by the Plaintiffs.

63. Therefore, Defendant City of Myrtle Beach is informed and believes that the Complaint should be dismissed under the doctrine of accord and satisfaction.

FOR A SEVENTH DEFENSE
(Release)

64. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

65. On or about September 2, 2005, the City of Myrtle Beach and others entered into a Settlement Agreement and Release with Plaintiffs Cornell and Melissa Patton and Phil and Elizabeth Eaves.

66. The Settlement Agreement and Release was intended to and did resolve all of those allegations raised in those lawsuits, among others, entitled Cornell Patton and Melissa Patton v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0765 and Phil Eaves v. Prestwick Land Limited Partnership, et al., civil action number 2000-CP-26-0780. Both of these suits raised substantially identical allegations to the present matter.

67. Pursuant to the Settlement Agreement and Release, Plaintiff Cornell Patton and Melissa Patton and Plaintiff Chad Webb and Amy Webb's predecessor-in-interest released the City of Myrtle Beach from "any and all claims and causes of action of any nature whatsoever, whether known or unknown, which landowners now have, had or may have relating to the claims, demands, and allegations which were or could have been set forth and asserted in the above referenced actions or which otherwise arise out of those matters described in the pleadings in the above referenced actions".

68. Defendant City of Myrtle Beach is therefore informed and believes that Plaintiffs have fully released any and all claims they now raise in the present litigation.

FOR AN EIGHTH DEFENSE
(Sovereign Immunity)

69. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

70. Defendant City of Myrtle Beach asserts its sovereign immunity as a complete defense to this action.

FOR A NINTH DEFENSE
(Tort Claims Act)

71. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

72. Defendant City of Myrtle Beach asserts the provisions of S.C. Code Ann. § 15-78-60 as a complete bar to this action.

FOR A TENTH DEFENSE
(Tort Claims Act)

73. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

74. Defendant City of Myrtle Beach asserts the liability limitation provisions found in S.C. Code Ann. § 15-78-120 as a complete bar to a recovery or recoveries in excess thereof, and as a complete bar to recovery of punitive or exemplary damages or pre-judgment interest.

FOR AN ELEVEENTH DEFENSE
(Tort Claims Act/Statute of Limitations)

75. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

76. Defendant City of Myrtle Beach asserts the two year statute of limitations provision found in S.C. Code Ann. § 15-78-110 as a complete bar to any act or omission alleged or which contributed to the allegations contained in this Complaint occurring on or before October 4, 2014.

FOR A TWELFTH DEFENSE
(Statute of Limitations)

77. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

78. Defendant City of Myrtle Beach asserts the statute of limitations as contained in S.C. Code Ann. § 15-3-530 as a complete bar to any act or omission alleged or which contributed to the allegations contained in this Complaint occurring on or before October 4, 2013.

FOR A THIRTEENTH DEFENSE
(Statute of Limitations)

79. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

80. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred under the statute of limitations contained in S.C. Code Ann. § 15-3-380 in that for over forty years, the watercourse a) has been used to drain property within its drainage field including property located at the former Air Force Base, b) has not been maintained, and c) has backed-up and flooded as natural conditions dictated.

FOR A FOURTEENTH DEFENSE
(Laches/Waiver/Estoppel/Unclean Hands)

81. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

82. Defendant City of Myrtle Beach asserts Plaintiffs' claims are barred by the doctrines of laches, waiver, estoppel, and/or unclean hands in that the watercourse has not been

cleared in decades. Additionally, the existence of the drainage easement and its obstructed condition is readily ascertainable upon a reasonable inspection, and that prior to purchasing or coming into possession of the property, Plaintiffs should have conducted such a reasonable inspection.

FOR A FIFTEENTH DEFENSE
(Assumption of Risk)

83. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

84. Defendant City of Myrtle Beach asserts Plaintiffs' claims are barred by the assumption of the risk in that Plaintiffs knowingly and voluntarily purchased property located adjacent to a natural watercourse.

FOR A SIXTEENTH DEFENSE
(Intervening/Superceding Cause)

85. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

86. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred because even if Defendant City of Myrtle Beach committed the misfeasances and nonfeasances alleged in the Complaint which Defendant City of Myrtle Beach specifically denies, the intervening and/or superceding acts of God are the direct and proximate cause of the damages suffered by the Plaintiffs.

87. Additionally, City of Myrtle Beach asserts that Plaintiffs' claims are barred because of the intervening and superceding misfeasance and nonfeasance of persons other than Defendant City of Myrtle Beach.

FOR A SEVENTEENTH DEFENSE
(Comparative Negligence)

88. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

89. Defendant City of Myrtle Beach asserts that any harm occurring to Plaintiffs resulted from Plaintiffs' own negligence to exercise reasonable care, and therefore Plaintiffs' own negligence must be measured against that of Defendant City of Myrtle Beach, if any, and Plaintiffs' damages must be reduced accordingly.

FOR AN EIGHTEENTH DEFENSE
(No Proximate Cause)

90. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

91. Upon information and belief, Plaintiffs assign blame to Defendant City of Myrtle Beach by virtue of that License Agreement dated September 30, 1997, between the City and the Department of the Air Force.

92. Although the City specifically denies that the drainage canal in question is a part of such Agreement, if it is, then the City's only duty under the Agreement is to maintain the canal in the condition it was in at as of September 30, 1997. That upon information and belief, the condition of the canal did not appreciable deteriorate from September 30, 1997, to the dates of the damages claimed by Plaintiffs.

FOR A NINETEENTH DEFENSE
(No Duty to Maintain)

93. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

94. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that Defendant City of Myrtle Beach had no duty either under the easement or under the law to maintain the watercourse and keep it free from obstructions.

FOR A TWENTIETH DEFENSE
(Natural Watercourse)

95. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

96. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that the watercourse and the "obstructions" therein are of a natural and unadulterated origin, and therefore Defendant City of Myrtle Beach had no duty to maintain the same.

FOR A TWENTY-FIRST DEFENSE
(Prescriptive Easement)

97. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

98. Defendant City of Myrtle Beach asserts that Plaintiffs' claims are barred in that for well over twenty years, the watercourse a) has been used to drain property within its drainage field including property located at the former Air Force Base, b) has not been maintained, and c) has backed-up and flooded as natural conditions dictated.

99. Defendant City of Myrtle Beach is informed and believes that there is a prescriptive right to use the watercourse for drainage and not maintain the same. Defendant City of Myrtle Beach is likewise informed and believes that there is a prescriptive right to use the Plaintiffs' property as an overflow for the watercourse itself. Therefore, Plaintiffs' claims should be barred.

FOR A TWENTY-SECOND DEFENSE
(Environmental)

100. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

101. Defendant City of Myrtle Beach asserts any and all rights, privileges, immunities, and defenses available to it pursuant to the South Carolina Pollution Control Act, South Carolina Stormwater Management and Sediment Reduction Act, South Carolina Erosion and Sediment Reduction Act, South Carolina Coastal Zone Management Act, the Regulation enacted pursuant to those Acts, similar Federal Statutes and Regulations, and the Common Enemy Rule.

FOR A TWENTY-THIRD DEFENSE
(Election of Remedies)

102. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

103. Defendant City of Myrtle Beach is informed and believes that Plaintiffs must elect whether the actions of Defendants are of a permanent or temporary character prior to any trial on this matter so as to determine the nature and scope of relief available to Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE
(Inverse Condemnation)

104. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

105. If Defendant City of Myrtle Beach's actions constitute "inverse condemnation," which this Defendant expressly denies, then this Defendant is informed and believes that it is entitled to an order of this Court granting this Defendant permanent possession of Plaintiffs' property, or alternatively, an interest therein allowing this Defendant to engage in and use Plaintiffs' property in the manner that Plaintiffs' have alleged that this Defendant has in fact used

this property, to wit” “allowing all of the stormwater from the Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs’ property.”

FOR A TWENTY-FIFTH DEFENSE
(Lack of Subject Matter Jurisdiction)

106. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

107. Plaintiffs’ lawsuit calls on the court to order a mandatory injunction and declaratory judgment relief requiring the Defendants to enter into alleged emergency relief programs provided by the Federal Emergency Management Authority (“FEMS”). (See paragraph 87 of Complaint).

108. This Court lacks the jurisdiction to order a government entity to apply for or undertake any specific Federal duties and Defendant City of Myrtle Beach asks that this claim be dismissed.

FOR A TWENTY-SIXTH DEFENSE
(Mootness)

109. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

110. Plaintiffs’ requests for injunctive relief cannot be resolved by a court of law because they require the Defendant City of Myrtle Beach to purchase and undertake the duties of property ownership. Even if the court were to fully grant all of the Plaintiffs’ requests, it would have no authority to force this on behalf of the Plaintiffs.

FOR A TWENTY-SEVENTH DEFENSE
(Failure to Exhaust Administrative Remedies)

111. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

112. The Plaintiffs have administrative remedies under state law, which they have not exhausted prior to bringing this action, and therefore, one or more of their claims should be dismissed.

FOR A TWENTY-EIGHTH DEFENSE AND THIRD-PARTY COMPLAINT
(Breach of Contract)

113. Defendant City of Myrtle Beach reasserts each and every averment, denial and explanation above.

114. Defendant City of Myrtle Beach is a municipal corporation organized and existing under the laws of the State of South Carolina.

115. Upon information and belief, Third-Party Plaintiffs Phil Eaves and Elizabeth Eaves ("Eaves") are citizens and residents of Horry County, South Carolina.

116. On or about February 24, 2000, Phil Eaves brought a lawsuit against the City of Myrtle Beach and others in that action entitled Phil Eaves v. Prestwick Land Limited Partnership, et al., with civil action number 2000-CP-26-0780. The allegations contained in this lawsuit are substantially similar to the allegations contained in this present suit.

117. On or about September 2, 2005, the Eaves and others, as "Landowners", entered into a Settlement Agreement with the City of Myrtle Beach and others, as "Defendants", whereby the Defendants agreed to pay to the Landowners certain specified sums as set forth in the Settlement Agreement and Release.

118. As part of the Settlement Agreement and Release, the Eaves promised as follows:

3. The Landowners, their heirs, executors, administrators, assigns and successors, covenant and agree that when selling the property, they must provide a purchaser a "Residential Property Condition Disclosure settlement" as required under Title 27, Chapter 50 of the South Carolina Code of Laws. The Landowners, their heirs, executors, administrators and assigns and successors, must check "Yes" to Question 11, "Drainage, grading or stability of

soil or retaining structure” and “Yes” to Question 22, “Flood hazards of that property is in a federally-designated flood plain.” Should the present form of the Disclosure Statement change, Plaintiffs shall check “yes” to any question which is substantially similar to those set forth in the preceding sentence. Under the Explanation section of the Disclosure Statement, Plaintiff shall disclose that:

AS TO LANDOWNERS EAVES: Due to Hurricane Floyd, floodwaters covered the first floor of the home while it was under construction. Additionally, the garage and yard experience periodic flooding. This flooding has damaged property located in the garage and the yard, including landscaping. The berm located at the rear of the property was constructed by the homeowner and the sole responsibility for its upkeep shall be with the owner of this property. Further information may be reviewed in Civil File 2000-CP-26-780 at the Horry County Courthouse.

119. The City of Myrtle Beach has fulfilled all of its duties under this Settlement Agreement and Release.

120. By and through that deed dated August 15, 2007, and filed on August 16, 2007, in Deed Book 3269 at Page 2296, the Eaves transferred the property which was subject to the prior litigation to the Plaintiffs Michael C. Webb and Amy Causey Webb.

121. According to the allegations contained in Plaintiffs’ complaint, the Webbs were not given any disclosures that the property they were purchasing was subject to flooding. Additionally, the Plaintiffs allege that they purchased the property based upon the representation that this property has never flooded.

122. The Eaves breached the Settlement Agreement and Release by failing to disclose to the Plaintiffs Chad and Amy Webb that their property may be subject to periodic flooding and that the same had flooded in the past.

123. As a direct and proximate result of the Eaves’ failure to make the required disclosures to the Webbs, the Webbs purchased the property, and have brought suit against the

City of Myrtle Beach and others for damage to their property resulting from flooding of the same. As a direct and consequential result, the City has been forced to retain counsel to defend it in this suit and has incurred other damages arising out of the filing of this suit by the Webbs, including any funds paid in settlement or by judgment to the Webbs.

124. Therefore, the City of Myrtle Beach is informed and believes it is entitled to judgment for actual damages against the Eaves in an amount to be determined by a jury.

WHEREFORE, having answered Plaintiffs' Complaint, Defendant City of Myrtle Beach prays:

- A. That the Complaint be dismissed;
- B. For judgment for actual damages against Third Party Defendants.
- C. That Defendant City of Myrtle Beach be granted the costs of this action; and
- D. That Defendant City of Myrtle Beach be granted such other relief as this Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

/s/ Charles B. Jordan, Jr.
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*Attorneys for Defendant City of Myrtle
Beach*

October 17, 2017

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2016-CP-26-6495
Cornell Patton, Melissa Patton,	)	
Chad Web and Amy Webb,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER OF PRESTWICK
	)	LAND LIMITED PARTNERSHIP,
Prestwick Land Limited Partnership;	)	JACKSON COMPANIES, AND
Prestwick Homeowners Association, Inc.;	)	CAMPGROUNDS, INC. TO
Jackson Companies;	)	AMENDED COMPLAINT
City of Myrtle Beach;	)	
South Carolina Department of Transportation;	)	
Horry County;	)	
Myrtle Beach Air Force Base Redevelopment	)	
Authority;	)	
Nelson L. Hardwick & Associates, Inc.;	)	
Bermuda Gardens Homeowners'	)	
Association d/b/a Homeowners of	)	
Ocean Walk Property Owners Association;	)	
Campgrounds, Inc.; and	)	
Prestwick Property Owners Association,	)	
Inc.	)	
	)	
Defendants.	)	
	)	
City of Myrtle Beach,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Phil Eaves and Elizabeth Eaves,	)	
	)	
Third-Party Defendants.	)	
Counterclaimants/Cross-Claimants.	)	
	)	

Defendants, Prestwick Land Limited Partnership, Jackson Companies, and Campgrounds, Inc., respond to the Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 1 of the Amended Complaint, and, therefore, demand strict proof thereof.
3. With regard to Paragraph 2 of the Amended Complaint, these Defendants would show that Prestwick Land Limited Partnership was a "limited partnership" which was organized and existed pursuant to the laws of the State of South Carolina; however, Prestwick Land Limited Partnership was dissolved with the South Carolina Secretary of State on or about October 3, 2007.
4. These Defendants, upon information and belief, admit the allegations as contained in Paragraph 3 of the Amended Complaint.
5. With regard to Paragraph 4 of the Amended Complaint, these Defendants would show that there is no such legal entity as "Jackson Companies", and the allegations contained in this paragraph are, therefore, denied.
6. These Defendants, upon information and belief, admit the allegations as contained in Paragraphs 5, 6 and 7 of the Amended Complaint.
7. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 8 and 9 of the Amended Complaint and, therefore, demand strict proof thereof.
8. With regard to Paragraph 10 of the Amended Complaint, these Defendants admit that Campgrounds, Inc. is a South Carolina corporation; however, these Defendants specifically

deny that it “owns the assets and liabilities” of Defendant Prestwick Land Limited Partnership.

9. With regard to Paragraph 11 of the Amended Complaint, these Defendants admit that Defendant, Prestwick Property Owners Association, Inc. owns certain property by virtue of a quitclaim deed; however, it has insufficient information in which to admit or deny the remaining allegations.
10. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 12, 13, 14, 15 and 16 of the Amended Complaint.
11. These Defendants deny the allegations as contained in Paragraph 17 of the Amended Complaint.
12. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 18 of the Amended Complaint.
13. These Defendants deny the allegations as contained in Paragraphs 19, 20, 21, 22 and 23 of the Amended Complaint.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Nuisance)

14. To the extent the allegations contained in Paragraphs 25, 26 and 27 of the Amended Complaint pertain to these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION
AS TO DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
(Negligence)

15. These Defendants would show that the allegations as contained in Paragraphs 29, 30, 31, 32 and 33 of the Amended Complaint do not pertain to these Defendants, and, therefore, no

response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Breach of Easement/Negligence)

16. These Defendants, upon information and belief, admit the allegations as contained in 35 of the Amended Complaint.
17. With regard to Paragraphs 36 and 37 of the Amended Complaint, these Defendants admit that there is a drainage easement and would show that the document speaks for itself.
18. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 38, 39 and 40 of the Amended Complaint, and, therefore, demand strict proof thereof.
19. These Defendants deny the allegations as contained in Paragraphs 41, 42, 43 and 44 of the Amended Complaint.

FOR A FIRST DEFENSE AS TO THE FIFTH CAUSE OF ACTION
AS TO DEFENDANTS CITY OF MYRTLE BEACH, Horry COUNTY AND MYRTLE
BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY
(Breach of Easement)

20. These Defendants would show that the allegations as contained in Paragraphs 46, 47 and 48 of the Amended Complaint do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

**FOR A FIRST DEFENSE AS TO THE SIXTH CAUSE OF ACTION
AS TO DEFENDANTS JACKSON COMPANIES, PRESTWICK LAND LIMITED
PARTNERSHIP AND PRESTWICK HOMEOWNERS ASSOCIATION, INC.**

(Negligence)

21. These Defendants deny the allegations as contained in Paragraphs 50, 51, 52, 53, 54 and 55 of the Amended Complaint.

**FOR A FIRST DEFENSE AS TO THE SEVENTH CAUSE OF ACTION
AS TO ALL DEFENDANTS**

(Trespass)

22. These Defendants deny the allegations as contained in Paragraphs 57, 58, 59 and 60 of the Amended Complaint.

23. These Defendants has insufficient information in which to admit or deny the allegations as contained in Paragraph 61 of the Amended Complaint, and, therefore, demand strict proof thereof.

24. These Defendants deny the allegations as contained in Paragraphs 62, 63, 64, 65, 66 and 67 of the Amended Complaint.

**FOR A FIRST DEFENSE AS TO THE EIGHTH CAUSE OF ACTION
AS TO DEFENDANTS CITY OF MYRTLE BEACH, HORRY COUNTY, MYRTLE
BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY AND SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION**

(Inverse Condemnation)

25. These Defendants would show that the allegations as contained in Paragraphs 69, 70, 71, 72, 73, 74 and 75 of the Amended Complaint do not pertain to them, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE NINTH CAUSE OF ACTION
AS TO DEFENDANTS CITY OF MYRTLE BEACH, Horry COUNTY, MYRTLE
BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY AND SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION
(Declaratory Judgment-Non Jury)

26. These Defendants would show that the allegations as contained in Paragraphs 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 and 93 of the Amended Complaint do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE TENTH CAUSE OF ACTION
AS TO DEFENDANTS CITY OF MYRTLE BEACH, Horry COUNTY, MYRTLE
BEACH AIR FORCE BASE REDEVELOPMENT AUTHORITY AND SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION
(Mandatory Injunction)

27. These Defendants would show that the allegations as contained in Paragraphs 95, 96, 98, 99 and 100 the Amended Complaint do not pertain to these Defendants, and, therefore, no response is required; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A SECOND DEFENSE

28. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.

29. These Defendants would show that the Amended Complaint fails to set out sufficient allegations to constitute a cause of action against these Defendants, and, therefore, request that this action be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR A THIRD DEFENSE

30. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
31. These Defendants would show that the Plaintiffs and/or their predecessors in title entered into a settlement agreement pertaining to the matters set out in the Amended Complaint, and these Defendants, therefore, assert release and settlement as an affirmative defense and a complete bar to Plaintiff's claims.

FOR A FOURTH DEFENSE

32. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
33. These Defendants would show that the Plaintiffs and/or their predecessors in title previously brought a lawsuit pertaining to the same matters asserted in this lawsuit and that lawsuit was dismissed with prejudice; therefore, these Defendants assert collateral estoppel as an affirmative defense.

FOR A FIFTH DEFENSE

34. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
35. These Defendants assert equitable estoppel as an affirmative defense.

FOR A SIXTH DEFENSE

36. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
37. These Defendants assert the equitable defenses of waiver and laches as affirmative defenses.

FOR A SEVENTH DEFENSE

38. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
39. These Defendants assert the Statute of Limitations as an affirmative defense and a complete bar to this action.

FOR AN EIGHTH DEFENSE

40. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
41. These Defendants assert the Statute of Repose as an affirmative defense and a complete bar to this action.

FOR A NINTH DEFENSE

42. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
43. These Defendants assert assumption of risk as an affirmative defense.

FOR A TENTH DEFENSE

44. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
45. These Defendants would show that the Plaintiff's alleged damages were caused by a third party or parties for whom these Defendants cannot be held liable.

FOR AN ELEVENTH DEFENSE

46. These Defendants reiterate the allegations as contained in the previous defenses as if repeated verbatim within this defense.
47. These Defendants assert failure to mitigate damages as an affirmative defense.

Wherefore, having fully responded to the Amended Complaint of the Plaintiff, Defendants, Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc., request that same be dismissed with prejudice, together with the costs and disbursements in the defense of this matter, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

Douglas Charles Baxter, Esquire, SC Bar No. 6272
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008 Main; (843) 443-3580 Direct
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dbaxter@richardsonplowden.com

Attorney for the Defendants, Prestwick Land
Limited Partnership, Jackson Companies and
Campgrounds, Inc.

October 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Cornell Patton, Melissa Patton,
Chad Web and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies;
City of Myrtle Beach;
South Carolina Department of Transportation;
Horry County;
Myrtle Beach Air Force Base Redevelopment
Authority;
Nelson L. Hardwick & Associates, Inc.;
Bermuda Gardens Homeowners'
Association d/b/a Homeowners of
Ocean Walk Property Owners Association;
Campgrounds, Inc.; and
Prestwick Property Owners Association,
Inc.

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants.

Counterclaimants/Cross-Claimants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A No. 2016-CP-26-6495

**NOTICE OF MOTION AND
MOTION FOR
SUMMARY JUDGMENT**

TO: PLAINTIFFS AND THEIR ATTORNEY, GENE M. CONNELL, JR.:

YOU WILL PLEASE TAKE NOTICE that Defendants, Prestwick Land Limited Partnership, Jackson Companies, and Campgrounds, Inc. will move before this honorable Court,

upon 10 days' notice or as soon thereafter as possible for an Order granting summary judgment. This Motion is brought pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* as there is no genuine issue of material fact and the Defendants are entitled to a judgment as a matter of law.

This motion is supported by the pleadings, the Affidavit of Dennis Wade, discovery responses, the attached Memorandum in Support of Defendants' Motion for Summary Judgment, relevant law and such other documents and arguments as may be presented at the motion hearing.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

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*Attorney for the Defendants, Prestwick Land
Limited Partnership, Jackson Companies and
Campground, Inc.*

April 6, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,)
Chad Web and Amy Webb,)
))
Plaintiffs,)

vs.)

**MEMORANDUM IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT**

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies;)
City of Myrtle Beach;)
South Carolina Department of Transportation;)
Horry County;)
Myrtle Beach Air Force Base Redevelopment)
Authority;)
Nelson L. Hardwick & Associates, Inc.;)
Bermuda Gardens Homeowners')
Association d/b/a Homeowners of)
Ocean Walk Property Owners Association;)
Campgrounds, Inc.; and)
Prestwick Property Owners Association,)
Inc.)

Defendants.)

City of Myrtle Beach,)

Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)

Third-Party Defendants.)

Counterclaimants/Cross-Claimants.)

The Defendants, Prestwick Land Limited Partnership, Jackson Companies, and
Campgrounds, Inc., hereby submit this Memorandum in Support of their Motion for Summary
Judgment. Prestwick Land Limited Partnership is a South Carolina limited partnership, and it

was created on or about February 24, 1993. Prestwick Land Limited Partnership was terminated by agreement on September 30, 2007 and the termination was filed with the Secretary of State on or about October 3, 2007. Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time that it was dissolved and it is named as a defendant pursuant to §33-41-370 of the Code of Laws of South Carolina; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision. Jackson Companies is not a legal entity and it is merely a generic name for several affiliated companies, which at the time included Prestwick Land Limited Partnership.

Prestwick Land Limited Partnership was the developer of the Prestwick subdivision. Construction of the stormwater management system for Phase 4-C and Phase 4-D began on or after February 3, 1997, and the work was completed in the fall of 1997. On October 10, 1997, the office of Ocean Coastal Resource Management (SC DHEC) issued final approval for the as-built stormwater management system.

Through a series of quitclaims deeds, all of the roads, common areas, open areas and easements for the Prestwick subdivision were conveyed to Prestwick Property Owners Association, Inc., and as of March 24, 2000, Prestwick Land Limited Partnership had relinquished control of the Board of Directors for the Prestwick Property Owners Association. In 2004, Prestwick Land Limited Partnership sold the last residential lot which it owned in the Prestwick subdivision.

On or about July 28, 1998 Prestwick Land Limited Partnership conveyed to Jack Cornell Patton and Melissa Jo Patton that lot 360, Prestwick Phase IV-D. On or about May 28, 1999, Lot 362, Prestwick Phase IV-D was conveyed to Phillip Eaves and Betty Eaves, and on August 16,

2007, the Eaves conveyed the property to Chad Webb and Amy Webb. Both lots are located in Phase IV-D of the Prestwick subdivision.

In 2000, the Pattons (2000-CP-26-0765), Eaves (2000-CP-26-0780) and other property owners filed lawsuits naming various Defendants including Prestwick Land Limited Partnership and the Jackson Companies alleging flooding problems. After a rather protracted litigation, a settlement was reached among the parties, and a Settlement Agreement and Release with the Defendants, including Prestwick Land Limited Partnership and Jackson Companies, was entered into on or about September 2, 2005. On or about September 26, 2005, the lawsuits against Prestwick Land Limited Partnership and Jackson Companies were dismissed with prejudice. It should be noted that the settlement agreement includes a confidentiality clause; however, it also contains a provision that the terms could be disclosed "in any action concerning the terms of this agreement". In exchange for payment of an agreed sum, the property owners (including Pattons and Eaves) released the Defendants from any and all claims and causes of action of any nature whatsoever which they now have, had, or may have relating to the claims, demands, and allegations which were or could have been set forth and asserted in their complaints.

The Plaintiff initially filed this action on October 4, 2016, and on September 26, 2017, they filed an Amended Complaint. The Causes of action against these Defendants are for negligence, nuisance, breach of easement/negligence, and trespass. The allegations in the current action and the 2000 actions are that these Defendants failed to disclose that the property flooded, had an improper design/construction of drainage system, directing water onto Plaintiffs' properties, and failing to maintain drainage system. The complaint does contain some new particulars of negligence; however, these do not pertain to these Defendants. Furthermore, the

damages alleged in the current complaint are virtually identical to the damages alleged in the 2000 lawsuits.

Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988).

Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (emphasis added). A party cannot rest on the mere allegations in his complaint. Nor can a party escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).

Statute of Repose

Section 15-3-640 of the Code of Laws, as amended, provides that an action may not be brought more than 13 years after substantial completion of the improvement; effective July 1, 2005, the statute was amended to provide for an 8 year limitation. In the present case, the stormwater management system constructed by Prestwick Land was completed on or before October 2, 1998 which is more than 13 years prior to the commencement of this action.

Accordingly, the Plaintiffs are precluded from recovery damages related to the design and/or construction of the subdivision, including the stormwater management system.

Res Judicata

The following elements must be shown in order to establish the defense of *res judicata*:

- 1) The Parties must be the same or their privy;
- 2) The subject matter must be the same; and
- 3) Generally the precise point must be ruled yet where the parties are the same or in privy the judgement is an absolute bar not only of what was decided but what might have been decided. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986). A dismissal with prejudice indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986).

When determining whether *res judicata* applies, the identity of the parties in the first lawsuit also includes persons in privy with the named parties. Nelson v. QHG of South Carolina, Inc., 580 S.E.2d 171 (Ct. App. 2003). One not a party to a prior action can be precluded from relitigating the issue only if he is in privy with a party to the prior action against whom an adverse finding is made. Id. In regard to *res judicata* or collateral estoppel, privy does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation. Id.

In both the Patton and Eaves 2000 lawsuits, the claims against Prestwick Land Limited Partnership and Jackson Companies were dismissed with prejudice, which indicate an adjudication of the allegations against these Defendants. Accordingly, the Plaintiffs are barred by *res judicata* from litigating the same issues in the present case. Furthermore, the Webbs are

in privity with the Eaves as to the property flooding claims, and they were aware of the 2000 lawsuits when they purchased the property. In fact, the Webbs include allegations against these Defendants which are based upon information/disclosures provided to the Eaves.

Settlement

In South Carolina jurisprudence, settlement agreements are viewed as contracts. Abel v. SCDHEC, 798 S.E.2d 445 (Ct. App. 2017). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Id. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Id.

As part of the Settlement Agreement and Release, the "landowners" released all claims which they had, including those "relating to the claims, demands and allegations which were or could have been set forth and asserted in the above-referenced actions or which otherwise arise out of those matters described in the pleadings in the above-referenced actions". In the 2000 lawsuits, the Plaintiffs asserted:

"That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants."

Accordingly, per the Settlement Agreement and Release, the "landowners" released not only damages they had already incurred, but also future damages, including diminution in value and continued flooding, and the Plaintiffs are precluded from seeking to recover these same damages.

To the extent the Webbs are seeking damages for any acts or omissions on the part of these Defendants which occurred after they bought their property, there is no evidence of any breach of a duty of care, trespass or nuisance occurring after August 16, 2007. At the time that the Webbs purchased the house, Prestwick Land Limited Partnership had sold all the residential lots, had conveyed all of the common elements, open area and easement to Prestwick Property Owners Association, Inc. and had relinquished control of the Board of Directors for the Prestwick Property Owners Association, Inc.

Conclusion

Based on the foregoing, Defendants, Prestwick Land Limited Partnership, Jackson Companies, and Campgrounds, Inc., hereby request that the court grant them summary judgment and dismiss all of the Plaintiffs' claims with prejudice.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

Douglas Charles Baxter, Esquire, SC Bar No. 6272
2103 Farlow Street, Myrtle Beach, SC 29577
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*Attorney for the Defendants, Prestwick Land
Limited Partnership, Jackson Companies and
Campground, Inc.*

April 6, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,
Chad Web and Amy Webb,

Plaintiffs,

vs.

AFFIDAVIT OF DENNIS WADE

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies;
City of Myrtle Beach;
South Carolina Department of Transportation;
Horry County;
Myrtle Beach Air Force Base Redevelopment
Authority;
Nelson L. Hardwick & Associates, Inc.;
Bermuda Gardens Homeowners'
Association d/b/a Homeowners of
Ocean Walk Property Owners Association;
Campgrounds, Inc.; and
Prestwick Property Owners Association,
Inc.

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

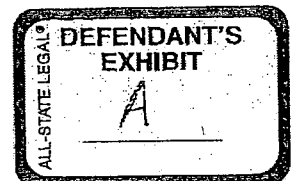
vs.

Phil Eaves and Elizabeth Eaves,

Third-Party Defendants.
Counterclaimants/Cross-Claimants.

PERSONALLY APPEARED BEFORE ME, Dennis Wade, who, upon being duly sworn,
deposes and says:

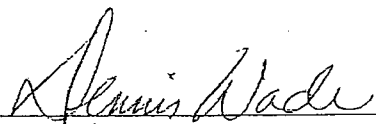
- 1) I am an adult over the age of 18 years and am competent to make this Affidavit.



- 2) Prior to its being dissolved, I was the President/CEO of Prestwick Land Limited Partnership.
- 3) Prestwick Land Limited Partnership was the developer of the Prestwick subdivision.
- 4) Plaintiffs' lots are located in Phase IV-D of the Prestwick subdivision.
- 5) The plans for the storm water management system for Phase IV-C and Phase IV-D of Prestwick subdivision were approved by the Office of Ocean and Coastal Resource Management (SCDHEC) and Horry County on or before January 3, 1997.
- 6) Construction of the storm water management system for Phase IV-C and Phase IV-D began on or about February 13, 1997
- 7) Final approval for the storm water management system was issued by the Office of Ocean and Coastal Resource Management (SCDHEC) on October 10, 1997. (A copy of the letter from the Office of Ocean and Coastal Resource Management is attached hereto.)
- 8) Through a series of Quitclaim Deeds, all of the roads, common areas, open areas and easements for the Prestwick subdivision were conveyed to Prestwick Property Owners' Association, Inc.
- 9) As of March 24, 2000, the Prestwick Land Limited Partnership relinquished control of the Board of Directors for Prestwick Property Owners' Association and thereafter the property owners elected the Board members.
- 10) By supplemental declaration of covenants and restrictions for Prestwick subdivision dated May 28, 2003, Prestwick Land Limited Partnership relinquished control of the architectural review board for Prestwick subdivision to the Prestwick Property Owners' Association.
- 11) During the calendar year of 2004, Prestwick Land Limited Partnership sold the last residential lot which it owned in the Prestwick subdivision.
- 12) By agreement dated September 30, 2007, Prestwick Land Limited Partnership was terminated and dissolved.
- 13) Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time it was dissolved; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision.
- 14) The Jackson Companies is not a legal entity subject to being sued, and it is merely a generic name for several affiliated companies.

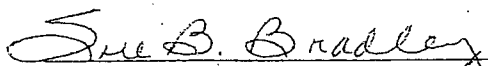
- 15) Since the dismissals of Civil Actions 2000-CP-26-0765 and 2000-CP-26-0780 and the execution of Releases in those cases, to my knowledge neither Prestwick Land Limited Partnership nor Campgrounds, Inc. have taken any action which would have adversely affected or contributed to the alleged flooding of the Plaintiffs' properties.

Further affiant sayeth naught.

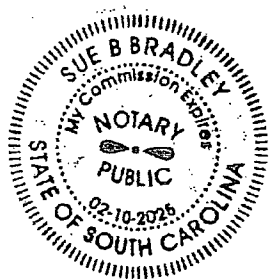

Dennis Wade

Subscribed and sworn to before me this

6th day of April, 2018


Notary Public, State of South Carolina

My Commission Expires: 2-10-2025





Office of Ocean and Coastal
Resource Management

1362 McMillan Avenue, Suite 400
Charleston, SC 29405

(803) 744-5838 FAX (803) 744-5847

October 10, 1997

OCT 11 1997

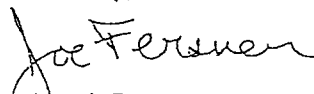
Mr. Mike Wooten
DDC Engineers
2205 Highway 17 South
N. Myrtle Beach, SC 29582

Re: Prestwick, Phases IV-C and IV-D
PN# 51-97-1-1
Horry County
Stormwater

Dear Mr. Wooten:

Final inspection of the above referenced project has been completed. The stormwater management system is constructed in accordance with previously approved plans and is consistent with the Storm Water Management and Sediment Reduction Permit and the Coastal Zone Management Program.

Sincerely,


Joseph Fersner, P. E.
Manager, Engineering
and State Certification Section

JF/25696/jk

cc: Mr. Christopher L. Brooks
Mr. H. Stephen Snyder
Mr. Terry Boyd

PLLP-JC 0053

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,)
Chad Web and Amy Webb,)
))
Plaintiffs,)

vs.)

**NOTICE OF MOTION AND
MOTION FOR
SUMMARY JUDGMENT**

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies;)
City of Myrtle Beach;)
South Carolina Department of Transportation;)
Horry County;)
Myrtle Beach Air Force Base Redevelopment)
Authority;)
Nelson L. Hardwick & Associates, Inc.;)
Bermuda Gardens Homeowners')
Association d/b/a Homeowners of)
Ocean Walk Property Owners Association;)
Campgrounds, Inc.; and)
Prestwick Property Owners Association,)
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))
Defendants.)

City of Myrtle Beach,)
))
Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)
))
Third-Party Defendants.)
Counterclaimants/Cross-Claimants.)

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upon 10 days' notice or as soon thereafter as possible for an Order granting summary judgment. This Motion is brought pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* as there is no genuine issue of material fact and the Defendants are entitled to a judgment as a matter of law.

This motion is supported by the pleadings, the Affidavit of Dennis Wade, discovery responses, the attached Memorandum in Support of Defendants' Motion for Summary Judgment, relevant law and such other documents and arguments as may be presented at the motion hearing.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

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*Attorney for the Defendants, Prestwick Land
Limited Partnership, Jackson Companies and
Campgrounds, Inc.*

October 24, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,)
Chad Web and Amy Webb,)
)
Plaintiffs,)

vs.)

**MEMORANDUM IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT**

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies;)
City of Myrtle Beach;)
South Carolina Department of Transportation;)
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Campgrounds, Inc.; and)
Prestwick Property Owners Association,)
Inc.)
)
Defendants.)

City of Myrtle Beach,)
)
Third-Party Plaintiff,)

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Phil Eaves and Elizabeth Eaves,)
)
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Judgment. Prestwick Land Limited Partnership is a South Carolina limited partnership, and it

was created on or about February 24, 1993. Prestwick Land Limited Partnership was terminated by agreement on September 30, 2007 and the termination was filed with the Secretary of State on or about October 3, 2007. Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time that it was dissolved and it is named as a defendant pursuant to §33-41-370 of the Code of Laws of South Carolina; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision. Jackson Companies is not a legal entity and it is merely a generic name for several affiliated companies, which at the time included Prestwick Land Limited Partnership.

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2007, the Eaves conveyed the property to Chad Webb and Amy Webb. Both lots are located in Phase IV-D of the Prestwick subdivision.

In 2000, the Pattons (2000-CP-26-0765), Eaves (2000-CP-26-0780) and other property owners filed lawsuits naming various Defendants including Prestwick Land Limited Partnership and the Jackson Companies alleging flooding problems. After a rather protracted litigation, a settlement was reached among the parties, and a Settlement Agreement and Release with the Defendants, including Prestwick Land Limited Partnership and Jackson Companies, was entered into on or about September 2, 2005. On or about September 26, 2005, the lawsuits against Prestwick Land Limited Partnership and Jackson Companies were dismissed with prejudice. It should be noted that the settlement agreement includes a confidentiality clause; however, it also contains a provision that the terms could be disclosed "in any action concerning the terms of this agreement". In exchange for payment of an agreed sum, the property owners (including Pattons and Eaves) released the Defendants from any and all claims and causes of action of any nature whatsoever which they now have, had, or may have relating to the claims, demands, and allegations which were or could have been set forth and asserted in their complaints.

The Plaintiff initially filed this action on October 4, 2016, and on September 26, 2017, they filed an Amended Complaint. The Causes of action against these Defendants are for negligence, nuisance, breach of easement/negligence, and trespass. The allegations in the current action and the 2000 actions are that these Defendants failed to disclose that the property flooded, had an improper design/construction of drainage system, directing water onto Plaintiffs' properties, and failing to maintain drainage system. The complaint does contain some new particulars of negligence; however, these do not pertain to these Defendants. Furthermore, the

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Standard of Review

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Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (emphasis added). A party cannot rest on the mere allegations in his complaint. Nor can a party escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).

Statute of Repose

Section 15-3-640 of the Code of Laws, as amended, provides that an action may not be brought more than 13 years after substantial completion of the improvement; effective July 1, 2005, the statute was amended to provide for an 8 year limitation. In the present case, the stormwater management system constructed by Prestwick Land was completed on or before October 2, 1998 which is more than 13 years prior to the commencement of this action.

Accordingly, the Plaintiffs are precluded from recovery damages related to the design and/or construction of the subdivision, including the stormwater management system.

Res Judicata

The following elements must be shown in order to establish the defense of *res judicata*:

- 1) The Parties must be the same or their privy;
- 2) The subject matter must be the same; and
- 3) Generally the precise point must be ruled yet where the parties are the same or in privity the judgement is an absolute bar not only of what was decided but what might have been decided. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986). A dismissal with prejudice indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986).

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in privity with the Eaves as to the property flooding claims, and they were aware of the 2000 lawsuits when they purchased the property. In fact, the Webbs include allegations against these Defendants which are based upon information/disclosures provided to the Eaves.

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In South Carolina jurisprudence, settlement agreements are viewed as contracts. Abel v. SCDHEC, 798 S.E.2d 445 (Ct. App. 2017). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Id. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Id.

As part of the Settlement Agreement and Release, the "landowners" released all claims which they had, including those "relating to the claims, demands and allegations which were or could have been set forth and asserted in the above-referenced actions or which otherwise arise out of those matters described in the pleadings in the above-referenced actions". In the 2000 lawsuits, the Plaintiffs asserted:

"That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants."

Accordingly, per the Settlement Agreement and Release, the "landowners" released not only damages they had already incurred, but also future damages, including diminution in value and continued flooding, and the Plaintiffs are precluded from seeking to recover these same damages.

To the extent the Webbs are seeking damages for any acts or omissions on the part of these Defendants which occurred after they bought their property, there is no evidence of any breach of a duty of care, trespass or nuisance occurring after August 16, 2007. At the time that the Webbs purchased the house, Prestwick Land Limited Partnership had sold all the residential lots, had conveyed all of the common elements, open area and easement to Prestwick Property Owners Association, Inc. and had relinquished control of the Board of Directors for the Prestwick Property Owners Association, Inc.

Conclusion

Based on the foregoing, Defendants, Prestwick Land Limited Partnership, Jackson Companies, and Campgrounds, Inc., hereby request that the court grant them summary judgment and dismiss all of the Plaintiffs' claims with prejudice.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

Douglas Charles Baxter, Esquire, SC Bar No. 6272
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008 Main; (843) 443-3580 Direct
(843) 448-1533 Fax
dbaxter@richardsonplowden.com

*Attorney for the Defendants, Prestwick Land
Limited Partnership, Jackson Companies and
Campgrounds, Inc.*

October 24, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2016-CP-26-6495

Cornell Patton, Melissa Patton,)
Chad Web and Amy Webb,)
) **Plaintiffs,**)

vs.)

AFFIDAVIT OF DENNIS WADE

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies;)
City of Myrtle Beach;)
South Carolina Department of Transportation;)
Horry County;)
Myrtle Beach Air Force Base Redevelopment)
Authority;)
Nelson L. Hardwick & Associates, Inc.;)
Bermuda Gardens Homeowners')
Association d/b/a Homeowners of)
Ocean Walk Property Owners Association;)
Campgrounds, Inc.; and)
Prestwick Property Owners Association,)
Inc.)

Defendants.)

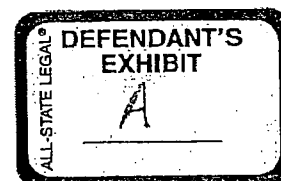
City of Myrtle Beach,)
) **Third-Party Plaintiff,**)

vs.)

Phil Eaves and Elizabeth Eaves,)
) **Third-Party Defendants.**)
Counterclaimants/Cross-Claimants.)

PERSONALLY APPEARED BEFORE ME, Dennis Wade, who, upon being duly sworn,
deposes and says:

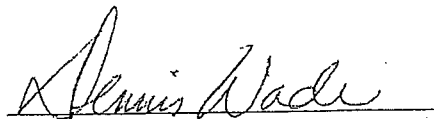
- 1) I am an adult over the age of 18 years and am competent to make this Affidavit.



- 2) Prior to its being dissolved, I was the President/CEO of Prestwick Land Limited Partnership.
- 3) Prestwick Land Limited Partnership was the developer of the Prestwick subdivision.
- 4) Plaintiffs' lots are located in Phase IV-D of the Prestwick subdivision.
- 5) The plans for the storm water management system for Phase IV-C and Phase IV-D of Prestwick subdivision were approved by the Office of Ocean and Coastal Resource Management (SCDHEC) and Horry County on or before January 3, 1997.
- 6) Construction of the storm water management system for Phase IV-C and Phase IV-D began on or about February 13, 1997
- 7) Final approval for the storm water management system was issued by the Office of Ocean and Coastal Resource Management (SCDHEC) on October 10, 1997. (A copy of the letter from the Office of Ocean and Coastal Resource Management is attached hereto.)
- 8) Through a series of Quitclaim Deeds, all of the roads, common areas, open areas and easements for the Prestwick subdivision were conveyed to Prestwick Property Owners' Association, Inc.
- 9) As of March 24, 2000, the Prestwick Land Limited Partnership relinquished control of the Board of Directors for Prestwick Property Owners' Association and thereafter the property owners elected the Board members.
- 10) By supplemental declaration of covenants and restrictions for Prestwick subdivision dated May 28, 2003, Prestwick Land Limited Partnership relinquished control of the architectural review board for Prestwick subdivision to the Prestwick Property Owners' Association.
- 11) During the calendar year of 2004, Prestwick Land Limited Partnership sold the last residential lot which it owned in the Prestwick subdivision.
- 12) By agreement dated September 30, 2007, Prestwick Land Limited Partnership was terminated and dissolved.
- 13) Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time it was dissolved; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision.
- 14) The Jackson Companies is not a legal entity subject to being sued, and it is merely a generic name for several affiliated companies.

- 15) Since the dismissals of Civil Actions 2000-CP-26-0765 and 2000-CP-26-0780 and the execution of Releases in those cases, to my knowledge neither Prestwick Land Limited Partnership nor Campgrounds, Inc. have taken any action which would have adversely affected or contributed to the alleged flooding of the Plaintiffs' properties.

Further affiant sayeth naught.

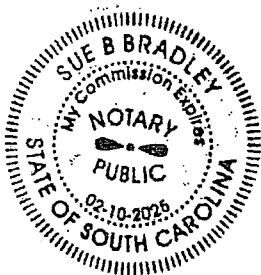

Dennis Wade

Subscribed and sworn to before me this

6th day of April, 2018


Notary Public, State of South Carolina

My Commission Expires: 2-10-2025





Office of Ocean and Coastal
Resource Management

1362 McMillan Avenue, Suite 400
Charleston, SC 29405

(803) 744-5838 FAX (803) 744-5847

October 10, 1997

OCT 11 1997

Mr. Mike Wooten
DDC Engineers
2205 Highway 17 South
N. Myrtle Beach, SC 29582

Re: Prestwick, Phases IV-C and IV-D
PN# 51-97-1-1
Horry County
Stormwater

Dear Mr. Wooten:

Final inspection of the above referenced project has been completed. The stormwater management system is constructed in accordance with previously approved plans and is consistent with the Storm Water Management and Sediment Reduction Permit and the Coastal Zone Management Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Fersner".

Joseph Fersner, P. E.
Manager, Engineering
and State Certification Section

JF/25696/jk

cc: Mr. Christopher L. Brooks
Mr. H. Stephen Snyder
Mr. Terry Boyd

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,)
Chad Webb and Amy Webb,)
)
Plaintiffs,)

vs.)

AFFIDAVIT OF
GENE M. CONNELL, JR.

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies; City of Myrtle)
Beach; South Carolina Department of)
Transportation; Horry County; Myrtle)
Beach Air Force Base Redevelopment)
Authority; Nelson L. Hardwick &)
Associates, Inc.; Homeowners of Ocean)
Walk Property Owners Association;)
Campgrounds, Inc.; and Prestwick)
Property Owners Association, Inc.,)
)
Defendants.)

City of Myrtle Beach,)
)
Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)
)
Third-Party Defendants/)
Counterclaimants /Cross-Claimants/.)

vs.)

Homeowners of Ocean Walk Property)
Owners Association,)
)
Defendant/Fourth-Party Plaintiff,)

vs.)

Rose Real Estate, Inc.,)
)
Fourth-Party Defendant.)

PERSONALLY APPEARED BEFORE ME, Gene M. Connell, Jr., who first being duly sworn, deposes and states as follows:

1. I am counsel for Plaintiffs in the above-captioned case. The matter involves flooding of the Plaintiffs' houses in the Prestwick Subdivision on multiple occasions from 1999 to date.
2. Upon information and belief, the Defendant Prestwick Land Limited Partnership sold the real property to the Plaintiffs who constructed houses on the property.
3. According to Defendants, Prestwick Land Limited Partnership has dissolved and the managing partner was Campgrounds, Inc.
4. The Defendants jointly have taken multiple depositions, including a partial deposition of the Plaintiffs' expert and the four Plaintiffs. These depositions took place over five days. The Plaintiffs have not yet had an opportunity to take any depositions and desire to take the deposition of Dennis Wade who prepared the Affidavit in this case.
5. Discovery is still ongoing and Plaintiffs have not been provided a full opportunity to conduct discovery in regard to Defendant Prestwick Land Limited Partnership and Campgrounds, Inc. It is crucial that Plaintiffs be allowed to conduct this discovery before the Court considers these Defendants' Motion for Summary Judgment.
6. There are multiple factual issues in the case including the following:
 - a. Has Prestwick Land Limited Partnership taken any action to repair the drainage system;
 - b. Has Prestwick Land Limited Partnership or Campgrounds, Inc. agreed to make any payments to the Prestwick Homeowners Association for drainage defects;
 - c. Has Campgrounds, Inc. or Prestwick Land Limited Partnership been involved in any ongoing repairs;

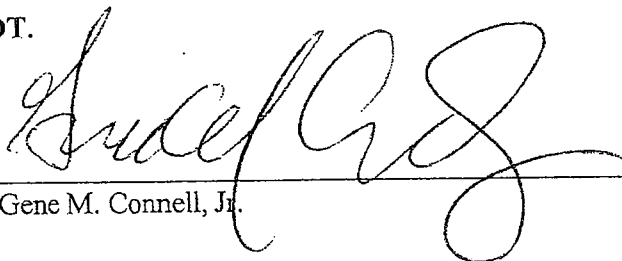
d. Has any of Prestwick Land Limited Partnership's or Campgrounds, Inc.'s employees performed any work on the drainage system;

e. What do the documents reveal between Prestwick Land Limited Partnership and how the property was transferred to the Homeowners Association.

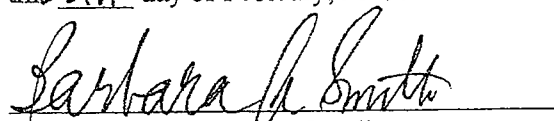
f. It is crucial to the development of the case that Plaintiffs understand the alleged transfer of the drainage system to the Prestwick Homeowners Association prior to having this Motion for Summary Judgment heard.

7. Accordingly, I request that because discovery has not been completed that the summary judgment motion not be heard at this time.

FURTHER AFFIANT SAYETH NOT.


Gene M. Connell, Jr.

SWORN AND SUBSCRIBED before me,
this 26th day of February, 2019.


Notary Public for South Carolina
My Commission Expires: 3-12-24

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,
Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; Myrtle
Beach Air Force Base Redevelopment
Authority; Nelson L. Hardwick &
Associates, Inc.; Homeowners of Ocean
Walk Property Owners Association;
Campgrounds, Inc.; and Prestwick
Property Owners Associates, Inc.,

Defendants.

City of Myrtle Beach,
Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,
Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

vs.

Homeowners of Ocean Walk Property
Owners Association,
Defendant/Fourth-Party Plaintiff,

vs.

Rose Real Estate, Inc.,
Fourth-Party Defendant.

**AFFIDAVIT OF
CORNELL PATTON**

PERSONALLY APPEARED BEFORE ME, Cornell Patton, who first being duly sworn, deposes and states as follows:

1. My name is Cornell Patton and I am one of the Plaintiffs in this action. I have just been provided a copy of the Affidavit of Thomas "Buddy" Styers dated October 1, 2018 and wish to apprise the Court of the situation concerning my personal residence.

2. I live in Prestwick with my wife and have built a house there. My home has been periodically flooded by various storms and rain events as a result of a ditch which borders my property.

3. This is the second lawsuit I have had to file regarding flooding. The first lawsuit that was filed was 2000-CP-26-00765 and was the result of Hurricane Floyd flooding my house.

4. After that flood, I decided to trace the ditch behind my house and walked the entire length of it from my house onto the old Myrtle Beach Air Force Base. I found that the ditch behind my house is the main source of drainage for the Myrtle Beach Air Force Base and for the eastern end of the Myrtle Beach Air Force Base airfield. All of the ditches on the Myrtle Beach Air Force Base connect together. Some of those ditches flow to the east of U.S. Highway 17 Bypass beside my house.

5. The ditches have all been constructed and are used for drainage and an enormous amount of water goes through the ditch beside my house from the Myrtle Beach Air Force Base.

6. The Myrtle Beach Air Force Base Redevelopment Authority has had control over those ditches in the past. I disagree with the statements in the Affidavit of Thomas "Buddy" Styers that the ditches only drain the old Myrtle Beach Air Force Base Housing Authority. The ditches involved in this lawsuit are a patchwork of ditches which are interconnected throughout the entire Myrtle Beach Air Force Base and continue to be so even to this day.

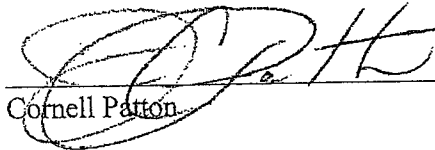
7. In the prior lawsuit that I filed entitled *Patton v. Prestwick Land Limited Partnership*, 2000-CP-26-00765, Myrtle Beach Air Force Base Redevelopment Authority was named as a defendant and actually paid some damages. Since that time, new storms have damaged my property and I have brought a new lawsuit. When I signed the Settlement Agreement and Release dated September 2, 2005, it was never my intention that it would cover future storm events. In fact, the only release I signed was a release up to the date of the execution of that Release. I refer the Court to page 2 of the Release which states "whatever from the beginning of the world up to the day, hour, minutes of the execution of these presents" I understood this language to mean that a release that I signed was only for that particular flood event and for other flood events prior to that date. Since that time, I have had a new flood event and new rain events, all of which have damaged my property. It was never my intention, belief or understanding that the Release which has been presented in this case would bar me from further lawsuits over future flooding. In fact, discussions were held on this very topic and I understood when I signed the Release that it would in no way prohibit me from bringing another claim should I have another flood event.

8. It has always been my contention and belief based on my personal review of the ditch system that the Myrtle Beach Air Force Base Redevelopment Authority, which is the agency charged with redeveloping the Base for civilian use, had responsibility and authority over all of the common elements on the Base, such as the ditches, the roads, the green spaces, the sewers and the electrical utility easement. The Myrtle Air Force Beach Redevelopment Authority and its officers, agents, and employees took no action as redevelopment occurred in changing the course of the ditch, in attempting to reduce the flow of water in the ditch behind my house or in attempting to divert the water such that I would not receive the type of flow I receive on my property during a big event.

9. In sum, the Myrtle Beach Air Force Base Redevelopment Authority has not maintained, changed, or repaired the drainage system which flows into the ditch behind the Plaintiffs' property and this is precisely one of the reasons why I continue to flood.

10. Finally, I note that because the Myrtle Beach Air Force Base Redevelopment Authority has certain statutory authority as found in S.C. Code Section 31-12-70(9) that Authority has the statutory duty to repair any works, streets, roads, public utilities and is part of their mission. It is my testimony that the Myrtle Beach Air Force Base Redevelopment Authority has not done so in this case and that the water behind my house continues to flow from the series of interconnected ditches on the Myrtle Beach Air Force Base and during storm events floods my property.

FURTHER AFFIANT SAYETH NOT.


Cornell Patton

SWORN AND SUBSCRIBED before me,
this 10 day of October, 2018.


Notary Public for South Carolina
My Commission Expires: 1-24-27

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,
Plaintiffs,

vs.

AFFIDAVIT OF
ROBERT K. TAYLOR

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; Myrtle
Beach Air Force Base Redevelopment
Authority; Nelson L. Hardwick &
Associates, Inc.; Bermuda Gardens
Homeowners' Association d/b/a
Homeowners of Ocean Walk Property
Owners Association; Campgrounds, Inc.;
and Prestwick Property Owners
Associates, Inc.,
Defendants.

City of Myrtle Beach,
Third-Party Plaintiff,

vs.

Phil Eaves and Elizabeth Eaves,
Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

PERSONALLY APPEARED BEFORE ME, Robert K. Taylor, who first being duly sworn, deposes and states as follows:

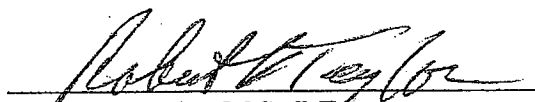
1. My name is Robert K. Taylor and I am a professional engineer licensed by the State of South Carolina and hold a P.E. designation.

2. I have performed extensive work on the canal behind the home of the Pattons in Prestwick. Further, I was the expert witness in the original action brought by the Pattons.

