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# Transcript of Hearing

**Date:** June 27, 2023

**Case:** Chapingo Investments, LLC

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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</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</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.: 486895</p> <p>24 Pages: 1 - 134</p> <p>25 Transcribed by: Bonnie Torrez, CET-1213</p>	<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</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TRANSCRIPT OF AUDIO-RECORDED HEARING</p> <p>IN RE: CHAPINGO INVESTMENTS, LLC</p> <p>LANDSCAPE CONTRACTOR BUSINESS APPLICATION</p> <p>TUESDAY, JUNE 27, 2023</p> <p>9:30 A.M.</p> <p>CASE NO. CU 22-07</p> <p>application pursuant to the criteria set forth, not only in</p> <p>that use standard that I just cited, but pursuant to Article</p> <p>59, Section 7.3.1. This is a remand. But, however, I will be</p> <p>issuing a decision. And if you disagree with my decision, you</p> <p>may appeal it back to the Board of appeals within 10 days after</p> <p>my issue -- after my decision is issued.</p> <p>So what I'd like to do right now is go through</p> <p>and let's identify all of the parties. Let's make sure</p> <p>everybody's microphones work, cameras work that we need to.</p> <p>So I will start with, let's see, Mr. Hughes.</p> <p>MR. HUGHES: Yes. Hi. Good morning. Sean</p> <p>Hughes here. I'm here with my client, Mr. Alvarez; Mr.</p> <p>Sekerak; and also, Mr. Alvarez's general counsel, Nelson</p> <p>Moskowitz, who also assisted me. And remotely, we have</p> <p>Mike -- I know that you're going to have them</p> <p>introduce -- Mike Nalepa and Kim Currano.</p> <p>My screen may show up as Jody Klein. If it does,</p> <p>I'm sorry, Ms. Byrne. He's my manager, and I guess the</p> <p>account is under him, but Sean Hughes here. Thank you.</p> <p>MS. BYRNE: Okay. All right. Awesome. Thank</p> <p>you. All right.</p> <p>We'll go -- I see Ms. Currano. Ms. Currano, if</p> <p>you could just make sure that your microphone works, and if</p> <p>you could identify yourself.</p> <p>MS. CURRANO: Yes. My name is Kim Currano. I'm</p>
<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</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>PROCEEDINGS</p> <p>HEARING EXAMINER: (Audio begins</p> <p>mid-sentence) -- I will be the hearing examiner today for</p> <p>the remand of 22-07 Chapingo from the -- back from the</p> <p>Board of Appeals.</p> <p>So what I'm going to do right now is I'm going to</p> <p>start the record button. And this recording is for</p> <p>the -- let's see -- it's for the court reporter only.</p> <p>It's not letting me record. Give me one second.</p> <p>Well, for whatever reason, it's not allowing me</p> <p>to record, which is great because we have a court reporter</p> <p>here. So hopefully, all will go well. It's rare that we</p> <p>ever have to go back to the Teams recording for the court</p> <p>reporter.</p> <p>And Ms. Johnson, if you wouldn't mind giving it a</p> <p>try to see if maybe you can record on your end. It should</p> <p>allow me because I am the person that organized the</p> <p>meeting, but if not, again, not the end of the world.</p> <p>All right. So we'll go ahead and get started.</p> <p>This is a public hearing on the remand of conditional use</p> <p>application for the operation of a landscape contractor</p> <p>business in an AR zone under use standards as set forth in</p> <p>Article 59, Section 3.5.5.</p> <p>Again, my name is Katie Byrne. I will listen to</p> <p>testimony, review evidence, and render an opinion on the</p>	<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</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>a professional engineer for Stantec, and I'm working with</p> <p>Sean Hughes.</p> <p>MS. BYRNE: All right. Thank you so much.</p> <p>Mr. Nalepa?</p> <p>MR. NALEPA: Yep. Mike Nalepa with Street</p> <p>Traffic Studies, again, working with the applicant.</p> <p>HEARING EXAMINER: All right. Awesome. Thank</p> <p>you.</p> <p>Mr. Ryan?</p> <p>MR. RYAN: Jim Ryan and Karen Ryan. And we</p> <p>are -- we live on Burnt Hill Road, and we're going to speak</p> <p>in opposition.</p> <p>HEARING EXAMINER: Okay. Thank you.</p> <p>Mr. Hartsock?</p> <p>MR. HARTSOCK: Also off Burnt Hill Road.</p> <p>Everything seems to be working. Thank you.</p> <p>HEARING EXAMINER: All right. And you'll be</p> <p>testifying in opposition, sir?</p> <p>MR. HARTSOCK: I will be, yes. Thank you.</p> <p>HEARING EXAMINER: Thank you.</p> <p>Mr. Hunt?</p> <p>MR. HUNT: It's Tim and Jackie Hunt. We own the</p> <p>farm on the south edge of the Chapingo property. And we</p> <p>will be speaking in opposition.</p> <p>HEARING EXAMINER: Okay. Thank you. Let's see.</p>

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<p>5</p> <p>1 I have a Jacqueline Newell Hunt?</p> <p>2 MS. HUNT: Yes. Timothy just introduced himself.</p> <p>3 He will be speaking on our behalf. Our -- as he said, we</p> <p>4 are adjacent to the Chapingo property, and we live at 12304</p> <p>5 Prices Distillery Road.</p> <p>6 HEARING EXAMINER: Okay. All right. Thank you.</p> <p>7 Ramon Espin? Mr. Espin?</p> <p>8 MR. ESPIN: Yes. Good morning, everyone. Ramon</p> <p>9 Espin here. I am just observing today's hearing.</p> <p>10 HEARING EXAMINER: Excellent. Okay. Thank you.</p> <p>11 I'm just trying to get a handle on who's speaking and who's</p> <p>12 not. So what might happen, just for everybody, as we go</p> <p>13 through, I'll probably call people's names out to make sure</p> <p>14 that we cover everybody and make sure everybody who wants</p> <p>15 to speak has an opportunity to speak.</p> <p>16 And Peter Atta? Again, looks like DHCA.</p> <p>17 MR. ATTA: Yeah, I'm just here to observe as</p> <p>18 well.</p> <p>19 HEARING EXAMINER: All right. Awesome. Thank</p> <p>20 you.</p> <p>21 And did I miss anyone? Okay. Hearing none,</p> <p>22 looks like I think I've gotten everybody, going through the</p> <p>23 list of participants. So I'm just going to go through a</p> <p>24 little housekeeping details for Teams.</p> <p>25 The first thing I would ask is if you are not</p>	<p>7</p> <p>1 particular order.</p> <p>2 Either way I can run the share-the-screen, or if</p> <p>3 you want to do that for your exhibits, you can. Up to you.</p> <p>4 MR. HUGHES: In the past I've had -- or OZAH has</p> <p>5 always led that, so I'll continue with that and have you,</p> <p>6 if that's okay. Thank you.</p> <p>7 HEARING EXAMINER: Perfectly fine. Absolutely.</p> <p>8 A hundred percent.</p> <p>9 So the way that -- as far as -- for those of you</p> <p>10 who are here in opposition, is there one -- I understand</p> <p>11 one or two of you are speaking for others. Is there any</p> <p>12 particular order in which you want to testify, or should we</p> <p>13 just roll through it when we get there?</p> <p>14 Mr. Hartsock, I'm sorry. You're muted. I can't</p> <p>15 hear you.</p> <p>16 MR. HARTSOCK: I'm okay with going with the flow.</p> <p>17 HEARING EXAMINER: Okay. All right. Sounds</p> <p>18 good. All right. So just to go through what the procedure</p> <p>19 will be.</p> <p>20 What you say will be under oath, and you may be</p> <p>21 asked questions about your testimony. The proceedings will</p> <p>22 follow in a certain order. We can get opening statements.</p> <p>23 Mr. Hughes, we'll get an opening statement from</p> <p>24 you.</p> <p>25 I would ask that we get -- if an opening</p>
<p>6</p> <p>1 speaking that you keep your microphone muted; it helps keep</p> <p>2 down with the feedback. You can keep your cameras on if</p> <p>3 you'd like, but -- or you can turn them off when you're not</p> <p>4 speaking. What I would ask is if you are speaking that</p> <p>5 your camera and mic both be on.</p> <p>6 We ask that people not interrupt each other or</p> <p>7 conduct crosstalk because it's a really difficult for the</p> <p>8 court reporter to record two people talking at one time.</p> <p>9 Right? I'll also try to do that myself. Sometimes, I</p> <p>10 think we all will tend to get a little sometimes excited,</p> <p>11 and we start to talk over each other. So just remind each</p> <p>12 other that we need to not speak when someone else is</p> <p>13 speaking.</p> <p>14 Let's see. If you have a question, we're going</p> <p>15 to use the raise-your-hand feature or function. So please</p> <p>16 don't use the chat because what I find is I'm not able to</p> <p>17 pay attention and watch and keep track of the chat as well.</p> <p>18 So you can turn your camera on and wave if you're having an</p> <p>19 issue or have a question, or use the raise-your-hand</p> <p>20 function that we have in Teams.</p> <p>21 Mr. Hughes, I will ask, do you wish to run the</p> <p>22 share-the-screen and pull the exhibits from the website, or</p> <p>23 would you like me to do that? I'm happy to go either way,</p> <p>24 because sometimes I know applicants like to jump around</p> <p>25 from exhibit to exhibit and they might have things in a</p>	<p>8</p> <p>1 statement would like to be made by those in opposition, I</p> <p>2 would request that just one of you make that opening</p> <p>3 statement, if you have a necessarily a speaker for the</p> <p>4 group. The order will be that the appellant will go first,</p> <p>5 meaning Mr. Hughes and his client, in their factual case.</p> <p>6 Then the party in opposition will go with their factual</p> <p>7 case upon completion of the appellant's case. And then any</p> <p>8 other interested persons will present a factual case with</p> <p>9 an opportunity for cross-examination. The appellant will</p> <p>10 have essentially the last word; they will be allowed to put</p> <p>11 on rebuttal.</p> <p>12 And then closing statements. Again, Mr. Hughes</p> <p>13 will have an opportunity to make a closing statement for</p> <p>14 his client. And if possible, I would -- there could be one</p> <p>15 speaker for the group in opposition who would like to sum</p> <p>16 up and give a closing statement.</p> <p>17 The first thing that I would like to do right now</p> <p>18 is go through and share screen on the list of exhibits and</p> <p>19 see if we can identify. Can everyone see this?</p> <p>20 UNIDENTIFIED SPEAKER: Yes.</p> <p>21 HEARING EXAMINER: On the screen? All right.</p> <p>22 MR. HUGHES: I can.</p> <p>23 HEARING EXAMINER: Okay. And if we could go</p> <p>24 through, is there anyone that has any specific objection to</p> <p>25 any of the exhibits? Now I'm going to scroll down a little</p>

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<p style="text-align: right;">9</p> <p>1 bit to, really, the ones that have been submitted here at 2 the end. So are there any specific objections to any of 3 the exhibits that we have identified on OZAH's website? 4 All right. Hearing none, Then we're going to 5 deem that all the -- all of the exhibits that are listed on 6 the website are going to be deemed admitted and can be 7 referred to during testimony if need be. 8 All right. Back again to procedure and 9 testimony. Cross-examination is your opportunity to ask 10 questions. It's not your opportunity to necessarily give 11 speeches or testimony. Everybody has an opportunity to 12 give testimony and have the opportunity to cross-examine 13 witnesses. 14 All right. So based on -- approval of this will 15 be based on the criteria as I had mentioned before in 16 Article 59.7.3.1. And so please focus that testimony on 17 that. 18 And I would remind everybody that this is a 19 remand. Right? So there were three very specific points 20 that the Board of Appeals ask that we focus our testimony 21 and review on. And that included the onsite bathroom 22 requirement, the mobile workforce requirement, and the 23 Rustic Roads -- conformance with the 1996 Rustic Roads 24 functional plan. 25 All right. So if there are no further questions</p>	<p style="text-align: right;">11</p> <p>1 to testify at least proactively, he does have a 2 international flight tonight for a family legal matter out 3 of the country. So he will have to leave around 2-ish if 4 we're not done. But he knows that we can continue, that 5 this is going to be -- there's a transcript, and that we 6 can -- the team here can continue with or without his 7 presence -- 8 HEARING EXAMINER: Okay. 9 MR. HUGHES: -- with your permission. And the 10 second one is Mr. Sekerak, he can be here as late as 5 p.m. 11 And I'll make sure I'm done with him. If we're not done by 12 then, he also has a flight out of -- out of the state that 13 he needs to leave to by 5 p.m. today. 14 HEARING EXAMINER: Okay. I'm hopeful that we 15 will not be here past 5:00. My goal is that we will go as 16 long as we can. We, you know, take consensus breaks for 17 those of us if we need a bathroom break or if there's a 18 natural stopping point for if people need to grab something 19 to eat. 20 But my hope is that we do 10- or 15-minute 21 bathroom breaks. And if we need to break for lunch, it 22 would be a 30-minute break, if that's all right with 23 everybody. I think everyone on hand would like to just 24 move forward and try to finish if we can today. 25 MR. HUGHES: That sounds good to me.</p>
<p style="text-align: right;">10</p> <p>1 on procedure, we will go ahead and get started. So we can 2 start with opening statements. 3 Mr. Hughes? 4 MR. HUGHES: Thank you, Madam Hearing Examiner. 5 Before I do that, I just had a quick preliminary matter or 6 two to run by you. 7 HEARING EXAMINER: Okay. 8 MR. HUGHES: Let's see. The first one is when I 9 -- I do have, like I said -- well, and I can reveal. My 10 plan proactively is to probably only utilize two 11 witnesses -- 12 HEARING EXAMINER: Okay. 13 MR. HUGHES: -- although I have (inaudible) here, 14 so that is Mr. Sekerak and Mike Nalepa. For Mr. Sekerak's 15 testimony, he's here with me, I will attempt to kind of 16 turn my computer so that he's more visible than me. I'll 17 be off camera or slightly visible for questions if that's 18 okay. 19 HEARING EXAMINER: That's perfect. 20 MR. HUGHES: Okay. The other item I wanted to 21 run by you is -- and we are obviously fully committed to 22 being here as long as we need to be today. But we do 23 have -- and so I'm here all day. We do have two items I 24 want to bring to your attention. 25 My client, Mr. Alvarez, again, who I don't expect</p>	<p style="text-align: right;">12</p> <p>1 HEARING EXAMINER: Okay. 2 MR. HUGHES: Thank you. 3 HEARING EXAMINER: All right. 4 MR. HUGHES: Okay. So appreciate that. With 5 that, I will start my opening statement. Thank you, 6 Hearing Examiner. 7 And Sean Hughes here from Miller, Miller &amp; Canby 8 here for the applicant, Mr. Jose Alvarez, who is here with 9 me in the room. Mr. Alvarez is the owner of Chapingo Tree 10 Care and also of Chapingo Investments. Chapingo 11 Investments owns the 32-acre farm. Chapingo Tree Care is 12 asking to utilize about three-plus acres in the middle of 13 the farm and obviously access to that conditional use area. 14 Mr. John Sekerak, again, he's here with me. He's 15 Stantec -- from Stantec and was our expert witness last 16 hearing for the land -- as a land use planner, a land use 17 landscape architect. 18 Another point of clarification: since this is a 19 remand, I'm assuming that the expert witnesses were already 20 recognized as that and I can go right into their testimony? 21 Okay. Thank you. 22 HEARING EXAMINER: You can, yeah. There's no 23 need to pre-qualify them. I have the transcript from 24 before. We have the hearing from before. So if they were 25 admitted as experts previously, they're admitted as experts</p>

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<p>13</p> <p>1 for this hearing.</p> <p>2 MR. HUGHES: And as we said, Mr. Mike Nalepa from</p> <p>3 Street Traffic Studies. He was recognized as an expert in</p> <p>4 transportation planning and traffic engineer, and he is</p> <p>5 remote, as you saw.</p> <p>6 Kim Currano, Stantec PE and civil engineering, is</p> <p>7 remote. Again, I mentioned Mr. Nelson Moskowitz, who's Mr.</p> <p>8 Alvarez's general counsel, and he has been -- he and I have</p> <p>9 been working together on this application.</p> <p>10 So I think I got through kind of the preliminary</p> <p>11 introduction. So I guess I'd like to start by saying that,</p> <p>12 well, appreciate the opportunity. And I'm a big believer</p> <p>13 in that a picture's worth a thousand words. And there's</p> <p>14 some very nice exhibits and visuals in this case. And as</p> <p>15 attorneys, we have a tendency to talk too much. I've said</p> <p>16 this before, and I'll probably talk too much today, but</p> <p>17 this is a pretty robust case as far as the exhibits and</p> <p>18 evidence in it.</p> <p>19 But if I could, I would ask Madam Hearing</p> <p>20 Examiner, if you could first pull up Exhibit 51, and also</p> <p>21 your guidance. I know -- you gave good guidance that we're</p> <p>22 going to focus on the three topics, which certainly makes</p> <p>23 sense. That's the remand. I just want to see if Madam</p> <p>24 Hearing Examiner would like a quick two- or three-minute</p> <p>25 overview of the case, the facts, and then go right into</p>	<p>15</p> <p>1 And so it is a -- as I mentioned, it's a 32-plus</p> <p>2 acre farm. A landscape contractor conditional use is what</p> <p>3 we're asking for. They're going to use about three-plus</p> <p>4 acres in that middle area that's marked and obviously have</p> <p>5 access to it. It is, like I said, about 1,200 feet off the</p> <p>6 road, which is about a little over 13-plus basketball</p> <p>7 courts in a row.</p> <p>8 There are no new structures being proposed here.</p> <p>9 There's two existing ag buildings that have been there.</p> <p>10 One of them is old, been there a long time. The other one</p> <p>11 was built around 2012, which was before Mr. Alvarez bought</p> <p>12 the property in -- around 2020.</p> <p>13 I say no new structures. I guess technically</p> <p>14 there is some fencing that's required under the application</p> <p>15 being proposed down by the compound area. So there's some</p> <p>16 fencing, which would be technically a new structure, but</p> <p>17 we're really not looking to alter the property or we don't</p> <p>18 desire to alter the property.</p> <p>19 And then as -- and the record mentioned that</p> <p>20 there is some alteration to the access drive related to</p> <p>21 making sure we would comply with fire access. And there's</p> <p>22 kind of a unique thing -- it's in the record -- also shows</p> <p>23 a telephone pole -- or power pole, I should say, that's</p> <p>24 just slightly off the road as you start going down the</p> <p>25 access drive but very close to the road.</p>
<p>14</p> <p>1 those points. Or if you want me to skip right over a</p> <p>2 little summary of where the property's located and what</p> <p>3 we're asking for.</p> <p>4 HEARING EXAMINER: It's up to you. I've read the</p> <p>5 prior decision. I've reviewed the transcript. I've read</p> <p>6 the Board of Appeals decision, looked at the exhibits. If</p> <p>7 you'd like to give me a quick summary of what happened</p> <p>8 before, that's fine. And then go through the site plan.</p> <p>9 MR. HUGHES: Okay.</p> <p>10 HEARING EXAMINER: Or, I'm sorry, the aerial.</p> <p>11 MR. HUGHES: Yeah. Thank you. Okay. Could you</p> <p>12 slide -- or maybe I can do it. No, I can't. Can you slide</p> <p>13 it down just a little bit?</p> <p>14 HEARING EXAMINER: Let's see. Oh, like this?</p> <p>15 MR. HUGHES: Yeah.</p> <p>16 HEARING EXAMINER: Okay.</p> <p>17 MR. HUGHES: Like that. Yep. Okay.</p> <p>18 HEARING EXAMINER: There you go.</p> <p>19 MR. HUGHES: There you go.</p> <p>20 HEARING EXAMINER: I see.</p> <p>21 MR. HUGHES: So, yes, the dark yellow line shows</p> <p>22 the Chapingo property. You can see there's a long access</p> <p>23 drive. It's about 1,200 feet off of Prices Distillery. It</p> <p>24 takes you down to the middle, which is the conditional use</p> <p>25 area.</p>	<p>16</p> <p>1 So what we're asking for here is, as was amended</p> <p>2 at the last hearing, maximum of 19 staff members on site at</p> <p>3 one time, maximum of 14 company vehicles overnight on site,</p> <p>4 and that would include two small pickups, and a maximum of</p> <p>5 10 company vehicles being utilized during the day. And</p> <p>6 that includes three small pickup vehicles.</p> <p>7 Staff comes in in the morning time. I think our</p> <p>8 official hours we're asking for are 6 a.m. to 6:30 p.m.,</p> <p>9 although staff may come in closer to 6:30 a.m. But they're</p> <p>10 in there for about 45 minutes, kind of getting set up,</p> <p>11 getting organized, having a safety meeting, and then going</p> <p>12 out to their clients' properties to work on them.</p> <p>13 And the property is pretty much vacant the rest</p> <p>14 of the day. They will come back towards the end of the day</p> <p>15 when they're done on their different job sites. They come</p> <p>16 in; they drop off the vehicles, do a little cleanup, put</p> <p>17 some equipment away, and essentially, then can head home.</p> <p>18 And, you know, that takes about 30 minutes typically.</p> <p>19 So I say it's pretty much vacant. There's no</p> <p>20 office there. We're not asking for an office. There's no</p> <p>21 house on site. Occasionally, management or staff may have</p> <p>22 to come back and switch out a vehicle, pick up a tool, or</p> <p>23 do some additional cleaning, but that's the exception.</p> <p>24 It's pretty rare. Usually it's very quiet during the day</p> <p>25 for the business, and certainly it's silent at nighttime</p>

