

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2021-00051

IN RE: 31 OAKS RPD

PROCEEDINGS:

PUBLIC HEARING

BEFORE:

Donna Marie Collins
Chief Hearing Examiner

DATE:

May 18, 2023

TIME:

9:00 a.m. to 11:40 a.m.

LOCATION:

Lee County Hearing Examiner
1500 Monroe Street, Second Floor
Fort Myers, FL 33901

REPORTER:

Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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13 Ivory Matthews, Neal Communities
Dan Ciesielski, Neal Communities
14 Brandon Frey, P.E., JR Evans Engineering
Yury Bykau, P.E., TR Transportation Consultants
15 Bethany Brosious, Passarella & Associates

I N D E X

	PAGE
Introduction by Mr. Hartsell.....	8
APPLICANT WITNESSES:	
Pat Neal.....	11
Jeremy Frantz.....	12
Yury Bykau.....	20
Bethany Brosious.....	24
Brandon Frey.....	30
Jeremy Frantz.....	41
STAFF WITNESSES:	
Elizabeth Workman.....	57
PUBLIC COMMENT:	
Bob DeBrock..... 75	Terry Short..... 83
Rose Garcia..... 76	An Jalique Ottley.... 86
James Simpson..... 80	Fred Fredrickson.... 92
REBUTTAL WITNESSES:	
Steve Hartsell.....	93
Yury Bykau.....	95
Steve Hartsell.....	96
Brandon Frey.....	100
Steve Hartsell.....	101
Brandon Frey.....	102
Yury Bykau.....	104
Certificate of Reporter.....	110

E X H I B I T S

Applicant Exhibit 1, Addendum, page 9
Applicant Exhibit 2, not identified on the record
Applicant Exhibit 3, PowerPoint, page 12
Applicant Exhibit 4, small master concept plan, page 50
Staff Exhibit 1, Staff Report, page 57
Staff Exhibit 2, affidavit of publication of notice, page 8
Staff Exhibit 3, PowerPoint, page 57
Ottley Composite Exhibit 1, page 92

P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning. My name is Donna Marie Collins. The date is May 18th, 2023. Today's hearing is to consider an application to rezone 88 acres from the agricultural and residential planned development zoning district to residential planned development. The property is located on the east side of State Road 31 in east Lee County. The case number is DCI2021-00051, 31 Oaks RPD. The details of this request will be explained during the parties' presentation.

My task, as the Hearing Examiner, is to accept testimony and evidence from the parties, prepare a recommendation to the Board of County Commissioners, who are the final decision-makers on this request. My job is to prepare a recommendation that evaluates the request based on the Land Development regulations in Lee County, and this includes the Lee County Comprehensive Land Use Plan and the Land Development Code based on the testimony and evidence I hear during the hearing.

Because this is a quasi-judicial hearing, all testimony and evidence that I accept on the record must be provided under oath. I will administer the oath to everyone in the room that intends to speak at one time,

1 at the conclusion of my remarks.

2 I will accept testimony and evidence for
3 approximately two hours, after which time I will take a
4 short ten-minute break. We will then resume and
5 continue for another hour and a half to two hours and
6 then break for lunch if necessary, and then we will
7 continue in that same pattern until the hearing
8 concludes, or 4:30, at which time if we need to
9 identify a second hearing date, we'll do so at that
10 time.

11 The order of the proceedings will be as follows:

12 First, the Applicant representing the property
13 owner will present their case. They may have one or
14 more witnesses, some may be experts. They will testify
15 on a variety of matters, including the environment,
16 transportation, compatibility, and things of that
17 nature. That will be followed by a presentation by
18 Staff. That is an urban planner that reviewed the
19 application and prepared the Staff Report in this case.
20 The Staff has recommended approval in this case with
21 conditions.

22 Following the Staff's presentation, I will open up
23 the floor to members of the public. I urge anyone that
24 is here that wishes to speak to please fill out one of
25 the public participation forms that are over there by

1 the door. I will take this stack, and I will call
2 names one at a time. When I call your name, I ask that
3 you please come to the podium, state your name. If you
4 wish, you can indicate where you live in relationship
5 to the project. We'll try to put up an aerial. And at
6 that time I would like for you to share your concerns
7 or support for the project.

8 I will say that oftentimes in these hearings I
9 find that people are not completely opposed or
10 completely in favor of a project. They have specific
11 concerns. If you share those concerns with us, you
12 allow us an opportunity to perhaps address those
13 concerns through a more detailed explanation, or you
14 give us an opportunity to perhaps fashion a condition
15 to address those concerns.

16 Members of the public, there is no limitation on
17 the amount of time you can speak. You may speak as
18 long as you like. All the same, I ask that you please
19 organize your comments, take notes during the
20 presentations that you hear so that you can relay the
21 information you wish to relay in a concise manner.

22 If someone spoke before you and basically
23 expressed all your feelings, in the interest of brevity
24 you may say, "I agree with what this person said, these
25 are my same concerns," or you're free to repeat those

1 same concerns. There's no limitation.

2 Also, one last thing I want to say about public
3 input. That is the time for you to ask questions. So
4 if during the presentation something comes to mind, and
5 you want more information on something, make a note of
6 it. During public presentation, that's when we accept
7 questions. I ask that Staff and the Applicant make
8 note of all questions, and then when we conclude all of
9 public comment, they will -- we will return to them and
10 they will address all the questions that have been
11 raised by the public.

12 Again, members of the public, you will get only
13 one opportunity to speak, so I urge you to please
14 organize your thoughts. I can't allow you to come back
15 up, after you've taken your seat, in the interest of
16 keeping the hearing moving and getting through the
17 hearing.

18 All right. At this time I'd like to administer
19 the oath to everyone in the room. If you intend on
20 speaking on the record, please raise your right hand.
21 Do you swear or affirm the testimony and evidence that
22 you give in this hearing will be the truth?

23 (Participants respond en masse.)

24 HEARING EXAMINER COLLINS: Thank you very much.

25 I am ready to begin -- Staff?

1 MS. WORKMAN: Madam Hearing Examiner, I want to
2 put one thing on the record for a Staff exhibit. It is
3 the affidavit stating that this hearing has been
4 advertised.

5 (Staff Exhibit 2 submitted.)

6 HEARING EXAMINER COLLINS: Thank you. This is
7 Staff Exhibit Number 2. It's an affidavit of
8 publication confirming that notice of this hearing was
9 published in the News-Press as required by law.

10 Good morning, you may begin.

11 MR. HARTSELL: Good morning, Madam Hearing
12 Examiner. My name is Steve Hartsell. I'm with the
13 Pavese Law Firm. I'm here today on behalf of Neal
14 Communities.

15 With me today are our team members: Pat Neal, who
16 is the founder and CEO of Neal Communities; some of the
17 Neal team, Ivory Matthews and Dan Ciesielski. Jeremy
18 Frantz is our project planner. He's with RVi Planning
19 & Landscape Architecture. Brandon Frey is our project
20 engineer. He's the Director of Land Development
21 Engineering at JR Engineering. Yury Bykau is with TR
22 Transportation. He is a traffic engineer with them.
23 And Bethany Brosious is our project ecologist. She's
24 the vice president of Passarella & Associates.

25 Let me begin with just a brief overview. As you

1 pointed out, the project is on the east side of State
2 Road 31 north of State Road 80. Our request today is
3 to amend the existing Marina Del Lago MPD to add 38
4 acres. We're in agreement with the Staff conditions
5 with the revisions that are proposed in the 48-hour
6 letter as reviewed by the 36-hour addendum to the
7 48-hour letter, which you have been provided. The
8 Staff is in agreement with the changes that have been
9 made based on the 48-hour letter and that 36-hour
10 addendum. I've got an extra copy of that addendum, if
11 you would like that. I also have a full-sized copy of
12 the master concept plan that I would like to introduce.

13 (Applicant Exhibit 1 submitted.)

14 HEARING EXAMINER COLLINS: Okay, thank you. I'll
15 take those now. So Exhibit 1 will be the addendum.

16 So have all outstanding issues between Staff and
17 the Applicant been resolved?

18 MR. HARTSELL: Yes.

19 MS. WORKMAN: Yes.

20 MR. HARTSELL: And that addendum reflects those
21 changes. So we are in agreement with the conditions.

22 HEARING EXAMINER COLLINS: We just got that on the
23 record so there's no take-back.

24 MR. HARTSELL: Thank you.

25 With regard to expert testimony, the four experts

1 that we have submitted with the 48-hour letter are all
2 experts who have been qualified before by the Hearing
3 Examiner and their résumés are on file. In the
4 interest of expedition, I would offer all four of them
5 as experts and ask that you recognize them as such.

6 HEARING EXAMINER COLLINS: I will, thank you.

7 MR. HARTSELL: Thank you very much.

8 Our order of presentation will be Jeremy will
9 start with a land use and planning analysis; Yury is
10 going to address our transportation and trip
11 generation; Bethany will follow with the environmental
12 aspects of the project; and Brandon will explain the
13 stormwater and drainage design; then Jeremy will come
14 back and wrap it up with the findings and Comp Plan
15 compliance and discuss the conditions so that you
16 understand the changes based on the conditions that are
17 set forth in the Attachment C to the Staff Report.

18 HEARING EXAMINER COLLINS: (Indicating.)

19 MR. HARTSELL: Yes, we'll work from the --

20 HEARING EXAMINER COLLINS: We'll work from the
21 addendum.

22 MR. HARTSELL: We'll work from the addendum.

23 At this time I would like to introduce Pat Neal,
24 who is the CEO of Neal Communities, and Neal is going
25 to -- or Pat is going to talk a little bit about Neal

1 Communities for you.

2 HEARING EXAMINER COLLINS: Thank you.

3 MR. HARTSELL: Thanks very much.

4 MR. NEAL: Thank you.

5 HEARING EXAMINER COLLINS: Good morning.

6 MR. NEAL: Good morning, Madam Hearing Examiner.

7 My name is Pat Neal, and I'm the principal of the
8 Applicant. I will be very brief.

9 I'll start by saying, quote, I've won every award
10 made to members of the Legislature. I was Frank Mann's
11 success -- predecessor as Senate Natural Resources
12 chairman. You'll see a very environmental proposal
13 that meets the standards of the Lee County Code.

14 We're experts in master planned communities.
15 We've completed about 124 master planned communities in
16 Pinellas, Hillsborough, Manatee, Sarasota, Charlotte,
17 Lee, and Collier counties over the last 53 years. I've
18 built about 20,000 homes in Manatee County.

19 We're Southwest Florida's largest locally-owned
20 private home building company. We have a customer
21 satisfaction rate of 93 percent. We think, if approved
22 today by your recommendation, we think we'll build a
23 beautiful community for people here in Lee County.
24 Thank you very much.

25 HEARING EXAMINER COLLINS: Thank you.

1 MR. HARTSELL: Thank you. At this time Jeremy
2 will begin.

3 MR. FRANTZ: Before I begin, I do have a copy of
4 the PowerPoint if you...

5 (Applicant Exhibit 3 submitted.)

6 HEARING EXAMINER COLLINS: This is Applicant
7 Exhibit 3, PowerPoint.

8 MR. FRANTZ: Good morning.

9 HEARING EXAMINER COLLINS: Good morning.

10 MR. FRANTZ: Jeremy Frantz with RVi Planning &
11 Landscape Architecture. I'm a planner there.

12 I will, as Steve mentioned, talk a little bit
13 about our request and the proposal and then turn it
14 over to the rest of the team.

15 So our request today is to amend an existing
16 resolution, Z-06-050, to rezone 88 acres from
17 residential planned development and agricultural, AG-2,
18 zoning to a unified 31 Oaks RPD.

19 The request allows for 265 single-family detached
20 dwelling units or 342 townhouse dwelling units, or a
21 combination of those unit types that does not exceed
22 the total weekday p.m. peak hour trip generation of 265
23 single-family dwelling units. That's a mouthful.
24 We'll talk more about it as we go.

25 Our maximum height proposed is 35 feet, and we're

1 also proposing to connect to Lee County Utilities for
2 sewer and water service.

3 So here you can see the site location. The
4 property boundary, obviously the yellow boundary, and
5 the highlighted area is that existing RPD, Z-06-050.
6 It's called the Marina Del Lago RPD. It's
7 approximately 49 acres, and the remaining portion of
8 our subject site today is approximately 38.6 acres.

9 As Steve mentioned, we're adjacent to State Road
10 31. Just along the north of the property line is
11 De Moya Drive, and then we'll be hearing about Davis
12 Drive (sic) probably later, and that's that road there
13 on the east side.

14 The property is approximately a quarter mile north
15 of State Road 80 -- Palm Beach Boulevard -- and we will
16 be proposing access from State Road 31 and Storage Bay
17 Drive, which is down here.

18 The property is within the Caloosahatchee Shores
19 Planning Community. That planning community has a
20 maximum height of 45 feet, or three stories.

21 Fort Myers Shores is the residential community to
22 the east of the property. You'll see on the next slide
23 predominantly suburban future land use and -- developed
24 with single-family homes. Around the property there
25 are a variety of approvals, although a number of these

1 properties appear to be vacant now. You can see marina
2 uses here. There are commercial uses all along State
3 Road 80, and there are a few other commercial and
4 residential approvals in the area -- or in these
5 properties that are surrounding.

6 Here you can see the future land use for the area.
7 So you see predominantly suburban future land use, some
8 wetlands on the property, as well, down in the southern
9 portion. To our south is a portion of urban community
10 designation.

11 The table on the screen demonstrates the maximum
12 allowable density under the suburban and wetland future
13 land use categories for the property. We've
14 demonstrated a calculation of six units per acre for
15 wetlands that are preserved on the property, and one
16 unit per 20 acres for impacted wetlands. And so you
17 see that calculation works out to a maximum allowable
18 of 474 units on the 88 acres.

19 I mentioned the Marina Del Lago RPD already.
20 That -- that development is currently approved for 140
21 dwelling units on that portion to the north. It allows
22 a maximum height of 35 feet, or two stories, and also
23 includes a boat trailer parking area, which I'll point
24 out on a future slide. And as I mentioned before, to
25 the south are the agriculturally zoned properties, and

1 then here you see some of the other zoning approvals
2 that have been in the area both north and south of the
3 property.

4 Infrastructure surrounding the property, you can
5 see there is a fire and EMS station approximately --
6 less than a mile from the property. A number of
7 schools and libraries, other public infrastructure
8 available to serve the property. We are proposing to
9 connect potable water to the Olga Water Treatment
10 Plant, and sanitary sewer connection to the City of
11 Fort Myers North Water Reclamation Facility.

12 Here you can see the master concept plan for that
13 Marina Del Lago RPD. It included access to De Moya
14 Drive, as well as to State Road 31. The maximum
15 height, like I mentioned, 35 feet, and the boat trailer
16 parking is this area here. Directly adjacent to this
17 boat trailer parking is the existing Davis boat ramp,
18 which is a public ramp.

19 Our proposed master concept plan bringing in those
20 southern parcels, we're, again, requesting 265
21 single-family -- detached single-family homes, 342
22 townhouse dwelling units, or a combination of those
23 unit types.

24 Our access points are a little different than
25 those previously approved. We have access to State

1 Road 31 here in the south, and then access to Storage
2 Bay Drive there. We do not have any access to De Moya
3 Drive.

4 Both of those accesses will be gated, and the
5 southern access on Storage Bay Drive will be for
6 residents only, resident entry only.

7 We think the proposed master concept plan provides
8 a number of enhancements over the previous approvals.
9 So we provide separation from those property lines,
10 from the existing residents in that gold area. We're
11 providing enhanced buffers in that area, as well, which
12 we'll talk about more in future slides.

13 Again, we have no access to De Moya Drive. This
14 was a comment that was made during our information
15 meeting with the public, and so we've made changes to
16 the plans that the public saw at that time.

17 Again, no boat trailer parking in that area, as
18 well. And we've moved our access on the Marina Del
19 Lago -- you see that corresponds to this location here.
20 We've removed that access, moved it down to the south,
21 and provided for additional wetland preserves in that
22 area.

23 So I'll walk through all of these enhanced
24 buffers. There's a number of slides here.

25 This area here is a 30-foot Type F buffer required

1 due to the cul-de-sac here adjacent to properties zoned
2 for single-family, to allow single-family.

3 We have two separate scenarios for the other parts
4 of the -- other property boundaries. So as I
5 mentioned, we're requesting single-family or townhomes
6 or a combination. So in the case of single-family in
7 these areas, a six-foot-high opaque solid wall or fence
8 will be constructed, as well as a ten-foot-wide buffer,
9 which is larger than the Code-required optional
10 residential project wall -- or wall and buffer. Our
11 plantings will be 5 trees per 100 feet and include a
12 double hedgerow. Those plantings will be on the
13 outside of the wall or fence.

14 In the case that townhomes are constructed, there
15 will be an 8-foot-high solid wall or fence. The buffer
16 would be a 15-foot-wide Type B buffer, which would,
17 again, include plantings of 5 trees every 100 feet,
18 with a double-staggered hedge, again, on the outside of
19 the wall.

20 The Marina Del Lago did include a project wall and
21 buffer here along the existing single-family lots.
22 We've extended that to the southern area.

23 So now we can take a look at what that will mean
24 for the folks in the room and -- and -- who own these
25 properties adjacent to us.

1 So in the case of single-family being developed
2 along the property lines, in these green areas, this
3 would be your ten-foot buffer, six-foot opaque fence or
4 wall, and there are -- as you'll see on some future
5 slides, there's also some floodplain storage and
6 conveyance areas on the outside of that buffer, as
7 well.

8 So this is our proposed project, and these are the
9 existing homes.

10 And this is what the potential sightline would
11 look like from about a six-foot level on the existing
12 residential side looking onto the property, and you can
13 see that buffer and fence or wall would significantly
14 obscure sightlines onto the property.

15 Now, in this area where there is a proposed lake,
16 you see a similar buffer and storage conveyance area
17 before -- then the lake area. Again, sightlines
18 significantly obscured, and as I mentioned, we've, you
19 know, provided more distance from the property line
20 than was previously in the Marina Del Lago RPD. Again,
21 that sightline is looking from the existing residential
22 onto the proposed property.

23 Along State Road 31 and these properties to the
24 north here are -- in the case of single-family, no
25 buffer is required with the exception of that Type F

1 that was previously mentioned. However, there will be
2 significant wetlands existing and proposed to be
3 created in this area; so there will still be a
4 significant setback and plantings or existing
5 vegetation between the road or the other properties and
6 our proposed residential tracts.

7 Again, here's a sightline, an example from outside
8 of the property looking in, and you can see kind of a
9 depiction here of those areas where we would include
10 created wetlands, which we'll talk about more later,
11 and then also some of the existing wetlands. So this
12 would be a pretty significant buffer for that property
13 line.

14 Moving on to the case of townhomes being
15 constructed, this would be the 15-foot Type B buffer, a
16 little bit bigger buffer, similar plantings, and then
17 an 8-foot-high fence or wall. Again, this is along
18 those areas marked in green.

19 And, again, the sightline onto the property from
20 outside by that proposed buffer and fence or wall.

21 Similar scenario again, the lake between the
22 proposed residential tracts, the buffer, proposed
23 floodplain storage and conveyance area, and, again,
24 sightlines from outside of the property on...

25 In the case of townhomes, along State Road 31 a

1 Type B -- sorry, a Type D buffer would be required.
2 The existing vegetation or any created wetland
3 plantings would be required to meet that Type D
4 planting height and -- or would exceed the requirements
5 for a Type D buffer. So it's a very similar buffer
6 setback scenario as in the single-family scenario.

7 Again, sightlines from outside of the property
8 looking onto the residential tracts.

9 The open space required for the property would be
10 35.3 acres. The grade-out areas on this version of the
11 master concept plan represent 39.43 acres of open space
12 so we're exceeding that open space requirement. And
13 the lake calculation is consistent with the Land
14 Development Code limiting to a max -- a maximum of 25
15 percent of the required open space.

16 So with that, momentarily I'll step away and turn
17 it over to Yury.

18 HEARING EXAMINER COLLINS: Thank you.

19 Good morning, Yury.

20 MR. BYKAU: Good morning. For the record, Yury
21 Bykau with TR Transportation Consultants. I've been
22 sworn in and previously accepted as an expert in
23 transportation planning.

24 So a traffic study was conducted for the proposed
25 rezoning request. As previously mentioned, the request

1 is to rezone the site to allow 265 single-family
2 dwelling units or up to 342 multi-family townhouse
3 units or a combination of both, as long as the trip
4 generation does not exceed that as a result of the 265
5 single-family dwelling units.

6 HEARING EXAMINER COLLINS: Okay. So it can all be
7 one, all be the other, or a mixture of the two?

8 MR. BYKAU: Right. And the reason is -- I just
9 want to emphasize that our traffic study was done based
10 on 265 single-family dwelling units --

11 HEARING EXAMINER COLLINS: Because that generates
12 the most traffic --

13 MR. BYKAU: It generates more --

14 HEARING EXAMINER COLLINS: -- of the three
15 options.

16 MR. BYKAU: No, it generates more trips than a
17 townhouse option --

18 HEARING EXAMINER COLLINS: Right.

19 MR. BYKAU: -- but that's why the Staff, I
20 believe, was more comfortable with putting a condition
21 where it says we won't exceed the 265 single-family
22 dwelling units because that's what was analyzed in our
23 traffic study. So that was the reason.

24 And per the ITE Trip Generation Manual, which is
25 the manual we're required to use to come up with the

1 trip generation, the 265 single-family dwelling units
2 generate approximately 248 p.m. peak hour trips, while
3 the 342 townhouse option generates approximately 168,
4 so significantly less.

5 So then as part of our traffic study, we took the
6 highest trip generation as proposed from this rezoning
7 request and added those trips to the surrounding
8 roadway network and conducted what's called a Link
9 level of service analysis based on the future build-out
10 project traffic conditions. And the results of our
11 Link level of service analysis indicated that all
12 roadways will operate at a projected level of service D
13 or better in the future project traffic conditions; or,
14 in other words, there is sufficient capacity to support
15 this rezoning request.

16 As part of our traffic study, we also analyzed the
17 surrounding intersections in the area. Those included
18 SR 80 with SR 31, which is currently signalized; SR 80
19 with Merchandise Way, which is that reverse frontage
20 road that currently serves the RaceTrac gas station to
21 the south; as well as SR 31 and the proposed project's
22 entrance. And the results of our intersection analysis
23 indicate all those studied intersections will operate
24 at an acceptable level of service and with sufficient
25 capacity to support this project at build-out.

1 I also want to mention that FDOT is currently
2 performing a PD&E study in this area to address the
3 future traffic growth and traffic patterns in this
4 area. As part of their PD&E study, they're evaluating
5 the widening of SR 31 from SR 78 to SR 80 to a six-lane
6 facility. Currently it's a two-lane roadway. So that
7 is something they're studying currently, and that study
8 is projected to be completed by early 2024. But,
9 again, that improvement is not funded yet for
10 construction, and that's why our traffic study did not
11 include that improvement. But, again, in our analysis
12 SR 31 was shown to operate at sufficient capacity as a
13 two-lane facility as it exists today so...

14 And also I just want to mention that we still have
15 to do another traffic study once we go through the
16 development order with the County, and that's when we
17 look at more site-related improvements, such as turn
18 lanes, et cetera. So there will be another traffic
19 study that will be done for our specific development at
20 the development order stage.

21 So it is my professional opinion that 31 Oaks RPD
22 has met all applicable standards and demonstrated
23 consistency with the transportation element of the Lee
24 Plan and the Land Development Code.

25 And if you have any questions, I'll be more than

1 happy to answer them.

2 HEARING EXAMINER COLLINS: Thank you. I don't
3 have any questions right now.

4 MR. BYKAU: Thank you.

5 MS. OTTLEY: I do.

6 HEARING EXAMINER COLLINS: During public time --

7 MS. OTTLEY: Oh.

8 HEARING EXAMINER COLLINS: -- that's when you ask
9 your questions related to --

10 MS. OTTLEY: Okay. Well, he said anybody. That's
11 why I raised my hand.

12 HEARING EXAMINER COLLINS: Okay. No, it's during
13 public --

14 MS. OTTLEY: Thank you.

15 MS. BROSIOS: Good morning. I'm Bethany Brosious
16 with Passarella & Associates, and I will be discussing
17 the environmental aspects of the project.

18 I'm going to start my presentation by just going
19 over the existing site conditions as they're
20 representative -- represented currently on the site
21 today; then I'll touch on the indigenous vegetation
22 management plan and the protected species management
23 plan that was prepared in coordination with County
24 Staff.

25 So looking at the on-site conditions, you can see

1 the orange area shaded on the aerial up here, those
2 represent the upland areas that are on-site. We've got
3 approximately 53 acres of upland habitat; and while we
4 have a various mix of upland habitats on-site, the
5 dominant upland land uses consist of urban land uses,
6 pasture areas, pine flatwoods and hardwood/conifer
7 mixed areas.

8 Urban and pasture are the more dominant upland
9 land uses on-site, but all of the uplands on-site
10 contain varying amounts of exotic vegetation, including
11 melaleuca, Brazilian pepper, air potato being the most
12 common exotics present on-site.

13 HEARING EXAMINER COLLINS: What constitutes urban
14 land use on the site?

15 MS. BROSIUS: There's an area with -- with
16 manufactured homes. So there's -- there's existing
17 manufactured homes on-site. We wouldn't consider that
18 to be a native upland habitat.