3. I have had an opportunity to again be involved in this case since the property is subject to repeated flooding. I have also learned that the developer to the east of the Plaintiffs hired Hardwick & Associates to reconfigure the canal by changing its course. The result has been more severe and frequent flooding of the Patton property.

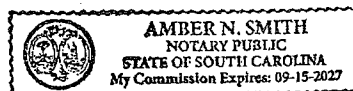
4. It is my opinion to a reasonable degree of certainty that it was negligent to change the course of the canal as this has channeled more water on the Plaintiffs' property. Such a change in the canal direction causes more flooding by artificial means on the Plaintiffs and should not have been approved by the County in light of the well-known propensity of this canal to flood. I base this opinion on my extensive involvement with this canal since 1999 and my prior expert opinions in this case.

FURTHER AFFIANT SAYETH NOT.


Robert K. Taylor, M.S., P.E.

SWORN AND SUBSCRIBED before me,
this 10th day of November, 2017.


Notary Public for South Carolina
My Commission Expires: 9-15-2027



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2000-CP-26- 765

Cornell Patton and Melissa Patton,)
)
Plaintiff,)

-VS-

COMPLAINT

Prestwick Land Limited Partnership,)
Jackson Companies, City of Myrtle)
Beach, Pirateland Campground, Inc.,)
and Horry County,)
)
Defendants.)

(Property Damage/Inverse Condemnation/
Negligence/Trespass)

JURY TRIAL DEMANDED

00 FEB 24 AM 9:36

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are owners and residents of 1288 Strathmill Court, Myrtle Beach, South Carolina, located in the Prestwick community.
2. The Defendant, Prestwick Land Limited Partnership, is a partnership organized and existing pursuant to the laws of the State of South Carolina and doing business as a developer of the Prestwick Subdivision.
3. The Defendant, Jackson Companies, is a corporation organized and existing pursuant to the laws of the State of South Carolina, and, upon information and belief, is the owner of Prestwick Land Limited Partnership and/or the General Partner.
4. The Defendant, City of Myrtle Beach, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a City.

5. The Defendant, Pirateland Campground, Inc., is a campground organized and existing as a corporation for recreational campground.

6. The Defendant, Horry County, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a County.

7. That the Plaintiffs purchased a lot in the Prestwick Subdivision with the address known as 1288 Strathmill Court, Myrtle Beach, South Carolina 29575.

8. That the Plaintiffs, after purchasing this lot, did build a residence upon the lot which was to be where they were going to live.

9. That prior to purchasing the lot the Plaintiffs were shown what was called "a small creek" which abutted the Plaintiffs' property.

10. That the Plaintiffs were provided with a Property Report which stated that "None of the lots or any portion of any lot are covered by water at any time of the year." The Property Report further stated that "None of the lots in this Property Report are located within a flood plain." Also, the Property Report stated that "None of the lots in the subdivision required drainage."

11. That because of the representations made in this Report the Plaintiffs purchased their property.

12. That, in fact, the property in question had been subject to flooding from a drainage ditch which was represented to the Plaintiffs as "a creek" previous to the Plaintiffs purchasing the property.

13. That the Defendants, Jackson Companies and Prestwick Land Limited Partnership, were aware of potential flooding from the drainage easement and insisted to the Plaintiffs that in fact the property had not flooded.

14. That these Defendants, through their officers, agents and/or employees, were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to inform Plaintiffs that the drainage easement would flood their property;
- b. in providing the Plaintiffs with a Property Report which stated that no flooding had ever occurred when this was, in fact, not true;
- c. in providing the Plaintiffs with a Property Report which stated that the property had never been under water when, in fact, this was not true;
- d. in failing to advise the Plaintiffs that the property sometimes flooded and, in fact, had been under water;
- e. in failing to warn, advise and inform the Plaintiffs that the drainage easement sometimes flooded;
- f. in failing to advise the Plaintiffs that the creek on the back of the property drained the entire Air Force Base property;
- g. in failing to inform the Plaintiffs that during times of heavy rains their property would flood;
- h. in failing to inspect the property to make sure that it would not flood prior to purchase by the Plaintiffs;
- i. in designing the creek in such a way so that all the water from Prestwick would flow through the Plaintiffs' property and cause flooding;
- j. in connecting a series of ditches and pipes so that all the water would flow through the drainage easement unto the Plaintiffs' property;
- k. in channeling water in such a way that would flood the Plaintiffs' home and property;
- l. in failing to devise a method for channeling water away from the Plaintiffs' property;
- m. in failing to advise the Plaintiffs that water would channel over their property;
- n. in failing to drain water into spillways and/or divert water away from the Plaintiffs' property.

15. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their home and residence, including floodwater inside their home, damage to their personal property, damage to their floors, walls, electrical, baseboards, air conditioning, heating, tile, and other aspects of their home.

16. That Plaintiffs suffered damages, not including depreciation, damages as a stigmatized or distressed property and loss of value, loss of use, and must disclose the flooding problem, thus, reducing market value to their home as a result of this incident.

17. That the Plaintiffs ask for judgment against Defendant Jackson Companies and Defendant Prestwick Land Limited Partnership for actual damages, punitive damages, and for the costs of this action.

FOR A SECOND CAUSE OF ACTION
AS TO THE DEFENDANTS, PRESTWICK LAND LIMITED PARTNERSHIP,
JACKSON COMPANIES, CITY OF MYRTLE BEACH
(Nuisance)

18. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

19. All of the above-named Defendants' conduct in channeling water through various pipes and ditches onto the Plaintiffs' property resulted in an unreasonable interference with Plaintiffs' use and enjoyment of their property, which reoccurs every time there is heavy rain.

20. The aforementioned action is a nuisance and severe damage has been done to the Plaintiffs' property as outlined in the First Cause of Action.

21. The Plaintiffs ask for judgment against these Defendants for actual damages for nuisance and also request a permanent injunction requiring these Defendants to not channel water through ditches and the like onto or near the Plaintiffs' property.

FOR A THIRD CAUSE OF ACTION
AS TO THE DEFENDANT PIRATELAND CAMPGROUND
(Negligence)

22. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

23. That the Defendant PirateLand Campground, through its officers, agents and/or employees, did build a road downstream from the Plaintiff, across the creek and/or drainage easement.

24. That when this road was built so that the Defendant PirateLand could use the land on the other side of the creek to park campers the Defendant PirateLand, through its officers, agents and/or employees, failed to put appropriate piping to allow the water to drain underneath the road into the ocean.

25. That the Defendant PirateLand Campground was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to have an engineer size the pipes in such a manner so that the water would not back up on the Plaintiffs' property;
- b. in putting in undersized pipes so that the water would not drain;
- c. in failing to provide such engineering that the entire creek did drain as it had before the road was placed across;
- d. in failing to have proper engineering advice or expertise before building the road and placing the pipes underneath the road;
- e. in failing to warn the Plaintiff of the undersized pipes;
- f. in failing to inspect the work to make sure that undersized pipes were not placed under the road.

26. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their home and property; that one of the causes of this damage was this Defendant's

building of a road and blocking downstream the drainage easement with undersized pipe; that Plaintiffs suffered property depreciation, property damage, damage to their home, will continue to have damage to their home during heavy rain, are the owners of a distressed property, and will be unable to sell the property for what they paid for it because they will have to disclose the flooding that occurred.

27. That Plaintiffs ask for judgment against Pirateland for actual damages, punitive damages and for the costs of this action.

FOR A FOURTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND HORRY COUNTY
(Breach of Easement/Negligence)

28. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

29. The drainage ditch which abuts the Plaintiffs' property is, in fact, the drainage ditch which goes all the way from the former Myrtle Beach Air Force Base into the Atlantic Ocean through Pirateland Campground.

30. That the Defendants, City of Myrtle Beach and Horry County, had an agreement with the United States Air Force to cover any and all rights and liabilities of the United States Air Force when the property was purchased.

31. That an easement exists as of October 30, 1958 wherein the United States Air Force was to maintain an easement for water drainage through a channel that would go by the Plaintiffs' property through Pirateland Campground and into the Atlantic Ocean.

32. The Defendants, City of Myrtle Beach and Horry County, took over this easement when they took over the former Myrtle Beach Air Force Base property.

33. That this easement provided that the United States Air Force and its successors in interest, the City of Myrtle Beach and Horry County, were to maintain the easement including to trim all underbrush, remove any trees and obstructions, including vegetation structures or obstacles within the limits of the right of way as is necessary to provide adequate clearance and to eliminate interference with.

34. That the aforementioned drainage easement was never maintained by the City of Myrtle Beach or Horry County.

35. That after the Plaintiffs' property flooded, Plaintiffs complained to the City of Myrtle Beach, and at that point the City of Myrtle Beach employees, officers, and/or agents did begin the job of maintaining the easement and clearing the easement of all obstructions.

36. That for years these obstructions through the drainage easement were not cleared such that it caused water to back up onto Plaintiffs' property.

37. That Defendants, City of Myrtle Beach and Horry County, through their officers, agents and/or employees, were negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. in failing to maintain the easement;
- b. in failing to keep the underbrush out of the drainage easement;
- c. in failing to maintain the easement on a regular basis;
- d. in failing to inspect the easement for obstruction;
- e. in failing to perform under the terms of the easement;
- f. in failing to have regular work crews clean the easement.

38. That as a direct and proximate result the Plaintiffs suffered severe damage to their property and home by waters which came onto their property and into their house. That Plaintiffs

have suffered depreciation to their property, loss of personal property, loss of real property, damage to the interior and exterior of their home, and will continue to have these problems for the remainder of the time they live on the aforementioned property.

39. That Plaintiffs ask for judgment against Defendants for actual damages, punitive damages, and the costs of this action.

FOR A FIFTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND HORRY COUNTY
(Breach of Easement)

40. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

41. That Defendants, City of Myrtle Beach and Horry County, as successors in interest to United States of America did breach their agreement to Plaintiffs to keep the aforementioned easement clean, maintained and inspected so that water would move in an unobstructed manner through the drainage easement.

42. The Plaintiffs ask for damages against the City of Myrtle Beach and Horry County for breach of its easement as more particularly described in the aforementioned cause of action.

43. The Plaintiffs ask for judgment against these Defendants for breach of easement, for attorney's fees and for costs.

FOR A SIXTH CAUSE OF ACTION
AS TO THE DEFENDANTS JACKSON COMPANIES AND PRESTWICK
(Negligence)

44. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. That the Defendants Jackson Companies along with Prestwick/Prestwick Land Limited Partnership are the owners of many areas upstream from Plaintiffs' property.

46. That the Defendant Jackson Companies along with Prestwick Land Limited Partnership Corporation has constructed many artificial drainage ditches throughout their property, including Prestwick and Crystal Lakes. That these drainage ditches all connect to a drainage ditch which flooded Plaintiffs' property.

47. That these Defendants did channel water directly into the drainage ditch which damaged Plaintiffs' property.

48. That the Defendant Jackson Companies was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in building artificial channels to direct water to Plaintiffs' property;
- b. in failing to warn Plaintiffs;
- c. in failing to maintain drainage easement;
- d. in failing to do a drainage study before connecting ditches to the ditch which caused damage to Plaintiffs' property;
- e. in failing to inspect, engineer, investigate, and advise Plaintiffs that this Defendant was connecting other ditches upstream which would dump water on the Plaintiffs' property.

49. That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants.

50. That Plaintiffs ask for damages against Prestwick and Jackson Companies for actual and punitive damages:

FOR A SEVENTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Trespass)

51. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

52. That water from all Defendants' properties was channeled officially onto the Plaintiffs' property.

53. That the aforementioned channeling is a trespass and has caused damage to the Plaintiffs' property, caused erosion, and has threatened Plaintiffs' home and lot.

54. That Defendants through a master drainage stormwater management system have in effect devised and/or connected all ditches such that water flows over Plaintiffs' property.

55. That after each rain Plaintiffs have significant erosion and damage to their property and, thus, there is a continual trespass on Plaintiffs' property.

56. That Plaintiffs have tried to mitigate their damages, but have been unable to do so.

57. That stormwater from all the Defendants' property is physically moved onto the Plaintiffs' property in a deliberate scheme and/or plan.

58. That the aforementioned affirmative acts by all Defendants invade the Plaintiffs' property in an intentional manner and cause great and grievous irreparable harm to the Plaintiffs' property.

59. That Plaintiffs asks for an injunction requiring all Defendants to immediately cease and desist from channeling artificially any water into ditches which flow through the Plaintiffs' property since this causes irreparable harm to Plaintiffs' property.

60. That Plaintiffs further asks this Court to issue its Order requiring all Defendants to halt this continuing trespass immediately.

61. Further, the Plaintiffs ask for damages to their home, their property, for depreciation because they are unable to sell their house, for loss of use of the property, and for a fix moving the water away from Plaintiffs' property.

62. That Plaintiffs ask this Court issue its order awarding damages to the Plaintiffs enjoining all Defendants from dumping water artificially into the easement and for such other and further relief as the Court may deem just, necessary and proper.

FOR AN EIGHTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND Horry COUNTY
(Inverse Condemnation)

63. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

64. That the Defendants City of Myrtle Beach and Horry County, through affirmative, aggressive, governmental acts, have effectively condemned Plaintiffs' property by allowing all of the stormwater from Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs' property.

65. That these governmental Defendants entered into a common scheme or plan whereby all of the water from the Myrtle Beach Air Force Base, Crystal Lakes, and Prestwick was channeled through various pipes and ditches to the Plaintiffs' home.

66. That these acts by these Defendants were affirmative, positive and aggressive acts and were taken on behalf of the Defendants City of Myrtle Beach and Horry County for a public purpose and that they are, in fact, permanent since the drainage system for the entire Myrtle Beach Air Force Base runs next to the Plaintiffs' property.

67. That Plaintiffs believe that their property has been inversely condemned as mentioned in the first cause of action each time heavy rains occur Plaintiffs suffer irreparable harm and erosion.

68. That the Plaintiffs have suffered damages as outlined in the first cause of action and further suffer continuing irreparable harm and ask that the Court issue its Order awarding actual damages to Plaintiffs and also enjoining these Defendants from channeling any water through the pipes and/or ditches under and around the Plaintiffs' property.

69. That the acts of these Defendants are intentional, aggressive and act on behalf of a governmental agency.

70. Further, that this is a taking of private property for public purpose in violation of the United States and South Carolina Constitutions and that Plaintiffs request actual damages, an injunction, and attorney's fees as required by state law.

WHEREFORE, Plaintiffs request judgment as follows:

A. On the First Cause of Action for actual damages, punitive damages and the costs of this action.

B. On the Second Cause of Action as to all Defendants for actual damages, punitive damages and the costs of this action.

C. On the Third Cause of Action as to Pirateland for actual and punitive damages.

D. On the Fourth Cause of Action as to the City of Myrtle Beach and Horry County for actual and punitive damages.

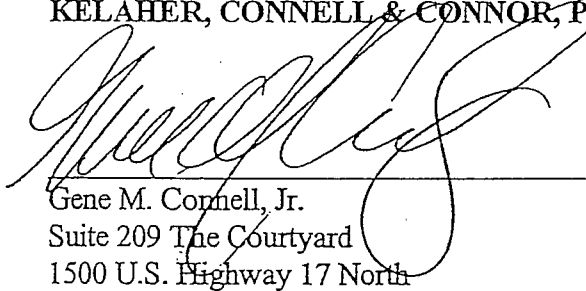
E. On the Fifth Cause of Action as to City of Myrtle Beach and Horry County for actual and punitive damages.

F. On the Sixth Cause of Action as to Prestwick and Jackson Companies for actual and punitive damages.

G. On the Seventh Cause of Action against all Defendants for actual and punitive damages.

H. On the Eighth Cause of Action against the Defendant City of Myrtle Beach and Defendant Horry County for actual damages, punitive damages, and attorney fees.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Cornell, Jr.
Suite 209 The Courtyard
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648

Attorney for Plaintiff

February 16, 2000
Surfside Beach, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2000-CP-26- 780

Phil Eaves,)
Plaintiff,)

-vs-

Prestwick Land Limited Partnership,)
Jackson Companies, City of Myrtle)
Beach, Pirateland Campground, Inc.,)
and Horry County,)
Defendants.)

COMPLAINT

(Property Damage/Inverse Condemnation/
Negligence/Trespass)

JURY TRIAL DEMANDED

00 FEB 24 AM 10:13

HORRY COUNTY

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiffs are owners and residents of 1284 Strathmill Court, Myrtle Beach, South Carolina, located in the Prestwick community.
2. The Defendant, Prestwick Land Limited Partnership, is a partnership organized and existing pursuant to the laws of the State of South Carolina and doing business as a developer of the Prestwick Subdivision.
3. The Defendant, Jackson Companies, is a corporation organized and existing pursuant to the laws of the State of South Carolina, and, upon information and belief, is the owner of Prestwick Land Limited Partnership and/or the General Partner.
4. The Defendant, City of Myrtle Beach, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a City.

5. The Defendant, Pirateland Campground, Inc., is a campground organized and existing as a corporation for recreational campground.

6. The Defendant, Horry County, is a governmental entity organized and existing pursuant to the laws of the State of South Carolina and doing business as a County.

7. That the Plaintiffs purchased a lot in the Prestwick Subdivision with the address known as 1284 Strathmill Court, Myrtle Beach, South Carolina 29575.

8. That the Plaintiffs, after purchasing this lot, did build a residence upon the lot which was to be where they were going to live.

9. That prior to purchasing the lot the Plaintiffs were shown what was called "a small creek" which abutted the Plaintiffs' property.

10. That the Plaintiffs were provided with a Property Report which stated that "None of the lots or any portion of any lot are covered by water at any time of the year." The Property Report further stated that "None of the lots in this Property Report are located within a flood plain." Also, the Property Report stated that "None of the lots in the subdivision required drainage."

11. That because of the representations made in this Report the Plaintiffs purchased their property.

12. That, in fact, the property in question had been subject to flooding from a drainage ditch which was represented to the Plaintiffs as "a creek" previous to the Plaintiffs purchasing the property.

13. That the Defendants, Jackson Companies and Prestwick Land Limited Partnership, were aware of potential flooding from the drainage easement and insisted to the Plaintiffs that in fact the property had not flooded.

14. That these Defendants, through their officers, agents and/or employees, were negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to inform Plaintiffs that the drainage easement would flood their property;
- b. in providing the Plaintiffs with a Property Report which stated that no flooding had ever occurred when this was, in fact, not true;
- c. in providing the Plaintiffs with a Property Report which stated that the property had never been under water when, in fact, this was not true;
- d. in failing to advise the Plaintiffs that the property sometimes flooded and, in fact, had been under water;
- e. in failing to warn, advise and inform the Plaintiffs that the drainage easement sometimes flooded;
- f. in failing to advise the Plaintiffs that the creek on the back of the property drained the entire Air Force Base property;
- g. in failing to inform the Plaintiffs that during times of heavy rains their property would flood;
- h. in failing to inspect the property to make sure that it would not flood prior to purchase by the Plaintiffs;
- i. in designing the creek in such a way so that all the water from Prestwick would flow through the Plaintiffs' property and cause flooding;
- j. in connecting a series of ditches and pipes so that all the water would flow through the drainage easement unto the Plaintiffs' property;
- k. in channeling water in such a way that would flood the Plaintiffs' home and property;
- l. in failing to devise a method for channeling water away from the Plaintiffs' property;
- m. in failing to advise the Plaintiffs that water would channel over their property;
- n. in failing to drain water into spillways and/or divert water away from the Plaintiffs' property.

15. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their home and residence, including floodwater inside their home, damage to their personal property, damage to their floors, walls, electrical, baseboards, air conditioning, heating, tile, and other aspects of their home.

16. That Plaintiffs suffered damages, not including depreciation, damages as a stigmatized or distressed property and loss of value, loss of use, and must disclose the flooding problem, thus, reducing market value to their home as a result of this incident.

17. That the Plaintiffs ask for judgment against Defendant Jackson Companies and Defendant Prestwick Land Limited Partnership for actual damages, punitive damages, and for the costs of this action.

FOR A SECOND CAUSE OF ACTION
AS TO THE DEFENDANTS, PRESTWICK LAND LIMITED PARTNERSHIP,
JACKSON COMPANIES, CITY OF MYRTLE BEACH
(Nuisance)

18. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

19. All of the above-named Defendants' conduct in channeling water through various pipes and ditches onto the Plaintiffs' property resulted in an unreasonable interference with Plaintiffs' use and enjoyment of their property, which reoccurs every time there is heavy rain.

20. The aforementioned action is a nuisance and severe damage has been done to the Plaintiffs' property as outlined in the First Cause of Action.

21. The Plaintiffs ask for judgment against these Defendants for actual damages for nuisance and also request a permanent injunction requiring these Defendants to not channel water through ditches and the like onto or near the Plaintiffs' property.

FOR A THIRD CAUSE OF ACTION
AS TO THE DEFENDANT PIRATELAND CAMPGROUND
(Negligence)

22. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

23. That the Defendant PirateLand Campground, through its officers, agents and/or employees, did build a road downstream from the Plaintiff, across the creek and/or drainage easement.

24. That when this road was built so that the Defendant PirateLand could use the land on the other side of the creek to park campers the Defendant PirateLand, through its officers, agents and/or employees, failed to put appropriate piping to allow the water to drain underneath the road into the ocean.

25. That the Defendant PirateLand Campground was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to have an engineer size the pipes in such a manner so that the water would not back up on the Plaintiffs' property;
- b. in putting in undersized pipes so that the water would not drain;
- c. in failing to provide such engineering that the entire creek did drain as it had before the road was placed across;
- d. in failing to have proper engineering advice or expertise before building the road and placing the pipes underneath the road;
- e. in failing to warn the Plaintiff of the undersized pipes;
- f. in failing to inspect the work to make sure that undersized pipes were not placed under the road.

26. That as a direct and proximate result, the Plaintiffs suffered severe and catastrophic damage to their home and property; that one of the causes of this damage was this Defendant's

building of a road and blocking downstream the drainage easement with undersized pipe; that Plaintiffs suffered property depreciation, property damage, damage to their home, will continue to have damage to their home during heavy rain, are the owners of a distressed property, and will be unable to sell the property for what they paid for it because they will have to disclose the flooding that occurred.

27. That Plaintiffs ask for judgment against Pirateland for actual damages, punitive damages and for the costs of this action.

FOR A FOURTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND HORRY COUNTY
(Breach of Easement/Negligence)

28. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

29. The drainage ditch which abuts the Plaintiffs' property is, in fact, the drainage ditch which goes all the way from the former Myrtle Beach Air Force Base into the Atlantic Ocean through Pirateland Campground.

30. That the Defendants, City of Myrtle Beach and Horry County, had an agreement with the United States Air Force to cover any and all rights and liabilities of the United States Air Force when the property was purchased.

31. That an easement exists as of October 30, 1958 wherein the United States Air Force was to maintain an easement for water drainage through a channel that would go by the Plaintiffs' property through Pirateland Campground and into the Atlantic Ocean.

32. The Defendants, City of Myrtle Beach and Horry County, took over this easement when they took over the former Myrtle Beach Air Force Base property.

33. That this easement provided that the United States Air Force and its successors in interest, the City of Myrtle Beach and Horry County, were to maintain the easement including to trim all underbrush, remove any trees and obstructions, including vegetation structures or obstacles within the limits of the right of way as is necessary to provide adequate clearance and to eliminate interference with.

34. That the aforementioned drainage easement was never maintained by the City of Myrtle Beach or Horry County.

35. That after the Plaintiffs' property flooded, Plaintiffs complained to the City of Myrtle Beach, and at that point the City of Myrtle Beach employees, officers, and/or agents did begin the job of maintaining the easement and clearing the easement of all obstructions.

36. That for years these obstructions through the drainage easement were not cleared such that it caused water to back up onto Plaintiffs' property.

37. That Defendants, City of Myrtle Beach and Horry County, through their officers, agents and/or employees, were negligent, reckless, willful, and wanton in one or more of the following particulars:

- a. in failing to maintain the easement;
- b. in failing to keep the underbrush out of the drainage easement;
- c. in failing to maintain the easement on a regular basis;
- d. in failing to inspect the easement for obstruction;
- e. in failing to perform under the terms of the easement;
- f. in failing to have regular work crews clean the easement.

38. That as a direct and proximate result the Plaintiffs suffered severe damage to their property and home by waters which came onto their property and into their house. That Plaintiffs

have suffered depreciation to their property, loss of personal property, loss of real property, damage to the interior and exterior of their home, and will continue to have these problems for the remainder of the time they live on the aforementioned property.

39. That Plaintiffs ask for judgment against Defendants for actual damages, punitive damages, and the costs of this action.

FOR A FIFTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND HORRY COUNTY
(Breach of Easement)

40. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

41. That Defendants, City of Myrtle Beach and Horry County, as successors in interest to United States of America did breach their agreement to Plaintiffs to keep the aforementioned easement clean, maintained and inspected so that water would move in an unobstructed manner through the drainage easement.

42. The Plaintiffs ask for damages against the City of Myrtle Beach and Horry County for breach of its easement as more particularly described in the aforementioned cause of action.

43. The Plaintiffs ask for judgment against these Defendants for breach of easement, for attorney's fees and for costs.

FOR A SIXTH CAUSE OF ACTION
AS TO THE DEFENDANTS JACKSON COMPANIES AND PRESTWICK
(Negligence)

44. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. That the Defendants Jackson Companies along with Prestwick/Prestwick Land Limited Partnership are the owners of many areas upstream from Plaintiffs' property.

46. That the Defendant Jackson Companies along with Prestwick Land Limited Partnership Corporation has constructed many artificial drainage ditches throughout their property, including Prestwick and Crystal Lakes. That these drainage ditches all connect to a drainage ditch which flooded Plaintiffs' property.

47. That these Defendants did channel water directly into the drainage ditch which damaged Plaintiffs' property.

48. That the Defendant Jackson Companies was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in building artificial channels to direct water to Plaintiffs' property;
- b. in failing to warn Plaintiffs;
- c. in failing to maintain drainage easement;
- d. in failing to do a drainage study before connecting ditches to the ditch which caused damage to Plaintiffs' property;
- e. in failing to inspect, engineer, investigate, and advise Plaintiffs that this Defendant was connecting other ditches upstream which would dump water on the Plaintiffs' property.

49. That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants.

50. That Plaintiffs ask for damages against Prestwick and Jackson Companies for actual and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Trespass)

51. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

52. That water from all Defendants' properties was channeled officially onto the Plaintiffs' property.

53. That the aforementioned channeling is a trespass and has caused damage to the Plaintiffs' property, caused erosion, and has threatened Plaintiffs' home and lot.

54. That Defendants through a master drainage stormwater management system have in effect devised and/or connected all ditches such that water flows over Plaintiffs' property.

55. That after each rain Plaintiffs have significant erosion and damage to their property and, thus, there is a continual trespass on Plaintiffs' property.

56. That Plaintiffs have tried to mitigate their damages, but have been unable to do so.

57. That stormwater from all the Defendants' property is physically moved onto the Plaintiffs' property in a deliberate scheme and/or plan.

58. That the aforementioned affirmative acts by all Defendants invade the Plaintiffs' property in an intentional manner and cause great and grievous irreparable harm to the Plaintiffs' property.

59. That Plaintiffs asks for an injunction requiring all Defendants to immediately cease and desist from channeling artificially any water into ditches which flow through the Plaintiffs' property since this causes irreparable harm to Plaintiffs' property.

60. That Plaintiffs further asks this Court to issue its Order requiring all Defendants to halt this continuing trespass immediately.

61. Further, the Plaintiffs ask for damages to their home, their property, for depreciation because they are unable to sell their house, for loss of use of the property, and for a fix moving the water away from Plaintiffs' property.

62. That Plaintiffs ask this Court issue its order awarding damages to the Plaintiffs enjoining all Defendants from dumping water artificially into the easement and for such other and further relief as the Court may deem just, necessary and proper.

FOR AN EIGHTH CAUSE OF ACTION
AS TO THE DEFENDANTS CITY OF MYRTLE BEACH AND HORRY COUNTY
(Inverse Condemnation)

63. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

64. That the Defendants City of Myrtle Beach and Horry County, through affirmative, aggressive, governmental acts, have effectively condemned Plaintiffs' property by allowing all of the stormwater from Myrtle Beach Air Force Base to be channeled artificially along the rear of Plaintiffs' property.

65. That these governmental Defendants entered into a common scheme or plan whereby all of the water from the Myrtle Beach Air Force Base, Crystal Lakes, and Prestwick was channeled through various pipes and ditches to the Plaintiffs' home.

66. That these acts by these Defendants were affirmative, positive and aggressive acts and were taken on behalf of the Defendants City of Myrtle Beach and Horry County for a public purpose and that they are, in fact, permanent since the drainage system for the entire Myrtle Beach Air Force Base runs next to the Plaintiffs' property.

67. That Plaintiffs believe that their property has been inversely condemned as mentioned in the first cause of action each time heavy rains occur Plaintiffs suffer irreparable harm and erosion.

68. That the Plaintiffs have suffered damages as outlined in the first cause of action and further suffer continuing irreparable harm and ask that the Court issue its Order awarding actual damages to Plaintiffs and also enjoining these Defendants from channeling any water through the pipes and/or ditches under and around the Plaintiffs' property.

69. That the acts of these Defendants are intentional, aggressive and act on behalf of a governmental agency.

70. Further, that this is a taking of private property for public purpose in violation of the United States and South Carolina Constitutions and that Plaintiffs request actual damages, an injunction, and attorney's fees as required by state law.

WHEREFORE, Plaintiffs request judgment as follows:

A. On the First Cause of Action for actual damages, punitive damages and the costs of this action.

B. On the Second Cause of Action as to all Defendants for actual damages, punitive damages and the costs of this action.

C. On the Third Cause of Action as to Pirateland for actual and punitive damages.

D. On the Fourth Cause of Action as to the City of Myrtle Beach and Horry County for actual and punitive damages.

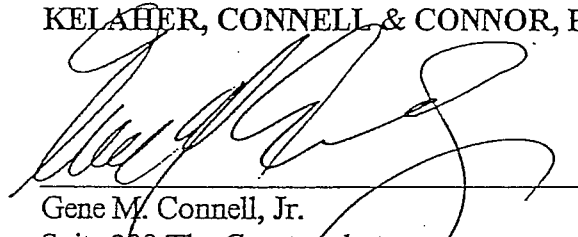
E. On the Fifth Cause of Action as to City of Myrtle Beach and Horry County for actual and punitive damages.

F. On the Sixth Cause of Action as to Prestwick and Jackson Companies for actual and punitive damages.

G. On the Seventh Cause of Action against all Defendants for actual and punitive damages.

H. On the Eighth Cause of Action against the Defendant City of Myrtle Beach and Defendant Horry County for actual damages, punitive damages, and attorney fees.

KELAHER, CONNELL & CONNOR, P.C.



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Surfside Beach, SC 29587-4547
(843) 238-5648
Attorney for Plaintiff

February 16, 2000
Surfside Beach, SC

STATE OF SOUTH CAROLINA)
) SETTLEMENT AGREEMENT AND RELEASE
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS that CORNELL PATTON, MELISSA PATTON, SCOTT WERTER, CHARISE WERTER, PHIL EAVES, ELIZABETH EAVES, SCOTT PLYLER AND MICHELL PLYLER, (hereinafter referred to as "Landowners"), for and in consideration of the sum of **FOUR HUNDRED SEVENTY THOUSAND AND NO/100 - (\$470,000.00) - DOLLARS**, and other good and valuable consideration to the undersigned in hand paid on behalf of Prestwick Land Limited Partnership, Jackson Companies, City of Myrtle Beach, Pirateland Campground, Inc., Bellamy Engineering, Inc., Horry County, and Myrtle Beach Air Force Base Redevelopment Authority, (hereinafter referred to as "Defendants") (receipt whereof is hereby acknowledged), have remised, released and forever discharged and by these presents do for me or us, my, or our heirs, executors, administrators, successors, and assigns remise, release, and forever mutually discharge the said Defendants, her/his or their heirs, executors or administrators or its successors as the case may be of and from all, and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass, and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands whatsoever both at law and in equity which the undersigned, , ever had, now has, or which, the undersigned, CORNELL PATTON, MELISSA PATTON, SCOTT WERTER, CHARISE WERTER, PHIL EAVES, ELIZABETH EAVES, SCOTT PLYLER AND MICHELL PLYLER, their heirs, executors, administrators, assigns or successors

hereafter can, shall, or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour, minutes of the execution of these presents, and with special reference to the following specifically stated matter or thing, to-wit:

ANY AND ALL CLAIMS for property damage/inverse condemnation, nuisance, breach of easement/negligence/trespass arising out of or in connection with drainage from the drainage easement which abutted the property of the Landowners located at Prestwick Subdivision located in Horry County, South Carolina and any and all other claims arising out of or in connection with Civil Action Nos. 2000-CP-26-0765; 2000-CP-26-0775; 2000-CP-0780; 2001-CP-26-2540 filed with the Clerk of Court for Horry County, South Carolina.

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises and covenants set forth hereinafter, the parties agree as follows:

1. Payment of Settlement Amount:

Subject to all of the terms and conditions contained herein, Defendants agree to pay to the Landowners the sum of **FOUR HUNDRED SEVENTY THOUSAND AND NO/100 - (\$470,000.00 - DOLLARS**. This amount shall be paid by and on behalf of Defendants in the following shares:

- 1) Prestwick Land Limited Partnership and the Jackson Companies: Two Hundred Forty-Six Thousand, Six Hundred Sixty-Six and 66/100 - (\$246,666.66) - Dollars;
- 2) City of Myrtle Beach: One Hundred Twenty-Three Thousand, Three Hundred Thirty-Three and 33/100 - (\$123,333.33)-Dollars;
- 3) Pirateland Campground, Inc. and Bellamy Engineering, Inc.: Sixty Thousand and No/100 - (\$60,000.00) - Dollars; and

plain." Should the present form of the Disclosure Statement change, Plaintiffs shall check "yes" to any question, which is substantially similar to those set forth in the preceding sentence. Under the Explanation section of the Disclosure Statement, Plaintiff shall disclose that:

AS TO LANDOWNERS PATTON: Due to Hurricane Floyd, floodwaters entered the first floor of the house. Additionally, the garage and yard experience periodic flooding. This flooding has damaged property located in the garage and the yard including landscaping and HVAC units. The berm located at the rear of the property was constructed by the homeowner and the sole responsibility for its upkeep shall be with the owner of this property. Further information may be reviewed in Civil File 2000-CP-26-765 at the Horry County Courthouse.

AS TO LANDOWNERS EAVES: Due to Hurricane Floyd, floodwaters covered the first floor of the home while it was under construction. Additionally, the garage and yard experience periodic flooding. This flooding has damaged property located in the garage and the yard, including landscaping. The berm located at the rear of the property was constructed by the homeowner and the sole responsibility for its upkeep shall be with the owner of this proper. Further information may be reviewed in Civil File 2000-CP-26-780 at the Horry County Courthouse.

AS TO LANDOWNERS WERTER: It is stipulated and agreed by the parties that the Werters have sold their property. Attached to the Settlement Agreement and Release is a letter of May 12th, 2005, from Edward T. Kelaher to H.J. Haar, Esquire, with attached State of South Carolina Residential Property Condition Disclosure Statement that it is incorporated within this Release as fully as if repeated verbatim. Further information may be reviewed in Civil File 2000-CP-26-775 at the Horry County Courthouse.

AS TO LANDOWNERS PLYLER: The Plylers have had standing water on their property. The berm located at the rear of the property was constructed by the landowners and the sole responsibility for its upkeep shall be with the owner of this property. Further information may be reviewed in Civil File No. 01-CP-26-2540 at the Horry County Courthouse.

4. Dismissal

Within ten (10) business days of receipt of the Settlement Amount, Landowners agree to dismiss, with prejudice, the above-described actions. Defendants agree to consent to the filing of the dismissal and to sign the same.

5. Confidentiality:

The parties agree to keep the terms of this Agreement confidential. The terms of this Agreement must be disclosed by the Landowners, their heirs, executors, administrators, assigns and successors, to any person obtaining an interest in Landowners' property. The Defendants shall have the right, but not the obligation, to advise any subsequent Purchasers of the Landowners' property of the contents of this Settlement Agreement and Release. Further, the terms of this Agreement may be disclosed to a parties' insurer and in any action concerning the terms of this Agreement.

6. No Admissions:

The parties agree that this Agreement is executed in compromise of disputed claims, that neither this Agreement nor the payment of the Settlement Amounts shall be construed as an admission of liability on the part of any Defendant. Each Defendant specifically denies liability to any and all Landowners and wishes merely to avoid the expense, inconvenience, and uncertainty of continued litigation and to resolve this matter by compromise and so that each Defendant may avoid any future claims and causes of action related to any future flooding of Landowners' property.

7. No Assignment

Landowners warrant that none has assigned, transferred, or conveyed in any manner all or any part of their legal claims or legal rights against any or all of Defendants in connection with the matters described in the pleadings in the Actions.

8. Construction

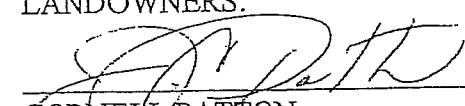
The parties to this Agreement have had the full benefit of counsel and enter into this agreement freely, voluntarily, and knowingly. This Agreement has likewise been reviewed by counsel for all parties, and accordingly should be deemed to be jointly drafted.

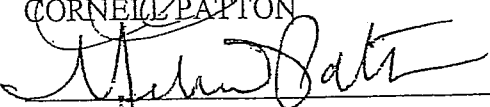
9. Entire Agreement.

This Agreement is an integrated agreement, containing the entire understanding between the parties regarding the matters addressed herein and, except as set forth in this Agreement, no representations, warranties or promises have been made or relied upon by the parties to this Agreement. This Agreement shall prevail over all prior communications regarding the matters contained herein.

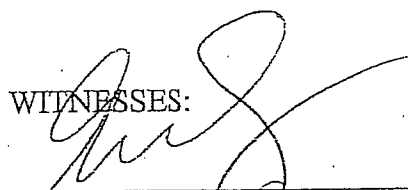
IN WITNESS WHEREOF, the parties, have executed this agreement as of the 21
^{September}
day of August, 2005.

LANDOWNERS:

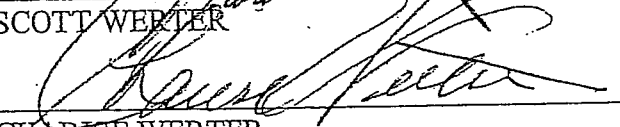

CORNEILL PATTON


MELISSA PATTON

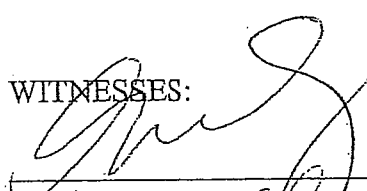
WITNESSES:

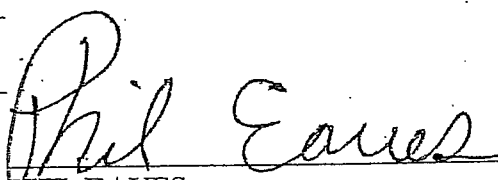

Michelle Sanders

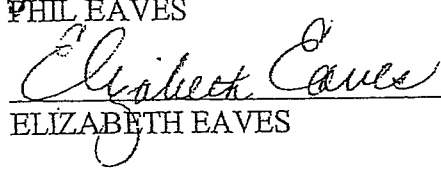

SCOTT WERTER


CHARISE WERTER

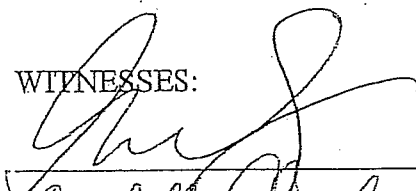
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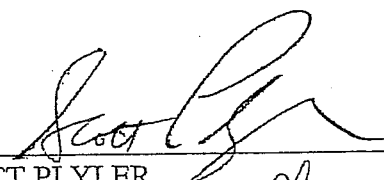

Michelle Sanders

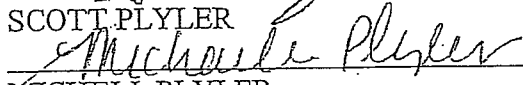

PHIL EAVES


ELIZABETH EAVES

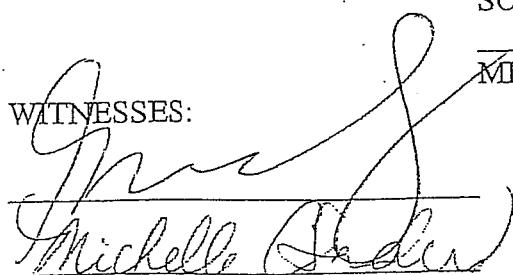
WITNESSES:


Michelle Sanders


SCOTT PLYLER


MICHELL PLYLER

WITNESSES:


Michelle Sanders

PIRATELAND CAMPGROUND, INC.,
THIRD PARTY PLAINTIFF,

VS.

ROBERT L. BELLAMY & ASSOCIATES, INC.,
THIRD PARTY DEFENDANT.

PHIL EAVES,

PLAINTIFF,

VS.

PRESTWICK LAND LIMITED PARTNERSHIP,
JACKSON COMPANIES, CITY OF MYRTLE
BEACH, PIRATELAND CAMPGROUND, INC.,
HORRY COUNTY, AND MYRTLE BEACH
AIR FORCE BASE REDEVELOPMENT
AUTHORITY,

DEFENDANTS.

DOCKET NO: 2000-CP-26-780

PIRATELAND CAMPGROUND, INC.,
THIRD PARTY PLAINTIFF,

VS.

ROBERT L. BELLAMY & ASSOCIATES, INC.,
THIRD PARTY DEFENDANT.

SCOTT PLYLER AND
MICHELLE PLYLER,

PLAINTIFFS,

VS.

PRESTWICK LAND LIMITED
PARTNERSHIP, JACKSON COMPANIES,
CITY OF MYRTLE BEACH, PIRATELAND

DOCKET NO: 2001-CP-26-2540

HORRY COUNTY
05 SEP 26 AM 10:44
MELANIE HUGGINS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CORNELL PATTON AND MELISSA PATTON,)
PLAINTIFF,)

VS.)

DOCKET NO: 2000-CP-26-765

PRESTWICK LAND LIMITED PARTNERSHIP,)
JACKSON COMPANIES, CITY OF MYRTLE)
BEACH, PIRATELAND CAMPGROUND, INC.,)
HORRY COUNTY, AND MYRTLE BEACH)
AIR FORCE BASE REDEVELOPMENT)
AUTHORITY,)
DEFENDANTS,)

PIRATELAND CAMPGROUND, INC.,)
THIRD PARTY PLAINTIFF,)

VS.)

ROBERT L. BELLAMY & ASSOCIATES, INC.,)
THIRD PARTY DEFENDANT.)

SCOTT WERTER AND CHARISE WERTER,)
PLAINTIFF,)

VS.)

DOCKET NO: 2000-CP-26-775

PRESTWICK LAND LIMITED PARTNERSHIP,)
JACKSON COMPANIES, CITY OF MYRTLE)
BEACH, PIRATELAND CAMPGROUND, INC.,)
AND HORRY COUNTY,)
DEFENDANTS.)

CAMPGROUND, INC., HORRY COUNTY
AND MYRTLE BEACH AIR FORCE BASE
REDEVELOPMENT AUTHORITY,

DEFENDANTS.

PIRATELAND CAMPGROUND, INC.,
THIRD PARTY PLAINTIFF,

VS.

ROBERT L. BELLAMY & ASSOCIATES, INC.,
THIRD PARTY DEFENDANT.

HORRY COUNTY
05 SEP 26 AM 10:44
MELANIE HUGGINS
CLERK OF COURT

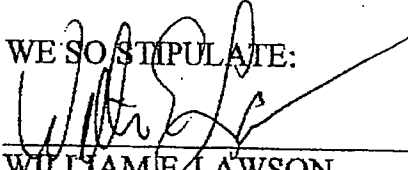
STIPULATION OF DISMISSAL
AS TO THE DEFENDANTS,
PRESTWICK LAND LIMITED PARTNERSHIP,
JACKSON COMPANIES,
AND CITY OF MYRTLE BEACH

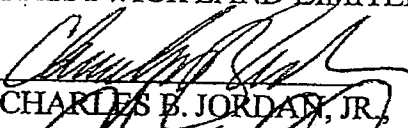
It has been made to appear to the Court that the parties hereto have settled their differences and these matters are no longer at issue as to the Defendants, Prestwick Land Limited Partnership, Jackson Companies, and City of Myrtle Beach. Upon motion of William E. Lawson, Attorney for the Defendants, Prestwick Land Limited Partnership and Jackson Companies, and Charles B. Jordan, Jr., Attorney for the Defendant, City of Myrtle Beach, with the consent of Gene M. Connell, Jr., Attorney for the Plaintiffs, Cornell Patton and Melisa Patton, Scott Werter and Charis Werter, Phil Eaves, and Scott Plyler and Michelle Plyler, IT IS HEREBY STIPULATED by and between the parties that the above

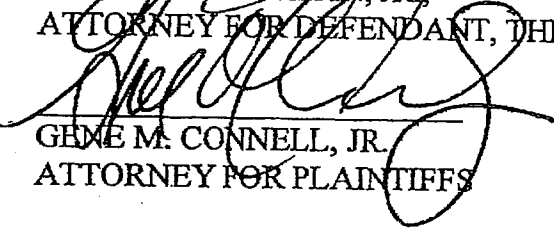
captioned matter be dismissed as to the Defendants, Prestwick Land Limited Partnership, Jackson Companies, and City of Myrtle Beach, with prejudice, pursuant to Rule 41(a)(1).

DATED THIS 12th day of September, 2005.

WE SO STIPULATE:


WILLIAM E. LAWSON,
ATTORNEY FOR DEFENDANTS,
PRESTWICK LAND LIMITED PARTNERSHIP AND JACKSON COMPANIES


CHARLES B. JORDAN, JR.,
ATTORNEY FOR DEFENDANT, THE CITY OF MYRTLE BEACH


GENE M. CONNELL, JR.
ATTORNEY FOR PLAINTIFFS

In the Matter Of:

Cornell Patton, et al. vs.
Prestwick LLP, et al.

Robert K. Taylor

November 19, 2018



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF HORRY

3 CORNELL PATTON, MELISSA PATTON,
4 CHAD WEBB AND AMY WEBB,

Plaintiffs,

5 vs.

CASE NO. 2016-CP-26-06495

6 PRESTWICK LAND LIMITED PARTNERSHIP; PRESTWICK
7 HOMEOWNERS ASSOCIATION, INC.; JACKSON
8 COMPANIES; CITY OF MYRTLE BEACH; SOUTH CAROLINA
9 DEPARTMENT OF TRANSPORTATION; HORRY COUNTY;
10 MYRTLE BEACH AIR FORCE BASE REDEVELOPMENT
11 AUTHORITY; NELSON L. HARDWICK & ASSOCIATES,
INC.; BERMUDA GARDENS HOMEOWNERS ASSOCIATION
D/B/A HOMEOWNERS OF OCEAN WALK PROPERTY OWNERS
ASSOCIATION; CAMPGROUNDS, INC.; AND PRESTWICK
PROPERTY OWNERS ASSOCIATES, INC.,

12 Defendants.

13 (Caption continued on next page)

14
15 DEPOSITION OF: ROBERT K. TAYLOR

16 DATE: November 19, 2018

17 TIME: 10:14 a.m.

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
21 (843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
(828) 785-5699



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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1 CAPTION CONTINUED:

2 CITY OF MYRTLE BEACH,

3 Third-Party Plaintiff,

4 vs.

5 PHIL EAVES AND ELIZABETH EAVES,

6 Third-Party Defendants/
7 Counterclaimants/Cross-Claimants.

8 DATE: November 19, 2018

9 TIME: 10:14 a.m.

10 LOCATION: Law Offices of
11 RICHARDSON PLOWDEN & ROBINSON
12 2103 Farlow Street
Suite B
Myrtle Beach, SC

13 TAKEN BY: Counsel for the Defendant

14 REPORTED BY: SHERY E. GARGIR, CSR

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REDEVELOPMENT AUTHORITY:

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(INDEX AT REAR OF TRANSCRIPT)

1
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ROBERT K. TAYLOR

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BATTLE:

Q. Mr. Taylor, my name is Kirk Battle.
I'm the attorney for Horry County in this matter --
hold on a second.

MR. BATTLE: Can you all be quiet
because I can't think if there's talking. Thank
you.

BY MR. BATTLE:

Q. Kirk Battle. Horry County. This is
your deposition, sir. I know you've been to many
before. Just a reminder, though, it's not a
marathon.

You're welcome to take breaks. You can
go to the bathroom whenever you want. If I say
something that doesn't make sense, I suspect this
will be frequent, please feel free to ask me. I
can rephrase it, go over it any way you like.

If me or one of the other attorneys
does an objection to the form, what they are doing
is flagging the record. You still have to, by law,
answer the question; however, they are flagging the
record for down the road as to whether or not the

1 testimony is admissible.

2 If I missed something on the checklist,
3 I know one of these fine folks will correct me.

4 Can you say your full name for the
5 record, please?

6 A. Robert K. Taylor.

7 Q. Where do you live, Mr. Taylor?

8 A. In Greenville County.

9 Q. Do you have any family or kin in Horry
10 County?

11 A. Not that I'm aware of.

12 Q. Let's see. Any businesses, church
13 work, clubs, anything like that in Horry County?

14 A. Not that I'm aware of.

15 Q. Okay. So let's see. You're an expert
16 in this case. Do you mind stating your credentials
17 for the record.

18 A. I can certainly state some. If you
19 want to push on more, I'll do that.

20 I have bachelor and master's degrees in
21 Engineering. I've been a professional engineer in
22 South Carolina since the early '80s. I don't
23 remember which year, maybe '83.

24 I've done numerous work, undergraduate
25 and graduate, in fluid mechanics. I've studied and

1 worked on drainage and flow problems at various
2 sites over the years.

3 That's kind of it in a nutshell. I've
4 been qualified as an expert witness in multiple
5 state courts and federal courts and local courts.

6 Q. That's fine, sir. And you've provided
7 a complete CV to Mr. Connell?

8 A. I would not say that it's a complete
9 CV. I would say it's a summary representative CV.

10 Q. All right. How many cases have you
11 testified in that involve flooding?

12 A. I don't know. I think I was asked that
13 about, what was it, 15 or so years ago in another
14 part of this matter.

15 And I don't remember if I knew then. I
16 couldn't say now. Potentially a handful. Depends
17 on what's meant by flooding, but potentially a
18 handful.

19 Q. How many of those cases have involved
20 drainage issues?

21 A. Well, drainage tends to be at least a
22 minor and maybe a major issue in most flooding
23 situations.

24 Q. So my question was, how many cases have
25 you -- is the answer, you don't know again?

1 A. Okay. You're referring to drainage in
2 general, not just general drainage with respect to
3 flooding. Is that correct?

4 Q. How many cases have you testified in
5 that involved draining -- drainage?

6 A. I would say probably a handful.

7 Q. And is a handful more than five, less
8 than five?

9 A. Five, plus or minus a little.

10 Q. How often have you testified for Gene
11 Connell in cases?

12 A. Well, Gene Connell and his firm have
13 been a client so probably a dozen or so.

14 Q. You were an expert in the prior
15 lawsuit; correct?

16 A. That's correct.

17 Q. Have you ever designed a drainage
18 system for an HOA?

19 A. I have not worked as any design
20 engineer to design drainage systems for HOAs.

21 Q. In any capacity, for municipalities?

22 A. I've certainly worked on issues
23 relating to design, but not been responsible for
24 the design of a drainage system.

25 Q. When you say worked on issues relating

1 to design, what does that mean?

2 A. Well, I've given an example of, I think
3 the first one was when I was a graduate student,
4 one of the projects that I was involved with was
5 doing an analysis of San Francisquito Creek and it
6 certainly served as drainage, particularly after
7 rains.

8 Q. Where was that?

9 A. It's on the border of Palo Alto. I
10 believe it's the border between Palo Alto and Menlo
11 Park in places but I'm not positive on that now.

12 Q. Is there any other examples of doing
13 design work related to drainage in any form?

14 A. Well, over the years, I've done
15 calculations with respect to particular issues on
16 elements of design of drainage systems, but I've
17 not been the one to sit down and come up with the
18 drawings for drainage projects.

19 Q. Have you ever dealt with regulations?
20 Have you gotten anything licensed or affirmed by
21 any government entity?

22 A. I certainly have been involved with
23 regulations for government entities over the years.

24 Q. Can you give us some examples of that?

25 A. Well, it could be anything from

11
1 building codes is one example. I worked on quality
2 review of major federal government projects and a
3 related project to that, an environmental impact
4 study which related to government regulations.

5 Q. Any work with a realtor or a
6 developmental organization?

7 A. I don't think so. I can't recall any.

8 Q. Any work -- and I guess you've already
9 answered this with the drainage one -- but any work
10 with getting drainage certified for a construction
11 project?

12 A. The only thing I can think of in that
13 category right off would be where there has been a
14 problem and I've worked with either insurance
15 adjustors or the property managers as far as what
16 needs to be done.

17 And in terms of what needs to be done,
18 that would relate to getting it certified. But I
19 don't recall having done anything that would
20 involve filling out the paperwork to try to
21 convince a government organization to approve
22 something.

23 Q. So any involvement like the measuring
24 of water flow or gauging how much the impact
25 statement of, like, a drainage system would be?

1 A. Certainly measuring water flow from a
2 fluid mechanic's point of view, a fair amount, or
3 liquid flow I should say as well.

4 And what was the other half of the
5 question?

6 Q. Just in regards to any sort of
7 development or construction?

8 A. Not meaning to say anything different
9 than what I said before, but when I've worked with
10 problems involving construction of all sorts,
11 including drainage issues, it's sometimes been with
12 the insurance people, what needs to be done, what
13 needs to be fixed, how does it need to be done with
14 property owners, the same sort of thing.

15 That's all from a side issue rather
16 than being brought in to design something.

17 Q. And -- sure. And I don't mind
18 explaining the gist of my questions. Would you say
19 that you're called in after the facility or
20 building is constructed or before?

21 A. Well, it's generally I do what
22 sometimes has been called post-incident analysis.
23 I've looked at things that are -- that have not
24 turned out the way they expected to determine what
25 happened and what to make of them and what to do to

1 make them correct or improved.

2 But that also means that it's things
3 that had changed and that activity would be before
4 they had changed.

5 Q. Do you have any examples of
6 pre-incident -- I guess there wouldn't be anything
7 such as like pre-incident, but you understand what
8 I'm asking about is you're being called in as an
9 expert after the fact; correct?

10 A. Yes.

11 Q. Okay.

12 A. But along with that -- and I can't
13 think of any right offhand -- but I've certainly
14 had times where I've worked with clients on -- is
15 this -- they are saying is this a good design? Do
16 I need to do something before I put it out in the
17 public to make it safer or more reliable and so on
18 and so forth, so I've had some of those, but not a
19 whole lot.

20 Q. Can you think of the names or locations
21 of any of these structures?

22 A. And these are engineering issues, not
23 necessarily structures but one was an individual
24 trying to design a new type of trailer and trailer
25 hitch and wanted me to go through analysis of it to

1 see from his prototype what I thought of the -- of
2 its potential failing under different circumstances
3 and how it can be improved.

4 So he had built a prototype but he had
5 not put it out on the market yet and so that was
6 not a hydraulic structure but that was an example
7 of doing something before there is a problem.

8 Q. Are there any examples with hydraulic
9 structures?

10 A. I can't think of any. I'm not saying
11 there were none, but I can't think of any.

12 Q. That's fine. And it's just a kind of a
13 general wraparound before we start getting to the
14 exhibits.

15 Can you explain to me what the basis of
16 your expertise is for evaluating the canal?

17 A. Some of it is, I would call it just
18 basic practical engineering. Another is the fluid
19 mechanics and the long-term specialty in fluid
20 mechanics.

21 And part of that is dynamics as well.
22 Those are related to fluid mechanics.

23 MR. BATTLE: If you don't mind picking
24 up Exhibit 1. I know you've a chance to review it
25 but just go ahead and go over it again. I've

1 highlighted the relevant portions. It's pretty
2 short.

3 (DFT. EXH. 1, Affidavit of Robert
4 Taylor, was marked for identification.)