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<p>17</p> <p>1 when we're not there for business hours and silent and 2 quiet on Sundays when the business is closed. 3 I said we don't need an office. Mr. Alvarez has 4 a typical office, which you can see Exhibit 42-A. We have 5 pictures of that office. It's up in Urbana/Frederick, 6 which is a few miles north. And that traditional office is 7 where office-type work is done. They communicate with 8 customers. If you were to continue, it would 9 show -- that's the map of the area, and a few more pictures 10 shows that's the outside of the business, and some inside 11 pictures of the office. 12 So they do, you know, accounting there. They do 13 billing. They do marketing. They do communications and 14 calls with clients. Mr. Alvarez himself is usually in 15 there about half a business day. He's -- he is a busy guy, 16 so he's at the site in the morning. He's sometimes out 17 doing sales or working with customers and also in the 18 office quite a bit. 19 So essentially, this is what we're asking for. 20 And I -- it's called a landscape contractor. That's what 21 fits the definition. I'll go into that a little bit more 22 later. But it is a tree care company. And tree care 23 actually is a lot less impactful, I would say, than even a 24 full-fledged landscape contractor. And I'll go into that a 25 little bit more later on.</p>	<p>19</p> <p>1 contractor also means providing snow removal 2 services with vehicles, equipment, supplies that 3 are stored, parked, serviced, or loaded at the 4 business location. Landscape contractor includes 5 tree installation, maintenance, or removal. 6 Landscape contractor does not include lawn and 7 maintenance services (see Section 3.5.14 G, Lawn 8 Maintenance Services)." 9 So why I bring that up is, so I said tree care 10 does fit that definition towards the end. It's a part of 11 it, but the county council obviously envisioned all those 12 things happening for landscape contractor. They could all 13 happen. 14 So why, again, I think this is an ideal location, 15 an ideal application is it's quite a modest size, and I'll 16 give some comparisons to some other ones that have been 17 approved. And the actual activity there is much less than 18 a typical landscape contractor, a full-scale landscape 19 contractor, and thus, much less than the legislature or 20 county council imagined when they permitted these by 21 conditional use in these areas and in this zone. So, you 22 know, we -- we're trees. That's what we do, everything 23 tree related. 24 So there's no hardscape, there's no mulch on 25 site. There's no materials on site, no bins, no moving of</p>
<p>18</p> <p>1 But as was noted, the decision by OZAH said we 2 met all the code criteria except for the two big areas 3 which were the adequate public facilities and then the 4 rustic road, which as you noted earlier, is those two 5 buckets. But there's three questions on the remand from 6 the Board of Appeals. 7 So with that, I will go into a little bit more of 8 what we're trying to accomplish here through those three 9 points. 10 I would say we believe this is an ideal location 11 for those -- for this type of use, considering the size of 12 the property and the size of the business. County council 13 certainly allows this type of use by conditional use in 14 this zone, in this area. One of the things they require is 15 that the lot size be at least two acres. So in this case, 16 we're 32 acres; we're 16 times the minimum requirement. 17 And regarding the definition of landscape 18 contractor. That's in 3.55, it says, 19 "Landscape contractor means business of 20 designing, installing, planting, or maintaining 21 lawns, gardens, hardscapes, water features, 22 outdoor structures, decorative features, 23 stormwater and drainage feature, or other 24 activities intended to enhance the appearance or 25 usefulness of outdoor areas. Landscape</p>	<p>20</p> <p>1 materials, no office, no staff on site throughout the day. 2 There's no snow plowing. So whenever there's snow storms, 3 we don't have 24/7 all-hours-of-the-day trucks coming and 4 going, people coming and going. We don't work on 5 stormwater management issues, which is permitted by a 6 landscape contractor. Customers do not come visit the 7 site. 8 And again, I think we have small number, 9 relatively speaking, of staff and vehicles versus others 10 that were anticipated and others that have been approved in 11 recent years. Again, I'll -- I'm going to mention that in 12 a little bit, give some examples. 13 One of the things I'd like to do is just 14 briefly -- if you could go back, Madam Hearing Examiner, to 15 the first exhibit we pulled up, which is 51. And I just 16 want to offer up the words from Exhibit 45-B, which you 17 don't need to pull up. I'm just going to read quickly. 18 This is from -- once 51 comes up. This is from the 19 property owner and the farmer right across the street. 20 Their driveway looks directly into ours. That's Mr. Gene 21 Walker. 22 And what Mr. Walker wrote in his email -- or I'll 23 read part of what he wrote in Exhibit 45-B. But 24 his -- again, his property is right across the street from 25 our property in the driveway. I believe his farm is over a</p>

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<p>21</p> <p>1 hundred acres.</p> <p>2 And he wrote, The Alvarez property is directly</p> <p>3 across from the entrance of our farm/home. We</p> <p>4 have a complete view of the property in the</p> <p>5 appeal. We've met Mr. Alvarez and used the</p> <p>6 services of his company for tree maintenance on</p> <p>7 our farm. His buildings sit in the middle of a</p> <p>8 32-plus acres. No neighbor is closer than a</p> <p>9 thousand feet from the building he is using.</p> <p>10 His last paragraph, he wrote, We support Mr.</p> <p>11 Alvarez's operation as it's no different,</p> <p>12 distracting, dangerous (twice a day, coming and</p> <p>13 going) or violating of agricultural use than the</p> <p>14 school buses, dump trucks, tractor trailers, farm</p> <p>15 equipment, and speeding cars are on our</p> <p>16 (indiscernible) country road. As far as we</p> <p>17 concerned, we -- as far as we are concerned, tree</p> <p>18 removal/care is agricultural, as is our farming</p> <p>19 operation.</p> <p>20 And why I bring that up is, A, first of all,</p> <p>21 because he's right across the street. But I do recognize</p> <p>22 that zoning cases are not popularity contests. It doesn't</p> <p>23 matter if we had a hundred people for us and one against,</p> <p>24 or a hundred people against us and one for, we know that</p> <p>25 the hearing examiner's going to look at the evidence and</p>	<p>23</p> <p>1 buildings were being proposed. It was going to have an</p> <p>2 office there and staff there all day. It was going to have</p> <p>3 deliveries, and it was a full-fledged landscape contractor</p> <p>4 versus a tree care company.</p> <p>5 One of the things that came up in that case was</p> <p>6 talking about access and the road to -- and Burnt Hill Road</p> <p>7 and weight restrictions and bridge restriction, which is</p> <p>8 obviously a topic in our case as well.</p> <p>9 So it actually had, from staff, a proposed</p> <p>10 condition of approval to deal with that. And that said,</p> <p>11 All vehicles with more than four wheels that are associated</p> <p>12 with the applicant's business, including those belonging to</p> <p>13 employees, must gain ingress and egress from Prices</p> <p>14 Distillery Road; vehicles with four wheels, brackets, with</p> <p>15 or without trailer, may use the Burnt Hill Road bridge.</p> <p>16 And then it said something which is -- doesn't</p> <p>17 apply to us, but, All delivery vehicles must gain ingress</p> <p>18 and egress from Prices Distillery Road; their drivers must</p> <p>19 be advised of the bridge restriction by the applicant.</p> <p>20 So again, I brought that up because there's -- as</p> <p>21 a landscape contractor, it was literally a few lots away</p> <p>22 and it also talked and did some fair analysis on the bridge</p> <p>23 issue but also on the Rustic Road Functional Master Plan.</p> <p>24 I'll get into that in a little bit.</p> <p>25 HEARING EXAMINER: Do you know why it never got</p>
<p>22</p> <p>1 the code criteria and make a decision based on that. But I</p> <p>2 did want to bring it up for the context of his position and</p> <p>3 kind of what falls into our arguments of impact.</p> <p>4 So we are -- I'd like to move into the substance</p> <p>5 of the topic areas.</p> <p>6 HEARING EXAMINER: Okay.</p> <p>7 MR. HUGHES: So some of the other landscaping</p> <p>8 cases that I mentioned I was going to talk about earlier</p> <p>9 that have been applied for and/or approved. There's one</p> <p>10 that's -- there's a fair amount in the record about -- and</p> <p>11 I'm going to talk about some today as well. And that's the</p> <p>12 Emerald Landscaping case, which was right around the corner</p> <p>13 at 25538 Burnt Hill Road. It's about 200 feet south of</p> <p>14 intersection of Prices Distillery and Burnt Hill Road.</p> <p>15 It did get a positive staff report. It did not</p> <p>16 go all the way through to OZAH. Case number 1609. So why</p> <p>17 I bring that up is that's a landscape contractor. It was</p> <p>18 literally one-tenth of a mile as the crow flies away from</p> <p>19 our property. It was also much more intense application.</p> <p>20 Had -- was asking for 60 staff members, which is more than</p> <p>21 three times our 19, 20-plus trucks. And it was only on</p> <p>22 four plus acres. So it was near -- we're 32 acres. It was</p> <p>23 nearly eight times smaller than our application.</p> <p>24 It required developing an undeveloped property,</p> <p>25 so putting a new drive onto the rustic road. And two new</p>	<p>24</p> <p>1 to OZAH? Did they just scrap the plan?</p> <p>2 MR. HUGHES: It had plenty of staff support, and</p> <p>3 I understand it ran in some challenges at the Planning</p> <p>4 Board, so they pulled the application.</p> <p>5 HEARING EXAMINER: Okay.</p> <p>6 MR. HUGHES: Somewhat interestingly, though,</p> <p>7 it -- I did notice that the Rustic Roads Advisory Committee</p> <p>8 noted and wrote that it would not testify against that</p> <p>9 application at the Planning Board or the OZAH hearing.</p> <p>10 Another case I wanted to mention is Board of</p> <p>11 Appeals number S2715/2716, which is two special exceptions</p> <p>12 from 2015. And OZAH -- I'm sorry. OZAH 8-14 and 8-15. So</p> <p>13 that was -- and it was two special exceptions, one for</p> <p>14 landscape contractor and one for a wholesale nursery. That</p> <p>15 was up to 40 staff members, 23 trucks, and that was on 11</p> <p>16 acres. And they were going to use four acres. That was</p> <p>17 approved.</p> <p>18 Another one that was approved is Greenskeeper,</p> <p>19 which is CU 15-04, on 31 acres, up to 53 staff members and</p> <p>20 30 trucks.</p> <p>21 So again, to -- my point of these are there's</p> <p>22 some precedent, but also that these are full-fledged</p> <p>23 landscape contractors are more and much larger ones and</p> <p>24 oftentimes on smaller properties.</p> <p>25 Another interesting one is Goshen CU 18-06. That</p>

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<p style="text-align: right;">25</p> <p>1 was between 30 to -- 38 to 50 staff members. I say that 2 because it approved for 38, and I think the caveat was they 3 could get up to 50 later, I think, if they -- I actually 4 have in front of me. I think it was if they got some 5 additional septic approval or enhancements. Twenty trucks. 6 That was on 30 acres, and they were going to use 6.3. They 7 were going to put in some new buildings. They would have 8 offices and staff on site.</p> <p>9 There was a -- also a restricted bridge app. So 10 there's another condition of approval that was proposed by 11 staff, proposed by Planning Board, and accepted in part of 12 the approval by OZAH. And essentially, it said, All 13 vehicles with more than four wheels that are associated 14 with the applicant's business, including those belonging to 15 employees, must not travel north on Zion Road from the 16 property; all trucks must enter from the south. So again, 17 that there are conditions of approval that can help and 18 guide certain transportation routes to make sure that 19 they're complying with any weight-restricted issues.</p> <p>20 Another case I'll mention that was approved is JB 21 Kline, S-2807, OZAH 11-31. That was for 25 staff members, 22 12 trucks, and on 5.77 acres.</p> <p>23 I think the last one that I will touch upon in a 24 little more depth as we go through today is a Francisco 25 case, CU 19-04. That was 19 staff, 16 trucks, 6.3 acres,</p>	<p style="text-align: right;">27</p> <p>1 quickly note what they say. So on page 13, first 2 paragraph, 2, it says, To reconsider whether the proposed 3 use would be served by adequate public services and 4 facilities, namely sanitary sewer, in light of the mobile 5 workforce argument that was put forth by Mr. Hughes, which 6 the Board generally found to be persuasive.</p> <p>7 And then under next paragraph, 3, they wrote, To 8 reconsider whether the proposed use conforms with the 1996 9 Rustic Roads Functional Master Plan; in this regard, the 10 hearing examiner found the proposed use would impact the 11 viewshed of a smaller -- and they write historic barn. I'm 12 going to take issue with the historic point. I'll talk 13 about that a little bit later.</p> <p>14 But they wrote smaller historic barn on the 15 petitioner's property. But the Board observes, based on 16 Exhibit 54-I, and that's a key exhibit that's in the case, 17 54-I. Ad I would -- perhaps I could ask if you could pull 18 up 54-I, please.</p> <p>19 HEARING EXAMINER: Sure.</p> <p>20 MR. HUGHES: That is very difficult to see the 21 smaller, again, historic barn -- I'll call it old 22 barn -- from Prices Distillery Road or from Burnt Hill 23 Road; and accordingly, it is the sense of the Board that 24 any impact of the proposed use on the viewshed of that barn 25 from the surrounding Rustic Roads would be minimal.</p>
<p style="text-align: right;">26</p> <p>1 and no bathroom. And that one I know well. I was involved 2 in that one. That one was -- it had staff support. It got 3 plenty of board support. And OZAH, Mr. Grossman, former 4 director, did deny it, but he noted three times in the 5 decision that it was a close call, and he denied it solely 6 on the basis of I guess an insufficient road. The road was 7 very thin in this traditional neighborhood, but he noted 8 that adequate public facilities were met in that case.</p> <p>9 And as I mentioned, you know, 32-plus acre farm 10 here. Plan is to use three-plus acres for the landscape 11 contractor, and then to utilize the rest of the property as 12 a farm.</p> <p>13 Your indulgence, Madam Hearing Examiner, just for 14 a second, please. Thank you.</p> <p>15 Okay. As we look at adequate public 16 facilities/sanitary sewer/bathroom topic, I certainly would 17 rely heavily upon Exhibit 84-A, which is our -- the brief 18 we filed in September of last year to the Board asking for 19 an appeal for oral argument, and also, obviously, the 20 Board's remand written decision, which is Exhibit 84, in 21 particular pages 12 through 13, which is where they talk 22 about the three topic areas of -- the three topic areas 23 that they want the remand to visit.</p> <p>24 And I would note under 2 and 3, the Board does 25 indicate support of applicant's positions. And I'll just</p>	<p style="text-align: right;">28</p> <p>1 So there is definitely some guidance.</p> <p>2 HEARING EXAMINER: Is this where you want me to 3 be?</p> <p>4 MR. HUGHES: Yeah. Thank you. It -- these are 5 from the road showing down towards the conditional use 6 area. And, you know, close to 1,200-plus feet down there, 7 the elevation does dip down. And you'll hear more 8 from -- description from Mr. Sekerak (indiscernible). But 9 it's difficult to see the barns or at least to see any 10 detail of them -- or ag buildings.</p> <p>11 And if you could scroll down, I think there's two 12 more pictures below that, Ms. Byrne.</p> <p>13 Or at least one more. But yeah, if you could go 14 back up to the other one, it's probably a better --</p> <p>15 HEARING EXAMINER: These two?</p> <p>16 MR. HUGHES: Yeah. So also in the record on the 17 topic of adequate public facilities, we certainly have the 18 expert testimony in the transcript, a significant number of 19 case citations, local county conditional use, landscaping, 20 other cases, utilities, cell towers.</p> <p>21 I've added a case, and I'll reference additional 22 case, which I think I put in some of my written briefs that 23 came in late. CU 22-03, which is related to an equestrian 24 center. I'll talk a little bit more about that in a bit.</p> <p>25 And also, an additional cell tower case. These are ones</p>



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<p>29</p> <p>1 where it was either adequate public facilities without a 2 bathroom. And the cell tower case is 23-07. 3 And as mentioned, the mobile workforce argument 4 from OSHA, the federal law that the Board found persuasive, 5 as well as COMAR Law about -- which talked about farm 6 workers and being in the fields for three hours or less, 7 not requiring a bathroom. And those things are all noted 8 in my memo from September, which is 84-A. 9 Talking a little bit about the Rustic Roads, and 10 I'm going to drill down a little bit more in a bit. But 11 the Rustic Roads Functional Master Plan, again, the 12 key -- I think some key documents in evidence: 84-A, our 13 memo to the Board of Appeals; the Board's remand, 84 again, 14 especially pages 12, 13, where I just talked about it; the 15 expert testimony last time and to come today again from our 16 expert in land use planning and landscape architecture, Mr. 17 Sekerak; as well as some additional exhibits. 18 One of the newer ones, which is Exhibit 101, 19 which I'll have him talk about, which is similar to what we 20 looked at in 54 but with some additional pictures, 21 different vantage points that we believe show that -- very 22 challenging from the road to see all the way down to the ag 23 buildings and that we're -- what we're proposing here is 24 not altering what's on site of what you can see. We're not 25 building any new structures, hence a small fence. That's</p>	<p>31</p> <p>1 needs of farmers for farm machinery and equipment 2 between farms. The master plan acknowledges the 3 importance of maintaining agriculture as a viable 4 industry in the county's economy and for this 5 reason, supports improvements that are necessary 6 to support the business of farming and land use 7 patterns within the Agricultural Reserve now and 8 in the future." 9 So that backdrop, Planning staff in Emerald 10 reviewed the topic, and they wrote on page 9 of their staff 11 report, The 1999 Rustic Roads Functional Master Plan notes 12 the outstanding farm fitness along Burnt Hill Road, page 13 68, but also recognized that a rustic road designation is 14 not intended to affect the use of adjoining land except in 15 the design of access to the subdivision. Again, we're 16 not -- we're pretty much utilizing a property that's 17 already existing. 18 And I would note Exhibit 41, which was a 19 statistic from County Planning staff about the rustic roads 20 in the county. Exhibit 41 is a little bit lengthy, but 21 it's -- on page 62 and -3 of that item, the last two pages, 22 I believe. It was an email from staff, as I said, and it 23 said, According to -- well, it essentially said, Planning 24 staff said that the county GIS shows that there are over 25 191 miles of rustic roads with 68 out of 99 existing roads</p>
<p>30</p> <p>1 not -- those are not blocking anything. And I'll have Mr. 2 Sekerak talk about that. 3 And I guess I would say is regarding the topic of 4 Rustic Road's Functional Master Plan, the case that I 5 mentioned earlier, Emerald, they did a very nice analysis 6 of this. And again, it was right around the corner, 7 related to the Rustic Roads Functional Master Plan in that 8 area. 9 What it says in that Emerald staff report 10 was -- and this was on page 5, and it's Exhibit 41-A, the 11 Rustic Roads designation. This is from the Rustic Roads 12 Functional Master Plan, page 5 of that, I should say. 13 "The rustic roads designation is not intended to 14 affect the use of adjoining land except in the 15 design of access to subdivision. It is also not 16 intended to prevent needed improvements to 17 adjoining land uses or to roads and bridges 18 themselves. Because many of these roads are 19 located in the Agricultural Reserve and serve 20 primarily agricultural uses, it's important that 21 the designation as rustic roads not preclude 22 providing adequate roads for the farming 23 community, either for moving farm equipment or 24 getting products to market. 25 "Many of these roads already do not meet the</p>	<p>32</p> <p>1 being within or adjacent to the AR zone. 2 So again, the county council created this special 3 exception, and it allows in this zone. And certainly 4 county council is very familiar about the AR zone, 5 agricultural zone, and that there are rustic roads in this 6 area. 7 They could have -- you know, if they thought 8 there was an issue with that, they could have said, Can't 9 put them on rustic roads or can't have them within X 10 distance to rustic roads. They did not do that. They had 11 the authority to do that, and they didn't. And I think 12 that's very telling. 13 And what's out there? There are all kinds of 14 vehicles that are allowed to and do travel that area daily. 15 There's school buses, coach buses, trash trucks, recycle 16 trucks, snow plow trucks, 18-wheelers, all sorts of 17 contracting vehicles, large and small, utility trucks, 18 large farm trucks, large county vehicles, parks vehicles, 19 fire trucks, swimming pool trucks, pool water trucks, 20 septic trucks, gas/propane trucks, concrete trucks, et 21 cetera, et cetera. 22 This is Montgomery County. And this is a very 23 busy area. This is not rural Montana. This is where we 24 see activity on a daily basis. Montgomery County obviously 25 geographically touches the nation's capital. It's one of</p>

