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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2012-209046
Case No. 2009-CP-10-6185

Henry W. Frampton, III .....Respondent,

v.

South Carolina Department of Transportation.....Appellant.

RECORD ON APPEAL
Volume II

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those at this time.

MR. BROOKER: Okay.

THE COURT: -- as I understand what we're dealing with.

All right. I sustain the objection to the introduction of those tax notices at this time.

MR. BROOKER: All right. Your Honor, could --

THE COURT: On the issue of -- I -- but, anyway, I sustain that. All right.

MR. BROOKER: Hold on, Your Honor. Can I ask you a question about what I -- what I can ask here?

Can I ask whether he ever protested a tax assessment of the basis that this --

THE COURT: I don't think --

MR. BROOKER: -- the value?

THE COURT: No, I don't think so. I don't think that would be proper, either.

All right. Bring the jury in.

Move on to something else.

[Off the record momentarily]

THE COURT: One thing, I don't think there's any claim to permanent depravation of value, or lowering of the value, being made by the plaintiff on the driveway issue --

MR. BYBEE: That is correct --

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THE COURT: -- on the driveway issue.

MR. BYBEE: -- on the temporary taking.

MR. BROOKER: I still have a problem with --

THE COURT: I understand. But, anyway --

[Whereupon, the jury enters the courtroom at 12:07 p.m.]

THE COURT: All right. The jury is back with us now.

You may continue to examine the witness.

THE BAILIFF: Your Honor, they can't -- they can't hear him.

THE COURT: Okay. Yes. You've got such a small -- you've got such a soft voice, Mr. Brooker.

MR. BROOKER: I'm sorry, Your Honor.

THE COURT: I said you've got -- the jury is complaining that they can't hear, and you know you want them to hear you.

MR. BROOKER: I'll try --

THE COURT: You've got a soft voice. It would certainly be to your disadvantage if you were at a cocktail party. And with the jury.

MR. BROOKER: The microphone work? Does this --

THE COURT: Yes.

MR. BROOKER: -- work?

THE COURT: But it's not portable.

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MR. BROOKER: Moving up here --

Q. [Mr. Brooker] Now, Mr. Frampton, you've -- we've been through these -- this chronology of these pictures with all the work, silt screens, and all of that sort of thing. And you took most of them, didn't you? I mean, there are a few of them in there that you got from elsewhere. Is that correct?

A. That's correct.

Q. And they span over, gosh, more than a year. So you were out there pretty much at least once or twice a month taking photographs, weren't you?

A. I was out there every day. That's where I live.

Q. And that's why all of the contractors and DOT personnel, or Cape Romain personnel, were there working on the job; is that correct?

A. That's correct.

Q. And this silt screen that we have the pictures of was up there the whole time, as well; is that correct?

A. That's correct.

Q. Did you ever --

THE COURT: That word that we've been using, it's silt? S-I-L-T?

MR. BROOKER: S-I-L-T screen, Your Honor.

THE COURT: Okay. I just wanted to make sure. Sometimes I think you're saying S-I-L-K. But it's

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S-I-L-T?

MR. BROOKER: Yeah. The silt-like thing that was in the photographs.

Q. [Mr. Brooker] So the silt screen was up there. And it was a fairy temporary thing. I mean, it wasn't hard-installed in the ground, was it?

A. It was blocking the driveway.

Q. Okay. But did you ever approach -- all these visits that you took over there to the construction site, did you ever approach Cape Romain or approach Jeff Rajabi or any --

A. I asked Mr. Rajabi and Mr. Huff many times when were we getting the driveway straightened out. I never got a direct answer from either one of them.

Q. But did you ever directly say that: I want to rent this property, I have a proposed tenant, could you move the silt screen, let him in, like you -- like you did Mr. Berkey, the last tenant you had?

A. In 2005, Mr. Phinney came to see me. He told me he was permanently closing that driveway. Up until '09, late '09, in my mind the driveway was closed. I didn't need to find a tenant. I couldn't go out and get a tenant, solicit a tenant, to go somewhere that didn't have a parking place or I didn't know if they were going to be there for a year.

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I'm a real estate agent, as well, a real estate broker. I have a fiduciary duty to be sure I don't take a tenant and put them at risk or put them into a contract that would not be something that I could live up to. And I had no idea until late 2009 that I was going to have a driveway there.

Q. But you're here bringing an inverse condemnation case and that would apply to the leasehold, as well, wouldn't it?

A. I'm not sure of that.

Q. But the fact is that the extended guardrail on the original highway plans never happened, did it?

A. It never did.

Q. And that's because you had subdivided the parcels and Mr. Bybee wrote and said, now --

MR. BYBEE: Exception.

MR. BROOKER: Well, that is in the record, isn't it?

MR. BYBEE: Your Honor, the appropriate thing for him to do is ask a proper question. I object to the question.

THE COURT: I didn't hear it. I'm sorry. I couldn't quite follow it.

Do you want to rephrase your question, or ask it again, or whatever?

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Q. [Mr. Brooker] That's what you informed me: that yourself, or through your attorney, you informed the Department that the rental house parcel is now a separate parcel and the proposed guardrail on the plans would block all access to that parcel; is that -- is that correct?

A. I'm not exactly sure what you -- what you're driving at.

But, you know, my question to Mr. Phinney when he told me the driveway was -- the guardrail was going in, my question was, well, Mr. Phinney, can't we shorten this guardrail.

Because in 1956, when that bridge replacement was done, up until December of 2009, there was never any kind of a guardrail on that property. There had never been an accident. There had never been any problem with the property.

There wasn't a guardrail there before. So why all of a sudden they've got to have a guardrail that blocks my driveway. I directly asked Mr. Phinney before he -- I might have put the seed in his mind to go back and ask why can't we shorten the guardrail.

Q. Well, the guardrail -- it's kind of obvious, isn't it? I mean, a guardrail is for the safety both of the traveling public and of the property behind the guardrail? I mean, they're substantial steel structures;

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isn't that --

A. Well, there wasn't one before and, you know, in my mind I didn't need one now.

Q. Okay. Well, my point is it never happened, did it?

A. I've got a guard rail there today. It's sixteen feet shorter than the original plan.

Q. All right. But the guardrail never extended across the driveway to the property at 699; is that correct?

A. It never did.

Q. Okay. So the only thing that you're testifying that took your access or blocked this access was this black-fabric silt screen?

A. Well, that wasn't the only thing. There was a lot of equipment and trucks.

And there was also a curb poured out there -- I don't know how tall -- four, five, six inches -- that was across that driveway. And unless you have a four-wheel drive vehicle ,or one of those trucks with the big tires on it, you can't -- you can't cross it. So it was blocked. There was no way to get to that driveway.

Q. Blocked partially because of the fabric silt screen. Then they put in this curb --

A. It was --

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Q. -- curb section and then --

A. It was blocked by the raised driveway, the inaccessible area between the driveway and the old asphalt, and the silt fence, and the orange barrels, and the orange nettings, and the do not -- the road-closed signs, and everything else. It was blocked.

Q. And your residence -- again, the residence and the other property that were also blocked from time to time, when you requested that they be unblocked, they were unblocked?

A. They were -- they were never blocked to the extent to where there was a lay-down area and a raised curb that you couldn't drive over. They were never blocked to that -- to that --

Q. And the raised -- this raised curb was part of the original plans and that's what you objected to concerning the guardrail and the proposal to come in behind the guardrail to --

A. What I objected to was losing the driveway that had been there for all of my life and most of my family's life.

Q. But ultimately you won and you got to keep the nice driveway, which the Department paid at its expense, and it's there and everything's fine now, isn't it?

A. Well, if you say I ultimately won, you know,

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that's fine. I need to be reimbursed for the time that I didn't have the driveway. And if we would have worked that out to start with, we wouldn't be here today. It happened in '05. We didn't get the driveway back until late '09.

Q. Right. But you could have gotten into the property, if the silt screen had been moved, and you never asked.

A. You could not have gotten into that property. The pictures showed the lay-down area, the raised curb, the problem with the sinkhole, the silt screen. It was not something that you just -- could just get into.

Q. But a lot of -- a lot of those problems went on over in 693, as well. I mean, we've got pictures of a geyser and that kind of thing, of that sort of thing; is that correct?

A. [No response]

Q. It's construction --

A. There was no blockage for lay-down area or silt fence ever installed at 685 or 693.

Q. Well, obviously, the lay-down area for a bridge is going to be up as close to the bridge as you can get, because that's what they're doing, they're replacing the bridge.

A. Well, that's why they closed the driveway at

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699, because they didn't have the proper lay-down area to start with and they needed the area to build the driveway. So they closed that road down and they just filled it up with everything because they did have area. They needed to do that before they ever built the bridge. They needed to figure that out.

Q. But the place was vacant. And you never said, could you keep a path through here opened so my tenant can get in --

A. The place --

Q. -- because you didn't have a tenant.

A. -- had never been vacant in my lifetime for more than a month at a time. And had we been able to have access to that driveway, we may have been able to rent it. It's a difficult situation, in bridge construction of that size, to say what would have happened. But the point is in 2005 Mr. Phinney told me that that driveway was to be permanently closed. Permanently.

Q. Okay. But, again, that never happened.

A. [No response]

Q. During the course of what you're claiming your temporary taking is, the obstruction of the driveway to 699, had you ever tried to sell the property at 699?

A. No, I didn't.

Q. Do you -- have you since attempted to market it,

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put it on the market?

A. I have not.

Q. And I think in your deposition and in your wife's deposition we took a few months ago you said that you really don't intend to; is that correct?

A. Well, I think I ought to let the jury know that that's heirs' property. I'm the last man standing on Folly Road from the Wapoo Bridge to almost Folly Beach. There are no more residences there. It's all shopping centers and concrete. And I hope one day that my son will be there. So my father was born there in '23 and my grandfather was there in 1900 and my family has been on James Island since 1885. I'm the last one left.

And, Your Honor, Wal Mart would have gotten more consideration than me. Nobody came to try to help me at a time when I'm trying to keep my property together for the future. And that's all I ever intended.

Q. I think that was my last question, but I will restate it. You didn't lose any potential sales because of this temporary interference of structure with what you're calling your access, did you?

A. No, I didn't.

Q. Okay. The photographs of the big trench -- you recall those when we went through -- you went through with Mr. Bybee a large, open trench in front of the properties.

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A. We looked at a lot of pictures. There were a lot of trenches in there.

Q. That was utility work, wasn't it?

A. I have no idea.

Q. Okay. Pipes?

A. As far as I know, it was Cape Romain work. I don't -- I didn't know anything about --

THE COURT: By utilities, you mean drainage?

MR. BROOKER: No. I think it's --

Q. [Mr. Brooker] Could it have been water -- a main waterline for the city of Folly Beach?

A. Could it have been the waterline? I don't know. They put a lot of lines. They did that thing where they bored down and put lines all the way across the creek on the other side. They put a lot of lines through there.

And there was also a drainage line in there and there is a large waterline but it now goes underneath the creek.

Q. I don't know, either, Mr. Frampton. I was -- what I was just going to point out is that they -- is it likely that they had to just replace a pipe and that -- that work didn't last long, did it? I mean, it looks extreme in the picture that there's this huge trench with a pipe laying in the bottom of it. But it --

A. It lasted a long time.

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They dug that trench up four or five times in there. There was a lot of people coming and going for a long time in that little stretch of dirt right there.

Q. Yeah, but they covered it back up to let you into your property. And that was -- that was pretty much an overnight thing, wasn't it? You were --

A. If it was under my property at 693, Mr. Rajabi made sure that there was a plate or something like that that they could put there so that I could get into my driveway, yes, sir.

Q. Once again, the reason they didn't accommodate the driveway at 699 is because nobody ever asked? It was vacant?

MR. BYBEE: Objection, Your Honor. This has been asked and answered.

THE COURT: Well, I'll allow it one more time.

A. My answer is the same. Mr. Phinney closed that driveway in 2005, permanently.

Q. [Mr. Brooker] The photograph of the road-closed signs of -- the road was closed, wasn't it? That was -- this project went on in two phases and the half of the roadway over on your side was closed to traffic, wasn't it?

A. That's correct.

Q. There's nothing wrong with that. The bridge was

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taken up and the road was closed. And that seems like a fairly responsible thing to do, wouldn't you say?

A. What? Close the road?

Q. Yeah.

A. Well, it's SCDOT's road. They could close it.

But they blocked my driveway in the process of closing the road.

Q. Concerning the concrete median: that median ends at the bridge, doesn't it?

A. I believe that's correct --

Q. And that --

A. The photograph.

Q. Yeah. Let me do that.

[Whereupon, Mr. Bybee and Mr. Brooker confer]

MR. BROOKER: Holding up Plaintiff's Exhibit 10, Your Honor.

Q. [Mr. Brooker] This white stripe is the concrete median?

A. Yes, sir.

Q. And then it turns into a painted median going across the bridge --

A. Yes, sir.

Q. -- correct?

And your driveway is somewhere around -- about right in here, isn't it?

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A. Yes, sir.

Q. So the way -- from 699, you would go towards town, towards Charleston, just come out and do a U-turn this way, wouldn't you? Is that correct?

A. Well, sir, if you want to -- if you want to be a kamikaze. There's 50,000 -- over 50,000 cars a day to go across that bridge. And they don't go across there at twenty-five miles an hour, they go across there at sixty, seventy miles an hour. They're flying.

When you pull out of that driveway, the only thing you can do is go down a safe distance to Burger King, or a stoplight or whatever, and go in there and make a turn. If you -- it's a challenge. The highway can be a challenge.

Q. Before the median was put there, you would have to cross two lanes of travel in the two eastbound lanes going to Folly Beach --

A. There was a left --

Q. -- is that correct?

A. There was a turn lane in there for Harris Teeter and all you had to do was pull out the driveway into the turn lane and it was -- it was simple to go to town. There was a turn lane in there.

Part of the purpose of building this bridge was to have that middle lane available all the way for

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emergency vehicles. They defeated that whole thing by putting that closed median in there.

We've got a bridge now that's no different than the bridge we had. It's a four-lane bridge. It's got a sidewalk on each side. It does have an added bike lane on each side, but that's the only additions that they got out of there once they put that fixed median in there. You can't use --

Q. The last --

A. -- that anymore.

Q. The last major reconstruction of Folly Road in this location was like back in '56, was it not?

A. '56.

Q. And that area has grown up a pretty good bit?

A. It's still a four-lane bridge.

Q. It's a four-lane bridge but there's still -- there's still a -- there's now a whole lot more traffic, a whole lot more built-up businesses on each side --

A. That's why you can't do it. That's why you can't do a U-turn there, either.

Q. There's a Speedy -- and next to you is a Speedy oil-change thing?

A. Right. They don't access. They're off of Point Road.

Q. Oh. They're -- okay. But there are businesses

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on this side of the road, as well?

A. There are no businesses from there all the way to Central Park Road. Harris Teeter goes in off of Oak Point. They have their own stoplight.

Q. And that intersection there with that -- Ellis Oak Road, is it --

A. Ellis Oaks --

Q. -- and --

A. -- and Oak Point. It's the same road.

Q. All right. And that's the -- that's a pretty busy intersection, isn't it --

A. I told you there's 50,000 cars a day, maybe more.

Q. And there were much less in 1956; is that right?

A. Well, it would have been less in 1956. But it was still a four-lane bridge then and it's a still a four-lane bridge now.

Q. I know. But what I'm saying, there's more traffic now in 2012 than --

A. There's more traffic everywhere in Charleston than there was in two thousand and --

In 1956 when I sat on that porch at my grandmother's house next door at 685, in the rocking chair when she would babysit me, my parents would go out of town, we used to pick a red VW, a white VW, a blue car,

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and we'd sit on there and count cars. That was in 1955, '56, '57.

Today, you had better not blink, because you'll get run over on that road. But it's still a four-lane bridge. It's the same thing they built in 1956.

Q. Well, I know. But we're talking about a concrete median preventing even more traffic conflicts. And that's more of a problem today -- the safety purpose of the median, preventing a whole bunch of left turns, people making left turns in there, is a lot more important today than it was in 1956 --

A. Well, you need to --

Q. -- I think we can agree on that.

A. -- come out to the site and just go down on the other side of the bridge where the Bojangle's is and the Duncan Donuts is. All of those people, they don't have any kind of fixed median in front of their property and they have wrecks there almost on a daily basis. There shouldn't be any --

If they're not going to allow me to make a turn, why do they allow the other people who have the same amount of traffic to be able to make a turn?

Q. I would suggest because it might be because it wasn't in these project notes. Maybe some day soon it will. It sounds like a good idea --

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A. Well, I hope so.

They put sidewalk in front of -- in front of my house but it's only, you know, about 400 feet of sidewalk and then there's no more sidewalk. And there's a bike lane, but that doesn't last long. So, you know, it is -- it does need improvements.

MR. BROOKER: Let me look at my notes one more time and --

THE COURT: What is the date of that photograph?

MR. BROOKER: Of this? This is the aerial that was a recent date but we don't know when it was taken. It's 2012 on the Google --

THE COURT: Okay.

MR. BROOKER: -- present day, Your Honor, I think.

THE COURT: Yeah. I couldn't -- I see that in my notes now.

MR. BROOKER: Okay.

THE COURT: 2012.

MR. BROOKER: That's right, Your Honor.

[Whereupon, Mr. Brooker reviews documents]

MR. BROOKER: That's all the questions I have for you, Mr. Frampton. Mr. Bybee may have some -- a few more questions.

MR. BYBEE: Very brief redirect, Your Honor, if

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it please.

Hal, I want to clean up one question. And maybe I didn't understand the answer.

REDIRECT EXAMINATION

BY MR. BYBEE:

Q. Let's look at Plaintiff's Exhibit T-T, which is --

MR. BYBEE: Would you -- all right.

Q. [Mr. Bybee] -- which is the photograph of a guardrail --

THE COURT: Which one? What are you looking at?

MR. BYBEE: 19-T-T.

THE COURT: T, as in Tom?

MR. BYBEE: Yes.

Q. [Mr. Bybee] -- and dated July 8th, 2009. That photograph depicts --

THE COURT: Wait a minute. Let me get to it.

MR. BYBEE: Excuse me, Judge.

[Whereupon, the Court reviews documents]

THE COURT: All right.

Q. [Mr. Bybee] That photograph depicts the guardrail that was actually installed in front of the house back --

THE COURT: Wait a minute. Wait a minute. T-T? I don't see any guardrail in T-T.

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MR. BYBEE: I'm sorry, Judge. It's F-F. Excuse me. 19-F-F and G-G and H-H. My apologies.

[Whereupon, the Court reviews documents]

THE COURT: All right. F-F.

MR. BYBEE: Yes, sir.

Q. [Mr. Bybee] Plaintiff's Exhibit 19-F-F. I thought I heard you say that the barricade never blocked the driveway to 699. This photograph tells me something different. Did this barricade block the driveway to 699?

A. It blocked -- blocked it completely.

Q. You couldn't get in and out once --

A. No.

Q. -- they installed this guardrail?

A. No.

Q. And even before then, you had the silt fence to contend with; right?

A. Right.

Q. And you had the concrete curb to contend with?

A. Right.

Q. And you had all that lay-down area to contend with?

A. That's correct.

Q. All right. Now, two photographs I would like you to look at. This is Exhibit 23. Can you tell me when that was taken?

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[Whereupon, the witness reviews documents]

A. Yeah. It was taken after the driveway was put back.

Q. [Mr. Bybee] Okay. So it was in January? after January of 2010?

A. Yes, sir.

Q. All right. And it's after you installed those fence panels that you asked about on cross-examination; is that correct?

A. Yes, sir.

Q. And that shows those fence panels and the blockage of the view or the privacy fence that you were talking about separating the guardrail from your existing house?

A. That's correct.

Q. And Exhibit 24 shows the same thing, different area?

A. Yes, sir.

THE COURT: Are these in evidence, or do you want to move them?

MR. BYBEE: I'm about to offer them, Your Honor.

THE COURT: Okay.

A. Yes.

MR. BYBEE: Any objection?

THE COURT: 23 and 24.

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MR. BYBEE: 23 and 24.

MR. BROOKER: Could I see them?

[Whereupon, Mr. Brooker reviews photographs]

MR. BROOKER: No objection.

THE COURT: All right.

MR. BYBEE: Move them into evidence, Your Honor.

THE COURT: Without objection.

[Whereupon, Plaintiff's Exhibit Number 23 is admitted into evidence by the Court]

[Whereupon, Plaintiff's Exhibit Number 24 is admitted into evidence by the Court]

MR. BYBEE: I have no further questions of this witness at this time.

THE COURT: Thank you very much.

Nothing else, Mr. Brooker?

MR. BROOKER: Nothing else, Your Honor.

THE COURT: Thank you very much. You can step down and return to your place in the courtroom.

[Whereupon, Mr. Frampton is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. BYBEE: I have no other witnesses, subject to --

THE COURT: On that issue?

MR. BYBEE: On that issue.

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THE COURT: All right. Members of the jury panel, I need you to go to the jury room for a few minutes, please.

Actually, it's 12:30, almost. Come on back. I'm going to send you to lunch now, because I've got to hear from the lawyers. We're going to -- I've got to continue working for a while. Y'all are going to get an early start on lunch and everything.

I hope that I'll be able to get through with them and do what I have to do and get back here by 2:15. So I'm going to give you a little bit longer lunch break and all because, as I said, I've got to continue working with them. And I'm estimating that that'll be about thirty to forty-five minutes that I have to do some more work with them at this point in the trial. So I'm letting you go to lunch.

Again, leave your notepads. Don't discuss the case. Be back in the jury room at 2:15. Have a nice lunch. And remember, we can't start until we all get back.

[Whereupon, the jury exits the courtroom at 12:33 p.m.]

THE COURT: All right. So what do we do now? As I understand it --

Let me tell you what I think we're going to do

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now. I'm going to hear from you in regard to the issue of taking, relative to the driveway issue and relative to the median issue and I'm going -- and -- or from your argument in regard to that.

And then I'm going to rule as to whether I think that there -- within my opinion, there's been a taking of property that will qualify under the inverse condemnation idea where the plaintiff would be entitled to something for taking the drive and/or taking the -- a taking as far as the median is concerned.

Is that right? Am I pretty close to what --

MR. BYBEE: That's fine.

THE COURT: Well, you know --

MR. BROOKER: I haven't had a chance to put up any witnesses.

THE COURT: Oh. Okay. Do you want to put -- I'm sorry. Yeah, yeah. Absolutely --

MR. BYBEE: I would think he would move, for example, for a directed verdict at the close of my case on that issue, we can do this argument, fine. He wants to put up witnesses.

THE COURT: You want to -- yeah.

MR. BYBEE: And so we can reserve it until after he puts up the evidence.

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THE COURT: Yeah. I'm sorry. I didn't -- hit me in the head, Mr. Brooker. Certainly you get a chance to put up anything that you want to put up on the taking issue, if you want to. I'm prepared to rule. But, anyway -- but you don't have to.

MR. BROOKER: I think I would like to, Your Honor, because I've got my engineers --

THE COURT: Okay. I'm sorry.

MR. BROOKER: -- back here who are going to testify --

THE COURT: I'm sorry.

MR. BROOKER: -- as to what it is all about.

THE COURT: Okay. Sure, sure, sure. If you want me to --

Should I tell you how I -- how I view it?

MR. BYBEE: Sure.

THE COURT: All right. We'll take our break, then, and let's stop and take a recess.

[Whereupon, a recess is taken from 12:38 p.m. to 2:07 p.m.]

THE COURT: Anybody want to say anything? Mr. Brooker, call on you.

MR. BROOKER: Thank you, Your Honor. We're prepared to proceed with the defendant's part of the case on the issue of a taking.

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THE COURT: All right.

MR. BROOKER: Three witnesses to call.

THE COURT: Okay. As soon as we get the jury here, we'll bring them in. I'm not sure how many --

[Off the record momentarily]

THE COURT: Bring them in.

[Whereupon, the jury enters the courtroom at 2:15 p.m.]

THE BAILIFF: All are seated, Your Honor.

THE COURT: All right. Good. Okay.

Now, we are through with the landowner's portion, as far as what we're doing is concerned, and we'll switch now to the Department.

Call your first witness.

MR. BROOKER: Thank you, Your Honor. I call Jeff Rajabi.

[Whereupon, Mr. Rajabi comes forward]

[Whereupon, Mr. Rajabi is duly sworn by the clerk of court as follows: do you swear or affirm your testimony will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, I do.

THE CLERK OF COURT: Be seated.

[Whereupon, Mr. Rajabi takes the witness stand]

THE CLERK OF COURT: Sir, please speak into this

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mike. You've got to get kind of close to it.

State your full name and spell your last name for the record.

THE WITNESS: Jeff Rajabi. R-A-J-A-B-I.

THE COURT: Spell that again.

THE WITNESS: R-A-J-A-B-I.

THE COURT: All right.

MR. BROOKER: Mr. Rajabi, this is the Department's, the defendant's, case against a taking of property from Mr. Frampton. You've heard -- you've been in the courtroom and you've heard the testimony on the plaintiff's side, and up to this point it's sort of looking like we're pretty horrible people and treated him pretty badly.

- - - - -

JEFF RAJABI,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKER:

Q. Can you tell us what your position is, where you work, what you do?

A. I'm resident construction engineer at the SCDOT. We basically oversee --

THE COURT: You're going to have to keep your

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voice up and all, also. You and Mr. Brooker, both of you, need to speak louder and try to make it as distinct as possible.

I heard you say you were the resident construction engineer; is that right?

THE WITNESS: Yes, sir.

A. At SCDOT, we basically oversee the construction of the bridges in Charleston County, Berkeley County, and Dorchester County.

MR. BROOKER: Okay. I think your microphone is louder, too, so if you want to pull it towards you, that might help.

Q. [Mr. Brooker] And you are the --

THE COURT: It won't move. You need to slide up, if you can.

THE WITNESS: Okay.

Q. [Mr. Brooker] You are an engineer. You have a B.S. in engineering; is that correct?

A. Yes, sir.

Q. And where was that from?

A. From the Citadel in Charleston, South Carolina.

Q. Now, you were involved in this project in what capacity?

A. I was as a resident construction engineer.

Q. So you were essentially the project manager

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overseeing the contractors on the project?

A. Well, I assigned a project manager, Daniel Burton. He was the project manager.

Q. And you were -- you were Daniel's superior?

A. That's correct.

Q. And it was your office's project; is that correct?

A. Yes, that's correct.

Q. You from time to time spoke with Mr. Frampton, did you not --

A. That's right.

Q. -- during the course of this?

And he would call you, e-mail you? How would -- what were his communication?

A. Usually, it was phone calls or meeting at the job site.

Q. All right. And when he had problems and he couldn't resolve them with the Cape Romain people or the other subcontractors, he would call you and you would go out there and try to handle it, wouldn't you?

A. Sometimes before even he calls Cape Romain, sometimes he called them directly.

Q. But at all times, you or somebody under you tried to respond to the problems they were having out there with the blocking of the driveways and that sort of

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thing; is that correct?

A. That's correct.

Q. Now, what was this project? Can you just explain it for us?

A. Well, this is basically a replacement of the bridge, James Island Creek project. The replacement of bridge. And also there was associated road work with this project.

Q. And the road work was at the approaches to the bridge?

A. Approaches to the bridge. That's correct.

Q. I'm going to show you a set of plans, the project plans that are actually already into evidence through the plaintiff's case. But I'll put them up here and I'll go through them with you.

MR. BROOKER: Give me a minute to make sure the jury can see these, unfortunately, Judge.

THE COURT: Go ahead. That's all right.

MR. BROOKER: Judge, if you want, I have the what they call the quarter sheet for you to follow along.

Q. [Mr. Brooker] Now, Mr. Rajabi, I'm going to hand you the quarter sheets. You know what quarter sheets are? They're just quarter size of the main --

A. Yes.

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Q. Okay. Can you identify this first -- the top sheet, the more detailed one there?

A. Yes.

Q. And does that show the entire project? The project -- within the project lines?

A. That's correct.

Q. And Mr. Frampton's three properties are indicated on there by designated numbers; is that correct?

A. Yes.

Q. Now, let me go to the second page of the preplan sheets that I've put up here.

MR. BROOKER: I hope this works.

Q. [Mr. Brooker] Can you identify the second page by page number, plan-sheet -- sheet number?

A. It's sheet number T.C. 5. Traffic Control 5, stage 2.

Q. Okay. And then the third one, what is that? They sort of go together, don't they?

A. Traffic Control -- T.C. 6, stage 3.

Q. Okay. And can you explain what traffic control sheets are and what they do?

A. Basically, since this project was in three [phonetic] stages so Traffic Control is going to have -- each stage is going to be different. So these sheets basically details the Traffic Control plans for each

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stage.

Q. And who would use these traffic control plans?

A. I guess that was the contractor. The contractor basically is part of the plans and part of this contact [phonetic]. So the contractor would basically go by the traffic control plans.

Q. So, essentially, they're instructions to the contractor on what to do next?

A. That's correct.

Q. Even in contract phasing or traffic control during the project -- not necessarily always -- what's going to be there permanently; is that correct?

A. That's correct.

Q. All right. Let me -- can you look on T.C. 5 for me? Actually, no. Oh, yeah. On T.C. 5, there is a dark line down the middle of the roadway. Can you tell me what that indicates? Tracing this --

A. T.C. 5?

Q. T.C. 5, yes.

THE COURT: Where is that designation?

MR. BROOKER: In the top, right corner.

THE COURT: That's the second page, is what you gave him?

MR. BROOKER: That's right. It's a --

THE COURT: I see it now.

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MR. BROOKER: Yeah. I'm sorry. I'm looking at T.C. 6.

THE WITNESS: I was going to say it don't look like T.C. 5.

MR. BROOKER: Right. I'm sorry. T.C. 6. I'm sorry.

THE COURT: Third page.

MR. BROOKER: Right.

Q. [Mr. Brooker] I'm going to talk -- I'm talking about this line.

A. The --

Q. The four dots, and then the dark black line picks back up.

A. Okay. That -- okay. The first part is the guardrail, it shows right there, and then it's the drawings, is the traffic drawings.

Q. By guardrail, you're talking about the concrete barriers that were put --

A. Temporary concrete barrier walls, yes.

Q. So explain -- or explain the phasing of this project, if you could.

A. Okay. Temporary barrier will basically -- we use that as kind of barrier between the contractors' workers and the traffic. So we kind of create a safe zone for the people that are working on the road and bridge.

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Kind of -- it's basically a separation between traffic and the people that are working.

Q. So you put the concrete barricade down the middle, and the work is going on on one side of it, traffic is passing on the other side of it, and that --

A. Yes.

Q. -- is to keep the traffic out of the work zone?

A. That's correct.

Q. The work zone --

A. Yes.

Q. -- on the right side of the bridge going east towards Folly Beach.

Now, what are the little black dots that appear between in the gap of that black line?

A. Those are the barrels. We call barrel, but I guess it's traffic -- is drawings is I guess part of traffic control.

Q. So preferably it would be -- it would be preferable, as a safety matter, not to have any gap in the concrete barricade at all?

A. No. Those are safety.

I guess more or less there's a separation between the barrier wall so in case a contractor wants to -- you know, as far as shipment of material or something, I guess for them, they can move those barrels and they can

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get in and out of the traffic zone.

Q. Was this gap in the concrete barricade also used by Frampton, his tenants -- and his tenants to access that property?

MR. MCDONALD: Objection to leading, Your Honor.

THE COURT: Well, no, I don't think that's leading.

MR. BYBEE: The word tenant was leading, Your Honor.

THE COURT: I'm sorry?

MR. BYBEE: Tenant.

THE COURT: Well, I'm going to allow it.

MR. MCDONALD: Thank you, Your Honor.

Q. [Mr. Brooker] Could -- did Mr. Frampton and his tenants actually use that gap --

THE COURT: Well, did anyone there see anybody going in and out? Just ask it that way.

A. When the traffic control, where they had those barrier walls, yes, there is a separation actually for access for Mr. Frampton to get in and out. Yes. And for the contractor's employees, yes.

Q. [Mr. Brooker] So your testimony is that was one of the purposes for leaving a gap there?

A. Yes.

Q. I'm going to show you two photographs,

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Mr. Rajabi, as soon as I have them marked.

MR. BROOKER: It's Defendant's Exhibits what? 3 and 4?

THE COURT REPORTER: 3 and 4.

[Whereupon, Defendant's Exhibit Number 3 is marked by the court reporter]

[Whereupon, Defendant's Exhibit Number 4 is marked by the court reporter]

Q. [Mr. Brooker] Handing you two photographs, one of them marked Defendant's Exhibit 3, the other one Defendant's Exhibit 4. And my question is does that -- do those photographs depict the concrete-median-barricade barrier and the drums in the gap between it? That is what it looked like; is that correct?

A. That's correct.

Q. Okay. Now I want to ask you about silt screens. There was a lot of testimony this morning about silt screens. What's --

A. It's called a silt fence.

Q. Silt fence? Is that what --

A. Yes.

Q. -- you prefer? Okay. We'll go with silt fence. You'll have to remind me.

What's the purpose of a silt fence?

A. Well, a silt fence is basically a cloth material

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kind of barrier that it shows almost the limit of the construction. So in a way, we don't just -- if anything within the construction limit is disturbed, it won't go beyond the silt fence. It's not supposed to, you know, any silt goes beyond the silt of that, I guess, line.

Q. So it --

A. And it's not really SCDOT I guess option. That's more or less DHEC mandate that I guess we have. That's on the plan. That's one of the first things that we do when we start construction.

Q. To your knowledge it's not a DHEC requirement for only for the DOT, it's for any land-disturbing activity?

A. Any land -- that's correct.

Q. And there are specifications for what these things are supposed to look like, aren't there?

A. That's correct. The way it is -- installation, yes.

Q. I have another exhibit marked, Mr. Rajabi.

MR. BROOKER: I'm sorry. I'm slower than I --

[Whereupon, Defendant's Exhibit Number 5 is marked by the court reporter]

Q. [Mr. Brooker] I'm going to hand you what's been marked as Defendant's Exhibit 5. Do you recognize that from your job?

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A. Yes.

Q. Explain to the jury and the judge what I've just handed you.

A. This is what we call standard drawing for the silt fence.

Basically, it's the instruction for how to install the silt fence.

Q. Okay. And what are -- can you summarize what those specifications call for? How are these things supposed to be built?

A. I guess -- as far as the installation, I guess basically it shows that one foot six inch -- one foot six inches should be buried, two foot six inches is going to be exposed, and that the posts is supposed to be at six foot apart.

Q. So it -- does it specify material?

A. And the -- I guess as far as the distance between the posts.

Q. Right. And the distance between the posts is what?

A. Six foot.

I mean, it could be more than six foot but it has to be reinforced but using only the cloth material, the silt fence material, and a minimum of six foot. If you go beyond that, then there's a way I guess you can

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handle that.

Q. There's an exception, another way to do it, if you have to go over?

A. Yes.

But usually the contractors just go with six foot so they don't have to reinforce it.

Q. And part of your job is for you to go out and check and make sure the contractor is actually doing this sort of thing, complying with the regulations; is that not correct?

A. That's correct.

Q. Let me -- I'll show you one picture here. Two pictures, actually. This was entered this morning by Mr. Bybee, in Mr. Frampton's testimony, as Plaintiff's Exhibit 19-M. If you could look over on the left side of the picture. Does that -- do you see some silt screens there, silt fences there?

A. Yes.

Q. And does that appear to you in that picture to be a proper way to do it in the course of the regulations? Standard drawings and specifications?

A. I mean, as far as the posts, look like you got the right distance. It, I mean, seem like that's okay.

Q. I know it's difficult to see.

I'm going to show you another photograph,

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actually, three more photographs, as soon as I provide Mr. Bybee with a copy, and the judge, and have them marked.

[Whereupon, Defendant's Exhibit Number 6 is marked by the court reporter]

[Whereupon, Defendant's Exhibit Number 7 is marked by the court reporter]

[Whereupon, Defendant's Exhibit Number 8 is marked by the court reporter]

Q. [Mr. Brooker] Before I ask you questions on these, Mr. Rajabi, I've got some housekeeping to do. Do you still have the earlier pictures I've handed you? Let's see here.

MR. BROOKER: Your Honor, I would like to offer Defendant's Exhibit 3 and 4.

THE COURT: That's those two photographs?

MR. BROOKER: The two photographs of the barricade with the barrels, Your Honor, as well as Plaintiff's Exhibit 5, which is the specifications for the silt screen.

THE COURT: All right. No objection; right?

MR. MCDONALD: No objection, Your Honor.

[Whereupon, Defendant's Exhibit Number 3 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 4 is

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admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 5 is admitted into evidence by the Court]

Q. [Mr. Brooker] Can you explain what I just handed to you as the three exhibits of -- what do we have there? 3, 4 and 5? Okay.

A. I see a picture of basically silt fence.

Q. And where is that silt fence?

A. It appears that -- over the driveway.

Q. Which driveway?

A. I mean, I can't really -- but I guess I see the house. It look like it's to the rental house.

Q. All right. Could you describe that? What kind of -- what is it?

A. The silt fence?

Q. Yes.

A. Well, the silt fence itself is not properly installed.

And who did that -- you know, that's not SCDOT approved, I guess --

Q. But there is --

A. -- because the installation.

Q. In other words, what we're calling the silt fence that you see in those pictures are not erected on six-foot, off-center posts or -- nor the -- are those

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posts driven a foot and a half into the ground, are they?

A. That's correct.

Q. But that's leads you to -- do you know when and who put that in?

A. This is the first time I've seen it.

Q. Okay. So you don't know how long it was there?

A. No, sir.

And I'm not sure even the dates of I guess when it was done. I don't see the dates.

[Whereupon, the witness reviews documents]

A. I don't see any dates I guess on the pictures they were taken.

Q. [Mr. Brooker] Standard regulatory silt fencing with the -- what we've just discussed, the six-inch off-center posts that are driven into the ground a foot and a half, where they -- to keep them up, are intended to be not permanent construction but at least temporary construction to get you through the construction period and serve their purpose during that?

A. That's correct.

Q. And the pictures that I showed you there, the black silt fabric -- that's in no way permanent, no way even semipermanent, and it's not to specs; is that correct?

A. No, at least not according to the spec.

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And I'm sure if the DOT inspector would have seen that, they would have even inform the project manager.

Q. If the landowner came to you and said can I get into my property, it would not be anything difficult to just pull that fabric aside, would it?

A. That's correct. It wouldn't be a problem.

Q. I'm just going to question on the -- on the last discussion we had.

Isn't it the Department's policy, isn't it construction division's policy, in their projects to wherever possible maintain the access to private property?

A. That's correct.

Q. And you did this in this project, as well, didn't you?

A. We did.

I guess because of different activity, construction activities that we had, we had -- first of all, either weekly or biweekly construction meetings at the job site. And so I was -- there was -- sometimes I guess that was one of the topic that we talk about.

If there was any construction activity that somehow would have caused any problem I guess with the access to Mr. Frampton's property, the project -- I mean, the contractor's project manager, he was supposed to

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contact Mr. Frampton and Ms. Jensen to make sure that they know what activity is going to be done, what's the duration, when they're going to start, when they're going to finish, so they always -- they knew what activity was going to be done in advance.

Most of the time I would say it was by phone call. But I did ask the project manager at Cape Romain to do it with e-mails, too, in writing, so that way, you know, there won't be any issues later on that I said so, he said so, so -- so there wouldn't be any problem.

Q. Sort of policies to maintain continuous communication with landowners about -- on the project --

A. That's correct --

Q. And if Cape Romain in this case being the -- our contractor failed to do that, you would do it; is that correct?

A. That's correct. Yeah, that's correct.

Q. What was the total length and time of this James Island Bridge replacement project, entire project, 10146B [phonetic]?

A. It's been a long time. I don't remember the exact, but I think it was about -- I don't have the exact time. I think it was about maybe two years. I don't have the, I guess, dates with me.

Q. And it proceeded -- and the project had to

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proceed in phases, didn't it?

A. Yes.

Q. And why was that?

A. The reason for the stages was a high volume of traffic on Folly Road.

Q. Yes, sir.

A. And we couldn't really realign the road and the bridge all at the same time, because of the properties on the four corners. It was too expensive, I guess, to buy.

So it has to be done in stages. We had to actually detour the road and basically the volume of the traffic on Folly Road, we had to have two lanes on each direction. So we had to have a detour road basically to have in phase one.

Q. Isn't it true sometimes around the state when a bridge is replaced and there is another street or road nearby, you will use that other street or road as a detour and then close completely the road where you're repairing the bridge?

A. Yes, that's correct.

Q. And why couldn't it be done in this case?

A. Like I said, I think -- the way I understood, just because of the high volume of traffic that has to be done each way. And I'm sure the preconstruction -- during the construction and pre-construction, which is I guess

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design and your program manager, actually they start the process, I guess they -- I'm sure they did their review and research and they figured that's the best way to do it.

Q. Okay. I'm going to risk a leading question here, Mr. Rajabi. But isn't the reason that you couldn't close Folly Road altogether and replace this bridge that -- because of the fact that it's the only highway into and out of Folly Beach, the city of Folly Beach? Is that correct?

A. Yes. It was high volume.

Q. At any time during this project, did Mr. Frampton approach you? Now, you were out there frequently and you -- Mr. Frampton had your phone number; is that correct?

A. Yes.

Q. And knew how to contact you and, in fact, did contact you on numerous occasions; is that correct?

A. That's correct.

Q. And he would call you when there was, say, for instance, a truck blocking his driveway to his residence or something; is that correct?

A. I don't recall that actually he was -- you know, as far as the, you know, blocking the road or access. But Mr. Frampton -- since Daniel Burton in my office, and he

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was the project manager and he was more or less on site every day, he usually had contact with him if there was an issue --

Q. Who is that individual? I didn't get his name.

A. Daniel Burton.

Q. Daniel Burton. Thank you.

A. Yeah.

He was the project manager who was -- who's on my staff. And if there was any issue, usually Mr. Frampton would see him first.

And sometimes Mr. Frampton directly called me, too.

Q. I see. Okay.

Speaking only for yourself, did -- was there any time -- at any time during the course of this project did Mr. Frampton call you, e-mail you, or come up to you and say, look, I need to rent this property and I have a -- I want to put it up for rental, there's this silt screen here, and you've got a port-a-let sitting there, and there's some material that partially occludes my driveway and that sort of thing, could you please move them?

A. I don't recall that he actually mentioned that to me.

Q. Now, when the phase two of the project -- which is the phase we're talking about on Mr. Frampton's side of

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the -- of Folly Road -- is that correct?

A. That's correct.

Q. Now, when the real work, the construction on phase two where equipment was brought in, materials were brought in to replace that side of the bridge during phase two, was the tenant house, the creek house, occupied? Do you recall?

A. I mean, it's been so long, you know. I mean, I don't have those dates and all, so I -- I don't recall.

Q. Well, hopefully Mr. Burton will be testifying and I'll ask him.

A. Yes.

Q. That's fine.

Now, you're a bridge engineer, aren't you? That's --

A. Yes, sir.

Q. -- what you do?

How long -- what is the useful life of a bridge? And I think engineers use the term design life; is that correct?

A. That's correct.

Usually, I guess the type of bridges -- it depends on the type of the bridge, but for James Island Creek project is -- more or less is fifty years.

Q. Fifty years.

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So anyone living or owning property abutting right up to a stream, a highway where a highway bridge is, should expect that that bridge is going to have to be replaced every fifty years; is that correct?

A. Well, that's a life expectancy. Sometimes it takes -- by the time they start to the point that they want to go ahead and replace, it might take longer.

But we do have a process as far as the inspection of the -- I mean, inspection of the bridge every two years or so or -- may need it. So if there isn't a problem with the foundation, substructure, or superstructure, they might postpone that -- I mean, they might actually -- the replacement of the bridge, they might delay that.

Q. Separation --

A. Yeah. But for the average is about fifty.

Q. About fifty.

And this particular bridge is over Ellis Creek? The James Island Creek is over a saltwater creek; is that not correct?

A. Yes, that's correct.

Q. And bridge columns or pilings, or whatever you call them, have steel rebar inside the concrete, don't they?

A. That's correct.

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Q. And what happens when that concretes cracks and it exposes the steel? Does that accelerate the need to repair?

A. Yes.

That's what I said. I guess we've got bridge maintenance department in district six, which is Charleston County environment, and they do inspect the bridges often. And if there is any need for any kind of repair, they usually take care of it.

Q. And, obviously, they made that determination here that it had to be replaced; is that correct?

A. That's right.

Q. You recall that I asked you to look at -- look into how many bridges there are in South Carolina some weeks ago?

A. Yes. That --

Q. I have that e-mail, if you want to refresh your memory --

A. No.

I -- it's more than 9,000 bridges I guess in South Carolina that --

Q. 9,000?

A. 9,000-plus. I don't have the exact number.

Q. Publically-owned bridges in the state; is that --

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A. That's correct.

Q. -- not correct?

And logically there are going to be four properties, four parcels of land, abutting each of these bridges that -- approach to the bridge; is that correct?

A. That's correct.

And if I guess that is the case, then we're talking about four times -- you know, when you say 9,000 bridges, that'll be almost 36,000 I guess properties or parcels. And if we have the same situation we have now, then I guess we can't really basically build bridges anymore because then we have to come to -- through the court and have lawsuits against DOT.

Q. So, in other words, there are 36,844 landowners of individual parcels that should expect on average the bridge that they're abutting to be replaced every fifty years; is that correct?

A. That's correct.

Q. Each one of those is going to have to suffer some inconvenience while that bridge is being replaced; is that correct?

A. That's kind of normal.

Q. Ask you -- repeating a question, actually. But you do this for a living. You're in the bridge-reconstruction business --

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A. Bridge construction.

Q. -- for DOT?

A. Yes, sir.

Q. Bridge construction.

This particular project replacing the James Island Creek -- Ellis Creek, Folly Road Bridge, was there any -- was it anything -- anything unusual about it as to length of time or typical to your construction, except for the fact that it had to be phased because of this -- the Folly Beach? In other words, was this a fairly usual length of time and fairly usual project, not an extraordinarily difficult or extraordinarily long?

A. Not really. I guess being just like -- I guess being in stages.

And also the location of it because of the utilities. We had basically every utility called on this bridge, so we have to coordinate with all the utility companies to either relocate -- move and relocate some of those lines. And that -- took -- took a lot.

So I guess looking at all those, every contractors, as far as the road and the bridge, they did stay on schedule and they did their job.

Q. They did stay on schedule?

A. On their part.

But as far as the utility, no. We did, I guess

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-- and then the utility company didn't finish it on time.

Q. But the DOT doesn't own the utilities, do they?

A. I'm sorry?

Q. The DOT doesn't own these utilities? That was another public body --

A. Yes.

Q. -- the James Island --

A. It is not --

Q. -- district or something like that?

A. I didn't get the question.

Q. I'm saying that these utility companies were not us, are they? They're --

A. They're not part of DOT. That's correct.

Q. And but actually the same thing would apply to them, too, because that would be the only water or sewer, or whatever it was, going into the city of Folly Beach?

A. That's correct. Most of it.

Q. So it had to be replaced, when you replaced the bridge, because they were hanging on the bridge?

A. Yes.

MR. BROOKER: Mr. Rajabi, I think those are -- I think that's all the questions I have for you, Mr. Rajabi.

Of course, they have the right to cross-examination. If you would stay there and let him ask

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you some questions. I appreciate it.

MR. MCDONALD: Mr. Rajabi, how are you doing?

THE WITNESS: All right, sir.

MR. MCDONALD: Good. My name is Bret McDonald. We haven't actually met so I'll take this opportunity to introduce myself. I've just got a few questions for you. I'm not going to take up too much of your time.

THE WITNESS: That's fine.

CROSS-EXAMINATION

BY MR. MCDONALD:

Q. You, sir, are the resident construction engineer for the DOT; correct?

A. That's correct.

Q. And you said that the responsibilities of the resident construction engineer are to oversee the construction of bridges; correct?

A. That's correct.

Q. Okay. And you, sir, you don't negotiate the acquisition of property interests from an individual, do you?

A. That's not part of my job duty.

Q. It's just not part of your job -- that's fine -- right?

A. Right.

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Q. Okay. And you don't assess damage to property, do you?

A. No, sir.

Q. And nobody asked you to do that, ever, did they?

A. No, sir.

Q. Okay. And you don't make the decision whether or not to condemn property on behalf of the DOT, do you?

A. That's not part of my job, either.

Q. You just oversee the construction of the bridge; right?

A. That's right.

Q. And what happens, happens; right?

A. That's correct.

Q. The teachers, they don't like to go pick up the kids. The bus drivers do that; right?

A. Let me go back to what you said. Everything happened? I guess can you expand that a little bit? I'm not sure --

Q. By all means. Please. Please.

A. I mean, can you expand on what you -- what you mean by anything happen?

Q. Well, you oversee the construction of the bridge; right?

A. Yes.

Q. And you have nothing to do with the condemnation

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of property; right?

A. That's correct.

Q. Okay. And nothing to do with damage to property?

A. Okay. What do you mean by damage?

Q. Assessing damages to property.

A. Okay. By what? By what action?

Q. Well, let me ask it ths way. What do you do with assessing damages to property for the DOT?

A. If the contractor -- well usually during the construction, when you start the construction, basically contractor is responsible what happen in the work zone, in the construction limit, of the project. So any damages happen to -- for example -- I'm using this just for example, Mr. Frampton house, then basically a contractor have to take care of it, if it did cause during the construction --

Q. I see what you're saying.

A. -- if you -- if you understand it.

Q. Inside. On the road itself; right?

A. Yes.

Q. I got you. Okay.

But you don't have anything to do with assessing damages to the property in which the bridges that you are in charge of constructing run through? You rely on the

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appraisers to do that; right?

A. Well, see, if it -- are you talking about damages during the construction or are you talking about damage on -- I'm not sure --

Q. Using the property rights. DOT relies --

A. No.

Q. -- on appraisers.

A. No, that's not part of my job.

Q. That's exactly right. And you -- the DOT relies on appraisers to do that?

A. That's right.

Q. And, in fact, they routinely do that; correct?

A. I'm not sure how, I guess, often it is.

Q. Now, how often were you on site?

A. We had, like I said, progress meetings and at least once a week. And then I had project managers that basically they're a daily basis. On a daily basis they were there.

Q. Okay. You were on site at least once a week?

A. At least, yes.

Q. And you, sir, were in the courtroom during Mr. Frampton's testimony where he went through the pictures, were you not?

A. Yes.

Q. Okay. And is that what you observed over that

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year-plus time when you were on site once a week?

A. The --

Q. What was depicted in those pictures.

A. Yes.

Q. Okay. And have you seen those pictures before today?

A. Some of them.

Q. Okay. Not all of them?

A. Not all of them.

Q. Okay. I'm going to show you what's been previously marked as Plaintiff's Exhibit 8 and you just tell me, once you've had an opportunity to review it, if you recognize that.

[Whereupon, the witness reviews documents]

THE COURT: What is that? Plaintiff's what?

