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# Transcript of Hearing

**Date:** July 22, 2022

**Case:** Chapingo Investments, LLC

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Conducted on July 22, 2022

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9           TRANSCRIPT OF AUDIO-RECORDED</p> <p>10          HEARING IN RE: CHAPINGO INVESTMENTS, LLC</p> <p>11          LANDSCAPE CONTRACTOR BUSINESS APPLICATION</p> <p>12                   FRIDAY, JULY 22, 2022</p> <p>13                   9:30 A.M.</p> <p>14</p> <p>15                   CASE NO. CU 22-07</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23   Job No.: 452186</p> <p>24   Pages: 1 - 255</p> <p>25   Transcribed by: Christian Naaden</p>	<p>3</p> <p>1   to try something. Mr. Alvarez, in the meantime, can you</p> <p>2   confirm the spelling is what I said?</p> <p>3       MR. ALVAREZ: Yes. Yes.</p> <p>4       MS. LEWINTER: Thank you very much. I</p> <p>5   appreciate that. All right. Why don't we just pause for</p> <p>6   a minute. It looks like Mr. Hughes signed off and I'm</p> <p>7   assuming he's going to come right back on with a</p> <p>8   different computer.</p> <p>9       Is everybody okay hearing me?</p> <p>10      MR. ALVAREZ: Yes.</p> <p>11      MALE 1: Yes.</p> <p>12      MS. LEWINTER: Okay.</p> <p>13      MS. EVANS: This is the court reporter. I just</p> <p>14   wanted to confirm the J-G-R-Y-A-N, could I have your</p> <p>15   names, please?</p> <p>16      MR. RYAN: My name is James Ryan and my wife</p> <p>17   is here with me, Karen Ryan.</p> <p>18      MS. RYAN: Karen Ryan, yep.</p> <p>19      MS. EVANS: That's Karen with a K?</p> <p>20      MS. RYAN: Correct.</p> <p>21      MS. EVANS: Thank you.</p> <p>22      MS. LEWINTER: And Mr. and Mrs. Ryan, if you</p> <p>23   could remain on mute if you're not talking, that would</p> <p>24   be very helpful.</p> <p>25      Do you see Mr. Hughes back on yet? Anybody?</p>
<p>2</p> <p>1           PROCEEDINGS</p> <p>2       MS. LEWINTER: I would like to open the</p> <p>3   hearing. I want to make sure, Ms. Evans, that you're</p> <p>4   ready to go?</p> <p>5       MS. EVANS: Yes, I'm recording.</p> <p>6       MS. LEWINTER: Thank you very much. And as</p> <p>7   everybody should have gotten on their screen, this</p> <p>8   hearing is being recorded. You do need to be aware of</p> <p>9   that.</p> <p>10      This is a public hearing in the matter of OzAH</p> <p>11   case number CU 22-07, the application of Chapingo, LLC</p> <p>12   to permit the conditional use of a landscape contractor</p> <p>13   at 12120 Prices Distillery Road in Damascus, Maryland,</p> <p>14   in the AR Zone.</p> <p>15      I also, just for the record, want to clarify</p> <p>16   that Chapingo, as I understand it, is spelled</p> <p>17   C-h-a-p-i-n-g-o. I think on some of the materials, it</p> <p>18   has been misspelled. Mr. Hughes, can you just confirm</p> <p>19   that for us? Can you repeat that? I couldn't hear you.</p> <p>20      MR. ALVAREZ: He's muted.</p> <p>21      MS. LEWINTER: Ms. Evans, can you hear him?</p> <p>22   No, we can't hear you.</p> <p>23      MS. EVANS: No, we can't hear you. Sorry, we</p> <p>24   can't hear you.</p> <p>25      MS. LEWINTER: All right. I think he's going</p>	<p>4</p> <p>1   No?</p> <p>2       MR. SEKERAK: [inaudible] also.</p> <p>3       MS. LEWINTER: I'm sorry?</p> <p>4       MR. HUGHES: Good morning. This is another</p> <p>5   computer in Sean's office. Can you hear me?</p> <p>6       MS. LEWINTER: Yes, I can hear you. Yes.</p> <p>7   You're coming through on Mr. Sekerak's computer, is</p> <p>8   that correct?</p> <p>9       MR. HUGHES: That's correct.</p> <p>10      MS. LEWINTER: And do you have audio? Sorry,</p> <p>11   video on that one?</p> <p>12      MR. HUGHES: Well, let's give it a try.</p> <p>13      MS. LEWINTER: Okay. There we go.</p> <p>14      MR. HUGHES: Okay. So Sean's office is -- is</p> <p>15   working on plan A and if they're unsuccessful, we'll</p> <p>16   use plan B.</p> <p>17      MS. LEWINTER: Okay. Well, I'd like to move</p> <p>18   forward, so for the time being, is it okay that we</p> <p>19   start with B and if we can switch to A, we can do that?</p> <p>20      MR. HUGHES: Yes</p> <p>21      MS. LEWINTER: Okay, thank you. All right. So</p> <p>22   I had introduced the case. Just to introduce myself, my</p> <p>23   name is Andrea LeWinter. I am serving as the hearing</p> <p>24   examiner today.</p> <p>25      It is my role today to listen, to take</p>

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<p>5</p> <p>1 evidence -- Mr. Sekerak, can you mute for now? To 2 listen, to take evidence and write a decision regarding 3 this case. And just, again, it seems like everybody is 4 doing this, but if you can stay on mute when you're not 5 talking as we proceed, it really helps. 6 I'd like to, right now, since we are on Teams, 7 and it can be a little bit difficult to go through who 8 is here and who they are. So if I call your name, can 9 you please just state who you are, whether you are -- 10 what your role is. 11 If you're the petitioner, representative, if 12 you're in support or if you're in opposition, I would 13 appreciate it. So Mr. Hughes, if you can start? 14 MR. HUGHES: [inaudible] Can you hear me now, 15 Madam Hearing Examiner? My apologies. 16 MS. LEWINTER: I can, but there's quite an 17 echo. I'm assuming -- 18 MR. HUGHES: It should be okay now. Just turn 19 your computer off. 20 MR. SEKERAK: Try it again. 21 MS. LEWINTER: Yes, better. Okay. 22 MR. HUGHES: Thank you very much. My 23 apologies. 24 MS. LEWINTER: No problem. I understand. Okay, 25 so Mr. Hughes, if you could identify yourself and your</p>	<p>7</p> <p>1 MS. LEWINTER: All right. Let's see. Just for 2 the record, Merinda Evans is the court reporter, Nana 3 Johnson is staff with OzAH as is Ms. [inaudible]. So 4 Ms. Leslie Saville, could you introduce yourself and 5 what your role is? 6 MS. SAVILLE: Good morning. Yes, I'm Leslie 7 Saville. I am a Silver Spring resident and a member 8 emeritus of the Rustic Roads Advisory Committee. I have 9 been familiar with this applicant and two of his 10 properties through the Rustic Roads Advisory Committee 11 for eight or ten years, I suppose. 12 MS. LEWINTER: Okay. And so are you here 13 representing the Rustic Roads or are you here to take a 14 position on the petition? 15 MS. SAVILLE: I am here for myself. I believe 16 you have the chair as the Rustic Roads Advisory 17 Committee also on. Thank you. 18 MS. LEWINTER: Okay. I'm sorry, are you in 19 opposition? 20 MS. SAVILLE: Yes, I am. 21 MS. LEWINTER: Okay, thank you. Let me just 22 see who else I have. Ms. Barbara Hoover? Is she on? All 23 right, Mr. Timothy Hunt? 24 MR. HUNT: Good morning. Timothy Hunt. I am a 25 neighbor and directly behind the Chapingo operation and</p>
<p>6</p> <p>1 role. 2 MR. HUGHES: Yeah. Sean Hughes from Miller, 3 Miller and Canby. I'm the attorney, a land use 4 attorney, for Mr. Alvarez for Chapingo. 5 MS. LEWINTER: Okay. And is there anybody else 6 on your tile who should introduce themselves now? 7 MR. HUGHES: Yes. I have several people on our 8 team. Would you like them to all introduce themselves 9 or you want me to quickly introduce them? 10 MS. LEWINTER: If you can just quickly run 11 through it. 12 MR. HUGHES: Absolutely. So we have first of 13 all Mr. Alvarez, Jose Alvarez, who is the applicant who 14 is here. In my off -- in my office is Mr. John Sekerak, 15 from Stantek, as well as Nelson Mosquitch [ph] who is 16 Mr. Alvarez's general attorney. 17 We also have, remotely, Kim Caurrano, who is 18 from Stantek as well. Hopefully she's on. And Mike -- 19 if she's not on, she'll be joining later and Mike -- 20 MS. LEWINTER: [inaudible] 21 MR. HUGHES: Okay. 22 MS. LEWINTER: Yep. Keep going. 23 MR. HUGHES: Mike Nalepa, who is traffic 24 engineer from Street Traffic Studies. And that's -- 25 that's our team for today.</p>	<p>8</p> <p>1 I am in opposition. 2 MS. LEWINTER: Okay. 3 MS. HOOVER: Excuse me. This is Barbara 4 Hoover. I just found my unmute button. I apologize. 5 MS. LEWINTER: Okay, no problem. Ms. Hoover, 6 can you introduce yourself and just whether you're in 7 opposition or support or if you have another role? 8 MS. HOOVER: Yes. I have a role. I'm on the 9 Rustic Roads Advisory Committee as the representative 10 for citizen's associations outside of the AG Reserve 11 and I'm here in opposition. 12 MS. LEWINTER: Sorry. Okay and Mr. and 13 Mrs. Ryan, if you could introduce yourselves? I'm just 14 going down my list. 15 MR. RYAN: Hi. We -- we are neighbors and we 16 are in opposition. 17 MS. LEWINTER: Okay, thank you. That's all I 18 need. Let's see. Mr. Hartsock? 19 MR. HARTSOCK: Hi. I'm also a farmer neighbor 20 and in opposition. 21 MS. LEWINTER: Okay. Is there anybody that I 22 didn't see and forgot who's on the call? Okay. All 23 right. Is there anyone here who is not represented by 24 counsel who would like to testify? 25 MR. HARTSOCK: I am not represented by</p>

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<p>9</p> <p>1 counsel, and I would like to testify. Hartsock. 2 MS. LEWINTER: Okay. Anyone else? 3 MR. RYAN: And the Ryan's are not represented 4 by counsel, and we would like to testify. 5 MS. LEWINTER: Okay. Anyone else? 6 MS. VAN ETTEN: [inaudible] oh, go ahead. 7 MR. HUNT: [inaudible] After you, please. 8 MS. VAN ETTEN: Oh, Laura Van Etten. Chair of 9 Rustic Roads Advisory Committee. I would like to 10 testify on behalf of the committee. 11 MS. LEWINTER: Okay. And then Mr. Hunt? 12 MR. HUNT: Tim Hunt, also not represented and 13 I would like to testify. 14 MS. LEWINTER: Is there anyone else? 15 MS. SAVILLE: Leslie Saville. Not represented. 16 MS. LEWINTER: Is that it? Anyone else? Okay, 17 great. And let's see, I just want to go through some of 18 this. Just some housekeeping. These proceedings are 19 informal with certain formalities. 20 This is a remote hearing, as we all know, over 21 the Teams platform. So we do need to be patient and 22 indulgent of technical issues, but please try not to 23 interrupt when someone is talking because it does make 24 it very difficult for the court reporter. 25 So unless you have an objection, if you can</p>	<p>11</p> <p>1 applicant and cross examination and then closing 2 statements by each side, if you desire. 3 Approval of the petition is based on the 4 criteria set forth in the zoning ordinance, which is 5 included in the planning staff report. Please address 6 all testimony to this criteria. 7 So as we move forward, are there any 8 preliminary procedural matters that we need to address? 9 MR. HUGHES: Madam Hearing Examiner, I have 10 one. 11 MS. LEWINTER: Sure. 12 MR. HUGHES: This is Sean Hughes, the 13 applicant's attorney. So I would ask, with your 14 permission, to make a slight amendment. Amendment down 15 in our numbers that we're requesting. 16 So we would like to request, again, a 17 decrease. A decrease down to a maximum of 19 staff on 18 the site and decrease down to a maximum of 14 vehicles 19 overnight on the property and a decrease down to a 20 maximum of 10 vehicles, work vehicles, being utilized 21 during the workday. 22 Of those 10 vehicles, three include standard 23 pickups and of the 14 storing overnight, they would 24 include two small standard pickups. We were hopeful 25 that you would be open to such a reduction in numbers.</p>
<p>10</p> <p>1 let people finish, and if you can use your raise hand 2 little option, whenever possible, that is very helpful. 3 Although if I -- there's so many people on and I can't 4 always see everybody on my screen, so if you're really 5 having difficulty, please do interrupt if you have to. 6 As stated, again, just to reiterate, this 7 session is being recorded. It is being recorded both by 8 the court reporter and by Microsoft Teams. Just so you 9 know, the Teams recording is used only as a backup for 10 the reporter. 11 What you say will be under oath and again, 12 will be recorded. You may be asked questions about your 13 testimony and the proceedings will move in the 14 following order. 15 We're going to see if there's any preliminary 16 motions or issues, then each side may make an opening 17 statement. We are going to go through the applicant's 18 case in chief and there will be the opportunity for 19 cross examination. 20 Then we will have any opposition case in 21 chief, again, with an opportunity for cross 22 examination. If there are presentations at that point 23 by other interested parties, then they can be cross 24 examined. 25 We will have rebuttal opportunity for the</p>	<p>12</p> <p>1 MS. LEWINTER: I will certainly take it under 2 advisement. Are there any other preliminary matters? 3 MR. HUGHES: One other question just from -- 4 MS. LEWINTER: Sure. 5 MR. HUGHES: -- to see how you want us to 6 proceed. As we introduce and talk about exhibits, do 7 you want me to try to ask to enter it each time or wait 8 towards the end of a certain time period where you'd 9 like to move those in together? 10 MS. LEWINTER: I mean, I guess we can try to 11 do it all at the end. That might be easier. But if 12 there is objection to any of the exhibits, definitely 13 want to know those in a timely manner as, you know, we 14 might kind of build on them going forward. 15 Is that acceptable? 16 MR. HUGHES: I -- I understand, yes. 17 MS. LEWINTER: Okay. And I know in both the 18 preliminary -- sorry, in the planning report and in the 19 planning -- sorry, in the technical staff report and in 20 the planning board recommendation, there were a couple 21 of specific issues raised. 22 I just want to ask at the outset if anybody 23 wanted to or had a -- wanted to address either of those 24 before we proceed? 25 MR. HUGHES: I'm not -- I'm sorry, Madam</p>

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<p>13</p> <p>1 Hearing Examiner. I'm not understanding your question. 2 MS. LEWINTER: Well, I guess it's my 3 understanding that the technical staff recommendations 4 and the planning board recommendations were for denial 5 on a couple of very specific issues. 6 So my question was whether anybody had any 7 preliminary issues they wanted to bring up related to 8 those two particular issues that were raised by both 9 the technical staff report and the planning board. 10 MR. HUGHES: Well, we certainly plan on going 11 through all the required criteria and we will address 12 those issues and I suspect when the community has their 13 time to speak, they might -- might want to address 14 those at that point. 15 But we're certainly prepared to address those 16 during our case-in-chief. 17 MS. LEWINTER: Okay, and as to anybody in 18 opposition? Okay. All right. So given that, if there's 19 no other preliminary matters, then we should begin the 20 more formal part of the proceedings. 21 Mr. Hughes, I'm assuming you're going to want 22 to make an opening statement on behalf of the 23 applicant? 24 MR. HUGHES: Yes, Your Honor. 25 MS. LEWINTER: Okay. And is there anybody else</p>	<p>15</p> <p>1 So yes, I'm here on behalf of Mr. Alvarez, who 2 is the owner of Chapingo Tree Care Specialists. He is 3 remote. He was going to be in our office, but his two 4 young daughters got Covid just the other day and so 5 they're having moderate symptoms, so we thought it was 6 safe that he be there. 7 So he would be here, but he is with us. So 8 we're going to go through the case, obviously, and 9 we're going to try to share some visuals, because we 10 think -- I'm going to be talking probably more than I'd 11 like to and I should be today. But we're going to have 12 some visuals, because they're better at telling a 13 picture. 14 As they say, a picture is worth 1000 words. So 15 if I could, during my introduction, Madam Hearing 16 Examiner, I'd like to start with Exhibit 51, which is 17 the aerial of the property. And 18 after -- 19 MS. LEWINTER: Sorry, just to interrupt you, 20 I'm sorry to interrupt your flow. 21 MR. HUGHES: Yeah. 22 MS. LEWINTER: In terms of the sharing, is it 23 your expectation that I'll share those or do you 24 have -- 25 MR. HUGHES: Well, in the past, I had always</p>
<p>14</p> <p>1 who is represented by counsel or from the Rustic Roads 2 who wanted to make any kind of opening statement? Okay. 3 All right. 4 Mr. Hughes, you can proceed. 5 MR. HUGHES: Thank you, Your Honor. Again, 6 just real quick, we'll have -- want to do an overview 7 of what we were hoping to prove today and the order 8 we're going to go in. 9 We do have the four -- several of our team 10 members here. Expecting our first witness will be John 11 Sekerak, land use planner and landscape architect from 12 Stantek. Then the applicant, Mr. Jose Alvarez, who owns 13 Chapingo Tree Care, and he also owns a property through 14 Chapingo Investments. 15 Next would be Kim Caurrano, the licensed 16 professional civil engineer from Stantek and last would 17 most likely be Mike Nalepa, traffic engineer from 18 Street Traffic Studies. 19 I did, in our prehearing statement, also 20 include Mr. Nelson Mosquitch, who's Mr. Alvarez's 21 general attorney. Perhaps there might be some rebuttal 22 where he would be a rebuttal witness, but I don't 23 expect to call him on direct. 24 So with that, I'd like to move into my 25 opening, and thank you.</p>	<p>16</p> <p>1 done the sharing. 2 MS. LEWINTER: No, no -- 3 MR. HUGHES: And we've been told -- yeah. 4 Sorry. 5 MS. LEWINTER: Yeah, I'm fine to do it. I 6 just -- I wanted to clarify. 7 MR. HUGHES: Okay. No, thank you. Yeah. Thank 8 you. So this property -- and I -- 9 MS. LEWINTER: Did you want me to go ahead and 10 share that now? 11 MR. HUGHES: If you would, please, yes. 12 MS. LEWINTER: Okay. 13 MR. HUGHES: Thank you. Yeah, 51. Thank you. 14 MS. LEWINTER: Can people see that? 15 MR. SEKERAK: Rotate 90 degrees 16 counterclockwise. 17 MR. HUGHES: Could you rotate 90 degrees 18 counterclockwise, please? 19 MS. LEWINTER: Is -- oh. One more? 20 MR. HUGHES: Yeah, please. 21 MR. SEKERAK: No, now, clockwise. Too far, too 22 far. 23 MR. HUGHES: All right. Yeah, two more. 24 MS. LEWINTER: Too far. All done. 25 MR. HUGHES: You were almost there. Thank you.</p>

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<p>17</p> <p>1 MR. SEKERAK: No.</p> <p>2 MS. LEWINTER: Is that -- is that it?</p> <p>3 MR. HUGHES: That is. And if you could just --</p> <p>4 about full -- there, excellent. So --</p> <p>5 MS. LEWINTER: Okay.</p> <p>6 MR. HUGHES: Here is the subject property. So</p> <p>7 this is a 32-acre farm. The code, as you're aware,</p> <p>8 requires that the property be for a landscape</p> <p>9 contractor, can be at least two acres. So it's 32</p> <p>10 acres, so we're 16 times that.</p> <p>11 We intend to use this three-acres in almost</p> <p>12 exactly the middle of the property. So this will be the</p> <p>13 operations, plus obviously using the drive to come in</p> <p>14 on. This is 1000 feet off the road.</p> <p>15 There are significant setbacks, as you can</p> <p>16 see, to any homes. I believe it's -- I believe the</p> <p>17 staff report said at least 700 or 800 feet. There are</p> <p>18 some really nice existing trees and such.</p> <p>19 There's changes in elevation from the road</p> <p>20 down and it goes back up, and then there's obviously</p> <p>21 some [inaudible] more about some additional screening</p> <p>22 and landscaping that's planned for the property.</p> <p>23 There is a larger, newer AG building. Mr.</p> <p>24 Alvarez bought the property in -- I should have this at</p> <p>25 the top of my head, but it's in the record, but I think</p>	<p>19</p> <p>1 has support staff up there. That's -- that's their</p> <p>2 office. That's the corporate office. That's where they</p> <p>3 -- he has staff that send out proposals, deal with</p> <p>4 billing, deal with customer service. He holds</p> <p>5 communications with customers.</p> <p>6 Really, what happens here is, as you'll hear</p> <p>7 more about from Mr. Alvarez, they -- his staff comes</p> <p>8 here in the morning. Our hours are asking from 6:00</p> <p>9 a.m. to 6:30 p.m., Monday through Saturday, although he</p> <p>10 says, typically they get in closer to 6:30 a.m.</p> <p>11 So staff comes in here and within 45 minutes,</p> <p>12 they leave here and they're gone all day. The work is</p> <p>13 off-site, at people's properties. At the end of the</p> <p>14 day, they'll come back and they're here about half an</p> <p>15 hour, clean up, get things together and leave.</p> <p>16 So they're on-site limited time and it's</p> <p>17 vacant I'm going to say 20 plus hours a day. Very</p> <p>18 modest amount of traffic. And while this is underneath</p> <p>19 the landscape contractor, it does fit within that, and</p> <p>20 you'll hear more about that.</p> <p>21 It's a tree care company and so that has much</p> <p>22 less moving parts than a full landscape type operation</p> <p>23 and less impact. We would also point out some other</p> <p>24 conditional use special exceptions cases for landscape</p> <p>25 contractors within the last few years or so that the</p>
<p>18</p> <p>1 2020 -- late 2019, early 2020, but this was built, we</p> <p>2 believe, based upon records and the electrical permit,</p> <p>3 this larger structure was built in 2012.</p> <p>4 There's also a smaller building back here, old</p> <p>5 barn, and that is not part of the conditional use. So</p> <p>6 we are asking to use this. You'll see pictures, close</p> <p>7 up pictures of this as well. It's in -- it's kind of an</p> <p>8 open barn on most of the sides.</p> <p>9 These also provide some screening of the</p> <p>10 vehicles and such. Really think it's a -- really a nice</p> <p>11 setting. Nice, large property and it's modest</p> <p>12 operation, truly. As I requested, you know, we're</p> <p>13 looking to have 19 staff.</p> <p>14 Maximum of 19 staff on site. Maximum of 14</p> <p>15 vehicles stored overnight down this way, and use of</p> <p>16 nine work vehicles -- or I'm sorry, 10 work vehicles a</p> <p>17 day.</p> <p>18 Mr. Alvarez, Chapingo actually has -- and</p> <p>19 there's no -- so this is all existing. We're not</p> <p>20 proposing to put any new buildings in. We're not</p> <p>21 proposing to alter this area at all, other than align</p> <p>22 some parking and such, which you'll hear later from Mr.</p> <p>23 Sekerak about. But no new structures.</p> <p>24 Mr. Alvarez actually has a corporate office a</p> <p>25 few miles north, just over in Frederick in Urbana. He</p>	<p>20</p> <p>1 county has reviewed.</p> <p>2 One of the first ones I'd like to point out is</p> <p>3 the Emerald case, which was CU 16-09. That one did not</p> <p>4 go all the way to OzAH, but that one did have a</p> <p>5 positive staff report. That was just around the corner,</p> <p>6 Madam Hearing Examiner.</p> <p>7 That's [inaudible] that was right back here.</p> <p>8 MR. SEKERAK: They can't see your cursor.</p> <p>9 MR. HUGHES: What's that?</p> <p>10 MR. SEKERAK: They can't see your cursor.</p> <p>11 MR. HUGHES: Oh, you can't see my cursor.</p> <p>12 Okay. My apologies. So it is just around the corner.</p> <p>13 MS. LEWINTER: Do you want me to, like,</p> <p>14 decrease the map? Would that be helpful?</p> <p>15 MR. HUGHES: Well, I'm being told you're not -</p> <p>16 - are you seeing the cursor when I move it?</p> <p>17 MS. LEWINTER: No.</p> <p>18 MR. HUGHES: Okay. Yeah, I -- my -- I was</p> <p>19 thinking you could. My apologies.</p> <p>20 MS. LEWINTER: [inaudible]</p> <p>21 MR. HUGHES: So it's -- Emerald -- you'll hear</p> <p>22 more about this. It was just around the corner. We can</p> <p>23 give you the address. As the crow flies, it was about</p> <p>24 1000 -- 1200 feet in it's on Burnt Hill Road, it was.</p> <p>25 That operation -- so I said, it had positive</p>

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<p>21</p> <p>1 staff report. That was for 60 employees. It was for 20 2 plus trucks. It was on a four-acre property. It had not 3 been developed. They were proposing two new structures, 4 a new driveway and it did receive positive staff 5 report.</p> <p>6 It also addressed a topic that has come up a 7 little bit in this one, concern about a bridge in the 8 area, on Burnt Hill.</p> <p>9 And that report, if you see condition of approval 10 number eight, staff suggested all vehicles with more 11 than four wheels that are associated with the 12 applicant's business, including those belonging to 13 employees, must gain ingress and egress from Prices 14 Distillery Road.</p> <p>15 Vehicles with four wheels, with or without a 16 trailer, may use the Burnt Hill Road bridge. All 17 delivery vehicles must gain ingress and egress from 18 Prices Distillery Road. The drivers must be advised of 19 the bridge restriction by the applicant.</p> <p>20 So you'll hear more about this, but why I 21 bring this up, just to say is there is a restricted 22 bridge of 30,000 pounds and the bottom line is we are 23 happy to accept a condition like that or there's 24 another condition in another case, another landscaping 25 case a few years ago similar to that.</p>	<p>23</p> <p>1 although much larger in staff and trucks, is similar in 2 some ways to us. It was on 30 acres of tree farm and 3 the use was sort of in the middle of the property.</p> <p>4 That's the other one that had a restricted 5 bridge and condition of approval number four, which was 6 approved by OzAH and is operational, said all vehicles 7 with more than four wheels that are associated with the 8 applicant's business, including those belonging to 9 employees, must not travel north on Zion Road from the 10 property.</p> <p>11 All trucks must enter the property from the 12 south. That's because there's a one lane bridge, 13 actually, not too far from there. So to avoid that.</p> <p>14 So again, conditions of approval can be used 15 to address this type of situation and in fact have been 16 proposed by plenty of staff and/or OzAH in these cases.</p> <p>17 Two other case -- just a few other cases I'll 18 mention. JB Kline, which is S2807, OzAH 11-31. Twenty- 19 five staff members, 12 trucks and that was on 5.77 20 acres.</p> <p>21 And Francisco Case, CU 19-04; 19 staff, 16 22 trucks, on 6.3 acres. There was no bathroom in that 23 case. If you read through the case, you'll see there's 24 no -- there was some analysis for the septic for the 25 house, but it was made clear that the house was not</p>
<p>22</p> <p>1 There are multiple ways to get to the property 2 and so it doesn't add a significant amount of time or 3 trouble to avoid that bridge for the trucks that are, 4 or could be, over that weight limit.</p> <p>5 So that is -- I bring it up just to say 6 there's -- there is a solution to it and that solution 7 was proposed in the case that was just around the 8 corner from here a few years ago, and also in the 9 Goshen Case, which I will bring up in a bit.</p> <p>10 I'll just mention the case number and then 11 I'll talk about it in a little bit. It's case 18-06, 12 Goshen.</p> <p>13 There's also a case called Natural 14 Surroundings, and that was Board of Appeals case S2715- 15 2716, OzAH 8-14 and OzAH 8-15.</p> <p>16 That was for up to 40 staff members, 23 trucks and 17 while there was some analysis of the septic in that 18 case, there's no indication that there was a bathroom 19 on the property that was inside the special exception 20 area.</p> <p>21 The next case I'll bring up is Greenskeeper, 22 CU 15-04. That was on a decent sized property like us, 23 31 acres, up to 53 staff members and 30 trucks.</p> <p>24 Goshen, I mentioned, 18-06, that was approved 25 for between 30 to 50 staff, 20 trucks. That one,</p>	<p>24</p> <p>1 part of the operation. There's no office and there's no 2 indication that the bathroom was available or to be 3 used.</p> <p>4 The last case I'll mention for now is 5 Woodstone Group, S2761. That was 4.5 acres. Eight 6 employees and five trucks. That one actually had an 7 illegal and a substandard septic on the property.</p> <p>8 It was determined it would not handle the 9 house continuing to be used as a house, and also the 10 business, so condition was it had to be just an office.</p> <p>11 So that was an illegal one with failing septic.</p> <p>12 So again, back to here, we're not proposing 13 any new structures. As I said, staff arrive early. 14 They're there for about 45 minutes, after a safety 15 meeting, they arrive in the afternoon.</p> <p>16 As I said, because this is a tree care company and not 17 a landscape -- traditional full scale landscape 18 company, there's no delivery to said property.</p> <p>19 There's no bins of materials with mulch or 20 stone or rocks set up or there's no need to move those 21 materials back and forth. There's no mulch or compost 22 manufactured on site or those materials on site.</p> <p>23 There's no signage there. There's no proposed 24 signage. There's no customer visits. There's really no 25 need for staff there, other than early in the morning</p>

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7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 and end of the day. Mr. Alvarez is the owner and/or 2 management on occasion may come back, but as I said, he 3 has a corporate office. 4 He splits his -- he'll explain. He splits his 5 day, oftentimes, half in the field and half at the 6 corporate office. So the goal is to utilize this three 7 plus acres in the middle of the property and use the 8 other 28 plus acres that surround it for traditional 9 farming. 10 He has some ideas. He's hoping to get this 11 approval so he can implement those, and some of those 12 are shown on the plans that you'll hear more about from 13 Mr. Sekerak. And I'd like to note, we do have some 14 supporters of the request and some letters are in the 15 file. 16 I'll note, we have Mr. and Mrs. Dwight, also 17 known as Gene and Linda Walker. They live immediately 18 across. Their driveway is right across from Chapingo's. 19 It's the large farm there. It's 80 plus acres, 12051 20 Prices Distillery. 21 We have Mr. Lawrence Walker, who is about two 22 properties to the west of the farm I just talked about, 23 12211. We have Mr. Dave Lorell [ph] Senior, who lives a 24 lot over to the east, address 11925. 25 And we also have Mr. Brian Mulligan, who lives</p>	<p style="text-align: right;">27</p> <p>1 ideal for this -- for a landscape contractor for tree 2 care, for the reasons we've -- we've -- I've 3 introduced, and we will lay out more through our case. 4 So let me -- let me -- to your point at the 5 beginning, Madam Hearing Examiner, let me switch gears 6 a little bit and touch a little bit on those two issues 7 that the planning board raised. 8 So regarding APFO/sanitary sewer/bathroom, I 9 would first ask that, Your Honor, please look at the 10 memo we provided, Exhibit 38. We provided that to 11 planning staff on March 7. 12 We've talked about a lot of our reasons as to why 13 either A, a bathroom is not necessary here and/or why, 14 after analysis, it's not needed. It's just not 15 applicable here. I would also note Exhibit 44, which is 16 an email additionally on the topic that I sent to staff 17 on April 4 and April 11. 18 In addition, there are quite a few cases that 19 the county has approved that did not involve -- 20 conditional use cases that did not involve a bathroom. 21 And I will -- I will be noting some of those cases to 22 you, Your Honor. One second, if I could, for your 23 indulgence. 24 So I would also -- we'll be showing some 25 visuals, which will be Exhibit 53 on the topic. And I</p>
<p style="text-align: right;">26</p> <p>1 about four or five lots to the west, Prices Distillery, 2 12424. And I recognize these are not supposed to be 3 popularity contests, but I did want to point out that 4 those letters are in the file. 5 And, if I could, I just want to read just a 6 few sentences from Mr. Walker -- Mr. and Mrs. Walker's 7 that's in the file. What he said, he sent this at the 8 end of May. He said, the Alvarez property is directly 9 across from the entrance to our farm home. 10 We have a complete view of the property in the 11 appeal. We have met Mr. Alvarez and used the services 12 of his company for tree maintenance on the farm. His 13 buildings sit in the middle of 32 plus acres. 14 No neighbor is closer than 1000 feet from the 15 buildings he is using. And then he ends by saying, we 16 support Mr. Alvarez's operation as it is no different, 17 distracting, dangerous, brackets, twice a day coming 18 and going or violating of agricultural use than the 19 school busses, dump trucks, tractor trailers, farm 20 equipment and speeding cars are on our [inaudible] 21 country road. As far as we are concerned, tree 22 removal/care is agricultural, as is our farming 23 operations. 24 So, you know, we believe this is really -- 25 this is the type of location and use that's almost</p>	<p style="text-align: right;">28</p> <p>1 certainly want to cite Exhibit 47, which is the COMAR 2 law, which addresses mobile workforces and -- and OSHA 3 law, which we also have in those memos I noted, 4 particularly Exhibit 38. 5 But regarding the COMAR, what I would say is, 6 it shows that the Maryland state has considered the 7 sanitation needs of employees and found that workers at 8 a site for less than three hours a day do not need to 9 have a toilet facilities provided by the employer. 10 That's what COMAR says. That's applicable to 11 this. This is a mobile workforce. These are adults. 12 They're at people's properties all day. They have to 13 manage their bathroom needs all day, just like many 14 other workers who are out in the field all day. 15 They are very briefly at this property, in the 16 morning and in the evening. I would also point out that 17 the county counsel, through the zoning code, obviously, 18 and through the table, the zoning table, 3.16 -- 19 section 3.16 zoning code, table 3.8. It says, landscape 20 contractors permitted, if you meet the criteria in this 21 AR zone. 22 There are other zones where it's not permitted 23 to have a landscape contractor. It is permitted in 24 larger residential zones, in the AR zone, which tends 25 to have the largest lots, like this one; to allow</p>



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8 (29 to 32)

<p>29</p> <p>1 greater separation, greater screening. 2 County agricultural department also classifies 3 landscape contracting under agricultural operations in 4 a county by a horticulture. I would say -- point you to 5 Exhibit 57, which we've provided from the AG department 6 -- county AG department. 7 I would also point out that the Rustic Roads 8 Functional Master Plan, please see the letter we sent 9 to the planning board dated July 2, which is Exhibit 10 41, which addresses the topic as well as you'll have 11 more testimony from our team here and visuals to 12 follow. 13 And also, we'll be pointing to the analysis 14 that I might have touched upon that was done in the 15 Emerald Case on this specific topic, just around the 16 corner. 17 I'll also point out Exhibit 41, which is about 18 some statistics about Rustic Roads and the county. Now, 19 Exhibit 41 is kind of a lengthy one, so it's inside of 20 Exhibit 41, there's Exhibit 4 and this will be on 21 almost the very last two pages, page 62 to 63. 22 There's an email from planning staff member 23 Jamie Pratt in which he shared with us that county GIS 24 shows that there are over 191 miles of rustic roads in 25 the county with 68 of the 99 within or adjacent to the</p>	<p>31</p> <p>1 pool, water trucks, septic trucks, gas and propane 2 trucks, concrete trucks. This is a road. This is a 3 public road. They're all allowed to operate out there. 4 I would also point out to Exhibit 46, which is 5 an item I provide that the county put together, that 6 talks about the big promotion we in this county have 7 done in the last few years for wineries and breweries 8 and similar uses in the ag reserve. 9 That's Exhibit 46. There has been a big push 10 to allow these on farms. County sees it as a big win, 11 big opportunity for farmers. Big opportunity for 12 economic development. They -- that document shows how 13 we compare to Loudoun County. 14 And they're 20 -- I think it's 20 to 40 times 15 as busy as we are. The goal is to grow these. They've 16 changed some laws. I would point out that in that law, 17 which is farm alcohol production, it talks about under 18 -- I believe it's section -- I apologize. 19 It talks about except as allowed under Section 20 C, the maximum number of participants at any event is 21 225. There's no limit on number of events with 100 22 participants or fewer. 23 And so it shows some of the numbers that we 24 have and what they're hoping to grow that area. So let 25 me just say a few other things about the law here, as</p>
<p>30</p> <p>1 AR zone. It's pretty significant. 2 The county council created the laws to allow 3 landscape contractors in this zone, in the AR zone. 4 They said it's okay. You meet the criteria, it's okay. 5 And they knew that the AR is the AG Reserve and that 6 rustic roads are out in this area. 7 They could have prevented it entirely in the 8 AR zone. They could have said, nope, not in the AR 9 zone. They didn't do that. They could have said, not 10 when it's on a rustic road or not when it's within X 11 feet of a rustic road. They didn't do that either. 12 As we talk about this case, we look at the 13 facts of this case. This is a very modest use. Very 14 small operation, and especially in comparison to a lot 15 of the cases that I've brought up within the last two 16 to five to 10 years of landscape contractor cases in 17 this county. 18 So what kind of vehicles are allowed out 19 there? Well, pretty much any vehicle. You have to watch 20 out for the bridge, but school, coach, buses, they're 21 allowed out there. Trash trucks, recycle trucks, 22 snowplow trucks, 18 wheelers, all sorts of contracting 23 vehicles, large and small. 24 Utility trucks, large farm trucks, large farm 25 vehicles, large county vehicles, fire trucks, swimming</p>	<p>32</p> <p>1 Your Honor is well aware. 2 Special exception, conditional uses, one of 3 the guiding cases is Schultz vs. Pritz [ph]. There 4 certainly are some other cases that are very important 5 and address that issue. 6 If I could just pause for one quick second, I 7 just want it noted -- I said I was going to share some 8 of the cases in which there were -- there are not 9 bathrooms on site. 10 Conditional uses, special exceptions, that were 11 approved, because I think planning staff had taken a 12 position that that has never occurred or they couldn't 13 find any. Well, that is not accurate. 14 There are quite a few, and at least some of 15 the ones we found, kind of fall into two areas. One of 16 those is public utilities. So when they build 17 substations or similar and let me just throw out a few 18 cases -- case numbers for Your Honor. 19 The first one is a little bit long because 20 it's been amended several times, but the case number is 21 S581, PEPCO. There's also CU -- this is pretty recent - 22 - 19-07. And CU 16-04. Those are also PEPCO's. All 23 three of the first. 24 Then we have one, S2596, Washington Gas. I 25 will note, one of the PEPCO ones, I believe it's 16-04,</p>

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9 (33 to 36)

