VOLUME 6
THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2023-00051

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

VOLUME 6

PROCEEDINGS:	PUBLIC HEARING
BEFORE:	Donna Marie Collins Chief Hearing Examiner
DATE:	March 20, 2025
TIME:	9:00 a.m. to 3:58 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

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VOLUME 6

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David Brown, RESPEC

VOLUME 6

I N D E X

PUBLIC INPUT:	PAGE:
Richard Grosso	6
Jay Brown	122
Bill Finley	132
Tom Sadlowski	145
Marilyn Frederick	157
Chauncey Goss	189
Tony Lapi	196
Richard Levinson	201
Calli Johnson	218
Certificate of Reporter	225

E X H I B I T S

Grosso Composite Exhibit 1, February 11, 2025, letter to Joe Adams with attachments, submitted on page 7
Grosso Exhibit 2, questions for Applicant and Staff, submitted on pages 106 and 114
Finley Exhibit 1, written statement, submitted on page 131
Finley Exhibit 2, PowerPoint presentation, submitted on page 131
Sadlowski Composite Exhibit 1, PowerPoint and reference materials re: Bayside Villas, submitted on page 145
Frederick Composite Exhibit 1, PowerPoint, submitted on page 179

VOLUME 6

P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning. My name is Donna Marie Collins. I'm the Hearing Examiner presiding over the case, which is South Seas Island Resort Mixed Use Planned Development. The date is March 20, 2025. Today is the sixth day of hearing to consider the rezoning of this 120.5-acre parcel.

We are in the public input portion of the hearing. For those of you who are unfamiliar with the zoning process, my task as the Hearing Examiner is to accept testimony and evidence and prepare a recommendation to the Board of County Commissioners. They will be the final decision-makers in this case. My recommendation will evaluate the request based on the review criteria in the Lee Plan and the Land Development Code.

Testimony from the public will not be limited as to time. Nonparty participants will have the opportunity to testify, enter evidence into the record, and pose questions. Those questions will be noted by the public -- will be noted by the parties and then answered at the conclusion of all public input.

MR. MINTZ: Madam Hearing Examiner, may I approach?

HEARING EXAMINER COLLINS: Yes.

(Sotto voce between Hearing Examiner Collins and

VOLUME 6

Mr. Mintz)

HEARING EXAMINER COLLINS: During public input, I'm going to invite members of the public to come sit in this first seat here. We're finding that the sound is not great, for some reason, from the podium. So once it's your turn to speak, please come sit at the front table here.

Once public input has concluded, I will take no further testimony or evidence from the public. At that point we'll go back to the parties, and they will have an opportunity to address questions and concerns raised by members of the public, and put on any rebuttal testimony they wish to put on, and then their closing remarks.

I don't believe we're going to conclude the hearing today. I just pass this along for those of you who are in the audience that may not be familiar with the process.

I understand that certain members of the public have requested to present testimony in a specific order. I will honor that. I see that I've been provided with an updated list for today, and I will abide by that list.

Finally, once the hearing begins, we will recess approximately every hour and a half to give the court

VOLUME

reporter a respite. We will resume promptly after that break and continue throughout the day in that manner. I will break for lunch, as I anticipate this hearing will continue throughout the whole day. The lunch break will be about an hour and 15 minutes, and then we will resume promptly at the conclusion of the lunch break.

We will terminate for the day at 4 p.m. We will resume again tomorrow at 9 a.m., and continue until 4 p.m. that day, if necessary.

I'm going to ask everyone to please take a moment, double-check your mobile devices. Please place them in the silent or vibrate mode.

And members of the public that are here today that wish to testify, I'm going to administer the oath to everyone en masse. Please raise your right hands. Do you swear or affirm the testimony and evidence you place into the record will be the truth?

(Participants respond affirmatively.)

HEARING EXAMINER COLLINS: Okay, thank you.

Richard Grosso.

MR. GROSSO: Thank you, Madam Hearing Examiner. I've got some documents I'd like to present to you before I begin my presentation.

At the beginning of this hearing back last month,

you asked me to hold off until now to put into the record the requested party status for the CCA. So I've got that -- thank you. I've got that. I've got a letter of a legal analysis and attachments that I'd like to put into the record, with copies for all others, if I may?

HEARING EXAMINER COLLINS: Okay. You know I've ruled on this; right?

MR. GROSSO: Yes --

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: I know you ruled, but you had just told me wait to put it into the record --

HEARING EXAMINER COLLINS: Yes --

MR. GROSSO: -- somehow.

HEARING EXAMINER COLLINS: -- I will accept that now. This is a composite exhibit?

MR. GROSSO: Yes, ma'am.

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: Thank you.

(Grosso Exhibit 1 submitted.)

MS. MONTGOMERY: Can I inquire as to whether this is the letter dated February 11th that went to Joe Adams? There's --

MR. GROSSO: (Nods head.)

MS. MONTGOMERY: Yes?

VOLUME 6

(Grosso Exhibit 1 submitted to Ms. Montgomery.)

MS. MONTGOMERY: Thank you.

MR. GROSSO: You're welcome.

Madam Hearing Examiner, was that a hard no on the stand at the podium? Does it sound --

HEARING EXAMINER COLLINS: Well --

MR. GROSSO: -- good?

HEARING EXAMINER COLLINS: -- we can try it. If we get raised hands, and people can't hear, well, then we'll -- let me just mark this exhibit before you begin.

MS. MONTGOMERY: Can I ask a question, a point of order, Madam Hearing Examiner, of Mr. Grosso?

On page 8 of this document, there's a list of documents that Mr. Grosso submits they may submit into evidence, whereas there's no foundation for any of those documents. Are they going to -- are you assuming they're automatically in evidence, or are you going to address it when you actually submit them?

MR. GROSSO: In response to counsel, Madam Hearing Examiner, when that letter was written, it was obviously prior to the hearing. Those documents that have already come into the record have -- I've got two additional attachments -- or the -- I've got my letter and two references in my letter that I presented into

the record now, and then there were -- I forget what number of attachments to the -- the letter -- the February 11th letter itself. So anything that was in the may-be-introduced list that hasn't been is obviously not being introduced --

MS. MONTGOMERY: Okay. That's --

MR. GROSSO: -- other than --

MS. MONTGOMERY: -- what I --

MR. GROSSO: -- what I've given.

MS. MONTGOMERY: -- wanted to confirm. Okay, thank you.

HEARING EXAMINER COLLINS: So those items are not included in this composite. You've got them on the side, and you may enter them?

MR. GROSSO: It's either in the composite that I've handed to you and counsel now, or other people have already put it in, and I had no need to put it in, if that --

MS. MONTGOMERY: Well, for example, one of the things is you have excerpts of testimony from another proceeding where --

MR. GROSSO: And that is -- that particular document is in the attached -- in the composite exhibit that I placed into the record.

MS. MONTGOMERY: Well -- and so I object to that

because the County and the Applicant objected to it at the DOAH proceeding. It's not subject to cross-examination, and so that excerpt should not be accepted without some discussion about that.

MR. GROSSO: The --

MS. MONTGOMERY: Well -- and you also have a video, and again --

MR. GROSSO: The video I have not put in the record.

MS. MONTGOMERY: Okay.

MR. GROSSO: The testimony excerpts are from County Staff persons that address the status of the ADD, which you've heard a lot about, and that it hasn't been amended. That's Mr. Dunn who testified that it was the governing document, it had -- it had been codified. It has not -- it never was amended to --

HEARING EXAMINER COLLINS: All right.

MR. GROSSO: -- increase --

HEARING EXAMINER COLLINS: It's subject to amendment by virtue of this proceeding though. That's what this proceeding is, it's going to amend that ADD.

MR. GROSSO: Oh, yes, but --

HEARING EXAMINER COLLINS: I recognize that the ADD represents a crystallization of the current development entitlements on the property.

VOLUME 6

MR. GROSSO: And the point I was making was that his testimony is that it -- up until now it had never been amended. There had never been an amendment to the ADD that increased that 912 number. That was the specific point I was making about his testimony here.

HEARING EXAMINER COLLINS: Okay. Neale, with regard to documents that are submitted in this packet, my -- the scope of my review is informed by the Land Development Code and the Lee Plan, and I will look at this evidence, and I will afford it the weight that it should be afforded. It's tricky here because the traditional Rules of Evidence don't apply, but I am limited, to some extent, by virtue of my authority to review zoning applications. So I don't know if that gives you any comfort. I'll note your continuing objection, however.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: And obviously, you know, information, testimony, letters from individuals that aren't present and can't be subject to cross-examination, you know, that -- it's informative, but it's not -- it doesn't have the same weight as if they were here testifying. You know that.

MR. GROSSO: Very much understood. And to be very clear, that -- Richard Grosso speaking on behalf of

CCA. Our arguments are that the Plan and the Code is violated. We're not asking you to enforce anything other than the Plan and the Code.

And as to County employees who aren't here, obviously the nature of this hearing doesn't allow us to subpoena or compel the attendance of people. I think that's why the rules --

HEARING EXAMINER COLLINS: Understood.

MR. GROSSO: -- probably grant some latitude.

HEARING EXAMINER COLLINS: Understood, and I'm going to let you begin.

And if you have an objection --

MS. MONTGOMERY: Note my continuing objection.

HEARING EXAMINER COLLINS: -- you can voice it, and then we'll just continue on.

MR. GROSSO: Thank you. That was all I had in terms of preliminary matters before I make my presentation.

HEARING EXAMINER COLLINS: Okay. So will there be additional exhibits beyond these?

MR. GROSSO: No, ma'am.

HEARING EXAMINER COLLINS: Okay. I'm just going to clip them.

Maria?

MS. PEREZ: Yes.

VOLUME 6

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: Can you hear me okay?

HEARING EXAMINER COLLINS: Yes.

MR. GROSSO: Thank you.

HEARING EXAMINER COLLINS: Can everybody hear all right? If you can't hear, raise your hand during the course of the testimony. Please do not call out.

Okay, go ahead.

MR. GROSSO: Thank you, Chief Hearing Examiner Collins.

My name is Richard Grosso. I'm an attorney, and I'm here on behalf of the Captiva Civic Association, and I'd like to present to you a legal analysis based on the record that's been created throughout the application and submittal process, and obviously during the process over which you are presiding today. And the conclusion that we think is clear is that this Applicant cannot meet its burden of proof that the rezoning complies with the Lee Plan and the Code. We believe the facts and the law allow only a conclusion that a denial must be recommended.

You know, if -- if this Applicant applied today for 272 units -- or 912 units on the entire 304 acres, 272 on its 120 acres, it would not be allowed. You heard Mr. -- Mr. Gauthier speak about this. But

VOLUME 6

it's --

HEARING EXAMINER COLLINS: It would not --

MR. GROSSO: -- vested --

HEARING EXAMINER COLLINS: -- it would not what?

MR. GROSSO: It would not be allowed.

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: But it's vested because it was approved, and it's almost completely built out. And so the Lee Plan, the property rights element with the community -- community plan policies recognizes and vests that previous existing development as the historic development pattern at South Seas Island Resort. The Applicant knew that when they purchased this property, that the law clearly gives them that vested right to continue that and not be subject completely to start over to the modern plan. There's no possible view, we believe, of the facts or any possible interpretation of the Plan under which -- today, under the modern Lee Plan, 912 units could be permitted in this particular location.

This application to increase what's there already violates the Plan and the Code on density, intensity, compatibility, protection of development from coastal hazards, from evacuation -- unsafe evacuation times, adequate public facilities requirements, and

environmental requirements.

It's too dense. It's too much for this shrinking land mass -- I remind us of sea-level rise -- for this particular piece of earth on a coastal barrier island at the northern tip of Captiva, as far away as you can get from a safe place of evacuation. Conditions won't do it. There are no conditions that can overcome the sheer density and intensity of this project and make it permittable. I'll address the merits in a moment more in-depth.

As a preliminary matter, I think there are two -- two issues that go to the basic sufficiency of the project. The first is the failure to comply with Land Development Code 33-1612 that requires for a rezoning, or planned development rezoning, a community meeting. Mr. Mintz addressed that in his presentation to you, that there was no such meeting. There is no record of such a meeting in the record whatsoever. There was, instead, some sort of open house that did not meet the requirements for that type of a meeting.

Now, the Applicant's argument is that they are exempted from that by virtue of a recent ordinance that exempted them, that exempted development from everything in Chapter 33. Our position would be that that does not exempt them from the preconditioned

procedural requirements for a community meeting. That's not development, that's a process. That's a mandatory procedure that has not been met.

The second fundamental insufficiency problem is the Applicant doesn't own all the property that -- for which it is seeking rezoning and deviations. Ms. Berkey made a presentation to you; Mr. Patterson, Mr. Whitt made presentations to you that make it clear that, on the face of the application and the Applicant's own submittals, there's deviations that would apply to roads that the Applicant only owns a portion of, and other people, other property owners own portions of that road, yet they're seeking a deviation for standards that would apply to that access road. The -- they could only apply deviations to lands that they own, but yet they're seeking deviations then that's going to be unworkable when it applies to property of others.

Section 34-202(a) requires a signed statement under oath that the Applicant is the owner or authorized representative of the owner for all property that's subject to the rezoning, and has the authority to secure the approval. They don't do that. They can't do that for Deviations 3 and 4D. Mr. Whitt and Mr. Patterson had an extensive presentation to you

about that, that those deviations rely on vegetation -- existing vegetation on somebody else's property. Obviously that's not allowed by -- by the Code. They can't impose deviations on other people -- other people, folks, who were -- who bought into this 304-acre, 912-unit master planned development, who then bought their interest in that. They have property rights, too, and their easements cannot be encroached upon in order for a rezoning and deviations to be granted to this developer. For those two reasons the application is insufficient on its face and should be denied summarily.

But now moving on to the merits, I'd like to start off with addressing the governing Florida law on this. The statute, Chapter 163, very strictly prohibits any development order that's inconsistent with the Comprehensive Plan. There's no question that a rezoning is a development order. No one is asserting otherwise. It has to comply with the Comprehensive Plan. That applies to everything that's relevant in the Comprehensive Plan.

And I know, Madam Hearing Examiner, you had asked one of the witnesses about Policy 5.1.2. That, and all other policies that are relevant to the issues generated by this application, do have to comply with

the Comprehensive Plan.

Section 163.3194(1)(a), after a Comprehensive Plan has been adopted, all development -- all development orders shall be consistent with such plan. This Comp Plan was enacted in 1984. It's been amended, obviously, several times since, including, importantly, the community plan provisions. But the lengthy discussion or definition of what's a development order under Florida law clearly applies to all rezoning decisions.

And I point out Chapter 163.3215, subsection (3), that's the statutory cause of action for folks that challenge a development order, that it violates -- on the basis it violates a Comprehensive Plan, and it applies to development orders that materially alter the use, density, or intensity of a -- of a piece of land. Surely this applies here. This rezoning, if it were to be granted, materially alters the amount of development that could take place on this property. Right now, as we sit here, 912 units is the maximum. If the rezoning were to be granted, it would add 356 units to that overall total of the 304, and it would add that number of units to this Applicant's share.

HEARING EXAMINER COLLINS: You're including hotel on this.

MR. GROSSO: Yes, I am. And, you know, for purposes of the Comp Plan, for purposes of the statute, we can get into hotels versus residential units in a moment -- you know, a little bit later. But all development orders, whether it's a single-family home, multi-family home, a hotel, a commercial development, all development orders that materially increase either density or intensity or uses are subject to the act. So there should be no question whatsoever that this rezoning has to comply with everything in the Comp Plan that's relevant.

They would increase the number of development units -- and, again, I'll use development units for both residential, permanent, and hotel units -- from 272 to 628, just on this 120 acres alone. That's a massive increase.

HEARING EXAMINER COLLINS: Well, what constitutes a material increase in this scenario that you're espousing?

MR. GROSSO: You know, I suppose if we were arguing about a two-unit increase, a single-digit increase, we could debate and discuss whether that's material. I don't think, having read pretty much every development order case ever under this law, I don't think there can be any question that if you take the

number of units from 272, and you increase that to 628, that there's any reasonable, plausible argument whatsoever that that's not a material increase in units. That, to me, would seem to be -- unless your --

HEARING EXAMINER COLLINS: Well, you're --

MR. GROSSO: -- question is raising an issue I'm not getting, I'm sorry.

HEARING EXAMINER COLLINS: No, I just -- I'm wondering what is your benchmark for that. Because we have multi-family timeshare, and we have hotel/motel; right? And how are you -- how are you treating those units? Are you treating hotel units equal to dwelling units in this scenario?

MR. GROSSO: In here, on this location -- and this case is, of course, all about this location -- hotel and residential units have historically always, by multiple County actions, been treated as the same. So I refer to them as development units and --

HEARING EXAMINER COLLINS: Well, I'm going to ask the Applicant to clarify this during their rebuttal, because what I'm not clear on is -- what my understanding was of the history of South Seas and the units, that all the units were like separate lock-off units, right, with exterior hallways and everything; and my understanding is the request for hotel now is --

it's still hotel -- the other way is still a hotel, but this is a little different because it's internally accessed, and I'm focusing on what's the relative increase in impacts by virtue of that. So that's why I'm asking you what your perspective is on this. So is your perspective that my focus should not be on the delta of external impacts from what is approved today versus what they're asking for, or am I looking at something else?

MR. GROSSO: I think that, as a general proposition, the delta is the question. You just look at general land use law in general --

HEARING EXAMINER COLLINS: External impacts -- external impacts --

MR. GROSSO: And when --

HEARING EXAMINER COLLINS: -- or impacts --

MR. GROSSO: I would say yes to external impacts, but that's going to be light. It's going to be structures --

HEARING EXAMINER COLLINS: Understood, understood.

MR. GROSSO: -- traffic, people, noise, all that.

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: And I'll talk more about those, but any way you slice it, from our perspective, this is a big increase, a really big increase, given the finite

amount of land involved, given the existing roadway network and the existing lay of the land in terms of the inner -- the inner -- the spliced nature of the buildings, some that this Applicant owns, some that others own. It's very clear throughout the history of this project that it mattered that there was this very specific limit on the number of units. Call them residential, call them hotels, the record can allow no conclusion other than that was a huge component of this entire master planned development, the -- and I'll come back to that in a moment.

We think it's clear -- in fact, I haven't heard the Applicant argue otherwise -- that somehow this rezoning is not subject to the statutory prohibition or requirement that you must comply with the Comprehensive Plan. The judicial precedent is so strong in this area, the judicial precedent makes clear, the law strictly prohibits an inconsistent development order.

One of the top cases is out of this district, the Second District, Lee County versus Sunbelt Equities; Pinecrest Lakes; the Machado case; Brevard County versus Snyder (sic), the Supreme Court -- I've cited all these to you in my -- in the letter that I handed out this morning, so I don't need to take your time and read you case law of all cites.

The statute says -- and the cases always emphasized this. The statute says -- and I'm quoting from 163.3194(4)(b) -- it is to be construed broadly to accomplish its stated purposes and objectives. So it's a remedial statute written to stop growth that was inconsistent with the environmental and the infrastructure and the community character and the other policy objectives of the statute. It was meant to stop that. So any doubt when it comes to applying this statute to this rezoning, any doubt that comes with applying this rezoning to the provisions of the Code or the Comp Plan, because the law is to be construed broadly, must be resolved in favor of strict enforcement.

The leading case is the Florida Supreme Court case Snyder versus Brevard County in 1993 which -- and I quote, "it is clear that orders on rezoning applications must be consistent with the comprehensive plan," very specific to rezoning applications. And Snyder said, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comp plan and complies with all other procedural requirements, as well. And I'd spoken to that a little bit earlier this morning to you.

And a point I want to make now, as we focus -- as

I focus on rezonings, is that the animal of a rezoning is a very different animal than, for example, a special exception, where the law says if you meet all the technical criteria for a special exception, you demonstrated entitlement, you must be granted it. Snyder is the leading case, and other cases have made clear, there is no entitlement to a rezoning. A rezoning request must be strictly construed for strict compliance with everything in a comprehensive plan, and it is within the discretion of the local government, indeed the responsibility of the local government, to deny it if that rezoning is inconsistent with anything in the comprehensive plan.

The Lake Rosa case, 5th DCA 2005, rejected a claim that prior development orders can somehow vest you. It ruled every development order, after a plan goes into effect, must comply with the plan. Compliance with the plan, the Lake Rosa case said, is mandatory.

City of Boynton Beach versus Carroll that I've cited in my letter is possibly the clearest on this idea of some sort of vested rights. A prior permit or zoning approval, ruled the Carroll case, does not create a vested right. It can be revoked where the zoning has changed. Now, of course there's vested rights law; so if somebody vests rights, materially

changes their position, spends a lot of money based on an approval, then changing the law on them later would violate their vested rights, and they get what they had. That's clear. We surely don't debate that. And, in fact, as I've said, this Plan recognizes the vested rights, and so does CCA, of this Applicant. But there's nothing about -- and the Carroll case makes clear, the law in effect at the time of the decision controls. So -- that's us, that's now, so this rezoning must comply with the Code and the Plan as it exists today.

So to come back to the grandfathering, any grandfathering that this Applicant might have is limited to the 912 total combined development units, and that's it. Chapter 23 recognizes that by recognizing that South Seas Island Resort is part of the historic development pattern, and certainly by virtue of property rights law and vested rights law, they are vested to that. We don't dispute that. But that's all they're entitled to because, as I'll explain later, as you've seen throughout this hearing, I think for everything that matters to this Comprehensive Plan, there's no way this amount of development makes sense, can comply with this Code and this Comprehensive Plan.

HEARING EXAMINER COLLINS: When you speak to

vested rights as to the 912, is it your position that the existing development entitlements are no longer consistent with the Lee Plan?

MR. GROSSO: The -- yes. I think the testimony that you heard earlier from Mr. Gauthier, for example, that sticks in my mind was that, in his opinion, that if you were to apply everything in the Code, everything in the Plan today, that there's no way you would approve -- and I'm not speaking you specifically, Your Honor -- 912 units here. You've got to remember that when 912 units was approved in 1973, that was 11 years before the modern Lee Plan was enacted, 12 years before the 1985 growth management law was enacted. We've come a long way since. I mean, the law that governs now is a completely different world than the law that governed in 1973. You didn't have a State law that required plans to protect life and limb and structures in the face of hurricanes and storm surge. We didn't know then, certainly not most of us, in terms of anything reflected in Florida law or local comp plans about rapid intensification of hurricanes, sea-level rise, climate causing the water to get heated up and rise. We didn't have requirements for adequate infrastructure, strong environmental protections for coastal resources. All that stuff came in in the 1985

law, and then it was reflected in the changes made certainly by this Comprehensive Plan and the -- and I forget when the Lee Plan -- might have been '89 there was some litigation, maybe early '90s, that the Lee -- modern Lee Plan that we're looking at, with some tinkering, today was finally amended to reflect all of those requirements in the new State law.

So, yeah, I think certainly from our perspective, it's hard to imagine how 912 units could have been approved on those 304 acres at the northern tip of Captiva, as far away from safety as you can get, surrounded by Pine Island Sound and the Gulf of Mexico with rising seas, given the historic development pattern that's been out there, the narrow constrained roadway, everything else that applies to this piece of earth, it's hard to imagine 912 would be deemed appropriate. It would be deemed, from our perspective, a lot too intense.

And so, you know, from that perspective, the idea that we take 120 acres of that, and we increase the number from 272 all the way up to 628, seems to us fairly absurd under this law, to be frank about it. And -- and something that hasn't been discussed, but I think has to be considered when you talk about a rezoning and planning decisions, what happens to the

rest of that 304 acres? Now, if this 120 acres is rezoned to allow this amount of an increase, how do you say no to the others that come in after that? The cumulative impact of this kind of density increase, this kind of development unit increase, given all of the testimony and evidence that you've heard and that I'm going to talk a little bit about today, it seems incomprehensible. If that's appropriate -- I don't think you can possibly square that being appropriate either on this 120 acres alone or the entire 304 acres if others want the same -- and you're hearing they don't, but that changes. If that's appropriate, then what does this plan mean? If that's appropriate, then what does this Code mean? If that's appropriate, what does this -- what is this law all about that requires consistency with the Comprehensive Plan?

So all the relevant provisions of a plan must apply. The statutory definition of consistent captures everything that you've heard, Your Honor. 163.3194(3)(a), a development order is consistent with the plan if the land uses, densities or intensities, and other aspects of development permitted are compatible with and further the objectives, policies, land uses, and densities or intensities in the plan, and if it meets all other criteria.

So, you know, to dwell on that for just a few minutes, density and intensity covers everything, whether -- whether one wants to call a hotel unit something different than residential, that means it's commercial, and then it's intensity. If it's residential -- and here it is. The testimony and record unequivocally shows that historically, for a lot of good reasons, here on Captiva hotels have been completely equated to residential uses. But either way, however you slice it, it's either density or intensity, and it's inconsistent with the Comprehensive Plan because the density or intensity and the other aspects, the details of it, don't further the intent or terms of the Comprehensive Plan.

And -- and -- and so, for example, you know, you can't read that definition, I don't think, and accept the premise of the Staff Report here where it says, well, the Plan, the Community Plan provisions recognize South Seas Island Resort as its own thing, as a separate category from the rest of Captiva -- and, sure, obviously Chapter 23 recognizes explicitly South Seas Island Resort as a component of Captiva separate from the rest of it; but you can't read the statutory definition of consistent without saying this premise of the Staff, a resort is a resort, so for purposes of

Chapter 23, it's a -- it was a resort then, it will be a resort now, and the scale, the magnitude, the size, all the deviations, all the details of what that will mean don't matter. With all due respect, that theme, theory, premise of the Staff Report cannot withstand the statutory definition of consistent.

Now, the other thing that you've seen from various ordinances that have come into play, Mr. Mintz' discussion, Mr. Gauthier, Mr. Murphy, is even if you want to look at South Seas Island Resort as somehow, you know, a separate part of Captiva from the rest of Captiva; but the history of the regulations, the ordinances and what's developed out there is that they're about the same. The gross density at South Seas Island Resort, 3 units per acre for combined hotels and residential, is the gross density that's been the historic development pattern for the rest of Captiva. The heights, same thing, just about the same.

So I think that there's -- maybe the Applicant has tried to create some sort of scenario for you that South Seas Island Resort is categorically a different thing, categorically a more dense, more intense thing that somehow has been walled off from the rest of Captiva, but that's just not the reality of the record that I think anyone in this room has heard, or created

by the historical record of this rezoning application and the regulatory development history of South Seas or the rest of Captiva. The "it was a resort so it doesn't matter how big it grows" cannot withstand the Plan -- I'll talk about that in a minute here.

The case law is also clear that the determination of consistency with the Comprehensive Plan looks at the Plan as a whole, and that's essentially a question of you look at the Plan as a whole. In this case, the Community Plan provisions for Captiva, it's everything about evacuation, it's the myriad of compatibility requirements, environmental requirements, hurricane evacuation, coastal vulnerability, everything that applies here, environmental protections. And one asks oneself, does this Comprehensive Plan, looking at everything in total -- not cherry-picking any particular one, the entire thing, does this Comprehensive Plan contemplate that this amount of development would be approved here? And I cannot believe that there's any question that the answer to that is no given everything that applies here. If this amount of development is allowed here, what does this Comprehensive Plan mean? Where would this Comprehensive Plan say no increase of development? Where -- the policies that you've heard people talk

about -- and I'll touch on a little bit more in reference for you. The policies about coastal high hazard area, environment, evacuation, storm surge, compatibility, historic development pattern, if that stuff doesn't apply here to stop an increase of development, where does it? What other parts of Lee County was that written for? They're written for here, and I think that that's fairly clear. There's no way the Lee Plan contemplates this amount of development here.

And as you're making that decision, what I would remind is that the burden of proof is on the Applicant. That's the US Sugar Corporation case, Village of Key Biscayne case, the Machado case. The Applicant has the burden of demonstrating strict compliance -- and that's another key aspect of this, the Brevard County versus Snyder, Machado versus Musgrove, that standard is strict scrutiny. So the Applicant has the burden of demonstrating with evidence, under strict scrutiny -- and I refer to the definition of consistency, that everything about this rezoning, the density, the intensity, the use, the deviations of the master development plan, all aspects of that strictly comply with all criteria in the Comprehensive Plan. We don't think they've come close. We don't think they can come

close to meeting that very exacting burden of proof here, I don't think. And if you think about that burden of proof, has it been demonstrated to you that all the policies that apply here have been complied with? Again, I don't know that strict scrutiny -- the Machado definition of strict scrutiny arises from the necessity of strict compliance with the plan, a court makes a detailed examination for exact compliance with, or adherence to, a standard or norm. It's the antithesis of a deferential review. Strict implies rigid exactness or precision. A thing scrutinized has been subjected to minute investigation.

Now, again, with all due respect, I don't believe that one can realistically look at the Staff Report or the presentation, I don't think one can look at the presentation made by the Applicant here, when you look at everything, where was the environmental analysis of noise, of light, of water quality impacts to an already impaired waterbody? Where was the analysis of what additional nutrients would do to Pine Island Sound, an impaired waterbody designated by the State? Where was the analysis of the narrow congested vegetation-lined road? There's one way out. Where was the analysis of real compatibility, other than arguing a resort is a resort; we've always been a resort; we're still being a

resort.

The only testimony and record, frankly, that we've seen that really look rigidly and exact -- with exactness at the details of this were that put on by project opponents, people who live there, people who know this island. The analysis those folks have presented just -- it so far exceeds the analysis presented in support of the application. I don't think that it can be said at all that this Applicant has met its burden under strict scrutiny of demonstrated interpret -- compliance with the Plan.

Another aspect of strict scrutiny under Florida law, again under Snyder and every other case that's addressed this question, is that there is no deference to be given to a Staff interpretation of the Comprehensive Plan. So that's -- Madam Hearing Examiner, you know, you read the Plan. You read the Code, too, in terms of your reading of what it means, and you're not to give deference to Staff's interpretation, that that's how we look at it, that's what we think it means. That doesn't matter. It's your reading of the plain terms and the intent of the Plan that -- that matters.

And I want to make a point there. You've heard some reference to a Division of Administrative Hearings

proceeding where a recent Code change for Captiva was litigated, and where in general -- again, that was a general what does the Code say on its face. This rezoning was not on the table there, as this Applicant kept reminding us there, and it was a fairly debatable standard there. That's a -- the challenger has to prove there's no fair debate; the challenger has to prove the ordinance on its face unquestionably violates the Plan. The development order standard of review is completely turned around, is completely different. The Applicant, not the opponents, has the burden of proof. It's a strict scrutiny burden of proof, not a fairly debatable burden of proof. That's a major difference. And of course the other major difference is now you have the details of a specific rezoning application that's on the table; and, again, we think the Applicant hasn't come close to demonstrating under strict scrutiny full compliance with the Plan.

Now I'll move to the Code. The law is obviously the same. The local government must deny a rezoning application that violates its Code. The burden of proof -- that's the Realty Associates -- I'm not going to reference cases for you, they're in my letter -- unless you would like me to -- must deny the rezoning if it violates the Code. The burden of proof, again,

is on the Applicant to demonstrate compliance with the Code. An important aspect of that -- and, you know, you've heard some, and you'll probably hear a little bit more -- difference between what the Code might say and what the Plan might say. The Buck Lake Alliance case, First District Court of Appeal, the year 2000, says, to be clear, an application can comply with the code, but that doesn't mean it complies with the plan. They are separate requirements, and compliance with the code does not ipso facto -- I think is the right phrase -- demonstrate compliance with the plan, too, because the code is inferior to a plan. The plan is the constitution. The plan -- where there's any difference or conflict, the plan prevails over any contrary provision of a code or a more lenient provision of the code. In fact, the Lee Plan says that -- or Code Section, excuse me, 34-491(a) of the Code says that, that where there are apparent conflicts between the -- and I'm paraphrasing -- the plan and any regulations, the Lee Plan will prevail. So that, I think, is a pretty important thing to remember in this particular case.

So that's the law; so I want to talk a little bit more about the merits of this application.

There is a fundamental problem, a fundamental

obstacle with this project, this rezoning. This is not a rezoning of an undeveloped piece of land or a partially built out piece of land. This is a rezoning of a parcel of land that is almost -- I think the number might be 27 units -- don't quote me, maybe -- something like that remaining to be built out of the 912, a fully built-out master development plan. That can't be forgotten. The idea of this master development plan, as was enacted in 1973, yes, it's been confirmed multiple times since then, was that, you know, you give flexibility to the Applicant to do integrated commercial/hotel/residential with all the roads, all the open space. You come up with -- the value of a master development plan, as opposed to conventional zoning, is it allows you to look at an entire piece of earth as a whole and decide what makes sense to go where, and that's what happened here.

And Code Section 34-612(2)(h) says the purpose and intent of a planned development district -- and you've heard that the South Seas Island Resort MPD has always been treated as akin to a planned development because they didn't have that animal back in '73. It was kind of the model before it became that. So this is a planned development. The purpose and intent of a planned development district is to provide a process

and record on which developers, public officials, the general public, and the consumers of development may rely. And that's what I'm talking about here. So an MPD is approved in 1973, that Applicant gets the benefit of the flexible site design, gets 912 units approved; and now over the years, as you and I sit here, most of those have been sold off to other people who relied on that approval. And, you know, I'll get into a little bit more of the detail -- you've heard some of it -- but it requires specific amounts of open space, specific types of buffers and heights and all of these things that when people bought -- I'm buying into an already planned master development plan. This is what it's going to be. This is how dense it's going to be, and that mattered; this is how high it's going to be, and that mattered; and people bought into that, and people relied on that. That's the purposes of it. It gives the developer the go-ahead, okay, you can rely on this, too. You can know that over the next whatever, 40 years it's going to take you to build this, we're not going to change the rules on you. You get to rely on this. By knowing, you can make all your investments, build, and sell off as many of those 912 units as you want. That's how it works. Everybody gets that surety. Everybody gets that reliance.

And now here we stand after all that has happened after -- over those 50 years, and all but 120 acres of those 304 have been sold off to other people -- and you've heard from some of them. You're probably going to hear from a lot more of them today, tomorrow. And now this Applicant -- this person -- I'm sorry, this Applicant comes in and does their due diligence with the County, and the County confirms to them before they purchase, yes, you are vested to that 912, and they bought the land. And now this rezoning -- again, this is a different animal. Now this rezoning asks, okay, we want to -- we want to take our 120 acres that we still own, and we want you to start over from those as though we can somehow physically extract that 120 acres from the rest of the 304, and we want a clean slate that allows us to increase from 272 to 600 something -- I forget, the number is on another page -- of what we want. That can't be what the PD provisions of the Code contemplate here.

And that's exacerbated, you know, by the fact that -- as you'll see and you've heard, when you -- when you drive through South Seas Island Resort, the Applicant owns this, and somebody else owns that on the other side, and it's completely intertwined.

The application here, you know, acknowledges that

this property -- I'm quoting from the application -- this property has functioned as a cohesive master planned resort since its inception. It is in the final phases of -- of development.

You've seen Mr. Murphy. We -- he put it in the record and explained that the 1973 master plan included, quote, enforceable conditions -- I'm continuing to quote -- those were, those enforceable conditions, to limit the overall density so as to create a very low-density, high-quality resort community. I continue, with an overall limitation to have the flexibility to develop pockets of higher density, while leaving other areas completely untouched. Until now, I guess, where some of those open space areas, those untouched areas are now going to be touched by new development. I continue to quote from the 1973 -- with a maximum limitation of 912 combined dwelling units and hotel units.

Now, having received the benefit of that flexibility, the predecessor in interest to this application -- to this Applicant received the full benefit of that. So much of that was sold off to other people, they get their benefit. This Applicant comes in and buys it and says now we want you to change the rules. Not by a unit, not by two units, not by some

minor tweaks, but by a 40 some percent increase of development overall. That isn't right. That is not what an MPD is all about.

The spatial relationship here is so hugely important. You cannot physically remove this piece of land from the rest of those 304 acres any more than you can physically remove it from the rest of Captiva -- and I haven't really talked about that yet -- outside of the gates of South Seas Island Resort. The presentations you've seen today, the stormwater, the drainage infrastructure, the garbage collection, the roads, the amenities, is completely intertwined. I don't know how you possibly could say that's you, that's you, we can make a decision here as if the rest of those folks who own the rest of the 304 acres don't exist. This property is completely interspliced with the other ownership now. That's the animal of an MPD. It worked fine. It did what it was supposed to do. The idea that 50 years now, after all the profits have been received and everything's been developed, we get a lot more to -- that -- that can't be. That completely wipes out the integrity of the MPD, which violates Chapter 23 and everything else in the Plan. There's no way -- and to make matters worse, it's not just the density, but we also want additional deviations,

deviations from buffers. We want to encroach on the easements other people own. We want to create enough visitor traffic that other people are going to have people parking on their property. We're going to get more traffic, more noise, more community -- again, if this was a raw piece of land that this developer wanted a big zoning increase over what was there before, and the new residents they're going to sell to will have to deal with whatever noise and traffic and other stuff that is generated by that development, well, then that's what they walked into. That's fine. But the idea that the folks who bought into that MPD, as it has been described very clearly and very carefully laid out, now they're going to get more noise, more traffic, more cars, more parking all over the place, that -- that can't comply with the compatibility, with the Community Plan provisions of this Comprehensive Plan.

Their -- remember the code section about the government, the developer, and the citizens get to rely on MPDs. So the developer got the full benefit of what they did, sold off to this Applicant. The folks who bought within that MPD, they don't get the full benefit of what they purchased because now they get 356 additional development units full of people and all the impacts that come with that. That can't be right under

the animal that is an MPD; that can't be right under the Community Plan provision of the Code -- of the Plan, and it can't be right under the compatibility and the traffic and all the other provisions of the plan.

The -- I'll move on to the provisions of the Plan that talk about threatening density.

Captiva is so limited in its capacity to handle and accommodate new development, it has its own chapter in the Comprehensive Plan that -- you don't see that every day. And you can't read logically that chapter of the Comprehensive Plan in any way that -- other than it was meant to preclude density or intensity increases over what the historic development pattern was.

The current limitations that exist for density, intensity, and height at South Seas are -- and I don't think anybody can possibly claim otherwise -- as set in ADD2002-00098, which confirmed the same density and intensity authorized by the Zoning Resolution Z-73-202. Again, as I said before, that would not be approvable under the Plan today, but it was then. And Chapter 23 recognizes that vested right by referencing South Seas Island Resort, but it sure does not allow an expansion of what was known to be South Seas Island Resort. So, you know, that 356-unit increase is just completely uncalled for, completely prohibited by Chapter 23 of

the Plan. Mr. Gauthier, Mr. Murphy made it clear to you that the existing number would never be approved, let alone the existing number plus 356 units.

The setting is important to that. The application and even the Applicant's own witnesses acknowledge the vulnerability of this location. The -- Ms. Crespo explained to you that the entire state of Florida, certainly at least South Florida, is grappling with the realities of hurricane intensity and storm surge, that mere fact that the application makes clear. Why are they rebuilding? Because they were devastated by Hurricane Ian, and that devastation was exacerbated by Milton and Helene later. And you've had people come talk to you about the hurricane vulnerability, evacuation issues. These are not hypothetical, they-could-happen-one-day scenarios. They are -- it did happen. It happened three times in two years.

Mr. Andrea, the landscape architect, referred to the new environment of frequent flooding here at Captiva. Structural engineer Mr. Wright, Christopher Wright, assumes storm intensity will get more intense over time. Certainly we -- that's true. That doesn't sound like a location that makes sense for 356 units on top of the 272 that are there, and the Plan and the Code reflect these realities. That's all the

provisions I'll cite to you in a little bit that reflect the extreme storm surge, flooding, hurricane vulnerability. You've heard about sea-level rise, too, in this very unique, very fragile, very vulnerable part of a barrier island. So the idea that we would gratuitously increase 356 units to the 912 already there, in the face of that kind of vulnerability, it's -- it's irresponsible just on one level, but it violates the Code and the Plan more directly for purposes of why we are all here.

Now, density is an important component in terms of some policies that address specific numbers, and it's obviously a key component of the historic development pattern provisions of the Plan. The testimony you've heard, I think, makes clear that whatever density or intensity is appropriate here has to be at the very low end of the ranges that are allowed by the Lee Plan. The Plan and the Code allow development only at the lowest density or intensity ranges.

Policy 1.1.6 that applies to outlying suburban, it establishes a density range, between 1 and 3 units per acre.

Policy 2.2 of the Plan says clearly, maximum densities are not guaranteed. Planned development densities are determined on a case-by-case basis.

So an argument, oh, we don't violate the 3 units per acre -- now, we think they do; but even if they didn't, that's not an entitlement. The case-by-case basis for this particular piece of land, given the history, given the location, has got to be, as Mr. Gauthier I think testified, at the very lowest end of that range.

Section 34-413 of the Code, again -- and, you know, I want to be clear. Whether one wants to call a hotel unit residential or commercial --

HEARING EXAMINER COLLINS: Well, the Code calls it commercial.

MR. GROSSO: I'm sorry?

HEARING EXAMINER COLLINS: The Code calls it commercial.

MR. GROSSO: Yes, ma'am, we acknowledge that. And the point we would add onto that is that when one is interpreting the Community -- Captiva Community Plan provisions for them, hotels have always been considered -- unlike the rest of the county, hotels have always been considered resident -- whether they were considered residential or commercial doesn't really matter. They've always clearly been subject to the 3-unit-per-acre residential density limit. So that's a key part of that. Obviously we can't dispute

the fact that on the mainland, most other parts of the county, hotels have never been subjected to the 3 units per acre residential limit. That's different here given the historical development pattern in Captiva, given the string of ordinances that I think Mr. Mintz presented to you. And County Staff, I think, has been very clear about that, as well, very candid about that.

But either way, for other purposes of other provisions outside of the Community -- Captiva Community Plan provisions, however you slice this, this is too much development, call it commercial or call it residential. 34-314, density or intensity of use permitted in any planned development shall be determined on a case-by-case basis in accordance with the range of density or the uses permitted or encouraged under the Lee Plan at that location. So, again, I want to really focus the inquiry here. We're not talking about some outlying suburban parcel of land somewhere else. It's what's appropriate at this very specific location.

Now -- and I think the facts are clear, that you have to be limited to the lowest density or intensity range here, at the very end of a narrow, environmentally-sensitive barrier island surrounded by already impaired Pine Island Sound sensitive waters,

that close to Ding Darling Preserve, that close to a preserve by SCCF, that close to a preserve owned by the City of Sanibel, one of the more environmentally sensitive islands -- barrier islands in the state of Florida, a special flood hazard area zone, the coastal high hazard area, Level A evacuation zone, one of the most hurricane and storm surge vulnerable areas in the state of Florida, connected to the mainland by one two-lane narrow, constrained road that has narrow shoulders for big stretches of it, vegetation, sidewalks, buildings; you cannot physically move, with little room to clear any cars that break down during an evacuation. The causeway off the island was demolished and unusable after Hurricane Ian. The development pattern that has built up around it is low-density, low-rise, and that applies to both hotels and residential; inadequate traffic, fire, and sewer availability.

What's left under this Comprehensive Plan? Environmental -- the only thing left that you could possibly say this doesn't have wrong is direct footprint environmental impact, and that's because it's already been built out under the 912-unit MPD. Every other matter -- every other issue that matters under this Comprehensive Plan or this Code is completely

inconsistent with what this Applicant is asking to be approved.

The -- the compatibility, the surrounding -- the impacts on the surrounding land uses, I mean, you saw the presentation of Mr. Suarez, Mr. Mintz, the fella who was here at the end of the -- I think the last day that we -- that we broke, to show you -- just really bring home the reality of how interconnected all of this is, and how you can't move without -- if I'm another owner, I can't basically move without being confronted with something that South Seas Island Resort owns now, this Applicant, and having that impact me, be it a restaurant, some other commercial use, a buffer that they want to use my easement, those kinds of things, the compatibility problem is just so stark.

The land use and transportation experts made clear what the historic very low density and intensity development pattern was there. The traffic increase, the unsafe access, the congestion, the undue burden on the streets, the additional demands on an already unsafe evacuation time, the low-lying flood-prone barrier island subject to extreme natural hazards. I mean, everything that this Plan or Code checks off in terms of a negative for development intensity exists here, again, other than a direct environmental

footprint, that I'll talk about environmental -- the environmental impacts still are really strong, really important in terms of off-site impacts. And of course on land I own, I can't keep birds from flying in there; I can't keep wildlife from trying to cross the roads.

The next thing I want to talk about is a prior ruling that's in the document that I handed to you this morning. There is a Zoning Staff Report for case number DCI2023-00028, and it references -- I believe this might have been, Your Honor, a ruling of yours back in 2011, HEX -- the HEX report in case DCI2011-00048. This rezoning should be denied for the same reasons that the rezoning in that case was denied. In that case the Staff Report in the 2023 --

HEARING EXAMINER COLLINS: What case was -- what case was it?

MR. GROSSO: It was -- I have a name and -- I have a name, and I'm not remembering the name --

HEARING EXAMINER COLLINS: I wasn't the Hearing Examiner then.

MS. MONTGOMERY: It was Laura Bellflower, as I recall.

HEARING EXAMINER COLLINS: Yeah, I wasn't the Hearing Examiner then yet, but I'm curious as to what case it was.

MR. MENDEZ: The Kinsey Inn.

MR. GROSSO: Yes, ma'am. Mr. Mendez helped me out there, the Kinsey Inn project. That was the Staff recommendation, Mr. Mendez? The Staff recommendation in 2023 was the Kinsey or the 2011 Hearing Examiner was the Kinsey?

MS. MONTGOMERY: Yeah, and it's my understanding it never went to the Board and was withdrawn so it's not binding.

MR. GROSSO: Okay.

The real focus is on the 2011 Hearing Examiner report. It made three or four findings that I think are really relevant here. The first was that -- the ruling in that case was that the exemption in Chapter 34 of the Code, the exemption for hotels from the residential density limits is not supported by the Lee Plan, said that report. The Plan does not specifically authorize different treatment between hotels and residential in terms of density, was the ruling in that case, whether it's a planned district or a conventional district. And I think apropos of a comment that you had made a moment ago, even -- and, again, I'm paraphrasing the rulings in that Hearing Examiner order, while designated commercial --

MS. MONTGOMERY: I am going to interpose an

objection.

MR. GROSSO: I'm talking.

MS. MONTGOMERY: The Hearing Examiner does not make a ruling in that situation. It makes a recommendation, and the recommendation never went to the Board so -- and even in your own letter, you said that zonings are determined on a case-by-case basis.

MR. GROSSO: That's fine.

HEARING EXAMINER COLLINS: Noted, continue.

MR. GROSSO: Thank you.

Even -- again, if I may continue, while designated commercial, hotels are still subject to the residential density standard, was the interpretation of the Plan in that case.

Now the recent Staff Report from 2023 points out that the plan has not been amended since that 2011 Hearing Examiner recommendation or report. And so that same interpretation would -- should apply here. Under Policy 1.1.6, hotels and residential are to be equated under that theory in terms of residential density; but, again, I come back to points I made earlier. That does not mean that in this location they're entitled to 3. It means they need to be at the lowest end of that density spectrum. And in the context of an integrated planned development, I mean, it doesn't make sense

otherwise. That's a hotel; that's a residential. The idea that in this location, specifically for this master planned development project, that those units -- I'd call one hotel, it doesn't count. The other, that's a residence, it counts. It doesn't make sense given the lay of the land and existing buildings and the spatial relationships here.

The next point in that ruling, the 2011 ruling, is that the approval of old pre-Plan, pre-Code structures is not precedent for approving them again under the new Code, under the new Plan. And that addresses in this case, there's been references to, I think, four old historic inns on Captiva, and the Applicant has pointed to them and said, oh, well, they were technically higher than 3 units an acre so you -- you know, our application is appropriate, too. That's -- those are nonconforming pre-Code, pre-Plan. They don't support this current application.

The final point from that 2011 ruling and recommendation that I want to make was about deviations, Your Honor. And the ruling there was that if a project can comply with the Code by reducing density or intensity, then the deviation is unwarranted and has to be denied, and that's what we have here. The deviation requests are being made so that they can

try to fit more development on the site than it can handle. I mean, that -- I don't think there's any other way to look at it. They don't need all of those deviations if they have less density and intensity. The deviations are not warranted here.

