

1 NATURAL RESOURCES CONSERVATION BOARD

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6 Application No. LA21011

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10 HUTTERIAN BRETHREN CHURCH OF LITTLE BOW

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P R O C E E D I N G S

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Volume 1

21

June 29, 2021

22

(Held by videoconference)

23

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1 Natural Resources Conservation Board in Alberta,  
2 proceedings taken virtually.

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4 Volume 1

5 June 29, 2021

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7 Sandi Roberts  
8 Page Stuart  
9 Earl Graham

Chair  
Panel Member  
Panel Member

8

Bill Kennedy

NRCB Counsel

9

10 Laura Friend  
11 Sylvia Kaminski  
12 Carolyn Taylor

NRCB Staff

11

Fiona Vance

For the NRCB Field Services

12

Richard Harrison

For the Little Bow Colony

13

Jason Schneider

Spokesperson for Vulcan County

14

Donna Gerbrandt, CSR(A)

Official Court Reporter

15

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16 (PROCEEDINGS COMMENCED AT 9:00 A.M.)

17 THE CHAIR: Good morning, and welcome. My  
18 name is Sandi Roberts, and I'll be chairing this Panel  
19 of the Natural Resources Conservation Board to hear a  
20 review of Decision LA21011 for the Hutterian Brethren  
21 Church of Little Bow.

22 UNIDENTIFIED SPEAKER: (Indiscernible) Madam Chair.

23 THE CHAIR: Sorry, are we okay?

24 Thank you to all parties for accommodating the  
25 Board's request to hold this hearing today. I will now

09:00

1           briefly introduce the Panel. For your reference,  
2           complete Board member biographies are on our NRCB  
3           website.

4           Panel members, if you'll please wave your hand  
5           when I introduce you.

6           We'll start with Page Stuart. Ms. Stuart was the  
7           general manager of a large beef feedlot in central  
8           Alberta, chaired the Alberta Cattle Feeders  
9           Association, and has championed multiple environmental  
10          sustainability initiatives in agriculture.

09:01

11          Next Earl Graham. Mr. Graham has extensive  
12          experience in municipal politics, including serving as  
13          the deputy reeve of Clearwater County. For three years  
14          he was central zone director for AAMD&C, now RMA, and  
15          he was a member of the Subdivision and Development  
16          Appeal Board.

17          And myself, Sandi Roberts, I'm an agricultural  
18          engineer. I was an approval officer with the NRCB  
19          until 2010, have been a municipal councillor for the  
20          Town of Carstairs, and was an instructor at  
21          Olds College.

09:02

22          And to help you identify the Panel in this Zoom  
23          virtual hearing, we -- the Panel members all have a  
24          Zoom background with a mountain scene.

25          Assisting with the Panel today are Bill Kennedy,

1 the Board's general counsel, and Laura Friend, manager  
2 of Board reviews.

3 If you have technical difficulties during the  
4 hearing, please phone or text Ms. Friend. And if you  
5 don't have her number, I'll say it slowly and I'll  
6 repeat it again so that you can get it down. Her  
7 number is 403-620-8294. So, again, that's  
8 403-620-8294. And you can phone or text her and she'll  
9 help you out.

10 And depending on the issue, it's possible that we  
11 may have to pause the hearing until everyone is again  
12 fully connected.

13 We have a number of NRCB staff here today,  
14 including Field Services staff, Fiona Vance. The chief  
15 legal officer for operations is here, as is  
16 Andy Cumming. Andy is director of Field Services  
17 applications.

18 We have staff members who will be doing the  
19 virtual onscreen document management.  
20 Sylvia Kaminski -- okay, Sylvia is our primary Document  
21 Manager -- and Carolyn Taylor. Carolyn is also here,  
22 and she's backing up Ms. Kaminski.

23 When you want a document shared on the screen,  
24 please clearly say the exhibit number and the  
25 pdf page number, and then give the Document Manager a

09:03

09:04

1           few moments to get the document loaded.

2           I would like to introduce our Zoom host,  
3           Justin Wiebe.

4       MR. WIEBE:                   I don't have video.

5       THE CHAIR:                   Okay. Thanks, Justin. Justin is  
6           with MNP, and he will be overseeing all of the  
7           technical matters related to this virtual hearing.

8           Also present is a court reporter from Amicus  
9           Reporting, who will provide a transcript of today's  
10          hearing that will be posted on the NRCB's website.  
11          Welcome, Ms. Gerbrandt.

09:05

12          During the hearing we ask that you identify  
13          yourself and speak slowly and clearly so that the  
14          court reporter can ensure that we get the transcript  
15          right.

16          The NRCB has also provided a YouTube link on its  
17          website for members of the public to observe the  
18          proceedings. The link is on the NRCB's main website  
19          page.

20          If there are members of the media on our YouTube  
21          feed and you have a question regarding today's process,  
22          please contact Janet Harvey, NRCB communications. She  
23          can be reached at the email address janet.harvey,  
24          H-A-R-V-E-Y, @nrcb.ca, or by telephone at 780-720-2317.

09:06

25          Your participation in this hearing is very

1 important to the Panel. We look forward to the  
2 information that you will be providing and recognize  
3 that our decision will have a significant impact on  
4 your community.

5 The process that we follow is inherently formal.  
6 This is a quasi-judicial proceeding, and so a certain  
7 level of formality is necessary. However, we do try to  
8 minimize formality to the extent possible so that  
9 participants are comfortable presenting their  
10 information to the Panel.

09:07

11 The Board encourages you to ask questions if you  
12 aren't sure about the process or if you're unsure  
13 whether you are allowed to interject. And please do  
14 this at any point. I'll do my best to answer your  
15 question, or will direct Mr. Kennedy to help out. If  
16 we need to take a short break so that Mr. Kennedy can  
17 spend a few minutes to help you understand, that's fine  
18 as well.

19 The purpose of this hearing is to review  
20 Decision LA21011 dated May 4th, 2021, issued by  
21 Approval Officer Joe Sonnenberg.

09:07

22 The confined feeding operation, or CFO, is located  
23 at the east half of 32-14-25 west of the 4th meridian  
24 in Vulcan County. The Municipal District of  
25 Willow Creek and the McDougalls were granted directly

1 affected party status, but chose to not participate in  
2 the hearing today.

3 A Field Services email dated June 10th advised  
4 that the approval officer is not available to attend  
5 the hearing. However, both Ms. Vance and Mr. Cumming,  
6 who we already have introduced, are here and are  
7 available to answer process questions.

8 The approval officer denied the Hutterian Brethren  
9 Church of Little Bow's application to expand an  
10 existing multi-species CFO. The application was to  
11 construct the chicken layer barn with attached manure  
12 storage and to increase chicken layer numbers from  
13 25,000 to 10,000.

14 A request for review, or RFR, from the operator,  
15 Little Bow Colony, was received by the filing deadline  
16 of May 26, 2021. No rebuttals were received by the  
17 deadline of June 2nd, 2021.

18 The Panel met on June 3rd, 2021, and in its RFR  
19 decision Number 2021-04 advised that it had made a  
20 decision to grant the RFR and hold an oral hearing.  
21 That decision report provided the reasons for granting  
22 the appeal and for questions that the Panel will have  
23 regard for at this hearing.

24 The Panel advised that a virtual hearing, using  
25 the Zoom platform, would commence at 9 a.m. on

09:08

09:09

1 June 29th, 2021. The Panel directed that written  
2 submissions by directly affected parties should be  
3 filed with the Board no later than June 18th, 2021.

4 A submission was received from Vulcan County on  
5 June 18th and a rebuttal was received from Little Bow  
6 Colony on June 24th, 2021.

7 NRCB's Field Services advised parties on June 10th  
8 that it would not be filing a submission.

9 All Panel members have and are familiar with the  
10 complete set of documents that parties have submitted  
11 as evidentiary materials for this hearing. Given this,  
12 there is no need for you to reread the entire record  
13 materials already submitted.

09:10

14 In order to make the best use of time, we request  
15 that each party use their presentation time to  
16 highlight or clarify the important points that are  
17 relative to your written submissions.

18 I would now like to provide a brief overview of  
19 the process for the hearing. First, all parties will  
20 be registered. Then each participant will have an  
21 opportunity to address any preliminary matters they may  
22 have. We'll then begin with the evidentiary or direct  
23 evidence portion of this hearing.

09:11

24 In this hearing, the Board believes it is  
25 beneficial for Little Bow Colony to present their

1 direct evidence first, followed by Vulcan County. When  
2 it is your turn to provide evidence, you will be sworn  
3 in or affirmed by the court reporter.

4 Once sworn in or affirmed, any new written  
5 evidence that you want us to consider may be entered  
6 into the record on request. We'll then give you a  
7 chance to highlight or expand upon any points in your  
8 submissions that you feel are particularly significant.

9 After each party has presented their evidence,  
10 they will then be open to questions by the other party,  
11 NRCB Field Services, and NRCB Board counsel and Panel  
12 members.

13 Once questioning is complete, the party that  
14 presented evidence will have an opportunity to  
15 introduce redirect evidence. Essentially we give you a  
16 chance to submit any further evidence or comments to  
17 address areas raised in the questions posed to you  
18 where you believe there is some additional information  
19 that the Panel should have.

20 Once we've completed direct evidence and  
21 questioning of both Little Bow Colony and  
22 Vulcan County, Little Bow Colony may provide rebuttal  
23 evidence.

24 If rebuttal evidence is provided, Vulcan County,  
25 NRCB Field Services, and NRCB Board counsel and Panel

09:12

09:12

1 members will be given the opportunity to ask questions.

2 Last, each party will have an opportunity to  
3 provide a final oral argument. Little Bow Colony will  
4 present first, followed by Vulcan County. Little Bow  
5 Colony will have the final word with reply argument.  
6 This is your opportunity to address any issue raised in  
7 Vulcan County's final argument.

8 I know that was a lot, but are there any questions  
9 with regard to the process we intend to follow today?

10 We will be taking breaks during the day, including  
11 a lunch break. I'll try to pause in a natural spot in  
12 the proceedings so we won't set a specific time for  
13 breaks. We hope to be done by 4:00 today. If we need  
14 to go later than that, a question that I have is, are  
15 all parties available?

09:13

16 Vulcan County? Vulcan County, would you be  
17 available if we need to go beyond 4:00 today?

18 MR. SCHNEIDER: Sorry about that. Just a  
19 technical issue on muting there. I guess if necessary,  
20 yeah, we will have someone available.

09:14

21 THE CHAIR: Okay, thank you.

22 Little Bow Colony?

23 MR. HARRISON: Yeah, we would be available.

24 I will just note -- and it's Richard Harrison --  
25 there's a lot of lag on our end. So I just query

1           whether it would be possible for those not speaking to  
2           perhaps cut their camera feed, just so we can see  
3           better in terms of bandwidth on our end.

4       THE CHAIR:                    Okay. Thank you, Mr. Harrison.  
5           So if you're not on camera, if you would please stop  
6           video, it may help that lag. Thank you.

7           Ms. Gerbrandt, if we need to go later than 4,  
8           would you be available?

9       THE COURT REPORTER:        Yes, I would be.

10       THE CHAIR:                   Thank you.

11           Mr. Wiebe?

12       MR. WIEBE:                   Yes, absolutely.

13       THE CHAIR:                   Okay, thank you.

14           So we'll now proceed to register participants.  
15           And it may be helpful as well to please spell your  
16           names, your last name, anyway for the court reporter.

17           So we'll start with Little Bow Colony. Who will  
18           be representing Little Bow Colony?

19       MR. HARRISON:                Thank you, Madam Chair, and  
20           thank you, Panel Member Stuart and Panel Member Graham.

21           My name is Richard Harrison. I'm counsel from  
22           Wilson Laycraft. I act for Little Bow Colony.

23           We'll be presenting three witnesses for the Panel  
24           today. Our first witness will be Mr. Sam Hofer, who is  
25           the CFO manager for Little Bow Colony. Our second

09:15

09:16

1 witness will be Ashley Kozak, who is a partner with  
2 MNP. And our third witness will be Mr. David  
3 Tschetter, who is with Shady Lane Colony near  
4 Grande Prairie.

5 And I'll spell those names for you. Sam, S-A-M,  
6 Hofer, H-O-F-E-R; Ashley, A-S-H-L-E-Y, Kozak,  
7 K-O-Z-A-K; and David, D-A-V-I-D, and Tschetter is  
8 spelled T-S-C-H-E-T-T-E-R.

9 THE CHAIR: Thank you, Mr. Harrison.

10 Next on to Vulcan County. Who will be  
11 representing Vulcan County, and who will be giving  
12 evidence for the county?

09:17

13 MR. SCHNEIDER: Jason Schneider. I will be  
14 representing Vulcan County. I'm the reeve. That's  
15 J-A-S-O-N S-C-H-N-E-I-D-E-R.

16 Our manager of development services will also be  
17 providing evidence.

18 MS. ERICKSON: Thank you. My name is  
19 Anne Erickson, manager of development services for  
20 Vulcan County. And it's A-N-N-E E-R-I-C-K-S-O-N.

09:17

21 THE CHAIR: Okay. Mr. Schneider, will anyone  
22 else be giving evidence for Vulcan County?

23 MR. SCHNEIDER: No. We do -- we do have two  
24 members of our planning commission joining us as  
25 observers.

1 THE CHAIR: Okay, thank you.

2 Are there any other parties eligible to  
3 participate in the hearing?

4 All right then. Let's begin.

5 MR. SCHNEIDER: Madam Chair, sorry. I did neglect  
6 to mention one more on behalf of Vulcan County:  
7 Ryan Dyck with the Oldman River Regional Services  
8 Commission. I'll let him introduce and spell his name  
9 for the record.

10 MR. DYCK: Thank you, Madam Chair.

09:18

11 Ryan Dyck, acting as planning advisors for Vulcan  
12 County. I'm not looking to give a submission, but if  
13 the need arises for questions and the like, it's  
14 R-Y-A-N D-Y-C-K.

15 THE CHAIR: Thank you, Mr. Dyck.

16 Okay. So are there any preliminary matters to  
17 address, procedural, legal, or others?

18 Little Bow Colony, is there anything that you have  
19 for procedural matters?

20 MR. HARRISON: Thank you, Madam Chair. I just  
21 have one quick question for the Panel. Is it -- I have  
22 two questions: First, while testimony is being given,  
23 is it okay to have the witnesses observing that  
24 testimony? And, second, whether the witnesses are able  
25 to have their notes available to them while presenting?

09:19

1 THE CHAIR: Mr. Kennedy, would you address  
2 that, please?

3 MR. KENNEDY: Yeah, I'm going to jump in and say  
4 both -- yes to both. If there is a situation,  
5 Mr. Harrison, where you or another party thinks that --  
6 procedurally there's a need to exclude a witness from  
7 the proceedings -- or a future witness from the  
8 proceedings during a particular part, then we could  
9 entertain that. It's unusual. I'm trying to think of  
10 an NRCB hearing where I've seen that happen. I don't  
11 know that I have.

09:20

12 And as for notes, yes, if it's helpful, by all  
13 means please do refer to notes.

14 We do ask that counsel, if they're -- if we take a  
15 break during a time when their witnesses are still  
16 impanelled, we do ask that counsel not have discussions  
17 with those witnesses during the break about the  
18 evidence and responses they're providing.

19 Hopefully that answers your question,  
20 Mr. Harrison.

09:21

21 MR. HARRISON: It does. Thank you. And I'll  
22 just say since the video has been turned off, the  
23 stream has been much better on our end. So thank you  
24 very much, everyone, for doing that.

25 THE CHAIR: Great. Thank you. That's great

1 to hear.

2 Vulcan County, do you have any preliminary  
3 matters?

4 MR. SCHNEIDER: Vulcan County has nothing at this  
5 time.

6 THE CHAIR: Thank you.  
7 Mr. Kennedy?

8 MR. KENNEDY: I have nothing.

9 THE CHAIR: Ms. Vance?

10 MS. VANCE: Yeah, Field Services, we have  
11 nothing at this time. Thank you, Madam Chair.

09:21

12 THE CHAIR: Okay, thank you. So the hearing  
13 exhibit list was prepared and posted on the NRCB  
14 website for all parties to reference, and I propose  
15 that we adopt the hearing exhibit list, which includes  
16 the relevant documents before the Panel.

17 Are there any objections to adopting the exhibit  
18 list?

19 Okay, I'm hearing... Hearing none, we will  
20 consider them adopted.

09:22

21 All right. We are now ready to hear direct  
22 evidence from Little Bow Colony. So I will leave it in  
23 Ms. Gerbrandt's hands to swear or affirm Little Bow's  
24 witnesses.

25 MR. HARRISON: Thank you, Madam Chair, and Panel

**SAM HOFER**

Examined by Mr. Harrison

1 members again.

2 As I noted, our first witness will be  
3 Mr. Sam Hofer, who is the CFO on behalf of Little Bow,  
4 and he's prepared to be affirmed this morning.

5

6 **SAM HOFER (For Little Bow Colony), affirmed**

7 **MR. HARRISON EXAMINES THE WITNESS:**

8 THE CHAIR: All right, Mr. Harrison, please  
9 proceed.

10 Q. MR. HARRISON: Good morning, Mr. Hofer. What is  
11 your role at Little Bow Hutterite Colony?

12 A. I partake in the day-to-day operations, CFO operations  
13 at the colony. But in respects to the application, I  
14 was tasked with some of the technical details, such as  
15 the mapping, scaling of the project, which I then  
16 forwarded to our financial manager, Darius Hofer, and  
17 he submitted it to the NRCB.

18 Q. So would it be fair to say, for example, that you  
19 prepared the application for the expanded CFO that  
20 we're -- before the Panel here today?

21 A. That's correct.

22 Q. Now, how long have you held that position with  
23 Little Bow Colony?

24 A. I've been involved with operations ever since I was a  
25 child, but more so over the last five years.

09:23

09:24

## SAM HOFER

Examined by Mr. Harrison

1 Q. Now, please tell the Panel why Little Bow Colony wants  
2 to expand its livestock operations?

3 A. To come into compliance with some of the changing rules  
4 and regulations that are put forth by the industry.  
5 Some of these being animal welfare, biosecurity, as  
6 well as food handling. That would be one.

7 I could also say that the economic value that it  
8 adds to our operation in that there's some incentive  
9 for producers to step up and meet some of the demand in  
10 the food supply. And also the -- and this helps to  
11 keep costs to producers stable and keeps produce  
12 affordable.

13 Along with that, I think I could add the added  
14 economic value it brings to our operation in its  
15 entirety, and the fact that we have 90 members within  
16 our community that we have to support, and this CFO  
17 operation is one of the ways in which we make that  
18 happen and keep our head above water.

19 Q. Now, you mentioned that there are incoming rules and  
20 regulations with respect to this CFO operation. Are  
21 there costs involved with respect to coming into  
22 compliance with those rules and regulations?

23 A. Yes, there's substantial costs involved. Automated  
24 control systems are expensive. Caging requirements  
25 that are mandatory. They're not -- they're not applied

09:25

09:25

## SAM HOFER

Examined by Mr. Harrison

1 as in do it if you want. They are mandatory, so there  
2 are some costs involved there.

3 Q. Now, would it be fair to say, for example, that the  
4 expansion will help to pay for those costs?

5 A. Absolutely, yeah.

6 Q. And is that one of the drivers for -- for seeking that  
7 expansion?

8 A. Yes. I would agree.

9 Q. Now, why don't you walk the Board through the current  
10 poultry CFO at Little Bow Colony?

11 A. The current CFO operation consists of 2500 units of  
12 quota that we own. In addition to that, we also have  
13 approximately 1100 units that are overbase quota. We  
14 are currently leasing out the overbased quota due to  
15 the size of our facility and not being able to  
16 facilitate that extra quota.

17 So there are some rules in regards to overbased  
18 quota that the Board allows producers to lease out that  
19 quota for ten years maximum, and at that point it is  
20 required for them to place the quota within their own  
21 facility. And that period of time came to fruition for  
22 us and our operation in 2019. We had other obligations  
23 at the time, so couldn't commit to placing that quota,  
24 so we approached the Board and requested for a  
25 three-year extension. They granted that extension.

09:26

09:27

## SAM HOFER

Examined by Mr. Harrison

1           And as far as the facility, it's 20 years old and  
2           showing aged infrastructure. It relies heavily on  
3           manual controlling the environment within the barn that  
4           should be upgraded and needs to be upgraded to a more  
5           continuously monitored and automatic control of that  
6           environment. This would improve animal welfare  
7           indefinitely.

8           Along with that, I would say that the facility has  
9           an onsite grading station which allows us to market our  
10          eggs locally to restaurants, grocers on a daily basis.

09:28

11          Is that enough to...

12          Q. Thank you very much. How long has the Little Bow  
13          Colony had the CFO poultry operation?

14          A. We've had the CFO poultry operation since 1983, and  
15          that was at the what we'll call the old place, which is  
16          beneath the Twin Valley Dam currently, but it's been  
17          there since 1983, when Little Bow was founded and  
18          established the colony there.

19          Q. Now, why don't you tell the Panel, or walk the Panel  
20          through how Little Bow Colony came to be in its current  
21          location.

09:29

22          A. As I just mentioned, we were founded in 1983 and we  
23          established our operations at again what we'll call the  
24          old colony beneath the Twin Valley Dam.

25          In the mid 1980s the provincial government put a

SAM HOFER

Examined by Mr. Harrison

1 halt to our operations. And the reason to this is the  
2 proposed project, which is now the Twin Valley Dam.  
3 The colony continued at that time during those  
4 restrictions, and we basically made do with what we had  
5 at that time, until the mid 1980s, when the provincial  
6 government obliged the colony to relocate to make way  
7 for that project.

8 We did that without much -- we did that without  
9 much resistance because we understood the significance  
10 of that project and what it brought to the region, and  
11 especially the farming community, and as far as  
12 irrigation is concerned.

13 The government and local planning development  
14 officials selected a parcel of land to relocate the  
15 colony to and basically grandfathered all of our  
16 existing CFOs from the old colony to this new location,  
17 and we took possession of the colony in 2002.

18 Q. Now, why was the current location selected for  
19 Little Bow Colony?

20 A. It's under -- it's under my understanding that it was  
21 selected because of its location. We're quite a ways  
22 out from any significant areas of population, towns,  
23 villages, as well as availability to water and the  
24 resource that we -- that we had at the old place, so  
25 that our water -- our water licences could remain in

09:30

09:31

**SAM HOFER**

Examined by Mr. Harrison

1           **place.**

2           Q.   So prior to its current location, would it be fair to  
3           say that Little Bow Colony was actually located in the  
4           Municipal District of Willow Creek?

5           A.   **Most of our CFOs were located in Willow Creek, except  
6           for the dairy operation and our main shop.**

7           MR. HARRISON:                   Madam Chair, I wonder if we could  
8           now pull up Exhibit 10, if they are numbered  
9           sequentially, or the last document in the exhibit  
10          booklet.

09:32

11                           I'm hoping that we can go to Map 12, which is  
12          seven pages from the last page. Oh, there we go.  
13          Scroll down. There's Map 12. No. If we could just go  
14          up a little bit more. No, that's good. Thank you. I  
15          appreciate that.

16          Q.   Now, Mr. Hofer, do you see where Highway 529 is  
17          identified on this map?

18          A.   **Yes, I see that.**

19          Q.   It should be in the middle approximately proportion on  
20          this map?

09:33

21          A.   **Yeah.**

22          Q.   And do you see just southeast of the number 529 there  
23          is a picture of a calf?

24          A.   **Yes, I see that.**

25          Q.   Are you able to confirm that that is the location of

## SAM HOFER

Examined by Mr. Harrison

1 Little Bow Colony?

2 **A. That is the location, yes.**

3 Q. And that's the location of the confined feeding  
4 operation that we're here to discuss today?

5 **A. That's correct.**

6 Q. So it's fair to say that the confined feeding operation  
7 is in the CFO exclusion zone on the IDP?

8 **A. That's right.**

9 Q. Mr. Hofer, who is Doug Bourque?

10 **A. Mr. Bourque was the government official appointed by**  
11 **Alberta Infrastructure to manage the Twin Valley Dam**  
12 **project, and his role -- one of his roles was to**  
13 **facilitate the relocation of the Hutterite colony.**

09:34

14 Q. And did you ask Mr. Bourque to provide a letter  
15 outlining his understanding and recollection of  
16 Little Bow Colony's transition?

17 **A. We did. On behalf of the colony we did ask him to**  
18 **provide a letter.**

19 Q. I wonder if we could now turn to page 4 of Exhibit 9.  
20 I'll be looking specifically at the third last  
21 paragraph of page 4. It starts with "Despite the  
22 Colony's hardships..." There we go.

09:35

23 So Mr. Bourque writes: (as read)

24 "Despite the Colony's hardships

25 (identified below) during the relocation

**SAM HOFER**

Examined by Mr. Harrison

1 transition, they have fully cooperated  
2 and acted in good faith to assist in the  
3 successful completion of all phases of  
4 work, so that the Dam and reservoir plan  
5 is completed within the time frame  
6 allotted and functioning as designed for  
7 comprehensive water resources management  
8 for Southern Alberta."

9 Do you see that, Mr. Hofer?

10 **A. Yes, I see that.**

09:36

11 **Q. Now, what hardships did Little Bow face?**

12 **A. I think Little Bow faced two significant hardships, and**  
13 **the first being that the government curtailed our**  
14 **operations back in the mid 1980s. Right after we**  
15 **established the colony, which was probably one of the**  
16 **most important times for people to -- for colonies to**  
17 **establish their operations, I specifically remember we**  
18 **weren't allowed to develop any permanent structures.**  
19 **However, they did allow temporary housing to be put in**  
20 **place there, and we had approximately nine to ten**  
21 **mobile trailers. But essentially all other permanent**  
22 **construction was halted.**

09:36

23 **Q. You mentioned two hardships. What was the other**  
24 **hardship?**

25 **A. Oh, sorry. The other hardship would be the uprooting**

SAM HOFER

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1 of the entire colony, in that case around 100 members,  
2 and placing them into a colony that they had very  
3 little input in designing or constructing. And the  
4 adjustments -- both the social adjustments required, as  
5 well as getting the operations back to full production.

6 Q. Now, you mentioned that when you transitioned to the  
7 new colony, you had little input into that new colony's  
8 design. Can you describe who did have input at that  
9 point in time?

10 A. I think predominantly it would have been the provincial  
11 government. They basically, from our understanding,  
12 replaced what we had existing. We did see some  
13 improvements, but essentially it was just a  
14 replacement.

15 Q. How about the historical value of the former location?  
16 What can you tell me about that?

17 A. The historical value, as in growing up there, our  
18 childhood -- my childhood anyway, I was 14 when we  
19 moved, it's tied to that location. Childhood memories  
20 of being kids growing up there, definitely that's  
21 something that we lost in the transition.

22 Q. Did you have a -- or did Little Bow Colony have a  
23 confined feeding operation, a poultry CFO at the old  
24 location?

25 A. Yes. And I think it was established also in and around

09:37

09:38

SAM HOFER

Examined by Mr. Harrison

1           1983 when we first moved there.

2           Q. Now, please walk the Board through the reasons you feel  
3           it should approve Little Bow's application for an  
4           expanded CFO?

5           A. I would like to start with saying that we reviewed the  
6           approval officer's decision and understand how he came  
7           to that conclusion. However, given our location, and  
8           being that we're 15 kilometres from any significant  
9           populations -- and, in our case, it would be the  
10          Village of Champion -- the factors of a nuisance are  
11          minimal and we have very few neighbours and acreages in  
12          the area.

09:39

13                       Some of the other reasons we think that they  
14                       should be approved is our proximity to the waterways  
15                       and the fact that we meet and exceed AOPA legislation  
16                       and any requirements that the NRCB regulates; as well,  
17                       the improvements that we're making, the improvements  
18                       that are proposed in this -- in this development or  
19                       this expansion project, as far as animal welfare,  
20                       biosecurity and proximity to other CFOs on that parcel  
21                       of land, as well as the economic aspect that it brings  
22                       for our operation and as well as the regional and  
23                       Vulcan County and beyond.

09:40

24          Q. When was the last time that your poultry -- or  
25          Little Bow Colony's poultry CFO expanded?

## SAM HOFER

Examined by Mr. Harrison

1     **A.   Actually, this is the -- this is the first application**  
2           **with the NRCB since 2000, 2002.**

3     **Q.   When the operation was established in the new colony?**

4     **A.   Yes, that's correct.**

5     **Q.   And how, with respect to water licensing, does**  
6           **Little Bow Colony have a water licence?**

7     **A.   Yes.  We fall within our licensing in the fact that we**  
8           **are under the *Water Act*.**

9     **Q.   And when you expand the CFO, would that still be within**  
10           **the water licence?**

11    **A.   Yes.**

12    **Q.   Now, how far is Little Bow Colony from any boundaries?**

13    **A.   We're approximately 1600 metres from the boundary with**  
14           **the MD of Willow Creek.**

15    **Q.   So you're over a kilometre and a half away from the**  
16           **MD of Willow Creek?**

17    **A.   That's correct.**

18    **Q.   And is that the location of where the expanded CFO**  
19           **would be, or is that the location of the colony?**

20    **A.   That's the location of where the proposed CFO would be.**

21    **Q.   So the proposed CFO would be approximately just over a**  
22           **kilometre and a half from the MD of Willow Creek?**

23    **A.   Yes, that's correct.**

24    **Q.   Now, how would this expanded CFO improve the**  
25           **environmental impacts of the current CFO operation?**

09:41

09:42

SAM HOFER

Examined by Mr. Harrison

1 A. It would increase the environmental -- or improve the  
2 environmental impact in the fact that we're actually  
3 proposing a 400-metre further separation from the  
4 nearest waterway and being that the Little Bow River,  
5 in comparison to the current CFO.

6 Q. So you would actually be moving your operation further  
7 away?

8 A. Yeah. By approximately 400 metres.

9 Q. Would you be developing any new land for the current  
10 CFO operation?

11 A. No. It would be on developed land.

12 Q. And you understood I meant the new CFO?

13 A. Yes.

14 Q. How about animal welfare? What can you tell me about  
15 that in terms of improvements there?

16 A. With the new caging requirements that are put forth by  
17 the Egg Farmers of Canada, they're transitioning  
18 producers out of conventional caging, which we  
19 currently have in our barn, and into a more enhanced or  
20 free range caging system. And I think we can all  
21 appreciate the recent -- in the recent years the  
22 pressure that has been put on producers to take into  
23 further consideration animal welfare. So there is a  
24 significant improvement.

25 Along with, as I mentioned earlier, the

09:43

09:43

1 environment that the birds are in with updating the  
2 systems to a more automated continuous monitoring and  
3 continuous adjustment.

4 Q. Why don't you -- today is obviously a good example,  
5 we're in a heat wave. Why don't you tell me a little  
6 bit about what the new system would be versus the old  
7 system would be like given today's temperature?

8 A. Well, the new system, as I said, continuously monitors  
9 outside temperatures and adjusts the internal  
10 temperature in the barn accordingly, whereas our old  
11 barn is more manually controlled. So it's up to the  
12 discretion of the operator to make those changes.

09:44

13 So the birds experience less extreme temperature  
14 differences, which is an added comfort level to the  
15 animals, of course.

16 Q. And you mentioned the environmental positive. For  
17 example, greenhouse gas emissions?

18 A. Absolutely. The proposed construction -- or the  
19 proposed plan of the CFO would significantly improve  
20 the efficiency of the barn.

09:45

21 Q. And a lot of those environmental improvements you  
22 mentioned at the outset are costly; correct?

23 A. That's correct, yes.

24 Q. And one of the factors that you noted early on in  
25 requesting the expanded CFO was to be able to afford

## SAM HOFER

Examined by Mr. Harrison

1           those environmental improvements?

2       **A.**   That's right, yeah.

3       **Q.**   Now, why wouldn't you move the CFO outside the CFO  
4           exclusion zone?

5       **A.**   Any parcels of land that we own that we would consider  
6           suitable for this type of development is -- for  
7           example, across the road, those two quarters across the  
8           road and to the north are irrigated acres, and so would  
9           either require taking that land out of production or  
10          moving the water rights to a different parcel of land.

09:46

11               We're very familiar with the process of  
12               transferring water rights and that we would lose  
13               10 percent of the water rights allotted in the transfer  
14               of the water rights to different parts of the land.

15               But also the cost to the infrastructure and the  
16               pipings -- the pipeline and the pumping -- and pumping  
17               capacities. There are revisions on that end that the  
18               costs would be substantial. And in taking that, the  
19               second option and taking that crop out of -- or that  
20               parcel of land out of production, it doesn't make much  
21               sense for us to move a CFO 200 metres across the road  
22               onto undeveloped land. And there's no incentive --  
23               there's no -- there's no incentive for us to do that.  
24               It actually devalues that parcel of land.

09:46

25               So, therefore, I think we can -- we can conclude

## SAM HOFER

Examined by Mr. Harrison

1           that it's not a piece of land that's suited for that  
2           type of development.

3       Q.   Right.  So just to summarize your evidence on this  
4           point, to move the current CFO and the expanded CFO  
5           operation outside of the CFO exclusion zone would be a  
6           200-metre move?

7       A.   **Approximately when you take in setbacks from the road,**  
8           **yes.**

9       Q.   And that 200-metre move would involve taking farmland  
10          and cropland out of production?

09:47

11      A.   **Absolutely.**

12      Q.   And it would involve new infrastructure to support  
13          that -- the new CFO location?

14      A.   **Yes, being that it's undeveloped land.**

15      Q.   And you would lose 10 percent of your water rights?

16      A.   **That's right.  10 percent that we -- that we don't have**  
17          **the opportunity to recoup.**

18      Q.   Now, are you familiar with the Vulcan County municipal  
19          plan?

20      A.   **Yes.**

09:48

21      Q.   Development plan?

22      A.   **Yes.  I've become familiar with it throughout this**  
23          **process.**

24      Q.   Did Little Bow Colony participate in the public hearing  
25          for the MDP?

## SAM HOFER

Examined by Mr. Harrison

1 A. It's my understanding that we didn't, no.

2 Q. Why not?

3 A. I don't think that we were notified that there was an  
4 MDP or notified that there was a public hearing or any  
5 notice of that type.

6 Q. You didn't know about it?

7 A. No.

8 Q. Now, how does Little Bow Colony receive notifications  
9 from Vulcan County?

10 A. Typically it would be registered mail, being that we're  
11 isolated.

09:48

12 Q. You mentioned you're isolated. What do you mean by  
13 that?

14 A. We're 15, 20 kilometres from the Village of Champion or  
15 the Town of Vulcan. So we're self-sustaining and  
16 community orientated. There's no reason for us to  
17 commute into town every day. In that sense I would say  
18 that we're fairly isolated.

19 Q. Is it fair to say that Little Bow Colony is isolated  
20 from a community standpoint because it's  
21 self-sufficient, and it's isolated geographically  
22 because it's far from any other centres?

09:49

23 A. That's correct, yeah.

24 Q. So you, for example, don't have someone going down to  
25 the municipal office on a weekly basis to see what

**ASHLEY KOZAK**

Examined by Mr. Harrison

1 public hearings are taking place?

2 **A. No. No, we wouldn't have.**

3 **Q. Does Little Bow Colony receive notification from**  
4 **Vulcan County in any other capacity other than**  
5 **registered mail?**

6 **A. Not that I'm aware of at this time, no.**

7 **MR. HARRISON:** Those are my questions for this  
8 witness.

9 **THE CHAIR:** Thank you, Mr. Harrison.

10 Thank you, Mr. Hofer.

09:50

11 Mr. Harrison, you can please proceed with your  
12 next witness, if you care to.

13 **MR. HARRISON:** Thank you. Our next witness will  
14 be Ms. Ashley Kozak. And perhaps before we go any  
15 further, we'll just get you to switch seats so that  
16 Ashley will be a little bit closer.

17

18 **ASHLEY KOZAK (For Little Bow Colony), sworn**

19 **MR. HARRISON EXAMINES THE WITNESS:**

20 **Q. Ms. Kozak, what is your relationship with and to**  
21 **Little Bow Colony?**

09:51

22 **A. My relationship with Little Bow Colony is I'm a CA and**  
23 **a partner at MNP. I have been an advisor to**  
24 **agriculture clients over the last ten years and a**  
25 **direct advisor to Little Bow Colony for the past six.**

ASHLEY KOZAK

Examined by Mr. Harrison

1 MNP has been an advisor, a business advisor, to  
2 the Little Bow Colony for the last 15 years, 10 to  
3 15 years.

4 Q. So it's fair to say that you have a good understanding  
5 of Little Bow Colony's business economically?

6 A. Absolutely, yeah.

7 Q. Why don't you tell us about Little Bow's economics with  
8 respect to its poultry CFO?

9 A. Yeah. So as you heard Sam say, the poultry operation  
10 at its current location has been there for about  
11 20 years. They do own 25 units -- 2500 units of quota  
12 holdings and 1100 units of overbase that they do  
13 currently lease out.

14 I guess it would be more economical to use this  
15 quota for themselves, but due to the capacity  
16 constraints, they do lease it out right now.

17 Their barn is, again, 20 years old, so there is --  
18 repairs and maintenance are starting to creep up. And  
19 the changes in the operational systems that are  
20 required to keep up with the supply and the demand need  
21 to happen sooner than later.

22 As barns -- infrastructure and their internal  
23 systems age, it does put a strain on the birds, and  
24 eventually it does affect their top line revenues and  
25 their net profits.

09:52

09:53

ASHLEY KOZAK

Examined by Mr. Harrison

1 Q. You mentioned that Little Bow Colony has a quota of a  
2 certain number of birds, but it only has approximately  
3 currently 2500 poultry units. Why can't it make use of  
4 its entire quota?

5 A. Yeah. So the entire quota with the overbase, they  
6 can't make use of it right now because their barn is  
7 not big enough at this time. They can only place the  
8 2500 birds. So that's why they have to lease out their  
9 1100.

10 Q. Can you please describe the capital costs that a  
11 poultry CFO is generally subject to?

12 A. So there's three major capital costs that a poultry CFO  
13 is subject to. Those would be the quota, the price per  
14 bird. Infrastructure would be the next one, and  
15 inflationary costs involved.

16 So quota would be -- we all know their operation  
17 is supply managed and producers are required to have  
18 quota in place in their barns. The average producer in  
19 Alberta has 10,000 to 15,000 penned, so units. The  
20 larger barns could be 30 to 40,000 units. And  
21 Little Bow has 2500.

22 The price as of January 1st, 2021, for quota was  
23 520. The only way that you can get quota is either you  
24 purchase it per hen or there is natural progression,  
25 natural -- you can obtain it naturally. So as demand

09:54

09:54

ASHLEY KOZAK

Examined by Mr. Harrison

1 increases, as we said with the overbase, the  
2 supply-managed industry will give you some extra quota.  
3 So that 1100 extra units of quota that they have, in  
4 the future, as demand goes up, they could increase  
5 that, along with every other competitor in the  
6 industry.

7 Q. You mentioned that there were three capital costs that  
8 a CFO is subject to.

9 A. Right. Right. So, yeah.

10 Q. What's the other?

11 A. So it would infrastructure cost. Essentially those are  
12 you're either going to retrofit your barn or you're  
13 going to build a bigger barn.

14 So I guess with barns and infrastructure, as they  
15 age, they become more obsolete. In our industry we've  
16 noticed that the average lifespan of a barn would be 20  
17 to 30 years and/or you're building a new barn because  
18 there's -- there's what we would call the regulatory  
19 environmental changes that Sam had spoke about before.

20 When you're building a new barn, you would be  
21 always thinking to build for the future. So you're  
22 building bigger to capture the idea of getting more  
23 quota through natural abilities or through purchase.  
24 And, also, you're thinking about the possibility of  
25 other regulatory standards, environmental standards,

09:55

09:56

ASHLEY KOZAK

Examined by Mr. Harrison

1 coming in so that you're ready for those -- when those  
2 come down the line.

3 The last would be for costs, the CFO would  
4 probably be inflationary costs.

5 Producers need to grow their top line because, as  
6 we all know in the current environment, costs are  
7 rising. So in order to stay viable, sustainable,  
8 producers really need to ensure that their top line  
9 revenue, and in supply manage the top line revenue  
10 needs more birds possibly. So to cover those  
11 inflationary costs, producers need to have more quota  
12 involved and bigger barns.

09:57

13 Over the last ten years, farm costs have increased  
14 30 to 40 percent. So that's about 3 or 4 percent per  
15 year. And so that hasn't gone in conjunction with the  
16 revenues. So margins are slimming at this point.

17 Q. Costs are arising due to inflation, but you mentioned,  
18 for example, revenue is not rising?

19 A. Yeah. I guess in the layer operation, revenues have  
20 only really risen 10 to 15 percent.

09:58

21 Q. So a poultry CFO is generally subject then to three  
22 types of capital costs: The price per bird,  
23 infrastructure, and inflation. Fair to say?

24 A. Fair to say, yeah.

25 Q. Now, how do these factors apply to Little Bow Colony,

ASHLEY KOZAK

Examined by Mr. Harrison

1 in particular?

2 A. So as we've mentioned earlier, Little Bow does have  
3 2500 birds. So if they were just to retrofit their  
4 barn at this point, with the new caging system, they  
5 would only be able to place about 1500 birds. So they  
6 would be losing out on a thousand birds there, plus  
7 their 1100 birds that they have as overbase, they  
8 wouldn't be able to place those as well. So that's  
9 2600 birds automatically that they would be losing out  
10 on their -- on their farm for revenues.

09:59

11 Also, when we -- when I said that barns are  
12 usually 10 to 15,000 units, right now in the barn that  
13 they have, it's only -- they only have 2500, which is  
14 on the lower end, I guess, of their competition. So to  
15 keep them viable, it would be better to have an  
16 increased barn.

17 We would also say that, going forward, Little Bow,  
18 with their aging infrastructure, we're not going to  
19 build a barn that's exactly the same as the old barn.  
20 Just like anything, things go obsolete. So we want to  
21 keep up with the market and keep up with the  
22 competition and, obviously, build a barn that's  
23 relevant to today and not relevant to 20 years ago.

10:00

24 And it would be a barn that they would want to  
25 consider the fact of future changes and future

ASHLEY KOZAK

Examined by Mr. Harrison

1           abilities to get more quota because the demand is up  
2           there. So they want to keep viable and keep  
3           competitive in their market.

4       Q. Right. Now, you talked a little bit about the  
5       infrastructure costs with respect to the new CFO and  
6       the new regulations coming in.

7           With respect to the incoming regulations, if  
8       their -- if Little Bow Colony is forced to keep its  
9       current operations, will it be able to afford the  
10       improvements that are required by the new regulatory  
11       environment?

10:01

12       A. No. As I said earlier, with rising costs and, I guess,  
13       the diminished per hen housed to 1500, that won't be  
14       sustainable in the future. The viability of the  
15       operation will shrink and the margins will grow smaller  
16       and smaller and thinner, and they won't be able to  
17       continue the operation eventually.

18           Overhead costs will stay -- will rise over time,  
19       so we can only imagine how that would work out for  
20       them.

