

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

In RE: LEE COUNTY, FLORIDA
and CORKSCREW GROVE LIMITED
PARTNERSHIP, a limited liability company,

Joint Petitioners,

v.

Case No.: 22-CA-002743
Division: G

KEVIN HILL and JEFFREY KLEEGER,

Proposed Intervenor Respondents.

PETITIONER, CORKSCREW GROVE LIMITED PARTNERSHIP'S
NOTICE OF FILING

Petitioner, CORKSCREW GROVE LIMITED PARTNERSHIP, hereby files the attached Hearing Transcript dated August 31, 2022.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2022, I electronically filed the foregoing document with the Clerk of Court using the Florida Courts E-Filing Portal System which will send a notice of electronic filing to Jeffrey L. Hinds, Esquire and Jay J. Bartlett, Esquire, jeffreyH@sblfirm.com and jayB@sblfirm.com, Bartlett Loeb Hinds & Thompson, PLLC, 100 North Tampa Street, Suite 2050, Tampa, Florida, 33602 and Richard Grosso, Esquire, richardgrosso1979@gmail.com, Grosso.Richard@yahoo.com RICHARD GROSSO, P.A. 6919 West Broward Boulevard 21, Mailbox 142, Plantation, Florida 33317 and Ralph Brookes, Esquire, Ralf Brookes Attorney Ralf@RalfBrookesAttorney.com, RalfBrookes@gmail.com, 1217 E Cape Coral Parkway #107, Cape Coral, Florida 33904.

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

IN RE: LEE COUNTY, FLORIDA
and CORKSCREW GROVE LIMITED
PARTNERSHIP, a limited
liability company,

Joint Petitioners.

CASE NO. 22-CA-2743

TRANSCRIPT OF PROCEEDINGS

Before the Honorable James R. Shenko, Circuit Judge
of the Twentieth Judicial Circuit of the State of
Florida, at a hearing in the above-styled matter, held
at the Lee County Justice Center, Fort Myers, Florida,
on August 31, 2022.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Michael Jacob	42	53 54	67	68
Daniel DeLisi	71			

E X H I B I T S

EXHIBIT NUMBER		PAGE MARKED
1 through 30	Exhibit Binder	42

1 THE COURT: Good morning. Good morning,
2 everyone.

3 Give me a second while I get my software up
4 and running. Under the state system, if I have
5 both computers open at the same time and try to
6 work, they crash, the one in my chambers and the
7 one in the courtroom.

8 (Off-the-record discussion.)

9 THE COURT: I'll try to speak into the
10 microphone. Court reporters have difficulty, as
11 do a lot of the folks.

12 We're here on Lee County and Corkscrew Grove
13 Limited, case number 22-2743.

14 Scheduled for this morning was two things:
15 Number 1, an evidentiary hearing on a joint
16 petition to approve the settlement agreement; and
17 number 2, a motion to intervene and respond to
18 joint petition filed by Kevin Hill and Jeffrey
19 Kleeger.

20 And, by the way, had I -- there are bigger
21 courtrooms around here, and I wish we had the
22 bigger courtroom so that we could accommodate
23 everybody, but I wasn't asked to attempt to get a
24 bigger courtroom.

25 THE BAILIFF: Sorry, your Honor.

1 (Off-the-record discussion.)

2 THE COURT: We're so crowded around here
3 that I have a trial set in two weeks and they told
4 me I don't have a courtroom, so that's really
5 interesting.

6 So why don't I have folks, first of all,
7 state their appearances for the record for Madam
8 Reporter.

9 MR. MOORE: Your Honor, my name is Bill
10 Moore. We represent Corkscrew Grove Limited, one
11 of the co-petitioners. And with me is Mitch
12 Hutchcraft, the principal.

13 MR. BARTLETT: Thank you, your Honor. Jay
14 Bartlett on behalf of Lee County. With me is my
15 partner, Jeff Hinds.

16 MR. GROSSO: Good morning, your Honor.
17 Richard Grosso. I'm here representing the
18 intervenors, Kevin Hill and Jeffrey Kleeger. My
19 client, Mr. Hill, is with us also this morning,
20 your Honor.

21 THE COURT: So Mr. Brookes isn't joining us
22 today?

23 MR. GROSSO: No, he is not.

24 THE COURT: Okay. All right. Well, I don't
25 know if we're having argument on argument about

1 what goes first. It seems that it -- that
2 logically probably the motion to intervene should
3 go first, but let me hear -- I've got everybody on
4 their feet.

5 MR. GROSSO: Your Honor, I -- we had --
6 opposing counsel and I had a brief conversation
7 this morning at which they informed me that they
8 would be willing to stipulate to the facts alleged
9 in our petition to intervene, such that
10 Mr. Kleeger and Mr. Hill would not have to come
11 and testify about those facts. I believe they
12 continue to oppose, as a matter of law, that those
13 facts are adequate for intervention. I believe
14 that's -- no?

15 MR. MOORE: No.

16 MR. GROSSO: I'll let them speak for
17 themselves on that. Go ahead.

18 MR. MOORE: Good plan.

19 Your Honor, our position for Corkscrew
20 Grove -- and when I speak, it's just for Corkscrew
21 Grove and not for the County, just us.

22 We have no objection now to the intervention
23 as a matter of law, subject to the rules that
24 govern intervenors.

25 THE COURT: No new issues.

1 MR. MOORE: No new issues, they take the
2 case as they find it, ancillary, but they -- they
3 certainly can cross-examine, give arguments, et
4 cetera.

5 With regard to the stipulation that
6 Mr. Grosso mentioned, we, Corkscrew Grove, have
7 stipulated to the facts related to standing,
8 related to the position of the intervenors being
9 allowed to intervene. The -- there's no other
10 stipulations with regard to the motion.

11 MR. GROSSO: I will stop arguing against
12 myself, then, accept that stipulation. Appreciate
13 it. And -- and so I don't believe we need my
14 clients to testify. The parties have agreed to
15 their standing. And certainly I understand they
16 have not stipulated to any facts beyond those
17 related to standing. And so I think that -- I
18 think we are on the same page there.

19 MR. MOORE: Maybe we'll hear from --

20 MR. BARTLETT: Yeah, Lee County group.

21 THE COURT: So, Mr. Grosso, are then you
22 prepared to go forward with the evidentiary
23 hearing today as it relates to this proposal to
24 settle?

25 MR. GROSSO: Well, I certainly believe we

1 are. I believe the --

2 THE COURT: I didn't know if you were --
3 if -- I didn't know if the relief you were
4 requesting was going to do any type of discovery
5 or call witnesses or anything, or are you prepared
6 to go forward?

7 MR. GROSSO: We are prepared to go forward.
8 And we simply ask for the right to question
9 witnesses --

10 THE COURT: Sure.

11 MR. GROSSO: -- placed in -- you know, that
12 testify for the joint petitioners.

13 THE COURT: Okay. The motion to intervene
14 is granted.

15 MR. GROSSO: Thank you, your Honor.

16 THE COURT: You're welcome.

17 MR. GROSSO: Thank you, counsel.

18 THE COURT: Okay.

19 And please try to ignore my typing. I am a
20 wicked typist, and I find my notes come in handy
21 towards the end of these longer hearings.

22 So I have reviewed the file. There's not as
23 much in there as I would like, but I absolutely
24 know some of the facts.

25 A lot of times I will go over what I believe

1 the facts to be, but in this case I'm going to let
2 the lawyers fill me in. And if I have any
3 questions later, then I will ask.

4 So if you want to give any type of opening
5 statements, both Mr. Moore and Mr. Bartlett, you
6 may. And also -- I will also allow Mr. Grosso, if
7 he wishes, to address the Court before we take
8 evidence.

9 Mr. Moore.

10 MR. MOORE: Thank you, your Honor.

11 Your Honor, we have filed a joint petition.
12 The joint petition is to approve the settlement,
13 as you know. But it's under the umbrella of
14 Chapter 70.001 of the Bert Harris Private Property
15 Rights Protection Act. If I may give you a copy
16 of that.

17 THE COURT: Sure, you may.

18 MR. MOORE: I think the key points of that
19 legislation, the Bert Harris Act, was set out in
20 paragraph number 1, that some laws or regulations
21 by entities in the state can inordinately burden
22 or restrict private property rights without
23 amounting to a taking. And that's important
24 because of some of the legal arguments that the
25 intervenors made. But the whole point of this

1 when it was -- this law, when it was passed back
2 in the mid-nineties, was realized how restrictive
3 regulatory takings had become, but -- but it
4 didn't provide any kind of a fair avenue for
5 landowners to object to restrictions unless --
6 back then it was if all your property was taken
7 and every bit of value was gone, then you could
8 claim a taking. That's changed now a bit under
9 takings law, but nevertheless the Bert Harris Act
10 was also enacted in order to -- I think ultimately
11 to provide for dispute resolutions.

12 So basically it's a separate and distinct
13 cause of action.

14 In this case, we have a pending Bert Harris
15 claim. The law was amended a few years ago saying
16 that you didn't have to file the suit, but you
17 could have a claim perfected by a claim letter
18 with an attached appraisal, and then you could
19 enter into the mediation within the provisions of
20 this law.

21 I would also point out just briefly, and
22 we'll get into more detail later, but if -- draw
23 the Court's attention to paragraph (4)(c), which
24 lists the type of examples of settlement
25 provisions that can occur as the basis of this

1 procedure.

2 And then, of course, number 9 is the
3 issuance of a development order or any other
4 extraordinary relief.

5 Our petition asks the Court, under the
6 provision of paragraph (4) (d) 1. and 2., to
7 evaluate the settlement with regard -- since it
8 contravenes a statute as distinct from an
9 ordinance or a local regulation. If it were just
10 that, there would not be a provision for court
11 approval, that would just be -- has to be in the
12 public interest and it would be presumed as long
13 as it was proven.

14 But with regard to our case -- and we have
15 identified the statutes, and we'll get into those
16 in detail later, that we're asking, we think they
17 contravene but that the relief that we worked out
18 with the County satisfies the public interest that
19 was protected by those statutes.

20 And then the second provision that the Court
21 is to look at is that the relief is necessary to
22 prevent the government from inordinately burdening
23 the real property, and we will have evidence on
24 that.

25 I would like to give you a little overview.

1 These -- some of these will be exhibits that are
2 already in the book, but if I may just give you a
3 little aerial map.

4 THE COURT: Thank you.

5 MR. MOORE: If I may approach.

6 I think counsel is aware of this, but here
7 is --

8 MR. GROSSO: Thank you.

9 MR. MOORE: This is Exhibit 5 in our book.

10 But, in general, it shows you the area of
11 southeast Lee County along Corkscrew Road, and the
12 property that's at issue here is outlined in
13 yellow. It's the settlement properties.

14 And you can see the blue areas are the
15 mining that's occurred in the DR/GR area for
16 years. In fact, the Troyer mine or Bell Road mine
17 are fairly recent approvals. The Titan mine is
18 certainly an active mine, very close to the --
19 adjacent to the subject property.

20 The settlement itself involves some land
21 swaps, which is provided for in the Bert Harris,
22 and picks up a southern tract, which is going to
23 be an issue that the intervenors have noticed,
24 owned by Corkscrew Grove. It's all part of one
25 large settlement.

1 This is a demonstrative exhibit. I
2 haven't -- it's kind of rough, but I haven't
3 entered it as an exhibit, but it just shows you in
4 general -- and I have got a copy for counsel. It
5 shows you in general what properties are involved,
6 as we discussed, and will become more clear about
7 what happens with those parcels.

8 In our evidence notebook, we have 30
9 exhibits. I've tried to organize them in way of
10 presentation, but you know how it is when you're
11 ready for trial, they're going to be a little bit
12 out of order sometimes. But I believe they're --
13 they're all -- most of them are public record and
14 have been familiar with all the parties.

15 One very clear summary of the issues -- and
16 you mentioned usually -- we usually give you a
17 little bit more in advance. For that, I
18 apologize. But one of the -- the clear summary of
19 the issues in this petition is framed by
20 Exhibit 4, which -- of course, I know the Court
21 will look at all of them, but it's a joint
22 memorandum by the County. And it's quite clear
23 and quite detailed about the provisions of the
24 settlement. And I think it's an excellent
25 overview.

1 Overall, this is one of the largest, most
2 complex land use dispute resolutions in Lee County
3 history. And it achieves some significant goals
4 to the public on an even greater scale than it
5 would be possible without the settlement.

6 The brief history of the case is -- as you
7 know, the DR/GR is somewhere between 87 and 90,000
8 acres in southeast Lee County. It was created
9 back in the 1980s.

10 In the 2007 comprehensive policy 1.4.5, I
11 have set out the future land use that would be
12 appropriate for the DR/GR, and it expressly
13 permitted mining or, as they call it, natural
14 resource extraction, within the DR/GR.

15 Under that, the owners of this property --
16 the predecessor was Old Corkscrew Plantation. And
17 you will hear that a lot, because basically the
18 property was known as that.

19 They filed an application for rezoning to
20 permit mining on its 4,200-acre land. When I say
21 4,200 and 6,000, I'm going to be -- that's
22 general. I will give you the specifics later and
23 through the evidence.

24 Since the County was beginning to
25 consider -- about that time was a very dynamic

1 time in Lee County. They were considering changes
2 to the DR/GR, especially with regard to mining.
3 And the application of the Old Corkscrew was
4 subjected to a moratorium. In other words,
5 prepared the mining application, but the County
6 was instructed not to accept it. Litigation
7 ensued.

8 The land use attorney, Neale Montgomery, was
9 handling it from the beginning. The litigation
10 attorney was Steve Dalton of the Pavese firm. And
11 that resulted in an order by Judge Fuller, which
12 is Exhibit 6 in our book. And basically that held
13 that Old Corkscrew's application should be
14 processed under the 2007 plan and not the newer
15 plans that were in process, which ultimately
16 resulted in an ordinance in 2010.

17 So it was based on -- based on estoppel
18 principles, and the Court ruled that the law of
19 2007 would be applicable to Old Corkscrew's mining
20 application.

21 Of course, the great recession occurred
22 thereafter. We just hit that right. 2008. And
23 depending on what economist you look at, it lasted
24 for two years or three years. But it was -- it
25 stopped pretty much all development in its tracks,

1 as the Court can take judicial notice of.

2 The comprehensive plan changes with regard
3 to the DR/GR happened in 2010. And I put one of
4 the significant ordinances in evidence of that, or
5 will seek to, which related to the DR/GR and
6 particularly preserving and restoring the natural
7 water flow, because water was such a critical
8 aspect of our public needs. It was and still is
9 and, of course, is increasingly more so. Kind of
10 see that with what's going on in Jackson,
11 Mississippi, now. If we don't take care of our
12 water and water infrastructure, then you can see
13 serious issues to the public arise.

14 In 2011, Old Corkscrew reinitiated their
15 application and it finally got submitted, because
16 we had a court order now from Judge Fuller.

17 However, not long after that, Old Corkscrew
18 went into bankruptcy. And the present owner,
19 Corkscrew Grove Limited, purchased the property in
20 2016. They not only purchased the property but
21 all the mining rights to the application that went
22 with it.

23 In 2017, they first submitted the King
24 Ranch -- and by -- when I say "King Ranch," King
25 Ranch is the parent company for Corkscrew Grove

1 Limited, so sometimes we use those
2 interchangeably. Mr. Hutchcraft, the principal
3 here, will explain that in detail.

4 In 2017, the King Ranch submittal was made
5 to the County for the same kind of mining that was
6 sought back in 2007.

7 In 2019, and this is Exhibit 8, the board
8 denied it, denied mining, and more litigation
9 ensued.

10 This time we were involved. Mr. Dalton had
11 retired. And we -- we filed a suit for
12 declaratory relief, a suit for -- petition for
13 certiorari, and additionally filed a Bert Harris
14 claim just in case those suits were not
15 successful.

16 Exhibit 10 is a fairly extensive order from
17 Judge Fuller granting Corkscrew Grove's motion for
18 summary judgment with regard to the denial of
19 mining. It said that basically it -- it was a
20 permitted use and had to go back and address that
21 under the law as established by Judge Fuller
22 initially.

23 During that time, after the Bert Harris
24 claim was filed and after litigation had ensued, a
25 third party appeared, Mr. Joseph Cameratta, who

1 had done some very significant developments out in
2 the Corkscrew Grove/Corkscrew Road area, and he
3 was interested in purchasing the property from
4 Corkscrew Grove. Settlement discussions began
5 then with Corkscrew Grove, Lee County, and
6 Mr. Cameratta's team, Cameratta being the contract
7 purchaser.

8 After a really extensive -- and you're going
9 to be -- I won't say be impressed, but I am, with
10 the amount of effort that's gone into this and
11 with the number of consultants and the hard work
12 that went into the settlement on both the County
13 and Corkscrew Grove, but also Mr. Cameratta's
14 team.

15 There were a number of public hearings,
16 noticed public hearings, and we're going to be
17 talking about those.

18 It went before the board with two different
19 hearings, both of them publicly noticed. And the
20 board proved the settlement under the auspices of
21 the Bert Harris provision that I had mentioned
22 earlier.

23 We're going to have witnesses: Michael
24 Jacob, Assistant Lee County Attorney, who was
25 really instrumental in shepherding this through

1 with regard to the County.

2 Dan DeLisi is a land planner. He's got vast
3 experience in Lee County, who not only worked on
4 the original mining application, the current one,
5 but is -- also worked on the settlement proposal.

6 Mitch Hutchcraft, our principal from
7 Corkscrew Grove, will testify with regard to the
8 second aspect of the Bert Harris law that we are
9 asking the Court to consider, and that is whether
10 the relief granted is necessary to relieve the
11 burden that's been placed on the Corkscrew Grove
12 property.

13 And then we understand that the County may
14 call Brandon Dunn and Becky Sweigert, who were
15 again instrumental in the kind of planning that
16 went into this settlement agreement.

17 And, with that, I would yield to
18 Mr. Barrett.

19 MR. BARTLETT: Or Bartlett.

20 MR. MOORE: Or Bartlett.

21 MR. BARTLETT: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. BARTLETT: I'm going to try to make it
24 to the podium. May waive that in future.

25 Your Honor, I would like to hand you a few

1 cases, if I may.

2 THE BAILIFF: I'll get it.

3 MR. BARTLETT: Thank you.

4 And I've provided these to opposing counsel
5 already.

6 Mr. Moore has already pointed out the
7 applicable portion of the statute, the Bert Harris
8 statutes, which I know you are familiar with,
9 because we had spent some time discussing it on
10 other occasions.

11 But on -- Section (4)(d)2. is -- has to do
12 with this proceeding right here. And that -- and
13 that's because we are contravening, as the statute
14 says, some statutes.

15 Your Honor's going to hear what those
16 contravened statutes are, but it's got -- the
17 Court has actually two functions, as Mr. Moore
18 pointed out. In the first one it says the Court's
19 to ensure that the relief granted protects the
20 public interest served by the statute at issue.
21 Right? That's -- that's job number one, whether
22 the public interest served by the statute at issue
23 and it -- and does the relief protect that public
24 interest?

25 And the second point is, is the appropriate

1 relief necessary to prevent the government
2 regulatory effort from inordinately burdening the
3 property?

4 And all of those difficult language -- not
5 all of them, but many of those difficult language
6 terms are defined terms under the statute, as we
7 have -- as we have discussed before.

8 Now, as Mr. Moore says, this -- this is a
9 very complicated set of land use litigation cases.
10 We had three cases -- or two cases filed, the Bert
11 Harris claim filed or served on the County, and
12 you're going to hear a little bit more about the
13 facts of that.

14 The County prevailed on the cert case, the
15 petition for cert, but as Mr. Moore pointed out,
16 the County did not prevail on the declaratory
17 relief case.

18 And all of this relates back to a -- the
19 County's denial of a 4,000-acre, plus or minus,
20 mine on the Corkscrew Grove property.

21 And the Bert Harris claim letter that was
22 served on the County and is at tab number 15, I
23 believe, is in the claimed amount of \$63 million.
24 And because of the way the Bert Harris Act is
25 written and the amount of time that's passed since

1 then, there's -- if the County were to lose that,
2 we're looking at interest and fees and costs on
3 top of that.

4 So that's -- that's a -- oh, 9? Sorry. The
5 Bert Harris claim is Exhibit Number 9.

6 So we are facing a significant litigation
7 risk.

8 And the parties and the County - I speak for
9 the County - they -- the County entered into this
10 settlement agreement. It is very detailed. It
11 includes the landowner, Corkscrew Grove, giving up
12 all right to mine the 4,000-acre parcel that was
13 originally the application, plus an additional
14 2,500 acres, more or less, located to the south of
15 that. So all the mining claims with respect to
16 that 7,000-plus-or-minus-acre parcel would be
17 given to the County.

18 The settlement approves or allows the
19 approval of a residential subdivision on this very
20 large five-mile-long property.

21 It contains numerous provisions for the
22 preservation and the restoration of habitat on
23 over 3,000 acres, all at no cost to the County or
24 to the citizens of the County.

25 It contains obligations to create public

1 transportation corridors and roadways,
2 specifically a north/south connection between
3 Corkscrew Road and State Road 52 {sic}, again, at
4 no cost to the County or to its citizens.

5 It contains obligations for the payments of
6 millions of dollars to the County related to
7 impact fees for the creation of public services.

8 Finally, the inclusion of the southern
9 2,500-acre parcel is accompanied by the obligation
10 to restore flow ways. This is sheet low drainage
11 flow ways that run from the north of the county to
12 the south of the property. There is an -- there
13 is no connection as we sit here presently today,
14 that's almost all uplands. It's in agriculture,
15 heavily ditched and drained, and it requires the
16 connection of those flow ways all the way from
17 State Road 82 south of Corkscrew Road to the CREW
18 property and the Collier County boundary. Okay?
19 This is a vital connection. It is a vital
20 environmental benefit to the county and to the
21 citizens actually of -- of this whole part of the
22 state.

23 Now, the statute, the Bert Harris statute,
24 specifically the (4)(d)2. section that -- that we
25 are dealing with, requires the Court to look at

1 two things. And that's -- we have gone through
2 that a little bit again. But the language is
3 difficult, as we know, with the Bert Harris
4 statute, and there -- and there's a lot of
5 inherent land use-type topics here, but
6 specifically with the public interest served by
7 the statute. It's not the public interest in
8 general, it's the public interest served by the
9 statutes. You will hear that the statutes at
10 issue require zoning approvals to comply with the
11 comprehensive plan. Now -- and other statutes
12 deal with public participation in the County's
13 decision-making process.

14 As Mr. Moore pointed out, we had three
15 noticed -- published, noticed, public hearings
16 with respect to this settlement and the provisions
17 thereof. We have transcripts that are included in
18 your exhibit notebook of each and every one of
19 those, those hearings.

20 You will hear that this residential
21 development could have been approved through a
22 simple amendment -- it's not simple -- an
23 amendment to the comprehensive plan. We didn't go
24 through that process. Why? It takes time, and we
25 lacked certainty, because of certain laws about

1 binding future boards.

2 The parties instead are doing everything
3 that the Bert Harris Act authorizes and
4 contemplates.

5 The parties set up a procedure that included
6 these public hearings, all of which were noticed,
7 so that the parties -- the public could be
8 included and seek the public participation,
9 comments, and -- and whatever criticisms they
10 would have.

11 One thing that you will notice is that the
12 statute does not set up a hearing procedure for
13 this -- for this Court or for the parties. I
14 mean, all this says is, Judge, you got to do this.
15 It doesn't say, this is the standard approved,
16 this is what you're supposed to do.

17 However, luckily enough, we have some
18 guidance. Not a whole lot, but we have some
19 guidance.

20 You will note, however, that this Court is
21 to review a settlement agreement. It is not your
22 typical hearing where a preponderance of evidence
23 standard applies. This is not a plaintiff and
24 a -- and a defendant arguing over whose facts
25 support the law better or whose law supports the

1 facts better. This is a -- this is a different
2 beast.

