VOLUME 8
THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2023-00051

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

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PROCEEDINGS:	PUBLIC HEARING
BEFORE:	Donna Marie Collins Chief Hearing Examiner
DATE:	April 8, 2025
TIME:	9:00 a.m. to 4:15 p.m.
LOCATION:	Lee County Hearing Examiner's Hearing Room, Second Floor 1500 Monroe Street Fort Myers, FL 33901
REPORTER:	Deborah M. Bruns Florida Professional Reporter

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P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning, my name is Donna Marie Collins. The date is April 8th, 2025. We're here for a continuation of a hearing on an application on the South Seas Island Resort Mixed Use Planned Development. We have heard presentations by Applicant and their representatives, Staff, and members of the public. The public input portion of the hearing is now closed, and we're back to the parties to address questions and issues that were raised during the public input portion, and to respond to questions I provided in writing to the parties regarding issues in particular that I'm interested in.

It has been nearly two months since the first day of hearing in this case; and before rebuttal testimony begins, I want to remind the parties that two specific issues were addressed and disposed of at the start of hearing. First were motions and requests to afford party status to members of the public. The second was the significance of ongoing litigation in the context of the Hearing Examiner's role with zoning requests.

Motions and arguments attempting to elevate the status of certain members of the public were not accepted for several reasons:

First, the Administrative Code identifies who

parties are, and it includes only Staff and the Applicant.

The Administrative Code only authorizes parties to make motions.

And, third, neither the Land Development Code or the Administrative Code grants me the authority to extend party status beyond Staff and the Applicant.

Several attorneys and some lay witnesses submitted copies of their letters and motions requesting party status into evidence during public input. The letters were accompanied by attachments in support of their motion for party status. Those documents and arguments are not gaining relevancy by virtue of their submission into evidence during the public testimony portion of the hearing.

Secondly, ongoing court actions have no relevancy to the task before the Hearing Examiner. The Land Development Code outlines the scope of my authority, and it does not include consideration, interpretation, or enforcement of agreements and disputes.

I realize Staff and the Applicant may sorely wish to address several issues and questions raised during public input; but I hope that only limited time, if any, is devoted to issues I believe have been resolved at the outset of hearing.

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I'd like to administer the oath to everyone who will be speaking on the record today. Please raise your right hand. Do you swear or affirm the testimony and evidence you enter into the record will be the truth?

(Participants respond en masse.)

HEARING EXAMINER COLLINS: Okay. Take a moment, please, silence your cellphones, tablets, so that we're not interrupted.

Staff and the Applicant, do we have an agreement as to who is going first today?

MS. MONTGOMERY: Yes, ma'am.

Good morning, Madam Hearing Examiner. Neale Montgomery, for the record.

I did put some documents on your desk. I provided a copy to the County. You were faster than me so I didn't get one additional document, which I'll hand to you and Adam.

(Applicant Exhibit 23 submitted.)

HEARING EXAMINER COLLINS: These are all Applicant exhibits, all this?

MS. MONTGOMERY: Yeah.

HEARING EXAMINER COLLINS: And then one more?

MS. MONTGOMERY: Yes, ma'am.

(Applicant exhibit submitted.)

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MS. MONTGOMERY: So one of the documents that I provided to you is the order from the DOAH proceeding. I recognize that that is not a proceeding that directly involved you; however, there's been a lot of references to it; and it's important because there is an entire section devoted to hurricane evacuation.

If you recall, Mr. Alexander read from his letter that he provided to you; and when I asked him about that and said, where is the actual study that you did, he didn't provide you with that study. He just said, I made one change to it, and here's the answer. Well, the only study that he's done was the one he provided to DOAH, which he's made one adjustment to. So you don't have the benefit of that study, but what you do have is the benefit of the ALJ's analysis of both Mr. Trescott and Mr. Alexander's testimony that you'll find in that order. Plus, there's been a multitude of references to what's in that order; and rather than take someone else's word for what it says, I've provided you with the document.

And during Mr. Grosso's narrative he submitted, as part of his documents, snippets of Anthony Rodriguez's depo and Brandon Dunn's testimony, and you'll find that on page 12 of his letter to you. I objected to providing those. They were allowed. Having been

allowed, I felt it was important for you to have the depo of Mr. Rodriguez and Brandon Dunn's testimony, because they do not stand for the proposition articulated on page 12. In fact, I encourage you to read Brandon's testimony. I thought I remembered it, but I read it again last night --

HEARING EXAMINER COLLINS: And it sounded even better the second time?

MS. MONTGOMERY: Absolutely; I was like, go, Brandon.

Brandon did a superb job talking about the three buckets and historical development. He goes through that at length. He was quizzed, pressured; and he remained clear, steadfast, and concise in the fact that there are three buckets and that the ADD doesn't set forth the historical development pattern, that what that policy in the Comp Plan, 23-24, references is three areas: The low-density residential, the commercial, and South Seas. And he goes at length to point out that it's a significant portion of the island, and it's its own area, and it's been treated historically as its own area. So he did a great job. I will not tell you any more about what he said because he did it way better than I can ever do.

And you have -- I think I told you, you have the

deposition for Mr. Rodriguez, which, again, he does a better job of explaining his position than the snippet does.

Both on the record and in the letter, on page 13, Mr. Grosso submits -- what he says here is different than what he said during his testimony. He said, SSIR unpersuasively claims that the ADD was procedurally and substantively inappropriate. And so -- and he elaborated on that a little bit at the hearing and submitted that we were wrong.

So what I've submitted to you is, you have a complaint filed by the Captiva Civic Association, and if you look at, I believe, Count 1 of that complaint -- did I not give you the right document?

HEARING EXAMINER COLLINS: (Indicating.)

MS. MONTGOMERY: And in that document, Count 1, they allege that the administrative interpretation is illegal. That's the complaint that resulted in the settlement agreement. So there is, in essence, an order -- a consent order in that case.

I provided you with cases, and what those cases stand for is the proposition that having taken a course of action, having declared a certain path, that the ADD is illegal, you can't now -- and if it results in a judgment, you can't now, under the rule of judicial

estoppel, go, hey, just kidding then. Now we think it's swell. And that's where we are. They, for a long period of time, submitted that was not a valid document, and they have questioned -- and even in Mr. Grosso's question, who at the County Attorney's Office in writing or orally told you that you can't amend that document? Who told you that that was illegal, and you have to rezone your property? Well, he need only look back in history at what they allege, the CCA, to see that they've already taken that position; and having done that, they now can't change their mind. Which answers the question, do we need to amend or get rid of the ADD and give us a real zoning district? And the answer is yes, we need a real zoning district because we can't amend the ADD.

And with that, I'll turn it over to our first witness.

HEARING EXAMINER COLLINS: Where -- excuse me -- where is the court order that you referenced? Because I have the two depositions --

MS. MONTGOMERY: I gave you the DOAH order, I gave you the complaint, and I gave you the case law on judicial estoppel.

HEARING EXAMINER COLLINS: Oh, are they attached to a clip maybe?

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MS. MONTGOMERY: I didn't give you the court order because I thought somebody else had already given you the supplemental agreement, one of the witnesses.

HEARING EXAMINER COLLINS: Okay. All right.

MS. MONTGOMERY: If you need it, I will get it for you.

HEARING EXAMINER COLLINS: No, I just heard you refer to it, and I thought it was in this bundle.

I'm ready.

MS. CRESPO: Good morning, Alexis Crespo, vice president of planning with RVi Planning & Landscape Architecture. I've been accepted as an expert in the Lee Plan and the Land Development Code for the purposes of this case, and many others in Lee County, and would like my testimony to be accepted that way again.

We have prepared a rebuttal PowerPoint presentation. I am going to give you a copy of that. I've provided that to the court reporter, as well as Staff. In this binder you will also have a revised master concept plan that we'll be presenting to you as part of our presentation. You have revised conditions dated April 8th to address items that we'll run through in this rebuttal, directly addressing what we heard at public comment and the questions you had issued. And then, lastly, we do have a full response letter to the

questions you issued to us on Friday, March 28th, within this --

HEARING EXAMINER COLLINS: Binder?

MS. CRESPO: -- package, as well -- yes.

HEARING EXAMINER COLLINS: Which you'll be covering today; right?

MS. CRESPO: Yes.

HEARING EXAMINER COLLINS: All right, thank you.

(Applicant Exhibit 20 presented.)

MS. CRESPO: And so that's a lot of information. We thought the best way, and hopefully the clearest way, to walk you through this would be to go through our PowerPoint presentation; the experts on the team will, through that presentation, address a lot of the questions in that; but we would also like the time to just walk through those one by one to make sure that we've fully -- fully addressed them through the conditions and changes we've made since that time.

HEARING EXAMINER COLLINS: Okay. I'm just going to interrupt for a second to remind everyone that I'm going to take a break every hour and a half for the court reporter, 10 minutes, then we'll resume and we'll get right back down to business. We will take a lunch break, since I think you indicated we will be going all day; and I'll continue in the same manner in the

afternoon.

I understand that my assistant has provided me with extra days of hearing. During one of the breaks, if you can get together with Staff and decide which ones of those will work for your collective parties, and then we'll have that information before the close of hearing.

And that's all, please begin.

MS. CRESPO: Yes, and we agreed upon April 18th as the day to come back and...

HEARING EXAMINER COLLINS: Okay.

MS. CRESPO: You see a lot of people in the room, and there's a lot of content we want to cover. We're not rehashing the case we made in our direct. We did -- this is new information to try to be very specific to --

HEARING EXAMINER COLLINS: Okay, very good, because I was listening very carefully during your direct.

MS. CRESPO: Yes.

All right. So I'm just going to lay a bit of groundwork. I'll be -- I'll be brief this morning before I hand it over to the rest of the team. But to lay some groundwork, you very appropriately asked -- the first question in your letter was, what is the

delta, what is the comparison under what you can do today under your current zoning, under the future land use underneath this administrative interpretation? What can you do today versus what you're requesting, and how does that relate to utility demand, traffic demand, intensity, compatibility, all these factors that would come into play. So I'm just going to lay some brief groundwork on that to start.

This is the current zoning map on the property subject to. You'll see the majority of it is in the light purple, which is residential multi-family. The marina area in the northern portion of the site is within commercial marine zoning. That's in the brown color. And then we have a small amount of TFC-2 shown in the turquoise color. And so these are our underlying zoning districts. They are supplemented by the administrative interpretation and the development standards and different allowances under that document, but these are -- these are the underlying zonings applying to the property.

Of note is the commercial marina zoning district applicable to the northern marina. I'll note that the southern marina is within RM-2 zoning, which does allow marinas to continue as existing only. So there are allowances for both marinas to -- to function

commercially under the provisions of the Land Development Code.

So what the Code says about this zoning district is it's a principal use of land limited to waterfront-dependent uses required for the support of recreational boating and fishing. This allows for local cruise ships; this allows for a variety of businesses to operate out of the marina. So that is a significant existing current entitlement that is being eliminated through the proposed MPD, and we want to compare and contrast what that can generate in terms of intensity versus our proposal, which will be to limit any public use of those marina areas and make them noncommercial. And we don't even have that use anymore. We're proposing a multi-slip docking facility exclusively for residents and registered guests of the property.

Also of note the RM-2, multiple-family zoning district, which does allow for a variety of conventional residential dwelling types, as well as property regulations subject to that district.

So we have to marry that up with the administrative interpretation. This does very specifically go to the next step of allocating units. It allocates the acreage of commercial. It doesn't

allocate a maximum intensity so we have a gap in that, but a specific land area of commercial usage.

For the purposes of examining the delta or difference, we propose a relatively conservative estimate of what could be developed on those commercial lands, which are generally up front along Captiva Drive in the southern end of the property.

HEARING EXAMINER COLLINS: And the marina.

MS. CRESPO: And marina.

So that -- within that we're -- we ran that as 10,000 square foot of commercial use per acre, or a total cap of 50,000 square feet, which is what you generally can fit with surface parking and all the different water management and features like that. There's a general rule of thumb that we've agreed upon with the County in past cases, as well.

So what -- what you'll hear from the experts is examining the impact of the current 272 dwelling units, 5 acres of commercial uses, or 50,000 square foot of commercial usage, as well as the 620 marina slips that are allocated to the property through the Manatee Protection Plan.

To go --

MS. MONTGOMERY: Can I stop you just a minute?

MS. CRESPO: Yes.

MS. MONTGOMERY: The Hearing Examiner noted about the commercial marina, but was the commercial marina noted in the administrative interpretation, or was that a zoning done later by the Board?

MS. CRESPO: That was a zoning done, I believe, in the late '80s or early '90s by the Board.

HEARING EXAMINER COLLINS: Can the property physically accommodate that many slips that you discussed? I thought during the testimony on the first day that was not achievable, and it was only useful via the slip transfer.

MS. CRESPO: I will have Hans Wilson address that.

HEARING EXAMINER COLLINS: I hope you evaluated based on what could physically fit on the property, and not the hypothetical of what your shorefront would permit.

MS. CRESPO: Yes, and I -- I can say from at least a planning standpoint, the 620 would not be wet slips. It would be a combination of wet slips and then buildings, dry slips, within our height limitations and setback limitations of the -- of the project.

HEARING EXAMINER COLLINS: So that really wouldn't be achievable along with all the other development, isn't that right, with the golf course and the existing multi-family development?

MS. CRESPO: I would say the golf course is not a required use of the property. So if you -- if you took the 120.5 acres --

HEARING EXAMINER COLLINS: Okay. I'm just hoping that this comparison is going to be based on a realistic development scenario, and not an inflated based on hypothetical possibilities.

MS. CRESPO: We did confer with Staff on this baseline of what -- the ADD, and I think -- I believe they'll add that they were comfortable with --

HEARING EXAMINER COLLINS: Okay.

MS. CRESPO: -- how we allocated the commercial, and how we allocated the commercial slips. We plan on being here an additional day; so if there's a need to reevaluate that, we can certainly do so.

HEARING EXAMINER COLLINS: Okay.

MS. CRESPO: Some other pieces of the administrative amendment that I want to touch on before I turn it over to Shawn -- and your Staff did this as part of their Staff Report, which is comparing and contrasting the development standards under the administrative interpretation versus what is proposed through the MPD. We are proposing to decrease the number of units on the property from the 272 to the 193. We are proposing to add the hotel uses.

What you'll see in those revised conditions is a maximum of 250 slips proposed on the MPD, just acknowledging what we would feel comfortable developing on the property as wet slips, and what we believe will work in that regard. And so looking at it from that perspective, in many events we're reducing intensity; we're certainly reducing density on the site. We're also at the same time increasing our buffers, our open space, and all of the different development standards through the MPD conditions that you've seen and that are also proposed for modification.

So you can see under the ADD, there's no minimum lot sizes; there's no minimum lot coverage; there's no minimum open space per tract; there's minimal setbacks from internal tract lines and roadways; as well as minimal buffering requirements, which we'll walk through in the next slide.

So these are all just excerpted from the ADD in terms of open space. Again, there's no minimum open space per parcel. Through the MPD we are proposing minimum green space of 10 percent per parcel, and that's in addition to memorializing the excess open space that's provided via the golf course, via the preserve areas, and other amenities within the site, well -- well above and beyond the Code minimum open

space requirements.

In terms of buffers, this was very permissive in terms of the natural waterway buffers, requiring no buffers in many areas where this abuts the bay and the pass, as well as no buffering between internal residential parcels.

And through -- through the proposed MPD, we are doing plantings, which will -- you asked questions about, which we'll walk you through in detail today; as well as other treatments along the Gulf of Mexico, to go above and beyond the requirements in this condition.

Parking. This is -- this was a significant discussion, talked about a lot during the public comment section. This is, in my opinion, a very, very significant change through this MPD. What is allowed today -- I'm going to just go to this next slide. It's easier to digest this way.

Under the current ADD, multi-family is allowed 1 space per unit and 10 percent guest parking, whereas the current Code -- which we will meet -- is 2 spaces per unit and 10 percent guest parking; so doubling the parking currently allowed, in full compliance with the Code.

Similarly, hotel, very permissive in the ADD. You can have 1 space per 2 units; so half a space per hotel

room, plus 10 percent guest parking; whereas, we're not proposing any reduction to that parking. We're doing 1.2 spaces per unit.

That last is obscured by the screen, but the commercial area is allowed 1 space per 1,000 square foot, which is commensurate with 1 space for -- well, we are proposing 1 space per 250 (sic) square foot, which is -- so basically 4 times the parking under our commercial scenarios per the MPD.

What I would also note is the restaurant parking, that Doc Ford's which was up front, was allowed 1 space per 1,000 square feet, whereas your Code requires 14 spaces per 1,000 square feet because restaurants generate a lot of traffic, and therefore need a lot of parking. So this is one area that is significantly being improved. All of the Code-required parking is being provided on the site, and we did modify the condition about the location of parking to make sure it is sited within 500 feet of the principal use, so that we don't have a situation where all the parking is in the south or the north, and people are having to get two miles throughout the site by foot or trolley, because we know that's not always feasible. So we've offered that up --

MS. MONTGOMERY: Alexis, before you go, can I just

ask for clarification? Doc Ford's, which required 14 spaces per 1,000, was open to the public.

MS. CRESPO: Correct.

MS. MONTGOMERY: And we're not -- are we going to have any that are open to the public?

MS. CRESPO: No, there will be no restaurants open to the public.

The last item in the -- in the ADD is the setbacks, and it blurs the line with setbacks versus buffers. This is important as it relates to the development on Tract G, the Beach House restaurant that was talked about at length during public comment. It was inferred that this was developed outside the bounds of the Code or not meeting criteria of the Code or the Lee Plan, et cetera. The Beach House on Tract G was issued a development order. It fully complied with the ADD in terms of its setbacks. It has a 10-foot setback from South Seas Plantation Road.

And when we're reviewing the ADD, and you review it as external and internal property lines, the external property lines are the perimeters of South Captiva -- or Captiva Drive to the south, Redfish Pass, Gulf of Mexico, and the bay. Areas owned by Timbers, for the purposes of the ADD since they're all in that zoning together, if you will, are treated as internal

property lines. So the neighboring home to the south of that easement is an internal property line, not an external, when you're applying the ADD, if that makes sense. So there's technically no minimum setback required, as you can see, for buildings from internal property lines. You've got a 10-foot minimum building separation unless the Fire Department requires -- or the Fire Code requires additional separation.

So due to the easement, yes, but even above and beyond that, the Beach House exceeds the required setbacks of -- allowed by the ADD. So the correlation here is our setbacks in the MPD will further enhance that internal compatibility and require buildings to be even further away from what will now be uses outside the MPD boundary --

HEARING EXAMINER COLLINS: Except in this one instance.

MS. CRESPO: This still went above and beyond the ADD requirements. The access easement itself provides the 30 feet, and then there's additional building setback off the access easement. So the total combined separation is above -- well above and beyond. That's why Staff issued the development order pursuant to the administrative amendment.

Within these setbacks there's also buffering,

which applies here, with a minimum 20 foot without -- without wall or vegetation buffers. So there is the allowance with this document to have no vegetative buffer so long as the building is -- is 20 foot away from the property line. And so that -- and we're going to dissect the Beach House later with our architect -- with our landscape architect, but we're just laying the groundwork here that the development both -- or as issued by development orders is compliant with the ADD, and it is very, very permissive when compared to the MPD setbacks that we're proposing, as well as the buffering.

So those are the key points on that. So just to kind of summarize, we're increasing our external setbacks; we're increasing internal setbacks through our proposed zoning.

So at this point just another kind of foundational speaker is going to be Shawn Farrell, and he's going to speak about the resort context and give you real data on how South Seas functions, both properties owned by Timbers but also the existing units and buildings within -- within the -- under the ADD or within the South Seas Island Resort as defined in the Land Development Code. We felt, based on some of the public comment and questions, that we did not do a thorough

enough job explaining to you the highly transient nature of the resort, the amount of units that are being rented and treated as hotel rooms today. And because they've owned the property for several years, fortunately pre some of the storms that have cut that down, there's -- we're able to explain to you that data in more detail. So I'll invite --

MS. MONTGOMERY: Before you go, can I ask you two questions?

MS. CRESPO: Yes.

MS. MONTGOMERY: On slide 10 you have the current ADD and proposed MPD parking requirements for a hotel. There was a hotel that existed previously, had been built under the ADD and prior regulations. When that hotel is rebuilt, will it have to meet the current regulations even though it previously existed?

MS. CRESPO: Yes.

MS. MONTGOMERY: And you recall Mr. Whitt spent extensive time talking about the LDC requirements regarding the Beach House restaurant and how we didn't meet them. And I asked him if he looked at the ADD, and he said he didn't. In your professional opinion, as a planner, would that be appropriate, to look at the LDC and not the ADD?

MS. CRESPO: No, and this is -- I acknowledge this

is a complex project where you are looking at the ADD, where -- where that is devoid of regulations. In some cases the LDC does apply to development within -- within South Seas; but where there is guidance and development standards established in the ADD, that is certainly -- and in this case the setbacks, the buffers are established in the ADD, not the code, and that would be the appropriate document to look at.

MS. MONTGOMERY: Okay, thank you.

MS. CRESPO: All right. I'll turn it over to Shawn.

MR. FARRELL: Good morning, Madam Hearing Examiner.

HEARING EXAMINER COLLINS: Good morning. Please state your name for the record.

MR. FARRELL: Shawn Farrell, general manager at South Seas Resort.

This morning I'd like to make myself available -- and I know the question came about -- from the public about how many units we had in our rental program, and I kind of want to walk through that a little bit to help you understand what's in there.

So we'll start with when you -- the South Seas membership, the rental program overview, the resort amenities, and who they're available to. So the resort

amenities themselves are offered to the overnight guests of the resort; the guests of the future hotel; the property owners in South Seas, both within and outside our proposed MPD that purchased a membership or participate in our rental program, which we call Club Captiva; guests who own non-resort-owned condominium units or property owners that participate in South Seas' rental program. So, again, if you're inside the gates, and you have a unit, and you'd like to use the amenities inside of there, you join our rental program, and you have access via that vehicle; or if you don't, rent with another third party, you're able to buy a membership to have access to those amenities.

So, again, the bottom section here kind of outlines who cannot use the amenities that are offered on the property. Property owners within the gates, outside of the MPD, that purchase a membership or participate in South Seas' rental program -- that do not, sorry, I apologize, that do not. Also guests who rent with -- their own condo units outside of the MPD, they do not have access to our amenities.

So ultimately you have to be in our rental program or within the gates, not rent out to another third party in competition, and buy a membership to our amenities, Club Captiva.

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HEARING EXAMINER COLLINS: So what's the breakdown?

MR. FARRELL: I have a sheet here that will show you what that is. Just to kind of outline, some of these are the ones that struck me, other third-party rental companies within the gates that rent: Royal Shell, VRBO, Airbnb, Sanibel Captiva vacations (sic), Kingfisher Vacations, Dream Vacations, these are all different rental companies within the gates. Smaller amounts of rentals, but they are within the gates and operate in there for those owners.

So by the numbers, 60 percent of all the dwelling units within South Seas are in a rental program, meaning that whether it be with us or other rental companies, 60 percent of the units within the gates are in a rental program. Of those rental/transient dwelling units, only 16 percent of them have a five-day or more duration limitation, meaning that there's two associations: Both Land's End, which has a minimum night of more than five nights; and Beach Homes, that has a minimum night of five days or more for rentals.

The other 84 percent of them are transient in nature and can be rented for one night; so it kind of lines up more with a hotel or a regular resort type of booking.

When you add the timeshare units that are within the gates, 68 percent of the existing units in South Seas Resort are transient in nature. Again, timeshare, one-week stays, they have a set week that they -- they move -- move about in.

Incompatibility between Tennis Villas, Bayside Villas, and the future hotel site and recreation amenities on Tract A-1 and C, 86 percent of the condo units effectively function as hotel rooms as they are in a rental program, nightly.

So this is a document that will help kind of put in context -- and I'll run through the first line just so I make sure that I'm explaining it properly.

If you go to dwelling units, the first line is Tennis Villas. There's 60 units inside that association. Out of those 60 units, 37 of those units are in our rental program at South Seas; 8 of the units are in another third party's rental program; leaving 45, or 75 percent, of the units inside that association are in a rental program and can stay for one day.

So obviously that -- that proceeds right down through all of those, and you can see that that number -- this number fluctuates depending on ownership of the condos and who they rent with, or if they do rent or don't rent. So that number is -- this is slow

compared to historically. A lot of it has to do from post-storms, and people still renovating, so they pulled their units out of rental while they did renovations. You know, I don't want to quote numbers that are in the past because -- but we're closer to 80 percent of the rentals being -- units inside the gates being in a rental program in one fashion or another. And this is basically stuff that we know, that we've called around or looked up for the ones that are out of our program, but accurate...

In answering the question that was asked, 285 units outside of our own assets are in our rental program as of today.

Any questions about that? It's a lot of information --

MS. CRESPO: Do you want to give her a copy?

MR. FARRELL: Yes.

(Applicant Exhibit 24 presented.)

HEARING EXAMINER COLLINS: So in this scenario, 124 units are not able to use your amenities?

MR. FARRELL: In this scenario, 124 units in that third party cannot use our -- our amenities, that is accurate.

(Sotto voce between Hearing Examiner and reporter)

MS. MONTGOMERY: Going to slide 14, you list

third-party rental companies. I know that at least one of these had representatives -- several representatives testify at these proceedings objecting to the rezoning. It may be an obvious question, but maybe not. Are these your competitors? Are you in competition with these people?

MR. FARRELL: Absolutely.

MS. MONTGOMERY: So your competitors are trying to keep from you upgrading the facilities?

MR. FARRELL: In this case, yes.

HEARING EXAMINER COLLINS: Are the timeshares under your umbrella or not under your umbrella?

MR. FARRELL: Some of the timeshares are underneath our umbrella. We -- we do not manage the timeshare units. The 120 timeshare units that are within the gates are managed by Hilton Grand Vacation. Out of those -- and let me slide back to that slide so we can talk numbers.

Out of those units, currently Harbourview Villas, which has 10 units; the Cottages at South Seas, which has 14 units; and Plantation House, that has 12 units, has in their deeds an agreement that was made with the ownership prior and have access to some of our amenities.

HEARING EXAMINER COLLINS: But the others do not?

MR. FARRELL: The others do not.

HEARING EXAMINER COLLINS: How do you keep them out? I mean, they're staying --

MR. FARRELL: We use --

HEARING EXAMINER COLLINS: -- in the resort --

MR. FARRELL: -- wristbands, we use different things to monitor that. Access to certain areas have RFID locks, et cetera. So we manage it via key controls and wristbands.

HEARING EXAMINER COLLINS: So that means that someone that lives in one of these other units can't go to one of your hotel restaurants and eat?

MR. FARRELL: That's correct.

HEARING EXAMINER COLLINS: So how do they even verify that if they walk up or make a reservation?

MR. FARRELL: We're -- so we're cashless, meaning that if you come to the resort and check into the resort, you can't go to the restaurant and spend -- you actually have to have a room account to charge back to. So you can't put your credit card or cash and pay at that venue. You would have to have an account established, which via our rental program or our membership or those agreements that we have with the timeshare units, we set that up, and you check in like a regular resort hotel and put a credit card down and

get a charge card or a wristband RFID to be able to do those charges.

HEARING EXAMINER COLLINS: And that goes for the dwelling units that are not in your program? They would not have a card?

MR. FARRELL: Correct, that are not in our rental program. So the --

HEARING EXAMINER COLLINS: So even if they own their unit, and they're not renting it, and they come and use their unit --

MR. FARRELL: Yeah.

HEARING EXAMINER COLLINS: -- they don't get a card from you?

MR. FARRELL: They do not unless they buy a membership --

HEARING EXAMINER COLLINS: Okay.

MR. FARRELL: -- and buy amenity access.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: Go back to that slide, if you would --

MR. FARRELL: Yeah.

MS. MONTGOMERY: -- Shawn.

I notice that the first line is Tennis Villas. I'm assuming that Tennis Villas are right next to where the tennis courts were.

MR. FARRELL: That is correct.

MS. MONTGOMERY: And I think I heard that they changed their name.

MR. FARRELL: That is correct.

MS. MONTGOMERY: So they went from being next to the tennis courts to now they're next to the water park, is that --

MR. FARRELL: Captiva Landing, correct.

MS. MONTGOMERY: So one of the things I can't tell, when I look at all these names, is how many of them are multi-family condos that are -- you know, we know if they're rented or not, how many are single-family. So of all the areas -- of all the units that are next to high-activity things, are most of them/all of them multi-family rentals, or are they single-family?

MR. FARRELL: It's a combination. Tennis Villas have one- and two bedroom units; Bayside has one-, two-, and three-bedroom units. So from a rental standpoint -- to answer your question, you know, a single family can go into a three-bedroom unit, but two families can squeeze into a single-family unit.

MS. MONTGOMERY: Yeah, but -- but are any of those units actual --

MR. FARRELL: Homes?

MS. MONTGOMERY: -- single-family homes, I guess --

MR. FARRELL: Oh, I apologize. The Beach Homes, Beach Homes sites, are all individual standalone homes. Beach Homes do connect in places, but they are full homes, correct.

MS. MONTGOMERY: And are they next to the high-activity areas, or more bayside --

MR. FARRELL: No, they're more toward the middle of the resort. So the ones that are closer to the higher-activity areas are the condos, the one-, two-bedroom and three-bedroom units.

