VOLUME 2
THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2023-00051

IN RE: SOUTH SEAS ISLAND RESORT
MIXED USE PLANNED DEVELOPMENT
_____/

VOLUME 2

PROCEEDINGS:	PUBLIC HEARING
BEFORE:	Donna Marie Collins Chief Hearing Examiner
DATE:	February 20, 2025
TIME:	9:00 a.m. to 4:05 p.m.
LOCATION:	Lee County Board of County Commissioners Board Chambers 2120 Main Street Fort Myers, FL 33901
REPORTER:	Deborah M. Bruns Florida Professional Reporter

FORT MYERS COURT REPORTING
2271 McGregor Boulevard, Suite 220
Fort Myers, Florida 33901
(239) 334-1411

VOLUME

APPEARANCES:

For the Applicant: Neale Montgomery, Esquire
The Pavese Law Firm
P.O. Box 1507
Fort Myers, FL 33902-1507
Email: nealemontgomery@paveselaw.com

Alexis V. Crespo, AICP, LEED AP
RVi Planning
1501 Broadway Street
Fort Myers, FL 33901
Email: acrespo@rviplanning

For the Staff: Adam Mendez, Principal Planner
Department of Community Development
Zoning Division
P.O. Box 398
Fort Myers, FL 33902-0398
Email: AMendez@leegov.com

ALSO PRESENT:

Greg Spencer, WS SSIR Holdings, LLC
Anthony Solomon, WS SSIR Holdings, LLC
David Henson, WS SSIR Holdings, LLC
Shawn Farrell, South Seas Resort
Carl Barraco, Barraco & Associates
Dan Trescott, Trescott Planning Solutions
Ted Treesh, TR Transportation

Joseph Adams, Lee County Attorney's Office

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Applicant Exhibit 5, compilation of experts' résumés, submitted on page 51
Applicant Composite Exhibit 6, inclusive of all planned development order materials, and three submittals during Staff review, submitted on page 52
Staff Exhibit 3, memorandum from School District, identified on page 76, submitted on page 77
Staff Exhibit 4, Lee County Natural Resources supplemental memorandum, identified and submitted on page 77
Staff Exhibit 5, PowerPoint, identified and submitted on page 77
Mintz Composite Exhibit 1 submitted on page 118.
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P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning, everyone. The date is February 20th, 2025. Today is the second day of hearing to consider a request to rezone 120.5 acres to the Mixed Use Planned Development Zoning District. The case name is South Seas Island Resort MPD, and we are in the middle of Applicant's presentation on the request.

Following their presentation, we will hear testimony from the County Staff. The County Staff will highlight the basis of their recommendation of approval and discuss recommended conditions they feel are appropriate if this project were to be approved.

I anticipate Staff's presentation will not be as long as the Applicant's; so there's a very good chance we will get to public input today. So we are just going to resume, and then we'll go right into Staff's presentation, and then we'll probably take a break, and then pick up with the public.

Okay. All those that are here today that intend to place evidence and testimony on the record, please raise your right hand. Do you swear or affirm the testimony and evidence you place into the record will be the truth?

(Participants respond en masse.)

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HEARING EXAMINER COLLINS: Okay, thank you.

I'm ready to begin with the next witness.

MR. FARRELL: Good morning.

HEARING EXAMINER COLLINS: Good morning.

MR. FARRELL: Shawn Farrell, general manager at South Seas Resort. I've been at South Seas Resort, again, for just over 14 years. Prior to that I worked at two resorts on the East Coast of Florida, on a barrier island, for 15 years.

Today I'm going to talk to you about our hurricane evacuation plan, our emergency response plan. I do have copies of that. Can I give you copies of that?

HEARING EXAMINER COLLINS: Yes. This will be Applicant Exhibit 4.

(Applicant Exhibit 4 submitted.)

HEARING EXAMINER COLLINS: And this is separate from the PowerPoint; correct?

MR. FARRELL: That is correct.

HEARING EXAMINER COLLINS: And we are on page 235 of the PowerPoint?

MR. FARRELL: Correct.

Our plan -- and I don't want to say it's easy because it's not easy, but we try to keep it simple. We have a great plan. It's not a plan that I drew. The property's always had a good hurricane plan, but

over the last 14 -- over 14 years we've had to modify, update it, and keep in it place so it's relevant to current conditions. We communicate, we execute, and evacuate, if -- if needed. So it's one, two, three.

Our emergency management plan we update annually. Obviously if team members change, we have phone numbers, we have contacts. You know, if a process changes, like it's changed off and on with reentry passes, getting them through Sanibel, sometimes we have to modify how we do that or when we get them or when they're updated. So it is a living document, and we do update. It is a document that's available to our leadership team on the resort at all times, for them to do their practice runs or -- or training with their new staff. The purpose of the document is to provide safety, preparedness, response, recovery, and mitigation before, during, and after the emergency event, such as a tropical storm system impact to the area.

I think it's important to understand for South Seas in particular -- I would say Captiva, but I'll stay with South Seas -- most of the people that are there are transient. Most of them there are on vacation. So when there is a storm coming, people are not excited about spending their vacation in a place

that's having a storm. You save up all year for your spring break or whatever. So most people -- we start getting calls ahead of time, and I'll walk through our levels of elevation on that. But just to kind of keep in context, you know, we -- as a resort, we watch that fall off. We watch our occupancy, we watch who's coming in, and falls off as soon as the weatherman goes on, right? My -- my dad's in Update New York. He calls me as soon as a hurricane is formed. He calls me, Shawn, is it going to come right to you in Florida? So it sounds crazy, but I think people coming on vacation, they do the same. You don't want to spend your money and end up at a place that has that kind of -- so it benefits us from an evacuation standpoint because it reduces the amount of numbers that we actually have to get off of the resort.

So for us the first activation is green. So it means that, hey, something has formed. It's out there. Let's refresh everything we have. We do under -- we all have families. I live in Iona. My wife and my two children, they are my priority. The resort is second. So making sure they're safe and they're set up in case it comes there, because I know I will be at the resort taking care of that, handling it, evacuating if need be. They need to be settled. So the first thing we do

is communicate to our team, prepare, take care of your stuff at home, if you need anything, this is the process.

At the next level, when we go to yellow at the resort, when there's a tropical storm watch, this is when communication starts out to guests, starts out to our guests in-house, future bookings. It is -- we -- we make them aware. We don't want people coming into a storm to provide that clogging of airports or clogging of traffic or anything like that. We don't want to try to have to move people out. We want to get our employees off the property if we're going to close. So that elevation, starting that communication. And it's -- it's counter to business, right, because we want to collect all the revenue of people being there, but we do know that we're going to lose it all anyway and cause a problem later on if we bring people onto the island as that's about potentially to happen.

So the tropical storm watch at code yellow is communication. It's internal; it's out to our guests. We notify our owners in our program what steps we're taking. We make our plans, preparation, reconfirm all our supplies, reconfirm everything that we need for that.

When we hit the next level, which is orange, and

we are in a tropical storm warning. This is definitively everything is being shut up. Whatever we're taking down that is potential loose debris, we're pulling in furniture off the balconies, putting them inside units. We are assisting guests -- if anybody is left, we are assisting them with plans to get out of there. Do you need reservations somewhere else, do you need to go there -- now, again, at this point the guests are almost always fully engaged to it. You know, you always have a few wandering around and not paying attention to what's going on because they're on vacation, but for the most part they're watching. They're talking about it as they're going -- so they're coming to us at the same time as we're communicating. And how we communicate is we have an app called Kipsu. We text all the guests in-house, but for future guests it's via email. We have phone numbers for everybody. So we -- we start that process. We communicate --

HEARING EXAMINER COLLINS: So you're reaching out to future guests and telling them not to come; right?

MR. FARRELL: We close reservations. We will not accept -- so you -- even -- we're telling them not to come, the ones that have reservations, making them aware of the situation and either moving their dates to a different time or just accepting cancellation without

a fee and shutting reservations. You can't book. You can't go online and book. Most people don't actually talk to somebody when they book a reservation now. They just go online. But we close that inventory so you can't -- you can't do that anymore.

HEARING EXAMINER COLLINS: So you're not introducing more people onto the island at this point.

MR. FARRELL: Absolutely not, absolutely not. Now it's about getting everybody out. So that process begins there -- and, again, there's two goals there. In my role I'm responsible for the resort so, you know, I always have that going; but I'm also responsible for the team and also for the owners' assets, that have given that to us to rent in our program. So there's multiple things and all of them take a certain amount of time.

So, you know, being on the other coast, the barrier island there, when they close it down, bridges go up, and you can't get on and off. It is not like Sanibel. So for me the trigger is -- and I say me, but it's the resort. If that wind is potentially going to make it to that threshold, and that bridge is going to be closed, right, we're not going to be able to get emergency services, I want everybody out. We're not going to put any -- we're not going to put any of our

team members, any of our guests in harm's way. So I'd rather be ahead of it and lose a day's revenue than be behind it and be scrambling and put that stress -- I mean, the emergency response people on an island -- anybody that's on Captiva, they know them all, right? Jeff and -- and Chris and, you know, all the -- we know them. We work with them day in and day out. You know, in a normal neighborhood you don't necessarily know those people that intimately like we do, but we do. We work side by side. So putting those individuals in a stressful situation would be counterproductive for the entire year. We're not going to do that either. So at orange, that's what we're doing. We -- we -- we've gotten there.

When we hit red, it is definitively this is when it's shut down. This is the close-down time. We reach out, we communicate to the Sheriff, the Fire Department, hey, this is where we are. I have five employees here. We're closing up. We're leaving by 4:00. There are no guests -- or if there is an owner in a house that's staying or -- we give them any other data that we may have, whether it's in our program or not in our program. Like Hilton Grand Vacation, for example, has timeshare units out there -- and we don't manage their units, we have interactions with them, but

we keep -- we talk to them a lot, right? They're another, you know, group that we talk to on a daily basis. We know if they're still there. Hey, Hilton Grand Vacation is wrapping up. They still got a couple owners staying over till tomorrow so --

HEARING EXAMINER COLLINS: So when you're telling me this, this is with regard to properties within the 120 acres that's the subject of this application, or are you talking about the entire resort proper?

MR. FARRELL: Very good, great question. So for us, currently, without the hotel we have approximately 300 units in rental programs that are spread throughout the entire resort. So if you go to -- example would be an association like Beach Villas, right? It's one -- one association. We may have 70 percent of the inventory in that association. I'm speaking to the 70 percent of that inventory in that association that we communicate with. The other 30 percent of that is not in my rental -- in our rental program, and I don't have that means. They're not connected into our Kipsu texting or our call. We do interact 100 percent with the management company, the association management. It's Island Management that manages most of the associations out there. But when I'm speaking about our plan and the things that we do --

HEARING EXAMINER COLLINS: This is a resort-wide protocol, not specific to the property in this application, what you're describing?

MR. FARRELL: What I'm describing is the program that's set forth for anything that we -- the business, the resort itself, manages. So as you go through the gates, again, you know, you have 20 different associations, no master association, multiple rental companies. If there's a Royal Shell rental in there, I am not communicating to that Royal Shell rental, but we do interact. It could be right next to -- to one of ours.

Now, being that we are the largest entity, obviously, by default we end up being supportive in other things, and we'll talk about it as we talk about going back on the island a little bit, but people do come to us. They don't know, they haven't gotten a communication, but of course we're helping them. We're human beings, and, you know, that -- that is -- but everything I'm talking about is people that are in our rental programs or within our business model, including the marinas, of course, because they're ours.

HEARING EXAMINER COLLINS: Thank you.

MR. FARRELL: Of course.

Next -- again, evacuation, closure of the resort.

The last thing we do after we communicate to emergency services, let them know our departure time, confirming that that's what's happening, what time we'll be out of there, et cetera. We make our plans and set forth -- we communicate to -- the Fire Department usually is first on, so they're -- you know, we're shortly after via either helicopter, boat, you know, if we don't have a bridge or we don't have necessarily that way, we let them know where some of our equipment is, potentially where our keys are. So our front-end loaders and stuff, they are usually hard at work when we arrive on island starting to do cleanup throughout, which we'll see in the next pictures. So that's kind of our -- our finish-up as we determine, we get everybody out, and move forward.

This sheet, this is a -- and I apologize, I looked at it this morning again, but this is the STAR report. It is a company that collects data from all different hotels and resorts, and it basically -- all I wanted to depict in this for you was to show you -- this is pre-Hurricane Irma, and you can see on the top line where it's highlighted yellow, orange, and red. If you go to the left of that, you can see our property's occupancy. So starting on September 1st, obviously a holiday weekend, we're, you know, 60, 70, 77 percent

occupancy. As the storm comes in -- you know, of course it's a holiday weekend so it fell off naturally; but as you get closer to storm, you can see where our occupancy completely and totally falls off, again, organically, but also through our steps of communication out to owner -- out to guests or owners, if they were coming in during that time period, either, to the point where Irma hitting landfall on September 10th, we were gone --

HEARING EXAMINER COLLINS: So based on this chart, two days prior to landfall occupancy was at zero?

MR. FARRELL: Correct. We had nobody staying overnight in our -- anything that we rented or anything on that Friday.

This would be the same for Ian.

So, again, more importantly -- and every storm is different. You know, I guess -- you know, if you're a Lee County resident, if you're somebody who's lived in Florida for any period of time, you are part of the storm, right? Everybody understands a certain part of it, and every storm is different. So whatever you think you have planned out, or you're going to handle it ahead of time, you don't know because it is kind of a moving target.

We cushion towards the front side of it. We

cushion -- I'd rather be safe than sorry. I'd rather open up right after, and the storm didn't have anything and get everybody back to vacation, than, you know, wait till the last minute, try to make a few bucks, and put everybody in danger.

Post-disaster, like I said, we communicate historically -- you know, Irma, we showed up -- we had to go, obviously, via helicopter to get onto the island to assess damage, figure out how we were going to get to island and start the recovery process, meet up with the Fire Department, what equipment do we have. Because we're such a large entity, you know, we have fuel, we have equipment, we have more stuff than -- than most in a support role.

We have -- in the 14 years that I've been there, we have always cleared the road at our expense. Even though we don't own the entire road throughout the resort, it's owned by multiple associations along with us, but that is something that we have put on -- I think our last bill -- and I'll verify it, but I think it's been almost $250,000 to clear the road. And that --

HEARING EXAMINER COLLINS: This is the road internal to the project?

MR. FARRELL: That is correct. That is correct.

That frees the way for all associations, all owners, to get in there and to get to their units and start to mitigate that issue.

You know, in Florida, of course, post-storm the bigger killer is what? You don't have air, you don't have power, and you have moisture inside your unit. The mold just kills everything. So to be able to act quickly -- you know, post-Irma we opened up our marina, and we were doing barges in. I mean, 18-wheelers were coming off barges on -- onto the island and doing that.

So for us -- you know, I guess it's just important to understand that we're wired to help. We're wired to get back open. We're wired to -- it doesn't matter -- get our head down, get it done, get things back opened up. We want to get our team back to work.

You know, for me, letting go 400 associates because I can't open up the resort is horrifying. All those people are dependent on us getting our resort open and operational, and it's critically important that -- that we're doing this.

Debris removal. You know, the recovery plan is simple, you know, everybody chips in. The island of Captiva, Sanibel, everybody helps. So this isn't just a South Seas thing, but we just play such a big part of it because of just who we are, what we are, and what we

have access to.

I covered the -- the road clearing, equipment, Lee County -- you know, all those things are -- are in place. You know, this is -- we put this up because this was out in front of Captiva Drive, down at the corner, the turn by Jensen's where the road actually blew out, which is a completely different thing for us. And interestingly, my team came to me, and they're like, hey, we just talked to the -- talked to Jeff. They need help out at the road. Yeah, go. You know, we got all this stuff to do in here, but we gotta -- nobody can get here if they can't get via the road back and forth. So there's just pictures of that, I mean, again, it's...

HEARING EXAMINER COLLINS: This is the road just south of your entrance? Captiva Drive kind of turns --

MR. FARRELL: So Tween Waters, the main road out in front of Tween Waters --

HEARING EXAMINER COLLINS: Yes.

MR. FARRELL: -- all the way down to there, it's kind of that main -- it's right at that --

HEARING EXAMINER COLLINS: This is depicting --

MR. FARRELL: That is correct. That's right there on the corner. Again, it was -- it was different -- the first time since I've been there we lost that

corner and lost part of that road so it was a big deal, because then it wasn't even just South Seas, it was Andy Rosse Lane, it was everything. They couldn't get past that point unless you were coming in via boat.

I think this is -- any questions?

MS. MONTGOMERY: I have questions, Madam Hearing Examiner, if you don't.

HEARING EXAMINER COLLINS: (Nods head.)

MS. MONTGOMERY: Jeff (sic), let me go back to -- you said you have owners in your program, and the Hearing Examiner wanted clarification. So your evacuation plan does apply to everything within the scope of this application; is that correct?

MR. FARRELL: That is correct.

MS. MONTGOMERY: But it also applies to owners out -- within the resort but outside of your ownership.

MR. FARRELL: It does. Anybody that -- if they are outside of our -- but in our rental program, our communications, all these things will go to all those people.

MS. MONTGOMERY: What percentage of the units outside of the Applicant's ownership are in your rental program, if you know?

MR. FARRELL: I -- it's approximately 50 percent, but I would have to verify that number. I don't

want -- I don't want to say exactly.

MS. MONTGOMERY: Okay, but a significant percentage?

MR. FARRELL: Significant amount, 100 percent, yes, correct.

MS. MONTGOMERY: And so during the past storms -- Milton, Helene, Irma, Ian -- you have gotten all the people that are in your rental program and on your property off well in advance of the storm?

MR. FARRELL: Absolutely.

MS. MONTGOMERY: And your employees, were they off, as well?

MR. FARRELL: Absolutely.

MS. MONTGOMERY: And did you have the chance to secure equipment, beach umbrellas, beach chairs, that kind of stuff, were they all stored away?

MR. FARRELL: Everything was secured, yeah. The only -- the only storm out of the ones you mentioned, just to clarify, was Helene wasn't going to make it -- we didn't anticipate -- we got all the guests out and everything like that, but we did have a few team members that stayed behind, which became very invaluable information to understand how that storm surge worked on the property. It was very helpful after, but we did have a couple employees there during

Helene.

MS. MONTGOMERY: Okay. You talked about your equipment and that you have equipment that other people don't have. Can you describe what that equipment is?

MR. FARRELL: Well, I would say today, if you went out there, you would see this equipment all over the place because everybody is doing construction in one way or another as they're revamping, bringing things back online, but we have heavier duty equipment with, you know, front-end loaders, you know, that type of equipment for moving heavier stuff. That is part of our normal inventory in our fleet.

MS. MONTGOMERY: So if I understand your testimony, you work with the Fire Department or the Sheriff or the County in utilizing that equipment to clear internal as well as external roads?

MR. FARRELL: Yes, the County has -- we participate, and we -- we provide space on the property for emergency debris removal already. That is -- it's been there for quite some many years that -- you know, they annually reach back out, we agreed to space, so they have a location --

HEARING EXAMINER COLLINS: So you're providing a staging area --

MR. FARRELL: Correct.

HEARING EXAMINER COLLINS: -- is what you're saying?

MR. FARRELL: That is correct.

MS. MONTGOMERY: And speaking of the Sheriff's Department, they're on-site, aren't they?

MR. FARRELL: They are. So the Sheriff's Department has a -- their office is being adjusted now, but historically always had an office space for them to work, and if -- in case they had to detain somebody, or if they needed an office to work in instead of out of their car out there, we've always had that, yes.

HEARING EXAMINER COLLINS: Well, we've seen The White Lotus. We know you need that.

MR. FARRELL: I did watch the new episode, yes.

MS. MONTGOMERY: You got me off track.

You've mentioned Jeff a few times. I don't know that the Hearing Examiner has met Jeff. When you talk about Jeff, who is Jeff?

MR. FARRELL: I apologize, Jeff is the fire chief.

HEARING EXAMINER COLLINS: The Captiva fire chief --

MR. FARRELL: That's correct.

MS. MONTGOMERY: So when you coordinate with Jeff in regards to who's on-site and -- both before the storm and after a storm, you're coordinating with the

fire chief?

MR. FARRELL: Correct, it's either me or my director of facilities, which is Chris Schu. He oversees historically facilities and security, loss prevention. So it's one or the other, usually they're direct connect. I am not the fleet expert on front loaders and things of that nature so he's going to -- if he needs something or needs support, he's going to reach out to them directly.

HEARING EXAMINER COLLINS: We're talking about recovery right now?

MS. MONTGOMERY: Both before storm for preparation and after --

MR. FARRELL: We -- we let them know, right, because at the end of the day if they've gotta go -- they need to know who's in the property, right? They need to know if -- if for some reason we're leaving, right, we're gone. Historically, anybody would come to us, we can tell you where our guests are, where our employees are. We have that gist of -- you know, a rooming list, et cetera.

HEARING EXAMINER COLLINS: So you have knowledge of who remains despite the warnings? Not guests, I'm talking about --

MR. FARRELL: Owners?

HEARING EXAMINER COLLINS: -- owners.

MR. FARRELL: We would know if they are owners that are within our program that communicate to us. I mean, if they are not, if they just own out there, and they rent with Royal Shell -- or they don't rent at all, and they just decided to stay at their house, they don't normally check in with us. I can only vouch or speak to the stuff that we oversee, we manage.

HEARING EXAMINER COLLINS: Right. So the resort is cleared, zero occupancy, skeleton staff until what point? What happens?

MR. FARRELL: As soon as everybody is gone, we will lock down the resort. As soon as I know guests are all gone, we've pulled in everything that's got to be pulled, we've -- we've systemically gone through every building, is it secure, is there any, you know, water, you know, that has to be turned off, or any type of power or propane or any of those emergency steps that we go through in each of the phases, once that's all done, we secure the cash out of the safe, we secure the keys to come back on the property, and we exit. We go to our homes or evacuate again --

HEARING EXAMINER COLLINS: And this happens where in the timeline?

MR. FARRELL: This would be at the end, at red.

MS. MONTGOMERY: Do you want to go back to that slide?

MR. FARRELL: The very -- very last part of it. Orange is when everybody -- we're getting the majority of the staff out; we're getting the majority of the guests out; and red is we're done.

HEARING EXAMINER COLLINS: And that happens 48 hours before landfall?

MR. FARRELL: Between 48 and 24 for us. We may be -- we've already -- at this point, when it's green and yellow, we've taken care of -- I can use me for an example, but my senior team, we've already asked them to take care of their homes. So if they're shuttering up homes, or if they're moving their family to somewhere else or whatever, that happens earlier on. And then we have a very small crew that falls to that last 48 to 24 hours. If we can leave at 48 hours because everybody is gone and all that's secured, we will leave.

HEARING EXAMINER COLLINS: At the 48-hour point, we're not talking about more people entering the island for any reason to do anything on the resort property --

MR. FARRELL: No, and --

HEARING EXAMINER COLLINS: -- is that correct?

MR. FARRELL: Let me -- thank you, I didn't

mention it.

So one of the other things that we do while guests are there, right, because there's always going to be -- and I can refer to the Captiva Community Panel pre -- I think it was Helene, the fire chief was communicating, hey, South Seas is closing down -- it was just before the storm. He was giving the update on what was going on, and he was speaking about another resort on Captiva that there's always somebody that stays at the resort. South Seas is out, but there's always somebody that stays. There's always those one-offs. We make it completely uncomfortable and not resort condition for guests. They are not going to stay. We close restaurants. We close -- you know, we make sure they have what they need -- water, food, whatever -- but we do not make it resort condition so they leave. Again, it's organically forced, I guess is the -- I don't know if that's the right term but -- so that is the process to move it out.

MS. MONTGOMERY: Shawn, let me ask you, during some of the storms has the Applicant sheltered some of the employers in other resorts who didn't have a place to go?

MR. FARRELL: So we have had the benefit -- because Timbers owns properties on the other coast, in

Jupiter, we have had to put people up. I, myself, took my family to the other coast, and we had another five or six families that had to evacuate, people that actually lived on Sanibel. We have two employees that live on Sanibel that evacuated over to Jupiter for the last storms. So yes.

MS. MONTGOMERY: You mentioned that as part of the recovery, you clean and restore the internal road, even though the Applicant doesn't own all of that road. Do you charge other owners --

MR. FARRELL: We have not.

MS. MONTGOMERY: -- for that? Okay, thank you.

I do want to follow up. At the last -- end of the last hearing, you asked -- I think you asked Shawn about where golf carts stay, and do you have a set place for them, and I believe Shawn has looked into that, about do we have parking lots for -- that are exclusively for golf carts. So can you answer that question?

MR. FARRELL: Where they are in the -- on the resort, just golf carts in general?

MS. MONTGOMERY: Do you have parking lots just for golf carts?

MR. FARRELL: We have multiple parking lots for golf carts only. All the associations -- like I said

before, you can go to that Beach Villas, and we have rental units in there. That Beach Villas Association has -- technically they have plenty of parking in that space. So people that rent golf carts will park in that association when they're staying inside their unit.

When they leave there, we have dedicated golf cart parking at our amenities. Like at the main pool or at the golf course, or up in front where Starbucks is or, you know, places like that. So we have additional golf cart parking outside of golf cart parking at your accommodations, which would be in each of the associations or private homes.

MS. MONTGOMERY: Does that help, or do you need more information?