<p>33</p> <p>1 actually there, because they had a large building with 2 an office in it, they actually did put a bathroom 3 there. 4 The other ones, it was determined that there 5 wasn't -- bathroom wasn't needed, because there was 6 limited time period, limited use, limited times that 7 property was used. 8 Now, it may be true, but there's certainly been times 9 when -- when there's outages and such or emergencies 10 where people could be there 24/7 for a few days, I'm 11 imagining, while they're trying to fix outages. 12 But those are the utility cases we're going to 13 cite, and let me cite a second section. A bunch of cell 14 tower cases. Those were also evaluated. They have 15 compounds. Sometimes they have small shelters that 16 technicians can walk into and close the door. 17 And so let me give you a few cases there. CU- 18 T-1901, S2805, which was OzAH 1129, S2729, OzAH 827, 19 and Board of Appeals case, 2706. 20 Each of those cases, public facility review 21 occurred, but it was deemed -- it was so minor that 22 there was really no need for a bathroom or sanitary 23 sewer on this topic. 24 Just like in many cases it's determined that there's no 25 impact on schools, or the number of traffic is so</p>	<p>35</p> <p>1 majority of parks in our county, Montgomery County, do 2 not have permanent bathrooms. So they're saying we have 3 to have one, but they don't install them. 4 You'll see there's some -- we have exhibits -- 5 I would cite out Exhibit 43, 64, 65 and 42D on this 6 topic, and you will hear more about those. 7 But they believe it's appropriate, and I think it's 8 against the Maryland state law, the wording if not the 9 spirit of health regulations, they install permanently 10 porta pots in many parks throughout the county. So 11 we're a little perplexed at that, and then their 12 current position. 13 So what I would say is there has to be -- all 14 government actions are supposed to have a rational 15 connection and we just don't see that with this 16 bathroom requirement that you're trying to say here is 17 a necessity. 18 There is precedent from those cases we've 19 talked about. There's also laws, Maryland, COMAR, OSHA, 20 that allows -- and there's discretion here for, Your 21 Honor, in evaluating this. 22 So with that, I would thank you for allowing 23 me to have that opening, and I'm prepared to call my 24 first witness. 25 MS. LEWINTER: Can you hear me okay, Mr.</p>
<p>34</p> <p>1 limited there's no impact on -- on that public facility 2 -- the roads. 3 I also want to point out another case. It's 4 called Rosenberg vs. Maryland National Capital Park and 5 Planning Commission. Citation 269 Maryland 520 from -- 6 and in that case, regulation question required adequate 7 schools within a reasonable distance. 8 But the Court of Appeals found that the 9 standard was so general, planning commission was 10 required to consider school capacity within a mile and 11 a half of the proposed development, not just capacity 12 of the nearest elementary school. 13 So that's an important case, because it talks 14 about how to measure, and what type of guidance is 15 given about adequate public facilities. 16 I mentioned COMAR, which is very important in 17 this case. We also talked about OSHA. One second, Your 18 Honor. I'm getting close to wrapping up my opening. 19 Thank you for your -- your indulgence. 20 I guess what I would say is, it's also 21 interesting here that planning department, Maryland 22 National Park and Planning Commission, took a position 23 here that we had to have a bathroom for such a minor 24 use, on-site for such a limited amount of time. 25 It's interesting to know that the vast</p>	<p>36</p> <p>1 Hughes? 2 MR. HUGHES: I certainly can. 3 MS. LEWINTER: Can I stop sharing the screen? 4 MR. HUGHES: Yes. Thank you. 5 MS. LEWINTER: Okay. 6 MR. HUGHES: It may come -- Mr. Sekerak may 7 bring it back up shortly, but I understand. 8 MS. LEWINTER: Did that work? 9 MR. HUGHES: Did. 10 MS. LEWINTER: So Mr. Hughes, this might be a 11 bit unusual, because I know this was really just your 12 opening, but you did make a significant argument with 13 related to -- at least to the bathroom issue. 14 I think we're going to be hearing more rustic 15 roads, there are people here to testify who want to 16 speak directly to that issue. But I did want to just 17 ask you some follow up questions on the bathroom from a 18 legal perspective, if I can. 19 MR. HUGHES: Certainly. 20 MS. LEWINTER: So first of all, I wasn't clear 21 after reading through the exhibit, is there even the 22 ability on the property to construct a bathroom, if 23 that were a requirement? 24 MR. HUGHES: It's an issue we've been digging 25 at for months with both [inaudible] planning and DPS.</p>

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<p>37</p> <p>1 My understanding and my belief is, no. There is not 2 that ability to do so. 3 I do have an exhibit in there where we ask for 4 a zoning verification from DPS. If you're not aware of 5 that exhibit number, let me dig through it, but that is 6 in the record. 7 MS. LEWINTER: No, I remember that. I don't 8 remember the number offhand either, 9 but -- 10 MR. HUGHES: Yeah. And they did -- I'm sorry, 11 go ahead, Your Honor. 12 MS. LEWINTER: No, keep talking. It's fine. 13 MR. HUGHES: Yep. Yep. And they did send a 14 reply, but I didn't believe it was -- I don't believe 15 it fully answered the question, so I had additional 16 conversations with them. And I think our position is, 17 unfortunately, even if we wanted to or were willing to, 18 which we would have been, it is not possible. 19 DPS verbally told me that park and planning 20 said that they would not let us subdivide the property, 21 and even if they did let us subdivide the property, 22 they would not issue a permit. 23 So unfortunately, park and planning is asking 24 us to do something that we believe cannot even be done 25 here.</p>	<p>39</p> <p>1 MR. HUGHES: F, right. 2 My apologies, I'm really having trouble 3 finding this. 4 MS. LEWINTER: Well, as I think your co- 5 counsel was saying, I'm looking at 7.3.1.E. 6 MR. SEKERAK: Point E. 7 MS. LEWINTER: Point E point. 8 MR. SEKERAK: Point 1.F. 9 MS. LEWINTER: Point 1.F.sub-I. 10 MR. HUGHES: Yes. My -- okay. Thank you. Yes. 11 Okay. So the language starts with, will be served by 12 adequate public services and facilities. Adequate. 13 So there's not a lot of -- the first argument about we 14 think that OSHA and COMAR guide this, the county could 15 have been clearer on specifying what that means. That's 16 one position. 17 The other position just is that it is adequate 18 on site here. There's not a need. As I put in my memo 19 of March 7. There's not a need and it is adequate, and 20 it explained all the reasons. And then how it ties into 21 the OSHA and the COMAR. 22 So and there is -- again, there's precedent 23 here. All those cases I just cited regarding the public 24 utilities that have compounds and some in the cell 25 tower cases.</p>
<p>38</p> <p>1 MS. LEWINTER: Right. And then when you look, 2 I -- I heard your argument about COMAR. I read your 3 letters where you reference OSHA. 4 But when you look at the actual text of the Montgomery 5 County zoning ordinance for conditional uses that 6 require the public facilities, how do you read that? 7 And I guess specifically in light, I mean of this 8 Rosenberg case that you're citing, are you basically 9 saying that -- that statute is too general or not good 10 law in some respect? Or do you have an argument within 11 the text of that statute that would allow for no 12 bathroom? 13 MR. HUGHES: So it's multi -- our argument is 14 multi-faceted. We believe, first of all, that the 15 guidance on the topic, one argue -- one position is the 16 guidance is from COMAR and from OSHA. 17 Now, certainly the county could have -- make 18 it stronger if they wanted to, but that language they 19 have there about whether there is -- let me get the 20 exact language in front of me. Yeah. 21 Yeah. I'm looking for the code section, review 22 of sanitary services, and necessary findings. Here it 23 is. Can I have [inaudible] indulgence just for a sec? 24 I'm trying to get to the proper area. Thank you. 25 MR. SEKERAK: 7.3.1 -- 7.1, 70.3.1.E.1.F.</p>	<p>40</p> <p>1 So it's not unprecedented that it was reviewed 2 and deemed that the need for the adequate public 3 facility for sanitary sewer was so minimal that it 4 didn't have to have a bathroom on site, and that's 5 exactly what we have here. 6 It's so minimal, the time period. Again, these 7 are adults. Like most of us, we plan when we need to go 8 to the bathroom, before we go to work. And then sales 9 people are out there all day. Utility workers are out 10 there all day. 11 Our team members are out at people's 12 properties for six, eight, 12 -- 10 hours a day, 13 whatever it is, and they have to plan accordingly. 14 MS. LEWINTER: No, I -- I get your argument, 15 Mr. Hughes. I guess my question is really from a very 16 technical legal perspective is your reading of the 17 statute. So I just want to make sure I understand that. 18 MR. HUGHES: Thank you. My apologies for going 19 on too much there. 20 MS. LEWINTER: No, no, that's okay. I get your 21 argument. 22 I just want to make sure I -- so I just want 23 to make sure that I heard you correctly, that your 24 position is that guidance should be coming from COMAR 25 and OSHA to a large extent; and that adequate in this</p>

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1 context is not kind of a term of art to discuss public 2 facilities, but should be taken in kind of its general 3 meaning. And that it is adequate because the key 4 workers are on site for such a short period of time. 5 MR. HUGHES: Exactly. Just like the adequate 6 public facilities which reviewed when there's minimal 7 vehicles. 8 They say it's so minimal, we don't need to review if 9 there's an impact on roads or there's no school 10 children, so it's adequate related to the impact on 11 schools and such. So yes. Exactly, Your Honor. 12 MR. HARTSOCK: Your Honor, may I interrupt for 13 just a second since we're talking about the septic 14 issue, and I'd like to present a point of fact? 15 MS. LEWINTER: Potentially, Mr. Hartsock, if 16 it's truly just a point of fact. 17 MR. HARTSOCK: It is indeed. The applicant has 18 quoted the Emerald landscape case numerous times. And 19 I'm holding the staff report for that case in front of 20 me and I just want to read paragraph two of page six. 21 The conditional use site plan shows an 22 approved 12,500 square foot septic field on the western 23 portion of the property. The applicant's septic plan 24 was approved by MCDPS on March 2, 2016. Emerald did 25 plan to put a toilet in.	1 view that we can see. 2 MS. LEWINTER: Oh, there you go. Sorry, my 3 fault. You're absolutely right. 4 MR. HUGHES: Thank you. 5 MS. LEWINTER: I apologize. Okay. Mr. Sekerak, 6 if you can raise your right hand. Do you solemnly 7 swear, under penalties of perjury, that the statements 8 you are about to make are the truth, the whole truth 9 and nothing but the truth? 10 MR. SEKERAK: I do. 11 MS. LEWINTER: Thank you. Mr. Hughes, your 12 witness. 13 MR. HUGHES: Thank you. Could you please state 14 your name and address for the record? 15 MR. SEKERAK: My name is John Sekerak. I'm 16 with Stantek at 6 Montgomery Village Avenue in 17 Gaithersburg, Maryland. 18 MR. HUGHES: Thank you. And what is your 19 profession? 20 MR. SEKERAK: I am a land use planner and 21 landscape architect. 22 MR. HUGHES: Thank you. Madam Hearing 23 Examiner, I would note for Exhibit 31 is my prehearing 24 statement and in that we -- as required, we have the 25 bios and resumes of -- of our witnesses who we're going
42	44
1 MS. LEWINTER: Okay. Thank you for that, Mr. 2 Hartsock. 3 MR. HARTSOCK: You're welcome. 4 MS. LEWINTER: All right. So Mr. Hughes, if 5 there's nothing else on that issue, then I think we 6 should proceed to the merits. 7 MR. HUGHES: Thank you, Your Honor. I would 8 call my first witness, Mr. John Sekerak. 9 MS. LEWINTER: Mr. -- 10 MR. HUGHES: Your Honor, I'm sorry. I'm going 11 to have him move just a little bit closer. 12 MS. LEWINTER: Yeah, that's great. 13 MR. HUGHES: Thank you. 14 MS. LEWINTER: Okay. 15 MR. SEKERAK: Good morning. 16 MS. LEWINTER: Good morning. Mr. Hughes and 17 Mr. Sekerak, maybe you could angle the camera, because 18 basically, right now, I can see your hands but I can't 19 -- I can't see either of your faces. 20 MR. SEKERAK: I don't know what happened. 21 MS. LEWINTER: The camera is not on that HP 22 computer. It seems to be coming from -- 23 MR. HUGHES: No, yeah. 24 MR. SEKERAK: You -- you may have pinned, 25 because the smaller frame has the full width of our	1 to request as experts. That includes his bio in there. 2 Can you tell us a little bit about your educational and 3 professional background? 4 MR. SEKERAK: I have a bachelor's in science 5 in landscape architecture. I am a certified land use 6 planner, certified by the AICP. I'm a licensed 7 landscape architect in three states, including the 8 state of Maryland. 9 MR. HUGHES: Thank you. Have you ever been 10 qualified as an expert witness in Montgomery County? 11 MR. SEKERAK: Yes, many times. 12 MR. HUGHES: And when you say many, is it more 13 than five? More than 20? More than 50? 14 MR. SEKERAK: Dozens. 15 MR. HUGHES: Dozens? Okay. And what was -- 16 what was your extra qualification category? 17 MR. SEKERAK: Both land use planning and 18 landscape architecture. 19 MR. HUGHES: Your Honor, I'd like to offer him 20 as an expert witness in those areas. Land use planner 21 and landscape architect. 22 MS. LEWINTER: Is there any objection? Okay. I 23 have reviewed his resume prior, so I'm going to qualify 24 him as an expert. 25 MR. HUGHES: Thank you. Your Honor, I'm going

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12 (45 to 48)

<p>45</p> <p>1 to ask if you could please put up Exhibit 51 again, the 2 aerial of the property and area. And ask Mr. Sekerak, 3 once that comes up, could you describe the general 4 character in the surrounding area out there? And 5 neighborhood? 6 MS. LEWINTER: Did that work? Did that work or 7 no? 8 MR. HUGHES: Not yet. 9 MR. SEKERAK: Not yet. 10 MS. LEWINTER: Is that better? 11 MR. HUGHES: There it is. Thank you. 12 MR. SEKERAK: As Mr. Hughes had described, 13 it's 32.7-acre property with a small portion of that 14 being subject to the -- to the conditional use, just 15 3.8 acres. The balance of the property is used, it is 16 either forested or used as farmland. 17 You can see the surrounding neighborhood, the 18 area, is also predominantly farmland with a number of 19 residential lots. Some smallish -- smaller lots and 20 larger -- some larger lots. 21 There is park land to the southwest and when 22 we describe the location of the nearest homes, to the - 23 - to the west it is greater than 1000 feet that -- 24 well, to the -- to the special exception area. 25 The special exception area --</p>	<p>47</p> <p>1 the 32.7-acre property, and that shows both the -- the 2 bulk of the conditional use area and the access road or 3 driveway to it. 4 We're using the aerial photo as the base for 5 this exhibit because there is relatively little change 6 to the property, and I'll describe what those -- what 7 those changes are. Access to the property is from the 8 existing entrance along Prices Distillery Road. 9 You can see there the nature of the driveway 10 apron, the length of about 1000-foot driveway and then 11 it gets down to the more active area of the -- of the 12 conditional use. 13 You can just pan down a little bit. Right. You 14 can see the two buildings that Mr. Hughes had 15 described. The smaller building, a little bit to the 16 south, is a -- you know, its smaller footprint, but 17 it's a little bit taller, existing barn. 18 It is not within the conditional use area, but 19 it's right there at the same compound and will be -- 20 continue to be used for agricultural use. 21 The larger barn is a little lower in height, 22 but more recently built. It's open on the two sides to 23 the northwest and to the southwest. The other two sides 24 are -- are walls. The -- the gravel area to the 25 northwest of that is kind of the work yard where the</p>
<p>46</p> <p>1 MR. HUGHES: Conditional use. 2 MR. SEKERAK: Yeah. Sorry, conditional use. 3 Old habit. Conditional use is approximately 1000 feet 4 setback from Prices Distillery Road and similar 5 distance from -- not Burnt Hill Road, there's, you 6 know, the home -- closest homes along Burnt Hill Road 7 are a little less than 1000 square feet. 8 So 800 or 900 linear feet away and buffered by 9 that woodland area there. The -- regarding the -- the 10 definition of the -- of the neighborhood, for the 11 purposes of the conditional use review, we had proposed 12 a -- a delineation of that and staff had concurred with 13 that. 14 And that's on -- I forget what page of the -- 15 MR. HUGHES: I believe it's -- I believe it's 16 pages six through seven of staff report and staff 17 report -- I'm sure Your Honor is well aware of this, 18 but that is Exhibit 38. 19 Okay. Mr. Sekerak, can you describe how the 20 Chapingo Tree Care will operate on such a property and 21 is there another visual you want to use for this item? 22 MR. SEKERAK: Yes. If the hearing examiner 23 could bring up Exhibit number 52. Okay. And this is 24 illustrative of the -- of the -- of the site. 25 Zooming in on just the northern portion of the -- of</p>	<p>48</p> <p>1 vehicles maneuver. 2 Many of them -- some of them are stored out 3 there. Many of them are stored within that larger barn. 4 MR. HUGHES: Mr. Sekerak, let me interrupt 5 just for one second. Just -- this aerial that you guys 6 pulled, I think online, was this picture before Mr. 7 Alvarez bought the property? I'm just looking at some 8 vehicles down there. 9 MR. SEKERAK: I -- I don't know the date of 10 the -- of the Google Maps photo. 11 MR. HUGHES: Okay. All right. Thank you. 12 MR. HARTSOCK: Can I -- may I interrupt? 13 MR. HUGHES: No, just hold off for now, I 14 think. 15 MR. HARTSOCK: Okay. 16 MR. SEKERAK: And if you could pan out a 17 little bit, show you the -- the nature of the proposed 18 improvements. Again, no -- no new construction is being 19 proposed. 20 You can see the wood -- the existing woodland 21 behind the -- the two barns there and that's preserved 22 in a category one conservation easement. 23 Part of this application will be planting 24 additional forest and that's that extension -- you 25 know, a lengthening of that existing forest to the --</p>

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13 (49 to 52)

<p>49</p> <p>1 to the northeast.</p> <p>2 That will be planted forest, protecting an</p> <p>3 intermittent stream along that draw there that -- that</p> <p>4 will also be protected in a category one conservation</p> <p>5 easement.</p> <p>6 Similar light green treatment behind the small</p> <p>7 barn, we're simply doing some more forest planting</p> <p>8 there to supplement the existing -- existing forest,</p> <p>9 and similarly that'll be encumbered with category one</p> <p>10 conservation easement.</p> <p>11 So the -- the general use is that the</p> <p>12 employees will access the site from Prices Distillery,</p> <p>13 drive down the driveway, parked in the general vicinity</p> <p>14 of the smaller barn.</p> <p>15 You know, get their orders for the day, grab</p> <p>16 the vehicles from the larger barn or the work yard out</p> <p>17 in front of that and drive off for their duties --</p> <p>18 performing the duties for the day.</p> <p>19 Make a distinction there, will come in more in</p> <p>20 play later on. But again, the personal vehicles would</p> <p>21 be parked in the area around the existing -- the</p> <p>22 smaller barn and the work trucks and associated</p> <p>23 trailers, Bobcats, chippers, that type of thing are</p> <p>24 stored over by the larger -- larger barn.</p> <p>25 If you would like to, you know, see a couple</p>	<p>51</p> <p>1 open side of it and the siding on the -- the two</p> <p>2 enclosed sides are very similar in character as -- as</p> <p>3 the smaller, but taller barn.</p> <p>4 Both have the -- the green roof, the cupulas.</p> <p>5 In agricultural and in character.</p> <p>6 MR. HUGHES: Thank you.</p> <p>7 MR. SEKERAK: Probably go into a little more</p> <p>8 detail of the -- of the things, if we go to the site</p> <p>9 plan, Exhibit 30.</p> <p>10 MS. LEWINTER: You want to tell me where on</p> <p>11 the sites that you'd like me to focus?</p> <p>12 MR. SEKERAK: This would be good to begin</p> <p>13 with.</p> <p>14 MS. LEWINTER: Okay.</p> <p>15 MR. SEKERAK: It shows the location of the</p> <p>16 conditional use area, location of the existing forest</p> <p>17 within a category one easement, the proposed forest to</p> <p>18 be placed in category one easement and the balance of</p> <p>19 the property to be used for agricultural uses.</p> <p>20 Whether it's crops or landscape materials or</p> <p>21 Christmas trees, what have you, but agricultural --</p> <p>22 agricultural uses.</p> <p>23 MR. HUGHES: When you say landscape material,</p> <p>24 you mean landscaping trees and shrubs?</p> <p>25 MR. SEKERAK: You're right, yeah. Trees --</p>
<p>50</p> <p>1 pictures of the existing barns, those are in Exhibit 42</p> <p>2 F, I and II. So that's the -- the smaller barn that</p> <p>3 will be continued to be used for agricultural use.</p> <p>4 MR. HUGHES: And Mr. Sekerak, were you able to</p> <p>5 notice anything that stood out about this barn to you?</p> <p>6 MR. SEKERAK: It -- it's a bank barn, taller</p> <p>7 than the other barn. It's agricultural in character, so</p> <p>8 nothing --</p> <p>9 MR. HUGHES: And how -- how did the exterior</p> <p>10 look compared to the new barn? If --</p> <p>11 MR. SEKERAK: Very compatible. I mean, both</p> <p>12 barns were, in terms of the color of the roof and</p> <p>13 siding, etc.</p> <p>14 MR. HUGHES: Did it look like it had been</p> <p>15 modernized on the outside?</p> <p>16 MR. SEKERAK: Yes. Again, similar to the</p> <p>17 larger barn, which was more recently constructed.</p> <p>18 MR. HUGHES: But this barn is technically</p> <p>19 outside the conditional use area and will not be used -</p> <p>20 -</p> <p>21 MR. SEKERAK: Correct, correct. Simply for</p> <p>22 agricultural use.</p> <p>23 MR. HUGHES: Thank you. Continue, I apologize.</p> <p>24 MR. SEKERAK: All right. The -- and the next</p> <p>25 photo is of the larger barn. So this is of the open --</p>	<p>52</p> <p>1 trees and shrubs, yes.</p> <p>2 MR. HUGHES: For -- for the farm, not to be</p> <p>3 sold for any other reason.</p> <p>4 MR. SEKERAK: Yeah, not -- yep.</p> <p>5 MR. HUGHES: I mean, not to be sold as part of</p> <p>6 the conditional use.</p> <p>7 MR. SEKERAK: Right, correct. Correct.</p> <p>8 MR. HUGHES: Thank you.</p> <p>9 MR. SEKERAK: Thanks for clarifying that. On</p> <p>10 the right-hand side, there's tabulation showing the</p> <p>11 compliance with the development standards for the AR</p> <p>12 zone and for landscape contractor use.</p> <p>13 Probably go into some more of those in detail</p> <p>14 later on, but in the upper left-hand corner, there's</p> <p>15 more of a detail of the conditional use area.</p> <p>16 MR. HUGHES: Yes, thank you.</p> <p>17 MR. SEKERAK: And you can see the treatments</p> <p>18 there regarding where the employee vehicles will be</p> <p>19 parking and the work yard, the two buildings, six-foot</p> <p>20 board on board privacy fence along the northwest</p> <p>21 property line and --</p> <p>22 MR. HUGHES: And -- and how -- I mean, roughly</p> <p>23 how long is the -- the fence proposed? It's just --</p> <p>24 it's in the compound area, right? Not the whole -- not</p> <p>25 the entire --</p>

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14 (53 to 56)

<p>53</p> <p>1 MR. SEKERAK: Yeah. It's -- it's not needed or 2 necessary or required for the entire length of -- of 3 the driveway. That would be unnecessary and -- and 4 clumsy. It's just within this particular area. 5 MR. HUGHES: Got you. 6 MR. SEKERAK: Of -- of the conditional use. 7 And I'm sorry. I had meant to point out when we had the 8 illustrative up, the location of -- of the proposed 9 planters. So if I can -- if I can ask you to pull 52 10 back up. 11 That's not shown on the -- obviously on the 12 site plan itself. So we're aligning the -- the driveway 13 with -- with some shade trees. Roughly one every 100 14 feet. Just a -- and then more significantly to the 15 northeast of the work yard, a significant evergreen 16 buffer there. 17 If -- if you can see that going from the north 18 corner of the large barn sweeping over to the -- over 19 to the driveway, and that will completely buffer views 20 of the work yard. 21 And I'll show you some street views a little 22 bit later to show the -- the nature of the view from 23 Prices Distillery Road. Again, this is over 1000 feet 24 away and so that would do any -- you know, buffer any - 25 - any possible views over that distance and if</p>	<p>55</p> <p>1 subject area of the parking compound. 2 We were making a distinction between those 3 areas of parking for the -- the company -- or I'm 4 sorry, the employee vehicles and then the equipment, 5 which includes company trucks, but also items, you 6 know, like the trailers and the Bobcats and that -- 7 that type of stuff. 8 So we had made that distinction consistent 9 with the understanding with staff that we had made on a 10 previous landscape contracting conditional use and that 11 was memorialized in the email from park and planning 12 staff, and that's in Exhibit 42. 13 I don't know if you need to -- 14 MR. HUGHES: I think it's 42 H, in fact. 15 MR. SEKERAK: Thank you, 42 H. And -- 16 MS. LEWINTER: Do you want me to go there, or 17 do you just want me to know [inaudible]? 18 MR. SEKERAK: I don't -- I don't think it 19 necessary that you pull -- pull that up. 20 But we were making the distinction because, well, when 21 it comes to the -- well, the calculations on the number 22 of spaces for something like number of ADA spaces or 23 number of motorcycle spaces that would be required, it 24 would be nonsensical to include the number of trailers 25 or Bobcats and those types of vehicles in those</p>
<p>54</p> <p>1 intervening crops didn't already interrupt that view. 2 And then there are other shade trees being 3 provided in proximity of the -- the parking area. 4 Go into more detail regarding the landscape 5 plan or -- 6 MR. HUGHES: Is there any more detail you want 7 to share about the parking or is this a time -- do you 8 want to talk about Exhibit 42 at this point? About 9 Metro Case or later on? 10 MR. SEKERAK: Yeah, we can go to the Exhibit 11 29, which is the landscape plan. You can see the -- how 12 the illustrative illustrates the location of those -- 13 of -- of the proposed trees. And on the right-hand 14 column, is tabulation regarding how we -- how we meet 15 all the landscape -- how we are meeting all the 16 landscape planting requirements for the -- in the 17 zoning ordinance regarding buffering landscape 18 contracting use and -- and required landscaping for -- 19 for parking compounds. 20 There -- there was a point -- let's see. In 21 the upper left-hand corner, there's a -- an exhibit 22 that shows kind of both of those, yeah. That looks 23 good. 24 The area of the parking compound, staff report 25 had differed with what we had determined to be the</p>	<p>56</p> <p>1 calculations regarding the number of -- or vehicles. 2 Similarly, how we treat the landscape 3 requirements of it. 4 We do want to provide shade trees for -- for those -- 5 for those employee vehicles while they're parked there 6 all day, but the -- the equipment that is addressed in 7 the -- there are other provisions in the -- in the code 8 for buffering landscape contracting use or tree care 9 use. 10 And so that -- that is handled differently. So 11 we maintain that we have calculated the number of 12 spaces required and -- and address the landscape 13 contracting. I'm sorry, the landscape buffering 14 requirements for the -- the parking compound correctly. 15 MR. HUGHES: So your position is that 42 H, 16 that email, with multiple staff members from park and 17 planning in the case, [inaudible] should be the guiding 18 principle for this topic? Is that your position? 19 MR. SEKERAK: That -- that's correct. And I'll 20 read an excerpt. When one looks at the definitions of 21 landscape contractor and parking in sections 3.55 and 22 3.59 respectively, it can be inferred that the 23 necessary parking for the fleet vehicles are inherent 24 with the landscape contractor use and that the parking 25 for fleet vehicles should not be considered under</p>

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15 (57 to 60)

<p>57</p> <p>1 section 6.2.9. 2 It could be interpreted that section 6.2.9 3 only applies to the necessary parking for vehicles of - 4 - or employees of that particular use. 5 MR. HUGHES: And who -- who wrote that email? 6 MR. SEKERAK: Doug Johnson. 7 MR. HUGHES: And where does Mr. Johnson work? 8 MR. SEKERAK: He is park and planning staff. 9 MR. HUGHES: And -- and who was copied on that 10 email? 11 MR. SEKERAK: Phillip Bestas, Ben Berbert and 12 the applicant team. 13 MR. HUGHES: Okay. And -- and Phillip and Ben 14 both work for park and planning as well? Is that 15 correct? 16 MR. SEKERAK: That's correct. 17 MR. HUGHES: And the -- okay. So your position 18 is that's the correct interpretation and that's the one 19 you believe should apply here? Is that your 20 professional opinion? 21 MR. SEKERAK: Correct. Correct. And I don't 22 want to belabor that. 23 MR. HUGHES: Yeah. 24 MR. SEKERAK: But that -- that is a lead up 25 to, you know, my testimony that we are in full</p>	<p>59</p> <p>1 those lines. 2 With the -- the slight change of use of the 3 property for -- for this conditional use, it did 4 require an amendment to a previously approved final 5 forest conservation plan. New worksheet was -- was 6 prepared. It indicated a small amount of forest -- 7 additional forest planting to be done. We are doing 8 well in excess of that, to put forest in these 9 appropriate areas. 10 They will be then encumbered with a category 11 one conservation easement and that amendment to the 12 final forest conservation plan was reviewed and 13 approved by the planning board two weeks ago. 14 MR. HUGHES: Very good. So I don't think Your 15 Honor needs to pull it up, but you referenced the 16 forest conservation plan pages, which I believe are 17 Exhibit 27 A through E. Does that seem right to you? 18 MR. SEKERAK: Yes. 19 MR. HUGHES: Yeah. 20 MR. SEKERAK: Yeah. The -- the -- the five 21 sheets of the now approved final forest conservation 22 plan. 23 MR. HUGHES: Okay. But as you said, the -- the 24 planning board approved the forest conservation plan. 25 So if we're fortunate enough to get this</p>
<p>58</p> <p>1 conformance with the development standards, including 2 the landscape buffering standards of -- of the code for 3 the -- for the proposed use. 4 MR. HUGHES: Okay. And so hopefully the 5 hearing examiner will agree with planning staff and 6 that email from that exhibit and you, but if for some 7 reason hearing examiner did not, could we meet the 8 requirements at staff in this application are 9 requiring? 10 MR. SEKERAK: We -- we could, by putting 11 planting islands in the middle of the work yard, which 12 would be inappropriate. 13 Different regarding sustainability, etc., but yeah, it 14 wouldn't be the first time I've done something that -- 15 in order to meet an interpretation of the code in order 16 to -- that would be otherwise unnecessary or ill 17 advised. 18 MR. HUGHES: Very good. Thank you. Is there 19 more you want to talk about, about the landscaping plan 20 or the forest conservation or should we go onto the 21 lighting topic? 22 MR. SEKERAK: Well, regarding forest 23 conservation, there -- the plans for that are also in - 24 - in the record and I don't think it's necessary to 25 bring those up unless anybody has any questions along</p>	<p>60</p> <p>1 conditional use that issue's been addressed by them, is 2 that correct? 3 MR. SEKERAK: That -- that's correct. There 4 were conditions of approval, the -- the conditions of 5 approval of the original plan survive, and some 6 additional ones were added just to make the 7 implementation and the inspection stuff for 8 contemporary -- their contemporary standards now. 9 MR. HUGHES: Good. Do you want to address the 10 -- the lighting topic or? 11 MR. SEKERAK: Yeah. No new lighting. That's 12 also indicated on the landscape plan. I don't think you 13 need to bring that back up, but the -- the -- the 14 exhibit, but the -- there is no new proposed lighting. 15 There's very limited lighting on the -- on the site; 16 wall packs mounted on the -- on the buildings 17 themselves, and they're in conformance with the zoning 18 ordinance. 19 MR. HUGHES: And is it correct that on staff 20 report, which is Exhibit 38, page 25 staff agreed with 21 your position on the lighting? 22 MR. SEKERAK: That's correct. 23 MR. HUGHES: Okay. Very good. Thank you. Would 24 you like to talk -- you mentioned earlier you're going 25 to talk about development standards. Would you like to</p>



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16 (61 to 64)

<p>61</p> <p>1 talk about at this point, or ?</p> <p>2 MR. SEKERAK: I go over any of those in -- in</p> <p>3 detail. Those are tag related on the site plan, and</p> <p>4 they indicate that we meet all the development</p> <p>5 standards for the AR zone and the landscape contracting</p> <p>6 use in -- in that zone. So if you'd like to go over</p> <p>7 those point by point we can certainly do that to -- I</p> <p>8 would then ask that the site plan be brought up and we</p> <p>9 can --</p> <p>10 MR. HUGHES: Well, perhaps with Your Honor's</p> <p>11 indulgence, I -- maybe we don't need to do that. I</p> <p>12 would say that's staff report also concurred with that</p> <p>13 on page 12 and 13. Is that your understanding?</p> <p>14 MR. SEKERAK: Yes.</p> <p>15 MR. HUGHES: Okay. Very good. Okay. So your --</p> <p>16 your position is in your -- and it shows on the site</p> <p>17 plan that you -- that we meet the development standards</p> <p>18 for the AR zone here, correct?</p> <p>19 MR. SEKERAK: Correct. Correct. Development</p> <p>20 standard for the AR zone, development standards for</p> <p>21 landscape contracting use. When it comes to development</p> <p>22 standards for the required landscape buffering or -- or</p> <p>23 treatment of parking lots, we had that one point of --</p> <p>24 we -- we have that one point of disagreement with --</p> <p>25 with staff re- --regarding the -- the subject area of</p>	<p>63</p> <p>1 describe how this is set up. So we -- we took Google</p> <p>2 Street view images from three different locations on</p> <p>3 the site, and that's indicated in the -- the -- the key</p> <p>4 map on the lower right.</p> <p>5 So zoom into just that lower right one, which</p> <p>6 is the air photo of the property. And it shows where</p> <p>7 those three locations are; first, from the Prices</p> <p>8 Distillery Road and --</p> <p>9 MR. HUGHES: We're starting at the top, at the</p> <p>10 clockwise, perhaps?</p> <p>11 MR. SEKERAK: Yes. But not yet. Let me -- let</p> <p>12 me describe the --</p> <p>13 MR. HUGHES: The map?</p> <p>14 MR. SEKERAK: Yeah. The map first. So that --</p> <p>15 you see where that was taken? Now, that was selected be</p> <p>16 -- excuse me. There we go. That particular spot along</p> <p>17 the frontage was taken because that is the site where</p> <p>18 it had the clearest view of into the, you know, the</p> <p>19 work area.</p> <p>20 And we'll be able to see where, you know, that</p> <p>21 is in -- in a moment. Other locations along that</p> <p>22 frontage was not as -- it was not as visible. The --</p> <p>23 the next one going at is at the intersection of Prices</p> <p>24 Distillery Road and Burnt Mill Road. And that --</p> <p>25 MR. HUGHES: Burnt Hill, correct?</p>
<p>62</p> <p>1 the -- of the parking compound.</p> <p>2 MR. HUGHES: Very good. Thank you.</p> <p>3 MR. SEKERAK: So with -- with the</p> <p>4 understanding of that interpretation, as we have</p> <p>5 previously established through parking plan- --planning</p> <p>6 we are in full conformance with the landscape sections</p> <p>7 of the code also.</p> <p>8 MR. HUGHES: Thank you. Would you like to move</p> <p>9 on to some of the necessary findings at this point? Is</p> <p>10 there some other topics you want to hit upon related to</p> <p>11 the operations?</p> <p>12 MR. SEKERAK: I think this would be a good</p> <p>13 time to go over the -- the views and --</p> <p>14 and --</p> <p>15 MR. HUGHES: You said you were going to show</p> <p>16 some of the --</p> <p>17 MR. SEKERAK: Yes.</p> <p>18 MR. HUGHES: -- other [inaudible] views?</p> <p>19 MR. SEKERAK: Correct.</p> <p>20 MR. HUGHES: Which is exhibits 50 --</p> <p>21 MR. SEKERAK: 54-I. 54-I.</p> <p>22 MR. HUGHES: Thank you, Your Honor.</p> <p>23 MR. SEKERAK: If you could rotate</p> <p>24 counterclockwise once. That -- that's great. Okay. Go</p> <p>25 ahead and pan out. Show the whole sheet, so I can</p>	<p>64</p> <p>1 MR. SEKERAK: Burnt Hill. Burnt Hill. Yeah.</p> <p>2 And that's just a representative of --</p> <p>3 and -- and you'll see in the photograph where --</p> <p>4 because that was, you know, an important spot in the --</p> <p>5 in the surrounding area.</p> <p>6 And then lastly, along Burnt Hill Road, that</p> <p>7 is -- that last one at the bottom of the photograph is</p> <p>8 where we could see the buildings most clearly from</p> <p>9 along there. So we can go in that order. We'll go to</p> <p>10 the top left.</p> <p>11 So this is the straight Google Street view</p> <p>12 photograph. You see how distant the -- the -- probably</p> <p>13 it's a thousand feet away to -- to the area. How the</p> <p>14 barns, the big barn there and the smaller barn, you</p> <p>15 know, behind it there.</p> <p>16 There's topographic changes that interrupt</p> <p>17 most of the view to the landscape contracting yard, or</p> <p>18 the -- the work yard. And if you recall from the</p> <p>19 illustrative and the landscape plan, even at that</p> <p>20 distance we are putting up a -- a significant evergreen</p> <p>21 b- --buffer there.</p> <p>22 Now we -- we're -- we're buffering at that</p> <p>23 location because we do not want to interrupt views, the</p> <p>24 -- the greater views of the -- of the surrounding area.</p> <p>25 We want to keep those open pastoral -- pastoral views</p>

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17 (65 to 68)

