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IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

CASE NO.: 35404

STATE OF ALABAMA,

Petitioner,

vs.

THE BALDWIN COUNTY BRIDGE COMPANY, LLC, and TEDDY J. FAUST as BALDWIN COUNTY REVENUE COMMISSIONER,

Respondents.

The following proceedings were taken before The Honorable James Reid and were taken down stenographically by Laura R. Fant, Court Reporter and Notary Public, at the Baldwin County Satellite Courthouse, Fairhope, Alabama, on the 24th day of April, 2018, commencing at 9:00 a.m.

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* * * * *

I, LAURA R. FANT, a Court Reporter of Mobile County, Alabama, and Notary Public for the State of Alabama at Large, acting as Commissioner, certify that on this date, whereupon the following proceedings were had:

* * * * *

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1 JUDGE REID: You want to make an opening
2 statement?

3 MR. HAGMAIER: Yes, Your Honor, that's
4 fine.

5 If it please the Court, this a merit
6 hearing, just to kind of refresh everybody's memory of
7 what we're here about. You know, this is a
8 condemnation case, the State of Alabama, through ALDOT,
9 is condemning one point three -- or excuse me, point
10 one three acres.

11 The before tract, which is tract
12 twenty-one, again, Your Honor has the complaint, we're
13 not going to submit a bunch of documents to overkill
14 the Court, but it's already in the file. The before
15 tract is point two five acres, the after tract is point
16 one two acres, the acquisition is point one three
17 acres.

18 The only issue we are here on today and it
19 appears may be into tomorrow, is whether or not ALDOT
20 has the authority to institute this proceeding and to
21 take this private property for the purposes of building
22 this new road. Again, you know, we've kind of set out
23 in our response to their objections, that this is a,

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1 you know, a fairly run of the mill eminent domain case.

2 As Your Honor is aware, we've had several
3 tracts already that have been subject to condemnation
4 proceedings and have proceeded through the Probate
5 Court. In this case, they've raised various
6 objections, none of which we believe have any merits or
7 really any relevancy to what the actual issue in this
8 case.

9 Again, it's a small tract, now we
10 understand that the owners, the Baldwin County Bridge
11 Company own the toll bridge that's down the road, but
12 that -- that bridge is not connected to this property,
13 there is no -- it's not contiguous. I could say that
14 probably a little bit better. But as a result, it is
15 not a subject of this proceeding. The only issue again
16 for Your Honor to review is whether or not the state
17 has the authority under the power of eminent domain to
18 acquire this piece of property.

19 There's going to be a lot of issues I think
20 they're going to try to raise. However, again, none of
21 those issues really touch on the authority of the state
22 or the lack of authority of the state to acquire this
23 particular piece of property. I know that on one of

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1 the issues that they have raised seems to be an actual
2 necessity argument, we don't believe that they can show
3 that this property, again, the point two five acres in
4 the before has been devoted to public use, that would
5 alleviate the need to show an actual necessity.

6 We plan on representing evidence as to the
7 actual necessity. And for Your Honor's benefit, we
8 suspect or we expect the evidence to show that the
9 issue here is the traffic on Highway 59. You know,
10 this is traffic that runs, you know, from about State
11 Road 12, I believe all the way south to 59 over the
12 intracoastal. You know, the bridge over the
13 intracoastal is a choke point, Highway 59 is a choke
14 point, traffic backs up all the way to Foley and Loxley
15 on 59. The existing ways across the intracoastal are
16 Highway 59 and the toll bridge.

17 Unfortunately, what we believe and what we
18 expect that the evidence to show is that the majority
19 of people, and when I say majority I mean a significant
20 majority of people, are consciously avoiding the toll
21 bridge, and as a result, they are overloading Highway
22 59. That leaves the state with basically three options
23 when it came to solving this problem. This is the

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1 problem that we have, which is getting traffic off of
2 Highway 59.

3 One is to widen 59 and make adjustments to
4 59 and widen the bridge. We would expect the evidence
5 to show that, that would just be economically
6 unfeasible. In addition to causing significant
7 disruptions to the Highway 59 area.

8 The second option, which was to attempt to
9 negotiate with the toll bridge company to lower the
10 tolls, in order again to pull more -- pull traffic over
11 that way. Those negotiations failed and they were
12 rejected as to a limit, a hard cap on the toll.

13 So the third option is to build a new
14 project, which this project is -- which this tract is a
15 part of.

16 Again, it's our position that a lot of that
17 doesn't have anything to do with this case. We are
18 prepared to present what the problem was and what the
19 basis for this project was. And we believe once the
20 Court hears that, there will be no further need for the
21 state to put on any testimony and the Court will find
22 that we have the power to acquire this tract.

23 JUDGE REID: Mr. Haas.

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1 MR. HAAS: Good morning. Thank you very
2 much.

3 I think Your Honor heard last time that
4 this is far from the run of the mill condemnation
5 proceeding. I think the press that Your Honor made
6 reference to, as well as everyone here in the courtroom
7 today, and all the various materials that are here rely
8 that proposition.

9 And this matter has significant
10 repercussions, not only with respect to BCBC, our
11 client, the Baldwin County Bridge Company, but the
12 citizens of the state. And the constitution of the
13 state protects its citizens by demanding that any state
14 sanction taking of their property must, must be in the
15 public interest and not pursuant to an arbitrary or
16 capricious decision making process. And for that
17 reason, the taking at issue here fails, Your Honor,
18 because in our view, it's a falsity based upon a false.

19 The falsity, Your Honor, is ALDOT's
20 assertion that it's in the public interest. To spend
21 eighty-seven million dollars of the state's scant
22 resources to build a new bridge across the intracoastal
23 waterway that is just a stone's throw away from the

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1 existing bridge, the BEX bridge, one point one miles
2 away. The false is the entirely arbitrary and
3 capricious manner in which the decision was made to
4 build this new bridge.

5 The facts will show, Your Honor, that the
6 decision was made without, without the requisite
7 studies required to justify the new bridge. And it was
8 made by a public official, who admitted that the bridge
9 was unnecessary repeatedly, and we'll see that verbally
10 and we'll see that in writing. And it was made by a
11 public official, who admitted that he directed the
12 bridge to be built in order to inflict harm on BCBC, on
13 a private enterprise, a public private partnership that
14 his agency is tasked to protect, not to
15 (unintelligible).

16 So specifically, Your Honor, the facts will
17 show that ALDOT's petition for condemnation is fatally
18 flawed for three reasons. One, the facts will show
19 that they cannot and have not met their burden of
20 showing that the stated purpose of the condemnation is
21 in the public interest, that's number one.

22 Number two, the facts will show that the
23 true motivation for the state's interest for building

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1 this bridge and for the condemnation is contrary to the
2 state's interest in fostering private investment in
3 public infrastructure projects, and that's a
4 significant concern for other projects that are going
5 on currently in this state.

6 And third, the facts will show that the
7 process followed in pursuing the condemnation was
8 entirely arbitrary and capricious.

9 And I'm just going to walk with it, and I
10 know, Your Honor, I don't want to go too long, but I
11 really want to walk through the chronology quickly to
12 demonstrate how the chronology that we will be working
13 through with these exhibits over the next two days
14 demonstrates those three facts.

15 But as an initial matter, we just heard
16 this is all about a piece of property, and it's
17 about -- it's not about a bridge. There's no
18 legitimate dispute that there's a direct nexus between
19 the property that is subject to this condemnation
20 proceeding and the bridge that is at issue.

21 Indeed, in their petition, Exhibit number
22 26, ALDOT expressly alleges that the purpose for the
23 condemnation is to take the property to further and to

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1 divert traffic from our bridge to the new bridge that
2 they intend to build. There's no question that the
3 real issue in this case is whether this new bridge
4 should be built and whether the right process was
5 followed in order to determine whether the bridge
6 should be built.

7 So with respect to the how this happened,
8 the chronology, this brings us back to 2015. It was in
9 2015, that ALDOT director, John Cooper, approached BCBC
10 asserting that he was contemplating building a new
11 bridge across the intracoastal waterway.

12 In response, BCBC said well, if ALDOT shows
13 us there's a need for a new bridge, BCBC would consider
14 building the bridge at no cost to the state. No cost
15 to the state. To that end, on July 8th, 2015, BCBC
16 asked ALDOT, asked Director Cooper specifically, in
17 writing, for traffic studies and other information
18 justifying the need for a new bridge across the
19 intracoastal highway. You know what they got? No
20 response, no response whatsoever.

21 So BCBC tried again. On November 30th,
22 2015, BCBC met with Director Cooper, BCBC offered to
23 conduct due diligence on its own, on its own dime, to

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1 determine whether or not a new bridge was required, and
2 again requested traffic studies from ALDOT to
3 legitimize, justify a new bridge across the
4 intracoastal waterway. Because again, if there was a
5 need, BCBC offered to build it at no cost to this
6 state. No response, Your Honor. There was no response
7 whatsoever.

8 So what happened next? On April 29th,
9 2016, BCBC got a letter, not from Director Cooper, but
10 from the mayor of Orange Beach, Tony Kennon, on behalf
11 of Director Cooper and other public officials. In that
12 letter, Mayor Kennon stated in no uncertain terms, that
13 a new bridge was not necessary. It's in writing, Your
14 Honor, we'll show Your Honor it's in black and white.
15 No new bridge was required if BCBC agreed to build a
16 new span on its existing bridge. Now, that was
17 something BCBC certainly was willing to do, and indeed,
18 it's what BCBC has the right to do under its contract
19 and it also has the obligation to do so if the traffic
20 volume reaches the required level for an additional
21 span.

22 But then what happened? Director Cooper
23 then took over the negotiations with Tony Kennon and he

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1 changed tact, changed course. Director Cooper then
2 said explicitly, neither a new bridge nor a new span
3 was required, he stated that position verbally and he
4 stated it in writing as recently, Your Honor, as March
5 23rd, 2017, and I will show you that document.

6 Instead, Director Cooper demanded money, monetary
7 concessions from BCBC, mainly in the -- in the vain
8 view of reductions in tolls to two dollars for every
9 vehicle that was across the BEX bridge.

10 Director Cooper said that if you reduce the
11 tolls to two dollars, I will get the state to promise
12 in writing not a build a new bridge. Although, BCBC
13 under its contracts, under its license, has full
14 authority to set its own toll, it none the less
15 negotiated in good faith to reduce its toll by
16 thirty-five percent to two dollars and twenty-five
17 cents. That's just twenty-five cents different than
18 what Director Cooper demanded, twenty-five cents, a
19 quarter, that was the difference.

20 BCBC then went further and it agreed to
21 reduce its toll for Orange Beach residents, on the
22 other side of the bridge, to one dollar, which was less
23 than Director Cooper demanded. Understandingly, that

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1 was a good deal, so the parties reached an agreement in
2 principle, Director Cooper proposed to put the
3 agreement in writing, and did so, prepared a draft
4 agreement, and provided that draft agreement to BCBC on
5 March 23rd, 2017.

6 And this is important, Your Honor, this is
7 a critical document in this case and we'll get to it.
8 And I just want to read a quote for you from Exhibit 7
9 in the record. Director Cooper recited his promise, he
10 recited his promise not to build a new bridge. He
11 said, quote, ALDOT, Orange Beach, Gulf Shores and
12 Baldwin County commit they will not build any new
13 bridge across the intracoastal waterway within two
14 miles of Foley Beach -- of the Foley Beach Express toll
15 bridge, BEX bridge, other than the proposed bridge
16 known generally as the Wolf Bay bridge.

17 Your Honor, he admitted that no new bridge
18 was required and he did not even demand a new span.
19 This case isn't about capacity across the intracoastal
20 waterway, this case is not about congestion, this case
21 is not about an evacuation route. This case is about
22 monetary coercion because indeed, what Director Cooper
23 demanded in exchange for that promise from the state

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1 was two material monetary concessions.

2 First, Director Cooper revived his demand
3 that BCBC reduce its toll across the board to two
4 dollars, that's twenty-five cents less than BCBC could
5 do, a quarter. Second, and this is critical, this is
6 very critical to this case, for the first time ever in
7 any of the discussions, Director Cooper demanded that
8 BCBC sell the BEX bridge, sell its bridge to Orange
9 Beach in 2043 at the depreciated value of the bridge at
10 that time. Your Honor, there's no dispute, that would
11 be zero.

12 Director Cooper did not provide any
13 justification for demanding another quarter reduction
14 in tolls. He certainly did not provide any studies,
15 any traffic studies, and I will assure Your Honor we
16 will not see it today or tomorrow, any studies that
17 shows a twenty-five cent reduction in tolls would
18 address and cure any congestion issues, any traffic
19 issues in any of the relevant areas.

20 Director Cooper also did not explain why
21 requiring BEX to turn over its bridge for free was
22 necessary to alleviate any traffic congestion. He
23 didn't explain at all why it had anything to do

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1 whatsoever with traffic at all, because it didn't, it
2 has nothing to do with traffic. I will tell you what
3 Director Cooper did say and what the testimony will
4 show he said. Director Cooper explicitly said the
5 reason I'm asking for this is to, quote, undo the deal.

6 Director Cooper explicitly said that he
7 made the monetary demands because he didn't like the
8 deal that BCBC had with the public entities. BCBC
9 entered into a public contract. Director Cooper didn't
10 like it, so Director Cooper now unilaterally, based
11 upon his subjective view, is seeking to eviscerate
12 BCBC's sole right. That's not a legitimate public
13 interest.

14 None the less, the facts will show that
15 BCBC went on with the negotiations in a good faith
16 attempt to try to work through the issues. And so what
17 did it do? It reduced its tolls voluntarily across the
18 board for all users. That was in vain, Director Cooper
19 did not engage. As a consequence, on June 27, 2017,
20 the very day that BCBC went back to Director Cooper and
21 said we can't accept the terms, he immediately turned
22 around and said all right, I'm going to build a new
23 bridge using state funds. That same day, that same

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1 conversation, without any more work being done, without
2 any studies being done, without any confirmation with
3 any other entities, organizations, or any public
4 hearings or any vetting whatsoever.

5 So the facts will show, Your Honor, that
6 Director Cooper made that decision at a personal
7 animosit of BCBC, of personal dislike subjectively with
8 respect to the deal it struck. The facts will show
9 that the decision was made without the requisite
10 studies justifying building a new bridge across the
11 intracoastal highway. The facts will show that
12 Director Cooper made that decision despite repeatedly
13 conceding that a new bridge was not required. And the
14 facts will show that there's other priorities in this
15 state that are now unfunded because eighty-seven
16 million dollars is being spent on a bridge that is not
17 needed. And finally, Your Honor, the facts will show
18 that the decision here is particularly egregious,
19 because BCBC was willing to add any capacity necessary
20 at no cost to the state.

21 So, Your Honor, just to conclude quickly,
22 and I thank you for your patience, as we go through the
23 proof today, I ask that you just keep mind three

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1 numbers, respectfully. Eighty-seven million dollars,
2 ALDOT is committing eighty-seven million dollars of the
3 state funds to a project that its own director stated
4 in writing is not necessary and committed not to do.

5 Second number, twenty-five cents. ALDOT is
6 contending without proof that an additional twenty-five
7 cent toll reduction will address traffic congestion
8 somewhere, no proof.

9 Third number, Your Honor, one point one
10 mile. The new bridge is just one point one miles from
11 the existing BEX bridge, which BCBC agreed to expand at
12 no cost to the state.

13 Your Honor, those numbers don't add up, and
14 we respectfully submit the petition should be denied.

15 Thank you, Your Honor.

16 JUDGE REID: Thank you, Mr. Haas.

17 Jason, you want to call your first witness?

18 MR. HAGMAIER: Yes, sir.

19 JUDGE REID: Would you, please, raise your
20 right hand.

21 (Swearing in witness.)

22 DIRECT EXAMINATION

23 BY MR. HAGMAIER:

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1 Q Will you state your name for the record,
2 please?

3 A Vincent E. Calametti.

4 Q Mr. Calametti, what is your current job?

5 A I am the regional engineer for the
6 southwest region of the Alabama Department of
7 Transportation.

8 Q And that is -- your offices are in Mobile,
9 correct?

10 A Yes, sir.

11 Q All right. Now, you're aware today we are
12 here on a merit hearing regarding what's been
13 designated as tract twenty-one on the waterways
14 project; is that correct?

15 A Yes, sir.

16 Q All right. What I'm going to show you as
17 Exhibit 1, I'll mark it here, is a -- well, I'm going
18 to let you identify it for me.

19 MR. HAGMAIER: Your Honor, I apologize I
20 didn't get this one mounted. I figured it would be
21 easier to handle this way.

22 MR. HAAS: Your Honor, I don't mean to
23 interrupt counsel, but we probably should say

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1 plaintiff's exhibits versus defendant's, I think --

2 MR. HAGMAIER: All right. The State's
3 Exhibit number 1.

4 (Whereupon, State's Exhibit 1 was
5 marked for identification and
6 attached hereto.)

7 BY MR. HAGMAIER:

8 Q Do you recognize that?

9 A Yes, sir.

10 Q Can you describe that for me?

11 A This is an overview of the -- of an aerial
12 of the Foley Beach Express in the general area of
13 County Road 8 into the south.

14 Q Okay. And does that show the property
15 designated as tract twenty-one?

16 A Yes, it does.

17 Q All right. Do you know the size of tract
18 twenty-one in the before?

19 A I do not.

20 Q Okay. Have you reviewed the petition that
21 has been filed?

22 A Yes.

23 Q Okay. And if I told you that the before

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1 was point two five acres, does that sound about right?

2 A Yes.

3 Q Does it sound about right that we're taking
4 point one three acres?

5 A Yes.

6 Q All right. Now, what is tract
7 twenty-one -- let me show you what's been marked as --
8 we'll start with this, this will be State's Exhibit 2.

9 (Whereupon, State's Exhibit 2 was
10 marked for identification and
11 attached hereto.)

12 BY MR. HAGMAIER:

13 Q Are you familiar with this?

14 A Yes.

15 Q All right. And this is north, correct?

16 A Pardon me?

17 Q North is at the top?

18 A Yes.

19 Q All right. And what does this show?

20 A That shows an aerial of the Foley Beach
21 Express, the existing, along with the new proposed
22 route.

23 Q All right. And generally, this is being

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1 called the waterways project, correct?

2 A Correct.

3 JUDGE REID: What did you say it --

4 MR. HAGMAIER: Waterways.

5 JUDGE REID: Waterways.

6 MR. HAGMAIER: The waterways project.

7 BY MR. HAGMAIER:

8 Q And let me do it this way here. And if you
9 could, on -- does this show the proposed bridge
10 spanning the intracoastal?

11 A Yes.

12 Q All right. Does it also show the toll
13 bridge?

14 A Yes.

15 Q And does it also show the Highway 59
16 bridge?

17 A Yes.

18 Q All right. Now, kind of give us a big
19 picture of what this project is about, what is --
20 what's going to be conducted, both in this exhibit, and
21 then I'm going to show you what's going to be marked as
22 Exhibit 3.

23 (Whereupon, State's Exhibit 3 was

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1 marked for identification and
2 attached hereto.)

3 BY MR. HAGMAIER:

4 Q And explain the difference and the time
5 line, if you would.

6 A The first -- the first picture, that is
7 from the north end just to the south of County Road 8,
8 that shows the route as it takes off. Generally, in
9 that area of tract twenty-one, there will be an exit
10 ramp, a southbound exit ramp for the traffic that will
11 be utilizing the new roadway.

12 It shows a minor relocation of the existing
13 southbound roadway. When I say a minor relocation, it
14 will allow the new road to be constructed while traffic
15 is maintained on the existing roadway. That new
16 revised, relocated area will have a bridge on it, so
17 that the new northbound roadway can come under that,
18 and then be a merge into the northbound existing Foley
19 Beach Express.

20 As you come down, you'll see the roadway
21 southbound right now. The project will construct a two
22 lane roadway with a two lane bridge across the
23 intracoastal, and then a trumpet ramp, loop ramp that

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1 comes into a round at Canal Road.

2 Q All right.

3 A That roadway will be the -- ultimately, it
4 will be the southbound roadway.

5 Q All right. And I want to ask you a couple
6 of questions, when you talk about a bridge over this,
7 this is northbound, so there's going to be basically an
8 overpass over the existing Foley Beach Express that
9 ties back into the Foley Beach Express heading north,
10 correct?

11 A Well, the Foley Beach Express will actually
12 have the bridge and the waterways northbound will come
13 under that bridge.

14 Q Okay. So it's going to go under a new
15 overpass right there and then connect to the north?

16 A Yes.

17 Q And the south, you're just going to have a
18 a lane that goes south basically?

19 A Yes, an exit ramp.

20 Q An exit ramp. And, then, generally with
21 this project, will the new existing roadway be a denied
22 access roadway?

23 A It will be -- yes, it will be a limited

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1 access. There are some minor -- I think at County Road
2 4, there are some connections, so it would be -- most
3 of it is being purchased as an access, denied access,
4 but there will be some limited access.

5 Q All right. I'd like to direct your
6 attention to this kind of loop here and then the green
7 road that heads over towards Highway 59, is that part
8 of this project or is that a different project?

9 A That was part of the original permit, but
10 that will be a project that will be under the control
11 of Gulf Shores.

12 Q Okay. All right. And, then, Exhibit 3 or
13 State's Exhibit 3 is -- what does this show?

14 A That is the ultimate build. The
15 right-of-way is being purchased for a four lane
16 facility, only two lanes are being constructed at this
17 time. That would be a four lane ultimate build out,
18 and on the very south end at the -- at Canal Road or
19 State Route 180, it shows two loop ramps, and then two
20 round about connections at Canal Road, such that
21 everything will be pretty much free flow of movement.

22 Q All right. And this new proposed bridge is
23 not going to be a toll bridge, correct?

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1 A Correct.

2 Q And the state will own or ALDOT will own
3 and maintain the new project after it's constructed or
4 will it be handled by Gulf Shores or Baldwin County or
5 what's the situation with that?

6 A It will more than likely be a state route,
7 but I don't think that determination has been fully
8 vetted yet.

9 Q Okay. That's all I have for these.

10 MR. HAGMAIER: And, Your Honor, I guess we
11 will admit these. We normally don't do this with merit
12 hearings, but this is --

13 JUDGE REID: 1, 2, 3?

14 MR. HAGMAIER: 1, 2, 3 of the State, being
15 the maps.

16 JUDGE REID: Any objection to the aerial
17 maps?

18 MR. HAAS: No, your Honor.

19 MR. BRADY: No, Your Honor.

20 BY MR. HAGMAIER:

21 Q Now, just to be clear, you said that
22 initially it's going to be a two lane north sound
23 roadway, but we're acquiring a right-of-way for the

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1 full build; is that correct?

2 A Yes, sir.

3 Q So when it comes to tract twenty-one, the
4 point one three acres that we're acquiring, there's no
5 additional property that's going to need to be
6 acquired?

7 A Correct.

8 Q And again, just for -- that's right up here
9 at the very top where the connection is with the Foley
10 Beach Express?

11 A Yes, sir.

12 Q Okay. Now, what is your understanding of
13 the purpose of the new roadway?

14 A The purpose of the new roadway is to
15 facilitate more north, south movement, to better have
16 access to the Jack Edwards Airport, and to help
17 alleviate congestion on 59.

18 Q All right.

19 MR. HAGMAIER: Mark this as State's Exhibit
20 4.

21 (Whereupon, State's Exhibit 4 was
22 marked for identification and
23 attached hereto.)

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1 BY MR. HAGMAIER:

2 Q Do you recognize this?

3 A Yes.

4 Q What is this? Explain to the Court what
5 this is.

6 A That is a screen shot of an Alabama traffic
7 data map that is on the ALDOT web site.

8 Q All right. And I'm going to give you a
9 copy, so that you can see it better. And if you would,
10 can you explain to the Court --

11 MR. HAGMAIER: I'm sorry, Your Honor, all I
12 have is the big map. Do you want -- can you see the
13 numbers?

14 JUDGE REID: If you have an extra one, I
15 sure would like to have it, it's a little difficult to
16 see. Thank you.

17 BY MR. HAGMAIER:

18 Q All right. Mr. Calametti, if you would,
19 let's start -- all right. First of all, where did
20 these numbers come from?