HEARING EXAMINER COLLINS: Yeah, I was trying to think in terms of traffic generation. The testimony was that this is a destination resort. It's not going to generate the same amount of traffic because people will arrive, and they'll stay on the resort, or they'll make use of the golf carts, and I just wanted a better understanding of what accommodation is made to support that --

MR. FARRELL: I think --

HEARING EXAMINER COLLINS: -- use of golf carts

versus people having to rent cars, bringing additional cars onto the island, and going places on the island or --

MS. MONTGOMERY: Well, if I haven't answered that question, let me have a few follow-up.

Do you have a shuttle that picks people up at the airport when they ask for it?

MR. FARRELL: We do not.

MS. MONTGOMERY: Do you have a shuttle that will take people around?

MR. FARRELL: In the -- inside the resort, we operate a trolley service. So we have -- I lost two in the last storm, but historically anywhere from three to six that operate throughout the resort and reduce that traffic within.

So if you stay at South Seas, you know, part of the experience is that; so you do not want to get in your car after you get there. You want to be on the trolley; you want to utilize that golf cart to move within. It is part of the experience of being at the resort; and whether you're in our program or not, it is the -- the preferred way to get around. So -- and our trolley service itself has been opened up to everybody within the resort, in our program or not in our program.

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MS. MONTGOMERY: Does that help?

HEARING EXAMINER COLLINS: Yeah.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: I might have more questions later.

MS. MONTGOMERY: Okay, thank you.

I believe that's all the testimony from Shawn at this juncture.

HEARING EXAMINER COLLINS: Thank you, Shawn.

MR. FARRELL: Thank you.

MR. TRESCOTT: Good morning, Ms. Collins.

Yes, the client here today has asked me to look at their hurricane evacuation --

MS. MONTGOMERY: Dan, let me interrupt you for just a second. Could you, before you start, on the record share some of your qualifications?

MR. TRESCOTT: Yes. First of all, I'm Dan Trescott, Trescott Planning Solutions. I've been qualified as an expert before, before the Hearing Examiner, in other cases. My experience really started in hurricane evacuation planning in 1985 when I started working for the Regional Planning Council, and I worked on all of the evacuation study updates, the regional studies for the six counties in the region, from about 1987 until around 2010, when this statewide evacuation

study program took over all the calculations and everything that we used to do.

So I've been involved probably for 40 years dealing with hurricane preparedness, evacuation planning. Prior to working for the region, I worked for the State of Florida for five years and was in charge of natural disaster planning, actually funded the Regional Planning Councils to do the evacuation studies, and I responded also to all the disasters, natural disasters around the state doing damage assessment and things like that. So pretty familiar with hurricane evacuation, been able to -- actually, when I first started doing, I did it all on a handheld calculator. It was quite a task but -- so I think I should be qualified as an expert.

Anything else?

MS. MONTGOMERY: No.

Does the Hearing Examiner accept Mr. Trescott as an expert?

HEARING EXAMINER COLLINS: Yes.

MS. MONTGOMERY: Thank you.

MR. TRESCOTT: Okay. So I used the two -- the Statewide Regional Evacuation Study Program, the 2021 Transportation Update, to calculate the evacuation clearance times for Sanibel/Captiva. And, you know,

when you do that, you're looking at the amount of time it takes for all the vehicles that need to evacuate in the occupied units through the four-way stop. That's the critical link in the evacuation for these two islands. I've done this calculation many times in the iterations of the updates that I've worked on.

This particular study is done for all the Regional Planning Councils, 11 Regional Planning Councils, and for 67 counties in this state, and basically it includes a number of things:

One is -- the first thing is the hazard analysis, which is the storm surge/tide modeling and mapping of the vulnerable areas that need to evacuate. And, in fact, the map that's generated from this analysis is used by the County in the Comprehensive Plan to show the storm surge areas of Lee County.

The study also looks at the population vulnerability analysis, which essentially uses the SLOSH mapping work, and also the wind vulnerable issues dealing with mobile homes, that could be wind vulnerable issues for those units. And so the slash -- the SLOSH mapping, the Sea, Lake, and Overland Surge from Hurricanes model, is what is used. It's produced by the National Hurricane Center, and that is used -- you know, overlaid and looked at to try to determine

the total population vulnerable -- it's based on units types. You know, it's broken down by hotel/motels, mobile homes, and site-built homes, which would be single-family and multi-family-type units.

Also as part of the study is behavioral survey analysis that determines, you know, where people are going to go, whether they go to a public shelter, whether they go to a hotel/motel, or friend or relative, or are they out of the county, and it attempts to get at the number of vehicles that people might use to evacuate. Not all people would necessarily take all their cars. They would rather stay in one car all together during an evacuation, is what we seem to hear.

As part of that, also the study looks at the shelter analysis. Based on the SLOSH model, what shelters can be used and the availability of space in those shelters countywide.

The -- one of the final things done is the transportation analysis. It has a model that's appropriately acronymed as TIME, and it's the Transportation Interface for Modeling Evacuations, and it looks at the amount of time it takes to -- to get all the people -- you know, there's some in-county evacuations; there's also out-of-county evacuations

calculated.

So -- let me see if I push the right one. I'm not pushing the -- which -- which -- there we go -- oh, wrong way.

MS. MONTGOMERY: The other way.

MR. TRESCOTT: Okay.

Okay. So -- so based on the -- based on use in the study, the 2021 Transportation Update, normally in each of the -- they don't always update every part of the evacuation study. The money is not always there to do it, you know, from the State. But typically what they do is update the transportation portion, that being the most important, to try to make sure we can save the lives and get people out in time.

So basically that particular model -- usually, when they come out with these -- these updates, they have a supplemental analysis that includes all of the data that's gone into the input for the time model within the transportation analysis zones that are -- that are essentially -- like they're essentially census tracks, similar to census tracks.

And so South Seas, for example, has its own transportation analysis zone in itself within the gated area, and there's two other ones in Captiva.

But anyhow, because they didn't come out with this

supplemental data, I had to work with the State on this particular analysis I did to get the specific data, and I was able to do that for both Captiva and Sanibel in order to get to the right numbers of vehicles that I needed to figure out how long it takes to get through the four-way stop.

There's a table I didn't include in here, but this is a result -- this is a compilation of the TAZ data from the TIME model that was pulled specifically because I requested it from the State to -- to get it so that I could do this calculation properly.

And so this is -- this is sort of a compilation of that data, which looks at the total number of occupied units and the total number of vehicles of those occupied units that might be evacuated, and the use of -- and how many might be used in evacuation. So it comes up a total number of units for hotel/motels, mobile homes, and multi-family/single-family units.

Now, in putting that all together, there's a couple things I might want to mention. First of all, this was -- this data was based on the December 2019 American Community Survey, so this is prior to Hurricane Ian, which we know has put a lot of units, single-family and multi-family -- a lot of things out of commission for a while until they get reconstructed,

including hotel/motels throughout both Captiva and Sanibel. But anyhow, it's -- so it includes everything prior to Ian's -- we assume that things will get rebuilt back at similar levels.

So another thing I might want to mention is that in terms of this data, that it assumes 100 percent occupancy for hotel/motels with only one unit per vehicle used for evacuation. And as I mentioned regarding specifically on South Seas, and they've mentioned, is that they are -- being a destination resort, people, you know, may take some sort of ride-sharing services, because if they don't need a car for an entire week or so they're there, why pay the money to rent a car? You can -- you can get an Uber or something to take you out there, and there are airport shuttle vans, I believe, that do go. They're not operated by South Seas, but they go to -- to Captiva. And so there's a lot less vehicles than you might assume, but for the purposes of this model they assumed 100 percent occupancy hotel/motel units and one unit per -- one vehicle per unit.

Now, based on this table here, what it shows is that -- the evacuation time to get all of Captiva and Sanibel evacuated, the people that would be there at the occupied -- occupancy rates, which is -- during the

hurricane season, particularly September, it took 4.6 hours to get all the vehicles that are assumed in this table through the four-way stop. If you add 356 hotel/motel units to the 25-unit count, that in-county time to evacuate will increase 15 minutes from the additional units, for a total of 4.8 hours.

Now, to calculate -- to do the -- to look at the out-of-county clearance time, it would increase by about 3.6 minutes for the additional units.

As I mentioned before --

HEARING EXAMINER COLLINS: And this -- excuse me -- this is assuming one car per unit?

MR. TRESCOTT: For hotel/motels only.

HEARING EXAMINER COLLINS: So it's a very conservative estimate? Well, because you just got finished telling me that it's a destination resort, and a lot of people --

MR. TRESCOTT: Yeah, it's --

HEARING EXAMINER COLLINS: -- will ride-share --

MR. TRESCOTT: Yes, it's an overestimate.

HEARING EXAMINER COLLINS: Okay.

MR. TRESCOTT: I just want to -- I'm trying to make a point that the model -- I'm not really sure why they want to assume 100 percent occupancy of all hotel/motels during -- during this period. It may be

that the State really wants to protect their tourists and make sure they get out soon, and that they're -- they may overestimate, but I haven't -- I really didn't ask that question -- I probably should have -- of the State, but I don't know for sure.

So despite the empirical data that I have that suggests that there's, you know, less than 100 percent occupancy, you know, as I mentioned, it tends to overestimate the clearance time.

One thing I want to mention now is that the -- there's Airbnb and Vrbo data that the Applicant was able to get ahold of for February of '24, February 19th of '24, which indicates that there's about 100 -- about 75 -- 755 units on Captiva that are active short-term rental listings, and so the total 1,100 units that are there on Captiva, about 70 percent of the housing stock is used for short-term rental, and this is during the peak season, which is, you know, February. So this is not the hurricane season.

Now, regarding hurricane season occupancy, I -- I was able to get some data from the Applicant that they use from the STAR reports that's been mentioned already by Shawn, that for South Seas -- if you look at the seven-year average between 2014 and 2020, the occupancy rate during the hurricane season, the average is -- the

occupancy rate is 54. -- 54 percent. The average high is 62 percent, and the average low is 43 percent. So you can see there's nowhere near 100 percent, but we are assuming it is. So it's what the model says, and I'm not going to get in there and mess around with it and try to change that.

So another thing that's important to understand, and it's been mentioned already, is early evacuation of these occupied hotels. Basically, it's sort of shown already that -- I'll summarize it. Really, two days prior to the hurricane there's a zero percent occupancy of hotels in South Seas. So it's just not -- not there, and it's been -- it's been looked at for both Ian and Irma, and I've got the numbers there and the slide to show that.

Now, based on the STAR report confirming these -- the early evacuation, this is important because, really, this is what the County requires when they start evacuations. They will start ordering evacuations of the tourists on the barrier islands first, along with the wind-vulnerable residents. It might be in -- mobile homes, they're not built up to necessarily higher codes.

So basically this gets -- gets the tourists off the barrier islands first so that, you know, basically

it kind of helps the mainland evacuation not be competing with the -- the barrier island evacuations since they're getting out first, and all the empirical data says that it happens.

So regarding the issue of mitigation that's required for the hurricane evacuation time impact -- and there will be shelter. Their shelter impact on hotel/motels is questionable because, really, people that go to hotel/motels don't -- it doesn't really show that they go to shelters, but it's still going to be paid because that's what the Land Development Code requires.

But the first thing I wanted to talk about was Objective 73.1 dealing with evacuation, where it says that the work -- work towards obtaining out-of-county evacuation for Category 5 event, Level E storm surge threat, that does not exceed the time frames referenced in the regional evacuation study.

Now, I wanted to make a point here that -- and I've gone back -- since I have data on all of these studies back to 2010, I wanted -- I went and looked at the comparison between 2017 and 2021 update, and what the table down at the bottom shows is that basically the times are going down. You know, for the base scenario it's gone down from, in 2017, to -- from 84 to

79.5 hours on the -- on the -- that's -- from 2017 to '21; for the base scenario on 2020, it's gone down from 96 hours to 79.5 hours; and then there's operational scenarios that show the same things in terms of reductions, to where the actual calculation for the 2025 operational scenario is 25.5 hours.

Now, this really shows that things have been done by the County to help reduce these times. First of all, improving evacuation routes is the most critical thing, and it's really the evacuation routes that lead out of the county, because a lot of people are anticipating leaving the county, and so the times are -- can be quite high with a lot of people leaving.

But, you know, examples are that six-laning State Road 82 recently that leaves the county. They've added lanes to -- they're going to be adding lanes to I-75 in the near future, and they have added them in the past. There's two -- two southbound lanes for Three Oaks Parkway going south; on the Three Oaks/Imperial Parkway, two lanes that are added; and then there's a future two-laning for State Road 31 out of the county. These type of improvements really do increase the capacity and allow more vehicles to get out.

Also what it helps is the public awareness. The County has multiple hurricane awareness seminars

throughout each city and throughout the county which helps educate people. This is an important thing because we -- we see, in terms of the behavioral models, that there's a lot of shadow evacuees, which is the people that -- that don't have to evacuate, they're not in a storm surge zone, they're not in a -- in a wind-vulnerable residence, but they just want to leave because they don't want to be around during a hurricane. And I -- I get it, but -- but that really does add a lot of burden to the evacuation routes, if there's too many of those people doing that. So there's an attempt at -- to not get people to leave.

Really, the best thing to do is to go -- my preferred thing is to go to a friend or relative within about a 10- or 15-minute short drive out of the storm surge zone that I live in, you know. So it's really the best way to go, and they're trying to educate people to do that more and more.

On the next -- the next line here, it's dealing with some more mitigation which -- for the project, which Policy 101.3.5 basically requires that any development order for any permanent or temporary residence, such as hotel/motels, would provide appropriate mitigation determined by the Public Safety Department of Lee County, and that includes payment in

lieu or construction of hurricane shelters. So they will pay a hurricane shelter fee. I believe the calculation was made in part of the other testimony in this proceeding.

Now, also they're talking about transportation facility improvements that could potentially be made as part of -- of the mitigation. And I might add that all the discussion we had this morning about the stuff that they've done to help actually get a road fixed temporarily to get emergency vehicles in and out, to deal with the recovery operations, that that impact is something they didn't get any credit for, but that's an example of the transportation facility improvement, even though it's after the fact, that helped a lot of people in the recovery process.

The next type of mitigation is the All-Hazards fund that exists. As part of Lee Plan Policy 72.1.6, there's an MSTU fund set up to -- all property owners are paying into that, including everybody in South Seas Plantation would pay for that. And that's an ongoing yearly fee that typically is used to improve hurricane shelter capacity, which really is an important thing, to keep more people within the county to reduce the out-of-county evacuation times.

And I might back up a little bit -- I got ahead of

myself -- that really, you know, the Land Development Code, Chapter 2, Article XI, hurricane preparedness, is what dictates how you calculate the transportation -- or the hurricane shelter fee that they will be paying.

Now, some other things that the State really has done, and I think it's helped out a tremendous amount, is they've got an app called "Know Your Zone" that you can put on your phone, and you can determine exactly what -- you know, you type in your address, and you can determine whether you're in a storm surge zone or in an evacuation zone, that you need to leave. So this, again, is something that really tries to help reduce shadow evacuations for people that don't need to evacuate.

So in -- in summary, the critical link clearance time to evacuate all occupied units on Sanibel/Captiva is roughly 5 hours -- 4.8, I'll round it to 5 hours, and it's a completely acceptable, safe evacuation time.

So, really, when you increase the number of hotel units, based on what the Applicant's proposing, it will not cause the 2025 operational 25.5-hour Category 5 out of -- out-of-county clearance time to exceed the 48-hour watch period normally provided by the Hurricane Center, which I consider is the same evacuation time to get everybody out of the storm surge vulnerable areas

of the county.

So in conclusion, it's my professional opinion that South Seas MPD has met and/or exceeded all applicable standards and demonstrates consistency with the Lee Plan and the Land Development Code, specifically, Lee Plan Goal 23, 72, 73, 101, Objective 23.1, Objective 72.2, Objective 73.1, 101.3, and then Policies 23.1.4, 23.2.3, 72.1.6, Policy 101.3.5, and the Land Development Code Hurricane Preparedness policy -- Hurricane Preparedness rule and the provisions -- numbers that are in there.

And I'll be glad to ask -- answer any questions you may have about this particular subject.

MS. MONTGOMERY: I have questions, if the Hearing Examiner doesn't. Can I proceed?

HEARING EXAMINER COLLINS: Go ahead.

MS. MONTGOMERY: Mr. Trescott, in one of your slides, you had a portion of Objective 73.1. So you had the first part where it says the County is going to work towards obtaining out-of-county hurricane evacuations for Category 5 that meets the State models for study.

The second sentence says, Lee County will work to improve clearance times by, one, increasing shelter availability within the county; two, improving

evacuation routes; and, three, increasing public awareness and citizen preparedness.

I believe that part of your testimony was related to that second sentence; am I correct?

MR. TRESCOTT: Yes.

HEARING EXAMINER COLLINS: So when you testified about improving State Road 80 and other roads, was that to -- an example of the County improving evacuation corridors?

MR. TRESCOTT: Yes, absolutely.

MS. MONTGOMERY: And when it comes to increasing public awareness and citizen preparedness, I think you talked about that there's an app. Does the County do things to increase public awareness and citizen preparedness?

MR. TRESCOTT: Yes. I would suggest that the public -- you know -- well, there's a hurricane -- first of all, there's a hurricane preparedness insert that comes out every year in the -- in the newspaper that -- and it's free, and it's not just in the newspaper. It's available in all kinds of places. That's one example.

And then they have multiple, you know, seminars where they have them throughout the county, in each city, basically, to get people to come to try to

educate -- all these things I'm talking about -- because it's so important to have a -- if you're going to live in these areas where we have this threat and things going on every year, you really gotta understand what's going on. You gotta understand what your plan is, to leave; if you're going to leave, if you're -- you know, first of all, you gotta understand -- most important thing is to understand your elevation of your house, if you're really going to get flooded or not. So it's important for people to get educated, and I believe the County does a lot of that, and I'm sure you all are aware of this that are --

MS. MONTGOMERY: Okay. And because of that education, I believe when you talked about the study, that there's a behavioral component of the analysis; and so as an expert in this field, do you inform people to act more responsively to an impending threat?

MR. TRESCOTT: I need to -- I'm not -- maybe I'm getting too old and can't hear, but I -- say that again. Let me listen to you closely, sorry.

MS. MONTGOMERY: As part of -- when you talked about the State study, you said that there's a behavioral analysis component. And as part of that behavioral analysis, does it take into account that people who are educated about the threats of storms or

the reality of those storms, do they act sooner and act more responsibly when the information becomes available of an impending storm?

MR. TRESCOTT: Absolutely.

MS. MONTGOMERY: You've got to talk on the record though.

MR. TRESCOTT: Yes, sorry.

Yes, all of that helps them become more educated so that they make a better informed decision about whether they really -- you know, it's like -- I think there's a lot of people -- during those -- there may be discouragement to go to a shelter so they plan other things to do, because it's not necessarily a pleasant place, to go to a shelter. And it's typical that hotel/motel residents do not really go to shelters.

But the behavioral analysis does do what you're talking about. It definitely helps improve what people need to do, which is critical, because, you know -- there's a lot of people that leave -- because of all this education, a lot of people leave early, way early. You know, as soon as a code hits the place where they're living, you know, five, seven days out, they're outta here. And so -- but a lot of that's not taken into account, the early evacuations. It's really hard to determine what that is, you know.

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MS. MONTGOMERY: Okay.

MR. TRESCOTT: I mean --

MS. MONTGOMERY: So the model is conservative in that regard?

MR. TRESCOTT: Yes.

MS. MONTGOMERY: Okay. So then the next thing we talked about was the population vulnerability analysis, and what population is more apt to be in residence during hurricane season, a multi-family unit, a single-family unit, or a hotel unit?

MR. TRESCOTT: So the question is which one is --

MS. MONTGOMERY: Well, maybe -- I'm sorry. Let me ask that another way.

Will a person in a hotel unit evacuate more quickly than a resident would?

MR. TRESCOTT: Yes, and -- well, first of all, the empirical data we -- I showed you for Ian and Irma clearly show that 48 hours prior to landfall, there is nobody in these -- in this hotel for -- South Seas, and Shawn has backed that up. And to tell you the truth, some of the testimony by the Sheriff's Department in the County's hearing on this case showed that when the last people left -- the sheriff, the first responders left, that there was just nobody there in the county. They had done sort of a drive-through of the county --

of the city, and there was nobody there so -- so they leave early.

Another thing about hotel/motel residents that I -- that I heard from the -- from the State is that they really only assume maybe 5 percent of hotel residents might be there to evacuate once an order is given. So it's a very low number that they -- that they think it might be.

MS. MONTGOMERY: Okay. So -- but you used the 100 percent.

MR. TRESCOTT: Yes.

MS. MONTGOMERY: So your number overstates the impact.

MR. TRESCOTT: Yes.

MS. MONTGOMERY: Okay.

MR. TRESCOTT: It -- you know, and as I mentioned, I'm not really sure why they want to use the 100 percent, but that's what the model shows, and I didn't want to start tinkering around with it. I wanted to use --

MS. MONTGOMERY: I get that.

MR. TRESCOTT: -- what the State uses and what the County's using.

MS. MONTGOMERY: Okay, thank you.

MR. TRESCOTT: Do you have some more?

HEARING EXAMINER COLLINS: No, I have no questions. I'm ready for the next witness.

MR. TRESCOTT: Okay, thank you, appreciate it.

HEARING EXAMINER COLLINS: You had Hans Wilson testify on the 14th --

MS. MONTGOMERY: Yes.

HEARING EXAMINER COLLINS: -- out of order.

MS. MONTGOMERY: Yes.

HEARING EXAMINER COLLINS: So we're going to the Lee Plan analysis with Ms. Crespo?

MS. MONTGOMERY: Yes.

MS. CRESPO: Good morning. Before I -- Alexis Crespo, RVi Planning, consultant for the Applicant. Before I start with the Lee Plan compliance, LDC compliance and inclusions, I have been asked to provide a composite of all expert résumés that I would like to submit into the record.

(Applicant Exhibit 5 submitted.)

HEARING EXAMINER COLLINS: This is Applicant's composite résumé of all -- composite exhibit of all --

MS. CRESPO: Expert witnesses.

HEARING EXAMINER COLLINS: -- experts' résumés.

THE REPORTER: What number is it?

HEARING EXAMINER COLLINS: Number 5.

Give me one moment here to mark it, Applicant

Exhibit Number 5, witnesses' résumés.

MS. CRESPO: Thank you. In addition to that, Ms. Montgomery asked me to print out our application materials, our complete planned development application, and the three submittals we made through the Staff review process. And so I am submitting our complete --

HEARING EXAMINER COLLINS: That's fine, and that includes the 48-hour -- updated 48-hour, or is this just up to the distribution of those two documents?

MS. CRESPO: Correct, up to the distribution of those documents.

HEARING EXAMINER COLLINS: Okay. This will be Applicant Composite Exhibit Number 6.

MS. CRESPO: Would you like me to give this to Maria, or would you like me to --

HEARING EXAMINER COLLINS: Yeah, let me just give you a sticker for it.

MS. MONTGOMERY: We just wanted to make double extra sure it's part of the record, thank you.

(Applicant Composite Exhibit 6 submitted.)

HEARING EXAMINER COLLINS: Just stick that on top. And this is the Applicant's complete application.

MS. CRESPO: Correct.

HEARING EXAMINER COLLINS: And submittals.

MS. CRESPO: Correct.

HEARING EXAMINER COLLINS: This includes like sufficiency round submittals?

MS. CRESPO: Correct.

HEARING EXAMINER COLLINS: All right, I'm ready.

MS. CRESPO: All right, thank you.

And on the note of the 48-hour and conditions, we -- when we left the hearing on Friday, we did understand you had certain items you wanted further evaluation of potential conditions on, and we are working through those, and intend to consider public input and then deliver those to you as part of our rebuttal.

All right. So I'll start discussion on compliance with the Lee Plan and Land Development Code with a discussion on community outreach. We did conduct publicly-noticed community meetings as part of this application process. I've noted on the slide these are voluntary, as these are not required by the Lee Plan. We are not changing the underlying future land use or any of the Comp Plan policies related to the subject property, therefore these were not required; but we obviously felt the need to reach out to the community and conduct these meetings.

We conducted the first on April 25th, early in the

application process, if you will. We had made an initial submittal and were working through sufficiency with Staff at that time.

Upon finding of sufficiency, when certain items had been modified, we had reduced the unit count by this point, had modified a lot of the development parameters. We elected to hold another community outreach meeting, this one hopefully hitting season a little bit better in early November. Both of these meetings were conducted on the subject property in what used to be the conference facility buildings, and that's an image of one of those meetings. These were noticed in the News-Press. We did mail notices to property owners within 500 feet of the subject property. That would include all owners within South Seas Resort, both inside MPD and outside the MPD. And so we went through that notification process, which, again, is above and beyond anything required by the Lee Plan or Land Development Code relating to this petition.

And we did have a reasonably good turnout, between 30 to 50 attendees. We conducted these as more open-house style, where we had all of our expert teams manning stations, if you will, to discuss their areas of expertise, whether that be the site plan, water

management, environmental, et cetera.

In addition, Timbers does conduct a monthly meeting with their owners; so that's done virtually. That began in the summer of 2023, well in advance of any submittal of application on the property. So those were -- those were conducted continually on a monthly basis, recorded, and distributed to all owners within -- within South Seas.

We did engage with the Captiva Community Planning panel and provided them copies of our -- of our notices to distribute to the community, as well, as a -- as an extra step.

Getting into compliance with the Lee County Lee Plan. So we'll start with the future land use categories applicable to the subject property.

