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TOWNSHIP OF WEST ORANGE
DEPARTMENT OF PLANNING AND DEVELOPMENT
WEDNESDAY, JANUARY 29, 2025
6:30 P.M.

RE; PB-24-01 WEST ESSEX HIGHLANDS, INC.

BOARD MEMBERS:

ROBERT BAGOFF, Chairman
JERRY GUARINO, Vice Chairman
SUSAN MCCARTNEY, Mayor
WILLIAM WILKES II
JOHN R. CARDOZA (Alternate 1)
KEN ALPER
SUSAN SCARPA, Councilwoman

JOHN HESS, Engineer
GERARD M. HAIZEL, Planner
JAMILET BAQUERIZO VITE, Board Secretary
GENIECE GARY-ADAMS, Zoning Official
JOSEPH FAGAN, Zoom Moderator

WITNESSES:

MARK SEEL, Geological & Geotechnical Engineer
JOHN McDONOUGH, Planner

FISHMAN COURT REPORTING AGENCY
89 HEADQUARTERS PLAZA NORTH
4 SPEEDWELL AVENUE, SUITE 1440
MORRISTOWN, NEW JERSEY 07960
(973) 285-5331 - FAX - (732) 605-9391

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APPEARANCES:

HUTT, SHIMANOWITZ & PLOCKER, ESQS.
BY BRYAN D. PLOCKER, ESQ.
Bplocker@huttshim.com
459 AMBOY AVENUE
WOODBIDGE, NEW JERSEY 07095
Appearing on behalf of the Applicant

GACCIONE & POMACO, ESQS.
BY DIANA P. MCGOVERN, ESQ.
ONE BOLAND DRIVE, SUITE 102
WEST ORANGE, NEW JERSEY 07052
Appearing on behalf of the Board

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
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4

1

2

3

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CHAIRMAN BAGOFF: We're now up to application PB-24-01 West Essex Highlands, Inc, Block 179 Lot 32 Zone IH-1 Warner Road. The application proposes to develop a 496 unit inclusionary multifamily residential development on a vacant 120-acre property in the northwest corner of the Township.

Mr. Plocker, for the applicant.

MR. PLOCKER: Good evening, Chairman Bagoff. Brian Plocker of the firm Hutt, Shimanowitz & Plocker, here on behalf of the applicant, West Essex Highlands, LLC. Okay.

Just before we start tonight, I understand that the objectors attorney, Mr. Afran, is ill, and will not be here. I know we had some communication. I will just confirm for the board, his group and Mr. Afran, if he's watching, hope you feel better and to the extent we need to bring any witness back tonight for cross examination, we will do so. We just don't know when that may be. We may have to work the schedule a little bit, but we will agree to do that

CHAIRMAN BAGOFF: Thank you, Mr. Plocker.

MR. PLOCKER: All right.

The applicant would like to call Mark Seel.

Mr. Seel -- you have to swear him in.

MS. MCGOVERN: Yes.

5 1 Could you put your full name on the record. 2 MR. SEEL: Mark Seel. 3 MS. MCGOVERN: S-E-E-L, correct? 4 MR. SEEL: That is correct. 5 MS. MCGOVERN: Do swear or affirm to tell 6 the truth and nothing but the truth so help you God. 7 MR. SEEL: I do. 8 M A R K S E E L, having been duly sworn 9 under oath testifies as follows: 10 Q. Thank you, Mr. Seel. 11 If you would just offer your credentials for the 12 board. Tell them in what respect you're testifying 13 tonight and give them a little bit about your 14 educational background and experience. 15 A. Sure. Thank you. I have over 30 years of 16 experience in geological and geotechnical engineering 17 throughout the United States and overseas. I have a 18 bachelor's degree from the Colorado School of Mines -- 19 CHAIRMAN BAGOFF: Can you talk into the 20 microphone, sir. 21 A. I have a bachelor's geological degree from 22 Colorado School of Mines and a masters degree in 23 engineering, environmental/civil engineering from 24 Stevens Institute of Technology. 25 Over 30 years of experience working throughout	7 1 your findings were? 2 A. Yes. So I was retained, or our firm was retained 3 to basically assess whether or not Building D, which is 4 at the top of the slope, if it's safe to build at the 5 top of that slope. And so what we had done to evaluate 6 that condition is we did a subsurface investigation that 7 consisted of drilling four soil borings and some rock 8 borings as well as some other additional test pits to 9 evaluate the ground conditions throughout the slope, at 10 the top of the slope where Building D is located as well 11 as further down the slope to the east. We ran some 12 laboratory tests to determine certain soil rock 13 parameters, strike parameters and we ran a slope 14 stability analysis using our software program to 15 evaluate the ground conditions. What we found in our 16 investigation was that the soil profile is generally 17 very dense and it's overlying a relatively hard and -- 18 relatively hard rock and subject conditions at the time 19 of the investigation were dry. 20 The slope itself is fairly densely vegetated as 21 perhaps well understood, which include significant tree 22 cover as well. And we found that this, this type of 23 soil profile and the generally shallow slope, which is 24 on order of between 10 and 17 degrees from horizontal, 25 so, again, relatively flat, is inherently stable given
6 1 New Jersey as well as the rest of the United States and 2 overseas. 3 Projects that I worked on, I attended project 4 development areas, small scale, large scale residential, 5 retail, industrial, commercial, energy power, all areas 6 of infrastructure within the building environment and 7 specializing in geotechnical engineering. I focus on 8 development and supervision of geotechnical 9 investigations, geological investigations as well as 10 interpretation of data and the development of solutions 11 and recommendations for development of grounds which 12 would include stabilization of slopes, etc. 13 Q. And you're license in New Jersey? 14 A. I am licensed in New Jersey as well as a dozen 15 other states both in geology and civil engineering. 16 Q. And your license is in good standing? 17 A. Correct. 18 CHAIRMAN BAGOFF: Okay. Thank you. 19 Do any members of the board have any questions? 20 Seeing none, we will accept Mr. Seel as a licensed 21 geotechnical expert in the State of New Jersey. 22 MR. PLOCKER: Okay. Thank you very much. 23 Q. Mr. Seel, I'm going to turn it over to you. Can 24 you just initially explain to the board what you were 25 retained to do by the applicant, what you did, and what	8 1 the strength and materials that are involved in our 2 analysis. And we found that, that, that they are 3 inherently stable, both under existing condition and 4 there was no change when we analyzed the condition where 5 Building D is put in place at the top of that slope. 6 There's the -- our analysis proved or showed us that the 7 slope is both inherently stable in existing condition as 8 well as the proposed future condition. 9 Q. Okay. 10 And just for the record Mr. Seel, we did file 11 with the board a report from Langan Engineering, there's 12 a executive summary letter dated January 14, 2025 13 followed by a more comprehensive report dated January 14 14, 2025. I just wanted to confirm that, that report 15 was prepared by you and/or your supervision with Lagan? 16 A. That is correct. 17 Q. Okay. 18 And you rely on that report today and support 19 it's contents, data that's contained therein in the 20 conclusions? 21 A. That correct. 22 Q. Okay. 23 MR. PLOCKER: I have nothing further for Mr. 24 Seel. 25 CHAIRMAN BAGOFF: Okay.

9 1 So we'll go around the board. 2 Mayor McCartney, do you have any questions 3 for the professional, Mr. Seel, on his testimony? 4 MAYOR MCCARTNEY: Thank you for being here, 5 because that was one of my major concerns, I was talking 6 to our engineer about that slope. The Township had 7 adopted a steep slope ordinance in 2001, so we're 8 saddling this applicant with that ordinance and I wanted 9 some assurances about the stability of that slope. So I 10 guess we'll dig further into this, no pun intended. 11 Thank you. 12 Thank you, Mr. Chairman. 13 CHAIRMAN BAGOFF: Thank you, Mayor 14 McCartney. 15 Vice Chairman Guarino, do you have any 16 questions on Mr. Seel's testimony? 17 VICE CHAIRMAN GUARINO: Not at this time, 18 Mr. Chairman. 19 CHAIRMAN BAGOFF: Mr. Alper, do you have any 20 question on Mr. Seel's testimony? 21 MR. ALPER: In the report, one of the 22 graphics in the report shows Building D where it is and 23 it also shows a drawing of the line that's labeled, I 24 think on the report at the top of the slope or 25 approximate top of the slope. I notice in some back and	11 1 MR. HESS: Just one quick question. 2 Is there any seismic risk at the property? 3 THE WITNESS: So in terms of generally 4 speaking in New Jersey seismic risks are low. There is 5 a map what's called fault, which is discounted the rock, 6 that is, I believe it was maybe a half mile or a quarter 7 mile away. Sorry, I will repeat that. There's a map 8 what's fault discounting the rock, but that is, there is 9 no activity on it that's in the record and it is 10 generally consistent with a lot of the other findings 11 available for seismic risk shock. Our findings are very 12 low seismic risk. 13 MR. HESS: Okay. Thank you. 14 CHAIRMAN BAGOFF: Mr. Haizel, do you have 15 any questions on Mr. Seel's testimony? 16 MR. HAIZEL: Yes. 17 Just to pick up on Mr. Hess. If -- is there 18 any risk when you factor in any type of blasting into 19 the process? 20 THE WITNESS: So any type of blasting I would 21 just emphasize caution on. I would say blasting of any 22 rock can be done safely. I have been involved and I've 23 recommended blasting within a foot of high-rise 24 foundation buildings, towers. As long as they're 25 controlled blasting techniques that are put in place,
10 1 forth questioning and previous testimony from other 2 witnesses the concept of the zoning allowing for 3 building only on one side of the, I think the ridge line 4 is the expression used, if I'm remembering correctly, 5 but that's not -- how far is the closest approach of 6 Building D to the actual top of the slope to that line 7 in the center there? 8 THE WITNESS: To the -- so there's two lines 9 on the drawing, one is a limit of disturbance line, the 10 dash line. There's another line that you're referring 11 to, the closest points about 13 feet, if I recall. 12 MR. ALPER: So I think it was 7 feet from 13 the line of disturbance, to the area of disturbance 14 line, but it's 13 feet from the slope? 15 THE WITNESS: I'd have to verify, but that's 16 what I recall. 17 MR. ALPER: Okay. Thank you. 18 CHAIRMAN BAGOFF: Mr. Wilkes, do you have 19 any questions of Mr. Seel on his testimony? 20 MR. WILKES: No, no questions at this time. 21 CHAIRMAN BAGOFF: Councilwoman Scarpa, do 22 you have any questions on Mr. Seel's testimony? 23 COUNCIL PERSON SCARPA: Not at this time. 24 CHAIRMAN BAGOFF: Mr. Hess, do you have any 25 questions on Mr. Seel's testimony?	12 1 blasting can be done very safely on any -- in any 2 setting. 3 MR. HAIZEL: But is there anything 4 particular about this profile as you mentioned that is, 5 makes it a little more at risk with blasting? 6 THE WITNESS: No, there is nothing about this 7 site that's inherently, in my view, inherently at risk 8 of blasting. As long as controlled blasting techniques 9 are properly implemented, there's no risk. 10 MR. HAIZEL: Thank you. 11 CHAIRMAN BAGOFF: Let the record show that 12 Mr. Cardoza joined the board. 13 Mayor McCartney. 14 MAYOR MCCARTNEY: Thank you. 15 Mr. Seel, Mr. Haizel's question begs the 16 question about is there anything that the applicant has 17 to do to shore up the slope if there's any blasting to 18 Building D? 19 THE WITNESS: No, typically what would happen 20 on many developments is that the contractor would design 21 construction documents that require such measures be 22 implemented and then the contractor would implement 23 those. That would be done at the drill site, so there 24 will be nothing needed within the slope. Findings of 25 the slope stability under seismic analysis show that it

13 1 still, it's still stable. So as long as blasting is 2 controlled, I don't see a risk to the slope. 3 MAYOR MCCARTNEY: Thank you. 4 CHAIRMAN BAGOFF: Okay. Thank you. 5 Do any members of the public have any 6 questions for Mr. Seel on his testimony? Please come up 7 to the microphone, state your name. 8 Ladies and Gentlemen, questions start with 9 when, why, what, where, which. Please don't testify 10 something that you know personally. Ask the expert 11 about testimony they have provided. Thank you. 12 THE PUBLIC: Thank you. Barbara White and I 13 get a smile that I get to ask the first question. 14 My question is about blasting. I am sure 15 you're aware in this particular instance there would be 16 blasting in order to handle stormwater runoff, what do 17 you call it, pools, etc., and then over the course of 18 time four buildings. So you mentioned that there's 19 nothing that you're aware of that would preclude during 20 blasting. I'm very interested in two things. One is 21 that you have multiple blast sites in a 36 acre space, 22 that's number one, and the second is as the work goes 23 along is there an opportunity to retest for any 24 movements as some major blasting takes place? 25 THE WITNESS: Well, on the first part. We	15 1 a very long period of time, would it be appropriate for 2 the planning board to ask that something that will 3 ensure that they're testing as construction goes along, 4 could be multiple years, to make sure there's no issue 5 with respect to blasting? 6 CHAIRMAN BAGOFF: I think it's going to be 7 up to the building department. Once they get the 8 documents they will work with the engineering firm to 9 ensure that everything is within code and within the 10 state regulations. 11 Would that be reasonable to say? 12 MS. MCGOVERN: That's not a condition. 13 CHAIRMAN BAGOFF: That's not a condition, 14 that's normally what happens. 15 Mr. Plocker. 16 MR. PLOCKER: Yeah, I said that is standard 17 procedure of my client throughout this process and any 18 period of compliance we will be working with the towns 19 professionals in connection with that item as with 20 respect to many others as well. 21 CHAIRMAN BAGOFF: The way things are done on 22 a regular basis with the township building department. 23 THE PUBLIC: Thank you. 24 CHAIRMAN BAGOFF: You're welcome. 25 Come on up.
14 1 were retained strictly as to the slope issue, so I can't 2 really -- I'm not familiar with the other aspects on the 3 site. But in general when you talk about blasting, as 4 long as the blasting is properly staged and carefully 5 implemented I wouldn't see, I don't, I wouldn't expect 6 there to be any compounding effect, if that's what your 7 question is. 8 THE PUBLIC: That's actually the second 9 question I asked. I understand it's going to be over a 10 long period of time, multiple blastings from multiple 11 building foundations, water, etc. So, again, is there a 12 possibility of an accumulative effect or you don't know 13 that? 14 THE WITNESS: I think that's outside of my 15 testimony. But as it relates to the building, I would 16 suspect that rock is blasted to construct the building 17 foundation that it would be done in a sequence manner, 18 relatively short-term and the, because the soil profile 19 is granular an relatively dense, I don't suspect there 20 to be any negative impacts on the stability of the 21 slope. 22 THE PUBLIC: Okay. 23 Mr. Bagoff, I don't know if I can ask this 24 question. 25 With the, considering all the blasting over	16 1 THE PUBLIC: Nancy Meyerowitz, 19 Howell 2 Drive. M-E-Y-E-R-O-W-I-T-Z. 3 My question is, from looking at the report, 4 I looked at most of it, I don't see any reference to 5 Howell Drive. You look solely down the other side of 6 the slope but, I mean, everybody on Howell Drive is at 7 the bottom slope as well, looks like that wasn't 8 considered at all? 9 THE WITNESS: That's the area to the -- 10 CHAIRMAN BAGOFF: Mr. Seel, speak into the 11 microphone, please. 12 THE WITNESS: That's to the north? 13 THE PUBLIC: Below the cul-de-sac. We all, 14 you know, get runoff and water and everything from above 15 the cul-de-sac, so we're considered, we believe we're a 16 slope, at the bottom of the slope as well. 17 MR. PLOCKER: I just want to say to the 18 extent that runoff is going to be discussed, I don't 19 think Mr. Seel testified about stormwater and drainage, 20 things to that nature. Not to say they're not important 21 to you and we recognize that they are, but his testimony 22 in his report was limited to the stability of the 23 location of Building D. 24 THE PUBLIC: But Building D is right above 25 my house. So I mean, how do you know there's no impact

17 1 from building Building D on the homes on Howell Drive? 2 CHAIRMAN BAGOFF: He didn't speak about 3 water runoff. 4 THE PUBLIC: I'm not talking about water. 5 I'm talking about Building D and stability of the slope 6 below Building D, because slope has two sides. 7 CHAIRMAN BAGOFF: What aspect -- I'm sorry. 8 What aspect? He's a geotechnical expert so is there 9 something he's testified to? 10 THE PUBLIC: Well, did you look at -- you 11 said you did soil samples for the slope down on that 12 side, did you do any on Howell Drive and the impact of 13 Building D on Howell Drive? 14 THE WITNESS: That - there's no analysis in 15 our report for that. We took borings at accessible 16 locations along a few different places behind Building D 17 and we found all that material to be generally very 18 consistent. So I'm expecting that the same would apply 19 elsewhere. But, no, nothing in specific was analyzed 20 between Building D and the location that you're 21 referencing. 22 THE PUBLIC: Thank you. 23 CHAIRMAN BAGOFF: Step up to the mic and 24 give us your name for the record, please. 25 THE PUBLIC: Hi. My name is Victor Misarti,	19 1 foundations for instance. 2 THE WITNESS: So what I testified to earlier 3 was the use of controlled blasting techniques, this is 4 limiting the amount of charge per delay as shots are 5 produced. The amount of burden or amount of material 6 that gets blasted, things of that nature. So as long as 7 these are properly implemented, those types of methods 8 that we expect, and there's also a monitoring program 9 implemented along with any blasting program that 10 ensures, that provides understanding what the impasse 11 would be and then ensures the safety of the program. 12 THE PUBLIC: I'm sorry, you said monitoring? 13 THE WITNESS: Monitoring, correct. 14 THE PUBLIC: Okay. 15 So it's not going to be disruptive? 16 THE WITNESS: Well, what we would expect, 17 what I would recommend for any blasting, there's always 18 a monitor associated with it. So vibration monitors 19 will be set up to understand what energy is getting 20 behind the line of excavation. 21 THE PUBLIC: Thank you. 22 CHAIRMAN BAGOFF: Thank you. 23 State your name, sir. 24 THE PUBLIC: James White. 25 CHAIRMAN BAGOFF: Thank you, sir.
18 1 M-I-S-A-R-T-I. My properties right at the bottom of 2 that hill and I'm familiar with quite a bit of rock. 3 There's a little bit of soil and then a lot of rock. So 4 my question is about the rock and the blasting and the 5 geotechnical, I'm not sure, you tell me, maybe it's 6 construction related, but how are, I mean, can this rock 7 up on top be blasted? I mean, we've got underground 8 utilities, these large detention basins for the 9 buildings. I mean, is this capable of being blasted? 10 All this to remove all that rock. 11 THE WITNESS: Blasting as a method of 12 excavation is, is one of the preferred methods of 13 excavating this type of material. The material can be 14 very, very hard, it's not easy to excavate. Blasting is 15 a relatively more rapid form of excavation and it's 16 appropriate to use for this rock material that are at 17 the site. 18 THE PUBLIC: And then it all has to be 19 carted away or removed or something from the site? 20 THE WITNESS: Yes, be either reused somewhere 21 else on-site or removed. I don't know what the plan is. 22 THE PUBLIC: Thank you. 23 My second question is, will the blasting 24 cause any harm to the neighboring houses, neighboring 25 properties right over there? Does it affect their	20 1 THE PUBLIC: I live at 1399 Pleasant Valley 2 Way. 3 Hello Mr. Seel. How are you today? 4 THE WITNESS: Very good. 5 How are? 6 THE PUBLIC: Very well. 7 Mr. Seel, are you aware that there was 8 historic flooding approximately two years ago that 9 caused severe amount of damage to town? 10 THE WITNESS: I am not familiar with it, no. 11 THE PUBLIC: Okay. Reason why I ask this, I 12 am curious if, in your analysis you had mentioned that 13 the fault line and the stability was tested for all 14 expected weather patterns. Well, we have had some 15 pretty severe aberrations in weather, not just here in 16 New Jersey, not just here in West Orange, but throughout 17 the country. Storms dropping multiple inches per hour, 18 that kind of event would you analysis be able to 19 guarantee the stability of that slope if such a storm 20 were to arrive? 21 THE WITNESS: Well, as part of our analysis 22 we did look at raising of the water table. So in our 23 findings, in our borings and test pits showed no water 24 table present. And despite that, and despite there was 25 lack of evidence that there even was a seasonal water

21 1 table, we did modify the water table as part of our 2 analysis. We brought it up close to the ground surface. 3 So in other words, full saturation of the ground and it 4 was still stable. 5 THE PUBLIC: Okay. 6 And looking at the full saturation of the 7 ground would that also account for completely atypical 8 such as four or five times amount of rain that normally 9 falls on it at the same time, would it also account for 10 that, the weight of water on top of it? 11 THE WITNESS: Well, we don't look at the 12 intensity of the storms, this is for the slope. We're 13 looking at water within the core spaces and the slope 14 profiles are about as strong as it gets. 15 THE PUBLIC: Okay. 16 Well, the part of West Orange that collapsed 17 had stood for my entire lifetime and my mother's entire 18 lifetime, so we can't really use what were typically 19 happening in those kinds of situations, but I'll move 20 on. 21 The next question I have is, you said 22 several samples were taken around the area but not in 23 the area of Howell Drive, is that correct? 24 THE WITNESS: Correct. Nothing between the 25 building and Howell Drive. It was taken between	23 1 And based on four borings and eight test 2 pits you feel as if you have a complete understanding 3 and faith in the stability of an area that's something 4 like 36 acres, is that correct or how many acres, I'm 5 sorry? 6 MR. PLOCKER: I just want to make it clear 7 that his report was limited to the stability of the 8 location of Building D. 9 THE PUBLIC: Building D. 10 MR. PLOCKER: For a clear record, sir. 11 THE PUBLIC: Sure. 12 What's the acreage of that area? He knows. 13 THE WITNESS: I don't know the exact 14 acreage. 15 THE PUBLIC: But you feel that the four 16 borings and eight test pits were sufficient to 17 understand the area given that if this -- 18 THE WITNESS: In my professional opinion. 19 MR. PLOCKER: Only one person can talk at a 20 time. 21 THE PUBLIC: Sure. So you feel confident to 22 that point that nothing can happen that would cause any 23 of this to cause an avalanche or anything like that or 24 cause anything to sheer off and endanger the lives of 25 the citizens of our town? Based on that you feel
22 1 Building D and along the slope. 2 THE PUBLIC: And you said in your testimony 3 that you expect them to be the same and consistent with 4 the samples that you took from the other side, is that 5 correct? 6 THE WITNESS: Yeah. We expect that the 7 conditions are generally very stable. We also analyzed 8 a relatively weaker soil profile that the data showed 9 us. 10 THE PUBLIC: But what do you expect or what 11 do you base that expectation on, other than gumption? 12 THE WITNESS: It's professional experience 13 and our observations of the site conditions. 14 THE PUBLIC: So your professional experience 15 allows you to know what's going on 30 feet under the 16 ground, 40 feet from the blast sample? Just to throw of 17 random numbers. 18 THE WITNESS: No, I wouldn't say that. 19 THE PUBLIC: Okay. 20 How many samples did you take, sir? 21 THE WITNESS: So we did four borings and 22 eight test pits. 23 THE PUBLIC: Four borings, eight test pits? 24 THE WITNESS: Yes. 25 THE PUBLIC: Okay.	24 1 extremely confident, 100 percent. 2 THE WITNESS: I would say considering all the 3 investigations that we did and the fact that the slope 4 was very gentle, I would say a 17 degree slope at most, 5 which is three on one and the balance of it is much 6 lighter than that, that there is, that the risk that you 7 just described doesn't exist. 8 THE PUBLIC: Okay. Based on that area? 9 THE WITNESS: Correct. 10 THE PUBLIC: Okay. All right. 11 That's it for now. 12 CHAIRMAN BAGOFF: Thank you. 13 Come on up. State your name, please. 14 THE PUBLIC: Rachel Klein. Howell Drive as 15 well. 16 I have a couple general questions and then a 17 specific. I guess the first one would be, could you 18 provide some, I can see where you took the borings from 19 my house because it's marked in a bright pink and you 20 can obviously see that. But I think some people, your 21 crews actually took it, would it be possible to provide 22 the public with a map of the site looking down? 23 THE WITNESS: There is -- within our report, 24 there is a figure that shows the locations. 25 MS. MCGOVERN: Do you want to put it up.

25 1 MR. PLOCKER: We're going to get the page. 2 THE PUBLIC: Anyway, I can literally see it 3 out my kitchen window, but. 4 MS. MCGOVERN: What page is this? Do we 5 have a page number. 6 MR. PLOCKER: Well, there's an executive 7 summary at the end Diana, Ms. McGovern, and then there's 8 a report proper, but total is a 73 page PDF and it's 9 Page 8 of the 73 page PDF. 10 MS. MCGOVERN: Thank you. 11 MR. PLOCKER: This is of the Langan report 12 of January this year. 13 THE PUBLIC: And I just saw the size of the 14 machine and I'm guessing the size of the machine can 15 actually go on the slope because all the sites look 16 pretty flat, it never, none of these actual tests were 17 into any of the actual sloping parts and it's a huge 18 machine and I know from where I can see they're pretty 19 high up most of these sites that samples were taken. Do 20 you know any different? 21 THE WITNESS: Well, the borings and test 22 pits were taken as they're shown on here and some of 23 them are on fairly, they are steeper. The area itself 24 is generally flat. 25 THE PUBLIC: Just where Building D is going	27 1 representation based on the comments and questions that 2 we received at earlier hearings and the concern by the 3 public which we respected, we decided to go out and 4 retain Langan and Langan performed the study on behalf 5 of us. We then filed with the board and Mr. Seel is 6 here tonight. 7 THE PUBLIC: So you then decided as well, 8 but the developer -- 9 MR. PLOCKER: Based upon the comments, there 10 were a lot of comments made about the location of 11 Building D and why that was chosen and the specific 12 location it was in. Based upon those comments we had 13 Langan prepare the report regarding the stability of the 14 proposed location Building D as set forth on the site 15 plan. 16 THE WITNESS: I think you're asking who 17 prepared the boring locations. That was us. It was an 18 independent review of the ask and we developed this 19 program. 20 THE PUBLIC: So before you came to the site 21 were you familiar with the history of the land, the 22 site, things that have been developed around the ridge 23 line before, like the Highlands, the houses on Howell 24 Drive, the ground? 25 THE WITNESS: I can't say that we -- I
26 1 to go? 2 THE WITNESS: I'm saying where along the 3 steep agenda the profile has these two horizontal lines, 4 you a series of test pits and bores. I'm saying that, 5 that profile is generally relatively flat and I think 6 that means different things to different people. Some 7 people might -- 8 THE PUBLIC: Many people think flat is 9 like there's no hill. 10 THE WITNESS: Well, I would say relatively 11 flat in terms of slope. So what it means, 10 degrees is 12 relatively flat in terms stability. If the soil 13 material is very dense it has a very high degree of 14 strength relative to the slope. So if it has 34 degrees 15 of friction and your slope is only 10 degrees it's 16 material is inherently much more stable than the driving 17 forces would otherwise allow to, to sheer it. 18 THE PUBLIC: The other general question was, 19 whose decision was it to do the stability study? Was it 20 -- you're hired by the developer, but who's running it, 21 is the planning board, do you know, or was it the 22 developers? Curiosity. 23 THE WITNESS: That I don't know. The 24 request came from the owner. 25 MR. PLOCKER: I will make that	28 1 personally was familiar with all the development around 2 the site. 3 THE PUBLIC: The planning board said that 4 they do these kinds of tests and studies before any 5 developments get done for safety and stability. When 6 The Grand was built and they did the top of The Grand 7 there was a landslide and it knocked a couple houses on 8 -- 9 CHAIRMAN BAGOFF: I'm sorry. You're 10 testifying. You can ask questions about what he said. 11 Please don't testify. The public will come after we are 12 done. 13 THE PUBLIC: So were you aware of the 14 landslide in a very close location to this? It wasn't 15 owned by the same owner, it was the same ridge line and 16 hill, continuous forest. 17 THE WITNESS: No, I was not. 18 THE PUBLIC: And the very top of the same 19 slope just further south. 20 THE WITNESS: No, I wasn't familiar with it. 21 THE PUBLIC: Thank you. 22 CHAIRMAN BAGOFF: Thank you. 23 THE PUBLIC: Can I ask another question. 24 CHAIRMAN BAGOFF: State your name again, 25 sir.

29 1 THE PUBLIC: Okay. Victor Misarti, 2 M-I-S-A-R-T-I. 3 CHAIRMAN BAGOFF: Thank you. 4 THE PUBLIC: Thank you. 5 After I've seen the map I have a question. 6 These, the purple circles, those are borings or test 7 pits? 8 THE WITNESS: Yes, the purple symbols are 9 borings or test pits. It's hard to see from this, but 10 some of them are labeled LB would be the boring and TP 11 would be the test pit. 12 THE PUBLIC: Okay. Because I'm just 13 wondering for instance, the boring machines, I guess 14 they're on trucks, but how, I mean, that's a very steep 15 slope, how do they drive -- I can't imagine a truck 16 driving down that slope to do the borings? 17 THE WITNESS: I'm sorry, what is the 18 question. 19 THE PUBLIC: Okay. The question is, how do 20 you drive a truck down to those locations? 21 THE WITNESS: Well, what we typically will 22 do in areas where there is difficult terrain, we have a 23 all-terrain vehicle, could be tracked or rubber tire 24 that is capable of getting up and down steeper slopes. 25 THE PUBLIC: Okay.	31 1 when we have heavy rains. Was there a study done by 2 your company regarding the other streets or just in that 3 area? 4 MR. PLOCKER: Again, I don't think Mr. Seel 5 testified as to stormwater runoff. 6 MS. MCGOVERN: That's not what he's asking. 7 He's asking was another study done in another area? 8 MR. PLOCKER: Oh, I'm sorry. 9 MS. MCGOVERN: You're asking was there 10 another study done in another area? 11 THE PUBLIC: For instance, right under 12 Building D, the slope and there's trees down there. 13 MS. MCGOVERN: You hear the question? 14 THE PUBLIC: So for instance Rosemont 15 Terrace there's a street right at the bottom. 16 THE WITNESS: I believe, I believe your 17 question is, did Langan do a study about stormwater 18 runoff from the site down to Rosemont. 19 THE PUBLIC: Right. Not only stormwater 20 runoff but the impact that the blasting is going to have 21 on the homes at the bottom of that area. Because we're 22 talking about, we're talking about bedrock that might be 23 unstable in that area. Now, has there been a study 24 regarding one, the foundation, the bedrock in that area 25 because we're Building D is, is kind of close to the
30 1 So like a tracked machine? 2 THE WITNESS: Correct. It could be a 3 tracked machine, it could be an ATV. I don't recall 4 what was used here. 5 THE PUBLIC: Either? 6 THE WITNESS: Yeah, it could be either or. 7 Tracked or rubber tire that has all-terrain capability. 8 THE PUBLIC: That's very steep. Okay. All 9 right. Thank you. 10 CHAIRMAN BAGOFF: Thank you. 11 Any other members of the public who would 12 like to question Mr. Seel on his testimony? 13 Please come up and state your name. 14 THE PUBLIC: Good evening. My name is Orin 15 Knights. 16 CHAIRMAN BAGOFF: Go right ahead, sir. 17 THE PUBLIC: I have a question for you and 18 for the planning board. 19 With regards to your blasting, was there a 20 study, I know we're talking about Building D which is 21 the focus right now. And where Building D is, there's a 22 slope that goes down to, for instance, Rosemont Terrace 23 and the other streets next to it. Now, for instance 24 Rosemont Terrace over the years has had tremendous 25 flooding. People's homes, basements have been flooded	32 1 slope, am I right? Not much space, so. 2 THE WITNESS: Correct. 3 THE PUBLIC: So did you guys study that area 4 and did you study the impact that it's going to have on 5 the residents at the bottom of the homes, the 6 foundations even? 7 This is also, I have a question for the 8 planning board as well. So have you studied that, has 9 there been a plan, a study and who authorizes it and has 10 there been. 11 MS. MCGOVERN: You got to do one at a time. 12 You keep asking and then keep adding to the question, 13 so. 14 THE PUBLIC: He's not answering my question, 15 so that's why I'm adding. 16 THE WITNESS: I'm just waiting for you to 17 pause. 18 THE PUBLIC: I'm paused right now. 19 THE WITNESS: Okay. So first of all it was 20 not my testimony that the rock is unstable. It's 21 inherently stable, so I don't know, I can't speak to the 22 inherent stability of the rock. No, we did not 23 perform an assessment, we were not asked to. We were 24 looking at blasting, our scope was strictly to look at 25 the stability of the slope back to Building D.

33 1 THE PUBLIC: So has there been -- have you, 2 have you spoken to the residents at the bottom of that 3 area? Has there been a study regarding the impact of 4 your project or its just been a study in that particular 5 area? That's what I'm asking. 6 THE WITNESS: The ask of Langan was to look 7 at the stability of that slope with respect to Building 8 D. That's what we performed. That's what we performed. 9 THE PUBLIC: Well, I have a question for the 10 planning board. For instance, if there's impact on the 11 residents at the bottom homes, because as we know if you 12 have an earthquake it has residual effects, after 13 shocks. So if one of our homes are damaged, the 14 foundation is this -- is there going to be some kind of 15 escrow set up that's going to compensate residents for 16 any kind of damage that the blasting might cause? This 17 is for the city. 18 CHAIRMAN BAGOFF: I believe our policy is 19 that the building department would be notified and the 20 zoning official comes out to take a look at the area and 21 they will contact the engineer for the applicant and 22 they will evaluate it from there and I believe that's 23 the standard policy of how the town works. So there's a 24 protection. I believe that has protection. But we will 25 make sure of that, we will contact the building	35 1 within them. When those get closer to together that's 2 the case of steeper. So for example here, these lines 3 between this heavy dash line and these heavy dash lines, 4 those are contour levels, I think they might be 5 one-foot. So you can see the distance from here to here 6 is relatively larger than from here to here. So this 7 section of slope would be considered relatively steeper 8 than this and much steeper than this, and so forth. So 9 that's how we're trying to, when we set borings up given 10 the inherent difficulties in navigating the site we try 11 to -- we certainly want to be close to this area. We 12 knew this was closer. And then on this one disturbed -- 13 limited disturbance slope and approximately to the top 14 of the slope. And we wanted to get as much of the 15 steeper area as we could. That's generally what drives 16 the location of citing our test pits. 17 THE PUBLIC: I'm going to say -- what I 18 think I'm going -- you're saying that those areas were 19 more accessible because they're not as steep as those 20 other areas? 21 THE WITNESS: That is not what I am saying. 22 THE PUBLIC: Okay. 23 THE WITNESS: I am saying what we're 24 attempting to do is get, where we can, get into areas 25 that are relatively steeper and that may not have been
34 1 department and get you a better answer. 2 THE PUBLIC: All right. Thank you. 3 CHAIRMAN BAGOFF: Ms. McGovern will contact 4 the building department and have a better answer and 5 post the answer on our website. Thank you. 6 Yes, sir. 7 THE PUBLIC: Patrick Laterza, L-A-T-E-R-Z-A. 8 So a couple quick questions. 9 One, why were those specific locations 10 chosen for the borings along those lines? 11 THE WITNESS: Partly because of access. Our 12 people or project manager determined the locations that 13 were appropriate. One of them is here, that knob, 14 that's going to be excavated, which is on the, the line. 15 We wanted to get as close to that as we could. There 16 were some steeper slopes in there and similarly on the A 17 line it's an area where there are steeper slopes that 18 were accessible. 19 THE PUBLIC: Okay. 20 So it's not -- those look like less steep 21 areas than other areas, is it perhaps there's less 22 steeper slope access? 23 THE WITNESS: Let me explain the -- how I see 24 it. The contour lines would be, or the dash lines that 25 run perpendicular to the purple lines, they have numbers	36 1 achieved in every location, but we have, there is a 2 traumatic difference in the relevance steepness of some 3 of these locations. 4 THE PUBLIC: And you're not saying that 5 those areas, 10 to 12 degrees, you're not saying those 6 areas are 10 to 12 degrees? 7 THE WITNESS: No, these areas are a little 8 bit -- these areas here are a little steeper. Right in 9 here for example. 10 THE PUBLIC: How steep would you say those 11 areas are? 12 THE WITNESS: Roughly 17, 20 degrees, maybe. 13 The amount overall from up here down to here roughly is 14 about a 10 degree slope. 15 THE PUBLIC: I'm not a geotechnical engineer 16 but that doesn't look like that to me, but. 17 I guess my other question is, when it comes 18 to blasting -- 19 THE WITNESS: Yes. 20 THE PUBLIC: -- I think you already said 21 this, to be certain, you're saying that you most likely 22 have to blast in this area to excavate because of the 23 density of the stone? 24 THE WITNESS: That's one method, yeah. 25 There are several different methods, drilling and