21 A We have a bureau in the central office in
22 Montgomery that is tasked with keeping up with traffic
23 data throughout the state. They take periodic traffic

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1 counts and update the web site.

2 Q Okay. And this is readily available on the
3 ALDOT web site?

4 A Yes.

5 Q And in particular, this map and these
6 numbers, do you know the date when these were -- what
7 these are reflecting, what time frame?

8 A These are the 2016 traffic counts.

9 Q Okay. If we could, can we go through the
10 numbers, and let's start on Highway 59, the box in red
11 on the north side, if you will tell the Court what that
12 number is and what it means?

13 A The box that's in red is a 2016 average
14 annual daily count. That location is just to the north
15 of County Road 8, that number is thirty-five thousand,
16 seven hundred and seventy.

17 Q And again, that's the average daily rate?

18 A Yes.

19 Q And that includes January, February, that's
20 an average daily for the entire year?

21 A Yes.

22 Q That's not just the summertime?

23 A Correct.

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1 Q All right. Now, as we move down Highway
2 59, that bottom red box, what is that number and what
3 does that mean?

4 A That is a count that was taken just to the
5 north of the intracoastal canal. It is again, a 2016
6 average daily count, and that number is forty-six
7 thousand, six hundred and fifty.

8 Q All right. And again, you said that's
9 average daily count in 2016, are you aware if the
10 numbers have increased or decreased since 2016?

11 A I'm not aware exactly.

12 Q Okay. All right. You don't know the
13 actual number, but what, in your professional opinion
14 as being part of ALDOT, what do you think are the
15 traffic counts, do you think they're higher or lower?

16 MR. HAAS: Objection.

17 A I think they've increased --

18 JUDGE REID: Just a moment. Speculation?

19 MR. HAAS: It's speculation, it's
20 hypothetical. He already testified he didn't know.

21 JUDGE REID: Sustained.

22 BY MR. HAGMAIER:

23 Q All right. Let's start over here in the

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1 blue box in the north, what is that number?

2 A This is a traffic count on the Foley Beach
3 Express just to the north of County Road 8, it's a 2016
4 average annual daily count of seventeen thousand, three
5 hundred and twenty.

6 Q All right. And as we move down the Foley
7 Beach Expressway, what's the next blue box?

8 A It is an average annual daily count of ten
9 thousand, three hundred and thirty.

10 Q All right. The difference of almost seven
11 thousand cars in that span, what does that generally
12 tell ALDOT?

13 A That there has been a reduction in the
14 traffic through a movement off to side roads.

15 Q Okay. Do we know where they're going?

16 A No.

17 Q Not particularly? All right. Now, at the
18 very -- keep going down Foley Beach Express and further
19 south of the blue box, right there on what would be the
20 Foley Beach Express toll bridge, what is that number
21 saying, what does that tell you?

22 A It's a number on the, you know, close to
23 the intracoastal waterway, 2016, and it's a count of

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1 ninety-six hundred.

2 Q Okay. Now, for the purposes of -- we just
3 read three numbers, three on the Foley Beach Express
4 and two on Highway 59, the fact that the difference has
5 changed from seventeen thousand at the beginning of the
6 Foley Beach Express up here, to ninety-six hundred at
7 the bridge, with a correspondence increase of almost
8 eleven thousand, does that give you any idea of where
9 the traffic on the Foley Beach Express is headed?

10 MR. HAAS: Objection. Asked and answered.
11 He has already testified he didn't know.

12 JUDGE REID: I'll overrule the objection.

13 BY MR. HAGMAIER:

14 Q You can answer.

15 A Yes, there's a corresponding increase in
16 the traffic on State Route 59, corresponding to a
17 similar decrease on the Foley Beach Express, which
18 indicates that some -- the traffic is traveling south
19 on the Foley Beach Express, and then getting off at
20 either County Road 8 or County Road 4 to possibly
21 bypass the toll.

22 Q Okay. And one other number I'd like to
23 point out just on this map, there's one here on Canal

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1 Road, it's just to the -- to the -- I guess to the east
2 there of that 2016 ALDOT number on the Highway 59
3 bridge, what is that number and what's the
4 significance?

5 A That is a number on Canal Road, State Route
6 180, 2016 average annual daily count of eleven
7 thousand, four hundred and ninety.

8 Q Okay. All right. Thank you.
9 (Whereupon, State's Exhibit 5 was
10 marked for identification and
11 attached hereto.)

12 MR. HAGMAIER: We're up to 5.

13 BY MR. HAGMAIER:

14 Q I'm going to do the same thing with you on
15 this, this one is a little bit easier to see.

16 MR. HAGMAIER: Your Honor, would you like
17 again?

18 JUDGE REID: Yes.

19 MR. HAGMAIER: I apologize. Old school.
20 One of these days I'm going to have this power point
21 and this will all be gone.

22 BY MR. HAGMAIER:

23 Q All right. Mr. Calametti, do you recognize

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1 this exhibit, Exhibit number 5?

2 A Yes.

3 Q And can you explain to the Court one, what
4 this is, and then we'll just work our way down the
5 boxes for the purposes of this hearing.

6 A Yes, this was -- this was a study that
7 ALDOT performed in conjunction with Skipper Consulting
8 to determine -- to look at the three intersections that
9 are south of the intracoastal to determine the total
10 number of left turns that are coming south and then
11 making a left turn either on 20th Avenue or East Fort
12 Morgan, which would be 180, or down at the very end at
13 State Route 182.

14 Q Okay. And if we can, on -- these are the
15 monthly averages or the monthly numbers, correct?

16 A Yes.

17 Q And what year is this for?

18 A 2015.

19 Q Okay. And what do these numbers tell
20 ALDOT?

21 A These -- these numbers, as we come down in
22 July, they were just typically four hundred and
23 fifty-three thousand, four hundred and ninety-eight.

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1 These -- and these numbers were actually taken from the
2 City of Gulf Shores has an adaptive traffic signal
3 system, which has the ability to make and count each
4 car that makes that turn, so the -- during that month,
5 the number of left turns at each one of these locations
6 was added up, and then a percentage of the -- a
7 percentage of the cars making that left turn were
8 determined at each one of these locations.

9 Q Okay. So what we learn from this exhibit
10 is that in June or July, which would -- you would agree
11 with me is probably peak --

12 A Yes.

13 Q -- summer season in Gulf Shores and Orange
14 Beach, and generally, Pleasure Island all together?

15 A Yes.

16 Q That sixty-four percent in June and
17 sixty-one percent of the traffic crossing the
18 intracoastal bridge is turning left towards Orange
19 Beach?

20 A Correct.

21 Q Thank you. I'm going to show you what's
22 been marked as State's Exhibit 6.

23 MR. HAGMAIER: Your Honor, unfortunately, I

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1 don't have another copy of this.

2 (Whereupon, State's Exhibit 6 was
3 marked for identification and
4 attached hereto.)

5 BY MR. HAGMAIER:

6 Q Can you tell the Court what that is?

7 A Yes, this was a study that was performed by
8 Brian Davis, he is a professional civil engineer three,
9 was a division engineer. He was tasked with performing
10 a traffic study for the transportation needs in Baldwin
11 County.

12 Q All right. And have you read through that
13 before, have you seen that before?

14 A Yes.

15 Q Do you know where this project, the
16 waterways project, and specifically the bridge over the
17 intracoastal, that's proposed as part of this project
18 ranks in that study? If it helps, it may be on page
19 forty-three and/or forty-seven.

20 A Yes, on page forty-three, table eight,
21 the -- the -- to provide third bridge to beach area
22 ranked as the second project.

23 Q Okay. And on page forty-seven, that

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1 includes several smaller projects or existing projects
2 that were under construction or in progress at the time
3 of the report; is that correct? Did I read that
4 correctly?

5 A Page forty-seven?

6 Q Yes, sir.

7 A Yes.

8 Q And on that list, where does the third
9 bridge or the bridge over the intracoastal as part of
10 this project rank?

11 A Number six.

12 Q Okay. Now, of the five that are above it,
13 how many have been done, if you know?

14 A We are working on three.

15 Q Okay. And which one are we not working on?

16 A We are not working on number two.

17 Q All right. From ALDOT's perspective, what
18 were the options to -- what is the -- you've already
19 testified that the problem is the traffic congestion on
20 Highway 59, correct?

21 A Correct.

22 Q And do you know, what were the options that
23 ALDOT had when it came to alleviating that problem? I

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1 mean, what were the possible solutions that ALDOT
2 looked at?

3 A Well, since there's only the one crossing
4 across 59, ALDOT would have to perform additional
5 capacity for that -- for that roadway. We would have
6 to allow for additional capacity on that roadway.

7 Q All right. Now, the toll bridge doesn't
8 really come into effect because we don't have any
9 control over the tolls, correct?

10 A Correct.

11 Q So does ALDOT really consider the toll
12 bridge a viable solution at this time?

13 A Not at this time.

14 Q Okay. And have you or have you reviewed
15 any cost estimates as what it would cost to increase
16 capacity on 59?

17 A Yes.

18 Q All right. Do you know the numbers off the
19 top of your head?

20 A Yes.

21 Q Okay. What are the numbers for the
22 highway -- for a possible change to Highway 59 to
23 address the traffic issue?

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1 A It would be extensive. In the two hundred
2 and twenty-eight million dollar range.

3 Q Okay. All right. And do you know what the
4 cost of this current project is estimated to be?

5 A Of the waterways, I think it is close to
6 sixty million.

7 Q All right.

8 MR. HAGMAIER: One second, Your Honor.

9 Your Honor, we would offer 4, 5, and 6,
10 which is the traffic study, and then the numbers on the
11 maps.

12 JUDGE REID: Any objection?

13 MR. HAAS: No objection.

14 MR. MORRISON: No objection.

15 JUDGE REID: The Court will put them in.

16 BY MR. HAGMAIER:

17 Q Mr. Calametti, are you aware that -- was an
18 appraisal and an offer made to Baldwin County Bridge
19 Company prior to the filing of the condemnation to
20 purchase the property that is necessary for this
21 project?

22 A I'm not aware.

23 Q You are not aware? Generally, are offers

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1 made prior to the filing of a condemnation case?

2 A Yes.

3 MR. HAGMAIER: No further questions.

4 JUDGE REID: Mr. Haas.

5 CROSS EXAMINATION

6 BY MR. HAAS:

7 Q Good morning.

8 A Good morning.

9 Q Mr. Calametti, you're the chief engineer of
10 the southwest region of the Alabama Department of
11 Transportation; is that correct?

12 A It's not chief engineer, it's region
13 engineer.

14 Q Chief regional engineer?

15 A We have a chief engineer in Montgomery,
16 it's just regional engineer.

17 Q Okay. Thank you. You report directly to
18 Director Cooper?

19 A I report -- I report to the deputy director
20 of operations, George Connor.

21 Q Okay. Who does he report to?

22 A I think Mr. Cooper.

23 Q You interact with Mr. Cooper?

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1 A Yes.

2 Q Frequently?

3 A Yes.

4 Q Director Cooper is effectively your boss?

5 A Yes.

6 Q Now, you were asked if you understood why
7 you were here today and just to be clear, you
8 understand that you're here today on ALDOT's petition
9 to take the property of the Baldwin County Bridge
10 Company or BCBC, correct?

11 A Yes.

12 Q You understand that BCB's property, in
13 order for ALDOT to take that property, ALDOT bears the
14 burden of proving that taking is in the public
15 interest --

16 MR. HAGMAIER: Your Honor, I object --

17 BY MR. HAAS:

18 Q -- of the citizens of this state?

19 MR. HAGMAIER: That's a misstatement,
20 that's not what the standard is when it comes to a
21 merit hearing, it's to show that we have the power to
22 take the property, there's no public interest
23 requirement anywhere found in the Alabama Code.

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1 MR. HAAS: Your Honor, it's a fact
2 question. He can answer and then I can ask -- present
3 evidence.

4 JUDGE REID: Okay. Overrule the objection.
5 If you know, you can answer.

6 BY MR. HAAS:

7 Q Do you understand the question or should I
8 ask it again?

9 A Could you ask it again, please?

10 Q Do you have an understanding,
11 Mr. Calametti, that ALDOT bears the burden of proving
12 that the taking of BCB's property must be in the public
13 interest of the citizens of this state?

14 A I don't -- I don't know.

15 MR. HAAS: Do you have the exhibit binder
16 for the defendants before you?

17 Your Honor, may we approach the bench?

18 JUDGE REID: Yes.

19 MR. HAAS: Your Honor, do you have a copy
20 of the binder?

21 JUDGE REID: Well, I have -- I don't have
22 the binder, but I think --

23 MR. BRADY: This is kind of a new binder,

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1 it's probably just best for you to have that.

2 JUDGE REID: Okay.

3 MR. BRADY: I think the numbers are
4 substantially the same, but that way you know.

5 JUDGE REID: Okay.

6 BY MR. HAAS:

7 Q And I'll try to move as slowly as possible
8 when we go through the exhibits. I understand that
9 flipping through a binder is very difficult, so if you
10 aren't there, just let me know and I'll slow down.

11 A Okay.

12 Q If you would turn with me to Exhibit 26?

13 A (Witness complies). Okay.

14 Q Mr. Calametti, this is the petition that
15 ALDOT filed with this Court in furtherance of its
16 action to condemn BCB's property, correct?

17 A Yes.

18 Q Please turn with me, if you would, to
19 paragraph two, the first sentence. And I'll read for
20 the record, quote, the State of Alabama has the power
21 of eminent domain pursuant to article one, section
22 twenty-three of the constitution of 1901, to acquire by
23 condemnation real property for public use, when an

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1 acquisition of real property is in the public interest
2 of the citizens of the State of Alabama.

3 A Yes.

4 Q Do you agree that, that statement is in the
5 petition that ALDOT filed in support of this
6 condemnation proceeding?

7 A Yes.

8 Q Thank you. And you see from that
9 statement, that requirement to show a public interest
10 is a constitutional requirement, correct, that's
11 exactly what it says, right?

12 A Correct.

13 Q ALDOT simply cannot take the property of
14 BCBC in furtherance of the personal subjective view of
15 a director of ALDOT, correct?

16 A Correct.

17 Q Okay. Now, with respect to why ALDOT is
18 taking this property, please turn with me to paragraph
19 three.

20 A (Witness complies).

21 Q It states, and I'll read for the record,
22 petitioner avers that it is in the public interest to
23 acquire real property described herein for the purpose

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1 of construction, operation, maintenance and/or widening
2 of a public highway and any related obstructions in
3 Baldwin County known and designed as project number ST
4 0029960 -- 999006, connector from SR 180 to Foley Beach
5 Express bridging over the intracoastal waterway. Do
6 you see that?

7 A Yes.

8 Q Is that a true statement?

9 A Yes.

10 Q So is it in fact true, as ALDOT states in
11 its petition in support of its condemnation of BCB's
12 property, that BCB's property is being taken or
13 attempted to be taken in furtherance of the project to
14 build a bridge over the intracoastal waterway?

15 A Correct.

16 Q You are familiar with the designs for the
17 new bridge that's referenced in their project, correct?

18 A On a general basis, yes.

19 Q That's the bridge that's been colloquially
20 referred to as the western alternative; is that
21 correct?

22 A I don't call it -- I don't call it the
23 western alternative.

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1 Q You've heard it called the western
2 alternative?

3 A Yes.

4 Q Thank you. It was Director John Cooper who
5 made the decision to build that western alternative,
6 correct?

7 A Yes, he advised us to move ahead with the
8 project.

9 Q And he did so in June of 2017, correct?

10 A I'm not sure of the exact date, but that is
11 -- that's the general time frame, yes.

12 Q Not 2015, not 2016, June, 2017, correct?

13 A Yes.

14 Q Now, you made some reference in response to
15 your counsel's question with respect to State's
16 evidence number 1 with respect to what is BCBC's
17 property that is at issue, correct?

18 A Yes.

19 Q And did you have an understanding,
20 Mr. Calametti, why BCBC maintained that piece of
21 property?

22 A No.

23 Q Can you sit here and say -- withdraw that

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1 question.

2 Do you have any basis sitting here today to
3 say that BCBC did not intentionally maintain that
4 property in order to ensure the quote, express ability
5 of traffic down the Foley Beach Express?

6 A No, I don't -- I don't know that.

7 Q So it could have, you just don't know one
8 way or the other?

9 A I don't know.

10 Q Likewise, you have no understanding of
11 whether the piece of property that is subject to this
12 condemnation proceeding is contiguous to other pieces
13 of property that run down the Foley Beach Express,
14 correct?

15 A No, I do not.

16 Q They may, you just don't know?

17 A I just don't know.

18 Q You are aware, are you not, Mr. Calametti,
19 that from 2015 through to June, 2017, Mr. Cooper had
20 discussions with BCBC regarding whether a new bridge
21 should be built over the intracoastal waterway in what
22 is referred to as the western alternative location,
23 right?

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1 A Yes.

2 Q Those discussions not only involved whether
3 to build a bridge, but they involved whether or not to
4 implement alternatives to the bridge, correct?

5 A Can you -- what do you mean by
6 alternatives?

7 Q Any potential means of addressing the
8 purported issues other than building a bridge?

9 A Yes.

10 Q You are aware that Mr. -- are you aware
11 that Director Cooper had many meetings with BCBC from
12 the 2015 through the June, 2017, period on these
13 issues, correct?

14 A I know there were -- there were meetings, I
15 don't know how many. I wasn't privy to all the
16 meetings, but I know there were meetings.

17 Q Yeah, you anticipated my next question.
18 You, in fact, were not present for all the meetings
19 that were had between Director Cooper and BCBC
20 concerning the new bridge and alternatives for the new
21 bridge, correct?

22 A Correct.

23 Q In fact, it was Director Cooper who was the

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1 point person on whether a new bridge was to be built or
2 whether there was an alternative to the new bridge,
3 correct?

4 A Correct.

5 Q Now, in terms of whether a new bridge is
6 needed, Mr. Calametti, you understand that BCBC has
7 both the right and the obligation to expand the BEX
8 bridge at no cost to the state?

9 A I'm not sure I understand that fully.

10 Q Okay. Let's break it down. You understand
11 that pursuant to its license with Baldwin County, BCBC
12 has the right to expand the BEX bridge at no cost to
13 the state without approval from Baldwin County,
14 correct?

15 A Correct.

16 Q You understand separately, pursuant to the
17 March 29, 2004, Orange Beach agreement between BCBC and
18 Orange Beach, that BCB has the obligation to expand the
19 size of the bridge if traffic reaches a certain level,
20 correct?

21 A I've heard that. I don't think I
22 understand it as I don't know the agreement.

23 Q So let me understand. You have not

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1 reviewed the March 29, 2004, agreement between BCBC and
2 Orange Beach?

3 A Correct.

4 Q You're not familiar with the terms of that
5 agreement?

6 A Correct.

7 Q You are aware that on March 23rd, 2017,
8 Director Cooper provided to BCB a draft agreement, are
9 you not?

10 A Yes.

11 Q Are you aware that in that agreement,
12 Mr. Cooper made express reference to the Orange Beach
13 agreement?

14 A I don't specifically recall that reference.

15 Q So sitting here today, you can't testify
16 one way or another as to what BCBC's rights and
17 obligations are under the Orange Beach agreement; is
18 that correct?

19 A Correct.

20 Q So sitting here today, you can't say one
21 way or the other how those rights and obligations may
22 impact whether it makes sense to build a new bridge
23 over the intracoastal waterway, correct?

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1 A Correct.

2 Q Did you participate in the drafting of the
3 March 23rd, 2017, draft agreement that Mr. Cooper --
4 excuse me, Director Cooper, no disrespect intended,
5 that Director Cooper provided to BCBC?

6 A No.

7 Q He drafted that himself?

8 A I'm not sure.

9 Q Are you aware that in the March 23rd, 2017,
10 agreement, that Director Cooper provided to BCBC,
11 Director Cooper did not require or demand BCBC to build
12 a new bridge or require BCBC to expand the scope of its
13 existing bridge?

14 A No, I'm not aware.

15 Q Do you have an understanding that in the
16 March 23rd, 2017, agreement, that Director Cooper
17 provided to BCBC, that Director Cooper expressly stated
18 that the state covenanted that it would not build a new
19 bridge across the intracoastal waterway?

20 A Yes, I'm generally aware of that.

21 Q So you are aware that as of March, 2017,
22 Director Cooper was willing to enter into an agreement
23 with BCBC where he would commit the state --

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1 MR. HAGMAIER: Your Honor, I'm going to
2 object, I mean, he's going on to a document that he's
3 already admitted that he hasn't read, but he has
4 general awareness of, but he's going into details of a
5 document that's not in front of him, hasn't been
6 pointed out to him, and he's already acknowledged he
7 wasn't a part of drafting. So I mean, counsel's
8 representation as to what a document says and what was
9 meant by it, and then his opinion to say I don't know,
10 I mean, it just seems like a waste of time here. It's
11 objectionable.

12 MR. HAAS: Your Honor --

13 JUDGE REID: Let's hear the question.
14 Finish the question.

15 MR. HAAS: And, Your Honor, his last answer
16 wasn't a no, it's a yes, he did know.

17 So may I have the last question and answer
18 be read for the Court?

19 (Question read back by reporter.)

20 BY MR. HAAS:

21 Q Were you aware as of March, 2017, Director
22 Cooper was willing to enter into an agreement with
23 BCBC, whereby he would commit not to build a new bridge

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1 across the intracoastal waterway?

2 A I was generally aware of that, yes.

3 Q Mr. Cooper wouldn't do that if that would
4 raise public safety concerns, would it?

5 A I don't understand the question.

6 Q Mr. Cooper wouldn't commit to not building
7 a bridge if a bridge was required in order to assure
8 the safety of the individuals that reside south of the
9 intracoastal waterway, would he?

10 MR. HAGMAIER: Your Honor, I'm going to
11 object. He doesn't know what Mr. Cooper would or
12 wouldn't do.

13 JUDGE REID: Sustained.

14 BY MR. HAAS:

15 Q You're aware that Director Cooper demanded
16 in exchange for the commitment of the state not to
17 build a new bridge, that BCBC reduce its tolls to two
18 dollars for all vehicles, correct?

19 A Yes.

20 Q Okay. You're also aware that at that same
21 point in time in negotiations, that BCBC had agreed to
22 reduce its tolls to two dollars and twenty-five cents,
23 correct?

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1 A I'm sorry, I don't know those exact
2 numbers.

3 Q Do you have an understanding that they were
4 approximately in that range?

5 A Yes.

6 Q So the parties were, in your understanding,
7 close with respect to the agreed upon level of tolls,
8 correct?

9 A I don't know that I can say I'm -- I have
10 that knowledge, no.

11 Q To your knowledge, has ALDOT done any
12 analysis to ascertain whether or not the difference
13 between the toll that Director Cooper demanded of two
14 dollars, and the toll that BCBC was willing to give,
15 would have had any impact whatsoever on traffic
16 congestion?

17 A I'm not aware of any study.

18 Q In fact, ALDOT has not done any study to
19 ascertain whether or not the difference between the two
20 dollar toll on the BEX bridge and any other toll would
21 impact the traffic congestion that is of a concern,
22 correct?

23 A I'm not aware of any study.

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1 Q I want to return to the studies
2 momentarily, but before we do so, let's talk about how
3 much this project is going to cost. You're aware that
4 in October 9, 2017, correspondence to the Department of
5 Transportation, Director Cooper, represented that the
6 cost of this project would be eighty-seven million
7 dollars, right?

8 A I'm sorry, say that one more time.

9 Q Are you aware that in October 9th, 2017, a
10 letter to the Department of Transportation, Director
11 Cooper, represented that the cost of this project to
12 build a road and the bridge across the intracoastal
13 highway would cost the taxpayers of this state
14 eighty-seven million dollars?

