

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,

CASE NO.: 22-CA-002743

Joint Petitioners,

-vs-

KEVIN HILL and JEFFREY
KLEEGER,

Intervenors.

TRANSCRIPT OF PROCEEDINGS

HELD BEFORE: Honorable James R. Shenko
DATE TAKEN: November 8, 2022
TIME: 9:16 a.m. - 5:18 p.m.
LOCATION: Lee County Justice Center
REPORTER: Melissa Meeks, RPR, FPR
Notary Public
State of Florida at Large

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

2 THE COURT: We're here on the continuation of
3 the joint petition to create a settlement. I have
4 Case No. 22-2743, Corkscrew Grove Limited vs. Kevin
5 Hill and Jeffrey Kleeger, as intervenors.

6 Last time we were here, we had too small a
7 courtroom. We're now in a larger courtroom. We've
8 also had some testimony. We were in the middle of,
9 I think, the second witness when we adjourned last
10 time. We have today scheduled all day.

11 Last time I had not had the opportunity to
12 review that many of the documents. I don't know if
13 I had been in trial or what. You know, this time I
14 have, including, but not limited to, all the prior
15 transcripts of the other hearings, including the
16 last hearing before me, not that I retained it, but
17 I have read it. There's a lot of information to
18 unpack. I'd just as soon head right into it.

19 If anybody wishes to recap where we were and
20 put on the witness, we can.

21 Mr. Moore?

22 MR. MOORE: Your Honor, Bill Moore for
23 Corkscrew Grove Limited. We had submitted to the
24 Court, and I think you indicated just now you read
25 it, the transcript of the prior hearing.

1 THE COURT: I have.

2 MR. MOORE: My reading of it, I just mentioned
3 to Mr. Grosso, on about Page 111 of the transcript,
4 we were just getting into the PowerPoint
5 presentation of Mr. DeLisi, which is Exhibit 29, and
6 he was beginning his explanation about the concept
7 plan, and that's when we hit a break. So if I could
8 call Mr. DeLisi.

9 THE COURT: You may.

10 And I'll remind you, you're still under oath.

11 THE WITNESS: Yes.

12 THE COURT: You may proceed.

13 DANIEL DELISI,
14 a witness, after previously being duly sworn, upon his
15 oath, testified as follows:

16 DIRECT EXAMINATION CONTINUED

17 BY MR. MOORE:

18 Q Mr. DeLisi, would you check your mic to see
19 if it sounds like it --

20 A I think it's hot.

21 Q Hot mic, so be careful.

22 Would you state your name, again, for the
23 record, please.

24 A Daniel DeLisi.

25 Q Mr. DeLisi, when we left off on August

1 31st -- I sent you a copy of the transcript -- I
2 believe we were discussing your PowerPoint
3 presentation that you made, or at least portions of
4 it, in prior public hearings on this issue.

5 And my reading of the transcript indicates
6 that we were beginning to discuss the concept plan,
7 which is on the PowerPoint, Exhibit 29, in the Court's
8 booklet, Page 4. Do you have that in front of you?

9 A I do.

10 Q All right. So would you just do a brief
11 recap, please, of that concept plan and the
12 significance of that toward the concept, the
13 settlement agreement, and how the concept plan
14 interplays with that?

15 A Yeah. So one of the key aspects of the
16 settlement agreement is that attached to the
17 settlement agreement are all of the elements that you
18 typically get with a Lee County Planned Development
19 approval.

20 So within that planned development approval,
21 you have a master concept plan, a schedule of uses,
22 schedule of deviations. You'll have your property
23 development regulations. So it's the exact same
24 document as a planned development, and as part of that
25 is the concept plan.

1 And so the concept plan for this property,
2 you'll note some major characteristics of it, one of
3 which is the connecting road from State Road 82 all
4 the way down to Corkscrew Road through the project.

5 The other thing you will notice, all of the
6 green area, that is the environmental preservation and
7 restoration area. That's the 3,287 acres that I
8 believe I spoke about last time.

9 I do want to note that within the tan areas,
10 those are the development areas, but within that, you
11 still have open space, and you still have water
12 quality features and water storage features.

13 So it's not all wall-to-wall development.
14 It's a mix of development, lakes, open space areas.
15 And so in total, you have slightly over 4,000 acres of
16 open space in the entire development.

17 Q All right, sir. If you will continue and
18 just go through page by page as they come up in the
19 PowerPoint, Exhibit 29, and explain the key elements
20 of the proposed plan and then how it relates to the
21 land use regulations of Lee County.

22 A Certainly. So one other aspect of a planned
23 development approval that's really key and one reason
24 why planned developments are unique and important in
25 the context of zoning is you can condition a planned

1 development based upon impacts of a project, and so --
2 and needs of the area.

3 And so this, again, is no different than any
4 other planned development in terms of its structure,
5 and so we have a series of development conditions that
6 go along with the concept plan, the schedule of uses,
7 the property development regulations.

8 And so within those development conditions,
9 the first one, Condition 1-C, is the restoration for
10 phasing plan. And this, of course, is a key element
11 to the entire development and the negotiation that --
12 between the property owner and the county. And what
13 it does is it provides the framework for development
14 to happen concurrent with conservation and restoration
15 uses.

16 So the general requirement is 50 percent of
17 the development area is going to be restoration or
18 conservation, but the key thing about Condition 1-C is
19 that it's phased concurrent with each development
20 order.

21 So each development order has to provide a
22 proportionate amount of the total conservation area,
23 and it's also key to the number of units that you're
24 proposing so that you can never get ahead on the
25 number of units proportionate to the overall

1 conservation area, and you can never get ahead on the
2 amount of land area of development proportionate to
3 the preservation.

4 Q Well, the total restoration area, and I think
5 you just testified it was 3,287 acres, not counting
6 the open space, wouldn't that have occurred anyway
7 under the existing conditions?

8 MR. GROSSO: Leading question, Your Honor.
9 Objection.

10 THE COURT: Sustained. Would you rephrase it?

11 BY MR. MOORE:

12 Q Under the existing conditions, what is the
13 situation with regard to preservation of that amount
14 of conservation land?

15 A There is no requirement for preservation of
16 30 -- 3,287 acres. So the only way you get to this
17 restoration plan is through this development proposal.

18 Q Now, your Sheet 5 on Exhibit 29 indicates
19 there's a perpetual maintenance responsibility. Will
20 you just detail that a little bit more, please.

21 A Yeah. So in Florida, you can't just restore
22 land and hope that it stays restored. We have
23 invasive exotics, melaleuca, and such. So you have to
24 consistently maintain land to make sure it stays in a
25 natural state just because of all of those invasives

1 that we have introduced over time.

2 Q And how long is that preservation or that
3 maintenance responsibility for, how many years?

4 A In perpetuity.

5 Q So who pays for that? Does the county pay
6 for that?

7 A No. That's paid for by the homeowners
8 association or community development district.
9 Whatever entity is overseeing the property moving
10 forward.

11 Q All right. Go to your next page, please, and
12 slide, Page 6.

13 A So from here I've been listing out additional
14 conditions of the agreement. And, again, these are --
15 all of these conditions on Page 6 and moving on to
16 Page 7 or all but one, rather, are identical to
17 conditions or nearly identical to conditions of past
18 environmental enhancement and preservation overlay
19 communities.

20 So there's no magic, not a lot of thinking
21 that needed to go in because the framework has already
22 been created through prior developments along
23 Corkscrew Road.

24 So Condition 4 requires a human wildlife
25 coexistent plan. Condition 5 outlines the open space

1 requirements, the slightly over 4,000 acres that are
2 being provided. Condition 7 mirrors conditions of
3 past environmental enhancement preservation overlay
4 communities, and let me throw in also the FFD
5 settlement agreement that was the result of a similar
6 Bert Harris action and negotiated agreement. Same
7 thing with Condition 10. Condition 12 talks about
8 proportionate share payment. That --

9 Q What does that mean?

10 A That is -- it's a requirement to pay a sum of
11 money per unit for -- to offset transportation impacts
12 over and above impact fees. So really it's directed
13 specifically towards the widening of Corkscrew Road
14 and improvements along Corkscrew Road.

15 Condition 14 deals with and requires an
16 enhanced lake management plan, and this has to do with
17 water quality. So making sure that water quality is
18 maintained or improved in the area, and that's dealing
19 with nutrients and long-term monitoring as well.

20 Q And who does the water quality monitoring?

21 A Well, so it would be, again, the CDD or the
22 developer. Whoever manages the property moving
23 forward.

24 Q And they report their results to the county?

25 A Yes. You have to send those to the county.

1 Q Okay. Go ahead.

2 A Conditions 15 and 16 require central
3 irrigation systems and the elimination of septic or
4 the potential for any future septic and existing and
5 future wells on the -- on the property for potable
6 water.

7 And that's key because, you know, the whole
8 purpose of the Density Reduction/Groundwater Resource
9 is to eliminate the impacts to the aquifers and the
10 county water resources. And so having a requirement
11 to hook up to central water and central sewer really
12 moves forward -- moves the intent of the DR/GR forward
13 and implements that.

14 Condition 18 requires that prior to any
15 development activities or development permit, we call
16 it the local development order, which is the permit
17 for all the horizontal construction, so before you get
18 out there and turn dirt, you get the authorization to
19 do that, you have to conduct an integrated groundwater
20 and surface water hydrologic model, and you need to
21 demonstrate that you're not going to have any negative
22 impacts on ground or surface waters in the area. It's
23 a very extensive analysis that needs to be conducted,
24 but, again, that's a condition of moving forward.

25 Q You have the -- do you have the book in front

1 of you?

2 A Yeah.

3 Q Let me ask you to look at Exhibit 22, a
4 document entitled, Prospects for Southeast Lee County
5 by Dover-Kohl, K-O-H-L.

6 A I see that.

7 Q Let me ask you to look at Page 4. It's 4.11,
8 I believe. What is -- do you see the flowway
9 restoration strategy there?

10 A Is it the -- okay.

11 Q Yeah, the bottom right-hand corner of the
12 page number, I think.

13 A Yes, I see that.

14 Q All right. What are those aerials, and then
15 the superimposed arrows, what do they represent?

16 A The direction of flow.

17 Q And the flow of...

18 A Of -- sorry. The direction of flow of water.

19 Q Okay. And whereabouts is the subject
20 property?

21 A So the subject property is on the far right
22 of each of these two images. So that would be the far
23 east. So just -- just west of the eastern north/south
24 line.

25 Q All right. And is the historic flowway

1 indicated there?

2 A It is. It goes across the subject property.

3 Q And under the current conditions, is the
4 historic flowway accelerated, the same, or impeded?

5 A Well, it's accelerated. So in an
6 agricultural condition, you have -- you have a ditch
7 and dike system. So you have to actively control and
8 manage the water as it goes through your property, and
9 then you have point discharges at the south side. So
10 it's not at all a natural condition. You fluctuate
11 water -- water table levels just below the surface.
12 There's a lot of pumping involved.

13 And so, you know, when you manipulate the
14 groundwater, oftentimes you can have higher discharges
15 at the wrong time of the year, or you can hold back
16 water sometimes when -- when the natural environment
17 south of this needs it, based on what you need for the
18 agricultural operation that's going on. So there's no
19 flowway going through the site.

20 Q Then, if you would, just generally compare
21 that existing condition situation with the conditions
22 that you've been talking about under the settlement
23 agreement.

24 A So -- okay. I mean, so just on a broader
25 scale, let me just say that the beauty of this

1 property extending from State Road 82 all the way down
2 to roughly two miles south of Corkscrew Road, you get
3 from Lehigh Acres to the Corkscrew Swamp Sanctuary or
4 CREW, which we talked about last time, all of that
5 natural environmental area, and you have the ability
6 to, one, when you remove the agriculture, you no
7 longer -- you cease all the pumping activity that goes
8 on. So you get a rebound in the groundwater levels.
9 That's the first thing. But you have the ability to
10 control and manage the surface waters that come across
11 the property to meet the needs of the environment,
12 both in the restoration areas on the property.

13 But, again, the beauty of connecting all the
14 way south to CREW is you have the ability to provide
15 water when they need water, store it on site, provide
16 water when they need water, and redirect some of those
17 flows from Lehigh Acres.

18 So you just have a lot of -- a lot of options
19 and opportunities in not only restoring the
20 environment on site, but enhancing the environment off
21 site on the adjacent property to the south.

22 Q And you indicated that wells and septic
23 tanks, which are the current condition, would be
24 eliminated also under the settlement proposal?

25 A Yes. Wells and septic tanks are eliminated.

1 Q Does that have a positive or a negative
2 effect on the environment?

3 A It has a positive effect. You know, the
4 wells that are on the property now and the magnitude
5 of the pumping operations for agriculture have a very
6 clear and distinct impact on the groundwater levels.
7 I mean, those were -- it's approximately 10 million
8 gallons a day. And we're looking at, when that's all
9 said and done, roughly about in the order of 3 million
10 gallons a day, if I remember correctly. But it's a
11 dramatic drop in the amount of water being pumped from
12 the groundwater on the site.

13 Q All right. Go ahead, please, and continue.
14 I think you're probably on Slide 8 right now of your
15 PowerPoint.

16 A Well, I do want to mention Condition 25.
17 That's a condition that was --

18 Q Sure.

19 A -- that was added that's specific to this
20 case with the goal of trying to address a localized
21 flooding issue. So in Wildcat Run -- in Wildcat Farms
22 there are, just to our east, there's currently
23 flooding problems that occur fairly regularly.

24 One condition placed in this settlement
25 agreement is that we would alleviate that flooding by

1 accepting that water flow on, onto this property. We
2 would store it. So it's a direct public benefit.

3 Q What about the consistency with the Lee Plan
4 as indicated on Page 8 of your slide?

5 A So based on following the framework of the
6 Environmental Enhancement & Preservation Overlay, we
7 have presented and agree with staff that we are
8 consistent with Policy 1.4.5.1, which is the Density
9 Reduction/Groundwater Resource area, as well as Policy
10 1.4.5.2.

11 We are also consistent with Policy 1.5.1 and
12 Policy 33.1.7, which requires the modeling of surface
13 and groundwaters.

14 We also meet nearly every criteria in the
15 Environmental Enhancement & Preservation Overlay, so,
16 you know, I would say every criteria that's really
17 applicable to this property. So all of the
18 substantive criteria in there, we have -- we have
19 followed, and that's set up the framework for how this
20 settlement agreement was able to occur.

21 Q Now, under the situation -- litigation
22 situation after the Court ruled a declaratory judgment
23 against Lee County and Corkscrew Road litigation, is
24 it your understanding as a land planner, I'm not
25 asking for legal opinion, but with regard to the land

1 use plans that were to be followed with regard to the
2 mining application, would they be under the current
3 proposals under current land use law, or would they be
4 under the prior one?

5 A You're asking about the mining?

6 Q Yes.

7 A So if the settlement agreement doesn't move
8 forward -- and I assume that's what you're asking.

9 Q Yes, sir.

10 A Then, the property would go back to mining.
11 And my reading of the judge's ruling is that we would
12 sit down with staff, and we would look at conditions
13 of mining based on approvals from prior to 2007.

14 So it's not just the mining plan that was
15 proposed before. In that, we had looked at a lot of
16 different options for providing public benefits or
17 things that you would have never done in 2007 or
18 prior, and were just nonexistent in any of those -- in
19 any of those zoning resolutions. But it would be
20 based on the conditions that were -- that were imposed
21 at that point in time.

22 Q Now, your conclusions with regard to
23 consistency with the Lee Plan, how do they compare
24 with the conclusions reached by the independent
25 hearing examiner in her recommendation?

1 MR. MOORE: Your Honor, that's Exhibit 15 in
2 our booklet.

3 THE WITNESS: Well, they agree. The hearing
4 examiner agreed with the findings of consistency and
5 overall with the -- with the settlement agreement.
6 That's all further outlined.

7 BY MR. MOORE:

8 Q Would you continue describing your
9 conclusions on Page 9 of the PowerPoint?

10 A Yeah. So from here we looked at all of the
11 policies in the Lee Plan that were being contravened
12 by the settlement agreement, and not just what was
13 being contravened, but what we were doing within the
14 settlement agreement to go the next step and protect
15 the public interest.

16 And so the first policy is Policy 33.2.4.1,
17 and that policy states that to utilize the overlay,
18 you need to be located on Map 2-D in the future land
19 use map series and comprehensive plan, and you need to
20 be within a certain geographical area. And in our
21 case, that's -- you need to be west of Imperial Marsh
22 Preserve, which is that preserve that just runs along
23 the west side of our property boundary.

24 So just starting out with Map 2-D, there's
25 no -- there's not a lot of meaning in that

1 requirement. No one is placed on Map 2-D without
2 petitioning to be placed on Map 2-D. So it's just a
3 requirement that you would then need to go through a
4 comprehensive plan amendment process to utilize the
5 criteria of the overlay. It's not really a
6 substantive issue.

7 So in other words, no one looked at Lee
8 County and said, okay, these properties should be in
9 the overlay. So we would be, in effect, placed on Map
10 2-D through this process. But we're not within the
11 current geographic area that the Environmental
12 Enhancement & Preservation Overlay was mapped out for
13 because we're just on the east side of Imperial Marsh
14 Preserve.

15 The key thing about this, though, is, again,
16 when that was created, there's no substantive
17 difference between one side of Imperial Marsh Preserve
18 and the other side of Imperial Marsh Preserve. It's
19 all targeted acquisition areas. This property was a
20 targeted acquisition area in the Dover-Kohl study that
21 led to all of this.

22 Q Let me interrupt you there. When you say
23 targeted acquisition, let me refer you to, I believe,
24 it's Exhibit 24 in our booklet, and I have an
25 enlargement of that.

1 What is this map, if you know, and how does
2 it relate to your testimony about targeted acquisition
3 or priority to restoration areas?

4 A So that is one of the maps in the future land
5 use map series, and these were areas that were
6 identified in the Dover-Kohl study as being targeted
7 for future acquisition, and it stemmed from the study
8 that I talked about -- I think I talked about last
9 time with Kevin Erwin, who did the basic
10 environmental, you know, he had three tiers in which
11 he looked at the environmental benefit, if you will,
12 of restoration.

13 Q Now, what do the colors represent? And you
14 have a laser pointer there. Careful with that.

15 A Yeah.

16 Q Where is the subject property, and what do
17 those colors represent?

18 A Okay. So there are Tier 1 -- it goes Tier 1
19 through Tier 7 on the highest priority to lowest
20 priority of acquisition. The subject property is
21 right here, this dark brown, this pink, and then this
22 yellowish color, so...

23 Q So they were designated by the county on a
24 land use map in the comprehensive plan; is that
25 correct?

1 A That's correct.

2 Q And they were designated for what?

3 A Targeted...

4 Q Priority restoration strategy?

5 A Yeah. Yes, that's correct. So, but this
6 came later. These were -- 33.2.2 and 33.2.3 refer
7 to -- refer back to the Environmental Enhancement &
8 Preservation Overlay.

9 Q So how was the public interest protected?

10 A So there aren't a lot of properties in the
11 DR/GR that are part of this priority restoration area.
12 You know, this property has been acquired. There's --
13 right here is the FFD property that was part of a
14 prior settlement agreement.

15 Q And just for the record, when you say right
16 here, so that the court reporter can pick it up, you
17 mean south of the Corkscrew Road or...

18 A Yeah, my apologies. South of Corkscrew Road.
19 This right -- this black line is Corkscrew Road. This
20 black line is Alico. So on the south side of
21 Corkscrew Road is the FFD settlement property. That
22 went through a similar process as this and is now
23 moving forward with a restoration and development
24 plan.

25 On the north side of Corkscrew Road, these

1 two properties, one is The Place and one is Verdana
2 Village. Those are also moving forward as
3 Environmental Enhancement & Preservation Overlay
4 communities. And this -- well, a lot of this gray
5 area is the Troyer Mine. It's an approved mine. So
6 there's really very little priority restoration or
7 targeted acquisition areas left.

8 Q All right. So the public interest is
9 protected in, according to your exhibit on Page 9,
10 with 1.4.5, and the other policy that you mentioned
11 32. -- 33.2.4.1, and the public interest is protected.
12 Just summarize that, will you, please.

13 A So on the bottom of the slide, I quote from
14 the hearing examiner's report on Page 5. She
15 concludes that the property possesses the
16 characteristics and potential to provide significant
17 regional hydrological and wildlife connections. These
18 connections would improve, preserve, and restore
19 regional surface and groundwater resources and
20 indigenous wildlife habitats.

21 Q Go ahead to Page 10.

22 A So Policy 33.2.4.2 requires on approval --
23 requires approval as a planned development. As I
24 stated before, so we're not in the planned development
25 process. So this is a policy we're contravening or

1 that's being contravened by the settlement agreement.
2 But you get the same document at the end of the day.
3 The same exact document that you would have in a
4 planned development, you would have as part of this
5 settlement agreement. And, in fact, almost identical
6 conditions to prior Environmental Enhancement &
7 Preservation Overlay communities are reflected in this
8 document.

9 So the same physical document with the same
10 development conditions that protect public health,
11 safety, and welfare are all part of this settlement
12 agreement.

13 You know, the other aspect of the planned
14 development process that -- that people talk about is
15 the, I guess, the public involvement in that process.
16 In this process, there was a lot of public outreach
17 that was conducted. Of course, we had the hearing
18 examiner hearing where anyone can come. They can
19 provide testimony or public comment. There was no
20 time limit on that comment at the hearing examiner
21 hearing.

22 We had two hearings before the Board of
23 County Commissioners. The developer Cameratta did a
24 mailing to property owners. The same mailing that you
25 would get in the planned development process. So we

1 tracked both the public aspects of the planned
2 development and the substantive documented aspects of
3 the planned development in this settlement agreement.

4 Q Your slide mentions a date of May 30th.
5 Would you defer to the record and to the Kingston
6 developer with regard to the date, whether it was the
7 30th or 31st?

8 A Yes, I would defer to that.

9 Q Okay. All right. Next sheet, please.
10 Page 11.

11 A Yes. So Policy 33.2.4.2(e) requires a
12 recording of the conservation easement for 55 percent
13 of the property. With this settlement agreement,
14 we're proposing 50 percent of the project development
15 property for a total of 3,287 acres. So there's a
16 difference there.

17 The bottom line, I think, with this is both
18 the onsite restoration activities are very key, but
19 it's also how you can affect the offsite conservation
20 properties that are adjacent to this property. Both
21 of those are very important.

22 So the sheer size of 3,287 acres is greater
23 than any Environmental Enhancement & Preservation
24 Overlay community that's come in the past. So none of
25 them have had the ability or the opportunity to

1 provide not much contiguous environmental area, but
2 also as we were talking about before, the connection
3 from Lehigh Acres to the CREW lands on the south side
4 of the property allows the ability to within those
5 conservation areas and within the property water
6 management system to enhance the offsite preservation
7 in a way that -- that prior developments have not been
8 able to achieve or just haven't been locationally
9 situated to achieve.

10 Q Well, under the existing land use plan, what
11 is the low density ratio that's permitted under the
12 existing land use plan in that area for residential?

13 A Under the Density Reduction/Groundwater
14 Resource?

15 Q Yes, sir.

16 A One unit per 10 acres.

17 Q If that were developed according to the
18 existing plans, then, all this land individually,
19 would this 3,287 acres of contiguous preservation
20 restoration be possible?

21 A No.

22 Q And I think you also referred to a conclusion
23 by the hearing examiner --

24 MR. MOORE: Which, Your Honor, I believe is
25 Exhibit 15, Pages 6 and 7.

1 BY MR. MOORE:

2 Q -- regarding the size of the preservation
3 area and the size of the properties involved. Do you
4 agree with her conclusion on that?

5 A I do, yes.

6 Q All right. Go ahead with the contravened
7 land use policies on Page 12, please.

8 A Policy 33.2.4.2(i) requires the elimination
9 of agriculture at the time of first development order.
10 In this settlement agreement, the agriculture will not
11 be removed at the time of first development order, but
12 will be removed in phases.

13 That's important because this is one of those
14 unintended consequences when you're looking at smaller
15 properties. So for a smaller property, if you're able
16 to do a single-phase restoration and development, say,
17 a thousand acres, 1200 acres, it's possible to do
18 that. If you're only -- if you're developing just
19 less than a thousand acres and restoring less than a
20 thousand acres, you could do that in one phase.

21 6700 acres is a total different animal,
22 different ball game. You can't develop all in one
23 phase. So if you removed agriculture at the time of
24 the first phase, you have all sorts of problems that
25 would likely arise; soil erosion, exotic infestation.

1 All of the things that we talked about with managing
2 land, you would no longer be -- have control over.

3 Removing agriculture and just leaving the
4 land fallow and barren is not helpful for anyone,
5 including the environment and the surrounding
6 properties. So having a phased approach is really
7 important.

8 Now, in doing that, the county's concern and
9 the county's goal was to make sure that each
10 individual phase had a significant water quality and
11 water quantity benefit. And so what they had asked
12 that CCLP and Cameratta and their consultants come up
13 with was a per phase look at what the water quality
14 benefits would be when you remove agriculture and
15 preserve land and develop land with each phase, what
16 the water quality benefits would be and what the water
17 supply benefits would be.

18 And so that analysis was done, and it was
19 part of this presentation, which is on the next couple
20 of pages. But these are very significant reductions
21 in water withdrawal from the surficial aquifers.

22 Q You're referring to Page 13?

23 A Page 13, that's correct.

24 Q Are these your calculations as a land
25 planner, or did you receive them from a geology or

1 hydrology firm?

2 A They were done by a hydrogeologist.

3 Q Go ahead.

4 A So we see in total, we can just look at the
5 totals for a moment, and then if you look at the far
6 right-hand column, that's the per phase reduction in
7 water withdrawal from the aquifer. You see a 77
8 percent total reduction in projected water withdrawal.
9 And this is in a total estimated of 9.9 million
10 gallons a day.

11 You know, just to kind of put this in
12 perspective, 9.9 million gallons a day is a water
13 plant for a decent size city. 9.9 million gallons a
14 day is just a tremendous amount of water.

15 Q And that's the reduction of drawdown of
16 water; is that correct?

17 A That's the reduction, yeah, yeah. So, and
18 let me just add another note just with my water
19 background. 6.1 million gallons a day is from the
20 sandstone aquifer, which is being entirely eliminated.
21 The sandstone aquifer is a depleted aquifer, and
22 that's an area where we have a need to limit
23 withdrawals. And so having that amount of water kept
24 within the aquifer is of tremendous public benefit.

25 So you can look at per phase. If you look at

1 Phase 1, you see a 78 percent reduction. But all of
2 those run in the range of some reduction that leads
3 you to the average or the overall, it's not an
4 average, it's an overall of 77 percent of a reduction.

5 Q And that's assuming that the agricultural use
6 is removed and replaced with the development proposed?

7 A Well, the development and conservation and
8 restoration.

9 Q Okay.

10 A So we also see water quality benefits.
11 Again, if you look at the last two columns on the
12 right.

13 Q You on Page 14?

14 A Yes.

15 Q Okay.

16 A On Page 14, the last two columns on the
17 right, one is the reduction in nitrogen percentage and
18 the next one is the reduction in phosphorus
19 percentage.

20 Q What causes that?

21 A What causes?

22 Q What causes the reduction?

23 A Both the removal of agriculture, that's a big
24 part of it, and then also the -- well, two things.
25 There's the restoration property, and then even the

1 development property needs to provide water quality
2 within to make sure that the development itself is not
3 contributing to water quality concerns.

4 So the state has a -- has a net reduction
5 policy when you do an environmental resource permit
6 that requires that you can't increase any nutrient
7 loading when you're -- when you're designing your
8 storm water system.

9 Q In general, if you know, what's the problems
10 as you see as a land planner with the nutrient flow or
11 having it increased or remain the same?

12 A What's the problem with it?

13 Q What's the negative result, if any?

14 A Yeah, so, I mean, algal blooms. I mean, when
15 you hear about all these algal blooms in the
16 Caloosahatchee Estuary. It's due to phosphorus and
17 nitrogen, and those are the two nutrients of -- of the
18 most concern. It also leads to exotic infestation.
19 If you have too many nutrients, it's a different type
20 of ecological system that grows up climbing on to
21 those nutrients.

22 So it's -- it's a significant problem, and
23 it's one -- it's the reason why the state looks at
24 these two particular nutrients in its analysis of
25 storm water systems.

1 Q So would those benefits accrue to the lands
2 to the south of the southern end of the water flow?

3 A Yeah, those are very important benefits to
4 CREW because these properties have been providing the
5 seed source for those exotics that have been growing
6 in the northern areas of the Corkscrew Swamp
7 Sanctuary. Audubon has done studies on this, but it's
8 that point discharge combined with the nutrients in
9 the water that causes the exotic infestation that's
10 going on there.

11 Q All right. Continue, if you will, on the
12 contravene land plan policies.

13 A So Policy 33.2.4.3(c) limits density based on
14 tier priority acquisition. And those were the tiers
15 that we were just talking about before on the future
16 land use maps series. The settlement agreement allows
17 for one and a half units per acre.

18 When we looked back at why the density was
19 corresponded with the tier priority acquisition area,
20 it was done to phase development over time, to
21 coordinate the development. If you look back at the
22 staff report itself, it says it was done to coordinate
23 development timing with meeting the conservation goals
24 of the county.

25 So as part of this process, we had to look at

1 infrastructure, and that's what the crop share is for,
2 that's what the north/south connection road is for,
3 putting the infrastructure in place so that it is
4 there at the time of development.

5 But, again, there's an overarching strategic
6 benefit to this property, as I keep repeating, going
7 from Lehigh Acres all the way to CREW. Having that
8 one contiguous area, we're able to manage the system
9 that provides larger regional benefits that -- that
10 really no other property has been able to provide.

11 Q All right. Go to Page 16 of your slide then
12 and continue.

13 A Policies 33.2.4.4(d) and 33.2.5, they both
14 limit commercial development in the southeast Lee
15 County area to 300,000 square feet. Now, the
16 southeast Lee County area is -- is that whole area on
17 the south side of 82, all the way down to south of
18 Corkscrew Road. It's a big planning community within
19 the Lee Plan.

20 The 300 -- and it's comprised mostly of
21 Density Reduction/Groundwater Resource as a future
22 land use category. The 300,000 square feet was put in
23 place based on the amount of growth that was projected
24 along the Corkscrew Road corridor.

25 Since that time, both FFD has gone through

1 with the settlement agreement. That's an additional
2 5200 units, but when you project an extra 10,000
3 units, that 300,000 square feet is no longer
4 applicable to meet the needs of the residential
5 population.

6 And the goal here is you don't want all your
7 traffic going west to get basic neighborhood
8 commercial services. You want them -- you want to
9 locate commercial as close as possible to where people
10 live. That diminishes the overall trips that get put
11 on the overall road network because people have to
12 drive a shorter distance to get -- to meet their
13 commercial needs. So you want to have commercial
14 located close.

15 In this area, most of that commercial is
16 located on State Road 82. 500,000 square feet of
17 that. So the vast majority of that commercial is
18 close to State Road 82, not down on Corkscrew Road.
19 And that provides a secondary benefit because Lehigh
20 Acres has long been known to not have sufficient
21 commercial area.

22 So that -- that's the -- that's the problem
23 we're trying to avoid is all of the people from Lehigh
24 Acres needing to drive west for most of their
25 commercial needs. We want to keep that population as

1 close as possible to their commercial needs. And
2 providing this both serves the development that will
3 be put in, but it also serves a larger public benefit
4 of Lehigh Acres.

5 Q The Lehigh Acres problem, as you put it,
6 existed prior to the settlement agreement, right?

7 A The Lehigh Acres problem has been one the
8 county has been trying to solve for decades, yes.

9 Q Go to Page 17, please.

10 A 17, then, Policy 33.2.4.4(e) limits
11 commercial development to neighborhood levels of
12 commercial. In the Lee Plan, neighborhood levels of
13 commercial are defined as 100,000 square feet or less,
14 and the intent of that is to not provide regional
15 attractors. The reason that this is here is really to
16 limit the types of uses so that you don't have -- so
17 you don't have large uses located near the well field.
18 You still want those neighborhood uses in proximity to
19 well field concerns with potential water quality
20 issues.

21 Two things I note about that is most of those
22 uses that would be regional attractors or all, if I
23 remember correctly, are not part of the schedule of
24 uses. So it's not -- it's not a use issue. The
25 second is there aren't any wells in this area. So

1 it's really not an applicable issue for us here.

2 Q You mean public water supply wells?

3 A Yeah, public water supply wells.

4 The third aspect of this that I think is
5 really important is, again, as I said before, the vast
6 majority of the commercial is up towards Lehigh Acres
7 where you need to have a larger amount of retail use.
8 So even though we contravene that, that policy,
9 there's a larger public benefit that we're trying to
10 address in contravening that policy.

11 Q Page 18.

12 A Page 18 was just a summary of the hearing
13 examiner's conclusions. The hearing examiner agreed
14 with us and...

15 Q You don't need to summarize it. It is set
16 out here, and, of course, the Court has that fully as
17 an exhibit.

18 But, generally, is it your opinion that the
19 settlement as proposed is consistent with the Lee Plan
20 policies and also consistent with the hearing examiner
21 recommendation?

22 A It is.

23 Q And of the contravened policies, the public
24 interest is still served by the settlement agreement;
25 is that correct?

1 A It is, yes.

2 Q And then Page 19 is a summary. Is there
3 anything on that that you think is significant to
4 point out to the Court that we have not discussed?

5 A Nothing that we have not discussed.

6 Q So what is your conclusion, then, with regard
7 to the public benefits that you've outlined? If there
8 were no settlement and the properties affected were
9 developed as proposed under the current comprehensive
10 plan for non-mining uses, what's the comparison?

11 A It's a dramatic difference. So under the
12 existing comprehensive plan, you could develop similar
13 to Wildcat Farms developed. I mean, it's -- you just
14 look to your east, there aren't these large contiguous
15 conservation and restoration areas. There aren't
16 water quality benefits. You would still have
17 uncontrolled discharge into the Corkscrew Swamp
18 Sanctuary and the CREW lands to the south. You
19 wouldn't have the ability to create a flow path from
20 Lehigh Acres all the way down to CREW that helps
21 alleviate flooding in the Caloosahatchee watershed.

22 So there's just a -- and you wouldn't get the
23 water quality treatment that we're placing in both
24 with -- within the development pods and then within
25 the restoration areas.

1 So none of the benefits that the county is
2 trying to achieve with restoring land you would be
3 able to get under the current Lee Plan.

4 Q Under the current Lee Plan, could the
5 property that's subject to the settlement agreement
6 south of Corkscrew Road be mined?

7 A It could.

8 Q It could?

9 A Yes. It's one of -- mining is one of the
10 uses specifically allowed for in the Density
11 Reduction/Groundwater Resource area.

12 Q Could all of these benefits that you've
13 outlined for the Court at the last hearing and then
14 today, could they have been achieved -- or would they
15 be achieved without the addition of this southern
16 parcel to the overall settlement agreement, and by
17 southern parcel, I mean south of Corkscrew Road?

18 A The southern parcel is key because, as I
19 said, it provides that connection to CREW. So it's
20 not just the southern parcel, it's the parcel on the
21 north side of Corkscrew Road.

22 So the mining application extended to --
23 south to a mile north of Corkscrew Road. So trying to
24 figure out how you control the discharges then going
25 into CREW from the area mile north of Corkscrew Road

1 all the way to that 2,000-plus acres south of
2 Corkscrew Road, you just can't do it. There's too
3 much intervening land, too much active agriculture or
4 other potential future uses.