10:02

21       Q. So to summarize, then, without the ability to expand  
22       their current CFO, Little Bow Colony will not be able  
23       to justify keeping the current operations?

24       A. Absolutely, yes.

25       Q. And that's because of not only added costs with the new

## ASHLEY KOZAK

Examined by Mr. Harrison

1 regulatory regime, but also because of the decrease in  
2 quota because of the size of the cage pens?

3 **A. Yes.**

4 **Q.** So with respect to the size of the cage pens, their  
5 current barn that they currently have, as those cages  
6 grow bigger, they have less ability -- or they have the  
7 ability to have less hens in that barn. Is that fair?

8 **A. Yeah, yeah. You only have so many square feet to use.  
9 And, yes, as cages get bigger, then less ability for  
10 hens to be housed.**

10:03

11 **Q.** You understand that that is part of the new regulatory  
12 requirements that are coming in?

13 **A. Yes.**

14 **Q.** Now, what can you tell me about the current market for  
15 poultry products?

16 **A. The market -- the demand is strong right now in that  
17 environment. And so in the future, more quota will be  
18 available. And I'm thinking that expansion is required  
19 to stay competitive in this market, in this marketplace  
20 for sure.**

10:03

21 **MR. HARRISON:** Those are my questions for this  
22 witness, Madam Chair.

23 **THE CHAIR:** Okay, great. Thank you,  
24 Ms. Kozak.

25 And, Mr. Harrison, you have Mr. Tschetter as well

## DAVID TSCHETTER

Examined by Mr. Harrison

1 as a witness. Please proceed.

2 MR. HARRISON: So, obviously, Mr. Tschetter is  
3 not in our boardroom here. He'll be joining in a  
4 moment.

5 THE CHAIR: Yes. Ms. Gerbrandt will have to  
6 swear or affirm him as well.

7

8 **DAVID TSCHETTER** (For Little Bow Colony), affirmed

9 **MR. HARRISON EXAMINES THE WITNESS:**

10 Q. Good morning, Mr. Tschetter. What is your role with  
11 the Little Bow Colony?

10:04

12 A. I'm the Vice-Chair of the Hutterian Advocacy Council,  
13 and we are currently supporting members of the  
14 Little Bow Colony.

15 Q. How long have you had that role for?

16 A. Eight months.

17 Q. And what is the Hutterian Advocacy Council?

18 A. The Hutterian Advocacy Council is an organization  
19 that's comprised of Hutterite members across the  
20 province. Our mandate is to provide supporting role  
21 for Hutterite colony leaderships in many areas.

10:05

22 So, for example, we may be required to facilitate  
23 discussions with non-governmental organizations and  
24 government in general on issues that pertain to us.

25 We feel that it's important to foster positive

## DAVID TSCHETTER

Examined by Mr. Harrison

1 relationships within local and region communities,  
2 municipality and other agricultural organizations.

3 We support farmers and ranchers like Little Bow  
4 Colony in their efforts to rise up to and exceed the  
5 agricultural and society standards of farmers and  
6 ranchers who excel in these areas. We are an asset to  
7 municipalities because they're role models of the  
8 agricultural landscape, and we support and advocate for  
9 this type of collaboration.

10 Q. When you mention standards and the Hutterian Advocacy  
11 Council's role when assisting colonies and meeting and  
12 exceeding standards, you're referring to, in this case,  
13 farming standards?

10:06

14 A. That's correct. Farming standards, also environmental  
15 standards, consumer demand on food safety, food  
16 security, and also transparency as well. So it's right  
17 across the board.

18 Q. Are you a member of the Little Bow Colony?

19 A. No. I'm a member of Shady Lane Colony in the  
20 Peace River regions. Right between Grande Prairie and  
21 Peace River.

10:07

22 Q. Now, in your role as Vice-Chair, why is Little Bow's  
23 application for an expanded CFO one that you have  
24 involved yourself with?

25 A. It's complex, but I would like to answer it by making a

## DAVID TSCHETTER

Examined by Mr. Harrison

1           few points for starters. This is a good example of  
2           farmers and ranchers like Little Bow Colony. In their  
3           efforts to rise up and exceed the agricultural and  
4           society standards, they require support from a broader  
5           perspective.

6           Given that Little Bow Colony, it was unaware of  
7           the CFO exclusion zone until the recent application,  
8           this application, we recognize that given the timeline  
9           of the ongoing Vulcan County IDP process, the  
10          relocation of the colony to its current location at the  
11          behest of the Alberta government, it's apparent that  
12          the Hutterian Advocacy Council provide a broader  
13          support to Little Bow Colony.

10:08

14          It's reasonable to conclude that the Alberta  
15          government may not have foreseen this quarter of land  
16          that Little Bow Colony was geographically translated to  
17          would have a confined feeding operation exclusion zone  
18          superimposed onto it. Regardless, Little Bow Colony  
19          now finds itself restricted from what would otherwise  
20          be a reasonable agricultural land use of their home  
21          quarter section. So this is a concern for us.

10:09

22          Another point I would like to make is that  
23          Little Bow Colony has met and exceeded the rigorous  
24          confined feeding operation application process and  
25          every regulatory requirement.

DAVID TSCHETTER

Examined by Mr. Harrison

1           Given that this application is well within the  
2           *Agricultural Operation Practices Act* and other  
3           regulatory requirements, we would like to point out  
4           that, as a result, that the exclusion zone for the home  
5           quarter of Little Bow Colony is onerous and  
6           unreasonable.

7           The new CFO improves the economic output, as just  
8           stated by the previous witness, by assisting the colony  
9           to increase its profit margin. And it's been -- and  
10          the lengthy economic growth restrictions at the  
11          previous location, which happens to be beneath the  
12          Twin Valley Reservoir, can now be offset at the current  
13          location through this new CFO.

10:10

14          We've looked at it and there are no deterrents to  
15          expanding the new CFO that we can identify; there are  
16          only benefits. For example, some of the benefits are  
17          securing the local and regional food supply, and it  
18          improves the environmental standards for the current  
19          operation.

20          And above all this, farmers and ranchers like  
21          Little Bow Colony are committed to meeting and  
22          exceeding the consumer demand for food safety and  
23          traceability. The consumer is playing an active role  
24          in driving that.

10:10

25          Another point that I want to make is that I'm

## DAVID TSCHETTER

Examined by Mr. Harrison

1           pretty certain that the current temperature, outside  
2           temperature, in all of your locations is just as balmy  
3           as where I am, and so these record-setting heat waves  
4           are a risk to livestock. And during heat waves, we  
5           humans, we can enhance our environments, like ensuring  
6           the air conditioning is working, but our livestock  
7           depend on us to mitigate it for them.

8           And, as pointed out by Sam Hofer, the new  
9           infrastructure would improve the automation  
10          environmental control systems, so -- but it's important 10:11  
11          to note that not only do heat waves create stress for  
12          animals, but widely fluctuating temperatures within the  
13          CFO facility during heat waves only amplifies the  
14          stress level on the animal.

15          So Little Bow Colony modernizing their CFO  
16          environmental control system within their facility  
17          through this application can only be a good thing.

18          The new confined feeding operation improves the  
19          wellbeing of Little Bow Colony. It's rare to find a  
20          multifamily farming operation without some type of CFO. 10:12  
21          And, similarly, it's rare to find a CFO without some  
22          type of multifamily culture and social structure that  
23          encapsulates it. For most farms and ranchers in  
24          Alberta, these go hand in hand.

25          And, given that this CFO application is the first

## DAVID TSCHETTER

Examined by Mr. Harrison

1 in approximately 20 years, it will certainly strengthen  
2 the social fabric of Little Bow Colony.

3 And then the final point that I want to make is  
4 the impacts of a denial of this permit. Such a  
5 concerning note for other -- for existing confined  
6 feeding operations and agriculture in general across  
7 Alberta when and where discrepancies exist between the  
8 AOPA, the MDPs and the IDPs. So we request that the  
9 NRCB Board exercises its discretion and to grant this  
10 application to Little Bow Colony.

10:14

11 We understand that each confined feeding operation  
12 application is unique. We also request that the NRCB  
13 considers this application as a precedence in future  
14 confined feeding operation applications that meet and  
15 exceed AOPA, but are unreasonably stifled (phonetic) by  
16 municipal development plans and/or intermunicipal  
17 development plans.

18 Thank you.

19 Q. Thank you, Mr. Tschetter.

20 MR. HARRISON: Those are my questions for this  
21 witness.

10:14

22 THE CHAIR: Thank you, Mr. Tschetter.

23 I think what we'll do now is proceed onto the  
24 opportunity to question Little Bow Colony.

25 Vulcan County, Mr. Schneider, you're up first.

S. HOFER, A. KOZAK, D. TSCHETTER

Cross-examined by Mr. Schneider

1 MR. SCHNEIDER: Great. Thank you. I have a  
2 couple of questions to direct to the applicant there.

3 **MR. SCHNEIDER CROSS-EXAMINES THE PANEL:**

4 Q. First off is what is the proposed plans for the barn  
5 that is currently in operation if a new facility were  
6 to be constructed?

7 A. MR. S. HOFER: The proposed plan is to take  
8 the -- take the current facility out of operation and  
9 use it -- just repurpose for other farm use.

10 What we plan on doing is our turkeys and ducks are  
11 raised predominantly outside, and we would like for the  
12 initial, when they're young birds, to put them in that  
13 facility and house them so they have protection.

10:15

14 Q. Thank you. Next question is, what technical documents  
15 have been supplied to show the site suitability for  
16 this proposed barn?

17 MR. HARRISON: I can provide the exhibits to the  
18 witness. Is that okay, Madam Chair?

19 THE CHAIR: Yes. Please do so, Mr. Harrison.

20 MR. HARRISON: I'm providing Document 3 to the  
21 witness from the exhibit list.

10:16

22 A. MR. S. HOFER: So could you just explain your  
23 question a little bit, please?

24 Q. MR. SCHNEIDER: Yes. We're just asking for some  
25 further information on what -- what has been done to

S. HOFER, A. KOZAK, D. TSCHETTER

Cross-examined by Mr. Schneider

1 determine that this site is suitable for the barn that  
2 you are proposing.

3 A. MR. S. HOFER: We're proposing the facility on  
4 already developed land, being that it's within the  
5 quarter. So our -- getting the infrastructure, such as  
6 gas, water, and all of that in place is readily  
7 available to us and easily accessible.

8 Q. Has there been any third-party review done of your  
9 plans to determine site suitability?

10 MR. HARRISON: I would like to object to the  
11 question, Madam Chair, and just ask that the question  
12 be specified as to what type of third-party review is  
13 being requested in the question.

10:17

14 MR. SCHNEIDER: My apologies. I will rephrase  
15 that to has a third-party environmental assessment been  
16 done to determine site suitability for this proposed  
17 barn.

18 MR. HARRISON: Again, I just query as to whether  
19 it's a biodiversity environmental review, water,  
20 wetland environmental review. Just a few different  
21 environmental reviews.

10:18

22 MR. SCHNEIDER: I'll leave it general.

23 Q. Has any type of environmental review been done to  
24 determine site suitability by a third party?

25 A. MR. S. HOFER: No.

S. HOFER, A. KOZAK, D. TSCHETTER  
Questioned by Mr. Kennedy

1 MR. SCHNEIDER: Okay, thank you. We have no  
2 further questions at this time.

3 THE CHAIR: Okay. Thank you, Mr. Schneider.  
4 Field Services. Ms. Vance, do you have any  
5 questions for Little Bow Colony?

6 MS. VANCE: Thank you, Madam Chair.  
7 Field Services does not have any questions for  
8 Little Bow Colony.

9 THE CHAIR: Thank you, Ms. Vance.  
10 Mr. Kennedy, do you have any questions for  
11 Little Bow Colony?

12 MR. KENNEDY: Thank you, Madam Chair. I do have  
13 one or two questions.

14 **MR. KENNEDY QUESTIONS THE PANEL:**

15 Q. And the first one may have already been answered, but,  
16 Mr. Hofer, when did you become aware that your confined  
17 feeding operation was located in the county's confined  
18 feeding operation exclusion zone?

19 A. **MR. S. HOFER:** When the approval officer  
20 submitted his decision, that's when we become aware.

21 Q. And what is your understanding of the purpose for the  
22 county establishing that exclusion zone?

23 A. **MR. S. HOFER:** My understanding is that it's with  
24 the border of Willow Creek and possibly protection of  
25 waterways.

10:18

10:19

S. HOFER, A. KOZAK, D. TSCHETTER  
Questioned by Mr. Kennedy

1 Q. So purely environmental reasons? Is that -- is that  
2 your understanding?

3 A. MR. S. HOFER: Yes, that is my understanding.

4 Q. And in terms of managing your CFO facilities in  
5 proximity to the Little Bow River, can you give us a  
6 quick summary of what you identify as the on-site risks  
7 from the confined feeding operation?

8 A. I would assess there is not very substantial risks and  
9 due to the fact that it's dry manure, it's storage,  
10 it's in the proposed -- sorry, the proposed manure  
11 facility meets AOPA's liner regulations. I'm not sure  
12 if that answers your question.

13 Q. Yeah. Well, perhaps more broadly, one of the points  
14 that you made, I believe, in answering a question from  
15 Mr. Harrison was there was an environmental benefit  
16 from moving this facility further away from the  
17 Little Bow River. And implicit in that answer is there  
18 might be an inherent risk from the current facilities.  
19 And I'm trying to get an understanding of what that  
20 risk might be.

21 A. MR. S. HOFER: It's basically just based off of  
22 the proximity to that waterway and the facility.

23 Q. And from your CFO facilities, and from all of your CFO  
24 facilities on the site, is manure -- does it move from  
25 that facility toward the Little Bow River naturally?

10:20

10:21

S. HOFER, A. KOZAK, D. TSCHETTER  
Questioned by Mr. Kennedy

1 MR. HARRISON: Sorry, I just want to make sure we  
2 got the question just because there was a lot of  
3 freezing there.

4 The question was: From the CFO facility, does  
5 manure move from that CFO facility?

6 MR. KENNEDY: Yeah. And, Mr. Harrison, the  
7 question related to all of the facilities and how --  
8 generally how manure is managed and what risk those  
9 facilities pose to the Little Bow River Reservoir.

10 A. MR. S. HOFER: I would say that it's minimal due  
11 to the fact that we have manure -- liquid manure  
12 storage and basins -- catch basins in place.

13 Q. And, Mr. Hofer, the current municipal development plan  
14 is -- I think it is dated 2012, and these things are  
15 updated every ten years or so. Does the colony  
16 anticipate, as the county updates its municipal  
17 development plan, it would actively participate in  
18 the -- in whatever revisions might arise?

19 A. MR. S. HOFER: I would assume so, yes. If it  
20 affects our operations and our future of our  
21 operations, absolutely.

22 Q. And, Mr. Tschetter, I think this question is for you.  
23 Is this -- in terms of municipal development plans and  
24 county's adoption and revision to plans, is this  
25 something that your group would be engaged with on

10:22

10:23

S. HOFER, A. KOZAK, D. TSCHETTER  
Questioned by Mr. Kennedy

1           behalf of your constituents?

2       **A. MR. TSCHETTER:**           **Yes. I believe we'd be very**  
3           **interested in participating in that process.**

4       **Q.** Thank you. And, Mr. Hofer, how do you anticipate that  
5           the county -- becoming aware when the county initiates  
6           its next revisions to its municipal development plan?  
7           Do you believe they'll reach out to you, or do you  
8           think you're going to have to actively watch and be  
9           aware when they initiate that process?

10      **A. MR. S. HOFER:**           **Based off of the past, I think we**  
11           **would have to stay current with what's happening within**  
12           **the county and keep ourselves updated to engage in**  
13           **those kinds of events.**

10:24

14      **Q.** And, Mr. Hofer, do you have a precise distance between  
15           the new -- or proposed facility and the Little Bow  
16           River Reservoir?

17      **A. MR. S. HOFER:**           **Negative. We do not have a**  
18           **precise location, but we can tell you off of satellite**  
19           **mapping, that's within 1600 metres.**

20      **Q.** Within 1600 metres. How much within? Do you have an  
21           idea of that?

10:24

22      **A. MR. S. HOFER:**           **No, I don't.**

23      **Q.** Okay. Thank you.

24      **MR. KENNEDY:**                **Thank you, witnesses. Those are**  
25           **my questions.**

S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by Ms. Stuart

1 Thank you, Madam Chair.

2 THE CHAIR: Thank you, Mr. Kennedy.

3 Ms. Stuart, do you have any questions for  
4 Little Bow Colony?

5 MS. STUART: I do. Thank you, Madam Chair.

6 **MS. STUART QUESTIONS THE PANEL:**

7 MS. STUART: Can I ask the Document Manager to  
8 pull up Exhibit 8, Vulcan County's hearing submission.

9 And my question will be to Little Bow, perhaps  
10 Mr. Hofer, but whoever can appropriately answer the  
11 question as I have stated it.

12 So if you go to page 2 and point Number 4, which  
13 refers to municipal setbacks.

14 And I apologize if this was somewhere in the  
15 material that I didn't see, but I note that the county  
16 said that the stated number for the application did not  
17 include setback distances and, therefore, Vulcan County  
18 cannot confirm if the project is in compliance with  
19 setback requirements, and they state 38.1 metres from  
20 the centreline of the road and 7.6 metres from the  
21 property line.

22 Mr. Hofer, or perhaps anyone else with Little Bow,  
23 can you confirm if the proposed site is in compliance  
24 with those county setback requirements?

25 **A. MR. S. HOFER: Yes, we are.**

10:25

10:26

S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by Ms. Stuart

1 Q. Okay, thank you.

2 MS. STUART: And, Document Manager, can I ask  
3 you to pull up Exhibit 3, which is the technical  
4 document, Part 2.

5 And, man, that's fast. The Document Managers do a  
6 great job.

7 Can I ask you to go to pdf page 23 of 29.

8 Q. Can you confirm that that is the proposed building site  
9 for the poultry expansion?

10 A. MR. S. HOFER: I can, yes.

10:27

11 MS. STUART: And if we just scroll up,  
12 Document Manager, so we can see the writing at the top.

13 Q. There's a note. It says A0 Note, approval officer  
14 note, that the topography is flat.

15 Can you tell me what your observations are about  
16 the topography on that area and whether you agree with  
17 that statement?

18 A. MR. S. HOFER: I would agree with that statement.  
19 It is predominantly flat.

20 Q. And when you say "predominantly flat," do you have any  
21 description that would clarify that?

10:27

22 A. MR. S. HOFER: There's no visible indentation in  
23 the topography, so I would conclude that it is flat.

24 Q. Okay, thank you.

25 MS. STUART: Now, to scroll back, Document

S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by Ms. Stuart

1           Manager, to more of the actual land in the photo. Just  
2           scroll. That's perfect. Thank you.

3           Q. It appears to me that manure has been spread on that --  
4           on that quarter. Can you tell me, is that correct?

5           A. MR. S. HOFER:           I can't say for certain, but it  
6           could be possible.

7           Q. Do you spread manure on this quarter?

8           A. MR. S. HOFER:           It used to be our garden actually,  
9           so we haven't in the past, but it could be possible  
10          that it was -- there was some manure this spring spread  
11          on that parcel.

10:28

12          Q. Thank you. And are you aware, do you have any  
13          restrictions from spreading manure on that site?

14          A. MR. S. HOFER:           Not that I'm aware of, no.

15          Q. Okay. Thank you very much.

16          MS. STUART:                In the same Exhibit Number 3,  
17          pdf page 12 of 29, I believe. Okay, so, again, that's  
18          faster than I can actually look at my question.

19          Q. In the first paragraph, it talks about -- it refers to  
20          an unnamed tributary that originates in the southwest  
21          corner of the CFO and defines it as ephemeral with a  
22          poorly designed channel.

10:29

23                 Can you describe the characters of water movement  
24                 from -- well, first of all, do you agree that there is  
25                 an ephemeral unnamed tributary on the southwest corner

S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by Ms. Stuart

1 of the site?

2 A. MR. S. HOFER: That is possible, yes.

3 Q. Can you describe what the character of that water  
4 movement would be in that area?

5 A. MR. S. HOFER: It predominantly moves to the  
6 southwest.

7 You're referring to the slope of the topography?

8 Q. I'm referring to what this -- what is referred to in  
9 this technical document when the approval officer says  
10 that there is an unnamed tributary that originates at  
11 the southwest corner and has a poorly designed channel  
12 that kind of moves southwest of that proposed site.

13 And I guess my question is, to be more clear,  
14 would you agree with the statement or disagree that  
15 that is ephemeral in nature and, you know, basically is  
16 it just a transitory -- a transitory movement of water  
17 that occurs briefly or has it a greater degree of  
18 permanence than that?

19 A. MR. S. HOFER: We don't see -- I could say that  
20 we don't see water flowing continuously, no. I'm not  
21 sure as to what the approval officer is referring to  
22 there. But based on your question, no, there is not --  
23 there is no water flowing continuously.

24 Q. Do you ever see water flowing from there?

25 A. MR. S. HOFER: I haven't, no.

10:30

10:31

S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by Ms. Stuart

1 Q. Okay. Okay. No, thank you. Thank you very much.

2 It was stated earlier, and Mr. Kennedy referred to  
3 this as well, that the expansion of the poultry barn,  
4 that that approval would result in an increased  
5 separation of 400 metres because of the location of the  
6 existing poultry barn.

7 Ms. Kozak spoke to the lack of economic inability  
8 of the unexpanded poultry facility, and you described  
9 that if the expansion application is approved, the  
10 current facility would move, you know, turkeys or young  
11 ducks, if I've got that right, to the facility. Did I  
12 get that right?

13 A. MR. S. HOFER: Yes.

14 Q. Okay, thank you. So I'm just wondering, if your  
15 application to expand the operation were to be denied,  
16 would you maintain the -- recognizing you, as you  
17 stated, couldn't maintain the 2500 bird level at the  
18 existing location, would you maintain it at the  
19 1500 bird level required to meet the upgraded animal  
20 wellbeing requirements? Or if it were to be denied,  
21 what would you do with that existing facility? Would  
22 you continue to operate it?

23 A. MR. S. HOFER: Well, as Ms. Kozak alluded to, the  
24 feasibility just on the financial perspective is  
25 probably not feasible.

10:32

10:32

## S. HOFER, A. KOZAK, D. TSCHETTER

Questioned by The Chair

1 Q. Okay.

2 A. MR. S. HOFER: To the upgrades necessary and the  
3 overhead costs.

4 Q. Okay.

5 MS. STUART: And with that, those are my  
6 questions, Madam Chair.

7 THE CHAIR: Thank you, Ms. Stuart.

8 Mr. Graham, do you have any questions for  
9 Little Bow Colony?

10 MR. GRAHAM: Not at this time. Thank you. 10:33

11 THE CHAIR: Great.

12 THE CHAIR QUESTIONS THE PANEL:

13 Q. I guess this is kind of a broad question that I have  
14 for the colony.

15 If this was approved and the buildings would move  
16 400 metres away, do you -- what would you believe to be  
17 any difference in environmental protection or lack of  
18 protection? Like you would be increasing the amount of  
19 manure on site, you would be increasing the amount of  
20 birds. How would you deal with any I'll just say  
21 environmental differences from what you have now to  
22 what you're proposing? 10:34

23 A. MR. S. HOFER: Due to the proximity to the  
24 waterway, with it being further away, it's possible  
25 that there would be less risk in the runoff and the

S. HOFER, A. KOZAK, D. TSCHETTER

Re-examined by Mr. Harrison

1 manure and what have you affecting the environment and  
2 the waterway.

3 Q. All right. Thank you.

4 THE CHAIR: And that's the only question that  
5 I had.

6 Is there any redirect evidence from Little Bow  
7 Colony?

8 MR. HARRISON: Just a brief redirect,  
9 Madam Chair.

10 MR. HARRISON RE-EXAMINES THE PANEL:

10:35

11 MR. HARRISON: I would ask that we go to page 23  
12 of Exhibit 3. And this is for Mr. Hofer.

13 Q. Mr. Hofer, you recall answering questions from Vulcan  
14 County with respect to whether any third-party  
15 environmental reviews had taken place with respect to  
16 the expanded CFO?

17 A. MR. S. HOFER: Yes.

18 Q. Now, is the site of the -- is the proposed site of the  
19 new expanded CFO near any wetland?

20 A. MR. S. HOFER: No.

10:35

21 Q. Do you recall answering questions from Board counsel,  
22 Mr. Kennedy, as well as the Board Chair, with respect  
23 to the location of the CFO to the Little Bow River?

24 A. MR. S. HOFER: Yes.

25 Q. Now, what type of safeguards does Little Bow Colony

S. HOFER, A. KOZAK, D. TSCHETTER

Re-examined by Mr. Harrison

1           have with respect to its current CFO operations and the  
2           impact of manure (indiscernible) --

3       **A. MR. S. HOFER:**            **In turn?**

4       **Q.**    Yes.

5       **A. MR. S. HOFER:**            **I'm assuming you're talking about**  
6           **our manure storage?**

7       **Q.**    Yes.

8       **A. MR. S. HOFER:**            **So the current manure storage**  
9           **facility is basically an open -- an open shelter. It's**  
10          **open to air shelter, concrete lined, whereas the**  
11          **proposed facility would be an enclosed environmentally**  
12          **controlled storage.**

10:37

13       **Q.**    And how close to the stable operation would the new  
14          manure storage facility be?

15       **A. MR. S. HOFER:**            **It would be attached.**

16       **Q.**    Okay.

17       **MR. HARRISON:**            Those are my questions on  
18          redirect.

19       **THE CHAIR:**                Thank you, Mr. Harrison.

20                Because we did have redirect evidence, we will  
21          give parties an opportunity to question on the  
22          redirect.

10:37

23                Vulcan County, Mr. Schneider, do you have any  
24          questions on the redirect?

25       **MR. SCHNEIDER:**            Vulcan County has no questions.

1 Thank you.

2 THE CHAIR: Thank you, sir.

3 Ms. Vance?

4 MS. VANCE: Field Services has no questions on  
5 redirect. Thank you.

6 THE CHAIR: Thank you.

7 Mr. Kennedy?

8 MR. KENNEDY: I have no questions. Thank you,  
9 Madam Chair.

10 THE CHAIR: Ms. Stuart?

10:38

11 MS. STUART: I have no questions. Thank you,  
12 Madam Chair.

13 THE CHAIR: Mr. Graham?

14 MR. GRAHAM: No questions at this time.  
15 Thank you.

16 THE CHAIR: Okay. And I have no questions as  
17 well.

18 So thank you, Little Bow Colony, for your direct  
19 evidence.

20 (PANEL STANDS DOWN)

10:38

21 THE CHAIR: We're through this portion of the  
22 proceedings, so I think it's probably a good time for  
23 us to take a break for everybody to maybe grab some ice  
24 water in this lovely weather that we've all been  
25 talking about.

1           My clock says that it is 10:38. How about we get  
2           back together again at 10:50, and we will begin with  
3           direct evidence from Vulcan County.

4       MR. HARRISON:           Thank you, Madam Chair.

5       THE CHAIR:            Okay. Thank you.

6       (ADJOURNMENT)

7       THE CHAIR:            I believe everyone is here, then,  
8           because I see all of our Panel, I know the colony has  
9           turned off their camera so that they will have  
10          better -- I'll call it "reception," but they are here.       10:50

11          So we will resume and we will start with direct  
12          evidence from Vulcan County.

13          Mr. Schneider, will you please lead us?

14       MR. KENNEDY:           Madam Chair --

15       MR. SCHNEIDER:        So there we go. Sorry, I hit the  
16          mute button there.

17          Okay. As far as Vulcan County's presentation  
18          goes, I'll refer to the April 8th letter from  
19          Vulcan County --

20       THE CHAIR:            Excuse me. Sorry, Mr. Schneider.       10:51

21          Before anyone provides evidence, we do need to have  
22          them sworn in or affirmed.

23       MR. SCHNEIDER:        Yeah. Sworn in is fine.

24       THE CHAIR:            Okay. Ms. Gerbrandt, would you  
25          please help.

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Evidence in chief for Vulcan County

1

2 J. SCHNEIDER, A. ERICKSON, R. DYCK (For Vulcan County),

3 sworn/affirmed

4 THE CHAIR: Mr. Schneider, please proceed.

5 EVIDENCE IN CHIEF FOR VULCAN COUNTY:

6 A. MR. SCHNEIDER: Thank you. Those were just the  
7 response to the questions that were asked by the NRCB  
8 during the application process, I don't have anything  
9 else to add on that. It was just our response to the  
10 questions that were asked of us. That included if this  
11 application was in a CFO exclusion zone, which this  
12 application did fall within our exclusion zone.

10:53

13 A few points that I would just like to add on  
14 that.

15 The exclusion zone was established with the  
16 ratification of the municipal development plan in 2012.  
17 This area was included in the development plan. It was  
18 once again noted in the intermunicipal development plan  
19 that was completed in conjunction with Willow Creek in  
20 2015. I will just note that the boundaries of that  
21 exclusion zone did not change in 2015. They were  
22 simply just noted. It was not expanded or changed in  
23 any way from the MDP of 2012.

10:54

24 I will just make a note in regards to  
25 notification. Vulcan County's notification process on

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Evidence in chief for Vulcan County

1           any development plan, whether it's an intermunicipal  
2           development plan or a municipal development plan, is  
3           that all affected landowners that would be included in  
4           the plan area do receive a direct mailout. So, in  
5           2012, the applicant would have received a direct  
6           mailing.

7           In addition to that, our policy in 2012 was we  
8           also sent a copy of the Vulcan Advocate to every  
9           ratepayer in Vulcan County, and as per our -- I guess  
10          under the *MGA* notification requirements, we did run  
11          notification of the municipal development plan in the  
12          newspaper in two consecutive weeks. So the applicant  
13          would also have received the Vulcan Advocate with that  
14          notification.

10:55

15          The applicant also would have received the  
16          notification on the Willow Creek 2015 IDP as they were  
17          also in that notification area. It would be sent to  
18          the registered landowner on title. So it would have --  
19          whoever is registered with Land Titles would have been  
20          the one to receive that letter. That's Vulcan County's  
21          policy, as well as, that also puts us into alignment  
22          with the *MGA* for notification requirements.

10:56

23          Speaking to the CFO exclusion zone, I will just  
24          refer to Section 20 of *AOPA*, which does refer that  
25          municipalities are able to set CFO exclusion zones.

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Evidence in chief for Vulcan County

1 That is also confirmed with Section 632 and 633 of the  
2 *Municipal Government Act*. So putting in these  
3 exclusion zones is -- is an option for municipalities  
4 to do.

5 Back in 2012, the reasoning for putting these  
6 exclusion zones in was the protection of the  
7 waterbodies within Vulcan County. Those -- those  
8 exclusion zones were applied to all waterbodies within  
9 Vulcan County. This was not -- this area was not  
10 treated any differently than every other waterbody  
11 within Vulcan County, and that's -- therefore, it was  
12 made to protect waterbodies from things like seasonal  
13 runoff and it was applied evenly across -- across the  
14 county there.

15 As far as -- I think that kind of covers why these  
16 exclusion zones have been put in place. Like I had  
17 mentioned, they've been in place since 2012.

18 It had been mentioned earlier, as far as looking  
19 at revising them, they do get typically revised on a  
20 10- to 15-year pattern. So that just depends on, you  
21 know, factors within the municipality, but this one has  
22 not been modified since 2012.

23 I think that basically covers it.

24 We were sent the referral letter. We saw the  
25 application like the general public and like everybody

10:57

10:57

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Evidence in chief for Vulcan County

1           else and we have provided our response to the four  
2           questions, and I don't think we have anything to --  
3           further to add on those four questions.

4           I will just ask if our manager of development or  
5           our planning advisor have any other -- anything else  
6           they would like to add at this time, and then we'll be  
7           ready for questions.

8       A.   MS. ERICKSON:           Thank you. I would just like to  
9           briefly speak on the municipal development plan, and I  
10          would suggest that we are now just completing our  
11          intermunicipal development plans and recognize that our  
12          MDP will require an update. And so I would hope that  
13          that starts and commences in 2022, and that, at that  
14          time, we would engage in some meaningful conversation  
15          with stakeholders within the county. Obviously, that  
16          would include operators of confined feeding operations.

10:58

17          I am unsure of Little Bow's timeline and if it  
18          would be -- if there would be opportunity to engage in  
19          that conversation and update the MDP in order to come  
20          together for this project.

10:59

21                 Thank you.

22       THE CHAIR:                   Thank you. Thank you,  
23                 Ms. Erickson.

24                 Will Ryan Dyck be providing any evidence for  
25                 Vulcan County?

**J. SCHNEIDER, A. ERICKSON, R. DYCK**  
**Cross-examined by Mr. Harrison**

1     **A. MR. DYCK:**                    **I think not at this time,**  
2                    **Madam Chair.**

3     **THE CHAIR:**                    Okay, thank you.

4                    So, Mr. Schneider, is that all for direct evidence  
5                    from the county?

6     **MR. SCHNEIDER:**                Yes, it is.

7     **THE CHAIR:**                    Okay. Thank you, sir.

8                    Okay. Now, we have an opportunity to question  
9                    Vulcan County, and first up is Little Bow Colony.

10                   Mr. Harrison, do you have any questions for the  
11                   county?

12     **MR. HARRISON:**                I do. I'll be asking  
13                    Mr. Schneider questions.

14     **MR. HARRISON CROSS-EXAMINES THE PANEL:**

15     **MR. HARRISON:**                Mr. Schneider -- I can jump into  
16                    it, Madam Chair?

17     **THE CHAIR:**                    Yes. Please do.

18     **Q. MR. HARRISON:**            Mr. Schneider, you recall  
19                    providing evidence that you -- that Vulcan County had  
20                    provided notice of the municipal development plan and  
21                    the intermunicipal development plan to Little Bow  
22                    Colony?

23     **A. MR. SCHNEIDER:**            **I reiterated the notification**  
24                    **process that Vulcan County follows, yes.**

25     **Q.** And you did not -- you were not the one who sent that

11:00

11:00

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Cross-examined by Mr. Harrison

1 correspondence to Little Bow Colony, did you?

2 A. MR. SCHNEIDER: I was not on council at the time  
3 of 2012.

4 Q. You weren't even on council at the time?

5 A. MR. SCHNEIDER: No. That is why I highlighted our  
6 notification process that Vulcan County used at the  
7 time and currently still uses.

8 Q. And who was it who the county placed the responsibility  
9 on to of sending notice?

10 A. MR. SCHNEIDER: That would fall to the chief  
11 administrative officer would be the one that would be  
12 ultimately responsible to make sure that the  
13 correspondence was sent out.

11:01

14 COURT REPORTER: Sorry, Mr. Harrison, sometimes  
15 you're hard to hear or understand.

16 MR. HARRISON: I'm sorry. I will try...

17 THE COURT REPORTER: Okay. Sorry?

18 MR. HARRISON: I'm just looking at my audio  
19 settings.

20 Q. To the best of your information and knowledge,  
21 Mr. Schneider, the Little Bow Colony is within the CFO  
22 exclusion zone in the municipal development plan;  
23 correct?

11:02

24 A. MR. SCHNEIDER: That is correct.

25 Q. And it's in the CFO exclusion zone for the Willow Creek

J. SCHNEIDER, A. ERICKSON, R. DYCK

Cross-examined by Mr. Harrison

1 IDP?

2 A. MR. SCHNEIDER: It is. It is highlighted in the  
3 Willow Creek IDP to show that there is a CFO exclusion  
4 zone in that area, yes.

5 Q. I just want to confirm that Little Bow Colony is in  
6 both exclusion zones.

7 A. MR. SCHNEIDER: Could you please restate your  
8 question? Or repeat your question, sorry.

9 Q. Yeah. Sorry. I just wanted to confirm that Little Bow  
10 Colony is in both the MDP exclusion zone and the IDP  
11 exclusion zone?

11:03

12 A. MR. SCHNEIDER: It is in the MDP exclusion zone,  
13 and that exclusion zone is mentioned in the IDP. But  
14 it is -- yeah, it is mentioned in both documents, yes.

15 Q. Okay, thank you.

16 MR. HARRISON: Madam Chair, I would like to put  
17 two documents side by side to the witness. I think the  
18 best way for me to do that is to share my screen, and I  
19 just canvass whether that would be acceptable to the  
20 Board.

11:03

21 THE CHAIR: Mr. Kennedy, are there any issues  
22 with that?

23 MR. KENNEDY: If we could just clarify.

24 Mr. Harrison, are we using existing exhibits that  
25 you're bringing up and just putting them side by side?

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Cross-examined by Mr. Harrison

1 MR. HARRISON: Yes, I could. And I can direct --

2 MR. KENNEDY: And I don't have an objection.

3 I'm just not sure whether technically -- we haven't  
4 done that before in a hearing, so perhaps we could rely  
5 on...

6 MR. HARRISON: What I have -- let me try this.

7 MR. KENNEDY: They've asked me whether I want to  
8 start my...

9 MR. HARRISON: Okay. Can everyone see what we  
10 are seeing?

11:05

11 MR. KENNEDY: Yes.

12 MR. HARRISON: Okay. So on the right is the IDP.  
13 That is at Exhibit 10, and on the left is the municipal  
14 development plan.

15 Now, the MDP was not exhibited, but I only plan on  
16 using language from the MDP that is contained at page 7  
17 of Exhibit 2, and so that language is with respect to  
18 the CF0, which is located on page 21 of the IDP. You  
19 should see it there on your screen.

20 So you have Policy 4.1 here, which is stated on,  
21 like I said, on page 7 of Exhibit 2.

11:06

22 And then on the IDP, I am turning to Policy 4.3.4.

23 Is everyone able to see that?

24 Q. Can you see that, Mr. Schneider?

25 A. MR. SCHNEIDER: Yeah. It's quite small, but

J. SCHNEIDER, A. ERICKSON, R. DYCK

Cross-examined by Mr. Harrison

1 I'm -- I got the page numbers from you.

2 Q. Okay, great. So Policy 4.1 of the MDP reads:

3 "New confined feeding operations (CFOs)  
4 are not permitted to be established and  
5 existing confined feeding operations are  
6 not permitted to expand within the  
7 exclusion areas as shown on the map in  
8 Appendix B."

9 And I'll repeat my question earlier. You would agree  
10 that Little Bow Colony does appear in the CFO exclusion  
11 zone on the map in Appendix B; correct?

11:07

12 A. MR. SCHNEIDER: Which map are you referring to?

13 Q. This will be the map at Appendix B, and you'll see that  
14 our clients' little slice of heaven is right over here.  
15 Right here. Can you see my cursor there?

16 A. MR. SCHNEIDER: You are highlighting over both  
17 highlighted and non-highlighted areas. It's quite  
18 small on your screen there.

19 Q. Fair enough, yes. But you did answer the question  
20 earlier that the CFO exclusion zone and Little Bow  
21 Colony was in both CFO exclusion zones. So I just  
22 wanted to show you there that it is in both areas.

11:08

23 So just to repeat, Clause 4.1 of the MDP:

24 (as read)

25 "New confined feeding operations are not

J. SCHNEIDER, A. ERICKSON, R. DYCK

Cross-examined by Mr. Harrison

1 permitted to be established and existing  
2 confined feeding operations are not  
3 permitted to expand within the exclusion  
4 areas as shown on the map in  
5 Appendix B."

6 And then on the IDP is Clause 4.3.4. And it reads:  
7 (as read)

8 "Any existing CFO permit holders may be  
9 allowed to expand operations within CFO  
10 Exclusion Areas if it is to upgrade and  
11 modernize (within the requirements of  
12 AOPA and Regulations), demonstrating  
13 changes will reduce negative  
14 impacts...to the residents of the area,  
15 additional environmental protection will  
16 be considered, and comments from both  
17 the municipalities are received and  
18 considered by the NRCB."

11:08

19 Do you see that?

20 A. MR. SCHNEIDER: I'm just trying to get to it.  
21 It's quite small on the screen here.

11:09

22 Q. Yeah. And you can refer to it on Exhibit 10, if you  
23 would like, and it's on page 12 of Exhibit 10. Let me  
24 know when you've had a chance to review that.

25 A. MR. SCHNEIDER: And your question on that one,

J. SCHNEIDER, A. ERICKSON, R. DYCK

Cross-examined by Mr. Harrison

1           **just to repeat, is?**

2           Q. I haven't provided you my question yet. My question  
3           is, you would agree with me that there is a conflict  
4           between the IDP and the MDP, would you not?

5           A. **MR. SCHNEIDER:**           **I would say that they are not the**  
6           **same -- they are not word for word the same, no.**

7           Q. Right. But one permits and extends to existing CFOs  
8           and the other does not; correct?

9           A. **MR. SCHNEIDER:**           **One said "does not" and one says**  
10          **"may."**

11:10

11          Q. Okay. Has Vulcan County given any consideration to how  
12          conflicts between municipal development plans and  
13          intermunicipal development plans...

14          THE COURT REPORTER:           Sorry, Mr. Harrison, I missed the  
15          end of your question.

16          MR. HARRISON:                 Sorry. I'll repeat it.

17          Q. Has Vulcan County given any consideration to how a  
18          conflict between a municipal development plan and an  
19          intermunicipal development plan gets resolved?

20          A. **MR. SCHNEIDER:**           **I'm not sure -- I'm not sure how**  
21          **to answer that one. I think it was stated by our**  
22          **planning department that our MDP will be looked -- or**  
23          **will be looked for revision -- or updated in the future**  
24          **to address any of those, as these IDPs were all put in**  
25          **place after the MDP was ratified in 2012.**

11:10

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           So at this point I would say the answer would be  
2           we are looking at updating the MDP in the future once  
3           our IDP process has been completed with all of the  
4           urban and rural municipalities that we border.

5       Q.   Okay. Is Vulcan County aware of Section 638(3) of the  
6           *Municipal Government Act*, that mandates that any  
7           conflict between a municipal development plan and an  
8           intermunicipal development plan is resolved in favour  
9           of the intermunicipal development plan?

10     A.   MR. SCHNEIDER:           Yes. That's what the *MGA* says. 11:11

11     Q.   Yes. So you're aware of that?

12     A.   MR. SCHNEIDER:           Yes.

13     Q.   Okay.

14     MR. HARRISON:                 Those are my questions for  
15           Vulcan County witnesses.

16     THE CHAIR:                     Thank you, Mr. Harrison.  
17           Field Services. Ms. Vance?

18     MS. VANCE:                     Field Services does not have any  
19           questions for these witnesses. Thank you.

20     THE CHAIR:                     Thanks, Ms. Vance. 11:12

21           Okay. NRCB staff and Panel. We'll start with  
22           Mr. Kennedy, please.

23     MR. KENNEDY:                   Thank you, Madam Chair.

24     MR. KENNEDY QUESTIONS THE PANEL:

25     Q.   Mr. Schneider, the Board, in setting this matter down

**J. SCHNEIDER, A. ERICKSON, R. DYCK**

**Questioned by Mr. Kennedy**

1           for hearing, asked four questions -- or set four  
2           questions down. And the first question is identify the  
3           municipal authority's rationale for establishing the  
4           relevant provisions in the MDP. And, of course, can  
5           you direct us to the part of the MDP that says these  
6           exclusion zones are established for these reasons, and  
7           so we can identify those reasons?