15 A I'm not aware of that letter.

16 Q Are you aware that there is a projected
17 cost of eighty-seven million dollars?

18 A No, sir, I'm not aware of that.

19 Q You're aware that with respect to the
20 bridge alone, are you not, that Director Cooper has
21 represented that cost would be thirty million dollars?

22 A I'm sorry, no, sir, I'm not aware of that
23 number.

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1 Q Don't you recall sitting in the Orange
2 Beach town meeting on November 17, 2017, whereby
3 Mr. Cooper told the entire audience the bridge would
4 cost thirty million dollars?

5 A I don't remember that specific number.

6 Q Okay. Perhaps I can refresh your
7 recollection. Please turn with me to Exhibit 17.

8 A (Witness complies). In this book?

9 Q Yes, sir.

10 Mr. Calametti, just let me know when you
11 are ready.

12 A I'm ready.

13 Q Do you recognize Exhibit 17 to be a series
14 of web site captures from the office -- the Orange
15 Beach, Alabama official web site, it says it right on
16 the top there, it says the office web site -- the
17 official web site of the City of Orange Beach, Alabama?

18 A Yes.

19 Q And this has been presented for
20 authentication purposes, so you can scroll through each
21 one, and if you would turn to the page that has a
22 picture of you and Mr. Cooper side by side, and it
23 refers -- and it has the title, it states, state

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1 highway director answers pressing questions about road
2 projects during town hall meeting. Do you see that?

3 A Yes.

4 Q And that is you on the right?

5 A Yes.

6 Q And that's Mr. Cooper on the left; is that
7 correct?

8 A Yes.

9 Q And in the one, two, three, fourth
10 paragraph down, Mr. Cooper is quoted as saying let me
11 tell you why we are building another bridge. Do you
12 see that?

13 A I'm sorry, which paragraph?

14 Q It's in the one, two, three, fourth
15 paragraph down, last sentence, it states, let me tell
16 you why we are building another bridge. And, then,
17 immediately preceding the paragraph that states for the
18 record, following are the comments made by Cooper
19 during the town hall meeting. Do you see that?

20 A Yes.

21 Q Okay. So if you go to the second paragraph
22 on from the bottom, it reads, and so I can talk for two
23 hours about the reason for the bridge. We are not

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1 looking to -- for a place to spend thirty million
2 dollars. Do you see that?

3 A Yes.

4 Q Does that refresh your recollection that
5 Mr. Cooper put a thirty million price tag on the bridge
6 alone in November of 2017?

7 A Yes.

8 Q That price has gone up since then, hasn't
9 it?

10 A In this -- I don't know exactly what he
11 meant as a total capturing of that thirty million. I
12 don't know if he -- what the total project that he was
13 referencing.

14 Q You are aware, are you not, of the Florida
15 Alabama Transportation Planning Organization?

16 A Yes.

17 Q You are aware that the Florida Alabama
18 Transportation Organization has been evaluating whether
19 and to what extent to approve this project?

20 A Yes.

21 Q And you are aware that they have been
22 reaching out to ALDOT for information with respect to
23 the project, correct?

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1 A Yes.

2 Q Among other things that they've been
3 reaching out to the ALDOT for is the cost of the bridge
4 alone, correct?

5 A I don't know that specifically, no.

6 Q Are you aware that in response to their
7 inquiries, that ALDOT has represented to the Florida
8 Alabama TPO, that the cost of the bridge alone will be
9 fifty-two million, comprised of forty-five million
10 dollars for the bridge and seven million dollars for
11 the right-of-way cost?

12 A The information that is sent to all the
13 MPOs are sent from a bureau in Montgomery, so I'm not
14 aware of those specific values that are -- those
15 estimates that are sent.

16 Q Do you have any reason to believe they are
17 inaccurate?

18 A No.

19 Q Do you have any reason to believe that the
20 current valuation and cost of building the bridge alone
21 is fifty-two million dollars?

22 A I, in dealing with the estimates that are
23 generated from the construction, from the design that

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1 is ongoing, so, therefore, that may explain the
2 differences in the estimates that I'm saying versus the
3 estimates, the general estimates that are sent from the
4 bureaus in Montgomery.

5 Q Do you have an understanding of what the
6 estimates from Montgomery are for the bridge alone?

7 A I mean, just the numbers themselves?

8 Q Yes, sir.

9 A No, sir, I'm not aware of those numbers.

10 Q Do you have an understanding whether it's
11 greater than thirty million dollars?

12 A No, sir, I'm not aware of those estimates.

13 Q And your current estimate is greater than
14 thirty million dollars?

15 A Of the total corridor, yes.

16 Q Let's break it down. Of the total
17 corridor, what are your current estimates?

18 A Approximately sixty million.

19 Q For the bridge alone, what are your current
20 estimates?

21 A Approximately eighteen million.

22 Q Where are those published?

23 A Where are those published? Those are

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1 through the work documents that are ongoing in the
2 design process within ALDOT.

3 Q And those costs, as pursuant to your
4 earlier testimony, don't include all the costs
5 associated with the project, correct?

6 A I'm sorry, you said they don't?

7 Q They don't?

8 A I don't know that they don't.

9 Q I thought you testified earlier that the
10 MPOs have one estimate that includes other factors and
11 you're focused on a more narrow cost range; is that
12 correct or not?

13 A Well, I'm -- I'm focused on a construction
14 estimate that is based on the design as it is ongoing.

15 Q Are the cost that the MPO take into account
16 -- are there costs that the MPO is currently taking
17 into account that you are not?

18 A I don't know.

19 Q So do you have any understanding of why the
20 Florida Alabama TPO currently lists the cost of the
21 bridge to be fifty-two million dollars?

22 A I don't know.

23 Q Do you -- do you understand that because

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1 the Florida Alabama TPO has stringent public notice
2 requirements, ALDOT must coordinate and cooperate with
3 the Florida Alabama TPO in order to get the approval
4 for this project, correct?

5 A Yes.

6 Q And indeed, the Florida Alabama TPO had
7 meetings just this month with respect to whether to
8 approve this bridge, correct?

9 A Correct.

10 Q And they did not, correct?

11 A Correct.

12 Q One of the reasons they did not is because
13 they did not get the information they required from
14 ALDOT, right?

15 A I don't know that.

16 Q Isn't it in fact true that at the current
17 meetings, recent meetings in April, the decision
18 whether to approve this very project was tabled because
19 they had not received sufficient information from
20 ALDOT?

21 A Again, I don't know that.

22 Q Okay. But all you know is that the Florida
23 Alabama TPO, that ALDOT is required to coordinate with,

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1 has not approved this project?

2 A Correct.

3 Q I'm not sure whether I got a clear
4 understanding, so let me ask it again, and I apologize
5 if I did. Are you familiar with the October 9, 2017,
6 correspondence that Mr. Cooper sent to the Department
7 of Transportation that made reference to the new bridge
8 project?

9 A No, I'm not aware of that.

10 Q Please turn with me, if you would, to the
11 document in -- identified as Exhibit 16.

12 A (Witness complies).

13 Q This is a letter from Director Cooper of
14 ALDOT to the Secretary of Transportation, U.S.
15 Department of Transportation, dated October 9, 2017,
16 correct?

17 A Correct.

18 Q Turn with me to the next map. This is a
19 depiction of the intracoastal waterway that shows the
20 Highway 59 bridge on the left, and the new western
21 alternative bridge on the right; is that correct?

22 A Yes.

23 Q And in yellow, in brackets around the new

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1 western alternative bridge and roadway, it states for
2 the record, ALDOT funded north, south improvements not
3 included entire, eighty-seven million dollars. Do you
4 see that?

5 A Yes.

6 Q Are you familiar with this map?

7 A Yes.

8 Q Who generated it?

9 A I don't know.

10 Q The eighty-seven million dollar figure is
11 contributable to the new roadway and the new bridge
12 that ALDOT is contemplating building, correct?

13 A Yes.

14 Q Please turn with me to the exhibit marked
15 21.

16 A (Witness complies).

17 Q I want to focus your attention on the
18 agenda, which is the second full page of the agreement,
19 but we have included the cover page, so that there's a
20 clear pathway to get that from the organization web
21 site.

22 So I'm focusing your attention on the
23 document that is titled transportation planning

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1 organization meetings. Are you with me?

2 A On the front page? Yes.

3 Q And this is agenda for a meeting to be held
4 in February of 2018; is that correct?

5 A Correct.

6 Q Now, I want you to turn with me to the page
7 that is marked fifty-seven, entitled enclosure E, all
8 committees. Are you with me?

9 A I'm sorry, you said fifty-seven? I
10 couldn't hear --

11 Q Yes. Yes, sir. Page fifty-seven, entitled
12 enclosure E, all committees?

13 A Yes.

14 Q The first section is titled subject, and
15 for the record I'll read. It states the cost to
16 proceed with amending the Florida Alabama 2040
17 long-range transportation plan for three projects, the
18 first being the Gulf Coast intracoastal waterway bridge
19 from SR 180, Canal Road to Foley Beach Express. Do you
20 see that?

21 A Yes.

22 Q That's the so-called western alternative
23 that ALDOT is contemplating building, correct?

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1 A Yes.

2 Q Look down to the next section, it says
3 origin of subject, and the first entity referenced is
4 the Alabama Department of Transportation, correct?

5 A Yes, sir.

6 Q That is consistent with your testimony that
7 the Alabama Department of Transportation is required to
8 coordinate with the Florida TPO with respect to such
9 transportation projects, correct?

10 A Yes, sir.

11 Q Turn with me -- look to the bottom of page
12 fifty-seven.

13 A (Witness complies).

14 Q And the second line from the bottom, if you
15 would, I'll read it for the record, it states, this
16 2040 long-range transportation plan amendment was
17 recommended by the Alabama Department of
18 Transportation. Do you see that?

19 A Would you say that one more time, please?

20 Q Yes, sir. The second to last line, not
21 sentence, second to last line on page fifty-seven,
22 first full sentence and I'll read for record, states,
23 this 2040 long-range transportation plan amendment was

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1 recommended by the Alabama Department of
2 Transportation. Do you see that?

3 A Yes, sir.

4 Q And that again is consistent with your
5 testimony that the information that Florida Alabama
6 Transportation Planning Organization received came from
7 ALDOT, correct?

8 A Yes, sir.

9 Q If you turn the page, it's a series of
10 costs, do you see that? It refers to PD and E complete
11 design under way right-of-way, seven million dollars,
12 in construction, forty-five million dollars, correct?

13 A Yes.

14 Q So those are the costs that the Florida
15 Alabama TPO obtained from ALDOT with respect to the
16 costs of the new bridge as of February of 2018,
17 correct?

18 A Yes, sir.

19 Q So we've talked about the cost. Let's talk
20 about the process a bit. Before taking steps and
21 making the decision to spend these exorbitant sums to
22 build a new bridge, did ALDOT hold public hearings and
23 open houses to discuss this very issue?

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1 A ALDOT has attended various public meetings
2 in Orange Beach that these projects were mentioned.

3 Q Indeed, the first project, the first --
4 indeed, the first meeting that was held in Orange Beach
5 with a current version of the new bridge was discussed
6 was the November 7, 2017 town hall meeting in Orange
7 Beach, correct?

8 A I'm sorry, say that again.

9 Q The first town hall meeting in Orange Beach
10 where the current plan to build the new bridge was
11 discussed was the November, 7, 2017 meeting that we
12 previously looked at and had some testimony about,
13 correct?

14 A No, I recall there was some meetings in I
15 believe in 2015, where these projects were discussed.

16 Q Yeah, and we'll get to that in a little bit
17 because it goes to the testimony you gave earlier, but
18 that plan was different, wasn't it? The earlier plan
19 for the bridge had the bridge with an access road that
20 went directly down to the beach, correct?

21 A Yes.

22 Q So that's a different plan. So let's talk
23 about the plan that's on the table, let's talk about

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1 the plan that dumps all the traffic on to Canal Road.

2 So the first meeting where that plan, the
3 current plan that we're talking about here today, was
4 discussed was in the November 7, 2017, Orange Beach
5 town hall meeting, right?

6 A As the project exists today, probably, yes.

7 Q And indeed, that was after the decision was
8 made to implement that plan, correct? In fact, it says
9 so in the minutes. Let me ask -- I withdraw that. Let
10 me get an answer to my question.

11 In fact, as of November 7th, 2017, the
12 decision had already been made by Mr. Cooper to proceed
13 with the new bridge, correct?

14 A Yes, sir.

15 Q Thank you. So let me go back to my
16 original question. There were no public hearings or
17 open houses to discuss the new bridge that we're
18 currently here talking about today before it was
19 approved by Mr. Cooper, correct?

20 A Not that I'm aware of.

21 Q Thank you. Now, if you would, turn back to
22 that exhibit, Exhibit 17, let's talk about the reason
23 why --

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1 JUDGE REID: Mr. Haas, if this is a good
2 time, let's take about a ten minute break.

3 MR. HAAS: Absolutely, Your Honor.

4 JUDGE REID: Ten minutes, ladies and
5 gentlemen.

6 (Whereupon, a brief recess was
7 held in the proceedings.)

8 JUDGE REID: You may proceed, Mr. Haas.

9 MR. HAAS: Thank you, Your Honor.

10 BY MR. HAAS:

11 Q Mr. Calametti, we're directing your
12 attention back to Exhibit 17, the same page that we
13 were previously discussing and that November 7, 2017
14 town hall meeting. And I want to ask you about
15 Mr. Cooper's statements as to why the bridge was being
16 built. Just let me know when you're ready.

17 A I'm ready.

18 Q So I'm referring you once again to the
19 fourth paragraph, the last sentence, it states, quote,
20 let me tell you why we are building another bridge. Do
21 you see that?

22 A Okay. Yes.

23 Q Okay. And I'm going to read into the

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1 record the next paragraph with the exception of the
2 first sentence, to get the explanation.

3 Mr. Cooper states, today while we are
4 moving a significant amount of traffic on the Baldwin
5 Beach Express, we have not moved nearly as much traffic
6 as we hoped to. We believe that is because of the
7 toll. People seem to react negatively to the toll. We
8 have about eight thousand cars a day drive all the way
9 down the Baldwin Beach Express and turn right on County
10 Road 4, over sixty percent of that traffic that crosses
11 the bridge on Highway 59 southbound makes a left turn.

12 As you can imagine, a high percentage of
13 that traffic is coming to Orange Beach, and so what we
14 concluded is that the toll either had to be lowered
15 significantly, we were not able to satisfactorily
16 negotiate the toll level with the bridge company or we
17 need to build another bridge that would facilitate
18 traffic and do two things.

19 Do you see that? Did I read that
20 correctly?

21 A Yes, sir.

22 Q Okay. So consistent with your earlier
23 testimony, if I understand it, the position is that

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1 traffic is not going over the Baldwin Express bridge,
2 the BEX bridge, because of the toll. That was the
3 position Mr. Cooper took; is that correct?

4 A Correct.

5 Q And just so that we're all oriented, if you
6 would turn with me and flip all the way to the back of
7 this binder to Exhibits 38 and 39. I want to make sure
8 that we and the Court have an understanding of the
9 position that is being taken. Let me know when you get
10 there, these things are kind of cumbersome to work
11 with.

12 Are you there?

13 A I'm at 38.

14 Q So would you agree, Mr. Calametti, that
15 what's been marked as Exhibit 38 is a depiction of the
16 roadways in the Baldwin County area, and in particular,
17 the Foley Beach Express on the one hand and the
18 highway -- and the BEX bridge and the Highway 59 bridge
19 to the west?

20 A Yes, sir.

21 Q So one route that could be taken is for
22 travelers to go down the Foley Beach Express from the
23 Baldwin Expressway across the BEX bridge to Canal Road,

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1 correct?

2 A Correct.

3 Q Turn with me now to the exhibit that's
4 marked as Exhibit 39.

5 A (Witness complies).

6 Q And tell me whether you agree this is
7 depiction of what Mr. Cooper characterized what was
8 happening, that travelers in vehicles would go down the
9 Foley Beach Expressway from the Baldwin Beach
10 Expressway, they would take a left on to Route 4,
11 otherwise known as I believe Cotton Creek Drive, then
12 go over Highway 59, and then taking an east road back
13 along Canal and 180 to Orange Beach, is that an
14 accurate depiction of what Mr. Cooper was
15 characterizing in his statement on November 7th, 2017?

16 A I don't know exactly everything that he
17 thought. I think this is one possible route, but there
18 are other possible routes. They could have gone on
19 County Road 8, but I'm not exactly sure exactly what he
20 meant on that date.

21 Q He indicated that about eight thousand cars
22 a day that drive all the way down the Baldwin Beach
23 Express and turn right at County Road 4, that's

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1 otherwise known as County Creek Drive, correct?

2 A Yes.

3 Q Yes. And that's what is depicted here on
4 Exhibit Thirty --

5 (Interruption - coughing).

6 A Correct.

7 BY MR. HAAS:

8 Q And, then, we go over on the Highway 59
9 bridge, correct?

10 A Correct.

11 Q And they would make their way back to
12 Orange Beach, correct?

13 A Yes.

14 Q So Mr. Cooper is positing that vacationers
15 go into Orange Beach or other travelers would take this
16 circumvented detour in order to avoid that bridge,
17 correct, the BEX bridge, right?

18 A Yes, sir.

19 Q And that's his justification for building a
20 new bridge, right?

21 MR. HAGMAIER: Your Honor, I object as to
22 what Director Cooper's justification is. He needs to
23 ask what ALDOT's justification is would be a better

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1 question.

2 JUDGE REID: Sustained.

3 BY MR. HAAS:

4 Q That was ALDOT's justification for building
5 a new bridge, correct?

6 A Correct.

7 Q And as you stated earlier, ALDOT has done
8 no studies to actually prove that to be the case, to
9 actually prove that vehicles are making that detour,
10 correct?

11 A Other than to the review of the existing
12 traffic numbers that we've seen, no additional studies
13 that I'm aware of.

14 Q Well, there are studies that you can do in
15 order to determine the flow of traffic, right?

16 A Correct.

17 Q And you didn't do them, correct?

18 A Nothing other than the patterns that we
19 looked at.

20 Q ALDOT did not do traffic flow studies to
21 ascertain where the vehicles actually went, correct?

22 A Correct.

23 Q ALDOT could have then stated preference

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1 studies, correct?

2 A I'm not sure what a preference study is.

3 Q Isn't it in fact true in connection with
4 the Mobile deal -- Mobile river bay and bay way
5 project, that ALDOT has done stated preference studies
6 to determine whether and why vehicles go in certain
7 directions?

8 A Are you referencing a traffic and revenue
9 study?

10 Q That's one of them, yes.

11 A Yes.

12 Q So you can do that type of study, correct?

13 A Yes.

14 Q You can do GPS monitoring studies, correct?

15 A Yes.

16 Q You can do Blue Tooth monitoring studies,
17 correct?

18 A Correct.

19 Q ALDOT did none of those studies to
20 ascertain where the traffic flow actually went,
21 correct?

22 A Correct.

23 Q So even though it had many different

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1 opportunities and avenues and modeling and alternatives
2 to determine whether or not it was in fact true, this
3 detour was occurring, ALDOT did not do so before
4 committing to build the new bridge, right?

5 A Correct.

6 Q Mr. Calametti, are you aware of what the
7 actual average toll vehicles pay when they go across
8 the BEX bridge today?

9 A No.

10 Q Would it surprise you to know that it's two
11 dollars and twenty-seven cents?

12 A No. No, sir.

13 Q It's fair to say that ALDOT has no studies
14 to ascertain whether paying twenty-seven cents more
15 than Director Cooper demanded that was paid, i.e., two
16 dollars, deterred anyone or would deter anyone from
17 taking the BEX bridge, right?

18 A Correct.

19 Q ALDOT also did not do any studies to
20 determine whether the monies that were being spent on
21 the new bridge or would be spent on the new bridge were
22 better spent on other pressing infrastructure needs of
23 this state, correct?

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1 MR. HAGMAIER: I'm going to object. This
2 is beyond what this hearing is about. Those cases are
3 cited in our response. This is not subject to judicial
4 review whether or not a decision that was made could be
5 better spent in another part of the state.

6 MR. HAAS: Your Honor, this is a court case
7 because from the outset, I argued this last week. The
8 very reason we are here today is to determine whether
9 or not this bridge is in the public interest or whether
10 this decision was made for arbitrary and capricious
11 reasons, this is the core of the case.

12 JUDGE REID: I overrule the objection.

13 MR. HAAS: I'm sorry, can you reread the
14 last question and answer?

15 (Question read back by reporter.)

16 A I'm not aware of any studies.

17 BY MR. HAAS:

18 Q You are familiar with the ALDOT state wide
19 transportation plan?

20 A Yes.

21 Q The most recent iteration of that was
22 completed in July of 2017?

23 A I'm not exactly -- I wasn't aware of that

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1 date.

2 Q Sometime in that time frame?

3 A Yes, sir.

4 Q The ALDOT state wide transportation plan,
5 among other things, evaluates whether there's
6 sufficient funds in the ALDOT transportation budget to
7 pay for all the pressing infrastructure and other
8 transportation needs of this state, correct?

9 A Would you repeat that one?

10 Q Yes, sir.

11 In connection with preparing the ALDOT
12 state wide transportation plan, analysis is done as to
13 whether there's a funding gap. In other words, whether
14 or not there are sufficient funds to pay for all the
15 pressing infrastructure capacity and other
16 transportation needs of the state?

17 A No, it's my interpretation that it
18 designates the funds that we have, which projects that
19 those funds will go towards.

20 Q It also determines whether there's a
21 funding gap, correct?

22 A I'm sure it would show funding -- unmet
23 funding needs.

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1 Q So you would agree with me, there are not
2 sufficient transportation funds to finance every
3 project that needs to be financed, correct?

4 A Correct.

5 Q You are also aware that in making the
6 assessments of what projects are to be funded, there is
7 an assessment of what key bridge projects are in the
8 state, right?

9 A I'm sorry, would you repeat that one more
10 time?

11 Q In connection with assessing how to spend
12 the limited funds of this state, there's an assessment
13 made as to what are the key bridge projects?

14 A Yes, the bridge projects are based on --
15 have a priority, yes.

16 Q And they designate those as key bridges,
17 right?

18 A I myself have never heard the term key
19 bridges.

20 Q Have you read the ALDOT state wide plan?

21 A It's been a while.

22 Q Are you aware that the state wide plan does
23 not identify the new bridge that ALDOT contemplates

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1 building as a key bridge?

2 A No, sir, I wasn't aware of that.

3 Q Okay. Let me see if I can refresh your
4 recollection. If you would, please, turn with me to
5 what has been identified as Exhibit 10.

6 A (Witness complies).

7 Q When you get the chance, if you would,
8 please, turn to the Alabama 2040 state wide
9 transportation plan, and in particular page three
10 sixteen and figure three eight. And just let me know
11 when you're there.

12 A I'm there.

13 Q All right.

14 MR. HAAS: Your Honor, there is a plan that
15 is titled the Alabama state wide -- 2040 state wide
16 transportation plan, that is identified after the cover
17 web sites that show how to access it on the web site.

18 May I approach the bench?

19 JUDGE REID: Yes.

20 MR. HAAS: That's the page.

21 JUDGE REID: Okay. Thank you.

22 BY MR. HAAS:

23 Q Mr. Calametti, in the 2040 state wide

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1 transportation plan of Alabama, the final report on
2 page three sixteen, figure three eight, it lists key
3 bridge projects. Do you see that?

4 A Yes, sir.

5 Q The new bridge that ALDOT contemplates
6 building across the intracoastal waterway is not one of
7 those of those key bridge projects, right?

8 A Correct.

9 Q And this was generated in July of 2017,
10 just after Mr. Cooper decided to -- excuse me, Director
11 Cooper decided to build a new bridge, correct?

12 A Yes, sir.

13 Q Thank you. Mr. Calametti, ALDOT has not
14 done any studies to ascertain whether the new bridge
15 that ALDOT intends to build is necessary for an
16 evacuation route from South Baldwin, correct?