The first is Policy 1.1.6 relating to the Outlying Suburban Future Land Use category, which is the majority of the subject property. This category allows for the proposed mix of hotel resort, as well as multi-family dwelling units proposed by the petition. We are actually not introducing any new uses that weren't previously developed on the property, as noted in the Staff Report, as a further demonstration of consistency with this category.

In terms of the wetlands, that is applicable to

the saltwater preserve areas that are maintained as preserve on the future land use category -- or on our master concept plan, rather.

We did do a detailed density calculation. I did walk you through this on our first day of hearings, where we certainly applied the -- the stringent calculation of 1 unit per 20 acres for all of those saltwater wetland areas, and then we did proration of the uplands and outlying suburban to fall at 193 dwelling units. This is a reduction of 79 dwelling units previously permitted per the administrative amendment, which permits or assigns 272 units to properties owned by the Applicant.

The other policy in question is 1.6.5. This is your planning districts allocation table. We, again, are in the Captiva Planning Community. There are 429 acres of outlying suburban available for residential development, well in excess of the acreage proposed through this petition, and there are also sufficient commercial lands available in that allocation table to support the project.

Moving on to development location and objective -- Goal 2 and some objectives and policies under that, this is relating to directing development to appropriate locations based on the characteristics of

the property and infrastructure availability to serve the property.

The petition is consistent with Objective 2.1 and 2.2 in terms of development location and timing. As I started my presentation on Friday, the development areas proposed through this MPD rezoning are entirely on impacted areas of the site, previously developed with hotel, conference facilities, and commercial uses to support the resort. So entirely impacted areas is where the proposed development will be located.

In terms of development timing, that correlates to Policy 2.2.1, as well. This is ensuring that there is infrastructure to support the proposed densities and intensities. I've noted a reduction in residential dwelling units through this petition, down to the 193 units that will reduce impacts upon Lee -- Lee County School District. We have experts that can testify to the very minor, if any, number of students in the project. Over the years we really don't contribute to any school demand, but worth knowing that we are reducing the density, and it relates to reduction on some infrastructure demand.

As Carl Barraco testified, there is water and sewer available to the site. We've obtained our required letters of availability from the agencies that

provide those services, indicating they can support the reduction in density and the increase in number of hotel rooms through -- through facilities.

There is a sheriff substation on the property to serve the project. We are working on modified conditions to memorialize that substation location, as well as boat slips being offered to both the Lee County Sheriff's Office, as well as the Captiva Fire District, as further demonstration of infrastructure and services available to serve the project. And that also covers Standards 4.1.1 and 4.1.2.

And you've heard testimony from Ted Treesh, and that correlates to Dan Trescott's testimony this morning, regarding availability of roads to service the project. The roads will operate at an acceptable level of service based on the amended traffic study included in our 48-hour letter.

Moving on into residential development standards, I don't think we can overemphasize the resort and transient nature of the residential dwelling units, both proposed through this application, as well as in existence in South Seas Resort. We've noted the resort is self-contained; it is the northern terminus of the island; it is geographically distinct and has a level of separation from the rest of the island in terms of

how it functions as, again, a self-contained resort. So it's unique in that nature, and then when you look at it internally, and you look at the multi-family units within South Seas that are not within this MPD, they are -- they are highly transient in nature. The majority of those are in the short-term rental pool. The longest minimum duration is five days, and the vast majority of those in the rental pool allow for one-night stays within the resort. So this is -- the multi-family residential uses within this property are, to a very large extent, functioning as hotel rooms, in effect, through the nature of the rental pools within -- within the project. Nevertheless, it is important we demonstrate compliance with this goal and the underlying policies and objectives.

We are consistent with Policy 5.1.1, in that the proposed unit count does trigger the need for planned development rezoning, as has been filed with the County.

We are consistent with Policy 5.1.2, related to residential development in relation to physical constraints. We are proposing redevelopment of a lesser number of residential dwelling units on the site, which is in the coastal high hazard area, and we are going to be reconstructing these buildings to

current flood standards, which, as we learned on Friday, vary across the site and -- and require different minimum base flood elevations, but all buildings will comply, which is a significant increase in compliance with this policy when compared to existing conditions permitted under the administrative amendment or administrative interpretation.

In terms of Policy 5.1.5, we've noted that the uses will be on impacted areas of the site. Hotel will be located where hotel was formerly located. We also have multi-family units that are lower density being introduced on areas formerly used as employee housing and/or golf course. These areas have been carefully designed and integrated with the surrounding lands, the northern hotels interfacing with timeshare properties that also are basically hotel or very transient in nature. We've worked with Staff on conditions related to buffering treatments, some of them being alternatives to the Code, but to ensure that there is green space, softening of the newly proposed structures in relation to existing buildings.

We are working on a modified outdoor seating consumption on premises event condition. You have a condition in the Staff Report. We heard your comments on Friday that we need to beef that up, if you will,

and address a broader range of issues that can occur in resorts, such as events, such as amplified music and sound in relation to noise ordinances. So we will come back to you with that key component.

Policy 5.1.6, residential performance standards, I'll point you to page 5 of the Staff Report that does an excellent job of noting how the proposed MPD is really increasing compatibility, increasing protection of residential uses in the project through the proposed development regulations. The administrative interpretation was very permissive. It allowed for 100 percent lot coverage. It allowed for less -- lesser setbacks than we are proposing. So, really, on all accounts the proposed development standards or performance standards are an enhancement to what was allowed under the administrative interpretation, the exception being height. We are asking for 45 feet in lieu of the 42 feet, and measurement in accordance with current FEMA and other flood regulations governing the property.

This is noted in the Staff Report, as well, and I'd like to enter that into the record, that the definition of compatibility and the test of these residential policies is not that the Applicant must construct 38-foot-tall buildings measured from grade in

order to achieve compatibility with other dwellings within -- within the South Seas Resort that are not within the MPD. You do not have to match or replicate, duplicate the adjacent land uses. You must demonstrate similarity, reciprocity of characteristics, and a neutral relationship or the failure to communicate negative or harmful influences. We would proffer, based on the proposed uses, their location, the dispersement of the units across the different developments pods, as well as the proposed development standards, that we are fully complying with the definition of compatibility and creating reciprocal land uses that have coexisted for decades together.

We are working on a height composite for you of all heights within South Seas. We will present that to you in our rebuttal presentation; but just as a refresher from testimony on Friday, these structures are not single-story. These structures actually are not -- to a large extent, many of them are not compliant with the administrative interpretation height measurement. They are actually exceeding that based on available data, and you can see through the imagery, these are exceeding the heights within that document.

And these are just -- these are those buildings on the south side of the site that would be located

closest to our southern hotel tract.

HEARING EXAMINER COLLINS: These are existing conditions?

MS. CRESPO: These are existing conditions of multi-family condominium units in the south side of the property that are outside the proposed MPD boundary. These would abut Tracts C and L-1 and A-1.

And to a large degree, we are focused on internal compatibility with existing units outside our boundary but within South Seas Resort. It's still very important. I'm sure we have folks from the greater Captiva Island here to hear about the project and provide their input. And so just to put on the record again, the nature of Captiva, being really segmented into three distinctive pieces, the single-family and intermittent hotel uses in the southern end of the island represented in yellow; there is a commercial core that provides a very natural transition from that low-density area into, really, the activity node of the island with restaurants, a lot of short-term rentals, hotel, commercial, et cetera; and then you turn the corner of the drive, and you enter the South Seas Resort, which is a substantial part of the island, geographically distinct and well insulated from those areas, and as you can see, there's just a logical

transition of density/intensity as you move from south to north on the island.

Captiva itself is diverse. There are quaint single-story cottages, some of which still remain; but there are also many examples of high-density resorts, as you can see through the Tween Waters. There are higher density multi-story condominiums throughout the island; there are multi-story commercial structures, as well. And to a large extent, the single-family lower density areas have developed with large -- larger scale single-family homes that are certainly of height and scale similar to multi-family dwellings.

Moving into commercial development standards, again, the hotel uses are located on the master concept plan in locations that were either conference facilities supporting a hotel use or restaurants open to the general public, so intensive commercial uses; and/or in the northern part of the project where the northern hotel is located, that is where hotel units existed previously. So we are locating those like uses on the property consistent with the historical development pattern.

This proposed master concept plan will also prohibit premature and strip commercial development patterns. It's locating those uses on impacted areas

of the site that have been a part of those uses.

Policy 6.1.11, revitalizing deteriorating commercial uses, I think this is spot on with the application. Obviously there's been significant damage to the resort. The buildings have deteriorated and simply fallen below current building standards over time, and this will allow for redevelopment of the site with resilient structures to current Building Code, as well as floodplain regulations.

As I noted, the application is subject to Goal 23 and supportive policies within the Lee Plan, and we're not subject to Chapter 33 through explicit exclusion, but these policies are applicable:

The MCP and mixed-use planned development in its entirety is consistent with Objective 23.1, as well as 23.1.1 related to natural resource protection, protection of the mangrove preserve. All those areas are remaining as preserve, and no new impacts to wetlands or mangrove areas are proposed.

We're also enhancing environmental conditions through the sea turtle lighting/migratory bird condition that we discussed on Friday that goes above and beyond Code requirements.

In terms of Policy 23.1.4, this relates to the Captiva Erosion Prevention District, which the subject

property does contribute to. They're actually the largest contributing taxpayer that goes into this prevention district, and they'll continue, obviously, to participate in that moving forward.

Policy 23.2.3 -- I'm going to just -- I want to get to that policy and read it aloud.

Policy 23.2.3 states, building heights, maintain building height regulations that account for barrier island conditions, such as mandatory flood elevation and mean high sea level for measuring height of buildings and structures. The policy provides two different directives in terms of measurement of building height regulations, and does note mandatory flood elevations as an appropriate measurement for building height. And this MPD will increase compliance with that policy, which also interrelates to other policies throughout the plan.

Policy 23.2.6, this reads variances and/or deviations from the current development standards will not be permitted unless they meet all of the specific requirements for variances and deviations set forth in the LDC. This is a PD request. We are not seeking any variances. We do seek a number of deviations. The application materials, the deviation justification narrative, as well as your supportive Staff Report,

coupled with the proposed conditions, demonstrate compliance with this policy, which interrelates to the Chapter 34 deviation criteria, that they are an enhancement to the site and will not negatively impact public health, safety, and welfare.

Policy 23.2.7 relates to multimodal transportation options. You've heard testimony this morning about golf cart usage being very prevalent within the property. There will be accommodations for golf cart spaces that will be above and beyond our required vehicular parking spaces that -- that does fully meet Code in terms of the required number of spaces on the site. There's also the trolley system, which Shawn Farrell testified to, that helps move people throughout the property. There's conditions relating to better marking bike lanes within the right-of-way. So this is --

HEARING EXAMINER COLLINS: Are there bike rentals available to guests there, if you know?

MS. CRESPO: I would like to defer that to Greg Spencer.

HEARING EXAMINER COLLINS: Okay, come back to that.

MS. CRESPO: Okay.

So to conclude on that policy, there are many

multimodal options, and really what South Seas encourages and their design is a park once concept, where you leave -- if you do arrive by a vehicle, you're leaving it and moving about the property through other means.

Policy 23.2.9, Dark Skies compliant lighting. Again, the Applicant is in agreement with Staff on a condition related to sea turtle lighting that will even be above and beyond this policy directive and above and beyond the Land Development Code requirements, as we are expanding that requirement outside of just that sea turtle lighting district to the entirety of -- of new buildings within the MPD.

And I've touched on public participation in 23.4. I'm having multiple community meetings.

Next I'll move into what are largely stormwater management policies under Goal 59 and 60.

59.1.3 is to maintain floodplain regulations in accordance with the most recently adopted Flood Insurance Rate Map (FIRM) and other available sources. The MPD is being proffered precisely for compliance with this policy in order to redevelop the site with -- with buildings that are meeting current floodplain regulations.

Policies 61.1.1, 61.2, and 64.1 have been touched

on by Carl Barraco in his testimony last Friday. This stormwater system is fairly unique compared to what we see in typical inland communities where there is a retention system, and there is a designated outfall agreed upon with the District where water is known to flow off the site. This is a barrier coastal island. The stormwater management technique to achieving and really enhancing water quality is through the on-site retention system that Carl described. There's really no outfall for a property like this. What is done is pretreatment volume on the property in the form of lakes, dry retention and detention areas that exceed the Water Management District requirements by 50 percent. So we are -- a lot of volume on the site just to hold the water till it's clean because eventually it just -- it will go into the bay waters or Gulf of Mexico.

HEARING EXAMINER COLLINS: And this is pursuant to the redesign as planned?

MS. CRESPO: It is my understanding this is not solely based on the redesign. This is how this property has functioned --

HEARING EXAMINER COLLINS: I thought I read something in the Staff Report or somewhere that the redesign is going to improve the water quality of the

surface water leaving the site from existing conditions. I'm pretty sure I read that somewhere.

MS. CRESPO: We will be proposing, through the redevelopment, additional treatment areas. So all of the development will trigger these dry or wet retention areas. We will certainly have Carl address that on rebuttal, from his expert --

MS. MONTGOMERY: Let me ask you a question, Madam Hearing Examiner. The Staff has been provided the ERPs that Carl referenced. Do you want a copy of those so that you can have that for the record?

HEARING EXAMINER COLLINS: Sure.

MS. MONTGOMERY: Okay, thank you.

MS. CRESPO: Are we giving that to her now, Neale, or it's forthcoming?

MS. MONTGOMERY: No, we'll have --

MS. CRESPO: Okay.

MS. MONTGOMERY: -- Carl provide that when he comes back.

MS. CRESPO: Per Carl's testimony, as well as agreement with your Staff, the petition does meet the Lee Plan policies related to stormwater management facilities and water quality enhancement.

You just heard testimony from Dan Trescott regarding our compliance with hurricane evacuation and

emergency services. There are on-site services available to the property. There's a de minimus impact on hurricane evacuation times. We're actually reducing key residential density, which is the most common form of evacuation. Again, hotel guests are rarely in need of evacuation. So the petition improves compliance with these policies and objectives, as well as mitigation of shelter impacts, which must occur per Chapter 2 of the Land Development Code. We will pay based on the calculation for any impacts associated with it. But, again, reducing density in the coastal high hazard is a demonstration of direct compliance with these policies and objectives.

Conservation and coastal management, this relates to testimony you heard from Elizabeth Fountain, Mark McLean, as well as Chris Wright. The redevelopment proposed by this MPD will reduce density in a coastal high hazard area; it will protect the environmentally sensitive areas on the site through permanent preservation shown on the master concept plan. All buildings, whether they're in FEMA A, whether they're in a V Zone, regardless, they will be meeting the minimum standards and being elevated to provide for additional public safety, additional resiliency, in accordance with these policies, as well as your

recently amended Land Development Code.

You've heard from Shawn, as well as Dan, about compliance with Policy 101.3.4 related to continuing information and communication with residents regarding hurricane evacuation shelters.

And I touched on Policy 123.2.4, which is, again, protecting all environmentally sensitive lands on the property shown on the master concept plan.

The last area of Lee Plan compliance I'll touch on is your economic development element. Lucy Gallo was a relatively minor part of our presentation, but certainly demonstrated compliance and enhancement through this MPD of aligning with these objectives and -- under Goal 158, expanding and enhancing the tourism industry, and retaining and expanding the County's existing tax base. This will improve the tax base generated by the property, this will provide for local employment, and this will also have the benefit of bringing visitors to Lee County to improve other businesses. So the impacts of this are widespread beyond just adding to the property value and direct tax base increase.

In terms of Land Development Code criteria, the MPD is consistent with Chapter 34, Section 34-145(d)(4)(a)(1). We are in agreement with your

Staff that the MPD complies with the Lee Plan. I've just gone through that in detail. You've got all of our written materials, as well, to support those findings.

The application meets the Code and other applicable regulations to qualify for the proposed deviations. These are allowed -- these are requested based on the unique nature of this resort. They take into effect -- or account for the increased intensity proposed through the application by increasing different performance standards and conditioning the deviations accordingly to ensure compatibility. And we've walked you through that in detail, and I presume Staff will also hit on that.

The MPD is compatible with the existing development within South Seas Resort, within Captiva Island as a whole. We are replacing former hotel units with a mix of hotel and resort within the subject property on impacted areas. Again, the performance standards through the MPD -- setbacks, lot coverage, lot sizes -- are greater than what was permitted through the administrative interpretation.

The application has demonstrated that there's sufficient access to support the proposed development intensity. I'll rely on the traffic impact study and

the findings in that document as evidence of compliance with that criteria.

That also aligns with criteria E, the expected impacts on transportations facilities will be addressed by the regulations and conditions of approval.

In terms of F, the application will not adversely affect environmentally critical or sensitive areas and natural resources. The conditions enhance natural resources and go above and beyond protection of natural resources required by the Code through the proposed conditions.

And we've also demonstrated that there are urban services defined in the Lee Plan on-site and in proximity to the property to support the proposed density and intensity.

In terms of additional PD rezone criteria, the proposed mix of uses is an -- is appropriate on the subject property. We're requesting redevelopment of a resort property with similar resort uses that have existed on this property since the early '70s and even beyond that. The recommended conditions, which we are continuing to work, will ensure safeguards to public health, safety, welfare, and allow the project to comply with the Land Development Code relating to protection of public interest.

And, lastly, the deviations. We've provided detailed justification within our narrative that the deviations are needed based upon the unique existing conditions of the property, and that they will, as conditioned, promote public health, safety, and welfare.

So with that, it is in my professional opinion, as a -- as a certified land use planner, that the South Seas Mixed-Use Planned Development has met or exceeded all of the applicable standards, requirements of the Lee Plan, as well as the Lee County Land Development Code.

HEARING EXAMINER COLLINS: Okay, thank you.

Neale?

MS. MONTGOMERY: I don't have any questions, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: All right. Let's take a five-minute break, and then we will resume with the Staff presentation.

(Recess from 10:36 a.m. to 10:46 a.m.)

HEARING EXAMINER COLLINS: All right, let's begin.

MR. MENDEZ: Good morning -- I'll wait till my mic is up -- okay.

Good morning, Madam Hearing Examiner, Madam Court Reporter. My name is Adam Mendez. I'm a principal

planner with the Community Development Zoning section. I have joined with me here today Staff members in various fields of Lee County Community Development, including Natural Resources, Transportation, Environmental, Long-Range Planning, Development Services, and the Attorney's Office. I am seeking to be qualified as an expert witness with respect to the Lee County Land Development Code and Comprehensive Plan. My résumé is on file, and I have been previously accepted as such.

HEARING EXAMINER COLLINS: Please proceed.

MR. MENDEZ: Thank you.

I intend to make the full presentation today, which includes some findings derived from the Staff Report. I believe the Staff Report is attached as part of your record here today as Staff Exhibit 1. Staff Exhibit 2 is the affidavit of publication that was provided on the first day of hearing. I do have additional -- I'm sorry. I do have additional exhibits I'd like to present to you, if I may.

HEARING EXAMINER COLLINS: I'll accept them at this time.

MR. MENDEZ: I will name them. So the first exhibit is the memorandum from the Lee County School District.

VOLUME 2

HEARING EXAMINER COLLINS: That will be Staff Exhibit 3.

MR. MENDEZ: Next is the Lee County Natural Resources supplemental memorandum.

HEARING EXAMINER COLLINS: That will be Staff Exhibit Number 4.

MR. MENDEZ: And the last is -- the last entry is the Staff PowerPoint presentation.

HEARING EXAMINER COLLINS: The PowerPoint is Staff Exhibit 5.

MR. MENDEZ: Hard copies of these have been presented to the Applicant.

MS. MONTGOMERY: Thank you.

(Staff Exhibits 3, 4, and 5 submitted.)

(Sotto voce between Hearing Examiner and Mr. Mendez.)

MR. MENDEZ: So I'll provide a brief overview of the presentation I'm going to make today. And so we're going to cover the request -- we're going to cover the character of Captiva Island both proximate to the application subject to the property -- subject to this request, as well as Captiva as a whole.

So the request, as stated today, is to rezone 120.5 acres from residential multi-family, two-family conservation, and marina commercial to mixed-use

planned development. The request, if approved, would allow up to 193 multi-family dwelling units or timeshares, 435 hotel rooms, common infrastructure and resort amenities, and the maximum building height requested as part of this MPD is 45 feet as measured in accordance with the Land Development Code.

Moving from north to south here, starting at Land's End, I'm going to just point out the delineation of zoning as it currently exists today. The site is currently comprised of three conventional zoning districts. The RM-2 zoning district is by and large the largest in terms of land area. Starting at the north end of the subject property, you see there is RM-2 zoning. There's also some TFC-2 zoning, which is the two-family conservation district in this green shade. That is going to be where the former hotel was situated. There's also some marine commercial zoning where the boat basin is on the north end of the island here. And working our way down, the spine road does traverse through a TFC-2 node. And for the remainder of the subject property, it is residential multi-family, with the exception of the boat basin on the south side of the subject property, which is also zoned currently today marine commercial.

Before jumping into the character of South Seas

and those land areas proximate to this zoning request, I'd like to jump into the island as a whole. And Ms. Crespo did touch on this not too long ago so I apologize for overlapping, but I think it's important to get this on the record.

So working up from the south end of the island, we have -- once we pass Blind Pass, we have the estate zoning, which is unique to Captiva Island. It's the RSC-2 district. That RSC-2 district continues north for about the northern third of the island, and it ceases just shy of the Tween Waters Resort, which is approximately where my cursor is right now. There's a residential planned development that's just south of that. I believe it's Tarpon Bay. It's a five single-family lot RPD that basically is the demarcation between that estate zoning, that RSC-2 zoning, along the southern third of the boundary of Captiva Island.

All of these residential areas are within this yellow shade, which indicate the residential land use pattern that is described in Lee Plan Policy 23.2.4.

Moving north from Tween Waters Resort, including Tween Waters Resort itself, the zoning transitions to primarily residential multi-family and two-family conservation district. Those are the predominant zoning districts for the residential areas moving north

all the way until we reach the South Seas land use pattern.

The second land use pattern that's recognized in this policy is the minor commercial, which you see some nodes here. These are the -- the red shading, the light-red shading on the screen. These are comprised of restaurants, retail, office space. There are marinas, as well, in this mix. It was mentioned that this is more the central core, the activity core. Also surrounding these areas are preexisting hotels or hotels that predate the Captiva Community Plan. We'll see an aerial view of one of them as we proceed through this presentation.

And then you reach the terminus of Captiva where we have the -- what we call the northern third of the island, which is the South Seas Island Resort. The South Seas Island Resort is distinguished as its own distinct land use pattern in Captiva. It's insulated by and large by Captiva Drive, commercial properties flanking the south side of Captiva Drive, and the Rauschenberg Property Foundation, which has a large tract of ownership right against the South Seas Island Resort boundary here you see over there in the -- the northeast corner -- or, sorry, the south -- southeast corner of the map you see right here near the proximity

to the resort boundary.

You can see that there is an excerpt from the Staff Report down below where we emphasize these three land use patterns, the low-density residential, minor commercial, and South Seas Island Resort.

The following series of slides are going to offer a perspective really from a bird's-eye view of the character of South Seas both internal to the resort and proximate.

So this first photo is a south vantage point, and you can see in the key map in the right corner of the screen, there is a directional arrow. It's orange. It's going to depict the actual orientation the photo was taken, as well as the location of the photo approximately. And in this photo you can see the Gore subdivision. These are essentially quarter-acre lots with single-family residences. The zoning district in this area is two-family conservation, TFC-2, and you can see two- and three-story single-family residences over non-living space.

Working our way north, we're still facing south. We have reached the Jensen's Palm Cottages on Captiva Drive. This is about a quarter mile from the South Seas Island Resort boundary, their southern boundary, and this is a hotel and marina. You can see in the

distance, in the top left corner of the screen, that is the Sunset Captiva Condominium, which is a multi-family building with three habitable stories over one ground floor of parking. Across the street is the Sunset Captiva RPD. It's a residential planned development that was approved in 1986, and it's 59 residential units, single-family residential units, on approximately 10 acres of land.

Now, in this photo we're oriented north. We're making that final bend on Captiva Drive, and you can see the Rauschenberg Estate property in the distance, and just over that you can see the Bayside Villas and the Tennis Villas. These are multi-family condominium buildings that have three and four stories of habitable floor area over some non-livable floor area. It may have parking facilities beneath.

This is an aerial depiction of the south end of the island. The south end of the island is comprised of two of the primary principal tracts that are subject to this MPD proposal, that is, the residential Tract D and the hotel tract. Currently the residential tract is vacant. It's the former site of the employee housing units, which was, I believe, 140 multi-family units. Those were demolished in 2018. The commercial that you see here still exists today. It is the

Chadwicks Commercial Center. It included restaurant, convention center, and meeting space.

And the proximity in this southern area of the MPD is -- in proximity you've got three condominiums, really, and it's Beach Villas on the Gulf; you've got the Tennis Villas just north of the convention center, restaurant space; and then off in the corner, you can see one of the buildings and the pool of the Bayside Villas.

This is the north view, as we work our way up the spine road, of the Beach Villas. The Beach Villas, as you can see here, are three habitable floors over a non-livable ground floor. And as we look into the horizon, we can also see the Beach Cottages, which are a product -- a single-family product where -- essentially it's a condo single-family, which is the same land use pattern moving forward with the Beach Homes.

The Beach Homes also adjoin a stretch of land called the Beach Homesites, which are your fee simple single-family residences. And moving north you'll see that these continue, and at this point you can see -- in the distance we're reaching the utility tract on the master concept plan, where you can see some of the infrastructure there, including the cell tower and

water tanks.

