

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MANATEE COUNTY
CIVIL DIVISION

CASE NO.: 2015-CA-2563

MANDARIN DEVELOPMENT, INC.,
a Florida corporation,

Plaintiff,

vs.

MANATEE COUNTY, a political
subdivision of the State of
Florida,

Defendant.

Type text

DEPOSITION OF: DANIEL B. DeLISI, AICP

TAKEN BY: Defendant Herein
DATE: September 16, 2016
TIME: 1:30 p.m. - 3:56 p.m.
PLACE: Moore, Bowman & Rix, P.A.
3277 Fruitville Road, Unit E
Sarasota, Florida 34237
REPORTED BY: Lorial Milazzo, RPR
Notary Public
State of Florida at Large

A-P-P-E-A-R-A-N-C-E-S

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Appeared on behalf of the Defendant:

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I-N-D-E-X

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E-X-H-I-B-I-T-S

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2	Entire paper file tendered by DeLisi	15
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1 (The witness was duly sworn.)

2 DANIEL B. DELISI, AICP
3 was called as a witness herein, and after having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DeCARLO:

7 Q. Mr. DeLisi, good afternoon, sir. I had a chance to
8 introduce myself to you before we began. As you know, my
9 name is Chris DeCarlo. I represent Manatee County, Florida,
10 in a lawsuit that has been filed in the Twelfth Judicial
11 Circuit in Manatee County, Mandarin Development, Inc., versus
12 Manatee County, Florida. As you know, I'm here to take your
13 deposition.

14 I know you and I met I think last year in another
15 case. I just remind you of the ground rules, please. The
16 lady who is seated to your right, my left is our court
17 reporter. Her job is to type down everything everyone says,
18 and for that reason would you please make sure that all your
19 responses to my questions are verbal responses.

20 A. Yes.

21 Q. Okay. If for some reason during the course of the
22 deposition you forget to give me a verbal response, as that
23 sometimes happens during depositions, I'm going to prompt you
24 for a verbal response. I'm not doing that to be rude to you
25 but to make sure that the record accurately reflects your

1 testimony. Does that make sense?

2 A. Yes.

3 Q. Okay. I'll do my best to ask questions of you that
4 hopefully you understand, but if I ask you a question for any
5 reason that you do not understand, will you please tell me
6 that you don't understand my question?

7 A. Okay.

8 Q. All right. The flip side of that is I'm going to
9 presume, for purposes of our conversation this afternoon
10 during the deposition, that if you answer one of my
11 questions, that you understood the question and you meant the
12 answer that you gave. Is that acceptable to you?

13 A. Yes.

14 Q. Okay. The only other thing that will make madam
15 court reporter's life easy is if you and I don't talk over
16 each other. So let me finish my question, please, in its
17 entirety, even if you think you know where I'm going, before
18 you answer, and I will afford you the courtesy as well of not
19 speaking over you while you're answering the question. Does
20 that make sense?

21 A. Yes.

22 Q. Okay. If you need a break for any reason, please
23 let me or Mr. Bowman know, and I'll be happy to take a break;
24 okay?

25 A. Okay.

1 Q. All right. Would you state your full legal name and
2 your business address for the record, sir.

3 A. Daniel Bryon DeLisi. My business is DeLisi, Inc.,
4 and located at 15598 Bent Creek Road, Wellington, Florida.

5 Q. The zip code?

6 A. 33414.

7 Q. Okay. All right. And I'm going to hand you a copy
8 of what I'll mark as composite Exhibit Number 1. This is a
9 copy of the notice of taking deposition duces tecum, as well
10 as the subpoena duces tecum that you I believe received
11 through Mr. Moore's office; is that correct?

12 A. Yes.

13 Q. Okay. Let me hand you Exhibit Number 1.

14 MR. DeCARLO: And, Jackson, here is a copy for you.

15 MR. BOWMAN: Thank you.

16 MR. DeCARLO: You're welcome.

17 COURT REPORTER: Can you spell your middle name for
18 me.

19 THE WITNESS: Yeah. B-R-Y-O-N.

20 BY MR. DeCARLO:

21 Q. And, Mr. DeLisi, do you have Exhibit Number 1 in
22 front of you?

23 A. Yes, I do.

24 Q. Okay. And again, that's the notice of taking
25 deposition duces tecum and the subpoena duces tecum that you

1 received in this case?

2 A. Yes.

3 Q. All right. And that notice and subpoena requested
4 that you bring certain documents with you here this
5 afternoon; is that correct?

6 A. Yes.

7 Q. And you in fact have produced documents responsive
8 to the notice and the subpoena here today?

9 A. Yes, to the best of my ability.

10 Q. Okay. And prior to us going on the record and
11 beginning the deposition, you and I had a chance to
12 informally briefly discuss what you have produced with you
13 here today; is that correct?