3 This is not a zoning hearing, where there's
4 a series of a criteria that have to be satisfied
5 in order for the approval to be granted. It's not
6 one of those.

7 This is a review of a government settlement
8 agreement. As such, it is not a -- it is not a
9 review of a quasi-judicial act.

10 Now, I have handed your Honor a series of
11 cases.

12 The first case is the case of City of
13 Homestead vs. United States. I -- those are the
14 cases I gave you, Mr. Grosso.

15 MR. GROSSO: Yeah.

16 MR. BARTLETT: Now, this is a yet-unreported
17 case, so it's blank, South Third, blank. It's
18 found in Westlaw at number 1160966, a Fifth DCA,
19 2022, only a month or so -- a couple months old.

20 So in this case, the Court was asked to
21 review a Bert Harris settlement agreement. The
22 Court, on its review -- now, this case got thrown
23 out for other reasons, but on its review noted
24 that this is a different kind of case. It is not
25 a review of a quasi-judicial act. You can't go to

1 cert petition to have -- the Court has no
2 jurisdiction over it, because what you have here
3 is not a record upon which a quasi-judicial
4 decision was made.

5 What you have here is a balancing of risk
6 and benefit, much like any other litigant.
7 Remember, we are settling two cases here: A
8 contrary case under the declaratory relief act,
9 and a Bert Harris claim.

10 And what the Court says, and it's
11 highlighted there in headnote number 2, "It
12 follows that when agencies and boards have acted
13 in a quasi-legislative capacity, the proper method
14 of attack in the circuit court for declaratory or
15 injunctive relief on grounds that the action is
16 arbitrary, capricious, confiscatory, or violative
17 of constitutional guarantees."

18 We don't have a series of hearings here. We
19 don't have a hearing schedule. We don't have a
20 zoning decision. We don't have this Court
21 reviewing a quasi-judicial act. We have decisions
22 of policy being made by the board, and those
23 actions are legislative in nature. They may be
24 executive. I -- I suspect there's -- there's --
25 somebody's going to write a Law Review article

1 about that in the future. It doesn't matter,
2 because the same standard of review, the same
3 standard of proof, applies to any challenge or
4 review of a quasi-legislative or executive act.

5 Now, that case cited another case,
6 Hillsborough County Commissioners vs. Casa
7 Development, which is a Second DCA case,
8 332 So.2d 651, 1976 case. And that -- and I have
9 highlighted a series of discussions that the Court
10 had. And these -- this case, as typical of these
11 cases of this genre, are -- are an attempt to
12 distinguish between quasi-judicial acts, which are
13 subject to cert jurisdiction review of the record,
14 et cetera, and quasi-executive or
15 quasi-legislative acts, which are the arbitrary
16 and capricious standard.

17 This case is followed in the Second DCA by
18 another case called City of St. Pete Beach vs.
19 Sowa, S-O-W-A, found at 4 So.3d 1245. Again, a
20 Second DCA, 2009 case.

21 Again, the Court attempting to determine
22 what kind of review is necessary given the facts
23 in front of it, this happened to be a granting of
24 a building permit, and the highlighted portion
25 reads, "A decision is judicial or quasi-judicial

1 as distinguished from executive when notice
2 hearing -- and hearings are required and the
3 judgment of the administrative agency is
4 contingent upon the showing made at the hearing."

5 And skipping down, "When an administrative
6 official or agency acts in a legislative or
7 legislative capacity, the proper method of attack
8 on the official or the agency's actions is a suit
9 in the circuit court for declaratory or injunctive
10 relief on the grounds that the action taken is
11 arbitrary, capricious," et cetera.

12 All right. I submit for your Honor that's
13 where we are. Okay? We are -- we are here on a
14 settlement -- a legislative body that -- that is a
15 determination of policy, the policy of whether
16 enough is enough and this is what we can get, and
17 this is what protects the citizens. And that's
18 the standard, I believe, your Honor needs to apply
19 to this hearing.

20 This -- as I said earlier, this same relief
21 could have been granted through an amendment to
22 the comprehensive plan. Okay. Interestingly
23 enough, amendments to the comprehensive plan are,
24 as a matter of law, legislative acts.

25 I provided your Honor with the case of

1 Coastal Development of North Florida vs. City of
2 Jacksonville Beach, 788 So.2d 204, which is a
3 Supreme Court of Florida 2001 case. This case is
4 an expansion of a previous case called Yusem,
5 Y-U-S-E-M, that determined that adoption of a
6 comprehensive plan is a legislative act. This one
7 says all amendments to the comprehensive plans are
8 legislative acts.

9 And -- and in the case, the Court cited to
10 Tom Pelham stating that it should be and these are
11 decisions of policy, and then cited to the First
12 DCA in -- in the Coastal Development case that I
13 have already -- earlier Coastal Development case,
14 that it stated, "We approve the First District's
15 thoughtful opinion on this point. It seems to us
16 that all comprehensive plan amendment requests
17 necessarily involve the formation of policy rather
18 than its mere application. Regardless of the
19 scale of the proposed development, a comprehensive
20 plan amendment request will require government
21 entity determine whether it is socially desirable
22 to reformulate the policies previously formulated
23 for the orderly future growth of the community.
24 This will, in turn, require that it consider the
25 likely impact that the proposed amendment will

1 have on traffic, utilities, other services, and
2 future capital expenditures, along with other
3 things. That is, in fact, precisely what occurred
4 here. Such considerations are different in kind
5 from those which come into play in considering a
6 rezoning request."

7 The Court went on to say, "The lack of
8 mandatory department oversight does not alter our
9 conclusion."

10 Now, as I said, the County undertook the
11 settlement agreement with an impressive series of
12 public hearings, including a hearing before the --
13 what -- what's called the hearing examiner. The
14 hearing examiner in the County is the public -- is
15 the fact-finding body -- or person for zoning
16 decisions. Along with two separate noticed board
17 of county commissioners meetings.

18 When it made this decision, it undertook a
19 policy-making decision.

20 The County invited the public and took
21 public testimony and comment as if it was going
22 through the normal process of a comprehensive plan
23 amendment, a rezoning, or an issuance of a
24 development order.

25 It did so in order to comply with certain

1 guidance that the Fifth District Court of Appeal
2 provided us in a case called Rainbow River
3 Conservation, Inc. vs. Rainbow River Ranch, which
4 is a Fifth DCA decision in 2016 found at
5 189 So.3d 312.

6 The -- this Court was faced with a -- a
7 decision of a circuit court where the circuit
8 court said, "Okay, you've got the Department of
9 Economic Opportunity up in Tallahassee. They --
10 they agreed with your stipulation, you don't need
11 to have this hearing that we're having today."
12 Right?

13 And the circuit -- and the DCA said, "No,
14 no, no. The statute is pretty clear, this judge
15 has got to -- got to -- got to have this hearing
16 and has to make determinations that are set forth
17 in the statute."

18 But after it said that, after the Court said
19 that, the Court went on to point out some things
20 to future courts.

21 First of all, in the highlighted portion
22 there, it says, "The Growth Management Act
23 requires local government comprehensive plans
24 protect and conserve natural resources, including
25 rivers, fisheries, wildlife, and marine habitat.

1 "Section 163.3184 sets forth part of the
2 process designed to give these broader interests
3 by establishing notice, participation, and state
4 review requirements for adoption or amendment of
5 local comprehensive plans.

6 "Section 163.3184 directly serves the public
7 interest in assuring that robust public
8 participation in the land planning process and
9 in -- and in ensuring compliance with all local
10 plan amendments with state law. These interests
11 are intertwined because this section relies upon
12 active public participation to ensure local plan
13 amendments comply with state law."

14 The Court went on in this -- and that's --
15 that's, your Honor, why we have noticed public
16 hearings and what we did in this, in order to
17 include the public in this decision.

18 The Court went on, on the last page of that
19 decision, to say, "Oh, and by the way, the Bert
20 Harris Act can trump the -- the statute that
21 requires all zoning activities to be in compliance
22 with the comprehensive plan."

23 Your Honor, the evidence will show that we
24 have undertaken a legislative act. We have
25 considered the litigation risks. We have entered

1 a settlement agreement. The burden of proof is,
2 therefore, somewhat differential to the County and
3 to the landowner. It is one where a legislative
4 act is to be upheld unless it is shown to be
5 arbitrary or capricious.

6 Thank you, your Honor.

7 We ask that this be approved. And, as
8 Mr. Moore said, we have some -- a series of
9 witnesses to present.

10 THE COURT: Thank you.

11 Mr. Grosso, you may.

12 MR. GROSSO: Thank you, your Honor.

13 THE COURT: And I don't think -- I don't
14 know if we have ever had the pleasure. These
15 other two gentlemen, I have met a few times over
16 the years. And for fair game, the only thing I
17 ever do is look up what the Florida Bar says, and
18 if you have a website, look at -- look you up on
19 the website. So I understand that this is not
20 your first time in one of these cases.

21 MR. GROSSO: Thank you, your Honor. It's
22 good to meet you.

23 THE COURT: Thank you.

24 MR. GROSSO: Appreciate the warm welcome.

25 On behalf of Mr. Hill and Mr. Kleeger, the

1 Bert Harris Act establishes very clear limitations
2 here.

3 Let me -- let me take, as a point of
4 departure here, counsel's discussion for you about
5 the -- the land use planning law, the
6 comprehensive plan amendment. You know, if local
7 government wants to entertain a major change to
8 its comprehensive plan, and which in this case
9 severely limited the kinds of uses and development
10 and density in this really important protected
11 area, the groundwater recharge area -- if the
12 local government wants to make those kinds of
13 policy changes, it has to go through the process
14 under the Growth Management Act, Community
15 Planning Act now. It must send a proposed
16 amendment to the state, all the state
17 environmental agencies, DOT, water management
18 district, DEP, Department of Agriculture,
19 Department of Economic Opportunity. They review
20 that against the standards in the law, and they
21 will provide extensive feedback and comments and
22 perhaps objections based on environmental
23 characteristics, potential problems and issues
24 with changing a plan to substantially increase
25 what -- the amount of development that can happen

1 in an area.

2 The Harris Act settlement cuts all of that
3 out.

4 The other thing the Harris Act settlement
5 does is, when those comprehensive plans exist and
6 they're in force, the law requires strict
7 compliance with those comprehensive plans. A
8 development order is approved that may violate
9 that comprehensive plan, and -- and folks like my
10 clients have broad standing, liberal standing, to
11 challenge those development orders to enforce that
12 comprehensive plan.

13 When a Harris Act settlement is made and is
14 brought before your Honor for validation, then
15 that validation, if it happens, means that that
16 massive change to the comprehensive plan is
17 preapproved now by the Court. It doesn't have to
18 be -- go through that typical state review and
19 objection process.

20 It means, then, that comprehensive plan
21 policies and the requirements that my clients
22 otherwise could have enforced have now been
23 judicially blessed by the Harris Act settlement,
24 and my clients and folks like them would no longer
25 have the ability to enforce that comprehensive

1 plan, because the Harris Act settlement, upon
2 judicial validation, has now judicially authorized
3 the approval of development that does violate the
4 comprehensive plan.

5 That short-circuiting of those requirements
6 is why the Harris Act says a claim in the local
7 government can't just settle a Harris Act claim,
8 they have to bring it to a Court.

9 And there are clear standards here. The
10 first standard is that the settlement is limited
11 to the property that was the subject of the Harris
12 Act claim. And it is a fundamental issue that we
13 have raised here that the Harris Act claim is
14 brought related to 4,000-some acres and then come
15 out the other end with a settlement agreement, and
16 the settlement agreement purports to waive the
17 comprehensive plan and all these rules for an
18 additional 2,000-plus acres. We believe
19 categorically that is not allowed by the Harris
20 Act. That's one of the -- that's the first
21 fundamental clear standard, that the Court is not
22 required to defer to anyone and -- and is here to
23 enforce that law.

24 The next standard that the Harris Act
25 establishes is that -- remembering that there are

1 otherwise strict -- strict compliance requirements
2 with comprehensive plans. The Harris Act allows a
3 very limited waiver from comprehensive plans and
4 their implementing Land Development Code only to
5 the extent necessary to avoid violating a
6 claimant's Harris Act rights. And the Harris Act
7 rights, your Honor, in turn, are to be free from
8 undue burdens.

9 Now, counsel, I believe, for Corkscrew was
10 correct to say that, when you read the Harris Act,
11 it does say we intend -- "This law intends to
12 grant landowners more rights than they might have
13 otherwise had under constitutional takings law."
14 That's what it says.

15 When you read the definition of inordinate
16 burden, it's clear, however, that the same factors
17 under the statute that a Court, such as yourself,
18 is required to look at to determine whether or not
19 there is an undue burden, they're exactly the same
20 factors that the cases, Florida and United States
21 federal courts, have historically used to apply to
22 constitutional taking claims. So the situation
23 with the Harris Act, in terms of its undue burden
24 standard, is the exact same factors are to be
25 considered to determine undue burden versus

1 constitutional taking.

2 Yes, the Harris Act says, "We mean to grant
3 some additional rights to landowners," but it
4 doesn't tell you how much. It's very ambiguous
5 there. And there's scant case law that
6 describes -- for us to follow how much more
7 property right the Harris Act has granted. But
8 when you consider the terms of the Harris Act,
9 when you consider its clear limitations to the
10 real property that was the subject of the Harris
11 Act claim, when you consider that the waivers are
12 limited only to the extent necessary to avoid an
13 undue burden -- it's not just any burden, it's
14 undue burden that is disproportionally requiring a
15 landowner to bear an adverse effect beyond the
16 general public.

17 When you also consider, your Honor, that
18 laws like the Bert Harris Act, which are a
19 derogation of common law, sovereign immunity are
20 always to be narrowly construed, not liberally,
21 I -- I think it is clear that it's important for
22 the Court in this case to ensure that the amount
23 of development, the relief to be granted by the
24 settlement agreement, does not go one inch beyond
25 that which is required to prevent an undue burden

1 on this landowner.

2 And we would submit that the amount of
3 development rights to be granted by this
4 settlement agreement far exceeds what's allowed by
5 the Lee County Comprehensive Plan, goes well
6 beyond that which would be an undue burden on the
7 landowner of something substantially less, very
8 substantially less than the settlement agreement
9 purports to allow would avoid an undue burden on
10 this landowner.

11 This is -- they talk about, then, procedure
12 in this case. This is a dec action. The Court
13 is, like in any dec action, to make findings of
14 fact based on the preponderance of evidence. This
15 is not -- it is not our position at all that this
16 is some sort of cert or appellate-type review of
17 what the local government did below. The joint
18 petitioners need to demonstrate to you
19 evidentiary-wise today that the standards I have
20 talked about are met and the protections put in
21 the law are not exceeded here.

22 That is to -- and the reason that validation
23 step in the process -- the reason we're here is to
24 make sure, as the Chisholm case talks about, that
25 the -- a settlement under the Harris Act is not

1 used as a vehicle to allow development that
2 otherwise under state law, otherwise under the
3 local comprehensive plan, could never be allowed.
4 And that's why it's an important part of the
5 process that the Court must ensure that those
6 standards are met.

7 And with that, your Honor, we appreciate the
8 opportunity to be here and to question witnesses
9 and to make legal argument, and thank you.

10 THE COURT: You're welcome.

11 Do you need a break?

12 THE COURT REPORTER: I'm fine, thank you.

13 THE COURT: Okay. As we all know, one of
14 the most important people in the room is the
15 reporter, so whenever you need a break, let us
16 know.

17 But she said she's okay. Let's begin.

18 MR. MOORE: Thank you, your Honor.

19 Could we just offer the exhibit book into
20 evidence? It's exhibits 1 through 30. I have
21 provided counsel with a copy.

22 MR. GROSSO: No objection.

23 THE COURT: Exhibits 1 through 30 are
24 admitted.

25

1 (Petitioner's Exhibit Numbers 1 through 30
2 were admitted into evidence.)

3 MR. BARTLETT: Your Honor, the County calls
4 Michael Jacob.

5 Thereupon,

6 MICHAEL JACOB,
7 a witness herein, called by Counsel for Joint
8 Petitioners, having been first duly sworn, was examined
9 and testified as follows:

10 THE WITNESS: Yes.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. BARTLETT:

14 Q Do you have one of the exhibit -- please
15 state your name. I'm sorry.

16 A Good morning.

17 Michael Jacob.

18 Q And what is -- where do you work, Mr. --

19 A I'm a deputy county attorney with the Lee
20 County Attorney's office.

21 Q How long have you held that position?

22 A I have been deputy for -- since 2017.

23 Prior to that, I was a section chief for
24 Land Use Division since 2013. I have been with the
25 County since 2006.

1 Q Okay. Are you familiar with the various
2 Corkscrew Grove litigations?

3 A Yes, sir.

4 Q Can you give a -- let's -- let's narrow it
5 down. The dec action and the Bert Harris case. Can you
6 give just a brief summary of the dec action and the Bert
7 Harris Act case?

8 A Yes. The property owners filed the dec --
9 the dec action, which included two counts. One was for
10 declaratory relief, requesting that Judge Fuller find
11 that the County's denial of rezoning was inconsistent
12 with the comp plan.

13 The second count of that was for injunctive
14 relief, requiring the County to go forward with a
15 limited hearing to review conditions of approval to
16 approve a mine.

17 Q Okay. And then the Bert Harris claim?

18 A The Bert Harris claim was based off of the
19 board's denial of the 2019 zoning request. I don't
20 remember the zoning resolution number, but it was a 2019
21 case, or claim.

22 And the Bert Harris claim sought \$63 million
23 in damages based on the fact that the board denied the
24 mining use.

25 MR. BARTLETT: Your Honor, can I approach

1 and --

2 THE COURT: You may.

3 MR. BARTLETT: -- hand him one of the
4 binders?

5 THE COURT: Sure.

6 MR. BARTLETT: Sorry. I thought it was
7 already up there.

8 BY MR. BARTLETT:

9 Q Can you turn to Exhibit Number 9, please?

10 A Yes, sir.

11 Okay.

12 Q Do you recognize Exhibit Number 9?

13 A Yes. This is the cover letter that goes
14 with the Bert Harris claim.

15 Q Okay. And, in fact, attached to that letter
16 is the appraisal --

17 A Correct. This is --

18 Q -- substantiating the \$63 million claim?

19 A This is the full Maxwell Hendry Simmons
20 appraisal and claim letter that we received, looks like
21 back in 2020.

22 Q Okay. And as part of this approval, did you
23 attempt to identify the statutes that were possibly
24 affected by the settlement?

25 A Yes, we did.

1 Q All right.

2 MR. BARTLETT: Your Honor, may I hand --

3 THE COURT: You may.

4 MR. BARTLETT: -- Mr. Jacob --

5 THE WITNESS: Thank you.

6 MR. BARTLETT: And I'll give your Honor a
7 copy.

8 THE COURT: Thank you.

9 MR. BARTLETT: It's the law. But it's
10 easier to refer to it without having to look up
11 all the numbers.

12 BY MR. BARTLETT:

13 Q And can you identify for me which statutes
14 were possibly affected by this settlement?

15 A The -- the statutes that are at issue are,
16 starting sort of in reverse here, 163.3194, 163.3184,
17 and 125.66.

18 Q Can you just summarize what the content of
19 each of those statutes --

20 A Yes, sir.

21 For the County to issue a development order,
22 development agreement, it must be consistent with the
23 comprehensive plan. 163.3194 provides the requirement
24 that development orders must be consistent with the
25 comprehensive plan.

1 3184, 163.3184, provides the process for
2 amending the comprehensive plan to allow for development
3 orders, development agreements.

4 And then within 3184, you have a number of
5 procedures, notice requirements, public hearing
6 requirements. And those relate back to 125.66, which is
7 the process for adoption of an ordinance. Lee Plan
8 amendments are adopted by ordinance, not resolution, so
9 that's why 125.66 is important.

10 Q Now, have the parties made an attempt to
11 comply with the public interest served by these
12 statutes?

13 A Yes. The parties have complied with public
14 interest of these.

15 Q Okay. Can I refer you to exhibits 13, 16,
16 and 18, to help you explain your answer, please?

17 A Yes, sir.

18 I'm at 13. You said 16 and 18?

19 Q Yes, sir. They didn't get side by side.

20 A Okay, I see where we are.

21 13, 16, and 18 are the affidavits of
22 publication provided by The News-Press. After every
23 notice, it's prepared and presented to the News-Press.
24 And once it's run, they issue a notice of -- or an
25 Affidavit of Notice of Publication. That's what these

1 are.

2 Q Okay. And these notices, these affidavits,
3 refer to what?

4 A Well, the -- the first one, which is the
5 hearing before the hearing examiner --

6 Q Okay. And what date was that?

7 A It was -- the publication or the actual
8 hearing?

9 Q The hearing itself.

10 A Oh. The hearing itself was May 17, 2022.
11 And the date of publication was May 6, 2022.

12 Q Okay. That was Exhibit 13?

13 A Yes, sir.

14 Q All right. And Exhibit 16, same question.

15 A This would be the notice of publication for
16 the first board adoption -- or hearing. This was June
17 what? June 7th? Yes, June 7th. With a date of
18 publication on May 27, 2022.

19 Q Okay. And, likewise, Exhibit Number 18?

20 A Yes. This is the second final adoption
21 hearing for the development agreement that was before
22 the board. That was held on June 22nd. Let me -- yes.
23 And it was -- notice of publication was June 10th.

24 Q Okay. And in between those exhibits, can
25 you identify those starting with -- I think it's Exhibit

1 Number 14. What is Exhibit Number 14?

2 A As part of our process, we had court
3 reporters at each of the hearings, and the Exhibit 14 is
4 the transcripts from the hearing examiner hearing on
5 May 17th.

6 Q Can you describe for the Court exactly what
7 a hearing examiner is and does?

8 A In Lee County, the hearing examiner -- we
9 have two of them. They review quasi-judicial
10 proceedings. They also are responsible for code
11 endorsement. In the zoning context, they review
12 applications for development orders. They also review
13 staff recommendations, the applicant's recommendations.
14 And then they compare that and relate it to whether it's
15 consistent with the comprehensive plan and the Land
16 Development Code and then issue a recommendation in
17 most -- certain cases. Sometimes they issue the actual
18 final decision.

19 Q Is this a public hearing?

20 A They're all done at public hearings.

21 Q Is the public invited to comment and testify
22 at those hearings?

23 A They are -- they are free to come in and
24 testify. The hearing examiner hearing process allows a
25 public participant to provide as much evidence and

1 testimony and they wish, as long as they don't get
2 repetitive or they're abusive in some nature.

3 Q Was the public actually -- did the public
4 actually testify at that hearing?

5 A Yes. We had a number of public participants
6 that either testified or were present in the hearing
7 room.

8 Q Okay. Are there -- I think it's Exhibit
9 Number 15.

10 What is 15?

11 Oh, yeah. Go ahead and tell us what number
12 15 is. Do you recognize that document?

13 A I do. At the conclusion of the public
14 hearing with the hearing examiner, the hearing examiner
15 issued a recommendation with regards to the local
16 regulations in the Lee Plan and the settlement agreement
17 and the --

18 Q Okay.

19 A Reviewed the public interest served by
20 those.

21 Q Okay. And then Exhibit Number 17?

22 A This is the transcripts from the first
23 hearing before the board of county commissioners.
24 Again, this was public -- the publication in the
25 News-Press and ultimately --

1 Q Okay. And -- and, likewise, Exhibit
2 Number 19?

3 A Yeah. This is the second and final hearing
4 transcripts for the board of county commissioners.

5 Q Okay. Was the public invited to those board
6 hearings?

7 A Yes. We were invited both through the
8 public notice and ultimately with prior letters that we
9 sent to residents in the area.

10 Q Okay. Explain what you mean you -- "prior
11 letters."

12 A In May, beginning of May, our office, in
13 conjunction with the petitioners, sent out First Class
14 mail letters to all the residents within 750 feet of the
15 property boundaries.