MS. MONTGOMERY: And those are primarily the rental ones?

MR. FARRELL: Correct.

MS. MONTGOMERY: Okay, thank you.

MR. TREESH: Good morning, Ted Treesh, TR Transportation Consultants.

So just to cover a little bit of the transportation questions, this is the trip generation. The top table is the trip generation that was utilized in the traffic impact statement that was submitted as part of the application. The top line is for the hotel rooms, the resort hotel that was being requested, and then the multi-family units that are permitted that

aren't yet developed on the property.

And then the bottom table is what Alexis was referring to that was discussed with Staff in terms of on the ADD -- the uses that are currently permitted within the ADD based on the discussions with Staff and with the Applicant of what possibly could be developed based on the ITE trip generation.

So what I did here was look at the ITE in terms of the marina, the multi-family, and the commercial. I just assumed some commercial development based on working with the development team, as they said, 50,000 square feet, based on what Alexis had indicated. I assumed based on this -- because the location of Captiva being at -- the island, I assumed 50 percent internal capture based on most of these uses are going to be internal. As you've heard through the testimony in this application, a lot of these trips are going to be internal.

So you can see even from this table, assuming that 50 percent internal capture -- which I didn't assume in that top table, if you notice -- that even with that internal capture, the p.m. peak hour trips -- I know the video is blocking, but 385 trips is still higher than what our application is currently proposing in the 275.

The daily trips, which you can't see in that table is --

MR. MENDEZ: Give me a second, sorry.

MR. TREESH: -- 4,929 in that table compared to the --

HEARING EXAMINER COLLINS: Can you -- what happened?

MR. MENDEZ: Yeah, I was trying to show the entire slide. I apologize.

HEARING EXAMINER COLLINS: I want to go back to the slide before.

MR. TREESH: That number is 4,929.

HEARING EXAMINER COLLINS: Go to the slide before.

MR. MENDEZ: (Complies.)

HEARING EXAMINER COLLINS: Wait, no, stay here.

MS. MONTGOMERY: You can't see the 4,000 because it's --

MR. TREESH: Yeah, it's hidden by the --

HEARING EXAMINER COLLINS: I know, but I see it's based on 620 slips, and the testimony is that only 250 can fit. So those numbers are inflated by 60 percent.

MR. TREESH: Yeah, but even --

HEARING EXAMINER COLLINS: The marina --

MR. TREESH: You can see the marina daily trips are only 1,400. If that number were to drop -- and we

can bring that number back to you. The marina is not a significant --

HEARING EXAMINER COLLINS: Yeah, I don't want you to assume trip generation on things that can't be built. So this is not useful to me the way it's drafted.

MR. TREESH: It would still be higher. Table 2 would still be higher --

HEARING EXAMINER COLLINS: I understand, but I would like it to be accurate.

MR. TREESH: Okay, and we can get that to you.

(Discussion at lectern)

MS. CRESPO: I just want to clarify my testimony from earlier. Our proposal is 250 wet slips as the maximum under the MPD. It's not because that's the maximum that could possibly fit. That is because Mr. Wilson has been designing some marina improvements, and that's what they think is reasonably what they would like to construct on the site. That is not an exercise of what could fit by -- by any means.

HEARING EXAMINER COLLINS: Okay. You had testified though that 620 could not fit, so I want that number --

MS. CRESPO: It's purely wet slips. You could -- you could absolutely construct dry slips and other --

other means --

HEARING EXAMINER COLLINS: Okay, that's fine. Let's move on.

MS. CRESPO: And I also -- just because of the formatting issue here, your slide show has this slide in it, if you want to just use the binder --

HEARING EXAMINER COLLINS: So what is the total external trips under Table 2?

MS. CRESPO: 4,900.

MR. TREESH: 4,929, assuming that 50 percent internal capture. And, again, the marina, we would assume the 620 would be wet and dry slips in terms of trip generation.

HEARING EXAMINER COLLINS: So Table 2 represents -- I'm not clear on what this is representing.

MR. TREESH: This is based on the uses that Alexis indicated earlier that could be built based on the current permitted uses under the ADD.

HEARING EXAMINER COLLINS: So why doesn't the top table include a marina or the multi-slip docking facility? And why doesn't it include the amenities like the spa and the restaurant?

MR. TREESH: Because this table up here is the new trips that we added to the roadway network. In my

zoning TIS, we looked at the trip generation of the site as it is currently being requested in terms of zoning, and this was the hotel and the multi-family. The multi-family I added to the roads because even though we're not requesting those uses, they are -- they are permitted, but they're not on the site today. So I've added these trips to the table because they're not developed yet.

HEARING EXAMINER COLLINS: So does the 1,300 daily two-way trips represent the delta, or does that represent your total external trip generation?

MR. TREESH: This is my total external trip generation that I analyzed in our current zoning TIS that was submitted as part of the application.

MS. MONTGOMERY: Yeah, and I think part of the problem is that Table 2 should say the ADD, but it doesn't, it says "MPD." So it might --

MR. TREESH: Yes, that's true.

MS. MONTGOMERY: -- be creating some confusion.

MR. TREESH: Yeah, that should not say "MPD," that's correct. And I can correct that and resubmit it.

HEARING EXAMINER COLLINS: So what's the delta? Am I getting the delta from these two tables --

MR. TREESH: We should not be looking at daily,

for one -- for one thing, because ITE does not report daily trips for a resort hotel so -- and in our traffic studies that we submit, and all the analysis we typically do, is based on the p.m. peak hour. So we typically look at the p.m. peak hour trips. So in this case it's 275 versus the 385. That's what I want to focus on.

HEARING EXAMINER COLLINS: Say that again.

MR. TREESH: It's the 275 trips from Table 1 versus the 385 in Table 2.

HEARING EXAMINER COLLINS: So Table 1 is only the MPD; Table 2 is the entire resort?

MR. TREESH: It's the ADD, of what could be developed.

MS. CRESPO: 120 acres on --

MR. TREESH: Right, on the 120 acres.

MS. MONTGOMERY: Ted, before we leave this slide, I've got to clarify some things.

MR. TREESH: Please.

MS. MONTGOMERY: Under the ADD, as you calculated it, was the commercial open to the public?

MR. TREESH: Yes.

MS. MONTGOMERY: And so under the MPD, the ancillary uses which may have been open to the public before, like restaurants, like the marina, and like

some of the retail uses, aren't open to the public anymore, are they?

MR. TREESH: That's correct.

MS. MONTGOMERY: So do you count internal capture, or you just don't look at it at all, you just look at the main primary use, since they're accessory uses?

MR. TREESH: No, those would all be included in the resort hotel --

HEARING EXAMINER COLLINS: So what about the freestanding spa and restaurants and cafes? Why is that not represented on --

MS. MONTGOMERY: Because they're ancillary, they're not open to the public. When you look at external trips, it's those things that are open to the public. And the spa, as Shawn just testified, you can't go there unless you're already in the hotel or on the resort. So they aren't new trips on the road, they're trips internal to the project. And so --

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: -- I'm not going to speak for Ted, but I don't believe he would --

HEARING EXAMINER COLLINS: So the takeaway from slide 18 is that on the 120 acres that is the subject of this application, what is permissible under the ADD is weekday total p.m. 385. What is going to be

generated by what is proposed in the request is 275.

MR. TREESH: Correct.

HEARING EXAMINER COLLINS: Did I summarize that accurately?

MS. MONTGOMERY: (Nods head.)

MR. TREESH: That's correct.

HEARING EXAMINER COLLINS: Thank you.

So Table 2 represents possibilities under the existing development approval.

MR. TREESH: Yes, because the commercial is open to the public, the marina is open to the public, and we're permitted up to 272 multi-family dwelling units.

HEARING EXAMINER COLLINS: I understand now. Thank you for clarifying that.

MR. TREESH: Thank you.

Any other on that --

MS. MONTGOMERY: I didn't have any more questions on that slide.

MR. TREESH: Okay.

MS. MONTGOMERY: Thank you.

MR. TREESH: So the next question is -- the next information I want to provide, in listening to Mr. Roark's testimony in regards to the traffic data that we utilized in the traffic report -- and I know Lee County is going to -- Lee County DOT is going to

offer some testimony later on, whether it will be today or another day, in regards to the Lee County Public Facilities level of service and concurrency report, which we rely on, as well as other consultants that do traffic study in Lee County, in terms of the data that we use in our traffic studies that we prepare in Lee County.

One of the things we did after we submitted the original zoning TIS for this report, because the data in the report was older traffic data, our firm went out and collected some new traffic data on Captiva Drive. And this shows the location that we collected that data on Captiva Drive, just over the bridge on Blind Pass, just -- just to the north of the bridge. So just as you come off of Captiva Drive heading southbound -- so to get all of the traffic coming southbound off the island and all the traffic heading northbound onto the island; so it would be the busiest spot on Captiva Drive before you leave the island, or as you come onto the island. So we conducted that count in February of '25.

So Lee County also conducted some updated traffic counts, and I believe their count was done in January. So I have that information here, and I can provide that to you; but that information also showed that traffic

counts really haven't increased that substantially since the data in the traffic -- Lee County report that we utilized, even though it was from 2010, it really hasn't increased substantially since 20 -- 2010 up to 2025.

The data that we collected showed a volume -- a peak-hour, peak-direction volume of 267 -- I'm sorry, 267 was in the Lee County report that was in our traffic study. Our volume that we collected was 246 peak-hour, peak-direction vehicles, and the Lee County DOT volume that was collected was 312, in their traffic count. So not a substantial increase from the 2010 count that was in the Lee County report that we utilized.

So the analysis that we conducted was entirely consistent with the Administrative Code for the zoning TISs. The traffic data that we collected didn't result in any change in the level of service analysis on Captiva Drive. So I can submit --

HEARING EXAMINER COLLINS: So this -- we can rely on this information to conclude that the TIS that was submitted with the application materials remains valid?

MR. TREESH: Correct.

MS. MONTGOMERY: Mr. Roark alleged it was flawed, and I believe --

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MR. TREESH: And I'll let Lee County speak to their reports that they produced, but we rely heavily on the information that Lee County and FDOT produce in terms of their traffic count data. They produce it; it's adopted by the Board of County Commissioners every year, it goes before the Board and is adopted; so we utilize that information in our traffic studies that we produce for zonings and development orders. Our TIS, again, was reviewed extensively by the County Staff prior to being found sufficient for this zoning case.

So I'd like to submit -- first is our traffic count that we conducted -- and it was conducted over two days, so we looked at -- and we took the highest volume over those two days. This is our traffic count that we conducted.

(Applicant Exhibit 10 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MR. TREESH: There's some extra copies for everybody.

MS. MONTGOMERY: Mr. Treesh, before you leave this slide and go to the next slide, I have a couple questions, if I could.

MR. TREESH: This is the Lee County DOT traffic count, and I think they're going to submit this later, as well, but...

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(Applicant Exhibits 12 and 13 submitted.)

MS. MONTGOMERY: Thank you.

MR. TREESH: One thing of note, going back to the trip generation of those uses before, there are some uses that are on the site -- that were on the site previously that are no longer there, specifically one thing is the Captiva Cruises. Captiva Cruises operated out of South Seas for a number of years. They're no longer on the site. Based on data from their operation, they had in excess of -- sometimes over 50,000 passengers a year. They operated sunset cruises, lunchtime cruises out of the marina on South Seas; and based on discussions with their operators, over half of those passengers were non-South Seas Resort guests. So they would come from off island -- or off the resort and were not related to the resort, and they are no longer on that resort. They operate from another location now. So those trips that were previously coming from outside the resort are also no longer part of this project, so that's even a further trip reduction that wasn't included in our trip generation. So I just wanted to put that on the record, as well.

MS. MONTGOMERY: Okay. Before you leave this slide, let me ask you a couple of questions.

The Hearing Examiner asked to clarify the methodology you used in your traffic impact study to explain external impacts. I think I heard you say that you used a Lee County Administrative Code; is that correct?

MR. TREESH: That's correct.

MS. MONTGOMERY: And another question was, does the ITE manual include data specific to destination resorts? I notice on your slide with the trip generation you had resort hotel noted.

MR. TREESH: Yes.

MS. MONTGOMERY: Is that an ITE designation?

MR. TREESH: Yes, and I wanted to briefly speak to that, as well.

ITE has several land use designations for hotels, and one of them is a resort hotel, another one is just simply called hotel, and let me just read from the ITE land -- or the ITE trip generation report. Currently ITE is in the 11th edition of the trip generation report, so this is from the 11th edition. The resort hotel description in each land use code in the ITE report has a -- has a description -- and I can -- I can give you these copies after I read from them.

From the resort hotel land use description, the

land use code is Land Use Code 330. It gives each land use a number. It says, and I quote, "A resort hotel is similar to a hotel (Land Use Code 310) in that it provides sleeping accommodations, full-service restaurants, cocktail lounges, retail shops, and guest services. The primary difference is that a resort hotel caters to the tourist and vacation industry, often providing a wide variety of recreational facilities/programs (e.g., golf courses, tennis courts, beach access, or other amenities) rather than convention and meeting business."

So this -- this land use code primarily fits this use to a tee, in terms of what this land use code, it applies to, this use. And, again, prior to conducting the traffic study, we review the facility, we review the site plan, the master concept plan, to determine which land use code best fits the project, and which one we should utilize for our traffic study. Obviously the County Staff reviews it. If they're not in agreement with the land use code -- which I've submitted many traffic studies where the County Staff has come back and said that's not the appropriate land use code, we think it should be this land use code. And we've had many traffic studies where we went back and forth with County Staff on the use of land use

codes from the ITE report.

So obviously Land Use Code 330 of the resort hotel is a -- is the appropriate land use code to utilize for this type of use, based on the amenities that this type of facility has in terms of -- as I indicated in my primary testimony, once a guest arrives on this facility, everything is included here where a guest can provide -- all the amenities are here. They really don't need to leave the resort to have those recreational activities. The beach is there, the golf course is there, the tennis is there, the restaurants, the marina, all the recreational activities are on-site for them to enjoy, rather than -- whereas a hotel typically only has maybe a restaurant, you might have a conference room, you know, maybe a swimming pool. Everything else, though, you've got to go off-site to use.

MS. MONTGOMERY: They don't need to leave the site, but the trip generation does recognize that they're not captives. They can --

MR. TREESH: Oh, yes --

MS. MONTGOMERY: -- leave the site.

MR. TREESH: -- yes.

MS. MONTGOMERY: Because we heard a lot of testimony about Ding Darling, the Shell Museum, yada

yada.

MR. TREESH: Yes.

MS. MONTGOMERY: That type of trip, is that included --

MR. TREESH: Yes --

MS. MONTGOMERY: -- in the trip generation --

MR. TREESH: -- yes, and the surveys that ITE does takes into account those --

MS. MONTGOMERY: Okay, thank you.

MR. TREESH: -- those trips.

That's really all the testimony I have unless you have other questions.

HEARING EXAMINER COLLINS: No, thank you. This has been very helpful.

MR. TREESH: Thank you.

HEARING EXAMINER COLLINS: Oh, you were going to give me what you read from --

MR. TREESH: Oh, yeah.

HEARING EXAMINER COLLINS: -- regarding the resort hotel.

(Applicant Exhibit 11 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MR. TREESH: Uh-huh.

MR. FARRELL: I'm back. Yeah, I know.

HEARING EXAMINER COLLINS: Shawn Farrell.

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MR. FARRELL: I've got a couple of appearances, I'm sorry.

Traffic mitigation, trolley service, golf cart parking. What we want to point out here on the property is obviously we have parking in all the buildings where all the condos, homes, et cetera, are. The additional parking is -- you had made the question earlier on where is the additional parking, and you can see throughout this map we have additional parking down by the Clutch Golf Course; a clubhouse for golf carts; there's additional parking at the main pool area that we have there; we have additional parking that will be at the Beach House; we will have parking and charging available kind of mid -- where that one red star is, that's going to be a new spot midway where we have a building that's being relocated from there. And, of course, parking at the very front of the resort, at the Captiva Landing amenity, and where our plaza is up front where Starbucks is. And this is all additional parking just for golf carts. Because once you land on the property, your movement -- and you made that comment earlier on, you know, people are going to get in their car and go from one end to the other.

The real objective is not that. That's why we opened up the trolley service throughout the resort,

running throughout 7 a.m. to 10:00 at night, moving people up and down the resort, and it's for the golf cart experience. That is -- that is really what the experience is. People really don't want to get in their car and go to the other place. You want to go in your bathing suit and jump in your cart. So we've added that parking throughout and the trolley service, to be able to do that, so you don't have to do that.

HEARING EXAMINER COLLINS: So the red stars represent golf cart parking only?

MR. FARRELL: Correct -- the red stars on here are a couple different things. You'll see trolley stops, as well as parking areas.

HEARING EXAMINER COLLINS: For golf carts?

MR. FARRELL: Correct.

HEARING EXAMINER COLLINS: If someone checks in to stay within the MPD --

MR. FARRELL: Correct.

HEARING EXAMINER COLLINS: -- do you have a golf cart rental program?

MR. FARRELL: We do. We do.

HEARING EXAMINER COLLINS: And what's your ratio of golf carts to guests?

MR. FARRELL: We're currently at 150 golf carts, as of today. We'll ramp up to 200 golf carts that

we'll have available, and then -- as demand -- but that will be from a ratio -- what's that, 50 percent right now, as of today? And then you have --

HEARING EXAMINER COLLINS: So the other people --

MR. FARRELL: -- of course the trolley.

HEARING EXAMINER COLLINS: -- would have to either take the trolley, or they'll use their car.

MR. FARRELL: Correct -- potentially bikes, yeah --

HEARING EXAMINER COLLINS: And where are you storing these 200 golf carts when they're not in use?

MR. FARRELL: We have a location at the front of the resort that has -- where our golf carts rent out of. That facility there has parking all underneath it.

HEARING EXAMINER COLLINS: For 200 golf carts?

MR. FARRELL: Correct. It's tight, but it's --

MR. SOLOMON: It's not in the MPD.

MR. FARRELL: No, it's -- I apologize, yes, that's correct.

HEARING EXAMINER COLLINS: It's what?

MR. FARRELL: It's outside of the MPD. So it's outside on -- next to where the plaza is in the front. So if you're going down the road, and you look at Starbucks in the first plaza, the next building is our building, and that's where the golf cart operation

operates out of. That's where the carts are stored. That's where --

HEARING EXAMINER COLLINS: It's off resort, but that's where --

MS. CRESPO: You can point to it, Shawn --

HEARING EXAMINER COLLINS: -- keeping --

MS. CRESPO: -- with the pointer.

MR. FARRELL: It's actually right up -- parking is -- you have Beach Villas right here. That's the location of where --

HEARING EXAMINER COLLINS: It's across the street from --

MR. FARRELL: Correct.

HEARING EXAMINER COLLINS: -- the resort entrance?

MR. FARRELL: That's correct, exactly, directly across the street from the --

MS. MONTGOMERY: Okay. Can I ask you a question?

MR. FARRELL: Yes.

HEARING EXAMINER COLLINS: Hang on. Can I just write some notes --

MS. MONTGOMERY: I'm sorry.

HEARING EXAMINER COLLINS: -- because I probably want to listen to what you're going to say.

MS. MONTGOMERY: You're on a roll, please...

HEARING EXAMINER COLLINS: And are these golf

carts that you rent from this facility only available to guests and residents of South Seas, or do you cater to off island --

MR. FARRELL: We do not. We only cater to guests that are in our program, that are renting through us or through Club Captiva. It's like -- Ted just mentioned about not having Captiva Cruises within the gates. It's another opportunity where we reduced and not open to the general public, and they're only contained within our resort community, meaning the resorts that we have and the units that we rent.

HEARING EXAMINER COLLINS: Okay. Thank you for that clarification.

Go ahead.

MS. MONTGOMERY: Okay. So when somebody checks in, do they let you know then that they want to get a golf cart, and do you deliver it to them, or do you make them have to go --

MR. FARRELL: A combination. We do it online through our -- through our booking method, try to get advanced reservations so we know, we prepare for it. We will either valet deliver the cart to the guest; or as they check in at the desk, if there's more than two -- more than one adult in the car, one will get the cart. We'll have it at the front desk available to

them so they can take it back and start enjoying their vacation golf-cart style.

MS. MONTGOMERY: So do you -- is the resort designed to encourage people to use the trolley and the golf carts?

MR. FARRELL: Absolutely.

MS. MONTGOMERY: To reduce vehicular traffic?

MR. FARRELL: That is correct.

MS. MONTGOMERY: And within the proposed MPD, will you allow off-site third parties to rent golf carts to your guests?

MR. FARRELL: We do not. So we do not allow third-party rental carts to come in and occupy any of our parking that we own. So if you are a resort guest, you're coming to stay with us, we confirm that via the reservation process. We'd like you to enjoy the golf cart and the trolley services within the gates; but if you choose a golf cart, you will need to rent that through us.

HEARING EXAMINER COLLINS: Are the hotel restaurants, spa, and water park open beyond 10 p.m.?

MR. FARRELL: In some cases the restaurant, inside.

HEARING EXAMINER COLLINS: So those folks wouldn't be able to get back to their room?

MR. FARRELL: Yeah, unless they're in a golf cart. I mean, it's not uncommon for us -- we have staff so I have bellmen -- the difference -- I showed you that slide of other third-party rental companies, and it's kind of important to understand, we are completely different than what they are. They rent vacation rental products just like us, so that's factual. They are in Captiva, they have a beach, but we are a resort with resort amenities with vacation rental product.

So when somebody goes to the restaurant, and they're Harbourside, and let's say they're staying at the other end of the resort, they will tell their server. A bellman will come down and loop and grab them, or security. We have both Yukon Denalis, we have -- we have different vehicles like you would have at any normal full-service resort to move people around. So it's -- it's rare, but it 100 percent can happen that way, and we'll give them a ride.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: I got distracted from the question. Go ahead.

MR. FARRELL: Okay. Third-party shuttle service. Somebody did mention in there they use the Uber rideshare services that -- you know, once you get to the resort, I think the question was how are you going

to get back out, and that's true. It is very difficult to catch an Uber because you're not in the city. You don't have a lot of people just roaming around Captiva waiting to pick up rides and do that stuff, and we're not that type of service. We're more scheduled services.

So Dolphin Transport, Island Taxi, Captiva Airport Taxi, even though they're smaller, we arrange that. That would go via either our concierge, our front desk team; or if you look at any of the social media, people post up, how did you get there? And they'll post up any number of these different services that provide it. But it is not as simple as the -- mentioned in public comments, to just grab an Uber when you walk outside to go to the -- that's not what you do anyway. You don't plan a trip with five people going to the airport with an Uber. You make a plan with a scheduled kind of setup.

That's how the transport -- you know, it is out there. I mentioned we do not personally run that airport shuttle, but we do coordinate with multiple different companies to do that for our guests.

HEARING EXAMINER COLLINS: Where are your employees parking on the site?

MR. FARRELL: Park up in the front of the resort.

Actually, currently, right now they're on the old employee housing lot that's at the very front of the resort.

HEARING EXAMINER COLLINS: So that's going to be a hotel; right?

MR. FARRELL: I think that's --

HEARING EXAMINER COLLINS: Under the new plan?

MR. FARRELL: Yeah, condos.

HEARING EXAMINER COLLINS: Condo hotel? Where are they going to park under the new plan?

MR. SOLOMON: The lot --

MR. FARRELL: Yeah, we have another lot that's outside of the MPD that's further up the road. So once you go past where the golf carts are, you have the post office, you have a private lot, and then all of a sudden we have another lot there. We refer to it as Shirley's lot. It used to be a --

HEARING EXAMINER COLLINS: Shirley's Spirit of Tomfoolery.

MR. FARRELL: That is 100 percent accurate, thank you. I've heard --

HEARING EXAMINER COLLINS: Yeah, I think my husband --

MR. FARRELL: That story multiple --

HEARING EXAMINER COLLINS: -- told me about that

place.

MR. FARRELL: Yeah, I've heard stories about the place so -- so that would be the lot -- that would be the lot for us to operate out of. We currently -- we had bought a Transit to -- before the trolleys got back after the storm, and we have a Transit that's a 15-passenger that will be utilized to move the employees within the resort.

HEARING EXAMINER COLLINS: So your testimony is the resort owns property outside the resort that is going to serve as employee parking?

MR. FARRELL: At this -- yes.

HEARING EXAMINER COLLINS: That's your testimony, okay.

MR. FARRELL: There are certain employees that do come into the resort. Like I am allowed to pull my car in and park by my office, and I may go up and down -- I do have a cart that I use. But there are employees of ours that do park on the resort, within, but the masses will be in that lot.

(Sotto voce between Mr. Farrell and Mr. Spencer)

MR. FARRELL: Yes, of course the shops up in the front of the resort, we do have parking along the back side, as well, where Starbucks and the Shoppes at South Seas -- we have multiple parking along the back and

underneath the building, as well.

HEARING EXAMINER COLLINS: On the first day of hearing, you had testified that there was an employee shuttle. Is that going to remain available?

MR. FARRELL: The shuttle to -- within the gates or coming out? They both will be --

HEARING EXAMINER COLLINS: Coming off island.

MR. FARRELL: Just to clarify, both of them, yes. And I have a slide today with the shuttle to help show what that is because I know that it was asked in public comment, and I don't want to breeze by it. I understand the importance of it. So I have the report from the company that we partner with to show that it's a very documented situation, that transport and what kind of trips that reduces, and the impact for our team in saying not using their car or mileage on their personal cars and stuff. So we do have that, which is this one.

So we partner with -- it's Lee County and Enterprise that has the commuter program. That is a quarterly report that they provide for us. The report is generated off of information that we collect from our teams as employees get on the shuttle. We track how many team members are on, and they calculate these reports and turn them in to us. This obviously -- I'm

sorry, it was -- if you look at it, it is back on 8/22 of 2022, so just pre the storm, where we were at that point, the employee count at that time, and this slide just shows the forecasting, the potential of the ride share program. We had 296 employees at that time. What they identified was 133 potential employees that would be able to participate in that because in -- in most case scenarios managers don't follow a set schedule, right? Expectation of a manager is you're going to work 50 hours or whatever that number is. You have to stay late if it's busy or come in early, where an hourly team member that's punching a clock can kind of fall into that. So the majority of our team is in that hourly category, and in this case we had 133 van poolers identified; potential vans, 13; and then they do the calculations to the right-hand side, speaking about parking spaces at the resort or for employees, et cetera --

HEARING EXAMINER COLLINS: And this is an outside company that's providing --

MR. FARRELL: That's correct.

HEARING EXAMINER COLLINS: -- the service?

MR. FARRELL: That's correct. Well, we partner with them. We pay for it, right? So we pay --

HEARING EXAMINER COLLINS: I understand, but

you're not having to store the vehicles at your place?

MR. FARRELL: So the vans we will. So an example would be if I came -- we all lived in Cape Coral. So I drive -- I'm the van driver. I'm paid a stipend to drive the van. I pick everybody up either at a location, or I stop in multiple locations to bring people in. I bring it to work. We park that van there. I collect everybody at the end of the day and take everybody home. I hold the van at my house when I have it at home, but we do have a parking spot on property, for that van to be on property during the day. But you have anywhere --

HEARING EXAMINER COLLINS: 13 vans.

MR. FARRELL: 13, yeah. But instead of -- but if it's 100 employees, you don't have 100 cars coming on the property. So, you know --

HEARING EXAMINER COLLINS: Well, I wanted to clarify that you need a spot for 13 vans.

MR. FARRELL: Yes, 100 percent.

And one of the other comments was that we incentivize people to come out to the island by paying their tolls. Everybody on the island, by the way -- any business out on the island pays tolls, and we actually encourage -- we have incentive programs for not just this, if you're a driver of one of the vans,

because we'll pay you a little bit more to do that because we know it benefits everybody. We also do the same thing for carpool. We offer gas cards and things of that nature for people if they carpool with somebody else that they may work with in another department that offsets their expense of driving out to the island.

So the report -- and you'll have a copy of this -- just kind of talks about some of the -- the -- the benefits of this van pool program that we have that comes out to the resort. This is something for the employees, obviously. You know, it's marketing stuff, but it's the data behind it, the -- the time saved for the employees and the actual dollars, which is the -- in my opinion the bigger thing, when you're punching a clock for an hourly position.

This is the actual data that generated. So if you go to the van pool at the very top, the target for us was to -- in the first quarter there -- because we fluctuate, obviously, on occupancy. So as we add more hourly team members and that availability out there, the first quarter we have five vans operating -- we have six vans. We're targeting five. We had six that operated. So you can see the gray to the green there. And then second quarter we grew it up to ten vans that were out into the community and operating.

When you go down, you can kind of see the participation by number of team members that were on those vans. So in that first quarter, we had 77 employees utilizing those -- those vans to get into work; and then as we expand it out to 10, we had 106 employees utilizing that service to get to work.

And, obviously, as our occupancy or that need for more staff members, it grows out. So our vans go out to -- everywhere from Cape Coral to North Fort Myers to Lehigh, to -- crazy, but, I mean, we had vans all the way to Immokalee. At one point I had three vans going to Immokalee. So it's a really great program if you are somebody who is making 15 -- we pay higher now, due to our ownership doing that, but we -- at $18 an hour, and you don't have to buy a car, necessarily, and you can catch a ride in, it's a cool program. I know that's not the means (sic) of this hearing, but it is about reducing the number of vehicles that are -- that are coming out to the property on a daily basis.

So this slide, this is the quarterly that they provide.

