

THE OFFICE OF THE LEE COUNTY  
HEARING EXAMINER

CASE NO.: DCI2023-00047

IN RE: HOME FRONT HEROES MINOR CPD

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PROCEEDINGS: PUBLIC HEARING

BEFORE: Amanda Rivera  
Hearing Examiner

DATE: March 13, 2025

TIME: 9:00 a.m. to 11:25 a.m.

LOCATION: Lee County Hearing Examiner's Office  
Second Floor Hearing Room  
1500 Monroe Street  
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns  
Florida Professional Reporter

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## 12 ALSO PRESENT:

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Lizbeth Benacquisto, Home Front Heroes, Inc.  
14 Samuel W. Marshall, P.E., Atwell, LLC  
Barrett "Bear" Stejskal, Ecologist, BearPaws Environmental  
15 Hans Wilson, P.E., Hans Wilson & Associates, Inc.  
Yury Bykau, P.E., TR Transportation Consultants, Inc.  
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17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

PAGE:

APPLICANT WITNESSES:

Richard Akin.....	5
Stacy Ellis Hewitt.....	12
Sam Marshall.....	37
Barrett Stejskal.....	40
Hans Wilson.....	42
Yury Bykau.....	48
Stacy Ellis Hewitt.....	51

STAFF WITNESSES:

Brian Roberts.....	57
--------------------	----

PUBLIC COMMENT:

Tom Ward.....	72
Joyce Campana.....	75
Dawn Krutz.....	76
Beth Russo.....	79
Kirk Woodbury.....	80

REBUTTAL WITNESSES:

Richard Akin.....	82
Stacy Ellis Hewitt.....	97

Certificate of Reporter.....	101
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E X H I B I T S

- Staff Exhibit 1, Staff Report, identified on page 5
- Staff Exhibit 2, Affidavit of Publication, submitted on page 5
- Applicant Exhibit A, 48-hour letter, submitted on page 6
- Applicant Exhibit 1, Staff Report, submitted on page 6
- Applicant Exhibit 2, master concept plan, two sizes, submitted on page 6
- Staff Exhibit 3, PowerPoint, marked after the conclusion of the hearing

1 P R O C E E D I N G S

2 HEARING EXAMINER RIVERA: Good morning. My name  
3 is Amanda Rivera. I'm the Hearing Examiner presiding  
4 over today's case. The date is March 13th, 2025, and  
5 this is case DCI2023-00047. It's a rezoning request in  
6 the North Fort Myers Planning Community.

7 Because it is a quasi-judicial hearing, all  
8 evidence and testimony must be taken under oath; so if  
9 you intend to speak, if you could please raise your  
10 hand.

11 Do you swear or affirm the testimony you will  
12 provide is the truth?

13 (Participants respond affirmatively.)

14 HEARING EXAMINER RIVERA: Okay. So the way we're  
15 going to proceed this morning is first we're going to  
16 hear from the Applicant. They present their request in  
17 the case and call any witnesses that they may have.  
18 Following that we will hear from the County Staff, who  
19 will present their re -- their recommendation -- excuse  
20 me -- in this case, which is a recommendation of  
21 approval with conditions. After that I'll open the  
22 public comment period, and I'll call forward the cards  
23 that I have. There is only one opportunity to speak,  
24 but there is no time limitation, so please make notes  
25 as you go through things this morning so that you can

1 make the most of your time at the podium. Following  
2 that we'll come back to the Applicant and the Staff for  
3 any rebuttal and closing comments that they may have.

4 So with that I can get started. Did the Staff  
5 have an Affidavit of Publication in this case?

6 MR. ROBERTS: Yes, ma'am.

7 HEARING EXAMINER RIVERA: Okay, if I can reach --  
8 (Staff Exhibit 2 submitted.)

9 HEARING EXAMINER RIVERA: -- thank you.

10 Okay. So the Affidavit of Publication will be  
11 labeled as Staff Exhibit 2. Staff Exhibit 1 is the  
12 Staff Report.

13 Okay. I'm ready to begin.

14 MR. AKIN: Good morning, Madam Hearing Examiner.  
15 For your record, Richard Akin of Henderson Franklin.  
16 I'm here this morning on behalf of the Applicant on  
17 DCI2023-00047, which is the Home Front Heroes Minor  
18 CPD.

19 Before we get started with our presentation, I  
20 just have a couple of matters to enter into the record.  
21 So I have a copy of a full-size master concept plan and  
22 the 11-by-17. They are the same as what is in the  
23 record. There are no changes to that. I also have two  
24 copies of our PowerPoint presentation for you, as well  
25 as a copy of the 48-hour letter.

1 HEARING EXAMINER RIVERA: With all the same  
2 attachments?

3 MR. AKIN: Correct.

4 HEARING EXAMINER RIVERA: Okay, thank you. So the  
5 48-hour letter -- I'll take it again here -- that was  
6 pre-labeled --

7 (Applicant Exhibit A submitted.)

8 HEARING EXAMINER RIVERA: -- excuse me, thank  
9 you -- as Applicant Exhibit A. Let me process all of  
10 this. I'm going to label the PowerPoint presentation  
11 as Applicant Exhibit 1 --

12 (Applicant Exhibits 1 and 2 submitted.)

13 HEARING EXAMINER RIVERA: Thank you.

14 The composite master concept plan then will be  
15 Applicant Exhibit 2. And the 48-hour letter, as I  
16 said, was Applicant A so I'll just accept that again.  
17 Thank you.

18 MR. AKIN: All right.

19 HEARING EXAMINER RIVERA: Okay.

20 MR. AKIN: Thank you.

21 So just briefly on the 48-hour letter, there are  
22 some slight clarifications to conditions, but it's  
23 really just cleanup, is all it is. I believe that  
24 Ms. Hewitt had a conversation with Mr. Roberts. We're  
25 in agreement with Staff on those. There's no -- no

1 matters in dispute, and we are otherwise in agreement  
2 with the Staff Report, and I think we're pretty much on  
3 the same page with regard to everything here today.

4 We did identify a few potential historical  
5 documents that you might have questions about and  
6 attached them. If you need them or have any questions  
7 about them as you go through today, we'll be happy to  
8 answer those.

9 So we have our team with us here this morning. We  
10 have Daniel Cote, who is the vice president of Home  
11 Front Heroes, Inc., he's here. Along with him we have  
12 Lizbeth Benacquisto, she's also with Home Front Heroes.  
13 Neither one of them has an affirmative presentation,  
14 but they are available for questions if they come up,  
15 and they are here.

16 Stacy Hewitt is our planner, our AICP planner with  
17 RVi Planning; Sam Marshall is the project engineer with  
18 Atwell; Bear Stejskal is our environmental consultant  
19 with BearPaws; and Hans Wilson is here, he's an  
20 engineer, and he may have some discussions about the  
21 multi-slip docking facility; and, finally, Yury Bykau  
22 is our transportation consultant. All of them have  
23 been accepted as experts in Lee County before the Lee  
24 County Hearing Examiner.

25 So briefly to discuss the site location, you can

1 see it's outlined in red on the slide here before you.  
2 It's on the east side of Moody Road, which is a  
3 County-maintained minor collector. It's a little more  
4 than 500 feet south of the intersection of Moody and  
5 Hancock Bridge Parkway. The site address is there  
6 listed for you. It's 884, 938, and 940 Moody Road.

7 Currently there's approvals on the property for a  
8 height of 75 feet, as well as multi-family development.  
9 That's been in place since 2005. It's kind of got a  
10 long history as part of the other -- the larger PD, and  
11 it encompasses additional areas.

12 So our request -- and it's kind of a mouthful  
13 here, but our zoning request is to amend the existing  
14 Moody River Estates RPD/CPD to rezone the western  
15 portion of Tract M, which has been identified as part  
16 of this, consisting of 15.76 acres, from residential  
17 planned development to commercial planned development,  
18 to allow a maximum of 46,000 square feet of commercial  
19 uses, including up to two caretakers' residence units.  
20 And there's also accessory multi-purpose outdoor  
21 recreation areas in the schedule of uses, boat ramps  
22 and a private multi-slip docking facility with a  
23 maximum of ten wet slips and ten optional parking and  
24 dry slips. So as I said, that's kind of a mouthful,  
25 and we have to start here because the request has been

1 reduced from 50,000 square feet and four caretakers'  
2 residences at this time down to what I just mentioned,  
3 the 46,000 and the two.

4 HEARING EXAMINER RIVERA: Okay. So that was the  
5 original request, was 50,000? Because many of the  
6 letters of support and no objection and things in the  
7 back all reference those parameters, but you've reduced  
8 it down?

9 MR. AKIN: We've reduced it so I think we're okay  
10 there because if there was capacity for more, then  
11 there would certainly be capacity for less.

12 So stating what the request is, it's primarily to  
13 allow development of a charitable organization, for  
14 Home Front Heroes, in order to provide programs like  
15 education and crime prevention, public safety, social  
16 outreach, recreation activities and animal welfare  
17 services for youth and for veterans and for disabled  
18 and disadvantaged. That's the idea here to develop  
19 this property. So it's ultimately a charitable  
20 organization, a charitable use that will be there. The  
21 schedule of uses reflects some flexibility to provide  
22 those different things, and we've worked through that  
23 with Staff to try to arrive at a place that makes sense  
24 for the end goal here.

25 I'll just give you a little bit about Home Front

1 Heroes, as we get into this before I turn it over to  
2 Ms. Hewitt, but the mission is to serve the community  
3 with programs that create a stronger and safer  
4 environment. You can see some photographs that are up  
5 here about projects that they've kind of already been  
6 involved in, in the community. This would provide  
7 offices, classrooms, and recreation facilities, as I  
8 mentioned before. The two caretakers' residences --  
9 and we've had a lot of discussion about that with  
10 Staff -- it's designed -- because there will be  
11 differing schedules and shifts with the Lee County  
12 Sheriff's Office and the deputy employees who will be  
13 performing these, and so we would need two of them in  
14 order to ensure that there's someone there to provide  
15 the security that's necessary at all times, at all  
16 hours of the day.

17 We've also had discussions with the local  
18 community and the homeowners association there, Moody  
19 River, and, you know, made some commitments to them to  
20 have a presence there in that area; and so having two  
21 caretakers' residences allows us to do that, and we  
22 believe that's a benefit, to have a presence from the  
23 Sheriff's Department there on-site at all times.

24 Just a little discussion about the youth programs,  
25 they will provide some of those. There's community

1 outreach programs, crime prevention, and education.  
2 The fact that this property is uniquely located on the  
3 waterfront there, it gives some additional opportunity  
4 for programming through things like kayaking and  
5 sailing and -- and other things that could potentially  
6 be utilized, which is why we've got the multi-slip  
7 docking facility and the ten wet slips and ten dry  
8 slips as part of our request.

9 So ultimately this property provides Home Front  
10 Heroes with a great opportunity to provide a lot of  
11 different programs and services to the community  
12 charitably, in that way. And so we believe that it's a  
13 good location for it, and as we'll discuss, we believe  
14 it's compatible with the surrounding area.

15 Do you have any questions of me before I turn it  
16 over to Ms. Hewitt?

17 HEARING EXAMINER RIVERA: I have a lot of  
18 questions as we go through, but big picture, why was it  
19 chosen to do a minor CPD instead of a CFPD, for  
20 example? Because everything that's described really  
21 fits more into that community facilities posture,  
22 except for the Group I uses, which I'm guessing is why  
23 there wasn't some way -- because I think when people  
24 see CPD, there's a fear that there's going to be  
25 commercial development, which your schedule of uses

1 doesn't allow, but I'm just curious why that decision  
2 was made.

3 MS. HEWITT: There was -- there was a lot of  
4 discussion of that up front, and that was the original  
5 path that we were going to take; but it had to do with  
6 the Social Services Group I use, as well as the  
7 Caretaker Residence use; and so it was decided that  
8 this was the best path to go in order to make sure that  
9 all the uses necessary were covered.

10 HEARING EXAMINER RIVERA: Thank you.

11 MR. AKIN: Okay, thank you.

12 Stacy?

13 HEARING EXAMINER RIVERA: Good morning.

14 MS. HEWITT: Good morning, Madam Hearing Examiner.  
15 Stacy Ellis Hewitt, for the record, with -- I'm the  
16 planning director at RVi Planning & Landscape  
17 Architecture. I've previously been accepted as an  
18 expert in land use and planning matters in Lee County,  
19 and I request to be accepted as such this morning.

20 HEARING EXAMINER RIVERA: Yes, thank you.

21 MS. HEWITT: This is the site future land use and  
22 zoning categories currently, the site outlined there in  
23 red, and the site is currently in suburban, as is most  
24 uses to the north and surrounding the property. There  
25 is some wetlands identified as green on the island

1 parcel and to the east.

2 And the zoning is currently RPD, and the -- to the  
3 north we've got RM-2 zoned property, and to the south  
4 we have AG-2 property.

5 There's some extensive site history that I just  
6 kind of want to walk through, to how we've got to where  
7 we are today.

8 The original zoning for the property was in 2003  
9 by Resolution Z-03-022, and that rezoned 222  
10 approximate acres from AG-2 and CT to RPD and CPD, and  
11 allowed a maximum 1,000 single-family, zero lot line,  
12 townhouse and multi-family units, as well as 45,000  
13 square feet of commercial, with a maximum height of 80  
14 feet.

15 And then in 2005, by Zoning Resolution Z-05-048,  
16 it was amended to add 19.56 acres, known as Tract M, to  
17 the RPD, to allow 200 of the approved 1,000 dwelling  
18 units with a maximum height of 75 feet. And it also  
19 included uses such as recreation facilities, personal  
20 and private on-site; a private boat ramp limited to the  
21 residents of the planned development; tennis courts;  
22 the multi-slip docking facility, with approximately 53  
23 slips; and a private recreational facility.

24 The Bald Eagle Management Plan at that time was  
25 for west of Moody Road.

1           The zoning has been administratively amended  
2 several times, as outlined in the 48-hour notice.

3           In 2006 to 2009 was the great recession so Tract M  
4 never developed.

5           And there were, between 2007 and 2012, some civil  
6 lawsuits that resulted in some easements and  
7 requirements, such as the shared boat ramp that exists  
8 on the site, some deed restrictions for assessments,  
9 and it limited the subject property to 14 single-family  
10 units. This is outside of the zoning -- this is  
11 private agreements -- but there was also an  
12 acknowledgment in the deed restrictions of an intention  
13 to convey to a not-for-profit charitable entity for use  
14 consistent with a mission to assist young people to  
15 develop and grow into contributing members of society.

16           The eastern 3.63 acres of Tract M that's outside  
17 of this request was limited to 55 multi-family units in  
18 that deed restriction, which is the basis for the TIS  
19 comparison that has 145 dwelling units assigned to this  
20 portion of Tract M.

21           In 2013 a limited conservation easement  
22 establishing 125 transfer slip credits was recorded for  
23 this site.

24           This is the existing 2005 master concept plan.  
25 There was residential north and south of Hancock Bridge

1 Parkway. The CPD originally -- the original CPD is  
2 Tract K, which is at the corner of Hancock Bridge and  
3 Skyline, and it add -- this master concept added this  
4 Tract M to the development.

5 HEARING EXAMINER RIVERA: So there's also Moody  
6 South which is south of Skyline. Is that conventional  
7 zoning?

8 MS. HEWITT: Yes, that's -- I believe it's RM-2;  
9 but, yes, that's conventional zoned, not part of this  
10 planned development.

11 This is documents reflecting the existing Tract M  
12 approval. As mentioned previously, it's permitted for  
13 up to 200 units, single-family, townhouse, two-family,  
14 or multi-family; and it did have a maximum height of 75  
15 feet allowed today.

16 You can see on the blowup of the site, the  
17 hatching here was for the private recreational facility  
18 and -- as well as the demonstration of the existing  
19 boat ramp that was developed, the 75-foot-tall  
20 multi-family, as well as recreation facilities on the  
21 site; and it also showed the portion to the east, as  
22 well, with those 55 units.

23 To continue along, in 2013 the private boat ramp  
24 launch facility for the subject property and Moody  
25 River Estates was developed with associated parking,

1 restroom facilities, landscaping, and infrastructure.  
2 There was a -- as noted in the 48-hour notice, there  
3 was a minor change to the landscaping by LDO2019-00170.

4 DOS2013-00023 was approved for the southern  
5 portion of the site, and that was approved for clearing  
6 and filling, which has partially been completed on the  
7 site.

8 In 2015 is when the eastern portion of Tract M  
9 ownership changed, and it was severed from the  
10 ownership of the rest of the property for the subject  
11 request.

12 And in 2021 an access, utility, and drainage  
13 easement was established along the south property line  
14 to that parcel.

15 HEARING EXAMINER RIVERA: So who owns the east  
16 Tract M?

17 MS. HEWITT: It's a private owner that's not  
18 affiliated with the request.

19 HEARING EXAMINER RIVERA: Is there some -- if you  
20 go up the side that you just showed on the last one, it  
21 contemplated a connection point throughout the entirety  
22 of Tract M. So how are they getting access with the  
23 site plan that is being proposed today?

24 MS. HEWITT: They are -- they drew that agreement  
25 in 2021. There was -- it's my understanding that it

1 was a tax sale when the ownership changed, and in 2021  
2 there was an access, utility, and drainage easement  
3 established for the ten feet along the south property  
4 line, and there was an option along with that to  
5 purchase more access there, but the option was  
6 terminated. And we do have those documents, if you'd  
7 like them for the record.

8 HEARING EXAMINER RIVERA: No, I'm just -- it's  
9 not -- I don't see that shown on the site plan. So I'm  
10 just curious if that's being --

11 MS. HEWITT: It is shown on the -- the ten foot  
12 along the south property line is limited -- it's --  
13 it's marked -- demonstrated that easement and  
14 recordation, and then the cross section of the south  
15 buffer also calls out the ten-foot easement.

16 HEARING EXAMINER RIVERA: Is there a version of  
17 the master concept plan that doesn't have the overlay?  
18 The overlay is helpful, but it makes reading the small  
19 print that's above the green --

20 MS. HEWITT: No, we do not have a...

21 HEARING EXAMINER RIVERA: Okay. I will take your  
22 word for it, and I will look at the enlarged version  
23 later. So thank you for giving me the large one  
24 because I'm going to need that with my eyes.

25 Okay. But you are showing that so you're not

1 affecting access to the eastern portion in any way with  
2 this request?

3 MS. HEWITT: That's correct.

4 HEARING EXAMINER RIVERA: Thank you. That's all I  
5 need to know.

6 MS. HEWITT: Then in 2017 there was an application  
7 for an administrative amendment for Royal Palm Sailing  
8 Club, doing business as Edison Sailing Center, and they  
9 applied for use of the property in response to a  
10 violation -- on some of the aerials you'll see -- the  
11 older aerials, there's boats on the site, and that was  
12 affiliated with the use, but that -- I actually was  
13 working on that request, and we weren't able to get  
14 that processed so it was eventually withdrawn.

15 In 2021 the bald eagle nest was abandoned on the  
16 west side of Moody River, and in 2022 the new bald  
17 eagle nest south of the subject property was  
18 documented.

19 And then in 2023 there was an LDO for a decorative  
20 fence on the subject property.

21 Home Front Heroes requests -- this request  
22 fulfills a long-term vision of nonprofit use for this  
23 site.

24 The Staff Report does recommend approval. The  
25 Applicant is in agreement with the Staff Report's

1 recommendation and the conditions and deviations, as  
2 revised in the 48-hour notice. And I would like to  
3 request to incorporate the Staff Report and the 48-hour  
4 notice with attachments into my testimony this morning.

5 The surrounding uses to the north is zoned RM-2,  
6 Mangrove Bay, and it has multi-family with  
7 single-family condo parcels that are one-story over  
8 parking, and there is the -- also on-site is the  
9 existing on-site shared boat ramp facility is abutting  
10 that location.

11 To the east is Hancock Creek, as well as the part  
12 of Tract M, the eastern portion, that's not part of the  
13 request that remains zoned RPD.

14 To the south is vacant AG-2 parcel.

15 And to the west is Moody Road, and then the  
16 entrance features and an existing 20-foot buffer, and  
17 there are two multi-family buildings that are in the  
18 vicinity of the site that have existing buffers along  
19 Moody Road there, and both of those are two-story.

20 There's been continuous community coordination  
21 with the request. Home Front Heroes, they've had  
22 voluntary outreach with the Moody River Estates  
23 Homeowners Association prior to filing the zoning  
24 application, and there's also been continuous  
25 coordination with the Moody River Estates Community

1 Development District since October '23.

2 And there was an on-site community event that was  
3 hosted on April 6th of 2024, and we did have -- the  
4 North Fort Myers Planning Community-required  
5 neighborhood meeting was held on September 24th of  
6 2024.

7 There are existing public services serving the  
8 site within -- all within less than two miles of the  
9 site. The North Fort Myers Fire Station 2, EMS Medic  
10 7, and the Lee County Sheriff's Office are located in  
11 these two locations here less than two miles from the  
12 site.

13 Lee County Utilities has adequate capacity to  
14 service the site, as included in the Staff Report,  
15 Attachment G, and the proposed development  
16 significantly -- has significantly less flows than the  
17 existing approvals for the site.

18 There is an existing six-foot sidewalk west -- on  
19 the west side of Moody Road, and there is a LeeTran bus  
20 stop across Moody Road that's for the Gold Line Route  
21 of the Downtown Fort Myers River District Trolley,  
22 which is a seasonal service, November through April.

23 Route 70 runs along Hancock Bridge Parkway, as  
24 well, north of the site.

25 The existing master concept plan is being revised

1 to refer to the second page for the minor CPD. The  
2 ten-foot access easement is actually identified on this  
3 portion, as well, and then just demonstrates the  
4 portion of Tract M that's no longer included.

5 There are no changes to the existing entitlements  
6 outside of the subject property, just some  
7 clarification on where the conditions apply.

8 And there's no changes proposed to the existing  
9 shared boat ramp.

10 And the island parcels also remain in  
11 conservation.

12 HEARING EXAMINER RIVERA: So when you say "shared  
13 boat ramp," you're sharing it with the residents of  
14 Moody River?

15 MS. HEWITT: Yes, that's -- that's why we kept it  
16 as an amendment, is because the on-site boat ramp is  
17 limited to the residents of the planned development for  
18 our site, as well as the remainder of Moody River  
19 Estates. So it is a shared facility.

20 HEARING EXAMINER RIVERA: I did my site visit  
21 yesterday. So that initial gate, one of the arms isn't  
22 operational, so I was actually able --

23 MS. HEWITT: Oh.

24 HEARING EXAMINER RIVERA: -- to get in and see --

25 MS. HEWITT: Okay.

1 HEARING EXAMINER RIVERA: -- the boat ramp. So  
2 that will remain gated, but it's only going to be  
3 access for the occupants of your site, as well as all  
4 the residents within Moody River; and then there's  
5 another gate on the opposite side, and that's going to  
6 be solely for the occupants of your site?

7 MS. HEWITT: Yes.

8 HEARING EXAMINER RIVERA: Okay.

9 MS. HEWITT: Yes, thank you. That was -- I was  
10 actually going to describe that in a moment --

11 HEARING EXAMINER RIVERA: Okay.

12 MS. HEWITT: -- but thank you for clarifying that.  
13 But, yes, the existing boat ramp, there's not going to  
14 be any changes to the current access and use of that.

15 This is the proposed master concept plan. As  
16 stated, this is the location of the existing gate for  
17 the boat ramp facilities, which will remain, and then  
18 there will be additional gates for the proposed uses on  
19 the site.

20 The proposed commercial are: Social services  
21 building is in the southwest corner of the site, and  
22 the caretakers' residences are in the northeast portion  
23 of the site. There are the proposed private boat  
24 facility for ten slips, and there's dry detention  
25 proposed along -- interconnected along the west, south,

1 and east portions of the site.

2 You can see along the southeast corner the portion  
3 of the property that's within the 330-foot eagle zone,  
4 and -- eagle nest zone, and the proposed buffer that's  
5 between the 330-foot and 660-foot eagle nest zones.

6 There's -- the phase timing may be interchangeable  
7 as far as when things come onboard, but phase one  
8 includes the temporary events with the outdoor  
9 recreation, petting zoo, bounce houses, food trucks,  
10 and the shade structures or temporary trailers that  
11 will be used on the site.

12 Phase two is the handrails and "no mooring" sign  
13 to the existing dock for the fishing boardwalk, which  
14 is in this location. And installation of bollards for  
15 the existing boat ramp that is -- there's a boat ramp  
16 in this location that's going to be limited for paddle  
17 craft and nonmotorized vehicles. And there's also --  
18 the private multi-slip docking facility will be a  
19 phase, with optional boat trailer parking, and that  
20 will be in this location, which is optional for either  
21 the boat trailer parking or the outdoor recreation uses  
22 that will be on the site. And then there's also  
23 potential paddle craft access to the existing dock in  
24 this location.

25 The existing boat ramp, again, is to remain, and

1 the request is a maximum of 46,000 square feet,  
2 including the maximum of two caretakers' residences.

3 As far as compatibility for this site, the maximum  
4 height is being reduced from the current 75 feet to 45  
5 feet for the commercial building and 35 feet for the  
6 caretakers' residences, and must demonstrate the  
7 compliance with architectural standards at the time of  
8 development order.

9 And any potential lighting on the site must also  
10 comply with the Land Development Code, which minimizes  
11 light pollution, glare, and light trespass, which will  
12 be demonstrated at the time of development order.

13 HEARING EXAMINER RIVERA: So the marina or the  
14 boat slips that you have there, and the parking,  
15 they're still utilizing the boat ramp that's at the  
16 top. So they would have to put the boat in, traverse  
17 down and then park the trailer, is that the  
18 intention --

19 MS. HEWITT: Yes --

20 HEARING EXAMINER RIVERA: -- on the southern part?

21 MS. HEWITT: -- yes, or it can also be for boat  
22 access to the site, which is, you know, for people that  
23 are coming on boats and coming to the site. So it  
24 won't be limited only to the existing boat ramp. It's  
25 also for people boating to the site location, as well.

1 HEARING EXAMINER RIVERA: If they are trailering,  
2 though, they're not to use the -- is the facility --  
3 when you say a shared boat ramp, the boat ramp is  
4 shared. Is the parking that's there --

5 MS. HEWITT: The entire facility up there is  
6 shared --

7 HEARING EXAMINER RIVERA: Okay.

8 MS. HEWITT: -- with this site, as well as across  
9 the street. And that was the same with the 200  
10 multi-family and the 53 multi-slip docking facility,  
11 either/or, it's a shared facility.