17 A Correct.

18 MR. HAAS: May I approach the exhibits,
19 Your Honor?

20 JUDGE REID: You may.

21 BY MR. HAAS:

22 Q Mr. Calametti, on your direct testimony,
23 you were shown a map that has been marked as State

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1 Exhibit number 2. Do you recall this map?

2 A Yes, sir.

3 Q This map depicts the new bridge that ALDOT
4 intends to built over the intracoastal waterway,
5 correct?

6 A Yes, sir.

7 Q This is the Baldwin Express bridge or the
8 BEX bridge, correct?

9 A Yes, sir.

10 Q Thank you. This is the Highway 59 bridge,
11 correct?

12 A Yes, sir.

13 Q The BEX bridge places people down on 180,
14 correct?

15 A Yes, sir.

16 Q If and when this new bridge is approved,
17 it, too, will place vehicles on 180, correct?

18 A Yes, sir.

19 Q Unlike prior iterations of this design,
20 there is no egress or no access off of 180 or off the
21 bridge to divert traffic from anywhere other than where
22 it would otherwise have to go if it came over the Foley
23 Beach Express bridge, correct?

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1 A Correct.

2 Q So it solves nothing with respect to
3 congestion on the Route 180, Canal Road, correct?

4 A Can you repeat that one?

5 Q It does not address it at all, that new
6 bridge does not address at all the congestion issues
7 with respect to Canal Road, Route 180?

8 A Correct.

9 Q Thank you. Mr. Calametti, I want to
10 address the studies that you were presented with on
11 direct. We have put up on the easel State Exhibit
12 number 5. This was also sent over to us in electronic
13 format with a name on the file that stated that it was
14 produced on April 11, 2018. Do you know when this was
15 produced, this data was generated?

16 MR. HAGMAIER: Your Honor, I'm going to
17 object, that's when I sent it to them.

18 MR. HAAS: That's a question.

19 MR. HAGMAIER: He wouldn't know that. He's
20 not -- that was done as a courtesy to the other side to
21 provide them when the date was given. Generate the
22 question -- I mean, the question is when it was
23 generated, are you asking when the numbers were

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1 generated or when the document that was sent to you was
2 generated is two different questions.

3 MR. HAAS: That's why I asked the question.
4 Withdrawn. I'll re ask it.

5 JUDGE REID: Okay.

6 BY MR. HAAS:

7 Q Do you know when this was generated?

8 A It was generated in, to the best of my
9 memory, is 2015 numbers, generated in 2016.

10 Q So these are 2015 data?

11 A Correct.

12 Q Okay. Now, if I understand your testimony,
13 this exhibit shows traffic coming down Route 59 and
14 taking one, two or three turns, correct?

15 A Yes, sir.

16 Q This data does not show why the vehicles
17 are taking a left turn, correct?

18 A Correct.

19 Q This data does not show the vehicles that
20 are going to Orange Beach, correct?

21 A Correct.

22 Q This data does not show any correlation
23 between cars turning left at any one of these locations

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1 and the level of tolls on the BEX bridge, correct?

2 A Correct.

3 Q Are you aware that in these months, BCBC
4 voluntarily raises the gates on its toll bridge when
5 traffic becomes backed up?

6 A No, I'm not aware.

7 Q So that would, if it occurred, be another
8 rationale why this data tells you nothing whatsoever as
9 to whether tolls on the BEX bridge impact the number of
10 people turning left, right?

11 A Correct.

12 Q And by the way, we're talking about June or
13 July of 2015, this tells you nothing about June or July
14 of 2016, June and July of 2017, or any other month of
15 the year, correct?

16 A Correct.

17 Q Okay. Now, setting aside that it doesn't
18 tell you anything about a correlation between why
19 people turn left and tolls, this data does not tell you
20 anything about whether or not the individuals going
21 down Highway 59 are going to locations in Gulf Shores,
22 correct?

23 A Correct.

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1 Q Gulf Shores is a vacation spot, right?

2 A Yes, sir.

3 Q In addition to that, Gulf Shores is a very
4 vibrant local community, correct?

5 A Yes.

6 Q Schools, there are residential areas,
7 they've got a Walmart, right?

8 A Yes.

9 Q They've got lots of condominiums, correct?

10 A Yes.

11 Q There are a lot of locations that are of
12 interest of individuals traveling down Highway 59,
13 correct?

14 A Yes.

15 Q And the difference between Highway 59 and
16 the Foley Beach Express is that there are also lights,
17 there's a plethora of lights up on Highway 59 that slow
18 down traffic, correct?

19 A Correct.

20 Q That's one of the main reasons Foley Beach
21 Express was built was to have an expressway, correct?

22 A Correct.

23 Q Has ALDOT done any assessment as to where

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1 the individuals turning left at these locations are
2 actually going?

3 A No, not that I'm aware of.

4 Q I'm going to touch on just a few of them
5 just by way of example and see whether you agree with
6 me.

7 So cars turning left off of Highway 59 on
8 to State Road 182, which is down at the bottom, could
9 be going to bars and restaurants, such as the Hang Out,
10 the Pink Pony, Sea and Suds, Gulf Island Grill, and
11 Hooters, correct?

12 A They are all to the east of that
13 intersection.

14 Q Just right around that area right there.
15 Vehicles turning left also could be going to parking
16 lots along the beach, right?

17 A I'm not aware of any parking lots to the
18 east.

19 Q So sitting here today, you can't say one
20 way or another whether or not they're going to parking
21 lots?

22 A Correct.

23 Q Okay. Cars turning left off of Highway 59

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1 on to Route 182 could be going to popular condominiums
2 such as the Best Western, San Carlos condominium, Gulf
3 Shores Sea Wind condos, Highland Shores, the Lighthouse
4 Resort, the Colonnades condominium, Royal Palms
5 condominium, the Grand Beach condominium, and the
6 Cottages at Romaro Beach, correct?

7 A Correct.

8 Q And there's always the Gulf Park, cars
9 turning left have access to the Gulf Shores State Park,
10 right?

11 A Right. Correct.

12 Q That's a very popular place, right?

13 A In my opinion, yes.

14 Q Thank you, sir.

15 Now, I won't belabor the point for the
16 Court, but there are likewise many attractions for both
17 the turn at 20th Avenue and the turn at SR 180, where
18 vehicles and passengers and drivers may be going other
19 than Orange Beach, correct?

20 A Correct.

21 Q And ALDOT has not done any analysis to
22 determine whether and to what extent those turning left
23 are going to those locations, correct?

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1 A Correct.

2 Q Thank you. Mr. Calametti, you were also
3 asked questions regarding what has been marked as State
4 Exhibit number 4, which we now have on the easel,
5 correct?

6 A Correct.

7 Q And if I heard you correctly, all these
8 numbers are average traffic counts at these various
9 particular locations; is that correct?

10 A Yes, sir.

11 Q So this exhibit does not depict data, what
12 happens in one point and another point on the same day?

13 A Correct.

14 Q So there could be myriad causes of factors
15 that influence the level of traffic here, versus the
16 level of traffic here, versus the level of traffic
17 here, correct?

18 A Yes.

19 Q You were also asked questions about the
20 roadways around Highway 59 and the Gulf Shores area,
21 correct?

22 A Yes.

23 Q Are you familiar with the federal tiger

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1 grant program?

2 A Yes.

3 Q The federal tiger grant program is a means
4 by which various communities submit applications in
5 effort to get federal funding for transportation
6 projects in the community, correct?

7 A Yes, sir.

8 Q Gulf Shores submitted an application to the
9 Department of Transportation for a tiger grant in 2015,
10 2016 and 2017, correct?

11 A I don't know the exact years, but, yes,
12 they did.

13 Q And in the applications that Gulf Shores
14 made, Gulf Shores represented to the federal government
15 that the congestion issues on Highway 59 could be
16 solved by making changes to the roadway and expanding
17 Highway 59 bridge, correct?

18 A I'm not aware of that, of their submittal.

19 Q In fact, in 2016, submitted a
20 correspondence in support of the application, did you
21 not?

22 A Yes.

23 Q You in fact, earlier -- if you would

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1 Mr. Calametti, turn with me to Exhibit 12. Let me know
2 when you're there.

3 A I'm there.

4 Q This document entitled waterway village
5 multi modal access project. Do you see that?

6 A Yes, sir.

7 Q This is the narrative application that is
8 submitted to the federal government in support of the
9 Gulf Shores tiger grant application for 2016, correct?

10 A Yes, sir.

11 Q ALDOT supported this application, correct?

12 A Yes, sir.

13 Q And if you would turn with me to page
14 twelve, you will see in the table of supporting
15 entities and individuals, it lists on the second row,
16 the second column, Alabama Department of
17 Transportation, Mr. John Cooper, Director, correct?

18 A Correct.

19 Q Would you turn with me back to page one
20 where it talks about the project description, so what
21 is this all about? Okay. I direct your attention to
22 the second to last sentence in the first paragraph, and
23 I will read it into the record. The proposed project

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1 will construct the transportation infrastructure that
2 is required for economic development within the
3 waterway village district, as well as provide
4 alternative transportation routes in and out of the
5 City of Gulf Shores that will improve safety and
6 traffic congestion. Do you see that?

7 A Yes.

8 Q Do you agree with that statement?

9 A Yes, sir.

10 Q Please turn to page nine.

11 A (Witness complies).

12 Q There's a section that specifically
13 addresses State Highway 59 improvements. It states in
14 the first sentence, and I'll read it for the record,
15 quote, the State Highway 59 improvements including
16 converting the existing paved shoulder to an additional
17 southbound travel lane across the intracoastal canal to
18 provide improved access to the waterway village
19 district from State Highway 59, and alleviate safety
20 and congestion problems that currently exist. Do you
21 see that?

22 A Yes.

23 Q Do you agree with that statement?

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1 A Yes.

2 Q So this proposal included expanding the
3 Highway 59 bridge to alleviate congestion problems,
4 correct?

5 A Yes.

6 Q ALDOT and you, personally, supported this
7 project, correct?

8 A Correct.

9 Q You submitted a letter to the Department of
10 Transportation specifically stating that this project
11 would improve the congestion issues on Highway 59,
12 correct?

13 A Yes.

14 Q And if you look on page eight, there's a
15 map of the improvements that are to be made in order to
16 address the existing congestion issues on Highway 59,
17 correct?

18 A Yes.

19 Q There is no reference to a new bridge
20 across the intracoastal waterway, is there?

21 A No.

22 Q The map also shows how much it would cost
23 this state, ALDOT, and it states one million, six

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1 hundred and fifty-two million dollars, correct?

2 A Yes.

3 Q Far less than eighty-seven million dollars,
4 correct?

5 A Yes.

6 Q Please turn to page fourteen. On page
7 fourteen, it shows the total project cost, not just the
8 cost to the state, but the cost to the federal
9 government and all the local constituents, correct?

10 A Yes, sir.

11 Q The total cost of this project to address
12 the issues in the Gulf Shores region and on Highway 59
13 is fifteen million, two hundred and forty million
14 dollars, correct?

15 A I think you misspoke, it's fifteen million,
16 two hundred and forty thousand.

17 Q Total cost of project on the bottom
18 right-hand corner. I'm sorry, you are quite right,
19 you're right the way I said it. I stand corrected.
20 Fifteen million, two hundred and forty thousand,
21 correct. Thank you, sir.

22 Again, far less than eighty-seven million
23 dollars, correct?

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1 A Yes.

2 Q So in 2016, ALDOT and you, individually
3 supported, the proposal to address the congestion on
4 Highway 59 that would cost a small fraction of what it
5 would cost to build the bridge across the intracoastal
6 highway that is currently contemplated, correct?

7 A Yes.

8 Q And ALDOT and you supported that same
9 proposal in 2015, correct?

10 A 2000 when?

11 Q I'm sorry, withdraw that question.

12 And you and ALDOT supported that same
13 proposal in 2015, correct?

14 A Yes.

15 Q The only difference between what happened
16 in 2015 and 2017, was that on October 9th, 2017, after
17 the proposal was in and after Director Cooper
18 unilaterally made the decision to build a new bridge,
19 he submitted a letter that for the first time ever
20 disclosed the new bridge in connection with this
21 application, right?

22 A Yes.

23 MR. HAAS: May we take a five minute break?

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1 JUDGE REID: Okay. Five minutes.

2 (Whereupon, a brief recess was
3 held in the proceedings.)

4 MR. HAAS: Thank you, Your Honor. BCBC
5 moves into evidence Exhibits 10, 12, 16, 17, 21, 26, 38
6 and 39.

7 JUDGE REID: Can you give me that list
8 again?

9 MR. HAAS: Yes, Your Honor, 10, 12, 16, 17,
10 21, 26, 38 and 39.

11 JUDGE REID: Any objection, Jason?

12 MR. HAGMAIER: Your Honor, I'll just do it
13 this way. We have a general objection as to the
14 relevancy of any documents that don't deal with the
15 acquisition of the property in question. As we argued
16 in opening statement, you know, this is a merit hearing
17 regarding the act of power of the state to acquire this
18 small parcel of land. And we specifically would object
19 to any of the documents that the State of Alabama or
20 the Department of Transportation is not a party to.

21 JUDGE REID: Mr. Haas, I have, as we've
22 been reviewing these, have them written down, are these
23 all documents that we have referred to in this --

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1 MR. HAAS: Yes, Your Honor. Nothing we
2 haven't referred to.

3 JUDGE REID: Okay. I order them admitted.

4 MR. HAAS: Your Honor, I have no further
5 questions for the witness at this time. Mr. Calametti,
6 I thank you for your time.

7 JUDGE REID: Jason?

8 MR. HAGMAIER: Yes, sir, I'll try to make
9 this quick.

10 RE-DIRECT EXAMINATION

11 BY MR. HAGMAIER:

12 Q We will kind of go backwards from what the
13 last question or the first.

14 First of all, on the multi modal project,
15 is that project actually shown on Exhibit 2, Exhibit 1
16 and 2, the aerial maps? And I point to this green line
17 south of Jack Edwards Airport?

18 A Yes, it is.

19 Q Okay. And in the documents and in the
20 description that was read to you regarding the cost and
21 the Highway 59 improvements, what is your understanding
22 of what the multi modal project improvements would be
23 regarding 59?

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1 A From the -- from the tiger grant that --

2 Q Correct,

3 A It would be an improvement across the
4 intracoastal canal, widening. They have widening for
5 the bridge itself to provide a pedestrian lane. That
6 bridge is a pin connection, so as it sits under that
7 proposal, I have my concerns that, that bridge can be
8 widened to provide pedestrian, so that's what I think
9 those improvements are.

10 Q Okay. The improvements that are
11 contemplated in the tiger grant and the multi modal
12 project, will that alleviate the traffic north of the
13 bridge to any extent, the 59 bridge?

14 A No.

15 Q All right. Looking at -- let's look at two
16 things. There's some discussion regarding the various
17 things that these cars could be going to regarding the
18 Pink Pony Pub and the Hang Out, and the various condos,
19 do you recall that line of questioning?

20 A Yes. Yes.

21 Q These numbers don't tell you exactly where
22 any of these cars are going, do they?

23 A No.

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1 Q They just tell you the traffic counts?

2 A Yes.

3 Q They tell you just as it's possible they
4 could be going to the Pink Pony Pub, they could also be
5 going to Orange Beach, correct?

6 A Correct.

7 Q And what they do tell you is that none of
8 these cars are traveling over the Foley Beach Express,
9 correct?

10 A Correct.

11 Q So they made the conscious decision of
12 wherever they're going, to not go over the Foley Beach
13 Express toll bridge, correct?

14 A Correct.

15 Q That's what these numbers tell us?

16 A Yes.

17 Q And they tell us that the numbers over the
18 intracoastal bridge for June and July for that year
19 were four hundred and forty-two thousand, four hundred
20 eighty-six in June and four hundred and forty-three
21 thousand, four ninety-eight in July, correct?

22 A Correct.

23 Q And of those numbers, sixty-four percent in

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1 June turned left going wherever they may be going,
2 Orange Beach or the Pink Pony Pub or in July, it was
3 sixty-one percent, correct?

4 A Correct.

5 Q All right. The same with exhibit, State's
6 Exhibit number 4. These again, are the ALDOT numbers.
7 What this tells us -- it doesn't tell us where these
8 cars are going, correct?

9 A Correct.

10 Q Other than to say a significant number --
11 strike that.

12 A number of cars that started on the Foley
13 Beach Express did not wind up going over the toll
14 bridge, correct?

15 A Correct.

16 Q And in fact, again, we don't know when and
17 where, but we know approximately daily average eight
18 thousand cars are not going on the Foley Beach Express
19 as they start, correct?

20 A Approximately, correct.

21 Q And the corresponding increase is almost
22 eleven thousand cars that start out at this point to
23 the north on -- it says thirty-five thousand seven

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1 seventy, to the intracoastal bridge on Highway 59?

2 A Correct.

3 Q So again, we don't see an increase in
4 traffic over the Foley Beach Express bridge, but we do
5 see an increase in traffic over the Highway 59 bridge,
6 correct?

7 A Correct.

8 Q What are the only differences between the
9 actual bridges? Do you understand that question? Is
10 it fair to say -- is this a toll bridge?

11 A No.

12 Q The Highway 59 bridge is not a toll bridge?

13 A Correct.

14 Q The Foley Beach Express bridge is a toll
15 bridge?

16 A Yes.

17 Q Okay. Are you aware of any agreement that
18 ALDOT has with the people that run the Baldwin County
19 Bridge Company or the people that run the Foley Beach
20 Express?

21 A No.

22 Q Are you aware of any ALDOT regulations or
23 federal -- strike that.

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1 Any ALDOT regulation or any other
2 regulation that requires ALDOT or the State of Alabama
3 to acquire approval before getting right-of-way when
4 using state funds?

5 A No.

6 Q So there may be requirements when it comes
7 to the actual build of the project, but when it comes
8 to acquiring right-of-way, we don't have to run
9 anything by the TPO?

10 A Correct.

11 MR. HAAS: Objection.

12 BY MR. HAGMAIER:

13 Q You don't have to run anything by anybody
14 in order to acquire right-of-way?

15 A Correct. With state funds.

16 Q With state funds. Thank you.

17 And this project is being -- the waterways
18 project is state funds only?

19 A Correct.

20 Q Again, we don't have to provide any
21 transportation studies to anyone prior to acquiring
22 right-of-way?

23 MR. HAAS: Objection.

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1 A Right.

2 JUDGE REID: Overruled.

3 BY MR. HAGMAIER:

4 Q There was some discussion and questioning
5 about the amount of the toll on the Foley Beach Express
6 and how it's changed over time. Do you recall that
7 line of testimony?

8 A Yes.

9 Q Are you aware of any prohibition placed on
10 the Foley Beach Expressway or on specifically the
11 Baldwin County Bridge Company that prevents them from
12 raising the toll whenever they want to?

13 A I'm not aware of anything.

14 Q Okay. Is there any agreement with ALDOT
15 regarding limitation or a cap on the tolls that you're
16 aware of?

17 A Not that I'm aware of.

18 Q Okay. Now, there was also -- to get back
19 to the numbers of the web site with the Orange Beach
20 town hall meeting numbers, the numbers that Director
21 Cooper mentioned at that town hall meeting are
22 reflected on these traffic studies?

23 A Yes.

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1 Q And he says approximately eight thousand
2 and sixty percent are turning, and that's what these
3 numbers reflect, correct?

4 A Correct.

5 Q The Alabama -- this is Exhibit 10, the
6 Defendant's Exhibit 10, the Alabama 2040 state wide
7 transportation plan. If you will look at page three
8 dash sixteen, and there were some questioning about key
9 bridge projects.

10 A (Witness complies).

11 Q Do you see that map?

12 A Yes, sir.

13 Q Is the Mobile bay bridge from Mobile County
14 to Baldwin County listed as a key bridge project?

15 A No, sir.

16 Q Would you consider that a key bridge
17 project in the State of Alabama?

18 A Yes, sir.

19 Q Where would you rank that bridge when it
20 comes to key bridge projects in the State of Alabama?

21 A Number one.

22 Q Let me get you to flip the page to page
23 three dash twenty-four, and then if you'll look at the

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1 -- that second list, and I'm reading from page three
2 dash twenty-four of Exhibit 10, the Defendant's
3 significant bridge improvements in the CPMS will also
4 improve evacuation routes. Do you see that language
5 there?

6 A Yes.

7 Q Is the bridge over the intracoastal
8 waterway listed?

9 A Yes.

10 Q So the current -- the bridge that we're
11 here today over the intracoastal, part of the waterways
12 project, that's mentioned in that report?

13 A Yes, sir.

14 Q Okay. Is it fair to say it was
15 contemplated at the time the report was issued?

16 A Yes, sir.

17 Q In your opinion, is traffic congestion or
18 alleviation of traffic congestion in the public
19 interest?

20 A Yes.

21 Q Is this road that is crossing over the
22 Baldwin County Bridge Company's property, this is going
23 to be a public road, correct?

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1 A Yes.

2 Q Open to the public, anybody can drive on
3 it?

4 A Yes.

5 Q I'm kind of jumping around here, but that's
6 because I'm trying to keep it as concise as possible
7 here.

8 There's discussions about when the
9 project -- you were told to go ahead with the project
10 by Director Cooper. How long have you known about the
11 possibility of this project or the bridge spanning the
12 intracoastal, a third bridge as we've been calling it,
13 kind of been in the minds of ALDOT?

14 A Several years.

15 Q All right. Do you recall when the design
16 and planning process was begun?

17 A Well, ALDOT has looked at this for several
18 years.

19 Q Okay. And in fact, is that because the
20 issue on Highway 59, this is not a new issue, correct?

21 A Correct.

22 Q How long -- traffic problems on Highway 59
23 crossing over the intracoastal, and actually extending

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1 -- how far up do they extend north on 59?

2 A Traffic problems?

3 Q Yes, sir.

4 A Gosh, you can go all the way to Robertsdale
5 probably.

6 Q And they've been there since the beach has
7 been there?

8 A Yes.

9 Q I'd like to point out to you -- there was
10 some discussion, I don't know what exhibit number it
11 is. Again, it's the Defendant's exhibit -- hold on one
12 second, let me find it.

13 Defendant's Exhibit 7, and if you will,
14 look at page five -- actually, strike that.

15 Yeah, no, look at page five first, and then
16 it's number five. And can you read the first sentence
17 in paragraph five on page five for me, please?

18 A ALDOT, Orange Beach, Gulf Shores and
19 Baldwin County commit that they will not build any new
20 bridge across the intracoastal waterway within two
21 miles of the Foley Beach Express toll bridge, other
22 than the proposed bridge known generally as the Wolf
23 Bay bridge for a period of blank years from the

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1 implementation of the toll rate set in this agreement.

2 Q Now, that sentence -- again, that
3 agreement, to your knowledge, has never been entered
4 into, correct?

5 A Correct.

6 Q No one has ever signed that?

7 A Correct.

8 Q All right. That statement that you just
9 read, do you read that as a commitment by ALDOT to
10 never build a third bridge over the intracoastal?

11 A Within two miles of the Foley Beach Express
12 toll bridge.

13 Q Is there any limitation on time period?

14 A Not identified.

15 Q Okay. But there is a statement that says
16 for a period of years from the implementation of the
17 toll rates set in the agreement, correct?

18 A Correct.

19 Q So is it fair to say it was contemplated
20 that if they agreed on the toll provisions that are
21 contained in that agreement, that ALDOT would not build
22 another bridge for a period of time?

23 MR. HAAS: Objection.

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1 JUDGE REID: Overruled.

2 A Correct.

3 BY MR. HAGMAIER:

4 Q So it limited to a blank number of years
5 and number of years hasn't been filled in because the
6 agreement wasn't reached?

7 A Yes.

8 Q Okay. Now, I want you to go back, flip a
9 page -- well, flip back to the prior exhibit, which is
10 Exhibit 6, and that's the letter from Mayor Kennon of
11 Orange Beach dated April 29th, 2016 to American Roads,
12 LLC. Do you see that document?