37 1 breaking would a method. Hoe rams would be another 2 method, but blasting tends to be the most productive. 3 It's the quickest, it's the least overall impact on the 4 community, but it's because of the relatively hardness 5 of the rock contractors tend or prefer using blasting. 6 THE PUBLIC: Is there any sort of danger 7 when it comes to the sequence of blasting as opposed to 8 just overall blasting? In other words, if you were to 9 blast one area versus another would that lead to the 10 potential collapse of an area versus blasting one area 11 then another? 12 THE WITNESS: Blasting is generally 13 sequenced determined by the blaster. And if -- there's 14 several things that go into determining what an 15 appropriate blast sequence is. But your question is 16 very broad, so it's harder to address. But I don't -- 17 if a properly developed, designed and implemented 18 control blasting program is implemented then there's 19 very -- there's no risk. Really very small risk of 20 getting damage beyond that excavation line. 21 THE PUBLIC: I think, to be more specific or 22 as specific as I can get, I'm nowhere near an expert on 23 this, is that the young lady who spoke earlier about 24 collapse, part of the reason for that collapse just 25 south of here, just because the blasting was not done in	39 1 so, you would obviously know the depth of the sand and 2 the dirt that I saw on your cross section? 3 THE WITNESS: Correct. So the borings -- 4 THE PUBLIC: Can you speak up, I'm sorry. 5 Even though I'm right here. 6 THE WITNESS: We can scroll to the boring 7 log and look at that together. 8 It's in there. 9 THE PUBLIC: So you're going to hopefully 10 cover the distance from the ridge and the area at the 11 top of that ridge where you dug borings or digging or 12 drilling, I would like to know the depth of the dirt. 13 Thank you. 14 MS. MCGOVERN: It's Page 26 in the report. 15 THE PUBLIC: Page 26 did you say? 16 MS. MCGOVERN: That's what I'm trying to 17 find out. 18 THE WITNESS: This is it right here. 19 MS. MCGOVERN: Page 26. 20 THE WITNESS: Okay. So boring LB-1, which is 21 shown up on the screen here. 22 THE PUBLIC: Can you speak into the mic, 23 please. 24 THE WITNESS: What we're showing on the 25 screen is boring LB-1 at the top of the slope and it's
38 1 the right order and that led to the collapse of the 2 slopes. So is that a danger if it is not done right? I 3 mean, I guess everything is a danger when it's not done 4 right, but obviously this was construction that you 5 would expect people to have known how to do it and they 6 didn't. So is something that needs to be a concern? 7 THE WITNESS: It's -- we always recommend 8 that this type of blasting be implemented on project 9 sites and that is something that the owner implemented 10 and put into their contract documents, to make sure that 11 this is properly done and implemented. 12 THE PUBLIC: Okay. All right. I think 13 that's all I have. 14 CHAIRMAN BAGOFF: Young lady first. 15 THE PUBLIC: Jessica Pearson, P-E-A-R-S-O-N. 16 Good evening. Good evening board. I'm going to speak 17 loudly because I had a very hard time hearing back there 18 and I'm going to tell you that I apologize in advance if 19 I repeat a question because I really -- back there is 20 very, very difficult to hear, including your testimony. 21 So I apologize. 22 So I would like to know, how deep was the 23 soil at the top of that ridge where you dug and were 24 there dug soil borings at the top of that slope or did 25 you go into the rock at the top of that slope, and if	40 1 showing decomposed rock layer. 2 THE PUBLIC: I'm sorry. I'm really having 3 trouble hearing you. Maybe he needs a new mic or 4 something. That mic is just -- 5 THE WITNESS: I will try to speak more 6 closely into the mic. 7 So what we're finding is in boring LD-1 rock 8 is around, decomposed rock is about 9 feet below ground 9 and above that is this generally sandy material with 10 varying amounts of gravel and silt that tends to be very 11 dense. 12 THE PUBLIC: Very dense? 13 THE WITNESS: Right. 14 THE PUBLIC: You said 9 feet correct? Yeah. 15 THE WITNESS: Correct. 16 THE PUBLIC: 9 feet of silt and sand and 17 some gravel before you hit rock. Did you bore into the 18 rock as well and if so how deep? 19 THE WITNESS: So at boring B-1 we cored a 20 couple runs into it, which is a total depth of 24 feet. 21 THE PUBLIC: I'm sorry. 22 THE WITNESS: 24 feet total. 23 THE PUBLIC: You went 24 feet into the rock? 24 THE WITNESS: No, we went from 9 feet to 24. 25 So the first 9 feet is soil and then the next 13 feet is

41 1 rock. 2 THE PUBLIC: He went 13 feet into the rock. 3 And did you encounter any water table at 4 that level? 5 THE WITNESS: No, there was only one test pit 6 where water was encountered, it was around the top of 7 top of the rock. On the top of the decomposed rock. 8 THE PUBLIC: I can't understand you. 9 THE WITNESS: There was only one location, 10 one test pit where water was encountered, otherwise 11 water was not encountered. 12 THE PUBLIC: And where was that located? 13 You said it, I'm sorry, I still can't hear you. 14 THE WITNESS: It's not in this boring, it was 15 at test pit -- test pit 1 also encountered, as I recall. 16 THE PUBLIC: So how many test pits were done 17 at the top of the ridge? 18 THE WITNESS: I think there was a total three 19 or four within the top of the ridge. 20 THE PUBLIC: And -- 21 THE WITNESS: Let me scroll back to the plan. 22 THE PUBLIC: To the map. 23 THE WITNESS: To the map. 24 THE WITNESS: I think that was Page 8. 25 THE PUBLIC: How close to the edge of the	43 1 going up the dead center of the page? 2 THE WITNESS: I'm not sure what you're 3 referring to. 4 THE PUBLIC: The white easement there. 5 THE WITNESS: This here, the utility easement 6 through here. 7 THE PUBLIC: So that is below ground or is 8 that at grade? 9 THE WITNESS: I believe that's below ground. 10 THE PUBLIC: Does anybody know if that's at 11 grade or below ground? 12 THE WITNESS: It's below ground. 13 THE PUBLIC: Can anyone tell me? It's on 14 the map, so I'm wondering. 15 THE WITNESS: I'm sorry, I did answer. This 16 is a below grade utility easement. 17 THE PUBLIC: It's below grade. Do you know 18 at what depth? 19 THE WITNESS: I don't know. 20 THE PUBLIC: Okay. 21 So you did test pits going that far away 22 from the ridge, and I'm looking at the ridge, and if you 23 could scroll up a little bit higher to the second 24 parallel. No, the other way. Yup. Yes. Okay. It 25 looks like there's some extremely steep areas coming off
42 1 ridge were each of those four borings? I know it sounds 2 like boring stuff, but I think it's important to know 3 and to get on the record. Thank you. 4 THE WITNESS: It's in the record. 5 THE PUBLIC: I know. 6 THE WITNESS: And depends what you describe 7 as the top of the ridge, but boring B-1 and test pit 1 8 and test pit 8 on A line are -- 9 THE PUBLIC: I'm sorry, could you use a 10 pointer and show me. Thank you. 11 THE WITNESS: So looking at this line up in 12 here. 13 THE PUBLIC: Where? Which boring are we 14 looking at? 15 THE WITNESS: This is LB-1. These two test 16 pits are also the top of the slope. 17 THE PUBLIC: Are each of those purple, for 18 lack of my -- because of my poor eyesight as well, 19 circles are each of those test pits? 20 THE WITNESS: Or borings. They're a 21 combination. So TP are test pits. This is a test pit, 22 this is a test pit. This is a test pit. This is a 23 boring. This is a boring. 24 THE PUBLIC: Okay. So there were four made 25 along that parallel. What is that big truncated thing	44 1 the ridge and what's the distance at that sort of little 2 point where TP-7 is? Test pit 7. That seems to be 3 right at the edge or maybe at the edge of the ridge, is 4 that correct? 5 THE WITNESS: TP-7 is at the edge. It's a 6 relatively flat area in here and then it drops off more 7 steeply on this side. 8 THE PUBLIC: Okay. 9 How far from the edge of that ridge, 10 according to your drawing, would that corner of the 11 building be? Right near test pit 7. 12 THE WITNESS: So this distance from here to 13 here is about 13 feet. 14 THE PUBLIC: 13. And then did you say 17 up 15 above at the other parallel? I think I heard the number 16 17 floating around. 17 THE WITNESS: No, I don't recall 17. I 18 didn't say 17. 19 THE PUBLIC: So are you guys going to be 20 putting any kind of mesh netting up to hopefully 21 withhold some of the potential rock that might split off 22 of the face of some of the steeper edges of the ridge? 23 THE WITNESS: That was not part of our 24 conclusion. Our conclusion is that the slope is stable. 25 THE PUBLIC: The slope is stable preblast,

45 1 I'm sure it is. But you're not capable of saying how it 2 would react once the vibration goes through the rock, 3 you have not testified on that because it would be 4 impossible for you to say, because you're not there and 5 have you been asked to be the blaster? 6 THE WITNESS: No. 7 THE PUBLIC: You guys doing any of the --- 8 no. Okay. So of course you can't testify on the safety 9 of the rock and the ridge post blasting. 10 So perhaps the board, much in the same way 11 that it was asked a few times, might consider a pre and 12 post blast survey the way that the state does for 13 certain radius around a blast site, and that would 14 include not just the homes that are at the bottom of 15 that hill, as many people have concerns, but also the 16 ridge itself which I would think should be. Wouldn't 17 you consider investigating that ridge and the stability 18 of the ridge after a few months of vibration have been 19 run through it, after it rains as this gentleman brought 20 up and other conditions continue. Would that not be 21 sensible Mr. Chair, to condition? 22 CHAIRMAN BAGOFF: I think the time now is to 23 ask questions and if you want to make statements -- 24 THE PUBLIC: That's not a statement, that's 25 a question to you.	47 1 THE PUBLIC: No, it's not, sir. 2 CHAIRMAN BAGOFF: -- where situations like 3 this occur? 4 MR. HESS: It's normally done prior to start 5 of construction. There is a blasting plan that's 6 prepared and that blasting plan lays out the monitoring 7 that's going to occur to protect the properties. 8 CHAIRMAN BAGOFF: Is there a subsequent 9 survey done after blasting? 10 MR. HESS: Not that I've ever seen. 11 CHAIRMAN BAGOFF: Okay. 12 MR. PLOCKER: And, again, as a condition of 13 approval we stated on the record numerous times, we'll 14 follow all guidelines, protocols and regulations and 15 work with the towns professionals in that regard. 16 CHAIRMAN BAGOFF: Thank you. 17 THE PUBLIC: All right. So you can't, sir, 18 answer? You can't answer that question because you 19 don't know how the effects of blasting might impact. So 20 you can't say whether it's going to be a secured ridge, 21 cliff face of a wall, etc., after blasting. You can 22 only tell us the condition it's in today or the day that 23 you did that report, correct? 24 THE WITNESS: I can't tell you what it is 25 going to be like after. I was only charged with
46 1 CHAIRMAN BAGOFF: Excuse me. If you don't 2 know the difference between a question and a statement 3 we can talk about that. The question -- the question is 4 to the expert now. 5 THE PUBLIC: You jump in when you want but 6 it's okay. I'm respectfully asking the chairman of the 7 board a question, if you care not to answer that -- 8 CHAIRMAN BAGOFF: The time now is to ask 9 questions of the expert. Okay. 10 THE PUBLIC: Well, the expert is not able to 11 answer that question. 12 CHAIRMAN BAGOFF: Okay. 13 THE PUBLIC: Are you, sir? 14 THE WITNESS: I can't. 15 MR. PLOCKER: Respectfully, it's a 16 construction issue, Chairman Bagoff. 17 THE PUBLIC: No, it's not, sir. It could be 18 a condition of approval to ensure the safety. 19 MR. PLOCKER: As I was saying Chairman 20 Bagoff, my -- 21 THE PUBLIC: Now he's asking me questions. 22 MR. PLOCKER: I didn't ask her a question. 23 CHAIRMAN BAGOFF: Mr. Hess, is that 24 something normally done through the engineering 25 process --	48 1 evaluating that slope stability. 2 THE PUBLIC: Okay. 3 You can't answer that question. Thank you. 4 CHAIRMAN BAGOFF: Thank you. 5 THE PUBLIC: Hello. Again, my name is James 6 White. 7 Mr. Seel, line A and B, what's the distance 8 between those two lines? 9 THE WITNESS: About 300 and -- 10 THE PUBLIC: Speak up into the microphone. 11 THE WITNESS: About 375 feet. 12 THE PUBLIC: 375 feet. Okay. 13 And there, besides I think LB-1, there are 14 no test pits that I can see or anything like that within 15 that 375 foot wide area, is that correct? 16 THE WITNESS: That's correct. 17 THE PUBLIC: Okay. 18 And then going long ways, how many feet are 19 we talking about that area from the start of let's say 20 TP-1 all the way to the end of line A, what is that 21 approximate distance, sir? 22 THE WITNESS: Rough numbers, 300, 325. 23 THE PUBLIC: Could you zoom the map a 24 little, please. Zoom out a little bit. That can't be. 25 If it's 375 feet between A and B, how can that line be

49 1 375 feet long. It looks like it's more about 950 feet 2 long, is that correct? That's my guesstimate looking at 3 it. 4 THE WITNESS: I understood your first 5 question to be what's the distance between test pit 1 -- 6 THE PUBLIC: No, no. My question is, what's 7 the distance between line A and line B? 8 THE WITNESS: Right. That's 375 feet. 9 THE PUBLIC: Okay. 10 So how long is line B approximately? 11 THE WITNESS: So you're asking the length B 12 to B? 13 THE PUBLIC: Yes, sir. The length B to B. 14 THE WITNESS: Probably 600, 700 feet. 15 THE PUBLIC: At least, right? 16 THE WITNESS: Roughly that. 17 THE PUBLIC: So how many square feet is 18 that, sir? Of area that you took no tests in. 19 THE WITNESS: I don't know what the areas is. 20 I don't see that as relevant. 21 THE PUBLIC: You don't see that as relevant. 22 THE WITNESS: We have data work that we -- 23 THE PUBLIC: Okay. 24 CHAIRMAN BAGOFF: Sir. Sir. One at a time. 25 THE PUBLIC: You're right. Duly noted.	51 1 THE PUBLIC: But opinion? 2 THE WITNESS: Sure. 3 THE PUBLIC: Okay. Good. 4 My next question for you, you have described 5 this slope several different ways, which is 6 understandable because it's a complex slope, it's not 7 going to be any uniform amount, but I have heard you say 8 that the ridge is 10 degrees and I have heard you say it 9 was 17 degrees. Well, my question for you is within 10 reason is the sharpest point, if we zoom into the middle 11 of the map there, the areas where you were not able to 12 get test equipment in which is pretty much dead center 13 between line A and line B, what is the slope like in 14 there, in the steepest points? 15 THE WITNESS: I would have to measure it. I 16 don't know off the top of my head. 17 THE PUBLIC: Okay. Would you say probably 18 more than 20 or 25 degrees? 19 THE WITNESS: Again, I don't recall. I 20 don't know what it is. We know that from lines A and B 21 that as you get closer to the top the slope steepens to 22 on the order of 15, 20 percent. I'm sorry, degrees. 23 And so I would say that slope is an approximate 24 reasonable range in between. 25 THE PUBLIC: So you're saying, I may have
50 1 Go ahead. 2 THE WITNESS: We have data that represents 3 the slope at a couple locations and it's consistent and 4 uniform throughout. 5 THE PUBLIC: Okay. 6 So, so, you don't find any relevance in the 7 area that is many, several, several thousand square feet 8 of space because you feel as if the data, the underlying 9 data says that whatever is between those lines should be 10 uniform, is that what you're saying? 11 THE WITNESS: I'm saying that for the site 12 conditions that we have there is a generally, relatively 13 flatter slope for the most part and steeper. As it 14 approaches the top of the slope the conditions are 15 relatively uniform and then our technical program, 16 investigation program, is adequate to properly 17 characterize the site. 18 THE PUBLIC: And I assume that's an 19 algorithm based kind of thing, plug in the variable and 20 it says -- 21 THE WITNESS: No, it's an experienced based 22 factor. 23 THE PUBLIC: So opinion then? 24 THE WITNESS: Yes. Very experienced 25 professional opinion.	52 1 heard this, I want to make sure I heard you correctly. 2 So you're saying that at no point in there is it greater 3 than roughly 17 degrees? 4 THE WITNESS: I'm not saying that. I'm 5 saying in general that it's, it's, it's steeper as we 6 approach the top of the slope and much more shallow as 7 you move away from it. 8 THE PUBLIC: Okay. 9 And were you able to conduct any of your 10 testing in the absolute steepest parts of the slope that 11 overlook people's homes? 12 THE WITNESS: We, we investigated the areas 13 that were accessible. I would say looking at our map 14 right here we didn't take a test pit or boring where 15 it's too steep to get into. 16 THE PUBLIC: Right. So your answer is, to 17 my question, would be no, is that correct? 18 THE WITNESS: That's a fair statement, yes. 19 THE PUBLIC: Right. So no, you did not take 20 any tests in the steepest parts of the hill, that is 21 right? 22 THE WITNESS: That's correct. 23 THE PUBLIC: Right. Because your equipment 24 was not able to get into those areas in order to conduct 25 said tests, is that the main reason why not?

53 1 THE WITNESS: That is and also didn't 2 represent the majority of the slope. 3 THE PUBLIC: Okay. 4 My question for you, do you have any 5 experience having sort of done a postmortem, when 6 there's been a collapse, like is that part of your 7 expertise? 8 THE WITNESS: Yes. 9 THE PUBLIC: Okay. 10 And is it usually the main part of the slope 11 that is the thing that causes the precipitating of the 12 collapse or is it the aberration points, as they break 13 off they then fall down and then the whole thing gathers 14 steam and causes, you know, an avalanche? 15 THE WITNESS: Well, triggering events vary 16 by their nature, often caused by water as the main 17 triggering of most slides. 18 THE PUBLIC: Okay. 19 So what are causes of most rock slides and 20 avalanches, those kinds of things? 21 THE WITNESS: That's a major precipitation 22 event, yes. 23 THE PUBLIC: Okay. 24 And you said you found a water table on one 25 of your test points. Can you tell us which one and	55 1 not do any testing, is that correct? Couldn't that be 2 possible, that there was water in that area that you 3 don't know about? 4 THE WITNESS: If there's water there it 5 could be water pockets of water. 6 THE PUBLIC: I'm sorry, could you say that 7 again, I can't hear you. 8 THE WITNESS: If there's pockets of water, 9 purged condition, they could be. So test pit 1 had 10 water, that had water. 11 THE PUBLIC: Test pit 1. Okay. 12 And can we zoom in a little bit to test pit 13 1. No, you got to go to the left. Okay. 14 So test pit 1, which is right smack in the 15 middle of Building D or top third really where line A 16 is, correct? 17 THE WITNESS: Test pit 1 shows some seeping 18 water, decomposed rock, so it could be a part of a, 19 could be part of water, it could be water got into the 20 rock and it's seeping, it was trapped in the rock and it 21 just seeped in. 22 THE PUBLIC: Okay. 23 What date was that sample taken? 24 THE WITNESS: This was dated November 15. 25 THE PUBLIC: November 15, is that correct?
54 1 point at with a laser where you found the water? 2 THE WITNESS: Could you scroll to the test 3 pit logs. I believe it was TP-1 or TP-8. 4 THE PUBLIC: Could you just show us TP-1 and 5 TP-8 and then we can come back. 6 THE WITNESS: TP -- 7 THE PUBLIC: They're both right there at the 8 absolute top of the slope. 9 THE WITNESS: Right. 10 THE PUBLIC: Okay. 11 So the one place that you found the water 12 table is at the absolute top of the slope, is that 13 correct? 14 THE WITNESS: Well, we're going to -- I 15 wouldn't say it was a water table. Might have been a 16 wet sample. 17 THE PUBLIC: Okay. A possible water table? 18 THE WITNESS: I would say localized water. 19 THE PUBLIC: Maybe a water table? 20 THE WITNESS: If there was a water table it 21 would be continuous throughout the borings and test pits 22 and we did not see that. 23 THE PUBLIC: Okay. 24 Unless it, you know, flows somewhere into 25 that unexplored 375 foot by 700 foot area that you did	56 1 THE WITNESS: Correct. 2 THE PUBLIC: Are you aware that it had 3 rained, less rain in the history of New Jersey for two 4 months almost immediately prior to that date? 5 THE WITNESS: I'm aware of that. 6 THE PUBLIC: Could that have any impact on 7 where you found water or not? 8 THE WITNESS: That is possible, yes. 9 THE PUBLIC: So it could be possible given 10 that you tested these things after we have had the 11 largest, longest drought that this entire area has ever 12 seen in -- are you confident that if we had a normal 13 amount of rain you would have gotten exactly the same 14 results? 15 THE WITNESS: No, which is exactly why our 16 analysis we did sensitivity on different water levels 17 within the entire slope. We treated the entire slope as 18 it was saturated. 19 THE PUBLIC: You stated earlier that your 20 analysis is not necessarily an algorithm, it is based on 21 opinions, right? 22 THE WITNESS: A stability analysis. A 23 stability analysis is done using a computer program. 24 THE PUBLIC: I'm sorry. 25 THE WITNESS: Using a computer program.

57 1 THE PUBLIC: Okay. Using a computer 2 program. So what computer program does it use? 3 THE WITNESS: Called SLOPE/W is what we used 4 to analyze this. 5 THE PUBLIC: Has SLOPE/W every been wrong 6 about something like this in your experience, just 7 curious? 8 THE WITNESS: I don't know how to answer 9 that. 10 THE PUBLIC: I'm asking narrow to your 11 experience, has it been incorrect? SLOPE/W ever been 12 used as a tool to make these kinds of predictions and 13 it's failed, that's what I'm curious of, in your 14 knowledge? 15 THE WITNESS: I don't know. I don't know. 16 THE PUBLIC: So not to your knowledge? 17 THE WITNESS: No. 18 THE PUBLIC: Okay. 19 Perhaps you'd like to look into that. 20 I guess the last thing is, again, you're not 21 able to quantify what the steepest slope is, right? 22 THE WITNESS: I don't know as I sit here 23 what the steepest slope is. I can figure it out 24 quickly. I can take some measurements. 25 THE PUBLIC: Yeah, yeah, I'm sure. You're	59 1 -- and the last thing was just that, again, where the 2 steepest slopes are you can't get equipment in to even 3 test that because it would be too dangerous for equipment 4 to get into there, correct? 5 THE WITNESS: I don't know that's the case, 6 it would be too dangerous. We did what we did for 7 practical reasons. 8 THE PUBLIC: Okay. It just wasn't practical 9 to do more testing in that area? 10 THE WITNESS: We just couldn't get to it 11 perhaps. 12 THE PUBLIC: Is there a way that testing 13 could be done if there was a will to do it, because 14 we're concerned that, that really steep area that's 15 center, that has not a single test done on it, that 16 overlooks houses, is there a way to do it in your 17 experience? 18 THE WITNESS: Potentially there's a way, 19 depends on-site conditions, if we're looking at a blank 20 map here, but in reality it's covered with trees. 21 MR. PLOCKER: We can cut a bunch of trees 22 down to do it. 23 THE WITNESS: Cut down a lot of trees and 24 gain access? 25 THE PUBLIC: I think we'd all rather not cut
58 1 clearly a brilliant engineer, so I'm sure you could 2 figure that out. But, again, with the dryness 3 conditions we're not really sure of anything that's 4 going on in this absolutely gigantic area dead center of 5 the map, but we do have, and this one is to your 6 statement, the opinion part of it, is that you're sure 7 because of your team's opinion and long experience you 8 feel confident that what's going on between A and B 9 appears utterly predictable to you, is that right? 10 THE WITNESS: It's -- we feel that, we are 11 confident that the data that we have is representative 12 of the rest of that slope and that what we did is we 13 analyzed these two slope sections, different geometries 14 of those sections by varying, lowering the strength of 15 materials and increasing the water table to analyze, 16 assess different conditions that could play into whether 17 it has long-term stability issues. 18 THE PUBLIC: Okay. 19 To be clear, if you had found water, let's 20 say at every one of these, wouldn't it have changed your 21 analysis at all? 22 THE WITNESS: Not in the way we did the 23 analysis. We analyzed a continuous water table, I think 24 it was three different levels. 25 THE PUBLIC: Okay. All right. Great. But	60 1 down a bunch of trees, which you were planning to any 2 way. But nice joke. But, okay, so there's not a 3 practical way to actually make sure that our concerns, 4 our collective concerns, I speak for other people here 5 regarding safety and well-being, everybody who sleeps at 6 night with their children under that, there is not a 7 practical way to get in there, except maybe cutting down 8 all the trees and making jokes about it. Okay. Thank 9 you. 10 CHAIRMAN BAGOFF: Thank you. 11 I think that ladies first, sir. 12 THE PUBLIC: Rachel Klein again. 13 Sorry about if this is testifying. My 14 question is, when did you do this site testing? Like 15 did you do all site testing or is there any reason that 16 you looked to the site as possibly being more 17 susceptible to an issue rather than like normally? 18 THE WITNESS: In terms of slope stability I 19 -- look, I did take all the sites seriously. 20 THE PUBLIC: No, not seriously. 21 THE WITNESS: This site itself is a 22 relatively shallower slope than many others that I deal 23 with and so I still look at this as a slope of, that 24 would give you concern and consideration and we, we get 25 the data, we need to perform the relevant analysis to

61 1 give us a good understanding of the ground conditions as 2 properly characterized and then develop our findings and 3 recommendations from that. 4 THE PUBLIC: So the USGS geological society, 5 they have a map of areas that are susceptible or likely 6 landslide sites, I can pull the exact name of the map. 7 It's the US Landslide Inventory and Susceptibility Map. 8 This site is in the red, designated red on that map, 9 which they indicate as the highest level of 10 susceptibility to landslides. So I'm asking if you 11 treat it differently if it's on the US Landslide 12 Inventory and Susceptibility Map and they say they use 13 local data and county data and state data to come up 14 with that, so knowing that the federal governments 15 website thinks that's a highly susceptible site for 16 landslides, do you treat it differently than say the 17 area that's more orange say? 18 THE WITNESS: I look at all sites objectively 19 and those maps that you have just cited, they look at, 20 it's a very broad brush mapping and the reason they 21 paint it red is because all rock is prevalent along this 22 area of the state. And it doesn't necessarily respect 23 -- doesn't necessarily respect the site conditions, 24 which when we do this level of investigation determine 25 the strength of soils present and, again, what we found	63 1 building and if it was not selected the question in my 2 mind is, why? Because of the slope lines around there? 3 MR. PLOCKER: We just want to get a better 4 idea of the area she's speaking about. In which area, 5 so we have a clear record and we all understand. We 6 would definitely like to address your question. 7 THE PUBLIC: So if I may. 8 Seth Weisleder, 17 Howell Drive. 9 So my question is, the upper corner, and I 10 believe we can see it better not on this map but the 11 report that was submitted, on Page 2 of the letter. 12 That was on, if we can go to that, that would actually 13 indicate the point I think that we are all speaking 14 about. It's on -- so there was a letter with that map, 15 it's on page, it's not the first letter, it's the second 16 letter. 17 MS. MCGOVERN: It's the report, it's in the 18 body of that. 19 THE PUBLIC: It's -- in the beginning 20 there's a little map. 21 MR. PLOCKER: Page 2 of 4. 22 THE PUBLIC: There it is. Yes, thank you. 23 So if we look here, if I'm correct sir, this 24 is 700 feet, correct? 25 THE WITNESS: That's what it shows, yes.
62 1 is that these soils are very dense and they're overall a 2 good quality rock. So, so I guess the short answer is, 3 yes, we look at all the information that's available, 4 but I still develop my, our programs based on-site 5 specifics. 6 THE PUBLIC: Thank you. 7 THE WITNESS: You're welcome. 8 THE PUBLIC: Barbara White again. 9 Now that I can see the full map, my question 10 is, one of the biggest areas of concern as we listened 11 to the testimony is that upper point of Building D, that 12 one overlooks Howell Drive, etc. So with that in mind, 13 I appreciate the fact that you asked to take a look at 14 this property and I am curious about why there's no 15 selection done at that area? Understand that's a very 16 tight pinpoint. Why there as opposed to, why not the 17 third test pit and boring at the top of that? 18 Based on the testimony of others who spoke 19 here, there's approximately, I think nine is the pinch 20 point or so at the top. What you see is also one of 21 those areas where people who live on Howell raised 22 concerns, so my question of Mr. Seel is, when choosing 23 where the test pits were going to be done, the borings 24 were going to be done, was there any consideration to 25 doing the upper area? No, down. Upper part of the	64 1 THE PUBLIC: Up here? 2 THE WITNESS: Yes. 3 THE PUBLIC: Okay. 4 So how, up here, how would you say from this 5 corner, that's where we're talking about, where I live 6 here, my neighbor is here, my other neighbor is here. 7 How many feet is it from here to here? Roughly. 8 THE WITNESS: I would say roughly 200 feet. 9 THE PUBLIC: Okay. 10 I mean, right about 200 you said? 11 THE WITNESS: Correct. Yes. I'm estimating 12 200. 13 THE PUBLIC: Right. So I think the question 14 that we're all trying to understand, from Howell Drive, 15 not representing all my neighbors, but since I'm right 16 here and my neighbor who is here is not here this 17 evening, we're worried about here, in this slope and 18 previous testimony we talked about deer fencing being 19 extended to protect the vegetation here, so why, why 20 wasn't any testing done here? So that's, you said and I 21 just -- that was 350 feet between that line and that 22 line and now why don't we test something over here to 23 protect this neighborhood and why are we only protecting 24 that neighborhood. I think that's unfair, would you 25 agree?

65 1 MS. MCGOVERN: The question can be, why 2 didn't he test there. 3 THE PUBLIC: Correct. 4 Why are we focused on this neighborhood and 5 not that neighborhood? And previous testimony this is 6 an important area that affects this neighborhood as 7 indicated by deer fencing that was proposed to be 8 extended. And there was no slope testing done and the 9 residents there are, myself as a resident, is highly 10 concerned. I would like to understand why this area was 11 not taken into consideration? 12 THE WITNESS: At the time we were asked to 13 look at the, our interpretation is, what we -- is in the 14 area that was shown in the report. 15 THE PUBLIC: Okay. 16 So you were not asked at all to approve the 17 area? 18 THE WITNESS: I wouldn't say asked. Our 19 understanding of what the concern was, was the slope. 20 THE PUBLIC: So in your professional opinion 21 would you think that slope would be important when you 22 get to blasting, being that the buildings only closer 23 here than it is here. We're talking 200 feet, 300 feet 24 to these homes. Would you think that would be important 25 to test?	67 1 THE WITNESS: Generally that's correct. To 2 understand how the construction of the building affects 3 the slope. 4 THE PUBLIC: So couldn't blasting over here 5 affect other parts of the slope that are closer than 700 6 feet away? I mean, even if we came from this point to 7 those homes that's approximately -- how far would you 8 say that would be? If I took that line and turned it, I 9 think we're about 700 feet, about, would you agree? 10 THE WITNESS: Perhaps less. 600. 11 THE PUBLIC: Right. So could blasting have 12 an effect on the slope here, in the neighborhood here, 13 "yes" or "no"? 14 THE WITNESS: Again, I don't control the 15 blasting, but if controlled blasting methods were 16 utilized then I suspect there would be no impacts from 17 it. 18 THE PUBLIC: I'm sorry. 19 THE WITNESS: I said, I'm not involved in 20 the blasting, my recommendation is that if anything is 21 done that they use controlled techniques to prevent any 22 damage to any adjacent structures. 23 THE PUBLIC: So would you suggest that this 24 area of the slope be tested given that could be 350 25 feet? So we have 350 feet and then over here as well to
66 1 THE WITNESS: Well -- 2 THE PUBLIC: Yes or no, please. 3 MR. PLOCKER: Let him answer the question, 4 please. 5 THE WITNESS: I don't know if there's rock 6 to blast in the north end of the building. 7 THE PUBLIC: I'm sorry. 8 THE WITNESS: I don't believe there's rock -- 9 I don't believe there's rock to be excavated at that 10 north end of the building. From what I recall that end 11 of the building is bearing on soils. 12 THE PUBLIC: So there's no rock here but 13 there's rock over here? I'm not understanding. 14 THE WITNESS: There was borings that were 15 done by another engineer within the building and rock, 16 as I recall, that was six to eight feet deep but what I 17 recall is that end of the building it steps down as you 18 go from north to south. So I don't believe that there 19 was rock intended to be excavated at that north end of 20 the building. 21 THE PUBLIC: So, again, I was not here for 22 your whole complete testimony, I apologize if I sound 23 repetitive. But this was to, whatever we're blasting to 24 see the effect on the slope and understand what could 25 potentially happen or not happen, is that correct?	68 1 mitigate any possible issues? Would you recommend that 2 as a professional. 3 THE WITNESS: We don't have data up here, so 4 if that's a concern in the area then additional borings 5 could be done to evaluate stability. 6 THE PUBLIC: I think the points made, 7 there's no data there to sense what could happen to that 8 neighborhood. Thank you. 9 THE PUBLIC: Hi. Just a couple of points of 10 clarification due to some of the other questions that 11 came out since I was last here. 12 So did you say sir, that the portion of the 13 building that's 200 plus feet away from that 14 neighborhood at the top of the map will not be secured 15 to anything but soil? Did you say it's not going to be 16 blasted or anchored in, its just going to be on soil, is 17 that what you said? 18 THE WITNESS: No, that's not what I said. 19 THE PUBLIC: What did you say? 20 THE WITNESS: First of all, I'm not the 21 geotechnical engineer of record for the building. 22 THE PUBLIC: I know but you testified on 23 something. 24 THE WITNESS: What I understand is that part 25 of the building is going to be on soil.

69 1 THE PUBLIC: It's not going to be anchored 2 into the, from your understanding, it's not going to be 3 anchored into -- do you know how deep the soil is there? 4 No, you didn't do borings. 5 THE WITNESS: No, my understanding is that 6 end of the building going to be on soil not rock. 7 THE PUBLIC: It's going to be on soil. 8 Is there a reason that you chose those two 9 particular parallels over anywhere else on that mesa? I 10 don't know what to call it. 11 CHAIRMAN BAGOFF: You're referring to lines 12 A and B? 13 THE PUBLIC: I'm referring to the parallels 14 at which they dug test pits or bore -- soil borings. So 15 you chose the two parallels out of that entire, I don't 16 know how many linear feet that we're talking about that 17 that building extends at the edge of that cliff? 18 THE WITNESS: It's common practice for 19 geotechnical engineers -- 20 THE PUBLIC: I really can't understand you. 21 THE WITNESS: It's common practice for 22 geotechnical engineers to determine -- to determine 23 density, strength of materials along parallels down 24 slope. And when you're evaluating stability of a 25 building. So the reason that these, these different	71 1 you're saying out of that, but if that's your answer 2 then so be it. Didn't actually explain why you chose 3 those two areas to my mind. 4 What happens to that 25 -- that massive 5 sewer line, that easement that runs through, if that 6 somehow -- now, that runs through the entirety of the 7 property, as you can see. It's a massive sewer line. 8 It goes up onto Howell and my understanding is it 9 currently has some leaks and it's sewage. It is raw 10 sewage -- 11 CHAIRMAN BAGOFF: I'm sorry, he didn't 12 testify about the sewer line. 13 THE PUBLIC: Sir, it is on his map. I am 14 asking about it so please allow me to finish. It's on 15 his map. 16 CHAIRMAN BAGOFF: There are many things on 17 the map. You have to focus on the testimony, on the 18 report, please. 19 THE PUBLIC: Sir, it's on his map. I am 20 asking him a question about something that is on his 21 map. 22 CHAIRMAN BAGOFF: Answer it if you can. If 23 you can't answer it, let's move on. 24 MR. PLOCKER: For the record Chairman 25 Bagoff, the underlying part of the site plan set, that
70 1 points are aligned is because of that. 2 THE PUBLIC: Did you make a statement 3 earlier that there were areas that were just so steep 4 that you couldn't do those borings? 5 THE WITNESS: I didn't say that, no. I said 6 we did a combination of assessments in the field for 7 accessibility. If there is dense trees or certain areas 8 we can't get around for whatever reason, we are 9 targeting areas that are more or less aligned so we 10 could get data or use our stability analysis and that 11 tends to be oriented perpendicular to slope in more or 12 less linear arrangement. That's why these, that's why 13 you see the borings and test pits aligned along or close 14 along two relatively straight lines. 15 THE PUBLIC: Okay. 16 But there was no reason in particular that 17 you chose those two parallels across the site other than 18 they just were convenient and accessible? 19 THE WITNESS: No, I testified earlier that 20 at least in one case the line to the south, that we did 21 want to get as close to that, that taller cropping where 22 that turned in building is closest to the edge of that 23 slope. 24 THE PUBLIC: I'm not sure that made that 25 much sense to me. I kind of didn't really get what	72 1 was submitted by our civil engineer. That was not -- 2 THE PUBLIC: He's a geotechnical -- 3 MR. PLOCKER: I need to finish. 4 That was not -- the underlying map was not 5 prepared by the witness here. I guess it is fair to say 6 the color notations and the, the location of the test 7 pits and borings you added to that map, but you did not 8 draw the underlying map, is that correct? 9 THE WITNESS: Yes, that is correct. We put 10 in our borings on the overlay. 11 THE PUBLIC: Did you put that existing sewer 12 easement lettering there and that arrow, is that what 13 you -- did you draw that on there, existing? 14 THE WITNESS: Yes, anything in red or blue 15 is what we added to the map. 16 THE PUBLIC: Okay. 17 So as a professional geotechnical engineer, 18 what is your opinion of what happens to a line that may 19 undergo, I think you know it's not a brand new sewer 20 line mind you, that may undergo a great deal of 21 vibration. What would your, and it would all be 22 conjecture on your part, right? Like you don't know how 23 the walls are going to react. The slopes are going to 24 react after blasting. 25 THE WITNESS: And to answer your question