5 There's -- it seems to negate the point of
6 providing water quality if the intervening land use is
7 agriculture, and you're just putting that water --
8 that cleaner water back into an ag ditch that would
9 flow and do a point discharge into an environmental
10 land. It defeats the purpose, or negates some of the
11 purpose, rather.

12 MR. MOORE: All right. Your Honor, can I take
13 a second and consult with counsel?

14 THE COURT: Absolutely.

15 MR. MOORE: Your Honor, that's all we have for
16 Mr. DeLisi.

17 I don't know if Mr. Bartlett or Mr. Grosso
18 have any questions.

19 MR. BARTLETT: None, Your Honor.

20 MR. GROSSO: Your Honor, I do. Could I have
21 five minutes?

22 THE COURT: Sure.

23 MR. GROSSO: May I, please?

24 THE COURT: Brief recess.

25 MR. GROSSO: Thank you, Your Honor.

1 (Recess taken from 10:12 a.m. to 10:20 a.m.)

2 CROSS-EXAMINATION

3 BY MR. GROSSO:

4 Q Good morning, Mr. DeLisi. So when we compare
5 the amount of residential development that the
6 settlement agreement would authorize to what the
7 amount of residential development that could be
8 happening under the current comprehensive plan rules,
9 the difference is a 15 times increase in residential
10 density; is that right?

11 A Give or take, yes.

12 Q Were you involved in the appraisal process at
13 all?

14 A I was not.

15 Q In general, a planner such as yourself would
16 understand that one of the purposes of the current
17 comprehensive plan limits on development in the DR/GR
18 is to protect wildlife from the impacts of urban
19 development, correct?

20 A That's one of them, yes.

21 Q And the natural areas, Corkscrew Swamp, the
22 other natural areas that are in the vicinity of this
23 project, they're considered part of the western
24 Everglades ecosystem, right?

25 A Well, I don't know if they're defined as the

1 western Everglades, honestly, but they are an
2 important ecosystem on the west coast.

3 Q And these areas are known habitat for the
4 Florida panther, correct?

5 A That's correct.

6 Q And it's one of the most critically
7 endangered species in this country, right?

8 A Yes. And I'll note that panther habitat
9 areas, I mean, stretches throughout eastern Lee
10 County. It's not just CREW or the DR/GR.

11 Q But it is a basic understanding of Florida
12 panther science that they do not have enough land
13 available to them right now to sustain themselves in
14 perpetuity, correct?

15 A So I'm not sure. Look, I'm not a wildlife
16 biologist. I'm not sure I agree with that. I know
17 the populations are up. There's a lot of science
18 that's out there that talks about panther mortality
19 based on other panthers, but I'm not an expert in
20 panthers.

21 Q There's no excess of panther habitat
22 available in southwest Florida, is there?

23 A That's not something that I would be able to
24 answer. Certainly it's something I might debate, but
25 I'm not an expert in that.

1 Q Panthers are very shy of human activity,
2 right?

3 A I can't answer whether -- what their
4 reactions are.

5 Q Okay. So then, to be clear, you're not the
6 person who's been able to explain to the judge that
7 the development allowed by the settlement agreement is
8 compatible with the continued existence of Florida
9 panther. That's not within your area of expertise?

10 A No. I will say that 10-acre lots spread out
11 is not going to be a pro-panther landscape type of use
12 either. I think that was the comparison.

13 Q One of the things that panther and other
14 wildlife don't like is a lot of noise from human
15 activity, right?

16 A Again, I can't comment on what panthers like
17 or don't like.

18 Q Okay. Is there anything about the current
19 Lee County Comprehensive Plan restrictions on
20 development on this property that are, you know,
21 arbitrary, just don't make any sense?

22 A You mean the one unit per 10 acres or...

23 Q Yeah, start with that. That's a valid --
24 there are valid planning reasons for that restriction,
25 right?

1 A So, in my opinion, no. I don't think so.
2 That was put in place based on a settlement agreement
3 back in 1989. A lot has happened since 1989.

4 Q But that's the current comprehensive plan
5 that, as you and I speak, is deemed in compliance with
6 Florida's planning law, correct?

7 A It is, yes.

8 Q When Judge Fuller ordered the county to
9 consider a rezoning application under the 2007 rules,
10 were you involved in that process then?

11 A I was.

12 Q Okay. And has the county made a decision on
13 what could be allowed under the 2007 rules as Judge
14 Fuller ordered?

15 A Well, currently that's -- that case, as I
16 understand it, is on hold pending the outcome of this
17 settlement, so we're waiting.

18 Q Okay. So as we're sitting here today, that
19 process that Judge Fuller ordered of the applicant
20 applying under the 2007 rules, then the county making
21 a decision on that application based on reasonable
22 conditions, that has never happened, right?

23 A So Judge Fuller had three rulings. One was
24 in, I think, 2010, and then two were -- actually,
25 there were two from back then, and then there were

1 rulings more recently, the latest of which requires us
2 to sit down with the county and come up with
3 conditions for approval of a mine based on mining
4 approvals from the 2007 time frame.

5 Q But that hasn't happened?

6 A That hasn't happened yet.

7 Q Instead, the landowner and the county reached
8 the settlement that we're debating about here today,
9 right?

10 A That's correct.

11 Q Are you familiar with the appraisal that was
12 done for this property?

13 A I've seen it.

14 Q Now, did it not -- did it not determine that
15 the highest and best use of the property was for
16 non-citrus agriculture?

17 A That, I'm not aware of.

18 Q You defer to whatever it says in the
19 appraisal, right?

20 A Yeah. I didn't read it that carefully.

21 Q And when the settlement was brought before
22 the various public forums in Lee County, was it
23 basically the same settlement that Judge Shenko is
24 going to be reviewing in this case?

25 A Yes.

1 Q And when that settlement was put out for
2 public comment, it's accurate to say there was
3 substantial public opposition to this, right?

4 A I wouldn't say that. I would say there was
5 substantial public opposition to the mine. That, I
6 remember very clearly. When we went to the hearing
7 examiner's hearing, there were a lot of people for and
8 there were some people against. When we went to the
9 board hearing, there were -- it was split. There were
10 a lot of people for and a lot of people against.

11 Q So you would say there was not substantial
12 public opposition to the development that would be
13 allowed by this settlement agreement?

14 A I definitely would not say that, no.

15 Q Now, as a result of the public comment and
16 input, there were no changes made to the settlement
17 agreement, correct?

18 A That's correct.

19 Q The CREW property -- and can you see CREW on
20 the big blowup of your exhibit there?

21 A Yes, I can see that.

22 Q CREW is Corkscrew -- can you point out to the
23 judge which the CREW parcel is?

24 A So CREW, just so we're clear, is all of this
25 area. Corkscrew Swamp Sanctuary is the Audubon

1 homeland. Right here. That's part of CREW, the CREW
2 footprint.

3 Q And Audubon, who owns CREW, they opposed this
4 settlement agreement, right?

5 A I don't believe so.

6 Q Are you sure about that?

7 A I haven't heard that they have.

8 Q You have not heard that they've supported it,
9 right?

10 A They did not come to any of the hearings.
11 They were the applicant or the -- the developer met
12 with them, and so I would fully -- I've worked with
13 Audubon for years, and, typically, when they oppose
14 something when you've met with them, they will let you
15 know beforehand.

16 Q But you're not saying that's what happened
17 here. You're not saying they supported it, because
18 you don't know?

19 A I haven't heard that they've come out in
20 support, and I haven't heard that they've come out in
21 opposition.

22 Q The development that -- the amount of
23 development that would be allowed under the settlement
24 agreement, is it basically the same as that which was
25 approved for the Verdana Village project that we see

1 on your map?

2 A So Verdana Village is this property.

3 Q Right.

4 A I'm sorry. What's your question?

5 Q My question is: Is the amount of
6 development, the density and intensity of development
7 that's allowed under this settlement agreement
8 essentially the same as what was allowed for the
9 Verdana Village project?

10 A It's close. This is a little over one unit
11 an acre. I think it's 1.15, and this is 1.5.

12 Q Okay. So it's higher density on this
13 project?

14 A It's higher.

15 Q And what about The Place development?

16 A The Place up here is one unit an acre.

17 Q One unit an acre. So the development
18 proposed here under this settlement agreement is more
19 dense and intense than that approved for The Place and
20 the Verdana Village project, right?

21 A Yes. That's correct.

22 Q And when those projects were approved, were
23 they in full compliance with the Lee County
24 Comprehensive Plan?

25 A They were approved under the framework of the

1 overlay and were deemed in compliance with the
2 comprehensive plan.

3 Q So for those projects there wasn't some list
4 of comprehensive plan deviations. They instead were
5 in full compliance with everything in the plan, right?

6 A That was not part of the settlement
7 agreement. So they were in a different process under
8 a different section of statute.

9 Q The amount of development approved for The
10 Place and Verdana Village was not determined based on
11 some analysis that that was the minimum amount of
12 development those landowners needed in order to have
13 their Harris Act property rights protected, right?

14 A Well, they didn't have a filed Bert Harris
15 claim, so there wouldn't have been that analysis.

16 Q And in your many years of representing
17 developers, the amount of development that they
18 typically receive approval for is in excess of what
19 the minimum requirement would be to protect their
20 property rights, correct?

21 A If I understand your question correctly, so
22 the amount of development rights that they receive
23 oftentimes is less than they actually build out at the
24 end of the day. And there are reasons for that but --
25 and very good reasons for that, but I'm not sure if

1 I'm addressing your question or not.

2 Q I guess you understand there's a difference
3 between the amount of development right needed to
4 protect my property rights versus the amount of
5 development needed to meet my full, you know, market
6 expectation, I guess?

7 A So let me just say that it's rare that we're
8 in this context where we're trying to look at the
9 amount of development I want because that's what I
10 believe I should get, and, you know, the amount of
11 development to offset a property rights case that is
12 in the process. And so, you know, under your typical
13 comprehensive plan amendment or rezoning application,
14 you're not really looking at that type of analysis.

15 In this case, an actual valuable -- and in my
16 opinion, the highest and best use of the property was
17 taken away, and so then the negotiation is a little
18 different. It's what can you do to offset what was
19 removed from a property, and that's where that
20 analysis comes in on the property rights.

21 Q The Place and the Verdana Village, were they
22 in a different future land use category than the
23 property we're talking about today?

24 A Same future land use category.

25 Q They had different -- they had different

1 compliance with the plan because of the unique
2 characteristics of their property, correct?

3 A They were found in compliance because of what
4 they eventually proposed on the site, the restoration.

5 Q There are legitimate water quality and other
6 environmental reasons for limiting mining, are there
7 not?

8 A So, look, from my perspective, I think, and I
9 testified to this during the mining hearing, that the
10 water quality and environmental aspects you can
11 incorporate into a mining application, and I think we
12 did. And, in fact, I think that you can create a mine
13 that -- that doesn't harm water quality, but
14 unfortunately, that's not on the table right now.

15 Q Okay. And that depends on the specific
16 conditions that would attach to that mining approval,
17 right?

18 A That's correct.

19 Q Okay. And in this case, we've never gotten
20 to that point of doing the analysis of what reasonable
21 conditions on mining could make mining on this
22 property acceptable, right?

23 A Well, we're not going to because in 2007,
24 those types of conditions weren't placed on mines. So
25 the mine that would get approved wouldn't be a mine

1 that would look at extra water quality filtration or
2 additional littoral shelves. It would be based on
3 mining approvals in 2007.

4 Q And that's exactly what Judge Fuller ordered
5 would happen.

6 A That's correct.

7 Q Okay. But it hasn't happened, not done that
8 exercise of seeing what reasonable rules could be put
9 on mining under the 2007 requirements, correct?

10 A Well, it's not under the 2007 requirements.
11 It's under -- based on similar approvals in 2007. So
12 if you look at the zoning resolutions from pre-2007,
13 it would essentially mirror those, and so 150-foot
14 setbacks. I mean, the Youngquist Mine to the
15 residential to the south at the time had a 150-foot
16 setback. That's the type of thing we would be looking
17 at. There were lesser requirements for the littoral
18 plantings when you do your restoration plan for your
19 mine, your reclamation plan.

20 So you wouldn't be implementing the newer
21 rules that require more littoral plantings for mines.
22 You would be implementing the older rules that would
23 have less littoral plantings.

24 Q The current situation on the ground at this
25 property, is the current owner currently violating any

1 water quality standards?

2 A Not that I know of.

3 Q Is the current owner pumping more water out
4 of the aquifer than the water management district
5 determined was sustainable?

6 A I can't imagine that they are.

7 Q The water use figures -- the water use
8 figures that were used to determine that there would
9 be a water use benefit by converting from farming to
10 development, those were based on maximum approved
11 quantities, right?

12 A I'm not sure if they were based on maximum
13 approved or actual pumping data.

14 Q Okay. The settlement touts some of its open
15 space and landscaping provisions as part of the reason
16 it would be deemed in the public interest, right?

17 A That's right.

18 Q And so residential lawns, right, they are
19 generally understood to be sources of pollution,
20 correct?

21 A If you overfertilize, yeah.

22 Q And that's kind of a common practice in
23 Florida, overfertilizing our St. Augustine grass
24 lawns, isn't it?

25 A We do have a fertilizer ordinance in Lee

1 County.

2 Q And St. Augustine grass lawns also tend to
3 collect, shall we say, pet waste, right?

4 A People don't pick up, that's what happens.

5 Q And when people build homes, then, like they
6 might under this project, they frequently plant exotic
7 plants as part of their outside landscaping, correct?

8 A Yes, that can happen.

9 Q And the seeds and the berries from those
10 exotic plants get carried off by birds and other
11 wildlife and subsequently deposited in wild, natural
12 areas, correct?

13 A You know, I've heard that discussed before,
14 but, again, I'm not a wildlife biologist.

15 Q And you wouldn't agree that a land use
16 planner would assume that that's a common impact that
17 comes from residential development?

18 A You know, I -- honestly, it's not something I
19 have looked at a lot, the correlation between the
20 individual residential landowner planting an exotic
21 and what that -- you know, what kind of impact from a
22 bird, you know, picking a seed, and then...

23 Q Did you do a development-wide impact analysis
24 of that problem?

25 A Not on birds eating berries from exotic

1 plants.

2 Q So there hasn't been, as far as you
3 understand it, any analysis performed of the secondary
4 development impacts from urban development that would
5 result from this project, has there?

6 A Well, there has been. I mean, so when you --
7 when the water quality -- when the nutrient --

8 Q I'm sorry. I should have qualified my
9 question. I'm talking about wildlife in a natural
10 area, not water quality impacts.

11 A So a lot of that is addressed in the
12 conditions of development. So what we did and what
13 the county has done in prior planned developments in
14 this area, we look at the human-wildlife coexistence
15 plan. That's part of what we need to do. So when you
16 talk about interaction with black bears or panthers,
17 that's the type of stuff that's contained in the
18 human-wildlife coexistence plan. And it's to minimize
19 any impact of residential on wildlife that would be in
20 the area.

21 Q But it's minimize, not prevent?

22 A Those -- I mean, Wildcat Farms at one unit
23 per 10 acres isn't preventing impacts to wildlife.
24 There's no silver bullet on 100 percent prevention no
25 matter what the land use is, whether it's mining,

1 whether it's residential at one unit per 10 acres, or
2 whether it's this community where you at least have
3 large contiguous areas of conservation.

4 Q Now, when we talk about the other aspect of
5 this plan, the open space requirements, residential
6 lawns that will be, you know, planted in this
7 development, they count towards the open space
8 percentage figures?

9 A There is an amount they can count up to. I
10 don't believe in this case that that's what we're
11 looking at. So the lakes, there are buffer areas,
12 there's other onsite green areas within the
13 development. Those are the open space areas. It's
14 not individual lawns.

15 Q Okay. So you're saying that when we look at
16 the fine print, residential lawns do not count towards
17 open space?

18 A In this case, that's not going to be what's
19 used to get up to the 4,002 acres. If you look at the
20 land development code, technically you can. So based
21 on land development code definition, when this is all
22 said and done, you're going to have more than
23 4,002 acres because you -- theoretically, you could
24 count the lawns, but that's not what the -- what the
25 calculation for this one has been based on.

1 Q When you refer to lakes that are going to be
2 on the property, what you're referring to are the
3 storm water pollution ponds, correct?

4 A The storm water retention ponds, yes.

5 Q And those, for the judge's benefit, those are
6 not natural lakes. They are pits designed to hold the
7 polluted storm water off of the development that would
8 be approved, correct?

9 A Well, they're lakes that clean up the storm
10 water so that you have a net improvement. The
11 language in the statute in Chapter 163 is that there
12 has to be a net water quality improvement, and you do
13 that through designing your storm water system, which
14 includes those lakes and the plantings around the
15 lakes to filter the nutrients.

16 Q But those lakes are managed for the purpose
17 of storing and cleansing polluted water. They're not
18 managed for ecosystem benefit as a lake, right?

19 A Yeah, that's correct.

20 Q The restoration that could happen as a result
21 of this development, now, Lee County has a public land
22 acquisition program, doesn't it?

23 A It does.

24 Q It's called Conservation 2020?

25 A Yes.

1 Q And that program makes taxpayer dollars
2 available to buy environmentally sensitive land from
3 private landowners, correct?

4 A It does, yes.

5 Q The idea of putting this development where it
6 is, and the notion that it might reduce the number of
7 vehicular trips by cars, can you tell me what
8 percentage of the vehicular trips that will be
9 generated by this development will be captured
10 internally on site to this project.

11 A I can't tell you that. I don't know.

12 Q Was that analysis ever done by anybody?

13 A There was a traffic analysis done. To be
14 clear, no one has said that putting in this number of
15 units will reduce the number of trips on the road, but
16 what you are doing is, one, mitigating for those
17 impacts of the trips through expanding the roadway
18 network; two, creating a greater roadway network with
19 the connection from 82 to Corkscrew Road; and three,
20 internalizing as much of that as possible by allowing
21 for commercial uses.

22 Q Right, but we don't have any actual figure on
23 how much of that traffic will be internalized, right?

24 A We don't.

25 Q And the net result of the development that

1 would be approved will, in fact, increase the amount
2 of traffic using the roads that will be served by that
3 development, right?

4 A It will increase the amount of traffic and
5 increase the amount of road infrastructure.

6 Q And the amount of commercial development that
7 is approved by the settlement agreement follows from
8 the fact that you're approving 10,000 homes under the
9 settlement agreement, right?

10 A It follows from that and the need for
11 additional commercial in Lehigh Acres that already
12 exists.

13 Q So the Lehigh Acres project, can you point
14 out to the judge where that is on your map?

15 A Yeah, so Lehigh Acres is all of this area
16 extending off into the back wall.

17 Q And there's just one chunk of Lehigh Acres
18 that abuts this property, right? Can you show us
19 where that is?

20 A Well, two chunks. I mean, there's all of
21 this on the north.

22 Q But that's across the highway.

23 A Across State Road 82, and then there's a
24 little bit here.

25 Q And the development pattern existing on

1 Lehigh Acres, it's accurate to say that, you know,
2 that happened well before the adoption of the modern
3 Lee County Comprehensive Plan, right?

4 A It did, yes.

5 Q And it's also safe to say that one of the
6 purposes of the current Lee County Comprehensive Plan
7 is to prevent projects like Lehigh Acres from being
8 built anymore in that area, correct?

9 A It is, yes.

10 Q Now, the 2,000-acre per home traffic impact
11 fee that the developer's agreeing to pay here, I mean,
12 is that consistent with what the going rate is today
13 for developers paying traffic impact fees?

14 A So the \$2,000 per home is in addition to
15 impact fees. So there's the impact fee that's paid by
16 every homeowner countywide based on offsetting their
17 impacts, and then for this project, there's an
18 additional \$2,000 per home on top of that.

19 Q But state law right now actually requires
20 that Lee County give the developer a credit for that
21 2,000 acre -- \$2,000 payment as against the impact
22 fees, right?

23 A If it goes to the same thing that the impact
24 fee is going to offset. But the key here is that to
25 the extent that the dollar amount of the impact fee

1 assessed is less than the dollar amount that offsets
2 the impact, you can make up that difference through
3 this proportionate share payment, because it's not
4 necessarily offsetting the same -- the same thing that
5 the impact fee is offsetting.

6 Q But they're both offsetting the need to add
7 additional roadway capacity, right?

8 A Exactly. One is specific to Corkscrew Road,
9 and one is the transportation network in its totality.

10 Q Is \$2,000 per home consistent with the
11 current fair market going rate for what other
12 developers pay today?

13 A Well, other developers don't pay anything.
14 So this is paying for an additional 2,000.

15 Q But all developers are required to pay
16 transportation impact fees, right?

17 A That's correct, and so is this developer.
18 But the \$2,000 is on top of what everyone else pays.

19 Q But, again, it's accurate that under current
20 state law, the county will have to deduct from the
21 future impact fees the \$2,000 per home that is being
22 paid under this agreement?

23 A So I'm familiar with the law. I'm familiar
24 with exactions. I'm familiar with impact fees. In my
25 reading of that -- I'm not an attorney -- that is not

1 the case in this case based on how the impact fees are
2 structured and how this proportionate share is also
3 structured.

4 Q The Dover-Kohl study that has been referred
5 to, that study did not call for development such as
6 being -- as being approved by the settlement
7 agreement, did it?

8 A It did not.

9 MR. GROSSO: So may I approach the...

10 THE COURT: The board? Sure. You may, yes.

11 BY MR. GROSSO:

12 Q If I own property here in this area I'm
13 pointing to, I'm going to -- that's going to impact me
14 if this project gets approved under this settlement
15 agreement. I will see a drastic change in the
16 surrounding lands, correct?

17 A Maybe. You know, so as a homeowner, I see an
18 impact when my neighbor's kid gets in their pool and
19 starts screaming, right? I don't -- I don't
20 necessarily know that that property given the site
21 plan or any property within there is going to see much
22 of an impact at all.

23 I mean, on their roads and Wildcat Farms, I
24 don't think people are driving on those dirt roads
25 when they have easier access to State Road 82 and

1 Corkscrew Road. I mean, I'm not sure from a
2 day-to-day perspective when you're sitting in your
3 house if you're going to have any changed impact.

4 Q And same thing when I get off the couch and
5 I'm not sitting in my house and I'm wandering around
6 my yard, I'm not going to notice the difference
7 between what's there now and 10,000 homes?

8 A It depends on how close you live. You know,
9 I met with a lot of people while the mining
10 application was going on, and people can hear the ag
11 pumps today. And so when that gets turned on --
12 turned off, you won't be able to hear the ag pumps
13 anymore.

14 There will be a change in land use, and
15 depending on how far away you live, you may have --
16 you may have an impact, but that very well could be a
17 very positive impact.

18 MR. GROSSO: Your Honor, may I have a moment?

19 THE COURT: You may.

20 BY MR. GROSSO:

21 Q So Mr. DeLisi, just to revisit this question.
22 If I currently live really close to this site, there
23 are not anywhere near 10,000 homes on this property.
24 There's -- there's no homes on this property, right?

25 A That's correct.

1 Q And there are no -- there's no commercial
2 development there now, right?

3 A That's correct, yeah.

4 Q And after the settlement agreement is
5 approved, there will be over 700,000 square feet of
6 commercial development?

7 A So 500 close to 82 on the north side and well
8 distant from any surrounding property owner, and then
9 150,000 square feet closer to Corkscrew Road, again,
10 well distant from any property owner.

11 Q The population that will live on this
12 property is going to be, like, more than 20,000 people
13 at total build-out, correct?

14 A Depending on what the persons per household
15 is, but 10,000 units.

16 Q We typically assume as planners in Florida
17 how many people per unit?

18 A Two. I need to check the census data to come
19 up with population, but...

20 Q So at least 20,000 people, right?

21 A Yeah. I mean, for your point of argument,
22 we'll go with 20,000, sure.

23 Q I mean, that's bigger than Marco Island.
24 More population than Marco Island, right?

25 A I don't know the population of Marco Island.

1 Q You know it's greater population than lives
2 in all of Belle Glade, right?

3 A Venture to guess, probably.

4 Q I mean, this project will be the size of a
5 small city, correct?

6 A So, I mean, it's bigger than -- it would be
7 bigger than the City of LaBelle, but it would also
8 have a lot more conservation area than you see
9 anywhere around there. So when you look at impacts
10 that surround property owners, impacts would be
11 negligible on a day-to-day basis based on those huge
12 areas of distance that you would see.

13 So it's not like you're moving in right next
14 to Marco Island, which is scraped. I mean, Marco
15 Island there's not 3200 acres of preserve on Marco
16 Island where -- you know, that surrounds the island
17 and buffers you from it. So it's not really a fair
18 like-to-like comparison.

19 Q When you talk about preserved land, that land
20 is already there now, correct?

21 A Not inactive agriculture. A lot of it is
22 inactive agriculture.

23 Q But you've told us today that that active
24 agriculture is not violating any water quality
25 standards, right?

1 A No, but it's still actively used. So, I
2 mean, there are people on it, there are trucks,
3 there's activity, there are pumps going on.

4 Q But that is generally the lifestyle and
5 surrounding land uses that people who have made their
6 homes out here knew they were getting when they built
7 their homes out here, correct?

8 A Well, so is a mine. That's true. I mean,
9 agricultural areas have trucks, they have active, you
10 know, things going on, diesel pumps constantly going,
11 and they have mines.

12 Q Every time a mine is approved by the county,
13 it is approved with permit conditions that the county
14 has determined will make it compatible with the
15 surrounding neighbors, correct?

16 A That's what I believe.

17 MR. GROSSO: Your Honor, that's all I have.
18 Thank you.

19 THE COURT: Mr. Moore?

20 MR. MOORE: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. MOORE:

23 Q Just so I'm sure, this exhibit that
24 Mr. Grosso was referring to, this is a different one
25 than we had up, isn't it?

1 A Might be on the back.

2 Q What's this area immediately north on -- of
3 our property, of Corkscrew Road property on State Road
4 82? What's that area?

5 A Lehigh Acres.

6 Q What's the density of Lehigh Acres compared
7 to the proposed density of the settlement agreement?

8 A The average density of the future land use
9 map. Six units per acre.

10 Q Versus what's the density of the proposed
11 settlement agreement?

12 A 1.5.

13 Q And State Road 82, is that a minor road, or
14 is that a major arterial?

15 A It's a state road. It's on the strategic
16 intermodal system, so it's a major arterial.

17 Q You used the term environmentally sensitive
18 land describing this area. What policy, land use
19 regulation, any kind of law that you know of that has
20 designated the area in which the subject is as
21 environmentally sensitive?

22 A No, there's none.

23 Q In fact, immediately to the north of our
24 subject, what land use was approved by Lee County?

25 A So there's Bell Road Mine.

1 Q Bell Road Mine?

2 A Yes.

3 Q And how about to the left?

4 A Troyer Mine.

5 Q Was that approved anciently, or was that
6 approved in the last few years?

7 A It was approved at the same time that this
8 application was moving through the process.

9 Q And do you know where the Westwind or Titan
10 Mine is?

11 A Yeah, that's contiguous on the south side of
12 the initial mining property on the north side of
13 Corkscrew Road.

14 Q Do you know if blasting is permitted in the
15 Troyer Mine?

16 A It is.

17 Q Do you know if the Westwind or Titan Mine if
18 blasting is permitted?

19 A It is.

20 Q Do you know if they use dump trucks?

21 A They do.

22 Q Now, Mr. Grosso asked you about what a
23 landowner of Wildcat Farms would experience in the
24 settlement agreement as opposed to the current
25 situation. Would you turn to Exhibit 7?

1 What is Exhibit 7, if you know?

2 A Exhibit 7 is the hearing examiner's report
3 for the old Corkscrew Plantation industrial planned
4 development application. That was the mining
5 application that went through the process and was
6 denied.

7 Q All right. And that was in April of 2019, is
8 that correct, or at least that's the recommendation?
9 The hearing dates are on the first page there. I
10 think there were seven different hearing dates; is
11 that correct?

12 A That's correct.

13 Q All right. And the neighbors got a chance to
14 testify at that hearing on a proposed mine at the
15 subject property, didn't they?

16 A They did.

17 Q All right. And let me ask you to -- in terms
18 of what a current owner would experience out there in
19 terms of listening to the birds and enjoying the
20 environment as opposed to this situation of the
21 settlement agreement, would you look on Page 27?

22 A Page 27.

23 Q The hearing -- have you read this hearing
24 examiner recommendation?

25 A I did.

1 Q You actually testified at the hearing, didn't
2 you?

3 A I did.

4 Q All right. And the hearing examiner took
5 some pains to discuss the negative effects of a mining
6 use, did she?

7 A She did.

8 Q And some of those had to do with noise from
9 blasting; is that correct?

10 A That's correct.

11 Q And noise from trucks; is that right?

12 A Yes, that's correct.

13 Q And noise from rock crushing activities; is
14 that right?

15 A That's correct.

16 Q Would you look at the footnotes that the
17 Court referred to when she was describing her
18 conclusions with regard to those effects and
19 referencing testimony of the neighbors who came out.

20 For example, let's take Footnote 196. You
21 see some testimony there referring to Mr. Kevin Hill
22 or Ken Hill, stated the screech, pop, creak, and clank
23 of dragline excavators from their homes 35 to 40,000
24 feet from Titan Mine.

25 A That must be a typo. I don't recall a Ken

1 Hill, but I believe that was Kevin Hill.

2 Q It also lists Kevin Hill right after that; is
3 that correct?

4 A That's correct.

5 Q Is Mr. Hill one of the intervenors in this
6 case?

7 A He is.

8 Q And how about Footnote 197 in terms of the
9 current conditions out there. This is because of the
10 activity of the Titan or Westwind Mine; is that
11 correct?

12 A That's correct.

13 Q All right. And did Mr. Hill indicate that
14 alarms from back-up trucks and equipment were audible
15 from 4,000 feet due to that mine?

16 A Yes, I believe I see that.

17 Q Okay. And similar to Footnote 198, did
18 Mr. Hill also indicate there were issues from back-up
19 alarms and vehicles audible at 4,000 feet where his
20 property was located?

21 A That's correct.

22 Q And on Page 29 of Exhibit 7, Footnote 207, is
23 there testimony from Mr. Hill and others from Wildcat
24 Farms residents relating to the blasting intensities
25 that were heard at least a mile from the Titan Mine?

1 A That's correct, and apparently ripples in the
2 pool water at 13,500 feet.

3 Q In fact, if one reads the hearing examiner's
4 report, one can get a full dose of the vibration
5 issues, the truck traffic issues, the noise issues,
6 basically compatibility issues that the hearing
7 examiner found with a mine at that site which had been
8 allowed by the Lee Plan; is that correct?

9 MR. GROSSO: Objection. Leading question,
10 Your Honor.

11 THE COURT: Sustained.

12 BY MR. MOORE:

13 Q Did the hearing examiner detail in her
14 recommendation the effects from a mining use that had
15 been allowed by the Lee Plan?

16 A The hearing examiner detailed the tremendous
17 public opposition to the mine and what the residents
18 said that they felt were the impacts of some of the
19 existing mines.

20 Q How would you compare those existing alleged
21 impacts with the impacts of a development such as
22 what's envisioned in this current settlement
23 agreement?

24 MR. GROSSO: Objection, Your Honor. I don't
25 believe a predicate has been laid for this. I don't

1 know based on what area of expertise the lawyer is
2 asking that question.

3 MR. MOORE: Counsel had no problem asking him
4 that question in direct examination, and now I'm
5 responding to that in cross-examination.

6 THE COURT: Overrule the objection. You may
7 answer.

8 THE WITNESS: So from a compatibility
9 standpoint, the mines that were approved that --
10 that residents had been testifying about from, they
11 were all pre-2007 mines, they had -- I heard a lot
12 of testimony. There were a lot of people in
13 opposition to that mine hearing, and I sat there for
14 literally, I think, a couple of days just listening
15 to the parade of horrors of the mine, blasting,
16 which we're not going to have blasting in this
17 development, no blasting. Certainly since you're
18 not mining, it's not continuous blasting over a
19 period of 30 years. There's no blasting. We don't
20 have rock crushers, no mobile rock crushers.

21 There's no -- there was testimony about the
22 drag lines and how you could hear the clanking of
23 the chains hitting the buckets from over a mile. I
24 think there was a recording played in the hearing
25 about that, and the hum of the diesel engine of the

1 drag lines. We won't have drag lines in the
2 construction activities. We're not excavating. So
3 we're not -- we don't have these massive -- massive
4 equipments that, you know, have these humming diesel
5 engines that you can hear from a mile away.

6 Then there's the back-up alarms that the
7 hearing examiner detailed. You know, there will be
8 some delivery trucks in the commercial area, but
9 compared to big dump trucks all over the site,
10 spread out, picking up where the rock piles are,
11 where the rock crushed piles are and then back-up
12 alarms that -- that the hearing examiner was
13 detailing, of course, none of that would exist
14 within this development.

15 BY MR. MOORE:

16 Q Now, Mr. Grosso asked you about the water
17 use of the existing agricultural use and whether that
18 was -- had met the requirements of the water
19 management district; is that correct?

20 A That's correct.

21 Q And he also made a comment about, or in
22 leading into his question about you and your history
23 of representing developers.

24 Is that all you do is represent developers,
25 your background?

1 A No. It's a mix. On the planning side, it's
2 mostly all developers. Some exceptions from time to
3 time, but mostly developers. On the water, I do water
4 policy consulting and lobbying so, and that's almost
5 entirely local government.

6 Q On behalf of local government?

7 A On behalf of local governments I try and
8 implement water projects, try and get funding for
9 water restoration activities, try and help them
10 understand policy at a state and federal level, and
11 how we can both influence them, how it impacts them,
12 and then how we can get rules written in a way that
13 meets their interest of environmental restoration.

14 Q And for a good period of time, you actually
15 worked for the water management district, did you not?

16 A I did.

17 Q In what capacity?

18 A I was the chief of staff.

19 Q So because the -- a particular agriculture
20 use met the standards of the South Florida Water
21 Management District, does that mean that there is no
22 negative effect to draw down from the aquifer that you
23 were speaking of during your direct examination?

24 A It doesn't mean that. You can meet all of
25 the rules and regulations in effect as an agricultural

1 operation. I mean, so the rules and regulations are
2 set up so that we can have agriculture in the state.
3 That doesn't mean that by its nature, there aren't
4 impacts to the environment of agricultural activity.

5 So the manipulation of underground water
6 levels is certainly one impact that you see. The
7 drawdown of water levels in order to keep roots dry,
8 which, of course, causes offsite impacts if you're
9 pumping that water off site, in this case the point
10 discharge location especially, and also the nutrients
11 that need to be applied for healthy farms.

12 Now, that's regulated, and it's -- and you
13 can meet all of your requirements, but at the end of
14 the day, nutrient application is a big part of
15 anything, whether it's a lawn or whether it's an
16 agricultural operation that also needs those nutrients
17 to produce their crops.

18 Q And under the proposed settlement agreement,
19 is the water quality, the result better or worse than
20 under permitted water quality issues for existing
21 agriculture?

22 A There's just a tremendous drop in the
23 nutrient loading under the proposed settlement.

24 Q And is that better or worse for the
25 environment from your perspective as a land planner?

1 A Much better.

2 Q And you used the term invasive species. What
3 do you mean by that?

4 A Well, invasive exotics are what we're most
5 concerned with, and those are species that are not
6 native and take over an area. So, like, melaleuca,
7 for example, will choke out indigenous vegetation
8 communities and choke out wildlife when it expands
9 across the landscape.

10 Q And under the proposed settlement, if the
11 water quality is improved and the restoration goes
12 forward as planned, what effect will that have on
13 invasive species?