So let me talk specifically next about the Captiva Community Plan limitations. Separate and apart from the density and intensity Plan and Code provisions I've spoken to, separate and apart from the Plan and Code provisions about compatibility that I'll speak about in a little bit, this rezoning violates the Captiva Community Plan limits, okay? Goal 23, the goal of Captiva Community Plan to enforce development standards that maintain the historic low-density residential development pattern of Captiva. And I'll talk in a minute about the support document that underlies the adoption of these provisions into the Plan, but where Goal 23 talks about the historic low-density residential development of Captiva -- and I believe these were put into the Plan in 2018 -- it's talking about hotels and residences being equated to residential density, because that's how it always was done there. That was the historic development pattern at Captiva. Enforce development standards that maintain that low-density residential development

pattern.

Objective 23.2, continue the long-term protection -- long-term, not just until somebody comes along in 2025 and wants to change it, the long-term protection and enhancement of existing land use patterns, meaning those that existed when this was adopted into the Comp Plan, not existing as some sort of future -- we'll move in the future thing -- unique neighborhood-style commercial activities and infrastructure capacity.

And then Policy 23.2.4, limit development to that which is in keeping with historic -- the historic development pattern on Captiva. A couple of lines down it reads, the historic development pattern -- the historic development pattern on Captiva is comprised of low-density residential dwelling units -- again, when this was put into the Plan, hotels were subject to residential density limits -- minor commercial development, and South Seas Island Resort. Okay.

The Staff recommendation and the application cannot withstand the plain terms of Chapter 23, its objective and its policies. It uses very strong, very clear words and phrases, maintain the historic low-density residential development pattern, continue existing land use patterns, limit development to that

which is in keeping with historic development pattern. Maintain, limit, continue cannot possibly be read to mean expand or increase. Look at the dictionary definition. Maintain means to keep in an existing state. Limit means something that bounds, restrains, or confines a maximum -- a prescribed maximum amount, quantity, or number, continues that definition. The word "continue" means to remain in existence.

These policies, this goal, this objective cannot be read to allow an expansion and increase in the historic development pattern, and historic development pattern is both density, intensity, and its height, as well. And intensity measures are traffic, environmental impacts, infrastructure impacts, everything that's generated by this request for increased development here.

So, again, the premise, South Seas Island Resort, is specified in the chapter, it's a resort, end of discussion, it doesn't matter how much bigger it gets. That can't be true given the language used in the Lee County Comprehensive Plan chapter. It was specifically written to maintain what was there: low-density, low-intensity, low-rise. The plain terms and the clear intent of that chapter absolutely preclude treating South Seas Island Resort as some sort of open-ended

land use that then there's no limit on how much development can happen. And I think, you know, this notion that we're going to change -- we're going to change the rules, and as much as they can fit with setbacks -- deviated setbacks, of course, and buffers and that kind of thing, that's definitely not what Chapter 23 was about. That was not the historic limit. The historic limit was always 912 combined hotel and residential units. The historic limit was always heights no less than 45 feet above grade (sic). What's being asked for here blows apart the historic development pattern at South Seas Island Resort and Captiva. That historic development pattern established by the '73 zoning, reiterated, reconfirmed by the 2002 Administrative Interpretation, repeated at every possible option for some sort of County action, like the lock-off compliance agreement that you heard about. This is an unusual case. I mean, not that what I know completely matters all that much, but I have never seen a situation like this, where the historic development pattern was so clearly, purposefully, intentionally documented throughout the course of that development. And of course then you've also seen through Mr. Mintz, I think, the pattern of ordinances that followed that precision of time that also limited the rest of

Captiva, 3 units an acre for hotel and residences, height limits that are like the same, with some minor tweaks in terms of heights for South Seas Island Resort.

And I think that -- I think the Staff Report acknowledged -- at least tacitly acknowledges that the ADD limits are the historic development pattern here. The Staff Report compares the rezoning -- you'll see there's a section, compares the rezoning, density, intensity, heights, et cetera, to that established in the ADD.

Given the role of density, intensity, setbacks, compatibility, all those things throughout the Lee Plan, throughout Florida planning law, this notion that a resort is a resort, it doesn't matter how much bigger it gets, cannot be consistent with the law, cannot be consistent with the Code or the Plan.

I think Mr. Gauthier articulated that very well to you in his presentation. Scale, magnitude, density, intensity, heights, they're a prime component of an historic development pattern, and so is the amount of traffic generated, the amount of noise, the amount of light that comes from density and intensity.

The extensive public record, in terms of ordinances, County actions on South Seas Island Resort,

is unequivocal that the historic development pattern on that 304-acre South Seas Island Resort has never been more than 912 units. Every action has made -- meticulously confirmed that and not allowed that to be increased, never.

Now, you know, we had a brief discussion -- I'm going to acknowledge Ms. Montgomery's standing objection, but the two things I put into the record in terms of transcripts for you from a corresponding administrative hearing, Zoning Manager Mr. Rodriguez has said -- and I don't think the -- the County doesn't dispute this -- the ADD identifies the historic development pattern of South Seas. The planning manager, Mr. Dunn, Brandon Dunn, confirmed the ADD in the '73 zoning resolution limits South Seas to a combined hotel/residential unit cap of 912 units.

And to address this Applicant's argument, well, we could have amended that, they didn't. There was never an amendment, Mr. Dunn confirms, to the ADD. So some speculation that possibly we could have amended the ADD to increase the development, maybe if we did that before it was all built out, that's fine, but it never happened. It's never been the historic development pattern here.

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

to interpose an objection and ask --

MR. GROSSO: I recognize the exemption, and I prefer not to be interrupted, quite frankly.

MS. MONTGOMERY: I'm allowed to raise objections, Mr. Grosso, under Administrative Code 2-6.

He referenced a portion of Brandon Dunn's testimony, but you take that out of context. That is not what Mr. Dunn testified to. So if you're going to allow it in, then I would submit you have to allow all of Mr. Dunn's testimony in so it's clear what Mr. Dunn actually said. Or if -- if you're going to, as earlier, take it in a context of not necessarily evidence, allowed cross-examination -- because Mr. Dunn is not here for either of us to cross-examine to clarify that point.

MR. GROSSO: The --

HEARING EXAMINER COLLINS: Okay, thank you.

MR. GROSSO: -- portions --

HEARING EXAMINER COLLINS: Proceed.

MR. GROSSO: -- of the transcript I put in can be read, and they say what they say. If counsel wants to put in other portions during rebuttal, obviously, as you've made clear, they get to do that.

The other thing, the support document for the Community Plan provisions, when they were put into the

Lee Plan as a reference where it's describing the historic development pattern, and it refers to South Seas Island Resort -- this is the support document for the CPA amendments, I'll identify them for you in a moment -- it refers to South Seas Island Resort as, and I quote, a blend of hotel, commercial, and residential uses delineated in a separate 2002 Administrative Interpretation.

The Staff Report here, again, compares what was allowed in the ADD to what's being requested here. And the Staff Report at page 2 says, notwithstanding that the ADD was not a development order, previous property owners have developed in accordance with the guidance provided in the ADD.

This Staff Report for this rezoning acknowledges at page 5, although the ADD is not a development permit and did not authorize development, it is an appropriate starting point for reviewing the proposed rezoning application.

There cannot be any plausible claim that the historic development pattern at SSIR is as limited and circumscribed in terms of hotel and residential density and heights in the ADD.

This rezoning -- and I'll move to the master development plan part of it. This rezoning will change

the ADD's development standards. Development standards is the phrase used in the Community Plan provisions of the Plan. The ADD sets forth, I'm quoting, development standards -- I'm quoting from the ADD -- development standards applicable to South Seas, based on standards that have been applied since its inception in 1973, and those include the residential, the hotel unit limits, and the building height limits.

Page 2 of this Staff Report for this rezoning references that the ADA -- I'm quoting now -- includes reference to open space, landscaping, building setbacks, building height, traffic impacts, parking, and other development standards. This MPD would change those standards, make them more flexible, more lenient for this Applicant in the face of a significant increase in density. It violates the Community Plan provisions of the Plan. The rezoning would replace the ADD standards with those that are less stringent, coupled with a massive increase in development. How does that possibly work? Those standards were there to protect everybody who bought within that land from the impacts.

Now there will be -- again, only looking at this 120 acres -- 356 units worth of more impacts, but yet reduce development standards and deviations from

things. That can't be consistent with Chapter 23 or the compatibility or the requirements in this Comprehensive Plan. The rezoning would not continue the existing land use pattern. It would not limit development to that which is in keeping with the historic development pattern, as required by Chapter 23 of the Plan.

You know, the Applicant has suggested to you that there was something somehow inappropriate about the ADD. The Applicant has suggested it might have been procedurally infirm or substantively didn't make sense. I think a phrase they used in the application was inappropriately blended hotel and residential density. Well, the Applicant might not like that; but, first of all, it's kind of irrelevant. I mean, it -- it was codified later in the -- into the Code. It was codified in the Code. If South Seas is going to be exempt from everything else, it has to comply with the ADD. And so that recently got taken out of the Code, but the historic development pattern was -- the ADD was the standards or the Code was the standards, and they both limited development there to 3 gross units, hotel and residential, per acre and the 45 maximum height limit. It was in the Code. They can argue all they want, they didn't like it and it was somehow

inappropriate, but it was put into the Code by a duly adopted ordinance.

Mr. Murphy, who wrote the thing, explained to you that the predecessor -- this Applicant's predecessor in title was involved with him every step of the way, as he investigated, did the fieldwork for that ADD to see exactly what was on the ground. They were with him; they agreed; they assented to it; they were directly involved and confirmed its accuracy. Now, today, the successor in title is somehow suggesting there's something inappropriate about it. The County's actions has acknowledged for -- since it was -- since its inception that it is the governing document for -- for height and -- and density/intensity at South Seas Island Resort. The ADD and the Code, up until the change in 2023, were exactly the same in terms of density, hotel and residential. So, you know, that's that.

The next thing that the Applicant has suggested to you, I think, was some sort of speculation that, oh, well, you know, in the '60s maybe we could have done a lot more. So you should perhaps compare what's being requested now to the thousands of units that they speculate they might have been able to get approved for in the 1960s. That can't matter. The fact of the

matter is that's speculation. The fact of the matter is that never happened. It was not the historic development pattern. The fact of the matter is in 1973 the predecessor to this Applicant determined what's in our best interest is to do a 912-unit integrated master development plan, with site design flexibility to make it a great world-class, low-intensity resort. That's the reality of what's been on the ground in terms of Community Plan, in terms of compatibility and everything else, and speculation what we could have done before there were modern zoning laws has nothing to do with this case.

The other thing that -- and I touched on it briefly, but the Applicant points to these three old historic hotels or motels on Captiva outside of the gates of South Seas Island Resort. The Tween Waters Inn is one; Jensen's Twin Palm is another; Captiva Island Inn is another. Tween Waters was approved in 1931, historic designation by the County. Jensen's Twin Palm approved 1932, historic designation by the County. Captiva Island Inn approved 1950, historic designation by the County. Jensen's on the Gulf was approved in 1976. I don't think it's an historic designation, but it's well before the '82 Code and the modern Plan. There's no reasonable interpretation --

and I think I might be getting to a break point here, if I can -- I can read --

HEARING EXAMINER COLLINS: I'm checking on her. Usually an hour and a half --

MR. GROSSO: -- I can read the room.

HEARING EXAMINER COLLINS: -- she needs a rest.

MR. GROSSO: So let me finish with this for a pause.

HEARING EXAMINER COLLINS: And then we'll come back to you.

MR. GROSSO: Thank you.

There is no reasonable interpretation other than the historic development pattern of both Captiva and South Seas Island Resort has been maximum 3 units per acre, gross acre, for hotels and residential units.

I will take a pause now. Thank you very much.

HEARING EXAMINER COLLINS: Okay, thank you.

We're going to take a ten-minute break, and we will resume at 10:38.

(Recess from 10:30 a.m. to 10:40 a.m.)

HEARING EXAMINER COLLINS: Okay. We are ready to begin.

MR. GROSSO: Thank you.

To continue on about the scale and the intensity here, I want to be clear that what -- the rezoning

request is not, in terms of uses, categorically different than what's always been there. It's a question of scale. The difference between what's approved and was on the ground pursuant to the '73 rezoning and the ADD, the difference is as follows:

There were 140 employee units that would now be converted to 193 multi-family condos.

There were 107 hotel units that, if this rezoning were to be approved, would now become 435 hotel units.

And there would be hotels both on the north side of the property holdings they have and on the south side of the property holdings they have, for the first time there.

Mr. Murphy and Mr. Gauthier, Community Leaders Mintz and Suarez explained to you in huge detail the huge density or intensity increase that would follow of a magnitude that's never been seen on Captiva and at South Seas before. That's the problem, completely out of scale with existing uses, a great departure from the historic density or intensity allowances. Again, the -- whatever number you can fit given our bulk and height and other restrictions has never been the historic development pattern out there. Mr. Mendez has made clear to us that the rezoning would allow, I quote, a net increase in intensity.

To drill down a little bit deeper, Mr. Murphy pointed out to you, and the documents are clear about this, the five acres of commercial development that were approved in the 1973 rezoning, confirmed in the ADD, were meant to serve the ancillary purposes of the guests and the residents of those 912 units, and they were never for hotel commercial development. That was not what they were there for. That was not the historic development pattern here. But now we would change that, there'd be a hotel there.

And the rezoning would create adverse impacts on the south part of the resort by putting a hotel that never existed there. So those owners at that south part of the resort never had a hotel next to them. They would now, a great departure from the historic development pattern here that never existed, okay?

Now -- so if you're one of the residents who lives there, and you were -- you know, those five acres were there to meet your ancillary commercial needs, now you won't have that anymore. Now you'll have 356 hotel -- more hotel units worth of people competing for your light, your space, your parking, all of those things, and you no longer have it. So we replace what was a service, an amenity for you, with 356 units worth of hotel guests. That's not a good trade-off. That's not

the benefit of the bargain they got with that MPD. That's not compatible with their uses.

Regarding heights. The CCA, to be clear, has no objection, it makes sense to change the building standards here so that people have to elevate above the minimum federal flood elevation standards. That's sustainability. That's necessary given the sea-level rise and other impacts that are coming to Captiva, that are already here, sure. But -- and so the idea that to avoid the regulatory squeeze, we'll change where you start counting your height, that's fine. That makes sense. That's appropriate. That's sustainability. But what's being done here is -- you know, under this false flag of resiliency is, oh, while we're at it, then let's not just change your starting point, but now you go higher than you used to be able to go from your starting point. That's the problem.

Mr. Murphy and Mr. Gauthier testified that the character -- the documentation is clear -- has always been low-rise building heights on Captiva and at South Seas. They're a major component of the development pattern plan. They're a key to the ambience, the feel, the character, the unique nature of the island and South Seas Island Resort. The Applicant has not demonstrated that the heights of the demolished

buildings were anything near what they're asking for in this application. There's no evidence that heights 45 feet above the lowest habitable floor are required to build under the new FEMA standard whatsoever. It's gratuitous height increase. None of the buildings demolished were three habitable floors over parking. That's what the evidence has shown.

The South Seas Island Resort historical development pattern has always been limited to the lesser of 35 feet above grade or 42 feet above sea level. This would be a major increase to that. No structures exist on Captiva today as tall as the proposed building heights here of three stories above parking and 45 feet above the lowest minimum habitable floor, but that's what the rezoning is asking for approval of. It would allow structures that are 20 feet taller than anything that's ever existed there before, 20 feet taller. And when the feet -- the heights we're talking about are 45, in that range, 43, 20 feet's a huge increase. It's not the historical development pattern here.

Mr. Mintz and the height -- the building height ordinances he put into the record show that no building on Captiva, including South Seas, could have been taller than 45 feet above grade, no existing building,

even if rebuilt to the new FEMA elevations, could possibly reach 65 feet, as being requested here. This rezoning is not about resiliency. It's not about preventing a problem for South Seas that when it builds back, it's going to have to meet new FEMA flood elevations and thereby lose the amount of space in its units. That's not what this is doing. This is going way, way, way beyond that.

The reality of the height increases was made clear by Captiva Fire Chief Pawul and the Captiva Island Fire Control District letter that he read into the record, where he says -- you know, he acknowledges we're still trying to work with them, but he tells you that the Fire District will be adversely impacted due to the proposed changes in building heights. The District does not have the ground ladders or fire flows to provide a sufficient response to the upper floors of these new buildings, and that an increase in units due to the approval of the rezoning may also result in the need for the Fire District to increase staffing.

The letter goes on to say the intensity of hotel space and timeshares creates a larger life safety and property risk for the visitors to the resort, and he concludes, in addition to the building being lost if a fire occurs due to the inability to suppress fire on

upper floors, lives may also be lost.

Now, that's evidence that the building heights were never here. This blows away the historic building heights. It demonstrates the problems with intense -- intensifying development at this vulnerable island. Lives may be lost, and we'll talk about that when it comes to evacuation, as well.

Again, everything from aesthetics, community character, to public safety is strongly and negatively impacted by this application.

The next thing I want to talk about -- I've referenced it before, the Community Plan provisions -- and this is in the record. The Community Plan provisions were enacted into the Comp Plan in 2018, and the support document explained a lot about what Captiva is, its historic development pattern, its setting; and that data and analysis is really important to a lot of issues in this case, not just the compatibility with the Community Plan provisions. That chapter was adopted into the Plan in 2018 by Comp Plan Amendment 2015-0009, by Ordinance 18-04. And this -- and, now, this is unusual. This is an unusual part of this adoption ordinance. This doesn't usually happen for Comp Plan amendments. But that adoption ordinance said specifically, and I quote, the corresponding Staff

Reports and data and analysis, along with all attachments and application submittals for this amendment, are adopted as support documentation for the Lee Plan. And, again, the general requirement in Florida law is that data and analysis is not adopted. It's just there as a supporting document. So the fact that this ordinance says that, I think, gives it a lot of extra weight in terms of its importance to interpreting and applying the Lee Plan, and in particular the Captiva Community Plan provisions, and what it says is really important. It -- there are some very key passages in that document, and I'll reference just a few of them.

It's referencing -- you know, back then, in 2018, the policies that are now in Chapter 23 were in Chapter 13. So it references chapters in policy 13 (sic), but there's -- the numbering has been changed. And the text of the objectives and the policies are the same, and it says, of course, we're introducing policies to limit development to that which is in keeping with the historic development pattern, and it explains what Chapter 23 currently says today. And it says that this continuation of a prior policy to preserve historic development pattern is to preserve historic structures and the historic development

pattern and compatible redevelopment, compatible redevelopment. It goes on to say that the provision adopted into the plan, the historic development pattern provision, will acknowledge the unique development known as South Seas Island Resort -- and I already mentioned this to you -- which is a blend, it says, of hotel, commercial, and residential uses delineated in that ADD. The objective to be put into the Plan, this data says, protects the existing neighborhood form and densities.

And it goes on to say Captiva's land use pattern is guided by its location in a coastal high hazard area. Public safety and evacuation are a concern. The island's only evacuation route is a constrained roadway. It says, consistent with policies -- I won't read to you -- that limit development where hazards exist, density on Captiva is 3 units an acre. Again, back then up until recently, density applied to residential and to hotels.

Heights are also limited, this document says, in keeping with Captiva's, I quote, low-rise buildings.

The support document goes on to say that the goal of the Captiva Community Plan, the historic development standards, is -- the intent of which, it says, is to address both the environmental and land use and

development issues vital to the protection of a fragile barrier island. This goals serves as a description of Captiva as it has historically developed and exists today -- a pattern of land use and low-impact development within the island's long-time context of environmental protection that should be maintained and supported into the future, it reads, unquote.

The document goes on to say -- and I'm quoting still -- two overall issues underlie a number of the policies under this objective: First, Captiva as a designated coastal high hazard, and the document explains specific -- specifically cited as issues of concern for coastal high hazard areas are evacuation times, building structural requirements, density increases, and infrastructure capacity. These reflect a recognition of additional risk to life and property present in coastal high hazard areas sufficient to warrant -- again, I'm still quoting -- more stringent regulations for safety while protecting property rights.

Madam Hearing Examiner, that's what Chapter 23 is about, more stringent regulations, not the same as those on the mainland.

The document continues, that it is intended to bring about risk reduction. It says, risk reduction --

I'm quoting -- is typically accomplished, particularly in the Lee Plan, by limiting rezoning approvals to those which do not increase density. Again, when this was written up until a Code change last year, density applied to both hotels and residential units.

It continues, and I'm quoting, avoiding replacement of current residential structures with much larger structures able to house considerably more people, which is inconsistent with the goal of putting fewer people at risk to storms and coastal hazards.

It goes on to read, efforts to control density are important because, and I quote, the island is in Zone A, Evacuation Zone A, with the longest evacuation time to shelter in the county. It goes on to say it's 29 miles from the South Seas gatehouse to the nearest shelter. Evacuation times -- the document reads -- are further complicated since any evacuation must use a single route and a single exit point off the island, the Sanibel Causeway, it says, through the limited road system of Sanibel, which must also accommodate the evacuation of Sanibel residents and visitors at the same time. Captiva, it says, is most impacted by any tropical storm event. Again, residents and visitors, Your Honor.

The document goes on to say that this evacuation

route off the island is a constrained roadway leading to another island with a limited road system, eventually leading to a single two-lane causeway to the mainland, and eventually to higher ground. I'm no longer quoting when I say to you, you've heard that that causeway was wiped out by Hurricane Ian.

The document continues to read, there are wind speed issues for the highest causeway bridge that could force it to close to traffic once a trigger wind speed is reached, as well as low-lying causeway islands susceptible to overwash. The document continues to read, any traffic incident interrupts the flow of traffic and will slow the overall evacuation; and on narrow roadways with minimal shoulder area, one vehicle breaking down could slow down the entire evacuation process for hours.

It goes on to explain, and I'm quoting, the right-of-way of Captiva Drive never exceeds 50, and narrows to 25 feet in certain portions. It says the maximum shoulder width, which is not consistent, barely meets the 2-foot standard for a rural highway with the lowest traffic count. It says, any vehicular breakdown has very little room to be moved to the shoulder in order to clear any resulting traffic backup. The very limited clear zone, et cetera, et cetera, combined with

the heavy vegetation planted along the adjacent private property makes moving a disabled vehicle off the roadway more difficult with consequent traffic tie-ups slower to clear. This problem worsens in the case of an evacuation, it says, when drivers may not always be at their best or most calm. And the document states that reasonable limits on the number of residents and visitors who need to evacuate from the island is vital for public safety. It concludes, this warrants -- I'm quoting -- steps to control the density and intensity of use for island properties to that which currently exists.

So the face of the Community Plan provisions, the support documents specifically adopted to help interpret the Plan, including those provisions, makes clear that they were put into the plan to maintain the levels of hotel and residential density that was there, not to allow a rezoning that would increase or expand that. It also makes clear, I think, as you're weighing and balancing the testimony, for example, of competing coastal hazard experts or competing evacuation time experts, which to give the most credibility and weight to. Not -- we're not talking about some theoretical evacuation zones somewhere. We're talking about this very constrained -- and you've heard the words I've

read -- evacuation zone.

No question this rezoning violates the chapter, goal, objective, and policy of the Community Plan provisions.

Now, I want to move on to compatibility separate and apart, and I really want to make a point of emphasis about this. The Community Plan provisions -- Captiva Community Plan provisions require the denial of this rezoning. If they did not exist, the compatibility requirements in the Code require the denial of this rezoning. These are completely separate, independent sets of requirements. If one didn't exist, the other would preclude the rezoning. I want to be really clear about that.

So the compatibility problem, the magnitude, the density, the intensity, the heights, the -- the -- the numerous deviations, are adverse to the surrounding uses, the community character, the quality of life, their living environment. You've seen just how intertwined all this ownership is -- garbage, stormwater, amenities, everything, buffers, physical encroachment on other people's easements. The complementary commercial services being replaced by 356 new hotel rooms full of guests instead. Traffic, car-bike-pedestrian-golf cart conflicts. I think it

was Mr. Roark who explained that. That's a quality of everyday life kind of thing, if I'm trying to walk around there, and I've got more bikes, more cars, more golf carts, those are basic livability, compatibility problems that -- I don't know that the Applicant and the Staff even gave much to you about that, but you've heard so much overwhelming testimony about how adverse all of those aspects of this development would be for those existing neighbors.

And so there are a lot of things violated here by this rezoning:

Policy 2.2.1, rezoning proposals shall be evaluated as to compatibility with surrounding land uses. That's violated.

Policy 5.1.5, protect existing and future residential areas from encroachment of uses that are potentially destructive to the character and integrity of the residential environment. If such uses -- if such uses are proposed in a planned development -- I'll skip over a bunch of words -- where no adequate conditions can be devised, the application will be denied altogether. That's Policy 5.1.5. Again, this idea that a resort is a resort can only make sense if Policy 5.1.5 doesn't exist. A resort is a resort does not look at character, integrity, the residential

environment. It can't be reconciled. And the testimony has made clear this is a matter of too much stuff in too small of an area, and too small of an area that's already been fully built out, and so conditions just simply can't cut it. More buffers, more vegetation, lighting requirements, whatever the case may be, this is too much stuff to fit on too small of a piece of land already built out, where people are making their lives there. There's no conditions that can make this approvable. It's too much.

Policy 5.2.2, when rezoning is required -- that's this case -- prevent -- prevent and mitigate adverse impacts to the surrounding areas.

Goal 6, allow commercial development only if well-planned and only at appropriate locations. If we're going to call the hotels now commercial development instead of residential, the way they've always been treated, it violates Policy 5.2.2 because it's not well-planned, it's not in an appropriate location given its geography. Well-planned was the MPD in 1973. This would disrupt that well-planned master development plan. It violates that goal, too.

Policy 6.1.1.(5), all applications for commercial development will be evaluated as to the impact on adjacent land uses and surrounding neighborhoods.

Policy 6.1.4 allows commercial development only when compatible with adjacent existing and proposed land uses.

And three Code sections I'll point out:

Section 34-612(2)(d), the purpose and intent of planned development districts is to avoid -- avoid, not allow and condition, but avoid negative impacts on surrounding land use.

Section 34-145(d)(4)(a)1(c) -- and all these, Your Honor, are in my letter -- it precludes rezoning that is not compatible with existing and planned uses in the surrounding area.

Section 34-413 limits both density and intensity of use in a planned development based on the range of density or uses permitted or encouraged under the Lee Plan at that location, and the nature of and the density and intensity of existing development surrounding the property. I just don't think there's any way that one can conclude, from hearing all that we've heard in this proceeding, that those policies are complied with, certainly not at this location, not at this density.

That's compatibility. I want to move to hurricane evacuation now.

You know, you have seen in this proceeding coastal

maps out of the County's Plan that -- I've just read to you excerpts from the Captiva Community Plan support document; you've seen the vulnerability studies; Erosion Control District study; I think it was the APTIM study, perhaps; the application; the Staff Report; Mr. Alexander, Murphy, and Gauthier; all agree this is an extremely hurricane and storm surge vulnerable barrier island. Remember, why do we call them barrier islands? They're there to take the hit to prevent the mainland from being devastated by hurricanes. They're the barrier. They're not the area we should be building up and tearing -- tearing down in terms of more vegetation, more open space being converted to concrete.

This island bears every possible official designation of vulnerability you can get under this Comp Plan or under State law: coastal high hazard area, Evacuation Zone A, flood zone, et cetera. There's nothing you could apply to the most vulnerable places that doesn't apply here.

The Applicant has, from our perspective, with all due respect, tried to downplay the vulnerability of this barrier island -- this barrier island to a barrier island; and I think their efforts, frankly, lack weight, lack credibility. I mean, certainly Hurricanes

Ian, Helene, and Milton demonstrate that. The evidence, the testimony has certainly not been that we're fixing to enter a phase of reduced hurricane activity and reduced hurricane intensity. The clear evidence is to the opposite. It's getting worse. They may not be getting more frequent, but they're getting more intense.

So you're talking of -- you're talking about a huge increase of development density, putting people -- 356 more units of people at risk, and it's an extremely vulnerable area. There's no way that can comply with this Comprehensive Plan. And it's both the coastal hazard, it's storm surge, it's everyday flooding. Mr. Alexander testified to you about, sure, these are going to be built under modern structural requirements. Obviously they're better than they used to be, but they're not going to be built high enough to avoid all the storm surge that will come. There are still going to be impacts.

And if this Applicant were exercising their vested rights and rebuilding devastated structures, those would have to comply with the new modern building heights. So if there's been some sort of suggestion here that in order for us to make, you know, the rebuilding more resilient you've got to give us more

density, too, that just doesn't make sense. Any replacement buildings are going to have to meet modern public safety flood requirements. So adding 356 units to that is not about resiliency, it's not about protecting the people who live there, it's about more development on the site.

There's two components of this under the Lee Plan. There's the increased hazard exposure -- that's storm surge, that's sea-level rise, that's coastal flooding, coastal flooding that's unassociated with hurricanes -- and then there's evacuation impacts. Those are separate impacts addressed, both of which require denial under the Lee Plan.

And, you know, you've heard the testimony of Sanibel officials; you heard the testimony of Mr. Alexander. I don't think you can get farther away from safety than the northern tip of Captiva where South Seas Island Resort is. Narrow, constrained two-lane road, one way off, that's it.

Sanibel folks, who testified credibly, revealed the challenges, the difficulty, again, not of some evacuation route somewhere, but this particular one that is impacted by this.

And I recall Mr. Mendez's own aerials, when he was showing us some aerial photographs. I mean, you could

see how narrow, how constrained this roadway is. I think you'll see that when you do your site visit, that this is not an evacuation route that safety is calling for there to be 356 additional units worth of people to evacuate. And Mr. Alexander made it very, very clear to you, and the Community Plan support document made clear to you, the evacuation is, indeed, about hotel guests, too. You cannot assume, despite the obviously good aspirations to try to get people out earlier, to try to dissuade them from coming down, you can't always assume that that good fortune that we had in Ian and other hurricanes is going to prevail into the future that includes more intense hurricanes, and as Mr. Alexander explained to you, more rapidly intensifying hurricanes. And what he was explaining was that if there's nasty weather coming, emergency managers aren't evacuating people. And when that nasty weather very quickly, unexpectedly, becomes a hurricane that now requires evacuation, that's the problem. And so if you've been counting on we were able to get them off early in past decades, we'll always be able to get them off early, if you're counting on that, you're running a huge risk that lives could be lost.

Mr. Alexander already told you that given the geography and the lay of the land here, the current

evacuation time is unsafe, in his opinion. His evaluation, we would say, was much more of a realistic evaluation of this particular evacuation route, this particular island, and these particular hazards, not some sort of theoretical let me run the numbers based on, you know, the best-case scenario, and let me conclude that I think those numbers will be fine. We always got people off before; we'll get them off again. I think that's the difference between the competing evacuation presentations that you've seen. I think one is more much grounded in realism about the nature of this area. It's been devastated, and people are still rebuilding from Ian and the other two storms, versus one that's designed to let's give the benefit of the doubt to assuming we can get hotel guests off early; let's give the benefit of the doubt of having early warning and everything going smoothly. When an Applicant has the burden of proving that the hazard and the evacuation policies have been complied with, the benefit of the doubt doesn't go to them. The benefit of the doubt, given the extreme vulnerability, does not go to saying yes.

Now, you know, Mr. Alexander testified to you that this rezoning, if it's approved, would add 30 minutes to the evacuation just at this area, Captiva/Sanibel,

and will increase evacuation times by some undetermined amount because coming up with a specific number would require a lot of modeling work that can't be done at this time. Either way, those numbers, that impact violates the plan.

Policy 5.1.2 prohibits residential development -- again, I reiterate that hotels have always been considered residential in Captiva -- where physical constraints or hazard exists, or require the density to be adjusted, it goes on to say, those constraints or hazards include flood, storm, or hurricane hazards. Policy 5.1.2 is violated.

So is Policy 72.2.2, assess the impact of all new residential development -- again, for Captiva that includes hotels historically -- upon the projected hurricane evacuation network and upon projected hurricane evacuation times. So the impact on an already unsafe evacuation time will be that it increases it. That cannot comply with Policy 72.2.2.

Goal 73 is to provide evacuation and shelter capabilities adequate to safeguard the public against the effects of hurricanes and tropical storms. Mr. Alexander's testimony is clear that this rezoning would not comply with that.

Goal 101, protect human life, along with current

and future development, from the impacts of coastal flooding, including the impacts of sea-level rise, storm surge, and flash floods. Again, that applies categorically, whether you want to call it residential or hotel, commercial, it applies to all development.

Section 34-411(f) of the Code, planned development -- that's this -- shall not create or increase hazards to persons or property, categorically, all persons, all property. Here we're increasing the hazard. It violates that section.

Section 34-413 that I've referenced a few times today, density or intensity in a planned development shall be determined on a case-by-case basis in accordance with the following, and under sub (2) among those following criteria are public safety.

Objective 73.1 requires the County to move towards decreasing the overall evacuation time pursuant to the Southeast regional evacuation model. His testimony was very clear, and even the generous testimony of the Applicant's expert is that we're moving away from, not towards, bettering our regional evacuation times relative to Objective 73.1.

Mr. Alexander explained, in response to the Applicant's argument, well, we've done some things over the years that have brought evacuation times down from

where they had been, Mr. Alexander pointed out, no, actually, since we started doing those regional studies in 2010, those numbers for countywide evacuation have gone up, not down. And so we're increasing the entire countywide evacuation time, we're not furthering Objective 73.1., and I would -- you know, and I want to say this: Again, this rezoning has to look at all of those, but the biggest impact is on this particular island, this particular hurricane-constrained, hurricane-vulnerable island. Trying to downplay, you know, let's do the rezoning, let's hope for the best, let's increase by 356 units -- Mr. Trescott for the Applicant, oh, let's just -- you know, he did say I modeled 100 percent occupancy, he said that; but he kept trying to get you to think that was somehow an overestimate. You really -- we're being overconservative because hurricane season doesn't totally coincide with peak season. Well, you know, you've got July 4th; you've got Labor Day. September is the low occupancy date, October and November, Thanksgiving holiday -- approve a rezoning like this, those units are permanent. They're not -- there's no requirement that they can't be occupied during big weekends during evacuation season, hurricane season. You're making permanent decisions to increase the

amount of people at risk based on there's times where there's low occupancy, based on there's times we're going to be able to get everybody off. That's not responsible planning, certainly inconsistent with the Code and the Plan as it relates to hurricane evacuation and public hazards here. It's impossible to interpret all the relevant policies and Code sections here to say this plan, this Code contemplates increasing by 356 the amount of development units at the northern tip of Captiva. There's just no way you could read it that way.

And of everything -- density, intensity, community character, traffic -- there's nothing more important in that hierarchy of public responsibilities, as reflected in the Comp Plan and the Code, than public safety, life and limb. And sadly, people of this county and people of Captiva and Sanibel have experienced that firsthand recently.

The next thing I want to talk about is transportation. Mr. Roark testified to you about major flaws in the transportation impact statement for this application. Traffic -- not fully counting traffic relative to changing 140 employee units to now 193 two- and four-bedroom condos. There's a lot of additional traffic there, different -- increased size and use of

multi-family units, the conference facilities, commutes by a thousand employees that are claimed. He pointed out the transportation impact statement relies on outdated data, which he said underprojects the impacts. He explained that this idea of this "park once" concept touted by the Applicant is -- is illusory, not consistent with the reality of how this resort is used. You've heard testimony from him and from others that talk about you can't walk. It's just too big. It's not a walkable resort. People gotta use cars; they gotta use golf carts. People don't stay there. There's these great little funky neighborhood commercial facilities outside of the gates on Captiva. There's Sanibel Island and all the things it has to give. People move around. You can't assume that people are going to show up, park over at South Seas, and never leave. That's his testimony as a traffic expert.

He explained I think in pretty vivid detail the problems you're going to have, including when you fold in the deviations with expanded parking conflicts, not enough parking spaces for everybody. And who bears the brunt of that? People that don't own this 120 acres that the Applicant owns. He explained that the transportation deviations are inappropriate, major

pedestrian conflicts, major golf cart conflicts. And he explained that -- forgetting, you know, individual conflicts, just the traffic congestion impacts are going to go far past the adjacent roads. It's going to worsen congestion, including congestion on US 41 on the mainland.

His testimony, I think, supports a conclusion that what will be violated if the rezoning is approved and the traffic impacts are allowed, then Section 34-612(2)(d), the purpose of a planned development district is to -- da, da, da -- by avoiding negative impacts on surrounding land use and traffic circulation. That's violated here.

So is Policy 6.1.1 of the Plan, which applies to commercial development. All application for commercial development will be evaluated as to, among other things, traffic and access impacts. Those cannot be categorically found to be anything other than very negative here.

The next infrastructure issue I want to talk about is the fire and the sewer service.

HEARING EXAMINER COLLINS: Okay. Just hang on a minute.

MR. GROSSO: Yes, ma'am.

HEARING EXAMINER COLLINS: I'll let you know when.

MS. MONTGOMERY: He's on page 24 of the letter.

THE REPORTER: Mr. Grosso, slow down.

HEARING EXAMINER COLLINS: Next topic?

MR. GROSSO: Fire and sewer service.

HEARING EXAMINER COLLINS: (Nods head.)

MR. GROSSO: Thank you.

Well, you heard Mr. Mintz made a presentation, Mr. Evans of the SCCF made a presentation that adequate wastewater treatment plant capacity has not been demonstrated by this Applicant. The letters of availability put into the record are woefully inadequate to show enough capacity available to meet the demands of all of the new units that are requested.

The capacity that is there comes from a treatment plant that sits in tidal mangrove wetlands and has a history of emergency sewage spills and doesn't treat to advanced wastewater treatment; discharges to Pine Island Sound, that's already impaired, by the State of Florida; it's already too polluted for nutrients; adding reuse water to the golf course and landscaping, it has nutrients in it that ultimately find their way into a nutrient-impaired body of water.

And then there's the fire, and we've seen the Fire Chief's letter from Captiva. You've heard his testimony, I've already addressed that, but there is

not demonstrated adequate fire service capacity for this rezoning, as we speak.

As a result of fire and water -- fire and sewer inadequacies, Policy 2.2.1 is violated. It requires rezoning to be evaluated as to the availability of central sewer and fire -- fire protection.

Section 34-202(a)(10) is violated -- of the Code -- because it requires proof of sanitary sewer availability for rezonings. It hasn't been complied with.

You know, the sewer issues relate to environmental issues. And, you know, what you heard -- you heard from a group of scientists from the highly respected Sanibel-Captiva Conservation Foundation, and they detailed for you great adverse impacts on both water quality and natural resources, including, importantly, wildlife habitat. I think it's safe to say those issues got pretty short shrift in the Staff Report and the presentation by the Applicant.

Again, most of those impacts spring from just the sheer increase in people and vehicles that are going to be there, and buildings that are going to be there under the rezoning. The increased conflicts between human and wildlife, the interactions there, vehicular-caused mortality. More vehicles from a

substantially greater amount of units is going to cause more wildlife mortality through collisions. More noise from that development, more light, noise and light are adverse to wildlife, birds, turtles in particular.

Beach and dune foraging and nesting habitat for shorebirds being disturbed by more people on the beach, and this area has a number -- I'm not going to detail them, those folks did it for you -- shorebirds that are state and federally designated. We're not talking about common wildlife here. We're talking about state and federally designated threatened and endangered species. They explained to you that federally protected sea turtles get disoriented by light. There's going to be more light, a lot more light, as a result of this development. They testified that birds will strike buildings both during the day and at nighttime.

They explained to you that, yes, we have lighting ordinances; yes, we have a noise ordinance. They can reduce to some extent, but they cannot prevent the additional impacts of the sheer number of people interactions, car interactions, building interactions.

And we're not talking about some sort of ecologically unimportant area. We are talking about a coastal barrier island within a stone's throw of Ding

Darling National Wildlife Refuge, Sanibel-Captiva Conservation Foundation preserve area, City of Sanibel Preserve, and lands owned by the State of Florida. This is a very environmentally sensitive area here so wildlife impacts matter a lot.

Those folks detailed for you, you've got some very -- for example, the Sanibel Island rice rat. Why is it called that? It only is found on Sanibel Island. And the eastern screech owl, they are particularly at risk here because of saltwater -- and you heard Mr. Evans talk about saltwater intrusion and sea-level rise. As fresh water resources get depleted, they have to cross the road more often in search of fresh water. More road crossings, more cars, more vehicular collisions.

The Code requirements, mitigation, those are window dressing that cannot overcome the density and intensity increase adverse impacts on water quality and on wildlife.

And the water quality issues, the experts told you, come from using reuse water on landscaping and on the gulf course -- golf course, and that water finds its way into the very sensitive Pine Island Sound Aquatic Preserve. I point out, it's a designated State of Florida aquatic preserve, a special waterbody that's

to be afforded the highest level of protection. It's currently impaired. This is going to make it worse.

And in particular, the nutrient pollution into the shallow waters will affect seagrass beds that are the nursery grounds for all manner of fish and invertebrates like crabs; and the more nutrients in the water, the more the red tide that closes beaches will increase, more fish kills, more beach closures, more wildlife strandings as a result of red tide bloom. That's what the experts told you.

So there's a lot of policies. I think -- there may be even more policies in this Plan to protect the environment than there are to protect compatibility of surrounding uses, and there are a lot that are meant to protect a neighborhood from intrusion from bad, adverse commercial and residential development.

There's a lot that are violated here for the environment:

Goal 113 of the plan, preserve the ecosystem that nourishes and shelters commercial, sport, and recreational fisheries.

Objective 113.1, enhance estuarine ecosystems, not add more polluting development when they're already impaired.

Goal 122, maintain or improve water quality,

protecting wildlife diversity, and reducing or maintaining current pollution loading.

Goal 125, ensure that water quality is maintained or improved. The testimony makes clear that is not going to happen here. It will be reduced.

Objective 125.1, again, maintain high water quality. We don't have that now. This is only going to make it worse.

Objective 125.1.2, do not degrade surface and groundwater quality.

Policy 101.1.1, development within the coastal high hazard area must be compatible with natural systems, such as wildlife habitat. There's no way that the facts presented by the SCCF experts could possibly result in a ruling that policy is complied with here.

Same is true, Policy 101.1.2, protect and conserve environmentally sensitive coastal areas, including estuaries, beach and dune systems.

Policy 6.1.1(7), all applications for commercial development -- if that's what these hotels are going to be -- will be evaluated as to environmental considerations. That evaluation is not a good one for this project.

Objective 23, continue the long-term protection and enhancement of wetland habitats, water quality,

native upland habitats, and beaches on Captiva. Specific to Captiva and its natural resources, and I remind that the Community Plan's support document made a point that the density limitations here were not just for public safety, were not just for community character and neighborhood compatibility, but also a reference to environmental protections.

I want to move on, before I conclude, and just mention briefly about the deviations. They don't comply with Policy 23.2.6 that requires all of the specific requirements for variances and deviations in the Code be met, all. It's not a weighing and balancing thing. They all have to be there. They all have to be met, burden of proof on the Applicant.

I mean, I don't know that the conclusion can possibly be made, with all the testimony we've had here, that all of those conditions have been -- have I triggered something?

(Discussion at lectern)

MR. GROSSO: If it's not bothering you, I'm happy to --

HEARING EXAMINER COLLINS: I can hear you unless --

MR. GROSSO: Okay.

HEARING EXAMINER COLLINS: -- we need to evacuate.

VOLUME 6

What is that?

MR. MENDEZ: Battery backup.

THE TECHNICIAN: It's the battery backup.

MR. GROSSO: Excuse me.

HEARING EXAMINER COLLINS: You outlasted the battery.

MS. MONTGOMERY: You wore out the microphone.

MR. GROSSO: Thank you, Your Honor.

They don't comply with all of the criteria in the Code.

Section 34-145(b)(3)b says deviations aren't allowed if they're the result of actions of the property owner.

Section 33-1615(b) don't allow deviations on Captiva unless a whole litany of things is complied with:

One, the hardship can't be corrected by other means;

Two, strict compliance of the regulations allows the property owner no reasonable use;

Another is the Applicant didn't cause the need;

And another is that the variance or deviation is the minimum one needed to make a reasonable use of the property.

Now, clearly they've got a reasonable use of the

property. It's already been built out. They've got all those units on 120 acres that they are entitled to. So the deviations are not necessary to allow a reasonable use of the land. They already have that.

Now, I think there's an argument that, well, there was an ordinance adopted last year, in 2023, that exempted South Seas from these requirements in the code. And the legal point I would want to make to you about that, Your Honor, is when Policy 23.2.6 in the plan says all of the specific requirements for deviations in the code must be met, that has to be interpreted to mean as they existed when Policy 23.2.6 was enacted. If one were to interpret that policy in a way that says, well, all we've got to do to change the policy in the plan is to just change the code, exempt people from the deviation requirements in the code, that is an inappropriate interpretation of a comp plan. One cannot read a comprehensive plan to be self-amending. It's an inappropriate reading of a comp plan to allow it to be changed, its terms, its requirements, by a subsequent code change.

I harken back to the point I made when I got up here this morning talking about that. The code always prevails, and the case law has made clear -- and I would point to you 163.3177(1)(b), that requires an

incorporation by reference in a plan has to specify the exact edition of the document being adopted by reference. I've cited you in my letter the Florida Wildlife Federation versus DCA, a DOAH final order of about 20 years ago, that you can't allow code changes to change the substance of what a plan requires.

So our position would be that policy -- that code change to somehow exempt South Seas Island Resort from having to meet the deviation requirements in chapter 34 is of no moment. It's legally inappropriate. You can't read the plan that way. Otherwise, whatever the plan says at any given time, you can just change later by subsequently changing the code. You can't do that under Florida law.

And then a couple more points on the deviations. You know, there's been, I think, an argument that -- the application goes on several times about how, well, we're not seeking deviations that are categorically different than what we were allowed before under the ADD development. Well, okay, those deviations may have been appropriate given X amount of development, but now those same deviations are not necessarily appropriate with 356 additional units of development. So they were vested certain deviations at a certain development intensity. That surely does not, as a matter of law,

authorize greater deviations in the face of more intense development. Florida law is clear. There is no right to expand an existing nonconforming use.

I've cited you in my letter the Marine Attractions versus City of St. Pete Beach case. That can't -- prior deviations for X amount of development cannot support new deviations for X plus, plus, plus amount of development.

The deviations have to be denied. They haven't demonstrated compliance with all the requirements. And I won't get into Mr. Patterson and Mr. Whitt and Mr. Suarez and some of the detailed testimony that you've heard about that, but the deviation -- deviations have to be denied.

And perhaps the overarching point I'd make about the deviations before I'm done with those, is that they -- they prove this is too much stuff. They prove this is too intense. Why do they need all these deviations? They are trying to put 356 more development units than this piece of earth can handle. Environmentally, community character-wise, roadway network-wise, mobility-wise, any way you look at it, there's too much stuff to fit with this rezoning application. That's why they need the deviations. That probably is the biggest take-home message from the

need for all these deviations. It proves the incompatibility of this intense amount of development being requested. That's why the rezoning has to be denied, and conditions won't cut it to make it appropriate.

I've got -- before I conclude, I think we had -- we were given the opportunity to present some questions --

HEARING EXAMINER COLLINS: Yes.

MR. GROSSO: -- to the Applicant. And I haven't done this before so I'm not sure how you do this but --

HEARING EXAMINER COLLINS: Why don't you read them aloud; and then if you have them printed, give a copy to Staff and the Applicant.

MR. GROSSO: I've got several of them, and I don't know if you want me to read them aloud. I could give them -- hand them out and give them to you, and have the Applicant have to address them or the Staff address them, but you are --

HEARING EXAMINER COLLINS: I would like you to read them aloud.

MR. GROSSO: Okay, okay.

MS. MONTGOMERY: But if you have a copy, I'd welcome a copy.

MR. GROSSO: Yes, and I have copies for all.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: And these are questions for Applicant and Staff to respond to?

MR. GROSSO: For Applicant and Staff, yes, Your Honor.

(Grosso Exhibit 2 submitted to participants.)

HEARING EXAMINER COLLINS: Okay. This will be Grosso Exhibit 2.

MR. GROSSO: And if it's okay, Your Honor, if I could read them off the copy that I will give to you --

HEARING EXAMINER COLLINS: Yes, and then give it to me, okay.

MR. GROSSO: And there's a set of questions that are tied to documents, as well.

First question we would put would be to Mr. Roberts and Mr. Barraco --

MS. MONTGOMERY: Can I interpose a question or an objection? I read ahead. This isn't regarding the rezoning. It's regarding a pending application that's permitted currently. So what do we do with this?