8           **A. MR. SCHNEIDER:**           Yeah. If you want to give us a  
9           minute here, we can -- we can get you the page number  
10          out of the MDP that might reference that.

11:13

11          **Q.** Take your time.

12          **A. MR. DYCK:**                Madam Chair?

13          **THE CHAIR:**                 Yes, sir.

14          **A. MR. DYCK:**                This is Ryan Dyck. I wonder if I  
15          may be able to step in and provide a little of the  
16          context that I think that the Board may be seeking and  
17          perhaps to supplement some of the responses to the  
18          questions, if that's okay.

19          **THE CHAIR:**                 Certainly. Anything that you can  
20          do to help answer the question would be much  
21          appreciated, Mr. Dyck.

11:14

22          **A. MR. DYCK:**                Okay. Firstly, I guess in terms  
23          of context and, as was stated, the MDP came into place  
24          prior to the IDP with Willow Creek.

25                 The county is very much aware of the consistency

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 of plans, requirements in the *Municipal Government Act*,  
2 Section 638, that counsel for Little Bow Colony  
3 referenced. And I think it brings about something  
4 we've been grappling with and talking about with the  
5 county, the need for consistency.

6 And, of course, it's our feeling that the law  
7 should be applied fairly and consistently. That  
8 sometimes is challenging to do because we are looking  
9 to establish municipal land use provisions within the  
10 relatively narrow scope provided for municipalities in 11:15  
11 Section 20, or whatever the relevant section of the  
12 *AOPA* is, and dealing with this multi-jurisdictional  
13 approval regime. The same sort of regime  
14 municipalities have to deal with for any types of  
15 entities where there's provincial interest, whether  
16 it's with the AUC, the AER, the NRCB, and sometimes  
17 that's quite challenging to do. We're left at the  
18 bottom of the ladder, but we want to be involved in the  
19 process, of course, and want to be involved in  
20 planning. Maybe that's a little context, stuff the 11:16  
21 Board might already know.

22 Anyways, I say that and go on to say that in a  
23 case like this where I do recognize the discrepancy  
24 that Mr. Harrison pointed out, and this may be an  
25 occasion where the Board chooses to read down the

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 full-on exclusion, I guess you could say, in policy  
2 Section 4.1 of the MDP in favour of the more lenient  
3 policy in 4.3.4 of the IDP. That may be the outcome of  
4 this. I'm not sure.

5 But I think what Reeve Schneider was trying to  
6 refer to was that in the IDP we were just looking to  
7 reference the existing CFO exclusion area out of the  
8 2012 MDP. The IDP did not establish new CFO exclusion  
9 area. And the reason we wanted to do that was to make  
10 sure that these things were consistent.

11:17

11 Now, it looks like we may have erred and that  
12 these policies aren't identical, but that may have been  
13 somewhat intentional. I can't exactly recall or know  
14 for sure.

15 I was involved in a limited capacity in the 2015  
16 plan, but I don't think any of the parties with the  
17 county today were involved in the 2012 MDP.

18 That's all I would say for now.

19 Q. MR. KENNEDY: Mr. Schneider and Ms. Erickson,  
20 have you found what you were looking for?

11:17

21 A. MR. SCHNEIDER: Yes. So this -- as I had stated  
22 to Mr. Harrison before, I was not part of the MDP  
23 process in 2012 as I was elected in 2013 to this -- to  
24 this role. So we are going off of the documents from  
25 the public hearing.

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           Now, I would -- I'm happy to have these sent in  
2           because they do address the rationale and because these  
3           questions were asked during the open house process and  
4           council did at the time did provide a response as to  
5           how they were -- how they were going to justify the  
6           exclusion zones -- or, sorry, what the reasoning is --  
7           was to justify the exclusion zones. We would be happy  
8           to send those in.

9           I can read the answer here and send in the  
10          documents, whatever you would prefer.

11:18

11          Q. Mr. Schneider, what I'm looking for, and my question  
12          was, is where do we find the explanation and the  
13          rationale within the municipal development plan?

14          A. MR. SCHNEIDER:           Pages 14 and 15 refer to the  
15          confined feeding operations. I believe that's -- I  
16          guess that would be probably what you'd be referring  
17          to?

18          Q. No. Well, perhaps. What I am looking for is the  
19          rationale within the municipal development plan for the  
20          establishment of the exclusion zone. So the CFO  
21          exclusion zone, which is set out on the map, and  
22          looking for the rationale.

11:19

23          So going back to the question that the Board posed  
24          in its decision which we've set down this hearing, is  
25          identify the municipal authority's rationale for

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           establishing the relevant provisions in the MDP. And  
2           normally you would look in the MDP for those relevant  
3           provisions and the justification. And that's what I'm  
4           asking for you, is to point out in the MDP the  
5           rationale for those exclusion zones?

6           **A. MR. SCHNEIDER:**           I don't believe the council at the  
7           time put them into the MDP. Like I said, they were  
8           included in the public hearing minutes there. I would  
9           say the only rationale is that, under the *MGA*, they  
10          established CFO exclusion zones. That's all that I  
11          would have to refer to in the MDP.

11:20

12          **Q.** So in terms of what you would suggest this panel do,  
13          because, of course, it's trying to understand the  
14          planning purposes for those exclusion zones and  
15          determining whether or not the Little Bow Colony's  
16          application should get an exemption from those  
17          exclusion zones, how do they understand what the  
18          purpose of that exclusion zone is from a planning  
19          perspective for Vulcan County?

20          **A. MR. SCHNEIDER:**           I would say I would refer to the  
21          minutes of the public hearing that was conducted when  
22          the MDP -- or the MDP was being developed, and those  
23          answers were in that document, and I would be happy to  
24          provide you a copy.

11:21

25                   But as far as reference specifically in the MDP,

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           they weren't, other than just being able to establish  
2           them under the *MGA* and then the rationale that was  
3           given during the public hearings in February of 2012.

4       Q.   And that exclusion zone is established at, more or  
5           less, at 1600 metres, and it looks like it follows  
6           quarter section boundaries as it's drawn out on the  
7           map. So is it a minimum of 1600 metres?

8       A.   MR. SCHNEIDER:           I believe that was the intention,  
9           and then they went by quarter lines because the river  
10          obviously is not -- not straight or uniform.

11:22

11       Q.   And can you help us understand why 1600 metres? Why  
12          was that distance chosen?

13       A.   MR. SCHNEIDER:           As I stated before, I wasn't part  
14          of the MDP development, so I don't have anything to add  
15          on that one.

16       Q.   Perhaps I should ask this question first. Does the  
17          county object to the exemption requested by Little Bow  
18          Colony?

19       A.   MR. SCHNEIDER:           The county has just responded to  
20          the questions asked by the NRCB and the one asked if it  
21          was in an exemption zone, and it is. To my knowledge,  
22          we've never been asked for a waiver. That's within the  
23          NRCB's jurisdiction and not Vulcan County's. We were  
24          simply answering the questions that were asked of us,  
25          and it does fall within the exemption zone -- or the

11:22

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 CFO exemption zone.

2 Q. Well, let's ask that question now. Does the county  
3 take exception with the request?

4 A. MR. SCHNEIDER: I cannot answer that. I would  
5 have to ask council. I am simply representing our --  
6 the letter that we sent. So I can't speak for the rest  
7 of council, I guess is what I'm trying to say.

8 Q. You understand, Mr. Schneider, that, you know, these  
9 four questions have been in front of the county for  
10 some time and, frankly, your answers aren't  
11 particularly helpful in understanding the county's  
12 position. So whatever you can do to kind of expand on  
13 these answers so that the Board has an understanding of  
14 where Vulcan County might stand with respect to its  
15 exemption -- exemption zone, it would be more than  
16 helpful.

17 A. MR. SCHNEIDER: I understand, but as -- your  
18 question is asking do we oppose the exemption zone.  
19 That was not a question that was asked of  
20 Vulcan County. If we had been asked that question, we  
21 would have been able to have given you a response on  
22 behalf of council.

23 You're asking me as one individual of a council to  
24 answer on behalf of seven.

25 So I apologize if that's not the answer you're

11:23

11:24

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 looking for, but if you would like that answer  
2 specifically, we can get that, but it will require the  
3 majority of council, you know, convening.

4 Q. Fair. One of the questions the Board asked and said it  
5 would be examining is: Is the relevant provision  
6 reasonable and reflective of good planning? Can you  
7 provide a response from Vulcan County as to, you know,  
8 how reasonable is the exemption -- or the exclusion  
9 zone, and how does that reflect good planning?

10 A. MR. SCHNEIDER: I think it reflects good planning  
11 because we have uniformly -- sorry, these zones are  
12 uniform across -- in -- sorry. These CFO exclusion  
13 zones are uniform on all of the waterbodies within  
14 Vulcan County.

11:25

15 Based on the notes from the public hearing and the  
16 responses that council of the day provided, it does --  
17 it is my opinion that the rationale was to protect the  
18 waterbodies and to prevent further development around  
19 those waterbodies. That's well within our mandate as a  
20 council and through the MGA to promote safe and viable  
21 communities. And I believe protecting our water  
22 sources is well within that mandate, and we are given  
23 that power to put CFO exclusion zones in areas through  
24 the MGA in Sections 632 and 633.

11:25

25 So I believe, through the uniformity as well as

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           our responsibility to create safe and viable  
2           communities, protection of our waterbodies is well  
3           within our mandate.

4       Q.   And to come back to the 1600 metres. Is there anything  
5           to support why 1600 metres was chosen as opposed to  
6           100 metres or 3,000 metres?

7       A.   MR. SCHNEIDER:           I can't speak to that. At the  
8           date that was the distance it was chosen, it was felt  
9           to be reasonable and applied across the entire  
10          County of Vulcan.

11:26

11       Q.   And does the county of Vulcan have anything that it can  
12          put forward that would suggest that 1600 metres is  
13          necessary as an exclusion zone to protect the  
14          waterbody?

15       A.   MR. SCHNEIDER:           I believe, according to the  
16          minutes, that was the number that they came up in  
17          consultation with the ratepayers and the council of the  
18          day. 1600 metres was felt to be a reasonable amount.

19       Q.   And I see that the same exclusion zone seems to apply  
20          around hamlets and villages. That's, I presume, for  
21          purposes other than the protection of waterbodies?

11:27

22       A.   MR. SCHNEIDER:           That is correct. In the minutes,  
23          they also reference to preserve existing and future  
24          quality of life and reducing the potential for future  
25          land use conflicts for residents within those areas.

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           Those areas have all been reexamined during the  
2           provincially mandated IDP process.

3           In some areas those exclusion zones have been  
4           expanded. Just as time goes on, operations getting  
5           larger and larger, the urbans have requested further  
6           setbacks from urban areas, but those -- those were all  
7           looked at on a case-by-case basis with each of the five  
8           villages and the one town within Vulcan County's  
9           border.

10           So all six of those exclusion zones have been  
11           recently reviewed during the IDP, but that was just in  
12           regards to proximity to urban areas.

11:28

13       Q.   And is there -- is there any portion of the exclusion  
14           zone that applies to the Little Bow Colony that the  
15           county of Vulcan would identify as creating a land-use  
16           conflict?

17           So is the exclusion zone where the Little Bow  
18           Colony is, is it there for land-use conflict purposes?

19       A.   MR. SCHNEIDER:       I can't speak directly to that  
20           because I wasn't part of those discussions, but I would  
21           say due to the uniform application of the -- of the  
22           zone -- the CFO exclusion zone to all waterbodies, I  
23           would say -- I would say that -- I guess we could  
24           speculate, but I would say it was -- I would venture a  
25           guess that, and according to the notes, that it was

11:29

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 more in regards to proximity to waterbodies, is what  
2 they were -- they were concerned about at the time of  
3 February 2012.

4 Q. And, Mr. Schneider, you would -- and I think this  
5 question is for you. You would accept that the purpose  
6 of the *Agricultural Operation Practices Act*, or one of  
7 the purposes, is to protect surface waterbodies?

8 A. I would say.

9 A. MR. SCHNEIDER: I would say it's one of the bodies  
10 that takes that into consideration, yes.

11:30

11 Q. And that it establishes standards and setbacks from  
12 surface waterbodies?

13 A. I believe it does, yes.

14 Q. And in establishing the 1600 metres in the MDP, did the  
15 County of Vulcan have regard for the fact that *AOPA* is  
16 there to address that very issue?

17 A. MR. SCHNEIDER: During the public -- the public  
18 hearings, open houses, and the consultation, they would  
19 have been -- they would have been referred. So I would  
20 say that they would have looked at all of the  
21 provincial standards from various bodies and then made  
22 a decision accordingly.

11:30

23 I realize that all those numbers might not match  
24 identically, but I believe, under the *MGA*, they would  
25 have been able to make a decision that works for their

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1 area as opposed to just a general legislation. But,  
2 once again, this was February of 2012, before my time  
3 on council.

4 Q. Thank you. And the colony, in its submission to the  
5 Board, suggested that there is not a similar exclusion  
6 zone setback on the Willow Creek side. Do you have any  
7 understanding as to whether that is true or not?

8 A. MR. SCHNEIDER: That would be a question that  
9 would need to be referred to Willow Creek. I could not  
10 speak to that.

11:31

11 Q. And is that the kind -- if the County of Vulcan is  
12 interested in protecting a surface waterbody, is that  
13 the kind of thing that might come up in discussions  
14 when an intermunicipal development plan is on the  
15 table?

16 A. MR. SCHNEIDER: It definitely would be a topic of  
17 conversation, but ultimately every municipality has to  
18 make decisions that they feel is in the best interests  
19 of their residences.

20 In this particular IDP, if this was what we  
21 identified, that there was no request for either side  
22 to change any of their exclusion zones, we primarily  
23 just highlighted it in the document because these are  
24 areas within the IDP -- sorry, these lands fall within  
25 the IDP area between Willow Creek and Vulcan County.

11:32

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Kennedy

1           So they were highlighted, but as far as any changes or  
2           requests for changes from either side, there were none.

3       Q.   And, Mr. Schneider, I just want to circle back to the  
4           very first question that I asked, and the Board -- the  
5           Board, in its decisions, wants to be respectful of  
6           municipalities' purposes for establishing its planning  
7           objectives and setting those out in its municipal  
8           development plan.

9           And when I asked that first question, it was  
10          really because I think the Board is going to struggle  
11          at the end of the day understanding why the exclusion  
12          zone was established in this instance and what planning  
13          purposes and objectives are there, because -- I asked  
14          you because I could not find them in the municipal  
15          development plan.

11:33

16          Would you agree with me that it's not particularly  
17          helpful if it's not in a municipal development plan?

18       A.   **MR. SCHNEIDER:**        I would agree that that is  
19          something that would need to be updated because, as I  
20          referenced before, referring to all of the rationale  
21          and the reasoning that was put into the public hearing  
22          notes, there was quite a -- there is quite a bit of  
23          reasoning put in there, but I cannot speak to why it  
24          was not included into the MDP as well, as I was not on  
25          council at that time.

11:33

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Graham

1 Q. Thank you.

2 MR. KENNEDY: Thank you, county. Thank you,  
3 Mr. Schneider.

4 Thank you, Madam Chair. Those are my questions.

5 THE CHAIR: Thank you, Mr. Kennedy.

6 Mr. Graham, we'll go to you next. Do you have any  
7 questions for Vulcan County?

8 MR. GRAHAM: Thank you.

9 MR. GRAHAM QUESTIONS THE PANEL:

10 Q. Reeve Schneider, can you tell me how in 2012 your MDP  
11 was developed, how you -- I think you've touched on it  
12 a couple of times, like, meetings held. How was the  
13 input from the public garnered? Or was this a council?  
14 Or was this more just a council document, not input  
15 from the public?

11:34

16 A. MR. SCHNEIDER: Sorry, you were cutting out, but I  
17 think I got the gist of your question here, and that  
18 was just how the MDP was developed and what process was  
19 followed.

20 So there were -- public input was sought and open  
21 houses were held. Through the minutes of the MDP open  
22 houses, there was input that was garnered from -- for  
23 example, surrounding villages. There was letters from  
24 the Village of Milo, the Village of Arrowwood.  
25 Actually even Mr. Cumming from the NRCB is also

11:35

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Mr. Graham

1 referenced in here. The NRCB was consulted. Alberta  
2 Health Services was consulted. The county of Newell  
3 was consulted. There's also individual letters from  
4 landowners in the area that were also sent in, and  
5 council provided responses to those in those minutes.

6 So it was a public process, and then the -- I  
7 guess the input that was gathered at that point was  
8 then incorporated into the MDP at the time, and that's  
9 how that document was created.

10 Q. Okay. Thank you. One other question. Does this fall  
11 within an ESA, this land of the colony's?

11:36

12 A. MR. SCHNEIDER: Sorry, we would have to refer --  
13 there was an ESA study done there, but I would have to  
14 look further into that to get you the proper answer to  
15 your question.

16 Q. Okay, thank you. It was mentioned before about an  
17 ephemeral waterbody. Is that part of the -- of what  
18 may be an ESA?

19 A. MR. SCHNEIDER: I would have to refer to that  
20 document. We -- we received the same information.  
21 That was -- that was an assessment done by the NRCB  
22 officer --

11:37

23 Q. Yes.

24 A. MR. SCHNEIDER: -- during the application there.  
25 But I have no -- I have no documentation to prove one

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 way or the other. I have not seen any technical study  
2 done on this land to either confirm or deny that.

3 Q. Okay, thank you.

4 MR. GRAHAM: That's all, Madam Chair.

5 THE CHAIR: Thank you, Mr. Graham.

6 Ms. Stuart, do you have any questions for the  
7 county?

8 MS. STUART: I do, Madam Chair. Thank you,  
9 although a number of them have been covered, so if  
10 you'll bear with me while I scan through my notes. I'm 11:38  
11 assuming that these will be for Mr. Schneider or  
12 Ms. Erickson, whoever is appropriate to address each  
13 question.

14 **MS. STUART QUESTIONS THE PANEL:**

15 Q. I am certainly recognizing the challenge when we're  
16 talking about an MDP that was developed before your  
17 time, and perhaps this is Mr. Schneider.

18 Are you able to speak to what the previous zoning  
19 for the quarter under discussion, the potential  
20 development site under discussion, what the previous 11:38  
21 zoning was and why it would have been zoned that way,  
22 before the exclusion zone was applied?

23 A. MR. SCHNEIDER: I would assume, just based on its  
24 location, the majority of the land in Vulcan County is  
25 zoned rural general. A pretty broad category for

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1           **agriculture-producing lands.**

2           Q.   Okay. Thank you very much.

3                     And, again, recognizing, you know, you weren't  
4           necessarily there, but do -- further to Mr. Kennedy's  
5           point that there's not much to go on in the MDP, but do  
6           you have a sense of what specific considerations, if  
7           any, were applied to that specific development area  
8           that's proposed, or if that area was simply part of the  
9           obvious 1600-metre approximate setback?

10          A.   **MR. SCHNEIDER:           I have no evidence to suggest that**  
11          **this area was looked at outside of the general area.**

11:39

12                     Like I said, the exclusion area was applied the  
13          same to every waterbody going through Vulcan County.  
14          So there's no -- there's no evidence and there was  
15          no -- nothing in the public hearing notes to suggest  
16          that this area was treated any differently than any  
17          other area in proximity to waterbodies within  
18          Vulcan County.

19          Q.   Okay. Thank you very much. And, further, I believe  
20          you stated that -- again, that rationale, as you've  
21          looked at in the meeting minutes from the public  
22          consultation process that was undertaken in the  
23          development of the MDP, that the rationale for the  
24          exclusion zone was to prevent further development  
25          around waterbodies and to protect waterbodies, and I

11:40

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 know you did mention that you believed in that area of  
2 the -- of the proposed CFO that it would be for  
3 waterbody protection.

4 But my question relates to the development side,  
5 and can you tell me, what -- what development, other  
6 than CFOs, is excluded from that 1600-metre margin that  
7 has them kind of uniformly placed across the county  
8 boundary?

9 A. MR. SCHNEIDER: So we do have setbacks from  
10 waterbodies for other types of development, but in the  
11 MDP, this is specifically referenced as CFO exclusion  
12 zones just because that is independently handled in the  
13 MGA in 632 and 633.

11:41

14 So this was just in reference to CFO exclusion  
15 zones, but we do have other setbacks that would apply  
16 to -- if you were going to build a house near the  
17 water, that would fall within our land use bylaw.  
18 Those setbacks would be contained in that document.

19 Q. Okay, thank you.

20 MS. STUART: Actually, Document Manager, can I  
21 ask you to bring up Exhibit 11, which is the MDP plan  
22 bylaw, pdf page 20 of 44.

11:42

23 Q. So in this section entitled "Confined Feeding  
24 Operations," we see that paragraph right at the top  
25 above the photograph. And I believe it is the -- let's

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 see, the second -- the sentence is: (as read)

2 "The preservation of agricultural

3 lifestyle is promoted and maintained

4 through the operations --"

5 So it's the next one that I'm thinking of: (as read)

6 "The potential issues caused by CFOs may

7 be mitigated through long-range planning

8 so these nearby settlements can still

9 enjoy the rural lifestyle of the

10 county."

11:42

11 Mr. Schneider, can you speak to what potential issues

12 caused by a CFO that could be mitigated through

13 long-term planning that you believe that statement may

14 refer to?

15 **A. MR. SCHNEIDER:** I believe issues within the  
16 county's purview would be things like transportation.

17 Also, of course, you know, proximity to res -- or,

18 sorry, urban areas.

19 I think it's quite a general statement there just

20 to try to mitigate any of these issues that might come

21 up. But, obviously, the NRCB does handle most of the

22 approvals, but local issues like setbacks, traffic,

23 things of that nature, do come to a council and they

24 work with the CFOs to try to mitigate, you know,

25 impacts on the area and any neighbours.

11:43

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 Q. Okay. Thank you for that.

2 So if you're thinking of some of those potential  
3 issues like transportation, for example, what are the  
4 differences that you see inherent in CFOs that would be  
5 different from, let's say, a more extensive  
6 agricultural operation?

7 A. MR. SCHNEIDER: I guess just to restate your  
8 question there, it's what's the differences between a  
9 smaller CFO and a larger CFO as far as impacts go? Is  
10 that where you're going?

11:44

11 Q. Yeah, I think so. I think when that statement in the  
12 MDP says "potential issues caused by CFOs can be  
13 mitigated," what would be the potential issues caused  
14 by CFOs that would require mitigation through  
15 long-range planning that would be different than say a  
16 non-CFO agricultural operation with respect to what the  
17 MDP is trying to get at here?

18 A. MR. SCHNEIDER: Yeah. The statement says, you  
19 know, some of those issues may be mitigated.

20 One of the biggest ones is traffic. You know, our  
21 road systems in Vulcan County are older, so we  
22 typically do try to work with any operator or any new  
23 operator to make sure that our road system is able to  
24 handle it. We don't want to -- we don't want to ruin  
25 the infrastructure because that doesn't benefit county

11:45

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 residents or the operators.

2 So, typically, our public works department is  
3 quite involved in these applications working with  
4 the -- working with the applicant to try to, you know,  
5 come up with the best routes to get their product in  
6 and out and -- you know, that's typically one of the  
7 biggest things.

8 As well as our development department, obviously,  
9 will work with them just to make sure that any other  
10 setbacks are met in -- that's usually in proximity to  
11 roads and quarter lines and things of that nature.

11:45

12 But those are typically the issues that we handle  
13 at a local level, and other things, you know, like  
14 odour and things like that are handled at NRCB level,  
15 and so not necessarily anything that the county can  
16 directly mitigate with the operator. It goes, of  
17 course, to a higher body.

18 Q. Okay, thank you. Thank you for that.

19 I'm not sure -- we can bring up the exhibit if you  
20 like, but you may recall from my questions earlier,  
21 when we looked at the technical document, we saw the  
22 photo of the site of the proposed development. Do you  
23 recall that?

11:46

24 And there it is because --

25 A. MR. SCHNEIDER: Yeah, there we go.

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by Ms. Stuart

1 Q. -- people can just read minds and find those things,  
2 so.

3 We've talked about the topography as described by  
4 the approval officer both in this document and by  
5 Little Bow, that they would characterize that  
6 topography as flat. Would you disagree or agree with  
7 that?

8 A. MR. SCHNEIDER: I have no firsthand knowledge of  
9 the site, and I have -- I have no documentation in my  
10 possession to prove one way or another.

11:47

11 Q. Okay. Fair enough. Thank you.

12 You referred to in -- I think in your -- some of  
13 your questions about whether a third-party  
14 environmental review had been undertaken for the site.

15 Can you tell me what your understanding of the  
16 requirements are with respect to an environmental  
17 review outside of the technical requirements driven by  
18 AOPA?

19 A. MR. SCHNEIDER: It was a general question in  
20 regards to the NRCB officer's assessment that there  
21 were areas that were sloping towards the river there in  
22 the application. We were just asking if there was any  
23 further documentation that we could review showing --  
24 showing one way or another as -- you know, we're  
25 looking at pictures and are unable to tell the terrain,

11:47

J. SCHNEIDER, A. ERICKSON, R. DYCK  
Questioned by The Chair

1 so as far as getting any -- we're just looking for some  
2 additional information on that, because I do not have  
3 any firsthand knowledge -- or I have not been on the  
4 site here, so I can't offer anything from my personal  
5 experience.

6 Q. Sure. I appreciate that. And, of course, as one --  
7 this is the last question -- Little Bow had, I believe,  
8 addressed the question that you have in Exhibit 8,  
9 page 2 of 3, and I know if I speak slowly enough that  
10 exhibit is just going to pop up, as it does.

11:48

11 So, in Number 4, about the Setback Distances. Has  
12 that question now been answered for you?

13 A. MR. SCHNEIDER: Question Number 3?

14 Q. Number 4. I apologize.

15 A. MR. SCHNEIDER: I believe, yes.

16 Q. To your satisfaction?

17 A. MR. SCHNEIDER: It's been answered, yes.

18 MS. STUART: Madam Chair, those are my  
19 questions. Thank you.

20 THE CHAIR: Thank you, Ms. Stuart.

11:49

21 I have a couple of questions.

22 **THE CHAIR QUESTIONS THE PANEL:**

23 Q. The first one flows, I guess, from one of Ms. Stuart's  
24 questions. She had asked, are there any other  
25 developments that have setbacks from waterbodies.

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1           And, Mr. Schneider, you had commented, well,  
2 houses is one, and I would expect that perhaps the  
3 reason for that is to keep them out of harm's way from  
4 flooding or possible erosion.

5           But, anyway, the question that I have following up  
6 on Ms. Stuart is, are you aware if there are any other  
7 types of developments besides CFOs that have setbacks  
8 from waterbodies for environmental reasons?

9       **A. MR. SCHNEIDER:**           I believe any development around a  
10 waterbody would have setbacks, and we would refer to  
11 Alberta Environment for their comment.

11:50

12           Development around lakes and rivers, it would be  
13 referred to them for the appropriate environmental  
14 setbacks, but each application is referred to the  
15 appropriate body if it is in proximity to water.

16           So I use houses as an example, but I would, I  
17 guess, further clarify that it would be any type of  
18 development around water would have a setback, and that  
19 would be laid out in our land use bylaw, but it would  
20 also -- it would also be referred to Alberta  
21 Environment if there was any additional setbacks that  
22 they would be looking for because of environmental  
23 reasons or anything that they would put out.

11:50

24           And then the planning Commission would make a  
25 decision based on the information that they had

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 received from Alberta Environment and in conjunction  
2 with the land use bylaw.

3 Q. Okay, thank you. And the other question that I had has  
4 to do again with your notification method, and agreed  
5 that this would have gone back to 2012 and sooner --  
6 and earlier because of how you would have notified  
7 people in advance of the open houses and such for the  
8 MDP.

9 And you had explained to us that, at that point in  
10 time, mailouts were sent to ratepayers, as well as  
11 notification in the local paper for a couple of weeks,  
12 that sort of thing.

13 And I guess -- I'm sensing a bit of a disconnect  
14 here, and I don't know if you can answer this or if you  
15 would care to presume or make a comment on it, but I  
16 find it very curious, the impact that this CFO  
17 exclusion zone that ended up in the 2012 MDP certainly  
18 directly affected, and continues to affect, Little Bow  
19 Colony, and yet they didn't comment on that potential  
20 CFO exclusion zone for the 2012 MDP.

21 And my familiarity with Hutterite colonies is that  
22 they typically do expand their CFOs.

23 I guess, does the county have any comment or  
24 anything to kind of -- I guess I'll just say, with  
25 regard to that, to help me perhaps understand the

11:51

11:52

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 disconnect that I'm sensing here?

2 A. MR. SCHNEIDER: As far as who chose to comment, I  
3 can't speak to that. I would suggest that, based on  
4 the letters that were sent in through the open house  
5 process, that landowners did -- some did choose to  
6 comment.

7 I would say from experience of eight years on  
8 council, we've held many open houses over the years,  
9 and I would say that a vast majority of ratepayers  
10 typically do not comment on, you know, plans like this. 11:54  
11 They are -- that's just kind of the way it is. I guess  
12 unless you feel that it's, you know, really affecting  
13 you, you might -- you might not or you might not look  
14 into it. It is a large document.

15 So I would say that there was a lot of input put  
16 into it from different bodies and members of the  
17 public, and I can't speak why Little Bow or -- would  
18 have not commented on it, but it was open to public  
19 comment in, I guess that would have been -- it would  
20 have started -- this process would have started late 11:54  
21 2011 and gone into -- I believe just the dates on these  
22 are, you know, beginning of 2012 is when a lot of the  
23 letters were sent in and the public hearing was held.

24 Q. Okay. Thank you, Mr. Schneider.

25 A. MR. SCHNEIDER: Sorry, I'll just let our manager

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 of development services supplement that question, if  
2 that's all right.

3 Q. Yes, please.

4 A. MS. ERICKSON: Thank you, Madam Chair. I just  
5 wanted to point to the MDP, it does have a section on  
6 public participation on page 2 of the municipal  
7 development plan document. It does provide a brief  
8 summary of just what was undertaken by the county and  
9 it discusses a direct notification by letter, newspaper  
10 advertisements, the holding of an open house, and the  
11 holding of a public hearing. Thank you.

11:55

12 Q. Okay. Thank you, Ms. Erickson.

13 THE CHAIR: And that's it for questions from  
14 me.

15 So, Vulcan County, you now have an opportunity to  
16 submit redirect evidence if you would like.

17 A. MR. SCHNEIDER: I don't think we've really got a  
18 whole lot to add at this point.

19 I guess as far as referral letter, this referral  
20 was for a new barn and not an upgrade of an existing  
21 barn. I realize that it's going to be replacing a  
22 barn, but it was a new one, so I believe that's why the  
23 questions were sent on behalf of the NRCB.

11:56

24 We do receive expansion requests for additional  
25 capacity on existing facilities on a -- you know, on a

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 somewhat regular basis.

2 I think that would be the only clarification I  
3 would point out on this one, is that our comments were  
4 in reference to a brand new barn. This wasn't in  
5 reference to upgrading of an existing facility.

6 But other than that, I think we've covered our  
7 points here and I'll just -- I'll allow our manager of  
8 development and planning or our planning advisor,  
9 Mr. Dyck, if they have anything further they would like  
10 to add before we close.

11 A. MS. ERICKSON: Not from me. Thank you.

12 A. MR. DYCK: Madam Chair, I would say just one  
13 or two things quickly.

14 I think -- you know, it may be obvious, but the  
15 approach with the 2012 MDP, this represents the first  
16 time the county addressed CFOs. It's the first MDP the  
17 county had since *AOPA* came into place. So it's the  
18 first look at this.

19 And so I think it made sense that we attempted to  
20 approach things consistently, at least with respect to  
21 watercourses and sticking with the 1-mile -- 1 mile is  
22 often used, of course, in rural areas, we also use  
23 that -- there was some questions about what other  
24 developments require, say, a 1 -mile setback.

25 In our land use bylaw, for example, we require

11:56

11:57

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 industrial developments within the rural industrial  
2 district to be set back 1 mile from environmentally  
3 significant areas, which generally correspond with  
4 river valleys.

5 There was another point I was going to make here.  
6 I'm just trying to recall.

7 I think the other thing I was going to say was --  
8 and the south -- the south office of the NRCB has  
9 communicated to us in the past that one of the best  
10 ways to go about establishing municipal land use  
11 provisions is through exclusionary zoning, exclusionary  
12 zoning because it's very clear, it's a hard yes or no,  
13 and that's typically been the approach in the region,  
14 not just in Vulcan County, as to how to go about  
15 establishing municipal land use provisions. There's no  
16 tests or conditions; it's a yes or no.

11:58

17 I think what we've identified with Vulcan County  
18 in the past year or two in doing all these new IDPs is  
19 that that may not be the best route moving forward for  
20 the county.

11:58

21 And I think with respect to this particular  
22 application, I might be bold to say, but a small barn  
23 like this could be seen as innocuous, but with  
24 exclusionary zoning, we're looking at anything that  
25 requires an approval, whether it's 350 head of cattle

J. SCHNEIDER, A. ERICKSON, R. DYCK

Questioned by The Chair

1 or 35,000 head feedlot. So that approach in its nature  
2 is limiting and challenging.

3 So I think we may be looking to look at things a  
4 little differently in the future, but as it stands  
5 right now, I think the county's concerns is that we  
6 want the laws to be applied fairly and consistently as  
7 much as is possible and reasonable.

8 THE CHAIR: Thank you, Mr. Dyck.

9 Mr. Schneider, does that complete the redirect  
10 evidence from Vulcan County?

11:59

11 MR. SCHNEIDER: Yes, it does. Thank you.

12 THE CHAIR: Okay. So we do give other parties  
13 an opportunity to ask any questions they may have on  
14 the redirect.

15 So I'll start with Little Bow Colony. Do you have  
16 any questions for Vulcan County?

17 MR. HARRISON: We have no further questions.

18 Thank you, Madam Chair.

19 THE CHAIR: Thank you.

20 Ms. Vance, Field Services?

12:00

21 MS. VANCE: Just one second. Yes, we do not  
22 have any questions. Thank you.

23 THE CHAIR: Okay, thanks.

24 Mr. Kennedy?

25 MR. KENNEDY: I have no further questions.

1 Thank you.

2 THE CHAIR: Mr. Graham?

3 MR. GRAHAM: The mouse didn't work. No  
4 questions at this time. Thank you.

5 THE CHAIR: Thank you.

6 Ms. Stuart?

7 MS. STUART: Thank you, Madam Chair. I have no  
8 additional questions, and thank you so much for the  
9 responses previously.

10 THE CHAIR: Okay. And I have no additional  
11 questions either.

12 (PANEL STANDS DOWN)

13 THE CHAIR: So the next section that we have  
14 is rebuttal evidence from Little Bow Colony.

15 Mr. Harrison, do you expect that you will have  
16 some rebuttal evidence?

17 MR. HARRISON: Little Bow has no further  
18 evidence.

19 THE CHAIR: Okay. So we're at the point now  
20 where we're at closing arguments, and we're at the  
21 point now where it's also noon.

22 So I am going to suggest that perhaps we take a  
23 lunch break. It will give parties a chance to digest  
24 the information, prepare their closing oral arguments,  
25 and then when we resume, it will be closing arguments.

12:00

12:01

1           The other thing we could do is just continue on  
2 with closing arguments and adjourn the hearing.

3           So I am -- I guess I'll just kind of canvass for  
4 what your wishes are.

5           And we'll start with Little Bow Colony. What  
6 would you prefer?

7 MR. HARRISON:           I think we would like to go into  
8 closing arguments, but I know everyone is probably  
9 getting hungry, so I'm a little sensitive to that.

10 THE CHAIR:           Vulcan County, what would you  
11 prefer? 12:02

12 MR. SCHNEIDER:       We would ask to continue into  
13 closing arguments.

14 THE CHAIR:           Okay. It looks like that's what  
15 the preference is, and certainly our stomachs may be  
16 feeling a bit empty, but if that's what people would  
17 like to do and that's great. We will then proceed into  
18 closing arguments.

19           Little Bow Colony, you're up first.

20 MR. HARRISON:       Thank you, Madam Chair. And 12:03  
21 thank you again, Panel members. We certainly  
22 appreciate the opportunity to be able to make  
23 submissions in front of this Board today.

24           I want to really kind of start my submissions -- I  
25 don't think it's going to be much of a surprise -- but

1 really focused on the Board, the reviews decision, and  
2 how it wanted to proceed today. And that's by looking  
3 at what I'll term as the "sources of discretion" that  
4 this Board has to approve this review.

5 And in my submission those two sources of  
6 discretion really come from -- the first comes from the  
7 interpretation of the municipal development plan, in  
8 conjunction with the intermunicipal development plan.

9 And then the second source of discretion, as we  
10 noted in the Board's decision, was from Section 25.4(g)  
11 of *AOPA*. 12:04

12 And I'd like to take the Board through my  
13 submissions on those two sources, because I think that  
14 each provides an independent mechanism for this Board  
15 to approve of my client's application for an expanded  
16 CFO.

17 And I'll start with the first source, which is the  
18 interpretation of the municipal development plan and  
19 the intermunicipal development plan.

20 And what I would like to do, again, with your  
21 permission, Madam Chair, is just pull up, if you would  
22 grant me that indulgence, the side by side of the MDP  
23 and the IDP. 12:04

24 THE CHAIR: Sure. We've seen these already,  
25 so I'll certainly...

1 MR. HARRISON: So we should have here the  
2 municipal development plan on the left-hand side, and  
3 I'll show you... it is the municipal development plan,  
4 and on the right-hand side the IDP between  
5 Vulcan County and the MD of Willow Creek.

6 And as I noted in my cross-examination of  
7 Mr. Schneider, Reeve Schneider, there is a discrepancy  
8 between -- there is a discrepancy between the CFO  
9 exclusionaries, as they are stated in both the MDP and  
10 the IDP. And I would characterize it as being, the MDP 12:05  
11 is somewhat more restrictive, whereas the IDP has an  
12 allotment for operations that are looking to expand,  
13 and that are looking to expand with an eye to  
14 mitigation as well.

15 And if we look at first the MDP policy at Clause  
16 4.1 there, the -- although it does say that existing  
17 CFOs are not permitted to expand, it does at the same  
18 time one breath later, in the second sentence, note  
19 that: (as read)

20 "...although new CFOs and expansions to 12:06  
21 existing CFOs are prohibited in the  
22 exclusion area, improvements with  
23 respect to the maintenance and/or  
24 environmental protection of an existing  
25 CFO are permitted."

1 And my submission on this point is that what this Board  
2 is going to first look to grapple with, in my  
3 estimation, is whether what my clients are looking to do  
4 is -- would meet the requirement of an improvement and  
5 thereby -- with respect to the maintenance and/or  
6 environmental protection of the existing CFO.

7 Now, I think that that's important to qualify  
8 because if this Board does find that my clients are  
9 improving their existing CFO and that the improvement  
10 will meet certain environmental enhancement, 12:07  
11 environmental standards, and maintenance standards, then  
12 I would submit that they will fall within Policy 4.1 and  
13 the allotment in the MDP to be able to expand that CFO.

14 And when we're interpreting legislation such as  
15 municipal development plans, which is a legislative  
16 enactment, rights that are granted to parties, or  
17 provisions that remove rights to parties such as an  
18 exclusion zone, have to be read with an eye to minimize  
19 the rights that are being taken away. They have to be  
20 read with the idea that, when you are taking away rights 12:08  
21 that would otherwise be granted to citizens or  
22 individuals, then those read downs (phonetic) need to be  
23 read strictly, and that is what I would submit ought to  
24 be read here.

25 There does appear in the MDP on the base of it a

1 distinction between, yes, we're not going to allow any  
2 expansion of CFOs, but if you are maintaining or  
3 improving your CFO or upgrading it, then you are allowed  
4 to -- then you are allowed. Then that is an allowable  
5 act.

6 And when we determine whether my client meets the  
7 condition that is established here as to whether they  
8 are maintaining and upgrading their facilities, the  
9 uncertainty that is, I would say, endemic to Clause 4.1  
10 of the MDP ought to be read in my client's favour.

12:09

11 And that becomes more evident, I would submit, when  
12 you see the side by side with the IDP. And the IDP  
13 Section or Clause 4.3.4 is equivalent to Clause 4.1 in  
14 the MDP, and Clause 4.3.4 reads that: (as read)

15 "Expansions are permitted insofar as  
16 those expansions will assist in reducing  
17 the negative impacts."

18 And I would submit that from my client's evidence today,  
19 that is clearly what is happening, that the expansions  
20 are there to pay for upgrades to animal welfare, the  
21 expansions are there to pay for enhanced environmental  
22 features, the expansions are there in order to maintain  
23 this CFO, to maintain this CFO with respect to  
24 inflationary pressures, and to make this CFO a more  
25 efficient operation.

12:09

1           Now, as I noted in my cross-examination of  
2           Reeve Schneider, the MGA does speak to conflicts between  
3           MDPs and IDPs.

4           And with your permission, Madam Chair, I could pull  
5           up the section of the MGA so that we could review it,  
6           and it is Section 638(3) of the MGA.

7           THE CHAIR:                   Mr. Kennedy, can you advise on  
8           that?

9           MR. KENNEDY:                 Yes. Well, by all means.  
10           Statutory references, we can introduce. I'm hoping  
11           Mr. -- there, he has it, which is far quicker than I  
12           could find it. Thank you.

12:10

13           MR. HARRISON:             Thank you.

14           So when *AOPA* references municipal development  
15           plans in the legislation, what it does is it references  
16           it by source to the *Municipal Government Act*, and the  
17           *Municipal Government Act* does not define a municipal  
18           development plan.

19           What a *Municipal Government Act* does is it defines  
20           statutory plans generally. And you'll see hear that  
21           statutory plans are both intermunicipal development  
22           plans and municipal development plans. So I think that  
23           it's not news to the Board that IDPs have just as much  
24           force with respect to *AOPA* and the requirement that  
25           IDPs and MDPs be given consideration as MDPs.

12:11

1           And if you look at the consistency of plans  
2 clause, which is 638 and sub (3) of that clause, it  
3 reads: (as read)

4           "An intermunicipal development plan  
5 prevails to the extent of any conflict  
6 or inconsistency between a municipal  
7 development plan, an area structure plan  
8 or an area redevelopment plan...in  
9 respect of the development of the land  
10 to which the conflicting or inconsistent  
11 plans apply."

12:12

12           So if we look back here at the IDP, it is clear that  
13 there is, at the very least, an inconsistency. And I  
14 would submit that that was, at least, acknowledged by  
15 Reeve Schneider during cross-examination, that there is  
16 an inconsistency between these two plans, if not an  
17 outright conflict. One appears to prohibit expansions,  
18 where the other permits expansions given certain  
19 qualifications.

20           I would submit that, given that the IDP is granted  
21 preference over the MDP with respect to conflicts, that  
22 the IDP is the plan that this Board ought to be applying  
23 as it pertains to my client. And there was no  
24 contradictory evidence before it by any party that what  
25 my client is doing here is upgrading and maintaining

12:12

1           this facility and this CFO operation for environmental  
2           stewardship for animal welfare and to pay for the costs  
3           relating to those upgrades.