73 1 related to how that behaves after blasting, correct, I 2 can't speak to that. 3 THE PUBLIC: That's all I got. 4 CHAIRMAN BAGOFF: Thank you. 5 Come right up, sir. 6 THE PUBLIC: One more. Can I have the laser 7 pointer, please. 8 So line A on your other map is approximately 9 here, is that correct? 10 THE WITNESS: Yeah. 11 THE PUBLIC: And line B is approximately 12 here, correct? 13 THE WITNESS: Correct. 14 THE PUBLIC: And this is the area which I 15 figured out is something like 500,000 square feet, you 16 did not check, but this here, this slope, do you -- did 17 you take any measurements of what the steepness of this 18 slope here is? 19 THE WITNESS: No, we didn't. 20 THE PUBLIC: There were no measurements 21 taken? 22 THE WITNESS: We didn't do any borings. 23 THE PUBLIC: The reason I ask is, you know, 24 first of all, the distance from this corner to this 25 house, I'm pretty good geometrically speaking, it's	75 1 So may I finish. 2 CHAIRMAN BAGOFF: If he's going to answer 3 your question -- 4 THE PUBLIC: Yes. 5 CHAIRMAN BAGOFF: -- he has to be able to 6 measure that. You're testifying, you put on the record 7 a certain amount of feet. 8 THE PUBLIC: Sure. Strike that from the 9 record. Sorry. 10 CHAIRMAN BAGOFF: So you may ask him a 11 question about a distance if he knows, that's fair game. 12 THE PUBLIC: Mr. Seel, do you see the line 13 here marked 700 -- oops, I think I hit the wrong button 14 here. The line marked 700 feet? 15 THE WITNESS: Yes. 16 THE PUBLIC: Would you be able to make a 17 mental estimate of approximately one-half of that line? 18 THE WITNESS: Yes. 19 THE PUBLIC: Okay. And would you be able to 20 superimpose that line from this corner right here to 21 this area? Can you take a moment and do that with your 22 mind, sir. 23 THE WITNESS: Yes. 24 THE PUBLIC: Okay. Would you tell me in 25 your opinion based upon this map right here how far,
74 1 somewhere between 150 to 200 square feet, which is not 2 very far. 3 CHAIRMAN BAGOFF: Again, you're testifying. 4 You can ask a question, if you know. 5 THE PUBLIC: Sir, Mr. Bagoff, he will be 6 able to answer my question, please allow him to answer 7 my question. 8 CHAIRMAN BAGOFF: Let me explain one second. 9 You're adding information that is not evidentiary. 10 THE PUBLIC: Sir, Mr. Bagoff, the reason why 11 I am interrupting you is because you are incorrect. 12 There is a map in front of us, there is a line from this 13 point to this point which shows the 700 feet. In the 14 middle of that 700 feet would be 350 feet, given this 15 line this long. We can take from the map, which is part 16 of the testimony, that line and superimpose it in our 17 minds from this point to this point and we would be all 18 the way over here. So being that this map is part of 19 the testimony it is fair game for me to ask questions 20 about it, even though his expertise is safety and the 21 building and insulation and all the grade and all that, 22 the question I was going to ask before you interrupted 23 me is directly related to this. It won't be about the 24 floodplain, it won't be about some other analysis he 25 hasn't made. It is a question and I think fair game.	76 1 taking a second to really look at it, from this corner 2 to this backyard would be? 3 THE WITNESS: So from the corner of the 4 building -- 5 THE PUBLIC: From the very corner of the 6 building to where these people live on Howell. 7 THE WITNESS: So if you pick a point -- 8 THE PUBLIC: This point to this point. 9 THE WITNESS: I would say roughly say 150 to 10 175 feet. 11 THE PUBLIC: Right. Roughly 100 to 175 12 feet. So based on this map right here does this look 13 like this is a 17 degree slope to you based upon looking 14 at this map? 15 THE WITNESS: I can't answer that quick. I 16 have to measure it. 17 THE PUBLIC: Well, I'm not allowed to 18 testify about the fact that it's not physically possible 19 for me to walk down that, so I won't make that 20 testimony, but I will ask you that or I just want to 21 know why no analysis was done in this particular area 22 given the proximity of this corner to where people 23 actually live and how steep, at least to this map, to my 24 eyes it appears that this slope might be, I am wondering 25 why an analysis was only performed along this lateral

77 1 here and this lateral here. Why wasn't there an 2 analysis of this area? 3 THE PUBLIC: Well, I believe I testified to 4 that. Perhaps my voice was low. 5 THE PUBLIC: Probably, sorry. 6 THE WITNESS: That's okay. At the time that 7 we performed this work it was our understanding that the 8 main concern here was, had to deal with more to rock 9 excavation and slope stability. General construction of 10 that building. So our focus area was in the area that 11 we investigated. 12 THE PUBLIC: Okay. 13 Now, pardon my ignorance, but whose 14 concerns, the person contracting you or the concerns of 15 the board here and the people? 16 THE WITNESS: What we understand as concerns 17 from this room. 18 THE PUBLIC: From? 19 THE WITNESS: This room. 20 THE PUBLIC: From this room. Okay. 21 So this area has never been brought up as a 22 possible, to you knowledge, as a possible area for 23 landslides or anything like that? 24 THE WITNESS: Not to my knowledge. 25 THE PUBLIC: Not to your knowledge. Okay.	79 1 THE WITNESS: If you zoom in. 2 In rough numbers I would say 100 feet or so. 3 75, 100 feet. 4 THE PUBLIC: Okay. 5 And how about -- sorry. LB-4 to TP-6? It 6 is down to the right. 7 THE WITNESS: This one here? Again, maybe 8 50 to 75 feet. I can't really tell the scale on this. 9 If you can zoom out again so I can get a better sense of 10 the scale, but looks like maybe 50, 75 feet. 11 THE PUBLIC: If we use those approximations, 12 could you calculate what the actual slope is on this 13 slope, because I think that's where we're getting to you 14 said 17 earlier, so my question about slope on these 15 lines and those areas where we're closest to 17 based 16 off my math. I know we are using approximations here, 17 but I'm getting 20 and 30 for slope. 18 THE WITNESS: Percent or degrees? 19 THE PUBLIC: Degrees. 20 THE WITNESS: I suggest if we are going to 21 -- if you want to know precisely what every section of 22 line is we can do that, but I need time to sit with a 23 scale and calculate it. 24 THE PUBLIC: I understand. I'm just -- 25 would it be possible to say that it's not 17 degrees in
78 1 All right. The last question I will ask 2 you, given your breath of experience do you think it 3 would be appropriate to do some exhaustive testing in 4 this area given the proximity of the corner of this 5 building to where people's family sleep, do you think 6 that may be a good idea to actually do some testing in 7 this area, especially if, and this is an if, if this 8 grade is considerably steeper than anything over here? 9 THE WITNESS: It would be certainly 10 something that we, that we would look at. 11 THE PUBLIC: Okay. 12 Thank you very much. Appreciate it. 13 CHAIRMAN BAGOFF: Yes. 14 THE PUBLIC: Hi. Patrick Laterza again. 15 I'm sorry, I have more measurement questions 16 for you. Can we switch over to like the main one with 17 the, all the test pits and everything. 18 Mr. Seel, do you have an idea or give us a, 19 because there's no legend on this map or whatever, what 20 the distance is between TB -- I'm sorry, TP-1 and TP-3 21 is? 22 THE WITNESS: TP-2 and TP-3? 23 THE PUBLIC: Yeah. 24 THE WITNESS: The question is the distance? 25 THE PUBLIC: Correct.	80 1 those areas. That perhaps 17 degrees might be the 2 entire run and as it lengthens out your slope gets less, 3 but the area very close to the building it is much 4 higher? 5 THE WITNESS: It varies. 6 THE WITNESS: Height varies. But we do -- 7 what we look at along the entire line it's close to, 8 again, roughly, rough numbers, 10 degrees. 9 THE PUBLIC: Across the entire line, that 10 whole distance of A? 11 THE WITNESS: You're measuring the very far 12 left to the far right, which, and admittedly the slope 13 varies as you navigate from one section to another. So 14 it is going to be steeper in sections, that's what the 15 contours show. 16 THE PUBLIC: Well, I mean from my 17 perspective then, the longer you elongate that line the 18 lower the slope is going to get, correct? 19 THE WITNESS: That's correct. 20 THE PUBLIC: So I think we're all concerned 21 about where the, a lot of that is very steep just 22 looking at these lines. You know, especially in the 23 areas where -- 24 THE WITNESS: I understand, but I think just 25 to help allay your concern. When we do our slope

81 1 stability analysis we're using actual topography along 2 these lines. So regardless of what I'm saying the 3 overall slope might be, we're looking at the surface 4 from one end to the other along that entire line, so 5 that's factored into the slope stability analysis. 6 THE PUBLIC: I know, but I think our concern 7 in response to your testimony is you're stating that the 8 building is being built on a slope at the top that's 10 9 some odd degrees and overall the slope is 17. But 10 wouldn't it be safe to say that that's using the very 11 elongated area that you're looking at on line A or line 12 B as opposed to looking at the steeper portion of the 13 slope which are significantly steeper than 17 degrees? 14 THE WITNESS: Well, I guess I said, my 15 testimony was that the approximate number from one end 16 to the other is on the order of 10 degrees, not the 17 other way around. But you are correct, it is steeper 18 but our analysis accounts for that and it varies 19 dramatically. So it's a conversation with respect to, 20 it's difficult to try to describe that in testimony. 21 But the fact is our analysis utilized the actual 22 topography to describe the stability of the slope. So 23 it factors in all these nuances you're describing, so, 24 yes, it's steeper in one section, it flattens out, get's 25 steeper again. All that topography is imbedded in our	83 1 degree slope, you know, it's as wide as it is tall, so 2 45 degrees and that looks like about the steepest, but 3 in other areas that steep, but certainly 10 or 17. I 4 mean, that's my question. 5 THE WITNESS: Yeah, again, my testimony is 6 not to dissect every section of the slope, just to 7 generalities because our slope stability analysis 8 utilizes the steepness and flatness along the factors 9 given and I don't know what the precise horizontal 10 distance is, for example, between LB-4 and TP-6, but 11 your logic is correct, if you look at the rise and run 12 that tells us what that slope is. I just don't know 13 what the horizontal distance is. 14 THE PUBLIC: The horizontal is a guess but 15 the vertical is given from the parameters? 16 THE WITNESS: Correct. 17 THE PUBLIC: Okay. Thank you. 18 CHAIRMAN BAGOFF: Thank you. 19 Do any other members of the public have a 20 question on Mr. Seel's testimony? 21 Seeing none. Close that part. 22 Thank you, sir. 23 We're going to take a five-minute bio break. 24 (Whereupon, a short recess is taken.) 25 CHAIRMAN BAGOFF: Welcome back. Thank you
82 1 slope stability analysis. 2 THE PUBLIC: Okay. 3 But I just want to go back to right after to 4 ask a question again, right after towards the ridge 5 line, it is significantly steeper than 17 degrees, 6 correct? 7 THE WITNESS: I don't have a calculator. 8 THE PUBLIC: I know you don't have a 9 calculator in front of you, I think a certain assertion 10 could be made here. 11 THE WITNESS: Yeah, I'm saying it certainly 12 could be, but I can't tell, specifically tell you what 13 they were. I know I measured it in one particular 14 section, it was 17 degrees. I can't tell everyone what 15 the section is and some may be steeper, some may be 16 shallower. 17 THE PUBLIC: Okay. Thank you. 18 THE PUBLIC: Hi. Victor Misarti again. 19 Joe, could you zoom in again. Those last two -- just 20 referring to those two. 21 I want to say that it says right there 5.8 22 elevation, that's above sea level and 584, so that's 56 23 feet and if you estimate between LB-4 and TP-6 as being 24 50 feet, that's just a guess, it says, vertical site 25 absolutely 56. So 50, potentially 50 vertically, 45	84 1 for joining us on Zoom. 2 MR. Plocker. 3 MR. PLOCKER: Thank you, chairman Bagoff. 4 The applicant would like to call it's professional 5 planner, John McDonough. 6 MS. MCGOVERN: Give me your name. 7 THE WITNESS: Sure. Hi there everyone. My 8 name is John McDonough. 9 MS. MCGOVERN: Do you swear or affirm to 10 tell the truth the whole truth nothing but the truth. 11 THE WITNESS: Yes, I do. 12 MS. MCGOVERN: Thank you. 13 J O H N M C D O N O U G H, having been duly sworn 14 under oath according to law testifies as follows: 15 DIRECT EXAMINATION BY MR. PLOCKER: 16 Q. Okay. Thank you. 17 Mr. McDonough, could you give the board and the 18 public the benefit of your credentials? 19 A. Sure. I am a licensed professional planner here 20 in the state of New Jersey. That license is current. 21 It's in good standing. 22 I testify in this capacity throughout the state 23 on a nightly basis. So we get to see the full cross 24 section, if you will, of this great state. 25 Again, for the record my name is John McDonough.

85 1 I'm a licensed professional planner here in the state of 2 New Jersey. That license is current. It's in good 3 standing. This is what I do on a nightly basis 4 throughout the state of New Jersey. I am also a member 5 of the AICP, American Institute of Certified Planners. 6 That's a national certification. Again, both are 7 current and in good standing. I do this on a nightly 8 basis and I have been here in this great community many, 9 many times. 10 THE PLOCKER: Okay. 11 CHAIRMAN BAGOFF: Any member of the board 12 have any questions about Mr. McDonough and his 13 licensures? 14 We accept you as a professional planner in the 15 state of New Jersey, sir. 16 Go ahead. 17 THE WITNESS: Thank you, Mr. Chairman. 18 Q. Okay. 19 John, the application seeks one bulk variance and 20 two exception requests from the RSIS standards. Please 21 give your overview of the project proposed as a planner 22 and address those three items as part of your testimony? 23 A. Sure. So from a planning standpoint we conducted 24 what would be a customary planning analysis in support 25 of the application. There are four parts to our	87 1 obligation to provide for it's fair share of affordable 2 housing, that equates to 100 units in four buildings, as 3 you heard through the testimony of the witnesses 4 extensively before me. And over 90 acres of preserved 5 land as part of this development. 6 Part number 3, we look at the zoning 7 considerations and we are here in the IH-1 inclusionary 8 housing district. A zone that is specifically aimed at 9 producing affordable housing. It comes on the heels of 10 your 2019 Master Plan update and reexamination report 11 which continues to call out as a core goal of the 12 community to provide for Fair Share Housing and decent 13 housing for people of all income levels. Quoting from 14 the Master Plan in general, in terms of general housing 15 obligations, West Orange remains committed to addressing 16 its, "Fair Share of regional affordable housing needs as 17 well as providing a range of housing opportunities." 18 Again, this also comes on the heels of our Fair Housing 19 Act and the state wide obligation to provide Fair Share 20 Housing and affordable housing for persons of low and 21 moderate income. Not only does this come on the heels 22 of the 2019 Master Plan, you followed that up with a 23 2020 fair share element and housing element as well, 24 which specifically references this site on page number 9 25 and specifically references this development, quoting
86 1 analysis. First part we look at is existing conditions. 2 Second, we look at proposed conditions. 3 Third, we look at applicable zoning and how the 4 particular development stacks up with the zoning 5 criteria that's articulated in your regulations. And 6 then finally, again, to the extent that the applicant is 7 seeking relief, we do have some relief sought here, we 8 look at the statutory criteria which have been well 9 established by our Municipal Land Use Law in existence 10 since 1975. 11 So taking you through the four parts. 12 Part number 1, it's been well established here 13 that we are dealing with a single tax lot, Block 179, 14 Lot 32, approximately 120 acres of vacant land. The 15 surrounding lands, as you've seen during the course of 16 seven hearings, now this being the eighth hearing, it's 17 all surrounded by development, predominantly residential 18 development. 19 Part number 2, we look at what's proposed. The 20 plan here is, as you've heard, is for what we call an 21 inclusionary housing development. In accordance with 22 the towns Fair Share Plan, the Housing Element and Fair 23 Share Plan and the court settlement. There are 496 24 units proposed here with a 20 percent affordable set 25 aside that will contribute to the towns regional	88 1 again, "West Essex Highlands Block 179, Lot 32 will 2 contain 496 family residential units including 100 3 affordable family units or rental units." Again, that 4 was part of a court settlement with Fair Share Housing 5 advocacy group. Again, that avoids a potential 6 challenge under a builders remedy and gives the 7 community immunity from a developers challenge for 8 failing to meet your fair share obligation. 9 This is one of multiple sites that, again, the 10 town is being proactive in meeting its fair share 11 obligation, so compliments to the community, your 12 leadership, this board all with the foresight to see 13 that you have a responsibility to provide for your Fair 14 Share Housing obligation. 15 This is a third round project, you actually are 16 now facing the fourth round coming at you next, as all 17 municipalities are, 80,000 -- actually more than 80,000 18 affordable housing units are mandated by the DCA as part 19 of the numbers that came out in October to provide a 20 realistic opportunity to stabilize 80,000 affordable 21 housing units by 2035, that's 10 years starting in 2025. 22 Your town is getting hit with an obligation as 23 well in the fourth round, 660 units is what I'm seeing 24 as part the DCA numbers. Again, this is a third round 25 obligation, so this is looking at your prior obligation.

89 1 The zone, again, is specifically aimed at 2 providing affordable housing as part of your fair share 3 plan. The planning board has taken all the proper steps 4 procedurally in implementing this plan. Most 5 importantly finding that the fair share element or the 6 housing element of the plan is substantially consistent 7 with your Master Plan as well. So there is a whole 8 series of layers of connectivity here from a public 9 policy standpoint that links together in the 10 implementation of this particular plan. 11 My role as the planner is relatively limited. 12 The focus and the board has a similar responsibility 13 here to focus on the applications conforming with the 14 zoning regulations that are before you. There's very 15 strict case law, very solid case law that comes from the 16 Supreme Court in the Pizzo Mantin case that says the 17 essence of good planning is rooted in your zoning 18 ordinance. If an application complies with your 19 ordinance it should be approved. We got a project here 20 that is substantially in compliance with the zoning 21 regulations that are before you. 22 All of the highest gears of your IH-1 district 23 are met. Particularly your use controls in terms of 24 providing for multifamily residential and open space. 25 And then of course your most important bulk controls are	91 1 the relief the applicant is asking the board to move on 2 is relatively limited as well. 3 There's one C variance here. You heard through 4 Mr. Appel's testimony back in August when those 5 air-conditioners were blasting on a hot day, quite the 6 contrast from today, where you saw many visuals as to 7 the relief that the applicant is seeking, which pertains 8 to a grading control that is built to this AH-1 9 inclusionary housing zone district. Not to the building 10 per se, but to the grading around the building. It's in 11 the grading section of your ordinance. 12 You heard testimony through Mr. Anderson, through 13 Mr. Appel as well, that the applicant is asking the 14 board to move on having greater than 50 percent exposure 15 of the building foundations based on the grading, again, 16 in the interest of minimizing disturbance on the 17 property and we've heard this over and over again, it 18 goes back to the settlement agreement as well, to 19 minimize disturbance on the property, to provide for a 20 cluster development as opposed to a sprawling 21 development over the entire land and maintaining 22 significant green space on the property. 23 Mitigative measures with respect to that wall 24 exposure, and just for the record, again citing Mr. 25 Appel's testimony, you got four buildings here, Building
90 1 met here as well. Project density, conforms. Project 2 height, conforms. The number of stories, conforms. The 3 coverage, building coverage, lot coverage, conforms. 4 Setbacks on all sides, front, side, rear, other side, 5 all conform. The parking, fully conforms. The buffers 6 on all sides, fully conform. The landscaping details, 7 fully conform. The lighting, signage, the unit sizes, 8 unit affordability, all conform with your zoning 9 ordinance. The project is also in full conformance with 10 outside agency requirements as well, what we call the 11 UHAC rules, or the Uniform Housing Affordability 12 Controls. 13 As you heard through Mr. Appel's testimony, the 14 architect, this project has been designed in accordance 15 with UHAC rules and affordability controls. 16 DEP, you heard extensive environmental testimony, 17 you heard Mr. Anderson speak about the strict adherence 18 to the DEP regulations with respect to wetlands and 19 buffers and the like. 20 And then finally of course ADA and our EV 21 standards, the state wide standards as well, are all met 22 here. 23 The project requires very, very minimal relief 24 and that will bring me to the fourth part of my 25 analysis, which will be relatively short, because again,	92 1 A exposes 76.5 percent, Building B, 76.4 percent, 2 Building C, 69.1 percent and Building D, 54.8 percent, 3 whereby 50 percent would be the maximum that's allowed. 4 Again, all in response to the sloping terrain, the 5 highly irregular terrain that we're dealing with on this 6 rugged piece of property and mitigated by substantial 7 vegetation. 8 You heard a lot about that green wall, this is 9 not going to be a plastic green wall, this is going to 10 be a living green wall, actual plantings. Foundation 11 plantings and trees as well to mitigate exposure, which 12 is really internal to the development not external to 13 the development and certainly remote from those homes 14 that are around it. Mitigating and obscured -- 15 mitigated and obscured by the trees and the buffering 16 that will remain between the subject and the neighboring 17 properties. 18 Again, we're looking at mitigative measures and 19 all being done in the interest of minimizing land 20 disturbance. 21 In consideration of the C relief that the 22 applicant is seeking and, again, it's just that one 23 variance which really has an aesthetic component more so 24 than a functional or a life safety component to it. We 25 look at what we call the Flexible C Balancing Test, and

1 we consider the application as a whole, we have good
 2 case law on that as well that says, look at the entire
 3 package and the good that it does. We counter balance
 4 that with the relief that the applicant is seeking,
 5 given that adherence to the zone, the higher zone
 6 controls and this relatively modest design relief that
 7 the applicant is asking the board to move on. Again,
 8 remember the little blue slivers that Mr. Appel showed
 9 in his Exhibit A-3 back in August, I think clearly the
 10 board can find that relief can be granted without any
 11 substantially adverse visual impacts by having that
 12 exposed building foundation and the relief that's being
 13 sought.

14 On the positive side, we consider the benefits of
 15 the application as a whole. Paramount to this
 16 application is the public interest, the court mandated
 17 provision for affordable housing. These are the words
 18 of the New Jersey Supreme Court going all the way back
 19 to the Mount Laurel number 1. These are not John
 20 McDonough's words, these are the New Jersey Supreme
 21 Court which form the whole impetus why we have
 22 affordable housing here in New Jersey and this was
 23 brought on, again, by that 1975 case NAACP v. The
 24 Township of Mount Laurel where courts found that there
 25 was exclusionary zoning in Mount Laurel and open the

1 doors, if you will, for the provision of affordable
 2 housing and obligation all towns. This is what the
 3 court said, "There is not the slightest doubt that New
 4 Jersey has been and continues to be faced with a
 5 desperate need for housing, especially of decent living
 6 accommodations economically suitable for low and
 7 moderate income families. This situation is
 8 characterized as a crisis." That's the pre-amble to the
 9 Mount Laurel Doctrine which has now been reaffirmed
 10 since 1975 for Mount Laurel 2, Mount Laurel 3 and here
 11 we sit with Mount Laurel 4 again. So what's happening
 12 here in West Orange is happening throughout New Jersey
 13 as well, and again, I compliment the community and the
 14 leadership for responding to the law. This is not the
 15 town per se driving this, but the law that's driving
 16 this and what our courts are mandating.

17 The project not only provides affordable housing,
 18 which we just said is a paramount of public interest.
 19 We have new housing stock, we have attractive new
 20 buildings, we've got abundant robust landscaping. This
 21 project has been well designed, it has been well laid
 22 out. You have testimony, unwavering testimony that this
 23 project will flow, will function, will operate safely,
 24 conveniently and comfortable for the people that live
 25 here and will integrate with the land that is around it.

1 The project will promote compact development,
 2 efficient land use and economic scale, which is what we
 3 see in multifamily developments, clustered development
 4 as opposed to sprawling single family development.

5 The project promotes a variety of land uses in
 6 appropriate locations. Again, with what is a fully
 7 permitted use in this zone.

8 The project promotes environmental preservation
 9 by preserving over 90 acres of woodlands. We always
 10 have to take this back to our land use law N.J.S.A.
 11 40:55D-2, which is what gives this community the right
 12 to create zone districts and essentially create this
 13 board and your zoning board as well and govern what
 14 happens from a land use perspective within the proper of
 15 your community.

16 Fundamental purposes in the land use law, there
 17 about 18 or so of them. It's an obligation of the
 18 applicant to prove that one are met. I actually see
 19 multiple here based on the benefits that I just quoted,
 20 including purpose A, the promotion of the general
 21 welfare. Purpose G, again, the planning goal for
 22 variety. Purpose I, for promotion of a desirable visual
 23 environment and purpose N, efficient use of land.

24 Counter balancing that with the negative
 25 criteria. Based on all the testimony and the credible

1 evidence, relief can be granted without substantial
 2 adverse impacts. You have good, solid testimony from
 3 Mr. Anderson and also 60, 70 pages of detailed site
 4 plans that demonstrate this is a well thought out plan
 5 designed in accordance with sound site planning
 6 principles. Likewise you have a set of plans and
 7 testimony from Mr. Appel that this has been designed in
 8 accordance with all applicable building codes, UHAC and
 9 other life safety codes as well.

10 You have testimony through your own environmental
 11 expert that there will not be any substantial
 12 environmental impacts. Testimony from Mr. Pehnke that
 13 there will not be any substantially adverse traffic
 14 impacts. And, again, you have testimony through an
 15 expert who's your technical that there will not be any
 16 substantial, geotechnical, impacts associated with this
 17 development. Again, this is uncontroverted expert
 18 opinion. That, as I stand now, I think strongly goes
 19 towards the resolution of the negative criteria and the
 20 applicant has certainly met it's burden through
 21 continued probing, which I think is certainly
 22 appropriate, very, very detailed, good questions and
 23 responsive applicant in the form of its professionals
 24 here. So the process has been interactive, which,
 25 again, is exactly what Pizzo Mantin says the process

1 should be. It should be done in a public forum with the
2 public and questions are posed, questions are answered.

3 Where we landed now after I will say eight
4 hearings, testimony on the record is clear that this
5 project will not have any substantially adverse impacts.

6 And lastly of course, I'm going to take you back
7 to that Pizzo Mantin case which I can tell you I
8 actually lived that case. It's up in Randolph, it
9 involved a 90 acre virgin piece of land of woodland
10 where the applicant was proposing a residential
11 development. We went through multiple hearings, many,
12 many hearings, public, very similar process to what has
13 happened here. At the end of the day the board actually
14 denied the application on the grounds that it did not
15 constitute "good planning." It went through the courts
16 and it landed with the Supreme Court that, again, taking
17 us back to what I said at the outset, ruled that the
18 essence of good planning "is rooted in your zoning
19 ordinance." Where an application complies it is
20 consistent with good planning and in that regard should
21 be approved. It is not up to the discretion of the
22 board or the public to say what does or doesn't
23 constitute good planning. You have evidence here, you
24 have conformance with the zone ordinance, which is
25 particularly set up to safe guard public interest.

1 So, again, we have two cases here that are
2 fundamental tenants to the application before you. The
3 Mount Laurel Doctrine and the Pizzo Mantin case as well
4 which will give the board, I think, good legal framework
5 to guide your decision making here. I'm not a lawyer,
6 I'm a planner, we have to operate in a legal frame work
7 and so I give those -- I certainly take those cases into
8 consideration and I give it to the board as well.

9 On balancing, I think clearly lands on the
10 positive substantially outweighs any detriments
11 associated with those slivers of raw wall exposure and
12 clearly a better zoning alternative. It sounds like it
13 is potentially feasible to eliminate that relief, but
14 then you would get retaining walls, you'd get more land
15 disturbance, more tree removal. The board's supposed to
16 consider whether it represents a better zoning
17 alternative, and for all those reasons I believe that
18 the evidence proves that this is a better zoning
19 alternative.

20 Now, you did hear testimony outside of the
21 variance relief, there are two de minimus exceptions
22 which come from, again, the state regulation, the
23 Residential Site Improvement Standards, and I'll call
24 them RSIS for the purposes of my testimony. Really
25 falling back on Mr. Pehnke's testimony to a certain

1 extent, Mr. Anderson as well, we have here relief
2 related to the fact that the loop road with the closing
3 off of Kuzik, which comes as part of that settlement
4 agreement with the neighbors there, would create a loop
5 that has a greater than 1,000 average daily traffic
6 rate. Greater than 1,000 average daily traffic. I
7 think through the testimony it was 1,784 trips above
8 that threshold. Mr. Pehnke, again, I'm not a traffic
9 engineer, has addressed that through his testimony as
10 the predicate for my planning conclusion that the site
11 has adequate carrying capacity and can function safely
12 and efficiently without any substantial adverse
13 degradation of traffic or unsafe conditions to have
14 Kuzik Road closed off as part of the court settlement in
15 the interest of protecting the privacy of the neighbors
16 but for emergency access.

17 Likewise there was testimony that came on during
18 the course of the hearing about having a sidewalk only
19 on one side from the interior circle working your way
20 back down to Warner, it's only a piece of the overall
21 development. And, again, I think the board can find
22 that, that relief is also justifiable in meeting the
23 intent and purpose of the RSIS.

24 Whenever we look at relief related to RSIS there
25 are certain words that we need to speak to. First, the

1 literal enforcement of one or more provisions of the
2 standard is impracticable or will exact undue hardship
3 because of peculiar conditions pertaining to the
4 development in question. Again, given all the testimony
5 on the record, strict or literal enforcement is
6 impracticable and serves no practical planning purpose.

7 In terms of the access, adequate access is
8 provided and relief response to the neighbors request to
9 close off Kuzik. Relief relates to a hardship created
10 by the land and the surrounding road network already in
11 place. You heard that that sidewalk on the one side is
12 going to provide for safe and adequate pedestrian
13 circulation. There are no homes along that stretch of
14 roadway, so the single walkway would nicely tie into
15 what we see on the Warner side.

16 Additionally, the RSIS purposes advanced here to
17 eliminate unnecessary increases in cost of housing that
18 are non-commensurate with the protection of public
19 health and safety. To provide for residential projects
20 that are based upon sound objectives, site improvement
21 standards, rather than upon discretionary design
22 standards. To provide the widest possible range of
23 design freedom and promote diversity through performance
24 oriented site improvement standards and then finally to
25 separate the policy making aspects of the development

101 1 review from the making of technical determinations. 2 During the course of the hearings, again, we found that 3 the applicant is advancing the laudable goals of, and 4 policies of the community, to advance your complete 5 street policy. This system, this circulation system is 6 going to be bicycle friendly and pedestrian friendly and 7 I think that goes towards the spirit of the RSIS and 8 justifies those de minimus exceptions as well. 9 All said, you have heard a lot of testimony, it's 10 the predicate for my generally narrow conclusion here 11 that this application is the culmination of a long court 12 settlement. I have been involved with this property for 13 many, many years and this is in accordance with the fair 14 share plan. Most importantly for the board to consider 15 the statutory criteria for the relief that the applicant 16 is making or met, and approval is warranted here. 17 That's all I have on direct, unless there's more 18 direct. 19 MR. PLOCKER: No, I don't have any redirect, 20 so I would open, Chairman, open up to the board for 21 questions. 22 CHAIRMAN BAGOFF: Thank you. 23 Mr. Cardoza, do you have any questions for 24 Mr. McDonough on his testimony? 25 MR. CARDOZA: No question questions, Mr.	103 1 any questions on Mr. McDonough's testimony? 2 MR. WILKES: No questions. 3 CHAIRMAN BAGOFF: Thank you. 4 COUNCILWOMAN SCARPA: Do you have any 5 questions for Mr. McDonough on his testimony? 6 COUNCILWOMAN SCARPA: No questions. 7 CHAIRMAN BAGOFF: Mr. Hess, do you have any 8 questions for Mr. McDonough on his testimony? 9 MR. HESS: No questions. 10 CHAIRMAN BAGOFF: Mr. Haizel, do you have 11 any questions for Mr. McDonough on his testimony? 12 MR. HAIZEL: Yes, I do. 13 John, in terms of the stipulation of the 14 exposure of the foundation, what, in your opinion, is 15 the intent of that stipulation? 16 THE WITNESS: I agree with, I think what you 17 said Mr. Haizel, and I think other board members said as 18 well back at that August hearing. It's primarily 19 aesthetic. Not functional per se. Not a safety 20 control, but generally to avoid having foundations, I'll 21 say, on the lower levels of the building overpowering 22 the overall development. Given all the mitigating 23 measures here and those visuals to support that 24 conclusion, I think that planning intent is clearly met 25 here.
102 1 Chairman. 2 CHAIRMAN BAGOFF: Mayor McCartney, do you 3 have any questions for Mr. McDonough on his testimony? 4 MAYOR MCCARTNEY: No questions. 5 CHAIRMAN BAGOFF: Vice Chair Guarino, do you 6 have any questions for Mr. McDonough on his testimony? 7 VICE CHAIRMAN GUARINO: No questions at this 8 time, Mr. Chairman. 9 CHAIRMAN BAGOFF: Mr. Alper, do you have any 10 questions for Mr. McDonough on his testimony? 11 MR. ALPER: It's been a while since I've seen 12 this and I don't know I need to see it, but it occurred 13 to me if Kuzik is closed to vehicle traffic, only left 14 for emergency access, would opening it, keeping it open 15 for bicycles and pedestrians be feasible at all? If so, 16 would that be something that's conditioned or agreed to? 17 Again, it's been so long since I've seen it, I don't 18 remember if it is feasible but it occurred to me to ask. 19 THE WITNESS: Yes. 20 MR. PLOCKER: The applicant will make the 21 representation we believe that it is generally feasible 22 and if it is we would be able to do that. Yes, Mr. 23 Alper. 24 MR. ALPER: Okay. Thank you. 25 CHAIRMAN BAGOFF: Mr. Wilkes, do you have	104 1 MR. HAZEL: Thank you. 2 CHAIRMAN BAGOFF: Thank you. 3 Do you any members of the public have any 4 questions of Mr. McDonough on his testimony? Please 5 come up, state your name. 6 THE PUBLIC: Hi. Victor Misarti. Thank you 7 everyone in the room, I can hear you. It was loud and 8 fantastic. 9 THE WITNESS: I'll run with that. 10 THE PUBLIC: Okay. 11 So my first -- I have two questions. 12 My first question is, you covered very well 13 how it meets the zone, it meets fair share, the 14 development, proposed development meets, you know, ADA, 15 etc. I see there, I'd like your opinion on two areas 16 which I don't think you comply with regulations I'd like 17 you to answer. So one is traffic, you know, we had a 18 traffic expert testify you referred to that, we have 19 over a thousand cars a day, you know, going through one 20 access road. We're going on Eagle Rock Avenue which is 21 going to be a problem. We have right there Laurel 22 Avenue through traffic light which is going to be a 23 conflict with these two turning movements, etc. So as a 24 planner I think it's a fair question, you know, for the 25 public good, etc., don't you see that as -- how do you

105 1 see it? 2 THE WITNESS: Are you talking about the sheer 3 volume of traffic? 4 THE PUBLIC: The whole traffic picture, yes. 5 THE WITNESS: I think I can conclude that 6 the traffic picture has been well thought out by 7 experienced professionals who have done a lot of 8 applications and looked at a lot of traffic conditions. 9 You have solid testimony from Mr. Pehnke, he swore under 10 oath that the project will, again, not create a 11 substantially adverse traffic impact. So that's on the 12 record. 13 THE PUBLIC: Okay. And you agree with that, 14 you would agree? 15 THE WITNESS: I can't dispute it. I'm not a 16 traffic expert and I have not heard any expert opinion 17 that would contravene or contradict that. 18 THE PUBLIC: Okay. 19 And my second question, doesn't seem like 20 this proposed development complies with DEP regulations. 21 I think there was an agreement where they did not have 22 to meet, the development did not have to meet the latest 23 DEP stormwater stream encroachment buffer zones as to 24 how much water is retained on this site. So as a 25 planner what's your opinion, do you think, I mean, if	107 1 THE PUBLIC: Rachel Klein. 2 So when you looked at the site as a planner 3 you pretty much stopped at Warren or Oval or you looked 4 at everything as has been done in the past? You said 5 you've been very familiar with this site for a long 6 time. Most other sites when developed they look at 7 everything. It sounded like you just stopped kind of 8 where Warner and Oval began and that was it. You didn't 9 go to Oval and Eagle Rock, is that true? You said the 10 traffic expert testified that he stopped at Warner and 11 Oval, he didn't look at Oval to Eagle Rock? 12 MR. PLOCKER: I just don't think it's a fair 13 question, because I believe the traffic professional, 14 Ms. Klein -- 15 THE PUBLIC: Yeah. 16 MR. PLOCKER: I believe he did testify to 17 that and he did testify as to the nature of the county 18 improvements, including the traffic signal installation 19 at the corner of Eagle Rock and Oval and I believe he 20 testified how that would interplay with Laurel as well, 21 and I know the other gentleman had mentioned those 22 intersections. So our professional definitely did 23 address traffic with regard to those roads. 24 THE PUBLIC: Not where Bakley joins oval and 25 more houses empty on the same road, but other planners
106 1 it's not meeting the newest regulations it seems like 2 it's not. 3 MS. McGOVERN: Is that a question. 4 MR. PLOCKER: No, I believe that the 5 gentleman is asking about not complying with certain DEP 6 regulations. It was testified as to what DEP stormwater 7 regulations apply. That was agreed with to by the DEP 8 itself and as we stated on the record before and as I 9 believe the township has, we did obtain all our required 10 DEP permits. I understand there are a group or two who 11 want to try to change the DEP's mind and that's fine, 12 that's not within the purview of this board, but that's 13 not something Mr. McDonough addressed or can or should 14 address. 15 THE PUBLIC: Okay. Just my question was as 16 a planner looking at the public good, you know, it's all 17 right that, you know, we're not meeting the latest 18 regulations? 19 MR. PLOCKER: Again, outside the scope. 20 CHAIRMAN BAGOFF: He didn't testify to that, 21 sir. He didn't testify to that, nor is he going to 22 testify to that. 23 THE PUBLIC: Okay. He's not involved. 24 That's it. Thank you. 25 THE WITNESS: Thank you.	108 1 had looked at that. That's the reason I asked the 2 question. 3 In your professional assessment this is a 4 safe, great project, looks wonderful, Mount Laurel 5 housing is going to be met, but when I look at the 6 magical number on Mount Laurel housing made deemed it 7 unsafe for 136 single family homes is now suddenly safe 8 for almost 500 homes. 9 THE WITNESS: Two totally different 10 properties. Single family housing is notorious for 11 sprawl. For disturbance, for land disturbance. One of 12 the fundamental principles of this application was to 13 have a compact development and, again, preserve over 90 14 acres of trees. That was not part of the single family. 15 THE PUBLIC: I think you misunderstood my 16 question. The town planner had deemed it's unsafe for 17 136 family homes based on traffic alone and the areas 18 where traffic meets was not really changed, except they 19 added Howell Drive as a possible egress for emergency 20 use only. So that was my -- 21 THE WITNESS: First of all, I'm not aware of 22 the prior planner saying that 136 units was unsafe from 23 a traffic standpoint. I'm looking at the application 24 now and the uncontroverted expert opinion from the 25 traffic engineer was that the development before you