16 As you indicated earlier, it was five miles,
17 so I'm not sure how many hundreds of people received
18 direct mailing.

19 We sent two, actually. The first one
20 provided that one -- the June 7th date was actually
21 June 8th. We had to switch -- we had to change that, so
22 we sent out two actual letters identifying when the
23 public hearings, all three public hearings, would be
24 held. So this was in addition to the actual publication
25 notice.

1 Q Okay. Did the public attend and testify at
2 the BOCC hearing?

3 A Yes, sir.

4 Q Okay. We were previously talking about the
5 action for declaratory relief. Can you -- I think you
6 have already done it a little bit. Exhibit Number 10 is
7 the order and -- summary judgment order. Can you
8 describe the outcome of the circuit court case, as
9 it applies to the County?

10 A I'll do my best.

11 The discussions we have had in all the
12 public hearings associated with this, this dec -- this
13 dec action, more importantly the order that is in here
14 under tab 10, the summary judgment order is, in our
15 opinion, catastrophic to both the Lee Plan and the
16 DR/GR, for a number of reasons that are irrelevant to
17 this case.

18 From the standpoint of the actual case, the
19 Court's order requires, in favor of the applicant --
20 found first that the mining use that was denied was, in
21 fact, a permitted use and, in fact, was -- the County's
22 decision to deny that was inconsistent with its comp
23 plan.

24 Unfortunately, it went even further than
25 that. And the Court's order decided that -- in a

1 response to the injunction, that within a short,
2 reasonable time, whatever that means, the County was
3 required to hold a public hearing to consider conditions
4 of approval for the mine request that was sought in the
5 application.

6 Unfortunately, the impacts of this decision
7 could far exceed what -- just this case. And I'm not
8 sure how much you want to get into that.

9 But the ultimate result is, if a use like
10 mining is identified in the Lee Plan, under Judge
11 Fuller's decision, it would be inconsistent for the
12 County to deny that request. I thought for the moment
13 that's for the entire DR/GR, where we'll -- we have
14 identified the actual uses that may be permitted, may be
15 permitted, under the Lee Plan.

16 Q Okay. Exhibit Number 9 is the Bert Harris
17 claim.

18 A Yes, sir.

19 Q Can you -- can you explain the risk that the
20 County is dealing with, with respect to the Bert Harris
21 claim?

22 A Taking into consideration the summary
23 judgment decision and the potential litigation involved
24 with the Bert Harris claim, the County, from a liability
25 standpoint, could be in the area of 63 to a

1 hundred million -- we haven't done the math exactly,
2 because we don't know when the case will be over. But
3 at least \$63 million to the property owner that would
4 ultimately still then be able to develop the property in
5 another fashion, but ultimately the risk is there. The
6 conditions of approval of the settlement take into
7 consideration the risks. And that's all I got.

8 Q Okay.

9 MR. BARTLETT: Mr. Moore, do you have
10 anything?

11 MR. MOORE: Just a couple.

12 CROSS-EXAMINATION

13 BY MR. MOORE:

14 Q Mr. Jacob, if you'd look at Exhibit 14,
15 which is the transcript of the May 17th public hearing.

16 A Yes, sir.

17 Q You note in there -- on page 3, on the
18 index, do you see a list there of public comments?

19 A Page 3? Yes, sir.

20 Q Individuals participating --

21 A I do.

22 Q -- from the public? There are three.

23 Do you see any of the intervenors, Mr. Hill
24 or Mr. Kleeger?

25 A No, sir.

1 Q Okay. If you look at Exhibit 17, which is
2 the first hearing transcript, June 7, 2022, page 3 --

3 A Yes, sir.

4 Q -- the index.

5 With regard to public comment, there's some
6 more public there that attended that. Would you look at
7 that carefully, please, and tell me if either of the two
8 current intervenors were public comments at that
9 hearing?

10 A No, the intervenors didn't participate in
11 any of the proceedings.

12 Q And then finally, Exhibit 19, which is the
13 transcript of the June 22, 2022, board hearing.

14 A Yes.

15 Q And ask you the same question with regard to
16 public comment listed on the index, page 3.

17 A Yes, sir, I'm looking at it. And, again,
18 the intervenors did not participate at all.

19 MR. MOORE: All right. That's all I have.

20 Thank you.

21 THE COURT: Mr. Grosso, you may.

22 MR. GROSSO: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. GROSSO:

25 Q Good morning, Mr. Jacob.

1 A Good morning, sir.

2 Q This proceeding that we're in right now, at
3 this moment, this is a dec action, correct? Declaratory
4 judgment action?

5 A As far as this right here?

6 Q Yes.

7 A I -- I don't really know what you call it,
8 if it's a dec action. I know the statute says we have
9 to ask the -- your Honor to issue a decision.

10 Q Do you know that -- would you agree this is
11 not a certiorari action, where the Judge's ruling is
12 based on a -- just reviewing the record below?

13 A I'd agree with that.

14 Q Okay. And so there's nothing in the Harris
15 Act that establishes a prerequisite that my clients had
16 shown up and argued to the county commission below,
17 correct?

18 A No.

19 Q When the Harris Act claim was brought, whose
20 job was it on behalf of the County to evaluate its
21 merit?

22 A If you look to your left, the individuals
23 right there, outside counsel that we hire for eminent
24 domain, some eminent -- eminent domain cases, and Bert
25 Harris cases.

1 Q Okay. And at any point in time, did the
2 County's lawyers submit in writing a legal analysis that
3 concluded that the County was likely to lose the Harris
4 Act claim?

5 A I don't think we have submitted anything in
6 writing.

7 Q Whose job was it at the County level to
8 evaluate the appraisal that was attached to the Harris
9 Act pre-claim?

10 A At the County level?

11 Q Yes, sir.

12 A At this point, we have County lands, we have
13 County attorney's office, we have outside counsel. And
14 then ultimately, if it goes to court, we would have
15 presumably some sort of valuation and appraisal
16 ourselves.

17 Q So the appraisal that was attached to the
18 Harris Act claim claimed that the denial of the rezoning
19 petition resulted in a \$63 million loss for the
20 applicant, correct?

21 A That's correct.

22 Q And did the County have its own independent
23 appraisal done to -- to question the applicant's
24 appraisal?

25 A No.

1 Q So the County took the applicant's appraisal
2 at face value and said, "We'll just agree with that,"
3 right?

4 A No. We haven't agreed with that number at
5 all.

6 Q Okay. So it's entirely possible, as you and
7 I sit here this moment, that that appraisal was overly
8 generous to the landowner's claim, isn't it?

9 A It could be.

10 Q Whose job was it at the County level to
11 determine that the amount of development contemplated by
12 the settlement agreement was the amount necessary to
13 avoid an undue burden on the claimant?

14 A Everyone that worked on the project, from
15 myself to outside counsel to ultimately County staff, we
16 all looked at it.

17 Q Is there anywhere a written analysis that
18 concludes that granting development rights, anything
19 less than what's in the settlement agreement, would be
20 an undue burden on this claimant?

21 A No.

22 Q Was there one person at the County who had
23 the responsibility of concluding that's what it takes,
24 10,000 homes, several hundred million square feet,
25 240-room hotel? Is there anyone whose job it was to say

1 that's what is needed to avoid a Harris Act violation?

2 A Like I said, we all looked at the case. We
3 all evaluated it from our office. And outside counsel
4 evaluated -- valuated the risks associated with a
5 \$63 million lawsuit. And the product that you have seen
6 is what's the result of the settlement agreement.
7 Nobody has made a formal determination, until the Court
8 does, that their claim is \$63 million, \$50 million or
9 \$100 million.

10 Q And you have brought today no contrary
11 appraisal that the judge can use to make that
12 determination, correct?

13 A I don't have an appraisal.

14 Q And you -- the County has not brought today
15 any written analysis by either a planner or an economist
16 that granting something less than is in the settlement
17 agreement would be an undue burden on the landowner,
18 correct?

19 A I don't -- I don't think -- I don't think
20 so, no.

21 Q And the Harris Act claim, it was for 4,203
22 acres, correct?

23 A I -- let me -- let me double check the
24 acres. It's something like that.

25 Is that 10, 14?

1 MR. HINDS: Nine.

2 THE WITNESS: Nine?

3 Yes, you're correct.

4 BY MR. GROSSO:

5 Q The settlement agreement grants development
6 rights, in excess of what the comprehensive plan allows,
7 for 6,676 acres; is that right?

8 A The settlement agreement includes over 6,000
9 acres.

10 Q Did I -- did I misstate when I said 6,676?

11 A No, sir. I just don't know the exact
12 number. And I -- I don't even think I heard the number
13 you used.

14 Q Okay. If you look at the Exhibit 5 in
15 y'all's binder, can you -- the colored map --

16 A Yes, sir.

17 Q -- that shows the piece averse.

18 MR. GROSSO: And, your Honor, if I might use
19 the -- what I believe is an accurate blowup of
20 that, that map.

21 BY MR. GROSSO:

22 Q Could you point out to our judge -- if I may
23 step -- I have got a -- is this -- with the visual I'm
24 looking, does that look like an accurate depiction of
25 your Exhibit 5 that you're looking at?

1 A No. I mean, it's still an aerial, sure, but
2 I don't know what all the colors are.

3 Q Okay.

4 A I know -- they're different.

5 Q All right. Well, let's use your Exhibit 5,
6 and I'll see if I can point out the dissimilarities.

7 The Exhibit 5 that you have --

8 MR. GROSSO: I -- I think I've got it --

9 THE COURT: Okay.

10 MR. GROSSO: -- if you could follow along.

11 BY MR. GROSSO:

12 Q The Exhibit 5 shows the property that's
13 subject to the settlement agreement, as -- with the
14 yellow border; is that right?

15 A Correct. It looks like the red on your map.

16 Q Thanks.

17 Okay. And the 2,000 acres-plus that were
18 not part of the initial Harris Act claim, will you point
19 out to the judge on your Exhibit 5 where those are.

20 A Let me take it out.

21 If you look generally from here through to
22 here, the southern connections.

23 THE COURT: So there appears to be the
24 yellow border that is south of I-75 and a little
25 bit north of I-75, correct?

1 THE WITNESS: Corkscrew Road?

2 THE COURT: Corkscrew Road, I'm sorry.

3 THE WITNESS: Yes, sir.

4 THE COURT: Corkscrew.

5 THE WITNESS: Yes.

6 THE COURT: Okay. So --

7 THE WITNESS: All of this.

8 THE COURT: And the majority of the
9 additional property is south of Corkscrew Road,
10 but there's also some that's north of Corkscrew
11 Road, correct?

12 THE WITNESS: Correct.

13 THE COURT: Just trying to establish a
14 little bit into the record --

15 THE WITNESS: Yeah.

16 THE COURT: -- instead of just pointing.

17 THE WITNESS: Yeah.

18 MR. GROSSO: Would it be appropriate if I
19 could ask --

20 THE COURT: Sure.

21 MR. GROSSO: -- the witness to maybe draw a
22 circle around that?

23 THE COURT: Sure.

24 THE WITNESS: Want me to do it down there,
25 or --

1 MR. GROSSO: Let's use the exhibit that you
2 and your Honor have been using.

3 THE WITNESS: Wrong exhibit.

4 MR. GROSSO: May I approach, your Honor?
5 I'm sorry.

6 THE COURT: You may.

7 MR. GROSSO: May I?

8 THE COURT: Sure.

9 THE WITNESS: Just going to draw a big
10 circle.

11 MR. GROSSO: Use that.

12 THE WITNESS: You got a clean copy for the
13 judge?

14 THE COURT: I have --

15 THE WITNESS: Okay. I just ruined it.

16 BY MR. GROSSO:

17 Q Okay. And would you -- could I ask you to
18 write the 2,000-plus acres, just to --

19 A I don't know what the acreage is, but -- you
20 want me to write 2,000-plus?

21 Q 2,000-plus.

22 A Okay.

23 Q Okay. Thank you. Steal my pen back.

24 Then could you explain to the -- to the
25 judge -- the property that's subject to the settlement

1 agreement is -- appears to be very close to the
2 Corkscrew Swamp Sanctuary. Could you just briefly tell
3 the judge what the Corkscrew Swamp Sanctuary is?

4 A Only based on -- I don't really know what
5 they do. It's an organization. It's preservation,
6 conservation lands to the south.

7 Q And do you know the -- the answer to this
8 question? In the absence of the settlement agreement,
9 how many homes could be built on this -- this 6,000
10 acres that are subject of the settlement agreement?

11 A I don't. There are people that will testify
12 that can.

13 Q The hearing examiner process --

14 A Yes, sir.

15 Q The hearing examiner's report explicitly
16 stated that she did not analyze the settlement agreement
17 for -- other than for the public interest test, correct?

18 A Correct.

19 Q So the issues that Judge Shenko needs to
20 rule upon in terms of, is the relief necessary to avoid
21 an undue burden, that's not an issue that she addressed
22 or made any findings on, correct?

23 A That's correct.

24 Q And the other issue that Judge Shenko has to
25 rule on in terms of whether it's appropriate to include

1 the -- the 2,473 acres that aren't part of the Harris
2 Act claim, that's not an issue she addressed either,
3 correct?

4 A I -- I -- restate that. I don't know what
5 you --

6 Q Sure. Sorry.

7 The hearing examiner did not make findings
8 on, or rule on, the question of whether it was
9 appropriate to include all 6,676 acres as part of the
10 settlement agreement?

11 A I think what you're going for is the
12 answer's no, but the hearing examiner evaluated the
13 entire 6,000 acres to make a determination or
14 recommendation with regards to the public interest
15 served over the entire project.

16 Q Okay. The -- did -- were you here this
17 morning when I made my opening remarks to Judge Shenko?
18 Did you hear them?

19 A I was here, yes.

20 Q Okay. And do you agree with what I said
21 about the statutory requirements for local governments
22 amending their comprehensive plans?

23 A You said a lot. So to refresh my memory,
24 the -- the County had -- there is a process under 31 --
25 163.3184 that has a whole process set up depending upon

1 the type of application you have.

2 Q Okay. And that process involves review by
3 state environmental, transportation, and agricultural
4 agencies, right?

5 A Correct.

6 Q Okay. And that process was not used as part
7 of arriving at the settlement agreement, was it?

8 A No. I don't know that there's an
9 application for review of a settlement agreement.

10 Q Okay. So the County hasn't gone through the
11 formal comp -- state review of a comp plan amendment to
12 approve of this settlement agreement development, right?

13 A No. Had we done that, we wouldn't be here
14 today.

15 Q Okay. And the lawsuit, the Exhibit 10 that
16 the County had lost, just --

17 A Yes, sir.

18 Q -- ask you a couple questions there.

19 Now, the end result of that ruling was that
20 the landowner was entitled to have a mining application
21 adjudged under the 2007 rules that applied to mining.
22 Is that the ruling?

23 A I -- I don't know. I don't know what you're
24 saying.

25 Q What -- what relief did the Court require?

1 A From the County to -- to -- after the order?
2 The County was required to pay fees and costs, and then
3 have a public hearing within a reasonable period of
4 time, and then -- if you want, I could read it. I have
5 done enough to read in the record, but it's in the
6 binder. Within a reasonable period of time, hold a
7 public hearing to determine conditions of approval for
8 approval of their mine application.

9 Q To be based on the rules that existed at a
10 certain period of time?

11 A Correct. And that was another reason -- or
12 point I had to make earlier that's even more -- based on
13 similar suited mining -- mining approvals under the 2007
14 time frame.

15 Q Okay. That -- that summary judgment order
16 did not require the County to approve 10,000 homes on
17 the property, did it?

18 A No.

19 Q It didn't require 700,000 square foot of
20 commercial development be approved, did it?

21 A No.

22 Q And it didn't require a 240-room hotel to be
23 approved, did it?

24 A No.

25 Q And it didn't require the County to approve

1 various ancillary uses that we see approved in this --
2 this settlement agreement, right?
3 A In this settlement, no.
4 Q Okay.
5 MR. GROSSO: Your Honor, that's all I have.
6 Thank you.
7 THE COURT: Any redirect, Mr. Bartlett?
8 MR. BARTLETT: Just briefly, your Honor. If
9 I may stay here?
10 THE COURT: Sure.
11 REDIRECT EXAMINATION
12 BY MR. BARTLETT:
13 Q Mr. Jacob, you referred to Exhibit Number 9.
14 A Yes, sir.
15 Q The appraisal that's attached there about, I
16 don't know, six or eight pages in, do you recognize the
17 name of the company who provided that appraisal?
18 A Very much so, yes.
19 Q And why "very much so"?
20 A We use them all the time.
21 Q Thank you.
22 MR. BARTLETT: No further questions, your
23 Honor.
24 THE COURT: Any questions, Mr. Moore?
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RE CROSS EXAMINATION

BY MR. MOORE:

Q Just with regard to the exhibit Mr. Grosso was showing you as compared to our Exhibit 5 --

A Yes, sir.

Q -- I noticed over here to the north of Corkscrew Road, to the west of the subject property, kind of a delicate, shaded, muted gray, there's some long rectangular areas. What does it really show on our Exhibit 5?

A Troyer mine.

Q And does our exhibit also show the Bell Road mine?

A Yes, sir.

Q And where is that in comparison to the subject property?

A If you look to the north along State Road 82, it is approximately in between the muted gray and the red outline.

Q Is that indicated on Mr. Grosso's --

A It's not.

MR. MOORE: Okay. That's all I have.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Thank you.

1 (Off-the-record discussion.)

2 THE COURT: Marianne, would you like a
3 break?

4 THE BAILIFF: Yes, we do need it. We have
5 some more media outside. I have to try to finagle
6 room in here. If we could just get a 5-minute
7 break?

8 THE COURT: Sure. We'll take a brief
9 recess, 5 minutes.

10 (A brief recess was taken.)

11 THE COURT: Okay. Judges here in Lee County
12 don't have a whole lot of eminent domain or Harris
13 Act cases, and there's more public involvement in
14 this one than people anticipated when we started
15 the morning. This was the only space available.
16 I have been told there's a bigger courtroom
17 available. We are going to move to the bigger
18 courtroom whenever the bailiff tells me that it's
19 available, which will be shortly. And that will
20 allow the public access that should be given, but
21 we just don't have room in this small space.

22 And then, second, the other issue I was
23 thinking was there's so many expert witnesses, by
24 the time we move, get set up, I doubt it's going
25 to be concluded today and it will probably need to

1 be continued to -- probably need to be continued
2 to a later date, because I have afternoon
3 hearings. But I do want to give folks the access
4 that, frankly, they're entitled to, but we had no
5 idea there would be this many people here.

6 So I'm waiting to hear from my bailiff,
7 whenever she gives me the green light, when we're
8 moving, which should be shortly, and where it will
9 be.

10 THE BAILIFF: I have to clear the room, so I
11 have other deputies going up there clearing the
12 room so that they can open it up for me.

13 (Off-the-record discussion.)

14 (A brief recess was taken.)

15 THE COURT: Apologized earlier to everyone.
16 I was assigned a particular courtroom. There
17 weren't -- there was not enough space. I rely on
18 my bailiff as far as the security of the
19 courtroom. As soon as the larger courtroom became
20 available, then we moved.

21 And we're going to continue on with the
22 hearing, but we will be stopping at the noon hour
23 and then reconvening at a later date so that we
24 can give this matter the time it needs. And next
25 time it's scheduled, we'll make sure we have a

1 bigger courtroom.

2 Mr. Moore, would you call your next witness,
3 please.

4 MR. MOORE: Yes, your Honor.

5 Daniel DeLisi.

6 THE CLERK: Sir, if you would stop and raise
7 your right hand to be sworn.

8 Thereupon,

9 DANIEL DiLISI,

10 a witness herein, called by Counsel for Corkscrew
11 Grove Limited, having been first duly sworn, was
12 examined and testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Thank you. You may be seated.

15 THE COURT: You may proceed.

16 MR. MOORE: May it please the Court?

17 DIRECT EXAMINATION

18 BY MR. MOORE:

19 Q Would you give your full name and business
20 address for the record, please.

21 A My name is Daniel DeLisi. My business
22 address is 520 27th Street, West Palm Beach, Florida.

23 Q And what is your profession, sir?

24 A I am a land use planner and a water policy
25 consultant.

1 Q And would you give the Court just a brief
2 summary of your education and your work experience in
3 the field of land planning?

4 A Certainly.

5 So, I -- I received my master's in city
6 planning from MIT. I also received a certificate in
7 urban design at MIT. And through my course work -- I
8 did a lot of course work on alternative dispute
9 resolution.

10 I have been practicing as a land use planner
11 and in the water policy arena in Florida since 2000.
12 Moved down in September of 2000; worked as a consultant;
13 worked for a large developer of master planned
14 communities for a period as their director of planning.

15 I had my own company based in downtown Fort
16 Myers, DeLisi Fitzgerald, a planning and engineering
17 company, for about seven years.

18 I worked as the chief of staff for the
19 South Florida Water Management District in West Palm
20 Beach, which covers this area geographically. And I was
21 appointed to the governing board to serve as this area's
22 representative on the South Florida Water Management
23 District governing board.

24 And since I left the district in 2015, I
25 have had my own practice.

1 Q Are you familiar with the Lee County
2 Comprehensive Plan otherwise known as the Lee Plan?

3 A I am.

4 Q And would this familiarity go to the various
5 versions, say, from the early 2000s or mid-2000s
6 forward?

7 A Yes. I have worked very intimately on both
8 the Lee Plan, processing amendments, writing portions of
9 it, since I moved down in 2000 and straight through till
10 today.

11 Q What is the DR/GR? What does that mean?

12 A That is the density reduction/groundwater
13 resource area. And I will just be clear. It's --
14 sometimes people confuse it and say "recharge." It --
15 it is "resource area."

16 And that was established in 1989 as a
17 settlement agreement with the Department of Community
18 Affairs, because at the time, the future land use map
19 was what we called over-allocated with density, and so
20 there needed to be an area of the county with less
21 density. So they -- a settlement with Lee County was to
22 reduce the density in this area.

23 The groundwater resource was tapped -- was
24 included because -- because some of the area within the
25 DR/GR included the County's wellfield, existing and

1 future. And so it was called the density
2 reduction/groundwater resource area.

3 Q Now, are you -- do you have the exhibit book
4 in front of you?

5 A I do.

6 Q I'll just direct you to a couple of things.
7 Starting with Exhibit 22, can you tell the
8 Court what that is?

9 A Exhibit 22, it -- it looks like a -- the
10 summary of -- of the planning study that was
11 conducted -- led off by Dover, Kohl & Partners back in
12 2008.

13 Q Kohl is K-O-H-L, for --

14 A Yes.

15 Q -- the court reporter.

16 Now, there's some excerpts that are attached
17 in here.

18 On the second page, it indicates names of
19 the project team for Dover Kohl. And do you see Kevin
20 Erwin Consulting there?

21 A I do.

22 Q And can you tell me what Kevin Erwin's
23 specialty was, why -- why he was selected as a
24 subconsultant?

25 A Yeah. Kevin Erwin specializes in ecology.

1 He's an ecologist. And so he was the environmental
2 planner on the team.

3 Q All right. The pages that follow discuss
4 the ecosystem integrity that must be retained within the
5 DR/GR.

6 And, by the way, I don't think we mentioned
7 how -- how large, roughly, is the DR/GR in terms of
8 acreage?

9 A It has varied over time, because there have
10 been comprehensive plan amendments to remove properties
11 from the DR/GR, but I would say roughly about -- I think
12 the 87,000 acres that was mentioned earlier is
13 approximately correct.

14 Q All right. Now, starting with what's on --
15 I guess it's Bates stamped 309, the lower right-hand
16 corner. The consultant lists the conservation
17 principles with regard to the DR/GR area and --
18 particularly. And the next page, the excerpt is
19 page 11. Will you explain to the Court what page 11
20 depicts?

21 A Just trying to make sure I get the page
22 numbers right, so --

23 Q It would be 311.

24 A 311, thank you.

25 So page 311. So there is a picture of

1 mining pits adjacent to wetland areas and then a
2 statement that they're incompatible.

