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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2007

1051644

Henderson Excavating Company, Inc.

v.

Alabama Department of Transportation

Appeal from Montgomery Circuit Court
(CV-05-2116)

SMITH, Justice.

The judgment is affirmed upon the authority of Ex parte Alabama Department of Transportation, [Ms. 1051661, August 10, 2007] ___ So. 2d ___ (Ala. 2007), and Ex parte Alabama

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Department of Transportation, [Ms. 1060078, July 20, 2007] ___

So. 2d ___ (Ala. 2007).

AFFIRMED.

Cobb, C.J., and See, Lyons, Woodall, Stuart, Bolin,
Parker, and Murdock, JJ., concur.