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<p>33</p> <p>1 the most populated, traveled, and sophisticated 2 jurisdictions in the entire nation.</p> <p>3 As the hearing examiner is well aware, you know, 4 the key -- one of the key cases that gives us guidance on 5 special exceptions and conditional uses is Schultz versus 6 Pritts case. And what that said, to give us some setting 7 here, is that special exception or conditional use involves 8 a use which is permitted once certain statutory criteria 9 have been satisfied; it is a desirable use which is a 10 attended with detrimental effects, which require that 11 certain conditions be met, and once met, it's for permitted 12 use because the legislative body has made that policy 13 decision.</p> <p>14 It goes on to say, It is irrelevant whether a 15 special exception conditional use is compatible with 16 permitted use because the legislative body has deemed it to 17 be generally compatible once the standards for approval 18 have been met; furthermore, it's not whether a use 19 permitted by way of special exception will have adverse 20 effects, since such effects are already presumed by the 21 legislature; it's whether the adverse effects in a 22 particular location that are greater or more severe than 23 adverse effects ordinarily associated with a particular use 24 that is be considered by the agency.</p> <p>25 Again, so I would say that Montgomery County</p>	<p>35</p> <p>1 related to adequate public facilities. What does that 2 really mean? How is it supposed to be applied? It comes 3 down from the State of Maryland.</p> <p>4 And so I'll reference the hearing examiner to 5 Exhibit 42-B from the State of Maryland Planning 6 Department. It's a publication titled, "Models and 7 Guidelines 24." And on page 3 of that -- I'm just going 8 to pull that up real quick.</p> <p>9 Page 3 in the introduction says, In plain English 10 and A-F -- and I'm sorry -- 11 "In plain English, an APFO says," this is third 12 paragraph, "says that if the roads are too 13 congested, if the school classrooms are too 14 crowded, if the water system cannot provide 15 enough water, if the sewer pipes or treatment 16 plants are full, or if there is not enough 17 playing fields for recreational use, then 18 development cannot be approved until the problem 19 is corrected. At the same time, however, an APFO 20 is not the appropriate tool to stop growth that 21 is otherwise consistent with local zoning." 22 So my position here is that I don't believe 23 staff, in their staff report and in the decision, is even 24 correctly applying this. There's not a question of 25 whether, as said here, the sewer pipes or treatment plants</p>
<p>34</p> <p>1 allows landscape contractors in this area, in this zone, 2 made no distinction about rustic roads, and this landscape 3 contractor, tree care company, much less impact than a 4 full-scale landscape contractor. And the size of it is 5 very modest, much smaller numbers than many that have been 6 approved or anticipated to be approved, and much less 7 operations because it's tree care.</p> <p>8 So the other thing that we noted in our brief to 9 the Board for oral argument is that the decisions obviously 10 cannot be made just based upon unsupported conclusions of 11 witnesses; you must have probative evidence. Speculation 12 and absence of direct evidence to sustain it is not a 13 proper reason to deny; otherwise, the decision is arbitrary 14 and capricious. We believe the evidence is really strong 15 in this case. And the evidence against is a lot of 16 speculation, so to speak, no expert witnesses.</p> <p>17 So on our theories, what I would say is on the 18 first -- in the Board's remand, number one is dealing with 19 bathroom, adequate public facilities, sanitary sewer. We 20 have multiple legal theories that we believe support that 21 we are approvable without a bathroom here, essentially. 22 And we only need one of them. And only one of them has to 23 be proven by preponderance of the evidence. And I believe 24 actually all of them apply.</p> <p>25 But the first one I guess I would start with is</p>	<p>36</p> <p>1 are full. It's not like there's a bad septic system here 2 or septic system cannot work. There is none. There's no 3 need for one. There's no bathroom on site. There's no 4 office on site. There's no house on site. We're not 5 adding to that.</p> <p>6 So my first argument could be that if you agree 7 that they're incorrectly applying it here, then it's game 8 over on this topic. That's -- I believe that's the correct 9 interpretation.</p> <p>10 But if Madam Hearing Examiner is not certain of 11 that or does not concur, as we write in our briefs, there's 12 multiple additional reasons that we can be found to meet 13 the criteria here and essentially not to have to have a 14 bathroom. And we note those as well. And I would first 15 start by saying the reasons for that.</p> <p>16 The first one is what the Planning Board -- or 17 I'm sorry, the Board of Appeals noted that they found 18 persuasive, which was the mobile crews, which is under OSHA 19 federal law, OSHA Section -- and it's also Exhibit 20 68 -- OSHA Section 1910.141; I believe it's (c)(1)(i). 21 It's also in the transcript 28 -- page 28, 247, and 248.</p> <p>22 It says, Sanitation requirements do not apply to 23 mobile crews or to normally unattended work locations if 24 the employees have transportation readily available to 25 nearby facilities. And OSHA has defined prompt accesses</p>

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10 (37 to 40)

<p>37</p> <p>1 within 10 minutes.</p> <p>2 So that situation applies here. We have Exhibit</p> <p>3 53 in the record, which shows multiple locations where</p> <p>4 there are bathrooms within 10 minutes. Mr. Sekerak</p> <p>5 testified to that last time and may touch upon that again</p> <p>6 today. But there are many locations, and we believe we</p> <p>7 clearly fit within this as it seemed the Board of Appeals</p> <p>8 did as well. So that's an additional theory.</p> <p>9 Another reason I think that we could, so to</p> <p>10 speak, win on this issue or topic is under COMAR, Maryland</p> <p>11 law. Exhibit 47, COMAR 09.12.36.03(C)(2). Essentially, it</p> <p>12 says, Requires employers to provide bathrooms for</p> <p>13 agricultural workers only if the employees are at the</p> <p>14 location for three hours.</p> <p>15 So Maryland has also weighed in on this topic.</p> <p>16 And you know, if you work in the fields for up to three</p> <p>17 hours, and I think it includes transportation too. But an</p> <p>18 employer doesn't have to supply it for their staff or the</p> <p>19 people working. So some strong federal guidance from OSHA,</p> <p>20 strong federal government from Maryland that I think,</p> <p>21 again, both allow us to be successful on this item.</p> <p>22 And then an additional theory ties into that is</p> <p>23 the Rosenberg case in which -- that's in the record. Let</p> <p>24 me see if I have everything here. Sorry.</p> <p>25 HEARING EXAMINER: That's okay.</p>	<p>39</p> <p>1 So early on, we are being told by staff that there was no</p> <p>2 such cases.</p> <p>3 First of all, there's no law that says in this</p> <p>4 case we have to have -- there's no county law that says you</p> <p>5 have to have a bathroom for landscape contractor or even</p> <p>6 generally. And there's a lot of precedent that we have</p> <p>7 cited. And so there are multiple -- I'll call them cell</p> <p>8 tower cases in which involve special exceptions for</p> <p>9 conditional uses. And those cases essentially said, oh</p> <p>10 yeah, the use is so minimal, you know, people only there</p> <p>11 occasionally for not that much time, you don't have to have</p> <p>12 a bathroom there; it's sufficient.</p> <p>13 Well, you know, they do get regularly serviced.</p> <p>14 They also have construction, which can go on for weeks.</p> <p>15 They are upgraded -- the equipment is upgraded. The</p> <p>16 additional providers are put on those. They go there for</p> <p>17 emergencies. And when they go there, they're usually going</p> <p>18 to be there a few hours.</p> <p>19 So -- but we get where the county's coming from.</p> <p>20 And we agree with those position, that when you have</p> <p>21 minimal time, minimal impact, for adult -- and most of us</p> <p>22 are adults so we can plan our bathroom breaks, and it kind</p> <p>23 of goes into the mobile workforce argument too, that, you</p> <p>24 know, people are adults; that we have to learn how to do</p> <p>25 this. There are mobile -- there are lots of companies, not</p>
<p>38</p> <p>1 MR. HUGHES: What I may do is I'm going to skip</p> <p>2 that one and come back. Actually, wait. I got help here.</p> <p>3 So in the Rosenberg versus Maryland, which is 269 Md 520</p> <p>4 and is in the record -- it was cited in our briefs and in</p> <p>5 the transcript, I believe, also -- essentially says, APFO</p> <p>6 should set quantifiable levels of service for public</p> <p>7 facilities and services, since these standards provide a</p> <p>8 basis for evaluation of their proposed projects in relation</p> <p>9 to existing or planned facilities; lack of identical</p> <p>10 standards can lead to invalidation of the regulations or</p> <p>11 conditions as applied.</p> <p>12 In that case from '73, versus Maryland-National</p> <p>13 Capital Park and Planning, it was found the standards to be</p> <p>14 insufficient. And I guess what I would be saying here is</p> <p>15 that we have some standards that are kind of set from the</p> <p>16 federal and the OSHA reg I talked and COMAR, and it's not</p> <p>17 real clear what Montgomery County is trying to say here, is</p> <p>18 one way to interpret it. So that's another theory as to</p> <p>19 how we would be successful in this topic.</p> <p>20 And then maybe the most straightforward, maybe</p> <p>21 the easiest, cleanest one perhaps is actual Montgomery</p> <p>22 County conditional use and special exception cases</p> <p>23 precedent that has allowed many different uses and</p> <p>24 different cases to be approved and/or deemed to have</p> <p>25 adequate public facilities when there is not a restroom.</p>	<p>40</p> <p>1 just blue collar, that are out in the field a lot. There's</p> <p>2 a lot. There's salespeople who are out in the field all</p> <p>3 day.</p> <p>4 So -- but I guess my point on the cell tower</p> <p>5 cases is, and there's multiple ones -- and then</p> <p>6 there's -- as I said, there was a new one that just came</p> <p>7 out this year, and OZAH also reviewed the topic. And so</p> <p>8 that was CU 23-07. And it says on page 21, By its nature,</p> <p>9 an unmanned and unoccupied telecom tower would have no</p> <p>10 significant impact on schools, police, and fire protection,</p> <p>11 water, sanitary sewer, and public roads.</p> <p>12 That's similar to us. We're -- the facility is</p> <p>13 unmanned almost the entire day. They're there for a short</p> <p>14 time period in the morning, a short time period in the</p> <p>15 afternoon. And these are adults, and they can plan their</p> <p>16 bathroom breaks.</p> <p>17 Another interesting case that I noted in some of</p> <p>18 the more recent exhibits that I filed is CU 22-03, which is</p> <p>19 an additional use. So I've talked about the cell tower</p> <p>20 cases, and there's a bunch of those in the record. I think</p> <p>21 we've cited five or six, and they were noted in the remand</p> <p>22 from the Board.</p> <p>23 But this one, CU 22-03, is a new use. Also going</p> <p>24 to talk about utility cases, which are also cited by the</p> <p>25 Board in the remand. So one bucket here is the cell tower</p>

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11 (41 to 44)

<p style="text-align: right;">41</p> <p>1 cases. Then there's utility station cases, you know, the 2 Washington Gas, the Pepcos. And then this one is another 3 use: equestrian center. 4 And in this case, it wasn't a large equestrian 5 center, but it was approved for two horses and allowed for 6 up to two lessons per day and also allowed for boarding of 7 up to two horses, board two horses, maximum two. So I 8 guess what I would say is that there's people coming there 9 on a daily basis for these horse riding lessons. A lot of 10 those would be not adults, could be children, and they 11 would be driven by people. They would have guests, family 12 members who might want to come watch. People boarding 13 would come check out their horses, visit with the horses. 14 And those visits are going to be easily an hour, if not 15 more, maybe two hours. 16 But in that case, it was noted that there is 17 water and sewer there. No problems with it. But no new 18 water sewer facilities were proposed. There was no mention 19 of a bathroom or those taking lessons or whether they're 20 people driving in there or they're visitors or the guests 21 watching. There's, again, minimal use, mostly adults, 22 although there's kids there. I would say that there's more 23 time spent there than our property per setting and more of 24 a need when you have younger children who might not be as 25 good planning their bathroom breaks, so to speak.</p>	<p style="text-align: right;">43</p> <p>1 the smaller, older barn which has not been designated as 2 historic. We've seen -- we've -- it has a locational atlas 3 designation, but that does not make it historic. It has 4 not been reviewed, I think, since that designation was 5 reached 40-some years ago. 6 It is an old barn. We will concede that. 7 There's also evidence in the record and testimony from Mr. 8 Sekerak and also at the last hearing from one of the 9 opponents, Ms. Saville, and they both noted that the 10 smaller, older barn had been modernized at some point 11 before our client bought the property in 2020. 12 Getting close, Ms. Byrnes, to wrapping up my 13 thorough -- and I acknowledge it's a thorough opening, 14 because it does involve a lot of legal argument and that I 15 am going to limit my witnesses, at least on the proactive 16 side. 17 We touched upon the -- little bit of the weight 18 restrictions, the concern about Burnt Hill Road weight 19 restrictions and a bridge. And I gave examples of 20 conditions of approval including an Emerald case, which 21 involved the same road and also in the Goshen case. And we 22 certainly think that a condition of approval similar to the 23 one that was proposed in Emerald could certainly also work 24 in this situation. And we have some exhibits that we 25 submitted recently that we'll talk a little bit today</p>
<p style="text-align: right;">42</p> <p>1 And then we have the utility cases. Several of 2 those have been cited. And again, most of those is 3 determined -- you know, they're out there occasionally 4 fixing things, there for a few hours, maybe a few days at a 5 time, but there's adequate public facilities. There's no 6 reason for a bathroom there. So again, there's quite a bit 7 of precedent right on point determining how much is enough, 8 what do you need. 9 And we think that the need is one. Each of these 10 legal arguments meets our criteria, but we only need one of 11 them and by a preponderance of the evidence. 12 Okay. Rustic Roads Functional Master Plan. So 13 there's a lot of expert testimony in the case from Mr. 14 Sekerak. There are some key exhibits such as 54 and the 15 one we're going to talk about today, 101. And there was 16 certainly the Board's position that they thought any impact 17 of the proposed use of -- on the viewshed of that barn from 18 the surrounding rustic roads will be minimal. We agree 19 with that. 20 And there was also some -- as I mentioned, some 21 really good, you know, on-point analysis by Planning staff 22 in the Emerald case 16-09 that evaluated the Rustic Roads 23 Functional Master Plan. 24 And we touched upon -- I had mentioned I was 25 going to talk a little bit about the larger -- I'm sorry,</p>	<p style="text-align: right;">44</p> <p>1 through Mr. Sekerak and Mr. Nalepa, Exhibit 98. 2 So I guess to kind of try to summarize my opening 3 here, I'd like to say that we believe the exhibits and the 4 evidence and expert testimony were very strong in the 5 record and in the prior hearing. We believe this is -- the 6 pictures show quite a bit, as we started out with Exhibit 7 51. And we also have -- if I could ask Madam Hearing 8 Examiner to pull up Exhibit 52, which the -- is a rendering 9 and was talked about quite a bit in the initial hearing. 10 We believe this is an ideal setting for this use. 11 It's 32-plus acre farm. Yes. Thank you. So this is a 12 rendering of roughly what it would look like with the 13 additions of some landscaping. It's hard to make out any 14 fencing, but it would be on the west side down by the 15 conditional use area. 16 Ideal setting, 32-plus acres. Going to use 17 three-plus in the middle of -- essentially in the middle of 18 the property. Twelve hundred feet off the road. The 19 elevation actually drops down as you go down the driveway. 20 No material alterations to the property. It'd be vacant 21 the vast, vast majority of each day, and certainly vacant 22 from a -- from the business perspective on Sunday, vacant 23 at nighttime. 24 Very modest numbers. Up to 19 staff. Up to 14 25 vehicles stored, including two small pickups. Daily, only</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 up to 10 -- up to 10. So some days would be less than 10, 2 but up to 10 vehicles used a day, which includes 3 small 3 pickups. That's a small operation. I don't believe APFO 4 or Rustic Road Functional Master Plan were intended to stop 5 this type of small operation in this what we believe is an 6 ideal location. 7 We believe the facts and the law support this 8 position and the approval of this conditional use. As 9 your -- as Hearing Examiner is well aware, the standard 10 here, as I mentioned before, is preponderance of the 11 evidence. 12 So with that, I appreciate your indulgence, and I 13 will be prepared to call my first witness. 14 HEARING EXAMINER: Well, let me give the 15 opposition an opportunity to make an opening statement. 16 So I would ask either, I guess, Mr. Hartsock, Mr. 17 and Mrs. Ryan, would either of you like to make an opening, 18 or are you prepared just to move forward with testimony? 19 MR. HARTSOCK: This is Tom Hartsock. I am 20 prepared to move ahead with testimony and not do an opening 21 statement. 22 HEARING EXAMINER: Okay. Thank you. 23 Mr. Ryan? 24 MR. RYAN: Same with us. 25 HEARING EXAMINER: All right. Sounds good.</p>	<p style="text-align: right;">47</p> <p>1 Mr. Hughes, you can proceed. 2 MR. HUGHES: Thank you. 3 Mr. Sekerak, are you familiar with the 1996 4 Rustic Roads Functional Master plan? 5 MR. SEKERAK: Very much. 6 MR. HUGHES: Okay. And are you familiar with the 7 remand directive from the Board of Appeals related to that 8 topic of the 1996 Functional Roads -- Rustic Roads 9 Functional Master Plan? 10 MR. SEKERAK: Yes, I am. 11 MR. HUGHES: Okay. Okay. And you testified in 12 the prior hearing and on this topic; is that correct? 13 MR. SEKERAK: I did. 14 MR. HUGHES: Mr. Sekerak, could you share with us 15 your knowledge of Exhibit 101 and what it shows? 16 And Madam Hearing Examiner, could you pull up 17 Exhibit 101 for us, please? 18 HEARING EXAMINER: Absolutely. All right. So 19 I've got -- we'll start there, and then we've got the 20 multiple subsets. So however you want me to work through. 21 MR. HUGHES: Thank you. Yeah. First there's a 22 map. Thank you. 23 MR. SEKERAK: Yes. If we could start off with 24 that and just get our orientation, and then we'll go 25 through the photos one by one as we effectively travel</p>
<p style="text-align: right;">46</p> <p>1 Thank you very much. 2 Okay. Mr. Hughes, your first witness. Oh, 3 you're muted, sir. 4 MR. HUGHES: Okay. I'm sorry. We're trying to 5 coordinate how we're going to do our camera. 6 HEARING EXAMINER: Okay. 7 MR. HUGHES: Mr. Sekerak, you're suggesting you 8 come sit next to me? 9 MR. SEKERAK: Yes. 10 MR. HUGHES: Okay. So we'll do that if that's 11 okay. If there's any issues -- 12 HEARING EXAMINER: No worries. 13 MR. HUGHES: Thank you, Ms. Byrne. 14 HEARING EXAMINER: And then before we start, Mr. 15 Sekerak, if you could raise your right hand, sir. 16 Do you promise to tell the whole truth and 17 nothing but the truth? 18 MR. SEKERAK: I do. 19 HEARING EXAMINER: Thank you very much. And then 20 before you start, if you could give your full name and 21 spelling for the court reporter. 22 MR. SEKERAK: My name is John Sekerak. It's 23 S-E-K-E-R-A-K. I'm a land use planner and landscape 24 architect with Stantec. 25 HEARING EXAMINER: Thank you.</p>	<p style="text-align: right;">48</p> <p>1 along the peripheral of the two roads. 2 HEARING EXAMINER: Okay. 3 MR. HUGHES: All right. Mr. Sekerak, if you 4 could just tell us what this map, which is 101 -- 5 HEARING EXAMINER: I think it's just straight 6 101. 7 MR. HUGHES: 101. Yes. Thank you. 8 MR. SEKERAK: The air photo of the area. It 9 shows the two closest roads, the Prices Distillery, which 10 the property fronts on for a short distance of frontage, 11 and Burnt Hill Road, which is further removed to the east. 12 Both of those roads are identified on the '96 13 Functional Master Plan as rustic. It indicates the 14 locations of the photographs that we're about to go through 15 one by one near, starting on Burnt Hill Road and going 16 along Prices Distillery. What we're going to be looking at 17 is the degree of visibility that the subject property has 18 from these various locations. 19 Another element on this plan I want to bring to 20 your attention is the yellow dash line, which is a 21 quarter-mile distance. And -- and that's an important 22 element to this. A quarter-mile is -- to give it some 23 context. It would be the distance between the hearing 24 examiner's office in Rockville and the Rockville Town 25 Square.</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 Another way of visualizing what that distance is, 2 is if, you know, the sign companies out there have 3 guidelines of how large type would need to be to be 4 effective and legible. So from a quarter-mile away, letter 5 size would -- would need to be four feet -- roughly four 6 feet high for it to be legible. It's a long ways away. 7 The -- the site is always lower in elevation than 8 all of these points of view. From the photo number 6 9 there, for instance, the site is 20 feet -- 20 feet below. 10 There are -- you can see the existing forested stream 11 buffer between the subject property and Burnt Hill Road. 12 There -- there will be additional 13 reforestation -- afforestation, actually, along that same 14 stream going northward. 15 So I think we're ready to go through the photos 16 now, but that's just to tee it up. 17 MR. HUGHES: And Madam Hearing Examiner, yeah, I 18 think they go through, as you're well aware -- 19 HEARING EXAMINER: yeah. 20 MR. HUGHES: -- I guess, photo 1 through 8. 21 HEARING EXAMINER: Okay. And we'll just proceed 22 in order then. 23 MR. HUGHES: Thank you. 24 HEARING EXAMINER: All right. So this would be 25 Exhibit A, so this is 101-A, which is photo number 1.</p>	<p style="text-align: right;">51</p> <p>1 photo, though, where Sugarloaf Mountain is visible off in 2 the distance, which is recognized component of the Rustic 3 Roads Master Plan when -- not so much for Burnt Hill Road, 4 but it does mention that for Prices Distillery Road, that 5 there are locations along there are views of Sugarloaf 6 Mountain that are very distant but still visible. 7 The discussion of the driving experience for 8 Burnt Hill Road in the Rustic Roads Master Plan indicated 9 that as you emerge from the trees further south, 10 you -- you've got views of the open fields to the left. 11 And all these are photos show what that driving experience 12 is and will be -- not be harmed by the proposed use of the 13 existing structures out there. 14 There are a couple new houses along -- along here 15 since the master plan, but no new -- but the remaining 16 views of the open fields as it was identified in the master 17 plan will remain. 18 HEARING EXAMINER: Okay. I already -- I jumped 19 to E which is your photo 5. Sorry. 20 MR. SEKERAK: All right. So a little further up, 21 we are able to, you know, start seeing the -- the existing 22 barn on there through -- through some roadside vegetation, 23 and the topography allows a view of that area. Now, this 24 is where very low -- effectively, no crop cover at this 25 point. Many times of the year, there will be crops or</p>
<p style="text-align: right;">50</p> <p>1 MR. SEKERAK: So this is on Burnt Hill Road at 2 the entrance to a park trailhead nearby, directly towards 3 the -- the site. It's difficult to tell, but right 4 up -- right in the middle there is a little bit of view of 5 one of the two barn rooftops. The older barn is smaller, 6 but it's a little taller, so depending upon the views along 7 here, which one you can actually see. 8 So there -- there is some topographic change 9 between there, but it -- but the primary -- you know, 10 between the topography and the tree line, a rooftop may be 11 visible but the yard area of the -- of the proposed use 12 would not be visible. 13 Go on to the next one. And similarly here, it's 14 another driveway along there. And we don't need to dwell 15 on this one, but very similar in that the -- the 16 conditional use area would -- any views of it would only be 17 rooftops and only in -- in winter. But no -- no views of 18 the yard area, which is on the other side of the buildings. 19 HEARING EXAMINER: Okay. 20 MR. SEKERAK: Go on to the next one. And another 21 view along that same route, from the rustic road. Not 22 visible at all at that location. 23 Photo number 4, where it's not only the forest 24 buffer but intervening topography that blocks the view. 25 This is -- you know, you can see right in the middle of the</p>	<p style="text-align: right;">52</p> <p>1 nursery stock or whatever along there. But it's -- this is 2 an example of the -- one of the more viewable areas of the 3 site from Burnt Hill Road. 4 Again, 20-some feet lower in elevation, gentle 5 slopes, some road type -- roadside vegetation, and -- but 6 the views of the open field -- open fields to the left as 7 described in the master plan are preserved and remain. 8 HEARING EXAMINER: Okay. 9 MR. SEKERAK: Next one. So we're on to number 6, 10 which is F. And this is straight down the driveway towards 11 the subject property where both barns are visible. And you 12 see the shorter but larger newer barn in the foreground. 13 The older but taller barn in the background. 14 This is a little over 1,200 square feet. Do you 15 recall that quarter-mile circle that was on Exhibit 101? 16 Some of these views are within a quarter-mile. Some are 17 outside of a quarter-mile, but I think it'd be fair to 18 characterize them all as, you know, 19 quarter-mile -- quarter-mile -- 20 MR. HUGHES: Mr. Sekerak, sorry to interrupt. 21 One question. Can you tell us, first of all, if you've 22 been out on the site, and second of all, when -- do you 23 know when these pictures were taken and were you involved 24 with those pictures? 25 MR. SEKERAK: Yeah. I -- yeah, I've been out to</p>