MR. MCDONALD: Exhibit 8, Your Honor.

THE COURT: 8?

MR. MCDONALD: Indeed.

A. Yes. This is a contract book, what we call contract book --

Q [Mr. McDonald] What do you recognize it to be?

A. -- for James Island.

This is a contract book for the James Island Creek project.

Q. And what is the contract book for the James

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Island Creek project?

A. What is it?

Q. Yes.

A. You mean what's --

Q. Yes --

A. -- included?

Q. Yes. Please identify it.

A. Basically, you know, if there was any kind of special provision or any supplemental specification they need for that contract, they usually include them in that.

Q. And this is how the DOT tells the contractor what to do out there at the project; correct?

A. That's the -- one -- I mean, one of the -- that's contract book. But then we do have specification, standard specification, that a contractor go by that, too.

Q. And the contract -- the DOT tells the contractor what to do through the contract book and through the specifications that --

A. That's correct.

Q. -- you talked about; right? Okay.

And you're aware, sir, that the contract book requires the installation of a silt fence; right?

A. Yes.

Q. The DOT requires the contractor to install a silt fence; correct?

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A. That's correct.

Q. Okay. And are you aware that the silt fence in this case was never installed in front of the 693 driveway; correct?

A. I haven't -- I did not see that. That was the first time I -- when I saw those pictures.

Q. Okay. And are you aware whether it was ever installed in front of the driveway at 685?

A. Yes.

There was -- when I say -- when I say in front of, it was -- it was in front of the property, but, you know --

Q. It was not blocking access --

A. It was not all the way up --

Q. -- to the property.

A. -- into the property.

Q. You could still get in and out -- get in and out of those --

A. Yes.

Q. -- properties; right?

A. Yes.

Q. Okay. But the silt fence, as required by the DOT contract documents, was installed in front of 699; correct? We've seen those pictures. You don't dispute that, do you?

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A. Front of 699?

Q. Yes.

A. The property -- I mean, the rental property?

Q. Yes.

A. It was in front of that, yes, a certain point.

Q. And you don't dispute the fact that it was installed in front of 699?

A. To a certain point, yes.

Q. What do you mean to a certain point?

A. Well, I guess -- you know, you had the driveway in front of I guess 693, and then there was a space, and then there was silt fence. So still, you know, there was a little room to get in and out. So that's what I'm saying. It wasn't, you know, like wrapped around, coming into Mr. Frampton's property.

Q. Okay. I would like you to show me. This is Plaintiff's Exhibit 19. If you could point to the picture you're referring to where there's a little room to get into 699 --

[Whereupon, the witness reviews documents]

A. Can see a portion right here.

Q [Mr. McDonald] Sir, you're pointing to what's been identified as 19-U --

A. But --

Q. -- and it's --

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A. But --

Q. -- your testimony that the silt fence is not blocking access to 699 in that picture?

A. Okay. This part right here, that's not DOT. Check that --

[Whereupon, the witness reviews documents]

A. Yeah. That's ours.

Q [Mr. McDonald] So it is blocking access?

A. Well, at this point right here, the way it shows, it does block it.

Q. Okay.

A. But remember that the driveway was -- I mean, the length of the driveway was -- based on the -- the City I guess talked with Mr. Frampton and in their opinion, they had the driveway. They did change the width of the driveway.

Q. And he ultimately got a driveway, at the end -- at the end of this, in January of 2010; right?

A. No, it wasn't January. It was sometime like maybe August '09 or something like that.

Q. And would you rely on the pictures to determine when it was he got -- he got his driveway?

A. Well, it was about that time that I guess the decision was made to widen the driveway and it was --

Q. I'm not talking about when the DOT man made some

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internal decision. I'm talking about when the access to 699 was no longer blocked. That was in January of 2010; correct?

A. I don't have the date --

Q. Okay. That's fine.

Now, were you involved in the decision to shorten the guardrail?

A. No, sir.

Q. Okay. And you just don't have any testimony on that?

A. No, sir.

That was more or less a design issue. And, you know, they basically sent the surveyor, they came to Charleston, did a review, and based on their calculation they could shorten only certain length -- I believe it was about twelve and a half feet -- and basically that's all they could do.

Q. All right. Now, you identified two pictures earlier, Defendant's Exhibit 3 and 4. Did you take those pictures?

A. Not personally, but --

Q. When were they taken?

A. I said not personally.

Q. Well, do you know when they were taken, even if you didn't take it?

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A. I don't see the date of it.

Q. Okay. These --

A. This is in I guess the stage two time, I guess.

Q. And these pictures, Exhibit 3 and Exhibit 4 that have been introduced through you, they depict the 685 property; correct? The Holly Jensen Law Firm?

A. Repeat the question, please.

Q. Sure.

The pictures that you've introduced, Exhibit 3 and Exhibit 4, they depict the 685 property; correct?

A. That's correct, yes.

Q. Okay. And that's not what we're here about. We're here about the 699 property; right?

A. I'm not sure.

Q. Can you see the 699 property in these pictures?

A. Not really. I mean, I don't see any property. I just see part of the driveway that goes to --

Q. The Holly Jensen Law firm?

A. -- Holly -- yeah.

MR. MCDONALD: Beg the Court's indulgence.

[Whereupon, Mr. McDonald and Mr. Bybee confer]

MR. MCDONALD: Your Honor, I would move to put Plaintiff's Exhibit 8 in, identified as Mr. Rajabi's contract documents for this project.

THE COURT: Any objection?

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MR. BROOKER: No objection.

MR. MCDONALD: And I would also move to put in this plan sheet that Mr. Brooker introduced.

THE COURT: I don't know how many -- I'm not sure you introduced anything that you've made reference to and all, Mr. Brooker, and all. I'm not sure what numbers they were. Started off with this three-page thing that I put a number 2 on; and then these two photographs, 3 and 4; and then these -- another set of drawings, number 5; and then these other three photographs, four photographs. Do you want all that in evidence?

MR. BROOKER: I want it all in evidence, Your Honor.

THE COURT: I'm not sure -- have you got the numbers for all that?

THE COURT REPORTER: Number 2 I have as a lease. 1 and 2 were leases. Is that what you said? I'm sorry.

THE COURT: Maybe I've got the numbers wrong. That's what I'm saying. Anyway --

MR. MCDONALD: Your Honor, to be clear, the three pictures, the last three pictures, are already in the notebook that's Exhibit 19. They're already in evidence, these pictures.

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THE COURT: Well, there's four pictures I've got.

MR. MCDONALD: The first two that he put in were not -- that Mr. Rajabi just identified -- Exhibits 3 and 4.

THE COURT: All right. How about these four?

MR. MCDONALD: Oh. I only have three, Your Honor.

THE COURT: I've got four.

Y'all go over there with the court reporter and -- she's the one that needs the record.

THE COURT REPORTER: Thank you.

[Off the record momentarily]

THE COURT: All right. So we've got -- Plaintiff's Exhibit 8 is the contract book, in evidence without objection. All right?

MR. MCDONALD: Yes, sir, Your Honor.

[Whereupon, Plaintiff's Exhibit Number 8 is admitted into evidence by the Court]

MR. MCDONALD: And then I think we need to mark this big -- it does not have a marker on it. And we can mark it as a defendant's exhibit or -- I introduced it, so I guess it would be a plaintiff's exhibit. The plan sheet.

[Off the record momentarily]

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[Whereupon, Plaintiff's Exhibit Number 25 is marked by the court reporter]

MR. MCDONALD: Your Honor, I would move Plaintiff's Exhibit 25.

[Off the record momentarily]

THE COURT: 25 is in evidence without objection.

[Whereupon, Plaintiff's Exhibit Number 25 is admitted into evidence by the Court]

MR. MCDONALD: Thank you, Your Honor.

THE COURT REPORTER: Thank you, Judge.

MR. BROOKER: Are you finished?

MR. MCDONALD: I am.

Thank you very much, Your Honor.

THE COURT: Anything else?

MR. BROOKER: Just one question.

REDIRECT EXAMINATION

BY MR. BROOKER:

Q. Mr. Rajabi, the question Mr. McDonald asked you about Defendant's Exhibit 8, with the silt fence next to the Jensen Law Firm driveway, was that -- my question to you on direct was was that what a silt fence should look like; is that correct?

A. Which one you talking about? What silt fence are you talking about?

Q. Yes.

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A. Which picture? I don't have it, I guess.

Q. Let me try to find it.

[Whereupon, Mr. Brooker reviews documents]

MR. BROOKER: I'm sorry, Judge. I --

[Whereupon, Mr. Brooker reviews documents]

Q. [Mr. Brooker] Well, let's just do it over. Let me refer you to Plaintiff's Exhibit 19-C-C --

THE COURT: 19 what?

MR. BROOKER: C-C.

Q. [Mr. Brooker] -- and show you the silt fence that's depicted in that picture. And I'll ask you does that appear to be installed in accordance with standard specifications and drawings --

A. This part that I'm looking at, it look like it is --

Q. -- as contrasted with the picture we showed you of the plastic open driveway in front of 699, which was not standard?

A. Is that -- the one-road driveway, it wasn't.

MR. BYBEE: Thank you. That's all I've got.

MR. MCDONALD: Your Honor, if I may?

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RECROSS-EXAMINATION

BY MR. MCDONALD:

Q. Sir, 19-C-C is in front of 699, not 685 --

A. Six -- that's what I was going to say. The rental. You're right. That's right.

Q. You're saying it's installed correctly; right?

A. Yes.

Q. Okay. And it's blocking the access; right?

A. I can't, I guess, tell by the picture --

Q. You can't tell by the picture? You just can't tell by the picture whether it is or not?

A. No, sir. I would have to look at it again, I guess, if you want -- if it shows that --

[Whereupon, the witness reviews documents]

A. At this point it look like it is. But like I said, that was already there before they make their decision about widening the driveway.

MR. MCDONALD: Thank you.

THE COURT: Thank you very much. You can return to your place in the courtroom.

[Whereupon, Mr. Rajabi is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. BROOKER: Judge, I'm going to call Daniel Burton.

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[Whereupon, Mr. Burton comes forward]

THE CLERK OF COURT: Raise your right hand.

[Whereupon, Mr. Burton is duly sworn by the clerk of court as follows: do you swear or affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Be seated.

[Whereupon, Mr. Burton takes the witness stand]

THE CLERK OF COURT: If you would speak into the mike.

State your full name and spell your last name for the record.

THE WITNESS: Bobby Daniel Ray Burton. And it's B-U-R-T-O-N.

- - - - -

BOBBIE D. BURTON,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKER:

Q. Mr. Burton, can you tell us what you do at DOT?

A. I am project manager.

At that time I was in Jeff's office, as project manager, on this particular project.

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Q. At the time of this project.

So you were actually closer to the ground, so to speak, than Mr. Rajabi in dealing with issues on this bridge replacement project; is that correct?

A. That is correct.

As Mr. Rajabi stated, typically I was out there every day.

Q. To get something out of the way real quickly; I've asked you to do some measurements for me. And let me put up one of the plaintiff's displays and explain my question to you. This is Plaintiff's Exhibit 10, the aerial, the present -- the current aerial showing the concrete median. That's the white stripe. Is that correct?

A. Yes.

Q. And then the creek-house driveway comes out somewhere around in here, doesn't it?

A. Yes, sir.

Q. And you've measured how far you would have to travel to the east -- and I'm using east; shortly after going towards Folly Beach it starts to bend back this way -- before making a U-turn across the painted median?

A. I believe it was over -- a little over 900 feet. I don't remember the exact number.

THE COURT: On the other side --

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THE WITNESS: To the east or west?

THE COURT: On the other side of the bridge?

A. Yeah. To the east, towards Folly Beach, it was over 900 feet.

Actually, Jeff's resident took the actual measurements. But to the east toward Folly Beach. And I want to say it's a little over 900 feet or a little under two-tenths of a mile to the first break on the west end.

Q. [Mr. Brooker] To the first --

THE COURT: Where is that? Where? Can you give me a landmark over there?

THE WITNESS: It is the -- as you come down the hill heading toward Folly Beach there is a break-to, that you can access a side street on the left, that kind of parallels the creek. And on the corner, there is the Sunshine House Daycare Center. That would be the first point to make that turn.

Q. [Mr. Brooker] Is there any no U-turn restriction at the end of the concrete median? It turns into a painted median, doesn't it?

A. That's right. Not that I'm aware of.

Q. There's no no-U-turn sign there. So I'm asking you -- and I understand your answer, but I'm trying to get on the same page here. You're talking about over here on the other side of the bridge --

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A. Yes, sir, I was talking about in that direction.
Q. -- first intersection or first right to actually -- you want to be able to come back out --
A. That's correct.
Q. But the distance between the driveway and the end of this concrete, it is how long?
A. I believe it's as you said, a little -- eighty or so feet. Not very long at all.
Q. I had fifty-nine, but eighty -- eighty is fine.
MR. MCDONALD: Objection --
MR. BROOKER: Excuse me.
MR. MCDONALD: -- to the leading.
THE COURT: You're not testifying, are you?
MR. BROOKER: I'm not sure what just went -- what just went on.
Q. [Mr. Brooker] There's no no-U-turn restriction --
THE COURT: Well, you said you had fifty-nine. That sounded like testimony to me.
Q. [Mr. Brooker] Fifty-nine or eighty feet; is that --
A. I think I can clarify it. Jeff's assistant took the actual measurements. I was -- but the length, as he said, I believe is fifty-nine.
Q. And there is no law, no signage, that prohibits

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a U-turn right there?

A. None that I'm aware of.

Q. That's all I have on that.

To your knowledge, none of the land was taken from the Framptons for this project, was it -- was there?

A. That's correct.

Q. Okay. So all of our work would have been done on our existing right-of-way property that the Department already owns; is that correct?

A. Yes, sir.

Q. And you being out there regularly monitoring this, you made sure that we would never go onto private property, including the Frampton property, without his permission?

A. That's correct. Myself, as well as the contract personnel and all of our staff, were acutely aware of how tense this situation was with the driveways and -- so we made special attention to make sure that we kept it unobstructed as absolutely possible.

Q. And there were times when you had to have permission to either go on or to actually physically obstruct each of the -- each of the driveways?

A. There were times when we had to put drainage pipe.

There is a drainage pipeline that goes parallel

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to the road that crosses over I want to say his 699 property, as well as the 693 property, possibly even the 685 property. But all that had to be installed. And we tried to work closely with Mr. Frampton, as well as Ms. Jensen, in installing that, to make sure we caused as little inconvenience to them as possible.

Q. And when this project started and you were on the ground there, this creek house was rented and occupied, was it not?

A. When we first started the project, yes, sir.

Q. And do you remember who that tenant was?

A. I believe it was Mr. Berkey, as has been stated.

Q. And Mr. Berkey actually stayed there for some months into the project, didn't he?

A. That's correct.

Q. Did you have regular contact with Mr. Berkey?

A. I never dealt directly with Mr. Berkey. I believe a few of our inspectors may have had some conversations with him, but I never met his personally.

Q. But Mr. Berkey never complained to you or to anyone else, to your knowledge, that he was being prevented from entering the property -- his property, did he?

A. That's correct.

Q. Let me show you a couple of pictures that

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actually have dates on them.

MR. BROOKER: Let me mark this as our next defendant's exhibit.

[Whereupon, Defendant's Exhibit Number 9 is marked by the court reporter]

Q. [Mr. Brooker] That will be Defendant's Exhibit 9. Can you tell me what that shows?

A. This shows a temporary access to the 699 property. The creek house.

Q. Temporary because it's gravel and not permanent?

A. That's right. The temporary rock --

Q. What's the --

A. -- that Mr. Rajabi referenced.

Q. What's the date on that picture?

A. The date on this picture is November 11th of 2008.

Q. We've already had evidence put into the record that Mr. Berkey left about this time. So this might have been even after Mr. Berkey left so -- after Mr. Berkey -- after Mr. Berkey left, the driveway was still perfectly open and accessible; is that correct?

A. That's correct.

Q. And at some time, someone put up a silt fence or -- or what purports to be a silt fence; is that correct?

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A. That's correct.

Q. At any time during your experience with and work on this property, did Mr. Frampton or anyone representing Mr. Frampton approach you and say, Daniel, I've got a tenant, I want to rent this property, y'all are denying me my access, could you please open it up so I can get in there -- or get a tenant who can get in there and park on the property?

A. No, sir.

Q. After Mr. Berkey left, he never did that, did he?

A. [No response]

Q. Therefore, in your opinion, wouldn't it have been reasonable -- or did you consider it reasonable, to keep the silt fence protection up I guess in front of his property?

A. In the driveway area? Or just in front of the property itself?

Q. In front of the whole thing, since it was vacant.

A. That, in combination with there's no tenant. As well as the driveway issue with that particular property still had not been resolved and we moved forward with gutter -- curb and gutter placement.

Q. You did not actively -- or any contractors to

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your knowledge or any of your employees did not actually, when approached by someone who had some rights to go onto property say, no, we're not going to let you go in there?

A. No. No.

Q. Just because it was vacant, you had these -- this equipment out there and you -- one of the subcontractors put the silt screen up for a benign purpose. But there's no one who's actually denied access to the property; is that correct?

A. Not to my knowledge.

Q. It's pretty hard to deny somebody access when nobody's there to access it; is that correct?

A. [No response]

Q. Let's see, Mr. Burton.

Now, originally it was agreed that under this contract the bridge contractor, Cape Romain Contractors, would put in this new parking area for Mr. Frampton; is that correct?

A. If I recall the plans correctly, the original plans showed a drive coming off of the 693 property, the main residence.

Q. But in your experience, the Department does not go in and pave parking areas on private property, do they?

A. No. No, sir.

Q. That's not a usual thing.

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In other words, we keep to the public access and public roads; is that correct?

A. [No response]

Q. So this was part of a deal made with Mr. Frampton concerning these whole negotiations that lasted a year or more on the where his driveway was going to be; is that correct?

A. That's what I presume.

Q. Do you know how much a paved parking area of these dimensions cost? Because I -- we haven't priced it --

A. Offhand, I don't have an exact amount.

But any time you deal with asphalt, it's always --

MR. MCDONALD: Your Honor, I object --

A. -- fairly pricey.

MR. MCDONALD: -- to his testimony, if he doesn't have the amount.

THE COURT: Okay. Ask another question.

[Whereupon, Mr. Brooker reviews documents]

MR. BROOKER: I believe I've completed my direct of this witness, Your Honor.

Daniel, Mr. McDonald might have some questions for you.

MR. MCDONALD: Mr. Burton, we haven't met,

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either. My name is Bret McDonald -- it's time to introduce myself.

CROSS-EXAMINATION

BY MR. MCDONALD:

Q. You're aware that from 2005 until mid 2009, it was the DOT's position that access -- the access driveway to 699 was going to be completely blocked permanently in the future; right?

A. I was unaware as to the end result. We -- it seemed kind of like a fluid indecision at the time we entered in construction. If it's some -- if it was a done deal, I don't think that Mr. Phinney would have continued on with conversations regarding, you know, not shortening the guardrail.

But that was my interpretation, that it was not an inconcluded result, that it was still a matter to be resolved. And we tried to hold off on any temporary -- permanent construction actions, to accommodate whatever the end result would be up, until that time.

Q. Well, would you consider actually putting the guardrail there and denying all access a permanent construction feature from your standpoint?

A. I would consider the shortened guardrail, once in place, it had pretty much rendered that existing drive inaccessible.

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Q. Which would have rendered 699 inaccessible; correct?

A. From that drive, yes.

Q. Okay. And you, sir, sat in this courtroom, as well, and viewed the photographs with everybody else; correct?

A. That's correct.

Q. Okay. And it's not your position that access to this piece of property was not blocked by the DOT; correct? That's not your position?

A. Restate?

Q. It's not your position that access was not blocked; right?

A. [No response]

Q. Access was blocked; right?

A. It was --

Q. There was no --

A. -- it was blocked. That is correct.

Q. And do you have any reason to believe that these pictures over this in excess of a year period of time somehow are inaccurate?

A. My only question as to those pictures was that initial silt fence placement that Mr. Brooker made mention of, that it wasn't per our specs. And as far as I can remember at that time, the driveway issue, as far as

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the -- any condition of that particular driveway was still up in the air. And I find it hard to believe that we would have had our guys go ahead and put silt fence in place across a rock bed when that issue was still kind of open and there was a possibility there may still be some access.

Q. You don't think Mr. Frampton put up the silt fence, do you?

A. I'm not saying that he put it up.

There's also utilities in the area, too. All I'm saying is that it didn't meet DOT standards.

Q. And the one thing we know is that Exhibit 8, the contract documents, require the installation of a --

A. That's correct.

Q. -- silt fence; correct? The DOT required the installation of a silt fence?

A. Yes, sir.

MR. MCDONALD: Okay. Thank you very much, Your Honor, and Mr. Burton.

THE COURT: Thank you very much. You can return to your place in the courtroom.

Unless you have some more questions?

MR. BROOKER: Just one, Your Honor.

THE COURT: Okay.

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REDIRECT EXAMINATION

BY MR. BROOKER:

Q. The last question -- the contract requiring installation of a silt fence does not require the installation of a silt fence across people's active driveways, does it?

A. That's correct.

There's always breaks. Anytime there is an entrance or access, there's always a break in the silt fence.

MR. BROOKER: Thank you.

THE COURT: Thank you very much.

[Whereupon, Mr. Burton is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. BROOKER: May we have a comfort break, Your Honor?

THE COURT: All right. We'll take a short recess, then.

Let you go to the jury room. Be back with you as soon as we can.

[Whereupon, the jury exits the courtroom at 3:27 p.m.]

[Whereupon, a recess is taken from 3:28 p.m. to 3:36 p.m.]

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THE COURT: Thank you. Please be seated.

Who's your next witness? Come on up, whoever it is.

[Whereupon, Mr. Hough comes forward]

[Off the record momentarily]

[Whereupon, the jury enters the courtroom at 3:36 p.m.]

THE BAILIFF: All jurors are seated, Your Honor.

[Whereupon, Mr. Hough is duly sworn by the clerk of court as follows: do you swear or affirm that your testimony will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do.

[Whereupon, Mr. Hough takes the witness stand]

THE CLERK OF COURT: If you'll please state your full name and spell your last name.

THE WITNESS: My name is Clifton Lee Hough. H-O-U-G-H.

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CLIFTON L. HOUGH,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKER:

Q. Mr. Hough, can you tell us who you're employed by?

A. I'm sorry. Say it again.

Q. Can you tell us who you're employed by?

A. I work for Cape Romain Contractors.

Q. What does Cape Romain do?

A. Build bridges, docks, wharfs, bulkheads, that kind of stuff.

Q. And you were -- Cape Romain was under a direct contract with the Department of Transportation for this project we've been talking about for the last several days; is that correct?

A. That's correct.

Q. And what did that project entail?

A. We had to put in a detour bridge to allow -- to maintain four lanes of traffic on the project, build a -- the first half of the bridge and move traffic to the other phase of the job and then built the finished product of the bridge.

Q. But your contract included road approaches, not

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only just bridge?

A. Correct.

Q. So the entire limits that we saw on the plan sheets that have been put into evidence were part of your contract? All the work within the left and right edges of that --

A. That's correct.

Q. And your role with Cape Romain, with respect to this project, was what?

A. The job was given to me to manage.

Q. So you were the main guy for the Cape Romain out on the ground on this project; is that correct?

A. Correct.

Q. And all the other employees of Cape Romain and subcontractors and suppliers to Cape Romain were under you; is that --

A. Scheduled through me. Yes, sir.

Q. And you also had contact with the Framptons and Ms. Jensen during the course of this, didn't you?

A. Yes, sir.

Q. They would come to you while you were out there in person; is that correct?

A. Well, I wasn't on the job site every day. But, yes, they contact -- went through me for contact.

Q. And when they did, what kind of complaints did

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they have?

A. Blocking of access, trucks not parked where they should have been, that kind of stuff.

Q. And when they came to you with those complaints, you would try to deal with it? You would try to accommodate?

A. Absolutely.

Q. And, in fact, your contract with DOT requires you to keep access open to private properties adjoining the project where possible?

A. Correct.

Q. Did you ever actually deny anyone the right to enter the 699 property from the road?

A. No, sir.

Q. Now, this lay-down area --

MR. BROOKER: I think I'm going to put one more picture into evidence here.

THE COURT: By the way, the court reporter and I consulted about this during our break, and I'm not sure --

Tell the numbers -- we don't think actually are into evidence yet? Defendant's.

THE COURT REPORTER: 1 and 2.

THE COURT: 1 and 2.

THE COURT REPORTER: 6 through 9.

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THE COURT: And those four last photographs. So do you want to move those into evidence? Any objection?

MR. BYBEE: No, sir.

MR. BROOKER: I would like to move them into evidence.

THE COURT: What?

MR. BYBEE: I have no objection.

THE COURT: No objection. Good. We've got it now.

[Whereupon, Defendant's Exhibit Number 1 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 2 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 6 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 7 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 8 is admitted into evidence by the Court]

[Whereupon, Defendant's Exhibit Number 9 is admitted into evidence by the Court]

THE COURT: All right. Now, what's next?

Q. [Mr. Brooker] Okay. I'm going to show you another photograph. And this is similar to one I showed

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Mr. Rajabi.

MR. BROOKER: I'm first having it marked as Defendant's Exhibit --

[Whereupon, Defendant's Exhibit Number 10 is marked by the court reporter]

Q. [Mr. Brooker] Show you Defendant's Exhibit 10 and ask you to identify that, please.

A. This is coming from the intersection. I forget the crossroads, those two different names. But the intersection approaching the job site.

Q. And it shows the concrete median, the barrels, what we've talked about earlier; is that correct?

A. Yes, sir.

Q. Okay. And from the vantage point of where that photograph was taken, pretty much as far as you can see is the work area of phase two; is that correct?

A. Yes, sir.

Q. And what we've been calling the lay-down area --

By the way, does that have any kind of official definition of equipment lay-down area or material lay-down area?

A. Say that again, please.

Q. A material lay-down area, is that something that's defined? Or it's just common sense that you have to lay down material?

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A. Yes, sir.

Q. You had, of course, a lot of material and equipment on this project, didn't you?

A. Definitely. Yes, sir.

Q. And did you try at all times to keep all of your equipment, all your material, as far towards the bridge as possible?

A. Yes, we did.

Q. And when you laid down rebar and that sort of thing, we've seen some pictures earlier, when Mr. Berkey was there, I don't know if you did or not, but you would try to accommodate that person to let them drive down --

MR. BYBEE: Objection to the leading, Your Honor. He --

THE COURT: Don't lead the witness.

MR. BROOKER: Okay.

Q. [Mr. Brooker] In other words, if there was a tenant there such as --

Mr. Berkey was there when phase two started; is that correct?

A. I believe so.

Q. And you always let him in?

A. I never -- I never met the man. When I was there and when I would go out and visit was in the daytime and I have never seen him there, parked there. Wouldn't

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know him if he walked in the courtroom right there.

Q. But it was an active driveway for a couple -- few months?

MR. BYBEE: Objection to the lack of foundation.

THE COURT: Ask another question.

Q. [Mr. Brooker] I think you answered that you do not know that Mr. Berkey was living there --

MR. BYBEE: The same objection, Your Honor.

He asked the same question you just sustained an objection to.

THE COURT: Did you make any observations about anybody going and coming from the creek house?

THE WITNESS: I never saw Mr. Berkey enter or leave that residence. Does that --

Q. [Mr. Brooker] Were you aware that it was --

MR. BYBEE: Objection.

THE COURT: That's what -- you're not supposed to ask it that way, because you're suggesting an answer, so you've got to ask a question that does not suggest an answer. That's what his objection is.

Q. [Mr. Brooker] At the early part of phase two, was the creek house occupied or unoccupied?

A. As far as I know, it was occupied.

Q. Okay. And the driveway to the creek house at that time -- we're talking August to November of 2008 --

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was open, wasn't it?

MR. BYBEE: Objection. Lack of foundation.

THE COURT: That's what you're not supposed to do. You're not supposed to ask it that way, because it suggests an answer.

MR. BROOKER: I see.

THE COURT: Was --

Q. [Mr. Brooker] Was the --

THE COURT: -- describe it or whatever.

Q. [Mr. Brooker] -- driveway opened or closed?

A. I'm sorry. I --

THE COURT: Ask another question.

Q. [Mr. Brooker] During that period, was the driveway open or closed?

A. The driveway was open.

Q. At any time, to your knowledge did Mr. Frampton, anyone representing the Framptons, any tenants of the Framptons, come to you and say, I cannot get to that creek house, I would like to?

A. Not to my -- not to my recollection, no.

Q. Mr. Frampton ever come to you and say, I want to rent that creek house, you've got a silt fence up here, you've got equipment in front of it, could you move it and let my tenant get in so I can rent it?

A. No, sir.

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Q. He never asked?

A. No.

Q. Now, when you -- when Cape Romain completed its work on the project, the driveway to the creek house was still -- the resolution of that issue was still up in the air; is that correct?

A. That's correct.

Q. So Cape Romain was kind of waiting to be told by the Department what they're supposed to do with respect to that driveway; is that --

A. Correct.

Q. And it was never paved by Cape Romain during --

A. No, sir. It was done afterwards.

Q. And you're aware that it was paved sometime after that?

A. I was told that it was done, yes.

Q. Have you seen it?

A. I have not, no.

MR. BROOKER: I think that's all I have, Your Honor.

And I think that's all of my witnesses, as well, but I --

THE COURT: All right. Cross-examination.

MR. BROOKER: -- there's cross-examination of Mr. Hough.

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MR. BYBEE: Mr. Brooker, did you want this into evidence?

THE COURT: Defendant's 10: is it in evidence?

MR. BROOKER: I never did offer it --

THE COURT: Offered and in evidence without objection.

[Whereupon, Defendant's Exhibit Number 10 is admitted into evidence by the Court]

MR. BYBEE: Mr. Hough, good afternoon, sir.

THE WITNESS: Yes, sir.

MR. BYBEE: You and I have met before.

THE WITNESS: We have.

CROSS-EXAMINATION

BY MR. BYBEE:

Q. Let's talk about your role. You're the general contractor on this job; right?

A. That's correct.

Q. You managed the general contractor's responsibility on behalf of the DOT; is that right?

A. Correct.

Q. You handled hiring the subcontractors on this job --

A. Correct.

Q. -- so that any work done by the subcontractors, you were responsible to the Highway Department --

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A. Yes, sir.

Q. -- through the contract documents? Isn't that the --

A. Correct.

Q. -- way this works?

A. Correct.

Q. And when they gave you this contract, what was it, in 1907 -- excuse me -- nineteen -- 2007. There we go. 2007. Does that --

A. Yes. Yes.

Q. -- sound about right?

A. About March. Yes.

Q. And when they gave you that project, they gave you this area to work in so you could replace the bridge?

A. Correct.

Q. That was your legal responsibility, was to adhere to the contract and do what the contract required you to do?

A. Correct.

Q. And during the course of this work, did you or your subcontractors ever perform anything in a negligent fashion?

A. Not to my knowledge, no, sir.

Q. Anybody ever tell you you didn't do something right, as far as your work was concerned?

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A. No.

Q. All right. Now, one of the things that you had to do when you first got started was to establish a silt fence?

A. Correct. Before any ground is broken.

Q. Before any ground is broken.

And during the course of the job, if that silt fence was improper you would expect the DOT to advise you that it was improper?

A. Correct.

Q. And during the course of the job over a long period of time you would have to repair and maintain the silt fence --

A. That's correct.

Q. -- is that not correct?

And that, in fact, happened a number of times along the property in front of -- along the road in front of Mr. Frampton's property; is that not true?

A. Correct.

Q. You had to straighten up that silt fence, you had to put -- dig it down in accordance with the specifications that Mr. Brooker put in -- into the record; is that not correct?

A. Correct.

Q. All right. And when you were -- when it was

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originally installed, it was either installed by you or one of your subcontractors? You being Cape Romain.

A. Subcontractor.

Q. Subcontractor did it.

But you are responsible to the DOT for the subcontractor's work?

A. Correct.

Q. You had to make sure that the subcontractor did his work properly?

A. Correct.

Q. All right. So did you ever see improper installation of silt fence by your subcontractors on this job?

A. Not to my knowledge, no, sir.

Q. Now, when they installed the silt fence, they installed it in front of 699 Folly Road, did they not?

A. At a point in time.

Q. At a point in time.

And you were here yesterday when we went through every one of these photographs in this exhibit book, 19; were you not?

A. I'm sorry. Say that again.

Q. Were you here --

A. Yes. Yes.

Q. -- when they went through the photographs this

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morning in this book, Exhibit 19?

A. Yes.

Q. Did you see any photograph that was inaccurate for any reason?

A. I don't remember if the one photograph, in particular, about -- that was stretched across without stakes, I don't remember if that's in there or not.

Q. Okay. But the ones that were displayed on the board and the ones that are in this notebook, they accurately depict what was installed in front of 699; did they not?

A. It appeared to be correct, yes, sir.

Q. All right. So is it fair to say that when you installed the silt fence, or you hired your subcontractor to install the silt fence, it was done properly?

A. Correct.

Q. It was done in accordance with the contract?

A. Correct.

Q. You installed it in front of 699?

A. Correct.

Q. You did not install it in front of 693?

A. Correct.

Q. Because you had to maintain access to the, quote, active driveways; right?

A. Correct.

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Q. And your plans showed a barricade that was to be installed in front of 699; is that not correct?

A. The guardrail?

Q. Yes. The -- excuse me. You're right.

The plans called for a guardrail to be installed in front of 699?

A. Correct.

Q. 685, you left an opening in order for Ms. Jensen to get in and out of her law office?

A. Correct.

Q. No silt fence was installed at that particular point?

A. That's correct.

Q. So from November of '09, when the silt fence was originally installed, up until the time of the temporary guardrail -- or excuse me -- the guardrail was installed at 699, that silt fence, in one form or another, was constantly in place?

A. Correct.

Q. It was blocking access to 699?

A. At a given point.

It wasn't originally -- in the original installation, it was not across 699.

Q. Well, by original installation, are we talking about the period of November 11th or --

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MR. BYBEE: Let me see if I can get to the first photograph.

[Whereupon, Mr. Bybee reviews documents]

Q. [Mr. Bybee] Here's 12/21. This is a photograph of the silt fence in front of 699.

A. Correct.

Q. All right. Now, let's go backwards in time this time.

A. That's the one that doesn't have the silt fence stakes in place --

Q. Okay. That's -- okay. Your subcontractor didn't put silt fence stakes in place. Is that what you're saying?

A. I'm not sure who put that silt fence in.

Q. Okay. But you're the only guy on the job.

A. As far as the contractor, correct.

Q. Right.

You and the subcontractors are the ones responsible to install the silt fence?

A. Correct.

Q. All right. You don't know how this occurred --

A. I don't know how or who.

Q. But nobody ever said, hey, you've got to shore this up?

A. It goes in as DOT standards and it has stakes

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placed on x number of foot centers but --

Q. And you employed -- you followed the specs?

A. Yes, sir.

Q. And nobody complained to you that the specs have not been followed?

A. On that piece of fence?

Q. On this piece of fence.

A. Not to my knowledge, no, sir.

Q. And periodically you would come and make sure it complied; is that correct?

A. It's inspected.

Q. And those things are required by DHEC. That's why they're done first?

A. Yes, sir.

Q. They're to prevent silt from getting into the creeks?

A. Or property or --

Q. Or, really, they're protecting the creeks; right? That's why they're there.

A. Well, the -- a silt fence is supposed to protect any contaminant silt from going outside the boundaries of the project.

Q. Okay. But the creek is right behind this project; right?

A. Well, not really. The silt fence runs

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perpendicular to the creek.

Q. Well, I understand.

There's a little bit of marsh back there, isn't it? A little title creek?

A. At the -- at the corner of 699, correct, on that very far end next to the bridge.

Q. And so there's nothing in your contract which is distinguishing between active and inactive driveway?

A. I would say -- that's right. But please repeat.

Q. There's nothing in your contract which tells you what's an active driveway or an inactive driveway?

A. Not to my knowledge.

Q. All right. What you have to do is look at the plans; correct?

A. Correct.

Q. And the plans show a barricade in front of 699?

A. Correct.

Q. Now, if somebody tried to run over your subcontractor's silt fence, you would not be happy with that, would you?

A. That's correct.

Q. That's your property?

A. It's our -- it's our responsibility to maintain it --

Q. Your responsibility --

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A. -- to make sure it's maintained.

Q. -- to maintain it.

Now, in addition to establishing the silt fence in front of 699, you heard the testimony of Mr. Hal Frampton about the installation that occurred in front of 699 after it had been dug up the first time?

A. Yes.

Q. And that was true testimony, was it not? You wouldn't disagree with that, would you?

A. The only thing I could -- like to say on that is I know we put the driveway in originally. And then it was determined that they wanted -- the DOT wanted that driveway widened, so we took out the first section of the driveway and re-poured it to the wider width. I'm --

Q. But that's late in the job.

A. I can't remember exactly when.

Q. Would the photographs help you, sir?

A. Possibly.

Q. Let's look at them. I'll let you use the ones we've already introduced. You'll see the tabs are by months. Let's go to July -- June or July of '09. Let's start with June 2009.

A. June?

Q. Yes, sir. Plaintiff's Exhibit 19-D-D.

A. 19-D-D. Correct. Okay.

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Q. Do you see the silt fence in that photograph?
A. Yes, I do.
Q. It's blocking access to 699, at least at that point in time, is it not, sir?
A. Yes, sir.
Q. And in addition to the silt fence, you've got that orange fencing?
A. Yes, sir.
Q. All right. So both of those are impediments to access that particular time?
A. Yes, sir.
Q. All right. The next photograph in June is 19-E-E.
A. 19-E-E?
Q. Yeah.
A. Okay.
Q. As of June 25th you've got the silt fence still being maintained, the road-closed sign, the driveway poured to 693, and you're growing grass in between the silt fence and the road; is that correct?
A. Yes, sir.
Q. That accurately depicts the condition?
A. Yes, sir.
Q. And there was no access to 699 in that photograph.

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A. Correct.

Q. Now we're going in July. This is July 8th, 2009, Plaintiff's Exhibit 19-F-F. Do you see that photograph?

A. Yes, sir.

Q. You were out there every day?

A. No, sir.

Q. Your subcontractor or your forces installed that barricade; correct?

A. The, yeah, subcontractor installed the guardrail.

Q. And the silt fence was continuing to be maintained at that particular time?

A. Correct. Until the grass is established.

Q. And so from the time period -- at least by your testimony -- of December to this point in time, that silt fence is still in there?

A. It appears so, yes, sir.

Q. And you want to tell this jury anything about any period between December 21st and July 8th, 2009 when you moved the silt fence?

A. No, sir.

Q. And up to this point in time, or at this point in time, you had that curb and gutter --

A. Yes.

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Q. -- already installed in front of 699?

A. Yes.

Traffic is -- on the new bridge, the new alignment is completed and established, and that's correct.

Q. And when was the curb and gutter installed, sir?

A. There was --

Q. Before you redid the second or third time on the driveway, when's the first time you installed the curb and gutter?

A. The first time?

Q. Yeah. In front of 699.

A. I do not know the exact dates. I --

Q. Well, give me an approximate date.

A. There was quite a bit of sidewalking put in in October of '08, a lot more in January of '09, and then finished up just prior to the opening -- you know, during this last phase of the job along that stretch.

Q. All right. So you're thinking somewhere January of '09 is when that concrete median was placed?

A. There was a lot placed in January of '09. I'm not sure if we still were placing some on the far end of the project at the same time --

Q. Let me show --

A. -- and then --

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Q. -- you what's been marked as --

A. -- August of '09, I think we finished up all that.

Q. Let me show you what's been marked as Plaintiff's Exhibit 19-M. The date is January 13, 2009. Your memory's not too bad. What does that show us?

A. January what?

Q. January 13th, 2009, Exhibit 19-M.

A. That is the entrance into 693.

Q. All right. And immediately to the left, in that photograph, is the sidewalk and curb and gutter; is that correct?

A. Correct.

Q. And so by then, the curb and gutter was blocking ingress and egress to 699 Folly Road; is that not correct?

A. Well, from this picture I can't tell that -- that's to the left of this picture.

Q. Well, I understand that.

Do you remember that that was, in fact, the case?

A. I'm sorry?

Q. Do you remember that you installed curb and gutter in front of 699 at least by January of 2009 --

A. Yes.

Q. -- in front of 699 Folly Road?

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A. I'm kind of confused now. You've got me --

THE COURT: Well, look at that photograph. Let me ask it this way.

THE WITNESS: Okay.

THE COURT: Would you say it's most probably that you had installed the curb and gutter in front of 699 or less probable?

THE WITNESS: I'm not for sure. I got with Mr. Frampton about pouring his driveway in two halves to, you know keep access, so I don't know if this is the last section poured or not.

Q. [Mr. Bybee] You just don't remember?

A. No, sir.

Q. You heard Mr. Frampton testify, did you not?

A. Yes, sir.

Q. And if -- and he says that it was in, would you accept that?

A. I would have to -- you know, to get the exact dates, I would have to see something to tell me that. I'm not sure -- myself right now, I'm not sure if that was in place at that time or not.

Q. When you keep records --

A. Beg your pardon?

Q. When you, as a contractor, keep records --

A. Yes, sir.

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Q. -- there is what they call a superintendent's diary or a daily dairy. What's that document that y'all keep?

A. The superintendent that's on the job site every day tracks his work, yes.

Q. And have you ever gone back and tried to establish when sidewalks were installed or the curb was installed or was not installed?

A. Before the deposition before you --

Q. When I -- all right. You tried to do that.

A. Yes.

Q. It was inconclusive?

A. Correct.

Q. You didn't have any data to rely on?

A. That's correct. They produced --

Q. In fact, when I took your deposition, you had signed an affidavit, had you not?

A. Yes, sir.

Q. And that affidavit had been prepared by Mr. Brooker; is that not correct?

A. Yes, sir.

Q. And we talked about that affidavit a good bit in the deposition.

A. Yes, sir.

Q. And in that affidavit, you said this: with the

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exception of a brief instance where access was blocked, after notice to the owners, to accommodate sidewalk installation, at no time were the Framptons or any of their tenants denied access to any of the three properties owned by the Framptons.

Do you remember signing this affidavit that had that sentence --

A. Yes, sir.

Q. -- that was drafted by Mr. Brooker?

A. Yes, sir.

Q. You didn't write that sentence? He did?

A. Yes, sir.

Q. But you signed it?

A. Yes, sir.

Q. But in the course of the deposition when I showed you the photographs of the silt fence, you had to change that testimony; is that not correct?

A. I was not sure what the definition of access was when I signed that affidavit.

Q. Okay. So you signed an affidavit --

A. -- because you can still get --

Q. -- prepared by Mr. Brooker using a term, term being access, and you didn't understand what it meant?

A. I didn't --

Q. Is that what your testimony is?

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A. Yes.

Q. Do you remember also telling me after the deposition, that is wrong?

A. As far as the definition --

Q. That once --

A. -- of access, yes, sir.

Q. Driveways connect private property to the residences; correct?

A. Correct.

Q. Agreed?

A. Correct.

Q. Can we both agree that's access?

A. I understand it more now, yes.

Q. You understand it today?

A. Yes.

Q. But at the time you signed it, you didn't understand it?

A. I did not understand the access portion of it, yes, sir.

Q. Okay. But you signed it anyway?

A. Yes.

Q. And then at the deposition when I showed you some of these photographs of the silt fence, you admitted to me that the statement was inaccurate?

A. After I understood better what the access meant,

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yes.

Q. Once you understood that driveway access meant, that somebody could drive from the residences into the property [phonetic], you withdrew it?

A. Yes.

Q. And today you still withdraw that?

A. Yes.

Q. It was not true when you wrote it?

A. I didn't write it, but I signed it.

Q. You signed it.

It wasn't true when you signed it, and it's not true today?

A. Okay. You've got me confused again.

Q. The statement says that with exception of a brief instance when access was blocked, after notice to the owners, to accommodate sidewalk installation, at no time were the Framptons or any of their tenants denied access to any of the three properties owned by the Framptons.

That was an untrue statement then; correct?

A. After I understand what the access meant, yes.

Q. All right. Now, let's -- we talked about these concrete barricades. And the last exhibit that was introduced --

MR. BYBEE: Let me see here.

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[Whereupon, Mr. Bybee reviews documents]

MR. BYBEE: Mr. Brooker, you told the Court you wanted to introduce this document.

MR. BROOKER: Yes. And I think I did, didn't I?

MR. BYBEE: What number --

THE COURT: Defendant's 10, I guess it is.

MR. BROOKER: Defendant's 10.

MR. BYBEE: Do you have -- do you think it's on your table?

THE COURT REPORTER: His are on the front.

MR. BROOKER: This one here?

Q. [Mr. Bybee] Defendant's Exhibit 10 --

MR. BYBEE: Let's let the jury see it.

Q. [Mr. Bybee] Do you have -- can you see that, or do you want me to bring you a copy?

MR. BROOKER: Let him see the copy.

Q. [Mr. Bybee] Now, that's a photograph depicting your traffic-control barricade system; is that not correct?

A. Yes, sir.

Q. And that photograph was basically taken on the other side of the Jensen property; is that correct?

A. Yes, sir, right behind the Jiffy Lube or whatever that --

Q. All right. And it's looking forward. You

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really can't see 699, can you?

A. No, sir.

Q. You might be able to make out the mailbox at 693 if you squinted real hard.

A. Yes, sir.

Q. But what one would do, if they wanted to go to the Jensen Law Firm, would go beyond the barricade to that little orange barrel; is that correct?

A. I'm sorry. Say it again.

Q. If one wanted to access the Jensen Law Firm, under your traffic control system --

A. Uh-huh.

Q. -- phase two of the project, one would go beyond the concrete barrier and there's a gap.

A. Correct.

Q. And then they would take the right-hand turn?

A. Yes, sir.

Q. Now, y'all did your best never to block that gap?

A. Correct.

Q. That is access?

A. Correct.

Q. In your mind, that was access; right?

A. Yes, sir.

Q. Not -- different than blocking access somewhere

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else; correct? That's an access term you used and you're thinking about; is that correct?

A. It's access into the property, yes.

Q. It's a part of access --

A. Correct.

Q. -- into the property?

A. Correct.

Q. That's access to the road system?

A. Correct.

Q. And then what we're trying to focus on is access into the driveway. Okay?

A. Okay.

Q. It's fair to say that anytime that the jury sees the photographs of the silt fence in front of 699, that Mr. Frampton did not get access into his driveway at 699? Is that not correct?

A. I'm sorry?

Q. Anytime the jury sees a photograph in the time period with the silt fence, it is fair to say that he could not get access into his driveway --

A. Correct.

Q. -- at 699?

A. Correct.

MR. BYBEE: No further questions, Your Honor.

THE COURT: Anything from the defense, Mr.

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Brooker?

MR. BROOKER: Mr. Hough, I'm going to follow up on a couple of things here.

REDIRECT EXAMINATION

BY MR. BROOKER:

Q. You testified that you didn't -- regarding the silt fence across the driveway of 699, you've testified that neither -- that Cape Romain did not put it there; is that correct?

A. The piece of silt fence without the stakes I have -- I am unaware who, how, and when that was installed.

Q. All the silt fencing on this project, that was installed per specifications and standard drawings, you did; right?

A. I'm sorry?

Q. Cape Romain -- the silt fencing that Cape Romain installed was installed in accordance with the standard --

A. Correct.

Q. -- drawings; is that --

A. Correct.

Q. But the one across the 699 built-up driveway was not to standard?

A. That particular piece of fence at that time that did not have the stakes in it, I'm not aware of how that

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got in or by whom.

Q. Okay. I'm sorry. I didn't mean to cut you off. You're not aware of who put it there or how it got there?

A. Not that piece, no, sir, and -- or what time --

Q. So your only testimony is that you never had any reason to take it out; is that correct?

A. I'm sorry. I didn't --

Q. You're only testifying that --

MR. BYBEE: Objection to leading.

THE COURT: That is leading.

Q. [Mr. Brooker] You never -- Cape Romain never took it out, did they?

A. Not to my knowledge. I mean --

Q. Did anybody ask you to take it out?

A. Like I say, I don't know -- I don't know when it was there, how it got there. I'm not aware of who took it down, who put it up.

Q. Was it there when your contract was terminated? Isn't it -- well, not terminated, but --

A. When we completed that phase of it?

Q. On the last day of your contract.

A. Not to my knowledge, no, sir.

Q. It was not?

A. No.

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Q. Okay. Now, concerning the affidavit Mr. Bybee was asking you about, the question was -- the question was about your statement in there that at no time did Mr. Frampton -- or did you deny access to Mr. Frampton or any of his tenants -- I think I'm quoting that right -- who were -- we know who Mr. Frampton was and that was the main-house driveway; is that correct?

A. Yes.

Q. And we know that Ms. Jensen occupied the second driveway; is that correct?

A. At 685? Yes.

Q. And there's been testimony that the tenant for a time, of the 699 property, was Mr. Greg Berkey; is that correct?

A. That's -- yes.

Q. My question is were either of those three individuals ever denied access for more than a day without their permission, of course --

A. No, not --

Q. -- to the property?

A. -- to my knowledge, no.

Q. So your statement in the affidavit is true? You never denied Mr. Frampton or either of his tenants --

THE COURT: Let's look at the affidavit. You've got that language. That's not exactly the language

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that Mr. Bybee used. Let's make sure about what the language was in the affidavit. It's my recollection that's not exactly -- what you just said is not exactly what Mr. Bybee said. Look at the affidavit.

Q. [Mr. Brooker] Reading from the affidavit: [reading] however, to my knowledge, at no time during the course of the project did either the owners, Mr. and Mrs. Frampton, or any tenant or potential tenant to the 699 Folly Road property contacted me with any complaints about the access to --

MR. BYBEE: Your Honor, he's reading from the wrong paragraph.

MR. BROOKER: I'm sorry.

THE COURT: You want to read it?

MR. BYBEE: I would love to.

The question I directed to you, Mr. Hough, was concerning paragraph 5, the last sentence. [Reading] With the exception of a brief instance where access was blocked, after notice to the owners to accommodate sidewalk installation, at no time were the Framptons or any of their tenants denied access to any of the three properties owned by the Framptons.

Q. [Mr. Brooker] Is that correct? Did you prevent any of the tenants or the Framptons from accessing --

MR. BYBEE: Objection to the form of the

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question.

THE COURT: No, I'm going to --

MR. BYBEE: He's now changing it --

THE COURT: Go ahead. Go ahead. I'll allow it. Go ahead.

Q. [Mr. Brooker] We could beat this thing to death, Mr. Hough. But did you ever prevent Ms. Jensen from using her driveway?

A. Ever prevent her from --

Q. Correct.

A. -- no, not to my knowledge.

Q. Mr. Frampton -- Mr. and Mrs. Frampton from using their driveway?

A. Not to my knowledge, no, sir.

Q. Did you ever prevent Mr. Berkey from using his driveway?

A. No, sir.

Q. Are you aware of any other tenants of 699 during the contract period?

A. No, sir.

Q. Was the house vacant after Mr. Berkey left?

A. There was no other tenants after that, to my knowledge.

Q. There was no one to deny access to, was there?

A. No.

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MR. BROOKER: Thank you.