12 (Sotto voce between Mr. Akin and Ms. Hewitt)

13 MS. HEWITT: Just for clarification, the proposed  
14 multi-slip docking facility is -- is not shared. That  
15 is limited to the proposed commercial planned  
16 development. The existing facilities as -- for the  
17 boat ramp and the facilities up in the north, those  
18 have an existing easement that's documented on the  
19 plan, as well, and that is what is shared -- as limited  
20 in the conditions of the existing and proposed zoning  
21 resolution, that that's shared with both the RPD and  
22 the proposed CPD.

23 HEARING EXAMINER RIVERA: I'll have a question on  
24 conditions about that later, but we'll get to --

25 MS. HEWITT: Okay.

1 HEARING EXAMINER RIVERA: -- to that, thank you.

2 MS. HEWITT: Thank you.

3 Regarding the deviations for the site, the  
4 existing deviations remain as amended by the Staff  
5 Report, Attachment E, and the 48-hour notice.

6 Proposed Deviation 15 is from Land Development  
7 Code Section 10-415, to allow navigable waterways  
8 within the boundary to be excluded from the required  
9 open space calculations and to allow preservation of  
10 the existing mangroves to meet the indigenous  
11 requirement. This is based on the land area instead  
12 of -- and removing the area of Hancock Creek from the  
13 request just based on historic surveys for the site.  
14 And the existing indigenous continues to be preserved.

15 And Staff recommends approval subject to Condition  
16 35, which is provided here, to require that the minimum  
17 open space depict 3.73 acres based on 30 percent of the  
18 10.78 acres of land.

19 I do want to take a moment to describe some of  
20 that just for clarity. There is -- the vegetation map  
21 was mapped for the entire boundary, and you'll notice  
22 the areas that have been depicted on the master concept  
23 plan, and the conceptual open space plan that  
24 demonstrate the areas that are within the land and  
25 under our control and areas that are within Hancock

1 Creek.

2 And this dark line along the edge demonstrates  
3 where the land is -- the 30 percent that's -- excuse  
4 me -- the 10.78 acres for open space is calculated on.  
5 It doesn't include like the man-made waterbodies and  
6 the boat ramp that are in water. Those were included  
7 in the land area, as well. They were -- so they're  
8 included in the open space calculations, but the  
9 natural waterway is not.

10 HEARING EXAMINER RIVERA: So is that -- I'm sorry.

11 MS. HEWITT: No, you're fine.

12 HEARING EXAMINER RIVERA: 3.73 is what Condition  
13 35 has, but that's showing 3.78.

14 MS. HEWITT: This is -- there is -- next to that  
15 it says the minimum 3.2 --

16 HEARING EXAMINER RIVERA: Okay, so it's 3.23? It  
17 says 3.73 in Condition 35.

18 MS. HEWITT: Oh.

19 HEARING EXAMINER RIVERA: I think you show that on  
20 the next slide.

21 MS. HEWITT: Thank you for catching that.

22 HEARING EXAMINER RIVERA: So I just need  
23 clarification on which number -- is it supposed to be  
24 3.23 or 3.78?

25 MS. HEWITT: It should be...

1 MR. AKIN: 3.73, right?

2 HEARING EXAMINER RIVERA: 3.73 is what it says.

3 MR. AKIN: Well, so it says --

4 MS. HEWITT: Yeah, it was --

5 MR. AKIN: -- so it --

6 MS. HEWITT: -- provided -- I need to do the math  
7 of 30 percent of 10.78.

8 MR. AKIN: Well, it says the minimum here, in  
9 parentheses, is 3.23, and then it says we're providing  
10 3.78. I thought the minimum was 3.73, and we're  
11 providing 3.78. Does that sound right?

12 HEARING EXAMINER RIVERA: We'll check the math on  
13 that just to be sure. I just wanted to be sure  
14 because --

15 MS. HEWITT: Thank you.

16 HEARING EXAMINER RIVERA: -- the 3.73 wasn't shown  
17 anywhere on the master concept plan or the open space  
18 table, so I wanted to be sure which number you're being  
19 held to and that you're committing to provide.

20 MS. HEWITT: Thank you. I will verify that  
21 calculation and get back to you just to confirm which  
22 number that was, and check with Staff, as well. Thank  
23 you.

24 Deviation 16 is from Land Development Code  
25 10-421(a)(8), which requires buffer plantings installed

1 on the exterior side of the fence to allow the  
2 decorative fence outside of the existing Moody Road  
3 buffer. This replaced a previous fence that was  
4 located along the property line, and it's consistent  
5 with other properties north and south along Moody Road,  
6 and Staff does recommend approval.

7 Deviation 17 is from Land Development Code Section  
8 10-416(d), which requires a Type C or F buffer when a  
9 commercial abuts residential, and a 30-foot buffer when  
10 commercial abuts a public preserve, to allow the  
11 buffers shown on the master concept plan.

12 The north property line is to allow the existing  
13 Type B buffer to remain that was part of the boat ramp,  
14 and we're not changing anything abutting that area.

15 The east property line is to allow the existing  
16 indigenous trees within the 330-foot eagle nest zone,  
17 and the Type C or F buffer will be provided outside of  
18 the 330-foot eagle nest zone.

19 On the south property line, it's to allow the  
20 existing indigenous trees within the 330 eagle nest  
21 zone, a 10-foot tree planting area outside of that, and  
22 the proposed 30-foot buffer between the 330 zone and  
23 the 660 nest zone.

24 The north buffer was previously found consistent  
25 and remains consistent.

1           And the east and south buffers were recommended  
2 for approval with the Eagle Technical Advisory  
3 Committee.

4           Staff recommends approval subject to Condition 34.

5           This is just a close-up, again, of that proposed  
6 30-foot buffer to the south and where the Type C buffer  
7 will just remain. We've got a note on the plan for no  
8 earthwork or plantings within that 330-foot buffer  
9 zone, but the existing vegetation will remain, the  
10 native vegetation.

11           And then the cross section demonstrates that  
12 existing 10-foot easement, the 10-foot planting strip,  
13 and then it will also have planted swale and dry  
14 detention in that area.

15           Condition 34 spells out all of their buffers and  
16 is consistent with the master concept plan, and will  
17 require the development to demonstrate that at the time  
18 of development order.

19           Deviation 18 is from Land Development Code Section  
20 34-2020(b), which allowed the 10-percent reduction in  
21 required parking when you have boat slips on the site,  
22 and this meets the requirements of the Land Development  
23 Code. And for the uses on the site, we do anticipate  
24 ride-sharing, parent dropoff, and potential bus  
25 dropoff, which will also add to the justification of

1 the request. And Staff does recommend approval.

2 Deviation 19 is from Land Development Code Section  
3 10-291(3), which requires more than one means of  
4 ingress and egress, to allow the previously approved  
5 and constructed single access to remain. Letters of no  
6 objection are included in the Staff Report from North  
7 Fort Myers Fire, Lee County Public Safety, and the Lee  
8 County Sheriff's Office. And Staff recommends approval  
9 subject to Condition 36, which, as required by Code,  
10 will be required to file a notice in the public record  
11 about the access for the site.

12 All of the existing and proposed deviations  
13 enhance the achievements of the objectives of the  
14 planned development and protect the public health,  
15 safety, and welfare.

16 HEARING EXAMINER RIVERA: When you say potential  
17 bus dropoff, are you referencing that trolley that's  
18 going there, or would it be to the site?

19 MS. HEWITT: No, for sites -- the programming is  
20 still preliminary, but we anticipate that for some of  
21 the youth events, there could be bus dropoff for youth  
22 coming to the events and --

23 HEARING EXAMINER RIVERA: Would they drop off --

24 MS. HEWITT: -- and where the --

25 HEARING EXAMINER RIVERA: -- right -- it's a

1 pretty hefty --

2 MS. HEWITT: In --

3 HEARING EXAMINER RIVERA: -- road right now at the  
4 entrance. Is that where they would get dropped off?

5 MS. HEWITT: No, it would be internal to the gate.

6 HEARING EXAMINER RIVERA: They would have access  
7 through the gate to get in?

8 MS. HEWITT: Correct.

9 HEARING EXAMINER RIVERA: I ask because when I did  
10 the site visit yesterday, there were children that I  
11 assume are Moody River residents that were sitting  
12 waiting for their bus stop, and it seemed like that's a  
13 more and more heavily trafficked road on Moody, and  
14 there's no facilities there for them. There's no shade  
15 structure, there's no bench, there's nothing -- which  
16 obviously wasn't required under the development, but  
17 I'm just curious if there was any interest or attempt  
18 to do that here, if you're going to be receiving any  
19 kind of bus traffic to the site. So that's something  
20 just to consider down the road, I guess. But if  
21 they're going to be entering the full site, and you're  
22 not going to be having them at the Moody River Road  
23 entrance --

24 MS. HEWITT: Right, this is proposed just for the  
25 uses on the site and the activities related with Home

1 Front Heroes, is what we're addressing as far as that.

2 The conditions from the 48-hour notice, I do have  
3 them in the presentation. Most of them are a carryover  
4 of the existing zoning resolution, with some minor  
5 clarifications.

6 We did add from the 48-hour notice the Home  
7 Front -- we did add a portion for the Home Front Heroes  
8 Minor CPD restricting the uses that have been  
9 demonstrated and provided and shared with the community  
10 at the neighborhood information meeting, and we did  
11 just add, for clarification, about the private boat  
12 ramp that -- the existing nonmotorized ramp. But I  
13 do -- now that we've been speaking of this, the  
14 existing nonmotorized ramp is -- we need to clarify  
15 that because that is private to Home Front Heroes and  
16 not part of the portion -- the existing boat ramp to  
17 the north, which is limited to the owners -- resident  
18 owners and their guests within the planned development.

19 HEARING EXAMINER RIVERA: And the language there I  
20 had flagged was "within this planned development," but  
21 that wasn't -- and maybe when you're revising it, maybe  
22 that language would be helpful in making that revision,  
23 because it wasn't clear if you meant this planned  
24 development, the minor CPD, or if you meant this  
25 planned development, the entirety of the RPD/CPD.

1 MS. HEWITT: Okay.

2 HEARING EXAMINER RIVERA: So maybe just reworking  
3 that language for that condition.

4 MS. HEWITT: Thank you.

5 The remainder of the conditions are -- we've made  
6 no changes to the conditions of approval for the  
7 existing residential planned development and commercial  
8 planned development. And then we have the property  
9 development regulations to ensure that those are met  
10 and limits the height to the 45 feet, and requires  
11 anything over 35 feet to meet Land Development Code  
12 Section 34-2174 for the additional setback.

13 There was just some clarifications, since there  
14 are so many conditions, as to which ones apply to the  
15 west side of Moody Road, and also Condition 5 was  
16 revised just to reflect the location of the eagle nest  
17 is no longer in that tract, so we just made a  
18 clarification there.

19 On Condition 14 we just made a minor clarification  
20 since the retail site location standards are no longer  
21 applicable.

22 The conditions for the subject property start on  
23 Condition Number 28, and those conditions all  
24 require -- have been worked with Staff just to require  
25 the Bald Eagle Management Plan that's been approved, as

1 well as providing documentation for the boat slips  
2 on-site, and limiting the -- depicting on the  
3 development order which boat slips are proposed, as  
4 well as preventing motorized vessel access to that  
5 existing boat ramp on-site to the south that's on the  
6 Home Front Heroes' portion.

7 There's also conditions for the existing island  
8 parcel, for the indigenous to remain; and the buffer  
9 conditions that we've already gone through; and the  
10 open space, which we will clarify that number.

11 HEARING EXAMINER RIVERA: Condition 18 about the  
12 ag uses that you clarified west of Moody Road,  
13 obviously those ceased a long time ago. Was this land  
14 ever used for agricultural, or has it just been vacant  
15 land?

16 MS. HEWITT: I don't believe so.

17 HEARING EXAMINER RIVERA: Okay.

18 MS. HEWITT: Not that I'm aware of. There was  
19 single-family on it prior, but those were -- the  
20 existing agricultural uses --

21 HEARING EXAMINER RIVERA: Right.

22 MS. HEWITT: -- were from the original zoning  
23 approvals.

24 We did add in conditions to incorporate the  
25 administrative amendments that were on record for this

1 site, and updated the deviations to reflect those that  
2 I just went through, and the conditions for the site,  
3 which are recommended for approval.

4 HEARING EXAMINER RIVERA: Okay. So what you've  
5 provided is a holistic revision that can replace the  
6 existing RPD/CPD approvals?

7 MS. HEWITT: Yes.

8 HEARING EXAMINER RIVERA: Thank you for doing  
9 that. That's not always done.

10 MS. HEWITT: My pleasure.

11 And at this time I am going -- I will be returning  
12 for the Lee Plan and Land Development Code consistency,  
13 but at this time I would like to turn it over to  
14 Mr. Marshall.

15 HEARING EXAMINER RIVERA: Before you leave, are  
16 you the person to ask just to explain a little bit --  
17 you explained broadly the activity, but the building  
18 itself -- because a lot of the activities tended to be  
19 more outdoor recreation. What's going to be in that  
20 building? Because it's 42,000 (sic) square feet. It's  
21 pretty sizeable.

22 MS. HEWITT: Yes, it's going to be for offices and  
23 classrooms and recreation facilities indoor, that's a  
24 large part of it, as well, and that's why that -- that  
25 group was used for the traffic impact statement. Even

1     though this is going to be a private, you know, social  
2     services use, that was why that recreation use was used  
3     for that comparison, but the facility size is to  
4     incorporate those indoor recreation facilities, as  
5     well.

6           HEARING EXAMINER RIVERA:   Okay.   So maybe  
7     after-school activities, gymnasium, things like that,  
8     fitness areas?

9           MS. HEWITT:   Yes, there's -- you know, for  
10    basketball courts, you know, potential -- again, it  
11    hasn't been finalized, but that's what the vision is,  
12    is to have offices, classrooms, and the recreation  
13    facilities indoors for some of these programs that are  
14    proposed for the site.

15           HEARING EXAMINER RIVERA:   Okay, thank you.

16           MS. HEWITT:   Thank you.

17           HEARING EXAMINER RIVERA:   Good morning.

18           MR. MARSHALL:   Good morning.   For the record, my  
19    name is Sam Marshall.   I'm a Florida registered  
20    professional engineer.   I'm with Atwell.   I have  
21    previously testified in this venue before as an expert,  
22    and I'd like to be accepted as an expert this morning  
23    in matters of civil engineering.

24           HEARING EXAMINER RIVERA:   Yes, thank you.

25           MR. MARSHALL:   Thank you.

1           And today I'm going to talk with you about  
2 stormwater management. I'm going to focus on that.  
3 The -- we're not to the point of designing a system  
4 yet; but when the system gets designed, it's going to  
5 have to comply with the South Florida Water Management  
6 District regulations and also the Lee County  
7 regulations. It will be designed to satisfy those  
8 codes.

9           The ERP is going to guarantee that water quality  
10 and water quantity issues have been met and satisfied.  
11 We're not going to have any adverse impacts with either  
12 our neighbors or surroundings or on the site. We are  
13 going to have to go through the permitting process --  
14 it's an ERP, Environmental Resource Permit, process --  
15 with the Water Management District at the same time.  
16 We will not receive a development order -- as you're  
17 aware, we're not going to receive a development order  
18 without receiving that permit, as well.

19           The project will be designed to meet all of the  
20 goals and objectives of the Lee Plan and the Land  
21 Development Code, as well.

22           There's been a previous permit issued on this  
23 site. It will be basically redesigned and replaced  
24 with new permitting, new design, to meet the  
25 regulations and to match the proposed site plan.

1           And that's the conclusion of my presentation, if  
2 you've got any questions.

3           HEARING EXAMINER RIVERA: Obviously Moody River  
4 has its own ERP that's operational and functional.  
5 Will this be kind of a spinoff of that permit, or it  
6 will be a standalone permit?

7           MR. MARSHALL: It's going to end up being a  
8 standalone permit. Moody River does have its own  
9 permit. It has an outfall pipe that runs through this  
10 site. That's going to continue. That will remain.  
11 That's part of the current permit, and that will remain  
12 in existence.

13           HEARING EXAMINER RIVERA: So it outfalls across or  
14 under Moody and then into...

15           MS. HEWITT: No. We -- this site will directly  
16 discharge to the creek after the water is treated.  
17 Moody actually discharges through this property.  
18 There's an existing outfall pipe that goes through this  
19 property, and that will remain.

20           HEARING EXAMINER RIVERA: That comes from the  
21 west -- or the west of Moody Road?

22           MR. MARSHALL: That's correct, yes.

23           HEARING EXAMINER RIVERA: Okay, thank you.

24           MR. MARSHALL: All right, you're welcome. Thank  
25 you.

1 HEARING EXAMINER RIVERA: Good morning.

2 MR. STEJSKAL: Good morning, madam, Bear Stejskal  
3 with BearPaws Environmental. I've previously testified  
4 amongst -- in this room as an expert in wetland and  
5 wildlife ecology, and I'd like to do the same.

6 HEARING EXAMINER RIVERA: Yes, thank you.

7 MR. STEJSKAL: Thank you.

8 I've done species surveys out there numerous  
9 times; and as Stacy said, there was an eagle's nest  
10 prior to '22 that existed west of the roadway. Those  
11 guys moved over south of the property in '22, and the  
12 nest was destroyed by Ian. We went through the  
13 Technical Advisory Committee with Lee County,  
14 coordinated with County Staff themselves, and got our  
15 Bald Eagle Management Plan approved by them. So we're  
16 following by that.

17 The project does meet all the requirements for the  
18 indigenous preserves and preservations. There were  
19 some larger oaks in the southeast corner that just so  
20 happened to be within that 330 zone. Those were also  
21 incorporated into the site plan. And we coordinated,  
22 as Stacy said, with that buffer along the south.

23 There were no other wetlands or species, any other  
24 things like that observed on-site. We meet the  
25 environmental goals and objectives of the Lee Plan and

1 LDC.

2 HEARING EXAMINER RIVERA: So the eagle -- you  
3 mentioned it here, too. It was also mentioned in the  
4 report. It was active but not successful --

5 MR. STEJSKAL: Yes, ma'am.

6 HEARING EXAMINER RIVERA: -- for the past two  
7 years.

8 MR. STEJSKAL: Correct, yes. I don't have the  
9 full document -- document data from '24, but I know '23  
10 was active, unsuccessful. '24 was also active, but  
11 I -- I'm pretty sure that was also deemed unsuccessful,  
12 as well.

13 HEARING EXAMINER RIVERA: So they still have -- I  
14 just don't -- I'm not as familiar or well-versed, if  
15 you could just -- in the regulations, they still have  
16 to abide by these even though there isn't presently an  
17 eagle that's on-site?

18 MR. STEJSKAL: Yes, ma'am, correct. For -- if,  
19 for some reason, that was deemed unsuccess -- if it's  
20 active, and when it's -- you have to abide by the  
21 guidelines, and the only way to get relief of those  
22 guidelines, if the nest is declared lost or abandoned  
23 for at least five years. So as long as eagles are  
24 there, they have to abide by the guidelines, and they  
25 have to do so within five years after it's declared

1 lost.

2 HEARING EXAMINER RIVERA: What's the distinction,  
3 then, between active and unsuccessful? So you've seen  
4 evidence that they're there, but they're not --

5 MR. STEJSKAL: Yes, ma'am, correct. They haven't  
6 produced any fledglings, any young.

7 HEARING EXAMINER RIVERA: Okay. So as long as --

8 MR. STEJSKAL: Or if they did, they didn't make  
9 it.

10 HEARING EXAMINER RIVERA: Okay. So you're not to  
11 the point -- the clock isn't ticking for it to be  
12 declared abandoned --

13 MR. STEJSKAL: No. As long as they're actively  
14 nesting and there and present, the nest is active.  
15 It's when they disappear, or the nest is knocked down  
16 and never rebuilt, that would be an abandoned nest or  
17 lost nest.

18 HEARING EXAMINER RIVERA: Thank you.

19 MR. STEJSKAL: Yes, ma'am.

20 HEARING EXAMINER RIVERA: Good morning.

21 MR. WILSON: Good morning. My name is Hans  
22 Wilson. I'm a licensed professional engineer and have  
23 been recognized as an expert witness in marine  
24 engineering and environmental consulting, and would  
25 like to request the same recognition.

1 HEARING EXAMINER RIVERA: Yes.

2 MR. WILSON: The project that we're talking about  
3 is the marine-related component. The existing water  
4 depths in this location are extraordinarily deep in  
5 many cases -- let's see if -- here we go.

6 So here's our depth contours. We have a  
7 surrounding area of mangroves. We have selected an  
8 access location through an existing opening in the  
9 mangrove fringe.

10 This is intended to be a floating dock to  
11 accommodate a variety of vessels. We have defined slip  
12 sizes here for 1 through 6, and then slips 7 through 10  
13 is parallel mooring for a variety of vessel sizes. In  
14 the northwest corner we've got an existing dock that  
15 runs down through here that we're going to be  
16 rebuilding, and then adding a ramp and a floating  
17 platform for canoe and kayak launching.

18 This project is currently in permit application  
19 with the U.S. Army Corps of Engineers, and is being  
20 reviewed for consistency with the Fish and Wildlife  
21 Service manatee impacts.

22 The project meets the County's Manatee Protection  
23 Plan requirements; and, in fact, it's a significant  
24 decrease in the total number of slips that were  
25 authorized for this property. And the balance of those

1 slips that are not going to be built have been  
2 sequestered into a holding company that are available  
3 for the market, if the Applicant should choose to sell  
4 them on the market or do otherwise.

5 The 10 slips are what were considered to be what  
6 was needed for the uses that are planned for the site,  
7 which is mixed. We anticipate we'll have law  
8 enforcement vessels here, which is good because it's --  
9 we've lost a lot of marinas in our area from these  
10 hurricanes; so the availability of boat slips in  
11 general has been decreased, and trying to provide  
12 access for law enforcement to get out of the water is  
13 really important. We do not have, really, enough law  
14 enforcement on the water for boating safety and for  
15 adherence to our Manatee Protection Plan, our speed  
16 zones. So this is a -- this is a positive. But, also,  
17 this is an opportunity because of the educational  
18 nature of this development to have the youth of our  
19 community be exposed to law enforcement and  
20 on-the-water law enforcement. We need that kind of  
21 exchange with our -- with our population so they  
22 understand how important that is for our community and  
23 for protecting our resources.

24 Again, the slip reductions, from 53 slips to 10;  
25 the balance is being held by the -- by a holding

1 company within the -- the Applicant.

2 And the project meets the marine goals and  
3 objectives of the Lee Plan and the Land Development  
4 Code.

5 You can see over here, we are in a slow speed zone  
6 coming out onto the river, and so it's pretty much a --  
7 it's actually, really, a pretty small marina facility  
8 compared to what it could be. We did have -- if we  
9 wanted to, there could have been additional slips  
10 placed out along the waterfront here, there's other  
11 locations, but this is a very well-protected location  
12 and very secure location, and we think really is the  
13 best setup for -- for what we're proposing to do on the  
14 site.

15 HEARING EXAMINER RIVERA: And the mechanism that  
16 you use, it's a conservation easement of some type, or  
17 some type of easement that's restricting you so that  
18 you can't come back later and say that you're going to  
19 put the additional slips on the outside that you just  
20 noted?

21 MR. WILSON: They hold the -- they hold the rights  
22 to those slips; so if they wanted to come back and try  
23 to put those slips back on the property, they could;  
24 but I will tell you that's not going to happen a third  
25 time because we've already done it a second time, and

1 it's been a real challenge with the County Staff and  
2 the County Attorney on how do we make that happen.  
3 Because this project originally had been secured in a  
4 conservation easement, and no slips were supposed to go  
5 onto the property; and then they realized, well, we do  
6 need boat slips, so we went through this modification  
7 of the conservation easements that sequestered those  
8 slips and now place those slips back on the property.  
9 But at this point in time, I would say, no, that's not  
10 going to happen; and it's likely those slip credits now  
11 will be transferred to somebody that can actually put  
12 those into play at a different location and a better  
13 location.

14 HEARING EXAMINER RIVERA: And once that happens,  
15 if they happens, they can't double-dip though and --

16 MR. WILSON: No.

17 HEARING EXAMINER RIVERA: -- reclaim those credits  
18 once they're sold to an independent --

19 MR. WILSON: Once those are transferred to a  
20 receiving property, it's a done deal.

21 HEARING EXAMINER RIVERA: Okay, thank you.

22 MR. AKIN: And, Madam Hearing Examiner -- for the  
23 record, Richard Akin. I just wanted to follow up real  
24 quick on what Mr. Wilson said about the conservation  
25 agreement and the slip credit transfer agreement.

1           So I believe Condition 29 sort of speaks to that.  
2           That's in the proposed conditions right now. It  
3           provides that prior to local development order, the  
4           western 15.76 acres of Tract M, the developer must  
5           demonstrate the record -- recorded conservation  
6           easement has been modified to allow for a maximum of 20  
7           boat slips to remain on the property. So the mechanism  
8           is -- there is an existing conservation easement --  
9           and, in fact, I don't believe that the way it's written  
10          it actually prohibits use of any of the slips that were  
11          created on-site, right? So what we are doing is  
12          proposing an amendment that would limit what is allowed  
13          on-site to that which we have shown here. All the rest  
14          cannot be used on-site anymore. So that's -- it would  
15          create a holding entity, those slip credits would have  
16          to go into a holding entity, and so what we're asking  
17          for would be the maximum that could be used on-site.

18                 HEARING EXAMINER RIVERA: And it's 20 in the  
19          condition, even though they're showing 10? So is the  
20          reservation of the 10 --

21                 MR. AKIN: It's 10 and 10, right? So here's --  
22          here's how they count it, right? So they count 10 wet  
23          slips and 10 dry slips.

24                 HEARING EXAMINER RIVERA: Okay.

25                 MR. AKIN: So a parking spot counts as a slip.

1 HEARING EXAMINER RIVERA: Got it, okay. Thank you  
2 for the clarification.

3 Good morning.

4 MR. BYKAU: Good morning. For the record, Yury  
5 Bykau with TR Transportation Consultants. I'm a  
6 licensed professional engineer in the state of Florida.  
7 I've been sworn in and previously accepted as an expert  
8 in transportation planning, and would like to be  
9 accepted today, as well.

10 HEARING EXAMINER RIVERA: Yes, thank you.

11 MR. BYKAU: So we prepared a traffic analysis for  
12 this rezoning request, which again is seeking approval  
13 of a charitable organization known as Home Front  
14 Heroes. As part of the traffic analysis, we first  
15 prepared a trip generation analysis consistent with the  
16 latest IT Trip Generation Manual, which is the required  
17 source for us to use to come up with traffic  
18 projections for projects.

19 For trip analysis purposes, we analyzed the  
20 worst-case scenario by assuming the IT code of  
21 recreational center; and then for the caretakers'  
22 residences, we assumed traditional single-family. And,  
23 again, that was done to ensure that we analyzed the  
24 worst-case scenario for traffic study purposes.