MS. MONTGOMERY: Shawn, let me ask you a question. I think the Hearing Examiner asked you about the off-site shuttles, but I got a sense, when you answered the question initially, that you have vehicles on-site

to move employees around --

MR. FARRELL: That is correct.

MS. MONTGOMERY: -- is that correct?

MR. FARRELL: We also -- because of that location at the front of the resort where we're going to have the majority of our staff parking there on Shirley's lot, we will have an internal shuttle that will move people around. I mean, they start at the front -- we also have basically where you have the time clock, you punch in, you get your keys. If you are a team member that operates a vehicle on the property, let's say you work in landscaping, and you drive a golf cart. You and your teammate, you'll pick that up where you park your car, and that will be your transport for the day. If you're somebody that doesn't have a vehicle assigned to them for their -- their daily duties, you'll get picked up on that either by your supervisor or by that trolley/tram -- it's a Transit currently -- to be moved throughout the resort or to wherever your home base -- if you're going to housekeeping, so you do your -- and then be dispersed out from there via your teams.

MS. MONTGOMERY: And so the 13 vans, they aren't parked within the MPD. They're parked off-site.

MR. FARRELL: They're going to be parked at Shirley's lot, correct.

MS. MONTGOMERY: Okay. Are there occasions or have there been occasions when there's a sudden emergency or something where you have had to transport guests or employees off-site with a shuttle?

MR. FARRELL: Of course.

MS. MONTGOMERY: So that's something, if something happens and you weren't expecting it, you would make sure --

MR. FARRELL: Yeah. It's the same thing with your question on after hours. The trolley service is discontinued. We have Yukon Denalis, we have different vehicles that if we needed to transport -- and in this case, we have. We've had to have people go for medical, or, you know, I got a sick kid, and I've got to go to CVS. I've got to go in town to get something that we don't have available. So, yes.

MS. MONTGOMERY: Okay. You sat through almost all the days of testimony, haven't you?

MR. FARRELL: I did.

HEARING EXAMINER COLLINS: He said with enthusiasm.

MR. FARRELL: I did.

MS. MONTGOMERY: Time we'll never get back.

I believe that there was a lady who testified against the project because of the impact on her

business. I believe she was a golf cart competitor.

MR. FARRELL: She is.

MS. MONTGOMERY: So I take it she's upset that you are not going to allow her to sell golf carts within your resort.

MR. FARRELL: Yes. I met with her and her husband prior to the announcement that we were doing that and worked through that. So it's -- I think for their business model, they're frustrated because customers are going back to them, why I can't rent your cart and -- you know, there's a learning curve with some of the things.

MS. MONTGOMERY: Okay --

MR. FARRELL: Yes, is the answer.

MR. MENDEZ: -- thank you.

MR. FARRELL: Sorry.

Okay. Any other --

HEARING EXAMINER COLLINS: Thank you, this was very helpful. I appreciate it.

MS. MONTGOMERY: Did you want to take a break before utilities, or do you want to charge in?

(Sotto voce between Hearing Examiner and reporter)

HEARING EXAMINER COLLINS: Okay, 10 minutes.

(Recess from 10:25 a.m. to 10:38 a.m.)

HEARING EXAMINER COLLINS: Back on the record.

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MS. CRESPO: Thank you. Alexis Crespo with RVi representing the Applicant.

Carl Barraco is the next speaker to start addressing utilities; but based on some of the questions and comments from you this morning, I wanted to just pause and give you some testimony on how we arrived at the current entitlement scenario under the ADD, particularly discussing the marina slips, the 620 marina slips and the 5 acres of commercial.

I felt like I didn't -- I wasn't clear enough that the ADD, both the written document, the plan, are very explicit that there's a 5-acre pot of commercial, and there's a separate pot of marina area. So those are exclusive entitlements in the ADD. The marina does not have to fit in the 5 acres. They are separate.

And that's evidenced by the zoning map. Adam has the LEEPA pulled up with the zoning layer to show those CM areas. My office's GIS map shows the southern marina as RM-2. They are, in fact, both CM. The CM zoning totals 10 acres. So the commercial marina acreage allocated by the zoning map, by the administrative interpretation, is a total of 10 acres, and then we have our separate pot of 5 acres of commercial. So that's where we arrived at the 50,000 square foot of commercial sitting on the 5 acres, and

the 620 slips allowed by the Manatee Protection Plan and allowed by the zoning and allowed by the ADD.

Now --

HEARING EXAMINER COLLINS: It's clearly not capable of being developed.

MS. CRESPO: And this is where -- Mr. Hans Wilson is going to come up and speak to that --

HEARING EXAMINER COLLINS: Okay.

MS. CRESPO: -- because he is the preeminent expert in --

HEARING EXAMINER COLLINS: He is --

MS. CRESPO: -- marina permitting.

HEARING EXAMINER COLLINS: -- the next witness?

MS. CRESPO: He is going to supplement this with a discussion on what can fit.

MR. WILSON: I don't know about preeminent. My name is Hans Wilson, and I've been doing permitting for 40 years though so I've got some scars to show for it.

HEARING EXAMINER COLLINS: But who's counting?

MR. WILSON: The 620-slip count is what was developed from the County's Manatee Protection Plan. That's a right, a vested right that comes with the nature of the shoreline calculation and the Manatee Protection Plan.

We currently have 136 slips that are entitled via

permitting. We have concept plans for an expansion for 63 additional slips, and that's all internal to the waterways that are on the site, basically expansions in the main marina.

The areas that we could expand to that we have not considered at the time is the area that's out in front of the key dock and the golf -- the pool area. That whole section of Pine Island Sound -- which is open water, it's on sovereign state land. We have, by Chapter 18-20 of the Florida Administrative Code, the ability to go as much as 500 feet out into the waterbody. So if we wanted to put -- apply for permits to put in additional wet slips in that location, that's something that we -- that's perfectly acceptable for us to apply for. So -- but we haven't considered that because we're -- there's so much under consideration at the point in time that we are now that an expansion that we're looking at is really fairly minimal.

There's also the option of dry storage. So if they decided to do an internal boat club or some sort of servicing of guests that are coming to the resort, we could put boats in dry storage, as well.

HEARING EXAMINER COLLINS: Right, but my rub was, when relying on the trips generated -- transportation trips generated from 620 slips, that that wasn't

realistic for me to consider because, A, you're going to have to do dry boat storage; B, I'm assuming it's open to the public now, right?

MR. WILSON: (Shakes head.)

HEARING EXAMINER COLLINS: No? It's under the existing ADD -- this is the assumption under the existing ADD. So the trip generation is assuming external usage of all the amenities, the commercial, the marina, and everything. So we're not only talking about room on the site for dry storage, but also parking because we're having people come to South Seas now to make use of the marina. So whether they have a boat in a wet slip or a dry slip, you're going to have to park them on the site. So I'm saying like how is it realistic for me to assume everything else plus that?

MR. WILSON: Because it would all be -- it would be contained internally. In other words, if you were to come and want to take a boat out of the dry storage, you'd have to stay in the resort. You'd have to be a guest in the resort.

HEARING EXAMINER COLLINS: Not under the existing approvals though.

MR. WILSON: No, I'm just saying if there was an expansion.

HEARING EXAMINER COLLINS: But we're comparing

what is capable versus what is proposed.

MS. MONTGOMERY: So I think Hans is only looking at it from what -- from a dock standpoint.

HEARING EXAMINER COLLINS: I acknowledge that. That's --

MR. WILSON: Yeah, it's an entitlement that runs with the land.

HEARING EXAMINER COLLINS: Right.

MR. WILSON: How we apply it, it's more likely what will happen is those -- those slips would be transferred offsite as slip credits.

HEARING EXAMINER COLLINS: I think --

MR. WILSON: That's a more --

HEARING EXAMINER COLLINS: -- my concern --

MR. WILSON: -- practical --

HEARING EXAMINER COLLINS: -- with it was misinterpreted. It has nothing to do with whether it's possible, can it be done, you know, whether you're entitled to it. Assuming that's true, then I'm going back to, well, this is going to take space -- dry slips, parking, et cetera. Now we're starting to eat into what else could be developed on the site. So the --

MR. WILSON: Yes.

HEARING EXAMINER COLLINS: -- trip generation --

MS. MONTGOMERY: Okay, let's --

HEARING EXAMINER COLLINS: -- is not accurate. That's --

MS. MONTGOMERY: How about we try it this way?

Hans, how many slips are there now? And acknowledging that you have to replace some that were damaged so --

MR. WILSON: There's -- there's regulatory entitlements for 136 slips, wet slips.

MS. MONTGOMERY: And I think you've indicated that you would intend to add some additional slips. So how many would the next --

MR. WILSON: The next -- the next phase we're currently working on is 63.

HEARING EXAMINER COLLINS: 63 new?

MR. WILSON: 63 new, yes. That's internal to the (unintelligible) waterways, not subject to lease with the State, and not in the aquatic preserve.

MS. MONTGOMERY: So I know Hans isn't a traffic expert, but I think the difference would be -- the delta is that total number of slips, strictly internal, and that number of slips open and available to the public to lease.

HEARING EXAMINER COLLINS: (Nods head.)

MR. WILSON: Does that satisfy everybody?

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MS. MONTGOMERY: Does that --

MR. WILSON: Have I answered the question?

HEARING EXAMINER COLLINS: That's fine.

MS. MONTGOMERY: Okay. We didn't get you there?

HEARING EXAMINER COLLINS: That's fine.

MS. MONTGOMERY: Okay.

MR. WILSON: Okay.

HEARING EXAMINER COLLINS: You can sit.

MR. WILSON: All right.

MR. BARRACO: Good morning, Madam Hearing Examiner. My name is Carl Barraco, for the record, and I'm first going to go over utilities this morning.

In starting, I'd like to say that my presentation this morning is going to be a little bit different than usually what I'm doing at this point in the process because I generally am writing down questions from public comment. At this particular time there really were no questions, but there was some misinformation I'd like to correct. So that's where I'm going to spend the time.

And both these ideas have to do with estimated utility flows, specifically estimated sanitary sewer flows.

Misconception number one, in the public they referenced -- someone referenced the 2015 FGUA capacity

report, and insinuated that maybe those flows should be used to estimate our flows, but there are some problems with that:

First, that report was done for a different purpose. It was done for capacity of the plant. The report itself said it was conservative so it wouldn't be appropriate to apply those.

More importantly, the old flows were based upon old fixtures, and now we're using new fixtures in our designs.

So in 2017 the EPA came out with the Water Efficiency Management Guide, and in 1992 they established maximum flow rates for flush volumes. That was in 1992, so everything before that was at these higher flows. For instance, pre-1994 they would have been 3.5 to 5 gallons per flush. Currently, the new technology is using 1.6 gallons per flush. So in and of itself, that's a pretty significant reduction in the way we use water. So that would show up in the difference between what water uses were used in the 2015 study, and what we're estimating in the future.

The bottom line, in my opinion, there is no correlation between the flows in the 2015 capacity report and future estimated flows; and the 2015 report is neither relevant nor appropriate to use as the basis

of estimating sanitary flows in this case.

Misconception number two. There was significant reference to the Florida Administrative Code -- excuse me -- in estimating sewer flows, specifically, referenced Chapter 62-6. But the problem with that is that section is primarily concerned with designing on-site septic systems, not really intended for central sewer systems like we have here. And there was a lot of discussion about using the number of bedrooms in each unit. The problem with that is when you have a central system, we really don't know how many bedrooms are going to be in each unit; but the way this is used with septic systems, you definitely know that because each septic system is associated with a specific home. That's why it's much more detailed. And further, because you have one septic system with each home, there really is no cushion in that system. They have to be more conservative.

So that was the misconception in using the Florida Administrative Code and trying to establish flows in multi-family units, what we're doing.

Rather than that, though, FGUA has criteria, and I'm going to go -- I borrowed the slide from the original presentation just to make sure you remember that FGUA operates in 14 counties, and within Lee

County they have three different systems. And that's important because it establishes and supports FGUA's position on this. And this is their general notes, and they basically say that they will use the technical specifications of the County that they're operating in. In this particular case, they're in Lee County, so we are to use Lee County Utilities specifications.

Before I go any further, I think it's important to look at Lee County Utilities history:

Established in 1968.

Their manual does provide a source for multi-family flows, but they don't provide a source for special types of development, and I'll get into that in just a minute.

So at this point -- and I have to make a correction, and I realized this this morning when I was going through this. The attachment there is for potable water systems. I intended that to be sanitary systems. So if I can give you that?

HEARING EXAMINER COLLINS: Okay.

(Applicant Exhibit 22 submitted.)

MR. BARRACO: So what I just handed you is Section 3 from the Lee County Utilities system designs, and it establishes a multi-family residence at 160 gallons per day per residence. That is what we used to

calculate our sanitary flows per multi-family.

So this is also from Lee County Utilities talking about -- I lost my place here -- yeah -- the special types of developments from Lee County, and then they do reference the Florida Administrative Code. So in Lee County Utilities, when you have a single-family or multi-family, they have specific uses. When they're special uses like this, resort hotel, they do reference you back to Florida Administrative Code. And that puts -- the Florida Administrative Code puts the flows for resort hotels at 200 gallons per day. Again, that's what we used to estimate our sanitary flows for this application.

I hope that clears up the basis that was used for estimating sanitary flows and requesting a letter of availability from FGUA.

Estimated sanitary flows and potable water demands were estimated based upon Lee County Utilities design guidelines, and are the basis for each letter of availability, which were both accepted by IWA and FGUA. Again, IWA and FGUA did review the future demand and flow associated with this zoning, and each has acknowledged that they have capacity for application.

If you have any questions, I'd be happy to answer them at this time.

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HEARING EXAMINER COLLINS: I don't have questions, thank you.

MS. MONTGOMERY: I do though.

Mr. Barraco, how long have you been an engineer registered in the state of Florida? Not to age you, but there's a reason.

MR. BARRACO: Approximately as much as Mr. Wilson, about 40 years.

MS. MONTGOMERY: And during that time, about how many times -- this is an approximate -- have you or your company submitted for letters of availability?

MR. BARRACO: I would say hundreds of times.

MS. MONTGOMERY: And how many times have you done an analysis to determine water and sewer demand?

MR. BARRACO: Hundreds of times.

MS. MONTGOMERY: And the 2015 report that was provided by Mr. Evans as an exhibit, he offered opinions on both that and the Florida Administrative Code, but he doesn't have an engineering degree; and other than he has done reviews and worked for the City of Sanibel, he didn't identify any expertise that he had relative to this.

So because you've done hundreds of submittals, have you become intimately and abundantly aware of what the rules are, and what can affect those calculations?

MR. BARRACO: Yes, I have. And to elaborate on that, if I tried to do an estimate based upon the Florida Administrative Code for single-family homes and multi-family homes, I don't think it would at all be considered by Lee County Utilities or FGUA, for that matter.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: Thank you.

MR. BARRACO: Thank you.

MR. VALENSTEIN: Thank you, Madam Examiner. My name is Noah Valenstein. You've got a copy of my résumé already in the book provided to you by Alexis.

Just as background, I had the privilege of serving as Secretary for the Department of Environmental Protection both for Governor DeSantis and Governor Scott, and also served as the chief resiliency officer while I was Secretary of DEP for the State of Florida for Governor DeSantis. I, prior to that, have served in other environmental roles, such as head of a Water Management District in Florida and adviser to the governor.

And I just wanted to follow up on Carl -- if you've got the clicker --

HEARING EXAMINER COLLINS: So what is your background?

Is he a planner, an engineer? What is --

MR. VALENSTEIN: I'm an --

HEARING EXAMINER COLLINS: -- he exactly?

MR. VALENSTEIN: -- I'm an attorney and then a former public official.

HEARING EXAMINER COLLINS: Okay, thank you.

MR. VALENSTEIN: Just --

HEARING EXAMINER COLLINS: I'm sorry, I haven't had you testify before me, and I was trying to put you into a description. That's all.

MR. VALENSTEIN: Sure. And so I currently, after stepping down from public service, have a consulting firm, Brightwater Strategies Group, and so we work with high-end development, agricultural, environmental investment funds, and other advising on policy, external affairs, and working with development. And then also serve on a number of environmental boards and education institutes in Florida.

HEARING EXAMINER COLLINS: Okay, you may proceed.

MR. VALENSTEIN: Okay, thank you.

So just to follow up on Mr. Barraco's comments, looking at the wastewater treatment plant, you know, during my time as secretary of DEP, Florida -- sorry, the Florida Governmental Utility Authority had a very good reputation for capacity to maintain its plants and

work throughout Florida. I wanted to highlight that it was recently provided with a $7 million award. So despite having the capacity to maintain the plant, and the plant -- at least on my tour -- appearing to be in very good working order, they're looking forward prospectively and worked to receive a grant from the State of Florida to make improvements to that. The State has been very focused on reducing septic and improving wastewater facilities throughout Florida.

And I'm happy to provide just the Governor's announcement of that grant, and then DEP information on that grant should you wish it.

HEARING EXAMINER COLLINS: So this specific grant is targeted for the South Seas Island Resort facility?

MR. VALENSTEIN: This is targeted as a grant to FGUA, to make improvements to that wastewater facility, so that it could even further reduce nutrients from that.

So as I was mentioning, DEP has been very interested and the Legislature has been very interested in reducing nutrients from wastewater facilities, specifically septic, but also being able to increase the capacity of wastewater facilities so that they could take on septic, right, so that folks could, instead of having a septic tank, connect to a

wastewater treatment plant.

And so in the fiscal year 2023/2024 -- I apologize for that typo -- the State provided a Caloosahatchee Watershed grant. This was the first year that this grant was available, and one of six awards went to FGUA, $7 million. And FGUA committed to proceed with the most cost-effective approach to removing nutrients from the wastewater treatment facility, basically improving the quality of the facility, as well as including an additional injection well to give them even more flexibility about managing that facility.

In general, I would mention that the Florida Department of Environmental Protection, under Chapter 403 of the Florida Statutes, has the regulatory authority and supervision over wastewater treatment plants. They've got strong oversight, wonderful staff, work for compliance but also assistance to make sure the wastewater treatment plant is operating well.

I mention that as a response to a public comment referring to a warning letter from DEP to FGUA on February 5th of 2025. At least our review of that warning letter, did not see anything that would conflict with the Utilities' statement of availability; but what we did was sort of go through and did a public review of the DEP's compliance assistance and

supervision for wastewater treatment plants on the island, right, to sort of look at their engagement there.

That's all public record. They have a wonderful online permitting system where you can go in and look at the wastewater treatment facilities. So the two facilities we had were the FGUA facility on Captiva Island, and then the Sanibel Donax facility. And in doing that, and looking sort of over the past couple of years, from 2023 to 2025, saw more than 30 reports of various spills and leaks and sanitary sewer overflows. It appeared about 24 were occurring at the Donax wastewater treatment plant, and about 6 at FGUA's SSIR wastewater treatment plant.

I'll mention and can provide just a sample of some of those letters, but they sort of matched up. There is a February 3rd, 2025, compliance assistance letter for Donax that matches up with a similar time frame for the compliance letter that was mentioned in prior -- previous testimony.

And so it looked at storm events; there appeared to be similar compliance assistance offers to both wastewater treatment plants. Sort of our takeaway from it was that DEP is engaged; they're providing oversight, compliance assistance, and then providing

grant funds to improve plants, to have sort of a continuous improvement of operations. And everything we saw was that FGUA is a very good operator and are well situated with their own funds for maintenance, but also State assistance.

And so with that, Madam Hearing Examiner, I would offer the grant award from the Governor's website, the DEP informational on the grant for FGUA, and then a sampling of warning letters, just looking over the last couple years from the island: a February 3rd to Donax, a July 25th to Donax, a November 27th letter for the same plant, and then a February 23rd for the same plant.

(Applicant Exhibit 25 submitted.)

MR. VALENSTEIN: Sorry for having them loose.

HEARING EXAMINER COLLINS: All right. So these go together?

MR. VALENSTEIN: Yes. This is the second, that shows the location; and then the list, this is all taken from the department website. And then here is the sample of just four letters.

(Applicant Exhibit 26 and 27 submitted.)

HEARING EXAMINER COLLINS: All right. Those have been marked as exhibits.

MS. MONTGOMERY: Thank you.

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Mr. Valenstein, I'm going to show you a document. Do you recognize that document?

MR. VALENSTEIN: It is FGUA notice of permit issuance.

MS. MONTGOMERY: And can you tell me, who is the Secretary noted up in the upper right-hand corner?

MR. VALENSTEIN: That would be myself. That was back in March 2021.

MS. MONTGOMERY: And can I ask you to flip to page 8 of that permit.

MR. VALENSTEIN: You have to help me with the page number -- there we go.

MS. MONTGOMERY: And page 9, can you take a look at that.

MR. VALENSTEIN: (Complies.)

MS. MONTGOMERY: So does that purport to be the operational requirements imposed by the Department and yourself on the FGUA permit?

MR. VALENSTEIN: Correct.

MS. MONTGOMERY: And do those -- some of those conditions purport to have water quality requirements and restrictions?

MR. VALENSTEIN: Correct.

MS. MONTGOMERY: And would you -- is DEP responsible for ensuring that those water quality

standards are met by FGUA?

MR. VALENSTEIN: Yes.

MS. MONTGOMERY: Thank you. I'm going to introduce that into evidence.

MR. VALENSTEIN: Thank you.

(Applicant Exhibit 21 submitted.)

MR. VALENSTEIN: No questions? Thank you.

HEARING EXAMINER COLLINS: And this is the permit issued to the FGUA facility on the MPD?

MS. MONTGOMERY: Yes, this is the March 2021 permit issued by DEP to FGUA. We'll come back to that later. There will be more testimony on that to help answer some of your questions.

(Sotto voce between Hearing Examiner and reporter)

MS. OLSON: Good morning, Cathy Olson for the record.

Do you want to move forward, or do you want me to --

(Discussion at lectern)

MS. OLSON: All right. I'm going to go over some comments based on testimony we heard during the public portion.

As a reminder, all of the proposed development will be in already disturbed areas of the property. Nothing, no intact native communities will be disturbed

by this project.

MS. MONTGOMERY: So let me stop you right there. There were numerous people who said we're going to impact, you know, animals and vegetation, and we're going to be creating additional impacts. So based on what you just said, all those statements are not true?

MS. OLSON: All of the development is going to be within areas that have previously been disturbed, correct.

MS. MONTGOMERY: Okay.

MS. OLSON: The existing mangrove preserve, which is roughly 40 acres, is -- will be -- remain intact. The only thing that will happen is some trimming along the road right-of-way, around buildings, et cetera. No large-scale destruction of the mangroves other than perhaps a boardwalk in the future.

All of this mangrove is providing habitat for listed species, such as wading birds, as well as migratory songbirds that are here.

Additionally, they have crossing signs, and educational signs will be installed along the road to educate the public about their driving -- how their driving impacts wildlife, as well as fast facts about the wildlife that are on Sanibel and Captiva.

And further, all of the South Seas golf cart

rentals have a geofence, which prevents them from going onto sensitive areas such as the beach.

All of these things, with an asterisk, exceed Code requirements.

HEARING EXAMINER COLLINS: And are these going to be conditions of approval?

MS. OLSON: These are things that we're committing to.

HEARING EXAMINER COLLINS: Okay.

MS. CRESPO: They are in the conditions.

MS. OLSON: They are in the conditions.

MS. MONTGOMERY: The proposed conditions --

HEARING EXAMINER COLLINS: The revised conditions --

MS. MONTGOMERY: Yeah.

HEARING EXAMINER COLLINS: Okay. Just give me a minute so I can look at this.

Okay. So explain this fence, this geofence. What is that?

MS. OLSON: It's the sensor on the golf cart that makes it so that you can't travel through certain areas. So you can't drive onto the beach; you can't drive probably off the property; is that correct?

MR. SPENCER: (Nods head.)

MS. OLSON: It's kind of like --

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MR. SOLOMON: GPS.

MS. OLSON: Yeah.

MS. MONTGOMERY: It's like the golf carts you can't take -- or not golf carts, shopping carts you can't --

MS. OLSON: Right, that's a good analogy.

MS. MONTGOMERY: If you need more on that, Shawn can explain it.

HEARING EXAMINER COLLINS: No, that's all right. I understand. So it disengages the golf cart so it can't --

MS. OLSON: Correct.

HEARING EXAMINER COLLINS: -- proceed into an area that's --

MS. OLSON: For all intents and purposes, yeah.

All right, sea turtles:

Tinted turtle glass will be installed on all new construction post MPD, including windows that are not directly visible from the beach. That exceeds Code requirements. Usually it's just -- the Code requires windows that are facing the beach, and the Applicant is going beyond that.

Additionally, when people check in, they are reminded to close the curtains. That gives an extra buffer for -- for light from leaving the -- the rooms.

All exterior lights on the new construction will be sea turtle compliant. So, again, not just the ones facing the beach but throughout the -- the development.

Additionally, South Seas staff remove umbrellas, beach chairs, leftover coolers, et cetera, during sea turtle nesting season.

HEARING EXAMINER COLLINS: You mean at night?

MS. OLSON: Correct, before the nesting sea turtles come ashore or the hatchlings go to sea.

Additional dune plantings will help with any light spill onto the beach, and all of the parking areas will be enclosed with buffers or buildings to limit light pollution onto the beach.

The individual turtle nests are monitored and marked by Sanibel Captiva Conservation Foundation employees, and they -- the marking helps with sea turtle nest disturbance, preventing.

HEARING EXAMINER COLLINS: Regarding the new construction lighting will be sea turtle compliant, are there existing buildings within the MPD's boundaries that are beachfront then that will have lighting that's not compliant?

MS. OLSON: Not beachfront, no. I believe the only one is the restaurant, the small restaurant?

MR. SPENCER: It has -- yeah.

MS. OLSON: It does have turtle compliant --

MR. SPENCER: Yeah.

HEARING EXAMINER COLLINS: Okay. So there's going to be sea turtle compliant lighting throughout the resort?

MS. OLSON: I believe that's the case, yes.

HEARING EXAMINER COLLINS: In beachfront areas, obviously.

MR. SPENCER: Correct.

MS. MONTGOMERY: Right, but there's a proposed condition to that effect.

HEARING EXAMINER COLLINS: Okay, thank you for the clarification.

MS. OLSON: Shorebird conservation:

The tinted turtle glass will be installed where we said they would be installed previously.

Exterior lights also will not -- lighting will not reach the beach.

Dogs are not allowed on the beach, per the LDC, and we will go further with putting "no unleashed dogs on the beach" signs.

And, again, employees from Sanibel Captiva Conservation Foundation mark shorebird nests, if there are any.

As far as migratory birds go, the LDC does not

cover migratory birds, but this development will have exterior lights that are shielded. That will prevent the nighttime migratory birds from becoming trapped in the light and perishing.

Additionally, turtle glass also will prevent light pollution. That will help with that, as well.

And, again, just the sea turtle lights will help prevent -- and the curtains will prevent light from going out of the individual rooms.

All these things combined make it so that migratory birds can safely pass through the area at night.

And, again, none of the migratory bird condition -- or none of these things are required by the Code. Everything in here is voluntary.

And that's it.

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: Wait, before you leave --

MS. OLSON: Sorry, Neale.

MS. MONTGOMERY: -- I just want to -- slide 46, third bullet, it says, "Exterior lights on all new construction DOs post MPD will be sea turtle compliant." I just want to kind of go back to that.

So under the County's LDC, every building would not have to have --

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MS. OLSON: That's true.

MS. MONTGOMERY: -- the lights -- so anything that's not on the beach, under the LDC, wouldn't have to have --

MS. OLSON: That's correct.

MS. MONTGOMERY: And we're going to be providing that.

MS. OLSON: That's correct.

MS. MONTGOMERY: So that's --

MS. OLSON: Going above the Code.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: I was wondering if I was going to see you during this hearing.

MR. BROWN: I'm here, and here is a copy of my résumé. I have one for the court reporter, if I need to, and I also provided her one of my business cards.

(Applicant Exhibit 7 submitted.)

MS. MONTGOMERY: Mr. Brown, I know you provided your résumé; but if you could, just for the record, give a highlight of your expertise and experience.

MR. BROWN: I've been practicing as a professional geologist in the state of Florida for over 38 years. My total experience now is approaching 42 years, 42 and a half years in Southwest Florida; so I have a lot of experience. Through that entire time frame, I've been

involved in both the collection of water quality samples, laboratory analysis of water quality samples, the review of water quality, and then using that for data -- for permit applications and engagements with regulatory agencies. So I have a lot of permitting history, as well. I've permitted -- I do water use permitting, ERP permitting, and a lot of different aspects predominantly regarding Water Management Districts, but we also do -- my company performs DEP permitting, as well as Army Corps permitting. So I have a lot of permitting in my background and -- and a lot of water quality work.

MS. MONTGOMERY: Thank you.

MR. BROWN: All right.

Well, again, my name is David Brown. I'm a certified professional geologist in the state of Florida; and I'm the national practice lead for my company RESPEC Company, LLC; and I'm the national practice lead in hydrogeology. And this morning I'm going to go over the characterization of ground and surface water resources, and hopefully provide some clarification of some of the things that were testified to earlier.