<p>65</p> <p>1 from the -- from Prices Distillery Road. 2 We did not want to, you know, put evergreen 3 buffering along the road itself, which would interrupt 4 those views from the, yeah, fr- --from the road. All 5 right. We can go to the photograph just to the right of 6 that. 7 MR. HUGHES: Let me just ask you a question on 8 that topic. That's our view -- that's our position, 9 that that's the best way to do it. 10 MR. SEKERAK: Mm-hmm. 11 MR. HUGHES: If the hearing examiner felt 12 otherwise and felt screening should be up on that area, 13 is that something that the applicant could do? 14 MR. SEKERAK: That -- that certainly is 15 something the applicant could do. That would be 16 unfortunate and contrary to the recommendations of -- 17 of master plan, but -- but is something that we could 18 do. Yes. 19 MR. HUGHES: Yeah. Thank you. 20 MR. SEKERAK: All right. So the photograph on 21 the screen now is the view from the intersection of -- 22 of the two roads. Only the large barn is visible. The 23 smaller barn is -- I'm scared by the existing 24 woodlands. 25 MR. HUGHES: Mr. Sekerak, I'm sorry to</p>	<p>67</p> <p>1 stream to the left behind there, which is wooded in the 2 surge, so lower elevations are -- are significantly 3 wooded and -- and to the right -- it's a higher 4 elevation of -- of a -- of a hole that's, you know, 5 over 30 feet higher than -- than the work yard itself. 6 MR. HUGHES: Thank you. Continue, please. 7 MR. SEKERAK: So not much to see here that, 8 you know, that -- because the well, one of the two 9 buildings are -- are -- you -- you can't even see it. 10 And the work yard is not only -- and this is about a 11 quarter mile away. And it's buffered by the -- the -- 12 the larger barn and the topographic changes. 13 MR. HUGHES: Right. 14 MR. SEKERAK: And then the photograph in the 15 lower left, so along Burnt Mill Road. 16 MR. HUGHES: Burnt Hill. 17 MR. SEKERAK: Burnt Hill Road. I got to get my 18 glasses on. The -- the existing woodland area, again, 19 protected with a category one conservation easement, 20 obscures most of -- of the view. You can see the small 21 barn, just a little bit of the roof line there because 22 it's -- it's taller than the other barn. And this is 23 about a thousand, similarly about a thousand feet away. 24 MR. HUGHES: Okay. 25 MR. SEKERAK: So I'm -- I'm ready to move onto</p>
<p>66</p> <p>1 interrupt you, but can you talk a little bit about the 2 elevations in this area and impacting our property? Are 3 you able to talk about that a little bit? 4 MR. SEKERAK: It -- the -- the -- the subject 5 area of the conditional use is down in a bit of a -- of 6 a [inaudible]. Low -- lower elevation, you can see it 7 doesn't -- doesn't interrupt the view lines of -- of 8 the horizon. It's views beyond. 9 From strategic locations there's views of 10 Sugarloaf Mountain, for instance. And so it's 11 uninterrupted by -- by this because it's at a lower 12 elevation from most surrounding -- surrounding areas. 13 MR. HUGHES: So from the driveway, as you 14 drive to the compound area, that can just show you the 15 elevation goes down, is that correct? 16 MR. SEKERAK: Yes. It's a -- it's a -- it's a 17 gentle de- --decrease in elevation going. 18 MR. HUGHES: Okay. And do you know, does the 19 el -- what does the elevation do as you continue that 20 way on the other side of the property? 21 MR. SEKERAK: If the driveway had gone, you 22 know, continued it would go up a significant hole [ph]. 23 MR. HUGHES: Okay. Certain directions. 24 MR. SEKERAK: Right. Yeah. You got the stream 25 to the -- to the left as you're driving that way. The</p>	<p>68</p> <p>1 the -- 2 MR. HUGHES: That's certified. Yeah. 3 MR. SEKERAK: -- required findings, if you 4 are. 5 MR. HUGHES: Yep. Mr. Sekerak -- 6 MS. LEWINTER: I'm sorry, should I stop this 7 screen share or not? 8 MR. SEKERAK: I believe so. Yeah. 9 MS. LEWINTER: Okay. 10 MR. HUGHES: Thank you, Your Honor. 11 Under zoning code necessary findings 597.3.1E, 12 one through six, under E(1)(a); does this satisfy any 13 applicable previous approvals on the subject site, or 14 if not the previous approval must be amended. Is that 15 applicable here? 16 MR. SEKERAK: The -- the only prior approval 17 was the final force conservation plan, which was for a 18 much larger area. The -- for the purposes of the -- the 19 sub- --subdivision to -- for the -- for some of the 20 residential lots in -- in -- in -- within the 21 neighborhood. 22 So this -- so the -- the amending that 23 previously improved final forest conservation plan was 24 the only one in, like -- like, we indicated that was we 25 are doing reforestation in excess of the what's</p>

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18 (69 to 72)

<p>69</p> <p>1 required and -- and that was approved by the planning 2 board 3 MR. HUGHES: And that original forest 4 conservation plan, that was years ago? Or do you know 5 roughly when that was? 6 MR. SEKERAK: 2015 is when it was originally. 7 MR. HUGHES: Okay. 8 MR. SEKERAK: And this has -- this has been, I 9 believe this has been the first amendment. 10 MR. HUGHES: Okay. And 2015 was before Mr. 11 Alvarez entered the property, is that correct? 12 MR. SEKERAK: That's correct. 13 MR. HUGHES: Okay. Thank you. And in your 14 professional opinion does -- does this -- you 15 substantially conform with the recommendations of the 16 applicable master plan? Can you talk to us about that 17 topic? 18 MR. SEKERAK: Yeah. The -- the applicable 19 master plan is the 1984 Damascus Master Plan. And I -- 20 I generally agree with staff's discussion of that in 21 the staff report. The site is not specifically 22 addressed in -- in -- in the master plan. 23 But it is, you know, the most applicable of 24 it, you know, of the very many general recommendations 25 is to maintain the rural and agricultural character of</p>	<p>71</p> <p>1 referenced staff concurred -- staff report is Exhibit 2 38, and, was it on pages 13 or 14? Is that your 3 recollection where they addressed this topic of master 4 plan, Damascus Master Plan? 5 MR. SEKERAK: Yes. The 1984/5 Damascus Master 6 Plan is -- is addressed, yes. On pages 13 and 14. 7 MR. HUGHES: I'm sorry. Is it, just quick 8 clerical point, is it 84 or 85, Damascus Master Plan? 9 MR. SEKERAK: '85. 10 MR. HUGHES: '85. 11 MR. SEKERAK: Did I say '84? 12 MR. HUGHES: Initially I think you did. 13 MR. SEKERAK: 1985. 14 MR. HUGHES: Thank you. 15 MR. SEKERAK: And so in addition to that I'd 16 like to discuss the Rustic Roads Master Plan. 17 MR. HUGHES: The rustic roads? 18 MR. SEKERAK: Functional Master Plan. 19 MR. HUGHES: Yes. Can you review it and 20 provide your professional opinions on it? 21 MR. SEKERAK: Well, Mr. Hughes had submitted 22 in the record Exhibit number 41, a letter on July 2nd, 23 letter to the planning board on many of the rationale 24 and -- and points. 25 And -- and I certainly agree with -- with any</p>
<p>70</p> <p>1 -- of the -- within the -- of the agricultural areas of 2 -- of the master plan. 3 So I'd certainly agree that it -- it does meet 4 -- meet that recommendation. Most of the site remains 5 in agricultural use, and the views retain the 6 agricultural character of -- of -- of the -- of the of 7 the area. 8 Yeah. The -- because of the, you know, 9 certainly because of the, you know, the sheer distance 10 of the conditional use area, and well, mostly due to 11 the, you know, the modest intensity of this use. This 12 is not a -- a typical landscape contracting use. 13 You know, there -- there are no deliveries, 14 there's no, you know -- you know, clients, visitors, 15 etc. There's no signage, etc. The nature of it is -- is 16 so, you know, less intensive as -- as Mr. Hughes had 17 described in his in -- introduction for -- for the 18 case. 19 But also, then that -- that very modest use is 20 set back so significantly from any area that would -- 21 it would be viewed from. And with the additional 22 buffering and the additional forest it's -- and it -- 23 and topographic characteristics, it certainly maintains 24 the agricultural character of the area. 25 MR. HUGHES: Thank you. I think you'd</p>	<p>72</p> <p>1 of those, but let me -- let me go into the, you know, 2 the nature of the -- of the master plan. And -- 3 MR. HUGHES: Again, you're talking about the 4 Rustic Road Functional Master Plan, correct? 5 MR. SEKERAK: Yes. 6 MR. HUGHES: We've -- we've moved on. 7 MR. SEKERAK: Yes. We have. The 1996, and so 8 unless directed otherwise, I -- this -- this will be 9 addressing the -- the Rustic Roads Functional Master 10 Plan. 11 MR. HUGHES: Thank you. 12 MR. SEKERAK: And I'd like to read, quickly, 13 in the -- in the purpose of the Rustic Roads Functional 14 Master Plan, quickly, from page five of the -- of -- of 15 the -- of the master plan to the last paragraph. 16 Page five begins with the rustic roads 17 designation is not intended to affect the use of 18 adjoining land, except in the design of access to 19 subdivision. Is not intended to prevent needed 20 improvements to adjoining land uses or to the roads and 21 bridges themselves. 22 So -- so when it comes to the -- the purpose, 23 it's -- it's not to restrict the -- the nature of the 24 land uses adjoining these roads. That -- that's -- 25 that's the job of the -- of the zoning ordinance.</p>

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19 (73 to 76)

<p>73</p> <p>1 And this does not alter what are permitted 2 uses and what uses are not permitted, and what uses are 3 permitted by conditional use. So -- so regarding the -- 4 the applicable purposes of the -- of the rustic roads 5 is the -- the character of the road itself and 6 character of the views from -- from the road. 7 MR. HUGHES: All right. 8 MR. SEKERAK: Regarding the -- regarding of 9 the -- the character of the roads themselves, itself, 10 if I could ask the hearing examiner to pull up 42G. And 11 I understand there are five separate ones: and we -- 12 we'll be looking at, quickly, at -- at each one. 13 MR. HUGHES: Five separate pictures. 14 MR. SEKERAK: There's five separate pictures. 15 MS. LEWINTER: Is that working? 16 MR. HUGHES: Yeah. But I think that's -- I 17 think if it -- we're actually trying to get to 42G. 18 That is, I think -- 19 MS. LEWINTER: 42G? 20 MR. HUGHES: G. Apologies. Yeah. 21 MS. LEWINTER: There we go. Okay. Is that 22 better? 23 MR. HUGHES: Yes. Thank you. 24 MR. SEKERAK: So this is just to indicate the 25 character of driveways wi- --within</p>	<p>75</p> <p>1 one more time? This is Tom Hartsock. I'm probably the 2 only one on this -- this -- this call who has lived at 3 this location and knows the history of all those places 4 that they're showing pictures of. And many of them are 5 grandfathered in because they were established -- 6 MS. LEWINTER: Okay. So, Mr. Hartsock, so I'm 7 going to let you then do that through your own 8 testimony and -- when we'll -- we'll conclude. 9 MR. HARTSOCK: Okay. Fair enough. 10 MS. LEWINTER: Okay. Thank you. 11 MR. SEKERAK: So today -- 12 MR. HUGHES: Just a quick point, Mr. Sekerak. 13 I should have asked before, have you been out to the 14 property in the area yourself? 15 MR. SEKERAK: Many times, yes. 16 MR. HUGHES: Okay. And -- and the pictures the 17 here the examiner just showed of other driveways, are 18 those pictures you took or areas you've seen? 19 MR. SEKERAK: Oh, the areas I've seen. I did 20 not take those pictures, but I've -- I've -- I've 21 traveled the -- the surrounding neighborhood many times 22 for -- to help me establish my opinion regarding the 23 character of the area. 24 MR. HUGHES: Thank you. Continue. My 25 apologies.</p>
<p>74</p> <p>1 the -- within the -- the immediate area within the -- 2 within the neighborhood. These are not, you know, 3 desperate ones from throughout the county. 4 The- --these are driveways within the 5 immediate area of -- of the -- of the center property. 6 So -- and you could probably, kind of scroll through 7 them. That -- that was -- that was one. It shows the -- 8 the gravel nature of it, the width. 9 It's another one within the imme- --immediate 10 area. File names for these include the -- the exact lo- 11 --locations of them. Width, you know, gravel or 12 millings. This one is the subject property, so -- and 13 then looking straight up the -- straight up the -- the 14 -- the driveway. 15 So again, similar in character with the other 16 one nearby. So regardless of whether it's agricultural 17 use or -- or some other use they're all rather very 18 similar in character. We're -- we -- we're not putting 19 in a new driveway. 20 Like, you know, for instance, the -- the 21 Emeralds case, that was considered consistent with the, 22 by staff, considered consistent with the Rustic Roads 23 Functional Master Plan. 24 MR. HARTSOCK: Your Honor, in -- in the 25 interest of time could I introduce, or -- or interrupt</p>	<p>76</p> <p>1 MR. SEKERAK: And the point is that the -- the 2 existing driveway, both in its, you know, current state 3 and before it was resurfaced well, improved with 4 additional millings, is consistent with the nature of 5 driveways in -- in this surrounding area on rustic 6 roads. 7 The second point, is the character of the 8 views from -- from the rustic roads. Very -- it's one 9 of the reasons Price Distillery Road is a -- is -- wa- 10 --was designated, according to description in there, is 11 the wide-open panoramic views. So we -- we -- we -- we 12 do maintain that. It's unfortunate power lines 13 along -- along the roads that depart from it. But other 14 than that, it's wide-open views. And as you saw from 15 those street view photographs where we are maintaining 16 those -- those views, the evergreen buffering is right 17 there at the -- at the location of the use. So we're 18 not -- yeah. I'll start. 19 If -- if you -- if you could consider this, 20 you know, something a thousand feet away to be the 21 foreground, we are ma -- you know, we are protecting 22 that foreground from the -- the more distant views of - 23 - of the countryside, and all the way out to the 24 horizon. So we are consistent with the -- the Rustic 25 Roads Functional Master Plan both by maintaining the</p>

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20 (77 to 80)

<p>77</p> <p>1 character of the road itself and the views from the 2 road. 3 MR. HUGHES: Good. Thank you. Is there any 4 more you want to address on -- on that topic or should 5 we move on? 6 MR. SEKERAK: Regarding the -- the master 7 plan? 8 MR. HUGHES: Yes. 9 MR. SEKERAK: Not unless the hearing examiner 10 has any questions. 11 MR. HUGHES: All right. 12 MS. LEWINTER: I do have a couple of 13 questions, but I can reserve those for the end. Or 14 would you prefer for me to address those right now, Mr. 15 Hughes? 16 MR. SEKERAK: Regarding -- the questions 17 regarding the master plan? 18 MS. LEWINTER: The Rustic Roads Functional 19 Master Plan. 20 MR. HUGHES: If -- if -- if you don't mind 21 maybe we could -- there might be some other questions 22 you have. Maybe we could hold those until he's 23 completed. 24 MS. LEWINTER: That's fine. He just had said 25 that, so I was just responding.</p>	<p>79</p> <p>1 master plan by definition, does not alter the nature of 2 the area. And as I just had just testified, that this 3 conditional use is consistent with the recommendation 4 to both the Damascus Master Plan and the Rustic Roads 5 Functional Master Plan. 6 That said, there is but, you know, there is 7 one other special exception within the defined 8 neighborhood; special exception 1998, I believe. But 9 very -- it -- it doesn't really appear active, but 10 again, just one other special exception within -- 11 within the -- within the defined neighborhood. 12 MR. HUGHES: Very good. And in your 13 professional opinion, will the -- will the use -- is it 14 true that the use will not cause harm to the 15 neighborhood as a result of non-inherent adverse 16 effects along, or the combination of inherent and non- 17 inherent adverse effects, based upon the -- the 18 criteria, the -- the categories in the code? 19 MR. SEKERAK: Yes. Look at staff report, page 20 30. 21 MR. HUGHES: So Exhibit 38, which is a staff 22 report, page 30. Your reference, is that correct? 23 MR. SEKERAK: Yes. It begins on page 29. 24 MR. HUGHES: Court's indulgence briefly. Thank 25 you.</p>
<p>78</p> <p>1 MR. SEKERAK: Thank you. 2 MR. HUGHES: Thank you very much. 3 MS. LEWINTER: We can wait to the end. 4 MR. HUGHES: Okay. Mr. Sekerak, in your 5 professional opinion, is this use harmonious with and 6 will not alter the character of the surrounding 7 neighborhood in a manner inconsistent with the plan? 8 MR. SEKERAK: That -- that -- that -- it is 9 harmonious and will not alter the -- the character of 10 the neighborhood. The -- the use is so modest. The use 11 is so distant from the surrounding travel ways. 12 And especially compared to a typical landscape 13 contracting use, that -- that -- that is, you know, 14 permitted by conditional use. And the visuals are so 15 non-obtrusive that it is harmonious and will not alter 16 the character. 17 MR. HUGHES: Thank you. And is it true it will 18 not, when evaluated in conjunction with the existing 19 improved conditional uses in any neighboring 20 residential detach zone, increase the number, 21 intensity, or scope of the conditional uses 22 sufficiently to affect the area adversely or alter the 23 predominantly residential nature of the area? 24 MR. SEKERAK: Yeah. Conditional use that is -- 25 substantially conforms with the recommendations of the</p>	<p>80</p> <p>1 MR. SEKERAK: It is page 32nd G, is it? It 2 discusses the inherent and non-inherent characteristics 3 regarding inherent vehicle -- vehicle trips. It 4 includes pedestrian trips, but I don't know if that's 5 necessarily an inherent characteristic of a -- of a 6 landscape contracting use. 7 You know, parking for employees, vari- -- 8 varied hours, noise, or odor -- odors, work yard area 9 and -- and the lighting. So -- and those are consistent 10 with other, you know, previous landscape contract staff 11 reports for landscape contracting use. 12 Staff identified the topography as non- 13 inherent and lack of on-site restroom as -- as non- 14 inherent. It -- it certain -- I -- I don't know if the 15 -- the topography is -- is all that unique on this one 16 but it -- but the nature of the topographic relief, 17 like what you had asked me to describe, is a -- is a -- 18 is a benefit for -- for this particular use. 19 The lack of long site facilities, which is 20 certainly unusual to not have a restroom on the 21 landscape con- --contracting use, but as we described, 22 this is not a typical landscape contracting use. This 23 is a tree care company with very little occupancy on- 24 site. No enclosed builds -- 25 MR. HARTSOCK: [Inaudible].</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 MR. SEKERAK: No no -- enclosed --</p> <p>2 MR. HARTSOCK: Laura with rustic roads</p> <p>3 [inaudible].</p> <p>4 MS. LEWINTER: Mr. Hartsock, I think you're</p> <p>5 not on mute. If you could mute yourself.</p> <p>6 MR. HUGHES: I'm sorry.</p> <p>7 MS. LEWINTER: Mr. Hartsock, you don't seem to</p> <p>8 be on mute. We can hear you chatting. Thank you.</p> <p>9 MR. SEKERAK: Oh the -- the -- the very -- the</p> <p>10 -- the relatively unique nature of this very limited</p> <p>11 use compared to other landscape contracting uses and --</p> <p>12 and -- and the such, make that non-inherent</p> <p>13 characteristic of this particular use certainly not</p> <p>14 elevated to the point where it would warrant denial of</p> <p>15 the application.</p> <p>16 MR. HUGHES: Thank you. Is this a point where</p> <p>17 you want to talk about Exhibit 53 visual, or -- or is</p> <p>18 that something we should address later on?</p> <p>19 MR. SEKERAK: This would -- this would be a</p> <p>20 good --</p> <p>21 MR. HUGHES: Sure.</p> <p>22 MR. SEKERAK: Three. Yes. This would be a good</p> <p>23 -- good point for that.</p> <p>24 MR. HUGHES: If your -- yeah. If Your Honor</p> <p>25 wouldn't mind. Thank you.</p>	<p style="text-align: right;">83</p> <p>1 at home. There are plenty of alternatives for on their</p> <p>2 way in and on their way home. So this quickly</p> <p>3 identifies seven of them.</p> <p>4 Four of them, are public parks with -- with</p> <p>5 restroom facilities. And three of them, are I -- I just</p> <p>6 chose the -- the Dunkin Donut and the Starbucks type of</p> <p>7 thing, because we knew no, they will be open at the</p> <p>8 early hours that landscape contractors are coming</p> <p>9 forth.</p> <p>10 So again, these you -- you've heard that there</p> <p>11 are, you know, state criteria or OSHA -- OSHA criteria</p> <p>12 for mobile workforces not needing a permanent restroom</p> <p>13 facility for the nature of their work.</p> <p>14 Especially if there are restroom alternatives,</p> <p>15 restroom facilities options, for anybody who -- who may</p> <p>16 need it within 10 -- 10 minutes of the work site. And</p> <p>17 this quickly, readily, identified seven of those.</p> <p>18 MR. HUGHES: Thank you, Mr. Sekerak.</p> <p>19 MR. SEKERAK: So that -- that lent into the</p> <p>20 nature of adequate public facilities. So, you know,</p> <p>21 police and fire are -- are adequate. You know,</p> <p>22 transportation, you'll hear from Mr. Nalepa la- --later</p> <p>23 on regarding addressing the transportation abilities</p> <p>24 for -- for this. Again, very modest site regarding the</p> <p>25 number of trips that it generates.</p>
<p style="text-align: right;">82</p> <p>1 Okay. Can you tell us what this is, what it</p> <p>2 shows, what it means?</p> <p>3 MR. SEKERAK: This maps out the --</p> <p>4 MR. HUGHES: And is it showing the key? Is the</p> <p>5 -- is -- isn't there a key at the bottom of the page?</p> <p>6 MR. SEKERAK: Yeah. You could pan out just a</p> <p>7 bit. Right. Okay. And that gives the details for the</p> <p>8 locations of all these facilities. In -- in one trip I</p> <p>9 just took a tour of the area of any, and all, available</p> <p>10 restroom facilities within the 10-minute drive of the</p> <p>11 site.</p> <p>12 And I was able to readily identify seven of --</p> <p>13 of those -- of those locations. So again, there --</p> <p>14 there -- I've -- I've been to the site a number of</p> <p>15 times and -- and you'll hear the -- the applicant</p> <p>16 testify regarding the -- the -- the nature of the use</p> <p>17 during the course of the day.</p> <p>18 I've never seen anybody. I -- I've been there</p> <p>19 in the middle of the day, the gates locked and -- and -</p> <p>20 - and there's nobody there. So the employees are simply</p> <p>21 traveling there in the morning and then leaving from</p> <p>22 there in the -- in -- in the late afternoon or early</p> <p>23 evening.</p> <p>24 There are, you know, any restroom needs they</p> <p>25 ha -- they had not taken care of, able to take care of</p>	<p style="text-align: right;">84</p> <p>1 And I'll use as a, and I think Mr. Hughes used</p> <p>2 in his introduction the comparison of schools, is</p> <p>3 another one of those categories of public facilities</p> <p>4 that we need to demonstrate. Well, there's no -- you</p> <p>5 know, we're not generating, you know, school-age</p> <p>6 children.</p> <p>7 So, you know, that's deemed adequate. Very</p> <p>8 similar that we -- we're not dependent on any public</p> <p>9 facilities for -- for water and sewer service. So that</p> <p>10 can be deemed adequate also, that the nature of this</p> <p>11 use does not need restroom facility on site. So again,</p> <p>12 it -- I can testify that -- that we are providing</p> <p>13 adequate public facilities for those that are</p> <p>14 applicable.</p> <p>15 MR. HUGHES: Let me just ask you a quick</p> <p>16 question on that topic before I switch gears. One</p> <p>17 second.</p> <p>18 Are you familiar with zoning code 3.15</p> <p>19 regarding transferable developmental -- development</p> <p>20 rights?</p> <p>21 MR. SEKERAK: Yes. I am.</p> <p>22 MR. HUGHES: Okay. And is it correct, in that</p> <p>23 section, it talks about uses that are not permitted</p> <p>24 when there's no development rights remaining on a</p> <p>25 property in the AR zone?</p>

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22 (85 to 88)

<p>85</p> <p>1 MR. SEKERAK: That -- that's -- that's 2 correct. It -- it lists those that are, you know -- 3 well, in -- in the use table, in -- in the zoning 4 ordinance, it lists all the use for AR zone. And the 5 others, but in -- in this case the AR zone, all those 6 uses that are permitted uses, all those and -- and 7 absent, and those that are permitted by limited or by 8 conditional use. 9 And in the absence of a designation of that, 10 it's considered not -- not -- not permitted. So 11 actually, contracting uses like this is permitted as a 12 conditional use. The code further goes on by that 13 section that you -- was to list those uses of -- of 14 that -- of that list, of use condition uses are 15 permitted in the AR zone. It identifies those that are 16 not permitted, absent [inaudible]. 17 MR. HUGHES: Can I show you that section right 18 there? 19 MR. SEKERAK: Yes. So yeah, 3.1.5 in the AR 20 zone and it lists those types of agricultural uses, 21 residential uses and -- and just to choose some of 22 them, in agricultural -- agricul- --agricultural 23 auction facility, is not permitted in the AR zone 24 absent -- absent development. 25 MR. HUGHES: Right.</p>	<p>87</p> <p>1 contracting permitted by conditional use in the AR 2 zone, whether or not TDRs are remaining. 3 MR. HUGHES: Very good. Thank you for clearing 4 that up. I -- I had talked about earlier in opening 5 some other special exceptions of commercial uses that 6 were granted, or topic areas that have been granted, in 7 which it evaluated adequate public facilities, 8 sanitary, sewer, and bathrooms. And they did not have 9 bathrooms but they were still approved. 10 MR. SEKERAK: Mm-hmm. 11 MR. HUGHES: Can you talk about that topic at 12 all? 13 MR. SEKERAK: It -- it -- for those that -- it 14 would be deemed unnecessary they were able to get 15 conditional use approval, which includes one of those 16 required findings are adequate public facilities. 17 So for those who did not demand public 18 facilities for -- public facilities for any restroom 19 facilities they were able to meet that -- meet that 20 finding. We -- you had correctly used, you know, 21 brought out a number of them, you know, substations 22 being one of those categories. Power -- power 23 utility substations. Most do not have restrooms because 24 they have visitors so infrequently at times over -- you 25 know, for longer periods of times in emergencies like</p>
<p>86</p> <p>1 MR. SEKERAK: Absent TDR. So what, residential 2 has, you know, a number of them, including residential 3 care. Certain categories of residential care 4 facilities; guest houses, home 5 pra -- health practitioners, civic and institutional. 6 It lists charitable, philanthropic institutions, you 7 know, certain categories of daycare. 8 MR. HUGHES: These are all ones that are not 9 allowed. 10 MR. SEKERAK: They are not allowed, right. 11 MR. HUGHES: Because if there's no TDRs left 12 on -- 13 MR. SEKERAK: Yeah. Right. Under the 14 commercial use category, it lists A through G; one, 15 two, three, four, five, six, seven uses, that are not 16 allowed in the AR zone absent TDRs remaining. 17 Veterinary hospital, bed and breakfast, 18 cemetery, funeral home, lawn maintenance service, rural 19 antique shop, shooting range. So this indicates that 20 the district council when analyzing what usage should 21 not be permitted on a property absent development 22 rights, that they went through the specific categories 23 chose seven -- seven of them. 24 Landscape contracting is not one of those. So 25 conversely, they -- the -- they do consider landscape</p>	<p>88</p> <p>1 what you had described. 2 But for those -- for -- well, at least one 3 that did have -- would have been staffed to a greater 4 degree, they did put in a -- a restroom. 5 So it's not like, you know, power substations 6 that utility type of substations inherently don't have 7 them, you know? It is discretionary on the regulatory 8 body to figure out which ones have -- need -- need them 9 and which ones do not. 10 Similarly, we've got a landscape contracting 11 use and yes, the landscape contracting uses typically 12 do have a re- --restroom. Such as, you the -- the 13 substations typically do not have room. But there are 14 exceptional cases, and I'm going to contest that this 15 is one of those cases where it's not a typical 16 landscape contracting use. 17 It -- it is a tree care company, the nature of 18 it where there's, you know, no visitors, no -- no -- 19 nobody there during the day. 20 MR. HUGHES: What about the position that has 21 no office on site? Do most of the ones that have 22 bathrooms have offices on site in your experience? 23 MR. SEKERAK: Of -- of the -- of the, like, 24 the substations? Yeah. 25 MR. HUGHES: Or the landscape contractors?</p>

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23 (89 to 92)

<p>89</p> <p>1 MR. SEKERAK: Yeah. Oh yeah. Yeah. Substations 2 typically do not, landscape contractors typically do. 3 MR. HUGHES: And -- and in this case 4 [inaudible] -- 5 MR. SEKERAK: And have staff entirely -- 6 during the entire day. It would be necessary and 7 appropriate for those to have a restroom. 8 MR. HUGHES: Yeah. If you have workers on the 9 property all day, I think we would have to agree. 10 MR. SEKERAK: Yeah. Yeah. We -- we are not 11 contesting that. 12 MR. HUGHES: So may -- in my view this is 13 almost like a common sense standpoint. 14 MR. SEKERAK: Yeah. 15 MR. HUGHES: You evaluate how -- what the use 16 is and how long it is to determine whether a bathroom 17 really is required. 18 MR. SEKERAK: That -- that -- that's correct. 19 That's what they've done for other types of conditional 20 uses and that's what would be applicable here. 21 MR. HUGHES: There's precedent in this county. 22 MR. SEKERAK: Yes. 23 MR. HUGHES: Thank you. 24 Let me ask you move on to section 59 7.3.1 25 (E)(2) where it says, any structure to be constructed,</p>	<p>91</p> <p>1 off regarding this is a landscape contracting use as -- 2 as defined in 3.55 A. 3 MR. HUGHES: Can you explain how -- how it 4 fits within that? 5 MR. SEKERAK: Right. Right. Yeah. It has a 6 long definition of what is or is -- is not landscape 7 contracting use. It specifically excludes lawn care, 8 you know, businesses, but it includes any number of 9 things typically found in a landscape contracting use 10 as if -- and sorry. I -- I'll -- I'll go off of memory 11 as opposed to wasting people's time. 12 MR. HUGHES: I can ask you -- le- --let me ask 13 you a question. The area of the use, is it greater than 14 two acres that's required by the code? 15 MR. SEKERAK: Considerably so. 16 MR. HUGHES: Okay. The property here is 32 17 plus acres. Is that correct? 18 MR. SEKERAK: Correct. Correct. 19 MR. HUGHES: So -- 20 MR. SEKERAK: Yes. 21 MR. HUGHES: -- it's 16 times. 22 MR. SEKERAK: It's 16 times the -- the -- the 23 minimum required. Yeah. And you know, the facilities 24 are more than 50 feet from the -- the -- from the 25 boundaries. Yeah.</p>
<p>90</p> <p>1 reconstructed, or altered under initial use in a 2 residential detached zone must be compatible with the 3 character of the residential neighborhood. Is that 4 applicable on any front here? 5 MR. SEKERAK: No. We -- we're -- we're not 6 proposing to construct, reconstruct, or alter these -- 7 these -- these buildings. They, if you saw from the 8 pictures, they're agricultural and they're not only use 9 but their appearance and attractively so 10 MR. HUGHES: Any other topics you want to hit 11 on before we move on to specific requirements for 12 landscape contractor use? 13 MR. SEKERAK: Yep. Let's go ahead and do that. 14 MR. HUGHES: Okay. 3.55. Okay. Do you agree 15 with staff in its report, which is Exhibit 38, that the 16 application meets all criteria required for a landscape 17 contractor? They wrote on page 33 through 34. 18 MR. SEKERAK: Oh, the -- that was the -- I'm 19 sorry. What -- what exhibit were you refer -- did you 20 refer? 21 MR. HUGHES: Staff report 38? Oh, is it 22 correct that they -- they wrote on page 33 through 34 23 that all -- that the application did meet all the 24 criteria for landscape contractor? 25 MR. SEKERAK: Yes. We -- yes. We, well, first</p>	<p>92</p> <p>1 MR. HUGHES: I was going to ask you next, 2 yeah. Buildings and park areas are 50 3 feet -- meets -- 50 feet setbacks, is that correct? 4 MR. SEKERAK: Correct. 5 MR. HUGHES: Okay. Will any plant materials, 6 garden supplies or garden equipment be sold from the 7 property? 8 MR. SEKERAK: They will not. 9 MR. HUGHES: And applicant understands that 10 the hearing examiner can regulate the hours. What's -- 11 what's your position on understands what the hours are 12 and are they typical for this type of use? 13 MR. SEKERAK: Right. I think what's being 14 proposed is very typical for landscape, 15 for -- for landscape contracting use. I don't see a 16 need to restrict the hours anything more than what -- 17 what would be inherent for hours of operation for a 18 landscape contractor. 19 MR. HUGHES: Thank you. 20 Earlier I -- I, in my opening, I talked a 21 little bit about the county's big push on in ag area 22 for wineries and breweries. Are you familiar with all - 23 - with that push by the county or -- or what they're 24 doing or what -- what's involved in that? 25 MR. SEKERAK: I've enjoyed many of -- many of</p>



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24 (93 to 96)

<p>93</p> <p>1 them, but I doubt that's your -- your point, but yes. 2 So compatible with the agricultural use and -- and 3 helpful for the economic health of the county. 4 MR. HUGHES: Okay. Is -- is it permitted in -- 5 in -- in all -- in ag zones like this? 6 MR. SEKERAK: They're definitely the AR zone. 7 Yes. 8 MR. HUGHES: Okay. 9 Can you explain to us how the county's 10 enforcement works generally in -- in land use 11 conditional use matters? 12 MR. SEKERAK: I'm sorry, could you repeat 13 that? I was reading something else. 14 MR. HUGHES: Yeah. Let me -- well, before I 15 answer it let me say, is there anything else you want 16 to add on -- on that topic or -- or what we just hit 17 upon recently? 18 MR. SEKERAK: Well, yeah. 3.55. The definition 19 of a landscape contractor in fall, and they describe 20 many of the things that you typically find in there, 21 the business of designing, installing, planting, or 22 maintaining lawns, gardens, yada yada yada, decorative 23 features. 24 A landscape contractor also means, providing 25 snow removal services with vehicles, equipment and</p>	<p>95</p> <p>1 So ele- --elevating a conditional use to a 2 higher level of -- of scrutiny, a regular review of 3 that above other non-conditional use uses. And this 4 would -- this would work it out that similar way. 5 Consequences of non-compliance with the 6 conditional use can, you know, start out with citation, 7 be elevated to fines, and -- and then suspension of the 8 use if -- if -- if it -- if that became necessary. 9 MR. HUGHES: And you've worked, as you said, 10 well, you've worked in this industry for many years. 11 You've worked on dozens to hundreds of special 12 exceptions conditional uses, is that fair to say? 13 MR. SEKERAK: Dozens, yes. 14 MR. HUGHES: Okay. And did they all, or most 15 of them have conditions of approval as part of an 16 approval? 17 MR. SEKERAK: All. All. 18 MR. HUGHES: Okay. So part of the inspection 19 is to make sure it's complying with the approval and 20 those conditions of approval. 21 MR. SEKERAK: Yeah. Absolutely. There's -- you 22 know, when necessary specific conditions of that 23 approval to make sure that it remains, you know, that 24 not only meets the required findings initially, but 25 that's maintained for the life of that conditional use.</p>
<p>94</p> <p>1 supply. Equipment and supplies are stored, parked, 2 serviced, or loaded in the business location. Landscape 3 contractor includes tree installation, maintenance, or 4 removal. 5 And I previously mentioned it does not include 6 lawn maintenance, but all those other items regarding 7 storage of -- of materials and landscape hard scapes 8 gardens, you know, water features, etc. is not included 9 this. 10 This is wholly the portion of the landscape 11 contractor that includes tree installation, 12 maintenance, or removal. So this just -- we are -- we - 13 - we clearly fit within the definition of a landscape 14 contractor, wholly so. But what it does not include 15 make this -- makes this instant application much less 16 intense than a typical landscape contracting use. 17 MR. HUGHES: Yeah. Thank you. 18 Can I ask you a question then about how the 19 county enforcement generally works in land use cases 20 for conditional uses or former special exceptions? 21 MR. SEKERAK: Well, the compliance with, you 22 know, the county laws often is done by complaint 23 driven, you know stuff, but with a successful 24 conditional use the applicant, you know, pays an annual 25 fee for the inspecting of -- of that conditional use.</p>	<p>96</p> <p>1 But the -- 2 MR. HUGHES: So that approval in those 3 conditions are probably the bedrock of ensuring that 4 the approval follows the regulat -- the rules. Is that 5 correct? 6 MR. SEKERAK: Yes. Yep. Yep. They are 7 inspected and -- and held to that standard. 8 MR. HUGHES: And as you, I think you mentioned 9 on this, and what can happen if someone does not? Could 10 they -- it could go to the extent of they would -- 11 could lose their approval? 12 MR. SEKERAK: Yes. Yeah. 13 MR. HUGHES: And have you seen that happen in 14 this county, or aware of that happening? 15 MR. SEKERAK: Oh, in this -- yes. I'm aware of 16 that happening in this county. 17 MR. HUGHES: Very good. Okay. Are -- there was 18 some discussion of -- maybe -- maybe -- maybe it was in 19 my opening. Are you familiar with the restricted bridge 20 in this area of the property? 21 MR. SEKERAK: Yes. 22 MR. HUGHES: Okay. And is there a possible 23 solution that you're aware of that could help deal with 24 that situation? 25 MR. SEKERAK: Yeah. My understanding of the --</p>

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25 (97 to 100)