25 And Table 1 here shows our trip generation

1 analysis. And it's very likely that the trips that you  
2 see in Table 1 overestimate what the actual facility  
3 is. As previously mentioned, a lot of activities will  
4 occur after school hours or during the weekends or  
5 during the summer days; and, again, we anticipate a lot  
6 of ride-sharing to this facility. So the trips you see  
7 in Table 1 are probably overestimating the weekday peak  
8 hour trips that you'll see for this facility when it  
9 comes online.

10 And the one thing I've noticed -- you see here --  
11 we assumed four units, and as previously mentioned by  
12 Richard, we've reduced that number to two units for the  
13 caretakers' residences.

14 And then Table 2 here shows the trip generation  
15 comparison between the approved RPD zoning on this  
16 western portion of the site -- as Stacy previously  
17 mentioned, the eastern portion was assigned 55 units.  
18 So for our analysis, we assumed 145 units for this  
19 portion of Tract M; and so when you do the trip  
20 generation comparison between our conservative number  
21 of trips and the existing RPD, you can see the net  
22 trips are slightly increased but, again, nothing too  
23 extremely significant in terms of traffic.

24 And so then as part of our analysis, we prepared  
25 our typical level of service analysis on the

1 surrounding roadways, which included Moody Road and  
2 Hancock Bridge Parkway, and the results of our analysis  
3 indicate both of these roadways will operate at an  
4 acceptable Level of Service C in the future project  
5 build-out conditions. In other words, there will be  
6 sufficient capacity on Moody Road and Hancock Bridge  
7 Parkway to support this rezoning request.

8 And Staff has reviewed our traffic report and  
9 agreed that this project will not have a detrimental  
10 impact on the surrounding roadway system.

11 And so in my professional opinion, this project is  
12 consistent with the transportation elements of the Lee  
13 Plan and the Land Development Code, and I'll be happy  
14 to answer any questions you have.

15 HEARING EXAMINER RIVERA: Is there any -- under  
16 the existing approvals, would a signal have been  
17 required at the intersection of Moody Road and Moody  
18 River Parkway, if that's what that road is called?

19 MR. BYKAU: No, no.

20 HEARING EXAMINER RIVERA: Okay. And you're  
21 generating not enough in this request either to warrant  
22 a signal, to your knowledge?

23 MR. BYKAU: Right, yeah. I mean, you have to have  
24 like a Walmart level of traffic to require a traffic  
25 signal. And so the traffic signal is based on MUTCD

1 warrants, and one of the things it looks at is the  
2 number of through traffic that's on that road, as well;  
3 and it's my understanding there's not significant  
4 through traffic on that road to ever warrant a signal  
5 there, at that location.

6 HEARING EXAMINER RIVERA: Thank you.

7 MR. BYKAU: Uh-huh, thank you.

8 MS. HEWITT: Stacy Hewitt again, for the record.

9 The request is consistent with the Lee Plan, as  
10 outlined in the Staff Report and attachments.

11 It's consistent with Policy 1.1.5, the Suburban  
12 Future Land Use category:

13 The location has been approved since 2005 for  
14 significant development.

15 No industrial uses are proposed on the site.

16 And it appropriately protects the existing  
17 residential. It reduces the height from 75 feet to 45  
18 feet; reduces the multi-slip docking facility from 53  
19 to 10 slips; and the existing buffers along the north  
20 and west continue to be compatible with the residences  
21 adjacent to the site.

22 Public services and urban infrastructure are  
23 available.

24 It's appropriate compatible infill development.

25 And it's also consistent with Policy 1.5.1 for the

1 Wetlands Future Land Use category, as the island  
2 indigenous wetlands remain in a conservation easement,  
3 and the wetlands will be preserved to the maximum  
4 extent possible.

5 It's also consistent with Objective 2.1 and 2.2,  
6 Policy 2.2.1 on development timing and location:  
7 Again, it is infill of compact and contiguous  
8 development and compatible with the surrounding land  
9 uses.

10 It's consistent with Standards 4.1.1 and 4.1.2 for  
11 water and sewer, as the letter of availability has been  
12 provided.

13 It's consistent with Policy 5.1.5, to protect  
14 residential. Again, it reduces the building height  
15 from the previous uses on the site, and provides  
16 adequate buffering.

17 Consistent with Goal 6, Policy 6.1.1, 6.1.4,  
18 6.1.5, and 6.1.6 for commercial land uses:

19 The Staff and the Applicant agree that there's no  
20 detrimental impacts on surrounding roadways.

21 Adequate landscaping and buffering and open space  
22 are provided.

23 And, again, it is reducing the previously approved  
24 height.

25 Also consistent with Goal 30, and as well as

1 Policy 17.3.5 and Policy 30.5.3, for the North Fort  
2 Myers Planning Community and public input:

3 We did hold the required public information  
4 meeting. The site is not located within the designated  
5 center or overlays in the North Fort Myers Planning  
6 Community so those are not applicable to the site.

7 And we did provide community outreach and  
8 proposing rec -- we are proposing community outreach  
9 and recreational uses along the waterway.

10 It's consistent with Goal 60 and 61, Policy  
11 60.4.1, for the stormwater management design and  
12 protecting water resources:

13 The required ERP will demonstrate compliance, and  
14 we are providing planted detention areas.

15 Policy 101.1.1, 101.1.2, 101.3.2, 101.3.5,  
16 101.4.2, and 101.4.3 for coastal areas:

17 It does protect wetlands in the coastal high  
18 hazard area, and the development is limited to uplands.

19 Any mitigation required will be determined at the  
20 time of development order.

21 And the site will meet the minimum finished floor  
22 elevations.

23 There are no new seawalls proposed for the site,  
24 and repair or maintenance of the existing seawalls will  
25 comply with the Land Development Code.

1           It's also consistent with Policy 123.6.1 on the  
2 bald eagle, as it has been conditioned to meet the Bald  
3 Eagle Management Plan that was approved by the Eagle  
4 Technical Advisory Committee.

5           It's also consistent with Objective 128.4,  
6 Policies 128.4.5, 128.4.7, 128.4.8, 128.4.9, 128.4.10,  
7 and 128.4.11, for marine facilities:

8           The number of slips were previously established  
9 for the site and have been significantly reduced as far  
10 as what is being constructed.

11           It's consistent with the Manatee Protection Plan.  
12 There's adequate water depth. It's in a slow speed  
13 zone, avoids mangroves and wetland impacts to the  
14 maximum extent possible, and flushing will be provided  
15 from upstream. And there are adequate uplands for the  
16 use.

17           The request does meet the required findings and  
18 review criteria found in Land Development Code Section  
19 34-145(d)(4)a.1:

20           As stated, it complies with the Lee Plan.

21           It does meet the Code and other applicable County  
22 regulations and qualifies for the requested deviations.

23           It is compatible with existing and planned uses in  
24 the area.

25           And provides sufficient access to support the

1 development intensity.

2 The expected impacts will be addressed by existing  
3 County regulations and conditions of approval.

4 And it will not adversely affect environmentally  
5 critical or sensitive areas and natural resources.

6 It's also served by urban services, even though  
7 we're in a Future Suburban Future Land Use category.

8 It's also consistent with Land Development Code  
9 Section 34-145(d)(4)a.2, the findings and review  
10 criteria for planned developments:

11 The proposed use and mix of uses is appropriate  
12 for the site. The site has been approved for  
13 development since 2005, and the request fulfills the  
14 nonprofit vision for the site.

15 The recommended conditions provide sufficient  
16 safeguards to the public interest.

17 And each of the requested deviations do enhance  
18 the achievement of the objectives of the planned  
19 development and protect the public health, safety, and  
20 welfare.

21 And that concludes our presentation. If you have  
22 any questions, we'll be happy to answer them.

23 HEARING EXAMINER RIVERA: You mentioned the  
24 phasing schedule, and that might change, it's a little  
25 fluid, but do you have any idea of timing of when any

1 of the horizontal and vertical construction might be  
2 happening?

3 MS. HEWITT: It's going to be based on the funding  
4 and program uses for the site, so I don't have an  
5 answer for that at this time.

6 HEARING EXAMINER RIVERA: But the temporary  
7 events, the intention would be would start right away,  
8 for the outdoor activities and things that don't  
9 require the building that's being proposed?

10 MS. HEWITT: Correct.

11 HEARING EXAMINER RIVERA: Okay, thank you.

12 MS. HEWITT: Thank you.

13 MR. AKIN: All right. So Madam Hearing  
14 Examiner -- Richard Akin again for the record -- that  
15 concludes our presentation. We would request a  
16 recommendation of approval with the conditions as  
17 clarified in the 48-hour letter agreed upon with Staff.

18 At this time we'll turn it over to Staff, unless  
19 you have other questions of us, and we would request an  
20 opportunity for rebuttal after public comment.

21 HEARING EXAMINER RIVERA: Okay, thank you.

22 MR. AKIN: Thank you.

23 HEARING EXAMINER RIVERA: I think before we begin  
24 with Staff, we'll take a break. So we'll take a  
25 ten-minute break and reconvene at 10:15.

1 MR. AKIN: Thank you.

2 HEARING EXAMINER RIVERA: Thank you.

3 (Recess from 10:05 a.m. to 10:16 a.m.)

4 HEARING EXAMINER RIVERA: All right, thank you.  
5 We're back on the record, and we can begin with Staff  
6 whenever you're ready. Good morning.

7 MR. ROBERTS: Good morning. For the record, Brian  
8 Roberts, Development Services Manager, Lee County  
9 Community Development.

10 This is DCI2023-00047, Home Front Heroes Minor  
11 CPD.

12 MR. AKIN: Can I do it for you?

13 MR. ROBERTS: Sure, thank you.

14 For the record, I've been previously qualified as  
15 an expert witness in land use planning, the Lee  
16 Comprehensive Plan, and the Lee County Land Development  
17 Code, and ask to be qualified today.

18 HEARING EXAMINER RIVERA: Yes, thank you.

19 MR. ROBERTS: Next slide, please.

20 Request and recommendation. I'm going to go  
21 through these slides kind of quickly. The Applicant  
22 covered most of the information.

23 They're amending the existing Moody River RPD/CPD  
24 to rezone the western 15.76 acres. It should be -- it  
25 looks like the 2 dropped out there -- or the 6 dropped

1 out there. It's 46,000 square feet total, a maximum of  
2 46,000 square feet, and Staff recommends approval with  
3 conditions.

4 Next slide, please.

5 The property information: The property is located  
6 at 884 Moody Road. It's in the North Fort Myers  
7 Planning Community.

8 And the Applicant covered the future land use and  
9 had the same maps that I do have, and the zoning  
10 district.

11 Character of the area: It's south of Hancock  
12 Bridge Parkway. It's predominantly residential uses.  
13 There's 20/20 Conservation to the south; there's  
14 existing transit stops and sidewalks on Moody Road in  
15 the area.

16 The surrounding uses:

17 To the north is the Mangrove Bay Condominiums,  
18 zoned RM-2, and in the Suburban Future Land Use  
19 category.

20 To the east, includes portions of the navigable  
21 waterway of Hancock Creek. Also shares a property line  
22 with the remainder of Tract M from the original  
23 rezoning, which will retain its Residential Planned  
24 Development zoning, and is in the Suburban and Wetlands  
25 Future Land Use category.

1 South, the subject property abuts land zoned  
2 Agricultural, AG-2, in the Suburban Future Land Use and  
3 is in the Conservation 20/20, and it is -- currently it  
4 has the eagle's nest that we saw earlier, and we see on  
5 the master concept plan the 330 and 660 buffer zones.

6 And to the west is the existing Moody River --  
7 Road, which is a County-maintained minor collector, and  
8 Moody River Estates Residential Planned Development,  
9 which is in the Suburban Future Land Use.

10 The next slide goes over the findings criteria. I  
11 won't go through all the criteria. It's been gone  
12 through with the Applicant. We can advance through  
13 that.

14 I'll go through some of the Lee Plan analysis:

15 The property is in the Suburban and Future Land  
16 Use -- Wetlands Future Land Use category. The Suburban  
17 Future Land Use category is predominantly residential  
18 areas. It emphasizes the protection of existing  
19 residential development and does not permit industrial  
20 land uses. The Applicant is not proposing any  
21 industrial land uses.

22 The rezoning is reducing previously permitted  
23 heights, is reducing some intensity with regards to  
24 water and sewer consumption.

25 The traffic estimates do show a little bit higher

1 traffic, but they're on the conservative side, I  
2 believe.

3 And it locates the commercial building to the  
4 southwest portion of the site.

5 Lee Plan Policy 1.5.1 describes the Wetlands  
6 Future Land Use category as low-density residential and  
7 recreational uses that won't adversely affect the  
8 functions of the wetlands. The wetland land use is on  
9 the island. The Applicant has proposed some past  
10 boardwalks and nature trails; however, the master  
11 concept plan currently doesn't show any development in  
12 that area.

13 Objectives 2.1, 2.2, and 2.2.1 talk about  
14 development timing, location, and availability of  
15 services:

16 The property was previously rezoned.

17 There is the existing Moody River Waterfront Park  
18 on the north portion of the site.

19 There is existing development north and west of  
20 the site.

21 As the Applicant mentioned, the bus stop -- the  
22 Gold Line seasonal bus stop to the west of the property  
23 on Moody River.

24 There is water and wastewater availability, as  
25 evidenced in the letter of availability from Lee County

1 Utilities.

2 Existing sidewalks on the west side of Moody Road,  
3 as well as an existing access to the property, as well  
4 as proximity to Fire and EMS and Police.

5 It's serviced by Solid Waste, again, the Public  
6 Transit, and Moody Road is a minor collector roadway.

7 Standards 4.1.1 and 4.1.2 talk about the water and  
8 sewer requirements in the Lee Plan; and Map 4-A and  
9 4-B, they're shown within the Lee County Utilities  
10 future service areas at time of development order, and  
11 this -- the development will be required to connect to  
12 the -- to the existing utilities on-site.

13 Objective 5.1.5 is protection of the existing  
14 residential development, and we've kind of talked about  
15 that, in the Suburban Future Land Use. Again, the  
16 reduced height, less intense uses.

17 I put 10 versus 45 with the wet slip reduction.  
18 Again, Mr. Akin talked about the 20 with the -- with  
19 the calculation of the parking spaces.

20 There's adequate landscape and buffering, and the  
21 reduced height from previous approvals and the location  
22 of the building to the southwest of the site. During  
23 DO time they'll comply with all the DO regulations  
24 where they haven't -- aren't provided deviations as  
25 part of the master concept plan in this rezoning.

1 Commercial land uses are covered in Goal 6 of the  
2 Lee Plan:

3 Again, they're going to provide adequate  
4 landscaping and buffering and open space.

5 They're adjacent to a minor collector roadway.  
6 The TIS provided as part of this shows no detrimental  
7 impacts to that roadway.

8 Existing access and on-site development.

9 Available water and wastewater capacities.

10 Urban services are available to the site.

11 And they're preserving the existing wetlands with  
12 no impact.

13 All these satisfy Policies 6.1.1, 6.1.4, .5, and  
14 .6.

15 Goal 30, they are within the North Fort Myers  
16 Community Plan area.

17 There was a required meeting. The meeting was  
18 conducted. The meeting notes and advertisements were  
19 part of the Staff Report.

20 The proposal of Home Front Heroes does improve the  
21 livability of the community and provides recreational  
22 activities use and educational programs, community  
23 outreach. It's establishing the charitable  
24 organizations. All these things are talked about in  
25 the North Fort Myers Community Plan.

1           And it preserves the resources, the conservation  
2 easements on-site. Although they're switching the  
3 boat -- the boat slips, the conservation easements are  
4 going to remain, and they're not -- they're not  
5 proposing development within the -- the -- island --  
6 the wetland island.

7           Goal 60 and 61 talk about surface water management  
8 and protection of water resources. They did provide a  
9 Surface Water Management Plan at the time of submittal.  
10 It shows that the runoff is collected via catch basins  
11 and culverts, swales, dry detention areas, and  
12 discharges ultimately to Hancock Creek.

13           The development -- ultimate development of the  
14 site will require the South Florida ERP permit and the  
15 development order.

16           At the time of the development order and the South  
17 Florida ERP, the designed surface water management  
18 system will be evaluated for off-site impacts,  
19 requirements for water quality, attenuation, and  
20 include operation and maintenance documents.

21           Coastal and -- conservation and coastal  
22 management, Goal 101 and 102, talk about the protection  
23 of human life, and the current and future development  
24 impacts from coastal flooding.

25           There's no wetland impacts proposed.

1           They will be required to meet the FEMA elevations  
2 during flooding.

3           There is also the South Florida permitting  
4 criteria and Water Management permitting criteria  
5 during the permitting process for development.

6           And also they'll have to comply with the Land  
7 Development Code, if there's proposals for seawall  
8 repair and replacement, as well as the Lee Plan  
9 Policies 101.4.2 and 4.3, which limits new vertical  
10 seawalls and encourages planting of mangroves or  
11 placement of riprap and artificial and natural canal  
12 systems to replace existing seawalls in need of repair.

13           Policy 123.6.1 talks about the bald eagle's nest.  
14 The environmental consultant talked about the nest. A  
15 Bald Eagle Management Plan was submitted. There was a  
16 subsequent master concept plan that was submitted  
17 post-sufficiency. The bald eagle plan that you have in  
18 the Staff Report was not updated with that master  
19 concept plan. That was addressed in the 48-hour  
20 letter. I just wanted to bring that up to make sure  
21 that that gets updated.

22           There's no earthwork or planting within the  
23 330-foot buffer, and there are limits on exterior  
24 construction in the 660-foot buffer zone during the  
25 nesting season, as outlined in the Natural Resources

1 Staff Report.

2 The Bald Eagle Management Plan was recommended for  
3 approval by the Eagle Technical Advisory Committee,  
4 ETAC, on September 10th, 2024. And the conditions do  
5 include a condition that includes the Bald Eagle  
6 Management Plan as part of the development order.

7 Staff finds that consistent with Goal 128.4.

8 The historic preservation policy, 141.1.2:

9 The site is in Archaeological Sensitivity Zone 2.

10 There was no cultural resources identified by the  
11 Bureau of Historic Preservation. There is  
12 correspondence in the file -- or in the Staff Report  
13 that was included. At time of development order, they  
14 will have to apply for a certificate to dig for the  
15 property.

16 And the proposed use is consistent with recreation  
17 and conservation uses on the site.

18 The economic element, I wanted to include this,  
19 Objective 160.3, because they are providing educational  
20 opportunities and outreach, job counseling, manpower  
21 training, and workforce education, and that is  
22 consistent with the Lee Plan, as well.

23 This is one of the findings criteria that the  
24 proposal meets. The rezoning meets the Code and other  
25 applicable County regulations or qualifies for a

1 deviation. They have requested five deviations.

2 During the process Deviation Number 20 was withdrawn.

3 You can go to the next slide.

4 It is compatible with existing and planned uses in  
5 the surrounding area:

6 The schedule of uses was adapted to the  
7 surrounding uses and the residential area.

8 There was considerable discussion during the  
9 sufficiency process with Staff and the Applicant.

10 The height and number of wet slips is reduced from  
11 previous approvals.

12 There is appropriate buffering and landscaping as  
13 part of the master concept plan and conditioning of the  
14 deviations.

15 Locates the building away from the existing  
16 residential to the north, and large portions of the  
17 site is dedicated to recreational or open space.

18 Got a picture of the existing site access there on  
19 the top, and kind of a zoom-up of the master concept  
20 plan of what's proposed in the -- in the bottom.

21 They're going to provide sufficient access to  
22 support the proposed development intensity with the  
23 existing access, it's called Cuddy Cove Place, that's  
24 one access onto Moody Road. There is a Deviation  
25 Number 19 for that one access. Even though the

1 developable area is less than 10 acres, the parcel in  
2 and of itself exceeds that 10-acre requirement, and  
3 Staff felt and the Applicant felt it safe -- safer to  
4 include the deviation, as the way the Code reads, it  
5 doesn't exempt any -- anything from the parcel other  
6 than the parcel size.

7 The Department of Transportation, a memo that was  
8 included in the Staff Report, did conclude that the  
9 access to the property is sufficient to support the  
10 development.

11 A TIS was provided as part of the Applicant's  
12 submittal documents. The Department of Transportation  
13 memo, again, concluded that there were no detrimental  
14 impacts on the surrounding roadway system. A complete  
15 TIS, when a more complete development plan is provided  
16 at the time of development order, will be provided that  
17 will analyze the proposal in more detail.

18 Will not adversely affect environmentally critical  
19 or sensitive areas. There is no -- no impacts proposed  
20 to the environmentally sensitive or critical areas.

21 A protected species survey was conducted on-site.  
22 No protected species were found on-site. Again, the  
23 bald eagle's nest is off-site. We do have Conditions  
24 28, 32, 33, and 34 in the conditions that deal with the  
25 protection of natural resources and talk directly to

1 protecting these items. The Manatee Protection Plan  
2 was looked at during the sufficiency with regards to  
3 the location of the -- the boat docks and the -- the  
4 water uses. And, again, the Surface Water Management  
5 Plan plays into meeting the requirements of this  
6 finding.

7 The site is served by urban services:

8 Lee County Utilities, water and wastewater.

9 Again, the North Fort Myers Fire Department and  
10 EMS Medic 7 are located close to the site.

11 It's served by the Lee County Sheriff's Office,  
12 Lee County Solid Waste, and public transit and  
13 pedestrian facilities.

14 I put up the proposed mix of uses for the site  
15 shown there. They are limited, and there was some talk  
16 earlier about why a CPD. Those uses have been  
17 discussed with the Applicant and are limited  
18 specifically and tailored to the Home Front Heros  
19 mission.

20 They're close to Hancock Bridge. I have 800 feet  
21 there. I believe the Applicant testified it was  
22 closer. That's what I measured to the actual  
23 entranceway. You may have measured to the property  
24 line.

25 And the schedule of uses are tailored to that

1 recreational, educational training, and youth programs.

2 Hancock Bridge Parkway in the North Fort Myers  
3 Community is in the commercial corridor. I wanted to  
4 mention that because of the proximity to the site.

5 The conditions established in the proposed  
6 conditions safeguard the public, and the conditions are  
7 reasonably related to the request.

8 Each deviation Staff has found enhances the  
9 achievements of the objectives of the planned  
10 development, and preserves and promotes the general  
11 intent of the Code, to protect the public health,  
12 safety, and welfare.

13 I'm not going to go through everything in the  
14 48-hour letter. Staff did look at each of the items.  
15 There were -- a lot of discussion and back and forth.  
16 I met with Staff individually for -- to go through each  
17 of the items that were in the 48-hour letter. I met  
18 with the Applicant. We talked through each of the  
19 items in the 48-hour letter. Staff has no objection to  
20 the attached documents that came with it.

21 In the Staff Report there were directional calls  
22 that -- I'm not sure how I got east and west backwards  
23 on several occasions, but I did, so I apologize for  
24 that. But no objections to anything in the Staff  
25 Report. I do note that in number 10 on the Staff

1 Report, that the DOT memo states 4 units, which at the  
2 time was the equivalent of the 8,000 square feet.

3 The next page.

4 Going through these, as well, these are cleanup  
5 items to the regulations and conditions.

6 In number 2 there was a gap left in the Staff  
7 Report that did not print the table. The table that's  
8 provided is the table that was from the original zoning  
9 of the property.

10 And number 5, Condition 10 -- or Condition 14,  
11 Staff understands removal of the commercial standards,  
12 doesn't object to it; however, we note that the  
13 condition repeats the Code requirements that are  
14 currently in place. So removal, either way, Staff  
15 doesn't have an objection to it.

16 Going through the rest of the conditions, Staff  
17 has no objection to the rest of the development  
18 regulations and conditions or the Environmental Staff  
19 Report changes or clarifications.

20 That's the conclusion and -- well, that is not the  
21 conclusion.

22 Based on the analysis of the application and  
23 standards for approval of planned development rezoning,  
24 Staff finds the request to be consistent with the  
25 established review criteria and recommends approval of

1 the request with the conditions.

2 HEARING EXAMINER RIVERA: Thank you.

3 Did Applicant have any questions of Staff?

4 MR. AKIN: No, I do not.

5 HEARING EXAMINER RIVERA: Thank you.

6 Okay. So with that, we will begin with public  
7 comment. As I said, I'm going to call the cards that I  
8 have in the order that I have them.

9 There is, again, only one opportunity to speak but  
10 no time limit; and if you do want to speak at the Board  
11 meeting, you must speak today.

12 So the first card that I have is for Tom Ward.

13 MR. ROBERTS: Madam Hearing Examiner, if I may  
14 quickly?

15 HEARING EXAMINER RIVERA: (Nods head.)

16 MR. ROBERTS: I did leave something off. I did  
17 speak to the Environmental Staff at the break. The  
18 condition regarding the open space, Condition  
19 Number 35, the correct calculation is 3.23 acres, and  
20 Condition 35 should read 3 -- 3.23 acres, and the  
21 condition should read 3.23 acres.

22 HEARING EXAMINER RIVERA: Thank you.

23 I apologize, Mr. Ward.

24 MR. ROBERTS: I apologize.

25 MR. WARD: Thank you.

1 HEARING EXAMINER RIVERA: Good morning.

2 MR. WARD: Good morning. My name is Tom Ward.  
3 I'm a resident of Moody River Estates. And I wasn't  
4 going to ask a question, I primarily wanted to get on  
5 the email list so I could be kept abreast of  
6 everything. But I noticed on one of the slides that  
7 was just shown that the gate barrier arms that come  
8 down when you enter there, it was said that they were  
9 going to remain in place for access to the boat launch,  
10 but I assume that's a temporary thing?

11 HEARING EXAMINER RIVERA: We'll collect -- I  
12 should have said this. We'll make notes of any  
13 questions that you have, and then they'll answer them  
14 at the close --

15 MR. WARD: Okay.

16 HEARING EXAMINER RIVERA: -- of the public  
17 comment. So I'll have them answer --

18 MR. WARD: Yeah.

19 HEARING EXAMINER RIVERA: -- that.

20 The testimony -- I asked the same question  
21 earlier, and their answer was at that time -- but I  
22 will leave it to them to answer again -- was that they  
23 were going to remain permanently, and only residents of  
24 Moody River and the occupants of their site would have  
25 access to that first set of gates, and then they have

1 another gate within the property that would be  
2 restricted to --

3 MR. WARD: For the boat launch, okay.

4 So actually the first one is for the development  
5 itself and access to the launch --

6 HEARING EXAMINER RIVERA: Correct.

7 MR. WARD: -- for Moody River residents.

8 HEARING EXAMINER RIVERA: Right, the --

9 MR. WARD: Eventually there will be a separate  
10 gate put in over there?

11 HEARING EXAMINER RIVERA: On their side. Are you  
12 asking about the Moody River side?

13 MR. WARD: Yeah.

14 HEARING EXAMINER RIVERA: Okay. And I don't want  
15 to get too deep on it, but they -- their testimony for  
16 that was that that's going to remain open so -- again,  
17 I did my site visit yesterday so I probably haven't  
18 been there as often as you. But when you enter the  
19 site, you have the opportunity to go left into the --

20 MR. WARD: Yes.

21 HEARING EXAMINER RIVERA: -- boat ramp? That is  
22 going to stay just as it is now. So your access will  
23 not be impeded in any way --

24 MR. WARD: Okay.

25 HEARING EXAMINER RIVERA: -- but there will not be

1 another set of gates solely for the residents.