First off, at the very beginning of this -- I'm going to start with the Lee Plan, but the terms

"reclaimed water" and "reuse water" are often used interchangeably, all right? So typically the more correct term is reclaimed water because reuse -- if I irrigated a farm field, and it ran down to the bottom of the field, and there was a lake, and I picked it up and brought it back up, that would be reuse, and it had nothing to do with reclaimed. But those terms are used interchangeably; and, in fact, in the Lee Plan, they use the term "reuse." So -- so, please, if I -- and you'll see some of the inconsistencies with those definitions as I go through some of the -- my slides.

So, again, reuse water, okay, defined by the Lee Plan is treated wastewater, which, as a commodity, is sold to various users for agricultural irrigation, grounds management -- institutional lawns, golf courses in this case -- or industrial uses. Sometimes it's used purely for industrial processes.

Looking at the Lee Plan under Standard 4.1.3, under reuse, any development that requires a development order on a property that is adjacent to a public reuse infrastructure -- i.e., pipelines and pipeline network -- with sufficient capacity, must connect to the reuse system for irrigation needs.

Policy 13.8.9, for private recreational facilities -- i.e., golf courses or similar -- located

outside of the depicted wellfield protection zone -- which we don't have any wellfield protection zones here -- reuse water, where available, will be utilized for irrigation. And that's also codified in an ordinance.

And Policy 61.1.6, when and where available, reuse water should be the first option in meeting irrigation needs of a development. Where reuse water is not available, surface water or other low-quality groundwater will be used for irrigation.

That little image is going to mess with all the slides, most likely, but -- but anyway, it's the -- it's the number one choice, if available.

So now kind of backing out and starting with Chapter 373 Florida Statutes regarding water resources:

373.250, reuse of reclaimed water. There you see that discontinuity in terms. The encouragement and promotion of water conservation and reuse of reclaimed water as defined by the Department -- and that's the Department of Environmental Protection -- and used in this chapter are State objectives and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment plants, permitted and operated under a reuse program approved by the Florida Department of

Environmental Protection, is environmentally acceptable and not a threat to public health and safety.

Now I'm kind of zooming in to more specific --

HEARING EXAMINER COLLINS: And where was that from? That's from the statute?

MR. BROWN: That's from the statute --

HEARING EXAMINER COLLINS: Okay.

MR. BROWN: Yeah, Chapter 373.

Now looking at the Water Use Permit Applicant's Handbook, South Seas has a water use permit that was issued by the South Florida Water Management District. So all of us that do water use permitting, you have to go by the Applicant's Handbook for water use permit applications. This one, the one that I'm pulling from, is from June 13th, 2022.

And under 2.2.4, reclaimed water reuse criteria -- again, you see that terminology -- the encouragement and promotion of water conservation and the use of reclaimed water are State objectives and considered to be in the public interest. So they're kind of re-echoing Chapter 373 right there.

Environmental feasibility, reclaimed water reuse is considered environmentally feasible if the Department has permitted the reuse facility that will provide the reclaimed water supply -- again, kind of

echoing what was in Chapter 373 --

THE REPORTER: Okay, slow down.

MR. BROWN: Oh, I'm sorry. She always -- sorry.

Reclaimed water use is considered technically feasible if the reclaimed water is available at the site of the proposed use to meet all or part of the Applicant's needs as defined by their application.

So what does it mean by that? The Water Management District will only issue a certain amount of water for a particular use, and they analyze that. And so they're not going to give you any more, if you're going to use reuse water or reclaimed water, than they would if you used 100 percent groundwater or surface water. So it's all based on that reasonable and beneficial need so...

South Seas Resort, there's a specific water use permit. You can see the permit number that I have there, 36-00109-W, and the expiration date is May 19th of 2036. It's a 20-year permit. They obviously can renew it prior to that, up to one year before that, but the permit is good until 2036.

And then South Florida Water Management District has a Staff Report, which is part of the permit, okay. And it says, direct quote, "Irrigation for the project area is supplied by three (3) wells that are finished

into the Mid-Hawthorn aquifer." That's the intermediate aquifer system. "Reclaimed water is also used for irrigation."

And they also say, the reclaimed water supply is delivered to an elevated storage tank from the South Seas Wastewater Treatment Plant. South Seas Resort routes the water from the tank into their main irrigation supply line, based on their irrigation schedule, and pumps groundwater from one of their wells, Well MH, to the tank, depending on the operating tank level of 18 feet. At 18 feet the well pump is turned off automatically -- has a float switch -- so the storage tank is approximately half full and always able to receive reclaimed water.

So this tank -- it comes out of the wastewater plant, it goes to this tank, and this tank is also supplied with a groundwater well. And so the District wants you to maximize use of reclaimed water; but if there's a shortfall or they needed a certain schedule, they have the ability to add groundwater into that tank and mix it with the reclaimed before it even gets used for irrigation.

You were provided earlier a copy of the wastewater permit for South Seas. First off, this permit is only issued every five years. It has to go through the

conditions of issuance every five years to get that plant -- to recertify that plant.

It's an existing 264,000-gallon-per-day, or 0.264-million-gallon-per-day, average flow. And the way they -- the terminology is R-001 is a reuse system that consists of spray irrigation.

And if you look at -- I can do this. How do you tip that little pointer?

MS. CRESPO: That guy.

MR. BROWN: Oh, that guy, okay.

Down here, this permit -- so we had the -- the water use permit recognizes the use of both groundwater and reuse water or reclaimed water. This permit also recognizes that there's the ability for the irrigation supply to be supplemented by the use of groundwater. So both of these permits are kind of mirror images of one another, and they basically are coordinated together.

So let's talk a little bit about the reuse water itself, and this is directly out of the permit that you were provided earlier. A DEP wastewater permit requires that FGUA perform extensive testing of the reclaimed water prior to its use for irrigation, including monthly testing of total phosphorus and total nitrogen.

You can see some of the other criteria that they go through. This water is chlorinated before it gets used, but they're looking at flows, turbidity, pH, bacteria. But specifically in regards to nutrients, they're looking at total phosphorus and total nitrogen, and those are graph samples, and those are required to be looked at on a very frequent basis.

So I made a little graphic to try to explain -- so we know under the -- the water quality is being monitored --

HEARING EXAMINER COLLINS: How frequently is it tested?

MR. BROWN: Monthly, and it's in the -- it's in the report -- in the permit.

So I talked about -- I testified earlier that both the DEP permit and the Water Management permit recognized that groundwater can be used to supplement the reclaimed water. And so what I did was I went into the DEP oculus -- that's their e-permitting portal that you can look in -- a public portal you can go into. I also looked into the South Florida Water Management District permitting portal and said, okay, how often are they adding groundwater to that tank on a monthly basis?

And so I looked at 18 months of data, okay, and on

average about 20 percent of the water in that tank is groundwater. Some months it's less; one month it was over 90 percent. So it just depends on the demand and timing. But that represents another form of treatment to this water of sorts because we're adding groundwater and diluting it at that stage in the tank before it even gets used for -- for irrigation. And, again, on average about 20 percent.

So then what about when it gets -- it gets used for irrigation? Okay. First off, as I testified earlier, there's three groundwater wells -- I'm sorry, there's three monitor wells that are monitoring the use of this water at the golf course -- and I'm sorry, I probably just confused you. There's three supply wells, and there's three monitor wells. They're two different things.

HEARING EXAMINER COLLINS: The supply wells is what's drawing from the Mid-Hawthorn.

MR. BROWN: Correct, correct. And the monitor wells are only 15-foot deep, and they're monitoring the surficial aquifer system.

And those monitor wells -- there's three monitor wells, and what they represent is a background sample -- and that is this well that is right here. It's SSP-3 right here. Notice it's nowhere near the

irrigation area of the golf course. It's outside the influence completely of the wastewater treatment plant. So that's the background water quality well.

And they also have what's called an intermediate well that is within the area where the reclaimed water is being used; and, more importantly, they have a compliance monitor well that is used to -- that's outside of the irrigated area and downgradient, to look at is there any influence from the use of reclaimed water at that facility, on that area. So there's three monitor wells.

These are the parameters that are looked at quarterly in the monitor wells. So we look at water level, but now we're not looking at -- even though it says "total" in the permit, it's really nitrate that they're looking at -- so it's one of the constituents of total nitrogen -- total dissolved solids, arsenic, chloride, cadmium, chromium, lead, coliform, pH, sulfate, turbidity, specific conductance, temperature, and DO, or dissolved oxygen. That's done every quarter.

HEARING EXAMINER COLLINS: Pursuant to the permit.

MR. BROWN: Correct.

Oh, it jumped.

So what does that data look like? Okay. So,

again, as I -- as I just stated, for land application of reclaimed water, DEP requires the plant operators to monitor groundwater quarterly. And, again, I'm comparing in this plot -- and take some time to look at it. But the orange line is the compliance well -- and it's unfortunate that this image is covering that, but the blue is the background well. So, remember, the background is having zero influence from the use of reclaimed water, and the compliance monitor well is looking at it outside the area where it actually is used.

First off, the standard is 10 milligrams per liter, and you can see we've never violated the standard. But the curious thing about this data, if you look at it, we have spikes in the blue in the background well, one that was right here -- and it's unfortunate, that happened in 2024 -- and they also have kind of this like peak right here. It's a single data point that happened in 2018.

So we have some -- some ups and downs in this, but they almost correspond together that when background conditions are elevated, that we see also a corresponding elevation in the compliance well. So they may be -- it may be coincidental, or it may be related, but it is curious that they occur at the same

time.

But if you look at it overall, these values are very low for nitrate. Overall we're -- we're below 3 milligrams per liter -- it's a dashed line -- generally on average we are; but, really, most of the data is below 2 milligrams per liter. You're almost approaching AWT water quality at this stage.

So -- so looking at this compliance well --

HEARING EXAMINER COLLINS: What's AWT?

MR. BROWN: Advanced wastewater treatment. There was some -- some -- and AWT is -- a lot of wastewater plants are undergoing AWT transformations, where they add additional treatment to the system to further reduce nutrients. So that's what AWT is. So we're already very close to reaching, if not really reaching, AWT standards looking at our compliance well.

Staying on water quality, there was some -- some previous testimony regarding tidal pumping. It's kind of a cool term, okay, interesting term, okay; but as with all things, the devil is in the details.

And the Gulf of Mexico -- anyone that fishes -- experiences four tides per day, two high tides and two low tides, but it's what's called semidiurnal. It doesn't all happen in one day.

And what I have up here at the top -- this is

right at Captiva, okay? And I took this -- this is recent data of the tides. And if you look at this -- I won't go too deep into it. I'm not an oceanographer, but I can look at tide charts. There's a high tide, then we have a low tide, then we have another high tide, a lot higher than before, then we have a low, and then we have this kind of low high tide like we had before, and then a low low, and then we have another high tide.

So that's -- that's a unique signature to the Gulf of Mexico. Why? Because it's a constrained waterbody. You've got Florida on one side, Texas, Louisiana, Alabama, and Mexico; so it's not like an open ocean of water. And so as it tries to match -- you have the tidal range -- and this is for Daytona Beach for the exact same time frame and the same scale. So we have about three foot of fluctuation here, but it's this kind of odd fluctuation of high, low, sort of high, sort of low. So it's very different. This is Daytona Beach, and you can see -- and it's the same vertical scale -- that we have also six foot of oscillation or amplitude that occurs, and we don't have these little kind of mini highs and mini lows.

So what does that all mean? For tidal pumping to occur, groundwater levels need to be higher than the

tide; and as the tide fluctuates, and it gets low, theoretically that increases the gradient so water would start to move towards the tidal region. For the Gulf of Mexico, then we have this kind of little high and little low, so it kind of confounds that process.

So tidal pumping is something that can occur, absolutely, but it occurs in areas where you have large swings in tidal fluctuation. You've got to have permeable sediments, as well.

I've done quite a bit of work on -- it happened to be -- nothing to do with reclaimed water -- a contamination project on coastal Manatee County, did a lot of monitoring. We did not see any evidence of tidal pumping, okay, as we went through.

In addition, conversations with some of the operators at the golf course, they don't see their stormwater ponds fluctuating up and down, showing a strong relationship to tidal influences.

So I don't believe that tidal pumping is appropriate in this area; and if it has any effect, it's really very, very small as compared to areas like the East Coast of Florida.

So, again, I've talked a lot about the FDEP and also the wastewater treatment plant. And this is what Noah said, I mean, they basically got a $7 million

award from DEP. And, again, the scope of work for that is to enhance the treatment capabilities -- this is right out of the scope of work for the existing South Seas Plantation Wastewater Treatment facility -- reduce nutrient loading and provide additional effluent disposal capabilities. And what that means is they will also allow them to have additional deep well injection for disposal. So there will be -- they already have a well where they can dispose of the reclaimed water, but they'll have redundancy in that as part of this DEP grant.

So it doesn't have to go to the golf course, okay? It's -- we saw that permittees and people through the Lee Plan are obviously very strongly encouraged to use reclaimed water, but it doesn't have to go there. If there was an issue or some problem, the disposal wells could be used.

Now, staying on this topic of water quality, I looked at this report -- anybody can find it online -- and it was a report done by a firm that I know, a consulting firm, ESA -- I've worked with them -- and it was a study for the Captiva Community Panel Wastewater Committee. And it was looking at septic tanks; but as part of that study, they did a nutrient-loading model for all of Captiva. And I know other nutrient models

have been performed, they're referenced in this report; but looking at that nutrient model that ESA put together, right out of the report, based on ESA's work -- this is a direct quote -- South Seas Island Resort's use of wastewater effluent for golf course and other irrigation needs is a fairly minor source, approximately 6 percent, of island-wide nitrogen loads from stormwater runoff.

So I read that and I went, hold on a minute, this is a zero discharge facility. In other words, it doesn't discharge stormwater through an outfall. There's only two ways for stormwater or runoff to get out: It goes to the -- to the stormwater ponds, runoff; it can evaporate or infiltrate. It's the only two ways. And so we're monitoring that infiltration by the monitoring wells as part of the wastewater permitting.

So I called the author. I know him. I've worked with this individual, this Ph.D., for many years. I worked with him at the Water Management District. And I said, hey, did you take into consideration that South Seas was a zero discharge stormwater facility? No, they did not when they put this report together.

So then I said, did you further understand or know that they augment the reclaimed water with groundwater?

No.

So as part of the study, they looked at septic tanks and other things. They weren't looking deep into the permit like I've done. But obviously, based on those two comments from one of the authors, it's got to be even less than 6 percent, because that's assuming it was stormwater runoff, which doesn't occur.

So the report findings, though, did say that many of the septic tanks on Captiva do not have adequate separation between the bottom of the drain field of the septic tank and the wet season water table, compared to the regulatory and non-regulatory guidance. I won't get into septic tanks -- if you want me to describe how they work, I could; but basically a septic tank has what's called a drain field; so there's treatment within the tank, and then it kind of, via gravity, flows out into this drain field, which is a series of perforated pipes that basically trickle or discharge that water over an area, typically through clean sand -- they sometimes bring in the sand -- and that has to be aerobic. In other words, it has to have oxygen, not be underwater, okay? That would be anaerobic. So it has to have that trickle-down concept to work, okay? And what's happening is if these tanks -- if you put in the tank, and it doesn't have

that, that trickle down -- or it's too close to the water table, it doesn't function properly; and so, in other words, it can release more nutrients. It doesn't have that attenuation effect.

So if you go on Captiva, you will see -- if you look very closely in some of the front yards or whatever, you'll see a mound in the front of the house. That's because they had to elevate the tank to meet Code to get that. So you're kind of moving away from the water table. So the report did say increased sea-level rise over the next 30 years is expected to further exacerbate this issue, okay, and that the decreased separation between the drain fields and the water table is likely to reduce efficiency of soil-based wastewater treatment processes over the next 30 years, perhaps resulting in impacts to water quality that are not yet occurring on Captiva Island. So they really kind of, you know, zeroed in on, hey, this could be a problem in the future with the septic tanks that are on-site.

So in conclusion, rules and regulations of Lee County and the South Florida Water Management District require developers and water use permit holders to maximize conservation of groundwater through the use of alternative irrigation supplies, or AWS, alternative

water supplies.

Reclaimed water, in this instance, is only used on the golf course. Other areas of the resort are irrigated entirely by groundwater through their water use permit. Only --

HEARING EXAMINER COLLINS: Say that again.

MR. BROWN: Only the golf course area gets reclaimed water.

HEARING EXAMINER COLLINS: Right. Other areas --

MR. BROWN: There's other areas -- they're groundwater, yeah. It's only to supply that one area where those monitor wells are at.

Reclaimed water is augmented with groundwater prior to being used for irrigation. On average over the last, like I said, 18 months that I looked at, about 20 percent, sometimes more.

FDEP has required groundwater monitoring of the areas that are irrigated by reclaimed water, and that data does not -- I looked at almost 10 years of data. If you look at that plot that I had, I went all the way back to 2015. It does not indicate elevated nitrogen levels above groundwater standards.

So -- and, again, as I stated earlier, FGUA is in the process of being awarded a grant for improvements to the South Seas wastewater treatment plant.

And although this is kind of cut off, a study for the Captiva Community Panel Wastewater Committee indicated that efforts to reduce -- so that same report that I referenced earlier -- to reduce nitrogen loads from stormwater runoff, that's the most cost-effective means to reduce nutrients in and surrounding Captiva, the stormwater runoff. And, again, as I have just previously testified, this is a zero discharge stormwater facility, the golf course area.

So with that, I'll take any questions.

MS. MONTGOMERY: Madam Hearing Examiner, do you have any questions?

HEARING EXAMINER COLLINS: No.

MS. MONTGOMERY: I have a couple questions. Mr. Grosso wrote a letter and testified for three hours in regard to the items in the letter; and in that letter it says, until and unless the Applicant can provide a capacity analysis report completed more recently than December of 2015, which verifies treatment capacity for the -- for the plant, the application must be denied.

In your expert opinion, is it the Applicant's job to provide an updated capacity analysis, or does the Applicant have a right to rely on permits and DEP?

MR. BROWN: Absolutely, the Applicant has -- must

rely on the permits issued by the Department of Environmental Protection and/or the Water Management District, yes.

MS. MONTGOMERY: So it goes on to say Captiva is a fragile coastal barrier island surrounded by the Gulf of Mexico and the Pine Island Sound. The FGUA plant is located within tidal mangrove wetlands and has a history of emergency sewage spills and treatment issues. Moreover, the FGUA plant does not treat wastewater to advanced wastewater treatment standards, and the reuse water distributed as irrigation to the golf course will contribute to additional cumulative impacts to the water quality of Captiva's coastal waterbodies that are already listed as impaired by the State of Florida, and are on the State 303(d) list of impaired waterbodies. According to Mr. Evans, the FGUA wastewater treatment plant is not currently capable of treating wastewater to a level that will protect Captiva's coastal waters, and will further impair the coastal estuarine waters and resources of Lee County, and will contribute to the decline of Lee County's coastal ecosystem.

I know that's a lot -- I can hand it to you to reread -- but do you have an expert opinion as to whether or not Mr. Evans is correct, that we are going

to destroy the coastal resources of Lee County by using the FGUA plant?

MR. BROWN: No, not going to destroy the natural resources in and around Captiva. Again, as I have testified, the reuse water itself, the reclaimed water is monitored, okay, monthly by DEP. The permit only lasts for five years. You've got to prove yourself up every five years.

In addition, I don't believe, just like ESA, that they understood that reclaimed water is diluted or buffered by groundwater. In addition, we have this kind of feedback loop, that we're looking at the monitor wells in and around the area where reclaimed water is used; and, no, we're almost at AWT standards at this point. We've never -- the -- I'm sorry, I looked at about 10 years' worth of data. It never violated State water quality standards in those monitor wells; and, in fact, they're well below and average less than 3 milligrams per liter. So, no, this is not a source -- a significant source of pollution by any means.

MS. MONTGOMERY: Okay. Well, this may be a dumb blonde question; but if we're talking about water quality standards, is it the State's water quality standards that we are to rely on?

MR. BROWN: Absolutely.

MS. MONTGOMERY: Okay. So no matter whether I'm in the county, the city, or wherever in the state of Florida, those are the applicable standards?

MR. BROWN: Absolutely.

MS. MONTGOMERY: And they've never been violated?

MR. BROWN: Not in the ten years that I looked at --

MS. MONTGOMERY: Okay.

MR. BROWN: -- and they wouldn't recertify this plant -- if it was continually violating State water quality standards, it couldn't get a permit.

MS. MONTGOMERY: I don't know if you know, but everything outside of South Seas is on septic tanks.

MR. BROWN: Yeah, I -- in reading that report, they have some maps and some areas on septic tanks, yeah.

MS. MONTGOMERY: So is there an impact from other hotels and commercial and residential, potentially, from their use of septic tanks on the coastal waters?

MR. BROWN: Certainly can be for the reason that I testified to, about the water table depth and those tanks not working efficiently; and that with sea-level rise that efficiency is going to go down over time. So absolutely, and that's why there's a big push in

Florida to get people off of septic tanks and on to wastewater treatment plants.

MS. MONTGOMERY: Okay. You talked about a closed system; and usually when we're in this forum, and we look at surface water management systems, we have what I call the little blue arrows that show how the water goes through the site and shows where we discharge it off-site. So that seems like a normal system; is that right?

MR. BROWN: Right, typical.

MS. MONTGOMERY: So in this case there's no little blue arrow off-site.

MR. BROWN: No.

MS. MONTGOMERY: So the water -- the little blue arrow would either be up --

MR. BROWN: Up --

MS. MONTGOMERY: -- into the air or down --

MR. BROWN: -- or down.

MS. MONTGOMERY: -- into the ground.

MR. BROWN: Correct.

HEARING EXAMINER COLLINS: Is this golf course only or resort-wide?

MR. BROWN: Only on the golf course where the reclaimed water is -- is -- is applied.

MS. MONTGOMERY: So if it goes down, it's already

being -- the quality is being monitored by the system that DEP put in place?

MR. BROWN: Correct.

MS. MONTGOMERY: Okay. So the Hearing Examiner expressed a concern as to whether or not monitoring conditions are necessary to track the impact of reuse water on the estuarine water quality, the same concern raised by Mr. Evans and Mr. Grosso.

MR. BROWN: Uh-huh.

MS. MONTGOMERY: Do you have an expert opinion as to whether or not additional monitoring is required above and beyond what DEP has already required?

MR. BROWN: None whatsoever. I mean, the reuse water is being monitored at the plant, it's being diluted, okay, it's being chlorinated, applied, and then it's being monitored again by the monitor wells.

MS. MONTGOMERY: And does surface water quality need to be monitored in light of the fact that there's no little blue arrow off-site?

MR. BROWN: Right, why would it be? Yeah, there's no need to.

HEARING EXAMINER COLLINS: On the golf course.

MR. BROWN: Yeah, again, because of this nutrient -- you know, this issue --

HEARING EXAMINER COLLINS: Right.

MR. BROWN: -- with reclaimed water and potential nutrients.

MS. MONTGOMERY: So -- and then there's a question to clarify whether the golf course water management system directs untreated runoff away from saltwater wetland systems.

MR. BROWN: Yeah, absolutely.

MS. MONTGOMERY: Up or down.

MR. BROWN: Yeah, it only can go towards the pond and evaporate or infiltrate at that location, or in the areas where it's irrigated.

HEARING EXAMINER COLLINS: Thank you.

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

HEARING EXAMINER COLLINS: Thank you. This was helpful.

MR. BARRACO: Madam Hearing Examiner, Carl Barraco, again, back for the record.

I'm going to go over the drainage and water quality aspects of the water management system, but first I'm going to start with the lake slopes and littorals because we heard a little bit about that during public comment. And I'm going to first talk about the recent golf course renovation that Timbers undertook.

The original slope in the lakes was 4 foot horizontal to 1 foot vertical, and that was the standard County criteria back when they were originally developed. All of the work recently done under the golf course renovation is based upon the current criteria for 6 foot horizontal to 1 foot vertical slopes, and would require littoral plantings. That is evidenced by -- if I can find -- yeah. This is the approved development order, and this is the approved Water Management permit for that work. And these are sections out of the approved plans.

First I want to show you the 6-to-1 slope, which is here, noting that the other side of the lake, which is at Land's End, was not touched because that's not under Timbers' control, on the drainage easement. So the water -- the work started below the control elevation on Land's End side. That's this section here.

The next thing I'd point to -- it's small, but you'll see it when you look at the hard copy -- is littoral plantings here.

Looking at the plan view -- this is the section, too, that I'm talking about here -- and this is the lake that was reconstructed. This is the lake slope that was untouched. And you heard some testimony that

the person was concerned that that lake slope was moved or addressed, and it wasn't touched as part of this project because they don't own that land, and they don't have a drainage easement over that land.

So a few things. During public testimony, we heard a gentleman talk about the lake slopes that were very steep and didn't have littoral plantings, and Ms. Montgomery asked him how he came to that conclusion, and he said he used aerial photograph interpretation. I can only assume that he looked at those aerial photographs prior to this construction because this is so recent, but this is a photograph of the lake slopes the day that testimony was made, and you can see that the lake slopes are very gentle, and the littoral plants are very healthy. And, again, this is the certificate of compliance issued by Lee County when that work was completed, and that certificate of compliance is dated February of 2024.

There was also some concern about lake slope deviations, and that lake slope deviation was simply requested to memorialize the older slopes that have not been upgraded; so if there are some slopes that are a 4-to-1 slope, as they were originally designed and permitted, and they were not part of the recent renovation.

Having said that, any future lake slope work would be consistent with current criteria, which is the 6-to-1 slope and littorals.

Now I'm going to go into the history of the surface water management system. The Water Management permit was originally issued in 1990 -- 1985, and I mentioned this in the original testimony, this was a surface water management permit. That's how old it was. It's not an Environmental Resource permit, as we would currently see it and currently talk about. So that permit was issued.

And the next thing I want to do is reference the Brizaga report, which you've heard about, and point particularly to this language here where Brizaga concluded, "Reducing runoff is an important strategy for improving water quality." And that's really, really important to this entire system because this entire system, from day one, is a full retention system, and that's shown in this slide here. This is a copy of that Water Management permit. Its storm water system is full retention, and you heard Mr. Brown say, there is no positive outfall, and it's total on-site retention.

HEARING EXAMINER COLLINS: You're talking about the golf course; right?

MR. BARRACO: No, I'm talking about the entire water management system. I believe Mr. Brown was talking about the golf course because he was talking specific about the golf course irrigation but --

HEARING EXAMINER COLLINS: So the entire MPD, the stormwater system is full retention?

MR. BARRACO: Yes.

HEARING EXAMINER COLLINS: So the water is either evaporating up or going down into the groundwater?

MR. BARRACO: And I have another slide that I'll -- I'll go over with you in a little bit more detail on that.

And here we go. If it would help, I have hard copies. Would you like a hard copy?

HEARING EXAMINER COLLINS: No, I can see.

MR. BARRACO: Okay.

So this first is a typical detention system and -- you've heard about those in every hearing you've been to, and the key is that it's detained. The water is coming off the developed area into the detention system; it's detained, held back; but it's allowed to leave slowly through this control structure into the receiving waters to emulate the historic conditions. So this -- the detention system, the water comes into the detention lake, but it's also leaving. And the

important part about that is, when we talk about monitoring schemes in the past, we have a place to do the sampling. We have, at the outfall of the system, an opportunity to collect that water leaving the system and analyze it.

Now you're going to see the little arrows that you've heard about. These aren't blue, but they're up and down. Starting -- I'm going to start right here with the retention system, and this is an "R." As you heard, these arrows, that's evapotranspiration. The water is either evaporating or going through the plant material and into the atmosphere, and we also have infiltration into the groundwater here.

Well, how does that water get in? Right now, today, in this developable area which you heard Ms. Olson talk about, that water is already treated in the existing condition -- in the existing permit. All the water in this system is treated. We're going to go above and beyond that and forget that, and we're going to look at new projects -- and this is a good example of the Beach House.

So the area the Beach House was on was already in the Water Management permit and already in the drainage area and was already going to these retention areas, but we're not going to consider that. We looked at the

existing design requirements for pretreatment and added an exfiltration trench here. So water from the developed site comes into the exfiltration trench, has an opportunity to go down into the -- into the soil, and there's a control structure here that holds that water back and allows it to go into the ex -- infiltration. When we have a heavy event, it does overflow that, and it comes into the retention area; but, again, at that point it's retained, and it's not leaving the site.

So that's the new design. Taking that a step further, at the Beach House -- I'm going to use round numbers. These aren't the exact numbers, but it will give you an idea of the magnitude. If we calculate 100 feet of exfiltration trench to provide the pretreatment needed, we went in excess of that, and in this case I think it was around 50 percent extra. So we're going -- whenever we can, when we have the area, we go above and beyond. So there's really three levels of retreatment: the original pretreatment that was in the original system, the introduction of this exfiltration trench, and going above and beyond what's required when designing that exfiltration trench.

HEARING EXAMINER COLLINS: What exactly is an exfiltration trench?

MR. BARRACO: So it's a perforated pipe, and the water is collected in a series of pipes or swales, directed into this -- this pipe, and this pipe is wrapped with #57 stone, and then around #57 stone is filter fabric. So that -- if I knew you were going to ask the question, I would have put a section up there.

So you have basically a rectangle of rock with a pipe in the middle, and all the drainage goes into that pipe, goes through the rock and into the soil when there is a heavy rainfall, and if it can't release quick enough, it will overflow into the retention area. Those are the new systems that we're adding.

HEARING EXAMINER COLLINS: Thank you.