14 A. Yes.

15 Q. Okay. Let's, if we could, please, just go through
16 the list of items on the record so I have an understanding of
17 what you have produced here. So specifically with regard to
18 the documents that are in front of you, there are a couple of
19 different sets of documents; is that correct?

20 A. Yes.

21 Q. Okay. The first set of documents, if you will, are
22 e-mail correspondences?

23 A. Yes.

24 Q. Are those e-mail correspondences either e-mails that
25 were sent to you by Mr. Moore's office or e-mails that you

1 sent back to Mr. Moore's office?

2 A. That's correct.

3 Q. All right. The second set of documents,
4 if you will --

5 MR. BOWMAN: Can I take a look at these?

6 MR. DeCARLO: Yeah, absolutely. Go ahead.

7 BY MR. DeCARLO:

8 Q. The second set of documents consists of the
9 complaint for declaratory relief that was filed in this case;
10 is that correct?

11 A. Yes.

12 Q. All right. The next item in the stack of documents
13 that I have that you've produced is a deposition transcript
14 of a Mr. Joel Christian which was taken in this case on
15 September 25th, 2015; is that correct?

16 A. Yes.

17 Q. Then there are several sets of documents which are
18 from the Southwest Florida Water Management District; is that
19 correct?

20 A. Yes.

21 Q. And let me just go through them specifically. First
22 is a correspondence dated January 16th, 2016, which is
23 from -- I'll call it SWFWMD for purposes of our deposition.

24 A. That's fine.

25 Q. Okay. And you understand what I mean by that, of

1 course?

2 A. I do.

3 Q. So from SWFWMD to TR Investor, LLC; is that
4 correct?

5 A. Yes.

6 Q. And that document is January -- excuse me,
7 February 16th, 2016?

8 A. Well, and to clarify --

9 Q. Sure.

10 A. -- what all of these are are permits that are
11 granted, and they correspond to the plans in front of us.

12 Q. Okay. And are these the plans for the -- what is
13 known as the Riva Trace subdivision?

14 A. No.

15 Q. No? What are they for?

16 A. They're the plans for these permits that were also
17 issued by the Southwest Florida Water Management District.

18 Q. Do they relate to the property which is the subject
19 of this litigation?

20 A. To the extent that they demonstrate that Southwest
21 Florida Water Management District and in fact all of the
22 districts do not have a set buffer width for wetlands. So in
23 these plans you'll see, you know, for instance, a five-foot
24 upland buffer to protect against secondary impacts, you know,
25 rather than the minimum fifteen-foot. You can propose your

1 own buffer, according to rule, and they do a site-specific
2 analysis to figure out what the most appropriate buffer is,
3 and then the permits correspond to the plans.

4 Q. Okay. So all of the documents that I have which we
5 are generally referring to from SWFWMD related to permitting
6 also relate to the site plans that you've produced here
7 today?

8 A. That's correct.

9 Q. All right. But these permits and the corresponding
10 site plans do not relate to the Riva Trace subdivision, which
11 is the parcel of property that is the subject property at
12 issue in this case?

13 A. They are not permits for Riva Trace, that's
14 correct.

15 Q. Okay. All right. So these are examples,
16 if you will, of other permits that you have looked at from
17 SWFWMD that you have utilized in formulating your opinions in
18 this case?

19 A. That's correct.

20 Q. All right. So then I won't go through the
21 individual dates of these documents, but suffice it to say,
22 they're all permitting documents from SWFWMD?

23 A. That's correct.

24 Q. Were you personally involved in any of these
25 projects as represented by the permitting documents that you

1 have produced here today?

2 A. No.

3 Q. How about any of the site plans? Were you
4 personally involved in any of the developments for the site
5 plans that you have produced here today?

6 A. No.

7 Q. All right. The next item that you have produced
8 responsive to the subpoena is your expert witness testimony;
9 is that correct?

10 A. That's correct.

11 Q. You've produced in response to the request a list of
12 the cases in the last three years where you have served as an
13 expert, either a testifying or a consulting expert on behalf
14 of the Moore, Bowman & Rix firm?

15 A. That's correct. Yes.

16 Q. And you've also given me a list of those same cases
17 where you have been retained to serve either as a testifier
18 or consulting expert witness for the Moore, Bowman & Rix
19 firm, and you've sort of designated approximately how many
20 hours you've spent in working on those cases; is that
21 correct?

22 A. That's correct.

23 Q. The next set of documents that you have produced is
24 what I guess you and I would agree can be referred to as your
25 CV, your curriculum vitae?