RECROSS-EXAMINATION

BY MR. BYBEE:

Q. This sentence says: [reading] denied access to any of the three properties owned by the Framptons.

The silt fence blocked access, the driveway access, to the Framptons, did it not?

A. Yes.

Q. And you told me at the deposition that that sentence was incorrect?

A. The sentence in the --

Q. The assertion that you didn't block access at 699 was wrong. Isn't that what you told me under oath at the deposition?

A. Yes.

Q. And you told me that three times again?

A. Yes.

Q. No matter how Mr. Brooker wants to parse the language, 699 was blocked because of the silt fence?

A. It was blocked because of the silt fence.

Q. You don't remember who installed the silt fence but --

A. Just --

Q. -- you're not --

A. Just the one piece.

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Q. Just the one piece.

But you don't know who installed it. It could have been your subcontractor, it could not have been your subcontractor, you just don't know?

A. I don't know who installed it.

MR. BYBEE: Thank you.

THE COURT: All right. Thank you very much. You can return to your place in the courtroom.

[Whereupon, Mr. Hough is excused and exits the witness stand]

THE COURT: Any other witnesses, Mr. Brooker?

MR. BROOKER: None, Your Honor. The defense will rest on the take position.

THE COURT: Anything in reply?

MR. BYBEE: No, sir, not on the take position.

THE COURT: Members of the jury panel, I need you to go to the jury room, please.

[Whereupon, the jury exits the courtroom at 4:15 p.m.]

THE COURT: All right. Do you want to make a statement? I'll be glad to hear statements or positions, if you want to state your position. If you want to. Anything you want to tell me at this point?

MR. BYBEE: Your Honor, I believe that we've met our burden of proof with respect to establishing a

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temporary taking and I believe that the evidence is overwhelming with respect to that. And any issue of law that opposing counsel wants to make in the form of a motion or whatever, I'm ready to respond to.

THE COURT: As I understand it, where we are now is I have to make a decision about whether I think there's been a taking under the constitution or under the laws of this state that would entitle to -- entitle the plaintiff to some money from the defendant for a taking that I've heard about during the course of this two days of testimony; right?

MR. BYBEE: Yes, sir. And --

THE COURT: And the two issues are, one, it has to do with the blocking or lack of access to 699 and the other has to do with the median in the road?

MR. BYBEE: That's correct. It's a two-step process, as far as -- before I get to the median, I've got to establish a temporary taking --

THE COURT: Okay. I thought you --

MR. BYBEE: -- and the --

THE COURT: I thought you were -- I thought you were alleging that the median was a taking.

MR. BYBEE: That the median's installation, after I've established -- and if I've established the taking --

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THE COURT: See, that's where you and I differ. I don't --

MR. BYBEE: I understand that. And I'm just trying to put it clearly in the record what I'm articulating to you.

THE COURT: Okay.

MR. BYBEE: So let me start from the beginning.

The imminent domain act defines property to include more than just land. It includes rights such as an easement, such as incorporeal easements. The case law in this state includes the right of access and easement of access, abutter's easement of access, and then an access easement to get to the general road system. Case law establishes that and the statutory law establishes that. In fact, I would cite to the Court 57-5-1010. And there's an entire --

THE COURT: What does that say?

MR. BYBEE: There's a couple of paragraphs, Judge, that I think are very pertinent. Your Honor, I'm going to refer to section 57-5-1100 first. It's titled changing or closing existing private driveways or side-road entrances or exits that provide another access to the highway. [Reading] Any such existing driveway or side-road entrance or exit constructed prior to February 16th, 1956, and adjudged by the

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Department to be unsafe to the traveling public, may be changed by the Department so as to eliminate any unsafe features or closed or displaced by substitution thereof of another driveway or side-road entrance or exit at such place or of such design as may be deemed safe but no such existing side road or a driveway may be closed unless other reasonable access to the highway is provided by a frontage road or otherwise.

Very specific. And we've got evidence in this record that this road was originally built in 1954, 1955. We have documented evidence with respect to the driveways, going forward, of houses being on those plans, and the driveways, in a series of documents were introduced through Mr. Phinney.

So this -- the evidence by a preponderance has shown that -- that implicates this particular section. And specifically they are --

THE COURT: Well, let me cut -- let me cut through you. I'm prepared to find by a preponderance of the evidence that there was a taking, under the constitution and under the laws of this state, access to Folly Road by blocking the driveway.

MR. BYBEE: Fine, sir.

Then the next issue that I need to speak about is the duration of that access blockage.

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THE COURT: All right. And I'm prepared to find that it was for sixteen months --

MR. BYBEE: And I have --

THE COURT: -- months, November of '08 through February '10.

MR. BYBEE: I have no quarrel with that calculation.

THE COURT: Okay.

MR. BYBEE: So I've now established, by affirmative act, blocking of the driveway, a taking, in violation of the constitutions, both the United States and the State, and these statutes and I have met my burden of proof as far as a temporary taking.

THE COURT: That's my feeling. That's my conclusion.

MR. BYBEE: Very good, Your Honor.

Now, the second part, where I know you and I differ. But let me put it on the record so it's clear.

THE COURT: Okay.

MR. BYBEE: Now that I've established the take, temporary even though it is, I then look to the imminent domain law, the general statutes of the state, with respect to compensation arising from all consequences of the project. I look to the code

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section, which tells me -- and you've charged it many times, that the -- it's not just the value of the land that's to be paid for. In other words, it's not just the value of the timber in take that is to be paid for, but it is all damages to the remainder.

And in the Bolt case, and the other cases -- and the Wilson case, all have established that in median damages, you can establish they are an incidental part of this project, that you're entitled to collect for those damages in the form of damages to the remainder.

And the testimony in this case is that this median was an incidental part of this project. It is an afterthought. And it was created, by virtue of that evidence, only because of sight-distance problems created with respect to the location of the bridge. That's the reason that I am proffering, when I get to the damage phase, that testimony.

THE COURT: Well, I don't see it quite that way and all, so --

My ruling is, as far as the taking --

MR. BROOKER: Well, Your Honor, do I get to --

THE COURT: If you want to say something, I'll be glad to hear from you.

And I don't agree with him in regard to the last things that he's talking about.

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MR. BROOKER: Well, I understand I'm not going to dissuade you at this point, Your Honor. But we do disagree on the -- many of the statements --

THE COURT: Okay.

MR. BROOKER: -- involving mister -- Mr. Bybee stated.

It's not whether there is a temporary taking. The question before the Court is whether the temporary interference was one property -- one of the plaintiff's property rights -- sort of -- the bulk -- the property constitutes a taking of the property.

And our complaint here is that even for one year or three years, a denial of sometimes and some days and sometimes, denial of access is not a taking of the property, that Mr. Frampton still owns the same property he owned as before -- is more valuable here under the Tahoe Sierra case, the Supreme Court of the United States ruled that temporary taking should -- findings of temporary takings should be rare because after the project is over, the project -- the full value returns. And that was regarding a three-year moratorium, Your Honor. We've only got sixteen months, at tops, here.

All property rights or other access, or whatever, have to yield to the police power from time

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to time. When you buy property, you buy it subject to the State's police power. One of the most important ones of those is to repair roads, Your Honor. If you have access to a road, you have to expect that it has to be repaired at taxpayers' expense from time to time and you're going to be inconvenienced. And your property right does not include the right to access it at all times, not during when this has to be reconstructed.

Now, 57-5-1110, when we take somebody's access, we have to give them a substitute access. That's what we did here. We moved the driveway over a little bit. But remember that it was one parcel to begin with. They actually subdivided it behind the guardrail and that's what that -- that issue came up.

Now, finally, Mr. Bybee's exposition of the case law, the Wilford -- Wilson [phonetic] case is -- the Bolt case, when all consequences of the projects are recoverable, once a taking has been found, is simply incorrect. It's the value of the land taken, plus all consequences -- consequential damages to the remaining land resulting from the taking. There may be many police power acts that devalue your property in a -- and a project may be put on the side of the road but -- or something like that, which is not

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compensable, not recoverable.

THE COURT: Well, like I say, I don't -- I don't think -- I'll agree with him. I don't think you can piggyback the median on the blocking of the driveway.

MR. BROOKER: Thank you.

THE COURT: That's the way I see it, in plain everyday language or whatever.

MR. BROOKER: Well, Your Honor --

THE COURT: I don't see you could piggyback it that way and I don't think the median by -- in and of itself is a taking.

MR. BROOKER: Even given the full sixteen months that you found, Your Honor, we don't think sixteen months constitutes a taking of property. We were prevented from putting in these tax assessments, which were level, went up after the project. So --

THE COURT: I agree with you, except I think that sixteen months -- blocking the driveway for sixteen months does constitute a taking for which he's due compensation.

That's my ruling, is that -- I find as a fact, by a preponderance of the evidence, that the drive to 699, the access to 699, was blocked by the actions of DOT for sixteen months. And in my opinion, and going on further, he's entitled to $690 a month rent that he

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lost for all those sixteen months. If my math is correct, that's $15,200. That's all he's entitled.

MR. BYBEE: Your Honor, that part of the ruling, we of course are going to proffer our own evidence --

THE COURT: Okay.

MR. BYBEE: -- as to --

THE COURT: Okay.

MR. BYBEE: -- as to damages.

THE COURT: I hope -- I was hoping that some of this would bring some --

MR. BYBEE: I would love to hear it, too --

THE COURT: -- merging ideas out there and decide to go -- decide to go home. But, anyway --

MR. BYBEE: I'm listening. I'm all ears, Judge --

THE COURT: All right. But anyway, so if you're going to put up stuff -- you know, I don't -- how are you going to proceed? What are you -- what are you going to put up now, as far as proof is concerned, in regard to damages as far as the way I've just ruled?

MR. BYBEE: I'm going to call an expert real estate appraiser, Mr. Hartnett, to establish the value of the property. Fair market value, not the rental contract rent. He will explain that process, how he arrived at the fair market value. He will then -- he

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will tell you his estimate of value over the period of sixteen months.

And that calculation and that testimony I am entitled to enter in front of the jury. The jury has the right to make those determinations. Those are fact-finding --

THE COURT: Well, it will be interesting. Okay.

MR. BYBEE: And Mr. Brooker can cross him to his delight.

And we also would call --

THE COURT: Well, what you're saying that -- you're saying that for the period of time of sixteen months, that somehow he lost more than what he would have got from the rent?

MR. BYBEE: Yes, sir. Because it's a standard measure of -- first of all, I'm going to proffer evidence that the contract rent was not fair market rent. Fair market rent is what you do in imminent domain cases. You estimate just compensation. And I think your charge --

THE COURT: That he's entitled to get what he should have been getting --

MR. BYBEE: No, sir.

THE COURT: -- when he was renting it?

MR. BYBEE: No, sir. He -- we're going to ask

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exactly what he should have been getting, that the problem is the difference between contract rent and fair market rent. Mr. Hartnett will testify --

THE COURT: He was renting it for too little, is what you're saying?

MR. BYBEE: Yes, sir. That's what Mr. Hartnett's opinion is.

And that's the way that you try condemnation cases. You estimate based on comparable sales. He's going to do that. He's going to provide that income stream and that rental value for the sixteen-month period that you just ruled on. And his estimate will be slightly higher than yours.

But I'm entitled to put that evidence in front of this jury. That's the just compensation phase of this case.

I also have a few incidental expenses from Mr. Frampton himself.

That would be my case for just compensation.

MR. BROOKER: Your Honor, perhaps I have a way to shortcut this.

THE COURT: Good.

MR. BROOKER: Well, Your Honor could rule under the Bolt case that income is not property and therefore it's not recoverable in imminent domain. An

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inverse condemnation case --

THE COURT: I'm not going to -- I'm not going to rule that.

MR. BROOKER: Excuse me?

THE COURT: I'm not going to rule that.

MR. BROOKER: The just compensation in an inverse condemnation case is the diminution in value of the property, Your Honor.

THE COURT: Well, it is -- it is -- I understand that.

But I think one value of the diminution would be what you didn't get in rent that you should have gotten. So that's the diminution in value, as far as I'm concerned.

All right. So what I need -- at this point I can tell the jury that there has been a taking and the only issue for them to decide is how much he lost as a result of the taking.

MR. BYBEE: That would be correct, Your Honor. And under -- well, if you charge them as to the duration, they don't have that fact --

THE COURT: Sixteen months.

MR. BYBEE: Right.

THE COURT: So I guess that's what I'm going to tell them.

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MR. BROOKER: Well, Your Honor, I mean, we know what the rent was for sixteen months so -- we know what the rent was for sixteen months, so why do you have to do this?

THE COURT: That's what I thought. But, anyway, that's not what he thinks, and so I'm going to give him a chance to put it in the record.

Bring the -- well, at this point, I would say let's start that tomorrow morning.

MR. BYBEE: Yes, sir.

THE COURT: Let's start that tomorrow morning.

Sorry you've been sitting back there all day but, you know, it's almost five o'clock and I want to get the jury out of here before the traffic gets too heavy on Folly Road.

And by the way, I've got something that I've got to do tomorrow morning at nine o'clock and so I will not be able to start this until ten o'clock. So I apologize for that. But I will not be able to start tomorrow until ten o'clock.

Bring the jury back in.

[Off the record momentarily]

[Whereupon, the jury enters the courtroom at 4:31 p.m.]

THE COURT: All right. We have the jury back

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with us.

All right. I think this is a good time for us to take our evening break, evening recess and all, so we're going to stop now and I'll get you out of here ahead of the evening rush-hour traffic, hopefully, and get you home safe and sound.

I would ask that you be back with us tomorrow morning at ten o'clock. I can't start -- I've got something else I've got to do early tomorrow morning and I will not be able to start back on the trial of this case until ten o'clock. So be back in the jury room tomorrow morning by ten o'clock.

Again, I tell you do not discuss the case with family, friends, or anyone else. Remember my instruction to you about that. Blame it on me.

I'll see you tomorrow morning at ten o'clock. Remember, we can't get started until everybody is here. Ten o'clock.

[Whereupon, the jury exits the courtroom at 4:32 p.m.]

THE COURT: We'll wait a few minutes to let the jury get out.

[JURY TRIAL ADJOURNS AT 4:34 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Thomas L. Hughston, Jr., on Tuesday, February 7, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 3rd day of September, 2012.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2009-CP-10-6185

HENRY W. FRAMPTON, III, and DALE FRAMPTON,

PLAINTIFFS,

VS.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,

DEFENDANT.

JURY TRIAL

VOLUME 3 OF 3

held before the Honorable Thomas L. Hughston

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on Wednesday, February 8, 2012, Commencing at 10:03 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

THE COURT: Anything before we bring the jury in?

MR. BYBEE: Yes, Your Honor. I have one procedural matter I would like to raise.

THE COURT: All right.

MR. BYBEE: When we make our presentation on damages, there is some conflicting case law, as I view the cases, as to statutory interest.

THE COURT: Statutory interest?

MR. BYBEE: Yes, sir. It's prejudgement interest on the verdict. And there's an older case, called Vick, which said in the setting of an inverse condemnation case you would put in the evidence of the interest to the jury. Thereafter, the Cobb decision came forward and said we look to the Imminent Domain Procedures Act on procedures.

I'm prepared to do it either way, but I don't want to get mouse-trapped again and so I think the better --

THE COURT: Again? I didn't know you had been mouse-trapped.

MR. BYBEE: I'm not trying not to -- I'm trying to avoid getting mouse-trapped. I'm not accusing anybody of mouse-trapping.

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THE COURT: Okay. I don't know. Have you got a position on that?

MR. BROOKER: Yeah. I don't really know that the law is that simple, Your Honor. But we would argue that Vick still applies because the imminent domain --

THE COURT: And what -- and Vick says? I'm not familiar with either one of those, so you'll have to tell me.

MR. BYBEE: I have a memorandum, Your Honor.

[Whereupon, Mr. Bybee proffers documents to the Court]

MR. BROOKER: The interest is part of the -- part of the judgment, how much he actually lost.

THE COURT: So you're saying that you think that he has to prove -- introduce evidence of the interest and ask the jury to do the math and add the interest into the verdict?

MR. BROOKER: Yes, Your Honor, the loss -- the cost of his loss of use of that money.

THE COURT: I'm sorry?

MR. BROOKER: His cost of the loss of the use of that money.

THE COURT: Okay.

MR. BYBEE: And my position is is since Cobb

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came down, that we look to what the general assembly says about interest and that is the governing feature of --

THE COURT: What does -- what does the general assembly say about it?

MR. BYBEE: Rate of interest according to the Imminent Domain Procedures Act is eight percent from the time of the taking until the verdict. And that's --

THE COURT: You're going to do the math on all that each month?

MR. BYBEE: I'll have to get somebody to calculate that amount, yes, sir. I'll proffer that as evidence, if he's not --

Well, I believe that I can just rely on the Court as you would in a normal imminent domain case. And in a normal imminent domain case, you get the verdict and then the Court applies the statutory rate of interest, as well as whatever post-litigation expenses you're entitled to.

THE COURT: Let me read your memo.

MR. BYBEE: Sure.

[Whereupon, the Court reviews documents]

THE COURT: Well, I think it's simpler for the Court to add the interest.

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MR. BYBEE: I agree, Your Honor.

But Mr. Brooker is going to object and claim that I waived it. I'm going to have to offer it, and then you can handle it as you wish.

Here's a copy of the code section, as far as the interest is concerned.

[Whereupon, Mr. Bybee proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Well, of course, a lot of it doesn't speak to exactly this situation.

MR. BYBEE: No, sir. That's the confusion.

[Whereupon, the Court reviews documents]

THE COURT: Mr. Brooker --

MR. BROOKER: Your Honor, under a normal condemnation case you would identify the date of the take, which is the service of the condemnation notice on the landowner.

Here the date of the take is a running thing so I don't know if you apply -- you know, take the $950 of rent he would have gotten in August of 2008 from that at a market interest, which is a lot lower than eight percent, Your Honor, so --

MR. BYBEE: Your Honor, what --

THE COURT: Let him finish.

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MR. BYBEE: Excuse me.

THE COURT: Anything else?

MR. BROOKER: No. I think I'm finished.

THE COURT: Okay. I'm sorry.

MR. BYBEE: I'm not trying to claim the interest from the beginning of the period. We'll stop at the end of the sixteen-month period, that you're going to tell this jury about, and then move forward from there.

THE COURT: All right. So the only question is -- I mean, asking -- you know, one way of looking at it would be to add whatever interest rate is applicable. When the November '08 rent was lost, or whatever was lost, you add -- you know, you do interest on that and you've got a total and you -- and add 950 and then do interest on that, and got a total, and then --

MR. BYBEE: That's the compounding problem. The case law with respect to the statutory interest is simple interest, not a compound, at least on an annual basis. So the computation I think can be simpler: my offer of proof.

But we would contend that we were entitled to the statutory rate that is reflected in the code and as referred to in the Cobb decision. You have to

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treat the inverse cases equally according to Cobb. And here the general assembly has spoken. This is what the landowner is entitled to.

And just because they have avoided filing a formal notice of condemnation doesn't mean they avoided the statutory rate of interest.

THE COURT: You don't -- either one -- you don't -- either one of you have the Vick case?

MR. BYBEE: We have a copy. Is that what you want, Judge?

THE COURT: Well, if you've got a copy, let me --

MR. BYBEE: Yes, sir.

THE COURT: -- let me see what it says.

[Whereupon, Mr. Bybee proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: All right. So you -- are you prepared, then, Mr. Bybee, to present the -- present interest, the issue of interest, to the jury and ask them to calculate it --

MR. BYBEE: Yes. I'm going to --

THE COURT: -- and award it?

MR. BYBEE: I'm going to have my appraiser --

THE COURT: Do that?

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MR. BYBEE: -- do that calculation and put it into evidence.

THE COURT: As it relates to $950? Or some other amount?

MR. BYBEE: Well, I'm going to do it a little simpler.

THE COURT: Or both?

MR. BYBEE: I'm going to do it on a number, on an annual basis, running from the end of the taking period -- as you're about to direct -- until the verdict, which is presumably today or tomorrow.

And my only point is -- and what this case was -- Court of Appeals case back in 2001, it did not have, at the time of its analysis, the Cobb case and so the distinction that they made with respect to the difference between the common law inverse case and the direct condemnation case has now been further clarified.

Cobb clearly says not only are you entitled to a jury trial in an inverse condemnation case or unjust compensation, but you are also entitled to the other aspects of the imminent domain code.

And that's why I think it's a simpler and better procedure to have the Court deal with it after the verdict is rendered.

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If you'll notice, the statute allows them twenty days to pay money in to the Court before the interest is to arise. In an inverse situation, it's not clear whether that twenty-day grace period is there, so there's a little bit of problem with that computation.

But my whole point to you is this prior decision has been, I believe, modified by Cobb to some degree. And the --

THE COURT: To speak to this particular issue. But the general language --

MR. BYBEE: Yeah. The general language would suggest that you get the jury trial and you get the other advantages that are in play in the imminent domain code.

[Whereupon, the Court reviews documents]

THE COURT: Well, of course we could avoid this issue, as far as the jury is concerned, by y'all agreeing --

MR. BYBEE: That is correct.

THE COURT: -- to let me do it.

MR. BROOKER: There's a lot -- a lot of difference between the eight-percent statutory interest and the quarter percent or so you get at a bank, Your Honor.

THE COURT: Well, I agree with that.

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And that's what I'm saying. Let me decide the whole thing. You know, I don't -- like I say, I don't see that the eight percent directly applies, you know. I mean, the statute setting out the eight-percent, that's in regular condemnation actions and the distinction can be drawn from that, I think, and all. And, you know, so --

MR. BYBEE: We would proffer the eight percent as the appropriate amount under Cobb and the statute, Your Honor.

[Whereupon, the Court reviews documents]

[Whereupon, Mr. Bybee and Mr. McDonald confer]

MR. BYBEE: My associate points out that my twenty-day problem was probably a misstatement, so I'll retract that point.

THE COURT: Well, I'm not worried about that right now.

MR. BYBEE: I understand. Here's I think the critical point.

THE COURT: I'm sorry?

MR. BYBEE: Here's the critical issue. At page 9 it allows, one, the Court -- and this is prior to Cobb -- to either do market rate or statutory legal rate if that is what is required to compensate plaintiff fully.

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It is our position to compensate the plaintiff fully, you look to the statutory rate. I can do the computation, we can put it in through the appraiser, we could submit it to the jury, and we will do so absent an agreement to handle it in a different fashion. That's my intention.

MR. BROOKER: Well, Your Honor, I must say I don't necessarily have any disagreement with that. If he wants to argue to the jury that Mr. Frampton could have earned eight percent on his money since 2010, fine. We all know what the bank rate is.

THE COURT: All right. Well, why don't we just proceed. You present what evidence you want to present, including the issue of interest, and we'll see where we wind up.

MR. BYBEE: Thank you, sir.

THE COURT: All right. Bring the jury in.

MR. BROOKER: Your Honor, I do have a --

THE COURT: Excuse me.

MR. BROOKER: I do have a procedural --

THE COURT: All right. Go ahead.

MR. BROOKER: The way I understand preservation issue, preservation for appeal, Your Honor, because this is a -- one ruling by the Court on a taking and then a compensation phase, that if I proceed to the

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compensation phase without serving a notice of appeal, that I've waived my right to appeal that judgment.

So I'm just going to do that at this time, hand the notice of appeal to the clerk and serve it on Mr. Bybee.

THE COURT: All right.

MR. BROOKER: Secondly, Your Honor, because I'm kind of homeless down here, I didn't have any way to get mail or fax so my secretary faxed some jury charges to your chambers. I hope that's okay.

THE COURT: I haven't gotten them yet. But, anyway --

MR. BROOKER: Thank you.

THE COURT: I'll check about that as soon as I can.

[Off the record momentarily]

THE COURT: All right. Bring the jury in.

MR. BYBEE: Your Honor, you're going to talk to them --

THE COURT: I'm going to explain it to them.

MR. BYBEE: You're going to explain your taking ruling?

THE COURT: [No response]

[Whereupon, the jury enters the courtroom at 10:24 a.m.]

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THE COURT: All right. We have the jury with us.

I apologize for keeping you back there for about twenty-five or thirty minutes. I appreciate you being on time. I was here at ten o'clock but I had some other matters that I had to deal with, with the attorneys and so forth, before I could bring you out here.

I need to explain something to you at this point, as far as this -- that relates to this case. This is an unusual and interesting case from a lot of standpoints. I first learned about the idea of what's called inverse condemnation when I was in law school, as you know a long time ago and all, and found it a very interesting idea at that point and still do. There are not very many cases like this that come along, although there are more -- there seem to be more in the recent years than there were before, one reason being because we've got more people and more things are going on and we're having more cases, just like we're having more wreck cases and we're having more contract disputes and we're having more litigation of all types, because we've got more people and more activity and people are bumping into each other and -- literally and figuratively, in many more

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ways than they used to.

And this is -- as I said, this is what's called an inverse condemnation case. Everybody knows -- I think everybody would know that the government and certain quasi government organizations such as public utilities and so forth have the right -- or have what's called a right of condemnation or they have the right to exercise what is called imminent domain powers, take somebody's land for a public purpose. And when you do that, the requirement is that you pay just compensation. There's no question that the government, there's no question that power companies and so forth and all, pipeline companies and so forth, have under the constitution and under the laws the right to take someone's land even if you or I don't want to give it to them. We're not going to give it to them. But they have to pay us just compensation when they take it.

Well, in this case, of course, the Department of Transportation has not actually taken any portion of -- physically -- you know, he had so much land there before any of this went on but -- and he still has that same amount of land. But the law does recognize what is called inverse condemnation, and that is where the government does something -- in this

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case, the Department of Transportation -- you've heard about this road rebuilding, bridge rebuilding, project. And through their actions, the claim is that they took his right of access and ingress and -- excuse me -- ingress and egress to the piece of property, 699, that we've been hearing about.

And the law, in regard to that claim, provides that I, as the judge, have to make a decision about whether or not that did amount to a taking under the constitution and code of laws of South Carolina. So at this point, I have decided that there was a taking of his right to get in and out from that property to the public road.

He had a right, no question about it, under the law. In my opinion, no question about it, he had a right of ingress and egress to his property to that public road. And in my opinion, by a greater weight or preponderance of the evidence, he has proven his claim that the Department of Transportation denied him that right, denied him his access to the public road for the period of time November of 2008 through February of 2010, that that was a substantial depravation, a substantial taking, of his right and that it occurred for that period of time. So you don't have to worry about that.

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We've also heard a little bit of testimony about a claim that he made as far as the median is concerned. And he claimed that putting that median in the road out there also was a taking. I've decided that he has not proven that by a preponderance or greater weight of the evidence, so that claim is gone.

You don't have to worry about anything as far as the claim that he made about the median that's in the road out there. That's gone. That's no longer a part of this case. The only taking was in regard to his access to the road from his property, access from the road in, access from his property back out onto the road. The question remains how much did he lose in terms of money because of that. That's what you have to decide at this point in the trial.

So from here on, we're going to be hearing about how much money he lost in one way or another as a result of this taking that I have decided under the law did occur. The law requires me to make that decision. I've made that decision, they know about it, now you know about it, and now we're going to hear about the money.

I used to -- I'll stop at this point and say I used to oftentimes have conversations with my clients back when I was practicing law and when I would be --

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when I would be talking to them about their case and how it was going to proceed and what we were going to do at trial and so forth and so on and everything. And oftentimes, there would be -- you know, there would be emotions involved, and hurt feelings and so forth and so on and everything, and I would tell my clients, well, the jury is not going to come back and say, we feel sorry for you. They're going to come back and they're going to say, you're entitled to this many dollars.

That's what the bottom line is in a civil case practically all the time. It's not who did good, right, do what was right or wrong in terms of you know what went on out there, who got hurt feelings or who didn't get hurt feelings or how they conducted themselves or whatever. That's not what a case like this is about.

The bottom line is how much money should the Department of Transportation pay to Mr. Frampton for denying him his right of access in and out to that property for the sixteen months that I'm talking about -- that we're talking about. So that's what your focus is going to be. That's the question that you're going to answer: how much money should DOT have to pay to him to make him whole, to give him just

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compensation for what went on out there.

All right. Call your next witness.

MR. BYBEE: We call Hal Frampton.

[Whereupon, Mr. Frampton comes forward]

THE COURT: You've been sworn. You're still under oath.

THE WITNESS: Yes, sir.

[Whereupon, Mr. Frampton re-takes the witness stand]

- - - - -

HENRY FRAMPTON,

Having Been Previously Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BYBEE:

Q. Mr. Frampton, you've engaged Mr. Hartnett to give an estimate for the temporary taking period; is that not correct?

A. That's true. Yes, sir.

Q. The question I want to direct, then, to you: when you had a tenant situation, any tenant situation, who paid for the utilities while the property was being rented?

A. Tenant --

Q. And the utilities I'm talking about are water

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and electricity.

A. Tenant pays for water and electricity.

Q. And when you prepared the -- excuse me. There was testimony about how you had to restore and relocate the driveway.

A. Yes, sir.

Q. And did you undertake an expense in order to prepare that area for that asphalt surface?

A. I had a contractor come in, Jerry Poore Landscape, and the area around where the asphalt was to be poured was excavated and then tamped and prepared and drains were put in the property so that when the sidewalk -- the new asphalt was put in, it would all tie back in.

That driveway had been moved over sixteen feet from where the original driveway was and that had to be connected to the walks that went around the house, so I had Jerry Poore's Landscaping come in and do that work.

Q. All right. I'm going to show you what's been marked as Plaintiff's Exhibit 21. And that's the invoice reflecting the work at 699 that was related to the driveway relocation; is that correct?

A. That's correct.

MR. BYBEE: Now, move that into evidence, Your Honor.

THE COURT: Any objection?

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MR. BROOKER: No objection, Your Honor.

[Whereupon, Plaintiff's Exhibit Number 21 is admitted into evidence by the Court]

Q. [Mr. Bybee] All right. Let's move through it just very briefly, Mr. Frampton.

MR. BYBEE: I'm not going to turn this light on again.

Q. [Mr. Bybee] Let's just run through it. You told us that you had to --

THE COURT: Have you given it to the court reporter to mark?

MR. BYBEE: Excuse me.

THE COURT REPORTER: What number?

MR. BYBEE: 21.

THE COURT REPORTER: Is it already marked?

MR. BYBEE: Yes, it's already marked. You're good?

Q. [Mr. Bybee] When you told us that you had to tamp down the property, what did you mean tamp it down?

A. They had to make the -- take out the top soil and put in some fill that would be -- that could be packed so it would be a permanent part of the driveway when they put the asphalt in.

Q. Okay. And then you also said you had to do something with respect to drainage. Would you describe

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that for us?

A. Right.

As we saw from the photographs yesterday, the water comes in that driveway, rushes to the back and we basically put in a wooden retainer across the back, with channels cut in it, so that the water which came down the driveway would have somewhere to go.

Q. And is that work reflected on this invoice?

A. It is.

Q. All right. And was there anything else of significance -- what's the total amount of this invoice, please, sir?

A. $3,589.62.

Q. Okay. And when he was tamping down the area that was to receive the asphalt on your side of the property, what kind of equipment was he using?

A. He had -- you would sometime just see him on the side of the road. The guys that are holding those gasoline [phonetic] machines and they vibrate up and down packing the -- packing the dirt.

Q. Now, in addition to that work, you had Mr. Poore perform other work which you are not claiming as a result of this taking; is that correct?

A. That's correct.

Q. You paid it all in one invoice, though, did you

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not?

A. Yes, sir.

Q. And a portion of the total invoice included the erection of the fence panels that you've testified about; is that correct?

A. Yes, sir.

Q. I'm now going to hand you Exhibit 22 and ask you if that reflects the entire invoice and a break-out of the fence panels.

A. Yes, sir, it does.

MR. BYBEE: Move it into evidence, Your Honor.

THE COURT: Any objection?

MR. BROOKER: No objection, Your Honor.

[Whereupon, Plaintiff's Exhibit Number 22 is admitted into evidence by the Court]

Q. [Mr. Bybee] So the amount of money spent on installing the fence panels so that they were in between the new guardrail and your house --

A. Right.

Q. -- how much was that?

A. $245.63.

Q. All right. Now, the remainder of this invoice, all of the landscaping, you're not claiming; correct?

A. No, sir.

Q. This invoice totals $6,346.95?

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A. That's correct.

Q. And you paid all that to Mr. Pooler --

A. Yes, sir.

Q. -- already; is that correct?

A. Yes, sir.

Q. And I want to go back -- did I understand that the tenant was responsible for the utilities?

A. That's correct.

Q. Now, when the tenant was no longer there, did you incur utility expense? Electric and water?

A. That's correct.

Q. Why did you leave that on?

A. Well, if you don't have power and water in a house for any length of time, you're going to cause more damage to the house than if you do.

I mean, that's my business, is real estate, and I always tell anybody that's going to be leaving the house, be leaving the property vacant or -- for a period of time, leave your thermostat set at sixty, don't leave it below that, it causes a lot of problems with your walls and cracks and things like that. And also with the water, it's important to make sure that you take care of that during the time that nobody's there so that you don't have a problem getting it turned back on.

Q. Okay. Now, I'm going to show you what's marked

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as Plaintiff's Exhibit 20. It's a multi-page document. It's a summary of the amount of money you spent from November of '08 to February of 2010 for the specific utilities -- the water and the electric and gas bill.

A. Yes, sir.

Q. And that summary totals how much?

A. $950.54.

Q. And attached to the summary are the cancelled checks or the electronic transfers

A. That's correct.

Q. Is that not correct?

A. Yes, sir.

MR. BYBEE: Moving into evidence, Your Honor.

MR. BROOKER: I would like to see it.

[Whereupon, Mr. Brooker reviews docs]

MR. BROOKER: I don't have an objection, Your Honor.

THE COURT: All right. Thank you.

[Whereupon, Plaintiff's Exhibit Number 20 is admitted into evidence by the Court]

Q. [Mr. Bybee] Now, so we have those costs. They are what they are. And then your claim includes whatever Mr. Hartnett estimants -- estimates for your loss during the period itself; is that correct?

A. That's correct.

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MR. BYBEE: No further questions, Judge.

CROSS-EXAMINATION

BY MR. BROOKER:

Q. Mr. Frampton, in your testimony yesterday and the day before, we pretty much went over the fact that you and Mr. Phinney, during this time, were negotiating where this driveway parking area would go; is that correct?

A. No, sir, that's not correct.

We didn't have any conversations of where the driveway was going to go, after 2005, until he came back and said they were going to shorten the guardrail and then they were going to put it in.

Q. And then somehow you made a deal with the Department to pave this parking area on --

A. No, sir, I didn't make any deal.

Mr. Phinney -- that was all on Mr. Phinney. I didn't ask for anything. That's what he gave as part of opening up the driveway. That was not -- I didn't ask for him to pave that driveway. Mr. Phinney voluntarily did that.

Q. Right. But you let them in.

A. Well, certainly I let them in.

Q. You let them enter.

A. Yes, sir.

Q. And you -- and you now have a paved driveway

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and --

A. I have a driveway that's appealable now.

Q. And wouldn't you call that a valuable consideration for the expenses you went to on this fencing and the tie-in and all of that?

A. Not necessarily.

Q. Now, the utilities that were left on during the period that the house was vacant: wasn't part of the reason for that, that you were doing these renovations?

A. No, sir, it had nothing to do with the renovations.

This was -- this was after Mr. Berkey left, I transferred those things to my name, is what you should always do. If you own a piece of property and a tenant moves out, you should immediately get with the SCE&G and the water department, have them put in your name. If you don't, you may have a chance that you don't get them turned back on without inspections, et cetera, et cetera.

So that had nothing to do with it.

Q. But you had the contractors come in there doing extensive renovations and you're saying that --

A. The contractors didn't come in there --

Q. -- they had no electricity?

A. -- until late December of 2009 and early 2010.

Q. And they used water and electricity, didn't

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they?

A. I wouldn't say they used any water. They might have used a little bit of electricity.

As you see from these bills, that's not a whole lot of electricity for fifteen months.

Q. But you had painters in there. Don't they use water?

A. No, not necessarily.

They might use a little bit of a clamp-on light -- that's basically what we used -- to light the house with. So there was a sixty, maybe a hundred-watt bulb in the house.

Q. But latex paint, you've got to clean brushes, don't you?

A. Well, yeah. Could have used a couple of gallons of water.

Q. It was necessary to have -- for them to have running water?

A. No, it wasn't necessary.

I owned the two properties next door. We could have run an electric cord over there if we needed to. We could bring a bucket of water over there if we needed to. I mean, that wasn't why they were left on. They were left on to minimize the damages that we didn't have any access to the property.

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If we had turned that off, today I would be trying to get you to help me fix the house and you would tell me you didn't want to.

So I'm trying to minimize the amount of damages done.

When Mr. Phinney came in 2005, told me the driveway was permanently closed, I didn't know I would ever get that house back. But it was still my duty to take care of the property and that's what I was doing was taking care of the property.

Q. But electricity and running water were useful and used for the renovations?

A. That's correct.

MR. BROOKER: Okay. That's all I have. Thank you.

THE COURT: Thank you very much.

[Whereupon, Mr. Frampton is excused and exits the witness stand]

THE COURT: Next witness.

MR. BYBEE: Call Tommy Hartnett.

THE COURT: I think he called you, Mr. Hartnett.

MR. HARTNETT: I'm sorry.

[Whereupon, Mr. Hartnett comes forward]

[Whereupon, Mr. Hartnett is duly sworn by the clerk of court as follows: do you swear or affirm

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that your testimony will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: I do, sir.

THE CLERK OF COURT: Be seated.

THE WITNESS: Thank you.

[Whereupon, Mr. Hartnett takes the witness stand]

THE CLERK OF COURT: If you will state your full name and then spell your last name for the record.

THE WITNESS: My name is Thomas F. Hartnett. H-A-R-T-N-E-T-T

- - - - -

THOMAS F. HARTNETT,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BYBEE:

Q. Tell us a little bit about your background, Mr. Hartnett. Where were you born?

A. I was born in Charleston a long, long time ago.

Q. Where did you go to school?

A. I went to -- I actually went to the Catholic schools. I finished Bishop England High School and then I attended the College of Charleston.

Q. And what business are you in?

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A. I'm a real estate appraiser and a real estate broker and my company is called Hartnett Realty Company, which was founded by my mother and father in 1947. I like to get a little commercial in. I'm still there. And my son is now, so we have the third generation of the family in the business. But my business is the Hartnett Realty Company.

Q. And how long have -- where is your business located?

A. At 134 Meeting Street. It's across Meeting Street, about a block from here.

Q. And how long have you been in control of the business? How long have you been operating the business?

A. My dad died in 1973 and my mom in '78, so I would say since about 1978.

Q. Do you have other business experience? For example, banking?

A. Yes, sir, I do.

Q. Would you tell me about your banking experience.

A. A group of us started a little bank, called the Harbor National Bank, five years ago in February. This month, five years ago. I am chairman of the board of that bank. It's a very small bank, but it's doing very well.

We have an office on Meeting Street, we have one over on Old Town Road near Charlestown Landing, and we

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have one over on the Hughston North Cut. We hope to open a fourth branch on James Island this year.

It's a small bank. It's about a 270-million-dollar bank. There's nine members of the board. All of us kind of got together and started that bank. And so I am chairman of the board of Harbor National Bank.

Q. Do you serve on any committees in that bank?

A. I do, sir.

Q. Tell me the committees that you serve on.

A. I serve on the audit committee, I serve on the loan committee, I serve on the executive committee, and I serve on what we call the special assets committee where we deal with any troubled loans that we might have. So I'm actually on four committees.

Q. All right. I'm going to switch gears back to your appraisal practice for just a second.

A. Yes, sir.

Q. Is it a fair statement to say that a condemnation appraisal is different than any other kind of an appraisal?

A. Yes, sir, it is.

Q. And would you explain to us why that is?

A. Well, most of the time when an appraisal of a piece of property is needed, it's needed either to get a loan for estate planning -- maybe someone died and left

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the property to their family and they need to know what it's worth -- so you generally just put one value on a piece of property.

In condemnation, you put a value on the property as if there were no condemnation, what we call the before value, before the condemning authority did to the property whatever they did to the property. And then we have to appraise the property after the condemning authority did whatever they did to the property. And the difference in those two values is what we call just compensation, or the amount of money that the property owner should be paid for whatever occurred on or to his or her property.

So we actually do two values, a before value and an after value, where in ordinary real estate appraising you just determine one market value.

Q. And it becomes even more complicated in a situation like this where there is only a temporary taking?

A. That's correct, sir.

Q. And you have to do a different analysis in that circumstance; is that correct?

A. That's correct.

Q. Now, let's talk about your practice or your experience with condemnation appraisals for just a couple of minutes.

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A. Yes, sir.

Q. You've done condemnation appraisals for the government; is that not correct?

A. Yes, sir.

Q. And those governmental entitles that you've done condemnation appraisals include out in Mount Pleasant; is that correct?

A. Yes, sir.

Q. Charleston County?

A. Yes, sir.

Q. Charleston County School Board?

A. Yes, sir.

Q. South Carolina Department of Transportation?

A. Yes, sir.

Q. They have a list at the South Carolina Department of Transportation that you have to demonstrate your competence, but you're on that list; is that not correct?

A. That's right.

Q. And you also have done condemnation appraisals for landowners?

A. Yes, sir, I have.

Q. So you do them for whomever hires you; is that correct?

A. That's correct, sir.

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Q. You're paid a fee to do that; is that not --

A. Yes, sir.

Q. -- correct?

A. That's correct.

Q. Can you -- well, let me just move on.

The appraisal of land -- and in the course of your employment with either the condemnor or the landowner, oftentimes you have to appraise land; is that not correct?

A. That's correct, sir, because most of the time they are acquiring or taking some portion of that land.

Q. All right. And you're also familiar with the appraisal of easements; is that not correct?

A. Yes, sir, I am.

Q. And describe for us very briefly the distinction between a land and an easement.

A. Well, if you had a piece of property that the Highway Department was going to need say ten feet of it off the front of it to widen the road, they would acquire that property and they would take title to it. It would no longer belong to you, it would belong to the people of South Carolina. That's what we call a take or condemnation of a fee simple. When you own a piece of property in fee simple, you own it, all of it. You're entitled to all of the rights of it. That would be a fee

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simple take by the Department of Transportation.

In an easement -- for example, it's probably happened to many of you -- maybe they want to put in a sewer line or a water line or an electrical line. Maybe they're going down your property line, your side of your property line, burying a sewer pipe or burying a power line. They will pay you to do that, but you keep the land. You still own the land. They don't own it, they just own a right in your land to put that pipe underground or that sewer line or that water line underground.

So an easement, you generally don't get as much money from whoever the authority is, whether it be the power company, the water company, the State of South Carolina, the Highway Department, the Water and Sewer District, because you still own the land.

Whereas, when they take your property, you're entitled to what the market value of the property is. When they acquire an easement, you're entitled to a portion of what the market value is.

Q. Now, in addition to appraisal of easements, you're familiar with the appraisal of temporary easements or temporary takings?

A. Yes, sir.

Q. You've testified in court before, have you not?

A. Yes, sir, I have.

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Q. You've been qualified by a judge in circuit court of South Carolina on a number of occasions, have you not?

A. Yes, sir, I have.

Q. And for both the landowner and for the condemnor; is that not correct?

A. Yes, sir, I have.

MR. BYBEE: Your Honor, we would offer Mr. Hartnett qualified as an expert in real estate and banking and entitled to offer opinions in connection therewith.

MR. BROOKER: No objection, Judge --

THE COURT: All right. Thank you very much. Go right ahead.

THE WITNESS: Thank you, sir.

Q. [Mr. Bybee] The first thing I want to do, Mr. Hartnett, is get our terminology straight, the appraisal terminology, so that we have a definition and that we're communicating with each other.

A. Yes, sir.

Q. Can you explain to me the concept of highest and best use?

A. Well, anticipating maybe some of those questions, I brought the -- what's called the dictionary of real estate appraising so I can read it from that. But

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let me just try to explain it, to keep it shorter.

Everybody -- well, maybe not everybody. But people who think they know a lot about real estate say the most important thing -- and there's three important things in real estate, is location, location, location. Well, that's true. But the most important thing is what is the highest and best use of a piece of property. Everybody thinks the highest and best use is to get a Hardee's or a McDonald's or a Town Center or a Cosco or -- and that -- they'll pay a lot of money for a piece of property. But if you owned a piece of property in the middle of a farm land where there was only a dirt road, the highest and best use of that property wouldn't be to build a Cosco, it would be to be a farm land.

So we, as appraisers, have to determine what is the highest and best use of a piece of property and we use four things to do that. We find out -- well, let's just say you want to put -- let's say you want to put a McDonald's in the middle of your farmland.

Well, is it physically possible? Sure it's physically possible. I own 300 acres out here and McDonald's only wants an acre, so, yeah, they can get it.

Second, is it legally permissible. What is the property zoned. Well, it's zoned farmland, it's not zoned commercial, so you can't put a McDonald's there.

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Well, what is the -- what is the maximally productive use of that property. Well, it's farming.

And what is the -- is it financially feasible to build a McDonald's? And, no, it's not, because it's on a dirt road. Nobody's going to come to it.

So we do a test of physically possible, legally permissible, financially feasible, and maximally productive, to determine what the highest and best use of a piece of land is. So that's essentially what the dictionary says, in less words than I said it. But, anyway --

Q. And fair market value, tell us what that term means.

A. Well, I'll -- it's a long definition, too.

It's what a property should bring if it's exposed to the real estate market if it's offered for sale for a reasonable length of time.

And if you have a buyer and a seller, familiar with the market, knowing what the property can be used for -- and in terms of U.S. dollars or the equivalent, whether it be a check or a money order. But -- not cash, but U.S. dollars.

So market value is the price that a property should bring in a fair and open market with a reasonable amount of exposure to the market, knowing all the uses to

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which the property can be put, and the consummation of a sale, a closing.

So of a purchaser and a seller getting together and changing hands of the property.

Q. Now, as an appraiser attempts to determine the fair market value of a piece of property, tell me the number of different kinds of approaches he can utilize to come to that estimate.

A. Well, depending on the piece of property, normally you can use three approaches.

You can use what's known as the sales comparison approach where if, for example, you wanted to sell your home and it was located in a subdivision west of the Ashley or in North Charleston or on James Island, I, as the appraiser, would come and inspect your home, measure your home, write down all the things about it, when it was built, how many square feet, the type of roof, the type of bathrooms. And then I would go in your neighborhood and see if I could find sales of properties like yours that sold fairly recently and I would compare those to your property and say, well, three of them down the street sold for this much, this one probably should sell for this much.

Another way to do it is a cost approach. And that's used for things like churches, gymnasiums,

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armories, hospitals, and houses, where when you can't find a comparable sale -- because not many hospitals sell, not many gymnasiums sell, not many churches sell. So the appraiser goes out and tries to estimate the value of the land that that church is on, as if the church were not there. So we go out and look for comparable land sales, what would a lot like that sell for, and we determine the value of that site on which the church sits as if the church were not there. Then we built that church. How much would it cost to build the church. And we figure, we calculate, the cost to build that church and we add that to the value of the land. If it's an old church, we have to depreciate it. But when you add the land value and the reproductive cost of the house or the church together, then you get what we call the cost approach.

The other one is the income approach. And this is seldom used in single-family residences because generally you can't get enough money in rent that would indicate what the real value of the house was. Or -- it's mostly used in shopping centers, commercial offices, where those properties are bought to produce income. You generally don't buy a single-family house to produce income. You buy it because you like where it is, you like the color, you like the school district, you like the neighborhood, you like the church, you like the ease of

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access to your office or to your place of work.

But you don't do that with commercial properties. You don't care what color the store is, as long as its producing so many dollars in income. So the income approach is used primarily for commercial property.

And if you had --

THE WITNESS: Judge, I hope you're enjoying the Lowcountry, because it's going to take me just a few minutes to explain this.

A. If you had $20,000 in cash -- grandmama died or Aunt Mary died and left you $20,000 -- you could put it in the bank, and hopefully you put it in my bank, and they would pay you some interest for the use of your money --

THE COURT: Not much.

A. -- because they loan money. A bank loans money.

THE COURT: It's not much these days.

THE WITNESS: No, sir, it's not.

A. But, anyway, that's what you put it in the bank for. Or you could put it in stock or you could put it in real estate or you could put it in your mattress. Your mattress is going to do about as much as the bank is going to do now. You're not going to get much interest.

You expect interest when you put your money in a bank. It's safe. Nobody's going to take your money. It's safe. They're going to pay you a certain amount of

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interest. And when you want your money, you can go and get it. If you put it in stocks, it's a little bit more risky because the stock market goes up and down, up and down. A little bit more risky. But your money is there and you've got a stock certificate saying, I own so many shares of stock.

Or you can put it in real estate. You could buy a 20,000-dollar house, or whatever you would buy with that 20,000. But then you would look for -- you want some income from your money. So that would be in the form of rent. Where the bank pays you in the form of interest, real estate pays you in the form of rent. And you would expect a reasonable return from the rent, like you would from the bank. And the stock market, it's a dice toss. And your mattress you get nothing. So that's -- I lost my train of thought. But that's what we call the income approach.

Q. [Mr. Bybee] All right. So the income that's being generated is being generated by the land in those examples; is that correct?

A. Yes, sir.

Q. It's not business income, it's land generated income?

A. Are you speaking of the subject property?

Q. The income -- no. Just the general theory right

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now. The income production, as you just described it, being generated by the fact that you own that real estate asset.

A. That's correct.

Q. Now, two more terms in a condemnation setting. When you do a condemnation appraisal, it's Condemnation 101 you're going to do a fee simple appraisal; correct?

A. Yes, sir.

Q. That means that you look at just the land, no leases that are existing as of the date that you're doing your evaluation; is that not correct?

A. Mr. Bybee, you keep referring to the land. Are you talking land and --

Q. Land, property.

A. Land and building --

Q. Land and building.

A. -- the piece of property.

Q. Property.

A. That's correct, yes, sir.

Q. And so you would do an appraisal which is unencumbered by a lease; is that not correct?

A. Unencumbered by a lease, unencumbered by a mortgage, unencumbered by any other problems that they might have.

Q. That's your charge from entities like the DOT?

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A. That's correct, sir.

Q. That's your charge for landowners?

A. That's correct.

Q. That's what you have to do in a condemnation appraisal?

A. That's correct, sir.

Q. And there's also a different kind of appraisal called a leased fee appraisal. But that's not the kind of appraisal that goes on in an imminent domain case, is it?

A. That's correct.

Q. And just for -- very briefly, tell me what a leased fee appraisal is.

A. Well, there's a leased hold and a leased fee. The leased fee appraisal is if you're the owner, what is your interest in that property based on the lease. And your interest in that property based on the lease is the income from that lease and the value of that property when the lease expires, what we call the reversion.