We've jumped forward to the Plantation Beach Club, which is a series of buildings containing timeshares. This is a south view looking back towards these -- those individual single-family lots. This is going to be not too far from the utility tract, as we make our way backwards.

Moving further up north on the island, we're going to pass some privately-owned single-family residences, and then you'll see the focal point in this photo is the Harbourview Villas, which is a timeshare with, I believe, ten units. It's two stories over ground floor parking.

The focal point of this photo is the Marina Villas. It's adjacent to the docking facility tract that's proposed with this MPD. That is going to be two habitable stories over a non-livable ground floor area.

Now, this photo -- these photos were taken in the summer of 2023; so you can see that there's some of the demolition occurring near the former hotel site. I'll move my mouse to show you exactly where the former hotel site is. And these buildings have since been removed.

Some of the amenities for The Cottages at South Seas Plantation you can see here, as well as their

particular product, which I believe is a townhome product.

And the last portion of South Seas, the northern terminus, is the Land's End multi-family condominium, and that's going to be three -- three habitable stories over one floor of non-living space.

To get into some of the legislative process post Hurricane Ian, there were two ordinances that were adopted. They were adopted in an effort to assist with build-back, and Ordinance 23-22 amended the Land Development Code, and it created a standardized method of measuring building height countywide. And more particular to the property in Coastal A and V Zones, it enacted some resiliency provisions which would allow for additional -- additional resiliency or ground floor elevation without penalizing the top -- the top measurement, the top of the building height measurement up to four feet.

Ordinance 23-22 also removed reference to the administrative interpretation in the Land Development Code, and it maintained the South Seas Island Resort exemption from the Community Plan/Land Development Code regulations without requiring compliance with the ADD.

Moving over to the Lee Plan side, Ordinance 23-33 was evaluated as a whole to ensure that those

amendments to the Land Development Code -- that was consistent with the Land Development Code and those amendments. It removed some features in Goal 23, including a date certain regarding height, Policy 23.2.3, and it removed reference to one and two stories in the Goal 23 with regard to building height.

I'd like to go over the development parameters, and I'll break it down into height and setbacks. But going through the administrative interpretation, which we use as a baseline for understanding the departure or difference of this proposed MPD with what can currently be developed today, we can see with height we're increasing from the 35 feet above grade or 42 feet above sea level, the lesser, to 45 feet as measured in accordance with the Land Development Code.

There were no lot dimensions or lot coverage requirements specified in the administrative interpretation with the proposed MPD. We do have those values. Those are incorporated in Attachment E of the Staff Report.

Perimeter setbacks were very similar, and so were the street -- private street, public street, and the waterbody setbacks. Those were all similar to what was and currently is approved for development on the property. You can see the difference in intensity and

density is 272 dwelling units or timeshare units or hotel units -- either of those could be developed with that figure -- to a maximum of 193 dwelling units, which is in Staff's opinion a reduction in density, or timeshare units, which are also evaluated as density.

There is an increase -- a net increase in hotel rooms, which is measured as intensity, which is generally a measurement of nonresidential land uses. And so hotel rooms have customarily been measured as intensity across Lee County.

There is also discussion on a net intensity of -- net increase in intensity because there are some uses that are being eliminated from the site. There's a public-facing commercial tract, which was a five-acre tract that was authorized by special permit with Resolution Z-73-202. There's also these commercial marinas that were zoned to marina commercial in 1990, which would also be eliminated with -- as part of this request, to serve as like a net increase as far as -- or net decrease in intensity, but the hotel room intensity would be going up.

HEARING EXAMINER COLLINS: And this is because the marina areas will no longer be open to the public?

MR. MENDEZ: That's correct. They would be docking facilities/amenities to the residents and hotel

guests.

So getting into the building height, I want to -- and Ms. Crespo read this into the record so I'll save you the time, but the County is charged with responsibility -- in Captiva within the goal of maintaining building height regulations that account for sea level rise and flood -- flood zones. And what we're looking at here on the left is the request -- this is a building section that was provided by the Applicant as part of the application materials, is what they're requesting. It's 45 feet above the lowest habitable floor for which a permit may be issued. There's an exception to this, in that they're also seeking to allow resiliency in the Coastal A areas that are demarcated on the master concept plan with the L-I-M-W-A or LiMWA line, limited wave action line.

As you can see from the request, and the existing structures we see numerous times through this demonstration, substantially similar to what is out there in the resort area; and we also saw examples of it in proximity outside of South Seas Island Resort with Sunset Captiva Condominium.

Looking at the setback regulations that are proposed or recommended, at least, in Attachment E of this -- of the Staff Report, you can see that the

highlighted conditions, the other building setbacks is emphasized here because I wanted to go into discussion about it.

The other setbacks that are mentioned here are typical of a planned development. It's the -- really, the nature of the polygon that is this MPD that warranted, really, a discussion on whether rear and side lot line setbacks should be assessed, or whether we should just call them all external and internal property lines. And so we went with this approach for requiring a setback from the perimeter boundary that's equal to 15 feet or half the height of building, whichever is greater, with the exceptions that are noted in the conditions. This is a way to avoid the ambiguity of the side or rear lot line when -- when and if divisions of land occur within this site.

The setback is derived from the planned development article in Chapter 34 for PDs. They're called external or perimeter setbacks, and that's what this is modeled after.

There are no new permitted uses proposed as part of this MPD request. No principal uses that haven't already occurred on the site. We are looking at hotels, which are, again, measured as intensity, hotel rooms; and then the timeshare and multi-family

component, which are measured as density.

The resort amenities and infrastructure are going to be accessory to and only -- and exclusive to the guests of the resort and the residents of the resort. And, again, I'll emphasize here that we're removing some of these public-facing uses, the commercial marina and the commercial -- 5-acre commercial tract along the south side in this recommendation before you.

I have the master concept plan, including the north area, the central area, and the south area here for discussion, if necessary and if we need to reference back to it, but I'll move on back to that discussion of compatibility and --

HEARING EXAMINER COLLINS: Okay. Can we go back --

MR. MENDEZ: Sure.

HEARING EXAMINER COLLINS: -- to the uses removed by the MPD? So currently on the 5-acre commercial tract that has Chadwicks, that was previously a restaurant open to the public?

MR. MENDEZ: Yes.

HEARING EXAMINER COLLINS: And there was convention center meeting space there?

MR. MENDEZ: Yes, to my understanding.

HEARING EXAMINER COLLINS: And that is no longer

going to be available, or it will be available to hotel guests?

MR. MENDEZ: To hotel guests exclusively, yes, hotel guests and residents of South Seas Island Resort.

HEARING EXAMINER COLLINS: And then previously these convention center meeting facilities were available to anybody who wanted to book them?

MR. MENDEZ: Yes, that's my understanding.

HEARING EXAMINER COLLINS: All right. So the commercial element of that is removed?

MR. MENDEZ: That's correct.

HEARING EXAMINER COLLINS: And Chadwicks or whatever restaurant goes in there is not going to be open to the public?

MR. MENDEZ: No, will not be public-facing.

HEARING EXAMINER COLLINS: Okay.

MR. MENDEZ: Ms. Crespo went over the definition of compatibility, and what that standard is when we're required to make the finding as part of a rezoning or a planned development rezoning, that the request is compatible with existing and planned uses. And I think we've shown extensively through their presentation and some of these exhibits here that what is proposed in terms of height is substantially similar -- very similar to what is existing out there both in and

outside the resort. The uses themselves are identical to uses that have previously existed in terms of the actual use -- the hotel, timeshare, and multi-family units. And then the discussion on intensity and density and that measurement -- or how that's determined to be compatible with this area is part of the study when measuring hotel intensity in a planned development. So hotel intensity in a planned development is not subject to an equivalency ratio of what the underlying future land use category provides for dwelling units. It's measured, really, as just what can actually fit on the site and meet the review criteria in a compatible manner, in a manner that doesn't overstress resources. And the Applicant here is proposing a 120.5-acre rezoning where they're going to limit the commercial acreage for the hotels to 5 acres, which is consistent with what has been there at least since the special permit was approved in 1972 as part of Zoning Resolution Z-72-202; but there's also this 58 acres of resort infrastructure and shared amenities that also kind of goes into that picture of how this is all fitting on the site. And so with the increase in intensity and also the decrease in marina intensity and the restaurant and convention center intensity, all those things paired together, Staff was

able to make the finding that the requested 193 dwelling units and 435 hotel rooms with amenities was compatible as situated on the master concept plan, as conditioned, on these 120.5 acres subject to this request.

I'd like to kind of read in or paraphrase Objective 4.1 into the record, and that is, the consideration of water, sewer, and environmental standards during the rezoning process, and that is to ensure that these standards are met prior to issuing a local development order.

The Applicant has obtained letters from the utility providers out there for water and sewer. These are standards -- under Objective 4.1, that's Standard 4.1.1, 4.1.2. These standards are effectuated at time of local development order. During the rezoning process, what's expected is that they demonstrate that they're either going to connect or not, that there is available capacity, and the Applicant also provided us with historical usage and an estimate on the proposed uses in Staff Report Attachment R.

So as part of review of Objective 4.1 of the Lee Plan, Staff feels that the request meets the rezoning standard for obtaining letters of capacity from these utility providers. And I should note that these

letters, they're really informal in nature. They're just to express -- they're not commitments. It's stated at the bottom of these letters. At time of development order, with each development that comes in, they will evaluate their system and determine whether or not there's available capacity. So in terms of this rezoning, Staff feels that the onus has been met in terms of providing water and sewer availability, and that they are going to connect.

Additional public services that are out here on Captiva Island include the Fire District and the Lee County Sheriff's Office, EMS, as well as the School District. I did provide you a memo from the Lee County School District. In summary, the memo explains there is capacity in the School District adjacent to this site. I think that the -- the multiplier that they used is fairly low, and I think that's in response to understanding that multi-family in a resort on Sanibel or Captiva is different than a multi-family project on -- in Iona or the mainland in terms of the expected student generation. So with that, we were able to find that the request does -- it will be served by public services.

I believe Attachment O of the Staff Report was the transportation memorandum from Lee County Department of

Transportation. And in their review of this request, in accordance with Administrative Code 13-17, they were -- they determined what the peak -- a.m. and p.m. peak-hour trip generation would be, and they applied that to the background, and they were able to make a determination that the proposed project will not have a detrimental impact on the surrounding roadway system.

They mention that road impact fees are assessed at the time of building permit to contribute to infrastructure improvements.

The access to this site is actually going to be as maintained. These access points are existing today. They meet the connection separation on Captiva Drive, which is a major collector road in a Suburban Future Land Use.

So Staff's able to make the finding that the project will be -- the project will provide sufficient access to support the development intensity, and that the expected impacts on transportation will be addressed by County regulations and conditions of approval.

Natural Resources and Environmental Staff Reports are attached as Attachments J and K of this report. And as the Applicant stated, there's no new disturbed lands proposed with this request. All buildings are

going in former recreation/amenity areas or former building sites.

The conditions regarding protected species that are proffered by Staff have been slightly modified by the Applicant, and we'll discuss those as we get to the 48-hour response, but we feel that these conditions are sufficient.

The construction standards applicable to new development provide for resilient construction that will be -- will create less debris fields after major storm events, and that these -- the request in general does not adversely affect environmentally critical areas or sensitive -- excuse me, natural resources.

Now, going back to that compatibility piece, I want to discuss some of the conditions and the rationale on Condition 9D, which is concerning Tract B where we have the residential building that's going to be seaward or a portion seaward of the coastal construction control line as depicted on the master concept plan.

The flood requirements for the DEP elevation markers will make this building or will require this building to be elevated higher than other areas within this particular MPD and other areas outside of the MPD

both inside and outside the resort. And so the current setback with the ADD using the baseline of 25 feet, we recommended that any portion of the structure that exceeds 35 feet be set back a foot for every foot it exceeds 35 feet, as measured in accordance with the Land Development Code.

Now, this is twice the ratio that is required in conventional zoning districts where an Applicant seeks to increase their height by increasing setbacks. So Staff feels that this is a sufficient condition to set this building -- building height back from Captiva Drive. We do recognize that there is commercial uses along the south side of Captiva Drive, some of it under the ownership of the Applicant, and also single-family residential uses which have coexisted with this particular terminus of Captiva Drive.

On this slide you can see all of the policies, objectives, and goals that were referenced in the Lee Plan analysis in the Staff Report. The Staff Report makes a finding that each of these particular elements of the Lee Plan was -- is met and is consistent with the request as conditioned. I certainly can speak more on this, but I believe Ms. Crespo went over them in detail; so I'll move on to the next slide if you don't have any questions.

The final findings that are required specific to planned developments is really just reiterating that the proposed mix of uses is appropriate at the location, discussing the resort continuing its resort land use pattern, that the recommended conditions are sufficient, and they're reasonably related to the impacts on public interest and the proposed development, and that the requested deviations enhance the objectives of the planned development and preserve the general intent of public health, safety, and welfare.

Now, before I get into the 48-hour letter, I want to walk through some of the conditions that were initially recommended, and then we'll discuss a little bit of the 48-hour response and what the 48-hour response, in Staff's perspective, was trying to achieve.

So Condition 1 is relative to this master concept plan. This is typical of any master -- any residential or mixed-use planned development or any planned development for that matter, and that is that this master concept plan is binding. You must be consistent with this master concept plan in terms of the details that are shown on it. Departures from this have to be evaluated with -- in accordance with the County's

regulations for amendments to master concept plans.

Condition B establishes the development parameters and the maximum building height up front, which is 193 multi-family dwelling units and 435 hotel rooms.

Condition 1C is a general boilerplate statement that says you have to be in compliance with the Land Development Code and all other regulations at time of local development order approval.

Now, Condition 2, which is 2A specifically, the schedule of uses, you'll see a difference between what the Applicant proposed initially and where we landed, and the emphasis on this was to really point out the principal uses that are proposed with this request and what are accessory uses. So you'll see there's an extensive list of accessory uses on all of these tracts, they're broken down by tract based on the master concept plan, and they include references to various conditions and deviations that are also included in Attachment E of this Staff Report.

Do you have any questions on the schedule of uses?

HEARING EXAMINER COLLINS: No.

MR. MENDEZ: We've discussed the property development regulations, which is Condition 2B, so I'll move on to Condition 3, which was the discussion on internal and external perimeter setbacks, as well as

some of the exceptions, and how to measure setbacks on the internal street, which is consistent with what the ADD or the administrative interpretation was regulating development in South Seas Island Resort. You'll see that language is very similar.

Condition 4 is typical, and it requires that their open space and indigenous preservation is consistent with their master concept plan, and that minimum acreage is set aside on each of the development tracts, regardless of exceedance of open space on each development tract, and I think the figure is 10 percent.

Now, Condition 5 is pertaining to the protected species. You'll see in the Applicant's 48-hour that what happened is they combined the sea turtle condition, which is 5D, and the migratory birds and wading birds condition into one condition. I believe Staff is generally acceptable to that combination and what they're trying to achieve on that, and we'll get into more of their 48-hour response as I make my way through this -- this letter.

Condition 6 is regarding planting material that's required in the Redfish Pass area of the site.

And Condition 7 is regarding consumption on premises.

All these conditions are fairly general. We understand that there's going to be an additional effort to provide some additional specificity regarding location, timing, and the occurrence of events outdoors, amplified music. So that is forthcoming.

Condition 8, and it's more importantly Condition 8C, makes clear that all accessory uses in the resort are limited to hotel guests and residents in South Seas Island Resort.

Building and structure height is regulated in Condition 9, and it basically prohibits additional height for additional setback. It authorizes the resilience provision in the Land Development Code for areas that are in the Coastal A Zone in the master concept plan or depicted on a master concept plan on the property. And it limits the amount of ornamental or structural elements that can exceed this height, the maximum building height.

Condition 9D memorializes the Tract E condition that we discussed, and Condition E requires that amenity tracts are limited to 35 feet in building height, with the exception of the water park, which has slides that may reach up to 45 feet in height.

Condition 10 pertains to hotel or motel land use, and that this is the -- that any expansion of these

tracts, in terms of acreage, would warrant a public hearing; that the banquet halls and meeting spaces are limited to 40,000 square feet collectively within the MPD, and they must be located on the hotel tracts, which are limited by acreage; and that the use of these facilities are, again, limited to hotel guests and residents of South Seas Island Resort.

There's also a condition concerning unit distribution to ensure that all of the units aren't consolidated on one or -- one of these sites, particularly the north end, which would increase the traffic that's been assumed there, and there has been hotel units that were there. I believe there was 107. The Applicant has requested a slight modification to this, and so a little more than 50 percent allowed on the north end, and Staff is agreeable with that condition that they have offered in their 48-hour response.

Condition 11 really memorializes a Land Development Code provision requiring that lock-off accommodations count as additional units.

Condition 12 regulates the boat slips. You heard Mr. Hans Wilson discuss the Manatee Protection Plan and discuss how that the slips that are credited to this site may not actually fit on this site, but they can be

transferred off-site. And at time of local development order review, they'll have to go through another Manatee Protection Plan evaluation.

Condition 13 is intended to memorialize the cell tower that's located on the utility tract in the center of the planned development.

And Condition 14 requires development tracking. So through the development order process, with each DO there are certain things that have to be provided in order for Staff to help track some of these totals.

The Applicant has went through all of the deviations in detail and in their 48-hour letter, as well as the conditions, and most of the conditions are clarification in nature. There are some substantive conditions that we still need to make our way through, namely a deviation regarding mulching. Our position is that 100 percent of the required external buffering be native vegetation and saltwater tolerant, and I think that we may be in agreement on this, but we have to speak further on it and then to go back to Code in terms of internal landscaping requirements.

So in summary, Staff does recommend approval of this request as conditioned. We do have Staff members here for presentation if you have any questions to specific areas, but I'm happy to answer any questions

that I may.

HEARING EXAMINER COLLINS: Okay. So is it my understanding that you're still in discussions with the Applicant regarding their request not to use 100 percent native -- I thought I understood that they wanted some flexibility, that the plants would be salt tolerant but maybe not native, and there was -- that's still under discussion?

MR. MENDEZ: It is.

HEARING EXAMINER COLLINS: Okay. And I was wondering, did the Transportation Staff evaluate the reduction in impacts from the marina transitioning to -- an open-to-the-public marina to a -- basically a marina limited to only hotel guests?

MR. MENDEZ: I'm going to look back to Staff, but I believe no. I don't believe that that was considered in the transportation analysis.

HEARING EXAMINER COLLINS: And also the conversion of the restaurant and convention center facilities from open to the public versus now only to residents and guests of the resort.

MR. MENDEZ: I believe that the figures you see in the memo were straight from the proposed units that they're requesting. I don't think that they counted reductions in the intensity that they are eliminating

from this request, but can certainly circle back if that is not the case.

HEARING EXAMINER COLLINS: I was just wondering if there was any analysis of potential reduction in boat traffic or car traffic, somebody coming to bring a boat there or take a boat away from there; and then more importantly, the restaurant, we know restaurants are big traffic generators if they're open to the public; and I was just wondering if that was analyzed in any way when considering the change in intensity that is requested for the overall property.

MR. MENDEZ: Yeah, and we did -- we did see that as kind of lowering the intensity while the hotel room intensity is increasing. We believe there's a net increase in intensity with the hotel rooms --

HEARING EXAMINER COLLINS: Right.

MR. MENDEZ: -- at the end of the day, but that is something to be considered.

HEARING EXAMINER COLLINS: Okay, thank you.

Is that the conclusion of --

MS. MONTGOMERY: Can I inquire?

HEARING EXAMINER COLLINS: Yeah -- wait.

Is that the conclusion of your presentation?

MR. MENDEZ: It is.

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: Thank you.

Adam, let me ask you about some of the policies and objectives that Mr. Trescott testified to, in particular 75.1, where it starts off with work to reduce evacuation times in a Category 5. There's no noun there so who is it that's going to work to do those things?

MR. MENDEZ: That objective, goal, and policy, I believe, is directed towards the County.

MS. MONTGOMERY: And not directed towards an Applicant?

MR. MENDEZ: That's correct.

MS. MONTGOMERY: Thank you.

When you were identifying the existing zoning on the island, you referenced an estate zoning. What is that? What's allowed in the estate zoning?

MR. MENDEZ: Yeah, so the RSC-2 district, which is unique to Captiva, is a residential single-family district that allows for up to three single-family residences on one undivided lot, and that's what truly makes it unique. I think at its inception it was used as a primary house, a guesthouse, and servants' quarters, and so all three of those principal uses or units can occur on one one-acre RFC-2 parcel.

MS. MONTGOMERY: I notice in your pictures that

some of those single-family residences are quite large. Is there any kind of restriction on the number of bedrooms you can have in those houses?

MR. MENDEZ: No, not a particular restriction on bedrooms.

MS. MONTGOMERY: So can all three of those houses be rented out as an Airbnb or vacation rental?

MR. MENDEZ: Yes, there's nothing in our County regulations that limits the stay of -- the occupancy of a single-family residence. The occupants should be by a single family, as defined in both the Captiva Community Plan and Land Development Code generally in Chapter 34.

MS. MONTGOMERY: I believe that through the process, you've had letters over time from interested parties on the island. When you were going through the island, you pointed to a parcel of property which I think is plus or minus 20 acres that's next to this South Seas. I think you called it the Rauschenberg Foundation property?

MR. MENDEZ: That's correct.

MS. MONTGOMERY: Have you gotten any communications from them either for or against or otherwise?

MR. MENDEZ: Not to date.

MS. MONTGOMERY: You referenced two ordinances, 23-22 and 23-33. Were both of those ordinances County-initiated?

MR. MENDEZ: They were.

MS. MONTGOMERY: And you indicated that the 23-33 eliminated a reference to one- and two-story structures. If you know, did that occur because, based on your pictures, there's many buildings that are three and four floors?

MR. MENDEZ: Yeah, that's part of it, and also it was kind of the ambiguity of one and two stories, what is one or two stories in Captiva if they have a ground floor that is a parking garage? Is that a -- the ground floor, is that the first story, or is the first story the habitable space? So that's part of the reason why it was removed --

MS. MONTGOMERY: Well, that was --

MR. MENDEZ: -- is my understanding.

MS. MONTGOMERY: -- going to be my next question. You referred to a lot of buildings as, you know, so many floors over space. So that space can be parking, it can be storage, it can be any number of things, and we don't know over time if that got counted into the number of floors, do we?

MR. MENDEZ: No.

MS. MONTGOMERY: You mentioned the administrative interpretation. Some of the communications that you received have indicated that that document rezoned the subject property to PUD. First question is, has the property ever been zoned PUD?

MR. MENDEZ: No.

MS. MONTGOMERY: Did the administrative interpretation rezone the property?

MR. MENDEZ: It did not.

MS. MONTGOMERY: Do you agree with Ms. Crespo's testimony that the RU-3 was converted to RM-2?

MR. MENDEZ: Yes, that's correct, and the 1978 zoning ordinance conversion matrix.

MS. MONTGOMERY: And other than, quote, existing only, does RM-2 permit hotel units?

MR. MENDEZ: Just as you said, the existing only.

MS. MONTGOMERY: Is there anything, to the best of your knowledge, in the administrative interpretation that prohibits a property owner in South Seas from filing an application to rezone their property?

MR. MENDEZ: No. I understand that there was an amendment process that was laid out in that interpretation that was referenced; but in terms of rezoning the property, I don't believe I've seen anything that prohibits that.

MS. MONTGOMERY: Is it your understanding that upon rezoning this property, that the Applicant's property will no longer be subject to what I'll call an ambiguous interpretation, and will, in fact, have clear, concise conditions that you outlined here today?

MR. MENDEZ: Yeah, the intent is to bring this portion of this property into a modern zoning designation and -- and to separate it from the administrative interpretation. So the administrative interpretation would no longer apply to the subject property.

MS. MONTGOMERY: Thank you, I don't have any other questions.

HEARING EXAMINER COLLINS: Thank you.

We're at a good breaking spot for lunch. We'll resume with public input. Let's resume promptly at 1:00, and I will begin taking public comment at that time.

I will be making some introductory remarks to remind members of the public that may not have been here on the first day of hearing on how we're going to proceed, and then we will get right to it. We will continue for an hour and a half, and then take a break. As has been our custom, we will conclude for the day at 4:00 p.m. I will see everyone at 1:00.

VOLUME 2

(Recess from 11:40 a.m. to 1:00 p.m.)

HEARING EXAMINER COLLINS: Okay. Again, the date is February 20th, 2025. We're at the second day of hearing on the South Seas Island Resort MPD case. We are now at the public portion of the hearing.

I'd like to repeat some of the comments that I made when we opened the hearing last week because I do see some new faces in the audience. Some of you may be unfamiliar with our zoning process here, so I just want to let you know that my task, as the Hearing Examiner, is to accept testimony and evidence and then prepare a recommendation to the Board of County Commissioners. They will be the final decision-makers on this request.

I understand that there are agreements between the County and party entities that are the subject of litigation. My authority, as the Hearing Examiner, is the evaluation of the request pursuant to the County's Land Development regulations. They are set forth in the Land Development Code. I searched carefully through the Lee Plan, the Land Development Code, and the Administrative Code, and I could find no authorization for me to consider or interpret documents and agreements that are not preexisting zoning resolutions. And so for this reason, I encourage the public to please focus their testimony on Lee Plan

consistency and the review criteria set out in the Land Development Code.

Testimony by the public will not be limited as to time. Participants will have the opportunity to testify and ask questions, and questions will be noted by Staff and the Applicant and addressed by them at the conclusion of all public testimony. We do this to avoid a back and forth and to keep the hearing moving forward. I also find that we don't always listen when other people speak, and we get the same questions again and again, so we answer everything at the end.