1 A. Yes.

2 Q. All right. The next item that you have produced is,
3 what, sort of a synopsis of your educational background and
4 work background?

5 A. It's a bio.

6 Q. Bio. Okay. And then the last of the
7 eight-and-a-half-by-eleven documents you've produced is an
8 hourly rate schedule for your firm, DeLisi Land Use
9 Planning & Water Policy?

10 A. That's correct.

11 Q. All right. And then the larger documents you've
12 produced, which are the site plans, do they correlate -- do
13 these site plans correlate exactly with the permitting
14 documents that you produced from SWFWMD?

15 A. Yes.

16 Q. All right. The next item that you've produced is a
17 document from the United States Environmental Protection
18 Agency. It's titled Riparian Buffer Width, Vegetative Cover,
19 and Nitrogen Removal Effectiveness: A Review of Current
20 Science and Regulations; is that correct?

21 A. Yes.

22 Q. And where did you obtain this document from, this --
23 first of all, let me strike that question.

24 How would you characterize this or what is this,
25 from your perspective?

1 A. It's been a while since I read it, but if I recall
2 correctly, it was a literature review of studies out there
3 and practices on riparian buffer widths.

4 Q. Okay. All right. Did you personally locate this or
5 find this, or was this sent to you? How did you come into
6 possession of this?

7 A. I located it.

8 Q. Okay. Were you at all involved in producing the
9 results of this study?

10 A. No.

11 Q. The next item is a notice of serving supplemental
12 answer to defendant's expert interrogatory number eleven; is
13 that correct?

14 A. Yes.

15 Q. All right. And this contains and it's simply your
16 two invoices, I guess, to the Moore, Bowman & Rix firm for
17 your work to date on this particular case?

18 A. That's correct.

19 Q. You've got approximately sixteen hours, again
20 approximately, in terms of time you spent on this case so
21 far, according to these invoices, one for twelve and three
22 quarter hours and one for three and three quarter hours?

23 A. If that's what it says, yes.

24 Q. Okay. And you billed out at an hourly rate of two
25 hundred and fifty dollars per hour; is that correct?

1 A. That's correct.

2 Q. Does your hourly rate -- is it adjustable, or does
3 it change depending upon the type of work you're doing, in
4 other words, document review versus hourly rate for
5 deposition testimony versus hourly rate for trial
6 testimony?

7 A. For expert witness work?

8 Q. Yes, sir.

9 A. No.

10 Q. Okay. So it's a flat two fifty hourly rate?

11 A. Yes.

12 Q. All right. And then you also produced here today a
13 thumb drive, which we talked about, and if you would, please,
14 remind me of what are the contents of this thumb drive.

15 A. The thumb drive includes the entire file that I
16 have, the electronic file that I have. It includes, you
17 know, whatever else I had that would be responsive to
18 Exhibit A, so PDF pages of my website. You asked for all or
19 any marketing materials. That's on there. It will, once we
20 take a break, include, you know, all the Power Point
21 presentations I've given in the last three years and, you
22 know, anything else that I had in my possession that was in
23 response to this.

24 Q. Okay. All right. In terms of everything that
25 you've produced here today in paper copies, as well as the

1 materials on the thumb drive, does that, in essence,
2 constitute your entire file related to this matter as an
3 expert witness?

4 A. To the best of my ability. If there's something on
5 here that, you know, I'm missing, I mean, let me know. I'll
6 get it right over to you.

7 MR. DeCARLO: All right. I appreciate that.

8 All right. Madam court reporter, let's do this, if
9 we could, please: Let me have you mark -- let's do it
10 all as Exhibit Number 2, please, all of the paper
11 documents that Mr. DeLisi has produced, as well as the
12 thumb drive.

13 Can we go off the record?

14 (Discussion had off the record.)

15 MR. DeCARLO: We had a conversation off the record
16 about how we're going to organize the exhibits, and so
17 what we're going to do is we're going to make all the paper
18 documents that Mr. DeLisi produced here today Exhibit
19 Number 2, and we'll make the contents of the thumb drive
20 that he produced here today Exhibit Number 3.

21 BY MR. DeCARLO:

22 Q. All right. Mr. DeLisi, let me show you what I'm
23 marking Exhibit Number 4. These are plaintiff's supplemental
24 answers to defendant's expert interrogatories.

25 MR. DeCARLO: I have a copy for you, Jackson.

1 MR. BOWMAN: Thanks.

2 BY MR. DeCARLO:

3 Q. Sir, you have Exhibit Number 4 in front of you?

4 A. Yes.

5 Q. All right. And have you ever seen those
6 interrogatory answers prior to today?

7 A. I have seen mine.

8 Q. Okay. All right. And according to these
9 interrogatory answers on page three of Exhibit Number 4, you
10 have been retained in this case to act as an expert witness
11 for the liability portion of the trial on behalf of the
12 plaintiff; is that correct?