2 MR. WARD: So when the project is completed, it's  
3 going to be open to the public?

4 HEARING EXAMINER RIVERA: That's a question that  
5 I'll ask --

6 MR. WARD: So there --

7 HEARING EXAMINER RIVERA: -- them to answer.

8 MR. WARD: -- won't be any barrier gates where  
9 they are right now, at the main entrance?

10 HEARING EXAMINER RIVERA: I'll ask them to clarify  
11 that. I don't want to testify for them. I'm just  
12 repeating what they said earlier, but I don't want to  
13 get too deep into that so I'll have them answer it --

14 MR. WARD: Okay.

15 HEARING EXAMINER RIVERA: -- after.

16 MR. WARD: And the ten slips right now that are  
17 proposed, are those for public access, is the question.  
18 And I know you talked about shortage of slips for like  
19 the fire department. Don't they have a couple boats  
20 that they have in the water or -- at least over on the  
21 downtown side of the river?

22 And I just wondered if any other watercraft like  
23 that, that belonged to the County, whether it's the  
24 Sheriff's Department or the Fire Department, are going  
25 to be utilizing that space or not.

1 That's the only questions I had, thank you.

2 HEARING EXAMINER RIVERA: Thank you. Thank you,  
3 sir, for coming today.

4 MR. WARD: Thank you.

5 HEARING EXAMINER RIVERA: Okay. The next card I  
6 have is for Joyce Campana. Good morning.

7 MS. CAMPANA: Good morning. My name is Joyce  
8 Campana, and I live in Lee County District 2.

9 I have very similar questions about the boat  
10 slips. Are they currently part of 20/20 conservation,  
11 and will all the boat slips be available to the public  
12 if they are part of the 20/20 land conservation? I  
13 thought that any use of that property was supposed to  
14 be for everybody.

15 And just to reiterate, I have some questions  
16 about -- the second question was about flooding  
17 precautions. I believe I heard Staff, or whoever it  
18 was, say that the FEMA guidelines for elevation would  
19 have to be followed, if I could just get a confirmation  
20 that that would apply to the whole project.

21 And I have one other question, and I'm not sure if  
22 it's appropriate here or to be directed to the Board,  
23 but it's about sources of funding. Does this all come  
24 from the Home Front group, or are there any tax dollars  
25 or tax dollar donations and that type of thing? So I

1 don't know if that can be addressed here, or probably  
2 at the Board. Thank you.

3 HEARING EXAMINER RIVERA: Thank you. Thank you  
4 for coming today, ma'am.

5 The next card I have is for Dawn Krutz. Good  
6 morning.

7 MS. KRUTZ: Good morning, thank you for having us.  
8 I'm Dawn Krutz.

9 Is there a way I can have a slide pulled up?

10 MR. ROBERTS: Sure.

11 MS. KRUTZ: One of the slides has the Mangrove Bay  
12 neighborhood, which is who we're representing. Is this  
13 the little pointer?

14 HEARING EXAMINER RIVERA: It should be.

15 MS. KRUTZ: Can I use it?

16 HEARING EXAMINER RIVERA: It was working --

17 MS. KRUTZ: Is it on?

18 HEARING EXAMINER RIVERA: -- and then it wasn't so  
19 I'm not sure.

20 MS. KRUTZ: Okay. So this is our neighborhood  
21 here. That's my home right there. We have Moody  
22 traffic, which we hear daily and nightly. We have the  
23 boat ramp right here, which we do hear daily and  
24 nightly. So for us I think it's more personal. I so  
25 appreciate what you all are trying to do with the Home

1 Front Heroes. I mean, there's nothing better that I  
2 like to hear than helping children and families, I love  
3 that, but our -- our 39 homes here, it's quiet, it's  
4 private. Nobody bothers us. We don't bother anyone  
5 else.

6 We are right on the road. The -- the -- our  
7 house -- our living room faces Moody, and the south  
8 side of my house faces the -- what's going to be the  
9 project. I have a problem with that because we're all  
10 kind of in retirement mode here, and it's going to be  
11 loud. It's going to be very loud. It's going to be  
12 very busy.

13 The traffic -- I don't know about the whole bus  
14 stop thing. The trolley that's here is only seasonal.  
15 It's not a bus, it's a trolley. You know, it's not --  
16 you know, there's not 150 people that get on this bus  
17 and get off. It goes downtown. We take it all the  
18 time, as neighbors. We travel downtown, come back.

19 I think for us it's just -- I mean, I know Moody  
20 River Estates is affected, as well, but us being right  
21 there -- is there going to be -- if this goes through,  
22 what are you going to do for us as a barrier? I mean,  
23 this is going to be noisy. We're talking pickleball;  
24 we're talking basketball; we're talking, you know,  
25 outdoor activities, food trucks.

1 I mean, I think it's respectful for us that we  
2 have an opinion that we still -- we live here because  
3 it's quiet. Not that I want to take away from what  
4 they're doing, because I really appreciate that, but  
5 sadly, I mean, as much as I would love to have that, I  
6 just -- I -- it's -- for our neighborhood and the  
7 surrounding quiet areas that we have, it's just -- it  
8 won't work.

9 I mean, we don't want to move. We don't want to  
10 sell our properties to move. We love where we live.  
11 This is our retirement home. So, I mean, I know that's  
12 more personal, maybe selfish, and I don't mean to be,  
13 but this is where we plan to spend the rest of our --  
14 our retirement. We don't want to go. We just don't  
15 want all the noise and ruffraff.

16 I mean, the homeless population up there is crazy.  
17 The Sheriff's Department can't even keep them out so  
18 they're all over the place. They walk in and out of  
19 our pool gate. I mean, they can access from the side  
20 there because we don't have a gate, there's trees and  
21 areca palms, but they still come in and out. How is  
22 that -- is that going to be prevented?

23 How many people at a time are you going to allow  
24 for activities in this area, and where is everyone  
25 going to exactly park? I don't know, but, I mean,

1 it's -- I vote no, I'm sorry.

2 That's all, thank you.

3 HEARING EXAMINER RIVERA: Thank you.

4 MS. KRUTZ: Thank you for having me.

5 HEARING EXAMINER RIVERA: Thank you for coming  
6 today.

7 Okay. The next card that I have is for Beth  
8 Russo. Good morning.

9 MS. RUSSO: Good morning. I'm also a Mangrove Bay  
10 resident, and along the lines of Dawn, my questions  
11 really are about capacities. How many children are in  
12 the after-school program? Is there a cap? Will there  
13 be a cap for events, for example?

14 I hadn't heard anything about food trucks and  
15 bounce houses, and I'm curious to know how often those  
16 types of events will take place, and is there a cap for  
17 the maximum number of people who can attend these  
18 events? I know that the number of parking spaces were  
19 specified; but when those parking spaces are full, what  
20 happens, who prevents the people from then going out  
21 and parking on the street? I'm just curious to know  
22 those kinds of things.

23 HEARING EXAMINER RIVERA: Thank you.

24 Okay. The next card is for Colleen Smith?

25 MS. SMITH: I don't have anything.

1 HEARING EXAMINER RIVERA: Okay. Thank you, ma'am.  
2 Okay. And then the last card I have is for Kirk  
3 Woodbury. Good morning.

4 MR. WOODBURY: Hello, my name is Kirk Woodbury.  
5 I'm also a resident at Mangrove Bay. I've been there  
6 over 20 years.

7 We were never consulted on this. There was no  
8 outreach or anything to our community. I wanted to  
9 start there.

10 We also displaced a sailing school which had use  
11 already there on-site. We're using that property. It  
12 was well-monitored. We didn't want to spend millions  
13 of dollars on consultants and things like that. We  
14 moved them with 30 days' notice.

15 We've also had increased flooding in our area. Up  
16 until Ian we've never had flooding in our community.  
17 We keep filling in these sites -- and they're going to  
18 build up to Code. That means they're going to fill in  
19 more. I had water in my garage, lost two cars, for the  
20 first time in 25 years from a storm, and we keep  
21 putting more and more things and filling up our land.  
22 You can only put so many people in a bathtub before you  
23 flood everything.

24 I'd also like to understand what happens if this  
25 not-for-profit fails, and now we've got commercial land

1 next to us, what's going to happen then?

2 And why are so many people in the Sheriff's Office  
3 on both the LLC board and the nonprofit board? It's  
4 concerning to me, and it should be concerning to  
5 everyone else.

6 I'd also like to know how many youths are actually  
7 going to be served, and how many of them have boats  
8 that they need slips. This is kind of concerning to  
9 me, too. Are they now going to become available to  
10 anybody that can pay enough money to have them? Why  
11 are we putting slips in there?

12 Now 15 or 18 years ago, the Army Corps of  
13 Engineers turned down our request to put a marina back  
14 in that place because it's an unnavigable waterway, and  
15 it is a public rights waterway.

16 I'm really concerned about the traffic. You  
17 cannot get through the light up there in less than two  
18 turns anymore. At the end of here -- now we have about  
19 500 apartment doors at the end of our street where  
20 Hancock hits 41. It's going to be an hour and a half  
21 to get downtown when it starts.

22 So we're not doing anything good for anybody else  
23 here except unfortunately maybe 10, 15 kids, and then  
24 the sheriff gets a place for his deputies to live. I'm  
25 very concerned about this.

1 HEARING EXAMINER RIVERA: Thank you.

2 Was there anyone else from the public that wanted  
3 to speak today?

4 Okay. We'll come back -- do we need to break  
5 before you start your rebuttal?

6 MR. AKIN: (Nods head.)

7 HEARING EXAMINER RIVERA: Okay. Let's take 10  
8 minutes and come back at 11:00.

9 (Recess from 10:50 a.m. to 11:05 a.m.)

10 HEARING EXAMINER RIVERA: Okay. We're going to be  
11 back on the record.

12 So we'll begin now with the rebuttal by the  
13 Applicant and the Staff, and any closing comments that  
14 you may have.

15 MR. AKIN: All right. So Madam Hearing Examiner,  
16 again for your record, Richard Akin.

17 Just to kind of go through a few of the  
18 discussions, things that were brought up by the  
19 public -- and I'll try to address them in order, and  
20 then I'm going to have Ms. Hewitt get up here and just  
21 address a couple of issues, as well.

22 First of all, there was a discussion about --  
23 there was questions about the -- the marina, and the  
24 marina being open to the public and the number of  
25 slips. Again, we've gone through this list. So it's

1 10 -- 10 wet, 10 dry. Essentially the dry slips are  
2 really because once you put the boats in, then you've  
3 got to park the trailer somewhere, and the way that the  
4 Lee Plan -- or the Land Development Code reads is that  
5 if you've got a trailer parking space, that counts as a  
6 slip, too. So there will be 10 wet slips and 10 dry  
7 slips, and the 10 dry slips basically will be, when the  
8 boats are in the water, the trailers will be parked  
9 there. We're not proposing to have this be something  
10 that's open to the public, as far as there's not going  
11 to be boats coming in and out and using these, or  
12 rented out to, you know, other members of the public.  
13 The idea here is that the boats that would be in the  
14 marina would be specifically to be used as part of the  
15 programming on-site, right? So to the extent that  
16 there is ecological programming where you might take  
17 kids out on a boat, show them around the areas, you  
18 know, this island here is -- anywhere in the river,  
19 things like that, manatee education, that the boats  
20 might be used for that.

21 There's also the possibility that there will be --  
22 and we hope -- law enforcement boats, right, provide  
23 law enforcement on the water. You heard Mr. Wilson  
24 talk about that, talk about the need for that in the  
25 area to enforce not only the boating laws, but the laws

1 that would protect the manatees and other wildlife,  
2 slow zones within the river, which there are a lot  
3 currently.

4 And so that's the idea. This is not a place where  
5 you're going to have boat traffic coming in and out  
6 from other members of the public, to come and access  
7 this area. It's a private -- private area to be used  
8 for the -- for the purpose and in connection with what  
9 is asked as part of the PD.

10 So that's number one. Let's see.

11 There were questions about whether -- someone -- I  
12 believe it was Ms. Campana, discussed whether the slips  
13 were currently part of 20/20, and I want to make this  
14 very clear on the record, right? So there is no  
15 Conservation 20/20 easement ownership of any of this  
16 parcel that we're talking about here today. And I'm  
17 sure the Hearing Examiner knows, but just for the  
18 public's benefit here, Conservation 20/20 is a program  
19 administered by Lee County wherein they purchase  
20 parcels of lands and place them into permanent  
21 conservation easement. It happens all the time, okay?  
22 And this property is not owned by Lee County  
23 Conservation 20/20, nor has there been any application  
24 for it to be owned by Conservation 20/20.

25 Now, where the confusion may come in is that the

1 property directly to the south of this Home Front  
2 Heroes property, so beyond our southern border here,  
3 that property was recently purchased by Conservation  
4 20/20, okay? So the stuff to the south of this is  
5 owned by Conservation 20/20. What we're proposing to  
6 do here has no effect on that, all right? No effect on  
7 the southern property, no effect on the Conservation  
8 20/20 purchase. You know, it's just as if Conservation  
9 20/20 bought, you know, this island out here or  
10 something like that. It's a completely different  
11 parcel. What we're doing will not affect that.

12 So the discussion about the conservation easement,  
13 just for the public's benefit to understand it, is that  
14 we could, if we wanted to, put more than the boat slips  
15 that we're requesting to put on here. If you just do  
16 the calculation of the amount of shoreline, the water  
17 depth, there's a calculation that you go through in  
18 order to make that determination. We could request  
19 more than what we're requesting, but we're not.

20 So what we're doing is we're going to put a  
21 conservation easement that limits the number of slips  
22 that we're allowed to use, the number of watercraft  
23 slips, to the request that we stated in here. So there  
24 will be a conservation easement limiting the slips to  
25 20, which is 10 wet/10 dry. So I want to make that

1 clear just for the members of the public so that  
2 there's not any confusion about that.

3 And if there's any other questions, Madam Hearing  
4 Examiner, I'm happy to answer those.

5 Let's see. There were questions about -- about  
6 the flooding precautions and FEMA, whether the FEMA  
7 guidelines were applied. We are required to comply  
8 with the FEMA guidelines and with the requirements of  
9 the Lee County Land Development Code. I believe that's  
10 already been testified to and very clear on the record.

11 There were also a couple of questions raised about  
12 ongoing flood. I believe one of the individuals  
13 indicated that there were flooding problems in Mangrove  
14 Bay that they already have. And I do want to point out  
15 that Mangrove Bay currently has a Code violation that's  
16 open in Lee County. It's -- the violation number is  
17 VIO2023-04271. It's a violation for, basically, their  
18 dry detention areas. They're not in compliance, and  
19 they're in for a development order to, I believe,  
20 resolve that issue. So some of their ongoing issues  
21 with flooding may be due to the fact that their dry  
22 detention areas are not in compliance.

23 However, I would like to say that we, as you heard  
24 Sam Marshall testify to earlier, are required to manage  
25 our stormwater and to ensure that we do not discharge

1 it or flood it onto others' properties. We've  
2 submitted a stormwater -- water management plan as part  
3 of the application, but we also will be required to go  
4 through the Water Management District and comply with  
5 all those at the time of development order.

6 So at the end of the day, I understand the  
7 concerns about flooding. I also understand the  
8 concerns about flooding as a result of hurricane. Many  
9 of us have been affected by that. But the development  
10 of our property will have to be consistent with and  
11 compliant with all of the Water Management regulations,  
12 and we will be, and we've testified to that today.

13 So I wanted to clarify -- there was a question  
14 about the bus stop, and I think the Hearing Examiner  
15 clarified this earlier, but we're not proposing to put  
16 an additional bus stop as a result of this. So there  
17 is an existing bus stop, as Ms. Hewitt explained, but  
18 we're not going to add one.

19 There was some discussion and concern about -- I  
20 believe the term "riffraff" was used or homeless --  
21 homeless in the area. As you've heard, we are asking  
22 to put two caretakers' residences on-site. Those two  
23 caretakers' residences would be for caretakers of the  
24 site, but they would essentially be employees of the  
25 Sheriff's Department. It is our anticipation sheriff's

1 deputies, right? So if there is a concern in this area  
2 about those things, it's our belief that that would do  
3 nothing to make that problem worse. It would only make  
4 it better by having a consistent law enforcement  
5 presence not only on this site, but in this general  
6 area where they would be able to assist members of the  
7 public with a homeless problem, a vagrancy problem, if  
8 necessary, or other problems that may come up over  
9 time.

10 There was discussion about what was on the site  
11 before, something about a sailing center. I will just  
12 say this, that it's my understanding that when Home  
13 Front Heroes took ownership of the property, there were  
14 a number of things going on on-site that were not --  
15 that were in violation of the allowed zoning that there  
16 was there. And so they did take over and they -- they  
17 took action to make sure that it was compliant with  
18 what was allowed out there, and I will leave it at that  
19 for right now.

20 I want to point out -- and you can see the master  
21 concept plan -- the residents of Mangrove Bay, which  
22 are up here, have expressed concern about noise and  
23 essentially what may happen here. You can see on  
24 the -- on the master concept plan, there's a note right  
25 here that from here up to our northern property line

1 where this little hatch is, that's 112 feet. There's a  
2 buffer there, all right? So that's 112 feet, and that  
3 would be before there would be even the caretakers'  
4 residences, right? And if you extend that on down,  
5 there will be well over 200 feet before you get to  
6 anything other than what would be caretakers'  
7 residences or the parking area, right? So there's a  
8 substantial distance between Mangrove Bay and what we  
9 are proposing to put in here as part of these changes.

10 There is the existing boat ramp in place that will  
11 be between the development Home Front Heroes is  
12 proposing and Mangrove Bay, but that's an existing use.  
13 It's not going to change. We're not opening it up to  
14 the public. So there is consider -- considerable  
15 buffer there.

16 There were questions about the number of people  
17 that would attend this area, and how -- how many people  
18 are going to be here. Well, essentially that's going  
19 to be governed by the size of the building that gets  
20 built and what -- the occupancy capacity of that  
21 building, which I don't know. We were allowed up to a  
22 certain number of square feet now, but we could build  
23 less. And so that would determine -- that would make  
24 it less. It's also going to be governed, I believe as  
25 you well know, by the amount of parking that we have

1 on-site. So I can't give exact numbers at this time  
2 because part of it will depend on how many people sign  
3 up, but we are limited by the space that we have and  
4 the County regulations to that.

5 HEARING EXAMINER RIVERA: So the parking -- there  
6 isn't like a separate parking table at this point  
7 because, as you just said, there isn't a companion DO.  
8 But I assume that -- or I guess can you explain what  
9 that process would look like then -- because you've  
10 just kind of got a conceptual layout, but can you  
11 explain how the parking would dictate to some extent  
12 what the size of the building could be and what use  
13 category you would use to make that calculation?

14 MR. AKIN: I probably can. I'm probably going to  
15 need some help from Ms. Hewitt to go through that.  
16 But, I mean, on a high level -- and I'm sure you  
17 understand this -- the way the parking works is that  
18 the Lee County Land Development Code requires a certain  
19 number of spots per square footage of building space,  
20 depending on the type of use of the building, right?  
21 And we're required to have that many parking spaces  
22 unless we ask for a deviation, which we've not done as  
23 part of this request here today. Which means that you  
24 are limited by how much site -- room you have on the  
25 space to -- to park, right? And you can't have more

1 people on-site than you can park. Which I think also  
2 addresses the parking on the street, as best I can  
3 really address it, is that, look, we're allowed and  
4 required to have parking for the uses that we have  
5 on-site, and we will have to go through that at the  
6 time of development order with Staff in order to make  
7 sure that we have met the requirements of the Code,  
8 since we are not asking for a deviation from that at  
9 this time.

10 And I don't know how to get in further detail,  
11 because without knowing exactly what the building will  
12 be, it's hard to say.

13 HEARING EXAMINER RIVERA: And I think the  
14 temporary uses was a concern that they were expressing,  
15 as well. Usually the sheriff's deputies are the ones  
16 that are directing traffic. So will that be  
17 controlled, as well? Is that the expectation, that if  
18 you're hosting these events, there would be sheriff's  
19 deputies on-site to ensure that there aren't backflow  
20 issues backing up into the roadway?

21 MR. AKIN: Yeah, the answer is yes. And that's  
22 what happened, you know, before -- to date when Home  
23 Front Heroes has had other events, yes, sheriff's  
24 deputies will be on-site to direct traffic, make sure  
25 that we're not having traffic out on the streets. I

1 can assure you that, you know, to the extent there's  
2 sheriff's deputies involved, they're not directing  
3 people to park in places that are unsafe or that would  
4 create a traffic hazard, as they would be the ones that  
5 would get called to address that, if there was an issue  
6 of doing that. So that -- that won't be the case.

7       There was all -- or there were some questions, as  
8 well, about some of the uses and concerns about noise.  
9 And so what I'll say is that, you know, the current  
10 list of approved uses on-site already allows outdoor  
11 pickleball courts, tennis courts, things of that  
12 nature. So we're not asking to add anything that  
13 wasn't already there.

14       Now, to some degree there's a -- part of the  
15 reason why we're asking to put this building in  
16 place -- and you heard this earlier -- is that, yeah,  
17 there will be some outdoor recreational uses, but I  
18 think we'd like to have some indoor courts that will  
19 address some of that noise issue and address the  
20 capacity issue and a place for these things to be,  
21 right? So the reason we want a building is we can  
22 hopefully put a basketball court, who knows what else,  
23 within that area.

24       But we are required, as we said earlier, to comply  
25 with the Lee County noise ordinance, which is a

1 requirement of not only this property but all the other  
2 surrounding properties. And we're not asking to  
3 deviate from that in any way; we will comply with it.

4 And based on the distance from Mangrove Bay to the  
5 areas where these events will be occurring, and the  
6 requirement that the noise ordinance applies, I can't  
7 imagine that that's going to be a compatibility issue.  
8 And Ms. Hewitt is going to come up and talk about that  
9 in just a minute, since I'm an attorney and she's a  
10 planner. But ultimately, just from a factual,  
11 straightforward basis, I think that takes care of  
12 itself.

13 There were discussions and questions about -- one  
14 gentleman asked about are the boat slips for the youth,  
15 are we going to have youth driving boats. Again, I  
16 think I answered that when I talked about what the  
17 purpose of the boats would be, but if we need to go  
18 there further, we can.

19 There was a -- the first gentleman, Mr. Ward,  
20 asked questions about the gates, and you discussed that  
21 a little bit earlier. So right now what I can tell you  
22 is that there is no plan, as we sit here today, to  
23 change the -- to take out the existing gates that  
24 prevent -- prevent members of the public who don't have  
25 access but allow access for the Moody River Estates

1 folks. There's no plan to change that.

2 I don't -- I don't know that we can make a  
3 commitment that we would never change the way the gates  
4 are at this moment; but what we are clear on is that if  
5 we have to move the gate like over here somewhere, the  
6 bottom line is that there will always be access to the  
7 boat ramp for the Moody River Estates residents, as  
8 it's required to be, and there will never be access for  
9 anyone who is not, not to the public, all right? So  
10 even if we have to reconfigure the gate, they will have  
11 access, they will have the ability to get in, and it  
12 will not be open to the public. It's that simple.

13 Is there anything that I've missed that you  
14 recall? I think that pretty much covers my list.

15 UNIDENTIFIED SPEAKER: Funding.

16 MR. AKIN: Funding.

17 HEARING EXAMINER RIVERA: That's not an  
18 appropriate -- I'm sorry, sir, that's not an  
19 appropriate question for this forum. I know it was  
20 mentioned that -- the lady that mentioned it wants to  
21 address that with the Board, and you can speak to the  
22 Board of what you spoke about today, but it's not  
23 something that we can speak about. It's not any  
24 relevance to the request.

25 I have an hours-of-operation question, but I don't

1 know if you want me to ask you or ask Ms. Hewitt.

2 MR. AKIN: Why don't you ask me, and maybe  
3 Ms. Hewitt will answer it. Let's see.

4 HEARING EXAMINER RIVERA: Well, it's just because  
5 of the events -- and it was a question I had going  
6 through the materials because there was repeated  
7 mention that it's an after-school -- in terms of  
8 traffic, in terms of noise, in terms of all the  
9 off-site potential impacts that this might have, you're  
10 saying that you're limited to after-school, weekends  
11 primarily. So is there any discussion that has been  
12 had with Staff about limiting hours of operation?  
13 Because I think that would potentially provide some  
14 comfort to the surrounding residents, just to know  
15 you're not talking about late-night food truck events,  
16 parties. It doesn't seem like that would be in the  
17 spirit of what you're proposing; but absent a condition  
18 that says that, they don't have any assurance of that.  
19 So I don't know if that's something that's been  
20 discussed.

21 MR. AKIN: Yeah, so I don't believe it's been  
22 discussed with Staff. We did discuss it a little bit  
23 ourselves internally just -- you know, I guess  
24 here's -- here's my thought. I'll just kind of give  
25 you -- so if the Hearing Examiner wanted to go down the

1 road of conditioning or saying that if you're going to  
2 have an event with food trucks, it can't occur past a  
3 certain time at night, you know, I think we would  
4 probably be okay with that, based on our discussions;  
5 but we haven't been doing that to begin with, and I  
6 don't think there's any real desire to do it.

7 There's also no -- no proposal at this point in  
8 time to put outdoor lighting or anything like that in  
9 the recreation area. My concern with an  
10 hours-of-operation condition, if not carefully drafted,  
11 is that, you know, I don't think we're really -- I  
12 don't think that there is an issue with hours of  
13 operation, especially once the indoor building is  
14 built, and people going in and out of that, right? It  
15 seems like the concern is maybe just around, hey, you  
16 have an event, and there's food trucks outdoors, and we  
17 don't want them there at midnight on a Friday night.  
18 And that -- that's a fair -- I understand why the  
19 public would raise that question. So if -- you know,  
20 that hasn't been occurring, and we don't have any  
21 intent to do that anyway, so I don't know how you want  
22 to address that but...

23 HEARING EXAMINER RIVERA: Okay. Did Ms. Hewitt  
24 have something she --

25 MR. AKIN: Yes, she does.

1 MS. HEWITT: Stacy Hewitt, for the record.

2 I did want to just -- as was already put on the  
3 record, just about the existing approval and what's  
4 allowed on the site with the existing zoning. I  
5 already included uses, such as recreation facilities,  
6 personal and private on-site, tennis courts, and  
7 private multi -- or the private recreational facility  
8 is allowed on-site today with the existing buffer that  
9 was installed and exists along that north property  
10 line. And as Mr. Akin said, the uses on the site are  
11 all around 200 feet south from that property line, as  
12 well. I just wanted to reiterate that those recreation  
13 uses are already allowed outdoors.