5 THE WITNESS: This looks like what you
6 had put on the table in front of me a little while
7 ago.

8 BY MR. BATTLE:

9 Q. Only the first two pages, sir.

10 A. Okay.

11 Q. So maybe what I'll do is I'll hand them
12 to you. This is Exhibit 1 and let me take the rest
13 of these. Sorry about that.

14 A. That's okay.

15 Q. Just take a moment to review that and
16 let me know when you are ready to talk about it.

17 MS. DUPRE: Is that the affidavit?

18 MR. BATTLE: Yes.

19 THE WITNESS: Okay.

20 BY MR. BATTLE:

21 Q. So let's just go over it.

22 This is Paragraph 2.

23 "I have performed extensive work on the
24 canal behind the home of the Pattons in Prestwick."

25 What does extensive work mean?

1 A. Well, let's see. I was involved in
2 this, I guess, about 15 years ago and it stayed in
3 the system. I'm sure I did some calculations. I
4 don't remember exactly what all I did at that time.

5 But I had substantial involvement in
6 dealing with this in the early litigation.

7 Q. How much of your records from that
8 initial lawsuit have you retained?

9 A. And I don't know if Mr. Connell told
10 you, but in going into semiretirement and purging
11 my files, I started purging things that were more
12 than 10 or 12 years old.

13 And guess what happened six months
14 before I got called back on this?

15 Q. I understand that. That's fine.

16 MR. CONNELL: And we've located some
17 black-and-white photos that we'll get to you that
18 he's given to me this weekend.

19 BY MR. BATTLE:

20 Q. Anything else or is it just -- when you
21 say purge, are we talking about like shredding,
22 dumped, the City dump?

23 A. Most were dumped. I did keep the
24 negatives from my photographs.

25 Q. Are you aware of the dump where you

1 dropped it at?

2 A. No, but --

3 MR. CONNELL: Horry County.

4 THE WITNESS: That's an interesting
5 issue, how long do you keep things and --

6 BY MR. BATTLE:

7 Q. You're within the statute. I think
8 it's ten years --

9 A. I know but I've kept things -- I've
10 kept some evidence one time that the insurance
11 adjustor said, "Throw away," and I said that I
12 shouldn't get rid of it.

13 And about five years later, I had a
14 call from a lawyer saying, "Do you still have this
15 evidence?"

16 So I tend to keep things longer than I
17 have to and, unfortunately, we missed this one by a
18 few months.

19 Q. All right. Paragraph 3, as far as
20 highlighted area, you said:

21 "The developer to the east of the
22 plaintiffs hired Hardwick & Associates to
23 reconfigure the canal by changing its course."

24 And then in 4:

25 "It was negligent to change the course

1 of the canal as this has channeled more water on
2 the plaintiffs' property."

3 Is it safe to say that your basic
4 position is that changing the course of the canal
5 is what's causing the flooding?

6 MS. DUPRE: Objection to form.

7 THE WITNESS: What I'm saying is that
8 changing the course is a contributor rather than
9 the cause.

10 BY MR. BATTLE:

11 Q. Okay.

12 A. No way would I suggest that it is the
13 cause.

14 Q. And your language speaks that:

15 "Causes more flooding by artificial
16 means on the plaintiffs and should not have been
17 approved by the County in light of the well-known
18 propensity of this canal to flood."

19 What are the indicators that changing
20 the course of the canal would have caused more
21 flooding?

22 A. Okay. There are several thing that go
23 along with changing that course of the canal.

24 One is that when you put a right angle
25 or close to a right angle, I don't know whether

1 it's exactly a right angle, that does increase the
2 resistance, all things being equal.

3 The second is the -- from what I
4 understand the purpose of changing this canal was
5 to provide more space to put more houses, which all
6 other things being equal, would increase the
7 flooding because of the nature of the building of
8 the houses.

9 And, of course, filling in the land and
10 making it go higher and giving the water a smaller
11 place to go as the creek begins to rise.

12 And so a place that was competing
13 with -- let's just call it the Patton property --
14 for water, in other words, another lowlands which
15 could have absorbed some was being taken over as a
16 part of changing the course because it was built in
17 and raised.

18 Q. Have you done any measurements of the
19 changes to the canal?

20 A. No, I have not. I have not gone in and
21 put a tape to it and that sort of thing.

22 Q. Is this purely an eyeballing situation?

23 A. Well, there are diagrams showing how it
24 was changed. The canal certainly appears to be
25 wide enough not to be a bottleneck in that area but

1 having the right-angle turn does increase the
2 resistance to flow.

3 Q. Which diagrams are you referring to?

4 A. There have been a bunch of them over
5 the time period I've seen.

6 Q. Is there -- help me out a little bit.
7 If there were so many --

8 A. I can't remember which one. I wish we
9 had everything up on the wall with a big number on
10 them.

11 Q. I'm sure we'll get there.

12 Can you describe how this backing-up
13 action, as you called it, works in term of fluid
14 dynamics? What's the water doing that -- why does
15 it just flood at the 90-degree turn?

16 A. Why does it just flood the 90-degree
17 turn is what you're saying?

18 Q. Yes. Why is that -- it's not like a
19 dam. I understand how dam stops water but how does
20 a 90-degree turn do it?

21 A. Well, the basic thing in fluid
22 mechanics is that there are certain changes that
23 confine the flow in different ways, such as an
24 elbow, and we'll go back to an elbow.

25 An elbow in a pipe, depending on

1 various factors, counts as resistance, as so many
2 feet of length of pipe, so water flows downhill,
3 and so for water to flow from one end of a straight
4 canal to another it needs to be sloped down.

5 Well, a curve requires typically some
6 additional slope to compensate because it
7 represents more length than the actual length of
8 the curve.

9 That was a convoluted way of putting it
10 but you feel free to ask me to clear that up.

11 Q. No. I think I understand what you're
12 saying. I've been doing my homework. Don't worry.

13 So do you think that -- would it be
14 possible to modify the canal as it exists now to
15 resolve the turn issue?

16 For example, you were referring to
17 slope. If they shored up the bank or dredged it
18 out more so there was a slope there, would that
19 resolve the flow issue?

20 A. Let me put it this way that may well
21 answer your question without answering it directly.

22 It might be clearer that way. If a
23 canal is very narrow and it's widened and a curve
24 is put in there, that could be the equivalent of a
25 wider curve than a narrow canal.

1 But putting this curve in there also
2 went along with adding additional houses that would.
3 not have been there had the curve not been put in
4 there.

5 And an additional development is
6 typically what causes an additional problem with
7 the flow or with the hydraulic system, I should
8 say.

9 Q. And how did the additional housing
10 cause the --

11 A. Well, because you have more pavement,
12 more roofs, so forth, which causes more rapid
13 concentration of the flow. That's one.

14 And, in addition, it's my understanding
15 and what I can glean from the information that the
16 ground level where those houses are is
17 substantially higher than it was beforehand.

18 And, therefore, it does not absorb
19 water when flooding begins, before it gets to the
20 top of the berm but it does not absorb water. And
21 so in certain rains, that adds to the problem.

22 Q. Is it your understanding that water has
23 flowed over the berms at the Pattons' property?

24 A. No. I mean evidently the berm could be
25 20 feet high and it wouldn't do that much good.

1 Now, I understand that it flowed around
2 it at one time and there has been some correcting
3 and maybe some contention on that correction at one
4 time.

5 But with the water level coming up for
6 the -- it's more difficult to drain the Patton
7 property because they tried to drain their yard
8 into a water level that's higher than their yard
9 and, of course, that doesn't flow without a
10 substantial pumping boost like they have in New
11 Orleans, that sort of thing.

12 Q. I understand. So in regards to fixing
13 the bend in the canal, is there any feasible way
14 for the County to go in and alter or change the
15 structure of the canal as it exists now and make an
16 impact on the water flow?

17 A. You're talking about the canal at the
18 point of the curve or at the canal anywhere?

19 Q. Probably just the point of the curve
20 for right now. Let's contain it, contain the
21 question.

22 A. Making it wider would have a small
23 impact on the positive direction.

24 Q. And how much is small? Like
25 10 percent?

1 A. Let's say it depends on the flow. It
2 depends on how much 17 is being bottlenecked and
3 the culvert under 17.

4 But the curve adds an amount to the
5 flooding problem. It's a problem. It is not the
6 major problem.

7 Q. And I know this is kind of a "wonkie"
8 one, but is there like a percentage amount that you
9 think the curve is responsible? Is it 50 percent?
10 70 percent?

11 I mean -- I noticed that in 2003 you
12 were willing to bring out a big fancy hierarchy
13 so --

14 A. Well, I wouldn't call it a big fancy
15 hierarchy. Somehow I was being pushed to identify
16 the major responsibilities there.

17 But the effect of the curve depends on
18 a lot of what's happening downstream, of how 17 is
19 backing up.

20 And when I say 17, I'm talking about
21 the culvert under 17. If it's not backing up at
22 all, then the curve may be having more of an effect
23 than if it is, and if it's not backing up at all,
24 then the water level in the canal at the Patton
25 property area, I don't know whether that would be a

1 problematic water level.

2 One can't tell right now. It's a
3 potential of being at a problematic level.

4 Q. It sounds like what you're describing
5 then is that depending on how much water is inside
6 the canal system dictates whether or not the bend
7 in the canal is having a significant impact or not?

8 A. Well, obviously with almost no -- very
9 light water like now, it doesn't make any
10 difference.

11 Q. Okay.

12 A. There could be ten curves in there when
13 there is almost no flow.

14 Q. Is there -- do you have a water, like a
15 rainwater amount, I think we call them flood
16 events, you know the system -- 25-, 50-, 100-year
17 flood events?

18 A. Yes.

19 Q. Do you have a specific flood event that
20 the canal ceases to be able -- ceases -- or begins
21 to become a problem?

22 A. I don't have it numerically. I do have
23 it in terms of obviously some of the events that
24 we've had in recent years have been problematic and
25 I would say they are frequent enough that they are

1 not all 500-year events and they are not all
2 100-year events.

3 Q. And that's getting more into the --
4 you're talking about frequency of the storms, not
5 necessarily -- scratch that.

6 You're referring to the fact that we're
7 having more and more hurricanes; right?

8 A. I was referring to the fact that we've
9 had more floodings -- I would just call it the
10 Patton property for lack of -- not wanting to
11 include everybody, just call it that.

12 Q. All right. You mentioned the culvert
13 under 17. Can you list off all of the factors you
14 think are causing the flooding for the plaintiffs'
15 property at this time?

16 MR. CONNELL: For each defendant? Is
17 that what you're saying?

18 MR. BATTLE: At some point there is
19 going to have to be -- it's going to have to
20 happen.

21 THE WITNESS: All the factors you're
22 asking for that affect the flooding over the
23 plaintiffs' property. Is that what you're asking
24 for?

25

1 BY MR. BATTLE:

2 Q. Yes.

3 A. Okay. Boy, where does one start?

4 First of all, you've got the property
5 being, from what I understand, being presented as
6 being a non-flooding piece of land. And then
7 selling and building houses on that basis.

8 Then there is the internal planning of
9 the development and then the potential lack of
10 following the plans regarding handling of water
11 runoff which certainly had the design and
12 maintenance of the channel over the years.

13 We've got the conduit on Highway 17.

14 We have a causeway and a dam down below
15 which I would -- I know some of that contributes to
16 the blockage under 17 or the reduced flow under 17
17 which contributes to the problem.

18 You've got the runoff from the golf
19 course.

20 You've got the design of, I think, it's
21 Crystal Lake, in the absence of effectively -- more
22 effectively using it for flood control.

23 You've got the building across the
24 creek which the canal was rerouted in order to
25 accommodate which has pluses and minuses.

1 And I think some of the pluses may be
2 not -- some of the minuses in terms of flood
3 control are not really looked at.

4 Q. We can take a break there. There is so
5 much to unpack from just that.

6 A. Okay.

7 Q. Do you have any more, sir?

8 A. I may have left out some specifics but
9 the generalities are there.

10 Q. There you go. All right. Did the
11 developer -- you know, did the developer that was
12 constructing across the canal make any changes to
13 water flow besides altering the canal course? You
14 mentioned pluses and minuses. This question kind
15 of gets to that.

16 A. Okay. You're talking about water flow.
17 Certainly on his property he made changes. He put
18 in drainage pipes coming out from the development
19 into the canal, so he certainly altered water flow
20 there.

21 I don't have the specifics on how much
22 fill he put in there, but it looks like he did put
23 in fill so there was fill but that can change water
24 flow characteristics and understanding and he put
25 in retention facilities too.

1 Q. Have you looked at the amount of water
2 that the retention facilities maintain?

3 A. I haven't seen those numbers. If I
4 did, I didn't fully absorb them.

5 Q. Well, I'll just get to them on the
6 road. Okay.

7 And so did the retention facilities and
8 things like that, when you say pluses and minuses,
9 do they balance out the changes that the
10 development has created for the water flow outside
11 the canal?

12 That was kind of a poor question.

13 A. I think it was a nice question.

14 Q. Okay.

15 A. You worded it well. I'm just --
16 thinking about the balances with pluses and
17 minuses, is there a balance of some sort and it
18 comes out one way and the other way.

19 And my take on it would be, without
20 having had the chance to really study it, is that
21 under some circumstances the pluses -- which means
22 the pluses being less problems -- the pluses may
23 outweigh the minuses and in other circumstances the
24 minuses may outweigh the pluses, the circumstances
25 being intensity of rain, length of rain, total

1 accumulation, these sort of things.

2 So this is similar to the question
3 about the canal in terms of the County having any
4 kind of construction solution for this situation.

5 Q. Is it basically during like a normal
6 rain flow the system works; correct?

7 A. That's my understanding. I wish I was
8 around to observe the level that the water comes up
9 the canal for each rain that comes along, a single
10 thunderstorm, multiple thunderstorms, a front
11 coming through and stalling and all these different
12 things and exactly how all these things work.

13 But the characteristics from what I
14 understand have been that the pluses and minuses
15 balance out some of the time and some of the time
16 it's the minuses are more substantial than the
17 pluses.

18 Q. And would it be safe to say that you're
19 describing when a hurricane hits, it floods
20 basically?

21 A. Maybe not basically but certainly that
22 would include when a hurricane hits, it tends to
23 flood worse than it needs to.

24 Q. And so if you can unpack that statement
25 to me, how much does it need to flood when a

1 hurricane hits?

2 A. You know, you picked up on my answer
3 and that is a very clever question in response.

4 As an example, and I hate to go into
5 personal things here, but, for example, the house
6 that I used to have was in Columbia and I picked
7 that house partly because it was about five feet
8 above the road, the ground yard was. A lot of the
9 neighbors' houses were one to two feet above the
10 road.

11 When the big rain of '15 hit Columbia,
12 my house was high and dry. The neighbors all
13 around were flooded. So I think the rain we had
14 what happened would be expected with the topology
15 there.

16 And so to have a development where it
17 can't handle that, you just don't put houses, at
18 least non-built up hours in areas that can flood
19 like that.

20 And certainly when you do have houses
21 in marginal areas for major events, you don't do
22 things in draining systems to make it worse.

23 Q. Have you -- there are a lot of
24 questions I have like the specifics of the housing
25 development.

1 Have you reviewed the numbers at all in
2 terms of how much the engineers said the water flow
3 was increasing or decreasing because of their work,
4 what we're calling the property across the canal --
5 in my mind, it's called Bermuda Gardens. It's not
6 called that anymore, you know how they change those
7 names.

8 But that's what they were in the
9 original plans so when I say Bermuda Gardens, that
10 what I'm referring to.

11 A. And we know that it's across the creek.

12 Q. Did you evaluate at all the engineer
13 studies, the claims about input and output of
14 water?

15 A. I saw that briefly a little while ago,
16 while we were waiting and they are claiming that
17 there is a reduction of water flow by their
18 changes.

19 Q. Okay.

20 A. I didn't see that they took into
21 account the fact that they had the extra houses in
22 there that would not have been there had they not
23 changed the creek.

24 And so had they had the same facilities
25 in terms of ponds and so forth, I don't think they

1 did that calculation.

2 And I also didn't see anything with
3 respect to how they raised the ground level by
4 putting in fill, the effect of that on the
5 neighborhood.

6 Q. So we're going to do a thing where I
7 say what my understanding of what you meant was and
8 you tell me if I've got it right or not.

9 A. Okay.

10 Q. They did not account for the impact
11 that all the concrete and the roofs, as you called
12 it earlier, would have on the flow; right?

13 A. I don't think I quite said that.

14 Q. What did you say? Well, Mr. Taylor,
15 you understand what I'm saying here. I'm trying to
16 get --

17 A. I understand that and I'm trying to
18 help you here. They took that into account. They
19 had -- they changed curve numbers which to me would
20 be representative of putting in concrete fills and
21 so forth.

22 Q. So let's just go one at a time. So
23 they did account for the pavement, the roofs, and
24 the displacement the houses would cause; correct?

25 A. They had an accounting for it, yes.

1 From the way I read it, and I had about two minutes
2 on that page, so the way I read it, they attempted
3 to take into account the fact that they had roofs
4 and sidewalks and streets and so forth.

5 Q. The major thing they did not account
6 for was you called it extra houses. But you're
7 just talking housing period, or do you mean that
8 they have houses outside the scope of their permit?

9 A. Neither. When they changed the course
10 of the creek, that gave them more land to build
11 more houses on.

12 And what I was suggesting was that had
13 they had the same infrastructure of storage ponds
14 and so forth and left that area, let's say, to the
15 right of the creek -- to the right of the old creek
16 going downstream left that low, that would have
17 given more capacity for the creek to flood into
18 that area rather than being forced to -- rather
19 than rise quite as high.

20 Q. So --

21 A. Go ahead.

22 Q. So your contention then is by raising
23 up the property, all that big wall of sand, I
24 guess, or dirt or fill or whatever it is, they
25 basically created a barrier where instead of the

1 water being able to go out onto the land, it then
2 just hits that wall and keeps flowing?

3 A. It basically forces it up higher. I
4 mean it's just like getting rid of a retention pond
5 in a way. And they did put in some small retention
6 ponds.

7 Q. What technique did you use to come to
8 this conclusion?

9 A. Addition and subtraction and
10 multiplication.

11 Q. So this is just looking at the plans
12 and eyeballing it?

13 A. Well, looking at the volume of space.
14 They appear to have raised it up about six feet. I
15 don't know if that's exactly accurate or not but it
16 appears that they raised it about six feet.

17 And I don't know how many extra acres
18 they created. Let's say they created three
19 additional acres, so that's about a million cubic
20 feet.

21 Q. And so this is just -- I don't mind
22 explaining this. I'm trying to figure out the
23 models or is all of your data coming from just
24 looking at the plans?

25 A. And that part, seeing -- estimating

1 kind of where the creek went, looking at some
2 drawings and you have the drawing there, which I'm
3 going to get to see again soon, I hope, just gives
4 me an estimate of the amount of land.

5 You know I said three acres. It might
6 be an acre and a half. It might be five acres.
7 I'm not sure.

8 Q. That's fine. The goal of the question
9 is to figure out the basis for all of these
10 opinions and so what I'm hearing is that it's
11 coming strictly from the plans as you see them?

12 A. The plans and then talking with
13 Mr. Patton and having him point the way that it
14 went before. Again, it's ballpark. It can't be
15 precise and typically the hydrology stuff is not
16 precise.

17 People take it out three decimal places
18 sometimes and that's not needed.

19 Q. So is it your opinion that the County
20 should not have approved this new development
21 because of the area's history?

22 A. Or approved it to be different. But in
23 general, I think until 17 got fixed, they shouldn't
24 have been approving a lot of the stuff that went in
25 upstream of the 17 culvert.

1 Q. Now when you say, 17 is fixed, what do
2 you mean?

3 A. My apologies. I refer to that very
4 loosely. I mean the culvert substantially
5 enlarged, another culvert put in, another train
6 pass put in to cross 17 to drain the field.

7 That's something that's got to be done
8 because 17 is a bottleneck and a lot of things
9 contribute to the problem.

10 Q. Are there any other factors that should
11 have told them to not approve development in this
12 area?

13 A. First of all, I didn't say not approve
14 development, but not an intensive development. And
15 if I said, development I meant -- let's see.

16 Q. My reading of Paragraph 4:

17 "Such a change in the canal direction
18 causes more flooding by artificial means and should
19 not have been approved by the County."

20 So I guess, how would you phrase it?

21 A. It may be not even approved
22 development. But with the problem that you have,
23 my take on it is, don't approve any development
24 until you get the problem solved as a part of it.

25 And, additionally, don't approve any

1 development that has potential to make things
2 worse.

3 Q. Okay.

4 A. Now, if they put in six houses on
5 stilts, that's a development, but I would see no
6 problem with that.

7 Q. So getting back to the question, was
8 there anything other than the pipe, than the
9 Highway 17 culvert to tell the County that they
10 should not be approving development here?

11 A. Well, there is the flooding that has
12 been taking place.

13 Q. Okay.

14 A. There has been very substantial
15 flooding. You've got a real problem with those
16 houses on Prestwick.

17 They should never have been built on --
18 and never been sold as un-flooded properties. But
19 you've got a real bottleneck there and things
20 downstream of 17 seem to affect the flow too, so
21 the whole thing needs to be straightened out and
22 someone needs to straighten it out before you get
23 houses in there.

24 Q. And this goes back to the question we
25 were talking about of the scale of water which the

1 system can withstand.

2 You know Horry County's code has got to
3 be up to a 25-year storm event; correct?

4 A. That's what I understand and that
5 bothers me that that is that low.

6 Q. That's fine. So hypothetically
7 speaking, do you at any point intend to testify
8 that they aren't up to 25-year flood events
9 standard?

10 A. I have not paid a whole lot of
11 attention to 25-year flood events, which I can't
12 remember exactly how many inches and how many time
13 periods and that sort of thing is.

14 I considered realistically what
15 happened in Myrtle Beach, what rain has happened
16 there.

17 And in this situation, we have had I
18 don't know how many floods in less than 25 years.
19 So there is some -- if someone says that it meets
20 the 25-year definition, but you've got six floods
21 in 25 years, something is wrong with how a person
22 is using the numbers.

23 Q. And I'll just cut to the chase. You're
24 not going to testify that they are violating their
25 own code of regulations.

1 It sounds like what you're saying the
2 codes and regulations themselves are flawed?

3 A. I would say there is some of both in
4 there. I mean we haven't had, whatever it is, six,
5 500-year events in the last 15 to 20 years. I mean
6 it's just -- so, yes, the regulation is flawed,
7 yes.

8 I raise the question of how has this
9 land lasted longer than 25 years and so to make it
10 legitimate, to say, okay, whatever this 25-year
11 thing is, we'll just let people build houses all
12 over the place and just turn it over to the federal
13 government and FEMA to take care of it, something
14 is wrong with that.

15 Q. I understand. So it sounds like you're
16 saying that you think there is something wrong with
17 the codes and regulations.

18 A. I think requiring only 25 years rather
19 than something longer is problematic.

20 Q. Do you intend to ever cite or claim
21 that it's not up to the 25-year standard?

22 A. I haven't really addressed that. I
23 just addressed that it's a problem -- it's been a
24 problem that it keeps flooding and whether we keep
25 on having 100-year floods year after year, so to

1 speak, I just haven't addressed that.

2 Q. That's fine. Are there any defects in
3 the certification process that you're going to
4 assert?

5 A. I haven't studied the certification
6 process yet. I've just looked at the results.

7 Q. Anything on the DHAC permits?

8 A. I haven't looked at that sort of thing.

9 Q. Okay. OCRM and their certification
10 plans? Any note on that?

11 A. I haven't really addressed the
12 certification of plans other than I'm not
13 specifically aware of plans where governmental
14 organizations were deliberately bought off, so to
15 speak, by developers. I haven't addressed that.

16 Q. What now --

17 A. Convinced. Let's say convinced. That
18 you didn't have developers convincing the
19 government to relax things. I haven't addressed
20 that potential.

21 Q. Do you think somebody bribed Horry
22 County to accept these plans?

23 A. I use bought off in a general sense of
24 using convince, anything to convince. Like the
25 swales were not built. They were supposed to be

1 there in the plans. Somebody approved it. I don't
2 know how that happened.

3 Q. You understand that they have to
4 approve the plans before the construction begins;
5 right?

6 A. Yes.

7 Q. Is there a building code that wasn't
8 met?

9 A. I have no idea.

10 Q. Based on your review of the property,
11 does it look like it's going to flood again, the
12 property?

13 A. Yes.

14 Q. There you go. Does it -- do you know
15 what storm event will cause it to flood?

16 A. You know, if I could do that, I would
17 be in a different business.

18 Q. Should every hurricane cause it to
19 flood that hits this area?

20 A. Boy, that's an interesting question.
21 Should a hurricane -- well, we wish that it
22 wouldn't, but could there be a hurricane that comes
23 through here that would not cause it to flood, and
24 by flood, we mean, let's say water up to the garage
25 floor level of the Patton house?

1 Q. How high is that?

2 A. I think it's 11 or 12 feet above the
3 sea level. Those are the numbers that we see on
4 various maps where typically the 14 to 17 is where
5 a lot of buildings are.

6 I can see a hurricane come through that
7 would not get water up to there.

8 Q. Okay.

9 A. But it would have to be small, fast and
10 get a certain edge of it, I would think.

11 Q. And I know -- I try not to repeat
12 myself but sometimes it happens.

13 You don't have a specific flood event
14 that will guarantee, cause the canal to flood every
15 time, do you? Can you name one?

16 A. You mean a named flood event?

17 Q. Not a name --

18 A. Go ahead.

19 Q. Like how much rain -- let me rephrase
20 this.

21 What amount of water has to hit the
22 canal for it to cause flooding?

23 A. You know, I started to do that
24 calculation but did not. And I'm trying to
25 remember the calculations that I did.

1 It's my -- this area that drains
2 through the creek is, I think, around 1,400 acres.
3 Is that -- I could ask you if that's accurate. Are
4 we in agreement on that?

5 Q. Are you talking about Prestwick or
6 Bermuda Gardens?

7 A. The whole area with the red line around
8 it which has an outflow through this.

9 Q. I mean, I'm not going to hold it
10 against you, if that's the wrong -- I don't know
11 the whole watershed. Sure.

12 A. I believe the watershed, the overall
13 drainage area is about that. Well, a significant
14 rain event, I think, is close to 50 million gallons
15 or something like that.

16 And I certainly think that 50 million
17 gallons in a day or so would completely overwhelm
18 the system, which has happened.

19 Q. Which storm was that?

20 A. Oh, that's just a hypothetical. A
21 heavy storm.

22 Q. Does the water permanently stand on the
23 plaintiffs' property when the flooding happens?

24 A. While it's flooding, it's permanent but
25 after the flooding has stopped, it's off.

1 Q. So it goes away once the water level
2 goes back down?

3 A. Yes, of course.

4 Q. Okay.

5 A. I didn't mean to make the question into
6 a joke.

7 Q. It's okay. It's the only way you can
8 get through this stuff sometimes.

9 Do you need a break, Mr. Taylor?

10 A. Not yet. We're fine.

11 Q. All right. Do you have a comprehensive
12 list of all the times the plaintiffs' property has
13 flooded?

14 A. No, I don't.

15 Q. Okay.

16 A. They have probably told me but I have
17 not written them down.

18 Q. And the subject of this lawsuit is
19 primarily the 2015, 2016 flood events. Does that
20 sound right?

21 A. Yes. And the background is earlier
22 ones than that, yes.

23 Q. Do you know what the first flood event
24 was post-Bermuda Gardens construction?

25 A. I'm not sure if I remember which one,

1 no.

2 Q. Does 2010 sound about right?

3 A. I remember a discussion of one around
4 that time period, but I don't know when
5 construction was finished on Bermuda Gardens.

6 Q. Okay.

7 A. I may have seen that. I just don't
8 have it committed to memory. 2010 is the year
9 before then.

10 Q. This is kind of a hypothetical one, but
11 would the property have still flooded during
12 Hurricane Matthew, that was the first flood
13 incident alleged in this lawsuit, if no changes to
14 the canal had occurred?

15 A. No changes since when?

16 Q. If -- let's start bigger than that.
17 Would the property have still flooded
18 during Hurricane Matthew if there had been no
19 development -- if Bermuda Gardens did not exist?

20 A. I don't remember the numbers on
21 Hurricane Matthew and when it was. When was it?
22 What were the numbers?

23 Q. It's 2015. Oh, gosh, I don't know.

24 A. The one in September?

25 Q. '16?

1 A. '15 was a big event and --

2 Q. 2015 was the massive one and '16 is
3 the -- what's the 2015 storm? So flood event --
4 let's call them the 2015 and 2016 storm as we go.
5 I don't have a lot of storm questions.

6 A. Okay.

7 Q. Would the property have still flooded
8 in 2015 if Bermuda Gardens did not exist and none
9 of the changes had occurred?

10 A. I think it would have. I think Bermuda
11 Gardens contributed a small amount to that but they
12 contributed something.

13 Q. So the property would have still
14 flooded even if this whole thing was still totally
15 natural?

16 A. Yes. There was a lot of factors which
17 contributed to that and you can take away one of
18 those factors, or maybe most of them, but any
19 individual factor could be taken away which would
20 not have stopped a certain flooding event from
21 occurring.

22 Those factors tend to make the flooding
23 event a little bit more and all put together make
24 it substantially more.

25 Q. If there is no Bermuda Gardens in 2015,

1 what's causing the flooding?

2 A. Well, everything else. And you can
3 take away any one item and it still occurs.

4 Q. All right. And that holds true for the
5 2016 storm event as well?

6 A. That certainly is my take on it.

7 Q. What would happen if there was no canal
8 at all?

9 A. You know, I don't know where the water
10 would go, but it would find a low area, wherever it
11 is.

12 Q. Is the approval of the canal changes
13 and construction of Bermuda Gardens -- I kind of
14 wrap them all up into one bundle in my head --

15 A. Sure.

16 Q. -- but is the approval of the Bermuda
17 Gardens development the only negligent act that
18 you're alleging by Horry County -- that you are
19 testifying to about Horry County?

20 A. I've been looking more at what occurred
21 and haven't kept close association with individual
22 organizational entities, but to the extent that
23 they have had a hand in the canal all together --
24 and I can't remember whether they have a
25 maintenance responsibility over it or not -- but

1 it's the various approvals along the line at times
2 and there is a lack of maintenance of the canal.

3 Q. When you say lack of maintenance, what
4 is that?

5 A. The canal had been very poorly
6 maintained at one time. It's much improved now.

7 Q. When was it poorly maintained?

8 A. Back in the late '90s, I think it was.

9 Q. Is there --

10 A. I don't remember when the improvements
11 were made.

12 Q. Is there any -- is lack of maintenance
13 a cause of flooding in 2015 or 2016?

14 A. I can't rule it out but I can't point
15 to anything right off. Also it depends on what you
16 mean by maintenance.

17 I was referring to keeping it cleaned
18 out and so forth. And, for example, the brush
19 washed down that had not been taken out and
20 partially clogged up the 17 culvert.

21 I don't know, but that's another lack
22 of maintenance. It's an issue, if it did, and
23 somebody I talked to talked about some partial
24 clogging up with trash of leaves and that sort of
25 thing.

1 Q. Who did you talk to?

2 A. I don't remember. It might have been
3 15 years ago. But I don't remember but my contact
4 was certainly out there.

5 Q. Okay.

6 A. I can't rule it out.

7 MR. BATTLE: Here is Exhibit 2.

8 (DFT. EXH. 2, Copy of photograph, was
9 marked for identification.)

10 BY MR. BATTLE:

11 Q. Is that a picture of the canal that is
12 the subject of this lawsuit?

13 A. It looks like it.

14 Q. It is.

15 A. Okay.

16 Q. And you said you've done no
17 measurements of this canal?

18 A. That's correct.

19 Q. If the canal is deeper and wider in
20 addition to the directional changes made, does that
21 improve the water flow?

22 A. In general it would, yes.

23 Q. If they went in there with backhoes and
24 stuff and made it even deeper and even wider, would
25 that improve the water flow?

1 A. Okay. It would improve the water flow
2 through that area at that time, yes.

3 Q. I'm kind of doubling back and I know
4 that you've addressed this, but what should Horry
5 County have required Bermuda Gardens to do in order
6 to make the area not flood during major storm
7 events?

8 A. Well, I made a suggestion before in the
9 extreme, and it was a little kind of facetious, but
10 if it approved six houses on stilts. That's an
11 extreme.

12 Q. Okay.

13 A. Lower density, less fill, more
14 retention. I don't know if they would have
15 required a new way of getting water to the ocean or
16 not.

17 Q. Okay.

18 A. Those sort of things. If they had a
19 new and adequate way of getting water to the ocean,
20 then they would build high rises there if they
21 wanted to, so to speak, figuratively speaking.

22 MR. BATTLE: So this is Exhibit 3.

23 (DFT. EXH. 3, Handwritten notes, was
24 marked for identification.)
25

1 BY MR. BATTLE:

2 Q. Are these your personal notes from the
3 2003 lawsuit?

4 A. I believe so, yes.

5 Q. So I'm obviously just doing a
6 checklist. So in 2003 you said:

7 "Approval of the subdivision drainage
8 plans caused the flooding" -- or one of the
9 factors, I think would be a better way to put it.

10 Are the plans themselves flawed or is
11 it the failure to follow through on them that's
12 causing the issues?

13 MR. BAXTER: Objection. Form.

14 MR. CONNELL: It's for the group.

15 THE WITNESS: Was it the plans or the
16 way it was built?

17 BY MR. BATTLE:

18 Q. Yes. And that was a pretty loaded
19 question.

20 In your notes for 2003, you wrote:

21 "Approval of subdivision development
22 and drainage plan."

23 I'm assuming since it's 2003 and there
24 is no such thing as Bermuda Gardens you're
25 referring to Prestwick. Is that what you're

1 referring to?

2 A. Yes. As I recall at the time, there
3 may be some other development around there but I
4 don't remember what it was.

5 Q. Was your opinion based on were the
6 plans themselves inadequate and never been approved
7 or were the plans not followed through on and built
8 properly?

9 MR. BAXTER: Objection. Form.

10 THE WITNESS: It should be both.

11 BY MR. BATTLE:

12 Q. All right. What was wrong with the
13 plans?

14 A. I would say for this one, with
15 Prestwick only in mind and that's limited just to
16 Prestwick, I think there should initially have been
17 a berm, a well-built berm required and a pump, an
18 adequate pump.

19 Now, I've heard mention there's a
20 pumping station somewhere or there was talk about a
21 pumping station but I don't know which it was and I
22 have never been shown a pumping station.

23 Q. And --

24 A. And that's with respect to these low
25 lots. It doesn't apply to the lots higher up.

1 Q. This is a kind of a recap of the
2 dispute that we had earlier. Are they not
3 following their own regulations or are the
4 regulations inadequate?

5 A. You're talking about the County?

6 Q. Yes. And I'm referring to the 2003
7 notes so I'm not trying to recap the Bermuda
8 Gardens questions but you understand the line of
9 questioning?

10 A. Yes. Well, again, one of the puzzles
11 is that there was a plan and it wasn't built
12 according to plan and the way that it missed the
13 plan made it more prone to flooding.

14 I just have to say it was an inadequate
15 drainage plan for the project and without getting
16 into what the County picked up on and required but
17 it didn't happen or what they did not pick up on
18 that they should have.

19 Q. So to paraphrase back, it ain't
20 draining enough. You're not going to comment to
21 any mistakes or anything the County should or
22 should not have seen other than just the plain fact
23 of the matter?

24 A. That's just part of it. The fact that
25 the swales were in the drawings and I couldn't find

1 any swales there, that means they weren't built.
2 That's not just, it floods there and so therefore
3 it's bad.

4 Q. So that gets into -- it sounds like
5 what you are saying is that the plans were never
6 followed?

7 A. Or they were changed in a way that I
8 was not informed of and that I was not aware of.

9 Q. When did you last inspect Prestwick
10 swales or drainage?

11 A. I last looked at it yesterday. That's
12 as close to this event as I could do.

13 Q. What did you see?

14 A. Well, I certainly saw the ditch that
15 had been cleaned out a lot. I saw the curve. I
16 saw the new development.

17 And since I'm about six, three, I stood
18 in the Prestwick backyard and my eyes seemed to be
19 basically level with the floor of the patio of the
20 house across the way. I concluded that it had been
21 roughly raised about six feet.

22 Q. Is that the clubhouse over at Bermuda
23 Gardens?

24 A. I don't think so. I think it was an
25 individual house. It's next to the house with the

1 swimming pool or next to a building with a swimming
2 pool.

3 Q. It's a long stretch. I'm not sure
4 where you were.

5 A. I didn't look for swales again
6 throughout the community but I didn't see any just
7 in walking around but I covered that adequately
8 15 years ago.

9 Q. So did you see -- do you intend to
10 testify to any changes at Prestwick or it's your
11 opinion that it hasn't changed at all in 15 years?

12 A. I hadn't thought about doing it either
13 way. I just -- I need to get my photographs
14 eventually and Mr. Connell has the negatives -- or
15 I still have the negatives I guess, but he has
16 volunteered to make photographs and then I can
17 compare.

18 Q. So as of this time, you don't have an
19 opinion about Prestwick's drainage system at the
20 property?

21 A. What has been done since then?

22 Q. Yes.

23 A. I believe I looked at the golf course
24 drainage for the first time. I don't think I
25 walked over there though I may have 15 years ago.

1 And I was interested to see in the golf
2 course flow just coming off those few acres of golf
3 course was greater than the flow coming down the
4 ditch, excluding the golf course.

5 So it looked to me like a little more
6 than half the flow as it got to Highway 17 was from
7 the golf course.

8 Q. Do you think the golf course is one of
9 the factors contributing to the flooding?

10 A. Certainly in terms of heavy rain, if
11 the golf course had a totally different path, then
12 the flooding would be less.

13 Q. "Coordination of drainage plans." What
14 does that mean?

15 A. Well, if you've got a bunch of
16 different developments or sections of the
17 development going into the creek and at the time
18 you approve one, it may be reasonably adequate.

19 But if you don't take into account
20 what's going to come right down the pike after it,
21 if you don't take into account improvements, if you
22 have two developments where they have the same
23 runoff rate such that they hit the bottleneck at
24 the same time, it makes it worse.

25 If you have different retentions and

1 different runoff rates and they hit the bottleneck
2 at different times so that's the coordination of
3 drainage plans. That's an example.

4 Q. And I know we talked about this in
5 terms of like the municipality, but do you have any
6 examples of drainage systems that were constructed
7 in this manner or that you had any involvement
8 with?

9 A. I have looked primarily into individual
10 issues in drainage systems rather than overall
11 coordination but I have considered taking into
12 account other sources of water.

13 Q. "Projects dumping into ditch Catherine
14 Drive." I actually -- there was a lot of talk
15 about Catherine Drive in the 2003 case and I never
16 got exactly what it was all about. What's the
17 Catherine Drive issue?

18 A. I don't remember from 2003. I don't.

19 Q. And it looked like they were just
20 saying that water came off the road or is Catherine
21 Drive like a neighborhood?

22 A. I believe Catherine Drive is a little
23 bit part of like a causeway. And if I've got the
24 right street, I think part of it was supposed to be
25 wetlands at one point and the developer changed it

1 around and then there is a question of whether part
2 of it is artificial or an unplanned retention pond
3 or not.

4 And I think that's the area that's
5 being talked about, but I don't specifically
6 remember from 2003.

7 Q. Is that a contributing factor today or
8 has it been resolved?

9 A. If it's where I'm thinking of, it could
10 be -- it could improve the situation. It could if
11 it was done a little differently.

12 Q. How would it need to be improved?

13 A. I think by turning the path-through
14 into a retention pond.

15 Q. How big of a retention pond?

16 A. I don't know the area that it would be
17 and I don't know how much it would improve either.
18 It may not be a lot.

19 Q. Okay.

20 A. I think this was addressed in the
21 Thomas & Hutton study, the 2010 one. I think they
22 analyzed it. It was studied and I'm not positive if
23 I'm putting the discussion with the right location
24 there.

25 Q. "Working on drainage system."

1 Is that just maintaining the canal?

2 I'm just reading from your notes.

3 A. That's what it says there and I don't
4 remember from 2003 what it means other than I had
5 been working on it and they had done some things
6 that hindered rather than helped or that they
7 should be working on it more to coordinate
8 everything. I'm not sure what that meant at that
9 time.

10 Q. Let's see. Do you intend -- you're not
11 going to offer any opinion as far as ownership of
12 the canal or legal duties?

13 A. I want to avoid legal duty sorts of
14 issues.

15 Q. You will or you won't?

16 A. I want to avoid who really owns it and
17 who is really responsible.

18 Q. Then if you're telling me that you're
19 not going to go into it, then we don't have to --

20 A. I don't plan to go into it and
21 certainly if I do, Mr. Connell will let you know.

22 Q. All right. And we talked about
23 maintenance already.

24 There's a note with Pirate Land. And I
25 know you mentioned that previously but tell me

1 about that. How is that contributing to the
2 flooding?

3 A. The dam is the causeway and what it is
4 in looking at this kind of a pond, kind of a
5 sluice, or whatever you call it, just below Highway
6 17 there is water that's relatively still moving.

7 And this water level is about a foot
8 below the exit of the culvert. But there are
9 markings on a fence post and other things that show
10 that the water has left markings about, at least
11 two feet above where it is now.

12 And so that would mean that the water
13 level there would be at least a foot over the
14 bottom of the exit of the culvert under 17 which
15 means it would impede the flow which means at a
16 minimum the water would have been up at least two
17 feet above the current level which would put it a
18 foot over the bottom of the exit of the culvert
19 under 17 which is enough to negatively affect the
20 flow rate through the culvert under 17.

21 And the water could have been much
22 higher than that, but that's the level of -- kind
23 of the water markings I saw on some of the posts.

24 Q. When did you see those water markings?

25 A. Yesterday.

1 Q. Yesterday?

2 A. I probably saw them before but didn't
3 pay much attention to them.

4 Q. You measured them yesterday?

5 A. No. I looked at them and estimated.

6 Q. And is that a contributing factor to
7 the flooding now?

8 A. I think it would be, not the marks
9 themselves, of course, but the indication that the
10 water was that high in that body of water.

11 Q. And so to paraphrase, the water -- the
12 dam causes the water to fill up over the culvert's
13 exit from 17 which backs up water flow?

14 A. Yes, it slows down the amount of the
15 water that can go through.

16 MR. BATTLE: All right. Let's take 5
17 or 10 or 20.

18 (A recess transpired.)

19 MR. BATTLE: Now I'm going to give you
20 a real flashback to the past. That's a page from
21 your 2000 depo. It's Volume 1, Page 115 for those
22 who are keeping track.

23 (DFT. EXH. 4, Portions of previous
24 deposition of Robert Taylor, was marked for
25 identification.)

1 BY MR. BATTLE:

2 Q. I figured rather than go through your
3 2003 depo piece by piece, I would just select one
4 of the ones that felt like one of your most
5 comprehensive answers and go into that and then I
6 have a feeling that these other folks will have
7 some other page cites for you.

8 I think at this point in the deposition
9 you and a gentleman named Arrigo Carrotti had been
10 going back and forth for a while?

11 A. I think I remember that name, yes.

12 Q. You would remember Arrigo.

13 Could I have you just review your
14 answer real quick?

15 A. Okay.

16 Q. All right. You're saying property
17 floods because the water gets too high and enters
18 the properties, and it is also, you say,
19 mismanagement of flow within Prestwick.

20 Does that sound like an accurate
21 description of your testimony?

22 A. Yes.

23 Q. Are those still issues today?

24 A. Yes.

25 Q. You say:

1 "The ditch could be 100 feet wide and
2 20 feet deep but that would not prevent it."

3 Do you stand by that statement?

4 A. Well, it wouldn't prevent water from
5 flowing onto the property from elsewhere in
6 Prestwick.

7 Q. So if the ditch was 100 feet wide and
8 20 feet deep, would the water overflowing cease to
9 be a problem?

10 A. Water overflowing what?

11 Q. I don't mind explaining the angle of my
12 question. I'm trying to assess whether or not
13 making the ditch wider and deeper fixes the water
14 flow issue and it looks like your answer in 2003
15 was indicating that it would?

16 A. Well, it would fix the issue of the
17 ditch being too narrow or too slow to handle the
18 water flow.

19 And I think there I was -- first of
20 all, the Prestwick water is getting on to the
21 property here and flooding it.

22 There were not -- and there could have
23 been catch basins on the street level which
24 basically would catch almost all this flow and it
25 could either be a big pumping station or the water

1 of the canal or ditch was below the Prestwick -- I
2 mean below the lot there, then it would flow on
3 out.

4 If the water was above the lot, pumping
5 station could have done it. So the water being --
6 water in the ditch being high or low doesn't make
7 that much difference if it's combined with adequate
8 catch basins and pumping stations.

9 That being said, and I don't know at
10 this time if what we're referring to is the whole
11 ditch, but if the total flow path to the ocean had
12 been this extreme, 20 feet deep and 100 feet wide,
13 so to speak, and 20 feet doesn't help any because
14 that's below the water level, sea level.

15 But if the whole path had been like
16 that, then it would have been low enough for the
17 Pattons' house and the other lots there to drain
18 into it which would have been no problem.

19 But when the water level of the ditch
20 gets up above the Pattons' yard, then there is a
21 problem.

22 Q. When you say pump station, do you have
23 like a recommendation or specification, what kind
24 of pumping station would they need?

25 A. I don't know how many cubic feet a

1 minute it would have to do or how many gallons a
2 minute but if you had a catch basin of adequate
3 size with these big pumps that would pump the water
4 out even though the ditch was -- we're calling it a
5 ditch, we're calling it a canal, we're calling it
6 everything here -- but no matter what the water
7 level is at the pumping station it would pump the
8 water out of Prestwick.

9 Q. So do you think that the pumping
10 station would resolve the flooding situation?

11 A. It would have to be combined with a
12 much better catch basin and so forth and then
13 hoping that the dike and berm never breaks.

14 Q. Okay.

15 A. And the power stays on, or you have a
16 generator added to it, and you're really getting
17 into complexities.

18 Q. This is a somewhat off the path
19 question.

20 Do you know what a cross section for a
21 canal is?

22 A. I know the term but I don't know -- I
23 haven't done calculations that are going to specify
24 that. Is that what you mean?

25 Q. Yes.

1 A. No, I haven't.

2 Q. Do you have a cross section of a canal
3 at all that you constructed yourself, I mean?

4 A. You mean constructed a canal or drawing
5 out the cross section?

6 Q. Drawing out the cross section for this
7 canal?

8 A. No, I haven't. I know that the cross
9 section can be plenty large so that it is no longer
10 the main bottleneck.

11 Q. All right.

12 MR. BATTLE: All right. Mr. Taylor,
13 this is the letter from Horry County to the
14 Prestwick homeowners on Strathmill Court.

15 (DFT. EXH. 5, letter from Horry County
16 to Prestwick Homeowners, dated June 4, 2014 was
17 marked for identification.)

18 BY MR. BATTLE:

19 Q. Could you just take a moment to review
20 that?

21 A. Okay.

22 Q. Have you reviewed the Thomas and Hutton
23 study which this letter is discussing?

24 A. Yes. And I think this is discussing
25 something like -- was it 1 or 2-A and 4-C or

1 something like that. I don't remember the numbers
2 for sure.

3 Q. Were there any flaws in the methodology
4 of the Thomas and Hutton study?

5 A. It was so big and there was so much
6 data that I don't know if I could address that..

7 Q. That's fine. That's kind of an unfair
8 question. I understand where you're coming from.

9 Do you know of any at this time that
10 you intend to testify about?

11 A. Flaws or --

12 Q. Anything that Thomas and Hutton did
13 that makes it inaccurate, flawed, incorrect?

14 A. I would have liked to see them put in
15 meaningful dollar estimates on some of the ones
16 that they said were too expensive to consider and
17 those happened to be the best ones I think or some
18 of the better ones.

19 Q. I think they gave -- well, we'll get
20 into Exhibit 6 but there are dollar estimates.

21 A. I know that there was one place where
22 it didn't have it.

23 Q. Now --

24 A. Or they did it later in another one.
25 That's right.

1 Q. Okay. So no math errors, technical
2 errors that you have detected at this time?

3 A. I haven't looked at it from that
4 perspective, just seeing what was there.

5 Q. And I'm checking my corners and you're
6 checking yours. You don't have anything that
7 you're going to testify about that you know of
8 right now; correct?

9 A. That's correct. Is that the sort of
10 thing that if I do, I should let Mr. Connell know
11 and he will let you know?

12 Q. You're going to let me know.

13 A. Okay.

14 Q. What kind of rain event is the Thomas
15 and Hutton report checking for?

16 A. I think they are going up to the 100th
17 year.

18 Q. Do you think their assessment to the
19 various solutions for the community is accurate?

20 A. It's reasonable at first blush.
21 Whether it's really accurate without going through
22 and checking everything, I don't know. But it's at
23 first blush reasonable.

24 Q. What happens after first blush? I mean
25 that's going out on date Number 2 and 3. How do

1 you feel about the study?

2 A. I don't know if that's in the cards for
3 me to spend the equivalent time that they spent
4 going through and doing this.

5 Q. So this probably backpedals back to my
6 initial question. Do you have -- are you going to
7 testify that their assessments are mathematically
8 incorrect, not the final decision but --

9 A. I haven't tried to identify going back
10 and checking numbers and so forth and checking to
11 see if they entered things in computer code and
12 represented acreage and soil types correctly and
13 that sort of thing.

14 MR. BATTLE: And I'll go ahead and
15 enter Exhibit 6. I don't expect nearly as much
16 commentary on this. There is a fair amount of
17 commentary towards the end where I've highlighted
18 it.

19 (DFT. EXH. 6, Thomas & Hutton Study,
20 was marked for identification.)

21 BY MR. BATTLE:

22 Q. Do you recognize Exhibit 6?

23 A. Yes. September, 2012.

24 Q. And is that the Thomas Hutton study
25 that we're talking about, a portion of it?

1 A. That's one of their studies. I know
2 there were different portions issued at different
3 times.

4 Q. And I'll stipulate that Exhibit 6 is
5 the one that breaks down the financial costs
6 associated with each option.

7 A. Okay.

8 Q. And Exhibit 5 is describing the
9 conclusions the study has made; correct?

10 A. Among other things.

11 Q. Fair enough.

12 A. Not limited to.

13 Q. Fair enough.

14 A. Okay.

15 Q. So out of the 14 options in Exhibit 6,
16 the County described the two that were --
17 essentially had the most impact, correct, or the
18 three options that had the most impact?

19 A. I'll have to look at it to see if it's
20 three or not. I see two are highlighted right off.
21 I think it's your doings.

22 Q. And most of my questions will revolve
23 around the letter more than the study. I know the
24 study is a lot of data.

25 A. By the way, this is what I'm referring

1 to here (indicating). On Page 8 where it has a
2 column that says, "Lake dredging not included."

3 That's talking about Crystal Lake so
4 that's not the one that includes the cost of it.
5 Maybe it estimates it in a paragraph somewhere.

6 Q. Do you think that the letter from 2014
7 picked -- do you think that it picked the three
8 most reasonable solutions or most effective
9 solutions to the flooding issue?

10 A. Let's see. There is Crystal Lake and
11 then the Highway 17. What was the third one?

12 Q. The third one was increase the berm
13 size around the properties.

14 A. Okay. The third one has not yet shown
15 the need for that. That's certainly a good idea to
16 do that most likely.

17 One of the things that disturbs me
18 about this Number 5 is basically the Pirate Land
19 and -- Pirate Land Campgrounds, they don't want --
20 it looks like they don't want the 17 culvert any
21 bigger because that would increase the flow so they
22 are admitting that the 17 culvert limits the flow
23 on their property; therefore, backing up is what
24 they want to continue to do evidently.

25 Q. So getting back to my question though,

1 are there any other solutions in the Thomas and
2 Hutton study that you think Horry County should
3 have looked at besides increasing Crystal Lake or
4 increasing the culvert under 17?

5 A. I don't know whether it makes sense to
6 define another drainage path or not. I haven't
7 looked at that. And evidently that's probably so
8 expensive that nobody is thinking about it.

9 That's my guess on that but I haven't
10 tried to estimate it.

11 Q. So you don't have an issue with them
12 selecting those two as the most impactful
13 solutions?

14 A. I think of all the contributory
15 factors, those would tend to take care of the most.

16 Q. I'll just narrow that down a bit.

17 Essentially the Crystal Lake solution
18 is create a giant retention pond upstream and
19 improve the drainage of it as well under the ocean.
20 Does that sound right to you, do you think?

21 A. It would smooth out the drainage toward
22 the ocean which would help alleviate the 17
23 problem.

24 Q. All right. Would making the pipe
25 bigger under Highway 17 resolve the channeling

1 issues?

2 A. Depends on how much bigger but it could
3 be made big enough to really be helpful.

4 Q. And how does that interact with the
5 issues with the Pirate Land dam? It seems like
6 kind of making the pipe bigger, if the water is
7 still backing up, it's not going to resolve
8 anything.

9 A. You kind of do it a lot broader. It
10 doesn't do much to make it deeper.

11 Q. Okay.

12 A. A little bit but not much.

13 Q. But, again, if I understand what you
14 were testifying about earlier about Pirate Land
15 which is that the water basically gets stuck in
16 that retention pond and then their exit out to the
17 ocean causes it all to back up, how does making the
18 pipe wider under 17 help with that?

19 A. Well, it doesn't help Pirate Land.
20 Most of the time it has no effect on Pirate Land.

21 But when you get conditions that it
22 would clog up the conduit under 17 with the current
23 culvert, you get those conditions with a bigger
24 culvert it would pour more flow into the Pirate
25 Land or put a higher peak flow, the same amount of

1 water going in there.

2 Q. So basically you would just increase
3 the capacity of Pirate Land to hold more water?

4 A. Or broaden the spillway or whatever.
5 It is what it is. But, see, when you get water
6 going over 17 which I understand but I haven't
7 seen, if it's actually going over 17, then Pirate
8 Land gets that bigger flow anyhow.

9 It's that elevation of water level in
10 the entry to 17 that is from the top of the conduit
11 up to the road level that you can have that
12 increase of water level which creates a problem
13 upstream which doesn't create any more significant
14 problem downstream.

15 And then once it starts going over 17,
16 if it does that again, and I understand that it has
17 done that, then that makes the Pirate Land problem
18 great again.

19 Q. Can you name what storm or event caused
20 water to go over 17?

21 A. No, I can't. I just -- someone had
22 mentioned it one time that it was bad enough that
23 it went over 17.

24 Q. Do you know who that was?

25 A. No, I don't remember who that was. And

1 whether it did or not, I don't know, but if it
2 does, then that puts a lot more water down on
3 Pirate Land.

4 Q. Are you familiar with who lives at
5 Pirate Land?

6 A. I may know somebody there but, no, I
7 don't. I don't know who lives there.

8 Q. Would it surprise you to learn that
9 it's a retirement community?

10 A. Being Myrtle Beach, no, it would not
11 surprise me if it's a retirement community there.
12 What's a cool place for a retiree -- Pirate Land.
13 They'll run you over with a golf cart if you don't
14 watch out.

15 Q. The letter finally concludes that the
16 only remaining solution for the property owners is
17 to improve their own berms. Have you evaluated the
18 plaintiffs' berms yet?

19 A. I've looked at them and they seem to
20 have generally done the job but they are not good,
21 long-term berms, I don't think.

22 Q. What's wrong with them?

23 A. Oh, they are just there. They just
24 looked like dirt was piled there. It's kind of
25 like -- I'm trying to think what it looks like, but

1 it doesn't appear to be really a capable permanent
2 structure, but it may be.

3 You know, trees have been growing in
4 for quite a while so it's holding so far.

5 Q. Did you evaluate the berms over by the
6 Webbs' property?

7 A. Webb is the next door or --

8 Q. The younger couple.

9 A. Next door to the Pattons?

10 Q. Yes.

11 A. I don't think I ever got on those and
12 looked at those.

13 Q. And I've got -- we'll get into the
14 photography in a second.

15 A. Okay.

16 Q. Does that letter from Horry County
17 basically put the plaintiffs on notice about their
18 decision regarding the canal issues?