3 And then on the lower picture, it depicts
4 the DR/GR on -- where it's located in the context of Lee
5 County, surrounding counties.

6 Q Is the -- are you familiar with the physical
7 location of the subject property?

8 A Yes, I am.

9 Q And does this map encompass where the
10 subject property is located?

11 A It does.

12 Q Where? Just in general terms.

13 A So if you look at that dotted red line, this
14 property is located towards the easternmost area of that
15 dotted red line, extending from State Road 82 down to
16 the southern area of that dotted red line.

17 Q And then the arrows on that page and
18 page 341, which follows, what -- what do those arrows
19 depict?

20 A It looks like those depict the direction of
21 flow. Yeah. And --

22 Q Of flow of water?

23 A Of water, yes.

24 Q Okay. And then there's a more specific one
25 on Bates stamp 342. And what do those purport to

1 demonstrate?

2 A Again, the direction of flow of water and --
3 and approximate flow ways, where water would flow
4 through.

5 Q What's the general direction, then, of the
6 water flow?

7 A It's -- so on our -- on the property that
8 we're talking about, it's generally north to south. It
9 varies in this area from northeast to southwest.

10 Q And let me ask you to turn to Bates stamp
11 352. What does the consultant depict there?

12 A This looks like a map of existing land uses
13 and then potential restoration areas. So you see mining
14 lakes as they existed in 2008 and then conservation
15 areas as they existed in 2008 and then potential for
16 restoration.

17 Q And are the restoration potential areas
18 listed in area -- in terms of priorities?

19 A They are.

20 Q Where is the subject property, if at all, on
21 this map?

22 A So the subject property is -- excuse me.
23 It's towards, again, the eastern area in the -- in this
24 dotted red outline. If you can identify Corkscrew Road,
25 there is a -- that easternmost blue area, that mining

1 lake. And then the property is on the north side of
2 that mining lake, the -- the east side and the south
3 side.

4 Q Okay. And --

5 A Generally.

6 Q Is that depicted as any particular
7 restoration priority?

8 A Yeah. It looks like -- and it's hard to
9 tell because of the gradience of the green, but it looks
10 like priority 1 and priority 2.

11 Q So that would be restoration for what
12 purpose?

13 A Ecological benefit, both flow ways and
14 habitat.

15 Q Now, Dover Kohl, who is the overall
16 consultant, submitted this -- according to page 1, would
17 that be in July of 2008?

18 A Yes.

19 Q All right. And who employed Dover Kohl?

20 A Lee County did.

21 Q All right. And was Dover Kohl's work,
22 including Mr. Erwin's work, utilized by Lee County
23 subsequently in any fashion?

24 A It was.

25 Q In what way?

1 A Lee County then processed and adopted an
2 amendment to the Lee County Comprehensive Plan to
3 generally implement the Dover Kohl study.

4 Q Now, are you familiar with the subject
5 property in terms of its geographic features?

6 A I am.

7 Q All right. Would you describe them, just in
8 general terms, as they're important to a land planner.

9 A So the property -- and to be clear, it's --
10 the initial 4,200-acre mining property is for a -- four
11 miles from north to south, but, again, there's an
12 additional roughly three miles, so we're looking at
13 about seven miles from north to south.

14 It's generally, topography, very flat. It's
15 mostly a citrus grove. There are some onsite wetlands,
16 but -- but the vast majority is simple farmland,
17 boundary to boundary, citrus, and then a drainage
18 system.

19 Q So a large part of the subject property is
20 an existing farmland? Is that right? North of
21 Corkscrew Road?

22 A Yes, it's all existing farmland.

23 Q Okay. Now, the intervenor's counsel showed
24 an exhibit, and then you -- I think Mr. Jacob said that
25 it wasn't exactly the same as our Exhibit 5. Will you

1 turn to Exhibit 5 in the book and tell me if --

2 MR. MOORE: Your Honor, can you -- well, you
3 have the --

4 THE COURT: I have it. Thank you.

5 BY MR. MOORE:

6 Q Did you prepare Exhibit 5?

7 A I did.

8 Q All right. And what does that depict?

9 A That depicts the property in yellow. There
10 is a hatched area that shows what the land swap property
11 is that is being taken in.

12 And then on the northeast section, along
13 State Road 82, is the property that's going to be
14 conveyed to Lee County that's not depicted in the hatch,
15 but that's on there within the yellow.

16 And then it depicts the surrounding land
17 uses.

18 So I show the mines that are approved.

19 Q Let me stop you there.

20 Along this slanted line that comes -- that's
21 slanted down to Corkscrew Road north -- southeast, is
22 that Alico Road?

23 A That is.

24 Q Okay. And what is the significance of Alico
25 Road with regard to mining?

1 A Alico Road is largely a mining corridor.
2 There's -- there's a lot of mines, and you can see them
3 on that aerial. There are a lot of mines along Alico
4 Road, that access Alico Road.

5 Q Do you see those marked on the intervenor's
6 exhibit?

7 A I don't see them on --

8 Q Are they -- on your Exhibit 5.

9 A They are, yes.

10 Q So the mines are in blue; is that correct?

11 A The mines are in blue.

12 Q All right. And then, for the record, what
13 mines, then, are in the vicinity of Southeast Lee
14 County, near the subject property?

15 A Well, you have the Bell Road mine that was
16 recently approved for lime rock extraction.

17 Q Is that adjacent to the subject property?

18 A It is.

19 Q Okay.

20 A There's the Titan mine on the south side.

21 Q Is that adjacent to the subject property?

22 A It is.

23 Q And when we talk about mines, what product
24 is mined?

25 A Lime rock.

1 Q What's lime rock used for?

2 A Roads, homes. Anything that requires a
3 structure.

4 Q Is there a demand for lime rock?

5 A Tremendous demand.

6 Q Okay. And just to the west of the subject
7 property?

8 A That's the Troyer mine approximately a
9 quarter mile from the site.

10 Q And I think we had -- we had mentioned it,
11 but just to make sure. The property in the yellow --
12 that in yellow, except for the crosshatch, south of
13 Corkscrew Road, is that owned by our client, Corkscrew
14 Grove?

15 A It is.

16 Q Okay. So all of this property, except for
17 the swapped parcels and the County parcels, is owned by
18 Corkscrew Grove Limited, right?

19 A Yes.

20 Q And then what's the green area to the south
21 and to the east?

22 A That is -- so that's the -- what we call the
23 Corkscrew Regional Ecosystem Watershed, CREW,
24 specifically large areas owned by Audubon Society, but
25 there are also a number of areas owned by the

1 South Florida Water Management District and a little bit
2 owned by Lee County. And overall, it's -- it's a
3 partnership between the South Florida Water Management
4 District and Lee County to acquire and restore and
5 maintain properties within that -- that large green
6 area.

7 Q And the sanctuary was within the
8 jurisdiction of the South Florida Water Management
9 District?

10 A Well, the sanctuary is privately owned by
11 the Audubon Society within the CREW watershed.

12 Q Okay.

13 A So the district and the County own lands
14 around it.

15 Q All right.

16 A So there are -- there are water management
17 district properties contiguous to this within that.

18 Q When you say "the district," you mean the
19 South Florida Water Management District?

20 A Yes.

21 Q Is that the entity that you were the chief
22 of staff for?

23 A It is.

24 Q Also depicted on this Exhibit 5 are certain
25 development areas. I don't know what color you would

1 call that. Tan or --

2 A It was orange before I made it a little
3 transparent.

4 Q All right.

5 A So, yes, the -- the development areas are
6 generally in that orange color, and I have depicted a
7 number of them on there.

8 I'll note Timber Creek up on State Road 82,
9 the northernmost was in the -- in the density
10 groundwater -- density reduction/groundwater resource
11 area until approximately 2017 and was removed for urban
12 development.

13 Then the place -- Verdana Village and
14 WildBlue are what we call part of the environmental
15 enhancement preservation overlay, so those were noted.

16 Q Now, say that last again, because we
17 sometimes call it by an acronym. Would you say the
18 whole title?

19 A Environmental enhancement and preservation
20 overlay.

21 Q And what do you land planners and County
22 staff call it?

23 A So we often refer to it as EEPCO, which is
24 environmental enhancement -- wait -- and preservation
25 communities overlay.

1 Q All right. And just tell the Court -- and
2 this is a little out of order, but since we talked about
3 it, what's the purpose of that EEPCO?

4 A So the purpose of the overlay was to find a
5 mechanism to incentivize land restoration in the DR/GR.

6 I think the County recognized that the cost
7 of acquiring land, you know, made it very difficult to
8 purchase lands, but then on top of that, lands purchased
9 need to be restored. And so in order to get to what
10 Mr. Erwin was aiming for, you needed to provide an
11 insensitive for landowners to implement that ultimate
12 vision.

13 Q And not only to purchase and to restore, but
14 would those type lands also need to be maintained?

15 A Yes. And the requirement under the overlay
16 is to restore and then maintain in perpetuity.

17 Q Now, I think it's perhaps self-explanatory
18 on there, but maybe not. Are the mines that are
19 depicted there -- were any of those granted permission
20 to mine prior to 2010?

21 A Yes.

22 Q And were any granted permission after 2010?

23 A Yes.

24 Q So mines were permitted within the DR/GR; is
25 that correct?

1 A They were and they are.

2 Q Okay. And would it also be true that citrus
3 agriculture and other types of agriculture are permitted
4 within the DR/GR lands?

5 A That's correct.

6 Q All right. And are there other large-scale
7 active agricultural producing properties within the
8 DR/GR?

9 A There are.

10 Q Could you name a few?

11 A Yeah.

12 Where you see that purple, the FFD
13 settlement agreement, that is approximately 5,200 acres.

14 The northern section, what we call a land
15 section, 640 acres along Corkscrew Road, it's citrus,
16 but the southern remainder of the property is vegetable
17 farming.

18 Q And that property also borders Corkscrew
19 sanctuary; is that correct?

20 A It does on --

21 Q Okay.

22 A -- on two sides.

23 Q And are you familiar with any recent
24 settlement that involved the FFD property?

25 A I am, yes.

1 Q Would you describe that just in very brief
2 general terms for the Court?

3 A Sure.

4 The settlement was also a settlement to a
5 Bert Harris claim. Very similar in nature to this. It
6 was a mining application. And it was denied. And the
7 County and the landowner went through a settlement
8 discussion and ultimately came out with a development
9 that would provide both residential units, 5,200, and
10 restoration.

11 Q And that settlement included a small portion
12 of land that was outside of the original mining
13 application, didn't it?

14 A It did.

15 MR. GROSSO: Object -- I'll object as
16 relevant, your Honor. They cannot use some other
17 situation where nobody perhaps challenged it as,
18 you know, a precedent or relevant to the issues in
19 this particular case.

20 MR. MOORE: Well, counsel can argue it
21 later, but it's certainly relevant because he
22 brought it up.

23 THE COURT: I'm going to overrule the
24 objection.

25 You may continue, Mr. Moore.

1 BY MR. MOORE:

2 Q Now, did you participate in any zoning
3 applications for a mining use for the subject property?

4 A I did.

5 Q Would you just briefly describe that, the
6 history of your involvement with regard to a mining
7 application for the subject?

8 A Yeah.

9 So I was hired in my capacity in my old
10 company, DeLisi Fitzgerald, to work on entitlements for
11 what we call the Old Corkscrew Plantation property. And
12 this is dating now back to 2006.

13 Q Now, Old Corkscrew Plantation, is that the
14 same as the 4,200 acres north of Corkscrew Road that's
15 outlined in yellow on that map?

16 A It's actually the same as the old 6,700
17 acres, but what became the mining application was just
18 the 4,200 acres.

19 Q Okay.

20 A So in the process of doing our due diligence
21 and investigating the site, what we noticed is an
22 incredibly rich source of lime rock on the property,
23 very abundant, very close to the surface throughout the
24 entire site. And the unique thing about this is it was
25 very deep, deep and hard.

1 Q Now, was that just a land -- not "just" --
2 that was a land planning opinion, or was it based on any
3 kind of hydrologic or geological survey?

4 A There was -- yes. There were many, many
5 core samples taken across the entire property. And a
6 report was produced, which was part of the mining
7 application that detailed both the hardness of the rock,
8 the depth of the rock, and the locations.

9 Q Do you remember when the mining application
10 for that property, the subject property, was put
11 together, roughly what year?

12 A So after that due diligence started focusing
13 in on a mining application, that was all compiled, I
14 want to say, around early fall of 2007.

15 Q What was happening within the DR/GR from a
16 planning perspective between 2007, 2010?

17 A So shortly after we attempted to submit,
18 the -- the County declared a moratorium on all
19 applications for land use changes in the DR/GR, zonings
20 specifically, and -- and went through a process to
21 evaluate and reenvision the DR/GR, so to speak. So
22 looked at the environmental corridors that we just
23 talked about, and looked at different locations for
24 mining.

25 Q Was some of that reevaluation based on the

1 Dover Kohl planning report?

2 A It was.

3 Q So you made a mining application on behalf
4 of Old Corkscrew Plantation in roughly 2007; is that
5 correct?

6 A That's correct.

7 Q And you put it all together. How long does
8 it take to put together a mining application like this
9 for the size?

10 A It took a long time. It's -- it's not an
11 easy application. Just the core samples alone took a
12 lot of time, the analysis.

13 Q Are you talking days or weeks or --

14 A Months.

15 Q Months?

16 A Yeah.

17 It's a big application, a lot of information
18 involved.

19 Q So once that was prepared for submission and
20 it was taken to the County office, what happened?
21 County administration office.

22 A So I was actually the person that physically
23 took it down to the desk to submit it. And -- and the
24 counter zoning person checked -- checked everything off,
25 to make sure we -- the application contained everything

1 it needed to contain.

2 And then she was told to not accept the
3 application at the counter.

4 Q Okay. Was there litigation that ensued -
5 you don't have to go into details - but as a result of
6 that?

7 A There was, yes.

8 Q Was that handled by the Pavese firm?

9 A It was.

10 Q And I will ask you to look at Exhibit 6.

11 And I'm not asking a legal question. But
12 just basically, do you know what that order is and what
13 it resulted in?

14 A Yes. This was Judge Fuller's order in that
15 case declaring that the moratorium was -- was void
16 and -- and the application needed to proceed and be
17 reviewed under the rules in effect at the time that we
18 initially tried to submit the application.

19 Q All right.

20 A And I believe that was upheld on appeal.

21 Q And then later, were you involved in another
22 mining application effort, or was this the only one that
23 you were involved in, on that property?

24 A On this property or other properties?

25 Q This property.

1 A On -- oh. So I -- when -- when we were
2 finally allowed to submit the application over the
3 counter, and I think this happened in 2012 by the time
4 the appeals court ruled in favor and ordered the County
5 to accept the application, the application went through
6 the process. And so that started in 2012.

7 Q All right. Now, what happened to Old
8 Corkscrew Plantation, the owners then, between 2011 and
9 2015? Do you know?

10 A Yeah.

11 So the owners of Old Corkscrew Plantation --
12 there was a very difficult economic downturn. And I
13 remember this as a bit differently than you do. I
14 remember this extending straight through 2013. From a
15 development perspective, business was -- was terribly
16 difficult until 2013, 2014.

17 They -- I believe they filed for bankruptcy.
18 The bank -- a bank inherited the property and the zoning
19 application. It remained in process throughout that
20 time, through submittals and extensions and sufficiency
21 rounds.

22 Q Now, did the current owner purchase the
23 property at that time, in 2016?

24 A Yes. I believe in 2016, the current owner
25 purchased the property and the zoning application in

1 process.

2 Q Was the mining application pursued by the
3 current owner?

4 A It was. They continued processing the
5 mining application.

6 Q If you would look at Exhibit 7, please. And
7 tell the Court what that is, if you know.

8 A Exhibit 7 is the hearing examiner's
9 recommendation from the mining case.

10 Q Okay. With regard to the Corkscrew Grove
11 property?

12 A Yes.

13 Q Okay. And there are a series of days for
14 the hearing that are listed on the first page. And then
15 the hearing examiner goes through in detail her views
16 about mining in that area and the impacts on southeast
17 Lee County. Is that correct?

18 A That's correct.

19 Q All right. What was the result, if you
20 know, of the hearing examiner's recommendation?

21 A The hearing examiner recommended denial of
22 the application.

23 Q And subsequently did the application go
24 before the board of county commissioners?

25 A It did.

1 Q All right. Ask you to turn to Exhibit 8.

2 And what does that reflect?

3 A That is the resolution of the board of
4 county commissioners denying the application.

5 Q Have you read the hearing examiner's
6 recommendation?

7 A I have.

8 Q Do you know if one of the intervenors in
9 this current proceeding, Mr. Kevin Hill, testified at
10 the HEX hearing and was actually mentioned several times
11 by the hearing examiner in her recommendation?

12 A He was there, yes.

13 Q Was he a proponent of the mining or
14 opponent?

15 A He was an opponent of the mining.

16 Q Okay. And what -- what did the board do
17 after the -- it was submitted to them? You say they
18 denied it?

19 A They denied --

20 Q Okay.

21 A -- the application.

22 Q And was there any litigation following that
23 denial?

24 A There was.

25 Q Ask you to turn to Exhibit 10. Are you

1 familiar with Judge Fuller's order granting the
2 plaintiff's summary judgment on their second amended
3 motion as the Count I of the second amended complaint
4 for declaratory relief?

5 A Yes, I am.

6 Q And from a land planning perspective, what
7 did that -- what was the import of that order?

8 A So that requires a hearing on the sole
9 purpose of establishing conditions for which the mining
10 approval would be -- will -- will happen. So the judge
11 ruled that he could not come up with conditions, but
12 the -- the County would need to come up with conditions
13 of approval based on approvals that occurred prior to
14 the date in 2007.

15 Q Now, are you also aware of a Bert Harris
16 claim letter submitted by Corkscrew Grove as a result of
17 the denial of the mining application?

18 A I am.

19 Q All right. That will be Exhibit 9.

20 Now, as a result of the litigation, the
21 Court's order, and the Bert Harris claim letter, were
22 there any subsequent settlement discussions, afterward?

23 A Yes, there were.

24 Q And were you involved in any of those?

25 A I was, yes.

1 Q In what capacity?

2 A As a consultant for -- for Cameratta
3 Companies to work with the County planning staff to come
4 up with a settlement.

5 Q Now, what does Cameratta Companies do?

6 A They're a land development company that
7 developed two of the environmental enhancement and
8 preservation overlay communities.

9 Q Do you have a PowerPoint that you have
10 prepared which describes the settlement agreement from a
11 planning perspective?

12 A I do.

13 Q And that's the current settlement agreement
14 that we're here for today?

15 A It is.

16 Q Could you go through that with the Court and
17 explain from your perspective what the agreement
18 provides for and how it -- if at all, it affects the
19 public interest and the statutes that are contravened in
20 reaching that agreement?

21 THE COURT: What tab is that, Mr. Moore?

22 MR. MOORE: That is tab 29, your Honor.

23 THE COURT: Thank you.

24 THE WITNESS: So, this is essentially a
25 PowerPoint presentation that -- that I gave to the

1 county commission and the hearing examiner in both
2 of those processes and those forums.

3 MR. MOORE: Well, let me interrupt for a
4 second.

5 THE WITNESS: Yes.

6 BY MR. MOORE:

7 Q Was there a HEX hearing, a hearing
8 recommendation on the settlement agreement?

9 A There was.

10 Q All right. We should have that here as
11 well.

12 Exhibit 15, will you just look at that and
13 see if that's -- I jumped ahead. Is that the hearing
14 examiner recommendation?

15 A It is.

16 Q All right. And what did the hearing
17 examiner recommend with regard to the settlement
18 agreement?

19 A That it protects the public interest, and no
20 changes are necessary to do that.

21 Q Was that an abbreviated hearing, or was it
22 extensive? Or how would you characterize it?

23 A Well, it wasn't abbreviated. It was a full
24 hearing.

25 In the hearing examiner hearings, as

1 Mr. Jacob has mentioned, the hearing examiner takes
2 testimony. The public is invited and allowed to speak.
3 There is no time limit for public participation, so
4 someone can speak for as long as they want. No
5 three-minute rule, like you see at a lot of board
6 hearings. And so the public is allowed to submit
7 testimony, submit evidence. And then the hearing
8 examiner will evaluate everything submitted and all the
9 testimony taken.

10 Q And do you know one of the intervenors,
11 Mr. Hill?

12 A I do.

13 Q All right. And was he at this hearing for
14 the settlement agreement?

15 A He was not.

16 Q Okay. Was that hearing publicly noticed?

17 A It was.

18 Q Okay. Are you aware of any public outreach
19 on the part of the contract purchaser, the Cameratta
20 group, advising the public in the area about the
21 settlement agreement?

22 A Yeah.

23 So Cameratta did what I would consider a
24 very extensive public outreach campaign, more so than
25 you see in most zoning and plan amendment cases. They

1 certainly went above and beyond what is typically done.

2 That would include individual meetings with
3 the Conservancy of Southwest Florida, Audubon Society,
4 Florida Wildlife Federation. They had informal
5 discussions with state agencies, just to get feedback
6 and input up-front.

7 They had -- they met with -- there's a
8 coalition of homeowners associations along East
9 Corkscrew Road called The East Corkscrew Alliance. They
10 met with them. And that group has all of the HOA heads
11 or designees on that, as part of that alliance, so they
12 met with them to get feedback.

13 Q Do you know how many people those groups
14 represent total?

15 A Well, how many people?

16 Q Well, homeowners.

17 A It's a lot. I mean, it's -- we're looking
18 at many very large developments along -- and East
19 Corkscrew is everything east of I-75. So that's Stony
20 Brook, Wildcat Run. That's, you know, Bella Terra. I
21 mean, thousands, thousands of homeowners. My guess is
22 probably on the order of, you know, just under 10,000
23 units.

24 Q So in addition to the nongovernmental
25 organizations, like the conservancy or Audubon Society,

1 state agencies, there is also a meeting -- public
2 meetings --

3 A Yes.

4 Q -- with the public? Is that correct?

5 A So yeah. So they had individual meetings to
6 get feedback and thoughts on -- on this. And then they
7 did a publicly noticed meeting where they got the same
8 mailing labels from the County, as the County does with
9 the -- with public notice. They did mailings to -- to
10 everyone on that list. And then did a public
11 advertisement as well, to have a community meeting to
12 get community input.

13 Q Is that public advertisement for the
14 neighborhood meeting depicted in Exhibit 13?

15 A Yes.

16 Q Look at Exhibit 27, please. What do those
17 photographs represent?

18 A This is a portion of the Florida statutes
19 under Chapter 163.

20 Q Exhibit 27.

21 A Oh, I'm sorry. I -- I was looking back.
22 I -- I still have it flipped over to my PowerPoint, so I
23 was --

24 Q That was my fault, I jumped ahead.

25 A Yeah, sorry.

1 That -- that is the Old Corkscrew Plantation
2 property or Corkscrew Grove, as it's now called, the --
3 what is physically out on the property today, pictures
4 of the property.

5 Q Do those accurately represent the subject
6 property in the current situation, or at least portions
7 of it?

8 A Yes.

9 Q Now I think we can go to Exhibit 29.

10 A Okay.

11 So to start out with, I -- I -- I think it's
12 important to give the regional context, and that's why
13 that map was produced on the -- really the first one in
14 the presentation.

15 THE COURT: Referring to what I think is
16 Exhibit 5.

17 THE WITNESS: Thank you. Exhibit 5, yes.

18 Because scale is really important when
19 looking at this property -- this property is a
20 very large property, and it extends, as I said
21 before, from State Road 82 all the way down to the
22 Corkscrew Regional Ecosystem Watershed, CREW as we
23 call it.

24 BY MR. MOORE:

25 Q The whole north/south link to that area

1 that's bound in yellow, approximately how many miles?