4           I think that when we go through the MDP as well --  
5           and I see that this was a point that perhaps Mr. Kennedy  
6           was alluding to in some of his questions, we have  
7           objective sections within the MDP. And purpose sections  
8           within the statute are relative to the guiding light for  
9           the interpretation of a statutory object.

10           Of course, this is a legislative instrument, and so  
11           I would submit that the same interpretation ought to be  
12           granted in this case. And when we look at the objective  
13           underlining the municipal development plan, what we have  
14           here is a real desire to uplift the community. Not to  
15           prevent, but to enable.

12:13

16           And if we look through it, for example: (as read)  
17           "To protect good quality agricultural  
18           land while allowing for subdivision  
19           development to occur for a variety of  
20           uses as specified in the land use  
21           bylaw."

12:14

22           You heard my client's testimony today that the only  
23           other available site to this colony was agricultural  
24           land.

25           And so for this Board to prevent the approval from

1 going forward and to develop that agricultural land in a  
2 way that removes that production, it's not going to be  
3 beneficial and it's not going to be, I would submit, in  
4 coherence with the clear objection -- or objective of  
5 the municipal development plan.

6 We keep going through the objectives here. To  
7 encourage development opportunities within  
8 Vulcan County, to expand the county's assessment base  
9 while limiting conflicts with existing land uses.

10 My client noted that there is no conflict with  
11 respect to this CFO. There is not a single party that  
12 has raised an objection to this CFO including, it would  
13 appear, Vulcan County itself.

12:15

14 And then the second last sentence of the objective  
15 is "to continue to promote intermunicipal cooperation."  
16 And if we continue through the objective of the MDP, or  
17 the guiding light of the MDP, we have another provision.  
18 It's page -- pdf page 28, page 22 of the MDP. It  
19 discusses the idea that intermunicipal cooperation  
20 between districts is a real essential point to this  
21 municipal development plan. And that provides further  
22 credence to my submission that the IDP ought to be  
23 applied over any conflict with the MDP.

12:16

24 When you have an MDP that is focused very heavily  
25 on intermunicipal cooperation, which is a laudable goal

1 for this County, then that ought to be elevated by this  
2 Board and not disregarded by ignoring the idea or the  
3 fact that the IDP, the Willow Creek IDP, does allow for  
4 expansions to an existing CFO.

5 And then the last provision, which is the provision  
6 of the IDP that I think there is some relevance, is  
7 page 29 of the pdf, which is page -- sorry, 19 of the  
8 IDP. And Clauses -- Clause 5.2.8 establishes what I  
9 would term as "an indication of preeminence of the IDP  
10 over the MDP." It reads: (as read)

12:17

11 "A newly proposed Vulcan County  
12 statutory plan (excluding a Municipal  
13 Development Plan) or amendment that will  
14 have an impact on the Plan Area shall be  
15 referred to the M.D. of Willow Creek  
16 No. 26 for comment prior to a public  
17 hearing."

18 When we look through planning with counties generally,  
19 and we include in intermunicipal cooperation clauses  
20 that require those planning documents to be referred  
21 together to the other side. That, I would submit, is  
22 more evidence that this County intended for the IDP to  
23 take preeminence over the MDP.

12:17

24 I would submit that in either case under either the  
25 MDP or the IDP -- and I'll pull up those two sections

1           again. I submit that both permits for development of  
2           CFOs and the expanding of CFOS. I would acknowledge  
3           that the development under the IDP is more restrictive,  
4           but it still permits for that development, whereas in  
5           the IDP, the ability to expand an existing CFO is read  
6           directly into the legislative instrument itself.

7           In either case, this expansion is required so that  
8           the colony can have sufficient funds to be able to  
9           maintain these operations.

10           The question was posed in cross that how would the  
11           colony react to the situation where this application  
12           were to be denied. And the response by Mr. Hofer was  
13           unequivocal in that the operation would not be viable in  
14           the long run. And I don't think that that was the  
15           intent of either the MDP or the IDP. I think that when  
16           we were looking at elevating people, it is not to close  
17           down operations but to raise them up and improve them,  
18           not only for the betterment of the environment, but also  
19           the betterment of their own individual community.

20           Now, in that submission, as I noted, was the other  
21           aspect of this Board's discretionary power, and that's  
22           with respect to Section 25(4)(g) of *AOPA*.

23           I won't pull that up on the screen because -- I  
24           could pull it up on the screen, Madam Chair, if you  
25           would find it beneficial too.

12:19

12:20

1 THE CHAIR: Sure. Please do.

2 MR. HARRISON: So Section 25(4)(g) provides that:

3 (as read)

4 "In conducting a review, the Board must  
5 have regard to, but is not bound by, the  
6 municipal development plan."

7 And there is some statutory interpretation -- or some  
8 jurisprudence on this provision, and that comes from the  
9 2011 Alberta Court of Appeal decision in  
10 *Grow North Inc. v. Alberta NRCB*, and I can provide you  
11 with the citation of that. It's 2011 ABCA 236.

12:21

12 And in that leave to appeal decision, the Court  
13 held, and confirmed, the test under Section 25(4)(g),  
14 which was that: (as read)

15 "The issue that the Board has to grapple  
16 with is whether there is a compelling  
17 argument to override an existing  
18 municipal development plan."

19 So I started off my submissions with outlining that by  
20 approving this expansion to the existing CFO, this Board  
21 is not going to override the municipal development plan.  
22 And I walked the Board through my submissions on that  
23 basis.

12:22

24 But I would submit that, separate and apart from  
25 that argument, insofar as this Board finds that the

1 expansion to the existing CFO does override a municipal  
2 development plan, then I would submit that there is  
3 compelling reasons to override the MDP that we've just  
4 looked at.

5 Now, the arguments that I want to present are  
6 fourfold. First, that there's a conflict with the IDP  
7 such that that is a compelling reason unto itself to  
8 override an existing MDP.

9 Second, that lack of notice or participation by my  
10 client and in the municipal development process is  
11 another compelling reason. 12:23

12 Third, that my client has met and exceeded all  
13 other requirements, including setbacks, and that will go  
14 to also the environmental improvements that my client is  
15 going to be making with this expansion application.

16 And, finally, that expansion is necessary to pay  
17 for modernization of this facility and this confined  
18 feeding operation for environmental reasons, as well as  
19 welfare and comfort reasons for the animals. And that  
20 is a compelling reason to permit the expansion to  
21 proceed. 12:23

22 But I would also -- after hearing Vulcan County in  
23 cross-examination, I would add a fifth ground, and that  
24 is that there is no opposition, not even alluded here  
25 from Vulcan County itself, to my client's CFO

1 application.

2 The question was posed to Vulcan County as to  
3 whether they are taking a position on it, and the answer  
4 that I heard was that they were not, but that they could  
5 not call old council to determine whether to waive any  
6 objection to my client's CFO.

7 And I go through those five reasons -- I'll skip  
8 over the first because that involves the conflict with  
9 the IDP, which I would submit is a compelling reason to  
10 override a municipal development plan. We've already  
11 looked at that in my initial submission.

12:24

12 The second, I would note that the lack of notice  
13 that my client received, and the participation of the  
14 MDP process, really harkens back to how my client came  
15 to be at its current location.

16 They left their colony in Willow Creek in good  
17 faith, and they did so for the betterment and  
18 improvement of lives of many farmers and ranchers in  
19 southern Alberta who benefited from the project, the  
20 Twin Valley Dam project.

12:25

21 When they came to their current location, their  
22 CFOs were all grandfathered in. And obviously at that  
23 juncture there was no CFO in place because neither the  
24 MDP or the IDP had been approved by council.

25 I would submit that to impose an IDP and an MDP,

1 and given the history that my client has faced in moving  
2 to the new location, that the history that my client has  
3 faced and the challenges involved in moving to that new  
4 location, that care ought to be granted in determining  
5 whether this is a circumstance in which the MDP may be  
6 overridden.

7 You heard from my client repeatedly that every  
8 requirement is going to be met in this case, and the CFO  
9 that they are planning to expand is going to better and  
10 improve their operations.

12:26

11 And given that in their former location in  
12 Willow Creek, as was noted in cross-examination by  
13 Mr. Kennedy, there are no CFO exclusion zones. Given  
14 that that is the case, then care ought to be taken in  
15 determining whether their participation in the MDP  
16 process is a valid ground for determining whether the  
17 MDP may be overridden in this scenario, and I would  
18 submit that it is, if only given their history and their  
19 good faith in coming to the table.

20 Mr. Schneider provided no first-hand accounts that  
21 my clients, who are directly affected property owners,  
22 actually had any notice of either the public  
23 participation for the MDP, nor did they have any notice  
24 that the MDP was coming into place.

12:26

25 And when you have a colony of 100 people who are

1 moving across county lines to improve, not only your  
2 county, but the county that they left behind, I would  
3 submit that you want to go above and beyond to ensure  
4 that they are provided with the fair chance to comment  
5 on issues and circumstances that are going to directly  
6 affect them.

7 As I noted, this is an application that has met and  
8 exceeded all other requirements, including setbacks.  
9 But I would also say significantly, as I have repeated  
10 here a few times already, this is going to make this  
11 confined feeding operation better.

12:27

12 If your concern is contamination of waterways, then  
13 this CFO is for you because it is going to be moving it  
14 half a kilometre from Little Bow River. If your concern  
15 is environmental stewardship, then this CFO is also for  
16 you because of the automated systems that are going to  
17 be employed here, the extended caging that is going to  
18 be granted to the hens, both of which are going to  
19 mitigate environmental circumstances that are  
20 subjecting -- or that are subject and consequences of  
21 the CFO operation.

12:28

22 But I would submit that the most compelling reason  
23 to grant this approval is because of the consequence of  
24 what's going to happen if you do not grant this  
25 approval.

1           As I noted, it was clearly not the intent of the  
2 MDP to close down existing CFOs, and my clients are  
3 subject to the market, just like everyone in our  
4 province is. They are subject to inflationary pressures  
5 and rising costs, just like everyone else is. And when  
6 those pressures mean that you need to expand your  
7 operation in order to pay for change in regulations and  
8 a change in regulatory environment, then the consequence  
9 of not granting that approval, being that the operation  
10 will be terminated, does not accord with either the  
11 intent or purpose of *AOPA* or the MDP and IDP for which  
12 this Board ought to be granting due consideration.

12:29

13           And then, in closing, I'll just note that the lack  
14 of opposition to the CFO, even from neighbours who would  
15 be subject to it, is telling and ought to be granted due  
16 consideration by this Board as well.

17           And subject to any questions from you, Madam Chair,  
18 and Panel members, those are my submissions.

19 THE CHAIR:                   Thank you, Mr. Harrison.

20           Vulcan County, Mr. Schneider, closing arguments  
21 that you may have?

12:30

22 MR. WIEBE:                   You are on mute.

23 MR. SCHNEIDER:               Sorry, my apologies. I had a  
24 great lead off here, and now I've got to start all over  
25 again, but that's technology for you; right?

1           So I'll -- Madam Chair, members of the Panel, I  
2 thank you for the opportunity to allow us to comment on  
3 this application and go through the process here.

4           I don't have -- I don't have a lot to add here.  
5 Just a couple of final points and thoughts that I will  
6 leave.

7           Mr. Harrison referenced once again council -- my  
8 response when I was asked about council's opinion about  
9 granting a waiver. I would just like to once again  
10 state that Vulcan County was not approached for a  
11 waiver. I cannot speak on behalf of council, I'm  
12 representing the council's letter and the discussion  
13 that council had in regards to this, but we were not  
14 asked for a waiver. I cannot speak on behalf of  
15 council. I just would like to make that very clear.  
16 I'm not -- if that is something that needs to be  
17 answered by the Panel, that would have to go back to  
18 council. That's the way -- that's the way the  
19 *Municipal Government Act* and the municipal governance  
20 works. I would just like to make that point once again  
21 as it was referenced once again by Mr. Harrison in  
22 regards to me not answering on behalf of council if a  
23 waiver was -- would be favourable.

24           Also, in the original application there was an  
25 adjacent landowner that did submit comment in that.

12:31

12:32

1 That was in the first application there. It was from  
2 McDougall.

3 I believe as far as this goes, this document has  
4 been in place since 2012. Council did their  
5 due diligence, and from the public hearing minutes --  
6 the public minutes of that meeting, I was shown that  
7 consultation was done. I can't speak to why the  
8 applicant did not comment at this time, but we did  
9 follow our procedure as set out in the *MGA* for  
10 notification and holding our public hearings, so I do  
11 believe that the due diligence was done. 12:33

12 Nine years ago, we were all sitting in different  
13 chairs, so I can't speak to, you know, as -- I can't  
14 say that I personally delivered the letter to them, but  
15 our policy is to notify all adjacent neighbours, and I  
16 have no reason to believe that that would not have  
17 occurred at the time.

18 As far as exclusion zones, as a council, our  
19 mandate is to promote safe and viable communities,  
20 water protection is a huge issue, and I believe this  
21 council has been very consistent in our decisions to  
22 err on the side of caution when anything is around  
23 water. These exclusion zones are no different. They  
24 have been applied across the entire county  
25 consistently, and we have been provided no technical 12:33

1 documentation to suggest that this application would be  
2 any different than any others.

3 We're looking at it as a precedence. We have  
4 never been asked for a waiver or to be agreed to a  
5 waiver for any NRCB hearing. We simply answer the  
6 questions that were asked of us by the NRCB in the  
7 April 8th letter that Vulcan County submitted. Those  
8 are the answers. And at the time the question was,  
9 does it fall within a CFO exclusion zone, and our  
10 answer was, yes, it does. So I really don't have  
11 anything to add beyond that point. 12:34

12 We've answered -- we've answered the questions. I  
13 believe we've justified why we have these. Under the  
14 AOPA regulations, it states that counties are able to  
15 establish these zones. The MGA also establishes our  
16 authority to establish these zones. That is what  
17 council of 2012 did, and I will argue that it was done  
18 consistently across the entire county.

19 So I really don't have anything else to add to  
20 that. I just once again thank everyone for their time,  
21 and I guess if there was anything further, we're happy  
22 to answer -- answer any further questions. But  
23 thank you for your time. 12:35

24 THE CHAIR: Thank you, Mr. Schneider.

25 Mr. Harrison, does Little Bow Colony have reply

1 argument?

2 MR. HARRISON: I do not, Madam Chair. Thank you.

3 THE CHAIR: Thank you.

4 So I'll move into my closing remarks.

5 MS. VANCE: Madam Chair, this is Fiona Vance  
6 with NRCB Field Services. I obviously do not have a  
7 final argument to make because we did not participate  
8 in the evidence portion.

9 I suppose I just had a comment on scope, and it  
10 addresses Mr. Harrison's first closing argument, which  
11 related to IDPs and MDPs, and I suppose that, if the  
12 Board were to contemplate making a finding in the  
13 context of this decision in relation to how Section 20  
14 of *AOPA* and Section 638(3) of the MGA interact, as a  
15 matter of interpretation of Section 20 of *AOPA*, I  
16 suppose my comment is that, if the Board is  
17 contemplating making such an interpretation, I think  
18 Field Services would be grateful for an opportunity to  
19 participate in submissions on a purely interpretation  
20 point.

12:36

12:36

21 THE CHAIR: Thank you, Ms. Vance.

22 MS. VANCE: Thank you.

23 MR. KENNEDY: Sorry, I don't mean to jump in and  
24 complicate things, and I have no idea where the Panel  
25 might go on this issue, but just to be clear,

1 Ms. Vance, would you expect that to be done with  
2 written submissions if the Panel were to call on them?

3 MS. VANCE: Yes, I think from the perspective  
4 of Field Services, I would have to seek some  
5 instructions from my client before I were to make  
6 submissions; and, of course, we would be happy to do  
7 them in whatever fashion that would assist the Panel.

8 MR. KENNEDY: Good. Thank you.

9 THE CHAIR: Okay, thank you.

10 With that, I will move into my closing remarks. 12:37

11 The Panel would like to thank everyone for their  
12 participation in this review process. No doubt the  
13 proceedings can be a little intimidating, particularly  
14 now that we're in the Zoom world.

15 To both Vulcan County and Little Bow Colony, I  
16 would like to thank both of you for a job well done.

17 Thank you as well to Field Services for your  
18 attendance.

19 Thanks to Ms. Kaminski and Ms. Taylor, our  
20 onscreen document administrators who seem to have  
21 things there even before we ask for them. 12:38

22 Mr. Wiebe, our Zoom host, thank you.

23 Ms. Gerbrandt, our court reporter, Ms. Friend, our  
24 manager of Board reviews, and Mr. Kennedy, the Board's  
25 general counsel, to all of you, your assistance has

1           been essential to the Board for this virtual hearing.

2           We've received a lot of helpful information. The  
3           Panel will consider this information in reaching our  
4           decision, and we will provide our decision to all  
5           parties in the form of a written decision report, the  
6           Board's long-standing performance target for issuing  
7           its decision within 30 working days, or six weeks of  
8           the closing of the hearing, and I would expect that our  
9           decision will be completed within that time frame.

10           Thank you very much, everyone. The hearing is now  
11           closed.

12:39

12           (PROCEEDINGS ADJOURNED AT 12:39 P.M.)

13

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14           PROCEEDINGS CONCLUDED

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1 Certificate of Transcript

2

3 I, the undersigned, hereby certify that the foregoing pages  
4 1 to 128 are a complete and accurate transcript of the  
5 proceedings taken down by myself in shorthand and  
6 transcribed from my shorthand notes to the best of my skill  
7 and ability.

8 Dated at the City of Calgary, Province of Alberta, on  
9 June 29, 2021.

10

11

12

"Donna Gerbrandt"

13

Donna Gerbrandt, CSR(A)

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Official Court Reporter

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## - I N D E X -

VOLUME 1

1		
2		
3		
4		
5	<u>SAM HOFER</u> (For Little Bow Colony)	16
6	MR. HARRISON EXAMINES THE WITNESS	16
7	<u>ASHLEY KOZAK</u> (For Little Bow Colony)	32
8	MR. HARRISON EXAMINES THE WITNESS	32
9	<u>DAVID TSCHETTER</u> (For Little Bow Colony)	40
10	MR. HARRISON EXAMINES THE WITNESS	40
11	MR. SCHNEIDER CROSS-EXAMINES THE PANEL	46
12	MR. KENNEDY QUESTIONS THE PANEL	48
13	MS. STUART QUESTIONS THE PANEL	52
14	THE CHAIR QUESTIONS THE PANEL	57
15	MR. HARRISON RE-EXAMINES THE PANEL	58
16		
17	<u>J. SCHNEIDER, A. ERICKSON, R. DYCK</u> (For Vulcan	61
18	County)	
19	EVIDENCE IN CHIEF FOR VULCAN COUNTY	62
20	MR. HARRISON CROSS-EXAMINES THE PANEL	66
21	MR. KENNEDY QUESTIONS THE PANEL	73
22	MR. GRAHAM QUESTIONS THE PANEL	87
23	MS. STUART QUESTIONS THE PANEL	89
24	THE CHAIR QUESTIONS THE PANEL	96
25		

<p style="text-align: center;"><b>1</b></p> <p>1 [7] - 1:20, 2:4, 101:21, 101:24, 102:2, 128:4, 129:3  <b>1-mile</b> [1] - 101:21  <b>10</b> [11] - 21:8, 29:13, 30:15, 30:16, 33:2, 36:20, 37:12, 64:20, 69:13, 71:22, 71:23  <b>10,000</b> [2] - 7:13, 34:19  <b>100</b> [3] - 24:1, 82:6, 119:25  <b>10:38</b> [1] - 61:1  <b>10:50</b> [1] - 61:2  <b>10th</b> [2] - 7:3, 8:7  <b>11</b> [1] - 91:21  <b>1100</b> [5] - 18:13, 33:12, 34:9, 35:3, 37:7  <b>12</b> [4] - 21:11, 21:13, 54:17, 71:23  <b>128</b> [1] - 128:4  <b>12:39</b> [1] - 127:12  <b>14</b> [2] - 24:18, 77:14  <b>15</b> [6] - 25:8, 31:14, 33:2, 33:3, 36:20, 77:14  <b>15,000</b> [2] - 34:19, 37:12  <b>15-year</b> [1] - 64:20  <b>1500</b> [3] - 37:5, 38:13, 56:19  <b>16</b> [2] - 129:5, 129:6  <b>1600</b> [11] - 26:13, 51:19, 51:20, 79:5, 79:7, 79:11, 82:4, 82:5, 82:12, 82:18, 84:14  <b>1600-metre</b> [2] - 90:9, 91:6  <b>18th</b> [2] - 8:3, 8:5  <b>19</b> [1] - 114:7  <b>1980s</b> [3] - 19:25, 20:5, 23:14  <b>1983</b> [4] - 19:14, 19:17, 19:22, 25:1  <b>1st</b> [1] - 34:22</p>	<p>2019 [1] - 18:22  <b>2021</b> [11] - 1:21, 2:5, 6:20, 7:16, 7:17, 7:18, 8:1, 8:3, 8:6, 34:22, 128:9  <b>2021-04</b> [1] - 7:19  <b>2022</b> [1] - 65:13  <b>21</b> [1] - 69:18  <b>22</b> [1] - 113:18  <b>23</b> [2] - 53:7, 58:11  <b>236</b> [1] - 116:11  <b>24th</b> [1] - 8:6  <b>25</b> [1] - 33:11  <b>25(4)(g)</b> [3] - 115:22, 116:2, 116:13  <b>25,000</b> [1] - 7:13  <b>25.4(g)</b> [1] - 106:10  <b>2500</b> [8] - 18:11, 33:11, 34:3, 34:8, 34:21, 37:3, 37:13, 56:17  <b>26</b> [2] - 7:16, 114:16  <b>2600</b> [1] - 37:9  <b>28</b> [1] - 113:18  <b>29</b> [6] - 1:21, 2:5, 53:7, 54:17, 114:7, 128:9  <b>29th</b> [1] - 8:1  <b>2nd</b> [1] - 7:17</p>	<p style="text-align: center;"><b>6</b></p> <p><b>61</b> [1] - 129:17  <b>62</b> [1] - 129:19  <b>632</b> [3] - 64:1, 81:24, 91:13  <b>633</b> [3] - 64:1, 81:24, 91:13  <b>638</b> [2] - 75:2, 111:2  <b>638(3)</b> [3] - 73:5, 110:6, 125:14  <b>66</b> [1] - 129:20</p>	<p>64:2, 73:6, 75:1, 84:6, 110:16, 110:17, 110:19, 122:19  <b>act</b> [2] - 11:22, 109:5  <b>acted</b> [1] - 23:2  <b>acting</b> [1] - 13:11  <b>active</b> [1] - 43:23  <b>actively</b> [2] - 50:17, 51:8  <b>actual</b> [1] - 54:1  <b>add</b> [12] - 17:13, 62:9, 62:13, 65:3, 65:6, 79:14, 100:18, 101:10, 117:23, 122:4, 124:11, 124:19  <b>added</b> [3] - 17:13, 28:14, 38:25  <b>addition</b> [2] - 18:12, 63:7  <b>additional</b> [7] - 9:18, 71:15, 96:2, 97:21, 100:24, 104:8, 104:10  <b>address</b> [10] - 5:23, 8:21, 9:17, 10:6, 13:17, 14:1, 72:24, 77:2, 84:16, 89:12  <b>addressed</b> [2] - 96:8, 101:16  <b>addresses</b> [1] - 125:10  <b>adds</b> [1] - 17:8  <b>adjacent</b> [2] - 122:25, 123:15  <b>adjourn</b> [1] - 105:2  <b>ADJOURNED</b> [1] - 127:12  <b>ADJOURNMENT</b> [1] - 61:6  <b>adjustment</b> [1] - 28:3  <b>adjustments</b> [2] - 24:4  <b>adjusts</b> [1] - 28:9  <b>administrative</b> [1] - 67:11  <b>administrators</b> [1] - 126:20  <b>adopt</b> [1] - 15:15  <b>adopted</b> [1] - 15:20  <b>adopting</b> [1] - 15:17  <b>adoption</b> [1] - 50:24  <b>advance</b> [1] - 98:7  <b>advertisements</b> [1] - 100:10  <b>advise</b> [1] - 110:7  <b>advised</b> [4] - 7:3, 7:19, 7:24, 8:7  <b>advisor</b> [6] - 32:23, 32:25, 33:1, 65:5, 101:8  <b>advisors</b> [1] - 13:11  <b>Advocacy</b> [5] - 40:12, 40:17, 40:18, 41:10, 42:12  <b>advocate</b> [1] - 41:8  <b>Advocate</b> [2] - 63:8, 63:13  <b>AER</b> [1] - 75:16  <b>affect</b> [3] - 33:24, 98:18, 120:6  <b>affected</b> [5] - 7:1, 8:2, 63:3, 98:18, 119:21  <b>affecting</b> [2] - 58:1, 99:12  <b>affects</b> [1] - 50:20  <b>affirm</b> [2] - 15:23, 40:6  <b>affirmed</b> [6] - 9:3, 9:4, 16:4, 16:6, 40:8, 61:22</p>	<p><b>afford</b> [2] - 28:25, 38:9  <b>affordable</b> [1] - 17:12  <b>age</b> [2] - 33:23, 35:15  <b>aged</b> [1] - 19:2  <b>aging</b> [1] - 37:18  <b>ago</b> [2] - 37:23, 123:12  <b>agree</b> [10] - 18:8, 53:16, 53:18, 54:24, 55:14, 70:9, 72:3, 86:16, 86:18, 95:6  <b>agreed</b> [2] - 98:4, 124:4  <b>agricultural</b> [12] - 3:17, 41:2, 41:5, 41:8, 42:3, 42:20, 92:2, 93:6, 93:16, 112:17, 112:23, 113:1  <b>Agricultural</b> [2] - 43:2, 84:6  <b>agriculture</b> [4] - 3:10, 32:24, 45:6, 90:1  <b>agriculture-producing</b> [1] - 90:1  <b>air</b> [2] - 44:6, 59:10  <b>Alberta</b> [18] - 2:1, 3:8, 22:11, 23:8, 34:19, 42:11, 42:14, 44:24, 45:7, 88:1, 97:11, 97:20, 98:1, 116:9, 116:10, 118:19, 128:8  <b>alignment</b> [1] - 63:21  <b>allotment</b> [2] - 107:12, 108:13  <b>allotted</b> [2] - 23:6, 29:13  <b>allow</b> [5] - 23:19, 101:7, 109:1, 114:3, 122:2  <b>allowable</b> [1] - 109:4  <b>allowed</b> [5] - 6:13, 23:18, 71:9, 109:3, 109:4  <b>allowing</b> [1] - 112:18  <b>allows</b> [2] - 18:18, 19:9  <b>alluded</b> [2] - 56:23, 117:24  <b>alluding</b> [1] - 112:6  <b>amendment</b> [1] - 114:13  <b>Amicus</b> [1] - 5:8  <b>amount</b> [3] - 57:18, 57:19, 82:18  <b>amplifies</b> [1] - 44:13  <b>Andy</b> [2] - 4:16  <b>animal</b> [9] - 17:5, 19:6, 25:19, 27:14, 27:23, 44:14, 56:19, 109:20, 112:2  <b>animals</b> [3] - 28:15, 44:12, 117:19  <b>Anne</b> [1] - 12:19  <b>ANNE</b> [1] - 12:20  <b>answer</b> [21] - 6:14, 7:7, 41:25, 49:17, 52:10, 70:19, 72:21, 73:1, 74:20, 77:9, 80:4, 80:24, 80:25, 81:1, 88:14, 98:14, 118:3, 124:5, 124:10, 124:22  <b>answered</b> [6] - 48:15, 96:12, 96:17, 122:17, 124:12  <b>answering</b> [5] -</p>	
<p style="text-align: center;"><b>2</b></p> <p><b>2</b> [6] - 52:12, 53:4, 69:17, 69:21, 96:9, 100:6  <b>20</b> [12] - 19:1, 31:14, 33:11, 33:17, 35:16, 37:23, 45:1, 63:24, 75:11, 91:22, 125:13, 125:15  <b>200</b> [1] - 29:21  <b>200-metre</b> [2] - 30:6, 30:9  <b>2000</b> [1] - 26:2  <b>2002</b> [2] - 20:17, 26:2  <b>2010</b> [1] - 3:19  <b>2011</b> [3] - 99:21, 116:9, 116:11  <b>2012</b> [24] - 50:14, 62:16, 62:23, 63:5, 63:7, 64:5, 64:17, 64:22, 67:3, 72:25, 76:8, 76:17, 76:23, 79:3, 84:3, 85:2, 87:10, 98:5, 98:17, 98:20, 99:22, 101:15, 123:4, 124:17  <b>2013</b> [1] - 76:23  <b>2015</b> [4] - 62:20, 62:21, 63:16, 76:15</p>	<p style="text-align: center;"><b>3</b></p> <p><b>3</b> [8] - 36:14, 46:20, 53:3, 54:16, 58:12, 96:9, 96:13, 111:2  <b>3,000</b> [1] - 82:6  <b>30</b> [4] - 34:20, 35:17, 36:14, 127:7  <b>32</b> [2] - 129:7, 129:8  <b>32-14-25</b> [1] - 6:23  <b>35,000</b> [1] - 103:1  <b>350</b> [1] - 102:25  <b>38.1</b> [1] - 52:19  <b>3rd</b> [1] - 7:18</p>	<p style="text-align: center;"><b>7</b></p> <p><b>7</b> [2] - 69:16, 69:21  <b>7.6</b> [1] - 52:20  <b>73</b> [1] - 129:21  <b>780-720-2317</b> [1] - 5:24</p> <p style="text-align: center;"><b>8</b></p> <p><b>8</b> [2] - 52:8, 96:8  <b>87</b> [1] - 129:22  <b>89</b> [1] - 129:23  <b>8th</b> [2] - 61:18, 124:7</p>	<p style="text-align: center;"><b>9</b></p> <p><b>9</b> [2] - 7:25, 22:19  <b>90</b> [1] - 17:15  <b>96</b> [1] - 129:24  <b>9:00</b> [1] - 2:16</p> <p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> [1] - 7:25  <b>A.M</b> [1] - 2:16  <b>AAMD&amp;C</b> [1] - 3:14  <b>ABCA</b> [1] - 116:11  <b>abilities</b> [2] - 35:23, 38:1  <b>ability</b> [6] - 38:21, 39:6, 39:7, 39:9, 115:5, 128:7  <b>able</b> [21] - 13:24, 18:15, 21:25, 28:25, 37:5, 37:8, 38:9, 38:16, 38:22, 63:25, 69:23, 74:15, 79:1, 80:21, 84:25, 89:18, 93:23, 105:22, 108:13, 115:8, 124:14  <b>absolutely</b> [7] - 11:12, 18:5, 28:18, 30:11, 33:6, 38:24, 50:21  <b>accept</b> [1] - 84:5  <b>acceptable</b> [1] - 68:19  <b>accessible</b> [1] - 47:7  <b>accommodating</b> [1] - 2:24  <b>accord</b> [1] - 121:10  <b>according</b> [2] - 82:15, 83:25  <b>accordingly</b> [2] - 28:10, 84:22  <b>accounts</b> [1] - 119:20  <b>accurate</b> [1] - 128:4  <b>acknowledge</b> [1] - 115:2  <b>acknowledged</b> [1] - 111:14  <b>acres</b> [1] - 25:11  <b>acres</b> [1] - 29:8  <b>Act</b> [10] - 26:8, 43:2,</p>	<p style="text-align: center;"><b>4</b></p> <p><b>4</b> [7] - 11:7, 22:19, 22:21, 36:14, 52:12, 96:11, 96:14  <b>4.1</b> [8] - 69:20, 70:2, 70:23, 76:2, 107:16, 108:12, 109:9, 109:13  <b>4.3.4</b> [5] - 69:22, 71:6, 76:3, 109:13, 109:14  <b>40</b> [3] - 36:14, 129:9, 129:10  <b>40,000</b> [1] - 34:20  <b>400</b> [3] - 27:8, 56:5, 57:16  <b>400-metre</b> [1] - 27:3  <b>403-620-8294</b> [2] - 4:7, 4:8  <b>44</b> [1] - 91:22  <b>46</b> [1] - 129:11  <b>48</b> [1] - 129:12  <b>4:00</b> [2] - 10:13, 10:17  <b>4th</b> [2] - 6:20, 6:23</p>	<p style="text-align: center;"><b>5</b></p> <p><b>5.2.8</b> [1] - 114:8  <b>52</b> [1] - 129:13  <b>520</b> [1] - 34:23  <b>529</b> [2] - 21:16, 21:22  <b>57</b> [1] - 129:14  <b>58</b> [1] - 129:15</p>

<p>49:14, 58:13, 58:21, 79:24, 122:22</p> <p><b>answers</b> [6] - 14:19, 49:12, 78:23, 80:10, 80:13, 124:8</p> <p><b>anticipate</b> [2] - 50:16, 51:4</p> <p><b>anyway</b> [3] - 11:16, 24:18, 97:5</p> <p><b>anyways</b> [1] - 75:22</p> <p><b>AO</b> [1] - 53:13</p> <p><b>AOPA</b> [17] - 25:15, 45:8, 45:15, 63:24, 71:12, 75:12, 84:15, 95:18, 101:17, 106:11, 110:14, 110:24, 115:22, 121:11, 124:14, 125:14, 125:15</p> <p><b>AOPA's</b> [1] - 49:11</p> <p><b>apart</b> [1] - 116:24</p> <p><b>apologies</b> [2] - 47:14, 121:23</p> <p><b>apologize</b> [3] - 52:14, 80:25, 96:14</p> <p><b>apparent</b> [1] - 42:11</p> <p><b>appeal</b> [2] - 7:22, 116:12</p> <p><b>Appeal</b> [2] - 3:16, 116:9</p> <p><b>appear</b> [3] - 70:10, 108:25, 113:13</p> <p><b>Appendix</b> [4] - 70:8, 70:11, 70:13, 71:5</p> <p><b>applicant</b> [6] - 46:2, 63:5, 63:12, 63:15, 94:4, 123:8</p> <p><b>Application</b> [1] - 1:6</p> <p><b>application</b> [38] - 7:9, 7:10, 16:13, 16:19, 25:3, 26:1, 41:23, 42:7, 42:8, 42:24, 43:1, 44:17, 44:25, 45:10, 45:12, 45:13, 52:16, 56:9, 56:15, 62:8, 62:11, 62:12, 64:25, 78:16, 83:21, 88:24, 95:22, 97:14, 102:22, 106:15, 115:11, 117:15, 118:1, 120:7, 122:3, 122:24, 123:1, 124:1</p> <p><b>applications</b> [3] - 4:17, 45:14, 94:3</p> <p><b>applied</b> [11] - 17:25, 64:8, 64:13, 75:7, 82:9, 89:22, 90:7, 90:12, 103:6, 113:23, 123:24</p> <p><b>applies</b> [1] - 83:14</p> <p><b>apply</b> [4] - 36:25, 82:19, 91:15, 111:11</p> <p><b>applying</b> [1] - 111:22</p> <p><b>appointed</b> [1] - 22:10</p> <p><b>appreciate</b> [4] - 21:15, 27:21, 96:6, 105:22</p> <p><b>appreciated</b> [1] - 74:21</p> <p><b>approach</b> [4] - 101:15, 101:20, 102:13, 103:1</p> <p><b>approached</b> [2] - 18:24, 122:10</p> <p><b>appropriate</b> [3] - 89:12, 97:13, 97:15</p> <p><b>appropriately</b> [1] - 52:10</p> <p><b>Approval</b> [1] - 6:21</p>	<p><b>approval</b> [16] - 3:18, 7:4, 7:8, 25:6, 48:19, 53:13, 55:9, 55:21, 56:4, 75:13, 95:4, 102:25, 112:25, 120:23, 120:25, 121:9</p> <p><b>approvals</b> [1] - 92:22</p> <p><b>approve</b> [3] - 25:3, 106:4, 106:15</p> <p><b>approved</b> [4] - 25:14, 56:9, 57:15, 118:24</p> <p><b>approving</b> [1] - 116:20</p> <p><b>approximate</b> [1] - 90:9</p> <p><b>April</b> [2] - 61:18, 124:7</p> <p><b>Area</b> [1] - 114:14</p> <p><b>area</b> [26] - 25:12, 53:16, 55:4, 62:17, 63:4, 63:17, 64:9, 68:4, 71:14, 76:7, 76:9, 85:1, 85:25, 88:4, 90:7, 90:8, 90:11, 90:12, 90:16, 90:17, 91:1, 92:25, 107:22, 111:7, 111:8</p> <p><b>areas</b> [19] - 9:17, 20:22, 40:21, 41:6, 70:7, 70:17, 70:22, 71:4, 81:23, 82:25, 83:1, 83:3, 83:6, 83:12, 85:24, 92:18, 95:21, 101:22, 102:3</p> <p><b>Areas</b> [1] - 71:10</p> <p><b>argue</b> [1] - 124:17</p> <p><b>argument</b> [8] - 10:3, 10:5, 10:7, 116:17, 116:25, 125:1, 125:7, 125:10</p> <p><b>arguments</b> [9] - 104:20, 104:24, 104:25, 105:2, 105:8, 105:13, 105:18, 117:5, 121:20</p> <p><b>arise</b> [1] - 50:18</p> <p><b>arises</b> [1] - 13:13</p> <p><b>arising</b> [1] - 36:17</p> <p><b>Arrowwood</b> [1] - 87:24</p> <p><b>Ashley</b> [4] - 12:1, 12:6, 32:14, 32:16</p> <p><b>ASHLEY</b> [3] - 12:6, 32:18, 129:7</p> <p><b>aspect</b> [2] - 25:21, 115:21</p> <p><b>assess</b> [1] - 49:8</p> <p><b>assessment</b> [4] - 47:15, 88:21, 95:20, 113:8</p> <p><b>asset</b> [1] - 41:6</p> <p><b>assist</b> [3] - 23:2, 109:16, 126:7</p> <p><b>assistance</b> [1] - 126:25</p> <p><b>Assisting</b> [1] - 3:25</p> <p><b>assisting</b> [2] - 41:11, 43:8</p> <p><b>Association</b> [1] - 3:9</p> <p><b>assume</b> [2] - 50:19, 89:23</p> <p><b>assuming</b> [2] - 59:5, 89:11</p> <p><b>AT</b> [2] - 2:16, 127:12</p> <p><b>attached</b> [2] - 7:11, 59:15</p> <p><b>attempted</b> [1] - 101:19</p> <p><b>attend</b> [1] - 7:4</p> <p><b>attendance</b> [1] -</p>	<p>126:18</p> <p><b>AUC</b> [1] - 75:16</p> <p><b>audio</b> [1] - 67:18</p> <p><b>authority</b> [1] - 124:16</p> <p><b>authority's</b> [2] - 74:3, 77:25</p> <p><b>automated</b> [3] - 17:23, 28:2, 120:16</p> <p><b>automatic</b> [1] - 19:5</p> <p><b>automatically</b> [1] - 37:9</p> <p><b>automation</b> [1] - 44:9</p> <p><b>availability</b> [1] - 20:23</p> <p><b>available</b> [11] - 7:4, 7:7, 10:15, 10:17, 10:20, 10:23, 11:8, 13:25, 39:18, 47:7, 112:23</p> <p><b>average</b> [2] - 34:18, 35:16</p> <p><b>aware</b> [11] - 32:6, 48:16, 48:20, 51:5, 51:9, 54:12, 54:14, 73:5, 73:11, 74:25, 97:6</p>	<p>93:25</p> <p><b>benefited</b> [1] - 118:19</p> <p><b>benefits</b> [2] - 43:16</p> <p><b>best</b> [9] - 6:14, 8:14, 67:20, 68:18, 85:18, 94:5, 102:9, 102:19, 128:6</p> <p><b>better</b> [6] - 11:3, 14:23, 37:15, 61:10, 119:9, 120:11</p> <p><b>betterment</b> [3] - 115:18, 115:19, 118:17</p> <p><b>between</b> [17] - 41:20, 45:7, 51:14, 72:4, 72:12, 72:18, 73:7, 85:25, 93:8, 107:4, 107:8, 109:1, 110:2, 111:6, 111:16, 113:20</p> <p><b>beyond</b> [4] - 10:17, 25:23, 120:3, 124:11</p> <p><b>big</b> [1] - 34:7</p> <p><b>bigger</b> [5] - 35:13, 35:22, 36:12, 39:6, 39:9</p> <p><b>biggest</b> [2] - 93:20, 94:7</p> <p><b>Bill</b> [2] - 2:8, 3:25</p> <p><b>biodiversity</b> [1] - 47:19</p> <p><b>biographies</b> [1] - 3:2</p> <p><b>biosecurity</b> [2] - 17:5, 25:20</p> <p><b>bird</b> [4] - 34:14, 36:22, 56:17, 56:19</p> <p><b>birds</b> [13] - 28:1, 28:13, 33:23, 34:2, 34:8, 36:10, 37:3, 37:5, 37:6, 37:7, 37:9, 46:12, 57:20</p> <p><b>bit</b> [8] - 21:14, 28:6, 32:16, 38:4, 46:23, 86:22, 98:13, 105:16</p> <p><b>board</b> [1] - 41:17</p> <p><b>BOARD</b> [1] - 1:1</p> <p><b>Board</b> [51] - 2:1, 2:19, 3:2, 3:16, 4:2, 6:11, 8:3, 8:24, 9:11, 9:25, 18:9, 18:18, 18:24, 25:2, 45:9, 58:21, 58:22, 68:20, 73:25, 74:16, 75:21, 75:25, 77:23, 80:13, 81:4, 85:5, 86:4, 86:5, 86:10, 105:23, 106:1, 106:4, 106:12, 106:14, 108:1, 108:8, 110:23, 111:22, 112:25, 114:2, 116:4, 116:15, 116:20, 116:22, 116:25, 121:12, 121:16, 125:12, 125:16, 126:24, 127:1</p> <p><b>Board's</b> [6] - 2:25, 4:1, 106:10, 115:21, 126:24, 127:6</p> <p><b>boardroom</b> [1] - 40:3</p> <p><b>bodies</b> [3] - 84:9, 84:21, 99:16</p> <p><b>body</b> [2] - 94:17, 97:15</p> <p><b>bold</b> [1] - 102:22</p> <p><b>booklet</b> [1] - 21:10</p> <p><b>border</b> [3] - 48:24, 73:4, 83:9</p> <p><b>bottom</b> [1] - 75:18</p> <p><b>bound</b> [1] - 116:5</p> <p><b>boundaries</b> [3] -</p>	<p>26:12, 62:20, 79:6</p> <p><b>boundary</b> [2] - 26:13, 91:8</p> <p><b>Bourque</b> [4] - 22:9, 22:10, 22:14, 22:23</p> <p><b>BOW</b> [1] - 1:10</p> <p><b>Bow</b> [115] - 2:12, 2:21, 7:15, 8:5, 8:25, 9:21, 9:22, 10:3, 10:4, 10:22, 11:17, 11:18, 11:22, 11:25, 13:18, 15:22, 16:3, 16:6, 16:11, 16:23, 17:1, 18:10, 19:12, 19:17, 19:20, 20:19, 21:3, 22:1, 22:16, 23:11, 23:12, 24:22, 25:25, 26:6, 26:12, 27:4, 30:24, 31:8, 31:19, 32:3, 32:18, 32:21, 32:22, 32:25, 33:2, 33:5, 34:1, 34:21, 36:25, 37:2, 37:17, 38:8, 38:22, 40:8, 40:11, 40:14, 41:3, 41:18, 42:2, 42:6, 42:13, 42:16, 42:18, 42:23, 43:5, 43:21, 44:15, 44:19, 45:2, 45:10, 45:24, 48:5, 48:8, 48:11, 49:5, 49:17, 49:25, 50:9, 51:15, 52:4, 52:9, 52:22, 57:9, 58:6, 58:23, 58:25, 60:18, 66:9, 66:21, 67:1, 67:21, 68:5, 68:9, 70:10, 70:20, 75:2, 78:15, 79:17, 83:14, 83:17, 95:5, 96:7, 98:18, 99:17, 103:15, 104:14, 104:17, 105:5, 105:19, 120:14, 124:25, 126:15, 129:5, 129:7, 129:9</p> <p><b>Bow's</b> [6] - 7:9, 15:23, 25:3, 33:7, 41:22, 65:17</p> <p><b>brand</b> [1] - 101:4</p> <p><b>break</b> [6] - 6:16, 10:11, 14:15, 14:17, 60:23, 104:23</p> <p><b>breaks</b> [2] - 10:10, 10:13</p> <p><b>breath</b> [1] - 107:18</p> <p><b>Brethren</b> [2] - 2:20, 7:8</p> <p><b>BRETHREN</b> [1] - 1:10</p> <p><b>brief</b> [3] - 8:18, 58:8, 100:7</p> <p><b>briefly</b> [3] - 3:1, 55:17, 65:9</p> <p><b>bring</b> [2] - 91:21, 94:19</p> <p><b>bringing</b> [1] - 68:25</p> <p><b>brings</b> [3] - 17:14, 25:21, 75:3</p> <p><b>broad</b> [2] - 57:13, 89:25</p> <p><b>broader</b> [2] - 42:4, 42:12</p> <p><b>broadly</b> [1] - 49:13</p> <p><b>brought</b> [1] - 20:10</p> <p><b>build</b> [5] - 35:13, 35:21, 37:19, 37:22, 91:16</p> <p><b>building</b> [4] - 35:17, 35:20, 35:22, 53:8</p>
<b>B</b>				
<p><b>background</b> [1] - 3:24</p> <p><b>backing</b> [1] - 4:22</p> <p><b>balmy</b> [1] - 44:2</p> <p><b>bandwidth</b> [1] - 11:3</p> <p><b>barn</b> [33] - 7:11, 19:3, 27:19, 28:10, 28:11, 28:20, 33:17, 34:6, 35:12, 35:13, 35:16, 35:17, 35:20, 37:4, 37:12, 37:16, 37:19, 37:22, 37:24, 39:5, 39:7, 46:4, 46:16, 47:1, 47:17, 56:3, 56:6, 100:20, 100:21, 100:22, 101:4, 102:22</p> <p><b>barns</b> [6] - 33:22, 34:18, 34:20, 35:14, 36:12, 37:11</p> <p><b>base</b> [2] - 108:25, 113:8</p> <p><b>based</b> [7] - 49:21, 51:10, 55:22, 81:15, 89:23, 97:25, 99:3</p> <p><b>basins</b> [2] - 50:12</p> <p><b>basis</b> [5] - 19:10, 31:25, 83:7, 101:1, 116:23</p> <p><b>bear</b> [1] - 89:10</p> <p><b>becoming</b> [1] - 51:5</p> <p><b>beef</b> [1] - 3:7</p> <p><b>begin</b> [3] - 8:22, 13:4, 61:2</p> <p><b>beginning</b> [1] - 99:22</p> <p><b>behalf</b> [10] - 13:6, 16:3, 22:17, 51:1, 80:22, 80:24, 100:23, 122:11, 122:14, 122:22</p> <p><b>behest</b> [1] - 42:11</p> <p><b>behind</b> [1] - 120:2</p> <p><b>believes</b> [1] - 8:24</p> <p><b>below</b> [1] - 22:25</p> <p><b>beneath</b> [3] - 19:16, 19:24, 43:11</p> <p><b>beneficial</b> [3] - 8:25, 113:3, 115:25</p> <p><b>benefit</b> [2] - 49:15,</p>				