14 And also as stated, we will be required to comply  
15 with the noise ordinance, which reduces the allowable  
16 noise levels between the hours of 10 p.m. and 7 a.m.,  
17 and that's consistent with this site and all  
18 surrounding properties. And that would remain, of  
19 course, in effect, and we would have to comply with  
20 that. There is also some concern with -- as far as any  
21 hours of operation, what that would apply to on the  
22 site.

23 Now, I believe that addressed the existing uses as  
24 far as our rebuttal, but I do believe there were two  
25 conditions that we were talking about that I did want

1 to circle back before we close the record.

2 HEARING EXAMINER RIVERA: And we can leave the  
3 record open to address that because I do want you to  
4 make that correction in --

5 MS. HEWITT: Okay.

6 HEARING EXAMINER RIVERA: -- I think it's 35 and  
7 I -- it's probably 2, I'm guessing it's Condition 2,  
8 that has the schedule of uses --

9 MS. HEWITT: Yes.

10 HEARING EXAMINER RIVERA: -- not having it right  
11 in front of me.

12 MS. HEWITT: Yes.

13 HEARING EXAMINER RIVERA: So if there is an  
14 opportunity if we want -- I'll hear from Staff, too,  
15 but if there is willingness to discuss an  
16 hours-of-operation condition, that's something else you  
17 could include in that, if you can come to some  
18 agreement.

19 MR. AKIN: Yeah, there is on our end. I just  
20 discussed it with the client. So we can discuss that  
21 with Staff as part of leaving the record open and  
22 proposing things.

23 HEARING EXAMINER RIVERA: Okay, thank you.

24 MS. HEWITT: Thank you.

25 HEARING EXAMINER RIVERA: Did Staff have any

1 rebuttal comments?

2 MR. ROBERTS: I do not.

3 HEARING EXAMINER RIVERA: Okay. And hours of  
4 operation, was that something that you had discussed  
5 previously?

6 MR. ROBERTS: We had not discussed hours of  
7 operation previously.

8 HEARING EXAMINER RIVERA: Okay. So I'm going to  
9 leave the record open to give you an opportunity to do  
10 that, and then make whatever other revisions we  
11 discussed to the master -- or to the conditions, not  
12 the master concept plan.

13 How long do you think that you would need to do  
14 that?

15 (Sotto voce between Mr. Akin and Ms. Hewitt)

16 MR. AKIN: Can we have two weeks from tomorrow?

17 HEARING EXAMINER RIVERA: Certainly.

18 MR. AKIN: I think we can get it in sooner than  
19 that, but that gives us a little flexibility.

20 HEARING EXAMINER RIVERA: Okay, thank you. So it  
21 would be by the end of business on March 28th, is when  
22 it would be due. If you need an extension for that,  
23 just request that in writing to my office. And if you  
24 can complete it sooner, certainly do that, as well.  
25 You can complete it at any time.

1           Thank you for everyone that came today. Again, if  
2 you spoke, you will receive a copy of the  
3 recommendation that I'll be issuing to the Board of  
4 County Commissioners, as well as the notice of when  
5 they're going to hold that hearing.

6           And, again, thank you for your time for coming  
7 down here. I appreciate it. I know downtown traffic  
8 can be a bit of a nightmare, so thank you for bearing  
9 with us this morning.

10           And please stay well, everyone, and stay safe.

11           MR. AKIN: Thank you.

12           (Proceedings concluded at 11:25 a.m.)

13           (Staff Exhibit 3 marked off-the-record.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEE )

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 100, is a true and correct record of my stenographic notes.

Dated this 19th day of March, 2025.

  
\_\_\_\_\_  
Deborah M. Bruns, FPR

(This transcript was electronically signed.)

<b>1</b>	<b>102</b> 63:22	<b>15.76</b> 8:16 47:4 57:24	<b>2006</b> 14:3	<b>3.23</b> 27:16,24 28:9 71:19,20,21
<b>1</b> 5:11 6:11,12 43:12 48:25 49:2, 7	<b>10:05</b> 57:3	<b>150</b> 77:16	<b>2007</b> 14:5	<b>3.63</b> 14:16
<b>1,000</b> 13:11,17	<b>10:15</b> 56:25	<b>16</b> 28:24	<b>2009</b> 14:3	<b>3.73</b> 26:17 27:12,17 28:1,2,10,16
<b>1.1.5</b> 51:11	<b>10:16</b> 57:3	<b>160.3</b> 65:19	<b>2012</b> 14:5	<b>3.78</b> 27:13,24 28:10, 11
<b>1.5.1</b> 51:25 60:5	<b>10:50</b> 82:9	<b>17</b> 29:7	<b>2013</b> 14:21 15:23	<b>30</b> 26:17 27:3 28:7 52:25 62:15 80:14
<b>10</b> 43:12 44:5,24 47:19,20,21,22, 23 51:19 61:17 67:1 69:25 70:10 81:23 82:7 83:1, 6,7 85:25 97:16	<b>10th</b> 65:4	<b>17.3.5</b> 53:1	<b>2015</b> 16:8	<b>30-foot</b> 29:9,22 30:6
<b>10-291(3)</b> 31:3	<b>11-by-17</b> 5:22	<b>18</b> 30:19 35:11 81:12	<b>2017</b> 18:6	<b>30.5.3</b> 53:1
<b>10-415</b> 26:7	<b>112</b> 89:1,2	<b>19</b> 31:2 66:25	<b>2021</b> 16:12,25 17:1 18:15	<b>32</b> 67:24
<b>10-416(d)</b> 29:8	<b>11:00</b> 82:8	<b>19.56</b> 13:16	<b>2022</b> 18:16	<b>33</b> 67:24
<b>10-421(a)(8)</b> 28:25	<b>11:05</b> 82:9	<b>2</b>	<b>2023</b> 18:19	<b>330</b> 29:20,22 40:20 59:5
<b>10-acre</b> 67:2	<b>123.6.1</b> 54:1 64:13	<b>2</b> 5:8,11 6:12,15 20:9 49:14 57:25 65:9 70:6 75:8 98:7	<b>2024</b> 20:3,6 65:4	<b>330-foot</b> 23:3,5 29:16,18 30:8 64:23
<b>10-foot</b> 29:21 30:12	<b>125</b> 14:22	<b>2.1</b> 52:5 60:13	<b>2025</b> 4:4	<b>34</b> 30:4,15 67:24
<b>10-percent</b> 30:20	<b>128.4</b> 54:5 65:7	<b>2.2</b> 52:5 60:13	<b>22</b> 40:10,11	<b>34-145(d)(4)a.1</b> 54:19
<b>10.78</b> 26:18 27:4 28:7	<b>128.4.10</b> 54:6	<b>2.2.1</b> 52:6 60:13	<b>222</b> 13:9	<b>34-145(d)(4)a.2</b> 55:9
<b>101</b> 63:22	<b>128.4.11</b> 54:7	<b>20</b> 47:6,18 61:18 66:2 80:6 85:25	<b>23</b> 20:1 41:9	<b>34-2020(b)</b> 30:20
<b>101.1.1</b> 53:15	<b>128.4.5</b> 54:6	<b>20-foot</b> 19:16	<b>24</b> 41:9,10	<b>34-2174</b> 34:12
<b>101.1.2</b> 53:15	<b>128.4.7</b> 54:6	<b>20/20</b> 58:13 59:3 75:10, 12 84:13,15,18, 23,24 85:4,5,8,9	<b>24th</b> 20:5	<b>35</b> 24:5 26:16 27:13, 17 34:11 71:19, 20 98:6
<b>101.3.2</b> 53:15	<b>13th</b> 4:4	<b>200</b> 13:17 15:13 25:9 89:5 97:11	<b>25</b> 80:20	<b>36</b> 31:9
<b>101.3.5</b> 53:15	<b>14</b> 14:9 34:19 70:10	<b>2003</b> 13:8	<b>28</b> 34:23 67:24	<b>39</b> 77:3
<b>101.4.2</b> 53:16 64:9	<b>141.1.2</b> 65:8	<b>2005</b> 8:9 13:15 14:24 51:13 55:13	<b>28th</b> 99:21	
<b>101.4.3</b> 53:16	<b>145</b> 14:19 49:18		<b>29</b> 47:1	
	<b>15</b> 26:6 81:12,23		<b>3</b>	
			<b>3</b> 71:20	
			<b>3.2</b> 27:15	

<b>4</b>	<b>6</b>	<b>9</b>	<b>achievements</b> 31:13 69:9	<b>adequate</b> 20:13 52:16,21 54:12,15 61:20 62:3
<b>4</b> 70:1	<b>6</b> 43:12 52:17 57:25 62:1,14	<b>938</b> 8:6	<b>acknowledgment</b> 14:12	<b>adherence</b> 44:15
<b>4-A</b> 61:8	<b>6.1.1</b> 52:17 62:13	<b>940</b> 8:6	<b>acres</b> 8:16 13:10,16 14:16 26:17,18 27:4 47:4 57:24 67:1 71:19,20,21	<b>adjacent</b> 51:21 62:5
<b>4-B</b> 61:9	<b>6.1.4</b> 52:17 62:13	<b>A</b>	<b>action</b> 88:17	<b>administered</b> 84:19
<b>4.1.1</b> 52:10 61:7	<b>6.1.5</b> 52:18	<b>a.m.</b> 57:3 82:9 97:16	<b>active</b> 41:4,10,20 42:3, 14	<b>administrative</b> 18:7 35:25
<b>4.1.2</b> 52:10 61:7	<b>6.1.6</b> 52:18	<b>abandoned</b> 18:15 41:22 42:12,16	<b>activities</b> 9:16 32:25 36:18 37:7 49:3 56:8 62:22 77:25 78:24	<b>administratively</b> 14:1
<b>4.3</b> 64:9	<b>60</b> 53:10 63:7	<b>abide</b> 41:16,20,24	<b>actively</b> 42:13	<b>advance</b> 59:12
<b>41</b> 81:20	<b>60.4.1</b> 53:11	<b>ability</b> 94:11	<b>advised</b> 9:16 32:25 36:18 37:7 49:3 56:8 62:22 77:25 78:24	<b>adverse</b> 38:11
<b>42,000</b> 36:20	<b>61</b> 53:10 63:7	<b>abreast</b> 72:5	<b>activity</b> 36:17	<b>adversely</b> 55:4 60:7 67:18
<b>45</b> 24:4 34:10 51:17 61:17	<b>660</b> 29:23 59:5	<b>absent</b> 95:17	<b>actual</b> 49:2 68:22	<b>advertisements</b> 62:18
<b>45,000</b> 13:12	<b>660-foot</b> 23:5 64:24	<b>abuts</b> 29:9,10 59:1	<b>adapted</b> 66:6	<b>Advisory</b> 30:2 40:13 54:4 65:3
<b>46,000</b> 8:18 9:3 24:1 58:1,2	<b>6th</b> 20:3	<b>abutting</b> 19:9 29:14	<b>add</b> 13:16 15:3 30:25 33:6,7,11 35:24 87:18 92:12	<b>aerials</b> 18:10,11
<b>48-hour</b> 5:25 6:5,15,21 14:2 16:2 19:2,3 26:5 33:2,6 56:17 64:19 69:14,17, 19	<b>7</b>	<b>accept</b> 6:16	<b>address</b> 8:5 82:19,21 91:3 92:5,19 94:21 96:22 98:3	<b>affect</b> 55:4 60:7 67:18 85:11
<b>5</b>	<b>7</b> 20:10 43:12 68:10 97:16	<b>acceptable</b> 50:4	<b>added</b> 15:3	<b>affected</b> 77:20 87:9
<b>5</b> 34:15 62:13 70:10	<b>70</b> 20:23	<b>accepted</b> 7:23 12:17,19 37:22 48:7,9	<b>adding</b> 43:16	<b>affecting</b> 18:1
<b>5.1.5</b> 52:13 61:13	<b>75</b> 8:8 13:18 15:14 24:4 51:17	<b>access</b> 16:12,22 17:2,5 18:1 21:2 22:3,14 23:23 24:22 31:5, 11 32:6 35:4 43:8 44:12 54:25 61:3 62:8 66:18,21,23, 24,25 67:9 72:9, 25 73:5,22 74:17 78:19 84:6 93:25 94:6,8,11	<b>additional</b> 8:11 11:3 22:18 34:12 45:9,19 87:16	<b>Affidavit</b> 5:5,10
<b>50,000</b> 9:1,5	<b>75-foot-tall</b> 15:19	<b>accessory</b> 8:20	<b>addressed</b> 55:2 64:19 76:1 97:23	<b>affiliated</b> 16:18 18:12
<b>500</b> 8:4 81:19	<b>8</b>	<b>accommodate</b> 43:11	<b>addresses</b> 91:2	<b>affirm</b> 4:11
<b>53</b> 13:22 25:10 44:24 51:18	<b>8,000</b> 70:2	<b>achievement</b> 55:18	<b>addressing</b> 33:1	<b>affirmative</b> 7:13
<b>55</b> 14:17 15:22 49:17	<b>80</b> 13:13			<b>affirmatively</b> 4:13
	<b>800</b> 68:20			<b>after-school</b> 37:7 79:12 95:7, 10
	<b>884</b> 8:6 58:6			<b>ag</b> 35:12

<b>AG-2</b> 13:4,10 19:14 59:2	<b>analysis</b> 48:11,14,15,19 49:1,18,24,25 50:2 59:14 70:22	31:1,8 34:6 36:3 48:12 55:3 56:16 58:2 65:3 70:23, 25 97:3	<b>arrive</b> 9:23	<b>B</b>
<b>agree</b> 52:19	<b>analyze</b> 67:17	<b>approvals</b> 8:7 20:17 35:23 36:6 50:16 61:21 66:11	<b>artificial</b> 64:11	<b>back</b> 5:2 9:7 28:21 45:18,22,23 46:8 57:5 69:15 77:18 81:13 82:4,8,11 98:1
<b>agreed</b> 50:9 56:17	<b>analyzed</b> 48:19,23	<b>approved</b> 13:17 16:4,5 31:4 34:25 40:15 49:15 51:13 52:23 54:3 55:12 92:10	<b>assessments</b> 14:8	<b>backflow</b> 91:19
<b>agreement</b> 6:25 7:1 16:24 18:25 46:25 98:18	<b>animal</b> 9:16	<b>approximate</b> 13:10	<b>assigned</b> 14:19 49:17	<b>backing</b> 91:20
<b>agreements</b> 14:11	<b>anticipate</b> 30:23 31:20 44:7 49:5	<b>approximately</b> 13:22	<b>assist</b> 14:14 88:6	<b>backwards</b> 69:22
<b>agricultural</b> 35:14,20 59:2	<b>anticipation</b> 87:25	<b>April</b> 20:3,22	<b>association</b> 10:18 19:23	<b>balance</b> 43:25 44:25
<b>AICP</b> 7:16	<b>anymore</b> 47:14 81:18	<b>Archaeological</b> 65:9	<b>assume</b> 32:11 72:10 90:8	<b>balance</b> 43:25 44:25
<b>Akin</b> 5:14,15 6:3,18,20 9:9 12:11 25:12 28:1,3,5,8 46:22, 23 47:21,25 56:13,14,22 57:1, 12 61:18 71:4 82:6,15,16 90:14 91:21 94:16 95:2, 21 96:25 97:10 98:19 99:15,16, 18	<b>apartment</b> 81:19	<b>Architectural</b> 24:7	<b>assumed</b> 48:22 49:11,18	<b>based</b> 26:11,13,17 50:25 56:3 70:22 93:4 96:4
<b>allowable</b> 97:15	<b>apologize</b> 69:23 71:23,24	<b>Architecture</b> 12:17	<b>assuming</b> 48:20	<b>bald</b> 13:24 18:15,16 34:25 40:15 54:2 64:13,15,17 65:2, 5 67:23
<b>allowed</b> 13:11 30:20 47:12 85:22 88:15,18 89:21 91:3 97:4,8,13	<b>applicable</b> 34:21 53:6 54:21 65:25	<b>area</b> 10:20 11:14 26:11,12 27:7 29:14,21 30:14 43:7 44:9 53:18 54:24 58:11,15 60:12 62:16 66:5, 7 67:1 78:24 80:15 83:25 84:7 87:21 88:1,6 89:7,17 92:23 96:9	<b>assurance</b> 95:18	<b>barrier</b> 72:7 74:8 77:22
<b>Amanda</b> 4:3	<b>applicant</b> 4:16 5:2,16 6:7,9, 11,12,15,16 18:25 44:3 45:1 52:19 57:21 58:8 59:12,20 60:9,21 66:9 67:3 68:17, 21 69:18 71:3 82:13	<b>areas</b> 8:11,21 26:22,24, 25 37:8 53:14,16 55:5 59:18 61:10 63:11 67:19,20 78:7 83:17 86:18, 22 93:5	<b>assure</b> 92:1	<b>basically</b> 38:23 83:7 86:17
<b>amend</b> 8:13	<b>applicant's</b> 67:11	<b>areca</b> 78:21	<b>attached</b> 7:6 69:20	<b>basins</b> 63:10
<b>amended</b> 13:16 14:1 26:4	<b>application</b> 18:6 19:24 43:18 70:22 84:23 87:3	<b>arms</b> 21:21 72:7	<b>Attachment</b> 20:15 26:5	<b>basis</b> 14:18 93:11
<b>amending</b> 57:23	<b>applied</b> 18:9 86:7	<b>Army</b> 43:19 81:12	<b>attachments</b> 6:2 19:4 51:10	<b>basketball</b> 37:10 77:24 92:22
<b>amendment</b> 18:7 21:16 47:12	<b>applies</b> 93:6		<b>attempt</b> 32:17	<b>bathtub</b> 80:22
<b>amendments</b> 35:25	<b>apply</b> 21:7 34:14 65:14 75:20 97:21		<b>attend</b> 79:17 89:17	<b>Bay</b> 19:6 58:17 76:11 79:9 80:5 86:14, 15 88:21 89:8,12 93:4
<b>amount</b> 85:16 89:25	<b>appropriately</b> 51:16		<b>attenuation</b> 63:19	<b>Bear</b> 7:18 40:2
	<b>approval</b> 4:21 15:12 18:24 26:15 29:6 30:2,4		<b>attorney</b> 46:2 93:9	<b>Bearpaws</b> 7:19 40:3
			<b>Atwell</b> 7:18 37:20	<b>begin</b> 5:13 56:23 57:5 71:6 82:12 96:5
			<b>authorized</b> 43:25	
			<b>availability</b> 44:10 52:11 60:14,24,25	
			<b>avoids</b> 54:13	
			<b>aware</b> 35:18 38:17	

<b>behalf</b> 5:16	8,11,13,19,22 93:15,17	<b>build-out</b> 50:5	<b>cap</b> 79:12,13,16	<b>certificate</b> 65:14
<b>belief</b> 88:2	<b>bollards</b> 23:14	<b>building</b> 22:21 24:5 36:17, 20 52:14 56:9 60:3 61:22 66:15 89:19,21 90:12, 19,20 91:11 92:15,21 96:13	<b>capacities</b> 62:9 79:11	<b>CFPD</b> 11:19
<b>belonged</b> 74:23	<b>border</b> 85:2	<b>buildings</b> 19:17	<b>capacity</b> 9:10,11 20:13 50:6 89:20 92:20	<b>challenge</b> 46:1
<b>Benacquisto</b> 7:12	<b>bother</b> 77:4	<b>built</b> 44:1 89:20 96:14	<b>card</b> 71:12 75:5 76:5 79:7,24 80:2	<b>change</b> 16:3 55:24 89:13 93:23 94:1,3
<b>bench</b> 32:15	<b>bothers</b> 77:4	<b>Bureau</b> 65:11	<b>cards</b> 4:22 71:7	<b>changed</b> 16:9 17:1
<b>benefit</b> 10:22 84:18 85:13	<b>bottom</b> 66:20 94:6	<b>bus</b> 20:19 30:24 31:17,21 32:12, 19 60:21,22 77:13,15,16 87:14,16,17	<b>care</b> 93:11	<b>changing</b> 29:14
<b>Beth</b> 79:7	<b>bought</b> 85:9	<b>business</b> 18:8 99:21	<b>carefully</b> 96:10	<b>Character</b> 58:11
<b>big</b> 11:18	<b>bounce</b> 23:9 79:15	<b>busy</b> 77:12	<b>Caretaker</b> 12:7	<b>charitable</b> 9:13,19,20 14:13 48:13 62:23
<b>bit</b> 9:25 36:16 59:25 93:21 95:22	<b>boundary</b> 26:8,21	<b>Bykau</b> 7:21 48:4,5,11 50:19,23 51:7	<b>caretakers</b> 87:23	<b>charitably</b> 11:12
<b>blowup</b> 15:16	<b>break</b> 56:24,25 71:17 82:4		<b>caretakers'</b> 8:19 9:1 10:8,21 22:22 24:2,6 48:21 49:13 87:22,23 89:3,6	<b>check</b> 28:12,22
<b>board</b> 71:10 75:22 76:2 81:3 94:21,22	<b>Brian</b> 57:7		<b>carryover</b> 33:3	<b>children</b> 32:10 77:2 79:11
<b>boardwalk</b> 23:13	<b>Bridge</b> 8:5 14:25 15:2 20:23 50:2,6 58:12 68:20 69:2		<b>cars</b> 80:19	<b>choose</b> 44:3
<b>boardwalks</b> 60:10	<b>briefly</b> 6:21 7:25		<b>case</b> 4:4,5,17,20 5:5 92:6	<b>chosen</b> 11:19
<b>boat</b> 8:21 13:20 14:7 15:19,23 19:9 21:9,13,16 22:1, 13,17,23 23:15, 19,21,25 24:14, 15,16,21,24 25:3, 17 27:6 29:13 30:21 33:11,16 35:1,3,5 44:10 46:6 47:7 63:3 68:3 72:9 73:3,21 75:9,11 76:23 83:17 84:5 85:14 89:10 93:14 94:7	<b>bring</b> 64:20	<b>C</b>	<b>cases</b> 43:5	<b>circle</b> 98:1
<b>boating</b> 24:25 44:14 83:25	<b>broadly</b> 36:17	<b>calculated</b> 27:4	<b>catch</b> 63:10	<b>civil</b> 14:5 37:23
<b>boats</b> 18:11 24:23 74:19 81:7 83:2,	<b>brought</b> 82:18	<b>calculation</b> 28:21 61:19 71:19 85:16,17 90:13	<b>catching</b> 27:21	<b>clarification</b> 21:7 25:13 27:23 33:11 34:18,19 48:2
	<b>buffer</b> 17:15 19:16 23:4 28:25 29:3,8,9, 13,17,22,24 30:6, 8 35:8 40:22 59:5 64:23,24 89:2,15 97:8	<b>calculations</b> 26:9 27:8	<b>categories</b> 12:22	<b>clarifications</b> 6:22 33:5 34:13 70:19
	<b>buffering</b> 52:16,21 61:20 62:4 66:12	<b>call</b> 4:17,22 71:7	<b>category</b> 51:12 52:1 55:7 58:19,25 59:16, 17 60:6 90:13	<b>clarified</b> 35:12 56:17 87:15
	<b>buffers</b> 19:18 29:11 30:1, 15 51:19	<b>called</b> 50:18 66:23 92:5	<b>ceased</b> 35:13	<b>clarify</b> 33:14 35:10 74:10 87:13
	<b>build</b> 80:18 89:22	<b>calls</b> 17:15 69:21	<b>center</b> 18:8 48:21 53:5 88:11	<b>clarifying</b> 22:12
		<b>Campana</b> 75:6,7,8 84:12		<b>clarity</b> 26:20
		<b>canal</b> 64:11		
		<b>canoe</b> 43:17		

<b>classrooms</b> 10:7 36:23 37:12	<b>comfort</b> 95:14	<b>complete</b> 67:14,15 99:24, 25	<b>conclusion</b> 39:1 70:20,21	<b>conservative</b> 49:20 60:1
<b>cleanup</b> 6:23 70:4	<b>comment</b> 4:22 56:20 71:7 72:17	<b>completed</b> 16:6 74:2	<b>condition</b> 26:15 27:12,17 30:4,15 31:9 34:3,15,19,23 35:11 47:1,19 65:5 70:10,13 71:18,20,21 95:17 96:10 98:7, 16	<b>considerable</b> 66:8 89:14
<b>clear</b> 33:23 84:14 86:1, 10 94:4	<b>comments</b> 5:3 82:13 99:1	<b>completely</b> 85:10	<b>conditioned</b> 54:2	<b>considered</b> 44:5
<b>clearing</b> 16:5	<b>commercial</b> 8:17,18 11:25 13:13 22:20 24:5 25:15 29:9,10 34:7 52:18 60:3 62:1 69:3 70:11 80:25	<b>compliance</b> 24:7 53:13 86:18, 22	<b>conditioning</b> 66:13 96:1	<b>consistency</b> 36:12 43:20
<b>client</b> 98:20	<b>commitment</b> 94:3	<b>compliant</b> 87:11 88:17	<b>conditions</b> 4:21 6:22 19:1 21:7 25:20,24 33:2 34:5,6,14, 22,23 35:7,9,24 36:2 47:2 50:5 55:3,15 56:16 58:3 65:4 67:23, 24 69:5,6 70:5, 16,18 71:1 97:25 99:11	<b>consistent</b> 14:14 29:4,24,25 30:16 48:15 50:12 51:9,11,25 52:5,10,13,17,25 53:10 54:1,5,11 55:8 65:7,16,22 70:24 87:10 88:4 97:17
<b>clock</b> 42:11	<b>commitments</b> 10:19	<b>complies</b> 54:20	<b>condo</b> 19:7	<b>consisting</b> 8:16
<b>close</b> 68:10,20 72:14 98:1	<b>Committee</b> 30:3 40:13 54:4 65:3	<b>comply</b> 24:10 38:5 53:25 61:23 64:6 86:7 87:4 92:24 93:3 97:14,19	<b>Condominiums</b> 58:17	<b>constructed</b> 31:5 54:10
<b>close-up</b> 30:5	<b>committing</b> 28:19	<b>component</b> 43:3	<b>conducted</b> 62:18 67:21	<b>construction</b> 56:1 64:24
<b>closer</b> 68:22	<b>community</b> 4:6 10:2,6,18,25 11:11,21 19:20, 25 20:2 33:9 44:19,22 53:2,6, 7,8 57:9 58:7 62:16,21,22,25 69:3 80:8,16	<b>composite</b> 6:14	<b>confirm</b> 28:21	<b>consultant</b> 7:18,22 64:14
<b>closing</b> 5:3 82:13	<b>Community- required</b> 20:4	<b>Comprehensive</b> 57:16	<b>confirmation</b> 75:19	<b>consultants</b> 48:5 80:13
<b>Club</b> 18:8	<b>compact</b> 52:7	<b>concept</b> 5:21 6:14 14:24 15:3 17:17 20:25 22:15 26:22 28:17 29:11 30:16 59:5 60:11 61:25 64:16,19 66:13,19 88:21, 24 99:12	<b>confusion</b> 84:25 86:2	<b>consulted</b> 80:7
<b>coastal</b> 53:16,17 63:21, 24	<b>companion</b> 90:7	<b>conceptual</b> 26:23 90:10	<b>connect</b> 61:11	<b>consulting</b> 42:24
<b>code</b> 24:10 26:7 28:24 29:7 30:19,23 31:2,9 34:11 36:12 38:21 45:4 48:20 50:13 53:25 54:18,21 55:8 57:17 64:7 65:24 67:4 69:11 70:13 80:18 83:4 86:9,15 90:18 91:7	<b>company</b> 44:2 45:1	<b>concern</b> 87:19 88:1,22 91:14 96:9,15 97:20	<b>connection</b> 16:21 84:8	<b>consumption</b> 59:24
<b>codes</b> 38:8	<b>compared</b> 45:8	<b>concerned</b> 81:16,25	<b>conservation</b> 14:21 21:11 45:16 46:4,7,24 47:5,8 52:2 58:13 59:3 63:1,3,21 65:17 75:10,12 84:15,18,21,23, 24 85:3,5,7,8,12, 21,24	<b>contemplated</b> 16:21
<b>collect</b> 72:11	<b>comparison</b> 14:19 37:3 49:15, 20	<b>concerns</b> 87:7,8 92:8	<b>control</b> 14:15	<b>contiguous</b> 52:7
<b>collected</b> 63:10	<b>compatibility</b> 24:3 93:7	<b>conclude</b> 67:8	<b>concludes</b> 55:21 56:15	<b>continue</b> 15:23 39:10 51:20
<b>collector</b> 8:3 59:7 61:6 62:5	<b>compatible</b> 11:14 51:20,24 52:8 54:23 66:4	<b>concluded</b> 67:13		<b>continues</b> 26:14
<b>Colleen</b> 79:24				<b>continuous</b> 19:20,24
				<b>contours</b> 43:6
				<b>contributing</b> 14:15
				<b>control</b>