<p>97</p> <p>1 the vast majority of the vehicles associated with this 2 particular conditional use, well, many of them are 3 pickup trucks and that obviously is -- is of no 4 inconvenience. 5 But there are, I -- I believe, two or three of 6 the vehicles that may, if loaded sufficiently, would 7 exceed the weight restrictions of the -- of the -- the 8 nearby weight restricted bridge. You know, I've driven 9 the area many times. 10 There are many difficult alternate routes for 11 those few vehicles to -- to get to 270, for instance. 12 Going the other way around to get to 270 would only be 13 one minute driving time, additional time. 14 So it's of minor inconvenience to make sure 15 that those vehicles that would exceed that weight limit 16 to find to -- to use that alternate route and would 17 suggest that one of those conditions of approval that 18 you would -- you were just describing could easily 19 accomplish that. So yes, this could, this proposed use 20 could be fully compliant with that -- with -- with, you 21 know, a condition to that effect with little 22 inconvenience to the operations. 23 MR. HUGHES: And in -- in my opening, I cited 24 Emerald and its proposed condition of approval number 25 eight. So something like that or similar?</p>	<p>99</p> <p>1 MR. SEKERAK: Yeah. The -- the -- the vehicles 2 are stored there and -- and the -- the staff comes. 3 They get the -- they get their job duties for the day 4 while -- while they're there. So it's not strictly 5 vehicle storage, but -- 6 MS. LEWINTER: Of course. No, you're -- you're 7 right. I guess they have like a morning meeting, and 8 they go. 9 MR. SEKERAK: Right. They -- they -- they get 10 their assignments, they leave and -- and, you know, 11 probably in shorter time when they come back, but Mr. 12 Alvarez can describe that more -- more thoroughly. So 13 there -- there's interaction between the -- the staff 14 and the supervisors to make sure that their job duties 15 for the balance of the day are -- are understood. 16 MR. HUGHES: But -- but Your Honor is correct 17 in that they -- the corporate office is -- is north in 18 Frederick where we have staff there -- office staff 19 that there's all day. And Mr. Alvarez -- Alvarez is 20 typically there for half the day or so. Correct. 21 MS. LEWINTER: Okay. 22 MR. SEKERAK: So they -- they don't store 23 trucks or -- or -- or keep trucks at -- at the business 24 office, nor they do business office type stuff at this 25 site.</p>
<p>98</p> <p>1 MR. SEKERAK: Si- --similar, yep. Wha- -- 2 whatever that -- that -- that would be an appropriate 3 condition for this property also. 4 MR. HUGHES: I think I also noted Goshen case, 5 which is 1806. And I would reference condition of 6 approval number eight, and I noted that this is 7 operational in effect. I believe I read that one also, 8 that case. 9 MR. SEKERAK: Yes. You did. And -- and it 10 sends all vehicles in a direction away from a -- away 11 from a -- a narrow -- a narrow bridge. 12 MR. HUGHES: Very good. Thank you. 13 Any other topics or items you want to go back 14 to clean up on before we finish up with you? 15 MR. SEKERAK: No. Nothing comes to mind. 16 MR. HUGHES: Okay. Madame Hearing Examiner, 17 thank you for your indulgence. That would be my direct 18 of Mr. Sekerak. 19 MS. LEWINTER: I don't believe we have any 20 other parties of record. So given that I just had a few 21 questions, Mr. Sekerak. Would -- so the way this has 22 been described, the -- the -- what is anticipated for 23 the site, would it be fair to characterize it as kind 24 of a satellite location for the existing landscape 25 where they're going to be storing vehicles?</p>	<p>100</p> <p>1 MS. LEWINTER: Okay. So maybe just two 2 locations for one entity. 3 MR. SEKERAK: Okay. 4 MS. LEWINTER: From a land use perspective, do 5 you consider the trips that the -- the traffic 6 generated as part of the use in the sense that you're - 7 - that the trucks, the -- the lands -- the -- the 8 workers arrive, and then they go out in their vehicles 9 to perform the work. So are you considering the use as 10 simply contained within the property, or does the use 11 also encompass the actual kind of transportation to the 12 site? 13 MR. SEKERAK: If I -- if I under -- 14 MS. LEWINTER: The site where the work is 15 being done. Sorry. 16 MR. SEKERAK: Yeah. Mm-hmm. Well, trips to and 17 from the landscape contracting use is an inherent 18 characteristic of -- of -- of the use. 19 MS. LEWINTER: So then to -- so from a rustic 20 roads' perspective, is the traffic that the use 21 produces on the roads something that should be factored 22 into the rustic roads assessment, in terms of the 23 impact on people enjoying the aesthetics of the rustic 24 roads. 25 MR. SEKERAK: So the -- the Rustic Roads</p>

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26 (101 to 104)

<p>101</p> <p>1 Master Plan does -- does not dictate influence of, you 2 know, talk to the -- the uses that are permitted 3 adjoining those rustic roads being AR zone or -- or any 4 of the -- any of the zones. 5 So the rustic roads presumes that the 6 adjoining land uses are those that are allowed by the 7 zoning ordinance B table. And this is one of those 8 uses. 9 MS. LEWINTER: Okay. I appreciate that. 10 What I'm -- what I'm trying to get at is, when 11 there's an assessment of the impact of the use, because 12 this is a conditional use, so the impact of the use on 13 the rustic roads. Should that analysis, in your 14 opinion, consider the actual traffic impact on the 15 roads from these landscaping vehicles coming to and 16 leaving the site. 17 So they're an inherent part of the use, we've 18 looked at the visual element of the site. We've seen 19 the barns, we've seen the buffering, but the 20 landscaping vehicles themselves, as they travel to and 21 from the site, on the rustic roads, should that be part 22 of the analysis of the impact on the kind of viewing 23 pleasure of accessing the rusting ro -- rustic road? 24 MR. SEKERAK: So I -- I think I described, you 25 know, the character of the road itself and the</p>	<p>103</p> <p>1 trips generated by this use compared to existing uses 2 on -- on the road, you know, the -- the number of 3 existing trips, you know, traffic volumes, etc. 4 Like any use, there is an incremental 5 increase. But for such a modest landscape contracting 6 use on a large property, I would consider this -- that 7 increment being less than what you would typically find 8 for a -- for a landscape contracting use of -- that -- 9 that would have more services or of -- of a larger 10 scale. 11 MR. HUGHES: Madam Hearing Examiner, not for 12 substance of answer but just to give you a little 13 foreshadow on what's also going to come, two things. 14 One is whe- --when Mr. Alvarez speaks we are going to 15 show -- we want to be fully transparent. 16 We're going to show some pictures of the types 17 of vehicles so you can get an idea about those. The 18 other thing is just, I think he was, Mr. Sekerak, was 19 just referencing to an extent. But per our request at 20 the beginning, we're talking about up to 10 truck, work 21 trucks a day, going out and of those three would be 22 standard pickups. Just as background. 23 MS. LEWINTER: No. I -- I -- I did hear that. 24 I'm just trying to -- to get a sense. And -- and again, 25 Mr. Setek, Se- --Sekerak, sorry, if you know -- if you</p>
<p>102</p> <p>1 character, the views from the road regarding the -- the 2 -- the vehicles generated by this use sh -- could be 3 considered but no more so or less than any other type 4 of use, either permitted or approved by conditional use 5 or -- or -- or limited use. 6 So all those other uses that you would find in 7 there it should similarly be considered. So yes, it 8 should -- it could be considered. But not to a higher 9 or lower level than other permitted or condition -- or 10 approved conditional uses. 11 MS. LEWINTER: And so I don't know if you have 12 the background. I appreciate that you have a traffic 13 person coming and Mr. Alvarez can speak to daily 14 operations, but what would you describe as the impact 15 of that additional traffic? 16 You know, what are -- what are we looking at? 17 So if I'm -- if I'm just a citizen trying to access the 18 rustic road or scenic views and this conditional use is 19 permitted, what would the expectation be, from -- of -- 20 of a -- of a change or impact on the rustic road, from 21 having the additional landscape vehicle traffic coming 22 back and forth? 23 MR. SEKERAK: Yeah. I -- I -- I am a little 24 uncomfortable addressing that in the sense of what is 25 the, you know, the -- the percentage of additional</p>	<p>104</p> <p>1 know, you know, are there any- --anything specific 2 about these rustic roads that -- that we have at issue. 3 I guess, Burnt Hill and the Distillery Road that would 4 make an impact more or less of concern? 5 MR. SEKERAK: I think we can address the -- 6 the -- the nature of these roads, of why they're -- 7 they're rustic roads. You know, the -- the Prices 8 Distillery running along a ridge line with wide 9 panoramic views with -- with the unfortunate, you know, 10 [inaudible]. 11 MS. LEWINTER: And let me -- let me -- yeah. 12 Let me -- let me make my question more specific. 13 MR. SEKERAK: Okay. 14 MS. LEWINTER: I mean, I think there was some 15 something put forth, I can't remember, that there's 16 like 191 rustic roads. I think I have that figure. 17 MR. HUGHES: 191 -- 191 miles. 18 MS. LEWINTER: Miles of rustic road, sorry. 19 Much better description. 101 -- 191 miles of rustic 20 road. The -- the -- the area that we're looking at, is 21 there anything, to your understanding, that makes this 22 kind of particularly special or particularly vulnerable 23 relative to the other rustic roads? I mean, they're all 24 presumably special in some way, the miles of rustic 25 roads to be more specific.</p>

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27 (105 to 108)

<p>105</p> <p>1 MR. SEKERAK: There are two categories. There</p> <p>2 are rustic roads and, well, I -- of rustic roads</p> <p>3 identified in the master plan rustic roads and there</p> <p>4 are exceptional rustic roads. This is not a -- neither</p> <p>5 are exceptional rustic. I -- I -- so -- yeah.</p> <p>6 So no, the- --they're designated rustic roads</p> <p>7 by, you know, seems to me by, I don't mean to be too</p> <p>8 minimalizing to either rustic roads, but a typical</p> <p>9 rationale of what the -- the bridge may be one of those</p> <p>10 [inaudible].</p> <p>11 It's not a -- it's not a -- anything special</p> <p>12 aesthetically, the bridge, it's simply weight</p> <p>13 restricted. So I guess that's not one of those</p> <p>14 contributing reasons why it would be if -- it would</p> <p>15 have been designated as a -- as a rustic road.</p> <p>16 But again, that -- that can easily be</p> <p>17 accommodated. So no, I am not aware of any</p> <p>18 characteristics that would elevate these -- the</p> <p>19 applicable, you know, for the nature of this use and --</p> <p>20 and any impacts that they would have.</p> <p>21 MS. LEWINTER: Okay. Thank you for that. That</p> <p>22 was my question. Again, it is not my understanding that</p> <p>23 we have any parties of record. We do have a number of</p> <p>24 people, obviously, who want to testify as participants,</p> <p>25 but given that, Mr. Hughes asked, like --</p>	<p>107</p> <p>1 I'm -- I'm flexible. If -- if that doesn't work for</p> <p>2 somebody, please speak up now and we can certainly go</p> <p>3 forward in a different way.</p> <p>4 MR. HUGHES: That sounds fine to us, but I'll</p> <p>5 obviously let others weigh in.</p> <p>6 MS. LEWINTER: Does anybody on the line have a</p> <p>7 com- --com- --comment? All right. Hearing none, it is</p> <p>8 12:07. So actually, why don't we reconvene at 12:40.</p> <p>9 Gives people 30 -- 33 minutes. Okay.</p> <p>10 MR. HUGHES: Thank you.</p> <p>11 MS. LEWINTER: You're welcome.</p> <p>12 It is 12:41, so hopefully everybody's back and</p> <p>13 listening who is on the virtual hearing. Mr. Hughes, if</p> <p>14 you want to proceed with your witness. Let me just</p> <p>15 swear him in -- Mr. -- or was there anything else</p> <p>16 before we get started with Mr. Alvarez?</p> <p>17 MR. HUGHES: No. We're ready, Your Honor.</p> <p>18 Thank you.</p> <p>19 MS. LEWINTER: There's a little -- can you</p> <p>20 hear? There's like a little bit of buzz when you're</p> <p>21 talking, Mr. Hughes.</p> <p>22 MR. HUGHES: Let me -- careful about our</p> <p>23 microphone. I'm sorry. One second. [Inaudible] that's</p> <p>24 on the floor.</p> <p>25 MR. SEKERAK: [Inaudible].</p>
<p>106</p> <p>1 I guess I also wanted to take note of the</p> <p>2 time. It's 12:06. I -- I know a lot of people have been</p> <p>3 on since like 9:15. I'd like to give everybody at a</p> <p>4 minimum a comfort break, but I don't know if people</p> <p>5 would like to break for lunch. I guess I'll ask you,</p> <p>6 Mr. Hughes first, and then if other people want to</p> <p>7 weigh in.</p> <p>8 MR. HUGHES: Thank you, Madam Hearing</p> <p>9 Examiner. I think a comfort break would be great. Mr.</p> <p>10 Alvarez will be my next witness. I don't know exactly</p> <p>11 how long he would take. I'm guessing maybe it could be</p> <p>12 close to 45 minutes. So however you want to do would be</p> <p>13 fine with us, but I think a comfort break at a minimum</p> <p>14 would probably be helpful.</p> <p>15 MS. LEWINTER: Okay. So let me just think.</p> <p>16 What if we -- would people be -- if anybody else wants</p> <p>17 to -- has some ex -- specific reason that we should</p> <p>18 take a longer break, but I guess what I would suggest</p> <p>19 then, why don't we take, because I'm thinking if we</p> <p>20 take a comfort break for 15 minutes and then come back</p> <p>21 we're -- we're probably going to be close to 1:20,</p> <p>22 which might be late for some people.</p> <p>23 So why don't we take like a half hour break</p> <p>24 and then people can grab a bite to eat if they want,</p> <p>25 and then we'll come back and do Mr. Alvarez. Really,</p>	<p>108</p> <p>1 MR. HUGHES: Hopefully did that stop it?</p> <p>2 MS. LEWINTER: Actually, that made it worse.</p> <p>3 MR. HUGHES: All right. How about now? Is it</p> <p>4 better?</p> <p>5 MS. LEWINTER: No.</p> <p>6 MR. HUGHES: Do I log back out and back in?</p> <p>7 MS. LEWINTER: Yes. Please do that. We'll --</p> <p>8 we'll wait.</p> <p>9 MR. HUGHES: Good afternoon.</p> <p>10 MS. LEWINTER: That seems to be better. Can</p> <p>11 you talk a little more?</p> <p>12 MR. HUGHES: Yes. My apologies. Hopefully the</p> <p>13 volume is okay. We're not sure what changed.</p> <p>14 MS. LEWINTER: The volume seems to be fine,</p> <p>15 and there's not that buzzing. So now maybe just</p> <p>16 rebooting was what we needed to do. So I appreciate</p> <p>17 that. All right. Are you ready or do you need a second</p> <p>18 to get reset?</p> <p>19 MR. HUGHES: No. We're good, thank you.</p> <p>20 MS. LEWINTER: Okay. So Mr. Alvarez, if you</p> <p>21 can raise your hand -- right hand, please. Do you</p> <p>22 solemnly swear under penalties of perjury that the</p> <p>23 statements you are about to make are the truth, the</p> <p>24 whole truth and nothing but the truth?</p> <p>25 MR. ALVAREZ: Yes, I do.</p>

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28 (109 to 112)

<p>109</p> <p>1 MS. LEWINTER: Thank you, Mr. Alvarez. 2 Mr. Hughes, your witness. 3 MR. HUGHES: Thank you. 4 Good afternoon, Mr. Alvarez. Can you please 5 state for the record your name and your address? Your 6 work address is -- is fine. 7 MR. ALVAREZ: Yes. My name is Jose Carmen 8 Alvarez [inaudible], and field address 12120, Prices 9 Distillery Road, Damascus, Maryland. 10 MR. HUGHES: Thank you. And you're the founder 11 and owner of Chapingo Tree Care Specialists, correct? 12 MR. ALVAREZ: Yes. 13 MR. HUGHES: And are you also the owner of the 14 -- of the farm at Chapingo Investments, I believe. Am I 15 correct? 16 MR. ALVAREZ: Yes, I am. 17 MR. HUGHES: Okay. How long have you owned 18 Chapingo Tree Care? 19 MR. ALVAREZ: I own it since 2007 when I 20 founded. I [inaudible], like, April or so, and first 21 day of work was July 14th, of 2007. 22 MR. HUGHES: Madam Hearing Examiner, can you 23 hear him okay? I'm -- it's a little bit echo-y for me, 24 so I may ask him closer unless you're hearing him well. 25 MS. LEWINTER: I -- it could be better.</p>	<p>111</p> <p>1 apologize with -- if it happens again just, please let 2 me know. 3 MS. LEWINTER: Of course. 4 MR. HUGHES: Mr. Alvarez, can you please 5 explain how you got into the tree care business? 6 MR. ALVAREZ: Yeah, certainly. I, well I'm 7 originally from Mexico. I grew up in a farm. At the age 8 of 14 years old I moved to Mexico City to go to the 9 University of Chapingo to get a plant pathology degree 10 at the time, in '93. 11 2000 I was about getting my bachelor's degree 12 when I was introduced to this [inaudible] Forestry 13 Administration of Mexico City. And I attended a 14 workshop; two capital classes, and I love it. 15 So I attended a workshop given by one of the 16 vice presidents of Chicago based tree care company and 17 I got hired. So 2001 I moved to Chicago to do plant 18 healthcare with this company and I got involved. 19 I was supposed to go back to Mexico a couple 20 years after, but I -- I wanted to do a career in this 21 industry. And I was happy there but in 2003 you guys 22 had a very bad storm called, Isabel, 23 and it was a national call. 24 So I -- I came to this area first time as a 25 volunteer for a couple of weeks to help the clean-up</p>
<p>110</p> <p>1 MR. HUGHES: Can -- can you move a little 2 closer, Jose? 3 MR. ALVAREZ: Yes. I can. 4 MR. HUGHES: Yeah. Good. 5 MR. ALVAREZ: Yes. And then sorry for the 6 voice. I typically have a stronger voice but two girls 7 with COVID and I am not, but I have the same symptoms, 8 so I don't know. 9 MR. HUGHES: Okay. 10 MR. ALVAREZ: Can you hear me better? 11 MR. HUGHES: Yeah. Yes. Thank you, Jose. Okay. 12 [Inaudible]. 13 MS. LEWINTER: Mr. Hughes, we're having a 14 problem again with the mic. You're -- it's, like, 15 really glitching. 16 MR. HUGHES: Okay. 17 MS. LEWINTER: That's -- it's okay right now. 18 It was -- you know, before it was just, like, that, ba, 19 ba, ba, so I'm not sure. 20 MR. HUGHES: I could also -- 21 MS. LEWINTER: I mean, if -- maybe it was when 22 you leaned in, I'm not really sure. 23 MR. HUGHES: Okay. If it happens one more 24 time, I can turn off our big screen here and that 25 [inaudible] through my computer. And I, again, I</p>	<p>112</p> <p>1 approach. And so -- and also, I love the area as well. 2 So I -- it took me six-months to get in transfer, same 3 company, but I made it and with my brother at the time. 4 And so in 2007, I applied for a sales position 5 with a company but I was rejected because my accent and 6 -- and so I put my three months' notice saying that I 7 will go on my own. I took as as an adventure say, well, 8 as far as I can pay my bills and live from it. 9 But it got -- it went more than that and I saw 10 an opportunity to become employer, which is exciting 11 and also, make it a life better or help the guys to 12 have a better life, whoever I work with, my team, and 13 slowly but I think we're moving forward. 14 MR. HUGHES: Very good. Thank you. Can you 15 tell us exactly what does your company, what does 16 Chapingo Tree Care do? 17 MR. ALVAREZ: Yeah. Chapingo Tree Care tries 18 to kind of stay with some of the services in the 19 industry on the far of the cultural practices because 20 the other one is chemical usages, which is, nothing 21 wrong, but I -- I want to go more on the organic. 22 And so we provide services for homeowners as 23 well as for commercial. As for pruning or maintenance, 24 in- --including consulting, replacements, and other 25 services like helping the trees to become safer,</p>

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<p>113</p> <p>1 installing some hardware systems; cabling, mulching, 2 growth pruning. Services that help the trees to become 3 or live longer, be safer or fit better in the cosmetic 4 scenario. 5 MR. HUGHES: Okay. Are there any professional 6 certificates or licenses or other things that you 7 gained through the profession? 8 MR. ALVAREZ: Yes. For Maryland, there is a 9 license tree expert provided by the Department of 10 Natural Resources. And so we got that and as well as 11 the certified arborist from the International Society 12 of Arbory Culture, that I got it back long time, like, 13 in 2003. 14 MR. HUGHES: Okay. 15 MR. ALVAREZ: So along the way other guys in 16 the -- in the team, we've been able to accomplish that 17 certification and now we are a [inaudible] certified. 18 MR. HUGHES: Very good. Very good. Madam 19 Hearing Examiner, I'd like to offer Mr. Alvarez as an 20 expert in tree care. 21 MR. ALVAREZ: I'm sorry, I didn't hear the 22 question. 23 MS. LEWINTER: It's not a question. He was 24 asking me whether he -- you could be considered an 25 expert in tree care, and I will agree to that</p>	<p>115</p> <p>1 Of course, there are -- I'm running three 2 crews, and about three main crew, and sometimes I -- I 3 -- I add one or two people additional to be able to 4 manage the tree material or when the job requires. And 5 that tells me if I need to send the second spare truck, 6 and that's where the variation comes. 7 And, or -- and I have two main crew on a 8 smaller Isuzu truck typically grinding the stops, 9 working behind the three main ones, just finishing 10 preparing, doing smaller jobs, bringing mulch in, 11 things like that. 12 So they are doing the coach final on the job 13 sites. And of course, I have two certified arborists 14 doing sales. So they -- they drive the pickup trucks, 15 the Chevy Colorado and Nissan, and I drive the other 16 pickup truck. 17 And so sometimes I go to the field half a day, 18 sometimes I come directly to the office from the 19 dispatch. And -- and if you -- the yard requires, of 20 course, I send a crane out, driven and operated by my 21 brother, or if not is a loader truck. One of those CDL 22 trucks too. I have another second CDL who is always on 23 loader truck. 24 MR. HUGHES: Yeah. And in just a few minutes 25 we're going to get to pictures of [inaudible]. That</p>
<p>114</p> <p>1 designation. 2 MR. HUGHES: Thank you. Mr. Alvarez, what -- 3 what are -- towns or counties or areas do you guys do 4 work in Chapingo Tree Care? 5 MR. ALVAREZ: Yeah. We are equipment based in 6 Montgomery and on Damascus. So we serve all of 7 Montgomery County, OTC and Northern Virginia. We try to 8 stay inside the beltway and, or along the river in 9 Prairie County. A little bit of PG County and other 10 counties, but it's specifically the main working zone, 11 Montgomery County. 12 MR. HUGHES: Okay. Thank you. 13 And what's a typical day like for you in -- in 14 -- for your business? 15 MR. ALVAREZ: In regards to -- okay. Yeah. We 16 meet at 6:30, everybody. Some guys they get there to 17 the farm a few minutes earlier and -- but we meet at 18 6:30. We have a safety meeting, short safety meeting, 19 or depending if we have any issues or concerns, 20 incidents or accidents to go over. 21 And -- but we try to cover it up within 20 22 minutes to half an hour. And then the other 10 minutes 23 to 15 minutes do the dispatch. So everybody, trying to 24 everybody be out of the door by 7:15. And then we go 25 out.</p>	<p>116</p> <p>1 might make more sense for some of us and have you go 2 into a little bit more detail. But you mentioned -- you 3 just mentioned you go to your office. It's correct you 4 have an office up in Urbana. Is that -- is that 5 correct? 6 MR. ALVAREZ: Yes. I have an office here in 7 Urbana. The address is 3558 Worthington Boulevard, Unit 8 201 in Urbana, 21704. 9 MR. HUGHES: Okay. Let -- let me, Madam 10 Hearing Examiner, can I indulge upon you to pull up 11 Exhibit 42A. I want to ask Mr. Alvarez if he can 12 identify these -- these pictures. 13 MS. LEWINTER: I'm sorry, what was the exhibit 14 number again? 15 MR. HUGHES: Yeah. Thank -- thank you. No. 16 42A. 17 MS. LEWINTER: 42A. And I apologize, I -- I'm 18 usually on Zoom so I get confused on Teams. Okay. 19 MR. HUGHES: You're doing 10 times better than 20 I would do. 21 MS. LEWINTER: That's what you were looking 22 for, correct? 23 MR. HUGHES: Yes. Just -- just real -- we're 24 going to move some pretty quick. And so this first one, 25 Mr. Alvarez, is -- is that just [inaudible] actually</p>

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<p>117</p> <p>1 shows where your business, your office is located? Is 2 that correct? 3 MR. ALVAREZ: Yes. That's correct. That's 4 3556. Because they are townhouses it's very easy just 5 to kind of pinpoint the -- the next one, but the office 6 is on the building 3558. 7 MR. HUGHES: Okay. And Your Honor, if you 8 could move to the next picture, please, or -- okay. So 9 is this -- is this the outside of -- of the office 10 building, is that correct? 11 MR. ALVAREZ: Yes. It is. 12 MR. HUGHES: Okay. And I think I have one or 13 two more pictures with this. Oh, I'm sorry. I -- I have 14 it sideways, but -- oh, thank you. And is it correct 15 that this is inside of your corporate office up in 16 Urbana? 17 MR. ALVAREZ: That's inside of the office. 18 MR. HUGHES: Okay. All right. And can you tell 19 us who works in the office and what kind of task or job 20 duties occur there? 21 MR. ALVAREZ: Yeah. There are three full -- 22 full time girls. One is Carolina. She is the office 23 manager. She's in charge of billing and of course 24 customer service. She is very skilled, and she learned 25 very well the process what we do.</p>	<p>119</p> <p>1 deal with safety for your employees and for your 2 customers and the importance of safety? 3 MR. ALVAREZ: Mm-hmm. Yes. When I was working 4 for a big firm, I was a safety coordinator for the -- 5 that office for a long time. So I really like the way 6 to perform the safety pre-care practices. 7 And when I started 15 years ago, this 8 business, I tried to really bring out all the safety 9 culture that the previous company had, and to really 10 minimize the exposure of injuries, especially injuries. 11 Property damages and everything else, but injuries is a 12 big factor. 13 So we every day go over a little safety 14 meeting, briefly safety meeting of topic like equipment 15 checkup, backing up like OSHA -- OSHA. I call OSHA over 16 a year ago to come and inspect us and help us out how 17 to -- we can make a -- a safety location and they give 18 us very good suggestions and material. 19 So we did all the adjustments that they 20 suggested from topics to fuel management and so forth. 21 So [inaudible] potential. And so each of us, we go over 22 a safety topic every day. 23 MR. HUGHES: Very good. Thank you. 24 Mr. Alvarez, you heard testimony and -- and - 25 - and also information from me in my introduction about</p>
<p>118</p> <p>1 So she answers even very technical questions. 2 They are two that are more like customer service. She 3 managing, booking, emailing, doing follow ups to the 4 customers, as well as the crew. They prepare calendars, 5 the schedules and the like. 6 MR. HUGHES: Excellent. 7 MR. ALVAREZ: Mm-hmm. 8 MR. HUGHES: Thank you. And you -- you -- do 9 you typically spend a few hours here most days? 10 MR. ALVAREZ: I typically spend half of my 11 days or more. I -- lately I've been spending more time 12 in the office than in the field and trying to redevelop 13 the business more than participating and doing stuff. 14 MR. HUGHES: Okay. So on Prices Distillery 15 Road, your farm, you do not have an office there and 16 you -- you're not requesting or needing an office 17 there. Is that -- is that true? 18 MR. ALVAREZ: That's true. 19 MR. HUGHES: Okay. So is it true that the -- 20 the bus -- once the business, the team goes out, is -- 21 is the -- is it pretty empty from a business standpoint 22 throughout the day? 23 MR. ALVAREZ: Yes, it is. 24 MR. HUGHES: Okay. I think you briefly touched 25 upon it, but can you tell us the importance in how you</p>	<p>120</p> <p>1 a weight bridge in the area. Can you tell us how you 2 handle that weight bridge currently and how, you know, 3 and how you can handle on board? Sorry, go ahead. 4 MR. ALVAREZ: The limited bridge? 5 MR. HUGHES: Yes, sir. 6 MR. ALVAREZ: The limited weight bridge? 7 MR. HUGHES: Yes. 8 MR. ALVAREZ: Yes. Actually, typically I have 9 three vehicles only, three units, that they go over the 10 capacity of the bridge, and they have very good 11 knowledge that there are no --. 12 MR. HUGHES: Uh-oh. Let me -- 13 MR. ALVAREZ: So they -- they always look for 14 alternatives. One of them is Foxville Road, which is 15 very -- around the corner, and the other one is the 16 Route 27. 17 MR. HUGHES: Okay. So is it true that the -- 18 the trucks that you have that are over the weight limit 19 can and will avoid that bridge? Is that true? 20 MR. ALVAREZ: Yes. That's easily to avoid that 21 bridge. 22 MR. HUGHES: Yep. And the other trucks that 23 are under the limit, you would certainly likely, like 24 everybody else to use that bridge if -- if they meet 25 the weight limits, is that correct?</p>

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<p>121</p> <p>1 MR. ALVAREZ: That's correct. In the morning 2 typically trucks are empty or less than half a load. 3 That's a typical working day because we use the system 4 to allow us to deliver wood chips on the way back home, 5 and that avoids common, majority of the times full of 6 wood chips to the -- to the shop. We call the shop. 7 MR. HUGHES: Okay. And and -- and you heard 8 Mr. Sekerak and, actually in my opening also 9 discussions, about a condition that could limit, like, 10 was done -- proposed in Emerald and like was done in 11 the Goshen landscaping case where there's a condition 12 that limits what roads and what bridges can be used. 13 If -- if -- if you are fortunate enough to get 14 approved here and there was a condition to help make 15 sure that bridge stays safe, you -- you would agree and 16 comply with that. Correct? 17 MR. ALVAREZ: That's correct. For me I will be 18 pleased to kind of avoid that section, which for me is 19 -- it adds no significant travel time. 20 MR. HUGHES: Because there's multiple ways to 21 get to and from your property, is that correct? 22 MR. ALVAREZ: That's correct. Yes. 23 MR. HUGHES: Now, let's say the hearing 24 examiner wants extra precaution and decided the 25 condition needed to limit even more of your trucks,</p>	<p>123</p> <p>1 is -- is -- is in also a water management system in 2 there, that would be probably a great option to use it 3 as a [inaudible]. 4 MR. HUGHES: Very good. Thank you. Jumping 5 back just real quick, you were talking about, you can 6 avoid the bridge and there's other ways to get your -- 7 to and from your property. Can you tell us about how 8 much longer does it add to the trip if you had to avoid 9 the bridge? Is it significant or about how much longer? 10 MR. ALVAREZ: Less than 10 minutes. 11 MR. HUGHES: Okay. Thank you. Okay. Is it true 12 that in this application you're asking for your hours 13 to be 6:00 a.m. to 6:30 p.m. Monday through Saturday? 14 Is that correct? 15 MR. ALVAREZ: That's correct. 16 MR. HUGHES: Okay. For this app -- for this 17 user application, are you asking for any snow removal 18 services? 19 MR. ALVAREZ: Not at all. 20 MR. HUGHES: Okay. And will you sell firewood 21 from the property? 22 MR. ALVAREZ: No. 23 MR. HUGHES: Okay. Will Chapingo Tree Care do 24 any mulch or manufacturing at the property? 25 MR. ALVAREZ: No manufacturing.</p>
<p>122</p> <p>1 even if they are under, perhaps under that weight 2 limit. While not ideal for you, is that something that 3 you could accept if you had to? 4 MR. ALVAREZ: Absolutely. So I can even put 5 all the trucks on their 20,000, or even more, used only 6 by pickup trucks allowed to use that road as any other 7 regular car would. 8 MR. HUGHES: Thank you. Can you -- can you 9 tell us a little bit about your overall plans for the - 10 - for your 32-acre farm for the property? Besides the 11 business which we know about, do you have some other 12 hopes or plans if this is approved that you can then do 13 some other things on the farm? 14 MR. ALVAREZ: Yes. I -- I grew up in a farm 15 side set so for me it is like home, the farm. So my 16 plan, and I have of good trees for those, multiple of 17 species, so I want to use the rear -- the rear part of 18 the farm available area, and from the old barn, buy 19 fruit trees. 20 Couple of variety of apples, cherries, and I 21 want to try peaches and see how they -- they do, and -- 22 and use that area for that. Which it has a little 23 higher altitude, higher level on the -- on the terrain. 24 And all the front, of course, we need some 25 planting criteria. Rest of the available space, which</p>	<p>124</p> <p>1 MR. HUGHES: Okay. Let me -- could -- sorry, 2 one second, Your Honor. Your Honor, could you pull up 3 Exhibit 49, please, using the pictures of the vehicles 4 that I -- we had referenced earlier. 5 MS. LEWINTER: Is this what you're referring 6 to? 7 MR. HUGHES: Yes. Thank you. Mr. Alvarez, 8 we're going to ask you to please explain to us the type 9 of trucks and how many in their weight limits so the 10 hearing examiner can understand fully, educate all of 11 us as well. So this -- this first picture, is that how 12 many of -- how many of these type of trucks do you 13 have? 14 MR. ALVAREZ: I have three vehicles like that. 15 MR. HUGHES: Okay. And the weight limit is 16 25,001. Is that correct? 17 MR. ALVAREZ: That's the rated for those 18 trucks. 19 MR. HUGHES: Okay. And that's -- that's 20 without -- you have an apparatus behind it. Is it a 21 zipper or what do you have behind it in this picture? 22 MR. ALVAREZ: Yeah. That's a trailer, process 23 trailer called tipper, and that got to be like XP200. 24 That are in the 75, 8,000, but let's say all the -- all 25 the trailers are under 10,000 pounds. So that's how we</p>



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<p style="text-align: right;">125</p> <p>1 have in the back [inaudible].</p> <p>2 MR. HUGHES: Is -- is -- is the 25,000 pound</p> <p>3 if that's -- is that if the truck is full?</p> <p>4 MR. ALVAREZ: When the truck is completely</p> <p>5 full, it could be all like that shown, but also</p> <p>6 depending what kind of material. So it's a big</p> <p>7 difference between even tree species weights on loads.</p> <p>8 And typically, logs are -- they weigh a whole</p> <p>9 lot more than wood chips because of the volume, and so</p> <p>10 we don't -- we don't carry logs in the chip trucks. So</p> <p>11 I have two trucks specifically for log towing, and they</p> <p>12 are the two CDL trucks that they don't go over Foxville</p> <p>13 Road. So typically, trucks -- these trucks are</p> <p>14 specifically for wood chips.</p> <p>15 MR. HUGHES: Thank you.</p> <p>16 MR. ALVAREZ: That -- that uses reduces the --</p> <p>17 the weights that they typically carry in them. And my</p> <p>18 map was like this, a truck full of wood chips is not a</p> <p>19 maximum capacity. We're not even going over 25. It's</p> <p>20 more like 21.</p> <p>21 And plus, another 75, 8,000 pounds, we still</p> <p>22 stay in the 10 -- 30,000 with these trucks. However, if</p> <p>23 I have the condition of use granted and just don't have</p> <p>24 to weigh the trucks every time, I easily can put these</p> <p>25 site trucks avoiding that bridge for sure.</p>	<p style="text-align: right;">127</p> <p>1 MR. ALVAREZ: Yes. This is Isuzu gas engine.</p> <p>2 And -- and I have three.</p> <p>3 MR. HUGHES: You have three of these. Right.</p> <p>4 MR. ALVAREZ: Mm-hmm.</p> <p>5 MR. HUGHES: And the weight limits 14,000. Is</p> <p>6 that correct?</p> <p>7 MR. ALVAREZ: That's correct.</p> <p>8 MR. HUGHES: Okay. And there's ano -- you have</p> <p>9 another picture of a similar one. Your Honor, could you</p> <p>10 go to the next one? I think it's also part of what you</p> <p>11 call the chip landscape trucks.</p> <p>12 MR. ALVAREZ: Yeah. This one has the -- the</p> <p>13 box just set up for throwing the wood chips behind.</p> <p>14 There is one that is -- it has the top open, but it has</p> <p>15 the same capacity.</p> <p>16 MR. HUGHES: Yeah. Hold on. Your Honor, --</p> <p>17 MS. LEWINTER: Yeah</p> <p>18 MR. HUGHES: -- this -- this happened a little</p> <p>19 bit yesterday where it didn't sh -- and then I -- I --</p> <p>20 I connected with Nana and she was able to fix it, but</p> <p>21 it seemed by some reason, it's showing the old bad</p> <p>22 information that I had sent where it doesn't show all</p> <p>23 the pictures.</p> <p>24 MS. LEWINTER: I see.</p> <p>25 MR. HUGHES: I don't know -- I don't know if</p>
<p style="text-align: right;">126</p> <p>1 MR. HUGHES: Very good. So this is a truck</p> <p>2 that you could avoid the bridge if need be. Got you.</p> <p>3 Okay. Can we have the next pitch -- next picture, Your</p> <p>4 Honor. There's probably about six of them or something.</p> <p>5 Okay. Mr. Alvarez, is this called a bucket truck? Is</p> <p>6 that correct?</p> <p>7 MR. ALVAREZ: They are called bucket trucks.</p> <p>8 MR. HUGHES: And you have those, is that</p> <p>9 correct?</p> <p>10 MR. ALVAREZ: There are two.</p> <p>11 MR. HUGHES: Okay. And their -- their weight</p> <p>12 limit is 22,000. Is that accurate?</p> <p>13 MR. ALVAREZ: It is close by depending the --</p> <p>14 the model, the make and model of the lift. And -- but</p> <p>15 that -- that's about right. The lift adds weight, but</p> <p>16 also reduces the capacity of the cargo drastically.</p> <p>17 MR. HUGHES: Okay. And this truck also, if you</p> <p>18 had to, you could avoid the weight restricted bridge,</p> <p>19 even know though in some places, I'm guessing, it would</p> <p>20 be under the weight limit in your professional opinion?</p> <p>21 MR. ALVAREZ: Definitely.</p> <p>22 MR. HUGHES: Okay. The next picture, Your</p> <p>23 Honor, please. Mr. Alvarez, is it correct that this is</p> <p>24 called -- or you called this like a chip or landscape</p> <p>25 truck. Is that -- is that accurate?</p>	<p style="text-align: right;">128</p> <p>1 we could come back to this.</p> <p>2 MS. LEWINTER: Yeah. We can certainly circle</p> <p>3 back. Let me just --</p> <p>4 MR. HUGHES: It's -- it -- it was -- it was</p> <p>5 like this, and then I clicked on it later and it was</p> <p>6 totally working so I figured it was solved.</p> <p>7 MS. LEWINTER: Nana, I don't know if you're --</p> <p>8 she's usually multitasking because --</p> <p>9 MR. HUGHES: But in the interest of time, if</p> <p>10 you want, I can just pause on that and move on and come</p> <p>11 back if you'd like.</p> <p>12 MS. LEWINTER: Yes. Why don't we do that and</p> <p>13 I'll -- I'll connect with her.</p> <p>14 MS. EVANS: Before we move on, this is the</p> <p>15 court reporter, and it is kind of difficult to hear</p> <p>16 because you keep dropping out. So can, Mr. -- Mr.</p> <p>17 Hughes and if we can rectify the audio clarity, that</p> <p>18 would help a lot.</p> <p>19 MS. LEWINTER: Okay. So Ms. -- Ms. Evans, I'm</p> <p>20 just trying to follow. Is it Mr. Hughes you're having</p> <p>21 trouble hearing, Mr. Alvarez, both, me?</p> <p>22 MS. EVANS: Both. Both.</p> <p>23 MS. LEWINTER: Okay.</p> <p>24 MS. EVANS: But Mr. Hughes is dropping out and</p> <p>25 Mr. Alvarez it is basically his accent is kind of hard</p>