2 A Seven miles.

3 Q Okay.

4 A Roughly, give or take.

5 It's just -- it's a -- it's a large
6 property. And so what -- what may look small on the
7 concept plan on any other property is going to look
8 really big, is my only point there.

9 You know, it's also important because the
10 extent, the north/south extent, gives us the opportunity
11 to look regionally, called regional context, in
12 addressing a lot of county regional needs.

13 So north/south roadways in the County are
14 scarce. You know, you have the opportunity of
15 connecting two arterial roads, State Road 82 and
16 Corkscrew Road, when you're looking at a property of
17 this scale.

18 But, importantly, you really have the
19 opportunity to look at this property in an environmental
20 context and -- and address regional flow ways, as
21 Mr. Erwin had put in his study, had articulated in his
22 study.

23 Q Back in July of 2008?

24 A Yes.

25 As well as wildlife movement, flood control,

1 a whole myriad of issues you're able to do when you look
2 regionally and on a scale of this context.

3 Q Okay. Continue, please.

4 A So, yeah, and -- and we already went over
5 everything else that this exhibit covers.

6 I do want to point out one thing that's
7 important on this exhibit, though. On the north side of
8 the property is Lehigh Acres, and on the north side
9 State Road 82. It's easier to see on the larger aerial
10 than it is on this PowerPoint. But Lehigh Acres extends
11 to the south side of State Road 82, which is on the east
12 side of this property, on the northeast side. So this
13 property is essentially surrounded by two areas that are
14 in the Lee Plan at six units an acre, which is
15 distinctly different from, say, the communities that are
16 farther west that are part of this environmental
17 enhancement overlay.

18 In this area, you're immediately adjacent to
19 an urban area. You're immediately adjacent on two sides
20 by property that's at six units an acre, platted
21 residential.

22 There are a myriad of issues, if you will,
23 that need to be solved in Lehigh Acres, such as wells
24 going dry and limitations on the aquifer system, the
25 need for utilities. You know, the list goes on. But

1 that's a -- it's a very important piece of this puzzle
2 to put the property in the regional context.

3 Q How would you describe the type density of
4 six dwelling units per acre in a land use context? Is
5 that high density, middle density, low density?

6 A I would generally consider it a medium
7 density. In some comprehensive plans, they would still
8 consider that a low density. But, you know, six units
9 an acre is either a very small single-family lot or
10 you're starting to get into more attached products.

11 Q Just for the record, the -- the Court may
12 already know this. But would you just describe Lehigh
13 Acres and its development of what -- what does that
14 consist of?

15 A Almost entirely single-family units. Just a
16 lot of single family.

17 There is a dearth of commercial in Lehigh
18 Acres. That's been studied and restudied, the need to
19 get more commercial out there so that your employment is
20 not all -- you know, people aren't waking up in the
21 morning and everyone driving west, crowding up the
22 roadways, trying to get some employment, get some
23 commercial farther out in Lehigh Acres.

24 But it was -- it was platted as an almost
25 entirely single-family area, with a drainage system that

1 shifted the directional of flow. Some of it used to go
2 south, which is part of this equation as well. Now it
3 all goes north, into the Caloosahatchee River.

4 Q That -- that drainage alteration, that
5 altered the historic flow, the development of Lehigh
6 Acres?

7 A It did, yes.

8 Q And the water was diverted north instead of
9 south, the way nature intended?

10 A That's correct.

11 Q And you said that there was a portion of
12 that, of Lehigh Acres, south of State Road 82; is that
13 correct?

14 A Yeah. There's a small portion that -- that
15 goes south along -- along the eastern boundary of this
16 property.

17 Q The density under the settlement agreement,
18 is that close to six units an acre?

19 A No.

20 Q What's the density that's proposed under
21 this settlement agreement?

22 A Just -- just shy of one and a half units an
23 acre.

24 Q Okay. All right. Continue, please. And
25 just explain to the Court the features of the settlement

1 agreement and particularly how it relates to the
2 comprehensive plan and the public interest served by the
3 plan.

4 A Sure.

5 So the development agreement, as we have
6 stated before, includes 10,000 units, which again is
7 just shy of one and a half units an acre. It's phased
8 over time.

9 There are amenity uses on site, so it's, you
10 know, a large-scale residential community.

11 But, importantly, it includes nearly 3,300
12 acres - 3,287, to be precise - of conservation,
13 restoration, and flow ways. So -- so you provide that
14 meaningful north/south ecological restoration that the
15 County has been looking for for sometime.

16 Q Now, in absolute terms, would you compare
17 that acreage size for the restoration, conservation, and
18 flow way with any similar-type restoration that was
19 provided for under the mining application that was
20 litigated?

21 A No. It's more than double, I think. It's
22 significantly larger.

23 Q Just to make sure we have got that -- I have
24 got an exhibit on that.

25 Look at Exhibit 28, please. Tell the Court

1 what that is.

2 A Okay. This is the Old Corkscrew Plantation
3 IPD, stands for industrial planned development,
4 application for the mining.

5 Q Okay. And the second sheet, which is sheet
6 number 2 at the bottom right-hand corner, does that
7 reflect the wetland-upland preserve numbers?

8 A It does, yes.

9 Q What's the total?

10 A 1,383 acres.

11 Q Okay. And the -- the next sheet, while
12 we're at it, what does that depict about the planned
13 mine?

14 A So the next sheet generally depicts the
15 mining plan. You could see the -- the mining -- each
16 mining pit, they're numbered.

17 And we're looking at a general phase of
18 years. You know, we looked at this as a 30-year --
19 actually a 40-year mining plan. So mining would be
20 occurring for an over 40-year period. So this was the
21 phasing.

22 And I don't believe on this one we had the
23 depth, but on the other plan I think we had depths as
24 well for you today.

25 Q The sheet --

1 A Yeah, on the prior sheet we included both
2 area of the excavation pit and then the depth we
3 anticipated it mining to.

4 So -- and keep in mind, mining is a -- it's
5 not just a horizontal venture. It's not something that
6 we look at in terms of acres. We look at it in terms of
7 acres and depth. I mean, a mining lake of -- a pit of
8 30 feet that's over a thousand acres doesn't do you near
9 as much good as, you know, a pit that's 500 acres that
10 goes down to a hundred feet to --

11 Q What are the proposed depths on this
12 application?

13 A Up to 110 feet, is the deepest we're looking
14 at.

15 Q And is that toward the southern and western
16 end of the property?

17 A It is.

18 Q Is that closest to -- do you know where
19 Kevin Hill's property is?

20 A I do.

21 Q Okay. Is that toward his property, over to
22 the west?

23 A Yes. The closest excavation pit, I -- if I
24 can read this right, is pit number 10, maximum depth 110
25 feet.

1 Q Let me ask you to look at this. This is a
2 demonstrative exhibit only that we have prepared.

3 Does this depict the placement of some of
4 the nearby property owners?

5 A It does.

6 Q And does that show the two intervenors'
7 property?

8 A Yes.

9 Q Okay. Mr. Hill and Mr. Kleeger?

10 A Yes.

11 Q Okay.

12 MR. MOORE: And, your Honor, just for
13 demonstrative purposes, if I may, I have got a
14 copy here for counsel.

15 THE COURT: Any objection?

16 MR. GROSSO: If I can just take a brief
17 look --

18 THE COURT: Sure.

19 MR. GROSSO: -- at it, I probably don't.

20 THE COURT: He said he has one for you.

21 MR. GROSSO: Thank you.

22 If I may take a quick look at the one you
23 have been handed, I might be able to
24 short-circuit.

25 Thank you.

1 We don't have any objection, your Honor.

2 THE COURT: Okay.

3 MR. GROSSO: Thank you.

4 MR. MOORE: That's not an exhibit number,
5 that's --

6 MR. BARTLETT: That's demonstrative.

7 BY MR. MOORE:

8 Q All right, sir. Would you continue with
9 your description of the settlement agreement.

10 A Yes.

11 So I have reviewed the number of units,
12 700,000 square feet of commercial. I will get into the
13 placement of that later, because it's not just 700,000
14 along Corkscrew Road or 700,000 in general, there's
15 specific placements that relate to surrounding land
16 uses.

17 As we said, nearly 3,300 acres, or 3,287, of
18 restoration conservation.

19 61 percent of the open is -- of the site is
20 open space. So when you look at the concept plan -- I
21 will point that out to you, on where that is. The
22 development agreement -- part of the key point of the
23 development agreement is the restoration plan. So
24 phasing and -- and relating any development approval to
25 specific areas of restoration or specific amounts of

1 restoration is key in this -- in this settlement
2 agreement, as is mitigation for public impacts, like
3 roads.

4 So the next slide is a concept plan. And
5 let me just start by saying the settlement agreement is
6 structured very similar to a -- what you get in a
7 planned development application.

8 So one thing that planners really like about
9 planned developments as opposed to, say, a conventional
10 rezoning, which is just a zoning category RM2 or a
11 commercial as a zoning category, we like planned
12 developments because you can condition them and require
13 a developer to do certain things, and to both address
14 the impacts of development and also to provide
15 oftentimes a larger public benefit that addresses needs
16 from a compatibility standpoint, or any other similar
17 need.

18 So at the end of the day, with a planned
19 development, you have a zoning resolution that includes
20 certain documents. It includes a master concept plan,
21 which is a site plan for the development. It includes a
22 schedule of uses, the specific uses you're allowed to do
23 on that property, development regulations that specify
24 how each property is going to be developed, and then a
25 density -- a specific density and intensity, among other

1 things.

2 And so the settlement agreement includes all
3 of those elements. So we structured the settlement
4 agreement just like we would structure a planned
5 development, so at the end of the day you get the same
6 document and the County has the same type of control
7 over the development as it moves forward that they would
8 do for any other planned development.

9 Q All right.

10 MR. MOORE: Let me interrupt you there.

11 Your Honor, it's almost 12:00. Is this a
12 good time, or --

13 THE WITNESS: Wow.

14 THE COURT: Counsel, approach.

15 (A Bench conference was conducted off the
16 record.)

17 THE COURT: For counsel and for those folks
18 in the gallery, I had a brief conversation with
19 the lawyers, who said that this witness may
20 actually be on many more hours. I have hearings
21 scheduled this afternoon. This matter is going to
22 be rescheduled. When we reschedule in the future,
23 we'll make sure we have a big enough courtroom and
24 try to have adequate time where it can be
25 completed.

1 So we are in recess as it relates to this
2 matter today.

3 I will be meeting with the lawyers now to
4 see when we can try to find a new date to complete
5 it.

6 Thank you.

7 You may step down, sir.

8 MR. BARTLETT: Thank you, your Honor.

9 (Proceedings concluded.)

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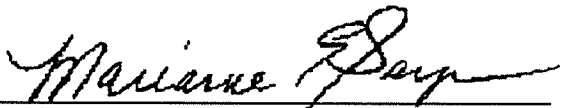
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEE)

I, Marianne E. Sayers, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages numbered 1 through 114, inclusively, is a true and correct record of the proceedings.

Done and dated this 19th day of September, 2022.

(This certificate has been digitally signed.)


Marianne E. Sayers
Notary Public, State of
Florida at Large

<p>\$</p> <p>\$100 58:9</p> <p>\$50 58:8</p> <p>\$63 21:23 43:22 44:18 53:3 56:19 58:5,8</p> <hr/> <p>(</p> <p>(4)(c) 10:23</p> <p>(4)(d) 11:6</p> <p>(4)(d)2 20:11 23:24</p> <hr/> <p>1</p> <p>1 4:15 9:20 11:6 41:20,23 42:1 78:10,16</p> <p>1,383 107:10</p> <p>1.4.5 14:10</p> <p>10 17:16 51:6,14 58:25 65:15 94:25 108:24</p> <p>10,000 57:24 66:16 99:22 106:6</p> <p>10th 47:23</p> <p>11 75:19</p> <p>110 108:13,24</p> <p>1160966 26:18</p> <p>1245 28:19</p> <p>125.66 45:17 46:6,9</p> <p>12:00 112:11</p> <p>13 46:15,18,21 47:12</p>	<p>100:14</p> <p>14 48:1,3 53:14 58:25</p> <p>15 21:22 49:9,10,12 97:12</p> <p>16 46:15,18,21 47:14</p> <p>163 100:19</p> <p>163.3184 33:1,6 45:16 46:1 64:25</p> <p>163.3194 45:16,23</p> <p>17 47:10 49:21 54:1</p> <p>17th 48:5 53:15</p> <p>18 46:16,18,21 47:19</p> <p>189 32:5</p> <p>19 50:2 54:12</p> <p>1976 28:8</p> <p>1980s 14:9</p> <p>1989 73:16</p> <hr/> <p>2</p> <p>2 4:17 11:6 27:11 78:10 107:6</p> <p>2,000 60:17</p> <p>2,000-plus 37:18 62:18,20,21</p> <p>2,473 64:1</p> <p>2,500 22:14</p> <p>2,500-acre 23:9</p> <p>2000 72:11,12 73:9</p> <p>2000s 73:5</p>	<p>2001 30:3</p> <p>2006 42:25 88:12</p> <p>2007 14:10 15:14,19 17:6 65:21 66:13 89:14,16 90:4 95:14</p> <p>2008 15:22 74:12 77:14, 15 78:17 102:23</p> <p>2009 28:20</p> <p>2010 15:16 16:3 85:20, 22 89:16</p> <p>2011 16:14 92:8</p> <p>2012 92:3,6</p> <p>2013 42:24 92:14,16</p> <p>2014 92:16</p> <p>2015 72:24 92:9</p> <p>2016 16:20 32:4 92:23, 24</p> <p>2017 16:23 17:4 42:22 84:11</p> <p>2019 17:7 43:19,20</p> <p>2020 44:21</p> <p>2022 26:19 47:10,11,18 54:2,13</p> <p>204 30:2</p> <p>22 54:13 74:7,9</p> <p>22-2743 4:13</p> <p>22nd 47:22</p> <p>240-room 57:25 66:22</p>	<p>27 47:18 100:16,20</p> <p>27th 71:22</p> <p>28 106:25</p> <p>29 96:22 101:9</p> <hr/> <p>3</p> <p>3 53:17,19 54:2,16</p> <p>3,000 22:23</p> <p>3,287 106:12 110:17</p> <p>3,300 106:11 110:17</p> <p>30 13:8 41:20,23 42:1 108:8</p> <p>30-year 107:18</p> <p>309 75:15</p> <p>31 64:24</p> <p>311 75:23,24,25</p> <p>312 32:5</p> <p>3184 46:1,4</p> <p>332 28:8</p> <p>341 76:18</p> <p>342 76:25</p> <p>352 77:11</p> <hr/> <p>4</p> <p>4 13:20 28:19</p> <p>4,000-acre 21:19 22:12</p> <p>4,000-some 37:14</p>	<p>4,200 14:21 88:14,18</p> <p>4,200-acre 14:20 79:10</p> <p>4,203 58:21</p> <p>40-year 107:19,20</p> <hr/> <p>5</p> <p>5 12:9 59:14,25 60:5,7,12,19 68:4, 10 69:9 79:25 80:1,6 81:8 83:24 101:16,17</p> <p>5,200 86:13 87:9</p> <p>5-minute 69:6</p> <p>500 108:9</p> <p>52 23:3</p> <p>520 71:22</p> <hr/> <p>6</p> <p>6 15:12 47:11 91:10</p> <p>6,000 14:21 59:8 63:9 64:13</p> <p>6,676 59:7,10 64:9</p> <p>6,700 88:16</p> <p>61 110:19</p> <p>63 52:25</p> <p>640 86:15</p> <p>651 28:8</p> <hr/> <p>7</p> <p>7 54:2 93:6,8</p>
--	--	--	---	--

<p>7,000-plus-or-minus-acre 22:16</p> <p>70.001 9:14</p> <p>700,000 66:19 110:12,13,14</p> <p>750 50:14</p> <p>788 30:2</p> <p>7th 47:17 50:20</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 17:7 94:1</p> <p>82 23:17 68:18 76:15 80:13 84:8 101:21 102:15 103:9,11 105:12</p> <p>87 14:7</p> <p>87,000 75:12</p> <p>8th 50:21</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 11:2 22:4,5 44:9, 12 52:16 67:13 95:19</p> <p>90,000 14:7</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>abbreviated 97:21,23</p> <p>ability 36:25</p> <p>absence 63:8</p> <p>absolute 106:16</p> <p>absolutely 8:23</p>	<p>abundant 88:23</p> <p>abusive 49:2</p> <p>accept 7:12 15:6 91:2 92:5</p> <p>access 69:20 70:3 81:4</p> <p>accommodate 4:22</p> <p>accompanied 23:9</p> <p>accurate 59:19,24</p> <p>accurately 101:5</p> <p>achieves 14:3</p> <p>acquire 83:4</p> <p>acquiring 85:7</p> <p>acre 103:14,20 104:4,9 105:18,23 106:7</p> <p>acreage 62:19 75:8 106:17</p> <p>acres 14:8 22:14,23 37:14,18 58:22,24 59:7,9 62:18 63:10 64:1,9,13 75:12 86:13,15 88:14,17, 18 103:8,10,23 104:13,18,23 105:6,12 106:12 107:10 108:6,7,8,9 110:17</p> <p>acres-plus 60:17</p> <p>acronym 84:17</p> <p>act 9:15,19 10:9 21:24 25:3 26:9,25 27:8, 21 28:4 30:6 32:22 33:20,24 34:4 35:1,14,15 36:2,4, 13,23 37:1,6,7,12, 13,20,24 38:2,6,</p>	<p>10,23 39:2,7,8,11, 18 40:25 43:7 55:15,19 56:4,9,18 58:1,21 60:18 64:2 69:13</p> <p>acted 27:12</p> <p>action 10:13 27:15 29:10 40:12,13 43:5,6,9 51:5,13 55:3,4,8, 11</p> <p>actions 27:23 29:8</p> <p>active 12:18 33:12 86:7</p> <p>activities 33:21</p> <p>acts 28:12,15 29:6,24 30:8</p> <p>actual 47:7 48:17 50:22, 24 51:18 52:14</p> <p>addition 50:24 99:24</p> <p>additional 22:13 37:18 39:3 61:9 79:12</p> <p>additionally 17:13</p> <p>address 9:7 17:20 71:20,22 102:20 111:13</p> <p>addressed 63:21 64:2</p> <p>addresses 111:15</p> <p>addressing 102:12</p> <p>adequate 6:13 112:24</p> <p>adjacent 12:19 76:1 81:17, 21 103:18,19</p> <p>adjudged 65:21</p> <p>administration 90:21</p> <p>administrative 29:3,5</p>	<p>admitted 41:24 42:2</p> <p>adopted 46:8 79:1</p> <p>adoption 30:5 33:4 46:7 47:16,20</p> <p>advance 13:17</p> <p>adverse 39:15</p> <p>advertisement 100:11,13</p> <p>advising 98:20</p> <p>aerial 12:3 60:1 81:3 103:9</p> <p>Affairs 73:18</p> <p>affected 44:24 45:14</p> <p>affects 96:18</p> <p>Affidavit 46:25</p> <p>affidavits 46:21 47:2</p> <p>afternoon 70:2 112:21</p> <p>afterward 95:22</p> <p>agencies 27:12 35:17 65:4 99:5 100:1</p> <p>agency 29:3,6</p> <p>agency's 29:8</p> <p>agree 55:10,13 57:2 64:20</p> <p>agreed 7:14 32:10 57:4</p> <p>agreement 4:16 19:16 22:10 25:21 26:8,21 31:11 34:1 37:15, 16 39:24 40:4,8 45:22 47:21 49:16 57:12,19 58:6,17</p>	<p>59:5,8 60:13 63:1, 8,10,16 64:10 65:7,9,12 67:2 73:17 86:13 96:10, 13,17,20 97:8,18 98:14,21 105:17, 21 106:1,5 110:9, 22,23 111:2,5 112:2,4</p> <p>agreements 46:3</p> <p>agricultural 65:3 86:7</p> <p>agriculture 23:14 35:18 86:3</p> <p>ahead 6:17 49:11 97:13 100:24</p> <p>aiming 85:10</p> <p>Alico 80:22,24 81:1,3,4</p> <p>alleged 6:8</p> <p>alliance 99:9,11</p> <p>allowed 7:9 37:19 40:4 41:3 92:2 98:2,6 111:22</p> <p>alter 31:8</p> <p>alteration 105:4</p> <p>altered 105:5</p> <p>alternative 72:8</p> <p>ambiguous 39:4</p> <p>amended 10:15 95:2,3</p> <p>amending 46:2 64:22</p> <p>amendment 24:22,23 29:21 30:16,20,25 31:23 33:4 35:6,16 65:11 79:2 98:25</p> <p>amendments 29:23 30:7 33:10,</p>
--	--	---	--	---