MR. BARRACO: So this is both the systems I just talked about, and the point I'd like to make is that, again, this detention system has this outfall point and a sampling point. This only leaves the retention area when it is above the 25-year stage; so that doesn't happen very frequently at all. It's really not significant in terms of water quality. Given that, there is no way to collect a sample because all treatment is happening here; so there's no point in taking a sample where the treatment is happening. We would expect that to show some level of contaminant.

In the state of Florida, we can obtain a water

quality certification from the South Florida Water Management District, but only when the proper design is approved. This is a copy of a permit from the South Florida Water Management District for a project that we just did in South Seas. It's dated March 2024. And as part of that permit -- and this one is cut off, too, the image on the screen, but I'll read it to you: "Issuance of this permit constitutes certification of compliance with state water quality standards in accordance with Rule 63" -- so on and so forth. So we are attaining water quality standards from the State of Florida on all the projects we're working on now and will continue to do that as we go forward.

The next is the water quality criteria, and this is important because it's changed so much since we started designing modern water management systems, which is roughly in the '70s. Initially, back then, there was presumptive criteria that were put together; and, basically, at that time it was an analysis where you would look at how much impervious area that you have, and the rainfall, and based upon some equations determine what volume of runoff would have to be treated prior to discharging. And so if you provided that volume of pretreatment, you were presumed to meet water quality standards.

Since then, and this is in the last few decades, there has been a lot of study done in -- particularly in Florida, and particularly at the University of Central Florida, and they evaluated stormwater characteristics from many different land uses, developed and undeveloped, and took samples and analyzed the water quality. So now we know the characteristics of water leaving the sites.

They also looked at evaluating treatment efficiencies in the system that we're using to treat the water. And based upon those two things, the State of Florida developed a quantitative analysis. So now we can look at a system, and we can determine exactly how much of the constituents are being removed in any particular design.

So in conclusion, in my professional opinion, the systems added by South Seas Island Resort to date, and systems added in the future resulting from this application, will improve water quality of the surrounding tidal waters and will serve as an example of what can be done cumulatively to improve local water quality in a significant way.

And in building on some things that Mr. Brown said, another way to say that is, South Seas Island Resort water quality permits are a start, but real

cumulative impacts will not be realized until runoff from older properties are treated and -- as South Seas is doing now, and off-site septic tank systems are addressed one way or the other given sea-level rise.

That's what I have on water quality. If you have any questions, I'd be happy to try to answer them.

HEARING EXAMINER COLLINS: Thank you.

Neale, do you have questions of your witness?

MS. MONTGOMERY: I do.

Mr. Barraco, do you have an opinion as to whether or not an exfiltration system is better or the same as lake retention?

MR. BARRACO: In this particular instance, with the soils we have, I think an exfiltration trench is well suited, much better suited than many other parts of South Florida.

MS. MONTGOMERY: Okay. And the Hearing Examiner has a question about whether or not -- well, let me go back -- asked a question about golf course water quality conditions, and one of the projects mentioned is Pelican Landing RPD/CPD. That was approved in 1994, and I won't say why I know that.

At or about the time there had been a fish kill in a golf course in Doral where the water was bright blue. If you know, do you know whether or not the

constituents that can be used in golf course fertilization have changed over time?

MR. BARRACO: I don't.

HEARING EXAMINER COLLINS: And if you know, have you worked on any projects where there are golf courses where the water quality has been monitored?

MR. BARRACO: Yes.

MS. MONTGOMERY: Have any of them had exceedances?

MR. BARRACO: Not that I'm aware.

MS. MONTGOMERY: And I'm going to sort of testify. The Pelican Landing RPD/CPD did water quality monitoring for 20 years, had no exceedances, but it did cost $20,000 a year. So we went back and amended it to remove and adjust that condition because of the fact that the system worked. And I guess that's my question to you. If the system works, will there be a water quality issue?

MR. BARRACO: No. And another good example is a project I worked on, Paseo, in the city of Fort Myers. That had a monitoring program. It was for a certain amount of years. That would cease after consecutive results -- acceptable results were provided, and that happened rather quickly. I don't recall any year where there was an issue with that. So --

MS. MONTGOMERY: Okay.

MR. BARRACO: -- another good example of how the systems work.

MS. MONTGOMERY: And then number 19, it says, "Surface water and groundwater monitoring conditions are necessary," and there's some explanation, but then it ends with, "This requirement has been imposed on other planned developments in the county, including those with outfalls to natural waterbodies."

Based on your explanation, is there a distinction between projects that outfall to natural waterbodies and those that don't?

MR. BARRACO: Yes. And really the clear distinction is there's no place to obtain a sample to analyze in this -- in this retention system.

MS. MONTGOMERY: Right, because they're not discharging.

MR. BARRACO: Right.

MS. MONTGOMERY: Okay. So question 21 was, "Describe planned enhancements to the surface water management system."

In your opinion, what are the enhancements that have been put in place as you've gotten -- as you've modified the system?

MR. BARRACO: As I went over with the Beach House, not even considering the original water quality that

was in the system for that land mass, we did an exfiltration trench and went above and beyond what was required to satisfy the current standards.

MS. MONTGOMERY: And I think you've answered this, but just to be sure: "Clarify whether golf course water management system directs untreated runoff away from saltwater wetland systems."

MR. BARRACO: I can say that all of the turf area in the golf course is directed to the retention system.

MS. MONTGOMERY: So we're not discharging anything to saltwater --

MR. BARRACO: No, all of -- all of the turfed area is directed to the lakes.

MS. MONTGOMERY: And I think your slides earlier address this, but we just want to make clear. Will on-site lakes include littoral shelves consistent with the Code?

MR. BARRACO: The current --

MS. MONTGOMERY: In the future.

MR. BARRACO: -- the current lakes do, yes.

MS. MONTGOMERY: Okay. All right.

This probably isn't a "you" question. "Given location on a barrier island, is it appropriate to specify types of littoral plantings?"

MR. BARRACO: Yeah, that's not me.

MS. MONTGOMERY: I thought I'd give it a shot, thank you.

I don't have any other questions.

(Sotto voce between Hearing Examiner and reporter)

HEARING EXAMINER COLLINS: The court reporter is saying one more witness before our lunch break. Do we have someone?

MR. VALENSTEIN: I will be your last witness before lunch, thank you.

Madam Hearing Examiner, just in case it wasn't in the file, I want to give you a copy of my résumé. You should have it, but just in case.

(Applicant Exhibit 28 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MR. VALENSTEIN: Again, to sort of add on to comments from Mr. Barraco and prior witnesses, I wanted to focus in on the Captiva Island Vulnerability Assessment and Adaptation Plan done by Brizaga, which is a well-known resilience firm here in Florida, and paid for by the ownership group. I believe it's been referenced by prior testimony and wanted to submit the entirety of it so you could have not just quotes, but the full --

HEARING EXAMINER COLLINS: Okay, thank you.

MR. VALENSTEIN: -- copy.

(Applicant Exhibit 19 submitted.)

MR. VALENSTEIN: And I would just sort of take a step back and make the high-level comment that during my prior service, I had the privilege of creating the Office of Resilience --

THE REPORTER: You had the --

MR. VALENSTEIN: Sorry.

THE REPORTER: Slow down. So creating the --

MR. VALENSTEIN: During my prior government service, I had the privilege of creating the Office of Resilience and Coastal Protection at the Department of Environmental Protection; and one of the goals of the State was to have local governments and others fund and implement vulnerability assessments and adaptation plans. And the point of that was to be able to have a prospective look, identify risks, and then be able to mitigate those risks or reduce the impacts of those risks, all right? To the point that the State actually created a grant program to provide funds to local governments so that they could hire firms, such as Brizaga, to do vulnerability assessments. And the idea was to put all the state in a better spot. Not to retreat from coastal development, but to inform how we develop.

I will say this is the only instance I'm aware of

where you have a developer, that I've worked with, that has actually chosen to fund the vulnerability assessment not just for their own property, but the entirety of this island. And that's important because at that point, back in 2022 when this was commissioned --

HEARING EXAMINER COLLINS: Right before the hurricane.

MR. VALENSTEIN: -- right before the hurricane, but also as the State was embarking on this big initiative to encourage local governments to do these vulnerability assessments, one of the ways they encouraged local governments to do vulnerability assessments -- money always helps -- was in Section 390.083, it said you have to have, right -- one of the -- one of the ways to be eligible for grant funding is to have a statutory compliant vulnerability assessment. So it's sort of the -- first a vulnerability assessment, or show us that you started work and are paying for a compliant vulnerability assessment, and then you can come over and get access to this other bucket of grant funds to actually implement projects. And so that was meant as a way to encourage everyone to do this.

I think the development group needs great credit

for -- they saw that there was not a compliant vulnerability assessment, that we were aware of, for Captiva Island, and so therefore it was a barrier should anyone on Captiva Island, you know, Lee County, want to go and apply to the State at the point for a resilience grant, that would have been a barrier to doing so. And so this actually then helped allow Captiva Island to, should they choose, apply for those vulnerability grants. And that's one of the -- the reasons that vulnerability assessment was done.

As you'll read it, the point is to identify risks. Obviously in this instance, flooding, sea level -- or storm surge being the main risk; and the main way to de-risk that and not have an impact -- again, is the point of this vulnerability assessment -- is elevation. I know you've heard at length the efforts. The development is going to elevate structures to meet modern-day permitting and even go beyond that.

I'll mention Lee County and Sanibel currently now both have active grants where they're getting funding from DEP to do just this, to do comprehensive vulnerability assessments.

And sorry to go on my tirade here, but you see results from that, right? The green dots are funded infrastructure projects. The yellow dots are planning

projects. You see more funds going for actual infrastructure projects where there are more vulnerability assessments because local governments and others are then able to understand where they should be investing, should we be investing in elevation of structures or storm hardening, things like that. And so vulnerability assessments have a direct consequence of having better development, which is what you see here.

I would say it's almost a master class of how to do resilient development here in Florida, and so I'll just touch on a few of the things that I think are unique and really impactful. And I know you've already heard many of these, but increasing the coastal dune system, right, having natural features help with resilience. And so in this area there's actually been a reduction of portions of the footprint of the golf course to put back in dune structures along the coastline, in addition to the dune structures being built on the beach by the Captiva Erosion Control District. That smaller golf course design also includes greater water retention, right? That, to me, is a novel thing that I've not been -- have seen elsewhere in Florida, where you begin to think about the golf course to say, hey, can this serve as even

better stormwater management, too, not just the golf course.

In addition to that, as I mentioned, elevation is key, right, having modern structures elevate above storm surge so that while that vulnerability assessment identified that risk, when you develop correctly, you've eliminated that risk for your development.

Other things that you've seen after hurricanes is lack of power and the impact that can have on your development, either through mold, no AC, electric -- and I'll highlight a couple here, is that you've seen designs for buildings with roofs that allow for installation of solar and buried electric, two really key items for vulnerability here in Florida.

And then lastly I'll say we were privileged to be engaged by them to work on environmental programming. It is rare that I've seen any development in Florida go to the length of actually funding a vulnerability assessment beyond their boundary so that an entire community can apply for grant funds, as well as do as many of these -- usually you see one or two that someone picks, not go through the whole list.

And with that, I believe -- I won't stand between you and lunch, unless you have questions.

MS. MONTGOMERY: I do. Are you aware of the fact

that after the hurricane Lee County adopted an ordinance providing for consistency in how height is measured, but which allowed for additional resiliency?

MR. VALENSTEIN: I am.

MS. MONTGOMERY: Do you have an opinion on whether that was, from a resiliency standpoint, a wise thing to do, especially in light of sea-level rise and climate change and the things that you've discussed?

MR. VALENSTEIN: Absolutely. In my professional opinion, probably the single-most consequential thing Florida can do, local governments can do, is to make sure that folks are able to elevate their structures, right, that the rules are clear and simple for that, and that the permitting is quick. The thing that you want to see, now and after any hurricane, is the ability to quickly invest and improve our coastal infrastructure. We have a lot of old developments along Florida's coastline. What we need is a quick, clear pathway, and one of the key things is rules for how to elevate your structures and to make sure that you have a clear path to elevating your structure, and you're not making a choice between losing square footage on what you had, right, in elevating, but that you can simply elevate your structure and move forward.

MS. MONTGOMERY: And so the ordinance allowed

everyone else to just rely on the Land Development Code to rebuild essentially what they had starting at a higher elevation that's safer.

MR. VALENSTEIN: Correct.

MS. MONTGOMERY: The ADD in this case didn't allow that to happen because we're still tied to measuring from sea level, not at the FEMA elevation or one foot above base flood elevation.

MR. VALENSTEIN: It was a perfect example of complicated regulation that ended up forcing a property owner to try to decide between reducing their development footprint, you know, the size of their housing structure, or elevating, right? That you could either elevate, and then have that impact what you could build -- it was one or the other, and I would mention not clear.

MS. MONTGOMERY: And during the adoption of that, Michael Jacob, an assistant county attorney, referred to that as the squeeze, that they were trying to avoid the squeeze.

MR. VALENSTEIN: I think that's a good phrase for it.

MS. MONTGOMERY: So in other words, if I have a three- or four-story building now, and it gets destroyed, I would be squeezed and not be able to

rebuild it. Is that your understanding?

MR. VALENSTEIN: That is correct.

MS. MONTGOMERY: And that's part of what resiliency was trying to avoid, that kind of negative impact.

MR. VALENSTEIN: Again, I think the most consequential thing Florida can do -- again, local governments, others -- is to make sure that there's not an argument over starting point, that you know that you can start above the point where you have a risk of storm surge or flooding, and the rules for that are clear. And that, my understanding, is exactly what the County was taking on, and what was the problem on the island before.

MS. MONTGOMERY: Okay, thank you.

HEARING EXAMINER COLLINS: Thank you.

MR. VALENSTEIN: Thank you.

HEARING EXAMINER COLLINS: We're going to take a break for lunch.

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: Why don't we try to be back here by 1:30 --

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: -- and we'll proceed.

(Recess from 12:19 p.m. to 1:32 p.m.)

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HEARING EXAMINER COLLINS: We're back on the record with the Applicant's rebuttal. The date is April 8th. We're ready for the next witness.

MS. CRESPO: Alexis Crespo with RVi --

UNIDENTIFIED SPEAKER: It's not on back here.

THE REPORTER: It's not on.

(Off-the-record discussion)

MS. CRESPO: Alexis Crespo with RVi representing the Applicant. We would like to take one more run at the ADD development scenario baseline to compare our MPD to, before we move further with other experts.

You heard from Hans Wilson that the 620 slips are an entitlement by the Manatee Protection Plan, that in his professional opinion there's sufficient water availability, and he can go so far into the bay that those could technically be accommodated.

That being said, we could -- we could understand your discomfort with that number. We had Ted Treesh take another look at the traffic comparison and just say 250 slips is what Timbers, long-term, plans on doing. Let's run the pre-scenario at the 250 slips instead of the 620. That's -- we feel there's very much potential to do more than the 250 slips, but let's do an apples to apples for the slips so that there's more comfort with -- with our approach in comparing

these. So Ted is going to present the trip generation comparison of the pre and post one more time.

And I'll just note the significance of the comparison is largely due to the current allowance for public and commercial access to the marina, to the five acres. We have conditions in your binder -- we'll walk through them with you today -- that we are very clearly eliminating public access to any commercial resort uses, and that really is fundamentally why there's such a decrease.

(Applicant Exhibit 10 resubmitted.)

HEARING EXAMINER COLLINS: Thank you.

Ted, just give me a second. I'm making a note here.

MR. TREESH: Sure.

Okay. Ted Treesh, TR Transportation. So this table -- sorry, I made a mistake. I have two Table 1s. The bottom table should be labeled "Table 2." I simply revised the marina trip generation to reflect the 250 slips, as Alexis indicated. So you can see, again, in the p.m. peak hour, that reduced the trip generation for the p.m. peak down to 346 p.m. peak hour trips. So you can still see the trip generation is still greater under the ADD scenario than what we're currently requesting in the MPD. And as Alexis indicated, the

primary reason, again, is because the marina and the commercial under the ADD are currently open to the public, whereas under the proposed, as indicated in the presentation, those uses will not be open to the public.

That's all I have.

HEARING EXAMINER COLLINS: All right. So the external trips are dropping...

MR. TREESH: 346 to 275.

HEARING EXAMINER COLLINS: All right, but I'm talking about daily two-way trips.

MR. TREESH: Well, again, daily is really not a comparison because under the proposed -- ITE does not have a daily trip for the resort land use category.

HEARING EXAMINER COLLINS: Oh, okay, I see.

MR. TREESH: So, again, all our analysis that we do for level of service on the roadway network is based on p.m. peak hour --

HEARING EXAMINER COLLINS: So the focus is on the p.m. peak.

MR. TREESH: Correct.

HEARING EXAMINER COLLINS: Thank you.

MR. TREESH: Thank you.

MS. FOUNTAIN: Good afternoon. For the record, Elizabeth Fountain, JR Evans Engineering, a registered

professional engineer and certified floodplain manager.

I'm going to just touch -- it's really a refresher on all the different coastal flood zones and controlling zones that we have for the South Seas property that dictate the design criteria for new construction and for rebuilding.

To help define what those controlling criteria are, we had an exhibit put together that highlights the current project property that's under the MPD and color codes which zone controls the design criteria. So the purple zone is controlled by the FDEP State 100-year storm elevation; so if you remember, that storm elevation sets the minimum elevation for the lowest horizontal structural member for habitable structures.

The yellow area is controlled by the Coastal A Zone, which is the FEMA flood zone seaward of the Limit of Moderate Wave Action line, the LiMWA line. That zone also controls where that lowest horizontal structural member is, and it's one foot above the elevation that's depicted on the map. So if it's an -- if it's in the yellow, eight, that means the lowest horizontal structural member has to be at nine to start your habitable space.

The light blue or cyan color is controlled by your normal FEMA flood zone, non-coastal, and that dictates

where your finish floor starts, and it's one foot above that number that's in that zone. So we're highlighting both the north side of the property and the south -- south portions of the MPD property.

Just to highlight some key components from my previous presentation, there is a distinction between the SLOSH defined or NOAA defined coastal high hazard area and the FEMA defined coastal high hazard area. The main difference is that, you know, the -- the FEMA defined one is used in the Florida Building Code regulations and the regulations for constructing in special flood hazard areas to establish those minimum criteria for habitable structures, and that's all in an effort to protect the public as far as safety and welfare.

The SLOSH coastal high hazard area is really the -- represents the maximum. The maximum is the worst-case scenario. It's used primarily as an emergency management tool for evaluating emergency plans, preparedness plans, evacuation routes, and it's not used for the Florida Building Code regulations.

Again, the FEMA flood hazard areas have been evolving over time. They go through a regular process where the coastal studies are reevaluated, new maps are prepared. The latest version of the maps is in -- was

effective in November of 2022. And, again, these -- these set the minimum criteria for your finish floor elevations. And with the new maps, they established, you know, new coastal zones really related to the Limit of Moderate Wave Action.

And just to reiterate on that -- that Limit of Moderate Wave Action line, it really establishes the boundary for the coastal high hazard area of -- for -- based on FEMA's mapping, and it really defines where those coastal waves -- the wave action is -- goes from a more moderate zone to a lesser impactive zone.

Again, to highlight the key aspects of the Coastal A Zone, it requires that you have to elevate your habitable space so that the lowest horizontal member is to at least one foot above base flood elevation. And with the latest Land Development Code updates for Lee County, they have included an additional four feet of -- freeboard is what they call that, that one foot is freeboard. So that's an additional four feet to acknowledge that you are in a coastal high hazard area based on FEMA's mapping.

HEARING EXAMINER COLLINS: And that will apply to all new structures in the resort?

MS. FOUNTAIN: That are located within that Coastal A Zone defined by the LiMWA boundary, yes.

Along with FEMA map zones, you have the aspect of the State's coastal construction control line boundary that has existed within that -- within the South Seas area for -- ever since 1978 when it was first established. The current line was in 1991. So any structures seaward of that line have to comply with even stricter requirements for new habitable structures.

And, again, in most cases -- in fact, in all cases that I've come across, the DEP 100-year storm elevation is higher than FEMA's base flood elevation in the same locations. So the higher elevation, the higher requirement will always supersede the lower requirement when setting those finish floor elevations or those minimum horizontal structural members.

This just gives an example of location of where the coastal -- the coastal construction control line is mapped over on where the FEMA flood zones are.

And in this area, based on the nearest range monument for DEP, the 100-year storm elevation is at 17.4 feet NAVD. So that is the lowest point where you can start your structural member supporting your finish floor elevation, is the underside of that structural member. And that's to account for what the State believes is the top of the wave that would be coming

through there during their 100-year storm event.

To highlight some additional aspects of the NOAA SLOSH model data in the coastal high hazard area, I wanted you to look at what the Florida State Statutes, Chapter 163.2(h) indicates, that the coastal high hazard area is determined by the NOAA SLOSH model, and it's used for planning and comprehensive amendment decisions -- Comprehensive Plan amendment decisions. The same section of the statutes indicates that that NOAA defined coastal high hazard area is the area below the elevation of a Category 1 storm surge. And so if you take the NOAA SLOSH model data, and you overlay it on the property, the area in yellow is where the model data says that the water will be greater than three feet above existing grade, but lower than six. So there will be a range of water depth from three to six above existing grade. The blue area is where the water depth will be less than three feet above existing grade, and the orange is obviously greater than six feet above existing grade, and that's -- that's representative because that's where the lower elevations are of the -- of the beach and shoreline.

So if you take a Category 1 surge level based on NOAA's SLOSH model, and you compare it to what FEMA has mapped in the same areas where the base flood elevation

range is from six to eight feet NAVD, it's pretty consistent with the depths there. So -- existing ground can vary between three and four feet. So in the yellow area it's very consistent that a depth of three to six feet above existing grade would be in the range of six to eight feet NAVD, which is a lot lower than DEP's State -- in the State's 100-year elevation of 17.4.

This is just an actual screenshot of the website from the National Hurricane Center depicting where that data was retrieved from -- for the NOAA Category 1 SLOSH model.

And with that, I'm here to answer any questions you may have.

HEARING EXAMINER COLLINS: I don't have any questions, thank you.

MS. FOUNTAIN: Okay.

You?

MS. MONTGOMERY: (Shakes head.)

MS. FOUNTAIN: Okay, thank you.

MR. TRESCOTT: Good afternoon, Madam Chairman or Hearing Examiner.

HEARING EXAMINER COLLINS: Were you here when I administered the oath?

MR. TRESCOTT: Yes.

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HEARING EXAMINER COLLINS: Okay. State your name for the record.

MR. TRESCOTT: My name is Dan Trescott with Trescott Planning Solutions, and I'm going to cover the hurricane evacuation issues for this project.

Basically, a lot of the public comments that were made is that hurricanes are unpredictable -- Charley and Ian were brought up as a concern -- and also that they expressed problems with -- issues with rapid intensification as an issue. Also, the public wanted to really know what happens when there's no evacuations recommended, and storm impacts -- storm impacts still occur. Examples were Hurricane Debby and Helene.

Just about everybody that got up at the public hearing brought up hurricanes. It kind of felt like I was being picked on a bit, but that's okay. We've had a lot of hurricanes.

I think the City Manager of Sanibel summed it up for everybody best, and she stated that sudden turns in course mean people may not evacuate early and will result in heavy congestion during times when storm intensity is increasing, and travel is becoming dangerous on the islands and on the causeway.

I've been involved in this hurricane planning work for 45 years. I started in 1980 with what was called

the Bureau of Disaster Preparedness at that time. I actually was hired by John Wilson. He was the former Public Safety Director for Lee County.

I can just tell you from that -- from -- you know, that the improvements that have been made in hurricane prediction is -- is phenomenal. We've really gone from a teletype, which is we get a printout on a big piece of paper of all the -- when a hurricane was approaching, we'd get a three-day forecast and probabilities of points all the way around the state, basically cities around the state. We had no cones. Now we have cones, and we have cellphones. Everybody gets cones. Everybody knows where they are. And you can pull up on your phone, when you're looking at the weather for the day, there will be a cone over that, if you're in the cone. So I'm just saying that in the 45 years I've been doing it, hurricane predictions have become more reliable than ever before.

And also what's really happening lately because of some of the misunderstandings about what the cone really means, which is really it's just where the eye is going to go as it's forecasted in that cone -- and sometimes they go outside the cone, but because you're in the cone, you think you're the only one vulnerable. But, really, if you're south of the cone, like you see

in a lot of these cases I'm going to show, you're just as vulnerable, if not more so, than being in the cone.

So there's been some improvements made in the last few years where hurricane centers are improving their ways of communicating -- they're predicting -- the predicted hurricane hazards outside the cone to the public as early as possible. Basically, it just came out this year that there's a three to five percent smaller cone this year than last year because of improvements that have been made in the forecasting. The cone is really about forecasting errors; and as the errors get less and less in their forecasting, the cones get smaller and smaller.

So all of the recent hurricanes, including Charley in 2004, that impacted the Sanibel-Captiva area were in the three- to five-day cone eye-wall -- eye landfall area and -- and with a hurricane watch issued 48 hours or more before landfall. The only way I really can show you what the truth is about all -- everybody talking about how unpredictable they are is to show what the Hurricane Center puts out and when.

And here's an example, Hurricane Charley in 2004, this is a five-day cone. We're in it, which means everybody better wake up because one is coming around us so we're going to have to watch it closely. And

that was when it was a depression. It was called a depression number 3. This is a case where Hurricane Charley is way down there -- or -- yeah, this is a case where Hurricane Charley, 48 hours prior to landfall, we were issuing a hurricane watch, which would have triggered a lot of things in South Seas to happen even prior to that. Once they were in the cone, they would have been starting to call people and make plans to possibly evacuate.

We look at the next slide for Hurricane Ian, 54 hours before landfall a tropical storm watch was issued. That would have triggered, again, South Seas to go into action to start potentially, you know, evacuating, getting all their stuff in and their guests dealt with and gone from that resort, prior to 48 hours, as all the data will show.

For Hurricane Ian, here is hurricane -- a tropical storm watch goes out 45 hours from landfall -- Hurricane Ian then comes up with a tropical storm warning 48 hours before landfall, again, plenty of time to evacuate everybody from the islands.

The next slide shows Hurricane Ian with a warning 36 hours before landfall, an actual -- an actual hurricane warning 36 hours before landfall. Normally you get one anywhere from 24 to 36 hours, so they were

right in there on the right time.

See, the problem with these type of storms that come up from the south, like Charley and Ian and even Irma, is that any deviations -- I consider them parallelling storms. So any deviations -- you know, a slight amount can make a big difference on where it actually makes landfall, but it doesn't really matter because we're in the cone.

Also what's -- what I'm going to show you is -- because people are misrepresenting the fact that if you're not in -- you know, if you're outside the cone, you're okay, but that's far from the truth. If you are -- if you are south of the cone, you've gotta wake up and pay attention because that's where a lot of storm surge impacts can occur, as -- as we've seen with -- with Milton.

Now, here's an example of Milton, which is just phenomenal. A hurricane watch was issued 88 hours before landfall. That's some confidence that it's going to happen within this cone area. What's even more amazing is they came out with a warning 76 hours before landfall, which is like twice as long a warning than we would normally get. So there's plenty of time for everybody to -- to get their plans in order and evacuate, which South Seas has done in multiple cases

with Ian and Milton and Irma.

The next slide shows what they're trying to convince after 2022 -- maybe because of the concerns of not everybody evacuating outside the cone and so forth, is they're coming out with these storm surge maps now. And this one was for Milton that came out 88 hours before landfall showing a five- to ten-foot surge is possible in our area, even though the landfall was quite a ways to the north.

Here's a forecast of 52 hours before landfall showing a storm surge of 12 -- of -- I can't read -- my glasses -- 8 to 12 feet.

Now, rapid intensification is this term everybody likes to use as if it's somehow big -- some big bogeyman problem that's going to catch people offguard, but basically the definition of it is a tropical cyclone with a sustained winds increase by 35 miles per hour in a 24-hour period. About 20 to 30 percent of those -- of tropical cyclones do go through rapid intensification. As I've mentioned, Charley, Ian, and Milton are examples. And all these storms, posted hurricane watches 48 hours or more before landfall, allowing plenty of time to evacuate.

Another prediction tool to address rapid intensification is they recently added tropical

storm -- potential tropical storm development cones. It's just quite amazing to me that you can follow this stuff and see no weather on the map, no clouds, but yet they're predicting a storm to form. It's incredible to me, and we're lucky to be living in these times, to have such prediction capability.

So this potential tropical storm cone gives the public even more extra time to evacuate before the storm forms. This is an example of one that was put out in 20 -- in June of 2022, and in this case it was 40 hours before landfall, and it was predicted to be a tropical storm.

A lot of times these storms, when they come out with the forecast about these, if you really get into it a lot, like I tend to do, there will be detailed discussions about potential rapid -- rapid intensification that may occur so...

But anyhow, this gives the public a lot more extra time, and it allows the Hurricane Center to issue tropical storm and hurricane watches and warnings early so that it gives people this additional time to address the potential storm surge and wind impacts to their areas.

Now, because Sanibel and Captiva are in this Level A evacuate zone, the Category 1 storm surge area, a

potential tropical storm cone over the island would trigger a possible evacuation recommendation from cities, counties. South Seas would -- would look at that and say we gotta prepare, we gotta get -- we gotta get everybody ready. We gotta make sure everybody is out of here before this comes and impacts us.