13 A. Yes.

14 Q. Now, I took your deposition, as we talked about off
15 the record before we started, in December of last year in the
16 Cargo Partners Long Bar Pointe versus Manatee County case.
17 Do you recall that?

18 A. I do.

19 Q. And we talked about this again a little bit before
20 we got on the record, but rather than go back through all of
21 your education and your work history, would it be fair to say
22 that that education and work history, your answers to those
23 questions would be the same today as they were back then?

24 A. Yes.

25 Q. Okay. Are there any substantial or substantive

1 additions to your work background since I deposed you last in
2 December of 2015?

3 A. I don't think so.

4 Q. Okay. Have you given any either trial deposition
5 testimony or testimony at any administrative hearings since
6 your deposition in December of 2015?

7 A. Administrative as in the DOAH hearings or --

8 Q. Yes.

9 A. No. I have done planning boards and that type of
10 thing but not a formal DOAH proceeding.

11 Q. And no deposition testimony and no trial
12 testimony?

13 A. No.

14 Q. All right. Could you tell me what you did to
15 prepare for today's deposition, please.

16 A. Yes. I read over the complaint. I reread the
17 interrogatory response, and I reviewed some of my research
18 that I did back in I believe it was March.

19 Q. Okay. Specifically what research are you thinking
20 of that you reviewed?

21 A. Research into federal and state permitting to see if
22 there was anything that -- in federal or state rules that
23 required a set buffer without regard to impacts.

24 Q. Was there anything different, as you prepared for
25 your deposition today, that you reviewed that's in addition

1 to or beyond the research that you did that I believe you
2 referenced in Exhibit A of these interrogatory answers in
3 terms of federal and state statutes?

4 A. Yeah. I mean, the only additional thing from this
5 is probably the review of the permits that you have in front
6 of you.

7 Q. Okay. The permits and the site plans that you
8 produced at your deposition here today, was that something
9 that you utilized or relied upon when you formulated the
10 opinions that are set forth in these interrogatory answers?

11 A. No, but they're consistent with those.

12 Q. Besides speaking with plaintiff's counsel, did you
13 speak with anyone in preparation for your deposition? Did
14 you speak with the applicant or the property owner or anyone
15 else?

16 A. No.

17 Q. Okay. In terms of this particular case, can you
18 give me -- can we kind of drill down on what date were you
19 retained in this case by the Moore, Bowman & Rix firm to work
20 as an expert? Would you have that information or be able to
21 tell me that based on what you've produced here today?

22 A. I should be able to find it.

23 Q. From the invoice?

24 A. From the e-mails.

25 Q. Oh, okay.

1 A. It would have been -- I believe the first invoice is
2 a March invoice, so it would have been in March of this year.
3 I mean, if you'd like a precise date, I can try and flip
4 through the e-mails to find it.

5 Q. Sure. Would you tell me, please.

6 A. Okay. It would have been March 9th.

7 Q. 2016?

8 A. 2016.

9 Q. And how were you contacted to be involved in this
10 case?

11 A. By e-mail.

12 Q. By plaintiff's counsel or by the plaintiff?

13 A. Plaintiff's counsel.

14 Q. Is there an engagement agreement that you've entered
15 into or contract in this case similar to the one that you had
16 related to the Cargor Partners Long Bar Pointe case?

17 A. Hold on one second. I'm still just trying to
18 confirm that last answer. Yeah, March 9th. I'm sorry, can
19 you repeat your question.

20 Q. Sure. Is there some type of an engagement agreement
21 or contract for expert witness services between yourself and
22 the Moore, Bowman & Rix firm as there was in the Cargor
23 Partners Long Bar Pointe case?

24 A. There is, and it should be on the thumb drive. The
25 one thing to note about that is, you know, quite frankly, I

1 don't know that I ever got a signed copy back, but, you know,
2 I typically don't. I'm a small business. I'm not a stickler
3 on those things.

4 Q. Okay. In terms of the materials that you would have
5 received from Mr. Moore's office, they sent you the
6 complaint. They sent you the interrogatory answers;
7 correct?

8 A. No.

9 Q. No?

10 A. They sent me the interrogatories.

11 Q. Okay. They sent you the interrogatories?

12 A. Yes. I produced the answer to my own sections.

13 Q. Okay. All right. I'm just trying to get an idea of
14 everything that they sent you that you used in formulating
15 your opinions in this case versus things that you went and
16 located on your own, so --

17 A. Any of the documents that -- any of their filings or
18 your filings that I have in the file.

19 Q. Okay.

20 A. Or like the deposition of -- I forget his name.

21 Q. Joel Christian?

22 A. Yeah, Joel. Those are the types of documents that
23 they sent me. They also sent me the permits and the permit
24 plans.