<p>13 46:8 73:8 75:10 amenity 106:9 amount 18:10 21:23,25 35:25 39:22 40:2 57:11,12 amounting 9:23 amounts 110:25 analysis 56:2 57:17 58:15 90:12 analyze 63:16 ancillary 7:2 67:1 answer's 64:12 anticipated 69:14 108:3 apologize 13:18 Apologized 70:15 appeal 32:1 91:20 appeals 92:4 appearances 5:7 appeared 17:25 appears 60:23 63:1 appellate-type 40:16 applicable 15:19 20:7 applicant 51:19 56:20 applicant's 48:13 56:23 57:1 application 14:19 15:3,5,13,20 16:15,21 19:4 22:13 30:18 52:5 65:1,9,20 66:8 87:6,13 88:7,17</p>	<p>89:7,9,13 90:3,8, 11,17,25 91:3,16, 18,22 92:2,5,19,25 93:2,5,22,23 94:4, 21 95:17 106:19 107:4 108:12 111:7 applications 48:12 88:3 89:19 applied 65:21 applies 25:23 28:3 51:9 apply 29:18 38:21 appointed 72:21 appraisal 10:18 44:16,20 56:8,15,17,23,24 57:1,7 58:11,13 67:15,17 approach 12:5 43:25 62:4 112:14 approval 11:11 22:19 26:5 37:3 43:15 44:22 52:4 53:6 66:7,8 95:10,13 110:24 approvals 12:17 24:10 66:13 95:13 approve 4:16 9:12 30:14 43:16 65:12 66:16, 25 approved 24:21 25:15 34:7 36:8 66:20,23 67:1 80:18 81:16 approves 22:18 approximate 77:3 approximately 68:18 75:13 82:8 84:11 86:13 102:1 aquifer 103:24 arbitrary</p>	<p>27:16 28:15 29:11 34:5 area 12:10,15 18:2 35:11 36:1 50:9 52:25 72:20 73:13, 15,20,22,24 74:2 75:17 76:14,16 77:9,18,23,25 80:10 82:20 83:6 84:11 93:16 98:20 101:25 103:18,19 104:25 108:2 area's 72:21 areas 12:14 68:9 76:1 77:13,15,17 82:24, 25 83:25 84:5 103:13 110:25 arena 72:11 argue 87:20 argued 55:16 arguing 7:11 25:24 argument 5:25 41:9 arguments 7:3 9:24 arise 16:13 arriving 65:7 arrows 76:17,18 arterial 102:15 article 27:25 articulated 102:21 asks 11:5 aspect 16:8 19:8 assigned 70:16</p>	<p>Assistant 18:24 associations 99:8 assuring 33:7 attached 10:18 44:15 56:8, 17 67:15 74:16 104:10 attack 27:14 29:7 attempt 4:23 28:11 44:23 46:10 attempted 89:17 attempting 28:21 attend 51:1 attended 54:6 attention 10:23 attorney 15:8,10 18:24 42:19 attorney's 42:20 56:13 Audubon 82:24 83:11 99:3, 25 auspices 18:20 authorized 37:2 authorizes 25:3 avenue 10:4 averse 59:17 avoid 38:5 39:12 40:9 57:13 58:1 63:20 aware 12:6 95:15 98:18</p>	<p style="text-align: center;">B</p> <p>back 10:1,6 14:9 17:6, 20 21:18 44:21 46:6 62:23 74:11 88:12 100:21 102:23 bailliff 4:25 20:2 69:4,18 70:6,10,18 balancing 27:5 bank 92:18 bankruptcy 16:18 92:17 Bar 34:17 Barrett 19:18 Bartlett 5:13,14 7:20 9:5 19:19,20,21,23 20:3 26:16 42:3,13 43:25 44:3,6,8 45:2,4,6,9,12 53:9 67:7,8,12,22 110:6 113:8 based 15:17 35:22 40:14 43:18,23 55:12 63:4 66:9,12 72:15 89:2,25 95:13 basically 10:12 14:17 15:12 17:19 91:12 basis 10:25 Bates 75:15 76:25 77:10 Beach 28:18 30:2 71:22 72:20 bear 39:15 beast 26:2 Becky 19:14</p>
--	---	--	--	---

began 18:4	36:23	Brook 99:20	capital 31:2	4:6
begin 41:17	blowup 59:19	Brookes 5:21	capricious 27:16 28:16 29:11 34:5	change 35:7 36:16 50:21
beginning 14:24 15:9 50:12	blue 12:14 77:25 81:10, 11	brought 36:14 37:14 55:19 58:10,14 87:22	care 16:11	changed 10:8
behalf 5:14 34:25 55:20 90:3	board 17:7 18:18,20 27:22 31:16 43:23 47:16,22 49:23 50:4,5 54:13 72:21,23 93:24 94:3,16 98:5	building 28:24	carefully 54:7	changing 35:24
Bell 12:16 68:12 81:15	board's 43:19	built 63:9	Casa 28:6	Chapter 9:14 100:19
Bella 99:20	boards 25:1 27:12	burden 9:21 19:11 34:1 38:16,19,23,25 39:13,14,25 40:6,9 57:13,20 58:17 63:21	case 4:13 7:2 9:1 10:14 11:14 14:6 17:14 21:14,17 26:12,17, 20,22,24 27:8 28:5,7,8,10,17,18, 20 29:25 30:3,4,9, 12,13 32:2 35:8 39:5,22 40:12,24 43:5,7,21 51:8,17, 18 52:7 53:2 58:2 87:19 91:15 93:9	characteristics 35:23
Bench 112:15	BOCC 51:2	burdening 11:22 21:2	cases 20:1 21:9,10 26:11,14 27:7 28:11 34:20 38:20 48:17 55:24,25 69:13 98:25	characterize 97:22
benefit 23:20 27:6 78:13 111:15	body 29:14 31:15	burdens 38:8	cert 21:14,15 27:1 28:13 40:16	check 58:23
Bert 9:14,19 10:9,14 12:21 17:13,23 18:21 19:8 20:7 21:10,21,24 22:5 23:23 24:3 25:3 26:21 27:9 33:19 35:1 39:18 43:5,6, 17,18,22 44:14 52:16,20,24 55:24 87:5 95:15,21	book 12:2,9 15:12 41:19 74:3 80:1	business 71:19,21 92:15	catastrophic 51:15	checked 90:24
big 62:9 90:17 102:8 112:23	border 60:14,24	call 8:5 14:13 19:14 55:7 71:2 82:22 84:1,14,17,22 86:14 88:11 101:23	category 111:10,11	chief 42:23 72:18 83:21
bigger 4:20,22,24 69:16, 17 71:1	borders 86:18	called 28:18 30:4 31:13 32:2 42:7 71:10 73:19 74:1 99:9 101:2 102:11	categorically 37:19	Chisholm 40:24
Bill 5:9	bottom 107:6	calls 42:3	certainty 24:25	circle 61:22 62:10
binder 59:15 66:6	bound 102:1	Caloosahatchee 105:3	certificate 72:6	circuit 27:14 29:9 32:7,13 51:8
binders 44:4	boundaries 50:15	Cameratta 17:25 18:6 96:2,5 98:19,23	category 111:10,11	cited 28:5 30:9,11
binding 25:1	boundary 23:18 79:17 105:15	Cameratta's 18:6,13	cert 21:14,15 27:1 28:13 40:16	citizens 22:24 23:4,21 29:17
bit 10:7,8 13:11,17 21:12 24:2 51:6 60:25 61:14 83:1 92:13	Brandon 19:14	campaign 98:24	certiorari 17:13 55:11	citrus 79:15,17 86:2,15
blank 26:17	break 41:11,15 69:3,7	capacity 27:13 29:7 88:9 96:1	cetera 7:4 28:14 29:11	city 26:12 28:18 30:1 72:5
blessed	briefly 10:21 63:2 67:8 88:5		challenge 28:3 36:11	claim 10:8,15,17 17:14, 24 21:11,21 22:5 27:9 37:6,7,12,13 39:11 43:17,18,21, 22 44:14,18,20 52:17,21,24 55:19 56:4,18 57:8 58:8, 21 60:18 64:2 87:5 95:16,21

C

claimed 21:23 56:18	66:20 104:17,19, 23 110:12 111:11	14:10 16:2 24:11, 23 29:22,23 30:6, 7,16,19 31:22 32:23 33:5,22 35:6,8 36:5,7,9,12, 16,20,25 37:4,17 38:2,3 40:5 41:3 45:23,25 46:2 48:15 59:6 64:22 73:2 75:10 79:2 104:7 106:2	conserve 32:24	contravene 11:17
claims 22:15 38:22	commission 55:16 97:1	computers 4:5	consideration 52:22 53:7	contravened 20:16 96:19
Class 50:13	commissioners 28:6 31:17 49:23 50:4 93:24 94:4	concept 102:7 110:20 111:4,20	considerations 31:4	contravenes 11:8
clean 62:12	common 39:19	concluded 56:3 69:25 113:9	considered 33:25 38:25	contravening 20:13
clear 13:6,15,18,22 32:14 35:1 37:9,21 38:16 39:9,21 70:10 73:13 79:9	communities 72:14 84:25 96:8 103:15	concludes 57:18	consist 104:14	control 102:25 112:6
clearing 70:11	community 30:23 35:14 73:17 100:11,12 106:10	conclusion 31:9 49:13	consistent 45:22,24 48:15	conventional 111:9
CLERK 42:11 71:6,14	comp 43:12 51:22 65:11	condition 111:12	constitutional 27:17 38:13,22 39:1	conversation 6:6 112:18
client 5:19 82:13	Companies 96:3,5	conducting 57:23	construed 39:20	conveyed 80:14
clients 7:14 36:10,21,24 55:15	company 16:25 67:17 72:15, 17 88:10 96:6	conclusion 31:9 49:13	consultant 71:25 72:12 75:16 77:11 78:16 96:2	copy 9:15 13:4 41:21 45:7 62:12 109:14
close 12:18 63:1 88:23 105:18	compare 48:14 106:16	condition 111:12	consultants 18:11	core 89:5 90:11
closest 108:18,23	compared 68:4	conditions 43:15 52:3 53:6 66:7 95:9,11,12	Consulting 74:20	Corkscrew 4:12 5:10 6:19,20 7:6 12:11,24 14:16 15:3 16:14,17,19, 25 17:17 18:2,4,5, 13 19:7,11 21:20 22:11 23:3,17 38:9 43:2 61:1,2,4,9,10 63:2,3 68:7 71:10 77:24 79:21 80:21 82:13,18,23 86:15, 18 88:11,13,14 90:4 92:8,11 93:10 95:16 99:9,19 101:1,2,22 102:16 107:2 110:14
co-petitioners 5:11	comparison 68:15	conducted 74:11 112:15	contained 90:25	contemplated 57:11
coalition 99:8	compatibility 111:16	conference 112:15	contemplates 25:4	content 45:18
Coastal 30:1,12,13	compiled 89:13	confiscatory 27:16	content 45:18	context 48:11 76:4 101:12 102:11,20 103:2 104:2,4
code 38:4 48:10,16	complaint 95:3	confuse 73:14	contiguous 83:17	contingent 29:4
Collier 23:18	complete 113:4	conjunction 50:13	continue 6:12 70:21 87:25 103:3 105:24 110:8	correct 38:10 44:17 55:3, 17 56:20,21 58:12, 18,22 59:3 60:15, 25 61:11,12 63:17, 18,22,23 64:3 65:5 66:11 75:13 81:10 85:25 86:5,19 90:5,6 93:17,18 100:4 105:10,13
color 83:25 84:6	completed 112:25	connecting 102:15	contract 18:6 98:19	conveyed 80:14
colored 59:15	complex 14:2	connection 23:2,13,16,19	contrary 27:8 58:10	copy 9:15 13:4 41:21 45:7 62:12 109:14
colors 60:2	compliance 33:9,21 36:7 38:1	connections 60:22		core 89:5 90:11
comment 31:21 48:21 54:5, 16	complicated 21:9	conservancy 99:3,25		Corkscrew's 15:13,19
comments 25:9 35:21 53:18 54:8	complied 46:13	conservation 32:3 63:6 75:16 77:14 106:12,17 110:18		corner 75:16 107:6
commercial	comply 24:10 31:25 33:13 46:11			correct 38:10 44:17 55:3, 17 56:20,21 58:12, 18,22 59:3 60:15, 25 61:11,12 63:17, 18,22,23 64:3 65:5 66:11 75:13 81:10 85:25 86:5,19 90:5,6 93:17,18 100:4 105:10,13
	comprehensive			

<p>corridor 81:1</p> <p>corridors 23:1 89:22</p> <p>cost 22:23 23:4 85:6</p> <p>costs 22:2 66:2</p> <p>counsel 6:6 8:17 12:6 13:4 20:4 38:9 41:21 42:7 55:23 56:13 57:15 58:3 71:10 79:23 87:20 109:14 112:14,17</p> <p>counsel's 35:4</p> <p>count 43:13 95:3</p> <p>counter 90:24 91:3 92:3</p> <p>counties 76:5</p> <p>counts 43:9</p> <p>county 4:12 5:14 6:21 7:20 11:18 12:11 13:22 14:2,8,24 15:1,5 17:5 18:5, 12,24 19:1,3,13 21:11,14,16,22 22:1,8,9,17,23,24 23:4,6,11,18,20 28:6 31:10,14,17, 20 34:2 40:5 42:3, 19,20,25 43:14 45:21 48:8 49:23 50:4 51:9 52:2,12, 20,24 55:16,20 56:3,7,10,12,13,22 57:1,10,15,22 58:14 64:24 65:10, 16 66:1,2,16,25 69:11 73:1,20,21 76:5 78:20,22 79:1,2 80:14 81:14 82:17 83:2,4,13 84:21 85:6 87:7 89:18 90:20,21 92:4 93:17,24 94:4 95:12 96:3 97:1 100:8 102:12,13</p>	<p>106:15 112:6</p> <p>County's 21:19 24:12 43:11 51:21 56:2 73:25</p> <p>couple 26:19 53:11 65:18 74:6</p> <p>court 4:1,9,10 5:2,21,24 6:25 7:21 8:2,10, 13,16,18 9:7,17 11:5,10,20 12:4 13:20 15:18 16:1, 16 19:9,22 20:17 23:25 25:13,20 26:20,22 27:1,10, 14,20 28:9,21 29:9 30:3,9 31:7 32:1,6, 7,8,18,19 33:14,18 34:10,13,23 36:17 37:8,21 38:17 39:22 40:12 41:5, 10,12,13,23 44:2,5 45:3,8 48:2,6 51:8 54:21 56:14 58:7 60:9,23 61:2,4,6,8, 13,16,20,23 62:6, 8,14 65:25 67:7, 10,24 68:23,25 69:2,8,11 70:15 71:15,16 72:1 74:8,15 75:19 80:4 85:1 87:2,23 92:4 93:7 96:16,21,23 101:15 104:11 105:25 106:25 109:15,18,20 110:2 112:14,17</p> <p>Court's 10:23 20:18 51:19, 25 95:21</p> <p>courtroom 4:7,22,24 5:4 69:16,18 70:16,19 71:1 112:23</p> <p>courtrooms 4:21</p> <p>courts 32:20 38:21</p> <p>cover 44:13</p> <p>covers 72:20 103:5</p>	<p>crash 4:6</p> <p>create 22:25</p> <p>created 14:8</p> <p>creation 23:7</p> <p>Creek 84:8</p> <p>CREW 23:17 82:23 83:11 101:22</p> <p>criteria 26:4</p> <p>critical 16:7</p> <p>criticisms 25:9</p> <p>CROSS- EXAMINATION 53:12 54:23</p> <p>cross-examine 7:3</p> <p>crosshatch 82:12</p> <p>crowded 5:2</p> <p>crowding 104:21</p> <p>current 19:4 54:8 92:22,24 93:3 94:9 96:13 101:6</p> <p>cuts 36:2</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>Dalton 15:10 17:10</p> <p>damages 43:23</p> <p>Dan 19:2</p> <p>Daniel 71:5,9,21</p> <p>date 47:6,11,17 50:20 70:2,23 95:14 113:4</p>	<p>dating 88:12</p> <p>day 111:18 112:5</p> <p>days 90:13 93:13</p> <p>DCA 26:18 28:7,17,20 30:12 32:4,13</p> <p>deal 24:12</p> <p>dealing 23:25 52:20</p> <p>dearth 104:17</p> <p>dec 40:12,13 43:5,6,8, 9 51:12,13 55:3,8</p> <p>decided 51:25</p> <p>decision 27:4,20 28:25 31:18,19 32:4,7 33:17,19 48:18 51:22 52:6,11,23 55:9</p> <p>decision-making 24:13</p> <p>decisions 27:21 30:11 31:16</p> <p>declaratory 17:12 21:16 27:8, 14 29:9 43:10 51:5 55:3 95:4</p> <p>declared 89:18</p> <p>declaring 91:15</p> <p>deep 88:25</p> <p>deepest 108:13</p> <p>defendant 25:24</p> <p>defer 37:22</p> <p>defined 21:6</p> <p>definition 38:15</p>	<p>delicate 68:8</p> <p>Delisi 19:2 71:5,21 72:16 88:10</p> <p>demand 82:4,5</p> <p>demonstrate 40:18 77:1</p> <p>demonstrative 13:1 109:2,13 110:6</p> <p>denial 17:18 21:19 43:11, 19 56:18 93:21 94:23 95:17</p> <p>denied 17:8 43:23 51:20 87:6 94:18,19</p> <p>density 35:10 73:12,19,21, 22 74:1 84:9,10 104:3,5,7,8 105:17,20 111:25</p> <p>deny 51:22 52:12</p> <p>denying 94:4</p> <p>DEP 35:18</p> <p>department 31:8 32:8 35:18,19 73:17</p> <p>departure 35:4</p> <p>depending 15:23 64:25</p> <p>depict 76:19,20 77:11 80:8 107:12 109:3</p> <p>depicted 78:6 80:14 83:24 84:6 85:19 100:14</p> <p>depiction 59:24</p> <p>depicts 75:20 76:3 80:9,16 107:14</p> <p>depth 89:8 107:23 108:2, 7,24</p>
--	--	--	---	--

depths 107:23 108:11	28:7 30:1,12,13,19 31:24 35:9,25	70:13 87:8	downtown 72:15	90:11
deputies 70:11	36:8,11 37:3 38:4 39:23 40:3 41:1	discussions 18:4 28:9 51:11 95:22 99:5	downturn 92:12	ecological 78:13 106:14
deputy 42:19,22	45:21,22,24 46:2,3 47:21 48:12,16	disproportionally 39:14	DR/GR 12:15 14:7,12,14 15:2 16:3,5 51:16	ecologist 75:1
derogation 39:19	57:11,18 59:5 65:12 66:20 83:25	dispute 10:11 14:2 72:8	52:13 73:11,25 75:5,7,11,17 76:4 85:5,24 86:4,8 89:15,19,21	ecology 74:25
describe 48:6 51:8 79:7 87:1 88:5 104:3,12	84:5,12 87:8 92:15 96:6 104:13 105:5 106:5 107:3 110:22,23,24	dissimilarities 60:6	drainage 23:10 79:17 104:25 105:4	economic 32:9 35:19 92:12
describes 39:6 96:10	111:7,14,19,21,23 112:5,7,8	distinct 10:12 11:8	drained 23:15	economist 15:23 58:15
description 110:9	developments 18:1 99:18 111:9, 12	distinctly 103:15	draw 10:22 61:21 62:9	ecosystem 75:4 82:23 101:22
design 72:7	differential 34:2	distinguish 28:12	driving 104:21	education 72:2
designed 33:2	differently 92:13	distinguished 29:1	dry 103:24	EEPCO 84:23 85:3
designees 99:11	difficult 21:4,5 24:3 85:7 92:12,16	district 32:1 35:18 72:19, 23,24 83:1,4,9,13, 17,18,19	due 88:20 89:12	effect 39:15 91:17
desirable 30:21	difficulty 4:10	District's 30:14	duly 42:8 71:11	effort 18:10 21:2 91:22
desk 90:23	diligence 88:20 89:12	ditched 23:15	Dunn 19:14	elements 112:3
detail 10:22 11:16 17:3 93:15	Dilisi 71:9	diverted 105:8	dwelling 104:4	eminent 55:23,24 69:12
detailed 13:23 22:10 89:7	direct 42:12 50:18 71:17 74:6	Division 42:24	dynamic 14:25	employed 78:19
details 91:5	direction 76:20 77:2,5	document 49:12 112:6	<hr/> E <hr/>	employment 104:19,22
determination 29:15 58:7,12 64:13	directional 105:1	documents 111:20	earlier 18:22 29:20 30:13 50:16 66:12 70:15 75:12	enacted 10:10
determinations 32:16	directly 33:6	dollars 23:6	east 78:2 82:21 99:8,9, 18,19 103:11	encompass 76:9
determine 28:21 30:21 38:18, 25 57:11 66:7	director 72:14	domain 55:24 69:12	eastern 77:23 105:15	end 8:21 37:15 65:19 108:16 111:18 112:5
determined 30:5	discovery 8:4	DOT 35:17	easy 76:14 77:25	endorsement 48:11
develop 53:4	discuss 75:3	dotted 76:13,15,16 77:24	easternmost 76:14 77:25	enforce 36:11,25 37:23
developed 96:7 111:24	discussed 13:6 21:7	double 58:23 106:21	easy 15:7 17:9,24 91:4	enforced 36:22
developer 72:13 111:13	discussing 20:9	doubt 69:24		engineering 72:16
development 11:3 15:25 24:21	discussion 4:8 5:1 35:4 69:1	Dover 74:11,19 78:15,19, 21 79:3 90:1		enhancement 84:15,19,24 96:7 103:17

ensure 20:19 33:12 39:22 41:5	58:3,4 64:12	24:18 41:19 42:1, 14 44:9,12 47:12, 14,19,25 48:1,3 49:8,21 50:1 51:6 52:16 53:14 54:1, 12 59:14,25 60:5, 7,12,19 62:1,3 65:15 67:13 68:3, 4,10,12 74:3,7,9 79:24,25 80:1,6 81:6,8 83:24 91:10 93:6,8 94:1,25 95:19 97:12 100:14,16,20 101:9,16,17 103:5, 7 106:24,25 109:2 110:4	extent 38:5 39:12 102:10	favor 51:19 92:4
ensuring 33:9	evidence 9:8 11:23 13:8 14:23 16:4 25:22 33:23 40:14 41:20 42:2 48:25 98:7	exhibits 12:1 13:9 41:20,23 46:15 47:24	extraction 14:14 81:16	features 79:5 105:25
enter 10:19	evidentiary 4:15 7:22	exist 36:5	extraordinary 11:4	federal 38:21
entered 13:3 22:9 33:25	evidentiary-wise 40:19	existed 66:9 77:14,15	F	Federation 99:4
entertain 35:7	exact 38:24 59:11	existing 73:25 77:12 79:20, 22	face 57:2	feedback 35:21 99:5,12 100:6
entire 52:13 64:13,15 88:24 89:5	EXAMINATION 42:12 67:11 68:1 71:17	expansion 30:4	faced 32:6	fees 22:2 23:7 66:2
entities 9:21	examined 42:8 71:12	expenditures 31:2	facing 22:6	feet 6:4 50:14 57:24 108:8,10,13,25 110:12
entitled 65:20 70:4	examiner 31:13,14 47:5 48:4,7,8,24 49:14 63:13 64:7,12 93:15,21 94:11 97:1,14,17,25 98:1,8	experience 19:3 72:2	fact 12:16 31:3 40:14 43:23 44:15 51:21	FFD 86:12,24
entitlements 88:10	examiner's 63:15 93:8,20 94:5	expert 69:23	fact-finding 31:15	field 72:3
entity 30:21 83:21	examples 10:24	explain 17:3 46:16 50:10 52:19 62:24 75:19 96:17 105:25	factors 38:16,20,24	file 8:22 10:16
environmental 23:20 35:17,22 65:3 75:1 84:14, 19,24 89:22 96:7 102:19 103:16	excavation 108:2,23	explicitly 63:15	facts 6:8,11,13 7:7,16 8:24 9:1 21:13 25:24 26:1 28:22	filed 4:18 9:11 14:19 17:11,13,24 21:10, 11 43:8 92:17
equation 105:2	exceed 52:7	expressly 14:12	fair 10:4 34:16	filled 9:2
Erwin 74:20,25 85:10 102:21	exceeded 40:21	extending 76:15 92:14	fairly 12:17 17:16	finagle 69:5
Erwin's 74:22 78:22	exceeds 40:4	extends 101:20 103:10	fall 89:14	final 47:20 48:18 50:3
essentially 96:24 103:13	excellent 13:24	extensions 92:20	familiar 13:14 20:8 43:1 73:1 76:6 79:4 86:23 95:1	finally 16:15 23:8 54:12 92:2
establish 61:13	excerpt 75:18	extensive 17:16 18:8 35:21 97:22 98:24	familiarity 73:4	find 7:2 8:20 43:10 85:4 113:4
established 17:21 73:16	excerpts 74:16		family 104:16	findings 40:13 63:22 64:7
establishes 35:1 37:25 55:15	excess 59:6		farming 86:17	fine 41:12
establishing 33:3 95:9	excuse 77:22		farmland 79:16,20,22	firm 15:10 91:8
estoppel 15:17	executive 27:24 28:4 29:1		farther 103:16 104:23	fisheries 32:25
evaluate 11:7 55:20 56:8 89:21 98:8	exhibit 12:9 13:1,3,20 15:12 17:7,16 22:5		fashion 53:5 78:23	Fitzgerald 72:16 88:10
evaluated			fault 100:24	five-mile-long