19 HEARING EXAMINER COLLINS: And where is the
20 pasture located?

21 MS. BROSIUS: The pasture is -- this is the
22 pointer?

23 MR. HARTSELL: Yes.

24 MS. BROSIUS: Okay. There you go, right here,
25 south of the borrow area on-site --

1 HEARING EXAMINER COLLINS: Thank you.

2 MS. BROSIUS: -- and it extends up to the east
3 and around the top.

4 The green areas noted here represent the wetland
5 areas on-site. We have approximately 22.8 acres of
6 wetland habitat on-site, and the dominant wetland areas
7 consist of mixed wetland hardwoods, willow, and
8 freshwater marsh areas, and hydric cabbage palm areas.
9 In addition, there's about a 12-and-a-half-acre borrow
10 area on the southern portion of the project site here.

11 Now, the wetland areas on-site contain much more
12 exotic vegetation, but the majority of them actually
13 contain greater than 50 percent cover by exotic
14 vegetation.

15 Just to give a visual representation of the
16 habitat on-site, as noted, we have a mixture of
17 indigenous and nonindigenous, native and nonnative
18 upland and wetland areas on-site. There's areas that
19 have been previously disturbed, including the -- the
20 urban area and the pasture areas.

21 But just to note, the vegetated habitat on-site in
22 general consists of approximately 62 percent nonnative
23 or nonindigenous area.

24 And these are photos from the project site that
25 represent the habitat conditions. The top photo here

1 represents the pasture areas that exist up there, and
2 then we have a photo of a wetland area here on the left
3 and an upland area here on the right. Most noteworthy
4 is the concentration of exotic vegetation within these
5 habitat types, melaleuca and earleaf acacia being
6 present in the background here, and a dominance of
7 melaleuca present in the background of this habitat.

8 Now, in coordination with the County, we prepared
9 an indigenous vegetation management plan for the
10 project. In total, the project preserves 18.38 acres
11 of habitat on-site, and that's broken down into
12 approximately 13 and a half acres of wetland areas,
13 just under a half acre of upland areas, and
14 approximately 4 and a half acres of wetland creation
15 areas.

16 Now, throughout the entire indigenous preserve,
17 which is depicted in this blue shading here, exotic
18 vegetation will be eradicated from that preservation
19 area; so species including, but not limited to,
20 melaleuca, Brazilian pepper, earleaf acacia will be
21 eradicated from the preservation area. In addition, in
22 areas that contain greater than 50 percent exotic
23 vegetation in the current condition, they'll be
24 enhanced with supplemental plantings. So plantings
25 will be installed in those areas to enhance the

1 condition after the completion of those activities.

2 Finally, we've got about four and a half acres of
3 wetland creation areas. We're actually going to go in
4 and create wetlands from some of these -- excuse me --
5 these nonnative formerly disturbed codes (sic). Those
6 areas will be graded, and then supplemental wetland
7 plantings will be installed in those to enhance the
8 conditions of those areas, as well. And then the
9 entire indigenous preservation area will be protected
10 under conservation easement.

11 So also in coordination with the County, a
12 protected species management plan was prepared for the
13 project. Now, a protected species man -- excuse me, a
14 protected species survey was conducted on-site in
15 October and November of 2021; and as part of that
16 survey, five gopher tortoise burrows were documented on
17 the eastern portion of the site, in this area here.

18 Now, in coordination with the County, a protected
19 species management plan was prepared to address the
20 gopher tortoise; and if the gopher tortoise burrows
21 will be disturbed during project construction, a
22 relocation plan will be developed in accordance with
23 the Florida Fish and Wildlife conservation gopher
24 tortoise permitting guidelines and in accordance with
25 the protected species management plan that was prepared

1 in coordination with the County.

2 HEARING EXAMINER COLLINS: Okay. So the gopher
3 tortoises on-site will be relocated in accordance with
4 regulations; right?

5 MS. BROSIOUS: They will --

6 HEARING EXAMINER COLLINS: Okay.

7 MS. BROSIOUS: -- yes.

8 HEARING EXAMINER COLLINS: And you'll be updating
9 the survey when you get closer to construction?

10 MS. BROSIOUS: The FWC will require that we do a
11 survey within 90 days of relocating the tortoises.

12 HEARING EXAMINER COLLINS: So if you missed any,
13 you'll probably catch them the next time or --

14 MS. BROSIOUS: Absolutely.

15 HEARING EXAMINER COLLINS: And so am I
16 understanding that the gopher tortoises were spotted in
17 the area where the mobile homes are?

18 MS. BROSIOUS: No. So the mobile homes are over
19 here along 31.

20 HEARING EXAMINER COLLINS: Okay. It looked like
21 there were structures on the map. That's why --

22 MS. BROSIOUS: Oh, okay. No, those are probably
23 just the gopher tortoise identifier --

24 HEARING EXAMINER COLLINS: I see, thank you.

25 MS. BROSIOUS: So that concludes my environmental

1 summary. It's my professional opinion that the 31 Oaks
2 RPD has met all of the applicable standards and
3 demonstrated consistency with the environmental
4 portions of the Lee Plan and Land Development Code.

5 And I'm happy to answer any other questions that
6 you may have.

7 HEARING EXAMINER COLLINS: I don't have any
8 questions right now, thank you.

9 MS. BROSIUS: Thank you.

10 MR. HARTSELL: Thank you.

11 MR. FREY: Good morning. My name is Brandon Frey.
12 I'm a professional engineer registered in the state of
13 Florida and served as the project engineer for 31 Oaks
14 RPD.

15 HEARING EXAMINER COLLINS: Okay. Please speak up,
16 Brandon.

17 MR. FREY: Sorry.

18 MR. HARTSELL: You never have a problem in team
19 meetings.

20 MR. FREY: Never, never. I'm shy.

21 So, as with many projects in Southwest Florida,
22 surface water management is a really important topic;
23 and in addition to all the standards that we will be
24 required to comply with on a state, regional, and local
25 level, there are a number of conditions that Staff and

1 our team have identified to help protect our project,
2 as well as the existing residents around the project,
3 which is memorialized by Condition 11 within the Staff
4 Report.

5 That condition requires us to submit an analysis
6 with multiple design scenarios both pre- and
7 post-development to confirm that any existing flow
8 pathways that may exist are maintained both during and
9 post construction to ensure that there are no impacts
10 to the residents surrounding the project, or commercial
11 facilities surrounding the project.

12 In addition to that, we will be required to
13 provide profiles in the existing and proposed
14 conditions to confirm that we are either maintaining or
15 improving the quality of the wetlands on-site and
16 lengthen the hydroperiod to the greatest extent
17 possible with a number of mechanisms in place --
18 rerouting flows, different control structures, things
19 like that -- that would all be detailed within that
20 development order.

21 It is my professional opinion that the 31 Oaks RPD
22 has met all of the applicable standards and
23 demonstrated consistency with the Lee Plan and the Land
24 Development Code.

25 And I'm open to any questions --

1 HEARING EXAMINER COLLINS: I have questions.

2 MR. FREY: -- you may have -- sure.

3 HEARING EXAMINER COLLINS: Can we go back to the
4 site plan, please?

5 MR. FREY: Certainly.

6 HEARING EXAMINER COLLINS: I'd like you to explain
7 to me how the surface water management system is
8 designed to operate.

9 MR. FREY: Internal or external?

10 HEARING EXAMINER COLLINS: Everything.

11 MR. FREY: Okay. So internal to the project, it's
12 relatively similar to most development that you'd see
13 in Lee County. So South Florida governs predominantly
14 what those standards would be. So there's a berm that
15 goes around the site, and there are multiple design
16 scenarios that we have to hold all the water in and
17 then meter our release to (inaudible). So in other
18 words, there's not just a deluge of water that leaves
19 the site when it rains. There's a berm that goes
20 around the site, and our outflow is regulated to
21 provide both water quality and water attenuation.

22 HEARING EXAMINER COLLINS: Okay. So the site is
23 bermed, which means any rainfall that falls on your
24 site and runs off your impervious areas will be
25 directed to?

1 MR. FREY: To the on-site lakes.

2 HEARING EXAMINER COLLINS: To on-site lakes,
3 and --

4 MR. FREY: Yes.

5 HEARING EXAMINER COLLINS: -- and they'll be held
6 there --

7 MR. FREY: Yes, until the required water quality
8 has been provided, and then it will be discharged
9 off-site at a metered rate that's established by the
10 South Florida Water Management District. And that rate
11 would either be regionally based, based on what their
12 opinions are for the discharge, or not greater than our
13 existing discharge.

14 HEARING EXAMINER COLLINS: So where are the
15 outfalls for this project?

16 MR. FREY: The outfalls for this project are --
17 well, right here is one of the outfalls; right here is
18 one of the outfalls internally --

19 HEARING EXAMINER COLLINS: And then what happens?

20 MR. FREY: And then it flows through the
21 indigenous or created wetlands, and then there's a pipe
22 that goes under State Road 31, and then it travels
23 north and into the Caloosahatchee.

24 HEARING EXAMINER COLLINS: Okay. And so all
25 stormwater that falls on the site is going to be

1 directed to that outfall down there ultimately, and
2 then out to the roadway?

3 MR. FREY: That's correct, and then out to the
4 river, uh-huh.

5 HEARING EXAMINER COLLINS: Okay.

6 MR. FREY: So in addition to the runoff that we
7 generate and discharge on-site, there are a number of
8 off-site properties that discharge onto our property,
9 and you can sort of see it here in green going around
10 the property. This is a conveyance swale that we have
11 designed to catch all of the adjacent property's runoff
12 that historically fell onto our site and direct it
13 around the property, under our entry, and then through
14 those same pipes that our created discharge runs
15 through.

16 HEARING EXAMINER COLLINS: Okay. So this is water
17 that's falling maybe on Fort Myers Shores and
18 traditionally ran to the southwest.

19 MR. FREY: Yes.

20 HEARING EXAMINER COLLINS: You're going to kind of
21 channel it along the perimeter of the site?

22 MR. FREY: Exactly, that will be channelized --

23 HEARING EXAMINER COLLINS: And then it's going to
24 enter your site and then go out to 31?

25 MR. FREY: It has -- yes, that is correct. We did

1 a regional study to determine which areas near the
2 project were graded such that water would fall onto our
3 property; so then we delineated basin lines and then
4 figured out how much water came off of those
5 properties, fell onto our properties, and then that was
6 our target for rerouting around, and that's what sized
7 the channel that's going to be placed around our
8 property.

9 HEARING EXAMINER COLLINS: Okay. So when I was
10 looking at the examples of the buffers between the
11 properties, I noticed that there was a wall, there was
12 vegetation, and then there was like a swale --

13 MR. FREY: Yes.

14 HEARING EXAMINER COLLINS: -- right, and then the
15 adjacent line.

16 MR. FREY: Yes.

17 HEARING EXAMINER COLLINS: That swale I saw in
18 that photograph is what's taking your off-site flows
19 and --

20 MR. FREY: Exactly. That's what's responsible for
21 routing the water around the site.

22 HEARING EXAMINER COLLINS: And then at some point
23 it's going to enter your site, get filtered through
24 your wetland and leave.

25 MR. FREY: That's correct.

1 HEARING EXAMINER COLLINS: So you have to design
2 that area to take on that water?

3 MR. FREY: "That area" being the wetlands or --

4 HEARING EXAMINER COLLINS: Yeah.

5 MR. FREY: -- or -- yes.

6 HEARING EXAMINER COLLINS: Yes, okay.

7 MR. FREY: Yes -- well, to the greatest extent
8 possible. The indigenous wetlands are what they are.
9 So there will be some cleanup of exotics within those
10 areas, but we don't have much capability to regrade
11 because those must remain indigenous. We do have the
12 ability to create wetlands though in the areas that are
13 depicted in the lighter tan here. So those areas we
14 have some control over, but the areas that exist, plus
15 the areas that we create, we estimate what the flow
16 characteristics for those will be, and that is what --

17 HEARING EXAMINER COLLINS: I'm trying to determine
18 whether the design of this perimeter swale is designed
19 to accommodate the anticipated flow, and that there
20 isn't going to be a backup within the community that's
21 adjacent to you.

22 MR. FREY: It must be, it has to be, and that's
23 something that we're really sensitive to, as well, with
24 the design. And there are -- I don't -- it's not
25 listed here, but there are a number of different storm

1 scenarios, up to and including the 100-year/3-day storm
2 scenario, which is kind of that -- well, once in a blue
3 moon that we all hope never happens but must design to.
4 It's designed to handle up to that amount of flow
5 coming off adjacent properties, onto our property,
6 conveyed through our property and under those pipes --
7 through those pipes under 31.

8 HEARING EXAMINER COLLINS: So barring an extreme
9 condition that would be beyond that storm --

10 MR. FREY: Uh-huh.

11 HEARING EXAMINER COLLINS: -- everything should
12 flow with no backup onto adjacent properties. And is
13 this regulated by just the County, or is it also
14 regulated by the District?

15 MR. FREY: The District regulates off-site
16 discharges, and we're required by the District
17 standards to either maintain or improve the flow
18 characteristics and stages that you would see for water
19 in off-site areas.

20 Lee County I don't know has a specific code for
21 that, but that's why it's conditioned here within the
22 Staff Report.

23 HEARING EXAMINER COLLINS: I'm just wondering in
24 terms of the design of this swale who's telling you
25 that it's big enough, not big enough.

1 MR. FREY: I am.

2 HEARING EXAMINER COLLINS: Okay.

3 MR. FREY: So --

4 HEARING EXAMINER COLLINS: And then it's the
5 responsibility of the developer then to maintain that
6 swale so it doesn't get overgrown, and it flows --

7 MR. FREY: That's exactly correct, yes. So South
8 Florida Water Management District would typically have
9 a requirement of maintaining conveyance for a
10 25-year/3-day storm event. In this case we're also
11 including some smaller storms but also the larger
12 storms, the 100-year/3-day that I had mentioned before.
13 And it's my professional responsibility to ensure that
14 there are no adverse impacts to the surrounding sites.

15 HEARING EXAMINER COLLINS: Okay, thank you.

16 MR. FREY: Yes, ma'am.

17 HEARING EXAMINER COLLINS: Beth, is this a
18 condition, the maintenance of that swale, worked into
19 this, or is it handled during platting? What is --

20 MS. WORKMAN: Condition 11 has a specification
21 that is driving what is on that development order for
22 the -- for the studies that need to be done at time of
23 DO to show that the capacity is there, the maintenance
24 entity is there, all of that is dealt with, because at
25 time of zoning -- they're not fully designed at this --

1 at this juncture. So it will go to the DO, and then
2 the conditions that are in Condition 11, which is
3 pre-development drainage analysis, the post-development
4 drainage plan, and then profiles and section plans are
5 all laid out in that condition with specificity. And
6 Natural Resources has reviewed that condition, and they
7 worked with the Applicant to come up with the condition
8 that would be sensitive to the surrounding uses to make
9 sure that it doesn't back up, it doesn't flood
10 off-site.

11 HEARING EXAMINER COLLINS: Okay.

12 MS. WORKMAN: So the details are in the DO at that
13 time, and this condition is driving it, because we do
14 not have a Code that Development Services can fall back
15 on; so we have to write this condition, this floodplain
16 storage condition.

17 HEARING EXAMINER COLLINS: And it's addressed in
18 that condition?

19 MS. WORKMAN: Correct.

20 HEARING EXAMINER COLLINS: Okay, thank you.

21 MR. FREY: Yes, ma'am.

22 HEARING EXAMINER COLLINS: No further questions.
23 You have a question?

24 MR. HARTSELL: I'm sorry, just as a follow-up,
25 Brandon -- Steve Hartsell for the record.

1 South Florida Water Management District will
2 review all of this as a precursor to being able to get
3 your development order; correct?

4 MR. FREY: That's correct, yes. These reports
5 were -- will be reviewed by both Lee County and South
6 Florida Water Management District.

7 HEARING EXAMINER COLLINS: So this 3-day --
8 100-year/3-day storm, it seems like we get them more
9 often now but -- so that would be something less than
10 Ian, okay, which is like an anomaly, but more than a
11 typical summer rainfall; correct?

12 MR. FREY: Dramatically more, yes.

13 HEARING EXAMINER COLLINS: Okay. Somewhere in
14 between?

15 MR. FREY: So on -- on a site in this area, I
16 don't remember the exact number, but I believe it's
17 around 14 inches of rain over a 3-day period so --
18 for -- for context, you know. It -- so there are
19 storms that are what I call -- I refer to as punchy.
20 It's not a technical term, but very intense, very quick
21 storms that respond a little bit differently; but it's
22 the long hurricane-type events that we typically design
23 around, which is what that 100-year/3-day is intended
24 to replicate.

25 HEARING EXAMINER COLLINS: Okay. Thank you very

1 much.

2 MR. FREY: Yes, ma'am.

3 And I believe Jeremy is up next to discuss Lee
4 Plan consistency.

5 MR. FRANTZ: Okay. So this is where I left my
6 pen.

7 HEARING EXAMINER COLLINS: Were you looking for
8 it?

9 MR. FRANTZ: I was looking for it.

10 HEARING EXAMINER COLLINS: That's going to happen
11 more often as you get older.

12 MR. FRANTZ: So I'll run through our Lee Plan
13 consistency and then review the conditions and
14 deviations, as well.

15 So the suburban future land use category, Policy
16 1.1.5, is predominantly residential areas that provide
17 housing near urban areas, but not the full mix of land
18 uses that are typical to an urban area.

19 Our project supports the protection of the
20 existing and emerging residential neighborhoods
21 surrounding the property, and you see that memorialized
22 in Conditions 1 through 3, which establish the density
23 and uses and development types -- development
24 standards.

25 The wetland future land use category, Policy

1 1.5.1, limits development to low -- very low
2 residential density and recreational uses that do not
3 affect -- do not adversely affect the ecological
4 functions of wetlands.

5 As we've reviewed, the project preserves and
6 creates wetlands on-site with no adverse effects on the
7 ecological functions of wetlands. Several conditions
8 address this. Condition 5 and Conditions 9 through 10
9 ensure the protection of wetlands through preservation
10 requirements and wetland permitting. And as we just
11 talked about, Condition 11 ensures no adverse effect on
12 the ecological function through floodplain storage
13 requirements.

14 Objectives 2.1 and 2.2 require contiguous and
15 compact growth patterns where adequate public
16 facilities exist. We are located in an area readily
17 served by public infrastructure and contiguous to
18 existing and emerging development.

19 Condition 3 ensures that our density does not
20 exceed a total weekday p.m. peak hour trip generation
21 of 265 single-family dwelling units. And that
22 condition also establishes that we cannot exceed the
23 available capacity of water and -- of the water and
24 wastewater system that is serving the development.

25 Standards 4.1.1 and 4.1.2 require connection to

1 Lee County Utilities for water and sewer service. We
2 submitted a letter of availability for potable water
3 and sanitary sewer services with the application.
4 We'll be required to do that again at the time of local
5 development order.

6 Goal 5 is related to residential land uses.
7 Policy 5.1.2 prohibits residential development where
8 physical constraints and hazards exist, and Policy
9 5.1.5 protects existing and future residential areas
10 from encroachment of uses potentially destructive to
11 community character.

12 So in addressing these policies, we've provided
13 those enhanced buffers that we've reviewed, especially
14 adjacent to the existing residential uses. We are,
15 again, located in an area currently served by public
16 infrastructure; we've provided that letter of
17 availability for services, for water and sewer
18 services; and, again, Condition 3 aimed at establishing
19 a maximum density and ensuring that we don't exceed the
20 water and wastewater capacity serving the development.

21 Policy 5.1.7 requires interconnected sidewalks,
22 open spaces, and recreational uses. We demonstrated
23 the open spaces exceed the required open space in the
24 Code, and open spaces and recreational uses provided
25 will be consistent with the policy. And sidewalks are

1 also provided throughout the community.

2 HEARING EXAMINER COLLINS: What are the
3 recreational uses on the property?

4 MR. FRANTZ: We have an optional amenity site in
5 the central portion of the master concept plan. I
6 think on an upcoming slide I'll have a master concept
7 plan, and I can point that out.

8 We're looking at the stormwater management plan,
9 but the optional amenity center is in this area here.

10 HEARING EXAMINER COLLINS: So if you don't build
11 an amenity center, no amenity for the project?

12 MR. FRANTZ: I'll let our team correct me if I'm
13 wrong; but if it's an optional amenity center, we are
14 not required to build the amenity center.

15 HEARING EXAMINER COLLINS: And what provision is
16 being made at the entrance of -- is this going to be an
17 age-restricted community?

18 MR. FRANTZ: No.

19 HEARING EXAMINER COLLINS: So what provision is
20 being made at the entrance for a school bus for the
21 residents' children?

22 MR. FRANTZ: At the entrance we are meeting the
23 Land Development Code requirement for separation
24 from -- of the gate -- gatehouse from the entrance, and
25 there will be a turnaround in that location, as well.

1 HEARING EXAMINER COLLINS: Will there be a place
2 off the paved roadway for the students to stand?
3 Because I think in the file -- in the Staff Report I
4 saw from the School District their -- the student
5 generation. So if you're saying it's not
6 age-restricted, the predicted student generation --
7 obviously that's the only place they're going to be
8 able to stand to be picked up by a school bus because
9 your access to the south is kind of on a reverse
10 frontage road --

11 MR. FRANTZ: Sure.

12 HEARING EXAMINER COLLINS: -- right?

13 MR. FRANTZ: So there will be sidewalks along the
14 roads internal and at the entrance, as well. So there
15 will be locations off of the road that students waiting
16 for the bus would be able to --

17 HEARING EXAMINER COLLINS: What will your off-site
18 sidewalk responsibility be in this case?

19 MR. FRANTZ: Off-site on State Road -- along State
20 Road 31?

21 HEARING EXAMINER COLLINS: Yeah.

22 MR. FRANTZ: We'll have to include a sidewalk
23 along State Road 31, I think -- well, I won't speak to
24 exactly how far that goes, but we'll have to include a
25 sidewalk along State Road 31, as well. We'll see that

1 when we look at off-site improvements at the DO stage.

2 HEARING EXAMINER COLLINS: Okay.

3 MR. FRANTZ: Regarding the surface water
4 management system, a number of policies here: 60.4.1,
5 60.4.2, and 60.4.3, as well as Policies 125.1.3,
6 125.1.4, and 126.1.4 address protection of natural
7 systems, and require incorporation of the natural
8 systems into the surface water management system. They
9 also require maintenance of pre-development groundwater
10 quality and surface water flows.

11 So in this case Condition 5, again, ensures that
12 we include 18.38 acres of indigenous open space. That
13 open space includes the preservation of wetlands, as
14 well as rare and unique uplands, and the creation of
15 wetlands, as well.

16 Condition 11, again, ensures that stormwater
17 system protects the predevelopment drainage patterns.

18 Regarding the coastal high hazard area, Policies
19 101.1.1, 101.1.2, and 101.3.2 require the protection of
20 environmentally sensitive lands. As Brandon discussed,
21 we've provided an enhanced stormwater system that
22 protects the existing resources on-site and those
23 wetlands within the CHHA. Again, Conditions 5 and 9
24 ensure that wetland preservation and permitting occurs
25 prior to the local development order, and Condition 11

1 addresses that pre-development drainage protection.

2 Objective 123.2, 123.3, and Policies 123.4.4,
3 123.3.1, and 125.1.3 require protection of
4 environmentally sensitive habitats and plant
5 communities. Again, Conditions 5 through 10 ensure
6 indigenous open space is provided, managed, and placed
7 under a conservation easement; and State permits will
8 be required for the relocation of those gopher tortoise
9 that we mentioned.

10 Earlier I mentioned we're in the Caloosahatchee
11 Shores Community Plan. So Policy 21.1.1 requires
12 maintaining regulations providing enhanced landscaping,
13 signage, and architectural standards consistent with an
14 Old Florida rural identity. And Policy 21.1.2 requires
15 that any deviations from the landscaping, buffering,
16 signage, or architectural requirements must meet the
17 approval criteria for variances.

18 As we've reviewed, the project provides buffers,
19 setbacks, and access points all aimed at protecting
20 those existing -- that community identity, and we have
21 not requested any deviations related to those
22 requirements in Policy 21.1.2 that would require
23 criteria for variances.

24 HEARING EXAMINER COLLINS: Your perimeter
25 landscaping actually exceeds the Code minimums; right?

1 MR. FRANTZ: It exceeds Code minimum in a couple
2 of ways, in both the single-family and the townhouse
3 requirement.

4 HEARING EXAMINER COLLINS: Okay, thank you.

5 MR. FRANTZ: The community plan also requires that
6 we hold a community meeting within the planning area.
7 We held that meeting on December 9th, 2021, at the
8 Crossroads Baptist Church. We had approximately 45
9 people in attendance, and we received comments related
10 to the access locations, as I mentioned. We previously
11 had a master concept plan at this meeting that showed
12 that same access on De Moya Drive. As a result of the
13 comments we received at this meeting, we moved --
14 removed that access.

15 HEARING EXAMINER COLLINS: Okay.

16 MR. FRANTZ: We also heard comments related to
17 traffic impacts on David -- Davis Boulevard, again,
18 related to that access point on De Moya, as well as the
19 intersection of State Road 80 and State Road 31, and
20 also questions about just those locations and sizes of
21 the buffers and setbacks.