109 1 will not be unsafe from a traffic standpoint. 2 THE PUBLIC: From Oval to -- from Warner to 3 Oval? 4 THE WITNESS: Based on standard traffic 5 impact analysis. 6 THE PUBLIC: Thank you. 7 CHAIRMAN BAGOFF: Thank you. 8 Do any other members of the public -- please 9 come up. State your name. 10 THE PUBLIC: Good evening, Edward Davis, I'm 11 Mayor of Essex Fells. I apologize for my casual attire, 12 I wasn't expecting to speak tonight. Thank you for your 13 testimony, just a couple questions for you. 14 You mentioned a court case where I think 15 your description of it was the court ruled, and you 16 apparently agree, that if a development is consistent 17 with the zone, with the zoning ordinance, that by 18 definition is sound planning. Do I have that right, is 19 that what you said? 20 THE WITNESS: That's the gist, yes. 21 THE PUBLIC: Okay. 22 So this zoning ordinance changed over time, 23 correct? In West Orange. 24 THE WITNESS: Yes. Zoning evolves, land use 25 does not standstill.	111 1 planning principles outside just looking at the zone, 2 looking at Mount Laurel, etc., correct? 3 THE WITNESS: All I can tell you is that I 4 lived that, that Randolph case. It had a lot of 5 parallels to what we're seeing here. A public that 6 clearly did not like the application, move the road, 7 move this or move that. Eventually the applicant threw 8 up his hands and said, I can't. I can't. I comply with 9 the ordinance and then went through the legal process. 10 THE PUBLIC: Did you look at anything else 11 outside the law in your analysis of this site, whether 12 it's sound planning or not? 13 THE WITNESS: The law is at the heart of 14 land use planning. 15 THE PUBLIC: Did you look at anything other 16 than the law as a planner? Did you look at, for 17 instance, the site conditions. Did you look at 18 neighboring property. Did you look at the impact this 19 development would have on neighbors in West Orange and 20 else were at all? 21 THE WITNESS: Yes. 22 THE PUBLIC: Okay. 23 Did you look at the impact of this 24 development on Laurel in Essex Fells, which is adjacent 25 -- owns adjacent parcel in town itself, adjacent to this
110 1 THE PUBLIC: Okay. 2 So in the zoning ordinance that applied, I 3 think it was six years ago, predated the current zone, 4 you're saying by definition that was sound at the time, 5 correct? 6 THE WITNESS: Yes. 7 THE PUBLIC: Okay. 8 So now a drastic change in terms of 9 multifamily homes what's allowed in the zone, drastic 10 change in roughly 2020, that's also sound even though 11 it's vastly different than what proceeded it? 12 THE WITNESS: Planning is all about balance. 13 There were significant changed circumstances with round 14 3 court mandated obligations. Certainly environmental 15 protection is one of the considerations, but affordable 16 housing is another force that has influence on this 17 town. So, yes, that is a clear cut and conventional 18 reason why a zoning would change. We see it throughout 19 New Jersey. 20 THE PUBLIC: Right. You're not testifying 21 to the board in your expert opinion on Mount Laurel, 22 you're not a lawyer, right? 23 THE WITNESS: I am not a lawyer. 24 THE PUBLIC: So you're a planner. So you 25 did an independent analysis consistent with sound	112 1 property? 2 THE WITNESS: I'm am not sure what the 3 question is? 4 THE PUBLIC: Did you look at anything 5 outside the boundaries of this property itself? 6 Downhill for instance. 7 THE WITNESS: Yes, I've been in homes in 8 Essex Fells that border this property. 9 THE PUBLIC: Were you aware Essex Fells 10 itself owns 18 acres on Essex Fells Country Club, which 11 acts as a well field for the water supply? 12 THE WITNESS: No. 13 THE PUBLIC: You're not aware? 14 THE WITNESS: No. 15 THE PUBLIC: Did you look at the impact on 16 stormwater under todays condition on Essex Fells or any 17 other neighboring town? 18 THE WITNESS: I did not. I'm not an 19 engineer. 20 THE PUBLIC: Now, we have in your summary 21 that characterizes various experts that appeared before 22 this board. You said things like, their testimony was 23 thorough. Their testimony was sound. Traffic 24 engineering, other types, geotechnical engineering, you 25 don't have the capability to evaluate their testimony on

113 1 an expert basis, do you? That's not a planning opinion. 2 THE WITNESS: A planners charge is to look at 3 land development, land use comprehensively. We consider 4 technical testimony, technical reports, plans. If this 5 plan did not work we wouldn't be here. This has gone 6 through a well thought out engineering process and the 7 plan before you has been based on sound engineering 8 principles. 9 THE PUBLIC: Is it your belief that this 10 board cannot consider impacts on stormwater quality, 11 potable water in Essex Fells or other impacts from an 12 environmental standpoint or quality of life standpoint 13 downhill? 14 THE WITNESS: Yes, the board can, again, 15 with consideration to how it's articulated in the 16 ordinance. 17 THE PUBLIC: But you haven't looked at any 18 of that? 19 THE WITNESS: I've looked at the ordinance 20 from top to bottom. 21 THE PUBLIC: What are the types of 22 conditions, if you looked at stormwater, on neighboring 23 property? 24 You haven't looked at adjacent to this 25 property?	115 1 that the plan of setbacks to adjacent neighborhoods are 2 all equal? 3 THE WITNESS: I don't understand the 4 question. 5 THE PUBLIC: You said the setback is, I'm 6 sorry, I'm just trying to -- 7 THE WITNESS: It's okay. 8 THE PUBLIC: I'm not a planner. 9 But the setbacks, are they, you said they're 10 adjacent to the property, correct? 11 THE WITNESS: To the property line. To the 12 outbound of the property. 13 THE PUBLIC: Okay. 14 You also mentioned lighting conforms. Can 15 you expand on how lighting conforms and what constitutes 16 conforming and not conforming for lighting? 17 THE WITNESS: I'd have to go back and look 18 at the specifics of the ordinance. But, again, the 19 applicant is not asking for any relief with respect to 20 illumination levels, light heights, light temperature, 21 color of the lights, dark-sky compliance. No relief in 22 that regard. 23 THE PUBLIC: So with regard to dark-sky 24 compliance, I'm not familiar with the terminology, can 25 you explain what you mean by dark-sky compliance?
114 1 THE WITNESS: I have not studied engineering 2 aspects of the stormwater management plan, times of 3 concentration, runoff coefficients, recharge, two year, 4 10 year, 50 year. Only relied upon the conclusions. 5 THE PUBLIC: So you're relying on other 6 expert testimony saying it's sound planning? 7 THE WITNESS: Yes, I am. 8 THE PUBLIC: Thank you. 9 THE WITNESS: That's my job. 10 THE PUBLIC: Thank you. 11 CHAIRMAN BAGOFF: Thank you. 12 THE PUBLIC: Seth Weisleder. 13 You mentioned at the beginning of your 14 testimony, you said the setbacks conform and can you 15 expand on that a little bit. What do you mean by 16 setbacks conform? 17 THE WITNESS: No relief is being sought with 18 respect to the positioning of the buildings, parking, 19 the roadways or any other structures with respect to 20 setbacks from property lines. 21 THE PUBLIC: Okay. 22 THE WITNESS: Those are light and air 23 controls and the application is not asking for any 24 relief in that regard. 25 THE PUBLIC: Do you feel that the buildings,	116 1 THE WITNESS: Sure. These are downward 2 directed lights cutoff in the back, so the spillage will 3 not go beyond the limits of the property or up into the 4 sky to intercept with what we call the dark-sky. 5 THE PUBLIC: So like light pollution? 6 THE WITNESS: Yes. 7 THE PUBLIC: So you think -- does that 8 conform to all neighboring neighborhoods, whether a 9 little closer or further away, would you say that those 10 conform? 11 THE WITNESS: Yes. 12 THE PUBLIC: Can you expand a little bit, 13 I'm sorry. You gave like a one word sentence, but can 14 you expand on what you mean by, from a planning point of 15 view, that it's well designed and well laid out. I 16 mean, that's, that's your opinion based on other expert 17 testimony but can you expand on what you define what 18 well laid out is versus not well laid out? 19 THE WITNESS: Sure. There are many accepted 20 design principles with respect to, for example, roadway 21 construction, horizontally, vertically, geometrically, 22 to ensure safe circulation. Start with that, that's 23 sort of the backbone of the development. And then of 24 course the positioning of the buildings, access into the 25 buildings. You heard extensive testimony through Mr.

117

1 Appel how people get into the buildings. How people get
2 to their units. The amenities. Again, these are all
3 done with consideration to acceptable design principles.
4 THE PUBLIC: What about design principles in
5 terms of nearby neighbors. Can you maybe share your
6 opinion on being well laid out and being well balanced
7 between neighborhoods and how far a particular building
8 should be of this magnitude to adjoining neighborhoods?
9 I mean, looking down at the property at the map of the
10 design would you say that, that is well laid out the way
11 it's balanced out? Maybe it's to close to one or two
12 neighborhoods.
13 THE WITNESS: Short answer is, yes. No
14 relief is being sought for the buffers. I'm not here to
15 question the integrity of the zoning ordinance. This is
16 a development that is going to have and preserve a soft
17 green edge around the perimeter of the property. That's
18 consistent with what we try to do from a planning
19 standpoint.
20 THE PUBLIC: All right. Thank you.
21 THE WITNESS: You're welcome.
22 CHAIRMAN BAGOFF: Any other members of the
23 public have questions?
24 THE PUBLIC: Hi. Jessica Pearson.
25 THE WITNESS: Hi there.

118

1 THE PUBLIC: Couple of questions. Did you
2 listen to all of this testimony or did you watch it on
3 YouTube?
4 THE WITNESS: Combination of the two. I've
5 been here but I tend to stay in the back because it's
6 crowded and I'm trying to maintain some space.
7 THE PUBLIC: And you can hear back here?
8 THE WITNESS: On Zoom. I can hear back there
9 better than here sometimes.
10 THE PUBLIC: Okay.
11 So you have listened to 100 percent of the
12 -- or read the transcripts of the testimony?
13 THE WITNESS: Yes.
14 THE PUBLIC: So are you still saying it's
15 uncontroverted?
16 THE WITNESS: Yes.
17 THE PUBLIC: Okay. I guess stick around for
18 like Part 2. Well, I'm certainly not part of that Part
19 2 but I'm just saying I think that you put the cart
20 before the horse.
21 THE WITNESS: If Part 2 makes me change my
22 mind, I'll come back, I'm sure.
23 THE PUBLIC: So this particular zone, this
24 was drafted in order to accommodate this housing, would
25 that be correct? It's an overlay zone of sorts.

119

1 MR. PLOCKER: No, objection to that.
2 THE PUBLIC: I'm asking a question to the
3 planner.
4 CHAIRMAN BAGOFF: You made a statement.
5 This is not --
6 THE PUBLIC: Oh, my God.
7 CHAIRMAN BAGOFF: -- this is not an overlay.
8 THE PUBLIC: Could somebody help me out
9 here. It's ridiculous.
10 CHAIRMAN BAGOFF: This is a matter of law,
11 this is not an overlay zone. It is a zone --
12 THE PUBLIC: Okay.
13 CHAIRMAN BAGOFF: -- that was adopted by the
14 town council. Let's just be accurate when we're
15 talking, please. Okay.
16 THE PUBLIC: I'm asking him. So he could
17 have qualified that instead of you yelling at me and
18 treating members of the public with such caustic
19 disrespect. Please. I asked him, it was in the form of
20 a question and I'm really getting tired of getting
21 yelled at by you and treated with total disrespect.
22 CHAIRMAN BAGOFF: I'm not treating you with
23 --
24 THE PUBLIC: It's caustic.
25 CHAIRMAN BAGOFF: When you're ready, let me

120

1 finish. Okay.
2 THE PUBLIC: I don't need to be lectured by
3 you, sir. That's what you do to people in the public.
4 You cow them. It's really tiresome. I am, please I'm
5 trying to ask some questions. You can correct me, but
6 you can't lecture me. I asked him if it was an overlay
7 zone. He could have said, no, ma'am. It's not.
8 CHAIRMAN BAGOFF: You stated it was an
9 overlay zone. There's a difference.
10 Go right ahead, ask your question.
11 THE WITNESS: No, ma'am. It's not.
12 THE PUBLIC: Thank you, sir. This is a
13 gentleman.
14 Okay. But it was drafted as a zone
15 particular to this property, is that correct?
16 THE WITNESS: Correct.
17 THE PUBLIC: See, I asked a question.
18 Okay. If that's the case, why if it was
19 drafted in order to accommodate this property, why in
20 fact would they need any waivers or any variances or any
21 changes if they were part and parcel, and the council
22 who drafted the zoning ordinance in conjunction
23 hopefully with the planning board, why wouldn't they
24 have taken everything into consideration and no waivers
25 would have been needed, is that generally how it goes?

121 1 MR. PLOCKER: John, don't answer that 2 question because it is not really a question. I just 3 want to explain something. 4 THE PUBLIC: It is a question. Why do they 5 need variances if this board and council drafted it 6 particularly to this particular -- 7 MR. PLOCKER: As a -- 8 CHAIRMAN BAGOFF: May I answer first. 9 MR. PLOCKER: Please. 10 CHAIRMAN BAGOFF: This board was not part of 11 any decision, that is a legal matter. 12 THE PUBLIC: It goes to him saying that we 13 look at the zone. This gentleman testified to the fact, 14 and he is a gentleman by the way, he's great. He 15 testified to the fact that good planning and good, from 16 a planners perspective, has to look at the zone and the 17 way that, that zone was written in the zoning code. I'm 18 simply asking him to please address the fact that 19 they're asking for waivers in a zone code that was just 20 written and revised. Did you say it was written in 2019 21 and maybe revised again in 2020? 22 THE WITNESS: Yes. 23 THE PUBLIC: To accommodate this very 24 development. So why is there such an exigent need for 25 waivers?	123 1 RSIS, and I believe you're on a planning board in 2 another town, I'm sure you're familiar with them. 3 Variances, exceptions and waivers are sought all the 4 time. Importantly as the zoning ordinance, which Mr. 5 McDonough relies upon, our settlement agreement is 6 referenced in the purpose of the zoning ordinance. That 7 settlement agreement specifically recognizes that at the 8 time of settlement, which was 2020, four and half years 9 ago let's say, and the town was involved, it 10 specifically recognizes at that time that job or any job 11 that's part of the Mount Laurel settlement is extremely 12 rare that a job would be fully engineered at that point 13 until the applicant, the developer, the property owner, 14 knows that the sites in the plan and approved by the 15 court. This site was put in the settlement agreement, 16 it was recommend by the special master, it was approved 17 by the Superior Court of New Jersey. Pursuant to that 18 the town had certain obligations under the settlement 19 agreement. One of them was to enact the zoning 20 ordinance, which is attached to the settlement agreement 21 which wound up in form C in the town code. The job got 22 fully engineered, the variance that we're here for is 23 necessary and the two exceptions. We fully acknowledge 24 them. One for was for Kuzik Drive pursuant to the 25 agreement with the condo association to the south. If
122 1 MR. PLOCKER: All right. So initially there 2 are no waivers being sought. You mentioned waivers in 3 connection with the zoning ordinance. We are seeking 4 one bulk variance for the building foundations. 5 THE PUBLIC: I'm sorry, can you repeat that. 6 One what? 7 MS. MCGOVERN: Bulk variance. One C 8 variance. 9 THE PUBLIC: C. Okay. 10 MR. PLOCKER: There's one bulk C variance 11 for the application that -- 12 THE PUBLIC: Okay. 13 MR. PLOCKER: I need to be able to finish 14 without being interrupted, please Mr. Chairman. 15 THE PUBLIC: I'm trying to listen. I can't 16 hear. 17 MR. PLOCKER: It's very hard to talk when 18 there's an okay, okay, every few minutes. 19 So I just want to address the question. 20 There's a single variance that this application is 21 seeking from the zoning ordinance that pertains to the 22 percentage of the building foundations that are exposed. 23 Mr. Appel addressed that in his testimony. Mr. 24 McDonough relied upon that in his testimony. There are 25 two exceptions from a state regulation, from a DCA,	124 1 it's not granted it's understood the application would 2 proceed with Kuzik open. 3 THE PUBLIC: Thank you, Mr. McDonough. 4 So I was asking Mr. McDonough, when you 5 first began your monologue earlier about this particular 6 site, did you mention that there were a number of things 7 that this variance, that this applicant was looking for 8 relief for? 9 THE WITNESS: I did, yes. 10 THE PUBLIC: Okay. 11 Did you put a number on that when you were 12 talking? 13 THE WITNESS: There's one variance. 14 THE PUBLIC: Yes. 15 THE WITNESS: That's for the exposure of the 16 foundation. 17 THE PUBLIC: Correct. 18 THE WITNESS: Which is grading control. 19 THE PUBLIC: Yes, I realize that. 20 THE WITNESS: C variance. 21 THE PUBLIC: I thought you said D, he 22 corrected me. My bad. I thought you said C. Thank 23 you. 24 THE WITNESS: And just to sort of clarify 25 the record. Sometimes we talk about bulk variances,

125 1 that implies mass and scale. These buildings are not 2 overly big. The height complies, you heard Mr. Appel 3 talk about that over and over again. 4 THE PUBLIC: I actually just asked you not 5 to go into details on the C variance. 6 THE WITNESS: So it's just one C. And then 7 outside of the land use law we now go into what we call 8 the RSIS -- 9 THE PUBLIC: Yes. And there were two did 10 you say? 11 THE WITNESS: Yes. One is the average daily 12 traffic coming through Warner would exceed 1,000 trips 13 per day. 14 THE PUBLIC: So we go up to 1,700 and change 15 you said, almost twice? 16 THE WITNESS: Above. 17 THE PUBLIC: If you round up almost twice. 18 I mean, 75 percent more than currently -- than would be 19 allowed? 20 THE WITNESS: Yes. 21 THE PUBLIC: That's pretty steep. Okay. 22 And what was the third one? 23 THE WITNESS: And also from the RSIS was 24 from the circle in the middle of the development coming 25 down to Warner there's a single walkway, a single	127 1 you in terms of your opinion of good planning, I'm not 2 asking you to tell me what the fair share attorneys said 3 about this. I'm asking your opinion and I just 4 basically want to know what you really think, because 5 I'm getting a lot of philosophical from you but in 6 realistic terms, do you think that that's good planning 7 to have a sidewalk on one side of a street where we have 8 a pretty isolated 500 or 496 unit inclusionary building 9 that has to potentially walk down that roadway in order 10 to, or home, up that roadway, to get to and from public 11 transit, which is not close? 12 THE WITNESS: Again, my answer is, yes. One 13 that's founded on multiple layers of advocates for 14 affordable housing to say this sites appropriate but 15 also from a pure design standpoint, a pure planning 16 standpoint. It's as beautiful piece of land perched up 17 on that hill. 18 THE PUBLIC: That has nothing to do -- 19 THE WITNESS: Yes. 20 THE PUBLIC: No, it's the safety and the 21 walking, that was really the issue that you're not 22 really addressing. You're telling me it's a pretty 23 piece of property but we know that. 24 THE WITNESS: It's a beautiful place to live 25 and all people should have a right to live there.
126 1 sidewalk as opposed to double sided. 2 THE PUBLIC: Okay. 3 So just out of curiosity, there is no busing 4 that, when that traffic expert said, that there's not 5 going to be shuttles or are there going to be shuttles? 6 You don't know. That's something you're not -- 7 THE WITNESS: I don't know. As I was 8 listening I heard the word jitney, but I don't know if 9 that was a community jitney that may come up into the 10 community, I don't know. 11 THE PUBLIC: Okay. 12 So is it your opinion that it's good 13 planning for an inclusive -- inclusionary development to 14 be basically in a very, I would say, isolated area, when 15 it comes to public transit and only have sidewalks on 16 one side of the street that would get them in a walking 17 or biking way to public transit? 18 THE WITNESS: My answer is, yes, and that 19 statement is not made in a vacuum. To get here with 20 this project this has gone through your own affordable 21 housing planner. 22 THE PUBLIC: Okay. Thank you. I hear you. 23 THE WITNESS: A fairness hearing, in 24 accordance with the Fair Share Housing advocacy. 25 THE PUBLIC: You're a planner, I'm asking	128 1 Regardless of -- 2 THE PUBLIC: That has nothing to do with the 3 safety of walking down a sidewalk. 4 THE WITNESS: It's all factored into the 5 consideration. 6 THE PUBLIC: So -- 7 THE WITNESS: I have not heard anything to 8 convince me that putting people of lower moderate 9 incomes on the top of that hill creates a safety 10 detriment. 11 THE PUBLIC: We're talking about a sidewalk 12 on one side of the street. The RSIS does not, I guess 13 they don't usually allow for that unless you ask for 14 some sort of relief. 15 THE WITNESS: I'm comfortable with what I've 16 just told you based on the evidence on the record and 17 the witnesses that have gone before me. 18 THE PUBLIC: Okay. 19 THE WITNESS: Mr. Pehnke, Mr. Anderson. 20 There are crosswalks built into this. There are. 21 THE PUBLIC: Okay. I get it. I hear you. 22 Okay. Thank you. 23 CHAIRMAN BAGOFF: Thank you. 24 Do any other members of the public have 25 questions for Mr. McDonough's testimony? Please come

129 1 up. 2 THE PUBLIC: I have a question. Patrick 3 Laterza, L-A-T-E-R-Z-A. 4 THE WITNESS: Hi, Mr. Laterza. 5 THE PUBLIC: I'm a frequent questioner. 6 Couple questions. First, have you seen the 7 planning boards denial of this original application in 8 2006? 9 MR. PLOCKER: That's not relevant. 10 MS. MCGOVERN: Have you seen the denial, the 11 planning boards denial for the previous application. 12 CHAIRMAN BAGOFF: Okay. Right, it's 13 irrelevant to this application. 14 THE PUBLIC: He testified to a point made 15 about it earlier, about why it was denied then how it 16 wouldn't apply to this application. 17 CHAIRMAN BAGOFF: The reason for the denial 18 is irrelevant. See, again, the public brings out things 19 that the planning board needs to hear to look at this 20 application. So that was an application for single 21 family homes. It was a totally different application. 22 They didn't have a fair share component and -- 23 THE PUBLIC: Fire safety -- 24 CHAIRMAN BAGOFF: -- different zone and so 25 we're looking at a totally different animal here.	131 1 experience, yes, it is very common to write the zoning 2 ordinances around affordable housing projects. You can 3 look in towns they'll have an H-1 and H-2, H-4 zone 4 districts specifically written in the interest of 5 eliminating barriers to the provision for affordable 6 housing. 7 MR. PLOCKER: Which are provided for in the 8 COAH regs, if it is not, isn't that correct? 9 THE WITNESS: Correct. 10 THE PUBLIC: And is it also the zoning, the 11 ordinance that you look at, also to do with public 12 safety though, isn't that in consideration? 13 THE WITNESS: It is all about balance, yes. 14 THE PUBLIC: So is this plan currently in 15 compliance with the current tree ordinance? I know it's 16 suspended for this. 17 THE WITNESS: I haven't reviewed it against 18 the current tree ordinance. 19 MR. PLOCKER: Again, it's completely 20 irrelevant. We have our own tree removal and 21 replacement provision for this particular zone. 22 THE PUBLIC: Things that have to do with 23 public safety after the fact. 24 MR. PLOCKER: That's a cute term that 25 everyone likes to throw around, did the town necessarily
130 1 THE PUBLIC: Okay. 2 Are you aware that almost every municipal 3 zoning environment ordinance was suspended for this 4 application? They were. 5 THE WITNESS: There was a tree -- there are 6 tree controls that were put into here. 7 MR. PLOCKER: The applicant will make the 8 representation and make this point that the entire land 9 use code doesn't apply to this application, except for 10 this provision specific to the IH-1 zone ordinance. 11 That's part of the ordinance, it's in black and white. 12 It's part of the record. 13 THE PUBLIC: As a planner is that 14 commonplace for -- 15 MR. PLOCKER: It's challenging the zoning 16 ordinance and it's not appropriate. 17 THE PUBLIC: I mean, he's a planner. He can 18 talk -- he's saying this is good planning, but a lot of 19 the ordinances have been suspended. 20 CHAIRMAN BAGOFF: He's looking at the zoning 21 ordinance. He can answer it based on the zoning 22 ordinance. Whatever opinion based on the zoning 23 ordinance. 24 THE WITNESS: Sure, if the question is, is 25 this normal. Does this happen elsewhere. In my	132 1 consider that when they zoned this property. 2 THE PUBLIC: Which was before the ordinance 3 was put in place. 4 CHAIRMAN BAGOFF: The tree ordinance within 5 the zone plan and that's what the applicant has to 6 comply to. 7 THE PUBLIC: Except if it has to do with 8 public safety, correct? 9 MS. MCGOVERN: Except if it has to do with 10 public safety. 11 CHAIRMAN BAGOFF: I think that would have to 12 be reviewed by the attorney. 13 THE PUBLIC: Okay. 14 I'm just asking a question. Is it 15 complying? 16 MS. MCGOVERN: It's been -- there's been 17 testimony, no, it doesn't comply -- I don't know whether 18 it complies or not but what the difference is, they only 19 have to comply with the ordinance that pertains to this 20 zone. This specific zone. 21 THE PUBLIC: Unless it could impact public 22 safety, which we just established, but you could ask the 23 attorney about it. 24 MS. MCGOVERN: Unless it pertains to public 25 safety. I guess the better question, I don't want to

133 1 put a question in your mouth is, have you heard anything 2 that would challenge public safety with respect to that? 3 MR. PLOCKER: No, and first of all, let's 4 face it, anybody could attempt to relate any 5 governmental ordinance or statute to public safety. 6 It's all for the public safety, good, health, welfare we 7 all get that, so we'll start there. But this 8 application was filed some time ago and we're eight 9 meetings in. We have had various town professionals, 10 engineers, planning, the environmental expert review 11 this and that has not been a comment that has been 12 brought to our attention by anyone of the township or 13 board professionals. 14 THE PUBLIC: I thought the point of the 15 questions were to bring up questions that we thought 16 were concerning. You said that several times, Mr. 17 Bagoff. 18 CHAIRMAN BAGOFF: Well, you feel there's a 19 public safety issue, we heard about the trees in 20 relation to the ordinance in the zone plan. 21 THE WITNESS: No. Again, based on the 22 letter of the ordinance and testimony that's been given, 23 no. 24 THE PUBLIC: That doesn't answer my 25 question, but that's okay.	135 1 through? 2 THE WITNESS: I don't know. 3 THE PUBLIC: Okay. Thank you. 4 CHAIRMAN BAGOFF: Thank you. 5 Do any other members of the public have any 6 questions for Mr. McDonough on his testimony? 7 Please come up and be identified. 8 Seeing none. I'm sorry, Mayor McCartney. 9 MAYOR MCCARTNEY: Mr. McDonough, just going 10 through my notes here and we're talking about sidewalk 11 and public safety, are you aware that the sidewalk is on 12 one side of the street, but I thought you said that 13 there are no homes on that side of the street? Please 14 clarify that. 15 THE WITNESS: I am going to check the plan 16 now. I thought that came out as part of Mr. Pehnke's 17 testimony. From the circle to Warner I am not seeing 18 any homes, ma'am. 19 MAYOR MCCARTNEY: So that's raising the 20 question for public safety. Does that mean someone has 21 to cross the street to get to the sidewalk? 22 THE WITNESS: Just checking. I know there 23 are crosswalks built into the plan that also came out as 24 part of Mr. Pehnke's testimony. I know from the 25 sidewalk from Building A-2. There is a crosswalk across
134 1 Would you say the same about the steep slope 2 that's been in place since the application? 3 THE WITNESS: I have not reviewed this 4 application for conformance with your nonapplicable 5 steep slope regulations. 6 THE PUBLIC: Are you aware of the distance 7 that someone would have to walk from this project to any 8 sort of public transportation? 9 THE WITNESS: No. 10 THE PUBLIC: Are you aware of, other than 11 within the actual location and the sidewalks, what type 12 of traffic anyone would have to walk across in order to 13 get there, get to public transportation from the 14 development? 15 THE WITNESS: No. 16 THE PUBLIC: Would you consider these might 17 be items that would go to good planning for, especially, 18 affordable housing location? 19 THE WITNESS: It's -- all of that is cooked 20 into the zoning regulations which established an 21 appropriate population density limit on this property. 22 So -- 23 THE PUBLIC: Are you aware that this 24 property is locked by other properties in order to get 25 to any sort of mass transit and/or all traffic has to go	136 1 the proposed road, the extension of Warner that will 2 take you to that sidewalk system on the east side of the 3 property. So there is connectivity. 4 MAYOR MCCARTNEY: Crosswalk connectivity? 5 THE WITNESS: Yes. 6 MAYOR MCCARTNEY: Thank you. 7 CHAIRMAN BAGOFF: Thank you. 8 Do any other members of the public have any 9 questions for Mr. McDonough on his testimony? 10 Seeing none. 11 Thank you, Mr. McDonough. 12 Mr. Plocker, you have the floor. 13 MR. PLOCKER: All right. At this moment the 14 applicant does not have any further witnesses. We 15 understand that the witnesses who testified here 16 tonight, we will have to bring them back at some point 17 and we'll discuss that with Ms. McGovern and Mr. Afran 18 about their cross examination and obviously we'll take 19 some comments into consideration tonight, the questions 20 from the board and public to determine if we're going to 21 have any additional application submissions or have any 22 further witnesses. If we don't, the applicant does 23 reserve it's right to call any and all witnesses back or 24 additional witnesses in response to whatever case the 25 objectors make.

137

1 MAYOR MCCARTNEY: One more question.
2 CHAIRMAN BAGOFF: Mayor McCartney.
3 MAYOR MCCARTNEY: Mr. Plocker, where do we
4 land as far as doing additional soil borings or test
5 pits?
6 MR. PLOCKER: That's something we'll
7 definitely discuss.
8 MAYOR MCCARTNEY: Thank you.
9 CHAIRMAN BAGOFF: Mr. Cardoza, do you have
10 any question or comments?
11 MR. CARDOZA: Not at this time, Chairman
12 Bagoff.
13 CHAIRMAN BAGOFF: Mayor McCartney, do you
14 have any questions or comments?
15 MAYOR MCCARTNEY: No, I asked my questions
16 already.
17 CHAIRMAN BAGOFF: Thank you.
18 Vice Chairman Guarino, do you have any
19 questions or comments?
20 VICE CHAIRMAN GUARINO: Not at this time.
21 CHAIRMAN BAGOFF: Mr. Alper, do you have any
22 questions or comments?
23 MR. ALPER: Not at this time.
24 CHAIRMAN BAGOFF: Mr. Wilkes, do you have
25 any questions or comments?

138

1 MR. WILKES: No.
2 CHAIRMAN BAGOFF: Councilwoman Scarpa, do
3 you have any questions or comments?
4 COUNCILWOMAN SCARPA: Yeah, I have a
5 question about planning. You testified that good
6 planning constitutes -- a good plan is comprehensive and
7 you talked a lot about good planning. So if there was
8 no Mount Laurel or affordable and you're a planner for
9 West Orange, would you plan and approve this development
10 for the site?
11 THE WITNESS: I'm not sure I understand the
12 question. You're saying if there was no --
13 COUNCILWOMAN SCARPA: Affordable housing was
14 removed from this, you were the planner for West Orange,
15 do you think this plan is a good plan? The totality of
16 all this.
17 THE WITNESS: It's a hypothetical and I
18 don't know. I don't know.
19 COUNCILWOMAN SCARPA: You're a planner and
20 you know about good planning, so I was wondering if this
21 would be a good plan?
22 CHAIRMAN BAGOFF: Ladies and gentlemen, you
23 have to be quiet, he is taking notes.
24 MR. PLOCKER: With all due respect, that's
25 not the application before you, Councilwoman Scarpa.

139

1 But John, if you want to, go ahead and answer it.
2 THE WITNESS: It's a whole separate fact
3 analysis. But, again, we're looking at a development
4 that fully complies with the zoning requirements that
5 are before you, so. There may be different zoning if it
6 wasn't affordable housing. I don't know. I think the
7 applicant has certainly demonstrated here that at this
8 density, at this mass, at this scale the site can
9 accommodate the density that's before you. Parking,
10 water, sewer, all can be accommodated here with the
11 development that's before you and it is a beautiful
12 development. It is a beautiful investment in the
13 property.
14 COUNCILWOMAN SCARPA: Okay. That's it.
15 CHAIRMAN BAGOFF: Mr. Hess, do you have any
16 questions or comments?
17 MR. HESS: I don't.
18 MR. BAGOFF: Mr. Haizel, do you have any
19 questions or comments?
20 MR. HAIZEL: Not at this time.
21 CHAIRMAN BAGOFF: Okay.
22 The objectors are going to put on their
23 testimony next meeting and --
24 MR. PLOCKER: We'll try to confirm that. We
25 need to look at availability and --

140

1 CHAIRMAN BAGOFF: So the area around, that
2 was brought out by the public tonight, around the most
3 disproportion of Building D proximity to Howell Drive.
4 The board would like to have additional pits done in
5 that area.
6 MR. PLOCKER: Yeah, we already discussed
7 that. We'll discuss it with the professional, we don't
8 see it's an issue.
9 CHAIRMAN BAGOFF: So the geotechnical expert
10 will be in touch with Mr. Hess, they will come up with a
11 solution that makes sense and during the process of
12 blasting we'd like monitoring during the entire blasting
13 period. Okay.
14 MR. PLOCKER: Absolutely.
15 CHAIRMAN BAGOFF: Okay. Good.
16 February 26 be good for the applicant?
17 MR. PLOCKER: Yes.
18 MS. MCGOVERN: We did poll the board, I did
19 poll the board and I do know that we have a quorum from
20 the responses that I got.
21 CHAIRMAN BAGOFF: So we'll have a quorum.
22 MS. MCGOVERN: We will have a quorum because
23 it looks like we got nine board members who responded
24 they would be able to attend.
25 CHAIRMAN BAGOFF: Good. Okay.

1 The next planning board, regular meeting
2 will be held on February 5, 2025 at 7:30 PM via Zoom.
3 The next planning special board meeting will be held on
4 February 12, 2025 at 7:00 PM via Zoom.

5 The next special meeting for this
6 application, PB 24-01 West Essex Highlands, there will
7 be no additional notice required, will be February 26,
8 2025 at town hall in person at 6:30 PM.

9 I would like to take this opportunity to
10 thank all members of the public for spending time with
11 us and all the members on Zoom.

12 (Hearing concludes at 9:56 PM.)
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Date

C E R T I F I C A T E

2 I, ERIC S. FISHMAN, a Shorthand Reporter
3 and Notary Public of the State of New Jersey do hereby
4 certify that the foregoing is a true and accurate
5 transcript of the testimony as taken stenographically by
6 and before me at the time, place and on the date
7 hereinbefore set forth, to the best of my ability.

8 I DO FURTHER CERTIFY that I am neither a
9 relative nor employee nor attorney nor counsel of any of
10 the parties to the action; and that I am neither a
11 relative nor employee of such attorney or counsel; and
12 that I am not financially interested in the action.

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ERIC S. FISHMAN, S.R.