<p>22:20 flat 79:14 flipped 100:22 flood 102:25 Florida 30:1,3 34:17 38:20 71:22 72:11,19,22 83:1,3,8,19 99:3,4 100:18 flow 16:7 23:10,11,16 76:21,22 77:2,3,6 78:13 102:20 105:1,5 106:13,18 focusing 89:12 folks 4:11 5:6 36:9,24 70:3 112:17 follow 39:6 60:10 75:3 foot 66:19 force 36:6 formal 58:7 65:11 formation 30:17 formulated 30:22 Fort 72:15 forums 97:2 forward 7:22 8:6,7 43:14 73:6 112:7 found 26:18 28:19 32:4 51:20 frame 66:14 framed 13:19 frankly 70:4</p>	<p>free 38:7 48:23 front 28:23 74:4 full 44:19 71:19 97:23 Fuller 15:11 16:16 17:17, 21 43:10 Fuller's 52:11 91:14 95:1 functions 20:17 fundamental 37:12,21 future 14:11 19:24 25:1 28:1 30:23 31:2 32:20 73:18 74:1 112:22 <hr/> <p style="text-align: center;">G</p> <hr/> gallery 112:18 game 34:16 gave 26:14 96:25 general 12:10 13:4,5 14:22 24:8 39:16 76:12 77:5 79:8 87:2 107:17 110:14 generally 60:21 77:8 78:5 79:3,14 84:6 104:6 107:14 generous 57:8 genre 28:11 gentlemen 34:15 geographic 79:5 geographically 72:20 geological 89:3 give</p>	<p>4:3 7:3 9:4,15 11:25 12:2 13:16 14:22 33:2 43:4,6 45:6 70:3,24 71:19 72:1 101:12 102:4 giving 22:11 goals 14:3 good 4:1 5:16 6:18 19:21,22 34:22 42:16 54:25 55:1 108:9 112:12 govern 6:24 governing 72:21,23 government 11:22 21:1 26:7 30:20 32:23 35:7, 12 37:7 40:17 governments 64:21 gradience 78:9 grant 38:12 39:2 granted 8:14 19:10 20:19 26:5 29:21 39:7,23 40:3 85:19,22 granting 17:17 28:23 57:18 58:16 95:1 grants 59:5 gray 68:8,18 great 15:21 greater 14:4 green 70:7 78:9 82:20 83:5 Grosso 5:16,17,23 6:5,16 7:6,11,21,25 8:7, 11,15,17 9:6 12:8 26:14,15 34:11,12,</p>	<p>21,24 41:22 54:21, 22,24 59:4,18,21 60:8,10,11 61:18, 21 62:1,4,7,11,16 67:5 68:3 87:15 109:16,19,21 110:3 Grosso's 68:20 grounds 27:15 29:10 groundwater 35:11 73:23 84:10 group 7:20 98:20 99:10 groups 99:13 grove 4:12 5:10 6:20,21 7:6 12:24 16:19,25 18:4,5,13 19:7,11 21:20 22:11 43:2 71:11 79:15 82:14, 18 93:10 95:16 101:2 Grove's 17:17 Grove/corkscrew 18:2 growth 30:23 32:22 35:14 guarantees 27:17 guess 75:15 99:21 guidance 25:18,19 32:1 <hr/> <p style="text-align: center;">H</p> <hr/> habitat 22:22 32:25 78:14 half 105:22 106:7 hand 19:25 44:3 45:2 71:7 handed 26:10 109:23 handled 91:8</p>	<p>handling 15:9 handy 8:20 happen 35:25 95:10 happened 16:3 28:23 90:20 92:3,7 happening 89:15 hard 18:11 78:8 88:25 hardness 89:7 Harris 9:14,19 10:9,14 12:21 17:13,23 18:21 19:8 20:7 21:11,21,24 22:5 23:23 24:3 25:3 26:21 27:9 33:20 35:1 36:2,4,13,23 37:1,6,7,11,13,19, 24 38:2,6,10,23 39:2,7,8,10,18 40:25 43:5,7,17, 18,22 44:14 52:16, 20,24 55:14,19,25 56:3,8,18 58:1,21 60:18 64:1 69:12 87:5 95:15,21 hatch 80:14 hatched 80:10 headnote 27:11 heads 99:10 hear 6:3 7:19 14:17 20:15 21:12 24:9, 20 64:18 70:6 heard 59:12 hearing 4:15 7:23 25:12,22 26:3 27:19 29:2,4, 19 31:12,13,14 32:11,15 43:15 46:5 47:5,8,9,10,</p>
--	---	---	---	---

<p>16,21 48:4,7,8,19, 24 49:4,6,14,23 50:3 51:2 52:3 53:15 54:2,9,13 63:13,15 64:7,12 66:3,7 70:22 93:8, 14,15,20,21 94:5, 10,11 95:8 97:1,7, 13,16,21,24,25 98:1,7,13,16</p> <p>hearings 8:21 18:15,16,19 24:15,19 25:6 27:18 29:2 31:12 33:16 48:3,20,22 50:6,23 51:12 70:3 97:25 98:6 112:20</p> <p>heavily 23:15</p> <p>held 15:12 42:21 47:22 50:24</p> <p>Hendry 44:19</p> <p>HEX 94:10 97:7</p> <p>high 104:5</p> <p>highlighted 27:11 28:9,24 32:21</p> <p>Hill 4:18 5:18,19 6:10 34:25 53:23 94:9 98:11 109:9</p> <p>Hill's 108:19</p> <p>Hillsborough 28:6</p> <p>Hinds 5:15 59:1</p> <p>hire 55:23</p> <p>hired 88:9</p> <p>historic 105:5</p> <p>historically 38:21</p> <p>history 14:3,6 88:6</p>	<p>hit 15:22</p> <p>HOA 99:10</p> <p>hold 52:3 66:6</p> <p>homeowners 99:8,16,21</p> <p>homes 57:24 63:9 66:16 82:2</p> <p>Homestead 26:13</p> <p>Honor 4:25 5:9,13,16,20 6:5,19 8:15 9:10, 11 19:21,25 26:10 29:12,18,25 33:15, 23 34:6,12,21 36:14 38:7 39:17 41:7,18 42:3 43:25 45:2,6 54:22 55:9 59:18 62:2,4 67:5, 8,23 71:4 80:2 87:16 96:22 109:12 110:1 112:11 113:8</p> <p>Honor's 20:15</p> <p>horizontal 108:5</p> <p>hotel 57:25 66:22</p> <p>hour 70:22</p> <p>hours 112:20</p> <p>hundred 53:1 57:24 108:10</p> <p>hundreds 50:17</p> <p>Hutchcraft 5:12 17:2 19:6</p> <p>hydrologic 89:3</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>I-75 60:24,25 99:19</p> <p>idea 70:5</p>	<p>identified 11:15 52:10,14</p> <p>identify 44:23 45:13 47:25 77:24</p> <p>identifying 50:22</p> <p>ignore 8:19</p> <p>immediately 103:18,19</p> <p>immunity 39:19</p> <p>impact 23:7 30:25</p> <p>impacts 52:6 93:16 111:2, 14</p> <p>implement 79:3 85:11</p> <p>implementing 38:4</p> <p>import 95:7</p> <p>important 9:23 35:10 39:21 41:4,14 46:9 79:8 101:12,18 102:9 103:7 104:1</p> <p>importantly 51:13 102:18 106:11</p> <p>impressed 18:9</p> <p>impressive 31:11</p> <p>incentivize 85:5</p> <p>inch 39:24</p> <p>include 33:17 63:25 64:9 99:2</p> <p>included 24:17 25:5,8 43:9 73:24,25 87:11 108:1</p> <p>includes 22:11 59:8 106:6, 11 111:19,20,21 112:2</p>	<p>including 31:12 32:24 78:22</p> <p>inclusion 23:8</p> <p>incompatible 76:2</p> <p>inconsistent 43:11 51:22 52:11</p> <p>increase 35:24</p> <p>increasingly 16:9</p> <p>incredibly 88:22</p> <p>independent 56:22</p> <p>index 53:18 54:4,16</p> <p>individual 99:2 100:5</p> <p>individuals 53:20 55:22</p> <p>industrial 107:3</p> <p>informal 99:4</p> <p>information 90:17</p> <p>informed 6:7</p> <p>infrastructure 16:12</p> <p>inherent 24:5</p> <p>inherited 92:18</p> <p>initial 60:18 79:10</p> <p>initially 17:22 91:18</p> <p>injunction 52:1</p> <p>injunctive 27:15 29:9 43:13</p> <p>inordinate 38:15</p> <p>inordinately 9:21 11:22 21:2</p> <p>input 99:6 100:12</p>	<p>insensitive 85:11</p> <p>instructed 15:6</p> <p>instrumental 18:25 19:15</p> <p>integrity 75:4</p> <p>intend 38:11</p> <p>intended 105:9</p> <p>intends 38:11</p> <p>intensity 111:25</p> <p>interchangeably 17:2</p> <p>interest 11:12,18 20:20,22, 24 22:2 24:6,7,8 33:7 46:11,14 49:19 63:17 64:14 96:19 97:19 106:2</p> <p>interested 18:3</p> <p>interesting 5:5</p> <p>Interestingly 29:22</p> <p>interests 33:2,10</p> <p>interrupt 97:3 112:10</p> <p>intertwined 33:11</p> <p>intervene 4:17 6:2,9 7:9 8:13</p> <p>intervenor's 79:23 81:5</p> <p>intervenor 5:18 6:24 7:8 9:25 12:23 53:23 54:8, 10,18 94:8 98:10</p> <p>intervenor's' 109:6</p> <p>intervention 6:13,22</p> <p>intimately 73:7</p>
--	---	---	--	--

investigating 88:21	57:10,25	89:3	large 12:25 22:20 72:13 75:7 79:19 82:24 83:5 99:18 101:20 102:5	legislative 27:23 29:6,7,14,24 30:6,8 33:24 34:3
invited 31:20 48:21 50:5,7 98:2	joining 5:21	kinds 35:9,12	large-scale 86:6 106:10	Lehigh 103:8,10,23 104:12,17,23 105:5,12
involve 30:17	joint 4:15,18 8:12 9:11, 12 13:21 40:17 42:7	King 16:23,24 17:4	largely 81:1	letter 10:17 21:21 44:13, 15,20 95:16,21
involved 13:5 17:10 52:23 86:24 90:18 91:21, 23 95:24	Joseph 17:25	Kleeger 4:19 5:18 6:10 34:25 53:24 109:9	larger 70:19 103:9 106:22 111:15	letters 50:8,11,14,22
involvement 69:13 88:6	judge 15:11 16:16 17:17, 21 25:14 32:14 43:10 52:10 58:11 59:22 60:19 62:13, 25 63:3,19,24 64:17 91:14 95:1, 10	Kohl 74:11,13,19 78:15, 19 79:3 90:1	largest 14:1	level 56:7,10 57:10
involves 12:20 65:2	Judge's 55:11	Kohl's 78:21	lasted 15:23	liability 52:24
IPD 107:3	Judges 69:11	L	law 6:12,23 10:1,9,15, 20 15:18 17:21 19:8 25:25 27:25 29:24 33:10,13 35:5,20 36:6 37:23 38:11,13 39:5,19 40:21 41:2 45:9	liberal 36:10
irrelevant 51:16	judgment 17:18 29:3 51:7,14 52:23 55:4 66:15 95:2	labels 100:8	laws 9:20 24:25 39:18	liberally 39:20
issuance 11:3 31:23	judicial 16:1 28:25 37:2	lack 31:7	lawsuit 58:5 65:15	light 70:7
issue 12:12,23 20:20,22 24:10 37:12 45:15, 21 46:24 48:16,17 55:9 63:21,24 64:2 69:22	judicially 36:23 37:2	lacked 24:25	lawyers 9:2 56:2 112:19 113:3	likewise 47:19 50:1
issued 49:15	July 78:17 102:23	lake 78:1,2 108:7	led 74:11	lime 81:16,25 82:1,4 88:22
issues 6:25 7:1 13:15,19 16:13 35:23 63:19 87:18 103:1,22	jumped 97:13 100:24	lakes 77:14	Lee 4:12 5:14 7:20 12:11 14:2,8 15:1 18:5,24 19:3 40:5 42:19 46:7 48:8 49:16 51:15 52:10, 15 69:11 73:1,2,8, 21 76:4 78:20,22 79:1,2 80:14 81:13 83:2,4 93:17 103:14	limit 98:3
J	June 47:16,17,22,23 50:20,21 54:2,13	land 12:20 14:2,11,20 15:8 19:2 21:9 24:5 33:8 35:5 38:4 42:24 48:15 71:24 72:3,10 73:18 77:12 79:8 80:10,16 84:21 85:5,7 86:14 87:12 89:1,2,19 95:6 96:6 104:4 110:15	limitations 35:1 39:9 103:24	limited 4:13 5:10 16:19 17:1 35:9 37:10 38:3 39:12 43:15 71:11 82:18
Jackson 16:10	jurisdiction 27:2 28:13 83:8	landowner 22:11 34:3 39:15 40:1,7,10 58:17 65:20 87:7	link 101:25	list 53:18 100:10 103:25
Jacksonville 30:2	K	landowner's 57:8	list 54:16 77:18 93:14	listed 10:24 75:16
Jacob 18:24 42:4,6,17 45:4 53:14 54:25 67:13 79:24 98:1	K-O-H-L 74:13	landowners 10:5 38:12 39:3 85:11	lists 10:24 75:16	litigant 27:6
Jay 5:13	Kevin 4:18 5:18 74:19, 22,25 94:9 108:19	lands 56:12 63:6 83:13 85:8,14 86:4	legal 9:24 41:9 56:2 91:11	litigated 106:20
Jeff 5:15	key 9:18 110:22 111:1	language 21:4,5 24:2	legislation 9:19	litigation 15:6,9 17:8,24
Jeffrey 4:18 5:18	kind 10:4 13:2 16:9 17:5 19:15 26:24 28:22 31:4 68:8			
job 20:21 55:20 56:7				

21:9 22:6 33:25 52:23 91:4 94:22 95:20 litigations 43:2 local 11:9 32:23 33:5,9, 12 35:6,12 37:6 40:17 41:3 49:15 64:21 located 22:14 76:4,10,14 location 76:7 locations 89:8,23 logically 6:2 long 11:12 16:17 42:21 49:1 68:9 90:7,10 98:4 longer 8:21 36:24 looked 57:16 58:2 89:22, 23 107:18 lose 22:1 56:3 loss 56:19 lost 65:16 lot 4:11 8:25 14:17 24:4 25:18 64:23 69:12 72:8 81:2,3 90:12,17 98:5 99:17 102:12 104:9,16 low 23:10 104:5,8 lower 75:15 76:3 luckily 25:17 <hr/> M <hr/> Madam 5:7	made 9:25 17:4 27:4,22 29:4 31:18 36:13 46:10 58:7 63:22 64:17 84:2 85:7 90:3 mail 50:14 mailing 50:18 100:8 mailings 100:9 maintain 83:5 85:16 maintained 85:14 major 35:7 majority 61:8 79:16 make 19:23 32:16 35:12 40:13,24 41:9 58:11 64:7,13 66:12 70:25 75:21 82:11 90:25 106:23 112:23 management 32:22 35:14,17 72:19,22 83:1,3,8, 16,19 mandatory 31:8 map 12:3 59:15,20 60:15 73:18 76:9 77:12,21 88:15 101:13 Marianne 69:2 marine 32:25 marked 81:5 massive 36:16 master 72:13 111:20 master's 72:5	math 53:1 matter 6:12,23 28:1 29:24 70:24 112:21 113:2 maximum 108:24 Maxwell 44:19 meaningful 106:14 means 36:15,20 52:2 mechanism 85:5 media 69:5 mediation 10:19 medium 104:6 meet 34:22 meeting 100:1,7,11,14 113:3 meetings 31:17 99:2 100:2,5 memorandum 13:22 memory 64:23 mentioned 7:6 13:16 18:21 75:6,12 82:10 94:10 98:1 mere 30:18 merit 55:21 met 34:15 40:20 41:6 99:7,10,12 method 27:13 29:7 Michael 18:23 42:4,6,17 microphone 4:10	mid-2000s 73:5 mid-nineties 10:2 middle 104:5 mile 82:9 miles 50:16 79:11,12,13 102:1,2 million 21:23 43:22 44:18 53:1,3 56:19 57:24 58:5,8,9 millions 23:6 mind 108:4 mine 12:16,17,18 21:20 22:12 43:16 52:4 66:8 68:11,13 81:15,20 82:8 85:20 107:13 mined 81:24 mines 80:18 81:2,3,10, 11,13,23 85:18,24 mining 12:15 14:13,20 15:2,5,19 16:21 17:5,8,19 19:4 22:15 43:24 51:20 52:10 65:20,21 66:13 76:1 77:13, 25 78:2 79:10 80:25 81:1 87:6,12 88:3,6,17 89:6,9, 13,24 90:3,8 91:22 93:2,5,9,16 94:13, 15 95:9,17 106:19 107:4,15,16,19 108:3,4,7 minus 21:19 minutes 69:9 Mississippi 16:11	misstate 59:10 MIT 72:6,7 Mitch 5:11 19:6 mitigation 111:2 moment 52:12 55:3 57:7 Montgomery 15:8 month 26:19 months 26:19 90:14,15 Moore 5:9,10 6:15,18 7:1, 19 9:5,9,10,18 12:5,9 19:20 20:6, 17 21:8,15 24:14 34:8 41:18 53:9, 11,13 54:19 67:24 68:2,22 71:2,4,16, 18 80:2,5 87:20,25 88:1 96:21,22 97:3,6 101:24 109:12 110:4,7 112:10 moratorium 15:4 89:18 91:15 morning 4:1,14 5:16,19 6:7 19:21,22 42:16 54:25 55:1 64:17 69:15 104:21 motion 4:17 6:2 7:10 8:13 17:17 95:3 move 69:17,24 moved 70:20 72:12 73:9 movement 102:25 moves 112:7 moving 70:8 muted 68:8,18
---	---	--	--	---

<p>Myers 72:16</p> <p>myriad 103:1,22</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>names 74:18</p> <p>narrow 43:4</p> <p>narrowly 39:20</p> <p>natural 14:13 16:6 32:24</p> <p>nature 27:23 49:2 87:5 105:9</p> <p>Neale 15:8</p> <p>nearby 109:4</p> <p>necessarily 30:17</p> <p>needed 58:1 73:20 85:10 91:1,16</p> <p>neighborhood 100:14</p> <p>newer 15:14</p> <p>News-press 46:22,23 49:25</p> <p>nongovernmental 99:24</p> <p>noon 70:22</p> <p>normal 31:22</p> <p>north 23:11 30:1 60:25 61:10 68:6,17 77:8 78:1 79:11,13,20 80:21 88:14 103:7, 8 105:3,8</p> <p>north/south 23:2 101:25 102:10,13 106:14</p> <p>northeast 77:9 80:12 103:12</p>	<p>northern 86:14</p> <p>northernmost 84:9</p> <p>note 25:20 53:17 84:8</p> <p>notebook 13:8 24:18</p> <p>noted 26:23 84:15</p> <p>notes 8:20</p> <p>notice 16:1 25:11 29:1 33:3 46:5,23,24,25 47:15,23 50:8,25 100:9</p> <p>noticed 12:23 18:16,19 24:15 25:6 31:16 33:15 68:6 88:21 98:16 100:7</p> <p>notices 47:2</p> <p>number 4:13,15,17 9:20 11:2 18:11,15 20:21 21:22 22:5 26:18 27:11 43:20 44:9,12 46:4 47:19 48:1 49:5,9,11,21 50:2 51:6,16 52:16 57:4 59:12 67:13 82:25 84:7 107:6 108:24 110:4,11</p> <p>numbered 107:16</p> <p>numbers 42:1 45:11 75:22 107:7</p> <p>numerous 22:21</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 10:5 87:15</p> <p>objection 6:22 36:19 41:22 87:24 109:15 110:1</p>	<p>objections 35:22</p> <p>obligation 23:9</p> <p>obligations 22:25 23:5</p> <p>occasions 20:10</p> <p>occur 10:25</p> <p>occurred 12:15 15:21 31:3 95:13</p> <p>occurring 107:20</p> <p>off-the-record 4:8 5:1 69:1 70:13</p> <p>offer 41:19</p> <p>office 42:20 50:12 56:13 58:3 90:20,21</p> <p>official 29:6,8</p> <p>oftentimes 111:15</p> <p>onsite 79:15</p> <p>open 4:5 70:12 110:19, 20</p> <p>opening 9:4 64:17</p> <p>opinion 30:15 51:15 89:2</p> <p>opponent 94:14,15</p> <p>opportunity 32:9 35:19 41:8 102:10,14,19</p> <p>oppose 6:12</p> <p>opposed 111:9</p> <p>opposing 6:6 20:4</p> <p>orange 84:2,6</p> <p>order 10:10 11:3 13:12</p>	<p>15:11 16:16 17:16 26:5 31:24,25 33:16 36:8 45:21 51:7,13,14,19,25 66:1,15 85:2,9 91:12,14 95:1,7,21 99:22</p> <p>ordered 92:4</p> <p>orderly 30:23</p> <p>orders 36:11 45:24 46:3 48:12</p> <p>ordinance 11:9 15:16 46:7,8</p> <p>ordinances 16:4</p> <p>organization 63:5</p> <p>organizations 99:25</p> <p>organize 13:9</p> <p>original 19:4 87:12</p> <p>originally 22:13</p> <p>outcome 51:8</p> <p>outline 68:19 77:24</p> <p>outlined 12:12 88:15</p> <p>outreach 98:18,24</p> <p>over-allocated 73:19</p> <p>overlay 84:15,20,25 85:4, 15 96:8 103:17</p> <p>overly 57:7</p> <p>override 87:23</p> <p>oversight 31:8</p> <p>overview 11:25 13:25</p> <p>owned</p>	<p>12:24 82:13,17,24, 25 83:2,10</p> <p>owner 16:18 53:3 92:22, 24 93:3</p> <p>owners 14:15 43:8 92:8,11 109:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pages 67:16 75:3</p> <p>Palm 71:22 72:19</p> <p>paragraph 9:20 10:23 11:6</p> <p>parcel 22:12,16 23:9</p> <p>parcels 13:7 82:17</p> <p>parent 16:25</p> <p>part 12:24 23:21 33:1 41:4 44:22 48:2 60:18 64:1,9 65:6 79:19 84:14 89:6 98:19 99:11 103:16 105:2 110:22</p> <p>participant 48:25</p> <p>participants 49:5</p> <p>participate 54:10,18 88:2</p> <p>participating 53:20</p> <p>participation 24:12 25:8 33:3,8, 12 98:3</p> <p>parties 7:14 13:14 22:8 25:2,5,7,13 46:10, 13</p> <p>partner 5:15</p> <p>Partners 74:11</p> <p>partnership 83:3</p>
---	--	---	---	--

party 17:25	petitioner's 42:1	65:11 73:2,8 75:10 79:2 98:25 102:7 103:14 106:2,3 107:15,19,23 110:20,23 111:4, 20,21	policy 14:10 27:22 29:15 30:11,17 35:13 71:24 72:11	presentation 13:10 96:25 101:14
passed 10:1 21:25	petitioners 8:12 40:18 42:8 50:13		policy-making 31:19	presented 46:23
Pavese 15:10 91:8	phase 107:17	planned 72:13 107:3,12 111:7,9,11,18 112:4,8	portion 20:7 28:24 32:21 87:11 100:18 105:11,14	presently 23:13
pay 66:2	phased 106:7	planner 19:2 58:15 71:24 72:10 75:2 79:8	portions 73:8 101:6	preservation 22:22 63:5 84:15, 19,24 96:8
payments 23:5	phasing 107:21 110:24	planners 84:21 111:8	position 6:19 7:8 40:15 42:21	preserve 107:7
Pelham 30:10	photographs 100:17	planning 19:15 33:8 35:5,15 72:3,6,14,16 74:10 89:2,16 90:1 95:6 96:3,11	possibly 44:23 45:14	preserving 16:6
pen 62:23	physical 76:6	plans 15:15 30:7 32:23 33:5 36:5,7 38:2,3 64:22 104:7	potential 35:23 52:23 77:13, 15,17	presumed 11:12
pending 10:14	physically 90:22 101:3	Plantation 14:16 88:11,13 90:4 92:8,11 101:1 107:2	Powerpoint 96:9,25 100:22 103:10	pretty 15:25 32:14
people 41:14 50:17 63:11 69:14 70:5 73:14 99:13,15 104:20	picks 12:22	platted 103:20 104:24	practice 72:25	prevail 21:16
percent 110:19	picture 75:25 76:3	play 31:5	practicing 72:10	prevailed 21:14
perfected 10:17	pictures 101:3	pleasure 34:14	pre-claim 56:9	prevent 11:22 21:1 39:25
period 66:3,6,10 72:14 107:20	piece 59:17 104:1	podium 19:24	preapproved 36:17	previous 30:4
permission 85:19,22	pit 107:16 108:2,7,9, 23,24	point 9:25 10:21 20:25 30:15 32:19 35:3 56:1,12 59:22 60:6,18 66:12 102:8 103:6 110:21,22	precedent 87:18	previously 30:22 51:4
permit 14:20 28:24	pits 76:1	pointed 20:6,18 21:15 24:14	precise 106:12	principal 5:12 17:2 19:6
permitted 14:13 17:20 51:21 52:14,15 85:24 86:3	place 84:13	pointing 61:16	precisely 31:3	principles 15:18 75:17
perpetuity 85:16	placement 109:3 110:13	points 9:18	predecessor 14:16	prior 42:23 50:8,10 85:20 95:13 108:1
person 31:15 57:22 90:22, 24	placements 110:15	policies 30:22 36:21	prepare 80:6	priorities 77:18
perspective 89:16 92:15 95:6 96:11,17	plaintiff 25:23		prepared 7:22 8:5,7 15:5 46:23 90:19 96:10 109:2	priority 78:7,10
Pete 28:18	plaintiff's 95:2		preponderance 25:22 40:14	private 9:14,22
petition 4:16,18 6:9 9:11, 12 11:5 13:19 17:12 21:15 27:1 56:19	plan 6:18 15:14 16:2 24:11,23 29:22,23 30:6,16,20 31:22 33:10,12,22 35:6, 8,24 36:9,12,16,20 37:1,4,17 40:5 41:3 43:12 45:23, 25 46:2,7 48:15 49:16 51:15,23 52:10,15 59:6		prerequisite 55:15	privately 83:10
			present 16:18 34:9 49:6	problems 35:23
				procedure 11:1 25:5,12 40:11
				procedures 46:5