HEARING EXAMINER COLLINS: So in my introduction, I explained that the public can ask questions, that Staff and Applicant will answer them to the degree necessary.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: And if, in your opinion, the question is not germane to the zoning application, then it is your choice not to include it -- a response to it when we get back to Staff and Applicant following public input.

MS. MONTGOMERY: Okay, thank you.

MR. GROSSO: So we would ask that Mr. Roberts and Mr. Barraco answer the following questions:

What is the minor change related to the water park, Tract C, development order that's currently under review by Staff, seemingly filed by the Applicant on February 14th of this year during the HEX hearing, and assigned case number DOS2023-00182-M01? The submittal and any Staff comments are not available on the County's website, but the Accela landing page notes the revision related to the landscape berm and elevations, among other things.

HEARING EXAMINER COLLINS: That might be better suited to a public records request, but please continue. I'm not intending to derail you. I'm intending to help you.

MR. GROSSO: Yes, ma'am.

Second question to Mr. Roberts and Mr. Barraco, the Applicant's May 30th, 2024, response to Staff's insufficient letter of May 1st, 2024, which notes that

the submitted plans do not meet the required setbacks from South Seas edge of pavement, nor for the proposed pool equipment or restroom building along Bayside Villas, provides that a table on sheet 4 of the revised plan -- which we attach to this question -- includes setbacks from the structures with measurements to the property line to demonstrate compliance with allowed setbacks per Land Development Code 10-329(d)(2). The water park is already under construction. Are the setbacks per the Land Development Code being met?

We next have a question for planning manager, Mr. Dunn, of the County. Is it true that the 5 acres of commercial use set aside in the 1973 resolution and recognized in ADD2002-00098 was not for residential dwelling unit or hotel use, but instead a small commercial area to provide necessary goods and services to resort visitors and property owners in the future?

Second question for Mr. Dunn is, is it true that the ADD provides the physical extents of a contiguous 5-acre commercial area on the south end only as depicted on Exhibit D to the ADD?

We have another question to Mr. Price, the Transportation Division Chief of the County. Is it true that during evacuations, the affected roadways experience reduced efficiency and flow rate and

increased congestion -- due to reduced flow during nighttime hours, weather conditions, disabled vehicles, more cautious and anxious drivers, and increased traffic volumes -- compared to regular traffic?

For the Applicant, we would ask Ms. Crespo to address the following question:

During your presentation at PowerPoint slides 20 and 89, you indicate that the County Attorney's Office notified the Applicant in 2023 that Section 34-1038 is no longer available. How was the Applicant notified by the County Attorney's Office? If that's in writing, please submit.

Next question for Ms. Crespo:

Why is the Beach House restaurant, Tract G, recognized as commercial on the development order application 2022-00196-A02 -- also Attachment S to the Staff Report -- but not reflected as commercial on the proposed MCP, and instead reflected as resort recreation?

For Mr. Barraco, we would ask to respond to the following two questions:

Madam Hearing Examiner inquired as to where golf cart parking will be included, and Ms. Crespo declined to answer and deferred to you, but you did not answer this question as part of your presentation. Where will

the golf cart parking be provided?

Number two, your office filed the development order application that included the Beach House restaurant. Why is the Beach House restaurant recognized as commercial on the development order application, but not reflected as commercial on the proposed MCP?

And for Mr. Trescott, we would ask:

Is the following passage from page 1 of your January 2025 report accurate? And to paraphrase that report, the entire SSIR property is in County Evacuation Zone A, a defined FEMA special hazard area, Coastal A, Coastal AE. Most of the property is located in the FEMA designated coastal high hazard area, Zone VE and Coastal Zone A. For the purposes of hurricane evacuation, Evacuation Zone A is also defined as a Category 1 SLOSH model area. Is that true? You put it in your report.

The next question is, is it true that the roundabout at the intersection of Causeway Boulevard and Periwinkle Way that you mentioned in your report is theoretical only and does not exist, and has not been funded or approved for construction?

Also for Mr. Trescott, is it true that several high occupancy periods fall within hurricane evacuation

season, including 4th of July, high occupancy months of October and November, Labor Day weekend, and Thanksgiving?

Next question, were the unit occupancy rates for Sanibel and Captiva, upon which you based your analysis, based on occupancy rates for the month of September, which you acknowledge would be low because September is probably the month that probably has got the lowest occupancy rate?

Next question for Mr. Trescott, is your analysis based on the assumption that only 42 homes of the 1,773 units on Captiva would be occupied, and only a total of 35 vehicles would be evacuated?

Next question, is it accurate that Hurricane Otis in 2024 began on October 24th as a tropical depression and became a Category 5 hurricane, and made landfall near Acapulco in 24 hours, on October 25th, and that tourists were still being evacuated on October 27th?

Final two questions for Mr. Trescott:

Do you know why the parameters for the base scenario as outlined in your report were set?

Last question: Is it true that you did not personally perform any of the evacuation clearance time calculations in the Statewide Regional Evacuation Study Program?

For Mr. Van Rinteln, we would ask the following questions --

HEARING EXAMINER COLLINS: Pardon me? Who is this for? Who is the question for?

MR. GROSSO: Mr. --

MS. MONTGOMERY: This is for someone who didn't testify in the case in chief, but who did testify in the DOAH proceeding. So I'm assuming we're under no obligation to produce him here.

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: Then I'll move on from that, the questions --

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: -- for that person, okay.

Ms. Fountain, I believe, testified for the Applicant, questions for her:

Is it accurate that for purposes of land use and development decisions in Florida, Chapter 163 Florida Statute makes the SLOSH coastal high hazard area the relevant coastal high hazard area?

Is it accurate to say that FEMA changes to the base flood elevation were made to respond to the fact that the land on which South Seas Island Resort sits is vulnerable to significant storm surge?

Also to Ms. Fountain, is it true that during

Hurricane Ian several segments of Captiva Drive were completely overwashed and damaged by storm surge?

I've got two more brief sets of questions.

For Mr. Gallo: Based on the transportation engineer's stated expectation that the guests will arrive at the resort and have no reason to leave, is it accurate that the expectation for off-site positive economic impact will reflect that situation?

And second question to Mr. Gallo: Is it true that your economic impact analysis did not include any analysis of any financial demands on taxpayers that will be created or increased by the expanded resort, for example, costs associated with fire, emergency management, and police, evacuation management, and hurricane and storm surge damage cleanup, code enforcement, and solid waste management?

And then three final questions for Mr. Farrell:

In your email to Ms. Crespo of June 7th, 2024, which was included in the Applicant's resubmittal to the County on July 24 of 2024, you indicated that there are currently three employee shuttle vans, and you expand as the staff grows, and you indicated that as many as 14 employee shuttles daily have been operated for the resort. How many shuttles are anticipated to serve the proposed development? How many employees

have historically been on each shuttle?

Second question: During your presentation, Attorney Montgomery asked you how many units outside the resort property participate in the resort's rental program and would be subject to its evacuation plan, but you didn't reply with a number. How many units outside of the resort owned by others participate in the resort's rental program, and what's the forecasted participation rate for the next 12 months?

Final question for Mr. Farrell: Is it not likely that guests who arrive by rideshare or shuttle may be unable to secure that same mode of travel off the island in the event of an evacuation?

Those are the questions, if I may present them to you.

(Grosso Exhibit 2 submitted.)

HEARING EXAMINER COLLINS: Okay, thank you. This is Grosso Exhibit 2.

MR. GROSSO: Thank you.

HEARING EXAMINER COLLINS: (Nods head.)

MR. GROSSO: To conclude, Your Honor, as you weigh and balance the presentations and testimony that you've heard, you know, I would ask you to consider just a couple of considerations:

The ability of the Applicant's attorney to direct

questions and, indeed, leading questions to presenters for the Applicant; the inability of lawyers, you know, for the opponents to be able to do the same thing, direct questions to folks and ask leading questions or put cross-examination questions directly to people. Certainly that's what the Code says, and we appreciate the courtesy we've been given to the Code. But I think as you consider the weight and credibility, I think that's an important factor to consider that probably comes into play.

Either way, even pending the questions we've put into the record, I think there's no view of the record -- the facts, the evidence, the presentations -- under which it can be concluded that the Plan and the Code criteria are met here. I have detailed a bunch of Code and Plan violations, but I'll focus at this point on the specific findings that you must make as a result of this proceeding.

Section 34-145(d)(4)(a) requires findings for -- for approval. And, again, we would -- we would certainly ask and urge you to make very specific findings of fact that are very specific to the language of the Code and the Plan sections that are implicated adversely by this amendment.

For rezonings generally, Section 34-145 requires

that the Applicant demonstrate, number one, compliance with the Plan. They have not. Number two, that it meets the Code and all applicable regulations. It does not.

Again, to reaffirm specifically here under Section 34-145, it must be found that the proposed development rezoning is compatible with existing and planned uses in the surrounding area. I just don't think the evidence can possibly support a positive finding there.

It must be found that the rezoning will provide access sufficient to support the proposed development intensity. Just a narrow access on and off the island, that's the access on and off the island, and then it's also the access within the development in terms of how constrained and interrelated that is with other people in the complex.

Must also be found positively that the rezoning will not adversely affect environmentally critical or sensitive areas and natural resources. Surely the weight of evidence precludes a positive finding there.

And then 34-145(d)(4)(a), sub (2), requires specific planned development rezonings, that the Hearing Examiner must also find:

A, that the proposed mix of uses is appropriate at the proposed location, and that mix of uses, as you've

heard, in terms of what's already on the ground as a result of this cohesive master development plan, this wrecks that mix of uses. It was carefully crafted. It was carefully built to provide the right amount of amenities and open space and complementary commercial and residential and hotel, and now this would blow that apart. It is not an appropriate mix, certainly not at this specific proposed location.

The Plan and the Code violations are multiple. I've already read them to you. There's nothing that recommends this. There's nothing positive about this. Everything is adverse. This rezoning is everything this Plan and this Code do not want at the northern tip of Captiva. Nothing -- it's incompatible with existing and surrounding uses. There's not enough room to comply with everything in the Code. Look at all the deviation requests. It's incompatible with the surrounding and nearby development.

You've got a land mass that's shrinking as a result of sea-level rises. It's not getting bigger. It's shrinking as a result of sea-level rise, and that's not just the land mass shrinking. That's saltwater coming up from underneath. That makes that treatment plant even more vulnerable. That makes the application of pesticides and fertilizer and reuse

water -- it gets into the water even quicker because of sea-level rise coming up from the ground, not just over from the sides.

The environmental and the habitat impacts are all adverse. The best they can show you is they won't be quite as bad if we comply with some standards in the Code, but increase? Absolutely. Adverse? Absolutely.

Public safety, the most paramount requirement that there is. Evacuation will get worse. It's already dicey. It will only get worse. They can downplay how much worse it will be, but it's categorically worse. Storm surge, flooding, public safety, it's worse, and it's already in a vulnerable location. It's not making it worse somewhere that's high and dry on the mainland. It's making it worse in the most hurricane and storm surge vulnerable location in the county.

Traffic, already congested, narrow one road in, one windy road within SSIR that is what all the other landowners rely on for their own convenience. It's going to get worse.

All those things require a finding of violations of the Plan.

There are the -- the two essential violations that just stand out, and, you know, that's the Community Plan policies. The record is clear, the historic

development pattern by this unique construct of SSIR master development plan, tightly controlled, reaffirmed over years, 912 units. That includes residential, that includes hotels. That's unequivocal, this is not in keeping with that. It's a major expansion of that with all sorts of adverse impacts on character, integrity of the residential neighborhoods, and all the other issues I've talked about: traffic, evacuation, environment, quality of life, everything else. There's no way to read Chapter 23 to allow an expansion, not a maintenance of the prior existing development pattern. There's no question of what that prior development pattern is, very constrained, very limited to 912.

And then the second one, the public safety, which I've already gone on -- you can't condition public safety. You can't require them to increase the capacity of the roads. You can't put window dressing on a development that's far too intense for this area environmentally, public safety-wise, evacuation-wise.

The requirements in the Code are for density and intensity to be keyed on a case-by-case basis based on what's appropriate at this location. Obviously the facts can only be found that this increased development is not appropriate at this location. It's a fully built-out project. Vested rights are recognized in the

Comp Plan, expansion is prohibited by the Comp Plan. Recall the Community Plan support document provisions that tell us why that chapter was put into the Comprehensive Plan. This rezoning would come at nothing but the expense of all the other owners out there at South Seas Island Resort and my clients, members who live just outside the resort, and many of whom live within the resort itself, this can only be approved on the backs of all those people that adversely affect their property rights, their community character, their public safety, their environment, the reason that people live and visit out here. This rezoning flouts the very purpose and the intent of the whole master development planning process, the purpose and intent of Chapter 23 of the Comprehensive Plan, and all the other provisions of the Plan and the Code.

On behalf of the Captiva Community Association, we would ask you to make very clear, very specific findings of fact and recommendations as to why this rezoning cannot possibly comply with the Lee County Plan and Code. And I thank you very much for the opportunity to present to you this morning. Thank you.

HEARING EXAMINER COLLINS: Thank you.

(Applause by participants)

MS. MONTGOMERY: Madam Hearing Examiner, I have a

question under the Administrative Code. Obviously I understand if that's legal argument, which it sounded like, I'm not allowed to ask Mr. Grosso any questions. If he's a fact witness, then I am.

So was that legal argument?

MR. GROSSO: I'm happy to answer any of Ms. Montgomery's questions; but to be clear, I was making legal arguments and --

MS. MONTGOMERY: Well, no, I don't want to break the rules. If it's legal argument, I will --

HEARING EXAMINER COLLINS: Okay. I will allow it to a limited extent, but remember my admonition from before and what information is helpful to me and the Board.

MS. MONTGOMERY: No, if it's legal argument, I'm happy not to ask questions.

HEARING EXAMINER COLLINS: Okay.

MR. GROSSO: Well, let me be clear, Your Honor, just to -- any misinterpretations. I'm a lawyer, and I do not claim to be making factual presentations to you. I was commenting on the record so...

MS. MONTGOMERY: No, and that's how I understood it. I just wanted to make sure we were all on the same page.

HEARING EXAMINER COLLINS: Right.

VOLUME 6

MS. MONTGOMERY: Thank you.

MR. GROSSO: Thank you.

HEARING EXAMINER COLLINS: Can he take his seat?

MS. MONTGOMERY: Pardon me?

HEARING EXAMINER COLLINS: May he take his seat, or are you going to ask questions now?

MS. MONTGOMERY: No, I'm not going to ask questions. If it's legal argument and it's not, in fact, competent, substantial evidence, I'm not going to ask questions.

HEARING EXAMINER COLLINS: Okay, thank you.

You may take your seat.

MR. GROSSO: Thank you, Your Honor.

Thank you, Madam Court Reporter.

HEARING EXAMINER COLLINS: All right. So the time is noon. I think that we can continue with at least another witness, if that witness thinks they're going to speak for less than 15 minutes or --

MR. BROWN: Yes.

HEARING EXAMINER COLLINS: Okay. I want to be sensitive to the court reporter so I'm keeping an eye on that hour and a half mark. So I think I can, in good conscience, go to 12:15.

Good morning.

MR. BROWN: Good morning, and thank you for

allowing me to speak. I'm Jay Brown. I'm a resident of Captiva for 27 years. I live on the Tween Waters stretch, which is about -- my house is about a mile from the entrance to South Seas.

In addition to being a resident on Captiva for 27 years, I've served over 10 years on the Captiva Community Panel, and for many of those years I was president of the panel. So I feel like, given my long history of living on Captiva and my service on the panel, I have a very good understanding of what makes Captiva so unique versus other Florida coastal communities, and why we all live on Captiva rather than in Naples or Palm Beach or any of the other communities that prize being cosmopolitan over preservation of their natural habitat.

We are a community of small-scale buildings, low density, and respect for our natural habitat. That's what makes us unique and special in the state of Florida. What's being proposed to you by Timbers goes against everything that we stand for on Captiva. It goes against all the reasons why we live on Captiva.

If you approve this, you're going to change the nature of Captiva. You're going to make it far less desirable for us to live on Captiva. Perhaps even more important than this decision here that you're about to

make is the precedent that would be set by approving this. How can you approve this without approving whatever other development plan comes before you? So I ask you to really think about the precedent that you will be setting here, not just what it's going to do to us if Timbers gets the approvals they're seeking from you.

I want you to understand how small Captiva is. There are 1,200 taxable parcels of land on Captiva, 1,200. About 600 of those parcels are in South Seas, and about 600 of them are outside of South Seas. If you allow 350 -- whatever the number is, something over 350 units beyond what exists on our long-standing land use policy, that is a major impact on Captiva. I mean, think about that, how small we are, 1,200 parcels. It is a big impact. We are a small, you know, community.

Think about having a 200-plus-room hotel right at the entrance to South Seas, which is right adjacent to our quaint village area. Do you not think that's a major change in the character of what Captiva is? It's a huge change.

There's been a lot of discussion about, well, how do we measure building heights. I think you can throw all that out. The people on Captiva have long believed that you should have two liveable floors above base

flood elevation. Everybody is for that. Timbers has argued that their height, you know, requirements are required for resiliency purposes. That's just nonsense. Resilience is a function of how high your first floor living area is above base flood elevation. Having three liveable floors, in some cases four liveable floors, above base flood elevation does not improve resilience. It harms it.

Low building heights with trees growing above, you know, our buildings surrounded by native vegetation, that's essential to what our island's charm is, and it's essential to our uniqueness among Florida coastal communities. Tall buildings, such as a hotel with parking underneath, three liveable floors, is a major change in the character, you know, of our island.

We do have a few buildings on Captiva that are built beyond what our two liveable floors are, but those were built long before our long-established land use policy has been -- that we've been adhering to for the past 30 years. So I urge you not to pay attention to that. Those buildings were built mostly back in the '30s.

You know, we talk about is what they're proposing consistent with our historical land use policy. Well, if it's consistent with our historical land use policy,

why is everybody on Sanibel and Captiva opposed to this? If this was consistent with our historical land use policy, you wouldn't have had a petition with 13,000 signatures on it go to the County Commissioners. You wouldn't have had over 5,000 emails go to the County Commissioners urging them to respect our long-standing land use policy. I just think the fact that everybody universally, you know, is opposed to this demonstrates that we do have a long-standing land use policy, and that long-standing land use policy is the reason why we're all here. Please don't change it.

There's been some discussion about the fact that Captiva properties outside of South Seas are on septic tanks, and we don't have a central sewer system to service those properties. One of my major tasks on the Captiva Community Panel has been to establish a central sewer system for all the properties outside of South Seas. We've completed all the engineering for what the central sewer plan would be like in our village. We have the plans for that. We're working to establish a partnership with the City of Sanibel to process the wastewater that would be collected.

In pursuing this project, the major negative I have heard from people, on both Sanibel and Captiva, is the fear that if we establish central sewer for

Captiva, that will encourage unwanted development. It will make it easier, you know, for people to convert, you know, their properties to more intense use.

I own four acres. You know, if we have central sewer, it's a lot easier for me to construct maybe 12 condos on my property. You know, it's a lot easier for me to do that if I have central sewer than if I have to worry about what I'm going to do with the wastewater.

So that has been the major negative feedback that I've always gotten about establishing central sewer, and I have answered that question time and time again: Folks, don't worry about it. We have long-standing land use policies in place. We have strict codes in place. Central sewer is not going to lead to more development. We're protected by our history. Don't worry about that. If this project goes through, I think the central sewer project on Captiva is doomed. I'll lose the public support.

As property owners on Captiva, we've made major investments, you know, to purchase and develop our properties. We did this because Captiva is unique. We didn't want to live in Naples. We didn't want to live in Palm Beach. We wanted to live in this quaint, small community with low density, low building heights.

Think about all the people inside South Seas now

who bought under the assumption that the land use codes there were going to stay. They didn't buy into this thinking that there's going to be 400 hotel rooms, hundreds of additional golf carts running around everywhere, you know, destruction of a lot of the greenery and everything that exists. They didn't buy into this. They bought into a promise that South Seas, as you see it today, is what it's going to be in the future.

So I ask you to think about -- you've got a developer here. You know, I understand -- you know, I spent years in private equity myself. I've, you know, done projects, you know, like this. But you've got this group of people, but you've got all the people in South Seas and outside of South Seas whose lives you're going to impact in a very dramatic negative fashion if this goes forward.

Thank you for hearing me out.

(Applause by participants)

HEARING EXAMINER COLLINS: Thank you -- okay, thank you.

MS. MONTGOMERY: Mr. Brown, if you would?

MR. BROWN: Yes, sure.

MS. MONTGOMERY: Can I trouble you to ask --

MR. BROWN: Yeah, of course.

MS. MONTGOMERY: You indicated you've been a resident for 27 years.

MR. BROWN: Yes.

MS. MONTGOMERY: Are you a year-round resident or a seasonal resident?

MR. BROWN: A seasonal resident for the first 17, year-round the last 10 years.

MS. MONTGOMERY: Okay. During the time that you've been on the island, have you done a lot split with your property?

MR. BROWN: I'm sorry?

MS. MONTGOMERY: Have you done a lot split on your property?

MR. BROWN: I did do a lot split.

MS. MONTGOMERY: And did you build a new approximately 16,000-square-foot house?

MR. BROWN: 16,000-square-foot house? No, 6,000.

MS. MONTGOMERY: 6,000, okay. And so you have a 6,000-square-foot --

MR. BROWN: Right.

MS. MONTGOMERY: -- house, and you have the original historic house?

MR. BROWN: I have -- the original historic house was a cottage on the center of the property built in 1945.

MS. MONTGOMERY: Which is still there?
MR. BROWN: Yes.
MS. MONTGOMERY: And you rent that house; correct?
MR. BROWN: No, my property manager lives in it.
MS. MONTGOMERY: Okay. So do you have any other houses?
MR. BROWN: I have a house on the back, which is in a seasonal rental program, and then the house I have in front --
MS. MONTGOMERY: Okay.
MR. BROWN: -- built in a coastal style that is similar to the architecture that exists on Captiva.
MS. MONTGOMERY: Okay. So you have increased the number of units on your property --
MR. BROWN: I have --
MS. MONTGOMERY: -- since you've been there.
MR. BROWN: -- yes.
MS. MONTGOMERY: So you have made it more dense or more intense.
MR. BROWN: No, I don't think so.
MS. MONTGOMERY: But you've added two houses.
MR. BROWN: Yeah, I have but, you know --
MS. MONTGOMERY: Okay.
MR. BROWN: -- one was my main house, and now I have a different main house. I built that house when I

decided to live here full-time.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: We are going to break for lunch now. We will resume at 1:30. Thank you.

(Recess from 12:13 p.m. to 1:36 p.m.)

HEARING EXAMINER COLLINS: Good afternoon, we're back on the record. Is everybody ready?

MS. MONTGOMERY: (Nods head.)

HEARING EXAMINER COLLINS: Yes?

Okay. We're in the public input portion. My understanding is that the next speaker is going to be Bill Finley -- oh, you're already in the chair. Hang on one second here.

MR. FINLEY: I'm pretty much going to read. I'll give you a copy.

HEARING EXAMINER COLLINS: Okay. And do you have a copy for the court reporter by any chance?

MR. FINLEY: I gave her one.

HEARING EXAMINER COLLINS: Okay, good.

MR. FINLEY: I gave him one.

(Finley Exhibits 1 and 2 submitted.)

MS. MONTGOMERY: Thank you.

HEARING EXAMINER COLLINS: Mr. Finley? So in terms of the exhibits, the written version of your statement is going to be your Exhibit 1, and the paper

copy of your PowerPoint presentation will be your Exhibit 2.

MR. FINLEY: Sounds good.

MS. MONTGOMERY: Can your office provide us with a copy of the PowerPoint? Is that possible?

MR. FINLEY: I thought I did.

HEARING EXAMINER COLLINS: Speak to Maria, and we'll get you one.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: It's two pages.

(Discussion at table)

MR. FINLEY: Do you want me to start?

HEARING EXAMINER COLLINS: Just give me a moment to mark the exhibits, and then I'll be ready for you to start.

Thank you for your patience. You may begin.

MR. FINLEY: My name is Bill Finley, and I am president of Marina Villas, a condominium complex with 40 units located on the east side of the main marina on South Seas. Our community consists of four two-story buildings, each containing ten condos, with air conditioning and storage beneath the units.

While I am not a recognized expert witness, I have firsthand experience managing the recovery of our condos following the last three hurricanes. Having

lived through these disasters, I understand the challenges they bring and the importance of practical, effective solutions. I believe the country has come around to appreciate that basic common sense is invaluable.

I have three major issues I would like to discuss:

The 912 limit, including hotel rooms;

The one-stop resort concept; and

Number three, safety, parking, and congestion.

I'm going to discuss the 912 limit. We bought here for the special ambience of a tropical paradise. If we wanted a densely populated area, we would have gone to the East Coast.

It's a very small island. We can see the water from the Gulf of America out of our lanai, although we have reconciled with the fact that the new condos may eliminate our view. We can see water in the bay from our kitchen. We can see these two bodies of water from our condo not because we are so high off the ground, but because the island is so small.

A group of owners are so upset that they are looking to launch a class action suit over the fact that they bought here with limited density in mind. They bought under the idea of a limit of 912. If the County thought the 912 was flawed, did they disclose it

to other owners when they sought to purchase their properties? They did not.

The Applicant's own PowerPoint slide included hotel rooms in the 912-unit cap. You have heard prior testimony that the 912 included hotel rooms. There is a concerted effort by the Applicant to confuse the meaning of dwellings. It is evident that dwellings include the Applicant's proposed 435 hotel units. Otherwise, there would be no reason for South Seas to file its appeal in the settlement case decided by Judge --

MS. MONTGOMERY: I'm going --

MR. FINLEY: -- Shenko --

MS. MONTGOMERY: -- to object to any discussion of civil litigation outside the scope of these proceedings.

HEARING EXAMINER COLLINS: Continue.

MR. FINLEY: The unit count is the central issue. If the 912-cap is maintained, many of the other concerns will be eliminated.

I'm going to address an issue that arose at the resort while the hearings were taking place. Timbers has sent out a directive not to assist the associations anymore. Our landscaper informed me that Timbers told him he could no longer park his semi-truck on their

property.

We have been using recycled water from the waste plant, which is owned by FGUA. The resort-owned pump house supplied water for our landscaping, which also benefited the resort by disposing of the effluent. Anticipating that the resort might cut off our water supply without notice, we secured a permit for our own water well and began the drilling. Timbers recently asked our landscaper how close we are to completing the project, as they will no longer provide us with water. When we went to check, we discovered that the water had already been shut off. I feel like I'm in a John Ford movie where the land baron has cut off the water to my cattle. We had to delay our replanting. And the question: Do they want the vegetation to die?

Previously they stopped trash collection with short notice. In fact, once the hurricane hit, they stopped all trash collection, even though our association needed it. Do they want the trash to pile up?

Now I have been informed that the resort has instructed the associations to restore the cleared culverts back to their previous conditions. Do they want sand and debris put back in the culverts?

Timbers has acted like a bully. These actions

will only make the experience worse for both owners and guests. The relevance of these instances reflects the Applicant's attitude.

Before I spoke, two owners, who together own five properties at the resort, told me they are afraid of retaliation by Timbers if they chose to speak.

I want to clarify that I am not against the resort. I have a good working relationship with resort staff. I have worked closely with the guest staff as issues arise. While we may have different opinions on further resort developments, we need to cooperate on a daily basis and keep the zoning issue separate for you, Madam Hearing Officer.

My second point concerns the one-stop concept, which I call the Hotel California proposition. You can check in, but you can't leave.

The beauty of Captiva lies in the connection to our sister island, Sanibel. There are so many great places to visit on Sanibel that I don't need to list them all. A few highlights include Ding Darling, the Shell Museum, the Lighthouse, the Farmer's Market, events at the Community House, and scenic walking trails like Pond Apple.

Captiva also offers many attractions beyond the resort. For example, the famous Bubble Room, which has

its own Facebook page with 23,000 followers. If you look on social media, you'll see many comments and questions wondering when the Bubble Room will reopen. The Mucky Duck is also famous. When discussing vacations, if Captiva or Sanibel come up, people always ask, "Have you been to the Bubble Room or the Mucky Duck?" The Green Flash offers a panoramic view of Pine Island Sound. Andy Rosse Lane is home to a variety of shops and eateries. Tween Waters has multiple dining options. In my experience, people leave the resort in a vehicle to visit these sites and restaurants.

My understanding is that the Applicant will be offering interval ownership. If they sell an interval ownership for a two-month stay, those owners will definitely leave the resort to visit local sites and restaurants.

It has been suggested that Uber or Lyft could be used for transportation; however, people have not had success getting Uber or Lyft to leave the resort.

It's unrealistic to assume that guests will only stay at the resort. This will ultimately lead to increased traffic and safety concerns.

My third point focuses on parking and congestion. We have 40 units at Marina Villas. We have 44 parking spaces. As golf carts became more popular, we started

to have parking issues. The vehicle parking is typically more than one per unit, a car and a golf cart. The condos can hold up to six people, so sometimes there are two cars plus a golf cart.

We built a golf cart lot with 20 spaces. Although as six-passenger carts become more popular, the space may hold less. We had tags made up to put on carts that park in the car spaces to move them to the golf cart lots. In season we have to check the parking lot every day and put these on (indicating). I am not aware that any of the other associations have the space to do it.

Planned parking at the resort is inadequate. We were told by the Applicant that there's plenty of cart parking, including at the north pool. There are only ten charging spaces next to the pool. Owners in the rental program who have their own golf carts are told not to park in the cart lot, as the resort reserves those spaces for those carts to charge; and, instead, they are instructed to park in the car lot. With the addition of a new restaurant, spa, and condos, we are now considering installing a gate at Marina Villas to prevent overflow parking from impacting our property.

Continuing with the issue of parking and congestion, the employee housing was in disrepair and

has now been demolished. Most employees did not have their own car; so converting these units into condos will significantly increase both traffic and parking demands.

Let's see if I can do this.

As I mentioned before, we are located on the main marina. You can see -- so we're the main marina, Marina Villas. You can see proposed below that condo -- additional condos. To the left of that is existing timeshare. Slightly to the north of that will be the spa, and then to the left is where they built the Beach House.

Currently there are three undeveloped areas, and the fourth is where the Beach House is being built. This means that the two condo associations, ours and the new ones, will all -- and the spa will all spill onto that road, that small road --

HEARING EXAMINER COLLINS: Where is the spa? I'm confused.

MR. FINLEY: It's on the -- now go up.

MR. MENDEZ: (Complies.)

MR. FINLEY: Right there -- right -- right there where it says, "Tract F."

HEARING EXAMINER COLLINS: Proposed resort recreation?

MR. FINLEY: Right. See --

HEARING EXAMINER COLLINS: And that's on --

MR. FINLEY: -- that's the spa, the timeshare, the condos, and the other condos; and we're all going to spill onto that road and into the intersection.

HEARING EXAMINER COLLINS: Okay. The paper copy you gave me doesn't match what you put on here. Location -- okay, I see, it's just truncated.

All right. And the point you're making, sir?

MR. FINLEY: I'm talking about the traffic and --

HEARING EXAMINER COLLINS: Right.

MR. FINLEY: -- congestion that will be there.

So additionally, as you can see, there's a curve in the road that limits visibility, making it difficult to see around the corner. You can see how it's curved at the bottom of the marina. This small road connects to Plantation Road, creating a four-way stop. Across the road is the Beach House, meaning all this traffic will funnel into that intersection.

It was mentioned there would be parking at the spa; but during the New Year's Eve party, I walked over and saw traffic officers managing the area. Cars and golf carts were already parking where the spa will be built, and the lot was full. Once the spa is completed, there will be even less parking spots

available.

Also, where is the expansive bicycle and pedestrian network? I have owned here for almost 30 years, and I have yet to find it.

Marina Villas uses a beach easement located by the restaurant. I have heard the argument from Michael Whitt that the beach easement is an access road. I would like to direct your attention to slide 3. These pictures were taken March 14th, 2025. As you can see, five vehicles are parked on the easement for the wedding party. One of these vehicles is a truck clearly marked "South Seas." These vehicles are parked directly in front of the restaurant entrance. My conclusion is that the Applicant agrees that this is an access road where parking is permitted.

To borrow from Johnny Cochran, "If the buffer doesn't satisfy, you must deny."

Before I summarize my final conclusions, I have a few questions:

Why were permits issued before deviations were requested or approved?

We saw what happened with the Beach House. Why is the water park moving forward despite ongoing questions about the buffers?

It has also been stated that the construction of

the spa has begun, but it hasn't.

In conclusion, we ask that the Applicant be required to stay within the 912-unit limit, including hotel units, which we understood to be the cap when we purchased. Doing so would help alleviate many issues and begin to heal the community.

Number two, let's be realistic. Guests and owners are not going to stay confined to the resort. The increase in units beyond the 912 will exacerbate an already terrible traffic problem, will increase evacuation times, and undermine public safety.

Number three, there is no realistic parking plan presented to support the increase in units. Common sense tells us that there is insufficient parking proposed.

Thank you, Madam Hearing Examiner, for your time.

HEARING EXAMINER COLLINS: Thank you, Mr. Finley.

MS. MONTGOMERY: I have a couple questions, if I could, for Mr. Finley.

Mr. Finley, in the ADD, which is controlling presently, it says one space per multi-family housing unit is required, plus one parking space per every 10 dwelling units.

MR. FINLEY: I can't understand you.

MS. MONTGOMERY: Can you hear me now?

MR. FINLEY: Yeah.

MS. MONTGOMERY: Under the ADD, one space -- parking space is required for every multi-family unit, and one extra space for every ten units. So your 44 spaces is consistent, is it not, with the current approval?

MR. FINLEY: I can't represent that.

MS. MONTGOMERY: And are you aware that the parking requirements will change, and more parking will be required when the project has to comply with the Land Development Code as opposed to the ADD?

MR. FINLEY: I'm not following you. Alls I'm saying, I haven't seen any -- that there was going to be no parking at the Beach House, and it was going to be at the spa. You're saying there's going to be more parking now?

MS. MONTGOMERY: The parking now is set forth in the ADD. That's where the requirements come from. Should the zoning be approved, the parking requirements will be per the Land Development Code, which in most instances is more parking.

MR. FINLEY: But I understood there was going to be no parking at the restaurant and --

MS. MONTGOMERY: The Beach House was approved under the ADD, not the current -- not the -- what will

happen in the future potentially.

So let me --

MR. FINLEY: So are you saying there's going to be parking there at the Beach House?

MS. MONTGOMERY: I'm just telling you what the situation is, that the Beach House is under the requirements of the ADD --

MR. FINLEY: Right. I'm just saying there's no parking there, and there's going to be a lot of congestion coming into that four-way stop, and there's not enough parking at the spa. That was my point.

MS. MONTGOMERY: We will -- yeah, I understand your point, and we'll address that further on rebuttal.

Let me ask you, do you have your own association for your four buildings, or are you part of a master association?

MR. FINLEY: We have our own association.

MS. MONTGOMERY: And is there a master association that you're a part of?

MR. FINLEY: We're just part of Marina Villas association.

MS. MONTGOMERY: So you're required, as your own association, to handle your irrigation, your parking, your trash, because you're not part of a master association; correct?

VOLUME 6

MR. FINLEY: Correct.

MS. MONTGOMERY: That's all the questions I have, thank you.

HEARING EXAMINER COLLINS: The next speaker, is it Marilyn Frederick? No?

MR. SADLOWSKI: Tom Sadlowski.

HEARING EXAMINER COLLINS: Did I lose the new sheet? Sadowski -- Sadlowski?

MR. MINTZ: Thomas Sadlowski.

(Sotto voce between Hearing Examiner Collins and Mr. Mintz)

MS. MONTGOMERY: Mr. Mintz, per chance do you have another copy of the witness list so we can follow along?

MR. MINTZ: I lost the copy he gave me.

MS. MONTGOMERY: Uh-oh.

(Off-the-record discussion)

(Sadlowski Composite Exhibit 1 submitted.)

HEARING EXAMINER COLLINS: Okay. Mr. Sadlowski, you gave me a composite exhibit of a couple of documents that you're going to be --

MR. SADLOWSKI: Discussing.

HEARING EXAMINER COLLINS: -- showing up there. Let me mark that.

MR. SADLOWSKI: I won't be showing those two

documents on the screen. I'll just be referencing them in my --

HEARING EXAMINER COLLINS: Right.

MR. SADLOWSKI: -- in my notes.

HEARING EXAMINER COLLINS: We're just going to make them part of the record.

MR. SADLOWSKI: Uh-huh.

HEARING EXAMINER COLLINS: Composite Exhibit 1, T. Sadlowski. You may begin.

MR. SADLOWSKI: Hi, Thomas Sadlowski, president of Bayside Villas Condominium Association. I am here today representing myself and my wife, who have owned a unit at Bayside Villas since 2008; but I am also representing the 102 owners of Bayside Villas as president of the Bayside Villas Condominium Association. I would like to address the specific impacts that the proposed zoning changes will have on the owners and guests of Bayside Villas.

The owners of Bayside Villas have serious concerns about any discussions about increases in density beyond what we know is the maximum number of 912 units that can be built within the resort boundaries. Any recommendation to the contrary will have serious consequences to the environment, traffic, and hurricane evacuations; but we understand that these issues have

already been discussed by consultants, attorneys, and expert witnesses, so I'll refrain from commenting on those issues.

Bayside Villas Condominiums is located near the main entry gate directly northeast of the South Seas condominiums and directly adjacent to the resort's south marina. Our 4000 building, which is depicted in this slide here to the upper right-hand corner, is about 42 feet away from the property line of the resort's water park that's under construction.

I should mention that Bayside Villas is comprised of two buildings: the 4000 building to the -- next to the marina, and the 5000 building to the south. The 4000 building contains 36 units, and the 5000 building contains 66 units. That's 102 in total.

The submission by South Seas, as we understand it, poses a significant lack of parking for the water park, which is a large and expected high-use facility, as well as for the south end of the resort. Due to the lack of parking available at the water park in that south end of the resort, and due to some information that we believe has been disseminated that the gate at the main entrance will be removed -- and that's a question for the resort, will the gate be removed -- non-Bayside guests will attempt to use our parking, our

amenities, and fishing on our property. The association will be forced to install traffic and pedestrian gates to keep cars, golf carts, and unauthorized people from entering and using our parking and amenities.

Also, water park structures appear to be being built right to the property line without any setbacks or buffers. It's a noisy use, and Bayside Villas owners and guests will be negatively impacted without the buffers and setbacks.

So right here, this line here indicates the approximately 42-foot distance from the corner of our building to the property line at the water park; and from that same location on our building was a photograph taken yesterday which shows the water park, the property line for that amenity, and you can see that structures are being built within a couple of feet from the property line.

HEARING EXAMINER COLLINS: So were you standing within a condo unit within Bayside Villas when you took that picture?

MR. SADLOWSKI: That is in a walkway directly outside one of the condominium units. That picture was taken from exactly the point where I took the measurement from our corner of the building to the

water park property line.

HEARING EXAMINER COLLINS: So the water park is located at the intersection of South Seas Plantation Road and Bayside Marina? Because I see another line diagonal to property that fronts on South Seas Plantation --

MR. SADLOWSKI: On the --

HEARING EXAMINER COLLINS: -- Road.

MR. SADLOWSKI: -- on the first slide, it's located along South Seas Plantation Road, and it is kind of perpendicular to Bayside Marina's road. It's the big -- the water park is the large swath of empty land there.

HEARING EXAMINER COLLINS: So it's the large cleared portion?

MR. SADLOWSKI: Uh-huh.

HEARING EXAMINER COLLINS: Okay, so now the photo.

MR. SADLOWSKI: And the photo is a picture of that land now under construction.

HEARING EXAMINER COLLINS: So I'm looking across the parking lot --

MR. SADLOWSKI: Right.

HEARING EXAMINER COLLINS: -- and then also looking across South Seas Plantation Road --

MR. SADLOWSKI: Correct, correct.

HEARING EXAMINER COLLINS: -- in this picture? Onto the parcel that's being developed as the water park?

MR. SADLOWSKI: Yeah, the road that you see in the foreground is the marina road, and the road that's perpendicular to that is the -- I believe that's South Seas -- that is South Seas Plantation Road.

HEARING EXAMINER COLLINS: I see. And the point you're making is that the water park is being constructed up to the right-of-way?

MR. SADLOWSKI: The argument that I'm making that -- is, yes, it is being built right up against the right-of-way without a buffer or setback; and given our proximity of 42 feet away from that property line, we fail to understand how the County would have given them a deviation on those buffers when we're so close to that property.

HEARING EXAMINER COLLINS: Well, I don't know the answer to that because I'm reviewing deviations as part of this zoning application, but it appears that maybe a development order that was issued by the County --

MR. SADLOWSKI: And I understand that this is not related to the planning and zoning application but --

HEARING EXAMINER COLLINS: It's a little confusing because we have both things going on at once. We've

got active development under development orders that have been issued by the County and a pending zoning application on the same property.

MR. SADLOWSKI: Understood. But my -- what I'm leading to is if you look towards the marina, there's a red line next to our building. That is the property line between our 4000 building and the marina. And we believe the marina is also part of the planning and zoning application, and we're concerned that the same deviations that they're allowed to have on the Beach House restaurant, at the water park, are going to be allowed at the marina. That's our concern.

HEARING EXAMINER COLLINS: At the marina?

MR. SADLOWSKI: Right.

HEARING EXAMINER COLLINS: And this is the main marina, you said; right?

MR. SADLOWSKI: Right -- repeat that question again?

HEARING EXAMINER COLLINS: Did you or the person before you describe this as the main marina?

MR. SADLOWSKI: No, this is -- this is the south marina, a much smaller marina near the front entry gate.

HEARING EXAMINER COLLINS: Near the very entrance of the --

MR. SADLOWSKI: Yes.

HEARING EXAMINER COLLINS: Okay. So your point is that insufficient buffering between these uses would then --

MR. SADLOWSKI: Correct.

So to restate my position or my concern, we are concerned that the same deviation concerning buffers and setbacks will likely be granted between our building and the resort marina directly adjacent to us, and those same deviations will impact our owners and guests.

We are unsure what structures, activities, and amenities are planned to be built there; and we are extremely concerned about how all this will affect the quality of life of our owners and guests. We simply don't understand how deviations from the regulations concerning setbacks and buffers are allowed, when one of the primary requirements of a zoning application is that no adjacent properties be negatively impacted.

The majority of our owners, including myself and my wife, when we purchased our units, we did so with the understanding that there could be no more than 912 units constructed within the resort. Our understanding was reinforced when the previous owners presented a preliminary plan in 2015 to reconfigure the existing

employee housing and -- built up to 912 -- a 912-unit limit at that location, as well as where the current restaurant at the north end is being constructed. Reconfiguring and building up to the 912-unit limit at that time was not an overly contentious issue, as it was presented and discussed with some transparency. That project obviously never proceeded, and the project -- the owner that proposed that project sold to Timbers.

Our owners are now very concerned that what is being requested in this zoning application will affect the quality of life and result in gated associations throughout the resort, and will have serious implications concerning our property values.

Historically, Bayside Villas has had one, possibly two, of their units go on the market every year, and I've been there since 2008. Currently there are 14 units of our 102 units on the market. Clearly there is concern about what is going on in the resort, and people are trying to bail out.

All this being said, one of the most unique and precedent-setting features of Bayside Villas is that when the project was approved and constructed -- and it has been confirmed that the building was built in accordance with approved plans by the County -- all

112 -- excuse me, all 102 units were built with what is described as a lockout unit. And to the best of my knowledge, Bayside Villas, our two buildings, are the only buildings within the boundaries of the resort that have lockout units. The lockout unit is a separate hotel (sic) at the front of each unit that could be locked off from the rest of the condo, and which had a separate entrance, separate air conditioning, and separate bathroom facilities, such that it could be rented out as a separate dwelling unit. This essentially raised the dwelling units at Bayside Villas not at 102 units, to 204 units. So when this came to the attention of some folks on September 27th, 1999 --

MS. MONTGOMERY: Madam Hearing Examiner, for the record, I'm going to object to relevancy of something that happened that has nothing to do with this application, and it has to do with their lock-off units being out of compliance, but it doesn't affect this application. It's irrelevant.

HEARING EXAMINER COLLINS: Okay. Please continue.

MR. SADLOWSKI: I disagree. The -- we were -- we were -- there's a legal agreement that was put in place on September 9th, 2002. The resort sent a letter to each Bayside owner that stated the County had notified the resort that rental of these lockout units was

unlawful, and to avoid any enforcement action, we were told to disengage those lockout units and make them part of the condominium unit. In that enforcement issue, you know, the 102 lockout units could be considered as hotel units, and forced us -- Bayside Villas forced not to be able to use them. Timbers should not be able to say that hotel units are not part of the 912-unit count.

In conclusion, if Bayside Villas is prohibited from using these dwelling units, then in Timbers' zoning application, any hotel rooms being proposed which exceeds the 912-unit cap should not be allowed. Thank you.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: I have a few questions, if I could.

MR. SADLOWSKI: Sure.

MS. MONTGOMERY: How many -- if you know, what percentage of your units within Bayside Villas are in some form of rental program?

MR. SADLOWSKI: Probably a little more than 50 percent.

MS. MONTGOMERY: Are there any residents, if you know, that are full-time residents in your association?

MR. SADLOWSKI: I can -- I can only tell you that

I am a full-time resident.

MS. MONTGOMERY: And do you have your own separate association that's responsible for your units and your common areas?

MR. SADLOWSKI: Yes, we do.

MS. MONTGOMERY: And are you aware of the fact that the water park has an existing development order and was approved under the setback buffer and parking requirements --

MR. SADLOWSKI: I'm aware.

MS. MONTGOMERY: -- of the ADD?

MR. SADLOWSKI: I'm aware.

MS. MONTGOMERY: And so a different set of rules and regulations would be in effect if this zoning is approved.

MR. SADLOWSKI: I understand that.

MS. MONTGOMERY: Okay, thank you.

MR. SADLOWSKI: May I make just one comment about the association? In the previous presentation, you had asked about if we were part of any master association agreement. There is no master association agreement, to my knowledge, in the resort.

MS. MONTGOMERY: Okay, I appreciate that.

Can we go to the second picture? I did have a question about that, and I almost --

MR. SADLOWSKI: Sure.

MS. MONTGOMERY: -- forgot.

In that picture it says that it's taken from the third floor of the villa. Is that a habitable floor?

MR. SADLOWSKI: Yes.

MS. MONTGOMERY: How many habitable floors do you have?

MR. SADLOWSKI: We have three habitable floors.

MS. MONTGOMERY: Okay. Over -- I think you said over storage; is that what you said?

MR. SADLOWSKI: Three -- three stories over parking underneath.

MS. MONTGOMERY: Okay, thank you.

MR. SADLOWSKI: Can I add to that question? We -- we -- at Bayside Villas, we are aware that the three stories is an existing nonconforming use.

MS. MONTGOMERY: Thank you.

MR. SADLOWSKI: Thank you.

HEARING EXAMINER COLLINS: Marilyn Frederick? Good afternoon.

MS. FREDERICK: Good afternoon, Madam Hearing Officer. I have a PowerPoint, and I'm not sure I know how to get to it.

HEARING EXAMINER COLLINS: All right. Well, Adam can help you. And then when you get a chance, state

your name for the record.

MS. FREDERICK: Okay. My name is Marilyn Frederick. I am a resident at Land's End -- let me find my thing here.

HEARING EXAMINER COLLINS: You're a resident at Land's End?

MS. FREDERICK: Yes, and what you see there is Land's End Village. It is our home. I'm not only a resident there -- we reside there roughly eight months out of the year -- I'm a Florida resident. I vote in Captiva. I'm also the president of the Land's End Village Condominium Association.

So I put that picture up there because so often a lot of people think that what they see when they see those buildings is South Seas Resort, and the resort owns it. They do not. That's a lot of times the face of a lot of marketing material, but that is Land's End, and it is privately owned by 68 private owners.

We've been an owner for seven years at Land's End. We've been owners for over a decade at Plantation House. We do own four weeks there. And I'd like to voice my concerns both privately, as an owner, and also as the association president.

HEARING EXAMINER COLLINS: Okay. Hang on a second, when you say "Plantation House," is that the

name of your building, or is that a different location --

MS. FREDERICK: Oh, I'm sorry, that's --

HEARING EXAMINER COLLINS: -- within the resort.