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14 (53 to 56)

<p>53</p> <p>1 the site many times as recently as Sunday, day before 2 yesterday. And yes, I took all of these pictures, I'd have 3 to look up the date, but roughly a month ago. So they are 4 very current.</p> <p>5 MR. HUGHES: Very good. Thank you. You may 6 continue. Sorry about that.</p> <p>7 MR. SEKERAK: So yeah, we're able to, you know, 8 see the two barns. You -- there are views of the yard area 9 there off of the distance, albeit a quarter-mile away, but 10 this is the existing entrance to the property. No signage 11 identified in the use.</p> <p>12 MR. HUGHES: And none are proposed -- no signage 13 is proposed, correct?</p> <p>14 MR. SEKERAK: That's correct.</p> <p>15 HEARING EXAMINER: Okay.</p> <p>16 MR. SEKERAK: Moving on to the next one. This is 17 Gene along Prices Distillery Road. This is where you 18 told -- at the entrance, there was no -- the topography did 19 not interrupt the view of the distant conditional use area. 20 Further up, this is an example of a location 21 along the Prices Distillery Road where quickly, the 22 topography does interrupt that view. In this particular 23 case, you can still see the two rooftops. 24 And then lastly, further down the road where it 25 is entirely obstructed by intervening topography and,</p>	<p>55</p> <p>1 And photo number 8, where the site is not obscured -- or 2 the site is obscured from view.</p> <p>3 So just a characterization as you drive -- the 4 traveling public driving along these -- these two roads, 5 off not in the -- you know, off in the periphery, no, you 6 know -- no, you know, focused line of sight, quarter-mile 7 away, much lower in elevation, the visual impact 8 is -- well, from a visual impact analysis standpoint, there 9 is no visual impact to the rustic roads by our -- by our 10 proposed use.</p> <p>11 So when it comes to the -- well, let's -- if we 12 could go to the landscape plan, I'll describe the 13 (indiscernible) 48? It's 49. 49?</p> <p>14 MR. HUGHES: Let me check. Oh, no. Rustic plan 15 would probably be 29, I believe, unless there was a revised 16 one later.</p> <p>17 HEARING EXAMINER: No.</p> <p>18 MR. SEKERAK: Okay. 29. Yeah. Yes.</p> <p>19 MR. HUGHES: Madam Hearing Examiner, thank you. 20 Please tell us about this exhibit.</p> <p>21 MR. SEKERAK: All right. It shows the finger of 22 afforestation extending the existing stream valley buffer 23 forest further northward. And I don't know if you could 24 place your -- 25 HEARING EXAMINER: Is this the area you're</p>
<p>54</p> <p>1 again, without any crops. Well, I tell you when -- when 2 there's corn growing out there, you sure can't -- you sure 3 can't see the site.</p> <p>4 And if you'd like to just revisit 101 and -- now 5 that we've gone through the photos. Let me see. So for 1 6 through 4, the -- you can see the back of the -- the backs 7 of the barns are obscured by existing forest cover. Photo 8 number 5, you can see the end of the larger, newer barn. 9 But that will be obscured at some time in the future by 10 future reforestation going up that stream valley area.</p> <p>11 Photo number 6 is where the site is most visible. 12 And we intend to -- again, still a quarter-mile away, but 13 we intend to mitigate that with additional evergreen 14 plantings that I can describe in more detail.</p> <p>15 MR. HUGHES: And Mr. Sekerak, the landscaping and 16 plantings you're talking about, are those being required 17 through county regulations?</p> <p>18 MR. SEKERAK: Well, yes, in the sense of 19 afforestation for along the stream buffer and then 20 evergreen buffering for conditional use (indiscernible), 21 yes, (indiscernible).</p> <p>22 MR. HUGHES: Continue. I'm sorry.</p> <p>23 MR. SEKERAK: And then if you recall those last 24 two photos, 7, where topographically, you can only see 25 rooftops because of -- because of the intervening topo.</p>	<p>56</p> <p>1 talking about?</p> <p>2 MR. SEKERAK: Yes, exactly. Just want to make 3 sure that we're all looking at the same.</p> <p>4 HEARING EXAMINER: Okay. So this would be 5 reforested if approval was granted?</p> <p>6 MR. SEKERAK: Correct. Correct. To further the 7 county's forest conservation efforts, stream -- stream 8 valley buffer preservation efforts, water quality -- well, 9 for all the benefits that the forest conservation law 10 provides. The -- the planting down towards the -- towards 11 the conditional use area shows some additional planting of 12 expanding the existing forest buffer down there, some trees 13 up in the yard area, but most to the point is the evergreen 14 buffer along the north side of the yard.</p> <p>15 And if you could move your cursor there, I'll 16 make sure we're talking about the same --</p> <p>17 HEARING EXAMINER: Are you talking here?</p> <p>18 MR. SEKERAK: Those, yes.</p> <p>19 MR. HUGHES: Yeah, thank you.</p> <p>20 HEARING EXAMINER: And then the zoom-in would be 21 here?</p> <p>22 MR. HUGHES: Yeah.</p> <p>23 MR. SEKERAK: Correct. Correct.</p> <p>24 HEARING EXAMINER: Okay.</p> <p>25 MR. SEKERAK: So we had a dense evergreen buffer</p>

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15 (57 to 60)

<p>57</p> <p>1 there. These are ilex opaca, American Hollys, so very 2 effective evergreen buffer planted at eight feet tall at 3 time of installation, which is the height of this 4 ceiling -- at time of installation. Obviously, it will 5 grow as time goes on. 6 These are placed down at the conditional use 7 area. They are not blocking views from the -- from the 8 roads, the traveling public on the two roads. 9 So considering that there -- when it comes to 10 conformance of the functional master plan, we're proposing 11 no changes to the roads, no signage to identify the use, no 12 new buildings. And considering the modest scope of this 13 use, only 14 trucks. And it's effectively not visible 14 other than now and even less so with the proposed 15 plantings, other than the existing rooftops. 16 It's hard to imagine a landscape contracting use 17 that it would be -- in the AR zone that would be more 18 consistent with the Rustic Roads Master Plan. 19 HEARING EXAMINER: Okay. 20 MR. HUGHES: Mr. Sekerak, are there any other 21 visuals that you wanted to show on this topic, or did that 22 pretty much cover it? 23 MR. SEKERAK: I -- we could go back to some that 24 you -- that Mr. Hughes had already asked that be pulled up. 25 The air photo -- and I'll leave this up to you whether or</p>	<p>59</p> <p>1 MR. SEKERAK: Just showing the entire site and -- 2 HEARING EXAMINER: Right. 3 MR. SEKERAK: -- you can see -- just show the 4 existing conditions. You can see the -- how it relates to 5 the surrounding roads. Again, there are a couple new homes 6 along Burnt Hill Road, not only since Rustic Roads Master 7 Plan was approved but even since this Google air photo was 8 taken. 9 But other than that it, it's an accurate 10 representation of the existing conditions out there. 11 HEARING EXAMINER: Okay. 12 MR. SEKERAK: To the -- and then go on to Exhibit 13 52. 14 HEARING EXAMINER: Okay. Can you see that? 15 MR. SEKERAK: Right. It shows in that lighter 16 green, the proposed reforestation and the -- and the 17 plantings down in the area and intermittent trees along the 18 entrance drive. 19 HEARING EXAMINER: Okay. 20 MR. SEKERAK: But those are the changes to the 21 site. And we'd like to -- Mr. Hughes mentioned the -- a 22 fence. There is a six-foot -- I'm trying -- six-foot 23 board-on-board fence that will be built along the -- we'll 24 call it the western property line, but just -- 25 HEARING EXAMINER: Here?</p>
<p>58</p> <p>1 not you would like to do this. But the air photo and the 2 illustrative plan, and just to point out that they're 3 effectively identical other than the new plantings that 4 we've discussed. 5 MR. HUGHES: So Exhibit 51 is the aerial. You 6 want to see that one first, and then 52, the rendering, 7 second? 8 MR. SEKERAK: Yep. 9 MR. HUGHES: Thank you, Madam Hearing. 10 HEARING EXAMINER: All right. Do you need me to 11 rotate it? 12 MR. SEKERAK: If you can rotate at 90 degrees 13 counterclockwise, that'd be great. 14 HEARING EXAMINER: All right. Stick with me. 15 MR. SEKERAK: Okay. 16 HEARING EXAMINER: I'm doing it -- I think now 17 I've done it completely -- 18 MR. HUGHES: One more back. 19 HEARING EXAMINER: And I've got to move it around 20 a little bit. Hold on one second. Let's get back to where 21 we were. So one more? 22 MR. SEKERAK: Yes. 23 MR. HUGHES: Yes. Right there. Thank you. 24 HEARING EXAMINER: I think this should do it. 25 Yeah. Okay.</p>	<p>60</p> <p>1 MR. SEKERAK: Exactly. Just in -- just in that 2 area of the conditional use area. It doesn't go along the 3 whole driveway. It doesn't block views from the -- from 4 either of the roads. It's simply to satisfy a development 5 standard for the -- you know, for any parking, adjoining 6 another property. 7 Very ineffective in -- in the sense of this 8 particular use, but in order to satisfy the development 9 standard. That's the only new structure being proposed for 10 the conditional use. 11 MR. HUGHES: Thank you. 12 MR. SEKERAK: So we have discussed the master 13 plan, but I haven't gone over the weight restriction when 14 it comes to the road, if you would like -- 15 MR. HUGHES: Yeah. Yeah. We can move on to that 16 topic. Let me -- before I do that, I just -- I think 17 you've already said this, but just so if you can explain. 18 In your professional opinion as a recognized expert in this 19 case, you're saying that this application does comply with 20 the Rustic Road Functional Master Plan? 21 MR. SEKERAK: I do. I'm -- difficult to imagine 22 a landscape contracting use that would have less impact 23 on -- on the roads. So when it comes to the Rustic Road 24 Master Plan that -- like you had indicated and within 25 previous testimony, on page 5, it's not intended to</p>



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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 regulate uses adjoining the site, but in the designation of 2 the rustic roads, the -- these two as rustic roads, it does 3 mention the views from them. And that's why my testimony 4 was very much focused on that. 5 It's not that rustic roads were meant to preclude 6 this type of use or preclude trucks on the thing. Rustic 7 roads -- the page reference -- even recognizes that 8 specifically landscapers -- let me come up with a page 9 number for that. 10 MR. HUGHES: Sure. 11 MR. SEKERAK: On page 27, second paragraph on the 12 left, the ending sentence, Two types of traffic are 13 associated with landscape -- oh, let's see. This is under 14 a section titled "Roadway Users," and it's an entire 15 section, Various types of large trucks and automobiles that 16 use for travel on the roads within study area. 17 And then -- so not only identifying various types 18 of large trucks and all the fields, but also specifically 19 identifies in the end of that paragraph two types of 20 traffic are associated with landscapers and nurseries that 21 are -- that are located in this area. Trucks delivering 22 bulk products and supplies and consumer traffic. 23 This particular landscape contracting use doesn't 24 have delivery of bulk products and it doesn't have 25 customers. So this is even much less impactful than a</p>	<p style="text-align: right;">63</p> <p>1 rustic. 2 So the fact that this use will have some larger 3 trucks is, well, inherent to the use and identified in the 4 Rustic Roads Master Plan's expectation on those roads. 5 MR. HUGHES: Evidence as -- was your testimony 6 just a minute or two ago where you talked about the 7 landscaping vehicles and other large vehicles on 8 page -- was it 25? 9 MR. SEKERAK: 27. 10 MR. HUGHES: 27. Correct? 11 MR. SEKERAK: Correct. Right. So now we'll be 12 talking regarding the weight-restricted roads in the areas. 13 And, you know, also -- like I just also said, keep in mind 14 trucks are inherent to any landscape contractor use. So 15 when the district council allowed landscape contractor use 16 in the AR zone, that was an expectation that there would be 17 large trucks in the AR zone. And the AR zone is, you know, 18 just replete with rustic roads throughout. 19 Much of the testimony -- or I'm sorry, the data 20 that's in the record regarding the number of miles of 21 rustic roads in the AR zone. So the district council 22 was -- when they crafted and zoned and allowed it as a 23 conditional use in the AR zone, there was an awareness that 24 large trucks would be part of it. 25 Same is true for mining and excavation. That's</p>
<p style="text-align: right;">62</p> <p>1 typical landscape contracting. So long-winded answer that, 2 yes, this is consistent and compatible with the 1996 Rustic 3 Roads Functional Master Plan. 4 MR. HUGHES: Thank you, Mr. Sekerak. Yeah, so we 5 can move over to item 3 from the Board's remand, kind of 6 topic C where it says, Revisit concerns about the weight of 7 the petitioner's various vehicles and it result in impact 8 on the surrounding rustic roads. I'm going to reference 9 Mr. Sekerak to Exhibit 98. There's an A, B and a C. And I 10 believe we could start with 98-A. 11 Is that what you'd want to start with, Mr. 12 Sekerak? 13 MR. SEKERAK: Sounds good, yes. 14 MR. HUGHES: Thank you, Madam Hearing Examiner. 15 Thank you, Madam Hearing Examiner. 16 MR. SEKERAK: I'd like to start off that 17 we're -- these are effectively two separate subjects. 18 Weight restrictions and rustic roads are two different 19 subjects. 20 MR. HUGHES: Can you explain what you mean by 21 that? 22 MR. SEKERAK: Well, there -- there are rustic 23 roads without weight restrictions. Prices Distillery is an 24 example of one of those. And there are, you know, 25 weight -- weight-restricted roads that are -- that are not</p>	<p style="text-align: right;">64</p> <p>1 another use allowed in the AR zone. And those would have 2 an expectation of having much larger trucks, much heavier 3 trucks than what a landscape contractor. So -- and usual 4 that these can -- the way these uses can be done in AR in 5 keeping with that zone. 6 So the next point we need to address, then, is 7 being able to get safe and adequate access to the site with 8 recognition of the weight restrictions in the area. And 9 you know, from a practical standpoint, there's both weight 10 restriction sections limiting to no trucks over 10,000 11 pounds for through trucks on road segments. And then there 12 are some bridges out there that have restrictions on either 13 30- or 50- or 80,000 pounds. So we recognize where those 14 are. 15 You know, we have up to 14 trucks -- maximum of 16 up to 14 trucks on this site for this use. 17 MR. HUGHES: For storage overnight. 18 MR. SEKERAK: Yes. 19 MR. HUGHES: And how many -- is it correct that 20 it's up to 10 trucks per day, including three pickups 21 maximum? 22 MR. SEKERAK: Correct. 23 MR. HUGHES: Okay. Thank you. So continue. 24 MR. SEKERAK: So 14 trucks total, only 10 being 25 used at any given day.</p>

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17 (65 to 68)

<p>65</p> <p>1 HEARING EXAMINER: So hold on just one second.</p> <p>2 Mr. Hartsock, I see you have your hand raised.</p> <p>3 Is it for a technical difficulty, or is it a question you</p> <p>4 want to ask the witness? Because if it's a question you</p> <p>5 want to ask the witness, we can do that after he's done</p> <p>6 testifying.</p> <p>7 MR. HARTSOCK: No, it's just a question on the</p> <p>8 map. I note that Germantown on that map is --</p> <p>9 HEARING EXAMINER: Okay. Well -- well --</p> <p>10 MR. HARTSOCK: I just don't know -- I don't</p> <p>11 understand where the map is because Germantown isn't up</p> <p>12 there.</p> <p>13 HEARING EXAMINER: Okay. So we'll -- I'll ask</p> <p>14 him to explain that, sir.</p> <p>15 MR. HARTSOCK: Okay. Thank you.</p> <p>16 HEARING EXAMINER: Uh-huh (affirmative).</p> <p>17 MR. SEKERAK: And yeah, but I share your</p> <p>18 (indiscernible) on that. I'll -- I will be able to explain</p> <p>19 that.</p> <p>20 So again, in the -- this use has some trucks over</p> <p>21 10,000, other vehicles under 10,000 pounds. For those that</p> <p>22 are over 10,000 pounds, we're aware of the current</p> <p>23 locations of limited weight for through trucks. And some</p> <p>24 of those also have weight-restricted bridges for a higher</p> <p>25 threshold of -- or of weight being, you know, 30-, 50-, or</p>	<p>67</p> <p>1 left where it says, Head north -- northwest on Prices</p> <p>2 Distillery Road to Lewisdale Road.</p> <p>3 HEARING EXAMINER: Okay.</p> <p>4 MR. SEKERAK: This shows the route that all</p> <p>5 Chapingo trucks would need to take to get to 270.</p> <p>6 HEARING EXAMINER: Quick question. Are all the</p> <p>7 trucks labeled with Chapingo's name, address, all of that</p> <p>8 on there? Do we know?</p> <p>9 MR. SEKERAK: It's certainly common. I don't</p> <p>10 know if all is -- might be over --</p> <p>11 MR. ALVAREZ: There are -- we've got trucks that</p> <p>12 they are four wheels.</p> <p>13 MR. SEKERAK: Okay. So the --</p> <p>14 MR. ALVAREZ: Do not have a (indiscernible).</p> <p>15 MR. SEKERAK: Yes. So I don't -- and I'm</p> <p>16 discussing this with Mr. Alvarez. So he was saying there</p> <p>17 are some pickup -- four-wheel pickup trip -- trucks that</p> <p>18 are not labeled. And I'll ask him if all trucks over</p> <p>19 10,000 pounds are -- do have the Chapingo --</p> <p>20 HEARING EXAMINER: Okay.</p> <p>21 MR. SEKERAK: -- logo on them.</p> <p>22 So the conclusion to this exhibit, what -- this</p> <p>23 is to demonstrate that the most direct route may be using</p> <p>24 Burnt Hill Road, but the alternative that is not</p> <p>25 weight-restricted to get over to Clarksburg Road and then</p>
<p>66</p> <p>1 80,000 pounds.</p> <p>2 Primarily pertinent is -- are the -- is Burnt</p> <p>3 Hill Road, both for the limitation of through trucks over</p> <p>4 10,000 pounds and for the weight-restricted bridges. So</p> <p>5 despite those -- that weight-restricted road, there is a</p> <p>6 convenient alternative to that. And that's what this</p> <p>7 exhibit is for.</p> <p>8 MR. HUGHES: And this is Exhibit 98-A, correct?</p> <p>9 MR. SEKERAK: Yes. 98-A. So this is</p> <p>10 straight -- straight from Google with the starting point</p> <p>11 selected right at the driveway entrance to the subject</p> <p>12 property. I do not know why Google labeled that as</p> <p>13 Germantown, but I couldn't -- I didn't want to manipulate</p> <p>14 the exhibit.</p> <p>15 HEARING EXAMINER: Right. Understood. And I see</p> <p>16 here it says Clarksburg to Clarksburg, which would be here.</p> <p>17 So you started -- so you put the address in, and it -- for</p> <p>18 whatever reason, it gave you Germantown; is that what</p> <p>19 you're saying?</p> <p>20 MR. SEKERAK: Exactly. I did. I selected the</p> <p>21 point on Prices Distillery Road, right at the driveway</p> <p>22 entrance to the property.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 MR. SEKERAK: And that is the -- they labeled it</p> <p>25 as Germantown. And that is the first text there to the</p>	<p>68</p> <p>1 go north or south on Clarksburg Road is not</p> <p>2 weight-restricted. And to get to 270 would only take one</p> <p>3 or two minutes longer than that. So it's a perfectly</p> <p>4 viable road. And we -- you know, we'd be happy to make</p> <p>5 that commitment that all trucks over 10,000 pounds would</p> <p>6 use that route.</p> <p>7 MR. HUGHES: And so then -- oh, sorry,</p> <p>8 Madam -- so this Exhibit 98-A, you've been talking about</p> <p>9 the blue route.</p> <p>10 MR. SEKERAK: The blue route.</p> <p>11 HEARING EXAMINER: Uh-huh (affirmative). I see</p> <p>12 that.</p> <p>13 MR. HUGHES: And then the gray route is for</p> <p>14 the -- potentially for vehicles under 10,000?</p> <p>15 MR. SEKERAK: Any vehicles under 10,000, whether</p> <p>16 it's associated with this use or any others.</p> <p>17 MR. HUGHES: And so I guess you're kind of</p> <p>18 referencing potentially a condition of approval. We've</p> <p>19 talked about that in our cases. And Emerald had a similar</p> <p>20 situation because of its location and a proposed condition</p> <p>21 of approval, correct?</p> <p>22 MR. SEKERAK: Correct. Correct.</p> <p>23 MR. HUGHES: And at this juncture, would you want</p> <p>24 to propose a condition -- a potential condition of</p> <p>25 approval, or do you want to talk more about this visual or</p>