13 A Yes.

14 Q Okay. Does that document -- if you will,
15 will you read number paragraph three? Actually, strike
16 that.

17 If you will go back and read the second
18 full paragraph?

19 A To accomplish these goals will require the
20 cooperation of several local and state agencies and
21 will require substantial expense to implement. Before
22 proceeding, however, it is imperative that we have
23 mutual understanding in principle on the following.

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1 Q And we skip down to number three?

2 A American Roads would reduce the tolls to
3 one dollar per car for Orange Beach residents and two
4 dollars per car for all others.

5 Q And, then, skip to number six.

6 A Tolls would be re evaluated every three
7 years for any increase and all increases will be based
8 on any objective economic indicators, such as the CPI.

9 Q All right. Are you aware of Baldwin County
10 Bridge Company, or its parent, American Roads, or
11 the -- or anybody ever agreeing to a two dollar toll
12 that can only be raised by adjustment reflecting the
13 CPI?

14 A I'm not aware.

15 Q Are you aware of any agreement at all with
16 anybody that has anything to do with the toll bridge
17 that would cap the tolls and not allow them to
18 unilaterally raise the tolls?

19 A Not that I'm aware of.

20 Q All right. Now, if you will skip to
21 Exhibit 7, I hate to keep going back and forth with
22 you. But if you will starting at page four, number
23 paragraph one, can you read paragraph one, paragraph

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1 two, two A, and two B?

2 A Paragraph one, American Roads agrees to
3 reduce the tolls charged for the usage of the Foley
4 Beach Express toll bridge to two dollars for all users,
5 provided any lesser current rate -- currently offered
6 to any user or class of users may be maintained for
7 such period as American Roads deems appropriate.

8 Two, American Roads agrees to implement the
9 reduced tolls within blank days of the execution of
10 this agreement and continues the toll rates for the
11 duration of this agreement subject to the following
12 revisions. A, beginning one year from the
13 implementation of the toll rates set in this agreement
14 and adjustments to the toll rate referenced in
15 paragraph one above may be computed annually based upon
16 the percentage change in the consumer price index for
17 the preceding year, except that no annual increase in
18 the toll greater than two dollars -- I'm sorry, in the
19 toll rate greater than twenty cents may be made without
20 the consent of ALDOT.

21 B, also?

22 Q Yes, please.

23 A Provided also that for a period of ten

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1 years from the implementation of the toll rate set in
2 this agreement, the toll rate shall not exceed two
3 dollars and seventy-five cents without the consent of
4 ALDOT.

5 Q All right. Again, are you aware of --
6 again, that agreement was not accepted by anybody
7 related to the toll bridge, correct?

8 A Not that I'm aware of.

9 Q And again, you're not aware of any
10 restriction whatsoever on their ability to change the
11 toll on a daily basis if they wanted to?

12 A Correct.

13 Q Now, is it normal for ALDOT to do numerous
14 studies on traffic when they have numbers in front of
15 them, such as the ones reflected on Exhibit 4 and 5?

16 A Ask that again.

17 Q Is it normal for -- Mr. Haas went through
18 numerous studies that could have been done. Were any
19 of those ever even contemplated?

20 A Not that I'm aware of.

21 Q Okay. And again, from the standpoint of
22 all the cross examination you went through, what are
23 your understanding -- strike that.

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1 When it comes to studies and discussions
2 with Baldwin County Bridge Company, other than the
3 petition for condemnation and the offer to purchase the
4 property, are you aware of any requirement by ALDOT or
5 the State of Alabama to discuss taking this property
6 with any third party?

7 A Not that I'm aware of.

8 MR. HAGMAIER: That's all I have, Your
9 Honor.

10 JUDGE REID: Mr. Haas?

11 MR. HAAS: Thank you.

12 RE-CROSS EXAMINATION

13 BY MR. HAAS:

14 Q Just a few clarifying questions.

15 You were asked again about the State's
16 Exhibit 4 and 5, which are traffic count data, right?

17 A Yes, sir.

18 Q This data, this traffic count data on
19 Exhibit 4 and 5 tells you nothing about where the cars
20 are coming from, correct?

21 A Where they're coming from?

22 Q Yes.

23 A Well, it tells me they're coming from the

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1 north.

2 Q Right, but it doesn't tell you whether
3 they're coming from the east, the west, Jack Edwards
4 Airport or any other location, right?

5 A Correct.

6 Q So you cannot tell from any of the exhibits
7 that have been presented by the state whether or not
8 the traffic is coming from the Foley Beach Express,
9 correct?

10 A Correct.

11 Q Thank you. You were asked questions about
12 the 2016 Gulf Shores tiger application narrative, just
13 to be clear, that narrative made very clear that the
14 improvements to Highway 59 and the Highway 59 bridge
15 would include an additional southbound lane, correct?

16 A Yes.

17 Q Thank you. And all the evidence that
18 you've been asked about in your direct and your cross,
19 of all that evidence, there is not a scintilla of proof
20 that the toll on the BEX bridge caused any traffic
21 congestion, correct?

22 MR. HAGMAIER: Object to the question. The
23 numbers speak for themselves.

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1 JUDGE REID: Overrule the objection. You
2 can answer it.

3 A Not that I'm aware of.

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

6 JUDGE REID: All right. Let's go ahead and
7 take our break for lunch now. We'll pick it up again
8 at 1:00 o'clock.

9 (Whereupon, a brief recess was
10 held in the proceedings.)

11 JUDGE REID: Jason, who is your next
12 witness?

13 MR. HAGMAIER: Director Cooper.

14 JUDGE REID: (Swearing in witness.)

15 (Whereupon, a brief recess was
16 held in the proceedings)

17 JUDGE REID: Jason, who is your next
18 witness?

19 MR. HAGMAIER: Director Cooper.

20 JUDGE REID: (Swearing in witness.)

21 (Whereupon, a brief recess was
22 held in the proceedings)

23 JUDGE REID: Jason, who is your next

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1 witness?

2 MR. HAGMAIER: Director Cooper.

3 JUDGE REID: (Swearing in witness.)

4 DIRECT EXAMINATION

5 BY MR. HAGMAIER:

6 Q State your name for the record, please.

7 A My name is John Cooper.

8 Q And what's your current position?

9 A I'm director of the Alabama Department of
10 Transportation.

11 Q All right. And Director Cooper, how long
12 have you been the director of the Alabama Department of
13 Transportation?

14 A I started January 18th of 2011.

15 Q All right. And I'm not going to kind of
16 beat around the bush on this direct examination.

17 When was the first time that the project,
18 the waterways project or whatever it was called at the
19 time, came to your attention?

20 A First version of the project that came to
21 my attention was in either spring or summer of 2011.
22 It was the version that showed a road through the park
23 and it involved the potential construction of the new

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1 lodge at the park.

2 Q All right. Did that project have any --
3 that iteration of the project have any benefit to
4 Highway 59?

5 A Well, I would think it would have. That
6 project bounced around for two or three years, it did
7 not get done in that form. Ultimately, the consultants
8 that the governor's staff had hired for the park did
9 not want a road through the park.

10 Q Okay. When was the next time that this,
11 and specifically when I talk about this, I'm talking
12 about the waterways project, I'm talking about the
13 southbound road, and then the bridge over the
14 intracoastal, when was the next version of that project
15 that came to your attention?

16 A Well, some version of this project has been
17 bouncing around the department since before I came
18 actually. Probably the next time I heard a version of
19 it, I was invited to a meeting that involved a number
20 of local officials and a representative of Mr. George
21 Barber to consider the potential for a bridge across
22 Wolf Bay, that they were asking the department's
23 assistance with.

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1 The next time -- that did not come to
2 fruition, the next time I remember dealing with the
3 project, it came up again in the context of the park.
4 Mr. Hammac was chief of staff to the Governor at that
5 time, I remember he circulated a drawing that showed
6 that potential route and there were people in the
7 administration who thought that route had merit.

8 As a result of that, there were again
9 discussions, but it did not occur. That did result in
10 our first discussions with Gulf Shores concerning what
11 is called their waterways development, I believe.

12 Q Okay. And in every version of the project,
13 what was the purpose generally?

14 A Well, the purpose always was some version
15 of dealing with congestion, relieving the congestion in
16 Gulf Shores on Alabama 59, causing more people to
17 travel a route that by the time these projects were
18 being considered, over a hundred and thirty million
19 dollars had been spent of public money to cause the
20 public to travel down a more eastern route and stay off
21 of Highway 59.

22 Q Okay. And that's the Foley Beach
23 Expressway?

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1 A Yes, Foley Beach Express, as extended by
2 the Baldwin Beach Express.

3 Q And there has been a lot of mention of the
4 Baldwin Beach Express, but explain to the Court and --
5 and -- what the Baldwin Beach Express is.

6 A Well, when I took office, one of my first
7 trips was to Baldwin County to meet with local
8 officials. Baldwin County is a, shall we say, a very
9 lively county from a conversation standpoint in the
10 desire for projects. It's a big county, a lot of
11 geographic area, and tends to divide into sub groups,
12 maybe along the Eastern Shore, Foley, Gulf Shores,
13 Orange Beach, and the rest of the county, the so-called
14 northern part of the county, there's usually a good bit
15 of contention for funds. And so the first meeting I
16 held with that group was actually before I even took
17 office.

18 Now, Judge Russell was a classmate of mine,
19 Leadership Alabama, and he contacted me to ask me to
20 come to Montgomery on my own time in December of 2010
21 and meet with a group from Baldwin County. As I
22 recall, there were more than twenty people in the
23 group. The big thing I always remember about that

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1 meeting is they fell into a dispute and asked me could
2 I leave my own conference room to let them try to agree
3 on what they had come to ask for.

4 We really didn't accomplish much that day,
5 and so the trip down came I believe in early March. We
6 met up at the county annex at Robertsdale, the meeting
7 was well attended by local officials and the press.
8 And as a result of that meeting, then chief engineer,
9 he has subsequently retired, Don Vaughan, and I, agreed
10 to meet with any of those officials who wanted to tour
11 the county.

12 We did that, the projects tend to fall into
13 two groups of priorities, one highly prized by the
14 Eastern Shore, and one highly prized by Foley, Gulf
15 Shores, Orange Beach. The project that won out was the
16 completion of the Baldwin Beach Express. It was under
17 construction, I believe one of three projects had
18 been -- was under construction. We left the remaining
19 two projects after I was in office because the county
20 officials agreed that was their first priority.

21 And, so, the purpose of the Baldwin Beach
22 Express was to extend the Foley Beach Express, which
23 had connected to Alabama 59, I guess in the north end

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1 of what was then Foley. I think Foley has grown out
2 beyond that now. And, so, the Baldwin Beach Express,
3 the purpose of it was to connect that road further
4 north by a divided four lane highway all the way to
5 I-10, and that was accomplished.

6 Q Okay. You talk about the tour of Baldwin
7 County with the local officials, what were some of the
8 other projects they asked you about or talked about or
9 asked for?

10 A There was a -- Canal Road has always been a
11 highly sought project, the widening of Canal Road by
12 both Orange Beach and Gulf Shores. The improvement of
13 traffic within the part of Gulf Shores south of the
14 intracoastal was a particular concern to Mayor Craft at
15 that point in time.

16 The potential construction of an
17 interchange on I-10 with an extension, I believe it was
18 County Road 13, up to that interchange was a high
19 priority for some of the folks on the Eastern Shore.
20 The Fairhope and Daphne folks placed a high priority on
21 widening Highway 181 further to the south.

22 Q Okay. When it comes to Gulf Shores and
23 Orange Beach, and I guess specifically more Gulf

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1 Shores, is the Highway 59 bridge congestion and the
2 Highway 59 congestion that extends further north, is
3 that a priority for Gulf Shores and for ALDOT?

4 A Well, it's priority for Gulf Shores and
5 ALDOT, and it's a significant priority for Foley also.

6 Q Okay.

7 A And if I recall correctly, and I believe I
8 do, from the first meeting in March, there was a
9 general opinion expressed that most all of the
10 communities south of I-10 on Alabama 59 would like the
11 Baldwin Beach Express completed in an attempt to
12 alleviate traffic problems in their town center areas.

13 Q Okay. And what, in general, has been the
14 affect of the completion of the Baldwin Beach Express
15 in distributing traffic on to the Foley Beach Express?

16 A It has had some effect I believe, but it
17 has not had nearly the effect we had hoped for.

18 Q And when it comes to -- has that or has
19 ALDOT or have you specifically seen any uptake in
20 traffic on 59 or a decrease in traffic on 59 because of
21 the Foley Beach Express -- or excuse me, the Baldwin
22 Beach Express?

23 A It's difficult to say what the impact of

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1 the Baldwin Beach Express has been because the traffic
2 on 59 has continued to grow and to grow at rates beyond
3 what we had estimated it would grow.

4 Q Okay. Has ALDOT looked at the
5 possibilities of projects on 59 to alleviate the
6 traffic?

7 A We have thought about projects on 59 and
8 have discussed them, the cost and the disruption it
9 would cause have always been prohibited. We have never
10 advanced to the planning stage in my time here.

11 Q Other than direct projects on 59, what are
12 the other solutions or options that ALDOT has looked
13 into regarding alleviating the traffic on 59?

14 A Well, the meeting about the bridge on Wolf
15 Bay, which is, as I recall, was instigated by Mayor
16 Kennon, contemplated an improvement of roadways to the
17 north of where that would land on the north shore of
18 Wolf Bay in an attempt or perceived attempt to cause
19 traffic to use that approach if it was going to the
20 beach and Orange Beach.

21 The other alternatives have been to improve
22 the flow of traffic across the toll bridge and cause
23 more people to take the toll bridge or to construct

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1 another bridge.

2 Q Okay. I want to point to the negotiations
3 or the discussions with Baldwin County Bridge Company,
4 which is one of the options you just talked about,
5 about trying to increase traffic flow across that
6 bridge.

7 If you would, what was the purpose or when
8 did you first approach them or did they approach you
9 regarding increasing the flow of traffic across the
10 Foley Beach Express bridge?

11 A Well, I can't tell you that I actually
12 recall the first meeting. There have been meetings
13 with the bridge company off and on throughout my tenure
14 in office for one reason or another.

15 For example, Mr. Roberts, with the bridge
16 company, visited my office at one point for the
17 specific purpose of telling me the bridges were in
18 bankruptcy and assuring me there would be no disruption
19 in their operations as a result of that.

20 As to those specific conversations, it is
21 probably fair to say that Mayor Kennon had vacillated
22 in his approach to the bridge, at times he strove to
23 improve traffic across the bridge, and at other times I

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1 think he found himself questioning whether the bridge
2 would work. He was always a little conflicted in those
3 thoughts, perhaps, by the fact that Orange Beach was
4 paid, for lack of a better term, a royalty for traffic
5 crossing the bridge.

6 And my best recollection is that he
7 approached Governor Bentley to see if discussions could
8 be held to try to determine if an agreement could be
9 reached whereby the capacity of the toll bridge could
10 be increased sufficient to carrying additional traffic
11 and relieve Alabama 59, and at the same time arrange
12 the toll, so that traffic would not resist crossing the
13 toll bridge.

14 Q So the lowering of the tolls was one of
15 the -- that was an initial type of at least proposal to
16 increase traffic over the Foley Beach Express?

17 A There was a broad based feeling that the
18 tolls needed to be lowered. If you refer to the study
19 that was done by Mr. Davis, that you asked
20 Mr. Calametti about this morning, you will see that it
21 mentions several of the municipalities and the
22 commissioners of Baldwin County, mentioned the need for
23 an additional bridge.

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1 Mayor Kennon's hope was that the toll
2 bridge could be found -- there could be a way found to
3 cause the toll bridge to eliminate that need.

4 Q Okay.

5 A And I think that's what I -- I shouldn't
6 put words in his mouth, but my assumption at the point
7 in time, I believe I received word from the Governor
8 that they had made that agreement, was that that's what
9 Mayor Kennon was hoping for.

10 Q Now, again, they've asked Mr. Calametti
11 several times, ALDOT has never done any, that you're
12 aware or you would know, any studies that show that the
13 toll is affecting traffic on the Foley Beach
14 Expressway?

15 A Well, we do have the flows of traffic,
16 which do mean something. I can't see -- I can't say
17 who went to the Pink Pony or who went to the Hang Out,
18 I can say that I don't believe they went there in those
19 numbers daily throughout those two months.

20 And, so, I do believe that there is an
21 impact on Highway 59 of people not wanting to use the
22 toll bridge. I have been told that in seven years of
23 office, probably more than a hundred times by

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1 individuals who sort of brag that they either avoid the
2 toll completely by finding their way down 59, or they
3 came down the Baldwin slash Foley Beach Express to a
4 point, and I've been told points everywhere from County
5 Road 20 south to a point and cross back over to 59.

6 Q Okay. And there's been discussion and
7 Mr. Calametti was presented with the letter from
8 Mr. Kennon or Mayor Kennon. If you will, let's look at
9 that real quick. I think that's Exhibit Number 6. It
10 should be in that book.

11 A Give me a minute to fish my glasses out of
12 my pocket.

13 Q Sure.

14 A Exhibit 6. Okay.

15 Q Now, Exhibit 6, and I had Mr. Calametti
16 already read some of this, but two of the points in
17 that letter is that Mr. Kennon, or excuse me, Mayor
18 Kennon is asking that the American Roads, which we
19 understand as being the parent of Baldwin County Bridge
20 Company, reduce the tolls, and then also limit any
21 increase to a CPI figure, some sort of cost of living
22 adjustment.

23 Do you recall that testimony earlier from

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1 Mr. Calametti?

2 A I do recall the testimony.

3 Q Now, I want you to flip to Exhibit 7, which
4 has been represented as being a draft agreement that
5 ALDOT prepared, that you prepared. If you would,
6 explain the background of that agreement, and
7 especially as it relates to those specific points of
8 lowering the toll and providing or making an increase
9 contingent on some factor?

10 A I drafted the agreement in conjunction with
11 my attorneys, I presented the agreement only to
12 representatives of the bridge company, no drafts of the
13 agreement were ever presented to any of the other
14 parties that it was contemplated that the agreement
15 contemplated would be involved. I believe that would
16 be Foley, Gulf Shores, Orange Beach and Baldwin County.
17 And I do not recall ever discussing the drafts of the
18 agreement with any of them.

19 The point in Mayor Kennon's letter about
20 the two dollar toll, the person who was most convicted
21 of the need for a two dollar toll was actually Mayor
22 Craft, who continually insisted that something needed
23 to be done to help traffic in his city, and continued

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1 to insist that a lifetime had taught him that Orange
2 Beach traffic was cluttering his city and he wanted
3 that fixed. And he agreed to compromise on a two
4 dollar toll sort of with Mayor Kennon and others, as a
5 level that he would live with if we could accomplish
6 that.

7 So the purpose of the agreement that I
8 drafted was to attempt to find economic terms that
9 ALDOT and the bridge company could agree on, and if we
10 could find that, as I explained to Mr. Roberts and Mr.
11 Belitsky, and on two occasions they had others there
12 whose names I could not remember. If we could reach
13 some sort of agreement on that, then it would be worth
14 attempting to bring the four other parties into
15 agreement with some form of that.

16 And so the -- my reasoning was this: I
17 could subsidize the toll more cheaply than I could deal
18 with the problems on 59. So as a result of that, and
19 I've heard it mentioned previously today, but as a
20 result of that, the agreement, while it does ask for
21 the toll to be lowered to two dollars and limit
22 increases to the CPI and limit increases to no more
23 than twenty cents per year or no more than two

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1 seventy-five in ten years without ALDOT's approval,
2 also contains a clause that would have required ALDOT
3 to maintain the bridge company's revenue to subsidize
4 tolls, if necessary, to maintain their revenue and
5 assure that it grew by a factor at least equal to the
6 CPI.

7 And if it did grow by such a factor, any
8 growth over that, the agreement asked that it be split
9 equally between ALDOT and the bridge company in return
10 for ALDOT taking the risk to guarantee the tolls. My
11 discussions with the bridge company going back to 2011
12 have always, and I'll go ahead and use the word
13 degenerated into a debate about the elasticity of
14 demand. And I have always contended and always
15 believed, and I worked for a boss for a number of years
16 who rigidly followed this doctrine, and I came to be a
17 convert to it I guess that if you lower the toll, you
18 would raise your revenue.

19 And so what I asked the bridge company and
20 for years I asked them to do it, and in this draft
21 agreement I attempted to incentivise them to do it, was
22 to lower the toll and let's put more cars across at a
23 more reasonable price and your gross revenue and your

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1 earnings would be greater. I was never able to
2 convince them, and so in this agreement I was outright
3 committing to subsidize their revenue, if necessary, to
4 maintain their toll. My own preference would have been
5 to lower the toll to a dollar and still subsidize it to
6 maintain their revenue.

7 Q And again, the point of this discussion,
8 and the point of lowering the toll is what you just
9 discussed about generating more traffic on to the Foley
10 Beach Express, where did you think that traffic was
11 going to come from?

12 A I thought that traffic would come off
13 Alabama 59. There are only two real ways to
14 effectively approach Alabama's Gulf Coast by road, one
15 is Alabama 59, the other is the Foley Baldwin Beach
16 Express. We have a very good road system on Alabama 59
17 that at a time in the past was adequate. As
18 development has occurred along that road, it is
19 terribly inadequate, and with the occurrence of
20 development, the cost of widening that road and the
21 disruption that would occur to the business community
22 of Gulf Shores, Foley, and the other communities to the
23 north as you worked your way through those towns, would

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1 just be in my opinion unthinkable.

2 And, so what I was offering to do was
3 subsidize the bridge company revenue in an attempt to
4 move more traffic off of 59, and on to the more eastern
5 route to the beach. That was being done in conjunction
6 with other activity that we have going on. We have a
7 project to widen Canal Road, that is a project that is
8 part of the project's -- one of the projects that are
9 being done with the BP money that Baldwin and Mobile
10 Counties got access to. And, so, we have a project to
11 widen Canal Road to five lanes.

12 We have another project to improve the
13 intersection at County Road 161, that's sort of the
14 east nexus of the beach traffic coming off of the Foley
15 Beach Express or coming off of Canal Road, however it
16 gets on to Canal Road. And we have an ongoing project
17 to improve traffic flowing along the Beach Road in
18 Orange Beach.

19 So I believed if we could lower the tolls
20 and get more people to cross the bridge, we could
21 materially improve our traffic problems.

22 Q Okay. And you've seen and heard the
23 testimony today, but you've seen the numbers regarding

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1 the amount of traffic over the Highway 59 bridge in
2 June and July of the summer months for I think 2015,
3 and the turn rates and the additional numbers that were
4 shown earlier from the ALDOT web site showing the
5 amount of traffic going over 59, as compared to the
6 Foley Beach Express, you've seen those numbers,
7 correct?

8 A I have seen the numbers and I have been
9 there during those months and I've been gifted with
10 pictures on several occasions.

11 Q All right. Now, the other thing in this
12 that's been brought up several times is the provision,
13 it's been represented or argued that ALDOT was going to
14 somehow agree to not ever build a third bridge; is that
15 true?

16 A The agreement, as I contemplated it and as
17 I believe every one contemplated it, was that these
18 things would happen. The bridge company needed to
19 provide us with traffic studies that would convince us
20 that a significantly higher volume of traffic could
21 indeed cross the toll bridge efficiently.

22 And to that end, between Mr. Calametti and
23 me, I'm probably the one who conveyed it, we suggested

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1 to the bridge company that they consider three laning
2 the bridge with a reversible lane, and we also asked
3 them to consider what I had always called electronic
4 tolling. I think some call it open road tolling. And
5 if that could be accomplished, I was proposing to do
6 two things, the first thing I was going to do, and I
7 discussed this specifically with Mr. Roberts and
8 Mr. Belitsky, was to ask Orange Beach to not
9 necessarily waive, but perhaps change the volume
10 requirement at which the bridge company would be
11 obligated to build two more lanes. And I'm no longer
12 sure exactly what that was, but it was something that
13 with an increase in traffic would have been approached
14 reasonably soon.