<p><b>buildings</b> [1] - 57:15  <b>business</b> [2] - 33:1, 33:5  <b>button</b> [1] - 61:16  <b>bylaw</b> [6] - 91:17, 91:22, 97:19, 98:2, 101:25, 112:21</p>	<p>43:13, 43:15, 44:13, 44:15, 44:20, 44:21, 44:25, 49:4, 49:23, 50:4, 50:5, 54:21, 58:16, 58:19, 58:23, 59:1, 62:11, 63:23, 63:25, 67:21, 67:25, 68:3, 69:18, 70:10, 70:20, 70:21, 71:8, 71:9, 76:7, 76:8, 77:20, 78:10, 80:1, 81:12, 81:23, 83:22, 91:2, 91:11, 91:14, 92:12, 93:9, 93:16, 98:16, 98:20, 106:16, 107:8, 107:25, 108:6, 108:9, 108:13, 109:3, 109:23, 109:24, 112:1, 113:11, 113:12, 114:4, 115:5, 116:20, 117:1, 117:25, 118:6, 118:23, 119:8, 119:13, 120:13, 120:15, 120:21, 121:14, 124:9  <b>CFOS</b> [1] - 115:2  <b>CFOs</b> [2] - 20:16, 21:5, 25:20, 70:3, 72:7, 91:6, 92:6, 92:24, 93:4, 93:12, 93:14, 97:7, 98:22, 101:16, 107:17, 107:20, 107:21, 109:2, 115:2, 118:22, 121:2  <b>CHAIR</b> [76] - 2:17, 2:23, 5:5, 10:21, 11:4, 11:10, 11:13, 12:9, 12:21, 13:1, 13:15, 14:1, 14:25, 15:6, 15:9, 15:12, 16:8, 32:9, 39:23, 40:5, 45:22, 46:19, 48:3, 48:9, 52:2, 57:7, 57:11, 57:12, 58:4, 59:19, 60:2, 60:6, 60:10, 60:13, 60:16, 60:21, 61:5, 61:7, 61:20, 61:24, 62:4, 65:22, 66:3, 66:7, 66:17, 68:21, 73:16, 73:20, 74:13, 74:19, 87:5, 89:5, 96:20, 96:22, 100:13, 103:8, 103:12, 103:19, 103:23, 104:2, 104:5, 104:10, 104:13, 104:19, 105:10, 105:14, 106:24, 110:7, 116:1, 121:19, 124:24, 125:3, 125:21, 126:9, 129:14, 129:24  <b>Chair</b> [46] - 2:6, 2:22, 11:19, 13:5, 13:10, 13:20, 15:11, 15:25, 21:7, 39:22, 40:12, 41:22, 46:18, 47:11, 48:6, 48:12, 52:1, 52:5, 57:6, 58:9, 58:22, 60:9, 60:12, 61:4, 61:14, 66:2, 66:16, 68:16, 73:23, 74:12, 87:4, 89:4, 89:8, 96:18, 100:4, 101:12, 103:18, 104:7, 105:20, 106:21, 110:4, 115:24, 121:17,</p>	<p>122:1, 125:2, 125:5  <b>chaired</b> [1] - 3:8  <b>chairing</b> [1] - 2:18  <b>chairs</b> [1] - 123:13  <b>challenge</b> [1] - 89:15  <b>challenges</b> [1] - 119:3  <b>challenging</b> [3] - 75:8, 75:17, 103:2  <b>Champion</b> [2] - 25:10, 31:14  <b>championed</b> [1] - 3:9  <b>chance</b> [5] - 9:7, 9:16, 71:24, 104:23, 120:4  <b>change</b> [4] - 62:21, 85:22, 121:7, 121:8  <b>changed</b> [1] - 62:22  <b>changes</b> [7] - 28:12, 33:19, 35:19, 37:25, 71:13, 86:1, 86:2  <b>changing</b> [1] - 17:3  <b>channel</b> [2] - 54:22, 55:11  <b>character</b> [1] - 55:3  <b>characterize</b> [2] - 95:5, 107:10  <b>characters</b> [1] - 54:23  <b>chicken</b> [2] - 7:11, 7:12  <b>chief</b> [2] - 4:14, 67:10  <b>CHIEF</b> [2] - 62:5, 129:19  <b>child</b> [1] - 16:25  <b>childhood</b> [3] - 24:18, 24:19  <b>choose</b> [1] - 99:5  <b>chooses</b> [1] - 75:25  <b>chose</b> [2] - 7:1, 99:2  <b>chosen</b> [3] - 79:12, 82:5, 82:8  <b>Church</b> [2] - 2:21, 7:9  <b>CHURCH</b> [1] - 1:10  <b>circle</b> [1] - 86:3  <b>circumstance</b> [1] - 119:5  <b>circumstances</b> [2] - 120:5, 120:19  <b>citation</b> [1] - 116:11  <b>citizens</b> [1] - 108:21  <b>City</b> [1] - 128:8  <b>clarification</b> [1] - 101:2  <b>clarify</b> [4] - 8:16, 53:21, 68:23, 97:17  <b>clause</b> [2] - 111:2  <b>Clause</b> [8] - 70:23, 71:6, 107:15, 109:9, 109:13, 109:14, 114:8  <b>Clauses</b> [1] - 114:8  <b>clauses</b> [1] - 114:19  <b>clear</b> [6] - 55:13, 102:12, 111:12, 113:4, 122:15, 125:25  <b>clearly</b> [4] - 4:24, 5:13, 109:19, 121:1  <b>Clearwater</b> [1] - 3:13  <b>client</b> [13] - 109:6, 111:23, 111:25, 113:10, 117:10, 117:12, 117:14, 118:13, 118:14, 119:1, 119:2, 119:7, 126:5  <b>client's</b> [6] - 106:15, 109:10, 109:18, 112:22, 117:25, 118:6</p>	<p><b>clients</b> [5] - 32:24, 108:3, 108:8, 119:21, 121:2  <b>clients'</b> [1] - 70:14  <b>clock</b> [1] - 61:1  <b>close</b> [4] - 59:13, 101:10, 115:16, 121:2  <b>closed</b> [1] - 127:11  <b>closer</b> [1] - 32:16  <b>closing</b> [13] - 104:20, 104:24, 104:25, 105:2, 105:8, 105:13, 105:18, 121:13, 121:20, 125:4, 125:10, 126:10, 127:8  <b>coherence</b> [1] - 113:4  <b>collaboration</b> [1] - 41:9  <b>College</b> [1] - 3:21  <b>colonies</b> [3] - 23:16, 41:11, 98:21  <b>colony</b> [28] - 16:13, 19:18, 19:24, 20:3, 20:6, 20:15, 20:16, 20:17, 22:13, 22:17, 23:15, 24:1, 24:2, 24:7, 26:3, 26:19, 40:21, 42:10, 43:8, 50:15, 57:14, 61:8, 85:4, 112:23, 115:8, 115:11, 118:16, 119:25  <b>Colony</b> [91] - 2:12, 7:15, 8:6, 8:25, 9:21, 9:22, 10:3, 10:5, 10:22, 11:17, 11:18, 11:22, 11:25, 12:3, 13:18, 15:22, 16:6, 16:11, 16:23, 17:1, 18:10, 19:13, 19:20, 20:19, 21:3, 22:1, 24:22, 26:6, 26:12, 30:24, 31:8, 31:19, 32:3, 32:18, 32:21, 32:22, 32:25, 33:2, 34:1, 36:25, 38:8, 38:22, 40:8, 40:11, 40:14, 41:4, 41:18, 41:19, 42:2, 42:6, 42:13, 42:16, 42:18, 42:23, 43:5, 43:21, 44:15, 44:19, 45:2, 45:10, 45:24, 48:5, 48:8, 48:11, 52:4, 57:9, 58:7, 58:25, 60:18, 66:9, 66:22, 67:1, 67:21, 68:5, 68:10, 70:10, 70:21, 75:2, 79:18, 83:14, 83:18, 98:19, 103:15, 104:14, 105:5, 105:19, 124:25, 126:15, 129:5, 129:7, 129:9  <b>colony's</b> [2] - 24:7, 88:11  <b>Colony's</b> [6] - 22:16, 22:22, 22:24, 25:25, 33:5, 78:15  <b>comfort</b> [2] - 28:14, 117:19  <b>comfortable</b> [1] - 6:9  <b>coming</b> [6] - 17:21, 36:1, 38:6, 39:12, 119:19, 119:24  <b>commence</b> [1] - 7:25  <b>COMMENCED</b> [1] - 2:16  <b>commences</b> [1] -</p>	<p>65:13  <b>comment</b> [15] - 97:11, 98:15, 98:19, 98:23, 99:2, 99:6, 99:10, 99:19, 114:16, 120:4, 122:2, 122:25, 123:8, 125:9, 125:16  <b>commented</b> [2] - 97:1, 99:18  <b>comments</b> [3] - 9:16, 71:16, 101:3  <b>Commission</b> [2] - 13:8, 97:24  <b>commission</b> [1] - 12:24  <b>commit</b> [1] - 18:23  <b>committed</b> [1] - 43:21  <b>communicated</b> [1] - 102:9  <b>communications</b> [1] - 5:22  <b>communities</b> [4] - 41:1, 81:21, 82:2, 123:19  <b>community</b> [7] - 6:4, 17:16, 20:11, 31:16, 31:20, 112:14, 115:19  <b>commute</b> [1] - 31:17  <b>comparison</b> [1] - 27:5  <b>compelling</b> [7] - 116:16, 117:3, 117:7, 117:11, 117:20, 118:9, 120:22  <b>competition</b> [2] - 37:14, 37:22  <b>competitive</b> [2] - 38:3, 39:19  <b>competitor</b> [1] - 35:5  <b>complete</b> [5] - 3:2, 8:10, 9:13, 103:9, 128:4  <b>completed</b> [5] - 9:20, 23:5, 62:19, 73:3, 127:9  <b>completing</b> [1] - 65:10  <b>completion</b> [1] - 23:3  <b>complex</b> [1] - 41:25  <b>compliance</b> [4] - 17:3, 17:22, 52:18, 52:23  <b>complicate</b> [1] - 125:24  <b>comprehensive</b> [1] - 23:7  <b>compromised</b> [1] - 40:19  <b>concern</b> [3] - 42:21, 120:12, 120:14  <b>concerned</b> [2] - 20:12, 84:2  <b>concerning</b> [1] - 45:5  <b>concerns</b> [1] - 103:5  <b>conclude</b> [3] - 29:25, 42:14, 53:23  <b>CONCLUDED</b> [1] - 127:14  <b>conclusion</b> [1] - 25:7  <b>concrete</b> [1] - 59:10  <b>condition</b> [1] - 109:7  <b>conditioning</b> [1] - 44:6  <b>conditions</b> [1] - 102:16  <b>conducted</b> [1] - 78:21  <b>conducting</b> [1] -</p>
<b>C</b>				
<p><b>CA</b> [1] - 32:22  <b>cage</b> [2] - 39:2, 39:4  <b>cages</b> [2] - 39:5, 39:9  <b>caging</b> [6] - 17:24, 27:16, 27:18, 27:20, 37:4, 120:17  <b>calf</b> [1] - 21:23  <b>Calgary</b> [1] - 128:8  <b>camera</b> [3] - 11:2, 11:5, 61:9  <b>Canada</b> [1] - 27:17  <b>cannot</b> [5] - 52:18, 80:4, 86:23, 122:11, 122:14  <b>canvass</b> [2] - 68:19, 105:3  <b>capacities</b> [1] - 29:17  <b>capacity</b> [4] - 32:4, 33:15, 76:15, 100:25  <b>capital</b> [4] - 34:10, 34:12, 35:7, 36:22  <b>capture</b> [1] - 35:22  <b>care</b> [4] - 32:12, 98:15, 119:4, 119:14  <b>Carolyn</b> [3] - 2:10, 4:21  <b>Carstairs</b> [1] - 3:20  <b>case</b> [11] - 24:1, 25:9, 41:12, 75:23, 83:7, 112:12, 114:24, 115:7, 119:8, 119:14  <b>case-by-case</b> [1] - 83:7  <b>catch</b> [1] - 50:12  <b>category</b> [1] - 89:25  <b>cattle</b> [1] - 102:25  <b>Cattle</b> [1] - 3:8  <b>caused</b> [4] - 92:6, 92:12, 93:12, 93:13  <b>caution</b> [1] - 123:22  <b>central</b> [2] - 3:7, 3:14  <b>centreline</b> [1] - 52:20  <b>centres</b> [1] - 31:22  <b>certain</b> [6] - 6:6, 34:2, 44:1, 54:5, 108:10, 111:18  <b>certainly</b> [6] - 45:1, 74:19, 89:15, 98:17, 105:15, 105:21  <b>certainly..</b> [1] - 106:25  <b>Certificate</b> [1] - 128:1  <b>certify</b> [1] - 128:3  <b>CFO</b> [118] - 6:22, 7:10, 11:25, 16:3, 16:12, 16:19, 17:16, 17:20, 18:10, 18:11, 19:13, 19:14, 22:7, 24:23, 25:4, 25:25, 26:9, 26:18, 26:20, 26:21, 26:24, 26:25, 27:5, 27:10, 27:12, 28:19, 28:25, 29:3, 29:21, 30:4, 30:5, 30:13, 33:8, 34:11, 34:12, 35:8, 36:3, 36:21, 38:5, 38:22, 41:23, 42:7, 43:7,</p>				

<p>116:4  <b>confined</b> [21] - 6:22, 22:3, 22:6, 24:23, 42:17, 42:24, 44:18, 45:5, 45:11, 45:14, 48:16, 48:17, 49:7, 65:16, 70:3, 70:5, 70:25, 71:2, 77:15, 117:17, 120:11  <b>Confined</b> [1] - 91:23  <b>confirm</b> [7] - 21:25, 52:18, 52:23, 53:8, 68:5, 68:9, 89:2  <b>confirmed</b> [2] - 64:1, 116:13  <b>conflict</b> [11] - 72:3, 72:18, 73:7, 83:16, 83:18, 111:5, 111:17, 113:10, 113:23, 117:6, 118:8  <b>conflicting</b> [1] - 111:10  <b>conflicts</b> [5] - 72:12, 82:25, 110:2, 111:21, 113:9  <b>conjunction</b> [4] - 36:15, 62:19, 98:1, 106:8  <b>connected</b> [1] - 4:12  <b>consecutive</b> [1] - 63:12  <b>consequence</b> [2] - 120:23, 121:8  <b>consequences</b> [1] - 120:20  <b>CONSERVATION</b> [1] - 1:1  <b>Conservation</b> [2] - 2:1, 2:19  <b>consider</b> [5] - 9:5, 15:20, 29:5, 37:25, 127:3  <b>consideration</b> [7] - 27:23, 72:11, 72:17, 84:10, 110:25, 121:12, 121:16  <b>considerations</b> [1] - 90:6  <b>considered</b> [2] - 71:16, 71:18  <b>considers</b> [1] - 45:13  <b>consistency</b> [3] - 74:25, 75:5, 111:1  <b>consistent</b> [2] - 76:10, 123:21  <b>consistently</b> [5] - 75:7, 101:20, 103:6, 123:25, 124:18  <b>consists</b> [1] - 18:11  <b>constituents</b> [1] - 51:1  <b>constraints</b> [1] - 33:16  <b>construct</b> [1] - 7:11  <b>constructed</b> [1] - 46:6  <b>constructing</b> [1] - 24:3  <b>construction</b> [2] - 23:22, 28:18  <b>consultation</b> [4] - 82:17, 84:18, 90:22, 123:7  <b>consulted</b> [3] - 88:1, 88:2, 88:3  <b>consumer</b> [3] - 41:15, 43:22, 43:23  <b>contact</b> [1] - 5:22  <b>contained</b> [2] - 69:16, 91:18</p>	<p><b>contamination</b> [1] - 120:12  <b>contemplate</b> [1] - 125:12  <b>contemplating</b> [1] - 125:17  <b>context</b> [4] - 74:16, 74:23, 75:20, 125:13  <b>continue</b> [6] - 38:17, 56:22, 105:1, 105:12, 113:15, 113:16  <b>continued</b> [1] - 20:3  <b>continues</b> [1] - 98:18  <b>continuous</b> [2] - 28:2, 28:3  <b>continuously</b> [4] - 19:5, 28:8, 55:20, 55:23  <b>contradictory</b> [1] - 111:24  <b>control</b> [4] - 17:24, 19:5, 44:10, 44:16  <b>controlled</b> [2] - 28:11, 59:12  <b>controlling</b> [1] - 19:3  <b>convening</b> [1] - 81:3  <b>conventional</b> [1] - 27:18  <b>conversation</b> [3] - 65:14, 65:19, 85:17  <b>cooperated</b> [1] - 23:1  <b>cooperation</b> [4] - 113:15, 113:19, 113:25, 114:19  <b>copy</b> [2] - 63:8, 78:24  <b>corner</b> [3] - 54:21, 54:25, 55:11  <b>correct</b> [15] - 16:21, 22:5, 26:4, 26:17, 26:23, 28:22, 28:23, 31:23, 41:14, 54:4, 67:23, 67:24, 70:11, 72:8, 82:22  <b>correspond</b> [1] - 102:3  <b>correspondence</b> [2] - 67:1, 67:13  <b>cost</b> [2] - 29:15, 35:11  <b>costly</b> [1] - 28:22  <b>costs</b> [23] - 17:11, 17:21, 17:23, 18:2, 18:4, 29:18, 34:10, 34:12, 34:15, 35:7, 36:3, 36:4, 36:6, 36:11, 36:13, 36:22, 38:5, 38:12, 38:18, 38:25, 57:3, 112:2, 121:5  <b>Costs</b> [1] - 36:17  <b>Council</b> [4] - 40:12, 40:17, 40:18, 42:12  <b>council</b> [31] - 67:2, 67:4, 77:4, 78:6, 80:5, 80:7, 80:22, 80:23, 81:3, 81:16, 81:20, 82:17, 85:3, 86:25, 87:13, 87:14, 88:5, 92:23, 99:8, 118:5, 118:24, 122:7, 122:11, 122:13, 122:15, 122:18, 122:22, 123:4, 123:18, 123:21, 124:17  <b>Council's</b> [1] - 41:11  <b>council's</b> [2] - 122:8, 122:12</p>	<p><b>councillor</b> [1] - 3:19  <b>Counsel</b> [1] - 2:8  <b>counsel</b> [9] - 4:1, 9:11, 9:25, 11:21, 14:14, 14:16, 58:21, 75:2, 126:25  <b>counties</b> [2] - 114:18, 124:14  <b>county</b> [39] - 12:12, 48:22, 50:16, 51:5, 51:12, 52:15, 52:24, 64:14, 65:15, 66:5, 66:11, 67:8, 74:25, 75:5, 76:17, 79:17, 79:19, 80:2, 80:9, 82:11, 83:15, 87:2, 88:2, 89:7, 91:7, 92:10, 93:25, 94:15, 98:23, 100:8, 101:16, 110:17, 102:20, 120:1, 120:2, 123:24, 124:18  <b>County</b> [80] - 2:13, 3:13, 6:24, 8:4, 9:1, 9:22, 9:24, 10:4, 10:16, 12:10, 12:11, 12:14, 12:20, 12:22, 13:6, 13:12, 15:2, 15:4, 25:23, 30:18, 31:9, 32:4, 42:9, 45:25, 52:17, 58:14, 59:23, 59:25, 61:3, 61:12, 61:19, 62:2, 63:9, 64:7, 64:9, 64:11, 65:25, 66:9, 66:19, 66:24, 67:6, 72:11, 72:17, 73:5, 73:15, 78:19, 80:14, 80:20, 81:7, 81:14, 82:10, 84:15, 85:11, 85:25, 87:7, 89:24, 90:13, 90:18, 93:21, 100:15, 102:14, 102:17, 103:10, 103:16, 105:10, 107:5, 113:8, 113:13, 114:1, 114:11, 114:22, 117:22, 117:25, 118:2, 121:20, 122:10, 124:7, 126:15, 129:18  <b>COUNTY</b> [2] - 62:5, 129:19  <b>county's</b> [6] - 48:17, 50:24, 80:11, 92:16, 103:5, 113:8  <b>County's</b> [7] - 10:7, 52:8, 61:17, 62:25, 63:20, 79:23, 83:8  <b>couple</b> [5] - 46:2, 87:12, 96:21, 98:11, 122:5  <b>course</b> [11] - 28:15, 74:4, 75:6, 75:19, 78:13, 92:17, 94:17, 96:6, 101:22, 112:10, 126:6  <b>court</b> [5] - 5:8, 5:14, 9:3, 11:16, 126:23  <b>COURT</b> [4] - 11:9, 67:14, 67:17, 72:14  <b>Court</b> [4] - 2:14, 116:9, 116:12, 128:14  <b>cover</b> [1] - 36:10  <b>covered</b> [2] - 89:9, 101:6  <b>covers</b> [2] - 64:15, 64:23  <b>create</b> [2] - 44:11, 82:1</p>	<p><b>created</b> [1] - 88:9  <b>creating</b> [1] - 83:15  <b>credence</b> [1] - 113:22  <b>Creek</b> [20] - 6:25, 21:4, 21:5, 26:14, 26:16, 26:22, 48:24, 62:19, 63:16, 67:25, 68:3, 74:24, 85:6, 85:9, 85:25, 107:5, 114:3, 114:15, 118:16, 119:12  <b>creep</b> [1] - 33:18  <b>crop</b> [1] - 29:19  <b>cropland</b> [1] - 30:10  <b>CROSS</b> [4] - 46:3, 66:14, 129:11, 129:20  <b>cross</b> [6] - 107:6, 110:1, 111:15, 115:10, 117:23, 119:12  <b>cross-examination</b> [5] - 107:6, 110:1, 111:15, 117:23, 119:12  <b>CROSS-EXAMINES</b> [4] - 46:3, 66:14, 129:11, 129:20  <b>CSR(A)</b> [2] - 2:14, 128:13  <b>culture</b> [1] - 44:22  <b>Cumming</b> [3] - 4:16, 7:5, 87:25  <b>curious</b> [1] - 98:16  <b>current</b> [29] - 18:9, 18:11, 19:20, 20:18, 21:2, 26:25, 27:5, 27:9, 30:4, 33:10, 36:6, 38:9, 38:22, 38:23, 39:5, 39:14, 42:10, 43:12, 43:18, 44:1, 46:8, 49:18, 50:13, 51:11, 56:10, 59:1, 59:8, 118:15, 118:21  <b>cursor</b> [1] - 70:15  <b>curtailed</b> [1] - 23:13  <b>cut</b> [1] - 11:2  <b>cutting</b> [1] - 87:16</p>	<p>116:12, 125:13, 127:4, 127:5, 127:7, 127:9  <b>Decision</b> [2] - 2:20, 6:20  <b>decisions</b> [3] - 85:18, 86:5, 123:21  <b>decrease</b> [1] - 39:1  <b>define</b> [1] - 110:17  <b>defines</b> [2] - 54:21, 110:19  <b>definitely</b> [2] - 24:20, 85:16  <b>degree</b> [1] - 55:17  <b>delivered</b> [1] - 123:14  <b>demand</b> [8] - 17:9, 33:20, 34:25, 35:4, 38:1, 39:16, 41:15, 43:22  <b>demonstrating</b> [1] - 71:12  <b>denial</b> [1] - 45:4  <b>denied</b> [4] - 7:8, 56:15, 56:20, 115:12  <b>deny</b> [1] - 89:2  <b>department</b> [3] - 72:22, 94:2, 94:8  <b>deputy</b> [1] - 3:13  <b>describe</b> [4] - 24:8, 34:10, 54:23, 55:3  <b>described</b> [2] - 56:8, 95:3  <b>description</b> [1] - 53:21  <b>design</b> [1] - 24:8  <b>designed</b> [3] - 23:6, 54:22, 55:11  <b>designing</b> [1] - 24:3  <b>desire</b> [1] - 112:14  <b>Despite</b> [1] - 22:21  <b>despite</b> [1] - 22:24  <b>details</b> [1] - 16:14  <b>determine</b> [6] - 47:1, 47:9, 47:16, 47:24, 109:6, 118:5  <b>determining</b> [4] - 78:15, 119:4, 119:15, 119:16  <b>deterrents</b> [1] - 43:14  <b>devalues</b> [1] - 29:24  <b>develop</b> [2] - 23:18, 113:1  <b>developed</b> [6] - 27:11, 47:4, 78:22, 87:11, 87:18, 89:16  <b>developing</b> [1] - 27:9  <b>development</b> [85] - 12:16, 12:19, 20:13, 25:18, 29:6, 30:2, 30:21, 45:16, 45:17, 50:13, 50:17, 50:23, 51:6, 62:16, 62:17, 62:18, 63:1, 63:2, 63:11, 65:4, 65:9, 65:11, 66:20, 66:21, 67:22, 69:14, 72:12, 72:13, 72:18, 72:19, 73:7, 73:8, 73:9, 77:13, 77:19, 79:14, 81:18, 85:14, 86:8, 86:15, 86:17, 89:20, 90:7, 90:23, 90:24, 91:4, 91:5, 91:10, 94:8, 94:22, 97:9, 97:12, 97:18, 100:1, 100:7, 101:8, 106:7, 106:8, 106:18, 106:19, 107:2, 107:3,</p>
---	--	---	---	--

<p>108:15, 110:14, 110:18, 110:21, 110:22, 111:4, 111:7, 111:9, 112:13, 112:19, 113:5, 113:7, 113:21, 115:1, 115:3, 115:4, 116:6, 116:18, 116:21, 117:2, 117:10, 118:10</p> <p><b>Development</b> [2] - 3:15, 114:13</p> <p><b>developments</b> [4] - 96:25, 97:7, 101:24, 102:1</p> <p><b>difference</b> [1] - 57:17</p> <p><b>differences</b> [4] - 28:14, 57:21, 93:4, 93:8</p> <p><b>different</b> [9] - 29:10, 29:14, 47:20, 93:5, 93:15, 99:16, 123:12, 123:23, 124:2</p> <p><b>differently</b> [3] - 64:10, 90:16, 103:4</p> <p><b>difficulties</b> [1] - 4:3</p> <p><b>digest</b> [1] - 104:23</p> <p><b>diligence</b> [2] - 123:5, 123:11</p> <p><b>diminished</b> [1] - 38:13</p> <p><b>direct</b> [16] - 6:15, 8:22, 9:1, 9:20, 15:21, 32:25, 46:2, 60:18, 61:3, 61:11, 63:4, 63:5, 66:4, 69:1, 74:5, 100:9</p> <p><b>directed</b> [1] - 8:1</p> <p><b>directly</b> [8] - 6:25, 8:2, 83:19, 94:16, 98:18, 115:6, 119:21, 120:5</p> <p><b>director</b> [2] - 3:14, 4:16</p> <p><b>disagree</b> [2] - 55:14, 95:6</p> <p><b>disconnect</b> [2] - 98:13, 99:1</p> <p><b>discrepancies</b> [1] - 45:7</p> <p><b>discrepancy</b> [3] - 75:23, 107:7, 107:8</p> <p><b>discretion</b> [5] - 28:12, 45:9, 106:3, 106:6, 106:9</p> <p><b>discretionary</b> [1] - 115:21</p> <p><b>discuss</b> [1] - 22:4</p> <p><b>discusses</b> [2] - 100:9, 113:19</p> <p><b>discussion</b> [3] - 89:19, 89:20, 122:12</p> <p><b>discussions</b> [4] - 14:16, 40:23, 83:20, 85:13</p> <p><b>disregarded</b> [1] - 114:2</p> <p><b>distance</b> [3] - 51:14, 79:12, 82:8</p> <p><b>Distances</b> [1] - 96:11</p> <p><b>distances</b> [1] - 52:17</p> <p><b>distinction</b> [1] - 109:1</p> <p><b>District</b> [2] - 6:24, 21:4</p> <p><b>district</b> [1] - 102:2</p> <p><b>districts</b> [1] - 113:20</p> <p><b>document</b> [18] - 4:19, 4:23, 5:1, 21:9, 53:4, 55:9, 78:23, 85:23, 87:14, 88:9,</p>	<p>88:20, 91:18, 94:21, 95:4, 99:14, 100:7, 123:3, 126:20</p> <p><b>Document</b> [9] - 4:20, 4:25, 46:20, 52:7, 53:2, 53:5, 53:12, 53:25, 91:20</p> <p><b>documentation</b> [4] - 88:25, 95:9, 95:23, 124:1</p> <p><b>documents</b> [8] - 8:10, 15:16, 46:14, 68:14, 68:17, 76:24, 77:10, 114:20</p> <p><b>done</b> [14] - 10:13, 46:25, 47:8, 47:16, 47:23, 69:4, 88:13, 88:21, 89:2, 123:7, 123:11, 124:17, 126:1, 126:16</p> <p><b>Donna</b> [3] - 2:14, 128:12, 128:13</p> <p><b>doubt</b> [1] - 126:12</p> <p><b>Doug</b> [1] - 22:9</p> <p><b>DOWN</b> [2] - 60:20, 104:12</p> <p><b>down</b> [11] - 4:6, 21:13, 31:24, 36:2, 73:25, 74:2, 75:25, 77:24, 115:17, 121:2, 128:5</p> <p><b>downs</b> [1] - 108:22</p> <p><b>drawn</b> [1] - 79:6</p> <p><b>driven</b> [1] - 95:17</p> <p><b>drivers</b> [1] - 18:6</p> <p><b>driving</b> [1] - 43:24</p> <p><b>dry</b> [1] - 49:9</p> <p><b>ducks</b> [2] - 46:10, 56:11</p> <p><b>due</b> [11] - 18:14, 33:15, 36:17, 49:9, 50:10, 57:23, 83:21, 121:12, 121:15, 123:5, 123:11</p> <p><b>during</b> [18] - 4:3, 5:12, 10:10, 14:8, 14:15, 14:17, 20:3, 22:25, 44:4, 44:13, 62:8, 77:3, 79:3, 83:1, 83:11, 84:17, 88:24, 111:15</p> <p><b>Dyck</b> [8] - 13:7, 13:11, 13:15, 65:24, 74:14, 74:21, 101:9, 103:8</p> <p><b>DYCK</b> [8] - 13:10, 62:2, 66:1, 74:12, 74:14, 74:22, 101:12, 129:17</p>	<p><b>Egg</b> [1] - 27:17</p> <p><b>eggs</b> [1] - 19:10</p> <p><b>eight</b> [2] - 40:16, 99:7</p> <p><b>either</b> [13] - 29:9, 34:23, 35:12, 85:21, 86:2, 89:2, 104:11, 114:24, 115:7, 115:15, 119:22, 121:10</p> <p><b>elected</b> [1] - 76:23</p> <p><b>elevated</b> [1] - 114:1</p> <p><b>elevating</b> [1] - 115:16</p> <p><b>eligible</b> [1] - 13:2</p> <p><b>email</b> [2] - 5:23, 7:3</p> <p><b>emissions</b> [1] - 28:17</p> <p><b>employed</b> [1] - 120:17</p> <p><b>empty</b> [1] - 105:16</p> <p><b>enable</b> [1] - 112:15</p> <p><b>enactment</b> [1] - 108:16</p> <p><b>encapsulates</b> [1] - 44:23</p> <p><b>enclosed</b> [1] - 59:11</p> <p><b>encourage</b> [1] - 113:7</p> <p><b>encourages</b> [1] - 6:11</p> <p><b>end</b> [7] - 10:25, 11:3, 14:23, 29:17, 37:14, 72:15, 86:11</p> <p><b>ended</b> [1] - 98:17</p> <p><b>endemic</b> [1] - 109:9</p> <p><b>engage</b> [3] - 51:12, 65:14, 65:18</p> <p><b>engaged</b> [1] - 50:25</p> <p><b>engineer</b> [1] - 3:18</p> <p><b>enhance</b> [1] - 44:5</p> <p><b>enhanced</b> [2] - 27:19, 109:21</p> <p><b>enhancement</b> [1] - 108:10</p> <p><b>enjoy</b> [1] - 92:9</p> <p><b>ensure</b> [3] - 5:14, 36:8, 120:3</p> <p><b>ensuring</b> [1] - 44:5</p> <p><b>entered</b> [1] - 9:5</p> <p><b>entertain</b> [1] - 14:9</p> <p><b>entire</b> [7] - 8:12, 24:1, 34:4, 34:5, 82:9, 123:24, 124:18</p> <p><b>entirety</b> [1] - 17:15</p> <p><b>entities</b> [1] - 75:15</p> <p><b>entitled</b> [1] - 91:23</p> <p><b>Environment</b> [3] - 97:11, 97:21, 98:1</p> <p><b>environment</b> [9] - 19:3, 19:6, 28:1, 36:6, 38:11, 39:17, 58:1, 115:18, 121:8</p> <p><b>environmental</b> [39] - 3:9, 26:25, 27:1, 27:2, 28:16, 28:21, 29:1, 35:19, 35:25, 41:14, 43:18, 44:10, 44:16, 47:15, 47:19, 47:20, 47:21, 47:23, 49:1, 49:15, 57:17, 57:21, 58:15, 71:15, 95:14, 95:16, 97:8, 97:13, 97:22, 107:24, 108:6, 108:10, 108:11, 109:21, 112:1, 117:14, 117:18, 120:15, 120:19</p> <p><b>environmentally</b> [2] - 59:11, 102:2</p>	<p><b>environments</b> [1] - 44:5</p> <p><b>ephemeral</b> [4] - 54:21, 54:25, 55:15, 88:17</p> <p><b>equivalent</b> [1] - 109:13</p> <p><b>ERICKSON</b> [6] - 12:18, 62:2, 65:8, 100:4, 101:11, 129:17</p> <p><b>Erickson</b> [5] - 12:19, 65:23, 76:19, 89:12, 100:12</p> <p><b>erosion</b> [1] - 97:4</p> <p><b>err</b> [1] - 123:22</p> <p><b>erred</b> [1] - 76:11</p> <p><b>ESA</b> [3] - 88:11, 88:13, 88:18</p> <p><b>especially</b> [1] - 20:11</p> <p><b>essential</b> [2] - 113:20, 127:1</p> <p><b>essentially</b> [4] - 9:15, 23:21, 24:13, 35:11</p> <p><b>establish</b> [6] - 23:17, 75:9, 76:8, 79:1, 124:15, 124:16</p> <p><b>established</b> [13] - 19:18, 19:23, 23:15, 24:25, 26:3, 62:15, 70:4, 71:1, 74:6, 78:10, 79:4, 86:12, 109:7</p> <p><b>establishes</b> [3] - 84:11, 114:8, 124:15</p> <p><b>establishing</b> [7] - 48:22, 74:3, 78:1, 84:14, 86:6, 102:10, 102:15</p> <p><b>establishment</b> [1] - 77:20</p> <p><b>estimation</b> [1] - 108:3</p> <p><b>evenly</b> [1] - 64:13</p> <p><b>events</b> [1] - 51:13</p> <p><b>eventually</b> [2] - 33:24, 38:17</p> <p><b>evidence</b> [37] - 8:23, 9:1, 9:2, 9:5, 9:9, 9:14, 9:15, 9:16, 9:20, 9:23, 9:24, 12:12, 12:17, 12:22, 14:18, 15:22, 30:3, 58:6, 59:20, 60:19, 61:3, 61:12, 61:21, 65:24, 66:4, 66:19, 90:10, 90:14, 100:16, 103:10, 104:14, 104:16, 104:18, 109:18, 111:24, 114:22, 125:8</p> <p><b>EVIDENCE</b> [2] - 62:5, 129:19</p> <p><b>evident</b> [1] - 109:11</p> <p><b>evidentiary</b> [2] - 8:11, 8:22</p> <p><b>exactly</b> [2] - 37:19, 76:13</p> <p><b>examination</b> [5] - 107:6, 110:1, 111:15, 117:23, 119:12</p> <p><b>EXAMINES</b> [12] - 16:7, 32:19, 40:9, 46:3, 58:10, 66:14, 129:6, 129:8, 129:10, 129:11, 129:15, 129:20</p> <p><b>examining</b> [1] - 81:5</p> <p><b>example</b> [15] - 16:18, 18:3, 28:4, 28:17,</p>	<p>29:7, 31:24, 36:18, 40:22, 42:1, 43:16, 87:23, 93:3, 97:16, 101:25, 112:16</p> <p><b>exceed</b> [4] - 25:15, 41:4, 42:3, 45:15</p> <p><b>exceeded</b> [3] - 42:23, 117:12, 120:8</p> <p><b>exceeding</b> [2] - 41:12, 43:22</p> <p><b>excel</b> [1] - 41:6</p> <p><b>except</b> [1] - 21:5</p> <p><b>exception</b> [1] - 80:3</p> <p><b>exclude</b> [1] - 14:6</p> <p><b>excluded</b> [1] - 91:6</p> <p><b>excluding</b> [1] - 114:12</p> <p><b>exclusion</b> [71] - 22:7, 29:4, 30:5, 42:7, 42:17, 43:4, 48:18, 48:22, 62:11, 62:12, 62:15, 62:21, 63:23, 63:25, 64:3, 64:6, 64:8, 64:16, 67:22, 67:25, 68:3, 68:6, 68:10, 68:11, 68:12, 68:13, 70:7, 70:10, 70:20, 70:21, 71:3, 74:6, 76:1, 76:7, 76:8, 77:6, 77:7, 77:20, 77:21, 78:5, 78:10, 78:14, 78:17, 78:18, 79:4, 81:8, 81:12, 81:23, 82:13, 82:19, 83:3, 83:10, 83:13, 83:17, 83:22, 85:5, 85:22, 86:11, 89:22, 90:12, 90:24, 91:11, 91:14, 98:17, 98:20, 107:22, 108:18, 119:13, 123:18, 123:23, 124:9</p> <p><b>Exclusion</b> [1] - 71:10</p> <p><b>exclusionaries</b> [1] - 107:9</p> <p><b>exclusionary</b> [3] - 102:11, 102:24</p> <p><b>excuse</b> [1] - 61:20</p> <p><b>exemption</b> [9] - 78:16, 79:17, 79:21, 79:25, 80:1, 80:15, 80:18, 81:8</p> <p><b>exercises</b> [1] - 45:9</p> <p><b>exhibit</b> [8] - 4:24, 15:13, 15:15, 15:17, 21:9, 46:21, 94:19, 96:10</p> <p><b>Exhibit</b> [13] - 21:8, 22:19, 52:8, 53:3, 54:16, 58:12, 69:13, 69:17, 69:21, 71:22, 71:23, 91:21, 96:8</p> <p><b>exhibited</b> [1] - 69:15</p> <p><b>exhibits</b> [2] - 46:17, 68:24</p> <p><b>exist</b> [1] - 45:7</p> <p><b>existing</b> [30] - 7:10, 20:16, 24:12, 45:5, 56:6, 56:18, 56:21, 68:24, 70:5, 71:1, 71:8, 72:7, 76:7, 82:23, 100:20, 100:25, 101:5, 107:16, 107:21, 107:24, 108:6, 108:9, 113:9, 114:4, 115:5, 116:17, 116:20, 117:1, 117:8, 121:2</p> <p><b>expand</b> [19] - 7:9, 9:7, 17:2, 26:9, 38:21,</p>
<b>E</b>				
<b>E-R-I-C-K-S-O-N</b> [1] - 12:20				
<b>Earl</b> [2] - 2:7, 3:11				
<b>early</b> [1] - 28:24				
<b>easily</b> [1] - 47:7				
<b>east</b> [1] - 6:23				
<b>economic</b> [6] - 17:7, 17:14, 25:21, 43:7, 43:10, 56:7				
<b>economical</b> [1] - 33:14				
<b>economically</b> [1] - 33:5				
<b>economics</b> [1] - 33:7				
<b>efficiency</b> [1] - 28:20				
<b>efficient</b> [1] - 109:25				
<b>efforts</b> [2] - 41:4, 42:3				