Next, during public input I would like to remind them that they may not request -- parties may not request that public testimony be stricken from the record. Administrative Code 2-6 provides objections to testimony and evidence goes to the weight of the evidence and not to its admissibility. Objections will be noted, and we will move on. There is no need to repeatedly object to testimony or documents that the witnesses are putting in. One objection will do it.

In the context of expert testimony, I don't know, but there may be members of the public that are going to claim expertise in a particular area. Objections to a witness' expertise goes to credibility and weight. It will not affect its admissibility into the record.

During public input, I will invite members of the public to come speak at the podium. If we're having problems hearing, I may ask you to sit in this first chair over here.

Also, during your testimony, if you feel as though there's a condition that you would like to recommend that would address a concern you may have, please share that with us. We have addressed things through conditioning in the past, or you give us an opportunity to clarify an issue you may not have understood during the presentation by the parties.

Finally, nonparty participants cannot put on a case. That means they will -- they may not have representatives make opening and closing remarks, ask questions of witnesses that are members of the public. These privileges, as I mentioned before, are reserved to the parties.

If members of the public wish to present testimony in a specific order, I will abide by that request. Just let me know. I already have one grouping here of people that want to speak in that manner.

And please understand, anyone who testifies may be subject to questioning, cross-examination, by Staff or the Applicant's representative.

And then one more moment, I want to reiterate on

the subject of cross-examination, please use it judiciously. Avoid using cross-examination to disagree with testimony presented by a witness or present counterarguments. Please address those disagreements during your rebuttal or closing remarks.

We will recess approximately an hour and a half from now. We will resume five or ten minutes later, and we will continue until 4:00.

If you must leave the hearing room, please do so quietly. And let's all take a moment to make sure our cellphones and tablets are in the silent mode.

All right. I'm ready to begin. Do we have a stack of papers? These are the only papers?

MS. PEREZ: Those are the only --

HEARING EXAMINER COLLINS: Okay, so list of speakers and order of presentation.

Okay. The first speaker I have is David Mintz. Good afternoon, thank you for coming.

MR. MINTZ: Thank you very much for having me.

HEARING EXAMINER COLLINS: Okay. You're going straight to the chair, that's fine. I hear best for some reason out of that speaker. I think everyone else does, too.

(Sotto voce between Hearing Examiner and Ms. Perez)

MR. MINTZ: Thank you. Can you hear me?

HEARING EXAMINER COLLINS: I can hear you.

MR. MINTZ: Okay. My name is David Mintz. I live on Wightman Lane in Captiva in the heart of the village. I also owned a condominium on South Seas, Bayside Villas, from about 2008 to 2021, so I am familiar with South Seas.

I am also the president of the Captiva Community --

THE REPORTER: Community what?

HEARING EXAMINER COLLINS: Say that again.

MR. MINTZ: Captiva Community Panel.

HEARING EXAMINER COLLINS: Captiva Community Panel.

MR. MINTZ: I'm sorry.

And I am on the land use committee of the Captiva Civic Association, the CCA. I am also on the legal team of Protect Captiva, which is a coalition of individuals and businesses and organizations at Sanibel and Captiva, and the legal team consists of individuals from the SCCF, the Sanibel Captiva Conservation Foundation, from the 12 South Seas associations that own on South Seas other than the Applicant, the Ding Darling Wildlife Society, and I mentioned the CCA and the Captiva Community Panel --

HEARING EXAMINER COLLINS: The CCA?

MR. MINTZ: Is the Captiva Civic Association -- Captiva Civic Association.

I'd like you to know that -- excuse me -- the CCA and Protect Captiva have provided nine comment letters from our attorney to the County Staff between February 24th and January 23rd, detailing our legal objections to the pending application, and copied them to the Applicant. They will be provided to you during this process.

For the record, and only for the record, I have a bachelor's degree from the University of Wisconsin; I have a master's degree from the London School of Economics, and a law degree from Columbia University. I'm happy to say I'm retired.

I just want to talk about the Captiva Community Panel for a second. That's the organization on Captiva that's responsible for overseeing the community planning effort that was established by Administrative Code AC-13-3. The panel consists of 11 community and business leaders, and since 2000 -- since the year 2000, the panel has worked with County Staff to draft and amend the Comprehensive Plan, the Land Development Code, and ordinances relating to Captiva.

Ms. Montgomery yesterday said she would provide

you with Captiva's golf cart and noise ordinance. To give you a sense, it was the panel that drafted and lobbied for those County ordinances to be passed.

In conjunction with our development of plan provisions and Land Development Code provisions, we hold community meetings -- excuse me -- we do surveys, and we basically take months, if not years, of community -- getting community input -- input to make sure that the Code provisions and the plan provisions represent the views of people on Captiva.

The panel also contracted with the County to receive hundreds of thousands of dollars to study the viability of central sewer, sidewalks on Captiva, stormwater management, resilience, and other Captiva projects. And just to clarify my role on the panel, I participated in the drafting and negotiations of many of the recent Land Development Code provisions, the plan amendments, and the ordinances that apply to Captiva. My role on the panel was to know what those meant and what they were.

During this controversy, I have researched development history on Captiva and South Seas with a focus on density and building heights. I want you to know that the Captiva Community Panel opposes this application because its increased density and increased

building heights, in our view, violate the Captiva Community Plan.

I think what I'd like to do is I'm going to refer to a number of documents, some of them which I hope can be admitted as exhibits at the end of my testimony. And I made four copies, and I can give one to you, one to Ms. Montgomery, and one to the County.

May I approach?

HEARING EXAMINER COLLINS: Yes.

(Mintz Composite Exhibit 1 submitted.)

HEARING EXAMINER COLLINS: Okay. This is the first of several, you're saying, or are you giving them all to me at once?

MR. MINTZ: I'm giving them all at once.

HEARING EXAMINER COLLINS: Okay. So I'm going to say this is Mintz composite exhibit, and we'll keep everything together.

MR. MINTZ: I'll give one to you.

MS. MONTGOMERY: Thank you very much.

MR. MINTZ: And I have one for the court reporter.

HEARING EXAMINER COLLINS: Oh, thank you.

THE REPORTER: Thank you.

MS. MONTGOMERY: Madam Hearing Examiner, can I ask you a question for a point of clarification?

HEARING EXAMINER COLLINS: Yes, let me just do

this for a minute.

MS. MONTGOMERY: I've only gotten to peek at the first couple of documents, but these documents do not appear to be relevant in the Administrative Code. It does indicate that if it's not a relevant document -- for example, there is a document that's a letter to the County objecting to Land Development Code changes that were adopted that Mr. Mendez referenced; there's a letter from 1973 purporting to explain what a document to the zoning resolution, which is clear on its face and no longer in effect, means.

So there are ordinances that are no longer in effect; there's a compliance agreement for something that happened perhaps 20 years ago that has no bearing on this proceeding. So there are a lot of documents that are irrelevant, and in my opinion will just confuse and clog up the record. So how are we going to go through these and ensure that we're only admitting those documents that will be relevant to the issues before you that --

HEARING EXAMINER COLLINS: I'm going to admit everything, and I will give the documents the weight they deserve when I evaluate the record.

MS. MONTGOMERY: Okay. Based on your indication that there's standing objections, I will raise the

standing objection to these exhibits.

HEARING EXAMINER COLLINS: Thank you. That objection is noted.

MR. MINTZ: Thank you. To understand the Code, the plan, and the panel, you have to know something about Captiva. And I know you said you're going to visit Captiva. I don't know if you've been there before, but I know you will visit it at least once.

HEARING EXAMINER COLLINS: I've been there many times.

MR. MINTZ: Oh, terrific. So you know it's a barrier beach island surrounded on all sides by water. It's a small town, basically. We have a post office, a firehouse, a library, chapel, a civic center, a sheriff's home, four resorts -- five if you include South Seas -- seven restaurants, twelve streets, and you have to drive through Sanibel for ten miles to get to Captiva.

Captiva is four-and-a-half miles long, one-and-a-half square miles, 745 acres. We have about 1,650 hotel and dwelling units together. About half of them are on South Seas.

We have one road in and one road out on a constrained roadway. Traffic in the morning coming in is stop and go with serious congestion. When I came

here this morning, there were cars stopped from the causeway to the Shell Point Road. This is typical in the morning. Traffic in the afternoon, stop and go with serious congestion. For workers or individuals coming off the islands in the afternoon, from 3:00 to 6:00 p.m., it's sometimes an hour or more of sitting in traffic. When you visit Captiva, I hope you don't go early in the morning, and also after 3:00 in the afternoon when you're looking to leave.

The first document which is on the list here -- on the pile here is a photo of the congestion that we typically in busy season experience on Captiva Drive. This is right outside of South Seas.

HEARING EXAMINER COLLINS: Is this the photo with the bicycles?

MR. MINTZ: This is the photo with the bicycles and the automobiles, and what's not on here are the golf carts that are constantly on the street. This was -- the photo was taken by me on January 3rd, 2021, at 2:54 p.m.

Normally we have golf carts, we have South Seas cars constantly always leaving South Seas, coming to visit the village. The notion that South Seas is going to be exclusive is something new. I mean, we always welcome South Seas' visitors to the business center of

Captiva, Andy Rosse Lane, the restaurants, the shops; and we hope that would continue, but their -- you should also know, when you're looking at this photo, that if you -- and you're facing away from South Seas. It's almost as if you're standing in front of the entrance to South Seas looking down the street, that this behind you -- behind us is the public parking lot for the -- one of the two beaches on Captiva. So Alison Hagerup Beach parking lot is at the end of Captiva Drive. You pass through the -- past the entrance to South Seas, and then you get to the parking lot of the public beach, often where cars are lined up in a line to try to get a spot in that parking lot to go to the beach.

The other thing you should know, which wasn't mentioned, is that the post office on Captiva is also past the entrance to South Seas. So not only do you have cars going to the beach parking lot, you have cars going to the post office on a regular basis because there is no mail delivery on Captiva. So anyone who wants to get their mail, which is regularly, go to the post office with their automobiles or with their golf carts or with their bicycles to pick up the mail.

So what we have here is a multiuse area that is particularly dangerous in high season. People on

Captiva believe putting a hotel right at that spot is insane.

Ms. Crespo testified that the hotel itself is located where there was a prior hotel. Where they are seeking to place the hotel at the foot of Captiva Drive, there was never a hotel there. That's where the conference center was, and that's where Doc Ford's was. There was never a hotel in that location at any time since 1973.

We also have serious wastewater concerns associated with a fragile barrier island facing increased development. As you know, we have algae blooms and red tide fed by nutrients; we have septics compromised by rising groundwater that eliminates the separations between the drain fields and the septic tanks as sea level rises, and that is a very serious polluting problem; and we have a central sewer on South Seas that is surrounded by water and mangroves and has very -- had very serious treatment problems in the past. In 2018 Sanibel --

MS. MONTGOMERY: I'm going to -- I'm going to object to this testimony. Under the Administrative Code, he's not qualified. This is beyond the speaker's qualifications.

HEARING EXAMINER COLLINS: Continue.

VOLUME 2

MR. MINTZ: Thank you.

We've been involved with receiving hundreds of thousands of dollars from the -- from the County to study conversion of septic tanks on Captiva, and convert them to central sewer to prevent this -- the nutrient flow into the bay, into the Gulf, and to prevent the failure of septic systems.

We've been negotiating with Sanibel. The money was used to see if we can process wastewater at the treatment plant, at the Donax facility in Sanibel, because they have a very high level of treatment, a much higher level of treatment than on South Seas. One of the reasons we received the funds is because there is a sentiment in the County that the FGUA plant -- and FGUA took out -- took over that plant --

MS. MONTGOMERY: I'm going to object to the testimony as, A, it's beyond the scope of these proceedings, we don't have septic tanks at the Applicant's property; and negotiations that the County may or may not have relative to the wastewater treatment plant, again, are completely irrelevant to these proceedings.

HEARING EXAMINER COLLINS: Okay. I'm going to allow him to testify, and I will give his weight -- his testimony the weight that it deserves given the review

criteria that I'm subject to. Your objection is noted.

MR. MINTZ: Madam Arbitrator, I will have something at the end to say about the presentation made about the FGA system -- FGUA system. We thought we were going to have an expert or a representative. In the original speaker list, there was an expert on the sewer that South Seas had on the list, but that individual, Doug Eckman, was removed from their speaker list. So I just do have some questions at the end about their presentation on their sewer plant.

But the point I was trying to make is that we have received County funds to see if, in fact, we could shut down the FGUA plant and process all of the wastewater from all of Captiva, including South Seas, at the Donax plant, which is a higher level treatment on Sanibel, and that has been basically placed on hold because of the unknowable increase in density that we're now -- which is now part of this proposal. It's unclear, with the increase in density or intensity, the additional 435 hotel rooms, whether there will be enough capacity at Sanibel to accept all the wastewater from Captiva. It's a serious issue; and, frankly, citizens of Captiva and Sanibel are very concerned now that central sewer will open the door for further development, whereas there is a natural limit with septic systems in terms

of processing wastewater. So that's one of the issues -- difficult issues that we're dealing with on a barrier island.

And of course we're dealing with hurricanes: Hurricane Charley, Hurricane Helene -- I'm sorry, Hurricane Charley, Hurricane Ian, Hurricane Helene and Milton. Each of those four hurricanes devastated, devastated Captiva, with serious damage to homes and businesses. The last hurricane, Hurricane Milton, washed out our only road, as you heard before, the Jensen's curve. It literally washed it -- washed it out. Our bridge to Captiva, the Blind Pass Bridge, was damaged, and people couldn't pass it for a significant period of time. Lee County did a yeoman's -- yeomen's work in repairing the bridge quickly and in making the Jensen's curve passable for one lane so that at least the Fire Department could do their job and reach places where there was a fire.

As a result of the recent hurricanes, two of the condominiums on South Seas burnt down, condominium buildings right in the Village of Captiva.

During the course of this application, and right prior to it, and as we sit here today -- and you have the second document in the pile, is a letter from the Captiva Island Fire Control District, and it basically

states that the Fire Department is not equipped to handle the proposed development at South Seas. And what it says is, if the proposed changes to building heights were to be approved, the Fire Department would not be properly equipped to serve the needs of the island. If building heights were to be increased from 28 to 35 feet, and constructed up to 4 feet above FEMA base flood elevations -- that's the freeboard we were talking about -- our current ladders -- our current ground ladders and fire flow would not be sufficient to provide a rescue and fire protection to the upper floors of a building. These taller structures would require the Fire Department to purchase a ladder truck at a cost to Captiva property owners of 1.65 million. This was at 35 feet above base flood elevation. The County two years ago with Code amendments increased building heights outside the gate of Captiva from 28 to 35 feet above base flood without any consultation with the Captiva Community Panel. What the Applicant is asking for is not 35 feet above base flood, which the Fire Department says they cannot handle, but they're asking for 45 feet above base flood elevation, which I'll talk about a little more when we talk about building heights. So this is a serious issue that we have to confront.

The history of planning and development on Captiva, Madam Hearing Examiner, is primarily about one thing only, which is protecting Captiva from overdevelopment for both public safety and environmental reasons. The fundamental purpose of Chapter 23 of the Lee Plan, which is called the Captiva Community Plan, is to prevent exactly what is being proposed here today. And nothing is more relevant to this hearing than Goal 23 of the Captiva Community Plan, Objective 23-2 of the plan, and Policy 23.2.4 of the plan. We will have other witnesses that will speak to other provisions of the plan and other provisions of the Land Development Code, but I'm going to try to focus on those three provisions.

The next document in the pile is the three provisions of the Captiva Community Plan that I'm going to address. And I just want to mention as an aside, the Applicant, in its PowerPoint number 271, explained how they were compliant or consistent with the Captiva Community Plan. It is worth mentioning that in that list in PowerPoint 271, there was no mention, not an acknowledgment, no mention of Goal 23, no mention of Objective 23.2, and no mention of Policy 23.2.4.

Goal 23 of the Captiva Community Plan is to protect the coastal barrier island community's natural

resources, such as beaches, waterways, wildlife, vegetation, water quality, dark skies, and history. This goal will be achieved through environmental protections and land use regulations that enforce -- and I emphasize the word "enforce." It doesn't say like or we sort of like or should. It says enforce development standards that maintain the historic low-density residential development pattern of Captiva.

Objective 23.2, protection of community resources, to continue the long-term protection and enhancement of community facilities, existing land use patterns -- to continue existing land use patterns, unique neighborhood-style commercial activities, infrastructure, capacity, and historically significant features on Captiva.

Policy 23.2.4, it's entitled, "Historic Development Pattern." It applies to that whole section, "Historic Development Pattern." Limit development to that which is in keeping with the historic development pattern on Captiva, including the designation of historic resources and the rehabilitation or reconstruction of historic structures. I will come back to that when we talk about those mom-and-pop hotels that have been around since the 1930s and '40s that the Applicant is talking

about for precedent for their development. We'll come back to that. I just want to point out that it talks about preserving the historic development pattern on Captiva, including the designation of historic resources.

The historic development pattern on Captiva is comprised of low-density residential dwelling units, as defined in LDC Chapter 10, minor commercial development, and South Seas Island Resort. We're talking about the historical development -- historic development pattern throughout Captiva, including the historic development pattern on South Seas Island Resort. That is what this chapter is about, historic development pattern.

So let's talk about the historic development pattern and what it is. We can start in 1973 with the zoning approval, and that was the zoning approval that created on South Seas a PUD concept plan limited to 3 units per acre, 304 acres, 912 units -- 304 times 3, 912 units, inclusive of hotel rooms. The Applicant in the approval designated very low-density development -- downzoning in exchange for clustering didn't exist -- and 5 acres of commercial development for only ancillary services to serve the 912 units. The --

MS. MONTGOMERY: Madam Hearing Examiner, I'm going

to object, and I would note for the record that the document speaks for itself, and there's no reason to explain the document unless it's ambiguous, and the testimony being provided exceeds the scope of the resolution. Thank you.

MR. MINTZ: Madam Hearing Examiner, if the document spoke for itself, I wouldn't be raising it right now. The reason the document doesn't speak for itself is because in the Staff Report, Attachment N, which is the '73 zoning approval, for reasons which are not important, they only attached 12 pages of a 102-page document. The zoning approval includes the application from the developer as to what the development was to contain and why it was going to be a PUD concept with 3 units per acre and 912 units.

The next document in the pile of documents I provided are the pages that relates to that from the 1973 zoning approval. And it's very clear, you can see right on the top page, and you'll notice it throughout these documents from the Applicant for the -- for the rezoning, that what he was seeking was 3 units per acre, a density of 912 units. We never heard the number "912" with the Applicant's presentation. But 912 is the number everyone on Captiva and Sanibel knows. 912 is the unit limit for South Seas, and it

starts in 1973 with the application for the rezoning. We're talking about historic development pattern.

But you can see what it is, and it does speak. And on page 1 at the bottom it says, "A small commercial area to provide necessary goods and services to resort visitors and property owners in the future. This will be similar to our Periwinkle Place Cluster of Island Shoppes on Sanibel." There was never an intent to place hotel units on the 5 acres of commercial property that was set aside for ancillary services to serve the 912 units that were allowable and approved as part of the 1973 rezoning.

If we move from 1973, again looking at the historic development pattern, to 1982, and the document you have on the pile is Lee County Ordinance Number 82-44, and that ordinance was recommended to the County from the CCA, from the Captiva Civic Association, because prior to 1982, South Seas was limited to 3 units per acre for both dwelling units and hotel units. And what this ordinance did at the behest of the CCA, with approval of the County, was to change the density limits on the rest of Captiva to be consistent with the PUD concept plan on South Seas that was passed in 1973. So what this ordinance does is limits hotel density and dwelling unit density to 3 units per acre on all of

Captiva consistent with the 1973 zoning approval for South Seas.

And when you read the document, and if you look at Chapter 33 of the Land Development Code today, the 3 units per acre for dwelling units and hotel units are in the Code. So they start -- it began in 1982, and it's been in effect for more than 30 years on Captiva, and it's called density. If you look at Chapter 3 -- 33 of the Code under density, it's 3 units per acre for hotel units -- hotel rooms, and 3 units per acre for dwelling units.

What's important to note in this ordinance is that lock-off units are to be counted as full dwelling units when computing density on Captiva. And why that's important is because in Bayside Villas, which is the 102-unit condominium on South Seas, they had lock-off units.

MS. MONTGOMERY: Madam Hearing Examiner, again, I'm going to object to the relevancy of this testimony. The Staff has conditions that doesn't allow lock-off units on the subject property. What may be occurring elsewhere is not germane. Thank you.

MR. MINTZ: And they -- they had lock-off units, and what the intent was, is to not allow an increase in density or intensity, if you want to use modern terms,

to have lock-off units as uncounted rooms for density purposes.

HEARING EXAMINER COLLINS: Bayside Villas wasn't a hotel, was it?

MR. MINTZ: Pardon me?

HEARING EXAMINER COLLINS: Was Bayside Villas a hotel? I thought that was a --

MR. MINTZ: Bayside Villas was -- on South Seas you had -- that was -- that was condos.

HEARING EXAMINER COLLINS: Right, okay.

MR. MINTZ: But they were -- they were rented through, often, South Seas Resort, and what they were doing is they were renting them -- even though it was one unit --

HEARING EXAMINER COLLINS: I understand the concept. What I'm saying is that's not a hotel though.

MR. MINTZ: It is not a hotel.

HEARING EXAMINER COLLINS: That's a dwelling.

MR. MINTZ: That is a dwelling --

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: -- that is correct.

HEARING EXAMINER COLLINS: I don't want to conflate that with a hotel room because it's different.

MR. MINTZ: Right.

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: Right. However, in the 1973 zoning approval, there was -- you had an understanding, and you read it, it talked about guest rooms, et cetera. There was an assumption that the condos would serve as rental units, and the hotel units -- of which there were 107 that we'll talk about in a second, they were hotel units; but they were both on South Seas permitted to be rented for a single night. On the rest of Captiva, you cannot have rentals for less than seven days unless you're a licensed hotel.

The other thing that's worth noting in this Ordinance 82-44, Madam Hearing Examiner, is that the height limits were set for all of Captiva. They were set at two stories above the lowest habitable floor, but in no case higher than 28 feet above the lowest habitable floor, and that's one of the first times we start seeing an actual limitation on building heights on Captiva.

And let me just add the findings and declarations, and bring it to your attention, in this ordinance back in '82. It said the BoCC, the Board of County Commissioners, hereby finds and declares that for the purpose of protecting the public health, safety, and welfare of citizens of Captiva Island, it is necessary to amend Lee County Ordinance Number 87-7 -- its

predecessor -- by further limiting the population density in the height of buildings and structures on Captiva Island, Florida.

The next thing that happens, if we're trying to understand the historic development pattern, is 1999, and that's the next ordinance on the pile. It's Ordinance 99-13. And here the building heights for Captiva are limited to the lesser of 35 feet above grade, or 40 -- 42 feet above sea level -- 35 above grade, 42 feet above sea level, whichever is less. That standard was then inputted, included in the development standards for South Seas, and you'll see that that is then incorporated in the administrative interpretation, the ADD that you hear about, 35 feet above grade or 42 feet above sea level. That's where it comes from. It comes from the '99 -- 1999 ordinance, and it's in effect on South Seas today. That is still the height limits on South Seas today.

The next important document, to understand the historical density pattern, is the compliance agreement which is dated 2002, and this is a -- really an amazing document --

MS. MONTGOMERY: Madam Hearing Examiner, I'm going to interpose an objection. This applies to property outside the scope of the Applicant's property.

HEARING EXAMINER COLLINS: Noted.

Please continue.

MR. MINTZ: I'm sorry. It's an important document if you want to understand how the County saw the historic density pattern on South Seas, in particular at 3 units per acre and 912 units, because -- and I've never actually seen a document like this before.

What happened -- and this is why I raised the lock-off units -- the lock-out units before is because Bayside was renting these lock-out units. They had 102 units in the Bayside Villas, but because each -- you could lock out -- and you know what they are, one of those rooms, and you rent them separately, you really had 204 potentially, and that would take you over the 912 units if you counted a lock-out unit as a separate unit.

And there was objection from the community about that because it was 3 units per acre, and the County responded, and they required South Seas to sign a compliance agreement. And the -- at the time it was Maristar (phonetic) -- Mariner, and they were required to agree that they will not rent lock-off bedrooms as separate accommodations in its rental and lease programs; they agreed to remove all references to lock-off bedrooms from their website and to cease

marketing them as such; they agreed to immediately disable the electronic exterior door locks in order not to be cited for code violation; they had to replace those door locks with -- door locks with blank plates; and then they had to change all the rental agreements to remove any reference to lock-out units that could be rented. And they could not -- in fact, they could not redevelop or expand South Seas even with their allowable units until they certified to the County that they eliminated those lock-off units.

The reason why this is important is because it tells us how serious and how important it was to maintain the 912 units to protect Captiva Island from increased density.

Okay. In 2002 -- as we move on, in 2002 the County asked their Community Development Department and their County Attorney's Office to determine on South Seas how many unbuilt units of the 912 remained, and they asked the Community Development Department, and in particular someone named Gerald Murphy, to begin to do an investigation into all the zoning on South Seas, and all of which was built on South Seas, and provide a memorandum -- a memorandum to basically explain what the situation was on South Seas up till that time. And the Murphy memo is actually Attachment P in the Staff

Report so I didn't put a copy of that there.