So basically because they're in this Level A Zone, the lowest level zone that any storm that started as a tropical storm and -- and rapidly intensifies, it really won't matter because they will have already evacuated before the rapid intensification took place that might have caused even higher storm surge levels than what they were planning for so...

And when you look at what South Seas uses for their levels of evacuation -- I read over their preparedness plans and talked a lot with Shawn about it. They just define a hurricane as a tropical system. They don't define a hurricane versus a tropical storm what they're going to do. They're responding to all tropical systems regardless of how small or big they are.

Now, Mr. Grosso is here today so he'll hear me talk about the questions that were asked by him, and one of them was this -- is it accurate that Hurricane Otis in 2024 began October 24th as a tropical

depression and became a Category 5 and making landfall near Acapulco in 24 hours on October 25th, and that there were still people being evacuated on the 27th?

Neale didn't really want me to get into specific storms, but I had to tell her the National Hurricane Center deals with specific storms. They're the same, you know, entity that deals with the Atlantic storms. The big difference is there is different modeling that goes on in the Pacific than in the Atlantic. So you can't really compare the two to really look at this issue, but in terms of me rebutting this issue, it's quite simple. But basically most hurricanes in the Pacific tend to go away from land, head towards Hawaii -- sometimes they get up there, and they hit Cabo -- I think my client has a resort in Cabo, and they always talk about, oh, no, they don't -- they don't come to Cabo. Well, they do, and there has been one so the National Hurricane Center does address it. They even -- they go up, and they hit southern California. They'll go up, and they'll get into -- up into Arizona and so forth.

But in order to rebut the statement that was made about these time frames, know the correct -- if you look at what's happened, the first time that Otis was -- was -- shown up as advisory number one, 10 a.m.

in the morning, and this is 63 hours from landfall, and it's October 22nd, not October 24th, as the hurricane expert indicated. And so we've got, you know, 63 hours before landfall here, and it just didn't quite -- it just didn't sneak up on people. And then you've got 45 -- 45.5 hours before landfall when a tropical storm watch was issued.

So the answer to the question on that was, no, it's not correct. He just worded it wrong and tried to trip me up, which is not possible.

At these -- all these new National Hurricane Center warning tools, in my opinion, make it basically impossible for a potential tropical storm to form or rapidly intensify five days prior to landfall without South Seas knowing and not being able to evacuate safely. That's the bottom line.

So how do we deal with these storms where we don't get -- when we're not in the cone? Tropical storm cyclones like Hurricane Helene that moved into the Gulf, you know, there were no cones over the islands, there were no recommended evacuations, but yet there was still storm surge. I think some people had some pictures of it.

Basically, you know, in these cases it's just basically to take shelter in place, do not drive your

car on flooded roads, and certainly do not go to the beach. These type of recommendations were made by the Lee County Emergency Management Director for Helene where there were no evacuations made. So that's an example of what you need to do if you're still going to potentially get impacts.

Okay. So I want to stress a little bit more about evacuation and when it occurs. The city manager and other public comment mentions people are being -- you know, the concern is people. I just want to say that South Seas Resort prepares their people to evacuate, meaning transient guests, other homeowners in their program, staff; and they stop new arrivals from coming 40 -- well before 48 hours before landfall, if the threat looks like it's really happening and coming.

So -- so as I previously mentioned -- and I might want to stress that South Seas can require a mandatory evacuation of their guests and people. They can. Maybe not the homeowners, some of the homeowners might be stragglers, but they're warned, and they're part of the whole warning process so...

But, you know, the City and the County has admitted that they cannot, you know, forcibly evacuate people. It's only a recommended evacuation. It's a voluntary thing. So I try to stress that there's a

difference between people outside of South Seas Resort and the people that are, you know, everywhere else, maybe on Captiva or Sanibel. They're -- they're being told different things about when to evacuate and so forth than the people at South Seas Resort. I mean, I might mention there's -- there's never been any loss of life for any of these hurricanes within this resort. So it's testimony that they're doing the right thing.

So as I mentioned before, the early evacuation of hotel/motel guests and other guests in their program is backed up by the STAR research program wherein -- you know, with Ian and -- and Irma, 48 hours before landfall there was zero occupancy at the -- at the resort. Same for Milton, even though they apparently didn't have many people in the resort at that time, but they were fully evacuated and prepared 48 hours before landfall.

I might mention that for Hurricane Ian, Lee County ordered Level A evacuation at 7 a.m. on the 27th, and it was 27 hours before landfall. Might be cutting it a little close but -- and then on the day before that is when the City of Sanibel ordered a voluntary evacuation. And by that time South Seas Resort people are already evacuated, everybody is already gone, and so they're not even in this stream of evacuating

traffic from Sanibel or other parts of Captiva.

So this 48-hour time frame is the time period that makes the guests leave the resort. I mean, I heard the word they were kicked out. I mean, they're told to get out. They make them go. And so -- so this early evacuation of hotel guests from South Seas indicates that there would be no vehicles from their guests or staff adding to the 24-hour evacuation time because they would have already evacuated. I've said that now I guess too many times.

So the early evacuation is confirmed by the Sanibel mayor or other public comments about leaving last, a day -- a full day before landfall on Hurricane Ian, and seeing no traffic or overwashing of the causeway prior to Ian landfall. The mayor thanked everybody for listening and preparing for the arrival of the hurricane. So Sanibel really showed that they could get everybody out early.

In reviewing the Sanibel Plan, which talks about hurricane procedures and things, the Sanibel Plan, in Section 3.1.1, mentions the City and Captiva Island were successfully evacuated in 2004, in 2005, in preparation for Hurricane Charley and Wilma; and this is contrary to the opposition's claims that people could not get off the island because of rapid

intensification.

Okay. There's another section of the Plan called "Provisions of the Plan" in Section 3.1.1 in 4.c. It says, and I quote, "encourage people to respond to early warnings and hurricane watches in order to lessen the evacuation burdens."

Section 4.d, quote, "keep in place a method for monitoring the number of vehicles on the islands during hurricane season to determine the vehicles to be evacuated."

So they have a procedure in place to try to figure out how many people are left on the island that have to be evacuated, particularly in the hotel/motels.

Objective 3, Policy 3.6, in Section 3.1.1 encourages early voluntary evacuation of visitors to decrease evacuation times. The City maintains a resort/hotel operators list to warn them of weather conditions via weather alerts.

So clearly there's a lot of early evacuation going on well before any 24-hour period might take place, really.

To further implement early evacuation, Lee County Ordinance 83-25 is an interlocal agreement with the City of Sanibel restricting access to the Sanibel Causeway under emergency conditions like a hurricane

evacuation. And so, basically, starting 40 hours before landfall, all traffic may be prohibited to Sanibel and Captiva, and it would only be allowed except for drivers, you know, who are residents of Sanibel or Captiva and essential emergency personnel.

Now, beginning at 27 hours before landfall, the city manager or other administrative official of the City of Sanibel can -- they may restrict all traffic seeking access to Sanibel on an intermittent period to allow two-way or three-way traffic to exist -- exit the island so that -- and it will all be based on how many people they think they might need to evacuate still. They can basically one-way the causeway to get people out even faster past the four-way stop. So, really, that would address a lot of concerns people had about stalled vehicles on the causeway or the bridge or whatever, you know. It could be an extra place to get around them.

Regarding their expert's -- the hurricane expert's analysis, he did not provide any analysis on how he determined his evacuation time, which apparently he claimed is a 30-minute increase because of the hotel. I have my theories on where that number came from. I think he just rounded up because that's what the hurricane study does, you round up one -- it's in

half-hour increments so maybe he just added 15 minutes to come up with a half hour, but whatever. It's not -- the data is not there as shown to you. So he just proffered a conclusion that there would be a 30-minute increase without any supporting data and analysis. No one, including the HEX, can determine how long -- how the time was calculated. One can only assume that the analysis he referred to is the DOAH hearing analysis he did, which was based on his worst-case scenarios of development in South Seas, well above what they're predicting, and not the actual numbers in the application.

The hurricane analysis provided at the DOAH hearing on March 24th was amended multiple times and significantly overestimated increased evacuation clearance time for Sanibel/Captiva. The primary problem is that the data -- the analysis does not use the most accurate and best available data to calculate evacuation clearance times as used in the Statewide Regional Evacuation Study Program 2021 update for the Southwest Florida region. This analysis has four major errors for overestimating -- overestimated evaluating vehicles.

The first one is the number of residential units does not account for the occupancy rate of these units

during the hurricane season, which is much lower than the peak season that the opposition is trying to apply to hurricane season. I might add that my -- that the model itself -- I say my calculations. Really, the model inputs that the study program uses assumed 100 percent occupancy of all hotel/motels on Sanibel and Captiva despite the fact that we know that that's not the case. Probably not even in peak season but...

So the second thing is the total number of -- the total number of hotel/motel units is twice as high as the TEZ data for the 2021 update for 2020 and 2025. Basically, there are -- the model says there's -- well, the County Planning Department says there are 270 hotel rooms at the end of 2024 on Captiva, and also it's backed up by the Department of Business and Professional Regulation data, which they are the ones that license hotel/motels. The model actually assumed it's 299 hotel rooms for 2025. So it's even overestimating what -- what we think is there possibly.

The third thing is the evacuating vehicles per unit are about twice as high for dwelling units and 60 percent too high for hotel/motels, which the 2021 update assumes is one vehicle per hotel/motel unit used for evacuation.

But probably the most significant error is the

roadway capacity at the four-way stop. He assumes 700 vehicles per hour when -- when the Lee County expert, the transportation director, has stated it's 13 -- it's 1,234 vehicles per hour here and 1,326 vehicles per hour when a roundabout or manual traffic control is used. Essentially manual traffic control and a roundabout are the same capacity.

I've gone back -- I've been doing this hurricane evacuation calculations well before computers, which is probably why I understand this better than people younger maybe that just use computers, fancy model computers that take three days to run and don't even work now. That's the -- that's the TIME model for this -- for this hurricane study.

So I just think that you've got to assume that the roundabout will be used under a manual traffic control situation because the Sanibel Plan actually requires it. They're going to require a traffic cop be out there at multiple locations. There's another one, I guess, at Donax, that they have traffic control, also. So all that helps speed up the capacity and gets people out quicker.

So Mr. Grosso had a question I needed to ask (sic). He said is it true that the roundabout at the intersection of the causeway and Periwinkle mentioned

in my January letter to you, the HEX, is theoretical and does not exist and has not been funded or approved for construction? Well, yeah, the answer is yes. It has not been funded, even though I think it's number one on the MPO list, and it should be done. Even though I've heard reasons why they don't want to do it, I won't get into it, but it should be done. But the bottom line is it's going to be there any -- the -- the -- the manual -- the roundabout capacity is the same as the manual traffic control capacity, and it will be in operation during the evacuation as the emergency management plan for Sanibel requires. And it says, and I quote, "to ensure that the level of service on the evacuation route is maintained throughout the evacuation period."

So there's some more questions I thought I'd address, some others from Mr. Grosso. Is it true that several high-occupancy periods fall within the hurricane season, including July 4th and October, November, and Labor Day weekend, Thanksgiving? And I would say yes, but it's not as high as the peak season that the Applicant's consultant is trying to use to come up with times, although sometimes it's hard to determine what's going on with that.

But anyhow, the next thing is were -- were the

unit occupancy rates for Sanibel and Captiva, upon which you base your analysis, based on occupancy rates for the month of September, which you acknowledge would be low because September is probably the lowest occupancy rate? And the answer is no, I did not make that statement in my January 20th, '25 letter.

Another question he wanted to ask, is your analysis based on the assumption that 42 homes of the 1,773 units on Captiva would be occupied only -- would be occupied and only 35 vehicles would be evacuated? Again, the answer is no. You cannot -- you can't even read -- can't read the tables properly that -- the inputs for the model that I'm going to show you. Basically he forgot to include the hotel/motels are part of that, too, so it's not 45 units (sic). It includes -- the number is bigger than that because it includes hotel/motels.

The HEX -- you -- you wanted to know specifically more explanation regarding evacuation behaviors between hotels guests and residents. And, amazingly, right after our last hearings with the public, I received that data -- an email clarifying the answer to your question that you hadn't even answered (sic) yet. But basically the model input for tourist evacuation assumptions is as follows: It says, most will be

leaving the county; 50 percent of the out-of-county people -- tourists that leave the county will go to a friend or relative or other destinations; 40 percent of those out-of-county tourists leaving will seek hotel/motels out of the county. 5 percent -- 5 percent will seek hotel -- will seek public shelter in the county. The remaining 5 percent are not modeled because they will have assumed to already -- because they have left before the evacuation was issued. So really only 5 percent of the tourists are assumed to stay in the county and apparently go to a public shelter.

Now, I included this in my January 20th letter to show you that -- and I -- and I mentioned it before, is that normally I get a -- each -- each transportation update that's done in this regional evacuation study, they have a supplemental traffic analysis section with all the -- it's a huge spreadsheet with all the data associated with occupancy rates, vehicle use rates, all the different things you need to be able to calculate evacuation time. Well, they didn't -- they didn't do that this last time so I had to ask specifically to pull the data that was going to be used in the model, and this is it for Sanibel-Captiva.

And I want to just highlight that, you know,

people say, oh, we use this low evacuation -- this low occupancy rate everywhere, and it's just not -- it's really not -- it's really not true. If you look at parts of Sanibel, you're looking at a 50-percent occupancy rate of site-built homes, 40 -- 61 percent here -- you're looking at 61 percent here, even 70 percent in some of these. So it's not like we're assuming, you know, way low occupancy rates for the hurricane season, but this is the data that's inputted to run the TIME model.

Now, based on the -- the -- the consultant that they hired, he came -- their hurricane expert, he analyzed that there would be a total of 18,757 evacuating vehicles, which is three times higher than the TEZ data that I just showed you calculates. So, you know, this overestimation of vehicles resulted in what he stated to be a 22-hour evacuation time, whereas I was indicating it was 5 hours because my numbers are -- when I used the actual TIME models that would have been implemented for the model, I came up with 6,127 vehicles, 3 times higher.

Now, you think 22 hours, ah, sounds bad; but, you know, really, if it were to be true -- which I've told you all kinds of things where it's not going to be true. Even my 5 hours is not going to be true because

there's going to be a bunch of people leaving early, and plus we've really overassumed how many people are in these hotel/motel units. We're assuming 100 percent throughout the whole island, and I didn't -- I didn't ask why they did. I need to at some point ask why. I think they're just trying to be overly protective of tourists, maybe, the State.

So this 22-hour time is still an acceptable time for everybody to get off because, you know, with a 48-hour hurricane or tropical storm watch, or longer, which would trigger an evacuation for both -- either, you know, Sanibel or Lee County, you know, there's plenty of time, you know, to get out.

I mean, so basically he gave a timeline in his presentation where it would -- he was trying to claim that there's a -- 24 hours or less is the best evacuation time, and that timeline included a 12-hour response time before people evacuate, giving them time to go here or there or whatever, and then -- and then a -- and what I called a pre-landfall hazard time, which is the arrival of gale force winds, making it unsafe to travel on the bridge.

Now, just to give an example of my -- of what I would do as a calculation for -- for total evacuation time, which I've done many times, the 46 -- the 4.6 --

the 5-hour clearance time that I calculated assumes that the four-way stop is going to operate at capacity, this manual traffic control capacity, throughout the evacuation. This is what I would call a quick response time. And I went back and looked at some of my old -- got off track. I went and looked at some of my old evacuation studies that I did, and the capacities that I used for Sanibel to evacuate are essentially the same as we're using here today. Not much has changed.

So what I want to say is that this quick evacuation time, this 1,327 vehicles per hour that can get through there with manual traffic control, is kind of like -- you know, it's kind of like a fire or a tornado. You just pick up your stuff, and you go. You don't take 12 hours to get ready to go. You go. And besides, you probably know well ahead of all this time before you leave that it's coming anyway, and so you're probably already prepared to go. And if you do the right thing, you're supposed to prepare before the hurricane season even starts anyway.

So to give you an example, if I had a 5-hour clearance time, which is what I calculated, and I add a 6-hour response time, which is generous -- and there is a 6-hour response time as part of the TIME model that you can use -- and you add an 8-hour pre-landfall

hazard time -- which that actually can be calculated on the fly. The Hurricane Center has a -- has a thing where you can determine when the arrival of gale force winds will occur to your location. So you add up 5 plus 6 plus 8, you get 19 hours, below 22, below 24. And if you add even a 12-hour response time with my scenario, it's -- you know, it's 25 hours total.

So there's plenty of time for people to get off of these barrier islands before conditions get bad. With all this early warning stuff that we got going on, with all the cones and cellphones, emergency alerts that we get in the middle of the night that wake us up and tell us -- one guy said it -- one guy mentioned that Lee County ordered an evacuation just before landfall. I think he's misrepresenting the fact, that he got an alert that probably said if you haven't evacuated yet, go to a safe place, go up or something like that, made some recommendations like that.

So there's plenty of time, is what I'm trying to say. There was plenty of time to get those people off Fort Myers Beach that didn't leave. There's plenty of time for people to leave if they want to leave, but not everybody wants to leave for various reasons. A lot of times it's related to animals.

All right. So the next thing -- and I'm almost

done.

MS. MONTGOMERY: Okay.

MR. TRESCOTT: I know you all want me to get through this. There's a lot to cover.

HEARING EXAMINER COLLINS: They're getting the hook out.

MR. TRESCOTT: Everybody was picking on me, you know, so I want to cover it all.

The next one had to do with Objective 73.1, evacuation, where it talks about, you know, the County working to obtain out-of-county evacuation for a Category 5 event, Level E, that does not exceed the time frames referenced in the Statewide Regional Evacuation Study. The County will improve clearance times by increasing shelter availability, improve evacuation routes, public shelter, public awareness, and citizen participation.

And I might add the County is responsible for complying with this objective, and they work on evacuation and public information and shelters. I think you'll hear a little about this later maybe from the Public Transportation director.

Basically he's trying to say that between 2010, when the first study came out, that he was sort of work -- that he worked on until this last one that's

come out in 2021, that the times have gone up. The problem is you can't just go from 2010 to that -- to 2021.

First of all, the population increased between 2010 and 2025 by about 32 percent, and some of that had to do with the fact that the SLOSH model changed in 2017 and actually expanded the area that was going to be flooded. So they included more people. So you really couldn't do a proper comparison between the two --

MS. MONTGOMERY: Can you take us to those slides?

MR. TRESCOTT: Sorry. This is -- this is the one that he was using to compare between 2010 and all these scenarios he's increased from 2010.

This is my table that I put together, and I just compared it between 2017 -- and the reason being, as I mentioned, the SLOSH model would be the same for '17 and 2021.

And so basically what we're saying here is that the 2000 (sic) update would be a closer population level to compare with since all the Level A through E times have gone down from 2017, even though the population increased. Shows a significant compliance with the Objective 73.1.

I might also add that the Jeff Alexander DOAH

analysis and letter to the HEX, the DOAH -- I wanted to mention the DOAH final order for the Civic Center (sic) Association versus Lee County ruled in favor of Lee County regarding consistency with Objective 72.2 and Objective 73.1 and all these policies I've listed. Basically, the order states -- the DOAH order states the petitioner presented no evidence that the Ordinance 23-33, being the building height and resiliency ordinance, is inconsistent with these objectives and policies.

Implementation of these policies show that Lee County has met these objectives by stronger wind-resistant buildings with new higher flood elevation requirements, which we're dealing with here today, improving clearance times by increasing shelter availability within the county, improving evacuation routes -- they've spent almost a billion dollars since 1987 -- and increasing public awareness and citizen participation.

So for Policies 72.1.6 and 101.3.5, South Seas will pay into the All-Hazards Protection Fund, the MSTU, yearly as part of their property taxes, which will help continually fund all these things the County needs to do to get everybody prepared for a hurricane. And they're also going to be paying $38,606 for shelter

and evacuation impact fees for shelter as -- as required by the Land Development Code in the Hurricane Preparedness section.

Okay. So another rebuttal that I dealt with is that the Category 5 clearance time would increase by 3.6 minutes is flawed. I was called a lot of names in this -- in this testimony. I won't -- I don't take -- take it personal. And he claims that only the TIME model can calculate this time. Well, he's gone -- he's gone on record saying the TIME model is inoperative; and if it did work, it'd take three days. It's just not acceptable to use in a real-time scenario. I've run up everything on the model. It says it's supposed to be easy to use, but it's far from it. You've gotta buy a special City Labs (phonetic) license to make it run; and if it takes three days to run, you've got to start running the dang thing before there's a cone even affecting your area. It's just not -- it's not going to work.

And so I just want to say that the model -- the method I've used to calculate the 5-hour clearance time for the islands and the 3.6 out-of-county times is the same method I've been using for 30 years, since the first evacuation study that was done in the United States for Lee County in 1979. I'm not sure you all

realize that, but we were the guinea pig for the first evacuation study in the nation funded by the Corps of Engineers.

This original methodology was peer-reviewed by experts in the field and was found to be an acceptable way to calculate evacuation time. I mean, I don't know what to tell you; but if there's no model to calculate like he wants to use it, no wonder he can't calculate it, because he couldn't accept the way I calculated it, which is the only way you can calculate it when you don't have a model. It's quite simple. You have a certain number of vehicles that have to evacuate, and you've got to get them through a chokepoint, and you figure out the time. It's an easy number.

And so anyhow, I just want to say that the TIME model projections that have come out of 70 -- 60 -- 70 to 90 hours under this base scenario for a Category 5 is not proven to be realistic. We have not seen times like that. And -- and -- and I have to say that you could literally walk out of the county faster than those times. Think about it. You can do it. You could walk out faster. If you're sitting in traffic, you just get out and go. You know, I mean, I can't -- 70 hours, 90 hours is just -- I get laughed at when I go and make presentations in other counties and so

forth. They start laughing.

So there's no evidence in past hurricanes of these high evacuation times. Most of the problems with these high projections is model input assumptions. You've heard the old adage -- I don't -- I don't want to say it's garbage in/garbage out, but it can be that. But it's not really all garbage in/garbage out. I'm sure there's a lot of -- a lot of good things that come about. It's just somehow this model is not really reflecting reality.

All right. Regarding -- Mr. Grosso had another question regarding evacuation times. He said, is it true that -- that you did not personally perform any of the evacuation clearance time calculations in the Statewide Regional Evacuation Study Program? It's a trick question. I have to say, yes, I did use the -- the study program update. I used the TEZ data that I showed you in that table to calculate the clearance time increase, and I put that in my letter to you -- in my January 20th letter.

Their expert did not provide any data analysis for his 30-minute increase in clearance time because he relies on the TIME model, which is not working and takes three days to run this simple calculation for the islands.

Okay. The next rebuttal -- I'm almost done -- had to do with the fact that I -- he's confused about the storms -- the FEMA flood coastal high hazard area and the SLOSH coastal high hazard area, and our last expert really, I believe, cleared that up so I really won't go into it in -- well, I've gotten off -- I'm sorry, I've gotten ahead of myself -- or -- yeah -- no, he did.

So you were shown this picture, but this is the coastal high hazard area that's referred to by FEMA. And I might add, just to clear it up, that the FEMA -- the FEMA elevations are really -- it's not designed necessarily to protect people's lives. The SLOSH model is designed to protect people's lives by -- by -- by doing these maximum -- the maximum storm surges that the model predicts.

The flood -- the FEMA Flood Insurance Program is used for actual rating purposes for flood insurance, to determine, you know, what the insurance rates should be. It's for property actual rating purposes, not for saving your life. So, basically, the coastal high hazard area really does cover most of the island. There's some little upland pieces that are a little higher than the Category 1 flood level.

Now, on the next thing, and the last thing, really, is sea-level rise. I don't know if you

remember, but I did work on the first sea-level rise study for the State of Florida in the year 2000. We got a grant from EPA under the Bush administration to look at what -- you know, 5 and a 10 foot -- a 2-foot rise this century would be and a 3-foot rise next century, what it would look like. We were chosen because we were good at doing storm surge mapping and storm surges are just looking at water rising for a short period of time, whereas sea level obviously is permanent.

So I did that study, and the basic premises of that whole study really was that if you're a landowner, and you have uplands, you have the right to hold back the sea by elevating or doing whatever is necessary to get you higher and hold back the sea. You can build seawalls. That's what people are doing all over, everywhere, Cape Coral, all over the place. I've got a new house going on in my neighborhood. The guy is two feet higher than my house. I'm going to his house, I guess.

So basically the reality is, is the development in these coastal areas have been elevating structures and filling land to avoid flooding from hurricane storm surge, which indirectly helps with sea-level rise. And they've been doing this since 1968 when the National

Flood Insurance Program -- since really before 1968 when the National Flood Insurance Program really started making you elevate, if you didn't even -- if you didn't want to, you had to. So it indirectly deals with it.

And I might mention that the woman that testified from the Erosion Control District mentioned that she was filling land on the back side of the island to address sea-level rise. So it's happening there.

And so what I want to say, too, is that the FEMA maps -- the FEMA -- FEMA is -- I've done some research on it, is actively developing methods to incorporate sea-level rise in their future maps and risk assessments.

Now, the Building Code and this 1 foot above the 100-year floodplain requirement, I'm pretty sure it's for sea-level rise, but they just don't want to say it, so that's okay. In my opinion it also addresses sea-level rise. And, in fact, the reason why I say this is because many local governments that I've worked with around the state have already admitted that this 1 foot extra is for sea-level rise. It's part of their comprehensive plan so -- and then the coastal construction control line, it also addresses sea-level rise in their elevations. So what I'm saying is that

therefore any new development in South Seas is going to address sea-level rise one way or the other through the plus 1 foot or the coastal construction control line.

So in summary, the critical link clearance time to evacuate all occupied units on Captiva and Sanibel in 5 hours is a completely acceptable and safe evacuation.

The increase in evacuation caused by 356 additional units in South Seas Resort will not cause the 2025 operational 25.5 hour Category --

THE REPORTER: Wait a minute, 25.5 --

MR. TRESCOTT: I'm sorry. The 20 -- will not cause the 2025 operational 25.5 hour Category 5 out-of-county clearance time to exceed 48 hours which is normally provided by the National Hurricane Center, as I have given you multiple examples of. And I mentioned that there's never been -- because of South Seas', you know, very rigid control of their people within their resort, there has been no loss of life from any hurricanes within that resort.

So in conclusion, it's my opinion -- professional opinion that the South Seas MPD has met and/or exceeds all applicable standards and demonstrated consistency with the Lee Plan and the Land Development Code, and I could list all those things, but you'll have a copy of this. And that's --

HEARING EXAMINER COLLINS: Thank you.

MR. TRESCOTT: -- all I have to say, too much probably. But any questions from anyone?

MS. MONTGOMERY: (Shakes head.)

MR. TRESCOTT: Oh, I meant to give you this. This was the -- the email I received from Andrew Sussman --

(Applicant Exhibit 18 submitted.)

MR. TRESCOTT: -- who clarified where the tourists were going in the model that they were inputting.

MS. MONTGOMERY: So that was based on that one slide you had?

MR. TRESCOTT: Yeah, it's based on --

MS. MONTGOMERY: We had different percentages as to where --

MR. TRESCOTT: Yes, yes.

MS. MONTGOMERY: Okay.

MR. TRESCOTT: It was at the bottom of the slide. I put it in there.

So I -- I take this very seriously, in closing. I've been doing these calculations for -- and I used to do it on a handheld calculator, and it was really amazing, I mean, how long it had to take to do stuff because it's just multiple calculations. But finally spreadsheets came out, and I put it all on a spreadsheet, and it was easier to calculate.

But I take it very seriously. When I heard about the people dying on Fort Myers Beach, I'm like, you know, there was enough time to get everybody out. People just -- some people just didn't want to leave, and maybe it's more up to people to be more forceful about evacuation or keep records of elderly people that might not know about what's going on, and maybe go get them and get them out, because it was mostly elderly folks that died. And I just think that -- who knows, maybe they had dementia or maybe just don't understand as well as younger folks or something.

But these calculations are very important, and it's also important to go back and look at what happened after the fact to see if, you know, what you thought was going to happen -- what happened in reality, compare that. And that's all done, too, with storm surge modeling and so forth, that they go back and look at how it performed, the models and so forth.

So any questions?

HEARING EXAMINER COLLINS: (Shakes head.)

MS. MONTGOMERY: No, sir, thank you.

MR. TRESCOTT: Thank you.

HEARING EXAMINER COLLINS: Thank you.

THE REPORTER: Shawn, are you going to be short?

MR. FARRELL: Yes, I will be. Yes, and Dan is

going to be a tough one to follow, unbelievable passion.

So what I did -- and I apologize, I know everybody is sick of seeing cone models. It's not something that we're always excited to see. But what I wanted to do was just kind of give context to what's really happened in the resort because we gave you already a copy of the emergency preparedness plan, and it kind of outlines those levels. And I believe your question was at what level are you evacuating, you know, is it red, is it yellow? When do those things happen? And you're trying to understand the very specific, it hits this, and that's what you do.

And unfortunately, as Dan has described, as everybody has brought up with their concerns, they're all different. If we have king tides, that's a different impact on the resort and potentially could cause us to adjust our movement, not necessarily change the category, because we're not in a watch or we're not in a warning. So I just wanted to give you some real communications that actually show what we did during these storms, and what actions were taken just so you can understand the context of how we dynamically worked and addressed this.

This would be Hurricane Irma, and this is

September 5th, and obviously we're just tickling into the cone here. And this is a communication from me that's out to Lucinda Carter and Scott Thompson. Those are two property managers. Lucinda oversees two of the associations within the gates -- and I'm sorry, I could go back to the sheet that I gave you earlier that kind of showed all the different associations.