14 A It will have a positive effect certainly at
15 the discharge points.

16 Q By positive, what do you mean?

17 A So some of the invasives that you -- or some
18 of the invasives and exotics that you see in the
19 Corkscrew Swamp Sanctuary and the CREW lands to the
20 south of the project won't -- will go away, hopefully,
21 over time, because they won't have that elevated
22 nutrient source.

23 Q Counsel also mentioned Verdana Village and
24 The Place. Did either of those developments as
25 approved contain close to 3200 acres of restoration

1 land?

2 A No.

3 Q Verdana Village actually went one mile beyond
4 the required overlay, did it not?

5 MR. GROSSO: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. MOORE:

8 Q Did Verdana Village meet the overlay
9 requirements with regard to distance from Corkscrew?

10 A So I processed that initial amendment to the
11 comprehensive plan, and we had to do an amendment to
12 those requirements to do two things: One is, again,
13 phase out agriculture, and two is to extend the
14 overlay distance so that you can have the development
15 go two miles south of Corkscrew Road.

16 Q So the plan had to be amended to allow that?

17 A It did.

18 Q Now, counsel discussed with you about
19 comparing the total build-out, ultimate build-out on
20 the subject property if the settlement is approved
21 with Belle Glade and Marco Island, I believe.

22 In your role in preparing for this testimony,
23 did you see your role as comparing this settlement
24 with other areas of the county, or did you see it more
25 to discussing consistency with the Lee Plan and what

1 policies were contravened and if there was a public
2 interest that was satisfied by the contravention of
3 those policies?

4 A Yeah, it was the latter, to look at making
5 sure the public interest was protected despite any
6 contravention of Lee Plan policies.

7 Q Counsel had mentioned early in his
8 cross-examination about the panther habitat. Under
9 the settlement agreement, is there more or less
10 panther habitat if 6,000 acres were mined north and
11 south of Corkscrew Road on the subject property as
12 compared with the settlement?

13 A So compared to a mining application, there's
14 a lot less habitat for all wildlife.

15 Q And how about if one were developed to one
16 unit per 10-acres throughout that 6,000 acres?

17 A So one unit per 10 acres, there's a lot of
18 open area. I don't think that's good for anything,
19 wildlife or anyone else. You have a lot of conflicts
20 between people and wildlife at 10-acre lots. You
21 don't have a human-wildlife coexistence plan that has
22 to be in place where you educate people on bear-proof
23 containers. So there's -- I wouldn't consider one
24 unit per 10 acres habitat of any form.

25 Q Counsel had also mentioned about panthers

1 that don't like noise, assuming that he was talking
2 about from the development Kingston has proposed.

3 Under that proposal, is there more or less
4 noise for a mining use than the settlement agreement?

5 MR. GROSSO: I'll object. On
6 cross-examination the witness was unable to answer
7 that question about the amount of noise generated by
8 the residential development, so how could he have a
9 basis to answer this question?

10 MR. MOORE: I don't think he said he couldn't
11 say whether it was more or less noise compared to --

12 THE COURT: Overrule the objection. You may
13 answer, Mr. DeLisi.

14 THE WITNESS: I'm sorry. Can you repeat the
15 question?

16 BY MR. MOORE:

17 Q Sure. Is there more or less noise to the
18 area, let's say the habitat in general, than -- for a
19 mining use than for the proposed settlement agreement?

20 A Well, just based on the hearing examiner's
21 report, all the testimony from the residents about the
22 noise from blasting, the, you know, clanks of drag
23 line, the hum of a drag line that you can hear from a
24 mile away, the back-up sounds from dump trucks, I
25 mean, it -- from their testimony, it was persistent,

1 ongoing, and constant, and that's a lot of noise to
2 me.

3 Q Counsel also asked you about some prior
4 rulings of the Court related to mining use. Do you
5 remember that?

6 A Vaguely. Sorry. It was just --

7 Q It was an hour ago.

8 A -- 10 minutes ago, yeah.

9 Q Looking at Exhibit 6 in the book, you said, I
10 believe, in your testimony that you were involved in
11 the mining application back in 2008 to 2010 era; is
12 that correct?

13 A That's correct.

14 Q And that's the old Corkscrew Plantation?

15 A Yes.

16 Q And just not asking you to give a legal
17 opinion, but just as a result of that ruling by Judge
18 Fuller, was the county required to process the owner's
19 application for mining approval under the laws as of
20 September 17th, 2007?

21 A It was.

22 Q And those laws would -- would those laws have
23 permitted mining?

24 A Yes.

25 Q All right. And counsel asked you about

1 whether that was still an open question. You know
2 that ruling was appealed and affirmed?

3 A That's correct.

4 Q Okay. With regard to the Bert Harris claims
5 and other settlements, were you involved in the FFD
6 settlement?

7 A I was.

8 Q And what were the densities, do you remember,
9 that were approved there?

10 A One unit an acre.

11 Q All right. And were there contravened
12 policies?

13 A There were.

14 Q And were those policies -- do you have any --
15 do you remember how many residents or how many units
16 would have been approved under that total?

17 A 5,208.

18 Q And of those 5,208 units, they were all
19 approved by the Court after a hearing like this; is
20 that correct?

21 A That's correct.

22 Q How would you compare the environmental
23 benefits of this settlement agreement with the
24 environmental benefits, if any, in the FFD settlement
25 agreement?

1 MR. GROSSO: Objection. Relevance, Your
2 Honor. That case is not before this Court. Each
3 Harris Act case is taken on its own merit. We don't
4 have the facts. We don't have the details of that
5 project, and it can't be a precedent for any
6 subsequent Harris Act case.

7 This is about how much this deviates from this
8 comprehensive plan. This is about the extent to
9 which the amount of development granted here is, in
10 fact, necessary to avoid a violation of the Harris
11 Act rights that this landowner may have.

12 It's an incredibly individually based
13 analysis, and it cannot be relevant how it compares
14 to another piece of land with totally different
15 circumstances, landowner investment, fair market
16 value, all of that.

17 MR. MOORE: Your Honor, it's a difficult
18 objection to understand when it was counsel who
19 raised the comparison with Verdana, with The Place,
20 with the land use plans that were applicable to both
21 of those and whether they were contravened and the
22 densities of that, Lehigh Acres as well as FFD, and
23 now I'm simply responding to that cross-examination.
24 I think I should be allowed to go into that
25 slightly.

1 MR. GROSSO: I'm sorry. I might have
2 misunderstood. Was the question about the Verdana
3 or The Place project?

4 MR. MOORE: These were other developments
5 which, according to counsel's argument, are all
6 individual and I shouldn't be allowed to ask
7 questions about other developments that -- because
8 they were individual, and a Bert Harris Act
9 apparently is unique, and yet, he went into that in
10 direct, and now I'm doing that in cross.

11 THE COURT: As to Verdana and The Place?

12 MR. GROSSO: Yes, Your Honor.

13 THE COURT: As it relates to Verdana and The
14 Place, Court will allow.

15 BY MR. MOORE:

16 Q And were there policies that needed to be
17 amended and changed in Verdana and The Place?

18 A In Verdana there were, yes.

19 Q Counsel asked you about the Dover-Kohl report
20 and whether the Dover-Kohl report was -- called for
21 development of the type that was proposed under the
22 settlement agreement. Do you remember that?

23 A Yes.

24 Q And under the Dover-Kohl report, there's an
25 exhibit in the booklet about that, are the water flows

1 that were proposed to be restored, is that similar to
2 the water flows that are being restored under this
3 settlement proposal, at least in part?

4 A Yes, that's correct.

5 Q So it's consistent with the Dover-Kohl
6 report?

7 MR. GROSSO: Objection. Leading, Your Honor.

8 BY MR. MOORE:

9 Q Is there any inconsistency?

10 A So it's consistent with the environmental
11 restoration goals, I think, of the Dover-Kohl report.

12 MR. MOORE: May I have a moment, Your Honor?

13 THE COURT: You may.

14 MR. MOORE: That's all we have. Thank you.

15 MR. GROSSO: Your Honor, in particular, since
16 my client was brought up during that, I would ask
17 for some brief recross.

18 THE COURT: I don't really want to make it a
19 habit, but I'll allow Mr. Moore to have the last
20 word.

21 MR. GROSSO: Thank you.

22 RECROSS-EXAMINATION

23 BY MR. GROSSO:

24 Q The Verdana project, that actually had to go
25 through the formal state review of a comprehensive

1 plan amendment process, right?

2 A It did.

3 Q But this settlement is not going through that
4 state review of comprehensive plan amendment process,
5 is it?

6 A Yeah, it's a separate process under
7 Chapter 70 rather than 163.

8 Q Right, meaning this proposed development and
9 the deviations from the comprehensive plan it's
10 allowing are not being reviewed by any state agencies
11 as would be the case for a normal comprehensive plan
12 amendment, right?

13 A That's correct.

14 Q Let's assume that you're right, that mining
15 has impacts that are greater than residential, and
16 assuming that you're right about that, and assuming
17 that that means my client would be better off having
18 residential development on this property, I want to
19 ask you a couple of questions about that.

20 That doesn't mean there had to be 10,000
21 homes approved for the development, does it?

22 A It's part of a negotiated settlement.

23 Q And that there could have been 5,000 homes
24 approved, and my client would be experiencing half of
25 the impact compared to what the settlement agreement

1 is going to allow, right?

2 A So I don't think there could have been 5,000
3 homes, and the reason for that is, to me, as I look at
4 this and as I understand valuation, mining is
5 absolutely the highest and best use of this property.
6 It is great rock. It's very deep. It's close to the
7 surface. It's a great mining property.

8 And so to offset that loss, you need to come
9 up with something more valuable, and I don't think
10 this is the greatest residential property. I mean, so
11 there's a lot of residential all around you. There's
12 residential farther west, so you need to think about
13 what's going to offset the value.

14 Q Okay. So where will I find in any of the
15 exhibits that y'all have put into the record, where
16 will I find an analysis that shows the inordinate
17 burden on this property owner requires X minimal
18 amount of development to avoid that inordinate burden
19 to require this minimal amount of development? Where
20 would I find that?

21 MR. MOORE: Your Honor, that's out of the
22 scope, I believe. I don't think we dove into that
23 on redirect.

24 MR. GROSSO: That's a follow-up on the answer
25 that I just received from the last question, Your

1 Honor.

2 THE COURT: Wait. Hold on a moment.

3 I'll overrule the objection.

4 BY MR. GROSSO:

5 Q Can you point me to anything in the record,
6 the appraisal or anything else?

7 A No. I mean, that's not -- you know, that's
8 an analysis that is somewhat subjective. It's not
9 really a technical analysis.

10 Q Even subjective, there's no written
11 subjective analysis of that question that's been done
12 by anybody as far as you know, correct?

13 A So I've been -- I've been involved in a lot
14 of negotiated settlements. I have a background in
15 dispute resolution. I don't think -- in my
16 experience, I've never seen a quantifiable offset when
17 you're trying to offset a loss to one party, you know,
18 with something else.

19 Q So the amount of development arrived at to be
20 approved by the settlement agreement was arrived at by
21 negotiation, not by an analysis that determined the
22 minimum level of development required to avoid an
23 inordinate burden for the landowner; is that right?

24 MR. MOORE: Your Honor, this is well outside
25 of the scope of anything that I addressed in the

1 testimony.

2 MR. GROSSO: It's the heart of the case, Your
3 Honor.

4 THE COURT: I agree it may be the heart of the
5 case, but I do sustain the objection.

6 MR. GROSSO: Okay. Last line of questions,
7 then, Your Honor. Thank you.

8 BY MR. GROSSO:

9 Q The 2007 rules that would have governed
10 another mining application, they did include
11 provisions allowing the county to regulate noise from
12 mines, right?

13 A Yes.

14 Q They did allow -- and that would include
15 blasting as a component of noise, correct?

16 A No. Blasting is regulated entirely by the
17 State Fire Marshal.

18 Q The 2007 rules would have allowed the county
19 to condition the hours of operation of the mine,
20 right?

21 A That's correct.

22 Q Okay. So, but because there has never been a
23 process of analyzing a mining application under the
24 2007 rules, we will never know the full extent of
25 conditions that could have been applied on a mining

1 operation here, correct?

2 A No, because all of the testimony from the
3 public was based on their experiences with mines that
4 were -- that were approved pre-2007.

5 When I looked at compatibility in this case,
6 we were proposing something better than that, and yet,
7 the testimony was based on all of the horrors from
8 those conditions. So more expansive hours of
9 operation than we were proposing in our application.
10 There were drag lines that were all diesel, a lot more
11 noisy than we were proposing. So it's worse, not
12 better, in what you're looking at pre-2007.

13 Q You answered my question based on what you
14 heard people say, not based on an analysis of what the
15 2007 rules could have authorized in terms of
16 conditions, correct?

17 A It's based on the conditions of approval from
18 2007 mines. And so, again, you just look at the
19 conditions of approval, and you come up with similarly
20 approved mines. It's not based on what the county may
21 have thought up back in 2007 that's beyond what was
22 actually approved. It's based on what was approved in
23 those pre-2007 mines.

24 Q So it would be possible for the county today
25 to apply the 2007 rules in a manner that is more

1 stringent than they might have been applying back in
2 2007?

3 A No, not according to my reading of that rule.

4 Q Okay. And we have to go on your reading of
5 the rule because we do not have any analysis by the
6 county of what conditions could be placed on a mine on
7 this location under the 2007 rules, right?

8 A You don't have to guess at that. You look at
9 the conditions that were actually placed on mines
10 pre-2007.

11 Q But yet, you're assuming that the rules in
12 2007 would not have authorized more stringent
13 conditions than the county had chosen to put on those
14 mines, right?

15 A Well, I know because that's -- those rules
16 were -- those mines were approved under those rules at
17 that time, and that's what the county -- those are the
18 conditions the county placed on those mines.

19 So what the ruling from Judge Fuller was is
20 that we need to look at conditions of approval similar
21 to mines approved in 2007. It's not we look at
22 conditions of approval that could have potentially or
23 theoretically been authorized back in 2007. It's
24 conditions of approval consistent with mines from
25 2007. And we know what those conditions of approval

1 are because they're out there. They exist.

2 Q They're out there in general, but they've
3 never been applied to a revised mining application for
4 this property, correct?

5 A We haven't got there yet because it's...

6 Q Because you settled this case instead?

7 A That's correct, yeah.

8 Q Thanks.

9 MR. GROSSO: Thank you, Your Honor.

10 MR. MOORE: Just briefly, Your Honor.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. MOORE:

13 Q Counsel mentioned Verdana and The Place, that
14 they had to go through some state overview of the
15 amendments at the time, is that correct, and the
16 proposals?

17 A That's correct.

18 Q All right. And you said there wasn't -- in a
19 Bert Harris case there is no approval. Is that the
20 Department of Economic Opportunity up in Tallahassee?

21 A Yes, that's correct.

22 Q Okay. Is that more or less stringent than
23 under the old DCA, Department of Community Affairs?

24 A Are you asking me if DEO is more or less --

25 Q The review.

1 A Do they review -- yeah, their reviews are a
2 lot less stringent now than they used to be under,
3 say, pre-2011.

4 Q And with regard to Verdana or The Place, did
5 either one have to go to a hearing where they had
6 cross-examination and rules of evidence and a ruling
7 by a Court with regard to approving their amendments?

8 A Not like this.

9 Q Okay. And with regard to mines, staff had
10 approved the mine previously; is that correct?

11 A The old Corkscrew IPD application, is that
12 what you're asking?

13 Q Yes. Did staff approve that, or did they --

14 A Yes, staff recommended approval of the old
15 Corkscrew IPD application.

16 Q Under whatever restrictions were applied, and
17 the hearing examiner found those were not sufficient;
18 is that correct?

19 A That's correct.

20 MR. MOORE: That's all we have.

21 THE COURT: Mr. DeLisi, you may step down.

22 THE WITNESS: Okay. Thanks.

23 THE COURT: Do you wish to call your next
24 witness?

25 MR. MOORE: I think we can because I know

1 we're under kind of a --

2 THE COURT: Yep. You may.

3 MR. MOORE: Call Elizabeth Fountain.

4 ELIZABETH FOUNTAIN,
5 a witness, after being duly sworn, upon her oath,
6 answered and testified as follows:

7 THE WITNESS: I do.

8 DIRECT EXAMINATION

9 BY MR. MOORE:

10 Q Would you state your full name and business
11 address for the record, please.

12 A Yes. Elizabeth Fountain, and I work at JR
13 Evans Engineering at 9351 Corkscrew Road, Estero,
14 Florida 33928.

15 Q What's your profession, Ms. Fountain?

16 A I am a professional civil engineer and also a
17 certified floodplain manager.

18 Q Would you just very briefly give the Court
19 your qualifications as your education and work
20 experience and just summarize it, if you will?

21 A Sure. Graduated from the University of
22 Tennessee at Chattanooga with a bachelor of science
23 degree in civil engineering in 1999. From that point,
24 immediately started my civil engineering career here
25 in Lee County, Florida, working for a civil

1 engineering firm, and then progressed my career
2 throughout the years focussing on land development
3 projects, and more recently, like in the last ten
4 years, with a focus on water resource projects
5 including hydrologic restoration, floodplain
6 restoration, things like that.

7 MR. MOORE: All right. Your Honor, we have a
8 CV that we would like to put in evidence. I've
9 given counsel a copy of it. Whatever that next
10 number is, 31? Has this been marked yet?

11 THE CLERK: It has not been marked yet. That
12 will be 31.

13 MR. GROSSO: If I could just get the exhibit
14 number, please?

15 MR. MOORE: 31.

16 MR. GROSSO: Thank you. And there's no
17 objection, Your Honor.

18 THE COURT: It's admitted.

19 (Joint Petitioners' Exhibit No. 31 was
20 admitted into evidence.)

21 BY MR. MOORE:

22 Q Are you generally familiar with the proposed
23 terms involving the Kingston development settlement
24 agreement?

25 A Yes, I am.

1 Q And I particularly direct your attention to
2 the settlement agreement as it affects water flows and
3 subject property.

4 Did you have any part in establishing plan
5 flowways for Kingston development, which is the
6 development that would happen if the settlement is
7 approved?

8 A Yes. I provided technical guidance input on
9 the layout of the flowway restoration areas, the
10 alignment of those areas.

11 Q I'm going to put up an enlargement of the
12 exhibit I'm going to hand to you. Could you identify
13 this, if you can? What is that exhibit?

14 A This is an exhibit illustrating the flowway
15 restoration area through the Kingston development
16 plan. It also highlights the wildlife corridor.

17 Q You said you had some input in creating that
18 or consulting with those water flows?

19 A Yes. I provided guidance on, I'll call it
20 the alignment of those flowway areas, which are
21 represented by the dark blue dash lines and arrows.

22 Q I'm going to ask you to explain it in just a
23 moment.

24 MR. MOORE: Let me get this marked, if I may,
25 as Exhibit 32, and if we could have it introduced in

1 evidence.

2 THE COURT: Any objection to 32, Mr. Grosso?

3 MR. GROSSO: No, Your Honor.

4 THE COURT: 32 is admitted.

5 (Joint Petitioners' Exhibit No. 32 was
6 admitted into evidence.)

7 BY MR. MOORE:

8 Q All right. Looking at whatever is easier for
9 you, either looking at what you have in front of you
10 or --

11 MR. MOORE: I don't know if Your Honor -- can
12 you see this?

13 THE COURT: I can see it. If the witness
14 would wish to step down, she may, if it makes it
15 easier for her.

16 BY MR. MOORE:

17 Q So just explain what you have here in terms
18 of the water flows and what effect they have that are
19 proposed here for the settlement agreement, what would
20 it have on the water situation out there for the
21 subject property.

22 A Sure. Absolutely.

23 Q Oh, and orient the Court.

24 A Yeah. So north is going to be on the
25 left-hand side of the board. South on the opposite

1 right-hand side.

2 Q So if we were doing a regular map, that would
3 be north?

4 A Yes, sir. I'll be speaking from north to the
5 south in those terms. So to be consistent with the
6 overall intent of the Lee County Comprehensive Plan
7 and those goals, there's been a long-term intent to be
8 able to take water from the north to the south,
9 especially in this area located east of I-75 and along
10 the Corkscrew Road corridor.

11 Historic flow patterns have been disrupted by
12 the development of agricultural activities and by
13 roadway construction, particularly and predominately
14 east of the Interstate 75 area. And so this property
15 provides a great opportunity to reestablish those
16 historic flow patterns.

17 And when first looking at it, we look at
18 multiple sources of data to help us come up with an
19 appropriate alignment of those flowway corridors. We
20 look at historic aerials back from the 40s and early
21 50s prior to the development of the agricultural
22 activities. We look at previous studies that have
23 been done such as the referenced Dover-Kohl study, as
24 well as previous county studies, and we look at trying
25 to establish flow patterns through existing wetlands

1 that are on the property that have been adversely
2 impacted by the agricultural activities but the
3 historic flow through those wetlands in a pattern that
4 goes down to the south, which would just be the CREW
5 lands.

6 And this really works if you take that flow
7 pattern from the north boundary line along 82 south
8 under -- you know, through Corkscrew Road to the south
9 side of Corkscrew and eventually meet those CREW lands
10 and help them get the water right for those areas.

11 Q Is that water flowing to the same degree now
12 from north of Corkscrew Road to south of Corkscrew
13 Road?

14 A No, it does not.

15 Q Go ahead.

16 A The opportunity for this flow restoration
17 also provides a benefit to Lehigh Acres, which could
18 result in a drainage connection for those -- for that
19 property at that point located on the north side of
20 82.

21 Much of Lehigh Acres currently drains to the
22 Orange River, and it is well-known that the Orange
23 River is pretty, I'll say well-taxed, often has
24 flooding problems even with normal rain events. So to
25 be able to provide a drainage connection from a

1 portion of Lehigh Acres through the property helps
2 alleviate some of those issues.

3 This plan also provides an opportunity to
4 relieve some of the flooding that Wildcat Farms is
5 experiencing due to the agricultural activity and the
6 development there of those fields. There's been berms
7 that have been placed along the eastern property line,
8 which have impacted the historic flow pattern that
9 used to come through there.

10 The one other benefit that the plan has is it
11 also re-establishes flow through a -- on the west side
12 of the property where there's a wetland that is shared
13 between the Lee County land on the west side and part
14 of the Kingston property. So this design helps
15 actually direct flow through that wetland system which
16 is an off-site benefit as well.

17 Q And are those hydrologic benefits detailed
18 even more specifically on this exhibit?

19 A Yes, they are.

20 MR. MOORE: Could I get that marked, please,
21 as Exhibit 33. I'd ask that Exhibit 33, and we
22 furnished counsel a copy, be admitted.

23 THE COURT: Any objection?

24 MR. GROSSO: If I may just ask one question of
25 the witness.

1 Did you prepare that document, that map?

2 THE WITNESS: We did. Yes, I did.

3 MR. GROSSO: No objection.

4 THE COURT: 33 is admitted.

5 (Joint Petitioners' Exhibit No. 33 was
6 admitted into evidence.)

7 BY MR. MOORE:

8 Q All right. Ms. Fountain, if you could, just
9 explain the detail of this map a bit with this chart
10 in terms of the hydrologic benefits, the specific
11 indications on the subject property that are conducive
12 to a better water flow.

13 A Absolutely. So this is a more detailed view
14 of the proposed flowway restoration area, and it
15 actually shows the concept of where, not only water
16 will flow based on the red arrows, but also
17 opportunities to store water in a strategic manner
18 that promotes a healthy hydraulic system for the
19 wetlands involved in those areas, and also doesn't
20 just completely drain the site and impact the flow
21 downstream more than they can handle.

22 So along the northeastern side of the
23 property we show a location where we could introduce
24 flows again from Lehigh Acres land into the flowway
25 restoration corridor. And we actually show the

1 direction of that flow moving in a northeast to
2 southwest direction.

3 Q Is that consistent with the historic water
4 flow?

5 A Yes, sir. We show the flow being achieved
6 just outside the western boundary into Lee County
7 preservation area and then back into the flowway
8 system directed towards the south, towards the
9 Corkscrew Road lands.

10 Again, along the east side of the Kingston
11 property, there are multiple points where we could
12 introduce flows from the Wildcat Farms area. Again,
13 those would be strategically -- those flow points
14 would be strategically defined based on more detailed
15 design as we go forward.

16 Q So the new development called Kingston would
17 accept water from Wildcat Farms to the east; is that
18 correct?

19 A Yes, sir.

20 Q Okay. And then do what with it? Send it in
21 what direction?

22 A Yeah, so basically it would, again, coming
23 from the eastern side directing flow towards the
24 middle of the Kingston property basically all the way
25 down to the south-southwest.

1 So these flowway restoration areas would all
2 be connected, and the darker green areas are
3 considered to be areas where there would be ponding,
4 kind of like a marsh area, not a detention lake, but
5 some low-lying lands to actually store surface water.

6 The water flow then travels south, and I
7 believe based on the current plan, there is a south
8 connection here to Corkscrew, and there will be
9 another one along the more eastern side of the
10 property.

11 Q And where does that, all that water end up
12 after it leaves the southern parcel here on the map?

13 A It ends up into the CREW lands.

14 Q Is that a good thing or a bad thing from a
15 hydrologic standpoint for the CREW lands?

16 A That is a positive thing. Right now, the
17 discharge point into the CREW lands is very, what we
18 call point source, very direct discharge.

19 Q What's the negative result of that, if any?

20 A It is -- it doesn't mimic the historic flow
21 pattern being more spread out, more like a sheet flow
22 pattern. It creates -- you know, introduces nutrient
23 high water that's very fast and -- trying to think of
24 another word to say -- very direct into a singular
25 point into their lands, which can create issues for

1 them.

2 With this project we would have multiple
3 points of discharge into the CREW lands to help spread
4 out that water flow pattern and manage it.

5 Q Well, under the current conditions, both the
6 north parcel and the south parcel, do you know what
7 they're being used for?

8 A Agricultural activities.

9 Q From a hydrologic perspective, from your
10 professional perspective, how does that current water
11 flow situation under current conditions compare with
12 the conditions that you are depicting on this chart
13 and what you anticipate under the settlement
14 agreement?

15 A So with the existing conditions of the
16 properties, there really is no connectivity to promote
17 surface water flow between the wetlands. The wetlands
18 are typically isolated with berms around them, and
19 even ditches, and sometimes they, during the
20 agricultural activities, they will actually pump water
21 into the wetlands and use them for storage areas. So
22 it really impedes the hydrology of those wetlands. It
23 does not have the same connected flow pattern that
24 this plan provides.

25 Q Assume for a moment that the north parcel and

1 the subject parcel and the south parcel that were
2 devoted to a mining use, or lime rock mining say, how,
3 if you know, would the water flows there compare with
4 the water flows that you're anticipating with this
5 settlement agreement?

6 A They would not be consistent. I'm not a
7 mining expert, however, I would believe that it would
8 be a similar --

9 MR. GROSSO: I'm sorry. I'm going to have to
10 object. I'm not an expert, but I believe that now
11 what comes next is objectionable.

12 MR. MOORE: We're not asking her about her
13 mining expertise.

14 THE COURT: Sustained. Could you rephrase the
15 question, please.

16 BY MR. MOORE:

17 Q What is your opinion with regard to the water
18 flows, assuming a mining use of that property, based
19 on your expertise as a hydrologist and civil engineer
20 as compared with the settlement agreement?

21 MR. GROSSO: I don't believe that restated
22 question addresses the core issue. The witness said
23 I'm not an expert in mining.

24 MR. MOORE: I'm not asking for a mining
25 expertise, Your Honor.

1 THE COURT: Overruled as to the last question.

2 THE WITNESS: It's my opinion there would
3 still be isolated wetland areas with the mining
4 development, and I do know that with the mining
5 there are concerns about drawing down the water
6 levels within adjacent wetlands due to the mining
7 activities and having them exceed the depth of the
8 water table.

9 BY MR. MOORE:

10 Q Now, could these flowways and the hydrologic
11 benefits that you've mentioned be achieved without
12 including the parcel to the south of Corkscrew Road as
13 part of the settlement agreement?

14 A No, they could not be fully achieved.

15 MR. MOORE: One moment, Your Honor.

16 That's all we have for Ms. Fountain. Thank
17 you.

18 CROSS-EXAMINATION

19 BY MR. GROSSO:

20 Q Ma'am, you've been practicing hydrology in
21 Florida since 2003; is that right? That's what it
22 says on your resumé. Engineer since 2003.

23 A Well, yes, I got my license in 2003, yes.

24 Q Great. Have you ever done consulting work on
25 behalf of a mining company or a company seeking

1 approval for a mine?

2 A No.

3 Q Ever done any engineering studies of the
4 hydrological impacts of mines?

5 A No, I have not.

6 Q Have you ever provided hydrological services
7 to agricultural operations?

8 A No, I have not.

9 Q Though, I assume that you have never written
10 a report to the State of Florida documenting any of
11 the adverse hydrological effects of agricultural
12 operations, right?

13 A No. I will say I've reviewed data from
14 monitoring wells for numerous sites that have
15 agricultural activities and compared those recorded
16 water levels with the water levels prior to
17 agricultural activities.

18 Q And nothing that you saw there ever prompted
19 you to write any kind of report to anyone with
20 authority documenting the adverse effects on water
21 flow of farming, correct?

22 A Only documenting the observations and the
23 recorded data and those differences. Nothing specific
24 about agriculture.

25 Q The first map or the first image y'all talked

1 about, you and Mr. Moore, it said wildlife corridors,
2 but that actually didn't depict or describe any
3 particular wildlife corridors on the property because
4 you're not a wildlife biologist, are you?

5 A I am not.

6 Q The flowway restoration for The Place and the
7 Verdana developments, did you design that?

8 A Yes, I did.

9 Q And is it working right now as it was
10 designed? Is it working correctly?

11 A Yes.

12 Q Are there not significant complaints by
13 neighbors that it is not working correctly?

14 A I am not aware of significant complaints.

15 Q There's a legal drainage easement through the
16 Titan Mine site currently, isn't there?

17 A I don't know the answer to that.

18 Q And so if that drainage easement that runs
19 through the Titan mining site is currently adequate to
20 protect my client's property from flooding, you don't
21 know about that, do you?

22 A I do not.

23 MR. GROSSO: If I may have a moment, Your
24 Honor.

25 THE COURT: You may.

1 MR. GROSSO: Thank you, Your Honor. That's
2 all.

3 THE COURT: Redirect?

4 MR. MOORE: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MOORE:

7 Q Mr. Grosso asked you about what you didn't
8 do, but let me ask you about what you did do.

9 Did you examine the current site, the current
10 conditions of the site, what's it being used for?

11 A Agriculture.

12 Q Agriculture?

13 A Yes.

14 Q And you examined the flowways under the
15 current conditions, and you compared them with the
16 flowways in the after condition if the settlement is
17 approved; is that correct?

18 A Yes.

19 Q Is that what your testimony is based upon?

20 A Yes, sir.

21 Q Is that consistent with your experience and
22 your training in the field of hydrology and flowways?

23 A Yes, sir.

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

25 THE COURT: You may step down. Thank you.

1 Mr. Moore, your thoughts. Good time for a
2 break?

3 MR. MOORE: Could we approach?

4 THE COURT: Absolutely.

5 (Sidebar begins.)

6 MR. GROSSO: I'm open to everyone's
7 convenience on this. I can go if need be. If the
8 Court or any of the members of the Court staff or
9 court reporter or counsel need a break for lunch,
10 maybe the witnesses do, that's fine with me. I'm
11 happy either way.

12 MR. MOORE: I'm a low maintenance lawyer.

13 THE COURT: Everybody else may have an uproar
14 in the crowd. These folks who may need to --
15 somebody out in the gallery may need to take food
16 for medical purposes, so I think we should, but we
17 can make it tight and quick. I mean, when would you
18 like to reconvene?

19 MR. GROSSO: 1:00?

20 MR. MOORE: Sure.

21 THE COURT: Very good. Let's do that.

22 (Sidebar ends.)

23 THE COURT: We're going to take a noon recess.
24 We're going to reconvene at 1:00 to continue with
25 the hearing. For those lawyers in the case and for

1 those folks out in the gallery, we'll be in recess
2 until 1:00.

3 (Recess from 12:05 p.m. to 12:59 p.m.)

4 THE COURT: Whenever you're ready, Mr. Moore,
5 you may call your next witness.

6 MR. MOORE: We call Shane Johnson.

7 SHANE WILLIAM JOHNSON,
8 a witness, after being duly sworn, upon his oath,
9 answered and testified as follows:

10 THE WITNESS: Yes.

11 DIRECT EXAMINATION

12 BY MR. MOORE:

13 Q Would you state your full name and business
14 address for the record, please.

15 A Shane William Johnson.

16 Q And how are you employed, sir?

17 A I am an ecologist at the environmental
18 consulting firm of Passarella & Associates, and the
19 address of that business is 13620 Metropolis Avenue,
20 Suite 200, in Fort Myers, 33912.

21 Q And I'm going to ask that your CV be
22 admitted, but can you just briefly tell us your
23 education and work experience. Just summarize it very
24 briefly, please, with regard to ecology and the field
25 that you're working.

1 A Sure. I obtained my bachelor of science
2 degree in zoology with an emphasis in wildlife
3 management from Southern Illinois University
4 Carbondale and started my career in Florida in 2003
5 working for the Sanibel-Captiva Conservation
6 Foundation as a shorebird technician. And then
7 eventually, shortly after that, obtaining an ecologist
8 position where I currently work at Passarella &
9 Associates.

10 Q All right. And did you hear some of the
11 testimony here this morning?

12 A Yes.

13 Q All right. And you heard the testimony about
14 the panthers and panther habitat?

15 A Yes, I did.

16 Q Okay. Are panthers a part of your study area
17 with which you're familiar?

18 A Yes, it is.

19 MR. MOORE: Your Honor, this is the CV of
20 Mr. Johnson. It's not marked yet, but whatever the
21 next number would be, I'd ask that it be admitted.

22 THE CLERK: 34.

23 THE COURT: Any objection, Mr. Grosso, to the
24 CV?

25 MR. GROSSO: No, Your Honor.

1 THE COURT: Thank you. 34 it's admitted.

2 (Joint Petitioners' Exhibit No. 34 was
3 admitted into evidence.)

4 MR. MOORE: Thank you.

5 BY MR. MOORE:

6 Q So I'm going to ask you to look at this
7 exhibit, the enlargement of this exhibit, which has
8 been admitted as 32. In it, if you can see it, but
9 you see the green arrows that are basically north and
10 south?

11 A Yes.

12 Q All right. Do you know what those represent?

13 A Yeah, it represents a wildlife corridor,
14 specifically a large animal wildlife corridor that we
15 are incorporating as part of the project design.

16 Q Does that corridor currently exist?

17 A It does not.

18 Q Did you assist Kingston Development in
19 designing anything to do with habitat protection and
20 wildlife corridors, particularly as it relates to
21 large mammals?

22 A Yes, we did, specifically with respect to the
23 restoration involved with such corridor involving
24 species, plant species to be planted to re-establish
25 vegetation within that corridor, discussing corridor

1 widths, and also helping with the design of the
2 wildlife crossings associated with that corridor.

3 Q Have you worked on other developments for the
4 Cameratta Group?

5 A Yes, I have.

6 Q Which ones?

7 A The Place at Corkscrew and Verdana Village.

8 Q And as a part of that consulting work, did
9 you interact at all with any state or federal agencies
10 with regard to wildlife?

11 A Yes, specifically the U.S. Fish and Wildlife
12 Service and the Florida Fish and Wildlife Conservation
13 Commission.

14 Q And those developments have been approved; is
15 that correct?

16 A Correct.

17 Q Would you just explain to the Court exactly
18 how these corridors work and what -- how they're --
19 how they're placed on the development program?