The lease hold interest is if you're renting a house, you have an interest in that house. If you have a two or three-year lease on that piece of property, you have an interest in that house by virtue of the fact that you are paying rent and you have a lease.

We can appraise that, also, your interest in a piece of property. That's called a leased hold, because

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you hold the lease, you have an interest in it. The leased fee is the owner's interest to the piece of property because he or she owns the fee simple interest in that property.

Q. But like in condemnation cases, no matter who hires you, Appraisal Practice 101, you're appraising the fee simple value --

A. That's correct, sir.

Q. -- is that correct?

All right. You've appraised the property at 699 Folly Road, which is owned by Hal Frampton?

A. I have, yes.

Q. And we've seen it many times -- I know you've been here for at least a day -- Plaintiff's Exhibit 1, the little creek house adjacent to the property; is that correct?

A. Yes, sir, I have.

Q. Tell me, how is this property zoned?

A. It's actually zoned commercial.

Q. And you estimated the highest and best use for this property, did you not?

A. I did.

Q. Tell me what your highest and best use estimate or your opinion of highest and best use is, and why.

A. It's residential.

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Q. Yes, sir.

A. For several reasons. If you go back to that four-way test that I had mentioned to you, the first is, well, is it physically possible to use this piece of property for commercial use. And it would be minimally physically possible.

This is a very small piece of property -- and you think of a commercial piece of property as needing a fair amount of parking, fair-sized building -- and it's not big enough to put really a commercial establishment on it. If it was a big piece of property, a seafood restaurant would be a nice thing to have there perhaps. But it's not that big, so it's really not physically possible -- it is physically possible, but not physically practical, to use it commercially.

And aside from that, people will pay more for a residential piece of waterfront property than they will for a commercial piece of waterfront property because there's really no benefit to be on the water with a piece of commercial property unless it's a seafood restaurant or something like that. But people like to be on the water to fish, to boat, just to look at the water.

So I determined that the highest and best use, even though it's zoned commercial, was for a residential use.

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Q. All right, sir. Now, what's the size? What's the size of the property? You told us it's small.

A. I have it in my report, Mr. Bybee. It's -- I'm not sure how many square feet it is, but it's a small site.

[Whereupon, the witness reviews documents]

Q. [Mr. Bybee] Less than an acre?

A. Well, yes, sir, it's less than a half an acre.

Q. Less than half an acre?

A. Yes, sir.

If you was to let that suffice --

Q. That's fine.

A. -- and not waste your time --

Q. That's fine.

A. -- and the jury's time.

Q. Now, just because it's small and just because it's a residence doesn't mean that the attribute of access is to be negated, does it?

A. I'm sorry. Would you repeat that for me? I --

Q. Even though it is a small residential property, you still have to have access to it, do you not?

A. Yes, sir.

Q. That's a very important component of value, is it not?

A. Well, if you didn't have access, I mean, it

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wouldn't -- you could hardly probably not sell it. So I think access is very important, yes, sir.

Q. All right. And the property that you appraised, 699, that I'm going to be asking questions about is separate and distinct from the residential property at 693; is that correct?

A. According to Charleston County tax records, there are two separate parcels with different owners, yes, sir.

Q. All right. And there were two different uses; is that not correct?

A. Yes, sir.

Q. Because one was income-producing and one was as --

A. Primary --

Q. -- used as a residence?

A. -- residence, yes, sir.

Q. And those concepts of use, title, those are important concepts in the appraisal of property; is that not correct?

A. Particularly in condemnation appraising, yes, sir.

Q. All right. Now, what did you determine to be the fair market value of 699?

A. Mr. Bybee --

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Q. And I'm going to ask you how you got there. But first of all I want you to tell me --

A. Okay.

Q. -- what the overall value of the tract was.

A. Back in March of 2009, Mr. Frampton contacted me and asked me if I would do an appraisal of that piece of property known as 699 Folly Road that's been talked about here for a couple of days. It was my opinion that the value was $250,000.

Q. Okay. For 699?

A. Yes, sir.

Q. Now, tell us how you estimated that value. What did you do?

A. Yes, sir.

Well, I went out and looked for, again, sales comparison, to determine what waterfront lots on James Island in the James Island area -- because that's the closest to this -- what they were selling for at that time. And this was as of March, 2009.

Q. And what kind of -- what kind of lots were you looking for? What kind of market?

A. Residential lots.

Q. All right. What did you find?

A. I found four sales, one on Ellis Oak Avenue, which is across Folly Road from the subject property,

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essentially.

Q. How far away?

A. Oh, it's within a tenth of a mile, maybe. Something like that.

Q. Okay.

A. Another one at Ellis Creek Landing, which is the same thing, short distance away. And these both fronted on Ellis Creek, like the subject property does. That little creek there is called Ellis Creek, runs underneath Folly Road.

The third one was on a place called Point Verona. If you've ever traveled on Harborview Road -- when you get off the connector, when you're going toward Lawton Bluff Plantation, when you round that curve there before you cross the bridge -- there used to be a little restaurant that burned down there, right across the street from that was called Point Verona [phonetic]. And that would be within a mile, mile and a half, of the subject property anyway, I think.

And the fourth one was on Harborview Road itself and it was right across the street. As a matter of fact, where that restaurant that burned was off of Harborview Road. And that was sold in January of 2008.

Analyzing those four sales --

Q. Were those -- did those sales have improvements

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on them or --

A. No, sir. These -- well --

Q. Tell me what you did.

A. Okay. The only one that had improvement on it was the old restaurant building that burned. So the rest were just all vacant. But I made adjustments to the for differences -- differences in size and difference in location and that type of thing. And after having done that, it was my opinion that the value was $43 a square foot and when I multiplied that times the square foot of the subject lot, it came up to $250,000.

Q. And that is in the time frame of March of '09? That's the effective date of that appraisal; is that correct?

A. That's correct.

Q. Now, did you thereafter do an appraisal of a loss in fair value, or fair income value, of that property for the '08 to '10 period of time because of loss of direct access to 699 Folly Road?

A. Yes, sir.

Q. And can you tell us your estimate of the loss assuming the total estimate assuming the sixteen-month period when access had been denied?

A. Yes, sir.

Basically, what I said was going back -- when I

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started my testimony here this morning, that in my opinion that property was worth $250,000. So if I had that $250,000 in that property, I wanted a fair return for that.

We've jokingly talked about interest rates today. But back in 2008, we were around five percent, bank. I was getting five percent on my money.

I said in my opinion a fair return on that real estate valued at two fifty would be eight percent, or $20,000 a year, would be what you would expect to get or want to get in return for your money that you had tied up in that piece of property rather than tied up in the bank.

The bank might be paying you five percent, but you don't have to worry. You can sleep well at night because you've got FDI insurance, not very many Jesse Jameses out there robbing banks anymore, so your money is pretty safe.

If you put it in real estate, you look for a higher return, [a], because you have to pay taxes, [b], you have to pay insurances, [c], you may not always have that, it may not be rented for a certain period of time. It's a greater risk than in the bank. So you look for a little bit larger return from real estate than you look for from your money in the bank and I estimated that, at that time, to be eight percent. Eight percent of $250,000

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is $20,000. So if you --

Q. On a yearly basis?

A. On an annual basis, yes.

Q. And on a monthly basis: can you calculate that for me, please?

A. Yes, sir.

If you divide $20,000 by twelve, it comes out out $1666.67 a month.

Q. All right. And assume that the period of loss was for sixteen months, as the judge has told us.

A. Sixteen months?

Q. Sixteen months.

A. If you multiply that by sixteen, it's $26,666.67.

Q. Repeat that one more time.

A. Yes, sir. $26,666.67.

Q. All right, sir. Now, I noticed that you have a bandage on your hand. Can you write -- can you write on the blackboard?

A. I'll try, if I --

MR. BYBEE: Mike, would you pull up that screen, please.

THE COURT: Have you got one of those markers? You have to have a special marker.

MR. BYBEE: Yes, sir.

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THE COURT: Have you got the right one?

[Off the record momentarily]

MR. BYBEE: Now, if this becomes too difficult for you, I can do the handwriting.

THE WITNESS: I don't know if you can read it, but it shouldn't be --

THE COURT: Well, if we can't read it, I'll come up there and you tell me what you're doing.

Q. [Mr. Bybee] What I want you to do is to go back through, in a little slower fashion, the numbers. Okay?

You got two -- how much for the entire parcel of land? What was it worth?

A. All right. I said that it was worth -- pretty good -- $250,000 in value.

Q. That's the fee simple value?

A. Correct.

Q. All right. And if -- when you determined -- or attempted to estimate a loss in value, what you were doing was estimating the loss of use of that property for a particular period of time; is that correct?

A. Well, you asked me what did I think would be a fair return on that.

Q. Yes, sir.

A. I said it would be eight percent annually, or $20,000.

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So if you didn't have the use of that value of $250,000 for a year, then that would be $20,000.

Q. That would be how you measure your loss --

A. Yes.

Q. -- for the period of time when you didn't have use of property?

A. Yes, sir.

Q. All right. So would you do that next calculation for us?

A. [Witness complies] $20,000 annually.

Q. All right. Now, then I asked you if I wanted to compute it on a monthly basis --

A. Yes, sir.

Q. -- how would you compute a monthly?

A. Based on twelve months in a year, you divide it by twelve. And I think that was the number that I gave, $1,666.67 monthly.

THE WITNESS: I'm doing pretty good.

Q. [Mr. Bybee] And then you heard the judge tell this jury he found a temporary taking for sixteen months. So multiply sixteen months times that monthly estimate.

A. I don't remember how much. Twenty-six six sixty-six sixty-seven.

Q. All right, sir. That's your estimate of the loss over that period of time, which takes us to 2010.

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A. That's for the sixteen months. Wherever it started, wherever it ended, that would be sixteen months, yes, sir.

Q. And your appraisal, the effective date of appraisal, was in that '09 period --

A. Yes, sir. March -- March 30th of '09.

Q. Right.

Now, to bring it forward to today, we're going to add interest to that number --

A. Yes, sir.

Q. -- all right, on a simple basis.

I'm going to ask you to assume a statutory rate of eight-percent interest and I want you to calculate that interest for me for a two-year period.

A. I have to do that on my machine.

Q. Go right ahead, sir, and then when you finish on the machine, then we can publish it on the board, please.

A. All right. $20,000? This number right --

Q. No. $26,666.67.

A. Two years?

Q. Yes, sir. Because you're stopping -- yes, sir, because it's about February of 2010 the judge ruled that the taking ended, and it's now February of 2012.

A. $31,104.

Q. That's the total?

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A. That would be the total two years -- at eight percent simple interest for two years. That much money.

Q. So write down the number for me, $31,000 whatever. I'm sorry, I --

A. [Witness complies] All right.

Q. Okay. Now, walk me through how you arrived at that $31,104. I know I gave you an assumed statutory rate of interest at eight percent. But tell me what you did.

A. Well, there's a keystroke in this calculator. If the present value of the money is this today --

Q. Twenty-six six six --

A. Correct.

Q. -- sixty-seven?

A. Correct.

If you put it in a bank at eight percent and went to pick it up two years later, that's how much they would give you.

Q. And that's simple interest --

A. That's correct.

Q. -- is that correct?

A. Correct.

MR. BYBEE: Your Honor, at this time I have a proffer outside the presence of the jury.

THE COURT: Members of the jury, I need you to go to the jury room for a few minutes, please.

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[Whereupon, the jury exits the courtroom at 11:20 a.m.]

THE COURT: All right. What are you wanting to do?

MR. BYBEE: If you rule against me on the median, I'm going to put in the record the estimate of value and decline because of the installation of the median or the permanent damage.

THE COURT: All right.

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PROFFER

BY MR. BYBEE:

Q. Mr. Hartnett, did I ask you to formulate an estimate for the permanent impact for this property because of the installation of a raised median on a permanent basis?

A. Yes, sir.

MR. BYBEE: All right. And I'm looking for the aerial photograph of the after -- here it is.

Q. [Mr. Bybee] And this is Exhibit 10. And you understood my task to you was to determine the impact of that particular median on the overall market value of the property --

A. Yes, sir.

Q. -- is that correct?

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A. Yes, sir.

Q. And can you tell me how you went about determining that impact?

A. Mr. Bybee, I'm going to have to more or less just read it.

Q. That's fine, sir.

A. Well, I have found in my years of appraising -- and, as you know, I've done a lot of condemnation work -- that access can have a definite effect on the value of a piece of property, the availability of access, full access versus limited access versus corner location versus not corner location. Access can play a very important part in the valuation of property. Sometimes things are harder to pin down than other things.

In this case what --

THE WITNESS: Your Honor, I'm just going to read it. I'll try to read fast. If I'm reading too --

THE COURT: No, don't read fast.

THE WITNESS: Well, if I'm reading too fast, you let me know.

THE COURT: Don't read fast.

A. [Reading] You've requested that I render an opinion as to what effect, if any, the installation of a raised concrete median in Folly Road would have on the market value of the property known as 699 Folly Road. The

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installation of the concrete median by the DOT has had the effect of limiting access to the property to a right-in, right-out turn only. It is not possible to access the property from Folly Road using a left turn-in, left turn out. There have been several sales of property affected by limited access that have indicated that access does indeed affect market value. One pair of paired sales --

Q. [Mr. Bybee] And what are paired sales before -- I know that's a little disruptive, but I think it's important.

A. Well, paired sales are as close to being identical as we can find in the appraisal industry in the market of the property that we are appraising. It's easy to find in residential subdivisions, especially with a tract house, because they're just exactly alike. A little bit more difficult to find in other types of property. But pretty good analysis here.

One pair of paired sales involved a 1.2 acre parcel -- we talked about the numbers here -- that sold on May the 7th, 2008, for a reported $349,000, which equates to $6.25 a square foot. The property was vacant and had limited access to Dorchester Road due to a grass median. Not a raised concrete, but a grass median.

The paired sale that I compared that with was a 1.36 acre tract -- now, the first one being 1.28, the one

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that I'm comparing to that one being 1.36 -- that sold on May the 13th, 2008, six days after the first sale that I cited to you, for a reported 500,000. This equates to $8.39 a square foot. The property had full access on Dorchester Road. The difference in these two square-foot cost is 25.51 percent. Obviously, the difference in access has been reflected in the price, because other than that it was the same location, the same zoning, the same size, the only difference was how you get to it.

A second pair of paired sales involves two properties, also on Dorchester Road, a 1.49 acre parcel of vacant land sold December the 30th, 2004, for $621,161.00. This equates to $9.57 a square foot. This property had limited access. The paired sale that I compared it with was a 1.5 acre parcel. 1.49 compared to 1.5. It sold on December 21st, 2004, nine days prior to the first sale I gave you, for a reported sales price of $827,858. This equates to $12.42 a square foot. The difference in these two square-foot sale prices is approximately 22.95 percent. The first paired sales I gave you, it was 25.51 difference -- this is 22.99.

A third set of paired sales that shows an example of value differences attributable to limited access can be found in the sale of a 5.25 acre tract on Dorchester Road with a raised, planted median. It sold

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for -- on December the 12th, 2005, for 530,000. That equates to $2.22 a foot. To compare with these two sales, a six-acre parcel on Ladson Road just off Dorchester Road sold on September the 19th, 2005, three months before this one, for $862,500 or $3.30 a square foot. When you compare those two parcels, the difference is $20.61. When comparing parcel one seven one zero sixty-three to one fifty-four zero nine, there's a difference of 32.73 percent.

Now, this is the way I conclude that analysis. As you can see from these preceding examples, limited access does have a negative effect on the value of property. The paired sales analysis shown in the preceding paragraphs indicated ranges from 20.61 percent difference to 32.73. I have not included this analysis in here as a direct comparison to the subject project, but only to show that full access versus partial access can have a negative effect on the value of property.

The subject property is obviously a residential-use property and the paired sales I have cited are of commercial properties. One would assume that limited access to a commercial property would have a greater negative effect than limited access to a residential property. The paired sales that I used for commercial properties indicates a negative range of 20.61 to 32.73.

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It would be my opinion that the negative effect on a residential piece of property would be fifteen percent.

I applied that fifteen-percent factor to my appraised value of the property of $250,000 and arrived at a figure of $37,500.

Q. And that would be your estimate of permanent --

A. Due to the --

Q. -- damage --

A. Due to the installation of a raised concrete median, which restricts access to right turn-in, right turn-out only.

Q. At 699 Folly Road?

A. Yes, sir.

Q. And that's consistent with that before and after description that you've given us previously?

A. Yes, sir.

MR. BYBEE: Your Honor, that would be the testimony we would proffer --

THE COURT: Anything you want to ask him on cross-examination about any of that?

MR. BROOKER: I do, Your Honor.

Mr. Hartnett, nice to meet you. We've never met before.

THE WITNESS: Nice to meet you, sir.

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PROFFER

BY MR. BROOKER:

Q. Were you aware -- you may or may not be aware that the South Carolina Supreme Court in these median cases, these restrictions of what we call access to left turns in and out, the issue really comes down to whether it was -- the security, the burden on the landowner, was unreasonable. In other words --

A. Mr. Brooker, I know that --

THE COURT: Because that's what I've decided. You don't have to ask him about that.

Q. [Mr. Brooker] In other words, how far you have to go out of your way compared to what you previously could do?

A. I understand there was a fairly recent ruling, Supreme Court ruling, relative to those types of improvements to the highway.

Q. Are you aware that in this case Mr. Frampton, from his driveway at 699 Folly Road, the creek house, we've been calling it, can go only fifty-nine feet until he can make a U-turn around through the painted median at the end fo the concrete median?

A. Looking at it, I can't tell. I heard the testimony of the engineers yesterday or today to that effect, yes, sir.

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Q. And then to the next intersection is actually 934 feet towards Folly Beach; correct?

A. I'm familiar with that one, yes, sir.

Q. Have any of your comparable -- the comparable sales that you were testifying to have that modest a burden or modest a distance?

A. I think they're probably more than thirty-nine feet, if that's what yours is. I think it's probably more --

THE COURT: Fifty-nine.

THE WITNESS: Excuse me?

THE COURT: Fifty-nine --

THE WITNESS: Fifty-nine.

THE COURT: -- I think he said. You said thirty-nine.

THE WITNESS: I'm sorry. Fifty-nine.

MR. BROOKER: Right.

THE COURT: I'm going to say something about that in a few minutes.

Q. [Mr. Brooker] Okay. In the -- in the Supreme Court case I'm talking about, the Supreme Court found .3 -- three-tenths of a mile and six-tenths of a mile in each direction before being able to go back in the other direction should not be an unreasonable burden --

THE COURT: All this really --

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MR. BYBEE: I'm going to object to that.

THE COURT: All this really has to do with what I've decided, not really what his opinion about loss is or anything. But just remind you of that.

Q. [Mr. Brooker] Well, I'm just asking comparable -- where do your comparables fall in those ranges? How far --

A. I'm sure they would be within those range [phonetic].

But, you know, I'm very familiar, Mr. Brooker, with Mr. Frampton's property.

Q. Right.

A. And I'm very familiar with Folly Road.

Q. Right.

A. And I would dare anybody to take a U-turn into that road during any time of day except a very, very quiet period of time. It would be much safer to go to the Sunshine --

Q. Okay. Well, that was not --

A. -- Daycare Center.

Q. -- the question. My question was the comparable sales --

THE COURT: I would -- go ahead. Go ahead.

Q. [Mr. Brooker] The comparable sales of property that you testified to, you didn't measure how far?

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A. No, sir, I did not, Mr. Brooker.

Q. Do you know -- do you think it's greater than what Mr. Frampton --

A. I do. Yes, sir.

THE COURT: All right. Anything else?

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PROFFER

BY MR. BYBEE:

Q. If you measured to the next intersection, would it be approximately the same?

A. Yes, sir.

Q. So if you didn't take that unsafe move that you just described --

A. I could not imagine --

Q. -- you're -- you're --

A. I could not imagine a law enforcement officer allowing somebody to do a U-turn at that bridge in the middle of Folly Road. I couldn't imagine it. But if you can do it, you can do it.

THE COURT: I can't imagine them letting them make a left turn. But, anyway, that's what -- that's what I say.

All right. Anything else about that? I'll say as far as my ruling in regard to the median is concerned is that I've very familiar with that, too,

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with that area, too. See, I guess y'all would have to voir dire the judge before the case but you didn't. But anyway, I'm very familiar with that area, also. And like I say, you would have to be crazy to make not only a U-turn, in my opinion, you know, where they're talking about down there at the end of the bridge, but you would have to be crazy to try to make a left turn out of the driveway out there. That's why that median is there. You would have to be crazy to try to make a left turn out there.

The only time you could make a U-turn out there or a left turn out there would be about three o'clock in the morning -- from 3:00 until about 5:00 or 6:00, after all the bars have closed and you would have everybody cleared out for an hour out that way with the traffic and so forth and so on.

And, you know, when I'm out there and make a U-turn, I go down to that -- not the first Cheap station on the right but the second Cheap station on the left to make my turn to come back and everything. And I don't think that's unreasonable from the property involved, and that's why I made the decision that I made. I don't think it's an unreasonable burden. I don't think it's unreasonable to have that burden, as far as traffic there is concerned.

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It would be nice to have an area out there in the middle and all, but that's not what the Highway Department decided to do, you know. And so I think the median is a reasonable thing for the Highway Department to do and a reasonable burden to put on 699, considering everything.

MR. BYBEE: Your Honor, and my proffer would be -- this testimony to the jury under the theory that even if it were a reasonable burden, they still have to pay just compensation.

THE COURT: I appreciate that. I appreciate that. I don't agree with you.

MR. BYBEE: Yes, sir.

THE COURT: All right.

MR. BROOKER: May we go off the record before the jury comes in --

THE COURT: Sure.

MR. BROOKER: -- and take a break?

THE COURT: Yeah. Okay. Yeah, we'll take a break.

[Whereupon, a recess is taken from 11:36 a.m. to 11:43 a.m.]

[Whereupon, the jury enters the courtroom at 11:44 a.m.]

THE COURT: All right. We've got the jury back

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with us.

Do you have any other questions for Mr. Hartnett?

CONTINUED DIRECT EXAMINATION

BY MR. BYBEE:

Q. Mr. Hartnett, in the condemnation appraisal terminology, tell me what the definition of the term cost to cure is.

A. Cost to cure?

Q. Yes, sir.

A. Yes, sir.

If, for example, the Highway Department were to take a piece of a building, maybe cut a corner off and not need the whole building, the property owner would have to replace that portion of the building to get the building back to where it was usable. It would cost him to cure that deficiency that existed.

It could be that if water was being washed off onto a piece of property as a result of a new road and they had to put in piping or something to run the water off, that would be a cost to keep the water from going.

So it would be any amount of money spent to correct a problem. That's about as simple a language as I can make it.

Q. And you were sitting here this morning when

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Mr. Hal Frampton testified concerning his prep cost for the driveway when it was reinstalled, were you not?

A. I couldn't hardly -- I knew that he talked -- he hired a landscape architect that he said he spent some money. I --

Q. All right. And I'm going to give you a figure of $3,835.25.

A. Three thousand eight hundred and?

Q. Thirty-five dollars, twenty-five cents.

A. All right.

Q. And I want you to compute interest on that number --

A. At what rate?

Q. At eight percent.

A. For how long?

Q. For the two-year period that you did similarly on the twenty-six thousand six sixty-six sixty-seven.

A. $4,473.44.

Q. Would you write those two numbers on the board for me, please?

A. You're going to have to give them to me again.

Q. All right. I gave you the five -- three thousand eight hundred and --

A. Hold on just a minute. Let me get that. I know it ends in twenty-five cents.

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Q. I gave you the product of three thousand --

A. That's three thousand --

Q. -- eight thirty-five twenty-five --

A. All right.

Q. -- which is the Jerry Poore -- the two Jerry Poore invoices for the relocation of the driveway and the reinstallation of the fence. And then I asked you to multiply that by eight percent interest for two years.

A. Okay.

Q. And would you then write the calculation as to that product or that --

A. [Witness complies]

Q. And then just right under that four thousand four hundred and seventy-three dollar and forty-four cent figure that you just put up there, put cost to cure.

A. [Witness complies]

MR. BYBEE: Thank you, Mr. Hartnett. Would you answer any questions Mr. Brooker may have for you, please, sir.

THE WITNESS: Yes, sir.

MR. BROOKER: Mr. Hartnett, I'm Beach Brooker. I'm assistant chief counsel with the DOT, a representative of the Highway Department.

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CROSS-EXAMINATION

BY MR. BROOKER:

Q. I'm a little bit confused about your methodology here for the appraisal for Mr. Frampton's loss. You're saying that based on some comparable sales that you've identified, you believe this property should sell for $250,000, is that correct, in a normal arm's length transaction?

A. As of March the 30th, 2009, my opinion of the market value of that property, if it were put on the open market, it should sell for $250,000. Yes, sir.

Q. And then someone would pay that $250,000 because they would be expecting to get eight percent return, income return, on the purchase price. Is that what your testimony is?

A. No, sir.

I apologize if I didn't make it clear. I said that -- I said that most people did not buy residential property looking for it as income-producing property, that someone would buy that piece of property to live on as a residence because it would be on the waterfront and people will pay more money to live on the waterfront.

I said that if I had $250,000 in a piece of property like that property or in that property, that I was not using as a residence, I would want a fair return

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for my -- I would not have bought it for that purpose, but if I owned it I would want a fair return from it and that in my opinion eight percent would be a fair return for a 250,000-dollar investment in that property.

Q. Okay. So if someone -- hypothetically, someone would buy this piece of property for $250,000 because they wanted to live in it --

A. Yes, sir. That's basically what my appraisal said, yes, sir.

Q. -- your testimony is once they decided they didn't want to live in it and turn it into income-producing property, they could get eight percent income for it?

A. I said that would be a fair return to expect on that amount of money, yes, sir, if it were tied up in real estate rather than in a bank where you might draw less interest.

Q. All right. Well, now, are you aware that Mr. Frampton was renting this little house at $950 a month at the time the project started?

A. Well, the information I had was that it was being rented for I think $1150 a month. But be that as it may, either 950 or 1150.

Q. Well, it was 950 at the start of the project but 1150 after he renovated it.

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But you have no indication that the nine fifty or the eleven fifty is not fair market rent, not an arm's length transaction, do you?

A. What do I do? I think that what was being paid was what we call contract rent. And you just, yourself, just said that was before the property was renovated.

Contract rent and market rent are two different things. And in the appraisal industry, as you know -- if you're the chief counsel for the DOT, you know that when you call on me or another appraiser to appraise a shopping center or anything, if it's under lease you don't want to know what the contract rent is, you want to know what the market rent is.

If you lease a piece of property for two years and you paid $1,000 a month, maybe rents go up around you and maybe it goes up to $1100 a month. Well, you got it for 1,000. That's good. But if you rent it again, it would be 1100.

So contract rent is what your lease says you will pay. That doesn't necessarily mean that that is what other things like it would rent for, which would be market rent.

Q. Well, Mr. Frampton used this property as a rental income, as an investment, didn't he?

A. I think it always had. It's part of his

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family's property. Yes, I think it always had.

Q. And the tenants that he rented it to were not family members or not friends where he would give a big discount on the rent, would he?

A. I don't know who he had it rented to. But probably not. I don't --

Q. It's a third-party stranger. And he -- reasonably, being a reasonable person, he would try to get as much income rent from the property as he could; correct?

A. I think he's that good a business man. But I'm not sure what he knew and what -- I know that the highway plans were going on from 2005. And I'm not sure what effect that the unknown was going to have on what rent he would get from that property at that time. I don't know all those things, so maybe I shouldn't even testify to them. But I heard testimony here where as far back as 2005, he and Mr. Phinney were talking about closing off the access completely.

Q. Right.

A. So that could have an effect on how much money he was getting.

Q. Well, the leases were in effect at $950 at that time, were they not?

A. I did not know that. If you tell me that, I

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will accept that. But I did not know that.

Q. And then after he renovated the property and after the bridge construction was done and after the department came in and paved a new driveway for him, he was able to rent it for a 1150-dollar -- $1150 a month; is that correct?

A. That would -- the information I had is that it had been rented for $1150, yes, sir.

Q. And you have no indication that that was not an arm's length transaction to someone who's not related?

A. No, sir, I don't.

Q. So the $20,000 for a year that you testified that you -- he should expect to receive -- or an owner of this house would expect to receive, is income comes up to -- as you computed, one thousand six hundred sixty-seven -- sixty-six dollars and sixty-seven cents a month; correct?

A. That's correct.

Q. But why would he not ask that?

A. Well, he may have asked that, you know, and maybe he was not able to get it.

I know that we base a lot on what college students pay. And mamas and dads are willing to pay up to $750 a month per bedroom. That's a little two-bedroom house, so that would be 1500.

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I would say he's in the range, but I think he should have expected to get more. Apparently, he didn't. But he should have expected to get more.

Q. Now, when you were testifying -- at the first of your testimony you were talking about condemnation appraisals and you said those differ from other kinds of appraisals you do because what you are appraising there is before and the after value of the property; is that correct?

A. That's correct.

Q. And is it your testimony -- it's not your testimony because it was not your assignment, correct, to identify the before and after in this case, was it?

A. No, sir, Mr. Brooker, I understood because this was a temporary take and it was not a -- it was not a before and after value. It was just what the loss of the use of the property would be for the period of sixteen months. So this was not a typical before and after --

Q. Right.

A. -- condemnation appraisal, but a calculation of what the loss of use would be for the sixteen months.

Q. I understand that.

And isn't loss of use calculation -- isn't that term loss of use, wouldn't it equate to loss of income?

A. Yes, sir. Yes, sir. That's what I did. That's

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what I show here on the board.

Q. So just put in appraisal terms, what you're saying is what he lost in investment income for the property?

A. That's fair, yes, sir.

Q. Okay. Now, the calculations that Mr. Bybee took you through as to the interest -- well, let me -- let me go back to your appraisal and the -- and the comparables you used.

A. Yes, sir.

Q. There were three comparables; correct?

A. Four.

Q. Four?

A. Yes, sir.

Q. Four? Including the subject property are four?

A. I thought -- maybe you're right. I thought I said four, Mr. Brooker. Let me look back at my report.

Q. I could be missing one, too. I'm sorry.

[Whereupon, the witness reviews documents]

A. No, sir. I used four. Four sales. Have two on -- two on Ellis Creek, one was on Point Verona and one was on Harborview Road.

Q. [Mr. Brooker] You're correct. I had stopped on a page too short. I'm sorry.

The comparable properties are a good bit larger

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than the Frampton property; is that correct?

A. Yes, sir, they are.

Q. The Frampton property, in fact, is only thirteen one-hundredths of an acre? .138?

A. That's correct.

Q. And the -- and some of the comparables are commercially zoned, but approximately twice the size; is that correct?

A. Yes, sir. But I made -- I made significant size adjustment.

Q. Adjustments?

A. Yes. Yes.

Q. So the highest and best use of some of those properties -- some of your comparable properties, even though they were being used for residential properties, could have been commercial; is that correct?

A. Only one --

Q. Because --

A. Only one -- only one out of three were not improved and they were zoned residential. The fourth one, the former restaurant on Harborview Road, was the only one that could have been used for commercial.

Q. So given the zoning -- or taking the subject property, which is the Frampton's creek house parcel, .138 acres, given zoning setbacks and all the like, and the

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land area that the government requires you to have before using -- developing commercial, get a license -- wouldn't be feasible?

A. No, sir.

Q. But some of the comparables you have that -- converting what is of present residential use to a commercial use would have been feasible --

A. Well, you know, you -- let me just look at this report. I think I did my thinking -- because, you know, you're very familiar with appraising. I used to work close to one of your predecessors and he was very familiar.

I did not make a zoning adjustment to that one, the only one that would be -- that would be possible to use for commercial. That was sale number four. And I did not make an adjustment for zoning.

Q. Now, concerning the interest calculations you went over, eight percent interest, with Mr. Bybee, the eight percent is a figure he gave you. You do not -- it is not your testimony that you could put money in the bank today, or in 2008 to 2010, subject to the period of this lawsuit, and earn eight percent, is it?

A. No, sir.

Mr. Bybee I think he quoted me -- I think he called it statutory interest.

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Q. Statutory interest.

A. That as -- he told me the rate to use, so that's why I used the eight percent.

Q. You don't know what the market rate for money market or savings accounts is at this --

A. Yes, sir, I do. I'm associated with a bank. It's not real good right now.

Q. Give us some idea of what that might be.

A. What it might be?

Q. What are banks paying right now.

A. If you had a six-month CD, you might could get 1.2 percent. More likely 1 percent, 1.1, something.

Q. Now, you never made a finding -- you were given the assignment solely as to the loss-of-use value to which we consider to be the rent value, but you've never made a finding that the house could not have been rented out during the construction period, did you? That was not your job, not your assignment?

A. Well, I sat in the courtroom yesterday and after I saw the evidence that was presented, I certainly would have said that it couldn't be used. I was not asked to do that. I was just told that it was not used and what was the loss of the use of that property.

Q. Sure. Just --

A. But I -- it certainly appeared to me yesterday

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that it couldn't be used.

MR. BROOKER: All right. I think that's all I have, Mr. Hartnett. Thank you.

THE WITNESS: Thank you, Mr. Brooker.

THE COURT: Anything on redirect?

MR. BYBEE: No, sir.

THE COURT: Thank you very much.

THE WITNESS: Thank you, Your Honor.

THE COURT: You can return to your place in the courtroom or we'll excuse you.

MR. BYBEE: That's all from the landowner, Your Honor.

THE COURT: All right. Thank you very much for coming. You're free to go.

THE WITNESS: Thank you, sir.

[Whereupon, Mr. Hartnett is excused and exits the witness stand]

THE COURT: All right. That's all from the landowner on the issue of money.

And now let's -- anything from the Department?

MR. BROOKER: We call Jeff Rajabi back to the stand, Your Honor.

THE COURT: All right. Come on back up.

[Whereupon, Mr. Rajabi comes forward and takes the witness stand]

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MR. BYBEE: Your Honor, may I approach?

THE COURT: Sure. Both of you. Don't -- both of you come up.

[Whereupon, an off-the-record bench conference is held]

THE COURT: All right. You're still under oath.

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

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JEFF RAJABI,

Having Been Previously Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKER:

Q. Jeff, I called you this morning and asked you to do a little research for me, didn't I?

A. Yes, sir.

Q. And that was how much the Department -- what was the Department's cost to put in a paved driveway for Mr. Frampton at 699. Did you look into that?

A. [No response]

Q. Did you look into that?

A. That's correct. Yes, I did check that at maintenance office and they did find --

MR. BYBEE: Objection to hearsay.

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THE COURT: I'm going to let him testify. Go ahead.

A. They did check into that and they found the daily diary for that day and the cost estimate was about $3,010.

Q. [Mr. Brooker] And that is -- that is just the cost to the Department, using their own maintenance personnel at their wages plus the material?

A. That's correct.

Q. So if someone out -- was out -- going out to the private market, finding a private contractor to do this would likely be higher?

A. That's correct.

MR. BROOKER: That's all the questions I have. Thank you. Mr. Bybee might.

CROSS-EXAMINATION

BY MR. BYBEE:

Q. Mr. Rajabi, I'm going to read you a statute. Are you familiar with the statutes on driveways?

A. [No response]

Q. Let me read you -- it says something about a residential -- installation of a residential right-of-way entrance and apron to state highways. It says here: the entrances to be constructed, as outlined in this section, shall include base and surfacing as necessary to provide

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an all-weather driveway entrance.

And that's the obligation of your agency; is it not?

A. That's correct up to the right-of-way.

Q. Up to the right-of-way.

And that's the cost that you just estimated and put it in this record; is that not correct? Or did it include on the other side of the apron, too?

A. Well, in this case, Mr. Brooker just asked me just for the cost estimate --

Q. Was it for the both sides or just the cost up to the sidewalk?

A. Up to the sidewalk.

Q. So up to the sidewalk --

A. That's correct.

Q. -- any landowner in this state you would provide that transition free of charge?

A. Well, actually, that -- I guess regulations changed now, is different now --

Q. I'm not talking about regulations, sir. I'm talking about this statute and what it just said.

A. Yes.

Q. Your practice, following this statute, would be to install that asphalt up to the right-of-way line free of charge; is that not correct?

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A. For this project, you're right.

Q. Thank you.

And what's -- the number that you just put into the record includes both the cost to put it up to the right-of-way on the other side of the entrance --

A. Whatever on the -- I guess it was February of 2010, the day that they came, DOT staff -- I mean, maintenance went out there, whatever the paving they did, the material, labor and equipment, the cost was $3,010.

Q. And that was what Mr. Phinney agreed to do.

A. I wasn't involved in that.

Q. You weren't involved in that?

A. No, sir.

Q. So Mr. Brooker just called you up last night, let me have this cost estimate, please; is that right?

A. He called me this morning and asked for it.

Q. It was this morning. Okay.

MR. BYBEE: Thank you, sir. No further questions.

THE COURT: Thank you very much. You can step down.

Oh. You've got something else?

MR. BROOKER: Just one more, Judge.

Stay seated for a minute.

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REDIRECT EXAMINATION

BY MR. BROOKER:

Q. The highway contractor, the road-bridge contractor, Cape Romain, was responsible for doing these transitions, the aprons, into driveways, was he not?

A. As part of --

MR. BYBEE: Objection, Your Honor.

A. -- the contract. Usually that's part of the contract.

THE COURT: I'm going to allow it. Go ahead.

A. Yes. That's --

Q. [Mr. Brooker] So this was somewhat out of the ordinary of what do as our practice and --

A. In this case. That's right.

Q. And actually paved and improved a parking lot for him, did you not?

A. That's correct.

MR. BYBEE: Objection.

A. In this case.

THE COURT: I'll allow it.

MR. BROOKER: That's all I have, Your Honor.

THE COURT: All right. Thank you very much. You can step down.

[Whereupon, Mr. Rajabi is excused and exits the witness stand]

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THE COURT: Anything else from the Department?

MR. BROOKER: No, Your Honor. The Department rests.

THE COURT: All right. Members of the jury panel, that finishes all the testimony and the evidence, then, that the parties wish you to consider.

In looking at the time and everything, we've still got summations and arguments from the lawyers and I actually have to go over a little bit of stuff with them, also, a little bit of work that I have to do with them, before we can give you the case.

So I think it would be best for us to take a little earlier lunch break today, let you go to lunch, let us get our work done, and then we'll come back a little early from lunch and have the arguments and my instructions to you on the law and then you'll go to the jury room and you'll deliberate and you'll give us your answer, how much money the Department should be required to pay to Mr. Frampton.

So it's about ten, quarter after -- let's say quarter after 12:00 now. I'm going to ask that you be back here by 1:30. We'll get started just as soon as we can after that. So have a nice lunch. Be back in the jury room at 1:30. Leave your notepads. Bring them back after lunch. 1:30.

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Wait. Wait. Don't nobody go out now. Have a seat.

I'm not talking to y'all, I'm talking to them. Y'all are preferred customers. I'm telling them. They're not supposed to ride down with y'all. You get preferred treatment.

[Whereupon, the jury exits the courtroom at 12:07 p.m.]

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CHARGE CONFERENCE

THE COURT: All right. Anything -- you got anything you want to give me in the way of a charge?

MR. BYBEE: Yes, sir. We have some charges.

THE COURT: All right. Give them to me.

MR. BROOKER: Before we start, can I look at the ones -- I haven't seen that yet.

THE COURT: I guess it'll be okay. Go ahead. I don't think any of them really apply.

MR. BROOKER: Okay. I just -- I haven't read them.

THE COURT: Maybe the last one. I'm not sure.

[Off the record momentarily]

MR. BYBEE: Judge -- hang on one second, Beach. They're not numbered and I think the only way we can make this --

THE COURT: Well, I'll number them so --

MR. BYBEE: We've got to keep the copies straight.

THE COURT: Okay.

MR. BYBEE: So let's do it this way. You number -- you tell me as you go.

[Off the record momentarily]

THE COURT: Okay. Have you given him --

MR. BYBEE: He's got a copy -- I don't have a

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copy --

THE COURT: Okay. I'm going to take some time now and look at them, read them, and then we'll talk about them.

MR. BYBEE: I don't have a copy of his.

MR. BROOKER: I only have one copy --

THE COURT: Yeah. I just gave them to him. Anyway. But hold on. We're going to do yours first.

[Whereupon, the Court reviews documents]

THE COURT: All right. I don't see anything wrong with number 1, Mr. Brooker. Do you?

MR. BROOKER: I think it fairly states the law, Your Honor, unfortunately.

THE COURT: Okay. I don't see any need to give number 2.

MR. BROOKER: That would be my opinion, as well.

THE COURT: Okay. So I'm not going to give number 2.

I don't really think number 3 is applicable.

MR. BYBEE: Well, if I may respond?

THE COURT: I mean, I know this is good stuff in regard to the cases that it's talking about, but I don't think the facts of this case justify that.

MR. BYBEE: Well, let's go back to Mr. Hartnett's testimony, Judge. The way he got --

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THE COURT: I understand what he's talking about. But go ahead.

MR. BYBEE: So fair market value is the test. You have to get the value of the property established. And then he derived the loss from that fair market value. I think if you --

THE COURT: Well, I'm going to -- I'll try to come up with something to say about fair market value, but I don't think that that's what we're talking about here. We're talking about a loss of use of the property, really, for sixteen months.

And I understand your calculation about how the loss of use translates in -- for sixteen months, his testimony and so forth. The jury has got that out there, and if they buy it, but I'm not -- I don't think that I need to tell them all this stuff that you've got in number 3.

MR. BYBEE: Is there a --

THE COURT: I'll talk -- I'll come up with something to say about it. That's one of the ways that you can calculate money that he's lost, but that's not the only way.

Okay. Let me go on to number 4.

[Whereupon, the Court reviews documents]

THE COURT: Well, I'm going to -- I've already

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told them number 4, but I'll tell them again if --

MR. BROOKER: Your Honor, I object to number 4 --

THE COURT: Well, I mean, I've told them that. I mean, I've decided that, that they -- that he lost the access rights from his property for sixteen months.

Let me look at it and see.

MR. BROOKER: Well, just the --

THE COURT: Wait a minute. Just a second.

MR. BROOKER: Okay.

[Whereupon, the Court review documents]

THE COURT: Well, that's what I've decided. I don't see what you object to.

I mean, you might not -- you might not agree that that's the fact -- in fact, the fact in this case, but that's what I've decided.

MR. BROOKER: No, I'm not -- I'm disagreeing that that's the law. The phrase, that therefore an obstruction, the phrase, that materially injures abutting landowner with access. And the Hardin -- the Hardin case, it's either taken or it's not.

MR. BYBEE: Your Honor --

THE COURT: Well, I don't know -- I don't see -- I don't see the distinction.

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But, anyway, I've already told them that I've decided that there has been a taking and the taking was of his access right to the road.

MR. BROOKER: I agree. So why do we do this --

THE COURT: That's what I say. I mean, you know, that's -- I don't think that's part of a charge, as far as --

MR. BROOKER: Right.

THE COURT: -- you know, this is concerned except, you know, to determine the damage that he's suffered because of that lack of access.

And like I say -- and, again, you know, number 5, I don't think I -- I'm not going to give that as it's presented here. I'm not going to give number 5 as it's presented here because I don't think it's applicable.

MR. BYBEE: Again, Your Honor, in order to estimate the value and derive the income --

THE COURT: The value of the land condemned is to be determined upon the basis most advantageous of property use in estimating the value of the property condemned.

Well, we haven't had any -- this is great for the conventional condemned condemnation case, but that's not what we're dealing with here.

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MR. BYBEE: But the way that the estimate from the expert appraiser is done was to determine the highest and best use, then determine --

THE COURT: You can do that, and you can argue that to the jury. That's a way of figuring the damages, but that's not the only way, and I don't think I should charge them that.

[Whereupon, the Court reviews documents]

THE COURT: And I agree with your just compensation, the first thing there. I don't see anything wrong with that.

And I don't see anything wrong with the second statement that you've got there.

I don't see anything wrong with the fourth statement -- third statement, or whichever one. The third.

I agree with the last statement.

MR. BROOKER: No. I don't think the last statement is correct, Your Honor.

THE COURT: All right. Well, tell me what you think is wrong with it.

MR. BROOKER: Well, I don't think that -- the First Evangelical Lutheran Church did say that. That's an accurate quote. But that principle announced in that case was superceded by the Tahoe-

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Sierra case, Your Honor.

THE COURT: Well, what's wrong with it?

MR. BROOKER: What's wrong with it is --

THE COURT: Let me read it again.

[Whereupon, the Court reviews documents]

THE COURT: Well, I don't know that the first part -- the last sentence I think is good. I don't know -- that other part I don't think really applies in this case. It is the owner's loss, not the taker's gain, which is the measure of the --

MR. BYBEE: We can amend --

THE COURT: -- property taken.

MR. BYBEE: We can amend that and just leave the last sentence, Judge.

THE COURT: That's what I would think. I think that's a good statement.

[Whereupon, the Court reviews documents]

THE COURT: Well, I think that first -- I think the first part of number 7 -- the proper measure of compensation in temporary-taking cases is the rental that probably could have been obtained, period, I think is the --

MR. BYBEE: It's a direct quote from the Unites States Supreme Court, Judge.

THE COURT: Well, I know. But, anyway --

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MR. BYBEE: And it's --

THE COURT: I think that -- I think a period right there is all that's necessary.

MR. BROOKER: Again, Your Honor, our comment would be the Tahoe-Sierra case was 2005. This is a 1949 case.

THE COURT: Well, what do you -- what do you think -- what do you think I should say, then, in place of that?

MR. BROOKER: Well, Your Honor, I don't think you should be charging the jury at all on compensation -- how compensation in an inverse condemnation is determined, because you've already decided that the loss of use for the sixteenth-month period is what they're to decide. Why are we going through all this law?

MR. BYBEE: Your Honor, there has to be some structure.

THE COURT: Well, I think so. I think I have to give them something on that. Anyway --

MR. BROOKER: That'll be fine.

THE COURT: All right.

[Whereupon, the Court reviews documents]

MR. BROOKER: For my part, I'll accept the last one, Your Honor.

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THE COURT: I'm sorry

MR. BROOKER: For my part, I will accept the last one.

THE COURT: All right. We've got an agreement on one.

And I'm going to tell them that, you know, the figures that he uses were eight percent but they don't have to accept that; if they don't think that's reasonable to apply in this case, they can make their own determination of what they think a reasonable rate of interest should be. I'm going to tell them that.

MR. BROOKER: All right. Now, Your Honor, I have one that's my standard -- our standard --

THE COURT: You've got to give it back to me if you --

MR. BYBEE: I need a copy myself.

THE COURT: Well, let me read it. Give them all to me.

MR. BROOKER: It's just a sentence --

THE COURT: Give me the three of them --

MR. BROOKER: It's just a sentence -- that's the only one I'm proposing.

[Whereupon, Mr. Brooker proffers documents to the Court]

THE COURT: The third one?

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MR. BROOKER: The third one.

THE COURT: Whichever one it was?

MR. BROOKER: Whichever one it was, yes.

THE COURT: I charge you that injury to business, loss of profit, loss of rent, or inconvenience in carrying on business with the result to take of -- by state and is private is not to be considered by you.

No, I'm not going to give that like that, because it is in this case.

MR. BROOKER: Okay.

THE COURT: So I'll give it to the court reporter: this is what you asked me to charge and I'm not going to charge it.

MR. BYBEE: Any others?

MR. BROOKER: That's all I have.

MR. BYBEE: Your Honor, I'm going to hand up to the court reporter the ones I'm taking exception to.

THE COURT: Which ones?

MR. BYBEE: The refusals: 5, 4, 3 --

THE COURT: Okay. Good.

MR. BYBEE: -- 2 --

THE COURT: Yeah. Go ahead and give them all to her.

[Whereupon, Court's Exhibit Number 2 is marked

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by the court reporter]

[Whereupon, Court's Exhibit Number 3 is marked by the court reporter]

MR. BYBEE: And we'll deal with your modifications as we need to.

THE COURT: All right. And you can take exception at the end and say anything else you want to say about it.

MR. BYBEE: Yes, sir.

THE COURT: Okay. Good. We're getting close.

All right. As far as I'm concerned, y'all can leave and be back --

What time did I tell them? 1:30

MR. BYBEE: 1:30.

MR. BROOKER: 1:30.

THE COURT: 1:30? And y'all -- we'll argue and charge. And I guess the arguments will be landowner goes first, argues fully, the Department, and then you can reply briefly if you want to.

MR. BYBEE: Yes, sir.

[Off the record momentarily]

MR. BROOKER: Your Honor, one more thing before we break.

THE COURT: Okay. Wait just a second.

MR. BROOKER: We don't have the jury here.

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You know, this morning I handed up that notice of appeal. But I just wanted to clarify for the record, so it's in the transcript, that that automatically puts in an appeal stay and by going forward, which you have done, has lifted that appeal stay under your authority, under the rule, so we can go on compensation.

THE COURT: That's fine with me.

MR. BROOKER: I don't want to consent to this on the record but there's --

MR. BYBEE: I think --

THE COURT: Okay. All right. Anyway, I --

MR. BYBEE: Your Honor, I don't know --

THE COURT: I don't know what that means. I don't worry --

MR. BYBEE: I don't know -- talking about --

THE COURT: I don't worry about those things.

MR. BYBEE: -- don't agree with it.

THE COURT: I don't worry about those things. I'm going to try this case to a conclusion and let whoever else wants to worry about those things worry about it.

I might say -- I want to make sure this -- I want to make sure this is on the record.

I don't know whether you put this on the record

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when I was talking earlier before.

But insofar as my ruling in regard to the meeting is concerned, again, factually I have found that it's not an unreasonable burden on 699 for somebody to make a right-turn only out of the driveway and proceed the distance. And I would think it would be 900 feet, at least, to make a safe U-turn to come back towards Charleston. I don't think that's an unreasonable burden to place on the owner of 699, under all the circumstances. And that's why I didn't find that there was a constitutional taking.

All right. Thank you very much.

[Whereupon, a recess is taken from 12:22 p.m. to 1:32 p.m.]

THE COURT: All right. Bring the jury in.

[Whereupon, the jury enters the courtroom at 1:32 p.m.]

THE BAILIFF: All jurors are here, Your Honor.

THE COURT: All right. Good. We do have the jury back with us. I hope you had a nice lunch. And we're finished with all of the testimony and the evidence from both sides. Now we're getting to that part of the trial where the attorneys can summarize and argue to you. These will be true arguments in which they try to persuade you as to what version or

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view you should take of the facts of this case and how those facts may fit into the law.

The procedure we'll follow is, first of all, Mr. Bybee, who represents Mr. Frampton, will go first and argue fully to you. Then we'll switch and Mr. Brooker, who represents the Department, will argue fully to you. And then the rules do allow the plaintiff's attorney to make a brief reply argument; that is, replying the matters raised by the defense, if he so desires.