MS. FREDERICK: -- that's a timeshare building on the resort.

HEARING EXAMINER COLLINS: But not in Land's End?

MS. FREDERICK: Not in Land's End --

HEARING EXAMINER COLLINS: Okay.

MS. FREDERICK: -- my apologies.

HEARING EXAMINER COLLINS: I understand.

MS. FREDERICK: Okay.

As private owners, we relied on the Lee Plan for Captiva. We purchased where we did because we felt that we could reasonably rely on the decades-old Lee Plan for Captiva. We used to own in Naples at Breakwaters there. It was also a low-height building, but we saw so many large, tall buildings come around us that we were no longer comfortable in Naples. We wanted to be in Captiva, and we relied on the fact that there could be no more than 912 units -- or 912 doors, as they say -- total that could exist. That would be 272 allowed in the resort, inclusive of hotel doors, and 640 owned by others, others like us, privately-owned people (sic). We relied on the

restriction of density and that low-use intensity of 3 units per acre. We loved that.

We raised our sons in Vermont, that's where we go in the summer, and Vermont has a lot of green. It's the Green Mountain State; so it has a lot of open area. We wanted a lot of that open, wild-type area.

Oddly enough, when people asked us, from Vermont, why would you want to live in Florida? All there are, are high-rises and people and traffic and everything else, and I said, not in Captiva. And the more they learned about it, the more they realized, too, not in Captiva. We relied on this.

We relied on the restriction of the heights of roughly 35 feet above grade, 42 feet above sea level, and all the other things that the experts -- which I'm not one of -- will indicate what the heights are. We just knew that in our romantic minds, I guess, that it was no taller than the tallest palm tree, that's what they always said, so that our views would never be obstructed, and we love that.

We also relied on the historic development pattern of Captiva, the quaintness. Those buildings were gorgeous -- they used to be gorgeous, even on the resort, before they were torn down. When you entered into Captiva, and you saw the little white welcome

building, it was nicely done. You felt like you were in the Caribbean, and we really relied on that quaintness, to never overdevelop.

I'm going to say our community relied on the 3-units-per-acre Lee Plan for Captiva because Captiva is a community. It's a community outside the gates; it's a community inside the gates. South Seas is a multi-owned community of which the resort is a part, just as my association is a part, and Bill's and Tom's and so many others are a part. It's not because we're ruled by a master association. It's because we're ruled by a master mindset of what community is, and we always felt that living where we do.

The resort is a minority owner of 120 acres of the 304 acres of the property there. They're a minority owner. You take that 912 units, divide it by the 304, that was our 3 units per acre. We thought we were safe. That would be good. But if the County takes away 120 acres and treats them separately, what about us? Now you've got 184 acres, and then you take the 640 privately-owned units, divided by that 184, and suddenly you've got 3.48 units per acre. How does that happen, that we become nonconforming with the Plan because of the actions of another?

Providing special zoning compliance for one part

of the community creates a breach in compliance for the rest of the community, I feel in my heart, and I would hate to set apart a community designed to be a part of one another. And I really felt, from the time I first saw Captiva -- and I first saw Captiva in the very early '70s and fell in love with it before this was even built. I came as a child with my father. We were just taking a drive. And there was this little building, and in this little building was a big table. It had a domed glass thing, diorama -- I don't know what they call them, but it had different buildings of "and here's our vision, here is what is to come." And they expressed all my life the idea that this was to be a community, and it always had been, and I would shudder to think that we'd be torn apart by something like this.

You know, everyone relied on restricted height for the Lee Plan for Captiva, too. We cherish our unobstructed views out there on Land's End. We really cherish them. I know that everyone who has a view does cherish them. That "no taller than the tallest palm tree" really provided that view. And as association president, I can tell you that not only are those views valued, but individuals really take the time every day -- and they really express this to me. They'll

take the time every day to just look out. There are individuals who love the resort. They love the area.

Somehow it doesn't seem right to only favor one entity in any sort of rezoning. To place buildings that are projected to be 20 feet -- I don't know how much taller, but any taller than what exists now is really something that would really be a blight to the views of many individuals, not just from our association's standpoint but many others. And recommending the rezoning, it seems to me, favors the value of real estate of one owner while potentially lowering the value of real estate for others, just as you've heard from other association presidents that, you know, people are trying to sell their places in some areas because they seem like they're trying to run before things can crash down on them.

I just really don't understand why you would allow so many deviations in rezoning that protect the rights and values that many have relied on, to favor just the one. And, again, they're the minority owner, not just in the amount of acreage they own, but from a money standpoint -- you don't want to make it a money standpoint, but let's face it, it's got to be about money that all this wants to happen. You know, the private timeshare -- non-timeshare associations are

valued at hundreds of millions of dollars more than the $50.38 million the current owners of the resort purchased the area for, and this is taken from the Just Value of the 2022 Lee County Property Appraiser's Office. The report was run February of 2024. But you can see of the associations -- not the timeshare associations, but the associations throughout the resort, the value of close to 500 million of all those associations. Land's End alone is worth twice the value of what they purchased the resort for. But all this rezoning is seemingly bending over backwards for one small owner and totally disregarding the values, both financially and intrinsically, to the owners. It's just ignoring those. It seems to me like the tail keeps on wagging the dog here, and I can't figure it out. Zoning protects property rights and values of everyone. That's the reason they exist. All these deviations and requests to rezone, it seems very unfair to me.

I want to talk about accessibility, parking, and safety, because I think it's very important to know that we've always felt fairly safe on Land's End; but when you add the different things that are being added, I think that you're going to overburden not only the density aspects of things but the safety of things.

I put up the picture of the Beach House there because that's something that they've used in their marketing, and you see all the people walking and milling around, and yet I also know you've seen -- not in my presentation but presentations previously -- just how big that restaurant really is and how close it is to the road. I'm not sure anyone could even balance on the curbing if they wanted to walk around it once it's done. So this rendering, I know it's not reality, they know it's not reality. I know it's not supposed to be reality, but what's really happening feels unreal to all of us that live there.

What about the easement protections for everyone? You know, Land's End is one of the entities entitled to the easement at Sunset Beach. It is our legal access to the Gulf. And roughly ten percent of our owners or their families are of limited mobility and rely on easy access of that easement to enjoy the beach. Parking is essential for both able-bodied and disabled users to be able to get there. It's essential. Access is essential, and the only way to access it realistically is if there is parking available. It's good to hear that maybe they'll have more parking than what we've been hearing in the past, because it seems like every sign that you see indicates that the only parking is

for South Seas Resort guests or South Seas owners in their program. There's no parking available for the rest of us currently, and I had not heard of any parking being available, even though we have a rightful access to it; and as was pointed out, the resort was parking on it just the other day, so they must realize, too, that parking -- vehicular -- I can't say it -- vehicle parking is allowed there, but I've not seen where you can really have it.

And you could see by the picture that Tom put up just recently, that when you park right in front of the restaurant, there is a very narrow path for anything else or anybody else to walk or access the beach. So most definitely there has to be consideration for additional parking in that area.

The feeling is that the resort is intentionally overbirding -- overburdening this easement, and it will make it unsafe at best, and it will make it a powder keg at worst. Because, quite frankly, at Land's End we have a number of people that do rent out their units -- and by "rent" I don't mean for long months at a time, but for 5 nights to 14 -- you know, a couple weeks' type time, and I've already seen the angst that people have when they feel that there's no place to go to park. You put this many more people on an easement

that's overburdened by what the resort has chosen to do, and you're going to see some very unsafe situations just as tempers flare.

And as it relates to accessibility, parking, safety -- you know, Sunset Beach isn't the only area left unsafe and inaccessible. This is an overview of Land's End, and you can see the lake -- which actually it's a pretty lake. It's much larger than it used to be, but it's -- it's pretty. And then there's another lake on this side that never used to exist. I keep hearing that, oh, these lakes always existed. That one never used to be there. That used to be like over here. It was just the sixth hole of the golf course. But not only have they trapped us in by these two lakes -- which okay, all right, you put up lakes, but there's a fence that you can see here that goes all the way around us that has also trapped us in.

At the entrance -- and you can see a picture of the fence there, too. At the entrance to Land's End -- you can't really see it, but there's some bollards there that they put up so that no one could use the path other than for walking. And you see the Redfish Pass there. That water is a very popular fishing area.

So you've got scenarios where we've got more traffic there than Land's End people because you have

people coming over there to fish and things, and they want to park and -- and what-not. They start blocking us in because they're parking their golf carts, et cetera; and we're really locked in then because once the front is locked in or blocked up, then we have no other access out. That's our only access.

In the event of a fire -- there have been times -- because we do live out there, there have been times when it's been dry for weeks, and the winds start to blow, and you really do worry that if a spark catches, there's going to be a fire, and what's my way out? Now I'm not an expert in anything, really; but, you know, I spent 40 years as a public school finance officer and, slash, safety officer for that. I've got just a little certificate on fire safety that you get to be a fire safety watch, et cetera.

When I look at the wind and dry conditions and scenarios, I always think, what's my way out? In the event of a disaster, what's my way out? And I never used to worry because I could always go out the back if the front was blocked, but not anymore. It would be tough for anybody to get out the back now, being fenced in.

Continuing with parking and safety, this, again, is the front of Land's End, our only road. And you can

see this road actually goes in front of their golf course, The Clutch. You can see there's "no parking" signs here. Now, those aren't always there. I don't know if they're going to leave them there or not. There were no parking signs there, they took them down for a while, now they put them back up --

HEARING EXAMINER COLLINS: Can you go to the slide before and orient me, on that first picture, where are you --

MS. FREDERICK: (Complies.)

HEARING EXAMINER COLLINS: Maybe it's the one before that where you can show me where that is.

MS. FREDERICK: That's -- it's right here. So --

HEARING EXAMINER COLLINS: So is that like on the --

MS. FREDERICK: -- this is our road in.

HEARING EXAMINER COLLINS: -- top of the island there? Is this located --

MS. FREDERICK: Oh, you mean where all of Land's --

HEARING EXAMINER COLLINS: Yes.

MS. FREDERICK: -- End is? Yeah, we're at the very north tip of the island.

HEARING EXAMINER COLLINS: Right, but where is that picture on this picture of all of Land's End?

MR. MENDEZ: It's the image above.

MS. FREDERICK: This image above?

MR. MENDEZ: It's right there --

MS. FREDERICK: Where the access road is from the picture --

MR. MENDEZ: Yes.

MS. FREDERICK: -- above, okay. So you're following the road right here --

MR. MENDEZ: Yeah.

MS. FREDERICK: -- so that's going into Land's End.

HEARING EXAMINER COLLINS: Okay. So the first picture on the next page, is that that intersection there?

MS. FREDERICK: Yes, yeah, that's our only way in. It meanders past their golf course and past Seabreeze and then into ours. There's a pretty severe curve there.

HEARING EXAMINER COLLINS: So where are the bollards you spoke of in this photo?

MS. FREDERICK: The bollards are on the path. There were -- this -- there's a walking path that used to be a golf cart path, also. People used it quite frequently. Every night at sunset, people would -- I'm losing my thing here -- people would take walks,

bicycles, and golf carts around this path to go to the very end. I call this little thing North Point. I don't know if it really has a real name. But they -- they would go out to this area, and they would not go onto the sandy beach. I've heard many times that they blocked all this off because we don't want golf carts driving on the beach. Have you ever seen a golf cart on a beach? Because it sinks. Your typical golf cart can't drive on that -- on the sandy beach unless it's pretty rock hard. You could get probably an ATV out there, but the golf carts that used to always use this would park probably in that green area there, or they would just sit in their golf carts, watch the sunset, and then they would drive away, either that way or come back the other way to enjoy things. But that's basically where the -- they would go.

Well, they put up bollards here so that way no golf carts can go there anymore. People could still walk through there; however, I have witnessed a wheelchair being unable to get through there, and the parents of a girl in a wheelchair being -- lifting her out, the other folding the wheelchair to be able to push it through the bollards, so that she could go on a walk with the family. They have not made this very family-friendly for a lot of different people.

Is that everything you wanted on that page?

HEARING EXAMINER COLLINS: Yeah.

MS. FREDERICK: Okay.

HEARING EXAMINER COLLINS: You can go back to the next page.

MS. FREDERICK: Okay.

HEARING EXAMINER COLLINS: I just was trying to get located...

MS. FREDERICK: All right. I know there's a lot thrown at you. I'm amazed at you. I don't know how you do it all but...

So this is still the road going into Land's End. They've got that no parking up. They've got this vehicle parked there. Now, this is a very narrow area, it's a curve; and when I went to ask the vehicle to move, I was told that he was told by the security guard to park there because he was setting up for a wedding up here -- oh, I'm sorry, you can even see the security truck, as I was talking to the guy, he came over.

So I said, well, why didn't you park at the golf course? They have -- they don't have any parking at the golf course, but they do have a semicircle that you can drop off people. And he said, well, I didn't want to block their golf course. I'm like, oh, okay, but you don't mind blocking our drive.

And you can see in the second photo, this is a golf cart coming out of Land's End who is totally stuck because she has to wait for the traffic to come around and -- you know, it's only a few minutes; but, hey, it doesn't make sense to me that you would have no parking there, you would allow vehicles to park on the road, a road that can't be wide enough to allow that, and restrict the flow of traffic like they do. There's a couple of cars behind them so it took the golf cart a while to move.

This was further back, longer ago, where the same scenario happened. Now, they were actually putting in some sort of wells on the golf course -- I don't know what exactly that is -- but that came about and blocked me as -- I think I might have been coming back from the Farmer's Market. But I was coming back, and it blocked me for 40 minutes, I couldn't get home. We didn't know this was going to go on.

HEARING EXAMINER COLLINS: So the entrance to the community is in front of that truck there --

MS. FREDERICK: Yeah.

HEARING EXAMINER COLLINS: -- you're saying?

MS. FREDERICK: Yeah, it's right -- right there. So they had many trucks blocking us, but that one was the one that really -- it took up a lot of space.

And then the -- they turned around in Land's End, going over our curbs and breaking a couple of irrigation heads that I didn't even bother asking -- I mean, the resort -- if something is damaged on Land's End because of vehicles that have gone in there, the resort is good about fixing them, et cetera. They understand that. But I just do not have an understanding of why we're, A, never made aware when there's going to be major things like that happening. That would be a courtesy of any neighbor. We're not made aware if there's going to be a wedding happening up here which would cause, you know, any sort of blockage. We're just always -- I want to say we're an afterthought, but we're not even a thought. They -- it's -- it's not a good community aspect.

And, again, here's another cart that was just sitting there. They didn't go on our property, but they parked there because, of course, they want to go fishing on Redfish Pass. That's one of their carts, and it's -- they just park anywhere.

Here's another one that actually did go on our property, and they -- we had just newly smoothed this out to put on landscaping, and we have to smooth it out again because this person -- this was Sunday. They went over; they parked there; they went out -- what

they'll do is they'll park, and then they go across to -- they go under our buildings to access the pass. So it's just one of those things that I know that we're always going to have parking issues, and we're going to now have to police that. We've already begun policing that.

It's bad enough with the traffic that we had -- even as we drove here today, traffic going onto the island was backed up almost to Shell Point. It -- there's a lot of traffic as you leave the island. You have pedestrian -- you know how narrow the roads are. We had to slam on our brakes as a bicyclist was coming across in a place that he shouldn't have been coming across. There's strollers on your other side. Really, I love seeing families; but when it comes to those double strollers, you know, they really take up a lot of space. So you're constantly being on the defensive as you're driving. There's no way that you are not being 100 percent focused when you drive on Captiva close to the resort because there's -- there's lots of people walking with no place to walk; there's lots of bicyclists with no separate bike path; and a lot of times cars can't make it through.

So this is at a time when there's hardly anyone on the resort, so to speak, because they don't have any of

their hotels or condos up. I can't imagine, with 628 units, how many vehicles and how many more people that will congest our roads with. Honestly, I can imagine it, and it's scary.

You know, before there were 107 hotel units; and when full, there were no extra spaces in their parking areas. I know because I live there. I would often go and just take a bike ride through; and when it was busy, it was busy.

There were 140 employee housing units, and they seemed to always have some space there for parking because I don't think all of them had cars -- I think it was just a small percentage -- and there were 25 undeveloped units so there weren't any cars there.

But after they get all these units in, renters bring a vehicle, they bring vehicles, and will there be 628? No, I think there's going to be more than that, quite honestly, because I can tell you at Land's End, I'm -- sometimes I call myself a bottom dweller. I'm on a lower unit, and then the larger units are above us. So each building at Land's End has two two-bedroom units on the first level above parking, and then they have two three-bedroom units on top of us. So I know when people come in, they rent and -- I know because I can hear them, and I also can hear any sort of issues,

if they're having issues parking.

So my experience living beneath a rental is they bring vehicles, and I'll tell you that a two-bedroom unit always has at least one vehicle. I know what's coming and going. They always have at least one vehicle. I've never seen them just come without one. And the three-bedroom units almost always have two or three vehicles. And why? Well, they consist of more than one family a lot of times. If it is just one family, often it is only two vehicles. They come in a car, they rent a golf cart, and they park underneath our -- our buildings. We can accommodate that.

When it's two families or maybe three friends, three different couples, they each bring a vehicle. We can't accommodate that. So -- and I know this last week we had one Ram 2500 pickup truck, one Wagoneer, one very large other vehicle, and a golf cart for one rental unit above us. And I went down and I said, you know, I'm sorry, but are all you parking here? And they said, well, it looks like you don't have room. And I had said, yeah, that's true. You know, I think I can give you the one parking space because we realize you're renting that unit, and they have a parking space, and we can accommodate the golf cart, but everybody -- you know, everything else is full. So

what they did was they called up Marina, who is the owners relations manager at the resort, and she found them another place to park. And I believe they told me, oh, this is good. We'll park the pickup at the -- at the marina.

So I think it's more realistic to believe that people who rent to stay for a week or longer at these places are going to come with a vehicle. I think it's very unrealistic to believe, in my experience just living there as I do, that people are not going to come with vehicles. They'll need more parking.

So, Madam Hearing Officer, thank you for listening, and I want to ask you to please advise the Board to honor the agreement they made with this community that we have relied upon for decades, and certainly since 2003. Please advise the Board to uphold the same density, height, and intensity rules that we have all legally relied upon, and please do not relieve the Applicant of the burdens of their own making by placing unsafe, unsightly, and unfair burdens on us.

Please advise a denial of the rezoning of 120 plus acres from residential multi-family, marine commercial, and two-family conservation to the mixed-use planned development to permit a maximum of 196 multiple-family

dwellings and 435 units -- hotel units with accessory uses and structures. That's not what Captiva is about, and we can't handle it. Thank you.

HEARING EXAMINER COLLINS: Thank you. Do --

MS. MONTGOMERY: I have a few -- go ahead.

HEARING EXAMINER COLLINS: Just a sec, Neale, just a second.

Do you have a paper copy of the PDF file that you --

MS. FREDERICK: I do. And one of the other things I wanted to mention, when I was talking about I was an owner and president of the association, I'm also a CCA member. I also use the library and, you know, multiple other community memberships and activities so --

(Frederick Exhibit 1 submitted.)

MS. FREDERICK: -- I feel like --

HEARING EXAMINER COLLINS: Okay. So this is Marilyn Frederick Composite Exhibit 1.

(Frederick Exhibit 1 submitted to Ms. Montgomery)

MS. MONTGOMERY: Thank you, appreciate it.

HEARING EXAMINER COLLINS: The next name I have is --

MS. MONTGOMERY: Wait, wait --

HEARING EXAMINER COLLINS: -- Leo --

MS. MONTGOMERY: -- wait --

MS. FREDERICK: She had a question.

HEARING EXAMINER COLLINS: Oh, I'm sorry.

MS. MONTGOMERY: Sorry.

HEARING EXAMINER COLLINS: I'm moving forward. Sorry about that.

MS. MONTGOMERY: Can you go back to your PowerPoint? Is that still possible, or did it disappear?

MS. FREDERICK: I don't know. Okay.

HEARING EXAMINER COLLINS: Well, Adam is there to help her if she can't.

MS. FREDERICK: It might have -- there we go.

MS. MONTGOMERY: Okay. Yeah, let's just go to slide one. I think that's helpful --

MS. FREDERICK: Okay.

MS. MONTGOMERY: -- if we can.

MS. FREDERICK: Yes.

MS. MONTGOMERY: Okay. So you represent Land's End. So when you talk about what Land's End is, how big is the area, and how many units do you have?

MS. FREDERICK: We have 68 units, there's 17 buildings, and a -- one small building that's an office/pool area building. There's some playing courts that you could see there. And the property line -- there's another person who will be speaking more to the

property line, Leo Farrenkopt, who is also a resident there. He has more information on the property line.

MS. MONTGOMERY: Okay. So he can tell me what the acreage is?

MS. FREDERICK: I'm not sure if he'll know what the acreage is of that, but he'll know what the property line is.

MS. MONTGOMERY: Okay. How many floors, if you know, are all those buildings?

MS. FREDERICK: There's -- the very first floor is parking, which is 76 to 78 inches high. It's very low. As a matter of fact, one of the South Seas golf carts just Sunday broke one of our fire sprinkler pipes. Your security is very good. They called the fire -- you know, everything -- your employees work with us so often on those type of things.

MS. MONTGOMERY: I appreciate that.

MS. FREDERICK: But it's very low, and then there's two -- well, so then there's -- the first floor would have the two-bedroom units; the next floor has the three-bedroom units with one of the bedrooms on the -- what you see is almost like a little penthouse little area.

MS. MONTGOMERY: Okay. So the second half of the floor has sort of like a mezzanine, is that what you

were -- or a loft, or what would you call that?

MS. FREDERICK: It's -- see how it's not a full floor? You know, it's got a bedroom up there and a bathroom, and there's a lot of wraparound porch, so to speak, up there.

MS. MONTGOMERY: Okay. So the property -- and I know you have the other gentleman coming. The property between you and the water, that is the golf course or property under the ownership of South Seas?

MS. FREDERICK: Yeah -- so our property line does go only -- I don't know how many feet out from those buildings; but that golf course hole that used to be the sixth hole --

MS. MONTGOMERY: Uh-huh.

MS. FREDERICK: -- is now a lake. That's all resort property.

MS. MONTGOMERY: Okay. Now, it's my understanding that during Ian, and perhaps Milton, that there was an overwash there which damaged what I'm going to call the riprap revetment area. Is my understanding correct?

MS. FREDERICK: Yeah, primarily Milton, it seems, did more damage almost than Ian when it came to -- the surge did come up, it pushed a lot of the stones around some trees -- and it is one of our concerns most definitely, too, because of that large lake you saw on

the other side where -- there has always been a lake there, but it's much larger now. We're almost a little worried that if there is another major surge like that, that we'll become like North Captiva and cut off from the rest of Captiva. We'll be kind of like middle earth -- it will be Middle Captiva.

MS. MONTGOMERY: Okay. But since the storm, it's my understanding that extensive work has been done, and that revetment has been repaired and enhanced. Is that --

MS. FREDERICK: No. I mean, there's been some work done -- I think after Ian there was extensive work done.

MS. MONTGOMERY: Maybe that's what I'm thinking.

MS. FREDERICK: Yeah, I think that's it. It hasn't been totally repaired yet, since Milton. I'm sure Shawn knows better what the timeline is and what the hurdles are on that; but, no, it's in pretty bad shape right now. It's in really bad shape. And the lake that you built there never seemed to really hold water, right. It --

MS. MONTGOMERY: The old lake, not the new lake.

MS. FREDERICK: The new lake, the new lake on the sixth hole, it really suffered damage, and it never quite held the water like it used to. And I only say

that because they seemed to rebuild it a number of times -- they did the other lake, too, but this -- this one's in bad shape. I don't know what's going to -- I don't know what the future is of it.

MS. MONTGOMERY: Okay.

MS. FREDERICK: It doesn't seem to hold water, is what I'm saying.

MS. MONTGOMERY: So your buildings are higher than what the current ADD allows. Are you aware of that?

MS. FREDERICK: I -- you know, I believe in listening to what David Mintz said earlier, that we would be within that -- that base sea level, flood, et cetera, and I think the person coming behind me would probably know best on that, too.

MS. MONTGOMERY: Okay. You talked about nonconformity and the 304 acres. Were you aware that 97 acres was conveyed away to the Department of the Interior, and it's not part of the resort at this juncture?

MS. FREDERICK: You know, I was aware of that, but I -- because it's the Department of the Interior, U.S. Government owning it, it still provided me with that concept of green space. At least in Vermont we call it green space. I don't know what it's called here. But I think it still has that effect, that you're not going

to build on it, and it's open.

MS. MONTGOMERY: Absolutely, you're absolutely right. It's going to be there, it's got a conservation easement on it, but you can't count somebody else's property towards your density. Does that make sense?

MS. FREDERICK: I understand what you're saying, yes.

MS. MONTGOMERY: So Land's End was over the 3 units an acre once the 97 acres was conveyed away to the Department of Interior. So it was a series of events, that conveyance as well as the adoption in 1984 of the Comprehensive Plan that had a density limit based on the land use category.

MS. FREDERICK: From that standpoint, technically I'm sure you are correct; however, from the standpoint of the general purpose, the idea of why there was just 3 units per acre, I think it still lives up to it because of that open space.

MS. MONTGOMERY: Okay.

MS. FREDERICK: And that's the beauty of what we have on Captiva. That's what we enjoy about it.

MS. MONTGOMERY: And you made a statement, and I may have misunderstood it, that the County would be taking away the 120 acres, or your right to use the 120 acres. Does Land's End have any ownership interest in

the 120 acres that's the subject of this application?

MS. FREDERICK: We have easements, but we don't have ownership.

MS. MONTGOMERY: Okay.

MS. FREDERICK: Is that it?

MS. MONTGOMERY: I've got a lot of notes. Can you wait just a second?

The road to Land's End, how much of that do you maintain, and how much of that does the resort maintain, if you know?

MS. FREDERICK: Again, the gentleman coming behind me will talk more to the road and the entrance, but we maintain most definitely everything that is -- there's -- there's black asphalt that -- actually, we still maintain a little bit of that, too. But there's black asphalt, and then you'll also see red bricks, and we maintain all the red bricks.

MS. MONTGOMERY: Okay.

MS. FREDERICK: There was a time earlier where the resort was pulling up the red bricks, and we gave Shawn a call, and we said, you're pulling up our bricks, and he had them replace it. But, yes, we maintain all that.

It's really interesting because the property lines cut in a variety of ways; and while we might have those

little red bricks, there's a little white retaining wall that the resort has, and they would maintain that. So when their truck hit it -- that big one I showed you, when they hit it, then they did repair that and repainted it. Since then another truck's hit it but -- so we're such an integrated community, that's why it's so hard to understand how any part of us could be taken away from each other, because it was clearly designed to work together and not against each other.

MS. MONTGOMERY: You indicated that the unit over top of you is a rental unit. Do you know what percentage of the units in Land's End are rental units?

MS. FREDERICK: I think there's roughly -- with the resort about 26, 28 percent, and throughout the rest of the Land's End, about 40 percent of them rent.

MS. MONTGOMERY: So either privately or through different rental management --

MS. FREDERICK: Correct.

MS. MONTGOMERY: -- companies?

MS. FREDERICK: They use Royal Shell, Dream -- there's a variety of them.

MS. MONTGOMERY: Okay.

MS. FREDERICK: But I think at one time the resort had all the rentals, and now they're down to about 26 percent.

MS. MONTGOMERY: Okay. So it's 26, and what's the other percentage, 40 some percent?

MS. FREDERICK: 40 percent of all the 68 units are rented that we know of right now. It's gotten as high as closer to 50 percent that I'm aware of; but since the storm, some of those places have wanted to take the opportunity to do some renovations internally so they haven't opened them up to rentals yet.

MS. MONTGOMERY: Okay.

MS. FREDERICK: Although they are open to rentals, but some of those owners decided not to rent yet.

MS. MONTGOMERY: So you're a nine-months-of-the-year person. How many other -- if you know, what percentage are actual residents that live here long enough to --

MS. FREDERICK: I don't know the exact percentage. I know that there are a few of us on there. There's a gentleman whose wife is in a nursing home down here. He lives here virtually year-round. Certainly there's Leo, who will speak today also, he's a resident of Land's End. And there are a couple of others that might also be, but it's not a question we normally ask people.

MS. MONTGOMERY: Yeah, so -- I understand. But it's fair to say it's a rental community, and you have

visitors and tourists on a regular basis at Land's End?

MS. FREDERICK: Yeah, I think the majority are probably not renting, but there are like that 40 percent, as I said, that do rent out their spaces, and that varies. Some of them only want to rent it out very rarely, and others do it quite -- quite often.

MS. MONTGOMERY: Okay. All right, thank you.

MS. FREDERICK: You bet.

Thank you very much.

HEARING EXAMINER COLLINS: Thank you.

We're going to take a break now for the court reporter. We're going to quit for the day at 4:00, but the next speaker is going to be Leo Farrenkopt -- I hope I pronounced your name right. When we resume, it will be your turn to speak. If you do not finish before 4:00, we will start with you, the remainder of your presentation, tomorrow morning.

So we're going to take a five-minute break right now.

(Recess from 3:02 p.m. to 3:09 p.m.)

HEARING EXAMINER COLLINS: Okay. Will Chauncey Goss please come sit at the table.

MR. GOSS: (Complies.)

HEARING EXAMINER COLLINS: Thank you, you may begin.

VOLUME 6

MR. GOSS: Thank you. Good afternoon, Madam Hearing Examiner. My name is Chauncey Goss. I'm speaking in my capacity as a resident of Sanibel. I live at 978 (inaudible) with my wife. We --

THE REPORTER: 978 what?

MR. GOSS: Oyster Court. Got it? I'll slow down. I have a tendency to speak fast --

MS. MONTGOMERY: I'm sorry, I didn't catch your name. Can you say it again?

HEARING EXAMINER COLLINS: His name is Chauncey Goss.

MS. MONTGOMERY: Oh.

HEARING EXAMINER COLLINS: He is a resident of Sanibel.

MS. MONTGOMERY: Oh, I know who he is now that I know...

MR. GOSS: Ms. Montgomery.

My wife and I have lived there for -- 15 years we've owned that house. I had the chance -- the opportunity to grow up on Sanibel Island. My family moved there in 1971. And over the last 54 years, we've watched as traffic has slowed to a standstill on our evacuation routes, as sea level has impacted both storm surge and ground level -- groundwater levels, as water quality has been degraded by septic tank and treatment

plant failures, and as climate change has provided more intense direct rainfall.

Now, we moved to Sanibel with the full understanding that it's a coastal high hazard area. Part of the reason my father worked so hard on Sanibel's incorporation back in 1974, and part of the reason he worked so hard on developing the Sanibel Comprehensive Land Use Plan, which is known worldwide as an incredible plan, was because he understood that hazard, and he understood that the quality of life could only be met if we had appropriate density. He understood that sometimes quality trumps quantity. So by setting realistic density targets, Sanibel has really flourished these last 50 years, as has Captiva. I think Sanibel was recently voted one of the best beach towns in the country, if not the world. And that's not by mistake, that's by design.

So the original developers of South Seas Plantation, Mariner, understood that, as well, and it's for that reason they didn't seek to maximize density when it was first developed in the early '70s. They settled on the 912-unit, inclusive of hotel rooms, and that number was further agreed by Lee County in a three-way settlement with residents of Captiva and the resort's owner in 2003. And I don't know if the

Timbers group understood those limitations when they purchased South Seas. Given the quality of the experts they've hired, I'd be very surprised if they did not.

In the spring of 2000 -- spring of 2022, right before the hurricane, their new ownership invited me up to tour the property with them. And when the tour was over --

HEARING EXAMINER COLLINS: Just slow down. I'm having trouble following you.

MR. GOSS: Yeah.

So the spring of 2022, right before Hurricane Ian, got it? The new ownership, they invited me to tour the property with them; and when the tour was over, we had a parking lot conversation like you sometimes do after you've had a tour, and Mr. Spencer said they didn't plan on -- I asked them two questions. I said, do you plan on increasing density? And he said, absolutely not. And I said, do you plan on working with the Captiva Community Panel or the Captiva Civic Association, and his answer to that one surprised me a little bit. Mr. Spencer said, I don't have to work with them, and I don't have to work with the residents of Captiva, because all I need is three votes from the Board of County Commissioners.

In my former life, prior in my career, I worked as

the executive director of something called the Gasparilla Island Conservation and Improvement Association, which is only known as the GICIA, and that's a property owners association on Boca Grande. And when I worked up there, I worked very closely with the development community on issues that were important to the island. It's an island not unlike Captiva, in it's unincorporated Lee County. And we didn't always agree with the developers, but ultimately the product was always better after we received input from the community. So I was surprised to learn that Timbers would sort of throw down the gauntlet and try and steamroll this project through by focusing on its lobbying efforts in this building rather than developing community consensus on Captiva. This strikes me as cronyism at its absolute worst and poor governance at its absolute best.

After Hurricane Ian, the Applicant decided to cloak its request for a density increase as resilience, and further began using the definition of density as really more a term of art than a definition that meets the reasonable man standard. How could squeezing more people into a high hazard area be anyone's definition of either resilience or anyone's definition of a reduction in density?

I've listened to some of the testimony given by witnesses, and I'm struggling to understand something -- and I don't do this for a living so -- I'm just a resident of Sanibel trying to figure this all out. So why are we allowing the Applicant to argue anything other than a binary when it comes to bringing more people to a high hazard zone? So the question should be simply yes or no. It shouldn't be a question of degree.

So does this rezoning put more people in harm's way during a natural disaster? And the answer is yes.

Does this rezoning increase traffic and slow evacuation times? The answer is yes.

Does this rezoning place a greater burden on an already stressed wastewater plant? The answer is yes.

So once those questions have been answered, why are we spending so much time on them? Why spend time figuring out how many more people are going to die in a storm? Because I can't believe the Lee Plan has a section on risks stating that if only ten more people die, we'll approve the rezoning. The acceptable level has to be zero. The Applicant can't prove zero. If the Applicant can't prove zero, or that their plan improves the situation by removing people from the high hazard zone, then the answer for the County has to be

no.

Why argue about how long it takes to get to Jacksonville when we're talking about traffic, when the simple truth is putting more cars on Captiva, it's going to slow evacuation times? Who really cares by how much? If it's one second more, it's too much. If it's one more life, it's too many.

Again, I can't believe the Lee Plan envisions any slowing of traffic in an evacuation zone in a high hazard area is acceptable when reviewing a rezoning. If the rezoning exacerbates already bad conditions, how can it be approved?

So in closing, I'd like to say the Applicant is incredibly talented. They're a very good developer. They pulled together a really dream team of consultants, engineers, land use advisers, one of my favorite attorneys. With a little creativity, a commitment to intelligent recovery, there's no reason South Seas couldn't build back at its long-approved density while really being the poster child for barrier island resilience. Thanks.

HEARING EXAMINER COLLINS: Thank you.

Next speaker?

THE REPORTER: Could we get a copy of his statement?

HEARING EXAMINER COLLINS: Oh, Mr. Goss? If you were basically reading from your notes, would you object to giving it to the court reporter? You don't have to enter it as an exhibit, but you were a very fast speaker, and it will be helpful to her.

MR. GOSS: (Complies.)

THE REPORTER: Thank you.

HEARING EXAMINER COLLINS: Tony Lapi? Good afternoon.

MR. LAPI: Good afternoon. For the record -- thank you for hearing me, Madam Hearing Officer. My name is Tony Lapi. I own and operate Tween Waters Inn. I live on Sanibel, but have worked both day and night on Captiva since 1976. That would be 49 years at the same property. I'm also a member -- a board member of the Captiva Community Panel, and I'm also on the board of the Captiva Island Historical Society.

I don't want to be here, but I need to be here. I have always had great relations with South Seas in the past. As of now, they have never reached out to me to say hello. I guess that's the difference between a developer and an innkeeper.

I really want them to reopen. For those of you who remember after Hurricane Charley in 2004, it took two years for South Seas to reopen. That hurt our

community. We want them to reopen, but we want them to play by the rules. People always ask me, over the years how has Captiva changed? The small houses got bigger, but nothing else has changed. It's still the same place. I have guests that have been coming to my inn for over 40 years, and they love Captiva the way it is. They say, yeah, it's changed, some of the houses are bigger; but in my relations with the community, I've never seen the community pull together as much as they have against this particular situation.

Following the rules. I did it years ago when we asked the Civic Association could we knock down employee housing and build units accordingly. We went through the process. We followed the rules. They allowed us to do that. Royal Shell did it with Jensen's Twin Palms Marina. My hats are off to them.

South Seas will automatically get an increase in density by knocking down the 140 units of employee housing and being able to rebuild those units not as small units, but probably maybe a two-bedroom or something. Has that been granted? I don't know, but I think it's in the works, and I have no problem with that. As a matter of fact, the Civic Association or the CCP, I think, was agreeable to look at those things. There to me is -- there to me lies some middle

ground maybe that could be established.

In closing, rezoning, what is rezoning? Rezoning is changing the rules. And it's okay to change the rules if you have enough people that agree upon it, a vast majority. It happens all the time. But in this situation, in my -- everything I've heard, there's only one entity that wants to change the rules, and everybody else is against it.

Thank you for your time, Madam Hearing --

HEARING EXAMINER COLLINS: Thank you, Mr. Lapi.

MS. MONTGOMERY: Can I ask a few questions?

MR. LAPI: Sure.

MS. MONTGOMERY: Thank you.

There are billboards that suggest that Tween Waters has day passes. Do you have day passes that allow people to park and use all your amenities?

MR. LAPI: We limit it based on the occupancy.

MS. MONTGOMERY: Oh.

MR. LAPI: And you might be thinking of Sundial because I don't believe it's on our billboard.

MS. MONTGOMERY: But you do have day passes?

MR. LAPI: Yes, we do.

MS. MONTGOMERY: And when did you first start with Tween Waters?

MR. LAPI: 1976, in October.

MS. MONTGOMERY: Well, I knew you said 1976, but I wasn't sure if you did something else initially.

MR. LAPI: No, no, I came down, I ran -- I had three employees when I started.

MS. MONTGOMERY: So --

MR. LAPI: A lot of fun.

MS. MONTGOMERY: -- in looking at aerials, it appears that you have added buildings and uses and units over time.

MR. LAPI: Good point. We -- when we bought the property, we had exclusive -- we had water rights when we bought the property in 1970 -- which gave us the ability to rebuild. Those water permits at that time were in a moratorium, they were not issuing any, but we were already allowed to build those.

MS. MONTGOMERY: So how many buildings and units have you added since -- if you know, since 1976?

MR. LAPI: Sure. We started with 47 cottages. We now have 137 units.

MS. MONTGOMERY: And how many buildings?

MR. LAPI: How many buildings?

MS. MONTGOMERY: Yes, sir.

MR. LAPI: Two-story buildings or cottages? What do you mean, "buildings"? Be more specific.

MS. MONTGOMERY: Okay. How many do you have in

the two-story building along the road?

MR. LAPI: 32 units.

MS. MONTGOMERY: And have you added restaurants over time?

MR. LAPI: Yes.

MS. MONTGOMERY: How many restaurants do you have?

MR. LAPI: I have a total of three.

HEARING EXAMINER COLLINS: And do you have retail, like little shops?

MR. LAPI: Little shops. We have a marina that sells clothing at the same place.

MS. MONTGOMERY: Okay.

MR. LAPI: It's been there -- as a matter of fact, I think it's on the historic register. And just so you understand, the historic register, we wanted to be on the historic register so I went out and got that -- that deal.

MS. MONTGOMERY: I appreciate that.

And so how many slips do you have, wet slips, available to the public --

MR. LAPI: Depends the size of the boat.

MS. MONTGOMERY: Pardon me?

MR. LAPI: Depends the size of the boat.

MS. MONTGOMERY: Okay. What's the range, from how many to how many?

MR. LAPI: Oh, you could probably put 20 boats.

MS. MONTGOMERY: And do you lease golf carts that people can drive around the --

MR. LAPI: Do I lease them? No, I do not.

MS. MONTGOMERY: Do you work with someone who does?

MR. LAPI: No, we have no commissions or anything involved.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: Richard Levinson, please.

MR. LEVINSON: Good afternoon.

HEARING EXAMINER COLLINS: Good afternoon, thank you for coming.

MR. LEVINSON: Thank you for hearing me.

My name is Richard Levinson. I live at 16201 Captiva Drive. I'm a member of the CCA. My house is about a mile from the gates of South Seas. I'm a Florida resident and a Florida voter.

I first visited South Seas with my family in 1987. In 1994 we purchased a condominium there that we owned until 2011, when we moved to our current house.

I'm a board member of the Ding Darling Wildlife Society, and that's the friends group that supports the wildlife refuge that's managed by the Fish and Wildlife

Service, U.S. Fish and Wildlife Service.

I have a Bachelor's degree in Economics and Mathematics and a Master's degree in Quantitative Methods from Union College in Upstate New York. I also have a Master's degree in Finance from the Wharton School at the University of Pennsylvania, where I was a doctoral fellow and an adjunct faculty member. I held planning and analysis positions in the New York State Governor's Office during the New York City and New York State financial crises in the 1970s. I served as Deputy Secretary of Revenue for Policy and Planting -- Planning -- excuse me -- for the Commonwealth of Pennsylvania. And then I worked in the Federal Reserve System for a while. And my major longest-term employment was from 1983 to 2000, I worked at what was then called Citibank, and I was responsible for managing the balance sheet, which was about $250 billion spread across (inaudible) --

THE REPORTER: Spread across what?

MR. LEVINSON: 60 different currencies and countries.

In 2000 I left Citibank, and I started my own investment and consulting firm in New York City, and I'm still involved in that.

The common themes of my professional experience

are planning, modeling, management, and analysis of complex systems. I taught at several universities and gave seminars in the U.S. and abroad on these topics.

Generally the objective of this discipline is to understand how things work in the real world. The most common approach to doing this is to create a computer model, make a whole series of assumptions, feed them into the model, test the model under different conditions and scenarios. I believe that most, if not all, of the expert witnesses that the Applicant presented employed this sort of methodology and approach.

I want to emphasize I have not had the opportunity to review the experts' technical analyses. I'm not a subject matter expert in many of the fields that they talked about. What I do have is methodological expertise, and I listened very closely to the testimony that was presented. And that process, and based on my experience, a number of questions occurred to me that I consider important. I believe that very real problems have been ignored or dismissed by the Applicant's experts, and it's critically important that these issues be addressed. I'm going to attempt to run through a few of them without belaboring this process too much.

A very important issue is the resort's capacity to handle sewage and wastewater treatment. The proposed development will increase the use of the resort by 40 percent, and would have concomitant increase in the usage of the -- the generation of wastewater and sewage. Again, I'm not an expert in this field, but I do know from the 24 years that I spent at the resort that sewage treatment was a chronic problem, and from time to time big tanker trunks had -- tanker trucks had to be brought in to haul the effluent away. I also know that the Captiva Community Panel conducted a study of the FGUA plant as a potential solution to Captiva's wastewater problem. That was rejected as not feasible.

With this, I was very interested to hear the presentation from the Applicant's sewage wastewater treatment expert, but that scheduled testimony was canceled at the last minute and never rescheduled.

Are we truly going to increase -- approve a 40 percent increase in dwelling units without a clear understanding of how the past problems have been corrected, and how the capacity to serve the increased demand will be created?

Is it feasible to meet that need within the existing footprint of the FGUA plant, or is the increased density going to be used as justification to

expand that plant into the tidal mangroves, which would be a violation of the Lee County Plan?

These are absolutely critical issues, and this application shouldn't proceed without a full public disclosure of a credible sewage and wastewater treatment plant and any required incursion into the mangroves.

The Applicant's presentations regarding traffic and parking also require critical review. The existing condominium and timeshare units have concerns about safety and parking within the resort, as we've heard from a number of people today. The community outside the gates is concerned about the traffic on Captiva Drive. Plantation Road is a constrained three-mile road -- constrained road that travels more than three miles through the resort. The Applicant owns some of the segments of the road; the condominium association owns others. This road is constantly and heavily used by cars, service vehicles, the resort trolley, joggers, and cyclists.

At an earlier point there was testimony regarding the posted 19-mile-an-hour speed limit on that road, and there was a lot of discussion about how that seemed to be an odd number. That sounds protective, but there's no enforcement of any sort on that road. The

resort staff does not have police powers, and the County Sheriff, because it's private property, typically answers only when called. In the 24 years I've spent at the resort, I never saw a resort staff or a Lee County deputy cite somebody for unsafe driving or excess speed. However, on my daily walks and bike rides through the resort, I've had a number of close calls from cars who were speeding and golf carts being driven recklessly by underage kids. If we are going to -- the safety enforcement there, the 19 miles sounds protective, but it's just words on a sign that anybody is free to ignore, and a lot of people do.

If we are going to approve this, the Applicant needs to credibly describe how a 40 percent increase in the density of the resort, with no improvements or expansion to the roads, is not going to create or compound safety issues that already exist on Plantation Road.

The Applicant expert also testified that there will be minimal traffic impact on Sanibel or Captiva because the resorts will be self -- the resort will be self-contained, and guests won't need to leave. Let's explore that for a minute. If the development request is approved, there will be 1,268 units at the resort not counting the private homes that are already there.

The resort has chosen to cluster four restaurants -- Beach House, Harbourside, Redfish Grill, and Scoops and Slices -- within a few hundred yards of each other at the north end of the resort. This is a far distance from where the planned hotel and development on the site of the previous employee housing was. It's a good distance from many of the other condominium developments along the road.

The Beach House restaurant, as you've seen, is adjacent to the main path to the beach, Sunset Beach, and the planned spa is going to be located right across from Plantation -- from the Beach House restaurant. A little further north is Redfish Grill and Scoops and Slices, which are part of a big pool complex that already exists. And then around the corner and further down is the bag drop for the golf course. Clearly this is going to be a very busy area during the day.

Let's take a -- take a moment and think about what happens at high season. The resort is 90, 95, possibly even 100 percent occupied. And let's assume there are 2 to 3 people per unit. With that set of assumptions, between 5:00 and 8:00 every day something like 2,000 to 3,000 people are going to be looking for dinner. They're going to be hungry. Now, some of them will stay in their units; some of them might walk to

restaurants; some of them may take the trolley. But given that the restaurant -- given that level of occupancy and given history, the restaurants will be full; there will be long queues to get into them. There are going to be, in that scenario, several hundred cars and golf carts converging on that section of the resort looking for parking. I don't know for sure, but I suspect a spa may also be opening -- may be operating during that period.

The residents of the private condominiums in that area are very rightly concerned that with this level of traffic coming to that area every night, there's going to be serious traffic problems and parking problems. There will not be parking capable of handling that kind of demand, and so the people are going to be forced to park in a fire lane, park in the private spaces of the condominium associations, or do something else. I think if we're going to go forward with this -- and the restaurants are already either built or in place -- I think we need to take a very, very careful look at what happens at a peak period during a peak season of occupancy.

The whole question of employee parking and commuting was glossed over in these presentations. As I understand, there's a plan to have 800 employees at

the resort, and we've heard there's going to be vans to ferry them back and forth from their homes. It's interesting that if you look at the career section on the website of the Applicant, there's about 40 different categories of jobs posted. If you click on any one of them, what pops up under benefits is company-paid toll programs. By offering this benefit, the Applicant not only recognizes that the van programs won't serve all of their employees, but they're actually creating an incentive for the employees to use their own cars to commute.

Now, let's just, again, do a little bit of back-of-the-envelope calculation. Let's say the van program attracts 60 percent of the employees, which would be very high for a program like that. If that's the case, there could be a need for 200 to 300 parking spaces at the resort for the employees. The City of Sanibel's website says that there's heavy traffic onto the island every day from 8:00 to noon and every day exiting the island from 2:30 to 6:00 p.m. -- 6:30 p.m. Waiting time in traffic to get onto the island, to get through the island, or get off the island at these times can easily exceed an hour. If the South Seas employees commute during this time, and many of them will, they will be adding scores, if not hundreds, of

cars to this congestion. It's hard to square all these facts with the Applicant's assertion that employee commuting will create neither traffic nor parking problems.

What's interesting is that the resort has offered a van program for years. As such, they should have real world hard data on how many of their employees use their vans and how many of them commute. From that real life hard data, they could have made a serious, respectable presentation on how much traffic the employees would create. They may have done that, but it wasn't presented to us, and I think we need to see that and understand that as part of this. Because 800 employees, none of whom will be staying at the resort, and all of whom will be commuting every day in and out of the resort, is going to create some sort of a burden. We can't just wave it away and say, don't worry, there's going to be a van program. It just doesn't make sense.