15 And if the bridge company could show that
16 it could clear more traffic than what we thought we
17 could reasonably move, we were willing to make an
18 attempt to do that with the so-called half measures of
19 three lanes, one being reversible. And to do that, you
20 put three, eleven foot lanes on the bridge instead of
21 two, twelve foot lanes with shoulders. It's low speed
22 traffic, shouldn't be a meaningful safety issue, and
23 you could time your reversing of the lanes to the flows

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1 of the traffic in and out. And as I understand it,
2 Orange Beach has rather distinct in flows and out flows
3 of traffic.

4 Then the other thing that we would all
5 agree to is in return for that, for some period of
6 years, that's why it's blank in the agreement, we would
7 refrain from building a competing bridge within two
8 miles.

9 Q But that was all contingent on these other
10 conditions being met and it was only for a limited
11 period of time?

12 A Everything in the agreement was contingent
13 on the agreement being finalized, and there were terms
14 still not negotiated in the last draft.

15 Q And you were never presented -- or strike
16 that.

17 Was ALDOT ever presented with any studies
18 from the bridge company regarding traffic?

19 A I don't recall any.

20 Q Okay. Now, when we are talking about -- I
21 want to be clear, when we are talking about the
22 traffic, and whether it be traffic -- pulling traffic
23 over to the Foley Beach Express, traffic on 59, I mean,

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1 this is all the same traffic we're talking about, we're
2 not talking about new numbers or was there anything
3 that you've seen at ALDOT that suggested that there
4 would be I -- I guess a greater increase in traffic to
5 the Foley Beach Express, absent the lowering of the
6 tolls?

7 A We didn't believe there would be other than
8 perhaps proportionally, and that was not sufficient. I
9 think there would have been and probably has been some
10 increase off the base numbers that they had just
11 because there are more people going to the beach,
12 tourism is up. All the statistics show that, I think
13 all of the roads show some increased traffic.

14 What we need to do is change the proportion
15 of the traffic going to the beach between Highway 59,
16 and either the Baldwin Foley Beach Express or some
17 other road. We need another method through less
18 developed territory than what we would have to do on
19 Alabama 59.

20 Q And the result of you sending this draft
21 agreement to the Baldwin County Bridge Company, what
22 was their response?

23 A Well, it actually is technically not

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1 correct to say I sent it. We met, we did meet as the
2 attorney said this morning, several times. I'm not
3 sure exactly how many, I think all the meetings were in
4 my office. As I say, I think except for the last
5 meeting, Mr. Roberts and Mr. Belitsky were at all of
6 the meetings. At two of the meetings, I seem to recall
7 once a male and once a female representative, whose
8 names I do not remember.

9 Q Okay.

10 A I was told I believe they were from New
11 York.

12 Q And after those meetings, after the draft,
13 did you ever get something in writing back from them?

14 A No, I never received anything in writing,
15 Mr. Roberts came along to visit me and told me that the
16 bridge company could not accept the agreement and it
17 was a very brief meeting. That was the gist of it,
18 there wasn't much small talk. He got right to the
19 point.

20 Q All right. And during the whole time, from
21 the time Mayor Kennon's letter was sent in April of
22 2016, through I guess this was '17, possibly, I'm not
23 sure when this draft agreement -- when was the draft

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1 agreement sent?

2 A Well, I think more than one version of the
3 draft were sent.

4 Q Okay.

5 A And I need to correct something I said
6 earlier. I said there was no discussion that I recall
7 with any of the other parties. I did tell Mayor
8 Kennon, they were discussing the two dollar toll for
9 all vehicles, and that is what gave rise to the
10 language inserted in the agreement that he stated to me
11 that residents of Orange Beach had a lower toll than
12 that already. And that's what caused the language to
13 be inserted into the agreement that said that any lower
14 toll could be maintained by the bridge company for as
15 long as they chose.

16 Q Okay. And during the time from Mayor
17 Kennon's letter, when this draft agreement was being
18 sent back and forth, or when the discussions were being
19 had with the Baldwin County Bridge Company, at any
20 point was the waterways project bridge, the third
21 bridge over the intracoastal pulled and scrapped?

22 A No, no.

23 Q Was that always a possibility, even during

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1 the negotiations?

2 A Well, it was a possibility it would happen.
3 In fact, when Mr. Roberts came to tell me that the
4 bridge company couldn't accept the agreement, as we
5 stood up to leave, which as I say was quick, we didn't
6 tarry a long time, he said to me, John, I guess this
7 means you're going to build that bridge. And I said
8 well, I'm thinking about it. And that was the end of
9 that, that was as we were walking out the door of my
10 office.

11 Q And from the time of Mr. Kennon's letter in
12 April of '16, through the time when he told you no, we
13 can't agree to it, did the traffic problems persist on
14 59?

15 A Yes, traffic problems have grown
16 consistently worse.

17 Q So they didn't stop, they didn't change in
18 any way?

19 A No.

20 Q And in fact, they've gotten worse?

21 A They have gotten worse.

22 Q Okay.

23 A At least that is the perception of the

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1 people here that I hear from. I don't know that we
2 have the latest counts, but tourist counts are up.
3 It's probably reasonable that their assertion that
4 traffic is worse is true.

5 Q Well, the numbers that we presented
6 earlier, the '15 and '16 numbers, I mean, they show a
7 significant amount of traffic over the 59 bridge?

8 A They do.

9 Q Okay. And to go back to the initial draft
10 of this agreement, in that draft you acknowledge or you
11 state that the issue is the congestion on the 59
12 bridge?

13 A Yes, I believe it's in there multiple
14 times.

15 Q Okay. Regarding this specific tract of
16 land, which is the sliver of property owned by the
17 Baldwin County Bridge Company, in your opinion, is this
18 property needed for this project?

19 A Mr. Hagmaier, I'm not an engineer, I'm told
20 that it is. I'm told that there are places we could
21 access the road within a few hundred feet that the
22 bridge company doesn't own the property that accesses
23 the road, but I'm told this is what the engineers

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1 believe is the best place to access the road.

2 Q Okay. Again, you don't -- when it comes to
3 these road projects, you're not sitting there with pen
4 and paper and designing any of these projects?

5 A Hardly.

6 Q At what point in time in your mind did you
7 make the decision that we've got to build this bridge
8 to alleviate the traffic on 59?

9 A Shortly after Mr. Roberts informed me that
10 the bridge company could not agree. He made me no
11 counter, he just told me they could not agree and left.

12 Q Okay.

13 A And I assumed at that point that, that was
14 their answer, and that for the benefit of the traveling
15 public, I needed to do something different.

16 Q So they took away that option regarding 59
17 not really being a project, a widening project, so just
18 left you with what we've got here?

19 A As I saw the landscape at that time, that
20 was the alternative available to me.

21 Q Since the -- have you had any discussions
22 with the Baldwin County Bridge Company since that
23 initial or since that last rejection of the proposal of

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1 the offer?

2 A I have not.

3 Q Okay. There's been an allegation that this
4 project is going to benefit a board that you sit on
5 that apparently has an office on Canal Road, can you
6 explain to the Court what the location of that -- what
7 is located on Canal Road in Orange Beach, Alabama, and
8 the board that you sit on?

9 A I am a member of the board of directors of
10 Community Health Systems, and that's a not for profit
11 corporation, not to be confused with the Community
12 Health Systems that is a for profit, very large
13 publicly held hospital concern. Community Health
14 Systems runs assisted living facilities, it has a
15 hospice, and it is in what's called the DME, durable
16 medical equipment business. I'm on that board and have
17 been for more than twenty years. I receive a fee from
18 the board. I've disclosed that every year on my ethics
19 filings.

20 Mr. Hagmaier, it never occurred to me that
21 with the -- nothing but the central office, no sales
22 locations, no revenue being derived from that place,
23 and located without even a sign on Canal Road, along

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1 with every other business located on Canal Road, it
2 never occurred to me that there was an ethics act
3 problem with that.

4 And as I sit here, I can tell you that
5 nothing I have done or contemplated doing or now
6 contemplate doing on Canal Road has been done without
7 the yelling and screaming of Mayor Tony Kennon. To the
8 point of putting on the sign outside town hall on the
9 4th of July, if you don't like your roads, call the
10 Governor at this number.

11 Q So that facility -- there's no facility on
12 Canal Road, that's just --

13 A It's the central office.

14 Q Okay.

15 A There's no sales occur there, no revenue
16 derived there.

17 Q And you're telling the Court today that,
18 that never played any role in your decision to move
19 forward with your project?

20 A Truthfully, until you or Mr. Patty one told
21 me about it, I had never thought of it.

22 MR. HAGMAIER: That's all I have for now.

23 CROSS EXAMINATION

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1 BY MR. HAAS:

2 Q Good afternoon, Mr. Cooper. You indicated
3 that you have been the director of the Alabama
4 Department of Transportation or ALDOT since 2011,
5 January, 2011, right?

6 A That's correct.

7 Q And one of the very first things you did
8 when you came through the door was to determine whether
9 you could get approval to construct a bridge across the
10 intracoastal waterway in the same location where you
11 now are seeking to construct a bridge, right?

12 A No, sir, that's not correct.

13 Q Isn't it correct that within the 2011 time
14 frame, you were considering constructing a bridge
15 across the intracoastal waterway in the same location
16 as the current?

17 A What is true is that I distributed a
18 concept that showed a bridge in order to more easily
19 access the new lodge --

20 Q That's right --

21 A -- at the state park.

22 Q Sir, I just asked a very simple -- this is
23 cross and you'll have the opportunity on re direct to

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1 explain, but if you would, I've got a lot to get
2 through, so I'm going try to be very succinct.

3 So the fact is that as soon as you came on
4 board in 2011, you considered a proposal, and you
5 actually put together a proposal, to develop a bridge
6 that goes across the intracoastal waterway in exactly
7 the same place as the current, correct?

8 A No, sir, that's not true. I told you
9 that's not true.

10 Q It's in the same location as you
11 considered?

12 A We're not talking about the location. You
13 said I did it as soon as I took office, I did not. I
14 spent several months trying to learn about my office,
15 and I did at the Governor's request, display a concept
16 that would have the bridge over the intracoastal. The
17 location of that bridge, if you go look, is on a direct
18 line between the end of the big curve and the Foley
19 Beach Express and the location of the lot.

20 Q I understand the point you're making with
21 respect to what the end point is. Within 2011, the
22 first year that you maintained your position as
23 director of ALDOT, you considered building a bridge

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1 across the intracoastal waterway, the same location
2 going down to the lodge you referenced, correct?

3 A I would say that I was considering that
4 concept in 2011, calendar 2011, yes, sir.

5 Q Thank you. Now, let's move forward to the
6 2015 time frame. If I understand your testimony
7 correctly on direct, you agree that you met repeatedly
8 with BCBC executives from 2015 to 2017, mid 2017, to
9 discuss whether a new bridge would be built across the
10 intracoastal waterway or whether there was an
11 alternative to doing so, right?

12 A I don't believe I testified in 2015. I
13 think those meetings started in 2016.

14 Q It's your position you didn't have any
15 meetings in 2015?

16 A No, it's not my position I didn't have any
17 meetings, because I may very well have. In the way you
18 framed your question, I don't believe in 2015, I was
19 negotiating with the bridge company.

20 Q Okay. Well, let's be very precise. In
21 2015, did you have any communications with BCBC --

22 A The reason I said --

23 Q Let me finish my question, sir.

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1 A I don't know.

2 Q Sir, in 2015, did you have any
3 communications with BCBC, regarding whether to build a
4 new bridge across the intracoastal highway, waterway?

5 A As I sit here, I don't know.

6 Q Isn't it in fact true, that in 2015, you
7 approached BCBC and proposed that BCBC build a new
8 bridge?

9 A I don't recall that.

10 Q Isn't it in fact true that on July 8th,
11 2015, BCBC sent a letter to you and said well, if
12 you're interested in us building a bridge, show us a
13 need for that bridge?

14 A I may very well have received the letter.
15 I do not remember the date. I do not remember making
16 the proposal.

17 Q Let me direct your attention to what's been
18 marked as Exhibit 28. Are you there?

19 A I am.

20 Q What's been marked as Exhibit 28 is a
21 correspondence to you, Mr. Cooper, from Neil Belitsky
22 of American Roads, parent of BCBC, correct?

23 A It appears to be signed by Mr. Belitsky.

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1 Q Yes. And in this letter, Mr. Belitsky asks
2 you for traffic studies and other information to show a
3 need for a new bridge across the intracoastal waterway,
4 correct?

5 A I'll take your word for it.

6 Q It's right in front you, you can read it
7 yourself. Would you like me to read it into the
8 record?

9 A Please yourself.

10 Q Mr. Cooper, did you receive this letter?

11 A I honestly don't know.

12 Q Is it in fact true that you received this
13 letter and request from BCBC, that you provide traffic
14 studies justifying any need for a new bridge across the
15 intracoastal waterway?

16 A As I told you, I do not recall asking for
17 the letter, and I actually do not recall receiving the
18 letter. I may very well have, it is addressed to the
19 Alabama Department of Transportation to my attention.
20 I'm not asserting that I did not receive it, I simply
21 do not remember.

22 Q Well, let's try this: Is it in fact true
23 that you never provided to BCBC or American Roads any

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1 traffic information or any studies that were requested
2 showing a need for a new bridge across the intracoastal
3 waterway?

4 A It's true that I didn't provide any data to
5 American Roads.

6 Q In November, 2015, Mr. Cooper, isn't it in
7 fact true, that you met with BCBC and they asked
8 whether or not BCBC could do the due diligence to
9 determine whether a new bridge was required across the
10 intracoastal waterway?

11 A I do not recall that meeting.

12 Q Well, let's try this way: Isn't it in fact
13 true that you never agreed to allow BCBC to conduct any
14 due diligence as to whether a new bridge was required
15 across the intracoastal waterway?

16 A I do not recall being asked and I did not
17 provide anything.

18 Q So sitting here today, you would agree with
19 me that you never approved BCBC to conduct due
20 diligence to determine whether or not a new bridge was
21 required across the intracoastal waterway?

22 A I have no recollection of doing that.

23 Q Well, on your direct, you suggested that

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1 the onus was upon BCBC to justify the need for a new
2 bridge, didn't you?

3 A Sir, I said that in relation to the
4 negotiations in 2016.

5 Q So it's your position that ALDOT spending
6 eighty-seven million dollars on a new bridge depended
7 upon whether BCBC did due diligence to show that it
8 wasn't needed?

9 A Sir, I don't agree that we're spending
10 eighty-seven million dollars on a new bridge. I don't
11 think it is dependent on anything. BCBC did, the
12 problem is that their bridge didn't function, that's
13 why I'm building a new bridge.

14 Q That's your opinion, and we'll see whether
15 there's any support for that opinion.

16 A We can.

17 Q I'm asking the question: First of all,
18 isn't it in fact true that in connection with your
19 October 9, 2017, letter, which you saw earlier today
20 because you were in the courtroom, that you included a
21 map that indicated that it was an eighty-seven million
22 dollar expenditure for the roadway and the bridge that
23 you proposed to build, correct?

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1 A There may very well have been a map
2 included that said that. Whether I included it, may be
3 open to some interpretation.

4 Q It was attached to your letter, was it not,
5 Mr. Cooper?

6 A Sir, that was a form letter. I send those
7 for everybody who applies for a Tiger without
8 exception.

9 Q So you signed the letter -- it's your
10 testimony on the stand today, that you signed that
11 letter without reading it?

12 A It is.

13 Q Did you have any reason to dispute the
14 accuracy of the information that was provided to you to
15 sign?

16 A I have no reason to dispute. I did not
17 study the information, it was not provided to me.

18 Q So you had no reason to dispute that the
19 roadway and the bridge that we are discussing here
20 today over the intracoastal waterway, would cost the
21 taxpayers of this state eighty-seven million dollars?

22 A Yes, I do dispute that. I don't dispute
23 that the map said that, but I dispute the correctness

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1 of that number.

2 Q Is it in fact true that you advised the
3 Florida Alabama TPO, that the cost of the bridge alone
4 was forty-five million dollars, plus seven million
5 dollars for right-of-way?

6 A I didn't advise them of anything. ALDOT
7 may very well have done that.

8 Q So ALDOT may have advised the Florida TPO,
9 that it was a fifty-two million dollar expenditure for
10 the bridge alone, someone else might have advised on
11 your -- in connection with the letter sent under your
12 name, that the total cost was eighty-seven million
13 dollars, but you say both those numbers are wrong?

14 A I believe, as I sit here today, both of
15 those numbers are wrong.

16 Q And you in fact, testified -- well,
17 withdraw that.

18 At the November 7th, 2017, meeting of the
19 Orange Beach town hall, you indicated the cost for the
20 bridge alone was thirty million dollars, right?

21 A I was quoted as saying that. I don't
22 remember it, but I assume I did.

23 Q Well, we have the video if you'd like to

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1 hear it.

2 A I'm sure you do.

3 Q Okay. So are you disputing that you --

4 A No, I'm not disputing it.

5 Q Okay. So let me ask the question then:

6 Mr. Cooper, did you say that the bridge alone would
7 cost thirty million dollars?

8 A I guess I did.

9 Q Okay. So now that we have a price, is it
10 your position that you have the discretion to spend
11 thirty million dollars of taxpayer's money on a new
12 bridge unless BCBC proves to you that, that bridge does
13 not make sense?

14 A I don't think that's what I said at all.

15 Q That's not my question.

16 A No, that's not my position.

17 Q Okay. So when you, on direct, made
18 reference that there's some onus time BCB to do
19 testing, that has nothing to do with --

20 A I don't know that I used the word onus.

21 Q Okay. Let me ask the question, then. In
22 your view, was there an onus on BCBC to do the testing
23 to determine that a new bridge was or was not required?

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1 A The obligation that BCBC would have been
2 under, under the agreement was to demonstrate that the
3 existing bridge could handle the increase in traffic.

4 Q There's no such obligation in that existing
5 agreement, is there?

6 A It was an obligation that was discussed.
7 There are many points that were discussed that never
8 got into the agreement.

9 Q Okay. So you would agree with me, there's
10 no such obligation under the existing agreement?

11 A Sir, the agreement is labeled a draft, it
12 was terribly incomplete.

13 Q Okay. So now you're talking about your
14 draft agreement?

15 A My draft agreement was incomplete.

16 Q So there's no agreement with BCBC that
17 requires it to do any analysis or any due diligence in
18 order to justify a new bridge, right?

19 A Not that I'm aware.

20 Q So the onus is on ALDOT to do the studies
21 that substantiate or refute whether a new bridge is
22 required across the intracoastal waterway before ALDOT
23 spends thirty million dollars on the bridge alone,

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1 right?

2 MR. HAGMAIER: Object to the form. Let me
3 object to the question. There is no requirement unless
4 they can point to a statutory requirement or a
5 constitutional requirement that requires us to do
6 anything like that prior to acquiring right-of-way,
7 it's not relevant to this case.

8 MR. HAAS: Your Honor, he's testifying for
9 the witness. That was a fact question.

10 JUDGE REID: Overrule the objection.

11 A State your question again, please.

12 BY MR. HAAS:

13 Q So is it your position, Mr. Cooper, that
14 you can spend thirty million dollars of the taxpayer
15 money of this state without doing any studies to
16 justify and legitimize the need for a new bridge?

17 A I don't think that's what I said.

18 Q I'm asking you a question.

19 A I said I don't believe I said that.

20 Q I know you don't believe you said that,
21 that's not an answer to my question. My question is:
22 Can you -- can ALDOT spend thirty million dollars on a
23 new bridge --

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1 A I don't spend thirty million dollars
2 without some idea of what I'm doing.

3 Q I understand there's some idea. Listen to
4 my question. Is it your position that ALDOT can spend
5 thirty million dollars on a new bridge across the
6 intracoastal waterway without conducting studies
7 justifying the need for that bridge?

8 A I didn't say that.

9 MR. HAAS: Your Honor, may I have a ruling
10 to instruct him to answer my question?

11 JUDGE REID: Restate your question. I
12 think it would be better if you would restate your
13 question.

14 BY MR. HAAS:

15 Q Mr. Cooper, is it your position that ALDOT
16 can build a new bridge across the intracoastal waterway
17 without conducting the studies to justify the need for
18 that bridge?

19 A That is not what I said and that's not my
20 position.

21 JUDGE REID: He said that's not his
22 position.

23 MR. HAAS: I know it's not his position,

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1 but he's not saying what that position is. He's not
2 saying whether or not they need to do studies or they
3 don't.

4 JUDGE REID: Okay. Can you answer that
5 question?

6 A I can say, Your Honor, that I believe we've
7 done appropriate work to determine building a bridge is
8 appropriate.

9 BY MR. HAAS:

10 Q Understanding that it's your position
11 you've done appropriate work, you have not done
12 studies --

13 A I have done studies.

14 Q Would you let me finish the question, sir.

15 A It's hard.

16 Q Well, I know it's hard for you, but,
17 please. You have -- you and ALDOT have not done any
18 studies to determine that any reduction in tolls on the
19 BEX bridge will reduce any congestion or alleviate any
20 congestion anywhere, have you?

21 A Yes, we really have.

22 Q Where is it?

23 A We have worked with tolling consultants in

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1 numerous places and we know from working with tolling
2 facilities that if you reduce the toll, you do increase
3 the traffic.

4 Q Did you --

5 A From the flows of traffic -- if you let me
6 finish, from the flows of traffic and from individual
7 conversations that have occurred many, many times, we
8 believe that if you build a bridge un tolled or lower
9 the toll significantly, more people will use that,
10 including many people who today are using some part or
11 all of Alabama 59.

12 Q I understand you're saying we believe, the
13 abstract, because you just believe it to be the case,
14 that's not my question. My question is what are the
15 particular studies that you've done?

16 A I just --

17 Q So let me ask you again to be very precise.
18 Starting with the BEX bridge, what studies has ALDOT
19 done to show that the tolls on the BEX bridge are
20 impacting congestion anywhere?

21 A The flow of traffic.

22 Q What flow of traffic?

23 A Which are on these exhibits and cited to

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1 you this morning.

2 Q These studies are not flow of traffic
3 studies.

4 A Yes, they are.

5 Q They're point in time --

6 A They show turns that people are making with
7 no where to go except on Alabama 59.

8 Q So just to be clear, you are relying on the
9 studies that we saw today as your justification for
10 building the bridge across the intracoastal highway?

11 A No.

12 Q Waterway, excuse me?

13 A I'm relying on that, along with the
14 plaintiff request of numerous Baldwin County entities,
15 Gulf Shores, Orange Beach, Foley, Baldwin County,
16 people who live here and people who believe that would
17 be extremely helpful.

18 Q What's --

19 A And when I combine those two things, I
20 believe I have sound basis to build a bridge.

21 Q Which you studies are you relying on other
22 than the studies that we have looked at here today?

23 A I'm relying on conversations with numerous

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1 people who are students of Baldwin County. I do not
2 have formal studies.

3 MR. HAAS: Judge, we're going to be here a
4 long time.

5 JUDGE REID: He said he didn't have formal
6 studies.

7 MR. HAAS: I know. I asked him what
8 studies other than --

9 JUDGE REID: He said he didn't have any.

10 MR. HAAS: If the record is clear, I think
11 I -- we need to hear that clearly.

12 BY MR. HAAS:

13 Q Is it true that aside from these studies
14 that we have looked at here today, you have not relied,
15 and you do not have any other formal studies
16 substantiating the need for the new bridge across the
17 intracoastal waterway?

18 A Not that I have paid for.

19 Q Not that you have paid for?

20 A Not that I have paid for.

21 Q Do you have any studies that you haven't
22 paid for?

23 A I have a substantial list of conversations

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1 with Darrell Skipper, who is the traffic consultant
2 with Andrews Traffic on the cities on the south end of
3 the county and I have his opinion.