20 A Sure.

21 MR. GROSSO: Objection. I don't believe this
22 witness has demonstrated expertise in panther
23 management, panther habitat, anything related to do
24 with the science of the Florida panther, or other
25 wildlife for that matter.

1 MR. MOORE: We'll be happy to go into his
2 credentials a little more, Your Honor.

3 THE COURT: If you would, please, Mr. Moore.

4 BY MR. MOORE:

5 Q Mr. Johnson, do you have anything to do in
6 your work experience with panthers or wildlife
7 corridors or design of development with regard to
8 those issues?

9 A Yes, I do. Going back to the history we've
10 had working with wildlife agencies, again, the U.S.
11 Fish and Wildlife Service and Florida Fish and
12 Wildlife Conservation Commission, we work with those
13 agencies closely in the design of corridors, the plant
14 material required to establish and restore vegetation
15 within those corridors to establish corridor widths
16 and also crossings.

17 Q Are you specifically familiar with the kind
18 of land use patterns and development requirements as
19 related to panthers?

20 A Yes.

21 Q And the panther habitat, is that something
22 that's regulated by Lee County, or is that -- are
23 there other agencies that deal with that typically?

24 A As you're going through the environmental
25 permit process, that's typically, again, the U.S. Fish

1 and Wildlife Service and also input received from the
2 Florida Fish and Wildlife Conservation Commission.

3 Q All right. And in terms of the design work
4 for the wildlife corridor, you say you have worked on
5 other wildlife corridors in the past and have
6 consulted with federal and state agencies about
7 approvals for those; is that correct?

8 A Yes.

9 MR. MOORE: Your Honor, I would like to
10 continue with my examination.

11 MR. GROSSO: May I voir dire, Your Honor?

12 THE COURT: You may.

13 VOIR DIRE EXAMINATION

14 BY MR. GROSSO:

15 Q Sir, when you said we work, is there somebody
16 else on staff at your firm who is the wildlife
17 specialist?

18 A No. When I say we, we work as a team at
19 Passarella & Associates.

20 Q So how many -- have you published any papers
21 on the habitat needs spatially of the Florida panther?

22 A No.

23 Q Have you published any reports or studies on
24 the wildlife habitats spatial needs of the -- any of
25 the mammals that are known to live in this part of

1 southwest Florida?

2 A No.

3 Q Have you ever been employed as a wildlife
4 expert with the federal or the state wildlife
5 agencies, U.S. Fish and Wildlife Service or the
6 Florida Fish and Wildlife Conservation Commission?

7 A Sanibel-Captiva Conservation Foundation was
8 my job prior to Passarella & Associates, the funding
9 of which came directly from the U.S. Fish and Wildlife
10 Service, and I worked cooperatively both with the U.S.
11 Fish and Wildlife Service and the staff of
12 Sanibel-Captiva Conservation Foundation as part of
13 that job.

14 Q Have you ever done any studies about
15 wildlife-vehicular collisions?

16 A Not personally.

17 MR. GROSSO: I don't believe this witness has
18 the requisite expertise to give these opinions, Your
19 Honor.

20 MR. MOORE: If I may just briefly.

21 BY MR. MOORE:

22 Q You haven't published any academic papers; is
23 that right?

24 A Correct.

25 Q With regard to panther habitat or wildlife?

1 A Correct.

2 Q But you have gotten approvals from state and
3 federal agencies for developments, Cameratta-type
4 developments for a residential project; is that
5 correct?

6 A That is correct.

7 Q And those approvals dealt with large mammals,
8 wildlife corridors, and specifically panther habitat;
9 is that correct?

10 MR. GROSSO: Objection. Leading.

11 BY MR. MOORE:

12 Q What did those approvals deal with?

13 A Well, to walk you through this a little bit
14 more, specifically, when we're in the environmental
15 permit process, we prepare a variety of documentation
16 that these wildlife agencies, again, the U.S. Fish and
17 Wildlife Services and the Florida Fish and Wildlife
18 Conservation Commission, utilize in making a
19 determination of approval for projects.

20 Q All right. Currently, are there any wildlife
21 corridors or panther crossings in this area that we're
22 dealing with with regard to this --

23 THE COURT: Mr. Moore, let me first address.

24 The Court overrules the objection and will allow the
25 inquiry of this witness.

1 MR. MOORE: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MOORE:

4 Q Are there currently any wildlife corridors or
5 crossings in the area of Corkscrew Road, north and
6 south parcels adjacent --

7 A No.

8 Q -- thereto?

9 Again, to ask you about just describing for
10 the Court these corridors, what it does, how it works,
11 what the land use development changes that have to
12 occur in order to provide those corridors, would you
13 go ahead.

14 A Sure. Again, it's establishing and
15 re-establishing vegetation to provide a vegetated
16 corridor so that it will allow cover and movement to
17 occur between point A and point B.

18 If we're taking just the example here in
19 showing green, this would provide connectivity between
20 Imperial Marsh Preserve to the west, which is on the
21 bottom part of the property that abuts the property to
22 the west, east all the way to the CREW lands.

23 So essentially, in the existing condition
24 right now, we have wetland systems that are in place
25 as part of the existing property, and the groves

1 surrounding them. Essentially the grove area will be
2 restored to provide additional vegetated connection to
3 these wetland areas as part of this corridor to allow
4 movement to occur from west to the east.

5 Now, these wetlands systems are essentially
6 isolated or connected by just very narrow ditch
7 systems. The restoration event that would occur would
8 reconnect these areas so a significant corridor would
9 be maintained for wildlife movement.

10 Q And with the establishment of a corridor such
11 as depicted on that exhibit, is that a fairly
12 inexpensive process, or does that cost any amount
13 of -- substantial amount of money, or do you know?

14 A Well, the restoration is pretty costly from
15 my experience working on The Place at Corkscrew and
16 Verdana Village which, by the way, this is a very,
17 very similar type of restoration that's being proposed
18 here on the Kingston property. That's a very costly
19 endeavor because the restoration that occurs from farm
20 fields, in this case, you know, row crops and existing
21 citrus is very expensive. You're going from very
22 denuded, very -- highly, you know, intense
23 agricultural activities to, you know, freshwater marsh
24 and pine systems. It takes a lot of effort and costs
25 to, you know, restore those areas to those target

1 habitat types.

2 Q Under the settlement proposal for the
3 Kingston Development, who pays for that expense? Is
4 that the taxpayers of Lee County?

5 A No.

6 Q Who pays for it?

7 A Well, it would be the developer paying for
8 that, and also the maintenance of that would be either
9 the homeowners association and/or the community
10 development district.

11 MR. MOORE: One minute, Your Honor.

12 BY MR. MOORE:

13 Q With regard to the wildlife corridor and the
14 large mammal crossings and panther habitat in general,
15 can you make any comparison between the panther
16 habitat under the settlement proposal and the panther
17 habitat under, say, a mining use or a low density
18 residential use of, say, one unit per 10 acres?

19 A Is this assuming that mining would occur in
20 the entire property shown here?

21 Q Yes, north and south parcels.

22 A I would say that the project as proposed
23 provides a significant benefit to the Florida panther
24 with the corridors that are proposed here and the
25 restoration that would occur.

1 With a mining operation, you have large
2 expansive open water areas that are essentially zero
3 value for the Florida panther. In this situation, you
4 have the ability to connect the existing wetland areas
5 and restore the agricultural areas to create
6 significant corridors, which you would not have that
7 opportunity with large scale mining. And also I think
8 your other example was the single-family homes.

9 Q Yes, sir.

10 A So that would be kind of the status quo for
11 the development in the DR/GR. One unit per 10 acres,
12 correct?

13 Q Yes, sir.

14 A To my knowledge, there is no preservation
15 requirement under that scenario. So the plan as
16 proposed is a significant benefit over that scenario.

17 Q So bottom line, are the panthers better off
18 or worse off with the settlement proposal such as
19 outlined here than the current situation?

20 A Better off.

21 MR. MOORE: That's all we have, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GROSSO:

24 Q So on whose behalf are you here testifying
25 today? Who's your client?

1 A My client is Cameratta.

2 Q Is that the same client that developed the
3 Verdana Place?

4 A Verdana Village, yes.

5 Q And the same client that developed The Place?

6 A Yes.

7 Q And you were their environmental consultant
8 on those projects, too?

9 A Yes, sir.

10 Q Are you saying that panther and other large
11 wildlife do not currently traverse over the property
12 we're discussing today?

13 A I didn't say that.

14 Q Okay. So panther and other large wildlife do
15 regularly traverse the property we're talking about
16 today, correct?

17 A I don't know if I would characterize it as
18 regularly, but they do traverse the property.

19 Q It is a common understanding about the status
20 of the Florida panther that they are now in peril
21 because their habitat historically has shrunk to
22 unsafe levels, correct?

23 A In large part due to habitat loss.

24 Q So that's a yes to what I asked you, right?

25 A Yes.

1 Q So in addition to urban development shrinking
2 their habitat, the second biggest threat to the
3 Florida panther is vehicle collisions on roads,
4 correct?

5 A Yes.

6 Q Okay.

7 A Well, let me --

8 Q I got another question for you.

9 MR. MOORE: Your Honor, can the witness finish
10 his answer?

11 THE COURT: He may.

12 THE WITNESS: I don't know if that's the
13 second largest cause of panther mortality. I want
14 to say that, you know, intraspecific aggression may
15 be up there.

16 BY MR. GROSSO:

17 Q And intraspecific aggression is a result of
18 the fact that as the panthers' habitat has shrunk, you
19 got too many male panthers in too small of an area.
20 That's increasing the aggression you're talking about,
21 correct?

22 A I wouldn't necessarily agree with that.

23 Q Can you name for our judge today a single
24 study that has documented that replacing farms with
25 suburban development has benefited the Florida panther

1 or any other large mammals?

2 A I can't name one offhand.

3 Q Okay. If I own -- build my house on 10 acres
4 of land out in the country in eastern Lee County, what
5 is the most common thing that's happening on that land
6 outside of where I've actually built the house?

7 A I'm not sure I understand your question.

8 Q Yeah. If I build a house on 10 acres,
9 doesn't the vast majority of the rest of that 10
10 acres, other than my house, typically remain in its
11 natural state?

12 A That's individualistic.

13 Q Sometimes people will mow the lawn you're
14 saying, right?

15 A That could result in a variety of different
16 landscape options depending on the individual.

17 Q And is your testimony today that Florida
18 panther would rather have the development proposed in
19 this settlement agreement than they would have
20 scattered residential development at one unit per 10
21 acres? That's what you're telling us today?

22 A The project that's proposed will provide a
23 larger and more significant benefit due to the amount
24 of restoration that will occur and the corridors that
25 will be established.

1 Q Okay. And the corridors that were
2 established are how wide?

3 A It varies. In the southern part of the
4 property, for example, say for sake of example south
5 of Corkscrew Road, they are approximately 500 feet
6 wide. There are some pinch points, but in general --

7 Q Pinch point meaning what?

8 A Pinch point is some areas they may be 300,
9 but the vast majority of the corridors and the
10 restoration that you see is approximately 500 feet
11 wide.

12 Q And it is also a commonly understood aspect
13 of panther biology that they do not like being around
14 humans and urban development, correct?

15 A I would say in general that's correct. But I
16 also would state that there are some that are -- have
17 become more accustomed to humans and anthropogenic
18 activities.

19 Q But that's actually an adverse impact to the
20 ecology of panther, right? That's not viewed by the
21 scientific community as a benefit to the long-term
22 survival of the species, is it, sir?

23 A Perhaps.

24 Q It is? Are you saying that it is? Are you
25 saying that changes in panther behavior as a result of

1 human encroachment are understood by the scientific
2 community to be beneficial to the long-term viability
3 of the species? Is that your testimony today?

4 A Can you restate your question, please.

5 Q Are you saying that the scientific community
6 is under the impression that human-induced changes to
7 panther behavior are good for the long-term
8 survivability of that species?

9 A Well, in this case, the restoration would be
10 a human-induced change to the landscape. I think that
11 would be a benefit.

12 Q Yeah, how about the question that I asked,
13 though? Are you saying that where panther have gotten
14 used to garbage and pets and other things humans
15 bring, that that's considered a benefit to the
16 panther? It's not, is it?

17 A I would say no, it's not a benefit, but
18 again, that's -- you know, those panthers that have
19 been habituated to anthropogenic activities is
20 probably a very small portion of the population.

21 Q But you understand, this is one of the most
22 critically endangered species in the entire United
23 States of America, do you not?

24 A I understand that.

25 Q And we have -- Lee County has policies in its

1 comprehensive plan that require educating the public
2 about how to interact and live among panthers safely,
3 correct?

4 A Yes.

5 Q And someone who lives out in this part of the
6 county with a house on 10 acres, they get that public
7 education too about, you know, bear-proof trash
8 containers and things like that, correct?

9 A I don't know if that's true.

10 Q Okay. So are you saying today that the only
11 way to educate people who would own homes in this area
12 is to bring 10,000 new homes in to this property?

13 A I wouldn't say that.

14 Q Okay. And the land that we are talking about
15 that's the subject of this settlement agreement is a
16 priority 1 panther habitat designated area, correct?
17 Tier 1 priority area, correct?

18 A I don't know the exact overlay.

19 Q That's not something you looked at before you
20 came here to testify today?

21 A Well, we look at -- for the environmental
22 permitting process, for example, we look at if it's
23 within a primary or secondary-type habitat.

24 Q And this is primary habitat, isn't it?

25 A It's both primary and secondary.

1 Q That means among all the properties, it's
2 among the most important pieces of land there is for
3 the panther. That's what that means, right?

4 A It's within the U.S. Fish and Wildlife
5 Services overlay, yes.

6 MR. GROSSO: If I may approach, Your Honor,
7 the exhibit --

8 THE COURT: You may.

9 BY MR. GROSSO:

10 Q So is it the green that's going to -- the
11 green line that's going to be the corridor as you
12 called it?

13 A That's going to be designed and designated
14 for large animal movement, yes.

15 Q And when I see these pods that are right up
16 against that corridor, is that a development pod?

17 A Yes.

18 Q So that's where the people and their homes
19 and their commercial areas, they're going to be right
20 there adjacent to that corridor, right?

21 A Correct.

22 Q And the same for this piece down here that
23 I'm pointing to with my finger?

24 A Yes.

25 Q So your wildlife corridor will be immediately

1 adjacent to areas developed with permanent residential
2 homes and commercial development, correct?

3 A Correct. I would like to elaborate on that,
4 if I could.

5 Q I got another question for you, though.

6 You've told us that urban development eating
7 up habitat is one of the primary threats to panther,
8 correct?

9 A I said habitat loss.

10 Q Okay. And you've also told us, then, that
11 infighting among panthers is one of the other primary
12 threats to the species, correct?

13 A Yes.

14 Q And the other of the top three threats to
15 this animal are vehicular mortality, correct?

16 A Yes.

17 Q So that's more cars equals more collisions
18 that are fatal to Florida panther, correct?

19 A In certain areas, yes.

20 Q Well, this would be one of the areas.

21 A Are you asking me?

22 Q Yes.

23 A Potentially, yes.

24 MR. GROSSO: If I may, Your Honor. May I have
25 a moment?

1 THE COURT: You may.

2 MR. GROSSO: Thank you, Your Honor. That's
3 all I have.

4 MR. MOORE: If I may.

5 THE COURT: You may.

6 REDIRECT EXAMINATION

7 BY MR. MOORE:

8 Q So what's the purpose of a panther crossing
9 or wildlife corridor particularly in the area of
10 Corkscrew Road?

11 A One of the benefits would be to help safe
12 passage for animals like Florida panther.

13 Q How does that work specifically?

14 A Well, if I could use the pointer here.

15 Q Sure.

16 A It's part of this large animal corridor,
17 again, from Imperial Marsh Preserve to the west to the
18 CREW lands, we would not only re-establish vegetation
19 along this corridor, but there would also be large box
20 culverts under the main spine road here within the
21 development. There's also a proposed future location
22 that would provide a large box culvert across
23 Corkscrew Road.

24 Q So when you say a box culvert, the purpose of
25 such a culvert is what, in this context?

1 A Well, to prevent panthers from having an
2 adverse interaction with a vehicle.

3 Q So they wouldn't get hit by a car or truck?

4 A Correct.

5 Q That doesn't exist now on Corkscrew Road,
6 does it?

7 A It does not.

8 Q So what protects the panther right now from
9 getting on Corkscrew Road and getting smacked by a
10 truck?

11 A Nothing.

12 Q Okay. And with regard to the habitat, I may
13 have missed your testimony or your answers to my
14 questions earlier, but Mr. Grosso was asking you about
15 a decrease in panther habitat as being a serious
16 problem in Florida or in the nation; is that correct?

17 A Yes.

18 Q Bottom line, does this settlement proposal
19 increase panther habitat or decrease it?

20 A This project will increase the top level
21 habitat for the Florida panther. So essentially the
22 development is being concentrated within the existing
23 agricultural fields, which from the U.S. Fish and
24 Wildlife Services' perspective considers that low or
25 minimal value for the Florida panther.

1 So the restoration areas that would occur in
2 the blue areas and the green area and all surrounding
3 the pods would be high level or optimal habitat for
4 the panther.

5 Q Did you coordinate this wildlife corridor
6 with the Florida Wildlife Federation, or did you just
7 do it without any kind of coordination?

8 A This was with direct coordination with
9 Florida Wildlife Federation. In fact, they're the
10 ones who conducted a study to suggest that this
11 corridor here would be beneficial for the Florida
12 panther.

13 Q The Florida Wildlife Federation did that?

14 A Yes.

15 Q You may have already done it, but I just want
16 to give you a chance. You started to elaborate on an
17 answer to a question that Mr. Grosso cut you off with
18 regard to the adjacency or proximity of homes and the
19 wildlife corridor. Did you have any more you wanted
20 to clarify on that?

21 A Yeah. To expand on that, I think Mr. DeLisi
22 in his testimony spoke to the human-wildlife
23 coexistence plan as part of the settlement agreement,
24 and as part of that plan, there's fencing along the
25 perimeter of the pods that would, you know, reduce

1 panther and their prey species from entering the
2 development pods themselves.

3 So essentially it's a controlled environment
4 to keep the panthers and other wildlife species within
5 the restoration areas and out of the development pods.

6 MR. MOORE: That's all we have. Thank you.

7 MR. GROSSO: May I briefly, Your Honor?

8 THE COURT: You may.

9 RE-CROSS-EXAMINATION

10 BY MR. GROSSO:

11 Q How high are those fences, sir?

12 A The fences, we coordinated with the Florida
13 Fish and Wildlife Conservation Commission, six feet.

14 Q Are you telling us today that the Florida
15 Wildlife Federation has approved the development
16 that's the subject of this settlement agreement?

17 A No, I didn't say the Florida Wildlife
18 Federation approved the development, no.

19 Q What you've said is that the Florida Wildlife
20 Federation at some point in the past has recommended
21 that there be a wildlife corridor in the same general
22 vicinities as the one you're talking about today,
23 right?

24 A That's correct.

25 Q But the Florida Wildlife Federation never

1 took a position that running that corridor adjacent to
2 a major urban development was good for the panther,
3 have they?

4 A Not to my knowledge.

5 Q Thank you.

6 MR. GROSSO: Thank you, Your Honor.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. MOORE:

9 Q Did the federation issue an objection?

10 A Not to my knowledge.

11 MR. MOORE: Thank you.

12 THE COURT: You may step down, sir.

13 THE WITNESS: Thank you.

14 MR. MOORE: Your Honor, we call David Brown.

15 DAVID BROWN,

16 a witness, after being duly sworn, upon his oath,
17 answered and testified as follows:

18 THE WITNESS: I do.

19 DIRECT EXAMINATION

20 BY MR. MOORE:

21 Q Would you state your full name and business
22 address for the record, please.

23 A My name is David Brown, and I'm currently a
24 managing principal with Progressive Water Resources,
25 which is a division of RESPEC Company, LLC, and my

1 office is located at 6561 Palmer Park Circle, Suite D,
2 Sarasota, Florida, but we also have offices in Fort
3 Myers and in Tampa.

4 Q All right. Sir, would you give the Court a
5 very brief summary of your education, work experience
6 in your field?

7 A Received my bachelor of science from the
8 University of Florida in 1983, upon which I went to
9 work at a mining engineering firm in Winter Haven,
10 Florida, by the name of Richard Fountain & Associates.

11 While employed at Richard Fountain &
12 Associates, I continued my graduate studies in
13 stratigraphic analysis hydrology engineering and
14 groundwater hydrology.

15 After Richard Fountain & Associates, I was
16 employed by Ardaman Associates, a geotechnical
17 engineering firm in Orlando, Florida.

18 I left Ardaman Associates and went to the
19 Southwest Florida Water Management District where I
20 was a senior water use permit evaluator and senior
21 professional geologist. I also administered a
22 cost-share program with the water management district
23 called Facilitating Agricultural Resource Management
24 Systems or FARMS program.

25 I then left the Water Management District and

1 went back to consulting. I was a vice president at
2 Integrated Water Solutions. Then left Integrated
3 Water Solutions and started a company Progressive
4 Water Resources, and we were acquired by RESPEC in
5 July of 2021.

6 Q All right, sir.

7 MR. MOORE: Your Honor, we've got a CV from
8 Mr. Brown, and we've got it marked as 35.

9 THE COURT: Any objection?

10 MR. GROSSO: No objection.

11 THE COURT: 35 is admitted.

12 MR. MOORE: Thank you, Your Honor.

13 (Joint Petitioners' Exhibit No. 35 was entered
14 into evidence.)

15 BY MR. MOORE:

16 Q Mr. Brown, are you familiar with the proposed
17 development along Corkscrew Road called Kingston?

18 A Yes, I am.

19 Q Have you been listening to the testimony here
20 this morning?

21 A I have.

22 Q Did you have any role in consulting with
23 Kingston on the hydrologic issues related to the
24 development?

25 A I did.

1 Q In general, what was that role?

2 A Basically looking at -- I assisted both the
3 engineer and the ecologist on some of the overland
4 flow stream systems, slash, flowways, also contouring
5 some of the water level values within the surficial
6 aquifer system and evaluating the water use permits
7 that are on site.

8 Q Now, we've got a series of four charts, and
9 the first one, and I --

10 MR. MOORE: Let's go ahead and get this marked
11 as 36, I believe. We can call it proposed reduction
12 in overall irrigation quantities.

13 BY MR. MOORE:

14 Q Did you prepare this exhibit?

15 A I did.

16 Q All right.

17 MR. MOORE: Your Honor, I would like to offer
18 that as a summary.

19 THE COURT: Any objection?

20 MR. GROSSO: (Shakes head.)

21 THE COURT: 36 is admitted.

22 (Joint Petitioners' Exhibit No. 36 was
23 admitted into evidence.)

24 BY MR. MOORE:

25 Q All right. Sir, would you explain to the

1 Court what this diagram -- what this chart represents
2 and the contents of that are set out there in terms of
3 the quantities?

4 A Okay. To understand the proposed reduction
5 in groundwater quantities, you have to understand the
6 existing permitted quantities that on site.
7 Currently, there is an existing agricultural
8 operation. That is what's authorized to occur by the
9 South Florida Water Management District. The permits
10 on site allow for the irrigation 4,805 acres as shown
11 here. That results in -- or has an allocation of
12 4,681,000,000 gallons per year. If you divide that by
13 365 for the numbers of days in a year, that equates to
14 12.8 million gallons per day.

15 Using the exact same program that the South
16 Florida Water Management District uses to allocate
17 those quantities, I also looked at the proposed lawn
18 and landscape irrigation system for the Kingston
19 Development, which will occur over approximately
20 832 acres and require approximately 2.9 million
21 gallons per day. If you subtract 2.9 from 12.8, it
22 results in a reduction of 9.9 million gallons per day
23 of groundwater.

24 If you look at the table below that, I've
25 further subdivided the aquifer source. The existing

1 agricultural operations utilize two aquifer systems,
2 the shallow water table aquifer, and then the
3 underlying confined sandstone aquifer.

4 Basically the permits authorize approximately
5 6.7 million gallons per day to be withdrawn from the
6 water table aquifer and approximately 6.1 million
7 gallons per day from the sandstone. So roughly half
8 of the permitted quantities split between the two
9 aquifer systems. If you add 6.7 plus 6.1, you get
10 back to the 12.8 that I described in the table above.

11 The proposal on the landscape for the
12 Kingston Development will exclusively use the water
13 table aquifer, and, again, as I testified earlier,
14 will be approximately 2.9 million gallons per day, but
15 that will exclusively be withdrawn from the water
16 table aquifer. So there will be 100 percent
17 retirement of sandstone quantities as a result of the
18 development.

19 Q What's the significance of the two aquifers
20 and the reduction in the drawdown from the sandstone
21 aquifer in particular?

22 A Well, the sandstone aquifer itself that was
23 previously testified is an aquifer system of concern,
24 so it's a confined system. It's used very often in
25 Lee County for a potable supply for domestic

1 self-supply from individual households. So it is an
2 aquifer of concern within Lee County and also with the
3 water management district.

4 Q So the per day reduction in water between
5 existing permitted water use by the agricultural
6 conditions is how much?

7 A 9.9 million gallons per day, which is
8 approximately equal to the same quantities that Lee
9 County is authorized to withdraw from those same two
10 aquifer systems for their potable supply system. So
11 basically we're retiring an entire well field as a
12 result of this project.

13 Q Would that reduction occur -- the same type
14 of reduction occur if the agricultural use were
15 continued at that site?

16 A No.

17 Q Now, you got some more detailed contours.

18 MR. MOORE: This next one I'd like -- it would
19 be...

20 THE CLERK: It would be 37.

21 MR. MOORE: 37. And this is permitted aquifer
22 drawdown.

23 THE COURT: 37 is admitted.

24 (Joint Petitioners' Exhibit No. 37 was
25 admitted into evidence.)

1 BY MR. MOORE:

2 Q Did you prepare this?

3 A I did.

4 Q Okay. All right. This is a little more
5 challenging to interpret for a layman. Would you
6 explain that?

7 A I'll do my best. You have two graphics
8 basically representing the two aquifer systems on
9 site. The one on the left is the water table aquifer,
10 and the one on the right is the confined sandstone
11 aquifer.

12 So we ran a groundwater flow model of the
13 existing permitted quantities that are authorized for
14 the water table aquifer. This is a model that uses
15 MODFLOW. The United States Geological Survey Code, or
16 USGS designed the model. These are the same models
17 that you use to obtain a permit through the South
18 Florida Water Management District.

19 So you basically run the model to look at
20 when I talk about the permitted quantities, what does
21 that result when you withdraw that, and what is the
22 drawdown, which is the depression in the water level
23 surface.

24 So if you look at this, if you look at the
25 black outline is the Kingston property. It's kind of

1 hard to see from this distance, but there's a yellow
2 contour line that runs around the outside.

3 Q Let me interrupt for a second.

4 A Yes, sir.

5 MR. MOORE: Your Honor, I've got an exhibit
6 that might be more helpful.

7 THE COURT: Thank you.

8 BY MR. MOORE:

9 Q Go ahead, sir.

10 A So there's a contour line that I've shown
11 that runs around the outside of the property that the
12 model has generated, and that represents a half a foot
13 of drawdown. Now, that doesn't -- the drawdown
14 doesn't stop there. It continues to propagate out in
15 all directions, but I only show the one that is right
16 around the property itself just for this graphic.

17 Embedded within that, you will see kind of
18 this color-coded area, which denotes areas of greater
19 drawdown. So the northern part of the property you
20 see kind of shade from blue to green to kind of
21 yellow, then orange and kind of an orangish red.
22 Those denote areas of greater drawdown where we have
23 higher concentrations of wells.

24 So we have about 1.5 foot to 2-foot of
25 drawdown on the northern part of the property, and

1 also that 1.5 feet of drawdown within the southern
2 part of the property.

3 Now, when you look at the permitted sandstone
4 aquifer, this is a confined aquifer, so it acts
5 somewhat differently in the model. You see that we
6 have significant drawdowns around the property itself
7 which, again, is outlined in black. We have a 5-foot
8 drawdown in the sandstone around the property, and
9 then, again, using the same color scheme, as you go
10 within the property where the wells are located, you
11 see drawdowns increase to 10, and then the southern
12 part of the property we have drawdowns of 10, 15, and
13 even 20 feet that occur as a result of the permitted
14 quantities.

15 Q Now, under the proposal we call the Kingston
16 Proposal, that's the name of the development, as part
17 of the settlement agreement, did you also prepare a
18 chart showing the proposed aquifer recovery?

19 A I did.

20 Q Is that the chart?

21 A (Nods head.)

22 MR. MOORE: And would that be --

23 THE COURT: 38.

24 MR. MOORE: 38?

25 THE CLERK: 38, yeah.

1 MR. MOORE: Ask that be admitted as 38.
2 Counsel?

3 MR. GROSSO: No objection.

4 THE COURT: 38 is admitted.

5 (Joint Petitioners' Exhibit No. 38 was
6 admitted into evidence.)

7 BY MR. MOORE:

8 Q All right. What does that exhibit indicate?

9 A Okay. Like I showed in the previous graphic,
10 we ran a groundwater flow model for the withdrawals to
11 the existing agricultural operation. We also ran
12 models for the proposed lawn and landscape operation,
13 but then we compared those two model outputs to look
14 at what is the net change between those two drawdowns.
15 And so that's how you look at this recovery.

16 So in comparing those same quantities, we now
17 see that we would have a recovery in the proposed
18 water table aquifer surrounding the property about
19 2/10ths of a foot. Again, this is color-coded. The
20 deeper colors represent greater areas of recovery.

21 So within the northern part of the property,
22 we have approximately one foot of recovery within the
23 water table, and we also see down at the southern part
24 of the property, we also see recovery coming close to
25 one foot -- I'm sorry, at one foot and slightly

1 greater than one foot.

2 Looking at the sandstone, which recall we're
3 going to retire 100 percent of the sandstone
4 quantities, we have a recovery of approximately five
5 feet around the exterior of the property, around the
6 property line, and then, again, we have recoveries of
7 10-foot, 15-foot, and even 20-foot within the southern
8 part of the property.

9 So the reduction permitted quantities will
10 result in a rebound in groundwater elevations.

11 Q Do those conclusions rely on the assumption
12 that there will be 10,000 dwelling units permitted?

13 A The models that I ran were based on the
14 irrigated area of lawn and landscape that would be
15 within that development, correct.

16 Q Or the -- what did you say, 800?

17 A 832 acres.

18 Q Okay. Out of the 6,000 plus total?

19 A Correct.

20 Q Okay.

21 A That represents -- I didn't say that. That's
22 about an 83 percent reduction in irrigated areas. So
23 it's significant. So the 9.9 million gallons per day
24 represents about a 77 percent reduction in quantities,
25 which was stated earlier, but the irrigated footprint

1 has reduced by 83 percent.

2 Q All right. Now, that's for irrigation. Did
3 you also look at existing wells in the area?

4 A Yes.

5 MR. MOORE: That would be the Lehigh Acres
6 existing wells document.

7 THE CLERK: Thank you. That will be Number
8 39.

9 MR. MOORE: We ask that this be admitted as
10 the next exhibit.

11 THE COURT: The Court admits 39.

12 (Joint Petitioners' Exhibit 39 was admitted
13 into evidence.)

14 BY MR. MOORE:

15 Q Did you prepare Exhibit 39?

16 A I did.

17 MR. MOORE: Is that admitted, Your Honor?

18 THE COURT: It is.

19 MR. MOORE: Thank you.

20 BY MR. MOORE:

21 Q What does this exhibit represent?

22 A All right. If you look at this graphic on
23 the right-hand side, this is a screenshot from Lee
24 County's permitted well database. So it's an online
25 portal that you can research both the location and

1 then specifics about all of the wells.

2 And the first thing that jumps out at you is
3 this red area that is here that actually is composed
4 of thousands of individual dots or markers, which
5 represent individual wells. That is Lehigh Acres.

6 And so these are domestic wells that occur
7 within Lehigh, and it basically is bound -- there's
8 some that come down further than that obviously, but
9 basically bound on the southern side by Highway 82.
10 Right here in the lower right-hand corner is the
11 Kingston property line in this area.

12 And then I've located a USGS -- it's a very
13 important USGS water level monitoring well, which is
14 within Lehigh Acres right in this area right here.

15 Focusing back on some of the concerns about
16 the sandstone aquifer, and this is from the South
17 Florida Water Management District, 2022 Lower West
18 Coast Water Supply Update, and I won't read the whole
19 thing, but basically, intensive use of the groundwater
20 from the sandstone aquifer in the Lehigh Acres area
21 has resulted in localized lowering of groundwater
22 levels towards the maximum developable limits.

23 So basically they're getting close to
24 exhausting this aquifer system in this area due to all
25 of the competition from these wells.

1 This particular USGS model that I talked
2 about, L-729, this is what's called a hydrograph on
3 this side. So basically it's the period of record of
4 water level data that occurs every day collected by
5 the USGS since 1977.

6 And the first thing that kind of jumps out at
7 you on this graph is, what are these squiggly lines
8 that run up and down? That represents -- the peak is
9 the wet season and the lower point is the dry season.
10 So you get this oscillation every year. So that's
11 what represents wet and dry seasons through time.

12 If you'll notice that this graph is very
13 diagnostic. Starting around 2000, you'll see that
14 that frequency, that amplitude changes dramatically.
15 It's almost three times as great as it was
16 historically. So the seasonal fluctuation in
17 groundwater levels in the sandstone aquifer has
18 increased dramatically as a result of this
19 competition.

20 Also, I did a linear trend analysis in Excel.
21 That's what this yellow line is. So you can
22 obviously -- you can see what it is, but the linear
23 line helps you look at what the exact values are. So
24 we're decreasing through time, and that looks like
25 approximately, if you look at the Y axis on the plot,

1 about 10-foot decrease in water level.

2 So water levels have dropped holistically
3 about 10 feet within the sandstone aquifer, but also
4 we have this exaggerated fluctuation in wet season and
5 dry season.

6 So this is kind of a classic example of an
7 aquifer system that is stressed, and that's why
8 there's concern by both Lee County and the water
9 management district in regards to withdrawals from the
10 sandstone aquifer. That's why the recovery of water
11 levels and the abandonment or retirement of
12 groundwater levels from the sandstone as part of the
13 project is very important, because these areas here to
14 the north, remember I said that these drawdowns from
15 the agricultural use propagate in all directions?
16 These people in this area and also along the eastern
17 side will definitely feel the direct benefit of this
18 reduction in permitted quantities.

19 Q Along the eastern side, is that Wildcat
20 Farms?

21 A Yes.

22 Q So the settlement agreement as currently is
23 approved by the Board of County Commissioners, can you
24 characterize its effect on -- hydrologic effect on the
25 area around the subject properties?

1 A Yes.

2 Q How would you characterize it?

3 A Currently, I would characterize the existing
4 setting, this is a stressed setting, and the project
5 as proposed is a regional benefit to the groundwater
6 resources and also is a benefit to the existing legal
7 users in proximity to the project. So it's a regional
8 benefit as well as an individual user benefit or
9 existing legal user benefit.

10 Q Can those hydrologic benefits, which are
11 envisioned by this development and settlement
12 agreement be achieved without the settlement
13 agreement?

14 A No.

15 Q Would those benefits be achieved if the land
16 remained in agricultural --

17 A No.

18 Q -- both north and south?

19 A No.

20 Q How about if the two parcels north and south
21 of Corkscrew Road were mined for the next 30, 40,
22 50 years?

23 A Mining, I have a lot of extensive experience
24 in mining. Mining is a whole new set of issues.
25 Mining severs the flowways. This -- the DR/GR is a

1 dynamic relationship between surface water and
2 groundwater, and the two interact with one another.
3 That's how the groundwater systems are recharged.