22 HEARING EXAMINER COLLINS: So was De Moya's output
23 onto Davis and then ultimately --

24 MR. FRANTZ: That's right.

25 HEARING EXAMINER COLLINS: Okay, thank you.

1 So you made modifications to your site plan in
2 response to comments you received from the public at
3 that meeting?

4 MR. FRANTZ: Yes.

5 Moving on to the LDC, the findings and conclusions
6 are in LDC Section 34-145(d)(4):

7 The project complies with the Lee Plan;

8 The project meets the Land Development Code and
9 other applicable County regulations or qualifies for
10 deviations;

11 The project is compatible with existing and
12 planned uses in the surrounding area and will provide
13 access sufficient to support the proposed intensity,
14 and the expected impacts on existing or planned
15 transportation facilities will be mitigated through the
16 County regulations or the conditions in the Staff
17 Report;

18 The project will not adversely affect
19 environmentally critical or sensitive areas or natural
20 resources;

21 Will be served by urban services as defined in the
22 Lee Plan;

23 And the proposed mix of uses is appropriate at the
24 proposed location.

25 The recommended conditions provide sufficient

1 safeguards to the public interest and are reasonably
2 related to the impacts on the public's interest
3 expected from the planned development.

4 And the approved deviations will enhance the
5 achievement of the objectives of the planned
6 development, and preserve or promote the general intent
7 of the Code to protect the public health, safety, and
8 welfare.

9 So moving on to the conditions --

10 HEARING EXAMINER COLLINS: Okay, hang on a second.
11 I'm ready.

12 MR. FRANTZ: So as already noted, Staff and the
13 Applicant are in agreement with all of the proposed
14 conditions and deviations as they have been amended. I
15 won't rehash those conditions that haven't been
16 changed, but we'll just go through those changes that
17 were in the exhibit that Steve provided.

18 MR. HARTSELL: Excuse --

19 HEARING EXAMINER COLLINS: So the site plan now is
20 May 16th --

21 MR. HARTSELL: Yes.

22 HEARING EXAMINER COLLINS: -- 2023? I know you
23 gave me an enlarged version. Do we also have a smaller
24 version for attachment to the recommendation?

25 (Applicant Exhibit 4 submitted.)

1 HEARING EXAMINER COLLINS: Thank you.

2 MR. HARTSELL: You're welcome. Is that Number 4?

3 HEARING EXAMINER COLLINS: This is Exhibit 4,
4 Applicant Exhibit 4, which is a reduced copy of the 31
5 Oaks master concept plan dated May 16, 2023.

6 MR. FRANTZ: Yes. So that -- that is the first
7 condition that -- I didn't create a slide for that date
8 change but --

9 HEARING EXAMINER COLLINS: I just wanted to
10 confirm. I realize you had given me an enlarged
11 version, but I'm going to need something to actually
12 attach to my recommendation. That's why I requested
13 it.

14 MR. HARTSELL: And would it help you if we hit a
15 couple of pages where there were highlights that we
16 were not in disagreement with? For instance, on the
17 first page, as you pointed out, the date changed for
18 the master concept plan --

19 HEARING EXAMINER COLLINS: No, you don't have to
20 go over the things you've agreed to. I highlighted on
21 that because I wanted to make sure I had all the
22 documents I need for the recommendation.

23 MR. HARTSELL: Good, thank you.

24 MR. FRANTZ: Okay. So jumping to Condition 3,
25 this is where we establish that limit on the mix of

1 dwelling types, in the case that we have more than one.
2 And the proposed modification in the 48-hour letter
3 maintains the intent of what that condition was doing
4 but just clarifies how that will be calculated. It's
5 the total weekday p.m. peak hour trip generation.

6 Moving down to Condition 12, a complete
7 strike-through/underline, but, again, maintaining the
8 intent of the previously proposed condition language.
9 In this case, we've broken out both the townhouse and
10 single-family scenario so it's very clear which buffer
11 type and what's associated with that buffer is
12 required. So the -- this condition ensures those
13 enhanced buffers that we talked about for both the
14 single-family and townhouse lots. We include an opaque
15 solid wall or fence for both scenarios. Again, in both
16 scenarios the buffer plantings will be outside of the
17 fence -- fence or wall. And, again, Staff and
18 Applicant are in agreement with these proposed changes
19 that are highlighted.

20 Condition 13, this condition required a Type D
21 buffer. We are proposing to clarify that that's in the
22 case that townhouses are proposed along State Route 31.
23 Again, the existing wetlands will exceed the Type D
24 buffer requirements, and the created wetlands would be
25 enhanced to meet the height requirements for the

1 plantings in the buffer area.

2 HEARING EXAMINER COLLINS: So is this really
3 necessary, this condition? Because I'm looking at the
4 site plan, and I don't see where you're really going to
5 have anything within 15 feet of the right-of-way.
6 Something to think about.

7 MR. HARTSELL: We didn't disagree with it so we
8 didn't argue the point.

9 MR. FRANTZ: Moving on to the deviations.
10 Deviation 1 and 2 we don't include -- we don't have any
11 changes to.

12 Deviation 1 allows for water retention excavations
13 to be a minimum of 25 feet from the private property
14 lines. Again, we've got the vegetative buffer and a
15 project fence or wall proposed between that stormwater
16 lake and the adjacent property lines.

17 Deviation 2 allows for lake banks with four-to-one
18 lake slope -- ratio slopes. And in that case we're
19 providing turf reinforcement mats and enhanced
20 herbaceous plantings to mitigate the potential for lake
21 bank erosion.

22 On Deviation 3 we propose a minor change to the
23 language. This deviation allows for dead-end streets
24 in those two locations identified there and there, by
25 the green. That deviation is needed to support the

1 removal of the access to De Moya that we previously
2 had. We did receive a letter of no objection from
3 Chief Rewis, and Staff and the Applicant are in
4 agreement. The removal of the hammerhead turnaround is
5 simply because these are just regular dead-ends.
6 There's no -- no hammerhead.

7 Deviation 4 provides relief for equipment pads to
8 allow for encroachments into setbacks of four and a
9 half feet. The deviation is related to a note in
10 Condition 2, note 6, which identifies that encroachment
11 allowance.

12 HEARING EXAMINER COLLINS: Why is this necessary?

13 MR. FRANTZ: Currently the Code specifies that
14 equipment pads and platforms are limited to a
15 three-foot encroachment into the -- into the setbacks.
16 The way that that is actually applied, as we understand
17 from Staff, is that it only applies to raised
18 platforms, and that a pad that is at grade is not
19 required -- is not limited by that standard. However,
20 the Code still states that so we're just asking for
21 that clarity, so that as we go through the review
22 process, it's clear that those pads can encroach.

23 HEARING EXAMINER COLLINS: So why is that
24 necessary though? Why can't it -- so four is more than
25 three; that's why you need the deviation?

1 MR. FRANTZ: Exactly.

2 HEARING EXAMINER COLLINS: And that enhances the
3 project in what way?

4 MR. FRANTZ: It allows us the ability to -- you've
5 seen on the site plan we've -- we're kind of sandwiched
6 between wetlands on one side and -- and residents on
7 the other. We've -- we've really tried to keep a very
8 compact residential development, and so it allows for
9 flexibility in the design of those lots, those
10 individual lots, to allow for, you know, just a further
11 encroachment of the pad.

12 HEARING EXAMINER COLLINS: Okay, thank you.
13 That's it?

14 MR. FRANTZ: I'll end, I think, with just a quick
15 summary of what we think are the benefits of the
16 project:

17 So we're protecting community character, again,
18 through separation from the existing residents along
19 the eastern and northern property lines.

20 We've removed the access to De Moya Drive.

21 We are not proposing any boat trailer parking, and
22 it would not be an allowed use in the PD.

23 The development is an infill development, and it
24 is requesting less than the permissible density in the
25 suburban future land use category, as well.

1 We're also providing significant protection of the
2 natural resources.

3 We are exceeding the open space requirement,
4 providing 18.38 acres of preserves, and we're including
5 the creation of wetlands of approximately four and a
6 half acres.

7 So with that, it's my professional opinion that
8 the 31 Oaks RPD has met all the applicable standards
9 and demonstrated consistency with the Lee Plan and the
10 Land Development Code.

11 HEARING EXAMINER COLLINS: Thank you.

12 MR. FRANTZ: Thank you.

13 HEARING EXAMINER COLLINS: Why don't we take -- do
14 you have questions of your witness?

15 MR. HARTSELL: No questions, but I was going to
16 say --

17 HEARING EXAMINER COLLINS: Okay. I'm going to
18 take a short break right now, and then we'll resume
19 with --

20 MR. HARTSELL: Yes.

21 HEARING EXAMINER COLLINS: -- Staff review of the
22 application. Thank you.

23 (Recess from 10:15 a.m. to 10:25 a.m.)

24 HEARING EXAMINER COLLINS: We're back on the
25 record with Staff's presentation of their Staff Report.

1 MS. WORKMAN: Good morning. For the record, my
2 name is Beth Workman. I'm a principal planner with the
3 Zoning section. I've been accepted as an expert in
4 this forum before, and I wish to do so today.

5 HEARING EXAMINER COLLINS: Yes, please proceed.

6 MS. WORKMAN: Thank you.

7 The first thing I want to do is give you a copy of
8 the PowerPoint.

9 (Staff Exhibit 3 submitted.)

10 HEARING EXAMINER COLLINS: Staff Exhibit 2 (sic).
11 Exhibit 1 was the Staff Report.

12 MS. WORKMAN: Okay. So the case before you today
13 is DCI2021-00051, 31 Oaks RPD.

14 The request, as Mr. Frantz went over, is a
15 rezoning of 88.3 acres from agricultural and
16 residential planned development to residential planned
17 development.

18 The Applicant is wishing to permit a maximum of
19 265 single-family dwelling units or 342 townhouse
20 dwelling units or any combination of those units.

21 The Applicant is seeking four deviations. The
22 fourth deviation has been added for encroachment
23 setback and was added in the 48-hour letter.

24 Staff recommends approval with conditions.

25 A little property history, Mr. Frantz went into

1 this in detail. The project does abut State Road 31.
2 It's in a suburban and wetlands future land use
3 category.

4 Approximately 49.62 acres was rezoned in 2006 by
5 Resolution Z-06-050, which was approved for 140
6 single-family dwelling units. And so what you see here
7 is this little blue area that's RPD, that is Marina Del
8 Lago. That is the Z-06-050.

9 So the Applicant today would like to add
10 approximately 38.68 acres to the 49.62, and that area
11 is located in the AG-2 portion down here. So this
12 would become one cohesive planned development rezoned
13 to residential planned development.

14 So this is the approval right now, as it stands
15 today, without the AG-2 property that's located down
16 here. So the Applicant could go out and get a
17 development order for this portion, and these are the
18 requirements -- for compatibility purposes, Staff
19 looked at what was previously required in the '06
20 zoning resolution for compatibility along the property
21 line abutting the residential tracts to the east and to
22 the north, and it's similar to what the Applicant today
23 is proposing. There's a 10-foot-wide buffer that's
24 proposed as part of the single-family to single-family.
25 The Code doesn't require a buffer when you're proposing

1 single-family to single-family, and that was an
2 enhancement in the '06, as well as it's an enhancement
3 today, as well, in this case, because the Applicant
4 today is proposing a 10-foot-wide buffer with the
5 6-foot-high opaque fence or wall, a solid wall. And in
6 this condition in '06, they incorporated the existing
7 vegetation, if it could be saved, along the property
8 line. Staff reviewed that. We decided not to include
9 that in the condition because of the berming that was
10 explained that's going to go around the property. It's
11 futile. I mean, you would have to, like, full drip
12 line, move a berm, snake it around some of the plant
13 material to save it. And with the conveyance coming in
14 off the side to, you know, incorporate the floodplain
15 storage so that the surrounding uses have positive flow
16 under the site like it currently occurs today, that
17 existing vegetation would need to be impacted and then
18 the buffer put in. So that was the single-family to
19 single-family.

20 The State Road 31 buffer, there was -- there were
21 no indigenous saved along this area, and it was a
22 25-foot Type D buffer.

23 The Code requires -- or allows a 45-foot height.
24 In this zoning it was 35 feet, and today's zoning it's
25 35 feet.

1 So I kind of went over a little bit about what's
2 on this master concept plan, and Mr. Frantz went over
3 in detail with the visuals of what it's going to look
4 like. So along the north here and the east and then
5 the southeast along here, it depends at time of DO what
6 is called out along these tracts. So if single-family
7 is there, then -- then the single-family would be this
8 buffer right here, with the 10-foot-wide, the 5 trees
9 per 100 linear feet, the double hedge, and the
10 six-foot-high opaque wall.

11 HEARING EXAMINER COLLINS: And that's only where
12 like the lots are abutting each other. It's not where
13 wetlands or open space --

14 MS. WORKMAN: So where there is the indigenous,
15 that provides essentially the buffer to provide
16 separation and compatibility.

17 HEARING EXAMINER COLLINS: So we're really only
18 talking about this northeast corner --

19 MS. WORKMAN: Right here.

20 HEARING EXAMINER COLLINS: -- and the southeast --

21 MS. WORKMAN: Coming down this way.

22 HEARING EXAMINER COLLINS: Yeah.

23 MS. WORKMAN: And you can see there's a note on
24 the MCP, "No buffer required," right here.

25 HEARING EXAMINER COLLINS: So there's going to be

1 a buffer required along the wetland or the lake there?

2 MS. WORKMAN: Along the lake there is a buffer
3 that is being required just because of the visual --
4 and that's the enhancement because the visual -- the
5 visual across the lake.

6 And so if townhomes are proposed, then the
7 15-foot-wide buffer is being proposed with the 8-foot
8 wall, and that is Code-required. Code-required is a
9 Type B, as in boy, which is a 15-foot-wide buffer with
10 the 8-foot wall, and the planting material.

11 HEARING EXAMINER COLLINS: That's when you have
12 multi-family against single?

13 MS. WORKMAN: Correct.

14 And so the surrounding uses, Mr. Frantz did a
15 really good job about going through each side of this
16 development. Because it is in the suburban future land
17 use category, you do have primarily residential in
18 these areas, with a mix of some commercial and mixed
19 planned development.

20 So up in here is a mixed planned development that
21 was approved for ALF, an assisted living facility, with
22 a marina component that runs all the way down this way.

23 There's an AG-2 property that abuts the subject
24 property here.

25 And then you have this commercial marine and

1 industrial marine, which is primarily they store boats
2 up in this area; and then you have a commercial planned
3 development with recreational facilities and a
4 restaurant on this property.

5 And working down across State Road 82, vacant
6 AG-2.

7 All the way down here there is a residential
8 single-family on this property and an AG-2 zoning
9 district.

10 And then at the corner of 80 and 31, you do have
11 this commercial planned development. There's slated to
12 be a gas station that goes right in here.

13 And then across the street, 31, is the
14 commercial --

15 HEARING EXAMINER COLLINS: (Sneezing.)

16 MS. WORKMAN: Bless you.

17 HEARING EXAMINER COLLINS: Thank you.

18 MS. WORKMAN: -- a commercial planned development
19 that is in here with an existing RaceTrac, and then it
20 has outparcels along here for commercial uses. This is
21 where the Applicant will be having residential access
22 only into this development to access 80, as well as 31.

23 And then along the eastern boundary is Fort Myers
24 Shores. It's a single-family residential development.
25 They're quarter-acre lots. Staff has walked this site

1 three times. We have walked along the boundaries to
2 look at what was existing there and the height of
3 the -- of the homes along this compared to what was
4 going to go in here to like really look at the
5 buffering and the compatibility in those areas.

6 So Lee Plan compliance, as mentioned, it's in the
7 suburban future land use category. The Applicant, the
8 way that they're designing the project, it's less than
9 the density that is allowed in that suburban future
10 land use category. It's six units per acre. The
11 Applicant is -- even with the combo going on with the
12 townhomes is less than that with what they're
13 proposing.

14 The wetland future land use category designation
15 allows for 1 unit per 20 acres when you impact
16 wetlands. If you do not impact wetlands, you can take
17 on the upland future land use category density. In the
18 application for rezoning, the Applicant was
19 conservative and calculated the density for all
20 wetlands to be impacted on the application; so it's a
21 conservative number going through this whole entire
22 application.

23 It does promote the contiguous compact growth
24 patterns. They are, you know, designing the
25 single-family or townhome tracts close together,

1 allowing for the preservation of the wetland preserves,
2 as well as creation of wetland preserves, with some
3 upland.

4 They have provided the adequate urban services and
5 the letter of availability from the potable water and
6 sewer.

7 The Applicant -- the project is located in the
8 coastal high hazard area, which I'm going to get into a
9 little bit later, which prompts the floodplain storage
10 that the engineer talked about. And so with the
11 "prohibits residential development where natural
12 physical constraints or hazards exist, including
13 hurricane or flood hazards," through Condition 11 these
14 concerns are mitigated by, at time of development
15 order, providing engineer drawings that are going to
16 show how this development is going to protect off-site
17 from flooding. So that Condition 11 really hits home
18 on those because it's pre- and post-conditions of
19 what's going to go on there, and checks and balances on
20 that.

21 Designed around existing site limitations, again,
22 open space and buffers. Mr. Frantz, you know, touched
23 on this. Some of the deviations are needed as a result
24 of preserving the wetlands, creating wetlands,
25 preserving uplands, as well as providing enhanced

1 buffers. They are over on their open space as what is
2 required by Code so they're really -- they really are
3 enhancing the project with some of these facets to meet
4 the Caloosahatchee Shores Community Plan requirements,
5 as well as Policy 5.1.2 and 5.1.6.

6 The design of the sidewalks, open space areas, and
7 recreation areas with the interconnect, the internal
8 and external. Madam Hearing Examiner, you touched on
9 the bus stop and the external. At time of development
10 order, Development Services Staff will be looking at
11 the off-site improvements that are needed for sidewalk.
12 Because this is on a State Road, if the State comes in
13 and says the improvements that are being proposed --
14 and I think it's 2025 along the widening -- if those
15 have adequate sidewalks, then the County will require a
16 fee in lieu at time of development order, and then
17 there won't be sidewalks designed because they're going
18 to be incorporated into that State -- you know, and I
19 know reviewing some other projects to the north of the
20 bridge on State Road 31 that there are extensive
21 sidewalks, multi-use paths going in, according to the
22 Florida Department of Transportation's current plans on
23 those.

24 HEARING EXAMINER COLLINS: This is like five, ten
25 years in --

1 MS. WORKMAN: Five or ten --

2 HEARING EXAMINER COLLINS: -- the future.

3 MS. WORKMAN: -- years, correct. So there will
4 be -- there will be required some sort of communication
5 between FDOT and our Lee County Staff to know what is
6 going on in there, via a letter from FDOT of what's
7 going on or how they're going to address that, but a
8 fee in lieu if sidewalks are not proposed on the DO.

9 HEARING EXAMINER COLLINS: But where are the kids
10 going to stand to catch the bus? There's no
11 sidewalk --

12 MS. WORKMAN: The internal --

13 HEARING EXAMINER COLLINS: -- no sidewalk
14 requirement, they do a fee in lieu, they only have to
15 build a sidewalk out to the roadway.

16 MS. WORKMAN: Out to the roadway. The external --
17 the external sidewalks is the fee in lieu. The
18 internal sidewalks are required to show
19 interconnectivity internally to the project.

20 HEARING EXAMINER COLLINS: Right, then they have
21 the gatehouse, and that's where the kids are going to
22 be standing, between the gatehouse and the highway, and
23 that's a major highway there.

24 MS. WORKMAN: Right, right.

25 HEARING EXAMINER COLLINS: Okay.

1 MS. WORKMAN: So enhanced landscaping, signage,
2 and architectural standards was touched on. They are
3 providing an enhanced buffer. The open space is above
4 Code minimum.

5 Environmentally sensitive areas. So Ms. Brosious
6 went over the wetlands and the complexity of the
7 wetlands, and the Lee County standard is 75 percent or
8 more exotic is not considered indigenous. The State is
9 50 percent. So we always have to look at, yes, you
10 have a FLUCCS map; yes, it's above -- you have exotics
11 above 75 percent; it's not considered indigenous.
12 Staff did go out and verify the FLUCCS map as part of
13 our review, went out a couple times to verify what the
14 Applicant was proposing bringing in and then what we
15 saw in the field, and it does -- it does verify that
16 the FLUCCS map they provided is accurate.

17 There was -- there wasn't a formal jurisdictional
18 wetland determination provided for the whole entire
19 site. Marina Del Lago, the portion that was rezoned to
20 the north, that portion did have a wetland
21 determination, did have an environmental resource
22 permit that we did look at to see what was considered
23 State wetlands on that northern piece. We did not on
24 the southern piece.

25 And so the Applicant is proposing to impact

1 approximately 9.29 acres of wetland. Through that,
2 County Staff provided Condition 9B, and 9B states that
3 after development order is approved, and before any
4 construction on-site can occur, County Staff needs to
5 review the South Florida Water Management District
6 permit to make sure that it's consistent with what
7 we're approving at DO time to make sure that the
8 impacts to wetlands are being mitigated. And at such
9 time, then we verify the consistency between the two
10 plans.

11 If there's an inconsistency, Condition 9B states
12 that they'll have to provide an amendment to that DO.
13 That amendment will still need to meet the zoning to
14 make sure that our open space and our indigenous is
15 being met; and if it does not, then the Applicant is
16 going to have to come back through zoning to make those
17 changes. So that Condition 9B allows for this project
18 to be consistent with 124.1.2.

19 I just want to put on the record that County Staff
20 does not -- we do not assess wetlands. That is a State
21 function, and they provide the mitigation needed for
22 impacts to their State wetlands. So we are -- we need
23 to know what they're doing in order to meet our Policy
24 124.1.2, hence Condition 9B. So I just wanted to point
25 that out with the environmentally sensitive areas.

1 Surface water management was explained in detail,
2 the difference between the on-site surface water
3 management and then the floodplain storage and
4 conveyance area, which are two separate things. And so
5 this map that was provided as part of the application
6 kind of speaks to the coastal high hazard area. And so
7 the coastal high hazard, which is not appearing very
8 well on this screen, it encompasses -- there's a dashed
9 line that runs along here, and it's beige on this part.
10 This whole entire area is in the coastal high hazard
11 area. This is the only piece that is not within that
12 region.

13 And so what does that mean? So coastal high
14 hazard, we have protection measures in the Lee Plan for
15 impacts to these areas; and if you're going to impact
16 the coastal high hazard area, you need to provide
17 demonstration that they are uplands. Through that
18 District permit for impacts to wetlands, that provides
19 the proof that those have been mitigated for. Once
20 they're mitigated for, they become -- they become
21 uplands. That's what that Condition 9B also does, is
22 to meet these policies to the coastal high hazard.

23 In addition, the coastal high hazard Lee Plan
24 Policy 101.1.2 is protection of uplands, wetlands, and
25 estuaries. The Applicant is providing areas of wetland

1 creation, and that is in these hatched areas here. In
2 the indigenous management plan and restoration plan,
3 there are tables in there that show what material is
4 going to be restored in these areas to be able to
5 provide water quality and additional storage. So it's
6 in detail in that -- in that document that shows, yes,
7 they are providing an additional wetland creation area
8 above and beyond what is required for the indigenous
9 open space, and here's what's going to be planted in
10 those areas to attenuate the water before it leaves the
11 site.

12 Again, this feeds into 125.1.3, which is
13 artificial drainage systems and retention and detention
14 areas. The engineer talked about swale systems and
15 that kind of thing. Those swale systems, dry detention
16 and retention, according to Caloosahatchee Shores Code,
17 requires plantings, and so they'll be required to plant
18 those to provide water quality, which then feeds into
19 60.4.1 and 4.2, which is designing green
20 infrastructure, which the Applicant has provided and
21 demonstrated through the review process.

22 This speaks to water quality. As mentioned, the
23 site is not going to degrade surface or groundwater
24 through the addition of the floodplain storage
25 conveyance, the plantings, and the created wetland, and

1 then the existing wetland areas that are going to be
2 restored through exotic removal.

3 Ms. Brosious talked about the gopher tortoises on
4 the site that are located right in this area right
5 here. There are five. They would be required to meet
6 State requirements.

7 The indigenous vegetative communities are present
8 on-site. They're going to be restored through the
9 removal of exotics, and then those creation areas will
10 provide a native habitat.

11 As mentioned, open spaces above and beyond what is
12 required per Code. Code is 40 percent of the site must
13 be represented as green space, half of that must be
14 represented as indigenous, and the Applicant is
15 providing overages.

16 I'm not going to belabor Condition 9B, but the
17 formal -- you know, the formal wetland acreage prior to
18 construction will need to be provided before a
19 vegetation removal permit will be issued.

20 And then buffers are compliant as conditioned.

21 Yury touched on the compatibility and access
22 traffic impacts to the site, and then County Staff
23 provided a Staff memo. The proposed development will
24 not be detrimental to the roadway system. Worst-case
25 scenario was looked at with the 265 single-family

1 units, and Staff opined that it would not have any
2 detriment to the system.

3 Again, going through the Land Development Code
4 requirements, we went in depth on the -- the open
5 space. There was a public informational meeting that
6 Mr. Frantz touched on to meet 33-1482.

7 I touched on the very last LDC section, 33-1494,
8 which requires dry detention areas to be planted with
9 the following species, and that's in the community
10 plan.

11 Deviations went -- we went over -- the Applicant
12 went over with the setbacks for the lake excavation.
13 So the Code requires 50 feet from private property line
14 under separate ownership. The Applicant is requesting
15 25 feet, and Staff is recommending approval with
16 Condition 12.

17 Deviation 2 is from lake bank slopes. The Code
18 requires a six-to-one slope on all lakes. The
19 Applicant is requesting a four-to-one on the lake bank
20 slopes, and Staff is recommending Condition 14.

21 The third deviation is from -- and I still have
22 hammerhead in here, the 48-hour letter changed that --
23 the dead-end streets, and Condition 15 was added by
24 Development Services to have verification from the Fire
25 Marshal that the turnaround would be -- would meet the

1 requirement to turn a truck around for health, safety.
2 At time of development order that will need to come in.