25 Q. Okay.

1 A. Everything else, all the reports in there, all the
2 copies of federal and state statute, all of that is my own
3 research.

4 Q. Okay.

5 A. And you have with these e-mails -- the e-mails
6 printed are all the e-mails that they had sent to me, and it
7 says next to the attachments what the document is, and so if
8 there's a -- you know, if there's an attachment that you see
9 attached but you don't see in the file, let me know, but the
10 file name should correspond to the e-mail what's next to the
11 attachment. And so you could correspond that with what they
12 sent to me.

13 Q. Was there anything else that you requested from
14 plaintiff's counsel related to this case that you wanted in
15 formulating your opinions?

16 A. I can't think of anything. The only thing that I
17 ever requested of them that they sent to me was one of the
18 exhibits in the complaint. I just had the complaint itself
19 and none of the exhibits.

20 Q. And which specific exhibit was that?

21 A. That was the original letter from Manatee County
22 citing the comp plan and the land development code as a
23 reason why the staff could not deviate from the buffer
24 requirements.

25 Q. And why did you want that?

1 A. I wanted to see what it said.

2 Q. Did that letter play any part in any of the opinions
3 that you formulated related to this case?

4 A. No. I requested that letter probably about a week
5 ago. I mean, my opinions had already been formulated, but,
6 you know, I wanted to see if there was anything in the comp
7 plan that I was missing.

8 Q. And was there, from your perspective, after you
9 reviewed the letter?

10 A. No.

11 Q. So in terms of everything that you've produced at
12 the deposition here today as contained in Exhibit 2 and as
13 contained in Exhibit 3, do I now have all of the materials
14 that you have relied upon in any way in formulating your
15 opinions in this case?

16 A. Yes.

17 Q. In terms of your background, you are a certified
18 land planner; correct?

19 A. That's correct.

20 Q. As a planner, are you familiar with part two of
21 Chapter 163 of Florida Statutes, what I think is typically
22 referred to as the Community Planning Act?

23 A. I am.

24 Q. Based upon your understanding of the Community
25 Planning Act, does that require all local governments in the

1 State of Florida to adopt, maintain, and implement a
2 comprehensive land use plan to govern future development of
3 property within the county's jurisdictional area?

4 A. It does.

5 Q. And each comprehensive plan, according to that
6 statute, that any county adopts is required to have certain
7 mandatory elements; correct?

8 A. That's correct.

9 Q. And one of the mandatory elements of those
10 comprehensive plans per Chapter 163 is a conservation
11 element; correct?

12 A. That I'll take your word for. It's been a while
13 since I've reviewed the required elements.

14 Q. Okay. I will represent to you that Florida Statute
15 163.3177(5)(d) calls for a conservation element.

16 A. That's fine.

17 Q. Okay. In general terms, do you understand that that
18 conservation element includes within it -- includes within
19 the purposes of that conservation element preservation of
20 water, wetlands, rivers, water bodies?

21 A. Yes.

22 Q. Would you agree, in terms of your background and
23 your experience, that you are not an environmental scientist
24 or an ecologist, per se?

25 A. That's correct.

1 Q. Would you agree you're not an expert in wetland
2 ecology?

3 A. That's correct.

4 Q. Would you agree that you're not an expert in
5 terrestrial ecology?

6 A. That's correct.

7 Q. Would you agree that you're not an expert in wetland
8 buffers?

9 A. So I think what I am an expert in and what I do deal
10 in regularly is environmental policy, and so to the extent
11 that, you know, I'm not a wetland scientist, I don't look at
12 plant materials and how they filter nutrients. I do
13 understand the policy behind the creation of things like
14 buffers.

15 Q. Okay.

16 A. But, no, I don't do the science behind physically
17 what needs to be in those buffers.

18 Q. Okay. Have you ever been qualified as an expert in
19 wetland buffers?

20 A. No.

21 Q. Have you ever given testimony in either a trial
22 proceeding or administrative hearing of any kind where you
23 were qualified as an expert in wetland buffers?

24 A. No.

25 Q. As a planner, you have an awareness of what buffers

1 are and how they are utilized when you are dealing with a
2 development or a piece of property that an applicant comes to
3 to get your guidance on as a planner. Is that fair to say?

4 A. That's correct.

5 Q. In general terms, based upon your background,
6 training, and experience, how would you define or what would
7 you say the purpose of a wetland buffer is?