When you pull into the resort, there's 20 different associations, no master association. We are obviously one of the bigger entities so we kind of play a role in some aspects like this where we're communicating out to the 20 associations, hey, this is what the resort operations are doing in this storm. And this email is just saying, hey, this is what we're doing; we're starting to move this stuff around; we're watching the storm; we'll keep you posted on what's going on.

We're not responsible for each and every one of those associations. As I showed you in the earlier slide, we have guests that are in those, and that's what we're going to be actioning, those guests inside those associations, but we're communicating to those other associations what we're doing so they understand it. Whether they decide to follow that or not, as somebody else said, we can't control them. We can

control the people that are renting through us, our guests, et cetera. So I just wanted to share some of the very realistic things that were going on.

So, again, Irma, this is September 5th. We're just tickling into the cone, and we've already started to have meetings and start moving things in that direction, and communicated to the other associations those actions.

September 6th -- and this was on my other presentation, kind of showed -- on the left-hand side of the slide is the STAR report showing our occupancy going from that higher occupancy; and as the storm gets into that cone, organically guests are like, we don't want to be around, we're out. As we start taking the resort apart and start demobilizing the pool area, the cabanas, et cetera, you see that occupancy go down. So this is just a repetitive one before landfall -- excuse me -- on the 10th.

On the 7th, this is a communication out to -- at that time this was our ownership group, a previous ownership group, and kind of outlining what was going on, what we're expecting from the storm. And in this case scenario, we're in a watch at this point, but it's outlining all of the things that we're doing, what we're not doing, who we've communicated to, and those

actions. So, again, it's just a -- a document to show you that we've already worked with Lee County Sheriff, with EMS. We -- we -- we've interacted and spoken to everybody so they know the status of the resort; so we are not that entity that's a problem or adds to the problem already that everybody is dealing with in the -- in the area -- or on the island, I should say.

And here is September 8th, it is an email going out, again, to our ownership. Update Friday, 11:00, and the storm was landfall on the 10th. All guests are gone. Team members are -- except essential staff were just wrapping up and recapping -- we're gone. The evacuation is not done for other places, but we are already out, and we're two days before landfall, which was on the 10th in this case.

So, again, just to show you -- because I can show you all kinds of documents that show you we have procedure and process and everything. This is really what it looks like and how we actually get through it in -- in the different cases.

Hurricane Ian more recent obviously. This is this current ownership. So now it's new ownership, new management group that I work for, Timbers in this case scenario, but it's the same case scenario, as you can see. On September 24th we are just tickling the cone

here on Ian, and the process has already started. We've already worked through; we've communicated with our staff, made sure they're in process; reached out to Servpro to make sure they're on -- ready -- standby if we happen to need those types of services, and confirm that everything is already in motion.

Obviously, again, this is like the STAR report and everything we had in there. This -- this email here on the right-hand side, Marina is our -- she's currently our resort manager. At this time she was our director of Owner Services. This is an email out to all of the associations, as well as the board presidents, and giving them the update of what we're doing on September 25th.

Again, landfall for this was on the 28th, but kind of updating them what we're doing, the guests that we're informing in each of your associations, the owners in these associations in our rental program, et cetera, et cetera.

HEARING EXAMINER COLLINS: What is "competitive set"?

MR. FARRELL: Competitive set would be the people we rent against, so everything from -- it could be Sundial Resort, it would be Key Largo, it would be the Hyatt Coconut Point, things like that, other

properties. That's where they pull it from. So it all depends on who we're selling against.

HEARING EXAMINER COLLINS: So their numbers are dropping, too, in the wake of the storm?

MR. FARRELL: In -- in -- in some case scenarios. So some -- sometimes the comp set could be up in Tampa. Maybe they don't have it necessarily coming there. It could be different locations. We have two different comp sets, one for destination-type events, like weddings, stuff like that, that aren't necessarily in the same exact spot in Florida, so they may not be impacted. So the comp set decline in occupancy may be the same if they're closer to us, and the storm is heading in their direction, like us.

September 26th, again, this is a note out from me to ownership and leadership group, just updating on where the storm is at this time. We are in a watch, and we are wrapping everything up. Everything is already on its way down. Again, the detail -- and you can kind of cross-reference it to our emergency preparedness plan, showing that we're communicating these things are done, and that's exactly how it happens.

And then the 27th, this was just a note -- to the right-hand side is actually the evacuation from Lee

County, which happened on the 27th at 2 p.m. This is my note out to our ownership group, at 3:00 on the 27th, and basically the resort is closed. We're gone. The evacuation order just came out from Lee County, but we are -- we are already out of there.

So, again, the slides were just meant to help keep in context what actually happens, because it's easy enough to write a plan but to execute against it, the property has always done that.

So, again, I think I said it in my testimony before, the team that was there when it was Charley, it was not me, but they did similar, and they created all their plans. So there's always been that sense of urgency and understanding that we are on Captiva, and it requires another level of attention to -- to those types of details. So that's basically what those slides were, for a reference point.

And that's all I had. So -- so any questions about that?

HEARING EXAMINER COLLINS: Yeah, go back to the other -- is this -- the bullets on the one -- on the right side, is that part of your letter?

MR. FARRELL: No, that was just -- I was just trying to -- I was Google searching trying to find the appropriate document that I could copy/paste. I am not

a PowerPoint expert. I was trying to find it so I had to copy/paste off of one of the websites listing --

HEARING EXAMINER COLLINS: So on this date --

MR. FARRELL: -- Lee County evacuation.

HEARING EXAMINER COLLINS: So what you're attempting to illustrate here is that on this date, September 27th, the County had already announced mandatory evacuations for Zones A, B, and partial C. And at this point, this is the message you sent --

MR. FARRELL: I'm done, we're already out.

HEARING EXAMINER COLLINS: Yeah, we're out --

MR. FARRELL: Yeah, they've -- they've issued evacuation, but we're already done with the evacuation.

HEARING EXAMINER COLLINS: And what's HGVC unit?

MR. FARRELL: Hilton Grand Vacation, that's the timeshare units on the property.

HEARING EXAMINER COLLINS: Okay.

MR. FARRELL: Because we don't manage them, those guests. We communicate with them, obviously, because we knew where they were and their status, but we don't manage them. So we stay in close contact.

HEARING EXAMINER COLLINS: Okay, thank you.

MR. FARRELL: Of course.

MS. MONTGOMERY: I just have a question. So, basically, when all the experts talk about the

evacuation time, it is that time to evacuate from when the order is given.

MR. FARRELL: Correct.

MS. MONTGOMERY: But in all the examples you've provided, by the time that order is given, you're already there -- gone.

MR. FARRELL: We're either gone or almost completely there. And I think what Dan spoke to, and all the models he showed is, the technology gives us that. I mean, 30 years of storms, if you're in the cone, like Dan said, you're going to get some type of impact from it so you better start preparing one way or the other. So I don't think -- we don't wait for -- this ownership and the previous ownership understand the cost of having to have people leave early and potentially lose some money by canceling reservations is minimal compared to not doing the right thing, being greedy, and having people stuffed in the hotel and having a last-minute panic. So, I mean, the message has always been that way to me, and we will always operate that way.

MS. MONTGOMERY: So you're not part of that evacuation time, bottom line, because you're gone.

MR. FARRELL: Yes. Sorry, yes --

MS. MONTGOMERY: Thank you.

MR. FARRELL: -- to answer your question.

HEARING EXAMINER COLLINS: Okay. We're going to take a break. Why don't we come back a few minutes after 3:00, and we'll resume then.

(Recess from 2:52 p.m. to 3:04 p.m.)

HEARING EXAMINER COLLINS: Good afternoon, we're back on the record, Applicant's rebuttal, next witness.

MR. SHAWLES: My name is Steve Shawles. I was not sworn in this morning.

HEARING EXAMINER COLLINS: Do you swear or affirm the testimony and evidence you put in the record will be the truth?

MR. SHAWLES: It will.

HEARING EXAMINER COLLINS: Thank you.

MR. SHAWLES: And I have copies of my résumé. I'm not sure if I've been qualified as a professional witness here.

HEARING EXAMINER COLLINS: All right. You can perhaps hand me your résumé, and then you can give us a brief rundown of your academic and work experience.

(Applicant Exhibit 9 submitted.)

MR. SHAWLES: So I've been surveying for over 40 years, licensed in 2003 --

HEARING EXAMINER COLLINS: Speak up, please.

MR. SHAWLES: -- licensed in 2003, been in Lee

County, I think, since 2000 -- sorry, 1987. And I'm project surveyor on this particular project, current sitting president for Florida Surveying and Mapping Society in Collier -- the Lee Chapter, and that's me.

HEARING EXAMINER COLLINS: Okay. You may proceed.

MR. SHAWLES: So I also have a couple more -- three copies of this exhibit, and what I'm going to do is briefly run through -- run through the access easements, as they run through the property, and the ownership of that.

So these are old-time 24-by-36 sheets because the print gets awful small, and I'll give copies over here, and I'll just...

(Applicant Exhibit 15 submitted.)

HEARING EXAMINER COLLINS: So this will be a composite exhibit, and what does it depict exactly?

MR. SHAWLES: The roadways and easements as they run through the property.

HEARING EXAMINER COLLINS: You have multiple copies?

MR. SHAWLES: I do, three.

HEARING EXAMINER COLLINS: All right. Well, let me have a second copy because we're going to have to find a way to make this available to the Board.

(Document submitted.)

MS. CRESPO: We can provide an electronic copy.

HEARING EXAMINER COLLINS: You know, I don't know how in the weeds they're going to get with this, are they going to look at, you know, certain exhibits or not; but we like to have everything available --

MS. MONTGOMERY: Do you want a rubber band?

HEARING EXAMINER COLLINS: Yes, please.

MR. SHAWLES: I have a couple, also.

Also, copies of the recordings of each one of the easements.

(Documents submitted.)

HEARING EXAMINER COLLINS: Thank you.

(Discussion at lectern)

HEARING EXAMINER COLLINS: I need one because I have two.

More? Is this everything, all your exhibits?

MR. SHAWLES: (Nods head.)

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

MR. SHAWLES: The Applicant has legal rights to utilize the entirety of the South Seas Plantation Road via ownership of approximately 61 percent of the roadway or via easements over the other 39 percent of the roadway.

Title opinion and boundary survey provided by Lee County, in accordance with the LDC requirements.

Title opinion and survey deemed sufficient by Lee County's Zoning Division.

So if we go to the next slide, we'll go to the survey itself.

We prepared this exhibit to clarify the access easement location and ownership. For clarification purposes, we highlighted the boundary survey prepared by Blew & Associates to illustrate the access easements by recording instrument and what parcels they --

HEARING EXAMINER COLLINS: Okay, so orient me for a minute. Where am I within the resort right here?

MR. SHAWLES: This is the southerly boundary, and Captiva Drive is running east and west on this.

HEARING EXAMINER COLLINS: I see. So we're at the entrance?

MR. SHAWLES: We are.

The darker screen is SSIR ownership, and you can see the lighter green is actually owned by somebody else in this area. I believe that is --

UNIDENTIFIED SPEAKER: Beach Villas III.

MR. SHAWLES: Right, that is Beach Villas.

So on the top right-hand corner of each sheet -- and you'll see this on the full size -- we've color coded the easement and whether it's owned by SSIR or if it's owned by others.

HEARING EXAMINER COLLINS: Okay. But if it's owned by others, they have an easement right to cross. That was your testimony.

MR. SHAWLES: Correct. So as an example, the darker green is depicting OR 1846, Page 807; and the darker portion is the portion that lies within SSIR property. The lighter green shows the ownership outside of SSIR property.

HEARING EXAMINER COLLINS: And what was the date of that easement?

MR. SHAWLES: It's on the recording.

HEARING EXAMINER COLLINS: Okay. Early '70s?

MR. SHAWLES: The -- yeah, 1848 -- 1846, 807.

HEARING EXAMINER COLLINS: 807.

MR. SHAWLES: It's highlighted on the top.

HEARING EXAMINER COLLINS: Yeah, I see that. That's '86. The first one is 981, 730. I don't know what this corresponds to, but that's from '73. Then we have another one in '86. This one doesn't have a page. How is that possible?

(Discussion at lectern)

HEARING EXAMINER COLLINS: '93, '84.

Okay. So the resort was in operation quite a few years before these 1980 easement documents.

MR. SHAWLES: Correct. Also, inside that stack is

what we found to be the first easement written, and I believe it was in OR Book 981.

HEARING EXAMINER COLLINS: Yeah, 981, 730, that's 1973.

MR. SHAWLES: Correct. That was modified several different times. So the easements we're going to be talking about now are what we see as the ones that are in place now. As a matter of fact, if you look to the left of that green shading, you see the dash lines that make a little hook right there? That's actually the original easement that was written, 981, page whatever that was in 1973.

HEARING EXAMINER COLLINS: So the contours of the easement has changed over time?

MR. SHAWLES: Significantly. And it looked like it changed every time there was a different design change in the property lines on the east portions of the development, and that has happened from one end of the parcel all the way through to the other end.

So if we go through -- and, again, if you look at the big paper sheets, those are legible. These are real hard to see on this screen, but the PDFs will be legible.

So we can go through, and we can see -- again, we kept the same shading. The lighter green is owned by

others, but, granted, it's written actually by the original owners of South Seas Plantation, okay?

And you can see that there's a smaller portion on the right-hand side of the easement that's under SSIR ownership, and the majority in this area is owned by others.

As we travel north, kind of the same scenario, and then we hit this area where it is entirely on SSIR property --

HEARING EXAMINER COLLINS: Is the paved road wholly within the easement?

MR. SHAWLES: I believe so, although it's not always within one ownership's property. It meanders back and forth between properties. And, again, this is -- we did not conduct this survey. This was the survey that was used for -- that was done for this hearing. We didn't prepare this. We just highlighted the ownership portions in the easements.

Again, through here it's completely SSIR property.

This is going past the utility area.

And what happens with the easement, you'll notice, is that in the beginning where the most traffic is, the easement is wider. As we go up the island, less and less people use it, the easement shrinks in size.

And then this particular easement terminates right

there, and that blue line on the top we'll call the south end of the Beach House restaurant area, all right, or where the 30-foot beach access easement is.

So if we go to the next slide, we can see -- we change easements. This was the previous slide. The dark green terminates, and then the cyan color takes over.

Again, there's another easement that carries us through this area here. The marina is on the right-hand side, the golf course on the left.

And then you can see, as we have that little turn right there, a small portion of the easement lies within a condominium. That first one was Beach Villas condominium. The next one...

HEARING EXAMINER COLLINS: And that's the reddish hatching on the right --

MR. SHAWLES: Right.

HEARING EXAMINER COLLINS: -- left side?

MR. SHAWLES: Correct. Actually, the -- that condominium boundary comes out to the centerline of the road in that area.

HEARING EXAMINER COLLINS: Okay.

MR. SHAWLES: And if we go north from there, we can see this easement has been modified again. The cyan color is no longer in effect. The shading -- or

the hatching is where the roadway is built. So what we did is we showed the ownership of the easements that are now where the roadway is built, and that carries all the way through, around another condominium, and up to the entrance of Land's End condominium.

HEARING EXAMINER COLLINS: So what's the shading on the left side?

MR. SHAWLES: The left side is where the roadway is, that hatching. The cyan shading is the original easement in this area, but that was modified again. Then, again, the hatching -- the legend -- you know, you open up that blue -- that big sheet, you'll be able to drill down and actually see --

HEARING EXAMINER COLLINS: And what does --

MR. SHAWLES: -- that information.

HEARING EXAMINER COLLINS: -- the purple represent?

MR. SHAWLES: Where one easement dovetails back into another. The original easement and the modified easement both come together in that area.

HEARING EXAMINER COLLINS: All right, and that's the top of the island.

MR. SHAWLES: Correct, that's Land's End.

And, again, what we -- also what we did was we calculated the ownership percentages, which we went

over earlier.

HEARING EXAMINER COLLINS: So the important takeaway for me is that the Applicant has the right to use the entire road.

MR. SHAWLES: Correct.

HEARING EXAMINER COLLINS: Okay.

MR. SHAWLES: Okay? Any questions?

HEARING EXAMINER COLLINS: No.

MS. MONTGOMERY: No questions, thank you.

MR. SHAWLES: Super.

MR. BARRACO: Good afternoon again, Madam Hearing Examiner. For the record, Carl Barraco. I'm going to go over the roadway design and deviation for the South Seas -- excuse me -- internal resort roadway.

Deviation 14 has basically just memorialized the existing conditions. And as part of that one, Staff reviewed the information I submitted, which I will go over in just a minute.

They did ask for some signing and marking for the bicycles, in accordance with the Manual of Uniform Traffic Control Devices, and they also asked, when we do that, to do a detailed review of the roadway pavement conditions. So we agreed to that.

And that --

HEARING EXAMINER COLLINS: Is this new --

MR. BARRACO: No.

HEARING EXAMINER COLLINS: -- from the original, or this is the original you're showing me?

MR. BARRACO: This is the original --

HEARING EXAMINER COLLINS: Deviation and the original "subject to" language?

MR. BARRACO: Yes.

HEARING EXAMINER COLLINS: Okay.

MR. BARRACO: But I'm going to show you two renditions of the existing sections; then when I get through, I'll explain why.

But this is what we initially submitted to Staff, and it shows four locations where we went in and surveyed and located the roadway to obtain the existing conditions, and I'm going to walk quickly through them.

Again, this is at section 1, and it's roughly 24.8 feet. And remember, these are typical sections. It varies continually throughout.

The next section, 26.6 feet wide.

And then section 3 and section 4 are very similar, and I don't want to spend a lot of time on them. And the reason I did that is because after Staff reviewed those the first time, they came back and asked for us to locate the pavement markings, which we did, and this is this next set.

And going through this, you'll see that we simply just added the pavement markings and some details. And the reason I showed that to you is because, in Mr. Roark's testimony, he thought there was an error in typical sections. I went through typical sections, and I could not find an error. My only conclusion is that he did not have an opportunity to review the initial sections, he only reviewed the second set; and without knowing that first set, it would have been more difficult to evaluate that new information; because if we had that information from the beginning, it would have showed it differently. It would have been clearer. So I don't think there is any error in typical sections, but he may not have had the benefit of the initial sections.

Now, this is a photograph at section 2 -- and I'll back up just a minute and show you -- that's where section 2 is, and that's right here, and I'm going to stay on this section for a bit.

A few points about this roadway in particular. The facility is posted with a 19-mile-per-hour speed limit. That's been there as long as I can remember, which is several decades. There is a manned guardhouse at the beginning, at the entrance to the resort facility. It's patrolled by resort security -- and

Shawn will present some incident reports when I'm done, after my conclusion.

This roadway currently provides access for passenger cars, trolleys, golf carts, and pedestrians. I've been fortunate to have personal experience out on this facility in golf carts several times, and all of those times I've found the facility, in a golf cart, to be very appropriate for the use and the traffic and the conditions. So what I'm trying to say is I don't think this facility functions as a typical roadway, but rather it functions as a resort facility.

And one analogy I can make -- and you may or may not ever have had the opportunity to visit Disney World, but there's a Fort Wilderness, a very large resort, and its internal transportation facility is extremely similar to this. It's gated; it's open drainage; it does have sidewalks; but it carries the same traffic; and it carries 40-foot recreational vehicles and travel trailers with trucks and the golf carts and passenger vehicles and the same traffic, and they really work well. And I think it's because it's a -- it's a resort facility, and that's what people expect in this area. That's what I expected when I was using that as a -- as a guest.

Finally, I think you heard Mr. Treesh say that

when this resort is closed, a closed system -- in other words, you can only come in if you're a guest or an owner, and a lot of other public is not coming in for the boat rentals and the cruises and all those things -- that the traffic, internal, will go down.

So in conclusion, in my professional opinion, this facility has and will continue to function as a resort transportation facility, and it will be enhanced with the additional signing and marking and pavement conditions that Staff suggested.

HEARING EXAMINER COLLINS: Thank you.

MR. BARRACO: One more thing before Shawn comes up. I do have the incident reports, and I did review them myself, and he's going to go over them with you.

MS. MONTGOMERY: Can you say that again, Carl? You went fast, and I think I missed it.

MR. BARRACO: Sure. The resort continually has incident reports, if there's an incident; and I have reviewed the incident reports; so that was part of my review and my knowledge of this facility. Shawn is going to go over the reports in detail.

MS. MONTGOMERY: Okay. Before you leave, then, let me ask you a question. As an engineer, when you've reviewed this road, I believe you testified you traveled on it numerous times. In your opinion, is

that road safe?

MR. BARRACO: First, I traveled in both a passenger vehicle and in golf carts; and, yes, I do believe it's safe for its intended use and its -- and its historic use.

MS. MONTGOMERY: Thank you.

MR. FARRELL: I promise this is my last time.

So we just went through the main road, and basically my part here is that I went back through all the records. Obviously, within the gates -- we are a gated community, so it is our security team that does incident reports of anything that happens on that road inside there. So I went back through from 2018 up till now. We only had five recorded guest incidents on that road throughout the resort. Two of them had injuries, both minor, but two of them did. Three of them were gas-operated golf carts improperly -- too fast, turning corners too fast, not paying attention. One was a vehicle striking a maintenance cart that was working on the side of the road -- because we do the maintenance on the road, trimming the mangroves, et cetera, to keep that width -- and a cart just clipped its mirror on the way going down there. And the third one was a third-party property manager actually hitting an owner -- out-of-program owner walking the road down

through there. So from 2018 up to this point, those are the incidents. I have copies for you of the incidents so you can take a look at those and see what they are.

I do think it's important to say, though, on the road, one of the things that this ownership has done is moved forward with a project on the front of the resort, the Captiva Landing, the water park in the front, which historically our operations -- over 60 percent of the inventory that we rented that enjoyed our facilities, which were on the north end of the resort, the main pool area and all that activity, 60 percent of our inventory was staying on this end of the resort. So in order to do that daily, they were making the rounds, and this ownership has -- we've put in a significant water park on this end of the resort that is walking distance, literally, from 60 percent of the inventory in our rental program currently. So I think that --

HEARING EXAMINER COLLINS: Before that the main pool was on the north end --

MR. FARRELL: Correct.

HEARING EXAMINER COLLINS: -- you're saying?

MR. FARRELL: Correct. So, I mean -- so there's -- there's more things going on. We mentioned

in the traffic the moving of Captiva Cruises, which invited outside guests that were not resort guests to come into the resort, to go down to the -- using this road to go to the main marina where Captiva Cruises would go out from.

We also had a golf cart provider that did water sports. They brought in people to do water sports activities. So there was some car traffic that came into the resort. So I know a lot of people turn the -- we're just being, you know, all enclosed and everything like that, but all those moves have added to that depleting the amount of traffic on the road. So I just say that because I don't know that it necessarily is clear in all these different tidbits of information.

HEARING EXAMINER COLLINS: So no longer inviting these third-party vendors in --

MR. FARRELL: A hundred percent, to add that to the traffic on the road. You know, Captiva Cruises would go out for multiple cruises; and, you know, they could have anywhere from 50 to 100 cars in a day that would come into the resort and park on that end. And they went down this road, as you saw, that was in there. I mean, we do have the added construction trucks right now, as well; but normally golf carts and bikes and pedestrians and other things that operate

within the resort and in that space, that's what the road is really meant to do. So I have copies for you.

(Applicant Exhibit 17 submitted.)

HEARING EXAMINER COLLINS: Thank you.

MS. MONTGOMERY: Shawn, I just have a couple of questions.

MR. FARRELL: Yes.

MS. MONTGOMERY: I know from the first day that you testified that you have worked in other resorts. So is this similar, better than, worse than other resorts that you've worked in?

MR. FARRELL: As far as?

MS. MONTGOMERY: Incidents.

MR. FARRELL: I would say, honestly, I mean, South Seas is nothing like anything I've -- I've worked in a lot of different ways. But from an incident standpoint, it's a different model. People go to South Seas as families, as travelers. It's not a downtown or a destination place where you have a lot of that weekend craziness -- we don't normally --

MS. MONTGOMERY: So you can't compare.

MR. FARRELL: -- get that. Yeah, they're difficult to compare.

So from an incident standpoint -- and I did not operate something that had a road of this type of

length. I operated 44 acres and 22 acres, but they didn't have kind of -- they're more marina-based stuff.

MS. MONTGOMERY: Okay. You talked about a third-party property manager. What is that?

MR. FARRELL: So, example, you own a home. If you didn't want to give that to us and have us manage your property, rent it for you and manage that process, you can pay a third-party management company that manages your property for you. They may rent; they may not. They may just handle the maintenance of it, prepare it for your personal visits and stuff. So --

MS. MONTGOMERY: Okay.

MR. FARRELL: -- we have homeowners throughout that have property managers.

MS. MONTGOMERY: Okay, thank you.

MR. FARRELL: Okay, thank you.

(Discussion at lectern)

MR. SHAWLES: Again, Steve Shawles.

HEARING EXAMINER COLLINS: Hang on a second.

MR. SHAWLES: Sure.

Okay. So this is the 30-foot beach access easement. There was a lot of discussion about -- first of all, I think there might have been some confusion as to whether the property lines matched or if there was a gap. There isn't, not that we know of, okay? Also --

actually, I have the recording instruments here, if you want a copy of that.

(Applicant Exhibit 16 submitted.)

HEARING EXAMINER COLLINS: This is the beach access easement?

MR. SHAWLES: The beach access easement, yes.

HEARING EXAMINER COLLINS: And the date's 1960?

MR. SHAWLES: It is, an oldie but a goodie. So the question, I suppose, is how many cars were out there in 1960?

The use of this easement was limited to people in Government Lot -- Government Lots 3 and 1, I believe. This exhibit shows those. Government Lot 1 is on the left-hand side. Governmental Lot 3 is on the south of Section 22 --

HEARING EXAMINER COLLINS: So Lot 1 is pink; Lot 2 is green?

MR. SHAWLES: Yes, I believe so.

And then here, this is a portion of the easement. I just want to point out the purpose of the easement, for the purpose of ingress and egress to the waters of the Gulf of Mexico. There's been some discussion as to vehicular traffic. It is -- the easement states that the westerly 200 feet of said easement is and shall be limited to pedestrian -- pedestrian use only. The

remaining easterly portion of the easement may be used for vehicular parking, as well as pedestrian uses.

There's a copy of the document. It's a 30-foot-wide beach access easement, provides ingress and egress to the waters of the Gulf of Mexico. Notes pedestrian use and permissions for parking. Not a right-of-way street or road per definitions and minimum roadway specifications in LDC Chapter 10.

From what we understand, 224 units have access rights aside from SSIR Owner, LLC.

So I'll back up one second and just bring -- bring something up as to how you determine the line of where vehicular traffic has to stop, and it can only be used by pedestrians. And the way this easement is written, it's a little bit vague. If we go back -- I'm sorry -- to the easement, I believe what it states is that the easement terminates at the waters of the Gulf of Mexico. You could interpretate that as the mean high water of the -- of the Gulf of Mexico. What the easement states is that the westerly 200 feet is for pedestrian only. So we can say that from the Gulf -- the waters of the Gulf of Mexico, 200 feet easterly is pedestrian only, and define the line that way, right? Well, the mean high water changes monthly. Every storm event that shoreline moves. So it's a little hard to

actually pinpoint exactly where that line would be.

You could hold the original easement language because it has a distance, more or less, to the waters, you could hold that; or you could use a current day mean high water. It's an interpretation that would actually take a judge to decide, I would imagine. So I just wanted to kind of bring that up, that that line is a little bit liquid. We're not exactly sure where that should be.

Now, as what I would say? I would try to hold the spirit of the easement as it was written, and hold the geometry or the position of it when it was -- when it was created. Any questions?

HEARING EXAMINER COLLINS: How do we know where that was though?

MR. SHAWLES: If you were -- if we were to read through here, it actually gives a distance from the -- from easterly side of the easement more or less to the -- roughly to the foot of where the mean high water was in 1960 when it was written.

HEARING EXAMINER COLLINS: Okay. So that's a point on the map?

MR. SHAWLES: Yes.

HEARING EXAMINER COLLINS: West of which, no cars.

MR. SHAWLES: Correct.

Is that it? Questions?

MS. MONTGOMERY: Thank you, no, sir.

MR. BARRACO: Last time today. For the record, Carl Barraco. I'm going to go over a few items on the Beach House development order.

The development order for the Beach House was issued under development standards and allowable resort uses for this tract under the administrative interpretation. It was approved as an amenity, but it also references commercial for building permit purposes so that they could obtain a building permit.

There is no on-site parking required for the amenity per the ADD.

There's a 10-foot setback from South Seas Plantation Road required and provided. And after the building walls were constructed, the building was survey located, and it is slightly greater than 10 feet. So that setback is satisfied.

There is a minimum 10-foot building separation required and provided in the ADD.

There are no buffer plantings required per the ADD. The Beach House setback is greater than 20 feet from the property line, therefore no buffer is required.

HEARING EXAMINER COLLINS: How is it greater than

20 feet from the property line? You just said it was 10 feet.

MR. BARRACO: No, that's the property line. When I said 10 feet, that's the right-of-way. If I said property line, I apologize. The 10 feet is from South Seas Plantation Road.

HEARING EXAMINER COLLINS: So what is the 20 feet?