4 Q I understand you have his opinion and you
5 have conversations, do you have any other studies?

6 A Whatever studies Mr. Skipper has done that
7 influence his opinion.

8 Q You haven't seen any other studies?

9 A I have not seen his study.

10 Q So aside from the studies here today, this
11 is all you got?

12 A No, I have Mr. Skipper's opinion, which I
13 value highly.

14 Q One more time.

15 A Rephrase your question.

16 Q Aside from the studies, formal studies that
17 you have looked at today in this courtroom, you have no
18 other formal studies?

19 A I do not.

20 Q Thank you. Now, let's just be clear
21 because I think we've moved the conversation and the
22 starting point.

23 At this point in time, Mr. Cooper, do you

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1 recall any communications in 2015 with BCBC regarding
2 the new bridge across the intracoastal waterway?

3 A At this point in time, I don't recall.

4 Q When was the first conversation you recall
5 with BCBC regarding the new bridge across the
6 intracoastal waterway?

7 A I think that would have been in 2011.

8 Q When was the first conversation you recall
9 of a discussion with BCBC about a bridge across the
10 intracoastal waterway that did not have an exit or an
11 egress down to the beach?

12 A 2016.

13 Q Okay. Who was in that conversation?

14 A I'm not sure. The people I can remember
15 would be Mr. Roberts and Mr. Belitsky and myself. As
16 to whether others were there, I can't say.

17 Q At the time you had that discussion about a
18 bridge going across the intracoastal waterway that did
19 not have an exit off Canal Road or 180 to the beach,
20 did you at that time have an understanding of BCBC's
21 rights and commitments under its agreements with the
22 public entities of the State of Alabama?

23 A I had some understanding, I'm not sure how

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1 much, but I had some. I've been told different things.
2 I had not read the agreements.

3 Q Let's walk through and see what rights you
4 understood they had and what commitments you understood
5 they had at that time. In 2016, when you had this
6 conversation, did you understand that BCBC had a
7 perpetual license to operate the BEX bridge?

8 A I did.

9 Q Did you understand that BCBC had the
10 perpetual right to set the tolls --

11 A I did.

12 Q -- for the bridge?

13 A I did.

14 Q Did you understand that BCBC had through
15 it's access management plan with Orange Beach, Foley,
16 the City of Foley and Baldwin County, the right to
17 ensure that a traffic consultant cleared any exits off
18 the Foley Express before they were implemented?

19 A At that time, I did not know that.

20 Q Did there ever come a point in time you
21 learned that?

22 A I've learned that recently.

23 Q How recently?

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1 A Within the last three weeks.

2 Q When you had the discussions with BCBC
3 beginning in 2016, did you have the understanding that
4 BCBC had the right to expand the bridge and the lanes
5 on the bridge by adding a new span if it so chooses?

6 A I actually didn't understand it as a right,
7 I understood it as an obligation. I guess I would have
8 thought that nobody would have objected if they wanted
9 to add lanes, so maybe I did think they had the right.
10 I didn't think of it that way.

11 Q Did there ever come a point in time where
12 you understood that BCBC had the right under a license
13 with Baldwin County to expand the lanes on the BEX
14 bridge without any consent from Baldwin County?

15 A I heard you say that this morning.

16 Q Did you have any understanding aside from
17 what you heard in this courtroom?

18 A No.

19 Q So did you ever have any discussions with
20 BCBC, that it had the right to expand the bridge at no
21 cost to the state?

22 A No, I did not.

23 Q Let's talk about the commitments that BCBC

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1 made to this state. Did you understand that BCBC had
2 agreed to raise the gates and to allow vehicles to flow
3 freely in the event of any voluntary or mandatory
4 evacuation notice?

5 A I did understand that.

6 Q Did you have an understanding that BCBC
7 agreed to allow any of the municipal vehicles of Orange
8 Beach to use the bridge freely?

9 A I didn't know that.

10 Q Did there ever come a point where you
11 learned that?

12 A I don't recall I've learned that.

13 Q I think you testified to this earlier, but
14 in 2016, when you were negotiating with BCBC, did you
15 understand that BCBC was obligated to pay a fee to
16 Orange Beach for each of the vehicles that crossed its
17 bridge?

18 A I did.

19 Q And I believe you just mentioned this, you
20 understood that BCBC had an obligation to add another
21 span on to its bridge if the vehicle usage was of a
22 sufficient level, correct?

23 A I knew that there was a trigger it was

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1 commonly called. I never read it. I didn't know the
2 specific terms.

3 Q So to the extent that, that trigger was
4 reached, it was your understanding that BCBC had an
5 obligation to add a span and a couple of additional
6 lanes on to the bridge, right?

7 A I understood they had that obligation at
8 some point under the agreement with Orange Beach.

9 Q Was it also -- and is it also your
10 understanding that trigger has not been reached?

11 A I don't know.

12 Q So you don't know whether or not the volume
13 of vehicle usage over the BEX bridge has even reached
14 the level that was contemplated that could be handled
15 with the existing lanes?

16 A I do not.

17 Q And you didn't take that into account when
18 deciding to instruct ALDOT to build a new bridge across
19 the intracoastal waterway?

20 A I took into account the traffic problems I
21 was trying to deal with.

22 Q That's not my question. Did you take into
23 account when you decided whether or not to build a new

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1 bridge across the intracoastal waterway, that BCBC had
2 the obligation to increase the size of the bridge if --

3 A No, I did not.

4 Q -- if the structural capacity --

5 COURT REPORTER: I'm sorry, I couldn't hear
6 the rest of it.

7 JUDGE REID: Let him finish the question.

8 BY MR. HAAS:

9 Q So you didn't take into account when you
10 made your decision to build a new bridge across the
11 intracoastal waterway, that BCBC had the obligation to
12 actually expand its bridge at no cost to the state --

13 A I questioned that.

14 Q You really have to let me finish.

15 A Well, you keep saying that and that's just
16 simply not true, there's a great cost to the citizens.

17 Q Sir, sir, sir, please let me ask the
18 question and then you can answer, then your counsel can
19 clarify whatever you'd like on redirect, please.

20 A Excuse me.

21 Q Thank you. So when you decided to build a
22 new bridge across the intracoastal waterway in 2017,
23 you did not take into consideration that BCBC had the

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1 obligation to increase the size of the bridge and the
2 capacity at no cost to the state if the vehicle usage
3 meets a certain level; is that right?

4 A When I decided to build a bridge, I did not
5 take into consideration BCBC's obligation to build any
6 additional lanes.

7 Q When you entered into negotiations in 2016
8 with BCBC, did you understand at that time that BCBC
9 had the obligation to sell the bridge to Orange Beach
10 at the Orange Beach option in 2033?

11 A I had knowledge there was an obligation to
12 sell, an option to buy on Orange Beach, but I didn't
13 know the terms.

14 Q Did you understand that, that option came
15 at a price?

16 A Well, I assumed it did, but I didn't know
17 what the price was.

18 Q Did you ever inquire what the price was?

19 A I did.

20 Q Does it refresh your recollection that the
21 option price for Orange Beach to buy the BEX bridge in
22 2033, was ten times the highest in the last three years
23 of revenue?

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1 A Repeat your question, please.

2 Q Does it refresh your recollection that the
3 option price that Orange Beach had to purchase the BEX
4 bridge in 2033, was ten times the highest of the last
5 three years of revenue?

6 A I thought it was earnings, but if you say
7 it's revenue, I won't argue with that.

8 Q Okay. That would be a substantial amount
9 of money, correct?

10 A I would think so.

11 Q Sure. Over a hundred million dollars,
12 correct?

13 A I don't know.

14 Q Assuming that it's ten million dollars
15 worth of revenue a year, ten times --

16 A According to the numbers you gave this
17 morning, you don't have ten times.

18 Q We're not there yet.

19 A No, I don't want to assume.

20 Q Did you testify earlier the volume is
21 increasing?

22 A The volume is increasing.

23 Q Okay. So we could agree that --

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1 A But I don't know what you're going to set
2 the toll at.

3 Q We can agree that it would be a big number?

4 A If you set the toll at a big number, it
5 would be smaller, you've proven that before.

6 Q You would agree with me --

7 A I doubt it.

8 Q -- that it would be a consideration to
9 BCBC, that it would receive for the exercise of that
10 option price, right?

11 A State your question again.

12 Q You would agree with me that the deal that
13 was struck between BCBC and Orange Beach was that BCBC
14 would get consideration for selling its bridge --

15 A If Orange Beach exercised the option, yes.

16 COURT REPORTER: I didn't get the end of
17 your question, I just wanted to let you know.

18 MR. HAAS: I think he said yes.

19 JUDGE REID: She didn't get the end of your
20 question.

21 MR. HAAS: Oh, I just said thank you.

22 JUDGE REID: Let's take a ten minute break.

23 (Whereupon, a brief recess was

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1 held in the proceedings.)

2 BY MR. HAAS:

3 Q Mr. Cooper, on your direct examination,
4 reference was made to an April, 2016, letter sent by
5 Mayor Kennon of Orange Beach. Do you recall those
6 questions?

7 A Yes.

8 Q And let's just be clear, the letter is
9 dated April 29th, 2016, did you receive a copy of that
10 letter in or around April 29th of 2016?

11 A Sir, I don't specifically recall, but I
12 suspect I did.

13 Q Did you discuss that letter with Mayor
14 Kennon before it was sent to BCBC or American Roads?

15 A No.

16 Q In the letter, which is Exhibit 6, if you
17 want to turn to it, I have it before you.

18 JUDGE REID: Number 6, Mr. Haas?

19 MR. HAAS: Yes.

20 A All right, sir.

21 BY MR. HAAS:

22 Q Director Cooper, I direct your attention to
23 the last sentence of the first paragraph and I quote

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1 for the record, it states, the Governor, John Cooper,
2 ALDOT director, Gulf Shores, and the Baldwin County
3 elected officials, have expressed support for a twin
4 span solution along side the current FBX bridge,
5 thereby eliminating the need to pursue the western
6 alternative. Do you see that?

7 A I do.

8 Q Did you have discussions with Mayor Kennon
9 before this letter was sent on whether or not adding
10 another span to the BEX bridge would eliminate the need
11 for a western alternative or new bridge across the
12 intracoastal waterway?

13 A I do not recall such discussions.

14 Q You may have had them, you just don't
15 recall?

16 A My recollection is that I got word from the
17 Governor, that he and Mayor Kennon had talked, but I
18 would not say to you that I did not talk with Mayor
19 Kennon, I may very well have.

20 Q Is it your understanding that the Governor
21 supported the position espoused by Mayor Kennon in this
22 letter?

23 A It was my understanding at the time that

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1 the Governor had agreed to try to find a way to work
2 with Mayor Kennon's desires.

3 Q And just so the record is absolutely clear,
4 when they're referring to a twin span solution, it's
5 referring to adding another span on the BEX bridge to
6 allow for additional lanes of traffic, correct?

7 A Well, I didn't write the letter, but I
8 would make that assumption.

9 Q Likewise, the representation of the
10 reference to western alternative is to the new bridge
11 that was being contemplated to be built, correct?

12 A I would make that assumption.

13 Q Okay. So based upon the position espoused
14 in this letter, so long as the conditions with respect
15 to the tolls being reduced and the other qualifications
16 that Mr. Kennon sets forth, you, the Governor, and the
17 Baldwin County elected officials, all were of the view
18 that there was no need for additional structural
19 capacity across the intracoastal waterway; is that
20 correct?

21 A I don't believe we agreed to that. Mayor
22 Kennon wrote the letter. I didn't see the letter
23 before he wrote it. I didn't approve it.

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1 Q So now you're saying that you were in
2 disagreement with the Governor?

3 A I am saying that the Governor had told me
4 he had discussed this with Mayor Kennon, and that he
5 wanted to try to reach an accommodation with him. I
6 don't believe I knew the specific terms at the time the
7 Governor spoke to me about it.

8 Q Is it your position that Mr. Kennon
9 misrepresented the Governor's position?

10 A It is not.

11 Q So it's your position that Mayor Kennon
12 accurately represented the Governor's position?

13 A Well, it says he says he's expressed
14 support for a twin span solution. I have to believe, I
15 don't think Mayor Kennon and his work with the Governor
16 expressed some degree of support. I was not at the
17 meeting.

18 Q When you received this letter, did you then
19 contact Mayor Kennon and say well, I don't agree that a
20 twin span solution is an appropriate alternative to the
21 western alternative bridge?

22 A I actually don't recall contacting Mayor
23 Kennon at all.

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1 Q So you didn't contact anyone and say I
2 disagree with the position espoused by Mayor Kennon in
3 the April 29, 2016 correspondence?

4 A I think all I did was arrange to pursue
5 discussions with the bridge company.

6 Q So thereafter, you then engaged in
7 discussions with BCBC, correct?

8 A I did.

9 Q In those discussions, you took the position
10 that neither a new bridge nor a new span was required,
11 so long as BCBC agreed to certain monetary terms that
12 you defined?

13 A No, that's not correct.

14 Q Let me say it differently. You took the
15 position with BCBC that neither a twin span nor a new
16 bridge was required if they were going to agree to the
17 terms in your draft agreement?

18 A No, I did not take that position.

19 Q You're saying your draft agreement did not
20 reflect --

21 A I am not saying I did not take that
22 position.

23 Q Let me ask the questions. Did your draft

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1 agreement that you sent on March 23rd, 2017, reflect
2 your view of what would be a reasonable agreement?

3 A It reflected a good part of my view, but as
4 I told you, the agreement was incomplete. And the
5 contemplated part of the agreement with respect to twin
6 spans or any span, was that a traffic study would be
7 provided showing what traffic could be cleared through
8 the existing span with amended tolling procedures and
9 with different striping on the bridge. That never got
10 done.

11 Q Walk through this piece by piece,
12 Mr. Cooper. April, 2016, Mayor Kennon sends the
13 letter, right?

14 A Fine.

15 Q Thereafter, you have discussions with BCBC
16 regarding whether or not a new bridge across the
17 intracoastal waterway is required, right?

18 A Yes.

19 Q On March 23rd, 2017, you give to BCBC a
20 draft agreement, correct?

21 A I don't argue with you on the date, I don't
22 remember it. My recollection is there was more than
23 one draft exchanged at more than one meeting.

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1 Q You do not dispute, do you, Mr. Cooper,
2 that you drafted and gave to BCBC the draft that is
3 included as Exhibit 7?

4 A I've not completely read Exhibit 7. I will
5 take your word that it's copied from what I gave them.
6 I did give them an agreement, I did prepare it. It was
7 a draft.

8 Q In this agreement or this draft agreement
9 it states, does it not, that ALDOT and other public
10 entities involved in the BEX bridge would commit that
11 they would not build any new bridge across the
12 intracoastal waterway within two miles of the Foley
13 Beach Express toll bridge?

14 A Depending on compliance with certain
15 conditions, yes.

16 Q And the conditions that are spelled out in
17 this agreement?

18 A No, the conditions never got spelled out
19 because we never got the traffic study back.

20 Q So it's your position that this draft
21 agreement that you sent over was incomplete because it
22 didn't have material terms?

23 A First off, I didn't send it, we need to say

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1 that again. I handed it across the table.

2 Q Is there a significance that I'm missing?

3 A Yes, sir, I think so, because there was
4 conversation going on about the draft agreement all the
5 time. There was conversation going on about the second
6 draft agreement, what had changed, and everybody in
7 those conversations knew the agreement was not
8 complete. It was an attempt to get an outline of terms
9 that ALDOT and the bridge company could agree to or own
10 in order to take those terms to the other four parties
11 and try to get a universal agreement.

12 Q Mr. Cooper, is it your position that when
13 you gave BCBC this draft agreement, you left out
14 material terms?

15 A It is my position that BCBC knew the
16 agreement was incomplete, and that was discussed in our
17 meetings. It's obviously incomplete.

18 Q Mr. Cooper, is it your position that you
19 left out material terms?

20 A It is my position that material terms were
21 missing from the agreement and had not been negotiated.

22 Q Can you produce, Mr. Cooper, another
23 version of the document that has the material terms

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1 that you say are missing from this one?

2 A I don't know. I may can. I don't know
3 what I've got.

4 Q You haven't seen any such document in this
5 courtroom, have you?

6 A I have not asked for the various people at
7 ALDOT who worked on the agreements. The attorney who
8 primarily worked on the agreement has retired and I
9 don't know how to go about finding her files and I have
10 not done that.

11 Q So you're resting your case based upon the
12 documents that are before you, correct?

13 A I just said I couldn't find any other
14 drafts of the agreement before today.

15 Q Now, you mentioned earlier about conducting
16 another study. Is that a term that was in this
17 agreement?

18 A No, it never got in the agreement.

19 Q So that is a material term that you say you
20 left out of the agreement, is that your testimony?

21 A I didn't say I left it out. I said it did
22 not get in, it was discussed.

23 Q So it's a material term that was discussed,

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1 but wasn't put into the agreement, that's your
2 testimony?

3 A It wasn't put into the agreement, but it
4 was a material term, it was discussed. And the bridge
5 company proceeded to go and tell people they were going
6 to do those things.

7 Q Mr. Cooper, why would you provide a draft
8 agreement in connection with the settlement
9 negotiations and leave out a material term that was
10 discussed?

11 MR. HAGMAIER: I'm going to object.
12 Settlement of what? There's no pending litigation at
13 this time, there's no settlement. This was, Director
14 Cooper is being clear, this was a jumping off point to
15 discuss, and then they would go to the other parties.

16 I mean, they keep referring to this as some
17 sort of finalized agreement, when it clearly says what
18 it clearly says. And he's testified ad nauseam at what
19 the purpose of the draft agreement was for. Saying
20 it's a settlement is incorrect.

21 MR. HAAS: Your Honor, the witness has
22 testified that as early as April, 2016, he engaged in
23 discussions with BCBC, so that's almost a year of

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1 discussions in order to reach a resolution, a
2 conclusion of how to reach an accord as to whether to
3 build a new bridge or not, and that's exactly what's
4 encapsulated by this agreement. So not only is the
5 terminology appropriate, but I think that the line of
6 questioning is absolutely appropriate.

7 JUDGE REID: Overrule the objection.

8 BY MR. HAAS:

9 Q So let's stick with the terms that you
10 actually put into the agreement, Mr. Cooper. So let's
11 look at it. So the very first thing you say is in
12 section one, American Roads agrees to reduce tolls
13 charged for usage of the Foley Beach Express toll
14 bridge to two dollars for all users, provided that any
15 lesser rate currently offered to any user or class of
16 users, may be maintained for such periods American
17 Roads deems appropriate?

18 A Where are you, sir?

19 Q I'm sorry. It's Exhibit 6, what we've been
20 referencing.

21 MR. BRADY: Exhibit 7.

22 MR. HAAS: I'm sorry, Exhibit 7. Thank
23 you. My mistake.

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1 BY MR. HAAS:

2 Q Exhibit 7, we are at section one of the
3 agreement, it's on page four.

4 A I asked because there's a section one on
5 page one.

6 Q Yes, so Exhibit 7, page four, section one.
7 With me?

8 A I'm with you.

9 Q The first provision that you put into this
10 agreement is for a toll rate of two dollars, correct?

11 A Yes.

12 Q And that was a dispute between BCBC and you
13 as to whether the toll should be two dollars or
14 something else, correct?

15 A Well, I think that's correct, but I also
16 need to point out that it does go ahead and say that
17 provided that any lesser rate currently offered to any
18 user or class of users may be maintained.

19 Q Yes, I read that into the record. Thank
20 you. But the rate of two dollars, whether it should be
21 higher or lower, was a matter of dispute between you
22 and BCBC, correct?

23 A Yes.

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1 Q At that point in time, BCBC had agreed to
2 reduce its rate by thirty-five percent, or to two
3 dollars and twenty-five cents, correct?

4 A I think that was another one of those oral
5 agreements.

6 Q Okay. So you're looking at the difference
7 between two dollars and twenty-five cents and two
8 dollars, correct?

9 I think you have to answer yes. You have
10 to answer the question.

11 A I was looking at much more than that.

12 Q I know, but we're just focusing on that one
13 point.

14 A I was looking at that one point in
15 conjunction with several other points.

16 Q With respect to just sticking on that one
17 point, Mr. Cooper, you would agree with me that BCBC
18 was at two twenty-five, and you were at two dollars,
19 correct?

20 A Well, no, that's actually not correct,
21 because there's no such thing as focusing on one point
22 in an agreement being negotiated with multiple points.

23 Q I'll give you the opportunity and your

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1 counsel will have the opportunity to raise other
2 issues, I just want to focus on just the toll rate that
3 was to be charged. At this point in time, there was a
4 difference between two twenty-five and two dollars with
5 respect to what would be the appropriate toll --

6 A I think that's correct.

7 Q Thank you. Now, just to be clear, and I
8 think we went over it before, but at this time, you,
9 ALDOT, had not done any studies to ascertain whether or
10 not the difference between two dollars and two dollars
11 and twenty-five cents as a toll would have any impact
12 on traffic congestion on the Foley Beach Express,
13 Highway 59, or any other road, correct?

14 A Would you say that again?

15 Q Sure. As of this time, and going forward,
16 ALDOT, and specifically, you, had not done any study to
17 ascertain whether the difference in the toll rate
18 between two twenty-five and two dollars was the cause
19 of any congestion or traffic issues on the Foley Beach
20 Express, on Highway 59, or any other road?

21 A That's correct.

22 Q Now, working through the agreement, if you
23 turn to page five, paragraph four, and it states,

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1 American Roads obligation to build a twin span bridge
2 providing four lanes of traffic to use the toll bridge
3 when annual traffic volume exceeds six million, with
4 the summer over -- volume over two million, as set
5 forth in section two point o-eight, of the bridge
6 agreement dated March 29th, 2004, is extended by blank
7 years from the triggering events described in section
8 two point o-eight in consideration of American Roads
9 reduction and equalization of toll rates as provided in
10 this agreement. Do you see that?

11 A I see it.

12 Q So effectively, this agreement that you
13 drafted contemplated that there would not be any twin
14 span built on the BEX bridge at this juncture unless
15 volumes exceeded this six million annual and the two
16 million summer volumes that were set forth in the
17 original Orange Beach bridge agreement, correct?

18 A I believe that's what the agreement with
19 Orange Beach says.

20 Q Okay. Thank you. Moving on to paragraph
21 five. Paragraph five is where ALDOT provides a
22 covenant where ALDOT commits that it, Orange Beach,
23 Gulf Shores and Baldwin County, will not build a new

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1 bridge across the intracoastal waterway, correct?

2 Correct?

3 A Restate your question. I'm sorry, I didn't
4 hear you.

5 MR. HAAS: Will you read that back?

6 (Question read back by reporter).

7 A It was one of the terms that we would have
8 provided such a covenant, if an agreement had been
9 concluded.

10 BY MR. HAAS:

11 Q So there is nothing else in this draft
12 agreement conveyed on March 23rd, 2017, that
13 contemplates increasing any structural capacity over
14 the intracoastal waterway, is there?

15 A Would you repeat that?

16 Q There is nothing in this draft agreement
17 conveyed to BCBC from you on March 23rd, 2017, that
18 contemplates any increase in structural capacity over
19 the intracoastal waterway, correct?

20 A Yes, that is correct. It was hoped we
21 wouldn't have to do that for some period of time.

22 Q Thank you. So let's look at the
23 significant material term of this agreement, which is

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1 set forth in paragraph seven. In paragraph seven,
2 Mr. Cooper, you propose a change to the Orange Beach
3 option, correct?

4 A I did.

5 Q And rather than having a purchase price at
6 ten times the last three years of revenue leading up to
7 2033, you propose that BCBC give back the bridge to
8 Orange Beach at its depreciated value in 2043, correct?

9 A That's right.

10 Q You understood full well, the depreciated
11 value at that time would have been zero, right?

12 A No, I didn't.

13 Q You highly expected that?

14 A No, I didn't.

15 Q Under any standard of accounting practices,
16 Mr. Cooper, the depreciated value of the bridge in
17 2043, would be zero?