A further concern that I had is the conflict between the Applicant's traffic and economic analysis. As previously stated, the Applicant's traffic expert testified that the resort will be self-contained, and guests will not need to leave the ground -- grounds. A short time later the Applicant's economic expert

testified that the proposed development would be an economic boon to Captiva and Sanibel. Both of those statements can't be true at the same time.

HEARING EXAMINER COLLINS: Say that again?

MR. LEVINSON: The employee -- the traffic expert said the resort is self-contained, and people won't need to leave. The economic expert said it's going to be a great boon to Sanibel and Captiva. Both of those can't be true at the same time. If people stay on the resort, there's not going to be an economic boon to Sanibel and Captiva. If people leave the resort, there's going to be traffic, and there's going to be a burden that's got to be analyzed and understood. We should not allow this conflicting testimony to stand.

As I've described, the Applicant's representations regarding traffic and parking and economic benefits have big gaps, and they're very inconsistent. With a project of this scope and its impact on the community, the Applicant should be required to provide comprehensive, credible, and internally consistent analyses of these issues.

I'd like to take just one or two minutes to talk about evacuation, which some other people have talked about. I'd like to put maybe a slightly different perspective on it.

We heard one of the Applicant's experts describe a scenario in which a hurricane occurs at a period of low occupancy and with two days' notice. People are assumed to evacuate in an orderly fashion down Captiva Drive and Sanibel-Captiva Road and Periwinkle Place (sic), all of which are constrained two-lane highways, and then go over the causeway; and once they're there, they're on Sanibel -- on Summerlin, which has been improved, and then it's an easy shot to 75, where they can proceed nicely and safely to a safer environment. We really need to do some reality checks and some stress testing here.

Due to the successful efforts of the County's tourism group, and I believe the Applicant participated in this, summer tourism in Sanibel and Captiva -- summer and autumn tourism is growing. These are heavily in-state people who come by car. We are also experiencing earlier and more frequent hurricanes. So the assumption that a hurricane is going to occur at a period of low occupancy is really suspect.

In his testimony earlier, Ken Suarez described a hurricane that was 200 miles offshore and did not motivate any evacuation orders, but it caused great damage in our area. In 2022 Hurricane Ian's path was very uncertain until very late in the storm's

development, projections where the landfall was going to be in Tampa. The path was so erratic that evacuation orders in Lee County weren't issued until a couple of hours before the storm slammed into Captiva, Sanibel, Fort Myers Beach, and the surrounding area. Ultimately, 54 people in Lee County died in this storm, and the lack of warning was cited as a major factor in these deaths. So the assumption that there's going to be two days' notice that will allow people to efficiently and orderly evacuate is -- it's hard to accept. Let's leave it at that.

We also know from recent experience that the assumed orderly evacuation on this route is very suspect. A simple web search of Hurricane Ian or Milton evacuation -- I'm sorry. A simple web search of Hurricane Ian or Milton evacuation traffic will bring up many links and videos describing gridlock on I-75 and the tributary roads. So any suggestion that an orderly -- orderly exit off the island over the -- once you're over the causeway is also suspect.

More fundamentally, you know, all of our discussion has been on hurricanes so far, but a hurricane is by no means the only problem and risk that we face. Madam Examiner, you said you've driven out to the site, so you probably -- you must have driven down

Sanibel-Captiva Road. If you did, you noticed on the right side three, four, five miles of vacant land, and almost as much on the left side. The land on the right is part of the Ding Darling Wildlife Preserve. The land on the left is owned by the Sanibel-Captiva Conservation Foundation. You probably saw miles of dead trees, and back from the road there are acres and tons of debris and branches and fallen trees. A lightning strike, a carelessly tossed cigarette, a downed power line, a truck driving off the road with a drunk driver, is all that would be needed to start a fire there; and if a fire started there, it would spread very quickly and would likely jump the road; and there would be very high heat, because there's so much tinder in supply there, and there would be lot of smoke and very limited visibility. What would happen in that circumstance is that firefighters and other first responders would converge on Sanibel-Captiva Road, and their trucks would clog the road up and down and constrict traffic flow. What -- that's the sole exit from Captiva and the west end of Sanibel.

The January reports of fires we all saw from California show what it's like, a graphic and horrific depiction of what it's like to try to manage a large evacuation through a big fire. And I want to emphasize

this risk is not trivial, nor is it one time. This is an annual major concern of the U.S. Fish and Wildlife Service, which manages Ding Darling, and SCCF. Of critical importance is that the period of maximum fire risk, the dry season, is 100 percent consistent with the period of high occupancy at South Seas Resort. So we can't just say, oh, don't worry about a fire. It's not going to happen. And if does, it's going to happen at a period of low occupancy, and there'll be two days' worth of notice. This is a very real and serious problem which the Applicant has not addressed, and I have not seen addressed in any of the reviews that were done by this proposal.

In closing, I want to emphasize this isn't NIMBY. The community is not saying "not in my back yard." The community recognizes the resort has to evolve, and it's in all of our interests for the resort to succeed. As Mr. Lapi just said, he's their competitor, but he wants them to succeed because it's all part of the larger infrastructure of the community. But we need that evolution to be done responsibly and respectfully of the environment and the community outside the resort gates.

There's over a 50-year history of the resort and community working together. The prior owners -- and

please note the plural there -- owners have cooperated and worked jointly to responsibly develop the resort. When the resort has needed reallocations, or they needed to do something different, there was consultation with the community, a discussion, and it was approved. Mr. Lapi echoed that in his experience with the community. But we've got a very different scenario here. The new owners want to disregard that history; they want to disregard standing contracts; they want to eliminate the 912 dwelling unit limit and the height limitation that have served everybody well for decades. They chose not to work with or even advise the community of their plans, but instead they engineered an end-around and are trying to do a cram-down on the community.

As Mr. Goss just said, all they need is three votes. I think that is a fundamentally bad way for us to proceed in developing our environment.

The fundamental issue here really is capacity. Does Captiva have the capacity to absorb the extra development that's being proposed? Can Captiva and Sanibel absorb the extra traffic, environmental burden, wastewater burden, and adverse event risk like a fire? If the assumptions are all sufficiently rosy, and enough inconvenient facts are just swept away, it's

very easy to get to yes. But as we've seen in New Orleans and South Carolina, the Carolina Outer Banks, and other areas, the lesson is that overbuilding in very fragile areas very often ends in tragedy. Very unfortunate aspect of these tragedies is that the postmortems frequently find that the risks of these tragedies were obvious and well-known far in advance. They could have been and should have been addressed, but they were ignored.

This proposal is going to affect the environmental -- the environment and the quality of life and the safety on Sanibel and Captiva for generations. At this time we know the risk that this proposal generates and -- and poses to us, and we can and we should address them honestly and comprehensively. That's not been done to date, unfortunately. The question is whether we're going to demand rigor and honesty in this analysis, or whether we're just going to go through the motions and tempt fate.

Madam Examiner, I've attempted to draw attention to important questions, shortcomings, inconsistencies, and disregarded risks in the Applicant's plans and presentations. I respectfully request that you carefully consider these observations in your

deliberations. Thank you.

HEARING EXAMINER COLLINS: Thank you, sir.

MR. LEVINSON: Do you need a copy of this? It has a couple notes on it. If you want a clean copy, I can --

THE REPORTER: That's all right.

HEARING EXAMINER COLLINS: It's very helpful to her, especially when --

(Sotto voce between Mr. Levinson and reporter)

HEARING EXAMINER COLLINS: It's hard to get it all just sitting here and listening, and she has to actually get it verbatim, yeah.

MR. LEVINSON: Thank you.

HEARING EXAMINER COLLINS: Calli Johnson?

MS. JOHNSON: Hello.

HEARING EXAMINER COLLINS: Thank you for your patience.

MS. JOHNSON: Do I correctly understand that I have until exactly 4:00 p.m.?

HEARING EXAMINER COLLINS: Well, you can float over by a few minutes, but it takes us --

MS. JOHNSON: Okay. I just wanted --

HEARING EXAMINER COLLINS: -- time to transfer all the data and -- yeah. And if you don't finish, Calli, don't rush. We'll just start with you tomorrow --

MS. JOHNSON: I can't be here tomorrow.

HEARING EXAMINER COLLINS: Okay. Well, then go --

MS. JOHNSON: I will do my best for the court reporter, and I am happy to share a copy.

HEARING EXAMINER COLLINS: Okay, good. That's helpful to her.

MS. JOHNSON: Okay. My name is Calli Johnson. Pardon my timing. I have to teach at FGCU tomorrow so I won't be able to be there -- or here, excuse me.

Thank you for the opportunity to speak with you today. As one of the youngest people testifying before you, it is intimidating, but I feel it's more important to share my perspective.

My family and I own and operate several businesses on both Sanibel and Captiva islands near where our great-grandfather homesteaded in the 1890s. I'd like to share some more information about myself and my family that are relevant to my testimony.

More about who we are: We're a fourth-generation family business started in 1899 on Matthews' Wharf in San Carlos Bay. That store was blown away, and they only found the safe in the bay. The new store, as granddad called it, was retired when our current location -- which is currently demolished due to Hurricane Ian -- was built in the center of the island.

That flagship, which is our full-size grocery store, went six feet underwater in Hurricane Ian and is being rebuilt. We haven't started the physical rebuilding yet. We employed 120 people, and we plan to reemploy as many of those people as we can. I can't decide what is more sad after Ian, having to fire our entire staff, or our inability to serve our community.

We continue to operate the Island Store on Captiva. It is a third of a mile from South Seas. We try very hard to offer fair pricing, and my mom is known as the sandwich lady, lovingly.

I'm also a proud member of the Captiva Civic Association as a business member.

We plan to open an interim store later this year on Sanibel at Rabbit Road, and that will be called a Bit of Bailey's because we are only going to be able to offer a little bit of what we used to be able to offer at our full-size store while we rebuild.

Why do I care? I'm a community member, not just a resident. I contribute beyond just my personal and business taxes. Among many other roles, this year I am the past board chair of the Chamber of Commerce. I had the honor of serving as board chair during Hurricane Ian, and again during the beginning of our recovery. I am a hard-working young professional proud to afford a

small home on Sanibel. Ironically, the former owner informed us, when we bought it, that it had never flooded since it was built in the '60s. It's ground level. Without getting into the details, I have bought the same exact refrigerator three times.

I will share a little bit more -- especially more than I would about myself personally because I think it speaks to the gravity of this matter and how seriously that I take it.

I am a woman who has had to delay marriage because of Ian's financial impact. Ironically, we got married come hell and high water two weeks after Milton. I imagine you're aware it takes longer than two weeks to plan a wedding so we didn't plan on Milton showing up.

I am a wife now who has had to delay children because of Helene and Milton's financial impact. It would be irresponsible of me to have children at this time when I need to be able to afford to lift my home.

The house my great-grandfather built in the 1890s, where my grandfather was born, where my mother grew up, only two feet off the ground is still standing because it's surrounded by low-density housing and dense vegetation, that same home my great-grandfather invited the community to stay in, in the 1926 hurricane. That same home is where my brother was married after

Hurricane Ian, and he and his wife now have my future niece on the way in July, due in July.

My family and I chose to carry this family legacy forward, and we choose it every day. All of this is to say we take great pride in doing great things, even when it's the hard choice.

Thank you for being patient while I help you understand my perspective.

The reason people visit our islands is because of the low-density, low-height, natural environment. The number of visitors and residents on the island directly correlate with my sales. Residents on Sanibel drive to our store on Captiva because of the limited options available to them.

I don't know your familiarity with the grocery business, but the profit margins are infamously low, and I wish I could tell my great-grandfather that. We depend on high product turnover just to break even. I insist on charging a fair price for our customers. Our major costs -- which are staff, refrigeration, and perishable food -- stay the same regardless of how many people walk in the door that day.

I would benefit from the proposed South Seas changes. The reason I shared with you about myself is so you know how much that could benefit me, but I don't

want that to happen, and here's why:

These sacrifices are not worth selling the soul of our islands:

Sacrificed quality of life which would be immediate for me, including, example, more -- even more than already hellacious traffic.

Sacrificed life safety.

Sacrificed water quality. I'm a spear fisherman, and the plant and mangroves may or may not effectively treat sewage, and I know that that affects the fish that I am able to take home.

Sacrificed environmental integrity, as outlined already by SCCF.

This will sacrifice everyone's bottom line when nobody wants to visit or live here.

To use a phrase that was likely invented by a grocer, "The juice is not worth the squeeze."

I had to make a hard choice to come here today. I worry about the repercussions of speaking to you today. I moved or missed hours of meetings to rebuild our flagship store; and if I am here, I cannot stock the shelves or check people out, which the community will tell you I do often.

I'm asking you to make a hard choice, too, not to change anything. Please recommend the Commission

respect and enforce the existing community plans that will protect our islands so the fifth generation of my family can continue supporting and caring for our community, as we have since 1899.

Thank you for your time and consideration.

HEARING EXAMINER COLLINS: Thank you.

MS. JOHNSON: Is there somewhere you would like me to send this?

HEARING EXAMINER COLLINS: Are there questions of this witness?

No questions, thank you.

If you would like to send a copy of that when we close the hearing, you can speak to Debbie, and you can send it to her directly.

MS. JOHNSON: Okay, thank you.

HEARING EXAMINER COLLINS: And thank you for that because it's a help.

Okay. We're going to conclude the hearing today. We will resume tomorrow. I understand I'm going to get a new witness list tomorrow for members of the public wanting to speak, and so I can't say who is going to go first, but I will see you here tomorrow morning at 9:00.

(Proceedings concluded at 3:58 p.m.)

VOLUME 6

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 224, is a true and correct record of my stenographic notes.

Dated this 26th day of March, 2025.

Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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7:20 8:1 45:21 110:9,17 131:21, 25 145:18 146:8 179:15,18,19
1,200
124:9,10,15
1,268
206:24
1,773
111:11
1.1.6
45:20 52:19
10
123:6 129:7 142:22
10-329(d)(2)
108:8
100
90:14 175:19 207:20 215:5
101
88:25
101.1.1
99:11
101.1.2
99:16
102
146:14 147:15 153:18 154:1,12 155:4
107
67:8 176:5
10:30
66:20
10:38
66:19
10:40
66:20
11
26:11
112
154:1
113
98:19
113.1
98:22
11th
7:22 9:3
12
26:12 114:9 127:5
120
13:24 19:15 27:20 28:1,10 39:2,12,14 62:24 92:23 102:2 161:14,19 178:22 185:24 186:1 220:4
120.5-acre
4:7
122
98:25
125
99:3
125.1
99:6
125.1.2
99:9
12:13
131:5
12:15
122:23
13
73:16,17
13,000
126:4
137
199:19
14
113:23 153:17 166:22
140
67:6 91:23 176:10 197:18
14th
107:12 141:9
15
6:5 122:18 190:18
16,000-square-foot
129:16,17
16201
201:16
163
17:15 112:18
163.3177(1)(b)
102:25
163.3194(1)(a)
18:2
163.3194(3)(a)
28:20
163.3194(4)(b)
23:3
163.3215
18:11
17
129:6 180:21
18-04
72:21
184
161:20,21
1890s
219:16 221:19
1899
219:20 224:4
19
206:10
19-mile-an-hour
205:22
1926
221:24
193
67:7 91:23
1931
65:19
1932
65:20
1945
129:25
1950
65:21
196
178:25
1960s
64:25
1970
199:12
1970s
202:10
1971
190:21
1973
26:11,16 37:9 38:4 40:6,17 62:6 65:3 68:4 81:21 108:13
1974
191:6
1976
65:23 196:14 198:25 199:1,17
1983
202:15
1984
18:5 185:11
1985
26:13,25
1987
201:20
1993
23:16
1994
201:21
1999
154:13
1:30
131:4
1:36
131:5
1st
107:25

2

2
61:11 62:9 106:6,8 114:16,18 131:21 132:2 207:21
2,000
207:22
2-6
60:5
2-foot
77:21
2.2
45:23
2.2.1
80:12 95:4
20
4:6 70:16,18,20 103:5 109:7 138:5 163:5 201:1
200
209:16 212:22
200-plus-room
124:17
2000
36:6 192:4 202:15, 22
2002
57:14 61:7 154:23
2003
178:16 191:25
2004
196:24
2005
24:14
2008
146:13 153:17
2010
90:3
2011
50:11 51:5,11 52:16 53:8,19 201:22
2015
152:25
2015-0009
72:21
2018
54:20 72:14,20 73:14
2022
164:4 192:4,11 212:24
2022-00196-A02
109:16
2023
50:14 51:5 52:15 64:16 102:6 109:9
2024
107:24,25 111:15 113:18,20 164:5
2025
4:6 55:4 110:10 141:9

204
154:12
23
25:15 29:21 30:1 41:23 43:20,25 54:12,18 55:21 57:7 63:1,6 73:15, 22 75:21 99:24 119:10 120:15
23,000
137:1
23.2
55:2
23.2.4
55:11
23.2.6
100:10 102:9,12
24
94:1 111:17 113:20 204:7 206:3
24th
111:15
25
77:19 176:13
2500
177:16
25th
111:17
26
187:14,24 188:1
27
37:5 123:2,5 129:2
272
13:23,24 19:15 20:1 27:21 39:16 44:24 159:23
27th
111:18 154:13
28
187:14
29
76:14
2:30
209:20

3

3
16:24 30:15 45:21 46:1 47:2 52:22 53:15 58:1 63:22 66:14 74:17 141:8 160:1 161:17 185:8,17 207:21
3,000
207:23
3-unit-per-acre
46:24
3-units-per-acre
161:5
3.48
161:22
30
87:24 125:20 141:3
300
209:16
304
13:23 18:22 27:10 28:1,10 39:3,15 41:6,15 161:15,16 184:16
304-acre
17:6 59:2
30s
125:22
30th
107:24
32
200:2
33
15:24
33-1612
15:14
33-1615(b)
101:14
34
51:15 103:9
34-1038
109:9
34-145
115:25 116:6
34-145(b)(3)b
101:11
34-145(d)(4)(a)
115:19 116:21
34-145(d)(4)(a)1(c)
82:9
34-202(a)
16:19
34-202(a)(10)
95:7
34-314
47:12
34-411(f)
89:6
34-413
46:8 82:13 89:11
34-491(a)
36:17
34-612(2)(d)
82:5 93:10
34-612(2)(h)
37:18
35
70:10 111:13 160:14
350
124:12,13
356
18:21 42:23 44:3, 23 45:6 62:24 68:20,24 79:23 84:10 85:3 86:4 90:12 91:8 103:23 104:19
356-unit
43:24
36
147:14
3:02
189:20
3:09
189:20
3:58
224:24

4

4
6:8,9 108:4
40
38:20 41:1 132:19 137:24 168:13 173:17 187:15 188:2,3 189:3 197:6 204:3,18 206:14 209:4
400
128:3
4000
147:7,12,14 151:7
41
93:5
42
70:10 111:11 147:9 150:14 160:14
42-foot
148:12
43
70:19
435
67:9 134:8 179:1
44
137:24 143:4
45
57:10 63:23 70:2, 14,19,25
47
199:18
49
196:14
4:00
189:12,16 218:19
4D
16:24
4th
90:19 111:1

5

5
61:16 108:12 111:16 166:22
5,000
126:5
5-acre
108:20
5.1.2
17:23 88:6,12
5.1.5
80:15,22,24
5.2.2
81:11,18
50
39:2 41:19 77:18 155:21 188:5 191:14
50-year
215:24
500
164:8
5000
147:13,14
54
190:21 213:6
5:00
207:22
5th
24:14

6

6
81:14
6,000
129:17,18
6,000-square-foot
129:19
6.1.1
93:14
6.1.1(7)
99:19
6.1.1.(5)
81:23
6.1.4
82:1
60
202:20 209:14
600
39:16 124:10,11
60s
64:21 221:3
628
19:15 20:1 27:21 176:1,17
640
159:24 161:21
65
71:2
66
147:15
68
158:18 180:21 188:3
6:00
209:20
6:30
209:20

7

70s

162:6 191:21
72.2.2
88:13,19
73
37:22 57:14 59:15 67:4 88:20
73.1
89:16,22 90:6
75
212:10
76
181:11
78
181:11
7th
113:18

8

8
8:14
800
208:25 210:13
82
65:24
89
27:3 109:8
8:00
207:22 209:19

9

9
6:9
90
207:19
90s
27:4
912
11:4 13:23 14:19 18:20 25:14 26:1, 10,11 27:9,16 37:7 38:5,23 39:9 40:17 45:6 57:8 59:3,16 68:6 119:3,13 133:7,10,24,25 134:5 142:9 146:21 152:22 153:1 159:21 161:16 216:10
912-cap
134:19
912-unit
17:6 48:23 65:5 134:4 142:3 153:1, 4 155:8,12 191:22
95
207:19
97
184:17 185:9
978
190:4,5
9:00
224:23
9th
154:23

A

a.m.
6:9 66:20
abide
5:23
ability
114:25 199:13
able-bodied
165:19
abroad
203:3
absolute
193:16,17
absolutely
56:24 118:7 185:2 192:17 205:3
absorb
216:20,22
absurd
27:22
Acapulco
111:17
Accela
107:15
accept
4:10 7:15 29:16 213:11
acceptable
194:21 195:10
accepted
10:4
access
16:14 49:19 93:17 116:11,12,13,14 141:7,15 165:15, 18,20,21 166:5,13 168:6 170:4 175:2
accessed
21:3
accessibility
164:20 167:4
accessory
179:1
accommodate
43:8 76:20 177:12, 15,24
accomplish
23:4
accomplished
76:1
accordance
47:14 61:13 89:14 153:25
accuracy
64:9
accurate
110:10 111:14 112:17,21 113:7
acknowledge
44:5 46:16 59:7 74:4 111:7
acknowledged
58:6 64:12
acknowledges
39:25 58:6 61:15 71:12
acre
30:15 45:22 46:2 47:3 53:15 58:1 63:23 66:15 74:17 160:2 161:17,22 185:9,17
acreage
163:21 181:4,6
acres
13:23,24 19:15 27:10,20 28:1,10 39:2,12,14 41:6,15 62:24 68:3,18 92:23 102:2 108:12 127:4 161:14,15,19,20 178:23 184:16,17 185:9,24,25 186:1 214:7
act
19:8
acted
135:25
action
18:12 57:16 59:3 133:22 155:1
actions
20:17 58:25 64:11 101:12 135:25 161:24
active
151:1
activities
55:9 152:12 179:14
activity
84:4
actual
188:14
ADA
62:10
Adam
157:24 180:10
Adams
7:23
add
10:13,21,24 11:4 18:21,22 46:17 58:7,11 59:12,14, 19,20 61:10,12,14, 16,23 62:3,4,18 63:10,19,20 64:6, 15 67:5 68:5 74:8 87:24 98:23 103:20 108:19,21 142:20 143:2,11, 18,25 144:7 156:11 157:14 164:23 184:9
ADD's
62:1
ADD2002-00098
43:17 108:14
added
130:21 164:23 199:8,17 200:3
adding
85:3 94:20 209:25
addition
71:24 123:5 138:21
additional
8:24 12:20 33:20 41:25 42:24 49:20 75:16 86:4 91:24 96:21 103:23 128:4 139:9 166:15
additionally
140:13
address
5:11 8:19 10:12 15:9 45:12 59:17 74:25 105:18 109:6 134:21 144:13 146:16 217:15
addressed
15:16 34:14 85:12 94:25 203:23 215:11,12 217:8
addresses
53:11
addressing
17:14
adequate
14:25 26:23 80:20 88:21 94:8 95:1
adherence
33:9
adhering
125:19
adjacent
78:1 81:25 82:2 93:4 124:18 147:6 152:9,19 207:10
adjunct
202:7
adjusted
88:10
administer
6:15
administrative
34:25 57:15 59:10 60:5 61:7 121:1
admonition
121:12
adopted
18:3 55:7 64:2 72:20 73:3,5 74:3 78:14 102:6 103:2
adoption

54:17 72:23,24 185:11
advance 217:7
advanced 94:17
adverse 68:11 79:17 80:7 81:12 95:15 96:4 97:18 98:15 117:12 118:5,7 119:6 216:23
adversely 71:14 115:24 116:18 120:10
advise 178:13,16,22 216:13
advisers 195:16
AE 110:13
aerial 85:25
aerials 85:24 199:7
aesthetics 72:8
affect 98:4 116:18 120:10 152:14 153:11 154:18 217:10
affected 108:24
affects 223:10
affirm 6:17
affirmatively 6:19
afford 11:10 220:25 221:18
afforded 11:11 98:1
afraid 136:5
afternoon 131:6 157:20,21 190:1 196:9,10 201:12,13
afterthought 174:14
agree 83:6 193:9 198:4
agreeable 197:24
agreed 64:8 191:23
agreement 57:17 154:22 156:21 178:14
agrees 141:14
ahead 13:8 106:18 179:5
air 132:21 154:8
akin 37:21
Alexander 83:6 84:14 85:16 86:5,14,24 87:23 89:23 90:1
Alexander's 88:23
alleviate 142:5
Alliance 36:5
allowances 67:20
allowed 13:24 14:5 17:3 31:22 45:17 59:4 60:4,13 61:10 93:9 101:12 103:19 108:7 121:3 151:10,12 152:17 155:12 159:23 166:8 197:15 199:15
allowing 123:1 194:5
Alls 143:12
aloud 105:13,16,21
alter 18:15
alters 18:18
altogether 80:22
amazed 172:10
ambience 69:22 133:11
amend 10:21
amended 10:14,16 11:3 18:5 27:6 52:16 59:18, 20
amendment 10:20 11:3 59:19 72:20 73:3 115:24
amendments 61:4 72:24
amenities 41:12 79:21 117:5 148:1,5 152:13 198:16
amenity 68:24 148:16
America 133:15
amount 18:18 22:1 25:23 28:2 31:18,22 32:9 56:6 58:21,22 71:6 88:2 91:1,9 96:1 103:21 104:6,7 105:2 117:4 163:21
amounts 38:10
analyses 203:14 211:21
analysis 7:4 13:13 33:17, 19,22,23 34:6,7 72:17 73:1,5 111:6,10 113:10, 11 202:8 203:1 210:21 217:18
analyzed 211:13
ancillary 68:5,19
Andrea 44:18
Andy 137:8
angst 166:23
animal 24:1,2 37:22 39:11 41:17 43:1
annual 215:2
answers 206:3
anticipate 6:3
anticipated 113:24
Anticipating 135:6
antithesis 33:10
anxious 109:3
anymore 68:20 134:24 168:21 171:18
anyone's 193:23,24
apologies 159:10
apparent 36:18
appeal 36:6 134:10
appears 150:20 199:8
applause 120:24 128:19
Apple 136:23
applicable 62:5 116:3
Applicant 10:1 13:18,22 14:13 16:5,11,20 20:20 22:4,13 25:6,13 30:19 32:12,14,18 33:16 34:9 35:4,11,16 36:1 37:11 38:4 39:6,7,23 40:21,23 42:21 49:1,12 53:13 62:15 63:8, 10,14 64:19 65:4, 14 69:24 80:5 83:21 84:20 87:18 90:13 92:6,24 94:10 95:19 100:14 101:21 105:10,14,18 106:3,4,23 107:5, 11 109:5,9,10 112:16 115:2 116:1 134:6 137:12 138:14 141:14 142:2 178:19 193:18 194:5,22,23 195:13 203:10 205:16 206:13,19 209:4,8 211:19 212:14 215:11
Applicant's 15:21 16:10 18:23 44:5 59:17 64:4 89:20,24 107:24 113:19 114:25 134:3,8 136:3 203:21 204:15 205:8 210:2,21,22, 25 211:15 212:1 217:23
application 13:15 14:21 16:9 17:11,25 31:1 34:8 35:15,21 36:7,24 39:25 40:1,21 44:4,10 53:16,18 55:20 61:19 63:12 70:2 72:10 73:2 80:21 83:5 91:22 93:15 103:17 104:24 106:19 107:3 109:16 110:3,6 117:25 150:20,23 151:3,9 152:18 153:11 154:17,19 155:11 186:1 205:4
applications 11:14 23:18,19 81:23 99:19
applied 13:22 62:6 74:18 76:5

applies
16:17 17:20 18:9, 15,17 27:15 31:14, 21 45:20 48:16 89:3,5 93:14
apply
11:12 16:11,14,15 26:7 28:18 32:5 33:4 52:18 83:19, 20
applying
23:9,11 73:9
Appraiser's
164:4
approach
4:23 203:6,12
approvable
43:19 81:10
approval
16:23 24:22 25:2 38:8 53:9 70:16 71:19 115:20 143:6
approvals
76:2 124:6
approve
26:9 90:21 123:22 124:2 194:21 204:18 206:13
approved
14:8 21:7 26:11 27:10 31:19 38:4,6 44:2 49:2 64:24 65:18,20,21,23 67:4,9 68:4 87:24 93:8 110:23 120:9 141:21 143:19,24 153:23,25 156:8, 15 195:12 206:24 216:6
approving
53:10 124:1,2
approximately
5:25 129:16 148:12
apropos
51:21
APTIM
83:5
aquatic
97:24,25
architect
44:18
architecture
130:12
area
22:17 32:3 48:5,6 74:13 77:14 81:3 82:12 83:11,17 84:11 87:12,25 96:7,24 97:2,4 99:12 108:16,20 110:12,14,17 112:19,20 116:8 119:18 124:19 125:5 133:12 140:22 160:5,6 163:2 164:3 166:15 167:5,23 171:4,12 172:14 180:20,23 181:23 182:20 191:4 193:23 195:10 207:17 208:11,12 212:24 213:5
areas
40:13,15 48:7 75:13,17 80:16 81:13 99:17 116:19 139:13 156:4 163:15 176:7 217:3,4
argue
22:13 63:24 194:5 195:2
argued
125:2
arguing
19:21 33:24
argument
15:21 20:2 46:1 59:17 89:24 102:5 103:16 121:2,5,10, 15 122:8 141:6 150:11
arguments
12:1 121:8
arise
136:10
arises
33:6
arose
134:21
arrive
113:6 114:11
art
193:21
articulated
58:18
asks
31:14 39:11
aspect
32:16 34:12 36:2 174:15 217:5
aspects
28:22 29:13 32:23 80:8 164:25
asphalt
186:14,16
aspirations
86:9
assented
64:8
asserting
17:18
assertion
210:2
assess
88:13
assigned
107:13
assist
134:23
Associates
35:22
association
13:12 120:17 135:19 144:14,16, 17,18,21,23,25 146:11,16 148:2 155:24 156:3,19, 20,21 158:12,23 161:9,11 162:22 163:13 179:12 192:20 193:3,4 197:12,23 205:17 220:13
association's
163:9
associations
134:23 135:22 138:11 139:15 153:12 163:25 164:6,7,9 208:17
assume
86:8,11 92:15 137:20 207:20
assumed
212:4 213:13
assumes
44:21
assuming
8:17 87:15 112:8
assumption
111:11 128:1 212:19 213:8
assumptions
203:7 207:21 216:24
attach
108:5
attached
9:23
Attachment
109:16
attachments
7:4 8:24 9:2 73:2
attempt
147:25 203:23
attempted
217:21
attendance
12:6
attention
125:20 141:8 154:13 217:21
attitude
136:3
attorney
13:11 114:3,25
Attorney's
109:8,11
attorneys
147:1 195:17
attractions
104:4 136:24
attracts
209:14
ATV
171:10
audience
5:17
authority
11:13 16:22
authorize
51:18 61:17 104:1
authorized
16:21 43:18
automatically
8:18 197:17
autumn
212:16
availability
48:18 94:11 95:5,9
avoid
69:10 82:6,7 84:17 155:1
avoiding
76:6 93:11
aware
138:11 143:8 156:6,10,12 157:15 174:8,11 184:9,16,20 188:5 221:13

B

Bachelor's
202:2
back
5:10 6:25 22:11 25:12 37:22 50:11 52:21 66:10 71:5 73:14 74:18 102:22 107:4 125:21 130:7 131:7 135:23,24 168:20,22 169:6 171:15 172:4 173:11,15,16 180:6 191:6 195:19 209:2 214:7 215:15
back-of-the-envelope
209:13
backed
175:9
backs
120:9
backup
77:24 101:2,3
backwards
164:11

bad
98:15 118:6 175:7 183:18,19 184:3 195:11 216:17
bag
207:16
bail
153:20
Bailey's
220:16
balance
114:22 165:7 202:17
balancing
78:20 100:13
Banks
217:2
barely
77:20
bargain
69:1
baron
135:13
Barraco
106:16 107:8,23 109:20
barrier
15:4 45:5 47:24 48:4 49:22 75:2 83:8,9,11,23 96:25 195:20
base
111:20 112:22 124:25 125:5,7 184:12
based
4:14 13:13 25:1 62:5 82:14 87:5 91:1,2 111:5,6,11 113:4 119:21 185:13 198:17 203:18
basic
15:12 80:4 133:4
basically
49:10 171:16 196:2
basis
18:14 45:25 46:4 47:14 52:7 89:13 119:21 136:12 189:1
bathroom
154:9 182:4
battery
101:2,3,6
bay
133:17 219:21,22
Bayside
108:3 146:11,13, 14,15,18,19 147:4, 11 148:8,20 149:4, 11 153:15,22 154:3,11,24 155:5, 9,19 157:15
beach
24:19 96:5,6 98:8 99:18 104:5 109:14 110:3,4 123:13 127:23 139:12,14 140:18 141:5,7,22 143:14, 24 144:4,6 151:10 165:1,15,18 166:13 167:5 171:5,7,8,9 191:16 207:2,9,10,12 213:5
beaches
98:7 100:1
bears
83:15 92:22
beauty
136:17 185:20
bedroom
182:3
bedrooms
181:21
beds
98:4
began
111:15 135:8 193:20
begin
6:24 8:11 12:11 66:22 132:16 142:6 146:9 189:25
beginning
6:25 220:24
begins
5:24
begun
142:1 175:6
behalf
11:25 13:12 120:17
belaboring
203:24
believed
124:24
Bellflower
50:21
benchmark
20:9
bending
164:11
beneath
132:22 177:2
benefit
38:5 40:19,22,23 42:20,22 69:1 87:14,16,20 209:7 222:23,25
benefited
135:5
benefits
209:6 211:16
Berkey
16:7
berm
107:16
best-case
87:6
bet
189:8
bettering
89:21
bicycle
141:2
bicycles
171:1
bicyclist
175:12
bicyclists
175:22
big
21:25 31:4 42:7 48:10 90:23 92:9 124:16 149:12 162:9 165:6 180:20 187:3 204:9 207:14 211:17 214:25
bigger
56:19 58:15 117:20 197:4,8
biggest
90:8 104:25
bike
175:22 176:8 206:6
bikes
80:3
Bill
131:12 132:17
Bill's
161:9
billboard
198:20
billboards
198:14
billion
202:18
binary
194:6
binding
51:9
birds
50:4 96:4,15
Biscayne
32:14
bit
19:4 23:24 28:7 32:1 36:4,23 38:9 45:1 54:11 68:1 186:15 192:21 209:12 220:16,17 221:6
black
186:14,16
blend
61:6 74:6
blended
63:13
blight
163:7
block
172:24
blockage
174:13
blocked
168:5,21 171:6 173:14,16
blocking
168:2 172:25 173:24
bloom
98:9
blow
117:6 168:10
blown
219:21
blows
57:11 72:3
board
4:12 51:8 52:6 121:14 178:14,16 192:24 196:15,16 201:23 220:22,23
boat
200:21,23
boats
201:1
Boca
193:4
bodies
133:18
body
94:22
bollards
167:20 170:20,21 171:17,23
boon
211:2,8,10
born
221:20
borrow
141:16
bother
174:3
bothering
100:20
bottom
140:16 176:19 223:14
bought
17:5,7 38:12,16 39:10 42:12,22 62:21 128:1,7 133:10,23,24 199:10,12 221:2,4
Boulevard
110:20

boundaries
146:22 154:4
bounds
56:5
Boynton
24:19
brakes
175:12
branches
214:8
Brandon
59:14 60:6
breach
162:1
break
6:2,3,5,7 48:12
66:1,18 121:9
131:3 189:11,18
222:18
breakdown
77:22
breaking
77:15 174:2
Breakwaters
159:17
Brevard
22:21 23:16 32:16
bricks
186:16,17,20,21
187:1
bridge
77:8
briefly
65:14 100:9
bring
49:8 75:25 133:2
176:16 177:3,14
213:16
bringing
194:6
broadly
23:3,13
broke
49:7 181:13
brother
221:25
brought
89:25 204:10
Brown
122:19,25 123:1
128:22,23,25
129:3,6,11,14,17,
20,23 130:2,4,7,
11,15,17,20,22,24
brunt
92:23
Bubble
136:25 137:3,6
Buck
36:5
buffer
49:13 141:16
150:13 156:8
buffering
152:3
buffers
38:11 42:1 57:5
79:21 81:5 141:24
148:8,10 150:16
152:7,17
build
38:20,23 70:4
129:15 185:1
195:19 197:13
199:15
building
62:8,11,12 69:4,20
70:13,22,23,25
71:15,24 72:2,3
75:14 83:12 84:22
96:22 108:3
124:23 125:9
127:24 147:7,12,
13,14 148:13,14,
25 151:6,7 152:9
153:4,24 159:1,5,
17 161:1 162:9
176:21 180:22,23
193:14 200:1
buildings
22:4 48:11 53:6
70:1,5 71:18 74:21
85:2 95:22 96:16
123:16 125:10,13,
16,21 132:21
144:15 147:12
154:3,4 158:15
159:18 160:22
162:11 163:4
175:2 177:12
180:22 181:9
182:12 184:8
199:8,16,20,21,23,
24
builds
71:4
built
14:8 37:3,6 48:15,
23 59:22 81:4,8
84:15,17 102:1
117:4 125:17,18,
21 129:24 130:11,
25 138:5 139:11,
14 140:24 146:22
148:7,17 150:12
152:13 153:1,24
154:1 162:7
183:20 208:19
219:25 221:3,19
built-out
37:7 119:25
bulk
67:21
bully
135:25
bunch
80:20 115:15
burden
13:18 23:21 32:12,
15,18 33:1,3 34:10
35:11,12,13,21,25
49:19 87:18
100:14 194:14
210:17 211:13
216:22,23
burdens
178:19,20
business
219:20 220:13,21
222:16
businesses
219:14
busy
176:9 207:17
buy
128:2,6
buying
38:12
buys
40:24

C

calculation
209:13
calculations
111:24
California
136:15 214:23
call
13:7 22:7,8 29:3
46:9 47:11 53:4
81:16 83:8 89:4
136:15 162:11
171:2 176:19
182:1,19 184:23
186:21
called
97:8 178:1 181:14
184:24 193:1
202:16 206:3
219:23 220:15
Calli
218:14,24 219:7
calling
86:3
calls
46:11,14 206:8
calm
78:6
canceled
204:17
candid
47:7
cap
59:16 134:4 142:4
155:12
capabilities
88:21
capable
208:14
capacity
43:7 55:10 75:15
94:9,12,14 95:1
119:17 190:3
204:1,21 216:19,
20
Captiva
13:12 15:5 27:11
29:8,20,22 30:11,
12,18,24 31:3,10
35:1 41:7 43:7
44:20 46:18 47:4,9
53:13 54:6,11,13,
15,19,24 55:13,15
57:13 58:1 65:15,
17,21 66:13 67:17
69:8,20 70:12,24
71:10 72:15 73:10
74:17,23 75:3,10
76:22 77:18 79:8
83:2 85:17 88:8,14
91:10,17 92:13
94:24 100:1,2
101:15 111:5,12
113:1 117:14
120:17 123:2,5,6,
9,11,12,20,21,23,
24 124:8,9,14,20,
24 125:16 126:1,
13,16,24 127:1,17,
19,21 130:12
136:17,24 137:5
158:11 159:14,16,
20 160:10,12,22,
25 161:5 162:5,18
175:19 179:2
183:4,5,6 185:21
191:14,24 192:19,
23 193:7,15 195:4
196:14,16,17
197:3,6 201:17
204:11 205:13
206:20 211:2,8,11
212:4,15 213:4
214:21 216:20,21
217:12 219:15
220:9,12 222:13
Captiva's
74:11,21 204:12
Captiva/sanibel
87:25
captures
28:18
car
96:22 138:2,8,20
139:2 177:11
212:17
car-bike-pedestrian-golf
79:25
care
220:19
career
192:25 209:3
careful
208:20
carefully
42:13 117:3,4
217:25

carelessly
214:9
cares
195:5
Caribbean
161:2
caring
224:3
Carlos
219:21
Carolina
217:2
Carroll
24:19,22 25:7
carry
222:3
cars
42:15 48:12 80:3 92:10 97:14 138:4 140:22 148:3 173:9 175:23 176:12,14 195:4 205:19 206:8 208:6 209:11 210:1
cart
79:25 93:1 109:23 110:1 138:3,4,5,9, 14,18 170:23 171:7,8 173:2,9 174:16 177:11,17, 24
carts
80:4 92:11 128:4 137:25 138:6,7,17, 19 140:23 148:3 168:3 171:1,6,11, 13,18 174:19 181:12 201:2 206:8 208:6
case
4:4,13 19:24 20:15 22:21,25 23:15 24:6,14,18,22 25:7 31:6,9 32:13,14 34:13 36:6,22 50:8,11,13,14,15, 16,25 51:14,20 52:14 53:12 57:18 65:12 72:18 78:4 81:6,12 102:24 104:5 107:13 112:7 134:10 209:16
case-by-case
45:25 46:3 47:14 52:7 89:13 119:21
cases
22:19 23:1 24:6 35:23 125:6
catch
190:8
catches
168:10
categorically
30:21,22 67:1 89:4,8 93:18 103:18 118:11
categories
209:5
category
29:20 110:17 111:16 185:13
cattle
135:14
caused
212:23
causeway
48:13 76:19 77:3, 6,8,10 110:20 212:7 213:20
causing
26:22
cautious
109:3
CCA
7:2 12:1 25:6 69:3 179:12 201:17
CCP
197:24
center
129:24 219:25
central
95:6 126:14,16,19, 25 127:4,7,10,14, 17 134:18
certificate
168:15
cetera
58:10 77:25 83:18 168:4,16 174:6 184:13
chair
131:12 220:22,23
challenge
18:13
challenger
35:6,7
challenges
85:21 133:2
Chamber
220:22
chance
131:17 145:12 157:25 190:19
change
35:1 38:21 40:24 55:4 57:3,4 61:25 62:13 64:16 68:10 69:4,10,15 76:4 102:14,15,21 103:6,8,12 107:9 123:22 124:20,21 125:15 126:11 143:9 191:1 198:3, 7 223:25
changed
24:24 73:18 102:20 197:3,4,7
changing
25:2 91:23 103:13 198:3
chapter
15:24 17:15 18:11 25:15 29:21 30:1 41:23 43:8,10,20, 25 51:14 55:21 56:18,21,24 57:7 63:1,6 72:19 73:15,16,22 75:21 79:2 103:9 112:18 119:10 120:3,15
chapters
73:16
character
23:7 69:19,23 72:9 79:18 80:17,25 91:13 100:6 119:6 120:11 124:20 125:15
character-wise
104:21
charge
138:19
charging
138:16 222:19
Charley
196:24
charm
125:11
Chauncey
189:21 190:2,10
check
135:11 136:16 138:9 223:22
checking
66:3
checks
49:23 212:11
cherish
162:18,20,21
cherry-picking
31:16
chief
13:9 71:10 108:23 112:7
Chief's
94:24
child
162:7 195:20
children
221:15,17
choice
107:3 222:6 223:18,24
choose
222:4
chose
136:6 216:12 222:3
chosen
167:1 207:1
Christopher
44:20
chronic
204:8
cigarette
214:9
circulation
93:13
circumscribed
61:22
circumstance
214:17
cite
45:1 206:5
cited
22:22 24:20 75:12 103:3 104:4 213:7
cites
22:25
Citibank
202:16,22
citizens
42:19
City
24:19 48:3 97:2 104:5 126:21 202:9,23 209:17
Civic
13:12 192:19 197:12,23 220:12
civil
134:15
claim
24:14 43:16 61:20 121:20
claimed
92:2
clarify
20:20 60:15 136:7
class
133:22
clean
39:15 218:4
cleanup
113:15
clear
11:25 13:17 16:8 20:21 22:5,12,17 23:17 24:7 25:4,8 31:6 32:8 36:7 44:1,10 45:15 46:9 47:7,21 48:12 49:16 55:23 56:23 60:10,23 66:25 67:24 68:2 69:3,19 71:9 77:24,25 78:4,16,19 79:14 81:2 84:4 86:5,7 88:23 89:19 99:4 102:24 104:2 118:25 120:18 121:7,18 204:19
clearance
111:23

cleared
135:22 149:15
clearest
24:20
click
209:5
clients
120:6
climate
26:22 191:1
clip
12:23
cloak
193:19
clog
214:19
close
32:25 33:1 35:17 48:1,2 77:9 135:9 150:16 164:8 165:6 175:20 206:7 224:13
closely
136:9 193:5 203:17
closer
188:5
closes
98:7
closing
5:13 195:13 198:2 215:14
closures
98:8
clothing
200:11
cluster
207:1
Clutch
169:2
Coast
133:13
coastal
14:23 15:4 26:25 31:13 32:2 48:5 74:12 75:11,13,17 76:10 78:21 82:25 83:17 84:12 85:9, 10 89:1 96:25 99:11,17 110:13, 14,15 112:19,20 123:11 125:12 130:11 191:4
Cochran
141:16
code
4:15 11:9 12:1,3 13:19 14:22 15:14 17:3 23:12 25:10, 24 26:7 28:14 34:18 35:1,3,19, 21,25 36:2,4,8,10, 12,15,16,17,18 37:18 39:18 42:18 43:2 44:25 45:9,18 46:8,11,14 48:25 49:23 51:15 53:11, 22 54:8,9 58:17 60:5 63:16,17,19, 21,24 64:1,15 65:24 76:4 79:10 82:4 89:6 91:5,7,8, 15 95:8 97:16 100:12 101:10 102:8,11,15,16,21, 23 103:5,7,13 108:8,10 113:15 115:6,7,15,16,23 116:3 117:9,13,16 118:7 119:20 120:16,21 121:1 143:11,20
codes
127:13 128:1
codified
10:16 63:16,17
cohesive
40:2 117:2
coincide
90:18
collected
126:22
collection
41:11 135:16,18
College
202:4
Collins
4:2,3,24,25 5:2 6:20 7:7,10,13,15, 18 8:6,8 9:12 10:17,19,23 11:6, 18 12:8,10,14,19, 22 13:1,3,5,10 14:2,4,6 18:24 19:17 20:5,8,19 21:13,16,20,22 25:25 46:11,14 50:15,19,23 52:9 60:17,19 66:3,6,9, 17,21 93:22,25 94:3,5 100:22,25 101:5 105:9,12,20 106:2,7,11,21 107:1,18 112:3,10, 13 114:17,20 120:23 121:11,17, 25 122:3,5,11,15, 20 128:20 131:3,6, 9,16,19,23 132:7, 10,13 134:17 139:18,24 140:2,6, 11 142:17 145:4,7, 10,19,23 146:3,5,8 148:19 149:2,8,14, 17,20,23 150:1,8, 18,24 151:13,15, 19,24 152:2 154:20 155:14 157:19,24 158:5, 24 159:4,7,9,11 169:7,11,14,17,21, 24 170:12,19 172:2,4,7 173:19, 22 179:4,6,17,21, 24 180:2,4,10 189:10,21,24 190:10,13 192:8 195:22 196:1,8 198:10 200:8 201:10,13 211:4 218:2,7,10,14,16, 20,23 219:2,5 224:6,9,16
collisions
96:2 97:15
combined
25:14 30:15 40:18 57:8 59:16 77:25
comfort
11:15
comfortable
159:19
comment
51:21 156:18
commenting
121:21 147:2
comments
107:14 137:2
Commerce
220:22
commercial
19:6 29:5 46:10, 12,15,22 47:11 49:13 51:24 52:12 55:9,18 61:6 68:3, 7,19 74:7 79:23 81:14,16,23 82:1 89:5 92:13 93:15 98:16,20 99:19 108:13,16,20 109:15,17 110:5,6 117:5 178:23
commercial/hotel/ residential
37:12
Commission
223:25
Commissioners
4:12 126:4,6 192:24
commissions
201:7
commitment
195:18
common
96:10 133:4 142:13 156:4 202:25 203:6
Commonwealth
202:12
communities
123:12,13 125:13
community
14:10 15:15 16:1 18:7 23:7 29:18 31:10 40:11 42:5, 17 43:2 46:18 47:9,10 54:7,12,13 60:25 62:2,16 65:9 67:14 72:8,12,13, 19 73:10 74:23 78:13 79:3,7,8,18 83:2 86:6 91:12 100:3,5 104:21 118:24 120:2,10, 17 123:7,16 124:16 126:16 127:24 132:20 136:22 142:6 161:4,6,7,8,12 162:1,2,3,14 173:20 174:15 178:15 179:14 187:6 188:25 192:19 193:6,11, 15 196:16 197:1,8, 9 204:11 205:12 211:18 215:15,16, 20,22,25 216:5,7, 13,15 220:7,19 221:24 223:22 224:1,4
commute
209:11,24 210:8
commutes
92:1
commuting
208:24 210:3,15
comp
18:4 19:2,10 23:12,22 26:20 55:7 72:14,20,24 83:17 91:15 102:17,19 120:1
companies
187:19
company-paid
209:7
compare
64:22
compared
109:4
compares
58:8,9 61:9
compatibility
14:23 31:11 32:4 33:24 42:16 43:3 49:3,15 54:10 58:13 63:2 65:9 72:18 79:5,10,15 80:4,13 82:23 98:13 100:6
compatible
28:23 69:2 74:1 82:2,11 99:12 116:7
compel
12:6
competent
122:9