19 A. Well, it's basically saying that we
20 don't want to go to the trouble of going under 17
21 and we don't want to upset the people down at
22 Pirate Land and that we don't want to do anything
23 that people upstream at Crystal Lake would not like
24 in order to help people down in the lowlands.

25 Q. So do you think it is putting them on

1 notice of the County's decision regarding this
2 area?

3 A. It looks like they are saying, take
4 care of your own problem.

5 Q. Do you think it's reasonable for the
6 County to spend -- I mean let's just look at the
7 tables -- \$815,000 to improve the culvert over 17
8 Business to prevent flooding for two houses
9 potentially?

10 A. Versus just buying out the houses?

11 Q. That's not the question.

12 Do you think it's reasonable as of 2014
13 when this letter was produced for the County to not
14 want to spend \$815,000 for two houses?

15 A. Well, I think the County had approved
16 building houses there. Once you look at it
17 philosophically, once you improve the house, you
18 need to deal with the infrastructure that basically
19 can make the house close to worthless.

20 Q. Is that for the Crystal Lake as well?
21 I understand the 667,000 but when it says lake
22 dredging not included, we both know that dredging
23 the lake would cost a fortune; right?

24 A. Yes. And that's the problem with
25 selling lots and building houses in flood plains.

1 Somebody has to bear the brunt of it and who is it?

2 Q. And that's -- I'm not getting --
3 expecting anything more out of you than just
4 acknowledging that neither of those solutions are
5 cost effective.

6 A. Well, I would say under 17 there may be
7 more than those two houses at stake in terms of
8 that culvert. That's an example.

9 Q. What other houses would be impacted by
10 changing the culvert?

11 A. Well, it depends on how much more
12 development is flooding in there, where the Crystal
13 dam reaches in a big storm and these -- you don't
14 know what's coming down the pike.

15 Q. So my understanding is that your basis
16 for that is that it would be a sound investment for
17 the future?

18 A. You know, that's a good way of putting
19 it.

20 Q. There you go. Did Horry County employ
21 experts and engineers to study this water basin?

22 A. I think they did.

23 Q. Okay.

24 A. But I don't know for sure. I didn't
25 pay attention to who did what or whose suggestion

1 but if they did, they did.

2 Q. You're not even going to give me that
3 one? You have the study right in front of you.

4 A. Was that done for -- okay. I read that
5 correctly now. Okay. My apologies.

6 Q. Did Horry County hire a major
7 engineering firm --

8 A. They spent all this money. That's
9 Horry County. That's right, yes, they did.

10 Q. Thank you.

11 A. Thank you.

12 Q. Does it appear that they made a
13 conscious decision weighing multiple options about
14 how to resolve this situation?

15 A. I didn't --

16 Q. I understand that you don't agree --

17 A. Yes. It looks like they made a
18 decision. They said for the following reasons, the
19 two people need to be able to take care of their
20 own problems.

21 MR. BATTLE: Let's do these two
22 photographs, Exhibits 7 and 8.

23 (DFT. EXH. 7, copies of photographs,
24 was marked for identification.)

25 (DFT. EXH. 8, copies of photographs,

1 was marked for identification.)

2 BY MR. BATTLE:

3 Q. Mr. Taylor, I'll stipulate to you those
4 photographs are of the berm alongside the Webbs'
5 lot and that's also, in Exhibit 8, I think that is
6 the pond you were discussing that's by Catherine
7 Drive. Does that sound correct to you?

8 A. It doesn't look familiar. Neither one
9 of them look familiar. So Numbers 1 and 2, I can't
10 quite tell where that is.

11 Q. All right. For the image in Exhibit 7,
12 the one your finger is still on --

13 A. Oh, that's not a 1. It's a 7. Okay.

14 Q. Does that berm wall look high enough to
15 protect the Webb and Pattons' property?

16 A. I can't tell from here what's -- what
17 is what in that photograph.

18 Q. And you haven't had a chance to look at
19 this area?

20 A. I may have but I can't -- I don't
21 remember what sense that is, for example. I think
22 it's two houses down from the Webbs or one house
23 down from the Webbs, but I'm not sure, that fence.

24 Q. Would making this pond bigger have any
25 impact at all? And we can go back, if you look at

1 Exhibit --

2 A. Well, let me back up. And I realize I
3 do recognize this but the grass was not so green at
4 the time I was there. And these have been taken a
5 good while ago.

6 And I believe that little riffraff dam
7 has been washed out, if that's what I think it is.
8 There's only a little bit of it that remains.

9 Q. Okay.

10 A. But I didn't see anything that looks
11 just like that, but there was -- that's probably it
12 and that's water draining off the golf course, if
13 I'm correct.

14 Q. And that's the area that you were
15 referring to earlier in your deposition off
16 Catherine Drive and the golf course retention pond?

17 A. Yes. Except there is a little pond
18 over here but you can tell from the riffraff that
19 it's not very deep and it's been washed out now.

20 But above -- if this is Catherine Drive
21 (indicating), this white line in Number 7, there's
22 a potential for a pond on the other side of it too.

23 You have one drainage pipe and another
24 at a little lower level so that could have been a
25 retention pond. This is something of a pond there.

1 Q. And do you think that any improvements
2 could be made to that pond to help with the
3 flooding situation?

4 A. I do but that's -- yeah, because that
5 little bit of riffraff doesn't do the job.

6 Q. Would increasing the size -- I'll
7 stipulate to you that that berm wall is running
8 alongside the Webbs' property. Would increasing
9 the size of that berm help control flooding at all?

10 A. I don't know if the water has a
11 potential of coming up over it or not.

12 Q. Okay.

13 A. So it looks like it's reasonable if
14 it's designed high enough.

15 Q. Put it this way, would making the berms
16 taller hurt the properties at all, make the
17 situation worse?

18 A. Generally it would help with the
19 potential if the water gets high enough to go over
20 a lower berm but if it gets high enough to break
21 through a higher berm, then you have more force of
22 water coming in and a more substantial flooding
23 event.

24 The longer you hold it back and the
25 more it builds up, the more destructive it is if it

1 breaks through.

2 Q. Now, that would be a pretty big storm,
3 would it not?

4 A. It would.

5 Q. I mean this is kind of an interesting
6 question and I might as well ask it now.

7 Is there such a storm that's so big
8 that there is no system that could contain it?

9 A. Like a Noah's ark kind of storm.

10 Q. Sure. At what point -- I mean this is
11 just kind of something that I feel has to be asked
12 for the grounding purpose, but at what point do you
13 admit that it's an act of God and there is not a
14 system that could contain it?

15 A. Well, these low houses -- well, you
16 know, could there be a storm that would flood every
17 house in Prestwick? I might argue that too. That
18 would be more unlikely.

19 Q. I have no doubt but what I'm trying to
20 sort of gauge here is we've talked a lot about
21 what's the bare minimum to cause flooding; right?

22 A. Uh-huh.

23 Q. Say "yes" or "no."

24 A. Okay. Yes, we've talked about the bare
25 minimum.

1 Q. And so now my question is, as we move
2 away from the berm topic, what size storm event, is
3 there no -- is it just an act of God?

4 At what point do we say there is no
5 man-made structure that can contain this amount of
6 water, period?

7 A. Okay. Well, that's -- with respect to
8 these two properties, they should not have been
9 built but they were.

10 A storm that puts -- and I don't know
11 the elevation but say a sheet of two feet of water
12 going over 17, if you get something that big, you
13 have to have a berm that could restrain that height
14 of water.

15 Q. So --

16 A. And that would probably be a bigger
17 storm than we've seen in our lifetime, probably.

18 Q. And that gets like -- so, for example,
19 to give context to my question, you talked a lot
20 about I'm not addressing the regs individually.
21 I'm just talking about the properties flooding;
22 correct?

23 A. Uh-huh.

24 Q. You've got to say "yes" or "no."

25 A. Yes.

1 Q. So my question is, at what point is
2 there no system that can manage a storm of that
3 size. So you said two feet of water over 17.

4 That's like an ice glacier melted on
5 top of the state. Is there like a point at which
6 you acknowledge that the County -- that there is no
7 way to create a system that can contain water flow?

8 Like at what point is man going to just
9 have to put up with mother nature?

10 A. Well, that's -- back to my point is
11 that 17 is the final barrier down there and there
12 is so much water that would cover 17, then you
13 could have five times as much rain and it still
14 would not raise it up that much.

15 Q. Okay.

16 A. So that's not quite the right way of
17 putting it. But you're not going to have a rain
18 big enough, I don't think, to get two feet of water
19 constantly flowing over 17.

20 You might have Crystal Lake breaking
21 its dam, breaking through and a surge come through
22 that's higher, then that's a whole different sort
23 of analysis.

24 Q. So your litmus test for a storm system
25 that no amount of drainage planning could withstand

1 is when water is on top of 17?

2 A. Well, that's a way of illustrating a
3 limit as to how high the water can be. I mean
4 because that would mean that it would be slightly
5 higher than whatever that elevation is in the creek
6 right by the Patton property.

7 I mean people in the middle of
8 Prestwick are not getting flooded by an event like
9 that.

10 Q. An event like what?

11 A. Like a foot or two feet of water over
12 17.

13 Q. So what's your gauge for that?

14 A. Well, the elevation -- the way I've
15 looked at the maps looks like you can have water a
16 foot or two over 17 that's not higher than the
17 interior of Prestwick so a lot of development is
18 built so you could have that rain.

19 Q. So as it stands here today -- I feel
20 like I've asked this two or three times.

21 What storm event is there no manmade
22 structure that can withstand it? And you've said
23 two feet on top of 17 but now I feel like you're
24 backtracking off of it.

25 A. I'm just saying that's the biggest

1 event I can imagine would be one that would put two
2 feet of water over 17 and that would kind of limit
3 the height of the water so you could build a berm
4 around whatever needed to be built around that
5 water that was high enough to be two feet over 17
6 and that would not break the berm.

7 Q. Okay.

8 A. But then you've got to get the water
9 flowing from uphill Prestwick out of the Pattons'
10 backyard, so to speak, and that would require
11 pumps, big pumps.

12 Q. So I'm going to ask a fourth time and
13 see if you can answer that.

14 What storm event is so big that no
15 manmade structure can reasonably be expected to
16 account for it?

17 A. Well, I can't imagine one that would be
18 here that would be that way.

19 Q. So you're saying that that's
20 impossible?

21 A. Well, in terms of water that would put
22 that much water over 17, and at the same time you
23 have a pumping station that's hit by lightning and
24 knocked out and then the water is going to flood
25 the Prestwick's house.

1 Q. So your testimony is that there is no
2 such thing as a storm that cannot be accommodated
3 by a structure?

4 A. If you're looking for --

5 Q. I'm asking for a simple, straight
6 answer. What storm size does it take for you to --
7 I don't mind unpacking the whole thing. Give me a
8 second, sir, please.

9 A. Okay.

10 Q. You've already said that you're not
11 paying attention to specific regs and codes.

12 A. Yes.

13 Q. You're just talking about, well, the
14 property is flooding so there must be something
15 wrong. Is that an accurate summary of your
16 testimony so far?

17 A. Well, we know there are things wrong
18 and the property is flooding.

19 Q. Okay.

20 A. Not only because, yes.

21 Q. At what point does that logic cease to
22 apply because the storm is so big?

23 A. And what I'm saying is a combination of
24 things. And it's not just in terms of rainfall is
25 the point that I was making.

1 If you have rainfall and lightning
2 knocks out the pumps and a tornado twists over a
3 big tree in the berm and reaches the berm -- I mean
4 you've got to have a major event to be unable to
5 contain it if the limit on the water height is
6 roughly two feet over 17.

7 MR. BATTLE: Let's keep going.
8 This is Exhibit 9.

9 (DFT. EXH. 9, June 14, 2001 affidavit,
10 was marked for identification.)

11 BY MR. BATTLE:

12 Q. This is recapping all the things that
13 we have already discussed. The dam and the
14 causeway at Pirate Land were causing resistance to
15 water flow in 2001; correct?

16 A. Yes.

17 Q. And that was a substantial part of the
18 prior lawsuit?

19 A. I don't know how substantial but it was
20 part of it, I think.

21 Q. How much responsibility does the
22 rainstorm have for causing the flooding in this
23 situation?

24 A. Well, no rain, no problem.

25 Q. There you go. Is it possible -- never

1 mind. Scratch that.

2 Can you cite any time any storm event
3 that was as large as the 2015 and 2016 flood events
4 where the properties did not flood?

5 A. I can't cite any.

6 Q. Are you saying that's impossible?

7 A. Possible that any storm that was as big
8 as the ones in '15 and '16 did not flood? Is that
9 what you're saying?

10 Q. Yes.

11 A. I don't know.

12 Q. Do you know the rainfall amount for the
13 2015 and 2016 flood events?

14 A. I don't know specific to the Myrtle
15 Beach area. I know that some areas were in the
16 neighborhood of 15 to 16 inches and some areas with
17 perhaps 20 and some with less.

18 Q. All right. Do you have any testimony
19 regarding the FEMA program?

20 A. I haven't dealt with that.

21 Q. That's fine.

22 A. Okay.

23 Q. Do you intend to testify at all about
24 the flood insurance or the buyout for that program?

25 A. I don't -- I have not evaluated those

1 and if I'm asked whether I'm aware that they occur,
2 I know that they occur.

3 Q. That's fine.

4 A. Okay. And with most of these, if
5 Mr. Connell wants me to get into them and I can,
6 he'll be responsible for telling you.

7 Q. Have you ever participated in any
8 development of building codes?

9 A. No, not building codes.

10 Q. Do you have any knowledge about how
11 building regulations are created?

12 A. I've been invited to attend some of
13 these things where you have proposals and
14 committees to evaluate and so forth and comments,
15 but I have not done so.

16 Q. Have you ever had any involvement
17 with -- you answered this earlier. Sorry.

18 This is slightly retreading ground but
19 if, hypothetically speaking, if the Bermuda Gardens
20 application fully complied with all building codes
21 on what grounds do you think Horry County should
22 have denied the building permit?

23 A. Is that building codes or flood control
24 codes and all sorts of codes or just the building
25 of the houses?

1 Q. Let's say Bermuda Gardens is fully
2 compliant with all codes, can you state -- assuming
3 hypothetically all codes, any one you can name, if
4 they are fully compliant with all of them, what
5 grounds did Horry County have to deny their
6 building permits?

7 A. Well, codes are often considered to be
8 a minimum and I can't state to legal issues to
9 denying permits that meet the bare minimum, but
10 maybe if there is something else wrong with it.

11 Q. If other government entities approved
12 the Bermuda Gardens plans such as DHAC or OCRM do
13 you think they are responsible as well for -- let's
14 just take a break.

15 (Pause in the proceedings.)

16 (Mr. Patton joins in the proceedings.)

17 BY MR. BATTLE:

18 Q. All right. We're about right at the
19 bend so I won't be too much longer.

20 If those entities also signed off on
21 the Bermuda Gardens plans and said they were code
22 compliant, do you think that they should also be
23 held responsible for this situation today?

24 A. If indeed they were not code compliant,
25 they should be, but also in consideration that the

1 code is an absolute minimum and so there are often
2 considerations other than the actual code.

3 MR. BATTLE: All right. Moving to
4 Exhibit 10, the stormwater report for Bermuda
5 Cottages.

6 (DFT. EXH. 10, Stormwater report for
7 Bermuda Cottages, dated May 25, 2006, was marked
8 for identification.)

9 BY MR. BATTLE:

10 Q. If you could take a minute to review
11 Exhibit 10, please. I've highlighted the portions
12 that I plan to discuss.

13 A. Okay. I don't think that I've seen it
14 before today. Maybe it was hidden somewhere and I
15 just didn't see it but --

16 Q. You'll have to take that up with
17 Mr. Connell.

18 A. Okay.

19 Q. This the 2006 stormwater report with
20 Bermuda Gardens. Portions of it are missing. It's
21 quite lengthy. I thought I'd just add the parts
22 that I wanted to ask about so I'll add now that
23 this is not a complete copy of it.

24 A. Okay.

25 Q. And you just said you have not looked

1 at this at all?

2 A. I don't remember seeing it before
3 today. So I have not studied the different
4 sections of it and the assumptions that go into it
5 and that sort of thing.

6 Q. Okay. What year event are they
7 planning for?

8 A. They are planning for a 25-year event.

9 Q. Are they making the canal deeper and
10 wider?

11 A. Yes. Well, they are -- well, I don't
12 see that right off but they have changed it and it
13 is wider where it goes into an almost right-angle
14 curve than it had been at some time in the past.

15 Q. And that's what you were talking about
16 earlier, ways to accommodate the right-angle curve.
17 Is that one of the ways to accommodate it?

18 A. Yes. They deepen the right angle and
19 there is less resistance than if it's shallow and
20 narrow.

21 Q. And is this stormwater report claiming
22 that they are actually going to reduce the amount
23 of water going into the drain system?

24 A. I see they are claiming they reduced
25 the peak. I haven't -- let's see. Are they saying

1 they reduced total water or just the peak, I think.

2 Q. It should be on the -- toward the end
3 on the third page. I'll flash it to you. That's
4 what I'm looking for.

5 A. Okay.

6 Q. There you go.

7 A. Okay.

8 Q. And is the method they are doing that
9 by installing retention ponds and dry retention
10 systems?

11 A. I see they are doing six retention
12 ponds and one dry system.

13 Q. Is that going to be sufficient to
14 offset any issues created by the bend in the canal
15 for a 25-year event?

16 A. Okay. They have not addressed any
17 changes in the canal. They have not addressed
18 whether it would do the same thing, whether the --
19 I am not saying the improvements, but the retention
20 ponds would do the same thing if the additional
21 lots were not included in the development, the
22 initial lots that were created by the change of the
23 canal.

24 Q. So you're saying that they are failing
25 to take into account the additional housing?

1 A. If they had the same, let's call it
2 positive things that they did with fewer houses and
3 less fill, I don't see that they addressed it that
4 way.

5 And their assumption is that they would
6 put all these extra houses out there and try to
7 improve it with these extra houses.

8 And I'm not sure, I don't see how they
9 have included the adverse effect of taking out that
10 amount of let's call it wetlands and lowlands.

11 Q. So basically by raising the property up
12 with fill and turning -- paving it over with
13 housing, this creates retention impact that they
14 are not addressing?

15 A. Well, I see they are addressing it
16 supposedly for a unit as a whole, but if they had
17 eliminated those houses that were built on the
18 extra space and still had the same retention
19 treatments and so forth and left as acres where
20 these extra houses went in a natural state or maybe
21 improved in some way like debris and so forth and
22 there is no comparison with that.

23 And I think that could well have been
24 better than what's here now. So rather than having
25 an improvement which they say will be a slight

1 degradation.

2 Q. When you say extra houses, what does
3 that mean? Are you talking about like all of the
4 houses?

5 A. The houses that went in this area that
6 they created by changing the channel.

7 Q. Okay. So I mean you're not talking
8 about they went outside the scope of their permit.
9 You're saying the houses alongside the channel.

10 A. Yes, these in this corner here
11 (indicating). The existing channel was like this
12 (indicating) and I think the new channel goes like
13 that (indicating).

14 Q. Okay.

15 A. And that's my understanding of it. So
16 this was more of a natural flow area. It was -- I
17 don't know for sure but you'll have to ask somebody
18 else but I think it was a good bit over than what
19 they filled these up to be (indicating). So as
20 water overflowed, this would be an area to fill in.

21 Q. Mr. Taylor, the Bermuda housing is here
22 (indicating). This is still -- I'm pretty sure
23 that's undeveloped.

24 A. See, the new channel comes down like
25 this.

1 Q. Right.

2 MR. CONNELL: Look at the difference.

3 BY MR. BATTLE:

4 Q. You're describing -- hold still.

5 You're talking about the housing --

6 A. Yes.

7 Q. Okay. I see now. Thank you. I
8 understand.

9 A. Okay.

10 Q. So when they assert that the
11 development will actually reduce the amount of
12 water they put into the canal by 27 percent, you're
13 saying that doesn't really matter.

14 A. I'm saying I don't see that they have
15 included the effects from reducing that as kind of
16 a lowlands flood area.

17 Q. And of those -- the two diagrams you're
18 referring to it's basically a before and after;
19 correct?

20 A. Yes. That's a good way of putting it,
21 yes.

22 Q. And is the before diagram an accurate
23 drawing of the area, the predevelopment diagram; is
24 that accurate?

25 A. I have to assume so.

1 Q. And so to me one of the big questions
2 is, doesn't the predevelopment diagram depict a
3 90-degree turn in the canal?

4 A. It deviates more than 90 degrees than
5 post does. In other words, this angle is not as
6 great as that angle.

7 Q. What's the angle in the predevelopment?

8 A. I don't have anything to measure it.

9 Q. Do you have any basis for that
10 statement other than just looking at the two
11 diagrams?

12 A. Just looking at the diagrams.

13 Q. Okay.

14 A. Having seen it before and having seen
15 it now but I didn't get an overhead view of it
16 before.

17 Q. So there was a turn in the canal before
18 2006; correct?

19 A. There was a turn, yes.

20 Q. But your testimony is that you don't
21 think it was as sharp?

22 A. It's not as sharp.

23 Q. And your basis for that is just
24 eyeballing a hand-drawn diagram?

25 A. And eyeballing it before. If I had a

101
1 good drone before and after to take pictures of it,
2 I would have done that, but I don't do that.

3 Q. So you don't have any maps or drawings
4 to indicate the condition of the canal before and
5 after the development?

6 A. I think in my photographs before, I
7 have something which shows that before the
8 development, my photographs from '99 or '03 or
9 whenever it was.

10 MR. BATTLE: Okay. I'm going to hand
11 you Exhibits 11, 12 and 13.

12 (DFT. EXH. 11, Google maps, was marked
13 for identification.)

14 (DFT. EXH. 12, Google maps, was marked
15 for identification.)

16 (DFT. EXHS. 13, Google maps, were
17 marked for identification.)

18 MR. CONNELL: What's the question?

19 BY MR. BATTLE:

20 Q. So can you make out the canal in the
21 2003 satellite image? 11, 12 and 13 are satellite
22 pictures taken from Google Earth.

23 A. Okay.

24 Q. Can you make out where the canal is in
25 the 2003 images?

1 A. Those are 11 and 12?

2 Q. Yes, sir.

3 A. Well, I see what looks like it. I
4 don't know what this is. I guess it's some kind of
5 a road going across the property there, but I did
6 not travel in that area.

7 Q. And the way I usually orient myself is
8 I find the culvert on 17 and then follow it up.
9 That might help you.

10 But essentially speaking, can you see
11 where there is already a significant turn in the
12 canal before development?

13 A. Yes, I see this turn right up here
14 (indicating).

15 Q. Okay.

16 A. And it comes down to go across 17 and
17 into this waterway here (indicating) into Pirate
18 Land.

19 Q. And so my point is, there was already a
20 bend in the canal before any development occurred;
21 correct?

22 A. Correct, yes.

23 Q. And if that is already the case, then
24 the County did not approve any kind of significant
25 alteration in the flow dynamics, did they?

1 A. Well, the bend is much closer to a
2 right angle now.

3 Q. And how do you know that it changed
4 significantly?

5 A. Looking at the various diagrams and
6 pictures. Again, I did not fly over it to take a
7 look at it.

8 Q. Okay. Would that create issues with
9 the affidavit you filed with this lawsuit if in
10 fact the County did not approve any significant
11 flow changes?

12 A. Well, if they didn't approve it, then
13 they didn't approve it and that would be my
14 opinion.

15 Q. I understand. But I don't mind
16 explaining the context of this.

17 If the canal already turns sharply, how
18 does the County approving the Bermuda Gardens plans
19 make anything worse?

20 A. Well, if -- and I don't think it's
21 correct that if the angle was the same then the
22 existence of that angle does not change things.

23 The fact is that instead of taking a
24 diagonal -- if it was more of an around the
25 perimeter sort of approach, lengthens it a little

1 bit which increases the resistance a little bit.

2 But you've got this lowlands area here
3 (indicating) which is -- in addition to this other
4 major area is changing from a lowlands into housing
5 with a lot of fill.

6 And I don't know how much fill it is,
7 but if it was the same like before, like the
8 Pattons' property, there is six feet of fill so it
9 might not have been the same height before but if
10 it was, it would be about six feet of fill.

11 Q. And so now the issue is, it's not so
12 much the canal turn as it is that the area got
13 filled in and the water can't go through anymore.

14 A. It can't receive and accumulate water,
15 but we're not dropping the right angle turn. The
16 closer the right-angle turn, making the turn
17 steeper, does affect the water flow and adds an
18 extra resistance to it.

19 Q. Is there any element in the Thomas and
20 Hudson study or the Bermuda Gardens water report
21 that appears to be an over act by the defendant,
22 Horry County, that they are intentionally dumping
23 water on someone's property?

24 A. Is there anything in the report that
25 says it's an intentional act by anyone to dump

1 water on somebody else's property?

2 Q. Yes.

3 A. I don't see anything that says we want
4 to get Mr. Patton and make his property flood. I
5 see things that there is not as much concern for
6 that as there are other people's own financial
7 interests.

8 Q. Winding down now, Mr. Taylor, can you
9 give me a nice, neat list of the negligent acts of
10 Horry County in this matter?

11 A. Well, I don't think I can give you a
12 nice, neat list. Various things get brought up.

13 I basically think it started with the
14 approval, however it happened with Prestwick, to
15 make the properties in question built -- to declare
16 that they were never flooded and buildable. I
17 think looking at the elevation, that would tell you
18 that that's a problem.

19 Now maybe Horry County could require
20 houses on stilts or elevated houses for that area
21 or require fill or whatever but I think that's
22 where it started.

23 And then the fact that Prestwick did
24 not follow the plans that supposedly were approved,
25 that either got by Horry County with a wink and a

1 nod or whatever, I don't how that happened.

2 And then future development --

3 Q. To stop you right there. Do you have
4 any foundation at all for asserting bribery or
5 anything like that occurred?

6 A. I wasn't saying bribery, no.

7 Q. I heard a wink and a nod. What does
8 that mean to you?

9 A. Well, what that means to me, yeah,
10 that's just as good. Go ahead and do it that this
11 way or, yes, I think they did it the way they said
12 they built it. We are not going to inspect it
13 again, that sort of thing.

14 Now, did somebody go out and take the
15 plans and look at that drainage plan and say, yes,
16 this is built the way it was supposed to be and
17 approved? I don't know.

18 Q. Do you have anything else?

19 A. Okay. Considering that there has been
20 the flooding issue, I don't see the extra scrutiny
21 of, you know, we've got to really improve this
22 situation and make it right.

23 They are saying, oh, this will be
24 inconvenient to fix it this way and it would be
25 inconvenient to fix it this way, we'll just let

1 Mr. Patton take care of his problems.

2 Q. And when you say inconvenient, we're
3 talking about multimillion dollar solutions;
4 correct?

5 A. I thought the conduit was supposed to
6 be 800,000. Is that not correct?

7 Q. Do you think that's a reasonable figure
8 for the County to expend for two houses in an HOA?

9 A. I don't know what the houses are worth.
10 I haven't looked into that.

11 Q. Do you have any other issues?

12 A. Anything else I mentioned before. I
13 can't think of any others that haven't already been
14 discussed.

15 Q. Is the water permanently located on the
16 Webb and Pattons' property?

17 A. There is not permanent flooding on the
18 property so there is no permanent flooding on the
19 property.

20 Q. Is the property going to flood for
21 every 25-year storm event?

22 A. I can't predict those sorts of things.

23 Q. A 50-year storm event? Will it flood
24 for that?

25 A. I can't predict that.

1 Q. Is the property only going to flood in
2 a 100-year storm event or larger?

3 A. I would think it would flood with
4 something small than that. How much smaller, I
5 don't know.

6 MR. BATTLE: No further questions.
7 Any attorneys want to take this seat?

8 THE WITNESS: It's about lunchtime.

9 MR. BATTLE: Do you folks want to go
10 off the record?

11 (A recess transpired.)

12 EXAMINATION

13 BY MR. BAXTER:

14 Q. Mr. Taylor, I'm Doug Baxter. I'm here
15 on behalf of Prestwick Land Limited Partners and
16 Campground, Inc., and basically these are the
17 original developers at Prestwick.

18 A. Okay.

19 Q. Now, you have -- let's back up.

20 Did you review the original plans, the
21 site work plans?

22 A. I believe so. That was in the past but
23 I don't think so recently.

24 Q. And did you review a single set of
25 plans, multiple set of plans or do you recall?

1 A. I don't recall.

2 Q. Did you review the plans of which were
3 submitted prior to construction?

4 A. I don't remember the dates on the
5 plans. At the time I thought they were the
6 appropriate plans, but I can't remember the
7 specific information on the information box that
8 would tell me now which they were.

9 Q. Do you know if they were the as-built
10 plans?

11 A. Again, my understanding was that they
12 were the appropriate plans and I don't remember
13 from that 15 or so years -- 18 years, whatever
14 years ago.

15 Q. Now, back in the late '90s when this
16 was built, what rules, regulations, statutes,
17 ordinances governed the construction of a
18 stormwater management system for a development such
19 as Prestwick?

20 A. I don't know right now what it was. I
21 looked through the information that was available
22 and worked with it.

23 And I don't know if we had that
24 discussion before about the -- you know, after
25 about 12 or 15 years, I purged my files so I don't

1 have it.

2 Q. Well, you have given opinions
3 concerning the plans; correct?

4 A. That's correct.

5 Q. And what's that opinion as to just the
6 plans? Are they sufficient?

7 A. Well, I remember looking at the
8 difference between what I saw on the ground and
9 what the plans said.

10 I don't remember now whether I did
11 enough to say these were wonderful plans or not.
12 My conclusion was that even looking at the plans,
13 those two or three lots were potentially
14 problematic and that there were some features that
15 we were trying to deal with that.

16 Q. Well, do you believe that they were
17 deficient?

18 A. The plans?

19 Q. Yes. The design, the plans, whatever.
20 Were they deficient?

21 A. Looking at it from what I looked at 18
22 years ago or whatever it was, I remember that I
23 thought that they did not do the job, whether they
24 were deficient with respect to some standards or
25 not.

1 Q. Well, that's my next question. You
2 don't remember what standards there were for a
3 stormwater management system such as was at
4 Prestwick in the late '90s?

5 A. I don't remember now and, of course, as
6 I said, I dealt with that 15 or 18 years ago.

7 Q. And I want to differentiate between
8 your opinion as to, I looked at this and I thought
9 there might be some problems with those lots versus
10 the design did not comply with the minimum
11 standards as promulgated by the state or local
12 government?

13 A. I don't specifically remember saying
14 they did not meet the standards, but I do remember
15 the issue of what I saw being built was not as
16 good, so to speak, if you use the word good as what
17 was in the drawings.

18 That's not to say that I concluded that
19 the drawings were totally adequate. It's just what
20 was built was not as good.

21 Q. Well, the -- and I'm just -- I want to
22 make sure we differentiate between the two.

23 You understand the standards as
24 established by whatever governmental entity set the
25 minimum requirements for the stormwater's

1 management design; correct?

2 A. They set minimum requirements, yes.

3 Q. You can always do more and better than
4 that; correct?

5 A. And minimum requirements may be
6 inadequate in some situations.

7 Q. All right. But in this case, you do
8 not have any opinion as to whether the plans and
9 design did not meet the minimum requirements of
10 whatever standard regulation, law, ordinance was in
11 effect in 1999?

12 A. Let me answer that in terms of I did
13 not -- I don't remember having gone step by step
14 with every feature of the plans and comparing it
15 with a standard.

16 Q. So your answer is, no, you do not have
17 an opinion that it deviates or does not meet the
18 minimum requirements for any governmental law,
19 ordinance, regulation, whatever?

20 A. It's not quite like that. I don't have
21 any opinion as to a specific item which I compared
22 side by side, minimum standard.

23 And, of course, it seems to have been
24 built differently than the standards -- I mean than
25 the design.

1 Is that difference the critical element
2 of flooding or is that difference minimal?

3 Q. Well, again, are you saying and if you
4 are, I just need to know, if you're saying it does
5 not?

6 Are you familiar with the Stormwater
7 Management and Sediment Reduction Act?

8 A. In the past, I have dealt with it.

9 Q. Does the design, the plans, did they
10 meet the minimum requirements of the Stormwater
11 Management and Sediment Reduction Act?

12 A. And I vaguely recall that my opinion at
13 the time was, no, they didn't, but I don't remember
14 the specific things so I would have to go back over
15 and compare the two.

16 Q. Okay. Well, that's very important. I
17 need to know what and how they did not meet the
18 minimum requirements and you are unable to do that?

19 A. I can't do that now as a part of this
20 because that was going on a long time ago and now
21 things have happened.

22 Q. Are you familiar with the -- I mean we
23 talked about the 25-year storm event. And is that
24 kind of the general rule for the minimum for the
25 Stormwater Management System?

1 A. My understanding is that it has been
2 broadly used as a general rule. I have some
3 problems with that as I'm sure other people do too,
4 but I understand that it's commonly used.

5 Q. I mean it's actually referenced in
6 either of these statutes or the accompanying
7 regulations. Were you aware of that?

8 A. I know there has been reference to
9 that, yes.

10 Q. Does the -- did the plan designs that
11 you saw -- and I understand you disagree with the
12 25-year being the minimum, they should be designed
13 for something better than that -- but did the plans
14 meet the 25-year storm requirement?

15 A. That was part of what I was answering
16 before is that a lot of that when I was dealing
17 with the plans and the drawings and so forth was
18 17 or so years ago and I have not gotten back into
19 that at this stage.

20 And certainly from a performance point
21 of view, the problems with just seeing the overall
22 system and how it operates so --

23 Q. Let me stop you there. Do you have the
24 expertise to give that opinion that something does
25 or doesn't meet the 25-year storm requirement?

1 A. I have the expertise to do that if I
2 can go back and go into the details of the
3 drawings.

4 That was something that I did some
5 18 years ago and that's what I -- I don't remember
6 exactly what I said about it at that time.

7 Q. Did you read over your deposition?

8 A. A good bit of it, yes.

9 Q. In your deposition, did you say under
10 oath that it does not comply with the requirements
11 of the Stormwater Management and Sediment Reduction
12 Act?

13 A. I don't remember that and whether that
14 was being referred to specific plans or the plans
15 as represented by what was built and indeed what
16 was built --

17 Q. Okay.

18 A. -- represented the plans.

19 Q. Okay. So are you going to do something
20 between now and trial or you're not planning on
21 doing that?

22 A. I think a lot is coming up here in the
23 deposition that when I talk about it with
24 Mr. Connell we may decide to do some other things
25 and if we do, I'm sure he'll let everybody know.

1 Q. Okay. I'm going to ask you the same
2 questions. As-built, and I understand you're
3 saying that the -- from what you observed the
4 as-built was different than the plans; correct?

5 A. That's correct, yes.

6 Q. And specifically you talked about the
7 swales?

8 A. Yes.

9 Q. Were there other things?

10 A. There was a catch basin problem too, I
11 believe.

12 Q. And where was that located?

13 A. That was -- I think there was one right
14 in front of Mr. Pattons' house, but there are other
15 catch basins in that area, but I think that that
16 was the one.

17 Q. Now, would going in and putting in the
18 swales and addressing the catch basin, would that
19 fix the flooding?

20 A. It depends on what else is done. We
21 have got the problem of the water in the creek. If
22 you don't have a berm it's going to come up and
23 onto the Pattons' property.

24 If you do have a berm, then you have a
25 problem dumping the water from the Patton property

1 into the creek. And when I say creek, it's the
2 creek or the ditch or whatever you want to call it.

3 And as I say, there was some mention, I
4 think, that one of Pattons' neighbors referred to a
5 pumping station and whether he meant at the time it
6 was under consideration or not, I don't know.

7 But if the water in the creek is over
8 the Patton property level, then there is no way to
9 deal with it --

10 Q. Now the --

11 A. -- without a pumping station.

12 Q. The items you identified as being
13 different from the plans, you're not sure if those
14 were the original plans or those were the as-built
15 plans; correct?

16 A. That's correct. My impression is they
17 were appropriate -- the appropriate plans at the
18 time but how they were labeled, I don't remember.

19 Q. And with a project it is -- there are
20 circumstances under which you can change the plans
21 or you can change what you're building or you can
22 deviate from the plans so long as it's appropriate
23 and approved, et cetera?

24 A. Properly approved and all that, yes.

25 Q. Do you know if that was done in this

1 case?

2 A. I don't recall if that was done in this
3 case.

4 Q. Were you aware that the DEHAC -- let me
5 ask you this. Who was in charge of approving the
6 stormwater management system back in the late '90s?

7 A. You know, I don't remember specifically
8 from the things I've looked at back, you know, 18
9 years ago.

10 Q. Would you -- if I were to tell that it
11 was DEHAC, The Office of Ocean and Coastal Resource
12 Management, would you disagree with that?

13 A. I wouldn't disagree with that. I
14 wouldn't absolutely confirm it though.

15 Q. Were you -- did you review any of the
16 paperwork by which DEHAC approved both the plans
17 and the system as-builts? Were you aware of that?

18 A. You mean back in the late '90s?

19 Q. Yes, sir.

20 A. I don't remember from being involved
21 with it 15 to 18 years ago, and I don't -- if I
22 have that information now, I don't remember it as
23 part of what I reviewed recently.

24 Q. And the swales, having -- in order to
25 comply with the minimum standards, were the swales

1 necessary?

2 A. I don't remember that specifically but
3 I know that they would be helpful. Especially if
4 you have catch basins without a whole lot of slope
5 going into them, you want the water to be directed
6 to them, if the catch basins can take water away,
7 but if they can't, then the whole thing becomes
8 problematic again.

9 Q. But let me ask this. As built, did it
10 comply with the minimum requirements under the
11 South Carolina Stormwater Management Act?

12 A. That I don't remember from back in that
13 time.

14 Q. And you mentioned a pump station. Is
15 that something that is required under any
16 governmental statute, law or regulation standard?

17 A. Well, without knowing specifically, I
18 would say that there are situations where pump
19 stations are required.

20 Q. Okay.

21 A. Now, whether one -- whether they have
22 entered into a dialogue in the Myrtle Beach area, I
23 don't know.

24 Q. Well -- and, again, I'm trying to
25 differentiate between what was required by law

1 versus what would have been a good idea to do.

2 A. Okay.

3 Q. And can you tell me that the pumping
4 station was required by law to meet the various
5 standards, regulations?

6 A. If I reviewed that back then, 18 years
7 ago, I don't remember now.

8 Q. And you reviewed the -- I think you
9 testified earlier that you think maybe the lots
10 shouldn't have been developed because of the
11 location where they were, et cetera, et cetera.

12 A. Their elevation and so forth and all
13 those factors.

14 Q. Was there any law that prohibited
15 developing it?

16 A. There probably was -- I'd probably have
17 to say that there certainly was, probably with
18 respect to disclosure.

19 If there is nothing else, there may be
20 some other things too but --

21 Q. But as far as the developer, you're
22 saying that as long as it was disclosed that it was
23 flood prone or a cause of the elevation?

24 A. No. I'm saying that's one thing.
25 There may be some others too.

1 Q. Is, in fact, at the time, were the
2 lots, were they located in a flood zone?

3 A. I remember looking at the map and I
4 don't remember what it said in terms of the
5 boundaries with respect to the different level
6 flood zones.

7 Q. Now, the berm that was built, does that
8 help with water that's flowing out of the Prestwick
9 subdivision or development or is that just to keep
10 water from off the property coming on to the Patton
11 and Eaves properties?

12 A. Well, it's almost entirely the latter.
13 I mean there are the check valves which allows
14 water to go off and so it's primarily to keep it
15 in.

16 I mean to keep it in the creek, not
17 keeping it in the yard.

18 Q. And when you're building a berm such as
19 that should that be designed by an engineer?

20 A. I don't know whether that's a should or
21 not. There are a lot of people who know a lot
22 about it who are not engineers and so that's
23 typically the sort of thing that one would see an
24 engineer being involved in.

25 Q. Do you know if that was done in this

1 case?

2 A. I don't know.

3 Q. Let me ask you, if you just go and pile
4 dirt as a berm or dam, you can actually make the
5 problem worse, you can restrict the drainage off of
6 the property by trying to keep water from coming on
7 to the property?

8 A. Yes. There is no other way of water
9 getting off except going off the edge into the
10 creek, then if you stop that, you've stopped it.

11 Q. And have you studied or examined those
12 berms to determine whether they in any way restrict
13 water leaving their lots?

14 A. Well, they have good size, maybe close
15 to one foot, maybe ten inches or so, multiple pipes
16 going out with ground shapes like a small swale to
17 lead the way, with a check valve.

18 And there are grates with piping
19 underneath so they would restrict an extremely
20 heavy flow. It would overwhelm the drains.

21 But I don't think they would prevent
22 flow otherwise. And if rain was heavy enough to
23 overwhelm those, they would overwhelm the creek too
24 most likely.

25 Q. Now, your deposition was taken twice in

1 the previous case; correct?

2 A. Yes. Was it something like 2001 and
3 2003 or --

4 Q. The last deposition, I believe, was
5 taken in 2003.

6 A. Okay.

7 Q. After your deposition in 2003 and -- or
8 between 2003 when your deposition was taken and
9 most recently when you went back out there, did you
10 visit that property?

11 A. I certainly visited on 17, just out of
12 curiosity as I was on the beach. I did not go into
13 Prestwick that I recall until very recently.

14 Q. Well, here's my question. Between 2003
15 and, say, 2017, 2016, do you have any information
16 as to any work done by Prestwick Limited Land
17 Partnership with regards to the drain system in the
18 Prestwick development?

19 A. At that time, I don't think I was aware
20 of anything. I mean it was pretty much off the
21 radar.

22 Q. So any opinions you have about the work
23 that Prestwick Limited Land Partnership did, that
24 would have been work they did before 2003?

25 A. And anything that I may have learned

1 about it in the past few days or weeks.

2 Q. Let me ask you, have you learned
3 anything about Prestwick Land Limited Partnership,
4 any work that they would have done after, say,
5 2003, 2004?

6 A. I don't think I've picked up on who had
7 it done, but certainly some work has been done in
8 the area with respect to drainage.

9 And so what Prestwick specifically has
10 done as compared to the Pattons and the others to
11 help their own situation, I'm not aware of what
12 specifically Prestwick has done. I'm allowing that
13 some things that were done may have been done by
14 Prestwick.

15 Q. What were those things?

16 A. Well, whatever they were. I'm not
17 saying that I have confidence that Prestwick has
18 done absolutely nothing.

19 Q. But you don't have any information that
20 they have done anything since 2003?

21 A. Well, I have information that things
22 were done and whether Prestwick did them or
23 somebody else, I don't know.

24 Q. What were the things that were done?

25 A. That's some things with respect to the

1 golf course drainage and some photographs that were
2 shown to me earlier. I think those were done in a
3 meeting.

4 And whether Prestwick participated in
5 some berm improvement or if it was left all to the
6 Pattons, et cetera, I don't know.

7 And they could have changed some
8 drainage pipe in the golf course and I don't know
9 about that.

10 Q. Let me ask you this. Do you know
11 whether Prestwick Land Limited Partnership owned
12 the golf course?

13 A. Okay. There are kind of multiple
14 Prestwicks and organizations and I haven't purely
15 differentiated that.

16 Q. Okay.

17 A. So I can refer to the golf course
18 drainage without knowing exactly who did it.

19 Q. So you don't know -- you're just using
20 Prestwick generically?

21 A. Yes. And, unfortunately, I haven't
22 been on top of it like you guys have probably been
23 where you know everything about everybody.

24 But I'm using Prestwick generically
25 most of the time but now that you reminded me, I do

1 remember that that golf course is probably part of
2 one of the homeowners' sort of -- or some other
3 organization.

4 Q. Did any of the -- what information were
5 you given with regards to why we're in this
6 lawsuit? Why are the plaintiffs suing the
7 defendants?

8 A. My take on it has been two more
9 flooding events and multiple things have been done
10 in the meanwhile that have contributed in some way
11 to those flooding events.

12 And so the desire is to get this thing
13 fixed once and for all and nobody -- not nobody but
14 there doesn't seem to be that cooperation in
15 getting it fixed or taken care of or resolved.

16 Q. And the flood events were 2015 and
17 2016?

18 A. And there may have been some others too
19 and there are different kinds of flood events. One
20 is where you have water backing up in the yard and
21 another one where you have water in the house or
22 floor level or above or whatever.

23 I think there were two that were
24 definitely in the structure from my understanding.
25 Whether there were others that were minor, I don't

1 remember the specifics.

2 Q. Okay.

3 A. I don't have a timeline. That would be
4 the part of it. If I really got into it, I would
5 have a timeline with each event and how much rain
6 they had and what work was done.

7 Q. And I understand from your previous
8 testimony that you don't know or you're not in a
9 position to testify as to -- and I'm talking
10 specifically as to the Prestwick development.

11 A. The corporation that developed it.
12 Okay.

13 Q. No. I'm just taking about the
14 Prestwick development.

15 A. Okay.

16 Q. You cannot sit here and tell me what
17 constitutes a 25-year storm; is that correct?

18 A. That's just something I haven't
19 committed to memory as to how much rain, over what
20 periods of time and so forth.

21 I know the information is out there. I
22 just don't have it on the top of my head.

23 Q. And do you know how many 25-year storms
24 there have been since 2003?

25 A. 25 to 25-plus? No, no, I don't.

1 Q. No. I'm talking just specifically, 25
2 years?

3 A. Well, really it wouldn't be exactly
4 25 years, but meaning the 25-year old threshold
5 without meeting say the 100-year threshold.

6 Q. Are you aware that there have been
7 events, rain events which have met the 100-year
8 standard?

9 A. That's my understanding that there have
10 been, yes.

11 Q. And my question is, assuming that the
12 minimum requirements are that you design a
13 stormwater drainage system such that it meets a
14 25-year storm event, my question is, have the
15 plaintiffs had any damage or flooding with just a
16 25-year storm event?

17 A. And I haven't put that standard of how
18 many inches and how many hours and days and so
19 forth meets which one of the flooding events.

20 Part of it is that these lots are
21 definitely low and definitely flood prone. If
22 there have been some methods to try to deal with
23 it, those efforts have been unsuccessful so far.

24 And if indeed we've had half a dozen
25 100-year storms in the past 20 years, then somebody

1 is not probably looking at the definition of what
2 is a 25-year storm, so they are hanging their hat
3 on something that's not a good milestone.

4 Q. But that's up to some regulator or
5 governmental entity to make that determination or
6 an engineer to make that determination what --
7 strike that. I withdraw that question.

8 A. Okay.

9 Q. But sitting here today, you cannot say
10 that the -- that there have been any 25²-year or
11 less storm events during which the plaintiffs
12 experienced flooding, can you?

13 A. Okay. I can't say definitively what
14 year ratings each of the events was where they had
15 some flooding.

16 And as I say, it's something that I
17 could do is make sure I have a timeline with
18 everything laid out when changes occurred and when
19 such rains occurred and how high the water got and
20 so forth, but I haven't done that.

21 Q. Well, ever. Have they ever experienced
22 flooding from a 25-year or less storm event?

23 A. And I don't have that information
24 either way, so I can't say right now that they have
25 or have not.

1 Q. So it's possible and you have no
2 opinion or you are unable to say one way or the
3 other whether the stormwater management system,
4 they have experienced flooding, as a result of it
5 not meeting the minimum standard of the 25-year
6 storm event?

7 A. I don't know if I agree with that.
8 There is something in that that I'm missing and
9 then what I'd have to do to answer that because I
10 can't answer that without going back and looking at
11 each storm and the definition of a 25-year storm
12 and trying to compare with each one.

13 I was looking at it much more to the
14 point of was the plan adequate for the storms that
15 occurred in this area rather than a specific
16 artificial designated amount.

17 Q. But, again, I'm differentiating between
18 what you think should be done versus what the
19 minimum requirements are.

20 You have no opinion or you cannot give
21 any testimony that the stormwater management system
22 has not met the minimum requirements?

23 A. I'm not able to say that right now. I
24 haven't looked at it from the point of view of
25 trying to establish the details of each rain event

1 and compare it with the 25 year, so if I can do
2 that, then I will have an opinion on that.

3 Q. Now, have you -- you've talked about
4 that there may have been stuff done, there may have
5 been some additions or changes or alterations.

6 Other than that, since you have been
7 looking at this, you have not discovered any
8 problems or any deficiencies that you missed during
9 the previous litigation?

10 A. There are some changes in the system
11 phase that are different now. I think the 17 is a
12 bit more clear contributor to this.

13 And I think it's even more clear now
14 how much the rising of the creek interferes with
15 getting rid of the water that comes through
16 Prestwick. Those two things.

17 Q. Are you aware of any additional work,
18 alterations done by Prestwick Land Limited
19 Partnership between, say, 2003 when you were giving
20 your deposition and 2007?

21 A. There is something that rings a bell
22 about something happening in 2006, but I can't
23 remember what it was.

24 Q. Okay.

25 A. And that may well be a document that I

1 haven't seen.

2 Q. As far as -- and I'm going to give you
3 another date -- September 2nd of 2005.

4 Have you identified any deficiencies or
5 problems that would have been in existence as of
6 this date, that date, that you didn't find in the
7 first go-around?

8 A. I don't remember from just looking at
9 those dates and what happened.

10 Q. Assuming that this case, the previous
11 case ended in September of 2005, are you aware of
12 or can you give any testimony that there were
13 problems that existed before that date that weren't
14 identified before that date?

15 A. I can't remember everything to be
16 specifically aware of, but I can allow that that
17 could have well have happened.

18 Q. But you can't sit here and say that
19 there were some problems that we were unaware of or
20 we couldn't have known about or they were hidden or
21 anything like that; correct?

22 A. I don't remember anything specifically.
23 But, again, I would allow that it's very possible
24 that that was the case.

25 Q. And specifically with regards to

1 Prestwick Limited Land Partnership, is there
2 anything that you have determined or learned that
3 they did or that their work was deficient that you
4 didn't know about in the previous litigation?

5 A. Anything that I'm aware of as of the
6 September of '06 that I was not aware of?

7 Q. No. As of 2003 when you gave your
8 deposition.

9 A. Okay. But anything I'm aware of now
10 that I was not aware of in --

11 Q. Right. You're looking back and saying,
12 oh, we missed this or I should have discovered this
13 or this was somehow latent and I was unaware of
14 this until now. Is there anything --

15 A. Well, of course there are some details
16 I was aware of then that I've forgotten about and I
17 can't remember now --

18 Q. Right.

19 A. -- for example, the routing of some of
20 the conduits from the catch basin that I've
21 understood recently that are not routed the way
22 they were supposed to be that I fully understand
23 that, understand whether the same thing affected it
24 in '03 or not.

25 And so this is something that has come

1 up but I don't know if it's as a reminder and I was
2 aware of it back then or not.

3 Q. Let me ask you, was there anything that
4 was latent or hidden or you could not have
5 discovered back in 2003 that was in existence in
6 2003 that now you look back and say, oh, well,
7 this -- since all this happened, I found this or
8 this is something new that I could not have
9 discovered back in 2003?

10 A. Well, there may be some things that I
11 could have but not practical like sending one of
12 these little robot things down through the conduits
13 to see if the underground piping, to see if there
14 is something there. That could be done but I
15 didn't do it.

16 Q. But sitting here, you can't identify
17 anything --

18 A. No --

19 Q. I want to know is there something that
20 you found that would have been in existence in 2003
21 that you were unaware of in 2003, not what you
22 could or you might but sitting here today that you
23 can say, here's a problem that I failed to identify
24 or I was unaware of back in 2003?

25 A. Okay. I think I mentioned these

1 before. One is that I don't think in 2003 I
2 appreciated the significance of the limitations of
3 the conduit of 17, under 17.

4 And also I didn't -- I don't remember
5 as fully appreciating the role of the rising creek
6 and how that would just totally limit the drainage
7 from the Patton property.

8 I may have. I just don't remember if I
9 appreciated it quite as full as I do now.

10 Q. And so let me narrow it down. With
11 regards to the -- and I want to just ask you about
12 the drainage system within Prestwick.

13 A. Within Prestwick?

14 Q. Yes, sir.

15 A. Okay. Well then, the extent that you
16 don't have swales guiding the water to catch
17 basins.

18 Q. Okay. You were fully aware of that;
19 correct?

20 A. I was aware of that before but I was
21 not quite as aware of the significance of that with
22 respect to getting water out into the creek.

23 Q. But you were aware that the swales were
24 not present?

25 A. Yes.

1 Q. I'm talking about something -- is there
2 something new you were unaware of --

3 A. You're talking about --

4 Q. You identified the swales as a problem
5 and it could contribute to the flooding.

6 A. And I've identified a little more about
7 the process of how it does. Okay. So you're not
8 asking that.

9 Q. No, I'm talking about, is there
10 something new that you have found that you were
11 unaware of back in 2003 --

12 A. In terms of --

13 Q. -- in Prestwick, the drainage system?

14 A. Okay. Within -- well, we'll call it
15 hardware. The fact that -- and I don't know the
16 different dates of how the berm was put up in
17 there.

18 But evidently some places of berm were
19 low and were filled in, but I mean I would have
20 been fully aware that those were low back in '03.

21 Q. And do you know who put in the berm?

22 A. Oh, I was told but I forgot whether it
23 was -- I think it was Patton and his neighbor.

24 Q. Let me narrow it down even more. With
25 regards to the drainage system as designed and

1 built by Prestwick Limited Land Partnership, are
2 you aware of any problems today that you were
3 unaware of back in 2003?

4 A. You mean problems with hardware?

5 Q. Yes, sir.

6 A. So hardware, so to speak, if we can use
7 that term?

8 Q. Right.

9 A. And we're excluding the golf course
10 because that's a different organization.

11 Q. Right.

12 A. I don't think that I am aware of
13 additional hardware problems.

14 Q. And I'm asking the question as we
15 settled the previous case and I want to make sure,
16 is there something that we didn't cover in the
17 previous case that we need to cover in this case?

18 A. No.

19 Q. So you're unaware of anything?

20 A. I can't -- I can't remember pointing to
21 any one specific thing and saying that was clogged
22 up or that wall blocked that swale or something
23 like that.

24 Q. One second. Did you review -- and I
25 think they referred to it as the Jackson Clemson

1 study?

2 A. The which?

3 Q. The Jackson Clemson study --

4 A. I don't remember. I don't --

5 Q. -- back in the '90s?

6 A. -- remember Clemson being in there but
7 I remember the Jackson name.

8 Q. The legal requirements, whether it's by
9 statute, organization -- no, statute, regulation,
10 ordinance, whatever, that is intended to protect or
11 provide drainage for owners within the subdivision
12 or is that intended to address the water leaving
13 the subdivision?

14 A. I think the greater emphasis is on the
15 water leaving. Of course, it can be with respect
16 to water coming in to it, but that would be
17 somebody else's doing.

18 Q. So it's more intended to protect the
19 adjoining property or the property downstream
20 versus the people contained within?

21 A. But it's also between one and another.
22 I mean you can have a huge subdivision. You can't
23 have one house dumping everything into the other
24 one's basement.

25 Q. Do you know Mike Wooten, DDC engineer?

1 A. I don't think so.

2 Q. And you don't know the process for --
3 you've never -- you personally gone through the
4 process of submitting plans for approval with the
5 appropriate governmental entity, getting them
6 approved and then actually building it and getting
7 final approval?

8 A. That has not been my job.

9 Q. And other than this case, have you ever
10 been involved in a lawsuit or have you been
11 retained as an expert in which that was an issue,
12 whether the plans complied with the plans and the
13 as-built complied with the plans and construction
14 complied with the stormwater management?

15 A. I can't separate that out from just
16 plans complying with the various regulations and
17 whether they included stormwater. I don't
18 remember.

19 But I've looked over plans and
20 consulted on whether they met things.

21 Q. Let me ask you this. And we're
22 talking, say, a subdivision or development?

23 A. Yes.

24 Q. Have you ever been retained or given an
25 opinion with regards to an individual lot or lot

1 owners having flooding problems within the
2 subdivision?

3 A. Yes, I have. And I'm hesitating
4 because I'm trying to remember specifically which
5 ones and I'm not able to --

6 Q. And I'm not talking about the guy next
7 to me built a house and my lot floods or there was
8 a new development and -- I'm talking about
9 contained within any confines of a development.