But basically what the Murphy memo establishes is that South Seas was a planned unit development, zoning district, limited to 3 dwelling units per acre, for the 912 units, and 5 acres of commercial development, all within the 34 (sic) acres of Captiva Island. What I am happy to tell you, Madam Hearing Examiner, is that Mr. Jerry Murphy is here with us today, and he will speak on behalf of the public and to explain how 912 units is the cap on South Seas, inclusive of hotels, and why no increase should be permitted on the property.

And that brings us to 2002, the quite famous document, what's been called the administrative interpretation, and that's synonymous with ADD2002-00098. That is attached to the Staff Report as Attachment Q -- Mr. Mendez is shaking his head, he knows all the attachments -- as Attachment Q, and that is the governing document on South Seas today. That is the document that governs development on South Seas today, and it memorializes the 3 units per acre, including hotel rooms, on the 304-acre resort, and it sets, and I quote, current and future development to 912 units. It also incorporates building heights, as I discussed before, of 35 feet above grade or 42 feet

above sea level, whichever is less. And actually that document, the ADD2002-00098, allocates -- allocates the 912 units to the various associations and to the various property owners. So it states how many units go to Tennis Villas, how many units go to Bayside Villas -- Bayside Villas has 102 units -- and to the Beach Villas and -- and to the resort, the people who own -- at that time it's been Mariner or Maristar or Blackstone, or now Timbers. It allocates to them 272 units of the 912, and there was no dispute about that. That is what the administrative interpretation sets forth, and there's no dispute that is the controlling authority today.

So as we look at South Seas and the 912 units, there are 640 units of the 912 that are owned by property owners and their associations other than the Applicant. 640 of the 912 are owned by other than the Applicant, and the Applicant is entitled to 272 units, which at the time it was purchased was 107 hotel rooms by the big marina, 140 employee housing units up at the south end, and 25 unbuilt units. 640 plus 272 equals 912.

There is no dispute that hotel was included in the 912 cap under the ADD, and Ms. Crespo, in her PowerPoint number 57 which I have on the pile, confirms

it. It says it in the ADD, but it's also confirmed by the Applicant, the former hotel site, the former 107-room hotel, that is part of the 912.

The historic development pattern under the Captiva Community Plan, the historic development pattern for South Seas is -- is the ADD. As recently as August 9th, 2024, the Lee County Zoning manager agreed in sworn deposition that the most important document that would help us understand the historic development pattern of South Seas would be the ADD. And Mr. Murphy, who again will be speaking to you, drafted the ADD, and he will explain to you its purpose and what it represents.

In 2003, as we move along, there was another question that got posed to the community about the 912-unit cap on South Seas, and also whether those lock-off units or lock-out units were going to constitute increased density or not. And to clarify this issue, the CCA, the Captiva Civic Association, filed a lawsuit in the 20th Judicial Circuit. Basically --

MS. MONTGOMERY: Madam Hearing Examiner, I believe in your opening remarks last Friday and your remarks after lunch indicated that we are not going to deal with litigation outside the scope of these proceedings

and other issues.

HEARING EXAMINER COLLINS: Yes, I said that. He's putting his testimony in. I'm going to give it the weight that I explained I would.

MS. MONTGOMERY: Okay, thank you.

MR. MINTZ: I am not suggesting that any litigation should be binding upon you or this proceeding. What I'm trying to do is lay out as factually and clearly and transparently as possible what the historic development pattern is on Captiva because it relates directly to how we understand the Captiva Community Plan and those provisions.

So CCA did sue, and they wanted to confirm that 912 was actually the limit, and the Court sent the litigation to mediation, and the lawsuit was mediated and settled. And there was a settlement agreement between the CCA and the County and the developer of South Seas at that time, the Plantation Development Corporation.

The 2003 settlement agreement states -- and this is signed by the County -- the total number of dwelling units on South Seas is limited to 912. No building permits may be issued by the County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time.

There will be more about the settlement agreement later in my testimony, but I'm just trying to do this chronologically.

In 2005 the County and the Captiva Community Panel, working together, placed into the Comprehensive Plan the building heights that I described to you a moment ago: 35 feet above grade or 42 feet above sea level, whichever is less. And that then became part of the October 2005 -- the month -- but the 2005 Captiva Community Plan, the Lee Plan, which is the immediate predecessor of the document that we're working with today of Captiva Community Plan, with two minor changes that took place last year.

In 2008 --

HEARING EXAMINER COLLINS: Hang on a second. This attachment that you're referring to --

MR. MINTZ: Yes.

HEARING EXAMINER COLLINS: -- the Captiva Plan October 2005?

MR. MINTZ: Yes.

HEARING EXAMINER COLLINS: That's the original, is the point you're making.

MR. MINTZ: Yes.

HEARING EXAMINER COLLINS: Okay, thank you.

MR. MINTZ: In 2008 the predecessor to the current

Applicant, who owned the 120 acres of the resort, came to the Captiva Community Panel and asked to demolish its 140 housing units, employee housing units, and to replace them with an 80-unit hotel and 40 units to be used for employee housing -- they would have some of the employees use some of those hotel rooms at certain times -- and then also 20 multi-family dwelling units, and leaving 40 units for the future. What they were basically doing is saying we want to demolish the 140 employee housing units, because they're not really being used, and replace them with 140 other units, staying within the cap of 912. And they came before the Captiva Community Panel, and they asked if they could do that. And the -- there was an administrative amendment made to the ADD, to the administrative interpretation, and they approved that. They said as long as you stay within the intensity and density of the existing '73 zoning approval and the 2002 administrative interpretation, that we will allow you to do this administrative amendment.

And the administrative amendment was passed, and it sets forth in it -- and I have it on your pile. It's Administrative Amendment 2008-00082. It says that the South Seas Resort cannot exceed the limitation of 3 units per acre, up to 912 dwelling units, and up to 5

acres of commercial property. The 140 employee housing units were included as part of the 912 residential dwelling units approved by the '73 zoning approval, and this amendment will not increase that number of units approved for South Seas. The panel did not object to this change because the amendment kept the 912-unit cap in place. The developer, the owner of South Seas at that point, Madam Hearing Examiner, never pursued it, and that never happened at that time.

The next thing that's important to note is reflected in the next document, which is Lee County -- Lee County Ordinance Number 11-19. And what we did at that time -- when I say "we," the Captiva Community Panel working with the County -- basically changed the heights on Captiva to recognize FEMA base flood elevation. We had 35 feet above grade or 42 feet above sea level, whichever was less; but now we said if you're subject to FEMA base flood elevations, you can go 28 feet above the base flood elevation. So either the lesser of 35 or 42 feet above -- 35 feet above grade, 42 feet above sea level, or 28 feet above base flood elevation. You had the option. But we didn't want people not to be able to rebuild their homes if, in fact, they were subject to FEMA's base flood elevation -- elevations in order to meet Code.

And that was placed into the plan. This is not in the Land Development Code. This Ordinance Number 11-19 placed it into the Comprehensive Plan.

The next document, Ordinance 12-19 in 2012, basically that incorporated those same building heights, which is the 35/42 or 28 feet above base flood elevation, they incorporated that into the Land Development Code so that the Land Development Code would be consistent with the plan.

Now, in this ordinance, Madam Hearing Examiner, there's something important besides the building heights. This ordinance incorporated the land -- the Administrative Interpretation ADD2002-00098, the Administrative Interpretation, it incorporated that into the Land Development -- Land Development Code in Section 33-1611(e).

And what this did is -- with respect to South Seas, what it did, it said if you complied with the Administrative Interpretation, with the building heights in Administrative Interpretation and the density, 3 units per acre for both hotels and residential dwelling units, if you comply with development in the Administrative Interpretation, you are exempt from Chapter 33 of the Captiva Code, if you comply. If you do not comply with the Administrative

Interpretation, Chapter 33 of the Code governs development at South Seas. And that's what Ordinance Number 12-19 did, and that was in effect and stayed in effect until last year.

What's important to note here, with respect to density that we're talking about, is that density on Captiva, under Chapter 33 of the Code called density, included both hotels and dwelling units, and it was 3 units per acre. The Administrative Interpretation for South Seas had the exact same limitation, 3 units per acre for hotels and dwelling units. They were the same.

So when the Applicant told you yesterday that South Seas was exempt from Chapter 30 -- was always exempt -- or for decades, I think was what they said, was exempt from Chapter 33 of the Code, that's not accurate. That's not fully accurate. They were only exempt if they complied with the density limitations of the Administrative Interpretation. If they exceeded that or changed from that, they were governed by the Captiva Code. So until last year, they were never exempt. Notwithstanding what they've said, they were never exempt from the Captiva Code with respect to density for hotels or for dwelling units.

The next thing that's important to know occurred

in 2015, because the, again, predecessor of the Applicant -- and I have that before you. It's Administrative Amendment ADD2014-00203. That Applicant at the time asked to relocate its 272 units that they were allocated, and this time -- because they hadn't done anything in the past with the prior administrative amendment, they asked to demolish the 140 employee housing units and replace them with 140 multi-family units. They wanted to knock down -- which they hadn't done yet, knock down the employee housing units and replace it with 140 multi-family dwelling units. They wanted to put 44 at the south end and 96 at the north end and still stay with the 912 cap. So if my arithmetic is right, 44 and 96 is 140. It replaced the 140 employee -- employee housing units, stayed within the 912 cap. And they could move them around, and they could replace dwelling units with hotel units and hotel units with dwelling units, because in 1973 and under the Administrative Interpretation, it was assumed these were guest quarters, and they could be called this or that, but the unit limitation was always 912.

The County approved the request because it did not increase density or intensity of development, and I quote, the proposed redistribution of the 140 existing dwelling units continues to maintain the 912 total

number of units approved for South Seas Resorts.

It's worth noting that on page 3 of the Staff Report, the Staff confirms that the two administrative amendments which I just referenced, in 2014 and 20 -- I'm sorry, 2008 and 2014, and I quote, did not involve a change in density or intensity. It remained at 912, 3 units per acre.

In 2018 the Captiva Community Panel amended the Captiva Community Plan, and they did that through Ordinance 18-04, which is the next document on the pile of documents. And at that point, in 2018, the current Goal 23, the current Objective 23.2, and Policy 23.2.4, which I read earlier, which requires the County to -- and these, again, are strong words, "to continue, maintain, and enforce the historic development pattern on Captiva and South Seas." That's when that was incorporated into the Comprehensive Plan.

With the adoption of Ordinance 18-04, and it's my understanding -- and, you know, this is -- I'm not as familiar with the adoption of these data and analyses, but my understanding is that the data and analyses which accompanied these plan amendments was adopted by Ordinance 18-04, and they adopted the data and analyses as -- as part of the ordinance itself. And it's also referenced, by the way, at various times, I think,

either in the Staff Report or in the Applicant's application.

I am going to ask -- and we can do this after my testimony. I would ask that this document -- and I have copies for everybody -- be admitted along with some of the other documents I'm referencing.

HEARING EXAMINER COLLINS: Okay, hang on.

MR. MINTZ: Okay.

HEARING EXAMINER COLLINS: I need clarification now. Your Composite Exhibit 1 is this sequential, chronological documents and history. This is like a subset to the plan amendment from 2018, or is it something else?

MR. MINTZ: The documents following the 2018 ordinance, which adopted the plan amendments which you have on your pile, which you have 18-04, the next document I had was a two-page -- the next document you have was a two-page excerpt from that data and analysis.

HEARING EXAMINER COLLINS: Right.

MR. MINTZ: And what I am suggesting is that after my presentation, I substitute that document or supplement it with the full data and analysis which was referenced in the Code because it's very instructive of what the intent was with respect to the --

HEARING EXAMINER COLLINS: So this was the data and analysis that supported CPA2015-00009.

MR. MINTZ: No, it is the data and analysis that supports the 2018 plan amendments --

HEARING EXAMINER COLLINS: Right.

MR. MINTZ: -- Ordinance 18-04.

HEARING EXAMINER COLLINS: Yes. All right. So you're going to give that to me at the conclusion of your testimony?

MR. MINTZ: Yes, I am going to do that.

HEARING EXAMINER COLLINS: Okay. And that will be your second exhibit.

MR. MINTZ: Right.

HEARING EXAMINER COLLINS: All right. So what page are we on now?

MR. MINTZ: We are -- we are now looking at the -- I excerpted two pages from this document which I'm going to provide to you after my testimony.

HEARING EXAMINER COLLINS: Okay, so we're highlighting these two?

MR. MINTZ: These two pages. And I'm just bringing to your attention on the second page, it talks about the historic development pattern, which is Policy 13.2.4, and I just want to say it says 13.2.4, but they changed it to 23, Chapter 23.2.4. So every time you

see a plan revision --

HEARING EXAMINER COLLINS: Right.

MR. MINTZ: -- with 13, it's really 23 today.

But it lays out Policy 13.2.4, which is in the -- in the plan today, and the Staff note with respect to that policy states -- in terms of historic development pattern, it says, the historic development pattern, the continuation of this policy, is to acknowledge the unique development known as South Seas Island Resort, a blend of hotel, commercial, and residential uses delineated in a separate 2002 Administrative Interpretation with the County.

My point is -- it's the point I've been making all along, is the historic development pattern of South Seas Island Resort is the ADD, is the Administrative Interpretation, and that's what the Staff says.

So the current Applicant purchased the 120 acres...

HEARING EXAMINER COLLINS: Thank you, continue.

MR. MINTZ: You've very welcome.

The current Applicant, which is a partnership between Timbers Resorts (sic), The Ronto Group, and the Wheelock Street Capital, bought their 120 acres at the resort in September of 2021; and prior to their purchase, they did their due diligence. And their due

diligence documents that were provided to them by the County, the Community Development Department, we received as part of a public information request that we made to the County, and that's the next document that you have in front of you. And the County's Department of Community Development answered the questions posed by the prospective owners, and I believe it was Ms. Montgomery that followed up with some additional questions. And the document is very instructive because the County's responses are perfectly consistent with the historic development pattern on South Seas Island Resort, as I referenced today.

The Applicant was told before they purchased the property that the resort was limited to 912 units, and that they had 247 units built with 35 unbuilt units. The Staff actually got that wrong. There were 10 units that were purchased before so it was 25 unbuilt units for 272. And they were told that they could reallocate those units and that the ADD does not differentiate between unit types.

And, I mean, again, if you're looking into what the historic development pattern was on South Seas prior to last year, or the year before last, even the County took the position that it was 912 units, and

they told the Applicant or the purchaser -- the prospective purchaser that they had 140 employee housing units and 107 hotel units.

The next thing that I just can't help but mention was that when the Code was amended, and the -- to allow for -- to exempt South Seas for the first time in 50 years, to exempt them from 3 hotel units per acre and to exempt them from the building heights that existed under the ADD, 35 feet above grade or 42 feet above sea level, whichever was less, it became clear to the Captiva Civic Association, and to everybody else living on Captiva, that we were going to be facing an attempt to increase density or the number of units on South Seas once again.

And so CCA, represented by Michael Whitt, filed a lawsuit in the --

MS. MONTGOMERY: Madam Hearing Examiner, at this point in time I'm going to pose the objection this is irrelevant and violates your directive.

HEARING EXAMINER COLLINS: I already announced what I said, and he's continuing at his benefit or peril. You know, this is a choice he has made, and I understand you have an ongoing objection, and it's not necessary to repeat.

MR. MINTZ: Thank you.

So CCA went to the Court and asked for a declaratory judgment that 912 units was, in fact, the limit on South Seas, and it was done because of the exemptions that were -- we were facing with respect to the Land Development Code, and we were confident that we were going to get an application for rezoning that would allow for an increase from 272 units to -- I believe now it's 628 units -- 193 residential dwelling units, multi-family units; 435 hotel units, 628 instead of the 272 that was in effect for 50 years.

So we went to court, and the County, together with South Seas, sought to dismiss our action in a motion to dismiss. It was denied. Then they moved for summary judgment, and it was denied. Then CCA moved for summary judgment, and it was granted and -- a motion for summary judgment was granted, and the Court issued a final judgment stating that that 2003 settlement agreement, which I discussed with you before which reflected the historic development pattern, the Court held that the settlement agreement was valid and binding, that the agreement was clear and unambiguous. The total number of dwelling units on South Seas is limited to 912. No building permits may be issued by the County for dwelling units within South Seas that will cause that number to be exceeded at any time; that

the agreement shall be in force and enforceable against Lee County, and no building permits may be issued by Lee County that will cause the number of dwelling units within the 304-acre property known as South Seas Resort to exceed 912 dwelling units at any time; that the Court retains jurisdiction to enter further orders and grant supplemental relief, as may be necessary or proper, to give proper full effect to this final judgment.

As part of the Court's order, it's found that the 1973 zoning approval limited the development density for that district to 912 units, inclusive -- inclusive of hotel room units. And it also found that the administrative interpretation, ADD, identified and included hotel units as part of the 912-unit density limitation.

The County and the Applicant have already noticed their appeal in this case, contending in part that the County did not have the authority, the right, or the power to make this agreement back in 2003. But regardless of the outcome or whether the agreement is valid or not, it is further evidence of the historic development pattern on South Seas, is 912 units, 3 units per acre.

So simply put, with respect to density, the '73

zoning approval and the 2002 Administrative Interpretation have been in effect for 50 years as the historic development pattern on South Seas, and the Ordinance 82-44, which is 3 units per acre outside the gate of South Seas on the rest of Captiva, is 3 units per acre for the dwelling units and hotel units, and that's been in effect on Captiva for 40 years. The two are identical, 3 units per acre for both dwelling units and hotel. It has to be understood that at no time since 1973 has South Seas ever been approved for more than 912 units.

With respect to building heights, the building heights on Captiva have been 35 feet -- the lesser of 35 feet above grade or 42 feet above sea level since 1999. We changed that to incorporate base flood elevation in 2011. That never changed on South Seas. Today South Seas is still 35 above grade, 42 feet above sea level, whichever is lesser. There is no building on Captiva that I'm aware of, or on South Seas that I'm aware of, over 48 feet from grade. What the Applicant is seeking will be 20 feet in some cases above grade, 20 feet higher, and I want to talk about that in a moment or so.

But before I do that, I just want to clarify -- because I think it was a little confusing before as to

what's actually on the ground, as we sit here today, on Captiva. For what it's worth, Captiva is known as an island where the trees are taller than the buildings --

HEARING EXAMINER COLLINS: Say that again.

MR. MINTZ: Where the trees are taller than the buildings, which is shorthand for the Captiva Community Plan and what it's trying to keep.

When we speak of height, it's important to distinguish between the height of a building and the amount of habitable floor space, or the height of a building above base flood elevation or other required FEMA elevations, or even 1 to 4 feet freeboard. So when the Applicant says that their buildings are going to be 45 feet tall, we're not talking about 45 feet tall. We're talking about 45 feet above base flood elevation. We're not talking about 45 feet above the ground.

As Staff pointed out last week, and it was important that they did so, some of the proposed South Seas buildings are going to be 65 or 70 feet above grade in some places. That's up to 20 feet taller than the tallest buildings on South Seas or the rest of Captiva.

So if you look at the next two documents on the pile, which is -- I believe is South Seas PowerPoint

219 and 220, you can see at the top the heights that the buildings are. You can see they're not 45 feet, but they're above 60 feet to the top of the buildings.

The tallest -- you asked this question, you asked the Applicant, what is -- how high are the buildings on -- on South Seas, and the tallest buildings on South Seas today are Bayside Villas; Tennis Villas, which are now called South Seas Villas; Beach Villas; and Land's End. And using the Applicant's own data, Bayside Villas, which is the tallest, is 47.8 feet above sea level and 44.3 above grade -- 44.3 feet above grade, that's Bayside Villas, the tallest, 44 feet, less than 45 feet above grade. Tennis Villas, 47.3 above sea level, 43.6 feet above grade. Less than 45 feet above grade, Tennis Villas. Beach Villas, 47.6 above sea level, 44.6 feet from grade. And Land's End, 42 feet above sea level, and 37.3 feet above grade. Some of the proposed are almost twice that height above grade.

The next document in the pile, Madam Hearing Examiner, is a South Seas exhibit, which I think would be useful to you, because it actually outlines -- it's an exhibit not in this proceeding but in a prior matter, and they actually did the elevations of all the buildings that we've been talking about, and that's in that document -- in this document here, and hopefully

that would be useful.

Outside the gate of South Seas, the rest of Captiva, 60 percent of Captiva, there's no building that's taller than 45 feet above grade that I'm aware of.

With respect to the number of habitable floors, there's only one or maybe two nonconforming buildings outside of South Seas with more than two habitable floors. Within South Seas, Ms. Crespo went through the list last week, four properties have three stories over parking. 14 South Seas communities have only two habitable floors. In terms of units, it's probably about half and half.

The Civic Association, the Captiva Community Panel, Protect Captiva, fully support the need for resilience, and actually we appreciate their expert witness, Christopher Wright's testimony the other day, but stronger, more resilient buildings do not mean buildings -- do not mean buildings with more density and habitable space. Resiliency does not require the Applicant to have 65-foot buildings with 3 habitable floors above parking. They can have new resilient buildings with 2 habitable floors above parking and still not be taller than the trees or any other building on South Seas or Captiva.

Building -- having buildings that are taller than 45, 46, or 47 feet from the grade -- from grade is just not compatible with South Seas or the rest of Captiva, and it's inconsistent with the historic development pattern on South Seas or Captiva, and it should not be approved.

With respect to density, it's really pretty simple. There are no dwelling units or hotels on the ground, on South Seas, since 1973 at greater than 3 units per acre. The 304-acre resort is limited to 912 units per acre for the past 50 years.

On Captiva outside of South Seas, there's no dwelling units or hotels built since the 1980s at greater than 3 units per acre. That's more than 40 years. You're talking about historic development pattern.

Applicant's PowerPoint, and this is important -- actually, I am going to -- the document on top now just shows you the height of the Tennis Villas, and we've already discussed that. But the next document was the PowerPoint number 81, existing hotels in Captiva. Okay. This was their document 81, and then they also gave us document 85 which showed us the four hotels they were talking about as support and precedent for their increase in hotel density. Okay?

These four hotels, which you have in front of you now, are Old Florida hotels and motels built -- Tween Waters in 1931; Jensen's Twin Palm, 1932; Captiva Island Inn, 1950; and Jensen's on the Gulf, 1976. They all predate the Comprehensive Plan. Three of them are designated as historic resources by the County's Historic Preservation Commission. There is no question they could not be built today, and they're not even on South Seas.

The Captiva Community Panel has always supported and continued -- the continued existence of these old historic Captiva structures, and that's why I drew your attention to Lee Plan Policy 23.2.4 earlier, which says, limits development to that which is in keeping with the historic development pattern on Captiva, including the designation of historic resources and the rehabilitation or reconstruction of historic resources. We want to keep these mom-and-pop hotels on Captiva, and we encourage the owners to do so; even if they could maybe knock them down and build three new buildings there on an acre, or whatever it is, we encourage them to keep it, and so has the County. But they have nothing to do -- nothing to do with the new structures that the Applicant is seeking to build on the resort.

The Staff Report -- the Staff Report attached 20 pages of Ordinance 23-22, and they discussed that before. It was adopted in 2023, and that's the amendments that the Applicant believes provides them license to violate -- in our view, violate the plan. The Staff Report, Ordinance 23-22, is Attachment U, but there are only three provisions, and believe me, I know there's a lot here. So to the extent that we can be helpful, we're trying. There are only three provisions in that whole ordinance that are relevant to this proceeding, and that's Section 33-1611(e), that's Section 34-2175, and Section 34-1805.

Section 33-1611(e) exempts South Seas from Chapter 33 even if they don't comply with the Administrative Interpretation. So that's what that Code amendment did.

Section 34-2175 exempted South Seas from the building heights on the rest of Captiva, and instead -- and as I explained to you before, the Captiva building heights was up to 28 feet above base flood. Without consultation with the Captiva Community Panel or anyone on Captiva, the Staff increased that to 35 feet above base flood just to be consistent with the rest of Lee County. We don't think Captiva should be consistent with the rest of Lee County because we're a barrier

beach island, but what they did in this Code amendment is said to South Seas, you can go 45 feet of base flood -- above base flood, which is 10 feet higher than the increased height that they provided for the rest of Captiva.

And then Section 34-805 exempts South Seas from the hotel density limits of 3 acres -- 3 hotel units per acre.

But these Code provisions, which we believe violate the plan, does not -- do not negate the historic development pattern requirements of the plan. And the Staff made it clear that, just so you know, the two recent amendments to the plan do not permit an increase in density or intensity on Captiva.

And the next document is the Staff presentation of the amendments to the Captiva Community Plan that took place in 2023. And you can see, when you have an opportunity to read it, that the amendment to the plan will not increase density or intensity within the Captiva Community Plan area. And we are glad to know that that's the Staff's position on this.

And you may also note -- and, in fact, I would bet that you know that the CCA challenged these Code amendments as being inconsistent with the plan in a DOAH proceeding. We did not overcome the fairly

debatable standard of proof, and we're appealing this decision, just as the County and South Seas are appealing Judge Shenko's decision on the settlement agreement; but we believe that you should know them, they're instructive in their own ways even if you find that they're not binding in any way on this proceeding.

Okay. I'd like to conclude my statement with my fundamental concern with the South Seas application and the Staff recommendation, and then a couple comments I just want to raise about the sewer.

HEARING EXAMINER COLLINS: Okay. Just -- it's been an hour and a half. How much longer are you going to be? I'm concerned about the court reporter. If you're not going to be that much longer -- if it's all right with you -- we will power through and then take a break, and then you can question --

MR. MINTZ: Let's take a break now because it will take a little bit of time, I think, in fairness to the court reporter.