competing
68:21 78:20,21 87:9
competitor
215:18
complementary
79:23 117:5
completed
126:18 140:25
completely
14:8,16 26:15 29:9 35:10 39:24 40:13 41:12,16,21 43:24, 25 48:25 57:19 67:18 79:11 113:2
completing
135:9
complex
116:16 132:18 203:2 207:14
compliance
24:9,17 32:15 33:7,8 34:11 35:18 36:1,9,11 57:17 101:19 104:10 108:7 116:1 154:18 161:25 162:1
complicated
76:17
complied
33:4 82:21 87:19 95:9 99:15 101:15
complies
13:19 23:22 36:8 139:21 169:10 189:23 196:6
comply
15:13 17:19,25 19:10 22:15 24:17 25:10,24 32:23 36:7 42:16 53:22 63:18 84:11,22 88:19,24 100:10 101:9 117:16 118:6 120:20 143:10
component
22:9 29:22 45:11, 13 58:20 69:21
components
85:7
composite
7:16 9:13,15,23 145:18,20 146:8 179:18
compound
206:17
comprehensive
17:17,19,21 18:1, 2,14 22:15 23:18 24:9,13 25:22,24 27:2 28:16 29:11, 14 31:7,15,18,23, 24 32:24 34:16 42:17 43:9,11 48:19,25 56:21 63:3 84:12 102:18 120:4,15 185:12 191:8 211:20
comprehensively
217:16
comprised
55:15 147:11
computer
203:6
concept
92:5 133:8 136:14 184:23
concern
74:13 75:13 151:12 152:6 153:19 210:20 215:2
concerned
151:9 152:7,14 153:10 205:13 208:11
concerns
5:11 134:20 136:14 137:22 146:19 158:22 182:24 205:10
concerted
134:6
conclude
5:15 82:19 87:7 100:8 105:6 114:21 224:18
concluded
5:8 115:14 224:24
concludes
71:24 78:9
conclusion
4:21 6:6 13:17,20 22:9 93:7 100:15 141:14 142:2 155:9
conclusions
141:18
concomitant
204:4
concrete
83:14
condition
82:7 119:15
conditioning
132:22 154:8
conditions
15:6,7 40:7,9 80:21 81:4,9 100:17 105:4 109:2 135:23 168:17 195:11 203:9
condo
133:19 139:9,15 148:20 154:7
condominium
132:18 146:11,15 148:23 155:3 158:12 201:21 205:10,17 207:7 208:17
condominiums
147:4,6 208:10
condos
67:7 91:24 127:6 132:21,25 133:16 138:3,21 139:2,9 140:4 176:1
conducted
204:11
conference
92:1
confined
142:8
confines
56:6
confirm
9:10
confirmed
37:10 43:17 59:4, 14 64:9 68:4
153:24
confirms
39:8 59:19
conflict
36:14 210:20
conflicting
211:14
conflicts
36:18 79:25 92:21 93:1,3 95:23
confronted
49:11
confuse
134:6
confused
139:19
confusing
150:24
congest
176:3
congested
33:22 118:17
congestion
49:19 93:3,5 109:1 133:9 137:23 138:25 140:12 144:10 210:1
connected
48:8
connection
136:17
connects
140:16
conscience
122:23
consensus
193:15
consequences
146:24
consequent
78:3
conservation
95:14 97:2 178:24 185:3 193:2 214:6
conserve
99:16
considerably
76:8
consideration
166:14 224:5
considerations
99:22 114:24
considered
27:24 46:20,21,22 88:8 155:5
consist
177:8
consistency
28:16 31:7 32:20
consistent
18:4 23:18,22 26:3 28:18,20 29:24 30:6 58:16,17 63:1 74:15 77:20 92:7 125:24,25 126:2 143:5 211:20 215:5
consists
132:20
constantly
175:17 205:18
constitutes
19:17
constitution
36:13
constrained
27:14 48:9 74:14 77:1 78:25 85:18 86:1 116:15 119:13 205:14,15 212:6
constraints
88:9,10
constrict
214:20
construct
119:1 127:5
constructed
150:10 152:23 153:3,23
construction
108:9 110:23 141:25 147:10 149:19
construed
23:3,13 24:8
consultants
147:1 195:16
consultation
216:5

consulting
202:23
consumers
38:2
contemplate
31:18 39:19
contemplates
32:9 91:8
contentious
153:5
context
52:24 60:7,12 75:5
contiguous
108:19
continuation
73:23
continue
6:2,4,9 12:15
14:15 40:11,16
52:9,11 55:2,24
56:2,8 63:3 66:24
99:24 107:20
122:16 134:17
154:20 220:8
224:3
continues
56:7 75:24 76:6
77:7,11
continuing
11:15 12:13 40:8
138:24 168:24
contracts
216:9
contrary
36:15 146:23
contribute
220:20
control
71:11 76:11 78:10
83:4
controlled
119:2
controlling
142:20
controls
25:9
convenience
118:19
conventional
37:15 51:20
converge
214:18
converging
208:6
conversation
192:14
convert
127:2
converted
67:7 83:14
converting
139:2
conveyance
185:11
conveyed
184:17 185:9
cooperate
136:11
cooperated
216:1
copies
7:5 105:25
copy
105:13,23,24
106:10 131:15,17
132:1,5 140:6
145:13,15 179:8
195:24 218:3,4
219:4 224:12
corner
140:15 147:8
148:12,25 207:15
Corporation
32:13
correct
130:3 144:25
145:1 149:25
152:5 182:20
185:15 187:18
corrected
101:17 204:21
correctly
218:18
correlate
222:12
cosmopolitan
123:14
costs
113:13 222:20
cottage
129:24
cottages
199:18,23
counsel
8:20 9:16 60:21
count
53:4 77:22 134:18
155:8 185:4
counting
69:11 86:20,22
91:22 206:25
countries
202:21
country
133:3 191:16
counts
53:5
county
4:12 10:1,12 12:4
20:17 22:20,21
23:16 32:7,16 39:8
46:20 47:2,6 56:21
57:16 58:25 59:11
65:19,21,22 76:14
89:16 91:16
108:12,23 109:8,
11 110:11 113:20
118:16 120:20
126:4,6 133:25
150:15,21 151:2
153:25 154:24
161:18 164:4
185:23 191:23
192:24 193:8
194:25 205:2
206:2,5 213:3,6
County's
64:11 83:1 107:15
212:13
countywide
90:3,5
couple
55:13 103:15
114:24 142:18
145:20 148:17
166:22 173:9
174:2 188:21
213:4 218:4
coupled
62:19
couples
177:14
court
5:25 22:22 23:15
33:7 36:6 122:14,
21 131:17 189:11
190:6 196:3 219:3
courtesy
115:7 174:10
courts
180:23
covers
29:2
CPA
61:4
crabs
98:6
crafted
117:3
cram-down
216:15
crash
163:16
create
24:23 30:20 40:10
42:2 68:11 89:7
203:6 206:16
210:3,11,16
created
13:14 30:25
113:12 204:22
creates
71:22 162:1
creating
140:17 209:10
creativity
195:17
credibility
78:22 83:25 115:8
credible
205:5 211:20
credibly
85:20 206:14
Crespo
44:6 109:5,13,23
113:18
crises
202:10
criteria
4:14 24:4 28:25
32:24 89:15 101:9
115:15
critical
116:18 205:3,9
215:4
critically
203:22
cronyism
193:16
cross
50:5 97:13
cross-examination
10:3 11:21 60:13
115:5
cross-examine
60:14
crossings
97:14
crystallization
10:24
culverts
135:23,24
cumulative
28:4
curbing
165:8
curbs
174:2
curious
50:24
currencies
202:20
current
10:24 43:14 53:18
76:7 86:25 88:25
99:2 143:5,25
153:2 164:2 184:9
201:22 219:23
curve
140:13 170:17
172:15
curved
140:15
customers
222:19
cut
81:5 105:4 135:6,
13 183:4 186:25
cyclists
205:20

D

da
93:11
daily
113:23 136:12 206:6
damage
113:15 182:22 183:24 212:24
damaged
113:2 174:4 182:19
Darling
48:1 97:1 136:20 201:23 214:4 215:3
data
72:17 73:1,5 74:9 92:4 210:7,9 218:24
date
4:5 90:20 217:16
dated
7:22
David
184:11
day
4:6 6:2,4,8,10 43:10 49:6 90:19 96:16 111:2 138:10 162:25 163:1 166:6 189:12 196:13 198:15,21 207:17, 22 209:19 210:15 222:4,22
days'
212:3 213:9 215:9
DCA
24:14 103:4
DCI2011-00048
50:12
DCI2023-00028
50:9
dead
214:7
deal
42:9 200:17
deaths
213:8
debatable
35:5,13
debate
19:22 25:4 35:7
Debbie
224:13
debris
135:24 214:8
decade
158:20
decades
86:21 178:15 216:12
decades-old
159:15
decide
37:16 220:5
decided
131:1 134:10 188:11 193:18
decision
25:8 32:11 41:14 123:25
decision-makers
4:13
decisions
18:10 27:25 90:25 112:18
declined
109:23
decreasing
89:17
deemed
27:16,17
deeper
68:1
defensive
175:17
deference
34:14,19
deferential
33:10
deferred
109:24
defined
110:12,16
definition
18:8 28:18 29:16, 24 30:6 32:20 33:6 56:4,7 193:20,21, 23,24
degrade
99:9
degraded
190:25
degree
106:23 194:9 202:2,3,5
delay
135:14 221:10,15
deliberations
218:1
delineated
61:7 74:7
delta
21:7,11
demand
204:22 208:15 217:18
demands
49:20 94:13 113:11 139:4
demolished
48:13 69:25 70:6 139:1 219:24
demonstrate
36:1,11 84:1 108:7 116:1
demonstrated
24:5 33:3 34:10 69:25 94:10 95:1 104:10
demonstrates
72:4 126:9
demonstrating
32:15,19 35:17
denial
13:21 79:8,11 85:13 178:22
denied
17:12 50:12,13 53:24 80:22 104:9, 14 105:4
dense
15:2 30:22 38:14 130:18 221:22
densely
133:12
densities
28:21,24 45:24,25 74:10
density
14:22 15:8 18:16 19:8 28:4 29:2,10, 12 30:14,16 32:21 40:9,13 41:25 43:6,12,14,17 45:11,15,19,21 46:24 47:12,15,22 49:17 51:16,19 52:13,20,24 53:23 54:4,8,22 55:18 56:12 58:9,12,19, 23 61:22 62:16 63:13 64:17 67:16, 20 74:17,18 75:14 76:3,4,11 78:10,17 79:16 82:13,15,17, 22 84:9 85:1 88:9 89:12 91:12 97:17 100:4 119:20 123:17 127:24 133:23 146:20 160:1 164:25 178:17 185:5,12 191:11,13,20 192:17 193:19,20, 25 195:20 197:18 204:25 206:15
density/intensity
64:14
deny
24:12 35:20,24 141:17
Department
184:17,21 185:10
departure
67:19 68:15
depend
222:18
Depends
200:21,23
depicted
108:21 147:7
depiction
214:24
depleted
97:12
depression
111:15
deputy
202:11 206:5
derail
107:20
describe
151:20 206:14 212:1
describing
61:1 213:17
description
75:2
design
38:5 65:6 191:17
designated
33:21 51:24 52:11 75:11 96:9,11 97:24 110:14
designation
65:19,20,22,24 83:16
designed
87:14 162:3 187:8
desirable
123:24
destruction
128:5
destructive
80:17
detail
38:9 67:15 92:19 96:7
detailed
33:8 95:15 97:6 104:12 115:15
details
29:13 30:3 34:4 35:15 221:4
determination
31:6
determined
45:25 47:14 52:7 65:4 89:13
devastated
44:11 83:10 84:21 87:12
devastation
44:12
develop
40:12 127:20 216:2
developed
30:13 41:20 61:13 75:3 150:2 191:21

developer
17:10 38:18 42:6, 19,20 128:11 195:14 196:22
developers
38:1 191:18 193:9
developing
191:7 193:15 216:18
development
4:5,15 10:25 11:9 14:11,12,23 15:14, 15,23 16:2 17:6, 16,18 18:3,8,13, 15,18 19:5,6,7,12, 13,24 20:18 22:10, 18 24:15,16 25:14, 17,23 26:2 27:13 28:5,20,22 30:17 31:2,19,22,24 32:4,6,9,23 35:9 37:7,9,14,19,21, 24,25 38:2,13 40:4,16 41:2 42:10,24 43:8,13 45:13,18,24 47:4, 11,13 48:14 49:18, 24 52:25 53:3 54:1,13,15,19,23, 24,25 55:11,13,14, 15,19,24,25 56:1, 11,16 57:2,12,13, 20,22 58:7,21 59:1,13,21,23 61:2,12,16,17,21, 25 62:1,3,4,13,19, 25 63:5,6,20,22 65:3,6 66:13 67:23 68:3,7,9,16 69:21 70:9,21 72:5,16 73:20,21,24,25 74:3,4,16,23 75:1, 5 80:8,19 81:14, 17,22,24 82:1,6, 14,17 84:9 85:6 88:6,14 89:1,5,7, 12 91:9 93:10,15, 16 96:3,15 98:16, 23 99:11,20 103:20,21,23,24 104:2,6,8,20 105:2 107:10 108:8,10 109:15 110:2,5 112:18 113:25 116:6,11,14,22 117:2,18 119:1,2, 11,12,18,23 120:14 124:3 127:1,15 143:11, 20 150:21 151:1 156:7 160:21 178:25 193:6 204:3 206:23 207:5 211:1 213:1 216:21
developments
136:11 207:8
deviated
57:5
deviation
16:13 53:23,25 101:22 102:16 103:9 104:13 117:17 150:16 152:7
deviations
16:6,10,15,16,24 17:1,4,9 30:3 32:22 41:25 42:1 53:21 54:4,5 62:25 79:17 92:21,25 100:9,11 101:11, 14 102:3,11 103:15,18,20,22, 24 104:1,6,7,9,14, 16,19,24 105:1 141:20 150:19 151:10 152:10,16 163:18 164:18
devices
6:12
devised
80:21
diagonal
149:5
dicey
118:10
dictionary
56:3
die
135:15 194:18,21
died
213:6
difference
35:13,14 36:4,14 67:3,5 87:9 196:21
difficult
78:3 140:14
difficulty
85:21
diligence
39:7
Ding
48:1 96:25 136:20 201:23 214:4 215:3
dining
137:9
dinner
207:23
diorama
162:10
direct
48:21 49:25 114:25 115:4 141:8 191:2
directive
134:23
directly
45:9 64:8 115:5 141:13 147:5,6 148:22 152:9 222:11 224:14
director
193:1
disabled
78:2 109:2 165:19
disagree
154:21
disappear
180:8
disaster
168:19 194:11
disasters
133:1
discharges
94:17
discipline
203:4
disclose
133:25
disclosure
205:5
discovered
135:11
discretion
24:10
discuss
19:22 133:6,10
discussed
27:23 147:1 153:6
discussing
137:4 145:22
discussion
10:4 18:8 30:9 56:19 59:6 100:19 124:22 126:12 132:11 134:14 145:17 205:23 213:22 216:5
discussions
146:20
disengage
155:2
dismissed
203:21
disoriented
96:13
disposing
135:5
dispute
25:19 46:25 59:12
disregard
216:8,9
disregarded
217:23
disregarding
164:12
disrepair
138:25
disrupt
81:21
disseminated
147:22
dissuade
86:10
distance
148:12 207:4,7
district
22:19,20 36:6 37:19,25 51:20,21 71:11,14,15,20 83:4 93:11
districts
82:6
disturbed
96:6
diversity
99:1
divide
161:16
divided
161:21
Division
34:25 108:23
DOAH
10:2 103:4 112:8
doctoral
202:7
document
8:14 9:23 10:15 50:7 54:16 60:24 61:3 64:13 72:15 73:6,12 74:20,22 75:8,11,24 76:16, 25 77:7,11 78:6 83:3 86:6 100:3 103:2 120:2
documentation
69:19 73:3
documented
57:22
documents
6:23 8:15,17,22 11:7 68:2 78:14 106:14 145:21 146:1
dog
164:15
dollars
164:1
domed
162:10
Donna
4:3
doomed
127:17
door
222:22
doors
159:21,23
DOS2023-00182-M01
107:13
double
175:16

double-check
6:12
doubt
23:9,10 87:15,16, 20,21
downed
214:10
downplay
83:22 90:10 118:10
drainage
41:11
dramatic
128:16
draw
217:21
dream
187:20 195:15
dressing
97:17 119:17
drill
68:1
drilling
135:8
drive
39:22 77:18 113:1 162:8 171:9,14 172:25 175:19 201:3,17 205:14 212:5 222:12
driven
206:9 213:24,25
driver
214:11
drivers
78:5 109:3
driving
171:7 175:18 206:5 214:10
drop
172:23 207:16
drove
175:8
drunk
214:11
dry
118:14 168:9,17 215:5
Duck
137:4,7
due
30:4 33:13 39:7 71:14,18,25 83:22 109:1 147:19,21 212:13 219:24 222:2
duly
64:1
dune
96:5 99:18
Dunn
10:14 59:14,19 60:8,10,13 108:12, 18
Dunn's
60:6,10
dwell
29:1
dweller
176:19
dwelling
20:12 40:18 55:16 108:15 142:23 154:10,11 155:10 204:19 216:10
dwellings
134:7 179:1

E

earlier
23:24 26:5 52:21 60:12 86:9 184:11 186:19 205:21 212:18,21
early
27:4 86:21,22 87:15,16 162:6 191:21
earth
15:4 27:16 37:16 104:20 183:6
easement
49:14 141:5,7,10 165:13,15,18 166:17,25 185:4
easements
17:8 42:2 79:22 186:2
easier
127:2,5,6
easily
209:23
east
132:19 133:13
eastern
97:9
easy
165:17 212:9 217:1
eateries
137:9
echoed
216:6
ecologically
96:24
economic
113:8,10 210:21, 25 211:2,7,10,16
Economics
202:2
ecosystem
98:19
ecosystems
98:22
edge
108:2
edition
103:2
effect
24:17 25:8 156:14 184:25
effective
133:3
effectively
223:9
effects
88:22
efficiency
108:25
efficiently
213:10
effluent
135:5 204:10
effort
134:6
efforts
76:11 83:24 193:14 212:13
element
14:9
elevate
69:5
elevation
69:6 112:22 125:1, 5,7
elevations
71:1,6 107:16
eliminate
133:17 216:10
eliminated
134:20
else's
17:2 185:4
email
113:18
emails
126:5
emergency
86:16 94:16 113:13
emphasis
79:7
emphasize
203:13 214:25 215:14
emphasized
23:2
employed
203:11 220:4
employee
67:6 91:23 113:21, 23 138:25 153:1 176:10 197:13,18 207:6 208:23 210:2 211:5
employees
12:4 92:2 113:25 139:1 181:15 199:4 208:25 209:9,10,14,17,24 210:7,11,14
employment
202:15
empty
149:12
en
6:16
enacted
18:5 26:12,13 37:9 72:14 102:13
encourage
127:1
encouraged
47:16 82:15
encroach
42:1
encroached
17:8
encroachment
79:22 80:16
end
45:17 46:6 47:23 49:6 52:23 56:18 108:20 147:19,21 153:3 158:3,6,8, 11,17,19 159:7,8 162:19 164:9,22 165:14 166:19 167:7,19,25 168:25 169:22,25 170:11 171:2 172:12 173:2 174:1,5 176:18,21 180:19 185:8,25 186:8 187:12,15 188:21 189:1 207:4 214:21
end-around
216:14
endangered
96:11
ends
217:4
enforce
12:2 54:13,24 224:1
enforceable
40:7,8
enforcement
23:14 113:16 155:1,3 205:25 206:10
engineer
44:20
engineer's
113:5
engineered
216:14
engineering
126:18
engineers

195:16
enhance
98:22
enhanced
183:9
enhancement
55:5 99:25
enjoy
165:18 171:15
185:21
ensure
99:3
enter
4:18 9:14 84:3
196:4
entered
160:24
entering
148:4
entire
13:23 22:10 28:10
31:17 37:16 44:7
77:15 90:4 110:11
220:6
entities
165:14
entitled
25:20 52:22 102:2
165:14
entitlement
24:5,7 46:3
entitlements
10:25 26:2
entity
163:4 198:7
entrance
123:4 124:18
141:13 147:23
151:24 154:8
167:18,19 173:19
186:12
entry
147:5 151:22
environment
32:3 44:19 79:19
80:18 81:1 98:13,
18 119:8 120:11
146:24 212:11
215:22 216:18
217:11 222:10
environmental
15:1 23:6 26:24
31:12,14 33:17
48:20,22 49:25
50:1,2 56:14 74:25
75:6 95:11 99:21
100:7 118:4
216:22 217:11
223:12
environmentally
48:3 97:4 99:17
104:21 116:18
119:19
environmentally-sensitive
47:24
envisions
195:8
equal
20:12
equated
29:9 52:19 54:21
equipment
108:3
Equities
22:20
equity
128:12
Erosion
83:4
erratic
213:2
espousing
19:19
essential
118:23 125:11,12
165:19,20,21
essentially
31:8 154:11
establish
126:16,20,25
established
57:13 58:10 198:1
establishes
45:21
establishing
127:10
estate
163:11,12
estuaries
99:18
estuarine
98:22
evacuate
78:8 86:5 100:25
212:4 213:10
evacuated
111:13,18
evacuating
86:17
evacuation
14:24 15:6 31:11,
13 32:3 44:15
48:6,13 49:21 72:7
74:13,14 75:13
76:13,16,17,21,25
77:13,15 78:5,21,
24 79:1 82:24
83:18 85:11,22
86:3,7,19 87:1,3,
10,19,25 88:1,16,
17,18,20 89:17,18,
21,25 90:3,5,24
91:5 110:12,16,25
111:23,24 113:14
114:5,13 118:9
119:8 142:11
190:23 194:13
195:5,9 211:23
212:23 213:3,13,
15,16 214:25
evacuation-wise
119:19
evacuations
108:24 146:25
evaluate
4:14
evaluated
80:13 81:24 93:16
95:5 99:21
evaluation
87:2,3 99:22
Evans
94:8 97:11
Eve
140:21
event
76:23 114:13
168:7,19 216:23
events
136:22 185:11
eventually
77:3,4
everyday
80:2 84:13
everyone's
223:14
everything's
41:20
evidence
4:11,18 5:9 6:17
8:16,18 11:10,12
28:6 32:19 60:13
70:2,7 72:2 84:2,5
115:13 116:9,20
122:9
evident
134:7
evolution
215:21
evolve
215:16
exacerbate
142:9
exacerbated
39:20 44:12
exacerbates
195:11
exact
33:8 34:3 103:2
188:16 221:5
exacting
33:1
exactness
33:11 34:4
examination
33:8
Examiner
4:2,3,10,22,24,25
5:2 6:20,22 7:7,10,
13,15,18 8:4,6,8,
13,21 9:12 10:17,
19,23 11:6,18
12:8,10,14,19,22
13:1,3,5,9 14:2,4,6
17:22 18:24 19:17
20:5,8,19 21:13,
16,20,22 25:25
34:17 46:11,14
50:15,19,20,23,24
51:5,11,23 52:3,9,
17 59:25 60:17,19
66:3,6,9,17,21
75:21 93:22,25
94:3,5 100:22,25
101:5 105:9,12,20
106:2,7,11,21
107:1,18 109:22
112:3,10,13
114:17,20 116:23
120:23,25 121:11,
17,25 122:3,5,11,
15,20 128:20
131:3,6,9,16,19,23
132:7,10,13
134:17 139:18,24
140:2,6,11 142:16,
17 145:4,7,10,19,
23 146:3,5,8
148:19 149:2,8,14,
17,20,23 150:1,8,
18,24 151:13,15,
19,24 152:2
154:14,20 155:14
157:19,24 158:5,
24 159:4,7,9,11
169:7,11,14,17,21,
24 170:12,19
172:2,4,7 173:19,
22 179:4,6,17,21,
24 180:2,4,10
189:10,21,24
190:2,10,13 192:8
195:22 196:1,8
198:10 200:8
201:10,13 211:4
213:24 217:21
218:2,7,10,14,16,
20,23 219:2,5
224:6,9,16
exceed
209:23
exceeds
34:7 77:18 155:12
exception
24:3,4
excerpt
10:3
excerpts
9:20 10:11 83:2
excess
206:6
exclusive
199:11
excuse
36:17 101:4 154:1
202:12 219:9

executive
193:1
exempt
15:25 63:18 102:15 103:8
exempted
15:22,23 102:7
exemption
51:14,15 60:2
exercising
84:20
exhibit
7:16,20 8:1,10 9:23 106:6,8 108:21 114:16,18 131:25 132:2 145:18,20 146:8 179:15,18,19 196:4
exhibits
12:20 131:21,24 132:14
exist
41:16 43:14 70:12 74:17 79:9,13 80:24 110:22 159:22 164:17 167:10 206:17
existed
55:6 68:13,16 70:17 102:12 167:11
existence
56:8
existing
14:11 17:2 22:1,2 26:2 44:2,3 53:6 55:5,7,25 56:4 63:4 67:19 70:25 74:9 80:9,15 82:2, 11,17 104:3 116:7 117:14 119:11 139:10 152:25 156:7 157:16 204:24 205:9 224:1
exists
25:11 49:24 75:3 78:12 88:9 124:13 128:6 130:12 163:6 207:15
exit
76:18 213:19 214:20
exiting
209:20
expand
56:3 78:18 104:3 113:22 205:1
expanded
92:21 113:12
expansion
43:22 56:10 119:5, 10 120:1 206:16
expansive
141:2
expectation
113:5,7
expected
147:18
expense
120:5
experience
108:25 132:24 136:1 137:10 177:2 178:9 202:25 203:19 213:12 216:6
experienced
91:17
experiencing
212:18
expert
89:20 92:18 132:23 147:2 168:12 203:10,15 204:6,16 206:19 210:22,25 211:5,7
expertise
203:17
experts
49:16 78:21,22 97:20 98:10 99:14 160:15 192:2 203:22 212:1
experts'
203:14
explain
25:20 77:17
explained
40:6 44:7 64:3 67:15 72:15 80:1 86:14 89:23 92:5, 19,24 93:2 96:12, 18 106:22
explaining
86:15
explains
73:22 75:12
explicitly
29:21
explore
206:23
exposure
85:8
express
162:25
expressed
162:13
extensive
16:25 58:24 183:8, 12
extent
11:13 96:20 121:12
extents
108:19
exterior
20:24
external
21:7,13,14,17
extra
73:8 143:4 176:6 216:20,22
extract
39:14
extreme
45:2 49:22 87:21
extremely
83:7 84:10 152:14
eye
122:21

F

face
16:9 17:11 26:18 35:3,8 45:7 62:15 78:13 104:1 158:16 163:23 213:24
Facebook
137:1
facilities
14:25 92:1,13 154:9
facility
147:18
fact
22:12 25:5 36:16 39:20 44:10 47:1 64:25 65:1,3 73:6 112:22 115:22 120:19 121:4 122:9 126:7,12 133:16,22 135:17 156:6 159:20 181:12 197:23 200:13
facto
36:10
factor
115:9 213:7
facts
13:20 14:17 47:21 99:14 115:13 119:23 210:2 216:25
factual
121:20
faculty
202:7
fail
150:15
failure
15:13
failures
191:1
fair
35:7 188:25 220:10 222:19
fairly
27:22 32:8 35:5,12 164:22
fall
110:25
fallen
214:8
false
69:14
familiar
5:17
familiarity
222:15
families
165:17 175:15 177:13
family
171:24 177:9,10 190:20 201:20 219:14,18,20 222:3 224:3
family-friendly
171:25
famous
136:25 137:4
Farmer's
136:21 173:16
Farrell
113:17 114:10
Farrenkopt
181:1 189:13
farther
85:16
fashion
128:16 212:4
fast
190:7 196:5
fate
217:20
father
162:7 191:5
favor
23:13 163:3,19
favorite
195:17
favors
163:10
fear
126:25
feasible
204:13,23
features
153:22
February
7:22 9:3 107:12 164:5
federal
69:6 202:13
federally
96:9,11,12
Federation
103:4
feed

203:7
feedback
127:9
feel
69:22 123:8 135:12 162:2 166:24 179:16 219:12
feeling
166:16
feels
165:11
feet
57:10 70:3,10,14, 17,18,25 71:2 77:19 147:9 148:17 150:14 160:14 163:5 182:11 220:2 221:21
feet's
70:20
fell
162:6
fella
49:5
fellow
202:7
felt
159:14 161:1,13 162:4 164:22
FEMA
70:4 71:1,5 110:12,14 112:21
fence
167:16,19
fenced
168:22
ferry
209:2
fertilizer
117:25
fewer
76:10
FGCU
219:8
FGUA
135:3 204:12,24
field
204:6
fields
203:15
fieldwork
64:6
figure
164:15 194:4
figuring
194:18
file
134:10 179:8
filed
107:11 110:2
final
4:13 40:3 53:19 103:4 111:19 113:17 114:10 141:18
finally
5:24 27:6
finance
168:13 202:5
financial
113:11 202:10 221:11,16
financially
164:13
find
94:21 116:23 141:4 158:4 217:6
finding
5:4 116:9,20 118:21
findings
51:12 115:17,19, 22 120:19
finds
97:22
fine
41:18 42:11 52:8 59:22 69:11 87:7
finish
66:7 189:15 218:24
finite
21:25
finley
131:12,14,18,20, 21,23 132:3,6,12, 17 134:13,18 139:20,22 140:1,3, 10,12 142:17,19, 20,24 143:1,7,12, 22 144:3,8,17,20 145:1
fire
48:17 71:10,14,16, 20,25 93:21 94:4, 23 95:1,3,6 113:13 168:7,11,15 181:13,14 208:16 214:12,25 215:4,7 216:23 220:6
firefighters
214:17
fires
214:22
firm
202:23
firsthand
91:17 132:24
fish
98:5,8 168:1 201:25 202:1 215:2 223:10
fisheries
98:21
fisherman
223:8
fishing
148:1 167:23 174:19
fit
54:1 57:4 67:21 81:7 104:23
five-minute
189:18
fixing
84:3 174:6
flag
69:14
flagship
220:1 223:21
flare
167:3
flash
89:3 137:7
flawed
133:25
flaws
91:21
flexibility
37:11 40:12,20 65:6
flexible
38:5 62:14
float
218:20
flood
48:5 69:6 71:5 83:18 85:3 88:11 112:22 125:1,5,7 184:12
flood-prone
49:21
flooded
221:3
flooding
44:19 45:2 84:13 85:9,10 89:2 118:12
floods
89:3
floor
70:3,15 125:5 157:4 181:10,19, 20,25 182:3
floors
70:6 71:17 72:1 124:25 125:6,7,14, 17 157:6,8 181:8
Florida
17:14 18:9 23:15 26:20 34:12 44:7,8 48:5,8 58:14 73:5 94:19 97:3,25 103:3,14 104:2 112:18 123:11,19 125:12 158:10 160:8 201:19
flourished
191:14
flouts
120:13
flow
77:12 108:25 109:1 173:8 214:20
flows
71:16
flying
50:4
focus
21:6 23:25 24:1 47:17 51:11 115:16
focused
175:19
focuses
137:23
focusing
21:3 193:13
fold
92:20
folding
171:22
folks
17:5 18:12 34:6 41:15 42:12,21 85:20 96:8 97:6 115:4 127:12 154:13
follow
67:16 145:13
followers
137:1
food
222:21
footprint
48:22 50:1 204:24
foraging
96:5
force
77:9
forced
148:2 155:5,6 208:15
Ford
135:12
forecasted
114:8
foreground
150:5
forget
9:1 27:3 39:17
forgetting
93:2
forgot
157:2
forgotten
37:8
form
74:9 155:20
Fort

213:5
fortune
86:11
forward
128:17 141:23 180:4 208:18 222:4
found
93:18 97:8 116:6, 10,17 119:23 178:2 219:22
foundation
8:16 95:14 97:2 214:6
Fountain
112:15,25
four-bedroom
91:24
four-way
140:17 144:10
fourth
139:14
fourth-generation
219:19
fragile
45:4 75:1 217:4
frank
27:22
frankly
34:2 60:3 83:24 166:19
frederick
145:5 157:19,21 158:2,3,7 159:3,5, 8,10,12 169:10,13, 16,19,22 170:2,4, 7,10,15,21 172:3, 6,9 173:21,23 179:10,15,16,18, 19 180:1,9,12,15, 17,21 181:5,10,18 182:2,10,15,21 183:11,15,23 184:6,10,20 185:6, 14,20 186:2,5,11, 19 187:13,18,20, 23 188:3,10,16 189:2,8
free
206:12
frequent
44:19 84:6 212:18
frequently
170:24 217:6
fresh
97:12,13
friends
177:13 201:24
front
5:7 130:9 141:13 151:22 154:6 166:11 168:5,21, 25 169:1 173:20
fronts
149:5
full
35:18 40:21 42:20, 22,24 79:24 140:24 176:6 177:25 182:2 191:3 205:4 208:4
full-size
220:1,18
full-time
131:1 155:24 156:1
fully
37:7 81:4 91:22 119:24
fun
199:6
function
125:4
functioned
40:2
fundamental
16:4 36:25 216:19
fundamentally
213:21 216:17
funded
110:23
funky
92:12
funnel
140:19
furthering
90:5
future
55:8 75:7 80:15 86:12 89:1 108:17 128:9 144:1 184:4 222:1

G

Gallo
113:4,9
gaps
211:17
garbage
41:11 79:20
Gasparilla
193:2
gate
138:22 147:5,22, 24 151:23
gated
153:12
gatehouse
76:15
gates
41:9 65:16 92:13 148:3 161:6,7 201:18 205:13 215:23
gauntlet
193:12
Gauthier
13:25 26:5 30:9 44:1 46:6 58:18 67:14 69:18 83:6
gave
80:6 131:18,20 140:7 145:15,20 186:20 199:12 203:3
general
21:10,12 35:2,3 38:2 73:4 185:16
generally
115:25 203:4
generated
17:25 42:10 56:15 58:22
generates
217:14
generation
204:5 224:2
generations
217:13
generous
89:19
gentleman
182:7 186:11 188:18
geography
81:20 86:25
germane
107:2
get all
176:15
GICIA
193:3
girl
171:21
give
5:25 34:19 37:11 78:22 84:25 87:14, 16 92:15 105:13, 16,17 106:10,11 131:15 132:13 177:22
giving
196:3
glass
162:10
glossed
208:24
go-ahead
38:18
goal
54:12,18 56:9 74:22 76:9 79:3 81:14,22 88:20,25 98:19,25 99:3
goals
75:2
golf
80:4 92:11 93:1 94:20 97:22 109:22 110:1 128:4 137:25 138:2,4,5,8,17 140:23 148:3 167:13 168:3 169:1 170:16,23 171:1,6,7,8,11,13, 18 172:20,22,24 173:2,9,13 177:11, 17,24 181:12 182:8,12 201:2 206:8 207:16 208:6
good
4:2 8:7 29:8 68:25 86:9,11 99:22 122:23,24,25 123:10 131:6,19 132:3 136:8 157:20,21 161:18 165:22 174:6,15 178:4 181:14 190:1 195:14 196:8,10 199:10 201:12,13 207:6 219:5
goods
108:16
gorgeous
160:23
Goss
189:22,23 190:1,2, 6,11,17 192:10 196:1,6 216:16
gotta
92:10,11
governance
193:17
governed
26:15
governing
10:15 17:14 64:13
government
24:10,11 35:20 42:19 184:22
Governor's
202:9
governs
26:14
grade
57:10 70:10,25 160:14
granddad
219:23
Grande
193:4
grandfather
221:20
grandfathering
25:12,13
grant
12:9
granted
17:10 18:18,21 24:5 152:8 197:21
graphic
214:23

grappling
44:8
gratuitous
70:5
gratuitously
45:6
gravity
221:8
great
5:5 65:7 67:19 68:15 92:12 95:15 136:18 196:19 211:8 212:23 222:5
great-grandfather
219:16 221:19,23 222:17
greater
96:1 104:1 194:14
green
137:7 160:4,5 171:12 184:23,24
greenery
128:6
grew
221:20
gridlock
213:17
Grill
207:2,13
grocer
223:17
grocery
220:1 222:15
gross
30:14,16 63:22 66:15
grosso
6:21,22 7:9,11,14, 17,19,20,24 8:1,3, 7,13,15,20 9:7,9, 15,22 10:5,8,11, 18,22 11:1,24,25 12:9,16,21 13:2,4, 9,11 14:3,5,7 19:1, 20 20:6,14 21:10, 15,17,21,23 26:4 46:13,16 50:17 51:2,10 52:2,8,10 60:2,5,16,18,20 66:5,7,11,23 93:24 94:2,4,6 100:20,24 101:4,8 105:10,15, 22,25 106:4,6,8,9, 13 107:7,22 112:5, 11,14 114:16,18, 19,21 121:3,6,18 122:2,13
ground
64:7 65:8 67:4 71:16 77:4 117:1 118:2 133:19 190:24 198:1 210:24 221:3,21
grounded
87:11
grounds
98:5 210:24
groundwater
99:10 190:24
group
95:13 128:14 133:21 192:1 201:24 212:14
grow
190:20
growing
125:9 212:16
grows
31:4 113:22
growth
23:5 26:13
guaranteed
45:24
guard
172:16
guess
40:14 160:17 196:21
guest
136:9
guests
68:6,25 79:24 86:8 87:15 113:5 114:11 136:2 137:20 142:7 146:18 147:25 148:9 152:11,15 166:1 197:5 206:22 210:24
guidance
61:13
guided
74:12
gulf
27:12 65:22 97:22 133:15 165:16
guy
172:19

H

habitable
70:3,6,14 157:4,6, 8
habitat
95:17 96:5 99:13 118:4 123:15,17
habitats
99:25 100:1
half
5:25 66:4 122:22 181:24
hallways
20:24
hand
13:6 105:17
handed
9:16 22:23 50:7
handle
43:7 54:2 104:20 144:23 179:3 204:2
handling
208:14
hands
6:16 8:9
hang
93:22 131:12 158:24
happen
44:17 57:2 72:23 99:5 144:1 161:23 163:24 214:16 215:8 223:1
happened
37:17 39:1 44:17 59:23 65:2 141:22 154:16 173:12
happening
165:11 174:9,11
happy
100:20 121:6,16 219:4
Harbourside
207:2
hard
8:4 27:9,16 171:10 187:7 191:5,7 210:1,7,9 213:10 218:10 220:10 222:6 223:18,24
hard-working
220:25
hardship
101:17
harken
102:22
harm's
194:10
harms
125:8
hate
162:3
hats
197:16
haul
204:10
hazard
32:3 48:5,6 74:12 75:11,13,17 78:21 83:17 84:13 85:8 87:18 88:9 89:10 99:12 110:12,14 112:19,20 191:4, 10 193:23 194:7, 25 195:10
hazards
14:24 49:22 74:16 76:10 87:4 88:11 89:8 91:6
he'll
181:5,6
head
7:24 94:5 114:20 131:8
heads
174:3
heal
142:6
hear
8:9 13:2,5,6 36:3 39:5 100:22 142:25 165:22 176:25 204:14
heard
10:13 13:25 22:12 26:5 28:6,19 30:25 31:25 34:24 36:3 37:20 38:9 39:4,21 45:3,15 57:17 77:5 78:25 80:7 82:20 85:14,15 92:8 94:7,24 95:12 97:10 104:13 114:23 117:1 126:24 134:4 141:6 163:13 166:3 171:5 198:6 205:11 209:1 212:1
hearing
4:2,3,6,8,10,22,24, 25 5:2,16,24 6:3, 20,22,25 7:7,10, 13,15,18 8:4,6,8, 13,20,22 9:12 10:17,19,23 11:6, 18 12:5,8,10,14, 19,22 13:1,3,5,9 14:2,4,6 17:22 18:24 19:17 20:5, 8,19 21:13,16,20, 22 25:21,25 28:11 34:16 46:11,14 50:15,19,23,24 51:5,11,23 52:3,9, 17 59:10,25 60:17, 19 66:3,6,9,17,21 75:21 82:19 93:22, 25 94:3,5 100:22, 25 101:5 105:9,12, 20 106:2,7,11,21 107:1,12,18 109:22 112:3,10, 13 114:17,20 116:23 120:23,25 121:11,17,25 122:3,5,11,15,20 128:18,20 131:3,6, 9,16,19,23 132:7, 10,13 134:17 136:13 139:18,24 140:2,6,11 142:16, 17 145:4,7,10,19, 23 146:3,5,8 148:19 149:2,8,14, 17,20,23 150:1,8, 18,24 151:13,15,

19,24 152:2 154:14,20 155:14 157:19,21,24 158:5,24 159:4,7, 9,11 165:24 167:11 169:7,11, 14,17,21,24 170:12,19 172:2,4, 7 173:19,22 178:12 179:4,6,17, 21,24 180:2,4,10 189:10,21,24 190:2,10,13 192:8 195:22 196:1,8,11 198:9,10 200:8 201:10,13,15 211:4 218:2,7,10, 14,16,20,23 219:2, 5 224:6,9,13,16,18

hearings
34:25 134:22

heart
162:2

heat
214:14

heated
26:22

heavily
205:18 212:17

heavy
78:1 209:18

height
43:15 56:12 58:2 62:8,12 63:23 64:14 67:22 69:11 70:5,22 71:9 125:2 162:17 178:17 216:11

heights
30:18 38:11 57:10 58:3,10,20 61:23 69:3,20,25 70:2, 13,19 71:15 72:2,4 74:20 79:16 84:23 124:23 125:9 127:24 160:13,16

held
183:25 202:7

Helene
44:13 84:1 221:16

hell
221:12

hellacious
223:6

helped
51:2

helpful
121:13 180:14 196:5 218:7 219:6

HEX
50:11 107:12

hey
173:4

hierarchy
91:14

high
32:2 38:15 48:6 74:12 75:11,13,17 83:17 84:17 99:6, 12 110:14,25 111:1 112:19,20 118:14 125:4 133:19 181:11 188:4 191:4 193:23 194:7,24 195:9 207:19 209:15 214:14 215:6 221:12 222:18

high-quality
40:10

high-rises
160:9

high-use
147:18

higher
40:12 53:15 69:16 77:4 184:8

highest
77:8 98:1

highlights
136:20

highly
95:13

highway
77:21

highways
212:7

hired
192:3

historic
14:12 25:17 27:13 30:17 32:4 43:13 45:13 49:17 53:13 54:14,18,23 55:12, 14,15,23 56:1,11 57:7,8,9,11,13,20 58:7,21 59:1,12,23 61:2,21 63:6,20 65:2,15,19,20,21, 23 66:13 67:20,23 68:9,15 72:3,16 73:21,24,25 74:3, 23 118:25 129:22, 23 160:21 200:14, 15,16

historical
31:1 47:4 70:8,20 125:24,25 126:2 196:17

historically
20:16 29:7 75:3 88:15 114:1 153:15

history
20:22 22:5 30:12 31:2 46:5 94:16 123:9 127:15 208:3 215:24 216:9

hit
83:9 135:17 187:3, 4,5

hold
7:1 23:20 138:3,7 183:20 184:6

holdings
67:11,12

hole
167:13 182:12,13 183:24

holiday
90:21

home
19:5,6 49:8 137:8 158:8 173:17 188:18 221:1,18, 23,25 223:11

homes
111:11 206:25 209:2

homesteaded
219:16

honestly
176:3,18 217:15

honesty
217:18

honor
5:21 26:10 28:19 50:10 53:21 76:24 82:10 101:8 102:9 106:5,9 114:21 121:18 122:13 178:14 220:23

hope
90:11 189:14

horrific
214:23

hotel
18:24 19:6,14 20:12,15,25 21:1 29:3 40:18 46:10 53:1,4 57:8 58:1 61:6,22 62:7 63:13,22 64:17 67:8,9 68:7,10,12, 14,20,21,25 71:21 74:7 78:17 79:24 86:7 87:15 89:5 108:15 117:6 124:17 125:13 128:3 133:7 134:4, 5,8 136:15 142:4 154:6 155:5,7,11 159:23 176:5 179:1 191:22 207:5

hotel/motel
20:10

hotel/residential
59:16

hotels
19:3 22:8 29:8 30:16 46:19,20 47:2 48:16 51:15, 18 52:12,19 54:21 55:17 65:15 66:15 67:10 74:19 76:5 81:16 88:7,15 99:20 119:4 176:1

hour
5:25 6:5 66:4 122:22 209:23

hours
77:16 109:2 111:17 213:4 223:20

house
15:19 76:8 109:14 110:3,4 123:3 129:16,17,21,22, 23 130:3,7,8,24,25 135:4 136:22 139:12,14 140:18 141:22 143:14,24 144:4,6 151:11 158:21,25 165:1 190:19 201:17,22 207:2,9,12 221:19

houses
130:6,21 197:3,7

housing
138:25 142:21 153:1 176:10 197:13,19 207:6 221:22

huge
22:9 67:15,16 70:20 84:9 86:23 124:21

hugely
41:4

human
88:25 95:24

hundred
207:3 208:6

hundreds
128:4 164:1 209:25

hungry
207:24

hurdles
183:18

hurricane
31:12 44:9,12,14 45:2 48:7,14 77:6 82:23 83:7 84:3,4 86:18 88:11,16,17 90:17,24 91:5 110:15,25 111:14, 16 113:1,15 118:15 135:17 146:24 192:5,11 193:18 196:24 212:2,19,22,24 213:14,16,23 219:25 220:2,23 221:24 222:1

hurricane-constrained 90:9
hurricane-vulnerable 90:10
hurricanes 26:18,21 83:11,25 85:10 86:12,13,15 88:22 132:25 212:18 213:22
hurt 196:25
hypothetical 44:15