10 Have you looked at and rendered an
11 opinion with regard to the drainage system within
12 the confines of the development affecting an owner
13 within a development?

14 A. Which would also be one neighbor and
15 another --

16 Q. Right.

17 A. -- neighbor.

18 Q. Right. So let's eliminate neighbors
19 and neighbors.

20 A. And I have within a subdivision and I
21 don't remember the specifics. Somebody after the
22 neighbor built something, their retaining wall came
23 down, that sort of thing.

24 Q. I got you. Where the developer or
25 builder was the defendant. Have you been involved

1 in any cases like that, within the confines of the
2 development?

3 A. I think so. If I have, it's been ten
4 years or more and I don't remember which ones.

5 MR. BAXTER: That's all I have.

6 EXAMINATION

7 BY MR. MCLEAN:

8 Q. My name is Joe McLean. I represent the
9 Department of Transportation. I have some
10 questions for you. I may refer to my clients as
11 DOT from time to time.

12 A. I understand, yes.

13 Q. DOT owns U.S. Highway 17 and the
14 culvert that runs under U.S. Highway 17 and so
15 that's what I want to talk to you about.

16 A. Okay.

17 Q. I want to make sure I understand what
18 your opinions are pertaining to this culvert. But
19 first I want to set up a little timeline that may
20 be helpful. At least it will to me because that's
21 how my brain works.

22 A. Good.

23 Q. Do you know when the culvert under
24 U.S. Highway 17 was installed?

25 A. I don't know specifically. I think

1 somebody speculated in the '50s or '60s but that's
2 all -- I think that's the extent of my exposure to
3 that information.

4 Q. Do you know what size the culvert is?

5 A. I understand it's seven by seven and it
6 is approximately that, although every time I look
7 at, it looks like the height is a little bit higher
8 than the width is wide, but that's maybe an optical
9 illusion but it looks that way.

10 Q. How long is it?

11 A. You know, I don't remember. I saw that
12 information but I don't remember what it was.

13 Q. Do you know if the culvert as it sits
14 there today is the same culvert that was originally
15 installed under Highway 17 or has it been modified
16 or changed over the years?

17 A. I'm not sure whether 17 was put in as a
18 four lane so I can't answer that.

19 Q. When was the Prestwick subdivision
20 developed?

21 A. I don't know exactly but I think part
22 of it was in the '90s and I think I saw that from
23 dates on the drawings in the past but I don't
24 remember.

25 Q. Was it after this culvert was

1 installed?

2 A. I think so.

3 Q. When was Crystal Lake built?

4 A. Oh, I don't have that information
5 either.

6 Q. Do you know if it was before or after
7 this culvert was installed?

8 A. I don't know. I'd be happy to learn
9 those things, but I don't know.

10 Q. When was the drainage canal built?

11 A. I think I saw that information and it
12 may have been in the '50s but I'm not sure. I'm
13 just speculating there.

14 Q. Do you know if it was built before or
15 after the culvert was installed under Highway 17?

16 A. Well, most likely there was a culvert
17 there of some sort or else you wouldn't run the
18 drainage ditch to that but it may not have been the
19 same culvert.

20 Q. How many times has that canal been
21 modified since it was originally built?

22 A. Probably several but I don't know how
23 many.

24 Q. When were the Patton and Webb -- his
25 neighbor is Webb --

1 A. Yes.

2 Q. -- when were their homes built?

3 A. I saw that many years ago. I suspect
4 it was in the '90s but I don't have the dates.

5 Q. Do you know how far it is from the
6 location of the culvert to the location of the
7 plaintiffs' homes? What distance is it?

8 A. I saw that and something like 12- or
9 1,400 feet comes to mind but I can't picture that
10 number. That's my impression.

11 Q. Would that distance be relevant to a
12 determination as to whether or not the culvert is a
13 contributing cause of the flooding of the
14 plaintiffs' homes?

15 A. That distance would be a factor to
16 determine that, yes.

17 Q. Have you done any calculations
18 regarding that distance as it may relate to the
19 culvert being a possible contributing factor to the
20 flooding?

21 A. I may have done some calculations.
22 It's more of a generalized assessment of the size
23 and condition of the culvert -- I mean the size and
24 condition of the ditch and how that relates to the
25 culvert size.

1 Q. In general would it be true that the
2 farther -- the greater distance from the culvert to
3 the homes the less likelihood it is that the
4 culvert could be a contributing cause to the
5 flooding of the homes?

6 A. As a general principle, yes, but it is
7 not absolutely true.

8 Q. Sure. When did the homes first flood?

9 A. That I'm aware of it was '99, I
10 believe.

11 Q. When were the berms built?

12 A. That was something I was exposed to and
13 I don't remember that. It looks like it was 15 to
14 20 years ago.

15 Q. There has been testimony about a dam or
16 a causeway on the east side of U.S. Highway 17 in
17 the Pirate Land property.

18 A. Yes.

19 Q. When was that installed or built?

20 A. I don't know and you're making me
21 realize that there is a lot of information that I
22 don't have on a timeline that, as I discussed, it
23 might be nice to have a timeline. Maybe some of
24 you guys have that for all these things.

25 Q. Was that before or after -- do you know

1 if that was before or after the culvert was
2 installed under U.S. Highway 17?

3 A. I don't know. I'd have to speculate on
4 that.

5 Q. There has been testimony about housing,
6 a residential subdivision called Bermuda Cottages.
7 When was it built?

8 A. In the last decade or so.

9 Q. You said you had heard someone tell
10 you, I believe you said that, that water has
11 overtopped Highway 17 at the location of the
12 culvert. Did I understand your testimony to be
13 correct?

14 A. That's what I said and that was my
15 impression that someone had said that, and they
16 might have been speculating if it does. But I
17 thought I heard it said that it did.

18 Q. Who told you that or who did you hear
19 say that?

20 A. I don't remember.

21 Q. Did this person that told you this tell
22 you when the water had overtopped Highway 17 at the
23 location of the culvert?

24 A. No. And I looked on that as a limiting
25 height for the water. Once it tops 17, if it does,

1 it just can't get much higher.

2 Q. But you don't have any firsthand
3 knowledge of water ever overtopping Highway 17 --

4 A. That's correct, no firsthand knowledge.

5 Q. I believe in the complaint the culvert
6 is referred to as a dam. Is a culvert the same
7 thing as a dam?

8 A. I wouldn't call it that.

9 Q. It's not a dam. A culvert is not a
10 dam, is it?

11 A. No. There can be a culvert, so to
12 speak, in a dam but it's typically not.

13 Q. Are you aware of whether or not the
14 Department of Transportation, DOT, sends any water
15 into the canal upstream of plaintiffs' properties?

16 A. Well, possibly, yes, but I don't know.
17 It's one of the roads that crosses the canal or
18 ditch or whatever we call; it has a watershed off
19 of it into the ditch and then that's sending it
20 away.

21 So I haven't checked to see if those
22 are county roads or state roads or whatever.

23 Q. Or private roads?

24 A. Or private roads, yes.

25 Q. And the dates of the storm event that

1 have brought us here today are October 4th and 5th,
2 2015, correct, that's one of them?

3 A. I thought it was September, but if it's
4 October, that's fine, yes.

5 Q. And September 2, 2016?

6 A. That sounds about right but I don't
7 have those memorized.

8 Q. Do you know if DOT had any involvement
9 in the design or building of the canal or the
10 relocation or modification of the canal?

11 A. Certainly on the original building of
12 the canal, one would expect that they would have
13 had some input but that's just expectation, not
14 knowledge.

15 Q. You testified that it is now clearer to
16 you that the culvert is a contributor to the
17 flooding of the plaintiffs' lots.

18 A. Yes, the size of the culvert is a
19 restrictor of the flow.

20 Q. Okay. That being said, what size
21 should it be?

22 A. I haven't done that calculation. I
23 think some others have maybe suggested a
24 calculation.

25 Q. So you're of the opinion that the

1 culvert is too small?

2 A. Too small for what's going on upstream,
3 yes.

4 Q. Does DOT have any responsibility for
5 what's going on upstream?

6 A. That's an interesting question. I
7 would say they probably have some responsibility
8 for what can be anticipated to be going on upstream
9 but that would be it.

10 Q. All these things are going on around
11 the east side and the west side of the culvert, but
12 it hasn't changed those things, has it?

13 A. I don't think it has changed, no.

14 Q. But all these things -- other things
15 are changing around it but you still think DOT
16 should replace that culvert and make it larger?

17 A. Okay. What I was saying from that
18 former question was that new roads are built in all
19 the time and the drainage going under them and as
20 we look into the future of what is going to be
21 going on upstream and how that character is going
22 to change.

23 And how far in the future, whenever it
24 was built, did people know that Myrtle Beach was
25 going to grow, I suspect so, so I haven't looked at

1 trying to address how far in the future DOT should
2 have looked, and whether they had a crystal ball as
3 to what developers might do.

4 Q. Of course that -- if they are going to
5 enlarge that culvert or even build a bridge, they
6 are going to have to close down Highway 17;
7 correct?

8 A. Well, I would think they would have to
9 at a time and build some temporary pavement on the
10 shoulders and that sort of thing.

11 Q. It's going to involve major traffic
12 disruptions if they do it half and half?

13 A. It would involve disruption, yes.

14 Q. What would be done for temporary
15 drainage while the culvert is being replaced or a
16 bridge is being built?

17 A. There are various ways around that but
18 I'm certain people with the Highway Department have
19 done that before and know how to do that.

20 Q. If a bridge were built or made larger,
21 that would significantly -- that would increase the
22 flow of water downstream into the Pirate Land
23 property; is that correct?

24 A. That's correct.

25 Q. And that could potentially adversely

1 affect those properties; correct?

2 A. They don't want that. That's correct.

3 Q. They know that could impact them.

4 A. That's what somebody said, yes.

5 Q. DOT didn't have anything to do with
6 building that dam or causeway in Pirate Land, did
7 they?

8 A. I would think not. I don't know if
9 they were even sought out for approval.

10 Q. So tell me what your opinions are
11 regarding the culvert and it being a contributor to
12 the flooding.

13 You've told me that it needs to be
14 enlarged in some way to anticipate future growth or
15 just needs to be enlarged.

16 What else? What other opinions do you
17 have pertaining to the culvert?

18 A. Well, in terms of when you have heavy
19 stormwater, it becomes a constriction of the flow
20 of the water to the ocean. And that constriction
21 relates to the flooding of some uphill properties
22 and the ability to drain out of uphill properties
23 and not just flooding into them, the inability to
24 drain out.

25 And if it's -- it's kind of a

1 combination thing that if DOT looks at the future
2 to see, to try to see what the needs are going to
3 be.

4 You know, if they build roads wider
5 than they have to be because of future traveling
6 and culverts can take that into account, future
7 water.

8 But then developers and approval --
9 builders' approval organizations can look at the
10 infrastructure that's there and it appears as a
11 major kind of break in communication planning of
12 whatever that nobody took all these into account.

13 And so is DOT supposed to think
14 50 years ahead of time? I can't answer that. The
15 developers are supposed to look and see what's a
16 few hundred yards downstream or upstream, or
17 whatever, yes, they should.

18 Q. Would it make any difference if I told
19 you that the culvert was initially installed in
20 1933? That's long before the '50 or '60s.

21 A. That's 80 years planning ahead of time,
22 isn't it?

23 Q. And U.S. Highway 17 was widened in 1959
24 to four lanes and the culvert was made longer but
25 not wider at that time.

1 A. Okay. That explains it. Then that
2 seems more -- yes, that sound more reasonable that
3 it was built originally as a two lane and they just
4 lengthened the culvert rather than widening it.

5 Q. So you just believe that the culvert
6 should be wider to handle more water. Is that the
7 bottom line?

8 A. And it could be taller too but the
9 wider is the main thing.

10 Q. Okay. Bigger?

11 A. Bigger.

12 Q. Okay.

13 A. To move more water --

14 Q. Yes.

15 A. -- underneath Highway 17.

16 Q. What else about the culvert? Are there
17 any other opinions that you have about that culvert
18 other than it should be larger, bigger, handle more
19 water?

20 A. I haven't looked at the approach and
21 exit very much to say whether something should
22 be -- wanting to do something to those to help it
23 out. But the main thing is it's a point of
24 resistance to the flow.

25 Q. Due to, in your opinion, it's

1 undersized. Is that why it is a point of
2 resistance?

3 A. I think that's the main thing. I don't
4 see any argument with the height-width ratio and
5 those sorts of things.

6 Q. Well, I mean it's true. They could
7 build a bridge there and just open it wide up,
8 couldn't they?

9 A. Yes, they certainly could have and
10 certainly could still. But most of the time, it's
11 a very small flow.

12 Q. And would the flooding affect the two
13 homes up, some distance away? What did you tell
14 me?

15 A. I said it was around 12-, 1,400 feet or
16 something like that.

17 Q. 1,200 to 1,400 away?

18 A. That's my estimate. I saw a number and
19 I can't remember whether that's it or not.

20 Q. We can measure it.

21 A. Yes.

22 MR. MCLEAN: I think that's all I have
23 for you now. Thank you.

24 EXAMINATION

25 BY MR. JORDAN:

1 Q. My name is Charles Jordan and I
2 represent the City of Myrtle Beach. And I'll try
3 not to repeat all the questions that you've already
4 answered.

5 A. Okay.

6 Q. The prior case we were involved in was
7 settled in September of 2005.

8 A. Okay.

9 Q. As a result, the claimants built a berm
10 out there that you're aware of, I believe?

11 A. Yes.

12 Q. Did you have any role in the
13 construction of the berm?

14 A. I did not. I wasn't down there with
15 the construction of the berm. There may well have
16 been discussions of the needs -- the benefits of
17 what a berm could do, the pros and cons of it.

18 Q. Did you do any of the design,
19 calculations or anything like that for it?

20 A. I don't think so. Like height to base
21 ratios and that sort of thing, and type of soil,
22 no.

23 Q. Do you believe that the berm has
24 rectified the flooding problem out there?

25 A. It's rectified part of it.

1 Q. And in what way?

2 A. It prevents the rise of level in the
3 creek -- and pardon me for using creek and ditch
4 and all these things interchangeably. There is
5 only one that we're talking about right here.

6 But it can have a -- it can rise above
7 the normal banks and not flood the Pattons'
8 property and the other properties there.

9 Q. Okay.

10 A. But, of course, the problem exists of
11 getting water off of the Pattons' property. And,
12 therefore, the pipes were put in with check valves
13 so that it can drain out.

14 Q. Does the Pattons' property still flood
15 now?

16 A. The Pattons' property is still flooded
17 since then but not from the creek overflow but from
18 the rise of the level of the creek.

19 When the creek raises to the point
20 where it would overflow, if the berms weren't
21 there, it's at the point where water from within
22 Prestwick dumps down into the plaintiffs' yards and
23 can't get out without a pumping station.

24 Q. So the current flooding that the
25 Pattons are experiencing isn't from the creek

1 backing up, but it's from the water sheet flowing
2 across Prestwick and not being able to get into the
3 creek?

4 A. Almost. The creek backing up prevents
5 the water getting out. So it's not the creek
6 backing up that puts the water in. It's the creek
7 backing up that keeps water from getting out.

8 Q. Okay. Let me try to put it a different
9 way then. I mean let me say this a different way
10 now.

11 Water coming down the creek, upstream
12 from the Pattons --

13 A. Yes.

14 Q. -- today, water falling down that creek
15 isn't getting into the Pattons' house. Is that a
16 true statement?

17 A. Today I don't think it is. For a
18 while, it was going around the end of where they
19 built the berm and coming back in --

20 Q. But I think they --

21 A. -- and I think that they ended up
22 correcting that but it's preventing the water that
23 falls on Prestwick from getting out.

24 Q. Gotcha. So the Pattons have fixed the
25 idea of the creek actually overrunning the berm,

1 you believe?

2 A. It's at least partially fixed. I
3 can't -- I didn't use surveying instruments to go
4 out and see exactly what level it was but it
5 addressed it. Whether it's completely fixed, I
6 don't know.

7 Q. But to the best of your knowledge, it
8 did fix --

9 A. It certainly improved that and reduced
10 the tendency of the creek to flow directly or
11 indirectly or end run into their yard and house.

12 Q. At some point in time -- I think the
13 berm was built in the 2005, 2006 timeframe. I'm
14 going to ask you this question.

15 Do you believe that in 2007 after the
16 berm was completed, would it have been a
17 misrepresentation for a real estate agent for
18 Prestwick to represent to a potential purchaser for
19 Strathmill Court that the flooding problem had been
20 rectified?

21 A. I would say it would be.

22 Q. It would be a misrepresentation to have
23 said that?

24 A. Yes.

25 Q. Why is that?

1 A. Well, because the flooding problem had
2 not been rectified. A particular aspect of the
3 flooding problem had been rectified in that water
4 from the creek generally won't come directly into
5 the property.

6 And when you mention the name of the
7 street, I assume that's the name of the same
8 street --

9 Q. Yes, sir. Strathmill. I believe
10 that's right.

11 MR. CONNELL: It is.

12 THE WITNESS: -- that the Pattons are
13 on.

14 MR. JORDAN: Let me show you what has
15 been marked as Exhibit Number 14.

16 (DFT. EXH. 14, Diagram of Outfall
17 Number 1, was marked for identification.)

18 MR. CONNELL: What's that? You never
19 gave us this before.

20 MR. JORDAN: This is a Stormwater
21 Master Plan, Myrtle Beach Air Force Base, Final
22 Report. This is what it comes from anyway.
23 This is a map of what's generally known as Seagate
24 Village. This was in the prior -- this was
25 documents I got out of the prior lawsuit.

1 MR. CONNELL: This is in the city of
2 Myrtle Beach, right? Seagate Village is part of
3 the city.

4 MR. JORDAN: Yes, Seagate Village is
5 within the City of Myrtle Beach.

6 MR. CONNELL: Those are the old
7 military duplexes.

8 MR. JORDAN: Yes, those are the old
9 military duplexes.

10 Q. Yes, I can represent to you at least
11 that there is a hardline here, this line at the
12 bottom between Seagate Village and what's called --
13 Crystal Lake is here (indicating)?

14 A. Yes.

15 Q. Do you see that?

16 A. Yes.

17 Q. That line is actually -- I believe the
18 municipal boundary of the City of Myrtle Beach is
19 actually that line.

20 I don't know exactly where it goes
21 after it leaves here, but it goes straight on out.

22 And if you look at Alpha Number 1,
23 Alpha Number 1 is where Seagate Village drains into
24 the canal and you can kind of see the canal as it
25 comes out, it takes sort of a dogleg to the right

1 and down straight?

2 A. And it also has a branch that goes over
3 to Crystal Lake.

4 Q. I'm asking you that. Is that correct?
5 Does it have a branch that goes into Crystal Lake?

6 A. That's what I thought I'd understood.

7 Q. Okay.

8 A. Crystal Lake would be a buffer of some
9 sort.

10 Q. Okay.

11 A. But I did not go out and inspect and
12 verify it.

13 Q. All right. This was taken from a
14 stormwater master plan of the former Myrtle Beach
15 Air Force Base and they ended up -- they separated
16 the Air Force Base into different outfalls,
17 different places where the Air Force Base drains.

18 My question to you is, do you -- would
19 you agree with me or not that the only portion of
20 the former Myrtle Beach Air Force Base that drains
21 into the creek is that area on Exhibit 14 which is
22 outlined in yellow?

23 A. I can't say whether it does or not only
24 looking at this.

25 Q. Okay. Have you done any studies as to

1 what part of the former Myrtle Beach Air Force Base
2 actually drains into that creek?

3 A. I have not other than reading materials
4 that quote the number of something like 13- to
5 1,400 acres as watersheds for that creek.

6 Q. But you have no independent knowledge
7 whether or not it is true that the area outlined in
8 yellow is the only part of the Air Force Base that
9 drains into the creek?

10 A. What I assume by that question is that
11 you're saying a lot of the rest of this is outside
12 of the Air Force Base.

13 Q. Correct. I will represent to you
14 everything to the top of the page is part of Air
15 Force Base.

16 A. Okay. I'd have to go back and check
17 what I saw as the outline of the watershed area.

18 Q. Okay. What do you have that outlines
19 the watershed?

20 A. Some of those Thomas and Hutton
21 drawings.

22 Q. Okay.

23 A. Is it Thomas and Hutton? Is that
24 correct?

25 Q. Yes, sir. Thomas and Hutton.

1 A. Okay.

2 Q. I represent the City of Myrtle Beach.
3 Earlier when you began your deposition, Mr. Battle
4 asked you what factors contributed to the flooding
5 of the Pattons' property, the plaintiffs'
6 property -- I guess there are two plaintiffs -- and
7 you gave us a list of nine. I want to go over
8 those with you. I wrote those down.

9 A. Okay.

10 Q. And I want to ask you if the City of
11 Myrtle Beach had any role in that or not?

12 A. Okay.

13 Q. The first thing you said was, a
14 representation that there was no flooding. Do you
15 know if the City of Myrtle Beach made any
16 representations to the plaintiffs that their
17 property does not flood?

18 A. I don't know that they gave any
19 representations but I don't know if they had other
20 information or interactions with Prestwick that
21 Prestwick had come to the conclusion that it was
22 okay to say that.

23 Q. Do you know if Prestwick is within the
24 City of Myrtle Beach or not?

25 A. I don't think that it is but I don't

1 know.

2 Q. It's not. My information is that it's
3 not.

4 A. Okay.

5 Q. But I'm not testifying.

6 A. Yours is better than mine, it looks
7 like.

8 Q. Do you know if the City of Myrtle Beach
9 had any role in the internal planning of the
10 Prestwick development?

11 A. I don't know that, whether or not
12 that's part of one of the people that the
13 developers talked to in the process. I haven't
14 asked that question. I don't know the answer to
15 that.

16 Q. Do you know if the City of Myrtle Beach
17 had any role in the developers of Prestwick failing
18 to follow their development plans?

19 A. I don't know about that.

20 Q. Do you know if the City of Myrtle Beach
21 has any -- had any role in the design of the ditch?

22 A. The original design of the ditch?

23 Q. Yes, sir. Let's start with the
24 original design of the ditch. Do you know if they
25 had any role in the original design of the ditch?

1 A. I don't but I can imagine they may have
2 but I haven't seen that information.

3 Q. Do you know if the City of Myrtle Beach
4 had any role in the redesign of the ditch?

5 A. I don't know but I would suspect that
6 part of the ditch is in the City and they may have.

7 Q. Have you seen any documents that show
8 that the City of Myrtle Beach had any role in the
9 redesign of the ditch?

10 A. I'm not in possession of any. As I
11 said, I suspect they may have had some awareness of
12 that.

13 Q. Have you talked to anybody that would
14 give you the indication that the City of
15 Myrtle Beach had any role in the redesign of the
16 ditch?

17 A. I have not.

18 Q. Do you know if the City of Myrtle Beach
19 has any role in the maintenance of the ditch? And
20 let me divide the ditch --

21 MR. CONNELL: Outside of the City or --

22 MR. JORDAN: Let me divide this.

23 Q. Exhibit 14 shows Outfall Number 1.

24 A. Yes.

25 Q. I will represent to you that Outfall

1 Number 1 is on the dividing line -- the best of my
2 information is -- on the dividing line between the
3 City of Myrtle Beach and Horry County.

4 A. Okay.

5 Q. And the boundary of Myrtle Beach is
6 south of that outfall or below the line of Outfall
7 1 is outside the city. Above the line is inside
8 the city.

9 So I'm going to ask you, below the
10 line, below Outfall Number 1.

11 Do you know if the City of Myrtle Beach
12 has any -- had any role or has any role in the
13 maintenance of the ditch outside of Outfall
14 Number 1?

15 A. I don't know that they have. I
16 wouldn't be surprised if they had been involved in
17 some coordination but I don't know anything about
18 that.

19 Q. Since 2005, since the settlement of the
20 case in 2005, do you know if the City of
21 Myrtle Beach has performed any maintenance on the
22 ditch outside of Outfall Number 1?

23 MR. CONNELL: What does that mean?

24 BY MR. JORDAN:

25 Q. Okay. Since 2005, do you know if the

1 City of Myrtle Beach has maintained any portion of
2 the ditch between Outfall Number 1 and Highway 17?

3 A. I am not sure about that. I remember
4 being exposed to the -- how the right of way was
5 whatever and the exchange was made and it was
6 somehow done at a different time and just exactly
7 who has any control over what right of way, but I
8 can't say whether or not the City was part of that.

9 Q. Have you seen any documents that would
10 indicate to you that the City of Myrtle Beach has
11 performed any maintenance on the ditch from, let's
12 say, Outfall Number 1 all the way to the
13 Atlantic Ocean after 2005?

14 A. I don't specifically remember but I
15 can't preclude there being -- having some
16 involvement if that's part of the right of way
17 issues and different people being involved in that
18 right of way issue.

19 Q. Have you seen any document that would
20 indicate to you that the City of Myrtle Beach has
21 any legal duty to maintain the ditch from Outfall
22 Number 1 to the Atlantic Ocean?

23 A. I don't remember seeing such.

24 Q. Inside Outfall Number 1, this is inside
25 of the yellow area, or let's say anything upstream

1 of Outfall Number 1, do you know who designed the
2 ditches that flow into Outfall Number 1?

3 A. I certainly don't know what engineer
4 did it and likely, but I don't know, it was related
5 to the military.

6 Q. Do you know if the City of Myrtle Beach
7 had any role in the design and construction of the
8 ditches that fall into Outfall Number 1?

9 A. I don't know which way that was at the
10 time it took place.

11 Q. Do you know when those ditches would
12 have been constructed?

13 A. Long time ago.

14 Q. Would those ditches have been
15 constructed before the development of the Prestwick
16 subdivision?

17 A. Most likely.

18 Q. Do you know if the City of Myrtle Beach
19 maintains the ditches that flow into Outfall
20 Number 1?

21 MR. CONNELL: Which side? Inside or
22 outside of the --

23 MR. JORDAN: That go into Outfall Number 1 so any
24 ditch upstream --

25 MR. CONNELL: Okay.

1 THE WITNESS: So if that's in the City,¹⁶⁹
2 it's on common ground, I would think that they did.
3 I don't have documents that say that or I don't
4 remember documents that say that.

5 BY MR. JORDAN:

6 Q. Getting back to my list. Number 4 was
7 the design and maintenance of the channel.

8 Number 5 was the conduit under 17.

9 Do you know if the City of Myrtle Beach
10 had any role in specifying the size conduit under
11 U.S. Highway 17?

12 A. I don't know about what happened back
13 in the '30s and how the DOT coordinated with the
14 different players and so I just can't say on that.

15 Q. You listed -- you talked about the
16 causeway and dam in Pirate Lane. Do you know if
17 the dam and causeway within Pirate Lane is within
18 the City of Myrtle Beach?

19 A. No, I haven't addressed that. I don't
20 know.

21 Q. Do you know if the City of Myrtle Beach
22 had any role in the design or construction of the
23 causeway and dam at Pirate Lane?

24 A. I don't know.

25 Q. You mentioned the golf course runoff.

1 Do you know if the City of Myrtle Beach had any
2 role in designing the stormwater runoff from the
3 golf course?

4 A. I don't have any knowledge of that.

5 Q. By the golf course, I assume you mean
6 Prestwick Golf Course?

7 A. Yes.

8 Q. There's a lot of golf courses around
9 here.

10 A. I assumed that as well also.

11 Q. Do you know if the golf course is
12 within the City of Myrtle Beach?

13 A. I don't know that. I think you were
14 representing this yellow line as the border of the
15 City down this way (indicating), so I haven't
16 checked to see exactly what's included or not.

17 Q. Okay. You mentioned the design of
18 Crystal Lake. Do you know if the City of Myrtle
19 Beach had any role in the design of Crystal Lake?

20 A. I don't know but I would suspect that
21 they had some role in Crystal Lake but, again, I
22 don't know.

23 Q. Have you seen any documents that would
24 support any indication that the City of
25 Myrtle Beach had any role in the design or

1 maintenance or upkeep of Crystal Lake?

2 A. If I have seen them, I don't recall
3 their content.

4 Q. Have you spoken with anyone who gave
5 you any indication that the City of Myrtle Beach
6 was involved in the design, upkeep or maintenance
7 of Crystal Lake?

8 A. If I have had, I don't remember it.

9 Q. You mentioned -- we've talked about the
10 building across the creek which goes by several
11 names.

12 Which name are we using?

13 MR. BATTLE: The name in all the plans
14 is Bermuda Gardens. So that's the one that we've
15 been using.

16 BY MR. JORDAN:

17 Q. Okay. Bermuda Gardens as we've been
18 calling it this morning. Do you know if the City
19 of Myrtle Beach had any role in the approval of any
20 plans for Bermuda Gardens?

21 A. I don't know that.

22 Q. Do you know if Bermuda Gardens is
23 within the City of Myrtle Beach?

24 A. If it was, they had some involvement in
25 it. If it wasn't they didn't. They most likely

1 didn't but I don't know.

2 Q. Have you seen any documents or talked
3 to anyone that would give you any indication that
4 the City of Myrtle Beach had any role in the
5 development of Bermuda Gardens?

6 A. I don't remember if I have.

7 Q. Are you aware of any development that
8 has taken place within the watershed of the creek
9 that occurred within the city limits of the City of
10 Myrtle Beach since 2005?

11 Let me rephrase this total question
12 again. I got a lot of qualifications.

13 Since 2005, are you aware of any
14 development that has taken place within the
15 watershed of the creek that is also located within
16 the City of Myrtle Beach?

17 A. I have not checked that out. And I
18 would have to do that so I may be aware of some
19 things that would meet those limits or that don't
20 meet those limits. I don't know.

21 Q. How is the City of Myrtle Beach
22 responsible for the flooding of the Pattons'
23 property?

24 A. Well, the terminology responsible for
25 the flooding implies that they alone are

1 responsible. I think I view it as having a
2 contributing factor.

3 Q. Okay.

4 A. And it relates to a lot of the water
5 that goes down the creek comes off the City of
6 Myrtle Beach territory.

7 Q. Okay.

8 A. Let's just say it that way. And then
9 there are various things that can be done to make
10 the timing of that water be less harmful, timing of
11 the flow.

12 I have seen nothing suggesting that
13 they have done some of those things which really
14 positively affect the timing.

15 Myrtle Beach, of course, is aware that
16 more -- from whenever they built the Air Force --
17 when the military base was built, that more water
18 was going downstream.

19 So being conscious of what leaves their
20 property and the times and whether it be catch
21 basins, something to slow the water down, speed the
22 water up, whatever, holding ponds, in light of the
23 development downstream, it appears that that has
24 not been done.

25 And some of that relates to maintenance

1 of the ditch that they were involved in as well.

2 So what I can think of now is not one
3 of the primary factors but it's at least a second
4 tier contributing factor.

5 Q. Can you put a percentage on that? Is
6 it a 1 percent contributing factor or a 5 percent
7 contributing factor?

8 A. I'm going to have to go back and put on
9 the thinking cap again if I'm going to be given the
10 task of trying to do a percentage factor for
11 everybody.

12 Q. Have you done any calculations that you
13 can specifically show me that would tell me exactly
14 what the City of Myrtle Beach should have done that
15 it has not done?

16 A. No, I'm not prepared to do that at this
17 time. It's primarily the water coming off of there
18 is a non-negligible factor and the rate of which
19 the water comes off and the things that can be done
20 to reduce that doesn't seem to be part of the
21 solution so far.

22 Q. Besides the City not doing something
23 that you believe maybe it should have done, are you
24 aware of the City of Myrtle Beach affirmatively
25 doing anything that has contributed to the flooding

1 of the Pattons' property?

2 A. Okay. And this may seem
3 counterintuitive but the better maintained those
4 ditches are within the City the more of a rapid and
5 peaking flow of water comes out and goes down.

6 So when they positively cut that grass
7 short, and it seems kind of humorous and you laugh
8 and I laugh too, but that's all part of looking at
9 the -- what they call the time and concentration of
10 water flow.

11 And I don't think they did anything
12 because they wanted to make it worse on the
13 Pattons. There is no question of that.

14 But they no doubt have done several
15 things which may be nice things to do but make it a
16 little more contributing to the problem than to the
17 Pattons.

18 Q. Do you know if the City of Myrtle Beach
19 has increased the size of Outfall Number 1 at any
20 time?

21 A. As I recall, Outfall Number 1 goes
22 under a little bridge. I read that. Is that
23 correct?

24 Q. I believe so.

25 A. Okay. And I shouldn't be asking you

1 questions.

2 Q. I answered. I don't know either.

3 A. Okay. And trees have been cut down
4 which increases the effective size. I didn't see
5 any signs of recent earth moving equipment or
6 anything.

7 Q. Do you know who -- go ahead.

8 A. But there at the County exit on both
9 sides of that bridge, you can see that some
10 maintenance has taken place at some time in the
11 recent decade.

12 Q. Do you know who performed that
13 maintenance?

14 A. No, I don't.

15 Q. If you could look at Exhibit 3 for me,
16 please.

17 A. Okay.

18 Q. Exhibit 3, at the very top, you say,
19 "Myrtle Beach City." Your handwriting is better
20 than mine, but I still can't read it.

21 A. Well, I might not be able to either.

22 Q. Can you please read that to me and --
23 first of all, when were these notes made? Let's
24 back up.

25 Were those notes made in connection

1 with the prior lawsuit?

2 A. Yes.

3 Q. Okay.

4 A. A long time ago. Sometime before '03.

5 Q. All right. What does it say about the
6 City of Myrtle Beach?

7 A. Let me see. My writing was worse then
8 than it is now.

9 Q. And if you could, if you could read it
10 and kind of explain to me what you meant by it.

11 A. "Drainage, maintenance and outflow of
12 water."

13 Q. Okay.

14 A. That's the first line.

15 Q. Is that what we've discussed?

16 A. Yes.

17 "Changes on base."

18 Q. Okay. Changes on the base. What do
19 you mean by that?

20 A. Widening of the road, changing the
21 drains off of the road, building additional
22 buildings, that sort of thing.

23 Q. Are you aware of any changes on the
24 base that occurred within the watershed of the
25 ditch?

1 A. Okay. At the time that I wrote that, I
2 understood that essentially the whole -- a lot more
3 of the area was in the watershed and that part of
4 the purpose of the drainage was the drainage from
5 the flight line. The flight line is outside.

6 Q. The drainage field?

7 A. Yes.

8 Q. Okay.

9 A. So it's a little bit confusing to me as
10 to whether that border that you gave me was really
11 indeed accurate or not.

12 So I go on the basis that the drainage
13 was -- came off of more than just what you've
14 outlined.

15 Q. All right.

16 A. And then, "Permits." That's just a
17 question of what permits were done with respect to
18 what's in Myrtle Beach.

19 Q. Are you aware of any permits that have
20 been issued by the City of Myrtle Beach after 2005
21 within the drainage field of the ditch?

22 A. I have not looked at that so I don't
23 know.

24 Q. Are you aware of any permits that were
25 issued by the City of Myrtle Beach after -- let's

1 back up.

2 Are you aware of any permits issued by
3 the City of Myrtle Beach on or before the
4 development of Prestwick, where the Pattons live --
5 on or after the development of the area where the
6 Pattons live?

7 A. Not specifically. I'm not saying there
8 are not any. I'm just --

9 Q. You just don't know?

10 A. I just don't know about them other than
11 this, some newer construction and remodeling in
12 the area.

13 Q. How about -- and just basic remodeling
14 of a building usually would not materially
15 contribute to the flooding?

16 A. May not.

17 Q. How about the last one?

18 A. "Drainage from other city property."

19 Q. Do you mean property owned by the City
20 or property in the City?

21 A. Property in the City that may be in
22 that field.

23 Q. Are you aware of any changes in any
24 property within the City after 2005?

25 A. Within the --

1 Q. Drainage field.

2 A. Drainage field. Not specifically. I
3 have not tried to divide things up in pre and post
4 2005.

5 Q. Here -- and this is one of the
6 questions I want to ask. I'm from Conway. My mom
7 grew up in a neighborhood where it got flooded
8 during Hurricane Florence.

9 Do you believe upstream municipalities
10 on the Waccamaw River have liability for the
11 flooding that occurred in Conway as a result of
12 Hurricane Florence?

13 A. Upstream, you mean --

14 Q. Yes, sir.

15 MR. CONNELL: I offered him as an
16 engineering expert, not a legal expert on
17 upstream --

18 MR. JORDAN: I'm asking him. He told
19 me if water falls in the City of Myrtle Beach, I'm
20 liable.

21 If water falls in the town of Lake Waccamaw --

22 MR. CONNELL: Well, you've got an
23 artificial channel going across --

24 MR. JORDAN: Well, I disagree that it's an
25 artifical channel.

1 THE WITNESS: Now, wait a minute. I
2 didn't say that any water falls in Myrtle Beach
3 they were --

4 BY MR. JORDAN:

5 Q. If any water falls in the City of
6 Myrtle Beach that flows into this channel, does
7 that make the City of Myrtle Beach liable for the
8 Pattons' flooding?

9 A. I don't think I said that.

10 Q. Okay.

11 A. I said if they do something to increase
12 the negative impact of it, it could.

13 Q. All right. So the only thing is to
14 increase the negative impact of it?

15 A. Well --

16 Q. I'm just wondering what you said.

17 A. Well, it depends on what was there
18 first too.

19 Q. Okay.

20 A. But now the City of Conway and -- well,
21 certainly -- and I'll just give you an example.

22 Another town built a dam, built it
23 shoddily, the dam washes out during a heavy flow
24 and it wipes out the city below, of course, they
25 have a responsibility, I think.

1 Q. Right.

2 A. So it can be, yes.

3 Q. In that regards?

4 A. Yes.

5 Q. Are you aware of this creek or this
6 drainage or are you aware of how it existed prior
7 to any development in the area?

8 A. Back when it was pine forest and burrs.

9 Q. Pretty much. That's what I'm asking.

10 A. I haven't tried to think back that far.

11 Q. Okay. You had mentioned in your prior
12 testimony that these houses were built in marginal
13 areas. What does that mean?

14 A. Well, this is with respect to, I think,
15 the flooding and water problems. There are areas
16 where one can be confident, one could build on top
17 of a hill, so to speak.

18 And then there are areas where you have
19 to ask the question of what's going to happen here
20 in a big rain.

21 And certainly there are ways of solving
22 this problem, even if you don't do anything to 17.
23 You build a big berm. You put in a big pumping
24 station. You put the house on stilts.

25 You don't need to do all those but --

1 and even bring in fill to make the garage higher
2 and don't have a patio, have a raised deck and just
3 live with it if anything happens.

4 So that's marginal. That's when you
5 have to do those sorts of things. And we've all
6 driven by some of the rivers like the Black River
7 and seen these mobile homes sticking up on 12-foot
8 piers and things like that.

9 There are ways of dealing with it. But
10 that's marginal. You can't build a standard house
11 there.

12 Q. If the land flooded prior to the
13 Pattons building on that property, do you believe
14 the City of Myrtle Beach has responsibility that
15 the Pattons build in a place that floods and they
16 then experience flooding in their home?

17 A. That's where the City and County kind
18 of get into each other's throat. The County
19 approved it and said, "Hey, that's fine," if indeed
20 they said that.

21 And then if the City is doing things
22 that contributes to it in whatever way through not
23 doing something or doing something, that brings an
24 interesting situation of your brother saying, do
25 it, and then you do something and it makes it

1 worse.

2 Q. I guess what I'm saying is, if the
3 outfall -- we're looking at the outfall on Exhibit
4 14. That's the base housing. That was built back
5 in the '50s, I think.

6 A. Okay.

7 Q. If that drainage system has remained
8 basically unchanged since the '50s, with normal
9 maintenance being done on it, if the area where the
10 Pattons' lot is flooded in 1960 and '65 and 1970
11 and 1980, and this drainage area has stayed
12 substantially the same since then, should the City
13 -- should the City of Myrtle Beach be liable
14 because the Pattons built in a place that was
15 flooding prior to their building there?

16 MR. CONNELL: Again, you're asking him
17 a legal conclusion. He's an engineering expert.

18 THE WITNESS: I would only answer in
19 terms of, did the City of Myrtle Beach contribute
20 to it by doing or not doing things that
21 incrementally increased the water level.

22 BY MR. JORDAN:

23 Q. All right.

24 A. And there are a lot of contributors
25 that are smaller than the others to this problem.

1 Q. I was just wondering -- okay. So your
2 testimony then is, let's say because the house the
3 Pattons' built flooded every time that there was a
4 big rain storm from 1957, when this was built
5 onwards, if they build there and they still flood,
6 then it's your testimony that the City of Myrtle
7 Beach has some responsibility for their flooding?

8 A. These are interesting issues as to
9 where the borderlines are. And I don't know the
10 details of the City of Myrtle Beach taking over
11 from the military and what role they had in
12 improving from the military and what role they had
13 in digging the ditches, if they did, and all these
14 sorts of things.

15 It would be interesting to have a
16 record of exactly what happened after each rain
17 over the last 75 years, wouldn't it?

18 Q. Would that make a difference in your
19 analysis?

20 A. I think it could add information which
21 would shed light on certain things and it may make
22 a difference and it may not.

23 Q. On what certain things would it shed
24 light on?

25 A. Well, the statistics if there was an

1 increase in water level of the creek with every
2 incremental piece of development that went on would
3 tend to indicate that development does indeed have
4 a role in that.

5 And if an Air Force Base and a military
6 base increases the peak flow down, and then
7 somebody else builds something and that increases
8 the peak flow and somebody else does something,
9 then they say, well, I'm the first one, so I don't
10 count. I don't know. That's an interesting point.

11 Q. We'll leave it at that then.

12 MR. CONNELL: Let's take a five-minute
13 break then.

14 (A recess transpired.)

15 EXAMINATION

16 BY MR. NEILL:

17 Q. Mr. Taylor, my name is Mark Neill and I
18 represent Rose Real Estate, Inc., which was the
19 entity which owned the property on which Bermuda --
20 what are we calling it -- Bermuda Cottages was
21 later developed which later became Ocean Walk.

22 Let me ask you this because no one has
23 asked you this yet. What did you do in preparation
24 for your deposition here today?

25 A. Well, yesterday, I went back over the

1 site to see what had changed and to refresh myself.

2 Q. And when you say the site, what are you
3 referring to?

4 A. That particular area of Prestwick, top
5 of the berm for a while and then around Highway 17,
6 both sides of it where the culvert was, the inflow
7 and outflow.

8 Q. Did you do anything with regards to
9 the -- I'll call it the canal -- upstream with like
10 where Bermuda Cottages is or any of the other
11 properties?

12 A. Well, yes. And thank you. And a
13 little bit of modification to that. Up in the
14 general -- the area between Crystal Lake and the
15 old military base, I looked at that area there too
16 and saw Crystal Lake and looked at it.

17 Q. Did you just walk the ditch? What did
18 you do as far as --

19 A. I walked along the edge of it but did
20 not get down into it or go on an extended time.

21 Q. And how much time did you take to do
22 all that?

23 A. Probably a couple of hours, something
24 like that.

25 Q. Did you review any other documents or

1 anything else in preparation for today?

2 A. Yes. And as you may have heard before
3 that I last worked on this matter about 15 years
4 ago and I guess just a few months before Gene
5 called me back, I purged my file.

6 So I reviewed some of the things that
7 he had, that he had from a prior deposition when I
8 brought my file to a deposition.

9 Q. So is that basically your deposition
10 transcript from the previous case and any exhibits
11 that were attached --

12 A. And some exhibits and then he sent me
13 the Thomas and Hutton reports.

14 Q. Okay.

15 A. And some photographs of the flooding
16 and just of the house and things like that.

17 Q. Do you have any other items besides
18 those at your office that didn't get purged other
19 than those negatives that we talked about --

20 A. I think negatives are the only things
21 that didn't get purged. That's because I always
22 keep them separate.

23 Q. Okay.

24 A. And they don't take up much space.

25 Q. Other than the inspections that you did

1 yesterday, between 2005, which I think was when the
2 first case was settled and yesterday, had you been
3 back to the property to look at it for any other
4 reasons during that time?

5 A. I had not been back into Prestwick at
6 all that I can recall. I wouldn't have an occasion
7 to. But having driven on 17, I had stopped and
8 just looked at the culvert just out of -- not just
9 the culvert, but the ditch, just out of interest of
10 something that I have been involved in and wanted
11 to see what was going on and nothing of note --

12 Q. Okay.

13 A. -- popped up on those times that I was
14 there.

15 Q. Now, we had talked about a little bit
16 earlier how you've never been involved with the
17 process of designing and submitting a stormwater
18 drainage plan for a development in the past; is
19 that correct?

20 A. That is right other than I may have
21 talked with people who were and given them some
22 guidance or asked questions or brainstormed with
23 them.

24 Q. Can you tell me, did you ever review or
25 look at anything that was submitted to any

1 government entity with regards to Bermuda Cottages
2 when it was being developed?

3 A. There was something that passed through
4 as another exhibit a little while ago that was
5 about three pages that was put into evidence.

6 I don't recall who that was presented
7 to and I see you're going through maybe some of
8 that but not what I was particularly referring to.

9 Q. Well, let's talk about prior to today.
10 Had you ever reviewed any of the plans or documents
11 that were submitted to the County as part of the
12 approval process for Bermuda Cottages?

13 A. I don't recall if Mr. Connell had sent
14 it to me and somehow I got -- I missed it in going
15 through all those documents.

16 Q. So you don't recall ever seeing what
17 the design plans were --

18 A. No.

19 Q. -- for the stormwater management, and
20 none of the calculations or any of those type of
21 things?

22 A. I wasn't aware of those things and in
23 preparing for this and reading documents, I saw
24 that land was developed and that was the first I
25 knew of it.

1 Q. And when was it that you first learned
2 that the property had been developed?

3 A. I think Mr. Connell may have told me
4 when he first contacted me on this several months
5 ago.

6 Q. Would that have been sometime near when
7 your affidavit was done for this case? I believe
8 that was done November of '17?

9 A. Was it that long ago?

10 Q. Does that sound about right?

11 A. Whenever it was, it was.

12 Q. Okay. I can tell you.

13 A. Okay.

14 Q. It was filed on November 27 of 2017.

15 A. Okay.

16 Q. So approximately a year ago.

17 A. Yes.

18 Q. It looks like it was signed November
19 10.

20 A. Okay.

21 Q. Now, can you tell me at the time that
22 Bermuda Cottages was submitted for development,
23 what standards was the government implementing --
24 strike that.

25 What standards were the County

1 governments implementing to determine whether the
2 stormwater drainage plan was sufficient? What
3 standards would they look at at that time?

4 A. I don't know what they looked at at
5 that time.

6 Q. So you don't know what guidelines they
7 were using in whether they determined to approve or
8 disapprove a set of plans?

9 A. No. I have in the past reviewed
10 guidelines and I don't remember what organization
11 puts them out.

12 Q. What about State guidelines. Are you
13 aware of any of the guidelines that were used at
14 that time?

15 A. I did not look into what guidelines
16 they used at that time.

17 Q. So sitting here today, you don't know
18 what those guidelines would have been back in 2006?

19 A. No, I don't know what guidelines were
20 used back in 2006. And I've looked at it on the
21 basis of what factors in the development would lead
22 to an increased water problem.

23 Q. But sitting here, you're not aware of
24 any governmental minimum requirement guidelines
25 that were used to determine whether the plans were

1 sufficient or --

2 A. No, I wasn't trying to compare the
3 governmental minimums. I was looking at what could
4 contribute to water flow problems at various times.

5 Q. So when you were forming your opinions
6 with regards to this litigation, you weren't
7 forming those in reference to any governmental
8 guidelines, but instead your own guidelines.

9 Would that be fair?

10 A. Well, no, it wasn't my own guidelines
11 saying that a slope should be this much here or
12 drainage -- or that a holding pond should be so
13 deep or pavement should have been -- a roof should
14 be no more than 8 percent of the land.

15 I wasn't having guidelines like that.
16 I was looking at, does this potentially increase
17 the drainage problem in that area, rather than did
18 they meet each little -- cross every "T" and dot
19 every "I."

20 Q. Okay. Have you ever seen the actual
21 plans for Bermuda Cottages?

22 A. I haven't seen the plans at all, no. I
23 saw some diagrams earlier.

24 Q. So you don't know what the actual
25 specifications were for the retainage ponds or any

1 fill that was provided for any of the drainage
2 outflow. You don't know what those were?

3 A. I've never got those specifics on that.
4 I can see that it looked like the amount of fill
5 that was used and they tried to take care of it
6 themselves, yes.

7 Q. How much fill did they use?

8 A. I don't know that. As I say, the
9 ground level was about six feet above the -- just
10 across the creek in the Pattons'. Whether that's
11 all fill or not, I don't know.

12 Q. Did you perform any tests or
13 calculations to determine it was six feet?

14 A. No, I did not go over there.

15 Q. Did you just eyeball it?

16 A. No. It was fairly clear, just looking
17 across the creek that it was about six feet higher.

18 Q. Okay.

19 A. Whether it was five and a half or six
20 and a half, I can't say.

21 Q. But you do not know if any of the
22 stormwater plans would have calculated that as part
23 of what the plan is going for the development?

24 A. Whether they were taking into account
25 the amount of fill, I don't know to what extent

1 they did.

2 Q. Okay. And you don't know how deep any
3 of the retention ponds were or how much water they
4 were designed to retain?

5 A. I don't know those things. There were
6 ponds there, yes.

7 Q. Do you know, back in 2006, what were
8 the standards that the stormwater drainage plan
9 would have been built to? Would it have been a
10 25-year event? Would it have been a 100-year
11 event? Would it have been a 500-year event? What
12 standard would they have used back in --

13 A. It's my understanding is that 25-year
14 was commonly used. I don't know if it was
15 universal. It's just how it got to be commonly
16 used.

17 Q. Do you have an opinion as to whether
18 Bermuda Cottages' stormwater plans were
19 inadequately designed not to accommodate a 25-year
20 flood event?

21 A. What do you mean by accommodate? I
22 don't understand that.

23 Q. Would it be your opinion that the
24 design plan for Bermuda Cottages was not able to
25 handle a 25-year flood event?

1 A. Okay.

2 Q. Do you have an opinion on that?

3 A. Let's see if I can say it this way. I
4 was handling it with respect to the development
5 itself and handling it with respect to not
6 increasing any element of down flow -- of outflow
7 over what it would have been otherwise.

8 And that you can have your rainfalls of
9 different periods, different intensities. You can
10 have quite a variation.

11 And then there are other things besides
12 dealing with the land that they had to develop.
13 They created new land, so to speak, by changing the
14 channel.

15 And so I took into account whether this
16 was likely under some rainfall events that were
17 reasonable would be likely to increase the backup
18 and flooding problem.

19 Q. But would it be able to handle a
20 25-year flooding event?

21 A. And I look at a flooding event like a
22 25-year as being variable. You know, you can have
23 different intensities for different time periods
24 and so I did not go back and look at all the
25 limits.

1 You know, if you have a 25-year event
2 two days after a 20-year event, and I just did not
3 look at how that distinguishes the difference.

4 I'm looking at what's typical in the
5 area and can that increase the contribution to the
6 increase in creek level.

7 Q. So would it be fair to say that in
8 basing your opinions, you're not applying a 25-year
9 flood event?

10 A. I'm not applying a strict 25-year flood
11 event. That's right.

12 Q. And do you know who is responsible for
13 determining what a 25-year flood event is?

14 A. Probably either appointed or elected
15 officials.

16 Q. So you think it's some elected official
17 who does this?

18 A. Well, I said appointed and/or elected
19 officials. I don't think that there was one person
20 who decided for all of the East Coast or something.

21 Q. Do you know, is it state or national
22 level? Do you have any idea who this person is?

23 A. I think it starts at national, but I
24 haven't followed that.

25 Q. Have you ever looked to see what a

1 25-year flood event is?

2 A. I've seen definitions of the different
3 flood events and I don't recall the technical
4 specifics of each of the durations and peaks and
5 things like that.

6 Q. And you haven't done that with regards
7 to --

8 A. No.

9 Q. -- Bermuda Cottages?

10 A. No, I have not done that with regard to
11 this issue. I'm looking at the overall
12 performance, not the strict adherence to some
13 minimum standard.

14 Q. Okay. So can you tell me what test and
15 studies have you performed that you can show to us
16 that show that there is additional water being
17 placed into the canal by Bermuda Cottages?

18 A. Okay. Well, some of it is by the
19 increase in curve number that they put in their
20 documents. And then --

21 Q. I'm sorry. Explain to me what you mean
22 by curve number.

23 A. It has do with the ferocity of the
24 ground and how rapid it flows in and out and that
25 sort of thing.

1 Q. And that's what I'm getting at. What
2 tasks have you performed that can tell me what
3 those numbers are?

4 Other than just saying it's happening,
5 what tests do you have that tell me how much is
6 going into there, how fast it's going, how it's
7 affecting that canal?

8 What do you have that can
9 scientifically document that?

10 A. Okay. In terms of being measured
11 during a storm and having a flow meter, I have not
12 done that and I doubt if anybody else did that
13 either.

14 Q. Are there tests that you can perform to
15 determine those?

16 A. You can certainly approximate it with a
17 test by going out and then putting some sort of
18 flow meter in all the representative outflow areas,
19 but that doesn't take care of it all so you have to
20 put estimates in there with them.

21 Q. Is it possible, since those tests
22 haven't been performed, that there isn't a
23 significant difference between the pre-development
24 flow into the ditch and the post-development flow
25 into the ditch?

1 A. Certainly in some rains it will be
2 more, some rains it will be less.

3 Q. And -- sorry.

4 A. So, yes, when you have catch basins and
5 you have a relatively -- I shouldn't say catch
6 basins. Holding ponds, whatever you want to call
7 them, in moderate rains they can do a good job of
8 basically halfway filling up or filling out and
9 there's very little outflow.

10 And then when they get to be full and
11 you have more pavements and roofs and things like
12 that, then once they are roughly full, then if the
13 rain keeps on coming, then you can have a lot more
14 going into the ditch.

15 Q. Have you done any tests to determine
16 what that level would be, how much rain has to fall
17 before that becomes an impact --

18 A. I did some calculations on Clear Lake.
19 I did not have specifics on this development so I
20 did not know the -- just how much it would take in
21 terms of how big the holding ponds are.

22 Q. So you don't know if it would be a
23 25-year flood event, a 100-year flood event, a
24 500-year flood event that would create enough rain
25 for that to impact the canal?

1 A. I don't know at what stage it would,
2 but part of it is that by moving the canal, they
3 took land that would normally be low and would be
4 fillable, so to speak, and converted it to housing.

5 And had they had the same amount of
6 these holding ponds and had fewer houses in the
7 system by not having cut the canal in a different
8 way, then the system would be much more effective
9 at keeping the peak water flow out of the
10 development from increasing, the height of the
11 canal.

12 Q. Are there state standards that prevent
13 them from taking those steps?

14 A. I suspect there are all sorts of
15 minimum standards which developers try to either
16 meet or try to meet or appear to meet. So there
17 are standards out there.

18 Q. But do you know what they did there
19 does not meet those standards? Are you giving that
20 opinion?

21 A. I'm not addressing the minimum
22 standards.

23 Q. Okay.

24 A. I'm addressing the likely contributing
25 factors, whether small or large.

1 Q. So you're not able to say that what
2 they did there with the rerouting of the canal
3 somehow violates some standards and design and
4 installation of the stormwater --

5 A. No. My experience over the decades is
6 there are a lot of situations where standards are
7 just -- totally don't do the job.

8 And to blindly say, I met the minimum
9 standard, I wash my hands and I'm perfectly clean,
10 you're missing a lot.

11 Q. So what would your standard be, if you
12 were designing that stormwater?

13 A. Part of it would be looking at this
14 system, how development has been going on in this
15 area and looking at the history of flooding that
16 has happened over in the Prestwick area and the
17 troubles they have had.

18 And then say, not how can I do the
19 absolute minimum, but how can I, as a person who,
20 as a builder, is putting my property up above the
21 property that's flooding and can likely increase
22 the flooding.

23 How can I be a good citizen, so to
24 speak, or a good neighbor or responsible person and
25 make sure that I'm not contributing to this.