18 A No, sir, not if the additional spans had
19 been built.

20 Q Regardless?

21 A No, no, sir. No, you would not depreciate
22 a bridge over less than twenty-five years.

23 Q So your point is the only way that there

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1 could have been value with your modified option price,
2 was if the new spans were added and whatever
3 depreciated residual value of the spans would be the
4 option price?

5 A Sir, I'm trying to anticipate. This is
6 actually a clause that was favorable to the bridge
7 company in my eyes, because under the agreements we
8 were contemplating, the bridge company may have been
9 required to build the original spans late in the
10 twenty-five year period contemplated by the agreement.
11 Had they done so and had they spent their money to do
12 that, I thought at the end of the agreement, they would
13 be entitled to recapture the depreciated value of that
14 new money.

15 Q And if they added value to the bridge by
16 increasing the revenue through additional spans, they
17 would have got the benefit of it under the old option
18 price, which was ten times --

19 A I don't know --

20 JUDGE REID: Let him finish.

21 BY MR. HAAS:

22 Q Which was ten times the highest of the last
23 three years revenue, correct?

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1 A That's not what was contemplated in this
2 agreement, that's what I was trying to explain to you.
3 You are correct about the old agreement.

4 Q And your new agreement changed the option
5 price that BCBC was to have, was to realize?

6 A It would have changed it if it had been
7 finalized.

8 Q Thank you. Now, I just want to be
9 absolutely clear about that term. Changing the option
10 price at which Orange Beach could purchase the BEX
11 bridge, had nothing to do with traffic congestion
12 issues, correct?

13 A Correct.

14 Q I want to switch gears slightly here. You
15 are aware, Director Cooper, that the Federal Highway
16 Administration does a review of bridges in states
17 throughout the United States every year, right?

18 A Yes, I am generally aware of that. I don't
19 know how it is done, but I know it is done.

20 Q And you're aware that based upon the
21 review, they've identified over twelve hundred bridges
22 in the State of Alabama that are structurally
23 deficient?

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1 MR. HAGMAIER: Your Honor, at this point in
2 time I would like to object again, and to remind every
3 one that we're at a merit hearing on one tract. The
4 law is clear that it -- if you are going to state a
5 decision was not made on a rational basis, was
6 arbitrary and capricious, but to try to argue to the
7 Court and tell ALDOT what -- how their money should --
8 how the money should be spent, how state money should
9 be spent and on what projects is not subject matter for
10 this, and has no relevancy whatsoever to the merit
11 hearing at issue.

12 MR. HAAS: Your Honor, we couldn't agree
13 more -- disagree more with that proposition. You know,
14 the fundamental question of whether something is in the
15 public interest of this state is whether the funds are
16 being utilized for an appropriate purpose. And
17 secondarily and relatedly, whether or not the decision
18 to spend money is arbitrary and capricious when it does
19 not take into account the alternative and priority
20 needs of this state is at the heart of this case.

21 In two -- as we set forth initially here,
22 we have two questionable issues that must overcome in
23 this merits hearing. Is this in the public interest

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1 and is it arbitrary and capricious? It's hard to
2 imagine a factor more important and more significant to
3 both those inquiries as to whether or not there were
4 other means to spend the funds, the scarce funds, which
5 we've already admitted. We have scarce funds and we
6 have a funding gap on the most important projects,
7 those bridges that are structurally deficient,
8 functionally obsolete, and that are falling down,
9 rather than a brand new bridge that is a stone's throw
10 away from the existing bridge. So this is highly
11 relevant.

12 MR. HAGMAIER: It's a fundamental
13 misunderstanding of eminent domain law in Alabama.
14 When they're talking about -- I mean, the fact that
15 they're getting into the bridge at all, the toll
16 bridge, when it doesn't touch the property at issue
17 here is one thing, you know, we understand that they're
18 trying to get into this argument. But what I'm
19 talking, the law is clear, Your Honor, and I've cited
20 to it in my response to their objections, the law is
21 clear that it is not for the courts to go behind the
22 decision unless there's showing that it's arbitrary and
23 capricious.

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1 The fact that there may be other funding
2 issues is not the grounds for arbitrary and
3 capriciousness, it's is there a rational decision for
4 this -- for this choice of route for this project,
5 that's all it is. The public interest, finances don't
6 get involved in this at all.

7 MR. HAAS: Your Honor, two fold, he made my
8 argument, the question is whether it's a rational
9 decision, and at the very least, it's arbitrary and
10 capricious. So even under the argument that's been
11 espoused, that is he's fundamentally made my point.

12 But more to the point, paragraph two, where
13 we started the day of the petition, ALDOT has conceded
14 right up front, that there's a constitutional
15 requirement that this taking be in the public interest.
16 The constitution protects the citizen of the state by
17 mandating that any taking be for the public interest
18 and not subject to an arbitrary and capricious
19 decision-making process. This point goes to both
20 parties.

21 JUDGE REID: I overrule the objection.

22 BY MR. HAAS:

23 Q So, Mr. Cooper, and I do apologize, I don't

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1 mean to say Mr., I mean to say Director, so if I do,
2 it's no disrespect, I apologize.

3 Director Cooper, you would agree with me
4 that there are over twelve hundred bridges in the State
5 of Alabama that have been identified by the Federal
6 Highway Administration as structurally deficient,
7 correct?

8 A I do not know the number. I would agree
9 with you that there are bridges that are structurally
10 deficient in the State of Alabama.

11 Q And there are a material number of bridges
12 in this state that are structurally deficient and
13 functionally obsolete, that are not currently being
14 repaired, replaced or fixed, correct?

15 A There are many of those.

16 Q And just so that we have it in the record,
17 I would direct your attention to Exhibit 13. This is
18 the Federal Highway Administration web page, where by
19 the way, the information that is in the ALDOT strategic
20 long-term plan is derived.

21 If you work through the iterate of web
22 pages, you get to a page that's titled deficient
23 bridges by highway system, 2017. And for Alabama, it

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1 lists twelve hundred bridges as SD. Do you see that?

2 A I do.

3 Q And if you go back two pages, it defines SD
4 as structurally deficient, which means it has a rating
5 out of ten of four or less, correct?

6 A What page are you on, sir?

7 Q So if you go back, where you see that there
8 are twelve hundred deficient bridges identified as SD,
9 you'd just go back one page, two page, and there's a
10 page entitled tables of frequently requested NBI
11 information, and they have the definition of
12 structurally deficient. Are you with me?

13 A Give me a minute. Yes.

14 Q And that definition basically refers to
15 bridges that are rated four or worse on the scale of
16 one to ten, correct?

17 I was waiting for an answer.

18 A Okay. I'm sorry, I thought you just made a
19 statement. I didn't know you asked me a question.

20 MR. HAAS: Could you read it back?

21 (Question read back by reporter.)

22 A That's what it says here.

23 BY MR. HAAS:

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1 Q Director Cooper, do you recall very
2 recently attending an April 10th, 2018, pre
3 construction conference at the Oak Hollow Farm in Point
4 Clear, Alabama?

5 A I don't believe I did.

6 Q I'm sorry, excuse me. Do you recall on
7 April 10th, 2017, attending a pre construction
8 conference at the Oak Hollow Farm in Point Clear,
9 Alabama?

10 A Sir, I'm not saying I didn't, but I do not
11 recall it.

12 Q Please turn with me to tab thirty-one. If
13 you'll turn with me to the page that's titled agenda,
14 you'll note that the Tuesday, April 11, 2017, it lists
15 you, Mr. John Cooper, Director John Cooper as
16 attending. Do you see that?

17 A Yes.

18 Q Does that refresh your recollection that
19 you were at that event?

20 A No, sir, I simply don't recall being at the
21 event. I may have been. It would not be unheard of
22 that I would be listed as speaking and not be able to
23 attend. There have been occasions when that occurred,

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1 but I'm not -- I'm not arguing I was not there, I just
2 do not recall.

3 Q Please turn with me to tab thirty-seven.
4 Again, this comes from the Alabama Department of
5 Transportation web site. And if you look through the
6 series of link pages, you'll get to a presentation that
7 says bridge replacement priorities. Let me know when
8 you're there.

9 A The page that says 2017 presentation?

10 Q The bridge replacement priorities 2017 pre
11 construction conference.

12 A Okay.

13 Q Are you familiar with this presentation?

14 A No, I'm not.

15 Q Is this the sort of presentation that's
16 given on annual basis by ALDOT?

17 A It may very well be, I do not know.

18 Q If you turn with me to the second page of
19 the presentation, it gives some clarity as to the 2017,
20 the stage of the bridges in Alabama identified
21 structurally deficient, one hundred, and functionally
22 obsolete, one thousand seven. Do you see that?

23 A Yes.

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1 Q Is that consistent with your recollection
2 at the time?

3 A I wasn't there.

4 Q But is that consistent with your
5 understanding of the state of affairs of Alabama
6 bridges?

7 A Sir, that's just not a number I walk around
8 with a concept of. I know it's a lot of bridges, I'm
9 not arguing with the number.

10 Q If you turn to page -- to the slide
11 entitled average bridge age in Alabama, it states in
12 the second bullet point, aging bridge inventory is a
13 very significant challenge facing Alabama. Do you
14 dispute that?

15 A Tell me the page again.

16 Q Page entitled average bridge age in
17 Alabama, the second bullet states aging bridge
18 inventory is a very significant challenge facing
19 Alabama?

20 A I got average bridge age in Alabama.

21 Q And second --

22 A The second bullet point is that we expect
23 each bridge to last a hundred years.

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1 Q I'm sorry, turn the page to the page before
2 that, it has the same title as the first page bridge
3 age in Alabama.

4 A Okay.

5 Q The second bullet states, aging bridge
6 inventory is a very significant challenge facing
7 Alabama. Do you see that?

8 A Yes.

9 Q Do you agree with that proposition?

10 A I do.

11 Q If you turn to bridge priorities, do you
12 see for fiscal year 2017?

13 A Was that further back?

14 Q Yes, two or three more pages back. Bridge
15 priorities. You with me?

16 A Yes.

17 Q It states for fiscal year 2017, four
18 bridges to date, seven bridges scheduled. You see
19 that?

20 A Yes.

21 Q That was the work schedule for 2017; is
22 that correct?

23 A I would assume for the 2018 fiscal year.

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1 Q Thank you. So consistent with your earlier
2 testimony, there are a material number of bridges in
3 the State of Alabama, that are both structurally
4 deficient and functionally obsolete that are not
5 currently being rehabilitated, fixed or any other way
6 addressed; is that correct?

7 A It is.

8 Q Now, I believe you testified earlier on
9 direct, that you don't need the approval of any other
10 organization in order to use state funds for
11 transportation needs, is that your testimony?

12 A I don't know if I testified to that. I
13 think Mr. Calametti may have testified to that this
14 morning. I don't recall that I did.

15 Q Well, let me ask you squarely, is it your
16 position that you can use state funds any which way you
17 want without getting any approval from any other
18 organization?

19 A No, I clearly have to have task approval
20 from the Governor's office.

21 Q Beside from the Governor -- aside from the
22 Governor's office, do you need approval from any other
23 agency?

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1 A To spend state funds on a bridge, no, sir,
2 I do not.

3 Q What's the basis for that?

4 A The basis for that, as far as I know, is
5 just how it is.

6 Q And do you have any legal cite for that
7 proposition or any cite whatsoever?

8 A No, I don't have a legal cite, it's what
9 I've been told.

10 Q Are you aware that there's an agreement
11 between ALDOT and the federal government that states
12 that if a TPO, an MPO, imposes more stringent
13 requirements than ALDOT, that ALDOT must comply with
14 those more stringent requirements?

15 A I think that would be applicable to federal
16 money, but not state money.

17 Q Regardless of whether it's federal money,
18 are you aware that's the case?

19 A That's not the way I understand it.

20 Q Are you aware that's the very reason why
21 the Florida Alabama TPO has undertaken a review of this
22 bridge?

23 A I believe they undertook a review because

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1 someone submitted it, but I do not believe they have
2 review authority over a state funded bridge.

3 Q But sitting here today, you can't state the
4 basis for your position?

5 A No, that's just what I've been told.

6 Q Did you clear with the Governor the -- let
7 me withdraw that question.

8 Did you obtain from the Governor, the
9 approval to build the current contemplated bridge
10 across the intracoastal waterway?

11 A I presented that in a plan, which was
12 accepted.

13 Q When was that?

14 A Sometime last year.

15 Q Sometime?

16 A Sometime last year, calendar year.

17 Q Have you had discussions with the
18 Governor's office since then?

19 A I have ongoing discussions with the
20 Governor's office. I think the last conversation on
21 the project was with the chief of staff last week.

22 Q Did you discuss this project with the chief
23 of staff?

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1 A I did.

2 Q Excuse me?

3 A I did.

4 Q Did he approve it?

5 A He just told me to continue on.

6 Q So it's your testimony in Court today, that
7 the Governor's chief of staff is approving this bridge
8 project?

9 A It's my testimony in Court today that I
10 talked with him about the project last week and he told
11 me to continue.

12 Q Okay.

13 MR. HAAS: Your Honor, just five minutes to
14 see if we can wrap it up.

15 JUDGE REID: Okay. Let's take a five
16 minute break.

17 (Whereupon, there was a brief recess
18 held in the proceedings).

19 JUDGE REID: Mr. Haas, you may proceed.

20 MR. HAAS: Your Honor, just one more
21 precise issue.

22 BY MR. HAAS:

23 Q Turn with me, would you, Director Cooper,

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1 to tab twenty-two. It's the letter from Jim Ziegler
2 state auditor. You and --

3 A Hold on a minute. It's much easier to turn
4 the other way. What number did you say?

5 Q Twenty-two. Director Cooper, you received
6 this letter in or around April 17, 2018, from the state
7 auditor, Jim Ziegler?

8 A I did.

9 Q The very first request is for copies of any
10 and all studies that demonstrated the need for a bridge
11 over the intracoastal waterway. Do you see that?

12 A I do.

13 Q Did you provide documents to Mr. Ziegler in
14 response to this request?

15 A No.

16 MR. HAAS: No further questions at this
17 time.

18 JUDGE REID: All right.

19 MR. HAAS: Just before I leave my cross,
20 just in case I don't have a re cross, we move to admit
21 Exhibit 6, 7 --

22 JUDGE REID: What numbers?

23 MR. HAAS: 6, 7, 13, 22, 28, 31 and 37, all

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1 which were referenced in my examination.

2 JUDGE REID: Okay. So admitted.

3 MR. HAGMAIER: Your Honor, when it comes to
4 those exhibits, could I just have kind of a blanket
5 objection as to the relevancy of the given subject
6 matter at the merit hearing.

7 JUDGE REID: Okay.

8 RE-DIRECT EXAMINATION

9 BY MR. HAGMAIER:

10 Q Director Cooper, I want to ask you a couple
11 of quick questions. First of all, we're working
12 backwards from what was last discussed regarding the
13 federal studies on obsolescence of bridges and the
14 condition of the bridges, you've mentioned that you
15 reviewed data, does that tell you how much traffic goes
16 over some of those bridges?

17 A No, sir.

18 Q Are you aware if they are ranked or judged
19 according to the amount of traffic that goes over those
20 bridges?

21 A I don't think so.

22 Q Okay. Do you know if the Highway 59 bridge
23 is listed in any one of those categories as being

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1 obsolete or functionally deficient?

2 A I do not believe so.

3 Q Okay. Would it be fair to say or would it
4 be surprising if the Highway 59 bridge was shown to
5 carry more traffic than some of those other bridges?

6 A You can be assured it carries more traffic
7 than those bridges.

8 Q What is your understanding of the condition
9 of some of those bridges and the plan for ALDOT, or the
10 state or the county, or anybody you've talked to,
11 regarding replacement of some of those other bridges?

12 A Well, the vast majority of the bridges are
13 county and local bridges, municipality or county
14 bridges, there's an ongoing effort to replace some of
15 the bridges. We are in the process of trying to
16 conclude what was called the ATRIP program in Alabama.
17 Alabama Transportation and Rehabilitation and
18 Improvement Program, where a billion dollars of state
19 highway money was given to counties and cities for
20 bridge and other highway projects.

21 Several hundred bridges have been reworked
22 and will be reworked under that program. During the
23 administration of that program, we learned that many of

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1 the substandard bridges carry very little traffic, and
2 as a result of that, we had to devise a procedure where
3 an individual county or city could justify to the ATRIP
4 committee that awarded grants under that program, we
5 were requiring bridges that carried school buses to be
6 fixed before we let you spend money on paving programs.

7 There was a process where a county could
8 request an exemption from that rule due to very low
9 traffic on bridges, many of the bridges had traffic
10 less than a hundred, many less than twenty vehicles a
11 day. Some, not a lot, but a few, serve only one or two
12 homes with other ways in and out. In some cases, we
13 received accompanying letters from boards of education
14 that while the bridge did block a bus, it caused the
15 bus to go a half mile out of the way or maybe a mile,
16 and the board agreed with the county commission that
17 the bridge was not worth replacing for that purpose,
18 compared its cost compared to what cost to go around
19 it.

20 So it's a -- it's a multi headed subject,
21 you have bridges that carry anywhere from a hundred and
22 sixty thousand down to ten or fifteen vehicles a day in
23 the state.

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1 Q And you've already mentioned when it comes
2 to -- this is I believe Exhibit 5, I could be wrong,
3 I'll check, but the assessment of transportation needs
4 in Baldwin County. Now, this ranks the different
5 projects, and Highway 59 or the new bridge or getting
6 traffic off of 59, is one of the priorities, correct?

7 A It was.

8 Q Was?

9 A It is.

10 Q All right. Get back to some of the
11 discussions about that draft agreement, just to be
12 clear, that agreement was never entered into?

13 A No.

14 Q And in fact, ALDOT doesn't have any
15 agreements with the Baldwin County Bridge Company or
16 American Roads regarding the Foley Beach Express
17 bridge; is that correct?

18 A Not to my knowledge.

19 Q ALDOT is not a party to any of the
20 agreements that were referenced regarding obligations
21 or rights or options to build additional spans or
22 additional lanes over the Foley Beach Express?

23 A No.

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1 Q Have you seen anything that would lead you
2 to believe that any of the triggers would be met
3 regarding -- in those agreements that you looked at or
4 there was testimony or questions about, that any of
5 those triggers would be met, specifically the six
6 million a year over the Foley Beach Express toll bridge
7 or the two million during the summer, have you seen
8 anything that would show you that those numbers are
9 close to being met?

10 A I have no knowledge of the months in the
11 summer. The last knowledge I have of bridge traffic is
12 probably a couple of years old, and it was around three
13 million seven.

14 Q And that's over the Foley Beach Express?

15 A Yes.

16 Q Okay. Now, do you know in that same time
17 frame, do you have any knowledge as to what the bridge
18 traffic over the Highway 59 bridge was when the Beach
19 Express was experiencing three million plus, what the
20 Highway 59 bridge was experiencing?

21 A Well, I don't -- I don't know the annual
22 number. If I remember correctly, the daily total was
23 reported at around forty-five thousand.

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1 Q Okay. And that's significantly more than
2 what's over the Foley Beach Express at this time?

3 A Yes.

4 Q And there's been apparently some argument
5 that the third bridge is not needed because there's
6 already capacity there to handle the traffic, the
7 totals that are being shown driving down into Orange
8 Beach and Gulf Shores, and my question to you is if a
9 road -- if a bridge has capacity to handle more
10 traffic, but more traffic doesn't travel over that
11 bridge, does that help us in any way? Does that help
12 ALDOT with the traffic problem?

13 A Not that I can see.

14 Q Okay. So I mean, just to get down to it,
15 if a bridge isn't used to its fullest extent, it
16 doesn't help us with the traffic problem, does it?

17 A That's been a significant part of the
18 issue, that's correct.

19 Q There was some discussion and apparently
20 it's a significant point in the minds of the Defendant,
21 that the difference between the two dollar toll and the
22 two dollar and twenty-five toll is somehow significant.

23 What other issues did they not agree to

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1 that you found important, whether they be in the draft
2 agreement or the discussions afterwards?

3 A The treatment of the bridge at the end was
4 the one they focused on the most. The transfer of the
5 bridge at book value.

6 Q What about a cap on or the ability to raise
7 at will the tolls at any time?

8 A That was not a big issue in discussion, I
9 assumed because under the agreement that was
10 contemplated, ALDOT would have guaranteed that revenue
11 would grow at least at the CPI.

12 Q Okay. Again, did you ever get anything in
13 writing in response to the draft agreement, did you
14 ever get a counter offer in writing?

15 A No.

16 Q There's been multiple statements and
17 questions about studies. In light of the actual
18 numbers and traffic counts at ALDOT and that you have
19 seen, do you feel the need to have additional studies
20 in order to justify the construction of a third bridge
21 over the intracoastal?

22 A I do not.

23 MR. HAGMAIER: No further questions.

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1 RE-CROSS EXAMINATION

2 BY MR. HAAS:

3 Q One question for you, Director Cooper,
4 going to that last one and the poster boards that we
5 pointed to throughout the day. Just to be absolutely
6 clear, there are no formal studies that show the new
7 bridge will reduce traffic on Highway 59 or the Highway
8 59 bridge, right?

9 A Sir, I answered that for you before, I'll
10 answer it again, there are no formal studies that I
11 have.

12 Q Thank you.

13 A Mr. Skipper, he may have studies.

14 MR. HAAS: No further questions. Thank
15 you.

16 JUDGE REID: You may step down, sir.

17 MR. HAGMAIER: Your Honor, the state has no
18 further witnesses.

19 JUDGE REID: Mr. Haas, do you have any
20 additional witnesses?

21 MR. HAAS: Your Honor, yes, we do have
22 additional witnesses. Before we make our -- present
23 our witnesses, we would like to make a motion for

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1 judgment as a matter of law on the grounds that the
2 state and ALDOT have not met the burden of proof with
3 respect to demonstrating a public interest in the new
4 bridge, and that the facts that have been elicited in
5 the course of the testimony and the documents
6 demonstrate that the decision to go forward with a new
7 bridge is entirely arbitrary and capricious.

8 So on those grounds, we respectfully
9 request that the case be dismissed.

10 JUDGE REID: The Court denies the motion.

11 MR. BRADY: Your Honor, logistically, we do
12 have two witnesses we intend to call. One of them is
13 Mayor Kennon, who we have under subpoena. He is going
14 to be here first thing in the morning.

15 JUDGE REID: All right.

16 MR. BRADY: And if I recall from Your
17 Honor's e-mail, you need to leave at noon tomorrow?

18 JUDGE REID: Correct.

19 MR. BRADY: We will have Mayor Kennon and
20 we have one witness, Neil Belitsky, which we believe we
21 will more than likely -- we will finish by noon.

22 JUDGE REID: Will he testify in the
23 morning?

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1 MR. BRADY: He will testify in the morning.
2 So we will have Mayor Kennon and Neil Belitsky, and
3 that will be it.

4 JUDGE REID: Okay. All right. And I
5 regret to inform you all that I cannot get this
6 courtroom again tomorrow, we're going to have to
7 sandwich into the Probate Court, it's small, but it
8 will hold all of us.

9 Jason, if you would before we leave today,
10 would you take them down and the court reporter, and
11 show them where we're going to be and see if y'all can
12 get set up.

13 MR. HAGMAIER: Turn down the air
14 conditioner.

15 (Whereupon, there was an
16 off-the-record discussion.)

17 (Deposition concluded at 3:26 p.m.)

18 FURTHER DEPONENT SAITH NOT

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C E R T I F I C A T E

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, LAURA R. FANT, do hereby certify
that the witness named above in the foregoing
deposition was present at the time and place therein
specified; that the said proceeding was taken before me
at the said time and place, and was taken down
stenographically by me;

That the said proceeding was
thereafter under my direction transcribed into
computer-aided transcription, and that the foregoing
transcript constitutes a full, true, and correct report
of the proceedings which then and there took place;
that I am a disinterested person to the said action.

/s/ Laura R. Fant

LAURA R. FANT, CCR
CCR# 308, Expires 9/30/2018
Commissioner for the State of Alabama
My Commission Expires 10-20-2020

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