I

I-75 213:17
Ian 44:12 48:14 77:6 84:1 86:11 87:13 113:1 182:18,22 183:12 192:11 193:18 213:14,16 219:25 220:2,6,24 222:1
Ian's 212:24 221:11
idea 24:21 27:19 37:8 41:19 42:12 45:5 53:2 69:9 80:23 92:5 133:24 162:13 185:16
identifies 59:12
identify 61:4
ignore 206:12
ignoring 164:14
illusory 92:6
image 170:1,2
imagine 27:9,16 176:1,3 221:13
impact 28:4 48:22 49:12 81:24 88:4,13,17 90:8 91:21 92:3 113:8,10 124:14, 16 128:16 152:10 206:20 211:18 221:11,16
impacted 71:14 72:10 76:22 85:23 148:9 152:19 190:23
impacting 138:23
impacts 21:4,7,13,14,16,17 33:18 42:25 49:4 50:2,3 56:14 62:12,22,24 68:11 69:8 81:13 82:7 84:19 85:11,12 89:1,2 92:4 93:3,9, 12,17 95:15,20 96:21 97:5,18 118:4 119:6 146:17
impaired 33:19,21 47:25 94:18 98:2,24
implicated 115:23
implications 153:14
implies 33:10
importance 73:8 133:2 215:4
important 36:2,21 41:5 44:4 45:11 50:3 72:17 73:11 76:12 91:13 115:9 123:25 164:21 193:6 203:20,22 204:1 217:22 219:12
importantly 18:6 95:16
impose 17:4
impossible 91:6
improve 98:25 125:8
improved 99:4 212:9
Improvement 193:2
improvements 206:15
improves 194:24
in-depth 15:10
in-state 212:17
inability 71:25 115:2 220:7
inaccessible 167:6
inadequacies 95:4
inadequate 48:17 94:12 138:13
inappropriate 63:9 64:1,11 92:25 102:17,19 103:10
inappropriately 63:13
inaudible 190:4 202:18
incentive 209:10
inception 40:3 62:6 64:13
inches 181:11
incident 77:12
include 62:7 88:11 107:3 113:10 134:8 136:20
included 9:13 40:7 109:23 110:3 113:19 134:3,5
includes 62:10 86:13 88:15 108:5 119:3,4
including 18:6,24 70:24 78:15 89:2 92:20 93:5 95:16 99:17 111:1 133:7 138:15 142:3 152:20 223:5
inclusive 159:23 191:22
incompatibility 105:2
incompatible 117:14,17
incomprehensible 28:8
inconsistencies 217:22
inconsistent 17:16 22:18 23:6 24:12 29:11 49:1 76:9 91:4 211:17
inconvenient 216:25
incorporation 103:1 191:6
increase 10:18 14:21 19:7, 12,16,18,21,22 20:1,3 21:4,25 27:20 28:2,4,5 31:24 32:5 39:16 41:1 42:7 43:24 45:6 49:18 56:3,10 59:21 62:16,19 67:16,25 70:5,11, 20 71:18,20 76:3 78:18 84:9 88:1 89:8 90:12,25 95:21 97:18 98:8 118:7 119:16 139:3 142:9,10,13 193:19 194:12 197:17 204:3,4,18, 19 206:14
increased 11:4 56:16 59:5 85:8 91:25 95:23 109:1,3 113:12 119:23 130:13 137:22 204:21,25
increases 43:12 71:9 75:15 88:19 146:20
increasing 89:9 90:4 91:8 192:17
incredible 191:9
incredibly 195:14
incursion 205:6
independent 79:12
indicating 138:10
individual 93:2
individuals 11:19 162:24 163:2,8
infamously 222:16
inferior 36:12
infirm 63:11
information 11:19 121:13 147:21 181:2 219:17
informative 11:21
informed 11:8 134:24 135:21 221:2
infrastructure 23:7 26:24 41:11 55:10 56:14 75:15 93:20 215:20
initially 199:2
inn 51:1,3 65:17,18,21 196:12 197:6
innkeeper 196:22
inns 53:13
input 4:8,21 5:2,8 107:5 131:10 193:10
inquire 7:21

inquired
109:22
inquiry
47:17
inside
127:25 161:7
insist
222:19
install
148:2
installing
138:22
instances
136:2 143:21
instructed
135:22 138:20
insufficiency
16:4
insufficient
17:11 107:25
142:14 152:3
integrated
37:12 52:24 65:5
187:6
integrity
41:22 80:17,25
119:6 223:12
intelligent
195:18
intended
75:24
intending
107:20,21
intense
27:18 30:22 44:21
72:4 84:7 86:13
104:2,18 105:2
119:18 127:3
130:19 191:2
intensification
26:21
intensifying
72:5 86:15
intensities
28:21,24
intensity
14:22 15:8 18:16
19:8 29:2,5,11,12
32:22 43:12,15,18
44:9,21 45:16,19
47:12,22 49:17,24
53:23 54:4,8
56:12,13 58:10,12,
20,23 66:24 67:16,
20,25 71:21 78:10
79:16 82:13,17
84:4 89:12 91:12
97:18 103:25
116:12 119:21
160:1 178:17
intent
29:13 34:22 37:19,
24 56:24 74:24
82:5 120:13,15
intentionally
57:21 166:16
interactions
95:24 96:22
interconnected
49:8
interest
17:7 40:20 65:5
185:25
interested
204:14
interesting
186:24 209:3
210:5
interests
215:17
interim
220:14
Interior
184:18,21 185:10
internally
21:2 188:7 211:20
interpose
51:25 60:1 106:17
interpret
34:11 78:15 91:6
102:13
interpretation
14:18 34:15,20
52:13,18 57:15
61:8 65:25 66:12
102:17
interpreted
102:12
interpreting
46:18 73:9
interrelated
116:15
interrupted
60:3
interrupts
77:12
intersection
110:20 140:5,19
149:3 170:13
interspliced
41:16
intertwined
39:24 41:12 79:20
interval
137:13
intimidating
219:12
intrinsically
164:13
introduced
9:5
introducing
73:20
introduction
106:21
intrusion
97:11 98:15
invaluable
133:5
invented
223:16
invertebrates
98:6
investigated
64:6
investigation
33:12
investment
202:23
investments
38:23 127:20
invite
5:3
invited
192:5,12 221:23
involved
22:1 64:5,9 201:8
202:24
ipso
36:10
Ironically
221:1,11
irrelevant
63:15 154:19
irresponsible
45:8 221:17
irrigation
144:23 174:3
island
4:4 14:12 15:4
25:16 27:12 29:19,
22 30:10,15,21
33:20 34:6 37:20
39:22 41:9 43:22,
23 45:5 47:24,25
48:13 49:11,22
55:19 56:17,25
57:12 58:3,25 59:2
61:3,5 64:15
65:16,18,21 66:14
69:23,24 70:8
71:10 72:5 74:5
75:2 76:12,18
77:1,2 78:8,11
83:8,15,23,24
85:18 87:4 90:9,10
92:14 94:18 96:25
97:7,8,23 103:8
112:23 114:13
116:12,13 120:6
125:15 129:9
133:14,20 136:18
137:8 169:17,23
175:9,10 190:20
193:2,7 195:21
196:17 209:19,20,
21,22 213:19
219:25 220:8
222:11
island's
74:14 75:5 125:11
islands
48:4 77:10 83:9
219:15 222:9
223:3 224:2
issue
20:6 48:24 93:20
134:18,21 136:12
138:24 153:5
155:4 204:1
216:19
issued
141:20 150:21
151:2 213:3
issues
15:12 17:24 44:15
72:18 75:1,9,12
77:8 95:11,12,18
97:20 119:7 133:6
136:10 138:1
142:5 146:25
147:3 175:4
176:25 177:1
193:6 203:23
205:3 206:17
211:21
issuing
199:14
items
9:12

J

Jacksonville
195:3
January
110:10 214:22
Jay
123:1
Jensen's
65:17,19,22
197:16
jobs
209:5
Joe
7:22
joggers
205:19
John
135:12
Johnny
141:16
Johnson
218:14,15,18,22
219:1,3,7 224:7,15
jointly
216:2
Judge
134:11
judicial
22:16,17
juice
223:17
July
90:19 111:1
113:20 222:2

jump
214:13
juncture
184:19
June
113:18
justification
204:25

K

keeping
55:12 56:1 63:5 73:21 74:21 119:5 122:21
keg
166:19
Ken
212:21
key
32:13,16 45:13 46:25 69:22 73:12
keyed
119:21
kids
206:9
kills
98:8
kind
28:4,5 37:22 45:7 57:6 63:15 80:2 149:11 183:5 208:14
kinds
49:14
Kinsey
51:1,3,5,6
kitchen
133:18
knew
14:13 160:17 199:1
knock
197:12
knocking
197:18
knowing
38:22
knowledge
154:3 156:22

L

Labor
90:19 111:2
lack
83:24,25 147:17, 20 213:7
ladders
71:16
lady
220:11
laid
42:13
lake
24:14,18 36:5 167:7,8,10 182:15, 25 183:1,20,22,23 184:2
lakes
22:21 167:11,15
lanai
133:15
land
4:15 11:8 15:3,13 18:16 21:12 22:1,2 28:21,24 37:2,3,4 39:10 41:6 42:6 46:4 47:18 49:4,16 50:4 53:6 55:5,25 57:1 62:21 63:4 74:11,25 75:4 80:13 81:8,25 82:3,8 86:25 93:12 102:4 108:8,10 112:17,23 117:19, 22 124:9,13 125:18,24,25 126:2,7,9,10 127:13 128:1 135:13 143:11,20 149:13,19 185:13 191:8 195:16 214:2,3,5
Land's
158:3,6,8,11,17,19 159:7,8 162:19 164:9,22 165:14 166:19 167:7,19, 25 168:25 169:20, 25 170:10 172:12 173:2 174:1,4 176:18,21 180:18, 19 185:8,25 186:8 187:12,15 188:21 189:1
landfall
111:16 213:1
landing
107:15
landowner
23:20
landowners
118:19
lands
16:15 97:3
landscape
44:18 107:16
landscaper
134:24 135:9
landscaping
62:11 94:20 97:21 135:4 174:23
lane
137:8 208:16
language
56:20 115:22
Lapi
196:8,10,12 198:10,12,17,19, 22,25 199:3,6,10, 18,21,23 200:2,5, 7,10,13,21,23 201:1,4,7 215:18 216:6
large
147:18 149:12,14 159:18 177:17 182:25 214:24
larger
71:22 76:8 167:8 176:20 183:2 215:19
late
212:25
latitude
12:9
launch
133:22
Laura
50:21
law
13:20 14:14 17:14 18:9 19:24 21:12 22:17,25 23:12 24:3,25 25:2,8,18 26:13,14,15,16,20 27:1,7,22 28:15 31:6 34:13 35:19 36:23 58:14,16 73:5 83:17 102:24 103:14,25 104:2
laws
65:11
lawyer
121:19
lawyers
115:2
lay
22:2 53:6 86:25
lead
127:14 137:21
Leaders
67:14
leading
23:15 24:6 77:1,3 115:1,4 151:5
learn
193:11
learned
160:11
lease
201:2,4
leave
92:17 113:6 136:16 137:10,15, 19 169:4 175:10 206:22 210:24 211:7,11 213:11
leaving
40:13
lectern
100:19
Lee
4:15 11:9 13:19 14:9,19 22:20 26:3,12 27:3,4,5 32:6,9 36:16,20 45:17 47:16 51:16 56:20 58:13 61:1 73:4,9 76:2 82:15 85:7,13 120:20 159:13,15 161:5 162:18 164:4 191:23 193:8 194:19 195:8 205:2 206:5 213:3, 6
left
48:19,20 139:9,11 167:6 202:22 214:3,5
legacy
222:3
legal
7:4 13:13 102:8 121:2,5,8,10,15 122:8 154:22 165:15
legally
103:10 178:18
lengthy
18:7
lenient
36:15 62:14
Leo
179:24 181:1 188:20 189:13
lesser
70:10
lesson
217:3
let alone
44:3
letter
7:4,22 8:21,24,25 9:2,3 22:23 24:20 35:23 52:6 71:11, 21 82:10 94:1,24 103:3 104:4 107:25 154:23
letters
11:19 94:10
level
45:8 48:6 70:11 98:1 160:14 176:22 184:12 190:23,24 194:21 208:2,11 221:4
levels
78:17 190:24
Levinson
201:10,12,15,16 202:20 211:5 218:3,9,13
library
179:13

lies
136:17 197:25
life
26:17 71:22 75:16 79:18 80:2 88:25 91:15 119:9 152:15 153:12 162:13 191:10 192:25 195:7 210:9 217:12 223:4,7
lift
221:18
lifting
171:21
light
21:18 33:18 58:23 68:22 96:3,13,14
Lighthouse
136:21
lighting
81:6 96:18
lightning
214:9
limb
26:17 91:16
limit
22:7 40:9 46:24 47:3 55:11,25 56:2,5 57:1,7,8,9 63:4,24 73:20 74:16 133:7,10,24 142:3 153:2,4 185:12 198:17 205:22 216:10
limitation
40:11,17 216:11
limitations
43:14 54:7 100:4 192:1
limited
4:16 11:13 25:14 43:7 47:22 57:25 61:21 63:22 70:9 74:20 76:19 77:2, 25 119:13 121:12 133:23 165:17 214:16 222:13
limiting
76:2
limits
51:16 54:12 55:18 58:2,7 59:15 62:7, 8 78:7 82:13 140:14
lines
55:13 186:24
links
213:17
list
5:22,23 8:14 9:4 136:19 145:13 224:20
listened
194:1 203:17
listening
178:13 184:11 218:11
litany
101:15
litigated
35:2
litigation
27:4 134:15
livability
80:4
live
34:5 85:5 120:7,8, 12 123:2,12,21,24 127:22,23 131:1 160:8 165:12 168:8 176:7 188:15 190:4 196:13 201:16 223:15
liveable
124:25 125:6,7,14, 17
lived
133:1 190:18
lives
68:17 72:1,6 81:9 86:23 128:15 130:4 185:17 188:19
living
79:19 123:9 125:5 161:13 177:2 178:10 194:3
loading
99:2
lobbying
193:14
local
24:10,11 26:20 35:20 137:15
located
110:13 132:19 139:6 141:5 147:4 149:3,10 169:18 172:8 207:11
location
14:20 20:14,15 44:6,23 46:5 47:16,20 52:22 53:2 74:12 81:20 82:16,21 116:25 117:8 118:13,16 119:22,24 140:8 148:14 153:2 159:2 219:24
locations
81:15
lock-off
20:23 57:17 154:17
locked
154:7 168:4,5
lockout
154:2,5,25 155:2,4
loft
182:1
logically
43:10
long
26:14 123:8 124:24 125:18 166:21 188:15 195:2 208:4
long-approved
195:19
long-established
125:18
long-standing
124:13 126:7,9,10 127:12
long-term
55:2,3,4 99:24
long-time
75:5
longer
26:2 68:23 77:5 109:10 134:25 135:10 159:19 173:11 178:7 221:13
longest
76:13
longest-term
202:14
lose
71:6 127:18 145:7
losing
170:25
lost
71:24 72:1,6 86:23 145:15
lot
10:13 25:1 27:18 29:7 39:5 41:21 64:22 72:15,17 73:7 80:10 88:3 91:24 96:14 97:5 98:11,14,17 124:22 127:5,6 128:5 129:9,12,14 138:5,9,18,20 140:24 144:9 149:21 158:14,16, 17 160:4,5,6 171:25 172:9 173:25 175:10,16, 22 177:9 182:4,23 186:6 192:14 199:6 205:23 206:12 214:15
lots
138:9 175:20,21
love
160:20 162:6 163:2 175:15 197:6
loved
160:2
lovingly
220:11
low
45:16 49:17 90:20 91:2 111:7 123:16 125:9 127:24 181:11,18 212:2, 20 215:9 222:16
low-density
40:10 48:15 54:14, 18,25 55:16,24 56:22 221:22 222:10
low-height
159:17 222:10
low-impact
75:4
low-intensity
56:23 65:7
low-lying
49:21 77:10
low-rise
48:16 56:23 69:20 74:21
low-use
160:1
lower
176:20
lowering
163:12
lowest
45:19 46:6 47:22 52:23 70:3,14 77:22 111:9
lunch
6:3,4,6 131:4
Lyft
137:17,19

M

Machado
22:21 32:14,17 33:6
Madam
4:22 6:22 8:4,13, 20 17:22 34:16 59:25 75:21 109:22 120:25 122:14 136:13 142:16 154:14 157:21 178:12 190:1 196:11 198:9 213:24 217:21
made
16:7,8 24:6 27:1 33:16 44:1 49:16 51:12,22 52:21 53:25 59:3 60:23 67:24 71:9 81:2 86:5,6 94:7,8 100:3,16 102:22, 24 111:16 112:22 127:19 130:18

138:7 171:24 174:8,11 178:14 185:22 210:9
magnitude 30:2 58:19 67:17 79:15
main 130:24,25 132:19 139:6,7 147:5,23 151:15,20 207:10
mainland 47:1 48:8 75:23 77:4 83:10 93:6 118:14
maintain 54:14,25 55:23 56:2,4,22 78:16 98:25 99:6 186:9, 10,13,15,17,22 187:2
maintained 75:6 99:3 134:19
maintaining 99:2
maintenance 119:11
major 35:13,14 69:21 70:11 91:20 92:25 93:1 119:5 124:14, 20 125:14 126:15, 23 127:9,19 133:6 174:9 183:3 202:14 213:7 215:2 222:20
majority 152:20 189:2 198:5
make 12:17 15:8 16:8 23:25 34:24 38:22 41:14,24 52:4,25 53:5,20 62:14 63:11 65:6 79:6 80:23 81:10 84:24 85:1 98:2 99:8 101:23 102:8 104:15 105:4 115:17,21 120:18 121:23 123:23 124:1 127:2 136:1 146:6 155:2 156:18 163:22 166:18 173:5 175:23 185:5 203:7 210:19 223:18,24
makes 22:17 25:7,23 33:8 37:16 44:10,23 45:15 52:4 69:4,11 78:2,15,19 99:4 112:19 117:23,24 123:10,18
making 11:1,5 32:11 81:9 90:25 118:13,15 121:8,20 140:9,14 150:9,11 178:20
man 193:22
manage 214:24
managed 201:25
management 26:13 113:14,16 187:17 203:1
manager 59:10,14 108:11 130:4 178:2
managers 86:17
manages 215:3
managing 132:24 140:22 202:17
mandatory 16:3 24:18
mangrove 94:15
mangroves 205:1,7 223:9
manner 6:2 98:5
maps 83:1
March 4:6 141:9
margins 222:16
Maria 12:24 132:7
Marie 4:3
Marilyn 145:5 157:19 158:2 179:18
marina 132:18,19 137:24 138:22 139:7,8 140:16 141:5 144:20 147:7,13 149:4 150:5 151:5, 7,8,12,13,16,20,22 152:9 178:1,5 197:16 200:10
Marina's 149:11
marine 104:4 178:23
Mariner 191:19
mark 8:10 122:22 132:14 145:24
marked 141:12
market 136:21 153:16,18 173:16
marketing 158:17 165:3
marriage 221:10
married 221:11,25
mass 15:3 117:19,22
masse 6:16
massive 19:16 62:19
master 17:6 22:10 32:22 37:7,8,14 38:13 40:2,6 53:3 61:24 65:5 81:21 117:2 119:2 120:14 144:15,18,24 156:20,21 161:11, 12
Master's 202:3,5
match 140:7
material 19:18,23 20:3 158:17
materially 18:15,18 19:7 24:25
Mathematics 202:3
matter 15:11 30:4 31:4 34:21 46:23 48:24 56:19 58:15 64:25 65:1,3 81:2 97:5 103:25 181:12 197:23 200:13 203:15 221:8
mattered 22:6 38:15,16
matters 12:17 25:22 34:23 41:24 48:24 57:19
Matthews' 219:20
maximize 191:20
maximum 18:20 40:17 45:23 56:6 63:23 66:14 77:20 146:21 178:25 215:4
may-be-introduced 9:4
MCP 109:18 110:7
meanders 170:16
meaning 55:6 134:7 140:18
means 29:4 34:18,21 52:23 56:4,5,8 101:18 139:15 213:23
meant 23:8 43:12 68:5 98:14
measure 124:23
measurement 148:25
measurements 108:6
measures 56:13
media 137:2
meet 13:18 15:19 68:19 71:5 85:2 94:12 103:9 108:1 204:23
meet all 24:3
meeting 15:15,17,18,20 16:1 33:1
meetings 223:20
meets 28:25 77:21 116:3 193:21
member 179:13 196:15 201:17,23 202:7 220:12,13,19
members 5:3,12,19 6:14 120:7 224:20
memberships 179:14
Mendez 51:1,2,4 67:23 101:2 139:21 170:1,3,6,9
Mendez's 85:24
mention 100:9 147:11 179:11
mentioned 74:6 110:21 139:6 140:20
mere 44:10
merits 15:9 17:13 36:24
message 104:25

met
16:3 34:9 100:12, 14 102:11 108:10 115:15 191:11
methodological
203:16
methodology
203:11
Methods
202:4
meticulously
59:4
Mexico
27:12
mezzanine
181:25
Michael
141:6
microphone
101:7
middle
183:5,6 197:25
mile
123:3 201:18 220:9
miles
76:15 205:16 206:10 212:22 214:2,6
milling
165:4
million
164:2,8
millions
164:1
Milton
44:13 84:1 182:18, 21 183:16 213:15, 16 221:12,14
Milton's
221:16
mind
26:6 133:23 172:25
minds
160:17
mindset
161:12
minimal
77:14 206:20
minimum
69:6 70:14 101:23
minor
41:1 55:18 58:2 107:9
minority
161:14,15 163:20
Mintz
4:22 5:1 15:16 47:5 49:5 57:23 67:15 70:22 94:7 145:9,11,12,15 184:11
Mintz'
30:8
minute
31:5 33:12 54:16 93:23 204:17 206:23
minutes
6:5 29:2 87:24 122:18 173:4,17 211:22 218:21
misinterpretations
121:19
missed
223:20
mistake
191:17
misunderstood
185:23
mitigate
81:12
mitigation
97:16
mix
116:24,25 117:3,7
Mixed
4:5
mixed-use
178:24
mobile
6:12
mobility
165:17
mobility-wise
104:22
mode
6:13 114:12
model
37:23 89:18 110:17 203:7,8
modeled
90:14
modeling
88:3 203:1
modern
14:16,19 26:12 27:5 65:11,25 84:15,22 85:2
mom
220:10
moment
6:11 15:9 19:4 22:11 51:22 61:5 103:10 132:13 207:18
money
25:1 163:21,22,24
Montgomery
7:21,25 8:1,2,12 9:6,8,10,19,25 10:6,10 11:17 12:13 50:21 51:7, 25 52:3 59:25 60:4 94:1 101:7 105:23 106:1,17,25 107:6 112:6 114:3 120:25 121:9,15, 22 122:1,4,7 128:22,24 129:1,4, 8,12,15,18,21 130:1,3,5,10,13, 16,18,21,23 131:2, 8,22 132:4,9 134:12,14 142:18, 25 143:2,8,17,24 144:5,12,18,22 145:2,12,16 154:14 155:15,18, 23 156:2,6,11,13, 17,23 157:2,6,9, 13,17 179:5,19,20, 23,25 180:3,6,13, 16,18 181:3,8,17, 24 182:6,14,17 183:7,14,22 184:5, 8,15 185:2,8,19,22 186:4,6,18 187:10, 16,19,22 188:1,9, 12,24 189:7 190:8, 12,15,17 198:11, 13,18,21,23 199:1, 5,7,16,20,22,25 200:3,6,12,18,22, 24 201:2,5,9
Montgomery's
59:7 121:7
month
6:25 111:6,8
months
111:1 114:9 158:9 166:21
moratorium
199:14
morning
4:2 22:24 23:24 50:8 102:23 120:22 122:24,25 189:17 224:22
mortality
95:25 96:2
motels
65:15
mother
221:20
motions
217:19
motivate
212:23
Mountain
160:5
move
35:19 43:5 48:11 49:9,10 55:8 61:24 79:5 82:23 89:16 92:15 100:8 112:11 138:8 172:16 173:10
moved
77:23 190:21 191:3 201:22 223:20
movie
135:13
moving
17:13 78:2 89:20 141:23 180:4
MPD
37:20 38:4 41:3, 17,22 42:12,22 43:1 48:23 62:13 69:1 81:20
MPDS
42:20
Mucky
137:4,6
multi-family
19:6 20:10 67:7 92:1 142:21 143:3 178:23
multi-owned
161:8
multiple
20:17 37:10 117:9 137:9 179:13
multiple-family
178:25
Murphy
30:9 40:5 44:1 64:3 67:14 68:1 69:18 83:6
Museum
136:21
Musgrove
32:17
Myers
213:5
myriad
31:11

N

Naples
123:13 127:22 159:16,19
narrow
27:14 33:22 47:23 48:9 77:14 85:18 86:1 116:12 118:17 166:12 172:14 175:11
narrows
77:19
nasty
86:16,17
National
97:1
native
100:1 125:10
natural
49:22 95:16 99:12 100:2 116:19 123:15,17 194:11 222:10
nature
12:5 22:3 69:23

82:16 87:11 123:23
Neale 11:6 179:6
nearby 117:18
nearest 76:15
necessarily 60:12 103:22
necessity 33:7
needed 101:23 135:19 214:11 216:3,4
negative 49:24 82:7 93:11, 19 126:23 127:9 128:16
negatively 72:9 148:9 152:19
neighbor 174:10
neighborhood 74:9 92:12 98:15 100:6
neighborhood-style 55:9
neighborhoods 81:25 119:7
neighbors 80:9
nesting 96:5
net 67:25
network 22:2 88:16 141:3
network-wise 104:22
newly 174:22
nicely 161:1 212:10
niece 222:2
night 170:24 196:13 208:12
nights 166:22
nighttime 96:17 109:2
NIMBY 215:14
nine-months-of-the-year 188:13
nods 7:24 94:5 114:20 131:8
noise 21:21 33:18 42:5, 9,14 58:22 96:2,3, 19
noisy 148:8
non-bayside 147:25
non-timeshare 163:25
nonconforming 53:17 104:3 157:16 161:23
nonconformity 184:16
Nonparty 4:17
nonsense 125:4
noon 122:16 209:19
norm 33:9
north 67:10 138:15 139:10 153:3 169:23 171:2 183:4 207:4,13
northeast 147:5
northern 15:5 27:10 85:17 91:9 117:13
note 11:15 12:13 216:1
noted 4:19,20 52:9
notes 107:15,25 146:4 186:6 196:2 218:4
notice 135:7,17 212:3 213:9 215:10
noticed 214:1
notified 109:9,10 154:24
notion 57:3 58:14
notwithstanding 61:11
nourishes 98:20
November 90:20 111:2
number 9:2 11:4 18:22 19:12 20:1 22:7 27:21 37:5 39:17 44:2,3 50:9 56:7 67:21 75:9 78:7 88:2 96:7,21 107:13 110:2 114:6 116:1,2 124:12 130:14 133:9 142:7,12 146:21 166:20 184:1 191:23 203:19 205:12,24 206:7 222:11
numbering 73:17
numbers 45:12 87:5,7 88:4 90:3
numerous 79:17
nursery 98:5
nursing 188:18
nutrient 98:3
nutrient-impaired 94:22
nutrients 33:20 94:19,21 98:6

O

oath 6:15 16:20
object 9:25 134:14 154:15 196:3
objected 10:1
objection 11:16 12:12,13 52:1 59:8 60:1 69:4 106:18
objections 60:4
objective 55:2,22 56:9 74:8 75:10 79:3 89:16, 22 90:6 98:22 99:6,9,24 203:4
objectives 23:4,8 28:23 73:18
obligation 112:9
observations 217:25
obstacle 37:1
obstructed 160:20
obvious 217:7
occupancy 90:14,20 91:2 110:25 111:1,4,6,9 198:17 208:3,22 212:3,20 215:6,9
occupied 90:23 111:12 207:20
occur 212:19
occurred 203:19
occurs 71:25 212:2
October 90:20 111:2,15,17, 18 198:25
odd 205:24
Oddly 160:7
off-site 50:3 113:7
off-the-record 145:17
offer 220:10,17
offered 210:5
offering 137:13 209:7
offers 136:24 137:7
office 109:8,11 110:2 132:4 164:5 202:9
office/pool 180:23
officer 136:13 157:22 168:13,14 178:12 196:11
officers 140:22
official 83:15
officials 38:1 85:15
offshore 212:22
one's 184:3
one-stop 133:8 136:14
oneself 31:15
ongoing 141:23
open 15:19 37:13 38:10 40:15 62:11 83:13 117:5 160:5,6 185:1,18 188:10 220:14
open-ended 56:25
opened 188:8
opening

208:8
operate
196:12 219:14 220:8
operated
113:23
operating
208:9
opinion
26:6 87:1 107:2
opinions
136:10
opponents
34:5 35:11 115:3
opportunity
4:18 5:11 105:7 120:22 188:7 190:20 203:13 219:10
opposed
37:14 126:1,8 143:11
opposite
84:5
option
57:16
options
137:10 222:13
order
5:21 8:13 17:9,16, 18 18:8,13 19:24 22:18 24:16 28:20 35:9 51:24 61:12 77:24 84:24 103:4 107:10 109:15 110:3,5 150:21 156:7
orderly
212:4 213:10,13, 19
orders
18:4,15 19:5,7 23:17 24:15 151:1 212:23 213:3
ordinance
15:22 35:8 64:2 72:21,23,24 73:7 96:19 102:6
ordinances
30:8,13 47:5 57:24 58:25 70:23 96:19
orient
169:8
original
129:22,23 191:18
Orleans
217:2
Otis
111:14
outdated
92:4
Outer
217:2
outlasted
101:5
outlined
111:21 223:12
outlying
45:20 47:18
overarching
104:15
overbirding
166:17
overbuilding
217:3
overburden
164:24
overburdened
167:1
overburdening
166:17
overcome
15:7 97:17
overconservative
90:17
overdevelop
161:3
overestimate
90:16
overflow
138:23
overly
153:5
overview
167:6
overwash
77:11 182:19
overwashed
113:2
overwhelming
80:7
owl
97:9
owned
48:2 97:3 114:7 135:3 141:3 146:12 158:18 159:24 190:19 201:21 214:5
owner
16:20,21 49:10 101:13,20 153:8 154:24 158:19,22 161:14,16 163:11, 20 164:12 179:12 191:25 221:1
owners
16:12 61:13 68:13 108:17 120:5 127:19 133:21 134:1 136:1,4 137:14 138:16 142:7 146:14,18, 19 148:9 152:10, 15,20,24 153:10 158:18,20 159:13 164:2,13 165:16 166:1 178:2 188:11 193:4 215:25 216:1,8
ownership
41:17 79:20 137:13,14 182:9 185:25 186:3 192:5,12
owning
184:22
owns
16:11 22:4 39:23 49:12 92:24 158:16 205:16,18
Oyster
190:6

P

p.m.
6:8,10 131:5 189:20 209:20 218:19 224:24
packet
11:7
pages
132:10
palm
65:17,20 123:13 127:23 160:18 162:21
Palms
197:16
panel
123:7,8,10 126:16 192:19 196:16 204:11
panoramic
137:7
paper
131:25 140:6 179:8
paradise
133:11
parameters
111:20
paramount
118:8
paraphrase
110:10
paraphrasing
36:19 51:23
parcel
4:7 37:4 47:18 150:2
parcels
124:9,10,15
Pardon
112:3 122:4 200:22 219:8
parents
171:21
park
92:5,16 107:10 108:9 134:25 138:8,18,20 141:23 147:10,17, 20 148:6,13,15 149:1,2,12 150:3,9 151:11 156:7 166:11,25 168:2 171:12 172:17,20 173:6 174:20 175:1 177:11 178:3,4 198:16 208:16
parked
141:10,12 172:14 174:18,25
parking
42:4,15 62:12 68:22 70:6,14 92:21,22 109:23 110:1 125:14 133:9 137:23,24 138:1,9,13,15,23, 24 139:3 140:20, 23,25 141:15 142:12,14,22 143:3,9,14,16,17, 19,21,23 144:4,9, 11,23 147:17,20, 25 148:4 149:21 156:8 157:12 164:20 165:18,22, 23,25 166:2,4,6,7, 8,15 167:4 168:3, 24 169:2,5 172:13, 21 173:5 175:4 176:6,11,22 177:1, 19,22,23 178:11 181:11 192:14 205:9,11 208:7,13, 14,23 209:16 210:3 211:16
part
25:16 30:11 45:4 46:25 61:25 68:12, 14 72:22 109:25 144:15,19,20,24 146:6 150:19 151:8 155:3,7 156:20 161:8,9,10, 25 162:3 184:18 187:7 191:5,6 207:14 210:13 214:4 215:19
partially
37:3
participants
4:17 6:19 106:6 120:24 128:19
participate
114:4,7
participated
212:14
participation
114:9
parties
4:20 5:10
partnership
126:21

parts
32:6 47:1
party
7:2 140:21 141:11
pass
5:16 167:23 174:19 175:3
passage
110:9
passages
73:12
passes
198:15,21
past
86:21 93:4 125:20 165:24 170:16 196:20 204:20 220:22
path
166:12 167:22 170:21,22,23 171:1 175:22 207:10 212:24 213:2
patience
132:16 218:17
patient
222:7
pattern
14:12 25:17 27:14 30:17 32:4 43:13 45:14 47:4 48:15 49:18 54:15,23 55:1,13,14,15,24 56:1,11,12 57:12, 13,21,24 58:7,21 59:1,13,24 61:2,21 63:4,6,20 65:3 66:13 67:23 68:9, 16 69:22 70:9,21 72:16 73:21,24 74:1,3,11 75:4 119:1,11,13 160:21
patterns
55:6,25
Patterson
16:7,25 104:11
pause
66:8,16
pavement
108:2
Pawul
71:10
pay
125:20
PD
39:18
PDF
179:8
peak
90:18 208:21
pedestrian
93:1 141:3 148:3 175:11
pending
106:19 115:11 151:2
Pennsylvania
202:6,13
penthouse
181:22
people
8:9 9:16 12:6 16:12 17:4,5 21:21 31:25 34:5 38:7, 12,16,17 39:3 40:23 42:2,3,4,24 44:13 68:21 69:5 76:9,10 81:8 84:9, 10 85:5 86:4,9,17 87:8,12 91:1,16 92:10,11,15,16,23 95:21 96:6,21 102:16 115:5 116:15 120:9,12 124:24 126:24 127:2,25 128:14 137:5,10,18 138:3 148:4 153:20 158:14 159:25 160:7,9 163:14 165:3 166:20,23, 25 167:25 168:1 170:23,24,25 171:18,25 172:23 175:21 176:2,24 178:7,10 188:23 193:23 194:7,10, 18,20,24 197:2 198:4,16 201:3 205:12 206:12 207:21,23 208:15 211:6,9,11,23 212:3,17 213:6,9 219:11 220:4,5 222:9,22 223:22
people's
79:22
percent
41:1 90:14 155:22 165:16 175:19 187:14,15,25 188:2,3,5 189:4 204:4,19 206:14 207:20 209:14 215:5
percentage
155:19 176:13 187:12 188:2,14, 16
PEREZ
12:25
perform
111:23
period
208:9,21 212:2,20 215:4,6,9
periods
110:25
perishable
222:21
Periwinkle
110:21 212:5
permanent
19:14 90:22,25
permit
24:21 61:16 135:7 178:25
permits
141:20 199:13
permittable
15:9
permitted
14:20 28:22 47:13, 15 82:15 106:20 141:15
perpendicular
149:11 150:6
person
39:6 112:14 151:19 174:24 180:25 184:13 188:13
personal
220:20
personally
111:23 221:7
persons
10:12 89:8,9
perspective
21:5,6,24 27:8,17, 19 83:21 211:25 219:13 222:8
pesticides
117:25
Pete
104:5
petition
126:3
phase
84:3
phases
40:4
photo
149:17,18 170:20 173:1
photograph
148:15
photographs
85:25
phrase
36:11 62:2 63:12 223:16
phrases
55:23
physical
79:21 88:8 108:19 220:3
physically
39:14 41:5,7 48:11
pickup
177:16 178:4
picture
148:21,23 149:18 150:1 156:24 157:3 158:13 165:1 166:10 167:18 169:8,25 170:5,13
pictures
141:9
piece
15:4 18:16 27:15 37:2,3,16 41:5 42:6 46:4 81:8 104:20
pile
135:19
Pine
27:12 33:20 47:25 94:17 97:23 137:7
Pinecrest
22:21
pipes
181:13
place
6:12,18 15:6 18:19 42:15 127:13,14 134:22 154:22 163:4 166:24 175:13,21 178:3 194:14 197:5 200:11 208:19 212:6
places
83:19 136:19 163:14 178:8 188:6
placing
178:20
plain
34:22 55:21 56:23
plan
4:15 11:9 12:1,3 13:19 14:9,10,16, 18,19,22 17:17,20, 21 18:1,2,4,5,7,14 19:2,10 22:16 23:12,19,22 24:9, 13,16,17,18 25:5, 10,22,24 26:3,8,12 27:2,3,5 28:13,16, 17,21,24 29:12,14, 18 31:5,7,8,9,10, 15,18,23,24 32:9, 23,24 33:7 34:11, 16,17,23 35:9,18 36:5,8,11,12,13, 14,16,19,20 37:7, 9,14 38:13 40:6 41:23 42:17 43:2, 3,4,5,9,11,20 44:1, 24 45:9,14,17,18, 23 46:18 47:10,16 48:19,25 49:23 51:17 52:13,16 53:11 54:7,8,9,12, 13,17,20 55:7,17 56:21 58:14,17

60:25 61:1,25 62:2,3,16,17 63:3, 7 65:6,9,25 69:22 72:12,13,14,19,20, 24 73:4,9,10 74:3, 8,23 76:2 78:13, 15,16 79:3,7,8 81:22 82:16 83:1, 2,17 84:12 85:7,13 86:6 88:5 91:5,8, 15 93:14 98:12,19 102:10,15,17,18, 20 103:1,6,11,12 108:5 114:5 115:14,16,23 116:2 117:2,9,13 118:22,25 119:2 120:1,2,4,15,16,21 124:3 126:19 142:12 152:25 159:13,16 161:5, 23 162:18 185:12 191:8,9 192:16,17, 18 194:19,23 195:8 205:2 208:25 220:4,14 221:14

Plan's
100:3

planned
4:5 15:15 17:6 22:10 37:19,21,24, 25 38:13 40:3 45:24 47:13 51:20 52:25 53:3 80:19 82:6,11,14 89:6,12 93:10 116:7,22 138:13 152:13 178:24 207:5,11

planning
27:25 58:14 59:13 91:4 108:11 120:14 150:23 151:8 202:8,12 203:1

plans
26:17,20 108:1 126:20 153:25 216:13 217:23 224:1

plant
94:9,15 117:24 135:3 191:1 194:15 204:12,24 205:1,6 223:9

Plantation
140:17 149:3,6,10, 24 150:7 158:20, 25 191:19 205:14 206:17 207:12

planted
78:1

Planting
202:11

plausible
20:2 61:20

play
30:8 115:10 197:2

playing
180:23

plenty
138:14

plural
216:1

pockets
40:12

podium
5:5 8:5

point
5:10 8:12 11:1,5 18:11 23:25 34:24 46:17 53:8,19 60:15 61:18 66:1 69:15,17 76:18 79:6 82:4 97:24 100:4 102:8,22,25 104:15 115:16 136:14 137:23 140:9 144:11,13 148:24 150:8 152:2 171:2 175:9 199:10 205:21

pointed
53:13 68:2 90:1 92:2 166:5

points
52:15,21 65:14 103:15

police
113:14 175:5 206:1

policies
14:10 17:24 28:23 31:25 32:2 33:4 45:12 55:22 56:9 73:15,19,20 74:15 75:10 82:20 87:19 91:7 98:11,12 118:25 127:13

policing
175:6

policy
17:23 23:8 45:20, 23 52:19 55:11 73:16,23 79:3 80:12,15,22,24 81:11,18,23 82:1 88:6,12,13,19 93:14 95:4 99:11, 15,16,19 100:10 102:9,12,13,15 103:7 124:14 125:19,24,25 126:3,7,10 202:11

polluted
94:19

polluting
98:23

pollution
98:3 99:2

Pond
136:23

pool
108:3 138:15,16 207:14

poor
193:16

pops
209:6

popular
137:25 138:6 167:23

populated
133:12

porch
182:4

portion
4:8 16:12 60:6 131:10 149:15

portions
16:13 60:18,22 77:19

pose
4:19

poses
147:17 217:14

position
15:24 25:1 26:1 103:7 152:6

positions
202:8

positive
113:7 116:9,20 117:11

positively
116:17

possibly
24:20 28:9 41:13 43:16 48:21 56:2 59:20 62:20 71:2 99:14 100:16 116:9 120:20 153:15 207:19

posted
205:22 209:5

poster
195:20

postmortems
217:6

potential
204:12

potentially
80:17 144:1 163:11

powder
166:18

power
214:10

Powerpoint
109:7 132:1,5 134:3 157:22 180:7

powers
206:1

practical
133:2

pre-code
53:9,17

pre-plan
53:9,17

precedent
22:16,17 53:10 124:1,4

precedent-setting
153:22

precision
33:11 57:25

preclude
43:12 56:24 79:13

precludes
82:10 116:20

preconditioned
15:25

predecessor
40:20 64:4 65:4

prefer
60:3

preliminary
12:17 15:11 152:25

premise
29:17,24 30:5 56:17

prepare
4:11

prescribed
56:6

present
5:20 6:23 11:20 13:13 75:17 105:7 114:14 120:22

presentation
6:24 12:18 15:16 16:7,25 33:15,16 49:5 58:19 94:7,8 95:19 109:7,25 114:2 132:1 156:19 165:5 189:17 204:15 210:10

presentations
16:8 41:10 87:10 114:22 115:13 121:20 165:5 205:8 208:24 217:24

presented
8:25 34:7,8 47:6 99:14 142:13 152:24 153:6 203:11,18 210:12

presenters
115:1

presently
142:21

preservation
123:14

preserve

48:1,2 73:24 97:2, 3,24,25 98:19 214:4
president 123:8 132:18 146:10,15 158:11, 23 162:23 179:12
presidents 163:13
presiding 4:4 13:16
pretty 19:23 36:21 92:19 95:18 131:14 167:8,9 170:17 171:10 183:18
prevail 36:20 86:12
prevails 36:14 102:24
prevent 81:12 83:10 96:20 138:23
preventing 71:4
previous 14:11 61:12 135:23 152:24 156:19 207:6
previously 135:16 165:5 210:22
price 108:22 222:19
pricing 220:10
pride 222:5
primarily 182:21
primary 152:18
prime 58:20
printed 105:13
prior 8:22 24:15,21 50:6 73:23 104:6 119:11,12 134:4 192:25 215:25
private 78:1 128:12 158:18 159:13 163:25 206:2,25 208:10,16
privately 158:18,22 187:16
privately-owned 159:25 161:21
prize 123:14
problem 16:4 36:25 49:15 67:18 69:17 71:4 78:4 79:15 86:19 142:10 197:22 204:8,13 213:23 215:11
problems 72:4 80:5 92:20 203:20 204:20 208:13 210:4
procedural 16:1 23:23
procedurally 63:11
procedure 16:3
proceed 60:19 205:4 212:10 216:18
proceeded 153:7
proceeding 9:21 10:2,20,21 35:1 82:20,25 112:8 115:18
proceedings 134:16 224:24
process 4:10 5:18 13:15,16 16:2 37:25 77:16 120:14 126:21 197:14 203:18,24
produce 112:9
product 193:9 222:18
professional 202:25 220:25
profit 222:16
profits 41:19
program 111:25 114:5,8 130:8 138:17 155:20 166:2 209:14,15 210:6, 18
programs 209:7,8
prohibited 43:25 120:1 155:9
prohibition 22:14
prohibits 17:15 22:18 88:6
project 15:8,13 22:6 34:5 37:1 51:3 53:3,22 99:23 119:25 126:23 127:16,17 135:10 143:10 153:7,8,23 193:13 211:18
projected 88:15,16 163:5
projections 213:1
projects 128:13
promise 128:7
promptly 6:1,6
pronounced 189:14
proof 13:18 32:12 33:1,3 35:11,12,13,22,25 95:8 100:14
properties 78:11 126:13,15, 17 127:3,21 134:2 136:5 152:19
property 10:25 14:9,14 16:5,12,18,21 17:2,7 18:19 23:21 25:18 40:1,2 41:16 42:4 61:12 67:11, 12 71:23 75:16,19 78:2 82:18 89:8,9 101:13,20,24 102:1 108:7,17 110:11,13 114:4 120:10 127:6,19 129:10,13,24 130:4,14 135:1 138:23 147:9 148:1,7,13,16,18 149:1,5 150:14,17 151:3,6 153:14 161:15 164:4,16 174:17,22 180:24 181:1,2,7 182:6,7, 9,10,16 185:5 186:24 192:6,13 193:4 196:15 199:11,12 206:2
proposal 23:21 215:13 217:10,14
proposals 80:12
proposed 61:18 70:13 71:15 80:19 82:2 108:2 109:18 110:7 113:25 116:6,11, 24,25 117:8 123:19 134:8 139:8,24 142:15 146:17 153:8 155:11 204:2 211:1 216:21 222:23
proposing 125:23
proposition 21:11 136:15
protect 26:17 62:21 80:15 88:25 98:12,13,15 99:16 163:18 224:2
protected 96:13 127:15
protecting 75:19 85:5 99:1
protection 14:23 55:3,5 75:1, 6 95:6 98:1 99:24
protections 26:24 31:14 100:7 165:13
protective 205:24 206:11
protects 74:9 164:16
proud 220:12,25
prove 35:7,8 104:17 194:22,23
proves 105:1
provide 37:25 71:17 88:20 108:16 116:10 117:4 132:4 135:10 211:19
provided 5:22 61:14 110:1 162:22 184:22 191:1
Providing 161:25
proving 23:21 87:18
provision 36:15,16 43:2 74:2,4
provisions 18:7 23:11 28:17 29:18 31:10 39:18 42:17 43:4,5 45:1, 14 46:19 47:9,10 54:8,10,17 60:25 62:2,17 72:12,14, 19 73:10 78:13,15 79:4,7,8 120:2,16
proximity 150:14
public 4:8,16,20,21 5:2,3, 8,9,12,19 6:14 14:25 38:1,2 58:24 72:9 74:13 78:9 85:3 88:21 89:15 91:6,14,15 100:5 106:22 107:5,19 118:8,12 119:14, 15,19 120:11 127:18 131:10

142:11 168:13 200:20 205:4 224:20
pull 197:9
pulled 195:15
pulling 186:20,21
pump 135:3
purchase 39:9 127:20 134:1
purchased 14:13 42:23 142:5 152:21 159:14 164:3,10 192:2 201:21
purpose 37:18,24 82:5 93:10 120:13,14 185:16
purposefully 57:21
purposes 19:2 23:4 29:25 38:17 45:10 47:8 68:5 110:15 112:17 125:3
pursuant 67:4 89:17
pursuing 126:23
push 171:23
pushed 182:23
put 5:12,13 7:1,5,12 9:17 10:8 34:4 40:5 54:20 55:17 59:8 60:20,22,25 64:1 70:23 74:8 78:16 94:11 104:19 106:15 110:17 115:5,11 119:17 120:3 135:24 138:7,10 140:7 154:22 158:13 165:1 166:10,25 167:15, 21 169:6 171:17 174:23 194:10 201:1 211:24
putting 68:12 76:9 84:9 173:12 195:4

Q

quaint 124:19 127:23
quaintness 160:22 161:3
quality 33:18 79:18 80:1 95:16 97:18,20 98:25 99:3,7,10,25 119:9 152:15 153:12 190:25 191:10,12 192:2 217:11 223:4,8
Quantitative 202:3
quantity 56:7 191:12
question 8:12 17:17 19:9,25 20:6 21:11 31:8,20 34:14 67:3 79:2 106:15,17 107:2, 23 108:5,11,18,22 109:6,13,25 110:19 111:4,10, 14,22 112:4 113:9 114:2,10 119:12 121:1 127:11 135:15 147:24 151:17 156:25 157:14 180:1 188:22 194:7,8 208:23 217:17
questions 4:19 5:11 105:8 106:2,13,22 107:8 109:21 111:19 112:2,12,16 113:3, 17 114:14 115:1,4, 5,11 121:3,7,16 122:6,8,10 137:3 141:19,23 142:18 145:2 155:15 192:16 194:16 198:11 203:19 217:22 224:9,11
queues 208:4
quicker 118:1
quickly 86:18 214:13
quit 189:12
quote 23:17 37:5 40:7,8, 16 61:6 67:25 72:25 74:21 76:12
quoting 23:2 40:1 62:3,4, 10 75:8,18 76:1,6 77:5,17 78:10