1 And then you look down and see that
2 something of a bottleneck in Highway 17 underpass
3 and you say, I'm just upstream from that.
4 Everything else that goes into this creek
5 negatively impacts the people around, so I'm going
6 to do more than just protect myself, meet the
7 minimum standards, which probably I think apply to
8 a free-flowing drainage area and just let that be
9 it.

10 Q. Without looking at the plans for
11 Bermuda Cottages, how do you know that they did not
12 do that?

13 A. And that's a good question. I don't
14 think I know for sure but I've looked at what they
15 seem to be -- someone seemed kind of proud of
16 having reduced the outflow on certain conditions by
17 a certain amount over what they say was probably
18 the case beforehand which may or may not have been
19 the actual case beforehand.

20 And I forgot where this is going now.

21 Q. Well, let's talk about that real quick
22 because we talked about -- this is Exhibit 10 to
23 your deposition, which was the stormwater report
24 for Bermuda Gardens that was prepared by Nelson
25 Hardwick & Associates.

1 And I think you were just discussing a
2 second ago that in their report they concluded that
3 the post-development discharge will be less than
4 the pre-development -- pre-development in storage
5 provided excess minimum by approximately
6 27 percent.

7 Can you tell me what calculations you
8 have performed that are in disagreement with the
9 conclusions of Mr. Hardwick regarding pre versus
10 post-discharge into the canal?

11 A. Okay. I did not see anything where
12 they utilized the little triangle that was cut off
13 for one thing.

14 They say that they are putting in more
15 storage than required in some areas and about the
16 same as required in other areas.

17 Having gotten this today, I haven't
18 gone in and tried to analyze all that.

19 So how is the post-development
20 discharge going to be less than pre-development?
21 Where does the water go if it doesn't go offsite?

22 Q. Well, wouldn't they move the other
23 retention ponds?

24 A. But it eventually goes offsite. It
25 doesn't stay there all year.

1 Q. Well, what calculations do you have
2 that show that Mr. Hardwick's conclusion here is
3 not correct?

4 A. Well, his conclusions depend on
5 assumptions and if he -- I don't understand how as
6 you build a place with a lot of roofs and pavement
7 and have less water that leak into the site than
8 you would have beforehand.

9 Q. I guess what I'm asking you for is what
10 scientific calculations do you have that shows that
11 these calculations are not correct?

12 A. Okay. I'm not saying these
13 calculations are not correct. It's some of the
14 assumptions and there's no mention of this extra
15 triangle that was cut off in there.

16 Q. I want to go ahead and show you. This
17 is the back two pages of that report. I want to go
18 ahead and show you, there's two parts to this.
19 There is a three-page --

20 MR. CONNELL: That's already been
21 marked?

22 MR. NEILL: Yes, this is part of 10,
23 the same thing.

24 Q. There is a pre-development basin map
25 and then there is a post-development basin map.

1 Now, in the upper left, top corner, is
2 this the triangle that you're talking about here
3 (indicating) --

4 A. Yes.

5 Q. The part that is to the upper left of
6 the canal? That's the triangle you're talking
7 about?

8 A. Uh-huh.

9 Q. So this does show as part of this
10 report that they did consider that triangle, does
11 it not?

12 A. Yes. They did consider it. And let's
13 see how to describe this. If this were not
14 developed and filled, then that would in essence
15 have been something of the equivalent space of a
16 lake or holding pond.

17 Q. Okay. What calculations do you have
18 that show that would be a holding pond?

19 A. Well, because with the canal coming
20 down through here (indicating), just like the
21 Prestwick property, the water just builds up in
22 there as the water builds up in the canal so that
23 would be something of a buffer.

24 Q. So do you have a topographical map or a
25 survey or anything that would show that?

1 A. I don't.

2 Q. Okay.

3 A. I don't know. And I would have wished
4 I had 17 or 18 or 19 or whatever years ago, I wish
5 I had some meters and gone through the whole length
6 of the canal.

7 Q. Gotcha.

8 A. I didn't anticipate this back then.

9 Q. Let's talk about that because we had
10 talked a little bit earlier about how we rerouted
11 the canal that's shown on both the pre-development,
12 which is the existing canal, and then on the
13 post-development map, we're showing this is how
14 they rerouted the canal; is that correct?

15 A. That's correct.

16 Q. And it's shown as the relocated canal
17 on the post-development basin map?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. Now, you talked earlier about this turn
22 here that the relocated canal made.

23 A. Yes.

24 Q. Now, the pre-existing canal had two
25 turns in it; is that correct?

1 A. Yes.. One was very slight and the other
2 one was definitely less than the new one.

3 Q. Do you know what the angles were on
4 these turns?

5 A. I don't know what they were. I talked
6 with Mr. Patton and he said he thought this was one
7 about 20 degrees.

8 Q. But you have not conducted any
9 measurements with --

10 A. No, unfortunately, I did not consider
11 that something that people were going to do and I
12 didn't -- that they were going to change the
13 channel so I didn't go out there and try to
14 document it.

15 Q. What about the relocated canal? Have
16 we conducted any measurements with regards to that
17 angle?

18 A. I've looked at it and I assume that
19 this drawing is much more correct than what was
20 existing -- meandering -- somewhat meandering
21 because I don't really mean meandering but like
22 that sort of thing.

23 Q. Have you done any calculations that
24 would let us know the effect that would have on the
25 canal with the change from the way it was

1 pre-development to post-development?

2 A. You mean just the canal itself?

3 Q. Yes. Have you done any testing of any
4 kind with regards to how that affects the flow of
5 water?

6 A. No, no testing.

7 Q. Okay.

8 A. And I can see that work has been done
9 on the canal.

10 Q. Are you aware of any flooding that the
11 plaintiffs have had which didn't involve a rainfall
12 event that exceeded a 25-year flood level?

13 A. I think I was asked that and since I
14 haven't gone and compared each event with the
15 25-year-old statistics -- not 25-year old, the
16 25-year statistics, I can't say that.

17 Q. So you can't testify whether they have
18 or have not?

19 A. No, I would have to go back and look at
20 the statistics of the rain and compare that with
21 the specifics of the 25 year.

22 Q. Now, we had some discussion earlier --
23 actually throughout this whole process today that
24 there are numerous contributing factors to the
25 flooding; is that correct?

1 A. That's correct.

2 Q. Have you taken the time to allocate any
3 type of percentage that the development of Bermuda
4 Cottages would contribute to that flooding?

5 A. I have not. And I have thought about
6 that and it might be a little arbitrary if I did it
7 at this stage.

8 I'd be happy to sit down and brainstorm
9 with any or all of you and just see what we thought
10 was the fair distribution of that by the different
11 factors.

12 But that would be something that you
13 would -- I can have my technical input and then
14 everybody could have their input and we could talk
15 about it and I'd be happy to do that.

16 Q. Do you believe that Bermuda Cottage's
17 impact would be less or more than 50 percent?

18 A. I believe it would be less than
19 50 percent.

20 Q. Now, you talked a little bit earlier
21 about what kind of steps can the homeowners take,
22 the plaintiffs in this case, to help them with
23 their flooding problems. What kinds of things can
24 they do to help themselves?

25 A. Okay. One of the things that I noticed

1 when I was there at their place and, you know, they
2 have got these grates in the yards. You've been
3 there, I'm sure.

4 Q. Yes.

5 A. And they have grates near the driveway
6 of the street, the catch basin. If they were to
7 put in a, basically an extended grate with a
8 structure under it all the way across the front of
9 their property, they would catch all the water
10 coming down from the top.

11 They could put a berm or little berm
12 around the side of their property and then put in a
13 pumping station with back-up electrical power.

14 Then the chances of their having repeat
15 flooding events would be substantially reduced.

16 So the grating in the front, like a big
17 catch basin, a long extended one, would take care
18 of water coming down from the rest of Prestwick.
19 The pumping station would pump it out.

20 If the creek level is up above their
21 yard level, you would have to pump it out and make
22 sure that there are good check valves.

23 Q. Do you have any estimate as to what a
24 system like that cost?

25 A. No. I can guess and you can guess and

1 everybody else can guess.

2 Q. Okay.

3 A. But the trick is with the pumping
4 station you have to have adequate capacity and
5 create the berms that can catch everything and to
6 have back-up power to the pumping station and
7 back-up pumps so if one pump fails, another one
8 comes in and they have got power.

9 Q. What about any other remedies they can
10 make?

11 A. I don't think you can put the house --
12 jack the house up on stilts.

13 Q. Could you raise it?

14 A. That's what I mean.

15 Q. I mean, could you raise the foundation?

16 A. You could potentially do that. That's
17 one of the things I thought about before, jack the
18 house up six feet or four feet or whatever.

19 Q. Okay.

20 A. Then you've got the problems with the
21 yard and garage. If you get the garage up, you
22 need to bring in fill and snatch your driveway up
23 so the garage fill is high enough too.

24 That's the brainstorming kind of things
25 that you could do that all there and solve their

1. problem.

2. Q. We talked earlier about the issues
3. with -- that you testified to where you opine that
4. there is additional water flowing off of the
5. Bermuda Cottage's development, the change in the
6. canal direction during the development.

7. Were there any other opinions that you
8. had where the development of Bermuda Cottage is
9. contributing to the plaintiffs' flooding issues?

10. A. I think what I mentioned is it.

11. Q. Okay.

12. A. If I get into this further and come up
13. with something else, I will let Mr. Connell know
14. and he will let you know.

15. MR. NEILL: That's all the questions I
16. have.

17. Thank you, Mr. Taylor.

18. THE WITNESS: Thank you.

19. THE REPORTER: I'd like to ask counsel
20. if anyone would like a copy of the transcript.

21. MR. CONNELL: Are you coming back for
22. the second part of the deposition?

23. THE REPORTER: I never know.

24. MR. CONNELL: You are. We'd like you
25. to come back. We need you to come back.

1 MS. DUPRE: I'd like a rough copy.

2 THE REPORTER: Is a week okay to get
3 you the rough?

4 MS. DUPRE: Yes, that's fine.

5 THE REPORTER: Would anyone else like a
6 rough?

7 MS. BISSET: I'd like a rough.

8 MS. THOMAS: Just a rough draft would
9 be fine.

10 MR. WATKINS: I'll take a rough draft
11 also if you're doing it.

12 MR. Mclean: I'll wait on the final.

13 MR. BATTLE: I'll take --

14 THE REPORTER: You get everything
15 because you ordered -- actually, I'm not sure about
16 the rough. Would you like a rough?

17 MR. BATTLE: Yes, I'd like a rough.
18 Just digital is fine.

19 MR. BAXTER: I'd like a rough.

20 MR. NEILL: I'll take a rough, please.

21 MR. CONNELL: And I'd like a rough
22 also, please.

23 (The witness, after having been advised
24 of his right to read and sign this transcript, does
25 not waive that right.)

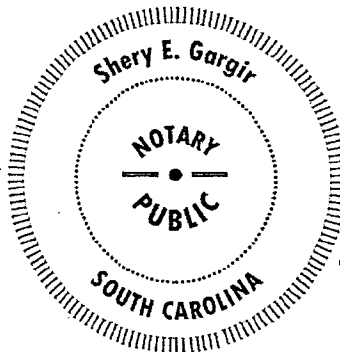
1 (The deposition adjourned at 4:19 p.m.)
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CERTIFICATE OF REPORTER

I, Shery E. Gargir, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 3rd day of December,
2018 at Myrtle Beach, Horry County, South Carolina.



Shery Gargir

Shery E. Gargir
Court Reporter
My Commission expires
November 29, 2028

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page Line

ROBERT K. TAYLOR	6	1
EXAMINATION	6	3
BY MR. BATTLE		
EXAMINATION	108	12
BY MR. BAXTER		
EXAMINATION	141	6
BY MR. MCLEAN		
EXAMINATION	154	24
BY MR. JORDAN		
EXAMINATION	186	15
BY MR. NEILL		
CERTIFICATE OF REPORTER	216	1

REQUESTED INFORMATION INDEX

(None Requested)

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	Page	Line
DFT. EXH. 1, Affidavit of Robert Taylor	15	3
DFT. EXH. 2, Copy of photograph	50	8
DFT. EXH. 3, Handwritten notes	51	23
DFT. EXH. 4, Portions of previous deposition of Robert Taylor	62	23
DFT. EXH. 5, letter from Horry County to Prestwick Homeowners	67	15
DFT. EXH. 6, Thomas & Hutton Study	70	19
DFT. EXH. 7, copies of photographs	80	23
DFT. EXH. 8, copies of photographs	80	25
DFT. EXH. 9, June 14, 2001 affidavit	90	9
DFT. EXH. 10, Stormwater report for Bermuda Cottages, dated May 25, 2006	94	6
DFT. EXH. 11, Google maps	101	12

1	DFT. EXH. 12, Google maps	101	14
2	DFT. EXH. 13, Google maps	101	16
3	DFT. EXH. 14, Diagram of	159	16
4	Outfall Number 1		
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
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1 SIGNATURE OF DEPONENT

2 DEPONENT: Robert K. Taylor

DEPOSITION DATE: 11/19/2018

3 AWR JOB #: 22424

CASE #: 2016-CP-26-06495

4

5 (Please return both Signature of Deponent pages)

6 I, the undersigned, Robert K. Taylor, do hereby
certify that I have read the foregoing deposition.

7 and find it to be a true and accurate transcription
of my testimony, with the following corrections, if

8 any:

9	PAGE	LINE	CHANGE	REASON

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO



1 SIGNATURE OF DEPONENT (CONTINUED)

2 DEPONENT: Robert K. Taylor

DEPOSITION DATE: 11/19/2018

3 AWR JOB #: 22424

CASE #: 2016-CP-26-06495

4

5 PAGE LINE CHANGE REASON

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12 Robert K. Taylor Date

13 I certify, as the Court Reporter and Notary Public
for the State of South Carolina at Large, that the deponent
14 was advised of his or her right to read and sign
said deposition both verbally and in writing.

15 If the deponent fails to execute and return
foregoing Signature of Deponent pages within the
16 thirty (30) days allowed pursuant to the Rules of
Civil Procedure, the original transcript may be filed
17 with the Court.

18

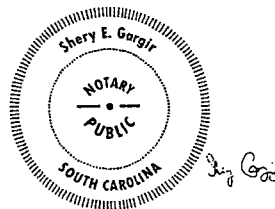
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24 Court Reporter
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25

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO



Exhibits	14:24 15:3,12 62:21 67:25 81:9, 13 159:17 160:22, 23 165:23 166:1,7, 10,14,22 167:2,12, 22,24 168:1,2,8, 20,23 174:6 175:19,21	17 24:2,3,18,20,21 26:13 27:13,16 36:23,25 37:1,6,8 38:9,20 43:4 49:20 57:6 61:6,14,19,20 62:13 72:11,20,22 73:4,22,25 74:18, 22 75:6,7,10,15, 20,23 77:20 78:7 79:6 85:12 86:3, 11,12,19 87:1,12, 16,23 88:2,5,22 90:6 102:8,16 114:18 123:11 131:11 135:3 141:13,14,24 142:15,17 143:15 145:16 146:2,11, 22,25 147:3 150:6 152:23 153:15 167:2 169:8,11 182:22 187:5 189:7 191:8 203:2 207:4	145:14 208:7 20-year 197:2 2000 62:21 2001 90:9,15 123:2 2003 24:11 52:3,6,20,23 54:6 58:15,18 59:6 60:4 63:3 64:14 101:21,25 123:3,5, 7,8,14,24 124:5,20 127:24 131:19 133:7 134:5,6,9, 20,21,24 135:1 136:11 137:3 2004 124:5 2005 132:3,11 155:7 158:13 166:19,20, 25 167:13 172:10, 13 178:20 179:24 180:4 189:1 2006 94:7,19 100:18 131:22 158:13 192:18,20 195:7 2007 131:20 158:15 2010 46:2,8 59:21 2012 70:23 2014 67:16 72:6 78:12 2015 45:19 46:23 47:2, 3,4,8,25 49:13 91:3,13 126:16 148:2 2016 45:19 47:4 48:5 49:13 91:3,13 123:15 126:17 148:5 2017 123:15 191:14 25 39:18,21 40:9,18 94:7 127:25 128:1, 4 131:1 209:21 25- 25:16	25-plus 127:25 25-year 39:3,8,11,20 40:10,21 95:8 96:15 107:21 113:23 114:12,14, 25 127:17,23 128:4,14,16 129:2, 10,22 130:5,11 195:10,13,19,25 196:20,22 197:1,8, 10,13 198:1 200:23 209:12,15, 16 25-year-old 209:15 27 99:12 191:14 204:6 2nd 132:3 3 3 17:19 51:22,23 69:25 176:15,18 30s 169:13 4 4 17:24 37:16 62:23 169:6 4-C 67:25 4th 148:1 5 5 62:16 67:15 71:8 72:18 169:8 174:6 50 24:9 44:14,16 152:14,20 210:17, 19 50- 25:16 50-year 107:23 500-year 26:1 40:5 195:11
DFT.EXH.001 14:24 15:3,12 101:12 218:4,25				
DFT.EXH.002 50:7,8 218:6				
DFT.EXH.003 51:22,23 176:15, 18 218:8	1,200 154:17			
DFT.EXH.004 62:23 218:9	1,400 44:2 144:9 154:15, 17 162:5			
DFT.EXH.005 67:15 71:8 218:12	10 16:12 23:25 62:17 94:4,6,11 191:19 203:22 205:22			
DFT.EXH.006 68:20 70:15,19,22 71:4,15 218:14	100 64:1,7 65:12			
DFT.EXH.007 80:23 81:11 218:16	100-year 25:16 26:2 40:25 108:2 128:5,7,25 195:10 200:23			
DFT.EXH.008 80:25 81:5 218:18	100th 69:16			
DFT.EXH.009 90:8,9 218:20	11 43:2 101:11,12,21 102:1			
DFT.EXH.010 94:4,6,11 203:22 218:22	115 62:21			
DFT.EXH.011 101:12 218:25	12 16:12 43:2 101:11, 14,21 102:1 109:25			
DFT.EXH.012 101:14 219:1	12- 144:8 154:15			
DFT.EXH.013 219:2	12-foot 183:7			
DFT.EXH.014 159:16 161:21 165:23 184:3,4 219:3	13 101:11,16,21			
S	13- 162:4			
\$815,000 78:7,14	14 43:4 71:15 90:9 159:15,16 161:21 165:23 184:4			
0	15 8:13 16:2 31:11 40:5 47:1 50:3 56:8,11,25 91:8,16 109:13,25 111:6 118:21 145:13 188:3			
03 101:8 133:24 136:20 177:4	16 46:25 47:2 91:8,16			
06 133:6				
1				
1				
		2 15:22 50:7,8 69:25 81:9 148:5 2-A 67:25 20 22:25 40:5 62:17 64:2,8 65:12,13 91:17 128:25		

200:24	99	act	adjustor	alleviate
50s	101:8 145:9	48:17 84:13 85:3	17:11	73:22
142:1 143:12		104:21,25 113:7,	adjustors	allocate
184:5,8	A	11 115:12 119:11	11:15	210:2
5th		action	admissible	allowing
148:1	ability	20:13	7:1	124:12
	151:22	activity	admit	alongside
	absence	13:3	84:13	81:4 83:8 98:9
6	27:21	acts	admitting	Alpha
	absolute	105:9	72:22	160:22,23
6	94:1 202:19	actual	adverse	alter
68:20 70:15,19,22	absolutely	21:7 94:2 193:20,	97:9	23:14
71:4,15	118:14 124:18	24 203:19	adversely	alteration
60s	145:7	add	150:25	102:25
142:1 152:20	absorb	94:21,22 185:20	advised	alterations
65	22:18,20 29:4	added	214:23	131:5,18
184:10	absorbed	66:16	affect	altered
667,000	19:15	adding	26:22 38:20 61:19	28:19
78:21	accept	22:2	104:17 151:1	altering
	41:22	addition	154:12 173:14	28:13
7		22:14 35:9 50:20	affected	Alto
80:22,23 81:11,13	accommodate	104:3	133:23	10:9,10
82:21	27:25 95:16,17	additional	affecting	amount
70	195:19,21	21:6 22:2,5,6,9	140:12 199:7	12:2 24:4,8 25:15
24:10	accommodated	35:19 96:20,25	affects	29:1 36:4 43:21
75	89:2	131:17 137:13	209:4	47:11 62:14 70:16
185:17	accompanying	177:21 198:16	affidavit	74:25 85:5 86:25
	114:6	213:4	15:3,17 90:9 103:9	91:12 95:22 97:10
8	account	additionally	191:7	99:11 130:16
	32:21 33:10,18,23	37:25	affirmatively	194:4,25 201:5
72:1 80:22,25 81:5	34:3,5 57:19,21	additions	174:24	203:17
193:14	58:12 88:16 96:25	131:5	affirmed	analysis
80	152:6,12 194:24	address	10:20	10:5 12:22 13:25
152:21	196:15	68:6 138:12 150:1	agent	86:23 185:19
800,000	accounting	addressed	158:17	analyze
107:6	33:25	40:22,23 41:1,11,	agree	204:18
80s	accumulate	15,19 51:4 59:20	80:16 130:7	analyzed
7:22	104:14	96:16,17 97:3	161:19	59:22
83	accumulation	158:5 169:19	agreement	and/or
7:23	30:1	addressing	44:4	197:18
9	accurate	85:20 97:14,15	ahead	angle
	35:15 44:3 63:20	116:18 201:21,24	14:25 34:21 43:18	18:24,25 19:1
90	69:19,21 89:15	adds	70:14 106:10	64:11 95:18 100:5,
100:4	99:22,24 178:11	22:21 24:4 104:17	152:14,21 176:7	6,7 103:2,21,22
90-degree	acknowledge	adequate	205:16,18	104:15 208:17
20:15,16,20 100:3	86:6	51:19 53:18 57:18	Air	angles
90s	acknowledging	65:7 66:2 111:19	159:21 161:15,16,	208:3
49:8 109:15 111:4	79:4	130:14 212:4	17,20 162:1,8,12,	answering
118:6,18 138:5	acre	adequately	14 173:16 186:5	21:21 114:15
142:22 144:4	36:6	56:7	alleged	answers
	acreage	adherence	46:13	63:5
	70:12	adjoining	alleging	anticipate
	acres	138:19	48:18	151:14 207:8
	35:17,19 36:5,6			anticipated
	44:2 57:2 97:19			
	162:5			

149:8 anymore 32:6 104:13 apologies 37:3 80:5 appears 19:24 35:16 104:21 152:10 173:23 application 92:20 apply 53:25 89:22 203:7 applying 197:8,10 appointed 197:14,18 appreciated 135:2,9 appreciating 135:5 approach 103:25 153:20 approval 48:12,16 52:7,21 105:14 139:4,7 151:9 152:8,9 171:19 190:12 approvals 49:1 approve 11:21 37:11,13,23, 25 42:4 57:18 102:24 103:10,12, 13 192:7 approved 18:17 36:20,22 37:19,21 42:1 51:10 53:6 78:15 93:11 105:24 106:17 117:23,24 118:16 139:6 183:19 approving 36:24 38:10 103:18 118:5 approximate 199:16 approximately 142:6 191:16 204:5 arbitrary 210:6 area 17:20 19:25 24:25	34:14,18 37:12 42:19 44:1,7,13 48:10 51:2,6 59:4, 16 78:2 81:19 82:14 91:15 98:5, 16,20 99:16,23 102:6 104:2,4,12 105:20 116:15 119:22 124:8 130:15 161:21 162:7,17 167:25 178:3 179:5,12 182:7 184:9,11 187:4,14,15 193:17 197:5 202:15,16 203:8 area's 36:21 areas 31:18,21 91:15,16 182:13,15,18 199:18 204:15,16 argue 84:17 argument 154:4 ark 84:9 Arrigo 63:9,12 artificial 180:25 artificial 18:15 37:18 59:2 130:16 180:23 as-built 109:9 116:2,4 117:14 139:13 as-builts 118:17 aspect 159:2 assert 41:4 99:10 asserting 106:4 assess 64:12 assessment 69:18 144:22 assessments 70:7 Associates 17:22 203:25 association 48:21	assume 99:25 159:7 162:10 170:5 208:18 assumed 170:10 assuming 52:23 93:2 128:11 132:10 assumption 97:5 assumptions 95:4 205:5,14 Atlantic 167:13,22 attached 188:11 attempted 34:2 attend 92:12 attention 39:11 62:3 79:25 89:11 attorney 6:6 attorneys 6:21 108:7 avoid 60:13,16 aware 7:11,14 16:25 41:13 55:8 92:1 114:7 118:4,17 123:19 124:11 128:6 131:17 132:11,16 133:5,6, 9,10,16 134:2 135:18,20,21,23 136:20 137:2,12 145:9 147:13 155:10 172:7,13, 18 173:15 174:24 177:23 178:19,24 179:2,23 182:5,6 190:22 192:13,23 209:10 awareness 165:11 B bachelor 7:20 back 16:14 20:24 38:7,	24 45:2 49:8 51:3 54:19 63:10 70:5,9 72:25 74:17 81:25 82:2 83:24 86:10 108:19 109:15 113:14 114:18 115:2 118:6,8,18 119:12 120:6 123:9 130:10 133:11 134:2,5,6, 9,24 136:11,20 137:3 138:5 157:19 162:16 169:6,12 174:8 176:24 179:1 182:8,10 184:4 186:25 188:5 189:3,5 192:18,20 195:7,12 196:24 205:17 207:8 209:19 213:21,25 back-up 211:13 212:6,7 background 45:21 backhoes 50:23 backing 24:19,21,23 72:23 74:7 126:20 157:1, 4,6,7 backing-up 20:12 backpedals 70:5 backs 62:13 backtracking 87:24 backup 196:17 backyard 55:18 88:10 bad 55:3 75:22 balance 29:9,17 30:15 balances 29:16 ball 150:2 ballpark 36:14 bank 21:17	banks 156:7 bare 84:21,24 93:9 barrier 34:25 86:11 base 155:20 159:21 161:15,16,17,20 162:1,8,12,15 173:17 177:17,18, 24 184:4 186:5,6 187:15 based 42:10 53:5 basement 138:24 basic 14:18 18:3 20:21 179:13 basically 30:5,20,21 34:25 35:3 55:19 64:24 72:18 74:15 75:2 77:17,19 78:18 97:11 99:18 105:13 108:16 184:8 188:9 200:8 211:7 basin 66:2,12 79:21 116:10,18 133:20 205:24,25 207:17 211:6,17 basing 197:8 basins 64:23 65:8 116:15 119:4,6 135:17 173:21 200:4,6 basis 14:15 27:7 36:9 79:15 100:9,23 178:12 192:21 bathroom 6:17 Battle 6:4,5,8,11,12 14:23 15:8,18,20 16:19 17:6 18:10 26:18 27:1 50:7,10 51:22 52:1,17 53:11 62:16,19 63:1 67:12,18 70:14,21 80:21 81:2 90:7,11 93:17 94:3,9 99:3

101:10,19 108:6,9 163:3 171:13 214:13,17	77:5 83:15 122:12 145:11 156:20 212:5	body 62:10	bridge 150:5,16,20 154:7 175:22 176:9	built 14:4 19:16 38:17 41:25 52:16 53:7 54:11 55:1 85:9 87:18 88:4 97:17 105:15 106:12,16 109:16 111:15,20 112:24 115:15,16 119:9 121:7 137:1 140:7,22 143:3,10, 14,21 144:2 145:11,19 146:7 149:18,24 150:16, 20 153:3 155:9 157:19 158:13 173:16,17 181:22 182:12 184:4,14 185:3,4 195:9
Baxter 52:13 53:9 108:13, 14 141:5 214:19	Bermuda 32:5,9 44:6 46:5, 19 47:8,10,25 48:13,16 51:5 52:24 54:7 55:22 92:19 93:1,12,21 94:4,7,20 98:21 103:18 104:20 146:6 171:14,17, 20,22 172:5 186:19,20 187:10 190:1,12 191:22 193:21 195:18,24 198:9,17 203:11, 24 210:3,16 213:5, 8	boost 23:10	briefly 32:15	bunch 20:4 57:15
beach 39:15 76:10 91:15 119:22 123:12 149:24 155:2 159:21 160:2,5,18 161:14,20 162:1 163:2,11,15,24 164:8,16,20 165:3, 8,15,18 166:3,5, 11,21 167:1,10,20 168:6,18 169:9,18, 21 170:1,12,19,25 171:5,19,23 172:4, 10,16,21 173:6,15 174:14,24 175:18 176:19 177:6 178:18,20,25 179:3 180:19 181:2,6,7 183:14 184:13,19 185:7, 10	big 20:9 24:12,14 31:11 34:23 47:1 59:15 64:25 66:3 68:5 74:3 79:13 84:2,7 85:12 86:18 88:11,14 89:22 90:3 91:7 100:1 182:20,23 185:4 200:21 211:16	border 10:9,10 170:14 178:10	bring 24:12 183:1 212:22	bundle 48:14
bear 79:1	bigger 46:16 72:21 73:25 74:2,6,23 75:8 81:24 85:16 153:10,11,18	borderlines 185:9	brings 183:23	burrs 182:8
began 163:3	biggest 87:25	bothers 39:5	broaden 75:4	business 42:17 78:8
begins 19:11 22:19 25:20 42:4	BISSET 214:7	bottleneck 19:25 37:8 38:19 57:23 58:1 67:10 203:2	broadly 114:2	businesses 7:12
behalf 108:15	bit 20:6 47:23 58:23 73:16 74:12 82:8 83:5 98:18 104:1 115:8 131:12 142:7 178:9 187:13 189:15 207:10 210:20	bottlenecked 24:2	broader 74:9	buying 78:10
bell 131:21	Black 183:6	bottom 61:14,18 153:7 160:12	brother 183:24	buyout 91:24
bend 23:13 25:6 93:19 96:14 102:20 103:1	black-and-white 16:17	bought 41:14,23	brought 12:16 105:12 148:1 188:8	C
benefits 155:16	blindly 202:8	boundaries 121:5	brunt 79:1	calculated 194:22
berm 22:20,24 53:17 66:13 72:12 81:4, 14 83:7,9,20,21 85:2,13 88:3,6 90:3 116:22,24 121:7,18 122:4 125:5 136:16,18, 21 155:9,13,15,17, 23 157:19,25 158:13,16 182:23 187:5 211:11	blockage 27:16	boundary 160:18 166:5	brush 49:18	calculation 33:1 43:24 148:22, 24
berms 22:23 76:17,18,21	blocked 137:22	box 109:7	buffer 161:8 206:23	calculations 10:15 16:3 43:25 66:23 144:17,21 155:19 174:12 190:20 194:13 200:18 204:7 205:1,10,11,13 206:17 208:23
	blush 69:20,23,24	brain 141:21	build 34:10 40:11 51:20 88:3 150:5,9 152:4 154:7 182:16,23 183:10,15 185:5 205:6	call 14:17 17:14 19:13 24:14 25:15 26:9, 11 47:4 61:5 97:1, 10 117:2 136:14 147:8,18 175:9 187:9 200:6
		brainstorm 210:8	buildable 105:16	called 12:19,22 13:8
		brainstormed 189:22	builder 140:25 202:20	
		brainstorming 212:24	builders' 152:9	
		branch 161:2,5	building 11:1 12:20 19:7 27:7,23 42:7 56:1 78:16,25 92:8,9, 11,20,22,23,24 93:6 117:21 121:18 139:6 148:9,11 151:6 171:10 177:21 179:14 183:13 184:15	
		break 28:4 45:9 83:20 88:6 93:14 152:11 186:13	buildings 43:5 177:22	
		breaking 86:20,21	builds 83:25 186:7 206:21,22	
		breaks 6:16 66:13 71:5 84:1		
		bribed 41:21		
		bribery 106:4,6		

16:14 20:13 32:5,6 33:11 34:6 146:6 160:12 188:5 calling 32:4 66:4,5 171:18 186:20 Campground 108:16 Campgrounds 72:19 canal 14:16 15:24 17:23 18:1,4,18,20,23 19:4,19,24 21:4, 14,23,25 23:13,15, 17,18 24:24 25:6, 7,20 27:24 28:12, 13,19 29:11 30:3,9 32:4 37:17 43:14, 22 46:14 48:7,12, 23 49:2,5 50:11, 17,19 60:1,12 65:1 66:5,21 67:2,4,7 77:18 95:9 96:14, 17,23 99:12 100:3, 17 101:4,20,24 102:12,20 103:17 104:12 143:10,20 147:15,17 148:9, 10,12 160:24 187:9 198:17 199:7 200:25 201:2,7,11 202:2 204:10 206:6,19, 22 207:6,11,12,14, 16,22,24 208:15, 25 209:2,9 213:6 cap 174:9 capable 77:1 capacity 9:21 34:17 75:3 212:4 cards 70:2 care 40:13 73:15 78:4 80:19 107:1 126:15 194:5 199:19 211:17 Carolina 7:22 119:11 Carrotti 63:9 cart 76:13	case 7:16 58:15 102:23 112:7 118:1,3 122:1 123:1 132:10,11,24 137:15,17 139:9 155:6 166:20 188:10 189:2 191:7 203:18,19 210:22 cases 8:10,19,24 9:4,11 141:1 catch 64:23,24 65:8 66:2,12 116:10,15, 18 119:4,6 133:20 135:16 173:20 200:4,5 211:6,9,17 212:5 category 11:13 Catherine 58:13,15,17,20,22 81:6 82:16,20 caused 18:20 52:8 75:19 causeway 27:14 58:23 61:3 90:14 145:16 151:6 169:16,17, 23 causing 18:5 26:14 48:1 52:12 90:14,22 cease 64:8 89:21 ceases 25:20 certification 41:3,5,9,12 certified 11:10,18 cetera 117:23 120:11 125:6 chance 14:24 29:20 81:18 chances 211:14 change 17:25 23:14 28:23 32:6 37:17 96:22 103:22 117:20,21 149:22 208:12,25 213:5	changed 13:3,4 19:24 32:23 33:19 34:9 55:7 56:11 58:25 95:12 103:3 125:7 142:16 149:12,13 187:1 changing 17:23 18:4,8,19,23 19:4,16 79:10 98:6 104:4 149:15 177:20 196:13 channel 27:12 98:6,9,11, 12,24 169:7 180:23,25 181:6 196:14 208:13 channeled 18:1 channeling 73:25 character 149:21 characteristics 28:24 30:13 charge 118:5 Charles 155:1 chase 39:23 check 121:13 122:17 156:12 162:16 211:22 checked 147:21 170:16 172:17 checking 69:5,6,15,22 70:10 checklist 7:2 52:6 church 7:12 circumstances 14:2 29:21,23,24 117:20 cite 40:20 91:2,5 cites 63:7 citizen 202:23 city 16:22 155:2 160:1,	3,5,18 163:2,10, 15,24 164:8,16,20 165:3,6,8,14,18,21 166:3,7,8,11,20 167:1,8,10,20 168:6,18 169:1,9, 18,21 170:1,12,15, 18,24 171:5,18,23 172:4,9,16,21 173:5 174:14,22, 24 175:4,18 176:19 177:6 178:20,25 179:3, 18,19,20,21,24 180:19 181:5,7,20, 24 183:14,17,21 184:12,13,19 185:6,10 claim 40:20 claimants 155:9 claiming 32:16 95:21,24 claims 32:13 clean 202:9 cleaned 49:17 55:15 clear 21:10 131:12,13 194:16 200:18 clearer 21:22 148:15 Clemson 137:25 138:3,6 clever 31:3 client 9:13 clients 13:14 141:10 clog 74:22 clogged 49:20 137:21 clogging 49:24 close 18:25 44:14 48:21 55:12 78:19 122:14 150:6 closer 103:1 104:16	clubhouse 55:22 clubs 7:13 Coast 197:20 Coastal 118:11 code 39:2,25 42:7 70:11 93:21,24 94:1,2 codes 11:1 40:2,17 89:11 92:8,9,20,23,24 93:2,3,7 Columbia 31:6,11 column 72:2 combination 89:23 152:1 combined 65:7 66:11 comment 54:20 commentary 70:16,17 comments 92:14 committed 46:8 127:19 committees 92:14 common 169:2 commonly 114:4 195:14,15 communication 152:11 community 56:6 69:19 76:9,11 compare 56:17 113:15 130:12 131:1 193:2 209:20 compared 112:21 124:10 209:14 comparing 112:14 comparison 97:22 compensate 21:6

competing 19:12	conduits 133:20 134:12	139:13 155:13,15 168:7 169:22 179:11	convincing 41:18	211:24
complaint 147:5	confidence 124:17	consulted 139:20	convoluted 21:9	costs 71:5
complete 8:7,8 94:23	confident 182:16	contact 50:3	Conway 180:6,11 181:20	Cottage 213:8
completed 158:16	confine 20:23	contacted 191:4	cool 76:12	Cottage's 210:16 213:5
completely 44:17 158:5	confines 140:9,12 141:1	contained 138:20 140:9	cooperation 126:14	Cottages 94:5,7 146:6 186:20 187:10 190:1,12 191:22 193:21 195:24 198:9,17 203:11 210:4
complexities 66:17	confirm 118:14	content 171:3	coordinate 60:7	Cottages' 195:18
compliant 93:2,4,22,24	confusing 178:9	contention 23:3 34:22	coordinated 169:13	counsel 213:19
complied 92:20 139:12,13, 14	connection 176:25	context 85:19 103:16	coordination 57:13 58:2,11 166:17	count 186:10
comply 111:10 115:10 118:25 119:10	Connell 8:7 9:11,12 16:9, 16 17:3 26:16 52:14 56:14 60:21 69:10 92:5 94:17 99:2 101:18 115:24 159:11,18 160:1,6 165:21 166:23 168:21,25 180:15,22 184:16 186:12 190:13 191:3 205:20 213:13,21,24 214:21	continue 72:24	copies 80:23,25	counterintuitive 175:3
complying 139:16		contribute 37:9 136:5 179:15 184:19 193:4 210:4	copy 50:8 94:23 213:20 214:1	counts 21:1
comprehensive 45:11 63:5		contributed 47:11,12,17 126:10 163:4 174:25	corner 98:10 206:1	county 6:6,12 7:8,10,13 17:3 18:17 23:14 30:3 36:19 37:19 38:9 41:22 48:18, 19 51:5 54:5,16,21 67:13,15 71:16 73:2 77:16 78:6, 13,15 79:20 80:6,9 86:6 92:21 93:5 102:24 103:10,18 104:22 105:10,19, 25 107:8 147:22 166:3 176:8 183:17,18 190:11 191:25
computer 70:11		contributes 27:15,17 183:22	corners 69:5	County's 39:2 78:1
concentration 22:13 175:9		contributing 57:9 59:7 61:1 62:6 144:13,19 145:4 173:2 174:4, 6,7 175:16 201:24 202:25 209:24 213:9	corporation 127:11	couple 77:8 187:23
concern 105:5	cons 155:17		correct 7:3 9:3,15,16 13:1, 9 30:6 33:24 39:3 50:18 69:8,9 71:9, 17 81:7 82:13 85:22 90:15 99:19 100:18 102:21,22 103:21 107:4,6 110:3,4 112:1,4 116:4,5 117:15,16 123:1 127:17 132:21 135:19 146:13 147:4 148:2 150:7,23,24 151:1,2 161:4 162:13,24 175:23 189:19 205:3,11, 13 207:14,15,19, 25 208:19 209:25 210:1	courses 170:8
concluded 55:20 111:18 204:2	conscious 80:13 173:19		correcting 23:2 157:22	Court 67:14 158:19
concludes 76:15	consideration 93:25 117:6	contribution 197:5	correction 23:3	courts 8:5
conclusion 35:8 110:12 163:21 184:17 205:2	considerations 94:2	contributor 18:8 131:12 148:16 151:11	correctly 70:12 80:5	cover 86:12 137:16,17
conclusions 71:9 204:9 205:4	constantly 86:19	contributors 184:24	cost 72:4 78:23 79:5	covered 56:7
concrete 33:11,20	constitutes 127:17	contributory 73:14		create
condition 101:4 144:23,24	constriction 151:19,20	control 27:22 28:3 83:9 92:23 167:7		
conditions 74:21,23 203:16	constructed 12:20 58:6 67:3,4 168:12,15	converted 201:4		
conducted 208:8,16	constructing 28:12	convince 11:21 41:24		
conduit 27:13 74:22 75:10 107:5 135:3 169:8, 10	construction 11:10 12:7,10 30:4 42:4 45:24 46:5 48:13 109:3,17	convinced 41:17		

73:18 75:13 86:7 103:8 200:24 212:5 created 29:10 34:25 35:18 92:11 96:14,22 98:6 196:13 creates 75:12 97:13 credentials 7:16 creek 10:5 19:11 27:24 32:11,23 34:10,15, 17 36:1 44:2 57:17 87:5 116:21 117:1, 2,7 121:16 122:10, 23 131:14 135:5, 22 156:3,17,18,19, 25 157:3,4,5,6,11, 14,25 158:10 159:4 161:21 162:2,5,9 171:10 172:8,15 173:5 182:5 186:1 194:10,17 197:6 203:4 211:20 critical 113:1 cross 37:6 66:20 67:2,5, 6,8 193:18 crosses 147:17 crystal 27:21 72:3,10 73:3,17 77:23 78:20 79:12 86:20 143:3 150:2 160:13 161:3,5,8 170:18,19,21 171:1,7 187:14,16 cubic 35:19 65:25 culvert 24:3,21 26:12 36:25 37:4,5 38:9 49:20 61:8,14,18, 20 72:20,22 73:4 74:23,24 78:7 79:8,10 102:8 141:14,18,23 142:4,13,14,25 143:7,15,16,19 144:6,12,19,23,25 145:2,4 146:1,12, 23 147:5,6,9,11 148:16,18 149:1,	11,16 150:5,15 151:11,17 152:19, 24 153:4,5,16,17 187:6 189:8,9 culvert's 62:12 culverts 152:6 curiosity 123:12 current 61:17 74:22 156:24 curve 21:5,8,23,25 22:1, 3 23:18,19 24:4,9, 17,22 33:19 55:15 95:14,16 198:19, 22 curves 25:12 cut 39:23 175:6 176:3 201:7 204:12 205:15 CV 8:7,9 D dam 20:19 27:14 61:3 62:12 74:5 79:13 82:6 86:21 90:13 122:4 145:15 147:6,7,9,10,12 151:6 169:16,17, 23 181:22,23 damage 128:15 data 35:23 68:6 71:24 date 69:25 132:3,6,13, 14 dated 67:16 94:7 dates 109:4 132:9 136:16 142:23 144:4 147:25 day 44:17 days 124:1 128:18 197:2	DDC 138:25 deal 78:18 110:15 117:9 128:22 dealing 16:6 114:16 183:9 196:12 dealt 10:19 91:20 111:6 113:8 debris 97:21 decade 146:8 176:11 decades 202:5 decide 115:24 decided 197:20 decimal 36:17 decision 70:8 77:18 78:1 80:13,18 deck 183:2 declare 105:15 decreasing 32:3 deep 64:2,8 65:12 82:19 193:13 195:2 deepen 95:18 deeper 50:19,24 64:13 74:10 95:9 defects 41:2 defendant 26:16 104:21 140:25 defendants 126:7 deficiencies 131:8 132:4 deficient 110:17,20,24 133:3 define 73:6	definition 39:20 129:1 130:11 definitions 198:2 definitively 129:13 degradation 98:1 degrees 7:20 100:4 208:7 DEHAC 118:4,11,16 deliberately 41:14 denied 92:22 density 51:13 deny 93:5 denying 93:9 Department 141:9 147:14 150:18 depend 205:4 depending 20:25 25:5 depends 8:16 24:1,2,17 49:15 74:2 79:11 116:20 181:17 depict 100:2 depo 62:21 63:3 deposition 6:13 62:24 63:8 82:15 115:7,9,23 122:25 123:4,7,8 131:20 133:8 163:3 186:24 188:7,8,9 203:23 213:22 describe 20:12 206:13 describing 25:4 30:19 71:8 99:4 description 63:21 design	9:19,20,23,24 10:1,13,16 12:16 13:15,24 27:11,20 110:19 111:10 112:1,9,25 113:9 128:12 148:9 155:18 164:21,22, 24,25 168:7 169:7, 22 170:17,19,25 171:6 190:17 195:24 202:3 designated 130:16 designed 9:17 83:14 114:12 121:19 136:25 168:1 195:4,19 designing 170:2 189:17 202:12 designs 114:10 desire 126:12 destructive 83:25 details 115:2 130:25 133:15 185:10 detected 69:2 determination 129:5,6 144:12 determine 12:24 122:12 144:16 192:1,25 194:13 199:15 200:15 determined 133:2 192:7 determining 197:13 develop 196:12 developed 120:10 127:11 142:20 186:21 190:2,24 191:2 206:14 developer 17:21 28:11 58:25 120:21 140:24 developers 41:15,18 108:17 150:3 152:8,15 164:13,17 201:15

developing 120:15	197:3 199:23	46:3 59:23 109:24 209:22	dollar 68:15,20 107:3	44:1 122:20 160:23 161:17,20 162:2,9 177:21
development 12:7 22:5 27:9 28:18 29:10 31:16, 25 36:20 37:11,14, 15,22,23 38:1,5,10 46:19 48:17 52:21 53:3 55:16 57:17 79:12 87:17 92:8 96:21 99:11 101:5, 8 102:12,20 106:2 109:18 121:9 123:18 127:10,14 139:22 140:8,9,12, 13 141:2 164:10, 18 168:15 172:5,7, 14 173:23 179:4,5 182:7 186:2,3 189:18 191:22 192:21 194:23 196:4 200:19 201:10 202:14 210:3 213:5,6,8	differentiate 111:7,22 119:25 differentiated 125:15 differentiating 130:17 differently 59:11 112:24 difficult 23:6 digging 185:13 digital 214:18 dike 66:13 directed 119:5 direction 23:23 37:17 213:6 directional 50:20 directly 21:21 158:10 159:4 dirt 34:24 76:24 122:4 disagree 114:11 118:12,13 180:24 disagreement 204:8 disapprove 192:8 discharge 204:3,20 disclosed 120:22 disclosure 120:18 discovered 131:7 133:12 134:5,9 discuss 94:12 discussed 90:13 107:14 145:22 177:15 discussing 67:23,24 81:6 204:1 discussion	discussions 155:16 displacement 33:24 dispute 54:2 disruption 150:13 disruptions 150:12 distance 144:7,11,15,18 145:2 154:13 distinguishes 197:3 distribution 210:10 disturbs 72:17 ditch 55:14 57:4 58:13 64:1,7,13,17 65:1, 6,11,19 66:4,5 117:2 143:18 144:24 147:18,19 156:3 164:21,22, 24,25 165:4,6,9, 16,19,20 166:13, 22 167:2,11,21 168:24 174:1 177:25 178:21 187:17 189:9 199:24,25 200:14 ditches 168:2,8,11,14,19 175:4 185:13 divide 165:20,22 180:3 dividing 166:1,2 document 131:25 167:19 199:9 208:14 documents 159:25 165:7 167:9 169:3,4 170:23 172:2 187:25 190:10,15, 23 198:20 dogleg 160:25 doings 71:21	door 77:7,9 dot 141:11,13 147:14 148:8 149:4,15 150:1 151:5 152:1, 13 169:13 193:18 doubling 51:3 doubt 84:19 175:14 199:12 Doug 108:14 downhill 21:2 downstream 24:18 34:16 38:20 75:14 138:19 150:22 152:16 173:18,23 dozen 9:13 128:24 draft 214:8,10 drain 23:6,7 37:6 65:17 95:23 123:17 151:22,24 156:13 drainage 8:1,20,21 9:1,2,5, 17,20,24 10:6,13, 16,18 11:9,10,25 12:11 28:18 44:13 52:7,22 54:15 55:10 56:19,24 57:13 58:3,6,10 59:25 73:6,19,21 82:23 86:25 106:15 122:5 124:8 125:1,8,18 128:13 135:6,12 136:13,25 138:11 140:11 143:10,18 149:19 150:15 177:11 178:4,6,12, 21 179:18 180:1,2 182:6 184:7,11 189:18 192:2 193:12,17 194:1 195:8 203:8 draining 9:5 31:22 54:20 82:12 drains	drawing 36:2 67:4,6 99:23 208:19 drawings 10:18 36:2 54:25 101:3 111:17,19 114:17 115:3 142:23 162:21 dredged 21:17 dredging 72:2 78:22 Drive 58:14,15,17,21,22 81:7 82:16,20 driven 183:6 189:7 driveway 211:5 212:22 drone 101:1 dropped 17:1 dropping 104:15 dry 31:12 96:9,12 Due 153:25 duly 6:2 dump 16:22,25 104:25 dumped 16:22,23 dumping 58:13 104:22 116:25 138:23 dumps 156:22 duplexes 160:7,9 DUPRE 15:17 18:6 214:1,4 durations 198:4 duties 60:12 duty 60:13 167:21

dynamics 14:21 20:14 102:25 E earlier 33:12 45:21 54:2 74:14 82:15 92:17 95:16 120:9 125:2 163:3 189:16 193:23 207:10,21 209:22 210:20 213:2 early 7:22 16:6 earth 101:22 176:5 east 17:21 145:16 149:11 197:20 Eaves 121:11 edge 43:10 122:9 187:19 effect 24:17,22 33:4 74:20 97:9 112:11 208:24 effective 72:8 79:5 176:4 201:8 effectively 27:21,22 effects 99:15 efforts 128:23 elbow 20:24,25 elected 197:14,16,18 electrical 211:13 element 104:19 113:1 196:6 elements 10:16 elevated 105:20 elevation 75:9 85:11 87:5,14 105:17 120:12,23	eliminate 140:18 eliminated 97:17 else's 105:1 138:17 emphasis 138:14 employ 79:20 end 21:3 70:17 96:2 157:18 158:11 ended 132:11 157:21 161:15 engineer 7:21 9:20 32:12 121:19,24 129:6 138:25 168:3 engineering 7:21 13:22 14:18 80:7 180:16 184:17 engineers 32:2 79:21 121:22 enlarge 150:5 enlarged 37:5 151:14,15 enter 70:15 entered 70:11 119:22 enters 63:17 entities 10:23 48:22 93:11, 20 entity 10:21 111:24 129:5 139:5 186:19 190:1 entry 75:10 environmental 11:3 equal 19:2,6 equipment 176:5 equivalent 21:24 70:3 206:15	errors 69:1,2 essence 206:14 essentially 71:17 73:17 102:10 178:2 establish 130:25 established 111:24 estate 158:17 186:18 estimate 36:4 73:10 154:18 211:23 estimated 62:5 estimates 68:15,20 72:5 199:20 estimating 35:25 evaluate 32:12 77:5 92:14 evaluated 76:17 91:25 evaluating 14:16 event 25:19 39:3 42:15 43:13,16 44:14 45:23 47:1,3,20,23 48:5 55:12 69:14 75:19 83:23 85:2 87:8,10,21 88:1,14 90:4 91:2 95:6,8 96:15 107:21,23 108:2 113:23 127:5 128:14,16 129:22 130:6,25 147:25 195:10,11, 20,25 196:20,21 197:1,2,9,11,13 198:1 200:23,24 209:12,14 events 25:16,17,23 26:1,2 31:21 39:8,11 40:5 45:19 51:7 91:3,13 126:9,11,16,19 128:7,19 129:11, 14 196:16 198:3 211:15 eventually 56:14 204:24	evidence 17:10,15 190:5 evidently 22:24 72:24 73:7 136:18 EXAMINATION 6:3 108:12 141:6 154:24 186:15 examined 122:11 examples 10:12,24 13:5 14:8 58:6 exceeded 209:12 excess 204:5 exchange 167:5 excluding 57:4 137:9 EXH 15:3 50:8 51:23 62:23 67:15 70:19 80:23,25 90:9 94:6 101:12,14 159:16 exhibit 14:24 15:12 50:7 51:22 68:20 70:15, 22 71:4,8,15 81:5, 11 82:1 90:8 94:4, 11 159:15 161:21 165:23 176:15,18 184:3 190:4 203:22 exhibits 14:14 80:22 101:11 188:10,12 EXHS 101:16 exist 46:19 47:8 existed 132:13 182:6 existence 103:22 132:5 134:5,20 existing 98:11 207:12 208:20 exists 21:14 23:15 156:10 exit 61:8,14,18 62:13	74:16 153:21 176:8 expect 70:15 148:12 expectation 148:13 expected 12:24 31:14 88:15 expecting 79:3 expend 107:8 expensive 68:16 73:8 experience 183:16 202:5 experienced 129:12,21 130:4 experiencing 156:25 expert 7:15 8:4 9:14 13:9 139:11 180:16 184:17 expertise 14:16 114:24 115:1 experts 79:21 explain 14:15 177:10 198:21 explaining 12:18 35:22 64:11 103:16 explains 153:1 exposed 145:12 167:4 exposure 142:2 extended 187:20 211:7,17 extensive 15:23,25 extent 48:22 135:15 142:2 194:25 extra 32:21 34:6 35:17 97:6,7,18,20 98:2 104:18 106:20 205:14

extreme 51:9,11 65:12 extremely 122:19 eyeball 194:15 eyeballing 19:22 35:12 100:24,25 eyes 55:18 F facetious 51:9 facilities 28:25 29:2,7 32:24 facility 12:19 fact 13:9 26:6,8 32:21 34:3 54:22,24 103:10,23 105:23 121:1 136:15 factor 47:19 59:7 62:6 144:15,19 173:2 174:4,6,7,10,18 factors 21:1 26:13,21 37:10 47:16,18,22 52:9 57:9 73:15 120:13 163:4 174:3 192:21 201:25 209:24 210:11 failed 134:23 failing 14:2 96:24 164:17 fails 212:7 failure 52:11 fair 12:2 70:16 71:11, 13 193:9 197:7 210:10 fairly 194:16 fall 168:8 200:16 falling 157:14	falls 157:23 180:19,21 181:2,5 familiar 76:4 81:8,9 113:6, 22 family 7:9 fancy 24:12,14 farther 145:2 fast 43:9 199:6 feasible 23:13 feature 112:14 features 110:14 federal 8:5 11:2 40:12 feel 6:19 21:10 70:1 84:11 87:19,23 feeling 63:6 feet 21:2 22:25 31:7,9 35:14,16,20 43:2 55:21 61:11,17 64:1,2,7,8 65:12, 13,25 85:11 86:3, 18 87:11,23 88:2,5 90:6 104:8,10 144:9 154:15 194:9,13,17 212:18 felt 63:4 FEMA 40:13 91:19 fence 61:9 81:23 ferocity 198:23 fewer 97:2 201:6 field 37:6 178:6,21 179:22 180:1,2 figuratively 51:21 figure 35:22 36:9 107:7	figured 63:2 file 188:5,8 filed 103:9 191:14 files 16:11 109:25 fill 28:22,23 33:4 34:24 51:13 62:12 97:3,12 98:20 104:5,6,8,10 105:21 183:1 194:1,4,7,11,25 212:22,23 fillable 201:4 filled 98:19 104:13 136:19 206:14 filling 11:20 19:9 200:8 fills 33:20 final 70:8 86:11 139:7 159:21 214:12 finally 76:15 financial 71:5 105:6 find 48:10 54:25 102:8 132:6 fine 7:3 8:6 14:12 16:15 36:8 39:6 41:2 45:10 68:7 91:21 92:3 148:4 183:19 214:4,9,18 finger 81:12 finished 46:5 firm 9:12 80:7 firsthand 147:2,4 five-minute 186:12 fix 64:16 106:24,25 116:19 158:8	fixed 12:13 36:23 37:1 126:13,15 157:24 158:2,5 fixes 64:13 fixing 23:12 flagging 6:23,24 flash 96:3 flashback 62:20 flawed 40:2,6 52:10 68:13 flaws 68:3,11 flight 178:5 flood 18:18 20:15,16 25:15,17,19 27:22 28:2 30:23,25 31:18 34:17 39:8, 11 42:11,15,19,23, 24 43:13,14,16 45:19,23 46:12 47:3 51:6 78:25 84:16 88:24 91:3, 4,8,13,24 92:23 99:16 105:4 107:20,23 108:1,3 120:23 121:2,6 126:16,19 128:21 145:8 156:7,14 163:17 185:5 195:20,25 197:9, 10,13 198:1,3 200:23,24 209:12 flooded 31:13 45:13 46:11, 17 47:7,14 87:8 105:16 156:16 180:7 183:12 184:10 185:3 flooding 8:11,17,22 9:3 18:5,15,21 19:7 22:19 24:5 26:14, 22 37:18 38:11,15 40:24 43:22 44:23, 24,25 47:20,22 48:1 49:13 52:8 54:13 57:9,12 61:2 62:7 64:21 66:10 72:9 78:8 79:12 83:3,9,22 84:21	85:21 89:14,18 90:22 106:20 107:17,18 113:2 116:19 126:9,11 128:15,19 129:12, 15,22 130:4 136:5 140:1 144:13,20 145:5 148:17 151:12,21,23 154:12 155:24 156:24 158:19 159:1,3 163:4,14 172:22,25 174:25 179:15 180:11 181:8 182:15 183:16 184:15 185:7 188:15 196:18,20,21 202:15,21,22 209:10,25 210:4, 23 211:15 213:9 floodings 26:9 floods 30:19 39:18,20 40:25 55:2 63:17 140:7 183:15 floor 42:25 55:19 126:22 Florence 180:8,12 flow 8:1 11:24 12:1,3 20:2,23 21:3,19 22:7,13 23:9,16 24:1 25:13 27:16 28:13,16,19,24 29:10 30:6 32:2,17 33:12 38:20 50:21, 25 51:1 57:2,3,6 61:15,20 62:13 63:19 64:14,18,24 65:2,11 72:21,22 74:24,25 75:8 86:7 90:15 98:16 102:25 103:11 104:17 122:20,22 148:19 150:22 151:19 153:24 154:11 158:10 168:2,19 173:11 175:5,10 181:23 186:6,8 193:4 196:6 199:11,18, 24 201:9 209:4 flowed 22:23 23:1 flowing