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18 (69 to 72)

<p>69</p> <p>1 some of the other visuals?</p> <p>2 MR. SEKERAK: I think that's it for the visuals</p> <p>3 that I -- that I had in mind. (Indiscernible) include on</p> <p>4 that weight restricted. I think trucks are inherent to</p> <p>5 landscape contracting use, and we have safe and adequate</p> <p>6 access for all vehicles, including those that are greater</p> <p>7 than 10,000 -- 10,000 pounds.</p> <p>8 MR. HUGHES: So in -- in your professional</p> <p>9 opinion as a planner, these are -- as you've testified,</p> <p>10 these are all viable routes for Chapingo vehicles in the</p> <p>11 area, correct?</p> <p>12 MR. SEKERAK: Correct.</p> <p>13 MR. HUGHES: And these routes are all on public</p> <p>14 roads, correct?</p> <p>15 MR. SEKERAK: All -- all on public roads, right.</p> <p>16 MR. HUGHES: And as such, these public roads are</p> <p>17 suitable for this sort of traffic you've testified to,</p> <p>18 correct?</p> <p>19 MR. SEKERAK: Correct.</p> <p>20 MR. HUGHES: In your professional experience, are</p> <p>21 conditions of approval common in Montgomery County land use</p> <p>22 cases?</p> <p>23 MR. SEKERAK: Extremely. It would be uncommon,</p> <p>24 and I haven't seen any case in years that did not have</p> <p>25 conditions of approval for -- for conditional use, special</p>	<p>71</p> <p>1 there, so it's common and appropriate in certain cases.</p> <p>2 And you know, the applicant is willing to accept that</p> <p>3 condition on this one.</p> <p>4 MR. HUGHES: And in your professional opinion, do</p> <p>5 you have any possible potential language that could be</p> <p>6 considered for conditional -- condition of approval for the</p> <p>7 travel routes here?</p> <p>8 MR. SEKERAK: I do. If --</p> <p>9 MR. HUGHES: You need a moment?</p> <p>10 MR. SEKERAK: It's over there on that computer</p> <p>11 that I moved over here. I did not print.</p> <p>12 MR. HUGHES: Or do you want to grab your computer</p> <p>13 real quick?</p> <p>14 MR. SEKERAK: No, that's it. That'll work. All</p> <p>15 right. So it -- an example of a conditional -- or I'm</p> <p>16 sorry, condition of approval for this. All vehicles with a</p> <p>17 Gross Vehicle Weight, GVW, of more than 10,000 pounds</p> <p>18 associated with the applicant's business, including any</p> <p>19 belonging to employees, must avoid any weight-restricted</p> <p>20 road sections or bridges on Burnt Hill Road to ingress and</p> <p>21 egress the subject property.</p> <p>22 So we don't even need to get into the weights</p> <p>23 that the bridges can because no vehicles more than 10,000</p> <p>24 pounds will be -- will be using those roads for -- for the</p> <p>25 through traffic.</p>
<p>70</p> <p>1 exceptions, or similar entitlements.</p> <p>2 MR. HUGHES: And what are they used for? What's</p> <p>3 the purpose?</p> <p>4 MR. SEKERAK: It can be for a variety of</p> <p>5 purposes, but for something like this, an assurance that</p> <p>6 the applicant -- or the applicant's representations and</p> <p>7 plans, et cetera, are enforceable so -- or any concerns</p> <p>8 that the regulatory body could have. It -- it's an</p> <p>9 enforcement mechanism in order to ensure that we are</p> <p>10 representing that, you know, maximum 14 trucks; we -- we</p> <p>11 will only go along these unrestricted routes. And</p> <p>12 condition of approval would provide that additional</p> <p>13 enforcement ability in addition to (indiscernible).</p> <p>14 MR. HUGHES: And are you familiar with any other</p> <p>15 special exception or conditional uses where they had</p> <p>16 conditions related to the routes?</p> <p>17 MR. SEKERAK: Yeah, absolutely. You had</p> <p>18 mentioned them previously in your introductory remarks, but</p> <p>19 Goshen and Emerald are the two that come off the top of my</p> <p>20 mind.</p> <p>21 MR. HUGHES: And Emerald --</p> <p>22 MR. SEKERAK: And those are, you know, just for</p> <p>23 landscape contractors.</p> <p>24 MR. HUGHES: Right.</p> <p>25 MR. SEKERAK: There -- there are others out</p>	<p>72</p> <p>1 MR. HUGHES: Okay. Thank you. And so in your</p> <p>2 professional opinion, what would this accomplish, such a</p> <p>3 type of condition of approval?</p> <p>4 MR. SEKERAK: Well, it'd be of no inconvenience</p> <p>5 to the applicant other than one minute of travel time to</p> <p>6 get to 270, but it would provide that enforce -- additional</p> <p>7 enforcement abilities that we discussed.</p> <p>8 MR. HUGHES: Mr. Sekerak, before we sum up your</p> <p>9 testimony, are there any other exhibits or points that you</p> <p>10 wanted to bring up that we have not touched upon yet?</p> <p>11 MR. SEKERAK: I'd like to go over the APF --</p> <p>12 MR. HUGHES: Yes.</p> <p>13 MR. SEKERAK: -- aspects. Thank you. You can</p> <p>14 bring up 53 again. So this is restroom facilities in the</p> <p>15 area less than 10 minutes away from the subject property,</p> <p>16 all publicly available restroom facilities.</p> <p>17 Let me start off. Not all conditional uses</p> <p>18 require restroom facilities like -- like you had indicated:</p> <p>19 utilities, the cemeteries, the equestrian centers.</p> <p>20 It -- it's kind of like those particular uses that do not</p> <p>21 need to have restroom facilities.</p> <p>22 Similarly, there are conditional uses that do not</p> <p>23 impact schools. So those are considered adequate.</p> <p>24 So -- and you know, I've done many special exception</p> <p>25 conditional uses where that type -- that type of public</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 facility is deemed adequate because there are no impacts or 2 de minimis impacts to those particular public facilities. 3 Other landscape contractors may need -- you know, it 4 doesn't apply to all landscape contractor conditional uses. 5 They may need to have restroom facilities onsite because 6 they have continuous staff there, offices, et cetera, or by 7 the sheer force. 8 But these other landscape contractors are not 9 exclusively mobile workforce tree care use like this. So 10 this particular use does not need or require that 11 particular public facility, so that public facility should 12 be deemed adequate. To the extent that a restroom would be 13 deemed convenient, the exhibit on the sheet here has many, 14 many options of these public restrooms within 10 minutes 15 for anybody that would need to do that on their way in and 16 way out and -- from those limited windows of time that Mr. 17 Hughes had described previously. 18 MR. HUGHES: So it is your testimony, this 19 exhibit, all these items here show public bathrooms within 20 10 minutes? And can you explain what they are quickly and 21 just their distances? 22 MR. SEKERAK: Some of them are at 23 public -- public parks. Down in -- you can scroll down to 24 the lower right-hand corner has -- 25 MR. HUGHES: Okay.</p>	<p style="text-align: right;">75</p> <p>1 MR. HUGHES: Very good. Thank you. Any last 2 points you want to note for the record, Mr. Sekerak? 3 MR. SEKERAK: Those are -- those are the biggies. 4 I'd be happy to, you know, field any questions or -- 5 MR. HUGHES: Madam Hearing Examiner, if you have 6 questions, or certainly, I know you may open it up to the 7 floor. 8 HEARING EXAMINER: Okay. Yeah. I think I'm good 9 as far as my questions go. 10 Mr. Hartsock, I'll start with you. Do you have 11 any questions for the witness? 12 I see -- Mr. Ryan, I see you're unmuted. Do you 13 have questions for the witness? 14 MR. RYAN: No. I'll -- 15 MS. RYAN: I have a question. 16 MR. RYAN: I'll rebut some of what he said during 17 our testimony. My wife has a question. Go ahead. 18 MS. RYAN: I would like to ask Mr. Sekerak if 19 he -- what was the last date that he rode the blue route? 20 MR. SEKERAK: Sunday. 21 MS. RYAN: Okay. Thank you. 22 MR. HUGHES: Thank you. 23 HEARING EXAMINER: Okay. Thank you, Mr. Ryan. 24 Mr. Hartsock, anything? 25 MR. HARTSOCK: Yes. Photo 6 on Exhibit 101 shows</p>
<p style="text-align: right;">74</p> <p>1 MR. SEKERAK: -- a description of each one, where 2 it's located -- 3 MR. HUGHES: Very good. 4 MR. SEKERAK: -- how long it takes to get there. 5 MR. HUGHES: Very good. So the exhibit does tell 6 the locations and the travel time and distance. Very good. 7 Thank you. Okay. 8 And is it fair to say, Mr. Sekerak, I think what 9 you were talking about earlier, if -- in good conscience, 10 if we were here asking for an office or two buildings or 11 new buildings where people were here on site, that we would 12 not be making this argument about no bathroom requirement? 13 MR. SEKERAK: That's absolutely correct, yeah. 14 This particular use is unique -- well, this particular use, 15 being a mobile workforce tree care company, is unique from 16 your typical landscape contractor or any number of other 17 conditional uses that -- that it would be necessarily 18 appropriate and -- and effectively required. But a 19 restroom is not required for all conditional uses for the 20 many examples that we had indicated. And that this 21 landscaping contractor is exclusively mobile workforce tree 22 care, and there are plenty of facilities nearby for the 23 convenience of them. 24 So it should -- this should be deemed adequate 25 for when it comes to public facilities.</p>	<p style="text-align: right;">76</p> <p>1 the apron of the entrance to the facility. And I wanted to 2 ask Mr. Sekerak if he could comment on how -- if that apron 3 complies with rustic road regulations. 4 MR. SEKERAK: Rustic roads -- 5 MR. HARTSOCK: I would like him either to go on 6 the record saying how it does or does not comply with 7 Rustic Road regulations. 8 MR. SEKERAK: Rustic Roads doesn't -- the master 9 plan describes the character along rustic roads, including 10 entrances to subdivisions and -- which effectively, this 11 is. The previous -- 12 MR. HARTSOCK: No, that is not an entrance to a 13 subdivision. 14 MR. SEKERAK: So -- but that -- I'm using that 15 term because the master plan use the term. It's not 16 a -- it is not a subdivision. It's the access to an 17 adjoining land use. If the point is it's not a subdivision 18 so that wouldn't be applicable, we'd be happy to accept 19 that. 20 But the point of the -- of this regarding the 21 master plan is the character of the roadway, which includes 22 access, which could include -- yeah, I won't -- I keep 23 trying to say the term access to the adjoining subdivision 24 because that's a term used in the master plan. 25 But if it -- our previous testimony was that this</p>

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20 (77 to 80)