R

Rabbit 220:15
rainfall 191:2
raise 6:16 13:6 60:4
raised 5:11 8:9 154:11 160:3
raising 20:6
Ram 177:16
ran 199:3
range 45:21 46:7 47:15, 23 70:19 82:14 200:24
ranges 45:17,19
rapid 26:21
rapidly 86:14
rarely 189:6
rat 97:7
rate 108:25 111:9 114:9
rates 111:4,6
raw 42:6
reach 71:2
reached 77:10 196:20
read 19:23 22:25 29:16, 23 34:17 43:10 56:2,10 60:21 66:2,5 71:11 74:16 76:11 77:7,12 79:1 83:1 91:10 102:18 103:11 105:12,16, 21 106:10,18 117:10 119:10 131:14
reading 34:18,22 102:19 196:2
reads 55:14 75:7 76:16
ready 66:21 131:7 132:14
reaffirm 116:5
reaffirmed 119:2
real 33:24 51:11 163:11,12 171:3 203:5,20 210:7,9 215:10
realism 87:11
realistic 87:2 142:7,12 178:6 191:13
realistically 33:14 165:21
realities 44:9,25
reality 30:24 49:8 65:8 71:9 92:7 165:9, 10,11 212:11
realize 166:6 177:22
realized 160:11
reallocations 216:3
Realty 35:22
reason 5:5 113:6 120:12 126:11 134:9 164:17 191:5,7,20 195:18 222:9,24
reasonable 20:2 65:25 66:12 78:7 101:20,23,25 102:4 193:22
reasons 17:10 29:8 50:13 123:21
rebuild 184:1 197:19 199:13 220:18 223:20
rebuilding 44:11 84:21,25 87:13 220:3
rebuilt 71:1 220:3
rebuttal 5:12 20:20 60:22 144:13
recall 50:22 85:24 120:2
received 40:19,21 41:20 193:10
recent 15:22 35:1 52:15 213:12
recently 63:19 74:18 91:18 135:8 166:11 191:15
recess 5:24 66:20 131:5 189:20
recklessly 206:9
recognition 75:16
recognize 10:23 29:18 60:2

recognized
108:14 109:15 110:5 119:25 132:23
recognizes
14:10 25:5,15 29:21 43:21 209:8 215:16
recognizing
25:16
recommend
223:25
recommendation
4:11,13 51:4 52:5, 17 53:20 55:20 146:23
recommendations
120:19
recommended
13:21
recommending
163:10
recommends
117:11
reconciled
81:1 133:16
reconfigure
152:25
Reconfiguring
153:4
reconfirmed
57:14
record
4:18 6:18 7:2,5,12 8:23 9:1,24 10:9 13:14 15:17,18 22:8 29:7 30:24 31:1 34:2 38:1 40:6 58:24 59:8 70:23 71:11 72:13 94:11 115:12,13 118:25 121:21 131:7 146:6 154:15 158:1 196:10
records
107:19
recovery
132:24 195:18 220:24
recreation
109:19 139:25
recreational
98:21
recycled
135:2
red
98:7,9 151:6 186:16,17,20 187:1
redevelopment
74:1,2
Redfish
167:22 174:19 207:2,13
reduce
62:25 96:20
reduced
84:3,4 99:5 108:25 109:1
reducing
53:22 99:1
reduction
75:25 193:25
reemploy
220:4
refer
20:18 32:20
reference
32:2 34:25 35:23 61:1 62:11 73:12 100:7 103:1,3
referenced
60:6 72:12 89:11
references
8:25 50:9 53:12 62:10 73:16
referencing
43:21 73:14 146:1
referred
44:18
refers
61:2,5
reflect
27:6 44:25 45:2 75:15 113:8
reflected
26:20 27:1 91:14 109:17,18 110:6
reflects
136:2
refrain
147:2
refrigeration
222:20
refrigerator
221:5
refuge
97:1 201:25
regard
11:7
regional
89:18,21 90:2 111:24
register
200:14,15,16
regular
109:4 189:1
regulations
30:12 36:20 75:19, 22 101:19 116:3 152:16 156:14
regulatory
31:2 69:10
reinforced
152:24
reiterate
88:7
reiterated
57:14
rejected
24:14 204:13
relate
95:11
related
107:9,16 150:23
relates
91:5 167:4
relations
178:2 196:19 197:8
relationship
41:4 136:8
relationships
53:7
relative
21:3 89:22 91:23
relevance
136:2
relevancy
154:15
relevant
17:20,24 19:11 28:17 51:13 91:7 112:20 219:18
reliance
38:25
relied
38:8,17 159:13,20, 25 160:12,13,21 161:2,4 162:17 163:19 178:15,18
relies
92:3
relieve
178:19
rely
17:1 38:3,18,21 42:19 118:19 159:15 165:17
remain
56:8
remainder
189:16
remaining
37:6
remarks
5:14
remedial
23:5
remember
26:10 36:21 42:18 83:8 121:12 196:24
remembering
50:18
remind
15:3 32:12 100:3
reminding
35:5
remove
41:5,7
removed
147:23,24
removing
194:24
rendering
165:9
renovations
188:7
rent
130:3 166:20,21
176:24 177:11 178:7 187:15 188:11 189:4,5
rental
114:4,8 130:8 138:17 154:25 155:20 177:2,18 187:11,12,17 188:25
rentals
187:24 188:8,10
rented
154:10 188:4
renters
176:15
renting
177:23 189:3
reopen
137:3 196:23,25 197:1
repainted
187:5
repair
187:4
repaired
183:9,16
repeat
151:17
repeated
57:15
repercussions
223:19
replace
62:17 68:23 186:22
replaced
79:23
replacement
76:7 85:2
replanting
135:14
reply
114:6
report
29:17 30:5 33:14 50:8,11,14 51:12, 17 52:15,17 58:5,8 61:9,11,15 62:9 83:6 95:18 109:17 110:10,11,18,21 111:21 164:5

reporter
6:1 94:2 122:14,21 131:17 189:12 190:5 195:24 196:3,7 202:19 218:6,9 219:4
reports
73:1 214:22
represent
143:7 180:18
representations
211:15
representative
16:21
representing
146:12,14
represents
10:24
request
4:14 20:25 24:8 56:15 67:1 107:19 193:19 206:23 217:24
requested
5:20 7:2 61:10 64:23 71:2 94:13 105:3 141:21 153:11
requests
53:25 117:17 164:18
require
79:8,10 85:12 88:3,9 118:21 119:16 205:9
required
26:16 63:6 70:3 81:11 108:1 125:3 142:3,22 143:3,10 144:22 205:6 211:19
requirement
22:15 73:4 90:23 118:8
requirements
14:25 15:1,20 16:1 23:23 26:23 27:7 31:12 36:9 63:2 75:14 79:10,12 81:6 84:15 85:3 97:16 100:11 102:7,10,16,21 103:9 104:10 119:20 125:2 143:9,18,19 144:7 152:18 156:9
requires
15:14 16:19 28:15 38:10 86:19 89:16 95:4,8 100:10 102:25 103:6 115:19,25 116:21
rescheduled
204:17
Reserve
202:13
reserves
138:18
reside
158:9
residence
53:5
residences
54:21 58:1
resident
46:21 123:1,5 129:2,4,5,6 156:1 158:3,5,9,10 181:1 188:20 190:3,13 194:4 201:19 220:20
residential
19:3,14 20:16 22:8 29:4,6,9 30:16 46:10,22,24 47:3, 12 48:17 51:16,19 52:12,19,20 53:1 54:14,19,22,25 55:16,18,24 57:9 61:6,22 62:7 63:13,23 64:17 66:15 74:7,19 76:5,7 78:17 80:16,18,25 81:17 88:6,8,14 89:4 98:16 108:14 117:6 119:3,7 178:23
residents
42:8 68:6,17 76:21,23 78:7 155:23,24 188:14 191:24 192:22 208:10 222:11,12
resilience
125:4,8 193:19,24 195:21
resiliency
69:14 71:3 85:4 125:3
resilient
84:25
resolution
43:18 59:15 108:13
resolved
23:13
resort
4:5 14:13 25:16 29:19,22,25 30:1, 2,10,15,21 31:3 33:24,25 34:1 37:20 39:22 40:3, 10 41:9 43:22,23 49:11 55:19 56:17, 18,25 57:12 58:4, 15,25 59:2 61:3,5 64:15 65:7,16 66:14 68:12,14 69:24 70:8 71:23 74:5 80:23,24 85:18 92:7,10 103:8 108:17 109:18 112:23 113:6,12,24 114:4, 7 120:6,7,8 133:8 134:22 135:5,6,21 136:5,8,11,25 137:10,15,19,21 138:13,18 139:24 142:8 146:22 147:19,21,24 152:9,23 153:13, 19 154:4,23,25 156:22 158:15 159:4,6,23 160:24 161:8,14 163:2 164:2,8,10 166:1, 5,16 167:1 174:4,6 175:20,25 178:2 182:16 184:18 186:9,20 187:2,14, 23 204:3,7 205:11, 16,19 206:1,4,7, 15,21,24 207:1,4, 19 208:7 209:1,17 210:5,14,16,23 211:6,10,11 215:6, 16,17,22,24 216:2, 3
resort's
114:4,8 147:6,10 191:25 204:1
resort-owned
135:3
resorts
206:21
resources
26:25 95:16 97:12 100:2 116:19
respect
30:4 33:13 83:22 123:17 126:6 224:1
respectable
210:10
respected
95:13
respectfully
215:21 217:24
respite
6:1
respond
6:19 106:3 109:20 112:22
responders
214:18
response
8:20 71:17 89:23 107:4,24
responsibilities
91:14
responsibility
24:11
responsible
91:4 156:3 202:16
responsibly
215:21 216:2
rest
28:1 29:20,23 30:11,17,23 31:3 39:15 41:6,7,14,15 46:20 57:25 66:6 154:7 162:2 166:3 183:5 187:15
restate
152:6
restaurant
49:13 109:14 110:4 138:21 141:6,13 143:23 151:11 153:3 165:6 166:12 207:9,12 208:2
restaurants
137:11,16 200:3,6 207:1 208:1,3,19
restore
135:22
restrains
56:5
restrict
173:8
restricted
162:17
restriction
160:1,13
restrictions
67:22
restroom
108:3
resubmittal
113:19
result
71:19 95:3 96:15 98:9 99:15 101:12 115:17 117:2,20, 21 153:12
resulting
77:24
resume
6:1,6,9 66:19 131:4 189:14 224:19
retail
200:8
retaining
187:1
retaliation
136:6
retired
219:23
reuse
94:20 97:21 117:25
revealed
85:20
Revenue
202:11

revetment
182:20 183:9
review
4:14 11:8,14 33:10 35:9 107:11 203:14 205:9
reviewing
61:18 150:19 195:10
reviews
215:12
revised
108:4
revision
107:16
revoked
24:23
rezone
23:20 164:18
rezoned
28:2
rezoning
4:7 13:19 15:14,15 16:6,22 17:9,18 18:9,17,20 19:10 22:14 23:10,11,17, 19 24:1,7,8,12 25:10 27:25 31:1 32:21 35:4,15,20, 24 37:1,2,3 39:10, 11 50:12,13 54:11 58:8,9 61:15,18, 24,25 62:9,17 63:3 66:25 67:5,8,24 68:4,11 70:15 71:3,19 76:2 78:18 79:2,9,11,13 80:11,12 81:11 82:10 87:24 88:23 90:7,11,21 93:8 95:2,5,23 104:23 105:3 106:19 116:7,10,17 117:12 120:4,13, 20 163:4,10,18 164:11 178:22 194:10,12,14,21 195:10,11 198:2
rezonings
24:1 95:9 115:25 116:22
rice
97:7
Richard
6:21 11:25 13:11 201:10,16
ride
176:8
rides
206:7
rideshare
114:11
right-hand
147:8
right-of-way
77:18 150:10,13
rightful
166:4
rightly
208:11
rights
14:9 17:8 24:21,25 25:3,6,18 26:1 75:20 84:21 119:25 120:10 163:18 164:16 199:11
rigid
33:11
rigidly
34:3
rigor
217:18
Rinteln
112:1
riprap
182:20
rise
15:3 26:21,22 45:3 69:8 85:9 89:2 97:12 117:21 118:2
rises
117:20
rising
27:13
risk
71:23 75:16,25 76:10 84:10 86:23 91:1 97:10 213:23 215:1,5 216:23 217:13
risks
194:20 217:6,23
road
16:13,14 33:23 48:9 76:19 77:2 85:19 97:13,14 118:17,18 139:17 140:5,14,16,17,18 141:7,15 149:4,8, 10,11,24 150:4,5,7 165:7 168:25 169:1,16 170:4,8 172:12 173:6,7 186:8,12 200:1 205:14,15,17,18, 22,25 206:18 207:8 212:5 214:1, 7,10,13,18,19 220:15
roads
16:11 37:13 41:12 50:5 93:4 119:17 175:11 176:3 206:16 213:18
roadway
22:1 27:15 74:15 77:1 78:3 86:1 104:21
roadways
77:14 108:24
Roark
80:1 91:20
Roberts
106:16 107:7,23
rock
171:10
Rodriguez
59:10
role
58:12
roles
220:21
romantic
160:17
room
30:25 48:12 66:5 77:23 117:15 136:25 137:3,6 177:20
rooms
79:24 128:3 133:7 134:4,5 155:11 191:22
Rosa
24:14,18
Rosse
137:8
rosy
216:24
roughly
158:9 160:14 165:16 187:13
roundabout
110:20
route
74:14 76:18 77:1 85:22 86:3 87:3 213:13
routes
190:23
Royal
187:20 197:15
ruled
7:8,11 24:16,22 161:11,12
rules
11:12 12:7 38:21 40:25 57:4 121:10 156:13 178:17 197:2,11,14 198:3, 4,7
ruling
50:7,10 51:14,19 52:4 53:8,19,21 99:15
rulings
51:23
run
87:5 163:15 164:5 203:23
running
86:23 128:4
rural
77:21
rush
218:25

S

sacrifice
223:14
Sacrificed
223:4,7,8,12
sacrifices
223:2
sad
220:6
sadlowski
145:6,8,9,18,19, 22,25 146:4,7,9,10 148:22 149:7,9,16, 18,22,25 150:4,11, 22 151:4,14,17,21 152:1,5 154:21 155:17,21,25 156:5,10,12,16,18 157:1,5,8,11,14,18
sadly
91:16
Sadowski
145:8
safe
15:6 95:17 161:18 164:22 219:22
safeguard
88:21
safely
212:10
safer
212:10
safety
27:11 71:22 72:9 74:13 75:19 78:9 85:3,17 86:3 89:15 91:15 100:5 118:8, 12 119:14,16 120:11 133:9 137:22 142:11 164:21,25 167:5 168:14,15,16,24 205:11 206:10,17 217:12 223:7
safety-wise
119:19
sales
222:12
saltwater
97:10,11 117:23
San
219:21
sand
135:24
sandwich
220:11

sandy
171:5,9
Sanibel
48:3 76:19,20,21 85:15,20 91:17 92:14 97:2,7,8 111:5 126:1,21,24 136:18,19 137:5 190:3,14,20 191:3, 7,13,15 194:4 196:13 206:20 211:2,8,11 212:8, 15 213:5 214:21 216:22 217:12 219:15 220:15 221:1 222:12
Sanibel's
191:6 209:18
Sanibel-captiva
95:14 97:1 212:5 214:1,5,18
sanitary
95:8
satisfy
141:17
scale
30:2 58:19 66:24 67:3,19
scary
176:4
SCCF
48:2 94:8 99:14 215:3 223:13
scenario
19:18 20:13 30:20 87:6 111:21 173:12 208:5 212:2 216:8
scenarios
44:16 167:24 168:18 203:9
scenic
136:22
scheduled
204:16
school
168:13 202:6
scientists
95:13
Scoops
207:2,13
scope
11:8 134:15 211:18
scores
209:25
screech
97:9
screen
146:1
scrutinized
33:11
scrutiny
32:18,19 33:5,6 34:10,12 35:12,18
sea
70:10 96:13 160:14 184:12 190:23
sea-level
15:3 26:21 45:3 69:7 85:9 89:2 97:11 117:20,21 118:2
Seabreeze
170:16
seagrass
98:4
search
97:13 213:14,15
seas
4:4 14:12 20:22 25:16 27:13 29:19, 22 30:10,15,21 31:2 37:20 39:22 41:9 43:15,21,23 49:11 55:19 56:17, 25 57:12 58:3,25 59:2,13,15 61:3,5 62:5 63:17 64:14 65:16 66:14 67:18 69:21,24 70:8,24 71:4 74:5 76:15 85:18 92:16 102:7 103:8 108:2 112:23 120:6 123:4 124:10,11, 18 126:13,18 127:25 128:7,15 132:20 134:9 141:12 147:5,16 149:3,5,10,24 150:7 158:15 161:7 166:1 181:12 182:9 191:18 192:2 195:19 196:19,25 197:17 201:18,20 209:23 215:6 220:9 222:23
season
90:17,18,24 111:1 138:9 207:19 208:21 215:5
seasonal
129:5,6 130:8
seat
5:4 122:3,5,12
sec
179:6
Secretary
202:11
section
16:19 18:2 36:17 37:18 42:18 46:8 58:9 82:5,9,13 89:6,10,11 93:9 95:7 101:11,14 109:9 115:19,25 116:5 194:20 208:6 209:3
sections
82:4 91:7 115:23
secure
16:23 114:12
secured
135:7
security
172:16,18 181:14
seek
191:20
seeking
16:6,13,16 23:20 103:18 124:6
seemingly
107:11 164:11
segments
113:1 205:17
self-amending
102:19
self-contained
206:22 210:23 211:6
sell
38:23 42:8 137:13 163:14
selling
223:2
sells
200:11
semi-truck
134:25
semicircle
172:22
seminars
203:3
send
224:8,12,14
sense
25:23 37:17 44:23 52:25 53:5 63:11 69:4,12 80:23 85:1 133:4 142:14 173:5 185:5 210:19
sensitive
47:25 48:4 97:4,23 99:17 116:19 122:21
separate
20:23 29:20,22 30:11 36:9 54:7,9 61:7 79:5,12 85:12 136:12 154:5,8,9, 10 156:2 175:22
separately
161:19
September
90:19 111:7,8 154:13,23
septic
126:13 190:25
series
185:10 203:7
serve
68:5 113:25 204:21 209:9 220:7
served
123:6 202:10 216:11
serves
75:2
service
68:24 93:21 94:4 95:1 123:9 126:15 202:1 205:19 215:3
services
79:23 108:16
serving
220:23
set
43:16 106:13 108:13 111:21 124:1 143:17 156:13 162:3 207:21
setback
150:13 156:8
setbacks
57:5 58:12 62:12 108:1,6,8,10 148:7,10 152:8,17
sets
62:3 79:12 113:3
setting
44:4 72:16 124:5 172:17 191:13
settled
191:22
settlement
134:10 191:24
severe
170:17
sewage
94:16 204:2,6,8,15 205:5 223:10
sewer
48:17 93:21 94:4 95:3,6,8,11 126:14,17,19,25 127:5,7,10,14,17
shallow
98:4
shape
183:19 184:3
share
18:23 219:4,13,17 221:6
shared
222:24
Shawn
183:17 186:20
sheer
15:8 95:21 96:21

sheet
108:4 145:8 202:17
Shell
136:21 175:9 187:20 197:15
shelter
76:14,16 88:20
shelters
98:20
shelves
223:22
Shenko
134:13
Sheriff
206:2
shops
137:9 200:9,10
shorebirds
96:6,8
short
95:18 135:17 210:25
shortcomings
217:22
shot
212:9
shoulder
77:14,20,23
shoulders
48:10
show
49:7 70:23 92:16 94:12 118:5 169:12 214:23
showed
187:3
showing
85:25 145:23,25 221:14
shown
70:7
shows
29:7 148:15
shrift
95:18
shrinking
15:2 117:19,21,22
shudder
162:15
shut
135:12
shuttle
113:21 114:1,11
shuttles
113:23,24
sic
22:22 57:10 73:17 154:6 159:25 212:6
side
9:14 39:24 67:10, 12 132:19 167:10 175:14 183:1 214:2,3
sides
118:3
sidewalks
48:11
sign
165:25 206:11
signatures
126:4
signed
16:19
significant
62:15 112:24 147:17
significantly
139:3
signs
169:3,5
silent
6:13
similar
130:12
simple
195:4 213:14,15
simply
81:5 152:15 194:8
single
76:18 77:3
single-digit
19:21
single-family
19:5
sinks
171:8
sir
140:9 199:22
218:2
sister
136:18
sit
5:3,6 18:20 38:6 171:13 189:22
site
38:5 54:1 65:6 85:6 86:2 207:6 213:25
sites
137:11,15
sits
94:15 112:23
sitting
174:17 218:11
situation
52:4 57:20 113:8 144:6 194:24 197:10 198:6
situations
167:2
six-passenger
138:6
sixth
4:6 167:13 182:13 183:24
size
30:2 91:25 200:21, 23
skip
80:20
slam
175:12
slammed
213:4
slash
168:14
slate
39:15
slice
21:24 29:10 47:10
Slices
207:3,14
slide
134:3 141:8 147:8 149:9 169:7 180:14
slides
109:7
slightly
139:10 211:24
slips
200:19
SLOSH
110:17 112:19
slow
77:13,15 94:2 190:6 192:8 194:12 195:5
slowed
190:22
slower
78:4
slowing
195:9
small
81:3,7 108:15 124:8,15,16 127:23 133:14,20 139:17 140:16 164:12 176:13 180:22 197:3,20 221:1
small-scale
123:16
smaller
151:22
smoke
214:15
smooth
174:23
smoothed
174:22
smoothly
87:17
Snyder
22:22 23:16,20 24:6 32:17 34:13
social
137:2
Society
196:17 201:24
sold
38:7 39:3 40:22 42:21 153:8
sole
214:20
solid
113:16
solution
204:12
solutions
133:3
sons
160:3
sort
15:19 24:21 30:20 55:7 56:25 57:16 64:20 84:23 87:5 96:23 163:4 173:13 174:12 176:25 181:25 193:12 203:11 205:25 210:16
sorts
119:6
sotto
4:25 145:10 218:9
sought
134:1
soul
223:2
sound
5:4 8:5 27:12 33:20 44:23 47:25 94:18 97:23 137:8
sounded
121:2
sounds
132:3 205:24 206:10
south
4:4 14:12 20:22 25:16 29:19,21 30:10,14,21 31:2 37:20 39:22 41:9 43:15,21,23 44:8 49:11 55:19 56:17, 25 57:12 58:3,25 59:2,13,15 61:2,5 62:5 63:17 64:14 65:16 66:14 67:11, 18 68:12,13 69:20, 24 70:8,24 71:4 74:5 76:15 85:18 92:16 102:7 103:8 108:2,20 112:23 120:6 123:4 124:10,11,18 126:13,17 127:25 128:7,15 132:20

134:9 141:12 147:5,7,13,16,19, 21 149:3,5,10,24 150:6,7 151:21 158:15 161:7 166:1 181:12 182:9 191:18 192:2 195:19 196:19,25 197:17 201:18,20 209:23 215:6 217:2 220:9 222:23
Southeast 89:18
spa 138:21 139:11,16, 18 140:3,21,23,24 142:1 143:15 144:11 207:11 208:8
space 37:13 38:11 40:15 62:11 68:22 71:6, 22 83:13 117:5 138:6,11 142:21, 22 143:2,3,4 173:25 175:17 176:11 177:22,24 184:23,24 185:18
spaces 92:22 137:25 138:5,8,16,19 143:5 176:6 189:4 208:16 209:17
spark 168:10
spatial 41:4 53:7
speak 5:6 13:25 25:25 54:10 95:2 122:18 123:1 132:7 136:6 175:25 182:5 188:20 189:15 190:7 219:10 224:13,21
speaker 131:11 145:4 189:13 195:23 196:5
speaking 11:25 26:9 180:25 190:3 223:19
speaks 221:8
spear 223:8
special 24:2,4 48:5 97:25 110:12 123:18 133:11 161:25
species 96:12
specific 5:20 11:5 22:7 23:19 35:15 38:10, 11 45:12 47:20 75:12 88:2 100:2, 11 102:10 115:17, 21,22 116:22 117:8 120:18 146:16 199:24
specifically 26:9 51:17 53:2 54:6 56:21 72:25 75:12 78:14 116:5
spectrum 52:24
speculate 64:24
speculation 59:20 64:20 65:1, 10
speed 77:8,9 205:22 206:6
speeding 206:8
Spencer 192:15,21
spend 194:17
spending 194:17
spends 25:1
spent 128:12 168:13 204:7 206:4
spill 139:16 140:5
spills 94:16
spliced 22:3
split 129:9,12,14
spoke 136:4 170:20
spoken 23:23 54:9
sport 98:20
spots 140:25
spread 202:18,19 214:13
spring 95:20 192:4,11
sprinkler 181:13
square 28:9 210:1
squeeze 69:10 223:17
squeezing 193:22
SSIR 61:21 110:11 118:18 119:1
St 104:5
staff 10:12 29:17,25 30:5 33:14 34:15 47:6 50:8,14 51:3, 4 52:15 55:20 58:5,8 61:9,11,15 62:9 72:25 80:6 83:5 95:18 105:14, 18 106:3,4,23 107:4,11,14 109:17 113:22 136:9 206:1,4 220:6 222:20
Staff's 34:19 107:24
staffing 71:20
stand 8:5 39:1 118:24 123:20 211:14
standard 32:17 33:9 35:6,9 52:13 70:4 77:21 193:22
standards 16:14 54:13,24 62:1,4,5,13,14,18, 20,25 63:21 69:5,6 74:24 118:6
standing 59:7 148:19 216:9 221:21
standpoint 163:9,22,23 185:14,15
standstill 190:22
stark 49:15
start 14:16 17:13 39:13 69:11 132:12,15 168:2,9 189:16 198:23 214:11 218:25
started 90:2 137:25 199:4, 18 202:22 214:12 219:20 220:3
starting 61:18 69:15,17
state 26:16 27:7 33:21 44:7 48:4,8 56:5 83:17 94:18 96:9, 10 97:3,24 123:18 157:25 160:5 202:8,10
stated 23:4 113:5 141:25 154:24 210:22
statement 16:19 91:21 92:3 131:25 185:22 195:25
statements 211:3
states 78:6
Statewide 111:24
stating 194:20
status 7:2 10:12
statute 17:15 19:2 23:1,2, 5,8,10 112:19
statutory 18:12 22:14 28:18 29:23 30:6
stay 92:11 128:2 137:14,21 142:3,8 178:7 207:25 211:9 221:24 222:21
staying 210:14
steamroll 193:13
step 64:5
steps 78:10
sticks 26:6
stock 223:21
stone's 96:25
stones 182:23
stop 23:5,9 32:5 140:17 144:10
stopped 135:16,18
storage 132:22 157:10
store 219:21,22 220:1,8, 14,18 222:13 223:21
stories 70:13 157:11,16
storm 26:18 32:3 44:9,21 45:2 48:7 76:23 83:7 84:13,18 85:8 88:11 89:3 112:24 113:2,15 118:12, 15 183:7 188:6 190:23 194:19

213:4,6
storm's
212:25
storms
76:10 87:13 88:22
stormwater
41:10 79:21
strandings
98:9
streets
49:20
stress
212:12
stressed
194:15
stretch
123:3
stretches
48:10
strict
23:13 24:8 32:15, 18,19 33:5,6,7,10 34:10,12 35:12,17 101:19 127:13
strictly
17:15 22:18 24:8 32:23
strike
96:16 214:9
strikes
193:16
string
47:5
stringent
62:18 75:18,22
strollers
175:14,16
strong
22:16 26:24 50:2 55:22
strongly
72:9
structural
44:20 75:14 84:15
structures
21:19 26:17 53:9 70:12,16 73:25 76:7,8 84:21 108:6 148:6,17 152:12 179:2
struggling
194:2
stuck
173:2
studies
83:3 90:2
study
83:4,5 111:24 204:11
stuff
26:25 32:5 42:9 81:3,7 104:17,23
style
130:11
Suarez
49:5 67:15 104:12 212:21
subject
10:2,19 11:20 14:15 16:22 19:8 22:14 46:23 49:22 52:12 55:17 114:5 186:1 203:15
subjected
33:12 47:2
submission
147:16
submit
8:15,19 60:9 109:12
submits
8:15
submittal
13:15 107:13
submittals
16:10 73:2
submitted
7:20 8:1 11:7 106:6 108:1 114:16 131:21 145:18 179:15,19
subpoena
12:6
subsection
18:11
subsequent
102:21
subsequently
103:13
substance
103:6
substantial
122:9
substantially
96:1
substantively
63:11
suburban
45:20 47:18
succeed
215:17,19
success
137:19
successful
212:13
successor
64:10
suddenly
161:22
suffered
183:24
sufficiency
15:12
sufficient
71:17 75:17 116:11
sufficiently
216:24
Sugar
32:13
suggest
198:14
suggested
63:8,10 64:19 137:17
suggesting
64:10
suggestion
84:23 213:18
suit
133:22
suited
107:19
summarily
17:12
summarize
141:18
summer
160:4 212:15,16
Summerlin
212:8
Sunbelt
22:20
Sunday
174:24 181:13
Sundial
198:19
sunset
165:15 167:5 170:24 171:13 207:10
supplied
135:4
supply
135:7 214:15
support
34:8 53:17 54:16 60:24 61:3 72:15 73:3 74:22 78:14 83:2 86:6 100:3 104:7 116:9,11 120:2 127:18 142:13
supported
51:16 75:7
supporting
73:6 224:3
supports
93:7 201:24
suppose
19:20
supposed
41:18 165:10
suppress
71:25
Supreme
22:22 23:15
surely
18:17 25:4 103:25 116:19
surety
38:25
surface
99:9
surge
26:18 32:3 44:9 45:2 48:7 83:7 84:13,18 85:9 89:3 112:24 113:2,15 118:12,16 182:23 183:3 190:24
surprised
192:3,20 193:11
surrounded
27:12 47:24 125:10 221:22
surrounding
49:3,4 79:17 80:13 81:13,25 82:8,12, 18 93:12 98:14 116:8 117:15,18 213:5
susceptible
77:11
suspect
208:8 212:20 213:14,20
sustainability
69:7,12
swath
149:12
swear
6:17
swept
216:25
system
76:20 77:2 126:14, 17 202:14
systems
99:13,18 203:2

T

table
5:7 35:4,16 108:4 132:11 162:9 189:22
tacitly
58:6
tags
138:7
tail
164:14
take-home
104:25
takes
161:18 195:2 218:21 221:13
taking
134:22 162:8 185:24
talented
195:14

talk
21:23 27:24 28:7 31:5,25 36:23 43:6 44:14 50:1,6 54:6, 15 72:6,11 91:19 92:9 93:20 97:11 125:23 164:20 180:19 186:12 211:22
talked
41:8 119:8 184:15 203:16 211:23
talking
38:3 47:18 52:2 54:20 70:19 78:23, 24 84:8 96:9,10, 23,24 102:23 140:10 172:19 179:11 195:3
talks
54:18
tall
70:12 125:13 159:18
taller
70:17,18,25 160:18 162:21 163:6
tallest
160:18 162:21
Tampa
213:2
tank
190:25
tanker
204:9
tanks
126:14
targets
191:13
task
4:10
tasks
126:15
taught
203:2
taxable
124:9
taxes
220:21
taxpayers
113:11
teach
219:8
team
195:15
tearing
83:12
technical
24:4 203:14
technically
53:14 185:14
TECHNICIAN
101:3
telling
144:5
tells
71:13 142:14
tempers
167:3
tempt
217:19
ten
132:21 138:16 143:4 165:16 194:20
ten-minute
66:18
tendency
190:7
term
193:21
terminate
6:8
terms
12:17 22:2 26:19 29:14 34:18,22 45:11 49:24 50:3 51:19 52:20 55:21 56:23 58:3,24 59:9 61:22 64:16 65:8,9 67:1 73:8 83:13 102:20 116:14 117:1 131:24
terrible
142:10
test
203:8
testified
10:14 46:6 60:8 69:18 84:14 85:20 87:23 91:20 96:15 112:15 206:19 210:23 211:1
testify
4:18 6:15 112:7
testifying
11:23 219:11
testimony
4:11,16 5:9,13,20 6:17 9:20 10:11 11:2,5,19 13:7 26:4 28:6 29:6 34:2 45:14 60:7,10 78:20 80:7 81:2 84:2 85:14,15 88:23 89:18,19 92:8,17 93:7 94:25 99:4 100:16 104:12 114:22 134:5 194:1 203:17 204:16 205:21 211:14 212:21 219:18
testing
212:12
text
73:18
Thanksgiving
90:21 111:3
theme
30:4
themes
202:25
theoretical
78:23 87:5 110:22
theory
30:5 52:20
there'd
68:10
there'll
215:9
they-could-happen-one-day
44:16
thing
29:19 30:7,18,22 31:17 33:11 36:21 48:20 50:6 55:8 57:6 60:24 64:3,19 65:13 72:11 80:2 91:19 100:13 115:3 158:4 162:10 170:25 171:2
things
9:20 38:12 49:15 58:13 59:8 63:1 68:22 80:10 89:24 92:14 93:17 101:15 107:17 118:21 150:25 160:15 163:16 164:23,25 168:1 171:15 174:9 175:3 179:10 181:16 197:25 203:5 222:5
thinking
128:3 183:14 198:19
thinks
122:17
Thomas
145:9 146:10
thought
132:6 133:25 161:17 174:14
thousand
92:2
thousands
64:23
threatened
96:11
threatening
43:6
three-bedroom
176:23 177:7 181:21
three-mile
205:14
three-way
191:24
throw
96:25 124:23 193:12
thrown
172:10
tidal
94:15 205:1
tide
98:7,9
tie-ups
78:3
tied
106:14
tightly
119:2
Timbers
123:19 124:6 125:1 134:22,24 135:8,25 136:6 153:9 155:6 192:1 193:11
Timbers'
155:10
time
4:17 22:24 25:8 44:22 49:21 57:25 67:13 76:13,22 78:21 87:1 88:4,18 89:17 90:5 103:12 111:23 122:15 127:11 129:8 142:16 153:5 162:4,24 163:1 166:21,23 175:24 186:19 187:23 194:17 198:5,9 199:9,13 200:4 204:9 209:21,24 210:25 211:3,9 215:1 217:13 218:23 221:18 224:5
timeline
183:17
times
14:24 18:6 37:10 44:17 75:14 76:16 88:1,17 89:11,21, 25 91:1,2 103:17 142:11 158:16 168:7,8 171:5 175:23 177:9 184:2 194:13 195:5 209:23 221:5
timeshare
20:10 139:10 140:3 159:5 163:25 164:6 205:10
timeshares
71:22
timing
219:8

tinder
214:15
tinkering
27:6
tip
15:5 27:10 85:17 91:9 117:13 169:23
title
64:5,10
today
4:6 5:16,22 6:14 13:16,22 14:19 21:7 25:11 26:8 27:6 28:7 39:5 41:10 43:20 64:9 70:12 73:22 75:4 89:12 128:8 146:12 175:8 188:20 205:12 219:11 223:18,19 224:18
told
7:12 86:24 97:20 98:10 134:24 136:5 138:14,17 155:2 172:16 178:3
toll
209:7
Tom
145:6 166:10
Tom's
161:9
tomorrow
6:9 39:5 189:17 218:25 219:1,8 224:19,20,22
tons
214:8
Tony
196:8,12
top
22:19 44:24 169:17 176:23 187:11
topic
94:3
topics
203:3
torn
160:24 162:15
tossed
214:9
total
18:22 25:14 31:16 111:12 147:15 159:22 200:7
totally
90:18 164:12 173:2 183:16
touch
32:1
touched
40:16 65:13
tough
168:22
tour
192:6,12,13,15
tourism
212:14,15,16
tourists
111:18 189:1
touted
92:6
towns
191:16
Tract
107:10 109:14 139:23
trade-off
68:25
traditional
11:12
traffic
21:21 42:3,5,9,14 43:4 48:17 49:18 56:13 58:22 62:12 77:9,12,13,22,24 78:3 79:24 91:13, 22,25 92:17 93:3, 9,12,17 109:4 118:17 119:8 137:22 139:3 140:10,18,22 142:10 146:24 148:2 160:9 167:25 173:3,8 175:7,8,10 190:22 194:12 195:3,9 205:8,13 206:20 208:12,13 209:18, 21 210:3,10,21,22 211:5,12,16 213:16 214:20 216:22 223:6
tragedies
217:5,7
tragedy
217:4
trails
136:23
transcript
60:20
transcripts
59:9
transfer
218:23
transparency
153:6
transportation
49:16 91:20,21 92:3,25 108:23 113:4 137:18
trapped
167:14,17
trash
135:16,18,19 144:24
travel
114:12
travels
205:15
treat
94:16 223:10
treated
20:17 37:21 81:18
treating
20:11,12 56:24
treatment
51:18 94:9,14,17 117:24 190:25 204:2,8,16 205:6
treats
161:19
tree
160:18 162:22
trees
125:9 182:24 214:7,8
Trescott
90:12 110:8,24 111:10,19
tributary
213:18
tricky
11:11
trigger
77:9
triggered
100:18
trivial
215:1
trolley
205:19 208:1
tropical
76:23 88:22 111:15 133:11
trouble
128:24 192:9
truck
141:11 172:19 173:20 177:16 187:3 214:10
truck's
187:5
trucks
173:24 204:9 214:19
true
44:22 56:20 99:16 108:12,18,24 110:17,19,24 111:22 112:25 113:9 177:21 211:3,9
trumps
191:12
truncated
140:8
trunks
204:9
truth
6:18 195:4
turn
5:6 189:15
turned
35:10 174:1
turnover
222:18
turtles
96:4,13
tweaks
41:1 58:3
Tween
65:16,18 123:2 137:9 196:12 198:14,24
Twin
65:17,20 197:16
two-
91:23
two-bedroom
176:21 177:3 181:20 197:20
two-family
178:24
two-lane
48:9 77:3 85:19 212:6
two-month
137:14
two-story
132:20 199:23 200:1
two-unit
19:21
type
15:20 166:23 181:16
types
38:11
typical
171:8
typically
76:1 138:2 206:3

U

U.S.
184:21 202:1 203:3 215:2
Uber
137:17,19
Uh-huh
146:7 149:16 182:14
Uh-oh
145:16
ultimately
94:21 137:21 193:9 213:6
unable
114:12 171:20
unassociated

85:10
unauthorized
148:4
uncalled
43:25
uncertain
212:25
underage
206:9
underlie
75:9
underlies
54:16
undermine
142:11
underneath
117:23 125:14 157:12 177:11
underprojects
92:4
understand
5:19 121:2 124:8 128:11 133:1 142:24 144:12 146:25 147:16 150:15,22 152:16 156:16 159:11 163:17 174:7 185:6 187:7 188:24 194:2 200:15 203:5 208:25 210:13 218:18 222:8 224:19
understanding
20:22,25 51:7 123:10 131:11 137:12 152:22,23 174:8 182:17,20 183:8 191:4 204:20
understood
11:24 12:8,10 21:20 121:22 142:4 143:22 151:4 191:9,10,12, 19 192:1 211:13
underwater
220:2
undetermined
88:1
undeveloped
37:2 139:13 176:14
undue
49:19
unequivocal
59:1 119:4
unequivocally
29:7
unexpectedly
86:18
unfair
164:18 178:20
unfamiliar
4:9
unfortunate
217:5
unimportant
96:24
unincorporated
193:8
Union
202:4
unique
45:4 55:8 69:23 74:4 119:1 123:11, 18 127:21 153:21
uniqueness
125:12
unit
28:5 29:3 40:25 46:10 59:16 62:7 108:15 111:4 134:18 138:2 142:22 143:3 146:13 148:20 154:2,5,6,10 155:3 176:20 177:4,18, 23 187:10,11 207:21 216:10
units
13:23 14:19 18:20, 21,23 19:3,13,14 20:1,4,12,13,16, 18,23,24 22:7 25:14 26:10,11 27:9 30:15 37:5 38:5,24 40:18,25 42:24 44:3,23 45:6,21 46:1 47:2 53:3,15 55:16 57:9 58:1 59:3,16 62:24 63:22 64:23 66:14, 15 67:6,8,9 68:6, 21,24 71:7,18 74:17 76:5 84:10 85:3 86:4 90:12,22 91:9,23 92:1 94:13 96:1 102:2 103:23 104:20 111:12 114:3,6 119:3 124:13 130:14 132:19,22 134:8 137:24 139:2 142:4,9,13,23 143:4 146:21 147:14,15 148:23 152:21,23 153:16, 18 154:1,5,11,12, 17,25 155:2,4,5,7, 10,19 156:3 159:21 160:2 161:16,17,21,22 166:20 176:2,5,10, 14,15,20,22,23 177:7 179:1 180:20,21 181:20, 21 185:9,17 187:12 188:3 197:13,18,19,20 199:9,16,19 200:2 204:19 205:10 206:24 207:25
universally
126:8
universities
203:2
University
202:6
unlawful
155:1
unlike
46:20 193:7
unobstructed
162:19
unquestionably
35:8
unquote
75:7
unreal
165:11
unrealistic
137:20 178:9
unsafe
14:24 49:19,21 87:1 88:18 166:18 167:2,6 178:20 206:5
unsightly
178:20
unsure
152:12
untouched
40:14,15
unusable
48:14
unusual
57:18 72:22
unwanted
127:1
unwarranted
53:23
unworkable
16:17
updated
5:22
uphold
178:17
upland
100:1
upper
71:17 72:1 147:8
upset
133:21
Upstate
202:4
urge
115:21 125:20
urging
126:6
usage
204:5
users
165:19

V

vacant
214:2
vacations
137:5
valued
162:24 164:1
values
153:14 163:19
164:12,16
van
112:1 209:8,13 210:6,18
vans
113:21 209:1 210:8
variance
101:22
variances
100:11
varies
189:5
variety
137:8 186:25 187:21
vast
198:5
VE
110:15
vegetation
17:1,2 48:10 78:1 81:6 83:13 125:10 135:15 221:23
vegetation-lined
33:22
vehicle
77:14 78:2 137:11 138:1 166:8 172:14,15 176:16 177:4,6,14,17 178:8
vehicles
95:21,25 109:2 111:13 141:10,11, 12 173:6 174:5 176:2,16 177:3,8, 10 178:11 205:19
vehicular
77:22 97:14 166:7
vehicular-caused
95:25
verbatim
218:12
Vermont
160:3,4,7 184:23
version
131:24
versus
19:3 21:8 22:20,22 23:16 24:19 32:16,

17 87:13 103:4 104:5 123:11
vest 24:15
vested 14:3,7,15 24:21, 23,24 25:3,5,18,19 26:1 39:9 43:21 84:20 103:24 119:25
vests 14:11 24:25
vibrate 6:13
video 10:7,8
videos 213:17
view 14:17 115:12 133:17 137:7 162:20,22
views 160:19 162:19,23 163:8
villa 157:4
village 32:13 124:19 126:19 158:8,12
Villas 108:4 132:18 137:24 138:22 139:8 141:5 144:20 146:11,13, 14,15,18,19 147:4, 11 148:8,20 153:15,22 154:3, 11 155:6,9,19 157:15
violate 25:3 46:1
violated 12:2 80:10,14 88:12 93:8,13 95:4,7 98:17
violates 14:22 18:13,14 35:8,21,25 41:22 45:9 54:11 62:16 79:2 81:18,22 88:5 89:10
violation 205:2
violations 115:16 117:9 118:21,23
virtually 188:19
virtue 10:20 11:13 15:22 21:4 25:18
visibility 140:14 214:16
vision 162:12
visit 86:2 120:12 136:19 137:11,15 222:9 223:15
visited 201:20
visitor 42:3
visitors 71:23 76:21,23 78:8 108:17 189:1 222:11
vital 75:1 78:8
vivid 92:19
voce 4:25 145:10 218:9
voice 12:14 158:22
volumes 109:4
vote 158:10
voted 191:15
voter 201:19
votes 192:23 216:17
vulnerability 31:13 44:6,14 45:3,7 83:3,16,22 87:21
vulnerable 45:4 48:7 72:5 83:8,19 84:11 112:24 117:24 118:13,16

W

wagging 164:15
Wagoneer 177:16
wait 7:12 173:3 179:23, 25 186:7
Waiting 209:21
walk 80:2 92:9 165:8 166:13 171:19,24 175:21 207:25 222:22
walkable 92:10
walked 42:11 140:21
walking 136:22 165:3 167:22 170:22 175:21
walks 170:25 206:6
walkway 148:22
wall 187:2
walled 30:23
wanted 9:10 42:6 121:23 127:23 133:12 159:20 160:6 165:8 172:1 179:11 188:6 200:15 218:22
wanting 224:21
warning 87:17 213:7
warrant 75:18
warranted 54:5
warrants 78:9
waste 113:16 135:2
wastewater 94:9,17 126:22 127:8 194:15 204:2,5,13,15 205:5 216:23
watch 168:16 171:13
watched 190:22
water 26:22 33:18 94:20, 22 95:3,15 97:12, 13,18,20,21,22 98:7,25 99:3,6,25 107:9 108:9 118:1 133:14,17,18 135:2,4,6,8,10,11, 13 141:23 147:10, 17,20 148:6,13,15 149:1,2,12 150:2,9 151:11 156:7 167:23 182:8 183:21,25 184:6 190:24 199:11,13 221:12 223:8
waterbody 33:19,21 97:25
waters 47:25 65:16,18 98:4 123:2 137:9 196:12 198:15,24
wave 210:17
ways 186:25
weather 86:16,18 109:2
web 213:14,15
website 107:15 209:4,18
wedding 141:11 172:17 174:11 221:14
week 177:16 178:7
weekend 111:2
weekends 90:24
weeks 158:21 168:9 221:12,13
weeks' 166:22
weigh 114:21
weighing 78:19 100:12
weight 11:10,22 73:8 78:22 83:25 115:8 116:20
well-known 217:7
well-planned 81:15,19,20,21
wells 173:13
west 214:21
wet 200:19
wetland 99:25
wetlands 94:15
Wharf 219:20
Wharton 202:5
what-not 168:2
whatsoever 15:18 19:9 20:3 70:4
wheelchair 171:20,21,22
white 160:25 187:1
Whitt 16:8,24 104:11 141:7
wide 173:7
width 77:20
wife 146:12 152:21 188:18 190:4,18

221:15 222:1
wild-type
160:6
wildlife
50:5 95:17,24 96:2,4,10 97:1,5, 19 98:9 99:1,13 103:4 201:23,25 202:1 214:4 215:2
wind
77:7,9 168:17
window
97:17 119:17
winds
168:9
windy
118:18
wiped
77:6
wipes
41:22
withdrawn
51:8
withstand
30:5 31:4 55:21
witnessed
171:19
witnesses
17:23 44:5 147:2 194:2 203:10
woefully
94:11
woman
221:10
wondering
20:9 137:3
word
56:8
words
55:23 78:25 80:20 206:11
wore
101:7
work
62:20 71:13 88:3 181:15 183:8,12 187:9 192:21,22 201:5 203:5 216:12
worked
41:18 136:9 191:5, 7 192:25 193:5 196:13 202:13,15 216:2
working
126:20 136:8 192:18 215:25
works
38:24 197:22
world
26:15 191:16 203:5 210:7
world-class
65:7
worldwide
191:8
worried
183:3
worry
127:8,12,16 168:10,20 210:18 215:7 223:19
worse
41:24 84:5 98:2 99:8 118:9,10,11, 12,14,15,20 136:1
worsen
93:5
worsens
78:4
worst
166:19 193:16
worth
62:24 68:21,24 86:4 164:9 215:10 223:2,17
wraparound
182:4
wrecks
117:3
Wright
44:20,21
writing
109:11
written
8:21 23:5 32:7 56:22 76:4 131:24
wrong
48:21
wrote
64:3

Y

yard
215:15
yards
207:3
year
36:6 76:4 102:6 107:12 153:16 158:10 220:14,21
Year's
140:21
year-round
129:4,7 188:19
years
26:11,12 38:6,20 39:2 41:19 44:17 89:25 103:5 119:3 123:2,6,7 125:20 128:12 129:2,7 141:4 158:19 168:13 190:18,21 191:14 196:14,25 197:3,6,11 204:7 206:3 210:6
yesterday
148:15
York
202:4,8,9,23
young
220:25
youngest
219:11

Z

Z-73-202
43:18
zone
48:5,6 76:12,13 77:25 79:1 83:18 110:12,14,15,16 194:7,25 195:9
zones
78:24
zoning
4:9 11:14 24:22,24 37:15 42:7 43:18 50:8 57:14 59:10, 15 65:11 107:2 136:12 143:19 146:17 150:20,23 151:2,9 152:18 153:11 155:11 156:14 161:25 164:16
zonings
52:7