3 And then the fourth deviation was the encroachment
4 between the units for the pads, and Staff is in
5 agreement with that. And we did run it past our Plan
6 Review Staff that review the building permits to ensure
7 that that was necessary.

8 And just to put on record, the Code is being
9 changed. We're working on removing pads from that
10 section of the Code. It hasn't been codified yet. We
11 shared it with the Applicant to let them know what is
12 being done in that -- and it's still a work in
13 progress. With some of the things that came out
14 through our discussions here, there still is some
15 tweaking in that that needs to be done, but the Code is
16 being changed.

17 So we're in agreement with the 48-hour letter, and
18 Staff finds that the findings and conclusions to rezone
19 the project to residential planned development have
20 been met, and we recommend approval with the
21 conditions.

22 HEARING EXAMINER COLLINS: Okay, thank you very
23 much.

24 MS. WORKMAN: Uh-huh.

25 HEARING EXAMINER COLLINS: That concludes Staff

1 and the Applicant's presentation. I'm going to open up
2 the floor to members of the public now. I'm going to
3 call all the names on the sheets I have; and then when
4 I get to the last one, I'll see if there's anyone left
5 that didn't fill out a sheet that would like to speak.

6 The first name is Jay Baumler?

7 Paul Thomas?

8 Terry Short?

9 UNIDENTIFIED SPEAKER: He just went to the
10 bathroom.

11 HEARING EXAMINER COLLINS: What did he do?

12 MR. HARTSELL: Hold that one. He just went to the
13 restroom.

14 MS. WORKMAN: Went to the restroom.

15 HEARING EXAMINER COLLINS: Oh, okay.

16 Sharon Fredrickson.

17 MS. FREDRICKSON: No questions.

18 HEARING EXAMINER COLLINS: Okay. I'm going to
19 mess this up probably, Analese Ottley?

20 MS. OTTLEY: An Jalique.

21 HEARING EXAMINER COLLINS: An Jalique.

22 MS. OTTLEY: That's me.

23 HEARING EXAMINER COLLINS: I'm sorry --

24 MS. OTTLEY: Do you mind if I go last, please?

25 Because I -- I have a lot to say, and I --

1 HEARING EXAMINER COLLINS: Okay, that's fine.

2 MS. OTTLEY: -- just kind of (unintelligible).

3 HEARING EXAMINER COLLINS: Bob DeBrock?

4 MR. DeBROCK: Yes.

5 HEARING EXAMINER COLLINS: Would you like to
6 speak, sir?

7 MR. DeBROCK: Yes.

8 HEARING EXAMINER COLLINS: Please come to the
9 podium.

10 MR. DeBROCK: My name is Bob DeBrock. I live on
11 Davis Boulevard. My first comment is to show
12 appreciation to Beth and Staff and all you folks for
13 addressing our concerns in the meeting of December 9th
14 in 2021, specifically, the De Moya closing off, the
15 landscape buffers, and the walls. That is one of my
16 biggest concerns with the already overwhelmed traffic
17 on Davis and the school children and all the
18 pedestrians. Again, I appreciate all your work on
19 that. You did a lot of work, and I appreciate it.

20 The second comment is about traffic. And I'm not
21 a traffic engineer, but by simple observation in the
22 early morning hours, State Route 31, State Road 80,
23 Davis Boulevard, Fifth Street, and Tropic Avenue do not
24 operate at sufficient capacities. Thank you.

25 HEARING EXAMINER COLLINS: Thank you.

1 Rose Garcia? Thank you for coming.

2 MS. GARCIA: Thank you.

3 My name is Rose Garcia. I own one of the oldest
4 houses in Fort Myers Shores. It was built in 1956.
5 Our family bought it in 1961. I've seen a little bit
6 of growth out here in Fort Myers Shores. I live on 1st
7 Street off of Davis Boulevard so our neighborhood is
8 very much impacted. So you see Davis Boulevard --

9 HEARING EXAMINER COLLINS: Yes.

10 MS. GARCIA: -- and First Street?

11 HEARING EXAMINER COLLINS: Yes.

12 MS. GARCIA: No, you're on 4th Street, way down
13 1st near Palm Beach Boulevard.

14 MS. WORKMAN: My mouse is slow, sorry.

15 MS. GARCIA: Yeah, there's 1st Street right there.
16 I'm one block up from Palm Beach Boulevard --

17 HEARING EXAMINER COLLINS: Right.

18 MS. GARCIA: -- off Davis.

19 So obviously I have a lot of concerns. The
20 traffic is a huge, huge, huge concern. I'm one block
21 off of Davis. I can wait at the light at Davis
22 Boulevard sometimes three cycles to get out onto Palm
23 Beach, particularly headed west, but also to east it's
24 also a long process.

25 So when I look at the traffic that we have now and

1 how hard it is to -- to navigate Palm Beach Boulevard
2 in either direction, and the growth that continues, I
3 still have really, really big concerns for a project of
4 this size. I understand everybody wants to live in
5 Florida, and we're going to have growth, but this
6 size -- and I'm not really understanding some of what
7 was said about the peak trip hours generating -- 265
8 single-family dwellings, what does that really mean in
9 numbers? Does that mean 2 cars per house so that's
10 over 500 extra cars on the road? Does that not include
11 deliveries or lawn service or employees or, you know,
12 whatever else? So the impact numbers seem a little
13 weird to me. So that was one really big concern.

14 And I think you mentioned that -- that the
15 sidewalk issues for the future is five to ten years.
16 How many years have they been talking about widening
17 Highway 31? Many years, and the Pigott Bridge is part
18 of that expansion process and problem and concern. So
19 if they're not even going to look at the reviews -- you
20 know, do we even have any kind of a timeline for when
21 they're actually going to expand Highway 31 and make it
22 more than a one-lane (sic) road?

23 So with the additional traffic for Babcock Ranch
24 and the growth that's happening there, and then you add
25 this community on an oversaturated Highway 31, and a

1 massively backed up Highway 80, Palm Beach Boulevard --
2 well, yes, we have four lanes and six lanes, divided
3 highway -- which, hallelujah, that's wonderful, but it
4 took us a lot of years to get that. What kind of a
5 timeline are we looking at before we have that
6 expansion on 31 to really be able to help absorb some
7 of this? It's going to be ten years till they study
8 it? It's going to be five years until they study it?
9 What does that mean for actuality, road expansion and
10 development, for that. So that's one major concern. I
11 think that's the number one concern that I have as a
12 resident that's impacted daily from that.

13 And another concern that I have, when you talked
14 about the survey for the water and that kind of thing,
15 so in -- in Fort Myers Shores where -- where I live on
16 1st Street, I didn't have as much impact from Hurricane
17 Ian as a lot of other people did. I had over seven
18 inches in less than eight hours of rainfall, but the
19 flooding -- storm surge came up to 4th Street, came
20 down David Boulevard to all that green space. You
21 know, all -- the Davis boat ramp, and look at all the
22 storm surge that came up and intruded into the Shores.

23 And we're an older community so we're probably
24 low-lying. You're talking about this new community
25 being 35 feet. So what is that elevation? I'm

1 thinking in the reverse. Okay. If it rains here, it's
2 going to be, you know, brought off and down eventually
3 into -- in the Caloosahatchee River. But what happens
4 if you have a 35-foot elevated community that -- and we
5 do have another Ian with that kind of storm surge, with
6 that kind of rainfall? And it's just going to pour off
7 of there and flood areas perhaps that didn't flood --
8 like at my house where I didn't flood, but I did get
9 over seven inches of rain from the storm. So those are
10 concerns that I have in the reverse of what he was
11 speaking and addressing.

12 But my last point is this: I invite all of you to
13 drive Palm Beach Boulevard and Highway 31 during rush
14 hour. All of you, take a ride, get stuck in the
15 traffic, see what we have to deal with on a daily basis
16 where ambulances can't get through if there's an
17 accident; fire trucks can't get through if there's an
18 accident so -- and that's what we have to deal with,
19 and that's my number one concern for this project and
20 that not being addressed before it's allowed to be
21 built.

22 Thank you very much.

23 HEARING EXAMINER COLLINS: Thank you.

24 Judy Meyers? Judy Meyers?

25 Noel -- Noel Greilick?

1 James Simpson?

2 MR. SIMPSON: Yes.

3 HEARING EXAMINER COLLINS: Thank you for coming.

4 MR. SIMPSON: How are you? My name is James
5 Simpson. I'm a resident of Davis Boulevard, lived
6 there going on 38 years now.

7 I had most of my concerns about the buffer area
8 like behind me. I'm wondering, is there any kind of
9 easement being put in, or are we just going to go down
10 the property line and strip mine any vegetation, trees,
11 anything that's existing there, and flatten it and then
12 go from there?

13 HEARING EXAMINER COLLINS: Okay. They're going
14 to -- we're going to take --

15 MR. SIMPSON: Okay.

16 HEARING EXAMINER COLLINS: -- notes of questions,
17 and then when they --

18 MR. SIMPSON: Yeah, because --

19 HEARING EXAMINER COLLINS: -- come back --

20 MR. SIMPSON: -- what I'm saying is, you know,
21 there's 30-foot trees back there that are like four or
22 five foot off the property line, and they're just going
23 to come in and take them out --

24 HEARING EXAMINER COLLINS: Well, they're going to
25 have to if they're going to berm this site to keep

1 water from going into Fort Myers Shores, but then
2 they'll go back in and they're going to install the
3 buffer that they showed during their presentation.

4 MR. SIMPSON: Yeah, that's on their side; right?

5 HEARING EXAMINER COLLINS: Yes.

6 MR. SIMPSON: Yeah, so -- okay.

7 HEARING EXAMINER COLLINS: Well, the trees must be
8 on their side. They can't clear trees that are not on
9 their property.

10 MR. SIMPSON: No, I understand that, but they're
11 not going to leave any easement or anything for any --

12 HEARING EXAMINER COLLINS: Well, there will be a
13 20-foot buffer if it's townhome, and it will be --

14 MR. SIMPSON: No, this is -- okay. That's the
15 next thing. Okay. We're talking single-family
16 residences?

17 HEARING EXAMINER COLLINS: Uh-huh.

18 MR. SIMPSON: Lot size? Are they going to be 30
19 something foot in the air, or are they going to be
20 compatible with the existing dwellings that have been
21 there for 50 years?

22 HEARING EXAMINER COLLINS: Okay. We'll ask them
23 to clarify that for us.

24 MR. SIMPSON: Yeah. I mean, what's a six-foot
25 fence going to do with 35-foot townhouse -- are these

1 townhouses, or are they single-family dwellings?

2 That's the other thing.

3 The Wilson Pigott Bridge, that is in the works to
4 be redone; right?

5 HEARING EXAMINER COLLINS: Okay. The Wilson
6 Pigott Bridge, do we know where that is on the map?

7 MR. SIMPSON: Yeah, it's on 31 at Caloosahatchee.

8 HEARING EXAMINER COLLINS: Okay.

9 MR. SIMPSON: My understanding is that is set to
10 be redone, done over, so it would have to shift to the
11 east. They're not going to come through The Boathouse,
12 I guarantee you, to do this bridge. So now we're
13 moving to the east, we're moving to their property, and
14 there's not going to be any conflicting or -- you know,
15 I don't understand that. Why wouldn't they put the
16 bridge and the infrastructure in before and then do the
17 development instead of doing the development, and now
18 we're going to have to come through with the widening
19 of 31 and the new bridge? You know, it just doesn't
20 make sense. Anyway, that's not my thing.

21 I think that's it. I'll just touch -- the
22 tortoise turtles (sic), we're talking two years ago
23 since the last -- you know, I'm sure there's no more
24 there, you know, whatever. I mean, nobody has done any
25 study in two years on it. They're just going by two

1 years ago. And I'm sure they might get relocated, and
2 maybe before they're relocated...

3 And that's the other thing, the traffic.
4 Everybody has touched on the traffic. It's a big
5 thing. I think maybe the traffic survey was done on a
6 Sunday.

7 HEARING EXAMINER COLLINS: Okay, thank you.

8 Terry Short, are you back?

9 MR. SHORT: Yeah, I'm back.

10 HEARING EXAMINER COLLINS: Would you like to
11 speak, sir?

12 MR. SHORT: Yes, I would.

13 HEARING EXAMINER COLLINS: Okay.

14 MR. SHORT: My name is Terry Short. I live on
15 Santiago.

16 HEARING EXAMINER COLLINS: Okay.

17 MR. SHORT: So we're three quarter of the way down
18 Santiago past the fake canal, which in your --

19 HEARING EXAMINER COLLINS: Further north, I think?

20 MR. SHORT: Yeah, further north there.

21 MS. WORKMAN: There's the property.

22 MR. SHORT: Keep going over to the left -- no, to
23 the left.

24 MS. WORKMAN: (Complies.)

25 HEARING EXAMINER COLLINS: North of De Moya?

1 There it is.

2 MR. SHORT: North of De Moya, yes, there's
3 Santiago.

4 MS. WORKMAN: There we go, right there.

5 MR. SHORT: I live right about there.

6 HEARING EXAMINER COLLINS: All right.

7 MR. SHORT: A little bit -- a little bit north of
8 that.

9 Anyway, we had four feet of water, okay, with Ian,
10 and they're talking about this development being 35
11 feet at the elevation? Okay. Our elevation is seven
12 feet. De Moya --

13 HEARING EXAMINER COLLINS: Okay. They're talking
14 about the height of the building, not --

15 MR. SHORT: Okay. They're not talking about the
16 land level?

17 HEARING EXAMINER COLLINS: No, sir.

18 MR. SHORT: Because De Moya is at about -- I think
19 eight-five or eight-six. They had about a foot and a
20 half of water up there. This swale they're talking
21 about behind De Moya, running behind De Moya south on
22 Davis, and then emptying into the wetlands -- which are
23 higher than De Moya. Water don't run uphill. I'm a
24 PE, okay? We haven't figured that one out yet. I
25 don't know how they're going to drain into the wetlands

1 uphill. That just doesn't make sense to me.

2 The next thing I'm curious about, this boat ramp,
3 some people say it exists; some people, it doesn't.
4 Okay. This boat -- the boat storage, excuse me, is not
5 for the people using the boat ramp at De Moya -- the
6 corner of De Moya, correct? This is private storage
7 for the --

8 HEARING EXAMINER COLLINS: There is no boat
9 storage proposed in the site plan.

10 MR. SHORT: Okay. So they've done away with the
11 boat storage coming out on De Moya?

12 HEARING EXAMINER COLLINS: Yes, sir.

13 MR. SHORT: Okay. That was it on that.

14 And other than the traffic, I agree with them,
15 there is no -- if you come out to Davis, you'll spend a
16 half hour at the light and an hour getting to 31 in the
17 morning and in the evening. So 265 more houses -- and
18 they can't put a light on 31 because that's a State
19 highway, and the light would be too close to 31 and
20 82 or 80 --

21 HEARING EXAMINER COLLINS: There's no light on 31?

22 MR. SHORT: No -- yeah, there's a light at 31 and
23 80.

24 HEARING EXAMINER COLLINS: Yes.

25 MR. SHORT: You can't put --

1 HEARING EXAMINER COLLINS: Right, okay.

2 MR. SHORT: -- another light --

3 HEARING EXAMINER COLLINS: On 31 --

4 MR. SHORT: On 31, correct.

5 HEARING EXAMINER COLLINS: Okay. I'm sorry --

6 MR. SHORT: So they --

7 HEARING EXAMINER COLLINS: -- I misunderstood.

8 MR. SHORT: -- could not have a light at the
9 access, and we would have another situation like they
10 have at Verandah, gee, come out of your house and pull
11 out onto a six-lane highway. That's not too feasible.
12 We know how many deaths have been at Verandah so far.

13 Other than that, thank you.

14 HEARING EXAMINER COLLINS: Thank you for coming.

15 MR. SHORT: Yeah.

16 HEARING EXAMINER COLLINS: An Jalique, it is your
17 turn. Good morning, thank you for coming.

18 MS. OTTLEY: Good morning. I am --

19 THE REPORTER: Since you have a mask on, make sure
20 you speak slowly and clearly because I can't see your
21 face.

22 MS. OTTLEY: Oh, sorry. And also here's the face
23 to the voice.

24 THE REPORTER: I just want to make sure I
25 understand you.

1 MS. OTTLEY: Thank you.

2 I have lived on Davis Boulevard right across from
3 5th Street -- that's the yard with the chessboard in
4 it --

5 HEARING EXAMINER COLLINS: All right. Let's just
6 see if we can see where that is.

7 MS. OTTLEY: And that's 5th -- right there.

8 MS. WORKMAN: (Inaudible.)

9 MS. OTTLEY: Right there, that's my house.

10 HEARING EXAMINER COLLINS: On the left side there?

11 MS. OTTLEY: Yes.

12 HEARING EXAMINER COLLINS: Okay.

13 MS. OTTLEY: Right there.

14 HEARING EXAMINER COLLINS: We -- we placed you.

15 MS. OTTLEY: Thank you.

16 I have lived in the house almost 30 years, and the
17 reason why most people build houses or buy houses in
18 areas like that is because we want to be away from
19 everybody else that we, you know, encounter during the
20 day, you know, in the city and everything.

21 And I didn't know that they were going to do the
22 Marina Del Lago. I kind of heard it after the fact,
23 when it was originally approved, that they were going
24 to put it back there. And it was 2006 you said it was
25 approved, and they didn't build anything. There was a

1 one-day -- a two-year extension they were given in 2011
2 to 2013 to go ahead and build it, the permits, and they
3 still didn't build anything.

4 Sorry, I have a million notes in here. Let me get
5 it together.

6 The wildlife in the area, you're going to put the
7 38 acres or the 49 acres, bring it down to I think 9.7,
8 according to the notes online, to the combined 9.7
9 acres versus the whole area that the animals have.
10 That's like asking somebody to go from a
11 2,400-square-foot house to an 800 square foot house,
12 but they'll figure out a way to make it work for the
13 animals. I don't see how you could do that because
14 you're not a turtle so you wouldn't know but...

15 Traffic -- okay. Sorry if I'm going like up,
16 down, and all around because this is my first rodeo as
17 far as public speaking.

18 So they have the original 140 there. They want to
19 increase it to 265 or 342 to include townhouses.

20 Calusa Palms just north of the area there, they
21 have pending 60 units, combined 219.

22 Alva Shores -- and I have the paper, I can give
23 you copies of these -- this is additional buildings
24 that have been approved anywhere -- from 31 to
25 Buckingham to include 104 on -- Hemingway Pointe, down

1 Buckingham, for 104 units to 207 townhomes that was
2 approved in 2015.

3 Oak View, which is down Buckingham across from --
4 from the Buckingham 320, they have 60 units that they
5 were approved for in 2017.

6 Buckingham -- Buckingham 320 in 2005 was approved
7 for 300 -- 690 units, and in 2021 got approved for
8 another 325.

9 Portico, 589 acres, approved 300 -- 3 -- sorry,
10 1,178 units in March of 2005, and in 2019 got approved
11 for an additional 422 units.

12 And Portico (sic) in '99 was approved for 1,598
13 units on 1,700 plus acres; in 2005 got an additional
14 401 units on 181 acres; and in 2015 got approved for
15 696 additional units.

16 I have all this paperwork here I can give to you.

17 Also, traffic, yeah. The other day I was outside
18 of my house and decided to count the cars. Coming down
19 5th Street -- and this is at 6:50 to 7 a.m. -- in 10
20 minutes 54 cars came down -- came down 5th and turned
21 south on Davis. And at 7 to 7:15, 102 cars came down
22 5th to turn on Davis.

23 And then this morning -- sorry, my apologies
24 again.

25 Okay. Then again -- that was on 5/11. On 5/15 I

1 did it again, 6:50 to 7 a.m., there was 53 cars and --
2 that came down -- I'll do 5th and Davis, but I also
3 have if they come down 5th and then go north on Davis.
4 I have south on Davis; I have north on Davis, et
5 cetera, and coming down 80, but I'm just going to give
6 you the one where the major traffic is.

7 And on -- 7 to 7:15, the same day on the 15th, 89
8 cars came down Davis -- I mean down 5th to Davis. On
9 the 16th, this is 7 to 7:15, 7:15 to 7:30, and 7:30 to
10 7:45 respectively, 75 cars, 107 cars, and 80 cars came
11 down in those 15-minute intervals.

12 Then -- sorry -- as far as traffic -- the traffic
13 reports, the last thing I saw on line was the analysis
14 that was done in 2006, and the year projection was
15 2007. I want to know when -- when they had said that,
16 you know, new traffic reports, was that done recently?

17 As far as the wetlands go, was anything done --
18 the ones that I saw online was 2006 and 2009. Has
19 anything been done post any of the hurricanes,
20 especially Ian? Because I am at a
21 seven-and-a-half-foot elevation, and I was lucky it
22 only made it to the last step before it came into my
23 house.

24 And also with the buffers in the back -- and
25 there's another paperwork that says there's a

1 six-foot -- there's going to be a six-foot fence on a
2 two-foot elevation. Water travels downhill so it --
3 it's going to come in everybody's back yard because
4 there's an additional two feet where the fencing is. I
5 think that's it.

6 And I'm actually curious as to how many of you
7 guys live out on Davis. How many of you live out
8 there?

9 And I went -- let me see, wildlife -- oh, the
10 sewer and water drainage. They're out there now -- I'm
11 sorry -- they're out there now putting in the drainage
12 systems along Davis, 5th, and all the other side
13 streets, Parkview and all them. Is that -- is that,
14 what they approved them to do, going to include any of
15 the additional housing that they're putting out there?
16 That I want to know, also.

17 And -- oh, and I was at Davis this morning. I
18 can't put it on a good piece of paper, but I'll have it
19 available for you at the next meeting; or if you like,
20 I can email it to you. I was at the corner of Davis
21 looking on to Palm Beach. From 7 to 7:15 the traffic
22 light goes from two to two and a half minutes
23 westbound. In that time anywhere from 68 to 94 cars
24 went westbound. It got backed up where they couldn't
25 pass, otherwise it would block Davis at 2 -- 7:02, 7:08

1 and 7:11. The Davis light lasts approximately 12 to 24
2 seconds. Eight to 15 cars can pass going westbound and
3 one to three cars going eastbound, with one or two cars
4 sneaking in, or somebody was kind enough to let them
5 go.

6 I think that's it. I think that is all. And if
7 you'd like these...

8 HEARING EXAMINER COLLINS: Yes, please. This will
9 be Ottley Exhibit 1, composite.

10 MS. OTTLEY: Thank you.

11 (Ottley Composite Exhibit 1 submitted.)

12 HEARING EXAMINER COLLINS: Thank you. Thank you
13 for coming, ma'am.

14 Is there any other member of the public whose name
15 I did not call that would like to speak?

16 MR. FREDRICKSON: (Indicating.)

17 HEARING EXAMINER COLLINS: Please come forward and
18 state your name.

19 MR. FREDRICKSON: Fred Fredrickson. I live on
20 De Moya.

21 One question I had was, is the elevation on the
22 first floor of buildings changed because of Ian?

23 HEARING EXAMINER COLLINS: Okay. We'll get --

24 MR. FREDRICKSON: Or are they --

25 HEARING EXAMINER COLLINS: -- an answer for you --

1 MR. FREDRICKSON: -- going to leave it the way it
2 was?

3 HEARING EXAMINER COLLINS: -- we'll get an answer
4 for you on that.

5 MR. FREDRICKSON: That's all I had, thank you.

6 HEARING EXAMINER COLLINS: Thank you. And your
7 name was Fred Fredrickson?

8 MR. FREDRICKSON: Yes.

9 MS. FREDRICKSON: It's under "Sharon."

10 HEARING EXAMINER COLLINS: Oh, I see, okay.

11 Okay. Is there anyone else that would like to
12 speak? Okay. I'm going to close public input and
13 return to the parties.

14 There were a number of issues that were raised by
15 the public and questions. I'm hoping that Staff and
16 the Applicant can contribute toward shedding light on
17 those issues and provide clarity for the residents of
18 Fort Myers Shores.

19 MR. HARTSELL: Could we have a five-minute break?

20 HEARING EXAMINER COLLINS: Yes.

21 MR. HARTSELL: Thank you.

22 (Recess from 11:13 a.m. to 11:20 a.m.)

23 HEARING EXAMINER COLLINS: Okay. We're back on
24 the record.

25 MR. HARTSELL: Thank you, Madam Hearing Examiner.

1 Steve Hartsell for the record.

2 I will try to recall or pick out all of the
3 questions that the members of the public asked; and to
4 the extent that I am not able to answer those or
5 address those, we can pull somebody else up.

6 You see the buffer exhibit that's up there. We
7 will address the buffers on Davis Boulevard again in a
8 little bit of detail because I know a number of -- a
9 number of people asked about that.

10 With regard to -- there was a question about when
11 the State Road 31 widening is going to take place. As
12 Mr. Bykau testified, the FDOT PD&E study is scheduled
13 for early 2024. So the study is not ten years down the
14 road. The study is actually, I think, underway and
15 scheduled for 2024.

16 HEARING EXAMINER COLLINS: So what does the PD&E
17 study entail?

18 MR. HARTSELL: That's the project design and
19 environmental, and that's as much as I can explain to
20 you --

21 HEARING EXAMINER COLLINS: Okay.

22 MR. HARTSELL: -- with regard to -- I mean, Yury
23 can come up and --

24 HEARING EXAMINER COLLINS: So --

25 MR. HARTSELL: -- give you more detail --

1 HEARING EXAMINER COLLINS: -- that's the very
2 first step in evaluating what improvement is necessary
3 and what the potential alignment would be?