8 A. It's to make sure that you don't have any secondary
9 impacts on a wetland so, you know, there's some area of
10 filtration, water attenuation between a development area and
11 a wetland.

12 Q. Okay. When you use the term secondary impacts, what
13 do you mean by that?

14 A. It means you're not physically tearing up the
15 wetland, that you're not going into the wetland and directly
16 impacting it, but things that you do off-site may have an
17 impact to the ecology of the wetland.

18 Q. Okay. So when we talk about impacts, I mean, a
19 direct impact is something, as I understand it, like we're
20 physically going in and ripping up the wetland or destroying
21 the wetland in some way?

22 A. That's correct.

23 Q. A secondary impact would be things that are done on
24 the upland portion of the property that can have a
25 potentially adverse impact on the wetland?

1 A. That's correct.

2 Q. You would agree, based on your background, training,
3 and experience, that wetlands are important and invaluable to
4 the environment?

5 A. Yes.

6 Q. And that wetland buffers protect the scientifically
7 recognized value of wetlands?

8 A. They can.

9 Q. They can? Are there certain instances where you
10 believe that they do not, that wetland buffers do not protect
11 the wetland?

12 A. I wouldn't make that statement, but I think the only
13 nuance is that a necessity for it may vary depending on what
14 the land use is adjacent to the wetland, what the slope of
15 the land is, the topography, the plantings, all of those
16 types of things. And of course, not all wetlands are in the
17 same state when you find them. So you could have a wetland
18 that's already severely degraded, and you're probably not
19 doing a whole lot through secondary impacts. It depends on
20 the situation.

21 Q. Okay. All right. Taking a wetland that is of good
22 quality, a buffer is a valuable area surrounding the wetland
23 to have to avoid secondary impacts?

24 MR. BOWMAN: I'm going to object to the form of the
25 question.

1 BY MR. DeCARLO:

2 Q. Go ahead and answer.

3 A. Yeah, buffers certainly are one tool or the main
4 tool used to avoid secondary impacts.

5 Q. What are the other tools that are typically utilized
6 to avoid secondary impacts to wetlands besides buffers?

7 A. Well, let me just say in our regulatory system
8 buffers are the regulatory, the tool to avoid secondary
9 impacts.

10 Q. Okay. All right. In terms of the functionality and
11 use of wetlands, would you agree that they help protect
12 drinking water by virtue of how they filter?

13 A. I wouldn't necessarily agree with that. Our
14 drinking water supplies are -- generally it depends on where
15 you're drawing your potable water supply from, but in Florida
16 most of the areas that I've dealt with, at least in southwest
17 Florida -- southeast the geology is different, you know, but
18 Aquaphor systems, if you're getting your potable water from
19 five hundred to a thousand feet below the surface, the
20 wetland above the surface is probably not doing a whole lot
21 to filter any future water supply.

22 Also, the nutrients that wetlands filter are often
23 not the same nutrients that we're looking at for human health
24 standards for potable water. So as a blanket statement, you
25 know, I don't think there's that direct of a relationship,

1 and certainly it depends on where you are and what your
2 drinking water supply source is.

3 Q. Okay. If we have wetlands that are adjacent to a
4 surface water drinking supply source?

5 A. Okay. So if a reservoir is where you're drawing
6 your water from and the wetland is adjacent to that
7 reservoir, potentially.

8 Q. Potentially the wetland is important for purposes of
9 preserving the quality of that drinking water?

10 A. Potentially. I mean, again, you have to look at the
11 system. You have to look at the specific site, but as a
12 blanket statement, I certainly wouldn't make that as a
13 blanket statement.

14 Q. Okay. Is that the type of analysis that you would
15 perform as the land planner, or if you were involved in a
16 project, would that analysis be performed by an ecologist or
17 a wetland -- a specific wetlands expert?

18 A. Yeah, it would probably be either a hydrogeologist
19 or someone with an environmental engineering background.

20 Q. Okay. Do you agree that there are numerous federal
21 and state studies that demonstrate the environmental and
22 ecological value of wetlands?

23 A. Yes.

24 Q. Have you been involved -- personally been involved
25 in wetland impact permits in your occupation over the years

1 as a land planner?

2 A. So as -- yes, I have been, not as the person filing
3 the permit, but as a member of the team and often the project
4 manager of that team, you know. And as the chief of staff of
5 the South Florida Water Management District, while I wasn't
6 directly over regulatory, I did from time to time get engaged
7 in permitting activities.

8 Q. Okay. Now, with regard to what you have in front of
9 you, I believe we've marked it as Exhibit Number 4, the
10 plaintiff's supplemental answers to the defendant's
11 interrogatories, would you please take a look at page four
12 and specifically question number three. Let me know when
13 you've had an opportunity to review the question and the
14 portion of the answer that relates to you.