After that, I will discuss with you more fully what your duties and responsibilities are as a jury in this case and the law that you may apply in this case and then you'll go to the jury room and you'll deliberate and you'll answer the question how much money should the Department be required to pay Mr. Frampton in this case.

Keep in mind what your job is going to be at the conclusion of the case.

Mr. Bybee.

MR. BYBEE: May it please the Court.

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CLOSING STATEMENT

BY MR. BYBEE:

Ladies and gentlemen, first of all, I want to thank you very much for your attention. The Framptons thank you.

I think I told you in opening argument that we were here to receive just compensation. And the judge just told you that after I stand down, he's going to charge you on the law. If he tells you something that I disagree with, I want you to follow his instructions. But I believe he's going to instruct you that the Fifth Amendment to the United States Constitution, and Article 1, Section 13, of the South Carolina Constitution, requires payment of just compensation for a property right that has been taken.

He's also going to instruct you that the plaintiff has the burden of proof, just as any other civil case. What does that mean, burden of proof? Very simple concept. If you weigh those scales of justice, the plaintiff must tip those scales ever so slightly in its favor with respect to the preponderance of the evidence.

What's the evidence? Well, the evidence is the testimony that you've heard from the witnesses, all the exhibits that are in evidence. Those are the two

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things. Anything you want to consider on that witness table is fine. This is your province and your ability to make the determinations as to what the evidence is.

So who did we hear from? We heard first from Mr. Phinney, who is a DOT employee. And he tells us what the practice and procedure of the DOT was And he tells us in imminent domain cases, they generally come to a landowner, have an appraisal done by a competent real estate appraiser -- they have a list of them in Columbia, approved appraisers -- and that they make an offer of just compensation if there's going to be a taking of a property right. But in this circumstance, that was not done.

What did he also tell us? Well, he explained these plans as they would impact the Framptons. And we've got this big blowup, and you can see the guardrail, if you want to look at these plans and look at all of that material. But the one thing I want to point out to you to refresh your recollection about is in Plaintiff's Exhibit 7, which are the plan sheets, there are some certain cross-sections in which there was an elevation in the grade change which arose because of the installation of that sidewalk, which led to damage to Hal Frampton's property, as we will show you later.

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So he's telling us the history of this property and the practice of the DOT and he's explained to us the plans. He's also told us that it's perfectly legal for a landowner, in the interim period between when he's advised of what's going on as far as an imminent domain case, that he could legally subdivide his property. And, finally, he tells us it's not the DOT practice to pay for access rights when they don't take land. Well, fine. That's his testimony. Important witness.

What's the other evidence? Hal Frampton. He tells us what? Well, his family has owned this particular parcel, 699 Folly Road, for better than a hundred years and at least -- this is how I write it down: the property has been used as a rental property, as income-producing property. That was a separate and distinct use than his other properties. So the parcel of land has been treated, in title and in use, as a separate parcel. So that's the way you have to evaluate it from a just compensation standpoint. That is the importance with respect to Hal's history.

The other thing that Hal has told us is how much it cost him to accommodate and relocate the driveway entrance. This would have typically been in part of

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the appraisal that Mr. Phinney told us never occurred because they typically would add the cost to cure to whatever amount of property right estimate that they were conveying.

But, again, in this case they did not elect to hire the appraiser. And, in fact, as we sit here today, we've heard no appraiser from the Highway Department. So when you're weighing that scale and that burden of proof that I have to carry, you have to come into the setting with the fact that the only evidence put in this record, put into this testimony, of the fair market value of the loss of that rental property was what came to the stand from the final witness, and that was Mr. Hartnett.

So what did Mr. Hartnett tell us? How does one evaluate just compensation? And, again, he's done this all of his life. He's been employed by the DOT and by the landowners on numerous occasions to estimate land value. And he went through those procedures with us in a very detailed fashion. He tells us first you have to determine the highest and best use of this property. And even though it was commercially zoned, he tells us because it was used as a residential rental there was highest and best use as a residential.

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So what does he do? He goes to the market. He researches comparable sales. He finds land values to justify and estimate what this particular property is worth. He finds four sales. Three of those four sales were residential sales, all within very close proximity, all on a creek. And he articulates a value, a fair market value, as of '09 of that property at $250,000. He takes those comparable sales and estimates, on that basis, standard appraisal practice. That's what the DOT appraiser does, that's what he does.

And then we have this unusual situation of a temporary taking. And the only way that you can estimate that temporary taking is to take down a rental value over that period of time that it was taken. So you have to come up with a monthly rate, because the judge has told us that the take lasted for sixteen months.

So how did he calculate that? Well, again, he goes into his experience and estimates a rate of return that one would obtain in a typical real estate investment. That's the purpose of an expert witness. That's the purpose of bringing testimony into the courtroom. That's the evidence that you have to weigh: did we tip the scale as to what the proper

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rate of return should be. And I would submit to you that's the only evidence in the record that suggests what the proper rate of return is. So he determined eight percent was the appropriate rate of return.

And you saw him do those calculations and put them on the board. That was the evidence that we brought to y'all with respect to the temporary taking period. And I know y'all took notes. My notes show that he estimated $1,666.67 a month as a loss, times the sixteen months.

Now, contract rent versus market rent -- because he was cross-examined. Mr. Brooker asked him about that. Wait a minute; we have a lease in this pile of documents; it says nine fifty; that's a different amount; why. And he said because the market rate is what you determine as a standard practice when you're working with the DOT. You have a fee simple value. The contract rent is not necessarily market rent. In his opinion, this contract rent was not market rent.

So, again, you weigh those scales. What kind of evidence do we have as to market rent? Well, the only evidence in this record as to market rent is what Mr. Hartnett tells us. So you take that calculation and you add interest. Now, it just so happens that the statutory rate of interest in a condemnation case

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that one is entitled to is eight percent. Common to the same rate of return that he found. Maybe the general assembly and Mr. Hartnett were thinking alike.

But he then calculates the interest that is due because for the temporary period, he had one particular number. It was 31,000 -- and I'm sure you got it down to the penny in your notes -- 31,000-odd dollars. That's after he's added that particular interest to it. Then he has to calculate interest from the period when it stops, when the temporary taking stops, to today. And those numbers are in your notes.

What do you add to that $31,104? Well, you can add the expenses that Hal had to incur to prepare the property to take the driveway. That would be $4,473. And that includes the interest. I'm just going to the bottom line here, ladies and gentlemen. And then you would add the $950, because he had to maintain the utilities during the time and duration of the temporary taking. You add that up and it equals $36,527, by my computations.

So the judge will tell you that what just compensation means is the full equivalent of dollars, associated by the taking, of the loss of income and the cost to cure and the expenses that he maintained

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and could not recoup for that particular period of time.

And, again, you're weighing the scales. You're determining who's tipped the balance, who's got better evidence, of that estimate of just compensation.

Ladies and gentlemen, I would submit to you, this testimony that you heard from the witness stand, the documents that you've seen, all merit and require payment of just compensation in the amount of $36,527.

Thank you, Your Honor.

THE COURT: All right. Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. May it please the Court.

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CLOSING ARGUMENT

BY MR. BROOKER: Ladies and gentlemen, you've heard a lot of testimony and a lot of argument through what you've just heard from Mr. Bybee giving you opinions as to what you should decide as to just compensation to pay Mr. Frampton for the taking that the judge has ruled. I want you to keep in mind that these are only opinions. It's your job to decide what is just compensation, find what is fair, what is just to the landowner and to the state that has to pay for it -- who has to pay for it. So you have to decide how much Mr. Frampton's property was diminished in value by the actions that the judge has found to be a taking, that being the closure of this driveway for some sixteen months.

Now, the main evidence that the plaintiff has for their valuation of what Mr. Frampton's loss is is, of course, Mr. Hartnett's testimony and his appraisal. And as you recall, that threw out a lot of eight percents. He is saying -- you heard him. His testimony was that Mr. Frampton could go and sell this property for 250,000 because someone would pay 250,000, presumably, to live there but then if they didn't want to live there, they would be able to get $1666 a month in rent. However, that is hypothetical.

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It's only Mr. Hartnett's opinion.

It's your job to decide whether that's reasonable or not. And we would submit that it's not. Remember, Mr. Frampton was renting this house for $950 a month. That -- there's no indication and no testimony and no evidence that he gave anybody a deal. He was trying to get as much rent as he could. And, in fact, during the course of this bridge project, he renovated the house for the express purpose, as he says himself, for maximizing the rent potential.

So he's not out there -- he owns a real estate company. He's a realtor, a real estate profession. He's not out there doing favors for people. He got the rent that he could and that rent is $950 a month. And taking the judge's ruling that this property was taken from him for sixteen months, then it's a simple matter of math for you to multiply sixteen by 950. A year's worth of 950-dollar rent is $11,400. Given sixteen months, it's somewhere around right north of $15,000. Four eight -- four thousand or whatever that Mr. Bybee is urging on you is just not within the range of what you heard this evidence today.

Now, when you go forward, keep a few facts that you've heard in mind that we have brought out. The first involves this Mr. Greg Berkey. You've heard

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that name thrown out. He was the tenant who was living in this house at the time this project started, when the construction crews were out there, when the median barrier was put down the center leaving the gap for everybody to get into their properties and their houses. He was there for a few months in this sixteen-month period. So Mr. Frampton was collecting rent for at least some weeks within the period assessed by -- to be a taking.

Moreover, Mr. Berkey's lease went until July the 31st of 2009. Mr. Frampton let him out of the lease in November of 2008. So that would mitigate this loss pretty well, something that Mr. Frampton could have insisted: you signed a year's lease, you're obligated for a year's rent, $11,400 in this case, from Mr. Berkey. He decided -- Mr. Frampton decided to forego that. Okay, Mr. Berkey, you can leave; I'm sorry.

Now, secondly -- the second thing to keep in mind is this issue about the renovations to the house. As I've just said, Mr. Frampton has testified that he wanted -- needed to fix this house up, renovate it, so he could maximize the rent there. And he did some of this work during the construction period. But the point it, it has nothing to do with the bridge project. He had to do that anyway in order to get

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more rent for the property. The utilities issue goes along with that, too. I mean, major renovations in the house takes electricity and water.

Not trying to make third out of four. I think I'm getting close now. Remember that Mr. Frampton owns the same property that he did before this project started. In fact, he has a nice new driveway that the Department put in for him. He gets more rent for it. So before the project, he owned a rental house; after the project, he owns an even more valuable rental house. It's been fixed up and has a -- has a new parking area out there. So in the long -- and though the judge said he's lost some rents in the interim, in the long term Mr. Frampton is in the same position or a better position than when the project started.

Now, the final thing is if you do accept these calculations, one thing they leave out is the fact that we paved that driveway. That was a benefit to him. That was something that Mr. Frampton agreed to. I mean, he said that he didn't like it. But we offered to pave the driveway, he accepted by accepting that nice paved driveway -- and Mr. Rajabi testified that that's worth about $3,000. So I would argue that that was a virtue, that that was an offset to the -- to the damages.

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Finally, as to interest, they're arguing that Mr. Frampton, if he had this $250,000 that Mr. Hartnett came up with, he could have invested that money and made eight percent return. My bank pays something south of a quarter of a percent interest, not even .8 interest. It's a fraction of a percent these days and that's been true since 2008. The point is that it's your job to decide what is reasonable. Mr. Hartnett -- it's not Mr. Hartnett's job. He is just giving testimony. And quite predictably and quite reasonably, he wants to bump up the range, under which you decide -- within which you decide this final figure, as high as possible. No problem with that. I would do the same thing. I just had to remind you you were to determine that and determine whether eight percent return on money in the last -- since 2008 is reasonable or not and whatever -- or what you believe that return should be.

With that, I would ask you to just listen to the judge's -- or Mr. Bybee has a rebuttal, if he wants to -- listen to the judge's charges and do what's just and fair. Appreciate it. It's been nice seeing you for the last three days.

THE COURT: Thank you, Mr. Bybee?

MR. BYBEE: Very briefly, Judge, please.

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CLOSING ARGUMENT

BY MR. BYBEE: Let's take the last matter first. We're not here to figure out what the bank interest was, because we not a real estate investor. That was the basis of what Mr. Hartnett was all about. That was why he chose the eight percent return.

The idea that he's offset a paved driveway under the circumstances of this case is just -- we read into the statute -- Mr. Rajabi admitted the statute required him to do that, and yet he wants to take another $3,000 off the estimate of just compensation when the State General Assembly has said you shall do this free? I find that a little bit less than just compensation.

The $950-dollar lease, he says there is -- this is the way he put this: there is no evidence that it was not market rent. Well, let's go back to that burden of proof. We put in the evidence that it was market rent. Mr. Hartnett testified in his opinion that it was market rent. He based that on the comparable sales approach, which we are all very familiar with in establishing the value of real estate.

Ladies and gentlemen, we need a just and full verdict, $36,527. That consists of the loss for the

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rental period, the cost to improve that driveway area, and the expense he had to carry for that sixteen months for the utilities that we've already identified.

Thank you very much.

THE COURT: All right. Thank you.

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CHARGE OF THE COURT

THE COURT: Members of the jury, you've heard and seen the evidence presented to you in this case and you've heard the summations and arguments from the attorneys. It's now my duty and responsibility, under the code of laws of this state and the constitution of this state, to discuss with you what your duties are at this point and the law that applies in this case and then you'll go to the jury room and you'll deliberate and you'll give us your decision about how much money the Department should be required to pay to Mr. Frampton as a result of this case.

Now, under our constitution and code of laws -- I tried to tell you this at the start -- you are the sole judges of the facts in this case, in terms of the dispute, as far as how much money is involved. As I told you earlier, the law requires me to make a determination about whether there had been a taking and I made that determination. Now it's your job to decide how much money is required to be paid in this case.

I would suggest you go about evaluating the testimony, the credibility or the believability of the witnesses who have testified, in much the same way you decide that issue in your everyday life. You and I have to decide who and what to believe when someone tells us

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something. You do it every day, whether at home, on your job, on the street, wherever. When someone comes up to you and makes a factual statement to you and someone says something like such and such just happened, or such and such is about to happen, or you should do this because, or you should do that because, you have to decide do I believe what that person tells me, how much trust, how much faith, do I put in what that person tells me.

I would suggest you go about deciding who and what to believe in regard to the testimony and evidence in this case in much the same way that you decide that issue in your everyday lives. Some of the things that you may want to consider -- and this is by no means an exhaustive list. But some of the things that you may want to consider in deciding who and what to believe in deciding how much weight to assign to testimony or not, such things as what was the manner or appearance of the witness who testified, was he straightforward or hesitant in answering, was the testimony of the witness consistent or inconsistent, how did the witness come to know the facts that he testified to or what was his ability to know these facts, is there some reason a witness would want to give testimony which would help or hurt one side or the other. In other words, was the witness biased or prejudiced in some way. Was the testimony of the witness strengthened

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or weakened by other testimony or evidence presented. You can believe as much or as little of each witnesses' testimony as you think proper. You may believe the testimony of a single witness -- single witness against that of many witnesses, or just the opposite. Of course, you do not determine truth or credibility or believability merely by counting the number of witnesses who have testified for one side or the other or who may have testified concerning some particular point or fact that may be involved in this case.

There was also one witness presented, Mr. Hartnett, was presented as an expert witness. We do allow witnesses that we refer to as expert witnesses. All that means is that they can give opinions. All the other kind of witnesses are only supposed to testify about facts. An expert is allowed to give his opinion about things that are beyond your and my common knowledge and experience. That's why he was qualified as an expert. That's why he was allowed to testify as he did and give opinions about things. You don't have to accept his opinions just because he was qualified as that. You weigh his testimony just as if -- just as you weigh the testimony of any other witness in this case. You decide what to believe. You decide how much weight to give his testimony in your deliberations and how it fits into this case. His

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testimony is to be considered by you and -- just as if all the other witnesses' testimony is to be considered in deciding your verdict in this case. Throughout this entire process you have but one goal, really, and that is to seek the truth regardless of its source.

Now, under the constitution, as I said, you're the finders of fact in regard to the issues submitted to you. Also, it makes me the instructor in the law. And that means that you must accept the law as I explain it to be the correct law. You should not be concerned with what you may think the law should be, but only what the law is.

Now, this is a relatively simple case at this point in time. As I've told you, this is what lawyers and judges refer to as an inverse condemnation case. Again, I've told you that under the constitution of laws, the government and quasi-government organizations such as utility companies and so forth, there's no question that they have the right to take somebody's property for public use through what's called a condemnation proceeding. If the parties can't agree on, you know, how much money the government should be required to pay for some property, then we go through a condemnation proceeding and we have a trial and a jury determines what just compensation is in those cases.

We also recognize this type case. The

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government here didn't directly take any land of Mr. Frampton, but we recognize under certain circumstances that someone's property rights, someone's property interests, can be taken even though he's still got all the land that he started out with. And in this case, as I said, the law required me to make that determination and I have decided, determined, that the government did, DOT did, in this case take some property rights that he had and under the constitution and laws of this state, he's entitled to just compensation.

An action for inverse condemnation, as I said, is appropriate where the government takes private property for public use. Inverse condemnation is a case against the governmental defendant here, South Carolina Department of Transportation, to recover the value of the property which has been taken, in fact, by the government.

Even though no formal exercise of the power of imminent domain has been -- while a principle -- while a typical taking occurs when the government acts to condemn property in the exercise of its power of imminent domain, the entire doctrine of inverse condemnation is predicated on the proposition or the idea that a taking may occur, and has, in fact, in this case occurred, without such formal condemnation proceedings. Article 1, Section 13 of the South Carolina Constitution and the Fifth Amendment to

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the Constitution of the United States of America, provide that private property shall not be taken for public use without the payment of just compensation. I instruct you that the actions of the South Carolina Department of Transportation in this case amounted to a taking for which Mr. Frampton in this case is due just compensation.

I charge you and instruct you that the temporary taking involved, the temporary taking of his property rights involved, occurred for a period of sixteen months. The amount the South Carolina Department of Transportation should be required to pay to Frampton in order to adequately compensate him for the taking of his property is called just compensation. It is an amount of money that would put him in as good a position as monitarily possible as he would have been in if there had been no taking.

In order for him to be compensated fully, he must put in -- and be put in as good a position as he would have been if there had been no taking. That's the bottom line, as far as just compensation is concerned in this case. If there had been no taking occurred, if the Department had not taken, what would his position have been monitarily without that taking. He's entitled to have the full value of such -- full value for any taking.

It is the owner's loss, Mr. Frampton's loss, is

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what you're compensating him for. The measure of compensation in a temporary case -- in a temporary taking case such as this is the rental that probably could have been obtained by him.

Now, there is a duty on the part of anybody, who seeks to be paid money by somebody else due to circumstances such as this, to mitigate any damages. In other words, he has to act as a reasonable person would have acted under the circumstances to mitigate or lessen any damage, any loss, that he claims occurred as a result of the Department's actions. He has to act as a reasonable landowner would have acted during this period of time so as to mitigate or lessen any loss that he would incur.

Now, there's also been some testimony -- there was testimony about an interest rate. And he is entitled, under the law, to interest on his money from February or the first of March of 2010, I believe it was, whatever the month, whatever the year was -- yeah, March 1, 2010. He is entitled to interest on his money from that period of time up to the present. The rate of interest is left up to you. There is a statute that was referred to that sets a rate of interest in regular condemnation cases. This is not a regular condemnation case. The legislature has said in a regular condemnation case, eight percent interest is

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what you're entitled to. But this is not a regular condemnation case. This is -- as I said, this is an inverse case and there's no set rate of interest for him to be paid for his money. It's left up to you to decide what a reasonable rate of interest would be under all the attendant circumstances under this case, under all your experience and knowledge and so forth, as far as money matters are concerned. You have to decide how much interest he should be paid by the South Carolina Department of Transportation from March 1, 2010, up to the present. So include that in your verdict. You decide how much money it would take to make him whole in regard to the loss he's incurred, as far as the loss of that right of ingress and egress for his property from November of 2008, I believe it was, through February of 2010. Sixteen months is what he's lost in terms of loss of access to go and come from that property. All right? You decide how much money he's entitled to, and that loss that he's incurred -- occurred -- that has occurred to him, and then you add to that what amount of interest you think is appropriate from March 1, 2010, up to the present.

Now, the burden of proof is on the plaintiff to prove how much money he's entitled to by what we call the greater weight or preponderance of the evidence. This is not a criminal case where the State must prove someone

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guilty beyond a reasonable doubt. We're not talking about a criminal case. We're talking about a civil case such as this, and the burden of proof is on the landowner to prove the amount of money that he's entitled to, by what we call the greater weight of preponderance of the evidence.

What do those words mean? The best way I know to explain that to you -- and I didn't come up with this. I adopted it from others many years ago -- is to ask you to imagine a scale, traditional scale. You've got a pan on one side of the scale, a pan on the other side of the scale, and there's a balance point midway between. Before this case began, there wasn't anything on either side of the scales: there wasn't anything on Mr. Frampton's side of the scales supporting his claim to money from the Department and there wasn't anything on the Department's side of the scales supporting his position in regard to this claim being made against him. The scales start out exactly even. If -- after you have mentally gone through the process of deciding who and what to believe in regard to the testimony, looking at the exhibits, considering everything that's been presented to you in this case if, after you've done that, the scales should remain exactly even in regard to an issue of money or if the scales should tip even slightly in favor of the defendant's -- the Department's position in regard to an issue of money

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in this case, then he would have failed to meet his burden of proof. But on the other hand, if the scale tilts even slightly in his favor in regard to the issues of money, in regard to the issue of money in this case, that's all that's necessary for him to have met the burden of proof of proving that claim by the greater weight or preponderance of the evidence.

So a slight tilting of the scale in his favor is all that's necessary for him to have met the burden of proof of proving a claim to money by the greater weight or preponderance of the evidence.

Another way of thinking about that is to ask you to imagine a scale of one to one hundred. Fifty-one on a scale of one to one hundred is by the greater weight or preponderance of the evidence.

So that's the standard that you apply in judging whether Mr. Frampton has met his burden of proof proving his claim to money in this weight by the greater weight or preponderance of the evidence.

Now, your verdict must be unanimous. All twelve of you must agree on what the verdict is before you can come back into the courtroom and tell us if you've reached a verdict in regards to this case. We don't have any majority verdicts. All twelve of you must agree.

Now, Mr. Foreman, you'll have with you in the

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jury room all the physical evidence that was introduced. You'll also have with you this piece of paper. I've got to put the name of the case at the top and so forth, and verdict form, and then this is what I've written down below that: we find just compensation for Henry W. Frampton, III, to be -- and then I've left a blank space there, followed by the word dollars, and a place for the foreman to sign. You fill in the dollar amount that you find just compensation in this case to be under the instructions as I've given you here today. You fill in that amount in that blank space, sign it below that, bring it back to me, and we'll know what your decision is in this case.

You have no friends to reward or enemies to punish. Your job is to do what you said you would do at the start of this case when you took your oath, and that is to decide this case based on the testimony and the evidence presented to you from the witness stand and my instructions to you on the law. When you do that, no one will have a right to criticize your verdict, regardless of what that verdict may be.

So now I would like for you to go to the jury room. Don't start your deliberations yet. I've been looking over -- I've been using some notes in discussing this with you. I need to look over my notes to make sure

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I've told you everything I need to tell you. If I have, I'll send the verdict form, along with the physical evidence, to the jury room and you'll know at that time you can begin your deliberations. If I've overlooked something, I'll bring you back out and tell you what I've overlooked before I let you start your deliberations.

So if you would go to the jury room, please.

[Whereupon, the jury exits the courtroom at 2:13 p.m.]

THE COURT: All right. Exceptions from the plaintiff, Mr. Frampton? Anything other than what I didn't charge as far as giving the court reporter?

MR. BYBEE: Yes, sir. Two. There was no charge whatsoever on fair market value, judge. And I know that we proffered one. And you had indicated you were going to make some kind of charge on fair market value. So that was not done.

And then the -- we take exception to the rate of interest, as you charged it, on the theory that the Cobb case establishes the inverse and direct cases are to be treated the same and so the proper charge should have been eight percent.

THE COURT: All right. Well, I put -- number 3, which is your fair market value request to charge, I told you I wasn't going to charge that.

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MR. BYBEE: You did tell us that, but you also said you were going to charge something on fair market value.

THE COURT: Well, I don't remember. I'll take your word for it, but I don't -- at this point, I don't think that's necessary.

MR. BYBEE: I understand.

THE COURT: So I'm not going to charge anything on that.

MR. BYBEE: And we've already tendered to the clerk [sic] the charges that we've tendered --

THE COURT: Right.

MR. BYBEE: -- we proffered and have that on --

THE COURT: Great. Good.

MR. BYBEE: Hold on. My co-counsel is tugging at my sleeve.

[Whereupon, Mr. Bybee and Mr. McDonald confer]

MR. BYBEE: I'm fine now, Judge.

THE COURT: All right. Mr. Brooker?

MR. BROOKER: I would only reiterate, Your Honor, that our rejected request to charge concerning the fact that income is not property, objection -- I guess, for the record, I except to that.

THE COURT: All right. Anything -- did you give a copy of that, or whatever you're talking about, to

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the court reporter?

MR. BROOKER: Of my rejected request to --

THE COURT: Right. If you want it -- if you want it -- you know, if you want it in the record, you need to give it to her.

MR. BROOKER: I did not know that. I'm sorry.

THE COURT: All right. I'll send it to the jury, then.

Bailiffs, come get all of this evidence.

[Whereupon, evidence goes to the jury at 2:20 p.m.]

[Whereupon, a recess is taken from 2:20 p.m. to 3:20 p.m.]

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VERDICT

THE COURT: Have a verdict. You've got ten days for any post-trial motions. Don't try to worry about making any post-trial motions today. Ten days for any post-trial motions. You both did a good job.

MR. BYBEE: Thank you, sir.

[Whereupon, the jury enters the courtroom at 3:21 p.m.]

THE COURT: Mr. Foreman, you can bring that over to me, if you would, please, sir.

[Whereupon, the foreman proffers documents to the Court]

THE COURT: All right. Thank you.

[Whereupon, the Court reviews documents]

THE COURT: We have the jury with us.

The jury has returned a verdict: we find just compensation for Henry W. Frampton, III, to be $36,527. Signed by the foreperson of the jury.

Anything prior to discharge of the jury? Nothing from the plaintiff?

MR. BYBEE: No.

THE COURT: Anything from the defendant?

MR. BROOKER: No, sir.

THE COURT: All right. Thank you very much. That finishes you up in regard to this case. And

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actually -- wait, wait, wait. Don't be so anxious.

[Off the record momentarily]

THE COURT: I want to thank you very much for your service on this jury. I'm not really interested in what a jury's verdict is; I am interested in the way that you go about arriving at your verdict. And by that I mean to my observations, you paid attention during the presentation of the testimony and the evidence, you paid attention when the attorneys were talking with you, and you paid attention when I was discussing the case with you. And to my observation, you did all three of those things. So thank you very much for your work in this case.

If you have not already done so, I would ask you to tear any notes you may have made, take them with you, tear them up, whatever you want to do.

And the good news also is is that you don't have to come back tomorrow. This is your last case. We are going to be trying another case tomorrow, picking another jury to try a case that will -- we hope will last only tomorrow. And if you want to come back as a volunteer, we'll let you do that, but you don't have to, no.

So you're through. Thank you very much. You are free to go.

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[Whereupon, the jury is excused and exits the courtroom at 3:24 p.m.]

THE COURT: Again, both of you did a very good job. I enjoyed being with you.

MR. BYBEE: Yes, sir.

THE COURT: Any post-trial motions, ten days.

MR. BYBEE: Just ask for -- move for litigation expenses pursuant to --

THE COURT: Well, you send it to me in writing.

MR. BYBEE: Yes, sir.

THE COURT: And be sure to send it to me --

MR. BYBEE: Yes, sir.

THE COURT: -- not the clerk of court and all. And of course copy him. I don't know what exactly you're going to be asking for, but you can submit whatever you want to submit.

MR. BYBEE: Thank you, sir.

[JURY TRIAL CONCLUDES AT 1:36 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, on Wednesday, February 8, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 8th day of September, 2012.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	RTE. NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BR10(020)	SC171	1	68

PIN 27840

INDEX OF SHEETS

SHEET NO.	DESCRIPTION	SHEET SUBTOTALS
1	TITLE SHEET	1
1-A	RIGHT OF WAY TITLE SHEET (FOR INFORMATION ONLY)	1
2-2A	SUMMARY OF ESTIMATED QUANTITIES	2
2B	MOVING, REMOVAL, AND RESET FENCE ITEMS	1
3-3B	TYPICAL SECTION	3
3C	STAKEOUT PLAN	1
3D	EMBANKMENT CONSTRUCTION DETAIL	1
3E	TREE PROTECTION DETAIL	1
3F	MARKINGS FOR BIKE LANES DETAIL	1
4	RIGHT-OF-WAY DATA SHEET	1
4A	PROPERTY STRIP MAP	1
5	GENERAL CONSTRUCTION NOTES	1
5A-5B	REFERENCE DATA SHEETS	2
6-7	PLAN & PROFILE SHEETS	2
8	TOP OF CURB PROFILE SHEET	1
9	INTERIM PROFILE	1
10	UTILITY OWNERS AND LOCATION SHEET	1
D1-D2	DRAINAGE PLAN SHEETS	2
TC1-TC6	TRAFFIC CONTROL PLANS	6
PM1	PAVEMENT MARKING PLANS	1
SN1-SN2	SIGNING PLANS	2
TS-1-TS-4	TRAFFIC SIGNAL PLANS	4
EC1	EROSION CONTROL DATA SHEET	1
U1-U6	U SHEETS	6
UC1-UC5	UTILITY RELOCATION SHEETS (BY OTHERS)	5
X1-X19	CROSS SECTIONS	19
	TOTAL	68

South Carolina Department of Transportation

COLUMBIA

PLAN AND PROFILE OF PROPOSED STATE HIGHWAY

CHARLESTON COUNTY

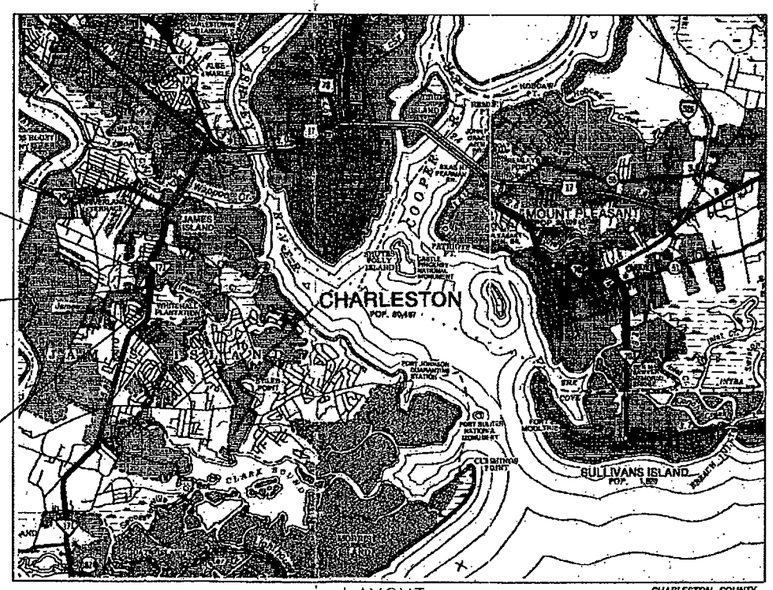
SC171 (FOLLY RD.) OVER JAMES ISLAND CREEK FROM ELLIS OAK AVE. TO HUNLEY AVE.

FILE NO. 10.146B ***PROJ. NO. BRT-BR10(020)***

BEGIN PROJECT -RELSC171-
FILE 10J46B PROJ. BRT-BR10(020)
STA. 13+00.00 SEE SHEET 6

CONSTRUCT 210 LF BRIDGE OVER JAMES ISLAND CREEK
FROM STA. 17+10.00 TO STA. 19+20.00
CONSTRUCT APPROACH SLABS ON EACH END OF BRIDGE.

END PROJECT -RELSC171-
FILE 10J46B PROJ. BRT-BR10(020)
STA. 25+76.50 SEE SHEET 6



LAYOUT

-N-

Design Reference for these plans is the:

2001

AASHTO "A Policy on Geometric Design of Highways and Streets"

NPDES PERMIT INFORMATION

NPDES Disturbed

Area = 1.47 Acre(s)

Approximate Location of Roadway is :
Longitude W 79° 58' 11"
Latitude N 32° 44' 42"

RAILROAD INVOLVEMENT?
YES / (NO)

CONSULTING ENGINEERING FIRM

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
RALPH WHITEHEAD ASSOCIATES, INC. No. C00114

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
5 SOUTHPARK CIRCLE
SUITE 250
CHARLESTON, SOUTH CAROLINA 29407

Certification Statement

These plans were prepared and certified by the Consultant for completeness.

No reviews or signatures by the SCDOT are required.

TRAFFIC DATA

2002 ADT 49,800

2022 ADT 74,202

TRUCKS 4 %

3 DAYS BEFORE DIGGING IN SOUTH CAROLINA

CALL 1-800-721-7877

PALMETTO UTILITY PROTECTION SERVICE

	RELSC171	SIDEROADS	DETOUR	TOTAL
NET LENGTH OF ROADWAY	0.202 MILES	0.015 MILES	0.072 MILES	0.289 MILES
NET LENGTH OF BRIDGES	0.040 MILES	0.000 MILES	0.057 MILES	0.097 MILES
NET LENGTH OF PROJECT	0.242 MILES	0.015 MILES	0.129 MILES	0.386 MILES
LENGTH OF EXCEPTIONS	0.000 MILES	0.000 MILES	0.000 MILES	0.000 MILES
GROSS LENGTH OF PROJECT	0.242 MILES	0.015 MILES	0.129 MILES	0.386 MILES

EQUALITIES IN STATIONING
NONE

NOTE: BRIDGE PLANS BOUND UNDER SEPARATE COVER

NOTE: ALL WORKMANSHIP AND MATERIAL ON THIS PROJECT TO CONFORM WITH SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (LATEST EDITION), AND BOOK OF STANDARD DRAWINGS FOR ROAD CONSTRUCTION (LATEST PUBLISHED ENGLISH REVISION).

APPROVED FOR CITY OF CHARLESTON DATE

MAYOR

COUNCIL MEMBERS

(SEE TITLE SHEET FOR R/W PLANS)

CLERK

CONSULTANT - PROJECT ENGINEER

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 22025 ALEX H. PRICE 7-19-05

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 19266 SCOTT A. ROBIDOUX 7-19-05

FOR CONSTRUCTION : 7-19-05
DATE

PIN 27840

FED. ROAD DIV. NO.	STATE	COUNTY	FED. NO.	PROJECT NO.	SEC. NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BR10(020)	SC171	3D	

ROADWAY AND APPROACH EMBANKMENT RECOMMENDATIONS

CONSTRUCT TEMPORARY SHORING WALL ALONG TEMPORARY DETOUR EMBANKMENT AS SHOWN ON SHEET 7 IN PLANS FROM APPROXIMATELY STA. 20+35 TO STA. 21+90. THIS TEMPORARY SHORING WALL IS A SHEET PILE WALL AND WILL BE REMOVED UPON THE REMOVAL OF THE DETOUR EMBANKMENT.

PRIOR TO PLACING CONTROLLED FILL TO RAISE THE SUBGRADE TO THE PROPER ELEVATION, A LAYER OF GEOTEXTILE SHALL BE PLACED TO PREVENT THE FILL MATERIAL FROM PUMPING OUT DURING PLACEMENT. AT ENDS OF FILL SLOPES, WRAP GEOTEXTILE UPWARDS ALONG THE SLOPE UNDERNEATH A MINIMUM OF 6' OF FILL MATERIAL. IT MAY BE NECESSARY TO FILL SURFICIAL VOIDS PRIOR TO PLACING THE GEOTEXTILE TO MINIMIZE EXCESSIVE STRAINS FROM DEVELOPING AND TEARING THE GEOTEXTILE. A BRIDGING LIFT OF NO.57 STONE SHALL BE PLACED DIRECTLY ON THE GEOTEXTILE TO A ELEVATION OF 3'. SOME "MUDWAVING" MAY BE EXPECTED DURING INITIAL FILL PLACEMENT. THE USE OF GEOTEXTILE BELOW THE TEMPORARY DETOUR EMBANKMENT WILL ASSIST IN MITIGATING THE WETLANDS WHEN THE EMBANKMENT IS REMOVED.

PLACE A SINGLE LAYER OF BIAXIAL GEOGRID (TYPE P1) ABOVE THE BRIDGING LIFT, PRIOR TO CONSTRUCTING THE REMAINDER OF THE EMBANKMENT. THIS GEOGRID SHALL EXTEND ACROSS THE FOOTPRINT OF THE PERMANENT AND TEMPORARY DETOUR CONSTRUCTION. (SEE DETAIL 1, THIS SHEET). AT THE ENDS OF THE FILL SLOPES, WRAP IT UPWARDS ALONG THE FILL SLOPE UNDERNEATH 6' OF FILL MATERIAL. ONCE THE TEMPORARY DETOUR EMBANKMENT IS REMOVED THE GEOGRID SHALL BE WRAPPED INTO THE FINISHED PERMANENT EMBANKMENT IN THE SAME MANNER AS ABOVE. THE TOE OF THE EMBANKMENT SHALL THEN BE PROTECTED FROM EROSION 2' ABOVE THE MEAN HIGH WATER MARK WITH CLASS 'B' RIP RAP. (SEE DETAIL 3, THIS SHEET). CHAPTER 7 OF THE FHWA MANUAL HI-95-038 SHALL BE FOLLOWED FOR PLACING GEOTEXTILES OVER SOFT SOILS. (SEE DETAIL 2, THIS SHEET).

PREPARE SUBGRADE:

- CUT TREES AND STUMPS FLUSH WITH GROUND SURFACE.
- DO NOT REMOVE OR DISTURB ROOT OR GRASS MAT.
- LEAVE SMALL VEGETATIVE COVER, SUCH AS GRASS AND REEDS, IN PLACE.
- FOR UNDULATING SITES OR AREAS WHERE THERE ARE MANY STUMPS AND FALLEN TREES, CONSIDER A WORKING TABLE FOR PLACEMENT OF REINFORCEMENT. FOR THIS PROJECT GEOFABRIC WITH A BRIDGING LIFT WILL BE USED TO PROVIDE THIS WORKING TABLE.

GEOTEXTILE PLACEMENT PROCEDURES:

ORIENT THE GEOTEXTILE WITH THE MACHINE DIRECTION PERPENDICULAR TO THE EMBANKMENT ALIGNMENT. NO SEAMS SHALL BE ALLOWED PARALLEL TO THE ALIGNMENT, THEREFORE,

- THE GEOTEXTILE ROLLS SHALL BE SHIPPED IN UNSEAMED MACHINE DIRECTION LENGTHS EQUAL TO ONE OR MORE MULTIPLES OF THE EMBANKMENT DESIGN BASE WIDTH.
- THE GEOTEXTILE SHALL BE MANUFACTURED WITH THE LARGEST MACHINE WIDTH POSSIBLE.
- THESE WIDTHS SHALL BE FACTORY-SEWN TO PROVIDE THE LARGEST WIDTH COMPATIBLE WITH SHIPPING AND FIELD HANDLING.

UNROLL THE GEOTEXTILE AS SMOOTHLY AS POSSIBLE TRANSVERSE TO THE ALIGNMENT. (DO NOT DRAG IT.)

GEOTEXTILES SHALL BE SEWN, JOINED, OR OVERLAPPED AS RECOMMENDED BY THE MANUFACTURER.

THE GOESYNTHETIC SHALL BE MANUALLY PULLED TAUT TO REMOVE WRINKLES. WEIGHTS (SAND, BAGS, TIRES, ETC.) OR PINS MAY BE REQUIRED TO PREVENT LIFTING BY WIND.

BEFORE COVERING, THE ENGINEER SHALL EXAMINE THE GEOTEXTILE FOR HOLES, RIPS, TEARS, ETC. ANY DEFECTS SHALL BE REPAIRED BEFORE PLACING FILL.

END-DUMP FILL ALONG EDGES OF GEOTEXTILE TO FORM TOE BERMS OR ACCESS ROADS.

- END-DUMP ON THE PREVIOUSLY PLACED FILL; DO NOT DUMP DIRECTLY ON THE GEOTEXTILE.
- LIMIT HEIGHT OF DUMPED PILES, E.G. TO LESS THAN 3 FEET ABOVE THE GEOTEXTILE LAYER, TO AVOID A LOCAL BEARING FAILURE. SPREAD PILES IMMEDIATELY TO AVOID LOCAL DEPRESSIONS. USE LIGHTWEIGHT DOZERS AND/OR FRONT END LOADERS TO SPREAD THE FILL.
- TOE BERMS SHALL EXTEND ONE OR TWO PANEL WIDTHS AHEAD OF THE REMAINDER OF THE EMBANKMENT FILL PLACEMENT.

AFTER CONSTRUCTING THE TOE BERMS, SPREAD FILL IN THE AREA BETWEEN THE TOE BERMS.

- PLACEMENT SHALL BE PARALLEL TO THE ALIGNMENT AND SYMMETRICAL FROM THE TOE BERM INWARD TOWARD THE CENTER TO MAINTAIN A U-SHAPED LEADING EDGE (CONCAVE OUTWARD) TO CONTAIN THE MUDWAVE.

TRAFFIC ON THE FIRST LIFT SHALL BE PARALLEL TO THE EMBANKMENT ALIGNMENT; NO TURNING OF CONSTRUCTION EQUIPMENT SHALL BE ALLOWED.

- CONSTRUCTION VEHICLES SHALL BE LIMITED IN SIZE AND WEIGHT TO LIMIT INITIAL RUTTING TO 3 INCHES. IF RUT DEPTH EXCEEDS 3 INCHES, DECREASE THE CONSTRUCTION VEHICLE SIZE AND/OR WEIGHT.
- THE FIRST LIFT SHALL BE COMPACTED ONLY BY TRACKING IN PLACE WITH DOZERS OR FRONT END LOADERS.
- ONCE THE EMBANKMENT IS AT LEAST 24 INCHES ABOVE THE ORIGINAL GROUND, SUBSEQUENT LIFTS SHALL BE COMPACTED WITH A SMOOTH DRUM VIBRATORY ROLLER OR OTHER SUITABLE COMPACTOR. IF LOCALIZED LIQUEFIED CONDITIONS OCCUR, THE VIBRATOR SHALL BE TURNED OFF AND THE WEIGHT OF THE DRUM ALONE SHALL BE USED FOR COMPACTION. OTHER TYPES OF COMPACTION EQUIPMENT MAY ALSO BE USED FOR NONGRANULAR FILL.

PLACEMENT OF SURCHARGE

WITH THE ANTICIPATION OF A TOTAL OF 15 INCHES OF SETTLEMENT, THE EMBANKMENT WILL NEED TO BE SURCHARED TO REDUCE THE AMOUNT OF SETTLEMENT THAT OCCURS AFTER CONSTRUCTION IS COMPLETED. 3 FEET OF COMMON SOILS SHALL BE USED AS SURCHARGE LOAD. ALTHOUGH IT'S EXPECTED THAT A PORTION OF THE SETTLEMENT WILL OCCUR RELATVELY QUICKLY DUE TO LOCALIZED BEARING FAILURE AND MUDWAVING, IT'S ANTICIPATED BETWEEN 90 TO 120 DAY'S WILL BE NEEDED TO COMPLETE THE DESIRED RESULTS OF THE SURCHARGE. THE ENGINEER WILL NOTIFY THE CONTRACTOR WHEN THE SURCHARGE MAY BE REMOVED. ONCE THE SURCHARGE IS COMPLETE, THE EXCESS SOIL CAN BE USED TO GRADE THE REMAINING SLOPES OF THE ALIGNMENT.

THE SURCHARGE FILL SHALL BE GRADED TO PROMOTE DRAINAGE TO PREVENT EXCESS WATER FROM PONDING WITHIN THE SURCHARGE.

EMBANKMENT MONITORING

DUE TO THE MAGNITUDE OF EXPECTED SETTLEMENTS BENEATH THE EMBANKMENTS, AND THE POTENTIAL FOR LATERAL STRAINS OF SOILS BEYOND THE EDGE OF THE EMBANKMENTS, A SYSTEM OF CONSTRUCTION MONITORING WILL BE NECESSARY. SETTLEMENT OF THE EMBANKMENT MUST BE MEASURED IN THE FIELD DURING CONSTRUCTION. MONITORING OF THE EMBANKMENT FOUNDATION DURING CONSTRUCTION SHALL BE ACHIEVED BY INSTALLING SETTLEMENT MEASURING DEVICES AND PIEZOMETERS TO EVALUATE THE RATE OF CONSOLIDATION AT ALL TIMES. THE DEPARTMENT WILL BE RESPONSIBLE FOR READING AND INTERPRETING THE MONITORING DEVICES.

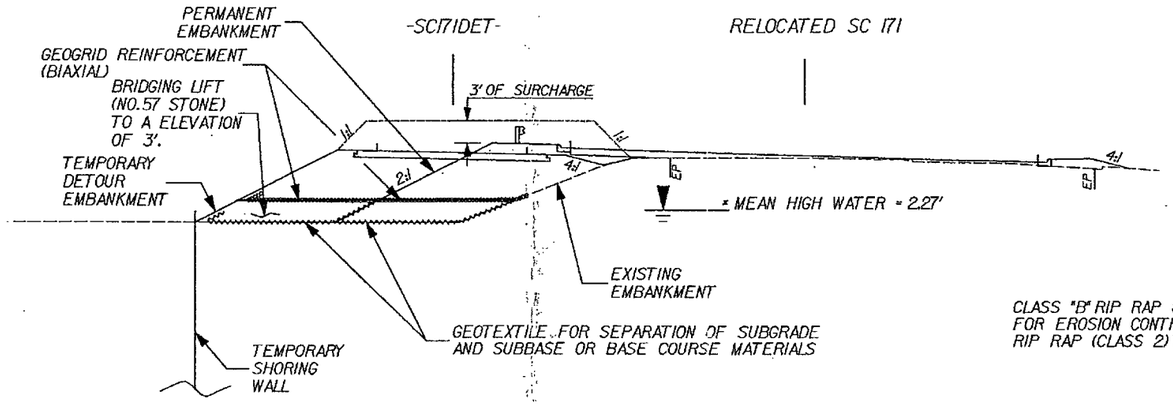
INSTALL MONITORING INSTRUMENTATION AT LOCATIONS INDICATED ON THIS SHEET. (SEE SPECIAL PROVISIONS, PROJECT NOTES AND NOTES ON THIS SHEET).

4 SETTLEMENT PLATES WILL BE INSTALLED ACROSS THE EMBANKMENT PRIOR TO BACKFILLING SO SETTLEMENTS DUE TO THE FILL CAN BE MONITORED DURING THE SURCHARGE PROGRAM. THE USE OF SETTLEMENT PLATES WILL ALLOW THE ENGINEER TO VERIFY WHEN THE DESIRED AMOUNT OF PRIMARY CONSOLIDATION HAS OCCURRED.

- SETTLEMENT PLATES SHALL ALSO BE INSTALLED ALONG THE EMBANKMENT ALIGNMENT AT THE STATIONS SHOWN.

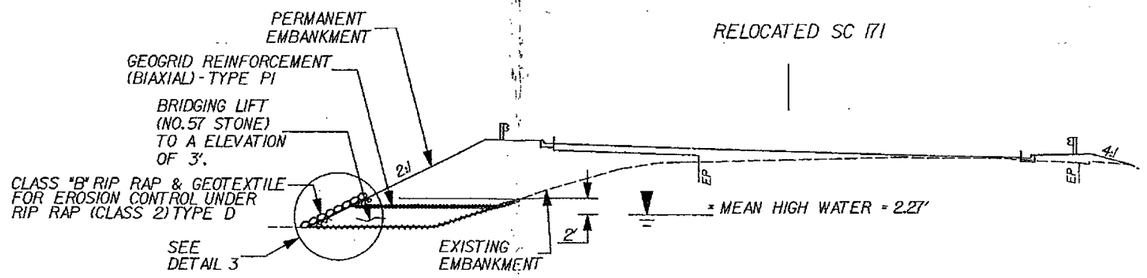
4 PEIZOMETERS WILL BE INSTALLED TO MONITOR THE SOFT SOILS UNDERLYING THE NEW EMBANKMENT DURING AND AFTER CONSTRUCTION. FIELD INSTRUMENTATION MAY DICTATE WORK STOPPAGES ON THE EMBANKMENT TO ALLOW EXCESS POREWATER PRESSURES TO DISSIPATE. A GEOTECHNICAL ENGINEER OR ENGINEERING TECHNICIAN SHALL BE PRESENT DURING CONSTRUCTION OPERATIONS TO OBSERVE MOVEMENTS AND ADJUST THE RATE OF FILLINGAS DICTATED BY THE INSTRUMENTATION RESULTS. IT SHALL BE NOTED THAT DURING CONSTRUCTION THE PVC CASING ON THE INSTRUMENTS SHALL BE EXTENDED UP WITH THE EMBANKMENT SO THEY MAY BE UTILIZED THROUGHOUT THE ENTIRE PROJECT.

- PIEZOMETERS SHALL ALSO BE INSTALLED AT THE LOCATIONS SHOWN.



DETAIL 1

TYPICAL CONSTRUCTION OF PERMANENT AND TEMPORARY DETOUR EMBANKMENTS



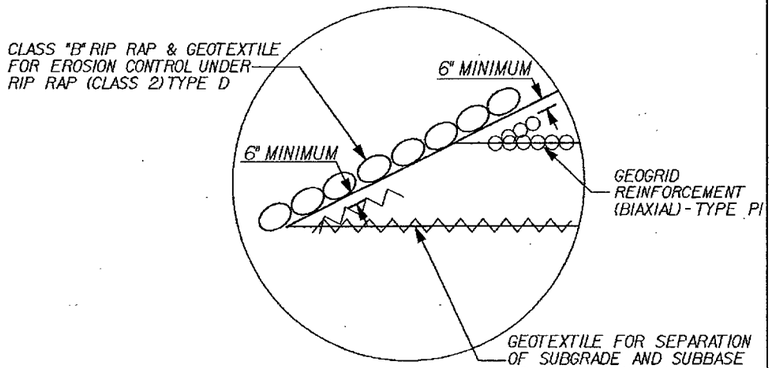
DETAIL 2

EMBANKMENT CONFIGURATION AFTER REMOVAL OF TEMPORARY DETOUR EMBANKMENT

* THIS ELEVATION IS TAKEN FROM TAYLOR ENGINEERING'S BRIDGE HYDRAULIC STUDY DATED MARCH 2, 2005.