MR. BARRACO: From the south property line.

HEARING EXAMINER COLLINS: But I thought there was testimony that there was just 10 feet on the edge of the easement to the building.

MR. BARRACO: This is --

HEARING EXAMINER COLLINS: Didn't somebody say that?

MR. BARRACO: The 20 feet is from the building to the property line, independent of the easement.

MS. CRESPO: Just advance to the next slide.

(Discussion at lectern)

MR. BARRACO: So we're talking here, the 10 feet is here, and the 20 feet is here.

HEARING EXAMINER COLLINS: So the 20 feet goes into the easement?

MR. BARRACO: Yes.

UNIDENTIFIED SPEAKER: Because the easements are --

MS. MONTGOMERY: Because they own it.

MR. SPENCER: No, the building is outside the easement.

MR. BARRACO: The building is greater than 20 feet from the property line, independent of the easement.

HEARING EXAMINER COLLINS: Okay. The Beach House restaurant is more than 20 feet from the property line?

MR. BARRACO: Yes.

(Discussion at Applicant table)

MR. BARRACO: It might be more clear when the architect comes up and --

HEARING EXAMINER COLLINS: Okay.

MR. BARRACO: -- reviews that. And if not, I can come back and try to explain it a little bit better, but I think it will be clear.

And then finally, in the last bullet, there was reference made during public comment to non-required existing plantings in the easement, but that existing vegetation is independent of the development order.

HEARING EXAMINER COLLINS: What did the ADD envision for that property?

MR. BARRACO: I think just an amenity, going back to --

HEARING EXAMINER COLLINS: No descriptor of --

MR. BARRACO: Not to my knowledge. Someone else

may have more information, but there was no description, to my knowledge. As we started going through this, we started talking about what could be there, and there was an amenity.

MS. CRESPO: Adam, do you have the ADD plan handy?

MR. MENDEZ: Up on the screen? Is that what you want to see?

MS. CRESPO: Yeah, if we could...

MR. MENDEZ: This plan?

MS. CRESPO: Yes.

(Discussion at Applicant table)

HEARING EXAMINER COLLINS: So where is the Beach House restaurant on this map?

MR. MENDEZ: Right here.

(Discussion at Applicant table.)

MS. CRESPO: From an ADD standpoint, the bulk of the resort area is that vertical hatch that is generalized resort area. The land use notations earlier focused around the commercial 5 acres on the Captiva Drive frontage, but the vast majority of the resort is just that generalized resort.

(Discussion at Applicant table)

HEARING EXAMINER COLLINS: So your need for the -- if I could just -- your need for the deviation that you've sought there is because, under the existing

development approval, you are not required to put a buffer, and you only had a set -- setback of 10 feet?

MS. CRESPO: Correct.

HEARING EXAMINER COLLINS: And so in the new approval --

MS. CRESPO: May I -- we would -- in order to have no buffer, the setback would have to be 20 feet. We are well in excess of that, but that would be the minimum standard under the ADD, to eliminate the buffer along that property line.

HEARING EXAMINER COLLINS: So now you're seeking a rezoning, and you're asking me to recognize that as a preexisting condition because the Beach House has now been constructed.

MS. CRESPO: In our revised conditions -- and this will be noted in the next few slides -- we've eliminated that deviation request. So we do have a vested development order for what's being constructed per the development order plans with no buffer in that location. We are proposing some supplemental plantings, as you're going to hear about momentarily; and in the future, if this is damaged more than 50 percent, if it has to be constructed and we elect to redevelop that property, we will comply with the Land Development Code Chapter 10-416, which would be a C or

F buffer in that location. So we are -- in your revised conditions, we've -- we've dropped the deviation request along that property line.

HEARING EXAMINER COLLINS: And you're addressing something in conditions?

MS. CRESPO: Yes, we have -- and Christian Andrea is going to be presenting right after Carl.

HEARING EXAMINER COLLINS: Hours of operation, amplified sound, other things to enhance compatibility?

MS. CRESPO: Yes.

HEARING EXAMINER COLLINS: Okay. Well, I look forward to that.

MR. BARRACO: And it may help to understand that last time we were in front of you talking about this, there was a different development order approval. It's been amended since then --

HEARING EXAMINER COLLINS: Okay.

MR. BARRACO: -- to be consistent with what we're talking about. So you may not have visualized that step that we just took.

HEARING EXAMINER COLLINS: Okay.

MR. BARRACO: And the others in the team will go through that, the changes.

HEARING EXAMINER COLLINS: Excellent.

Just so that I understand, the takeaway from your

testimony is what exactly?

MR. BARRACO: Just touching on the items of why -- why there's no parking, why there's no buffer, why the existing vegetation isn't required, because those things were discussed last time we discussed this item, and the development order has since been amended to clean those up.

HEARING EXAMINER COLLINS: Okay.

MS. MONTGOMERY: And I just want to note for the record, under the ADD on page 16, it does indicate that the final phases of development, as set forth in the ADD, would be upgrading of resort service facilities and improvements to guest facilities, which included amenities. So they provided for great flexibility as to their locations.

HEARING EXAMINER COLLINS: I'm more concerned with achieving compatibility than the details of.

MS. MONTGOMERY: Okay.

MR. ANDREA: Good afternoon, Christian Andrea, landscape architect with Architectural Land Design.

This is a rendered version of the approved development order landscape plans, and this is reflecting -- is this a pointer, too?

MS. CRESPO: The red button.

MR. ANDREA: There we go.

So this is the -- the buffer here that is not required as part of the ADD, but this reflects all the existing trees that are there and to remain. In addition, this plan has an additional strip of landscape here and here that's 5 feet wide that's been added from the previous plan that you saw. There are 12 trees proposed along this corridor here, and 9 here, and then 3 here, along with additional landscape in that area.

In addition to that, a wall is being proposed here that is 8 feet tall as measured from the deck, but it's 4 foot of masonry wall with 4 foot of louvered panels above that.

And then in addition, you can see the landscape now basically wraps all four sides of the building, not completely, but there's at least a 5-foot strip that covers -- I don't know what percentage that is, but probably two-thirds, if not three-quarters of the perimeter.

The next slide shows the wall that's proposed. So this is a cross section through the wall. So from inside the deck -- the deck's about 2 feet or 2 and a half feet, I think, above the ground; then there's the 4-foot masonry wall, and then the 4-foot louvered panels that's above that. And then on this side here

is where that dense landscape would occur.

This is a view from the -- sorry, I've got blurry vision. I think that says from the south -- yes, from the south property line looking back at it. So the wall is a little taller than 4 feet here. So it's between 8 and -- let's see, that would be 10 feet-ish. And then when you're inside the patio looking to the south, you can see the 4-foot wall there with the louvered panels on top.

I am happy to answer any other questions you may have. If not, I'll have Mark come up and continue.

HEARING EXAMINER COLLINS: Can you spell your last name, please.

MR. ANDREA: Andrea, A-N-D-R-E-A.

HEARING EXAMINER COLLINS: And you're an architect?

MR. ANDREA: Landscape architect.

MS. MONTGOMERY: Okay. Before you leave, the louvered panels, are you the one that can --

MR. ANDREA: Mark will do better.

MS. MONTGOMERY: Thank you.

MR. ANDREA: Thank you.

MR. McLEAN: Good afternoon, Madam Hearing Examiner. Mark McLean, MHK Architecture. I'm a national director. I lead our Southwest Florida --

THE REPORTER: I'm sorry.

HEARING EXAMINER COLLINS: Okay, slow down.

MR. McLEAN: Okay.

THE REPORTER: Okay. Mark McLean --

MR. McLEAN: Yeah, MHK Architecture. I presented our original presentation to you. My credentials are on file with the submittal. I'm here to follow up on --

HEARING EXAMINER COLLINS: So you're also an architect?

MR. McLEAN: Yes, ma'am.

HEARING EXAMINER COLLINS: And you designed the original Beach House?

MR. McLEAN: My team designed this Beach House, yes, ma'am.

HEARING EXAMINER COLLINS: I'm ready for you.

MR. McLEAN: Ready?

So as we've been talking about, this is the property that we're looking at. It's the Beach House that's under construction and the property to the south of it.

So where everybody was trying to lay this out to you was the relationship of the two buildings. So as we look at the relationship of the two buildings, this red line represents the property line. To the face of

our building, which is the entry that's there, that's the 30-foot separation. So from the property line to this entry, that's our 30-foot separation from the buildings -- from the property line to our building. If we're greater than 20 feet, in the ADD, then there's no requirement for a buffer on this property line. So that's where the separation is, and why there's no requirement for the buffer. It's because we're 10 foot greater than the ADD requires.

HEARING EXAMINER COLLINS: But you're going to provide one.

MR. McLEAN: We are providing one anyway, yes, ma'am.

So as we move from there, as I continue to move on this, this little roof area here that I referred to as the 30-foot area, that's just the entrance to get into it. The building itself, the primary wall of the building, is back here along this line. And you'll see it in my next renderings, that that primary wall is another 12 and a half feet back. So from the face of this house's wall to the face of our building wall, there's a 42-and-a-half-foot separation between the two. It gets into the semantics of where things are measured from so --

HEARING EXAMINER COLLINS: You're talking about

the side of the building versus the overhang?

MR. McLEAN: Yes, ma'am, the side of the building from the -- from the side of the building to the side of the building is greater than 42 feet. The setback is measured to the face of this building, which will show a little better in the renderings.

The other thing we wanted to point out here is that our building is slightly over 29 feet tall, and the neighboring building is 42 feet tall. So we are also over 13 feet short -- or nearly 13 feet shorter than the adjacent building.

So as I move into this slide here, this will kind of define some of the things that we've done. So as we've cleaned up the pedestrian walkway through here, again, from the face of this column to the property line is the 30 foot measured requirement; then from the face of this building to the property line, we're 42 and a half feet.

What we've done with this in the new development order that you haven't seen yet was we created this 5-foot landscape buffer that runs through here to increase the compatibility of it. Back here in the rear area where the outdoor dining is, that's where we've added the wall that Christian had referred to, which shows up a little better in my next slides.

So as we move to the next slides, and we're down on the beach looking back at the Beach House, you can see how this wall presents itself here. The dining is on this side; the wall is on this side. This rendering is a little bit off. The floor of this outdoor dining is actually about 30 inches above the sand. So when you're on this side of the wall, you would have the 4-foot wall plus 30 inches. So you'd be 6 and a half feet -- like if this person is walking down this pedestrian walkway, there's 6 and a half feet of concrete wall that would separate you from that, and then it's all planted out to kind of bury the wall. Then we put 4 feet of louver on top of that wall.

When I move to the next slide, it kind of looks -- as you move around to the beach looking back at the wall. So somebody sitting at the table at this side, there's still 4 feet of wall here. So if they're sitting in a chair, the wall is still about the top of your head, or maybe a little bit higher when you're sitting in a chair. So that should knock down most of the sound coming off of the outdoor dining area, and then the louver is -- we wanted to be decorative once we come up out of the top of the landscaping and out of the top of the trees. We just didn't want an 8-foot-tall concrete wall there; so we put the louvers

in it to be decorative and more compatible with the rest of the restaurant.

And that's my presentation on the Beach House. If --

MS. MONTGOMERY: I have a question.

MR. McLEAN: -- you have any questions.

MS. MONTGOMERY: It's my understanding that those louvers are more than just decorative. It's my understanding -- and correct me if I'm wrong -- that they are designed to be sound dampening --

MR. McLEAN: There -- there are sound dampening blades within them. So the blades have an aluminum thickness to it, and they have an insulation within them. The manufacturer specification on it says that it will knock down 80 percent of sound transmission going through that wall.

MS. MONTGOMERY: Thank you.

MR. McLEAN: Any questions?

HEARING EXAMINER COLLINS: (Shakes head.)

MR. McLEAN: I'll turn this back over to Christian, I believe.

Is it Christian again, or is it you? No, it's Christian again.

MR. ANDREA: Sorry about that. I've got to pay attention.

This is the water park area. This is a rendered version of the development order, the approved development order for the landscape plans. The focus here is the -- the buffer along here and here. So this is indicated as a 6-foot-wide buffer. We have a requirement of trees at a ratio of 5 per 100, so roughly every 20 feet are trees. I forgot what the exact mix is, but I believe there's 4 palm trees and the rest are -- oops, sorry -- the rest are canopy trees. And then there's a requirement for a 5-foot hedge with -- to be maintained at 8-foot height at maturity. So it's a relatively complete and full buffer.

HEARING EXAMINER COLLINS: This is a condition of approval?

MR. ANDREA: This is coming from our deviation, I guess, right?

MS. CRESPO: Deviation and development order.

MR. ANDREA: And development order -- yeah, and the development order, yes, sorry.

HEARING EXAMINER COLLINS: All right. So that's the -- the top of the photograph --

MR. ANDREA: Yeah --

HEARING EXAMINER COLLINS: -- represents --

MR. ANDREA: -- that's where the -- that's where

the focus was for this presentation, this portion here.

HEARING EXAMINER COLLINS: The closest condo units?

MR. ANDREA: Correct, because they're a non-owned property, and that's what predicated the need for the buffer. Non-resort-owned, I should say.

HEARING EXAMINER COLLINS: And this is at the south end of the resort?

MR. ANDREA: This is at the south end. You drive in right through here, as you come around -- actually, let me -- yeah. So this is the south end as you come into the property.

HEARING EXAMINER COLLINS: What parcel is this on your master concept plan?

MS. CRESPO: It's parcel -- Tract C.

HEARING EXAMINER COLLINS: Recreation, okay. Thank you.

MR. McLEAN: Mark McLean again, MHK Architecture.

The first slide I'm going to present to you today for the south end is an image from pre-Hurricane Ian. So you can see from the pre-Ian development -- earlier in the presentation, Shawn had mentioned that this was the previous check-in building, and these tennis courts had existed in here. These were the properties that were in question that we were just mentioning that are

outside of the development. So with this, we just wanted to illustrate the amount of density, the amount of buildings, everything that was in that space pre-Ian.

So then if we move forward to where we are in our development today -- or our development in our future development, the water park was the picture that Christian just reviewed and showed the buffer along here for the villas, and then what we're illustrating is where the new proposed hotel will be along this buffer.

One of the things we want to talk about is there's been a lot of conversation about building height and how building height works; and in my original presentation, we had talked about whether we were at design flood elevation or base flood elevation or an elevation controlled by the construction control line or by the LiMWA, but this entire property is in a standard A Zone. So in the standard A Zone, our building heights will be measured from DFE.

But to eliminate some of that confusion as to where everything is measured from, even if we're in a AE 7 or an AE 8, there's still a reference point of zero. So zero is always somewhere in the ground, it's back at a water level from the North American Vertical

Data when everything comes from a zero. So what we wanted to do to simplify this for everybody is do some measurements from zero.

So when we look at the Tennis Villas here, and we say it's 47.3 feet tall, that's from zero. So that's a reference height from zero. What you can see, the building is only 43.6 from grade, but the grade can change, right? You can have a driveway that leads up to a building, or you can change a grade down to a pool deck. So what we're trying to do is level everything back out to zero so we can simplify it for everybody. So if we measure from zero, the Tennis Villas are 47.3 adjacent to our new proposed hotel.

As we move into that comparison, the building on the right is the Tennis Villas. So that's the 47 that we just mentioned. I think this says 47.6; the other one says 47.3. There's different villas there, and they're off by a few inches, again, because of just measurements that -- you know, we've got someone with a laser trying to shoot the elevation of a building. So this one -- whoops, I'm sorry. This one says 47.6, the other one said 47.3.

If we bring everything back down to zero, and zero everything out -- our property is in a FEMA flood zone that's AE 7. We have to add a foot to it for our base

floor, which brings us to the design flood elevation, which is BFE plus 1, which puts our base floor at 8. Going back to the original presentation that I did, we're allowed 45 feet in building height to the midpoint of the roof. The existing building, again, we measured the 47.6 back down to zero. If we come across to zero and back up to our height, we're 56.83. So the difference between the existing building and our new building is slightly over 10 feet.

When these numbers reconcile, there are buildings out there that are right at 8 feet; there are buildings out there that are at 10 feet; but anywhere that we're in the standard AE flood zone on the south end, this is kind of where we are, at 10 feet.

But if we break this down a little bit, there's over 4 feet here from their ground floor to where we're now mandated to be for our ground floor. So we can't put our ground floor down here 3.7. We've learned, through our presentation, that FEMA says we have to be up here at 8. So that's 4 feet of the 10 feet right there.

Also, this 45 feet is measured to the midpoint of the roof. The midpoint of the roof encourages a mansard-style design so you put all that mechanical equipment on the roof and protect it. It's a

resiliency technique that they ask us to put the mechanical equipment on the roof so it's not getting flooded, and then screen it with the roof itself because the roof is hurricane rated. So that's where we get a few extra feet in height from the 45 feet, but it's all done in the name of resiliency.

So if we take the 10 foot 2 -- we take the 3 foot 10 in additional resiliency height, the 4 foot in additional elevation height and resiliency, a little over 8 feet of the new height makes up our efforts to make the building more resilient out of the 10 foot total in the two different building heights.

So we just wanted to slow everything down and see when we align all these buildings at zero-zero, we're not talking about a great elevation difference in height.

HEARING EXAMINER COLLINS: So is this 10-foot differential the greatest differential in the resort?

MR. McLEAN: No, ma'am. As we discussed, if we're seaward of coastal construction control line, and we're subject to the LiMWA line, those could be greater differences because those are controlled by DEP. These are the -- these are the ones that we can control in the standard AE Zone. And I think the question that was brought to us was what was the comparison of the

new hotel to the villas.

HEARING EXAMINER COLLINS: No, I wanted to know the difference between the tallest buildings on the resort existing today and the potential height of the buildings that will be newly constructed.

MR. McLEAN: I -- I believe Alexis has some of that in her follow-up presentation. I had only done the south building because my understanding --

HEARING EXAMINER COLLINS: So this is the south area --

MR. McLEAN: Yes, ma'am. So I threw one more slide in here that kind of shows the south area --

HEARING EXAMINER COLLINS: The former Tennis Villas and --

MR. McLEAN: Yes, ma'am.

HEARING EXAMINER COLLINS: -- the hotel --

MR. McLEAN: So -- so the Tennis Villas were right in here. Again, this is where the gate comes in. This is showing that the flood zone in here is the AE 7. The purple area with this black dash line is your LiMWA line that shows we're not subject to the LiMWA down here because we're in this higher central portion of the island.

HEARING EXAMINER COLLINS: Okay. So in this particular area, there's a 10-foot differential.

MR. McLEAN: Yes, ma'am.

HEARING EXAMINER COLLINS: Of which you're saying 8 can be derived from resiliency measures.

MR. McLEAN: Yes, ma'am.

HEARING EXAMINER COLLINS: Okay, thank you.

MS. MONTGOMERY: I just have one question.

MR. McLEAN: Yes, ma'am.

MS. MONTGOMERY: Can we go back to the comparison slide?

MR. McLEAN: Certainly.

MS. MONTGOMERY: If the Tennis Villas were to be damaged by greater than 50 percent, and they sought to rebuild, where would their starting point then be, the same as...

MR. McLEAN: I -- yes, they would be the same as us. It just depends -- if you got out here at Bayside Villas, and this line got surveyed accurately, and they were subject to LiMWA, they could technically be taller than us.

MS. MONTGOMERY: Okay.

MR. McLEAN: But for now, no, the Tennis Villas are right here. They would be equal to us at that point.

MS. MONTGOMERY: Okay, thank you.

MR. McLEAN: Yes, ma'am, thank you.

Any questions?

HEARING EXAMINER COLLINS: No, thank you.

MR. McLEAN: Thank you.

MS. CRESPO: Our next speaker has two slides so we could finish with him today.

MS. MONTGOMERY: Or two, so we just -- we're checking.

HEARING EXAMINER COLLINS: I'll go to 4:15 so --

MS. MONTGOMERY: Okay. We were told 4:00 so we don't want to get in trouble.

HEARING EXAMINER COLLINS: Yeah, I just want to give Maria time to transfer all the --

MS. MONTGOMERY: Okay.

HEARING EXAMINER COLLINS: -- recordings. We're covering a lot of ground. This is good.

MR. WALTER: Yes, it is. Ready?

HEARING EXAMINER COLLINS: (Nods head.)

MR. WALTER: All right. For the record, my name is Bob Walter. I'm a 45-year hospitality professional mostly in resort destinations. I've had direct oversight of 13 different cities and locations in 3 countries throughout my career. And I know we've talked a lot about hurricanes. I've dealt with 14 hurricanes in the resorts that I've worked with. So I don't know if I'm like them, but I like to consider

myself a hurricane --

HEARING EXAMINER COLLINS: You're hurricane savvy.

MR. WALTER: -- expert.

HEARING EXAMINER COLLINS: You're hurricane savvy.

MR. WALTER: Yeah, hurricane savvy.

And if I may, my résumé?

HEARING EXAMINER COLLINS: Okay, thank you.

(Applicant Exhibit 8 submitted.)

MR. WALTER: A little personal aspect of my relationship with South Seas. I began vacationing at South Seas in the mid 2000s. I worked for Maristar Hospitality, who was the owner of the resort during Charley. Plantation Development, the original developer, sold to Maristar, who then sold to Blackstone Group, who then sold it to the current -- current owner/applicant. So I've been at the resort as a guest from the early 2000s.

In January of 2013, I moved to Captiva from Tampa, and I was the managing director of the resort through -- from 2013 to 2021. And when the Applicant purchased the resort, at that point in time I became the owners' representative, still working with the resort and the Applicant, but not running the day-to-day operations. Mr. Farrell runs the day-to-day operations.

If I could just add one more comment to the hurricane, the hurricane plan that the resort has is probably one of the most complex and well-done hurricane plans I've ever seen in my career; and frankly, I've used it at five or six other resorts around the country as an example of how to do it right. So it's an excellent plan that they speak of.

I want to talk a little bit today about who we are in the community and communications for the last year.

Our beautiful beaches attract guests and protect Captiva. Post-Hurricane Ian APTIM, who is the CEPD -- which is the Captiva Erosion Prevention District's nourishment consultant, stated that consistent nourishment and dune restoration clearly limited the impact of the storm compared to the other areas impacted, like Fort Myers Beach. We're a special district, the Captiva Erosion Prevention District, and we have the ability to tax and nourish the beaches every eight to ten years, and that's what we do. And the fact that we do that as a community saved a lot of homes during these hurricanes, because we had the dunes up 13 to 15 feet, and the -- even though we had surge, it was nothing near like you see in Fort Myers Beach and some other areas that were highly impacted by surge.

Let me step back for a second. I sat on the board of the Captiva Community Panel, which you've heard of, from 2013 to 2023; I've been sitting on the board of the Captiva Erosion Prevention District from 2013 to present; and I'm also a member of the Captiva Civic Association.

A little history -- a little factoid that not a lot of people know. The CEPD has a parking lot called Alison --

THE REPORTER: Called what?

MR. WALTER: Alison Hagerup Beach. It's a public parking lot at the end of Captiva Drive and -- where the public can come park, go to the beach, and there's a small section of public beach there. That land, except for one small parcel, is actually owned by the Applicant. And it has an easement that the Applicant has given to the County and the CEPD to use that space for parking. And what's really important to note there is those revenues that are collected from parking are reserved, and then they're used, when the beach nourishment is done, to offset the cost to Captivians.

So example, 2021 that parking lot generated $814,000 in revenue; over an eight-year period, on or about $6.5 million. Now, there are CEPD expenses, operation expenses, that come out of that; but what's

left over as reserves pays down the nourishment before the apportionment goes to Captivians. So it's a big deal that this parking lot exists so we can do the beach parking, protect our beaches, and at the same time save taxpayers a boatload of money in the nourishments.

A couple other things, we provide emergency access -- some of these you've heard already -- to the north beaches for Lee County Sheriff's Office and the Captiva Fire District. We also provide marina space for the marine operations at no charge for both --

THE REPORTER: You've got to slow down.

MR. WALTER: I'm sorry. I'm one of those -- I apologize.

Marine operations at no charge for both Captiva Fire and Lee County Sheriff. We also provide Lee County Sheriff office space for its base of operations in Captiva at no charge.

We also supply training facilities for the Fire District, and emergency airlift operations -- the resort's land for airlift operations when needed. And, thankfully, it's probably happened, in my 12 years, 4 times, I think.

HEARING EXAMINER COLLINS: You're speaking of this parking area?

MR. WALTER: No -- for the emergency airlift? It's -- we use sections of the golf course, island -- any open land that we have closer to the accident, more importantly, since we are the largest landowner in Captiva.

This was mentioned earlier, I think Mr. Valenstein spoke of it. We executed and funded a resiliency study for all of Captiva, not just South Seas. And I'd like to show you that we shared that, as soon as we got it, with the Captiva Community Panel and the Captiva Erosion Prevention District.

Open communication. I think this is probably the most important slide to talk about. It talks about what we've done and how we've done it, as far as the largest landowner, in communicating to the owners within the resort and owners within Captiva.

Prior to Hurricane Ian we held -- we hold monthly president calls in just an open forum, talk about what's working, what's not working. There's no master association. I think we spoke to that in a previous meeting. So we held monthly calls on a regular basis, and we communicated openly.

After Hurricane Ian, we held daily calls. I mean, we couldn't get back -- we got back on the island. We had boats and that sort of thing, but the causeway was

washed out, and a lot of owners were not there. I mean, they're at homes in Michigan and Chicago and that sort of thing.

Then we held four daily -- four weekly calls, and then beginning in November of '22 we went back to our HOA president calls, and we discussed recovery, restoration, and planning to rebuild and restore the resort. It became very evident in early 2023 the discussions we were having with the presidents were not filtering down to the owners. We had many owners call us and say, hey, listen, what's going on here with -- well, we just had our presidents' call. Weren't you involved in that? Didn't anybody -- no, nobody -- granted, some presidents were very good at it, but most weren't.

So we made a conscious decision in mid 2023 to move our president calls to all-owner calls in July. There have been a total of 26 calls. To start in July of 2023, we held 6 HOA calls, and those HOA calls were specific to Land's End, Beach Villas, because we wanted to speak specifically to what their issues were and their concerns. And this happened to coincide at the exact same time when the County had gone to the Board of County Commissioners and asked for the rezoning out there. So we were very conscious of making sure that

everybody knew, from our perspective, what was going on, what we were doing, and our involvement in discussing things with the County and homeowners.

In August of 2023 we began monthly calls. We continue with those monthly calls to this day. We cover resort operations, sales and marketing, owner relations, hurricane recovery efforts; and there's a huge section with South Seas Build Back and Future Amenities. I mean, our slide deck right now is about 140 slides on a monthly basis that we go through for owners. The meetings are recorded and made available to all owners on our community website -- on our South Seas page.

From July of 2023 to March of 2025, we have had 3,000 participants on those calls; 685 video review downloads from Zoom alone, not counting individuals that went to our site, South Seas; and we addressed 122 separate questions; and we had 172 individual owner meetings that followed up on some of those questions, et cetera, et cetera.

So we've made an unbelievable effort to communicate on a regular basis, our development, our rezoning efforts. All the things you spoke of about height and squeeze and everything, we've talked about all those things on all these calls since 2023.

If I may, I could present -- this is the data analytics from those calls --

(Applicant Exhibit 14 submitted.)

MR. WALTER: -- to show the participants, the number of participants.

And that was my quick two slides.

HEARING EXAMINER COLLINS: That's it? You're done?

MR. WALTER: Yeah.

MS. MONTGOMERY: I have --

HEARING EXAMINER COLLINS: You only had the one exhibit?

MR. WALTER: Yes.

HEARING EXAMINER COLLINS: Okay.

THE REPORTER: And his résumé.

MR. WALTER: Oh, yes, my --

HEARING EXAMINER COLLINS: And his résumé, that's right. I've already lost it. There it is.

Go ahead.

MS. MONTGOMERY: Did you have any questions, Madam Hearing Examiner?

HEARING EXAMINER COLLINS: I do not. Thank you, this is very informative.

MS. MONTGOMERY: Bob, I think -- I think Bob, who testified at the end of the second day who was a

president, and Mr. Suarez, who was a president, both lamented that there was no communication. Since you've been involved with this, in your opinion, have you worked diligently to communicate with all the owners?

MR. WALTER: Absolutely.

MS. MONTGOMERY: And I know you said you were there when Charley was there, so do you know whether or not the trolleys have actually been used to evacuate people from the resort to the mainland?

MR. WALTER: Yes, for Charley we used the trolleys to evacuate -- all the guests were evacuated. But at that time, back in 2004, we had employee housing. So the team members that worked and lived in housing at the time were all transported to the Hertz Arena --

MS. MONTGOMERY: Okay.

MR. WALTER: -- and sheltered, and the EC members stayed with them.

MS. MONTGOMERY: Okay. I don't have any other questions.

HEARING EXAMINER COLLINS: Thank you.

MR. WALTER: Thank you.

HEARING EXAMINER COLLINS: We're going to conclude for today, and we'll resume on April 18th at 9 a.m. And we'll be still in the Applicant's rebuttal portion of the hearing. Our hope is to conclude that on that

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day --

MS. MONTGOMERY: As do we.

HEARING EXAMINER COLLINS: -- and then we go to Staff, and then possibly conclude the hearing.

Okay, thank you.

MR. MENDEZ: Thank you.

(Proceedings concluded at 4:15 p.m.)

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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 255, is a true and correct record of my stenographic notes.

Dated this 21st day of April, 2025.

Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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