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<p>129</p> <p>1 to understand. So if he could just slow down a little 2 bit while he's talking that would be helpful. 3 MS. LEWINTER: Okay. Mr. Alvarez, I apologize 4 for that, but if you could just speak a little bit 5 slower so she can catch everything that you're saying. 6 Obviously, you can't control your accent, I understand 7 that. 8 MR. ALVAREZ: Yeah. 9 MS. LEWINTER: Mr. Hughes, do you want to try 10 one more time to go in and go out? 11 MR. HUGHES: I certainly can. Is it -- are you 12 able to hear me incorrect -- or somewhat, well, but 13 it's just the court reporter, or is it everyone who's 14 not hearing me well? 15 MS. LEWINTER: Well, I think I -- I -- you are 16 dropping, but because I can kind of pick up from 17 context, you're not dropping frequent in -- you're not 18 dropping frequently enough that I can't follow, but I 19 could appreciate as the court reporter it would be very 20 frustrating. 21 MR. HUGHES: So -- so I understand. So, yeah. 22 I apologize again but let me -- let -- let me -- let me 23 try. Maybe I'll just come through my computer instead 24 of our whole firms. 25 MS. EVANS: Yeah. I was going to suggest if</p>	<p>131</p> <p>1 MR. HUGHES: Yeah. I think if we can move to 2 the next one. 3 MS. LEWINTER: Is that what you wanted? 4 MR. HUGHES: Yes. Thank you. Mr. Alvarez, is 5 it correct that this is -- this is the existing ag 6 building that was there when you bought the property 7 that you're -- you would like to utilize as you're 8 utilizing in this picture for your vehicles and 9 operations? 10 MR. ALVAREZ: Yes. 11 MR. HUGHES: Okay. And can you explain to us, 12 are -- are these most of your vehicles, or -- or almost 13 all your vehicles here in this picture? 14 MR. ALVAREZ: They are not all of them. Some 15 of them were in service probably at that time. That's 16 why they don't show up in the picture. 17 MR. HUGHES: Okay. So can you explain to us -- 18 you -- you -- our -- our commitment, if you're 19 fortunate enough to be approved, or we suggested that 20 you would limit your staff to 19 persons on the site. 21 Is that true that you -- you would agree to that? 22 MR. ALVAREZ: Yes. 23 MR. HUGHES: Okay. And also that you would 24 store a maximum of 14 work vehicles on site overnight. 25 Is that correct?</p>
<p>130</p> <p>1 you could come through your computer, it might be -- it 2 might be less taxing on the internet bandwidth, which 3 is causing the dropouts. MR. HUGHES: Okay. All 4 right. I -- I will do that. If -- if you -- court's 5 indulgence, it'll take me two minutes or so. Is that 6 okay? 7 MS. LEWINTER: Okay. Yes. 8 MR. HUGHES: Thank you. 9 MS. EVANS: And we can go off record while 10 he's doing that. 11 MS. LEWINTER: Yes, we can. 12 Have another exhibit up. 13 MR. HUGHES: Well did -- we're able to connect 14 -- have we heard from Nana yet about that exhibit? 15 MS. LEWINTER: You know what I -- I have not 16 yet, so we can keep going on that. 17 MR. HUGHES: Yes. Absolutely. Okay. Mr. 18 Alvarez, actually there -- there is another exhibit, we 19 can use it. I -- we will come back to hopefully show in 20 all the vehicles so you can see them up close, but we 21 can show the pictures that Mr. Sekerak used before of 22 the -- that showed the shed ag building with the 23 trucks. And I believe that is, I believe it's 42F. 42F 24 one and two. 25 MS. LEWINTER: Is that correct?</p>	<p>132</p> <p>1 MR. ALVAREZ: Yes. 2 MR. HUGHES: Okay. And that during the 3 workday, you would use a maximum of 10 vehicles going 4 out, work vehicles going out. Is that accurate? 5 MR. ALVAREZ: Yes. 6 MR. HUGHES: Okay. And can you explain to us - 7 - do -- well, how many -- explain to us, so of those 14 8 trucks that we stored overnight, it's correct that two 9 of those would be pickup trucks. Is that correct? 10 MR. ALVAREZ: There are three pickup trucks. 11 MR. HUGHES: But yours stays with you and goes 12 to your house. Correct? 13 MR. ALVAREZ: Yes. 14 MR. HUGHES: Okay. And during the day when a 15 maximum of ten trucks would go out, of those ten, three 16 are pickups. Correct? 17 MR. ALVAREZ: Yeah. That includes the pickup 18 truck. 19 MR. HUGHES: Okay. So the maximum would be 20 seven non-pickup vehicles that would go out a day. 21 Correct? 22 MR. ALVAREZ: That's correct. 23 MR. HUGHES: Okay. And would you always have 24 10 vehicles going out a day, or would you have less 25 sometimes?</p>

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<p>133</p> <p>1 MR. ALVAREZ: Majority of the times, it's 2 less. Maximum is the 10 when I have demanding jobs that 3 require to use a crane and wood hauling with the stump 4 grinding [inaudible]. 5 MR. HUGHES: Okay. And so how do you determine 6 how many vehicles go out, and how many people in each - 7 - in each truck, or each vehicle I should say? 8 MR. ALVAREZ: That changes every day 9 accordingly with the schedule of the day, the size of 10 the job, and the location where they are. For example, 11 a job in Montgomery County, Frederick County, or even 12 some areas of Virginia, I can send all the trucks 13 required for -- to complete the job. But if I have to 14 go to D.C., I need to do it -- the same job in stages, 15 different days. 16 MR. HUGHES: Okay. And so which vehicles have 17 how many people in it typically? And how do you decide 18 that? 19 MR. ALVAREZ: Typically, it was three vehicles 20 using state law. It's a truck, either I bought the 21 truck or a cheap truck, and a shredder. 22 MR. HUGHES: Okay. And of those three vehicles 23 that are -- were they -- there -- what's the weight 24 limit before it's become -- what is it? UCLA? What is 25 it? Commercial limit weight, what's -- what's that the</p>	<p>135</p> <p>1 MR. HUGHES: Okay. Will you have any retail 2 sales business, or customers come to the site on Prices 3 Distillery Road? 4 MR. ALVAREZ: No. 5 MR. HUGHES: Okay. And -- and I apologize. I 6 can't remember if you already agreed to this, but if 7 you are fortunate enough to get approval here, you -- 8 you would agree to the numbers that we asked be amended 9 at the beginning, which are 19 staff, 14 vehicles 10 parked overnight, and 10 maximum trucks going out 11 during the day. Is that correct? 12 MR. ALVAREZ: That's correct. 13 MR. HUGHES: Okay. Can you tell us about any 14 neighborly or community outreach that -- that you and 15 your -- your development team or staff did related to 16 this application? 17 MR. ALVAREZ: Yes. When we moved into the 18 property in 2020 during the pandemic, difficult time. I 19 went -- I went and introduced myself to my force to all 20 the neighbors around my property. And I could meet and 21 speak to some of them, majority of them. And -- and the 22 majority of them were very friendly and welcoming. And 23 so, I'm defending, that the team had reached out a 24 couple times, and we haven't heard nothing bad from any 25 neighbors, from those. I know --</p>
<p>134</p> <p>1 -- license and truck -- and truck limit is that? 2 MR. ALVAREZ: [inaudible] 3 MR. HUGHES: CDL -- CD- -- I'm sorry. C- -- 4 CDL. Commercial driver's license, what -- what -- what 5 size vehicle does that involve typically? 6 MR. ALVAREZ: CDL drivers, they can drive any 7 straight. They're class is class B, A and B. 8 MR. HUGHES: Okay. 9 MR. ALVAREZ: And well, we're required to 10 operate and -- and drive the -- the freight over 20,000 11 pounds, 26,000 pounds vehicles, or class B. And they 12 can drive straight vehicles, that way it doesn't 13 separate the tractor from the trailer. That's the 14 difference between class A and class B. And what we use 15 is class B, because all our trucks are straight body 16 trucks. 17 MR. HUGHES: Okay. Thank you -- thank you. 18 Mr. Alvarez, will you have any plant 19 materials, garden supplies, or garden equipment sold 20 from the farm there on Prices Distillery Road? 21 MR. ALVAREZ: Can you rephrase the question? 22 MR. HUGHES: Yeah. You won't be selling any 23 plants, or garden supplies, or garden equipment from 24 the property on Prices Distillery Road, will you? 25 MR. ALVAREZ: No.</p>	<p>136</p> <p>1 MR. HUGHES: All right. You're -- you're 2 referring to -- is it also true that your -- your team, 3 including me, our law firm, since out some letters to 4 the neighbors. Is that -- is that your understanding? 5 MR. ALVAREZ: That's my understanding. 6 MR. HUGHES: Okay. And I would reference, 7 Madam Hearing Examiner, Exhibit 59, applicant 8 correspondence to neighbors and the mailing list. And 9 your -- your understanding is that you or your law firm 10 didn't get any e-mails or calls back about that. Is 11 that correct? 12 MR. ALVAREZ: That's correct. 13 MR. HUGHES: Okay. And the -- there has also 14 been signs posted on your property since early this 15 year about -- about the application. Is that correct? 16 MR. ALVAREZ: Can you repeat the question? 17 MR. HUGHES: There -- there have been large 18 signs that -- that we put up on your property to -- to 19 talk about the application since the early part of this 20 calendar year. Correct? 21 MR. ALVAREZ: That's correct. 22 MR. HUGHES: And they have stayed up the whole 23 time, you've -- you've been watching them and such? 24 MR. ALVAREZ: Yes. They've been -- stayed up 25 and property maintaining -- they are from weeks and so</p>

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<p>137</p> <p>1 I don't get it.</p> <p>2 MR. HUGHES: And you're not -- you're not</p> <p>3 asking for any signage on this property, are you?</p> <p>4 MR. ALVAREZ: Not necessarily.</p> <p>5 MR. HUGHES: Well, you don't need a sign on</p> <p>6 the property, do you?</p> <p>7 MR. ALVAREZ: I don't.</p> <p>8 MR. HUGHES: Okay. So -- so you're not asking</p> <p>9 for one, you don't want one, you don't need one.</p> <p>10 Correct?</p> <p>11 MR. ALVAREZ: That's correct.</p> <p>12 MR. HUGHES: Okay. Your Honor, the court's</p> <p>13 indulgence, just for a moment.</p> <p>14 Mr. Alvarez, you heard me in my opening talk</p> <p>15 about, you did get at least four neighbors that have --</p> <p>16 have come out publicly and said they do support what</p> <p>17 you're trying to do here, correct, in your application?</p> <p>18 MR. ALVAREZ: That's correct.</p> <p>19 MR. HUGHES: Okay. Mr. Alvarez, if you're</p> <p>20 fortunate enough to get approval here, and the hearing</p> <p>21 examiner wanted to put any type of condition on that</p> <p>22 encourages or requires a community liaison type group,</p> <p>23 where you and the neighbors have the opportunity to</p> <p>24 meet and talk a few times a year, is that something you</p> <p>25 would be open to doing?</p>	<p>139</p> <p>1 of the package, we do get to the -- the -- the two</p> <p>2 larger -- lar- -- the few largest trucks you have. You</p> <p>3 have something that's called, I believe, a wood loader</p> <p>4 CDL truck with 37,000 pounds. Is that correct?</p> <p>5 MR. ALVAREZ: That's correct.</p> <p>6 MR. HUGHES: And can you tell us about that</p> <p>7 and when you use that?</p> <p>8 MR. ALVAREZ: Yes. That's being used as a</p> <p>9 spare when the main loader truck is -- like, a, T180 is</p> <p>10 the main loader truck. But T40 is the backup of the</p> <p>11 T180. So typically goes one or another.</p> <p>12 MR. HUGHES: Only one of those typically go</p> <p>13 out?</p> <p>14 MR. ALVAREZ: Mm-hmm.</p> <p>15 MR. HUGHES: Okay. And then the last picture</p> <p>16 we have is of the one crane CDL truck with a limit of</p> <p>17 56,000 pounds. Is that correct?</p> <p>18 MR. ALVAREZ: That's correct.</p> <p>19 MR. HUGHES: And what does that -- when is</p> <p>20 that used for or what's it used for?</p> <p>21 MR. ALVAREZ: That's used to increase the</p> <p>22 safety during -- during the hazard of tree removal</p> <p>23 processes, or very hard pulling jobs. And that one</p> <p>24 pulls up a lot better the -- from the tree material,</p> <p>25 and minimizing property damage, property or staff, of</p>
<p>138</p> <p>1 MR. ALVAREZ: Completely. Yes.</p> <p>2 MR. HUGHES: Madam Hearing Examiner, I can</p> <p>3 have Mr. Alvarez talk a little bit about -- more about</p> <p>4 those trucks if the -- if the visuals are still not</p> <p>5 fully there, knowing that you'll be able to look at</p> <p>6 those, perhaps at a later time. Would you like me to</p> <p>7 proceed in that fashion?</p> <p>8 MS. LEWINTER: Sure. I'm still waiting to hear</p> <p>9 back from Ms. Johnson. So why don't we proceed with</p> <p>10 that, if that's kind of the last part of the testimony</p> <p>11 you're tre- -- seeking to solicit from Mr. Alvarez.</p> <p>12 MR. HUGHES: Okay. Thank you. Mr. Alvarez, I'm</p> <p>13 going to -- I think we were talking about the vehicles</p> <p>14 that you call the chip landscape trucks. We have two</p> <p>15 pictures of those, but you have three of those. Is that</p> <p>16 correct?</p> <p>17 MR. ALVAREZ: Yes.</p> <p>18 MR. HUGHES: Okay. And then the next picture</p> <p>19 is of a pickup truck. You have three of those with a</p> <p>20 weight limit of 7,000. Is that correct, 7,000 pounds?</p> <p>21 MR. ALVAREZ: That's correct.</p> <p>22 MR. HUGHES: And you said you drive that and</p> <p>23 your two sales managers. Is that correct?</p> <p>24 MR. ALVAREZ: Yes.</p> <p>25 MR. HUGHES: Okay. And then towards the back</p>	<p>140</p> <p>1 course. I'm afraid it -- I mean, that separated my --</p> <p>2 my brother with the CDL class B. And he is either using</p> <p>3 that one or driving the -- the loader truck.</p> <p>4 MR. HUGHES: Okay. The last -- the last three</p> <p>5 trucks which are all over 26,000 plus, they all have</p> <p>6 more than four wheels. Correct?</p> <p>7 MR. ALVAREZ: Yes. So two of them, they are</p> <p>8 double logs also in the back. And so in -- and there</p> <p>9 are only two CDL drivers. So only maximum two of them</p> <p>10 can be out at once.</p> <p>11 MR. HUGHES: Okay. And you talked -- so you</p> <p>12 have -- you told about keeping on site 14 trucks</p> <p>13 maximum overnight and 10 maximum going out a day. Is --</p> <p>14 is there a -- do you have some that are usually being</p> <p>15 worked on, or spares, or -- or tell us a little bit</p> <p>16 about that difference in the numbers.</p> <p>17 MR. ALVAREZ: Yeah. Difference -- the increase</p> <p>18 in having more equipment is because, before the</p> <p>19 pandemic I was running a bigger operation. However, the</p> <p>20 -- one of the effects of the pandemic was, like --</p> <p>21 forced us to really reduce operation. That's what I</p> <p>22 have extra equipment.</p> <p>23 But I am already putting it for sale since</p> <p>24 it's costing me money and not being used too much. And</p> <p>25 I am still covering insurance and so forth. So that's</p>

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<p>141</p> <p>1 what I need to be afraid of, keep processing as 2 possible. And refilling one or two machinery that 3 they've been sitting there for a while, and costing 4 money to maintain, but without production. 5 So that's why I -- I want to stay smaller and 6 -- and have -- of course, it's great to have backup 7 equipment because always -- always something happens. 8 And that, having backups, allows me to continue doing. 9 And that means, like, even if I have all the backup 10 equipment, very rare times is all of it in the yard. 11 Typically, there are -- couple units are being -- 12 minimum operating [inaudible] 13 THE COURT: Mr. Hughes, if I can just 14 interrupt for a second. Ms. Johnson's on the line, so 15 maybe you can explain to her what the concern is. 16 MR. HUGHES: Yeah. Thank you. 17 MS. JOHNSON: Yeah. What -- what's -- what's 18 the concern? 19 MR. HUGHES: Yeah. Hi, Nana. On Exhibit 49, 20 this is the one you and I had some offline discussion 21 about where it should be all pictures of trucks. But at 22 one -- it was my fault. Initially, I think I scanned 23 some back of -- back of the pictures. 24 And then you -- the last we discussed, I was 25 able to resend all the pictures, and then when I</p>	<p>143</p> <p>1 MR. HUGHES: Okay. 2 MS. JOHNSON: Yeah -- yeah. 3 MR. HUGHES: Can you see it too? 4 MS. JOHNSON: So if you guys, you can please 5 try again. 6 MR. HUGHES: Yeah. Absolutely. Thank you. 7 MS. JOHNSON: You're welcome. Thank you. 8 MR. HUGHES: So Your Honor, if it comes up, 9 great. If -- if not, it's in the record for -- for -- 10 MS. LEWINTER: Yeah. 11 MR. HUGHES: -- certainly for you to see but 12 for everyone. 13 MS. LEWINTER: So which -- which exhibit is it 14 again? 15 MR. HUGHES: 49, please. And -- and pe- -- our 16 folks in -- in this office are saying they're seeing it 17 on their computers now. Yes. 18 MS. LEWINTER: Down here? Okay. 19 MR. HUGHES: Excellent. Yep. 20 MS. LEWINTER: Yeah. I -- I'm sor- -- I mean, 21 I -- I don't know what happened. But -- 22 MR. HUGHES: Just a lit- -- little glitch, but 23 it's fixed. Thank you. 24 MS. LEWINTER: Okay. So if you want to walk -- 25 just tell me where you want me to go.</p>
<p>142</p> <p>1 checked online yesterday or the day before, it was 2 showing just trucks. But when the hearing examiner just 3 brought it up a few minutes ago, it seemed to revert 4 back to the initial 49, where it was, like, three or 5 four pictures, and then backs of piece of paper with 6 information about the -- the -- the registration for 7 the vehicles. 8 MS. JOHNSON: Okay. So the 40 -- the 49, what 9 I have is the picture of the trucks with these -- this 10 gentleman standing in front of. That's not the pictures 11 that you -- you sent me? 12 MR. HUGHES: It is. But it should be only 13 pictures of trucks with gentleman in it. Not any 14 pictures of paper or paperwork. 15 MS. JOHNSON: Oh, there's no paper. Well, from 16 my end, I don't see any paperwork on 49. I don't know 17 what everyone else can see. I see -- 18 MS. LEWINTER: I'm wondering if this is my 19 fault, that if I need to, like, refresh the page or 20 something. 21 MS. JOHNSON: Yeah. Because what I'm looking 22 at from the website, on 49, like, Exhibit 49, it's a -- 23 MR. HUGHES: Yes. 24 MS. JOHNSON: --picture of the trucks with a 25 gentleman standing in front of it. That's what I have.</p>	<p>144</p> <p>1 MR. HUGHES: That'd be great. I think we 2 stopped at the third and fourth picture. 3 MS. LEWINTER: Okay. That's the third picture. 4 MR. HUGHES: Yeah. And go one more, that's 5 fourth. Okay. So Mr. Alvarez, this is what we talked 6 about earlier. These are the chip landscape trucks that 7 you have three of those. Correct? 8 MR. ALVAREZ: Yes. 9 MR. HUGHES: Okay. And that's a weight limit 10 of 14,000. And Madam Hearing Examiner, if you can go to 11 the next one, it should be a picture of a pickup. Okay. 12 And Mr. Alvarez, these are the -- you have 13 three of these pickups. You drive one, and two of your 14 sales team drives -- and these are three of the ten 15 vehicles maximum that would go out each day. Is that 16 correct? 17 MR. ALVAREZ: That's correct. 18 MR. HUGHES: Okay. And that's a 7,000 pound 19 pickup. Okay. Madam Hearing Examiner, the next -- next 20 picture, please. This -- these are -- this -- these are 21 pictures of the larger vehicles. Mr. Alvarez, this is 22 the wood loader CDL truck for 48,000 pounds that would 23 definitely avoid the restricted bridge. Correct. 24 MR. ALVAREZ: That's correct. That's -- that's 25 tagged as a T180.</p>

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<p>145</p> <p>1 MR. HUGHES: Okay. And then the next picture, 2 Madam Hearing Examiner, please. This is the wood loader 3 CDL truck with a limit of 37,000. Is that correct, Mr. 4 Alvarez?</p> <p>5 MR. ALVAREZ: That's correct. This is parked 6 at the back of the [inaudible]</p> <p>7 MR. HUGHES: Okay. And you just have one of 8 those, and you have one of the last one as well. 9 Correct?</p> <p>10 MR. ALVAREZ: That's correct.</p> <p>11 MR. HUGHES: Okay. And then one more, Madam 12 Hearing Examiner, this would be the last one. This is 13 what we talked about as the crane truck. You have one 14 of those, and that's 56,000 pounds. Correct?</p> <p>15 MR. ALVAREZ: Correct.</p> <p>16 MR. HUGHES: Okay. And as we discussed, 17 clearly the -- the pickups can go anywhere. The last 18 three types of trucks are definitely over the weight 19 limit, and the other ones are below in most cases. But 20 you'd like to be able to use those, but if you had to 21 go avoid the restricted weight limit bridge out of 22 abundance of caution, you'd be willing to do so. Is 23 that correct?</p> <p>24 MR. ALVAREZ: That's correct. Actually, that's 25 something that we can set up now that the pickup trucks</p>	<p>147</p> <p>1 understand it, that your employees leave the site in 2 the morning and don't return to -- until late 3 afternoon, like, six -- 6:00 o'clock. Do they -- do 4 they never have more than one job in a day that would 5 require them to come back to the site midday, or 6 multiple times a day?</p> <p>7 MR. ALVAREZ: Yes. Typically, they rotate jobs 8 sometimes. And sometimes they are back by 2:00 o'clock, 9 because that crew had nothing else to do. And depending 10 the size -- or typically, they have more than one job 11 actually, unless the job is big enough for a full day. 12 So that's why the return is always at 13 different times regarding the crews. The size and -- 14 and distance, in this case, traffic, it makes a big 15 difference what time the trucks return. That's why my 16 interest to have open until 6:30, so that way they can 17 return whenever we have no more work for them, for that 18 day.</p> <p>19 And in regards of multiple trips back to the 20 shop, multiple is not really something that happens 21 quite often. But sometimes when we have a breakdown of 22 a unit, somebody has to go back to the shop to pick up 23 the -- the backup piece of machinery. Or -- or a truck, 24 in this case, or when they are switching equipment. So 25 they are the only reasons why a truck should go back to</p>
<p>146</p> <p>1 and the -- the 14,000 pound capacity trucks can use 2 Burnt Hill Road. The restricted bridge weight -- weight 3 area, everything else can be supported.</p> <p>4 MR. HUGHES: Okay. And the 14,000 pound ones 5 are wha- -- what -- you said you had three of the chip 6 landscape trucks. Correct? Which are the third and 7 fourth picture.</p> <p>8 MR. ALVAREZ: They are -- they are exclusive 9 brands. They are the ones that -- they don't block the 10 -- the path.</p> <p>11 MR. HUGHES: Okay.</p> <p>12 MR. ALVAREZ: So that way even having the 13 truck at maximum weight capacity with the shredder 14 behind, they are far be- -- less than 20,000 pounds.</p> <p>15 MR. HUGHES: Very good. Very good. Okay. Thank 16 you. Cou- -- could I ask for the court's indulgence 17 real quick?</p> <p>18 MS. LEWINTER: Sure.</p> <p>19 MR. HUGHES: Madam Hearing Examiner, that -- 20 that would be my direct of Mr. Alvarez, please.</p> <p>21 MS. LEWINTER: Okay. Thank you. Hold on. Ms. - 22 - Mr. Alvarez, can you hear me?</p> <p>23 MR. HUGHES: Yes. I can.</p> <p>24 MS. LEWINTER: Okay. I just have a few follow- 25 up questions. It has primarily been the testimony, as I</p>	<p>148</p> <p>1 the -- to the shop during the day.</p> <p>2 MS. LEWINTER: So how often would you say -- 3 I'm sorry about that. How often would you say they're 4 doing multiple trips in a day? I mean, how often is it? 5 Like, in a given week, how often is it that -- that a 6 team will have more than one job and require them to go 7 back and forth from the site more than once?</p> <p>8 MR. ALVAREZ: Yes. Typically, the -- the 9 crews, they have almost every day more than one job a 10 day per crew. But they don't require to go back to the 11 shop every day. So going back to the shop during the 12 day, it means, like, I would say no more than two or 13 three times a week.</p> <p>14 And that's only fri- -- by one truck that for 15 some reason has to switch trailers, or somebody forgot 16 a piece of tool that we have to run to -- to get it. Or 17 to switch either trucks, to pick up a spare truck, or 18 to pick up a spare machine.</p> <p>19 MS. LEWINTER: All right. So just so I 20 understand, what you're basically saying is they may 21 very well have more than one job on a given day, but 22 they usually have everything they need when they start 23 out in the morning, so they don't need to go back and 24 forth.</p> <p>25 MR. ALVAREZ: That's exactly right. Yes.</p>

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<p>149</p> <p>1 MS. LEWINTER: Now, you talked about you're 2 not manufacturing wood chips on the property. But are 3 you storing them there? 4 MR. ALVAREZ: No. I don't manufacture, and I 5 don't store there. What I did back in 2020 on the 6 critical time of the pandemic, I saw myself being a 7 essential business. But the places, where they 8 manufactured those mulch and -- and logs, they were -- 9 they were closed on certain days. But I have wood chips 10 and logs to handle, because I had to go out and -- and 11 help with emergencies or maintenance on the trees. 12 That's when I start using the rear part of the 13 property as -- as pile up with the purpose that, one it 14 was survival, because the businesses were -- were 15 challenging the shut down at the time. Regarding of the 16 people, lack of people, and also, lack of businesses. 17 So I -- my extra strategy for survival of the 18 business, and it was do the cut off of the expense that 19 required for me to get rid of all the material 20 constantly, including wood chips and logs. And even 21 more at that time, as I said previously, those places 22 where I dispose of the wood chips were shut down. 23 And so that's why -- the only reason, one time 24 I brought a considerable amount of wood chips and logs, 25 and -- and piled them up in the back of the property.</p>	<p>151</p> <p>1 maximum weight capacity, and even having a trailer 2 behind, they're, like, 20,000 pounds total. 3 I can certainly keep those six vehicles, the 4 only vehicles, units allowed to use Burnt Hill Road, 5 and everybody else just find the roads around it, which 6 is just across the road, or going around and use the -- 7 the bridge. And that way, it doesn't have too big 8 weight. And even if -- 9 MS. LEWINTER: And I do appreciate that, Mr. 10 Alvarez. You're kind of stopping and starting. My 11 question is just more in the field whether your 12 employees have the ability to really know how much 13 weight they're carrying. 14 MR. ALVAREZ: There is no -- there is no way 15 for the crew to find how much weight they're carrying 16 behind. They do by -- by eye. And we have a rule that 17 if the truck is half full or more, they use a system 18 called ChipDrop. 19 That's is software that allows to find who is 20 willing to have wood chips for free or even if we pay 21 20 bucks to allow us to dump. And whoever is half a 22 load or more, they do that. That way, save us bill and 23 then they get ready the equipment for the next day. 24 MS. LEWINTER: Okay. 25 MR. ALVAREZ: So that helps for the chips.</p>
<p>150</p> <p>1 But I was -- I was conscious, like, that I have to get 2 rid of it. And also, as I did as I financially could. 3 MS. LEWINTER: I'm sorry. I just -- I'm -- I 4 will get a transcript, but I just -- it's very helpful 5 for me to take my own notes so I can stay -- 6 MR. ALVAREZ: Mm-hmm. 7 MS. LEWINTER: I'm sorry about -- about the 8 breaks. 9 MR. ALVAREZ: And if I -- if I need to speak a 10 little slower, I still can try to slow. 11 MS. LEWINTER: All right. Ms. Evans seems to 12 be okay. Okay. So in terms of -- we talked a lot about 13 the weight of trucks, and when they're full and when 14 they're not full. Do your -- your employees have some 15 way of assessing weight without having to get the 16 trucks weighed every time? 17 MR. ALVAREZ: Yeah. So pretty much, I have -- 18 from the whole fleet, I have three small pickup trucks. 19 But they are 7,000 pounds and they never carry a 20 trailer behind -- 21 MS. LEWINTER: Right. 22 MR. ALVAREZ: -- that -- that are used to do 23 sales. And there are three more small Isuzu brand 24 trucks that they are -- we call landscape trucks, and 25 they're 14,000 pounds. Even those three trucks at</p>	<p>152</p> <p>1 MS. LEWINTER: Yeah. But what I hear you 2 saying is that there's no real way for crews in the 3 field to know the weight they're carrying. 4 MR. ALVAREZ: No. Because the weight is 5 different from -- depending on the species of trees 6 that they have behind in the back of the truck. Some 7 species of trees differentiate drastically on the 8 density and the weight. 9 MS. LEWINTER: All right. So, Mr. Alvarez, 10 it's also my understanding, and this is documented in 11 the record, you know, many of the exhibits, that you 12 have been operating as a landscape contractor at this 13 site. I mean, that's your own testimony. Is that 14 correct? 15 MR. ALVAREZ: Well, because there is no 16 specific tree care category for us, we fit in the 17 landscape contractors. With the county, they don't have 18 that category, subcategory for us in specific. 19 MS. LEWINTER: So I just want you to confirm 20 though that you did begin operations before you 21 obtained that conditional use permission. 22 MR. ALVAREZ: Oh, yes. That's correct. 23 MS. LEWINTER: And do you have an explanation 24 for why that happened? 25 MR. ALVAREZ: Yes. That -- the reason to me be</p>

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<p>153</p> <p>1 able to cut off expenses during the critical months of 2 the pandemic, early 2020. And I was renting from a 3 commercial place in Rockville, off of Travilah Road. 4 And they want almost \$4,000 a month. 5 And so I had to move into the farm as a 6 emergency strategy to save the -- the business, cutting 7 off expenses. And that's the only reason ma- -- made me 8 or forced me to move into, before me going through this 9 process before. Can see there's no time to do this 10 process and then move in. 11 MS. LEWINTER: Okay. So even though you moved 12 in in January of -- or early of 2020, because we're now 13 in 2022. 14 MR. ALVAREZ: I didn't remember exactly the 15 move in, but I know it wasn't really in January. I -- I 16 think I started sending the material to the property 17 before me move in. I was still in Rockville, renting 18 the -- the place in Rockville before I move -- move 19 into the farm. 20 MS. LEWINTER: So, Mr. Alvarez, can you 21 appreciate why there may be some concerns about your 22 credibility based on this with your neighbors? 23 MR. ALVAREZ: Yes. There is a specific 24 neighbor that the time that I went to introduce myself, 25 everybody else were friendly. But he said that he will</p>	<p>155</p> <p>1 buffer for that. It's going to -- the planting of the 2 trees is going to improve the appearance of the 3 property as well. It's going to give some of the 4 neighbors, that they are concerned about views, 5 privacy. And -- and again, improving -- improving the - 6 - the -- the value of the property, that's my thinking, 7 when they back up to a tree farm, not a conditional use 8 of the truck parking. 9 MS. LEWINTER: And my understanding is there's 10 also been some concerns about after hours use, parties, 11 etc. on the site. 12 MR. ALVAREZ: I -- I did one customer 13 appreciation party last year, close to the Fourth of 14 July. And sometimes I do little cookout recognitions 15 for the guys, but in afternoon. 16 MS. LEWINTER: Can you repeat that? What did 17 you say for the guys that you do? 18 MR. ALVAREZ: Yeah. Cookout. 19 MS. LEWINTER: Oh, cookout. 20 MR. ALVAREZ: So as everybody else has the 21 right to cookout in their backyard, I think all the 22 neighbors also they cookout they eat, they do what they 23 do. And still, I think we've been very respectful to 24 everybody, because we know where we are, and we're in 25 the middle of this process, and what this process is</p>
<p>154</p> <p>1 do whatever is in his capacity to really make me move 2 out, without even knowing. So I think I was expecting 3 this kind of rejection from the beginning, that I -- 4 they knew that I purchased the property. Even before me 5 -- sent the material out there to pile up wood chips 6 and so forth. 7 MS. LEWINTER: I guess my question to you is 8 that -- what would you do to rebuild your credibility 9 with your neighbors? 10 MR. ALVAREZ: Well, if they are willing to 11 talk, and we can meet, and address the concerns about 12 the neighborhood. I think we all can work together and 13 -- and make a better neighborhood friendship. Mm-hmm. 14 MS. LEWINTER: And I mean, besides your kind 15 of good word and your willingness to have the regular 16 inspections, you know, what kind of guarantees can you 17 offer in terms of your ability to comply with a 18 conditional use going forward? 19 MR. ALVAREZ: So if the conditional use is 20 granted, I can -- I have a plan. For example; first up, 21 noise concerns. Noise concerns is going to be 22 eliminated once trees are planted. Besides, I think the 23 -- all the fleet that I have is no -- beyond a normal 24 car, regular car noise. 25 And -- but I'm going to have to increase the</p>	<p>156</p> <p>1 concerning. 2 MS. LEWINTER: Is that something you'd want to 3 do more than once, to have cookouts or appreciation? 4 MR. ALVAREZ: Actually, we decided to shut 5 down this option and just go to a park when we need to 6 do any company event. 7 MS. LEWINTER: So it's your testimony that 8 that type of event will not happen on site after 6:30? 9 MR. ALVAREZ: Exactly. 10 MS. LEWINTER: Okay. 11 Mr. Hughes, did you have any follow-up to my 12 questions? 13 MR. HUGHES: Thank you, Your Honor. I don't 14 believe so. Thank you. 15 MS. LEWINTER: We can move on to your next 16 witness. 17 MR. HUGHES: Thank you, Mr. Alvarez. Thank 18 you, Your Honor. 19 Our next witness would be Ms. Kim Currano. 20 MS. LEWINTER: Ms. Currano, can you raise your 21 right hand, please? 22 MS. CURRANO: Yes. I -- 23 MS. LEWINTER: Sorry. Do you solemnly swear 24 under penalties of perjury that the statements you're 25 about to make are the truth, the whole truth, and</p>



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<p>157</p> <p>1 nothing but the truth?</p> <p>2 MS. CURRANO: I do.</p> <p>3 MS. LEWINTER: Thank you. Mr. Hughes.</p> <p>4 MR. HUGHES: Thank you. Ms. Currano, can you</p> <p>5 please again state your name for the record and your</p> <p>6 work address?</p> <p>7 MS. CURRANO: Yes. My name is Kimberly</p> <p>8 Currano. My work address, I for -- I work for Stantec.</p> <p>9 And the work address is 6 Montgomery Village Avenue,</p> <p>10 Gaithersburg, Maryland.</p> <p>11 MR. HUGHES: Thank you. And what is your</p> <p>12 profession?</p> <p>13 MS. CURRANO: I'm a site civil engineer.</p> <p>14 MR. HUGHES: And tell us a little bit about</p> <p>15 your educational and professional background, please.</p> <p>16 MS. CURRANO: Yes. I have a bachelor's degree</p> <p>17 from University of Maryland in civil engineering. And I</p> <p>18 am a registered Maryland professional engineer. And</p> <p>19 I've been working for about 20 years locally.</p> <p>20 MR. HUGHES: Thank you. And have you been</p> <p>21 recognized as an expert professional engineer in civil</p> <p>22 engineering by this -- by Montgomery County zoning</p> <p>23 before?</p> <p>24 MS. CURRANO: Correct. Yes. I have provided</p> <p>25 expert witness testimony before. My last one was with</p>	<p>159</p> <p>1 MS. CURRANO: Yes. Right now, they have</p> <p>2 overhead electric that's provided by polls out on -- on</p> <p>3 the road, and they do not have any water and sewer</p> <p>4 available, public water and sewer is not available on</p> <p>5 site. They're category W6 and S -- S6.</p> <p>6 MR. HUGHES: Okay. Correct, there's no natural</p> <p>7 gas on site as well?</p> <p>8 MS. CURRANO: Correct. No natural gas, that's</p> <p>9 correct.</p> <p>10 MR. HUGHES: Okay. And -- one second. And,</p> <p>11 Your Honor, I'm going to reference exhibit 28, I</p> <p>12 believe. Ms. Currano, is it your understanding that</p> <p>13 fire apparatus access plan has been approved by the</p> <p>14 county?</p> <p>15 MS. CURRANO: That's correct. Yes. That has</p> <p>16 been approved by Marie LeBois [ph], the fire</p> <p>17 department.</p> <p>18 MR. HUGHES: Thank you. Exhibit 28 is the</p> <p>19 amended approval dated 5/31/22. Is -- is that your</p> <p>20 understanding?</p> <p>21 MS. CURRANO: I have 34 so I'm kind of</p> <p>22 checking now. I'm sorry. I had that as --</p> <p>23 MR. HUGHES: Oh, my mistake.</p> <p>24 MS. CURRANO: -- number 34.</p> <p>25 MR. HUGHES: You're correct. You're -- my</p>
<p>158</p> <p>1 Metro Grounds, which was conditional use 2020-07. Very</p> <p>2 similar number to this one, but 2020-07.</p> <p>3 MR. HUGHES: Thank you. And, Your Honor, her</p> <p>4 resume is also in exhibit 31 of our pre-hearing</p> <p>5 statement. I would like to offer her up as a</p> <p>6 professional engineer, the discipline of civil</p> <p>7 engineering.</p> <p>8 MS. LEWINTER: I'll accept that. Thank you.</p> <p>9 MR. HUGHES: Thank you.</p> <p>10 Ms. Currano, are you familiar with this</p> <p>11 property and this project?</p> <p>12 MS. CURRANO: Yes. I am.</p> <p>13 MR. HUGHES: What have -- what -- how have you</p> <p>14 -- what tools, or materials, and/or site visits have</p> <p>15 you had to become familiar with the project in the</p> <p>16 area?</p> <p>17 MS. CURRANO: I have visited the site, I was</p> <p>18 there on Wednesday. And then, of course, we've been</p> <p>19 working together, everyone at Stantec including me and</p> <p>20 John Sekerak, who testified previously, we've been</p> <p>21 working together on the documents prepared. We've also</p> <p>22 been reviewing other documents prepared by other agency</p> <p>23 -- other engineering firms as well.</p> <p>24 MR. HUGHES: Thank you. Can you tell us a</p> <p>25 little bit about the utilities on the property?</p>	<p>160</p> <p>1 mistake. Yep. Revised fire marshal approval 30 -- my</p> <p>2 apologies, Your Honor. It's exhibit 34. Or it might be</p> <p>3 both, it might be the same one. And that's -- that's</p> <p>4 definitely the most current if. And can you tell us --?</p> <p>5 MS. LEWINTER: Do you need it on a specific</p> <p>6 page? Or it doesn't matter.</p> <p>7 MR. HUGHES: Yeah. It do- -- I don't think it</p> <p>8 matters. Ms. Currano, is there anything else you want</p> <p>9 to add about that approval?</p> <p>10 MS. CURRANO: No. It's -- it's approved.</p> <p>11 MR. HUGHES: Okay. Let's see. Can you tell us</p> <p>12 a little bit about stormwater management related to</p> <p>13 this project?</p> <p>14 MS. CURRANO: Yes. Of course. Storm management</p> <p>15 is not required for the site, and that's because the</p> <p>16 overall limited disturbance for any proposed disturbing</p> <p>17 that would be going on in this property is less than</p> <p>18 5,000 square feet. That's the Maryland State law. If</p> <p>19 you're less than 5,000 square feet, you don't need any</p> <p>20 storm management. And you also don't need any permits</p> <p>21 for earthmoving or sediment control.</p> <p>22 MR. HUGHES: Okay.</p> <p>23 MS. CURRANO: So I've quantified it about</p> <p>24 3,000 square feet of disturbance.</p> <p>25 MR. HUGHES: Okay. And what does that involve,</p>