EMBANKMENT CONSTRUCTION MONITORING

ALIGNMENT	STATION	LOCATION	EQUIPMENT	DEPTH FROM EXISTING GROUND SURFACE
-SC 171-	19+40	50' LT	PIEZOMETER	15'
-SC 171-	19+40	50' LT	SETTLEMENT PLATE	0'
-SC 171-	20+20	45' LT	PIEZOMETER	15'
-SC 171-	20+20	45' LT	SETTLEMENT PLATE	0'
-SC 171-	20+90	45' LT	PIEZOMETER	15'
-SC 171-	20+90	45' LT	SETTLEMENT PLATE	0'
-SC 171-	21+50	50' LT	PIEZOMETER	15'
-SC 171-	21+50	50' LT	SETTLEMENT PLATE	0'



DETAIL 3

DETAIL OF CONSTUCTION USING GEOTEXTILES

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER No. 20319 THOMAS J. CRAIG

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
2 SOUTHPARK CIRCLE
SUITE 250
CHARLESTON, SOUTH CAROLINA 29407

PREPARED IN ACCORDANCE WITH WPC'S "GEOTECHNICAL ENGINEERING ANALYSIS REPORT FOR SC 171 OVER JAMES ISLAND CREEK. CHARLESTON COUNTY, SOUTH CAROLINA"

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
4			
3			
2			
1			

TOPO. _____ DATE _____
DWG. _____ DATE _____ SQUAD ____ - ____
R/W _____ DATE _____

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

RELOCATED SC 171 OVER JAMES ISLAND CREEK
EMBANKMENT CONSTRUCTION DETAIL

SCALE RTE. SC171 DWG. NO.

drw.pgfce
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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
RIGHT-OF-WAY DATA SHEET

— CONSTRUCTION CHANGE —
SHEET PROVIDED AFTER LETTING

PIN NO. 27840

FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.1468	BRT-BRIDX020	SC171	4	

TRACT NO.	PROPERTY OWNER	TAX MAP REFERENCE	TOTAL TRACT ACRES	OBTAIN A				REMAINDER LEFT B ACRES	REMAINDER RIGHT B ACRES	DATE ACQUIRED	TYPE OF INSTRUMENT	PERMANENT EASEMENT	SLOPE PERMISSION (YES)	DRAINAGE STRUCTURE PERMISSION (YES)	TREE PROTECTION PERMISSION (YES)	ENTRANCE CONSTRUCTION PERMISSION (YES)	TREE PRE-TREATMENT AND/OR TRIMMING PERMISSIONS (YES)	REMARKS
				OUTFALL DITCH ACRES	LEFT	RIGHT	TOTAL											
1	TARRANT PROPERTIES	340-09-00-008	C 0.51 AC			1,962 SF (0.045 AC)	1,962 SF (0.045 AC)		0.465 AC	09/24/2008 06/28/2007 08/15/2005	FEE DEED CONDEMNATION PERMISSION				YES			30 SF NEEDED FOR TREE PROTECTION PERMISSION
2	MEDICAL DEVELOPMENT ASSOCIATES, LLC	340-00-00-083	D 2.08 AC		15,865 SF (0.364 AC)		15,865 SF (0.364 AC)	1.716 AC		07/27/2005 06/03/2005 08/08/2005	CONDEMNATION PERMISSION PERMISSION			YES	YES			835 SF NEEDED FOR TREE PROTECTION PERMISSION
3P	HENRY W. FRAMPTON, III	340-09-00-023	D 0.61 AC							-----	-----					YES		
4P	HENRY W. FRAMPTON, III	340-09-00-007	D 0.71 AC							-----	-----					YES	YES	
5	SCDOT	X	UNDETERMINED		38,516 SF (0.884 AC)		38,516 SF (0.884 AC)			-----	-----				YES			100 SF NEEDED FOR TREE PROTECTION PERMISSION
6	MELVIN BESSINGER	425-03-00-055	D 4.76 AC			472 SF (0.011 AC)	472 SF (0.011 AC)		4.75 AC	05/12/2005	FEE DEED							
7	MELVIN BESSINGER	425-03-00-056	D 0.64 AC			1,469 SF (0.034 AC)	1,469 SF (0.034 AC)		.606 AC	-----	-----							
8P	C & D OF MT. PLEASANT, INC.	425-03-00-054	D 0.70 AC							05/18/2005	PERMISSION			YES		YES		
9	CAROLINA CHILD CARE PROPERTIES	425-04-00-001	D 0.86 AC		4,815 SF (0.111 AC)		4,815 SF (0.111 AC)	.749 AC		07/27/2005 11/18/2005	CONDEMNATION AMENDED COND.				YES			970 SF NEEDED FOR TREE PROTECTION PERMISSION
10	ALBEMARLE SUPPER CLUB, LLC	425-03-00-053	D 2.5 AC			1,798 SF (0.041 AC)	1,798 SF (0.041 AC)		2.459 AC	06/27/2005	FEE DEED							
11	SUNOCO, INC.	425-03-00-051	D 0.6 AC			1,131 SF (0.026 AC)	1,131 SF (0.026 AC)		.574 AC	05/20/2005	FEE DEED							
12P	LEON R. MATLOCK	425-04-00-012	C 1.00 AC							05/13/2005	PETMISSION			YES				

R/W NOTE:
THE DEPARTMENT WILL UTILIZE THE PRESENT VARIABLE RIGHT OF WAY THAT WAS ACQUIRED IN VARIOUS YEARS UNDER VARIOUS FILES EXCEPT AS OTHERWISE SHOWN ON PLANS.

NOTES:

A TOTAL OBTAIN INCLUDES HIGHLAND, MARSH AND OUTFALL DITCHES.
OBTAINS WILL BE SHOWN IN SQUARE FEET AND ACRES. ACRES WILL BE SHOWN IN PARENTHESES UNDER SQUARE FEET. IN RURAL AREAS OBTAINS MAY BE SHOWN IN ACRES ONLY. OUTFALL DITCHES WILL BE SHOWN IN ACRES ONLY.

B SHOW REMAINDER IN SQUARE FEET WHEN LESS THAN 0.25 ACRE.

C TOTAL TRACT ACRES DETERMINED FROM DRAWING FILES PROVIDED.

D TOTAL TRACT ACRES DETERMINED FROM DEEDS PROVIDED.

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
5 SOUTHPARK CIRCLE
SUITE 350
CHARLESTON, SOUTH CAROLINA 29407

PREPARED BY GLB CH'D BY KAP REVIEWED BY ERC

REVISIONS

DATE	TRACT NO.	REMARKS	DATE	TRACT NO.	REMARKS
7-15-05	1	OBTAINED PERMISSION FOR TREE PROTECTION	2-15-06	4P	ADDED PRE-TREATMENT AND/OR TRIMMING PERMISSIONS
7-15-05	2	OBTAINED PERMISSION FOR TREE PROTECTION	12-08-08	NOTE	ADDED R/W NOTE... Rac
7-15-05	4P	OBTAINED PERMISSION FOR TREE PROTECTION	12-08-08	8P & 11	REV. PROP. OWNERS... Rac
7-15-05	5	OBTAINED PERMISSION FOR TREE PROTECTION	12-08-08	UPDATED	DATE ACQ'D & TYPE OF INSTR. BLOCKS COMPLETED... Rac
7-15-05	9	OBTAINED PERMISSION FOR TREE PROTECTION			
2-15-06	1	MODIFIED EXISTING AND PROPOSED RIGHT OF WAY ON TRACT NO. 1			

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PIN NO. 27840

FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BR10(020)	SC171	4A	

RETAIN R/W PL - PRES. R/W UNABLE TO VERIFY

RETAIN PRES. 80' R/W FILE 10.230A T.A.G. 1990

ELLIS OAK AVE.

PL - PRES. R/W UNABLE TO VERIFY RETAIN

PRES. R/W VARIES PLAT EC & 604, T.A.G. UNABLE TO VERIFY

PRES. 50' R/W DOCKET 10.494 T.A.G. 1962

NEW 120' R/W

NEW 65' R/W

+99.12 34.03'

OBTAIN NEW 30' X 30' Δ

+05.96 65.00'

-50.00 25.00'

NEW TRANS. R/W

+35.00 120.00'

+35.00 90.00'

+00.00 175.00'

+95.00 120.00'

NEW TRANS. R/W

+50.00 85.00'

NEW TRANS. R/W

+00.00 55.00'

+05.91 26.53'

OBTAIN NEW 30' X 50' Δ

+65.24 55.00'

NEW 55' R/W

PRES. 35' R/W DOCKET 10.494 T.A.G. 1962

PL - R/W UNABLE TO VERIFY RETAIN

RETAIN R/W UNABLE TO VERIFY

HUNLEY AVE.

RETAIN PRES. 35' R/W DOCKET 10.494 T.A.G. 1962

RELSCITI (FOLLY RD.)

PRES. 35' R/W DOCKET 10.494 T.A.G. 1962

RETAIN

PRES. 35' R/W DOCKET 10.494 T.A.G. 1962

NEW 55' R/W

+05.00 35.11'

+05.00 55.00'

PRES. 50' R/W DOCKET 10.494 T.A.G. 1962

RETAIN

NEW 75' R/W

+90.00 54.93'

+90.00 75.00'

+91.78 49.15'

+98.19 55.00'

+76.71 64.83'

+77.06 75.00'

RELSCITI (FOLLY RD.)

PRES. 35' R/W FILE 10.494 T.A.G. 1962

+85.00 48.00'

+76.96 50.00'

NEW TRANS. R/W

-74.35 31.80'

PRES. R/W FILE 10.494 T.A.G. 1962 RETAIN

RETAIN PRES. 57.5' R/W FILE 10.230A T.A.G. 1990

OAK POINT RD.

RETAIN PRES. 57.5' R/W FILE 10.230A T.A.G. 1990

RETAIN PRES. 57.5' R/W FILE 10.230A T.A.G. 1990

P.L. - EDGE OF CREEK PER DELVING PROJECT

PL - CENTERLINE OF CREEK

1

2

3P

4P

5

6

7

8P

9

10

11

12P

50 0 50 100

scale feet

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
4 SOUTHPARK CIRCLE
SUITE 210
CHARLESTON, SOUTH CAROLINA 29407

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
4			
3			
2			
1	EBH	2-15-06	MODIFIED EXISTING AND PROPOSED RIGHT OF WAY, OR TRACT NO. 1

TOPO. _____ DATE _____

DWG. _____ DATE _____ SQUAD ____ - ____

R/W _____ DATE _____

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

RELOCATED SC171
OVER JAMES ISLAND CREEK
PROPERTY MAP

SCALE 1" = 50' RTE. SC171 DWG. NO.

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PIN NO. 27840							
FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.1468	BRT-BR10(020)	SC171	6	

CONTRACTOR SHOULD EXCERCISE CAUTION WHEN DRIVING GUARDRAIL AND FENCE POSTS IN ORDER NOT TO DISTURB UTILITIES.

— CONSTRUCTION CHANGE —
SHEET PROVIDED AFTER LETTING

SEE SHEET 3C FOR STAKEOUT PLAN
SEE SHEET 3E FOR TREES TO BE PROTECTED
SEE SHEET 5A & 5B FOR REFERENCE DATA
SEE SHEET 7 FOR HUNLEY AVE PROFILE
SEE SHEET 7 FOR DETOUR PLAN & PROFILE
SEE SHEET 8 FOR TOP OF CURB PROFILES
SEE SHEET 10 FOR UTILITY OWNERS AND LOCATIONS
SEE SHEET DI FOR REL SC 171 DRAINAGE PLAN

ALIGNMENT CONTROL CAN BE FOUND ON REFERENCE SHEET

OBTAIN PERMISSIONS FOR TREE PRE-TREATMENT AND/ OR TRIMMING FOR TRACT NO.4P.

OBTAIN PERMISSIONS FOR TREE PROTECTION BARRICADES FOR TRACT NO.S 1,2,5&9.

RELOCATED ALIGNMENT - SC 171 (FOLLY RD.) - STA. 13+97.36 TO STA. 23+74.24

STV INCORPORATED
CONSULTING ENGINEERS
4975 LACROSS ROAD
SUITE 214
NORTH CHARLESTON, SOUTH CAROLINA 29406

scale 50 0 50 100 feet

UNCLASSIFIED = 496 CY. *
BORROW = 701 CY.
EXC. 496 CY. EMB. 58 CY.
BOR. 701 CY. SUR. 877 CY.
WASTE FOR = 473 CY.
DETOUR REMOVAL
SUBTOTAL = 1,197 CY. SUBTOTAL = 1,197 CY.
LESS = 701 CY. LESS = 701 CY.
TOTAL = 496 CY. TOTAL = 496 CY.

* INCLUDES REMOVAL OF DETOUR

UNCLASSIFIED = 645 CY. *
BORROW = 2,682 CY.
EXC. 645 CY. EMB. 775 CY.
BOR. 2,682 CY. SUR. 686 CY.
WASTE FOR = 826 CY.
DETOUR REMOVAL
SUBTOTAL = 3,327 CY. SUBTOTAL = 3,327 CY.
LESS = 2,682 CY. LESS = 2,682 CY.
TOTAL = 645 CY. TOTAL = 645 CY.

* INCLUDES REMOVAL OF DETOUR

PRESENT R/W DETERMINED FROM THE FOLLOWING PROJECTS:
DOCKET NO. 10492 T.A.G. 1962
FILE NO. 10230A T.A.G. 1990

ESTIMATED 360 CY OF UNCLASSIFIED EXC FOR END BENT EXCAVATION.

ESTIMATED 360 CY OF UNCLASSIFIED EXC FOR END BENT EXCAVATION.
ESTIMATED 1280 CY OF BORROW EXCAVATION FOR SURCHARGE ALONG SC 171.
ESTIMATED 800 CY OF UNCLASSIFIED EXCAVATION FOR REMOVAL OF SURCHARGE ALONG SC 171.

VPI = 14+80
Elev. = 9.90
330' V.C.
K = 221
DS = 45 MPH

VPI = 18+30
Elev. = 13.77
300' V.C.
K = 111
DS = 45 MPH

VPI = 22+00
Elev. = 7.86
200' V.C.
K = 154
DS = 45 MPH

BEGIN BRIDGE STA. 17+10.00 ELEV. 12.40'

END BRIDGE STA. 19+20.00 ELEV. 12.17'

FINISHED GRADE

EXISTING GRADE

(+) 1.11%

(-) 0.39%

(+) 1.11%

(-) 1.60%

(-) 1.60%

(-) 0.30%

TOP OF FILL STA. 17+35

TOP OF FILL STA. 18+98

OVERLAY

STA. 23+50.00

STA. 25+76.50

HYDROLOGY DATA:
DA= Indeterminate sqmi= ac.
Q25 = 3,000 cfs
Vel.= 9.3 ft/sec
25 Year HW Elev.= 18.3 ft MSD
Q100 = 3,960 cfs
Vel = 25 ft/sec
100 Year HW Elev.= 40.7 ft
NOTE : Data from Bridge Section
OVERTOPPING FLOOD:
Q= 13,000 cfs
Probability= 0.002 %

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 8811 DAVID M. PRESTON REGISTERED

SCALE: 1"= 50' HORIZONTAL
1"= 10' VERTICAL

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
6	ASF	6-18-09	ADDED RAISED CONC. ISLAND TO NORTH SIDE OF JAMES ISLAND CREEK
5	AHP	5-14-07	MODIFIED PROPOSED RIGHT OF WAY ON TRACT NO. 1
4	WJC	2-15-06	MODIFIED PERMISSIONS FOR TREE PROTECTION AND ADDED PERMISSIONS FOR TREE PRE-TREATMENT AND/ OR TRIMMING
3	EBM	2-15-06	MODIFIED EXISTING AND PROPOSED RIGHT OF WAY ON TRACT NO. 1
2	EBM	10-24-05	REVISED EXISTING RIGHT OF WAY LABELS
1	AHP	7-15-05	ADDED NOTE FOR OBTAINING PERMISSIONS FOR TREE PROTECTION BARRICADES FOR TRACT NOS. 1,2,4P,5&9

DWG. _____ DATE _____ TOPO. _____ DATE _____
R/W _____ DATE _____ SQUAD ____ - ____

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

RELOCATED SC 171 OVER JAMES ISLAND CREEK
STA. 13+00.00 TO STA. 25+76.50

SCALE 1"= 50' RTE. SC171 DWG. NO.

-RELSC171-

PIN NO. 27840							
FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BRI0(020)	SC171	7	

— CONSTRUCTION CHANGE —
SHEET PROVIDED AFTER LETTING

SURVEY POC STA.13+30.27
-EXSCIT- STA.13+33.24, 19.50' LEFT
BEGIN WIDENING
FILE 10.146B
-SCITIDET-

TIE EQUALITY
-RELSCIT- POC STA. 13+32.22 =
ELLIS OAK AVE. POT. STA. 10+00.00

POT 11+59.38

PCC 13+30.27

CURVE 1 (RELSCIT)
CURVE (-EXSCIT)

TIE EQUALITY
-RELSCIT- POC STA. 13+23.12
OAK POINT RD. POT
STA. 10+46.33

POT 10+00.00

N 65°13'12"E

ELLIS OAK AVE.

RETAIN

1 STORY BRICK MISC MEDICAL PLAZA

PRES. R/W VARIES PLAT EC @ 604 T.AG. UNABLE TO VERIFY

NEW 65' R/W

OBTAIN NEW 30' X 30' Δ

PT 15+25.98

CURVE 2 (RELSCIT)

CURVE 2 (-EXSCIT)

S 30°51'18" E

PRES. 80' R/W RALEN 10.23(A) T.AG. 1965

PRES. 35' R/W FILE 10.23(A) T.AG. 1965

NEW TRANS. R/W

1 STORY WOOD HOUSE

1 STORY BRICK HOUSE

1 STORY BRICK DUPLEX

1 STORY WOOD BLDG.

2 STORY WOOD HOUSE

1 STORY BRICK BLDG. CONOCO

1 STORY METAL/BRICK BLDG.

KEROSENE PUMP

METAL CANOPY

BOLLARDS

PLAY GROUND

CONC. PAD

6' WOOD FENCE

CHAIN LINK FENCE

PICKET FENCE

OCRM AND WETLAND LINES

CRITICAL AREA BOUNDARY

EDGE OF TIDAL MARSH

JAMES ISLAND

JAMES ISLAND CREEK

PRES. 50' R/W DOCKET 10.494 T.AG. 1962

NEW 120' R/W WETLAND BOUNDARY

PLACE 27 TONS OF RIP RAP (GREEN CLASS B)
PLACE 48 SY OF GEOTEXTILE FABRIC

CONSTRUCT TEMPORARY 300' X 32' BRIDGE (SEE BRIDGE PLANS)

BEGIN TEMPORARY SHORING WALL -SCITIDET- STA. 20+35 OFF 45°

PLACE 76 TONS OF RIP RAP (CLASS B)
PLACE 134 SY OF GEOTEXTILE FABRIC

END TEMPORARY SHORING WALK -SCITIDET- STA. 21+30 OFF 45°

END DETOUR BRIDGE STA. 20+50.00

PT 20+26.89

PC 21+57.00

PT 22+75.43

PT 22+49.85

BEGIN DETOUR BRIDGE STA. 17+50.00

CURVE 3

CURVE 3 (RELSCIT)

CURVE 2 (EXSCIT)

RELSCIT (FOLLY RD.)

SCI71 (FOLLY RD.)

SURVEY POC STA.13+42.62
BEGIN GRADE
FILE 10.146B
-SCITIDET-

PRES. R/W FILE 10.494 T.AG. 1962 RETAIN EDGE OF TIDAL MARSH

SURVEY POT STA.23+28.86
RELSCIT- POT STA.8+30.00, 19.50' LEFT
END WIDENING
FILE 10.146B
-SCITIDET-

SURVEY POT STA.21+91.09
END GRADE
FILE 10.146B
-SCITIDET-

PROPOSED CBC AND DRAINAGE FROM STA.22+50 TO 23+50.0 LT NOT SHOWN DURING THIS PHASE FOR CLARITY.

NEW TRANS. R/W

NEW 55' R/W

OBTAIN NEW 30' X 50' Δ

POT 10+00.00

POT 25+23.51

POT 27+51.46

TIE EQUALITY
-RELSCIT- POT STA. 25+47.4
HUNLEY AVE. POT STA. 11+28.15

SSI-8PV

SSI-11-C, 14"(S)

W1-12(D)

TV1-F

TV1-C

UTI-C

DB-1

DA-1

DA-2

DA-3

DA-4

DA-5

DA-6

DA-7

DA-8

DA-9

DA-10

DA-11

DA-12

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DA-29

DA-30

DA-31

DA-32

DA-33

DA-34

DA-35

DA-36

DA-37

DA-38

DA-39

DA-40

— CONSTRUCTION CHANGE —
SHEET PROVIDED AFTER LETTING

SEE SHEET 3C FOR STAKEOUT PLAN
SEE SHEET 5A & 5B FOR REFERENCE DATA
SEE SHEET 7 FOR DETOUR PLAN & PROFILE
SEE SHEET 10 FOR UTILITY LOCATIONS

PIN NO. 27840

FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BR10(020)	SC171	D2	

PROPOSED C&G, SIDEWALK, AND DRAINAGE FROM STA. 22+50 TO 25+76.50 LEFT, NOT SHOWN DURING THIS PHASE FOR CLARITY. SEE SHEET D2.

PLACE 11'-15" R.C. PIPE FL IN - 4.57 FL OUT - 3.57
PLACE 71'-36" R.C. PIPE FL IN - 2.19 FL OUT - 1.82
CONST. D.I. 24"X36" SPECIAL (4'X6' BOX) W/ EXTRA DEPTH
REMOVE EXISTING CB AND PLUG 15" R.C. PIPE
SURVEY PCC STA 13+30.27 - EXSCITI - STA 13+33.24, 19.50' LEFT
BEGIN WIDENING FILE 10.146B SCITIDET
TIE EQUALITY - RELSCITI - POC STA. 13+32.22 = ELLIS OAK AVE. POT. STA. 10+00.00
PLACE 76'-36" R.C. PIPE FL IN - 2.43 FL OUT - 2.19
RETAIN EXISTING M.H.
RETAIN
POT 11+58.88
PCC 13+30.27
ELLIS OAK AVE.
CURVE 1 (EXSCITI)
CURVE 1 RELSCITI (FOLLY RD.)
N 66° 12' 14" E
S 30° 51' 18" E
CONST. D.I. 24"X36"
CONST. 4'X5' JUNCT. BOX 2' EXTRA DEPTH
PLACE 138'-36" R.C. PIPE FL IN - 1.82 FL OUT - 0.06
1 STORY BRICK MUSC MEDICAL PLAZA
PLACE 29'-18" R.C. PIPE FL IN - 2.98 FL OUT - 1.44
PLAT ED. D 604, T.AG. LWARLE TO VERIFY
PC 16+52.59
PT 15+85.30
OBTAIN NEW 30' X 30' Δ
NEW TRANS. R/W
NEW 55' R/W
CURVE 2
RETAIN
CONST. M.H.
PLACE P.C. DRAINAGE BASE (60" DIAMETER)
PLACE P.C. RISER 60" DIAMETER 1.33 L.F.
PLACE P.C. FLAT SLAB ADAPTER
PLACE 132'-36" R.C. PIPE FL IN - 0.06 FL OUT - 1.02
PLACE 23 TONS OF RIP RAP (CLASS B)
PLACE 46 SY OF GEOTEXTILE FOR EROSION CONTROL UNDER RIP RAP CLASS 2, TYPE D
EDGE OF TIDAL MARSH
JAMES ISLAND CREEK
OCRM AND WETLAND LINES
CRITICAL AREA BOUNDARY
NEW 120' R/W
WETLAND BOUNDARY
PRES. 50' R/W LOCKET 10.494 T.AG. 1962
PT 20+26.69
END DETOUR BRIDGE STA. 20+50.00
PC 21+67.00
NEW TRANS. R/W
CURVE 3
BEGIN DETOUR BRIDGE STA. 17+50.00
PT 22+75.45
CURVE 4
CURVE 2 (EXSCITI)
RELSCITI (FOLLY RD.)
S 49° 08' 42" E
SURVEY POT STA. 23+22.86
RELSCITI POT STA. 23+00.00, 19.50' LEFT
END WIDENING FILE 10.146B SCITIDET
1 STORY BRICK HOUSE
PLAYGROUND
CONC. PAD
1 STORY BRICK BLDG.
OBTAIN NEW 30' X 30' Δ
NEW 55' R/W
POT 25+23.51
HUNLEY AVE.
1 STORY BRICK DUPLEX
POT 25+00.00
TIE EQUALITY - RELSCITI POT STA. 25+41.74 = HUNLEY AVE. POT STA. 25+00.00
POT 27+51.46
SCITIDET
S 27° 21' 34" E
SCITIDET
S 27° 28' 28" E
CONST. SEDIMENT DAM NO.1
REMOVE 165' 36" R.C. PIPE
CONVERT C.B. TO J.B.
PRES. R/W FILE 10.494 T.AG. 1962 RETAIN
SURVEY POC STA 15+12.62
BEGIN GRADE FILE 10.146B SCITIDET
PCC 15+10.61
NEW TRANS. R/W
CLEAN EXISTING PIPE
PLUG & FILL
RETAIN EXISTING C.B.
TIE EQUALITY - RELSCITI POC STA. 13+23.12 = OAK POINT RD. POT STA. 10+46.33
POT 10+00.00
N 65° 13' 32" E
OAK POINT RD.
2 STORY WOOD HOUSE
1 STORY WOOD HOUSE
1 STORY BRICK HOUSE
GREEN HOUSE
WOOD FENCE
CHAIN LINK FENCE
METAL SHED
BOAT SHED
PLACE 72" R.C. PIPE SPECIAL (TRENCHLESS) FL IN - 1.84 FL OUT - 1.06
EDGE OF CREEK PER DETAIL SHEET D2
SURVEY POT STA. 21+91.09 END GRADE FILE 10.146B SCITIDET
NEW 75' R/W
PT 22+49.83
PT 23+22.24
OCRM AND WETLAND LINES
1 STORY WOOD BLDG.
BOLLARDS
KEROSENE PUMP
METAL CANOPY
1 STORY BRICK SUNOCO
2 STORY METAL/BRICK BLDG.
1 STORY METAL/BRICK BLDG.
1 STORY BRICK GARAGE
2 STORY WOOD/BRICK HOUSE
UT1-C
SST-8PV
W1-12DI
E1-30, LEC-TV1(4)-TV1-F
E1-30 (S), TV1-F
E1-30, TV1-F
RETAIN
BRUSH
FENCE
OVERHEAD
UNDERGROUND

NOTES FOR TRENCHLESS PIPE (JACK & BORE):

1. JACK & BORE 18" R.C. PIPE PRIOR TO CONSTRUCTION OF DETOUR ROAD.
2. ONLY ONE PIT WILL BE USED FOR THIS OPERATION. IT WILL BE LOCATED ON THE LEFT SIDE OF THE ALIGNMENT. VERIFY BY PROBING OR OTHER MEANS APPROVED BY THE ENGINEER THAT THE END OF PIPE ON RIGHT SIDE OF ALIGNMENT IS AT THE LOCATION AND ELEVATION AS SHOWN ON THE PLAN DURING A NIGHT TIME LANE CLOSURE.
3. TEMPORARILY PLUG OR CAP LEFT END OF 18" R.C. PIPE.
4. EXTEND PIPE LENGTH ON RIGHT SIDE AFTER TRAFFIC IS SHIFTED TO DETOUR ROUTE WHEN CATCH BASIN IS CONSTRUCTED. (SEE PLAN SHEET D1).
5. ALL WORK SHOULD ADHERE TO SCDOT CONSTRUCTION MANUAL SECTION 714.3.10 (TRENCHLESS PIPE METHOD) UNLESS NOTED OTHERWISE.
6. STEEL CASING SHOULD NOT BE USED AS CARRIER PIPE.

EROSION CONTROL LEGEND
INLET PROTECTION
SEDIMENT DAM

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 24586 EDWARD J. VANCE 4-19-07

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
4			
3	AHP	04-19-07	REVISED DRAINAGE PLAN
2	AHP	02-08-07	REVISED DRAINAGE PLAN
1	AHP	12-26-06	REVISED DRAINAGE PLAN

TOPO. _____ DATE _____
DWG. _____ DATE _____ SQUAD ____ - ____
R/W _____ DATE _____

50 0 50 100
scale feet

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
4975 LACROSS ROAD
SUITE 214
NORTH CHARLESTON, SOUTH CAROLINA 29406

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

RELOCATED SC 171 OVER JAMES ISLAND CREEK
DETOUR DRAINAGE PLAN
STA. 13+30.27 TO STA. 23+22.86

SCALE 1" = 50' RTE. SC171 DWG. NO.

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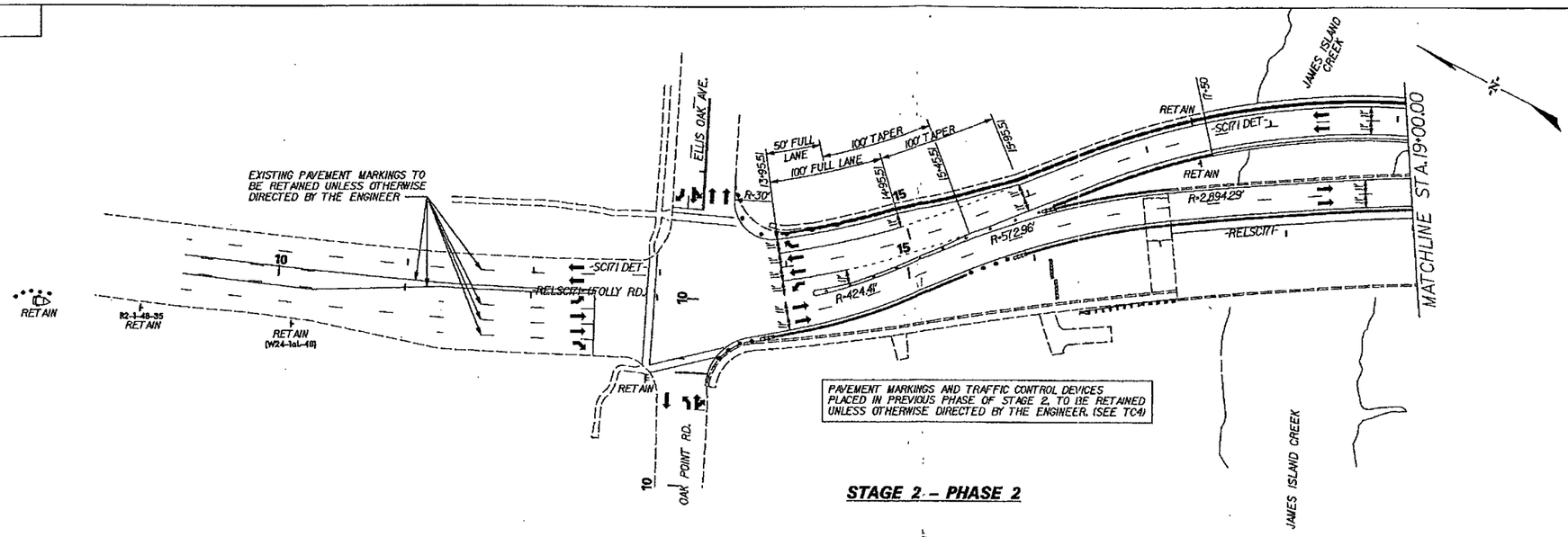
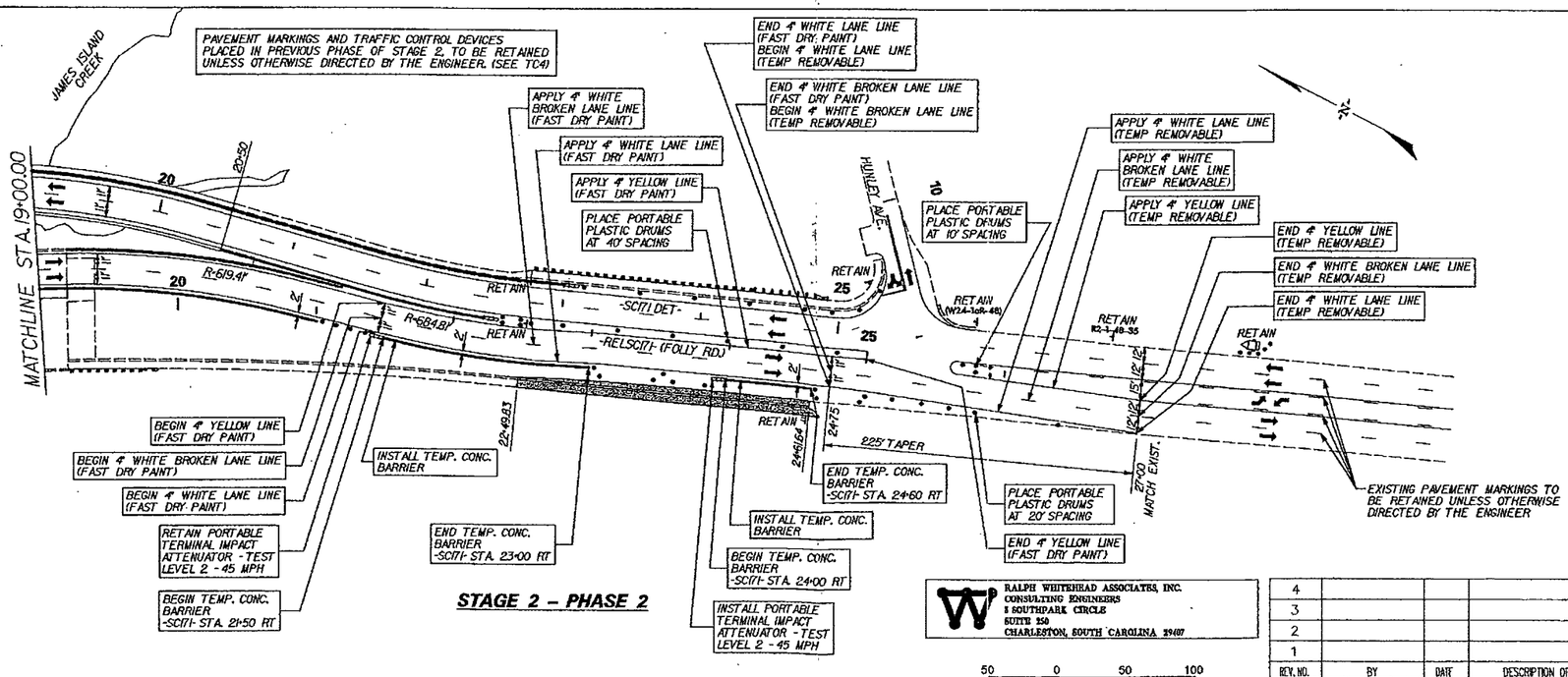
PIN NO. 27840							
FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.146B	BRT-BR10(020)	SC171	TC5	
						STAGE 2	

SEE SPECIAL PROVISIONS FOR DETAILS ON TEMPORARY PEDESTRIAN WALKWAY.





LEGEND

- TYPE III BARRICADE W/R11-2-48
- FLEXIBLE DELINEATOR POSTS
- PORTABLE PLASTIC DRUM
- TEMPORARY CONCRETE BARRIER
- PORTABLE IMPACT ATTENUATOR - LEVEL 2
- TRAFFIC CONTROL SIGN
- EXISTING EDGE OF PAVEMENT
- TRAILER-MOUNTED CHANGEABLE MESSAGE SIGN
- ROADWAY STAGE 2 CONSTRUCTION
- BRIDGE STAGE 2 CONSTRUCTION

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
5 SOUTHPARK CIRCLE
SUITE 250
CHARLESTON, SOUTH CAROLINA 29407

50 0 50 100
scale feet

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
4			
3			
2			
1			

TOPO. _____ DATE _____
DWG. _____ DATE _____
R/W _____ DATE _____
SQUAD ____ - ____

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

TRAFFIC CONTROL PLANS
STAGE 2
PHASE 2

SCALE 1"= 50' RTE. SC171 DWG. NO.

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 22025 6-27-05 ALEX N. PRICE

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PIN NO. 27840							
FED. ROAD DIV. NO.	STATE	COUNTY	FILE NO.	PROJECT NO.	ROUTE NO.	SHEET NO.	TOTAL SHEETS
3	S.C.	CHARLESTON	10.1468	BRT-BR1D(020)	SC171	TC6	
						STAGE 3	

END TEMP. CONC. BARRIER -SC171- STA. 14+10 LT
INSTALL PORTABLE TERMINAL IMPACT ATTENUATOR - TEST LEVEL 2 - 45 MPH
END 4 WHITE LANE LINE (FAST DRY PAINT)
BEGIN TEMP. CONC. BARRIER -SC171- STA. 15+50 LT
INSTALL TEMP. CONC BARRIER
PLACE PORTABLE PLASTIC DRUMS AT 10' SPACING
ELLIS OAK AVE.
10+95.77
14+00
14+25
14+75
75' FULL LANE
50' FULL LANE
100' TAPER
15+75
16+75
100' TAPER
APPLY 4 WHITE LANE LINE (FAST DRY PAINT)
END TEMP. CONC. BARRIER -SC171- STA. 16+00 LT
INSTALL TEMP. CONC. BARRIER
JAMES ISLAND CREEK
APPLY 4 WHITE LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE)
SEE BRIDGE PLANS FOR TEMP. CONC. BARRIER
SEE BRIDGE PLANS, STAGE 3, FOR NEW BRIDGE SIDEWALK (STAGED CONSTRUCTION)
SC171 BEG.
17+10
MATCHLINE STA. 19+00.00
EXISTING PAVEMENT MARKINGS TO BE RETAINED UNLESS OTHERWISE DIRECTED BY THE ENGINEER
STICKNEY CLOSED FROM CLOSED
END 4 WHITE BROKEN LINES (FAST DRY PAINT)
RETAIN
RETAIN (R2-1-48-35)
RELSC171 (FOLLY RD.)
APPLY 33 LF 24" WHITE STOP LINE (FAST DRY PAINT)
OAK POINT RD.
BEGIN 4 WHITE BROKEN LANE LINE (FAST DRY PAINT)
APPLY 11 LF 24" WHITE STOP LINE (FAST DRY PAINT)
BEGIN/END 4 YELLOW LINES (FAST DRY PAINT)
PLACE PORTABLE PLASTIC DRUMS AT 40' SPACING
APPLY 4 YELLOW LINES (FAST DRY PAINT)
BEGIN 4 WHITE BROKEN LINES (FAST DRY PAINT)
APPLY 4 WHITE BROKEN LINES (FAST DRY PAINT)
PLACE PORTABLE PLASTIC DRUMS AT 10' SPACING
APPLY 4 WHITE BROKEN LANE LINES (FAST DRY PAINT)
JAMES ISLAND CREEK
APPLY 4 YELLOW LINES (PREF. FLEX T-2, TEMP. REMOVABLE)
APPLY 4 WHITE BROKEN LANE LINES (PREF. FLEX T-2, TEMP. REMOVABLE)
END 4 WHITE LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE) BEGIN 4 WHITE LANE LINE (FAST DRY PAINT)
END 4 WHITE BROKEN LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE) BEGIN 4 WHITE BROKEN LANE LINE (FAST DRY PAINT)
END 4 YELLOW LINE (PREF. FLEX T-2, TEMP. REMOVABLE) BEGIN 4 YELLOW LINE (FAST DRY PAINT)
END 4 YELLOW LINE (FAST DRY PAINT) BEGIN 4 YELLOW LINE (PREF. FLEX T-2, TEMP. REMOVABLE)
END 4 WHITE BROKEN LANE LINE (FAST DRY PAINT) BEGIN 4 WHITE BROKEN LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE)

STAGE 3 – PHASE 1

LEGEND

- TYPE III BARRICADE W/R11-2-48
- FLEXIBLE DELINEATOR POSTS
- PORTABLE PLASTIC DRUM
- TEMPORARY CONCRETE BARRIER
- PORTABLE IMPACT ATTENUATOR – LEVEL 2
- TRAFFIC CONTROL SIGN
- EXISTING EDGE OF PAVEMENT
- TRAILER-MOUNTED CHANGEABLE MESSAGE SIGN
- ROADWAY STAGE 3 CONSTRUCTION
- BRIDGE STAGE 3 CONSTRUCTION

END 4 WHITE LANE LINE (FAST DRY PAINT) BEGIN 4 WHITE LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE)
APPLY 4 WHITE LANE LINE (PREF. FLEX T-2, TEMP. REMOVABLE)
JAMES ISLAND CREEK
INSTALL PORTABLE TERMINAL IMPACT ATTENUATOR - TEST LEVEL 2 - 45 MPH
BEGIN TEMP. CONC. BARRIER -SC171- STA. 21+00 LT
INSTALL TEMP. CONC BARRIER
PLACE PORTABLE PLASTIC DRUMS AT 10' SPACING
APPLY 4 WHITE LANE LINE (FAST DRY PAINT)
END TEMP. CONC. BARRIER -SC171- STA. 21+50 LT
INSTALL TEMP. CONC BARRIER
MATCHLINE STA. 19+00.00
19+20
22+52.58
APPLY 4 WHITE BROKEN LANE LINES (PREF. FLEX T-2, TEMP. REMOVABLE)
R=1,011'
R=2,000'
RELSC171 (FOLLY RD.)
20+32.01
22+50.40
22+97
PLACE PORTABLE PLASTIC DRUMS AT 40' SPACING
APPLY 4 WHITE BROKEN LANE LINES (FAST DRY PAINT)
APPLY 4 DOUBLE YELLOW LINES (FAST DRY PAINT)
BEGIN 4 WHITE LANE LINE (FAST DRY PAINT)
END 4 DOUBLE YELLOW LINES (FAST DRY PAINT) BEGIN 4 YELLOW TWO WAY LEFT TURN LINES (FAST DRY PAINT)
END/BEGIN 4 YELLOW LINES (FAST DRY PAINT) BEGIN/END 4 DOUBLE YELLOW LINES (FAST DRY PAINT)
APPLY 4 YELLOW LINES (FAST DRY PAINT)
BEGIN TEMP. CONC. BARRIER -SC171- STA. 23+00 LT
INSTALL PORTABLE TERMINAL IMPACT ATTENUATOR - TEST LEVEL 2 - 45 MPH
APPLY 4 YELLOW TWO WAY LEFT TURN LINES (FAST DRY PAINT)
PLACE PORTABLE PLASTIC DRUMS AT 40' SPACING
APPLY 4 WHITE LANE LINE (FAST DRY PAINT)
END 4 YELLOW TWO WAY LEFT TURN LINES (FAST DRY PAINT)
HUNLEY AVE.
SIDEWALK CLOSED
RETAIN
BEGIN 4 WHITE LANE LINE (FAST DRY PAINT)
PLACE PORTABLE PLASTIC DRUMS AT 10' SPACING
BEGIN 4 WHITE BROKEN LANE LINE (FAST DRY PAINT)
25+76.50
25+00
50' TAPER
RETAIN (R2-1-48-35)
RETAIN
END 4 WHITE BROKEN LANE LINE (FAST DRY PAINT)
END 4 WHITE LANE LINE (FAST DRY PAINT)
BEGIN 4 YELLOW TWO WAY LEFT TURN LINES (FAST DRY PAINT)
EXISTING PAVEMENT MARKINGS TO BE RETAINED UNLESS OTHERWISE DIRECTED BY THE ENGINEER

STAGE 3 – PHASE 1

RALPH WHITEHEAD ASSOCIATES, INC.
CONSULTING ENGINEERS
5 SOUTHPARK CIRCLE
SUITE 250
CHARLESTON, SOUTH CAROLINA 29407

50 0 50 100
scale feet

SOUTH CAROLINA PROFESSIONAL ENGINEER No. 22025 4-27-05 ALEX H. PRICE

REV. NO.	BY	DATE	DESCRIPTION OF REVISION
4			
3			
2			
1			

TOPO. _____ DATE _____
DWG. _____ DATE _____ SQUAD ____ - ____
R/W _____ DATE _____

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
ROAD DESIGN COLUMBIA, S.C.

TRAFFIC CONTROL PLANS
STAGE 3
PHASE 1

SCALE 1"= 50' RTE. SC171 DWG. NO.

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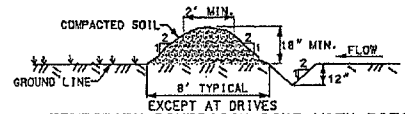
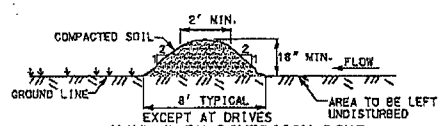


TEMPORARY DIVERSION DIKE WITH DITCH

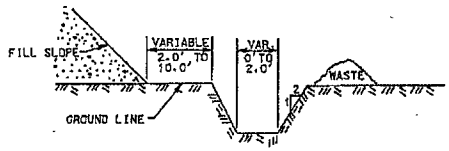
THE PAY ITEM SHALL BE TEMPORARY DIVERSION DIKE WITH DITCH_____L.F.



TEMPORARY DIVERSION DIKE

NOTES

1. THIS ITEM IS FOR DIVERTING CLEAN WATER AROUND A CONSTRUCTION AREA.
2. CLEAR AND GRUB ALL TREES, BRUSH, STUMPS AND OTHER OBJECTIONABLE MATERIAL.
3. ENSURE THAT THE MINIMUM CONSTRUCTED CROSS SECTION MEETS ALL DIMENSIONS SHOWN.
4. IMMEDIATELY AFTER CONSTRUCTION ESTABLISH VEGETATION, PLACING TEMPORARY EROSION CONTROL BLANKET ON THE DIKE. (AS APPLICABLE).
5. PAYMENT FOR TEMPORARY DIVERSION DIKE INCLUDES ALL MATERIALS IN PLACE, REMOVAL AND DISPOSAL OF MATERIALS AND RESHAPING DIKE TO DRAIN. SEEDING TO BE PAID FOR SEPARATELY.
6. THE PAY ITEM SHALL BE: TEMPORARY DIVERSION DIKE_____L.F.

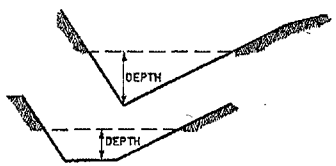


TEMPORARY SILT DITCH

NOTES

1. THIS ITEM IS TO MOVE SEDIMENT LADEN WATER FROM A CONSTRUCTION SITE TO A SEDIMENT CONTROL STRUCTURE.
2. SEED DITCH AND WASTE AREA WITH TEMPORARY SEEDING IMMEDIATELY AFTER CONSTRUCTION.
3. IMMEDIATELY AFTER CONSTRUCTION ESTABLISH VEGETATION, PLACING TEMPORARY EROSION CONTROL BLANKET ON THE DITCH (AS APPLICABLE).
4. THE PAY ITEM SHALL BE: SILT DITCHES_____C.Y.

ROLLED EROSION CONTROL PRODUCT



NOTES

1. THE DEPTH OF THE EROSION CONTROL PRODUCTS ARE TO BE DETERMINED BY DESIGN AND PLACED ON PLAN SHEETS.
2. INSTALL IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS.
3. COST OF INSTALLATION AND MATERIALS SHALL BE INCLUDED IN THE PAY ITEM FOR ROLLED EROSION CONTROL PRODUCT.
4. PAY ITEMS:
TEMPORARY EROSION CONTROL BLANKET _____SY
PERMANENT TURF REINFORCEMENT MAT_____SY

THIS DRAWING IS NOT TO SCALE

SILT FENCE

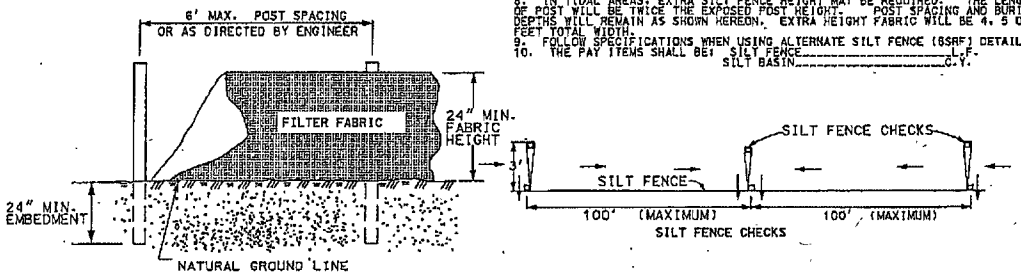
HEIGHT OF FILL (y) IN FEET	FILL SLOPE	MINIMUM SILT FENCE OFFSET FROM TOE OF SLOPE (x) IN FEET	MINIMUM RIGHT OF WAY OFFSET FROM TOE OF SLOPE (NPDES LINE) (z) IN FEET	CHECK LENGTH IN FEET**
<6	2:1 4:1 6:1	2	3	2
6-10	2:1	12*	13*	5
	4:1 6:1	3	4	3
>10	2:1	12*	13*	5
	4:1 6:1	4	6	4

*THESE MINIMUM OFFSETS MAY BE REDUCED WHEN CURB AND GUTTER OR SOME OTHER FEATURE REDUCES THE FLOW OF WATER DOWN THE SLOPE. THE SMALL OFFSETS OF EACH GROUP OF HEIGHT OF FILL CANNOT BE REDUCED.

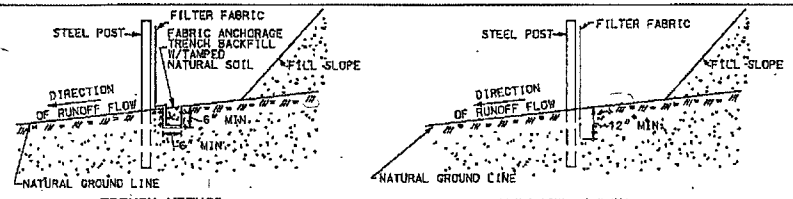
**SILT FENCE CHECKS WILL HAVE A MAXIMUM LENGTH OF FIVE (5) FEET OR UNTIL THEY TIE BACK INTO THE SLOPE.