4 MR. HARTSELL: Essentially, yes.

5 HEARING EXAMINER COLLINS: And that's scheduled
6 for next year?

7 MR. HARTSELL: Yes, early next year.

8 HEARING EXAMINER COLLINS: And how long does that
9 process typically take? We'll have Yury tell me that.

10 MR. HARTSELL: Yes, we will have Yury tell you
11 that.

12 MR. BYKAU: So I don't have the details of when
13 they actually started that PD&E study, but it's already
14 underway. I believe they already had some public
15 neighborhood meetings a couple of months ago, but it's
16 set to be completed by early next year. After the PD&E
17 study -- basically it looks at the feasibility of
18 widening of SR 31. So it's going to look at
19 right-of-way impacts, environmental impacts, and after
20 that they'll come up with like preliminary cost of the
21 project, and then -- then they might apply for funding
22 of the widening project. But, again, at this time it
23 hasn't been funded yet for widening. I just want to
24 make sure -- right now they're doing a feasibility
25 study, which is set to be completed by early 2024, but

1 the reason they're doing it now is because they are
2 aware of how many projects are coming into the area,
3 and they understand that SR 31 to the north of SR 78 is
4 already funded for widening of that roadway to four
5 lanes, and ultimately six lanes, so they just want to
6 make sure there's connection between that widening
7 project and this. So --

8 HEARING EXAMINER COLLINS: This project could
9 potentially be impacted by that project.

10 MR. BYKAU: Correct, yes, it could.

11 MR. HARTSELL: Which also takes us then to the
12 question about sidewalks on State Road 31. Those
13 sidewalks would be part of the State Road 31 widening
14 design. It wouldn't make sense to put a short sidewalk
15 along our project on State Road 31 when they recognize
16 that they're going to be widened anyway, which is where
17 the fee in lieu comes in, is the money is better spent.
18 Rather than putting in a sidewalk that's going to get
19 torn up --

20 HEARING EXAMINER COLLINS: Well, my concern is if
21 we're just at the PD&E stage, they do that, they get
22 funding, then they design the project, then they
23 acquire the right-of-way, then they build the project.
24 We're really -- we're talking eight, ten years in the
25 future before this happens; right?

1 My immediate concern is that this project goes to
2 develop, and we're going to have school-aged children
3 standing in front of your project on a major highway
4 with no place to stand because you feel as though it's
5 not worth building something if in eight years it's
6 going to get torn down. So I'm -- I'm struggling with
7 that because I think there's a public safety issue
8 there.

9 MR. HARTSELL: Your concern is about the bus stop.
10 I mean --

11 HEARING EXAMINER COLLINS: Well, they're going to
12 have to stand somewhere. You've got the entrance right
13 there; right?

14 MR. HARTSELL: I'm trying to distinguish between
15 sidewalks along State Road 31 being required and a bus
16 stop to -- to accommodate children who are there.

17 With regard to the bus stop, you know, we've
18 talked about it internally. The entrance to the
19 project is large enough to accommodate -- there's a
20 turnaround at the front that accommodates large trucks,
21 or it will accommodate a school bus to pull in there.
22 So there will be enough room for a school bus to pull
23 into -- I'd show you this but -- the main entrance
24 there and -- and to turn around. So at the main
25 entrance there will be sidewalks on our property

1 heading out to 31. So that's the area where children
2 would have a bus stop and --

3 HEARING EXAMINER COLLINS: So is that the kind of
4 detail that I would expect to see on a master concept
5 plan?

6 MR. HARTSELL: That's the kind of detail that
7 would be in the development order with regard to
8 showing the design of -- I mean, that actual
9 construction design.

10 MS. WORKMAN: You would not see that level of
11 detail on a master concept plan because that would
12 be -- if it changes or something changes with that
13 entry point during the DO process through the Land
14 Development Code, then any change would have to come
15 back through as an amendment, or if it had
16 intensity/density or decrease in open space, a public
17 hearing to change that. Those kind of things would be
18 worked out at time of development order, exactly where
19 that's going to be.

20 If there's a deviation for stackability and
21 turnaround, we get inset drawings showing exactly what
22 are you deviating from in the Code, what are you
23 proposing that's an enhancement to the project that's
24 above Code. Like we look at that if there's a
25 deviation. In this case they're meeting the

1 requirement. Development Services has reviewed that.

2 The bus stop thing, internal bus stop for a school
3 bus, would be a call-out on the DO plans with --
4 showing that turning radius. They would have to
5 demonstrate all of that at time of DO.

6 HEARING EXAMINER COLLINS: Okay. I mean, let's --
7 let's just think through this realistically. The
8 school bus is heading north on 31. They park blocking
9 the entrance to this project, most likely. The
10 children are going to load from somewhere, these
11 sidewalks, I assume, that are going to lead to 31. And
12 then the bus is going to head north on 31, like that's
13 only if they're taking them to a school that's on the
14 other side of the river.

15 Okay. Come now a bus coming from -- so somehow
16 it's going to have to turn around; right? Or come now
17 a bus heading south on 31 to pick up children at this
18 project. What are we going to have, children crossing
19 State Route 31 to get on this bus? That bus is going
20 to have to turn into this project somehow, pick up
21 children, turn around, and head back out.

22 MR. HARTSELL: I think the point with regard to
23 turnaround is, yes, it will have to -- I mean, it will
24 come into the entrance, and there is room at the
25 entrance for large trucks that can't get into the

1 project to be able to turn and -- to leave the project
2 again without going through the gate.

3 MS. WORKMAN: And that's Code. The turnaround
4 point before the gate needs to be able to accommodate
5 large -- large box trucks. It's in the Code because we
6 have deviations come in on that, which that's when we
7 get the detail.

8 HEARING EXAMINER COLLINS: So does that include --
9 because a school bus is bigger than a large box truck;
10 right? It's closer to like a moving van.

11 I'm just saying the reality of where this project
12 entrance is, on the road that it's on and what you
13 access on that road in terms of, you know, taking
14 children to school -- it's not age-restricted -- I have
15 an issue with this. So that's -- you know.

16 MR. HARTSELL: What you would like to see is a
17 condition that indicates that the entrance has to be
18 designed in order to accommodate a school bus turning
19 into the entrance --

20 HEARING EXAMINER COLLINS: Right.

21 MR. HARTSELL: -- and being able to leave.

22 HEARING EXAMINER COLLINS: I personally don't see
23 a lot of wiggle room on your site plan. I see created
24 wetlands north and south of this entrance road.

25 MR. FREY: So for the record, Brandon Frey.

1 Another mechanism that Neal typically uses within
2 their communities to allow school bus turnarounds, in
3 the event that they don't fit, is a gatehouse mechanism
4 that allows the school bus to come in, and then it
5 would either be able to make a three-point turn within
6 the community just past that -- that gate that you're
7 referring to, or take the resident entry out.

8 You know, the ideal scenario, obviously, would be
9 to provide a pretty fluid turnaround, but it does
10 remain an option to allow the school bus to go
11 through -- and I think it would probably be a similar
12 maneuver -- you know, not in distance but a similar
13 maneuver in time to do either/or.

14 HEARING EXAMINER COLLINS: Okay. And the entrance
15 to this project is a quarter mile north of 31? Is that
16 what I heard somebody say?

17 MR. FREY: Yeah, that sounds about right.

18 HEARING EXAMINER COLLINS: So you wouldn't be
19 required to build a sidewalk on that roadway leading to
20 any bus stop that may be on 31 anyway because the
21 distance is --

22 MS. WORKMAN: Correct.

23 HEARING EXAMINER COLLINS: -- far too great.

24 MS. WORKMAN: Correct.

25 HEARING EXAMINER COLLINS: Thank you.

1 MR. HARTSELL: I think it was made clear, with
2 regard to the height of the buildings being 35 feet,
3 which is the same as a 35-foot that's allowed in the
4 Fort Myers Shores community --

5 HEARING EXAMINER COLLINS: Right, let me --

6 MR. HARTSELL: -- and --

7 HEARING EXAMINER COLLINS: -- let me clarify what
8 I heard the issue was. There was a question about how
9 high the site was going to be elevated with fill, and
10 then the building would be on top of that. So I think
11 there was a confusion that the site was going to be
12 elevated 35 feet.

13 MR. HARTSELL: Yes.

14 HEARING EXAMINER COLLINS: So what -- what amount
15 of fill is going to be brought into this site? What
16 elevation must the site be brought to?

17 MR. FREY: I guess I'll get my steps in today.
18 Brandon Frey again, for the record.

19 So I do understand that there was some confusion.
20 We are not filling this site to an elevation of 35.
21 The 35 is the maximum height that the buildings are
22 allowed to be within the community per the development
23 regulations.

24 As a requirement for the finished floor elevation
25 of the home, which is basically the slab elevation,

1 we're required to be, in this case, one foot higher
2 than the effective FEMA elevation. Our site has a FEMA
3 elevation of 10, meaning that our minimum finished
4 floor elevation would be an 11.

5 HEARING EXAMINER COLLINS: And then would height
6 be measured from that 10-foot base flood?

7 MR. FREY: I believe so. I'd have to verify. I'm
8 not a hundred percent sure if it's measured from the
9 height of the finished floor itself or from the FEMA
10 elevation, but one or the other.

11 HEARING EXAMINER COLLINS: But the site will be --
12 to the extent it isn't already at ten, there will be
13 fill brought into the site to create a ten-foot --

14 MR. FREY: That's correct, yes, yes.

15 And I know that there was another -- I may be
16 jumping ahead. There was a concern about this -- you
17 know, this large mountain that we were building and
18 water just falling off and flooding everyone else. You
19 know, we have a lake on-site, and all of the runoff
20 from the site is collected within the lakes and then
21 discharged out. So you don't just have this patio
22 that's way up in the air flowing directly onto your
23 property. You have a berm in between there that would
24 collect that water, bring it into the lake system, and
25 then discharge it at some metered rate.

1 HEARING EXAMINER COLLINS: Thank you for that
2 clarification.

3 MR. FREY: You're welcome.

4 MR. HARTSELL: Those were the questions that I
5 believe we had. I don't know if there were any other
6 questions that --

7 HEARING EXAMINER COLLINS: Okay. Could we have
8 Yury come up and speak very slowly and explain the
9 published documentation that's relied on when
10 predicting how much traffic this project is going to
11 generate during the peak hour, and why that's the
12 measurement for determining how much traffic is going
13 to be generated by this project, because there seemed
14 to be a little confusion about that.

15 And, also, there was confusion about what document
16 was relied upon for the purposes of determining what
17 the road capacity was versus how it was functioning
18 with the existing traffic on it.

19 MR. BYKAU: Okay.

20 HEARING EXAMINER COLLINS: I think a little bit of
21 an explanation on those two things would be helpful for
22 the public.

23 MR. BYKAU: Okay. So regarding the trip
24 generation, what we use for our resource, and it's
25 what's required to be used by Lee County traffic study

1 guidelines for rezoning applications and various other
2 jurisdictions in Lee County, Collier County, all around
3 Florida and the state (sic), is they use what's called
4 an ITE Trip Generation Manual. That is the standard
5 that is used to come up with the number of trips that
6 are generated by a project so --

7 HEARING EXAMINER COLLINS: And this is based on
8 data that's collected --

9 MR. BYKAU: Data that is collected all around the
10 United States, everywhere.

11 HEARING EXAMINER COLLINS: And based on that, they
12 can reasonably estimate how many cars will be generated
13 by a project of this size?

14 MR. BYKAU: Correct, reasonably they can estimate,
15 yes. And we've actually done our own trip generation
16 studies for multi-family communities in Collier County,
17 and what we found is very, very similar to what the ITE
18 Trip Generation Manual has. So we've done even our own
19 studies --

20 HEARING EXAMINER COLLINS: So you rely on that
21 trip generation rate, and that allows you to estimate
22 the number of trips that will be entering and leaving
23 this project at various times during the day.

24 MR. BYKAU: Correct. We usually look at the trip
25 generation during the peak hour. So that is from 7 to

1 9 a.m. or from 4 to 6 p.m. We look at the highest hour
2 between those time slots to -- to estimate the number
3 of trips that we basically generate during rush hour.

4 HEARING EXAMINER COLLINS: Okay. And so based on
5 that and the adopted level of service, the way the
6 roads are functioning now -- which you're going to get
7 to that explanation in a second -- your conclusion and
8 Staff's conclusion was that the roads would not be in a
9 failing condition as a result of the addition of this
10 project's traffic?

11 MR. BYKAU: Correct. At the build-out of this
12 project, yes.

13 So, I mean, we don't make any numbers up. So the
14 adopted level of service standards, those come from the
15 State or Lee County per -- per their -- their
16 documentation. So we don't make any of those standards
17 up. We use that -- the existing traffic volumes, we
18 take it from the Lee County concurrency report. So
19 again --

20 HEARING EXAMINER COLLINS: Okay, so explain that,
21 how you rely on this concurrency report. How often is
22 it produced by the County, and what are they measuring
23 on it for the purposes of you determining this project
24 impact on the roadway.

25 MR. BYKAU: So the concurrency report comes out

1 every year, and it basically indicates the traffic --
2 the peak hour traffic volumes -- existing traffic
3 volumes on several -- several roadway segments in the
4 study area --

5 HEARING EXAMINER COLLINS: And this is updated
6 annually?

7 MR. BYKAU: Annually, yes. So we take that
8 traffic volume; we apply a growth rate factor to
9 accommodate for any background growth that might
10 happen; we take it out to the projected build-out year;
11 and then we add our project traffic on top of that, and
12 we compare it to the level of service standard. So we
13 have our traffic with background growth, with an -- and
14 existing traffic, and we compare it to the standard.
15 When we compare the two, this does not exceed the
16 standard.

17 HEARING EXAMINER COLLINS: Okay. And will this
18 happen again in greater detail at the development order
19 stage?

20 MR. BYKAU: Yes, of course, yes. At development
21 order stage we're required to do another traffic
22 analysis, and we'll be looking at Link level of service
23 analysis in more detail.

24 And at this time obviously we analyzed the
25 worst-case scenario, which is 265 single-family

1 dwelling units; but usually, in my experience, at
2 development order stage usually they go with something
3 lower than that.

4 HEARING EXAMINER COLLINS: Right. And at that
5 stage they'll determine whether you have to install a
6 turn lane entering your project or exiting the project?

7 MR. BYKAU: Yes. And obviously SR 31 is a State
8 roadway so we would be designing those turn lanes up to
9 those standards.

10 And we actually did our preliminary turn lane
11 analysis in our rezoning traffic study, which we
12 usually don't do, and it actually states that there
13 will be turn lanes warranted, left and right, on
14 SR 31's entrance.

15 HEARING EXAMINER COLLINS: And you'll be required
16 to build them notwithstanding this PD&E study --

17 MR. BYKAU: Right.

18 HEARING EXAMINER COLLINS: -- for 31, because in
19 order to get authorization to develop --

20 MR. BYKAU: Yeah. To get FDOT permits, you will
21 probably have to put turn lanes there, yes.

22 HEARING EXAMINER COLLINS: And has FDOT already
23 approved this access location for your project?

24 MR. BYKAU: I'm not sure if we applied for FDOT
25 permit application yet. That will be maybe a question

1 for another team member.

2 HEARING EXAMINER COLLINS: Thank you.

3 MR. BYKAU: Thank you.

4 MR. HARTSELL: We have not yet applied for those.

5 HEARING EXAMINER COLLINS: Anything further --

6 MS. WORKMAN: I do not have anything.

7 HEARING EXAMINER COLLINS: -- Beth?

8 Steve?

9 MR. HARTSELL: If you don't have any other
10 questions.

11 HEARING EXAMINER COLLINS: If there's nothing
12 further, I have -- I understand I've got all the
13 documents. I'm not waiting for any additional
14 documents. I will rely on this addendum for the
15 purposes of preparing a resolution or recommendation to
16 the Board. There's no need for a second hearing day so
17 we're going to close the record.

18 Thank you, everyone, for coming and for
19 participating.

20 (Proceedings concluded at 11:40 a.m.)

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1
2 CERTIFICATE OF REPORTER
3

4 STATE OF FLORIDA)

5 COUNTY OF LEE)
6

7 I, Deborah M. Bruns, Florida Professional
8 Reporter, do hereby certify that I was
9 authorized to and did report the foregoing
10 proceedings, and that the transcript, pages 1
11 through 109, is a true and correct record of my
12 stenographic notes.

13
14 Dated this 29th day of May, 2023.

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16 

17 Deborah M. Bruns, FPR
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19
20 (This transcript was electronically signed.)
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0	64:13,17 103:4	18.38	2021	31
06	11:13	27:10 46:12 56:4	28:15 48:7 75:14	4:8,9 9:2 12:18
58:19 59:2,6	93:22	181	89:7	13:10,16 15:14
1	11:20	89:14	2023	16:1 18:23 19:25
	93:22	18th	4:3 50:22 51:5	22:18,21 23:5,12,
	12	4:3	2024	21 29:19 30:1,13
1	52:6 72:16 92:1	1956	23:8 94:13,15	31:21 33:22 34:24
9:13,15 41:22	12-and-a-half-acre	76:4	95:25	37:7 45:20,23,25
53:10,12 57:11	26:9	1961	2025	48:19 51:4 52:22
63:15 92:9,11	123.2	76:5	65:14	56:8 57:13 58:1
1,178	47:2	1st	207	59:20 62:10,13,22
89:10	123.3	76:6,13,15 78:16	89:1	65:20 75:22 77:17,
1,598	47:2		21.1.1	21,25 78:6 79:13
89:12	123.3.1	2	47:11	82:7,19 85:16,18,
1,700	47:3	2	21.1.2	19,21,22 86:3,4
89:13	123.4.4	8:5,7 53:10,17	47:14,22	88:24 94:11 95:18
1.1.5	47:2	54:10 57:10 72:17	219	96:3,12,13,15
41:16	124	77:9 91:25	88:21	97:15 98:1 99:8,
1.5.1	11:15	2,400-square-foot	22.8	11,12,17,19
42:1	124.1.2	88:11	26:5	101:15,20
10	68:18,24	2.1	24	320
42:8 47:5 89:19	125.1.3	42:14	92:1	89:4,6
103:3	46:5 47:3 70:12	2.2	248	325
10-foot	125.1.4	42:14	22:2	89:8
103:6	46:6	20	25	33-1482
10-foot-wide	126.1.4	14:16 63:15	20:14 53:13 72:15	72:6
58:23 59:4 60:8	46:6	20,000	25-foot	33-1494
100	13	11:18	59:22	72:7
17:11,17 60:9	27:12 52:20	20-foot	25-year/3-day	34-145(d)(4)
100-year/3-day	14	81:13	38:10	49:6
37:1 38:12 40:8,23	40:17 72:20	2005	265	342
101.1.1	140	89:6,10,13	12:19,22 15:20	12:20 15:21 21:2
46:19	14:20 58:5 88:18	2006	21:1,4,10,21 22:1	22:3 57:19 88:19
101.1.2	15	58:4 87:24 90:14,	42:21 57:19 71:25	35
46:19 69:24	53:5 72:23 92:2	18	77:7 85:17 88:19	12:25 14:22 15:15
101.3.2	15-foot	2007	3	59:24,25 78:25
46:19	19:15	90:15		84:10 102:2,12,20,
102	15-foot-wide	2009	3	21
89:21	17:16 61:7,9	90:18	12:5,7 41:22 42:19	35-foot
104	15-minute	2011	43:18 51:24 53:22	79:4 81:25 102:3
88:25 89:1	90:11	88:1	57:9 89:9	35.3
107	15th	2013	3-day	20:10
90:10	90:7	88:2	40:7,17	36-hour
10:15	16	2015	30	9:6,9
56:23	51:5	89:2,14	81:18 87:16	38
10:25	168	2017	30-foot	9:3 80:6 88:7
56:23	22:3	89:5	16:25 80:21	38.6
11	16th	2019	300	13:8
31:3 38:20 39:2	50:20 90:9	89:10	89:7,9	38.68
42:11 46:16,25				58:10
				39.43
				20:11

<hr/> 4 <hr/> 4 27:14 50:25 51:2, 3,4 54:7 106:1 4.1.1 42:25 4.1.2 42:25 4.2 70:19 40 71:12 401 89:14 422 89:11 45 13:20 48:8 45-foot 59:23 474 14:18 48-hour 9:5,7,9 10:1 52:2 57:23 72:22 73:17 49 13:7 88:7 49.62 58:4,10 4:30 5:8 4th 76:12 78:19 <hr/> 5 <hr/> 5 17:11,17 42:8 43:6 46:11,23 47:5 60:8 5.1.2 43:7 65:5 5.1.5 43:9 5.1.6 65:5 5.1.7 43:21 5/11 89:25	5/15 89:25 50 26:13 27:22 67:9 72:13 81:21 500 77:10 53 11:17 25:3 90:1 54 89:20 589 89:9 5th 87:3,7 89:19,20,22 90:2,3,8 91:12 <hr/> 6 <hr/> 6 54:10 106:1 6-foot-high 59:5 60 88:21 89:4 60.4.1 46:4 70:19 60.4.2 46:5 60.4.3 46:5 62 26:22 68 91:23 690 89:7 696 89:15 6:50 89:19 90:1 <hr/> 7 <hr/> 7 89:19,21 90:1,7,9 91:21 105:25 75 67:7,11 90:10 78 23:5 96:3	7:02 91:25 7:08 91:25 7:11 92:1 7:15 89:21 90:7,9 91:21 7:30 90:9 7:45 90:10 <hr/> 8 <hr/> 8-foot 61:7,10 8-foot-high 17:15 19:17 80 9:2 13:15 14:3 22:18 23:5 48:19 62:10,22 75:22 78:1 85:20,23 90:5,10 800 88:11 82 62:5 85:20 88 4:5 12:16 14:18 88.3 57:15 89 90:7 <hr/> 9 <hr/> 9 42:8 46:23 106:1 9.29 68:1 9.7 88:7,8 90 29:11 93 11:21 94 91:23 99 89:12	9B 68:2,11,17,24 69:21 71:16 9th 48:7 75:13 <hr/> A <hr/> a.m. 56:23 89:19 90:1 93:22 106:1 ability 36:12 55:4 Absolutely 29:14 absorb 78:6 abut 58:1 abuts 61:23 abutting 58:21 60:12 acacia 27:5,20 accept 4:12,23 5:2 7:6 acceptable 22:24 accepted 20:22 57:3 access 13:16 15:13,24,25 16:1,2,5,13,18,20 45:9 47:19 48:10, 12,14,18 49:13 54:1 55:20 62:21, 22 71:21 86:9 100:13 accesses 16:4 accident 79:17,18 accommodate 36:19 97:16,19,21 100:4,18 accommodates 97:20 accordance 28:22,24 29:3 accurate	67:16 achievement 50:5 acquire 96:23 acre 14:14 27:13 63:10 acreage 71:17 acres 4:5 9:4 12:16 13:7, 8 14:16,18 20:10, 11 25:3 26:5 27:10,12,14 28:2 46:12 56:4,6 57:15 58:4,10 63:15 68:1 88:7,9 89:9,13,14 activities 28:1 actual 98:8 actuality 78:9 add 9:3 58:9 77:24 added 22:7 57:22,23 72:23 addendum 9:6,10,15,20 10:21,22 addition 26:9 27:21 30:23 31:12 34:6 69:23 70:24 106:9 additional 16:21 70:5,7 77:23 88:23 89:11,13,15 91:4,15 address 6:12,15 7:10 10:10 23:2 28:19 42:8 46:6 66:7 94:5,7 addressed 39:17 79:20 addresses 47:1 addressing 43:12 75:13 79:11 adequate 42:15 64:4 65:15
---	---	---	---	---

adjacent 13:9 15:16 17:1,25 34:11 35:15 36:21 37:5,12 43:14 53:16	allowable 14:12,17	52:18 54:3 57:18, 21 58:9,16,22 59:3 62:21 63:7,11,18 64:7 67:14,25 68:15 69:25 70:20 71:14 72:11,14,19 73:11 93:16	23 22:17 23:2,4 25:1,15,25 26:10, 20,23 27:2,3,19,21 28:9,17 29:17 36:2,3 40:15 41:18 42:16 43:15 44:9 46:18 48:6 49:12 53:1 58:7,10 59:21 62:2 64:8 69:4,6, 10,11,16 70:7 71:4 80:7 88:6,9,20 96:2 98:1	Avenue 75:23
administer 4:24 7:18	allowance 54:11			award 11:9
adopted 106:5,14	allowed 55:22 63:9 79:20 102:3,22	Applicant's 74:1		aware 96:2
adverse 38:14 42:6,11	allowing 64:1	application 4:4 5:19 43:3 56:22 63:18,20,22 69:5	areas 17:7 18:2,6 19:9, 18 20:10 25:2,6,7 26:4,5,6,8,11,18, 20 27:1,12,13,15, 22,25 28:3,6,8 32:24 35:1 36:10, 12,13,14,15 37:19 41:16,17 43:9 49:19 61:18 63:5 65:6,7 67:5 68:25 69:15,25 70:1,4, 10,14 71:1,9 72:8 79:7 87:18	<hr/> B <hr/>
adversely 42:3 49:18	Alva 88:22	applications 105:1		Babcock 77:23
advertised 8:4	ambulances 79:16	applied 54:16		back 7:14 10:14 32:3 39:9,14 56:24 68:16 80:19,21 81:2 83:8,9 87:24 90:24 91:3 93:23 98:15 99:21
aerial 6:5 25:1	amend 9:3 12:15	applies 54:17		backed 78:1 91:24
affect 42:3 49:18	amended 50:14	apply 95:21		background 27:6,7
affidavit 8:3,7	amendment 68:12,13 98:15	appreciation 75:12		backup 36:20 37:12
affirm 7:21	amenity 44:4,9,11,13,14	approval 5:20 47:17 57:24 58:14 72:15 73:20		balances 64:19
AG-2 12:17 58:11,15 61:23 62:6,8	amount 6:17 37:4 102:14	approvals 13:25 14:4 15:1 16:8		bank 53:21 72:17,19
age-restricted 44:17 45:6 100:14	amounts 25:10	approved 11:21 14:20 15:25 50:4 58:5 61:21 68:3 87:23,25 88:24 89:2,5,6,7,9, 10,12,14 91:14		banks 53:17
agree 6:24 85:14	Analese 74:19	approving 68:7		Baptist 48:8
agreed 51:20	analysis 10:9 22:9,11,22 23:11 31:5 39:3 90:13	approximate 5:3 13:7,8,14 15:5 22:2,3 25:3 26:5, 22 27:12,14 48:8 56:5 58:4,10 68:1 92:1		barring 37:8
agreement 9:4,8,21 50:13 52:18 54:4 73:5,17	analyzed 21:22 22:16	architectural 47:13,16 67:2		base 103:6
agricultural 4:5 12:17 57:15	animals 88:9,13	Architecture 8:19 12:11		based 4:17,20 9:9 10:16 21:9 22:9 33:11 105:7,11 106:4
agriculturally 14:25	anomaly 40:10	area 13:5 14:4,6,23 15:2,16 16:10,11, 17,22,25 17:22 18:15,16,17 19:3,		basically 6:22 95:17 102:25 106:3
ahead 88:2 103:16	anticipated 36:19			basin 35:3
aimed 43:18 47:19	apologies 89:23			basis 79:15
air 25:11 81:19 103:22	appearing 69:7			bathroom 74:10
ALF 61:21	applicable 23:22 30:2 31:22 49:9 56:8			Baumler 74:6
alignment 95:3	applicant 5:12 7:7 9:13,17 11:8 12:5,6 39:7 50:13,25 51:4			