<p>77</p> <p>1 driveway entrance is very consistent with access to other 2 properties along these roads. And so that affects -- let 3 me pull up 42-G. 4 HEARING EXAMINER: Okay. Oops, pushed the wrong 5 button. Stick with me. 6 MR. SEKERAK: G might not be -- 7 HEARING EXAMINER: 42-G? 8 MR. SEKERAK: Yeah, it might not be Exhibit G. 9 HEARING EXAMINER: There's multiple pictures -- 10 MR. SEKERAK: Right. Right. 11 HEARING EXAMINER: -- for 42-G. 12 MR. HUGHES: I, G, 1 through -- it's G 1 through 13 5, I think. 14 MR. SEKERAK: Yeah. 1 and 3 would be two good 15 examples. 16 HEARING EXAMINER: Okay. Here's G-1. 17 MR. SEKERAK: That's just up the street on Prices 18 Distillery Road. When I say just up the street, what would 19 that be? A thousand -- 20 MR. HUGHES: That's a larger property that's 21 occupied by Mr. Styles. 22 MR. SEKERAK: Yeah, roughly a thousand feet north 23 of our -- northwest of our driveway entrance. 24 HEARING EXAMINER: Okay. 25 MR. SEKERAK: So in the immediate area, similar</p>	<p>79</p> <p>1 on the other side of the street from the other 2 (indiscernible), so on -- on the east side of Burnt Hill 3 Road. 4 Another example, gravel driveway, considerable 5 width, much more than would be necessary for, you know, two 6 vehicles to pass. And -- 7 HEARING EXAMINER: Okay. 8 MR. SEKERAK: -- it's all minimal. 9 HEARING EXAMINER: Just for my own clarification, 10 I think, I guess what Mr. Hartsock was asking potentially 11 was the driveway that we have at the subject property. Now 12 you've testified that it is similar to others along Prices 13 Distillery Road. Is there anything in the master plan or 14 in any other code section that would require it to be 15 altered or upgraded or changed? 16 MR. SEKERAK: So with the -- 17 HEARING EXAMINER: I think he's asked 18 specifically about the master plan, right? So is it in 19 conformance with the master plan? Just because it looks 20 like everything else, does that mean it's in conformance 21 with the master plan? 22 MR. SEKERAK: I would say yes. I'm not aware of 23 any part of the '96 Rustic Roads Functional Master Plan 24 that dictates a design standard for a driveway entrance. 25 HEARING EXAMINER: Okay. Mr. Hartsock, sorry to</p>
<p>78</p> <p>1 materials much wider than ours, the use is much closer to 2 the street. Curiously has a telephone pole in the middle 3 of its driveway also. But that's an example of a -- of the 4 character of one of the -- one of the driveways. 5 Go on to number 3. 6 MR. HARTSOCK: Can we stay with that one? I'd 7 like to comment on that. I'm intimately familiar -- 8 HEARING EXAMINER: Well -- 9 MR. HUGHES: Madam Hearing Examiner, yeah, can he 10 finish his answer first, please? 11 HEARING EXAMINER: Yeah. So Mr. Hartsock, I'm 12 happy to pull this up for you to talk about it, but I'll 13 let -- I'll let the witness go ahead and finish here. But 14 if you want to put a pin in this and testify to this 15 and -- and basically contrary to what he says, we can 16 absolutely do that. 17 MR. HARTSOCK: Okay. I'm -- that's fine. 18 HEARING EXAMINER: Okay. All right. So I think 19 it was number 3 that you wanted to look at -- 20 MR. SEKERAK: Yes. 21 HEARING EXAMINER: -- for similar driveways. I 22 think this was where you -- is this accurate? 23 MR. SEKERAK: Correct. That's along Burnt Hill 24 Road. Within that stretch that we had done the other 25 photographs of the site from Burnt Hill Road, this would be</p>	<p>80</p> <p>1 kind of jump -- jump in your questioning there, but I 2 just -- that's what I heard you were saying. And I wanted 3 to make sure that -- and then I had the same questions. So 4 I wanted to make sure that that got answered. 5 MR. HARTSOCK: Thank you. You heard correctly. 6 HEARING EXAMINER: Okay. 7 MR. HARTSOCK: But I -- when would you like me to 8 address these photographs, now or later? 9 HEARING EXAMINER: So -- later. 10 MR. HARTSOCK: Okay. 11 HEARING EXAMINER: So you've heard him testify 12 that there's no design standard. We've looked at these 13 additional pictures. So when it's your turn to testify, 14 you can tell me -- we can pull up these same exhibits, and 15 then you can tell me why you believe he's right or he's 16 wrong. Okay? 17 MR. HARTSOCK: Okay. 18 HEARING EXAMINER: Okay? 19 MR. HARTSOCK: Yes. Thank you. 20 HEARING EXAMINER: Sounds good. All right. Any 21 other questions for this witness from anyone in opposition 22 based on what he's testified to today? 23 Great. It doesn't sound like we have any, 24 so -- and I have no additional questions. 25 So Mr. Hughes if you're -- would like to call</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 your next witness or if you have any follow-up questions 2 for this witness. 3 MR. HUGHES: I did have one follow-up question 4 related to the question from you and Mr. Hartsock. I guess 5 it would just be about asking Mr. Sekerak about Exhibit 6 42-E which is titled, "Revised Fire Marshal Approval Letter 7 and Stamp Plan." If you're able to pull that up, Madam 8 Hearing Examiner. 9 HEARING EXAMINER: 42-E. Okay. Want me to 10 scroll down at all? There we go. 11 MR. HUGHES: Mr. Sekerak, can you just tell us 12 what this exhibit is and what it -- what it means for this 13 application? 14 MR. SEKERAK: It indicates that the driveway 15 entrance meets the DPS Department of Fire and Rescue 16 Services criteria for access to the site. 17 MR. HUGHES: So is it fair to say, then, if this 18 is approved, this -- if this application is approved, that 19 this would be how the entranceway would be designed to fit 20 this plan in this criteria and dimensions? 21 MR. SEKERAK: Yeah. This indicates the existing 22 dimensions chapter. 23 MR. HUGHES: Okay. Very good. Thank you. 24 Madam Hearing Examiner, could we take a short 25 break?</p>	<p style="text-align: right;">83</p> <p>1 call you for tree service and I have a tree that needs to 2 be cut down or limbs that need to be pruned, your 3 guys -- you know, tell me what in this scenario is 4 inaccurate as far as your operation goes. 5 So your crew would report to this site. They 6 would pick up their truck and their tools. They would come 7 to my home. They would cut down, trim the tree, whatever 8 excess. Where does that go? 9 MR. ALVAREZ: Yes. 10 HEARING EXAMINER: Where would they go after? 11 MR. ALVAREZ: We have multiple dump sites for 12 wood chips specifically and also for different sites of 13 logs, depending the length, the size, quality, and even the 14 species. Some places are -- let us dump for free, 15 depending the quality of the logs. Other ones we have to 16 pay for them. 17 And the sites of it, we use very heavily a -- an 18 app called ChipDrop. That shows all the entire area here 19 who is requesting a load of wood chips or logs. So that 20 way, we look at the next one closer to our job site, and we 21 try to supply the load even of wood or logs to the nearest 22 point. And that way, we avoid dumping on site that 23 material that I -- where we are. 24 HEARING EXAMINER: So are there times that 25 there's no place to take this material that you've removed</p>
<p style="text-align: right;">82</p> <p>1 HEARING EXAMINER: Absolutely. Let's see. It is 2 11:42. So how about 11:55? Give everybody just a little 3 over 10 minutes. Does that work? 4 MR. HUGHES: That's great. Thank you. 5 HEARING EXAMINER: Okay. All right. We're going 6 to recess until 11:55. 7 (A recess was taken.) 8 HEARING EXAMINER: Do you promise to tell the 9 truth, the whole truth, and nothing but the truth? 10 MR. ALVAREZ: I do. 11 HEARING EXAMINER: Okay. Thank you. Just for my 12 clarification, like I said, I read the transcript, and you 13 know, sometimes it's difficult to piece things together. 14 So from an operational standpoint, do you store 15 any materials at this site? 16 MR. ALVAREZ: Not at all. 17 HEARING EXAMINER: When -- so essentially, the 18 only thing stored there are trucks? 19 MR. ALVAREZ: Trucks, and I have couple 20 containers for small tools and supplies that we use for 21 especially rigging equipment -- 22 HEARING EXAMINER: Okay. 23 MR. ALVAREZ: -- saddles, ropes. But that's 24 pretty much about it. 25 HEARING EXAMINER: So if I'm a customer and I</p>	<p style="text-align: right;">84</p> <p>1 from a job site to and it comes back to this particular 2 location? 3 MR. ALVAREZ: Typically -- we have the policy 4 that if the truck is over half a load, try to dump at the 5 end of the day because we have dump sites close by that we 6 are allowed to dump 24/7. 7 HEARING EXAMINER: Okay. 8 MR. ALVAREZ: And that way, we avoid to kind of 9 have the truck full the next day. Very few times, we keep 10 the wood chips in -- behind, inside the trucks because the 11 dump sites require, like, morning deliveries and/or for 12 traffic convenience. But we don't -- we don't drop the 13 wood chips on site and reload them. 14 HEARING EXAMINER: Do you engage in planting, or 15 is it mostly removal? 16 MR. ALVAREZ: We do very limited planting for the 17 reason that it is the -- the warranty liability. And when 18 we do, we bring the material directly from the nursery to 19 the job site and plant it the same day. Majority for scope 20 of work is based on pruning, tree care, and removals when 21 the trees become hazardous or when they die or people 22 desires to remove them. 23 HEARING EXAMINER: Okay. All right. So 24 the -- so pruning, removal, tree care. Okay. 25 MR. ALVAREZ: Uh-huh (affirmative).</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 Installations -- we call installations. We do a few other 2 services related to inspections of the trees, conditions, 3 but pretty much that's what we do. 4 HEARING EXAMINER: Okay. So you're saying it's a 5 rare event that materials would be taken back to this site. 6 If they are taken back, do they essentially remain on the 7 truck until the next day? 8 MR. ALVAREZ: Yes. 9 HEARING EXAMINER: Okay. So nothing is really 10 offloaded and left at the site? 11 MR. ALVAREZ: We sometimes have few logs in one 12 truck, and we put it on the ground in order to just load it 13 up -- load them up back to the bigger truck to take them in 14 a full load, more than multiple trips to the dumping place 15 for few logs each. That's how -- 16 HEARING EXAMINER: Okay. Is -- 17 MR. ALVAREZ: -- (indiscernible) we do. 18 HEARING EXAMINER: So because you're charged by 19 the load, for the most part? 20 MR. ALVAREZ: We are charged by the load, by 21 weight sometimes. 22 HEARING EXAMINER: Okay. All right. 23 MR. ALVAREZ: And so we try to send full loads. 24 HEARING EXAMINER: Okay. All right. Thank you. 25 That's very helpful. So --</p>	<p style="text-align: right;">87</p> <p>1 So that's why I brought the material to the 2 property at the beginning in order for me to save that 3 money and pay some hours to the -- to the crews. After we 4 could catch up, we did the cleanup immediately after 5 requesting, which it was my intention from the beginning. 6 It was just like a survival mechanism during the pandemic 7 first month when it got very critical. 8 MR. HARTSOCK: But Mr. Alvarez, when you visited 9 my home, you told me that those materials were to mulch 10 fruit trees that you were going to plant on the farm. I 11 don't understand. You brought a massive amount of 12 material, and you -- one of the reasons you gave for that 13 in prior testimony -- or Mr. Hughes gave on your behalf, 14 I'm sorry, was that all the receiving companies were 15 closed. And that simply was not true. Pogo's never 16 closed. 17 MR. HUGHES: Objection. 18 HEARING EXAMINER: Basis? 19 MR. HUGHES: I'm not sure he's asking a question. 20 He's not asking a question. 21 HEARING EXAMINER: Right. 22 MR. HARTSOCK: I'm asking why the material was 23 stored there when Pogo's -- 24 MR. HUGHES: He answered that. 25 HEARING EXAMINER: And Mr. Hartsock, he did</p>
<p style="text-align: right;">86</p> <p>1 MR. HUGHES: Thank you. 2 HEARING EXAMINER: -- based on that, Mr. Hughes, 3 obviously still your witness. Anything -- and then -- 4 MR. HUGHES: No, but (crosstalk) -- 5 HEARING EXAMINER: -- since he is a witness, I 6 would open him up to cross-examination based on the 7 operational questions. 8 MR. HUGHES: Okay. 9 HEARING EXAMINER: All right. So Mr. Hughes, I 10 guess if you don't have any questions for him, then I would 11 ask Mr. Ryan or Mr. Hartsock, you may ask Mr. Alvarez 12 questions but limited to essentially what I asked him 13 that -- regarding operations. 14 MR. RYAN: I have no questions. 15 HEARING EXAMINER: Thank you, Mr. Ryan. 16 MR. HARTSOCK: My only question -- Tom Hartsock. 17 My only question is how -- why did you end up with such a 18 lot of materials stored there when you first purchased the 19 property? 20 MR. ALVAREZ: Thank you for the question. During 21 the pandemic -- it was the first months of the pandemic 22 2020. And we were -- we were about shutting down. So my 23 cost reduction on operations was saving the disposal 24 expense that I had at the time. And I put on this position 25 of paying the guys that they couldn't work on those months.</p>	<p style="text-align: right;">88</p> <p>1 answer that. You'll have the opportunity to tell me about 2 your conversation with him and what your observations were 3 during that time. 4 MR. HARTSOCK: Okay. 5 HEARING EXAMINER: And to tell me about the 6 places that were not closed. 7 MR. HARTSOCK: Okay. I just -- I thought it 8 would be unfair to Mr. Alvarez if we discussed that after 9 he has to leave. That was my reason for asking the 10 question when I did. 11 HEARING EXAMINER: Understood. 12 So Mr. Hughes, if -- oh, I'm sorry, Mr. Hartsock. 13 Any additional questions of Mr. Alvarez? 14 MR. HARTSOCK: No. 15 HEARING EXAMINER: Okay. Thank you. 16 Mr. Hughes, any follow-up? 17 MR. HUGHES: Yes. Thank you. 18 And good and fair question by Mr. Hartsock. 19 Thank you, sir. 20 So I think you've -- you just testified that you 21 did -- there was a time period when -- early on when you 22 bought the property where you did store a significant 23 amount of logs for a time period; is that correct? 24 MR. ALVAREZ: Yes. Correct. 25 MR. HUGHES: And then you've also testified that</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 those logs, for some time now, have been gone off the 2 property, correct? 3 MR. ALVAREZ: Yes. 4 MR. HUGHES: And is it your commitment and you 5 would accept an -- a condition that you will -- you will 6 not be storing any more logs on the property; is that 7 correct? 8 MR. ALVAREZ: That's correct. 9 MR. HUGHES: Thank you. No further questions, 10 Madam Hearing Examiner. 11 HEARING EXAMINER: Okay. Thank you very much. 12 All right. For some reason, I can't see you, Mr. Hughes. 13 Is anybody else having this issue or is it just me? 14 MR. HARTSOCK: I can see him clearly. 15 HEARING EXAMINER: Dang it. 16 MR. HUGHES: You're the lucky one. 17 HEARING EXAMINER: Well, it must just be me. Let 18 me turn myself on and turn myself back off. Hold on. 19 Well, that didn't do anything. That's okay. If 20 everybody else can see him clearly, it's something on -- on 21 my end, and hopefully it will pop back up. All right. 22 Okay. 23 So if we're done with Mr. Alvarez -- maybe I'll 24 change my view. Yeah, nope. That didn't help either. All 25 right. Okay. So we're -- if we're done with Mr. Alvarez,</p>	<p style="text-align: right;">91</p> <p>1 think this Exhibit 98-B is I guess three pages, including 2 the first page being a cover part, which we don't need. 3 But can you -- the second page here, can you explain to us 4 what 98-B is and what it shows? 5 MR. NALEPA: Those are pictures looking on 6 Clarksburg Road, heading south at the intersection at 7 Lewisdale Road. 8 MR. HUGHES: And what does it tell us about those 9 roads and those intersections? Well, let me back up. 10 Have you visited this site in this area? 11 MR. NALEPA: Yes, I have. 12 MR. HUGHES: Okay. And are these pictures that 13 you took? 14 MR. NALEPA: Yes, they are. 15 MR. HUGHES: And do you know when you 16 were -- when you took those pictures or about when? 17 MR. NALEPA: June 7th. 18 MR. HUGHES: Okay. So Madam Hearing Examiner, 19 could you scroll down? The next page I think might -- 20 HEARING EXAMINER: Sure. 21 MR. HUGHES: -- might be a short email from -- 22 HEARING EXAMINER: Yes. 23 MR. HUGHES: -- him to me about the day. Okay. 24 All right. 25 So can you explain what this -- what these</p>
<p style="text-align: right;">90</p> <p>1 your next witness, Mr. Hughes. 2 Thank you, Mr. Alvarez. 3 MR. HUGHES: Thank you, Madam Hearing Examiner. 4 MR. ALVAREZ: You're welcome. 5 MR. HUGHES: I would call next Mr. Mike Nalepa. 6 HEARING EXAMINER: Okay. All right. Mr. Nalepa, 7 can you please raise your right hand? Promise to tell the 8 truth, the whole truth, and nothing but the truth? 9 MR. NALEPA: Yes. 10 HEARING EXAMINER: All right. Thank you very 11 much. And if you could spell your name for the hearing 12 examiner. 13 MR. NALEPA: It's N-A-L-E-P-A. 14 HEARING EXAMINER: Thank you. 15 MR. HUGHES: Okay to start, Madam Hearing 16 Examiner? 17 HEARING EXAMINER: Yes, please do. 18 MR. HUGHES: Thank you. 19 Good afternoon, Mr. Nalepa. 20 I'd like to ask Madam Hearing Examiner to please 21 pull up Exhibit 98-B, and also then we'll be talking about 22 98-C. What I would ask Mr. Nalepa, once it comes up here. 23 HEARING EXAMINER: Okay. Oh, and there you are, 24 Mr. Hughes. You just appeared back on my screen. 25 MR. HUGHES: Thank you. Mr. Nalepa, this -- I</p>	<p style="text-align: right;">92</p> <p>1 pictures show? What -- 2 MR. NALEPA: Well, hopefully they show -- they 3 show that there is no weight restriction on Clarksburg 4 Road. And the reason I took the pictures is we had gotten 5 a letter from the Ryans, and they had -- there was a 6 picture of a sign at that location that had -- it was a 7 weight-restricted sign. 8 And I was confused by that after I had gone out 9 and visited the site. So I took the pictures, and then I 10 contacted DPW at the county and inquired about it. And 11 they said that they had mistakenly installed that sign on 12 Clarksburg Road, when it should have in fact been installed 13 on Lewisdale Road. And the reason there's a discrepancy in 14 the picture that I took versus the one that the Ryans took 15 was corrected by the county. 16 MR. HUGHES: Very good. And when you say DPW, 17 can you tell us what that stands for? 18 MR. NALEPA: Department of Public Works. 19 MR. HUGHES: Very good. And when you referenced 20 the Ryans' letter and picture -- 21 I believe that's Exhibit 95, Madam Hearing 22 Examiner. 23 HEARING EXAMINER: Okay. 24 MR. HUGHES: Can you pull that up? Thank you. 25 HEARING EXAMINER: Sure.</p>



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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 MR. HUGHES: And if there's a -- is this 2 the -- no. Additional pictures, Mr. Nalepa. Can you 3 scroll down some more? Keep going, I think. 4 MR. NALEPA: Yeah, that's -- 5 MR. HUGHES: Right there. Okay. So that -- is 6 it your testimony that that sign was up but is no longer up 7 because it was incorrectly put up by the county? 8 MR. NALEPA: That's correct. 9 MR. HUGHES: And what's that information based 10 upon, your position at -- that it was incorrectly put up? 11 I think you've already testified to that, but -- 12 MR. NALEPA: Well, right. I -- when I visited 13 the site, I didn't see that sign. And so I contacted 14 public works to find out if the sign had gotten knocked 15 down or if there was a weight -- weight restriction on 16 Clarksburg Road. And they informed me that that sign had 17 been incorrectly installed there and had since been removed 18 and installed on Lewisdale Road where they intended to have 19 it installed. 20 MR. HUGHES: Okay. And in your professional 21 opinion, would you be surprised to see that sign on 22 Clarksburg at that location? 23 MR. NALEPA: Oh, yeah. Yeah, absolutely. It's 24 an arterial road. Trucks have to go somewhere. 25 MR. HUGHES: Got you. Okay.</p>	<p style="text-align: right;">95</p> <p>1 And so can -- in your professional opinion, can 2 you explain what this shows? 3 MR. NALEPA: Well, that shows of two routes that 4 Mr. Alvarez's vehicles could take to access 270. The one 5 in blue being completely open to any size vehicle, and then 6 the gray route are available to any vehicles that are less 7 than 10,000 pounds gross vehicle weight. 8 MR. HUGHES: Okay. Okay. So in your expert 9 opinion, these routes are legal per those parameters you 10 just explained, the weight restrictions and -- or weight 11 restrictions on the gray and no weight restrictions on the 12 blue; is that correct? 13 MR. NALEPA: That's correct. 14 MR. HUGHES: And in your expert opinion, are they 15 both viable routes for Mr. Alvarez and Chapingo's business 16 needs? 17 MR. NALEPA: Yes, they are. 18 MR. HUGHES: Did you hear Mr. Sekerak testify to 19 a possible condition of approval language related to these 20 routes? 21 MR. NALEPA: Yes. 22 MR. HUGHES: And in your expert opinion, would 23 that language or similar language be appropriate here from 24 a legal and operational standpoint for Chapingo? 25 MR. NALEPA: Oh, yeah, absolutely.</p>
<p style="text-align: right;">94</p> <p>1 And Madam Hearing Examiner, could you pull up 2 98-C, please? 3 HEARING EXAMINER: Do you want me to rotate? 4 MR. HUGHES: To the left. There you go. 5 HEARING EXAMINER: Okay. 6 MR. HUGHES: Thank you. 7 Mr. Nalepa, can you tell us what this is and what 8 it shows? And well, first of all, is this a -- yeah, tell 9 us what this is and what it shows. Thank you. 10 MR. NALEPA: Well, it's a copy of the grid map 11 that the Maryland State Highway Administration publishes 12 and maintains. And what it's showing is the location of 13 Mr. Alvarez's site there on Prices Distillery Road. And 14 then it's showing the section of Lewisdale Road and Burnt 15 Hills Road that have weight restrictions on them. And 16 there's -- those are highlighted by the blue. 17 MR. HUGHES: Okay. Okay. All right. And are 18 you familiar with the exhibit Mr. Sekerak showed, 98-A, 19 that Google map? 20 MR. NALEPA: Yes. Yes, I am. 21 MR. HUGHES: I'm sorry. Madam Hearing 22 Examiner -- 23 HEARING EXAMINER: Sure. 24 MR. HUGHES: -- if you could pull that one up as 25 well, please. 98-A.</p>	<p style="text-align: right;">96</p> <p>1 MR. HUGHES: And can you just tell us a little 2 bit -- well, what type of vehicles can and do travel in and 3 around this area? 4 MR. NALEPA: Oh, there's school buses, trash 5 trucks, county maintenance vehicles, farming equipment, you 6 know, delivery vehicles that are, well, either making 7 deliveries to some of the farm uses or even the single 8 family homes, you know, moving vans. Really, 9 there -- there really are no restrictions on which types of 10 trucks can use it, with the exception of on Burnt Hill 11 Road; there are weight restrictions on two of the bridge 12 crossings. Those are hard restrictions that have to be 13 observed. 14 But for example, Burnt Hill Road has a no-through 15 trucks restriction for vehicles over 10,000 pounds. School 16 buses can obviously go on there. Trash trucks can go on 17 there, even though they're in excess of (inaudible). 18 MR. HUGHES: (Inaudible) or they're able to 19 handle such vehicles; is that correct? 20 MR. NALEPA: That's correct. 21 MR. HUGHES: And are Chapingo's vehicles any 22 different than the other types of vehicles that are able to 23 and do travel this area? 24 MR. NALEPA: No. 25 MR. HUGHES: In your professional opinion, would</p>

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25 (97 to 100)

<p>97</p> <p>1 Chapingo's modest number of vehicles make a material impact 2 beyond what's already permitted on these local roads? 3 MR. NALEPA: No, not -- it'd be de minimis, 4 really. 5 MR. HUGHES: And what's that based upon, your 6 professional opinion? 7 MR. NALEPA: Well, prior to -- our first 8 involvement with this case is we had to submit a traffic 9 scoping request to Park and Planning. And in that form, we 10 had to list the projected trips that would be generated by 11 this site and then determine whether or not the county was 12 going to require a traffic study or not. 13 So we submitted that, put the -- we used a -- the 14 trip generation that we used was for a nursery because 15 there aren't, I -- the Institute of Transportation 16 Engineers, which is the publication we use for trip 17 generation, doesn't have a trip generation rate for this 18 type of use. So anyway, we used that, sent it in. 19 The -- the trips generated were far less than the 50 20 peak-hour trips that would've triggered a traffic study. 21 Park and Planning agreed with that and didn't require a 22 traffic study. 23 MR. HUGHES: And that's based upon the numbers 24 were so low? 25 MR. NALEPA: Yes.</p>	<p>99</p> <p>1 sir. I apologize. 2 MR. NALEPA: You're not the first. 3 MR. HUGHES: I've done it. 4 MR. HARTSOCK: I would like to ask him the same 5 question I asked Mr. Sekerak. Full disclosure, many years 6 ago, I was on the Rustic Roads Advisory Committee, and I am 7 recalling that we had restrictions on the widths of aprons 8 of driveways that attached to rustic and exceptional rustic 9 roads. I would like to ask Mr. -- and I'm going to say Mr. 10 N because I don't want to mess up your name -- 11 MR. NALEPA: Mike is fine. 12 MR. HARTSOCK: -- if you are aware of those. I 13 don't know if they were regulations that were developed 14 after the master plan was put together or if they're in the 15 master plan and I'm sorry, I just don't recall. It's been 16 too many years. Could you give us some insight on how wide 17 aprons can be for driveways attaching to rustic and 18 exceptional rustic roads? 19 MR. NALEPA: Yeah, and I'm -- I have to say that 20 I'm not aware that there is a restriction. I know our 21 company does -- we're under contract with Montgomery County 22 DOT to do work for them from time to time. And I have 23 worked on rustic roads with guardrail installations, for 24 example. And of course, you know, you -- we have to use 25 the -- the county has to use the brown ones instead of the</p>
<p>98</p> <p>1 MR. HUGHES: Very good. Okay. So just in -- in 2 closing out here. In -- in your expert opinion, Exhibit 3 98-A is very viable for the travel of Chapingo's vehicles; 4 is that correct? 5 MR. NALEPA: Yes. 6 MR. HUGHES: And -- and I apologize. I think you 7 already testified to this. But the condition of approval 8 suggested that Mr. Sekerak talked about, that's one, in 9 your professional opinion, you also support as viable and 10 legal; is that correct? 11 MR. NALEPA: Yes. And I might add, not necessary 12 because even if there wasn't a condition of approval on 13 that, their trucks wouldn't be allowed to travel on Burnt 14 Hill Road if they were in excess of the weight restrictions 15 on the bridge or going through that section and over 10,000 16 pounds. 17 MR. HUGHES: Very good. Thank you. 18 That would be -- that would be my direct 19 from -- for Mike, Madam Hearing Examiner. 20 HEARING EXAMINER: Okay. Thank you very much. I 21 don't have any questions for this particular witness. 22 I would ask Mr. Hartsock, Mr. and Ms. Ryan, 23 anyone else in opposition, if you have any questions for 24 Mr. Nalepa. 25 Or -- I know I'm totally butchering your name,</p>	<p>100</p> <p>1 galvanized -- 2 MR. HARTSOCK: Right. 3 MR. NALEPA: -- and I'm -- I'm just not aware 4 that there is any kind of restriction on any type of 5 physical improvements on a rustic road, given that it's 6 required for a safety or operational type use. So I -- the 7 short answer to your question is I'm not aware of any 8 restrictions on apron widths. 9 And even the other restrictions, it's more 10 of -- it's almost more of an aesthetic designation than it 11 is in a geometric engineering restriction. I mean, the 12 road still has to be able to safely handle traffic. You're 13 not going to be able to widen a rustic road as easily as 14 you would a non-rustic road. But if there were a safety 15 issue, say, at a narrow bridge or a narrow curve or 16 something where there was a documented safety problem, the 17 rustic road designation wouldn't preclude the county from 18 going in there and making a modest improvement to improve 19 the safety of the road. 20 MR. HARTSOCK: And rightfully so. 21 MR. NALEPA: Right. 22 MR. HARTSOCK: Thank you. That's all. 23 HEARING EXAMINER: Thank you, Mr. Hartsock. 24 Mr. and Mrs. Ryan, anything? 25 MR. RYAN: No questions.</p>

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26 (101 to 104)