Dated: 2/16/2025

0	20 [5] - 36:12, 51:18, 51:22, 79:17, 86:24 200 [6] - 64:8, 64:10, 64:12, 65:23, 68:13, 74:1 2001 [1] - 9:7 2006 [1] - 129:8 2019 [3] - 87:10, 87:22, 121:20 2020 [4] - 87:23, 110:10, 121:21, 123:8 2025 [7] - 1:2, 8:12, 8:14, 88:21, 141:2, 141:4, 141:8 2035 [1] - 88:21 24 [4] - 40:20, 40:22, 40:23, 40:24 24-01 [1] - 141:6 25 [2] - 51:18, 71:4 26 [5] - 39:14, 39:15, 39:19, 140:16, 141:7 285-5331 [1] - 1:25 29 [1] - 1:2	92:3, 114:4 500 [2] - 108:8, 127:8 500,000 [1] - 73:15 54.8 [1] - 92:2 56 [2] - 82:22, 82:25 584 [1] - 82:22	20:15 ability [1] - 142:7 able [13] - 20:18, 46:10, 51:11, 52:9, 52:24, 57:21, 74:6, 75:5, 75:16, 75:19, 102:22, 122:13, 140:24 absolute [3] - 52:10, 54:8, 54:12 absolutely [3] - 58:4, 82:25, 140:14 abundant [1] - 94:20 accept [2] - 6:20, 85:14 acceptable [1] - 117:3 accepted [1] - 116:19 access [9] - 34:11, 34:22, 59:24, 99:16, 100:7, 102:14, 104:20, 116:24 accessibility [1] - 70:7 accessible [5] - 17:15, 34:18, 35:19, 52:13, 70:18 accommodate [4] - 118:24, 120:19, 121:23, 139:9 accommodated [1] - 139:10 accommodations [1] - 94:6 accordance [6] - 86:21, 90:14, 96:5, 96:8, 101:13, 126:24 according [2] - 44:10, 84:14 account [2] - 21:7, 21:9 accounts [1] - 81:18 accumulative [1] - 14:12 accuracy [1] - 143:22 accurate [2] - 119:14, 142:4 achieved [1] - 36:1 acknowledge [1] - 123:23 acre [2] - 13:21, 97:9 acreage [2] - 23:12, 23:14 acres [7] - 23:4, 86:14, 87:4, 95:9, 108:14, 112:10 Act [1] - 87:19 action [2] - 142:10,	142:12 activity [1] - 11:9 acts [1] - 112:11 actual [8] - 10:6, 25:16, 25:17, 79:12, 81:1, 81:21, 92:10, 134:11 ADA [2] - 90:20, 104:14 ADAMS [1] - 1:14 added [3] - 72:7, 72:15, 108:19 adding [3] - 32:12, 32:15, 74:9 additional [9] - 7:8, 68:4, 136:21, 136:24, 137:4, 140:4, 141:7, 143:5 additionally [1] - 100:16 address [7] - 37:16, 63:6, 85:22, 106:14, 107:23, 121:18, 122:19 addressed [3] - 99:9, 106:13, 122:23 addressing [2] - 87:15, 127:22 adequate [4] - 50:16, 99:11, 100:7, 100:12 adherence [2] - 90:17, 93:5 adjacent [7] - 67:22, 111:24, 111:25, 113:24, 115:1, 115:10 adjoining [1] - 117:8 admittedly [1] - 80:12 adopted [2] - 9:7, 119:13 advance [2] - 38:18, 101:4 advanced [1] - 100:16 advancing [1] - 101:3 adverse [6] - 93:11, 96:2, 96:13, 97:5, 99:12, 105:11 advocacy [2] - 88:5, 126:24 advocates [1] - 127:13 aesthetic [2] - 92:23, 103:19 affect [2] - 18:25, 67:5 affects [2] - 65:6, 67:2 affirm [2] - 5:5, 84:9
1	3	6		
1 [11] - 1:11, 41:15, 42:7, 49:5, 55:9, 55:11, 55:13, 55:14, 55:17, 86:12, 93:19 1,000 [3] - 99:5, 99:6, 125:12 1,700 [1] - 125:14 1,784 [1] - 99:7 10 [13] - 7:24, 26:11, 26:15, 36:5, 36:6, 36:14, 51:8, 80:8, 81:8, 81:16, 83:3, 88:21, 114:4 100 [7] - 24:1, 76:11, 79:2, 79:3, 87:2, 88:2, 118:11 102 [1] - 2:8 12 [3] - 36:5, 36:6, 141:4 120 [1] - 86:14 120-acre [1] - 4:5 13 [6] - 10:11, 10:14, 40:25, 41:2, 44:13, 44:14 136 [3] - 108:7, 108:17, 108:22 1399 [1] - 20:1 14 [2] - 8:12, 8:14 1440 [1] - 1:24 15 [3] - 51:22, 55:24, 55:25 150 [2] - 74:1, 76:9 17 [20] - 7:24, 24:4, 36:12, 44:14, 44:16, 44:17, 44:18, 51:9, 52:3, 63:8, 76:13, 79:14, 79:15, 79:25, 80:1, 81:9, 81:13, 82:5, 82:14, 83:3 175 [2] - 76:10, 76:11 179 [3] - 4:3, 86:13, 88:1 18 [2] - 95:17, 112:10 19 [1] - 16:1 1975 [3] - 86:10, 93:23, 94:10	3 [3] - 87:6, 94:10, 110:14 30 [4] - 5:15, 5:25, 22:15, 79:17 300 [3] - 48:9, 48:22, 65:23 32 [3] - 4:3, 86:14, 88:1 325 [1] - 48:22 34 [1] - 26:14 350 [4] - 64:21, 67:24, 67:25, 74:14 36 [2] - 13:21, 23:4 375 [7] - 48:11, 48:12, 48:15, 48:25, 49:1, 49:8, 54:25	7 [3] - 10:12, 44:2, 44:11 70 [1] - 96:3 700 [9] - 49:14, 54:25, 63:24, 67:5, 67:9, 74:13, 74:14, 75:13, 75:14 73 [2] - 25:8, 25:9 732 [1] - 1:25 75 [4] - 79:3, 79:8, 79:10, 125:18 76.4 [1] - 92:1 76.5 [1] - 92:1 7:00 [1] - 141:4 7:30 [1] - 141:2		
2	4	8		
	5	9		
	5 [1] - 141:2 5.8 [1] - 82:21 50 [8] - 79:8, 79:10, 82:24, 82:25, 91:14,	8 [3] - 25:9, 41:24, 42:8 80,000 [3] - 88:17, 88:20 89 [1] - 1:23	9 [6] - 40:8, 40:14, 40:16, 40:24, 40:25, 87:24 90 [4] - 87:4, 95:9, 97:9, 108:13 950 [1] - 49:1 973 [1] - 1:25 9:56 [1] - 141:12	
2	5	A		
2 [7] - 63:11, 63:21, 86:19, 94:10, 118:18, 118:19, 118:21		A-2 [1] - 135:25 A-3 [1] - 93:9 aberration [1] - 53:12 aberrations [1] -		

Bagoff [6] - 4:8, 46:16, 46:20, 71:25, 84:3, 137:12 BAGOFF [108] - 1:9, 4:1, 4:21, 5:19, 6:18, 8:25, 9:13, 9:19, 10:18, 10:21, 10:24, 11:14, 12:11, 13:4, 15:6, 15:13, 15:21, 15:24, 16:10, 17:2, 17:7, 17:23, 19:22, 19:25, 24:12, 28:9, 28:22, 28:24, 29:3, 30:10, 30:16, 33:18, 34:3, 38:14, 45:22, 46:1, 46:8, 46:12, 46:23, 47:2, 47:8, 47:11, 47:16, 48:4, 49:24, 60:10, 69:11, 71:11, 71:16, 71:22, 73:4, 74:3, 74:8, 75:2, 75:5, 75:10, 78:13, 83:18, 83:25, 85:11, 101:22, 102:2, 102:5, 102:9, 102:25, 103:3, 103:7, 103:10, 104:2, 106:20, 109:7, 114:11, 117:22, 119:4, 119:7, 119:10, 119:13, 119:22, 119:25, 120:8, 121:8, 121:10, 128:23, 129:12, 129:17, 129:24, 130:20, 132:4, 132:11, 133:18, 135:4, 136:7, 137:2, 137:9, 137:13, 137:17, 137:21, 137:24, 138:2, 138:22, 139:15, 139:18, 139:21, 140:1, 140:9, 140:15, 140:21, 140:25 bagoff [4] - 14:23, 74:5, 74:10, 133:17 Bakley [1] - 107:24 balance [4] - 24:5, 93:3, 110:12, 131:13 balanced [2] - 117:6, 117:11 Balancing [1] - 92:25 balancing [2] - 95:24, 98:9 BAQUERIZO [1] - 1:14 barbara [1] - 62:8 Barbara [1] - 13:12 barriers [1] - 131:5 base [1] - 22:11 based [27] - 23:1,	23:25, 24:8, 27:1, 27:9, 27:12, 50:19, 50:21, 56:20, 62:4, 62:18, 75:25, 76:12, 76:13, 79:15, 91:15, 95:19, 95:25, 100:20, 108:17, 109:4, 113:7, 116:16, 128:16, 130:21, 130:22, 133:21 basements [1] - 30:25 basins [1] - 18:8 basis [5] - 15:22, 84:23, 85:3, 85:8, 113:1 bearing [1] - 66:11 beautiful [4] - 127:16, 127:24, 139:11, 139:12 bedrock [2] - 31:22, 31:24 began [2] - 107:8, 124:5 beginning [2] - 63:19, 114:13 begs [1] - 12:15 behalf [4] - 2:6, 2:9, 4:10, 27:4 behaves [1] - 73:1 behind [2] - 17:16, 19:20 belief [1] - 113:9 below [10] - 16:13, 17:6, 40:8, 43:7, 43:9, 43:11, 43:12, 43:16, 43:17, 143:5 benefit [1] - 84:18 benefits [2] - 93:14, 95:19 best [1] - 142:7 better [11] - 4:16, 34:1, 34:4, 63:3, 63:10, 79:9, 98:12, 98:16, 98:18, 118:9, 132:25 between [21] - 7:24, 17:20, 21:24, 21:25, 35:3, 46:2, 48:8, 48:25, 49:5, 49:7, 50:9, 51:13, 51:24, 58:8, 64:21, 74:1, 78:20, 82:23, 83:10, 92:16, 117:7 beyond [2] - 37:20, 116:3 bicycle [1] - 101:6 bicycles [1] - 102:15 big [2] - 42:25, 125:2 biggest [1] - 62:10	biking [1] - 126:17 bio [1] - 83:23 bit [10] - 4:19, 5:13, 18:2, 18:3, 36:8, 43:23, 48:24, 55:12, 114:15, 116:12 black [1] - 130:11 blank [1] - 59:19 blast [8] - 13:21, 22:16, 36:22, 37:9, 37:15, 45:12, 45:13, 66:6 blasted [5] - 14:16, 18:7, 18:9, 19:6, 68:16 blaster [2] - 37:13, 45:5 blasting [58] - 11:18, 11:20, 11:21, 11:23, 11:25, 12:1, 12:5, 12:8, 12:17, 13:1, 13:14, 13:16, 13:20, 13:24, 14:3, 14:4, 14:25, 15:5, 18:4, 18:11, 18:14, 18:23, 19:3, 19:9, 19:17, 30:19, 31:20, 32:24, 33:16, 36:18, 37:2, 37:5, 37:7, 37:8, 37:10, 37:12, 37:18, 37:25, 38:8, 45:9, 47:5, 47:6, 47:9, 47:19, 47:21, 65:22, 66:23, 67:4, 67:11, 67:15, 67:20, 72:24, 73:1, 91:5, 140:12 blastings [1] - 14:10 Block [3] - 4:2, 86:13, 88:1 blue [2] - 72:14, 93:8 board [55] - 4:15, 5:12, 6:19, 6:24, 8:11, 9:1, 12:12, 15:2, 26:21, 27:5, 28:3, 30:18, 32:8, 33:10, 38:16, 45:10, 46:7, 77:15, 84:17, 85:11, 88:12, 89:3, 89:12, 91:1, 91:14, 93:7, 93:10, 95:13, 97:13, 97:22, 98:4, 98:8, 99:21, 101:14, 101:20, 103:17, 106:12, 110:21, 112:22, 113:10, 113:14, 120:23, 121:5, 121:10, 123:1, 129:19, 133:13, 136:20, 140:4, 140:18, 140:19,	140:23, 141:1, 141:3 BOARD [1] - 1:8 Board [2] - 1:14, 2:9 board's [1] - 98:15 boards [2] - 129:7, 129:11 body [1] - 63:18 BOLAND [1] - 2:8 border [1] - 112:8 bore [2] - 40:17, 69:14 bores [1] - 26:4 boring [16] - 27:17, 29:10, 29:13, 39:6, 39:20, 39:25, 40:7, 40:19, 41:14, 42:2, 42:7, 42:13, 42:23, 52:14, 62:17 borings [32] - 7:7, 7:8, 17:15, 20:23, 22:21, 22:23, 23:1, 23:16, 24:18, 25:21, 29:6, 29:9, 29:16, 34:10, 35:9, 38:24, 39:3, 39:11, 42:1, 42:20, 54:21, 62:23, 66:14, 68:4, 69:4, 69:14, 70:4, 70:13, 72:7, 72:10, 73:22, 137:4 bottom [10] - 16:7, 16:16, 18:1, 31:15, 31:21, 32:5, 33:2, 33:11, 45:14, 113:20 boundaries [1] - 112:5 Bplocker@huttshim.com [1] - 2:4 brand [1] - 72:19 break [2] - 53:12, 83:23 breaking [1] - 37:1 breath [1] - 78:2 Brian [1] - 4:9 bright [1] - 24:19 brilliant [1] - 58:1 bring [4] - 4:17, 90:24, 133:15, 136:16 brings [1] - 129:18 broad [2] - 37:16, 61:20 brought [6] - 21:2, 45:19, 77:21, 93:23, 133:12, 140:2 brush [1] - 61:20 BRYAN [1] - 2:4 buffer [1] - 105:23 buffering [1] - 92:15 buffers [3] - 90:5,	90:19, 117:14 build [1] - 7:4 builders [1] - 88:6 building [46] - 6:6, 10:3, 14:11, 14:15, 14:16, 15:7, 15:22, 17:1, 21:25, 33:19, 33:25, 34:4, 44:11, 63:1, 66:6, 66:10, 66:11, 66:15, 66:17, 66:20, 67:2, 68:13, 68:21, 68:25, 69:6, 69:17, 69:25, 70:22, 74:21, 76:4, 76:6, 77:10, 78:5, 80:3, 81:8, 90:3, 91:9, 91:10, 91:15, 93:12, 96:8, 103:21, 117:7, 122:4, 122:22, 127:8 Building [34] - 7:3, 7:10, 8:5, 9:22, 10:6, 12:18, 16:23, 16:24, 17:1, 17:5, 17:6, 17:13, 17:16, 17:20, 22:1, 23:8, 23:9, 25:25, 27:11, 27:14, 30:20, 30:21, 31:12, 31:25, 32:25, 33:7, 55:15, 62:11, 91:25, 92:1, 92:2, 135:25, 140:3 buildings [13] - 11:24, 13:18, 18:9, 65:22, 87:2, 91:25, 94:20, 114:18, 114:25, 116:24, 116:25, 117:1, 125:1 built [5] - 28:6, 81:8, 91:8, 128:20, 135:23 bulk [6] - 85:19, 89:25, 122:4, 122:7, 122:10, 124:25 bunch [2] - 59:21, 60:1 burden [2] - 19:5, 96:20 busing [1] - 126:3 button [1] - 75:13 BY [2] - 2:4, 84:15
C				
calculate [2] - 79:12, 79:23 calculator [2] - 82:7, 82:9 cannot [1] - 113:10 capability [2] - 30:7, 112:25 capable [3] - 18:9,				

29:24, 45:1 capacity [2] - 84:22, 99:11 cardoza [3] - 12:12, 101:23, 137:9 CARDOZA [3] - 1:11, 101:25, 137:11 care [1] - 46:7 carefully [1] - 14:4 carrying [1] - 99:11 cars [1] - 104:19 cart [1] - 118:19 carted [1] - 18:19 CASE [1] - 143:2 case [15] - 35:2, 59:5, 70:20, 89:15, 89:16, 93:2, 93:23, 97:7, 97:8, 98:3, 109:14, 111:4, 120:18, 136:24 cases [2] - 98:1, 98:7 casual [1] - 109:11 caused [2] - 20:9, 53:16 causes [3] - 53:11, 53:14, 53:19 caustic [2] - 119:18, 119:24 caution [1] - 11:21 center [5] - 10:7, 43:1, 51:12, 58:4, 59:15 certain [10] - 7:12, 36:21, 45:13, 70:7, 75:7, 82:9, 98:25, 99:25, 106:5, 123:18 certainly [11] - 35:11, 78:9, 82:11, 83:3, 92:13, 96:20, 96:21, 98:7, 110:14, 118:18, 139:7 certification [1] - 85:6 Certified [1] - 85:5 certify [1] - 142:4 CERTIFY [1] - 142:8 Chair [2] - 45:21, 102:5 CHAIRMAN [109] - 4:1, 4:21, 5:19, 6:18, 8:25, 9:13, 9:17, 9:19, 10:18, 10:21, 10:24, 11:14, 12:11, 13:4, 15:6, 15:13, 15:21, 15:24, 16:10, 17:2, 17:7, 17:23, 19:22, 19:25, 24:12, 28:9, 28:22, 28:24, 29:3, 30:10, 30:16, 33:18, 34:3, 38:14, 45:22,	46:1, 46:8, 46:12, 46:23, 47:2, 47:8, 47:11, 47:16, 48:4, 49:24, 60:10, 69:11, 71:11, 71:16, 71:22, 73:4, 74:3, 74:8, 75:2, 75:5, 75:10, 78:13, 83:18, 83:25, 85:11, 101:22, 102:2, 102:5, 102:7, 102:9, 102:25, 103:3, 103:7, 103:10, 104:2, 106:20, 109:7, 114:11, 117:22, 119:4, 119:7, 119:10, 119:13, 119:22, 119:25, 120:8, 121:8, 121:10, 128:23, 129:12, 129:17, 129:24, 130:20, 132:4, 132:11, 133:18, 135:4, 136:7, 137:2, 137:9, 137:13, 137:17, 137:20, 137:21, 137:24, 138:2, 138:22, 139:15, 139:21, 140:1, 140:9, 140:15, 140:21, 140:25 Chairman [13] - 1:9, 1:9, 4:8, 9:12, 9:15, 9:18, 46:16, 46:19, 71:24, 101:20, 102:1, 137:11, 137:18 chairman [5] - 46:6, 84:3, 85:17, 102:8, 122:14 challenge [3] - 88:6, 88:7, 133:2 challenging [1] - 130:15 change [7] - 8:4, 106:11, 110:8, 110:10, 110:18, 118:21, 125:14 CHANGE [1] - 143:6 changed [4] - 58:20, 108:18, 109:22, 110:13 changes [1] - 120:21 characterize [1] - 50:17 characterized [2] - 61:2, 94:8 characterizes [1] - 112:21 charge [2] - 19:4, 113:2 charged [1] - 47:25 check [2] - 73:16, 135:15	checking [1] - 135:22 children [1] - 60:6 choosing [1] - 62:22 chose [4] - 69:8, 69:15, 70:17, 71:2 chosen [2] - 27:11, 34:10 circle [3] - 99:19, 125:24, 135:17 circles [2] - 29:6, 42:19 circulation [3] - 100:13, 101:5, 116:22 circumstances [1] - 110:13 cited [1] - 61:19 citing [2] - 35:16, 91:24 citizens [1] - 23:25 city [1] - 33:17 civil [2] - 6:15, 72:1 clarification [1] - 68:10 clarify [2] - 124:24, 135:14 clear [6] - 23:6, 23:10, 58:19, 63:5, 97:4, 110:17 clearly [6] - 58:1, 93:9, 98:9, 98:12, 103:24, 111:6 client [1] - 15:17 cliff [2] - 47:21, 69:17 close [14] - 21:2, 28:14, 31:25, 34:15, 35:11, 41:25, 70:13, 70:21, 80:3, 80:7, 83:21, 100:9, 117:11, 127:11 closed [2] - 99:14, 102:13 closely [1] - 40:6 closer [6] - 35:1, 35:12, 51:21, 65:22, 67:5, 116:9 closest [4] - 10:5, 10:11, 70:22, 79:15 closing [1] - 99:2 Club [1] - 112:10 cluster [1] - 91:20 clustered [1] - 95:3 COAH [1] - 131:8 code [5] - 15:9, 121:17, 121:19, 123:21, 130:9 codes [2] - 96:8, 96:9 coefficients [1] -	114:3 collapse [6] - 37:10, 37:24, 38:1, 53:6, 53:12 collapsed [1] - 21:16 collective [1] - 60:4 color [2] - 72:6, 115:21 Colorado [2] - 5:18, 5:22 combination [3] - 42:21, 70:6, 118:4 comfortable [2] - 94:24, 128:15 coming [4] - 43:25, 88:16, 125:12, 125:24 commensurate [1] - 100:18 comment [1] - 133:11 comments [13] - 27:1, 27:9, 27:10, 27:12, 136:19, 137:10, 137:14, 137:19, 137:22, 137:25, 138:3, 139:16, 139:19 commercial [1] - 6:5 committed [1] - 87:15 common [3] - 69:18, 69:21, 131:1 commonplace [1] - 130:14 communication [1] - 4:14 community [11] - 37:4, 85:8, 87:12, 88:7, 88:11, 94:13, 95:11, 95:15, 101:4, 126:9, 126:10 compact [2] - 95:1, 108:13 company [1] - 31:2 compensate [1] - 33:15 complete [3] - 23:2, 66:22, 101:4 completely [2] - 21:7, 131:19 complex [1] - 51:6 compliance [6] - 15:18, 89:20, 115:21, 115:24, 115:25, 131:15 complies [6] - 89:18, 97:19, 105:20, 125:2, 132:18, 139:4 compliment [1] - 94:13	compliments [1] - 88:11 comply [5] - 104:16, 111:8, 132:6, 132:17, 132:19 complying [2] - 106:5, 132:15 component [3] - 92:23, 92:24, 129:22 compounding [1] - 14:6 comprehensive [2] - 8:13, 138:6 comprehensively [1] - 113:3 computer [4] - 56:23, 56:25, 57:1, 57:2 concentration [1] - 114:3 concept [1] - 10:2 concern [9] - 27:2, 38:6, 60:24, 62:10, 65:19, 68:4, 77:8, 80:25, 81:6 concerned [3] - 59:14, 65:10, 80:20 concerning [1] - 133:16 concerns [8] - 9:5, 45:15, 60:3, 60:4, 62:22, 77:14, 77:16 conclude [1] - 105:5 concludes [1] - 141:12 conclusion [5] - 44:24, 99:10, 101:10, 103:24 conclusions [2] - 8:20, 114:4 condition [13] - 7:6, 8:3, 8:4, 8:7, 8:8, 15:12, 15:13, 45:21, 46:18, 47:12, 47:22, 55:9, 112:16 conditioned [1] - 102:16 conditioners [1] - 91:5 conditions [20] - 7:9, 7:15, 7:18, 22:7, 22:13, 45:20, 50:12, 50:14, 58:3, 58:16, 59:19, 61:1, 61:23, 86:1, 86:2, 99:13, 100:3, 105:8, 111:17, 113:22 condo [1] - 123:25 conduct [2] - 52:9, 52:24
--	---	--	--	---

conducted [1] - 85:23 confident [5] - 23:21, 24:1, 56:12, 58:8, 58:11 confirm [3] - 4:15, 8:14, 139:24 conflict [1] - 104:23 conform [8] - 90:5, 90:6, 90:7, 90:8, 114:14, 114:16, 116:8, 116:10 conformance [3] - 90:9, 97:24, 134:4 conforming [3] - 89:13, 115:16 conforms [7] - 90:1, 90:2, 90:3, 90:5, 115:14, 115:15 conjecture [1] - 72:22 conjunction [1] - 120:22 connection [2] - 15:19, 122:3 connectivity [3] - 89:8, 136:3, 136:4 consider [10] - 45:11, 45:17, 93:1, 93:14, 98:16, 101:14, 113:3, 113:10, 132:1, 134:16 considerably [1] - 78:8 consideration [11] - 60:24, 62:24, 65:11, 92:21, 98:8, 113:15, 117:3, 120:24, 128:5, 131:12, 136:19 considerations [2] - 87:7, 110:15 considered [3] - 16:8, 16:15, 35:7 considering [2] - 14:25, 24:2 consisted [1] - 7:7 consistent [9] - 11:10, 17:18, 22:3, 50:3, 89:6, 97:20, 109:16, 110:25, 117:18 constitute [2] - 97:15, 97:23 constitutes [2] - 115:15, 138:6 construct [1] - 14:16 construction [9] - 12:21, 15:3, 18:6, 38:4, 46:16, 47:5, 67:2, 77:9, 116:21	contact [3] - 33:21, 33:25, 34:3 contain [1] - 88:2 contained [1] - 8:19 contents [1] - 8:19 continue [1] - 45:20 continued [1] - 96:21 continues [2] - 87:11, 94:4 continuous [3] - 28:16, 54:21, 58:23 contour [2] - 34:24, 35:4 contours [1] - 80:15 contract [1] - 38:10 contracting [1] - 77:14 contractor [2] - 12:20, 12:22 contractors [1] - 37:5 contradict [1] - 105:17 contrast [1] - 91:6 contravene [1] - 105:17 contribute [1] - 86:25 control [5] - 37:18, 67:14, 91:8, 103:20, 124:18 controlled [6] - 11:25, 12:8, 13:2, 19:3, 67:15, 67:21 controls [6] - 89:23, 89:25, 90:15, 93:6, 114:23, 130:6 Controls [1] - 90:12 convenient [1] - 70:18 conveniently [1] - 94:24 conventional [1] - 110:17 conversation [1] - 81:19 convince [1] - 128:8 cooked [1] - 134:19 core [2] - 21:13, 87:11 cored [1] - 40:19 corner [12] - 4:6, 44:10, 63:9, 64:5, 73:24, 75:20, 76:1, 76:3, 76:5, 76:22, 78:4, 107:19 correct [60] - 5:3, 5:4, 6:17, 8:16, 8:21, 19:13, 21:23, 21:24, 22:5, 23:4, 24:9, 30:2,	32:2, 39:3, 40:14, 40:15, 44:4, 47:23, 48:15, 48:16, 49:2, 52:17, 52:22, 54:13, 55:1, 55:16, 55:25, 56:1, 59:4, 63:23, 63:24, 64:11, 65:3, 66:25, 67:1, 72:8, 72:9, 73:1, 73:9, 73:12, 73:13, 78:25, 80:18, 80:19, 81:17, 82:6, 83:11, 83:16, 109:23, 110:5, 111:2, 115:10, 118:25, 120:5, 120:15, 120:16, 124:17, 131:8, 131:9, 132:8 corrected [1] - 124:22 corrections [2] - 143:5, 143:23 correctly [2] - 10:4, 52:1 cost [1] - 100:17 council [3] - 119:14, 120:21, 121:5 COUNCIL [1] - 10:23 councilwoman [1] - 138:2 COUNCILWOMAN [6] - 103:4, 103:6, 138:4, 138:13, 138:19, 139:14 Councilwoman [3] - 1:12, 10:21, 138:25 counsel [2] - 142:9, 142:11 counter [2] - 93:3, 95:24 Country [1] - 112:10 country [1] - 20:17 county [2] - 61:13, 107:17 couple [9] - 24:16, 28:7, 34:8, 40:20, 50:3, 68:9, 109:13, 118:1, 129:6 course [9] - 13:17, 45:8, 86:15, 89:25, 90:20, 97:6, 99:18, 101:2, 116:24 Court [5] - 89:16, 93:18, 93:21, 97:16, 123:17 court [10] - 86:23, 88:4, 93:16, 94:3, 99:14, 101:11, 109:14, 109:15, 110:14, 123:15 COURT [1] - 1:23	courts [3] - 93:24, 94:16, 97:15 cover [2] - 7:22, 39:10 coverage [3] - 90:3 covered [2] - 59:20, 104:12 cow [1] - 120:4 create [4] - 95:12, 99:4, 105:10 created [1] - 100:9 creates [1] - 128:9 credentials [2] - 5:11, 84:18 credible [1] - 95:25 crews [1] - 24:21 crisis [1] - 94:8 criteria [5] - 86:5, 86:8, 95:25, 96:19, 101:15 cropping [1] - 70:21 cross [5] - 4:17, 39:2, 84:23, 135:21, 136:18 crosswalk [2] - 135:25, 136:4 crosswalks [2] - 128:20, 135:23 crowded [1] - 118:6 cul [2] - 16:13, 16:15 cul-de-sac [2] - 16:13, 16:15 culmination [1] - 101:11 curiosity [2] - 26:22, 126:3 curious [4] - 20:12, 57:7, 57:13, 62:14 current [6] - 84:20, 85:2, 85:7, 110:3, 131:15, 131:18 customary [1] - 85:24 cut [4] - 59:21, 59:23, 59:25, 110:17 cute [1] - 131:24 cutoff [1] - 116:2 cutting [1] - 60:7	dark [4] - 115:21, 115:23, 115:25, 116:4 dark-sky [4] - 115:21, 115:23, 115:25, 116:4 dash [4] - 10:10, 34:24, 35:3 data [15] - 6:10, 8:19, 22:8, 49:22, 50:2, 50:8, 50:9, 58:11, 60:25, 61:13, 68:3, 68:7, 70:10 date [4] - 55:23, 56:4, 142:6, 143:5 Date [1] - 143:25 dated [3] - 8:12, 8:13, 55:24 Dated [1] - 142:20 Davis [1] - 109:10 DCA [3] - 88:18, 88:24, 122:25 de [4] - 16:13, 16:15, 98:21, 101:8 dead [3] - 43:1, 51:12, 58:4 deal [3] - 60:22, 72:20, 77:8 dealing [2] - 86:13, 92:5 decent [2] - 87:12, 94:5 decided [2] - 27:3, 27:7 decision [3] - 26:19, 98:5, 121:11 decomposed [4] - 40:1, 40:8, 41:7, 55:18 deemed [2] - 108:6, 108:16 deep [4] - 38:22, 40:18, 66:16, 69:3 deer [2] - 64:18, 65:7 define [1] - 116:17 definitely [3] - 63:6, 107:22, 137:7 definition [2] - 109:18, 110:4 degradation [1] - 99:13 degree [8] - 5:18, 5:21, 5:22, 24:4, 26:13, 36:14, 76:13, 83:1 degrees [23] - 7:24, 26:11, 26:14, 26:15, 36:5, 36:6, 36:12, 51:8, 51:9, 51:18, 51:22, 52:3, 79:18, 79:19, 79:25, 80:1,
---	---	---	---	--

D

daily [3] - 99:5, 99:6, 125:11

damage [4] - 20:9, 33:16, 37:20, 67:22

damaged [1] - 33:13

danger [3] - 37:6, 38:2, 38:3

dangerous [2] - 59:3, 59:6

80:8, 81:9, 81:13, 81:16, 82:5, 82:14, 83:2 delay [1] - 19:4 demonstrate [1] - 96:4 demonstrated [1] - 139:7 denial [4] - 129:7, 129:10, 129:11, 129:17 denied [2] - 97:14, 129:15 dense [7] - 7:17, 14:19, 26:13, 40:11, 40:12, 62:1, 70:7 densely [1] - 7:20 density [6] - 36:23, 69:23, 90:1, 134:21, 139:8, 139:9 DEP [8] - 90:16, 90:18, 105:20, 105:23, 106:5, 106:6, 106:7, 106:10 DEP's [1] - 106:11 department [5] - 15:7, 15:22, 33:19, 34:1, 34:4 DEPARTMENT [1] - 1:1 depth [4] - 39:1, 39:12, 40:20, 43:18 describe [3] - 42:6, 81:20, 81:22 described [2] - 24:7, 51:4 describing [1] - 81:23 description [1] - 109:15 DESCRIPTION [1] - 3:4 design [9] - 12:20, 93:6, 100:21, 100:23, 116:20, 117:3, 117:4, 117:10, 127:15 designated [1] - 61:8 designed [6] - 37:17, 90:14, 94:21, 96:5, 96:7, 116:15 desirable [1] - 95:22 desperate [1] - 94:5 despite [2] - 20:24 detailed [2] - 96:3, 96:22 details [2] - 90:6, 125:5 detention [1] - 18:8 determinations [1] - 101:1	determine [5] - 7:12, 61:24, 69:22, 136:20 determined [2] - 34:12, 37:13 determining [1] - 37:14 detriment [1] - 128:10 detriments [1] - 98:10 develop [3] - 4:4, 61:2, 62:4 developed [4] - 27:18, 27:22, 37:17, 107:6 developer [3] - 26:20, 27:8, 123:13 developers [2] - 26:22, 88:7 development [45] - 4:5, 6:4, 6:8, 6:10, 6:11, 28:1, 86:4, 86:17, 86:18, 86:21, 87:5, 87:25, 91:20, 91:21, 92:12, 92:13, 95:1, 95:3, 95:4, 96:17, 97:11, 99:21, 100:4, 100:25, 103:22, 104:14, 105:20, 105:22, 108:13, 108:25, 109:16, 111:19, 111:24, 113:3, 116:23, 117:16, 121:24, 125:24, 126:13, 134:14, 138:9, 139:3, 139:11, 139:12 DEVELOPMENT [1] - 1:1 developments [3] - 12:20, 28:5, 95:3 Diana [1] - 25:7 DIANA [1] - 2:8 difference [4] - 36:2, 46:2, 120:9, 132:18 different [17] - 17:16, 25:20, 26:6, 36:25, 51:5, 56:16, 58:13, 58:16, 58:24, 69:25, 108:9, 110:11, 129:21, 129:24, 129:25, 139:5 differently [2] - 61:11, 61:16 difficult [3] - 29:22, 38:20, 81:20 difficulties [1] - 35:10 dig [1] - 9:10	digging [1] - 39:11 DIRECT [1] - 84:15 direct [2] - 101:17, 101:18 directed [1] - 116:2 directly [1] - 74:23 dirt [2] - 39:2, 39:12 discounted [1] - 11:5 discounting [1] - 11:8 discretion [1] - 97:21 discretionary [1] - 100:21 discuss [3] - 136:17, 137:7, 140:7 discussed [2] - 16:18, 140:6 disproportion [1] - 140:3 dispute [1] - 105:15 disrespect [2] - 119:19, 119:21 disruptive [1] - 19:15 dissect [1] - 83:6 distance [16] - 35:5, 39:10, 44:1, 44:12, 48:7, 48:21, 49:5, 49:7, 73:24, 75:11, 78:20, 78:24, 80:10, 83:10, 83:13, 134:6 district [3] - 87:8, 89:22, 91:9 districts [2] - 95:12, 131:4 disturbance [10] - 10:9, 10:13, 35:13, 91:16, 91:19, 92:20, 98:15, 108:11 disturbed [1] - 35:12 diversity [1] - 100:23 DO [1] - 142:8 Doctrine [2] - 94:9, 98:3 documents [3] - 12:21, 15:8, 38:10 done [38] - 7:5, 11:22, 12:1, 12:23, 14:17, 15:21, 28:5, 28:12, 31:1, 31:7, 31:10, 37:25, 38:2, 38:3, 38:11, 41:16, 46:24, 47:4, 47:9, 53:5, 56:23, 59:13, 59:15, 62:15, 62:23, 62:24, 64:20, 65:8, 66:15, 67:21, 68:5, 76:21, 92:19, 97:1, 105:7, 107:4, 117:3, 140:4 doors [1] - 94:1	double [1] - 126:1 doubt [1] - 94:3 down [26] - 7:11, 16:5, 17:11, 24:22, 29:16, 29:20, 29:24, 30:22, 31:12, 31:18, 36:13, 53:13, 59:22, 59:23, 60:1, 60:7, 62:25, 66:17, 69:23, 76:19, 79:6, 99:20, 117:9, 125:25, 127:9, 128:3 downhill [2] - 112:6, 113:13 downward [1] - 116:1 dozen [1] - 6:14 drafted [5] - 118:24, 120:14, 120:19, 120:22, 121:5 drainage [1] - 16:19 dramatically [1] - 81:19 drastic [2] - 110:8, 110:9 draw [2] - 72:8, 72:13 drawing [3] - 9:23, 10:9, 44:10 drill [1] - 12:23 drilling [3] - 7:7, 36:25, 39:12 drive [2] - 29:15, 29:20 Drive [16] - 16:2, 16:5, 16:6, 17:1, 17:12, 17:13, 21:23, 21:25, 24:14, 27:24, 62:12, 63:8, 64:14, 108:19, 123:24, 140:3 DRIVE [1] - 2:8 drives [1] - 35:15 driving [4] - 26:16, 29:16, 94:15 dropping [1] - 20:17 drops [1] - 44:6 drought [1] - 56:11 dry [1] - 7:19 dryness [1] - 58:2 due [2] - 68:10, 138:24 dug [4] - 38:23, 38:24, 39:11, 69:14 duly [3] - 5:8, 49:25, 84:13 during [6] - 13:19, 86:15, 99:17, 101:2, 140:11, 140:12	E Eagle [4] - 104:20, 107:9, 107:11, 107:19 earthquake [1] - 33:12 easement [5] - 43:4, 43:5, 43:16, 71:5, 72:12 east [2] - 7:11, 136:2 easy [1] - 18:14 economic [1] - 95:2 economically [1] - 94:6 edge [8] - 41:25, 44:3, 44:5, 44:9, 69:17, 70:22, 117:17 edges [1] - 44:22 educational [1] - 5:14 Edward [1] - 109:10 effect [4] - 14:6, 14:12, 66:24, 67:12 effects [2] - 33:12, 47:19 efficient [2] - 95:2, 95:23 efficiently [1] - 99:12 egress [1] - 108:19 eight [7] - 22:22, 22:23, 23:1, 23:16, 66:16, 97:3, 133:8 eighth [1] - 86:16 either [3] - 18:20, 30:5, 30:6 Element [1] - 86:22 element [4] - 87:23, 89:5, 89:6 elevation [1] - 82:22 eliminate [2] - 98:13, 100:17 eliminating [1] - 131:5 elongate [1] - 80:17 elongated [1] - 81:11 elsewhere [2] - 17:19, 130:25 emergency [3] - 99:16, 102:14, 108:19 emphasize [1] - 11:21 employee [2] - 142:9, 142:11 empty [1] - 107:25 enact [1] - 123:19 encounter [1] - 41:3 encountered [4] - 41:6, 41:10, 41:11, 41:15 encroachment [1] -
---	--	--	---	--