NOTES

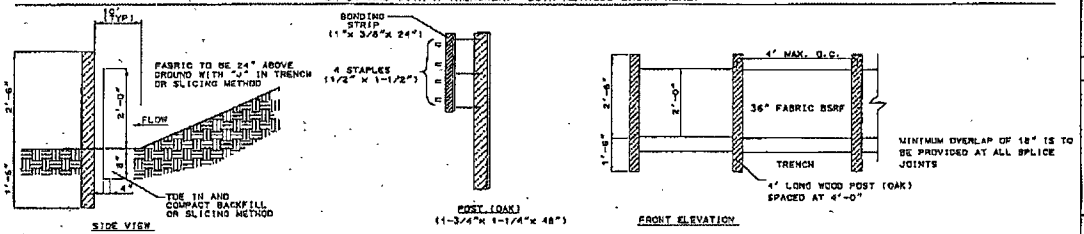
1. SILT FENCE CHECKS MUST BE LOCATED EVERY 100 FT. MAXIMUM AND AT LOW POINTS. FILTER FABRICS SHALL CONFORM TO SCDOT STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (LATEST EDITION).
2. ONLY STEEL POSTS MAY BE USED. POSTS SHALL BE A MINIMUM OF 5 FEET LONG AND INSTALLED TO A MINIMUM DEPTH OF 24 INCHES WITH NO MORE THAN 3 FEET OF THE POST ABOVE GROUND. AT LEAST 1 TO 2 INCHES OF THE POSTS SHALL EXTEND ABOVE THE TOP OF THE FABRIC. POST SPACING WILL BE A MAXIMUM OF 6 FEET ON CENTER.
3. STEEL POSTS SHALL BE 5 FEET LONG AND WEIGH A MINIMUM OF 1.25 POUNDS PER FOOT AND HAVE PROJECTIONS FOR FASTENING THE FABRIC TO THE POST. STEEL POSTS SHALL ALSO HAVE A SOIL PLATE WELDED NEAR THE BOTTOM OF THE POST, EXCEPT WHEN HEAVY CLAY SOILS ARE PRESENT ON-SITE.
4. ATTACH FABRIC TO STEEL POSTS USING HEAVY-DUTY PLASTIC TIES THAT ARE EVENLY SPACED AND PLACED IN A MANNER TO PREVENT SAGGING OR TEARING OF THE FABRIC. IN ALL CASES, TIES SHOULD BE AFFIXED IN NO LESS THAN 4 PLACES.
5. SILT SHALL BE REMOVED AND DISPOSED OF WHEN SILT ACCUMULATES TO 1/3 THE HEIGHT OF THE FENCE. TRAPPED SEDIMENT SHALL BE REMOVED OR STABILIZED ON-SITE. MAINTENANCE OF SILT FENCE WILL BE MEASURED AND PAID FOR BY THE ITEM OF SILT BASIN.
6. SILT FENCE SHALL BE INSPECTED EVERY 7 DAYS.
7. TYPICAL SILT FENCE APPLICATIONS REQUIRE 24 INCHES OF THE FABRIC TO BE ABOVE GROUND. WHEN NEEDED, THE HEIGHT OF SILT FENCE FABRIC ABOVE THE GROUND MAY BE GREATER THAN 24". SEE PLANS FOR APPLICATION OF HIGHER SILT FENCE. PAY ITEMS AND INSTALLATION METHODS.
8. IN TIDAL AREAS, EXTRA SILT FENCE HEIGHT MAY BE REQUIRED. THE LENGTH OF POST WILL BE TWICE THE EXPOSED POST HEIGHT. POST SPACING AND BURIED DEPTHS WILL REMAIN AS SHOWN HEREON. EXTRA HEIGHT FABRIC WILL BE 4, 5 OR 6 FEET TOTAL WIDTH.
9. FOLLOW SPECIFICATIONS WHEN USING ALTERNATE SILT FENCE (BSRF) DETAILS.
10. THE PAY ITEMS SHALL BE: SILT FENCE_____L.F.
SILT BASIN_____C.Y.



STANDARD SILT FENCE



12 INCHES OF THE FABRIC SHALL BE BURIED REGARDLESS, IF PLACED PNEUMATICALLY OR BY AND WITH A TRENCHER. BOTH METHODS SHOWN HERE.



ALTERNATE SILT FENCE - BELTED SILT RETENTION FENCE (BSRF)

REFERENCES

NATIONAL DOCUMENTS

SCDOT DOCUMENTS

RELATED DRAWINGS & KEYWORDS

PRECONSTRUCTION SUPPORT ENGINEER

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER NO. 8858 EDWIN SYLVESTER EAGLE, III

SIGNATURE

MARCH 3, 2008
DATE

#	DATE	CHK	DESCRIPTION
6			
5			
4			
3			
2			
1			
0	3/2008	DSO	GENERAL REVISIONS

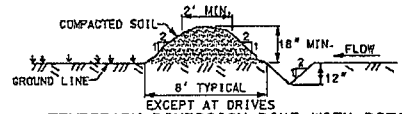
SCDOT
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
DESIGN STANDARDS OFFICE
955 PARK STREET
ROOM 405
COLUMBIA, SC 29201

STANDARD DRAWING

TEMPORARY EROSION & SEDIMENTATION CONTROL

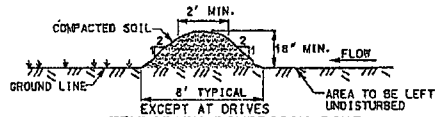
815-605-00

EFFECTIVE LETTING DATE: MAY 2008



TEMPORARY DIVERSION DIKE WITH DITCH

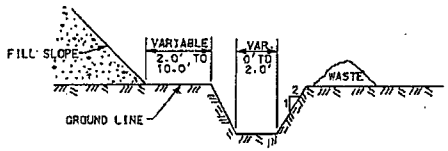
THE PAY ITEM SHALL BE TEMPORARY DIVERSION DIKE WITH DITCH_____L.F.



TEMPORARY DIVERSION DIKE

NOTES

1. THIS ITEM IS FOR DIVERTING CLEAN WATER AROUND A CONSTRUCTION AREA.
2. CLEAR AND GRUB ALL TREES, BRUSH, STUMPS AND OTHER OBJECTIONABLE MATERIAL.
3. ENSURE THAT THE MINIMUM CONSTRUCTED CROSS SECTION MEETS ALL DIMENSIONS SHOWN.
4. IMMEDIATELY AFTER CONSTRUCTION ESTABLISH VEGETATION. PLACING TEMPORARY EROSION CONTROL BLANKET ON THE DIKE. (AS APPLICABLE).
5. PAYMENT FOR TEMPORARY DIVERSION DIKE INCLUDES ALL MATERIALS IN PLACE, REMOVAL AND DISPOSAL OF MATERIALS AND RESHAPING DIKE TO DRAIN. SEEDING TO BE PAID FOR SEPARATELY.
6. THE PAY ITEM SHALL BE: TEMPORARY DIVERSION DIKE_____L.F.

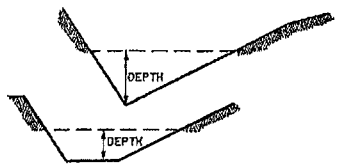


TEMPORARY SILT DITCH

NOTES

1. THIS ITEM IS TO MOVE SEDIMENT LADEN WATER FROM A CONSTRUCTION SITE TO A SEDIMENT CONTROL STRUCTURE.
2. SEED DITCH AND WASTE AREA WITH TEMPORARY SEEDING IMMEDIATELY AFTER CONSTRUCTION.
3. IMMEDIATELY AFTER CONSTRUCTION ESTABLISH VEGETATION. PLACING TEMPORARY EROSION CONTROL BLANKET ON THE DITCH (AS APPLICABLE).
4. THE PAY ITEM SHALL BE: SILT DITCHES_____C.Y.

ROLLED EROSION CONTROL PRODUCT



NOTES

1. THE DEPTH OF THE EROSION CONTROL PRODUCTS ARE TO BE DETERMINED BY DESIGN AND PLACED ON PLAN SHEETS.
2. INSTALL IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS.
3. COST OF INSTALLATION AND MATERIALS SHALL BE INCLUDED IN THE PAY ITEM FOR ROLLED EROSION CONTROL PRODUCT.
4. PAY ITEMS:
TEMPORARY EROSION CONTROL BLANKET _____SY
PERMANENT TURF REINFORCEMENT MAT:_____SY

THIS DRAWING IS NOT TO SCALE

SILT FENCE

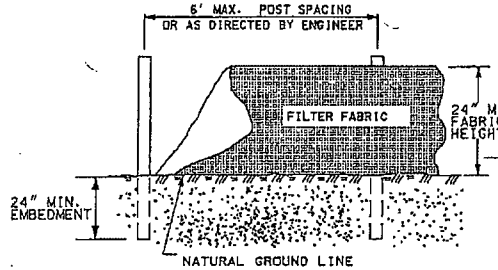
HEIGHT OF FILL (y) IN FEET	FILL SLOPE	MINIMUM SILT FENCE OFFSET FROM TOE OF SLOPE (x) IN FEET	MINIMUM RIGHT OF WAY OFFSET FROM TOE OF SLOPE (NPDES LINE) (z) IN FEET	CHECK LENGTH IN FEET**
<6	2:1 4:1 6:1	2	3	2
6-10	2:1	12*	13*	5
	4:1 6:1	3	4	3
>10	2:1	12*	13*	5
	4:1 6:1	4	5	4

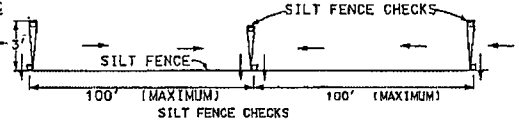
*THESE MINIMUM OFFSETS MAY BE REDUCED WHEN CURB AND GUTTER OR SOME OTHER FEATURE REDUCES THE FLOW OF WATER DOWN THE SLOPE. THE SMALL OFFSETS OF EACH GROUP OF HEIGHT OF FILL CANNOT BE REDUCED.

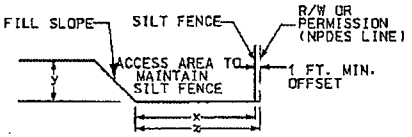
**SILT FENCE CHECKS WILL HAVE A MAXIMUM LENGTH OF FIVE (5) FEET OR UNTIL THEY TIE BACK INTO THE SLOPE.

NOTES

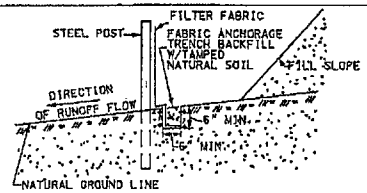
1. SILT FENCE CHECKS MUST BE LOCATED EVERY 100 FT. MAXIMUM AND AT LOW POINTS. FILTER FABRICS SHALL CONFORM TO SCDOT STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (LATEST EDITION).
2. ONLY STEEL POSTS MAY BE USED. POSTS SHALL BE A MINIMUM OF 5 FEET LONG AND INSTALLED TO A MINIMUM DEPTH OF 24 INCHES WITH NO MORE THAN 3 FEET OF THE POST ABOVE GROUND. AT LEAST 1 TO 2 INCHES OF THE POSTS SHALL EXTEND ABOVE THE TOP OF THE FABRIC. POST SPACING WILL BE A MAXIMUM OF 6 FEET ON CENTER.
3. STEEL POSTS SHALL BE 5 FEET LONG AND WEIGH A MINIMUM OF 1.25 POUNDS PER FOOT AND HAVE PROJECTIONS FOR FASTENING THE FABRIC TO THE POST. STEEL POSTS SHALL ALSO HAVE A SOIL PLATE WELDED NEAR THE BOTTOM OF THE POST, EXCEPT WHEN HEAVY CLAY SOILS ARE PRESENT ON-SITE.
4. ATTACH FABRIC TO STEEL POSTS USING HEAVY-DUTY PLASTIC TIES THAT ARE EVENLY SPACED AND PLACED IN A MANNER TO PREVENT SAGGING OR TEARING OF THE FABRIC. IN ALL CASES, TIES SHOULD BE AFFIXED IN NO LESS THAN 4 PLACES.
5. SILT SHALL BE REMOVED AND DISPOSED OF WHEN SILT ACCUMULATES TO 1/3 THE HEIGHT OF THE FENCE. TRAPPED SEDIMENT SHALL BE REMOVED OR STABILIZED ON-SITE. MAINTENANCE OF SILT FENCE WILL BE MEASURED AND PAID FOR BY THE ITEM OF SILT BASIN.
6. SILT FENCE SHALL BE INSPECTED EVERY 7 DAYS.
7. TYPICAL SILT FENCE APPLICATIONS REQUIRE 24 INCHES OF THE FABRIC TO BE ABOVE GROUND. WHEN NEEDED, THE HEIGHT OF SILT FENCE FABRIC ABOVE THE GROUND MAY BE GREATER THAN 24". SEE PLANS FOR APPLICATION OF HIGHER SILT FENCE. PAY ITEMS AND INSTALLATION METHODS.
8. IN TIDAL AREAS, EXTRA SILT FENCE HEIGHT MAY BE REQUIRED. THE LENGTH OF POST WILL BE TWICE THE EXPOSED POST HEIGHT. POST SPACING AND BURIED DEPTHS WILL REMAIN AS SHOWN HEREON. EXTRA HEIGHT FABRIC WILL BE 4, 5 OR 6 FEET TOTAL WIDTH.
9. FOLLOW SPECIFICATIONS WHEN USING ALTERNATE SILT FENCE (BSRF) DETAILS.
10. THE PAY ITEMS SHALL BE: SILT FENCE_____L.F.
SILT BASIN_____C.Y.



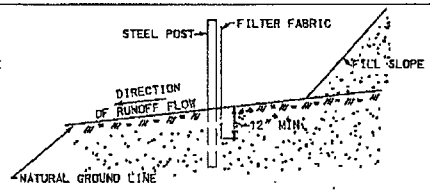




STANDARD SILT FENCE

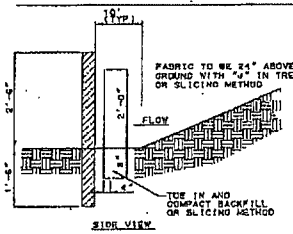


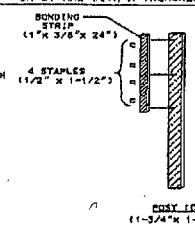
TRENCH METHOD

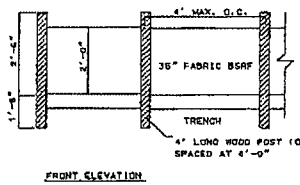


PNEUMATIC METHOD

12 INCHES OF THE FABRIC SHALL BE BURIED REGARDLESS, IF PLACED PNEUMATICALLY OR BY AND WITH A TRENCHER. BOTH METHODS SHOWN HERE.







MINIMUM OVERLAP OF 18" IS TO BE PROVIDED AT ALL SPLICE JOINTS

ALTERNATE SILT FENCE - BELTED SILT RETENTION FENCE (BSRF)

REFERENCES

NATIONAL DOCUMENTS

SCDOT DOCUMENTS

RELATED DRAWINGS & KEYWORDS

PRECONSTRUCTION SUPPORT ENGINEER

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
NO. 8858
EDWIN SYLVESTER EAGLE, II

SIGNATURE

MARCH 3, 2008
DATE

#	DATE	BY	DESCRIPTION
6			
5			
4			
3			
2			
1			
0	3/2008	DSO	GENERAL REVISIONS

SCDOT
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
DESIGN STANDARDS OFFICE
955 PARK STREET
ROOM 405
COLUMBIA, SC 29201

STANDARD DRAWING

TEMPORARY EROSION & SEDIMENTATION CONTROL

815-605-00

EFFECTIVE LETTING DATE: MAY 2008

645

FW SC 171 Sight Distance at Drives - File 10.146B-Frampton Driveway

From: Rajabi, Jeff
Sent: Wednesday, June 17, 2009 3:03 PM
To: Bodiford, Clay A; Burton, Daniel
Subject: FW: SC 171 Sight Distance at Drives - File 10.146B-Frampton Driveway

fyi

Jeff Rajabi
SCDOT
Resident Bridge Construction Engineer
Charleston Bridge Construction
Tel. (843) 740-1574
Fax (843) 740-1673
E-mail : Rajabij@scdot.org

-----Original Message-----
From: McKinney, Ben
Sent: Tuesday, June 16, 2009 10:37 AM
To: Rucker, Oscar K; Phinney, Larry; Rajabi, Jeff
Cc: Fallaw, Tony; Gresham, Charles A
Subject: SC 171 Sight Distance at Drives - File 10.146B-Frampton Driveway

All,

A field survey of as-built conditions was performed on 6/15/09 to obtain elevations in support of determining if adequate sight distance can be provided at drives in the vicinity of the bridge replacement. Specifically three drives were investigated including two existing drives between stations 14+00 and 16+00 along the SC 171 alignment and one proposed drive in the vicinity of Station 16+20. The elevations taken confirm that adequate sight distance cannot be provided for these drives. As such, a raised median should be installed adjacent to the northbound left-turn lane from approximately Sta. 14+15 to approximately Sta.16+90 where the approach slab begins. This will allow for right-in, right-out turning movements at all of the drives for access.

If you have any questions or require additional information, please let me know.

Ben McKinney, P.E.

Design Manager - RPG 1

SCDOT

(803)-737-1376

SCDOT Production/
Frampton00069

Tract 4

Form 801 (Rev. 3-21-56)

The State of South Carolina

COUNTY OF Charleston

Route No. 615 Docket No. 10.424(Pt. 1)

Approx. survey station, from 5+72 to 9+00 Rt.

Right of Way Easement

KNOW ALL MEN BY THESE PRESENTS, That I (or we) (Mrs.) Nellie W. Frampton

Route 1, Charleston, S. C.

in consideration of the sum of One Dollar, to me (or us) in hand paid, and other valuable consideration at and before sealing and delivering thereof, by the South Carolina Highway Department, receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said South Carolina Highway Department, its successors and assigns, a right-of-way for the

construction of a section of the State Highway from U. S. Route 17
Name of Place.

to Folly Beach (At James Island Creek) on Route No. 615 State and
Name of Place.

County aforesaid, as shown by plans prepared by the State Highway Department, on and over all lands which I (or we) may own in whole or in part, for the purpose of locating, constructing, improving, and maintaining the above described highway with the bridges and causeways thereon, and the right to construct and maintain controlled access facilities to said highway.

Bounded by lands of Rose M. Ellis on the north; James Island Creek on the south.
Show only the Land Owners along the Highway.

and others.

Said right-of-way to have a width of 62 1/2 feet, that is 25 feet on ~~the~~ right or west side of the center line of the Highway except where a greater width is necessary for short distances on account of large cuts or fills, and drainage structures.

"Special Provisions:" This Easement supersedes condemnation of H.W. Frampton dated May 25, 1955 and nullifies appeal filed from the award of the Board of Condemnation.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining. It is agreed that buildings, fences, signs or other obstructions will not be erected by me (or us), my heirs, assigns or administrators within the limits of the right-of-way herein conveyed and that such buildings and fences as are now within the limits of the right-of-way herein conveyed will be moved from the right-of-way and restored in as good condition as before moving at the expense of the State Highway Department of the State of South Carolina.

TO HAVE AND TO HOLD, all and singular, the said right-of-way and the rights hereinbefore granted, unto the said South Carolina State Highway Department, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand and seal this 3 day of June in the year of our Lord, One Thousand Nine Hundred and Fifty-Seven

Signed, sealed and delivered in the presence of:

Ella Ruth Wheeler

Lucille J. Holst

Nellie W. Frampton (L. S.)
Nellie W. Frampton, Individually and as Executrix under Last Will and Testament of H. W. Frampton.

NOTE: All Right-of-Way Agreements must be in writing and are subject to rejection by the South Carolina State Highway Department.

The State of South Carolina

COUNTY OF Charleston

Personally appeared

and made oath that saw the within named Nellie W. Frampton, individually and as Executrix under Last Will and Testament of H. W. Frampton,
Print or Typewrite Name.

sign, seal and, as act and deed, deliver the within written easement; and that with witnessed the execution thereof.

Sworn to before me this 3 day of June A. D., 19 57

Ella Ruth Wheeler (L. S.)
Notary Public for S. C.

Lucille J. Holst
Witness sign here.

PLAINTIFF'S EXHIBIT 3

1/31/58 9722

The State of South Carolina

COUNTY OF_____

I, _____ Notary Public for S. C.

do hereby certify unto whom it may concern, that Mrs. _____

the wife of the within named _____, did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named South Carolina State Highway Department, its successors and assigns, all her interest and estate, and also her right and claim of dower of, in and to, all and singular, the premises within mentioned and released.

Given under my hand and seal, this _____ day of _____ Anno Domini, 19____.

_____
Signature of Wife.

Sworn to before me this _____ day of _____ A. D., 19____.

_____ (L. S.)
Notary Public for S. C.

The State of South Carolina

COUNTY OF_____

MORTGAGE RELEASE

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ do for certain valuable consideration release from the lien and operation of my (or our) mortgage the right-of-way conveyed by the within easement so that the said right-of-way shall be free and unaffected by said mortgage.

Witness our hand and seal this _____ day of _____, 19____.

In the presence of:

_____

_____

_____

RESOLUTION

WHEREAS, This easement contains certain special provisions which are subject to rejection by the State Highway Department, and

WHEREAS, It is recommended to this Board that the special provisions be investigated and approved, therefore

BE IT RESOLVED by this Board of Condemnation that after its investigation it is satisfied that the easement with the special provisions should be accepted by the State Highway Department and the easement is approved for acceptance by the State Highway Department this _____ day of _____, 19____.

_____

_____

_____
Members of Board of Condemnation.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ROUTE NO. 615)

NOTICE OF ABANDONMENT

OF

CONDEMNATION PROCEEDINGS

TO: Mrs. Nellie W. Frampton, Individually
and as Executrix under Last Will and
Testament of H. W. Frampton
Route 1
Charleston, South Carolina

PLEASE TAKE NOTICE, That the South Carolina State Highway Department does hereby and herewith abandon the condemnation of May 25, 1955, condemning property between survey stations 5+72 and 9+00 on the right, as described in the Notice of Condemnation dated May 9, 1955, which was served upon you on May 9, 1955, for the reason that it has been determined that the full 37½ foot right of way on the right of centerline is not necessary and the gratis right of way easement executed by you on June 3, 1957, granting a 25 foot right of way on the right of the centerline, will suffice for the Department's needs.

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT

By: C. R. McMillan

C. R. McMillan
Chief Highway Commissioner

Recommended:

Columbia, S. C.

This 11th day of June, 1957 in connection with Project designated as Docket 10.424

Copy to:

(2) Attorney General

District Engineer No. 6

Letter File

STATE OF SOUTH CAROLINA:

WHEREAS, on or about May 9, 1955, the late H. W. Frampton, landowner, was duly served, according to law, Notice of Condemnation, by the South Carolina State Highway Department, that a right-of-way was required for a public highway through and across lands of which H. W. Frampton was then owner; said land being located in Charleston County, South Carolina, as shown by plans of the State Highway Department for the construction of a section of State Route 615, bridge approaches on Folly Road, known as Docket No. 10.424, and described as -

> "ALL that parcel or strip of land coming within 37½ feet of the center line of the survey as shown on plans for Docket 10.424 between approximate survey station 5 + 70 and 9 + 100 on the right and being bounded as follows: North by Miss Rose M. Ellis; east by other lands of owner; south by James Island Creek, and west by Present Road," and

WHEREAS, pursuant to said Notice of Condemnation, a public hearing was held on the 25th day of May, 1955, at the County Court House, Charleston, S. C.; at which both the Highway Department and the landowner were represented; and the Board of Condemnation made an award of Four Hundred and no/100 ($400) dollars to H. W. Frampton, then owner, and

WHEREAS, in the period of time provided by law, Notice of Appeal from the Award of the Board was duly filed against the South Carolina State Highway Department, by Messrs. Barnwell and Whaley, Attorneys for H. W. Frampton, and,

WHEREAS, H. W. Frampton departed this life on or about February 11, 1956, testate, reference being made to Probate File 862 No. 66 in the Probate Court for Charleston County, and,

WHEREAS, Nellie W. Frampton was designated as the sole devisee and as Executrix under the Last Will and Testament of the late H. W. Frampton, and,

WHEREAS, Nellie W. Frampton under the Last Will and Testament of the late H. W. Frampton, became the sole owner of all of the Estate of H. W. Frampton, and is still acting as Executrix, and

WHEREAS, the construction of the Folly Beach Road designated as Route 615 under Docket 10.424, has been completed, and,

WHEREAS, upon the call of the trial of the proceedings in the case of South Carolina State Highway Department vs. H. W. Frampton, in the Court of Common Pleas for Charleston County, an agreement was made between the parties that upon Nellie W. Frampton, as Executrix under the Last Will and Testament of H. W. Frampton and individually, releasing the South Carolina Highway Department from any and all claims for the removal of one utility pole on the property described in the condemnation and the encroachment at the toe of the bridge or the encroachment of spillage in the present area at the bridge within the area designated by the right-of-way, and any and all other claims which the Estate of H. W. Frampton or Nellie W. Frampton may have had against the South Carolina Highway Department,

that the Highway Department would abandon the condemnation proceedings, now,

KNOW ALL MEN BY THESE PRESENTS, that I, Nellie W. Frampton, individually and as duly qualified Executrix under the Last Will and Testament of H. W. Frampton, for the South Carolina Highway Department abandoning the condemnation proceedings in the case of Docket 10.424, Route 615, South Carolina State Highway Department vs. H. W. Frampton, now Nellie W. Frampton, and the further consideration of One ($1.00) dollar to me in hand paid, receipt whereof is hereby acknowledged, have released and discharged, and do by these presents for myself, my heirs, executors, administrators, successors and assigns, release and forever discharge South Carolina Highway Department from any and all damages which may have resulted from the removal of one utility pole on the lands now or late of H. W. Frampton, and for any and all damages of an encroachment for spillage at toe of stop at bridge, and the said Nellie W. Frampton does hereby release the said South Carolina State Highway Department from any and all other damages, claims, demands, actions of whatever kind or nature, which may have accrued to H. W. Frampton, the Estate of H. W. Frampton, or the said Nellie W. Frampton, prior to and including the date hereof, and particularly on account of the proceedings hereinabove referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22 day of April, 1957.

IN THE PRESENCE OF:

Ben Scott Wheeley

Jean K. Townsend

Nellie W. Frampton

Nellie W. Frampton, Individually and as Executrix under the Last Will and Testament of H. W. Frampton.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me Ben Scott Wheeley who, being duly sworn, says that he with Jean K. Townsend saw Nellie W. Frampton, individually and as Executrix under the Last Will and Testament of H. W. Frampton, sign, seal and deliver the within instrument.

SWORN to before me this
22 day of April, 1957

M. Z. Madsen
Notary Public for South Carolina

Ben Scott Wheeley

SOUTH CAROLINA HIGHWAY DEPARTMENT abandoned condemnation proceedings on the _____ day of _____ 1957, which Notice of Abandonment is to be filed in the said proceedings.

_____

(4)

Form 803

The State of South Carolina,

COUNTY OF Charleston

ROUTE NO. [redacted] 615 (JAMES ISLAND CREEK)

RESOLUTION OF BOARD OF CONDEMNATION

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT

vs.

Mr. H. W. Frampton, Route 1, Charleston S. C.

After due notice served upon the above named person, firm or corporation that a right-of-way would be condemned for the construction of Project No. 10.424

between Survey Stations 5+78 and 9+00 rt.

and compensation fixed and damages assessed therefor and after full hearing of all testimony and arguments and careful consideration of all questions involved.

Be it Resolved by this Board of Condemnation that after taking into consideration the benefits accruing to the landowner by the construction or improvement of the highway the value of the lands being taken together with any special damages occasioned by the construction or improvement of the highway and deducting the total value of the benefits from the total value of the damages in accordance with the statutes the members of this Board find that the damages exceeds the benefits and we therefore make an award of

Four Hundred & 00/100 ($400.00) Dollars.

PAYMENT REQUESTED 6-10-55

No. 39676 Rec'd & credited to Docket on 6-11-57

Appealed 6-11-55

Signed by the Board of Condemnation at Charleston S. C., this 25th day of May 1955.

D. P. Sojourner
Chairman.

W. R. Kelly Jr.
Member.

[signature]
Member.

Owner executed Gratis R/W deed 6-3-57 Cond. Abandoned 6-11-57. Case closed.

6-23-57

THE STATE OF SOUTH CAROLINA

COUNTY OF Richland

J. B. Barker being duly sworn, deposes and says that he served the Resolution of Board of Condemnation on the obverse side of this paper on the Defendant (s) in the manner hereinafter stated and on the dates given after the name of the said Defendant (s) by delivering to and leaving with said Defendant (s) a copy of this Resolution of Board of Condemnation and, where service has been made by mail, by posting a copy of the Resolution to the last known address.

Sworn to before me this

27 day of May 1955. J. B. Barker

Notary Public for South Carolina

Defendant (s) Served	Date	Method	Place
H. W. Frampton	5-27-55	Reg. Mail	Charleston S. C.

Form 802

THE STATE OF SOUTH CAROLINA
COUNTY OF Charleston
ROUTE NO. [redacted] 615

NOTICE OF CONDEMNATION

TO: Mr. H. W. Frampton, Rt. 1, Charleston S. C.

PLEASE TAKE NOTICE,

That the South Carolina State Highway Department and requires a right-of-way for a public highway through and across lands in which the above-named person, firm or corporation claims title or some interest. Said lands being located in the County and State aforesaid as shown by plans of the State Highway Department for the construction of a section of U. S. or State Route No. 615 ~~between the~~ Bridge approaches on ~~and the~~ Folly Beach Road known as Docket No. 10,424

All that parcel or strip of land coming within 37½' of the centerline of the survey as shown on plans for Docket 10,424 between approximate survey stations 5+72 and 9+00 on the right and being bounded as follows; North by (Miss) Rose M. Ellis; East by other lands of owner; South by James Island Creek; West by Present Road.

The above described property will be condemned and a right of way established by the State Highway Department, and

YOU WILL TAKE FURTHER NOTICE, That a public hearing will be held at 10 o'clock (A.M.) ([redacted]) on the 25 day of May , 19 55, at County Courthouse(Grand Jury Room) in the town of Charleston S. C. to ascertain the amount of damage in excess of benefits as a result of using said lands for the proposed highway improvement.

SOUTH CAROLINA STATE HIGHWAY DEPARTMENT

Columbia, S. C.
Date May 9th.,1955.

By J. Frank Tuttle
19 J. Frank Tuttle, Right of Way Engineer.

THE STATE OF SOUTH CAROLINA

COUNTY OF: Charleston

J. B. Barker being duly sworn deposes and says that he served the Notice of Condemnation on the obverse side of this paper on the Defendant (s) in the manner hereinafter stated and on the dates given after the name of the said Defendant (s) by delivering to and leaving with said Defendant (s) a copy of this Notice of Condemnation and, where service has been made by mail, by posting a copy of the Notice to the last known address.

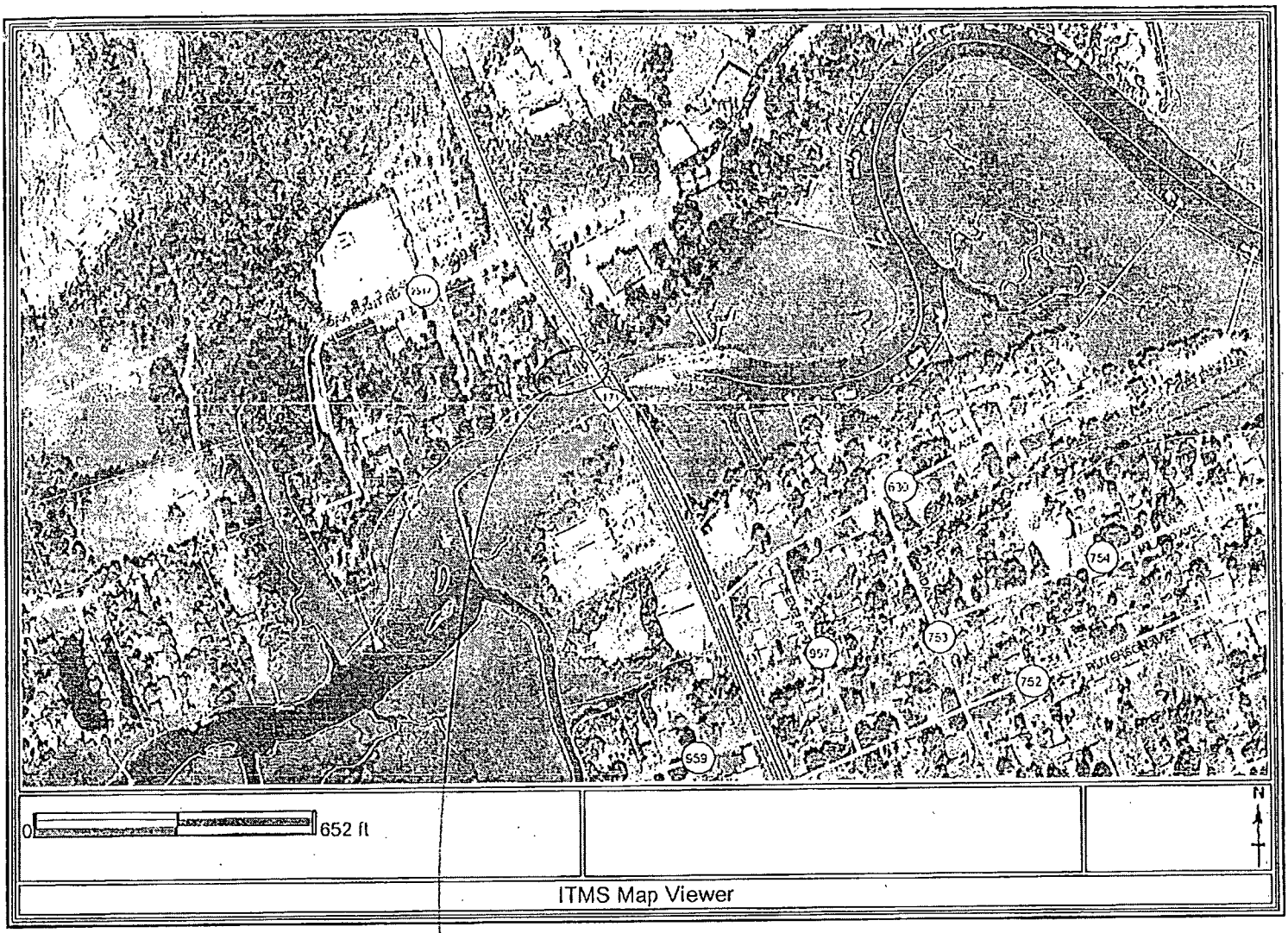
Sworn to before me this

19th day of May 19 55.

J. B. Barker

Notary Public for South Carolina

Defendant (s) Served	Date	Method	Place
H. W. Frampton	May 9th, 1955	Reg. Mail	Charleston S. C.



SUBJECT AREA

South Carolina
Department of Transportation

2401 Maintenance Way
North Charleston, S.C. 29406
(843) 740-1655 ext. 530
(843) 740-6169 (fax)

Transmittal

To: Hal Frampton

From: Roger D. Lemon, Charleston Maintenance

Date: November 30, 2005

Re: Plat for 693 Folly Road

Mr. Frampton,

After reviewing the plat and the driveways the SCDOT will not require a permit for the driveways, since each driveway already exists and no changes are planned for the property at this time. Please keep in mind that any changes to the driveways in the future will require an encroachment permit from us with a set of site plans. This letter should cover any issues Charleston County has, if not please let me know.

If you have any questions please call 843-740-1655 ext. 530

Thank you,

Roger D. Lemon

File: Chas/Permit/ rdl

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

PLAINTIFF'S EXHIBIT 17

PLANNING AND RMC USE ONLY

APPROVED FINAL PLAT

Director of Planning
Charleston County Planning Commission

20118 — 12-9-05
appl. # — Date

Charleston, South Carolina
Office of Register Mesne Conveyance
Plat recorded this 9th day of December, 2005 at 3:34 o'clock in Plat Book DK Page 894 and tracing cloth copy filed in File 2 Drawer 5 Folder 04 Drawing No. 01.
Original plat (a White Print) delivered to Chas Co. Planning Board.

Register Mesne Conveyance

BK N 560PG344

CERTIFIED TRUE COPY
CHARLIE LYBRAND
REGISTER MESNE CONVEYANCE
CHARLESTON COUNTY, SC
DATE: Feb 6, 2012
BY: Charlie Lybrand
NP24

THE AREA SHOWN ON THIS PLAT IS GENERAL REPRESENTATION OF DHEC-OCRM PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERAL LY DELINEATING THE PERMIT AUTHORITY OF THE DHEC-OCRM, THE OFFICE OF OCRM IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.

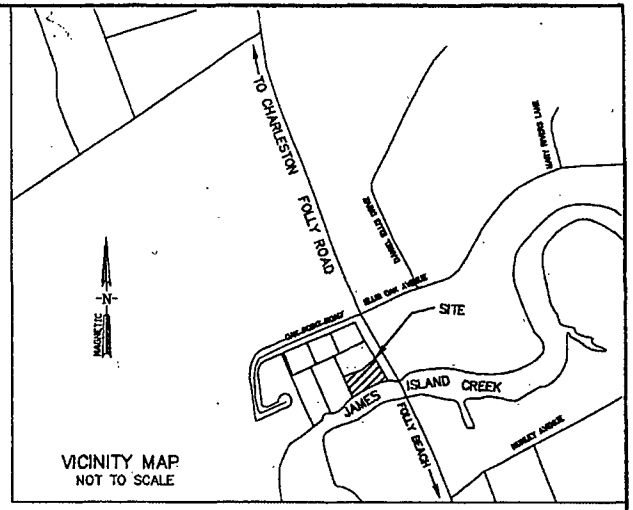
SIGNATURE — DATE

THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR THREE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

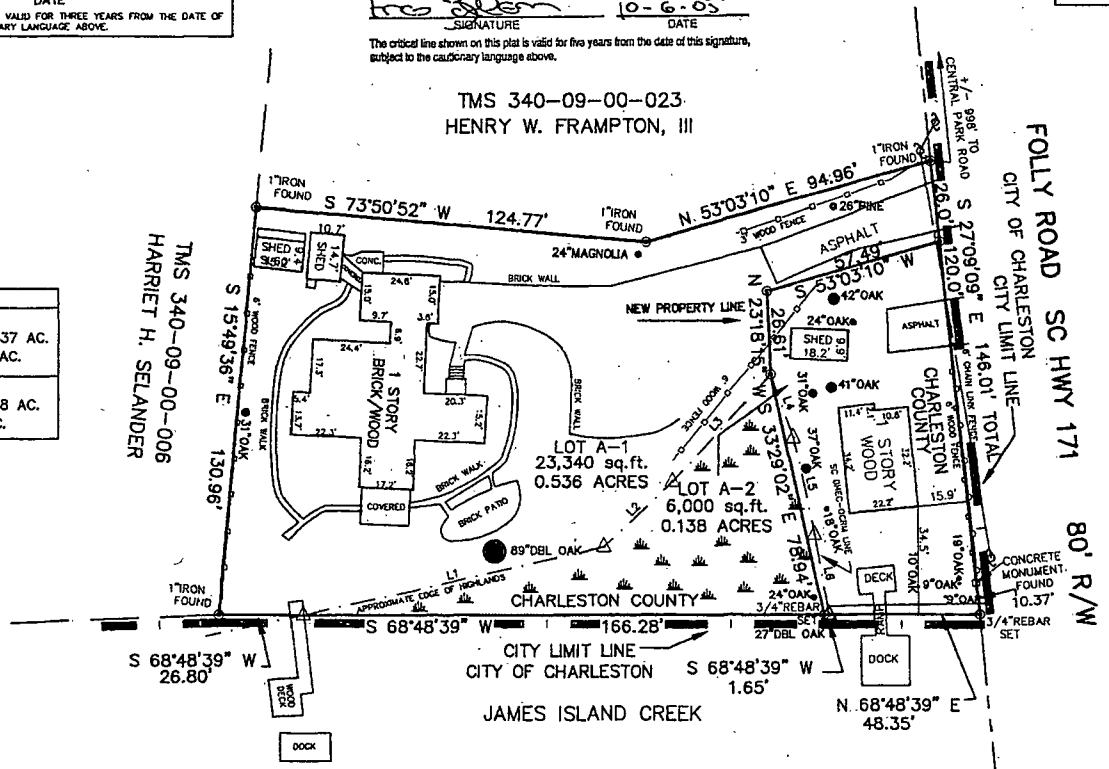
SIGNATURE — 10-6-05 DATE

The critical line shown on this plat is valid for five years from the date of this signature, subject to the cautionary language above.



LINE TABLE		
LINE	LENGTH	BEARING
L1	98.51	S55°58'28"W
L2	30.15	S25°25'56"W
L3	46.76	S21°11'33"W
L4	21.60	N41°06'49"W
L5	31.78	N33°17'54"W
L6	26.13	N30°57'34"W

LOT AREA
A-1
HIGHLAND – 19,048 sq.ft./0.437 AC.
MARSH – 4,292 sq.ft./0.099 AC.
A-2
HIGHLAND – 6,000 sq.ft./0.138 AC.
MARSH – 177 sq.ft./0.004 AC.



NOTES & REFERENCES:

REFERENCE PLAT BY HAROLD J. LEAMOND AND RECORDED IN THE CHARLESTON CO. RMC OFFICE IN PLAT BOOK U PAGE 130.

NO PERMIT REQUIRED FOR THE EXISTING DRIVEWAY SHOWN HEREON PER LETTER DATED 11/30/05 SCDOT FROM MR. ROGER D. LEMON, CHARLESTON MAINTENANCE

THE CRITICAL LINE SHOWN ON THIS PLAT WAS SIGNED BY SC DHEC/OCRM – FRED MALLETT 10/06/05

CHARLESTON COUNTY APPLICATION NO. 20118

PLAT TO SUBDIVIDE
693 FOLLY ROAD
TMS 340-09-00-007
INTO
LOT A-1 & LOT A-2 OF TRACT A
TOTAL COMBINED ACREAGE – 0.678 ACRES

OWNED BY HAL FRAMPTON
JAMES ISLAND
CHARLESTON COUNTY, SC
DATE: MARCH 7, 2005 SCALE: 1" = 30'
REVISED: SEPTEMBER 22, 2005

ABSOLUTE SURVEYING, INC.
4 CARRIAGE LANE
P.O. BOX 30604
CHARLESTON, SOUTH CAROLINA 29417
PHONE (843)763-6689 FAX (843)763-6632

GRAPHIC SCALE
30 0 15 30 60 120
(IN FEET)
1 inch = 30 ft.
JOB #05-9560

SOUTH CAROLINA REGISTERED LAND SURVEYOR 9758 JAMES KELLY DAVIS

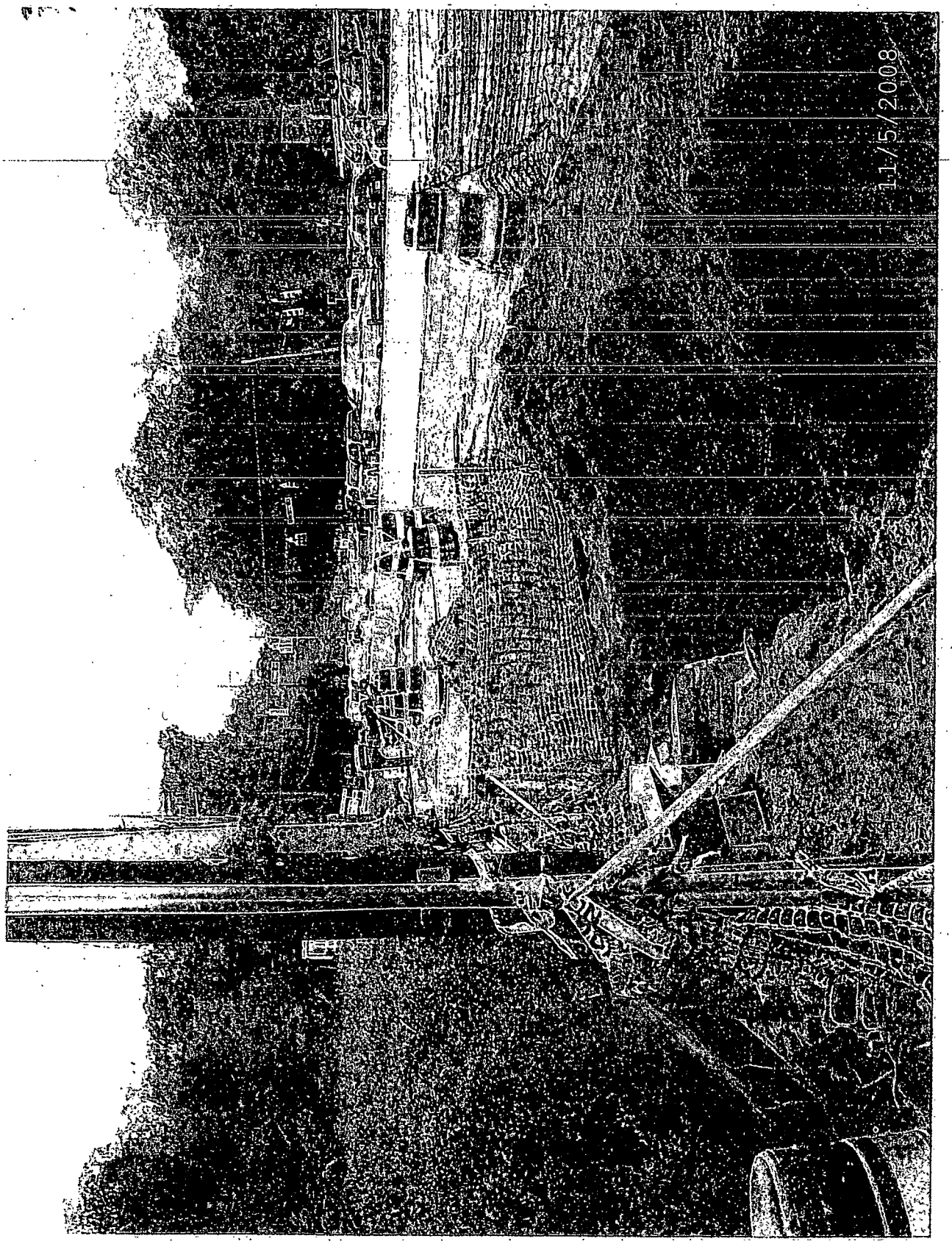
I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

JAMES KELLY DAVIS, R.L.S. No. 9758 9/22/05

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION ABSOLUTE SURVEYING, INC. No. C01968

PLAINTIFF'S EXHIBIT 18

JOHNSON LAW
FIRM, LLC
ROAD
CLOSED
ROAD
CLOSED



PLAINTIFF'S EXHIBIT
19 - A

11-10-2008

PLAINTIFF'S EXHIBIT
12-13

PLAINTIFF'S EXHIBIT
19-2
6604

tabbies

PLAINTIFF'S
EXHIBIT
12 - 20

11/11/2008 03:30 PM

PLAINTIFF'S
EXHIBIT
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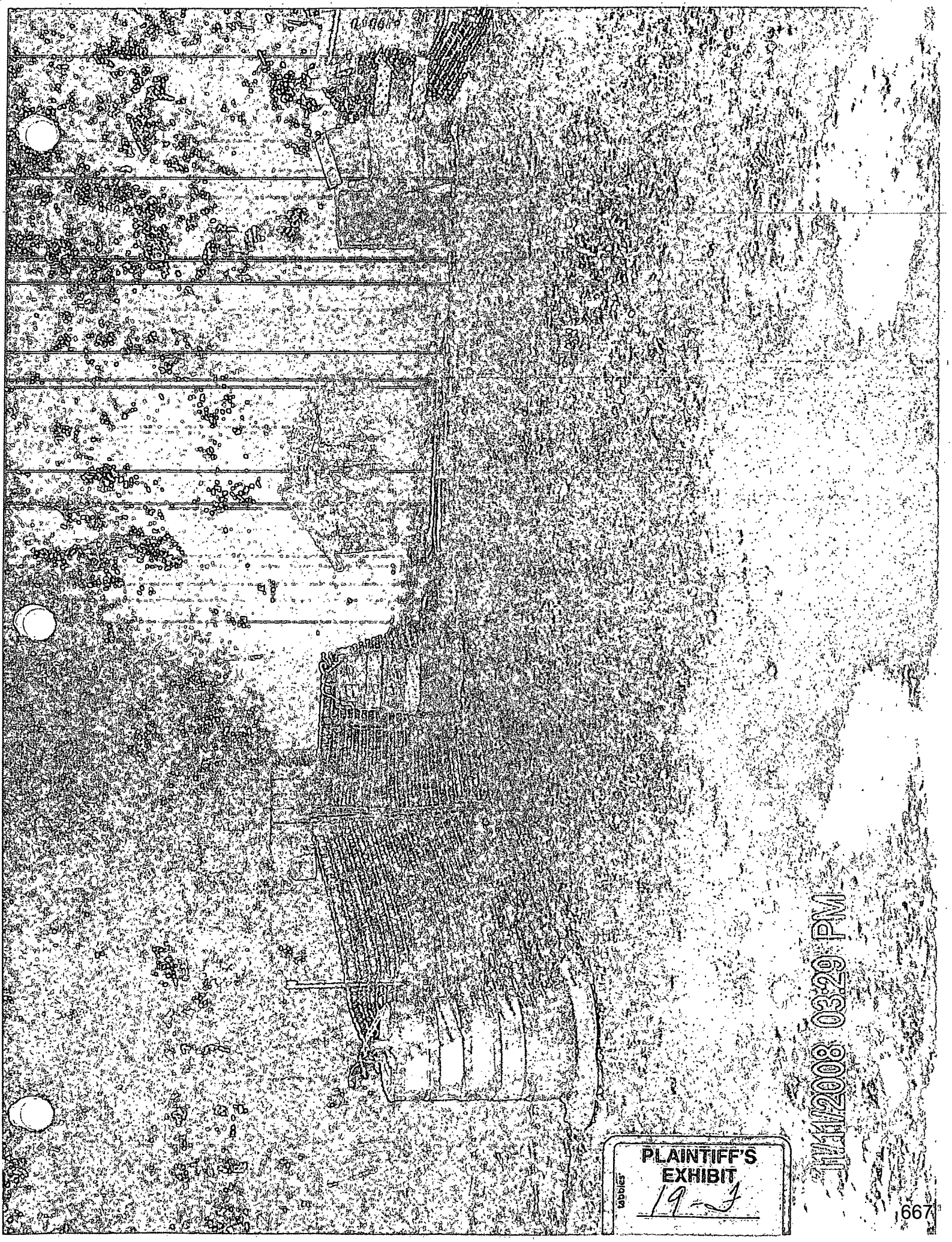