15 A. Are you thinking page --

16 Q. It starts on page three. It's question -- at least
17 on my page three question number three.

18 A. Three, yes. That's right.

19 Q. Okay. And then it goes on to page four.

20 A. Yes.

21 Q. And then there is an answer on page four.

22 A. Okay. So my question number three starts on page
23 two, which is --

24 Q. You're right. Your set does. Okay. Let me work
25 off the one you're working off of. Page two, question number

1 three, and that question continues on to page three, and then
2 there is a response there; correct?

3 A. That's correct.

4 Q. All right. And at the bottom of the section related
5 to the answer it states, It is anticipated that Mr. DeLisi
6 will testify as to planning-related development issues; is
7 that correct?

8 A. I'm sorry, where is that exactly?

9 Q. Right at the bottom there, Mr. DeLisi, when you go
10 to the last sentence, I think.

11 A. Okay. Mr. DeLisi will also opine as to the lack of
12 any -- where are we?

13 Q. It's right here (indicating), Dan.

14 A. Oh, got it. Okay.

15 Q. So are you with me? The answer to question number
16 three, which asked for the plaintiff to disclose basically
17 the area in which you are going to testify or the topic that
18 you were going to testify to.

19 A. Yes.

20 Q. And in general terms it says, It is anticipated that
21 Mr. DeLisi will testify as to planning-related development
22 issues; is that correct?

23 A. Yes.

24 Q. And then question number five, which was the one I
25 think you were looking at a moment ago, essentially asks for

1 what your expert opinions are with regard to this case.

2 A. Yes.

3 Q. You see what I'm referring to? And it says -- and
4 I'm on page four. It says, It is expected that Mr. DeLisi
5 will opine that requiring a fifty-foot buffer and
6 corresponding conservation easement without regard to a
7 project's impacts is unique in environmental permitting
8 within the State of Florida, as well as with respect to
9 federal wetland regulators. The opinions of Mr. DeLisi are
10 based upon his review of state and federal environmental
11 rules and statutes, as well as published documents on wetland
12 buffers. Mr. DeLisi will also opine as to the lack of any
13 scientific basis for the setbacks and easement required by
14 Manatee County.

15 Is that, in fact, the response to interrogatory
16 number five in terms of your expert opinions?

17 A. That is the response.

18 Q. Okay. And have I just read in verbatim how that
19 response reads in terms of your expert opinions?

20 A. You have.

21 Q. Okay. Have all the topics -- the general topics or
22 areas that you intend to provide expert testimony about been
23 disclosed in these expert interrogatory answers?

24 A. Yes.

25 Q. And have all of your professional opinions or

1 conclusions that you intend to testify about been disclosed
2 in these expert interrogatory answers?

3 A. Yes.

4 Q. Okay. Let me focus on the answer to interrogatory
5 number five, the one we were just talking about; okay? I
6 want to break down this answer, if I may, and there are two
7 opinions in this answer, as I read it. The first is that
8 Manatee County requiring a fifty-foot buffer and
9 corresponding conservation easement without regard to a
10 project's impacts is unique in environmental permitting
11 within the State of Florida, as well as with respect to
12 federal wetland regulators; is that correct?

13 A. That's correct. And --

14 Q. And then there is a second opinion that says you
15 will opine as to the lack of any scientific basis for the
16 setbacks and easement required by the county?

17 A. That's correct.

18 Q. Okay. So two opinions basically is what you have
19 there?

20 A. Yes.

21 Q. All right. And then, as I'm understanding this
22 answer, the basis of those opinions are your review of state
23 and federal environmental rules and statutes and published
24 documents on wetland buffers; correct?

25 A. Yes.

1 Q. Okay.

2 A. As well as everything in the case file.

3 Q. Okay.

4 A. So when I researched scientific basis, I've read
5 Joel's deposition.

6 Q. Okay. All right. So Joel's deposition would also
7 be a basis for what your expert opinions are in this case?

8 A. That's correct.

9 Q. Is there anything else that we haven't talked about?
10 I mean, I'm including the materials that you provided to me
11 that we talked about. I'm not trying to --

12 A. Yeah.

13 Q. I'm not trying to play gotcha with you. The
14 materials you produced in response to your subpoena --

15 A. Yes.

16 Q. -- also form the basis for your expert opinions?

17 A. That's correct.

18 Q. All right. Now, in terms of the first opinion, the
19 part that starts with requiring a set fifty-foot buffer and
20 corresponding conservation easement, okay, is unique within
21 the State of Florida and with respect to federal wetland
22 regulators, just that opinion, tell me if you would, please,
23 what specifically the basis for that opinion is.