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<p>161</p> <p>1 briefly?</p> <p>2 MS. CURRANO: The -- the quantifying --</p> <p>3 measuring what -- what disturbance we're doing. Or --</p> <p>4 the disturbance that we're doing on site we're</p> <p>5 proposing is the tree panel area that was discussed by</p> <p>6 Mr. Sekerak earlier, two trees to go in the parking</p> <p>7 area. And then, of course, the underground fire</p> <p>8 suppression tanks that will be going on closer to the,</p> <p>9 you know -- the front of the property.</p> <p>10 MR. HUGHES: Okay. And based upon the revised</p> <p>11 fire marshal approval, if we're fortunate enough to get</p> <p>12 this conditional use, the driveway toward -- right at</p> <p>13 the road area will be reduced. Is that your</p> <p>14 understanding?</p> <p>15 MS. CURRANO: That's my understanding. That's</p> <p>16 correct.</p> <p>17 MR. HUGHES: Can you tell us a little bit</p> <p>18 about some of the adequate public facility</p> <p>19 considerations including fire, I guess, as a starting</p> <p>20 point?</p> <p>21 MS. CURRANO: Sure. Yeah. Fires, they're</p> <p>22 certainly approved. And, you know, once they app- --</p> <p>23 you know, install these and adequately -- adequately</p> <p>24 served.</p> <p>25 MR. HUGHES: Okay.</p>	<p>163</p> <p>1 MR. HUGHES: Okay. Thank you. There's been</p> <p>2 some testimony and discussion quite a bit about the</p> <p>3 weight restricted bridges, or bridging area, the one</p> <p>4 close by to the site. Are you familiar with that</p> <p>5 bridge?</p> <p>6 MS. CURRANO: Yes. Correct. I did visit it on</p> <p>7 Wednesday, Burnt Hill.</p> <p>8 MR. HUGHES: Okay. And is it your professional</p> <p>9 opinion, or do you concur that there's multiple routes</p> <p>10 and thus any heavy trucks could avoid it?</p> <p>11 MS. CURRANO: Correct. Yes. Multiple routes to</p> <p>12 get to it that lo- -- to our particular site. And I</p> <p>13 wou- -- just as stated previously by Mr. Alvarez,</p> <p>14 Clarksburg Road, Lewisdale Road, all those roads can</p> <p>15 get us to where -- to where our property is.</p> <p>16 MR. HUGHES: Good. Thank you. Are there any</p> <p>17 oth- -- are there any other key topics from your</p> <p>18 professional position that you want to talk -- add to</p> <p>19 or related to compliance here?</p> <p>20 MS. CURRANO: I don't have anything else, I</p> <p>21 don't.</p> <p>22 MR. HUGHES: Okay. Very good. That would be my</p> <p>23 direct of Ms. Currano, Your Honor.</p> <p>24 MS. LEWINTER: Thank you. Ms. Curra- --</p> <p>25 Currano, can you speak to the driveway apron, and what</p>
<p>162</p> <p>1 MS. CURRANO: And public schools I don't think</p> <p>2 applies, because there's no generated of school use.</p> <p>3 Police is available and not -- adequately provided</p> <p>4 police.</p> <p>5 MR. HUGHES: And -- and same with the fire</p> <p>6 station, the Laytonsville one?</p> <p>7 MS. CURRANO: Correct.</p> <p>8 MR. HUGHES: That's correct?</p> <p>9 MS. CURRANO: It's our -- fire station number</p> <p>10 13.</p> <p>11 MR. HUGHES: Okay. Are you aware of -- just a</p> <p>12 second. Your Honor, the court's indulgence real quick.</p> <p>13 One second, Your Honor.</p> <p>14 Ms. Currano, I'm going to refer you to Exhibit</p> <p>15 17. And I don't think it needs to be pulled up, Your</p> <p>16 Honor, right now. But the site distance report, is that</p> <p>17 something you've looked at? And tell us what -- what</p> <p>18 that says, and -- and if you -- if you have a viewpoint</p> <p>19 on that.</p> <p>20 MS. CURRANO: Sure. That is the site distance</p> <p>21 evaluation that was done in field in March of 2021. And</p> <p>22 that one shows that we do have adequate site distance</p> <p>23 to enter -- to exit the property. And went -- in my</p> <p>24 opinion, I went to the site, and I do agree with this</p> <p>25 state -- with this distances that were provided.</p>	<p>164</p> <p>1 happened with that, and why it may have changed or not</p> <p>2 changed?</p> <p>3 MS. CURRANO: I definitely wasn't part of the</p> <p>4 process, you know, but I've been told that it changed</p> <p>5 when I visited it on -- on Wednesday. I recognized the</p> <p>6 -- the -- the -- what the width is currently. But I --</p> <p>7 I couldn't tell what had been added. It's not something</p> <p>8 that was very clear, oh, this has been added, it's</p> <p>9 newer in this location.</p> <p>10 It looked like a regular driveway that had</p> <p>11 been there. I've been told that it was added to one</p> <p>12 side so that all trucks could go around one side of the</p> <p>13 pole that's in the middle of the driveway. That's what</p> <p>14 I was told, but I had not visited the site prior to</p> <p>15 that to verify if that was the case or not.</p> <p>16 MR. HUGHES: And, Your Honor, if -- I think</p> <p>17 Mr. Sekerak or myself might be able to give more</p> <p>18 insight into that. If -- if -- if -- if -- if now or</p> <p>19 later you want that discussed in detail, he and I were</p> <p>20 a little more involved.</p> <p>21 MS. LEWINTER: Okay. I -- I apologize. I guess</p> <p>22 I misunderstood who would be the right witness for</p> <p>23 that, and I probably should have directed it to Mr.</p> <p>24 Sekerak. We can circle back to that so we don't waste</p> <p>25 Ms. Currano's time. I don't have any other questions</p>

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<p>165</p> <p>1 for Ms. Currano. Right. 2 You -- did you have one more witness, Mr. 3 Hughes? 4 MR. HUGHES: Yes. 5 MS. LEWINTER: More than one. 6 MR. HUGHES: Yes. I -- yeah. One -- one more 7 is -- is the plan, Your Honor. Do you want me to call 8 that witness now? 9 MS. LEWINTER: Yes, please. 10 MR. HUGHES: I'd like to call Mike Nalepa. I 11 think he's on, I hope he's on. 12 MS. LEWINTER: I see him. Mr. Nalepa, would it 13 be possible to, like, close the shade behind you? 14 MR. NALEPA: How about this? 15 MS. LEWINTER: That is much better. Thank you, 16 sir. Okay. Mr. Nalepa, can you raise your right hand 17 please? Do you promise -- sorry. Do you solemnly swear 18 under penalties of perjury that the statements you're 19 about to make are the truth, the whole truth, and 20 nothing but the truth? 21 MR. NALEPA: Yes. 22 MS. LEWINTER: Mr. Hughes, your witness. 23 MR. HUGHES: Thank you. Mike, can you please 24 state your name and your business ad- -- address for 25 the record?</p>	<p>167</p> <p>1 exhibit 16. Can you tell us what that is and -- and 2 what that shows? 3 MS. LEWINTER: Do you want me to pull his up? 4 MR. HUGHES: Mike, would it be helpful to have 5 this document out? 6 MR. NALEPA: Not really. There isn't a whole 7 lot on it. 8 MS. LEWINTER: Okay. 9 MR. HUGHES: Okay. 10 MR. NALEPA: It's -- it's basically a -- park 11 and planning requires that you -- we submit, as traffic 12 engineers, a scope of work agreement before starting 13 work on any project. And -- and so I filled that form 14 out. And per their requirements, they do not require 15 that a full traffic study be done if the use generates 16 49 or fewer trips during any peak hour. 17 So using the trip generation rates, found in 18 the Institute of Transportation Engineers publication 19 trip generation, we determined that based on the 25 20 employees that were proposed at the time, the maximum 21 peak hour trips that would be generated by that use 22 were 12. 23 We put that in the scope of work agreement, 24 filled out all the -- you know, checked all the boxes, 25 sent it in along with the trip generation. And park and</p>
<p>166</p> <p>1 MR. NALEPA: Mike Nalepa. Four hundred Crain 2 Highway, Glen Burnie, Maryland. 3 MR. HUGHES: Can you tell us a little bit 4 about your professional and educational background? 5 MR. NALEPA: Yes. Well, I'm a traffic engineer 6 with street traffic studies, I've been with them for 7 coming on 38 years. Prior to that, I worked for four 8 years with PG County Department of Public Works. And 9 I've got a bachelor's degree from the University of 10 Buffalo. 11 MR. HUGHES: Your Honor, his resume is also in 12 exhibit 31, our pre-hearing statement. Now, let me 13 first back up. Mike, have you ever been qualified as an 14 expert be- -- in Montgomery County? 15 MR. NALEPA: Yes. 16 MR. HUGHES: Is -- multiple times? 17 MR. NALEPA: Yes -- yeah. And other spots too. 18 MR. HUGHES: Okay. And, Your Honor, his resume 19 is in exhibit 31. I'd like to ask him to be recognized 20 in -- as expert in transpor- -- transportation planning 21 and, or traffic engineering. MS. LEWINTER: So 22 recognized. 23 MR. HUGHES: Thank you. Mike, you were asked 24 to prepare a park and planning report related to 25 transportation, the county form. Can you -- that's</p>	<p>168</p> <p>1 planning accepted it and didn't require a traffic 2 study. 3 MR. HUGHES: So that was ev- -- even -- you 4 know that now we're talking about 19 staffers, but even 5 at 25, it was well below the limit. Is that correct? 6 MR. NALEPA: Oh, yeah. You could -- you could 7 have doubled it and we still would have been under the 8 49. 9 MR. HUGHES: Okay -- okay. And -- and Mike, 10 did you want -- the hearing examiner had a question 11 right before we took our lunch break. Is that -- is 12 that -- as related to the -- the road and to traffic, 13 is that a topic that you feel you could weigh in on for 14 her from your professional opinion? 15 MR. NALEPA: Well, I think so. Like I said, 16 with [inaudible] 17 MR. HUGHES: If you could rephrase the quest- 18 -- could you rephrase the question that she was asking 19 first? Do you remember what the -- kind of the question 20 was? 21 MR. NALEPA: I believe it was what would -- 22 would the impact of these additional trips be 23 perceptible to the neighbors and motoring public on the 24 road? I believe that was it. And -- and my response to 25 that would be, even with the 25 employees that we</p>

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<p>169</p> <p>1 looked at, that's 12 trips an hour, which would be 2 imperceptible to the average motorist or adjacent land 3 owner on a road like that. 4 MR. HUGHES: So I guess even less impact with 5 it being knocked down to 19. 6 MR. NALEPA: Mm-hmm. 7 MR. HUGHES: Okay. Thank you. 8 So your professional opinion is that the -- 9 the -- the limit is -- is certainly within the county 10 criteria. Correct? 11 MR. NALEPA: Yes. 12 MR. HUGHES: And -- and -- and county staff 13 took no exception to that? 14 MR. NALEPA: That's correct. 15 MR. HUGHES: And so do you -- you know, is 16 there any material impact you see to the transportation 17 network based upon these numbers, from your 18 professional experience? 19 MR. NALEPA: Not that would be considered to 20 be significant in any way. 21 MR. HUGHES: Very good. Your Honor, those 22 would be my direct questions for -- for Mike, please. 23 MS. LEWINTER: Okay. I -- I don't have any 24 follow up for Mr. Nalepa. 25 MR. HUGHES: I apologize, I kept calling you</p>	<p>171</p> <p>1 MR. HUGHES: [inaudible] 2 MS. LEWINTER: Is it possible for him to just 3 sit where you're sitting, Mr. Hughes, and you kind of 4 sit right next to him? 5 MR. HUGHES: But I think we fixed it though. 6 Just trying -- just have to [inaudible] 7 MR. SEKERAK: Let me give this one more try. 8 MS. LEWINTER: That seems better. Great. All 9 right. Mr. Sekerak, I've -- I've read about it in the 10 various exhibits. But if you could explain to me what 11 happened with the driveway. 12 MR. SEKERAK: Mr. Alvarez improved his 13 driveway, putting additional millings down on top of 14 the existing surface. While doing that, chose to put 15 two lanes on -- well, let's see. The driveway ha- -- 16 had one lane going on each side of a telephone pole 17 that was, you know, ne- -- up near the road. 18 So he chose to put two lanes on one side of 19 the telephone pole, antic- -- properly anticipating 20 that's how fire marshal would like that to be -- would 21 like that to be handled. And did millings for the -- 22 the length of the driveway, the -- the -- the entire 23 1,000 feet right on -- on top of the existing. In terms 24 of any widening, you know, it -- is a gravel -- gravel 25 driveway, ill-defined edges.</p>
<p>170</p> <p>1 Mike. Sorry about that. I should have been more formal 2 myself. 3 MR. NALEPA: No worries. That it? 4 MR. HUGHES: Let me see if the hearing 5 examiner agrees, but I think so. 6 MS. LEWINTER: For Mr. Nalepa, I think so. 7 Did you have any other witnesses you want to 8 call? 9 MR. HUGHES: I do not. 10 MS. LEWINTER: Could you then indulge me if 11 Mr. Sekerak -- I'm saying -- I'm -- 12 MR. HUGHES: Yeah. 13 MS. LEWINTER -- messing up his name, is still 14 on just to ask about the driveway? 15 MR. HUGHES: Absolutely. He's still here with 16 me, and we'll have him move over. And that is a good 17 one to recall him on, so thank you. You want to move 18 over here, John? Oh, you're going to do it from there, 19 you're going to be fancy. Okay. 20 MS. LEWINTER: And I'm still going to consider 21 this in the cave -- case in chief presentation because 22 this is my question to you. Okay. 23 MR. HUGHES: We're -- we're going to have him 24 --. Sorry, we think we -- 25 MS. LEWINTER: Oops.</p>	<p>172</p> <p>1 So, you know, that -- that's not really 2 quantifiable, except for the -- at the entrance where, 3 again, they put two lanes on one side of the -- one 4 side of the pole. We had gone back, you know, at -- at 5 that point, the engineer had gone back to bring this up 6 with the fire marshal again, and got their approval 7 that yes, it was a successful approval of this 8 conditional use. 9 The remaining single lane to the right of the 10 pole can be removed and still maintain the good, 11 proper, sufficient access to the site for a -- for a -- 12 for fire department truck. If you look at, for 13 instance, the air photos, it was already a wide 14 entrance. But the throat of it entering into the site 15 got wider with that improvement of two lanes on one 16 side of the pole. 17 MS. LEWINTER: So are you saying it would 18 then, if this was approved, be reduced? 19 MR. SEKERAK: It could be reduced, right, 20 still maintaining the two lanes on one side of the pole 21 but removing the -- the -- the previous and remaining 22 one lane on the -- to the right of the pole. If you 23 kind of visualize that before and after, the revised 24 fire department access plan kind of illus- -- 25 illustrates, you know, marks out how -- how that --</p>

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<p>173</p> <p>1 that would be accomplished.</p> <p>2 MS. LEWINTER: And should -- in terms of order</p> <p>3 of approval, did Mr. Alvarez jump the gun here? Should</p> <p>4 he have waited until after a conditional use was</p> <p>5 approved before making these changes?</p> <p>6 MR. SEKERAK: To put down more millings</p> <p>7 doesn't require proo- -- on -- on an existing driveway,</p> <p>8 it's -- it's the -- it is a pre-existing driveway, it</p> <p>9 was already wide where the -- where it would be public</p> <p>10 right of way, prescriptive easement along the -- the</p> <p>11 road. The additional widening to get around the pole</p> <p>12 with two lanes on one side was less than 5,000 square</p> <p>13 feet. It -- it's -- the site is also used for</p> <p>14 agricultural use, etc. So I don't think any approvals</p> <p>15 would have been necessary to do such a modest</p> <p>16 improvement.</p> <p>17 MS. LEWINTER: Mr. Hughes, do you have any</p> <p>18 follow-up to my question?</p> <p>19 MR. HUGHES: I do -- I do not.</p> <p>20 MS. LEWINTER: Okay. Good. Thank you, Mr.</p> <p>21 Sekerak.</p> <p>22 So will that conclude your case in chief for</p> <p>23 now?</p> <p>24 MR. HUGHES: It -- it would. Yes.</p> <p>25 MS. LEWINTER: Okay. So what I'm going to</p>	<p>175</p> <p>1 representing or speaking for a group, I would then ask</p> <p>2 them to go next, and then we can just kind of go in</p> <p>3 turn.</p> <p>4 And I apologize that there's not a more -- we</p> <p>5 don't have a sign-in sheet, so I can't really assess</p> <p>6 who should go first beyond that. But I -- everybody</p> <p>7 should get the opportunity to testify. Is that</p> <p>8 acceptable? Okay. Not hearing anything, Ms. Van Etten,</p> <p>9 are you still on? Ms. Van Etten, can you hear me? I --</p> <p>10 I think that's her phone number. Ms. Van Etten, can you</p> <p>11 hear me? Ms. Van Etten -</p> <p>12 MS. VAN ETTEN: Can you hear me?</p> <p>13 MS. LEWINTER: Now I can.</p> <p>14 MS. VAN ETTEN: Yes. You can hear me?</p> <p>15 MS. LEWINTER: Yes. Would you be comfortable</p> <p>16 test- -- testifying now and moving forward?</p> <p>17 MS. VAN ETTEN: Yeah. That's fine. Thank you.</p> <p>18 MS. LEWINTER: Okay. Can I swear you in?</p> <p>19 MS. VAN ETTEN: Yes. Thanks.</p> <p>20 MS. LEWINTER: Okay. Obviously, you're on the</p> <p>21 phone and we can't see you, but I'm going to trust that</p> <p>22 you have your right hand up.</p> <p>23 MS. VAN ETTEN: Yes.</p> <p>24 MS. LEWINTER: Do you solemnly swear under</p> <p>25 penalties of perjury that the statements you're about</p>
<p>174</p> <p>1 recommend is we take another, like, five minute comfort</p> <p>2 break. Maybe you guys can work on the microphone if</p> <p>3 that's going to be an ongoing issue. But we can</p> <p>4 reconvene at 2:30. And if Ms. Evans wants to go off the</p> <p>5 record.</p> <p>6 MR. HUGHES: Ask for ten --</p> <p>7 MS. LEWINTER: Okay.</p> <p>8 MR. HUGHES: Can -- can we ask for 10 minutes,</p> <p>9 Your Honor?</p> <p>10 MS. LEWINTER: Oh, sure. We'll come back at</p> <p>11 2:35. Sure. Let me know when you're ready.</p> <p>12 MS. EVANS: We're back on record.</p> <p>13 MS. LEWINTER: Thank you. My apologies.</p> <p>14 Again, my understanding before we took our</p> <p>15 little break was that the applicant had completed his</p> <p>16 case in chief. I don't have any opposition parties of</p> <p>17 record. But there ha- -- are a number of people who are</p> <p>18 at the hearing who are interested parties, and had</p> <p>19 expressed an interest in testifying when we began the</p> <p>20 proceedings this morning. So I'd like to proceed now to</p> <p>21 let them testify.</p> <p>22 I don't really have a system in terms of who</p> <p>23 gets to go first. But I was going to ask if I could</p> <p>24 hear from Ms. Van Etten, who is from the Rustic Roads</p> <p>25 Advisory Board. And then if there's anybody else who's</p>	<p>176</p> <p>1 to make are the truth, the whole truth, and nothing but</p> <p>2 the truth?</p> <p>3 MS. VAN ETTEN: Yes.</p> <p>4 MS. LEWINTER: Okay. If you could state and</p> <p>5 spell your name for the record.</p> <p>6 MS. VAN ETTEN: It's Laura Van Etten. L-a-u-r-</p> <p>7 a, last name, capital V-a-n space, capital E-t-t-e-n.</p> <p>8 MS. LEWINTER: And if you could again state</p> <p>9 which group or what your role is and why you're here?</p> <p>10 MS. VAN ETTEN: Yeah. Sure. I am the chair of</p> <p>11 the Rustic Roads Advisory Committee, and I'm here to</p> <p>12 testify on behalf of the committee.</p> <p>13 MS. LEWINTER: Okay. So Ms. Van Etten, if</p> <p>14 you'd like to proceed.</p> <p>15 MS. VAN ETTEN: Yes. Thank you. What I was</p> <p>16 going to do is go over our experience and our issues, a</p> <p>17 little bit of background about Rustic Roads. And then I</p> <p>18 wanted to address some of the things raised by the</p> <p>19 applicant.</p> <p>20 And so I may have to kind of go back and forth</p> <p>21 because in my notes, they're not going to be in order</p> <p>22 of what I would generally be talking about. So I'm just</p> <p>23 going to start with a little introduction about Rustic</p> <p>24 Roads.</p> <p>25 They are historic and scenic roadways</p>

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<p>177</p> <p>1 reflecting the agricultural character and rural origins 2 of the county. We preserve these rustic roads by 3 retaining certain physical features along the road. And 4 by code, these features are called significant 5 features, which once in a master plan and adopted by 6 the county council must be preserved when there are 7 improvements or changes on the road. 8 And Prices Distillery is a rustic road, as is 9 Burnt Hill Road, which is its nearest intersection. So 10 these protected significant features are on Prices 11 Distillery, the views of the open farmland, and the 12 view of the barn. And that's the bank barn that's been 13 talked about, which is actually an historic barn from 14 the 1800s, called the John King Barn. It's in the 15 locational atlas for historic purposes, the -- that's 16 part of the view shed that's protected here. 17 On Burnt Hill Road, the significant feature of 18 interest here is the concrete bridge, the one with the 19 weight limit. That is a 1949 bridge, and therefore, 20 when that comes up in the queue for repairs, the 21 committee will have full involvement with the 22 Department of Transportation in deciding how that is 23 handled so as to preserve any characteristic -- 24 characteristics of it that we feel are special. 25 We, by law, provide input to the planning</p>	<p>179</p> <p>1 the road. So that would be an effect and adverse impact 2 on that significant feature of the view. 3 And I'll just mention that, you know, I did a 4 little research on this just -- just because I wanted 5 to know where is wood supposed to be deposited. And you 6 have to have a State Department of Environment permit 7 to pile wood debris on your property. There are six 8 licensed facilities in Montgomery County, and that's 9 where the wood debris, it needs to go. 10 Now, I know that eventually the wood debris 11 was removed. But at our March 27th -- our March 25th 12 meeting, the president of the company, Mr. Alvarez, 13 told us that they had cleaned up the wood debris. And I 14 thanked him for that profusely. However, two days later 15 on the 27th, I drove over and it's still wood debris 16 there. So my sort of interest in their good faith waned 17 a bit. 18 They also told us at our meeting that they 19 would not be widening their driveway unless 20 they were required to do so by the fire and rescue 21 department. And I'm actually looking at their -- their 22 statement of justification right here. And it's -- you 23 know, it talks about their driveway, you know, that the 24 applicant has no need or plans to modify the entrance. 25 However, the fire marshal, planning staff, or other</p>
<p>178</p> <p>1 board on subdivisions and conditional uses on rustic 2 roads. And we advise as to whether there are adverse 3 impacts proposed to be caused. We always opine on 4 driveways, because that's the access point where the 5 property changes meet the road. 6 And, you know, just -- just as a little bit 7 more background, we're -- we're just volunteers. We 8 have seven members of the committee, and we do have a 9 few emeritus members who help us out. But we're all 10 volunteers, we have other jobs, other things that we 11 do. And we sometimes, like today, spend an enormous 12 amount of time on something like this. 13 And so we try to do the right thing by 14 everyone involved. And I know with -- in this case, 15 looking back at the Chapingo company, they actually did 16 what a lot of applicants do. They sent us a letter back 17 in March of 2021 asking to come in early and talk to 18 us. And quite honestly, that's great, because it's nice 19 to get a feel for what's going to happen, give the 20 applicant some advice as to what we'll be looking for 21 when they plan to do whatever it is they're going to 22 do. 23 They were going to come in at our March 25th 24 meeting. So I drove over to have a look at the 25 property. They had the piles of wood in plain view of</p>	<p>180</p> <p>1 government entities may request some improvement to it. 2 They don't say how wide it is. But I know that 3 their engineer said that it was sort of indeterminate 4 because it was gravel. We have gravel roads in our 5 Rustic Roads Program, and they're all measured, and we 6 know exactly how wide they are. And I personally 7 measured this driveway, and it was 12 feet wide. 8 Now, you know, again, if this were a farm, and 9 an existing driveway in a farm that wasn't going 10 through conditional use, probably a farmer could do 11 pretty much, you know, whatever, put millings, make it 12 a little wider. 13 But not in this case, not when you're before a 14 reviewing agency. And our normal process is that the 15 engineer will provide us with a set of drawings that 16 show what they propose to do with the driveway. And 17 then we'll oftentimes meet the engineer and/or the 18 property owner over at the driveway, and look at it, 19 and give them advice. 20 And had they asked us to do that, we would 21 have said to them, you know, let's just leave the 22 driveway on the one side of the pole where it is now. 23 And I'm actually going to refer you guys to -- it's -- 24 it's the applicants Exhibit 9B. It's a picture of the 25 property, and it will show you all what they did with -</p>

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<p>181</p> <p>1 - with this utility pole.</p> <p>2 I -- my rec- -- recollection differs from Mr.</p> <p>3 Sekerak's. I recall the driveway being on the left side</p> <p>4 of that pole, and not on the right side. But either</p> <p>5 way, putting a driveway around two sides of the pole,</p> <p>6 and this is very close to the road, as you mentioned.</p> <p>7 And then the millings. The problem with</p> <p>8 millings is they're an impervious surface. And for</p> <p>9 these engineers to say that the only place they</p> <p>10 disturbed the road was here at this pole, meaning less</p> <p>11 than 5,000 square feet, I think is incorrect.</p> <p>12 I think if you put millings down no- -- a now</p> <p>13 20-foot-wide driveway that goes 1,000 feet, that's</p> <p>14 20,000 square feet that you've just impacted. And I</p> <p>15 think you're now subject to stormwater management</p> <p>16 rules. And just -- I don't know. But I'm just</p> <p>17 mentioning that because I -- I'm pretty sure that's</p> <p>18 true.</p> <p>19 Then I want to move on to the barn that's in</p> <p>20 the view. They've said today repeatedly that they have</p> <p>21 no plans to use that barn in their CU, that would be</p> <p>22 used for its original farming purposes. Well, they --</p> <p>23 in their exhibits, they actually have their alteration</p> <p>24 of building permit letters that they insisted DPS</p> <p>25 cosign on so it could be proven that they filed this,</p>	<p>183</p> <p>1 that they will cooperate with self-imposed, or</p> <p>2 otherwise imposed restrictions, just cannot be trusted.</p> <p>3 At the planning board, in fact, it was brought</p> <p>4 up by the commissioners that they would have no way of</p> <p>5 verifying whether Chapingo was complying with the</p> <p>6 requirement to travel one direction or another.</p> <p>7 I think it was Commissioner Verma, who just</p> <p>8 said, we can't -- we would never be able to follow you</p> <p>9 every day and prove that you're compliant. And they --</p> <p>10 they dismissed the idea that that would be a condition</p> <p>11 that would be acceptable out-of-hand.</p> <p>12 And I'm just going to go through my notes real</p> <p>13 quick and just see what else I see here. Oh, Emerald</p> <p>14 Landscaping. I was not on the committee at that time</p> <p>15 when this came before, if it did come before Rustic</p> <p>16 Roads, and I think it did.</p> <p>17 At the planning board hearing, the chair,</p> <p>18 Casey Anderson, dismissed this summarily and said, even</p> <p>19 though there was a positive staff report, he said we</p> <p>20 had -- that was a terrible staff report. He said, we --</p> <p>21 we -- we fired him those staff, we told the applicant,</p> <p>22 you're going to have to come back and redo this,</p> <p>23 because the staff work was so bad.</p> <p>24 And in fact, the applicant didn't return. So I</p> <p>25 think to them as well as to me, citing a, you know,</p>
<p>182</p> <p>1 indicating their intent to alter both structures on the</p> <p>2 property.</p> <p>3 It's very clear that they're saying they might</p> <p>4 alter the King Barn. They've told us repeatedly they</p> <p>5 wouldn't. So again, this all goes to their credibility</p> <p>6 and their trustworthiness as to whether they will</p> <p>7 cooperate with any restrictions placed on them at all.</p> <p>8 Finally, in my -- in my -- I think it's</p> <p>9 covered in my letter to the hearing examiner, I</p> <p>10 discussed the -- the bridge. I've already told you that</p> <p>11 the bridge is 1949. But I do want to say that we asked</p> <p>12 them in committee to commit to not taking any trucks</p> <p>13 over that bridge.</p> <p>14 And I know today, Mr. Hughes mentioned some</p> <p>15 other landscape company case called Goshen, I'm not</p> <p>16 familiar with it. But he cited it as an example of a</p> <p>17 company agreeing not to use a certain road, all traffic</p> <p>18 would go a different direction. And yet, when we asked</p> <p>19 this applicant to do that, he refused. And he said --</p> <p>20 their spokesman said, we'll just limit the heavyweight</p> <p>21 trucks going over the bridge.</p> <p>22 After they said that, of course we heard from</p> <p>23 neighboring parties who had seen heavyweight trucks,</p> <p>24 and apparently photographed heavyweight trucks going</p> <p>25 over that bridge. So again -- and the ability to trust</p>	<p>184</p> <p>1 practice by an applicant that never got approval from</p> <p>2 the planning board is probably not your best choice.</p> <p>3 Then I want to just discuss briefly, one of</p> <p>4 the kind of comparisons that Chapingo is making here,</p> <p>5 is the types of trees -- types of vehicles being used</p> <p>6 on the road. And they've got trash trucks, school</p> <p>7 buses, utility trucks, fire trucks.</p> <p>8 Now, at the planning board, Commissioner Rubin</p> <p>9 said, those are for public use. Those are required for</p> <p>10 public use, they serve a public purpose, you really</p> <p>11 can't rely on those as a reason why you as a private</p> <p>12 business can take heavy trucks repeatedly out on the</p> <p>13 road. And I would just say, even someone who fills</p> <p>14 their swimming pool, that's once a year. It's not six</p> <p>15 days a week, 52 weeks out of the year.</p> <p>16 You know, the idea that they're in some sort</p> <p>17 of agricultural business, like wineries and breweries,</p> <p>18 those are considered agricultural businesses that</p> <p>19 people are putting on their farms where they are</p> <p>20 farming. This is not a matter of rights. This applicant</p> <p>21 had to come for conditional use because tree removal is</p> <p>22 not farming.</p> <p>23 So then -- okay. Now I see my notes here. On</p> <p>24 the driveway again, and this goes to your question that</p> <p>25 you were asking at the end of our session, they claim</p>

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<p>185</p> <p>1 they worked closely with the fire marshal. Okay. The 2 fact of it is they misled the fire marshal. 3 After they widened the driveway, and they -- 4 and they told us that the fire marshal required them to 5 do it, our staff coordinator, e-mailed Marie LeBois, 6 and she said, no, they presented as existing driveway 7 the newly widened driveway with the millings. She did 8 not like the fact that they had it overly wide at that 9 pole. She didn't like the fact that was 70 feet wide at 10 the road. 11 And that's why they got a request by her to 12 come in for a revised permit, to cut back the driveway, 13 to cut it back to 20 feet all the way down. And to cut 14 the entrance which they had made 70 feet down to 35. 15 And, you know, there was an existing wider entrance 16 there that was gravel. 17 If you have some gravel, and you're going to 18 make that opening 35 feet down from 70, you throw a 19 little dirt on it, and a little seed, and straw and 20 voila, it goes away. Once you put millings on it, now 21 you've got to have a bulldozer to fix it. So I mention 22 that because, again, they're bad faith in saying that 23 they were -- they were doing it at the request of the 24 fire marshal was just wrong. 25 And then let's see if I can find anything else</p>	<p>187</p> <p>1 understanding is that historic barn is not suppo- -- 2 supposed to be part of the CU. And I'm not sure why 3 they made a big parking pad there. I don't know if 4 that's allowed or not. But I did notice it's right in 5 their own photo. 6 All right. So I think maybe I've covered the 7 things that I wanted to say. We -- we definitely 8 appreciate your hearing from us. I know we have another 9 two former members of the committee here today who are 10 going to testify. And I'm looking forward to them 11 picking up where I've failed to notice what I should 12 have added. But thank you so much for hearing from me. 13 And I'll just conclude there. 14 MS. LEWINTER: All right. Ms. Van Etten, if 15 you can, please stay on. I'm going to allow Mr. Hughes 16 to ask you some questions, and I might have my own 17 questions at the end. So, Mr. Hughes, if you -- 18 MS. VAN ETTEN: Great, thanks. 19 MS. LEWINTER: -- have questions for Ms. Van 20 Etten. 21 MR. HUGHES: Your Honor, I don't have any 22 questions for her. Thank you. 23 MS. LEWINTER: Okay. Ms. Van Etten, I do. If 24 you could just -- in terms of the AR zone, we had 25 testimony earlier that's 191 miles of rustic roads. In</p>
<p>186</p> <p>1 that I want to comment. On the roads themselves, we do 2 protect the significant features. But also, one of the 3 things to understand about many of the rustic roads is 4 that when they were paved, usually there wasn't a lot 5 of prep that went on. Like, on a state highway, they'll 6 go in and lay a base, and then they'll lay a different 7 course, and then they put the paving down. 8 Often on these rustic roads, and I'm pretty 9 sure this is one of them, because I know Purdum just 10 north of this, which is exceptional rustic that they 11 will probably be traveling on, is -- they just pave 12 over whatever's there. So the roads do take a beating 13 from heavy equipment. 14 And we know with farm equipment, there's a 15 combine. Let's say there's a planter coming in in the 16 spring, there might be a sprayer coming in, and then 17 there's a combine, and a truck, you know, to carry the 18 product out in the fall. It's not daily, it's seasonal. 19 So it seems to me to be a really big difference from 20 what this applicant is proposing. 21 I also wanted to note that in their photo of - 22 - their -- the photos of their vehicles, they show one 23 of their trucks parked, and it looks like a couple of 24 vehicles, parked at the south side of the historic bank 25 barn. And when I looked at the site plan, my</p>	<p>188</p> <p>1 the AR zone generally, what percentage of -- of road 2 mileage is qualified as rustic? If you know, that might 3 be a very big question. 4 MS. VAN ETTEN: Well, you know, I don't -- I 5 don't know the -- Your Honor, I don't know the mileage. 6 That's just sort of a DOT statistic. But what I do know 7 is numbers of roads -- 8 MS. LEWINTER: Okay. 9 MS. VAN ETTEN: -- percentages, and Leslie 10 Saville can probably correct me on this. But I think 11 it's something like 77 percent of the Rustic Roads 12 program's roads are in the Ag Reserve. It's a large 13 percentage of them, but there are many others in old 14 historic neighborhoods that are not in the Ag Reserve. 15 MS. LEWINTER: Okay. So it would be very 16 difficult to have a use in the AR zone that doesn't 17 have to access rustic roads. Is -- if it's 77 percent. 18 Would that be accurate? 19 MS. VAN ETTEN: Right? That's probably right. 20 Yeah. 21 MS. LEWINTER: Okay. That was my -- 22 MS. VAN ETTEN: I mean, it would depend if the 23 road were close to a state highway or something, you 24 know, but even some state roads are rustic roads. 25 MS. LEWINTER: How close are they to the state</p>