105:23 end [11] - 25:7, 48:20, 66:6, 66:10, 66:17, 66:19, 69:6, 81:4, 81:15, 97:13 endanger [1] - 23:24 energy [2] - 6:5, 19:19 enforcement [2] - 100:1, 100:5 engineer [11] - 9:6, 33:21, 36:15, 58:1, 66:15, 68:21, 72:1, 72:17, 99:9, 108:25, 112:19 Engineer [1] - 1:13 engineered [2] - 123:12, 123:22 engineering [12] - 5:16, 5:23, 6:7, 6:15, 15:8, 46:24, 112:24, 113:6, 113:7, 114:1 Engineering [1] - 8:11 engineers [3] - 69:19, 69:22, 133:10 ensure [4] - 15:3, 15:9, 46:18, 116:22 ensures [2] - 19:10, 19:11 entire [14] - 21:17, 56:11, 56:17, 69:15, 80:2, 80:7, 80:9, 81:4, 91:21, 93:2, 130:8, 140:12 entirety [1] - 71:6 environment [3] - 6:6, 95:23, 130:3 environmental [7] - 90:16, 95:8, 96:10, 96:12, 110:14, 113:12, 133:10 environmental/civil [1] - 5:23 equal [1] - 115:2 equates [1] - 87:2 equipment [4] - 51:12, 52:23, 59:2, 59:3 ERIC [2] - 142:2, 142:16 ERROR [1] - 143:6 errors [1] - 143:4 escrow [1] - 33:15 especially [4] - 78:7, 80:22, 94:5, 134:17 ESQ [2] - 2:4, 2:8 ESQS [2] - 2:3, 2:7 essence [2] - 89:17, 97:18	essentially [1] - 95:12 ESSEX [1] - 1:5 Essex [11] - 4:2, 4:10, 88:1, 109:11, 111:24, 112:8, 112:9, 112:10, 112:16, 113:11, 141:6 established [4] - 86:9, 86:12, 132:22, 134:20 estimate [2] - 75:17, 82:23 estimating [1] - 64:11 etc [9] - 6:12, 13:17, 14:11, 47:21, 62:12, 104:15, 104:23, 104:25, 111:2 EV [1] - 90:20 evaluate [6] - 7:5, 7:9, 7:15, 33:22, 68:5, 112:25 evaluating [2] - 48:1, 69:24 evening [6] - 4:8, 30:14, 38:16, 64:17, 109:10 event [2] - 20:18, 53:22 events [1] - 53:15 eventually [1] - 111:7 evidence [5] - 20:25, 96:1, 97:23, 98:18, 128:16 evidentiary [1] - 74:9 evolves [1] - 109:24 exact [3] - 23:13, 61:6, 100:2 exactly [3] - 56:13, 56:15, 96:25 examination [2] - 4:17, 136:18 EXAMINATION [1] - 84:15 example [4] - 35:2, 36:9, 83:10, 116:20 excavate [2] - 18:14, 36:22 excavated [3] - 34:14, 66:9, 66:19 excavating [1] - 18:13 excavation [5] - 18:12, 18:15, 19:20, 37:20, 77:9 exceed [1] - 125:12 except [5] - 60:7, 108:18, 130:9, 132:7,	132:9 exception [1] - 85:20 exceptions [5] - 98:21, 101:8, 122:25, 123:3, 123:23 exclusionary [1] - 93:25 excuse [1] - 46:1 executive [2] - 8:12, 25:6 exhaustive [1] - 78:3 Exhibit [1] - 93:9 EXHIBIT [1] - 3:4 exigent [1] - 121:24 exist [1] - 24:7 existence [1] - 86:9 existing [5] - 8:3, 8:7, 72:11, 72:13, 86:1 expand [5] - 114:15, 115:15, 116:12, 116:14, 116:17 expect [7] - 14:5, 19:8, 19:16, 22:3, 22:6, 22:10, 38:5 expectation [1] - 22:11 expected [1] - 20:14 expecting [2] - 17:18, 109:12 experience [12] - 5:14, 5:16, 5:25, 22:12, 22:14, 53:5, 57:6, 57:11, 58:7, 59:17, 78:2, 131:1 experienced [3] - 50:21, 50:24, 105:7 expert [22] - 6:21, 13:10, 17:8, 37:22, 46:4, 46:9, 46:10, 96:11, 96:15, 96:17, 104:18, 105:16, 107:10, 108:24, 110:21, 113:1, 114:6, 116:16, 126:4, 133:10, 140:9 expertise [2] - 53:7, 74:20 experts [1] - 112:21 explain [6] - 6:24, 34:23, 71:2, 74:8, 115:25, 121:3 exposed [2] - 93:12, 122:22 exposes [1] - 92:1 exposure [6] - 91:14, 91:24, 92:11, 98:11, 103:14, 124:15 expression [1] - 10:4 extended [2] - 64:19,	65:8 extends [1] - 69:17 extension [1] - 136:1 extensive [2] - 90:16, 116:25 extensively [1] - 87:4 extent [4] - 4:16, 16:18, 86:6, 99:1 external [1] - 92:12 extremely [3] - 24:1, 43:25, 123:11 eyes [1] - 76:24 eyesight [1] - 42:18 F face [3] - 44:22, 47:21, 133:4 faced [1] - 94:4 facing [1] - 88:16 fact [11] - 24:3, 62:13, 76:18, 81:21, 99:2, 120:20, 121:13, 121:15, 121:18, 131:23, 139:2 factor [2] - 11:18, 50:22 factored [2] - 81:5, 128:4 factors [2] - 81:23, 83:8 FAGAN [1] - 1:15 failed [1] - 57:13 falling [1] - 88:8 Fair [9] - 86:22, 87:12, 87:16, 87:18, 87:19, 88:4, 88:13, 126:24 fair [17] - 52:18, 72:5, 74:19, 74:25, 75:11, 87:1, 87:23, 88:8, 88:10, 89:2, 89:5, 101:13, 104:13, 104:24, 107:12, 127:2, 129:22 fairly [2] - 7:20, 25:23 fairness [1] - 126:23 faith [1] - 23:3 fall [1] - 53:13 falling [1] - 98:25 falls [1] - 21:9 familiar [9] - 14:2, 18:2, 20:10, 27:21, 28:1, 28:20, 107:5, 115:24, 123:2 families [1] - 94:7 family [9] - 78:5, 88:2, 88:3, 95:4, 108:7, 108:10,	108:14, 108:17, 129:21 fantastic [1] - 104:8 far [10] - 10:5, 43:21, 44:9, 67:7, 74:2, 75:25, 80:11, 80:12, 117:7, 137:4 fault [3] - 11:5, 11:8, 20:13 FAX [1] - 1:25 feasible [4] - 98:13, 102:15, 102:18, 102:21 February [4] - 140:16, 141:2, 141:4, 141:7 federal [1] - 61:14 feet [54] - 10:11, 10:12, 10:14, 22:15, 22:16, 40:8, 40:14, 40:16, 40:20, 40:22, 40:23, 40:24, 40:25, 41:2, 44:13, 48:11, 48:12, 48:18, 48:25, 49:1, 49:8, 49:14, 49:17, 50:7, 63:24, 64:7, 64:8, 64:21, 65:23, 66:16, 67:6, 67:9, 67:25, 68:13, 69:16, 73:15, 74:1, 74:13, 74:14, 75:7, 75:14, 76:10, 76:12, 79:2, 79:3, 79:8, 79:10, 82:23, 82:24 Fells [7] - 109:11, 111:24, 112:8, 112:9, 112:10, 112:16, 113:11 fencing [2] - 64:18, 65:7 few [4] - 17:16, 45:11, 45:18, 122:18 field [2] - 70:6, 112:11 figure [3] - 24:24, 57:23, 58:2 figured [1] - 73:15 file [1] - 8:10 filed [2] - 27:5, 133:8 finally [3] - 86:6, 90:20, 100:24 financially [1] - 142:12 findings [6] - 7:1, 11:10, 11:11, 12:24, 20:23, 61:2 fine [1] - 106:11 finish [5] - 71:14, 72:3, 75:1, 120:1, 122:13
--	---	---	---	--

fire ^[1] - 129:23 firm ^[3] - 4:9, 7:2, 15:8 first ^[20] - 13:13, 13:25, 24:17, 32:19, 38:14, 40:25, 49:4, 60:11, 63:15, 68:20, 73:24, 86:1, 99:25, 104:11, 104:12, 108:21, 121:8, 124:5, 129:6, 133:3 FISHMAN ^[3] - 1:23, 142:2, 142:16 five ^[2] - 21:8, 83:23 five-minute ^[1] - 83:23 flat ^[8] - 7:25, 25:16, 25:24, 26:5, 26:8, 26:11, 26:12, 44:6 flatness ^[1] - 83:8 flattens ^[1] - 81:24 flatter ^[1] - 50:13 Flexible ^[1] - 92:25 floating ^[1] - 44:16 flooded ^[1] - 30:25 flooding ^[2] - 20:8, 30:25 floodplain ^[1] - 74:24 floor ^[1] - 136:12 flow ^[1] - 94:23 flows ^[1] - 54:24 focus ^[6] - 6:7, 30:21, 71:17, 77:10, 89:12, 89:13 focused ^[1] - 65:4 follow ^[1] - 47:14 followed ^[2] - 8:13, 87:22 follows ^[2] - 5:9, 84:14 foot ^[5] - 11:23, 35:5, 48:15, 54:25 FOR ^[1] - 143:6 force ^[1] - 110:16 forces ^[1] - 26:17 foregoing ^[1] - 142:4 foresight ^[1] - 88:12 forest ^[1] - 28:16 form ^[5] - 18:15, 93:21, 96:23, 119:19, 123:21 forth ^[4] - 10:1, 27:14, 35:8, 142:7 forum ^[1] - 97:1 foundation ^[8] - 11:24, 14:17, 31:24, 33:14, 92:10, 93:12, 103:14, 124:16 foundations ^[7] - 14:11, 19:1, 32:6,	91:15, 103:20, 122:4, 122:22 founded ^[1] - 127:13 four ^[15] - 7:7, 13:18, 21:8, 22:21, 22:23, 23:1, 23:15, 41:19, 42:1, 42:24, 85:25, 86:11, 87:2, 91:25, 123:8 fourth ^[3] - 88:16, 88:23, 90:24 frame ^[1] - 98:6 framework ^[1] - 98:4 freedom ^[1] - 100:23 frequent ^[1] - 129:5 friction ^[1] - 26:15 friendly ^[2] - 101:6 front ^[3] - 74:12, 82:9, 90:4 full ^[6] - 5:1, 21:3, 21:6, 62:9, 84:23, 90:9 fully ^[8] - 90:5, 90:6, 90:7, 95:6, 123:12, 123:22, 123:23, 139:4 function ^[2] - 94:23, 99:11 functional ^[2] - 92:24, 103:19 fundamental ^[3] - 95:16, 98:2, 108:12 FURTHER ^[1] - 142:8 future ^[1] - 8:8	45:19, 106:5, 107:21, 120:13, 121:13, 121:14 Gentlemen ^[1] - 13:8 gentlemen ^[1] - 138:22 geological ^[4] - 5:16, 5:21, 6:9, 61:4 geology ^[1] - 6:15 geometrically ^[2] - 73:25, 116:21 geometries ^[1] - 58:13 geotechnical ^[15] - 5:16, 6:7, 6:8, 6:21, 17:8, 18:5, 36:15, 68:21, 69:19, 69:22, 72:2, 72:17, 96:16, 112:24, 140:9 GERARD ^[1] - 1:13 get's ^[1] - 81:24 gigantic ^[1] - 58:4 gist ^[1] - 109:20 given ^[15] - 7:25, 23:17, 35:9, 56:9, 67:24, 74:14, 76:22, 78:2, 78:4, 83:9, 83:15, 93:5, 100:4, 103:22, 133:22 goal ^[2] - 87:11, 95:21 goals ^[1] - 101:3 God ^[2] - 5:6, 119:6 govern ^[1] - 95:13 governmental ^[1] - 133:5 governments ^[1] - 61:14 grade ^[6] - 43:8, 43:11, 43:16, 43:17, 74:21, 78:8 grading ^[5] - 91:8, 91:10, 91:11, 91:15, 124:18 Grand ^[2] - 28:6 granted ^[3] - 93:10, 96:1, 124:1 granular ^[1] - 14:19 graphics ^[1] - 9:22 gravel ^[2] - 40:10, 40:17 great ^[6] - 58:25, 72:20, 84:24, 85:8, 108:4, 121:14 greater ^[4] - 52:2, 91:14, 99:5, 99:6 green ^[5] - 91:22, 92:8, 92:9, 92:10, 117:17 ground ^[13] - 7:9,	7:15, 21:2, 21:3, 21:7, 22:16, 27:24, 40:8, 43:7, 43:9, 43:11, 43:12, 61:1 grounds ^[2] - 6:11, 97:14 group ^[3] - 4:15, 88:5, 106:10 guarantee ^[1] - 20:19 guard ^[1] - 97:25 GUARINO ^[4] - 1:9, 9:17, 102:7, 137:20 Guarino ^[3] - 9:15, 102:5, 137:18 guess ^[14] - 9:10, 24:17, 29:13, 36:17, 38:3, 57:20, 62:2, 72:5, 81:14, 82:24, 83:14, 118:17, 128:12, 132:25 guessing ^[1] - 25:14 guesstimate ^[1] - 49:2 guide ^[1] - 98:5 guidelines ^[1] - 47:14 gumption ^[1] - 22:11 guys ^[3] - 32:3, 44:19, 45:7	health ^[2] - 100:19, 133:6 hear ^[12] - 31:13, 38:20, 41:13, 55:7, 98:20, 104:7, 118:7, 118:8, 122:16, 126:22, 128:21, 129:19 heard ^[23] - 44:15, 51:7, 51:8, 52:1, 86:20, 87:3, 90:13, 90:16, 90:17, 91:3, 91:12, 91:17, 92:8, 100:11, 101:9, 105:16, 116:25, 125:2, 126:8, 128:7, 133:1, 133:19 hearing ^[7] - 38:17, 40:3, 86:16, 99:18, 103:18, 126:23, 141:12 hearings ^[6] - 27:2, 86:16, 97:4, 97:11, 97:12, 101:2 heart ^[1] - 111:13 heavy ^[3] - 31:1, 35:3 heels ^[3] - 87:9, 87:18, 87:21 height ^[3] - 80:6, 90:2, 125:2 heights ^[1] - 115:20 held ^[2] - 141:2, 141:3 hello ^[2] - 20:3, 48:5 help ^[3] - 5:6, 80:25, 119:8 hereby ^[1] - 142:3 hereinbefore ^[1] - 142:7 hereto ^[1] - 143:23 hess ^[5] - 10:24, 11:17, 46:23, 103:7, 140:10 HESS ^[7] - 1:13, 11:1, 11:13, 47:4, 47:10, 103:9, 139:17 Hess ^[1] - 139:15 Hi ^[1] - 17:25 hi ^[8] - 68:9, 78:14, 82:18, 84:7, 104:6, 117:24, 117:25, 129:4 high ^[3] - 11:23, 25:19, 26:13 high-rise ^[1] - 11:23 higher ^[3] - 43:23, 80:4, 93:5 highest ^[2] - 61:9, 89:22 Highlands ^[5] - 4:2, 4:10, 27:23, 88:1,
H				
H-1 ^[1] - 131:3 H-2 ^[1] - 131:3 H-4 ^[1] - 131:3 Haizel ^[2] - 103:10, 103:17 HAIZEL ^[6] - 1:13, 11:16, 12:3, 12:10, 103:12, 139:20 haizel ^[2] - 11:14, 139:18 haizel's ^[1] - 12:15 half ^[3] - 11:6, 75:17, 123:8 hall ^[1] - 141:8 handle ^[1] - 13:16 hands ^[1] - 111:8 hard ^[6] - 7:17, 7:18, 18:14, 29:9, 38:17, 122:17 harder ^[1] - 37:16 hardness ^[1] - 37:4 hardship ^[2] - 100:2, 100:9 harm ^[1] - 18:24 HAZEL ^[1] - 104:1 head ^[1] - 51:16 HEADQUARTERS ^[1] - 1:23				

141:6 HIGHLANDS [1] - 1:5 highly [3] - 61:15, 65:9, 92:5 hill [7] - 18:2, 26:9, 28:16, 45:15, 52:20, 127:17, 128:9 hired [1] - 26:20 historic [1] - 20:8 history [2] - 27:21, 56:3 hit [3] - 40:17, 75:13, 88:22 hoe [1] - 37:1 home [1] - 127:10 homes [20] - 17:1, 30:25, 31:21, 32:5, 33:11, 33:13, 45:14, 52:11, 65:24, 67:7, 92:13, 100:13, 108:7, 108:8, 108:17, 110:9, 112:7, 129:21, 135:13, 135:18 hope [1] - 4:16 hopefully [3] - 39:9, 44:20, 120:23 horizontal [5] - 7:24, 26:3, 83:9, 83:13, 83:14 horizontally [1] - 116:21 horse [1] - 118:20 hot [1] - 91:5 hour [1] - 20:17 house [3] - 16:25, 24:19, 73:25 houses [5] - 18:24, 27:23, 28:7, 59:16, 107:25 housing [34] - 86:21, 87:2, 87:8, 87:9, 87:13, 87:14, 87:16, 87:17, 87:20, 87:23, 88:18, 88:21, 89:2, 89:6, 91:9, 93:17, 93:22, 94:2, 94:5, 94:17, 94:19, 100:17, 108:5, 108:6, 108:10, 110:16, 118:24, 126:21, 127:14, 131:2, 131:6, 134:18, 138:13, 139:6 Housing [8] - 86:22, 87:12, 87:18, 87:20, 88:4, 88:14, 90:11, 126:24 Howell [18] - 16:1, 16:5, 16:6, 17:1, 17:12, 17:13, 21:23,	21:25, 24:14, 27:23, 62:12, 62:21, 63:8, 64:14, 71:8, 76:6, 108:19, 140:3 huge [1] - 25:17 Hutt [1] - 4:9 hUTT [1] - 2:3 hypothetical [1] - 138:17 I idea [3] - 63:4, 78:6, 78:18 identified [1] - 135:7 ignorance [1] - 77:13 IH-1 [4] - 4:3, 87:7, 89:22, 130:10 II [1] - 1:10 ill [1] - 4:13 illumination [1] - 115:20 imagine [1] - 29:15 imbedded [1] - 81:25 immediately [1] - 56:4 immunity [1] - 88:7 impact [15] - 16:25, 17:12, 31:20, 32:4, 33:3, 33:10, 37:3, 47:19, 56:6, 105:11, 109:5, 111:18, 111:23, 112:15, 132:21 impacts [10] - 14:20, 67:16, 93:11, 96:2, 96:12, 96:14, 96:16, 97:5, 113:10, 113:11 impasse [1] - 19:10 impetus [1] - 93:21 implement [1] - 12:22 implementation [1] - 89:10 implemented [10] - 12:9, 12:22, 14:5, 19:7, 19:9, 37:17, 37:18, 38:8, 38:9, 38:11 implementing [1] - 89:4 implies [1] - 125:1 important [6] - 16:20, 42:2, 65:6, 65:21, 65:24, 89:25 importantly [3] - 89:5, 101:14, 123:4 impossible [1] - 45:4 impracticable [2] - 100:2, 100:6	improvement [2] - 100:20, 100:24 Improvement [1] - 98:23 improvements [1] - 107:18 Inc [1] - 4:2 INC [1] - 1:5 inches [1] - 20:17 include [4] - 6:12, 7:21, 45:14, 143:22 including [4] - 38:20, 88:2, 95:20, 107:18 inclusionary [6] - 4:4, 86:21, 87:7, 91:9, 126:13, 127:8 inclusive [1] - 126:13 income [3] - 87:13, 87:21, 94:7 incomes [1] - 128:9 incorrect [2] - 57:11, 74:11 increases [1] - 100:17 increasing [1] - 58:15 independent [2] - 27:18, 110:25 indicate [2] - 61:9, 63:13 indicated [2] - 65:7, 143:5 industrial [1] - 6:5 influence [1] - 110:16 information [2] - 62:3, 74:9 infrastructure [1] - 6:6 inherent [1] - 35:10 inherently [8] - 7:25, 8:3, 8:7, 12:7, 26:16, 32:21, 32:22 installation [1] - 107:18 instance [10] - 13:15, 19:1, 29:13, 30:22, 30:23, 31:11, 31:14, 33:10, 111:17, 112:6 instead [1] - 119:17 Institute [2] - 5:24, 85:5 INSTRUCTIONS [1] - 143:3 insulation [1] - 74:21 integrate [1] - 94:25 integrity [1] - 117:15 intended [2] - 9:10, 66:19	intensity [1] - 21:12 intent [3] - 99:23, 103:15, 103:24 interactive [1] - 96:24 intercept [1] - 116:4 interest [7] - 91:16, 92:19, 93:16, 94:18, 97:25, 99:15, 131:4 interested [2] - 13:20, 142:12 interior [1] - 99:19 internal [1] - 92:12 interplay [1] - 107:20 interpretation [2] - 6:10, 65:13 interrupted [2] - 74:22, 122:14 interrupting [1] - 74:11 intersections [1] - 107:22 Inventory [2] - 61:7, 61:12 investigated [2] - 52:12, 77:11 investigating [1] - 45:17 investigation [5] - 7:6, 7:16, 7:19, 50:16, 61:24 investigations [3] - 6:9, 24:3 investment [1] - 139:12 involved [7] - 8:1, 11:22, 67:19, 97:9, 101:12, 106:23, 123:9 irregular [1] - 92:5 irrelevant [3] - 129:13, 129:18, 131:20 isolated [2] - 126:14, 127:8 issue [7] - 14:1, 15:4, 46:16, 60:17, 127:21, 133:19, 140:8 issues [2] - 58:17, 68:1 item [1] - 15:19 items [2] - 85:22, 134:17 itself [9] - 7:20, 25:23, 45:16, 60:21, 106:8, 111:25, 112:5, 112:10, 143:5 J James [2] - 19:24,	48:5 JAMILET [1] - 1:14 January [3] - 8:12, 8:13, 25:12 JANUARY [1] - 1:2 JERRY [1] - 1:9 Jersey [19] - 6:1, 6:13, 6:14, 6:21, 11:4, 20:16, 56:3, 84:20, 85:2, 85:4, 85:15, 93:18, 93:20, 93:22, 94:4, 94:12, 110:19, 123:17, 142:3 JERSEY [3] - 1:24, 2:5, 2:9 Jessica [2] - 38:15, 117:24 jitney [2] - 126:8, 126:9 job [5] - 114:9, 123:10, 123:12, 123:21 Joe [1] - 82:19 John [8] - 84:5, 84:8, 84:25, 85:19, 93:19, 103:13, 121:1, 139:1 JOHN [2] - 1:11, 1:13 joined [1] - 12:12 joining [1] - 84:1 joins [1] - 107:24 joke [1] - 60:2 jokes [1] - 60:8 JOSEPH [1] - 1:15 jump [1] - 46:5 justifiable [1] - 99:22 justifies [1] - 101:8 K keep [2] - 32:12 keeping [1] - 102:14 KEN [1] - 1:11 kind [8] - 20:18, 31:25, 33:14, 33:16, 44:20, 50:19, 70:25, 107:7 kinds [4] - 21:19, 28:4, 53:20, 57:12 kitchen [1] - 25:3 Klein [4] - 24:14, 60:12, 107:1, 107:14 Knights [1] - 30:15 knob [1] - 34:13 knocked [1] - 28:7 knowing [1] - 61:14 knowledge [5] - 57:14, 57:16, 77:22, 77:24, 77:25 known [1] - 38:5 knows [3] - 23:12,
--	--	---	--	---

75:11, 123:14 Kuzik [6] - 99:3, 99:14, 100:9, 102:13, 123:24, 124:2	106:17 laudable [1] - 101:3 Laurel [17] - 93:19, 93:24, 93:25, 94:9, 94:10, 94:11, 98:3, 104:21, 107:20, 108:4, 108:6, 110:21, 111:2, 111:24, 123:11, 138:8 law [13] - 84:14, 89:15, 93:2, 94:14, 94:15, 95:10, 95:16, 111:11, 111:13, 111:16, 119:10, 125:7 Law [1] - 86:9 lawyer [3] - 98:5, 110:22, 110:23 layer [1] - 40:1 layers [2] - 89:8, 127:13 lays [1] - 47:6 LB [1] - 29:10 LB-1 [4] - 39:20, 39:25, 42:15, 48:13 LB-4 [3] - 79:5, 82:23, 83:10 LD-1 [1] - 40:7 lead [1] - 37:9 leadership [2] - 88:12, 94:14 leaks [1] - 71:9 least [4] - 37:3, 49:15, 70:20, 76:23 lecture [1] - 120:6 lectured [1] - 120:2 led [1] - 38:1 left [3] - 55:13, 80:12, 102:13 legal [4] - 98:4, 98:6, 111:9, 121:11 legend [1] - 78:19 length [2] - 49:11, 49:13 lengthens [1] - 80:2 less [7] - 34:20, 34:21, 56:3, 67:10, 70:9, 70:12, 80:2 letter [6] - 8:12, 63:11, 63:14, 63:15, 63:16, 133:22 lettering [1] - 72:12 level [4] - 41:4, 61:9, 61:24, 82:22 levels [6] - 35:4, 56:16, 58:24, 87:13, 103:21, 115:20 license [4] - 6:13, 6:16, 84:20, 85:2 licensed [4] - 6:14, 6:20, 84:19, 85:1	licensures [1] - 85:13 life [3] - 92:24, 96:9, 113:12 lifetime [2] - 21:17, 21:18 light [5] - 104:22, 114:22, 115:20, 116:5 lighter [1] - 24:6 lighting [4] - 90:7, 115:14, 115:15, 115:16 lights [2] - 115:21, 116:2 likely [2] - 36:21, 61:5 likewise [2] - 96:6, 99:17 limit [2] - 10:9, 134:21 limited [5] - 16:22, 23:7, 35:13, 89:11, 91:2 limiting [1] - 19:4 limits [1] - 116:3 Line [1] - 143:7 line [54] - 9:23, 10:3, 10:6, 10:9, 10:10, 10:13, 10:14, 19:20, 20:13, 27:23, 28:15, 34:14, 34:17, 35:3, 37:20, 42:8, 42:11, 48:7, 48:20, 48:25, 49:7, 49:10, 51:13, 55:15, 64:21, 64:22, 67:8, 70:20, 71:5, 71:7, 71:12, 72:18, 72:20, 73:8, 73:11, 74:12, 74:15, 74:16, 75:12, 75:14, 75:17, 75:20, 79:22, 80:7, 80:9, 80:17, 81:4, 81:11, 82:5, 115:11 linear [2] - 69:16, 70:12 lines [19] - 10:8, 26:3, 34:10, 34:24, 34:25, 35:2, 35:3, 48:8, 50:9, 51:20, 63:2, 69:11, 70:14, 79:15, 80:22, 81:2, 114:20, 143:5 links [1] - 89:9 listen [2] - 118:2, 122:15 listened [2] - 62:10, 118:11 listening [1] - 126:8 literal [2] - 100:1, 100:5	literally [1] - 25:2 live [8] - 20:1, 62:21, 64:5, 76:6, 76:23, 94:24, 127:24, 127:25 lived [2] - 97:8, 111:4 lives [1] - 23:24 living [2] - 92:10, 94:5 LLC [1] - 4:11 local [1] - 61:13 localized [1] - 54:18 located [2] - 7:10, 41:12 location [13] - 16:23, 17:20, 23:8, 27:10, 27:12, 27:14, 28:14, 35:16, 36:1, 41:9, 72:6, 134:11, 134:18 locations [9] - 17:16, 24:24, 27:17, 29:20, 34:9, 34:12, 36:3, 50:3, 95:6 locked [1] - 134:24 log [1] - 39:7 logic [1] - 83:11 logs [1] - 54:3 long-term [1] - 58:17 longest [1] - 56:11 look [53] - 16:5, 17:10, 20:22, 21:11, 25:15, 32:24, 33:6, 33:20, 34:20, 36:16, 39:7, 57:19, 60:19, 60:23, 61:18, 61:19, 62:3, 62:13, 63:23, 65:13, 76:1, 76:12, 78:10, 80:7, 83:11, 86:1, 86:2, 86:3, 86:8, 86:19, 87:6, 92:25, 93:2, 99:24, 107:6, 107:11, 108:5, 111:10, 111:15, 111:16, 111:17, 111:18, 111:23, 112:4, 112:15, 113:2, 115:17, 121:13, 121:16, 129:19, 131:3, 131:11, 139:25 looked [10] - 16:4, 60:16, 105:8, 107:2, 107:3, 108:1, 113:17, 113:19, 113:22, 113:24 looking [27] - 16:3, 21:6, 21:13, 24:22, 32:24, 42:11, 42:14, 43:22, 49:2, 52:13, 59:19, 76:13, 80:22, 81:3, 81:11, 81:12, 88:25, 92:18, 106:16,	108:23, 111:1, 111:2, 117:9, 124:7, 129:25, 130:20, 139:3 looks [7] - 16:7, 43:25, 49:1, 79:10, 83:2, 108:4, 140:23 loop [2] - 99:2, 99:4 loud [1] - 104:7 loudly [1] - 38:17 low [5] - 11:4, 11:12, 77:4, 87:20, 94:6 lower [3] - 80:18, 103:21, 128:8 lowering [1] - 58:14
M				
M-E-Y-E-R-O-W-I-T-Z [1] - 16:2 M-I-S-A-R-T-I [2] - 18:1, 29:2 ma'am [3] - 120:7, 120:11, 135:18 machine [5] - 25:14, 25:18, 30:1, 30:3 machines [1] - 29:13 magical [1] - 108:6 magnitude [1] - 117:8 main [5] - 52:25, 53:10, 53:16, 77:8, 78:16 maintain [1] - 118:6 maintaining [1] - 91:21 major [3] - 9:5, 13:24, 53:21 majority [1] - 53:2 management [1] - 114:2 manager [1] - 34:12 mandated [3] - 88:18, 93:16, 110:14 mandating [1] - 94:16 manner [1] - 14:17 Martin [4] - 89:16, 96:25, 97:7, 98:3 Map [2] - 61:7, 61:12 map [39] - 11:5, 11:7, 24:22, 29:5, 41:22, 41:23, 43:14, 48:23, 51:11, 52:13, 58:5, 59:20, 61:5, 61:6, 61:8, 62:9, 63:10, 63:14, 63:20, 68:14, 71:13, 71:15, 71:17, 71:19, 71:21, 72:4, 72:7, 72:8, 72:15, 73:8, 74:12, 74:15,				

74:18, 75:25, 76:12, 76:14, 76:23, 78:19, 117:9
mapping [1] - 61:20
maps [1] - 61:19
Mark [1] - 4:23
mark [2] - 5:2, 143:5
marked [3] - 24:19, 75:13, 75:14
mass [3] - 125:1, 134:25, 139:8
massive [2] - 71:4, 71:7
Master [4] - 87:10, 87:14, 87:22, 89:7
master [1] - 123:16
masters [1] - 5:22
material [8] - 17:17, 18:13, 18:16, 19:5, 26:13, 26:16, 40:9
materials [3] - 8:1, 58:15, 69:23
math [1] - 79:16
matter [2] - 119:10, 121:11
maximum [1] - 92:3
Mayor [9] - 1:10, 9:2, 9:13, 12:13, 102:2, 109:11, 135:8, 137:2, 137:13
MAYOR [12] - 9:4, 12:14, 13:3, 102:4, 135:9, 135:19, 136:4, 136:6, 137:1, 137:3, 137:8, 137:15
Mccartney [20] - 1:10, 9:2, 9:4, 9:14, 12:13, 12:14, 13:3, 102:2, 102:4, 135:8, 135:9, 135:19, 136:4, 136:6, 137:1, 137:2, 137:3, 137:8, 137:13, 137:15
McDonough [11] - 84:5, 84:8, 84:17, 84:25, 102:3, 102:6, 102:10, 103:5, 103:8, 103:11, 122:24
mcDonough [11] - 85:12, 101:24, 104:4, 106:13, 123:5, 124:3, 124:4, 135:6, 135:9, 136:9, 136:11
mcDonough's [2] - 103:1, 128:25
McDonough's [1] - 93:20
MCGOVERN [26] - 4:25, 5:3, 5:5, 15:12, 24:25, 25:4, 25:10,

31:6, 31:9, 31:13, 32:11, 39:14, 39:16, 39:19, 63:17, 65:1, 84:6, 84:9, 84:12, 122:7, 129:10, 132:9, 132:16, 132:24, 140:18, 140:22
McGovern [5] - 2:8, 25:7, 34:3, 106:3, 136:17
mean [20] - 16:6, 16:25, 18:6, 18:7, 18:9, 29:14, 38:3, 64:10, 67:6, 80:16, 83:4, 105:25, 114:15, 115:25, 116:14, 116:16, 117:9, 125:18, 130:17, 135:20
means [2] - 26:6, 26:11
measure [3] - 51:15, 75:6, 76:16
measured [1] - 82:13
measurement [1] - 78:15
measurements [3] - 57:24, 73:17, 73:20
measures [4] - 12:21, 91:23, 92:18, 103:23
measuring [1] - 80:11
meet [3] - 88:8, 105:22
meeting [8] - 88:10, 99:22, 106:1, 106:17, 139:23, 141:1, 141:3, 141:5
meetings [1] - 133:9
meets [4] - 104:13, 104:14, 108:18
member [2] - 85:4, 85:11
MEMBERS [1] - 1:8
members [15] - 6:19, 13:5, 30:11, 83:19, 103:17, 104:3, 109:8, 117:22, 119:18, 128:24, 135:5, 136:8, 140:23, 141:10, 141:11
mental [1] - 75:17
mention [1] - 124:6
mentioned [8] - 12:4, 109:14, 114:13, 115:14, 122:2
mesa [1] - 69:9
mesh [1] - 44:20

met [8] - 89:23, 90:1, 90:21, 95:18, 96:20, 101:16, 103:24, 108:5
method [4] - 18:11, 36:24, 37:1, 37:2
methods [4] - 18:12, 19:7, 36:25, 67:15
Meyerowitz [1] - 16:1
mic [5] - 17:23, 39:22, 40:3, 40:4, 40:6
microphone [4] - 5:20, 13:7, 16:11, 48:10
middle [4] - 51:10, 55:15, 74:14, 125:24
might [12] - 26:7, 31:22, 33:16, 35:4, 44:21, 45:11, 47:19, 54:15, 76:24, 80:1, 81:3, 134:16
mile [2] - 11:6, 11:7
mind [7] - 62:12, 63:2, 71:3, 72:20, 75:22, 106:11, 118:22
minds [1] - 74:17
Mines [2] - 5:18, 5:22
minimal [1] - 90:23
minimize [1] - 91:19
minimizing [2] - 91:16, 92:19
minimus [2] - 98:21, 101:8
minute [1] - 83:23
minutes [1] - 122:18
Misarti [4] - 17:25, 29:1, 82:18, 104:6
misunderstood [1] - 108:15
mitigate [2] - 68:1, 92:11
mitigated [2] - 92:6, 92:15
mitigating [2] - 92:14, 103:22
mitigative [2] - 91:23, 92:18
moderate [3] - 87:21, 94:7, 128:8
Moderator [1] - 1:15
modest [1] - 93:6
modify [1] - 21:1
moment [2] - 75:21, 136:13
monitor [1] - 19:18
monitoring [5] - 19:8, 19:12, 19:13, 47:6, 140:12
monitors [1] - 19:18

monologue [1] - 124:5
months [2] - 45:18, 56:4
MORRISTOWN [1] - 1:24
most [13] - 16:4, 24:4, 25:19, 36:21, 37:2, 50:13, 53:17, 53:19, 89:4, 89:25, 101:14, 107:6, 140:2
mother's [1] - 21:17
Mount [14] - 93:19, 93:24, 93:25, 94:9, 94:10, 94:11, 98:3, 108:4, 108:6, 110:21, 111:2, 123:11, 138:8
mouth [1] - 133:1
move [9] - 21:19, 52:7, 71:23, 91:1, 91:14, 93:7, 111:6, 111:7
movements [2] - 13:24, 104:23
MR [83] - 4:8, 4:22, 5:2, 5:4, 5:7, 6:22, 8:23, 9:21, 10:12, 10:17, 10:20, 11:1, 11:13, 11:16, 12:3, 12:10, 15:16, 16:17, 23:6, 23:10, 23:19, 25:1, 25:6, 25:11, 26:25, 27:9, 31:4, 31:8, 46:15, 46:19, 46:22, 47:4, 47:10, 47:12, 59:21, 63:3, 63:21, 66:3, 71:24, 72:3, 84:2, 84:3, 84:15, 101:19, 101:25, 102:11, 102:20, 102:24, 103:9, 103:12, 104:1, 106:4, 106:19, 107:12, 107:16, 119:1, 121:1, 121:7, 121:9, 122:1, 122:10, 122:13, 122:17, 129:9, 130:7, 130:15, 131:7, 131:19, 131:24, 133:3, 136:13, 137:6, 137:11, 137:23, 138:1, 138:24, 139:17, 139:18, 139:20, 139:24, 140:6, 140:14, 140:17
MS [27] - 4:25, 5:3, 5:5, 15:12, 24:25, 25:4, 25:10, 31:6, 31:9, 31:13, 32:11,

39:14, 39:16, 39:19, 63:17, 65:1, 84:6, 84:9, 84:12, 106:3, 122:7, 129:10, 132:9, 132:16, 132:24, 140:18, 140:22
multifamily [4] - 4:4, 89:24, 95:3, 110:9
multiple [9] - 13:21, 14:10, 15:4, 20:17, 88:9, 95:19, 97:11, 127:13
Municipal [1] - 86:9
municipal [1] - 130:2
municipalities [1] - 88:17

N

N.J.S.A [1] - 95:10
NAACP [1] - 93:23
name [16] - 5:1, 13:7, 17:24, 17:25, 19:23, 24:13, 28:24, 30:13, 30:14, 48:5, 61:6, 84:6, 84:8, 84:25, 104:5, 109:9
Nancy [1] - 16:1
narrow [2] - 57:10, 101:10
national [1] - 85:6
nature [4] - 16:20, 19:6, 53:16, 107:17
navigate [1] - 80:13
navigating [1] - 35:10
near [2] - 37:22, 44:11
nearby [1] - 117:5
necessarily [4] - 56:20, 61:22, 61:23, 131:25
necessary [1] - 123:23
need [13] - 4:16, 60:25, 72:3, 79:22, 94:5, 99:25, 102:12, 120:2, 120:20, 121:5, 121:24, 122:13, 139:25
needed [2] - 12:24, 120:25
needs [4] - 38:6, 40:3, 87:16, 129:19
negative [3] - 14:20, 95:24, 96:19
neighbor [3] - 64:6, 64:16
neighborhood [8] - 64:23, 64:24, 65:4,