56:15, 70:6, 71:3, 71:9, 80:12, 98:22, 107:12, 107:13, 107:17, 108:13, 113:8, 115:5, 119:9, 121:6 <b>expanded</b> [13] - 16:19, 25:4, 25:25, 26:18, 26:24, 28:25, 30:4, 41:23, 58:16, 58:19, 62:22, 83:4, 106:15 <b>expanding</b> [2] - 43:15, 115:2 <b>expansion</b> [15] - 18:4, 18:7, 25:19, 39:18, 53:9, 56:3, 56:9, 100:24, 109:2, 115:7, 116:20, 117:1, 117:15, 117:16, 117:20 <b>expansions</b> [9] - 107:20, 109:15, 109:16, 109:19, 109:21, 109:22, 111:17, 111:18, 114:4 <b>expect</b> [4] - 97:2, 104:15, 126:1, 127:8 <b>expensive</b> [1] - 17:24 <b>experience</b> [4] - 3:12, 28:13, 96:5, 99:7 <b>explain</b> [1] - 46:22 <b>explained</b> [1] - 98:9 <b>explanation</b> [1] - 77:12 <b>extended</b> [1] - 120:17 <b>extends</b> [1] - 72:7 <b>extension</b> [2] - 18:25 <b>extensive</b> [2] - 3:11, 93:5 <b>extent</b> [2] - 6:8, 111:5 <b>extra</b> [3] - 18:16, 35:2, 35:3 <b>extreme</b> [1] - 28:13 <b>eye</b> [2] - 107:13, 108:18	21:2, 22:6, 31:19, 33:4, 36:23, 36:24, 39:7, 70:19, 81:4, 95:11, 120:4 <b>fairly</b> [3] - 31:18, 75:7, 103:6 <b>faith</b> [3] - 23:2, 118:17, 119:19 <b>fall</b> [9] - 26:7, 62:12, 67:10, 79:25, 85:24, 88:10, 91:17, 108:12, 124:9 <b>familiar</b> [4] - 8:9, 29:11, 30:18, 30:22 <b>familiarity</b> [1] - 98:21 <b>far</b> [17] - 19:1, 20:11, 25:19, 26:12, 31:22, 61:17, 64:15, 64:18, 78:25, 86:1, 93:9, 96:1, 99:2, 100:19, 110:11, 123:3, 123:18 <b>farm</b> [3] - 36:13, 37:10, 46:9 <b>farmers</b> [5] - 41:3, 41:5, 42:2, 43:20, 118:18 <b>Farmers</b> [1] - 27:17 <b>farming</b> [4] - 20:11, 41:13, 41:14, 44:20 <b>farmland</b> [1] - 30:9 <b>farms</b> [1] - 44:23 <b>fashion</b> [1] - 126:7 <b>fast</b> [1] - 53:5 <b>faster</b> [1] - 54:18 <b>favour</b> [3] - 73:8, 76:2, 109:10 <b>favourable</b> [1] - 122:23 <b>feasibility</b> [1] - 56:24 <b>feasible</b> [1] - 56:25 <b>features</b> [1] - 109:22 <b>February</b> [3] - 79:3, 84:3, 85:2 <b>feed</b> [2] - 5:21, 11:2 <b>Feeders</b> [1] - 3:8 <b>Feeding</b> [1] - 91:23 <b>feeding</b> [21] - 6:22, 22:3, 22:6, 24:23, 42:17, 42:24, 44:18, 45:6, 45:11, 45:14, 48:17, 48:18, 49:7, 65:16, 70:3, 70:5, 70:25, 71:2, 77:15, 117:18, 120:11 <b>feedlot</b> [2] - 3:7, 103:1 <b>feet</b> [1] - 39:8 <b>felt</b> [2] - 82:8, 82:18 <b>few</b> [7] - 5:1, 6:17, 25:11, 42:1, 47:20, 62:13, 120:10 <b>Field</b> [13] - 2:11, 4:14, 4:16, 7:3, 8:7, 9:11, 9:25, 15:10, 103:20, 125:6, 125:18, 126:4, 126:17 <b>field</b> [5] - 48:4, 48:7, 60:4, 73:17, 73:18 <b>fifth</b> [1] - 117:23 <b>filed</b> [1] - 8:3 <b>filing</b> [2] - 7:15, 8:8 <b>final</b> [6] - 10:3, 10:5, 10:7, 45:3, 122:5, 125:7 <b>finally</b> [1] - 117:16 <b>financial</b> [2] - 16:16, 56:24 <b>fine</b> [2] - 6:17, 61:23 <b>Fiona</b> [3] - 2:11, 4:14, 125:5	<b>first</b> [34] - 8:19, 9:1, 10:4, 11:24, 13:22, 16:2, 23:13, 25:1, 26:1, 44:25, 45:25, 46:4, 48:15, 54:19, 54:24, 66:9, 74:2, 79:16, 86:4, 86:9, 96:23, 101:15, 101:16, 101:18, 105:19, 106:6, 106:17, 107:15, 108:2, 117:6, 118:8, 119:20, 123:1, 125:10 <b>first-hand</b> [1] - 119:20 <b>firsthand</b> [2] - 95:8, 96:3 <b>firstly</b> [1] - 74:22 <b>five</b> [3] - 16:25, 83:7, 118:7 <b>flat</b> [5] - 53:14, 53:19, 53:20, 53:23, 95:6 <b>flooding</b> [1] - 97:4 <b>flowing</b> [3] - 55:20, 55:23, 55:24 <b>flows</b> [1] - 96:23 <b>fluctuating</b> [1] - 44:12 <b>focused</b> [2] - 106:1, 113:24 <b>follow</b> [3] - 6:5, 10:9, 123:9 <b>followed</b> [3] - 9:1, 10:4, 87:19 <b>following</b> [1] - 97:5 <b>follows</b> [2] - 66:24, 79:5 <b>food</b> [6] - 17:6, 17:10, 41:15, 43:17, 43:22 <b>FOR</b> [2] - 62:5, 129:19 <b>force</b> [1] - 110:24 <b>forced</b> [1] - 38:8 <b>foregoing</b> [1] - 128:3 <b>foreseen</b> [1] - 42:15 <b>form</b> [1] - 127:5 <b>formal</b> [1] - 6:5 <b>formality</b> [2] - 6:7, 6:8 <b>former</b> [2] - 24:15, 119:11 <b>forth</b> [2] - 17:4, 27:16 <b>forward</b> [5] - 6:1, 37:17, 82:12, 102:19, 113:1 <b>forwarded</b> [1] - 16:16 <b>foster</b> [1] - 40:25 <b>founded</b> [2] - 19:17, 19:22 <b>four</b> [5] - 65:1, 65:3, 74:1, 80:9 <b>fourfold</b> [1] - 117:6 <b>frame</b> [2] - 23:5, 127:9 <b>frankly</b> [1] - 80:10 <b>free</b> [1] - 27:20 <b>freezing</b> [1] - 50:3 <b>Friend</b> [4] - 2:9, 4:1, 4:4, 126:23 <b>front</b> [2] - 80:9, 105:23 <b>fruitful</b> [1] - 18:21 <b>full</b> [2] - 24:5, 76:1 <b>full-on</b> [1] - 76:1 <b>fully</b> [2] - 4:12, 23:1 <b>functioning</b> [1] - 23:6	<b>funds</b> [1] - 115:8 <b>future</b> [14] - 14:7, 35:4, 35:21, 37:25, 38:14, 39:17, 45:13, 50:20, 72:23, 73:2, 82:23, 82:24, 103:4	<b>Great</b> [1] - 14:25 <b>great</b> [8] - 14:25, 39:23, 46:1, 53:6, 57:11, 70:2, 105:17, 121:24 <b>greater</b> [1] - 55:17 <b>greenhouse</b> [1] - 28:17 <b>grocers</b> [1] - 19:10 <b>ground</b> [2] - 117:23, 119:16 <b>group</b> [1] - 50:25 <b>Grow</b> [1] - 116:10 <b>grow</b> [3] - 36:5, 38:15, 39:6 <b>growing</b> [2] - 24:17, 24:20 <b>growth</b> [1] - 43:10 <b>guess</b> [27] - 10:19, 33:14, 35:14, 36:19, 37:14, 38:12, 55:13, 57:13, 63:9, 74:22, 76:1, 77:16, 80:7, 83:23, 83:25, 88:7, 93:7, 96:23, 97:17, 98:13, 98:23, 98:24, 99:11, 99:19, 100:19, 105:3, 124:21 <b>guiding</b> [2] - 112:8, 113:17	
<b>F</b>			<b>G</b>		
<b>fabric</b> [1] - 45:2 <b>face</b> [1] - 23:11 <b>faced</b> [3] - 23:12, 119:1, 119:3 <b>facilitate</b> [3] - 18:16, 22:13, 40:22 <b>facilities</b> [8] - 49:4, 49:18, 49:23, 49:24, 50:7, 50:9, 100:25, 109:8 <b>facility</b> [27] - 18:15, 18:21, 19:1, 19:8, 44:13, 44:16, 46:5, 46:8, 46:13, 47:3, 49:11, 49:16, 49:22, 49:25, 50:4, 50:5, 51:15, 56:8, 56:10, 56:11, 56:21, 59:9, 59:11, 59:14, 101:5, 112:1, 117:17 <b>fact</b> [9] - 17:15, 25:15, 26:7, 27:2, 37:25, 49:9, 50:11, 84:15, 114:3 <b>factors</b> [4] - 25:10, 28:24, 36:25, 64:21 <b>fair</b> [13] - 16:18, 18:3,			<b>garden</b> [1] - 54:8 <b>garnered</b> [2] - 87:13, 87:22 <b>gas</b> [2] - 28:17, 47:6 <b>gathered</b> [1] - 88:7 <b>general</b> [12] - 3:7, 4:1, 40:24, 45:6, 47:22, 64:25, 85:1, 89:25, 90:11, 92:19, 95:19, 126:25 <b>generally</b> [6] - 34:11, 36:21, 50:8, 102:3, 110:20, 114:18 <b>geographically</b> [2] - 31:21, 42:16 <b>Gerbrandt</b> [8] - 2:14, 5:11, 11:7, 40:5, 61:24, 126:23, 128:12, 128:13 <b>Gerbrandt's</b> [1] - 15:23 <b>gist</b> [1] - 87:17 <b>given</b> [21] - 8:11, 10:1, 13:22, 25:7, 28:7, 42:6, 42:8, 43:1, 44:25, 72:11, 72:17, 79:3, 80:21, 81:22, 110:25, 111:18, 111:20, 119:1, 119:11, 119:13, 119:18 <b>goal</b> [1] - 113:25 <b>governance</b> [1] - 122:19 <b>Government</b> [7] - 64:2, 73:6, 75:1, 110:16, 110:17, 110:19, 122:19 <b>government</b> [9] - 19:25, 20:6, 20:13, 22:10, 23:13, 24:11, 40:24, 42:11, 42:15 <b>governmental</b> [1] - 40:23 <b>grab</b> [1] - 60:23 <b>grading</b> [1] - 19:9 <b>Graham</b> [9] - 2:7, 3:11, 11:20, 57:8, 60:13, 87:6, 89:5, 104:2 <b>GRAHAM</b> [7] - 57:10, 60:14, 87:8, 87:9, 89:4, 104:3, 129:22 <b>Grande</b> [2] - 12:4, 41:20 <b>grandfathered</b> [2] - 20:15, 118:22 <b>grant</b> [5] - 7:20, 45:9, 106:22, 120:23, 120:24 <b>granted</b> [9] - 6:25, 18:25, 108:16, 108:21, 111:20, 112:12, 119:4, 120:18, 121:15 <b>granting</b> [4] - 7:21, 121:9, 121:12, 122:9 <b>grapple</b> [2] - 108:2, 116:15 <b>grappling</b> [1] - 75:4 <b>grateful</b> [1] - 125:18	<b>H</b>	
				<b>half</b> [4] - 6:23, 26:15, 26:22, 120:14 <b>halt</b> [1] - 20:1 <b>halted</b> [1] - 23:22 <b>hamlets</b> [1] - 82:20 <b>hand</b> [6] - 3:4, 44:24, 107:2, 107:4, 119:20 <b>handle</b> [3] - 92:21, 93:24, 94:12 <b>handled</b> [2] - 91:12, 94:14 <b>handling</b> [1] - 17:6 <b>hands</b> [1] - 15:23 <b>happy</b> [5] - 77:1, 77:7, 78:23, 124:21, 126:6 <b>hard</b> [2] - 67:15, 102:12 <b>hardship</b> [2] - 23:24, 23:25 <b>hardships</b> [4] - 22:24, 23:11, 23:12, 23:23 <b>hardships..</b> [1] - 22:22 <b>harkens</b> [1] - 118:14 <b>harm's</b> [1] - 97:3 <b>Harrison</b> [27] - 2:12, 10:24, 11:4, 11:21, 12:9, 14:5, 14:20, 16:8, 32:9, 32:11, 39:25, 46:19, 49:15, 50:6, 59:19, 66:10, 67:14, 68:24, 72:14, 73:16, 75:24, 76:22, 104:15, 121:19, 122:7, 122:21, 124:25 <b>HARRISON</b> [51] - 10:23, 11:19, 13:20, 14:21, 15:25, 16:7, 16:10, 21:7, 32:7, 32:13, 32:19, 39:21, 40:2, 40:9, 45:20, 46:17, 46:20, 47:10, 47:18, 50:1, 58:8, 58:10, 58:11, 59:17, 61:4, 66:12, 66:14,	

<p>66:15, 66:18, 67:16, 67:18, 68:16, 69:1, 69:6, 69:9, 69:12, 72:16, 73:14, 103:17, 104:17, 105:7, 105:20, 107:1, 110:13, 116:2, 125:2, 129:6, 129:8, 129:10, 129:15, 129:20</p> <p><b>Harrison's</b> [1] - 125:10</p> <p><b>Harvey</b> [1] - 5:22</p> <p><b>HARVEY</b> [1] - 5:24</p> <p><b>head</b> [3] - 17:18, 102:25, 103:1</p> <p><b>Health</b> [1] - 88:2</p> <p><b>hear</b> [5] - 2:19, 15:1, 15:21, 67:15, 110:20</p> <p><b>heard</b> [4] - 33:9, 112:22, 118:4, 119:7</p> <p><b>hearing</b> [45] - 2:25, 3:23, 4:4, 4:11, 5:7, 5:10, 5:12, 5:25, 6:19, 7:2, 7:5, 7:20, 7:23, 7:24, 8:11, 8:19, 8:23, 8:24, 13:3, 14:10, 15:12, 15:15, 15:19, 30:24, 31:4, 52:8, 69:4, 74:1, 76:25, 77:24, 78:8, 78:21, 81:15, 86:21, 90:15, 99:23, 100:11, 105:2, 114:17, 117:22, 123:5, 124:5, 127:1, 127:8, 127:10</p> <p><b>hearing..</b> [1] - 15:19</p> <p><b>hearings</b> [4] - 32:1, 79:3, 84:18, 123:10</p> <p><b>heat</b> [5] - 28:5, 44:3, 44:4, 44:11, 44:13</p> <p><b>heaven</b> [1] - 70:14</p> <p><b>heavily</b> [2] - 19:2, 113:24</p> <p><b>held</b> [6] - 16:22, 87:12, 87:21, 99:8, 99:23, 116:13</p> <p><b>Held</b> [1] - 1:22</p> <p><b>help</b> [10] - 3:22, 4:9, 6:15, 6:17, 11:6, 18:4, 61:25, 74:20, 79:11, 98:25</p> <p><b>helpful</b> [6] - 11:15, 14:12, 80:11, 80:16, 86:17, 127:2</p> <p><b>helps</b> [1] - 17:10</p> <p><b>hen</b> [2] - 34:24, 38:13</p> <p><b>hens</b> [3] - 39:7, 39:10, 120:18</p> <p><b>hereby</b> [1] - 128:3</p> <p><b>higher</b> [1] - 94:17</p> <p><b>highlight</b> [2] - 8:16, 9:7</p> <p><b>highlighted</b> [6] - 67:5, 68:2, 70:17, 85:23, 86:1</p> <p><b>highlighting</b> [1] - 70:16</p> <p><b>Highway</b> [1] - 21:16</p> <p><b>historical</b> [2] - 24:15, 24:17</p> <p><b>history</b> [3] - 119:1, 119:2, 119:18</p> <p><b>hit</b> [1] - 61:15</p> <p><b>Hofer</b> [19] - 11:24, 12:6, 16:3, 16:10, 16:16, 21:16, 22:9, 23:9, 32:10, 44:8, 48:16, 50:13, 51:4, 51:14, 52:10, 52:22,</p>	<p>58:12, 58:13, 115:12</p> <p><b>HOFER</b> [38] - 12:6, 16:6, 46:7, 46:22, 47:3, 47:25, 48:19, 48:23, 49:3, 49:21, 50:10, 50:19, 51:10, 51:17, 51:22, 52:25, 53:10, 53:18, 53:22, 54:5, 54:8, 54:14, 55:2, 55:5, 55:19, 55:25, 56:13, 56:23, 57:2, 57:23, 58:17, 58:20, 58:24, 59:3, 59:5, 59:8, 59:15, 129:5</p> <p><b>hold</b> [2] - 2:25, 7:20</p> <p><b>holders</b> [1] - 71:8</p> <p><b>holding</b> [3] - 100:10, 100:11, 123:10</p> <p><b>holdings</b> [1] - 33:12</p> <p><b>home</b> [2] - 42:20, 43:4</p> <p><b>hope</b> [2] - 10:13, 65:12</p> <p><b>hopefully</b> [1] - 14:19</p> <p><b>hoping</b> [2] - 21:11, 110:10</p> <p><b>host</b> [2] - 5:2, 126:22</p> <p><b>house</b> [5] - 46:13, 77:3, 91:16, 99:4, 100:10</p> <p><b>housed</b> [2] - 38:13, 39:10</p> <p><b>houses</b> [7] - 84:18, 87:21, 87:22, 97:2, 97:16, 98:7, 99:8</p> <p><b>housing</b> [1] - 23:19</p> <p><b>huge</b> [1] - 123:10</p> <p><b>humans</b> [1] - 44:5</p> <p><b>hungry</b> [1] - 105:9</p> <p><b>Hutterian</b> [7] - 2:20, 7:8, 40:12, 40:17, 40:18, 41:10, 42:12</p> <p><b>HUTTERIAN</b> [1] - 1:10</p> <p><b>Hutterite</b> [5] - 16:11, 22:13, 40:19, 40:21, 98:21</p>	<p>121:11</p> <p><b>IDPs</b> [7] - 45:8, 72:24, 102:18, 110:3, 110:23, 110:25, 125:11</p> <p><b>ignoring</b> [1] - 114:2</p> <p><b>imagine</b> [1] - 38:19</p> <p><b>impact</b> [5] - 6:3, 27:2, 59:2, 98:16, 114:14</p> <p><b>impacts</b> [5] - 26:25, 45:4, 92:25, 93:9, 109:17</p> <p><b>impacts...to</b> [1] - 71:14</p> <p><b>impanelled</b> [1] - 14:16</p> <p><b>implicit</b> [1] - 49:17</p> <p><b>important</b> [6] - 6:1, 8:16, 23:16, 40:25, 44:10, 108:7</p> <p><b>impose</b> [1] - 118:25</p> <p><b>improve</b> [8] - 19:6, 26:24, 27:1, 28:19, 44:9, 115:17, 119:10, 120:1</p> <p><b>improvement</b> [4] - 27:24, 108:4, 108:9, 118:18</p> <p><b>improvements</b> [9] - 24:13, 25:17, 27:15, 28:21, 29:1, 38:10, 107:22, 117:14</p> <p><b>improves</b> [3] - 43:7, 43:18, 44:18</p> <p><b>improving</b> [2] - 108:9, 109:3</p> <p><b>IN</b> [2] - 62:5, 129:19</p> <p><b>inability</b> [1] - 56:7</p> <p><b>Inc</b> [1] - 116:10</p> <p><b>incentive</b> [3] - 17:8, 29:22, 29:23</p> <p><b>include</b> [3] - 52:17, 65:16, 114:19</p> <p><b>included</b> [5] - 62:10, 62:17, 63:3, 78:8, 86:24</p> <p><b>includes</b> [1] - 15:15</p> <p><b>including</b> [6] - 3:12, 4:14, 10:10, 113:12, 117:13, 120:8</p> <p><b>incoming</b> [2] - 17:19, 38:7</p> <p><b>inconsistency</b> [3] - 111:6, 111:13, 111:16</p> <p><b>inconsistent</b> [1] - 111:10</p> <p><b>incorporated</b> [1] - 88:8</p> <p><b>increase</b> [4] - 7:12, 27:1, 35:4, 43:9</p> <p><b>increased</b> [3] - 36:13, 37:16, 56:4</p> <p><b>increases</b> [1] - 35:1</p> <p><b>increasing</b> [2] - 57:18, 57:19</p> <p><b>indefinitely</b> [1] - 19:7</p> <p><b>indentation</b> [1] - 53:22</p> <p><b>independent</b> [1] - 106:14</p> <p><b>independently</b> [1] - 91:12</p> <p><b>indication</b> [1] - 114:9</p> <p><b>indiscernible</b> [2] - 2:22, 59:2</p> <p><b>individual</b> [3] - 80:23, 88:3, 115:19</p> <p><b>individuals</b> [1] - 108:22</p>	<p><b>indulgence</b> [1] - 106:22</p> <p><b>industrial</b> [2] - 102:1</p> <p><b>industry</b> [4] - 17:4, 35:2, 35:6, 35:15</p> <p><b>inflation</b> [2] - 36:17, 36:23</p> <p><b>inflationary</b> [5] - 34:15, 36:4, 36:11, 109:24, 121:4</p> <p><b>information</b> [11] - 6:2, 6:10, 9:18, 46:25, 67:20, 88:20, 96:2, 97:25, 104:24, 127:2, 127:3</p> <p><b>Infrastructure</b> [1] - 22:11</p> <p><b>infrastructure</b> [13] - 19:2, 29:15, 30:12, 33:22, 34:14, 35:11, 35:14, 36:23, 37:18, 38:5, 44:9, 47:5, 93:25</p> <p><b>inherent</b> [2] - 49:18, 93:4</p> <p><b>inherently</b> [1] - 6:5</p> <p><b>initial</b> [2] - 46:12, 118:11</p> <p><b>initiate</b> [1] - 51:9</p> <p><b>initiates</b> [1] - 51:5</p> <p><b>initiatives</b> [1] - 3:10</p> <p><b>innocuous</b> [1] - 102:23</p> <p><b>input</b> [9] - 24:3, 24:7, 24:8, 87:13, 87:14, 87:20, 87:22, 88:7, 99:15</p> <p><b>insofar</b> [2] - 109:15, 116:25</p> <p><b>instance</b> [1] - 86:12</p> <p><b>instructions</b> [1] - 126:5</p> <p><b>instructor</b> [1] - 3:20</p> <p><b>instrument</b> [2] - 112:10, 115:6</p> <p><b>intend</b> [1] - 10:9</p> <p><b>intended</b> [1] - 114:22</p> <p><b>intent</b> [3] - 115:15, 121:1, 121:11</p> <p><b>intention</b> [1] - 79:8</p> <p><b>intentional</b> [1] - 76:13</p> <p><b>interact</b> [1] - 125:14</p> <p><b>interest</b> [1] - 75:15</p> <p><b>interested</b> [2] - 51:3, 85:12</p> <p><b>interests</b> [1] - 85:18</p> <p><b>interject</b> [1] - 6:13</p> <p><b>intermunicipal</b> [18] - 45:16, 62:18, 63:1, 65:11, 66:21, 72:13, 72:19, 73:8, 73:9, 85:14, 106:8, 106:19, 110:21, 111:4, 113:15, 113:19, 113:25, 114:19</p> <p><b>internal</b> [2] - 28:9, 33:22</p> <p><b>interpretation</b> [8] - 106:7, 106:18, 112:9, 112:11, 116:7, 125:15, 125:17, 125:19</p> <p><b>interpreting</b> [1] - 108:14</p> <p><b>intimidating</b> [1] - 126:13</p> <p><b>introduce</b> [6] - 3:1, 3:5, 5:2, 9:15, 13:8, 110:10</p>	<p><b>introduced</b> [1] - 7:6</p> <p><b>involve</b> [2] - 30:9, 30:12</p> <p><b>involved</b> [13] - 16:24, 17:21, 17:23, 18:2, 34:15, 36:12, 41:24, 75:18, 75:19, 76:15, 76:17, 94:3, 119:3</p> <p><b>involves</b> [1] - 118:8</p> <p><b>irrigated</b> [1] - 29:8</p> <p><b>irrigation</b> [1] - 20:12</p> <p><b>isolated</b> [5] - 31:11, 31:12, 31:18, 31:19, 31:21</p> <p><b>issue</b> [7] - 4:10, 10:6, 10:19, 84:16, 116:15, 123:20, 125:25</p> <p><b>issued</b> [1] - 6:20</p> <p><b>issues</b> [13] - 40:24, 68:21, 92:6, 92:11, 92:15, 92:20, 92:22, 93:3, 93:12, 93:13, 93:19, 94:12, 120:5</p> <p><b>issuing</b> [1] - 127:6</p> <p><b>itself</b> [5] - 42:19, 113:13, 115:6, 117:7, 117:25</p>
<b>J</b>				
<p><b>Janet</b> [1] - 5:22</p> <p><b>janet.harvey</b> [1] - 5:23</p> <p><b>January</b> [1] - 34:22</p> <p><b>JASON</b> [1] - 12:15</p> <p><b>Jason</b> [2] - 2:13, 12:13</p> <p><b>job</b> [2] - 53:6, 126:16</p> <p><b>Joe</b> [1] - 6:21</p> <p><b>joining</b> [2] - 12:24, 40:3</p> <p><b>judicial</b> [1] - 6:6</p> <p><b>jump</b> [3] - 14:3, 66:15, 125:23</p> <p><b>juncture</b> [1] - 118:23</p> <p><b>June</b> [1] - 1:21, 2:5, 7:3, 7:17, 7:18, 8:1, 8:3, 8:5, 8:6, 8:7, 128:9</p> <p><b>jurisdiction</b> [1] - 79:23</p> <p><b>jurisdictional</b> [1] - 75:12</p> <p><b>jurisprudence</b> [1] - 116:8</p> <p><b>justification</b> [1] - 78:3</p> <p><b>justified</b> [1] - 124:13</p> <p><b>justify</b> [3] - 38:23, 77:5, 77:7</p> <p><b>Justin</b> [3] - 5:3, 5:5</p>				
<b>K</b>				
<p><b>Kaminski</b> [4] - 2:10, 4:20, 4:22, 126:19</p> <p><b>keep</b> [12] - 17:11, 17:18, 33:20, 37:15, 37:21, 38:2, 38:8, 51:12, 97:3, 113:6</p> <p><b>keeping</b> [1] - 38:23</p> <p><b>keeps</b> [1] - 17:11</p> <p><b>KENNEDY</b> [22] - 14:3, 15:8, 48:12, 48:14, 50:6, 51:24, 60:8, 61:14, 68:23, 69:2, 69:7, 69:11, 73:23, 73:24, 76:19, 87:2, 103:25, 110:9, 125:23, 126:8,</p>				

<p>129:12, 129:21  <b>Kennedy</b> [19] - 2:8, 3:25, 6:15, 6:16, 14:1, 15:7, 48:10, 52:2, 56:2, 58:22, 60:7, 68:21, 73:22, 87:5, 103:24, 110:7, 112:5, 119:13, 126:24  <b>Kennedy's</b> [1] - 90:4  <b>kids</b> [1] - 24:20  <b>kilometre</b> [3] - 26:15, 26:22, 120:14  <b>kilometres</b> [2] - 25:8, 31:14  <b>kind</b> [11] - 55:12, 57:13, 64:15, 80:12, 85:11, 85:13, 91:7, 98:24, 99:11, 105:3, 105:24  <b>kinds</b> [1] - 51:13  <b>knowledge</b> [4] - 67:20, 79:21, 95:8, 96:3  <b>Kozak</b> [7] - 12:1, 12:6, 32:14, 32:20, 39:24, 56:7, 56:23  <b>KOZAK</b> [3] - 12:7, 32:18, 129:7</p>	<p><b>laws</b> [1] - 103:6  <b>Laycraft</b> [1] - 11:22  <b>layer</b> [3] - 7:11, 7:12, 36:19  <b>lead</b> [2] - 61:13, 121:24  <b>leaderships</b> [1] - 40:21  <b>lease</b> [4] - 18:18, 33:13, 33:16, 34:8  <b>leasing</b> [1] - 18:14  <b>least</b> [3] - 101:20, 111:13, 111:14  <b>leave</b> [4] - 15:22, 47:22, 116:12, 122:6  <b>left</b> [5] - 69:13, 75:17, 107:2, 118:16, 120:2  <b>left-hand</b> [1] - 107:2  <b>legal</b> [2] - 4:15, 13:17  <b>legislation</b> [4] - 25:15, 85:1, 108:14, 110:15  <b>legislative</b> [3] - 108:15, 112:10, 115:6  <b>lengthy</b> [1] - 43:10  <b>lenient</b> [1] - 76:2  <b>less</b> [6] - 28:13, 39:6, 39:7, 39:9, 57:25, 79:5  <b>letter</b> [11] - 22:14, 22:18, 61:18, 63:20, 64:24, 80:6, 100:9, 100:19, 122:12, 123:14, 124:7  <b>letters</b> [4] - 87:23, 88:3, 99:4, 99:23  <b>level</b> [7] - 6:7, 28:14, 44:14, 56:17, 56:19, 94:13, 94:14  <b>licence</b> [2] - 26:6, 26:10  <b>licences</b> [1] - 20:25  <b>licensing</b> [2] - 26:5, 26:7  <b>life</b> [1] - 82:24  <b>lifespan</b> [1] - 35:16  <b>lifestyle</b> [2] - 92:3, 92:9  <b>light</b> [2] - 112:8, 113:17  <b>limited</b> [1] - 76:15  <b>limiting</b> [2] - 103:2, 113:9  <b>line</b> [6] - 33:24, 36:2, 36:5, 36:8, 36:9, 52:21  <b>lined</b> [1] - 59:10  <b>liner</b> [1] - 49:11  <b>lines</b> [3] - 79:9, 94:11, 120:1  <b>link</b> [2] - 5:16, 5:18  <b>liquid</b> [1] - 50:11  <b>list</b> [4] - 15:13, 15:15, 15:18, 46:21  <b>LITTLE</b> [1] - 1:10  <b>lives</b> [1] - 118:18  <b>livestock</b> [3] - 17:2, 44:4, 44:6  <b>loaded</b> [1] - 5:1  <b>local</b> [6] - 20:13, 41:1, 43:17, 92:22, 94:13, 98:11  <b>locally</b> [1] - 19:10  <b>located</b> [5] - 6:22, 21:3, 21:5, 48:17, 69:18  <b>location</b> [30] - 19:21, 20:16, 20:18, 20:21, 21:2, 21:25, 22:2,</p>	<p>22:3, 24:15, 24:19, 24:24, 25:7, 26:18, 26:19, 26:20, 30:13, 33:10, 42:10, 43:11, 43:13, 51:18, 56:5, 56:18, 58:23, 89:24, 118:15, 118:21, 119:2, 119:4, 119:11  <b>locations</b> [1] - 44:2  <b>long-range</b> [2] - 92:7, 93:15  <b>long-standing</b> [1] - 127:6  <b>long-term</b> [1] - 92:13  <b>look</b> [14] - 6:1, 54:18, 78:2, 88:14, 99:13, 101:18, 103:3, 107:15, 108:2, 111:1, 111:12, 112:12, 112:16, 114:18  <b>looked</b> [10] - 43:14, 72:22, 72:23, 83:7, 84:20, 90:11, 90:21, 94:21, 117:4, 118:11  <b>looking</b> [23] - 13:12, 22:20, 64:18, 67:18, 73:2, 75:8, 76:6, 76:20, 77:11, 77:18, 77:22, 81:1, 95:25, 96:1, 97:22, 102:24, 103:3, 106:2, 107:12, 107:13, 108:3, 115:16, 124:3  <b>looks</b> [3] - 76:11, 79:5, 105:14  <b>lose</b> [2] - 29:12, 30:15  <b>losing</b> [2] - 37:6, 37:9  <b>lost</b> [1] - 24:21  <b>lovely</b> [1] - 60:24  <b>lower</b> [1] - 37:14  <b>lunch</b> [2] - 10:11, 104:23</p>	<p>89:24, 99:9  <b>man</b> [1] - 53:5  <b>manage</b> [2] - 22:11, 36:9  <b>managed</b> [3] - 34:17, 35:2, 50:8  <b>management</b> [2] - 4:19, 23:7  <b>manager</b> [10] - 3:7, 4:1, 11:25, 12:16, 12:19, 16:16, 65:4, 99:25, 101:7, 126:24  <b>Manager</b> [7] - 4:21, 4:25, 52:7, 53:2, 53:12, 54:1, 91:20  <b>Managers</b> [1] - 53:5  <b>managing</b> [1] - 49:4  <b>mandate</b> [5] - 40:20, 81:19, 81:22, 82:3, 123:19  <b>mandated</b> [1] - 83:2  <b>mandates</b> [1] - 73:6  <b>mandatory</b> [2] - 17:25, 18:1  <b>manual</b> [1] - 19:3  <b>manually</b> [1] - 28:11  <b>manure</b> [18] - 7:11, 49:9, 49:10, 49:24, 50:5, 50:8, 50:11, 54:3, 54:7, 54:10, 54:13, 57:19, 58:1, 59:2, 59:6, 59:8, 59:14  <b>Map</b> [2] - 21:11, 21:13  <b>map</b> [9] - 21:17, 21:20, 70:7, 70:11, 70:12, 70:13, 71:4, 77:21, 79:7  <b>mapping</b> [2] - 16:15, 51:19  <b>margin</b> [2] - 43:9, 91:6  <b>margins</b> [2] - 36:16, 38:15  <b>market</b> [7] - 19:9, 37:21, 38:3, 39:14, 39:16, 39:19, 121:3  <b>marketplace</b> [1] - 39:19  <b>match</b> [1] - 84:23  <b>material</b> [1] - 52:15  <b>materials</b> [2] - 8:11, 8:13  <b>matter</b> [2] - 73:25, 125:15  <b>matters</b> [5] - 5:7, 8:21, 13:16, 13:19, 15:3  <b>maximum</b> [1] - 18:19  <b>McDougall</b> [1] - 123:2  <b>McDougalls</b> [1] - 6:25  <b>MD</b> [4] - 26:14, 26:16, 26:22, 107:5  <b>MDP</b> [83] - 30:25, 31:4, 62:23, 65:12, 65:19, 68:10, 68:12, 69:15, 69:16, 70:2, 70:23, 72:4, 72:22, 72:25, 73:2, 74:4, 74:5, 74:10, 74:23, 76:2, 76:8, 76:17, 76:22, 78:1, 78:2, 78:4, 78:7, 78:11, 78:22, 78:25, 79:14, 84:14, 86:24, 87:10, 87:18, 87:21, 88:8, 89:16, 90:5, 90:23,</p>	<p>91:11, 91:21, 93:12, 93:17, 98:8, 98:17, 98:20, 100:5, 101:15, 101:16, 106:22, 107:9, 107:10, 107:15, 108:13, 108:25, 109:10, 109:14, 111:21, 112:4, 112:7, 113:16, 113:17, 113:18, 113:23, 113:24, 114:10, 114:23, 114:25, 115:15, 117:3, 117:8, 118:14, 118:24, 118:25, 119:5, 119:15, 119:17, 119:23, 119:24, 121:2, 121:11  <b>MDPs</b> [5] - 45:8, 110:3, 110:25, 125:11  <b>mean</b> [3] - 31:12, 121:6, 125:23  <b>meaningful</b> [1] - 65:14  <b>means</b> [2] - 14:13, 110:9  <b>meant</b> [1] - 27:12  <b>mechanism</b> [1] - 106:14  <b>media</b> [1] - 5:20  <b>meet</b> [6] - 17:9, 25:15, 45:14, 56:19, 108:4, 108:10  <b>meeting</b> [4] - 41:11, 43:21, 90:21, 123:6  <b>meetings</b> [1] - 87:12  <b>meets</b> [2] - 49:11, 109:6  <b>member</b> [4] - 3:2, 3:15, 41:18, 41:19  <b>Member</b> [4] - 2:7, 2:7, 11:20  <b>members</b> [18] - 3:4, 3:23, 4:18, 5:17, 5:20, 8:9, 9:12, 10:1, 12:24, 16:1, 17:15, 24:1, 40:13, 40:19, 99:16, 105:21, 121:18, 122:1  <b>memories</b> [1] - 24:19  <b>mention</b> [3] - 13:6, 41:10, 91:1  <b>mentioned</b> [17] - 17:19, 19:22, 23:23, 24:6, 27:25, 28:16, 28:22, 31:12, 34:1, 35:7, 36:17, 37:2, 64:17, 64:18, 68:13, 68:14, 88:16  <b>meridian</b> [1] - 6:23  <b>met</b> [6] - 7:18, 42:23, 94:10, 117:12, 119:8, 120:7  <b>method</b> [1] - 98:4  <b>metres</b> [19] - 26:13, 27:8, 29:21, 51:19, 51:20, 52:19, 52:20, 56:5, 57:16, 79:5, 79:7, 79:11, 82:4, 82:5, 82:6, 82:12, 82:18, 84:14  <b>MGA</b> [15] - 63:10, 63:22, 73:10, 78:9, 79:2, 81:20, 81:24, 84:24, 91:13, 110:2, 110:5, 110:6, 123:9, 124:15, 125:14  <b>mid</b> [3] - 19:25, 20:5, 23:14  <b>middle</b> [1] - 21:19  <b>might</b> [14] - 49:18,</p>
<b>L</b>		<b>M</b>		
<p><b>LA21011</b> [3] - 1:6, 2:20, 6:20  <b>lack</b> [5] - 56:7, 57:17, 117:9, 118:12, 121:13  <b>ladder</b> [1] - 75:18  <b>lag</b> [2] - 10:25, 11:6  <b>laid</b> [1] - 97:19  <b>lakes</b> [1] - 97:12  <b>Land</b> [1] - 63:19  <b>land</b> [36] - 20:14, 25:21, 27:9, 27:11, 29:5, 29:9, 29:10, 29:14, 29:20, 29:22, 29:24, 30:1, 30:14, 42:15, 42:20, 47:4, 54:1, 75:9, 82:25, 83:15, 83:18, 88:11, 89:2, 89:24, 91:17, 97:19, 98:2, 101:25, 102:10, 102:15, 111:9, 112:18, 112:20, 112:24, 113:1, 113:9  <b>land-use</b> [2] - 83:15, 83:18  <b>landowner</b> [2] - 63:18, 122:25  <b>landowners</b> [3] - 63:3, 88:4, 99:5  <b>lands</b> [2] - 85:24, 90:1  <b>landscape</b> [1] - 41:8  <b>Lane</b> [2] - 12:3, 41:19  <b>language</b> [2] - 69:16, 69:17  <b>large</b> [2] - 3:7, 99:14  <b>larger</b> [4] - 34:20, 83:5, 93:9  <b>last</b> [14] - 10:2, 11:16, 16:25, 21:9, 21:12, 22:20, 25:24, 32:24, 33:2, 36:3, 36:13, 96:7, 113:14, 114:5  <b>late</b> [1] - 99:20  <b>laudable</b> [1] - 113:25  <b>Laura</b> [2] - 2:9, 4:1  <b>law</b> [1] - 75:6</p>	<p><b>letter</b> [11] - 22:14, 22:18, 61:18, 63:20, 64:24, 80:6, 100:9, 100:19, 122:12, 123:14, 124:7  <b>letters</b> [4] - 87:23, 88:3, 99:4, 99:23  <b>level</b> [7] - 6:7, 28:14, 44:14, 56:17, 56:19, 94:13, 94:14  <b>licence</b> [2] - 26:6, 26:10  <b>licences</b> [1] - 20:25  <b>licensing</b> [2] - 26:5, 26:7  <b>life</b> [1] - 82:24  <b>lifespan</b> [1] - 35:16  <b>lifestyle</b> [2] - 92:3, 92:9  <b>light</b> [2] - 112:8, 113:17  <b>limited</b> [1] - 76:15  <b>limiting</b> [2] - 103:2, 113:9  <b>line</b> [6] - 33:24, 36:2, 36:5, 36:8, 36:9, 52:21  <b>lined</b> [1] - 59:10  <b>liner</b> [1] - 49:11  <b>lines</b> [3] - 79:9, 94:11, 120:1  <b>link</b> [2] - 5:16, 5:18  <b>liquid</b> [1] - 50:11  <b>list</b> [4] - 15:13, 15:15, 15:18, 46:21  <b>LITTLE</b> [1] - 1:10  <b>lives</b> [1] - 118:18  <b>livestock</b> [3] - 17:2, 44:4, 44:6  <b>loaded</b> [1] - 5:1  <b>local</b> [6] - 20:13, 41:1, 43:17, 92:22, 94:13, 98:11  <b>locally</b> [1] - 19:10  <b>located</b> [5] - 6:22, 21:3, 21:5, 48:17, 69:18  <b>location</b> [30] - 19:21, 20:16, 20:18, 20:21, 21:2, 21:25, 22:2,</p>	<p><b>M.D</b> [1] - 114:15  <b>Madam</b> [42] - 2:22, 11:19, 13:5, 13:10, 13:20, 15:11, 15:25, 21:7, 39:22, 46:18, 47:11, 48:6, 48:12, 52:1, 52:5, 57:6, 58:9, 60:9, 60:12, 61:4, 61:14, 66:2, 66:16, 68:16, 73:23, 74:12, 87:4, 89:4, 89:8, 96:18, 100:4, 101:12, 103:18, 104:7, 105:20, 106:21, 110:4, 115:24, 121:17, 122:1, 125:2, 125:5  <b>mail</b> [2] - 31:10, 32:5  <b>mailing</b> [1] - 63:6  <b>mailout</b> [1] - 63:4  <b>mailouts</b> [1] - 98:10  <b>main</b> [2] - 5:18, 21:6  <b>maintain</b> [6] - 56:16, 56:17, 56:18, 109:22, 109:23, 115:9  <b>maintained</b> [1] - 92:3  <b>maintaining</b> [3] - 109:2, 109:8, 111:25  <b>maintenance</b> [4] - 33:18, 107:23, 108:5, 108:11  <b>major</b> [1] - 34:12  <b>majority</b> [3] - 81:3,</p>	<p><b>margin</b> [2] - 43:9, 91:6  <b>margins</b> [2] - 36:16, 38:15  <b>market</b> [7] - 19:9, 37:21, 38:3, 39:14, 39:16, 39:19, 121:3  <b>marketplace</b> [1] - 39:19  <b>match</b> [1] - 84:23  <b>material</b> [1] - 52:15  <b>materials</b> [2] - 8:11, 8:13  <b>matter</b> [2] - 73:25, 125:15  <b>matters</b> [5] - 5:7, 8:21, 13:16, 13:19, 15:3  <b>maximum</b> [1] - 18:19  <b>McDougall</b> [1] - 123:2  <b>McDougalls</b> [1] - 6:25  <b>MD</b> [4] - 26:14, 26:16, 26:22, 107:5  <b>MDP</b> [83] - 30:25, 31:4, 62:23, 65:12, 65:19, 68:10, 68:12, 69:15, 69:16, 70:2, 70:23, 72:4, 72:22, 72:25, 73:2, 74:4, 74:5, 74:10, 74:23, 76:2, 76:8, 76:17, 76:22, 78:1, 78:2, 78:4, 78:7, 78:11, 78:22, 78:25, 79:14, 84:14, 86:24, 87:10, 87:18, 87:21, 88:8, 89:16, 90:5, 90:23,</p>	<p>91:11, 91:21, 93:12, 93:17, 98:8, 98:17, 98:20, 100:5, 101:15, 101:16, 106:22, 107:9, 107:10, 107:15, 108:13, 108:25, 109:10, 109:14, 111:21, 112:4, 112:7, 113:16, 113:17, 113:18, 113:23, 113:24, 114:10, 114:23, 114:25, 115:15, 117:3, 117:8, 118:14, 118:24, 118:25, 119:5, 119:15, 119:17, 119:23, 119:24, 121:2, 121:11  <b>MDPs</b> [5] - 45:8, 110:3, 110:25, 125:11  <b>mean</b> [3] - 31:12, 121:6, 125:23  <b>meaningful</b> [1] - 65:14  <b>means</b> [2] - 14:13, 110:9  <b>meant</b> [1] - 27:12  <b>mechanism</b> [1] - 106:14  <b>media</b> [1] - 5:20  <b>meet</b> [6] - 17:9, 25:15, 45:14, 56:19, 108:4, 108:10  <b>meeting</b> [4] - 41:11, 43:21, 90:21, 123:6  <b>meetings</b> [1] - 87:12  <b>meets</b> [2] - 49:11, 109:6  <b>member</b> [4] - 3:2, 3:15, 41:18, 41:19  <b>Member</b> [4] - 2:7, 2:7, 11:20  <b>members</b> [18] - 3:4, 3:23, 4:18, 5:17, 5:20, 8:9, 9:12, 10:1, 12:24, 16:1, 17:15, 24:1, 40:13, 40:19, 99:16, 105:21, 121:18, 122:1  <b>memories</b> [1] - 24:19  <b>mention</b> [3] - 13:6, 41:10, 91:1  <b>mentioned</b> [17] - 17:19, 19:22, 23:23, 24:6, 27:25, 28:16, 28:22, 31:12, 34:1, 35:7, 36:17, 37:2, 64:17, 64:18, 68:13, 68:14, 88:16  <b>meridian</b> [1] - 6:23  <b>met</b> [6] - 7:18, 42:23, 94:10, 117:12, 119:8, 120:7  <b>method</b> [1] - 98:4  <b>metres</b> [19] - 26:13, 27:8, 29:21, 51:19, 51:20, 52:19, 52:20, 56:5, 57:16, 79:5, 79:7, 79:11, 82:4, 82:5, 82:6, 82:12, 82:18, 84:14  <b>MGA</b> [15] - 63:10, 63:22, 73:10, 78:9, 79:2, 81:20, 81:24, 84:24, 91:13, 110:2, 110:5, 110:6, 123:9, 124:15, 125:14  <b>mid</b> [3] - 19:25, 20:5, 23:14  <b>middle</b> [1] - 21:19  <b>might</b> [14] - 49:18,</p>