<p>101</p> <p>1 HEARING EXAMINER: Okay. Thank you so much.</p> <p>2 MR. RYAN: We'll talk about the changes later.</p> <p>3 HEARING EXAMINER: Okay. Okay. Mr. Hughes, if</p> <p>4 you have no additional questions for this witness, we can</p> <p>5 move on to your next witness, or let me know where you are.</p> <p>6 MR. HUGHES: No follow up with Mike, and that was</p> <p>7 my plan as far as direct, proactive testimony of our</p> <p>8 witnesses.</p> <p>9 HEARING EXAMINER: Okay. All right. Thank you</p> <p>10 very much.</p> <p>11 All right. So that concludes the applicant's</p> <p>12 case. Now we will move on to opposition. So just -- I</p> <p>13 just want to make sure I have our list of people who wish</p> <p>14 to speak in opposition ready to go. So I have Mr.</p> <p>15 Hartsock. I've got Mr. and Mrs. Ryan.</p> <p>16 MR. RYAN: Yep.</p> <p>17 HEARING EXAMINER: I know -- let's see. I think</p> <p>18 it was --</p> <p>19 MR. HARTSOCK: Mr. Hunt, I think, wanted to --</p> <p>20 HEARING EXAMINER: Yes. Okay. So I see Mr. and</p> <p>21 Mrs. Hunt. So Mr. Hunt as well. Is there anyone else?</p> <p>22 All right. So then Mr. Hunt. All right.</p> <p>23 Whoever needs to go first, please proceed. Anyone?</p> <p>24 MR. HARTSOCK: We haven't choreographed this.</p> <p>25 HEARING EXAMINER: Okay. All right. So Mr.</p>	<p>103</p> <p>1 my former friends and colleagues running landscape</p> <p>2 businesses in the local area. Let's not forget that this</p> <p>3 whole saga started out with Chapingo illegally dumping</p> <p>4 massive amounts of tree debris on a farm that they</p> <p>5 purchased in Montgomery County's agricultural reserve.</p> <p>6 After the debris covered so much acreage that</p> <p>7 dumping areas were limited, equipment was brought in to</p> <p>8 push the piles together and pile them higher. The debris</p> <p>9 was deposited on a slope where the runoff from this field</p> <p>10 goes into a tributary of Little Bennett Creek. We</p> <p>11 neighbors reported this violation, and the DPS inspectors</p> <p>12 came, but the fines must have been few enough and/or small</p> <p>13 enough to simply be a reasonable business expense for</p> <p>14 Chapingo. And no runoff control was mandated and put into</p> <p>15 place. The disappearance of tree debris later seemed to</p> <p>16 coincide appropriately with Chapingo's application for</p> <p>17 conditional use approval.</p> <p>18 All of this might have been a forgivable rookie</p> <p>19 mistake by a naïve or novice business person, except that</p> <p>20 Mr. Alvarez had done this exact same thing a while earlier</p> <p>21 on Old Hundred Road: accumulated tree debris, drainage</p> <p>22 problem --</p> <p>23 MR. HUGHES: Objection.</p> <p>24 MR. HARTSOCK: -- reports from affected</p> <p>25 neighbors --</p>
<p>102</p> <p>1 Hartsock?</p> <p>2 MR. HARTSOCK: I'll be happy to go first --</p> <p>3 HEARING EXAMINER: Okay.</p> <p>4 MR. HARTSOCK: -- just to keep things rolling.</p> <p>5 My name is Tom Hartsock. I'm a neighboring farmer and</p> <p>6 resident with my farm and home lying to the west of and</p> <p>7 sharing a short border with the subject property. The</p> <p>8 stream that accepts the runoff from the subject property</p> <p>9 runs through my farm and past my home.</p> <p>10 I am retired from the University of Maryland,</p> <p>11 where for my last six years, I served as director of the</p> <p>12 Institute of Applied Agriculture, a two-year program in the</p> <p>13 College of Ag and Natural Resources that includes a</p> <p>14 landscape management major. As part of our curriculum, we</p> <p>15 offered a course in arboriculture. Therefore, I am</p> <p>16 familiar with the commercial landscaping industry and the</p> <p>17 valuable service -- services this industry provides. I am</p> <p>18 also sympathetic to the difficulty in finding appropriate</p> <p>19 and affordable sites for their operations and Montgomery</p> <p>20 County's failure, in my opinion, to identify appropriate</p> <p>21 sites for their location to make their lives a little bit</p> <p>22 easier.</p> <p>23 That said, however, I am saddened and concerned</p> <p>24 about how the illegal and unethical actions of a company</p> <p>25 like Chapingo will negatively influence the reputations of</p>	<p>104</p> <p>1 MR. HUGHES: Objection.</p> <p>2 HEARING EXAMINER: Mr. Hartsock, hold on one</p> <p>3 second. I need to find out why Mr. Hughes is objecting to</p> <p>4 your testimony.</p> <p>5 Mr. Hughes?</p> <p>6 MR. HUGHES: He's -- yeah, he's starting to talk</p> <p>7 about another property that's not relevant to here.</p> <p>8 There's -- and in -- in the record, there's never been any</p> <p>9 formal allegations or even proof about this. I think it's</p> <p>10 just -- it's not relevant to the case and it's just trying</p> <p>11 to pile on.</p> <p>12 HEARING EXAMINER: All right. I understand.</p> <p>13 I'll take it for -- I'll take it from Mr. Hartsock for what</p> <p>14 it's worth. And I'll note your objection, but I'll allow</p> <p>15 him to continue to speak.</p> <p>16 MR. HUGHES: Thank you.</p> <p>17 MR. HARTSOCK: Thank you. In lawyer parlance,</p> <p>18 this is precedent. Accumulated -- basically the same thing</p> <p>19 that happened here happened on Old Hundred Road a couple of</p> <p>20 years ago. This is not a mistake; it's a business plan</p> <p>21 is -- if anyone in our local government paying attention</p> <p>22 and keeping track.</p> <p>23 A conditional use approval needs to be granted</p> <p>24 before a business begins operations in the Ag Reserve. If</p> <p>25 they start the business illegally, they should be required</p>

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27 (105 to 108)

<p>105</p> <p>1 to cease and desist while the approval process plays out, 2 especially in the case of a repeat offender. Chapingo 3 operated illegally on Old hundred Road, and they have 4 continued to operate on Prices Distillery Road for nearly 5 another three years.</p> <p>6 Just downstream from Chapingo, I run a farm where 7 I'm required to document and report all nutrients, 8 including chemical fertilizers, collected animal manures, 9 compost, and other organic materials like wood chips that I 10 apply to my fields as fertilizer, all in an effort to keep 11 nutrients from running into the stream. And these field 12 nutrient applications are limited to the nutrients needed 13 by the crops being grown. Why doesn't the county require 14 the same of Chapingo?</p> <p>15 I alluded to this before. One of the excuses 16 that Mr. Alvarez used was that the receiving companies that 17 took his tree debris were closed down during -- during the 18 pandemic. I suspect it was more a cost thing because it's 19 much cheaper to dump tree debris on a farmland area than it 20 is to have to pay a dumping fee. Those outlets weren't all 21 closed, so that -- in previous testimony, that was a -- at 22 best, a statement by the applicants.</p> <p>23 The other -- another part -- and I'm going 24 through these things because my concern is if there's an 25 approval, what's the enforcement mechanism to make sure</p>	<p>107</p> <p>1 apples to apples.</p> <p>2 That said, I don't think the Planning staff and 3 the Rustic Roads Advisory Committee should have approved 4 Emerald's proposal either, and a number of us pointed out 5 why in the Planning Board hearing. The Emerald folks and 6 their representatives recognized that approval after 7 further review was on unlikely and pulled out of the 8 process.</p> <p>9 The mistake was not in denying Chapingo but in 10 approving Emerald. That was rectified during a public 11 hearing process. Erroneous precedents should not be used 12 to justify subsequent decisions.</p> <p>13 With regard to the issue of no well and septic on 14 this property, I believe that Planning staff have addressed 15 the legalities of the work -- global workforce and the 16 absence of sanitary facilities quite accurately. But in 17 case their conclusions are subject to any questions, I 18 would like to very briefly address the practical issues.</p> <p>19 First and foremost, no male worker will get in a 20 truck and drive several miles from the subject property to 21 Damascus or Clarksburg just to pee when they can just walk 22 behind a building and do it. And I say this as a man who's 23 worked on crews like this in my youth. Nobody would drive 24 three miles to do that.</p> <p>25 And I, as -- as a farmer, I run into that same</p>
<p>106</p> <p>1 that the conditions of the approval are actually met? 2 Because DPS has obviously allowed this company to operate 3 for almost three years when they were obviously operating 4 illegally.</p> <p>5 I appreciate the fact that Mr. Alvarez's 6 commitment to not do snow removal at this site. I am 7 concerned that that might not be the case once it snows 8 again. That's an easy commitment to make when it doesn't 9 snow. And I'm very much aware of the profitability of snow 10 removal, and I'm very much in favor of landscape companies 11 doing this because it keeps their trucks busy and it also 12 keeps employees who might otherwise be seasonal, keeps them 13 more fully employed throughout the wintertime.</p> <p>14 With regard to Emerald, in testimony before the 15 previous hearing examiner and in subsequent filings, Mr. 16 Hughes cited the precedent of the Planning staff 17 recommending approval for Emerald Landscaping at a site not 18 far from the current subject property. The implication was 19 that the Planning staff were being inconsistent in 20 recommending approval for Emerald but denial for Chapingo.</p> <p>21 What Mr. Hughes failed to mention was that on 22 page 6 of staff's March 11th, 2016 report is a statement 23 that the proposed Emerald site plan included sanitary 24 facilities per a septic plan approved by MCDPS on March 25 2nd, 2016. Comparing the two proposed facilities is not</p>	<p>108</p> <p>1 problem. If I feel the urge when I'm doing field work more 2 than a quarter mile from my house, I can assure you that I 3 don't unhitch my tractor and drive it back to my house. I 4 likely wouldn't make it anyway. Being able to urinate 5 easily in the field is just a benefit of my being born with 6 external plumbing.</p> <p>7 The difference between me and the Chapingo crew 8 is that I do that a couple times a year on a hundred acres 9 in the middle of a growing animal crop field where my 10 liquid deposits become crop fertilizer. Twenty or so 11 Chapingo employees will be doing that almost daily, as well 12 as other coffee-induced activities, in a small area within 13 a stream buffer that is frequented by other humans.</p> <p>14 The examples given above have been presented as 15 evidence and precedent bearing on the reliability of the 16 applicant to operate honestly, legally, and ethically in 17 the conditional -- should the conditional use approval be 18 granted. And that is the why, is why I vigorously oppose 19 approval of the application.</p> <p>20 I -- in addition, I have a few comments on Mr. 21 Hughes' testimony and his expert's testimony. Is it 22 appropriate that I present those now?</p> <p>23 HEARING EXAMINER: Yes.</p> <p>24 MR. HARTSOCK: He cited staff requirements 25 regarding the use of Burnt Hill Road by larger trucks.</p>

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28 (109 to 112)

<p style="text-align: right;">109</p> <p>1 Chapingo is obviously aware of the road issues, and if they 2 share our concerns, why have their bigger trucks used Burnt 3 Hill Road? They have used it extensively, even though the 4 signs made it very obvious that they shouldn't have. 5 So again, my concern is that even if -- if a CU 6 is approved and conditions are attached, how are they 7 enforced? 8 Both the expert witness and Mr. Hughes have cited 9 all kinds of different large vehicles that travel on rustic 10 roads routinely. This is to be expected. School buses, 11 delivery trucks are all part of what is needed to supply 12 the goods and services for the residents and for farmers in 13 the agricultural reserve. Just because a UPS truck can 14 drive in the Ag Reserve routinely isn't justification for 15 putting a whole bunch of other big trucks on those roads as 16 well. 17 If bathrooms are within 10 minutes and Chapingo 18 wishes to comply with the law, why did Mr. Alvarez place an 19 illegal portable toilet on the facility? Mr. Hughes' 20 citing of cell towers, not requiring sanitary facilities, 21 and for a two-horse boarding/training facility not to be 22 required to have a toilet, that is almost ludicrous. I am 23 actually pleased that the county gave this tiny horse 24 operation an exception because there certainly is no reason 25 to have toilet facilities on a two-horse operation. It's</p>	<p style="text-align: right;">111</p> <p>1 MR. HARTSOCK: Yeah, try 3. That wasn't the one 2 we looked at before. 3 HEARING EXAMINER: This is it, right? 4 MR. HARTSOCK: Yes, that's correct. 5 HEARING EXAMINER: Okay. 6 MR. HARTSOCK: That is actually a picture of what 7 was another illegal landscaping operation, which we 8 reported and inspectors visited, but they didn't shut it 9 down either. Eventually, the owners left. 10 What they did was bought a residence, turned it 11 into a dormitory, and put up a stockade fence. And my 12 point is, I'm not sure Mr. Hughes would like to cite an 13 illegal operation as precedent for justifying the apron 14 that Chapingo has in place. 15 HEARING EXAMINER: Okay. 16 MR. HARTSOCK: The other one I'd like to look at 17 is 42-E. And that's the fire marshal's approval. Again, 18 Mr. Hughes implies that the fire marshal approval 19 will -- justifies everything that was done there. The fire 20 marshal, quite honestly, would approve a four-lane highway 21 between Prices Distillery Road and the facility. 22 What Chapingo did in expanding that road is went 23 above the minimum requirements of the fire marshal, 24 particularly by making it basically suitable for two-way 25 traffic. And that was not what they proposed in their</p>
<p style="text-align: right;">110</p> <p>1 the epitome of a one-horse operation. 2 With regard to Exhibit 101, if you could pull 3 those pictures up again. I'd like to first look at -- 4 HEARING EXAMINER: Here's the big map. 5 MR. HARTSOCK: Oh, I'm sorry. I'm sorry. I 6 cited the wrong exhibit. I want to look at the driveways. 7 It's Exhibit 42-G. My apologies. 8 HEARING EXAMINER: No problem. 42-G. 9 MR. HARTSOCK: And then I think there's several 10 pictures there, and we looked at the first two. 11 HEARING EXAMINER: Right. 12 MR. HARTSOCK: The first one is the Styles' 13 operation. This is the former Leiger (ph) Dairy Farm. And 14 what isn't obvious from the picture is off to the right of 15 the picture is the whole dairy barn complex. This is 16 really not a driveway. This is pretty much the parking and 17 access area for this farming operation. So to cite this as 18 justification for the -- a large driveway area is 19 incorrect. 20 If you could go to the next photo. 21 HEARING EXAMINER: This is number 2. 22 MR. HARTSOCK: Okay. That one's on Burnt Hill 23 Road, I think. 24 HEARING EXAMINER: Do you want me to go to number 25 3?</p>	<p style="text-align: right;">112</p> <p>1 initial application, and it exceeds what the fire marshal 2 would require. Again, the fire marshal approved it. That 3 doesn't mean it meets minimum requirements. 4 And with that, I will end my testimony by again 5 saying I am in opposition for this approval. And I 6 appreciate the opportunity to testify in opposition. Thank 7 you. 8 HEARING EXAMINER: Okay. Mr. Hartsock, let me 9 ask you a quick question. 10 MR. HARTSOCK: Sure. 11 HEARING EXAMINER: I know you testified earlier 12 or when you were questioning Mr. Alvarez that there was a 13 large amount of bulk material there in the beginning and in 14 2020. Have you observed any bulk material stored at the 15 site in recent months or in the last year? 16 MR. HARTSOCK: Only small amounts and mostly 17 logs. 18 HEARING EXAMINER: Okay. 19 MR. HARTSOCK: And again, I would not fault if 20 the company had a conditional use approval and had half a 21 load. I understand the concept of dumping fees and wanting 22 to make sure you take a full load, not a half load. And I 23 would have no problem to store a half a load until a day 24 later so you could do a full load. But I have not seen the 25 large amounts that were there initially.</p>

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29 (113 to 116)

<p>113</p> <p>1 My concern is that if they get approval, it may 2 happen again. And given DPS' response and allowing this to 3 go on for a year, year and a half after we first reported 4 it is my problem. 5 HEARING EXAMINER: Okay. Thank you, sir. 6 MR. HARTSOCK: Thank you. 7 HEARING EXAMINER: Mr. Hughes, any questions for 8 Mr. Hartsock? 9 MR. HUGHES: No, but thank you. 10 HEARING EXAMINER: Okay. All right. Thank you 11 so much, Mr. Hartsock. 12 We'll move to Mr. and Mrs. Ryan, if that's okay. 13 MR. RYAN: Okay. And so my testimony, I'm going 14 to alter it as we go through because real time, we went out 15 and checked on the expert. And indeed, there is no weight 16 limitation sign on Clarksburg Road. There was when we took 17 the picture of it, but that has changed. 18 HEARING EXAMINER: Okay. 19 MR. RYAN: Okay. We took the picture on May 5th. 20 And you know, we -- I think most of our pictures are from 21 the May time frame, so. 22 HEARING EXAMINER: Okay. 23 MR. RYAN: Okay? 24 HEARING EXAMINER: Thank you. 25 MR. RYAN: So we are Karen and James Ryan. We</p>	<p>115</p> <p>1 And a portion of Lewisdale as cited in the blue route, so 2 to speak, is still available, although why? Because it's 3 the worst part of the road, but it is still available. 4 And -- but the intersection between Lewisdale and 5 Clarksburg, from that point on, Lewisdale is a 6 10,000 -- less-than-10,000 pound road. 7 We have provided pictures of -- first in our 8 figure 1 is the picture of the sign for the 9 weight-restricted bridge on Burnt Hill Road. Figure 2 is 10 the weight limit sign on Burnt Hill Road itself. And then 11 pictures of the intersection of Mountain View Road, Prices 12 Distillery Road, and Purdum Road, all of which are rustic 13 roads, although Prices Distillery is not weight limited. 14 So what I'm going to do is go past the pictures 15 since Mr. Hughes's expert has shown the picture that's 16 accurate today, which is that there is no restriction on 17 Clarksburg Road. And the weight limit sign on Lewisdale 18 Road is still there. And we took a picture of it from both 19 ends of Lewisdale, and Lewisdale is further restricted in 20 Frederick County as well. 21 So I'm just trying to go through and sort of edit 22 on the fly here. 23 HEARING EXAMINER: Is there anything you want me 24 to pull up, Mr. Ryan? 25 MR. RYAN: You have all the pictures in my</p>
<p>114</p> <p>1 live at 25602 Burnt Hill Road, in close proximity to the 2 Chapingo site from Mr. Hughes' expert. Took a beautiful 3 picture of our mailbox, for instance. So that's how close 4 we are. 5 HEARING EXAMINER: Okay. 6 MR. RYAN: Our property does not border Chapingo, 7 but we are close enough to hear workers and work noise on 8 the Chapingo site and have an excellent view of the 9 Chapingo driveway and its exit onto Prices Distillery Road. 10 We have testified in previous hearings in 11 opposition to Chapingo, LLC conditional use application. 12 And we would like to again provide testimony. 13 Now, what we tried to focus on is not repetitive 14 but what we thought was new information. And our previous 15 testimony focused on rustic roads and their -- and 16 Chapingo's heavy trucks. And as noted in the Montgomery 17 Planning Department Upcountry [sic] Planning Division 18 report to hearing examiner -- to the hearing examiner, the 19 Chapingo heavy trucks may cause damage to the rustic roads 20 and present a danger to -- to other motorists. 21 The testimony that we'll provide -- or that we 22 are providing involves new information. And originally, it 23 was the change of weight limitation on two rustic roads. 24 Now we -- obviously, the Clarksburg road change was an 25 error. But the other road that was changed was Lewisdale.</p>	<p>116</p> <p>1 letter? 2 HEARING EXAMINER: I do. 3 MR. RYAN: Okay. So -- and some of them have 4 been used already. 5 HEARING EXAMINER: Okay. 6 MR. RYAN: Okay. So I'm going to go a little bit 7 further ahead. Even though Chapingo's trucks should not be 8 on weight-limited roads, rustic roads, we all agree about 9 that, I believe, they travel on them anyway every workday. 10 Okay. And for example -- and what we did is took pictures 11 on 5/31 of a set of trucks leaving the Chapingo site 12 between 7 a.m. and 7:30. And those photographs are figures 13 7 to 19 in the letter. And they show the directions that 14 the heavy trucks took. 15 So, you know, as they begin to roll out, and then 16 at the corner, if they turn right, then the only way to get 17 out of that area is by a rustic road, a weight-limited 18 rustic road. If you turn left, then you could go down 19 Lewisdale to -- continue on Lewisdale or to go Clarksburg. 20 And Lewisdale to Clarksburg apparently is the preferred 21 way. And if it's not weight-limited, it should be open. 22 So of the eight trucks that left that morning, 23 then six turned toward Mountain View Road, and they did not 24 come down Burnt Hill. So they had to get -- they had to go 25 to the intersection to Prices Distillery, Mountain View,</p>