26:25	84:19,22 86:9,16	<b>critical</b>	<b>decorative</b>	<b>deputy</b>
<b>controlled</b>	90:4,18 92:25	55:5 67:18,20	18:19 29:2	10:12
91:17	<b>County's</b>	<b>cross</b>	<b>decrease</b>	<b>describe</b>
<b>conventional</b>	43:22	17:14 30:11	43:24	22:10 26:19
15:6,9	<b>County-</b>	<b>CT</b>	<b>decreased</b>	<b>describes</b>
<b>conversation</b>	<b>maintained</b>	13:10	44:11	60:5
6:24	8:3 59:7	<b>Cuddy</b>	<b>dedicated</b>	<b>design</b>
<b>convey</b>	<b>couple</b>	66:23	66:17	38:24 53:11
14:13	5:20 74:19 82:21	<b>cultural</b>	<b>deed</b>	<b>designated</b>
<b>coordinated</b>	86:11	65:10	14:8,12,18	53:4
40:14,21	<b>court</b>	<b>culverts</b>	<b>deemed</b>	<b>designed</b>
<b>coordination</b>	92:22	63:11	41:11,19	10:10 38:4,7,19
19:20,25	<b>courts</b>	<b>curious</b>	<b>deep</b>	63:17
<b>copies</b>	13:21 37:10	12:1 17:10 32:17	43:4 73:15 74:13	<b>designing</b>
5:24	92:11,18 97:6	79:15,21	<b>defined</b>	38:3
<b>copy</b>	<b>Cove</b>	<b>current</b>	43:11	<b>desire</b>
5:21,25	66:23	22:14 24:4 39:11	<b>degree</b>	96:6
<b>corner</b>	<b>covered</b>	63:23 92:9	92:14	<b>destroyed</b>
15:2 22:21 23:2	12:9 57:22 58:8		<b>demonstrate</b>	40:12
40:19 43:14	62:1	<b>D</b>	24:6 26:24 30:17	<b>detail</b>
<b>Corps</b>	<b>covers</b>	<b>daily</b>	47:5 53:13	67:17 91:10
43:19 81:12	94:14	76:22,23	<b>demonstrated</b>	<b>detention</b>
<b>correct</b>	<b>CPD</b>	<b>Daniel</b>	17:13 24:12 33:9	22:24 30:14
6:3 18:3 32:8	5:18 11:19,24	7:10	<b>demonstrates</b>	53:14 63:11
39:22 41:8,18	13:10 15:1 21:1	<b>dark</b>	21:3 27:2 30:11	86:18,22
42:5 56:10 71:19	25:22 33:8,24	27:2	<b>demonstration</b>	<b>determination</b>
73:6	57:11 68:16	<b>data</b>	15:18	85:18
<b>correction</b>	<b>craft</b>	41:9	<b>department</b>	<b>determine</b>
98:4	23:17,23	<b>date</b>	10:23 67:7,12	89:23
<b>correspondence</b>	<b>crazy</b>	4:4 91:22	68:9 74:19,24	<b>determined</b>
65:12	78:16	<b>Dawn</b>	78:17 87:25	53:19
<b>corridor</b>	<b>create</b>	76:5,8 79:10	<b>depend</b>	<b>detrimental</b>
69:3	10:3 47:15 92:4	<b>day</b>	90:2	50:9 52:20 62:6
<b>Cote</b>	<b>created</b>	10:16 87:6	<b>depending</b>	67:13
7:10	47:11	<b>days</b>	90:20	<b>develop</b>
<b>counseling</b>	<b>credit</b>	49:5	<b>depict</b>	9:18 14:15
65:20	46:25	<b>days'</b>	26:17	<b>developable</b>
<b>count</b>	<b>credits</b>	80:14	<b>depicted</b>	67:1
47:22	14:22 46:10,17	<b>DCI2023-00047</b>	26:22	<b>developed</b>
<b>counts</b>	47:15	4:5 5:17 57:10	<b>depicting</b>	14:4 15:19,25
47:25 83:5	<b>creek</b>	<b>deal</b>	35:2	<b>developer</b>
<b>County</b>	19:11 26:12 27:1	46:20 67:24	<b>depth</b>	47:4
4:18 7:23,24	39:16 58:21	<b>decided</b>	43:6 54:12 85:17	<b>development</b>
10:11 12:18	63:12	12:7	<b>depths</b>	8:8,17 9:13 11:25
20:10,13 31:7,8	<b>crime</b>	<b>decision</b>	43:4	13:21 15:4,10
38:6 40:13,14	9:15 11:1	12:1	<b>deputies</b>	20:1,15 21:17
46:1,2 54:21 55:3	<b>criteria</b>	<b>declared</b>	81:24 88:1 91:15,	24:8,10,12 25:16
57:8,16 60:25	54:18 55:10	41:22,25 42:12	19,24 92:2	26:6 28:24 29:7
61:9 65:25 68:8,	59:10,11 64:4			30:17,18,19,22
11,12 74:23 75:8	65:23 70:25			31:2,14 32:16



<p><b>enlarged</b> 17:22</p> <p><b>ensure</b> 10:14 34:9 48:23 86:25 91:19</p> <p><b>enter</b> 5:20 72:8 73:18</p> <p><b>entering</b> 32:21</p> <p><b>entire</b> 25:5 26:21</p> <p><b>entirety</b> 16:21 33:25</p> <p><b>entitlements</b> 21:5</p> <p><b>entity</b> 14:13 47:15,16</p> <p><b>entrance</b> 19:16 32:4,23 74:9</p> <p><b>entranceway</b> 68:23</p> <p><b>environment</b> 10:4</p> <p><b>environmental</b> 7:18 38:14 40:3, 25 42:24 64:14 70:18 71:17</p> <p><b>environmentally</b> 55:4 67:18,20</p> <p><b>equivalent</b> 70:2</p> <p><b>ERP</b> 38:9,14 39:4 53:13 63:14,17</p> <p><b>essentially</b> 83:1 87:24 88:23 89:18</p> <p><b>established</b> 16:13 17:3 54:8 69:5 70:25</p> <p><b>establishing</b> 14:22 62:23</p> <p><b>Estates</b> 8:14 15:25 19:22, 25 21:19 59:8 72:3 77:20 93:25 94:7</p> <p><b>estimates</b> 59:25</p>	<p><b>ETAC</b> 65:4</p> <p><b>evaluated</b> 63:18</p> <p><b>event</b> 20:2 96:2,16</p> <p><b>events</b> 23:8 31:21,22 56:7 79:13,16,18 91:18,23 93:5 95:5,15</p> <p><b>eventually</b> 18:14 73:9</p> <p><b>evidence</b> 4:8 42:4</p> <p><b>evidenced</b> 60:25</p> <p><b>exact</b> 90:1</p> <p><b>Examiner</b> 4:2,3,14 5:7,9,14 6:1,4,8,13,19 7:24 9:4 11:17 12:10,13,14,20 15:5 16:15,19 17:8,16,21 18:4 21:12,20,24 22:1, 8,11 24:13,20 25:1,7,23 26:1 27:10,12,16,19, 22 28:2,12,16 31:16,23,25 32:3, 6,9 33:19 34:2 35:11,17,21 36:4, 8,15 37:6,15,17, 24 39:3,13,20,23 40:1,6 41:2,6,13 42:2,7,10,18,20 43:1 45:15 46:14, 17,21,22 47:18, 24 48:1,10 50:15, 20 51:6 55:23 56:6,11,14,21,23 57:2,4,18 71:2,5, 13,15,22 72:1,11, 16,19 73:6,8,11, 14,21,25 74:4,7, 10,15 75:2,5 76:3,14,16,18 79:3,5,23 80:1 82:1,7,10,15 84:17 86:4 87:14</p>	<p>90:5 91:13 94:17 95:4,25 96:23 98:2,6,10,13,23, 25 99:3,8,17,20</p> <p><b>exceeds</b> 67:2</p> <p><b>exchange</b> 44:21</p> <p><b>excluded</b> 26:8</p> <p><b>excuse</b> 4:19 6:8 27:3</p> <p><b>exempt</b> 67:5</p> <p><b>Exhibit</b> 5:8,11 6:7,9,11, 15</p> <p><b>Exhibits</b> 6:12</p> <p><b>existed</b> 40:10</p> <p><b>existence</b> 39:12</p> <p><b>existing</b> 8:13 14:24 15:11, 18 19:9,16,18 20:7,17,18,25 21:5,8 22:13,16 23:13,15,23,25 24:24 25:16,18, 20 26:4,10,14 29:2,12,15,20 30:9,12 31:12 33:4,12,14,16 34:7 35:5,7,20 36:6 39:18 43:3, 8,14 47:8 49:21 50:16 51:16,19 53:24 54:23 55:2 57:23 58:14 59:6, 18 60:17,19 61:2, 3,12,13 62:8,11 64:12 66:4,15,18, 23 87:17 89:10, 12 93:23 97:3,4, 8,23</p> <p><b>exists</b> 14:7 97:9</p> <p><b>expectation</b> 91:17</p>	<p><b>expected</b> 55:2</p> <p><b>expert</b> 12:18 37:21,22 40:4 42:23 48:7 57:15</p> <p><b>experts</b> 7:23</p> <p><b>explain</b> 36:16 90:8,11</p> <p><b>explained</b> 36:17 87:17</p> <p><b>exposed</b> 44:19</p> <p><b>expressed</b> 88:22</p> <p><b>expressing</b> 91:14</p> <p><b>extend</b> 89:4</p> <p><b>extension</b> 99:22</p> <p><b>extensive</b> 13:5</p> <p><b>extent</b> 52:4 54:14 83:15 90:11 92:1</p> <p><b>exterior</b> 29:1 64:23</p> <p><b>extraordinarily</b> 43:4</p> <p><b>extremely</b> 49:23</p> <p><b>eyes</b> 17:24</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>faces</b> 77:7,8</p> <p><b>facilities</b> 10:7 11:21 13:19 15:20 16:1 22:17 25:16,17 32:14 36:23 37:4,13 54:7 68:13 97:5</p> <p><b>facility</b> 7:21 8:22 11:7 13:22,23 15:17, 24 19:9 21:19</p>	<p>22:24 23:18 25:2, 5,10,11,14 37:3 45:7 49:2,6,8 51:18 97:7</p> <p><b>fact</b> 11:2 43:23 47:9 86:21</p> <p><b>factual</b> 93:10</p> <p><b>fails</b> 80:25</p> <p><b>fair</b> 96:18</p> <p><b>familiar</b> 41:14</p> <p><b>families</b> 77:2</p> <p><b>fear</b> 11:24</p> <p><b>features</b> 19:16</p> <p><b>feet</b> 8:4,8,18 9:1 13:13,14,18 24:1, 4,5 34:10,11 36:20 51:17,18 58:1,2 68:20 70:2 89:1,2,5,22 97:11</p> <p><b>feet allowed</b> 15:15</p> <p><b>feet along</b> 17:3</p> <p><b>felt</b> 67:3</p> <p><b>FEMA</b> 64:1 75:18 86:6,8</p> <p><b>fence</b> 18:20 29:1,2,3</p> <p><b>file</b> 31:10 65:12</p> <p><b>filing</b> 19:23</p> <p><b>fill</b> 80:18</p> <p><b>filling</b> 16:6 80:17,21</p> <p><b>finalized</b> 37:11</p> <p><b>finally</b></p>
--	--	--	--	--

<p>7:21  <b>finding</b>                  68:6  <b>findings</b>                  54:17 55:9 59:10                  65:23  <b>finds</b>                  65:7 70:24  <b>fine</b>                  27:11  <b>finished</b>                  53:21  <b>fire</b>                  20:9 31:7 61:4                  68:9 74:19,24  <b>Fish</b>                  43:20  <b>fishing</b>                  23:13  <b>fitness</b>                  37:8  <b>fits</b>                  11:21  <b>flagged</b>                  33:20  <b>fledglings</b>                  42:6  <b>flexibility</b>                  9:21 99:19  <b>floating</b>                  43:10,16  <b>flood</b>                  80:23 86:12 87:1  <b>flooding</b>                  63:24 64:2 75:16                  80:15,16 86:6,13,                  21 87:7,8  <b>floor</b>                  53:21  <b>Florida</b>                  37:19 38:5 48:6                  63:14,17 64:3  <b>flows</b>                  20:16  <b>fluid</b>                  55:25  <b>flushing</b>                  54:14</p>	<p><b>focus</b>                  38:2  <b>folks</b>                  94:1  <b>follow</b>                  46:23  <b>food</b>                  23:9 77:25 79:14                  95:15 96:2,16  <b>foot</b>                  17:11  <b>footage</b>                  90:19  <b>Fort</b>                  4:6 20:4,9,21                  31:7 53:1,5 58:6                  62:15,25 68:9                  69:2  <b>forum</b>                  94:19  <b>forward</b>                  4:22  <b>found</b>                  29:24 54:18                  67:22 69:8  <b>Franklin</b>                  5:15  <b>Friday</b>                  96:17  <b>fringe</b>                  43:9  <b>front</b>                  5:17 7:11,12                  9:14,25 11:9 12:4                  18:21 19:21 33:1,                  7,15 35:6 48:13                  57:10 62:20                  68:18 75:24 77:1                  85:1 88:13 89:11                  91:23 98:11  <b>fulfills</b>                  18:22 55:13  <b>full</b>                  32:21 41:9 79:19  <b>full-size</b>                  5:21  <b>functional</b>                  39:4  <b>functions</b>                  60:8</p>	<p><b>funding</b>                  56:3 75:23 94:15,                  16  <b>future</b>                  12:21 50:4 51:12                  52:1 55:7 58:8,                  18,25 59:2,9,15,                  16,17 60:6 61:10,                  15 63:23</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gap</b>                  70:6  <b>garage</b>                  80:19  <b>gate</b>                  21:21 22:5,16                  32:5,7 72:7 73:1,                  10 78:19,20 94:5,                  10  <b>gated</b>                  22:2  <b>gates</b>                  22:18 72:25 74:1,                  8 93:20,23 94:3  <b>general</b>                  44:11 69:10 88:5  <b>generating</b>                  50:21  <b>generation</b>                  48:15,16,25                  49:14,20  <b>gentleman</b>                  93:14,19  <b>give</b>                  9:25 90:1 95:24                  99:9  <b>giving</b>                  17:23  <b>glare</b>                  24:11  <b>goal</b>                  9:24 52:17,25                  53:10 62:1,15                  63:7,22 65:7  <b>goals</b>                  38:20 40:25 45:2  <b>Gold</b>                  20:20 60:22</p>	<p><b>good</b>                  4:2 5:14 11:13                  12:13,14 37:17,                  18 40:1,2 42:20,                  21 44:8 48:3,4                  57:6,7 72:1,2                  75:6,7 76:5,7                  79:8,9 80:3 81:22  <b>governed</b>                  89:19,24  <b>great</b>                  11:10 14:3  <b>green</b>                  12:25 17:19  <b>group</b>                  11:22 12:6 36:25                  75:24  <b>grow</b>                  14:15  <b>guarantee</b>                  38:9  <b>guess</b>                  32:20 90:8 95:23  <b>guessing</b>                  11:22 98:7  <b>guests</b>                  33:18  <b>guidelines</b>                  41:21,22,24                  75:18 86:7,8  <b>guys</b>                  40:11  <b>gymnasium</b>                  37:7</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>half</b>                  81:20  <b>Hancock</b>                  8:5 14:25 15:2                  19:11 20:23                  26:12,25 50:2,6                  58:11,21 63:12                  68:20 69:2 81:20  <b>hand</b>                  4:10  <b>handrails</b>                  23:12  <b>Hans</b>                  7:19 42:21</p>	<p><b>happen</b>                  45:24 46:2,10                  81:1 88:23  <b>happened</b>                  40:20 91:22  <b>happening</b>                  56:2  <b>happy</b>                  7:7 50:13 55:22                  86:4  <b>hard</b>                  91:12  <b>hatch</b>                  89:1  <b>hatching</b>                  15:17  <b>hazard</b>                  53:18 92:4  <b>head</b>                  71:15 82:6  <b>health</b>                  31:14 55:19                  69:11  <b>hear</b>                  4:16,18 76:22,23                  77:2 98:14  <b>heard</b>                  75:17 79:14                  83:23 86:23                  87:21 92:16  <b>hearing</b>                  4:2,3,7,14 5:7,9,                  14 6:1,4,8,13,19                  7:24 9:4 11:17                  12:10,13,14,20                  15:5 16:15,19                  17:8,16,21 18:4                  21:12,20,24 22:1,                  8,11 24:13,20                  25:1,7,23 26:1                  27:10,12,16,19,                  22 28:2,12,16                  31:16,23,25 32:3,                  6,9 33:19 34:2                  35:11,17,21 36:4,                  8,15 37:6,15,17,                  24 39:3,13,20,23                  40:1,6 41:2,6,13                  42:2,7,10,18,20                  43:1 45:15 46:14,                  17,21,22 47:18,</p>
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24 48:1,10 50:15, 20 51:6 55:23 56:6,11,13,21,23 57:2,4,18 71:2,5, 13,15,22 72:1,11, 16,19 73:6,8,11, 14,21,25 74:4,7, 10,15 75:2,5 76:3,14,16,18 79:3,5,23 80:1 82:1,7,10,15 84:17 86:3 87:14 90:5 91:13 94:17 95:4,25 96:23 98:2,6,10,13,23, 25 99:3,8,17,20	17:11,20 18:3,6 21:15,23,25 22:7, 9,12 24:19,21 25:5,8,12,13,25 26:2 27:11,14,18, 21,25 28:4,6,15, 20 31:19,24 32:2, 5,8,24 34:1,4 35:16,18,22 36:7, 10,22 37:9,16 39:15 51:8 56:3, 10,12 82:20 87:17 90:15 93:8 95:1,3 96:23 97:1 98:5,9,12,24 99:15	<b>homes</b> 77:3 <b>hope</b> 83:22 <b>horizontal</b> 56:1 <b>hosted</b> 20:3 <b>hosting</b> 91:18 <b>hour</b> 49:8 81:20 <b>hours</b> 10:16 49:4 95:12 96:12 97:16,21 99:3,6 <b>hours-of- operation</b> 94:25 96:10 98:16 <b>house</b> 77:7,8 <b>houses</b> 23:9 79:15 <b>human</b> 63:23 <b>hurricane</b> 87:8 <b>hurricanes</b> 44:10	52:20 54:13 55:2 62:7 63:18,24,25 67:14,19 95:9 <b>impeded</b> 73:23 <b>important</b> 44:13,22 <b>improve</b> 62:20 <b>include</b> 27:5 63:20 65:5, 18 67:4 98:17 <b>included</b> 13:19 20:14 21:4 27:6,8 31:6 50:1 65:13 67:8 97:5 <b>includes</b> 23:8 58:20 65:5 <b>including</b> 8:19 24:2 <b>incorporate</b> 19:3 35:24 37:4 <b>incorporated</b> 40:21 <b>increased</b> 49:22 80:15 <b>independent</b> 46:18 <b>indigenous</b> 26:10,14 29:16, 20 35:8 40:18 52:2 <b>individually</b> 69:16 <b>individuals</b> 86:12 <b>indoor</b> 36:23 37:4 92:18 96:13 <b>indoors</b> 37:13 <b>industrial</b> 51:15 59:19,21 <b>infill</b> 51:24 52:7 <b>information</b> 33:10 53:3 57:22 58:5 <b>infrastructure</b>	16:1 51:22 <b>ingress</b> 31:4 <b>initial</b> 21:21 <b>input</b> 53:2 <b>installation</b> 23:14 <b>installed</b> 28:25 97:9 <b>intend</b> 4:9 <b>intended</b> 43:10 <b>intense</b> 61:16 <b>intensity</b> 55:1 59:23 66:22 <b>intent</b> 69:11 96:21 <b>intention</b> 14:12 24:18 56:7 <b>interchangeable</b> 23:6 <b>interconnected</b> 22:25 <b>interest</b> 32:17 55:16 <b>internal</b> 32:5 <b>internally</b> 95:23 <b>intersection</b> 8:4 50:17 <b>involved</b> 10:6 92:2 <b>island</b> 12:25 21:10 35:7 52:1 60:9 63:5,6 83:18 85:9 <b>issue</b> 86:20 92:5,19,20 93:7 96:12 <b>issued</b> 38:22 <b>issues</b> 38:10 82:21 86:20 91:20
<b>heavily</b> 32:13 <b>hefty</b> 32:1 <b>height</b> 8:8 13:13,18 15:14 24:4 34:10 51:17 52:14,24 61:16,21 66:10 <b>heights</b> 59:23 <b>held</b> 20:5 28:19 44:25 <b>helpful</b> 17:18 33:22 <b>helping</b> 77:2 <b>Henderson</b> 5:15 <b>Heroes</b> 5:17 7:11,12 9:14 10:1 11:10 18:21 19:21 33:1,7,15 48:14 57:10 62:20 77:1 85:2 88:13 89:11 91:23 <b>Heroes'</b> 35:6 <b>Heros</b> 68:18 <b>Hewitt</b> 6:24 7:16 10:2 11:16 12:3,14,15, 21 15:8 16:17,24	<b>hey</b> 96:15 <b>high</b> 53:17 90:16 <b>higher</b> 59:25 <b>historic</b> 26:13 65:8,11 <b>historical</b> 7:4 <b>history</b> 8:10 13:5 <b>hits</b> 81:20 <b>hold</b> 45:21 53:3 <b>holding</b> 44:2,25 47:15,16 <b>holistic</b> 36:5 <b>home</b> 5:17 7:10,12 9:14,25 11:9 18:21 19:21 32:25 33:6,7,15 35:6 48:13 57:10 62:20 68:18 75:24 76:21,25 78:11 85:1 88:12 89:11 91:22 <b>homeless</b> 78:16 87:20,21 88:7 <b>homeowners</b> 10:18 19:23	<b>I</b>	<b>lan</b> 40:12 80:16 <b>idea</b> 9:18 55:25 83:13 84:4 <b>identified</b> 8:15 12:25 21:2 65:10 <b>identify</b> 7:4 <b>imagine</b> 93:7 <b>impact</b> 36:25 50:10 62:12 <b>impacts</b> 38:11 43:21	