HEARING EXAMINER COLLINS: That's fine. I appreciate you being forthright about that. Let's resume at 20 minutes to 3:00.

(Recess from 2:33 p.m. to 2:44 p.m.)

HEARING EXAMINER COLLINS: Okay. We're ready to resume. We are with the same witness. This was just a

little break.

Mr. Mintz.

MR. MINTZ: So I'm coming towards the end of my remarks, and I wanted to raise some concluding concerns about the South Seas application and the Staff recommendation, and then a couple of comments that I want to make that I -- since the Staff presentation and the County presentation (sic).

But fundamentally, the application must be denied because the proposed development violates the historic development pattern of 912 units, inclusive of hotels, and that the County is required to continue -- and I quote that word -- maintain -- and I quote that word -- and enforce the historic development pattern under Chapter 23 of the plan.

My view is the Applicant understands its problem here, which is why it fails to even acknowledge the existence of Goal 23, Objective 23.2, or Policy 23.2.4 in its PowerPoint page 271, Lee Plan compliance, Captiva Community Plan.

There are only two ways around these provisions:

First, you can argue that the policy entitled "Historic Development Pattern," Captiva's historic development pattern of 3 units per acre does not apply to South Seas, you can say that; and you could also say

that South Seas' own virtually identical historic development pattern of 3 units per acre does not apply to South Seas either. So they are basically saying that the Captiva Code, Captiva density limitations and intensity limitations, hotel and dwelling units, doesn't apply to South Seas; and South Seas' own historic development pattern doesn't apply to South Seas. That interpretation cannot possibly be correct. It makes the policy meaningless, the policy that's titled "Historic Development Pattern."

Or the second thing you can do is you can argue that the application is consistent and commensurate with the historic development pattern of South Seas and Captiva, which they do, but that is wrong on its face. We know that the PUD concept was fully built out with an allowable 912 units at 3 units per acre, with 5 acres of commercial, of ancillary services, to serve the 912 units. We know that hotel units were never to be placed on the 5 acres of commercial. We know that from the '73 zoning approval, we know it from the ADD, and we know it from what was developed on the ground from 1973 till today.

When the Applicant purchased 120 acres of the resort, there were 640 units owned by others, and they had 140 employee housing units and 107 hotel units and

25 unbuilt units. The new owners had 272 units allocated to them, and all of the 107 hotel units were at the north end of the resort by the big marina.

And I really want to be clear about what exists today and what existed before they demolished what existed two years ago. They had 140 employee housing units and 107 hotel units, plus 25 unbuilt. 140 and 107, plus 25 unbuilt. The application now seeks 435 hotel units and 193 two- to four-bedroom condos. That's 620 -- 628 units instead of 272, with hotels not just at the north end, but hotels at the north and the south end. 628 units are not commensurate with the development standards of the Administrative Interpretation, as they claim, and there were no hotels on the 5 acres of commercial.

Their application is not consistent with the concept plan that was submitted with the '73 zoning approval. They're seeking to more than double the number of units on their property. They're looking for a 40 percent increase in allowable units on South Seas as a whole, and 20 additional feet of building heights.

The Applicant in its application states that, quote, the proposed scale and height will be compatible and commensurate to the built form throughout Captiva Island, and, quote, many single-family homes that exist

in Captiva today meet or exceed the proposed maximum building height in this MPD.

Madam Hearing Examiner, not a single structure on all of Captiva meets or exceeds the Applicant's proposed maximum building height, not one. This application is fundamentally flawed.

In going to the Staff Report, it acknowledges that the '73 zoning approval limited South Seas to 3 units per acre. It acknowledges that the Administrative Interpretation set future development at South Seas at 912 units. It acknowledges that the Applicant seeks to increase development from 272 units to 628 units. It acknowledges that the Applicant seeks to increase the maximum building -- maximum permitted building height.

Staff Report on page 2 states, and I quote, notwithstanding the fact that the administrative interpretation was not a development order or permit, previous property owners have developed in accordance with the guidance provided by ADD2002-00098; and they not only developed in accordance with it, they relied on it. They relied on South Seas being a low-density resort.

Staff Report on page 5, quote, although ADD2002-00098 is not a development permit, and it did not authorize development, it is an appropriate

starting point for reviewing the proposed zoning application. Why is it an appropriate starting point? Because ADD2002-00098 represents the historic development pattern on South Seas.

But then the Staff fumbles the ball and claims that you can increase density, increase intensity, increase building heights on South Seas and not violate the historic development pattern, so long as South Seas effectively remains a resort with similar uses. For the Staff -- and I don't understand this -- the magnitude of the development is virtually irrelevant, but the magnitude of development is a development standard that must be limited and enforced under the plan. The Staff -- which I have complete respect for, I work with them all the time -- simply got this one wrong.

One more comment. The Captiva community was pleased when the new ownership purchased South Seas, and CCA, the Captiva Civic Association and Protect Captiva and the Captiva Community Panel would like South Seas to rebuild and succeed, but they need to respect the community and respect the long-standing rules that the community worked extremely hard over decades to set in place to protect our fragile barrier island. Instead, they ignored the Captiva Community

Panel and the Captiva community and invited the inevitable litigation.

But I think there is reason for hope. Before they purchased, they were told that 912 units was the limit on South Seas and that they had 272 units. The owners are funded by Wheelock Street Capital, it's a private equity firm, and they are trying to maximize the development and their profits, and we get it; but there has to be a more realistic plan, a plan B.

In 2014 the former owners of South Seas came to the panel, the Captiva Community Panel, with a development proposal that was consistent with the 912-unit cap. In 2015 the County approved the demolishment of 140 employee housing units and have them replace those units with 44 multi-family units at the south end and 96 multi-family units at the north end, and they still had their 107 hotel units, for a total of 272 units. The Applicant can amend its plan, rebuild its 107-unit hotel, and build 165 multi-family units, their two- to four-bedroom condominiums or timeshares, and a plan can be approved; but the current application cannot be approved. It must be denied.

I would like to, with your permission, just make two other points that reflect something I've noticed during the presentation and I did not prepare for. I

wasn't sure I was going to include it, but I thought there would be a -- an expert testifying about the capacity of the FGUA plant to handle this proposed development, and that expert was crossed off their witness list. So what I'd like to do, if you will permit me, is just to raise a question about the capacity of the FGUA plant.

HEARING EXAMINER COLLINS: Okay. This is the time to raise questions and suggest conditions.

MR. MINTZ: Okay. And what I'm going to do is, again with your permission, just --

HEARING EXAMINER COLLINS: And I want to remind you, you mentioned that there would be a supplemental exhibit you were going to submit --

MR. MINTZ: (Indicating.)

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: I didn't forget. My -- my attorney would kill me if I forget it.

(Mintz Exhibit 2 submitted.)

HEARING EXAMINER COLLINS: These two exhibits go together?

MR. MINTZ: Yes. While I'm standing --

HEARING EXAMINER COLLINS: You have copies.

MR. MINTZ: -- I will give them to you so I don't have to get up again.

HEARING EXAMINER COLLINS: Well, it's now Exhibit 3.

MS. MONTGOMERY: Thank you.

(Discussion at table)

HEARING EXAMINER COLLINS: Mintz Exhibit 1 was a composite exhibit; Mintz Exhibit 2 is relating to FGUA. It's a multi-page exhibit -- do I have that? No.

MR. MINTZ: Did I give you that one?

HEARING EXAMINER COLLINS: Is this part of the same exhibit?

MR. MINTZ: Yeah.

MS. MONTGOMERY: I'm sorry, Madam Hearing Examiner, what exhibit number did you give that?

HEARING EXAMINER COLLINS: The composite FGUA-related exhibit is Mintz Exhibit 2.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: And then I understand there's a supplement to his Exhibit 1, the data analysis --

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: -- that's now going to be Exhibit 3 because I used my sticker.

MS. MONTGOMERY: Okay, thank you.

MR. MINTZ: And then I'll give you the second point I was going to raise based on what I heard today.

That's this one.

(Mintz Exhibit 4 submitted.)

HEARING EXAMINER COLLINS: So this is 4.

(Discussion at table)

HEARING EXAMINER COLLINS: Okay. I'm saving 3 for the supplemental. And this is the community outreach --

MS. MONTGOMERY: Thank you.

HEARING EXAMINER COLLINS: -- it's a one-page exhibit, Mintz Exhibit 4.

(Mintz Exhibit 5 submitted.)

HEARING EXAMINER COLLINS: This is Mintz Exhibit 5. This is a multipage exhibit with "Mariner" printed on the top.

MS. MONTGOMERY: And, Madam Hearing Examiner, I will say as to Number 3 and Number 4, I'm not sure of the relevance, but I know you've acknowledged my standing objection.

HEARING EXAMINER COLLINS: Well, Number 3 I still haven't gotten, and my understanding was that it's data and analysis --

MR. MINTZ: Yeah.

HEARING EXAMINER COLLINS: -- supporting the plan amendment?

MR. MINTZ: Yeah.

MS. MONTGOMERY: Yeah, I don't have it.

MR. MINTZ: No, I didn't --

HEARING EXAMINER COLLINS: I don't have it either.

MR. MINTZ: Yeah.

MS. MONTGOMERY: Okay.

MR. MINTZ: I didn't give it to you yet.

HEARING EXAMINER COLLINS: It's coming.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: Are you standing ready to be cross-examined at this point?

MR. MINTZ: No, I'm standing here ready to discuss the documents I just gave you.

HEARING EXAMINER COLLINS: Okay, let's discuss the documents. I'm sorry --

MS. MONTGOMERY: That's okay.

MR. MINTZ: I'm looking forward to cross-examination, but not yet.

HEARING EXAMINER COLLINS: Okay. So which exhibit are we focusing on now?

MR. MINTZ: We're going to focus on -- let's start with PowerPoint slide 190, which is the South Seas sanitary sewer exhibit, FGUA -- the sewage treatment plant at South Seas. It's not owned by South Seas. It's owned by FGUA, but it's located in the middle of South Seas and...

HEARING EXAMINER COLLINS: And the first page of this exhibit is PowerPoint page 190, you said?

MR. MINTZ: That's correct. That's correct. That is their exhibit. And what it does is it reflects a -- includes a letter dated January 23rd from FGUA, and it says that the application indicated that the proposed project consists of Island Resort and associated facilities with an estimated 117,880 gallons per day of wastewater disposal, and it says that the FGUA facilities are able to accommodate these demands. That's the letter that's there.

And I don't purport to be an expert on sewers, but I do have questions since we don't have a sewer expert that we can ask.

HEARING EXAMINER COLLINS: Okay. So questions are coming, and responses will be handled at the end of all public input.

MR. MINTZ: The other document I gave you, which was a May 23rd letter, only discussed the capacity to handle 425 hotel rooms. That's the May 23rd letter from FGUA. That was the first letter of availability that was provided to the public and to the County with respect to availability, and it didn't include the 193 multi-family units.

HEARING EXAMINER COLLINS: Okay. So this is the

one that says the estimated potable wastewater demand is 85,000.

MR. MINTZ: That's correct, 85,000, and it had 425 rooms in total when it should have been 435, but that's not really important at this point.

HEARING EXAMINER COLLINS: Okay. And then the next letter is the following year.

MR. MINTZ: Is January 23rd --

HEARING EXAMINER COLLINS: A year and a half later.

MR. MINTZ: That's correct. That's correct. And the January 23rd letter -- and I'm looking at the document that was provided by South Seas -- it has a capacity for 435 hotel rooms at 200 gallons per day, for a total of 87,000 gallons per day.

HEARING EXAMINER COLLINS: Where is that at?

MR. MINTZ: Okay. This is on this document here (indicating), the chart.

HEARING EXAMINER COLLINS: Okay, I see it.

MR. MINTZ: Do you see it?

HEARING EXAMINER COLLINS: Yes, I do.

MR. MINTZ: You see it (indicating)?

HEARING EXAMINER COLLINS: Yes.

MR. MINTZ: Okay. So that's 87,000, which is basically 435 rooms times 200 gallons per day.

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HEARING EXAMINER COLLINS: Yes.

MR. MINTZ: Okay?

And then they say -- now they add the 193 multi-family dwelling units, which we understand are two- to four-bedroom, depending on how big they're going to be. Some are going to be two-floor two-bedroom, some are going to be four-bedroom. Those are the condos or timeshares.

And what they do is attribute to the 193 units, as I read this, 160 gallons per day, which is less than the one-bedroom hotel rooms, for a total of 30,880 gallons per day, for a total for the whole project of 117,880 gallons per day.

So the first question I have is how does a two- or a four-bedroom multi-family unit only produce 160 gallons per day of wastewater, when the one-bedroom hotel room is producing 200 gallons per day of wastewater? And my understanding, from talking to some people who know something about this, is that 160 gallons per day is too low for a multi-family unit, even a two-bedroom multi-family unit, let alone a four-bedroom multi-family unit. And I think we just need to have some clarity on this because the FGUA plant is a -- was a distressed plant that's had a lot of problems, and we want to make sure that whatever

development we have, even if it's not the full development that they're asking for, that the -- that the wastewater facility can handle it.

HEARING EXAMINER COLLINS: So you're asking them to double-check their numbers and confirm that there's sufficient capacity?

MR. MINTZ: Yes. And the reason I'm concerned about it is because the other document I gave you was a capacity analysis report provided to the Captiva Community Panel back in 2015, when they were looking to demolish the 140 employee housing units and then replace them with multi-family units at that time. I described it to you, they were going to replace the 140 employee housing units with 140 multi-family units, some of which were going to be at the north end, some were going to be at the south end, but it was going to stay within the 192 cap. Okay, that's the time we got this. When they did the administrative amendment --

HEARING EXAMINER COLLINS: This capacity report is from ten years ago.

MR. MINTZ: Correct, that's correct.

HEARING EXAMINER COLLINS: So wouldn't you need to see a capacity report for 2025?

MR. MINTZ: If there is a more recent one, that would be useful, but I'm not sure there is a more

recent one.

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: Okay?

But here's the point about this capacity report: At that time a two-bedroom multi-family unit was designated to generate 240 gallons per day. That's what they advised us that a two-bedroom multi-family unit would produce based on the Code requirements, 240 gallons per day, but what they are proposing -- what they're showing us now is 160 gallons per day.

HEARING EXAMINER COLLINS: Okay. So you need more detail on that apparent discrepancy.

MR. MINTZ: Because -- I'll tell you why, because when I look at the capacity analysis report, I conclude that -- that their current proposal will generate 148,680 gallons per day, approximately 150,000 gallons per day is what -- based on the numbers we got in the capacity analysis report, that's what they would produce. Assuming half the multi-family units were two-bedroom, half were four-bedroom, it would come to about 148,680 gallons per day, which is a much bigger number than the 117,880 that they're suggesting that they are going to produce in the amount of wastewater. That's a very big difference. And when I read the capacity analysis report --

MS. MONTGOMERY: Madam Hearing Examiner, I think we understand his question. You've made the valid point that's a very old report --

HEARING EXAMINER COLLINS: Okay. We'll get you more clarity on that.

MS. MONTGOMERY: Yes, we will, thank you.

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: As I understand it, the FGUA plant doesn't have the capacity for 148,000 --

HEARING EXAMINER COLLINS: We'll get more information on that for you.

MR. MINTZ: Okay. The next thing is I just wanted to comment on the community outreach, page 260 of their --

HEARING EXAMINER COLLINS: Uh-huh.

MR. MINTZ: Okay. The -- Section 33-1612 of the Land Development Code -- that's Chapter 33, Section 33-1612 of the Land Development Code, requires the owner or agent applying for County approval of, quote, a planned development zoning action, including administrative deviations, amending the approved master concept plan, or other provisions of the applicable zoning resolution, they require them to hold a public information meeting --

MS. MONTGOMERY: Madam Hearing Examiner --

MR. MINTZ: -- on Captiva --

MS. MONTGOMERY: -- I'm going to interpose a --

HEARING EXAMINER COLLINS: Okay. Let me -- let me finish -- this is the question portion of his thing so I want to let him get it out before you --

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: -- say your piece.

MS. MONTGOMERY: Okay, thank you.

MR. MINTZ: Well, they -- they said they did the community outreach, and I'm saying that pursuant to the Code they didn't. And for an application to be sufficient, they have to meet Section 33-1612 of the Code. Their position is they're exempt from Chapter 33 and 33-16 (sic) of the Code because development at South Seas is exempt. Remember they exempted it in the recent code amendment, that compliance wasn't required with the ADD. But this public information meeting is not development on Captiva, it is -- or South Seas, it's a condition precedent to it, and they should have held a public meeting on Captiva pursuant to that Code provision, which they did not do. And that's why they said they held two voluntary meetings, they didn't follow the Code provision, and I would just ask you to take a look at that.

And then the --

MS. MONTGOMERY: Hang on.

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: At this point in time I'd like to interpose my objection. Section 33-1611(e) does, in fact, exempt South Seas from the provisions of -- the Captiva LDC provisions, for the record.

HEARING EXAMINER COLLINS: Okay. Continue, please.

The next exhibit is the Mariner exhibit?

MR. MINTZ: The next exhibit I just received yesterday, actually, and it's an instructive exhibit. It's dated March 8th, 2004, and it's from the owners of South Seas at that point, and it describes their final build-out of the resort at 912 units for the whole resort, at 3 units per acre. And they are so advising every South Seas owner of the fact that they are going to complete the development of 912 units, and it's going to be consistent with their allowable 912 units. And they actually say it's going to fit within the overall density cap of 912, it doesn't include any lock-out units, and they actually say it's going to be at the building heights required by the existing Captiva Code.

That concludes my presentation to you, Madam Hearing Examiner, and I thank you for your patience.

HEARING EXAMINER COLLINS: Okay. I'm waiting for the exhibits that you referenced.

MR. MINTZ: Okay.

HEARING EXAMINER COLLINS: Okay. The next thing that will happen is you may be subject to cross-examination. I'm going to allow that once you submit this.

Will there be cross-examination of this witness?

MS. MONTGOMERY: Yes, but I believe the County has questions first --

HEARING EXAMINER COLLINS: Right, that's fine.

MS. MONTGOMERY: -- so I'll defer to the County.

(Mintz Exhibit 3 submitted.)

HEARING EXAMINER COLLINS: Thank you, sir.

MS. MONTGOMERY: Under the Administrative Code --

HEARING EXAMINER COLLINS: Hang on a second --

MS. MONTGOMERY: -- even though he's a lawyer, he testified as a fact witness, therefore he's subject to cross-examination --

HEARING EXAMINER COLLINS: Hang on a second, let me speak first.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: What's being passed out right now is a compilation of documents that I believe represents the data and analysis supporting

CPA2015-00009 that was later codified as an ordinance by the County. This is Mintz Exhibit 3.

The County?

MR. ADAMS: Madam Hearing Examiner, Joe Adams with the County Attorney's Office. In accordance with your earlier directive, we're going to address most of the testimony from witnesses on rebuttal, but I do have one issue that I wanted -- one line of questioning for Mr. Mintz.

Mr. Mintz, at some point in your testimony you made reference to three condo buildings in South Seas that were around 45 feet above grade; is that correct?

MR. MINTZ: I said approximately -- I actually gave the exact numbers in the -- in the exhibit. It was produced by the -- by South Seas, and it had the actual heights above grade of the -- all the buildings that we -- I discussed.

MR. ADAMS: Would you agree that the heights were approximately 45 feet above grade that you've testified to?

MR. MINTZ: I think in terms of those four buildings, I never measured them, but my guess is they are approximately -- yeah, I would say less than 50 feet above grade certainly.

MR. ADAMS: And over 45 feet above grade --

MR. MINTZ: No, no --

MR. ADAMS: -- some of them --

MR. MINTZ: -- some of them were lower than that. Land's End was significantly lower than that, if I recall. I can tell you what the numbers said that -- that South Seas produced: Bayside Villas was 44.3 feet above; Tennis Villas was 43.6 feet above grade; Beach Villas was 44.6 feet above grade; and Land's End was 37.3 feet above grade.

MR. ADAMS: Thank you. And do those buildings currently meet the flood regulations --

MR. MINTZ: I don't know --

MR. ADAMS: -- for elevation?

MR. MINTZ: -- the answer to that. Some of them have parking underneath. They may or may not meet the flood regulations.

MR. ADAMS: So if you were to indulge me, and if I were to --

MR. MINTZ: I'm sorry?

MR. ADAMS: If you were to indulge me in this line of questioning, and I were to tell you that they do not meet the base flood elevation --

MR. MINTZ: I will assume that as hypothetical, yes.

MR. ADAMS: Okay. When these buildings come in to

redevelop, could they redevelop at 45 feet above grade?

MR. MINTZ: If you're talking about can they be built back if something happens to them, would they be required to build higher if it was exactly the same habitable space; is that what you're asking?

MR. ADAMS: That would be one scenario, yes.

MR. MINTZ: Yeah, I think you would have to -- our understanding is that under build-back provisions, you should be able to build back what you had so that you continue to meet Code, whether that's -- whatever that FEMA requirement is.

MR. ADAMS: So my --

MR. MINTZ: If that's not the case -- if that's not the case, if there's some ambiguity there -- and when we had some hearings on this, there was some ambiguity about that -- that should be clarified by the Code -- build-back provisions of the Lee Plan -- Lee Code so that people could build back what they had.

MR. ADAMS: So your testimony is that, in fact, to meet base flood elevation upon redevelopment, these buildings would need to be built taller than 45 feet?

MR. MINTZ: I said if they need to be taller. They should be allowed to build back what they had. I don't know what their situation is.

MR. ADAMS: Thank you.

MS. MONTGOMERY: Madam Hearing Examiner, inasmuch as the witness opened the door on the DOAH proceedings, I have some questions that are now relevant to the record.

Mr. Mintz, you raised --

MR. MINTZ: Can I just say it's very -- that's why Mr. Trescott got up. It echoes here, and it's very difficult --

HEARING EXAMINER COLLINS: Yeah, it's hard to hear.

MR. MINTZ: -- to hear you.

HEARING EXAMINER COLLINS: I hate to make you come to the podium. Can you maybe move the mic closer?

MS. MONTGOMERY: Okay. If I'm closer, can you hear better? No?

MR. MINTZ: It's a little better, but it's not great.

MS. MONTGOMERY: How about now?

MR. MINTZ: Now it's worse. Now you can't hear anything.

HEARING EXAMINER COLLINS: We've been plagued with sound issues with this hearing.

MS. MONTGOMERY: It's a bad room acoustically, I think.

HEARING EXAMINER COLLINS: Yeah.

MS. MONTGOMERY: Okay. Mr. Mintz, you asserted that Policy 23.2.4, which talked about the historic development pattern, would be violated by the approval of this request based on all those documents you submitted with your Exhibit 1; is that correct?

MR. MINTZ: I believe that -- that the application has to be consistent with the historic development pattern, and I believe that the documents that I presented exemplify and tell us what the historic development pattern was, in conjunction with what's on the ground so --

MS. MONTGOMERY: And you're relying on Policy 23.2.4, as I understand it; is that correct?

MR. MINTZ: I am relying on one of the -- it's one of the policies I'm relying on.

MS. MONTGOMERY: Okay. And did you submit essentially the same information and make the same argument in the DOAH proceeding?

MR. MINTZ: Did I do it?

MS. MONTGOMERY: Did the CCA witnesses -- not you personally, but the people that you put on the stand and your attorney, Mr. Grosso.

MR. MINTZ: We -- we claimed that the Code amendments which exempted South Seas from 3 units per acre, hotels, and the building heights were

inconsistent with the plan. And I think it would be fair to say that the judge -- in that case the administrative law judge did not think we met the fairly debatable standard, and I thought I said that in my testimony.

MS. MONTGOMERY: Let me just say this. In paragraph 80 the ALJ said, a petitioner, which would have been CCA, interprets that Policy 23.2.4 to require the County to limit development in South Seas to that which was consistent with the historic development pattern, and you submitted that the ADD and other provisions were the limiting factor. The ALJ said, the plain language of the policy does not say that the County must limit development of South Seas to that which has historically developed in South Seas. The policy sets out three characteristics of historic development of Captiva: low-density residential, minor commercial, and the resort. That paragraph goes on to elaborate, but do you agree that that's what the ALJ said?

MR. MINTZ: Are you asking me if I agree that what you read is what she said?

MS. MONTGOMERY: Yes, that's what I'm asking.

MR. MINTZ: I mean, I'm happy for you to put the document in evidence.

What I will tell you is that I think what the ALJ -- the ALJ took the position that -- that the South Seas is not limited by either the historical development pattern on Captiva or the historical development pattern of South Seas itself, and was an entity in itself and therefore was basically a black box, which so long as it functions as a resort, you could have whatever density that they propose to have.

And what she said specifically is that petitioner, meaning CCA, presented a strong case that the ordinance would allow development at South Seas which departs from the historic development pattern at least for density and height, but the evidence showed, and it was at least fairly debatable, that the historic development pattern of Captiva referenced in Policy 23.2.4 singled out South Seas as a separate land use subject to its own regulations.

It is a -- may be a separate land use, and it may be subject to its own regulation, but we know what the regulation is.

HEARING EXAMINER COLLINS: Okay.

MR. MINTZ: It's the ADD.

HEARING EXAMINER COLLINS: Hang on a second. We can stipulate that there's a disagreement on the interpretation of what historical development pattern

means. I understand that. We can move on from there.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: I don't need to hear about this court action. I understand that there's a dispute on interpreting the Lee Plan policies.