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<p>189</p> <p>1 highway?</p> <p>2 MS. VAN ETEN: Not very, that I know. Just 27</p> <p>3 is the nearest road. It's -- I don't know. A couple</p> <p>4 miles, a mile, I'm not sure.</p> <p>5 MS. LEWINTER: I'll have to check. Thank you.</p> <p>6 Okay. That was my only question. So maybe -- just so we</p> <p>7 can continue on the rustic road train of thought, maybe</p> <p>8 Ms. Saville, maybe you'd like to go next.</p> <p>9 MS. SAVILLE: I'd be happy to. Thank you.</p> <p>10 MS. LEWINTER: Thank you. If you can raise</p> <p>11 your right hand. Do you solemnly swear under penalties</p> <p>12 of perjury that the statements you're about to make are</p> <p>13 the truth, the whole truth, and nothing but the truth?</p> <p>14 MS. SAVILLE: Yeah. I do.</p> <p>15 MS. LEWINTER: Thank you. You may proceed.</p> <p>16 MS. SAVILLE: Okay. I'm going to tag on to a</p> <p>17 piece of the master plan and the significant features</p> <p>18 that Laura was just talking about.</p> <p>19 MS. LEWINTER: Can you speci- -- specify which</p> <p>20 master plan, since we have two that we've been</p> <p>21 discussing.?</p> <p>22 MS. SAVILLE: Thank you. The Rustic Roads</p> <p>23 Functional Master Plan. The two roads we're talking</p> <p>24 about most -- both are from the 1996 Rustic Roads</p> <p>25 Functional Master Plan. So Laura mentioned that</p>	<p>191</p> <p>1 we heard before the planning board is that the -- the</p> <p>2 trucks tend to come into that bridge in the center of</p> <p>3 the road. And the neighboring people who are meeting</p> <p>4 those trucks head on are very alarmed with that.</p> <p>5 Related to that, but perhaps more of an</p> <p>6 adequate public facilities question rather than a</p> <p>7 compliance with the master plan question, the entirety</p> <p>8 of the section of Burnt Hill Road we've been talking</p> <p>9 about, is signed for no through trucks over 10,000</p> <p>10 pounds V -- GVWR. And because this operation doesn't</p> <p>11 take direct access from Burnt Hill Road, every trip</p> <p>12 would be in violation of that sign for all of the</p> <p>13 trucks that we talked about earlier, except for the</p> <p>14 pickup trucks.</p> <p>15 As Laura said, the committee did ask for</p> <p>16 restrictions, and it sounds like perhaps the applicant</p> <p>17 is willing to entertain that now. They turned the</p> <p>18 committee down twice. Going back to adequate public</p> <p>19 facilities, we've talked a lot about bathrooms.</p> <p>20 I -- there is a porta potty on site, so even</p> <p>21 though the argument is being made that nobody needs any</p> <p>22 bathrooms, they're being provided. That is inconsistent</p> <p>23 with county regulation. You cannot put a porta potty up</p> <p>24 and leave it indefinitely. You can get a permit for one</p> <p>25 if you are, for instance, having a weekend festival.</p>
<p>190</p> <p>1 significant features must be preserved. And that Prices</p> <p>2 Distillery has a significant feature of broad vistas,</p> <p>3 and that's specific to exactly where this compound is -</p> <p>4 - is located.</p> <p>5 If the -- it's a 30 some acre property. There</p> <p>6 are parts of the property that aren't visible from the</p> <p>7 rustic road. It wouldn't necessarily have been required</p> <p>8 that this operation be in that protected and identified</p> <p>9 view shed.</p> <p>10 Let's see. The thi- -- some of the things that</p> <p>11 are in there, of course, are all of these trucks, a new</p> <p>12 fuel shed, a porta potty, a bunch of brush and debris.</p> <p>13 And so we've got a lot of stuff that has fallen into</p> <p>14 there that they're -- they're arguably not fixed</p> <p>15 things, except for the fuel shed. But</p> <p>16 in any case, those are now all in the view shed.</p> <p>17 The applicant showed the street view with that</p> <p>18 long and very broad vista in there. It -- it is just</p> <p>19 beautiful. Anecdote aside, many years ago, I used to</p> <p>20 make rustic roads calendars for the Rustic Roads</p> <p>21 Advisory Committee. And the view across this old bank</p> <p>22 barn was one of the -- the -- the photos in there</p> <p>23 because it was such a stunning view.</p> <p>24 Going to Burnt Hill Road, the -- the 1949</p> <p>25 concrete bridge is only 18 feet wide. One of the items</p>	<p>192</p> <p>1 Anyway, other landscape contractors that I'm</p> <p>2 familiar with on rustic roads that had a question about</p> <p>3 bathrooms, Zelkova LLC was proposed on Rustic Wasche</p> <p>4 Road, special exception 2684. And the planning board</p> <p>5 recommended against approval because having crews of</p> <p>6 guys with no plumbing they consider to be a serious</p> <p>7 public health problem.</p> <p>8 Another one, Butler Landscaping on Rustic</p> <p>9 Peach Tree Road, S2711, was originally submitted with</p> <p>10 no plumbing facilities, even though there was a house</p> <p>11 on the site. The business owner lived in the house and</p> <p>12 said the crews could not use it. As in this case, they</p> <p>13 should use facilities before and after they came to the</p> <p>14 site.</p> <p>15 At the first hearing with the planning board,</p> <p>16 the immediately adjacent neighbor appeared with photos</p> <p>17 of human waste and passed that around to the planning</p> <p>18 board. The planning board asked them to please go away</p> <p>19 and reconsider. And when the application was</p> <p>20 resubmitted, it did come back with crews allowed to use</p> <p>21 the bathroom in the house.</p> <p>22 You did hear a little bit about Emerald</p> <p>23 Landscaping. That was within sight of this property</p> <p>24 we're talking about right now. That application was</p> <p>25 also deferred and then withdrawn by the applicant</p>

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<p>193</p> <p>1 because of the concerns of the planning board. So that 2 one didn't move forward. 3 Let's see, and then I've got a couple more 4 notes on non-inherent items. We've talked already about 5 the well and septic questions. I have questions about 6 the fact that there is no TDR on this property. 7 This property can't be platted, it can't be 8 built. It is under a TDR easement which should be 9 keeping it in agricultural use. I did put a phone call 10 in to the Department of Permitting Services to 11 determine if a use and occupancy permit could be 12 granted. And I never received a call back on that. 13 I don't know if a they -- there -- there are 14 exemptions and grandfathering provisions for 15 residential uses in the AR zone. There are not, as far 16 as I know, for a new commercial use. And this property 17 doesn't qualify for grandfathering or exemptions. 18 During the second planning board hearing, I 19 also heard from a neighbor about the 10,000-pound 20 restrictions on the roads. I have only found that -- I 21 only looked at Prices Distillery 22 Road -- I'm sorry, Burnt Hill Road, for signs for that. 23 And I do see them in street view. I hope that those -- 24 those residents will chime in with that. I believe they 25 named at least three weight restricted roads. Let's</p>	<p>195</p> <p>1 definitive about that. Do you have any -- can you 2 explain how you know that to be the case? 3 MS. SAVILLE: I have been out there, Laura Van 4 Etten has been out there. I have looked at the photos 5 that have been put into the record by the neighbors and 6 the porta potty appears in photos from them. So I've 7 seen it myself and in photos. 8 MS. LEWINTER: And do you know how long it was 9 there or has been there? 10 MS. SAVILLE: I do not. But I suspect -- I 11 suspect that it was the March meeting of -- oh, wait. 12 Maybe it was -- oh, I may need -- I may need to phone a 13 friend. The -- the last meeting that the Rustic Roads 14 Advisory Committee had with the applicant this spring, 15 I -- I think maybe it was April or May rather than 16 March, that was when I first saw the photos. 17 MS. LEWINTER: Now, you also talked -- it 18 sounds like right now, there are concerns about the 19 view shed. The applicant, in their case in chief, 20 provided a number of pictures and plans for buffering 21 that current view. Theoretically, if that buffering was 22 in place, would you have the same concerns about the 23 impact on the view shed? 24 MS. SAVILLE: I suspect I would -- I'm going 25 to back up for a moment here. I'm a landscape architect</p>
<p>194</p> <p>1 see. 2 And I think the last thing would be that I 3 also heard that the water quality in the stream coming 4 off of the property had been deteriorating, probably 5 from the tannins from the wood that had been dumped on 6 the property, and animals downstream were avoiding the 7 water contact. This is actually the highest quality 8 water in the county, in the state. 9 This is a use class 3P stream, which is a non- 10 tidal cold water and public water supply use class. 11 This is where we have our very few remaining breeding 12 trout and whatnot because of the cold water. So there 13 are extra requirements for setbacks and stream valley 14 buffers because of that water quality. Let's see. And I 15 think that's everything I had. Sor- -- sorry to go on 16 so long. Thank you. 17 MS. LEWINTER: No apology necessary. Mr. 18 Hughes, are you there? There you are. 19 MR. HUGHES: Yes, Your Honor. 20 MS. LEWINTER: Did you have any questions for 21 Miss Saville? 22 MR. HUGHES: Your Honor, I do not. 23 MS. LEWINTER: All right. I do have a couple 24 of Ms. Saville, if you're okay. You -- you said that 25 there is a porta potty on the property, you were very</p>	<p>196</p> <p>1 by training. And views are one of the things that we 2 really give a damn about. And so to come in and block a 3 view and say, there we fixed it, is not how you would 4 manage a view if you were trying to protect the view. 5 Also, there -- there's -- at this point, 6 unless everything is pulled away from the historic 7 barn, that view shed is deeply compromised. And it's 8 unfortunate that someone -- and it wasn't -- wasn't Mr. 9 Alvarez, it was either the previous owner or two owners 10 ago that put siding on that beautiful old barn. You 11 know, that -- that used to be just breathtaking. Now, 12 it's merely beautiful with a lot of stuff around it. 13 MS. LEWINTER: So how would -- if you could 14 just describe for the record the view, prior to Mr. 15 Alvarez's occupation of this site and his vehicles 16 being on the site, compared to what you see now. And 17 then, you know, I appreciate this as a multi-step 18 comparison, what you -- what would still be the 19 difference with the recommended buffering? So my -- my 20 ultimate inquiry is, if you had the ideal, and then you 21 have what they're proposing, what would the traveler 22 who's trying to envo- -- enjoy the view shed be 23 missing? 24 MS. SAVILLE: Okay. So right now, and there -- 25 there are actually views from both Burnt Hill and</p>

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<p>197</p> <p>1 Prices Distillery that are identified in the master 2 plan. And as you look across this -- this valley from 3 both directions, you had just this beautiful rolling, 4 open view and this historic barn. That's where we 5 started. 6 A previous owner came along and -- and built a 7 pole building with -- as an agricultural building with 8 no permits. And that set beside the historic barn. At 9 that point, it was actually maybe a little bit more 10 interesting because now you've got a modern building 11 beside a historic building and -- and it's actually 12 kind of cool to see that contrast. 13 Then -- then you start adding in the -- the 14 trucks, and the brush, and debris, and the large 15 driveway, and the fencing, and the porta potty, and the 16 staff cars, and it sort of looks like an industrial 17 site dropped inside this bucolic landscape. If you were 18 to come along and simply line the whole thing with a 19 big green wall, you would lose the historic view shed 20 into the knoll and showing the historic barn 21 especially. Did I get it all? 22 MS. LEWINTER: That was helpful to me. Just 23 give me one second to catch up on my notes. So just to 24 clarify the -- that small barn, that historic barn once 25 had buffering. Right -- right now, if I was driving</p>	<p>199</p> <p>1 drop. 2 MS. LEWINTER: You also talked about 3 contacting ag pres and not hearing back. When -- when 4 did you contact them? 5 MS. SAVILLE: That was -- that was DPS, 6 Department of Permitting Services. 7 MS. LEWINTER: Oh, okay. I thought you were 8 talking about the easement. The -- we were talking 9 about the -- so maybe it was the same thing. Let me 10 just go back and see what I had written. We talked 11 about the fact that you can't -- that there's a TDR 12 easement and it should only be agricultural use. 13 There are some exceptions, but none that you 14 know of for and can der- -- commi- -- commercial 15 operation. I thought you said you had contacted ag 16 pres, I was wrong. Who did you contact? 17 MS. SAVILLE: I contacted Department of 18 Permitting Services to find out if they could get a use 19 and occupancy permit for a property that doesn't seem 20 to qualify for platting or subdivision. I believe 21 earlier, Mr. Hughes said the property could not be 22 subdivided. And with no TDR, that's my understanding 23 also. 24 MS. LEWINTER: But you said you were waiting 25 to hear back definitively, and you have not yet.</p>
<p>198</p> <p>1 down the rustic road, I could see the barn. Once the 2 buffering is in place, I really won't be able to see 3 the barn. 4 MS. SAVILLE: Correct. 5 MS. LEWINTER: But if we don't obscure it, 6 then I'm going to be basically seeing what you would 7 describe as an industrial site? 8 MS. SAVILLE: Yes. 9 MS. LEWINTER: Okay. 10 MS. SAVILLE: And I -- I -- I will add one 11 more thing. The forest conservation area is being 12 adjusted. And so I think as it grows in, there probably 13 will be some summertime screening of that barn from -- 14 especially from Burnt Hill Road. 15 Given the fact that we are protecting the 16 stream and the water quality with that forest 17 conservation buffer, I -- I personally would think that 18 that is a tradeoff that is willing -- that I'd be 19 willing to entertain. The -- the water quality is a big 20 deal out there. 21 MS. LEWINTER: But that would just be a 22 summertime thing when the trees are in full foliage? 23 MS. SAVILLE: Yeah. Our -- our mature forests 24 are deciduous. And so as it grows in, the -- you would 25 -- should retain the -- the winter view as the leaves</p>	<p>200</p> <p>1 MS. SAVILLE: Correct. 2 MS. LEWINTER: And when did you contact them? 3 MS. SAVILLE: That was right after the second 4 hearing at the planning board, which I think that was - 5 - was that three weeks ago yesterday, or two weeks ago 6 yesterday? 7 MS. LEWINTER: I don't remember off the top of 8 my head, I've only seen my date. Since I wasn't there, 9 it doesn't live in my memory. I just have seen the 10 date. 11 MS. SAVILLE: Right. 12 MS. LEWINTER: Since sometime after the second 13 hearing. 14 MS. SAVILLE: It -- right. I think it was 15 actually that day. Perhaps it was the next morning. 16 MS. LEWINTER: Okay. And have you been able to 17 -- 18 FEMALE 2: It was the 7th. 19 MS. LEWINTER: The 7th? July -- 20 MS. SAVILLE: Thank you. 21 MS. LEWINTER: -- 7th? July 7th or July -- 22 FEMALE 2: Yes. July 7th. 23 MS. LEWINTER: Thank you. Have you been able 24 to nudge them at all to find out if they're working on 25 it or anything?</p>

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<p>201</p> <p>1 MS. SAVILLE: I -- I have not. No. That -- 2 that was I actually haven't seen the planning board's 3 referral. As they were taking their vote, that was 4 something that one of the commissioners said they would 5 like to have included in their transmittal as a follow- 6 up. And 7 sin- -- I also asked to see that letter to see if it 8 was in there to see if I needed to follow up or if that 9 was coming to you. So I -- I've been remiss on both 10 scores. 11 MS. LEWINTER: You -- no. I -- I wasn't trying 12 to -- to say that, I'm just trying to follow up on it. 13 MS. SAVILLE: Yeah. 14 MS. LEWINTER: Do you -- you may not know the 15 answer to this question. But the TDR easements, are 16 they pretty standard? Like, is there language 17 accessible -- 18 MS. SAVILLE: Yes. 19 MS. LEWINTER: -- online that would be --? 20 MS. SAVILLE: Yes -- yes. There -- so every 21 time a TDR is sold, a standard county-approved easement 22 is recorded in the land records. This is a -- is not a 23 lot, this is a deeded parcel, and it was not conveyed 24 with a TDR. The TDRs had been sold or otherwise 25 transferred. So when it was conveyed to Mr. Alvarez, it</p>	<p>203</p> <p>1 MS. VAN ETTEN: It's Laura Van Etten. The 2 person I was referring to is a former member, Tom 3 Hartsock -- 4 MS. LEWINTER: Oh, okay. 5 MS. VAN ETTEN: -- is who I was referring to. 6 Yeah. 7 MS. LEWINTER Tom -- 8 MS. VAN ETTEN: I think Barbara was not 9 intending to testify, she was just attending. 10 MS. LEWINTER: Got you. Well, why don't we -- 11 Ms. -- Ms. -- Ms. Hoover, is that accurate? You are not 12 intending to testify. 13 MS. HOOVER: That is correct. 14 MS. LEWINTER: Thank you. Okay. Mr. Hartsock, 15 would you like to testify next? Mr. Hartsock? Ms. Van 16 Etten, do you have the ability to --? Because I know 17 sometimes -- oh, there he is. Mr. Hartsock, can you 18 hear me? 19 MR. HARTSOCK: Yes. I can. 20 MS. LEWINTER: Would you like to testify now? 21 MR. HARTSOCK: Oh, it's telling me that the 22 video is not supported in my browser. So if you can 23 hear me, you're going to have to settle for my voice. 24 MS. LEWINTER: That's fine, sir. We did that 25 with Ms. Van Etten, and it seemed to go okay. If you</p>
<p>202</p> <p>1 was conveyed as an unbuildable deeded parcel. Not a 2 buildable lot with a TDR associated with it. 3 MS. LEWINTER: So a search of the land records 4 should reveal that easement and its language? 5 MS. SAVILLE: Yes. 6 MS. LEWINTER: Okay. All right. Okay. I think 7 those were my questions. So I -- I didn't have any 8 other questions. 9 Mr. -- Mr. Hughes, I just -- I know I asked 10 her a number of questions. Do you have anything that 11 you wanted to ask and follow up? 12 MR. HUGHES: I do not. Thank you. 13 MS. LEWINTER: Okay. Ms. Saville, before you 14 go, I thought Ms. Van Etten said there was a third 15 person from Rustic Roads. Can you just remind me who 16 that is and we can go to that person? 17 MS. SAVILLE: It's Barbara Hoover, I see she's 18 still on. I'm not certain that she was planning to 19 testify, but we can certainly ask her. So I'll -- I'll 20 mute myself and let you guys discuss. 21 MS. LEWINTER: Okay. Ms. Hoover -- 22 MS. SAVILLE: Thank you. 23 MS. LEWINTER: Ms. Hoover, did you want -- 24 MS. VAN ETTEN: I [inaudible] 25 MS. LEWINTER: Yeah.</p>	<p>204</p> <p>1 could, on Your Honor, raise your right hand. Do you 2 solemnly -- 3 MR. HARTSOCK: Yep. 4 MS. LEWINTER Do you solemnly swear under 5 penalties of perjury that the statements you are about 6 to make are the truth, the whole truth, and nothing but 7 the truth? 8 MR. HARTSOCK: I do. 9 MS. LEWINTER: All right. Thank you, Mr. 10 Hartsock. If you'd like to give your statement. 11 MR. HARTSOCK: Okay. I am a neighboring 12 resident and farmer with my permanently preserved farm 13 lying to the west of and sharing a short border with 14 the subject property. The stream that receives the 15 runoff from the subject property runs through my farm 16 and past my home. 17 Prior to my retirement from the University of 18 Maryland, I was director of a program that trained 19 students for careers in the green industry, including a 20 program in landscape management. So I am intimately 21 familiar with the workings of the landscape industry. 22 I concur with the planning staff's 23 recommendation of denial. The absence of septic 24 facilities and a TDR, along with the rustic road 25 impacts and violations make this site unacceptable for</p>

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<p>205</p> <p>1 a landscape operation. However, I am sympathetic to 2 both the county's need for landscape contractors, and 3 the difficulty landscapers have in finding appropriate 4 sites to locate their businesses. The county should 5 identify appropriate locations for such businesses. 6 Before I go on, I'll -- I'll address the 7 forest conservation buffer first. As Laura Van Etten 8 mentioned, I am a former member of the Rustic Roads 9 Advisory Committee. So the extension of the forestry 10 conservation easement and buffer will create some 11 issues with the view shed. 12 But on the other note, I'm downstream, and the 13 initial conservation program that was put in there 14 because it receives runoff from those -- that large 15 number of fields actually reduced the stream flow that 16 came through my farm, which during heavy rains was 17 almost like a flood. So on one hand, I'm very much in 18 favor of the -- the forest conservation buffer and 19 easement. But I have some sympathies from the rustic 20 roads point of view. 21 I'm also going to take just a few moments to 22 talk about the history of that 32 acres. I've lived -- 23 I bought that property early in the 1980s, right after 24 the TDR program was set up and the agriculture reserve 25 was established.</p>	<p>207</p> <p>1 MS. LEWINTER: Sorry. That's my fault. 2 MR. HARTSOCK: Oh, now I got it. 3 MS. LEWINTER: Sorry. Mr. Hartsock, let me 4 back up. So there is a process through the -- the rules 5 of procedure for this proceeding by which someone can 6 become a party. I did not see that anybody took -- took 7 advantage of that opportunity. So it is my 8 understanding of the procedures that what you may do at 9 this point is give your own statement. 10 So I can't make Mr. Sekerak available for you 11 to cross-examine him now. But if you want to raise 12 concerns that his testimony put you in mind of, this is 13 your opportunity to -- to point out those 14 inconsistencies, or those issues that his testimony 15 raises for you. 16 MR. HARTSOCK: Okay. This is my first time 17 through this procedure, so I'm learning. 18 MS. LEWINTER: Yeah. And I -- I -- I 19 appreciate it's -- it's very complicated. 20 MR. HARTSOCK: Not a problem. Mr. Sekerak, in 21 order to -- he was in the process of verifying that 22 there were no personnel on the site during the middle 23 of the day. And he visited the site during the day. And 24 in his testimony, he said, and I quote, the gates had 25 been locked unquote, and no one was there. I challenge</p>
<p>206</p> <p>1 And the -- the process of selling that farm to 2 me, I -- I gave up some of the TDRs to the previous 3 owners. And those TDRs were some of the first ones 4 recorded as a result of the agricultural reserve TDR 5 program. So I'm intimately familiar with -- with the 6 TDR issues. 7 That 32 acres was initially going to be a 8 homestead for the then owner, farmer owner of that 9 large parcel farm that included the dairy farm on the 10 other side of Prices Distillery. When it wouldn't perk, 11 that idea went down the drain. And Mr. Leiger [ph] who 12 interpreted or inherited the farm from his father, 13 Chester [ph], recognized that that parcel was good for 14 one thing, and that was agriculture for farming. So he 15 did not reserve a TDR because it wasn't perkable. And 16 so that -- that's a bit of history on that background. 17 I assume -- I mistakenly earlier thought 18 cross-examining meant we could ask questions as we went 19 through and -- and I apologize for -- for chiming in at 20 one point. But I -- I would like to ask some questions 21 as I go through my testimony. Excuse me. I'll have to 22 make sure I have my notes in the right order. Mr. 23 Sekerak, did I pronounce that properly? Is -- is he 24 still with us? 25 Now I don't seem to be getting audio.</p>	<p>208</p> <p>1 his familiarity with the site because there's no gate 2 and no locks. 3 I would also like to have him actually answer 4 your question, where you asked him specifically if Mr. 5 Alvarez had jumped the gun in redoing that road, but I 6 guess that ship has sailed. 7 This next thing I would like to address is if 8 you could pull up -- and I believe they're in Exhibit 9 49. There are a series of five pictures purported to 10 show driveways, I assume in a justification attempt to 11 say that other people have big aprons, and we should 12 too. And I would like to explain the -- the content of 13 those pictures. If you could pull up picture number 14 one. 15 MS. LEWINTER: What was the number of the 16 exhibit again? Sorry. 17 MR. HARTSOCK: 49. 18 MS. LEWINTER: Because when I'm seeing 49, 19 it's the picture of the vehicles is what I'm seeing. 20 But -- 21 MR. HARTSOCK: Oh, then I've written down the 22 wrong number. Oh, I'm sorry, 42. 23 MS. LEWINTER: Okay. Hold on. 24 MS. VAN ETTEN: 42G. 25 MS. LEWINTER: G, got you.</p>

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<p>209</p> <p>1 MR. HARTSOCK: While you're -- 2 MS. LEWINTER: Okay. 3 MR. HARTSOCK: -- pulling that up -- 4 MS. LEWINTER: Is that what you had in mind? 5 MR. HARTSOCK: Yes, yes. 6 MS. LEWINTER: Okay. 7 MR. HARTSOCK: That's a picture of Chester 8 Leiger's long since deceased dairy operation. The 9 operation consists of six buildings that were placed 10 right up along the road. Long, long, long before the 11 Rustic Roads program was put into place. 12 You can't see all the buildings, but starting 13 from the west and moving to the east, it starts out 14 with a grain facility with major grain storage, facil- 15 -- storage, a storage building that's accessible from 16 Prices Distillery Road. The house that you can see in 17 the middle of this picture, 18 a milking parlor which you can see part of it to the 19 right. And a bank barn that's a little bit further to 20 the east, and then the very furthest one is a free 21 stall barn for their large dairy herd at one point. 22 All these buildings were placed alongside the 23 road, and the working area around these buildings is 24 contiguous with the roadway itself. So these are not 25 driveways in any way, shape, or form. This is the</p>	<p>211</p> <p>1 continue to get away with this. 2 But -- and we continued to place complaints, 3 and eventually they sold the place. They had turned the 4 house into a dormitory and the outside of it was 5 basically a landscape operation. The -- the next item I 6 would like to address is the Emerald Application. And 7 to basically save time, that has also been talked about 8 by others. I just -- 9 MS. LEWINTER: Did -- did you want to look at 10 any of the other pictures? Or -- 11 MR. HARTSTOCK: Oh. No. Picture four is of the 12 subject property which we have already seen. And -- of 13 the dairy farm. 14 MS. LEWINTER: Oh, that's also the dairy farm? 15 MR. HARTSTOCK: Yes. That's -- that's the view 16 that shows the grain storage facility and the 17 equipment. That's a sprayer in front of it that's used 18 to spray the grain fields. 19 MS. LEWINTER: So, if I were -- so, the 20 picture taken in G1 and G5 would each -- GV are kind of 21 contiguous. Is that what you're saying? 22 MR. HARTSTOCK: Yes. They are both of the same 23 facility. 24 MS. LEWINTER: Okay. So I can stop sharing? 25 MR. HARTSTOCK: Yes. Yes. Thank you very much.</p>
<p>210</p> <p>1 working area around the farm that long predates the 2 establishment of Rustic Roads. 3 If you could go to the second picture. This is 4 a picture of Tom and Eloise Woodfield's horse boarding 5 operation, again established long and operated long 6 before the Rustic Roads program was put in place. It's 7 on a hilly area, and they established a parking area 8 right beside the road. And you can see downhill from 9 there are the barns where they housed their clients' 10 horses. 11 If you would go to the third picture. This is 12 on Birdhill Road. An area that ten years ago was 13 actually a residence and had a proper driveway. This 14 particular parcel, which is a little bit over five- 15 acres, was purchased by another landscaping company 16 called Champ Skate -- Scape -- Champ Scape. They 17 immediately brought in concrete millings and turned the 18 front yard into a parking lot and started operating a 19 landscape operation, including snow removal and snow 20 plowing. 21 Bringing in dump truck loads of salt. And we agree that 22 this is totally illegal, but it should not be a reason 23 why someone else could do this kind of thing at another 24 location. We complained officially to DPS. The DPS 25 inspectors did not understand the code and let them</p>	<p>212</p> <p>1 MS. LEWINTER: No problem. 2 MR. HARTSTOCK: The only thing I will -- I 3 will say about the Emerald issue is that people keep 4 citing that as something -- as -- as a precedent. The 5 Emerald Landscaping -- there was never a vote taken 6 even by the planning board on the Emerald Landscaping 7 application. They withdrew and were not heard from 8 again. 9 So, I will save time by not saying anything 10 more about that. Just a brief mention about something 11 about the sanitary and the fact that Chapingo doesn't 12 think that they need to have sanitary facilities. I -- 13 I will state that I am a trained nutritionist and I 14 know that coffee is both a diuretic and purgative 15 agent. 16 I can almost guarantee that most of the 17 employees will arrive at the site with a cup of coffee 18 in hand and that most of them will urinate at least 19 once before leaving the site. That's all I will say 20 about that. 21 And a couple of comments that would have been 22 for Mr. Alvarez. He did come to visit me, but it was 23 not before he started dumping tree trash on that 24 property. He came to my home. We spoke. And I told him 25 what he was doing was illegal and I disagreed with it.</p>

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<p>213</p> <p>1 And I did tell him that I would do anything in 2 my power to prevent him from setting up a business 3 there, given his business practices. 4 The second thing I'll mention is, I do 5 understand an interim need to store wood chips, 6 branches, and logs during the pandemic when businesses 7 were closed. However, I know that some of the folks 8 where his tree clippings and trash could go were not 9 closed. 10 One of those is a company called Pogo. And I 11 don't think Pogo ever closed during the pandemic. But 12 my more important question I would like him to answer 13 is, what is the reason that he stock piled tree trash 14 at the old hundred site several years beforehand. He 15 put stuff there and it would -- there was so much of it 16 that it actually changed the flow of water off his 17 property and caused drainage problems for neighbors. 18 He was cited. He was told he needed a 19 conditional use approval before he could continue doing 20 what he was doing on that property. And instead of 21 filing for a conditional use, he sold the property and 22 bought the one that we're talking about today and did 23 the same thing all over again. So, Mr. Alvarez is a 24 repeat offender with regard to zoning regulations. 25 Multiple complaints filed for violations at his</p>	<p>215</p> <p>1 fruit trees. Mr. Alvarez has clearly demonstrated twice 2 that he will do whatever he pleases on property he owns 3 in the AG Reserve. And he relies on the slow-moving 4 government bureaucracy to give him time to operate his 5 business with impunity. 6 Does anyone care if repeat offenders are 7 allowed to continue? The planning board and the zoning 8 office should care. The rest of the landscape industry 9 should care. And the folks whose property abuts or is 10 near the subject property do care. Mr. Alvarez and his 11 company have operated in violation of Montgomery 12 County's AG Reserve zoning for more than five years. 13 Please, don't let it continue. That completes my 14 testimony. 15 MS. LEWINTER: Thank you, Mr. Hartstock. 16 Mr. Hughes, do you have any questions for Mr. 17 Hartstock? 18 MR. HUGHES: Your Honor, I do not have any 19 questions. 20 MS. LEWINTER: Thank you. Mr. Hartstock, I had 21 a few follow up questions. 22 MR. HARTSTOCK: Sure. 23 MS. LEWINTER: Have you -- you took issue with 24 the -- Mr. Zachary's accounting that there were no 25 people on the -- no employees on the property midday.</p>
<p>214</p> <p>1 previous old one hundred location included dumping of 2 large quantities of tree debris. The complaints to DPS 3 were closed when Mr. Alvarez said he would apply for 4 conditional use approval. But a CU application as I 5 mentioned was never filed. 6 So, clearly Mr. Alvarez knew that his 7 operations were not legal, and he should have filed for 8 a CU approval the day after purchasing the Prices 9 Distillery Road property. But it appears that he simply 10 transferred his tree trash dumping operation to the 11 current Prices Distillery location. And I will tell you 12 that the tree trash dumping on that old hundred road 13 was well before the pandemic. 14 Mr. Alvarez removed the most visible tree 15 trash and revised his initial CU application to 16 indicate that snow removal operations will not be run 17 out of the subject property facility. But if this 18 application is approved, I fully expect to see trucks 19 outfitted with snowplows, because snow removal is a 20 cash cow with businesses with available truck fleets 21 and employees who are underutilized during periods of 22 inclement weather. 23 And I wouldn't be surprised if tree debris 24 began to reappear with Mr. Alvarez, once again, telling 25 everyone that it will be used to mulch his non-existent</p>	<p>216</p> <p>1 What have you observed with respect to that? 2 MR. HARTSTOCK: Oh. My concern was not with 3 whether or not there were people there during the day. 4 MS. LEWINTER: Oh. 5 MR. HARTSTOCK: I fully understand that in the 6 operation of a business like this, there are going to 7 be times, just like Mr. Alvarez said that a vehicle or 8 a piece of equipment is going to break down or they 9 finish early. There's all kinds of reasons for coming 10 back in the middle of the day. 11 My reason for saying that was that it 12 demonstrated that Mr. Sekerak doesn't really know that 13 property, isn't really familiar with it, because he 14 said there were gates with locks on them. And there are 15 no gates. So he, maybe, made one visit there, maybe he 16 didn't. But he certainly doesn't remember what he saw. 17 MS. LEWINTER: I see. Okay. I thought you were 18 disputing more than that. Okay. Thank you. Have you 19 personally observed the porta potty on the site? 20 MR. HARTSTOCK: Yes. In fact, one of the 21 pictures that I sent into the planning board was taken 22 with my son-in-law's drone, which we flew over the site 23 and had a very good picture of a porta potty. I do not 24 know exactly when it was placed there. And I haven't 25 driven by there today to see if it's still there. But I</p>

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<p style="text-align: right;">217</p> <p>1 assume that it is. But I can't verify that.</p> <p>2 MS. LEWINTER: Do you know when you first saw</p> <p>3 it?</p> <p>4 MR. HARTSTOCK: It was back in March, I</p> <p>5 believe.</p> <p>6 MS. LEWINTER: Of 2022?</p> <p>7 MR. HARTSTOCK: Yes. Yes.</p> <p>8 MS. LEWINTER: Do you know when you most</p> <p>9 recently saw it?</p> <p>10 MR. HARTSTOCK: A week or two ago. I -- I</p> <p>11 drive on Birdhill Road and access my farm on a lane</p> <p>12 that borders the north edge of Little Bennet. So I very</p> <p>13 seldom drive on Prices Distillery past the point where</p> <p>14 it intersects with Birdhill.</p> <p>15 MS. LEWINTER: Mr. Hartstock, just relying on</p> <p>16 your experience from the rustic roads and your</p> <p>17 knowledge of the neighborhood, is there a way to get to</p> <p>18 this site without -- or, I guess -- how -- how quickly</p> <p>19 do they get off of the rustic roads from this site, if</p> <p>20 they're traveling I guess to 27.</p> <p>21 MR. HARTSTOCK: 27 runs through Damascus,</p> <p>22 which is about two and a half miles. Maybe two miles</p> <p>23 from the intersection of Birdhill and Prices</p> <p>24 Distillery.</p> <p>25 MS. LEWINTER: And -- but to access -- I mean,</p>	<p style="text-align: right;">219</p> <p>1 And then to Johnson Drive where the road makes</p> <p>2 a sharp turn right there where the duty dairy farm is.</p> <p>3 So yeah. It -- it changes names. And I'm not sure if --</p> <p>4 I don't think Johnson Drive is rustic. But Prices</p> <p>5 Distillery and Mountainview certainly are.</p> <p>6 MS. LEWINTER: My last question, Mr.</p> <p>7 Hartstock, is if Mr. Alvarez wanted to endeavor to</p> <p>8 restore his credibility and show he can act in good</p> <p>9 faith, what would it take for you to -- what would he</p> <p>10 have to do from -- from your perspective to demonstrate</p> <p>11 that?</p> <p>12 MR. HARTSTOCK: I think he's demonstrated all</p> <p>13 that I need to know about him more than one time. He</p> <p>14 told me when he visited that all that tree trash that</p> <p>15 he was dumping was mulch for fruit trees he was going</p> <p>16 to plant. And he told me that he had an agricultural</p> <p>17 degree. And I wondered where he got it, because he had</p> <p>18 enough tree trash to cover a significant part of that</p> <p>19 32 acres with several inches of -- of tree material.</p> <p>20 Plus, you're not allowed to haul that stuff in and</p> <p>21 compost it without a permit. I had an offer many years</p> <p>22 ago by a friend of mine who was in a similar business.</p> <p>23 And he had a chipper. And he wanted to haul chips and</p> <p>24 dispose of them on my farm. And I said I - I can't do</p> <p>25 that. It's not legal.</p>
<p style="text-align: right;">218</p> <p>1 do those two and a half miles, are those also on rustic</p> <p>2 roads, or is it just --</p> <p>3 MR. HARTSTOCK: Oh, yeah. Well, most of it's</p> <p>4 rustic roads. They travel -- and this is confusing</p> <p>5 because the roads have changed names over the years.</p> <p>6 But if -- if you start at the subject property</p> <p>7 entrance, you're on Prices Distillery Road. You drive</p> <p>8 east toward Damascus and the first thing you encounter</p> <p>9 is a T-intersection where Birdhill goes off to the</p> <p>10 right.</p> <p>11 If you continue on what is still Prices</p> <p>12 Distillery Road, you get to a point where it turns into</p> <p>13 Mountain View -- or, Purgam road. And then it changes</p> <p>14 names again to Mountain View Road, and then to Johnson</p> <p>15 Drive. But it's all the same thoroughfare. And I think</p> <p>16 -- I can't remember if Johnson Drive is rustic, but all</p> <p>17 of Prices Distillery of course is. And all of Birdhill</p> <p>18 is.</p> <p>19 MS. LEWINTER: But you don't know about Purgam</p> <p>20 and Mountainview?</p> <p>21 MR. HARTSTOCK: Well, I know Purgam Road. And</p> <p>22 it might now -- I'm trying to remember how this works.</p> <p>23 But Purgam Road might not be one of the names on Prices</p> <p>24 Distillery. It may go from Prices Distillery to</p> <p>25 Mountainview, and Mountainview is rustic.</p>	<p style="text-align: right;">220</p> <p>1 Even though I had -- I had 130 acres available</p> <p>2 to me at the time. That's just not legal without some</p> <p>3 kind of a special permit. And Mr. Alvarez has</p> <p>4 demonstrated not just once, but twice that he's not</p> <p>5 credible. And I don't think there's anything he could</p> <p>6 do. I mean, once bitten, twice shy. We're not -- we're</p> <p>7 not going to get there.</p> <p>8 MS. LEWINTER: All right. Mr. Hughes, did you</p> <p>9 have any follow up to my questions?</p> <p>10 MR. HUGHES: No, Your Honor. Thank you.</p> <p>11 MS. LEWINTER: If -- if someone else would</p> <p>12 like to testify. If they would like to turn on their</p> <p>13 camera and at least raise their hand and can kind of --</p> <p>14 I see the Ryan's. And Mr. and Mrs. Ryan, would you like</p> <p>15 to go next?</p> <p>16 MR. RYAN: Yes. Please.</p> <p>17 MS. LEWINTER: Okay. Can you -- are you going</p> <p>18 to speak for both of you? Or do you both want to --</p> <p>19 MR. RYAN: I'm -- I'm going to speak for both</p> <p>20 of us, in terms of the prepared remarks, but you may</p> <p>21 have questions. And my wife and I really put this</p> <p>22 together -- put it together -- together.</p> <p>23 MS. LEWINTER: Together. Yes. Well, so could</p> <p>24 you both just raise your right hand then, just in case</p> <p>25 you both want to chime in. Do you both solemnly swear</p>