Bay 13:16 16:2,5	4:14	30:9 67:5 71:3	Bykau 8:21 20:20,21 21:8,13,16,19 24:4 94:12 95:12 96:10 104:19,23 105:9, 14,24 106:11,25	categories 14:13
Beach 13:15 76:13,16,23 77:1 78:1 79:13 91:21	boat 14:23 15:15,17 16:17 55:21 78:21 85:2,4,5,8,11	brought 79:2 102:15,16 103:13		category 41:15,25 55:25 58:3 61:17 63:7, 10,14,17
beautiful 11:23	Boathouse 82:11	Buckingham 88:25 89:1,3,4,6	C	center 44:9,11,13,14
begin 7:25 8:10,25 12:2, 3	boats 62:1	buffer 16:25 17:8,10,15, 16,21 18:3,6,13, 16,25 19:12,15,16, 20,22 20:1,5 52:10,11,16,21,24 53:1,14 58:23,25 59:4,18,20,22 60:8,15,24 61:1,2, 7,9 67:3 80:7 81:3, 13 94:6	cabbage 26:8	central 44:5
behalf 8:13	Bob 75:3,10		calculated 52:4 63:19	CEO 8:16 10:24
beige 69:9	borrow 25:25 26:9		calculation 14:14,17 20:13	cetera 23:18 90:5
belabor 71:16	bought 76:5		call 6:1,2 40:19 74:3 92:15	chairman 11:12
benefits 55:15	Boulevard 13:15 48:17 75:11, 23 76:7,8,13,16,22 77:1 78:1,20 79:13 80:5 87:2 94:7	buffering 47:15 63:5	call-out 99:3	change 51:8 53:22 98:14, 17
berm 32:14,19 59:12 80:25 103:23	boundaries 17:4 63:1	buffers 16:11,24 35:10 43:13 47:18 48:21 52:13 64:22 65:1 71:20 75:15 90:24 94:7	called 13:6 22:8 60:6 105:3	changed 50:16 51:17 72:22 73:9,16 92:22
bermed 32:23	boundary 13:4 62:23	build 11:22 44:10,14 66:15 87:17,25 88:2,3 96:23 101:19	Caloosahatchee 13:18 33:23 47:10 65:4 70:16 79:3 82:7	channel 34:21 35:7
berming 59:9	box 100:5,9		Calusa 88:20	channelized 34:22
Beth 38:17 57:2 75:12	boy 61:9	build-out 22:9,25 106:11	canal 83:18	character 43:11 55:17
Bethany 8:23 10:11 24:15	Brandon 8:19 10:12 30:11, 16 39:25 46:20 100:25 102:18	building 11:20 73:6 84:14 97:5 102:10 103:17	capability 36:10	characteristics 36:16 37:18
big 37:25 77:3,13 83:4	Brazilian 25:11 27:20	buildings 88:23 92:22 102:2, 21	capacities 75:24	Charlotte 11:16
bigger 19:16 100:9	break 5:4,6 56:18 93:19		capacity 22:14,25 23:12 38:23 42:23 43:20 104:17	checks 64:19
biggest 75:16	brevity 6:23		cars 77:9,10 89:18,20, 21 90:1,8,10 91:23 92:2,3 105:12	chessboard 87:3
bit 10:25 12:12 19:16 40:21 60:1 64:9 76:5 84:7 94:8 104:20	bridge 65:20 77:17 82:3, 6,12,16,19	built 11:18 76:4 79:21	case 4:8 5:13,19,20 17:6,14 18:1,24 19:14,25 38:10 45:18 46:11 52:1, 9,22 53:18 57:12 59:3 98:25 103:1	CHHA 46:23
Bless 62:16	bring 88:7 103:24	burrows 28:16,20	catch 29:13 34:11 66:10	Chief 54:3
block 76:16,20 91:25	bringing 15:19 67:14	bus 44:20 45:8,16 65:9 66:10 97:9,15,17, 21,22 98:2 99:2,3, 8,12,15,17,19 100:9,18 101:2,4, 10,20		children 44:21 75:17 97:2, 16 98:1 99:10,17, 18,21 100:14
blocking 99:8	broken 27:11 52:9	buy 87:17		Church 48:8
blue 27:17 37:2 58:7	Brosious 8:23 24:15 25:15, 21,24 26:2 29:5,7, 10,14,18,22,25			Ciesielski 8:17
Board				city 15:10 87:20

clarification 104:2	20:18 21:6,11,14, 18 24:2,6,8,12 25:13,19 26:1	comment 7:9 16:14 75:11,20	compliance 10:15 63:6	12,20 53:3 54:10
clarifies 52:4	29:2,6,8,12,15,20, 24 30:7,15 32:1,3, 6,10,22 33:2,5,14, 19,24 34:5,16,20, 23 35:9,14,17,22 36:1,4,6,17 37:8, 11,23 38:2,4,15,17 39:11,17,20,22 40:7,13,25 41:7,10 44:2,10,15,19 45:1,12,17,21 46:2 47:24 48:4,15,22, 25 50:10,19,22 51:1,3,9,19 53:2 54:12,23 55:2,12 56:11,13,17,21,24 57:5,10 60:11,17, 20,22,25 61:11 62:15,17 65:24 66:2,9,13,20,25 73:22,25 74:11,15, 18,21,23 75:1,3,5, 8,25 76:9,11,17 79:23 80:3,13,16, 19,24 81:5,7,12, 17,22 82:5,8 83:7, 10,13,16,19,25 84:6,13,17 85:8, 12,21,24 86:1,3,5, 7,14,16 87:5,10, 12,14 92:8,12,17, 23,25 93:3,6,10, 20,23 94:16,21,24 95:1,5,8 96:8,20 97:11 98:3 99:6 100:8,20,22 101:14,18,23,25 102:5,7,14 103:5, 11 104:1,7,20 105:7,11,20 106:4, 20	comments 6:19 48:9,13,16 49:2	compliant 71:20	59:6,9 64:13,17 68:2,11,17,24 69:21 71:16 72:16, 20,23 100:17 106:9
clarify 52:21 81:23 102:7		commercial 14:2,3 31:10 61:18,25 62:2,11, 14,18,20	complies 49:7 83:24	conditioned 37:21 71:20
clarity 54:21 93:17		Commissioners 4:14	comply 30:24	conditions 5:21 9:4,21 10:15, 16 22:10,13 24:19, 25 26:25 28:8 30:25 31:14 39:2 41:13,22 42:7,8 46:23 47:5 49:16, 25 50:9,14,15 57:24 73:21
cleanup 36:9		common 25:12	component 61:22	conducted 20:24 22:8 28:14
clear 52:10 54:22 81:8 102:1		communication 66:4	composite 92:9,11	confirm 31:7,14 51:10
close 63:25 85:19 93:12		communities 8:14,16 10:24 11:1,14,15 47:5 71:7 101:2 105:16	Comprehensive 4:19	confirming 8:8
closer 29:9 100:10		community 11:23 13:19,21 14:9 36:20 43:11 44:1,17 47:11,20 48:5,6 55:17 65:4 72:9 77:25 78:23, 24 79:4 101:6 102:4,22	concentration 27:4	conflicting 82:14
closing 75:14		Comp 10:14	concept 9:12 15:12,19 16:7 20:11 44:5,6 48:11 51:5,18 60:2 98:4, 11	confusion 102:11,19 104:14, 15
coastal 46:18 64:8 69:6,7, 10,13,16,22,23		compact 42:15 55:8 63:23	concern 76:20 77:13,18 78:10,11,13 79:19 96:20 97:1,9 103:16	connect 13:1 15:9
code 4:20 11:13 20:14 23:24 30:4 31:24 37:20 39:14 43:24 44:23 47:25 48:1 49:8 50:7 54:13,20 56:10 58:25 59:23 65:2 67:4 70:16 71:12 72:3,13,17 73:8,10,15 98:14, 22,24 100:3,5		company 11:20	concerns 6:6,11,13,15,25 7:1 64:14 75:13,16 76:19 77:3 79:10 80:7	connection 15:10 42:25 96:6
Code-required 17:9 61:8		compared 63:3	concise 6:21	conservation 28:10,23 47:7
codes 28:5		compatibility 5:16 58:18,20 60:16 63:5 71:21	conclude 7:8	conservative 63:19,21
codified 73:10		compatible 49:11 81:20	concludes 5:8 29:25 73:25	considered 67:8,11,22
cohesive 58:12		complete 52:6	conclusion 5:1 106:7,8	consist 25:5 26:7
collect 103:24	combination 12:21 15:22 17:6 21:3 57:20	completed 11:15 23:8 95:16, 25	conclusions 49:5 73:18	consistency 23:23 30:3 31:23 41:4,13 56:9 68:9
collected 103:20 105:8,9	combined 88:8,21	completely 6:9,10	concurrency 106:18,21,25	consistent 20:13 43:25 47:13 68:6,18
Collier 11:17 105:2,16	combo 63:11	completion 28:1	condition 6:14 21:20 27:23 28:1 31:3,5 37:9 38:18,20 39:2,5,6, 7,13,15,16,18 42:8,11,19,22 43:18 46:11,16,25 51:7,24 52:3,6,8,	consists 26:22
Collins 4:2,3 7:24 8:6 9:14,22 10:6,18,20 11:2,5,25 12:6,9	comfortable 21:20	complexity 67:6	constitutes 25:13	

constraints 43:8 64:12	count 89:18	cycles 76:22	Debrock 75:3,4,7,10	10:13 31:6 32:15 36:1,18,24 37:3,24 40:22 55:9 65:6 94:18 96:14,22 98:8,9
constructed 17:8,14 19:15	counties 11:17	D	December 48:7 75:13	designation 14:10 63:14
construction 23:10 28:21 29:9 31:9 68:4 71:18 98:9	County 4:8,14,18 11:13, 18,23 13:1 23:16 24:23 27:8 28:11, 18 29:1 32:13 37:13,20 40:5 43:1 49:9,16 65:15 66:5 67:7 68:2,4,19 71:22 104:25 105:2,16 106:15, 18,22	daily 78:12 79:15	decided 59:8 89:18	designed 32:8 34:11 36:18 37:4 38:25 64:21 65:17 100:18
Consultants 20:21	couple 48:1 51:15 67:13 95:15	Dan 8:17	decision-makers 4:15	designing 63:8,24 70:19
context 40:18	cover 26:13	dashed 69:8	decrease 98:16	destructive 43:10
contiguous 42:14,17 63:23	create 28:4 36:12,15 51:7 103:13	data 105:8,9	defined 49:21	detached 12:19 15:21
continue 5:5,7	created 19:3,10 20:2 33:21 34:14 52:24 70:25 100:23	date 4:3 5:9 51:7,17	degrade 70:23	detail 58:1 60:3 69:1 70:6 94:8,25 98:4, 6,11 100:7
continues 77:2	creates 42:6	dated 51:5	Del 9:3 13:6 14:19 15:13 16:18 17:20 18:20 58:7 67:19 87:22	detailed 6:13 31:19
contribute 93:16	creating 64:24	David 48:17 78:20	delineated 35:3	details 4:9 39:12 95:12
control 31:18 36:14	creation 27:14 28:3 46:14 56:5 64:2 70:1,7 71:9	Davis 13:11 15:17 48:17, 23 75:11,17,23 76:7,8,18,21 78:21 80:5 84:22 85:15 87:2 89:21,22 90:2,3,4,8 91:7,12, 17,20,25 92:1 94:7	deliveries 77:11	detention 70:13,15 72:8
conveyance 18:6,16 19:23 34:10 38:9 59:13 69:4 70:25	critical 49:19	day 87:20 89:17 90:7 105:23	deluge 32:18	determination 67:18,21
conveyed 37:6	crossing 99:18	days 29:11	demonstrate 99:5	determine 35:1 36:17
coordination 24:23 27:8 28:11, 18 29:1	Crossroads 48:8	DCI2021-00051 4:9 57:13	demonstrated 14:14 23:22 30:3 31:23 43:22 56:9 70:21	determining 104:12,16 106:23
copies 88:23	cul-de-sac 17:1	De 13:11 15:13 16:2, 13 48:12,18,22 54:1 55:20 75:14 83:25 84:2,12,18, 21,23 85:5,6,11 92:20	demonstrates 14:11	detriment 72:2
copy 9:10,11 12:3 51:4 57:7	curious 85:2 91:6	dead-end 53:23 72:23	demonstration 69:17	detrimental 71:24
corner 60:18 62:10 85:6 91:20	current 27:23 65:22	dead-ends 54:5	density 14:12 41:22 42:2, 19 43:19 55:24 63:9,17,19	develop 97:2
correct 34:3,25 35:25 38:7 39:19 40:3,4,11 44:12 61:13 66:3 85:6 86:4 96:10 101:22,24 103:14 105:14,24 106:11	customer 11:20	deal 79:15,18	Department 65:22	developed 13:23 18:1 28:22
corresponds 16:19		dealt 38:24	depends 60:5	developer 38:5
cost 95:20		deaths 86:12	depicted 27:17 36:13	development 4:6,7,17,19 8:20 12:17 14:20 20:14 23:16,19,20,24 30:4 31:20,24 32:12 38:21 39:14 40:3 41:23 42:1, 18,24 43:5,7,20
			depiction 19:9	
			depth 72:4	
			design	

44:23 46:25 49:8 50:3,6 55:8,23 56:10 57:16,17 58:12,13,17 61:16, 19,20 62:3,11,18, 22,24 64:11,14,16 65:9,10,16 68:3 71:23 72:3,24 73:2,19 78:10 82:17 84:10 98:7, 14,18 99:1 102:22	46:20 discussing 24:16 discussions 73:14 distance 18:19 101:12,21 distinguish 97:14 district 4:6 33:10 37:14, 15,16 38:8 40:1,6 45:4 62:9 68:5 69:18 disturbed 26:19 28:5,21 divided 78:2 document 70:6 104:15 documentation 104:9 106:16 documented 28:16 documents 51:22 dominance 27:6 dominant 25:5,8 26:6 Donna 4:3 door 6:1 double 17:12 60:9 double-staggered 17:18 downhill 91:2 drain 84:25 drainage 10:13 39:3,4 46:17 47:1 70:13 91:10, 11 Dramatically 40:12 drawings 64:15 98:21	drip 59:11 drive 13:11,12,17 15:14 16:2,3,5,13 48:12 55:20 79:13 driving 38:21 39:13 dry 70:15 72:8 due 17:1 dwelling 12:20,23 14:21 15:22 21:2,5,10,22 22:1 42:21 52:1 57:19,20 58:6 dwellings 77:8 81:20 82:1	E earleaf 27:5,20 Earlier 47:10 early 23:8 75:22 94:13 95:7,16,25 easement 28:10 47:7 80:9 81:11 east 4:7,8 9:1 13:13,22 26:2 58:21 60:4 76:23 82:11,13 eastbound 92:3 eastern 28:17 55:19 62:23 ecological 42:3,7,12 ecologist 8:23 effect 42:11 effective 103:2 effects 42:6 eight-five	84:19 eight-six 84:19 either/or 101:13 element 23:23 elevated 79:4 102:9,12 elevation 78:25 84:11 90:21 91:2 92:21 102:16, 20,24,25 103:2,3, 4,10 email 91:20 emerging 41:20 42:18 emphasize 21:9 employees 77:11 emptying 84:22 EMS 15:5 en 7:23 encompasses 69:8 encounter 87:19 encroach 54:22 encroachment 43:10 54:10,15 55:11 57:22 73:3 encroachments 54:8 end 55:14 engineer 8:20,22 30:12,13 64:10,15 70:14 75:21 Engineering 8:21 enhance 27:25 28:7 50:4 enhanced	16:11,23 27:24 43:13 46:21 47:12 52:13,25 53:19 64:25 67:1,3 enhancement 59:2 61:4 98:23 enhancements 16:8 enhances 55:2 enhancing 65:3 enlarged 50:23 51:10 ensure 31:9 38:13 42:9 46:24 47:5 73:6 ensures 42:11,19 46:11,16 52:12 ensuring 43:19 entail 94:17 enter 34:24 35:23 entering 105:22 entire 27:16 28:9 63:21 67:18 69:10 entity 38:24 entrance 22:22 44:16,20,22, 24 45:14 97:12,18, 23,25 99:9,24,25 100:12,17,19,24 101:14 entry 16:6 34:13 98:13 101:7 environment 5:15 environmental 10:11 11:12 24:17 29:25 30:3 67:21 94:19 95:19 environmentally 46:20 47:4 49:19 67:5 68:25
---	--	--	--	---	--

equipment 54:7,14	23 35:9,14,17,22 36:1,4,6,17 37:8, 11,23 38:2,4,15,17 39:11,17,20,22 40:7,13,25 41:7,10 44:2,10,15,19 45:1,12,17,21 46:2 47:24 48:4,15,22, 25 50:10,19,22 51:1,3,9,19 53:2 54:12,23 55:2,12 56:11,13,17,21,24 57:5,10 60:11,17, 20,22,25 61:11 62:15,17 65:8,24 66:2,9,13,20,25 73:22,25 74:11,15, 18,21,23 75:1,3,5, 8,25 76:9,11,17 79:23 80:3,13,16, 19,24 81:5,7,12, 17,22 82:5,8 83:7, 10,13,16,19,25 84:6,13,17 85:8, 12,21,24 86:1,3,5, 7,14,16 87:5,10, 12,14 92:8,12,17, 23,25 93:3,6,10, 20,23,25 94:16,21, 24 95:1,5,8 96:8, 20 97:11 98:3 99:6 100:8,20,22 101:14,18,23,25 102:5,7,14 103:5, 11 104:1,7,20 105:7,11,20 106:4, 20	excuse 28:4,13 50:18 85:4	explained 4:10 59:10 69:1	fashion 6:14
eradicated 27:18,21	examples 35:10	exhibit 8:2,5,7 9:13,15 12:5,7 50:17,25 51:3,4 57:9,10,11 92:9,11 94:6	favor 6:10	
erosion 53:21	excavation 72:12	exist 27:1 31:8 36:14 42:16 43:8 64:12	FDOT 23:1 66:5,6 94:12	
essentially 60:15 95:4	excavations 53:12	existing 9:3 12:15 13:5 15:17 16:10 17:21 18:9,11,21 19:2,4, 11 20:2 24:19 25:16 31:2,7,13 33:13 41:20 42:18 43:9,14 46:22 47:20 49:11,14 52:23 55:18 59:6, 17 62:19 63:2 64:21 71:1 80:11 81:20 104:18 106:17	feasibility 95:17,24	
establish 41:22 51:25	exceed 12:21 20:4 21:4,21 42:20,22 43:19,23 52:23	extends 26:2	feasible 86:11	
established 33:9	exceeding 20:12 56:3	extension 88:1	fee 65:16 66:8,14,17 96:17	
establishes 42:22	exceeds 47:25 48:1	extensive 65:20	feeds 70:12,18	
establishing 43:18	exception 18:25	extent 31:16 36:7 94:4 103:12	feel 97:4	
estimate 36:15 105:12,14, 21 106:2		external 32:9 65:8,9 66:16, 17	feelings 6:23	
estuaries 69:25		extra 9:10 77:10	feet 12:25 13:20 14:22 15:15 17:11,17 53:5,13 54:9 59:24,25 60:9 72:13,15 78:25 84:9,11,12 91:4 102:2,12	
evaluates 4:16		extreme 37:8	fell 34:12 35:5	
evaluating 23:4 95:2		<hr/> F <hr/>	FEMA 103:2,9	
evening 85:17		face 86:21,22	fence 17:7,13,15 18:3,13 19:17,20 52:15,17 53:15 59:5 81:25 91:1	
event 38:10 101:3		facets 65:3	fencing 91:4	
events 40:22		facilities 31:11 42:16 49:15 62:3	field 67:15	
eventually 79:2		facility 15:11 23:6,13 61:21	figure 88:12	
everybody's 91:3		fact 87:22	figured 35:4 84:24	
evidence 4:13,20,23 5:2 7:21		fact 87:22	file 10:3 45:3	
exact 40:16		fall 35:2 39:14	fill 5:24 74:5 102:9,15 103:13	
Examiner 4:2,12 7:24 8:1,6, 12 9:14,22 10:3,6, 18,20 11:2,5,6,25 12:6,9 20:18 21:6, 11,14,18 24:2,6,8, 12 25:13,19 26:1 29:2,6,8,12,15,20, 24 30:7,15 32:1,3, 6,10,22 33:2,5,14, 19,24 34:5,16,20,		falling 34:17 103:18	filling 102:20	
		falls 32:23 33:25		
		family 76:5		

filtered 35:23	Florida's 11:19	51:6,24 53:9 54:13 55:1,4,14 56:12 57:14,25 60:2 61:14 64:22 72:6	63:7,9,14,17 66:2 77:15 96:25	57:1 61:15 86:17, 18 91:18
final 4:15	flow 31:7 36:15,19 37:4,12,17 59:15	Fred 92:19 93:7	FWC 29:10	gopher 28:16,20,23 29:2, 16,23 47:8 71:3
Finally 28:2	flowing 103:22	Fredrickson 74:16,17 92:16,19, 24 93:1,5,7,8,9	G	governs 32:13
find 6:9	flows 31:18 33:20 35:18 38:6 46:10	free 6:25	Garcia 76:1,2,3,10,12,15, 18	grade 54:18
findings 10:14 49:5 73:18	FLUCCS 67:10,12,16	freshwater 26:8	gas 22:20 62:12	grade-out 20:10
finds 73:18	fluid 101:9	Frey 8:19 30:11,17,20 32:2,5,9,11 33:1,4, 7,16,20 34:3,6,19, 22,25 35:13,16,20, 25 36:3,5,7,22 37:10,15 38:1,3,7, 16 39:21 40:4,12, 15 41:2 100:25 101:17 102:17,18 103:7,14 104:3	gate 44:24 100:2,4 101:6	graded 28:6 35:2
fine 75:1	folks 17:24 75:12	front 97:3,20	gated 16:4	great 101:23
finished 102:24 103:3,9	follow 10:11	frontage 22:19 45:10	gatehouse 44:24 66:21,22 101:3	greater 26:13 27:22 33:12
fire 15:5 72:24 79:17	follow-up 39:24	full 41:17 59:11	gave 50:23	greatest 31:16 36:7
Firm 8:13	foot 80:22 81:19 84:19 88:11 103:1	full-sized 9:11	gee 86:10	green 18:2 19:18 26:4 34:9 53:25 70:19 71:13 78:20
Fish 28:23	formal 67:17 71:17	fully 38:25	general 26:22 50:6	Greilick 79:25
fit 101:3	forms 5:25	function 42:12 68:21	generate 22:2 34:7 104:11 106:3	groundwater 46:9 70:23
five-minute 93:19	Fort 13:21 15:11 34:17 62:23 76:4,6 78:15 81:1 93:18 102:4	functioning 104:17 106:6	generated 104:13 105:6,12	growth 23:3 42:15 63:23 76:6 77:2,5,24
flatten 80:11	forum 57:4	functions 42:4,7	generates 21:11,13,16 22:3	guarantee 82:12
flatwoods 25:6	forward 92:17	funded 23:9 95:23 96:4	generating 77:7	guess 102:17
flexibility 55:9	found 105:17	funding 95:21 96:22	generation 10:11 12:22 21:4, 24 22:1,6 42:20 45:5,6 52:5 104:24 105:4,15,18,21,25	guidelines 28:24 105:1
flood 39:9 64:13 79:7,8 103:6	founder 8:16	futile 59:11	give 6:14 7:22 26:15 57:7 88:22 89:16 90:5 94:25	guys 91:7
flooding 64:17 78:19 103:18	fourth 57:22 73:3	future 13:23 14:6,7,12,24 16:12 18:4 22:9,13 23:3 41:15,25 43:9 55:25 58:2 61:16	Goal 43:6	H
floodplain 18:5 19:23 39:15 42:12 59:14 64:9 69:3 70:24	four-to-one 53:17 72:19		gold 16:10	habitat 25:3,18 26:6,16, 21,25 27:5,7,11 71:10
floor 5:23 74:2 92:22 102:24 103:4,9	Frank 11:10		good 4:2 8:10,11 11:5,6 12:8,9 20:19,20 24:15 30:11 51:23	habitats 25:4 47:4
Florida 28:23 30:13,21 32:13 33:10 38:8 40:1,6 47:14 65:22 68:5 77:5 105:3	Frantz 8:18 12:3,8,10 41:5,9,12 44:4,12, 18,22 45:11,13,19, 22 46:3 48:1,5,16, 24 49:4 50:12			half 5:5 27:12,13,14 28:2 54:9 56:6 71:13 84:20 85:16