4 When you put a mine or a large excavation,
5 you sever those flowways and flow paths, and basically
6 it captures everything, and the mine doesn't
7 discharge. So it's like installing a giant area that
8 basically captures everything within that.

9 So the mine has a very different set of
10 issues as a result of, you know, within the water
11 table aquifer itself. So it introduces different
12 aspects.

13 Q So you heard the testimony earlier today from
14 another witness that she hadn't specifically had
15 mining experience with regard to hydrology or
16 agricultural. Have you?

17 A Absolutely.

18 Q What kind of projects have you worked on?

19 A I do all of the permitting for Mosaic. I do
20 permitting for limestone mines, Florida Crushed Stone.
21 I've done work for Rinker. I've done a number of
22 projects for mining operations for sand, clay,
23 limestone, and phosphate all over the Southeast United
24 States.

25 Q Have you also examined the effect of -- the

1 effect on hydrology of an agricultural use?

2 A Absolutely. I have.

3 Q You publish any papers on that?

4 A I did. I was co-author of a reasonable
5 assurance plan when I was at the water management
6 district due to degrading water quality impacts on the
7 City of Punta Gorda. The City of Punta Gorda has an
8 in-stream drinking water reservoir that was
9 established in the early 1960s, and agricultural
10 operations upstream of that reservoir were impacting
11 water quality.

12 So when I was at the water management
13 district, we reduced a reasonable assurance plan, I
14 helped co-author it, to address total maximum daily
15 loads, TMDLs, for the City of Punta Gorda, and that
16 was approved and basically peer reviewed by the EPA.
17 So, yes, I have.

18 Q Okay. In summary, how would you -- what are
19 your conclusions with regard to the benefits or the
20 detriments of the settlement agreement on the overall
21 hydraulic both surface water and groundwater in the
22 Corkscrew Road area?

23 A By virtue of shrinking the footprint by
24 80-something percent. And I support agriculture. I
25 do a lot of work with agriculture, but let's be

1 honest. There's a lot of agrochemicals and there's a
2 lot of aspects associated with agricultural
3 operations. So shrinking that footprint has a very
4 beneficial aspect towards water quality, and then in
5 the proposed creation of the flowways and maintaining
6 flow through the property.

7 A lot of this grove was developed prior to
8 current storm water permitting rules. So based on
9 today's standard has a very primitive storm water
10 management system. So the engineered system under
11 development is a vast improvement over that, and not
12 only attenuates the storm water, but also treats the
13 storm water. So there are improvements proposed on
14 water quantity, as well as water quality.

15 MR. MOORE: Can I have one moment, Your Honor?

16 THE COURT: You may.

17 MR. MOORE: That's all we have.

18 THE COURT: Mr. Grosso?

19 CROSS-EXAMINATION

20 BY MR. GROSSO:

21 Q Sir, when a mine is proposed to be dug and
22 maintained, does it require a water use permit from
23 the water management district?

24 A It can. It depends on the type of mining.

25 Q The type of mining that would take place on

1 this property in lieu of this development, would that
2 type of mining require a permit from the water
3 management district?

4 A It would for the processing of materials is
5 typically what happens. So they withdraw water either
6 through wells sometimes for the processing or through
7 the pit itself, but, yes, that is very typical to
8 require a water permit.

9 Q And agricultural operations also withdraw
10 water from an aquifer and also as a result require a
11 permit from the water management district, correct?

12 A Yes, if they meet, again, the specific
13 criteria for the permit.

14 Q And the reason that a mine or an agricultural
15 operation needs to get a permit is that we have a law
16 in Florida that's designed to protect our surface and
17 our groundwater resources, Chapter 373, correct?

18 A Yes, and 373 has a number of sections within
19 it that afford protections for existing land uses and
20 existing legal users.

21 Q Right, and in order for -- and the relevant
22 water management district for this piece of earth
23 would be the Southwest Florida Water Management
24 District, correct?

25 A No, this would be South Florida.

1 Q South Florida. Headquarters in West Palm
2 Beach?

3 A Well, they have a local office, but their
4 headquarters is in --

5 Q Either way, the law requires the water
6 management district as a condition of saying yes to a
7 consumptive use permit, they have to determine that
8 granting that permit would not adversely affect the
9 groundwater resources that would be impacted, correct?

10 A That's correct. It's the conditions of
11 issuance.

12 Q Right. And so when a mine or a farm has
13 received a consumptive use permit from the water
14 management district, that means the district has
15 determined that that mine or that farm will not
16 adversely affect groundwater resources, correct?

17 A Based on the presumptions of the application,
18 but these permits, you have to understand, are
19 licenses. They have -- they're term limited, and
20 during that time frame there is the reporting of a lot
21 of information and data to make sure that that mine
22 stays in compliance or that agricultural operation
23 with that specific permit.

24 Q So the answer to my question is yes. When
25 the district is given a permit, that means it's

1 determined that the mine or the ag operation will not
2 adversely affect the groundwater resources. True
3 statement?

4 A Based on the presumptions of the application
5 itself, that is tested over and over again during the
6 term of the permit.

7 Q That's right. And if the water management
8 district determines sometime during the life of that
9 permit that the groundwater resources are actually
10 being harmed, it can revoke the permit, correct?

11 A It has that ability, yes.

12 Q And you have on behalf of mining operations
13 sought and received consumptive use permits from the
14 water management district; is that correct?

15 A Yes.

16 Q And are you the guy who does the hydrologic
17 work and submits a report that tells the district
18 there won't be a problem with water resources if you
19 say yes to this permit? That's the role you played?

20 A I play -- I do the technical analysis and
21 also the interaction with the district. So I do more
22 than just that, but I also provide reasonable
23 assurance to the district through my analyses that the
24 proposed project will meet the conditions of issuance.

25 Q So of the permit applications that you have

1 analyzed, how many of them -- for how many of them did
2 you determine that a mining permit will actually harm
3 the water resources?

4 A I just got done with one.

5 Q And you determined that the project would
6 harm --

7 A Yeah.

8 Q -- would adversely affect water resources?

9 A We have.

10 Q And you told your client don't even bother
11 applying for this permit?

12 A No. We told them to modify the mine plan.
13 Through my analyses, we modified the mine plan.
14 Someone will come in and they'll say I want to do A, B
15 and C. We do the analysis and said C is impossible,
16 maybe B, but A you could do.

17 So, no, through the analysis, I have modified
18 virtually every single mining permit that I have
19 helped been part of.

20 Q Great. Because the water management district
21 is not going to grant the water use permit for that
22 mine if, in fact, it would adversely affect
23 groundwater resources, right?

24 A Correct.

25 Q Same question for agricultural operations.

1 The water management district is not going to give an
2 agricultural operation a consumptive water use permit
3 if doing so would adversely affect groundwater
4 resources, correct?

5 A Correct.

6 Q And at that, the chart that you talked about
7 today, the one we're looking at there sitting on the
8 floor, when you compared the amount of water that's
9 going to be used for this development to what was
10 happening now as farmland, you looked at the amount of
11 water that the state, the water management district
12 permits allow the agricultural operation to use,
13 correct?

14 A Yeah, what they authorized, correct, and I
15 used the exact same procedure when I analyzed the
16 proposed lawn and landscape.

17 Q And that allowable quantity of groundwater
18 withdrawal has been determined by the water management
19 district to be safe, relative to impacts on the
20 groundwater resources, correct?

21 A They have determined that that proposed water
22 use was -- met the test of reasonable assurance,
23 right, that there would be no adverse impacts,
24 correct.

25 Q Okay. And, actually, the actual amount of

1 water being used by the agricultural operations on the
2 property today is a lot less than what they've been
3 authorized to take out of the groundwater by the
4 district, correct?

5 A It is less, but there are good reasons why
6 it's less.

7 Q But it is less. The actual water use is less
8 than what you're showing us on your chart, correct?

9 A Yes. For clarification, the district, South
10 Florida Water Management District permits to a
11 one-in-10 drought situation. So that's the driest 10
12 percent out of a 10-year time frame. So they do that
13 on purpose so that you can maintain compliance through
14 drought conditions. So if we're not in a drought,
15 you're not going to be pumping the amount that is
16 authorized as a drought condition.

17 Q And that's one of the conditions they put on
18 these permits to make sure they won't adversely affect
19 groundwater, correct?

20 A They do that, right, as a worst-case scenario
21 so they can assess under a drought condition what the
22 impacts may be.

23 Q Now, when you compared the amount of water
24 that's going to be used by the development approved by
25 the settlement agreement, you analyzed the amount of

1 irrigation water that would be used from the
2 development under the settlement agreement, correct?

3 A I use the modified Blaney-Criddle equation
4 that is used by the South Florida Water Management
5 District to determine the quantities for the existing
6 agricultural operation. I used it in an identical
7 form for the proposed lawn and landscape. So they are
8 synonymous.

9 Q A home or a business uses water also for
10 potable indoor use in addition to its irrigation use,
11 correct?

12 A Yes.

13 Q And that was not part of your analysis,
14 correct?

15 A No. That would not occur on site. There's
16 no potable wells proposed on site. If there were,
17 that would be part of my analysis.

18 Q Okay. But the homes and the businesses that
19 are going to be approved under the settlement
20 agreement are going to be increasing the water
21 withdrawal from somewhere else within our watershed,
22 correct?

23 A Correct, but the offsetting quantities as a
24 reduction of the permit, more than offsets that
25 amount.

1 Q But, again, the current water withdrawals
2 from this site from the agricultural operations are
3 deemed sustainable by the South Florida Water
4 Management District, correct?

5 A Yes.

6 MR. GROSSO: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. MOORE:

9 Q I just want to ask you a frame of reference
10 question regarding your testimony on direct.

11 You've heard of the term, it's not a
12 referendum, it's a choice. If you had a choice
13 between an adverse effect, in this case counsel has
14 been asking you about adverse effects or not, it's a
15 permit was issued by the water management district
16 versus testimony about a public benefit to be achieved
17 by water reacquisition, water recovery, quality
18 benefits, did your testimony on direct go to adverse
19 effects and the -- whether the settlement would have
20 an adverse effect or not, or did it go to the public
21 benefits achieved by this settlement?

22 A There is a significant public benefit on the
23 settlement in the reduction of groundwater quantities.

24 Q Notwithstanding any permitted use from
25 agricultural --

1 A Correct.

2 Q And is it a safe assumption with regard to
3 your area of expertise to assume that, well, the owner
4 is probably not ever going to meet his quantities for
5 permitting under the permit, so let's assume that he
6 would only use half or a quarter of what he's
7 permitted to use. Is that a safe assumption?

8 A No. If it's -- if I understand your
9 question, if it remains in agricultural, citrus has
10 suffered horrible impacts from a disease called citrus
11 greening. Plus, these hurricanes have had a
12 devastating effect on the citrus industry in Florida.

13 So citrus properties, I do a lot of work with
14 agriculture. I'm converting a lot of citrus
15 properties to more intensive agricultural uses like
16 row crops, sod and other aspects. In fact, the lower
17 part of this particular property of Kingston has been
18 converted. Five years ago south of Corkscrew Road was
19 all citrus. Now it's row crops and sod.

20 So agriculturalists, I've learned from
21 working with them, are very stubborn people. They
22 love to be farmers, and they will do what they can to
23 maintain a farming operation, and a lot of that means
24 converting to a different use type or a different type
25 of crop in order to maintain their farming operation.

1 So they could live up easily to their
2 quantities if they converted this entire thing to row
3 crops and to sod operation let's say.

4 Q And the public benefits that you've outlined
5 for the Court are assuming that they used their
6 permitted amount of quantity water, correct?

7 A Yeah.

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

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 MR. MOORE: Your Honor, we call Ray Blacksmith
12 to the stand.

13 RAYMOND BLACKSMITH,
14 a witness, after being duly sworn, upon his oath,
15 answered and testified as follows:

16 THE WITNESS: Yes, I do.

17 DIRECT EXAMINATION

18 BY MR. MOORE:

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

21 A Sure. It's Raymond Blacksmith. The address
22 is 12011 Design Park Lane, Suite 103, Estero, Florida.

23 Q What is your profession, Mr. Blacksmith?

24 A I am president of Cameratta Companies, the
25 land developing company.

1 Q Can you just briefly tell the Court your work
2 experience as related to land development.

3 A I've got 49 years in land developing
4 experience. I look young, but I'm very old. I've got
5 17 years that I've worked at a civil engineering firm
6 and 32 years with Cameratta Companies.

7 Q Have you prepared a series of charts?

8 A Yes, I did.

9 Q Okay.

10 A Or I had them prepared.

11 Q All right. Are you familiar with the --
12 well, first, I should ask if you're authorized by
13 Mr. Cameratta. Who is Mr. Cameratta?

14 A He's the owner of Cameratta Companies.

15 Q Are you authorized to speak for the
16 purchaser, Kingston Development, for this -- regarding
17 this settlement?

18 A Yes.

19 Q Are you familiar with the terms of the
20 settlement agreement before the Court?

21 A Yes, I am.

22 Q I have about three different areas of
23 questioning for you.

24 First, was there any public outreach efforts,
25 were there any, by Kingston to explain the development

1 proposal and to seek public input?

2 A The settlement agreement, along with the
3 Kingston project, went through four advertised public
4 hearings, advertised to the local newspaper and direct
5 mailings to residents surrounding the individual
6 property.

7 MR. MOORE: This next exhibit is the Kingston
8 mailing list. That will be 39?

9 THE CLERK: Actually, that will be 40. I'm
10 sorry.

11 MR. MOORE: 40.

12 THE COURT: Any objection?

13 MR. GROSSO: No.

14 THE COURT: 40 is admitted.

15 (Joint Petitioners' Exhibit No. 40 was
16 admitted into evidence.)

17 MR. MOORE: Your Honor, here is...

18 THE COURT: Thank you.

19 BY MR. MOORE:

20 Q What's put on the easel there and marked as
21 Exhibit 40, did you prepare that?

22 A I discussed the preparation of a number of
23 court exhibits for today.

24 Q Did you supervise the preparation?

25 A Yes, I did.

1 Q It's pretty intense. Could you explain to
2 the Court what this represents, the purpose of it?

3 A It's to show the Court the notification
4 process that the project, the settlement agreement and
5 the Kingston project went through for each of the
6 public hearings.

7 What's shown on the board are the 387 lot
8 owners surrounding the project that were mailed
9 information regarding the proposed settlement
10 agreement and the Kingston project.

11 Q Now, where did you get this mailing list
12 from?

13 A The mailing list I obtained from Lee County.
14 It's the exact mailing list that Lee County used when
15 they did their public notice on the county's public
16 hearings, the hearing examiner Board of County
17 Commissioners meetings.

18 Q And let me specifically ask you about the
19 date of May 31st, 2022. Does that date have any
20 significance?

21 A On May 31st, 2022, we did a neighborhood
22 outreach meeting to discuss the project. We followed
23 the same guidelines that Lee County used in notifying
24 the residents about the hearing examiner meeting, and
25 I obtained the same mailing list to hold the

1 neighborhood meeting.

2 Again, those mailings went out to all the
3 surrounding residents, about 387 involved -- included
4 in the mailing list, and the meeting was also
5 advertised in the local newspaper.

6 Q Where did you hold the meeting?

7 A We tried to make it convenient for the area
8 residents, and we held the meeting at The Place, a
9 residential development just to the west of the
10 Kingston property.

11 Q Is that the development we've heard testimony
12 about here this morning?

13 A Right. We developed The Place project, and
14 that included the construction of an amenity site and
15 a large restaurant, and we reserved the restaurant and
16 held a presentation for the local residents.

17 Q Were you at that presentation?

18 A Yes, I was.

19 Q What did you do there?

20 A Well, included in the mailings, we offered
21 those that were going to come out to the site the
22 ability -- because The Place is similar to what we're
23 trying to do at Kingston with the restoration work, we
24 offered anybody that would come to that neighborhood
25 meeting the opportunity, two hours before starting the

1 actual meeting, we have a bus that seats about 26
2 people, and we offered everybody an opportunity to do
3 a tour of The Place project and tour the locations of
4 the restoration work that we had done within The Place
5 project.

6 Q What relevance would that have, what you did
7 on The Place as opposed to or as distinct from the
8 Kingston development?

9 A It will be identical. The type of
10 construction that's going to be done, the grading
11 that's going to be done, the type of plants that are
12 going to be constructed -- or installed and the
13 flowways that were installed at The Place is going to
14 be similar to what we're going to do at the Kingston
15 project.

16 Q All right. And did you receive input from
17 the public at that meeting?

18 A Prior to the 31st meeting, we had a number of
19 residents contact our office stating that they
20 wouldn't be able to make the meeting but was
21 interested in what was going to be presented.

22 So I prepared a summary for our secretary to
23 follow up, and along with the summary for the May 31st
24 meeting, I had a number of presentation boards
25 prepared, and I had copies of those presentation

1 boards made. And they were included with the summary
2 that I gave our secretary to e-mail all of those that
3 had questions and wanted additional information about
4 the project. They were sent that information.

5 Q And did you actually receive public input?

6 A Yes, we had some follow-up conversations with
7 those mailings that we -- or the e-mails that were
8 sent out, and then getting into the actual meeting
9 itself, we had a sign-in sheet. Unfortunately, it
10 wasn't monitored well enough, and a lot of people
11 didn't sign it, but there was a sign-in sheet, and I
12 had four exhibit boards there.

13 And then everybody that came into the meeting
14 I made copies or provided copies of each exhibit
15 board, 11 by 17 color copies that they could have with
16 them at their table while they're listening to the
17 presentation.

18 And they could also take it home with them if
19 they had any follow-up questions regarding the
20 presentation itself. And I provided everybody that
21 was there with my cell phone number, my office number,
22 and my e-mail address to contact me with any questions
23 that anybody would have.

24 And to be honest with you, it's no different
25 than what Cameratta Companies does with any of our

1 residential developments that we've done, especially
2 along Corkscrew Road.

3 We try to do neighborhood outreach to contact
4 at least the surrounding areas that may be affected by
5 the development to try to find out what they may --
6 what comments they might have, and if we could
7 integrate it into our design project.

8 Q Now, looking at this mailing list, you see --
9 I see some green rectangles largely to the east of the
10 project or Corkscrew Road. What do those green
11 rectangles on the east represent?

12 A The green areas are actual lots within the
13 abutting properties of the Kingston project, and
14 green, as it relates to this map, are residents that
15 were -- that showed up to one or more or all of the
16 public hearings and/or contacted us. And there's --
17 in fact, it's at the hearing examiner, there's
18 testimony, sworn testimony that some of these
19 residents talked, voiced their agreement with the
20 project.

21 Q And more than a few actually about the eastern
22 side of the development; is that correct?

23 A That's correct.

24 Q And how about the two red rectangles? What
25 does that represent?

1 A Those are the locations of the two
2 intervenors.

3 Q Mr. Kleeger and Mr. Hill?

4 A That's correct. That's where they're located
5 in relationship to the project.

6 Q Did Mr. Kleeger and Mr. Hill reach out to you
7 at this May 31st hearing either before or after that?

8 A No.

9 MR. GROSSO: Objection. Relevance.

10 MR. MOORE: Relevance of the intervenors whose
11 basis was they're interested in the project.

12 THE COURT: Overrule the objection. You may
13 continue.

14 BY MR. MOORE:

15 Q What does the May 17th, 2022, date represent?

16 A May 17th there was the hearing examiner
17 meeting where the presentation was made in front of
18 the Lee County hearing examiner regarding the
19 settlement agreement.

20 Q Was that a public hearing?

21 A Yes, it was.

22 Q Was it a notice of public hearing?

23 A Yes, it was. Again, every resident that's
24 shown on this board got a notice of that meeting, and
25 the meeting was also noticed in the area newspaper.

1 MR. MOORE: Your Honor, those notices are in
2 the record.

3 BY MR. MOORE:

4 Q Did Mr. Hill or Mr. Kleeger attend the public
5 hearing by the hearing examiner on May 17th, 2022?

6 A No, they did not.

7 Q What are these last two dates, June 7th, '22
8 and June 22nd, 2022?

9 A The June 7th was also a public hearing. It
10 was the first public hearing in front of the Board of
11 County Commissioners.

12 Q Was that noticed?

13 A Yes, it was, in the same fashion as the other
14 two meetings.

15 Q Okay. And did you attend it?

16 A Yes, I did.

17 Q All right. Did Mr. Hill or Mr. Kleeger
18 attend that?

19 A To my knowledge, they were not there.

20 Q Okay.

21 MR. MOORE: And we have the transcript, Your
22 Honor, of that hearing and the 22nd hearing.

23 BY MR. MOORE:

24 Q And how about on the 22nd hearing? Did
25 either Mr. Hill or Mr. Kleeger attend?

1 A The June 22nd was another public hearing in
2 front of the Board of County Commissioners, and
3 neither Mr. Kleeger nor Mr. Hill, to my knowledge,
4 were at that meeting.

5 Q Was there an opportunity for the public to
6 speak at each of these four public hearings?

7 A Yes, they were. With unlimited time.

8 Q Let me show you this letter to Michael Jacobs
9 from you, I believe it was signed by you, dated
10 June 2nd, 2022. Do you recognize that?

11 A Yes.

12 Q What is that?

13 A After I -- after I had the neighborhood
14 meeting on May 31st, I wanted to document for county
15 attorney Michael Jacob that the meeting was held. I
16 provided a summary of the meeting, provided proof of
17 the mailing list, of the advertisement in the
18 News-Press. I have a photo of me giving the
19 presentation with the design boards and also shows
20 residents in that meeting, and then I've got some
21 comments. I summarized the comments of the meeting
22 also.

23 Q Both positive and negative?

24 A Both positive and negative.

25 MR. MOORE: Your Honor, I believe this would

1 be 41.

2 THE CLERK: Correct.

3 MR. MOORE: I offer this as our next exhibit.

4 THE COURT: 41 is admitted.

5 (Joint Petitioners' Exhibit No. 41 was
6 admitted into evidence.)

7 BY MR. MOORE:

8 Q Did you on behalf of Kingston Development or
9 Mr. Cameratta have any interactions with
10 representatives from Lehigh Acres about this agreement
11 and the development proposal?

12 A Again, like I had mentioned a couple of
13 minutes ago, whenever we have a new project that we're
14 contemplating, we do a neighborhood outreach. We try
15 to contact the surrounding neighbors to see what their
16 input might be on our design.

17 We did reach out to Lehigh Acres because our
18 company and our employees, we all live within Lee
19 County, and it's no secret that Lee County has had, on
20 occasion, flooding issues.

21 Knowing that we're constructing a project
22 with over 3,000 acres of restoration, and in a way
23 it's similar to the restoration work that we did at
24 Verdana Village where we had the ability to accept
25 floodwaters and stored to protect downstream

1 properties, we felt that there was a potential ability
2 for the Kingston project to assist Lehigh Acres in
3 solving some of their flooding issues.

4 Q And were you able to accommodate those
5 interests?

6 A We met with them about two months ago, and I
7 want to say it was four or five representatives from
8 Lehigh Acres there. We discussed what our plans were.
9 Initially, we believed we would try to connect into
10 the Lancid [phonetic] Canal out of the northeast
11 corner of our property and try to take some of that
12 water during a severe storm event and put it into the
13 Kingston project where we could store it.

14 During the course of that meeting, Lehigh
15 Acres had discussed their desire to try to work with
16 us and see if we could accommodate them if they were
17 able to get water to our northwest corner of the
18 property. And I told Lehigh Acres that if the
19 project -- if the settlement agreement were approved
20 and we went forward with the Kingston project, that
21 our project engineer would work closely with Lehigh
22 Acres' engineer to try to accommodate what we could
23 for Lehigh Acres.

24 Q All right. So Lehigh Acres actually abuts
25 the northern portion of the Corkscrew Road property;

1 is that correct?

2 A That's correct.

3 Q And it comes down across State Road 82 on the
4 east side of the property as well?

5 A That's correct.

6 Q And so your discussions with them dealt with,
7 in part, about flooding concerns that they had and how
8 you could perhaps accommodate that?

9 A That is correct.

10 Q Did you receive a letter from David Lindsay,
11 the district manager of Lehigh Acres, regarding the
12 benefits and acknowledgment that they approved of
13 those benefits by the development?

14 A Yes. He sent me the letter just confirming
15 or acknowledging the fact that we did meet and try to
16 work together to incorporate in some ways to be able
17 to handle some of the water from Lehigh Acres. He was
18 appreciative of it and looking forward to working with
19 us.

20 MR. GROSSO: Your Honor, I'm going to object
21 and move to strike as hearsay.

22 THE COURT: Response?

23 MR. MOORE: Your Honor, it's a letter
24 regarding the benefits and acknowledgement and the
25 outreach that he observed. I'm not offering it to

1 prove the truth of the fact asserted, but rather to
2 show that this was sent and received to show that
3 there was interaction and input from the public, in
4 particular, Lehigh Acres.

5 THE COURT: I sustain the objection.

6 MR. GROSSO: If it's not being offered for the
7 truth of the matter asserted, then, I don't have
8 that objection.

9 THE COURT: Okay. All right. He withdraws,
10 so go ahead.

11 MR. MOORE: It's Exhibit 21, and I just point
12 out for the record it's already been admitted.

13 THE COURT: Oh, it's already been. Okay.

14 BY MR. MOORE:

15 Q Did the Kingston Development team, to your
16 knowledge, have any meetings with nongovernmental
17 organizations sometimes called NGOs regarding the
18 environmental effects of the settlement agreement?

19 A Yes, we did.

20 Q Can you name some of those groups?

21 A Again, as I've stated twice before, when we
22 -- our company starts looking into any project, we do
23 an outreach to see if there's any comments or
24 suggestions that we can possibly incorporate into our
25 design.

1 For the Kingston project, we reached out to
2 the Audubon Society, to the Conservancy of Southwest
3 Florida, and to the Florida Wildlife Federation.

4 Q Did you share with them the details of the
5 settlement proposal and what the development would be
6 proposed?

7 A Yeah, we discussed the settlement agreement.
8 I think they were more interested in the pod layout,
9 the bubble plan is what we showed them, and they
10 commented and they made comments to that.

11 Q We've had some testimony today about panthers
12 and wildlife corridors. Did you discuss the wildlife
13 corridor and the location of your proposed wildlife
14 corridor with any of these groups?

15 A We -- yes, we discussed it with the Florida
16 Wildlife Federation. In fact, we asked them what
17 their opinion would be to locate a corridor on the
18 Kingston project. And we had dialog with the Florida
19 Wildlife Federation for about a decade because of the
20 projects that we've done up and down Corkscrew Road,
21 they contacted our office to see if we would allow
22 them to put cameras on our site so they could document
23 wildlife in the area.

24 We felt they had the best information and
25 possibly a better direction on where to locate a

1 wildlife corridor on our property.

2 Q Referring to Exhibit 32, did you have any
3 negative feedback from those organizations with regard
4 to the location of the placement of the wildlife
5 corridor?

6 A As far as wildlife --

7 MR. GROSSO: Objection. We're talking -- this
8 is now the rankest of hearsay, Your Honor. We're
9 trying to establish some facts about the value of
10 this wildlife corridor, so-called, based on the
11 statements or non-statements of people who are not
12 here.

13 MR. MOORE: I'm not asking for statements.
14 I'm asking if he had any negative feedback from
15 those organizations.

16 Counsel has already raised previously about
17 these organizations and negative comments regarding
18 wildlife corridors and panther habitat, and I'm
19 proving the negative, that there were no negative
20 comments.

21 THE COURT: Sustain. Sustain the objection.

22 MR. GROSSO: Thank you.

23 BY MR. MOORE:

24 Q As a result of these meetings, did you locate
25 this corridor where it's currently represented on this

1 exhibit?

2 A The corridor represented on this exhibit is
3 how it was described to me by the Florida Wildlife
4 Federation as the most ideal location.

5 MR. GROSSO: Your Honor, I got to move to
6 strike that.

7 THE COURT: Sustained. Go ahead.

8 BY MR. MOORE:

9 Q Let me show you with regard to the spine
10 road. Have you heard testimony about the north/south
11 spine road throughout the property?

12 A Yes.

13 Q Can you identify that exhibit?

14 A Yes. This is a map that shows the overall
15 Corkscrew Grove Limited Partnership land that's owned.
16 It shows the State Road 82 in black, Corkscrew Road in
17 black, and in red is the location of where the five
18 and a half mile long spine road is going to be
19 located.

20 Q All right.

21 MR. MOORE: This will be the next numbered
22 exhibit that we would offer.

23 THE CLERK: Number 42.

24 MR. MOORE: 42.

25 THE COURT: Any objection?

1 MR. GROSSO: No. No objection.

2 THE COURT: 42 is admitted.

3 (Joint Petitioners' Exhibit No. 42 was
4 admitted into evidence.)

5 MR. MOORE: I think we have an enlargement of
6 that. Maybe not.

7 BY MR. MOORE:

8 Q All right. Do you have that in front of you?

9 A Yes.

10 Q What's the reason for the spine road?

11 A It's to give the individual residential pods
12 in the development the connection to State Road 82 and
13 Corkscrew Road. It also acts as a hurricane
14 evacuation route, north/south hurricane evacuation
15 route for the benefit of Lee County. It's also a
16 secondary roadway north and south.

17 There's been a few times over the last year
18 where there's been an automobile accident at the
19 intersection of Alico Road and Corkscrew Road. And
20 when that has happened, and, again, that's happened
21 more than once in the last year, any resident east of
22 Alico Road can't go west. They have to take another
23 route. And it's traveling east all the way down
24 Corkscrew Road, all the way to Route 82, and then down
25 Route 82 to Daniels and Daniels to I-75.

1 This route gives all the residents east of
2 Alico Road the ability for another route to go north
3 and south and to also go east and west.

4 Q Have you prepared a chart listing the costs
5 of the roadway development mitigation plan for this
6 settlement?

7 A The cost of the -- yes.

8 Q Are those the figures that you prepared?

9 A Yes.

10 Q All right.

11 MR. MOORE: Your Honor, I believe Kingston
12 Development roadway mitigation. We would offer
13 those as the next exhibit.

14 MR. GROSSO: No objection.

15 THE COURT: 43, I believe.

16 THE CLERK: That was 42 you showed me, Mr. --

17 MR. MOORE: 43.

18 THE CLERK: Is that 43 you showed me?

19 MR. MOORE: I think we had a 42.

20 THE CLERK: We just had 42. I wasn't sure the
21 name of that, but is that the next, Exhibit 43?

22 MR. MOORE: Yes.

23 THE CLERK: Okay. Thank you.

24 (Joint Petitioners' Exhibit No. 43 was
25 admitted into evidence.)

1 BY MR. MOORE:

2 Q And do you know the -- can you just tell the
3 Court what the cost of the spine road would be.

4 A The spine road relative to this chart is for
5 five and a half miles of roadway, four lanes of road
6 seven-foot wide, bike paths, all the infrastructure,
7 the sewer, the water, the irrigation, the pavement,
8 the grading, the landscaping, is estimated at about
9 \$40 million.

10 Q Who pays for that, the county?

11 A No. That's a development cost. Once
12 completed, it will be turned over to the county, but
13 that's a development cost.

14 Q All right. And does this chart also indicate
15 the projected cost of the large mammal crossings
16 there's been testimony about?

17 A Yes. We're estimating a large mammal
18 crossing to satisfy the crossing that we just talked
19 about to be approximately \$2 million, and that would
20 be underneath the spine road.

21 Q Again, who pays for that?

22 A That is also a development cost.

23 Q Did you also prepare an exhibit showing the
24 conservation restoration costs?

25 A Yes.

1 Q There's been a good bit of testimony today
2 and back on August 31st about restoration of over
3 3200 acres. You remember that testimony?

4 A Yes.

5 Q And that restoration includes with it a
6 maintenance cost; is that correct?

7 A Yes, it does.

8 Q How long is that maintenance of the
9 restoration area?

10 A I found out going through approvals what
11 perpetuity meant. That's forever.

12 THE CLERK: 44.

13 MR. MOORE: 44.

14 THE COURT: Any objection to 44?

15 MR. GROSSO: No objection.

16 THE COURT: 44 is admitted.

17 (Joint Petitioners' Exhibit No. 44 was
18 admitted into evidence.)

19 BY MR. MOORE:

20 Q What's your estimation, please, on that --
21 put it in the record, of the restoration, preservation
22 costs?

23 A The restoration construction cost, which
24 includes the grading and the plantings and everything
25 necessary to provide the restoration work per the

1 settlement agreement is estimated at over \$78 million,
2 \$78,422,000. And then the maintenance costs per year
3 is about just over \$1.7 million a year.

4 Q That 1.7 would be forever?

5 A That would be forever.

6 Q Again, paid by the county?

7 A The restoration construction cost is paid by
8 the land developer, by us. That's a developing cost.
9 The maintenance cost is paid for by the homeowner --
10 by the developer while we're still in control, but
11 eventually to the homeowner association or community
12 development district.

13 Q Yeah. If you could just give a little basis
14 of how you arrived at these numbers, and specifically,
15 what's done with regard to restoration, and what's
16 done with regard to maintenance.

17 A I just wanted to say this work, we first
18 implemented this type of work at The Place
19 development. That was our first project, and we went
20 to school on that project because I don't think we
21 really realized the cost of what -- what the cost is
22 to be able to perform this type of work.

23 We were educated when we went into the
24 Verdana Village project, and we're about halfway
25 through that construction right now. So we've got

1 historical numbers on the planting and the grading and
2 the wildlife fencing that's necessary to be installed
3 into the restoration areas. And we've got significant
4 historical numbers on the maintenance because we're
5 seeing it at The Place project and at the Verdana
6 Village right now.

7 I just want to say the maintenance is not a
8 manner of once a year, or four times a year you check
9 the water monitoring and you submit those documents to
10 Lee County, to the natural resources. Maintenance is
11 going out there after a severe storm event and
12 walking, in this case, over 3200 acres of land.

13 The engineer is going to have to walk that
14 and make sure there's no trees that have fallen over
15 that are blocking the historical flowways, that
16 there's no soil erosion in the historical flowways, if
17 the weirs that are going to be constructed are still
18 operating the way they're designed to operate.

19 And if there is an issue, then, that cost has
20 to make those repairs, and if there's plants that have
21 died, they have to be replaced.

22 Q Under the current conditions, is there any
23 restoration or maintenance required?

24 A In the current condition, no, there is not.

25 Q Mr. Blacksmith, from the perspective of the

1 contract purchaser, Mr. Cameratta and Kingston
2 Development, would this settlement agreement be
3 possible without involving the southern parcel owned
4 by Corkscrew Road --

5 A No, it would not.

6 Q -- south of Corkscrew Road?

7 A It would not.

8 Q Why not?

9 A Because to be able to develop and construct
10 the historical flowways on the north side, you need to
11 be able to continue that discharge all the way to the
12 southerly property line. And after discussions with
13 the Audubon Group, who is the southerly abutting
14 property owner, they voiced concern about the --

15 Q Don't tell us what they said, just tell us
16 what you did.

17 A To satisfy issues that we saw evident to our
18 southerly neighbor, we will prevent and direct
19 discharge locations and try to do sheet flow from the
20 Kingston property onto the Audubon property and
21 install monitoring wells at each discharge location,
22 not only to check the quality of the water leaving the
23 site, but we'll have monitoring wells in each location
24 on the north side of the property.

25 Where water is coming in, we'll monitor it

1 and send that information to Lee County, and any water
2 leaving the site will be monitored, and that
3 information will be sent to Lee County.