65:5, 65:6, 67:12, 68:8, 68:14 neighborhoods [5] - 115:1, 116:8, 117:7, 117:8, 117:12 neighboring [7] - 18:24, 92:16, 111:18, 112:17, 113:22, 116:8 neighbors [6] - 64:15, 99:4, 99:15, 100:8, 111:19, 117:5 netting [1] - 44:20 network [1] - 100:10 never [2] - 25:16, 77:21 NEW [3] - 1:24, 2:5, 2:9 New [19] - 6:1, 6:13, 6:14, 6:21, 11:4, 20:16, 56:3, 84:20, 85:2, 85:4, 85:15, 93:18, 93:20, 93:22, 94:3, 94:12, 110:19, 123:17, 142:3 new [4] - 40:3, 72:19, 94:19 newest [1] - 106:1 next [9] - 21:21, 30:23, 40:25, 51:4, 88:16, 139:23, 141:1, 141:3, 141:5 nice [1] - 60:2 nicely [1] - 100:14 night [1] - 60:6 nightly [3] - 84:23, 85:3, 85:7 nine [2] - 62:19, 140:23 non [1] - 100:18 non-commensurate [1] - 100:18 nonapplicable [1] - 134:4 none [5] - 6:20, 25:16, 83:21, 135:8, 136:10 normal [2] - 56:12, 130:25 normally [5] - 15:14, 21:8, 46:24, 47:4, 60:17 north [5] - 16:12, 66:6, 66:10, 66:18, 66:19 NORTH [1] - 1:23 northwest [1] - 4:6 Notary [1] - 142:3 notations [1] - 72:6 note [1] - 143:4	noted [2] - 49:25, 143:23 notes [2] - 135:10, 138:23 nothing [11] - 5:6, 8:23, 12:6, 12:24, 13:19, 17:19, 21:24, 23:22, 84:10, 127:18, 128:2 notice [2] - 9:25, 141:7 notified [1] - 33:19 notorious [1] - 108:10 November [2] - 55:24, 55:25 nowhere [1] - 37:22 nuances [1] - 81:23 number [13] - 13:22, 25:5, 44:15, 81:15, 86:12, 86:19, 87:6, 87:24, 90:2, 93:19, 108:6, 124:6, 124:11 numbers [7] - 22:17, 34:25, 48:22, 79:2, 80:8, 88:19, 88:24 numerous [1] - 47:13	offer [1] - 5:11 official [1] - 33:20 Official [1] - 1:14 often [1] - 53:16 on-site [3] - 18:21, 59:19, 62:4 once [2] - 15:7, 45:2 one [74] - 9:5, 9:21, 10:3, 10:9, 11:1, 13:20, 13:22, 18:12, 23:19, 24:5, 24:17, 31:24, 32:11, 33:13, 34:9, 34:13, 35:5, 35:12, 36:24, 37:9, 37:10, 41:5, 41:9, 41:10, 49:24, 53:24, 53:25, 54:11, 58:5, 58:20, 62:10, 62:12, 62:20, 70:20, 73:6, 74:8, 75:17, 78:16, 79:7, 80:13, 81:4, 81:15, 81:24, 82:13, 85:19, 88:9, 91:3, 92:22, 95:18, 99:19, 100:1, 100:11, 104:17, 104:19, 108:11, 110:15, 116:13, 117:11, 122:4, 122:6, 122:7, 122:10, 123:19, 123:24, 124:13, 125:6, 125:11, 125:22, 126:16, 127:7, 127:12, 128:12, 135:12, 137:1 ONE [1] - 2:8 one-foot [1] - 35:5 one-half [1] - 75:17 oops [1] - 75:13 open [6] - 89:24, 93:25, 101:20, 102:14, 124:2 opening [1] - 102:14 operate [2] - 94:23, 98:6 opinion [23] - 23:18, 50:23, 50:25, 51:1, 58:6, 58:7, 65:20, 72:18, 75:25, 96:18, 103:14, 104:15, 105:16, 105:25, 108:24, 110:21, 113:1, 116:16, 117:6, 126:12, 127:1, 127:3, 130:22 opinions [1] - 56:21 opportunities [1] - 87:17 opportunity [3] - 13:23, 88:20, 141:9	opposed [6] - 37:7, 62:16, 81:12, 91:20, 95:4, 126:1 OR [1] - 143:6 Orange [8] - 20:16, 21:16, 87:15, 94:12, 109:23, 111:19, 138:9, 138:14 ORANGE [2] - 1:1, 2:9 orange [1] - 61:17 order [11] - 7:24, 13:16, 38:1, 51:22, 52:24, 81:16, 118:24, 120:19, 127:9, 134:12, 134:24 ordinance [38] - 9:7, 9:8, 89:18, 89:19, 90:9, 91:11, 97:19, 97:24, 109:17, 109:22, 110:2, 111:9, 113:16, 113:19, 115:18, 117:15, 120:22, 122:3, 122:21, 123:4, 123:6, 123:20, 130:3, 130:10, 130:11, 130:16, 130:21, 130:22, 130:23, 131:11, 131:15, 131:18, 132:2, 132:4, 132:19, 133:5, 133:20, 133:22 ordinances [2] - 130:19, 131:2 oriented [2] - 70:11, 100:24 original [1] - 129:7 Orin [1] - 30:14 otherwise [2] - 26:17, 41:10 outbound [1] - 115:12 outset [1] - 97:17 outside [8] - 14:14, 90:10, 98:20, 106:19, 111:1, 111:11, 112:5, 125:7 outweighs [1] - 98:10 Oval [8] - 107:3, 107:8, 107:9, 107:11, 107:19, 109:2, 109:3 oval [1] - 107:24 overall [8] - 36:13, 37:3, 37:8, 62:1, 81:3, 81:9, 99:20, 103:22 overlay [6] - 72:10, 118:25, 119:7, 119:11, 120:6, 120:9	overlook [1] - 52:11 overlooks [2] - 59:16, 62:12 overly [1] - 125:2 overlying [1] - 7:17 overpowering [1] - 103:21 overseas [2] - 5:17, 6:2 overview [1] - 85:21 own [3] - 96:10, 126:20, 131:20 owned [1] - 28:15 owner [4] - 26:24, 28:15, 38:9, 123:13 owns [2] - 111:25, 112:10
O				
oath [3] - 5:9, 84:14, 105:10 objection [1] - 119:1 objectively [1] - 61:18 objectives [1] - 100:20 objectors [3] - 4:13, 136:25, 139:22 obligation [10] - 87:1, 87:19, 88:8, 88:11, 88:14, 88:22, 88:25, 94:2, 95:17 obligations [3] - 87:15, 110:14, 123:18 obscured [2] - 92:14, 92:15 observations [1] - 22:13 obtain [1] - 106:9 obviously [4] - 24:20, 38:4, 39:1, 136:18 occur [2] - 47:3, 47:7 occurred [2] - 102:12, 102:18 October [1] - 88:19 odd [1] - 81:9 OF [2] - 1:1, 1:1				
P				
P-E-A-R-S-O-N [1] - 38:15 P.M [1] - 1:2 package [1] - 93:3 PAGE [1] - 3:4 page [11] - 25:1, 25:4, 25:5, 25:8, 25:9, 39:15, 39:19, 43:1, 63:15, 87:24, 143:5 Page [6] - 25:9, 39:14, 41:24, 63:11, 63:21, 143:7 PAGE/ERRATA [1] - 143:1 pages [1] - 96:3 paint [1] - 61:21 parallel [3] - 42:25, 43:24, 44:15 parallels [6] - 69:9, 69:13, 69:15, 69:23, 70:17, 111:5 parameters [3] - 7:13, 83:15 paramount [2] - 93:15, 94:18 parcel [2] - 111:25, 120:21 pardon [1] - 77:13 parking [3] - 90:5, 114:18, 139:9 part [41] - 13:25, 20:21, 21:1, 21:16, 37:24, 44:23, 50:13, 53:6, 53:10, 55:18, 55:19, 58:6, 62:25, 68:24, 71:25, 72:22, 74:15, 74:18, 83:21, 85:22, 86:1, 86:12, 86:19, 87:5, 87:6, 88:4, 88:18, 88:24,				

89:2, 90:24, 99:3,
99:14, 108:14,
118:18, 120:21,
121:10, 123:11,
130:11, 130:12,
135:16, 135:24
Part [3] - 118:18,
118:21
particular [15] - 12:4,
13:15, 33:4, 69:9,
70:16, 76:21, 82:13,
86:4, 89:10, 117:7,
118:23, 120:15,
121:6, 124:5, 131:21
particularly [3] -
89:23, 97:25, 121:6
parties [1] - 142:10
partly [1] - 34:11
parts [6] - 25:17,
52:10, 52:20, 67:5,
85:25, 86:11
past [1] - 107:4
Patrick [3] - 34:7,
78:14, 129:2
patterns [1] - 20:14
pause [1] - 32:17
paused [1] - 32:18
PB [1] - 141:6
PB-24-01 [2] - 1:5,
4:2
PDF [2] - 25:8, 25:9
Pearson [2] - 38:15,
117:24
peculiar [1] - 100:3
pedestrian [2] -
100:12, 101:6
pedestrians [1] -
102:15
Pehnke [4] - 96:12,
99:8, 105:9, 128:19
Pehnke's [3] - 98:25,
135:16, 135:24
people [19] - 24:20,
26:6, 26:7, 26:8,
34:12, 38:5, 45:15,
60:4, 62:21, 76:6,
76:22, 77:15, 87:13,
94:24, 117:1, 120:3,
127:25, 128:8
people's [3] - 30:25,
52:11, 78:5
per [6] - 19:4, 20:17,
91:10, 94:15, 103:19,
125:13
percent [12] - 24:1,
51:22, 79:18, 86:24,
91:14, 92:1, 92:2,
92:3, 118:11, 125:18
percentage [1] -
122:22

perched [1] - 127:16
perform [2] - 32:23,
60:25
performance [1] -
100:23
performed [5] - 27:4,
33:8, 76:25, 77:7
perhaps [8] - 7:21,
34:21, 45:10, 57:19,
59:11, 67:10, 77:4,
80:1
perimeter [1] -
117:17
period [4] - 14:10,
15:1, 15:18, 140:13
permits [1] - 106:10
permitted [1] - 95:7
perpendicular [2] -
34:25, 70:11
PERSON [1] - 10:23
person [3] - 23:19,
77:14, 141:8
personally [2] -
13:10, 28:1
persons [1] - 87:20
perspective [3] -
80:17, 95:14, 121:16
pertaining [1] -
100:3
pertains [4] - 91:7,
122:21, 132:19,
132:24
philosophical [1] -
127:5
physically [1] - 76:18
pick [2] - 11:17, 76:7
picture [2] - 105:4,
105:6
piece [5] - 92:6, 97:9,
99:20, 127:16, 127:23
pinch [1] - 62:19
pink [1] - 24:19
pinpoint [1] - 62:16
pit [21] - 29:11, 41:5,
41:10, 41:15, 42:7,
42:8, 42:21, 42:22,
44:2, 44:11, 49:5,
52:14, 54:3, 55:9,
55:11, 55:12, 55:14,
55:17, 62:17
pits [25] - 7:8, 20:23,
22:22, 22:23, 23:2,
23:16, 25:22, 26:4,
29:7, 29:9, 35:16,
41:16, 42:16, 42:19,
42:21, 43:21, 48:14,
54:21, 62:23, 69:14,
70:13, 72:7, 78:17,
137:5, 140:4
Pizzo [4] - 89:16,

96:25, 97:7, 98:3
place [9] - 8:5, 11:25,
13:24, 54:11, 100:11,
127:24, 132:3, 134:2,
142:6
places [1] - 17:16
Plan [6] - 86:22,
86:23, 87:10, 87:14,
87:22, 89:7
plan [29] - 18:21,
27:15, 32:9, 41:21,
47:5, 47:6, 71:25,
86:20, 89:3, 89:4,
89:6, 89:10, 96:4,
101:14, 113:5, 113:7,
114:2, 115:1, 123:14,
131:14, 132:5,
133:20, 135:15,
135:23, 138:6, 138:9,
138:15, 138:21
planing [1] - 138:20
Planner [1] - 1:13
planner [24] - 84:5,
84:19, 85:1, 85:14,
85:21, 89:11, 98:6,
104:24, 105:25,
106:16, 107:2,
108:16, 108:22,
110:24, 111:16,
115:8, 119:3, 126:21,
126:25, 130:13,
130:17, 138:8,
138:14, 138:19
planners [3] -
107:25, 113:2, 121:16
Planners [1] - 85:5
planning [47] - 15:2,
26:21, 28:3, 30:18,
32:8, 33:10, 60:1,
85:23, 85:24, 89:3,
89:17, 95:21, 96:5,
97:15, 97:18, 97:20,
97:23, 99:10, 100:6,
103:24, 109:18,
110:12, 111:1,
111:12, 111:14,
113:1, 114:6, 116:14,
117:18, 120:23,
121:15, 123:1,
126:13, 127:1, 127:6,
127:15, 129:7,
129:11, 129:19,
130:18, 133:10,
134:17, 138:5, 138:6,
138:7, 141:1, 141:3
PLANNING [1] - 1:1
plans [3] - 96:4,
96:6, 113:4
plantings [2] - 92:10,
92:11

plastic [1] - 92:9
play [1] - 58:16
PLAZA [1] - 1:23
Pleasant [1] - 20:1
plocker [5] - 4:7,
4:21, 15:15, 136:12,
137:3
PLOCKER [59] - 2:3,
2:4, 4:8, 4:22, 6:22,
8:23, 15:16, 16:17,
23:6, 23:10, 23:19,
25:1, 25:6, 25:11,
26:25, 27:9, 31:4,
31:8, 46:15, 46:19,
46:22, 47:12, 59:21,
63:3, 63:21, 66:3,
71:24, 72:3, 84:3,
84:15, 85:10, 101:19,
102:20, 106:4,
106:19, 107:12,
107:16, 119:1, 121:1,
121:7, 121:9, 122:1,
122:10, 122:13,
122:17, 129:9, 130:7,
130:15, 131:7,
131:19, 131:24,
133:3, 136:13, 137:6,
138:24, 139:24,
140:6, 140:14, 140:17
Plocker [3] - 4:9,
84:2
plug [1] - 50:19
plus [1] - 68:13
PM [4] - 141:2,
141:4, 141:8, 141:12
pockets [2] - 55:5,
55:8
point [22] - 23:22,
44:2, 51:10, 52:2,
54:1, 62:11, 62:20,
63:13, 67:6, 74:13,
74:17, 76:7, 76:8,
116:14, 123:12,
129:14, 130:8,
133:14, 136:16
pointer [2] - 42:10,
73:7
points [7] - 10:11,
51:14, 53:12, 53:25,
68:6, 68:9, 70:1
policies [1] - 101:4
policy [5] - 33:18,
33:23, 89:9, 100:25,
101:5
poll [2] - 140:18,
140:19
pollution [1] - 116:5
POMACO [1] - 2:7
pools [1] - 13:17
poor [1] - 42:18

population [1] -
134:21
portion [2] - 68:12,
81:12
posed [1] - 97:2
positioning [2] -
114:18, 116:24
positive [2] - 93:14,
98:10
possibility [1] -
14:12
possible [12] - 24:21,
54:17, 55:2, 56:8,
56:9, 68:1, 76:18,
77:22, 79:25, 100:22,
108:19
possibly [1] - 60:16
post [3] - 34:5, 45:9,
45:12
postmortem [1] -
53:5
potable [1] - 113:11
potential [3] - 37:10,
44:21, 88:5
potentially [5] -
59:18, 66:25, 82:25,
98:13, 127:9
power [1] - 6:5
practical [5] - 59:7,
59:8, 60:3, 60:7,
100:6
practice [2] - 69:18,
69:21
pre [2] - 45:11, 94:8
pre-ample [1] - 94:8
preblast [1] - 44:25
precipitating [1] -
53:11
precipitation [1] -
53:21
precise [1] - 83:9
precisely [1] - 79:21
preclude [1] - 13:19
predated [1] - 110:3
predicate [2] - 99:10,
101:10
predictable [1] - 58:9
predictions [1] -
57:12
predominantly [1] -
86:17
prefer [1] - 37:5
preferred [1] - 18:12
prepare [1] - 27:13
prepared [4] - 8:15,
27:17, 47:6, 72:5
present [2] - 20:24,
61:25
preservation [1] -
95:8

preserve [2] - 108:13, 117:16 preserved [1] - 87:4 preserving [1] - 95:9 pretty [9] - 20:15, 25:16, 25:18, 51:12, 73:25, 107:3, 125:21, 127:8, 127:22 prevalent [1] - 61:21 prevent [1] - 67:21 previous [4] - 10:1, 64:18, 65:5, 129:11 primarily [1] - 103:18 principles [7] - 96:6, 108:12, 111:1, 113:8, 116:20, 117:3, 117:4 privacy [1] - 99:15 proactive [1] - 88:10 probing [1] - 96:21 problem [1] - 104:21 procedurally [1] - 89:4 procedure [1] - 15:17 proceed [1] - 124:2 proceeded [1] - 110:11 process [9] - 11:19, 15:17, 46:25, 96:24, 96:25, 97:12, 111:9, 113:6, 140:11 produced [1] - 19:5 producing [1] - 87:9 productive [1] - 37:2 professional [16] - 9:3, 22:12, 22:14, 23:18, 50:25, 65:20, 68:2, 72:17, 84:4, 84:19, 85:1, 85:14, 107:13, 107:22, 108:3, 140:7 professionals [6] - 15:19, 47:15, 96:23, 105:7, 133:9, 133:13 profile [7] - 7:16, 7:23, 12:4, 14:18, 22:8, 26:3, 26:5 profiles [1] - 21:14 program [12] - 7:14, 19:8, 19:9, 19:11, 27:19, 37:18, 50:15, 50:16, 56:23, 56:25, 57:2 programs [1] - 62:4 project [23] - 6:3, 33:4, 34:12, 38:8, 85:21, 88:15, 89:19, 90:1, 90:9, 90:14, 90:23, 94:17, 94:21, 94:23, 95:1, 95:5,	95:8, 97:5, 105:10, 108:4, 126:20, 134:7 projects [3] - 6:3, 100:19, 131:2 promote [2] - 95:1, 100:23 promotes [2] - 95:5, 95:8 promotion [2] - 95:20, 95:22 proper [3] - 25:8, 89:3, 95:14 properly [7] - 12:9, 14:4, 19:7, 37:17, 38:11, 50:16, 61:2 properties [6] - 18:1, 18:25, 47:7, 92:17, 108:10, 134:24 property [31] - 4:5, 11:2, 62:14, 71:7, 91:17, 91:19, 91:22, 92:6, 101:12, 111:18, 112:1, 112:5, 112:8, 113:23, 113:25, 114:20, 115:10, 115:11, 115:12, 116:3, 117:9, 117:17, 120:15, 120:19, 123:13, 127:23, 132:1, 134:21, 134:24, 136:3, 139:13 proposed [10] - 8:8, 27:14, 65:7, 85:21, 86:2, 86:19, 86:24, 104:14, 105:20, 136:1 proposes [1] - 4:4 proposing [1] - 97:10 protect [3] - 47:7, 64:19, 64:23 protecting [2] - 64:23, 99:15 protection [4] - 33:24, 100:18, 110:15 protocols [1] - 47:14 prove [1] - 95:18 proved [1] - 8:6 proves [1] - 98:18 provide [11] - 24:18, 24:21, 87:1, 87:12, 87:19, 88:13, 88:19, 91:19, 100:12, 100:19, 100:22 provided [3] - 13:11, 100:8, 131:7 provides [2] - 19:10, 94:17 providing [3] - 87:17, 89:2, 89:24 provision [5] - 93:17,	94:1, 130:10, 131:5, 131:21 provisions [1] - 100:1 proximity [3] - 76:22, 78:4, 140:3 Public [1] - 142:3 public [48] - 13:5, 24:22, 27:3, 28:11, 30:11, 83:19, 84:18, 89:8, 93:16, 94:18, 97:1, 97:2, 97:12, 97:22, 97:25, 100:18, 104:3, 104:25, 106:16, 109:8, 111:5, 117:23, 119:18, 120:3, 126:15, 126:17, 127:10, 128:24, 129:18, 131:11, 131:23, 132:8, 132:10, 132:21, 132:24, 133:2, 133:5, 133:6, 133:19, 134:8, 134:13, 135:5, 135:11, 135:20, 136:8, 136:20, 140:2, 141:10 PUBLIC [365] - 13:12, 14:8, 14:22, 15:23, 16:1, 16:13, 16:24, 17:4, 17:10, 17:22, 17:25, 18:18, 18:22, 19:12, 19:14, 19:21, 19:24, 20:1, 20:6, 20:11, 21:5, 21:15, 22:2, 22:10, 22:14, 22:19, 22:23, 22:25, 23:9, 23:11, 23:15, 23:21, 24:8, 24:10, 24:14, 25:2, 25:13, 25:25, 26:8, 26:18, 27:7, 27:20, 28:3, 28:13, 28:18, 28:21, 28:23, 29:1, 29:4, 29:12, 29:19, 29:25, 30:5, 30:8, 30:14, 30:17, 31:11, 31:14, 31:19, 32:3, 32:14, 32:18, 33:1, 33:9, 34:2, 34:7, 34:19, 35:17, 35:22, 36:4, 36:10, 36:15, 36:20, 37:6, 37:21, 38:12, 38:15, 39:4, 39:9, 39:15, 39:22, 40:2, 40:12, 40:14, 40:16, 40:21, 40:23, 41:2, 41:8, 41:12, 41:16, 41:20, 41:22,	41:25, 42:5, 42:9, 42:13, 42:17, 42:24, 43:4, 43:7, 43:10, 43:13, 43:17, 43:20, 44:8, 44:14, 44:19, 44:25, 45:7, 45:24, 46:5, 46:10, 46:13, 46:17, 46:21, 47:1, 47:17, 48:2, 48:5, 48:10, 48:12, 48:17, 48:23, 49:6, 49:9, 49:13, 49:15, 49:17, 49:21, 49:23, 49:25, 50:5, 50:18, 50:23, 51:1, 51:3, 51:17, 51:25, 52:8, 52:16, 52:19, 52:23, 53:3, 53:9, 53:18, 53:23, 54:4, 54:7, 54:10, 54:17, 54:19, 54:23, 55:6, 55:11, 55:22, 55:25, 56:2, 56:6, 56:9, 56:19, 56:24, 57:1, 57:5, 57:10, 57:16, 57:18, 57:25, 58:18, 58:25, 59:8, 59:12, 59:25, 60:12, 60:20, 61:4, 62:6, 62:8, 63:7, 63:19, 63:22, 64:1, 64:3, 64:9, 64:13, 65:3, 65:15, 65:20, 66:2, 66:7, 66:12, 66:21, 67:4, 67:11, 67:18, 67:23, 68:6, 68:9, 68:19, 68:22, 69:1, 69:7, 69:13, 69:20, 70:2, 70:15, 70:24, 71:13, 71:19, 72:2, 72:11, 72:16, 73:3, 73:6, 73:11, 73:14, 73:20, 73:23, 74:5, 74:10, 75:4, 75:8, 75:12, 75:16, 75:19, 75:24, 76:5, 76:8, 76:11, 76:17, 77:3, 77:5, 77:12, 77:18, 77:20, 77:25, 78:11, 78:14, 78:23, 78:25, 79:4, 79:11, 79:19, 79:24, 80:9, 80:16, 80:20, 81:6, 82:2, 82:8, 82:17, 82:18, 83:14, 83:17, 104:6, 104:10, 105:4, 105:13, 105:18, 106:15, 106:23, 107:1, 107:15, 107:24, 108:15, 109:2, 109:6, 109:10, 109:21, 110:1, 110:7,	110:20, 110:24, 111:10, 111:15, 111:22, 112:4, 112:9, 112:13, 112:15, 112:20, 113:9, 113:17, 113:21, 114:5, 114:8, 114:10, 114:12, 114:21, 114:25, 115:5, 115:8, 115:13, 115:23, 116:5, 116:7, 116:12, 117:4, 117:20, 117:24, 118:1, 118:7, 118:10, 118:14, 118:17, 118:23, 119:2, 119:6, 119:8, 119:12, 119:16, 119:24, 120:2, 120:12, 120:17, 121:4, 121:12, 121:23, 122:5, 122:9, 122:12, 122:15, 124:3, 124:10, 124:14, 124:17, 124:19, 124:21, 125:4, 125:9, 125:14, 125:17, 125:21, 126:2, 126:11, 126:22, 126:25, 127:18, 127:20, 128:2, 128:6, 128:11, 128:18, 128:21, 129:2, 129:5, 129:14, 129:23, 130:1, 130:13, 130:17, 131:10, 131:14, 131:22, 132:2, 132:7, 132:13, 132:21, 133:14, 133:24, 134:6, 134:10, 134:16, 134:23, 135:3 pull [1] - 61:6 pun [1] - 9:10 pure [2] - 127:15 purged [1] - 55:9 purple [4] - 29:6, 29:8, 34:25, 42:17 purpose [7] - 95:20, 95:21, 95:22, 95:23, 99:23, 100:6, 123:6 purposes [3] - 95:16, 98:24, 100:16 pursuant [2] - 123:17, 123:24 purview [1] - 106:12 put [15] - 5:1, 8:5, 11:25, 24:25, 38:10, 72:9, 72:11, 75:6, 118:19, 123:15, 124:11, 130:6, 132:3,
--	--	---	--	--

133:1, 139:22 putting [2] - 44:20, 128:8	raising [2] - 20:22, 135:19 rams [1] - 37:1 ran [2] - 7:11, 7:13 Randolph [2] - 97:8, 111:4 random [1] - 22:17 range [3] - 51:24, 87:17, 100:22 rapid [1] - 18:15 rare [1] - 123:12 rate [1] - 99:6 rather [3] - 59:25, 60:17, 100:21 raw [2] - 71:9, 98:11 RE [1] - 1:5 react [3] - 45:2, 72:23, 72:24 read [3] - 118:12, 143:4, 143:22 ready [1] - 119:25 reaffirmed [1] - 94:9 realistic [2] - 88:20, 127:6 reality [1] - 59:20 realize [1] - 124:19 really [22] - 14:2, 21:18, 37:19, 38:19, 40:2, 55:15, 58:3, 59:14, 69:20, 70:25, 76:1, 79:8, 92:12, 92:23, 98:24, 108:18, 119:20, 120:4, 121:2, 127:4, 127:21, 127:22 rear [1] - 90:4 reason [15] - 20:11, 37:24, 51:10, 52:25, 60:15, 61:20, 69:8, 69:25, 70:8, 70:16, 73:23, 74:10, 108:1, 110:18, 129:17 reasonable [2] - 15:11, 51:24 reasons [2] - 59:7, 98:17 received [1] - 27:2 recess [1] - 83:24 recharge [1] - 114:3 recognize [1] - 16:21 recognizes [2] - 123:7, 123:10 recommend [4] - 19:17, 38:7, 68:1, 123:16 recommendation [1] - 67:20 recommendations [2] - 6:11, 61:3 recommended [1] - 11:23	record [23] - 5:1, 8:10, 11:9, 12:11, 17:24, 23:10, 42:3, 42:4, 47:13, 63:5, 68:21, 71:24, 75:6, 75:9, 84:25, 91:24, 97:4, 100:5, 105:12, 106:8, 124:25, 128:16, 130:12 red [4] - 61:8, 61:21, 72:14 redirect [1] - 101:19 reexamination [1] - 87:10 reference [1] - 16:4 REFERENCE [1] - 143:2 referenced [1] - 123:6 references [2] - 87:24, 87:25 referencing [1] - 17:21 referred [1] - 104:18 referring [5] - 10:10, 43:3, 69:11, 69:13, 82:20 regard [6] - 47:15, 97:20, 107:23, 114:24, 115:22, 115:23 regarding [5] - 27:13, 31:2, 31:24, 33:3, 60:5 regardless [2] - 81:2, 128:1 regards [1] - 30:19 regional [2] - 86:25, 87:16 regs [1] - 131:8 regular [2] - 15:22, 141:1 regulation [2] - 98:22, 122:25 regulations [14] - 15:10, 47:14, 86:5, 89:14, 89:21, 90:18, 104:16, 105:20, 106:1, 106:6, 106:7, 106:18, 134:5, 134:20 relate [1] - 133:4 related [5] - 18:6, 73:1, 74:23, 99:2, 99:24 relates [2] - 14:15, 100:9 relation [1] - 133:20 relative [3] - 26:14, 142:9, 142:11 relatively [23] - 7:17, 7:18, 7:25, 14:18, 14:19, 18:15, 22:8, 26:5, 26:10, 26:12, 35:6, 35:7, 35:25, 37:4, 44:6, 50:12, 50:15, 60:22, 70:14, 89:11, 90:25, 91:2, 93:6 relevance [2] - 36:2, 50:6 relevant [4] - 49:20, 49:21, 60:25, 129:9 relied [2] - 114:4, 122:24 relief [26] - 86:7, 90:23, 91:1, 91:7, 92:21, 93:4, 93:6, 93:10, 93:12, 96:1, 98:13, 98:21, 99:1, 99:22, 99:24, 100:8, 100:9, 101:15, 114:17, 114:24, 115:19, 115:21, 117:14, 124:8, 128:14 relies [1] - 123:5 rely [1] - 8:18 relying [1] - 114:5 remain [1] - 92:16 remains [1] - 87:15 remedy [1] - 88:6 remember [2] - 93:8, 102:18 remembering [1] - 10:4 remote [1] - 92:13 removal [2] - 98:15, 131:20 remove [1] - 18:10 removed [3] - 18:19, 18:21, 138:14 rental [1] - 88:3 repeat [3] - 11:7, 38:19, 122:5 repetitive [1] - 66:23 replacement [1] - 131:21 report [22] - 8:11, 8:13, 8:14, 8:18, 9:21, 9:22, 9:24, 16:3, 16:22, 17:15, 23:7, 24:23, 25:8, 25:11, 27:13, 39:14, 47:23, 63:11, 63:17, 65:14, 71:18, 87:10 Reporter [1] - 142:2 REPORTING [1] - 1:23 reports [1] - 113:4 represent [1] - 53:2 representation [3] - 27:1, 102:21, 130:8	representative [1] - 58:11 representing [1] - 64:15 represents [2] - 50:2, 98:16 request [2] - 26:24, 100:8 requests [1] - 85:20 require [1] - 12:21 required [3] - 106:9, 141:7, 143:5 requirements [2] - 90:10, 139:4 requires [1] - 90:23 reserve [1] - 136:23 resident [1] - 65:9 Residential [1] - 98:23 residential [7] - 4:5, 6:4, 86:17, 88:2, 89:24, 97:10, 100:19 residents [5] - 32:5, 33:2, 33:11, 33:15, 65:9 residual [1] - 33:12 resolution [1] - 96:19 respect [15] - 5:12, 15:5, 15:20, 33:7, 61:22, 61:23, 81:19, 90:18, 91:23, 114:18, 114:19, 115:19, 116:20, 133:2, 138:24 respected [1] - 27:3 respectfully [2] - 46:6, 46:15 responded [1] - 140:23 responding [1] - 94:14 response [4] - 81:7, 92:4, 100:8, 136:24 responses [1] - 140:20 responsibility [2] - 88:13, 89:12 responsive [1] - 96:23 rest [2] - 6:1, 58:12 results [1] - 56:14 retail [1] - 6:5 retain [1] - 27:4 retained [5] - 6:25, 7:2, 14:1, 105:24 retaining [1] - 98:14 retest [1] - 13:23 reused [1] - 18:20 review [3] - 27:18,
Q			
qualified [1] - 119:17 quality [3] - 62:2, 113:10, 113:12 quantify [1] - 57:21 quarter [1] - 11:6 questioner [1] - 129:5 questioning [1] - 10:1 questions [60] - 6:19, 9:2, 9:16, 10:19, 10:20, 10:22, 10:25, 11:15, 13:6, 13:8, 24:16, 27:1, 28:10, 34:8, 45:23, 46:9, 46:21, 68:10, 74:19, 78:15, 85:12, 96:22, 97:2, 101:21, 101:23, 101:25, 102:3, 102:4, 102:6, 102:7, 102:10, 103:1, 103:2, 103:5, 103:6, 103:8, 103:9, 103:11, 104:4, 104:11, 109:13, 117:23, 118:1, 120:5, 128:25, 129:6, 133:15, 135:6, 136:9, 136:19, 137:14, 137:15, 137:19, 137:22, 137:25, 138:3, 139:16, 139:19 quick [3] - 11:1, 34:8, 76:15 quickest [1] - 37:3 quickly [1] - 57:24 quiet [1] - 138:23 quite [2] - 18:2, 91:5 quorum [3] - 140:19, 140:21, 140:22 quoted [1] - 95:19 quoting [2] - 87:13, 87:25			
R			
Rachel [3] - 24:14, 60:12, 107:1 radius [1] - 45:13 rain [3] - 21:8, 56:3, 56:13 rained [1] - 56:3 rains [2] - 31:1, 45:19 raised [1] - 62:21			

101:1, 133:10 reviewed [3] - 131:17, 132:12, 134:3 revised [2] - 121:20, 121:21 ridge [23] - 10:3, 27:22, 28:15, 38:23, 39:10, 39:11, 41:17, 41:19, 42:1, 42:7, 43:22, 44:1, 44:3, 44:9, 44:22, 45:9, 45:16, 45:17, 45:18, 47:20, 51:8, 82:4 ridiculous [1] - 119:9 rise [2] - 11:23, 83:11 risk [11] - 11:2, 11:11, 11:12, 11:18, 12:5, 12:7, 12:9, 13:2, 24:6, 37:19 risks [1] - 11:4 road [6] - 99:2, 100:10, 104:20, 107:25, 111:6, 136:1 Road [2] - 4:3, 99:14 roads [1] - 107:23 roadway [4] - 100:14, 116:20, 127:9, 127:10 roadways [1] - 114:19 ROBERT [1] - 1:9 robust [1] - 94:20 Rock [4] - 104:20, 107:9, 107:11, 107:19 rock [45] - 7:7, 7:12, 7:18, 11:5, 11:8, 11:22, 14:16, 18:2, 18:3, 18:4, 18:6, 18:10, 18:16, 32:20, 32:22, 37:5, 38:25, 40:1, 40:7, 40:8, 40:17, 40:18, 40:23, 41:1, 41:2, 41:7, 44:21, 45:2, 45:9, 53:19, 55:18, 55:20, 61:21, 62:2, 66:5, 66:8, 66:9, 66:12, 66:13, 66:15, 66:19, 69:6, 77:8 role [1] - 89:11 room [4] - 77:17, 77:19, 77:20, 104:7 rooted [2] - 89:17, 97:18 Rosemont [4] - 30:22, 30:24, 31:14, 31:18 rough [3] - 48:22, 79:2, 80:8	roughly [10] - 36:12, 36:13, 49:16, 52:3, 64:7, 64:8, 76:9, 76:11, 80:8, 110:10 round [6] - 88:15, 88:16, 88:23, 88:24, 110:13, 125:17 RSIS [10] - 85:20, 98:24, 99:23, 99:24, 100:16, 101:7, 123:1, 125:8, 125:23, 128:12 rubber [2] - 29:23, 30:7 rugged [1] - 92:6 ruled [2] - 97:17, 109:15 rules [2] - 90:11, 90:15 run [5] - 34:25, 45:19, 80:2, 83:11, 104:9 running [1] - 26:20 runoff [8] - 13:16, 16:14, 16:18, 17:3, 31:5, 31:18, 31:20, 114:3 runs [3] - 40:20, 71:5, 71:6	21:6 saw [3] - 25:13, 39:2, 91:6 scale [8] - 6:4, 79:8, 79:10, 79:23, 95:2, 125:1, 139:8 Scarpa [3] - 10:21, 138:2, 138:25 SCARPA [8] - 1:12, 10:23, 103:4, 103:6, 138:4, 138:13, 138:19, 139:14 schedule [1] - 4:19 School [2] - 5:18, 5:22 scope [2] - 32:24, 106:19 screen [2] - 39:21, 39:25 scroll [4] - 39:6, 41:21, 43:23, 54:2 se [3] - 91:10, 94:15, 103:19 sea [1] - 82:22 seasonal [1] - 20:25 second [9] - 13:22, 14:8, 18:23, 43:23, 63:15, 74:8, 76:1, 86:2, 105:19 Secretary [1] - 1:14 section [10] - 35:7, 39:2, 79:21, 80:13, 81:24, 82:14, 82:15, 83:6, 84:24, 91:11 sections [3] - 58:13, 58:14, 80:14 secured [2] - 47:20, 68:14 see [34] - 13:2, 14:5, 16:4, 24:18, 24:20, 25:2, 25:18, 29:9, 34:23, 35:5, 48:14, 49:20, 49:21, 54:22, 62:9, 62:20, 63:10, 66:24, 70:13, 71:7, 75:12, 84:23, 88:12, 95:3, 95:18, 100:15, 102:12, 104:15, 104:25, 105:1, 110:18, 120:17, 129:18, 140:8 seeing [7] - 6:20, 83:21, 88:23, 111:5, 135:8, 135:17, 136:10 seeking [6] - 86:7, 91:7, 92:22, 93:4, 122:3, 122:21 seeks [1] - 85:19 Seel [4] - 4:23, 5:2, 6:20	seel [21] - 4:24, 5:7, 5:10, 6:23, 8:10, 8:24, 9:3, 10:19, 12:15, 13:6, 16:10, 16:19, 20:3, 20:7, 27:5, 30:12, 31:4, 48:7, 62:22, 75:12, 78:18 SEEL [2] - 5:3, 5:4 seel's [3] - 9:16, 11:15, 83:20 Seel's [3] - 9:20, 10:22, 10:25 seem [1] - 105:19 seeped [1] - 55:21 seeping [2] - 55:17, 55:20 seismic [5] - 11:2, 11:4, 11:11, 11:12, 12:25 selected [1] - 63:1 selection [1] - 62:15 sense [4] - 68:7, 70:25, 79:9, 140:11 sensible [1] - 45:21 sensitivity [1] - 56:16 sentence [1] - 116:13 separate [2] - 100:25, 139:2 sequence [3] - 14:17, 37:7, 37:15 sequenced [1] - 37:13 series [2] - 26:4, 89:8 serious [1] - 60:19 seriously [1] - 60:20 serves [1] - 100:6 set [9] - 19:19, 27:14, 33:15, 35:9, 71:25, 86:24, 96:6, 97:25, 142:7 setback [1] - 115:5 setbacks [6] - 90:4, 114:14, 114:16, 114:20, 115:1, 115:9 seth [2] - 63:8, 114:12 setting [1] - 12:2 settlement [13] - 86:23, 88:4, 91:18, 99:3, 99:14, 101:12, 123:5, 123:7, 123:8, 123:11, 123:15, 123:18, 123:20 seven [1] - 86:16 several [7] - 21:22, 36:25, 37:14, 50:7, 51:5, 133:16	severe [2] - 20:9, 20:15 sewage [2] - 71:9, 71:10 sewer [6] - 71:5, 71:7, 71:12, 72:11, 72:19, 139:10 shallow [2] - 7:23, 52:6 shallower [2] - 60:22, 82:16 Share [8] - 86:22, 86:23, 87:12, 87:16, 87:19, 88:4, 88:14, 126:24 share [11] - 87:1, 87:23, 88:8, 88:10, 89:2, 89:5, 101:14, 104:13, 117:5, 127:2, 129:22 sharpest [1] - 51:10 sheer [3] - 23:24, 26:17, 105:2 SHEET [1] - 143:1 sheet [1] - 143:5 sheets [1] - 143:5 Shimanowitz [1] - 4:9 SHIMANOWITZ [1] - 2:3 shock [1] - 11:11 shocks [1] - 33:13 shore [1] - 12:17 short [5] - 14:18, 62:2, 83:24, 90:25, 117:13 short-term [1] - 14:18 Shorthand [1] - 142:2 shots [1] - 19:4 show [5] - 12:11, 12:25, 42:10, 54:4, 80:15 showed [4] - 8:6, 20:23, 22:8, 93:8 showing [2] - 39:24, 40:1 shown [3] - 25:22, 39:21, 65:14 shows [6] - 9:22, 9:23, 24:24, 55:17, 63:25, 74:13 shuttles [2] - 126:5 side [17] - 10:3, 16:5, 17:12, 22:4, 44:7, 90:4, 93:14, 99:19, 100:11, 100:15, 126:16, 127:7, 128:12, 135:12,
--	---	---	--	---