<p>49:20, 50:18, 74:10, 75:21, 80:14, 84:23, 85:13, 92:20, 99:13, 102:22, 125:25  <b>mile</b> [3] - 101:21, 101:24, 102:2  <b>Milo</b> [1] - 87:24  <b>minds</b> [1] - 95:1  <b>minimal</b> [2] - 25:11, 50:10  <b>minimize</b> [2] - 6:8, 108:18  <b>minimum</b> [1] - 79:7  <b>minute</b> [1] - 74:9  <b>minutes</b> [10] - 6:17, 78:8, 78:21, 82:16, 82:22, 87:21, 88:5, 90:21, 123:5, 123:6  <b>missed</b> [1] - 72:14  <b>mitigate</b> [5] - 44:7, 92:20, 92:24, 94:16, 120:19  <b>mitigated</b> [4] - 92:7, 92:12, 93:13, 93:19  <b>mitigation</b> [2] - 93:14, 107:14  <b>MNP</b> [4] - 5:6, 12:2, 32:23, 33:1  <b>mobile</b> [1] - 23:21  <b>models</b> [1] - 41:7  <b>modernization</b> [1] - 117:17  <b>modernize</b> [1] - 71:11  <b>modernizing</b> [1] - 44:15  <b>modified</b> [1] - 64:22  <b>moment</b> [1] - 40:4  <b>moments</b> [1] - 5:1  <b>monitored</b> [1] - 19:5  <b>monitoring</b> [1] - 28:2  <b>monitors</b> [1] - 28:8  <b>months</b> [1] - 40:16  <b>morning</b> [4] - 2:17, 16:4, 16:10, 40:10  <b>most</b> [5] - 21:5, 23:16, 44:23, 92:21, 120:22  <b>mountain</b> [1] - 3:24  <b>mouse</b> [1] - 104:3  <b>move</b> [11] - 29:3, 29:21, 30:4, 30:6, 30:9, 49:24, 50:5, 56:10, 57:15, 125:4, 126:10  <b>moved</b> [2] - 24:19, 25:1  <b>movement</b> [3] - 54:23, 55:4, 55:16  <b>moves</b> [2] - 55:5, 55:12  <b>moving</b> [8] - 27:6, 29:10, 49:16, 102:19, 119:1, 119:3, 120:1, 120:13  <b>multi</b> [2] - 7:10, 75:12  <b>multi-jurisdictional</b> [1] - 75:12  <b>multi-species</b> [1] - 7:10  <b>multifamily</b> [2] - 44:20, 44:22  <b>multiple</b> [1] - 3:9  <b>Municipal</b> [10] - 6:24, 21:4, 64:2, 73:6, 75:1, 110:16, 110:17, 110:19, 114:12, 122:19  <b>municipal</b> [50] -</p>	<p>3:12, 3:19, 30:18, 31:25, 45:16, 50:13, 50:16, 50:23, 51:6, 52:13, 62:16, 63:2, 63:11, 65:9, 66:20, 67:22, 69:13, 72:12, 72:18, 73:7, 74:3, 75:9, 77:13, 77:19, 77:25, 86:7, 86:14, 86:17, 100:6, 102:10, 102:15, 106:7, 106:18, 107:2, 107:3, 108:15, 110:14, 110:17, 110:22, 111:6, 112:13, 113:5, 113:21, 116:6, 116:18, 116:21, 117:1, 117:10, 118:10, 122:19  <b>municipalities</b> [7] - 41:7, 63:25, 64:3, 71:17, 73:4, 75:10, 75:14  <b>municipalities'</b> [1] - 86:6  <b>municipality</b> [3] - 41:2, 64:21, 85:17  <b>must</b> [1] - 116:4  <b>mute</b> [2] - 61:16, 121:22  <b>muting</b> [1] - 10:19  <b>my..</b> [1] - 69:8</p>	<p>27:12, 27:16, 28:6, 28:8, 30:12, 30:13, 35:17, 35:20, 37:4, 38:5, 38:6, 38:10, 38:25, 39:11, 43:7, 43:13, 43:15, 44:8, 44:18, 46:5, 51:15, 58:19, 59:13, 70:3, 76:8, 93:22, 100:20, 100:22, 101:4, 102:18, 107:20, 119:2, 119:3  <b>Newell</b> [1] - 88:2  <b>newly</b> [1] - 114:11  <b>news</b> [1] - 110:23  <b>newspaper</b> [2] - 63:12, 100:9  <b>next</b> [10] - 3:11, 12:10, 32:12, 32:13, 34:14, 46:14, 51:6, 87:6, 92:5, 104:13  <b>nine</b> [2] - 23:20, 123:12  <b>non</b> [3] - 40:23, 70:17, 93:16  <b>non-CFO</b> [1] - 93:16  <b>non-governmental</b> [1] - 40:23  <b>non-highlighted</b> [1] - 70:17  <b>none</b> [2] - 15:19, 86:2  <b>noon</b> [1] - 104:21  <b>normally</b> [1] - 78:2  <b>North</b> [1] - 116:10  <b>north</b> [1] - 29:8  <b>note</b> [11] - 10:24, 44:11, 45:5, 52:15, 53:13, 53:14, 62:20, 62:24, 107:18, 118:12, 121:13  <b>Note</b> [1] - 53:13  <b>noted</b> [12] - 16:2, 28:24, 62:18, 62:22, 106:10, 107:6, 110:1, 113:10, 115:20, 119:12, 120:7, 121:1  <b>notes</b> [9] - 13:25, 14:12, 14:13, 81:15, 83:25, 86:22, 89:10, 90:15, 128:6  <b>nothing</b> [4] - 15:4, 15:8, 15:11, 90:15  <b>notice</b> [7] - 31:5, 66:20, 67:9, 117:9, 118:12, 119:22, 119:23  <b>noticed</b> [1] - 35:16  <b>notification</b> [15] - 32:3, 62:25, 63:10, 63:11, 63:14, 63:16, 63:17, 63:22, 66:23, 67:6, 98:4, 98:11, 100:9, 123:10  <b>notifications</b> [1] - 31:8  <b>notified</b> [3] - 31:3, 31:4, 98:6  <b>notify</b> [1] - 123:15  <b>NRCB</b> [36] - 2:8, 2:9, 2:11, 3:2, 3:18, 4:13, 5:16, 5:22, 9:11, 9:25, 14:10, 15:13, 16:17, 25:16, 26:2, 45:9, 45:12, 62:7, 71:18, 73:21, 75:16, 79:20, 87:25, 88:1, 88:21, 92:21, 94:14, 95:20, 100:23, 102:8, 116:10, 124:5, 124:6,</p>	<p>125:6  <b>NRCB's</b> [4] - 5:10, 5:18, 8:7, 79:23  <b>nrcb.ca</b> [1] - 5:24  <b>nuisance</b> [1] - 25:10  <b>Number</b> [6] - 7:19, 52:12, 54:16, 96:11, 96:13, 96:14  <b>number</b> [11] - 4:5, 4:7, 4:13, 4:24, 4:25, 21:22, 34:2, 52:16, 74:9, 82:16, 89:9  <b>numbered</b> [1] - 21:8  <b>numbers</b> [3] - 7:12, 70:1, 84:23</p>	<p>85:2, 122:7, 122:9, 122:20, 122:21, 124:20  <b>One</b> [1] - 111:17  <b>one</b> [46] - 13:6, 13:21, 17:6, 17:17, 18:6, 22:12, 23:15, 28:24, 34:14, 41:23, 48:13, 48:15, 49:13, 63:20, 64:21, 66:25, 67:11, 71:25, 72:7, 72:9, 72:21, 79:15, 79:20, 80:23, 81:4, 83:8, 84:6, 84:9, 88:10, 88:25, 92:5, 93:20, 94:6, 95:10, 95:24, 96:6, 96:23, 97:2, 100:22, 101:3, 101:12, 102:9, 103:21, 107:18  <b>onerous</b> [1] - 43:5  <b>ones</b> [1] - 93:20  <b>ongoing</b> [1] - 42:9  <b>onscreen</b> [2] - 4:19, 126:20  <b>onsite</b> [1] - 19:9  <b>open</b> [13] - 9:10, 59:9, 59:10, 77:3, 84:18, 87:20, 87:21, 98:7, 99:4, 99:8, 99:18, 100:10  <b>operate</b> [1] - 56:22  <b>operation</b> [48] - 6:22, 17:8, 17:14, 17:17, 17:20, 18:11, 18:22, 19:13, 19:14, 21:6, 22:4, 22:6, 24:23, 25:22, 26:3, 26:25, 27:6, 27:10, 30:5, 33:9, 34:16, 36:19, 38:15, 38:17, 42:17, 42:24, 43:19, 44:18, 44:20, 45:11, 45:14, 46:5, 46:8, 48:17, 48:18, 49:7, 56:15, 59:13, 93:6, 93:16, 109:25, 112:1, 115:13, 117:18, 120:11, 120:21, 121:7, 121:9  <b>Operation</b> [2] - 43:2, 84:6  <b>operational</b> [1] - 33:19  <b>operations</b> [29] - 4:15, 16:12, 16:24, 17:2, 19:23, 20:1, 23:14, 23:17, 24:5, 38:9, 38:23, 45:6, 50:20, 50:21, 59:1, 65:16, 70:3, 70:5, 70:25, 71:2, 71:9, 77:15, 83:4, 92:4, 107:12, 115:9, 115:17, 119:10  <b>Operations</b> [1] - 91:24  <b>operator</b> [5] - 7:14, 28:12, 93:22, 93:23, 94:16  <b>operators</b> [2] - 65:16, 94:1  <b>opinion</b> [2] - 81:17, 122:8  <b>opportunities</b> [1] - 113:7  <b>opportunity</b> [15] - 8:21, 9:14, 10:1, 10:2, 10:6, 30:17, 45:24, 59:21, 65:18, 66:8,</p>
<b>N</b>			<b>O</b>	
	<p><b>name</b> [5] - 2:18, 11:16, 11:21, 12:18, 13:8  <b>names</b> [2] - 11:16, 12:5  <b>narrow</b> [1] - 75:10  <b>NATURAL</b> [1] - 1:1  <b>natural</b> [4] - 10:11, 34:24, 34:25, 35:23  <b>Natural</b> [2] - 2:1, 2:19  <b>naturally</b> [2] - 34:25, 49:25  <b>nature</b> [4] - 55:15, 92:23, 94:11, 103:1  <b>near</b> [3] - 12:3, 58:19, 91:16  <b>nearby</b> [1] - 92:8  <b>nearest</b> [1] - 27:4  <b>necessarily</b> [2] - 90:4, 94:15  <b>necessary</b> [5] - 6:7, 10:19, 57:2, 82:13, 117:16  <b>need</b> [17] - 6:16, 8:12, 10:13, 10:17, 11:7, 13:13, 14:6, 33:20, 36:5, 36:8, 36:11, 61:21, 75:5, 85:9, 86:19, 108:22, 121:6  <b>needs</b> [3] - 19:4, 36:10, 122:16  <b>negative</b> [3] - 51:17, 71:13, 109:17  <b>neglect</b> [1] - 13:5  <b>neighbours</b> [4] - 25:11, 92:25, 121:14, 123:15  <b>net</b> [1] - 33:25  <b>never</b> [2] - 79:22, 124:4  <b>New</b> [1] - 70:25  <b>new</b> [39] - 9:4, 20:16, 24:7, 26:3, 27:9,</p>			

<p>100:15, 103:13, 105:22, 122:2, 125:18 <b>oppose</b> [1] - 80:18 <b>opposed</b> [2] - 82:5, 85:1 <b>opposition</b> [2] - 117:24, 121:14 <b>option</b> [2] - 29:19, 64:3 <b>oral</b> [3] - 7:20, 10:3, 104:24 <b>order</b> [5] - 8:14, 36:7, 65:19, 109:22, 121:7 <b>organization</b> [1] - 40:18 <b>organizations</b> [2] - 40:23, 41:2 <b>oriented</b> [1] - 31:16 <b>original</b> [1] - 122:24 <b>originates</b> [2] - 54:20, 55:10 <b>otherwise</b> [2] - 42:19, 108:21 <b>ought</b> [10] - 108:23, 109:10, 111:22, 112:11, 113:22, 114:1, 119:4, 119:14, 121:12, 121:15 <b>ourselves</b> [1] - 51:12 <b>outcome</b> [1] - 76:3 <b>outlining</b> [2] - 22:15, 116:19 <b>output</b> [1] - 43:7 <b>outright</b> [1] - 111:17 <b>outset</b> [1] - 28:22 <b>outside</b> [7] - 28:9, 29:3, 30:5, 44:1, 46:11, 90:11, 95:17 <b>overbase</b> [5] - 18:13, 33:12, 34:5, 35:1, 37:7 <b>overbased</b> [2] - 18:14, 18:17 <b>overhead</b> [2] - 38:18, 57:3 <b>overridden</b> [2] - 119:6, 119:17 <b>override</b> [6] - 116:17, 116:21, 117:1, 117:3, 117:8, 118:10 <b>overseeing</b> [1] - 5:6 <b>overview</b> [1] - 8:18 <b>own</b> [5] - 18:12, 18:20, 29:5, 33:11, 115:19 <b>owners</b> [1] - 119:21</p>	<p>129:21, 129:22, 129:23, 129:24 <b>panel</b> [1] - 78:12 <b>Panel</b> [39] - 2:7, 2:7, 2:18, 3:1, 3:4, 3:22, 3:23, 3:25, 6:1, 6:10, 7:18, 7:22, 7:24, 8:1, 8:9, 9:11, 9:19, 9:25, 11:20, 11:23, 13:21, 15:16, 15:25, 16:20, 17:1, 19:19, 61:8, 73:21, 105:21, 121:18, 122:1, 122:17, 125:24, 126:2, 126:7, 126:11, 127:3 <b>paper</b> [1] - 98:11 <b>paragraph</b> [3] - 22:21, 54:19, 91:24 <b>parcel</b> [6] - 20:14, 25:20, 29:10, 29:20, 29:24, 54:11 <b>parcels</b> [1] - 29:5 <b>part</b> [8] - 14:8, 39:11, 74:5, 76:22, 79:13, 83:20, 88:17, 90:8 <b>Part</b> [1] - 53:4 <b>partake</b> [1] - 16:12 <b>participant</b> [1] - 8:20 <b>participants</b> [2] - 6:9, 11:14 <b>participate</b> [6] - 7:1, 13:3, 30:24, 50:17, 125:7, 125:19 <b>participating</b> [1] - 51:3 <b>participation</b> [7] - 5:25, 100:6, 117:9, 118:13, 119:15, 119:23, 126:12 <b>particular</b> [4] - 14:8, 37:1, 85:20, 102:21 <b>particularly</b> [4] - 9:8, 80:11, 86:16, 126:13 <b>parties</b> [15] - 2:24, 8:2, 8:7, 8:10, 8:19, 10:15, 13:2, 15:14, 59:21, 76:16, 103:12, 104:23, 108:16, 108:17, 127:5 <b>partner</b> [2] - 12:1, 32:23 <b>parts</b> [1] - 29:14 <b>party</b> [15] - 7:1, 8:15, 9:9, 9:10, 9:13, 10:2, 14:5, 47:8, 47:12, 47:15, 47:24, 58:14, 95:13, 111:24, 113:11 <b>past</b> [5] - 32:25, 51:10, 54:9, 102:9, 102:18 <b>pattern</b> [1] - 64:20 <b>pause</b> [2] - 4:11, 10:11 <b>pay</b> [6] - 18:4, 109:20, 109:21, 112:2, 117:16, 121:7 <b>pdf</b> [6] - 4:25, 53:7, 54:17, 91:22, 113:18, 114:7 <b>Peace</b> [2] - 41:20, 41:21 <b>penned</b> [1] - 34:19 <b>pens</b> [2] - 39:2, 39:4 <b>people</b> [6] - 23:16, 95:1, 98:7, 105:16, 115:16, 119:25 <b>per</b> [6] - 34:13, 34:24, 36:14, 36:22, 38:13, 63:9</p>	<p><b>percent</b> [6] - 29:13, 30:15, 30:16, 36:14, 36:20 <b>perfect</b> [1] - 54:2 <b>performance</b> [1] - 127:6 <b>perhaps</b> [14] - 11:2, 32:14, 49:13, 52:9, 52:22, 69:4, 74:17, 77:18, 79:16, 89:17, 97:2, 98:25, 104:22, 112:5 <b>period</b> [1] - 18:21 <b>permanence</b> [1] - 55:18 <b>permanent</b> [2] - 23:18, 23:21 <b>permission</b> [2] - 106:21, 110:4 <b>permit</b> [3] - 45:4, 71:8, 117:20 <b>permits</b> [4] - 72:7, 111:18, 115:1, 115:4 <b>permitted</b> [7] - 70:4, 70:6, 71:1, 71:3, 107:17, 107:25, 109:15 <b>personal</b> [1] - 96:4 <b>personally</b> [1] - 123:14 <b>perspective</b> [4] - 42:5, 56:24, 78:19, 126:3 <b>pertain</b> [1] - 40:24 <b>pertains</b> [1] - 111:23 <b>phases</b> [1] - 23:3 <b>phone</b> [2] - 4:4, 4:8 <b>phonetic</b> [2] - 45:15, 108:22 <b>photo</b> [2] - 54:1, 94:22 <b>photograph</b> [1] - 91:25 <b>picture</b> [1] - 21:23 <b>pictures</b> [1] - 95:25 <b>piece</b> [1] - 30:1 <b>pipeline</b> [1] - 29:16 <b>pipings</b> [1] - 29:16 <b>place</b> [21] - 18:20, 19:15, 20:24, 21:1, 23:20, 32:1, 34:7, 34:18, 37:5, 37:8, 47:6, 50:12, 58:15, 64:16, 64:17, 72:25, 74:23, 101:17, 118:23, 119:24, 123:4 <b>placed</b> [2] - 67:8, 91:7 <b>placing</b> [2] - 18:23, 24:2 <b>Plan</b> [2] - 114:13, 114:14 <b>plan</b> [57] - 23:4, 28:19, 30:19, 30:21, 46:7, 46:10, 50:13, 50:17, 51:6, 62:16, 62:17, 62:18, 63:1, 63:2, 63:4, 63:11, 65:9, 66:20, 66:21, 67:22, 69:14, 69:15, 72:18, 72:19, 73:7, 73:8, 73:9, 76:16, 77:13, 77:19, 85:14, 86:8, 86:15, 86:17, 91:21, 100:7, 106:7, 106:8, 106:18, 106:19, 107:2, 107:3, 110:18, 111:4, 111:7, 111:22, 112:13, 113:5, 113:21,</p>	<p>114:12, 116:6, 116:18, 116:21, 117:2, 118:10 <b>plan...in</b> [1] - 111:8 <b>planning</b> [22] - 12:24, 13:11, 20:13, 65:5, 72:22, 75:20, 78:14, 78:18, 81:6, 81:9, 81:10, 86:6, 86:12, 92:7, 92:13, 93:15, 97:24, 101:8, 114:18, 114:20, 119:9 <b>plans</b> [19] - 45:16, 45:17, 46:4, 47:9, 50:23, 50:24, 65:11, 72:12, 75:1, 99:10, 108:15, 110:15, 110:20, 110:21, 110:22, 111:1, 111:11, 111:16 <b>plans..</b> [1] - 72:13 <b>platform</b> [1] - 7:25 <b>playing</b> [1] - 43:23 <b>please</b> [25] - 3:4, 4:4, 4:24, 5:22, 6:13, 11:5, 11:15, 14:2, 14:13, 16:8, 17:1, 25:2, 32:11, 34:10, 40:1, 46:19, 46:23, 61:13, 61:25, 62:4, 66:17, 68:7, 73:22, 100:3, 116:1 <b>plus</b> [1] - 37:6 <b>point</b> [28] - 6:14, 18:19, 24:9, 30:4, 36:16, 37:4, 42:22, 43:3, 43:25, 45:3, 52:12, 73:1, 78:4, 88:7, 90:5, 98:9, 100:5, 100:18, 101:3, 102:5, 104:19, 104:21, 108:1, 112:5, 113:20, 122:20, 124:11, 125:20 <b>pointed</b> [2] - 44:8, 75:24 <b>points</b> [7] - 8:16, 9:7, 42:1, 49:13, 62:13, 101:7, 122:5 <b>policies</b> [1] - 76:12 <b>Policy</b> [4] - 69:20, 69:22, 70:2, 108:12 <b>policy</b> [6] - 63:7, 63:21, 76:1, 76:3, 107:15, 123:15 <b>politics</b> [1] - 3:12 <b>poorly</b> [2] - 54:22, 55:11 <b>pop</b> [1] - 96:10 <b>population</b> [1] - 20:22 <b>populations</b> [1] - 25:9 <b>portion</b> [4] - 8:23, 60:21, 83:13, 125:8 <b>pose</b> [1] - 50:9 <b>posed</b> [4] - 9:17, 77:23, 115:10, 118:2 <b>position</b> [3] - 16:22, 80:12, 118:3 <b>positive</b> [2] - 28:16, 40:25 <b>possession</b> [2] - 20:17, 95:10 <b>possibility</b> [1] - 35:24 <b>possible</b> [9] - 4:10, 6:8, 11:1, 54:6, 54:9, 55:2, 57:24, 97:4, 103:7</p>	<p><b>possibly</b> [2] - 36:10, 48:24 <b>posted</b> [2] - 5:10, 15:13 <b>potential</b> [8] - 82:24, 89:19, 92:6, 92:11, 93:2, 93:12, 93:13, 98:19 <b>poultry</b> [17] - 18:10, 19:13, 19:14, 24:23, 25:24, 25:25, 33:8, 33:9, 34:3, 34:11, 34:12, 36:21, 39:15, 53:9, 56:3, 56:6, 56:8 <b>power</b> [2] - 81:23, 115:21 <b>Practices</b> [2] - 43:2, 84:6 <b>Prairie</b> [2] - 12:4, 41:20 <b>precedence</b> [2] - 45:13, 124:3 <b>precise</b> [2] - 51:14, 51:18 <b>predominantly</b> [5] - 24:10, 46:11, 53:19, 53:20, 55:5 <b>preeminence</b> [2] - 114:9, 114:23 <b>prefer</b> [3] - 77:10, 105:6, 105:11 <b>preference</b> [2] - 105:15, 111:21 <b>preliminary</b> [3] - 8:21, 13:16, 15:2 <b>prepare</b> [1] - 104:24 <b>prepared</b> [3] - 15:13, 16:4, 16:19 <b>present</b> [4] - 5:8, 8:25, 10:4, 117:5 <b>presentation</b> [2] - 8:15, 61:17 <b>presented</b> [2] - 9:9, 9:14 <b>presenting</b> [3] - 6:9, 11:23, 13:25 <b>preservation</b> [1] - 92:2 <b>preserve</b> [1] - 82:23 <b>pressure</b> [1] - 27:22 <b>pressures</b> [3] - 109:24, 121:4, 121:6 <b>presume</b> [2] - 82:20, 98:15 <b>pretty</b> [2] - 44:1, 89:25 <b>prevails</b> [1] - 111:5 <b>prevent</b> [4] - 81:18, 90:24, 112:15, 112:25 <b>previous</b> [4] - 43:8, 43:11, 89:18, 89:20 <b>previously</b> [1] - 104:9 <b>price</b> [3] - 34:13, 34:22, 36:22 <b>primarily</b> [1] - 85:22 <b>primary</b> [1] - 4:20 <b>procedural</b> [2] - 13:17, 13:19 <b>procedurally</b> [1] - 14:6 <b>procedure</b> [1] - 123:9 <b>proceed</b> [9] - 11:14, 16:9, 32:11, 40:1, 45:23, 62:4, 105:17, 106:2, 117:21 <b>proceeding</b> [1] - 6:6 <b>PROCEEDINGS</b> [3] - 2:16, 127:12, 127:14</p>
<b>P</b>				
<p><b>P.M</b> [1] - 127:12 <b>Page</b> [2] - 2:7, 3:6 <b>page</b> [23] - 4:25, 5:19, 21:12, 22:19, 22:21, 52:12, 53:7, 54:17, 58:11, 69:16, 69:18, 69:21, 70:1, 71:23, 74:9, 91:22, 96:9, 100:6, 113:18, 114:7 <b>pages</b> [3] - 21:12, 77:14, 128:3 <b>PANEL</b> [22] - 46:3, 48:14, 52:6, 57:12, 58:10, 60:20, 66:14, 73:24, 87:9, 89:14, 96:22, 104:12, 129:11, 129:12, 129:13, 129:14, 129:15, 129:20,</p>				

<p><b>proceedings</b> [8] - 2:2, 5:18, 10:12, 14:7, 14:8, 60:22, 126:13, 128:5</p> <p><b>process</b> [31] - 5:21, 6:5, 6:12, 7:7, 8:19, 10:9, 29:11, 30:23, 42:9, 42:24, 51:3, 51:9, 62:8, 62:25, 66:24, 67:6, 73:3, 75:19, 76:23, 77:3, 83:2, 87:18, 88:6, 90:22, 99:5, 99:20, 117:10, 118:14, 119:16, 122:3, 126:12</p> <p><b>produce</b> [1] - 17:11</p> <p><b>producer</b> [1] - 34:18</p> <p><b>producers</b> [9] - 17:9, 17:11, 18:18, 27:18, 27:22, 34:17, 36:5, 36:8, 36:11</p> <p><b>producing</b> [1] - 90:1</p> <p><b>product</b> [1] - 94:5</p> <p><b>production</b> [5] - 24:5, 29:9, 29:20, 30:10, 113:2</p> <p><b>products</b> [1] - 39:15</p> <p><b>profit</b> [1] - 43:9</p> <p><b>profits</b> [1] - 33:25</p> <p><b>progression</b> [1] - 34:24</p> <p><b>prohibit</b> [1] - 111:17</p> <p><b>prohibited</b> [1] - 107:21</p> <p><b>project</b> [10] - 16:15, 20:2, 20:7, 20:10, 22:12, 25:19, 52:18, 65:20, 118:19, 118:20</p> <p><b>promote</b> [3] - 81:20, 113:15, 123:19</p> <p><b>promoted</b> [1] - 92:3</p> <p><b>proper</b> [1] - 88:14</p> <p><b>property</b> [2] - 52:21, 119:21</p> <p><b>proportion</b> [1] - 21:19</p> <p><b>propose</b> [1] - 15:14</p> <p><b>proposed</b> [22] - 20:2, 25:18, 26:20, 26:21, 28:18, 28:19, 46:4, 46:7, 46:16, 47:16, 49:10, 51:15, 52:23, 53:8, 55:12, 58:18, 59:11, 90:8, 91:2, 94:22, 114:11</p> <p><b>proposing</b> [4] - 27:3, 47:2, 47:3, 57:22</p> <p><b>protect</b> [6] - 64:12, 81:17, 82:13, 84:7, 90:25, 112:17</p> <p><b>protecting</b> [2] - 81:21, 85:12</p> <p><b>protection</b> [12] - 46:13, 48:24, 57:17, 57:18, 64:6, 71:15, 82:2, 82:21, 91:3, 107:24, 108:6, 123:20</p> <p><b>prove</b> [2] - 88:25, 95:10</p> <p><b>provide</b> [17] - 5:9, 8:18, 9:2, 9:22, 10:3, 22:14, 22:18, 40:20, 42:12, 46:17, 74:15, 77:4, 78:24, 81:7, 100:7, 116:10, 127:4</p> <p><b>provided</b> [12] - 5:16, 7:21, 9:24, 65:1, 66:20, 72:2, 75:10, 81:16, 88:5, 119:20, 120:4, 123:25</p>	<p><b>provides</b> [4] - 61:21, 106:14, 113:21, 116:2</p> <p><b>providing</b> [6] - 6:2, 12:17, 14:18, 46:20, 65:24, 66:19</p> <p><b>Province</b> [1] - 128:8</p> <p><b>province</b> [2] - 40:20, 121:4</p> <p><b>provincial</b> [5] - 19:25, 20:5, 24:10, 75:15, 84:21</p> <p><b>provincially</b> [1] - 83:2</p> <p><b>provision</b> [5] - 81:5, 113:17, 114:5, 116:8</p> <p><b>provisions</b> [7] - 74:4, 75:9, 78:1, 78:3, 102:11, 102:15, 108:17</p> <p><b>proximity</b> [11] - 25:14, 25:20, 49:5, 49:22, 57:23, 83:12, 84:1, 90:17, 92:17, 94:10, 97:15</p> <p><b>public</b> [30] - 5:17, 30:24, 31:4, 32:1, 64:25, 76:25, 78:8, 78:21, 79:3, 81:15, 84:17, 86:21, 87:13, 87:15, 87:20, 88:6, 90:15, 90:21, 94:2, 99:17, 99:18, 99:23, 100:6, 100:11, 114:16, 119:22, 123:5, 123:6, 123:10</p> <p><b>pull</b> [8] - 21:8, 52:8, 53:3, 106:21, 110:4, 114:25, 115:23, 115:24</p> <p><b>pumping</b> [2] - 29:16</p> <p><b>purchase</b> [2] - 34:24, 35:23</p> <p><b>purely</b> [2] - 49:1, 125:19</p> <p><b>purpose</b> [6] - 6:19, 48:21, 78:18, 84:5, 112:7, 121:11</p> <p><b>purposes</b> [6] - 78:14, 82:21, 83:18, 84:7, 86:6, 86:13</p> <p><b>purview</b> [1] - 92:16</p> <p><b>puts</b> [1] - 63:21</p> <p><b>putting</b> [3] - 64:2, 64:5, 68:25</p>	<p>129:23, 129:24</p> <p><b>questions</b> [73] - 6:11, 7:7, 7:22, 9:10, 9:17, 10:1, 10:8, 13:13, 13:22, 32:7, 39:21, 45:20, 46:2, 48:2, 48:5, 48:7, 48:10, 48:13, 51:25, 52:3, 57:6, 57:8, 58:13, 58:21, 59:17, 59:24, 59:25, 60:4, 60:8, 60:11, 60:14, 60:16, 62:7, 62:10, 65:2, 65:3, 65:7, 66:10, 66:13, 73:14, 73:19, 74:1, 74:2, 74:18, 77:3, 79:20, 79:24, 80:9, 81:4, 87:4, 87:7, 89:6, 94:20, 95:13, 96:19, 96:21, 96:24, 100:13, 100:23, 101:23, 103:13, 103:16, 103:17, 103:22, 103:25, 104:4, 104:8, 104:11, 112:6, 121:17, 124:6, 124:12, 124:22</p> <p><b>quick</b> [2] - 13:21, 49:6</p> <p><b>quicker</b> [1] - 110:11</p> <p><b>quickly</b> [1] - 101:13</p> <p><b>quite</b> [9] - 20:21, 69:25, 70:17, 71:21, 75:17, 86:22, 92:19, 94:3</p> <p><b>quota</b> [25] - 18:12, 18:13, 18:14, 18:16, 18:18, 18:19, 18:20, 18:23, 33:11, 33:15, 34:1, 34:4, 34:5, 34:13, 34:16, 34:18, 34:22, 34:23, 35:2, 35:3, 35:23, 36:11, 38:1, 39:2, 39:17</p>	<p>107:19, 108:18, 108:20, 108:22, 108:23, 108:24, 109:10, 109:14, 111:3, 112:16, 114:10, 115:5, 116:3, 116:14</p> <p><b>readily</b> [1] - 47:6</p> <p><b>reads</b> [5] - 70:2, 71:6, 109:14, 111:3, 114:10</p> <p><b>ready</b> [3] - 15:21, 36:1, 65:7</p> <p><b>real</b> [2] - 112:14, 113:20</p> <p><b>realize</b> [2] - 84:23, 100:21</p> <p><b>really</b> [11] - 36:8, 36:20, 86:10, 99:12, 100:17, 105:24, 106:1, 106:6, 118:14, 124:10, 124:19</p> <p><b>reason</b> [10] - 20:1, 31:16, 76:9, 97:3, 117:7, 117:11, 117:20, 118:9, 120:22, 123:16</p> <p><b>reasonable</b> [7] - 42:14, 42:20, 81:6, 81:8, 82:9, 82:18, 103:7</p> <p><b>reasoning</b> [4] - 64:5, 77:6, 86:21, 86:23</p> <p><b>reasons</b> [12] - 7:21, 25:2, 25:13, 49:1, 74:6, 74:7, 97:8, 97:23, 117:3, 117:18, 117:19, 118:7</p> <p><b>rebuttal</b> [5] - 8:5, 9:22, 9:24, 104:14, 104:16</p> <p><b>rebuttals</b> [1] - 7:16</p> <p><b>receive</b> [5] - 31:8, 32:3, 63:4, 63:20, 100:24</p> <p><b>received</b> [12] - 7:15, 7:16, 8:4, 8:5, 63:5, 63:13, 63:15, 71:17, 88:20, 98:1, 118:13, 127:2</p> <p><b>recent</b> [3] - 27:21, 42:7</p> <p><b>recently</b> [1] - 83:11</p> <p><b>reception</b> [1] - 61:10</p> <p><b>recognize</b> [4] - 6:2, 42:8, 65:11, 75:23</p> <p><b>recognizing</b> [3] - 56:16, 89:15, 90:3</p> <p><b>recollection</b> [1] - 22:15</p> <p><b>record</b> [4] - 8:12, 9:6, 13:9, 44:3</p> <p><b>record-setting</b> [1] - 44:3</p> <p><b>recoup</b> [1] - 30:17</p> <p><b>redevelopment</b> [1] - 111:8</p> <p><b>redirect</b> [11] - 9:15, 58:6, 58:8, 59:18, 59:20, 59:22, 59:24, 60:5, 100:16, 103:9, 103:14</p> <p><b>reduce</b> [1] - 71:13</p> <p><b>reducing</b> [2] - 82:24, 109:16</p> <p><b>Reeve</b> [4] - 76:5, 107:7, 110:2, 111:15</p> <p><b>reeve</b> [3] - 3:13, 12:14, 87:10</p> <p><b>reexamined</b> [1] -</p>	<p>83:1</p> <p><b>refer</b> [13] - 14:13, 61:18, 63:24, 71:22, 76:6, 77:14, 78:11, 78:20, 88:12, 88:19, 92:14, 97:10</p> <p><b>reference</b> [9] - 3:1, 15:14, 74:10, 76:7, 78:25, 82:23, 91:14, 101:4, 101:5</p> <p><b>referenced</b> [6] - 75:3, 86:20, 88:1, 91:11, 122:7, 122:21</p> <p><b>references</b> [3] - 110:10, 110:14, 110:15</p> <p><b>referral</b> [3] - 64:24, 100:19</p> <p><b>referred</b> [10] - 55:8, 56:2, 84:19, 85:9, 95:12, 97:13, 97:14, 97:20, 114:15, 114:20</p> <p><b>referring</b> [7] - 41:12, 55:7, 55:8, 55:21, 70:12, 77:16, 86:20</p> <p><b>refers</b> [2] - 52:13, 54:19</p> <p><b>reflect</b> [1] - 81:9</p> <p><b>reflective</b> [1] - 81:6</p> <p><b>reflects</b> [1] - 81:10</p> <p><b>regard</b> [5] - 7:23, 10:9, 84:15, 98:25, 116:5</p> <p><b>regarding</b> [1] - 5:21</p> <p><b>regardless</b> [1] - 42:18</p> <p><b>regards</b> [7] - 18:17, 62:24, 83:12, 84:1, 95:20, 122:13, 122:22</p> <p><b>regime</b> [3] - 39:1, 75:13</p> <p><b>region</b> [3] - 20:10, 41:1, 102:13</p> <p><b>Regional</b> [1] - 13:7</p> <p><b>regional</b> [2] - 25:22, 43:17</p> <p><b>regions</b> [1] - 41:20</p> <p><b>register</b> [1] - 11:14</p> <p><b>registered</b> [5] - 8:20, 31:10, 32:5, 63:18, 63:19</p> <p><b>regular</b> [1] - 101:1</p> <p><b>regulates</b> [1] - 25:16</p> <p><b>regulations</b> [8] - 17:4, 17:20, 17:22, 38:6, 38:7, 49:11, 121:7, 124:14</p> <p><b>Regulations</b> [1] - 71:12</p> <p><b>regulatory</b> [8] - 35:18, 35:25, 38:10, 39:1, 39:11, 42:25, 43:3, 121:8</p> <p><b>reiterated</b> [1] - 66:23</p> <p><b>related</b> [3] - 5:7, 50:7, 125:11</p> <p><b>relates</b> [1] - 91:4</p> <p><b>relating</b> [1] - 112:3</p> <p><b>relation</b> [1] - 125:13</p> <p><b>relationship</b> [2] - 32:20, 32:22</p> <p><b>relationships</b> [1] - 41:1</p> <p><b>relative</b> [2] - 8:17, 112:8</p> <p><b>relatively</b> [1] - 75:10</p> <p><b>relevance</b> [1] - 114:6</p> <p><b>relevant</b> [8] - 15:16, 37:23, 74:4, 75:11, 78:1, 78:2, 81:5</p>
<b>Q</b>				
<p><b>qualifications</b> [1] - 111:19</p> <p><b>qualify</b> [1] - 108:7</p> <p><b>quality</b> [2] - 82:24, 112:17</p> <p><b>quarter</b> [10] - 42:15, 42:21, 43:5, 47:5, 54:4, 54:7, 79:6, 79:9, 89:19, 94:11</p> <p><b>quarters</b> [1] - 29:7</p> <p><b>quasi</b> [1] - 6:6</p> <p><b>quasi-judicial</b> [1] - 6:6</p> <p><b>query</b> [2] - 10:25, 47:18</p> <p><b>questioning</b> [2] - 9:13, 9:21</p> <p><b>QUESTIONS</b> [14] - 48:14, 52:6, 57:12, 73:24, 87:9, 89:14, 96:22, 129:12, 129:13, 129:14, 129:21, 129:22,</p>	<p><b>raise</b> [1] - 115:17</p> <p><b>raised</b> [4] - 9:17, 10:6, 46:11, 113:12</p> <p><b>ranchers</b> [6] - 41:3, 41:6, 42:2, 43:20, 44:23, 118:18</p> <p><b>range</b> [3] - 27:20, 92:7, 93:15</p> <p><b>rare</b> [2] - 44:19, 44:21</p> <p><b>ratepayer</b> [1] - 63:9</p> <p><b>ratepayers</b> [3] - 82:17, 98:10, 99:9</p> <p><b>ratification</b> [1] - 62:16</p> <p><b>ratified</b> [1] - 72:25</p> <p><b>rationale</b> [13] - 74:3, 77:2, 77:13, 77:19, 77:22, 77:25, 78:5, 78:9, 79:2, 81:17, 86:20, 90:20, 90:23</p> <p><b>RE</b> [2] - 58:10, 129:15</p> <p><b>RE-EXAMINES</b> [2] - 58:10, 129:15</p> <p><b>reach</b> [1] - 51:7</p> <p><b>reached</b> [1] - 5:23</p> <p><b>reaching</b> [1] - 127:3</p> <p><b>react</b> [1] - 115:11</p> <p><b>read</b> [2] - 22:23, 70:24, 71:7, 75:25, 77:9, 92:1, 92:5, 95:1,</p>	<p><b>R</b></p>	<p><b>83:1</b></p>	
<b>R</b>				
<p><b>qualifications</b> [1] - 111:19</p> <p><b>qualify</b> [1] - 108:7</p> <p><b>quality</b> [2] - 82:24, 112:17</p> <p><b>quarter</b> [10] - 42:15, 42:21, 43:5, 47:5, 54:4, 54:7, 79:6, 79:9, 89:19, 94:11</p> <p><b>quarters</b> [1] - 29:7</p> <p><b>quasi</b> [1] - 6:6</p> <p><b>quasi-judicial</b> [1] - 6:6</p> <p><b>query</b> [2] - 10:25, 47:18</p> <p><b>questioning</b> [2] - 9:13, 9:21</p> <p><b>QUESTIONS</b> [14] - 48:14, 52:6, 57:12, 73:24, 87:9, 89:14, 96:22, 129:12, 129:13, 129:14, 129:21, 129:22,</p>	<p><b>raise</b> [1] - 115:17</p> <p><b>raised</b> [4] - 9:17, 10:6, 46:11, 113:12</p> <p><b>ranchers</b> [6] - 41:3, 41:6, 42:2, 43:20, 44:23, 118:18</p> <p><b>range</b> [3] - 27:20, 92:7, 93:15</p> <p><b>rare</b> [2] - 44:19, 44:21</p> <p><b>ratepayer</b> [1] - 63:9</p> <p><b>ratepayers</b> [3] - 82:17, 98:10, 99:9</p> <p><b>ratification</b> [1] - 62:16</p> <p><b>ratified</b> [1] - 72:25</p> <p><b>rationale</b> [13] - 74:3, 77:2, 77:13, 77:19, 77:22, 77:25, 78:5, 78:9, 79:2, 81:17, 86:20, 90:20, 90:23</p> <p><b>RE</b> [2] - 58:10, 129:15</p> <p><b>RE-EXAMINES</b> [2] - 58:10, 129:15</p> <p><b>reach</b> [1] - 51:7</p> <p><b>reached</b> [1] - 5:23</p> <p><b>reaching</b> [1] - 127:3</p> <p><b>react</b> [1] - 115:11</p> <p><b>read</b> [2] - 22:23, 70:24, 71:7, 75:25, 77:9, 92:1, 92:5, 95:1,</p>	<p><b>R</b></p>	<p><b>83:1</b></p>	