4 Q Now, none of these costs that we previously
5 had before the Court that you testified about relate
6 to proportionate share or impact fees or all the other
7 development costs that your group would entail; is
8 that correct?

9 A That is correct.

10 Q So overall, do you have an estimate of how
11 many dollars those would cost?

12 A If you had a chart, I could look at it to
13 verify it. It's hundreds of millions of dollars.

14 Q And, again, that's a cost by the developer;
15 is that correct?

16 A That's correct.

17 Q So what relationship, if any, did those costs
18 and the costs that you testified to about the
19 restoration and the enhancement of the wildlife
20 corridor, et cetera, what relation, if any, do those
21 costs have with the number of units being proposed for
22 this development?

23 A A significant number of costs are based upon
24 the density approval for the development.

25 Q And how about the costs that are not related

1 to density but, say, the large mammal crossing with
2 the spine road?

3 A Whatever the cost comes in at, that's a
4 development cost.

5 Q And how does the -- how does the property
6 owner, how does he afford that? How is that paid for?

7 A Those types of costs are part of the unit or
8 lot cost to the customers or builders on the lots
9 being built or developed in the subdivision.

10 Q So would those public benefits that have been
11 testified to in this hearing be possible without those
12 10,000 units being approved?

13 A No, it would not.

14 Q Would Kingston accept less than the current
15 negotiated proposal for price?

16 A No.

17 MR. MOORE: One moment, Your Honor.

18 THE WITNESS: Just one more.

19 MR. MOORE: I don't think I can unless it's
20 related to your last answer.

21 THE WITNESS: Not to my last answer but to the
22 development.

23 MR. MOORE: All right. Maybe something will
24 pop up in cross.

25 CROSS-EXAMINATION

1 BY MR. GROSSO:

2 Q Sir, so your company currently owns the land?

3 A No, it does not. We're a contract purchaser.

4 Q So you've got a contract right now that is
5 contingent upon the approval of this settlement
6 agreement?

7 A That's correct, sir.

8 Q And the amount of money you are going to pay
9 for the property under the contract is what?

10 MR. MOORE: Your Honor, we object. Could we
11 approach the bench?

12 THE COURT: You may.

13 (Sidebar begins.)

14 MR. MOORE: There's a number of objections to
15 this. Number one, it's outside the scope. I
16 haven't raised what he's paying for the property,
17 but more to the point, there's also a
18 confidentiality agreement in the contract between
19 the purchase contractor and our client, Kingston
20 Corkscrew Road. We can't divulge that unless the
21 Court directs us to, but it's certainly not
22 specifically relevant to any of his testimony here.

23 MR. GROSSO: I'm not sure why this is an
24 off-the-record discussion, but I don't know how an
25 inordinate burden can be proven if we cannot get the

1 facts out in terms of the dollar figures. And
2 there's some sort of implication that we don't get
3 to go behind, that this amount of development is
4 required to prevent an inordinate burden, but then
5 it's all confidential and we can't learn about it.
6 I don't know how we can square the ruling you have
7 to make, Your Honor, with that approach.

8 MR. MOORE: Number one, it's on the record,
9 you know, the court reporter's taking it down. It's
10 just before the bench, and, Number 2, we can put
11 this -- he can ask our client. I'm going to have an
12 objection to that, too, but that's specifically what
13 Mitch Hutchcraft, our next witness, is going to be
14 testifying to.

15 That's not what Mr. Blacksmith -- he is not
16 the one who has to be satisfied with regard to
17 reduction of the inordinate burden or elimination of
18 the inordinate burden. Counsel wants to get into
19 the second issue of the Bert Harris, but that's not
20 the purpose of all this previous testimony.

21 This is the public benefits section, not that.
22 He can ask Mr. Hutchcraft, if you will, and then the
23 Court can rule whether...

24 THE COURT: Mr. Hutchcraft would know that
25 amount number, is that what you're saying?

1 MR. MOORE: Yeah, he's the seller. This is
2 the buyer's representative.

3 THE COURT: Mr. Hutchcraft will be called as a
4 witness?

5 MR. MOORE: He's our next witness.

6 MR. GROSSO: Well, if they're going to have
7 the same objection, I don't know how to deal with
8 that. I mean, that information --

9 MR. MOORE: Well, it's not entirely the same
10 objection. First is, this is totally out of the
11 scope because I didn't raise this at all with this
12 witness. It's out of the scope.

13 The other objection is going to be
14 confidentiality, but I don't have to make it again.
15 I'll just -- that will be a speaking objection here.
16 Without a speaking objection, rather, standing
17 objection, and then you can rule and tell
18 Mr. Hutchcraft to do it.

19 We'll do whatever the Court tells us to do
20 with regard to confidentiality, but right now,
21 we're bound by the contract and so is he. I'm not
22 his lawyer, but he's bound by the contract just as
23 our -- unless there's a direction by the Court.

24 THE COURT: Well, it seems as if that amount
25 would go as to proving or disproving the inordinate

1 burden. So I don't know how we get that in the
2 record, if you want to not have it heard by
3 everybody in the gallery. I'm not quite sure.

4 MR. MOORE: He can seek to put it in through
5 Mr. Hutchcraft, and then if the Court thinks that's
6 appropriate, I'm not going to raise cane about it.
7 I'll just say there's an objection, but we can go
8 ahead and do it because I think that's what the
9 contract says. We're not going to do it without the
10 court order.

11 MR. GROSSO: I certainly think it would be
12 important for the record to reflect that information
13 is not going to be made public. And, again, I don't
14 know how you can, then, prepare the impact on the
15 landowner without having that information.

16 You're asking the Court to make an assumption,
17 then, without facts that this amount of development
18 is required to avoid an inordinate burden when we're
19 not going to be told what all of those facts are.

20 MR. MOORE: The point is, we didn't raise it
21 in direct examination, and if he wants to raise that
22 issue, that's a second issue. We have two issues
23 pending before the Court; public benefit to the
24 contravening policies and whether it's in the public
25 interest, and the second is inordinate burden.

1 That's not Mr. Blacksmith's position.

2 MR. GROSSO: Then, I'm not sure that that last
3 question would your company accept anything less,
4 what does that help prove --

5 MR. MOORE: You're hitting the court
6 reporter's head.

7 Objection to that, too.

8 MR. GROSSO: Obviously, Your Honor, you would
9 rule as you can. I think it's a relevant, valid
10 question. I think it speaks to the nature of the
11 issues under the Harris Act, and I think that Your
12 Honor is prejudiced without being able to be given
13 that information.

14 MR. MOORE: How would Your Honor be prejudiced
15 if he's going to bring it up with the next witness?

16 THE COURT: Well, I'll reserve the right to
17 allow Mr. Grosso to recall this witness, if
18 necessary. We'll deal with him on the next witness,
19 and I'll allow you to recall this witness should you
20 wish.

21 MR. GROSSO: If I'm unable to do it with the
22 next witness?

23 THE COURT: Correct.

24 MR. GROSSO: Thank you.

25 (Sidebar ends.)

1 MR. GROSSO: How should we proceed, then, Your
2 Honor?

3 THE COURT: Sustaining the objection without
4 prejudice. You may continue.

5 MR. GROSSO: Thank you.

6 BY MR. GROSSO:

7 Q Sir, when you tallied up all of the costs
8 that you've testified to with your lawyer today and
9 you compared them to your projected profit as a result
10 of this project, you are projecting that your company
11 will make a profit if the contract follows through,
12 correct?

13 A Your question doesn't include the
14 construction costs of the project.

15 Q Everything.

16 A Well, that wasn't -- that wasn't a question
17 by Mr. Moore.

18 Q You're not going to take a loss on this
19 contract, right?

20 A No. It's not our objective to take a loss.

21 Q You are here because you have determined that
22 when you compare all of the costs you're going to have
23 to outlay to all of the profit you're going to get by
24 selling the development, you intend and you project
25 you will, in fact, make a profit, correct?

1 A That is the intent.

2 Q And that profit is to be measured in hundreds
3 of millions of dollars?

4 A I have no knowledge on what to project that
5 to be today.

6 Q So --

7 A If you look at the economy today.

8 Q What you're telling the judge today is that
9 you actually have no idea how much profit your company
10 will make if the contract is fully executed?

11 MR. MOORE: Objection to relevance, Your
12 Honor. Far outside of the field.

13 THE COURT: Overrule the objection.

14 BY MR. GROSSO:

15 Q I'm sorry, sir, that means you can answer the
16 question.

17 THE WITNESS: That I can?

18 THE COURT: You may.

19 BY MR. GROSSO:

20 Q So you don't know the answer to my question?

21 A Well, sir, when we signed the contract almost
22 a year ago, the economy was in a totally different
23 location as it is right now. And over the last
24 several months, construction costs have escalated 30,
25 40, 50 percent if you can even get the material.

1 So to project what we could have made a year
2 ago to what we may make over a period of 15 to
3 20 years, I'm not going to conjecture. I'm not going
4 to speculate.

5 Q Yeah, by that same token, the cost of housing
6 has also accelerated greatly over that same period of
7 time, correct?

8 A Right.

9 Q So the amount that you will be able to sell
10 the homes and office space is also increasing
11 significantly, correct?

12 A We're a development company, not a building
13 company. We don't build the houses.

14 Q You just sell the land off.

15 A We sell the finished lots. That's correct.

16 Q And as part of the process you've been
17 involved in with the negotiations here, did you ever
18 have prepared an appraisal that documented or
19 projected how much profit you could make if you got to
20 develop less than 10,000 homes?

21 A No.

22 Q Have you ever had an appraisal done that
23 documented how much profit you could make if you got
24 less than the hundred thousand square feet of
25 commercial development?

1 A No.

2 Q The settlement process -- the settlement that
3 is before the judge today, is that, the substance of
4 that, what your company offered to the county?

5 A It's what was negotiated with the county,
6 correct.

7 Q And once that settlement agreement was
8 negotiated with the county, that's when public
9 hearings were set up to run that settlement by the
10 public, correct?

11 A Yes.

12 Q And part of the outreach you made to certain
13 residents did not include contacting my client,
14 Mr. Hill, correct?

15 A You're correct. I did not go door to door to
16 contact any of the residents. We did mailings and an
17 advertisement in the newspaper as all public hearings
18 are handled in Lee County.

19 Q And the settlement agreement that is before
20 the judge today is the same settlement agreement that
21 was presented to the public during those public
22 forums, correct?

23 A That's correct.

24 Q And there were no changes made to that
25 proposed settlement as a result of any of the public

1 comment you received, correct?

2 A That is correct. I had tweaked the design of
3 the project prior to those public hearings.

4 Q And you, I assume, have been part of the team
5 that's put together the presentation of documents for
6 this hearing, correct?

7 A Correct.

8 Q And I assume you directed your attorneys to
9 put documents into the record that sort of put the
10 best face forward on the settlement agreement; is that
11 right?

12 A We put the settlement agreement as presented.

13 Q And you put the settlement agreement and
14 everything you think is in support of it, helpful of
15 that settlement agreement in the record, right?

16 A Everything in the settlement agreement speaks
17 for itself.

18 Q Okay. And so if I look through the notebook
19 of exhibits, I'm not going to find a letter of support
20 from a single environmental organization, am I?

21 A No, because you won't -- you won't achieve
22 that type of recommendation prior to a project going
23 in front of them with all the design completed. No
24 project gets that.

25 Q Okay. So you're speculating. What you just

1 said to us was that, no, an environmental group would
2 never write a letter approving of a settlement
3 agreement. They would wait until permits are sought.
4 Is that what you're saying?

5 A I'm saying an environmental organization does
6 not offer an approval of a project prior to the
7 project being directly submitted to them.

8 Q Have you ever worked for an environmental
9 group?

10 A I worked 17 years at a civil engineering firm
11 and 32 years with Cameratta.

12 Q That's a no, you've never worked for an
13 environmental organization?

14 A Right. Correct.

15 Q The spine road that you talked about wouldn't
16 be necessary if you weren't going to develop 10,000
17 homes and all of the commercial development, right?

18 A The spine road would be necessary. It's just
19 the size of the number of lanes that would be
20 required.

21 Q When you say the spine road would be
22 necessary, you're saying under a scenario where your
23 project doesn't happen at all?

24 A What is your question?

25 Q My question is, you're building the spine

1 road to handle the traffic that your development would
2 generate, right?

3 A Correct, along with the neighboring residents
4 who will utilize that, too. Once the spine road is
5 completed, it's turned over to the county, and all
6 residents can utilize that same road.

7 Q Right. And so that, at that point, when the
8 road is turned over to the county, it's county
9 taxpayer's responsibility to maintain that road,
10 right?

11 A That is correct.

12 MR. GROSSO: If I may, Your Honor?

13 THE COURT: You may.

14 MR. GROSSO: That's all I have. Thank you.

15 MR. MOORE: No questions, Your Honor.

16 THE WITNESS: Thank you, Your Honor.

17 MR. GROSSO: Your Honor, could we have a brief
18 recess?

19 THE COURT: Sure.

20 MR. GROSSO: Thank you.

21 THE COURT: Take a 10-minute recess.

22 (Recess taken from 2:58 p.m. to 3:07 p.m.)

23 THE COURT: Your next witness, please.

24 MR. MOORE: Your Honor, we call Mitch
25 Hutchcraft.

1 MITCHELL HUTCHCRAFT,
2 a witness, after being duly sworn, upon his oath,
3 answered and testified as follows:

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. MOORE:

7 Q Would you state your full name and business
8 address for the record, please.

9 A Yes. My name is Mitchell A. Hutchcraft. My
10 business address is 3 Riverway, Suite 1600, Houston,
11 Texas. We also have an office in Fort Myers.

12 Q When you say we, what do you mean?

13 A I am an employee of King Ranch, so this is a
14 King Ranch address.

15 Q And what is your profession, sir?

16 A I was trained professionally as a landscape
17 architect and then as a certified planner.

18 Q And what do you do now?

19 A Now, I am vice president of real estate
20 governmental affairs and land and minerals for King
21 Ranch.

22 Q Does King Ranch have real estate in Florida?

23 A Yes, sir, we do.

24 Q How is King Ranch connected with Corkscrew
25 Grove Regional -- well, with Corkscrew Grove Limited

1 Partnership?

2 A Yes, sir. King Ranch is the majority owner
3 and managing member of Consolidated Citrus. Corkscrew
4 Groves is a wholly-owned subsidiary of Consolidated
5 Citrus.

6 Q And how long have you been employed with King
7 Ranch?

8 A I've been with King Ranch over 15 years.

9 Q Specifically, what's your official
10 connection, if any, between King Ranch and Corkscrew
11 Grove Limited Partnership, LLC?

12 A Again, King Ranch owns Consolidated Citrus.
13 Consolidated Citrus is the managing member and wholly
14 owns Corkscrew Grove Limited Partnership.

15 Q Are you familiar with the property owned by
16 Corkscrew Grove and the -- there's another ownership
17 group called The Hunt Group, north of Corkscrew Road?

18 A Yes, sir.

19 Q How about the parcel immediately to the south
20 of that property across Corkscrew Road?

21 A Yes, I'm familiar with that as well.

22 Q How did you become familiar with that?

23 A As my role with King Ranch, I lead up the
24 acquisition responsibilities for acquiring those
25 properties.

1 Q Roughly, when did you acquire, do you
2 remember?

3 A Yeah. Those properties were acquired in
4 September of 2016.

5 Q Okay. And was the former owner Old Corkscrew
6 or Plantation?

7 A That was the previous entity. They had
8 actually defaulted, so we acquired it from a bank out
9 of bankruptcy.

10 Q What was the intent of Corkscrew Grove
11 Limited when it purchased that property in terms of
12 its short-term and long-term use?

13 A King Ranch looks to acquire properties that
14 have long-term conversion opportunities. We like to
15 look for properties that are in the path of growth,
16 but that also have a short-term agricultural
17 opportunity.

18 We saw that there was potential for
19 short-term agriculture in the form of citrus on this
20 property, but we were aware of the pending zoning
21 application for mining when we acquired the property.

22 Q Did your acquisition include all the rights
23 from that mining application?

24 A That's correct. We specifically included
25 those rights in our agreements.

1 Q What kind of agriculture was the property
2 being used for north of Corkscrew Road?

3 A It was in citrus.

4 Q What was the state of the citrus industry in
5 southwest Florida from about 2017 forward?

6 A The citrus industry has been in a long-term
7 decline starting about 2007. 2017 was a pivotal point
8 in time following Hurricane Irma. It had a
9 significant impact and rapidly spread citrus greening
10 and citrus canker resulting in a pretty quick decline
11 of the citrus industry after that year.

12 Q How did that situation affect your plans for
13 the property?

14 A It had a significant impact. Our groves in
15 southwest Florida lost anywhere from 50 to 80 percent
16 of the fruit following Hurricane Irma, and there was
17 not a meaningful rebound.

18 Input costs doubled or tripled, and the price
19 for fruit was going down and our productivity was
20 going down. So our groves in southwest Florida have
21 seen significant declines.

22 Q As a land planner considering that situation,
23 what did you consider to be the highest and best use
24 of the property in the long run?

25 A Rock mining is what we believe is the highest

1 and best use for this property.

2 Q Why not just develop the whole acreage as low
3 density residential?

4 A A, I don't think that there's a market demand
5 for that. B, I think that there are environmental
6 challenges putting wells and septic tanks. I think
7 there was some discussion of Lehigh Acres sprawl
8 having low density all over the property eliminates
9 habitat connectivity, makes infrastructure costs more
10 expensive. So I don't think it is a viable use of
11 that land.

12 Q Roughly, how much did the owner spend in
13 pursuing the mining application, both administratively
14 and then in litigation?

15 A I don't have an exact number, but it's
16 somewhere between half a million and a million dollars
17 so far.

18 Q Was the subject property reasonably suitable
19 for mining?

20 A I believe the answer is yes. All of the core
21 samples that we saw indicated that there was deep and
22 very high quality rock under the property. There was
23 two approved rock mines adjacent to the property when
24 we acquired it. Since that time, there's been a third
25 rock mine approved. The DR/GR has rock mining as a

1 permitted use. So we believe it was very appropriate
2 for a rock mine.

3 Q Was there a hearing before an independent
4 hearing examiner on the mining application?

5 A Yes, sir, there was.

6 Q And what was the result?

7 A The hearing examiner recommended denial over
8 the staff's recommendation of approval with
9 conditions.

10 MR. MOORE: Your Honor, that's Exhibit 7.

11 THE COURT: Thank you.

12 BY MR. MOORE:

13 Q Was there a subsequent hearing before the
14 Board of County Commissioners on the mining
15 application?

16 A Yes, sir, there was. The board agreed with
17 the hearing examiner recommendation and denied the
18 request, found that the site was inappropriate for
19 rock mining.

20 MR. MOORE: Your Honor, that's -- Exhibit 8 is
21 the county commissioner resolution.

22 THE COURT: Thank you.

23 BY MR. MOORE:

24 Q Did that denial of rezoning application for
25 mining impact the subject property in any way?

1 A Yes. We believe that it removed the highest
2 and best use for the property. We also believed that
3 it impacted our property rights as an owner.

4 Q Did the denial impact any of your reasonable
5 expectations?

6 A Absolutely. We had investment-backed
7 expectation of this property for both short-term
8 agriculture and a long-term use, and mining was the
9 one that was currently in process.

10 Q What did the owner, that is, Corkscrew Grove
11 Limited, do after receiving the board's denial of the
12 mining application?

13 A We immediately filed two items. One, we
14 filed a request to petition against the denial looking
15 for declaratory relief, and then, secondly, we filed a
16 Bert Harris action.

17 Q Well, you say filed an action. Did you file
18 a claim letter?

19 A I'm sorry. Yes, we filed a claim letter.

20 MR. MOORE: Your Honor, that claim letter is
21 Exhibit 9.

22 THE COURT: Thank you.

23 BY MR. MOORE:

24 Q And have you read the claim letter?

25 A Yes, sir.

1 Q Okay. And past appraisal?

2 A Yes, sir.

3 Q Was that date of value back in 2019?

4 A That is correct.

5 Q What's happened to the land value since then?

6 A Land values in general have gone up
7 significantly since that time.

8 Q How about for residential?

9 A I believe that is true for residential as
10 well.

11 Q What was the amount of damage claimed from
12 the loss of the mining use?

13 A The appraisal found a \$63 million loss due to
14 the removal of mining.

15 Q And was that just for the land?

16 A That was just for the mining rights.

17 Q And did that include your reasonable
18 expectations regarding other uses that you would have
19 had other than just selling it?

20 A No, it did not.

21 Q All right. Did that appraisal include the
22 loss of potential revenues after leasing the property
23 out for mining use?

24 A No, it did not. It did not include what we
25 would have expected the royalty revenues from that

1 property.

2 Q Did you run any pro formas or get any ideas
3 about this royalty projections of what the owner could
4 expect or reasonably expect for a mining use?

5 A Yes, sir. We ran a number of pro formas that
6 looked at how much you could mine per year, the
7 different types of aggregate that could come out of
8 it, and what those royalty rates. And it could be
9 anywhere from a half a billion in royalties to just
10 under a billion dollars in royalty rates.

11 Q How many acres are we talking about?

12 A Roughly, 4200 acres.

13 Q And did your projections include any
14 certainty regarding the cost of lime rock over the
15 next 30 years?

16 A We put in an annual escalator and played with
17 those annual escalators, and so we had the high ones
18 and low ones, but, yes, we did include some
19 escalation.

20 Q If you know, what's happened to the cost of
21 lime rock in the last three years?

22 A I would say in the last three years, but more
23 specifically in the last three weeks, the cost of lime
24 rock has gone up significantly. There's a demand to
25 raise road elevations and building elevations as

1 southwest Florida's recovering from the storm.

2 Q Now, regarding the litigation on the
3 property, you had a certiorari proceeding, you had a
4 declaratory action proceeding; is that correct?

5 A Yes, sir.

6 Q Regarding that litigation, did you receive an
7 order on the declaratory relief action?

8 A Yes, we did.

9 MR. MOORE: Your Honor, that's Exhibit 10.

10 BY MR. MOORE:

11 Q As a result of the Bert Harris claim letter
12 and the declaratory relief action litigation, did you
13 and the county enter into any discussions about
14 resolving your dispute?

15 A Yes. Following the judgment, we had some
16 preliminary conversations with the county about
17 settlement. Cameratta approached us and accelerated
18 those conversations with the county to see if there
19 was a mechanism by which we could settle those claims.

20 Q By that time, after discussing with
21 Cameratta, did you enter into a contract?

22 A Yes, we did.

23 Q Is that a contingent contract?

24 A There are timelines associated with it. The
25 contract is hard, and there are monies that are hard,

1 but there's an opportunity for them to exit the
2 agreement.

3 Q How long did your negotiations with the
4 county take?

5 A We, I would say, had preliminary
6 conversations for a couple of months and then detailed
7 conversations for now probably four to six months.

8 MR. MOORE: Your Honor, the agreement is
9 Exhibit Number 11.

10 THE COURT: Thank you.

11 BY MR. MOORE:

12 Q What's your opinion as to whether the
13 settlement agreement is the appropriate relief, if
14 necessary, to prevent the board's denial of your
15 mining rights from an inordinately burdensome subject
16 property?

17 MR. GROSSO: Your Honor, I object. That calls
18 for, if it's a legal conclusion. It's unclear what
19 level of expertise or what type of expert opinion
20 that's even calling for.

21 MR. MOORE: So counsel has said that's the key
22 question he wants answered. This is the owner who
23 has had its property burdened, inordinately
24 burdened. He's the one that had his company sign
25 the purchase agreement, and now counsel doesn't want

1 me to elicit that opinion from him regarding the
2 inordinate burden which we have to prove through the
3 owner.

4 MR. GROSSO: I think it's quite appropriate
5 for the witness to talk about facts that might go
6 into that equation, but to ask the owner's opinion
7 on what is ultimately a legal conclusion, that's
8 where, I think, it crosses over.

9 THE COURT: Court overrules the objection.
10 You're allowed to question the witness on cross-exam
11 about those issues. You may continue.

12 BY MR. MOORE:

13 Q Let me restate the question.

14 A Yes, sir.

15 Q What is your opinion as to whether the
16 settlement agreement you reached with Lee County is
17 the appropriate relief necessary to prevent the
18 board's denial of mining rights from inordinately
19 burdening the subject property?

20 A I would say it's the minimal amount that
21 would be required, and it is the only agreement that
22 my board has agreed to. We had conversations about a
23 number of other scenarios that were not accepted by my
24 board. This is a very dynamic relationship that
25 requires agreement by us, King Ranch, by the county,

1 and by Cameratta. It is a very finely threaded
2 needle, and it is the only agreement that my board has
3 approved.

4 Q Does the settlement agreement provide
5 Corkscrew Grove Limited more relief than is necessary
6 to prevent the inordinate burden or damage due to the
7 denial of your mining application?

8 A My board has not accepted a lesser amount.
9 Even though they were presented with lesser amounts,
10 this was what was required to get my board's approval
11 to pursue a settlement agreement.

12 MR. MOORE: May I have a minute, Your Honor?
13 That's all we have, Your Honor.

14 THE COURT: Cross.

15 CROSS-EXAMINATION

16 BY MR. GROSSO:

17 Q Sir, your board, like the board of any
18 for-profit company, it's their responsibility to
19 maximize the company's profits, correct?

20 A That is not the only criteria that my board
21 looks at. We've got 189-year history of land
22 management stewardship managing a legacy, so I think
23 it's inaccurate to say that the only thing that my
24 board looks at is revenue.

25 Q Yeah, I mean, I didn't mean to say the only

1 thing. That is part of their responsibility, that's
2 part of what goes into their decisionmaking in terms
3 of what deal they will accept, right?

4 A Well, we looked at what we believed was the
5 highest and best use for this property, which was rock
6 mining that we believed could generate up to just
7 under a billion dollars in royalty over the life of a
8 mine, and this was the minimum amount that my board
9 would approve to resolve this litigation.

10 Q Is the property currently discharging
11 pollution that is in violation of any state or federal
12 water quality standards?

13 MR. MOORE: Your Honor, outside of the scope
14 of direct examination.

15 THE COURT: Your response.

16 MR. GROSSO: I can't argue with that, Your
17 Honor.

18 THE COURT: Sustained.

19 BY MR. GROSSO:

20 Q When you bought the property in 2016, how
21 much did you pay for it?

22 A That is a matter that's of public record. We
23 paid \$29.75 million.

24 Q 29.75 million, okay. And at the time you
25 purchased it, you either would have known or should

1 have known what the Lee County Comp Plan development
2 limits were at that time, right?

3 A We had done a thorough due diligence, yes,
4 sir.

5 Q So you knew at that time when you bought the
6 land in 2016 that it limited residential development
7 to one house every 10 acres. You knew that when you
8 bought the land, right?

9 A I was also aware there was an alternative
10 approach that allowed for environmental overlay that
11 would allow for additional revenue. So that was in
12 place when we acquired the property.

13 Q But you're not within that environmental
14 overlay, you don't technically actually qualify for
15 that?

16 A Well, there was other property along that
17 corridor that had asked to be included in that, and
18 that was granted. So I believe that that was a
19 decision that could be made by the Board of County
20 Commissioners.

21 Q But you also knew that you ran the risk that
22 that would not be granted, that approval by the
23 county, right?

24 A I was very aware of the situation that the
25 land was sitting in when we acquired it, yes, sir.

1 Q So you're saying yes to my question?

2 A There is always risk associated with.

3 Q And that's a risk that the company knowingly
4 took when it bought the land in 2016?

5 A That, but in addition to that, we also had an
6 active zoning application for rock mining, and we felt
7 very confident in that based on previous court
8 rulings.

9 Q Okay. The environmental hurricane-related
10 impacts that hurt your farming activity happened after
11 you bought the land, right?

12 A Hurricane Irma did happen after we acquired
13 the property.

14 Q It wasn't anything that the county did to the
15 property that caused that impact to your farming
16 operation, right?

17 A I don't think I made that statement, no.

18 Q And so as part of any of the negotiations and
19 analysis that has gotten us here to today, is there
20 anywhere of an analysis done by a bona fide real
21 estate appraiser of what level of development was
22 necessary in order to avoid an inordinate burden for
23 your company?

24 A There was an appraisal that was done. It was
25 submitted to the county. I can tell you that my board

1 evaluated a number of scenarios, and they did
2 internally make an analysis of what was the minimum
3 amount required for us to enter settlements. I
4 assumed that there was a similar analysis done by
5 Cameratta and the county.

6 Q But that internal analysis you just referred
7 to, that's never been shown to the public, right?

8 A I believe that the county in their adoption
9 hearing found that it did address that matter, yes.

10 Q But my question was, the internal inordinate
11 burden analysis you told us your company did, that has
12 never been made public, has it?

13 A We're a private company, sir.

14 Q So the answer is no, it has not ever been
15 made public?

16 A King Ranch did not disclose its internal --

17 Q So Judge Shenko is going to kind of have to
18 take y'all's word for it that anything less than this
19 amount of development would be an inordinate burden?

20 A My board -- this was the only approval that
21 my board approved.

22 Q So, yes, the judge is going to have to take
23 that -- take their word for it?

24 A I think that the facts of the settlement
25 agreement demonstrating all of the public benefits

1 associated with this settlement agreement, the
2 elimination of mining rights achieved the requirement
3 of Lee County, it achieved the requirements of
4 Cameratta to provide public benefits, and it achieved
5 King Ranch's requirements to eliminate their
6 inordinate burden.

7 Q Putting your opinion on that aside, the
8 answer is, yes, the judge is going to have to take
9 it -- your company's word for it that anything less
10 than the settlement is an inordinate burden?

11 MR. MOORE: He's arguing with the witness now.
12 It's the third time he asked that. Any witness who
13 testifies under oath, it goes to the Court. The
14 Court either accepts that or rejects that. It's up
15 to the Court, but for counsel to keep asking him the
16 same question, I think is badgering the witness.

17 THE COURT: Sustain the objection.

18 BY MR. GROSSO:

19 Q There is no appraisal that was done to
20 determine the value of the property if something less
21 than 10,000 dwelling units could be built, right?

22 A I'm not aware of one, no.

23 Q And there's no appraisal that has ever been
24 done that would tell anyone what the value of the
25 property would be if something less than 700,000

1 square feet of commercial could be built, correct?

2 A But there was an appraisal that was done that
3 evaluated the elimination of mining rights.

4 Q Right. But in terms of the question I asked,
5 the answer is no, there was no such appraisal done of
6 a lesser amount of commercial square footage, right?

7 A I'm not aware of one.

8 Q Same question for a 240-room hotel. There's
9 no appraisal that was done to look at the value of the
10 land if you couldn't do a 240-room hotel, correct?

11 A There was no need to do one because this is
12 the only scenario that all three parties have agreed
13 to.

14 Q Are you able to tell the Court how much the
15 land is worth today if it can be developed only to the
16 extent that's in full compliance with everything in
17 the Lee County Comprehensive Plan?

18 A As in a rock mine, my calculations are that
19 we would have the right to between 500 million and a
20 billion dollars of rock royalty. And I believe that
21 would be in compliance with the Lee County
22 Comprehensive Plan based on the ruling that we've
23 gotten from the court.

24 Q Okay. And has there ever been an appraisal
25 done that would show the value of the property if it

1 were developed, not mined, developed in full
2 compliance with what the current Lee County Comp Plan
3 would allow?

4 A Not that I'm aware of.

5 Q Are you able to tell the judge today if you
6 tally up the total purchase price and the money you
7 invested in the property since purchasing what that
8 total figure is?

9 A Ask that question again.

10 Q Yeah. You told us you bought the land for
11 \$29.75 million, right?

12 A Correct.

13 Q And I assume you've invested an additional
14 amount since the initial purchase price.

15 A We've been citrus growers since 2016, and
16 that's a deep, dark hole that you just pour money
17 into.

18 Q So, again, that's simply how your business
19 portions turned out. There was nothing that
20 government did that impacted that?

21 A That is correct.

22 Q So what is the total investment outlay as you
23 and I are speaking right now that y'all have put into
24 this property?

25 A As we've indicated, we did the acquisition

1 costs and we spent up to a million dollars in
2 entitlement and in pursuing the land use, but that is
3 in excess -- or that does not include all of our land
4 management and operational costs since we acquired it,
5 which have been meaningful.

6 Q So almost 30 million to buy it, another
7 million on top of that, and then there's other
8 meaningful costs?

9 A That's correct.

10 Q Give me a ballpark figure for those.

11 A I couldn't -- 20 million. Who knows.

12 Q So you speculate that it's 20 million. You
13 don't have a hard number.

14 A I do not have a hard number.

15 Q Okay. So what's the purchase price, then?
16 How much are you going to be able to sell the land for
17 if this settlement agreement is approved by the Court?

18 A I am bound by confidentiality agreement that
19 protects the business terms of this agreement, and so
20 I'm obligated to follow that unless directed otherwise
21 by the Court.

22 Q Are you able to tell us whether it exceeds
23 \$55 million?

24 MR. MOORE: Your Honor, we have a standing
25 objection to it, but if counsel wants to ask

1 specifically what the contract price is, perhaps the
2 Court should rule one way or the other.

3 MR. GROSSO: I'm sorry, I thought I did. I
4 thought that one question was specifically what the
5 contract price was, and I believe the answer was
6 that it's confidential, so...

7 MR. MOORE: That's correct. And now -- and
8 I've already had a standing objection to that. And
9 now if the Court were to rule on that, then, the
10 witness can go ahead and answer it, because he just
11 said that he will if the Court directs.

12 MR. GROSSO: All I can say to that, Your
13 Honor, is that under the Harris Act, the property
14 owner and the county are required to demonstrate
15 that the amount of development is necessary to avoid
16 an inordinate burden on the property rights as
17 stated in the law.

18 I don't know how you or anyone could make that
19 determination without knowing could they also have
20 made a go of it with less development. Was this
21 really the minimum amount of development necessary
22 to avoid an undo burden? How do we answer that
23 question if we're left to guess what the impact on
24 the property owner is?

25 Even a speculative value of 55 million, I

1 mean, I would say that if the purchase price far
2 exceeds that, then, you're not looking at an
3 inordinate burden at all.

4 MR. MOORE: Well --

5 MR. GROSSO: It's a black hole, and we don't
6 know those facts, and I don't think they can
7 prove --

8 THE COURT: Counsel, approach.

9 (Sidebar begins.)

10 MR. MOORE: Rather than to argue and speculate
11 about what Mr. Grosso thinks about inordinate burden
12 and what the amount should be, we've laid this out.
13 It's pretty clear what counsel can do if he wants
14 to. I kind of laid it out for him.

15 All we're obligated to do under the contract
16 is not volunteer it. If the Court directs us to
17 give it, then counsel's made his argument and the
18 Court can rule, and Mr. Hutchcraft can respond.

19 THE COURT: And the question that you would
20 put to the witness would be?

21 MR. GROSSO: Would be how much is the purchase
22 price, and how does that compare to what the
23 complete investment has been in the property.

24 THE COURT: I think you've got the complete
25 investment. You've asked this question, as I

1 recall, right?

2 MR. GROSSO: I think what we don't know, then,
3 is whether the settlement agreement grants rights
4 that are gratuitous, that are beyond that which is
5 necessary to prevent an inordinate burden as
6 defined.

7 MR. MOORE: That's an argument for counsel,
8 closing argument, but with regard to this --

9 THE COURT: It's the purchase price.

10 MR. MOORE: -- he can ask him about the
11 purchase price, but for some reason, doesn't want to
12 do that.

13 MR. GROSSO: I'm sorry. I thought I did ask
14 about the purchase price.

15 MR. MOORE: Try it again without the dressing,
16 without the open also part of it.

17 THE COURT: All right. Ask the question, and
18 I'll direct the witness, frankly.

19 MR. GROSSO: Okay. Thank you, Your Honor.

20 (Sidebar ends.)