<p><b>items</b> 68:1 69:14,17,19 70:5</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>job</b> 65:20</p> <p><b>Joyce</b> 75:6,7</p> <p><b>justification</b> 30:25</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>kayak</b> 43:17</p> <p><b>kayaking</b> 11:4</p> <p><b>kids</b> 81:23 83:17</p> <p><b>kind</b> 8:9,12,24 10:5 13:6 32:19 39:5 44:20 57:21 61:14 66:19 77:10 81:8 82:17 90:10 95:24</p> <p><b>kinds</b> 79:22</p> <p><b>Kirk</b> 80:2,4</p> <p><b>knocked</b> 42:15</p> <p><b>knowing</b> 91:11</p> <p><b>knowledge</b> 50:22</p> <p><b>Krutz</b> 76:5,7,8,11,15, 17,20 79:4</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>label</b> 6:10</p> <p><b>labeled</b> 5:11</p> <p><b>lady</b> 94:20</p> <p><b>land</b> 12:18,21 24:10</p>	<p>26:6,11,18,24 27:3,7 28:24 29:7 30:19,22 31:2 34:11 35:13,15 36:12 38:20 45:3 50:13 51:12 52:1, 8,18 53:25 54:18 55:7,8 57:15,16 58:8,18,25 59:1, 2,9,15,16,17,20, 21 60:6,8 61:15 62:1 64:6 75:12 80:21,25 83:4 86:9 90:18</p> <p><b>lands</b> 84:20</p> <p><b>landscape</b> 12:16 61:20</p> <p><b>landscaping</b> 16:1,3 52:21 62:4 66:12</p> <p><b>language</b> 33:19,22 34:3</p> <p><b>large</b> 17:23 36:24 66:16</p> <p><b>larger</b> 8:10 40:19</p> <p><b>late-night</b> 95:15</p> <p><b>latest</b> 48:16</p> <p><b>launch</b> 15:24 72:9 73:3,5</p> <p><b>launching</b> 43:17</p> <p><b>law</b> 44:7,12,13,19,20 83:22,23 88:4</p> <p><b>laws</b> 83:25</p> <p><b>lawsuits</b> 14:6</p> <p><b>layout</b> 90:10</p> <p><b>LDC</b> 41:1</p> <p><b>LDO</b> 18:19</p>	<p><b>LDO2019-00170</b> 16:3</p> <p><b>leave</b> 36:15 71:16 72:22 88:18 98:2 99:9</p> <p><b>leaving</b> 98:21</p> <p><b>Lee</b> 7:23 10:11 12:18 20:10,13 31:7 36:12 38:6,20 40:13,25 45:3 50:12 51:9 54:20 57:8,15,16 59:14 60:5,25 61:8,9 62:2 64:8 65:22 68:8,11,12 75:8 83:4 84:19,22 86:9,16 90:18 92:25</p> <p><b>Leetran</b> 20:19</p> <p><b>left</b> 70:6 73:19</p> <p><b>letter</b> 5:25 6:5,15,21 52:11 56:17 60:25 64:20 69:14,17,19</p> <p><b>letters</b> 9:6 31:5</p> <p><b>level</b> 49:25 50:4,24 90:16</p> <p><b>levels</b> 97:16</p> <p><b>licensed</b> 42:22 48:6</p> <p><b>life</b> 63:23</p> <p><b>light</b> 24:11 81:17</p> <p><b>lighting</b> 24:9 96:8</p> <p><b>limit</b> 47:12 71:10</p> <p><b>limitation</b> 4:24</p> <p><b>limited</b></p>	<p>13:20 14:9,17,21 17:12 21:17 23:16 24:24 25:15,19 33:17 53:18 68:15,17 90:3,24 95:10</p> <p><b>limiting</b> 35:2 85:24 95:12</p> <p><b>limits</b> 34:10 64:9,23 85:21</p> <p><b>lines</b> 79:10</p> <p><b>list</b> 72:5 82:25 92:10 94:14</p> <p><b>listed</b> 8:6</p> <p><b>livability</b> 62:21</p> <p><b>live</b> 75:8 78:2,10 81:24</p> <p><b>living</b> 77:7</p> <p><b>Lizbeth</b> 7:12</p> <p><b>LLC</b> 81:3</p> <p><b>local</b> 10:17 47:3</p> <p><b>located</b> 11:2 20:10 29:4 53:4 58:5 68:10</p> <p><b>locates</b> 60:3 66:15</p> <p><b>location</b> 7:25 11:13 19:10 22:16 23:14,16, 20,24 24:25 34:16,20 43:4,8 45:11,12 46:12, 13 51:5,13 52:6 60:14 61:21 68:3</p> <p><b>locations</b> 20:11 45:11</p> <p><b>long</b> 8:10 35:13 41:23 42:7,13 99:13</p>	<p><b>long-term</b> 18:22</p> <p><b>longer</b> 21:4 34:17,20</p> <p><b>looked</b> 68:2</p> <p><b>lost</b> 41:22 42:1,17 44:9 80:19</p> <p><b>lot</b> 10:9 11:10,17 12:3 13:11 36:18 44:9 49:3,5 69:15 84:2</p> <p><b>loud</b> 77:11</p> <p><b>love</b> 77:2 78:5,10</p> <p><b>low-density</b> 60:6</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>madam</b> 5:14 12:14 40:2 46:22 56:13 71:13 82:15 86:3</p> <p><b>made</b> 10:19 12:2 34:5, 17,19</p> <p><b>main</b> 74:9</p> <p><b>maintenance</b> 53:24 63:20</p> <p><b>make</b> 4:24 5:1 12:8 42:8 46:2 64:20 72:12 84:13 85:18,25 88:3,17 89:23 90:13 91:6, 24 94:2 98:4 99:10</p> <p><b>makes</b> 9:23 17:18</p> <p><b>making</b> 33:22</p> <p><b>man-made</b> 27:5</p> <p><b>manage</b> 86:24</p>
--	--	--	---	---

<b>management</b> 13:24 34:25 38:2, 5,15 40:15 53:11 54:3 63:7,9,17,22 64:4,15 65:2,6 68:4 87:2,4,11	<b>master</b> 5:21 6:14 14:24 15:3 17:17 20:25 22:15 26:22 28:17 29:11 30:16 59:5 60:10 61:25 64:16,18 66:13,19 88:20, 24 99:11,12	<b>memo</b> 67:7,13 70:1	22:10 26:19 94:4	<b>MUTCD</b> 50:25
<b>Manager</b> 57:8	<b>match</b> 38:25	<b>mention</b> 69:4 95:7	<b>money</b> 81:10	<b>Myers</b> 4:6 20:4,9,21 31:7 53:2,5 58:6 62:15,25 68:9 69:2
<b>manatee</b> 43:21,22 44:15 54:11 68:1 83:19	<b>materials</b> 95:6	<b>mentioned</b> 9:2 10:8 15:12 41:3 49:3,11,17 55:23 60:21 94:20	<b>Moody</b> 8:2,4,6,14 10:18 13:25 15:5,24 18:16 19:15,19, 22,25 20:19,20 21:14,18 22:4 29:2,5 32:11,13, 22 34:15 35:12 39:3,8,14,17,21 50:1,6,17 57:23 58:6,14 59:6,8 60:17,23 61:2,6 66:24 72:3,24 73:7,12 76:21 77:7,19 93:25 94:7	<hr/> <b>N</b> <hr/>
<b>manatees</b> 84:1	<b>math</b> 28:6,12	<b>met</b> 34:9 38:10 69:16, 17 91:7	<b>mooring</b> 23:12 43:13	<b>native</b> 30:10
<b>mangrove</b> 19:6 43:9 58:17 76:11 79:9 80:5 86:13,15 88:21 89:8,12 93:4	<b>matters</b> 5:20 7:1 12:18 37:23	<b>midnight</b> 96:17	<b>morning</b> 4:2,15,25 5:14,16 7:9 12:13,14,19 19:4 37:17,18,22 40:1,2 42:20,21 48:3,4 57:6,7 72:1,2 75:6,7 76:6,7 79:8,9 80:3	<b>natural</b> 27:9 55:5 64:11, 25 67:25
<b>mangroves</b> 26:10 43:7 54:13 64:10	<b>maximum</b> 8:18,23 13:11,13, 18 15:14 24:1,2,3 47:6,17 52:3 54:14 58:1 79:17	<b>miles</b> 20:8,11	<b>motorized</b> 35:4	<b>nature</b> 44:18 60:10 92:12
<b>manpower</b> 65:20	<b>means</b> 31:3 80:18 90:23	<b>millions</b> 80:12	<b>mouthful</b> 8:12,24	<b>navigable</b> 26:7 58:20
<b>Manual</b> 48:16	<b>meant</b> 33:23,24	<b>minimizes</b> 24:10	<b>move</b> 78:9,10 94:5	<b>needed</b> 44:6
<b>map</b> 26:20 61:8	<b>measured</b> 68:22,23	<b>minimum</b> 26:16 27:15 28:8, 10 53:21	<b>moved</b> 40:11 80:14	<b>neighborhood</b> 20:5 33:10 76:12, 20 78:6
<b>mapped</b> 26:21	<b>mechanism</b> 45:15 47:7	<b>minor</b> 5:17 8:3 11:19 16:3 21:1 33:4,8, 24 34:19 57:10 59:7 61:6 62:5	<b>multi</b> 97:7	<b>neighbors</b> 38:12 77:18
<b>maps</b> 58:9	<b>Medic</b> 20:9 68:10	<b>minute</b> 93:9	<b>multi-family</b> 8:8 13:12 14:17 15:14,20 19:6,17 25:10	<b>nest</b> 18:15,17 23:4,5 29:16,18,20,23 34:16 40:9,12 41:22 42:14,15, 16,17 59:4 64:13, 14 67:23
<b>March</b> 4:4 99:21	<b>meet</b> 26:10 34:11 38:24 40:24 53:21 54:2,17,21 64:1	<b>missed</b> 94:13	<b>multi-purpose</b> 8:20	<b>nesting</b> 42:14 64:25
<b>marina</b> 24:13 45:7 81:13 82:23,24 83:14	<b>meet all</b> 38:19 40:17	<b>mission</b> 10:2 14:14 68:19	<b>multi-slip</b> 7:21 8:22 11:6 13:22 23:18 25:10,14 51:18	<b>net</b> 49:21
<b>marinas</b> 44:9	<b>meeting</b> 20:5 33:10 53:4 62:17,18 68:5 71:11	<b>mitigation</b> 53:19		<b>night</b> 96:3,17
<b>marine</b> 42:23 45:2 54:7	<b>meets</b> 30:22 43:22 45:2 65:24	<b>mix</b> 55:11 68:14		<b>nightly</b> 76:22,24
<b>marine-related</b> 43:3	<b>members</b> 14:15 83:12 84:6 86:1 88:6 93:24	<b>mixed</b> 44:7		<b>nods</b> 71:15 82:6
<b>marked</b> 17:13		<b>mode</b> 77:10		<b>noise</b> 78:15 88:22 92:8, 19,25 93:6 95:8 97:15,16
<b>market</b> 44:3,4		<b>modification</b> 46:6		<b>noisy</b> 77:23
<b>Marshall</b> 7:17 36:14 37:18, 19,25 39:7,22,24 86:24		<b>modified</b> 47:6		
		<b>moment</b>		

<p><b>nonmotorized</b> 23:17 33:12,14</p> <p><b>nonprofit</b> 18:22 55:14 81:3</p> <p><b>north</b> 4:6 12:24 13:3 14:25 19:5 20:4, 9,24 25:17 29:5, 12,24 31:6 33:17 51:19 53:1,5 58:6,17 60:18,19 62:15,25 66:16 68:9 69:2 97:9</p> <p><b>northeast</b> 22:22</p> <p><b>northern</b> 88:25</p> <p><b>northwest</b> 43:14</p> <p><b>not-for-profit</b> 14:13 80:25</p> <p><b>note</b> 30:7 69:25 70:12 88:24</p> <p><b>noted</b> 16:2 45:20</p> <p><b>notes</b> 4:24 62:18 72:12</p> <p><b>notice</b> 14:2 16:2 19:2,4 26:5,21 31:10 33:2,6 80:14</p> <p><b>noticed</b> 49:10 72:6</p> <p><b>November</b> 20:22</p> <p><b>number</b> 27:23 28:18,22 34:23 35:10 43:24 49:12,20 51:2 54:8 66:2, 10,25 69:25 70:6, 10 71:19 79:17, 18 82:24 84:10 85:21,22 86:16 88:14 89:16,22 90:19</p> <p><b>numbers</b> 90:1</p> <p><b>numerous</b></p>	<p>40:8</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>oaks</b> 40:19</p> <p><b>oath</b> 4:8</p> <p><b>object</b> 70:12</p> <p><b>objection</b> 9:6 31:6 69:19 70:15,17</p> <p><b>objections</b> 69:24</p> <p><b>Objective</b> 52:5 54:5 61:13 65:19</p> <p><b>objectives</b> 31:13 38:20 40:25 45:3 55:18 60:13 69:9</p> <p><b>observed</b> 40:24</p> <p><b>occasions</b> 69:23</p> <p><b>occupancy</b> 89:20</p> <p><b>occupants</b> 22:3,6 72:24</p> <p><b>occur</b> 49:4 96:2</p> <p><b>occurring</b> 93:5 96:20</p> <p><b>October</b> 20:1</p> <p><b>off-site</b> 63:18 67:23 95:9</p> <p><b>office</b> 10:12 20:10 31:8 68:11 81:2 99:23</p> <p><b>offices</b> 10:7 36:22 37:12</p> <p><b>older</b> 18:11</p> <p><b>on-site</b> 10:23 13:20 19:8, 9 20:2 21:16 35:2,5 40:24 41:17 47:11,13,</p>	<p>14,17 61:12 62:8 63:2 67:21,22 80:11 83:15 87:22 88:14 90:1 91:1,5,19,24 92:10 97:6,8</p> <p><b>on-the-water</b> 44:20</p> <p><b>onboard</b> 23:7</p> <p><b>one-story</b> 19:7</p> <p><b>ongoing</b> 86:12,20</p> <p><b>online</b> 49:9</p> <p><b>open</b> 4:21 26:9,17,23 27:4,8 28:17 35:10 52:21 62:4 66:17 71:18 73:16 74:3 82:24 83:10 86:16 94:12 98:3,21 99:9</p> <p><b>opening</b> 43:8 89:13</p> <p><b>operate</b> 50:3</p> <p><b>operation</b> 63:20 95:12 96:13 97:21 99:4, 7</p> <p><b>operational</b> 21:22 39:4</p> <p><b>opinion</b> 50:11 78:2</p> <p><b>opportunities</b> 65:20</p> <p><b>opportunity</b> 4:23 11:3,10 44:17 56:20 71:9 73:19 98:14 99:9</p> <p><b>opposite</b> 22:5</p> <p><b>option</b> 17:4,5</p> <p><b>optional</b> 8:23 23:19,20</p>	<p><b>order</b> 9:14 10:14 12:8 24:8,12 30:18 35:3 38:16,17 47:3 53:20 61:10 63:15,16 65:6,13 67:16 71:8 82:19 85:18 86:19 87:5 91:6</p> <p><b>ordinance</b> 92:25 93:6 97:15</p> <p><b>organization</b> 9:13,20 48:13</p> <p><b>organizations</b> 62:24</p> <p><b>original</b> 9:5 12:4 13:8 15:1 35:22 58:22 70:8</p> <p><b>originally</b> 15:1 46:3</p> <p><b>others'</b> 87:1</p> <p><b>outdoor</b> 8:20 23:8,21 36:19 56:8 77:25 92:10,17 96:8</p> <p><b>outdoors</b> 96:16 97:13</p> <p><b>outfall</b> 39:9,18</p> <p><b>outfalls</b> 39:13</p> <p><b>outlined</b> 8:1 12:22 14:2 51:10 64:25</p> <p><b>outreach</b> 9:16 11:1 19:22 53:7,8 62:23 65:20 80:8</p> <p><b>overestimate</b> 49:2</p> <p><b>overestimating</b> 49:7</p> <p><b>overlay</b> 17:17,18</p> <p><b>overlays</b> 53:5</p> <p><b>owned</b> 84:22,24 85:5</p>	<p><b>owner</b> 16:17</p> <p><b>owners</b> 33:17,18</p> <p><b>ownership</b> 16:9,10 17:1 84:15 88:13</p> <p><b>owns</b> 16:15</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m.</b> 97:16</p> <p><b>paddle</b> 23:16,23</p> <p><b>Palm</b> 18:7</p> <p><b>palms</b> 78:21</p> <p><b>parallel</b> 43:13</p> <p><b>parameters</b> 9:7</p> <p><b>parcel</b> 13:1 16:14 19:14 35:8 67:1,5,6 84:16 85:11</p> <p><b>parcels</b> 19:7 21:10 84:20</p> <p><b>parent</b> 30:24</p> <p><b>parentheses</b> 28:9</p> <p><b>park</b> 24:17 60:17 78:25 83:3 90:25 91:1 92:3</p> <p><b>parked</b> 83:8</p> <p><b>parking</b> 8:23 15:25 19:8 23:19,21 24:14 25:4 30:21 47:25 61:19 79:18,19, 21 83:5 89:7,25 90:5,6,11,17,21 91:2,4</p> <p><b>Parkway</b> 8:5 15:1 20:23 50:2,7,18 58:12</p>
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69:2 <b>part</b> 8:10,15 11:8 15:9 19:11,12 24:20 29:13 33:16 36:24 39:11 48:14 49:24 61:25 62:6,19 65:6 66:13 67:11 75:10,12 83:14 84:9,13 87:2 89:9 90:2,23 92:14 98:21 <b>partially</b> 16:6 <b>participants</b> 4:13 <b>parties</b> 95:16 <b>past</b> 41:6 60:9 96:2 <b>path</b> 12:5,8 <b>pay</b> 81:10 <b>PD</b> 8:10 84:9 <b>peak</b> 49:7 <b>pedestrian</b> 68:13 <b>people</b> 11:23 14:14 24:22,25 77:16 78:23 79:17,20 80:22 81:2 89:16, 17 90:2 91:1 92:3 96:14 <b>percent</b> 26:17 27:3 28:7 <b>performing</b> 10:13 <b>period</b> 4:22 <b>permanent</b> 84:20 <b>permanently</b> 72:23 <b>permit</b> 38:14,18,22 39:5,	6,8,9,11 43:18 59:19 63:14 <b>permitted</b> 15:12 59:22 <b>permitting</b> 38:13,24 64:3,4,5 <b>person</b> 36:16 <b>personal</b> 13:19 76:24 78:12 97:6 <b>petting</b> 23:9 <b>phase</b> 23:6,7,12,19 <b>phasing</b> 55:24 <b>photographs</b> 10:4 <b>pickleball</b> 77:23 92:11 <b>picture</b> 11:18 66:18 <b>pipe</b> 39:9,18 <b>place</b> 8:9 9:23 46:8 66:23 70:14 72:9 78:18 79:16 81:14,24 84:4,20 89:10 92:16,20 <b>placement</b> 64:11 <b>places</b> 92:3 <b>plan</b> 5:21 6:14 13:24 14:24 16:23 17:9, 17 20:25 22:15 25:19 26:23 28:17 29:11 30:7, 16 34:25 36:12 38:20,25 40:15, 21,25 43:23 44:15 45:3 50:13 51:9 54:3,11,20 57:16 59:5,14 60:5,11 61:8,25 62:2,16,25 63:9 64:8,15,16,17,19	65:2,6,22 66:13, 20 67:15 68:1,5 78:13 83:4 87:2 88:21,24 93:22 94:1 99:12 <b>planned</b> 8:17 13:21 15:10 21:17 25:15 31:14 33:18,20, 23,25 34:7,8 44:6 54:23 55:10,18 58:23 59:8 66:4 69:9 70:23 <b>planner</b> 7:16 93:10 <b>planning</b> 4:6 7:17 12:16,18 20:4 48:8 53:2,5 57:15 58:7 <b>planted</b> 30:13 53:14 <b>planting</b> 29:21 30:12 64:10,22 <b>plantings</b> 28:25 30:8 <b>platform</b> 43:17 <b>play</b> 46:12 <b>plays</b> 68:5 <b>pleasure</b> 36:10 <b>podium</b> 5:1 <b>point</b> 16:21 38:3 42:11 46:9 86:14 88:20 90:6 96:7 <b>pointer</b> 76:13 <b>Police</b> 61:4 <b>Policies</b> 54:6 62:13 64:9 <b>policy</b> 51:11,25 52:6,13, 17 53:1,10,15 54:1 60:5 64:13	65:8 <b>pollution</b> 24:11 <b>pool</b> 78:19 <b>population</b> 44:21 78:16 <b>portion</b> 8:15 14:20 15:21 16:5,8 18:1 19:12 21:3,4 22:22 23:2 33:7,16 35:6 49:16,17,19 60:4, 18 <b>portions</b> 23:1 58:20 66:16 <b>positive</b> 44:16 <b>possibility</b> 83:21 <b>post-sufficiency</b> 64:17 <b>posture</b> 11:21 <b>potential</b> 7:4 23:23 24:9 30:24 31:16 37:10 95:9 <b>potentially</b> 11:5 95:13 <b>Powerpoint</b> 5:24 6:10 <b>pre-labeled</b> 6:6 <b>precautions</b> 75:17 86:6 <b>predominantly</b> 58:12 59:17 <b>preliminary</b> 31:20 <b>prepared</b> 48:11,15 49:24 <b>presence</b> 10:20,22 88:5 <b>present</b> 4:16,19 42:14 <b>presentation</b> 5:19,24 6:10 7:13 33:3 39:1 55:21	56:15 <b>presently</b> 41:16 <b>preservation</b> 26:9 65:8,11 <b>preservations</b> 40:18 <b>preserve</b> 29:10 <b>preserved</b> 26:14 52:3 <b>preserves</b> 40:18 63:1 69:10 <b>preserving</b> 62:11 <b>president</b> 7:10 <b>presiding</b> 4:3 <b>pretty</b> 7:2 32:1 36:21 41:11 45:6,7 94:14 <b>prevent</b> 93:24 <b>prevented</b> 78:22 <b>preventing</b> 35:4 <b>prevention</b> 9:15 11:1 <b>prevents</b> 79:20 <b>previous</b> 29:3 38:22 52:15 61:21 66:11 <b>previously</b> 12:17 15:12 29:24 31:4 37:21 40:3 48:7 49:3, 11,16 52:23 54:8 57:14 59:22 60:16 99:5,7 <b>primarily</b> 9:12 72:4 95:11 <b>print</b> 17:19 70:7 <b>prior</b> 19:23 35:19
--	---	--	--	--

40:10 47:3	<b>property</b>	67:25 68:1	68:14 73:10	24 25:3,17 27:6
<b>private</b>	8:7 9:19 11:2,9	<b>protects</b>	80:22 81:13 83:2	29:13 33:12,14,
8:22 13:20,23	12:24 13:3,4,8	51:16	85:14,15,20	16 35:5 43:16
14:11 15:17,23	14:9 15:24 16:10,	<b>provide</b>	87:15,22 89:9	73:21 76:23
16:17 22:23	13 17:3,12 18:9,	4:12 9:14,21	92:15,22 96:8	89:10 94:7
23:18 33:11,15	17,20 21:6 23:3	10:6,14,25 11:10	97:2	<b>ramps</b>
37:1 77:4 84:7	29:4,12,15,19	28:19 44:11 53:7	<b>putting</b>	8:21
97:6,7	34:8,22 39:17,19	55:15 62:3 63:8	80:21 81:11	<b>reach</b>
<b>problem</b>	40:11 43:25	66:21 83:22		5:7
77:9 88:3,7	45:23 46:5,8,20	95:13	<b>Q</b>	<b>read</b>
<b>problems</b>	47:7 58:5,21	<b>provided</b>	<b>qualified</b>	71:20,21
86:13 88:8	59:1,15 60:16,22	26:16 28:6 29:17	57:14,17	<b>reading</b>
<b>proceed</b>	61:3 65:15 67:9	33:9 36:5 52:12,	<b>qualifies</b>	17:18
4:15	68:23 70:9 73:1	22 54:14 61:24	54:22 65:25	<b>reads</b>
<b>process</b>	75:13 80:11	62:6 67:11,15,16	<b>quality</b>	67:4 83:4
6:9 38:13,14 64:5	84:22 85:1,2,3,7	70:8	38:9 63:19	<b>ready</b>
66:2,9 90:9	87:10 88:13,25	<b>providing</b>	<b>quantity</b>	5:13 57:6
<b>processed</b>	93:1 97:9,11	28:9,11 35:1	38:10	<b>real</b>
18:14	<b>proposal</b>	53:14 65:19	<b>quasi-judicial</b>	46:1,23 96:6
<b>produced</b>	62:20 65:24	<b>proximity</b>	4:7	<b>realized</b>
42:6	67:17 96:7	61:4 69:4	<b>question</b>	46:5
<b>professional</b>	<b>proposals</b>	<b>public</b>	25:23 72:4,20	<b>reason</b>
37:20 42:22 48:6	64:7	4:22 9:15 20:7	74:4,17 75:16,21	41:19 92:15,21
50:11	<b>proposed</b>	29:10 31:7,10,14	87:13 94:19,25	<b>rebuilding</b>
<b>program</b>	16:23 20:15 21:8	51:22 53:2,3	95:5 96:19	43:16
56:4 79:12 84:18	22:15,18,20,23,	55:16,19 56:20	<b>questions</b>	<b>rebuilt</b>
<b>programming</b>	25 23:4 25:13,15,	61:5 68:12 69:6,	7:5,6,14 11:15,18	42:16
11:4 31:19 83:15,	20,22 26:6 29:22	11 71:6 72:16	39:2 50:14 55:22	<b>rebuttal</b>
16	30:5 31:12 32:24	74:3,17 75:11	56:19 71:3 72:13	5:3 56:20 82:5,12
<b>programs</b>	35:3 37:14 38:25	81:15 82:2,19,24	75:1,9,15 79:10	97:24 99:1
9:14 10:3,24	47:2 51:15 53:23	83:10,12 84:6	82:23 84:11 86:3,	<b>rec</b>
11:1,11 37:13	55:11 56:9 60:9	86:1 88:7 89:14	5,11 89:16 92:7	53:8
62:22 69:1	63:25 65:16	93:24 94:9,12	93:13,20	<b>recall</b>
<b>prohibits</b>	66:20,22 67:19	96:19	<b>quick</b>	94:14
47:10	68:14 69:5 74:17	<b>public's</b>	46:24	<b>receive</b>
<b>project</b>	<b>proposing</b>	84:18 85:13	<b>quickly</b>	38:16,17
7:17 38:19 40:17	45:13 47:12 53:8	<b>Publication</b>	57:21 71:14	<b>receiving</b>
43:2,18,22 45:2	59:20 63:5 83:9	5:5,10	<b>quiet</b>	32:18 38:18
46:3 50:4,9,11	85:5 87:15 89:9,	<b>pulled</b>	77:3 78:3,7	46:20
74:2 75:20 77:9	12 95:17 98:22	76:9	<b>R</b>	<b>recently</b>
<b>projections</b>	<b>protect</b>	<b>purchase</b>	<b>raise</b>	85:3
48:18	31:14 52:13	17:5 84:19 85:8	4:9 96:19	<b>recess</b>
<b>projects</b>	53:17 55:19	<b>purchased</b>	<b>raised</b>	57:3 82:9
10:5 48:18	69:11 84:1	85:3	86:11	<b>recession</b>
<b>promotes</b>	<b>protected</b>	<b>purpose</b>	<b>ramp</b>	14:3
69:10	67:21,22	84:8 93:17	13:20 14:7 15:19,	<b>reclaim</b>
<b>properties</b>	<b>protecting</b>	<b>purposes</b>	23 19:9 21:9,13,	46:17
29:5 78:10 87:1	44:23 53:12 68:1	48:19,24	16 22:1,13,17	<b>recognition</b>
93:2 97:18	<b>protection</b>	<b>put</b>	23:15,25 24:15,	42:25
	43:22 44:15	24:16 45:19,23		
	54:11 59:18	46:11 61:17		
	61:13 63:8,22			