<p><b>relies</b> [1] - 19:2  <b>relocate</b> [2] - 20:6, 20:14  <b>relocation</b> [3] - 22:13, 22:25, 42:10  <b>rely</b> [1] - 69:4  <b>remain</b> [1] - 20:25  <b>remarks</b> [2] - 125:4, 126:10  <b>remember</b> [1] - 23:17  <b>remove</b> [1] - 108:17  <b>removes</b> [1] - 113:2  <b>repairs</b> [1] - 33:18  <b>repeat</b> [6] - 4:6, 68:8, 70:9, 70:23, 72:1, 72:16  <b>repeated</b> [1] - 120:9  <b>repeatedly</b> [1] - 119:7  <b>rephrase</b> [1] - 47:14  <b>replaced</b> [1] - 24:12  <b>replacement</b> [1] - 24:14  <b>replacing</b> [1] - 100:21  <b>reply</b> [2] - 10:5, 124:25  <b>report</b> [2] - 7:21, 127:5  <b>Reporter</b> [2] - 2:14, 128:14  <b>REPORTER</b> [4] - 11:9, 67:14, 67:17, 72:14  <b>reporter</b> [5] - 5:8, 5:14, 9:3, 11:16, 126:23  <b>Reporting</b> [1] - 5:9  <b>representing</b> [5] - 11:18, 12:11, 12:14, 80:5, 122:12  <b>represents</b> [1] - 101:15  <b>repurpose</b> [1] - 46:9  <b>request</b> [8] - 2:25, 7:14, 8:14, 9:6, 45:8, 45:12, 80:3, 85:21  <b>requested</b> [4] - 18:24, 47:13, 79:17, 83:5  <b>requesting</b> [1] - 28:25  <b>requests</b> [2] - 86:2, 100:24  <b>require</b> [8] - 29:9, 42:4, 65:12, 81:2, 93:14, 101:24, 101:25, 114:20  <b>required</b> [9] - 18:20, 24:4, 33:20, 34:17, 38:10, 39:18, 40:22, 56:19, 115:7  <b>requirement</b> [4] - 42:25, 108:4, 110:24, 119:8  <b>requirements</b> [16] - 17:24, 25:16, 27:16, 39:12, 43:3, 52:19, 52:24, 56:20, 63:10, 63:22, 71:11, 75:1, 95:16, 95:17, 117:13, 120:8  <b>requires</b> [1] - 102:25  <b>reread</b> [1] - 8:12  <b>res</b> [1] - 92:17  <b>Reservoir</b> [3] - 43:12, 50:9, 51:16  <b>reservoir</b> [1] - 23:4  <b>residences</b> [1] - 85:19</p>	<p><b>residents</b> [3] - 71:14, 82:25, 94:1  <b>resistance</b> [1] - 20:9  <b>resolved</b> [2] - 72:19, 73:8  <b>resource</b> [1] - 20:24  <b>resources</b> [1] - 23:7  <b>RESOURCES</b> [1] - 1:1  <b>Resources</b> [2] - 2:1, 2:19  <b>respect</b> [25] - 17:20, 17:21, 26:5, 33:8, 38:5, 38:7, 39:4, 58:14, 58:15, 58:22, 59:1, 69:17, 80:14, 93:16, 95:16, 101:20, 102:21, 107:23, 108:5, 109:23, 110:24, 111:9, 111:21, 113:11, 115:22  <b>respectful</b> [1] - 86:5  <b>respects</b> [1] - 16:13  <b>responded</b> [1] - 79:19  <b>response</b> [8] - 62:7, 62:9, 65:1, 77:4, 80:21, 81:7, 115:12, 122:8  <b>responses</b> [5] - 14:18, 74:17, 81:16, 88:5, 104:9  <b>responsibility</b> [2] - 67:8, 82:1  <b>responsible</b> [1] - 67:12  <b>rest</b> [1] - 80:6  <b>restate</b> [2] - 68:7, 93:7  <b>restaurants</b> [1] - 19:10  <b>restricted</b> [1] - 42:19  <b>restrictions</b> [3] - 20:4, 43:10, 54:13  <b>restrictive</b> [2] - 107:11, 115:3  <b>result</b> [2] - 43:4, 56:4  <b>resume</b> [2] - 61:11, 104:25  <b>retrofit</b> [2] - 35:12, 37:3  <b>revenue</b> [3] - 36:9, 36:18  <b>revenues</b> [4] - 33:24, 36:16, 36:19, 37:10  <b>review</b> [16] - 2:20, 6:19, 7:14, 47:8, 47:12, 47:19, 47:20, 47:23, 71:24, 95:14, 95:17, 95:23, 106:4, 110:5, 116:4, 126:12  <b>reviewed</b> [2] - 25:5, 83:11  <b>reviews</b> [5] - 4:2, 47:21, 58:15, 106:1, 126:24  <b>revised</b> [1] - 64:19  <b>revising</b> [1] - 64:19  <b>revision</b> [2] - 50:24, 72:23  <b>revisions</b> [3] - 29:17, 50:18, 51:6  <b>RFR</b> [3] - 7:14, 7:18, 7:20  <b>Richard</b> [3] - 2:12, 10:24, 11:21  <b>right-hand</b> [1] - 107:4  <b>rights</b> [9] - 29:10,</p>	<p>29:12, 29:13, 29:14, 30:15, 108:16, 108:17, 108:19, 108:20  <b>rigorous</b> [1] - 42:23  <b>rise</b> [3] - 38:18, 41:4, 42:3  <b>risen</b> [1] - 36:20  <b>rising</b> [4] - 36:7, 36:18, 38:12, 121:5  <b>risk</b> [5] - 44:4, 49:18, 49:20, 50:8, 57:25  <b>risks</b> [2] - 49:6, 49:8  <b>river</b> [3] - 79:9, 95:21, 102:4  <b>River</b> [11] - 13:7, 27:4, 41:20, 41:21, 49:5, 49:17, 49:25, 50:9, 51:16, 58:23, 120:14  <b>rivers</b> [1] - 97:12  <b>RMA</b> [1] - 3:14  <b>road</b> [7] - 29:7, 29:8, 29:21, 30:7, 52:20, 93:21, 93:23  <b>roads</b> [1] - 94:11  <b>Roberts</b> [3] - 2:6, 2:18, 3:17  <b>role</b> [10] - 16:11, 22:12, 40:10, 40:15, 40:20, 41:7, 41:11, 41:22, 43:23, 76:24  <b>roles</b> [1] - 22:12  <b>route</b> [1] - 102:19  <b>routes</b> [1] - 94:5  <b>ruin</b> [1] - 93:24  <b>rules</b> [4] - 17:3, 17:19, 17:22, 18:17  <b>run</b> [2] - 63:10, 115:14  <b>runoff</b> [2] - 57:25, 64:13  <b>rural</b> [5] - 73:4, 89:25, 92:9, 101:22, 102:1  <b>Ryan</b> [4] - 13:7, 13:11, 65:24, 74:14  <b>RYAN</b> [1] - 13:14</p>	<p>61:23, 62:2, 62:6, 66:6, 66:23, 67:2, 67:5, 67:10, 67:24, 68:2, 68:7, 68:12, 69:25, 70:12, 70:16, 71:20, 71:25, 72:5, 72:9, 72:20, 73:10, 73:12, 74:8, 76:21, 77:14, 78:6, 78:20, 79:8, 79:13, 79:19, 80:4, 80:17, 81:10, 82:7, 82:15, 82:22, 83:19, 84:9, 84:17, 85:8, 85:16, 86:18, 87:16, 88:12, 88:19, 88:24, 89:23, 90:10, 91:9, 92:15, 93:7, 93:18, 94:25, 95:8, 95:19, 96:13, 96:15, 96:17, 97:9, 99:2, 99:25, 100:17, 103:11, 105:12, 121:23, 129:11, 129:17  <b>Schneider</b> [37] - 2:13, 12:13, 12:21, 45:25, 48:3, 59:23, 61:13, 61:20, 62:4, 66:4, 66:13, 66:15, 66:18, 67:21, 69:24, 73:25, 76:5, 76:19, 77:11, 80:8, 84:4, 86:3, 87:3, 87:10, 89:11, 89:17, 92:11, 97:1, 99:24, 103:9, 107:7, 110:2, 111:15, 119:20, 121:20, 124:24  <b>scope</b> [2] - 75:10, 125:9  <b>screen</b> [7] - 4:23, 68:18, 69:19, 70:18, 71:21, 115:23, 115:24  <b>scroll</b> [4] - 21:13, 53:11, 53:25, 54:2  <b>seasonal</b> [1] - 64:12  <b>seats</b> [1] - 32:15  <b>second</b> [10] - 11:25, 13:24, 29:19, 92:1, 103:21, 106:9, 107:18, 113:14, 117:9, 118:12  <b>Section</b> [15] - 63:24, 64:1, 73:5, 75:2, 75:11, 76:2, 106:10, 109:13, 110:6, 115:22, 116:2, 116:13, 125:13, 125:14, 125:15  <b>section</b> [7] - 42:21, 75:11, 79:6, 91:23, 100:5, 104:13, 110:5  <b>Sections</b> [1] - 81:24  <b>sections</b> [3] - 112:7, 114:25  <b>securing</b> [1] - 43:17  <b>security</b> [1] - 41:16  <b>seek</b> [1] - 69:10  <b>seek</b> [1] - 126:4  <b>seeking</b> [2] - 18:6, 74:16  <b>seem</b> [1] - 126:20  <b>selected</b> [3] - 20:14, 20:18, 20:21  <b>self</b> [2] - 31:15, 31:21  <b>self-sufficient</b> [1] - 31:21  <b>self-sustaining</b> [1] - 31:15  <b>send</b> [2] - 77:8, 77:9</p>	<p><b>sending</b> [1] - 67:9  <b>sense</b> [4] - 29:21, 31:17, 90:6, 101:19  <b>sensing</b> [2] - 98:13, 99:1  <b>sensitive</b> [1] - 105:9  <b>sent</b> [12] - 63:8, 63:17, 64:24, 66:25, 67:13, 77:1, 80:6, 88:4, 98:10, 99:4, 99:23, 100:23  <b>sentence</b> [3] - 92:1, 107:18, 113:14  <b>separate</b> [1] - 116:24  <b>separation</b> [2] - 27:3, 56:5  <b>sequentially</b> [1] - 21:9  <b>Services</b> [20] - 2:11, 4:14, 4:16, 7:3, 8:7, 9:11, 9:25, 13:7, 15:10, 48:4, 48:7, 60:4, 73:17, 73:18, 88:2, 103:20, 125:6, 125:18, 126:4, 126:16  <b>services</b> [3] - 12:16, 12:19, 100:1  <b>servicing</b> [1] - 3:12  <b>set</b> [8] - 8:10, 10:12, 63:25, 74:1, 77:21, 77:24, 102:2, 123:9  <b>setback</b> [7] - 52:17, 52:19, 52:24, 85:6, 90:9, 97:18, 101:24  <b>Setback</b> [1] - 96:11  <b>setbacks</b> [16] - 30:7, 52:13, 83:6, 84:11, 91:9, 91:15, 91:18, 92:22, 94:10, 96:25, 97:7, 97:10, 97:14, 97:21, 117:13, 120:8  <b>setting</b> [3] - 44:3, 73:25, 86:7  <b>settings</b> [1] - 67:19  <b>settlements</b> [1] - 92:8  <b>seven</b> [2] - 21:12, 80:24  <b>Shady</b> [2] - 12:3, 41:19  <b>shall</b> [1] - 114:14  <b>share</b> [1] - 68:18  <b>shared</b> [1] - 4:23  <b>shelter</b> [2] - 59:9, 59:10  <b>shop</b> [1] - 21:6  <b>short</b> [1] - 6:16  <b>shorthand</b> [2] - 128:5, 128:6  <b>show</b> [4] - 46:15, 68:3, 70:22, 107:3  <b>showing</b> [3] - 19:2, 95:23, 95:24  <b>shown</b> [3] - 70:7, 71:4, 123:6  <b>shrink</b> [1] - 38:15  <b>side</b> [16] - 68:17, 68:25, 85:6, 85:21, 86:2, 91:4, 106:22, 107:2, 107:4, 109:12, 114:21, 123:22  <b>significance</b> [1] - 20:9  <b>significant</b> [7] - 6:3, 9:8, 20:22, 23:12, 25:8, 27:24, 102:3  <b>significantly</b> [2] - 28:19, 120:9  <b>similar</b> [1] - 85:5  <b>similarly</b> [1] - 44:21</p>
<b>S</b>				
<p><b>S-C-H-N-E-I-D-E-R</b>  [1] - 12:15  <b>safe</b> [3] - 81:20, 82:1, 123:19  <b>safeguards</b> [1] - 58:25  <b>safety</b> [2] - 41:15, 43:22  <b>Sam</b> [6] - 11:24, 12:5, 16:3, 33:9, 35:19, 44:8  <b>SAM</b> [3] - 12:5, 16:6, 129:5  <b>Sandi</b> [3] - 2:6, 2:18, 3:17  <b>satellite</b> [1] - 51:18  <b>satisfaction</b> [1] - 96:16  <b>saw</b> [2] - 64:24, 94:21  <b>scaling</b> [1] - 16:15  <b>scan</b> [1] - 89:10  <b>scenario</b> [1] - 119:17  <b>scene</b> [1] - 3:24  <b>SCHNEIDER</b> [80] - 10:18, 12:13, 12:23, 13:5, 15:4, 46:1, 46:3, 46:24, 47:14, 47:22, 48:1, 59:25, 61:15,</p>				

<p><b>simply</b> [5] - 62:22, 79:24, 80:5, 90:8, 124:5</p> <p><b>single</b> [1] - 113:11</p> <p><b>site</b> [21] - 46:15, 47:1, 47:9, 47:16, 47:24, 49:6, 49:24, 52:23, 53:8, 54:13, 55:1, 55:12, 57:19, 58:18, 89:20, 94:22, 95:9, 95:14, 96:4, 112:23</p> <p><b>sitting</b> [1] - 123:12</p> <p><b>situation</b> [2] - 14:4, 115:11</p> <p><b>six</b> [3] - 32:25, 83:10, 127:7</p> <p><b>size</b> [3] - 18:15, 39:2, 39:4</p> <p><b>skill</b> [1] - 128:6</p> <p><b>skip</b> [1] - 118:7</p> <p><b>slice</b> [1] - 70:14</p> <p><b>slimming</b> [1] - 36:16</p> <p><b>slope</b> [1] - 55:7</p> <p><b>sloping</b> [1] - 95:21</p> <p><b>slowly</b> [3] - 4:5, 5:13, 96:9</p> <p><b>small</b> [4] - 69:25, 70:18, 71:21, 102:22</p> <p><b>smaller</b> [3] - 38:15, 38:16, 93:9</p> <p><b>social</b> [3] - 24:4, 44:22, 45:2</p> <p><b>society</b> [2] - 41:5, 42:4</p> <p><b>someone</b> [2] - 10:20, 31:24</p> <p><b>sometimes</b> [3] - 67:14, 75:8, 75:16</p> <p><b>somewhat</b> [3] - 76:13, 101:1, 107:11</p> <p><b>somewhere</b> [1] - 52:14</p> <p><b>Sonnenberg</b> [1] - 6:21</p> <p><b>sooner</b> [2] - 33:21, 98:5</p> <p><b>sorry</b> [26] - 2:23, 10:18, 13:5, 23:25, 49:10, 50:1, 61:15, 61:20, 67:14, 67:16, 67:17, 68:8, 68:9, 72:14, 72:16, 77:6, 81:11, 81:12, 85:24, 87:16, 88:12, 92:18, 99:25, 114:7, 121:23, 125:23</p> <p><b>sort</b> [2] - 75:13, 98:12</p> <p><b>sought</b> [1] - 87:20</p> <p><b>source</b> [3] - 106:9, 106:17, 110:16</p> <p><b>sources</b> [4] - 81:22, 106:3, 106:5, 106:13</p> <p><b>south</b> [2] - 102:8</p> <p><b>southeast</b> [1] - 21:22</p> <p><b>southern</b> [1] - 118:19</p> <p><b>Southern</b> [1] - 23:8</p> <p><b>southwest</b> [5] - 54:20, 54:25, 55:6, 55:11, 55:12</p> <p><b>SPEAKER</b> [1] - 2:22</p> <p><b>speaking</b> [2] - 11:1, 63:23</p> <p><b>species</b> [1] - 7:10</p> <p><b>specific</b> [3] - 10:12, 90:6, 90:7</p> <p><b>specifically</b> [5] - 22:20, 23:17, 78:25,</p>	<p>81:2, 91:11</p> <p><b>specified</b> [2] - 47:12, 112:20</p> <p><b>speculate</b> [1] - 83:24</p> <p><b>spell</b> [3] - 11:15, 12:5, 13:8</p> <p><b>spelled</b> [1] - 12:8</p> <p><b>spend</b> [1] - 6:17</p> <p><b>Spokesperson</b> [1] - 2:13</p> <p><b>spot</b> [1] - 10:11</p> <p><b>spread</b> [3] - 54:3, 54:7, 54:10</p> <p><b>spreading</b> [1] - 54:13</p> <p><b>spring</b> [1] - 54:10</p> <p><b>square</b> [1] - 39:8</p> <p><b>stable</b> [2] - 17:11, 59:13</p> <p><b>staff</b> [4] - 4:13, 4:14, 4:18, 73:21</p> <p><b>Staff</b> [1] - 2:9</p> <p><b>stakeholders</b> [1] - 65:15</p> <p><b>stand</b> [1] - 80:14</p> <p><b>standards</b> [14] - 35:25, 41:5, 41:10, 41:12, 41:13, 41:14, 41:15, 42:4, 43:18, 84:11, 84:21, 108:11</p> <p><b>standing</b> [1] - 127:6</p> <p><b>standpoint</b> [1] - 31:20</p> <p><b>stands</b> [1] - 103:4</p> <p><b>STANDS</b> [2] - 60:20, 104:12</p> <p><b>start</b> [11] - 3:6, 11:17, 25:5, 61:11, 69:8, 73:21, 103:15, 105:5, 105:24, 106:17, 121:24</p> <p><b>started</b> [3] - 99:20, 116:19</p> <p><b>starters</b> [1] - 42:1</p> <p><b>starting</b> [1] - 33:18</p> <p><b>starts</b> [2] - 22:21, 65:13</p> <p><b>state</b> [2] - 52:19, 122:10</p> <p><b>statement</b> [7] - 53:17, 53:18, 55:14, 92:13, 92:19, 93:11, 93:18</p> <p><b>states</b> [1] - 124:14</p> <p><b>station</b> [1] - 19:9</p> <p><b>status</b> [1] - 7:1</p> <p><b>statute</b> [1] - 112:8</p> <p><b>statutory</b> [6] - 110:10, 110:20, 110:21, 112:9, 114:12, 116:7</p> <p><b>stay</b> [4] - 36:7, 38:18, 39:19, 51:11</p> <p><b>step</b> [2] - 17:9, 74:15</p> <p><b>stewardship</b> [2] - 112:2, 120:15</p> <p><b>sticking</b> [1] - 101:21</p> <p><b>stifled</b> [1] - 45:15</p> <p><b>still</b> [5] - 14:15, 26:9, 67:7, 92:8, 115:4</p> <p><b>stomachs</b> [1] - 105:15</p> <p><b>stop</b> [1] - 11:5</p> <p><b>storage</b> [7] - 7:12, 49:9, 50:12, 59:6, 59:8, 59:12, 59:14</p> <p><b>straight</b> [1] - 79:10</p> <p><b>strain</b> [1] - 33:23</p> <p><b>stream</b> [1] - 14:23</p> <p><b>strengthen</b> [1] - 45:1</p> <p><b>stress</b> [2] - 44:11,</p>	<p>44:14</p> <p><b>strictly</b> [1] - 108:23</p> <p><b>strong</b> [1] - 39:16</p> <p><b>structure</b> [2] - 44:22, 111:7</p> <p><b>structures</b> [1] - 23:18</p> <p><b>struggle</b> [1] - 86:10</p> <p><b>Stuart</b> [11] - 2:7, 3:6, 11:20, 52:3, 57:7, 60:10, 89:6, 96:20, 97:6, 104:6</p> <p><b>STUART</b> [16] - 52:5, 52:6, 52:7, 53:2, 53:11, 53:25, 54:16, 57:5, 60:11, 89:8, 89:14, 91:20, 96:18, 104:7, 129:13, 129:23</p> <p><b>Stuart's</b> [1] - 96:23</p> <p><b>study</b> [2] - 88:13, 89:1</p> <p><b>stuff</b> [1] - 75:20</p> <p><b>sub</b> [1] - 111:2</p> <p><b>Subdivision</b> [1] - 3:15</p> <p><b>subdivision</b> [1] - 112:18</p> <p><b>subject</b> [9] - 34:11, 34:13, 35:8, 36:21, 120:20, 121:3, 121:4, 121:15, 121:17</p> <p><b>subjecting</b> [1] - 120:20</p> <p><b>submission</b> [10] - 8:4, 8:8, 13:12, 52:8, 85:4, 106:5, 108:1, 113:22, 115:20, 118:11</p> <p><b>submissions</b> [12] - 8:2, 8:17, 9:8, 105:23, 105:24, 106:13, 116:19, 116:22, 121:18, 125:19, 126:2, 126:6</p> <p><b>submit</b> [21] - 9:16, 100:16, 108:12, 108:23, 109:11, 109:18, 111:14, 111:20, 112:11, 113:3, 114:21, 114:24, 115:1, 116:24, 117:2, 118:9, 118:25, 119:18, 120:3, 120:22, 122:25</p> <p><b>submitted</b> [5] - 8:10, 8:13, 16:17, 48:20, 124:7</p> <p><b>substantial</b> [3] - 17:23, 29:18, 49:8</p> <p><b>successful</b> [1] - 23:3</p> <p><b>sufficient</b> [2] - 31:21, 115:8</p> <p><b>suggest</b> [8] - 65:10, 78:12, 82:12, 90:10, 90:15, 99:3, 104:22, 124:1</p> <p><b>suggested</b> [1] - 85:5</p> <p><b>suitability</b> [3] - 46:15, 47:9, 47:16</p> <p><b>suitable</b> [2] - 29:6, 47:1</p> <p><b>suitably</b> [1] - 47:24</p> <p><b>suited</b> [1] - 30:1</p> <p><b>summarize</b> [2] - 30:3, 38:21</p> <p><b>summary</b> [2] - 49:6, 100:8</p> <p><b>superimposed</b> [1] - 42:18</p> <p><b>supplement</b> [2] -</p>	<p>74:17, 100:1</p> <p><b>supplied</b> [1] - 46:15</p> <p><b>supply</b> [6] - 17:10, 33:20, 34:17, 35:2, 36:9, 43:17</p> <p><b>supply-managed</b> [1] - 35:2</p> <p><b>support</b> [7] - 17:16, 30:12, 41:3, 41:8, 42:4, 42:13, 82:5</p> <p><b>supporting</b> [2] - 40:13, 40:20</p> <p><b>suppose</b> [3] - 125:9, 125:11, 125:16</p> <p><b>surface</b> [3] - 84:7, 84:12, 85:12</p> <p><b>surprise</b> [1] - 105:25</p> <p><b>surrounding</b> [1] - 87:23</p> <p><b>sustainability</b> [1] - 3:10</p> <p><b>sustainable</b> [2] - 36:7, 38:14</p> <p><b>sustaining</b> [1] - 31:15</p> <p><b>swear</b> [2] - 15:23, 40:6</p> <p><b>switch</b> [1] - 32:15</p> <p><b>sworn</b> [5] - 9:2, 9:4, 32:18, 61:22, 61:23</p> <p><b>sworn/affirmed</b> [1] - 62:3</p> <p><b>Sylvia</b> [3] - 2:10, 4:20</p> <p><b>system</b> [7] - 27:20, 28:6, 28:7, 28:8, 37:4, 44:16, 93:23</p> <p><b>systems</b> [7] - 17:24, 28:2, 33:19, 33:23, 44:10, 93:21, 120:16</p>	<p>13:22, 13:24, 112:22</p> <p><b>tests</b> [1] - 102:16</p> <p><b>text</b> [2] - 4:4, 4:8</p> <p><b>themselves</b> [1] - 33:15</p> <p><b>thereby</b> [1] - 108:5</p> <p><b>therefore</b> [3] - 29:25, 52:17, 64:11</p> <p><b>they've</b> [2] - 64:17, 69:7</p> <p><b>thinking</b> [5] - 35:21, 35:24, 39:18, 92:5, 93:2</p> <p><b>thinks</b> [1] - 14:5</p> <p><b>thinner</b> [1] - 38:16</p> <p><b>third</b> [9] - 12:2, 22:20, 47:8, 47:12, 47:15, 47:24, 58:14, 95:13, 117:12</p> <p><b>third-party</b> [5] - 47:8, 47:12, 47:15, 58:14, 95:13</p> <p><b>thoughts</b> [1] - 122:5</p> <p><b>thousand</b> [1] - 37:6</p> <p><b>three</b> [6] - 3:13, 11:23, 18:25, 34:12, 35:7, 36:21</p> <p><b>three-year</b> [1] - 18:25</p> <p><b>throughout</b> [1] - 30:22</p> <p><b>tied</b> [1] - 24:19</p> <p><b>timeline</b> [2] - 42:8, 65:17</p> <p><b>title</b> [1] - 63:18</p> <p><b>Titles</b> [1] - 63:19</p> <p><b>to..</b> [1] - 19:11</p> <p><b>today</b> [17] - 2:25, 3:25, 4:13, 7:2, 10:9, 10:13, 10:17, 11:24, 16:20, 22:4, 28:4, 37:23, 76:17, 105:23, 106:2, 109:18, 112:22</p> <p><b>today's</b> [3] - 5:9, 5:21, 28:7</p> <p><b>together</b> [3] - 61:2, 65:20, 114:21</p> <p><b>took</b> [1] - 20:17</p> <p><b>top</b> [6] - 33:24, 36:5, 36:8, 36:9, 53:12, 91:24</p> <p><b>topic</b> [1] - 85:16</p> <p><b>topography</b> [6] - 53:14, 53:16, 53:23, 55:7, 95:3, 95:6</p> <p><b>touched</b> [1] - 87:11</p> <p><b>toward</b> [1] - 49:25</p> <p><b>towards</b> [1] - 95:21</p> <p><b>Town</b> [2] - 3:20, 31:15</p> <p><b>town</b> [2] - 31:17, 83:8</p> <p><b>towns</b> [1] - 20:22</p> <p><b>traceability</b> [1] - 43:23</p> <p><b>traffic</b> [2] - 92:22, 93:20</p> <p><b>trailers</b> [1] - 23:21</p> <p><b>transcribed</b> [1] - 128:6</p> <p><b>transcript</b> [3] - 5:9, 5:14, 128:4</p> <p><b>Transcript</b> [1] - 128:1</p> <p><b>transfer</b> [1] - 29:13</p> <p><b>transferring</b> [1] - 29:12</p> <p><b>transition</b> [3] - 22:16, 23:1, 24:21</p> <p><b>transitioned</b> [1] - 24:6</p>
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<p><b>transitioning</b> [1] - 27:17  <b>transitory</b> [2] - 55:16  <b>translated</b> [1] - 42:16  <b>transparency</b> [1] - 41:16  <b>transportation</b> [2] - 92:16, 93:3  <b>treated</b> [2] - 64:10, 90:16  <b>tributary</b> [3] - 54:20, 54:25, 55:10  <b>true</b> [1] - 85:7  <b>try</b> [7] - 6:7, 10:11, 69:6, 92:20, 92:24, 93:22, 94:4  <b>try..</b> [1] - 67:16  <b>trying</b> [8] - 14:9, 49:19, 71:20, 76:5, 78:13, 80:7, 93:17, 102:6  <b>TSCHETTER</b> [3] - 40:8, 51:2, 129:9  <b>Tschetter</b> [8] - 12:3, 12:7, 39:25, 40:2, 40:10, 45:19, 45:22, 50:22  <b>turkeys</b> [2] - 46:10, 56:10  <b>turn</b> [3] - 9:2, 22:19, 59:3  <b>turned</b> [2] - 14:22, 61:9  <b>turning</b> [1] - 69:22  <b>Twin</b> [6] - 19:16, 19:24, 20:2, 22:11, 43:12, 118:20  <b>two</b> [14] - 12:23, 13:22, 23:12, 23:23, 29:7, 48:13, 63:12, 68:17, 101:13, 102:18, 106:5, 106:13, 111:16, 114:25  <b>type</b> [10] - 29:6, 30:2, 31:5, 41:9, 44:20, 44:22, 47:12, 47:23, 58:25, 97:17  <b>types</b> [4] - 36:22, 75:14, 91:10, 97:7  <b>typically</b> [9] - 31:10, 64:19, 93:22, 94:2, 94:6, 94:12, 98:22, 99:10, 102:13</p>	<p><b>unexpanded</b> [1] - 56:8  <b>UNIDENTIFIED</b> [1] - 2:22  <b>uniform</b> [4] - 79:10, 81:12, 81:13, 83:21  <b>uniformity</b> [1] - 81:25  <b>uniformly</b> [2] - 81:11, 91:7  <b>unique</b> [1] - 45:12  <b>units</b> [10] - 18:11, 18:13, 33:11, 33:12, 34:3, 34:19, 34:20, 35:3, 37:12  <b>unless</b> [1] - 99:12  <b>unnamed</b> [3] - 54:20, 54:25, 55:10  <b>unreasonable</b> [1] - 43:6  <b>unreasonably</b> [1] - 45:15  <b>unsure</b> [2] - 6:12, 65:17  <b>unto</b> [1] - 117:7  <b>unusual</b> [1] - 14:9  <b>up</b> [37] - 4:22, 17:9, 21:8, 21:14, 24:17, 24:20, 28:11, 33:18, 33:20, 35:4, 37:21, 38:1, 41:4, 42:3, 45:25, 52:8, 53:3, 53:11, 66:9, 68:25, 82:16, 85:13, 91:21, 92:21, 94:5, 94:19, 96:10, 97:5, 98:17, 105:19, 106:21, 110:5, 114:25, 115:17, 115:23, 115:24  <b>update</b> [2] - 65:12, 65:19  <b>updated</b> [4] - 50:15, 51:12, 72:23, 86:19  <b>updates</b> [1] - 50:16  <b>updating</b> [2] - 28:1, 73:2  <b>upgrade</b> [2] - 71:10, 100:20  <b>upgraded</b> [3] - 19:4, 56:19  <b>upgrades</b> [3] - 57:2, 109:20, 112:3  <b>upgrading</b> [4] - 101:5, 109:3, 109:8, 111:25  <b>uplift</b> [1] - 112:14  <b>uprooting</b> [1] - 23:25  <b>urban</b> [4] - 73:4, 83:6, 83:12, 92:18  <b>urbans</b> [1] - 83:5  <b>uses</b> [3] - 67:7, 112:20, 113:9</p>	<p>103:21, 125:5, 125:22, 126:3  <b>variety</b> [1] - 112:19  <b>various</b> [1] - 84:21  <b>vast</b> [1] - 99:9  <b>venture</b> [1] - 83:24  <b>versus</b> [1] - 28:6  <b>viability</b> [1] - 38:14  <b>viable</b> [7] - 36:7, 37:15, 38:2, 81:20, 82:1, 115:13, 123:19  <b>Vice</b> [2] - 40:12, 41:22  <b>Vice-Chair</b> [2] - 40:12, 41:22  <b>video</b> [3] - 5:4, 11:6, 14:22  <b>videoconference</b> [1] - 1:22  <b>Village</b> [4] - 25:10, 31:14, 87:24  <b>villages</b> [4] - 20:23, 82:20, 83:8, 87:23  <b>virtual</b> [5] - 3:23, 4:19, 5:7, 7:24, 127:1  <b>virtually</b> [1] - 2:2  <b>visible</b> [1] - 53:22  <b>VOLUME</b> [1] - 129:3  <b>Volume</b> [2] - 1:20, 2:4  <b>VULCAN</b> [2] - 62:5, 129:19  <b>Vulcan</b> [89] - 2:13, 6:24, 8:4, 9:1, 9:22, 9:24, 10:4, 10:7, 10:16, 12:10, 12:11, 12:14, 12:20, 12:22, 13:6, 13:11, 15:2, 15:4, 25:23, 30:18, 31:9, 31:15, 32:4, 42:9, 45:25, 52:8, 52:17, 58:13, 59:23, 59:25, 61:3, 61:12, 61:17, 61:19, 62:2, 62:25, 63:8, 63:9, 63:13, 63:20, 64:7, 64:9, 64:11, 65:25, 66:9, 66:19, 66:24, 67:6, 72:11, 72:17, 73:5, 73:15, 78:19, 79:23, 80:14, 80:20, 81:7, 81:14, 82:10, 82:11, 83:8, 83:15, 84:15, 85:11, 85:25, 87:7, 89:24, 90:13, 90:18, 93:21, 100:15, 102:14, 102:17, 103:10, 103:16, 105:10, 107:5, 113:8, 113:13, 114:11, 117:22, 117:25, 118:2, 121:20, 122:10, 124:7, 126:15, 129:17</p>	<p>26:5, 26:6, 26:10, 29:10, 29:12, 29:13, 29:14, 30:15, 47:6, 47:19, 54:23, 55:3, 55:16, 55:20, 55:23, 55:24, 60:24, 81:21, 91:17, 97:15, 97:18, 123:20, 123:23  <b>waterbodies</b> [18] - 64:7, 64:8, 64:12, 81:13, 81:18, 81:19, 82:2, 82:21, 83:22, 84:1, 84:7, 84:12, 90:17, 90:25, 91:10, 96:25, 97:8  <b>waterbody</b> [7] - 64:10, 82:14, 85:12, 88:17, 90:13, 91:3, 97:10  <b>watercourses</b> [1] - 101:21  <b>waterway</b> [4] - 27:4, 49:22, 57:24, 58:2  <b>waterways</b> [3] - 25:14, 48:25, 120:12  <b>wave</b> [2] - 3:4, 28:5  <b>waves</b> [4] - 44:3, 44:4, 44:11, 44:13  <b>ways</b> [3] - 17:17, 20:21, 102:10  <b>weather</b> [1] - 60:24  <b>website</b> [5] - 3:3, 5:10, 5:17, 5:18, 15:14  <b>weekly</b> [1] - 31:25  <b>weeks</b> [3] - 63:12, 98:11, 127:7  <b>welcome</b> [2] - 2:17, 5:11  <b>welfare</b> [8] - 17:5, 19:6, 25:19, 27:14, 27:23, 109:20, 112:2, 117:19  <b>wellbeing</b> [2] - 44:19, 56:20  <b>west</b> [1] - 6:23  <b>wetland</b> [2] - 47:20, 58:19  <b>whereas</b> [4] - 28:10, 59:10, 107:11, 115:4  <b>whole</b> [1] - 100:18  <b>widely</b> [1] - 44:12  <b>Wiebe</b> [3] - 5:3, 11:11, 126:22  <b>WIEBE</b> [3] - 5:4, 11:12, 121:22  <b>Willow</b> [20] - 6:25, 21:4, 21:5, 26:14, 26:16, 26:22, 48:24, 62:19, 63:16, 67:25, 68:3, 74:24, 85:6, 85:9, 85:25, 107:5, 114:3, 114:15, 118:16, 119:12  <b>Wilson</b> [1] - 11:22  <b>wishes</b> [1] - 105:4  <b>WITNESS</b> [6] - 16:7, 32:19, 40:9, 129:6, 129:8, 129:10  <b>witness</b> [16] - 11:24, 12:1, 12:2, 14:6, 14:7, 16:2, 32:8, 32:12, 32:13, 39:22, 40:1, 43:8, 45:21, 46:18, 46:21, 68:17  <b>witnesses</b> [9] - 11:23, 13:23, 13:24, 14:15, 14:17, 15:24, 51:24, 73:15, 73:19  <b>wonder</b> [3] - 21:7,</p>	<p>22:19, 74:14  <b>wondering</b> [1] - 56:14  <b>word</b> [3] - 10:5, 72:6  <b>works</b> [3] - 84:25, 94:2, 122:20  <b>world</b> [1] - 126:14  <b>writes</b> [1] - 22:23  <b>writing</b> [1] - 53:12  <b>written</b> [5] - 8:1, 8:17, 9:4, 126:2, 127:5</p> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> [3] - 18:25, 36:15, 102:18  <b>years</b> [18] - 3:13, 16:25, 18:19, 19:1, 27:21, 32:24, 33:2, 33:3, 33:11, 33:17, 35:17, 36:13, 37:23, 45:1, 50:15, 99:7, 99:8, 123:12  <b>you..</b> [1] - 107:3  <b>young</b> [2] - 46:12, 56:10  <b>yourself</b> [2] - 5:13, 41:24  <b>YouTube</b> [2] - 5:16, 5:20</p> <p style="text-align: center;"><b>Z</b></p> <p><b>zone</b> [47] - 3:14, 22:7, 29:4, 30:5, 42:7, 42:17, 43:4, 48:18, 48:22, 62:11, 62:12, 62:15, 62:21, 63:23, 67:22, 67:25, 68:4, 68:10, 68:11, 68:12, 68:13, 70:11, 70:20, 77:20, 77:21, 78:18, 79:4, 79:21, 79:25, 80:1, 80:15, 80:18, 81:9, 82:13, 82:19, 83:14, 83:17, 83:22, 85:6, 86:12, 89:22, 90:24, 98:17, 98:20, 108:18, 124:9  <b>zoned</b> [2] - 89:21, 89:25  <b>zones</b> [27] - 63:25, 64:3, 64:6, 64:8, 64:16, 68:6, 70:21, 74:6, 77:6, 77:7, 78:5, 78:10, 78:14, 78:17, 81:11, 81:13, 81:23, 83:3, 83:10, 85:22, 91:12, 91:15, 119:13, 123:18, 123:23, 124:15, 124:16  <b>zoning</b> [5] - 89:18, 89:21, 102:11, 102:12, 102:24  <b>Zoom</b> [6] - 3:22, 3:24, 5:2, 7:25, 126:14, 126:22</p>
<p style="text-align: center;"><b>U</b></p> <p><b>ultimately</b> [2] - 67:12, 85:17  <b>unable</b> [1] - 95:25  <b>unaware</b> [1] - 42:6  <b>uncertainty</b> [1] - 109:9  <b>under</b> [13] - 20:20, 26:8, 63:10, 78:9, 79:2, 84:24, 89:19, 89:20, 114:24, 115:3, 116:13, 124:13  <b>underlining</b> [1] - 112:13  <b>undersigned</b> [1] - 128:3  <b>understood</b> [2] - 20:9, 27:12  <b>undertaken</b> [3] - 90:22, 95:14, 100:8  <b>undeveloped</b> [2] - 29:22, 30:14  <b>unequivocal</b> [1] - 115:13</p>	<p style="text-align: center;"><b>V</b></p> <p><b>valid</b> [1] - 119:16  <b>Valley</b> [6] - 19:16, 19:24, 20:2, 22:11, 43:12, 118:20  <b>valleys</b> [1] - 102:4  <b>value</b> [4] - 17:7, 17:14, 24:15, 24:17  <b>Vance</b> [13] - 2:11, 4:14, 7:5, 15:9, 48:4, 48:9, 60:3, 73:17, 73:20, 103:20, 125:5, 125:21, 126:1  <b>VANCE</b> [8] - 15:10, 48:6, 60:4, 73:18,</p>	<p style="text-align: center;"><b>W</b></p> <p><b>waive</b> [1] - 118:5  <b>waiver</b> [7] - 79:22, 122:9, 122:11, 122:14, 122:23, 124:4, 124:5  <b>walk</b> [3] - 18:9, 19:19, 25:2  <b>walked</b> [1] - 116:22  <b>wants</b> [2] - 17:1, 86:5  <b>watch</b> [1] - 51:8  <b>Water</b> [1] - 26:8  <b>water</b> [28] - 17:18, 20:23, 20:25, 23:7,</p>		