21 MR. GROSSO: Okay. Thank you, Your Honor.

22 BY MR. GROSSO:

23 Q Sir, are you able to tell us how much your
24 company is selling the property for under the
25 contract?

1 THE COURT: And the Court finds it's necessary
2 for its determination. The Court instructs the
3 witness to answer the question.

4 THE WITNESS: There are three contracts on the
5 property. There is one for The Hunt ownership.
6 There is one for what we refer as King Ranch North,
7 and then there is a third for King Ranch South.

8 The contracts for the property that are
9 incumbent by the zoning application are \$25,000 an
10 acre.

11 BY MR. GROSSO:

12 Q \$25,000 an acre, and how many acres are
13 involved?

14 A It is 4200 acres is the northern portion.

15 Q And why did you exclude the southern portion?

16 A They're separate contracts.

17 Q Okay. So what's the total purchase price,
18 then, at 25,000 an acre for all of the land times
19 every acre that's involved in the contract? What's
20 that number?

21 A I don't have the total including The Hunt.
22 The Hunt is -- The Hunt ownership is outside of the
23 King Ranch component.

24 Q So there's a landowner involved in this
25 settlement agreement that isn't a party to this case?

1 A No, they are. They have provided
2 authorization for us to represent them in this case.

3 Q Okay. And --

4 A I just don't have the math totaled.

5 Q So is all the land being -- so 25,000 times
6 4,200 acres, that would give us --

7 A The north.

8 Q -- the dollar figure?

9 A For the north.

10 Q For the north property.

11 UNIDENTIFIED SPEAKER: 105 million.

12 BY MR. GROSSO:

13 Q Does it sound about right that that's \$105
14 million, sir?

15 A That's close, yeah.

16 Q And if the total investment dollars that you
17 told us a few minutes ago of about \$55 million, you
18 were even speculating about the 20 million part of
19 that, right? You weren't sure of that?

20 A I don't have a fixed number on that, but
21 you've excluded the value of the rock mine. That
22 needs to be included in that number, and I value that
23 somewhere between 500 million and a billion dollars.

24 Q And the company that owns the 2,000 acres
25 that's involved that you mentioned, now did they ever

1 get any permits denied by the county?

2 A They were a part of the zoning application
3 and had authorized us to represent them in the zoning
4 application as well.

5 Q But they're not here in court today to
6 explain any appraisal done for their property, right?

7 A They have authorized us to represent the
8 4200 acres in this process.

9 MR. GROSSO: May I have a moment, Your Honor?

10 THE COURT: You may.

11 BY MR. GROSSO:

12 Q If I could revisit the 2,000 acres. What's
13 the name of that company?

14 A It's not 2,000. It is 967 acres. It is
15 owned by the Hunt family.

16 Q Okay. And, again, that property is -- would
17 be given development rights under the settlement
18 agreement, right?

19 A That's correct.

20 Q But that property was never the subject of
21 any governmental denials by Lee County, right?

22 A That is incorrect. It was included in the
23 zoning application that was denied.

24 Q The mining zoning application.

25 A Yes, sir.

1 Q Okay. And when the company bought the
2 property, your company bought the property in 2016, it
3 was aware that getting mining approval under the Lee
4 County rules was not a guarantee, correct?

5 A We were aware that there was a court order
6 directing Lee County to process an amendment under the
7 2007 rules at the time, and we believed that there was
8 no indication that a denial would be appropriate under
9 those rules. So we felt very confident in that
10 entitlement.

11 Q And that subjective belief on your company's
12 behalf never translated into an actual mining
13 application to be adjudged by the county under the
14 2007 rules, did it?

15 A Well, I would disagree. The HEX report
16 indicated that it was processed under the 2007 rules,
17 but it was denied. However, subsequent court ruling
18 indicated that the county had erred in that conclusion
19 and directed it to be reconsidered. So I believe that
20 that court ruling substantiated my belief in our
21 entitlement right when we acquired that property.

22 Q But the court ruling didn't require the
23 county to issue a permit. Instead, it required the
24 county to consider a formal application under the
25 rules as they existed in 2007, right?

1 A And it also found that mining was appropriate
2 use.

3 Q You can explain your answer, but you have to
4 give one first, though.

5 So is that correct what I said?

6 A Restate your question.

7 Q The judge ordered the county not to grant a
8 permit, but to consider a permit application under the
9 rules that existed in 2007?

10 A To the extent that a decision must reflect
11 conditions that had been attached to other rock mines
12 that had been approved prior to 2007.

13 Q But the county never received an application
14 or acted on it because you settled the case with the
15 settlement that is before our judge today, right?

16 A The county, and King Ranch, and Cameratta
17 have been working in good faith to find a settlement
18 that doesn't cost the taxpayers of Lee County money
19 and provide significant public benefits, yes, that's
20 what we've been working on.

21 Q So the question that I asked, your answer is
22 yes?

23 A It has not been pursued. We are working on a
24 settlement.

25 Q Thank you.

1 MR. GROSSO: Thank you, Your Honor.

2 MR. MOORE: May I have a minute, Your Honor?

3 THE COURT: You may.

4 MR. MOORE: No questions, Your Honor.

5 THE COURT: Thank you. You may step down.

6 THE WITNESS: Thank you, sir.

7 MR. BARTLETT: You ready, Your Honor?

8 THE COURT: I'm ready.

9 MR. BARTLETT: Your Honor, the county calls
10 Brandon Dunn.

11 BRANDON DUNN,
12 a witness, after being duly sworn, upon his oath,
13 answered and testified as follows:

14 THE WITNESS: Yes, I do.

15 DIRECT EXAMINATION

16 BY MR. BARTLETT:

17 Q Please state your name.

18 A Brandon Dunn.

19 Q Okay. And where do you work, Mr. Dunn?

20 A I work for the Lee County Board of County
21 Commissioners in the community development.

22 Q What is your job title?

23 A I am a principal planner. I work in the
24 planning section. I primarily focus on land use.

25 Q Okay. How long have you been working with

1 the county on land use issues?

2 A I have been with the county overall since
3 2007, so just over 15 years now. I have been in the
4 planning section since 2009 and principal planner
5 since 2014.

6 Q Okay. Are you familiar with the mine
7 application that was sought by the Corkscrew Group
8 Limited Partnership?

9 A I am familiar with it, yes.

10 Q And how are you familiar with it?

11 A As a member of the planning session, we
12 reviewed it for consistency with the Lee Plan as...

13 Q As you would, right?

14 A Yeah.

15 Q You were a reviewer for the county?

16 A Yes.

17 Q Okay. And did you participate in the
18 hearings on that mining application?

19 A I was present at the hearings, yes.

20 Q I'm sure it's no surprise now, but what was
21 the outcome of that mining application?

22 A The Board of County Commissioners denied that
23 mining application.

24 Q Are you familiar with the HEX recommendation
25 to the board?

1 A Yes.

2 Q And what did the HEX -- the hearing examiner,
3 I'm sorry, what did the hearing examiner recommend?

4 A The hearing examiner recommended that it be
5 denied.

6 Q Was there a -- was there -- let me do it this
7 way.

8 In front of you is a set of exhibits, right?
9 Can you turn to Exhibit Number 7.

10 If you look at the date, do you recognize
11 that document?

12 A It is dated April 4th, 2019.

13 Q Okay. And what is that document?

14 A This is the hearing examiner recommendation
15 to the Board of County Commissioners.

16 Q Okay. And the hearing examiner had a number
17 of reasons for recommending denial to the board; is
18 that correct?

19 A It's been a couple of years. I would need to
20 review this slightly. I recall her primary reasons
21 for denial were quality of life and incompatibility
22 with the surrounding neighbors.

23 Q Moving on. Are you familiar with the
24 Environmental Enhancement & Preservation Overlay also
25 known as EEPCO?

1 A Yes, I am.

2 Q Can you tell me what that is.

3 A It is an overlay that was created in
4 southeast Lee County to help effectuate some of the
5 goals that were originally identified in the
6 Dover-Kohl studies that addressed land use in
7 southeast Lee County.

8 Q Okay. And specifically, can you give me some
9 characteristics of this overlay?

10 A It's an overlay that was formally developed,
11 I guess, through working with two separate landowners.
12 They came forward approximately around the same time
13 and were looking to do some -- they wanted to do
14 development out there. And the county at the time,
15 this is now 2014, 2015, so it's five years after the
16 Dover-Kohl study, one of the primary strategies
17 recommended by the Dover-Kohl study was the
18 implementation of a TDR program for southeast Lee
19 County --

20 Q What's TDR?

21 A Excuse me. Transferable Development Rights
22 Program. So that would be you take the density off of
23 a land -- piece of land and transfer it to another
24 land. And that was the strategy or the strategy that
25 was recommended to preserve or conserve the land in

1 southeast Lee County.

2 Five years after it had been implemented, it
3 had not been successful. It had not been used at that
4 time. So internally staff had already started
5 thinking maybe we need to look at some other options
6 to meet the restoration strategy goals, and that's
7 about the same time we were approached with the two
8 private developers.

9 Q Okay. I think you've gone through this.
10 What is the purpose of this -- of the EEPCO?

11 A Like I said, it was really just another
12 strategy to meet the same goals that we've always been
13 trying to meet in southeast Lee County, you know, as
14 far as restoration of flowways, protection of wildlife
15 corridors, protection of water resources, both surface
16 and groundwater, and finding a balance of, you know,
17 residential mining and agricultural uses within
18 southeast Lee County.

19 Q Okay. Can you tell us the projects that have
20 been approved under EEPCO.

21 A The first two that came forward and were
22 approved were The Place, at the time it was Corkscrew
23 Farms, and WildBlue. Subsequent to that, there was
24 Pepperland Ranch and Verdana. Pepperland Ranch and
25 Verdana were combined later on into Verdana Village.

1 So you probably heard -- you've heard discussion about
2 that one. So the three major cases that went through
3 the full EEPCO process that currently still exist are;
4 Verdana Village, The Place, and WildBlue.

5 Q Are you familiar with the settlement
6 agreement in this case?

7 A Yes.

8 Q Okay. Can you tell me how you became
9 familiar with the settlement agreement in this case.
10 Let me ask it a different way.

11 Did you participate in the settlement
12 discussions or the settlement terms, if you will, on
13 behalf of the county?

14 A I was not involved in the number of units and
15 the number of commercial square feet. We were
16 involved in the layout, how it would work with the
17 surrounding land uses, whether it could be supported
18 by the land and by the infrastructure that was out
19 there.

20 Q How about the conditions of approval?

21 A Yes, we were involved in the conditions of
22 approval.

23 Q Did you participate in the development of --
24 or in the public hearings?

25 A I was there. I was present.

1 Q Okay. Are you familiar with the process of
2 amending the comprehensive plan?

3 A Yes.

4 Q Okay. Was the process used for evaluating
5 the settlement in this case similar to amendment of a
6 comprehensive plan?

7 A Yes.

8 Q Okay. And how was it similar? Can you give
9 me some examples?

10 A There were a number of public hearings just
11 like there would have been to go through the process
12 to amend the plan. I want to kind of back up just one
13 step here.

14 The process to go through the full EEPCO
15 approval process with the comp plan would include --
16 it includes both an amendment to the Lee Plan as well
17 as a rezoning requirement. Overall, it ends up being
18 about four public hearings.

19 We had four public hearings here. We ended
20 up with a schedule of uses and a conditions of
21 approval. That's the same process, that's the same
22 outcome we would end up with as far as a zoning
23 approval that we would get through a planned
24 development.

25 The conditions of approval that we have for

1 this one are very similar, if not identical, and
2 actually borrowed in some cases right from the
3 conditions of approval for Verdana Village or The
4 Place.

5 So the conditions of approval are similar,
6 the hearing process is similar. The amount of time
7 it's taken has ended up being very similar, so...

8 Q All right. Would the development as
9 proposed, i.e., the settlement agreement, be
10 recommended for approval by the staff under a comp
11 plan amendment standards?

12 A We would end up in a slightly different
13 timing, just slightly different on the timing just
14 because of the zoning, because we didn't have the
15 actual zoning process time. There are some things
16 that will be done at the development order stage, but
17 the end product will be identical to what was approved
18 through the EEPCO communities.

19 Q So if I can re-characterize just to
20 understand what you're saying. Some of the documents
21 or approvals that would have -- you would have gotten
22 earlier are now later and vice versa. Is that what
23 you're saying?

24 A Yes.

25 Q Okay. So the process changed, but not the

1 result?

2 MR. GROSSO: Objection. Leading.

3 MR. BARTLETT: Withdrawn.

4 BY MR. BARTLETT:

5 Q From your perspective as a county land
6 planner, does this development, the Kingston
7 Development, have benefits over the lime rock mine
8 that was proposed out here?

9 MR. GROSSO: Objection. I don't believe the
10 witness is qualified to speak about the impacts of
11 lime rock mines. The land use planner, I've heard
12 that.

13 MR. BARTLETT: He testified he was involved
14 with the mining application and hearings.

15 THE COURT: Overrule the objection. You may
16 answer the question.

17 THE WITNESS: Yeah, there are benefits to the
18 proposal over the mine application. Those include
19 compatibility with the adjacent neighbors as far as
20 the activity of the mine, the rock crushing, the
21 mobile rock crushers, the facility that would have
22 been located near the northern end of the plant.

23 The proposed project also greatly reduces
24 water -- I'm sorry -- greatly reduces water
25 withdrawal. That's from the existing agriculture.

1 The primary benefit over the mine is in the quality
2 of life and the compatibility that was addressed of
3 concern to both the hearing examiner and Board of
4 County Commissioners.

5 BY MR. BARTLETT:

6 Q All right. Could the county achieve these
7 public benefits without the inclusion of what we've
8 been calling the southern property?

9 A No. The public benefits, you know, the
10 primary -- the flowway connection all the way from
11 Lehigh Acres to the CREW lands in Collier County
12 wouldn't be able to be achieved with just the mine or
13 the continued agriculture project. That includes, you
14 know, both controlling the quantity of the water
15 that's being moved out from the timing of that
16 quantity, but also, you know, what's being discharged
17 into the water from the adjacent agricultural uses if
18 those were to continue.

19 MR. GROSSO: I'm sorry. Again, Your Honor,
20 the witness has not demonstrated any expertise in
21 hydrology, chemistry, water quality, environmental
22 issues. He's an urban land use planner, and I think
23 this is inappropriate opinion testimony to solicit
24 from this witness.

25 THE COURT: Overrule the objection. You may

1 continue.

2 MR. BARTLETT: Thank you, Your Honor.

3 BY MR. BARTLETT:

4 Q You were here when Mr. DeLisi testified about
5 the conditions of approval; is that correct?

6 A Yes, I was.

7 Q Did Mr. DeLisi accurately describe the
8 conditions of approval within the settlement
9 agreement?

10 A Yes, I believe he did.

11 Q Okay. Do you have any corrections or
12 additions that you would like to make to his
13 descriptions?

14 A Not that I can think of at this time.

15 Q Okay. Are the conditions, and you've said
16 this partly. Are the conditions of approval similar
17 to those that were given or extracted, if you will,
18 from the landowners of the other EEPCO properties?

19 A I wouldn't use the word extracted, but, yes.

20 Q Of course not.

21 A Yes, they are.

22 Q Can you give me some examples. How -- what
23 do you mean that they're similar?

24 A The amount of open space is similar.
25 60 percent open space is, I believe, what's required

1 for EEPCO communities. This development is providing
2 61. EEPCO communities generally do provide 55 percent
3 conservation lands. In this location -- in this
4 example or in this circumstance, they are proposing a
5 50 percent conservation or flowway easement to be
6 covered.

7 So those are some of the similars. They also
8 are required to provide letters of availability to
9 make sure that water, sewer, road transportation are
10 all going to be provided. They're required to monitor
11 for pollutions, pollutants in the water, water levels.
12 It's the same -- same requirements that we put on the
13 EEPCO communities.

14 There are some differences in the situation.
15 For example, this project is not located near a well
16 field. So there are other conditions that are
17 specific to being in proximity to a well field than
18 the others that are not in this one, but I think
19 that's just because there is no well field in this
20 immediate location.

21 Q Okay. Does the settlement agreement have
22 conditions that ensure developer compliance with the
23 conditions you just described?

24 A Yeah, there's phasing conditions that require
25 a certain amount of open space or conservation lands

1 be provided with each -- with each development order
2 to make sure that the development stays consistent or
3 even approximately with the proposed conservation
4 areas or conservation areas that will be built.

5 Q Just so everyone understands, how many
6 development orders do we expect?

7 A I don't know if I would want to guess on that
8 at this point. This is a very huge property.

9 Q Can you explain why.

10 A Each pod could come -- have its own
11 development order. There might be different
12 development orders for the proposed commercial uses up
13 along State Road 82. It would be very hard to
14 speculate on a number of development orders that might
15 come in on this project over the next 10 years.

16 Q So what you're telling us is that the
17 obligation to restore or preserve or both is --
18 somehow is tied to the number of units that are
19 approved by the development order?

20 A Yes.

21 Q Okay. But ultimately, you're going to get to
22 that magic number, right?

23 A Yes.

24 MR. BARTLETT: Okay. One moment, please.

25 No further questions, Your Honor.

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CROSS-EXAMINATION

BY MR. GROSSO:

Q Sir, the EEPCO stands for what?

A Environmental Enhancement Preservation
Communities Overlay.

Q And that overlay was enacted for some very
important, valid public purposes, right?

A I believe so.

Q One of those purposes of that overlay was to
prevent this part of southeast Lee County from
becoming urbanized, correct?

A No.

Q So you're telling us that a transferable
development rights system was not designed to
encourage the transfer of development rights away from
the properties in the overlay?

A I don't think not being urbanized and
protecting the environment are the same thing.

Q A local government identifies an area as a
transferable development rights sending area with the
objective of preventing that development from
happening there. That's what a TDR system is about,
correct?

A Yes.

Q There aren't any studies that have documented

1 that the Florida panthers status is better off today
2 than it was before the approval of the Verdana
3 Village, The Place, and WildBlue developments, right?

4 A Not that I'm aware of.

5 Q When the county agreed to the settlement
6 agreement, you had not been consulted as to whether
7 you believed that the amount of development in the
8 settlement agreement was appropriate, correct?

9 A I was not.

10 Q You were simply asked, Mr. Dunn, assume this
11 amount of development is going to happen. Now you
12 tell us what's the best way to do it. That was your
13 involvement?

14 A Not exactly.

15 Q The settlement process, you compared it to
16 the comp plan amendment process in Florida law, but
17 isn't it true that if a comprehensive plan amendment
18 is going to be processed, after the county commission
19 gives it an initial approval, it has to get sent up to
20 the State of Florida for various state agency reviews,
21 right?

22 A That is correct.

23 Q And the lead state agency is the Department
24 of Economic Opportunity, correct?

25 A Yes.

1 Q And that proposed plan amendment along with
2 all of its supporting documentation would also be
3 reviewed by the Florida Fish and Wildlife Conservation
4 Commission, right?

5 A Yes.

6 Q And the commission would submit a formal
7 letter with data and analysis and a review of that
8 proposed amendment, correct?

9 A Yes.

10 Q And as part of that comp plan amendment
11 review process, the South Florida Water Management
12 District would also receive a copy of the proposed
13 amendment and all of its support and would do a formal
14 written review of that proposed amendment, correct?

15 A Yes.

16 Q Same question for the Department of
17 Transportation, right?

18 A Correct.

19 Q And the Florida Department of Agriculture and
20 Consumer Services would also receive the plan
21 amendment and would provide a formal written comment
22 letter on the impact on agriculture, correct?

23 A That is correct.

24 Q And the Department of Environmental
25 Protection would also receive the full amendment

1 package and submit a formal review of that, correct?

2 A Yes.

3 Q None of that happened on this settlement
4 agreement, correct?

5 A No.

6 Q Among the requirements for approval of a
7 comprehensive plan amendment under state law is the
8 requirement that any future land use map change be
9 consistent with the adopted goals, objectives, and
10 policies of the local ordinance comprehensive plan,
11 correct?

12 A Can you state that again, please?

13 Q Yeah. In order to be approved under state
14 law, an amendment to the future land use map has to be
15 found to be consistent with the rest of the goals,
16 objectives, and policies in the county's comprehensive
17 plan, right?

18 A Yes.

19 Q We call that the internal consistency
20 requirement in our business, don't we?

21 A Yeah.

22 Q Okay. And the hearing officer in this case,
23 in fact, found that the settlement agreement violated
24 a number of different policies of the comprehensive
25 plan on Pages 5 through 8 of her report, correct?

1 A I will say they were relatively few that were
2 found to be inconsistent out of the number of policies
3 that were reviewed.

4 Q Okay. But one of those was what any planner
5 would agree is the most important determination, how
6 much development is allowed on the property, correct?

7 Any planner in Florida would agree the most
8 important determination that a comprehensive plan
9 makes is what can be done there and how much. True
10 statement?

11 MR. BARTLETT: Object to form. We don't have
12 any planner here. We have one.

13 THE COURT: Overruled. You may answer.

14 THE WITNESS: That is a determination you make
15 at the time of zoning.

16 BY MR. GROSSO:

17 Q You make that at the time of a future land
18 use map change to the comprehensive plan, correct?

19 A You have to identify the -- both the existing
20 scenario and then worst-case scenario of the proposed
21 amendment.

22 Q And for this piece of land right now, given
23 what its future land use map designation is, the
24 maximum amount of residential development is one house
25 every 10 acres, correct?

1 A Yes.

2 Q And were this not a Harris Act settlement,
3 this development project approved by the settlement
4 agreement would have to have been the subject of a
5 future land use map formal amendment to the county
6 comp plan, correct?

7 A Under normal circumstances, if this were not
8 a Harris Act settlement, yes.

9 Q And among the considerations when a land use
10 change is being made to increase density is how
11 compatible is that with the surrounding neighborhood,
12 correct?

13 A Yes.

14 Q And right now if I am a landowner or a
15 resident in the neighborhoods that surround this piece
16 of land, you as a planner would characterize that as a
17 very rural style of life out there right now, right?

18 A Yes.

19 Q The type of development that's approved under
20 this settlement agreement, you as a planner would
21 characterize as at least suburban and maybe even
22 urban, right?

23 A Definitely not urban.

24 Q It's suburban development, isn't it, sir?

25 A Most likely.

1 Q It is a distinctly different lifestyle from
2 that which is experienced by the people who live out
3 there now, yes, sir?

4 A That does not come in the way when you are
5 talking about compatibility.

6 Q So it's your opinion as a planner that the
7 impact on surrounding landowner and residents'
8 lifestyle is not a relevant aspect of compatibility?

9 A I'm saying, as a planner, that you can plan
10 to have suburban development next to rural development
11 or nonurban development and it can still be
12 compatible.

13 Q With what? Things like walls and hedges for
14 buffers? What are you talking about?

15 A This property has much more than hedges for
16 buffers.

17 Q It's got water courses?

18 A We can go through the MCP, I suppose.
19 There's -- it's quite wide. It's quite large.

20 Q Have you ever been out there at night?

21 A Yes.

22 Q You see the stars at night out here at this
23 part of the county?

24 A Yes.

25 Q That's going to change when this development

1 goes in, isn't it?

2 MR. BARTLETT: Objection. Relevancy.

3 THE WITNESS: It depends on the design, sir.

4 THE COURT: Overruled. I'll allow it.

5 BY MR. GROSSO:

6 Q The settlement conditions do not require,
7 like, low volume lighting or anything, do they?

8 A Actually, I would have to review those to
9 double-check.

10 Q The amount of development that would be
11 approved on this property or this settlement agreement
12 is indeed the size of a small city, isn't it?

13 A I would not disagree with that.

14 MR. GROSSO: That's all I have. Thank you,
15 Your Honor.

16 MR. BARTLETT: Nothing further, Your Honor.

17 THE COURT: Thank you. Mr. Dunn, you may step
18 down.

19 THE WITNESS: Okay.

20 MR. HINDS: Nothing like being the last car on
21 a roller coaster, Your Honor. Becky Sweigert,
22 please.

23 REBECCA SWEIGERT,

24 a witness, after being duly sworn, upon her oath,
25 answered and testified as follows:

1 THE WITNESS: Yes.

2 THE COURT: And your name, Counsel? I forget
3 your name, Counsel.

4 MR. HINDS: Rebecca Sweigert.

5 THE COURT: No.

6 MR. HINDS: My name. For the record, Attorney
7 Jeff Hinds on behalf of the county.

8 THE COURT: Thank you. I apologize.

9 DIRECT EXAMINATION

10 BY MR. HINDS:

11 Q Good afternoon. Could you spell your name
12 for the court reporter, please.

13 A Yes. My name is Becky Sweigert. The last
14 name is spelled, S-W-E-I-G-E-R-T.

15 Q And what do you do, Ms. Sweigert?

16 A I am a principal environmental planner with
17 Lee County. I've been employed there for about
18 22 years. I started as an entry level planner and
19 worked my way up to a principal environmental planner.

20 I started reviewing development order plans,
21 landscape plans, site clearing permits, comprehensive
22 plans, rezoning. I was promoted to a control
23 environmental planner in 2006 where I was overseeing
24 all of the environmental regulatory review program and
25 making sure that was done correctly.

1 The last seven years I've worked in the
2 planning section, specifically focusing on the
3 environmental review for comp plan amendments, as well
4 as environmental mitigation for the county's public
5 infrastructure.

6 Q Has part of your job been to assess the
7 environmental impact of mines that might have been
8 proposed?

9 A Yes.

10 Q And has part of your job been to assess the
11 environmental impact of residential developments that
12 have been proposed?

13 A Yes.

14 Q Are you familiar with the mine that was
15 proposed by Corkscrew Grove in 2011?

16 A Yes. I reviewed the application and
17 participated in the public hearings for that process.

18 Q And is that the same application that gave
19 rise to the Bert Harris claim that's been so talked
20 about today?

21 A Yes.

22 Q Are you also familiar with the settlement
23 agreement between the county and the Corkscrew Grove
24 Limited Partnership?

25 A Yes. I have participated in the settlement

1 discussions and attended the public hearings as well.

2 Q Okay. Have you been present all day and
3 heard testimony?

4 A Yes.

5 Q That was all from the developer's end of
6 things. Hoping to hear the county's perspective from
7 you.

8 Could you just briefly describe the
9 environmental impact of the mine proposed by
10 Corkscrew?

11 A Some of the environmental components that
12 would -- or the impacts for the mine would be the
13 lighting that would be set up and established.
14 Particularly when they're doing 24-hour operations,
15 they have to have specific OSHA required lighting,
16 which is quite bright. It's very significant. It can
17 have effects on panthers, on their movements.

18 The dust that also gets created from the
19 mining operations can create problems with the plant
20 communities. You can also have some drawdown to your
21 wetlands when you're excavating in close proximity to
22 them.

23 Q Do you recall what the -- what the operating
24 life of the mine proposed was?

25 A I believe it was a 30-year life.

1 Q Can you briefly describe from the county's
2 perspective the environmental impact if the subject
3 property was left as agriculture?

4 A It would continue to draw down, I think, the
5 sandstone aquifer. It would create some continued
6 stress on that aquifer that's there. It also would
7 continue to be producing the nitrogen and phosphorus
8 runoff that it has currently.

9 Q Did you hear Mr. Brown's testimony earlier?

10 A I did.

11 Q Did you hear anything from him that needs
12 correcting?

13 A I did not hear anything that needed to be
14 corrected.

15 Q From an environmental perspective, does the
16 Kingston Development have benefits of relieving the
17 property as agricultural?

18 A I believe that that probably -- changing it
19 to the Kingston Development does have environmental
20 benefits, particularly when it comes to the
21 restoration components of this.

22 Restoring 3,000 acres is going to be a lot of
23 work to undertake. It will provide connectivity to
24 the surrounding lands, particularly those public
25 lands, helping to provide the flowway connections for

1 wildlife movement, helping to improve the water
2 quality that's there now. So there are some pretty
3 significant benefits that would come with the Kingston
4 Development.

5 Q Okay. And how about, are there any -- are
6 there any environmental benefits of having the
7 Kingston Development over the proposed lime rock mine?

8 A This would have more preservation and
9 landscape improvements. It would provide more cover
10 for the panthers. It would have more connectivity to
11 the adjacent lands.

12 With the mine proposal, it was predominantly
13 saving those existing wetlands, but not really making
14 any better flowway connections, providing more uplift
15 habitat, which is particularly important to the
16 panthers as well.

17 Q I know you heard this a bunch today, but does
18 the proposed Kingston Development create a hydraulic
19 flowway all the way from State Road 82 down to Collier
20 County?

21 A It does, which is also a significant
22 improvement. Allowing that water to get from State
23 Road 82 all the way to Collier County is a huge
24 benefit and one of the goals of the DR/GR that we've
25 been trying to obtain. So I think this is providing

1 that connection.

2 Q And would that connection be possible without
3 the southern most piece?

4 A No, it would not be, and with that southern
5 piece, we get the connection and we get a cleaner
6 discharge point with more of a controlled outfall.

7 Q You heard Mr. Dunn talk about, is it EEPCO or
8 EEPCO, E-E-P-C-O?

9 A Uh-huh.

10 Q Are you also familiar with that?

11 A Yes.

12 Q Can you just, again, describe briefly for the
13 Court what the EEPCO overlay is?

14 A So the Environmental Preservation Community
15 Overlay was just another tool in our toolbox to create
16 a strategy that requires a 60 percent preservation,
17 centralized irrigation system.

18 It has components for conservation easements.
19 It requires flowway connections. It looks at and
20 requires the wildlife movement to be addressed. So
21 it's a pretty lofty list including the 60 percent open
22 space, which is almost double what our current open
23 space requirements are under the LDC.

24 Q Is the proposed Kingston Development
25 consistent with EEPCO other than not being on the map?

1 A Yes. In my opinion, it is.

2 Q Okay. And do you know would the staff have
3 recommended approval of the Kingston Development under
4 EEPKO had it been on the map?

5 A I think the staff would have. I mean, it
6 meets the same criteria of other projects.

7 MR. HINDS: Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Grosso?

10 CROSS-EXAMINATION

11 BY MR. GROSSO:

12 Q This property that's the subject of the
13 settlement agreement, it's a priority 1 panther
14 habitat, correct?

15 A I believe it's primary and secondary panther
16 habitat.

17 Q That makes it really important, valuable land
18 for the panther survival, doesn't it?

19 A It is important to their survival, yes. But
20 in its current state, it is an agricultural field,
21 which doesn't have the same value as the restoration
22 that would be provided under this project.

23 Q Whatever value the landscaped wildlife
24 corridors might provide will, to some extent, be
25 diminished by the fact that they are running right

1 along and adjacent to suburban development, correct?

2 A They would be adjacent to development, yes.

3 Q And that is not a good thing for panthers, is
4 it?

5 A It is not an ideal situation, but I think
6 part of what we're missing here is the scale of these
7 wide corridor areas, as well as the underpass. I
8 mean, it's not -- the panther isn't just freely in the
9 middle of a pod. It is focused to be concentrated in
10 those areas towards whether it be a wetland or an
11 upland.

12 Q Panther do not like being near people and
13 cities, do they?

14 A They are more of a secretive animal, yes.

15 Q That's why you said a moment ago that putting
16 a panther corridor next to suburban development is not
17 ideal, right?

18 A Yes.

19 Q And the negative impacts of mining that you
20 talked about a few minutes ago, now, did you
21 understand what those negative impacts were when
22 you've had the occasion in the past to recommend
23 approval or denial of mining applications?

24 A Yes, we have identified those as some
25 concerns that the staff has.

1 Q And did you not recommend approval of a
2 mining application for this property?

3 A Staff did recommend approval.

4 Q Have your concerns that you've expressed here
5 today for nitrogen and phosphorous pollution from farm
6 fields ever caused you to write an official memo or
7 report to anyone with authority calling for increased
8 agricultural water quality standards?

9 A No.

10 Q It is not a goal of the Density
11 Reduction/Groundwater Recharge provisions of the Lee
12 County Comprehensive Plan to have residential
13 development at one and a half units per acre in the
14 area, is it?

15 A No, but the staff has identified alternative
16 means to try to balance the development as well as
17 obtaining the restoration, because the restoration
18 that the county staff has been trying to achieve even
19 back to the 1990s has not been happening.

20 Q Yeah. One of those strategies, the TDR
21 strategy, that hasn't really worked, has it?

22 A Unfortunately, no.

23 Q And the TDRs would only work, a landowner
24 trying to develop will only have an incentive to
25 purchase a transferable development right from another

1 landowner if that landowner can't otherwise get
2 improved density by a rezoning or plan amendment,
3 correct?

4 A Potentially.

5 Q So if I can just apply to the county
6 commission for a plan amendment or rezoning or a
7 Harris Act settlement, I don't have any incentive to
8 have to buy development rights from some other
9 landowner, do I?

10 A But with these cases that have come forward,
11 they have provided a much higher level of development
12 than what has been provided at other developments. It
13 is not a normal 30 to 40 percent open space.
14 Providing 60 percent open space with restoration and
15 preservation is a significant benefit to the public.

16 Q The hearing officer in this case found,
17 actually, that the development didn't comply with the
18 county open space requirements, correct?

19 A I don't remember that specific detail.

20 Q The hearing officer in this case found that
21 the settlement agreement didn't comply with the
22 conservation easement requirements, didn't require
23 enough land in the conservation easement, correct?

24 A Again, I don't remember that specific detail
25 of the mine.

1 Q To answer my question, you defer to the text
2 of the hearing officer's report, right?

3 A I would believe that would have the
4 statement.

5 MR. GROSSO: That's all I have, Your Honor.

6 MR. HINDS: One moment.

7 THE COURT: Sure.

8 REDIRECT EXAMINATION

9 BY MR. HINDS:

10 Q Before an actual development can proceed,
11 does the builder need to get any state or federal
12 permits regarding panthers?

13 A No.

14 Q Is the proposed development in violation of
15 any objectives in the Lee County plan or the LDC
16 regarding Florida panthers?

17 A No.

18 MR. HINDS: I have nothing else. That's it.
19 Thank you. Nothing else.

20 THE COURT: You may step down. Thank you.

21 THE WITNESS: Thank you.

22 MR. MOORE: Your Honor, we rest.

23 MR. GROSSO: May I have a moment?

24 THE COURT: You may.

25 MR. GROSSO: Thank you, Your Honor. We have

1 no witnesses.

2 THE COURT: You folks need a few moments, and
3 would you be making presentations today or would you
4 be doing written submissions?

5 MR. GROSSO: Could I ask a process question?

6 THE COURT: Sure.

7 MR. GROSSO: I think I noticed this morning
8 that the petitioners had filed a memorandum of law
9 with the Court, I believe, and so I was going to ask
10 whether the Court would entertain, I would hope so,
11 of post-hearing memos of law -- thank you --
12 post-submittals.

13 I certainly didn't file one. We weren't done
14 this morning, and so I would ask for the opportunity
15 to file something in writing within a reasonable
16 amount of time you might set, Your Honor, to also
17 file a brief memorandum of law. I don't know if
18 that impacts your sense of how much you want to hear
19 from us now in terms of closing or whatever.

20 THE COURT: Why don't I have you folks
21 approach for a second.

22 (Sidebar begins.)

23 THE COURT: You folks do this all the time,
24 and I don't do that much of it. You have a big,
25 lovely audience here. Do you want to give some

1 closing-type statements, or do you want to just do
2 written submissions?

3 MR. MOORE: I'd like to give a brief closing,
4 not because of the audience, because I think it's
5 appropriate.

6 THE COURT: Sure.

7 MR. MOORE: And I haven't filed a memorandum,
8 so I would like to join with counsel about asking a
9 chance to file one as well. But, yeah, I think if
10 we can do 15, 20-minute.