<p>91:22</p> <p>hallelujah</p> <p>78:3</p> <p>hammerhead</p> <p>54:4,6 72:22</p> <p>hand</p> <p>7:20 24:11</p> <p>handle</p> <p>37:4</p> <p>handled</p> <p>38:19</p> <p>hang</p> <p>50:10</p> <p>happen</p> <p>41:10</p> <p>happening</p> <p>77:24</p> <p>happy</p> <p>24:1 30:5</p> <p>hard</p> <p>77:1</p> <p>hardwood/conifer</p> <p>25:6</p> <p>hardwoods</p> <p>26:7</p> <p>Hartsell</p> <p>8:11,12 9:18,20,24</p> <p>10:7,19,22 11:3</p> <p>12:1 25:23 30:10,</p> <p>18 39:24,25 50:18,</p> <p>21 51:2,14,23 53:7</p> <p>56:15,20 74:12</p> <p>93:19,21,25 94:1,</p> <p>18,22,25 95:4,7,10</p> <p>96:11 97:9,14 98:6</p> <p>99:22 100:16,21</p> <p>102:1,6,13 104:4</p> <p>hatched</p> <p>70:1</p> <p>hazard</p> <p>46:18 64:8 69:6,7,</p> <p>10,14,16,22,23</p> <p>hazards</p> <p>43:8 64:12,13</p> <p>head</p> <p>99:12,21</p> <p>headed</p> <p>76:23</p> <p>heading</p> <p>98:1 99:8,17</p>	<p>health</p> <p>50:7 73:1</p> <p>hear</p> <p>4:20 6:20</p> <p>heard</p> <p>48:16 87:22</p> <p>101:16 102:8</p> <p>hearing</p> <p>4:2,4,12,21,22 5:7,</p> <p>9 7:16,17,22,24</p> <p>8:1,3,6,8,11 9:14,</p> <p>22 10:2,6,18,20</p> <p>11:2,5,6,25 12:6,9</p> <p>13:11 20:18 21:6,</p> <p>11,14,18 24:2,6,8,</p> <p>12 25:13,19 26:1</p> <p>29:2,6,8,12,15,20,</p> <p>24 30:7,15 32:1,3,</p> <p>6,10,22 33:2,5,14,</p> <p>19,24 34:5,16,20,</p> <p>23 35:9,14,17,22</p> <p>36:1,4,6,17 37:8,</p> <p>11,23 38:2,4,15,17</p> <p>39:11,17,20,22</p> <p>40:7,13,25 41:7,10</p> <p>44:2,10,15,19</p> <p>45:1,12,17,21 46:2</p> <p>47:24 48:4,15,22,</p> <p>25 50:10,19,22</p> <p>51:1,3,9,19 53:2</p> <p>54:12,23 55:2,12</p> <p>56:11,13,17,21,24</p> <p>57:5,10 60:11,17,</p> <p>20,22,25 61:11</p> <p>62:15,17 65:8,24</p> <p>66:2,9,13,20,25</p> <p>73:22,25 74:11,15,</p> <p>18,21,23 75:1,3,5,</p> <p>8,25 76:9,11,17</p> <p>79:23 80:3,13,16,</p> <p>19,24 81:5,7,12,</p> <p>17,22 82:5,8 83:7,</p> <p>10,13,16,19,25</p> <p>84:6,13,17 85:8,</p> <p>12,21,24 86:1,3,5,</p> <p>7,14,16 87:5,10,</p> <p>12,14 92:8,12,17,</p> <p>23,25 93:3,6,10,</p> <p>20,23,25 94:16,21,</p> <p>24 95:1,5,8 96:8,</p> <p>20 97:11 98:3,17</p> <p>99:6 100:8,20,22</p> <p>101:14,18,23,25</p> <p>102:5,7,14 103:5,</p>	<p>11 104:1,7,20</p> <p>105:7,11,20 106:4,</p> <p>20</p> <p>hearings</p> <p>6:8</p> <p>hedge</p> <p>17:18 60:9</p> <p>hedgerow</p> <p>17:12</p> <p>height</p> <p>12:25 13:20 14:22</p> <p>15:15 20:4 52:25</p> <p>59:23 63:2 84:14</p> <p>102:2,21 103:5,9</p> <p>held</p> <p>33:5 48:7</p> <p>helpful</p> <p>104:21</p> <p>Hemingway</p> <p>88:25</p> <p>herbaceous</p> <p>53:20</p> <p>high</p> <p>46:18 64:8 69:6,7,</p> <p>10,13,16,22,23</p> <p>102:9</p> <p>higher</p> <p>84:23 103:1</p> <p>highest</p> <p>22:6 106:1</p> <p>highlighted</p> <p>13:5 51:20 52:19</p> <p>highlights</p> <p>51:15</p> <p>highway</p> <p>66:22,23 77:17,21,</p> <p>25 78:1,3 79:13</p> <p>85:19 86:11 97:3</p> <p>Hillsborough</p> <p>11:16</p> <p>historically</p> <p>34:12</p> <p>history</p> <p>57:25</p> <p>hit</p> <p>51:14</p> <p>hits</p> <p>64:17</p> <p>hold</p> <p>32:16 48:6 74:12</p>	<p>home</p> <p>11:20 64:17</p> <p>102:25</p> <p>homes</p> <p>11:18 13:24 15:21</p> <p>18:9 25:16,17</p> <p>29:17,18 63:3</p> <p>hope</p> <p>37:3</p> <p>hoping</p> <p>93:15</p> <p>hour</p> <p>5:5 12:22 22:2</p> <p>42:20 52:5 79:14</p> <p>85:16 104:11</p> <p>105:25 106:1,3</p> <p>hours</p> <p>5:3,5 75:22 77:7</p> <p>78:18</p> <p>house</p> <p>77:9 79:8 86:10</p> <p>87:9,16 88:11</p> <p>89:18 90:23</p> <p>houses</p> <p>76:4 85:17 87:17</p> <p>housing</p> <p>41:17 91:15</p> <p>huge</p> <p>76:20</p> <p>hundred</p> <p>103:8</p> <p>hurricane</p> <p>64:13 78:16</p> <p>hurricane-type</p> <p>40:22</p> <p>hurricanes</p> <p>90:19</p> <p>hydric</p> <p>26:8</p> <p>hydroperiod</p> <p>31:16</p> <hr/> <p>I</p> <hr/> <p>lan</p> <p>40:10 78:17 79:5</p> <p>84:9 90:20 92:22</p> <p>ideal</p> <p>101:8</p> <p>identified</p> <p>31:1 53:24</p>	<p>identifier</p> <p>29:23</p> <p>identifies</p> <p>54:10</p> <p>identify</p> <p>5:9</p> <p>identity</p> <p>47:14,20</p> <p>impact</p> <p>63:15,16 67:25</p> <p>69:15 77:12 78:16</p> <p>106:24</p> <p>impacted</p> <p>14:16 59:17 63:20</p> <p>76:8 78:12 96:9</p> <p>impacts</p> <p>31:9 38:14 48:17</p> <p>49:14 50:2 68:8,22</p> <p>69:15,18 71:22</p> <p>95:19</p> <p>impervious</p> <p>32:24</p> <p>important</p> <p>30:22</p> <p>improve</p> <p>37:17</p> <p>improvement</p> <p>23:9,11 95:2</p> <p>improvements</p> <p>23:17 46:1 65:11,</p> <p>13</p> <p>improving</p> <p>31:15</p> <p>inaudible</p> <p>32:17 87:8</p> <p>inches</p> <p>40:17 78:18 79:9</p> <p>include</p> <p>17:11,17,20 19:9</p> <p>23:11 45:22,24</p> <p>46:12 52:14 53:10</p> <p>59:8 77:10 88:19,</p> <p>25 91:14 100:8</p> <p>included</p> <p>15:13 22:17</p> <p>includes</p> <p>4:18 14:23 46:13</p> <p>including</p> <p>5:15 25:10 26:19</p> <p>27:19 37:1 38:11</p> <p>56:4 64:12</p>
---	---	---	--	---

inconsistency 68:11	intensity 49:13	Jay 74:6	4:17,19 8:20 10:9 13:23 14:6,7,13 20:13 23:24 25:5, 9,14 30:4 31:23 41:15,17,25 43:6 44:23 49:8 55:25 56:10 58:2 61:16 63:7,10,14,17 72:3 84:16 98:13	66:5 67:7 69:14,23 104:25 105:2 106:15,18
incorporate 59:14	intensity/density 98:16	Jeremy 8:17 10:8,13 12:1, 10 41:3		left 27:2 41:5 74:4 83:22,23 87:10
incorporated 59:6 65:18	intent 50:6 52:3,8	job 4:16 61:15		Legislature 11:10
incorporation 46:7	interconnect 65:7	JR 8:21	lands 46:20	lengthen 31:16
increase 88:19	interconnected 43:21	Judy 79:24	landscape 8:19 12:11 75:15	letter 9:6,7,9 10:1 43:2, 16 52:2 54:2 57:23 64:5 66:6 72:22 73:17
Indicating 10:18 92:16	interconnectivity 66:19	jumping 51:24 103:16	landscaping 47:12,15,25 67:1	level 18:11 22:9,11,12, 24 30:25 84:16 98:10 106:5,14
indigenous 24:21 26:17 27:9, 16 28:9 33:21 36:8,11 46:12 47:6 59:21 60:14 67:8, 11 68:14 70:2,8 71:7,14	interest 6:23 7:15 10:4 50:1,2	jurisdictional 67:17	lanes 23:18 78:2 96:5	libraries 15:7
individual 55:10	internal 32:9,11 45:14 65:7 66:12,18 99:2	jurisdictions 105:2	language 52:8 53:23	lieu 65:16 66:8,14,17 96:17
individual 55:10	internally 33:18 66:19 97:18	<hr/> K <hr/>	large 97:19,20 99:25 100:5,9 103:17	
industrial 62:1	intersection 22:22 48:19	keeping 7:16	larger 17:9 38:11	light 76:21 85:16,18,19, 21,22 86:2,8 91:22 92:1 93:16
infill 55:23	intersections 22:17,23	kids 66:9,21	largest 11:19	lighter 36:13
information 6:21 7:5 16:14	intervals 90:11	kind 19:8 34:20 37:2 45:9 55:5 60:1 69:6 70:15 75:2 77:20 78:4,14 79:5,6 80:8 87:22 92:4 98:3,6,17	lasts 92:1	limit 51:25
informational 72:5	introduce 9:12 10:23		law 8:9,13	limitation 6:16 7:1
infrastructure 15:4,7 42:17 43:16 70:20 82:16	intruded 78:22	<hr/> L <hr/>	lawn 77:11	limitations 64:21
input 7:3 93:12	invite 79:12	Lago 9:3 13:6 14:19 15:13 16:19 17:20 18:20 58:8 67:19 87:22	LDC 49:5,6 72:7	limited 27:19 54:14,19
inset 98:21	issue 97:7 100:15 102:8		lead 99:11	limiting 20:14
install 81:2	issued 71:19	laid 39:5	leading 101:19	limits 42:1
installed 27:25 28:7	issues 9:16 77:15 93:14, 17	lake 18:15,17 19:21 20:13 53:16,17,18, 20 61:1,2,5 72:12, 17,19 103:19,24	leave 35:24 81:11 93:1 100:1,21	linear 60:9
instance 51:16	ITE 21:24 105:4,17		leaves 32:18 70:10	lines 16:9 18:2 35:3 53:14,16 55:19
intend 7:19	Ivory 8:17	lakes 33:1,2 72:18 103:20	leaving 105:22	Link 22:8,11
intended 40:23	<hr/> J <hr/>	land	Lee 4:8,18 11:13,17,23 13:1 23:23 30:4 31:23 32:13 37:20 40:5 41:3,12 43:1 49:7,22 56:9 63:6	listed 36:25
intends 4:25	Jalique 74:20,21 86:16			
intense 40:20	James 80:1,4			

live 6:4 75:10 76:6 77:4 78:15 83:14 84:5 91:7 92:19	44:16,20 49:1 90:22 102:1	69:5 82:6	measured 103:6,8	met all 23:22 30:2 31:22 56:8
lived 80:5 87:2,16	main 97:23,24	March 89:10	measurement 104:12	meter 32:17
living 61:21	maintain 37:17 38:5	Marie 4:3	measures 69:14	metered 33:9 103:25
load 99:10	maintained 31:8	marina 9:3 13:6 14:1,19 15:13 16:18 17:20 18:20 58:7 61:22 67:19 87:22	measuring 106:22	Meyers 79:24
local 30:24 43:4 46:25	maintaining 31:14 38:9 47:12 52:7	marine 61:25 62:1	mechanism 101:1,3	mile 13:14 15:6 101:15
locally-owned 11:19	maintains 52:3	marked 19:18	mechanisms 31:17	million 88:4
located 4:7 25:20 42:16 43:15 58:11,15 64:7 71:4	maintenance 38:18,23 46:9	marsh 26:8	meet 20:3 47:16 52:25 65:3 68:13,23 69:22 71:5 72:6,25	mind 7:4 74:24
location 13:3 16:19 44:25 49:24	major 66:23 78:10 90:6 97:3	Marshal 72:25	meeting 16:15 44:22 48:6, 7,11,13 49:3 72:5 75:13 91:19 98:25	mine 80:10
locations 45:15 48:10,20 53:24	majority 26:12	mask 86:19	meetings 30:19 95:15	minimum 48:1 53:13 67:4 103:3
long 6:18 21:3 40:22 76:24 95:8	make 7:5,7 39:8 51:21 68:6,7,14,16 77:21 82:20 85:1 86:19, 24 88:12 95:24 96:6,14 101:5 106:13,16	masse 7:23	meets 11:13 49:8	minimums 47:25
looked 29:20 58:19 71:25	man 28:13	massively 78:1	melaleuca 25:11 27:5,7,20	minor 53:22
lot 74:25 75:19 76:19 78:4,17 81:18 100:23	managed 47:6	master 9:12 11:14,15 15:12,19 16:7 20:11 44:5,6 48:11 51:5,18 60:2 98:4, 11	member 92:14	minutes 89:20 91:22
lots 17:21 52:14 55:9, 10 60:12 62:25	management 24:22 27:9 28:12, 19,25 30:22 32:7 33:10 38:8 40:1,6 44:8 46:4,8 68:5 69:1,3 70:2	material 59:13 61:10 70:3	members 5:23 6:16 7:12 8:15 11:10 74:2 94:3	missed 29:12
low 42:1	Manatee 11:16,18	mats 53:19	memo 71:23	misunderstood 86:7
low-lying 78:24	maneuver 101:12,13	matters 5:15	memorialized 31:3 41:21	mitigate 53:20
lucky 90:21	Mann's 11:10	Matthews 8:17	mention 23:1,14	mitigated 49:15 64:14 68:8 69:19,20
lunch 5:6	map 29:21 67:10,12,16	max 20:14	mentioned 12:12 13:9 14:19, 24 15:15 17:5 18:18 19:1 20:25 38:12 47:9,10 48:10 63:6 70:22 71:11 77:14	mitigation 68:21
M		maximum 12:25 13:20 14:11, 17,22 15:14 20:14 43:19 57:18 102:21	Merchandise 22:19	mix 25:4 41:17 49:23 51:25 61:18
Madam 8:1,11 11:6 65:8 93:25		MCP 60:24	mess 74:19	mixed 25:7 26:7 61:18,20
made 9:9 11:10 16:14,15		meaning 103:3	met 68:15 73:20	mixture 21:7 26:16
		means 32:23		mobile 29:17,18
				modification 52:2
				modifications 49:1

momentarily 20:16	N	notes 6:19 80:16 88:4,8	37:15,19 39:10 45:17,19 46:1 64:16 65:11	6:9
money 96:17	names 6:2 74:3	noteworthy 27:3	offer 10:4	option 21:17 22:3 101:10
months 95:15	native 25:18 26:17 71:10	notice 8:8	oftentimes 6:8	optional 17:9 44:4,9,13
moon 37:3	natural 11:11 39:6 46:6,7 49:19 56:2 64:11	noticed 35:11	older 41:11 78:23	options 21:15
morning 4:2 8:10,11 11:5,6 12:8,9 20:19,20 24:15 30:11 57:1 75:22 85:17 86:17, 18 89:23 91:17	nature 5:17	November 28:15	oldest 76:3	orange 25:1
mountain 103:17	navigate 77:1	number 4:8 8:7 13:25 15:6 16:8,24 30:25 31:17 34:7 36:25 40:16 46:4 51:2 63:21 78:11 79:19 93:14 94:8,9 105:5,22 106:2	Olga 15:9	order 5:11 10:8 23:16,20 31:20 38:21 40:3 43:5 46:25 58:17 64:15 65:10,16 68:3,23 73:2 98:7, 18 100:18
mouse 76:14	Neal 8:13,15,16,17 10:23,24,25 11:4, 6,7 101:1	numbers 77:9,12 106:13	on-site 24:25 25:2,4,9,12, 17,25 26:5,6,11, 16,18,21 27:11 28:14 29:3 31:15 33:1,2 34:7 42:6 46:22 68:4 69:2 71:8 103:19	organize 6:19 7:14
mouthful 12:23	needed 53:25 64:23 65:11 68:21	O	one-day 88:1	original 88:18
move 59:12	neighborhood 76:7 95:15	Oak 89:3	one-lane 77:22	originally 87:23
moved 16:18,20 48:13	neighborhoods 41:20	Oaks 4:9 12:18 23:21 30:1,13 31:21 51:5 56:8 57:13	online 88:8 90:18	ottley 24:5,7,10,14 74:19,20,22,24 75:2 86:18,22 87:1,7,9,11,13,15 92:9,10,11
moving 7:16 19:14 49:5 50:9 52:6 53:9 82:13 100:10	network 22:8	oath 4:24 7:19	opaque 17:7 18:3 52:14 59:5 60:10	outfall 34:1
Moya 13:11 15:13 16:2, 13 48:12,18 54:1 55:20 75:14 83:25 84:2,12,18,21,23 85:5,6,11 92:20	News-press 8:9	objection 54:2	open 5:22 20:9,11,12,15 31:25 43:22,23,24 46:12,13 47:6 56:3 60:13 64:22 65:1,6 67:3 68:14 70:9 71:11 72:4 74:1 98:16	outfalls 33:15,16,17,18
Moya's 48:22	Noel 79:25	Objective 47:2	operate 22:12,23 23:12 32:8 75:24	outflow 32:20
MPD 9:3	nonindigenous 26:17,23	objectives 42:14 50:5	opined 72:1	outparcels 62:20
multi-family 21:2 61:12 105:16	nonnative 26:17,22 28:5	obscure 18:14	opinion 23:21 30:1 31:21 56:7	output 48:22
multi-use 65:21	north 9:2 13:10,14 14:21 15:2,11 18:24 33:23 58:22 60:4 65:19 67:20 83:19, 20,25 84:2,7 88:20 90:3,4 96:3 99:8, 12 100:24 101:15	observed 18:18	opinions 33:12	outstanding 9:16
multiple 31:6 32:15	northeast 60:18	observation 75:21	opportunity 6:12,14 7:13	overages 71:15
Myers 13:21 15:11 34:17 62:23 76:4,6 78:15 81:1 93:18 102:4	northern 55:19 67:23	occure 68:4	opposed	overgrown 38:6
	note 7:5,8 26:21 54:9, 10 60:23	occurs 46:24 59:16		oversaturated 77:25
	noted 26:4,16 50:12	October 28:15		overview 8:25
		off-site 33:9 34:8 35:18		overwhelmed 75:16

owner 5:13	Passarella 8:24 24:16	11:21 20:15 26:13, 22 27:22 67:7,9,11 71:12 103:8	plan 4:19 9:12 10:14 15:12,19 16:7 20:11 23:24 24:22, 23 27:9 28:12,19, 22,25 30:4 31:23 32:4 39:4 41:4,12 44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	100:4
ownership 72:14	past 73:5 83:18 101:6	performing 23:2	15:12,19 16:7 20:11 23:24 24:22, 23 27:9 28:12,19, 22,25 30:4 31:23 32:4 39:4 41:4,12 44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	Pointe 88:25
P	pasture 25:6,8,20,21 26:20 27:1	perimeter 34:21 36:18 47:24	20:11 23:24 24:22, 23 27:9 28:12,19, 22,25 30:4 31:23 32:4 39:4 41:4,12 44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	pointed 9:1 51:17
p.m. 12:22 22:2 42:20 52:5 106:1	Pat 8:15 10:23,25 11:7	period 40:17	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	pointer 25:22
pad 54:18 55:11	paths 65:21	permissible 55:24	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	points 15:24 47:19
pads 54:7,14,22 73:4,9	pathways 31:8	permit 57:18 67:22 68:6 69:18 71:19	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	policies 43:12 46:4,5,18 47:2 69:22
pages 51:15	patio 103:21	permits 47:7 73:6 88:2	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	policy 41:15,25 43:7,8, 21,25 47:11,14,22 65:5 68:23 69:24
palm 13:15 26:8 76:13, 16,22 77:1 78:1 79:13 91:21	pattern 5:7	permitting 28:24 42:10 46:24	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	Portico 89:9,12
Palms 88:20	patterns 23:3 42:15 46:17 63:24	person 6:24	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	portion 13:7 14:9,21 26:10 28:17 44:5 58:11, 17 67:19,20
paper 88:22 91:18	Paul 74:7	personally 100:22	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	portions 30:4
paperwork 89:16 90:25	paved 45:2	photo 26:25 27:2	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	positive 59:15
parcels 15:20	Pavese 8:13	photograph 35:18	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	post 31:9 90:19
park 99:8	PD 55:22	photos 26:24	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	post-conditions 64:18
parking 14:23 15:16,17 16:17 55:21	PD&E 23:2,4 94:12,16 95:13,16 96:21	physical 43:8 64:12	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	post-development 31:7 39:3
Parkview 91:13	PE 84:24	pick 94:2 99:17,20	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	potable 15:9 43:2 64:5
part 22:5,16 23:4 28:15 58:24 67:12 69:5,9 77:17 96:13	peak 12:22 22:2 42:20 52:5 77:7 104:11 105:25	picked 45:8	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	potato 25:11
participants 7:23	pedestrians 75:18	piece 67:23,24 69:11 91:18	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	potential 18:10 53:20 95:3
participation 5:25	pen 41:6	Pigott 77:17 82:3,6	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	potentially 43:10 96:9
parties 4:13 93:13	pending 88:21	pine 25:6	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	pour 79:6
parties' 4:10	people 6:9 11:23 48:9 78:17 85:3,5 87:17 94:9	Pinellas 11:16	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	Powerpoint 12:4,7 57:8
parts 17:3	pepper 25:11 27:20	pipe 33:21	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	pre- 31:6 64:18
pass 91:25 92:2	percent	pipes 34:14 37:6,7	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	pre-development 39:3 46:9 47:1
		place 31:17 45:1,7 94:11 97:4	44:5,7,8 47:11 48:5,11 49:1,7,22 50:19 51:5,18 53:4 55:5 56:9 60:2 63:6 65:4 69:14,23 70:2 72:10 73:5 85:9 98:5,11 100:23	precursor 40:2