<b>recognized</b> 42:23	51:17,18 52:14 97:15	70:11,14	18:21	<b>resolve</b> 86:20
<b>recommend</b> 18:24 29:6 31:1	<b>reducing</b> 52:23 59:22,23	<b>removing</b> 26:12	<b>require</b> 26:16 30:17 34:24 50:24 56:9 63:14	<b>Resource</b> 38:14
<b>recommendation</b> 4:19,20 19:1 56:16 57:20	<b>reduction</b> 30:20 61:17	<b>rented</b> 83:12	<b>required</b> 26:8 30:21 31:9, 10 32:16 48:16 50:17 53:3,13,19 54:17 61:11 62:17 64:1 86:7, 24 87:3 90:21 91:4 92:24 94:8 97:14	<b>resources</b> 44:23 53:12 55:5 63:1,8 64:25 65:10 67:25
<b>recommended</b> 30:1 36:3 55:15 65:2	<b>reductions</b> 44:24	<b>repair</b> 53:24 64:8,12		<b>respectful</b> 78:1
<b>recommends</b> 26:15 30:4 31:8 58:2 70:25	<b>refer</b> 21:1	<b>repeated</b> 95:6		<b>respond</b> 4:13
<b>reconfigure</b> 94:10	<b>reference</b> 9:7	<b>repeating</b> 74:12		<b>response</b> 18:9
<b>reconvene</b> 56:25	<b>referencing</b> 31:17	<b>replace</b> 36:5 64:12	<b>requirement</b> 26:11 67:2 93:1,6	<b>rest</b> 16:10 47:13 70:16,17 78:13
<b>record</b> 5:15,20,23 12:15 17:7 31:10 35:25 37:18 46:23 47:5 48:4 51:8 56:14 57:5,7,14 82:11, 16 84:14 86:10 97:1,3 98:1,3,21 99:9	<b>reflect</b> 34:16 36:1	<b>replaced</b> 29:3 38:23	<b>requirements</b> 14:7 30:22 40:17 43:23 61:8 63:19 68:5 70:13 86:8 91:7	<b>restricted</b> 73:2
<b>recordation</b> 17:14	<b>reflecting</b> 15:11	<b>replacement</b> 64:8	<b>report</b> 5:12 7:2 18:24 19:3 20:14 26:5 31:6 41:4 50:8 51:10 62:19 64:18 65:1,12 67:8 69:21,25 70:1,7,19	<b>restricting</b> 33:8 45:17
<b>recorded</b> 14:22 47:5	<b>reflects</b> 9:21	<b>registered</b> 37:19	<b>Report's</b> 18:25	<b>restriction</b> 14:18
<b>recreation</b> 8:21 9:16 10:7 13:19 15:20 23:9, 21 36:19,23 37:2, 4,12 65:16 96:9 97:5,12	<b>regard</b> 7:3	<b>regulations</b> 34:9 38:6,7,25 41:15 54:22 55:3 61:23 65:25 70:5, 18 87:11 90:4	<b>representing</b> 76:12	<b>restrictions</b> 14:8,12
<b>recreational</b> 13:23 15:17 48:21 53:9 60:7 62:21 66:17 69:1 92:17 97:7	<b>register</b> 75:15 97:12	<b>related</b> 32:25 69:7	<b>request</b> 4:5,16 8:12,13,25 9:5,12 11:8 12:19 14:17 16:11,18 18:2,13,21 19:3, 13,21 24:1 26:13 31:1 42:25 48:12 50:7,21 51:9 54:17 55:13 56:15,19 57:20 69:7 70:24 71:1 81:13 85:18,23 90:23 94:24 99:23	<b>retail</b> 34:20
<b>red</b> 8:1 12:23	<b>reiterate</b> 75:15 97:12	<b>relevance</b> 94:24	<b>requesting</b> 54:22 55:17 66:1	<b>result</b> 87:8,16
<b>redesigned</b> 38:23	<b>relief</b> 41:21	<b>remain</b> 21:10 22:2,17 23:25 26:4 29:13 30:7,9 31:5 35:8 39:10,11,19 47:7 52:2 63:4 72:9,23 73:16 97:18	<b>requesting</b> 85:15,19	<b>resulted</b> 14:6
<b>reduced</b> 9:1,7,9 24:4 49:12 54:9 61:16, 21 66:10	<b>remainder</b> 21:18 34:5 58:22	<b>remains</b> 19:13 29:25	<b>requests</b>	<b>results</b> 50:2
<b>reduces</b>	<b>removal</b>			<b>retain</b> 58:23
				<b>retirement</b> 77:10 78:11,14
				<b>returning</b> 36:11
				<b>review</b> 54:18 55:9 70:25
				<b>reviewed</b> 43:20 50:8
				<b>revised</b> 19:2 20:25 34:16
				<b>revising</b> 33:21

<b>revision</b> 33:22 36:5	8,15 37:6,15,17, 24 39:3,13,20,23 40:1,6 41:2,6,13 42:2,7,10,18,20 43:1 45:15 46:14, 17,21 47:18,24 48:1,10 50:15,20 51:6 55:23 56:6, 11,21,23 57:2,4, 18 71:2,5,15,22 72:1,11,16,19 73:6,8,11,14,21, 25 74:4,7,10,15 75:2,5 76:3,14, 16,18 79:3,5,23 80:1 82:1,7,10 90:5 91:13 94:17 95:4 96:23 98:2, 6,10,13,23,25 99:3,8,17,20	<b>RPD/CPD</b> 8:14 33:25 36:6 57:23 <b>runoff</b> 63:10 <b>runs</b> 20:23 39:9 43:15 <b>Russo</b> 79:8,9 <b>RVI</b> 7:17 12:16	<b>season</b> 64:25 <b>seasonal</b> 20:22 60:22 77:14 <b>seawall</b> 64:7 <b>seawalls</b> 53:23,24 64:10, 12 <b>section</b> 17:14 26:7 29:7 30:11,19 31:2 34:12 54:18 55:9	<b>services</b> 9:17 11:11 12:6 20:7 22:20 37:2 51:22 55:6 57:8 60:15 62:10 68:7 <b>servicing</b> 20:7 <b>set</b> 72:25 74:1 <b>setback</b> 34:12 <b>setup</b> 45:13 <b>severed</b> 16:9 <b>sewer</b> 52:11 59:24 61:8 <b>shade</b> 23:10 32:14 <b>shared</b> 14:7 19:9 21:9, 12,19 25:3,4,6, 11,14,19,21 33:9
<b>rezone</b> 8:14 57:24 <b>rezoned</b> 13:9 60:16 <b>rezoning</b> 4:5 48:12 50:7 58:23 59:22 61:25 65:24 70:23 <b>Richard</b> 5:15 46:23 49:12 56:14 82:16 <b>ride-sharing</b> 30:24 49:6 <b>riffraff</b> 78:15 87:20 <b>rights</b> 45:21 81:15 <b>riprap</b> 64:11 <b>river</b> 8:14 10:19 15:25 18:16 19:22,25 20:21 21:14,18 22:4 32:11,22 39:3,8 45:6 50:18 57:23 59:6,8 60:17,23 72:3,24 73:7,12 74:21 77:20 83:18 84:2 93:25 94:7 <b>Rivera</b> 4:2,3,14 5:7,9 6:1,4,8,13,19 9:4 11:17 12:10,13, 20 15:5 16:15,19 17:8,16,21 18:4 21:12,20,24 22:1, 8,11 24:13,20 25:1,7,23 26:1 27:10,12,16,19, 22 28:2,12,16 31:16,23,25 32:3, 6,9 33:19 34:2 35:11,17,21 36:4,	<b>RM-2</b> 13:3 15:8 19:5 58:18 <b>road</b> 8:2,6 13:25 19:15,19 20:19, 20 29:2,5 32:3, 13,20,22 34:15 35:12 39:21 50:1, 6,17,18 51:2,4 58:6,14 59:7 61:2,6 66:24 77:6 96:1 <b>roadway</b> 40:10 50:10 61:6 62:5,7 67:14 91:20 <b>roadways</b> 50:1,3 52:20 <b>Roberts</b> 5:6 6:24 57:7,8, 13,19 71:13,16, 24 76:10 99:2,6 <b>room</b> 40:4 77:7 90:24 <b>Route</b> 20:20,23 <b>Royal</b> 18:7 <b>RPD</b> 13:2,10,17 19:13 25:21 49:15,21	<b>sadly</b> 78:5 <b>safe</b> 67:3 <b>safeguard</b> 69:6 <b>safeguards</b> 55:16 <b>safer</b> 10:3 67:3 <b>safety</b> 9:15 31:7,15 44:14 55:19 69:12 <b>sailing</b> 11:5 18:7,8 80:10 88:11 <b>sale</b> 17:1 <b>Sam</b> 7:17 37:19 86:24 <b>satisfied</b> 38:10 <b>satisfy</b> 38:7 62:13 <b>scenario</b> 48:20,24 <b>schedule</b> 8:21 9:21 11:25 55:24 66:6 68:25 98:8 <b>schedules</b> 10:11 <b>school</b> 49:4 80:10	<b>S</b> <b>secure</b> 45:12 <b>secured</b> 46:3 <b>security</b> 10:15 <b>seeking</b> 48:12 <b>selected</b> 43:7 <b>selfish</b> 78:12 <b>sell</b> 44:3 78:10 <b>sense</b> 9:23 <b>sensitive</b> 55:5 67:19,20 <b>Sensitivity</b> 65:9 <b>separate</b> 73:9 90:6 <b>September</b> 20:5 65:4 <b>sequestered</b> 44:2 46:7 <b>serve</b> 10:2 <b>served</b> 55:6 68:7,11 81:7 <b>service</b> 20:14,22 43:21 49:25 50:4 61:10 <b>serviced</b> 61:5	<b>shares</b> 58:21 <b>sharing</b> 21:13 <b>sheriff</b> 81:24 <b>sheriff's</b> 10:12,23 20:10 31:8 68:11 74:24 78:17 81:2 87:25 91:15,18,23 92:2 <b>shifts</b> 10:11 <b>shoreline</b> 85:16 <b>shortage</b> 74:18 <b>show</b> 27:19 59:25 60:11 83:17 <b>showed</b> 15:21 16:20 <b>showing</b> 17:25 27:13 47:19 <b>shown</b> 17:9,11 28:16

29:11 47:13 61:9 68:15 72:7 <b>shows</b> 48:25 49:14 62:6 63:10 <b>sic</b> 36:20 <b>side</b> 8:2 16:20 18:16 20:19 22:5 29:1 34:15 60:1 61:2 73:11,12 74:21 77:8 78:19 <b>sidewalk</b> 20:18 <b>sidewalks</b> 58:14 61:2 <b>sign</b> 23:12 90:2 <b>signal</b> 50:16,22,25 51:4 <b>significant</b> 43:23 49:23 51:3, 14 <b>significantly</b> 20:16 54:9 <b>similar</b> 75:9 <b>simple</b> 94:12 <b>single</b> 31:5 <b>single-family</b> 13:11 14:9 15:13 19:7 35:19 48:22 <b>sir</b> 75:3 94:18 <b>sit</b> 93:22 <b>site</b> 7:25 8:5 12:21, 22,23 13:5 14:8, 23 15:16,21 16:5, 7,23 17:9 18:11, 23 19:18 20:8,9, 12,14,17,24 21:18,20 22:3,6, 19,21,23 23:1,11, 22 24:3,9,22,23, 25 25:8 26:3,13	30:21,23 31:11, 18 32:10,19,21, 25 34:20 36:1,2 37:14 38:12,23, 25 39:10,15 40:21 44:6 45:14 49:16 51:15,21 52:15 53:4,6,21, 23 54:9 55:12,14 56:4 60:4,18,20 61:22 62:10 63:14 65:9,17 66:17,18 68:7,10, 14 69:4 72:24 73:17,19 87:24 88:5,10 90:24 97:4,10,17,22 <b>sites</b> 31:19 80:17 <b>sitting</b> 32:11 <b>six-foot</b> 20:18 <b>size</b> 37:3 67:6 89:19 90:12 <b>sizeable</b> 36:21 <b>sizes</b> 43:12,13 <b>Skyline</b> 15:3,6 <b>slide</b> 8:1 27:20 57:19 58:4 59:10 66:3 76:9 <b>slides</b> 57:21 72:6 76:11 <b>slight</b> 6:22 <b>slightly</b> 49:22 <b>slip</b> 14:22 43:11 44:24 46:10,25 47:15,25 61:17 83:6 <b>slips</b> 8:23,24 11:7,8 13:23 22:24 24:14 30:21 35:1,	3 43:12,24 44:1, 5,10,24 45:9,19, 22,23 46:4,6,8 47:7,10,23 51:19 54:8 63:3 66:10 74:16,18 75:10, 11 81:8,11 82:25 83:1,6,7 84:12 85:14,21,23,24 93:14 <b>slow</b> 45:5 54:12 84:2 <b>small</b> 17:18 45:7 <b>Smith</b> 79:24,25 <b>social</b> 9:15 12:6 22:20 37:1 <b>society</b> 14:15 <b>sold</b> 46:18 <b>solely</b> 22:6 74:1 <b>Solid</b> 61:5 68:12 <b>sooner</b> 99:18,24 <b>sort</b> 47:1 <b>sotto</b> 25:12 99:15 <b>sound</b> 28:11 <b>source</b> 48:17 <b>sources</b> 75:23 <b>south</b> 8:4 13:3 14:25 15:6 16:13 17:3, 12,14 18:17 19:14 22:25 29:5, 19 30:1,6 35:5 38:5 40:11,22 58:11,13 59:1 63:14,16 64:3 77:7 85:1,4 97:11 <b>southeast</b>	23:2 40:19 <b>southern</b> 16:4 24:20 85:2,7 <b>southwest</b> 22:21 60:4 61:22 <b>space</b> 26:9,17,23 27:4,8 28:17 35:10 52:21 62:4 66:17 71:18 74:25 83:5 90:3,19,25 <b>spaces</b> 61:19 79:18,19 90:21 <b>speak</b> 4:9,23 71:9,10, 11,17 82:3 94:21, 23 <b>SPEAKER</b> 94:15 <b>speaking</b> 33:13 <b>speaks</b> 47:1 <b>species</b> 40:8,23 67:21,22 <b>specifically</b> 68:18 83:14 <b>speed</b> 44:15 45:5 54:12 <b>spells</b> 30:15 <b>spend</b> 78:13 80:12 <b>spinoff</b> 39:5 <b>spirit</b> 95:17 <b>spoke</b> 94:22 <b>spot</b> 47:25 <b>spots</b> 90:19 <b>square</b> 8:18 9:1 13:13 24:1 36:20 58:1,2 70:2 89:22 90:19 <b>Stacy</b>	7:16 12:12,15 40:9,22 49:16 51:8 97:1 <b>staff</b> 4:18 5:2,4,8,11, 12 6:25 7:2 9:23 10:10 18:24,25 19:3 20:14 26:4, 15 28:22 29:6 30:4 31:1,6,8 34:24 40:14 46:1 50:8 51:10 52:19 56:17,18,24 57:5 58:2 62:19 64:18 65:1,7,12 66:9 67:3,8 69:8,14, 16,19,21,24,25 70:6,11,14,16,18, 24 71:3,17 75:17 82:13 91:6 95:12, 22 98:14,21,25 <b>standalone</b> 39:6,8 <b>standards</b> 24:7 34:20 52:10 61:7 70:11,23 <b>start</b> 8:25 34:22 56:7 80:9 82:5 <b>started</b> 5:4,19 <b>starts</b> 81:21 <b>state</b> 48:6 <b>stated</b> 22:16 54:20 85:23 97:14 <b>statement</b> 36:25 <b>states</b> 70:1 <b>stating</b> 9:12 <b>Station</b> 20:9 <b>stay</b> 73:22 <b>Stejskal</b> 7:18 40:2,7 41:5, 8,18 42:5,8,13,19
---	---	---	---	--

<p><b>stop</b> 20:20 32:12 60:21,22 77:14 87:14,16,17</p> <p><b>stops</b> 58:14</p> <p><b>storm</b> 80:20</p> <p><b>stormwater</b> 38:2 53:11 86:25 87:2</p> <p><b>straightforward</b> 93:11</p> <p><b>street</b> 25:9 79:21 81:19 91:2</p> <p><b>streets</b> 91:25</p> <p><b>strip</b> 30:12</p> <p><b>stronger</b> 10:3</p> <p><b>structure</b> 32:15</p> <p><b>structures</b> 23:10</p> <p><b>study</b> 48:24</p> <p><b>stuff</b> 85:4</p> <p><b>subject</b> 14:9 15:24 16:10 18:17,20 21:6 26:15 30:4 31:9 34:22 59:1</p> <p><b>submittal</b> 63:9 67:12</p> <p><b>submitted</b> 5:8 6:7,12 64:15, 16 87:2</p> <p><b>subsequent</b> 64:16</p> <p><b>substantial</b> 89:8</p> <p><b>suburban</b> 12:23 51:11 55:7 58:18,24 59:2,9, 15,16 61:15</p> <p><b>successful</b> 41:4</p>	<p><b>sufficiency</b> 66:9 68:2</p> <p><b>sufficient</b> 50:6 54:25 55:15 66:21 67:9</p> <p><b>summer</b> 49:5</p> <p><b>support</b> 9:6 50:7 54:25 66:22 67:9</p> <p><b>supposed</b> 27:23 46:4 75:13</p> <p><b>surface</b> 63:7,9,17 68:4</p> <p><b>surrounding</b> 11:14 12:24 19:5 43:7 50:1,10 52:8,20 58:16 66:5,7 67:14 78:7 93:2 95:14 97:18</p> <p><b>surroundings</b> 38:12</p> <p><b>survey</b> 67:21</p> <p><b>surveys</b> 26:13 40:8</p> <p><b>swale</b> 30:13</p> <p><b>swales</b> 63:11</p> <p><b>swear</b> 4:11</p> <p><b>switching</b> 63:2</p> <p><b>sworn</b> 48:7</p> <p><b>system</b> 38:3,4 50:10 63:18 67:14</p> <p><b>systems</b> 64:12</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> 28:18 48:25 49:2, 7,14 70:7,8 90:6</p> <p><b>tailored</b> 68:18,25</p> <p><b>takes</b></p>	<p>93:11</p> <p><b>talk</b> 38:1 60:13 61:7 63:7,22 67:25 68:15 83:24 93:8</p> <p><b>talked</b> 61:14,18 62:24 64:14 69:18 74:18 93:16</p> <p><b>talking</b> 43:2 77:23,24 84:16 95:15 97:25</p> <p><b>talks</b> 64:13</p> <p><b>tax</b> 17:1 75:24,25</p> <p><b>team</b> 7:9</p> <p><b>Technical</b> 30:2 40:13 54:4 65:3</p> <p><b>temporary</b> 23:8,10 56:6 72:10 91:14</p> <p><b>ten</b> 8:23 11:7 17:3,11 22:24 74:16</p> <p><b>ten-foot</b> 17:15 21:2</p> <p><b>ten-minute</b> 56:25</p> <p><b>tended</b> 36:18</p> <p><b>tennis</b> 13:21 92:11 97:6</p> <p><b>term</b> 87:20</p> <p><b>terminated</b> 17:6</p> <p><b>terms</b> 49:23 95:7,8</p> <p><b>testified</b> 37:21 40:3 68:21 86:10 87:12</p> <p><b>testify</b> 74:11 86:24</p> <p><b>testimony</b> 4:8,11 19:4 72:20 73:15</p>	<p><b>thing</b> 49:10 72:10 75:25 77:14</p> <p><b>things</b> 4:25 9:6,22 11:4, 5 23:7 37:7 40:24 51:1 56:8 62:24 79:22 80:13,21 82:18 83:19 88:2, 14 92:11,20 98:22</p> <p><b>thought</b> 28:10 75:13 95:24</p> <p><b>ticking</b> 42:11</p> <p><b>time</b> 4:24 5:1 9:2 13:24 24:7,12 30:17 35:13 36:11,13 38:15 45:25 46:9 53:20 56:5,18 61:10,23 63:9,16 65:13 67:16 70:2 71:10 72:21 77:18 78:23 80:20 84:21 87:5 88:9 90:1 91:6,9 96:3, 8 99:25</p> <p><b>times</b> 10:15,23 14:2 40:9</p> <p><b>timing</b> 23:6 52:6 55:25 60:14</p> <p><b>TIS</b> 14:18 62:6 67:11, 15</p> <p><b>today</b> 7:3,7 13:7 15:15 16:23 38:1 48:9 57:17 71:11 75:3 76:4 79:6 82:3 84:16 87:12 90:23 93:22 94:22 97:8</p> <p><b>today's</b> 4:4</p> <p><b>Tom</b> 71:12 72:2</p>	<p><b>tomorrow</b> 99:16</p> <p><b>top</b> 24:16 66:19</p> <p><b>total</b> 43:24 58:1</p> <p><b>townhouse</b> 13:12 15:13</p> <p><b>TR</b> 48:5</p> <p><b>tract</b> 8:15 13:16 14:3, 16,20 15:2,4,11 16:8,16,22 19:12 21:4 34:17 47:4 49:19 58:22</p> <p><b>traditional</b> 48:22</p> <p><b>traffic</b> 32:19 36:25 48:11,14,17,24 49:23 50:8,24,25 51:2,4 59:25 60:1 76:22 77:13 81:16 84:5 91:16, 24,25 92:4 95:8</p> <p><b>trafficked</b> 32:13</p> <p><b>trailer</b> 23:19,21 24:17 83:3,5</p> <p><b>trailer</b> 25:1</p> <p><b>trailers</b> 23:10 83:8</p> <p><b>trails</b> 60:10</p> <p><b>training</b> 65:21 69:1</p> <p><b>transfer</b> 14:22 46:25</p> <p><b>transferred</b> 46:11,19</p> <p><b>transit</b> 58:14 61:6 68:12</p> <p><b>transportation</b> 7:22 48:5,8 50:12 67:7,12</p> <p><b>travel</b> 77:18</p>
---	--	--	---	---

<p><b>traverse</b> 24:16</p> <p><b>treated</b> 39:16</p> <p><b>tree</b> 29:21</p> <p><b>trees</b> 29:16,20 78:20</p> <p><b>trespass</b> 24:11</p> <p><b>trip</b> 48:15,16,19,25 49:14,19</p> <p><b>trips</b> 49:1,6,8,21,22</p> <p><b>trolley</b> 20:21 31:17 77:14,15</p> <p><b>truck</b> 95:15</p> <p><b>trucks</b> 23:9 77:25 79:14 96:2,16</p> <p><b>truth</b> 4:12</p> <p><b>turn</b> 10:1 11:15 36:13 56:18</p> <p><b>turned</b> 81:13</p> <p><b>turns</b> 81:18</p> <p><b>two-family</b> 15:13</p> <p><b>two-story</b> 19:19</p> <p><b>type</b> 29:8,13,17 30:6 45:16,17 75:25 90:20</p> <p><b>types</b> 79:16</p> <p><b>typical</b> 49:25</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S.</b> 43:19</p>	<p><b>Uh-huh</b> 51:7</p> <p><b>ultimate</b> 63:13</p> <p><b>ultimately</b> 9:19 11:9 63:12 93:10</p> <p><b>understand</b> 44:22 80:24 85:13 87:6,7 90:17 96:18</p> <p><b>understanding</b> 16:25 51:3 88:12</p> <p><b>understands</b> 70:11</p> <p><b>UNIDENTIFIED</b> 94:15</p> <p><b>uniquely</b> 11:2</p> <p><b>units</b> 8:19 13:12,18 14:10,17,19 15:13,22 49:11, 12,17,18 70:1</p> <p><b>unnavigable</b> 81:14</p> <p><b>unsafe</b> 92:3</p> <p><b>unsuccess</b> 41:19</p> <p><b>unsuccessful</b> 41:10,11 42:3</p> <p><b>updated</b> 36:1 64:18,21</p> <p><b>uplands</b> 53:18 54:15</p> <p><b>upstream</b> 54:15</p> <p><b>urban</b> 51:22 55:6 62:10 68:7</p> <p><b>utilities</b> 20:13 61:1,9,12 68:8</p> <p><b>utility</b> 16:12 17:2</p> <p><b>utilized</b> 11:6</p> <p><b>utilizing</b></p>	<p>24:15 74:25</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vacant</b> 19:14 35:14</p> <p><b>vagrancy</b> 88:7</p> <p><b>variety</b> 43:11,13</p> <p><b>vegetation</b> 26:20 30:9,10</p> <p><b>vehicles</b> 23:17</p> <p><b>venue</b> 37:21</p> <p><b>verify</b> 28:20</p> <p><b>version</b> 17:16,22</p> <p><b>versus</b> 61:17</p> <p><b>vertical</b> 56:1 64:9</p> <p><b>vessel</b> 35:4 43:13</p> <p><b>vessels</b> 43:11 44:8</p> <p><b>veterans</b> 9:17</p> <p><b>vice</b> 7:10</p> <p><b>vicinity</b> 19:18</p> <p><b>VIO2023-04271</b> 86:17</p> <p><b>violation</b> 18:10 86:15,16, 17 88:15</p> <p><b>vision</b> 18:22 37:11 55:14</p> <p><b>visit</b> 21:20 32:10 73:17</p> <p><b>voce</b> 25:12 99:15</p> <p><b>voluntary</b> 19:22</p>	<p><b>vote</b> 79:1</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waiting</b> 32:12</p> <p><b>walk</b> 13:6 78:18</p> <p><b>Walmart</b> 50:24</p> <p><b>wanted</b> 28:13,18 45:9,22 46:23 64:20 65:18 69:3 72:4 80:8 82:2 85:14 87:13 95:25 97:12</p> <p><b>Ward</b> 71:12,23,25 72:2, 15,18 73:3,7,9, 13,20,24 74:2,6, 8,14,16 75:4 93:19</p> <p><b>warrant</b> 50:21 51:4</p> <p><b>warrants</b> 51:1</p> <p><b>Waste</b> 61:5 68:12</p> <p><b>wastewater</b> 60:24 62:9 68:8</p> <p><b>water</b> 27:6 38:5,9,10,15 39:16 43:3 44:12, 14 52:11 53:12 54:12 59:24 60:24 61:7 62:9 63:7,8,9,17,19 64:4 68:4,8 74:20 80:19 83:8,23 85:16 87:2,4,11</p> <p><b>waterbodies</b> 27:5</p> <p><b>watercraft</b> 74:22 85:22</p> <p><b>waterfront</b> 11:3 45:10 60:17</p> <p><b>waterway</b> 27:9 53:9 58:21 81:14,15</p>	<p><b>waterways</b> 26:7</p> <p><b>weekday</b> 49:7</p> <p><b>weekends</b> 49:4 95:10</p> <p><b>weeks</b> 99:16</p> <p><b>welfare</b> 9:16 31:15 55:20 69:12</p> <p><b>well-monitored</b> 80:12</p> <p><b>well-protected</b> 45:11</p> <p><b>well-versed</b> 41:14</p> <p><b>west</b> 13:25 18:16 19:15 20:18,19 22:25 34:15 35:12 39:21 40:10 51:20 59:6 60:19,22 61:2 69:22</p> <p><b>western</b> 8:14 47:4 49:16 57:24</p> <p><b>wet</b> 8:23 11:7 47:22 61:17 66:10 83:1, 6</p> <p><b>wet/10</b> 85:25</p> <p><b>wetland</b> 40:4 54:13 60:8 63:6,25</p> <p><b>wetlands</b> 12:25 40:23 52:1, 2,3 53:17 58:24 59:16 60:5,8 62:11</p> <p><b>wildlife</b> 40:5 43:20 84:1</p> <p><b>willingness</b> 98:15</p> <p><b>Wilson</b> 7:19 42:21,22 43:2 45:21 46:16, 19,24 83:23</p>
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