35:2 64:5 86:19 88:9 121:8 157:1 213:4 flows 21:2 181:6 198:24 fluid 7:25 12:2 14:18, 19,22 20:13,21 fly 103:6 folks 7:3 63:6 108:9 follow 52:11 102:8 105:24 164:18 foot 61:7,13,18 87:11, 16 122:15 force 83:21 159:21 161:15,16,17,20 162:1,8,12,15 173:16 186:5 forced 34:18 forces 35:3 forest 182:8 forgot 136:22 203:20 forgotten 133:16 form 6:22 10:13 18:6 52:13 53:9 forming 193:5,7 fortune 78:23 found 134:7,20 136:10 foundation 106:4 212:15 fourth 88:12 Francisquito 10:5 free 6:19 21:10 free-flowing 203:8 frequency 26:4	frequent 6:19 25:25 front 15:6 30:10 80:3 116:14 211:8,16 full 7:4 135:9 200:10, 12 fully 29:4 92:20 93:1,4 133:22 135:5,18 136:20 future 79:17 106:2 149:20,23 150:1 151:14 152:1,5,6 G gallons 44:14,17 66:1 garage 42:24 183:1 212:21,23 Gardens 32:5,9 44:6 45:24 46:5,19 47:8,11,25 48:13,17 51:5 52:24 54:8 55:23 92:19 93:1,12,21 94:20 103:18 104:20 171:14,17, 20,22 172:5 203:24 gauge 84:20 87:13 gauging 11:24 gave 34:10 68:19 133:7 159:19 163:7,18 171:4 178:10 Gene 9:10,12 188:4 general 9:2 14:13 36:23 41:23 50:22 113:24 114:2 145:1,6 187:14 generalities 28:9 generalized 144:22 generally 12:21 76:20 83:18 159:4,23	generator 66:16 generically 125:20,24 gentleman 63:9 giant 73:18 gist 12:18 give 10:24 62:19 80:2 85:19 89:7 105:9, 11 114:24 130:20 132:2,12 165:14 172:3 181:21 giving 19:10 131:19 201:19 glacier 86:4 glean 22:15 go-around 132:7 goal 36:8 God 84:13 85:3 golf 27:18 56:23 57:1, 2,4,7,8,11 76:13 82:12,16 125:1,8, 12,17 126:1 137:9 169:25 170:3,5,6, 8,11 good 13:15 22:25 72:15 76:20 79:18 82:5 98:18 99:20 101:1 106:10 111:16,20 115:8 120:1 122:14 129:3 141:22 200:7 202:23,24 203:13 211:22 Google 101:12,14,16,22 gosh 46:23 Gotcha 157:24 207:7 governed 109:17 government	10:21,23 11:2,4,21 40:13 41:19 93:11 111:12 190:1 191:23 governmental 41:13 111:24 112:18 119:16 129:5 139:5 192:24 193:3,7 governments 192:1 graduate 7:25 10:3 grass 82:3 175:6 grate 211:7 grates 122:18 211:2,5 grating 211:16 great 75:18 100:6 greater 57:3 138:14 145:2 green 82:3 Greenville 7:8 grew 180:7 ground 22:16 31:8 33:3 92:18 110:8 122:16 169:2 194:9 198:24 grounding 84:12 grounds 92:21 93:5 group 52:14 grow 149:25 growing 77:3 growth 151:14 guarantee 43:14 guess 11:8 13:6 16:2,13 34:24 37:20 56:15 73:9 102:4 163:6	184:2 188:4 205:9 211:25 212:1 guidance 189:22 guidelines 192:6,10,12,13,15, 18,19,24 193:8,10, 15 guiding 135:16 guy 140:6 guys 125:22 145:24 H half 12:4 36:6 57:6 128:24 150:12 194:19,20 halfway 200:8 hand 15:11 48:23 101:10 hand-drawn 100:24 handful 8:16,18 9:6,7 handle 31:17 64:17 153:6, 18 195:25 196:19 handling 27:10 196:4,5 hands 202:9 handwriting 176:19 Handwritten 51:23 hanging 129:2 happen 26:20 48:7 54:17 182:19 happened 12:25 16:13 31:14 39:15 42:2 44:18 68:17 105:14 106:1 113:21 132:9,17 134:7 169:12 185:16 202:16

happening 24:18 131:22 199:4	134:4	holding 77:4 173:22 193:12 200:6,21 201:6 206:16,18	96:25 97:13 98:21 99:5 104:4 146:5 184:4 201:4	illustrating 87:2
happy 143:8 210:8,15	hierarchy 24:12,15	holds 48:4	Hudson 104:20	image 81:11 101:21
hardline 160:11	high 22:25 31:12 34:19 43:1 51:20 62:10 63:17 65:6 81:14 83:14,19,20 87:3 88:5 129:19 212:23	home 15:24 183:16	huge 138:22	images 101:25
hardware 136:15 137:4,6,13		homeowners 67:14,16 210:21	humorous 175:7	imagine 88:1,17 165:1
Hardwick 17:22 203:25 204:9	higher 19:10 22:17 23:8 35:3 53:25 61:22 74:25 83:21 86:22 87:5,16 142:7 147:1 183:1 194:17	homeowners' 126:2	hundred 152:16	impact 11:3,24 23:16,23 25:7 33:10 71:17, 18 81:25 97:13 151:3 181:12,14 200:17,25 210:17
Hardwick's 205:2		homes 144:2,7,14 145:3, 5,8 154:13 183:7	hurricane 30:19,22 31:1 42:18,21,22 43:6 46:12,18,21 180:8, 12	impacted 79:9
harmful 173:10	highlighted 15:1 17:20 70:17 71:20 94:11	homework 21:12	hurricanes 26:7	impactful 73:12
hat 129:2	Highway 27:13 38:9 57:6 61:5 72:11 73:25 141:13,14,24 142:15 143:15 145:16 146:2,11, 22 147:3 150:6,18 152:23 153:15 167:2 169:11 187:5 203:2	hope 36:3	hurt 83:16	impacts 203:5
hate 31:4		hoping 66:13	Hutton 59:21 67:22 68:4, 12 69:15 70:19,24 73:2 162:20,23,25 188:13	impede 61:15
he'll 92:6 115:25		Horry 6:6,12 7:9,13 17:3 39:2 41:21 48:18, 19 51:4 67:13,15 73:2 77:16 79:20 80:6,9 92:21 93:5 104:22 105:10,19, 25 166:3	hydraulic 14:6,8 22:7	implementing 191:23 192:1
head 48:14 127:22	hill 182:17	hours 31:18 128:18 187:23	hydrology 36:15	implies 172:25
hear 146:18	hindered 60:6	house 31:5,7,12 42:25 55:20,25 65:17 78:17,19 81:22 84:17 88:25 116:14 126:21 138:23 140:7 157:15 158:11 182:24 183:10 185:2 188:16 212:11,12,18	hypothetical 44:20 46:10	important 113:16
heard 53:19 106:7 146:9, 17 188:2	hire 80:6	hours 31:18 128:18 187:23	hypothetically 39:6 92:19 93:3	impossible 88:20 91:6
hearing 36:10	hired 17:22	house 31:5,7,12 42:25 55:20,25 65:17 78:17,19 81:22 84:17 88:25 116:14 126:21 138:23 140:7 157:15 158:11 182:24 183:10 185:2 188:16 212:11,12,18	I	impression 117:16 144:10 146:15
heavy 44:21 57:10 122:20,22 151:18 181:23	history 36:21 202:15	houses 19:5,8 22:2,16 27:7 31:9,17,20 32:21 33:24 34:6, 8,11 38:4,16,23 40:11 51:10 78:8, 10,14,16,25 79:7,9 81:22 84:15 92:25 97:2,6,7,17,20 98:2,4,5,9 105:20 107:8,9 182:12 201:6	ice 86:4	improve 50:21,25 51:1 59:10,17 73:19 76:17 78:7,17 97:7 106:21
height 85:13 88:3 90:5 104:9 142:7 146:25 155:20 201:10	hit 31:11 43:21 57:23 58:1 88:23	hits 30:19,22 31:1 35:2 42:19	idea 42:9 72:15 120:1 157:25 197:22	improved 13:1 14:3 49:6 59:12 97:21 158:9
height-width 154:4	HOA 9:18 107:8	hold 6:7 44:9 75:3 83:24 99:4	identification 15:4 50:9 51:24 62:25 67:17 70:20 80:24 81:1 90:10 94:8 101:13,15,17 159:17	improvement 97:25 125:5
held 93:23	HOAS 9:20	housing 22:9 31:24 34:7	identified 117:12 132:4,14 136:4,6	improvements 49:10 57:21 83:1 96:19
helped 60:6			identify 24:15 70:9 134:16, 23	improving 185:12
helpful 74:3 119:3 141:20			illusion 142:9	inability 151:23
hesitating 140:3				inaccurate 68:13
Hey 183:19				inadequate 53:6 54:4,14 112:6
hidden 94:14 132:20				

inadequately 195:19	indirectly 158:11	intended 138:10,12,18	12:10	kin 7:9
inches 39:12 91:16 122:15 128:18	individual 13:23 47:19 48:21 55:25 58:9 139:25	intensities 196:9,23	issue 8:22 12:15 17:5 21:15,19 49:22 58:17 64:14,16 72:9 73:11 104:11 106:20 111:15 139:11 167:18 198:11	kind 8:3 14:12 24:7 28:14 29:12 30:4 36:1 46:10 48:13 51:3,9 54:1 61:4, 22 65:23 68:7 69:14 74:6,9 76:24 84:5,9,11 88:2 99:15 102:4,24 113:24 125:13 151:25 152:11 160:24 175:7 177:10 183:17 203:15 209:4 210:21 212:24
incident 46:13	individually 85:20	intensity 29:25	issued 71:2 178:20,25 179:2	kinds 126:19 210:23
include 26:11 30:22	inflow 187:6	intensive 37:14	issues 8:20 9:22,25 10:15 12:11 13:22 52:12 58:10 60:14 63:23 74:1,5 77:18 93:8 96:14 103:8 107:11 167:17 185:8 213:2,9	Kirk 6:5,12
included 72:2 78:22 96:21 97:9 99:15 139:17 170:16	information 22:15 109:7,21 118:22 123:15 124:19,21 126:4 127:21 129:23 142:3,12 143:4,11 145:21 163:20 164:2 165:2 166:2 185:20	intentional 104:25	item 48:3 112:21	knew 8:15 190:25
includes 72:4	informed 55:8	intentionally 104:22	items 117:12 188:17	knocked 88:24
including 12:11	infrastructure 34:13 78:18 152:10	interact 74:4	J	knocks 90:2
inconvenient 106:24,25 107:2	initial 16:8 70:6 96:22	interactions 163:20	jack 212:12,17	knowing 119:17 125:18
incorrect 68:13 70:8	initially 53:16 152:19	interchangeably 156:4	Jackson 137:25 138:3,7	knowledge 92:10 147:3,4 148:14 158:7 162:6 170:4
increase 19:1,6 20:1 72:12, 21 75:2,12 150:21 181:11,14 186:1 193:16 196:17 197:5,6 198:19 202:21	input 32:13 148:13 210:13,14	interest 189:9	job 76:20 83:5 110:23 139:8 200:7 202:7	L
increased 175:19 184:21 192:22	inside 25:5 166:7 167:24 168:21	interested 57:1	Joe 141:8	labeled 117:18
increases 104:1 176:4 186:6, 7	inspect 55:9 106:12 161:11	interesting 17:4 42:20 84:5 149:6 183:24 185:8,15 186:10	joins 93:16	lack 26:10 27:9 49:2,3, 12,21
increasing 32:3 73:3,4 83:6,8 196:6 201:10	inspections 188:25	interests 105:7	joke 45:6	laid 129:18
incremental 186:2	installation 202:4	interferes 131:14	Jordan 154:25 155:1 159:14,20 160:4,8 165:22 166:24 168:23 169:5 171:16 180:18,24 181:4 184:22	lake 27:21 72:2,3,10 73:3,17 77:23 78:20,21,23 86:20 143:3 160:13 161:3,5,8 170:18, 19,21 171:1,7 180:21 187:14,16 200:18 206:16
incrementally 184:21	installed 141:24 142:15 143:1,7,15 145:19 146:2 152:19	interior 87:17	June 67:16 90:9	land 19:9 27:6 34:10 35:1 36:4 40:9 60:24 72:18,19 74:5,14,19,20,25
independent 162:6	installing 96:9	internal 27:8 164:9	K	
indicating 64:15 72:1 82:21 98:11,12,13,19,22 102:14,17 104:3 160:13 170:15 206:3,20	instruments 158:3	investment 79:16	keeping 49:17 62:22 121:17 201:9	
indication 62:9 165:14 170:24 171:5 172:3	insurance 11:14 12:12 17:10 91:24	invited 92:12		
indicators 18:19	intend 39:7 40:20 56:9 60:10 68:10 91:23	involve 8:11 11:20 150:11, 13 209:11		
		involved 8:19 9:5 10:4,22 16:1 118:20 121:24 139:10 140:25 155:6 166:16 167:17 171:6 174:1 189:10,16		
		involvement 11:23 16:5 58:7 92:16 148:8 167:16 171:24		
		involving		

75:3,8,17 76:3,5, 12 77:22 90:14 102:18 108:15 123:16,23 124:3 125:11 131:18 133:1 137:1 145:17 150:22 151:6 183:12 190:24 193:14 196:12,13 201:3	49:24 160:21 173:19 leaving 122:13 138:12,15 left 28:8 34:14,16 61:10 97:19 125:5 206:1,5 legal 60:12,13 93:8 138:8 167:21 180:16 184:17 legitimate 40:10 length 21:2,7 29:25 207:5 lengthened 153:4 lengthens 103:25 lengthy 94:21 letter 67:13,15,23 71:23 72:6 76:15 77:16 78:13 level 22:16 23:5,8 24:24 25:1,3 30:8 33:3 42:25 43:3 45:1 55:19 61:7,13,17, 22 64:23 65:14,19 66:7 75:9,11,12 82:24 117:8 121:5 126:22 156:2,18 158:4 184:21 186:1 194:9 197:6, 22 200:16 209:12 211:20,21 liability 180:10 liable 180:20 181:7 184:13 licensed 10:20 lifetime 85:17 light 18:17 25:9 173:22 185:21,24 lightning 88:23 90:1 likelihood 145:3	limit 87:3 88:2 90:5 135:6 limitations 135:2 limited 53:15 71:12 108:15 123:16,23 124:3 125:11 131:18 133:1 137:1 limiting 146:24 limits 72:22 172:9,19,20 196:25 liquid 12:3 list 26:13 45:12 105:9, 12 163:7 169:6 listed 169:15 litigation 16:6 131:9 133:4 193:6 litmus 86:24 live 7:7 179:4,6 183:3 lives 76:4,7 loaded 52:18 local 8:5 111:11 located 16:16 107:15 116:12 121:2 172:15 location 59:23 120:11 144:6 146:11,23 locations 13:20 logic 89:21 long 17:5 56:3 113:20 117:22 120:22 142:10 152:20 168:13 177:4 191:9 211:17 long-term 14:19 76:21	longer 17:16 40:9,19 67:9 83:24 93:19 152:24 looked 12:23 28:3 29:1 41:6,8 55:11 56:23 57:5 58:9,19 62:5 69:3 73:3,7 76:19, 24 77:12 87:15 94:25 107:10 109:21 110:21 111:8 118:8 130:24 139:19 140:10 146:24 149:25 150:2 153:20 178:22 187:15,16 189:8 192:4,20 194:4 197:25 203:14 208:18 loosely 37:4 lot 13:19 24:18 31:8, 23 36:24 37:8 39:10 43:5 47:5,16 55:15 58:14 59:18 65:2,4 71:24 74:9 76:2 81:5 84:20 85:19 87:17 104:5 114:16 115:22 119:4 121:21 139:25 140:7 145:21 162:11 170:8 172:12 173:4 178:2 184:10,24 200:13 202:6,10 205:6 lots 53:25 65:17 78:25 96:21,22 110:13 111:9 120:9 121:2 122:13 128:20 148:17 low 34:16 39:5 48:10 53:24 65:6,16 84:15 128:21 136:19,20 201:3 lower 51:13 82:24 83:20 lowlands 19:14 77:24 97:10 99:16 104:2,4 lunchtime 108:8	M made 28:17 49:11 50:20, 24 51:8 54:13 71:9 74:3 80:12,17 83:2 150:20 152:24 163:15 167:5 176:23,25 207:22 main 67:10 153:9,23 154:3 maintain 29:2 167:21 maintained 49:6,7 167:1 175:3 maintaining 60:1 maintains 168:19 maintenance 27:12 48:25 49:2, 3,12,16,22 60:23 165:19 166:13,21 167:11 169:7 171:1,6 173:25 176:10,13 177:11 184:9 major 8:22 11:2 24:6,16 31:21 34:5 51:6 80:6 90:4 104:4 150:11 152:11 make 6:18 12:25 13:1,17 23:15 25:9 28:12 31:22 38:1 40:9 45:5 47:22,23 51:6 56:16 65:6 74:10 78:19 83:16 101:20,24 103:19 105:4,15 106:22 111:22 122:4 129:5,6,17 137:15 141:17 149:16 152:18 173:9 175:12,15 181:7 183:1 185:18,21 202:25 211:21 212:10 makes 57:24 68:13 73:5 75:17 183:25 making 19:10 23:22 64:13 73:24 74:6,17 81:24 83:15 89:25

A	W	R

national 197:21,23	note 41:10 60:24 189:11	occurring 47:21	optical 142:8	outlines 162:18
natural 47:15 97:20 98:16	notes 51:23 52:2,20 54:7 60:2 176:23,25	occurs 48:3	option 71:6	output 32:13
nature 19:7 86:9	notice 77:17 78:1	ocean 51:15,19 65:11 73:19,22 74:17 118:11 151:20 167:13,22 186:21	options 71:15,18 80:13	outweigh 29:23,24
neat 105:9,12	noticed 24:11 210:25	OCRM 41:9 93:12	order 27:24 51:5 77:24 118:24	overflow 156:17,20
necessarily 13:23 26:5	November 191:8,14,18	October 148:1,4	ordered 214:15	overflowed 98:20
needed 36:18 88:4	number 20:9 69:25 72:18 82:21 144:10 154:18 159:15,17 160:22,23 162:4 165:23 166:1,10, 14,22 167:2,12,22, 24 168:1,2,8,20,23 169:6,8 175:19,21 198:19,22	offer 60:11	ordinance 112:10,19 138:10	overflowing 64:8,10
negative 181:12,14	numbers 29:3 32:1 33:19 39:22 43:3 46:20, 22 68:1 70:10 81:9 199:3	offered 180:15	ordinances 109:17	overhead 100:15
negatively 61:19 203:5	numerically 25:22	offhand 13:13	organization 11:6,21 126:3 137:10 138:9 192:10	overrunning 157:25
negatives 16:24 56:14,15 188:19,20	numerous 7:24 209:24	office 118:11 188:18	organizational 48:22	overtopped 146:11,22
negligent 17:25 48:17 105:9	nutshell 8:3	official 197:16	organizations 41:14 125:14 152:9	overtopping 147:3
neighbor 136:23 140:14,17, 22 143:25 202:24	O	officials 197:15,19	orient 102:7	overwhelm 44:17 122:20,23
neighborhood 33:5 58:21 91:16 180:7		offset 96:14	original 32:9 108:17,20 117:14 148:11 164:22,24,25	owned 125:11 179:19 186:19
neighbors 31:12 117:4 140:18,19		offsite 204:21,24	originally 142:14 143:21 153:3	owner 140:12
neighbors' 31:9		one's 138:24	Orleans 23:11	owners 12:14 76:16 138:11 140:1
Neill 186:16,17 205:22 213:15 214:20		onwards 185:5	other's 183:18	ownership 60:11
Nelson 203:24		open 154:7	outfall 159:16 165:23,25 166:6,10,13,22 167:2,12,21,24 168:1,2,8,19,23 175:19,21 184:3	owns 60:16 141:13
newer 179:11	oath 115:10	operates 114:22	outfalls 161:16	pages 15:9 190:5 205:17
nice 29:13 105:9,12 145:23 175:15	objection 6:22 18:6 52:13 53:9	opine 213:3	outflow 44:8 177:11 187:7 194:2 196:6 199:18 200:9 203:16	paid 39:10
Noah's 84:9	observe 30:8	opinion 36:19 53:5 56:11, 19 60:11 103:14 110:5 111:8 112:8, 17,21 113:12 114:24 130:2,20 131:2 139:25 140:11 148:25 153:25 195:17,23 196:2 201:20	outlined 161:22 162:7 178:14	Palo 10:9,10
nod 106:1,7	observed 116:3	opinions 36:10 110:2 123:22 141:18 151:10,16 153:17 193:5 197:8 213:7		paperwork 11:20 118:16
non-built 31:18	occasion 189:6			paragraph 15:22 17:19 37:16 72:5
non-flooding 27:6	occur 92:1,2			paraphrase 54:19 62:11
non-negligible 174:18	occurred 46:14 47:9 48:20 102:20 106:5 129:18,19 130:15 172:9 177:24 180:11			pardon 156:3
normal 30:5 156:7 184:8				Park 10:11

part 8:14 14:21 19:16 35:25 37:24 54:24 58:23,24 59:1 90:17,20 113:19 114:15 118:23 126:1 127:4 128:20 142:21 155:25 160:2 162:1,8,14 164:12 165:6 167:8,16 174:20 175:8 178:3 190:11 194:22 201:2 202:13 205:22 206:5,9 213:22 partial 49:23 partially 49:20 158:2 participated 92:7 125:4 partly 31:7 Partners 108:15 Partnership 123:17,23 124:3 125:11 131:19 133:1 137:1 parts 94:21 205:18 pass 37:6 passed 190:3 past 62:20 95:14 108:22 113:8 124:1 128:25 142:23 189:18 192:9 path 57:11 65:11,15 66:18 73:6 path-through 59:13 patio 55:19 183:2 Patton 19:13 23:6 24:24 26:10 36:13 42:25 87:6 93:16 105:4 107:1 116:25 117:8 121:10 135:7 136:23 143:24 208:6	Pattons 15:24 77:9 124:10 125:6 156:25 157:12,24 159:12 175:13,17 179:4,6 183:13,15 184:14 Pattons' 22:23 65:17,20 81:15 88:9 104:8 107:16 116:14,23 117:4 156:7,11,14, 16 157:15 163:5 172:22 175:1 181:8 184:10 185:3 194:10 pause 93:15 pavement 22:11 33:23 150:9 193:13 205:6 pavements 200:11 paving 97:12 pay 62:3 79:25 paying 89:11 peak 74:25 95:25 96:1 186:6,8 201:9 peaking 175:5 peaks 198:4 people 12:12 36:17 40:11 77:21,23,24 80:19 87:7 114:3 121:21 138:20 149:24 150:18 164:12 167:17 189:21 203:5 208:11 people's 105:6 percent 23:25 24:9,10 99:12 174:6 193:14 204:6 210:17,19 percentage 24:8 174:5,10 210:3 perfectly 202:9 perform	194:12 199:14 performance 114:20 198:12 performed 15:23 166:21 167:11 176:12 198:15 199:2,22 204:8 perimeter 103:25 period 20:5 34:7 46:4 85:6 periods 39:13 127:20 196:9,23 permanent 44:24 77:1 107:17, 18 permanently 44:22 107:15 permit 34:8 92:22 98:8 permits 41:7 93:6,9 178:16,17,19,24 179:2 person 39:21 146:21 197:19,22 202:19, 24 personal 31:5 52:2 personally 139:3 perspective 69:4 pertaining 141:18 151:17 phase 131:11 philosophically 78:17 photograph 50:8 81:17 photographs 16:24 56:13,16 80:22,23,25 81:4 101:6,8 125:1 188:15 photography 77:14 photos 16:17	phrase 37:20 pick 54:17 picked 31:2,6 54:16 72:7 124:6 picking 14:23 picture 50:11 144:9 pictures 101:1,22 103:6 piece 27:6 63:3 186:2 piers 183:8 pike 57:20 79:14 pile 122:3 piled 76:24 pine 182:8 pipe 20:25 21:2 38:8 73:24 74:6,18 82:23 125:8 pipes 28:18 122:15 156:12 pipng 122:18 134:13 Pirate 60:24 72:18,19 74:5,14,19,20,24 75:3,7,17 76:3,5, 12 77:22 90:14 102:17 145:17 150:22 151:6 169:16,17,23 place 19:11,12 38:12 40:12 68:21 76:12 168:10 172:8,14 176:10 183:15 184:14 205:6 211:1 places 10:11 36:17 136:18 161:17 plain 54:22	plains 78:25 plaintiffs 17:22 18:16 77:17 126:6 128:15 129:11 163:6,16 209:11 210:22 plaintiffs' 18:2 26:14,23 44:23 45:12 76:18 144:7,14 147:15 148:17 156:22 163:5 213:9 plan 52:22 54:11,12,13, 15 60:20 94:12 106:15 114:10 130:14 159:21 161:14 189:18 192:2 194:23 195:8,24 planning 27:8 86:25 95:7,8 115:20 152:11,21 164:9 plans 27:10 32:9 35:11, 24 36:11,12 41:10, 12,13,22 42:1,4 52:8,10,15 53:6,7, 13 55:5 57:13 58:3 93:12,21 103:18 105:24 106:15 108:20,21,25 109:2,5,6,10,12 110:3,6,9,11,12, 18,19 112:8,14 113:9 114:13,17 115:14,18 116:4 117:13,14,15,17, 20,22 118:16 139:4,12,13,16,19 164:18 171:13,20 190:10,17 192:8, 25 193:21,22 194:22 195:18 203:10 players 169:14 plenty 67:9 pluses 27:25 28:1,14 29:8,16,21,22,24 30:14,17 point 12:2 23:18,19 26:18 36:13 39:7 49:14 58:25 63:8

84:10,12 85:4 86:1,5,8,10 89:21, 25 102:19 114:20 130:14,24 153:23 154:1 156:19,21 158:12 186:10 pointing 137:20 pond 35:4 59:2,14,15 61:4 73:18 74:16 81:6,24 82:16,17, 22,25 83:2 193:12 206:16,18 ponds 32:25 34:13 35:6 96:9,12,20 173:22 193:25 195:3,6 200:6,21 201:6 204:23 pool 56:1,2 poor 29:12 poorly 49:5,7 popped 189:13 portion 70:25 161:19 167:1 portions 15:1 62:23 71:2 94:11,20 position 18:4 127:9 positive 10:11 23:23 59:22 97:2 positively 173:14 175:6 possession 165:10 possibly 147:16 post 61:9 100:5 180:3 post-bermuda 45:24 post-development 199:24 204:3,19 205:25 207:13,17 209:1 post-discharge 204:10	post-incident 12:22 posts 61:23 potential 14:2 25:3 27:9 38:1 41:20 82:22 83:11,19 158:18 potentially 8:16,17 78:9 110:13 150:25 193:16 212:16 pour 74:24 power 66:15 211:13 212:6,8 practical 14:18 134:11 pre 180:3 204:9 pre-development 199:23 204:4,20 205:24 207:11 209:1 pre-existing 207:24 pre-incident 13:6,7 precise 36:15,16 preclude 167:15 predevelopment 99:23 100:2,7 predict 107:22,25 preparation 186:23 188:1 prepared 174:16 203:24 preparing 190:23 present 135:24 presented 27:5 190:6 Prestwick 15:24 38:16 44:5 52:25 53:15,16 55:9,18 56:10 63:19 64:6,20 65:1 66:8 67:14,16 84:17 87:8,17 88:9 105:14,23 108:15,	17 109:19 111:4 121:8 123:13,16, 18,23 124:3,9,12, 14,17,22 125:4,11, 20,24 127:10,14 131:16,18 133:1 135:12,13 136:13 137:1 142:19 156:22 157:2,23 158:18 163:20,21, 23 164:10,17 168:15 170:6 179:4 187:4 189:5 202:16 206:21 211:18 Prestwick's 56:19 88:25 Prestwicks 125:14 pretty 15:1 52:18 84:2 98:22 123:20 182:9 prevent 64:2,4 78:8 122:21 201:12 preventing 157:22 prevents 156:2 157:4 previous 62:23 123:1 127:7 131:9 132:10 133:4 137:15,17 188:10 previously 60:25 primarily 45:19 58:9 121:14 174:17 primary 174:3 principle 145:6 prior 9:14 90:18 109:3 155:6 159:24,25 177:1 182:6,11 183:12 184:15 188:7 190:9 private 147:23,24 problem 11:14 14:7 22:6,21 24:5,6 25:21 27:17 37:9,22,24 38:6,15 40:23,24 64:9	65:18,21 73:23 75:12,14,17 78:4, 24 90:24 105:18 116:10,21,25 122:5 134:23 136:4 155:24 156:10 158:19 159:1,3 175:16 182:22 184:25 192:22 193:17 196:18 213:1 problematic 25:1,3,24 40:19 110:14 119:8 problems 8:1 12:10 29:22 80:20 107:1 111:9 114:3,21 131:8 132:5,13,19 137:2, 4,13 140:1 182:15 193:4 210:23 212:20 proceedings 93:15,16 process 41:3,6 136:7 139:2,4 164:13 189:17 190:12 209:23 produced 78:13 professional 7:21 program 91:19,24 prohibited 120:14 project 11:3,11 54:15 117:19 projects 10:4,18 11:2 58:13 promulgated 111:11 prone 54:13 120:23 128:21 propensity 18:18 properly 53:8 117:24 properties 38:18 63:18 72:13 83:16 85:8,21 91:4 105:15 121:11 147:15 151:1,21, 22 156:8 187:11	property 11:15 12:14 18:2 19:13 22:23 23:7 24:25 26:10,15,23 27:4 28:17 32:4 34:23 42:10,12 44:23 45:12 46:11, 17 47:7,13 56:20 63:16 64:5,21 72:23 76:16 77:6 81:15 83:8 87:6 89:14,18 97:11 102:5 104:8,23 105:1,4 107:16,18, 19,20 108:1 116:23,25 117:8 121:10 122:6,7 123:10 135:7 138:19 145:17 150:23 156:8,11, 14,16 159:5 163:5, 6,17 172:23 173:20 175:1 179:18,19,20,21, 24 183:13 186:19 189:3 191:2 202:20,21 206:21 211:9,12 proposals 92:13 pros 155:17 protect 81:15 138:10,18 203:6 prototype 14:1,4 proud 203:15 provide 19:5 138:11 provided 8:6 194:1 204:5 public 13:17 pump 53:17,18 65:22 66:3,7 119:14,18 211:19,21 212:7 pumping 23:10 53:20,21,22 64:25 65:4,8,24 66:7,9 88:23 117:5,11 120:3 156:23 182:23 211:13,19 212:3,6 pumps 66:3 88:11 90:2

212:7 purchaser 158:18 purely 19:22 125:14 purge 16:21 purged 109:25 188:5,18, 21 purging 16:10,11 purpose 19:4 84:12 178:4 push 7:19 pushed 24:15 put 13:16 14:5 15:6 18:24 19:5,21 21:20,24 22:3 28:17,22,24 31:17 35:5 37:5,6 38:4 47:23 52:9 61:17 68:14 74:25 77:17 83:15 86:9 88:1,21 97:6 99:12 128:17 136:16,21 142:17 156:12 157:8 174:5,8 182:23,24 190:5 198:19 199:20 211:7,11, 12 212:11 puts 76:2 85:10 157:6 192:11 putting 21:9 22:1 33:4,20 59:23 77:25 79:18 86:17 99:20 116:17 199:17 202:20 204:14 puzzles 54:10 Q qualifications 172:12 qualified 8:4 quality 11:1 question 6:24 8:24 12:5	21:21 23:21 28:14 29:12,13 30:2 31:3 36:8 38:7,24 40:8 42:20 45:5 52:19 59:1 64:12 66:19 68:8 70:6 72:25 78:11 84:6 85:1,19 86:1 101:18 105:15 111:1 123:14 128:11,14 129:7 137:14 149:6,18 158:14 161:18 162:10 164:14 172:11 175:13 178:17 182:19 203:13 questioning 54:9 questions 12:18 31:24 47:5 54:8 71:22 100:1 108:6 116:2 141:10 155:3 176:1 180:6 189:22 213:15 quick 63:14 203:21 quiet 6:8 quote 162:4 R radar 123:21 rain 29:25 30:6,9 31:11,13 39:15 43:19 44:14 57:10 69:14 86:13,17 87:18 90:24 122:22 127:5,19 128:7 130:25 182:20 185:4,16 200:13,16,24 209:20 rainfall 89:24 90:1 91:12 196:16 209:11 rainfalls 196:8 rains 10:7 22:21 129:19 200:1,2,7 rainstorm 90:22	rainwater 25:15 raise 40:8 86:14 212:13, 15 raised 19:17 33:3 35:14, 16 55:21 183:2 raises 156:19 raising 34:22 97:11 rapid 22:12 175:4 198:24 rate 57:23 61:20 174:18 rates 58:1 ratings 129:14 ratio 154:4 ratios 155:21 reaches 79:13 90:3 read 34:1,2 80:4 115:7 175:22 176:20,22 177:9 214:24 reading 37:16 60:2 162:3 190:23 ready 15:16 real 38:15,19 62:20 63:14 158:17 186:18 203:21 realistically 39:14 realize 82:2 145:21 realtor 11:5 reasonable 69:20,23 72:8 78:5,12 83:13 107:7 153:2 196:17 reasons 80:18 189:4	recall 11:7,19 53:2 108:25 109:1 113:12 118:2 123:13 171:2 175:21 189:6 190:6,13,16 198:3 recap 54:1,7 recapping 90:12 receive 104:14 recent 25:24 176:5,11 recently 108:23 118:23 123:9,13 133:21 recess 62:18 108:11 186:14 recognize 70:22 82:3 recommendation 65:23 reconfigure 17:23 record 6:23,25 7:5,17 108:10 185:16 records 16:7 rectified 155:24,25 158:20 159:2,3 red 44:7 redesign 165:4,9,15 reduce 95:22 99:11 174:20 reduced 27:16 95:24 96:1 158:9 203:16 211:15 reducing 99:15 reduction 32:17 113:7,11 115:11 refer 37:3 125:17 141:10	reference 114:8 193:7 referenced 114:5 referred 115:14 117:4 137:25 147:6 referring 9:1 20:3 21:16 26:6,8 32:10 49:17 52:25 53:1 54:6 65:10 71:25 82:15 99:18 187:3 190:8 refresh 187:1 regard 140:11 198:10 regs 85:20 89:11 regulation 40:6 112:10,19 119:16 138:9 regulations 10:19,23 11:4 39:25 40:2,17 54:3,4 92:11 109:16 114:7 120:5 139:16 regulator 129:4 relate 11:18 144:18 related 10:13 11:3,4 14:22 168:4 relates 144:24 151:21 173:4,25 relating 9:23,25 relax 41:19 relevant 15:1 144:11 reliable 13:17 relocated 207:16,22 208:15 relocation 148:10 remained 184:7 remaining 76:16

remains 82:8 remedies 212:9 remember 7:23 8:15 16:4 20:8 39:12 43:25 45:25 46:3,20 48:24 49:10 50:2,3 53:4 58:18 59:6 60:4 63:11,12 68:1 75:25 81:21 95:2 109:4,6,12 110:7, 10,22 111:2,5,13, 14 112:13 113:13 115:5,13 117:18 118:7,20,22 119:2, 12 120:7 121:3,4 126:1 127:1 131:23 132:8,15, 22 133:17 135:4,8 137:20 138:4,6,7 139:18 140:4,21 141:4 142:11,12, 24 145:13 146:20 154:19 167:3,14, 23 169:4 171:8 172:6 192:10 reminded 125:25 reminder 6:14 134:1 remodeling 179:11,13 rendered 140:10 repeat 43:11 155:3 211:14 rephrase 6:20 43:19 172:11 replace 149:16 replaced 150:15 report 69:15 94:4,6,19 95:21 104:20,24 159:22 203:23 204:2 205:17 206:10 REPORTER 213:19,23 214:2,5, 14 reports 188:13	represent 141:8 155:2 158:18 160:10 162:13 163:2 165:25 186:18 representation 163:14 representations 163:16,19 representative 8:9 33:20 199:18 represented 70:12 115:15,18 representing 170:14 represents 21:7 require 88:10 105:19,21 required 51:5,15 53:17 54:16 119:15,19, 25 120:4 204:15, 16 requirement 114:14,25 192:24 requirements 111:25 112:2,5,9, 18 113:10,18 115:10 119:10 128:12 130:19,22 138:8 requires 21:5 requiring 40:18 rerouted 27:24 207:10,14 rerouting 202:2 residential 146:6 resistance 19:2 20:2 21:1 90:14 95:19 104:1, 18 153:24 154:2 resolve 21:15,19 66:10 73:25 74:7 80:14 resolved 59:8 126:15 Resource 118:11 respect 9:2 10:15 33:3	53:24 85:7 110:24 120:18 121:5 124:8,25 135:22 138:15 178:17 182:14 196:4,5 response 31:3 responsibilities 24:16 responsibility 48:25 90:21 149:4, 7 181:25 183:14 185:7 responsible 9:23 24:9 60:17 92:6 93:13,23 172:22,24 173:1 197:12 202:24 rest 15:12 162:11 211:18 restrain 85:13 restrict 122:5,12,19 restrictor 148:19 result 130:4 155:9 180:11 results 41:6 retain 195:4 retainage 193:25 retained 16:8 139:11,24 retaining 140:22 retention 28:25 29:2,7 35:4, 5 51:14 59:2,14,15 73:18 74:16 82:16, 25 96:9,11,19 97:13,18 195:3 204:23 retentions 57:25 retiree 76:12 retirement 76:9,11 retreading 92:18	review 11:2 14:24 15:15 42:10 63:13 67:19 94:10 108:20,24 109:2 118:15 137:24 187:25 189:24 reviewed 32:1 67:22 118:23 120:6,8 188:6 190:10 192:9 revolve 71:22 rid 17:12 35:4 131:15 riffraff 82:6,18 83:5 right-angle 20:1 95:13,16 104:16 rings 131:21 rise 19:11 34:19 156:2, 6,18 rises 51:20 rising 131:14 135:5 River 180:10 183:6 rivers 183:6 road 6:25 29:6 31:8,10 58:20 75:11 102:5 177:20,21 roads 147:17,22,23,24 149:18 152:4 Robert 6:1 7:6 15:3 62:24 robot 134:12 role 135:5 155:12 163:11 164:9,17, 21,25 165:4,8,15, 19 166:12 168:7 169:10,22 170:2, 19,21,25 171:19 172:4 185:11,12 186:4 roof 193:13	roofs 22:12 33:11,23 34:3 200:11 205:6 Rose 186:18 rough 214:1,3,6,7,8,10, 16,17,19,20,21 roughly 55:21 90:6 200:12 routed 133:21 routing 133:19 rule 49:14 50:6 113:24 114:2 rules 109:16 run 76:13 143:17 158:11 running 83:7 runoff 27:11,18 57:23 58:1 169:25 170:2 runs 141:14 S safe 18:3 30:18 safer 13:17 San 10:5 sand 34:23 satellite 101:21 scale 38:25 scientific 205:10 scientifically 199:9 scope 34:8 98:8 scratch 26:5 91:1 scrutiny 106:20

sea 43:3 65:14	sharply 103:17	simple 89:5	23:22,24 35:5 43:9 47:11 108:4 122:16 149:1,2 154:11 201:25	sources 58:12
Seagate 159:23 160:2,4,12, 23	shed 185:21,23	single 30:9 108:24	smaller 19:10 108:4 184:25	south 7:22 119:11 166:6
seat 108:7	sheet 85:11 157:1	sir 6:13 8:6 15:9 28:7 89:8 102:2 118:19 135:14 137:5 159:9 162:25 164:23 180:14	smooth 73:21	space 19:5 35:13 97:18 188:24 206:15
section 66:20 67:2,5,6,9	shoddily 181:23	sit 10:17 127:16 132:18 210:8	snatch 212:22	speak 41:1,15 51:21 65:13 88:10 111:16 137:6 147:12 182:17 196:13 201:4 202:24
sections 57:16 95:4	shored 21:17	site 108:21 187:1,2 205:7	soil 70:12 155:21	speaking 39:7 51:21 92:19 102:10
Sediment 113:7,11 115:11	shoulders 150:10	sits 142:13	sold 38:18	speaks 18:14
select 63:3	show 61:9 159:14 165:7 174:13 198:15,16 205:2,16,18 206:9, 18,25	sitting 129:9 134:16,22 192:17,23	solution 30:4 73:17 76:16 174:21	specialty 14:19
selecting 73:12	showing 19:23 207:13	situation 19:22 30:4 39:17 59:10 66:10 80:14 83:3,17 90:23 93:23 106:22 124:11 183:24	solutions 69:19 72:8,9 73:1, 13 79:4 107:3	specific 25:19 43:13 89:11 91:14 109:7 112:21 113:14 115:14 130:15 137:21
selling 27:7 78:25	shown 53:22 72:14 125:2 207:11,16	situations 8:23 112:6 119:18 202:6	solve 212:25	specifically 41:13 59:5 111:13 116:6 118:7 119:2, 17 124:9,12 127:10 128:1 132:16,22,25 140:4 141:25 167:14 174:13 179:7 180:2
semiretirement 16:10	shows 101:7 165:23 205:10	size 66:3 72:13 83:6,9 85:2 86:3 89:6 122:14 142:4 144:22,23,25 148:18,20 169:10 175:19 176:4	solved 37:24	specification 65:23
sending 134:11 147:19	shredding 16:21	slight 97:25 208:1	solving 182:21	specifications 193:25
sends 147:14	side 12:15 82:22 112:22 145:16 149:11 168:21 211:12	slightly 87:4 92:18	someone's 104:23	specifics 28:8,21 31:24 127:1 140:21 194:3 198:4 200:19 209:21
sense 6:18 41:23 73:5 81:21	sidewalks 34:4	slope 21:6,17,18 119:4 193:11	sort 12:6,14 19:21 23:11 29:17 30:1 39:13 41:8 49:24 51:18 69:9 70:13 84:20 86:22 95:5 103:25 106:13 121:23 126:2 140:23 143:17 150:10 155:21 160:25 161:9 177:22 198:25 199:17 208:22	speculate 146:3
separate 139:15 188:22	sign 214:24	sloped 21:4	sorts 12:10 60:13 92:24 107:22 154:5 183:5 185:14 201:14	speculated 142:1
separated 161:15	signed 93:20 191:18	slow 64:17 173:21	sought 151:9	speculating 143:13 146:16
September 46:24 70:23 132:3, 11 133:6 148:3,5 155:7	significance 135:2,21	slows 62:14	sound 45:20 46:2 63:20 73:20 79:16 81:7 153:2 191:10	speed 173:21
served 10:6	significant 25:7 44:13 75:13 102:11,24 103:10 199:23	sluice 61:5	sounds 25:4 40:1,15 55:4 148:6	spend 70:3 78:6,14
set 108:24,25 111:24 112:2 141:19 192:8	significantly 103:4 150:21	small		
settled 137:15 155:7 189:2	signs 176:5			
settlement 166:19	similar 30:2			
shallow 95:19				
shapes 122:16				
sharp 100:21,22				

spent 70:3 80:8 spillway 75:4 spoken 171:4 stage 114:19 201:1 210:7 stake 79:7 stalling 30:11 stand 44:22 64:3 standard 39:9 40:21 112:10, 15:22 119:16 128:8,17 130:5 183:10 195:12 198:13 202:9,11 standards 110:24 111:2,11, 14:23 112:24 118:25 120:5 191:23,25 192:3 195:8 201:12,15, 17,19,22 202:3,6 203:7 stands 87:19 start 14:13 27:3 46:16 164:23 started 16:11 43:23 105:13,22 starts 75:15 197:23 state 7:18 8:5 86:5 93:2, 8 97:20 111:11 147:22 192:12 197:21 201:12 statement 11:25 30:24 64:3 100:10 157:16 stating 7:16 station 53:20,21,22 64:25 65:5,22,24 66:7,10 88:23 117:5,11 119:14 120:4 156:23 182:24 211:13,19 212:4,6	stations 65:8 119:19 statistics 185:25 209:15,16, 20 statute 17:7 119:16 138:9 statutes 109:16 114:6 stay 204:25 stayed 16:2 184:11 stays 66:15 steeper 104:17 step 112:13 steps 201:13 210:21 sticking 183:7 stilts 38:5 51:10 105:20 182:24 212:12 stipulate 71:4 81:3 83:7 stood 55:17 stop 106:3 114:23 122:10 stopped 44:25 47:20 122:10 189:7 stops 20:19 storage 34:13 204:4,15 storm 39:3 42:15 44:19, 21 47:3,4,5 48:5 51:6 75:19 79:13 84:2,7,9,16 85:2, 10,17 86:2,24 87:21 88:14 89:2, 6,22 91:2,7 107:21,23 108:2 113:23 114:14,25 127:17 128:14,16 129:2,11,22 130:6, 11 147:25 185:4 199:11	storms 26:4 127:23 128:25 130:14 stormwater 94:4,6,19 95:21 109:18 111:3 113:6,10,25 115:11 118:6 119:11 128:13 130:3,21 139:14, 17 151:19 159:20 161:14 170:2 189:17 190:19 192:2 194:22 195:8,18 202:4,12 203:23 stormwater's 111:25 straight 21:3 89:5 160:21 161:1 straighten 38:22 straightened 38:21 Strathmill 67:14 158:19 159:9 street 58:24 64:23 159:7, 8 211:6 streets 34:4 stretch 56:3 strict 197:10 198:12 strictly 36:11 strike 129:7 191:24 structure 14:6 23:15 77:2 85:5 87:22 88:15 89:3 126:24 211:8 structures 13:21,23 14:9 stuck 74:15 student 10:3 studied 7:25 41:5 59:22 95:3 122:11 studies	32:13 71:1 161:25 198:15 study 11:4 29:20 59:21 67:23 68:4 70:1, 19,24 71:9,23,24 73:2 79:21 80:3 104:20 138:1,3 stuff 36:15,24 45:8 50:24 131:4 subdivision 52:7,21 121:9 138:11,13,22 139:22 140:2,20 142:19 146:6 168:16 subject 45:18 50:12 submitted 109:3 189:25 190:11 191:22 submitting 139:4 189:17 substantial 16:5 23:10 30:16 38:14 83:22 90:17, 19 substantially 22:17 37:4 47:24 184:12 211:15 subtraction 35:9 sufficient 96:13 110:6 192:2 193:1 suggest 18:12 suggested 148:23 suggesting 34:12 173:12 suggestion 51:8 79:25 suing 126:6 summary 8:9 89:15 support 170:24 supposed 41:25 58:24 106:16 107:5 133:22 152:13,15	supposedly 97:16 105:24 surge 86:21 surprise 76:8,11 surprised 166:16 survey 206:25 surveying 158:3 suspect 6:18 144:3 149:25 165:5,11 170:20 201:14 swale 122:16 137:22 swales 41:25 54:25 55:1, 10 56:5 116:7,18 118:24,25 135:16, 23 136:4 swimming 56:1 sworn 6:2 system 9:18,24 11:25 16:3 22:7 25:6,16 30:6 39:1 44:18 56:19 59:25 84:8,14 86:2,7,24 95:23 96:12 109:18 111:3 113:25 114:22 118:6,17 123:17 128:13 130:3,21 131:10 135:12 136:13,25 140:11 184:7 201:7,8 202:14 211:24 systems 9:20 10:16 31:22 58:6,10 96:10

103:23 127:13 185:10 194:24 201:13 talk 15:16 50:1 53:20 58:14 115:23 141:15 190:9 203:21 207:9 210:14 talked 49:23 58:4 59:5 60:22 84:20,24 85:19 113:23 116:6 131:3 164:13 165:13 169:15 171:9 172:2 188:19 189:15,21 203:22 207:10,21 208:5 210:20 213:2 talking 6:9 16:21 23:17 24:20 26:4 28:16 34:7 36:12 38:25 44:5 54:5 70:25 72:3 85:21 89:13 95:15 98:3,7 99:5 107:3 127:9 128:1 136:1,3,9 139:22 140:6,8 156:5 206:2,6 taller 83:16 153:8 tape 19:21 task 174:10 tasks 199:2 Taylor 6:1,5 7:6,7 15:4 33:14 45:9 62:24 67:12 81:3 98:21 105:8 108:14 186:17 213:17 technical 69:1 198:3 210:13 technique 35:7 telling 60:18 92:6 temporary 150:9,14 ten 17:8 25:12 122:15 141:3	tend 17:16 47:22 73:15 186:3 tendency 158:10 term 20:13 66:22 137:7 terminology 172:24 terms 11:17 25:23 28:2 30:3 32:2,25 57:10 58:5 79:7 88:21 89:24 112:12 121:4 136:12 151:18 184:19 199:10 200:21 territory 173:6 test 86:24 198:14 199:17 testified 6:2 8:11 9:4,10 120:9 148:15 213:3 testify 39:7,24 56:10 68:10 69:7 70:7 91:23 127:9 209:17 testifying 48:19 74:14 164:5 testimony 7:1 63:21 89:1,16 91:18 100:20 127:8 130:21 132:12 145:15 146:5,12 182:12 185:2,6 testing 209:3,6 tests 194:12 199:5,14, 21 200:15 thing 11:12 12:14 18:22 19:21 20:21 23:11 33:6 34:5 38:21 39:13 40:11 41:8 47:14 49:25 52:24 69:10 70:13 89:2,7 95:5 96:18,20 106:13 119:7 120:24 121:23 126:12 133:23 137:21 140:23	147:7 150:10 152:1 153:9,23 154:3 155:21 163:13 177:22 181:13 198:25 204:13 205:23 208:22 things 12:23 13:2 16:11 17:5,9,16 19:2,6 29:8 30:1,12 31:5, 22 37:8 38:1,19 41:19 51:18 60:5 61:9 70:11 71:10 72:17 89:17,24 90:12 92:13 97:2 103:22 105:5,12 107:22 113:14,21 115:24 116:9 118:8 120:20 124:13,15,21,24, 25 126:9 131:16 134:10,12 139:20 143:9 145:24 149:10,12,14 154:5 156:4 172:19 173:9,13 174:19 175:15 180:3 183:5,8,21 184:20 185:14,21, 23 188:6,16,20 190:21,22 195:5 196:11 198:5 200:11 210:23,25 212:17,24 thinking 29:16 59:9 73:8 174:9 Thomas 59:21 67:22 68:4, 12 69:14 70:19,24 73:1 104:19 162:20,23,25 188:13 214:8 thought 14:1 56:12 94:21 107:5 109:5 110:23 111:8 146:17 148:3 161:6 208:6 210:5, 9 212:17 three-page 205:19 threshold 128:4,5 throat 183:18 Throw 17:11	thunderstorm 30:10 thunderstorms 30:10 tier 174:4 time 16:4 17:10 20:5 23:2,4 26:15 30:15 33:22 39:12 43:15 46:4 49:6 51:2 53:2 56:18,24 57:17,24 60:9 65:10 68:9 69:2 70:3 74:20 75:22 82:4 88:12,22 91:2 95:14 109:5 113:13,20 115:6 117:5,18 119:13 121:1 123:19 125:25 127:20 141:11 142:6 149:19 150:9 152:14,21,25 154:10 158:12 167:6 168:10,13 174:17 175:9,20 176:10 177:4 178:1 185:3 187:20,21 189:4 191:21 192:3,5,14, 16 196:23 210:2 timeframe 158:13 timeline 127:3,5 129:17 141:19 145:22,23 times 13:14 45:12 49:1 58:2 71:3 86:13 87:20 143:20 173:20 189:13 193:4 timing 173:10,14 today 59:7 63:23 87:19 93:23 94:14 95:3 129:9 134:22 137:2 142:14 148:1 157:14,17 186:24 188:1 190:9 192:17 204:17 209:23 told 16:9 37:11 45:16 136:22 146:18,21 151:13 152:18 180:18 191:3	top 22:20 75:10 86:5 87:1,23 125:22 127:22 162:14 176:18 182:16 187:4 206:1 211:10 topic 85:2 topographical 206:24 topology 31:14 tops 146:25 tornado 90:2 total 29:25 65:11 96:1 172:11 totally 47:14 57:11 111:19 135:6 202:7 town 180:21 181:22 track 62:22 traffic 150:11 trailer 13:24 train 37:5 transcript 188:10 213:20 214:24 transpired 62:18 108:11 186:14 Transportation 141:9 147:14 trash 49:24 travel 102:6 traveling 152:5 treatments 97:19 tree 90:3 trees 77:3 176:3

trial 115:20	134:21,24 136:2, 11 137:3,19	upkeep 171:1,6		87:1,3,11,15 88:2, 3,5,8,21,22,24
triangle 204:12 205:15 206:2,6,10	unchanged 184:8	upper 206:1,5	W	90:5,15 95:23 96:1 98:20 99:12
trick 212:3	undergraduate 7:24	upset 77:21	Waccamaw 180:10,21	104:13,14,17,20, 23 105:1 107:15
trouble 77:20	underground 134:13	upstream 36:25 73:18 75:13 77:23 147:15 149:2,5,8,21 152:16 157:11 167:25 168:24 180:9,13,17 187:9 203:3	wait 181:1 214:12	116:21,25 117:7 119:5,6 121:8,10, 14 122:6,8,13
troubles 202:17	underneath 122:19 153:15		waiting 32:16	126:20,21 129:19 131:15 135:16,22 138:12,15,16 146:10,22,25
true 48:4 145:1,7 154:6 157:16 162:7	underpass 203:2	utilized 204:12	waive 214:25	147:3,14 150:22 151:20 152:7 153:6,13,19
turn 20:1,15,17,20 21:15 40:12 100:3, 17,19 102:11,13 104:12,15,16 207:21	undersized 154:1	V	walk 186:21 187:17	156:11,21 157:1,5, 6,7,11,14,22 159:3 173:4,10,17,21,22 174:17,19 175:5, 10 177:12 180:19, 21 181:2,5 182:15 184:21 186:1 192:22 193:4 195:3 198:16 201:9 204:21 205:7 206:21,22 209:5 211:9,18 213:4
turned 12:24	understand 13:7 16:15 19:4 20:19 21:11 23:1, 12 27:5 30:14 33:15,17 39:4 40:15 42:3 54:8 68:8 74:13 75:6,16 78:21 80:16 99:8 103:15 111:23 114:4,11 116:2 127:7 133:22,23 141:12,17 142:5 146:12 195:22 205:5	vaguely 113:12	walked 56:25 187:19	watershed 44:11,12 147:18 162:17,19 172:8, 15 177:24 178:3
turning 59:13 97:12	understanding 22:14,22 28:24 30:7 33:7 79:15 98:15 109:11 114:1 126:24 128:9 195:13	valve 122:17	walking 56:7	watersheds 162:5
turns 103:17 207:25 208:4	understood 133:21 161:6 178:2	valves 121:13 156:12 211:22	wall 20:9 34:23 35:2 81:14 83:7 137:22 140:22	waterway 102:17
twists 90:2	undeveloped 98:23	variable 196:22	wanted 13:25 51:21 94:22 175:12 189:10	WATKINS 214:10
type 13:24 155:21 190:20 210:3	unfair 68:7	variation 196:10	washing 26:10 153:22	ways 20:23 95:16,17 150:17 182:21 183:9
types 70:12	unit 97:16	verify 161:12	wash 202:9	Webb 77:7 81:15 107:16 143:24,25
typical 197:4	universal 195:15	versus 78:10 111:9 120:1 130:18 138:20 204:9	washed 49:19 82:7,19	Webbs 81:22,23
typically 21:5 22:6 36:15 43:4 121:23 147:12	unpacked 28:5 30:24	view 12:2 100:15 114:21 130:24 173:1	washes 181:23	Webbs' 77:6 81:4 83:8
U	unpacking 89:7	Village 159:24 160:2,4,12, 23	watch 76:14	week 214:2
U.S. 141:13,14,24 145:16 146:2 152:23 169:11	unplanned 59:2	violates 202:3	water 11:24 12:1 18:1 19:10,14 20:14,19 21:2,3 22:19,20,22 23:5,8,16 24:24 25:1,5,9,14 27:10 28:13,16,19,23 29:1,10 30:8 32:2, 14,17 35:1 38:25 42:24 43:7,21 44:22 45:1 48:9 50:21,25 51:1,15, 19 58:12,20 61:6, 7,10,12,16,21,23, 24 62:10,11,12,13, 15 63:17 64:4,8, 10,13,18,20,25 65:4,5,6,14,19 66:3,6,8 74:6,15 75:1,3,5,9,12,20 76:2 79:21 82:12 83:10,19,22 85:6, 11,14 86:3,7,12,18	weekend 16:18
Uh-huh 84:22 85:23 206:8	unsuccessful 128:23	violating 39:24		weeks 124:1
un-flooded 38:18	uphill 88:9 151:21,22	visit 123:10		weighing 80:13
unable 90:4 113:18 130:2		visited 123:11		
unaware 132:19 133:13		volume 35:13 62:21		
		volunteered 56:16		

well-built 53:17	7:13,24 10:13 11:5,8,9 15:23,25	204:25 209:21
well-known 18:17	30:12 32:3 108:21	years 8:2,13 10:14,23
were ⁴ 67:16	123:16,22,24 124:4,7 127:6	16:2,12 17:8,13
west 149:11	131:17 133:3 209:8	25:24 27:12 39:18, 21 40:5,9,18 50:3 56:8,11,25 109:13, 14,25 110:22
wetlands 58:25 97:10	worked 8:1 9:19,22,25	111:6 114:18
white 82:21	11:1,14 12:9 13:14 109:22 188:3	115:5 118:9,21 120:6 128:2,4,25 141:4 142:16
wide 19:25 64:1,7 65:12 142:8 154:7	working 59:25 60:5,7	144:3 145:14 152:14,21 185:17 188:3 207:4
widened 21:23 152:23	works 20:13 30:6 141:21	yellow 161:22 162:8 167:25 170:14
widening 153:4 177:20	worry 21:12	yesterday 55:11 61:25 62:1,4 186:25 189:1,2
wider 21:25 23:22 50:19, 24 64:13 74:18 95:10,13 152:4,25 153:6,9	worse 30:23 31:22 38:2 57:24 83:17 103:19 122:5 175:12 177:7 184:1	younger 77:8
width 142:8	worth 107:9	Z
Winding 105:8	worthless 78:19	zone 121:2
wink 105:25 106:7	wrap 48:14	zones 121:6
wipes 181:24	wraparound 14:13	
wished 207:3	writing 177:7	
withdraw 129:7	written 45:17	
withstand 39:1 86:25 87:22	wrong 39:21 40:14,16 44:10 53:12 76:22 89:15,17 93:10	
wonderful 110:11	wrote 52:20 163:8 178:1	
wondering 181:16 185:1	Y	
wonkie 24:7	yard 23:7,8 31:8 65:20 121:17 126:20 158:11 211:21 212:21	
Wooten 138:25	yards 152:16 156:22 211:2	
word 111:16	year 7:23 40:25 46:8 69:17 95:6 129:14 131:1 191:16	
worded 29:15		
words 19:14 100:5		
work		

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-06495

Cornell Patton, Melissa Patton,
Chad Webb and Amy Webb,

Plaintiffs,

vs.