predecessor 11:11	primarily 61:17 62:1	projected 22:12 23:8	protect 31:1 50:7 64:16	punchy 40:19
predevelopment 46:17	principal 11:7 57:2	projection 90:14	protected 24:22 28:9,12,13, 14,18,25	purposes 58:18 104:16 106:23
predicted 45:6	prior 46:25 71:17	projects 30:21 65:19 96:2	protecting 47:19 55:17	put 6:5 8:2 59:18 68:19 73:8 80:9 82:15 85:18,25 87:24 88:6 91:18 96:14
predicting 104:10	private 11:20 53:13 72:13 85:6	promote 50:6 63:23	protection 41:19 42:9 46:6,19 47:1,3 56:1 69:14, 24	putting 21:20 91:11,15 96:18
predominantly 13:23 14:7 32:13 41:16	problem 30:18 77:18	prompts 64:9	protects 43:9 46:17,22	<hr/> Q <hr/>
preliminary 95:20	proceed 57:5	proof 69:19	provide 16:9 31:13 32:21 41:16 49:12,25 60:15 68:12,21 69:16 70:5,18 71:10 93:17 101:9	qualified 10:2
prepare 4:13,16	proceedings 5:11	properties 14:1,5,25 17:1,25 18:23 19:5 34:8 35:5,11 37:5,12	provided 4:24 9:7 16:21 18:19 33:8 43:12, 16,24 44:1 46:21 47:6 50:17 64:4 67:16,18 68:2 69:5 70:20 71:18,23	qualifies 49:9
prepared 5:19 24:23 27:8 28:12,19,25	process 54:22 70:21 76:24 77:18 95:9 98:13	property 4:7 5:12 13:4,10, 14,18,22,24 14:8, 13,15 15:3,4,6,8 16:9 17:4 18:2,12, 14,19,22 19:8,12, 19,24 20:7,9 34:8, 10,13 35:3,8 37:5, 6 41:21 44:3 53:13,16 55:19 57:25 58:15,20 59:7,10 61:23,24 62:4,8 72:13 80:10,22 81:9 82:13 83:21 97:25 103:23	providing 16:11 47:12 53:19 56:1,4 64:15,25 67:3 69:25 70:7 71:15	quality 31:15 32:21 33:7 46:10 70:5,18,22
present 5:13 25:12 27:6,7 71:7	produced 106:22			quarter 13:14 83:17 101:15
presentation 4:11 5:17,22 7:4,6 10:8 24:18 56:25 74:1 81:3	professional 23:21 30:1,12 31:21 38:13 56:7			quarter-acre 62:25
presentations 6:20	profiles 31:13 39:4			quasi-judicial 4:22
preservation 27:18,21 28:9 42:9 46:13,24 64:1	progress 73:13			question 39:23 92:21 94:10 96:12 102:8
preserve 27:16 50:6	prohibits 43:7 64:11	property's 34:11	provision 44:15,19	questions 7:3,7,8,10 23:25 24:3,9 30:5,8 31:25 32:1 39:22 48:20 56:14,15 74:17 80:16 93:15 94:3 104:4,6
preserved 14:15	project 6:5,7,10 8:18,19, 23 9:1 10:12 17:10,20 18:8 22:10,13,25 24:17 26:10,24 27:10 28:13,21 30:13 31:1,2,10,11 32:11 33:15,16 35:2 41:19 42:5 44:11 47:18 49:7,8,11,18 53:15 55:3,16 58:1 63:8 64:7 65:3 66:19 68:17 73:19 77:3 79:19 94:18 95:21,22 96:7,8,9, 15,22,23 97:1,3,19 98:23 99:9,18,20 100:1,11 101:15 104:10,13 105:6, 13,23 106:12,23	proposal 11:12 12:13	public 5:23,25 6:16 7:2,6, 9,11,12 15:7,18 16:15,16 24:6,13 42:15,17 43:15 49:2 50:1,7 72:5 74:2 88:17 92:14 93:12,15 94:3 95:14 97:7 98:16 104:22	quick 40:20 55:14
preserves 16:21 27:10 42:5 56:4 64:1,2		propose 53:22		quote 11:9
preserving 64:24,25		proposed 9:5 12:25 15:19 16:7 18:8,15,22 19:2,6,20,22 20:24 22:6,21 31:13 49:13,23,24 50:13 52:2,8,18,22 53:15 58:24 61:6,7 65:13 66:8 71:23 85:9	publication 8:8	<hr/> R <hr/>
president 8:24		proposing 13:1,16 15:8 52:21 55:21 58:23,25 59:4 63:13 67:14, 25 98:23	published 8:9 104:9	Racetrac 22:20 62:19
pretty 19:12 101:9	project's 22:21 106:10		pull 86:10 94:5 97:21, 22	radius 99:4
previous 16:8				
previously 15:25 18:20 19:1 20:22,25 26:19 48:10 52:8 54:1 58:19				

rain 40:17 79:9	recognize 10:5 96:15	regulated 32:20 37:13,14	replicate 40:24	requirements 20:4 42:10,13 47:16,22 52:24,25 58:18 65:4 71:6 72:4
rainfall 32:23 40:11 78:18 79:6	recommend 73:20	regulates 37:15	report 5:19 10:17 31:4 37:22 45:3 49:17 56:25 57:11 106:18,21,25	requires 31:5 43:21 47:11, 14 48:5 59:23 70:17 72:8,13,18
rains 32:19 79:1	recommendation 4:14,16 11:22 50:24 51:12,22	regulations 4:17 29:4 47:12 49:9,16 102:23	REPORTER 86:19,24	rerouting 31:18 35:6
raise 7:20	recommended 5:20 49:25	rehash 50:15	reports 40:4 90:13,16	residences 81:16
raised 7:11 24:11 54:17 93:14	recommending 72:15,20	reinforcement 53:19	represent 20:11 25:2 26:4,25	resident 16:6 78:12 80:5 101:7
ramp 15:17,18 78:21 85:2,5	recommends 57:24	related 24:9 43:6 47:21 48:9,16,18 50:2 54:9	representation 26:15	residential 4:5,6 12:17 13:21 14:4 17:10 18:12, 21 19:6,22 20:8 41:16,20 42:2 43:6,7,9,14 55:8 57:16 58:13,21 61:17 62:7,21,24 64:11 73:19
ran 34:18	record 4:23 7:20 8:2 9:23 20:20 39:25 56:25 57:1 68:19 73:8 93:24 94:1 100:25 102:18	relationship 6:4	representative 24:20	residents 16:6,10 31:2,10 55:6,18 93:17
Ranch 77:23	recreation 65:7	relay 6:20,21	represented 24:20 71:13,14	residents' 44:21
rare 46:14	recreational 42:2 43:22,24 44:3 62:3	release 32:17	representing 5:12	resolution 12:16 58:5,20
rate 11:21 33:9,10 103:25 105:21	redone 82:4,10	relied 104:9,16	represents 27:1	resolved 9:17
ratio 53:18	reduced 51:4	relief 54:7	request 4:10,15,17 9:2 12:13,15,19 20:25 22:7,15 57:14	resource 67:21 104:24
readily 42:16	refer 40:19	relocated 29:3 83:1,2	requested 47:21 51:12	resources 11:11 39:6 46:22 49:20 56:2
ready 7:25 50:11	referring 101:7	relocating 29:11	requesting 15:20 17:5 55:24 72:14,19	respond 7:23 40:21
realistically 99:7	reflects 9:20	relocation 28:22 47:8	require 29:10 42:14,25 46:7,9,19 47:3,22 58:25 65:15	response 49:2
reality 100:11	regard 9:25 94:10,22 97:17 98:7 99:22 102:2	rely 105:20 106:21	required 8:9 16:25 18:25 20:1,3,9,15 21:25 30:24 31:12 33:7 37:16 43:4,23 44:14 47:8 52:12, 20 54:19 58:19 60:24 61:1,3 65:2 66:4,18 70:8,17 71:5,12 97:15 101:19 103:1 104:25	responsibility 38:5,13 45:18
realize 51:10	region 69:12	remain 36:11 101:10	requirement 20:12 38:9 44:23 48:3 56:3 66:14 73:1 99:1 102:24	responsible 35:20
reason 21:8,23 87:17 96:1	regional 30:24 35:1	remaining 13:7		rest 12:14
recall 94:2	regionally 33:11	remarks 5:1		restaurant 62:4
receive 54:2	registered 30:12	remember 40:16		
received 48:9,13 49:2	regrade 36:10	removal 54:1,4 71:2,9,19		
recently 90:16	regular 54:5	removed 16:20 48:14 55:20		
recess 56:23 93:22		removing 73:9		
Reclamation 15:11		repeat 6:25		

restoration 70:2	4:8 9:2 13:9,12,15, 16 14:3 15:14 16:1 18:23 19:5,25 22:20 33:22 45:10, 15,19,20,23,25 48:19 58:1 59:20 62:5 65:12,20 75:22 77:10,22 78:9 94:11,14 96:12,13,15 97:15 100:12,13,24 104:17	RVI 8:18 12:10	seeking 57:21	share 6:6,11
restored 70:4 71:2,8		résumés 10:3	Senate 11:11	shared 73:11
restroom 74:13,14		<hr/> S <hr/>	sense 82:20 85:1 96:14	Sharon 74:16 93:9
result 21:4 48:12 64:23 106:9		safeguards 50:1	sensitive 36:23 39:8 46:20 47:4 49:19 67:5 68:25	shedding 93:16
results 22:10,22		safety 50:7 73:1 97:7	separate 17:3 69:4 72:14	sheet 74:5
resume 5:4 56:18	roads 45:14 106:6,8	sandwiched 55:5	separation 16:9 44:23 55:18 60:16	sheets 74:3
retention 53:12 70:13,16	roadway 22:8 23:6 34:2 45:2 66:15,16 71:24 96:4 101:19 106:24	sanitary 15:10 43:3	serve 15:8	shift 82:10
return 7:9 93:13		Santiago 83:15,18 84:3	served 30:13 42:17 43:15 49:21	Shores 13:18,21 34:17 47:11 62:24 65:4 70:16 76:4,6 78:15,22 81:1 88:22 93:18 102:4
reverse 22:19 45:9 79:1,10	roadways 22:12	Sarasota 11:16	services 22:20	short 5:4 56:18 74:8 83:8,9,12,14,17, 20,22 84:2,5,7,15, 18 85:10,13,22,25 86:2,4,6,8,15 96:14
review 40:2 41:13 54:21 56:21 67:13 68:5 70:21 73:6	rodeo 88:16	satisfaction 11:21	service 13:2 22:9,11,12,24 43:1 77:11 106:5, 14	show 38:23 64:16 66:18 70:3 75:11 97:23
reviewed 5:18 9:6 39:6 40:5 42:5 43:13 47:18 59:8 99:1	room 4:25 7:19 17:24 97:22 99:24 100:23	save 59:13	services 39:14 43:3,17,18 49:21 64:4 65:10 72:24 99:1	showed 48:11 81:3
reviewing 65:19	Rose 76:1,3	saved 59:7,21	set 10:17 82:9 95:16, 25	showing 98:8,21 99:4
reviews 77:19	Route 52:22 75:22 99:19	scenario 19:21 20:6 37:2 52:10 71:25 101:8	setback 19:4 20:6 57:23	shown 23:12
revisions 9:5	routing 35:21	scenarios 17:3 31:6 32:16 37:1 52:15,16	serving 42:24 43:20	shows 70:6
Rewis 54:3	RPD 4:9 12:18 13:5,6 14:19 15:13 18:20 23:21 30:2,14 31:21 56:8 57:13 58:7	scheduled 94:12,15 95:5	setbacks 47:19 48:21 54:8, 15 72:12	shy 30:20
rezone 4:4 12:16 21:1 73:18	run 41:12 73:5 84:23	school 44:20 45:4,8 75:17 97:21,22 99:2,8,13 100:9,14,18 101:2, 4,10	seven-and-a-half-foot 90:21	sic 13:12 28:5 57:10 77:22 82:22 89:12 105:3
rezoned 58:4,12 67:19	running 84:21	school-aged 97:2	sewer 13:2 15:10 43:1,3, 17 64:6 91:10	side 4:7 9:1 13:13 18:12 55:6 59:14 61:15 81:4,8 87:10 91:12 99:14
rezoning 20:25 22:6,15 57:15 63:18 105:1	runoff 34:6,11 103:19	schools 15:7	shaded 25:1	sidewalk 45:18,22,25 65:11
ride 79:14	runs 32:24 34:14 61:22 69:9	screen 14:11 69:8	shading 27:17	
right-of-way 53:5 95:19 96:23	rural 47:14	seat 7:15		
river 34:4 79:3 99:14	rush 79:13 106:3	seconds 92:2		
road		section 39:4 49:6 57:3 72:7 73:10		

66:11,13,15 77:15 96:14,18 101:19 sidewalks 43:21,25 45:13 65:6,15,17,21 66:8,17,18 96:12, 13 97:15,25 99:11 sightline 18:10,21 19:7,19 sightlines 18:14,17 19:24 20:7 signage 47:13,16 67:1 signalized 22:18 significant 19:2,4,12 56:1 significantly 18:13,18 22:4 similar 18:16 19:16,21 20:5 32:12 58:22 101:11,12 105:17 simple 75:21 simply 54:5 Simpson 80:1,2,4,5,15,18, 20 81:4,6,10,14, 18,24 82:7,9 single 61:12 single-family 12:19,23 13:24 15:21 17:2,5,6,21 18:1,24 20:6 21:1, 5,10,21 22:1 42:21 48:2 52:10,14 57:19 58:6,24 59:1,18,19 60:6,7 62:8,24 63:25 71:25 77:8 81:15 82:1 sir 75:6 83:11 84:17 85:12 site 13:3,8 21:1 24:19, 20 25:14 26:10,24 28:17 32:4,15,19,	20,22,24 33:25 34:12,21,24 35:21, 23 40:15 44:4 49:1 50:19 53:4 55:5 59:16 62:25 64:21 67:19 70:11,23 71:4,12,22 80:25 85:9 100:23 102:9, 11,15,16,20 103:2, 11,13,20 site-related 23:17 sites 38:14 situation 86:9 six-foot 18:3,11 81:24 91:1 six-foot-high 17:7 60:10 six-lane 23:5 86:11 six-to-one 72:18 size 77:4,6 81:18 105:13 sized 35:6 sizes 48:20 slab 102:25 slated 62:11 slide 13:22 14:24 44:6 51:7 slides 16:12,24 18:5 slope 53:18 72:18 slopes 53:18 72:17,20 slots 106:2 slow 76:14 slowly 86:20 104:8	smaller 38:11 50:23 snake 59:12 sneaking 92:4 Sneezing 62:15 solid 17:7,15 52:15 59:5 sort 34:9 66:4 sounds 101:17 south 14:9,25 15:2 16:1, 20 22:21 25:25 32:13 33:10 38:7 40:1,5 45:9 68:5 84:21 89:21 90:4 99:17 100:24 southeast 60:5,20 southern 14:8 15:20 16:5 17:22 26:10 67:24 southwest 11:19 30:21 34:18 space 20:9,11,12,15 43:23 46:12,13 47:6 56:3 60:13 64:22 65:1,6 67:3 68:14 70:9 71:13 72:5 78:20 98:16 spaces 43:22,23,24 71:11 speak 4:25 5:24 6:17 7:13 30:15 45:23 74:5 75:6 83:11 86:20 92:15 93:12 104:8 SPEAKER 74:9 speaking 7:20 79:11 88:17 speaks 69:6 70:22 species 24:22 27:19 28:12,	13,14,19,25 72:9 specific 6:10 23:19 37:20 specifically 75:14 specification 38:20 specificity 39:5 specifies 54:13 spend 85:15 spent 96:17 spoke 6:22 spotted 29:16 square 88:11 SR 22:18,21 23:5,12 95:18 96:3 stack 6:1 stackability 98:20 staff 5:18,19,20 7:7,25 8:2,5,7 9:4,8,16 10:17 21:19 24:24 30:25 31:3 37:22 45:3 49:16 50:12 52:17 54:3,17 56:21,25 57:9,10, 11,24 58:18 59:8 62:25 65:10 66:5 67:12 68:2,4,19 71:22,23 72:1,15, 20 73:4,6,18,25 75:12 93:15 Staff's 5:22 56:25 106:8 stage 23:20 46:1 96:21 stages 37:18 stand 45:2,8 66:10 97:4, 12	standard 54:19 67:7 105:4 standards 11:13 23:22 30:2, 23 31:22 32:14 37:17 41:24 42:25 47:13 56:8 67:2 106:14,16 standing 66:22 97:3 stands 58:14 start 10:9 11:9 24:18 started 95:13 state 4:8 6:3 9:1,2 13:9, 15,16 14:2 15:14, 25 18:23 19:25 30:12,24 33:22 45:19,23,25 47:7 48:19 52:22 58:1 59:20 62:5 65:12, 18,20 67:8,23 68:20,22 71:6 75:22 85:18 92:18 94:11 96:12,13,15 97:15 99:19 105:3 106:15 states 54:20 68:2,11 105:10 stating 8:3 station 15:5 22:20 62:12 step 20:16 90:22 95:2 steps 102:17 Steve 8:12 12:12 13:9 39:25 50:17 94:1 stop 65:9 97:9,16,17 98:2 99:2 101:20 storage 13:16 16:1,5 18:5, 16 19:23 39:16 42:12 59:15 64:9 69:3 70:5,24 85:4,
---	---	---	--	---

6,9,11	submit 31:5	17,21 71:24 72:2 103:24	ten-minute 5:4	today 8:13,15 9:2 11:22 12:15 13:8 23:13 24:21 57:4,12 58:9,15,22 59:3,4, 16 102:17
store 62:1	submitted 8:5 9:13 10:1 12:5 43:2 50:25 57:9 92:11	systems 46:7,8 70:13,14,15 91:12	term 40:20	today's 4:4 59:24
stories 13:20 14:22	suburban 13:23 14:7,12 41:15 55:25 58:2 61:16 63:7,9	<hr/> T <hr/>	terms 37:24 100:13	top 26:3,25 102:10
storm 36:25 37:1,9 38:10 40:8 78:19,22 79:5,9	success 11:11	table 14:11	Terry 74:8 83:8,14	topic 30:22
storms 38:11,12 40:19,21	sufficient 22:14,24 23:12 49:13,25 75:24	tables 70:3	testified 94:12	torn 96:19 97:6
stormwater 10:13 33:25 44:8 46:16,21 53:15	summary 30:1 55:15	take-back 9:23	testify 5:14	tortoise 28:16,20,24 29:23 47:8 82:22
street 62:13 75:23 76:7, 10,12,15 78:16,19 87:3 89:19	summer 40:11	takes 96:11	testimony 4:13,20,23 5:2 7:21 9:25	tortoises 29:3,11,16 71:3
streets 53:23 72:23 91:13	Sunday 83:6	taking 35:18 99:13 100:13	thing 7:2 8:2 57:7 70:15 78:14 81:15 82:2, 20 83:3,5 85:2 90:13 99:2	total 12:22 27:10 42:20 52:5
strike-through/ underline 52:7	supplemental 27:24 28:6	talk 10:25 12:12,24 16:12 19:10	things 5:16 31:18 51:20 69:4 73:13 98:17 104:21	touch 24:21 82:21
strip 80:10	support 6:7 22:14,25 49:13 53:25	talked 42:11 52:13 64:10 70:14 71:3 78:13 97:18	thinking 79:1	touched 64:22 65:8 67:2 71:21 72:6,7 83:4
structures 29:21 31:18	supports 41:19	talking 60:18 77:16 78:24 81:15 82:22 84:10, 13,15,20 96:24	Thomas 74:7	townhome 63:25 81:13
struggling 97:6	surface 30:22 32:7 46:3,8, 10 69:1,2 70:23	tan 36:13	thoughts 7:14	townhomes 17:5,14 19:14,25 61:6 63:12 89:1
stuck 79:14	surge 78:19,22 79:5	target 35:6	three-foot 54:15	townhouse 12:20 15:22 21:2, 17 22:3 48:2 52:9, 14 57:19 81:25
student 45:4,6	surrounding 14:5 15:4 22:7,17 31:10,11 38:14 39:8 41:21 49:12 59:15 61:14	task 4:12	three-point 101:5	townhouses 52:22 82:1 88:19
students 45:2,15	survey 28:14,16 29:9,11 78:14 83:5	team 8:15,17 12:14 30:18 31:1 44:12	till 78:7	TR 8:21 20:21
studied 22:23	swale 34:10 35:12,17 36:18 37:24 38:6, 18 70:14,15 84:20	technical 40:20	time 4:25 5:3,8,10 6:2, 6,17 7:3,18 10:23 12:1 16:16 24:6 29:13 38:22,25 39:13 43:4 60:5 64:14 65:9,16 68:7,9 73:2 91:23 95:22 98:18 99:5 101:13 106:2	tracts 19:6,22 20:8 58:21 60:6 63:25
studies 38:22 105:16,19	swear 7:21	telling 37:24	timeline 77:20 78:5	traditionally 34:18
study 20:24 21:9,23 22:5,16 23:2,4,7, 10,15,19 35:1 78:7,8 82:25 94:12,13,14,17 95:13,17,25 104:25	sworn 20:22	ten 65:24 66:1 77:15 78:7 94:13 96:24 103:12	times 63:1 67:13 105:23	traffic 8:22 20:24 21:9, 12,23 22:5,10,13, 16 23:3,10,15,18 48:17 71:22 75:16, 20,21 76:20,25
studying 23:7	system 32:7 42:24 46:4,8,	ten-foot 18:3 103:13		
subject 13:8 61:23		ten-foot-wide 17:8		

77:23 79:15 83:3, 4,5 85:14 88:15 89:17 90:6,12,16 91:21 104:10,12, 18,25 106:10,17	turned 89:20	unique 46:14	vegetation 19:5 20:2 24:21 25:10 26:12,14 27:4,9,18,23 35:12 59:7,17 71:19 80:10	wanted 51:9,21 68:24
trailer 14:23 15:15,17 16:17 55:21	turning 99:4 100:18	unit 12:21 14:16 15:23 63:15	vegetative 53:14 71:7	wastewater 42:24 43:20
transportation 5:16 8:22 10:10 20:21,23 23:23 49:15	turtle 88:14	United 105:10	Verandah 86:10,12	water 13:2 15:9,11 30:22 32:7,16,18,21 33:7,10 34:16 35:2,4,21 36:2 37:18 38:8 40:1,6 42:23 43:1,2,17,20 46:3,8,10 53:12 64:5 68:5 69:1,2 70:5,10,18,22 78:14 81:1 84:9, 20,23 91:2,10 103:18,24
Transportation's 65:22	turtles 82:22	units 12:20,23 14:14,18, 21 15:22 21:2,3,5, 10,22 22:1 42:21 57:19,20 58:6 63:10 72:1 73:4 88:21 89:1,4,7,10, 11,13,14,15	verification 72:24	ways 48:2
travels 33:22 91:2	tweaking 73:15	upcoming 44:6	verify 67:12,13,15 68:9 103:7	weekday 12:22 42:20 52:5
Treatment 15:9	two-foot 91:2	updating 29:8	version 20:10 50:23,24 51:11	weird 77:13
trees 17:11,17 60:8 80:10,21 81:7,8	two-lane 23:6,13	uphill 84:23 85:1	versus 88:9 104:17	welfare 50:8
trip 10:10 12:22 21:3, 24 22:1,6 42:20 52:5 77:7 104:23 105:4,15,18,21,24	two-year 88:1	upland 25:2,3,4,5,8,18 26:18 27:3,13 63:17 64:3	vice 8:24	west 76:23
trips 21:16 22:2,7 105:5,22 106:3	types 16:25 17:16 18:25 19:15 20:1,3,5 52:11,20,23 59:22 61:9	uplands 25:9 46:14 64:25 69:17,21,24	View 89:3	westbound 91:23,24 92:2
Tropic 75:23	typical 40:11 41:18	urban 5:18 14:9 25:5,8, 13 26:20 41:17,18 49:21 64:4	visual 26:15 61:3,4,5	wetland 14:12 16:21 20:2 26:4,6,7,11,18 27:2,12,14 28:3,6 35:24 41:25 42:10 46:24 61:1 63:14 64:1,2 67:18,20 68:1 69:25 70:7,25 71:1,17
truck 73:1 100:9	typically 38:8 40:22 95:9 101:1	urge 5:23 7:13	visuals 60:3	wetlands 14:8,15,16 19:2, 10,11 28:4 31:15 33:21 36:3,8,12 42:4,6,7,9 46:13, 15,23 52:23,24 55:6 56:5 58:2 60:13 63:16,20 64:24 67:6,7,23 68:8,20,22 69:18, 24 84:22,25 90:17 100:24
trucks 79:17 97:20 99:25 100:5	<hr/> U <hr/>	Utilities 13:1 43:1	voice 86:23	widened 96:16
truth 7:22	uh-huh 34:4 37:10 73:24 81:17	<hr/> V <hr/>	volumes 106:17	
turf 53:19	ultimately 34:1 48:23 96:5	vacant 14:1 62:5	<hr/> W <hr/>	
turn 12:13 20:16 23:17 73:1 86:17 89:22 97:24 99:16,20,21 100:1 101:5	understand 10:16 54:16 77:4 81:10 82:15 86:25 96:3 102:19	van 100:10	wait 76:21	
turnaround 44:25 54:4 72:25 97:20 98:21 99:23 100:3 101:9	understanding 29:16 77:6 82:9	variances 47:17,23	waiting 45:15	
turnarounds 101:2	underway 94:14 95:14	variety 5:15 13:25	walk 16:23	
	UNIDENTIFIED 74:9	varying 25:10	walked 62:25 63:1	
	unified 12:18	vegetated 26:21	wall 17:7,10,13,15,19, 20 18:4,13 19:17, 20 35:11 52:15,17 53:15 59:5 60:10 61:8,10	
	unintelligible 75:2		walls 75:15	

widening 23:5 65:14 77:16 82:18 94:11 95:18, 22,23 96:4,6,13	write 39:15	
wiggle 100:23	wrong 44:13	
wildlife 28:23 88:6 91:9	<hr/> Y <hr/>	
willow 26:7	yard 87:3 91:3	
Wilson 82:3,5	year 90:14 95:6,7,16	
wishes 5:24	years 11:17 65:25 66:3 77:15,16,17 78:4, 7,8 80:6 81:21 82:22,25 83:1 87:16 94:13 96:24 97:5	
wishing 57:18	yellow 13:4	
witnesses 5:14	Yury 8:21 10:9 20:17, 19,20 71:21 94:22 95:9,10 104:8	
won 11:9	<hr/> Z <hr/>	
wonderful 78:3	Z-06-050 12:16 13:5 58:5,8	
wondering 37:23 80:8	zoned 14:25 17:1	
words 22:14 32:18	zoning 4:6 12:18 15:1 38:25 57:3 58:20 59:24 62:8 68:13, 16	
work 10:19,20,22 73:12 75:18,19 88:12		
worked 38:18 39:7 98:18		
working 62:5 73:9		
Workman 8:1 9:19 38:20 39:12,19 57:1,2,6, 12 60:14,19,21,23 61:2,13 62:16,18 66:1,3,12,16,24 67:1 73:24 74:14 76:14 83:21,24 84:4 87:8 98:10 100:3 101:22,24		
works 14:17 82:3		
Worst-case 71:24		
worth 97:5		
wrap 10:14		