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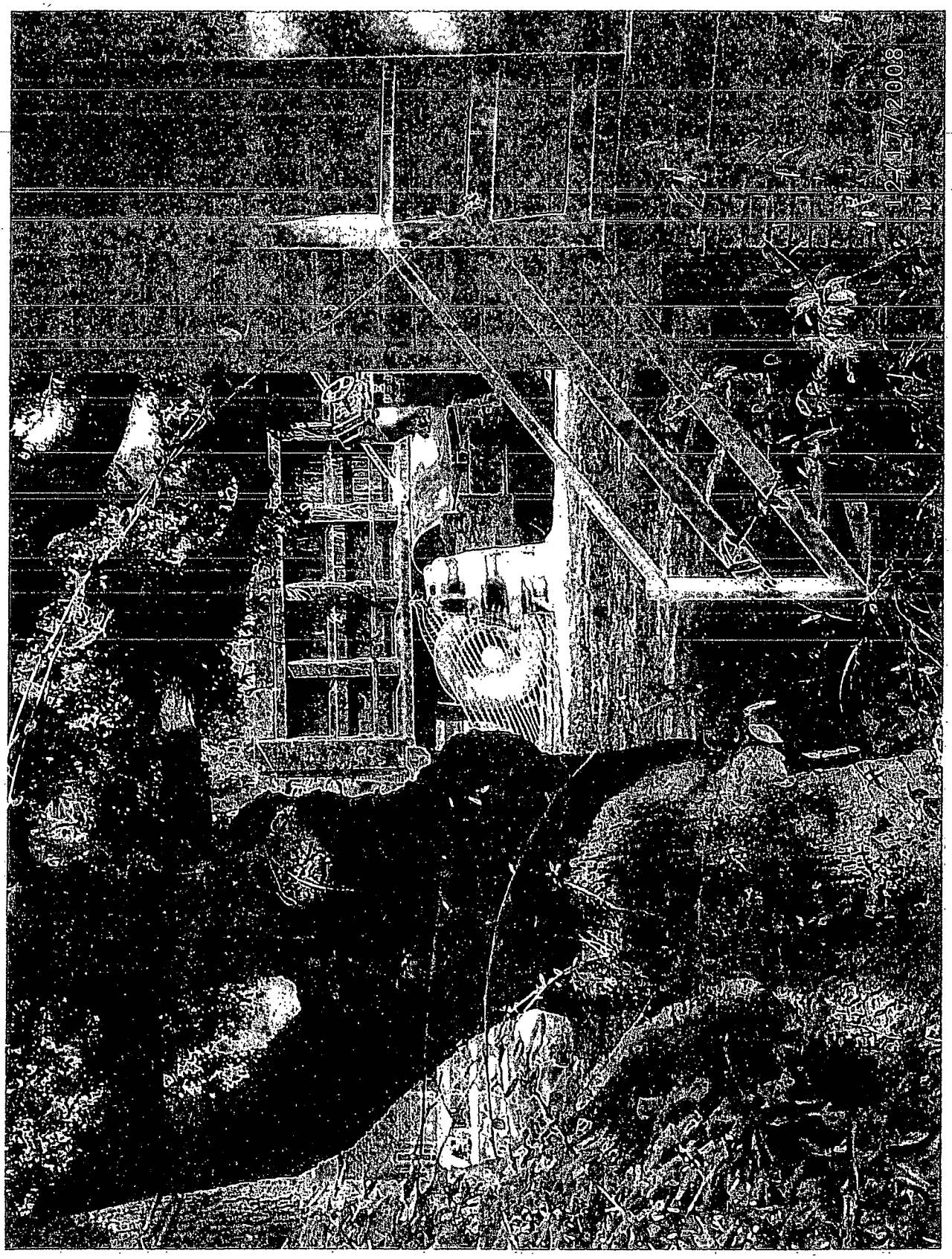
PLAINTIFF'S EXHIBIT
668

PLAINTIFF'S EXHIBIT
6669
tabbies



PLAINTIFF'S EXHIBIT
19-I

12/21/2008

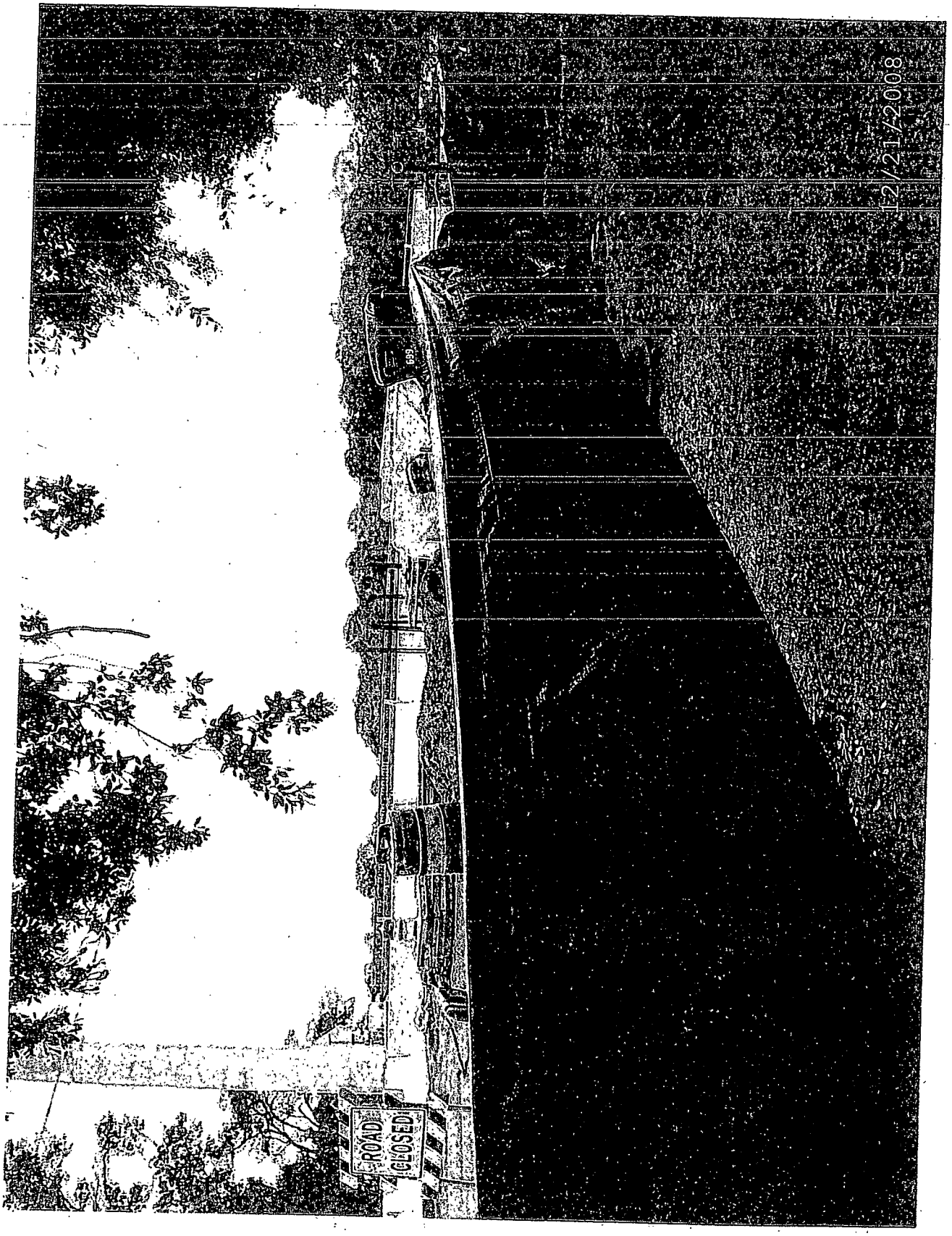
PLAINTIFF'S
EXHIBIT
tabbies
12-8
6/1

PLAINTIFF'S EXHIBIT

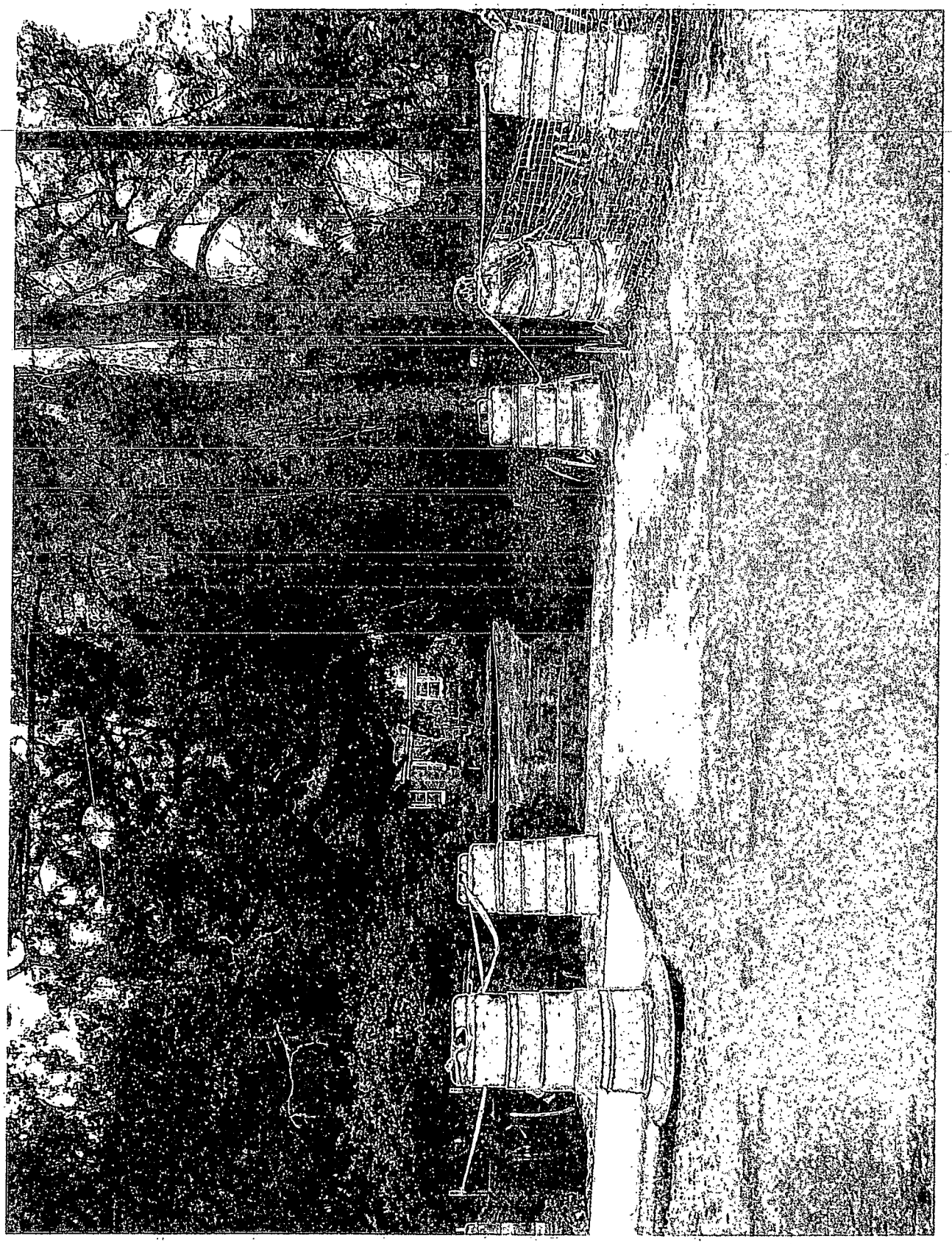
tabbies

12/21/2008

172



PLAINTIFF'S EXHIBIT
19-L



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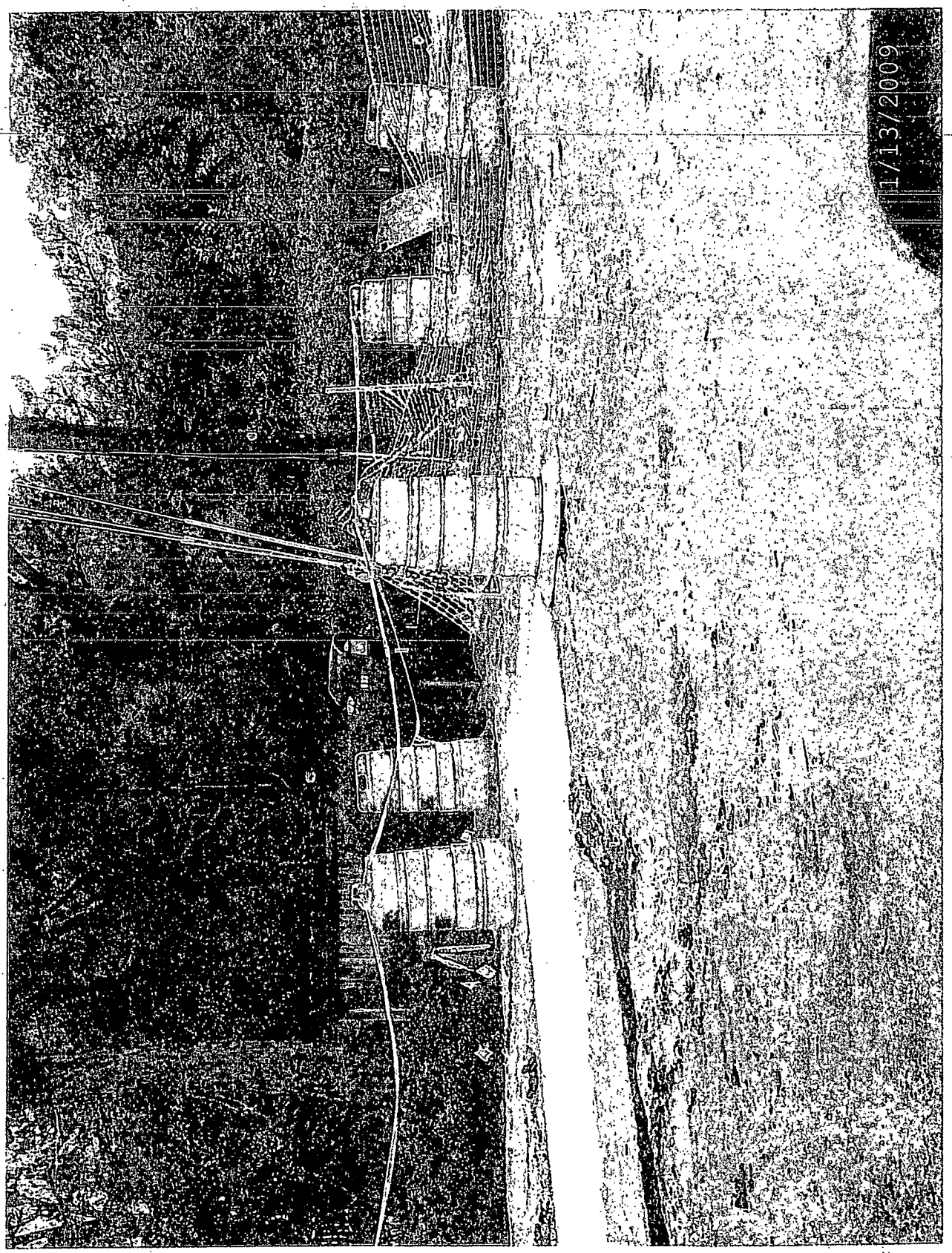
PLAINTIFF'S EXHIBIT
19-M



PLAINTIFF'S EXHIBIT
19-N

PLAINTIFF'S EXHIBIT
tabbies
69

1/14/2009

PLAINTIFF'S EXHIBIT 19-F

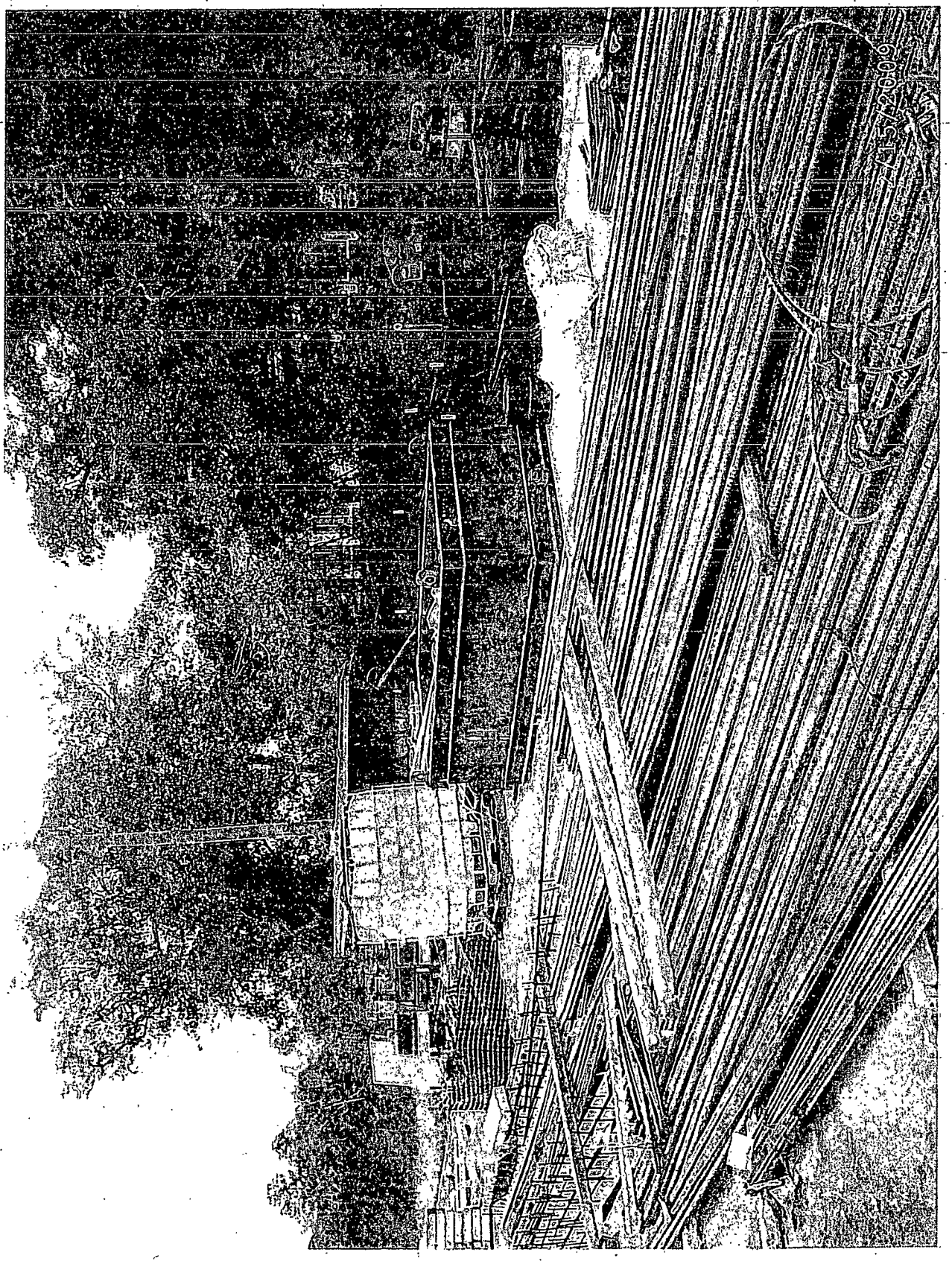
ROAD
CLOSED
ROAD
CLOSED
ROAD
CLOSED

2/12/2009

tabbies
PLAINTIFF'S
EXHIBIT

78

tabbies
PLAINTIFF'S
EXHIBIT
6769



PLAINTIFF'S EXHIBIT
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2/15/2009

tabbies
PLAINTIFF'S
EXHIBIT
661

tabbies
PLAINTIFF'S EXHIBIT
68

2/15/2009

tabbies
PLAINTIFF'S
EXHIBIT
19-7

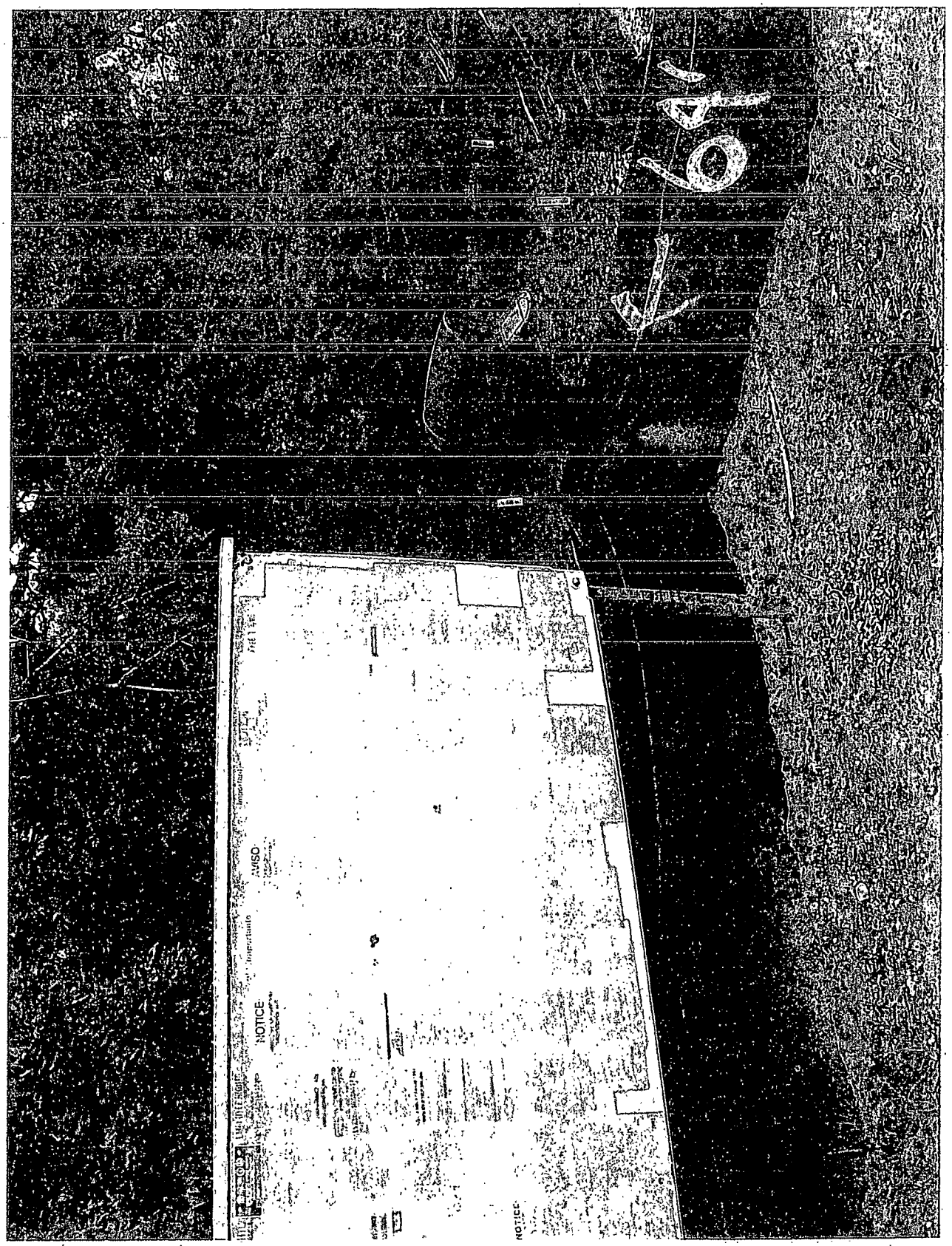
tabbies
PLAINTIFF'S
EXHIBIT
684

tabbies
PLAINTIFF'S EXHIBIT
19-Y
685

tabbies
PLAINTIFF'S
EXHIBIT
686

PLAINTIFF'S EXHIBIT
tabbies
19-15

PLAINTIFF'S EXHIBIT
tabbies
19-AA
6888



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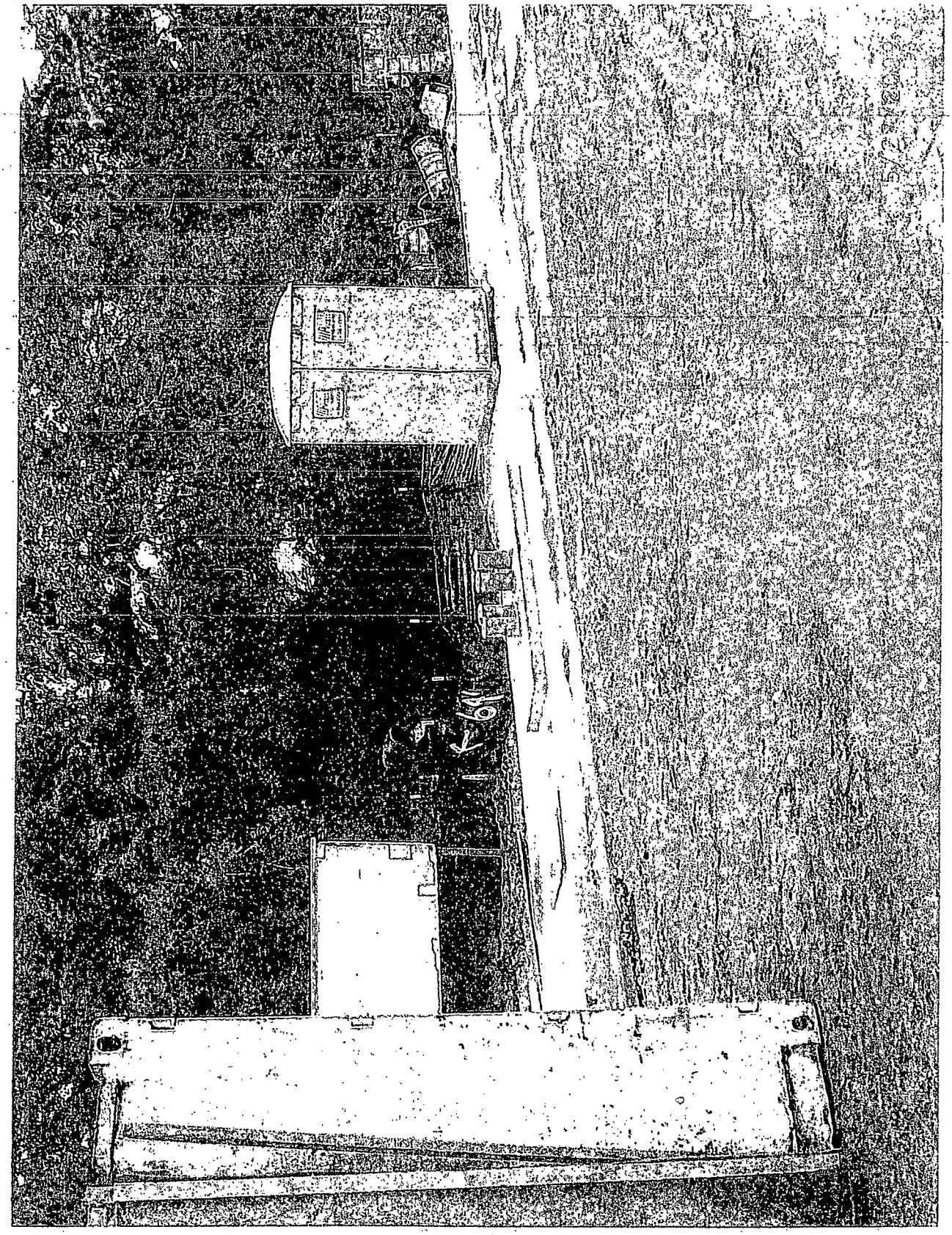

5/27/2009

PLAINTIFF'S EXHIBIT
19-CC

6/19/2009

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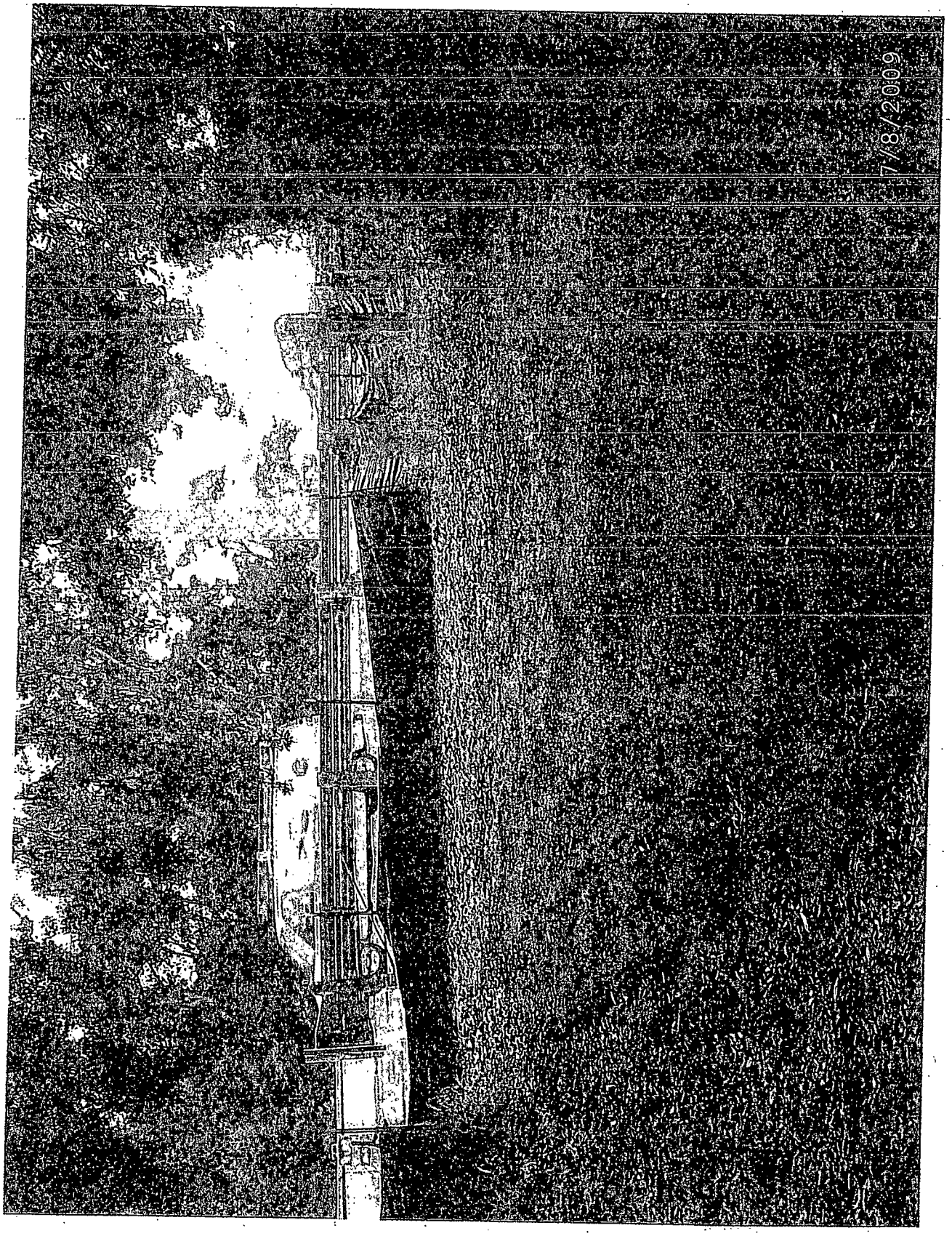
69
tabbies

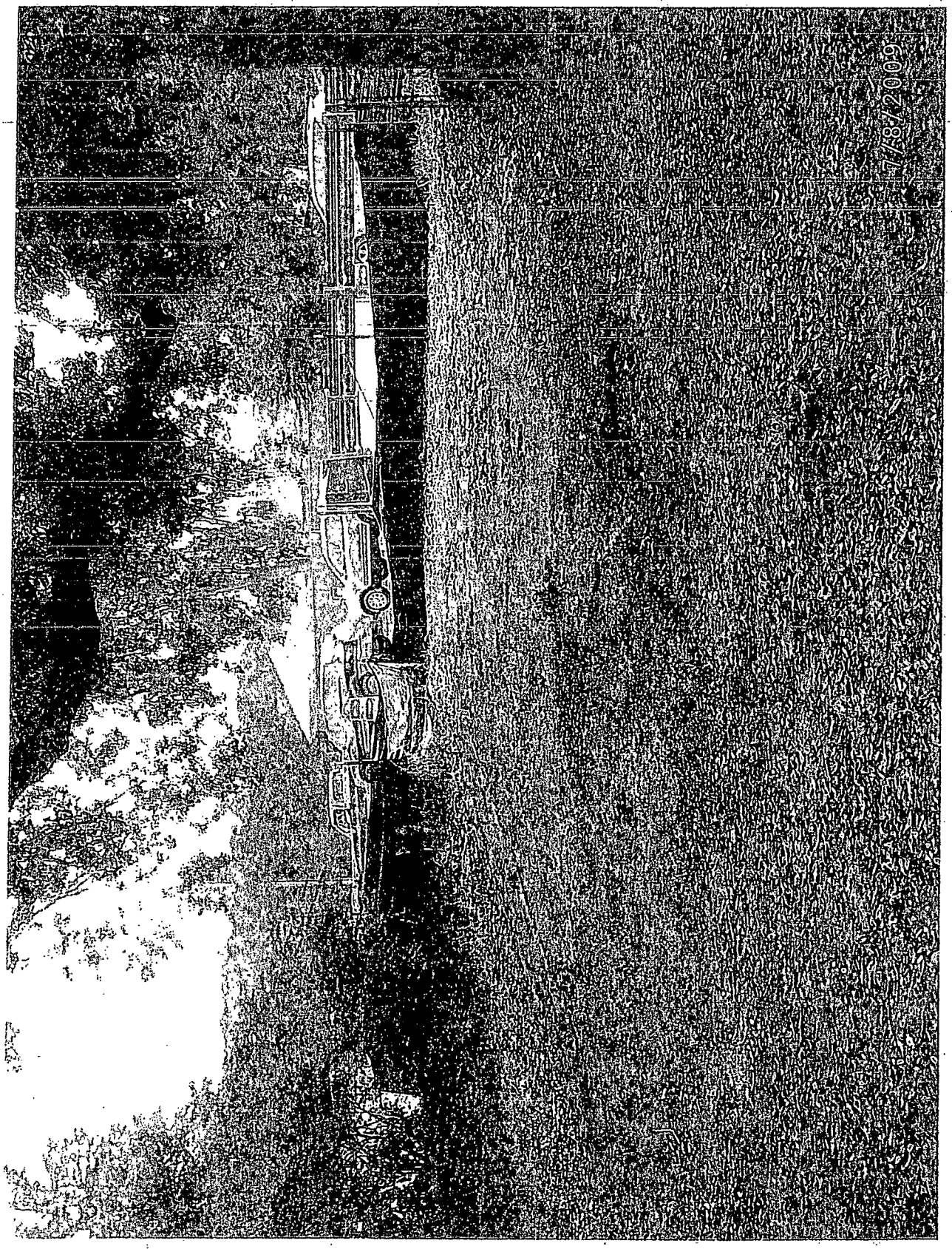
6/25/2009

tabbies
PLAINTIFF'S
EXHIBIT
692



PLAINTIFF'S EXHIBIT
19-J-J

PLAINTIFF'S EXHIBIT
tabbies
12-9-09



PLAINTIFF'S EXHIBIT
19-H-11

PLAINTIFF'S EXHIBIT
19-II

PLAINTIFF'S
EXHIBIT
12-99
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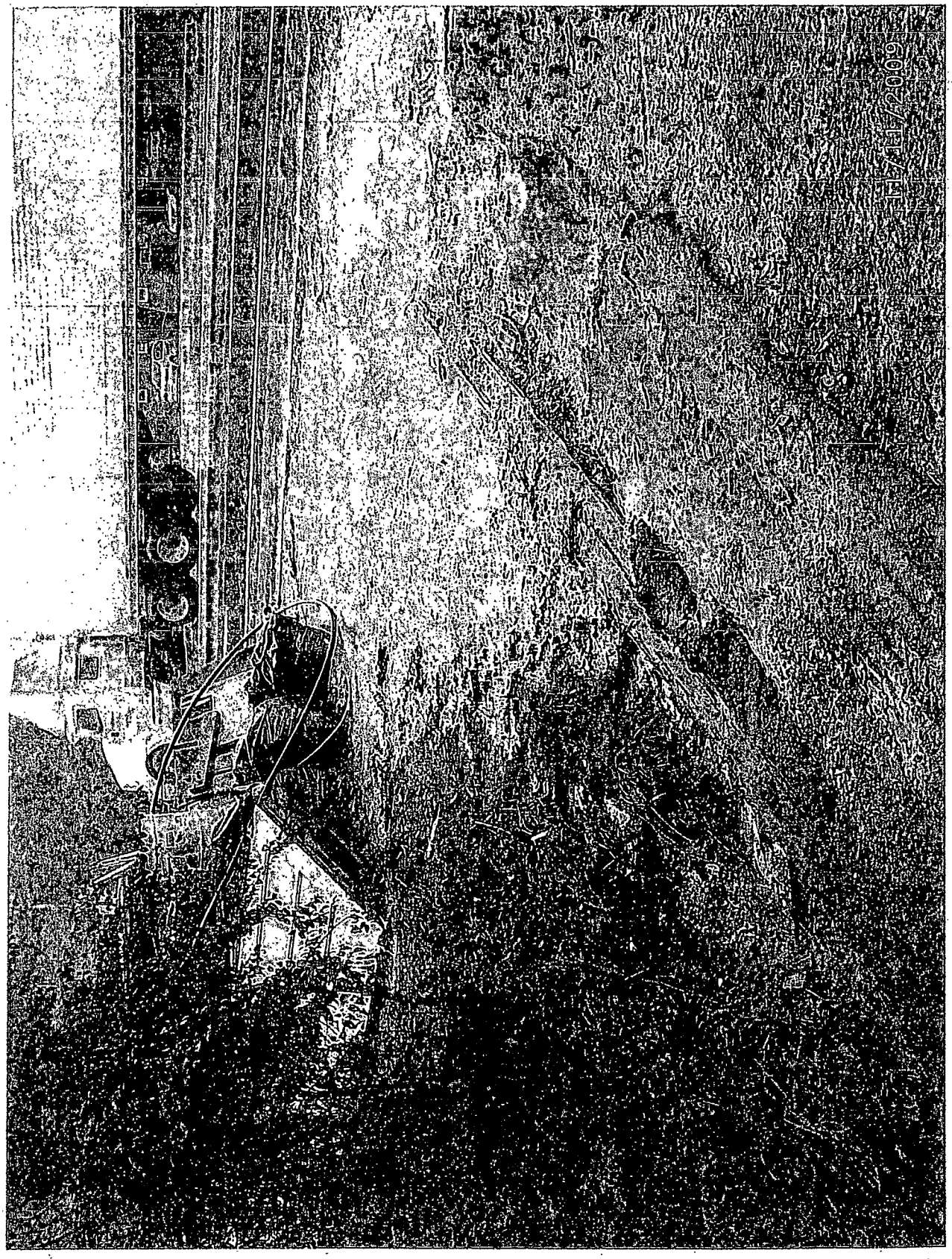
tabbies
PLAINTIFF'S
EXHIBIT
68

PLAINTIFF'S
EXHIBIT
tabbies
699

8/19/2009



PLAINTIFF'S EXHIBIT
19-44

11/11/2009

PLAINTIFF'S EXHIBIT
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tabbies
PLAINTIFF'S EXHIBIT
12-200
792

12/21/2009

PLAINTIFF'S EXHIBIT
19-PP

703

12/21/2009

PLAINTIFF'S EXHIBIT
19-84

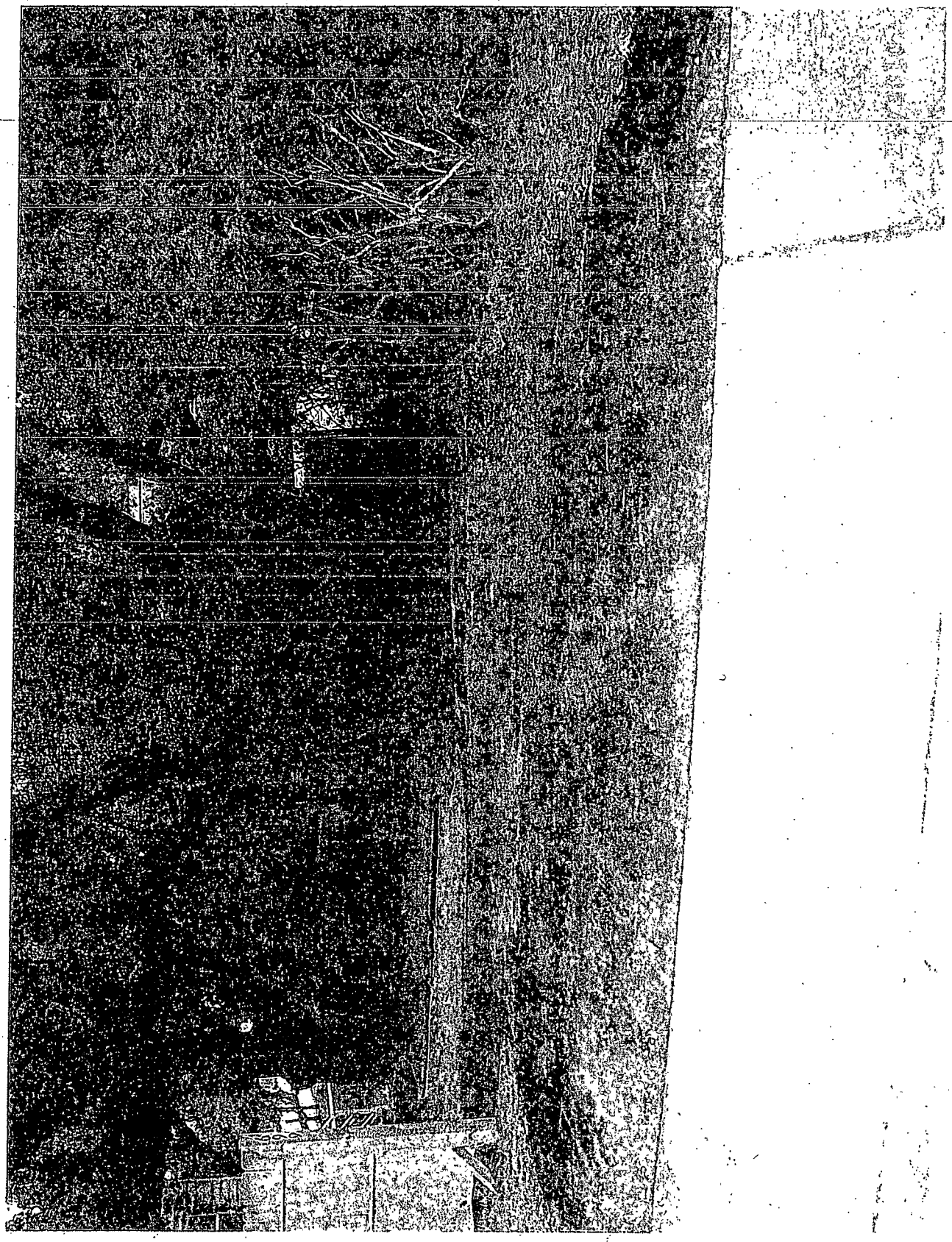
1/4/2010

PLAINTIFF'S EXHIBIT
19-B.R

PLAINTIFF'S EXHIBIT
19-D-1

1/24/2010

PLAINTIFF'S EXHIBIT
19-11



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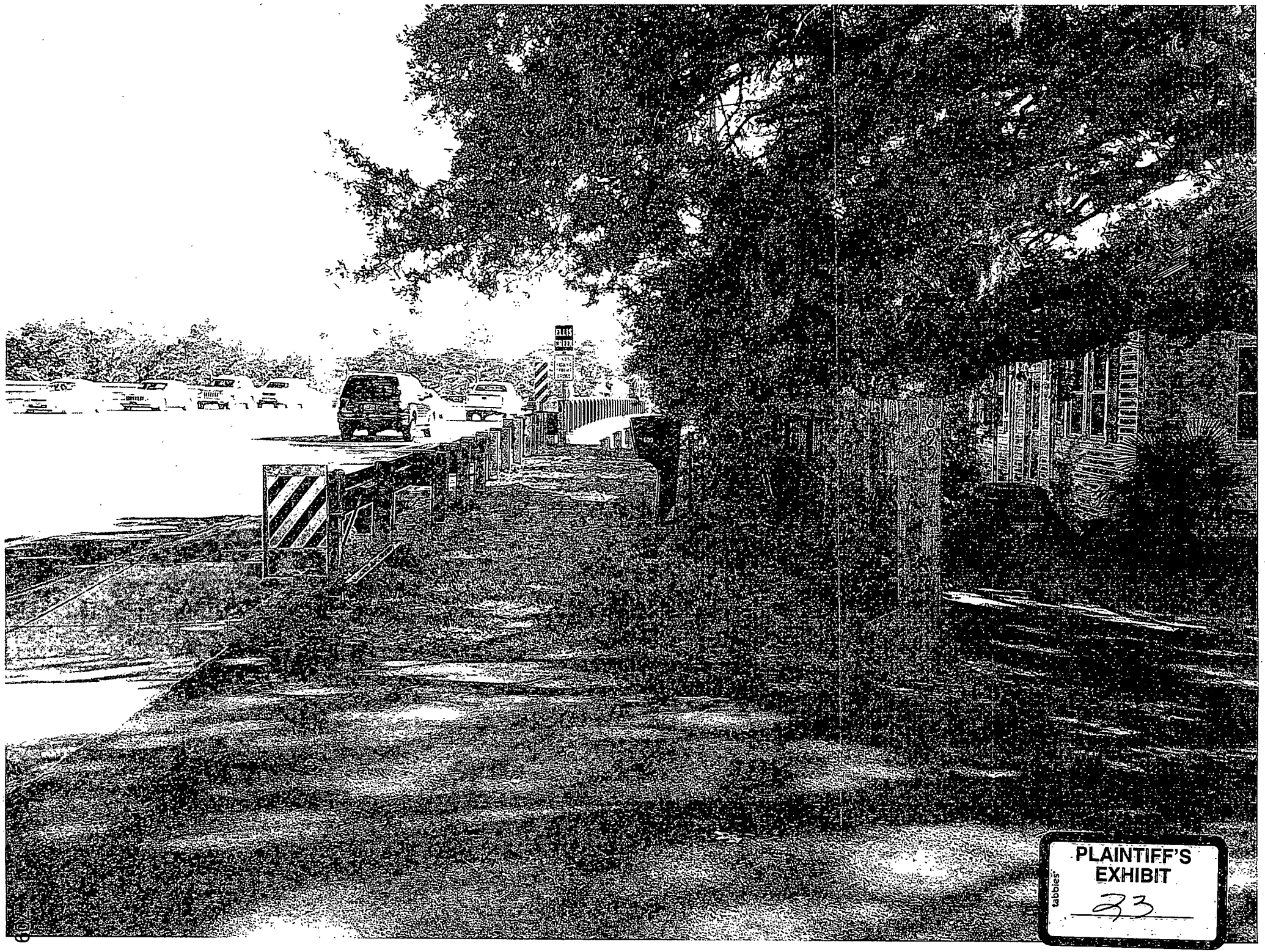
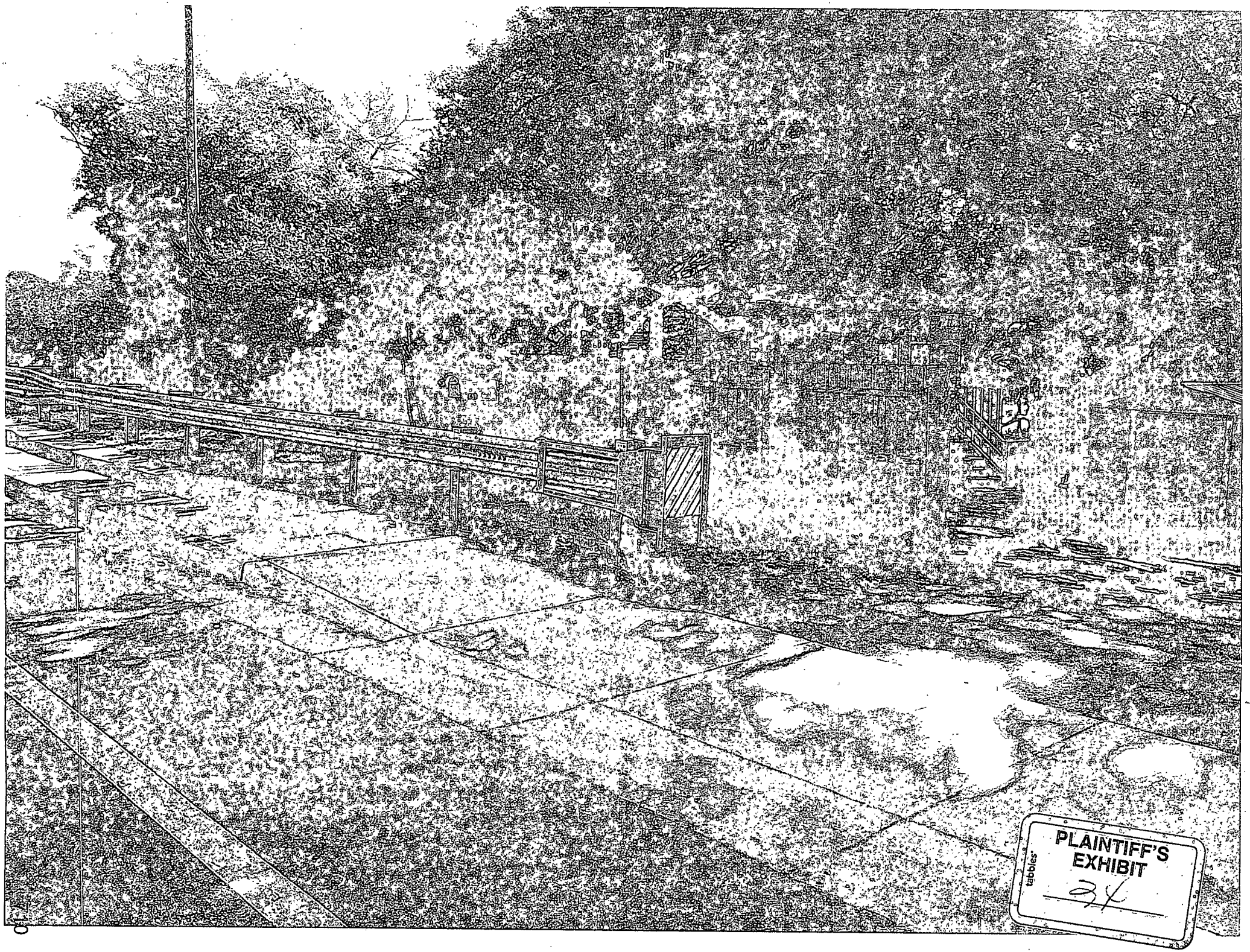
PLAINTIFF'S EXHIBIT
19-U U

08



PLAINTIFF'S
EXHIBIT
23

tabbies


PLAINTIFF'S
EXHIBIT
24
tabbies

Certificate

The undersigned counsel for appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Beacham D. Brock, Jr.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Thomas L. Hughston, Circuit Court Judge

Appellate Case No. 2012209046
Case No. 2009-CP-10-6185

Henry W. Frampton, III..... Respondent,

v.

South Carolina Department of Transportation ..... Appellant.

PROOF OF SERVICE

I certify that I have served the BRIEF OF APPELLANT, REPLY BRIEF and RECORD ON APPEAL on Henry W. Frampton, III, by depositing a copy of each of these pleadings in the United States Mail, postage prepaid on March 21, 2013, addressed to his attorney of record, Richard D. Bybee, as follows:

M. Brent McDonald
Richard D. Bybee, Esquire
Smith Bundy Bybee & Barnett
Post Office Box 1542
Mount Pleasant, SC 29456

Beacham O. Brooker, Jr.
SCDOT
Post Office Box 191
Columbia, South Carolina 29201-0191
(803) 737-1347
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Columbia, S.C.
March 21, 2013

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MAR 22 2013
SC Court of Appeals