11 THE COURT: Sure. That would be great. And
12 since you're up here, just might as well say it now,
13 with all of the information I've been provided upon
14 what -- and I think I mentioned this before, if
15 folks could give submissions post-hearing with
16 findings of fact and conclusions of law, kind of a
17 proposed ruling, in Word format that could go then
18 directly to my judicial assistant. Then I can use
19 that to help craft a ruling. And I don't know how
20 much time, you tell me when. I've got 60 cases on
21 the trial docket every month, so I'm swamped. So
22 how much time you would like, and it's fine with me,
23 whatever it is.

24 MR. HINDS: 30 days, maybe?

25 THE COURT: Right, because you have the

1 holiday coming up, so...

2 MR. HINDS: Oh, we do.

3 THE COURT: We do, so that's why I'm asking
4 you folks.

5 MR. HINDS: I don't know that I'm entitled to
6 a holiday.

7 MR. GROSSO: What do y'all think, 30 days?
8 Can we do that in 30 days?

9 THE COURT: Okay.

10 MR. GROSSO: Is there a page limit or length
11 you would be looking for?

12 THE COURT: Pardon me?

13 MR. GROSSO: Is there a page limit or length
14 you would be looking for?

15 THE COURT: There is not, but -- there's not.
16 There's not because I -- whatever you folks think is
17 appropriate.

18 MR. GROSSO: Thanks, Your Honor.

19 THE COURT: And then -- okay. So we'll do a
20 brief closing and written submissions within
21 30 days, and then the ball is in my court.

22 (Sidebar ends.)

23 THE COURT: Do you folks need a few minutes?

24 MR. MOORE: Do you need any time?

25 We're ready.

1 THE COURT: Okay. You may proceed.

2 MR. MOORE: May it please the Court. Your
3 Honor, on behalf of Corkscrew Grove Limited, the
4 co-petitioners, we've -- I've looked at this
5 proceeding that's happened the 31st and then more
6 today, from kind of a high altitude view for
7 purposes of closing.

8 We're dealing with the Bert Harris law, which
9 if we were just violating some local ordinances and
10 then those ordinances were offset by public
11 interest, that wouldn't even go before the court.
12 Here, which violates -- don't violate, but
13 contravenes state statutes, and that's what this is
14 about, and that's why it goes before the circuit
15 court.

16 The intervenors have raised a couple of issues
17 in looking at it from a high altitude view. It's
18 hard to imagine why someone would object to over
19 3200 acres of preservation restoration. That's not
20 going to happen without the settlement. It hasn't
21 happened in the past.

22 They've had preserves that they -- counsel
23 says they ought to spend some money to buy this
24 land, suggest that the county 2020 program, they
25 spent \$43 million for the Kiker Preserve. He's very

1 easy with the county's money. But the county
2 commissioners are a good bit more conservative with
3 that. This 3200 acres of preservation and
4 restoration is all off the county's tax roll. It's
5 not going to cost the county anything.

6 There's a restoration of historic flowways.
7 That's been on the books in the county since before
8 the Dover-Kohl report. It was the county's
9 ordinances talk about a study by an ecologist and
10 geologist, Kevin Erwin, about the restoration of
11 water flows and the significance of that to the
12 Corkscrew Regional Ecosystem Watershed, CREW, and
13 this is doing it. This is having the flowways
14 through 6,000 acres across Corkscrew Road flowing
15 into those preservation lands. That would not
16 happen without the settlement. There's a recovery
17 of over 9 million gallons a day of water.

18 The argument from the intervenors were, well,
19 gosh, we're permitted to draw that water, and so
20 what's the problem? Just because you're permitted
21 under the ag use of the property, doesn't mean that
22 that's good for the aquifer, doesn't mean it's a
23 benefit. It's an avoidance of an adverse impact.

24 That's why I was asking Mr. Brown. This is a
25 choice. Is it better to have that potential

1 drawdown, or is it better to have a restoration of
2 about the same amount of water that's permitted for
3 Fort Myers and Lee County, 9 million gallons plus a
4 day? That's dramatic. The individual wells and
5 septic tanks that dot that area, you saw that whole red
6 map that was in evidence, that's something that is
7 not going to be provided. In fact, it's going to be
8 prohibited under the settlement conditions here.
9 It's hard to imagine opposing that.

10 The large animal crossings, the culverts that
11 are put in there for the animals to avoid Corkscrew
12 Road, yes, panthers are endangered. And so now
13 we've put in culverts or proposed to put in culverts
14 that would protect them. Apparently, that's
15 objectionable, too. That's not under the current
16 situation. You're not going to have that.

17 Then there's the avoidance of not only a
18 potential at a minimum \$63 million claim plus
19 interest for three years, plus potential owner's
20 testimony, and, of course, and as Your Honor knows,
21 owner can always testify to value based on the
22 royalty approach, and royalty approach is certainly
23 an accepted process for valuing land of between 500
24 million and a billion dollars. You don't think the
25 landowners are going to try to get that in, and I

1 think perhaps successfully if we had a Bert Harris
2 trial or a takings trial. Not to mention the fees
3 and costs attendant on both sides if we pursue this
4 litigation. The county's getting all these
5 protections, all these improvements, all these
6 benefits without spending any money.

7 The spine road, the north/south spine road,
8 that's not only going to help for the development
9 that's being proposed, but also as a hurricane
10 reliever, and also to take traffic off of -- from
11 Lehigh off State Road 82. That's a benefit. All,
12 again, paid for, not by the county, by the
13 developer.

14 One of the more significant benefits, if you
15 had to sift through the hearing examiner report like
16 we did, you can read it, with the comments about the
17 mining proposal. Talk about hotly contested. It
18 makes this proceeding look extremely pleasant,
19 because in that proceeding, there were high emotions
20 and a great deal of testimony about current mining
21 issues that people at Wildcat Farms and adjacent
22 areas had.

23 Under this proposal, there would never be any
24 mining on the Corkscrew Grove property north of
25 Corkscrew Road or south. That entire parcel would

1 have to give up its mining rights. That's
2 tremendous. You would think that would be a
3 tremendous benefit to those, including at least one
4 of the intervenors who protested the mining. That's
5 out of the question under the settlement. We're not
6 going to have that mining possibility.

7 Now, the intervenors disagree with the
8 legislative decision, and I should stress that, the
9 legislative decision by the Board of County
10 Commissioners to settle the case. The whole idea of
11 the Bert Harris settlement provision is to expand
12 the opportunities for the government to settle
13 cases, and for landowners, instead of pursuing
14 litigation. In fact, there's a whole list in our
15 legal documents or memorandum we're going to file,
16 and we'll go into that in more detail, but they're
17 giving suggestions in the statute about how to
18 resolve these, and one of them is for any other
19 extraordinary relief.

20 Now, the Bert Harris statute is a property --
21 Private Property Rights Protection Act. However,
22 the Second District and some other courts have ruled
23 that insofar as sovereign immunity goes, it should
24 be read -- a waiver of sovereign immunity, that
25 is -- it should be read strictly, strictly

1 construed.

2 With regard to the settlement provision where
3 the county is not being opposed here, the landowner
4 is not. Both parties want to resolve something.
5 There's no such ruling that I know of that says that
6 should be strict instruction of that, but let's
7 assume you do. Let's assume you strictly construe
8 the settlement provisions of Bert Harris. Is a term
9 that says -- or other -- any other extraordinary
10 relief, is that a word of limitation, or is that a
11 word of expansion? I think the question answers
12 itself.

13 One of the arguments of the intervenors is
14 that we have brought in another parcel, and you know
15 why we brought in another parcel? Because you
16 couldn't have the water flow that the county wants,
17 that the comprehensive plan has been calling for for
18 30 years. You couldn't have the kind of benefits
19 for water recovery that we've talked about that's so
20 enormous. You couldn't have a lot of these public
21 benefits that we've spent so much time on without
22 that parcel. And the deal wouldn't have happened.
23 But, there's nothing in the Bert Harris law that
24 prohibits that.

25 In fact, if you look at those, I think there

1 are nine elements that you -- that are thrown out
2 there to suggest by the legislature of how you can
3 resolve these. One of them involves transfer of
4 density rights. Well, that by definition involves
5 another parcel, right, not the -- not the one that
6 was subject to Bert Harris. There's another one
7 involving land swaps. What's that about, except for
8 another parcel. And then, of course, other
9 extraordinary relief.

10 So there's nothing in the Bert Harris law,
11 certainly no statute or no case law, that's been
12 presented by the intervenors that have suggested
13 that the county is foreclosed from taking this kind
14 of approach for the benefit of the public and the
15 savings of the public treasury that they have here.

16 I would say, I was waiting, and we waited for
17 quite some time now for the intervenors to suggest
18 any comprehensive plan provision that's been
19 contravened and not offset by a public benefit.
20 They haven't cited you one.

21 Now, I would suggest specifically, and I know
22 the Court has reviewed it, there's such a lot of
23 materials to review, but Exhibit Number 4 is the
24 county memorandum, and that is very, very clear
25 about the specific comprehensive plans, not only

1 that were consistent, but also that were contravened
2 and why, and the public benefit that would be served
3 by that contravention.

4 That Exhibit 4 is an excellent document to
5 review in that, and I would also suggest, of course,
6 the hearing examiner's recommendation, which goes
7 into detail about those.

8 With regard to the panther habitats, there's
9 no comprehensive plan policy that has been
10 identified by the intervenors of contravene, not
11 one. There's been suggestions, innuendos. Gee,
12 panthers don't like noise. They don't like mining
13 either. They don't like tractors for an ag use.
14 They don't like spraying machines for an ag use.
15 All of that is true. But under this settlement, we
16 have 3200 acres plus of preserve and restoration.
17 We have a wildlife corridor that did not exist
18 before, and we have panther crossings. But you know
19 what? More importantly, there's no policy that's
20 been identified, no Lee Plan provision that counsel
21 has suggested to you, even suggested much less
22 proved, that has been contravened with regard to
23 panthers.

24 Those policies and provisions are pretty much
25 hoity-toity. They're generalized protection of the

1 panther goals. But under the state and federal
2 preemption, the state and feds look at that. In
3 fact, our settlement agreement indicates that we
4 would have to seek approvals there and not -- it's
5 not something that Lee County does. So all of that,
6 I think, is a smoke screen and really doesn't relate
7 to any contravened statute that the Court has to
8 look at.

9 Their second issue besides the comprehensive
10 plan violations that they allege but don't give you
11 any specifics on is that this is too much relief.
12 It's a sweetheart deal they said. Too much relief
13 for the owner.

14 The county has been involved for three and a
15 half years, and so has the owner, in litigation.
16 The owner spent between 500,000 and a million
17 dollars in fees and costs. There's no end to this
18 matter if we go forward. It's being abated right
19 now for the circuit courts.

20 If we lose the dec action ruling, which
21 requires the county to reprocess the mining
22 application that's allowed by the comp plan under
23 the old rules, if we lose that, then there's no --
24 there's no avenue for the owner except a Bert Harris
25 claim action and a lawsuit for minimum 63 million up

1 to 500 million plus.

2 The county is avoiding that risk, not to
3 mention the other risk from other landowners and the
4 avoidance, as I said, the mining of the southern
5 property.

6 So is it too much relief for the owner? Well,
7 again, innuendo, argument, but no evidence, no
8 witnesses. There's no evidence to contradict the
9 owner's testimony, none. There's no evidence of
10 other buyers willing to take the kind of risk that
11 Mr. Cameratta and his group are willing to take.

12 There's exhibits in evidence that show they're
13 going to spend over \$200 million in development
14 costs, over \$78 million for restoration
15 preservation, and obligate whoever the owner is now
16 into the future to \$1.7 million a year forever.
17 That's a risk. That's a big risk. That's why
18 developers are a different breed.

19 Here, of course, there's a profit. There was
20 some suggestion that maybe profit's a bad thing.
21 It's kind of what makes the engine run here in
22 America, so it's not a bad thing. And there's
23 nothing in the Bert Harris law that would prevent
24 that. In fact, it's a Private Property Protection
25 Act. So the profit isn't the issue. The issue is,

1 is this more relief than we're entitled to?

2 Well, there's no evidence regarding land value
3 from -- that's been offered based on evaluation by
4 comparable sales. They could have had somebody, but
5 they didn't. There's no evidence regarding land
6 value at all when the land valued under the royalty
7 approach as Mr. Hutchcraft did, none. Nothing but
8 innuendo and argument, generally unsupported by any
9 evidence.

10 So with regard to this settlement agreement,
11 we would ask the Court to look at those two issues,
12 specifically. One, are the contravene policies in
13 the public interest, has a public interest been
14 protected, and look at the public hearings that we
15 had, look at the outreach, look at the opportunities
16 that the public had to convince their commissioners
17 about this legislative act.

18 The commissioners thought in their view that
19 this was a wise thing to do, and now counsel is
20 suggesting to the Court that you overrule that.

21 And then the second issue under Bert Harris is
22 whether there's too much relief provided the owner.
23 And given everything that's been testified to and
24 zero evidence on the contrary, we hope you'll find
25 that that's not appropriate either.

1 The settlement agreement is exactly on target.
2 It gives more benefits than any settlement
3 agreement, any development, Verdana, The Place, any
4 other one that you can think of in that area that's
5 been testified to, more benefits resulting from this
6 settlement than any other available. This is the
7 only way to go on it. The Board of County
8 Commissioners has spoken legislatively. The public
9 has had plenty of opportunity, and there's no law
10 that suggests otherwise to convince the Court to
11 overturn this agreement.

12 We ask you to approve it, and as you said,
13 we're going to be submitting a memorandum of law and
14 proposed order within the next 30 days, I believe.
15 So with that, I would just turn it over to
16 Mr. Bartlett or Mr. Hinds.

17 THE COURT: Before I hear from Mr. Grosso,
18 I'll see whoever else on that side of the table
19 wishes. Mr. Hinds?

20 MR. HINDS: Yes, Your Honor. May it please
21 the Court. I'm going to try real hard not to go
22 over the same row that Mr. Moore just went over.

23 Your Honor, the Bert Harris Act specifically
24 describes what the role of the Court is in this
25 circumstance under 4d.2, and just two things; one,

1 make sure that the public interest is -- that what's
2 served by the statutes that were contravened is
3 covered by the settlement agreement, and we've had
4 testimony on that. I'll get to that in a minute.
5 And the second is that the settlement agreement is
6 the appropriate relief necessary to protect the
7 governmental regulatory effort from inordinately
8 burdening the property.

9 With respect to that first prong, way back
10 when we heard from Michael Jacob. He testified that
11 there were three statutes that were contravened, and
12 those are the only reasons I actually had to file an
13 action. As Mr. Moore said, if we hadn't contravened
14 any statutes, you know, this would just be up for
15 board approval.

16 So those three statutes are 163.3194, which is
17 the consistency statute that any act that the county
18 does has to be consistent with the comp plan.
19 163.3184, which is a notice provision regarding
20 amending the comp plan, and 125.66, which is a
21 notice provision regarding passing ordinances, which
22 is how Lee County goes about amending its comp plan.

23 We've had no evidence or argument that any
24 other statutes were contravened. So the Court's
25 review really should be limited to whether or not

1 those three statutes have been satisfied, at least
2 in an analog fashion by the settlement agreement.

3 And by and large, what they deal with is the
4 right of the public to participate and to have
5 notice. I don't need to go back over all the
6 public -- four public meetings, mailings, et cetera.
7 So clearly that prong has been satisfied.

8 The second prong with respect to the relief
9 necessary, I think Mr. Moore has done an onerous job
10 in covering that. I just want to emphasize that
11 from the county's perspective, we're not dealing
12 with a blank slate here, and from the Court's
13 perspective as well.

14 There really are only three choices with what
15 to do, right? We can -- the county could accept
16 Judge Fuller's ruling and deny -- continue to deny
17 the mining rights, which would result in a minimum
18 of \$63 million plus for a few years, which is not a
19 good choice to leave it in ag. Although, I suspect
20 that's, I think, what we've heard from the
21 intervenors is that they would like that. That's
22 really not a viable option from the county's
23 perspective.

24 The second would be to concede that, okay,
25 we're going to have a mine here. But it's not just

1 any mine. It's a mine that would have been approved
2 in 2007. And the Court, again, has heard extensive
3 evidence that, even from the intervenors, that
4 that's not a pretty thing. That's not -- that's not
5 going to be in the public's best interest.

6 And what that leaves us with is only option
7 number three, which is to approve the settlement
8 agreement and the development that goes along with
9 it. And you've heard uncontravened testimony from
10 Mr. Hutchcraft that that was the minimum that they
11 would take. So there really hasn't been any
12 evidence presented to the contrary on either of
13 those points.

14 I guess, you know, if I was in front of a
15 jury, I would be asking for a directed verdict at
16 this point. What we have is argument from the other
17 side, and it's kind of this bob and weave thing
18 where it's like, well, maybe it's agricultural or
19 maybe it's a smaller development. But we've heard
20 -- all we've heard -- the only testimony we've heard
21 is that that won't do.

22 Lastly, let me -- actually, it's the second to
23 last. Let me touch on the standard of review. At
24 the very outset, Mr. Bartlett handed you a case
25 called City of Homestead, which is now recorded in

1 the official report of 346 So.3d 1205. That
2 involves a Bert Harris settlement as well, and it's
3 not quite on all fours with where we are today, but
4 it's pretty close.

5 In that case, there was a judicial challenge
6 of a Bert Harris settlement, and what the Third DCA
7 found there was just what Mr. Moore told you, is
8 that the act of deciding whether or not to settle a
9 lawsuit by a county is legislative or executive. It
10 is not quasi judicial, and therefore, it needs to be
11 upheld unless it's arbitrary, capricious,
12 confiscatory or violative of constitutional
13 guaranties. Again, there's been no evidence
14 whatsoever presented from the intervenors of any of
15 those four things.

16 And then, finally, Your Honor, the Bert -- and
17 this was touched on by Mr. Moore, the Bert Harris
18 Act does allow, in fact, it encourages settlements
19 that use other property other than one that's the
20 subject of the claim.

21 When you go back and review the Bert Harris
22 Act, you'll see that Section 4C has 11 menu choices,
23 if you will, options for settling a case. The
24 first -- the first nine are all things that you can
25 do. Number 10 is just go ahead and pay for the

1 development rights. And number 11 is do nothing.
2 Okay.

3 The Bert Harris Act also contains a specific
4 definition of real property, and I know we've talked
5 about this in front of you before, but the
6 definition of real property in this case is the
7 property that's actually impacted by the negative
8 decision of the board.

9 That word real property appears only once in
10 that laundry list of settlements. And it appears
11 with respect to when you're paying for the
12 development rights. The county can only pay for the
13 development rights on the real property, but
14 everything else is fair game to use other property.

15 As a matter of fact, the legislature goes out
16 of its way to use words other than real property.
17 Like, it will say property, or it will say land, but
18 it never invokes the defined term real property. So
19 that gives you a hint that -- of the breadth and
20 creativity that the Bert Harris Act encourages in
21 settling things -- or settling claims.

22 Additionally, if you look down that list, and
23 I think we covered this a little bit in our
24 memorandum that we filed earlier today, some of the
25 resolution choices, if you will, require the use of

1 other property that wasn't part of the claim. You
2 heard Mr. Moore talk about land swaps, transfer of
3 density rights.

4 The settlement agreement that was approved by
5 the board actually hits all nine of the options
6 under that Section 4C. The only ones it doesn't hit
7 is paying for the development rights and doing
8 nothing.

9 So we try to be respectful of everyone's time,
10 and that's all I have to say, Your Honor. If you
11 would, find that Lee County has checked all the
12 boxes and uphold the decision to adopt the
13 settlement agreement. Thank you.

14 THE COURT: Thank you. Anything from
15 Mr. Bartlett?

16 MR. BARTLETT: No, Your Honor.

17 THE COURT: Mr. Grosso.

18 MR. GROSSO: Thank you, Your Honor. By the
19 petitioners' own proof, they have failed to
20 demonstrate that this settlement meets the very
21 strict terms of the Harris Act. We do not need to
22 bring any additional evidence of our own. The facts
23 as they have come out through their own testimony
24 demonstrates this settlement cannot apply with this
25 law.

1 The Harris Act says, It authorizes relief to a
2 landowner when a specific action of a governmental
3 entity has inordinately burdened an existing use of
4 real property.

5 It defines real property to mean -- I jump
6 ahead -- the term includes -- and why would the
7 legislature have written it this way -- the term
8 includes, only parcels that are the subject of and
9 directly impacted by the action of a governmental
10 entity.

11 The case law tells us that because it's in
12 derogation of common law, because it authorizes
13 waivers from other statutes, the Harris Act is to be
14 interpreted and applied very strictly.

15 And so this idea of it being a legislative
16 decision, well, it's not purely a legislative
17 decision. Otherwise, the statute would not have
18 said, in order to protect the public interest, a
19 settlement agreement must be submitted to a circuit
20 court judge.

21 If you are going to violate the rules that
22 otherwise apply, you have to take that settlement
23 agreement to a circuit court judge, and the circuit
24 court must ensure that the relief granted protects
25 the public interest. That's one of the

1 requirements.

2 If you were to find that the settlement
3 agreement actually sort of sideways protected the
4 public interest, that's still not enough. Now, we
5 don't believe it does, but in addition to that, it
6 is the other strict requirement of this very limited
7 waiver of the rules authorized by this law that the
8 petitioners demonstrate that the settlement
9 agreement is the appropriate relief necessary to
10 prevent the government regulatory effort from
11 inordinately burdening the real property.

12 Now, you've been presented with a false
13 choice. If you don't approve this settlement
14 agreement, we will mine the property, and that's
15 horrible, or we will continue to farm the property,
16 and that's horrible, too. Yet, by their own
17 testimony, nothing about the activities going on on
18 this property are violating any laws now.

19 I think the parade of horrors about how bad
20 farming is on this property, I think to say the
21 least, have been overplayed. The false choice you
22 have been given is you have to approve this amount
23 of development. You have to approve 10,000 units of
24 homes, 700,000 square feet of commercial
25 development, a 240-room hotel. It's all or nothing.

1 We won't accept anything less than that.

2 Question and answer is, there's no inordinate
3 burden analysis that was done here. This law allows
4 a waiver of rules only to the extent needed to avoid
5 an undue burden on the property owner.

6 Now, what you've heard today is that this
7 project, the amount of development that's allowed,
8 the type of development that's allowed by it, it's
9 exactly the same, maybe a few details are different,
10 of other projects that have been approved that had
11 nothing to do with the Harris Act.

12 It's a garden variety suburban development
13 approved because that's what the developer wants,
14 and the local government gave it. There's no
15 determination. There's no analysis. There's no
16 proof that the development rights granted here don't
17 go above and beyond what's needed to avoid a
18 property rights violation. You've heard there's no
19 such proof. They have not done that analysis
20 whatsoever.

21 Here's the definition of inordinate burden,
22 Your Honor, under the statute, that the property
23 owner is permanently unable to attain the reasonable
24 investment expectation for the existing use of the
25 real property or a vested right to a specific use

1 with respect to the property as a whole -- I'm
2 paraphrasing a little bit -- or that the property
3 owner is left with existing or vested uses that are
4 unreasonable, such that the property owner bears a
5 permanently disproportionate share of the burden
6 imposed for the good of the public, which in
7 fairness, should be borne by the public at large.
8 That's what it takes for a regulatory decision to be
9 an inordinate burden.

10 What you've heard is we invested an amount of
11 money into this property, and if the settlement goes
12 through, we're going to double that. Not exactly an
13 inordinate burden. Nowhere close to an inordinate
14 burden. It's a garden variety development approval.
15 It violates the Lee County Comprehensive Plan on the
16 stuff that's the most important thing the plan
17 regulates, how much development, where.

18 Under this settlement agreement 6,000 acres
19 that are currently slated for rural development and
20 farming and mining, the one unit per 10-acre
21 development, that's rural. That's rural
22 development. That's country.

23 We are bending the rules, not by a little bit,
24 but by enough to put 10,000 homes, 700,000 square
25 feet of commercial development and a hotel. A major

1 urban/suburban, if you will, infrastructure. Not
2 bending the rules a little bit to avoid violating
3 property rights. Bending the rules completely to do
4 a deal that the developer says that's all I will
5 take. Not an inordinate burden analysis. A
6 negotiated settlement to avoid litigation. Now that
7 can't be, Your Honor, if the purpose of the Harris
8 Act was local government gets to settle any case
9 because of the cost and burden of litigation and
10 that would have been the standard. That's not the
11 standard. The Chisholm case tells us that. You
12 can't just turn and say, well, we're going to
13 resolve litigation. We won't have to pay our
14 lawyers. We won't have to go through that. That's
15 the public benefit of settling under the Harris Act.
16 That's obviously not what the Harris Act
17 contemplates.

18 And going back to that inordinate burden
19 thing, this landowner knew what the rules were when
20 they purchased the property in 2016. They knew you
21 couldn't develop a new city out there. They knew
22 you couldn't do that amount of development. They
23 knew it was planned only for country type of
24 development and as well as mining. But they bought
25 it anyway. They took their own risk. That's how it

1 works.

2 Takings law is very clear. Property rights
3 law, Harris Act law is very clear. You buy land
4 subject to existing restrictions, you make a
5 business decision, that's what you got. You're not
6 entitled to a massive land use change to increase
7 the development.

8 What did we hear today, Your Honor, 15 times
9 the amount of residential density as is currently
10 allowed by the rules. That's not what property
11 rights are. That's not what the Harris Act was
12 designed to give a windfall to developers. That way
13 they bought with knowledge of the rules.

14 The property, you're not allowed to give
15 development rights to property that was not -- the
16 real property that was inordinately burdened. It's
17 clear. The legislature said that. That's the text
18 of the law. We can't go beyond that.

19 To the extent the law authorizes things like
20 land swaps or transferable development rights, that
21 obviously contemplates you're preserving the land
22 that was regulated, and in exchange for that, you're
23 swapping some land to the developer. You're giving
24 transferable development rights. The law obviously
25 doesn't contemplate that, oh, when you turn down

1 approval for a piece of land for valid public
2 purpose reasons, what the Harris Act intent is, is
3 that then you get to develop all of that land
4 instead. That can't be what the Harris Act is
5 written to do, to allow the development, complete
6 development of the property, that was the subject of
7 a valid bona fide regulatory decision. You've been
8 given a false choice.

9 The Harris Act might have allowed some
10 additional amount of development on the property.
11 The idea that it's got to be take it or leave it,
12 Your Honor, take it or leave it, 10,000 homes,
13 700,000 square feet, a major hotel, all that urban
14 infrastructure, we won't take a dime less, we won't
15 take a unit less, we won't take a shopping center
16 less. That's not what the Harris Act is about.
17 They've got to demonstrate they haven't gone beyond
18 the rules any more than absolutely necessary to
19 avoid an inordinate burden.

20 What you heard today is that under this deal,
21 the landowner is going to double their investment.
22 That cannot be. There is not going to be a case
23 that we will ever find in federal takings law, state
24 takings law, state Harris Act interpretations that
25 remotely suggests that doubling your money is what

1 the Harris Act contemplated, Your Honor. You've
2 been given a false choice here, and I haven't even
3 talked about the public interest test yet here.

4 I think that the last point that I will make
5 about the public interest test here is that I think
6 you've heard from regulatory people at the county,
7 they were told we're going to negotiate this
8 settlement, make it work. Come up with ways that we
9 can argue that it's in the public interest.

10 But you heard the planner. I wasn't consulted
11 on whether this level of intensity of development
12 was appropriate for this property. You have not
13 been -- it's been -- not been demonstrated to you
14 that the amount of development authorized with the
15 settlement has any connection whatsoever to avoiding
16 an undue burden on this property owner. What you've
17 heard instead, I might suggest, is, in fact, a
18 pretty nice windfall.

19 My clients have nothing against profit. Yes,
20 profit is contemplated, but the point of the Harris
21 Act is that you can only authorize this undue amount
22 of profit to the extent necessary to avoid a
23 complete burden on the property owner. Otherwise,
24 under state law, these rules are there for a
25 purpose. There's a reason that state law requires

1 comprehensive plans. There's a reason the state law
2 prohibits the approval of development that violates
3 comprehensive plans.

4 That's why the Harris Act says it's only a
5 narrow waiver of that law, that comprehensive plan
6 consistency requirement, only to the extent
7 necessary to avoid violating the private property
8 rights, and the petitioners have not demonstrated
9 the settlement agreement meets that test.

10 It gives development rights for property that
11 had nothing to do with the Harris Act, and it gives
12 you development rights to this property far in
13 excess of anything that's been demonstrated to be
14 the minimum necessary to avoid an undue burden.

15 We ask that you reject the settlement, Your
16 Honor, and I appreciate all the Court's courtesy,
17 and I thank you very much.

18 THE COURT: Thank you.

19 MR. MOORE: Can I have a brief response?

20 THE COURT: I knew you couldn't help yourself.

21 MR. MOORE: I can't, especially having done
22 the takings law and Bert Harris law for so many
23 years, I think it's the first time I ever heard
24 anyone say that takings law is really clear.

25 Justice Scalia and Justice Ginsburg, you name it,

1 Justice Alito, I don't think anybody has suggested
2 that, particularly Bert Harris law.

3 What is clear, though, a couple of things.
4 One is that the reason that the law says that Bert
5 Harris law should be strictly construed has to do
6 with the waiver of sovereign immunity. Now, who is
7 challenging the power of the sovereign here? Is it
8 the landowner? No. The county has made a decision.
9 We've agreed with them. Negotiate a settlement.
10 Legislative act. The challenge to the sovereign
11 power is by the intervenors. They want you to
12 second-guess the county commission. With all
13 respect, that is not the Court's role. The Court's
14 role is very circumscribed by the statute.

15 So to say, well, 10,000 units wasn't right.
16 Maybe it should have been 5,000 or 8500, or maybe
17 the amount of commercial use wasn't. That's -- that
18 is not before the Court.

19 Now, the other issue I take with what counsel
20 said, and, again, this is based on a good bit of
21 experience with regard to how land is valued and
22 what the owners do, but I -- and I look forward to
23 the intervenors' memorandum of law and proposed
24 order, because I don't believe there's any law that
25 I know of that says that an owner is only entitled

1 to recover his or her investment. That's not the
2 test.

3 In fact, Lee County vs. Brigham, an old case
4 back in the 50s, says it doesn't matter if the owner
5 could have inherited from his Aunt Suzy, the
6 property. It still would be entitled to the highest
7 and best use of the property in terms of the
8 valuation. That is a -- it's a false test, and I
9 don't know where it came from, and I look forward to
10 seeing the law that supports that when counsel
11 submits his proposed order.

12 No, it's the value that the market indicates
13 based on the highest and best use of the property.
14 Is the highest and best use a mining use? Well,
15 that's the contention of the owner and the appraiser
16 that did this, and Maxwell Henry, the same appraiser
17 that the county uses for their eminent domain and
18 other issues. Is it what the owner says the
19 royalties going out for 30, 40, 50 years could be as
20 much as a billion dollars, 500 million?

21 If you look at the appraisal that's attached
22 to the Bert Harris claim letter, the land values are
23 really quite close. Mining, according to the
24 appraiser, not on the royalty approach, but just on
25 the comparable sales approach was 20,000 an acre,

1 whereas, this sale three years after, not counting
2 the interest, is for \$5,000 an acre more at \$25,000
3 an acre.

4 So to say that this windfall is a terrible
5 thing because it's greater than the investment of
6 the owner, none of those issues have any merit in
7 considering the inordinate burden or whether the
8 relief is enough to satisfy meeting that burden.

9 The inordinate burden has been that the owner
10 has been prohibited from achieving the highest and
11 best use of this property when the court said
12 basically that's what the comprehensive plan allows,
13 a mining use.

14 Now, for good, solid reasons the county
15 commission says, no, we don't want to do a mining
16 use there, but by golly, they will settle this
17 thing, and -- and achieve all those public benefits
18 as a side.

19 If you look at the law, and we'll submit this
20 extensively, but one of the cases that I was glad to
21 see that counsel cited is the Rainbow River
22 Conservation case that he sent to you as
23 supplemental authority. Rather than just read it,
24 if I may, just give it to the Court.

25 THE COURT: You may.

1 MR. MOORE: The last page. The appellate
2 court indicates that while the intervenor said you
3 can't violate the comprehensive plan, that's
4 contrary, directly contrary to the language of the
5 Bert Harris action. And that -- that's the whole
6 point of hearings like this, to see that if the
7 statute is contravened, and this is one of them, and
8 that deals directly with the comprehensive plan, is
9 that offset by a public benefit. So I think that's
10 been proved doubly and triply here.

11 We would also point out, and I've submitted a
12 notice of supplemental authority to the Court, and
13 one of the cases that I would ask the Court to look
14 at is the Omni National Bank case, and, again, I
15 have it here. That talks about intervenors, and how
16 the intervenors have to take the pleadings and the
17 issues as they find them, and they're not allowed to
18 introduce new claims, new matters into the purview
19 of the court, because they're guests, invited
20 guests, but to introduce new matters is something
21 that the intervention law does not permit.

22 So the bottom line is, the objections of
23 counsel for the intervenors have to do with a public
24 benefit that he doesn't agree with, challenges the
25 power of the sovereign, in this case, Lee County, to

1 make a legislative decision, thinks the Court ought
2 to second guess them, and has zero, zero evidence to
3 support any of his contentions.

4 We ask you based upon that presentation and
5 based on what you've heard on the August 31st and
6 today to approve this settlement agreement after
7 you've been able to review the law that's been
8 submitted by both sides. Thank you.

9 MR. GROSSO: 15 seconds, Your Honor?

10 THE COURT: I've got to give Mr. Bartlett a
11 shot --

12 MR. HINDS: No.

13 THE COURT: -- or Mr. Hinds.

14 MR. BARTLETT: We're done, Your Honor.

15 MR. MOORE: We're the -- go ahead.

16 MR. GROSSO: 15 seconds.

17 THE COURT: I will allow, but you do realize
18 that Mr. Moore will have the last opportunity,
19 should he wish.

20 MR. GROSSO: Thank you, Your Honor. The only
21 point I would make is the intervenors have not
22 introduced any new issues. The issue of whether
23 this is an appropriate relief granted the minimum
24 amount necessary to avoid an undue burden and
25 whether it applies to the correct spacial amount of

1 property, those issues are already before the Court
2 given the nature of the joint petition and the
3 rulings that the Court had to make, whether we
4 showed up in this court or not. So I just wanted to
5 be clear about that point, Your Honor. And, again,
6 I thank the Court for all its indulgences. Thank
7 you.

8 THE COURT: Thank you.

9 MR. MOORE: We'll respond directly to that
10 point in our written submission.

11 THE COURT: Thank you.

12 MR. MOORE: Thank you, Your Honor.

13 THE COURT: We are in recess. Thank you.

14 (Thereupon, at 5:18 p.m., the proceedings were
15 concluded.)

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C E R T I F I C A T E

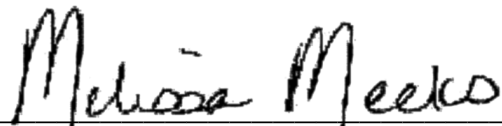
STATE OF FLORIDA)
COUNTY OF LEE)

I, Melissa Meeks, RPR, FPR, do hereby certify that I was authorized to and did stenographically report the proceedings and that the foregoing transcript, pages 1 through 301, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 28th day of November, 2022, at Fort Myers, Lee County, Florida.

(This transcript has been digitally signed.)


Melissa Meeks, RPR, FPR

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