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<p>221</p> <p>1 under penalties of perjury that your statement, the 2 statements you are about to make, are the truth, the 3 whole truth, and nothing but the truth? 4 MR. RYAN: Yes. 5 MRS. RYAN: I do. Yes. 6 MS. LEWINTER: Thank you. Okay. Mr. Ryan, if 7 you could just state your full name for the record. 8 MR. RYAN: My name is James G. Ryan. And we 9 live at 25602 Birdhill Road in Clarksburg. 10 MS. LEWINTER: And what's wife's name. I'm 11 sorry. Just so I can get the both. 12 MRS. RYAN: Karen. 13 MS. LEWINTER: Karen. And How do you spell 14 that, Karen? 15 MRS. RYAN: K-A-R-E-N. 16 MS. LEWINTER: Okay. Karen Ryan. Thank you. 17 And if you'll indulge me for one minute, Mr. Hartstock, 18 did I -- did I get your address? 19 MR. HARTSTOCK: It's 25518 Birdhill Road, 20 Clarksburg. That is my mailing address. It's not the 21 deeded property address. My property address is an 22 easement off Prices Distillery Road. 23 MS. LEWINTER: And -- and is your full name 24 Thomas? Or do you go by Tom? 25 MR. HARTSTOCK: I go by Tom, but my mother</p>	<p>223</p> <p>1 arguable. But their larger trucks, I believe, also have 2 used Birdhill Road. I -- in my testimony that I sent 3 in, I included three pictures of one particular 4 morning. 5 And since we've already established that the 6 planning board hearing was on the 7th of July, when a 7 lot of this material was brought up. And then, well 8 okay, we could -- we could drive a different way. 9 Except the photos I sent to you were from the 12th of 10 July. And so, clearly, they are not driving another 11 way. 12 In the three trucks that I sent were just a few minutes 13 apart. Chapingo tree care has been in operation for 14 over a year and a half. Neighbors have already 15 complained about the dumping of tree waste on the 16 property and very possibly the contamination of the 17 stream running through their property. It is important 18 to note that they have not followed Montgomery County 19 rules for such landscaping businesses. 20 This has been discussed by a number of 21 witnesses. It has been our observation over the years 22 that entities that do not follow the rules don't 23 miraculously start following them later. So we agreed 24 with Tom Hartstock. Today, we would like to address the 25 traffic that their operation causes on our narrow</p>
<p>222</p> <p>1 named me Thomas. 2 MS. LEWINTER: Okay. Thank you, Mr. Hartstock. 3 And I apologize to the Ryans. I appreciate you letting 4 me fix that little hole. Mr. Ryan, it's all yours. Go 5 ahead, please. 6 MR. RYAN: Okay. Well, thanks for the 7 opportunity to speak today. And let me just say this is 8 going to reiterate some of what you heard about the 9 rustic roads. It's our principal concern. But it's a 10 little bit more of a personal situation, in terms of -- 11 because we live on Birdhill Road. And we see these 12 trucks on Birdhill Road. So -- so, I'll just begin. 13 Although our property does not border the 14 Chapingo property in question, it is in close proximity 15 with a clear view of the access road into the property. 16 And directly across from their buildings, albeit from a 17 fair distance. A -- a group of trees is -- is between 18 us and them. We really can only see it when -- or see 19 most of it, during the fall or winter. For instance, 20 when the trees lose their leaves. 21 So just to say, we see their trucks driving on 22 Birdhill Road, most mornings and evenings, even though 23 the trucks violate the road and bridge restrictions. Or 24 at least it appears to us. They definitely violate the 25 road restrictions. The bridge restrictions are somewhat</p>	<p>224</p> <p>1 country roads. Chapingo is located on one of the 2 county's rustic roads. We've already established this. 3 Montgomery County's rustic roads are described 4 as historic and scenic roadways that reflect the 5 agricultural character and rural origins of the county. 6 And that's great. But although they're very 7 picturesque, rustic roads are characterized by a bunch 8 of other things. And they're generally narrow, often 9 hilly, with blind curves and driveways, minimal 10 shoulders, and significant potential for accidents. 11 Birdhill is a rustic road that has clearly posted 12 weight limits. And although the focus of the earlier 13 discussion was on the bridge, there are clear signs of 14 weight limits for through vehicles of less than 10,000 15 pounds, gross vehicular weight rate. As well as two 16 bridges with weight limitations. The bridge nearest to 17 Chapingo, as we have established, is limited to less 18 than 30,000 pounds for gross combination weight. 19 Although I'm confident that their trucks, when 20 they leave the building, are probably less than 30,000 21 pounds, even when dragging a chipper. When they come 22 back, I'm not so sure. I think you asked the right 23 question. Do we have any way of weighing them when they 24 are full? Because they're full with usually two 25 employees and dragging a chipper, which we have</p>

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<p>225</p> <p>1 established is a pretty heavy weight item. 2 The application claims they have 12 trucks 3 under 26,000 pounds in weight. I guess that number will 4 change, if this is approved. And three trucks over 5 26,000 pounds weight. It's not specified, excuse me, in 6 the application. But these figures were related to curb 7 weight or gross vehicular weight. 8 I guess, in the discussion, clearly, they are 9 implying gross vehicular weight. But the business owns 10 seven large woodchippers. And these are often towed by 11 the trucks to their jobs. Although the weight 12 prohibitions for Birdhill Road are clearly posted, 13 Chapingo trucks towing chippers routinely drive on 14 Birdhill Road and across the 30,000-pound bridge. 15 It is our belief that many of the Chapingo 16 trucks, with their chippers in tow, loaded with tree 17 waste as well as employees, exceed both the 10,000 18 pound through traffic prohibition as well as the 19 30,000-pound gross weight bridge limitation, gross 20 combined weight limitation. The bridge portion of the 21 road is one of the narrowest most dangerous parts of 22 the road. When I measured the travel lane, it was only 23 about eight feet wide on the bridge. 24 I think someone in the meeting has said it was 25 18 feet wide. Okay. I had to run out of there pretty</p>	<p>227</p> <p>1 But if you've ever driven on them, even though 2 they're not marked for less than 10,000 pounds, those 3 size trucks do not belong on those roads, because -- 4 because Clarksburg Road goes through a park basically. 5 Now Prices Distillery area has many farms, so it is not 6 unusual to occasionally encounter farm traffic moving 7 slowly on the road. The local residents understand and 8 expect these hazards during specific times of the year. 9 This area is not appropriate for a business 10 like Chapingo's that requires large trucks to navigate 11 daily on roads that weren't built for commercial 12 activity. In addition to our traffic safety concerns, 13 the Chapingo application indicates the hours of 14 operation will be 6:00 a.m. to 6:30 p.m. From our 15 observations, work has continued well past 6:30 on 16 numerous occasions. 17 And I just picked -- we picked one day, for 18 example, on 6/16/22 at 7:00 p.m., there was low talking 19 and laughing on the site. A truck with a chipper 20 arrived at 7:26 p.m., and a dump truck at 7:32 p.m. The 21 application states that there is no water or septic 22 facilities on the site, and we are concerned about how 23 the workers deal with the lack of such facilities. 24 Because of the impact on the local traffic, 25 potential for accidents, and road damage, as well as</p>
<p>226</p> <p>1 quick, because there was a car coming, but it's pretty 2 narrow. And a fatal accident occurred in that area, 3 just a few years ago. My wife, Karen, has met Chapingo 4 trucks on Birdhill road twice. Once where the narrow -- 5 near the narrow bridge. And once near the vineyard, 6 which is just a little bit farther up the road from -- 7 from the bridge. 8 The Chapingo trucks were over the centerline 9 of the road because the road is not wide enough to 10 handle them. If she were in a larger vehicle and unable 11 to move to the edge of the road, these encounters could 12 have led to serious accidents. In addition to weight 13 prohibitions on Birdhill Road, there are weight or 14 other prohibitions on many of the roads near Chapnago's 15 location. For example, Kingstead Road, Purgam Road, and 16 Mountainview Road. 17 And in Fredrick County, a portion of Lewisdale 18 road, and Lewisdale runs from Prices Distillery up into 19 Fredrick County. A portion of Lewsdale Road also has a 20 10,000-pound gross vehicular weight limitation. And 21 route 75 prohibits trucks greater than 102 inches wide 22 and 48 feet long for five miles, going from route 355. 23 Now it's also been said that perhaps Lewisdale road, at 24 least the Montgomery County part, and Clarksdale Road, 25 might be alternatives.</p>	<p>228</p> <p>1 for serious environmental concerns related the effects 2 felt by the local residents and farms, we ask the 3 conditional use application of Chapingo tree care 4 specialists for the use of the property at 12120 Prices 5 Distillery Road Damascus as a landscaper contract 6 business be denied. I'm happy to answer any questions. 7 MS. LEWINTER: Thank you, Mr. Ryan. 8 Mr. Hughes, did you have any questions for Mr. 9 Ryan? 10 MR. HUGHES: I do not. Thank you. 11 MS. LEWINTER: Okay. Mr. Ryan, I think I just 12 have one question. Because you did touch on many things 13 that others have discussed. But you seem extremely 14 familiar with the roads and their weight limits. Is 15 there a way that Chapingo trucks could avoid roads with 16 a weight limit and still get to the highway? 17 MR. RYAN: It's much longer. I believe there 18 is, okay. But if I were going to do it, it's sort of 19 like Tom Hartstock mentioned, I'd go down Prices 20 Distillery Road, make that turn onto Johnson Drive, go 21 to Bethesda Church, and hit Route 27. Those roads are 22 not posted. Prices Distillery isn't and it's hard to 23 tell whether Purgam or Mountain Road -- or Mountainview 24 Road somehow are connected there. But as separate 25 roads, they have prohibitions on them.</p>

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<p>229</p> <p>1 And so I think you'd have to go over into 2 Damascus. But it's much longer to go that way, which is 3 why I think they all come on Birdhill Road. Because 4 it's a shorter shot over to Route 270. And even for a 5 while, you know, there was a prohibition on Route 355, 6 when they were -- when they were working on the bridge 7 in Hyattsville. And so, you know, it's -- it -- it's 8 not an easy place to just quickly avoid all the 9 problems and somehow slalom out of here. 10 MS. LEWINTER: So, if they were to do that, if 11 they were to go this more circuitous route, do you have 12 an estimate for how much longer it would add to a trip? 13 I appreciate you're probably traveling a little faster 14 than a truck this size usually does. But -- 15 MR. RYAN: Wouldn't be so sure. You know, if 16 you're talking about getting to the highway, then, you 17 know, 270, then you'd have to go down 27. So, I'm 18 guessing it's -- yeah. There's a lot of lights that 19 would certainly increase the traffic by Damascus high 20 school. And there's another school on that road as 21 well. And so, anyway, I think it would probably -- 22 probably add 15 minutes. 23 You know, just because there's a fair amount 24 of traffic on that. And I think that's why Birdhill 25 Road is the road of choice. It's quicker. And -- and</p>	<p>231</p> <p>1 this, but I just want to be confident. You basically 2 said you are of the same mind as Mr. Hartstock, at -- 3 at this point in time, there's nothing from your 4 perspective that Mr. Alvarez could do to rebuild 5 credibility. 6 MR. RYAN: I -- and I think that's a good way 7 to say it. You know, he's not in control of his drivers 8 all the time, right. He may even tell them. But I think 9 the pressure to produce and get there on time makes 10 people take shortcuts. 11 MS. LEWINTER: I don't have any further 12 questions. Mr. Hughes, did you have any other 13 questions? 14 MR. HUGHES: Just real quickly, thank you. 15 Mr. Ryan, when -- coming out from his driveway on 16 Prices Distillery, wouldn't he just head out to 17 Clarksburg Road? Wouldn't that be a pretty quick way 18 that he'd get out of there as opposed to the 15-minute 19 route you just talked about? 20 MR. RYAN: If I were him, okay, I wouldn't 21 want to take Louis Dale Road. Pretty much, in -- in a 22 big truck, it's a 25-mile-an-hour road. It's steep. 23 It's a -- it's not banked very well and 24 it -- and it's extremely narrow. 25 MR. HUGHES: But that's not the question --</p>
<p>230</p> <p>1 that adds to the danger because I'm -- I'm not saying 2 that, you know, Chapingo trucks are the only problem. 3 There are -- there are plenty of other problems on 4 those roads. And there, Chapingo is just adding to a 5 whole -- a whole list. 6 MS. LEWINTER: Do you see other vehicles 7 comparable to Chapingo's on those roads traveling? 8 MR. RYAN: The short answer is yes. But you 9 see one z, two z. It's already been brought up about 10 school buses and garbage trucks and stuff like that 11 which are vital services to all the people who live 12 here. But you -- you will see trucks that have used it 13 as a short cut. Sure. And every time one come rumbling 14 down the road, it's kind of scary. 15 MS. LEWINTER: So, you believe any of the 16 trucks that are doing that are in violation. 17 MR. RYAN: Yes. I saw another landscaping 18 business doing it the other day. Which is why it's 19 stuck in my mind. And, you know, that was the only time 20 I had ever seen that landscaping truck. But -- but 21 there are, you know, it does seem like there is 22 insufficient enforcement in terms of controlling that 23 situation. I don't -- I'm not sure though that other 24 areas have quite as big a problem as Birdhill Road. 25 MS. LEWINTER: Okay. And I think you answered</p>	<p>232</p> <p>1 MR. RYAN: So, we -- 2 MR. HUGHES: -- that's -- 3 MR. RYAN: -- go -- 4 MR. HUGHES: -- that's not a quicker way? 5 MR. RYAN: There's quick and there's safe. 6 Okay. 7 MR. HUGHES: Thank you, sir. 8 MR. RYAN: And if I might finish answering 9 your question, if you go to Clarksburg Road, in order 10 to get out to 355, you're going to have to go through 11 the -- the park and -- and so that road is even 12 narrower in places and -- and it has 20 mile an hour 13 curves. 14 All right, so, if you're talk- -- if -- if 15 you're asking the -- me my opinion, the only way to do 16 this is -- is out Prices Distillery and into -- into 17 Damascus. 18 MR. HUGHES: I -- I -- I think I asked if it 19 was possible and quicker and so I think your answer to 20 that was yes. 21 MR. RYAN: It is possible, and it is quicker 22 MR. HUGHES: Okay, thank you. 23 MR. RYAN: -- it is not safe. 24 MR. HUGHES: Thank you. 25 That -- that's all, Your Honor.</p>

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<p>233</p> <p>1 MS. LEWINTER: Okay. Thank you. Okay. 2 So, the last person I see is Timothy Hunt. Mr. 3 Hunt, did you want to testify? 4 MR. HUNT: Yes, indeed. Oh, sorry. 5 MS. LEWINTER: Okay. 6 MR. HUNT: Yep. Hello. 7 MS. LEWINTER: All right. Hi, Mr. Hunt, can 8 you -- there you got it down. Do you solemnly swear 9 under penalties of perjury that the statements you are 10 about to make are the truth, the whole truth, and 11 nothing but the truth? 12 MR. HUNT: I do. 13 MS. LEWINTER: And can you provide the full 14 spelling of your name and your address? 15 MR. HUNT: Timothy Hunt. T-i-m-o-t-h-y, H-u-n- 16 t. 12304 Prices Distillery Road, Damascus. 17 MS. LEWINTER: Thank you. Okay. If you'd like 18 to proceed with your statement. 19 MR. HUNT: First off, could you possibly pull 20 up Exhibit 51, so I can show you the proximity of my 21 house to this operation? 22 MS. LEWINTER: Sure, just give me one second. 23 Can you see it? 24 MR. HUNT: I can see it. Now, if you go 25 from -- if you look from Prices Distillery Road to</p>	<p>235</p> <p>1 cursor? Is that near your house -- 2 MR. HUNT: No, go to the opposite side of the 3 picture there. 4 MS. LEWINTER: Oh, okay. 5 MR. HUNT: Okay. Go up and then to the right. 6 Go to the right and you'll see my house right there. 7 That's my barns. Closer. 8 MS. LEWINTER: Okay. 9 MR. HUNT: Right there. 10 MS. LEWINTER: Right here? 11 MR. HUNT: That is my -- 12 MS. LEWINTER: Okay. 13 MR. HUNT: -- pro- -- 14 MS. LEWINTER: So, you're -- you're saying the 15 debris field was around here and it went towards your 16 property? 17 MR. HUNT: It's within a hundred feet of my -- 18 my property line. 19 MS. LEWINTER: Okay. 20 MR. HUNT: I'm not going to go back over 21 everything that's been brought up; more addressing how 22 this has affected my way of life, my peace, my 23 existence. 24 So in September of, I believe it was 2020, 25 they started dumping and at first we didn't think too</p>
<p>234</p> <p>1 where the proposed operation is; number one, I want to 2 point out the question was asked, is this a current 3 aerial photograph and it is not. This was taken when 4 the previous owner, Mark Yates, had it. Because if it 5 was a current photo, you would see the debris field 6 that is still there. 7 MS. LEWINTER: Okay. Do you need me to -- 8 MR. HUNT: To go -- 9 MS. LEWINTER: -- or- -- orient it? 10 MR. HUNT: I'm sorry? 11 MS. LEWINTER: Do you need me to -- to -- to 12 rotate it all? 13 MR. HUNT: No, that's -- that's fine. If you 14 look at the picture and you go all the way to the back 15 of the property, away from Prices Distillery Road, 16 basically go left on the thing, you'll see my house at 17 the back corner of the property. 18 They have the -- they have this down as the 19 proposed area of what the operation is currently using. 20 That debris field went all the way back within 100 feet 21 of my property line. 22 MS. LEWINTER: So, it's down -- 23 MR. HUNT: And we are not far -- 24 MS. LEWINTER: I'm sorry. I just want to make 25 sure I'm orienting myself. Am I -- can you see my</p>	<p>236</p> <p>1 much of it. Okay. They need to -- you know, they need 2 to dump out these trucks. But then it continued every 3 day, and it became more and more, it was all day, every 4 day, six days a week. Starting shortly after dawn and 5 ending near dusk. 6 And this wasn't a dozen loads, this wasn't 20 7 loads, this was hundreds of loads of logs. And since 8 they started this operation, it was probably 9 inevitable, but every ash tree in the area is now dead 10 because they were bringing in mostly dead beetle 11 infested ash logs. 12 The other thing that we've noticed is that 13 I've lived there for 30 years, and we've always had 14 tree frogs down in the swampy area below the -- next to 15 the creek that runs off of that property. They're gone. 16 The brown trout that live in the stream are gone. And 17 this has all occurred in the last two years. 18 My average in- -- you know, my average day 19 there, when they were still dumping full time, was 20 listening to the sound of dump truck beds -- I mean, 21 doors slamming, the sound of heavy equipment. And the 22 only reason it stopped is because the property became 23 too muddy for them to get any further back. 24 They had major size machinery get stuck in the 25 property and had to bring bigger machines in to pull</p>

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<p style="text-align: right;">237</p> <p>1 them out. That is the only reason they stopped. 2 And Mr. Alvarez says, oh, I did that to stay 3 so- -- you know, to survive. But what nobody ever asked 4 Mr. Alvarez was, what is he saving in tipping fees when 5 you dump several hundred loads. I can guarantee a 6 tipping fee for a truck that size is over \$300. So he 7 was saving thousands of dollars a day in tipping fees. 8 We contacted the county multiple times. The 9 inspector came out, we never had any follow-up. He said 10 we're fining them, we have no proof of that. But I 11 believe the top fine is \$500 a month, which doesn't 12 mean a whole lot when you're saving thousands of 13 dollars a day. 14 A couple more points; on the driveway, we 15 actually widened our driveway. We had to get a permit 16 through some Conservation Service, because they are 17 actually a commercial operation and not registered as 18 an agriculture operation, they kind of slipped through 19 the -- the two -- two entities of what is -- would be 20 commercial oversight versus agriculture oversight. 21 I can guarantee that the size of that road has 22 doubled at least. And they talk about not having 23 employees there all day. They had employees there all 24 day running the skid loaders as the milling trucks came 25 in. They've also stockpiled millings, which is illegal</p>	<p style="text-align: right;">239</p> <p>1 the tree cutting trucks on all four properties, which I 2 assume meant that they were doing some cut rate tree 3 work in order for support. 4 MS. LEWINTER: All right. I don't have any 5 other questions. Thank you, Mr. Hunt. 6 At this -- 7 MR. HUNT: Thank you. 8 MS. LEWINTER: -- scanning -- I don't -- 9 MR. HUGHES: Your Honor, the -- 10 MS. LEWINTER: Yes. 11 MR. HUGHES: -- the rebuttal -- 12 MS. LEWINTER: Oh -- 13 MR. HUGHES: -- [inaudible]? 14 MS. LEWINTER: -- I'm sorry. Sorry, Mr. Hunt, 15 can -- there -- Mr. -- 16 MR. HUGHES: There -- 17 MS. LEWINTER: -- Hughes has some questions. 18 MR. HUGHES: Thank you. 19 Mr. Hunt, we sent two letters to your home 20 that did not come back to us in the fall and around 21 Christmas-time last year. Are you saying you didn't get 22 those letters? 23 MR. HUNT: I got letters from the lawyers. I - 24 - I don't particularly want to deal with the lawyers. I 25 would like to talk to the owner or --</p>
<p style="text-align: right;">238</p> <p>1 in this county, which means that they're only going to 2 increase the footprint of that operation. 3 Let me just run through my list real quick. I 4 think that pretty much covers it. 5 MS. LEWINTER: Okay, thank you. 6 Mr. Hughes, did you have any questions for Mr. Hunt? 7 MR. HUGHES: Nothing for Mr. Hunt. Thank you, 8 Your Honor. 9 MS. LEWINTER: Thank you. Mr. Hunt, are you of 10 the same mindset as Mr. and Mrs. Ryan and Mr. Hartsock 11 that -- in terms of how Mr. Alvarez could rebuild 12 credibility? 13 MR. HUNT: Absolutely not. My house, not from 14 the view, I don't see the operation directly, but my 15 house was the closest to what the noise and the debris 16 field was going on. No one ever came to my house and 17 talked to me. No one. They may have tried but I'm there 18 every night. I'm there by, generally, 3:30 in the 19 afternoon. 20 So if he wanted to do the friendly handshake - 21 - one other point I wanted to put up is that, for the 22 people that -- that signed letters in support of them, 23 one is a father and son -- or two are -- one is the 24 father, one is the son; one is over a mile away and the 25 other one has no direct view of the property. And I saw</p>	<p style="text-align: right;">240</p> <p>1 MR. HUGHES: So -- 2 MR. HUNT: -- representative lawyers of the 3 company. 4 MR. HUGHES: -- okay, so you chose not to talk 5 to us when we reached out. I -- I understand, thank 6 you. 7 MS. LEWINTER: Anything else, Mr. Hughes? 8 MR. HUGHES: No. Thank you, Your Honor. 9 MS. LEWINTER: Thank you, Mr. Hunt. 10 I'm just scanning this list. I don't see any 11 other names that I don't think that we've called on or 12 have declined to testify, but if somebody is in that 13 situation if they could speak up now because I don't 14 want to miss anybody. Okay. 15 Given that, Mr. Hughes, do you have any rebuttal 16 testimony that you wanted to offer? 17 MR. HUGHES: Your Honor, could I just -- could 18 I have 30 seconds to consult here? 19 MS. LEWINTER: Sure. 20 MR. HUGHES: Thank you. 21 Thank you, Your Honor. No rebuttal. 22 MS. LEWINTER: All right. Did you want to make 23 a closing statement? 24 MR. HUGHES: Yes. Would it be possible to ask 25 for a quick, what did you call it, comfort break, real</p>

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<p>241</p> <p>1 quick one?</p> <p>2 MS. LEWINTER: Sure. Would you like five</p> <p>3 minutes?</p> <p>4 MR. HUGHES: Ten, if possible.</p> <p>5 MS. LEWINTER: Ten minutes?</p> <p>6 MR. HUGHES: Yes.</p> <p>7 MS. LEWINTER: Sure. Why don't --</p> <p>8 MR. HUGHES: Thank --</p> <p>9 MS. LEWINTER: -- we come back at four --</p> <p>10 4:30.</p> <p>11 MR. HUGHES: Thank you.</p> <p>12 MS. LEWINTER: Okay.</p> <p>13 Tell me when you're ready to go back on the</p> <p>14 record. I apologize.</p> <p>15 MS. EVANS: We're -- we're back on the record.</p> <p>16 MS. LEWINTER: Thank you.</p> <p>17 MR. HUGHES: Okay, thank you --</p> <p>18 MS. LEWINTER: [inaudible]</p> <p>19 MR. HUGHES: -- Your Honor. Yep.</p> <p>20 First of all, thank you for the time and</p> <p>21 opportunity today. And thank you everyone for</p> <p>22 participating.</p> <p>23 Before I go into my closing, just one</p> <p>24 procedural matter. I know we have talked about moving</p> <p>25 the exhibits in together. I don't think there was any</p>	<p>243</p> <p>1 land use.</p> <p>2 So that's a criteria that's -- that's guiding</p> <p>3 us in this case. There are also some very important</p> <p>4 cases I referenced them, I know you know them inside</p> <p>5 out, I'm sure. I'm not going to go through a lot of</p> <p>6 them related -- and what I'm talking about goes back to</p> <p>7 Schultz versus Pritz [ph], but I -- I did want to just</p> <p>8 talk -- touch briefly upon two phrases or two -- two</p> <p>9 short blurbs that are related to the topic area.</p> <p>10 And -- but one of them, which obviously relies</p> <p>11 upon the guiding case, Schultz versus Pritz, Eastern</p> <p>12 Outdoor versus Merian, City of Baltimore, which is 128</p> <p>13 Maryland at 494. One of the key passages, it kind of --</p> <p>14 it's all along the same line but sums it up is, it's</p> <p>15 not whether a special exception conditional use is</p> <p>16 compatible with permitted uses that is relevant in an</p> <p>17 administrative hearing.</p> <p>18 The legislative body by designating special</p> <p>19 exception has deemed it to be generally compatible with</p> <p>20 other uses. Moreover, it's not whether the use</p> <p>21 permitted by way of special exception will have</p> <p>22 adverse-affects. Brackets, adverse-affects from applied</p> <p>23 in the first instance by making such use as conditional</p> <p>24 uses or special exception rather than permitted ones.</p> <p>25 It is whether the adverse-affect in a</p>
<p>242</p> <p>1 objections to the any of the exhibits we used or</p> <p>2 referenced. Would -- so I -- I would you that, Your</p> <p>3 Honor, move those in now or before the record's closed.</p> <p>4 MS. LEWINTER: I appreciate you remember --</p> <p>5 reminding me of that because I had overlooked that</p> <p>6 step, so I appreciate that.</p> <p>7 Is there any objection to any of the exhibits from</p> <p>8 anybody? Okay. I was just counting to 10 in my head to</p> <p>9 hopefully give people enough time to unmute if</p> <p>10 necessary. Hearing none, all the exhibits will be</p> <p>11 admitted.</p> <p>12 MR. HUGHES: Thank you, Your Honor.</p> <p>13 So yeah, it's been a long day, but I'd like to</p> <p>14 just kind of summarize a few of our key points and</p> <p>15 positions. And again, thanks to you and to everyone for</p> <p>16 the time and patience, especially with some of our</p> <p>17 technology challenges we had here, or that I had.</p> <p>18 So kind of the -- try to wrap it up from our</p> <p>19 position. So one of the things I try to remind myself</p> <p>20 is that -- and I -- certainly I know you know this, but</p> <p>21 just for -- for our team and Melody and so is -- so in</p> <p>22 this type of case the -- the criteria is by</p> <p>23 preponderance of evidence. It's not, you know, clear</p> <p>24 and convincing evidence, it's not beyond a reasonable</p> <p>25 doubt, that's -- that's what we deal with here in -- in</p>	<p>244</p> <p>1 particular location would be a greater than the</p> <p>2 adverse-affects ordinarily associated with a particular</p> <p>3 use that is considered by the agency. And I think just</p> <p>4 based upon the facts in this case, based upon the law,</p> <p>5 based upon the testimony, you know, we feel really good</p> <p>6 about this application.</p> <p>7 It -- it has -- you know, it -- it's a 32-plus</p> <p>8 acre property. It has three acres in the middle. Has</p> <p>9 incredible setbacks, screening, separation distances,</p> <p>10 very -- very minor operation in the grand scheme of</p> <p>11 things under a landscape contractor. We cited many</p> <p>12 cases in the county, much larger numbers, much smaller</p> <p>13 properties, much more staff, trucks.</p> <p>14 This is where -- what we're talking about is a</p> <p>15 maximum of 19 staff members on site, 14 trucks stored</p> <p>16 overnight, two of which are pickups, 10 trucks going</p> <p>17 out during the day for the work of which three are</p> <p>18 pickups. We're really tal- -- I mean, we're talking</p> <p>19 about up to seven trucks.</p> <p>20 You had testimony from Mr. Sekerak, Mr. Nalepa</p> <p>21 about the -- the impact, their professional testimony</p> <p>22 on the claim of Rustic Roads' conceptual master plan.</p> <p>23 It's -- it's a really -- and -- and I reference again</p> <p>24 Exhibit 51 which is the aerial, which just really shows</p> <p>25 the setting. And this property -- this zone allows it.</p>

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<p style="text-align: right;">245</p> <p>1 This property allows it by conditional use. 2 The legislature of the county counsel knows 3 that this zone permits it. It knows that this is where 4 rustic roads are. We talked about the statistics about 5 the miles of rustic roads, the number of roads I also 6 cited in there. As you -- as I think the testimony from 7 Mr. -- from the rustic roads' chairperson was 77 8 percent of the roads out in this zone are -- are rustic 9 roads. 10 Council could have said no special -- no 11 landscape contractor's out in this zone. They could 12 have said -- they didn't do that. They could have said 13 none that are on rustic roads or touched rustic roads. 14 They didn't do that. 15 We also talked about 3.15 of the zoning codes, 16 it talks about TDRs and, again, the county council also 17 could have prevented this, if that's what they wanted, 18 if there was no TDRs left, the landscape contractor, 19 but they didn't. They did not list as -- as one thing 20 that you could not do on a -- in fact it said, so you 21 can do this use on a property that doesn't have a TDR. 22 It's one of the things you can do on it. 23 We want to use prop- -- property -- we want to 24 use properties properly. We want to use property. This 25 is a use that county council has deemed is appropriate.</p>	<p style="text-align: right;">247</p> <p>1 designation as spec- -- having special historic 2 significance. So, I'm -- we're not saying it's not a 3 nice barn but it -- it's -- anyways. Let me -- let me 4 move on from that. 5 So another I -- going back -- I'm sorry. Let 6 me focus on -- again on the two big issues which you -- 7 which, you know, the Planning Board hit on and you 8 asked about early in -- in our hearing, so the bathroom 9 situation in the Rustic Road Functional Master Plan. 10 I would -- as we did earlier, I would ask you 11 again to look at our significant letters or memos and 12 attachments on these topics. So for the bathroom, 13 Exhibit 70 and 44, you also had ex- -- you know, 14 testimony on this, and there's additional law that 15 gives guidance on this. 16 In our memo, we talked about OSHA but at that 17 point we -- we hadn't had -- we'd not even talked about 18 COMAR. COMAR gives it strong guidance on this. There's 19 a lot of reasons why -- why and there's also the cases 20 we cited, the local cases. There's precedence where if 21 you feel like you really need to look at whether 22 there's adequate public facilities -- and again, I 23 think that was trying to capture -- confident that was 24 I trying to capture, if -- if there is septic being 25 operated on-site, is it sufficient.</p>
<p style="text-align: right;">246</p> <p>1 And again, why it falls on a landscape contractor, this 2 is a tree care company. We talked about the operations. 3 Much less moving parts, much -- much less operations 4 than a landscape contractor. It's -- the property is 5 vacant almost all day every day. 6 Mr. -- Mr. Alvarez did concede, of course, 7 there are occasions where they have -- somebody has to 8 come back usually one truck if -- if, you know, a piece 9 of equipment breaks, or they forget something. But by 10 and large, the property is vacant and empty during the 11 day. I mean, it's hard to have less impact, quite 12 honestly, on this property. There's so many more things 13 that could be done that was greater impact including a 14 -- a -- a pretty good size farm operation. 15 We really think the pictures help sell -- show 16 and sell what a great location this is for this. 17 Regarding the question about the -- the barn, the older 18 barn that as, I think, Miss Saville testified, somebody 19 else had modernized it but as you can see from the 20 picture, it's very hard to see at the starting point 21 and has been modernized. 22 And the county has not identified this -- 23 well, taking it back, public notice, they identified 24 this in the '60s or '70s. They have yet to inventory 25 it. Fifty some years, they've yet to give it a special</p>	<p style="text-align: right;">248</p> <p>1 Is it going to fail? Is it going to cause a 2 health problem? That's what these other landscape cases 3 that I cited focused on. And our position is it's not 4 needed. There's so minimal use there, we don't -- you 5 don't need that. It's not required. It's not necessary 6 there. But if you want to go further, there is guidance 7 on that from COMAR and OSHA. 8 I'd also cite -- I can't remember if I said it 9 earlier, I just mentioned it, but -- yeah. The 10 Rosenberg case which is -- I -- I think I did mention 11 earlier, Maryland National Capital Park and Planning 12 versus Rosenberg, 269 Maryland 520 Court of Appeals of 13 Maryland. 14 And, you know, that -- that's one that could 15 give a lot of -- of guidance here, if -- if Your Honor 16 really feels the need to dig into that matter and that 17 there might be -- could be a restroom because there's - 18 - that case says if you're going to do that, you need 19 to give some clear guidance on it, some parameters on 20 it. So, we -- we feel like there's plenty of evidence 21 and -- and there's also discretion about the bathroom 22 in case law and testimony. 23 And switching gears to the Rustic Roads 24 Functional Master Plan, we'd ask you again to look at 25 Exhibit Number 41, which we supply to the Planning</p>

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<p>249</p> <p>1 Board and also the -- the extensive testimony of our 2 professional planner, Mr. Sekerak today. As well as the 3 testimony from Mr. Nalepa, the professional traffic 4 engineer who just said that, you know, the amount of 5 traffic is so minimal, it had no impact really. 6 We -- we -- again, we just feel that this is 7 minimal impact, the right type of use of this property. 8 We have supporters, it's unpopular [inaudible]. We know 9 that we have people who are not happy either, but Mr. 10 Alvarez has a good heart, he's a hard worker, he has 11 good plans for this property, for the farm and for the 12 business. He's tried to, you know -- he's not perfect. 13 He's trying to reach out his hands and -- and he's 14 willing to continue to do so. 15 So, if -- if we are fortunate enough to gain 16 approval of this conditional use, we certainly would 17 accept conditions of approval which are standard in, 18 you know, land use cases in Montgomery County. 19 Certainly one -- there's certainly one we've 20 talked about at -- quite a bit that it could be dealt 21 with regarding the roads, and I think he even said we 22 would -- we would be willing to have only the pickups 23 go over the weight restricted bridge and have all the 24 others go the other direction. 25 And it can be done. His testimony was, it</p>	<p>251</p> <p>1 did you have something? 2 MR. SAVILLE: Laura Van Etten is on the phone. 3 She's not able to put anything in the chat. She had a 4 correction that she just sent me a note about. Can she 5 speak up? 6 MS. LEWINTER: Sure. Miss Van Etten, can you 7 speak? 8 MS. VAN ETTEN: Yes. I just wanted to say -- 9 thank you. Mr. Hughes misunderstood what I said about 10 the number of rustic roads. I did not say that 77 11 percent of the roads in the AG Reserve are rustic. 12 There are only 99 rustic roads. 75 to 77 percent of 13 them are in that AG Reserve. There are hundreds and 14 hundreds and hundreds of roads in the AG Reserve. It's 15 only 75 or 77 of them that are rustic. He's -- he got 16 it backwards. 17 MS. LEWINTER: Okay. No, that's a -- it's a 18 good point, Miss Van Etten, and I just want to be 19 clear. So you're saying, 75 percent of the rustic roads 20 that exist are in the ag res but you don't know what 21 percentage -- 22 MS. VAN ETTEN: Yes. 23 MS. LEWINTER: -- or sorry, in the I- -- in 24 the -- in the AR zone but you don't know what -- 25 MS. VAN ETTEN: They're in the ag reserve --</p>
<p>250</p> <p>1 would add about five minutes. It certainly can be done 2 and it's legal. And all kinds of trucks and big trucks 3 are allowed in that area, all over. And this is 4 Montgomery County. 5 And last, I would say that, I think I had 6 suggested earlier, but Montgomery County on occasions 7 create what, you know, a condition that has like a -- a 8 community liaison group. And I know you asked and I'm 9 not so sure if some of the neighbors would be willing 10 to do it but some might. 11 And Mr. Alvarez would certainly be willing to 12 -- a lot of times they -- these suggestions are they 13 meet at least twice a year, maybe quarterly and try to 14 talk through some things. If you talk you never know 15 where you can get. If you talk you can find some 16 consensus on some things and you can make some things 17 better. It never hurts to try and by trying, I've seen 18 some things over time that would surprise me. 19 So we would certainly welcome and accept a 20 condition that would try to do that moving forward. So 21 with that, Your Honor, I again want to thank you for 22 your time and guidance on this. And we -- we ask that 23 you grant -- grant this conditional use. Thank you. 24 MS. LEWINTER: Thank you, Mr. Hughes. 25 I see that Miss Saville has her hand up. Miss Saville,</p>	<p>252</p> <p>1 yes, they're in the ag reserve and -- 2 MS. LEWINTER: -- and that -- 3 MS. VAN ETTEN: -- no, I do not know what 4 total percent that would be of all the roads in the ag 5 reserve, right. 6 MS. LEWINTER: Okay. Because I misunderstood 7 that too from your prior testimony. So, I -- wouldn't 8 put that testimony -- 9 MS. VAN ETTEN: Well, yeah, I was answering a 10 question at the time which probably is how it got 11 confused. Thank you. 12 MS. LEWINTER: Okay. All right. Miss -- 13 MS. EVANS: You're on mute. 14 MS. LEWINTER: Sorry. Mr. Hughes, I don't know 15 if Miss Van Etten's statements impact anything you want 16 to say. 17 MR. HUGHES: No. No, I appreciate that -- that 18 -- that correction in my misunderstanding. Thank you. 19 MS. LEWINTER: No, I -- I misunderstood it 20 too. Okay. 21 If so, then that will conclude the hearing 22 portion for today. As I know Mr. Hughes is well aware, 23 but I -- I just want to make sure everybody else is 24 clear. The record will remain open for 10 days. And 25 then after that point, there are 30 days by which to</p>



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<p>253</p> <p>1 issue a written decision. This was a pretty lengthy 2 hearing so hopefully we'll do our best. 3 With respect to keeping the record open, I 4 wanted to say to Miss Saville in particular, that if 5 you do hear anything back from -- with regard to the -- 6 the TDR inquiry that you had, if you could please 7 submit that, I think that would be helpful information. 8 If there's nothing else, then I appreciate 9 everybody being so patient today and the -- if there's 10 any issues or concerns, please contact OzHA. All right. 11 MR. HUGHES: Thank you. 12 MALE: Thank you, Your Honor. 13 MS. LEWINTER: Thank you everybody. This will 14 conclude the hearing. 15 MALE: Thank you. 16 MALE: Thank you. 17 FEMALE: Is this where you log off? 18 FEMALE: Thank you. 19 MS. EVANS: Before you -- before you log off, 20 Miss LeWinter -- 21 MS. LEWINTER: Yes, Miss Evans. 22 MS. EVANS: Miss -- Miss Bennett, I didn't get 23 her -- her full name. 24 MS. LEWINTER: Miss Bennett? 25 MS. EVANS: Yes. She was- -- I -- I didn't see</p>	<p>255</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Chris Naaden, a transcriber, hereby declare 3 under penalty of perjury that to the best of my ability 4 from the audio recordings and supporting information; 5 and that I am neither counsel for, related to, nor 6 employed by any of the parties to this case and have no 7 interest, financial or otherwise, in its outcome, the 8 above 254 pages contain a full, true and correct 9 transcription of the tape-recording that I received 10 regarding the event listed on the caption on page 1. 11 I further declare that I have no interest in 12 the event of the action. 13 14 15  16 July 28, 2022 17 Chris Naaden 18 19 (452186, Landscape Contractor Business, in re: Chapingo 20 Investments, LLC, 7-22-22) 21 22 23 24 25</p>
<p>254</p> <p>1 her on the participant's list. 2 (off the record at 4:50 P.M.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

A			
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