135:13, 136:2
sided [1] - 126:1
sides [3] - 17:6, 90:4, 90:6
sidewalk [11] - 99:18, 100:11, 126:1, 127:7, 128:3, 128:11, 135:10, 135:11, 135:21, 135:25, 136:2
sidewalks [2] - 126:15, 134:11
sign [1] - 143:5
signage [1] - 90:7
signal [1] - 107:18
SIGNATURE [1] - 143:1
Signature [1] - 143:25
significant [3] - 7:21, 91:22, 110:13
significantly [2] - 81:13, 82:5
silt [2] - 40:10, 40:16
similar [2] - 89:12, 97:12
similarly [1] - 34:16
simply [1] - 121:18
single [11] - 59:15, 86:13, 95:4, 100:14, 108:7, 108:10, 108:14, 122:20, 125:25, 129:20
sit [3] - 57:22, 79:22, 94:11
site [44] - 12:7, 12:23, 14:3, 18:17, 18:19, 18:21, 22:13, 24:22, 27:14, 27:20, 27:22, 28:2, 31:18, 35:10, 45:13, 50:11, 50:17, 59:19, 60:14, 60:15, 60:16, 60:21, 61:8, 61:15, 61:23, 62:4, 70:17, 71:25, 82:24, 87:24, 96:3, 96:5, 99:10, 100:20, 100:24, 105:24, 107:2, 107:5, 111:11, 111:17, 123:15, 124:6, 138:10, 139:8
Site [1] - 98:23
sites [11] - 13:21, 25:15, 25:19, 38:9, 60:19, 61:6, 61:18, 88:9, 107:6, 123:14, 127:14
situation [1] - 94:7
situations [2] - 21:19, 47:2
six [2] - 66:16, 110:3

size [2] - 25:13, 25:14
sizes [1] - 90:7
sky [5] - 115:21, 115:23, 115:25, 116:4
sleep [1] - 78:5
sleeps [1] - 60:5
slides [2] - 53:17, 53:19
slightest [1] - 94:3
slivers [2] - 93:8, 98:11
slope [122] - 7:4, 7:5, 7:9, 7:10, 7:11, 7:13, 7:20, 7:23, 8:5, 8:7, 9:6, 9:7, 9:9, 9:24, 9:25, 10:6, 10:14, 12:17, 12:24, 12:25, 13:2, 14:1, 14:21, 16:6, 16:7, 16:16, 17:5, 17:6, 17:11, 20:19, 21:12, 21:13, 22:1, 24:3, 24:4, 25:15, 26:11, 26:14, 26:15, 28:19, 29:15, 29:16, 30:22, 31:12, 32:1, 32:25, 33:7, 34:22, 35:7, 35:13, 35:14, 36:14, 38:24, 38:25, 39:25, 42:16, 44:24, 44:25, 48:1, 50:3, 50:13, 50:14, 51:5, 51:6, 51:13, 51:21, 51:23, 52:6, 52:10, 53:2, 53:10, 54:8, 54:12, 56:17, 57:21, 57:23, 58:12, 58:13, 60:18, 60:22, 60:23, 63:2, 64:17, 65:8, 65:19, 65:21, 66:24, 67:3, 67:5, 67:12, 67:24, 69:24, 70:11, 70:23, 73:16, 73:18, 76:13, 76:24, 77:9, 79:12, 79:13, 79:14, 79:17, 80:2, 80:12, 80:18, 80:25, 81:3, 81:5, 81:8, 81:9, 81:13, 81:22, 82:1, 83:1, 83:6, 83:7, 83:12, 134:1, 134:5
SLOPE/W [3] - 57:3, 57:5, 57:11
slopes [7] - 6:12, 29:24, 34:16, 34:17, 38:2, 59:2, 72:23
sloping [2] - 25:17, 92:4
smack [1] - 55:14
small [2] - 6:4, 37:19

smile [1] - 13:13
society [1] - 61:4
soft [1] - 117:16
software [1] - 7:14
soil [20] - 7:7, 7:12, 7:16, 7:23, 14:18, 17:11, 18:3, 22:8, 26:12, 38:23, 38:24, 40:25, 68:15, 68:16, 68:25, 69:3, 69:6, 69:7, 69:14, 137:4
soils [3] - 61:25, 62:1, 66:11
solely [1] - 16:5
solid [3] - 89:15, 96:2, 105:9
solution [1] - 140:11
solutions [1] - 6:10
someone [2] - 134:7, 135:20
sometimes [2] - 118:9, 124:25
somewhere [3] - 18:20, 54:24, 74:1
sorry [29] - 11:7, 17:7, 19:12, 23:5, 28:9, 29:17, 31:8, 39:4, 40:2, 40:21, 41:13, 42:9, 43:15, 51:22, 55:6, 56:24, 60:13, 66:7, 67:18, 71:11, 75:9, 77:5, 78:15, 78:20, 79:5, 115:6, 116:13, 122:5, 135:8
sort [8] - 37:6, 44:1, 53:5, 116:23, 124:24, 128:14, 134:8, 134:25
sorts [1] - 118:25
sought [6] - 86:7, 93:13, 114:17, 117:14, 122:2, 123:3
sound [11] - 66:22, 96:5, 100:20, 109:18, 110:4, 110:10, 110:25, 111:12, 112:23, 113:7, 114:6
sounded [1] - 107:7
sounds [2] - 42:1, 98:12
south [5] - 28:19, 37:25, 66:18, 70:20, 123:25
space [6] - 13:21, 32:1, 50:8, 89:24, 91:22, 118:6
spaces [1] - 21:13
speaking [4] - 11:4, 63:4, 63:13, 73:25
special [3] - 123:16,

141:3, 141:5
specializing [1] - 6:7
specific [8] - 17:19, 24:17, 27:11, 34:9, 37:21, 37:22, 130:10, 132:20
specifically [8] - 82:12, 87:8, 87:24, 87:25, 89:1, 123:7, 123:10, 131:4
specifics [2] - 62:5, 115:18
SPEEDWELL [1] - 1:24
spending [1] - 141:10
spillage [1] - 116:2
spirit [1] - 101:7
split [1] - 44:21
spoken [1] - 33:2
sprawl [1] - 108:11
sprawling [2] - 91:20, 95:4
square [4] - 49:17, 50:7, 73:15, 74:1
stability [32] - 7:14, 9:9, 12:25, 14:20, 16:22, 17:5, 20:13, 20:19, 23:3, 23:7, 26:12, 26:19, 27:13, 28:5, 32:22, 32:25, 33:7, 45:17, 48:1, 56:22, 56:23, 58:17, 60:18, 68:5, 69:24, 70:10, 77:9, 81:1, 81:5, 81:22, 82:1, 83:7
stabilization [1] - 6:12
stabilize [1] - 88:20
stable [10] - 7:25, 8:3, 8:7, 13:1, 21:4, 22:7, 26:16, 32:21, 44:24, 44:25
stacks [1] - 86:4
staged [1] - 14:4
stand [1] - 96:18
standard [4] - 15:16, 33:23, 100:2, 109:4
Standards [1] - 98:23
standards [6] - 85:20, 90:21, 100:21, 100:22, 100:24
standing [4] - 6:16, 84:21, 85:3, 85:7
standpoint [9] - 85:23, 89:9, 108:23, 109:1, 113:12, 117:19, 127:15,

127:16
standstill [1] - 109:25
start [6] - 4:12, 13:8, 47:4, 48:19, 116:22, 133:7
starting [1] - 88:21
state [21] - 13:7, 15:10, 19:23, 24:13, 28:24, 30:13, 45:12, 61:13, 61:22, 84:20, 84:22, 84:24, 85:1, 85:4, 85:15, 87:19, 90:21, 98:22, 104:5, 109:9, 122:25
State [2] - 6:21, 142:3
statement [7] - 45:24, 46:2, 52:18, 58:6, 70:2, 119:4, 126:19
statements [1] - 45:23
States [2] - 5:17, 6:1
states [1] - 6:15
stating [1] - 81:7
statute [1] - 133:5
statutory [2] - 86:8, 101:15
stay [1] - 118:5
steam [1] - 53:14
steep [17] - 9:7, 26:3, 29:14, 30:8, 34:20, 35:19, 36:10, 43:25, 52:15, 59:14, 70:3, 76:23, 80:21, 83:3, 125:21, 134:1, 134:5
steepens [1] - 51:21
steeper [23] - 25:23, 29:24, 34:16, 34:17, 34:22, 35:2, 35:7, 35:8, 35:15, 35:25, 36:8, 44:22, 50:13, 52:5, 78:8, 80:14, 81:12, 81:13, 81:17, 81:24, 81:25, 82:5, 82:15
steepest [7] - 51:14, 52:10, 52:20, 57:21, 57:23, 59:2, 83:2
steeply [1] - 44:7
steepness [3] - 36:2, 73:17, 83:8
stenographically [1] - 142:5
step [1] - 17:23
steps [2] - 66:17, 89:3
Stevens [1] - 5:24
stick [1] - 118:17

still [7] - 13:1, 21:4, 41:13, 60:23, 62:4, 118:14 stipulation [2] - 103:13, 103:15 stock [1] - 94:19 stone [1] - 36:23 stood [1] - 21:17 stopped [3] - 107:3, 107:7, 107:10 stories [1] - 90:2 storm [1] - 20:19 storms [2] - 20:17, 21:12 stormwater [11] - 13:16, 16:19, 31:5, 31:17, 31:19, 105:23, 106:6, 112:16, 113:10, 113:22, 114:2 straight [1] - 70:14 stream [1] - 105:23 street [8] - 31:15, 101:5, 126:16, 127:7, 128:12, 135:12, 135:13, 135:21 streets [2] - 30:23, 31:2 strength [5] - 8:1, 26:14, 58:14, 61:25, 69:23 stretch [1] - 100:13 strict [3] - 89:15, 90:17, 100:5 strictly [2] - 14:1, 32:24 strike [2] - 7:13, 75:8 strong [1] - 21:14 strongly [1] - 96:18 structures [2] - 67:22, 114:19 studied [2] - 32:8, 114:1 studies [1] - 28:4 study [13] - 26:19, 27:4, 30:20, 31:1, 31:7, 31:10, 31:17, 31:23, 32:3, 32:4, 32:9, 33:3, 33:4 stuff [1] - 42:2 subject [2] - 7:18, 92:16 submissions [1] - 136:21 submitted [2] - 63:11, 72:1 subscribed [1] - 143:22 subsequent [1] - 47:8 substantial [5] -	92:6, 96:1, 96:11, 96:16, 99:12 substantially [7] - 89:6, 89:20, 93:11, 96:13, 97:5, 98:10, 105:11 subsurface [1] - 7:6 suddenly [1] - 108:7 sufficient [1] - 23:16 suggest [2] - 67:23, 79:20 suitable [1] - 94:6 SUITE [2] - 1:24, 2:8 summary [3] - 8:12, 25:7, 112:20 superimpose [2] - 74:16, 75:20 Superior [1] - 123:17 supervision [2] - 6:8, 8:15 supply [1] - 112:11 support [3] - 8:18, 85:24, 103:23 supposed [1] - 98:15 Supreme [4] - 89:16, 93:18, 93:20, 97:16 surface [2] - 21:2, 81:3 surrounded [1] - 86:17 surrounding [2] - 86:15, 100:10 survey [2] - 45:12, 47:9 SUSAN [2] - 1:10, 1:12 Susceptibility [2] - 61:7, 61:12 susceptibility [1] - 61:10 susceptible [3] - 60:17, 61:5, 61:15 suspect [3] - 14:16, 14:19, 67:16 suspended [3] - 130:3, 130:19, 131:16 swear [3] - 4:24, 5:5, 84:9 switch [1] - 78:16 swore [1] - 105:9 sworn [2] - 5:8, 84:13 symbols [1] - 29:8 system [3] - 101:5, 136:2	53:24, 54:12, 54:15, 54:17, 54:19, 54:20, 58:15, 58:23 tall [1] - 83:1 taller [1] - 70:21 targeting [1] - 70:9 tax [1] - 86:13 TB [1] - 78:20 teams [1] - 58:7 technical [5] - 50:15, 96:15, 101:1, 113:4 techniques [4] - 11:25, 12:8, 19:3, 67:21 Technology [1] - 5:24 temperature [1] - 115:20 tenants [1] - 98:2 tend [2] - 37:5, 118:5 tends [3] - 37:2, 40:10, 70:11 term [3] - 14:18, 58:17, 131:24 terminology [1] - 115:24 terms [12] - 11:3, 26:11, 26:12, 60:18, 87:14, 89:23, 100:7, 103:13, 110:8, 117:5, 127:1, 127:6 Terrace [3] - 30:22, 30:24, 31:15 terrain [5] - 29:22, 29:23, 30:7, 92:4, 92:5 test [52] - 7:8, 20:23, 22:22, 22:23, 23:1, 23:16, 25:21, 26:4, 29:6, 29:9, 29:11, 35:16, 41:5, 41:10, 41:15, 41:16, 42:7, 42:8, 42:15, 42:19, 42:21, 42:22, 43:21, 44:2, 44:11, 48:14, 49:5, 51:12, 52:14, 53:25, 54:2, 54:21, 55:9, 55:11, 55:12, 55:14, 55:17, 59:3, 59:15, 62:17, 62:23, 64:22, 65:2, 65:25, 69:14, 70:13, 72:6, 78:17, 137:4 Test [1] - 92:25 tested [3] - 20:13, 56:10, 67:24 testified [16] - 16:19, 17:9, 19:2, 31:5, 45:3, 68:22, 70:19, 77:3, 106:6, 107:10,	107:20, 121:13, 121:15, 129:14, 136:15, 138:5 testifies [2] - 5:9, 84:14 testify [12] - 13:9, 28:11, 45:8, 71:12, 76:18, 84:22, 104:18, 106:20, 106:21, 106:22, 107:16, 107:17 testifying [6] - 5:12, 28:10, 60:13, 74:3, 75:6, 110:20 testimony [86] - 9:3, 9:16, 9:20, 10:1, 10:19, 10:22, 10:25, 11:15, 13:6, 13:11, 14:15, 16:21, 22:2, 30:12, 32:20, 38:20, 62:11, 62:18, 64:18, 65:5, 66:22, 71:17, 74:16, 74:19, 76:20, 81:7, 81:15, 81:20, 83:5, 83:20, 85:22, 87:3, 90:13, 90:16, 91:4, 91:12, 91:25, 94:22, 95:25, 96:2, 96:7, 96:10, 96:12, 96:14, 97:4, 98:20, 98:24, 98:25, 99:7, 99:9, 99:17, 100:4, 101:9, 101:24, 102:3, 102:6, 102:10, 103:1, 103:5, 103:8, 103:11, 104:4, 105:9, 109:13, 112:22, 112:23, 112:25, 113:4, 114:6, 114:14, 116:17, 116:25, 118:2, 118:12, 122:23, 122:24, 128:25, 132:17, 133:22, 135:6, 135:17, 135:24, 136:9, 139:23, 142:5 testing [11] - 15:3, 52:10, 55:1, 59:9, 59:12, 60:14, 60:15, 64:20, 65:8, 78:3, 78:6 tests [6] - 7:12, 25:16, 28:4, 49:18, 52:20, 52:25 THE [668] - 10:8, 10:15, 11:3, 11:20, 12:6, 12:19, 13:12, 13:25, 14:8, 14:14, 14:22, 15:23, 16:1, 16:9, 16:12, 16:13,	16:24, 17:4, 17:10, 17:14, 17:22, 17:25, 18:11, 18:18, 18:20, 18:22, 19:2, 19:12, 19:13, 19:14, 19:16, 19:21, 19:24, 20:1, 20:4, 20:6, 20:10, 20:11, 20:21, 21:5, 21:11, 21:15, 21:24, 22:2, 22:6, 22:10, 22:12, 22:14, 22:18, 22:19, 22:21, 22:23, 22:24, 22:25, 23:9, 23:11, 23:13, 23:15, 23:18, 23:21, 24:2, 24:8, 24:9, 24:10, 24:14, 24:23, 25:2, 25:13, 25:21, 25:25, 26:2, 26:8, 26:10, 26:18, 26:23, 27:7, 27:16, 27:20, 27:25, 28:3, 28:13, 28:17, 28:18, 28:20, 28:21, 28:23, 29:1, 29:4, 29:8, 29:12, 29:17, 29:19, 29:21, 29:25, 30:2, 30:5, 30:6, 30:8, 30:14, 30:17, 31:11, 31:14, 31:16, 31:19, 32:2, 32:3, 32:14, 32:16, 32:18, 32:19, 33:1, 33:6, 33:9, 34:2, 34:7, 34:11, 34:19, 34:23, 35:17, 35:21, 35:22, 35:23, 36:4, 36:7, 36:10, 36:12, 36:15, 36:19, 36:20, 36:24, 37:6, 37:12, 37:21, 38:7, 38:12, 38:15, 39:3, 39:4, 39:6, 39:9, 39:15, 39:18, 39:20, 39:22, 39:24, 40:2, 40:5, 40:12, 40:13, 40:14, 40:15, 40:16, 40:19, 40:21, 40:22, 40:23, 40:24, 41:2, 41:5, 41:8, 41:9, 41:12, 41:14, 41:16, 41:18, 41:20, 41:21, 41:22, 41:23, 41:24, 41:25, 42:4, 42:5, 42:6, 42:9, 42:11, 42:13, 42:15, 42:17, 42:20, 42:24, 43:2, 43:4, 43:5, 43:7, 43:9, 43:10, 43:12, 43:13, 43:15, 43:17, 43:19, 43:20, 44:5, 44:8, 44:12, 44:14, 44:17, 44:19, 44:23, 44:25, 45:6, 45:7,
---	---	---	--	---

45:24, 46:5, 46:10, 46:13, 46:14, 46:17, 46:21, 47:1, 47:17, 47:24, 48:2, 48:5, 48:9, 48:10, 48:11, 48:12, 48:16, 48:17, 48:22, 48:23, 49:4, 49:6, 49:8, 49:9, 49:11, 49:13, 49:14, 49:15, 49:16, 49:17, 49:19, 49:21, 49:22, 49:23, 49:25, 50:2, 50:5, 50:11, 50:18, 50:21, 50:23, 50:24, 51:1, 51:2, 51:3, 51:15, 51:17, 51:19, 51:25, 52:4, 52:8, 52:12, 52:16, 52:18, 52:19, 52:22, 52:23, 53:1, 53:3, 53:8, 53:9, 53:15, 53:18, 53:21, 53:23, 54:2, 54:4, 54:6, 54:7, 54:9, 54:10, 54:14, 54:17, 54:18, 54:19, 54:20, 54:23, 55:4, 55:6, 55:8, 55:11, 55:17, 55:22, 55:24, 55:25, 56:1, 56:2, 56:5, 56:6, 56:8, 56:9, 56:15, 56:19, 56:22, 56:24, 56:25, 57:1, 57:3, 57:5, 57:8, 57:10, 57:15, 57:16, 57:17, 57:18, 57:22, 57:25, 58:10, 58:18, 58:22, 58:25, 59:5, 59:8, 59:10, 59:12, 59:18, 59:23, 59:25, 60:12, 60:18, 60:20, 60:21, 61:4, 61:18, 62:6, 62:7, 62:8, 63:7, 63:19, 63:22, 63:25, 64:1, 64:2, 64:3, 64:8, 64:9, 64:11, 64:13, 65:3, 65:12, 65:15, 65:18, 65:20, 66:1, 66:2, 66:5, 66:7, 66:8, 66:12, 66:14, 66:21, 67:1, 67:4, 67:10, 67:11, 67:14, 67:18, 67:19, 67:23, 68:3, 68:6, 68:9, 68:18, 68:19, 68:20, 68:22, 68:24, 69:1, 69:5, 69:7, 69:13, 69:18, 69:20, 69:21, 70:2, 70:5, 70:15, 70:19, 70:24, 71:13, 71:19, 72:2, 72:9, 72:11, 72:14, 72:16, 72:25,	73:3, 73:6, 73:10, 73:11, 73:13, 73:14, 73:19, 73:20, 73:22, 73:23, 74:5, 74:10, 75:4, 75:8, 75:12, 75:15, 75:16, 75:18, 75:19, 75:23, 75:24, 76:3, 76:5, 76:7, 76:8, 76:9, 76:11, 76:15, 76:17, 77:3, 77:5, 77:6, 77:12, 77:16, 77:18, 77:19, 77:20, 77:24, 77:25, 78:9, 78:11, 78:14, 78:22, 78:23, 78:24, 78:25, 79:1, 79:4, 79:7, 79:11, 79:18, 79:19, 79:20, 79:24, 80:5, 80:6, 80:9, 80:11, 80:16, 80:19, 80:20, 80:24, 81:6, 81:14, 82:2, 82:7, 82:8, 82:11, 82:17, 82:18, 83:5, 83:14, 83:16, 83:17, 84:7, 84:11, 85:10, 85:17, 102:19, 103:16, 104:6, 104:9, 104:10, 105:2, 105:4, 105:5, 105:13, 105:15, 105:18, 106:15, 106:23, 106:25, 107:1, 107:15, 107:24, 108:9, 108:15, 108:21, 109:2, 109:4, 109:6, 109:10, 109:20, 109:21, 109:24, 110:1, 110:6, 110:7, 110:12, 110:20, 110:23, 110:24, 111:3, 111:10, 111:13, 111:15, 111:21, 111:22, 112:2, 112:4, 112:7, 112:9, 112:12, 112:13, 112:14, 112:15, 112:18, 112:20, 113:2, 113:9, 113:14, 113:17, 113:19, 113:21, 114:1, 114:5, 114:7, 114:8, 114:9, 114:10, 114:12, 114:17, 114:21, 114:22, 114:25, 115:3, 115:5, 115:7, 115:8, 115:11, 115:13, 115:17, 115:23, 116:1, 116:5, 116:6, 116:7, 116:11, 116:12, 116:19, 117:4, 117:13,	117:20, 117:21, 117:24, 117:25, 118:1, 118:4, 118:7, 118:8, 118:10, 118:13, 118:14, 118:16, 118:17, 118:21, 118:23, 119:2, 119:6, 119:8, 119:12, 119:16, 119:24, 120:2, 120:11, 120:12, 120:16, 120:17, 121:4, 121:12, 121:22, 121:23, 122:5, 122:9, 122:12, 122:15, 124:3, 124:9, 124:10, 124:13, 124:14, 124:15, 124:17, 124:18, 124:19, 124:20, 124:21, 124:24, 125:4, 125:6, 125:9, 125:11, 125:14, 125:16, 125:17, 125:20, 125:21, 125:23, 126:2, 126:7, 126:11, 126:18, 126:22, 126:23, 126:25, 127:12, 127:18, 127:19, 127:20, 127:24, 128:2, 128:4, 128:6, 128:7, 128:11, 128:15, 128:18, 128:19, 128:21, 129:2, 129:4, 129:5, 129:14, 129:23, 130:1, 130:5, 130:13, 130:17, 130:24, 131:9, 131:10, 131:13, 131:14, 131:17, 131:22, 132:2, 132:7, 132:13, 132:21, 133:14, 133:21, 133:24, 134:3, 134:6, 134:9, 134:10, 134:15, 134:16, 134:19, 134:23, 135:2, 135:3, 135:15, 135:22, 136:5, 138:11, 138:17, 139:2 therein [1] - 8:19 thinks [1] - 61:15 third [6] - 55:15, 62:17, 86:3, 88:15, 88:24, 125:22 thorough [1] - 112:23 thousand [2] - 50:7,	104:19 three [4] - 24:5, 41:18, 58:24, 85:22 threshold [1] - 99:8 threw [1] - 111:7 throughout [11] - 5:17, 5:25, 7:9, 15:17, 20:16, 50:4, 54:21, 84:22, 85:4, 94:12, 110:18 throw [2] - 22:16, 131:25 tie [1] - 100:14 tight [1] - 62:16 tire [2] - 29:23, 30:7 tired [1] - 119:20 tiresome [1] - 120:4 TO [1] - 143:3 today [4] - 8:18, 20:3, 47:22, 91:6 today's [1] - 112:16 together [3] - 35:1, 39:7, 89:9 tonight [8] - 4:12, 4:17, 5:13, 27:6, 109:12, 136:16, 136:19, 140:2 took [6] - 17:15, 22:4, 24:18, 24:21, 49:18, 67:8 tool [1] - 57:12 top [37] - 7:4, 7:5, 7:10, 8:5, 9:24, 9:25, 10:6, 18:7, 21:10, 28:6, 28:18, 35:13, 38:23, 38:24, 38:25, 39:11, 39:25, 41:6, 41:7, 41:17, 41:19, 42:7, 42:16, 50:14, 51:16, 51:21, 52:6, 54:8, 54:12, 55:15, 62:17, 62:20, 68:14, 81:8, 113:20, 128:9 topography [3] - 81:1, 81:22, 81:25 total [5] - 25:8, 40:20, 40:22, 41:18, 119:21 totality [1] - 138:15 totally [3] - 108:9, 129:21, 129:25 touch [1] - 140:10 towards [3] - 82:4, 96:19, 101:7 towers [1] - 11:24 town [18] - 20:9, 23:25, 33:23, 88:10, 88:22, 94:15, 108:16, 110:17, 111:25, 112:17, 119:14,	123:2, 123:9, 123:18, 123:21, 131:25, 133:9, 141:8 towns [6] - 15:18, 47:15, 86:22, 86:25, 94:2, 131:3 Township [3] - 4:6, 9:6, 93:24 township [3] - 15:22, 106:9, 133:12 TOWNSHIP [1] - 1:1 TP [3] - 29:10, 42:21, 54:6 TP-1 [4] - 48:20, 54:3, 54:4, 78:20 TP-2 [1] - 78:22 TP-3 [2] - 78:20, 78:22 TP-6 [3] - 79:5, 82:23, 83:10 TP-7 [2] - 44:2, 44:5 TP-8 [2] - 54:3, 54:5 tracked [4] - 29:23, 30:1, 30:3, 30:7 traffic [30] - 96:13, 99:5, 99:6, 99:8, 99:13, 102:13, 104:17, 104:18, 104:22, 105:3, 105:4, 105:6, 105:8, 105:11, 105:16, 107:10, 107:13, 107:18, 107:23, 108:17, 108:18, 108:23, 108:25, 109:1, 109:4, 112:23, 125:12, 126:4, 134:12, 134:25 transcript [5] - 142:5, 143:4, 143:5, 143:22 transcripts [1] - 118:12 transit [4] - 126:15, 126:17, 127:11, 134:25 transportation [2] - 134:8, 134:13 trapped [1] - 55:20 traumatic [1] - 36:2 treat [2] - 61:11, 61:16 treated [2] - 56:17, 119:21 treating [2] - 119:18, 119:22 tree [8] - 7:21, 98:15, 130:5, 130:6, 131:15, 131:18, 131:20, 132:4 trees [11] - 31:12, 59:20, 59:21, 59:23,
--	---	---	---	--

60:1, 60:8, 70:7, 92:11, 92:15, 108:14, 133:19 tremendous [1] - 30:24 triggering [2] - 53:15, 53:17 trips [2] - 99:7, 125:12 trouble [1] - 40:3 truck [2] - 29:15, 29:20 trucks [1] - 29:14 true [2] - 107:9, 142:4 truncated [1] - 42:25 truth [5] - 5:6, 84:10 try [6] - 35:10, 40:5, 81:20, 106:11, 117:18, 139:24 trying [7] - 35:9, 39:16, 64:14, 115:6, 118:6, 120:5, 122:15 turn [1] - 6:23 turned [2] - 67:8, 70:22 turning [1] - 104:23 twice [2] - 125:15, 125:17 two [30] - 10:8, 13:20, 17:6, 20:8, 26:3, 42:15, 48:8, 56:3, 58:13, 69:8, 69:15, 70:14, 70:17, 71:3, 82:19, 82:20, 85:20, 98:1, 98:21, 104:11, 104:15, 104:23, 106:10, 108:9, 114:3, 117:11, 118:4, 122:25, 123:23, 125:9 type [6] - 7:22, 11:18, 11:20, 18:13, 38:8, 134:11 types [3] - 19:7, 112:24, 113:21 typically [3] - 12:19, 21:18, 29:21	72:20 underground [1] - 18:7 underlying [4] - 50:8, 71:25, 72:4, 72:8 understandable [1] - 51:6 understood [3] - 7:21, 49:4, 124:1 undue [1] - 100:2 unexplored [1] - 54:25 unfair [1] - 64:24 Uniform [1] - 90:11 uniform [4] - 50:4, 50:10, 50:15, 51:7 unit [4] - 4:4, 90:7, 90:8, 127:8 United [2] - 5:17, 6:1 units [10] - 86:24, 87:2, 88:2, 88:3, 88:18, 88:21, 88:23, 108:22, 117:2 unless [5] - 54:24, 101:17, 128:13, 132:21, 132:24 unnecessary [1] - 100:17 unsafe [5] - 99:13, 108:7, 108:16, 108:22, 109:1 unstable [2] - 31:23, 32:20 unwavering [1] - 94:22 up [54] - 4:1, 11:17, 12:17, 13:6, 15:7, 15:25, 17:23, 18:7, 19:19, 21:2, 24:13, 24:25, 25:19, 29:24, 30:13, 33:15, 35:9, 36:13, 39:4, 39:21, 42:11, 43:1, 43:23, 44:14, 44:20, 45:20, 48:10, 61:13, 64:1, 64:4, 68:3, 71:8, 73:5, 77:21, 86:4, 87:22, 97:8, 97:21, 97:25, 101:20, 104:5, 109:9, 111:8, 116:3, 123:21, 125:14, 125:17, 126:9, 127:10, 127:16, 129:1, 133:15, 135:7, 140:10 update [1] - 87:10 upper [4] - 62:11, 62:25, 63:9 US [2] - 61:7, 61:11 uses [1] - 95:5	USGS [1] - 61:4 utilities [1] - 18:8 utility [2] - 43:5, 43:16 utilized [2] - 67:16, 81:21 utilizes [1] - 83:8 utterly [1] - 58:9	95:22 visuals [2] - 91:6, 103:23 VITE [1] - 1:14 voice [1] - 77:4 volume [1] - 105:3	114:12 welcome [4] - 15:24, 62:7, 83:25, 117:21 welfare [2] - 95:21, 133:6 well-being [1] - 60:5 WEST [3] - 1:1, 1:5, 2:9 West [12] - 4:2, 4:10, 20:16, 21:16, 87:15, 88:1, 94:12, 109:23, 111:19, 138:9, 138:14, 141:6 wet [1] - 54:16 wetlands [1] - 90:18 whereby [1] - 92:3 white [2] - 43:4, 130:11 White [4] - 13:12, 19:24, 48:6, 62:8 whole [10] - 53:13, 66:22, 80:10, 84:10, 89:7, 93:1, 93:15, 93:21, 105:4, 139:2 wide [4] - 48:15, 83:1, 87:19, 90:21 widest [1] - 100:22 WILKES [4] - 1:10, 10:20, 103:2, 138:1 wilkes [3] - 10:18, 102:25, 137:24 WILLIAM [1] - 1:10 window [1] - 25:3 withhold [1] - 44:21 Witness [1] - 143:25 witness [2] - 4:17, 72:5 WITNESS [304] - 10:8, 10:15, 11:3, 11:20, 12:6, 12:19, 13:25, 14:14, 16:9, 16:12, 17:14, 18:11, 18:20, 19:2, 19:13, 19:16, 20:4, 20:10, 20:21, 21:11, 21:24, 22:6, 22:12, 22:18, 22:21, 22:24, 23:13, 23:18, 24:2, 24:9, 24:23, 25:21, 26:2, 26:10, 26:23, 27:16, 27:25, 28:17, 28:20, 29:8, 29:17, 29:21, 30:2, 30:6, 31:16, 32:2, 32:16, 32:19, 33:6, 34:11, 34:23, 35:21, 35:23, 36:7, 36:12, 36:19, 36:24, 37:12, 38:7, 39:3, 39:6, 39:18, 39:20, 39:24, 40:5, 40:13,	
U	UHAC [3] - 90:11, 90:15, 96:8 uncontroverted [3] - 96:17, 108:24, 118:15 under [11] - 5:9, 8:3, 12:25, 22:15, 31:11, 60:6, 84:14, 88:6, 105:9, 112:16, 123:18 undergo [2] - 72:19,	V	vacant [2] - 4:5, 86:14 vacuum [1] - 126:19 Valley [1] - 20:1 variable [1] - 50:19 variance [14] - 85:19, 91:3, 92:23, 98:21, 122:4, 122:7, 122:8, 122:10, 122:20, 123:22, 124:7, 124:13, 124:20, 125:5 variances [4] - 120:20, 121:5, 123:3, 124:25 varies [4] - 80:5, 80:6, 80:13, 81:18 variety [2] - 95:5, 95:22 various [2] - 112:21, 133:9 vary [1] - 53:15 varying [2] - 40:10, 58:14 vastly [1] - 110:11 vegetated [1] - 7:20 vegetation [2] - 64:19, 92:7 vehicle [2] - 29:23, 102:13 verify [1] - 10:15 versus [3] - 37:9, 37:10, 116:18 vertical [2] - 82:24, 83:15 vertically [2] - 82:25, 116:21 via [2] - 141:2, 141:4 vibration [4] - 19:18, 45:2, 45:18, 72:21 Vice [2] - 1:9, 137:18 vice [2] - 9:15, 102:5 VICE [3] - 9:17, 102:7, 137:20 Victor [4] - 17:25, 29:1, 82:18, 104:6 view [2] - 12:7, 116:15 virgin [1] - 97:9 visual [2] - 93:11,	W	waiting [1] - 32:16 waivers [7] - 120:20, 120:24, 121:19, 121:25, 122:2, 123:3 walk [4] - 76:19, 127:9, 134:7, 134:12 walking [3] - 126:16, 127:21, 128:3 walkway [2] - 100:14, 125:25 wall [6] - 47:21, 91:23, 92:8, 92:9, 92:10, 98:11 walls [2] - 72:23, 98:14 Warner [10] - 4:3, 99:20, 100:15, 107:8, 107:10, 109:2, 125:12, 125:25, 135:17, 136:1 warranted [1] - 101:16 Warren [1] - 107:3 watch [1] - 118:2 watching [1] - 4:16 water [42] - 14:11, 16:14, 17:3, 17:4, 20:22, 20:23, 20:25, 21:1, 21:10, 21:13, 41:3, 41:6, 41:10, 41:11, 53:16, 53:24, 54:1, 54:11, 54:15, 54:17, 54:18, 54:19, 54:20, 55:2, 55:4, 55:5, 55:8, 55:10, 55:18, 55:19, 56:7, 56:16, 58:15, 58:19, 58:23, 105:24, 112:11, 113:11, 139:10 ways [2] - 48:18, 51:5 weaker [1] - 22:8 weather [2] - 20:14, 20:15 website [2] - 34:5, 61:15 WEDNESDAY [1] - 1:2 weight [1] - 21:10 Weisleder [2] - 63:8,

40:15, 40:19, 40:22, 40:24, 41:5, 41:9, 41:14, 41:18, 41:21, 41:23, 41:24, 42:4, 42:6, 42:11, 42:15, 42:20, 43:2, 43:5, 43:9, 43:12, 43:15, 43:19, 44:5, 44:12, 44:17, 44:23, 45:6, 46:14, 47:24, 48:9, 48:11, 48:16, 48:22, 49:4, 49:8, 49:11, 49:14, 49:16, 49:19, 49:22, 50:2, 50:11, 50:21, 50:24, 51:2, 51:15, 51:19, 52:4, 52:12, 52:18, 52:22, 53:1, 53:8, 53:15, 53:21, 54:2, 54:6, 54:9, 54:14, 54:18, 54:20, 55:4, 55:8, 55:17, 55:24, 56:1, 56:5, 56:8, 56:15, 56:22, 56:25, 57:3, 57:8, 57:15, 57:17, 57:22, 58:10, 58:22, 59:5, 59:10, 59:18, 59:23, 60:18, 60:21, 61:18, 62:7, 63:25, 64:2, 64:8, 64:11, 65:12, 65:18, 66:1, 66:5, 66:8, 66:14, 67:1, 67:10, 67:14, 67:19, 68:3, 68:18, 68:20, 68:24, 69:5, 69:18, 69:21, 70:5, 70:19, 72:9, 72:14, 72:25, 73:10, 73:13, 73:19, 73:22, 75:15, 75:18, 75:23, 76:3, 76:7, 76:9, 76:15, 77:6, 77:16, 77:19, 77:24, 78:9, 78:22, 78:24, 79:1, 79:7, 79:18, 79:20, 80:5, 80:6, 80:11, 80:19, 80:24, 81:14, 82:7, 82:11, 83:5, 83:16, 84:7, 84:11, 85:17, 102:19, 103:16, 104:9, 105:2, 105:5, 105:15, 106:25, 108:9, 108:21, 109:4, 109:20, 109:24, 110:6, 110:12, 110:23, 111:3, 111:13, 111:21, 112:2, 112:7, 112:12, 112:14, 112:18, 113:2, 113:14, 113:19, 114:1, 114:7,	114:9, 114:17, 114:22, 115:3, 115:7, 115:11, 115:17, 116:1, 116:6, 116:11, 116:19, 117:13, 117:21, 117:25, 118:4, 118:8, 118:13, 118:16, 118:21, 120:11, 120:16, 121:22, 124:9, 124:13, 124:15, 124:18, 124:20, 124:24, 125:6, 125:11, 125:16, 125:20, 125:23, 126:7, 126:18, 126:23, 127:12, 127:19, 127:24, 128:4, 128:7, 128:15, 128:19, 129:4, 130:5, 130:24, 131:9, 131:13, 131:17, 133:21, 134:3, 134:9, 134:15, 134:19, 135:2, 135:15, 135:22, 136:5, 138:11, 138:17, 139:2, 143:2, 143:3 witnesses [8] - 10:2, 87:3, 128:17, 136:14, 136:15, 136:22, 136:23, 136:24 wonderful [1] - 108:4 wondering [4] - 29:13, 43:14, 76:24, 138:20 WOODBIDGE [1] - 2:5 woodland [1] - 97:9 woodlands [1] - 95:9 word [2] - 116:13, 126:8 words [5] - 21:3, 37:8, 93:17, 93:20, 99:25 works [1] - 33:23 worried [1] - 64:17 wound [1] - 123:21 write [1] - 131:1 written [4] - 121:17, 121:20, 131:4	yelled [1] - 119:21 yelling [1] - 119:17 young [2] - 37:23, 38:14 YouTube [1] - 118:3 yup [1] - 43:24
Z		
Zone [1] - 4:3 zone [32] - 87:8, 89:1, 91:9, 93:5, 95:7, 95:12, 97:24, 104:13, 109:17, 110:3, 110:9, 111:1, 118:23, 118:25, 119:11, 120:7, 120:9, 120:14, 121:13, 121:16, 121:17, 121:19, 129:24, 130:10, 131:3, 131:21, 132:5, 132:20, 133:20 zoned [1] - 132:1 zones [1] - 105:23 Zoning [1] - 1:14 zoning [38] - 10:2, 33:20, 86:3, 86:4, 87:6, 89:14, 89:17, 89:20, 90:8, 93:25, 95:13, 97:18, 98:12, 98:16, 98:18, 109:17, 109:22, 109:24, 110:2, 110:18, 117:15, 120:22, 121:17, 122:3, 122:21, 123:4, 123:6, 123:19, 130:3, 130:15, 130:20, 130:21, 130:22, 131:1, 131:10, 134:20, 139:4, 139:5 Zoom [6] - 1:15, 84:1, 118:8, 141:2, 141:4, 141:11 zoom [7] - 48:23, 48:24, 51:10, 55:12, 79:1, 79:9, 82:19		
Y		
year [4] - 25:12, 114:3, 114:4 years [9] - 5:15, 5:25, 15:4, 20:8, 30:24, 88:21, 101:13, 110:3, 123:8		