MS. MONTGOMERY: That's correct, and they submitted all the same evidence they submitted today, and it was not compelling. So I just wanted -- since they opened that door up, I wanted that to be on the record.

And I don't know if you know -- and I know you're an attorney -- but when the County filed its notice of appeal on the circuit court case, that has an automatic stay, does it not?

MR. MINTZ: I wouldn't know, and I'm not aware of that, actually.

MS. MONTGOMERY: Okay, thank you.

You provided a lot of testimony on wide-ranging topics. Let me ask you this: Do you have any degrees or training in engineering?

MR. MINTZ: In engineering?

MS. MONTGOMERY: Engineering.

MR. MINTZ: No, I do not.

MS. MONTGOMERY: Do you have any degrees or training in architecture?

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MR. MINTZ: No.

MS. MONTGOMERY: Do you have any degrees or training in planning?

MR. MINTZ: No.

MS. MONTGOMERY: Do you have any degrees or training in floodplain management?

MR. MINTZ: In floodplain management?

MS. MONTGOMERY: Floodplain management.

MR. MINTZ: No.

MS. MONTGOMERY: Okay, thank you. I don't have any other questions.

HEARING EXAMINER COLLINS: Okay. It is 20 after 3:00. I would like to proceed until 4. The next witness I've been requested to accept is Ken Suarez.

Mr. Suarez, understanding that you may not be able to finish your presentation by 4:00, we are going to start with you anyway. So I don't want to --

MR. SUAREZ: Madam Hearing Examiner, my testimony will be less sexy than my colleague's here. So I can -- I can guarantee you that I will finish before 4:00.

HEARING EXAMINER COLLINS: Okay. So then the witness that will follow you would be Mr. Murphy. Let's allow --

MS. MONTGOMERY: He won't be done before 4:00.

HEARING EXAMINER COLLINS: We're going to try to finish up today -- 4:15 at the latest.

MS. MONTGOMERY: I'll talk to Mr. Murphy.

HEARING EXAMINER COLLINS: Time in this room comes at a premium so I'm trying to keep things moving.

MS. MONTGOMERY: I understand.

MR. SUAREZ: Good afternoon, Madam Hearing Examiner. Today I have --

HEARING EXAMINER COLLINS: Please state your name for the record.

MR. SUAREZ: My name is Ken Suarez. I'm going to give you an introduction here in a moment.

I have a number of folks that have given me an agent authorization; and instead of reading each one, I can present that for the record for you, if you'd like, to accommodate --

HEARING EXAMINER COLLINS: Right, that's an exhibit.

MR. SUAREZ: -- the time constraints.

HEARING EXAMINER COLLINS: Right. There's no time constraints on you. If you're representing others, and you wish to share who you're representing with me, that's fine.

MR. SUAREZ: Would you rather I read those names into the record, or would you like to accept them as --

I have them here printed out.

HEARING EXAMINER COLLINS: I will accept it as an exhibit of yours, just so that you understand that these people will not have standing to speak to the Board if they don't speak at this hearing today.

MR. SUAREZ: Okay, I understand that.

HEARING EXAMINER COLLINS: Or tomorrow for that matter.

MR. SUAREZ: So I will -- I will give it to you as an exhibit.

HEARING EXAMINER COLLINS: Very good. I will mark this as Suarez Exhibit --

MS. MONTGOMERY: Mr. Suarez, do you have a copy for the County and for me?

MR. SUAREZ: I don't, but I will get you one tomorrow.

MS. MONTGOMERY: And for Mr. Mendez?

MR. SUAREZ: I will, yes.

MS. MONTGOMERY: Thank you.

(Suarez Exhibit 1 submitted.)

HEARING EXAMINER COLLINS: This is Suarez Exhibit 1.

MR. SUAREZ: Thank you.

HEARING EXAMINER COLLINS: This is a composite exhibit of folks authorizing you to speak on their

behalf.

MR. SUAREZ: Yes, ma'am.

HEARING EXAMINER COLLINS: That's Suarez Exhibit 1.

MR. SUAREZ: So Madam Hearing Examiner, again, my name is Ken Suarez. I am an owner inside South Seas Resort. My history with the resort is extensive. I had a 14-year tenure with working for the resort, from 1988 into the 2000s. I am a fifth-generation Floridian. I visited the resort as a child beginning in 1976 and, again, started working there in 1988.

My career took me from being a bellman, through the front office; I ran the front office; I ran the guest services department, which included the transportation section, the trolley service inside the resort; I moved my way into the property management department, managing all of the condominium associations and homeowners associations inside the resort; and I left as the director of room operations in the executive office.

HEARING EXAMINER COLLINS: The director of what operations?

MR. SUAREZ: Of room operations.

HEARING EXAMINER COLLINS: Room?

MR. SUAREZ: Yes, director of room operations.

HEARING EXAMINER COLLINS: Room, okay, thank you.

MR. SUAREZ: I hold an accreditation as a Certified Rooms Division Executive with the American Hotel and Motel Association that I received while I was working for the resort.

In 2004 my wife and I purchased our first condo at the Tennis Villas, and we purchased our second one in 2019.

I hold license -- Florida licenses in real estate, in community association management, and I'm a certified building contractor. 95 percent of my work, my business work, is inside the resort; so my knowledge from the time I worked there to present is -- is vast.

Currently I'm president of the South Seas Villas, formerly known as the Tennis Villas. I'm also -- I also chair what's called The Presidents Council. The Presidents Council is a body of presidents of all the associations inside the resort. There's 20 different associations, and I'll go through that for you today.

I'm going to give you sort of a micro-level depiction, kind of an introduction of the resort, so you have a clear understanding of how the resort was developed and how it was operated throughout the years, from '73 when Mariner bought the resort and started developing it.

So there are 12 owners associations listed here -- and I will give you a copy of this presentation for the record, as well.

These 12 associations are listed here. There is one notation on here where it says estate residence, and that is just as a count for the 912. That is not part of any association inside the resort.

So those 12 associations total 528 units.

There are 8 timeshare associations. They're listed above. Where it says total, the -- they're actually counted as 120 -- there's 120 actual units, but for the 912 density limitation, they are counted as 112. The 10 -- or the 8 deduction from the 20 is -- to be honest with you, I don't know why that is, but that's how it's counted in the administrative interpretation.

And what I've done here for you, Madam Hearing Examiner, is I have -- I have taken the master concept plan and sort of listed where these -- where these associations sit outside of the master concept plan so you can see the relationship to what the zoning application entails.

This is the mid part of the resort. And the documents I had presented earlier that showed the count of the units, that coincides with how they are numbered

here on the map.

This green lined area, this is not counted. These are private homes; and when the original developer of the resort started purchasing the property, these -- these lots existed as they sit today, and the original developer sort of just consumed the property around them. So they just built around these -- these single-family residences.

Again, this is the north end of the resort, and I -- sorry about that.

What I wanted to point out here, on this particular part of the map, is you have this association, and this is called Land's End Condominium Association, and this -- this area shaded in green, there is a line that is delineated as an easement that cuts across about where my cursor is, and it comes across all the way to -- to the beach, and that line -- and it goes north. And that is sort of a line of protection so that when they built these condominiums, that their view would never be disturbed. So while it's inside the MCP, the developer really cannot build anything past -- past that line. And I believe this line sort of starts that line of protection, and it carries -- it carries going -- going east.

So the golf course -- this is -- this is where the

golf course is currently situated.

I want to make a couple of corrections. Ms. Crespo had indicated last Friday that there were multiple associations that had over-the-ground-floor parking, and that's simply not true, and so I listed them here to correct the record.

HEARING EXAMINER COLLINS: Your statement is that the listed associations do not include over-ground-floor parking?

MR. SUAREZ: That is correct.

HEARING EXAMINER COLLINS: So what do they have?

MR. SUAREZ: They are lifted buildings. Most of them have air conditioning equipment and storage facility under those buildings.

HEARING EXAMINER COLLINS: Oh, so what you're saying is that there's only like a crawl space below?

MR. SUAREZ: Well, it's more than a crawl space but not enough for parking.

HEARING EXAMINER COLLINS: Understood.

MR. SUAREZ: For the master concept plan, there is Tract C, which is the -- the Applicant's water park that is currently under construction, and I wanted to -- I wanted to highlight this particular area for several -- several reasons: One, just to show you the proximity of -- of this particular project in relation

to the south end of the resort -- and I'll give you a better picture on the next slide.

This picture was taken yesterday, and as you can see, this particular development right now occupies a good portion of -- of space that used to be tennis courts and the registration building as the resort was developed. And during Hurricane Ian, the tennis courts were -- were destroyed, and so they -- I think they had plans on eliminating them anyways but -- this is current construction. The reception center used to be up here in this area.

And the reason why I wanted to bring that to your attention is that because it specifically relates to my particular association, this being the South Seas Villas, formerly known as the Tennis Villas, that are here in this area. And of course we were called the Tennis Villas because there used to be tennis courts here. So we changed our name.

The concern here is in the -- this lined area in purple, this is where the proposed hotel complex is going to be developed, and of course this is their water park. As I understand it, both of these are -- have consumption on the premises for both, and you see how it relates to the closeness of our buildings here.

There's a deviation request for buffering, and I

think even setback in this area, and the question is -- well, there's an objection to it because of the COP that is attached to these particular properties. We -- we feel at the South Seas Villas that we need better protection from noise and lighting and just overall status, as well. So we would -- we would object to these deviations from that standpoint.

HEARING EXAMINER COLLINS: So your position is that you would like to see them meet Code in this regard?

MR. SUAREZ: We would like to see greater protection from -- from our --

HEARING EXAMINER COLLINS: So you're okay with the deviation, but you feel further conditioning is appropriate?

MR. SUAREZ: I'm not okay with the deviation whatsoever.

HEARING EXAMINER COLLINS: Well, that's what I'm --

MR. SUAREZ: They should follow -- they should follow the current Building Code.

HEARING EXAMINER COLLINS: That was my first statement to you.

MR. SUAREZ: Yes.

HEARING EXAMINER COLLINS: Okay.

MR. SUAREZ: Bear with me one second. Let me get myself caught up here.

Also want to ask a question about this commercial use, which I'm a little confused on. The -- and I will flip that back to this slide here.

As I understand it, this area shaded in purple and orange was the designated commercial area originally as the resort was developed; and as you can see here, they've -- they've kind of cut a line through the middle of it, and they're taking -- they're taking part of this commercial area, and they're moving it off to the north end of the resort where their hotel rooms originally were -- were built, the 107 hotel rooms that are on the marina, and they've -- they've moved that commercial, and they're shifting part of it to the north.

So my -- my question would be as to why is this -- why do they need to do this? Because if there were already hotel rooms on the north end tract, why do they need to shift the commercial aspect of it north? Why don't they just keep the entire 5 acres of commercial down at this end?

HEARING EXAMINER COLLINS: All right. So you're asking for them to clarify the motivation of their site design?

MR. SUAREZ: Excuse me?

HEARING EXAMINER COLLINS: Are you asking them to clarify the motivation behind their site design?

MR. SUAREZ: No, I just don't understand the -- the shifting of the commercial -- the commercial was always granted to be in this area down --

HEARING EXAMINER COLLINS: I understand that. I'm trying to ascertain what your question is so that I can --

MR. SUAREZ: I'm just simply asking why are they shifting --

HEARING EXAMINER COLLINS: So you want the motivation behind --

MR. SUAREZ: Yes, ma'am.

HEARING EXAMINER COLLINS: -- their site design.

MR. SUAREZ: Yes, ma'am.

HEARING EXAMINER COLLINS: Okay.

MR. SUAREZ: As I was discussing with you about the 12 different HOAs and 8 different timeshare units, I want to give you sort of an idea of how that sort of fits into how the resort was developed with the original developer, and how they -- how they designed their resort to be a -- you know, to be actually South Seas Plantation Resort back in the day.

So as they developed, obviously, these

condominiums, they had offered a rental program for these different condominiums; and you, as the purchaser of the condo, could enter their rental program; and as a rental agent, they would -- they would offer these on the open market for rental, offer amenities to the individual who participated in their rental program. And that took place -- many years of that.

Back in the late '80s and early '90s when I was managing the front office, we had approximately 475 to 525 different rental condominiums and then the 107 hotel rooms. So we had quite a few in our program.

You asked the question earlier to Shawn Farrell, how many is that today. From our estimations, in talking to various other resort presidents, we think that number is between 100 and 150. So if they have more information on that, they could share it.

I also want to note that when people purchase their units, they were well aware of the density cap and just the ambience of the resort, and that's why most people made their purchases. That's why my wife and I -- that's why we purchased, because we liked -- we liked how the resort was functioning, the low density, the clustering. Obviously you've been there, and you know the charm of the resort; and of course Hurricane Ian has caused some issues with that charm

right now, but it will come back. But I -- I would say that it was quite the selling feature in the real estate office, that it would remain at a cap of 912.

So I just wanted to share this slide, talk a little bit about the commercial space and where their 210 hotels (sic) are going to be built. This commercial area was made up of the conference center, Chadwicks restaurant back in the day, later to be -- to be Doc Ford's; and then this area here was office -- resort office, offices, and also below were conference facilities. It also in this back area housed the tennis pro shop. And you can see with having a building that is going to be 65 feet above grade, how it's going to affect at least one of our buildings.

I just wanted to -- last week you had asked about the flag. This Deviation Number 9 is before you. I'm not sure why the deviation is being requested when the flag is flying today. I'm a little perturbed by it because it's bigger than the American flag that is steps away from it, for the record.

So parking. As a five-generation Floridian, if there's one thing I do know is that any small beach town, the biggest issue is parking. No question about it. And we are going to have a major parking problem on the resort if this development is to -- is to occur.

The amount of parking there needing to fill their hotel rooms, along with 813 employees, I have yet to see where they're going to be parked.

There is a travel trend these days where guests want to be more independent; they want to be able to have a vehicle; they want to be able to leave the resort and go to other areas of the island, maybe visit Ding Darling; and the idea of them taking a ride-share or a scheduled transportation from the airport to the resort and contain themselves on the resort, I think it's overstated, frankly, and that is not today's travel trends.

Also, they have 150 golf carts that they are seeking to -- to rent. What I see when I'm out on the resort, which is quite often, I see families checking in and them parking their rental car and then wandering over and renting a golf cart for the day. That's going to take up a parking space.

Down at the south end of the resort where the water park is going to go, they have 210 hotel rooms that are planned on being built there. And with 252 parking spaces that are allocated, I would venture to guess, between employees, golf carts, and guests that are going to travel from the north end to the south end to visit the water park, that there's going to be a

parking issue. This is a major concern, if not the number one concern, for the surrounding HOAs. Those -- the overflow parking will be in our associations. No doubt about it. And if people don't -- they will find a parking space; and if there's no parking spaces in the HOAs, they will park in the right-of-way. So we have concerns about where employees are going to park and where overflow parking is going to be contained.

I also want to state that the law enforcement of being able to -- there's really no capability of law enforcement to police parked cars that are not parked legally. They have no -- they have no jurisdiction inside the resort. They also have no jurisdiction inside the resort to -- to police the speed limit.

We have, really, no ability to tow vehicles away. There is -- there have been moments, while I have been at the resort, that we have asked tow truck companies to come out and tow away vehicles that are parked in a right-of-way or illegally parked, and they laugh in our face because they're not going to drive out an hour, an hour and a half for a car that may or may not be there. So we really -- we do not have a tow truck on the island that would come and tow away a car if they're illegally parked. So we really have no real enforcement for people who are -- are not placed in a

proper parking space, which is a major concern.

I'm going to shift directions for a little bit. I am currently the asset manager for the residential property that abuts the Beach House restaurant that's at the north end. You raised issues about it last week, and I'd like some more clarification from the Applicant to discuss the deviation request here.

This is the property that I manage for the trust, and this is currently the Beach House restaurant that is being built. This is the front entry to the restaurant, and there is a 30-foot access easement between this residential property and this restaurant. This access easement was drawn up in 1960, and it is for pedestrian and vehicular access to the beach. As you can see, the restaurant is almost on top of the easement; and with this easement being in place, there's no way to properly buffer this restaurant from this residential property.

As I understand it, this area here will be outside dining, and I can tell you that this owner is not happy about this restaurant being there without the proper buffering. So we do have concerns.

Also, I have a question as to why the Applicant is basically able to not follow the proper setbacks. You can see that the edge of the restaurant is really on

top of the road. On the Staff presentation today, they had a slide up that said there was a ten-foot setback from interior roads, and this is not being followed. It's also the reason why they can't properly buffer the front of this restaurant.

Here's a better picture of it, and this is a picture of the beach access. These trees are mostly on my client's property, private property.

Just so you know, I have made -- I have made the Applicant aware of this issue. I have sent them emails, I have also sent County Staff emails on this setback issue, and they have gone unanswered.

You will hear more about this later on in public comment.

And this access easement is in place for Section 22, Township -- of Township 45, so it's not -- it's for that entire section, which is about half of the resort.

I want to make you aware that the -- the road going into the resort -- if you've been out there, you've been through the gate. Once you enter the gate, about 25 feet after entering the gate you start on the first association property. That is in this area right here. So the Applicant does not own the road from this particular area here to approximately right here. This stretch of the road is owned by five different

associations, and it is outside the MCP.

This is the list of the associations that own the road inside the resort.

We talked to you a little bit today about storm prep. I know we had a -- we had testimony about hurricane evacuation and plans and whatnot. My experience on South Seas Resort: Hurricane Charley in 2004; Hurricane Wilma in 2005; Hurricane Irma in 2017; Ian in 2022; Helene in 2024; and Milton in 2024.

This was Hurricane Helene. This was in the morning before the storm was at its maximum, at the point of maximum enforce -- force winds. So what I'm telling you is that 12 hours later was at the peak of how it affected the resort. So these pictures were taken prior to any evacuation, which there was no mandatory evacuation whatsoever at that time because it was 200 miles offshore; so, you know, there was no need to issue an evacuation, but it did affect the resort in a tremendous way.

This white van is a vehicle that tried to drive down the main part of the road, and they got stuck.

This is South Seas Plantation Road.

This is a video, and if you don't mind, I'll play this video for you of -- it's one of my employees who has a lifted truck, and got him to take this video so

you could see how it affected...

(Video played.)

MR. SUAREZ: When you see this, you wonder why we're looking for more development.

This is Hurricane Milton.

Last week we heard testimony by one of the Applicant's expert witnesses that talked about breakaway walls and how, when they design these things, they break away and they stay in place. They don't float off. Madam Hearing Examiner, in my experience with this, I can tell you that they do not stay in place. They do float off; they do cause damage.

This is an overview picture of the road. You can see how narrow it is, how constrained it is. This area here was an area that was completely taken out by Hurricane Milton's force. It had to be patched.

This is a picture of the same area, and you are looking at three to four feet of sand on top of the road. There was no way to get in or out of this unless you had a four-wheel drive -- and I don't even think a four-wheel drive would have worked. I think you needed more like a four-wheeler to get through this.

This is another picture, and you can see the debris that's in the mangroves in this picture.

So I guess my question for the Applicant is what

happens when you have no warning? How do you evacuate folks in situations like this?

And I'd like to read something to you: A massive and intense cyclone storm that impacted much of the eastern United States, including the Florida Gulf Coast and Captiva Island. Impact on Captiva Island, storm surge and flooding --

MS. MONTGOMERY: I'm sorry, Madam Hearing Examiner, what are we reading from, or is it just his thoughts or --

MR. SUAREZ: Can I finish and then I'll --

HEARING EXAMINER COLLINS: Well, give us some context, please. What are you --

MR. SUAREZ: This is the storm that hit Captiva.

HEARING EXAMINER COLLINS: Right, but what are you reading from?

MR. SUAREZ: I'm reading -- I'm just reading -- it's not that long, but I'm just reading some information about how a storm impacted --

HEARING EXAMINER COLLINS: So this is something you drafted yourself?

MR. SUAREZ: No.

HEARING EXAMINER COLLINS: Okay. So we're trying to determine the source of the document, that's all.

MR. SUAREZ: This is just -- this came from NOAA.

Would you like to know more about how this storm impacted Captiva? Is that what everybody wants to know?

MS. MONTGOMERY: No, you're reading a document, and we have no idea --

MR. SUAREZ: Okay. I'll -- I'll simply tell you. Instead of reading the document, I'll tell you. There was a storm that hit on March 13th of 1993 that flooded Captiva in the middle of season, in the middle of the resort being highly occupied and the area being highly occupied. So, again, my question was, how do you deal with a storm that you -- how do -- how do you evacuate when you don't have any warning? This storm, if it would have hit just a little south of us -- a little less south, it would have caused -- there were many people in the northern part of Florida that died, there was up to 12 foot of storm surge in -- in areas of Northern Florida. And I just wanted to make sure and put into the record that we just don't deal with hurricanes, we deal with other storms that impact a fragile environment like the resort --

HEARING EXAMINER COLLINS: Okay.

MR. SUAREZ: -- so --

HEARING EXAMINER COLLINS: So your question to the Applicant is what their preparation is for that type of

storm.

MR. SUAREZ: Correct.

HEARING EXAMINER COLLINS: Okay.

MR. SUAREZ: So that concludes my testimony.

HEARING EXAMINER COLLINS: Thank you very much. Remain seated, I just want to make sure whether anyone has questions of you.

Adam?

MR. MENDEZ: I do not, thank you.

HEARING EXAMINER COLLINS: (indicating).

MS. MONTGOMERY: I just have a couple questions.

HEARING EXAMINER COLLINS: And I need to put your PowerPoint into the record. Did you give that to me?

MR. SUAREZ: I'm going to give you a copy of it.

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: And will you give the County and I a copy tomorrow then?

MR. SUAREZ: Yes, ma'am.

MS. MONTGOMERY: Thank you.

Mr. Suarez, you indicated that you own two condominiums inside South Seas. Do you reside in either of those condos?

MR. SUAREZ: I'm sorry, I can't hear you.

MS. MONTGOMERY: I don't know how to get any closer.

You testified that you own two condos inside South Seas; correct?

MR. SUAREZ: That's correct.

MS. MONTGOMERY: Do you reside in either of those condos?

MR. SUAREZ: I do not.

MS. MONTGOMERY: So you rent those condos?

MR. SUAREZ: I do not.

MS. MONTGOMERY: So you don't live there, and you don't rent them?

MR. SUAREZ: No, ma'am.

MS. MONTGOMERY: I'm afraid to ask what do you do with them.

MR. SUAREZ: Well, one is sitting completely empty. The other, I was recently removed from the resort's rental program.

MS. MONTGOMERY: Okay. Where do you reside --

MR. SUAREZ: In Fort -- in Fort Myers.

MS. MONTGOMERY: So you're an hour, hour and a half away from South Seas personally?

MR. SUAREZ: I'm approximately an hour -- well, depending on traffic, it could be two hours, but I'm an hour without traffic.

MS. MONTGOMERY: Okay. And the last storm you mentioned happened while you were working there. What

did you do?

MR. SUAREZ: The last storm that I mentioned?

MS. MONTGOMERY: You were there.

MR. SUAREZ: Yes, ma'am, I was there.

MS. MONTGOMERY: What did you do?

MR. SUAREZ: What did I do...

MS. MONTGOMERY: You raised the question what happens when those happen. What did you do?

MR. SUAREZ: I don't know the premise of your question, what did I do as far as --

MS. MONTGOMERY: Relative --

MR. SUAREZ: -- my job at the time?

MS. MONTGOMERY: Did you do any of the things that Mr. Farrell testified he does when --

MR. SUAREZ: I was not in -- I was early on in my tenure at the resort so I wasn't in a management position to make that decision.

MS. MONTGOMERY: So your relationship to the resort is that you own two units and that you manage, I think, other people's properties.

MR. SUAREZ: I do.

MS. MONTGOMERY: Do you do anything else inside the resort?

MR. SUAREZ: Yes, I'm a -- I'm a contractor so we perform remodel work.

MS. MONTGOMERY: Okay. And I'm assuming since you said you're a Realtor, do you sell property?

MR. SUAREZ: No, nobody wants to buy from me. That's my wife's job.

MS. MONTGOMERY: Okay. I don't have any other questions, thank you.

MR. SUAREZ: Thank you.

HEARING EXAMINER COLLINS: Okay. Mr. Suarez, I'll take your exhibit now.

(Suarez Exhibit 2 submitted.)

HEARING EXAMINER COLLINS: This is Suarez Exhibit 2, thank you, and please remember to make a copy.

MR. SUAREZ: Yes, ma'am, I will, thank you.

HEARING EXAMINER COLLINS: Okay. It's 5 minutes after 4:00. The next witness is Jerry Murphy. I'm going to say that we will start with his testimony tomorrow morning at 9 a.m.

MS. MONTGOMERY: Can I ask a dumb question? I know we're here because we expected hundreds of people. If we're not going to have hundreds of people, do we still need to be here where we have to end at 4:00?

HEARING EXAMINER COLLINS: Well, I'm given to understand that more people will be coming, possibly tomorrow, more likely next week.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: And so we discussed moving the hearing over to my chambers, but apparently that is not going to be appropriate until -- unless we go beyond next week.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: Once public input is closed, and we get to rebuttals and closing remarks, then we can move to my chambers, because they anticipate there being a number that can be accommodated by the hearing room.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: Okay. I'm closing the hearing for today. We will resume tomorrow at 9 a.m. with Mr. Murphy.

(Proceedings concluded at 4:05 p.m.)

VOLUME 2

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEE)

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 219, is a true and correct record of my stenographic notes.

Dated this 25th day of February, 2025.

Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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