<p>proceed 71:15 91:16</p> <p>proceeding 20:12 55:2 94:9</p> <p>proceedings 48:10 54:11 113:9</p> <p>process 15:15 24:13,24 31:22 33:2,8 35:13 36:19 40:23 41:5 46:1,7 48:2,24 63:13 64:24,25 65:2,6 88:20 89:20 92:6,19 93:1</p> <p>processed 15:14 79:1</p> <p>processes 97:2</p> <p>processing 73:8 93:4</p> <p>produced 89:6 101:13</p> <p>producing 86:7</p> <p>product 58:5 81:23</p> <p>products 104:10</p> <p>profession 71:23</p> <p>project 57:14 64:15 74:19</p> <p>proof 28:3 34:1</p> <p>proper 27:13 29:7</p> <p>properties 12:13 13:5 75:10 83:5,17 86:7 91:24</p> <p>property 9:14,22 10:6 11:23 12:12,19 14:15,18 16:19,20 18:3 19:12 21:3,20 22:20 23:12,18 37:11 39:7,10 43:8 50:15 53:3,4 60:12 61:9 62:25 66:17 68:7,16 76:7,10,14 77:7,20,22 78:1 79:5,9,10,19 80:9,</p>	<p>10,13 81:14,17,21 82:7,11,16 86:16, 18,24 88:3,11,22 89:5,10 91:23,24, 25 92:18,23,25 93:11 101:2,3,4,6, 19,20 102:6,7,16, 19 103:8,12,13,20 104:2 105:16 108:16,19,21 109:4,7 111:23,24</p> <p>proponent 94:13</p> <p>proposal 7:23 19:5</p> <p>proposed 30:19,25 35:15 105:20 108:11</p> <p>protect 20:23 32:24</p> <p>protected 11:19 35:10</p> <p>Protection 9:15</p> <p>protections 40:20</p> <p>protects 20:19 29:17 97:19</p> <p>proved 18:20</p> <p>proven 11:13</p> <p>provide 10:4,11 35:21 48:25 85:10 87:9 106:13 111:14</p> <p>provided 12:21 20:4 29:25 32:2 41:21 46:22 50:20 67:17 106:19</p> <p>provision 11:6,10,20 18:21</p> <p>provisions 10:19,25 13:23 22:21 24:16</p> <p>public 11:12,18 13:13 14:4 16:8,13 18:15,16 20:20,22, 23 22:25 23:7 24:6,7,8,12,15</p>	<p>25:6,7,8 31:12,14, 20,21 33:6,7,12, 15,17 39:16 46:5, 11,13 48:19,20,21, 25 49:3,5,13,19,24 50:5,8,23 51:1,12 52:3 53:15,18,22 54:5,6,8,16 63:17 64:14 66:3,7 69:13,20 96:19 97:19 98:2,3,6,18, 20,24 100:1,4,9, 10,13 106:2 111:2, 15</p> <p>publication 46:22,25 47:7,11, 15,18,23 49:24 50:24</p> <p>publicly 18:19 98:16 100:7</p> <p>published 24:15</p> <p>purchase 85:8,13 92:22</p> <p>purchased 16:19,20 85:8 92:25</p> <p>purchaser 18:7 98:19</p> <p>purchasing 18:3</p> <p>purple 86:12</p> <p>purport 76:25</p> <p>purports 37:16 40:9</p> <p>purpose 78:12 85:3,4 95:9</p> <p>purposes 109:13</p> <p>pursued 93:2</p> <p>put 16:3 40:20 89:10 90:7,8 102:21 104:2</p> <p>puzzle 104:1</p>	<p style="text-align: center;">Q</p> <hr/> <p>quarter 82:9</p> <p>quasi-executive 28:14</p> <p>quasi-judicial 26:9,25 27:3,21 28:12,25 48:9</p> <p>quasi-legislative 27:13 28:4,15</p> <p>question 8:8 41:8 47:14 54:15 56:23 63:8 64:8 91:11</p> <p>questions 9:3 65:18 67:22,24</p> <p>quick 109:22</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>Rainbow 32:2,3</p> <p>raise 71:6</p> <p>raised 37:13</p> <p>Ranch 16:24,25 17:4 32:3</p> <p>reaching 96:20</p> <p>read 38:10,15 66:4,5 94:5 108:24</p> <p>reads 28:25</p> <p>ready 13:11</p> <p>real 11:23 39:10</p> <p>realized 10:2</p> <p>reason 40:22,23 66:11</p> <p>reasonable 52:2 66:3,6</p> <p>reasons 26:23 51:16</p> <p>received 44:20 50:17 72:5,6</p>	<p>recent 12:17 86:23</p> <p>recently 81:16</p> <p>recess 69:9,10 70:14 113:1</p> <p>recession 15:21</p> <p>recharge 35:11 73:14</p> <p>recognize 44:12 49:12 67:16</p> <p>recognized 85:6</p> <p>recommend 97:17</p> <p>recommendation 48:16 49:15 64:14 93:9,20 94:6,11 97:8,14</p> <p>recommendations 48:13</p> <p>recommended 93:21</p> <p>reconvening 70:23</p> <p>record 5:7 13:13 27:3 28:13 55:12 61:14 66:5 71:20 81:12 104:11 112:16</p> <p>RECROSS 68:1</p> <p>rectangular 68:9</p> <p>red 60:15 68:19 76:13, 15,16 77:24</p> <p>redirect 67:7,11</p> <p>reduce 73:22</p> <p>reduction/ groundwater 73:12 74:2 84:10</p> <p>reenvision 89:21</p> <p>reevaluation 89:25</p>
---	--	---	---	--

refer 45:10 46:15 47:3 84:23	63:20 65:25 95:4	39:25 52:3 66:2	16	40:3 57:18 59:6
referred 67:13	relies 33:11	requirement 45:23 85:15	restored 85:9	risk 22:7 27:5 52:19 53:5
Referring 101:15	relieve 19:10	requirements 33:4 36:21 37:5 38:1 46:5,6 64:21	restoring 16:6	risks 33:25 53:7 58:4
reflect 94:2 107:7	rely 70:17	requires 23:15,25 32:23 33:21 36:6 51:19 82:2 95:8	restrict 9:22	River 32:2,3 105:3
reformulate 30:22	remainder 86:16	requiring 39:14 43:14	restrictions 10:5	rivers 32:25
refresh 64:23	remained 92:19	reschedule 112:22	restrictive 10:2	RM2 111:10
regard 7:5,10 11:7,14 15:2 16:2 17:18 19:1,7 54:5,15 68:3 75:17 80:25 88:6 93:10 97:17	remarks 64:17	rescheduled 112:22	restudied 104:18	Road 12:11,16 18:2 23:3,17 61:1,2,9, 11 68:7,12,17 76:15 77:24 79:21 80:13,21,22,25 81:1,4,15 82:13 84:8 86:15 88:14 99:9 101:21 102:15,16 103:9, 11 105:12 110:14
regional 82:23 101:12,22 102:11,12,20 104:2	remember 27:7 43:20 89:9 92:13,14	residential 22:19 24:20 87:9 103:21 106:10	result 52:9 58:6 65:19 91:5 93:19 95:16, 20	resulted 15:11,16 56:19 91:13
regionally 102:11 103:2	remembering 37:25	residents 50:9,14	retained 75:4	roads 82:2 102:15 111:3
regulation 11:9	remove 75:10	resolution 43:20 46:8 72:9 94:3 111:19	retired 17:11	roadways 23:1 102:13 104:22
regulations 9:20 49:16 111:23	removed 84:11	resolutions 10:11 14:2	reverse 45:16	robust 33:7
regulatory 10:3 21:2	repetitive 49:2	resource 14:14 73:13,15,23 74:2 84:10	review 25:21 26:7,9,21, 22,23,25 27:25 28:2,4,13,22 33:4 35:19 36:18 40:16 43:15 48:9,11,12 65:2,9,11	rock 81:16,25 82:1,4 88:22 89:7,8
reinitiated 16:14	report 63:15 89:6 90:1	resources 32:24	reviewed 8:22 49:19 91:17 110:11	room 41:14 49:7 69:6,21 70:10,12
relate 46:6 48:14 110:15	reporter 5:8 41:12,15 74:15	respect 22:15 24:16 52:20	reviewing 27:21 55:12	rough 13:2
related 7:7,8,17 16:5 23:6 37:14	reporters 4:10 48:3	respond 4:17	rezoning 14:19 31:6,23 43:11 56:18 111:10	roughly 75:7,11 79:12 89:11 90:4 102:4
relates 7:23 21:18 106:1 113:1	represent 5:10 99:14 100:17 101:5	response 52:1	rich 88:22	rounds 92:21
relating 110:24	representative 72:22	responsibility 57:23	Richard 5:17	ruined 62:15
relevant 87:16,18,21	representing 5:17	responsible 48:10	right-hand 75:15 107:6	rule 63:20,25 64:8 98:5
relief 8:3 11:4,17,21 17:12 19:10 20:19, 23 21:1,17 27:8,15 29:10,20 39:23 43:10,14 51:5	request 30:20 31:6 43:19 52:4,12	restate 64:4	rights 9:15,22 16:21 38:6,7,12 39:3	ruled 15:18 92:4 95:11
	requesting 8:4 43:10	restoration 22:22 77:13,16,17 78:7,11 85:5 87:10 106:13,14,17,18 110:18,23,25 111:1		rules 6:23 37:17 65:21
	requests 30:16	restore 23:10 83:4 85:13,		

66:9 91:17 ruling 55:11 65:19,22 run 23:11 46:24 99:20 running 4:4	September 72:12 series 26:4,10 27:18 28:9 31:11 34:8 93:13 serve 72:21 served 20:20,22 21:11,22 24:6,8 46:11 49:19 64:15 106:2 serves 33:6 services 23:7 31:1 set 5:3 9:19 14:11 21:9 25:5,12 32:16 64:25 69:24 sets 33:1 settle 7:24 37:7 settlement 4:16 9:12 10:24 11:7 12:13,20,25 13:24 14:5 18:4, 12,20 19:5,16 22:10,18 24:16 25:21 26:7,21 29:14 31:11 34:1 36:2,4,13,23 37:1, 10,15,16 39:24 40:4,8,25 44:24 45:14 49:16 53:6 57:12,19 58:6,16 59:5,8 60:13 62:25 63:8,10,16 64:10 65:7,9,12 67:2,3 73:17,21 86:13,24 87:4,7,11 95:22 96:4,10,13 97:8,17 98:14,21 105:17, 21,25 110:9 111:1, 5 112:2,3 settling 27:7 severely 35:9 shaded 68:8	sheet 23:10 107:5,11,14, 25 108:1 Shenko 63:19,24 64:17 shepherding 18:25 shifted 105:1 short 52:1 short-circuit 109:24 short-circuiting 37:5 shortly 69:19 70:8 89:17 show 33:23 68:9,12 80:18 109:6 showed 79:23 showing 29:4 68:4 shown 34:4 55:16 shows 12:10 13:3,5 59:17 60:12 80:10 shy 105:22 106:7 sic 23:3 side 46:19 78:1,2,3 81:20 103:7,8,11, 12 sides 86:22 103:19 significance 80:24 significant 14:3 16:4 18:1 22:6 significantly 106:22 similar 66:13 87:5 111:6, 16 similar-type	106:18 Simmons 44:19 simple 24:22 79:16 simply 8:8 single 104:16 single-family 104:9,15,25 sir 43:3 44:10 45:20 46:17,19 47:13 51:3 52:18 53:16, 19,25 54:3,17 55:1 56:11 59:11,16 61:3 63:14 65:17 67:14 68:5,14 71:6,23 110:8 113:7 sit 23:13 57:7 site 82:9 88:21,24 106:9 110:19 111:21 situation 38:22 87:17 101:6 size 90:9 106:17 skipping 29:5 slanted 80:20,21 slide 111:4 small 69:21 87:11 102:6 104:9 105:14 So.2d 28:8 30:2 So.3d 28:19 32:5 socially 30:21 Society 82:24 83:11 99:3, 25 software 4:3	sole 95:8 solved 103:23 somebody's 27:25 sort 40:16 45:16 56:15 sought 17:6 43:22 52:4 source 88:22 south 22:14 23:12,17 26:17 60:24 61:9 63:6 72:19,22 77:8 78:2 79:11,13 81:20 82:12,20 83:1,3,8,19 103:11 105:2,9,12,15 southeast 12:11 14:8 80:21 81:13 93:16 southern 12:22 23:8 60:22 76:16 86:16 108:15 southwest 77:9 99:3 sovereign 39:19 Sowa 28:19 space 69:15,21 70:17 110:20 speak 4:9 6:16,20 22:8 89:21 98:2,4 specializes 74:25 specialty 74:23 specific 76:24 110:15,25 111:22,25 specifically 23:2,24 24:6 82:24 89:20 specifics 14:22
S				
S-O-W-A 28:19 samples 89:5 90:11 sanctuary 63:2,3 83:7,10 86:19 satisfied 26:4 satisfies 11:18 scale 14:4 30:19 101:18 102:17 103:2 scant 39:5 scarce 102:14 schedule 27:19 111:22 scheduled 4:14 70:25 112:21 seated 71:14 section 20:11 23:24 33:1, 6,11 42:23 80:12 86:14,15 security 70:18 seek 16:5 25:8 selected 74:23 self-explanatory 85:17 send 35:15 separate 10:12 31:16				

<p>spent 20:9</p> <p>square 57:24 66:19 110:12</p> <p>St 28:18</p> <p>staff 48:13 57:15 72:18 83:22 84:22 96:3</p> <p>stamp 76:25 77:10</p> <p>stamped 75:15</p> <p>standard 25:15,23 28:2,3,16 29:18 37:10,21,24 38:24</p> <p>standards 35:20 37:9 40:19 41:6</p> <p>standing 7:7,15,17 36:10</p> <p>standpoint 51:18 52:25 111:16</p> <p>stands 107:3</p> <p>start 101:11 111:5</p> <p>started 69:14 89:12 92:6</p> <p>starting 45:16 47:25 74:7 75:14 104:10</p> <p>state 4:4 5:7 9:21 23:3, 17,22 33:3,10,13 35:16 36:18 41:2 42:15 65:3,11 68:17 76:15 80:13 84:8 99:5 100:1 101:21 102:15 103:9,11 105:12</p> <p>stated 30:14 63:16 106:6</p> <p>statement 76:2</p> <p>statements 9:5</p>	<p>States 26:13 38:20</p> <p>stating 30:10</p> <p>statute 11:8 20:7,13,20,22 21:6 23:23 24:4,7 25:12 32:14,17 33:20 38:17 55:8</p> <p>statutes 11:15,19 20:8,14, 16 24:9,11 44:23 45:13,15,19 46:12 96:19 100:18</p> <p>statutory 64:21</p> <p>stay 67:9</p> <p>Steal 62:23</p> <p>step 40:23 59:23 68:23 113:7</p> <p>Steve 15:10</p> <p>stipulate 6:8</p> <p>stipulated 7:7,16</p> <p>stipulation 7:5,12 32:10</p> <p>stipulations 7:10</p> <p>Stony 99:19</p> <p>stop 7:11 71:6 80:19</p> <p>stopped 15:25</p> <p>stopping 70:22</p> <p>straight 73:9 92:14</p> <p>Street 71:22</p> <p>strict 36:6 38:1</p> <p>structure 82:3 112:4</p> <p>structured</p>	<p>111:6 112:3</p> <p>studied 104:18</p> <p>study 74:10 79:3 102:21, 22</p> <p>subconsultant 74:24</p> <p>subdivision 22:19</p> <p>subject 6:23 12:19 28:13 37:11 39:10 60:13 62:25 63:10 68:7, 16 76:7,10 77:20, 22 79:4,19 81:14, 17,21 82:6 88:3,7 89:10 101:5</p> <p>subjected 15:4</p> <p>submission 90:19</p> <p>submit 29:12 40:2 56:2 89:17 90:23 91:18 92:2 98:6,7</p> <p>submittal 17:4</p> <p>submittals 92:20</p> <p>submitted 16:15,23 56:5 78:16 94:17 95:16 98:8</p> <p>subsequent 95:22</p> <p>subsequently 78:23 93:23</p> <p>substantially 35:24 40:7,8</p> <p>substantiating 44:18</p> <p>successful 17:15</p> <p>sufficiency 92:20</p> <p>suit 10:16 17:11,12 29:8</p> <p>suited 66:13</p>	<p>suits 17:14</p> <p>summarize 45:18</p> <p>summary 13:15,18 17:18 43:6 51:7,14 52:22 66:15 72:2 74:10 95:2</p> <p>support 25:25</p> <p>supports 25:25</p> <p>supposed 25:16</p> <p>Supreme 30:3</p> <p>surface 88:23</p> <p>surrounded 103:13</p> <p>surrounding 76:5 80:16 110:15</p> <p>survey 89:3</p> <p>suspect 27:24</p> <p>Swamp 63:2,3</p> <p>swap 80:10</p> <p>swapped 82:17</p> <p>swaps 12:21</p> <p>Sweigert 19:14</p> <p>switch 50:21</p> <p>sworn 42:8 71:7,11</p> <p>system 4:4 79:18 103:24 104:25</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tab 21:22 51:14 96:21, 22</p>	<p>takes 24:24 57:23 98:1</p> <p>taking 9:23 10:8 38:22 39:1 52:22</p> <p>takings 10:3,9 38:13</p> <p>talk 40:11 81:23</p> <p>talked 40:20 85:2 89:23</p> <p>talking 18:17 51:4 77:8 90:13</p> <p>talks 40:24</p> <p>Tallahassee 32:9</p> <p>Tan 84:1</p> <p>tapped 73:23</p> <p>team 18:6,14 74:19 75:2</p> <p>tells 69:18</p> <p>terms 21:6 38:23 39:8 63:20,25 75:7 76:12 77:18 79:5,8 87:2 106:16 108:6</p> <p>Terra 99:20</p> <p>terribly 92:15</p> <p>test 63:17</p> <p>testified 42:9 49:6 71:12 94:9</p> <p>testify 6:11 7:14 8:12 19:7 48:21,24 49:4 51:1 63:11</p> <p>testimony 31:21 49:1 98:2,7, 9</p> <p>thereof 24:17</p> <p>thing 25:11 34:16 36:4</p>
---	--	---	--	--

88:24 103:6 111:8	Tom 30:10	typist 8:20	40:22	waiting 70:6
things 4:14 24:1 31:3 32:19 74:6 111:13 112:1	top 22:3 85:8	<hr/> U <hr/>	valuated 58:4	waive 19:24 37:16
thinking 69:23	topics 24:5	ultimate 52:9 85:11	valuation 56:15	waiver 38:3
thought 44:6 52:12	topography 79:14	ultimately 10:10 15:15 49:25 50:8 53:4,5 56:14 57:15 87:8	varied 75:9	waivers 39:11
thoughtful 30:15	total 99:14 107:9	umbrella 9:13	varies 77:9	waking 104:20
thoughts 100:6	tracks 15:25	understand 7:15 19:13 34:19	vast 19:2 79:16	warm 34:24
thousand 108:8	tract 12:22	undertaken 33:24	vegetable 86:16	water 16:7,12 35:17 71:24 72:11,19,22 76:22,23 77:2,3,6 83:1,3,8,16,19 105:8
thousands 99:21	traffic 31:1	undertook 31:10,18	vehicle 41:1	watershed 82:23 83:11 101:22
three-minute 98:5	transcript 53:15 54:2,13	undue 38:8,19,23,25 39:13,14,25 40:6,9 57:13,20 58:17 63:21	venture 108:5	ways 23:10,11,16 77:3 78:13 102:20 106:13
thrown 26:22	transcripts 24:17 48:4 49:22 50:4	unique 88:24	Verdana 84:13	website 34:18,19
till 73:9	transparent 84:3	United 26:13 38:20	versions 73:5	weeks 5:3 90:13
Timber 84:8	transportation 23:1 65:3	units 87:9 99:23 103:14, 20 104:4,8,15 105:18,22 106:6,7 110:11	versus 38:25	wellfield 73:25
time 4:5 14:25 15:1 17:10,23 20:9 21:25 24:24 34:20 52:2 56:1 66:4,6, 10,14 67:20 69:24 70:24,25 73:18 75:9 90:10,12 91:17 92:3,20,23 98:3 106:8 112:12, 24	Tremendous 82:5	up-front 99:6	vicinity 81:13	wells 103:23
times 8:25 34:15 94:10	trial 5:3 13:11	upheld 34:4 91:20	views 93:15	west 68:7 71:22 72:19 82:6 103:16 104:21 108:22
Titan 12:17 81:20	Troyer 12:16 68:11 82:8	uplands 23:14	Village 84:13	western 108:15
title 84:18	true 86:2	urban 72:7 84:11 103:19	violate 36:8 37:3	Westlaw 26:18
today 5:22 7:23 23:13 32:11 40:19 58:10, 14 65:14 69:25 73:10 96:14 101:3 107:24 113:2	trump 33:20	use-type 24:5	violating 38:5	wetland 76:1
told 5:3 69:16 91:2	turn 30:24 38:7 44:9 77:10 80:1 94:1,25	utilities 31:1 103:25	violation 58:1	wetland-upland 107:7
	type 8:4 9:4 10:24 65:1 85:14 104:3 112:6	utilized 78:22	violative 27:16	wetlands 79:15
	types 86:3	<hr/> V <hr/>	vision 85:12	wicked 8:20
	typical 25:22 28:10 36:18	validation 36:14,15 37:2	visual 59:23	Wildblue 84:14
	typically 99:1		vital 23:19	
	typing 8:19		void 91:15	
			<hr/> W <hr/>	
			wait 84:24	

Wildcat 99:20		
wildlife 32:25 99:4 102:25		
wishes 9:7		
witnesses 8:5,9 18:23 34:9 41:8 69:23		
words 15:4		
work 4:6 18:11 42:18 72:2,7,8 78:21,22 88:10 96:3		
worked 11:17 19:3,5 57:14 72:12,13,18 73:7		
Wow 112:13		
write 27:25 62:18,20		
writing 56:2,6 73:8		
written 21:25 57:17 58:15		
Wrong 62:3		
<hr/> Y <hr/>		
y'all's 59:15		
Y-U-S-E-M 30:5		
year 89:11		
years 10:15 12:16 15:24 34:16 72:17 107:18		
yellow 12:13 60:14,24 80:9,15 82:11,12 88:15 102:1		
yet-unreported 26:16		
yield 19:17		
Yusem 30:4		
	<hr/> Z <hr/>	
	zoning 24:10 26:3 27:20 31:15 33:21 43:19, 20 48:11 88:2 90:24 92:18,25 98:25 111:10,11, 19	
	zonings 89:19	