Prestwick Land Limited Partnership;
Prestwick Homeowners Association, Inc.;
Jackson Companies; City of Myrtle
Beach; South Carolina Department of
Transportation; Horry County; Myrtle
Beach Air Force Base Redevelopment
Authority; Nelson L. Hardwick &
Associates, Inc.; Bermuda Gardens
Homeowners' Association d/b/a
Homeowners of Ocean Walk Property
Owners Association; Campgrounds, Inc.;
and Prestwick Property Owners
Associates, Inc.,

Defendants.

City of Myrtle Beach,

Third-Party Plaintiff,

vs.

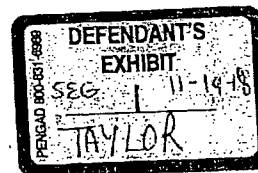
Phil Eaves and Elizabeth Eaves,

Third-Party Defendants/
Counterclaimants /Cross-Claimants/.

AFFIDAVIT OF
ROBERT K. TAYLOR

PERSONALLY APPEARED BEFORE ME, Robert K. Taylor, who first being duly
sworn, deposes and states as follows:

1. My name is Robert K. Taylor and I am a professional engineer licensed by the State
of South Carolina and hold a P.E. designation.

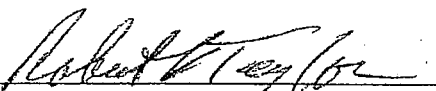


2. I have performed extensive work on the canal behind the home of the Pattons in Prestwick. Further, I was the expert witness in the original action brought by the Pattons.

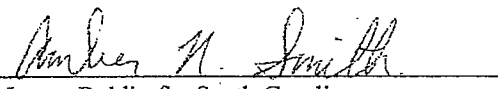
3. I have had an opportunity to again be involved in this case since the property is subject to repeated flooding. I have also learned that the developer to the east of the Plaintiffs hired Hardwick & Associates to reconfigure the canal by changing its course. The result has been more severe and frequent flooding of the Patton property.

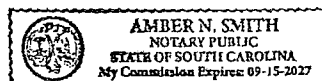
4. It is my opinion to a reasonable degree of certainty that it was negligent to change the course of the canal as this has channeled more water on the Plaintiffs' property. Such a change in the canal direction causes more flooding by artificial means on the Plaintiffs and should not have been approved by the County in light of the well-known propensity of this canal to flood. I base this opinion on my extensive involvement with this canal since 1999 and my prior expert opinions in this case.

FURTHER AFFIANT SAYETH NOT.


Robert K. Taylor, M.S., P.E.

SWORN AND SUBSCRIBED before me,
this 10th day of November, 2017.


Notary Public for South Carolina
My Commission Expires: 9-15-2027





DEFENDANTS
 28 EXHIBIT 11-15
 2
 TAYLOR

MB City

Drainage Mainlines & submain of water
Changes on base
Drainage system changes
Permits
Drainage from other city property

Henry Co

approval of subdivision development & drainage plan
Construction permits
Coordination of drainage plans
Projects dumping into ditch (Cathlamet Dr)
working on drainage system

MB & BRA

Upstream dredging, etc
Paving, etc improvements

Pinalden

Dam & conveyer



1 Q: --- I'm thinking about the vacant -- There's one
2 Plaintiff who has not built a home on their lot.

3 A: Uh-huh (affirmative response).

4 Q: Just in my own mind, have you considered the use
5 of that lot as a potential source to -- I don't know a retention pond
6 or something along those lines?

7 A: I thought about that. I think a retention area is
8 going to have to be a good bit bigger than that, although that
9 would -- that could help some. Again, I view it as two sources.
10 One is the water in the ditch getting too high and either entering
11 the properties from that or preventing flow from Prestwick into
12 the ditch. And the other is the mismanagement of flow within
13 Prestwick. And you know, the ditch could be a 100 feet wide and
14 20 feet deep, but that would not prevent it. The way I see it, it is
15 problems created by water-flow within Prestwick. It would then
16 make those easier to solve if the ditch were massively big.

17 Q: I'm subject to asking you about your billing
18 statements which hopefully are on the way.

19 MR. KELAHER: THEY'RE RIGHT HERE.

20 MR. NICKELS: OH, OKAY.

21 Q: Let's just mark that as the next exhibit.

22 (DEPOSITION EXHIBIT NUMBER EIGHTEEN
23 MARKED FOR IDENTIFICATION)

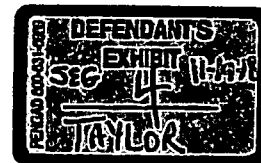
24 Q: I don't have any questions about it.

25 (This Deposition ended at 4:00 p. m.)

Palmetto Hill

Nell T. Ciacchio

5507 North Kings Highway, Myrtle Beach, SC 29577



**INFRASTRUCTURE &
REGULATION DIVISION-
STORMWATER DEPARTMENT**

4401 Privetts Road
Conway, South Carolina 29526



Post Office Box 1236
Conway, South Carolina 29528-1236

Phone: (843) 915-5160
Fax: (843) 365-2208
www.horrycountysc.org

June 24, 2014

TO: Prestwick Homeowners on Strathmill Court
FROM: Thomas Garigen, Horry County Stormwater Manager
RE: Results of Drainage Studies

Dear Homeowners:

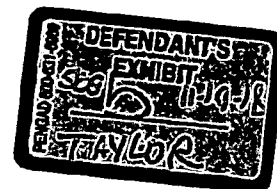
As you will recall, Horry County Stormwater contracted with Thomas and Hutton Engineers to conduct several studies of the Lakewood-Pirateland Swash drainage basin that includes the large canal ditch along Prestwick subdivision that borders the homes on Strathmill Court where past flooding has occurred. I am writing to you to summarize the results of those studies, which are available at:

<http://stormwater.horrycounty.org/ResourcesTools/OrdinancesManualsandReports.aspx>.

The Phase I study developed a technical model based on survey and infrastructure data and predicted flood elevations at various points throughout the drainage basin. The Phase II study used the model to evaluate drainage improvement alternatives. The most recent study evaluated the specific alternative of utilizing Crystal Lake as a detention basin by diverting upstream flows that would be detained long enough to reduce the water elevations in the canal drainage ditch to avoid structure flooding.

The recent study did determine that the Crystal Lake alternative would substantially reduce downstream flooding. To make this alternative viable the water level in Crystal Lake would have to be lowered to capture the upstream water coming from the old airbase and therefore the lake bottom would have to be lowered by dredging. Cost estimates were produced and as expected, the dredging and additional piping costs are significant. Horry County met with the landowner, the Jackson Companies, and presented the study results and offered to cost-share the needed improvements. After careful consideration the Jackson Companies felt the project would be too disruptive and not in their best interests at this time.

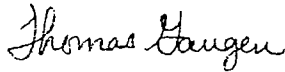
As the previous phases of the study showed, the only other drainage improvement alternative that significantly reduced structural flooding (including garages) was upgrading of the culvert under US Highway 17 Business. All of these alternatives are very expensive and would require S.C. Department of Transportation cooperation. At this point in time, the cost of such a project is prohibitive and the Department of Transportation is unwilling to allow the traffic disruption that would result. In addition, Horry County has discussed this possibility with the owner-operators of Lakewood and



Pirateland Campgrounds. Both of these organizations were adamantly opposed to increasing flows through their properties. They have had flooding problems in the past and feel that additional flows would increase their flooding problems.

Unfortunately, at this time it appears that the only remaining alternative is the improvements to the existing berm along the drainage canal at the rear of your properties. If you wish to pursue such a project, we encourage you to hire an engineer to fully evaluate the integrity of the existing berm and determine the necessary improvements needed. In its current form, there are several breaches and low spots in the berm that allow water to enter the back yards of your homes and then trap the water there until the water elevations in the adjacent canal ditch recede. Following the recommended design in the Phase II study would help to reduce the flooding problem and avoid first floor flooding.

Sincerely,



Thomas Garigen
Horry County Stormwater Manager
garigent@horrycounty.org

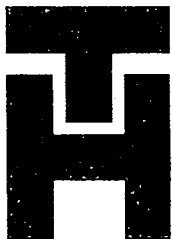
DRAINAGE STUDY
PHASE 2 – ALTERNATIVE IMPROVEMENTS

FOR:
LAKEWOOD – PIRATELAND SWASH
HORRY COUNTY, SC

PREPARED FOR:
HORRY COUNTY
STORMWATER DEPARTMENT

SEPTEMBER 24, 2012

J-23453.404



Prepared by:

THOMAS & HUTTON

Savannah, GA | Charleston, SC | Myrtle Beach, SC | Brunswick, GA



TABLE OF CONTENTS

Background and Introduction	Page 1
Alternative Projects Screening	Page 2
Alternative Projects Post-Improvement Conditions Model Development	Page 3
Alternative Projects Evaluation	Page 7
Opinions of Probable Construction Cost	Page 8
Findings and Recommendations	Page 8

FIGURES

Alternative 1A – Highway 17 Culvert Improvements and Main Channel Improvements
 Alternative 1B – Highway 17 Culvert Improvements
 Alternative 1C – Highway 17 Culvert Improvements
 Alternative 2A – Detention Pond at Catherine Ave.
 Alternative 2B – Detention Pond at Catherine Ave.
 Alternative 2C – Detention Pond at Catherine Ave.
 Alternative 3 – Detention Pond at Lakeview Dr.
 Alternative 4A – Crystal Lake Modifications
 Alternative 4B – Crystal Lake Modifications
 Alternative 4C – Crystal Lake Modifications
 Alternative 5 – Detention Pond at Seagate Village (1 of 2)
 Alternative 5 – Detention Pond at Seagate Village (2 of 2)
 Alternative 7 – Strathmill Court Drainage Diversion
 Alternative 8 – Local Flood Protection System Improvements

TABLES

Alternative 1A – Maximum Node Elevation Comparison
 Alternative 1B – Maximum Node Elevation Comparison
 Alternative 1C – Maximum Node Elevation Comparison
 Alternative 2A – Maximum Node Elevation Comparison
 Alternative 2B – Maximum Node Elevation Comparison
 Alternative 2C – Maximum Node Elevation Comparison
 Alternative 3 – Maximum Node Elevation Comparison
 Alternative 4A – Maximum Node Elevation Comparison
 Alternative 4B – Maximum Node Elevation Comparison
 Alternative 4C – Maximum Node Elevation Comparison

TABLES (Cont'd)

Alternative 5 – Maximum Node Elevation Comparison

Alternative 6 – Maximum Node Elevation Comparison

OPINIONS OF PROBABLE CONSTRUCTION COST

Alternative 1A – Highway 17 Business Culvert Improvements and Main Channel Improvements

Alternative 1B – Highway 17 Business Culvert Improvements

Alternative 1C – Highway 17 Business Culvert Improvements

Alternative 2A – Detention Pond at Catherine Drive

Alternative 2B – Detention Pond at Catherine Drive

Alternative 2C – Detention Pond at Catherine Drive

Alternative 3 – Detention Pond at Lakeview Drive

Alternative 4A – Crystal Lake Modification

Alternative 4B – Crystal Lake Modification

Alternative 4C – Crystal Lake Modification

Alternative 5 – Detention Ponds at Seagate Village

Alternative 7 – Strathmill Court Drainage Diversion

Alternative 8 – Strathmill Court Flood Protection System Improvements

EXHIBITS

Exhibit 1 – Existing Conditions ICPR Link-Node Schematic

Exhibit 2 – Improvement Alternatives

BACKGROUND AND INTRODUCTION

Horry County is experiencing rapid growth and in certain places, the pace of development continues to outgrow the capacity of the existing drainage system. Flooding concerns have been voiced by many of the businesses and residents in the Lakewood-Pirateland Swash Basin (Exhibit 1). Structural flooding of several business and/or homes has been recorded on at least two occasions in the past.

The Lakewood-Pirateland Basin drains 1,560 acres including the Lakewood and Pirateland Campgrounds, Long Bay Estates, and portions of the Myrtle Beach State Park, all east of US Highway 17 Business. West of US Highway 17 Business, the basin provides drainage for the Prestwick Subdivision and Country Club, Crystal Lakes Mobile Home Park, Seagate Village (formerly part of Myrtle Beach Air Force Base), and commercial properties along the highway. Drainage is conveyed through a swash to the Atlantic Ocean.

The Horry County Stormwater Department intends to implement a three phases approach to improving drainage in the basin – including (1) the development of a hydrology and hydraulic model, (2) alternatives analysis and recommendations, and (3) implementation of the recommended improvements if deemed financially feasible.

Phase 1

Phase 1 of the Lakewood-Pirateland Swash Drainage Project included six tasks including:

- Task 1 – Data Collection
- Task 2 – Field Reconnaissance
- Task 3 – Surveying
- Task 4 – Existing Conditions Model Development
- Task 5 – Model Calibration
- Task 6 – Phase 1 Study Findings and Report

Phase 1 of the Lakewood-Pirateland Swash Drainage Project was documented in the report *Lakewood-Pirateland Swash Drainage Study* (Thomas & Hutton, February 29, 2012).

Phase 1 Additional Analysis

Due to certain findings of the Phase 1 report, the Horry County Stormwater Department requested additional study of the Lakewood-Pirateland Swash Drainage Basin. In particular, the County commissioned additional survey and drainage system analysis of the minor collection system draining through Strathmill Court. The additional survey and drainage system analysis work was documented in a Technical Memorandum *Lakewood-Pirateland Swash Drainage Improvements – Strathmill Court Study Findings* (Thomas & Hutton, May 3, 2012).

Phase 2

Phase 2 of the Lakewood-Pirateland Drainage Study included the assessment of alternatives that could be implemented within the basin that would address flood issues – particularly the structural flooding of businesses along Highway 17 Business and homes in the Prestwick subdivision. Phase 2 was conducted under the following five tasks:

- Task 1 – Alternative Projects Screening
- Task 2 – Alternative Project Evaluation
- Task 3 – Alternative Post Improvement Conditions Model Development
- Task 4 – Opinion of Probable Cost and Benefit Analysis
- Task 5 – Phase 2 Study Findings and Report

The following sections describe each task conducted as part of Phase 2 of the Lakewood-PirateLand Swash Drainage Study.

ALTERNATIVE PROJECTS SCREENING

Alternative improvement projects were developed that addressed the structural flooding issues identified in Phase 1 of the project – mainly the flooding upstream of the US Hwy 17 Business at the business (Camper County) just west of the highway and the two residences in the Prestwick Sub-division (1284 and 1288 Strathmill Ct.).

Alternative improvement projects with the potential to alleviate the identified structural flooding were developed and screened for further assessment. The following projects were selected for further assessment as part of Phase 2 of the study.

- Alternative 1: Improvements to the existing culvert under US Hwy 17 Business
 - Alternative 1A: Addition of a 5'x10' CBC underneath US Hwy 17 Business and improvements to approximately 1,200 LF of Channel
 - Alternative 1B: Addition of a 7'x7' CBC underneath US Hwy 17
 - Alternative 1C: Addition of a 42" RCP underneath US Hwy 17 Business
- Alternative 2: Detention on a parcel adjacent the main channel (Graham Walden Tract)
 - Alternative 2A: Detention of flow entering the main channel from across Catherine Avenue (flow from the camper storage area along US Hwy 17 Business)
 - Alternative 2B: Diversion and detention of flows entering the pond/wetland area along Catherine Avenue (flows from the Prestwick Sub-division)
 - Alternative 2C: Off-line detention of flows in the main channel
- Alternative 3: Detention on a wooded area between Prestwick Phase IV and Sea Gate Village
- Alternative 4: Total and partial diversion of flows from the main channel (adjacent Sea Gate Village) to Crystal Lake
 - Alternative 4A: Partial diversion of high flows to Crystal Lake through a side-flow weir from the main channel
 - Alternative 4B: Total diversion of the flow from the main channel (draining the northern Sea Gate Village tributary)
 - Alternative 4C: Total diversion of the flow from the main channel (draining the northern and southern Sea Gate Village tributaries)
- Alternative 5: Detention in the common areas of Sea Gate Village
- Alternative 6: Modification of the pond control structure in Prestwick Phase 1

In addition to the alternative projects listed above that address the structural flooding (US Hwy 17 Business and Strathmill Court), local improvement alternatives that address potential flooding of the Strathmill Court residences were also selected for further assessment. These alternatives include:

DRAINAGE STUDY: PHASE 2 – ALTERNATIVE IMPROVEMENTS

- Alternative 7: Diversion of the local Strathmill Court drainage system to the main channel
- Alternative 8: Improvements to the local flood protection system along the main channel at Strathmill Court

The locations of the alternative projects are shown on Exhibit 2. Detail conceptual plans for each alternative project (except Alternative 6) are illustrated in the Figures 1A, 1B, 1C, 2A, 2B, 2C, 3, 4A, 4B, 4C, 5 (2 sheets), 7 and 8.

ALTERNATIVE PROJECTS POST-IMPROVEMENT CONDITIONS MODEL DEVELOPMENT

For alternative projects 1 through 6, individual post-improvement conditions ICPR stormwater models were developed to assess the effectiveness of each alternative project. The model inputs are based on the alternative project's conceptual plan depicted in the figures. The alternative projects were optimized to maximize the flood control effect of project while minimizing impact to adjacent properties or structures. The alternative projects were also refined to fit the physical parameters of the area to be improved, including elevations, storage areas, etc. The following are a brief description of each alternative as refined in the post-conditions modeling process.

Alternative 1A – US Highway 17 Business Culvert Improvements and Main Channel Improvements

This alternative consists of installing a 5'x10' CBC underneath US Highway 17 Business parallel to the existing 7'x7' CBC. The proposed alternative would include the reconstruction and expansion of the upstream and downstream headwall/wingwalls and aprons. In addition, the alternative would include improvements (widening to 20' bottom width with 2:1 side slopes) to approximately 1,200 LF of the main channel upstream of US Highway 17 Business. This alternative was optimized to prevent flood of structures (including garages) up to and including the 100-year event.

Alternative 1B – US Highway 17 Business Culvert Improvements

This alternative consists of installing a 7'x7' CBC underneath US Highway 17 Business parallel to the existing 7'x7' CBC. The proposed alternative would include the reconstruction and expansion of the upstream and downstream headwall/wingwalls and apron. The alternative produced significantly lower peak water surface elevations upstream of US Highway 17 Business and eliminated finished floor (FF) flooding (up to the 100-year event) at the two locations. However, garage flooding could continue to occur after this improvement for some larger events.

Alternative 1C – US Highway 17 Business Culvert Improvements

This alternative consists of installing a 42" RCP underneath US Highway 17 Business parallel to the existing 7'x7' CBC. The proposed alternative would include the reconstruction and expansion of the upstream and downstream headwall/wingwalls and apron. This alternative was optimized to be the minimum improvement needed to prevent FF flooding of structures (up to the 100-year event). However, similar to Alternative 1B, garage flooding could continue to occur after this improvement for some larger events.

Alternative 2A – Detention Pond at Catherine Drive

This alternative consists of constructing a 0.67-acre wet detention pond adjacent Catherine Drive on the Graham Walden Tract. The alternative would include diverting drainage from the exiting 30" RCP under Catherine Drive into the proposed detention pond. The ponds normal water and stormwater release would be controlled by a structure that would discharge directly to the main channel.

This alternative resulted in only minor improvements to peak water surface elevations and mainly or smaller storm events (i.e. 2-, 10- and 25-yr events), with no significant improvement for larger events.

Alternative 2B – Detention Pond at Catherine Drive

This alternative consists of constructing a 0.62-acre wet detention pond adjacent Catherine Drive on the Graham Walden Tract. The alternative maintains the drainage from the exiting 30" RCP under Catherine Drive in a ditch on the southeast side of the property. The alternative would divert the stormwater from the existing pond/wetland that received runoff from the Prestwick sub-division into the new pond.

The diversion would include the installation of triple 60-inch RCP pipes from the existing wetland/pond to the proposed pond. The proposed pond would outfall to the main channel through triple 60-inch RCP pipes. The alternative would also include the abandonment of the outfall of the existing pond/wetland (which is essentially a narrow ditch).

This alternative resulted in minor improvements to peak water surface elevations (mainly the area of the main channel adjacent the Strathmill Court properties), but no improvement downstream (i.e. immediately upstream of US Highway 17 Business).

Alternative 2C – Detention Pond at Catherine Drive

This alternative consists of constructing a 0.80-acre dry detention pond adjacent Catherine Drive on the Graham Walden Tract. The alternative maintains the drainage from the exiting 30" RCP under Catherine Drive in a ditch on the southeast side of the property. The alternative would serve as an off-line detention area for high flows from the main channel.

High flows would spill into the detention area through a rip-rap weir. The stormwater would flow back into the main channel after the storm passes, with the lowest part of the detention area being drained by a small 18-inch RCP drain pipe.

This alternative resulted in only minor improvements to peak water surface elevations and mainly for smaller storm events (i.e. 2- and 10-yr events), with no significant improvement for larger events.

Alternative 3 – Detention Pond at Lakeview Drive

This alternative is the construction of a 3.35-acre wet detention pond in the area between Lakeview Drive and Seagate Village (currently a wood tract of land). The detention pond would be an in-line detention pond that would receive flows from Seagate Village and Crystal Lake. The pond would outfall through a control structure immediately upstream of the bridge at Lakeview Drive.

DRAINAGE STUDY: PHASE 2 – ALTERNATIVE IMPROVEMENTS

This alternative resulted in moderate improvements to peak water surface elevations in the main channel, with improvements at the structure flooding location of nearly 0.25 feet. However, this alternative would not eliminate structural flooding for the 100-year event.

Alternative 4A – Crystal Lake Modifications

This alternative would be the construction of a side-discharge weir that would allow higher flows in the channel between Seagate Village and Crystal Lake to overflow into Crystal Lake during most events (including the 2-yr). The weir would be rip-rap lined at an elevation of approximately 14.5 feet, which is slightly above the NWL of the lake at the time of the survey conducted for this study (December 2011). The weir would preclude the lake from reaching water levels above 14.5 feet. A wooden raised boardwalk is proposed for the existing walking trail adjacent Seagate Village to span the proposed weir.

This alternative resulted in improvements to peak water surface elevations for the 100-year storm event by nearly 0.4 feet at the two structural flooding locations. However, this would not eliminate the potential of flooding during the 100-year rainfall event.

Alternative 4B – Crystal Lake Modifications

To better utilize Crystal Lake, this alternative would modify the control structure of the lake and lower the NWL to elevation of the existing outfall pipe (elevation 13.5 feet). The modification would be relatively inexpensive, but could result in areas of the lake bottom becoming partially exposed. Partial areas of the lake bottom are currently exposed (December 2011) at the current NWL of 14.39 feet.

The alternative would also include the diversion of a portion of the Seagate Village into Crystal Lake. This would include the abandonment of an existing culvert in the channel between Seagate Village and Crystal Lake that would force drainage through a proposed culvert (triple 48-inch RCP) into the lake. This alternative would convert Crystal Lake into an in-line detention pond with a portion of Seagate Village drainage passing through the lake.

This alternative is nearly successful in eliminating structural flooding at the two locations up to the 100-year rainfall event. However, it does not eliminate the potential for structural flooding through the 100-year event. This alternative would significantly impact Crystal Lake. Potentially to mitigate the effect, the lake's bottom could be lowered by dredging. However, it would be a significant project and cost to dredge out a portion of the lake.

Alternative 4C – Crystal Lake Modifications

To best utilize Crystal Lake would require a significant modification to the operation and appearance of the lake. This alternative would replace the lake's control structure and outfall to allow for the NWL in the lake to be elevation 10.0 feet. This would allow drainage from all of Seagate Village to be diverted to Crystal Lake and thus be detained in the large lake. The existing bottom elevation of Crystal Lake is unknown, but from visual observation, portions of the bottom are significantly higher than elevation 10.0. Thus a significant project would be required to increase the depth of the lake to accommodate this alternative.

This alternative significantly improves the peak water surface elevations downstream in the main channel (and some contributing systems). This alternative would eliminate the potential for structural flooding at the two locations up to and including the 100-year rainfall event.

Alternative 5 – Detention Ponds at Seagate Village

The common areas of Seagate Village allow for the opportunity to construct two wet detention ponds that could provide flood protection benefits while possibly providing an amenity to the adjacent residents. The ponds would include a 6.80-acre pond in the common area between Pelican Avenue and Mockingbird Street / Hemlock Avenue. A second 2.32-acre pond would be constructed on the common area between Sycamore Avenue and Walnut Avenue. The ponds NWL would be set to the invert of the large culverts under Spruce Drive. The control structures would be constructed immediately upstream (east) of Spruce Drive and outfall through the existing culverts under Spruce Drive.

This alternative improves the downstream peak water surface elevations moderately for all storm events; however, it will not totally eliminate the potential for structural flooding from the 100-year rainfall event.

Alternative 6 – Prestwick Pond Control Structure Modification

This alternative is the modification to the outfall control structure for the pond in Prestwick Phase 1 (located on the Prestwick Golf Course). The ponds NWL would be lowered to increase stormwater detention capacity and the outflow would be regulated to maximize detention in the pond. This alternative did not improve peak water surface elevations in the main channel and provides no flood protection benefit.

Post-Improvement Conditions ICPR Stormwater Model Results

The post-improvement conditions ICPR stormwater model were executed for the 2-, 10-, 25-, 50- and 100-year storm events. The results (maximum simulated water surface elevations) for each alternative are compared to the existing conditions in the attached tables. Refer to Exhibit 1 for the Existing Conditions ICPR Model Link-Node Schematic for the location of the nodes included in the tables.

The tables identify the nodes associated with structural flooding - MAIN-03 (Camper Country) and MAIN-07 (1284 and 1288 Strathmill Ct.) in yellow. Structural flooding is defined as the peak water surface elevation above the finished floor elevation. Structural flooding is also highlighted in yellow at the nodes if occurring for the scenario/event. Structural flooding occurs at MAIN-03 (Camper Country) at approximately elevation 13.31 and at MAIN-07 (1284 and 1288 Strathmill Ct.) at approximately elevation 13.43. For example, MAIN-03 (Camper Country) floods under existing conditions for the 100-year storm event (elevation 13.91) and MAIN-07 (1284 and 1288 Strathmill Ct.) floods under existing conditions for the 50-year event (elevation 13.44) and 100-year event (elevation 14.13). The garages of 1284 and 1288 Strathmill Ct. are significantly lower than their finished floor elevations, and this could be subject to flooding for smaller rainfall events.

The tables also identify improvement (decrease) in predicted peak water surface elevations from existing conditions at each node as well as potential increases in predicted water surface elevations. Improvements are marked in green, while increases in water surface elevations are marked in red. Only relatively large differences in water surface elevations are noted. Minor variances (i.e. +/- 0.1 ft.) are not highlighted in the tables.

ALTERNATIVE PROJECTS EVALUATION

The alternative project exhibits include information including contour elevations, existing utilities (generally buried water and sewer), edge of pavement, property lines, build footprints, and aerial photography. This information was used in refining the alternative concepts and also in developing the opinions of probable costs for the alternatives.

In addition to the ten alternatives discussed above, two additional alternatives local to the structural flooding on Strathmill Court were developed. These alternatives are discussed below.

Alternative 7 – Strathmill Court Drainage Diversion

This alternative would divert the local Strathmill Court drainage system to the main channel. This improvement would serve to improve the capacity of the drainage system to move local drainage to the main channel and bypass the relatively flat Strathmill Court area. The improvement would include a flap gate, which with the pipe improvements would help prevent the potential backup of stormwater in the low are between the berm along the main channel and the Strathmill Court residences.

Alternative 8 – Strathmill Court Flood Control System Improvements

The alternative would improve the existing Strathmill Court flood control system that was apparently constructed by the residents or other private entities. This alternative would include the raising (and strengthening) of the existing berm as well as the lengthening of the berm to tie to existing ground. The existing and proposed berm elevation would be 14.5 feet. This elevation is dictated by the predicted peak water surface elevation in the main channel (which is controlled by the elevation of the overtopping of US Highway 17 Business).

This alternative would also require the installation of various flap gates to control the back flow of water into the protected area. This would include various privately and publically owned drainage pipes. It should be noted that the construction methods of the existing berm and privately owned pipes is unknown and thus the structural soundness would have to be confirmed prior to being improved.

OPINION OF PROBABLE CONSTRUCTION COST

Individual opinions of probable construction cost were developed for each alternative. The opinions of probable construction cost are included at the end of this report and are summarized in the table below.

Alternative	Opinion of Probable Construction Cost	Note
Alternative: 1A - Hwy 17 Business Culvert Impr. and Channel Impr.	\$ 815,000	
Alternative: 1B - Highway 17 Business Culvert Improvements	\$ 393,000	
Alternative: 1C - Highway 17 Business Culvert Improvements	\$ 229,000	
Alternative: 2A - Detention Pond at Catherine Drive	\$ 671,000	
Alternative: 2B - Detention Pond at Catherine Drive	\$ 750,000	
Alternative: 2C - Detention Pond at Catherine Drive	\$ 541,000	
Alternative: 3 - Detention Pond at Lakeview Drive	\$ 3,317,000	
Alternative: 4A - Crystal Lake Modification	\$ 95,000	
Alternative: 4B - Crystal Lake Modification	\$ 142,000	Lake dredging not included
Alternative: 4C - Crystal Lake Modification	\$ 667,000	Lake dredging not included
Alternative: 5 - Detention Ponds at Seagate Village	\$ 4,896,000	
Alternative: 6 - Prestwick Pond Control Structure Modification	\$ 15,000	
Alternative: 7 - Strathmill Court Drainage Diversion	\$ 148,000	
Alternative: 8 - Strathmill Court Flood Protection System Imp.	\$ 110,000	

FINDINGS AND RECOMMENDATIONS

Based on the results of the proposed conditions ICPR modeling and the opinions of probable construction cost for Alternatives 2A, 2B, 2C, 3, 4B, 5, and 6, it appears that with the limited improvement in flooding conditions and the relatively high cost that these alternatives are not viable for implementation and thus are not considered further.

Only Alternatives 1A totally address the structural (including garage) flooding (up to the 100-yr rainfall event) reported and as identified by the existing conditions modeling. The other alternatives that had significant impact on flooding included Alternatives 1B, 1C and 4C. Alternative 4C's opinion of probable construction cost does not include a cost for the lake bottom excavation/dredging. This cost would be significant (approximately \$1M to \$3M), which

DRAINAGE STUDY: PHASE 2 – ALTERNATIVE IMPROVEMENTS

would render the alternative to be cost prohibitive. In addition, Alternative 4C would require a radical modification of the lakes operation (lower NWL by approximately 4.5 feet), which could be unacceptable to local residents.

Alternative 4A provides moderate improvement with a relatively inexpensive capital cost, but does not address structural flooding through the 100-yr rainfall event. Alternative 8 could address flooding at the Strathmill Court locations (up to the 100-year event), but would most likely need to be implemented by private entities, since most of the infrastructure is on private lands without a dedicated easement to a public entity.

It is recommended that the County pursue the implementation of Alternative 1A as a long term solution to structural flooding in the watershed and possibly implement Alternative 4A as an interim, partial solution to flooding the watershed.



DEFENDANT'S
EXHIBIT
SEC 7
TAYLOR
FBI LABORATORY
100-100-000000



DEFENDANT'S
EXHIBIT 11-A
SUS
TAYLOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Cornell Patton and Melissa Patton,)

Plaintiff,)

-VS-)

Prestwick Land Limited Partnership,)
Jackson Companies, City of Myrtle)
Beach, Pirateland Campground, Inc.,)
Horry County, and Myrtle Beach Air)
Force Base Redevelopment Authority,)

Defendants.)

C/A NO: 2000-CP-26-765

Scott Werter and Charise Werter,)

Plaintiff,)

-VS-)

Prestwick Land Limited Partnership,)
Jackson Companies, City of Myrtle)
Beach, Pirateland Campground, Inc.,)
Horry County, and Myrtle Beach Air)
Force Base Redevelopment Authority,)

Defendants.)

C/A NO. 2000-CP-26-775

Phil Eaves,)

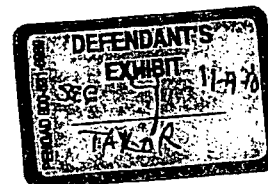
Plaintiff,)

-VS-)

Prestwick Land Limited Partnership,)
Jackson Companies, City of Myrtle)
Beach, Pirateland Campground, Inc.,)
Horry County, and Myrtle Beach Air)
Force Base Redevelopment Authority,)

Defendants.)

C/A NO. 2000-CP-26-780



Scott Plyler and Michelle Plyler,

Plaintiff,

-vs-

Prestwick Land Limited Partnership,
Jackson Companies, City of Myrtle,
Beach Pirateland Campground, Inc.,
Horry County, and Myrtle Beach Air
Force Base Redevelopment Authority,

Defendants.

C/A NO. 2001-CP-26-2540

AFFIDAVIT OF ROBERT K. TAYLOR

PERSONALLY APPEARED BEFORE ME, Robert K. Taylor, who first being duly sworn, deposes and states as follows:

1. My name is Robert K. Taylor. I am a licensed, professional engineer in the state of South Carolina. My practice includes analysis of flooding claims and of how fluid flows.

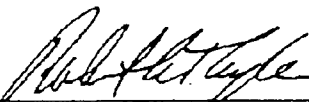
2. I was retained by the Plaintiffs to review the flooding at and around their homes at the Prestwick Community in Myrtle Beach.

3. I have investigated this matter and have made trips to the property to determine why the water flows onto and/or accumulates on Plaintiffs' property. I have come to many conclusions, one of which is that a dam and a causeway were built downstream at Pirateland before this flooding occurred.

4. I believe that the construction of the dam and causeway at Pirateland Campground increased resistance of the water flow which contributed to the level of flooding which occurred on the Plaintiffs' property. I have reviewed the dam and causeway downstream from the Plaintiffs' property on the Pirateland Campground, and I find to a reasonable degree of engineering and scientific certainty that there is added resistance and/or restriction of the water flow towards the

ocean because of the construction of this dam and causeway. As a result, one of the factors involved in the damage to the Plaintiffs' property was this resistance created by the construction of the dam and causeway across the drainage path.

FURTHER AFFIANT SAYETH NOT.


Robert K. Taylor, M.S., P.E.

Sworn to and subscribed before
this 14th day of June, 2001.


Notary Public for South Carolina
My Commission Expires: July 13, 2006

RECEIVED MAY 30 2006

JUN - 1 2006

STORM WATER REPORT

FOR

BERMUDA COTTAGES

May 25, 2006

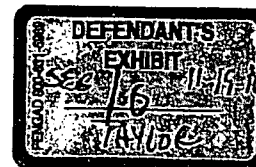
Prepared by:

**NELSON L. HARDWICK & ASSOCIATES
1010 5TH AVE. N. EXT., SUITE 102
SURFSIDE BEACH, S.C. 29575
(843) 238-1142**

SCANNED

SEP 20 2012

BY _____



PROJECT NARRATIVE FOR

BERMUDA COTTAGES - TMS# 186-00-01-005

May 23, 2006

This project consists of the development of approximately (30.09) acres of land located on the western boundary of U.S. Business Highway 17 approximately (1.25) miles north of the city limits of Surfside Beach and across from the entrance to Pirateland Campground. Presently, the tract is undeveloped and contains approximately (3.63) acres of wetlands currently under review by the U.S. Army Corps of Engineers. (See Wetlands Map) The owner proposes to construct (74) single family duplex lots (148 units) with infra-structure consisting of paved roadways, water distribution and ~~sanitary sewer~~, storm drainage, and lakes for storm water detention.

Regarding the existing site conditions and surface drainage, existing elevations indicate that the tract is moderately sloped from the eastern boundary to an existing canal located within a (70') drainage right-of way as shown on the "Canal Relocation Plan". This canal provides positive outfall for this tract as well as upstream properties through an existing 7' x 7' box culvert under U.S. 17 to the existing lake system located within Pirateland Campground. Regarding vegetation, the site is densely wooded with a variety of tree species.

Regarding the proposed storm water system, the design of the project consists of the construction of (6) lake systems and (1) dry detention system as shown on "Post Development Sub-Basin Map" and drainage plan. "Post development" runoff will be routed via curb & gutter, swales, and storm drains into storm water detention systems as shown. Total peak runoff for the entire project has been reduced by approximately 6.7% for a (25) year event. (see Discharge Summary)

Regarding soils classifications, the following summary indicates hydrologic groups and percentage cover. Soils tables are also included in this report.

SOIL HYDROLOGIC GROUPS AND % COVERAGE

<u>Soil Name</u>	<u>Hydrologic Group</u>	<u>% Coverage</u>	<u>Ac</u>	<u>CN</u>
Bladen(YaA)	D	10.0	11.8	80
Eulonia (EuA, EuB)	C	90.0	3.9	74

Ref: "Soil Survey of Horry County, S.C.", Nov., 1986

RUNOFF SUMMARY FOR 2/10/25 YEAR STORM EVENTS
(PRE-DEV)

<u>STORM EVENT</u>	<u>CN (PRE)</u>	<u>PRE DEV (CFS)</u>
2	74.0	22.0
10	74.0	45.4
25	74.0	56.6

RUNOFF SUMMARY FOR 2/10/25 YEAR STORM EVENTS
(POST-DEV)

<u>STORM EVENT</u>	<u>SUB-BASIN #</u>	<u>CN</u>	<u>(CFS)</u>	<u>Q thru Pond</u>
2	A1	80.0	7.6	4.8
10	A1	80.0	14.4	11.9
25	A1	80.0	28.7	14.3
2	A2	80.0	7.7	5.2
10	A2	80.0	14.7	9.2
25	A2	80.0	17.9	10.6
2	A3	80.0	5.0	3.0
10	A3	80.0	9.5	5.6
25	A3	80.0	11.6	7.6
2	A4	80.0	9.3	7.0
10	A4	80.0	17.6	10.9
25	A4	80.0	21.4	12.4(A2,A4,A5) (Combined)
2	A5	80.0	6.5	5.7
10	A5	80.0	12.3	9.9
25	A5	80.0	11.3	11.6
2	A6	80.0	4.9	0.3
10	A6	80.0	9.3	4.2
25	A6	80.0	12.5	5.9
2	A7	80.0	5.5	N/A
10	A7	80.0	10.4	N/A
25	A7	80.0	12.6	N/A

Total: (25))	=	52.8	CFS	(A1 + A3 + A4 + A6 + A7)
Total: (10)	=	43.0	CFS	(A1 + A3 + A4 + A6 + A7)
Total: (2)	=	20.6	CFS	(A1 + A3 + A4 + A6 + A7)

DISCHARGE SUMMARY

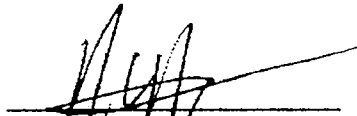
<u>STORM EVENT</u>	<u>PRI-DEV</u>	<u>POST DEV</u>	<u>% DECREASE</u>
25	56.6	52.8	6.7
10	45.4	43.0	5.3
Or	22.0	20.6	6.4

**STORAGE SUMMARY FOR 25 YEAR STORM EVENT
(POST-DEV)**

<u>SUB-BASIN #</u>	<u>ACRES</u>	<u>STORAGE REQ'D (FIRST 1")</u>	<u>STORAGE PROVIDED</u>	<u>ELEV.</u>
A-1	4.60	16,631	23,269	15.89
A-2	5.80	20,978	33,037	17.54
A-3	2.19	7,917	8,501	11.80
A-4	5.36	19,387	26,796	15.00
A-5	4.99	18,040	18,761	17.00
A-6	2.45	8,859	15,579	16.00
A-7	1.94	7,014	N/A	N/A

TOTAL: 98,826 CF 125,943 CF

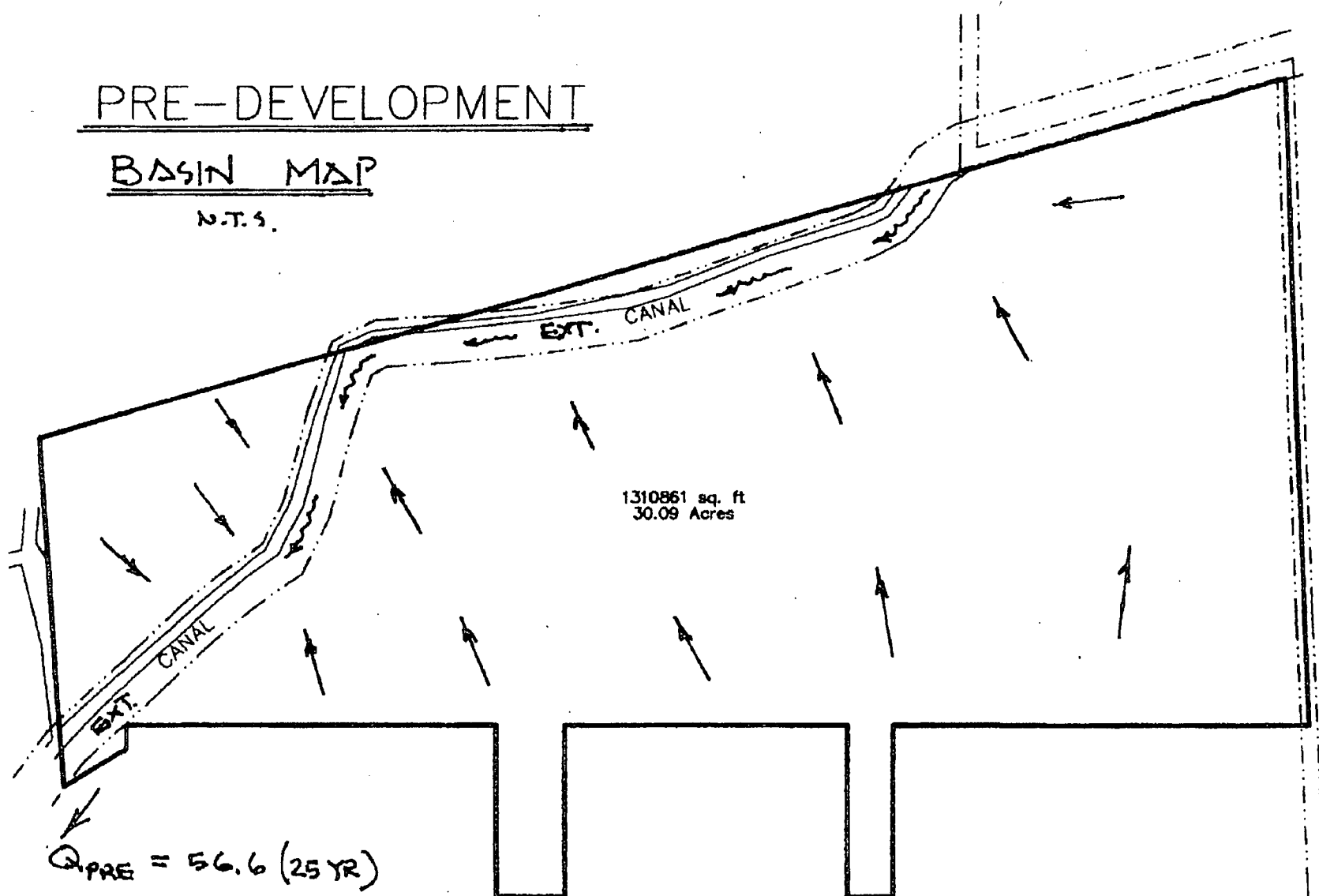
Since drainage calculations indicate that "post development" discharge will be less than "pre development", and storage provided exceeds minimum by approximately 27%, the impact on the existing watershed will be negligible.


Nelson L. Hardwick, P.E.

PRE-DEVELOPMENT

Basin Map

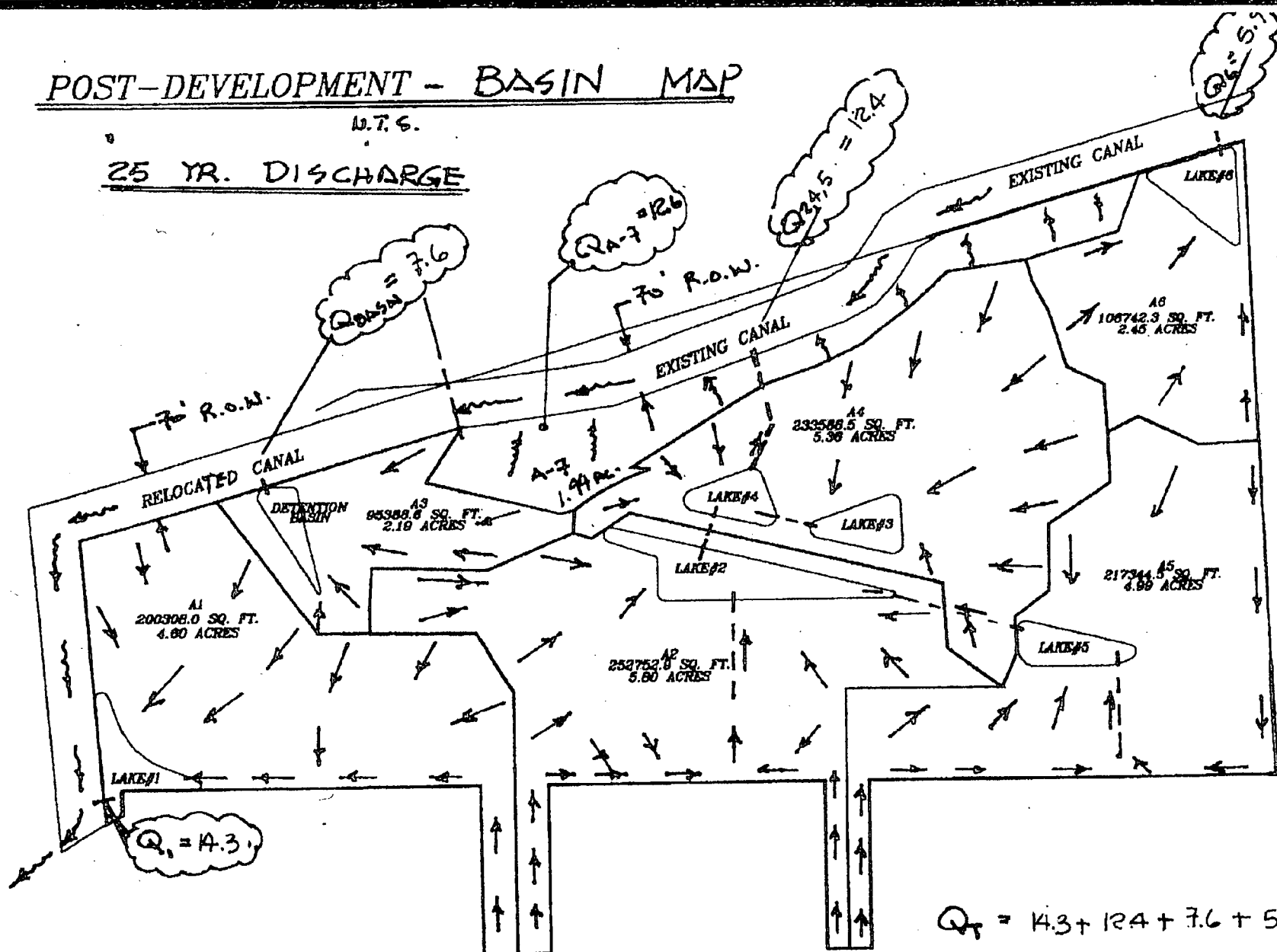
N.T.S.



POST-DEVELOPMENT - BASIN MAP

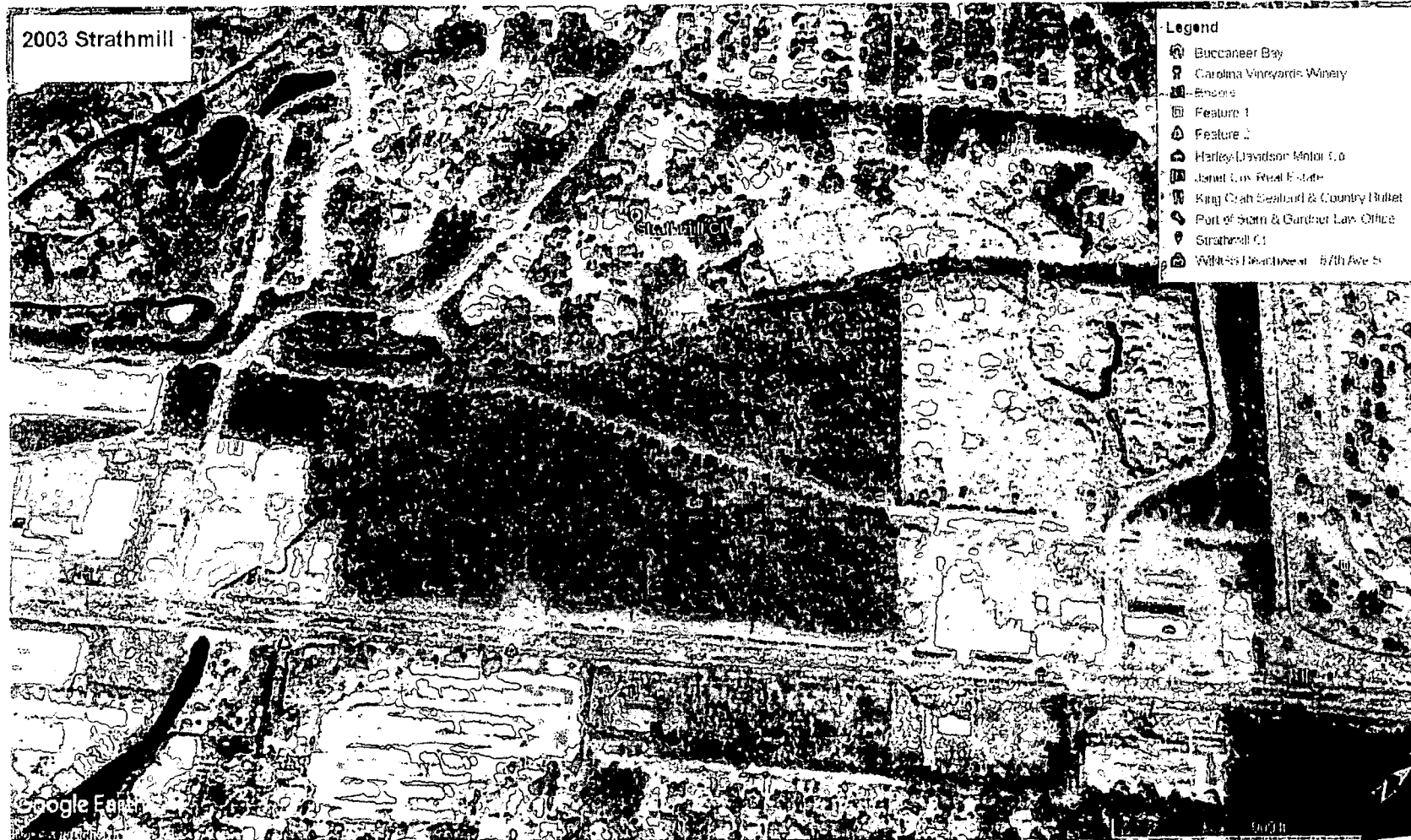
U.T.C.

25 YR. DISCHARGE



$$Q_T = 14.3 + 12.4 + 7.6 + 5.9 + 12.4$$

$$= 52.8$$



- Legend
- Buccaneer Bay
 - Carolina Vineyards Winery
 - Endore
 - Feature 1
 - Feature 2
 - Harley Davidson Motor Co
 - John Law Real Estate
 - King Crab Seafood & Country Buffet
 - Port of Stern & Gardner Law Office
 - Strathmill Ct
 - Willis's Boat House at 5th Ave S

DEFENDANT'S
EXHIBIT 11-19-16
SS & TAYLOR
2010-10-00 CYDNEY