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<p>117</p> <p>1 and Purdum.</p> <p>2 So what we see and what we've seen for a long,</p> <p>3 long time, as Tom mentioned, it's been going on three years</p> <p>4 now, that the designation of a weight limit on the road</p> <p>5 doesn't seem to matter. And these are pictures of their</p> <p>6 trucks. Some of them are sort of medium-sized trucks, but</p> <p>7 they pull chippers. So the gross vehicular weight should</p> <p>8 exceed 10,000 pounds. And some are actually pretty</p> <p>9 good-sized trucks.</p> <p>10 So the last point here in addition to the road</p> <p>11 signage, I believe that my wife and I -- we dispute the</p> <p>12 Chapingo claim that no workers are on the Prices Distillery</p> <p>13 Road site during the day. They are there some days. Okay?</p> <p>14 And we have been assured that workers leave by 6:30 a.m.</p> <p>15 and return by 6:30 p.m. It's actually mostly between 7 and</p> <p>16 7:30 a.m. that they leave. However, quite often,</p> <p>17 people -- we hear people during the day sometimes running</p> <p>18 what sounds like chainsaws and moving large equipment</p> <p>19 around.</p> <p>20 We can't see because there is -- as the expert</p> <p>21 said, there's a tree barrier. We can see the roof. And</p> <p>22 during the fall, we can see more, of course. But at times,</p> <p>23 it often sounds like material is being dumped. And</p> <p>24 although the information below was only over a short</p> <p>25 period, May 4th through May 6th and also May 12th, these</p>	<p>119</p> <p>1 know, it's in Exhibit 98, reply to the Ryans' letter. But</p> <p>2 thank you.</p> <p>3 HEARING EXAMINER: Okay. All right. Thank you,</p> <p>4 Mr. and Mrs. Ryan.</p> <p>5 Mr. Hunt?</p> <p>6 MR. HUNT: Yes. Can you hear me okay?</p> <p>7 HEARING EXAMINER: I can. Thank you.</p> <p>8 MR. HUNT: Okay. I'm not going to go over -- Tom</p> <p>9 Hartsock pretty much covered almost all the points I had.</p> <p>10 I do have a few points, one being the Emerald Landscaping</p> <p>11 keeps being pulled up as the gold standard. The fact of</p> <p>12 the matter is is that the report that was done, they blew</p> <p>13 it. And that is in the words of the county council</p> <p>14 chairman. He said people were fired over this report, and</p> <p>15 he said, asked not -- that it not be brought up again as</p> <p>16 evidence for Chapingo as to getting their permit.</p> <p>17 My second point is that the proposed site is very</p> <p>18 small. Fact of the matter is they did clean up all</p> <p>19 the -- most of the debris that you can see from Burnt Hill</p> <p>20 and Prices Distillery Road, but there's still a substantial</p> <p>21 amount of chips on the property -- or the back of the</p> <p>22 property that borders my house, right above the stream bed.</p> <p>23 My third point is, or -- if they're asking or</p> <p>24 they're saying no bulk things are being stored on site.</p> <p>25 The fact of the matter is, is that there is a mountain of</p>
<p>118</p> <p>1 are by no means the only times that workers have been</p> <p>2 present during the day on the Prices Distillery site.</p> <p>3 We were working in our yard on the date specified</p> <p>4 in the letter. And what we heard and saw is documented.</p> <p>5 So on 5/4, workers were on the site all day, at least by</p> <p>6 the voices we heard. 5/5, workers were there part of the</p> <p>7 day. And 5/6, workers were at the site all day, and there</p> <p>8 was a bobcat, earth-moving vehicle, that was spreading</p> <p>9 material on the driveway.</p> <p>10 On 5/12 workers were on site much of the day. It</p> <p>11 sounded like earth-moving -- earth-moving vehicles and</p> <p>12 rocks or debris being dumped and moved around. So we don't</p> <p>13 dispute that they're -- most of them have left, but they do</p> <p>14 come back during the day. And again, you know, why did you</p> <p>15 need the portable toilet on the site? And I think I know</p> <p>16 why.</p> <p>17 But let us just say that we are -- we continue to</p> <p>18 be opposed to the Chapingo, LLC conditional use</p> <p>19 application. And thank you for allowing the testimony and</p> <p>20 the real-time update and correction.</p> <p>21 HEARING EXAMINER: Okay? Thank you, Mr. Ryan.</p> <p>22 Mr. Hughes, any cross-examination?</p> <p>23 MR. HUGHES: No, Madam Hearing Examiner. I'll</p> <p>24 just reference in my -- later on in the case or my closing</p> <p>25 Exhibit 98, which was my reply letter. It's in -- you</p>	<p>120</p> <p>1 asphalt millings sitting right in front of the barn. And I</p> <p>2 can only think that is to increase the amount of parking</p> <p>3 area there. It is also illegal to stockpile millings as</p> <p>4 far as the county goes, but they've been sitting there for</p> <p>5 over a year.</p> <p>6 That pretty much covers anything I want -- oh,</p> <p>7 one more point. Mr. Alvarez stated the only reason they</p> <p>8 were dumping stuff on the property was because it was a way</p> <p>9 to get -- get his workers paid. My question to Mr. Alvarez</p> <p>10 is, if they weren't working, where did all the chips and</p> <p>11 logs come from?</p> <p>12 That's all the points I have for today. I</p> <p>13 definitely remain in opposition. If things had started off</p> <p>14 differently and he didn't open a dump on the back of the</p> <p>15 property bordering mine, disturbed the peace, the -- the</p> <p>16 sound of trucks, the sound of heavy equipment, I might not</p> <p>17 be as opposed. But that's how he started off. And I</p> <p>18 suspect that if they're given approval, they will go right</p> <p>19 back to their previous business practices.</p> <p>20 That's all I have to say. Thank you.</p> <p>21 HEARING EXAMINER: Thank you, Mr. Hunt.</p> <p>22 Mr. Hughes, anything for Mr. Hunt?</p> <p>23 MR. HUGHES: No, but thank you.</p> <p>24 HEARING EXAMINER: Thank you.</p> <p>25 Does anybody else wish to testify in opposition</p>

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<p>121</p> <p>1 to the application? If so, please unmute and turn your 2 camera on. Just going through looking to see if I see any 3 hands, see if we've missed anyone. 4 Okay. Seeing no raised hands, I believe that 5 concludes the testimony from the opposition. 6 So Mr. Hughes, you can go forward with your 7 rebuttal if you have any. If there is no rebuttal in 8 particular, if you want to go to closing, we can go right 9 to closing. 10 Oh, you're muted. I'm sorry, sir. 11 MR. HUGHES: Could we take another short break 12 before we go into those? Would that be appropriate? 13 HEARING EXAMINER: Sure. It's two minutes to 1. 14 So you want to come back at 1:10? Does that work for 15 everyone? 16 MR. HUGHES: That's good for us. 17 HEARING EXAMINER: Okay. Well, let's all go off 18 the record for 10 minutes. We'll come back at 1:10, and 19 we'll wrap up. 20 MR. HUGHES: Thank you. 21 (A recess was taken.) 22 HEARING EXAMINER: All right. Excellent. Okay. 23 So we are -- we've finished the applicant's case-in-chief. 24 We've finished the opposition testimony. 25 Now, Mr. Hughes, if you would like to put on some</p>	<p>123</p> <p>1 Mr. Sekerak, I think, testified that, you know, it'd be 2 hard to imagine a landscape contractor with less impact. 3 It's not invisible. I'm not going to say it's a 4 vacant property, but that's anticipated. All the things 5 that are anticipated, expected with landscape contractor 6 are what's part of conditional use, and we are much less 7 impactful than the traditional one. We've talked about 8 other cases and sizes. 9 So I think it's a very compelling case. There's 10 a lot of evidence in here. It's a very good use of land 11 here. We really believe it should be approved. Some of 12 the additional reasons we -- so two big topics, right? The 13 remand -- or two big topics with three questions. 14 The first one being the sanitary sewer or 15 adequate public facilities bathroom. And as we 16 have -- there's a expert testimony in the record. There's 17 exhibits. There's cases. There are code sections on the 18 federal, state, and local level arguments. As I said, we 19 think we have at least five different legal alternative 20 positions that would get us successful on this topic. 21 Quick summary. The first one is just -- goes 22 back to the Maryland planning document, brochure 24, which 23 is -- apologies -- Exhibit 42-B, and I believe that -- that 24 showed this isn't what they were trying to prevent in 25 saying you need a bathroom. The question of adequate</p>
<p>122</p> <p>1 rebuttal testimony, or if you would like to go directly to 2 closing. Up to you. 3 MR. HUGHES: Thank you, Madam Hearing Examiner. 4 We're prepared to move to our closing. And my closing will 5 be much shorter than my opening. 6 HEARING EXAMINER: Okay. I'll take it. 7 MR. HUGHES: Thank you. So thank you, Madam 8 Hearing Examiner, and for everyone who participated. 9 So what does this case come down to? We think 10 that the visuals are crucial in this case. Exhibit 51, 52, 11 54, 101, 53 really help set the stage of what we're asking 12 for and where it's set. 51 is the aerial. 52 is the 13 rendering. 14 And the facts here are, as we said: up to 19 15 staff members on site at one time; up to 14 trucks stored 16 overnight, 2 being pickups; up to 10 vehicles, work 17 vehicles being used a day with 3 of those being pickups; 18 pretty small operation on a 32-acre farm, in the middle of 19 it, 1,200 feet off the road. Some nice screening already 20 out there, drop in elevation. 21 It's landscape contractor; it fits that 22 definition. We've talked about it. It's a tree care 23 company, so it's even much less impactful than county 24 council envisioned and allowed by conditional use in the 25 county, in this area, in this zone by conditional use. As</p>	<p>124</p> <p>1 public facilities is, is it sufficient? If -- are you 2 going to jam up the roads? Are you going to overflow the 3 bathroom? No bathrooms needed. No bathrooms out there. 4 No office is out there. 5 We think you don't even get to really the 6 threshold question, first position. And then multiple 7 additional arguments. One is the one that the Board seemed 8 persuaded by, related to the mobile workforce, again where 9 they said the Board generally found to be persuasive. 10 Mobile workforce, which is under OSHA, which there's -- you 11 know, in the record that citation is in there. 12 We also have Exhibit 53, which showed the 13 multiple bathrooms available within 10 minutes. That's 14 part of that OSHA regulation. Also the COMAR code 15 about -- talking about the topic of farm workers. If 16 you're out in the fields less than three hours, you don't 17 have to have a bathroom on site. Another strong indicator. 18 And then tied to the federal and the state is 19 going back to the Rosenberg case, which I mentioned, which 20 is 269 Md. 520, which essentially says, you know, if you're 21 going to have these APFO, Adequate Public Facility 22 Ordinances, you have to have measurable criteria. That 23 case was determined not to be. So I don't know if it's 24 measurable under the county code, but we also have these 25 federal and state guidance on it.</p>



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32 (125 to 128)

<p>125</p> <p>1 And then again, the one that I think is the 2 easiest and cleanest -- I think these all apply, I didn't 3 argue much it today, I think I did before -- is one is just 4 the code itself. They certainly could have put it in 3.55 5 for landscape contractor if they wanted a bathroom. 6 There also is the multiple cases, many 7 conditional use and special exception cases where they 8 looked at APF and determined not necessary because the use 9 is so minimal of time impact. And that's certainly our 10 position here. It's -- I mean, the property is vacant the 11 vast majority of the day. As I said, they're there in the 12 morning; they're there in the evening, 45 minutes, about 30 13 minutes. And I did say occasionally they are there; they 14 have to switch a truck out or come get a tool. Sometimes 15 there might be a little additional cleaning, but it's 16 minimal, by and large, property, very quiet. 17 Those cases -- there's multiple cell tower cases. 18 There's multiple public utility cases. There's the 19 equestrian case which I like, and it didn't evaluate 20 whether it was 2 horses or 20 horses. It just didn't 21 evaluate it. It just felt the impact is so low because 22 people -- I believe because the people were there for a 23 short time period. Sometimes common sense should rule out 24 and -- what is really needed. 25 So we think there's multiple arguments on that</p>	<p>127</p> <p>1 disharmony to the operation of the comp plan, denial of the 2 application for conditional use is arbitrary, capricious, 3 and illegal. 4 But essentially what these cases say that we've 5 cited is there -- there has to be a connection; there has 6 to be real probative evidence to deny it. 7 Also, we've talked about that the impact is 8 anticipated by the legislature. That's why they made it a 9 condition to use. They allow landscape contractors in this 10 area, in this zone, in the agricultural zone. They 11 anticipated all the typical use and activity that comes 12 along with it and equipment. 13 And we've talked about at length that this 14 particular use -- again, first of all, the benefit of being 15 3-plus acres in the middle of a 32-acre farm that sits 16 1,200 feet off the road, and it goes into a little bit of a 17 valley, the elevation goes down; it's hard to see down 18 there. And it's not a large operation, and it's not a 19 full-fledged landscape contractor. It's a tree care 20 company. No customers. They don't come there. No 21 deliveries. They don't have an office there, so they're 22 not there during the day. They're not moving equipment 23 around. They're not moving material around. It's much 24 less than even anticipated by the legislature. This is 25 really almost an ideal location for the size of this</p>
<p>126</p> <p>1 point. There's expert testimony, cases, code and exhibits. 2 The second point, obviously, it was about the 3 1996 Rustic Roads Functional Master Plan. And in that, 4 again, we had expert testimony from Mr. Sekerak, expert 5 testimony from Mike, and we have a lot of exhibits on the 6 topic. We have the actual words of the Rustic Roads 7 Functional Master Plan. We have some value and precedent, 8 not from a case that went all the way through, but Emerald 9 from professional planning review on this exact topic, in 10 this exact area that is compelling. 11 We have visuals, Exhibits 101 and 54, which the 12 Board found compelling as well as they wrote that any 13 impact of the proposed use on a viewshed from -- of that 14 barn from the surrounding rustic roads would be minimal. 15 No expert testimony to counter anything. A lot of innuendo 16 and allegations, but that doesn't make it under this law. 17 As we've talked about, the standard is 18 beyond -- or is preponderance of evidence. And as in our 19 brief, 84-A and in the transcript from the prior case, 20 there has to be -- has to be connection or it's arbitrary 21 and capricious. Some of the key cases on that are Anderson 22 versus Sawyer, 23 Md. App. 612, and Turner versus Hammond, 23 270 Md. 41, which said -- second -- said, But if there is 24 no probative evidence of harm or disturbance in light of 25 the nature of the zone involved or of factors causing</p>	<p>128</p> <p>1 operation and the type of operation. 2 Condition of approval that we've had much 3 discussion about, Exhibits 98-A, 98-B, 98-C, regarding the 4 roots and any restrictions from Burnt Hill Road, 5 weight-limited road part of it, and also the bridge. And 6 there's expert testimony from Mr. Sekerak, Mr. Nalepa about 7 access to and from the property for Chapingo, Mr. Alvarez's 8 staff. And it can be done legally, efficiently, and it 9 will be done. We proposed some sort of condition of 10 approval that would be accepted and would be followed. 11 If it's not accepted, if it's not followed, there 12 are repercussions that can happen from Montgomery County. 13 That's why we have condition of uses approved, and if 14 there's conditions of approval, if they're not followed, 15 the approval can be at risk. 16 There's also testimony from Mr. Alvarez that if 17 approved, he would certainly accept a condition that says 18 no storing of logs or trees. I guess the only caveat 19 is -- and I think even Mr. Hartsock was fair in that. I 20 would hope the hearing examiner, if we're fortunate enough 21 to get approval and there was any type of condition like 22 that, would just recognize overnight or staying inside of 23 the trucks, but no excessive storage of logs or no logs 24 that remained for any substantial period of time. 25 So there's -- there's ample discussion about the</p>

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33 (129 to 132)

<p style="text-align: right;">129</p> <p>1 routes and a condition of approval. And I guess, I 2 just -- to try to wrap this up, I would say that there's a 3 lot of evidence in this case, a lot of testimony, a lot of 4 expert testimony on our side, a lot of exhibits, a lot of 5 cases, a lot of statutes. And I think it just comes down 6 to -- obviously, it's got to come down to law, but the 7 visuals help sell what we're asking for and what the 8 operations are.</p> <p>9 And I think there was also really good guidance 10 from the Board in their remand. And in particular, it does 11 say that, To reconsider whether the proposed use would be 12 served by adequate public services facilities, namely 13 sanitary sewer, in light of the mobile workforce argument 14 that was put forth by Mr. Hughes, which the Board generally 15 found to be (inaudible), at least five different 16 alternative legal avenues there, we believe we've met that 17 burden.</p> <p>18 And on item 3 in their remand, they said, 19 Reconsider whether proposed use conforms with the 1996 20 Rustic Roads Functional Master Plan; in this regard, the 21 hearing examiner found that the proposed use would impact 22 the viewshed of a smaller historic barn on the petitioner's 23 property, but the Board observes, based on Exhibit 54-I, 24 that it's very difficult to see the smaller historic barn 25 from Prices Distillery Road or Burnt Hill Road; and</p>	<p style="text-align: right;">131</p> <p>1 So we greatly appreciate the time. We ask that 2 the hearing examiner please give due consideration to all 3 the exhibits, all the case law, all the code criteria from 4 federal, state, and county, all the expert testimony. And 5 we would ask for an approval of this conditional use. 6 Thank you very much.</p> <p>7 HEARING EXAMINER: Mr. Hartsock, anything you'd 8 like to say in conclusion?</p> <p>9 MR. HARTSOCK: I'm going to resist the temptation 10 to repeat anything.</p> <p>11 HEARING EXAMINER: Okay.</p> <p>12 MR. HARTSOCK: I find it personally annoying 13 hearing the same thing six times. So I won't. I will make 14 one statement with regard to conditions of approval. They 15 sound good on paper, but if they are not enforced or they 16 aren't enforceable, they are worthless and leave the 17 community with few alternatives. And DPS has shown a 18 distinct reluctance to enforce. Thank you.</p> <p>19 HEARING EXAMINER: Thank you, sir.</p> <p>20 Mr. Ryan, Mr. Hunt, any concluding statements 21 from either of you?</p> <p>22 MR. RYAN: I think Tom said it very well. I 23 don't think you're going to be able to repair the 24 relationship with at least some of the neighbors because 25 we've seen three -- almost three years of this behavior.</p>
<p style="text-align: right;">130</p> <p>1 accordingly, it's a sense of the Board that any impact of 2 the proposed use on the viewshed of that barn from the 3 surrounding rustic roads would be minimal.</p> <p>4 It went on to say, The board directs the hearing 5 examiner to remand the case, review the existing evidence 6 regarding impact of the proposed use on the viewshed, 7 including expert testimony of Mr. Sekerak, and develop any 8 evidence that's necessary to assess the impact of use on 9 the viewshed and conforming with the Rustic Roads 10 Functional Master Plan.</p> <p>11 And it closed by saying, In this regard, the 12 Board notes that there is a precedent for conditioning the 13 grant of a conditional use on the petitioner's use or 14 non-use of certain roads to access the property, and that 15 fear of non-compliance with conditions of approval is not a 16 reason to deny.</p> <p>17 So we believe we meet the code criteria. We 18 believe the facts and the law are on our side. There 19 certainly could be -- (indiscernible) to get approval, 20 there certainly could be conditions that would ensure 21 compliance and I think meet the -- some of the concerns 22 from some of the neighbors. And as we've noted, we would 23 be certainly willing to abide by conditions that we have 24 suggested related to the access of the road and also about 25 any non-storage of -- of excess tree material.</p>	<p style="text-align: right;">132</p> <p>1 But I believe it'll be almost unenforceable. And 2 unless every time we see somebody driving down the wrong 3 road, we call the police, it's -- this is going to be 4 impossible. And that's all I have to say. Thank you.</p> <p>5 HEARING EXAMINER: Okay. Thank you, sir.</p> <p>6 Mr. Hunt?</p> <p>7 MR. HUNT: I'd just like to reiterate the same 8 thing. Over and over again, we see trucks on the roads, 9 roads they're not supposed to be on. That stops right 10 around the time we come up for another hearing and then 11 continues right on after that hearing is done. I don't see 12 them complying with anything they promised to do, and I've 13 seen it over the last three years.</p> <p>14 You can't convince me they're not just going to 15 go back to the way they were doing things before.</p> <p>16 HEARING EXAMINER: Thank you, sir.</p> <p>17 Okay. That concludes our hearing today. I 18 believe that's -- we have closing from the applicant. We 19 have closing statements from those in opposition.</p> <p>20 All of the exhibits will be admitted. As we 21 stated earlier, there's no objection any of the exhibits 22 that were identified on the exhibit list. So they are now 23 all deemed admitted.</p> <p>24 We will hold the record open for a minimum of 10 25 calendar days for the transcript to be prepared.</p>

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1 Mr. Lorete, we'd ask for expedited on that one so  
2 that we can get that in 10 days. Thank you, sir.  
3 That means that I have an additional 30 days for  
4 the opinion to come out. So we do 10 days and 30 days.  
5 That's 40 days. I can do that kind of math. That puts my  
6 decision to be due out on Monday, August 7th. So you will  
7 have my decision on this matter by Monday, August 7th. And  
8 that concludes our hearing today.  
9 And we're off the record.  
10 (Off the record at 1:31 p.m.)  
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1 CERTIFICATE OF TRANSCRIBER

2  
3 I, Bonnie Torrez, do hereby certify that the  
4 foregoing transcript is a true and correct record of the  
5 recorded proceedings; that said proceedings were transcribed to  
6 the best of my ability from the audio recording and supporting  
7 information; and that I am neither counsel for, related to, nor  
8 employed by any of the parties to this case and have no  
9 interest, financial or otherwise, in its outcome.  
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15 Bonnie Torrez, CET-1213  
16 July 6, 2023  
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