24 A. So I did a review of state and federal wetland
25 regulatory processes, rules, statutes, and I could not find

1 anything that required a set buffer requirement of any width,
2 fifty-foot or not.

3 Q. All right. And as it relates to the specific
4 federal and state statutes and regulations, which ones are
5 you referring to? Are those the ones that are referenced in
6 your March 23rd, 2016, e-mail to Mr. Moore, which is attached
7 to the expert interrogatory answers as Exhibit A?

8 A. Yes.

9 Q. All right. Are there any other federal or state
10 statutes or rules that you relied upon in formulating the
11 basis for this first opinion?

12 A. I don't believe so. Whatever is in the file is what
13 I reviewed and in that memo. So the memo plus the file would
14 be the universe of what I looked at. The only reason why I
15 add that caveat is, you know, I can't remember if I cited all
16 of the federal and state statutes in the memo.

17 Q. Okay. So if there are other federal or state
18 statutes that I find -- and I won't go through them right
19 now, but I may do that when we take a break, but if there are
20 any other state statutes or rules or federal statutes or
21 rules that I find within the documents you produced, you also
22 relied on those?

23 A. Yes.

24 Q. In formulating this -- again, I'm just focusing on,
25 for sake of clarity, the first opinion about the set

1 fifty-foot buffer; okay? Are you with me?

2 A. Yes.

3 Q. All right. Did you analyze the land development
4 codes of any other Florida counties in formulating that
5 opinion?

6 A. I did not.

7 Q. Are you aware of whether any other Florida counties
8 have fixed wetland buffer or wetland setback requirements?

9 A. Offhand, I can't recall any. And just to be clear,
10 when we say the State of Florida, the meaning is the State of
11 Florida, not all jurisdictions within the State of Florida.
12 So I looked at state and federal wetland permitting
13 processes.

14 Q. Okay. The State of Florida overall?

15 A. The actual State of Florida government.

16 Q. Okay. But my question is whether you have an
17 awareness or whether you know if any other Florida counties
18 besides Manatee County have fixed wetland buffer or fixed
19 wetland setback requirements?

20 A. Offhand, I can't recall.

21 Q. You are not personally aware, as you sit here today
22 with me, of any other Florida counties which have fixed
23 wetland buffer requirements?

24 A. I can't recall.

25 Q. If I was to tell you or represent to you that other

1 counties in the State of Florida have fixed wetland buffer
2 requirements, would that change your first opinion, your
3 first opinion being that requiring a fifty-foot buffer and
4 corresponding conservation easement without regard to the
5 project's impacts is unique within the State of Florida?

6 A. So I believe I understand your question. You're
7 looking at the State of Florida as an entity, including all
8 of the municipalities; is that correct?

9 Q. Yes.

10 A. Okay. The statement that is here I believe to mean
11 that it's the State of Florida itself and all the state
12 regulatory agencies, so the five water management districts
13 and the Department of Environmental Protection.

14 Q. Okay.

15 A. It does not look at all local cities and counties
16 within the State of Florida.

17 Q. Okay.

18 A. So it's unique in terms of wetland permitting
19 process from the state regulatory scheme.

20 Q. Okay. And by that statement I guess the converse
21 would be that if there are other -- well, my question, then,
22 to you is if I represent to you that there are other local
23 governments, counties that have fixed wetland buffer or
24 wetland setback requirements and I ask you to assume that --

25 A. Okay.

1 Q. -- would that change your first opinion that Manatee
2 County's regulation is unique within the State of Florida?

3 A. Yeah, I understand what you're trying to say, and I
4 don't think we're saying different things. What I'm saying
5 is that this opinion was meant to be limited to the State of
6 Florida itself. I wasn't -- I'm not opining to Manatee
7 County being different than other counties.

8 Q. Okay.

9 A. I'm opining to the way that Manatee County is
10 regulating wetlands is different from the way the state and
11 federal governments regulate wetlands.

12 Q. Okay. All right. Your second -- what I'm calling
13 your second opinion --

14 A. Uh-huh, yes.

15 Q. -- the last sentence where it says, Mr. DeLisi will
16 also opine as to the lack of any scientific basis for the
17 setbacks and easement required by Manatee County, what is
18 your basis for that opinion?

19 A. I was not able to find any scientific basis. The
20 science that I read or the review of the science that you'll
21 find in the reports talks about buffer widths varying based
22 on different environmental factors and land use types. And
23 so, you know, I was not able to find anything, from a review
24 of literature out there, that would state that a fifty-foot
25 buffer straight-away without any regard to land use or

1 topography or vegetation is an appropriate buffer.

2 Q. Okay. And when you say of the materials that you
3 reviewed, tell me specifically are you referring to the study
4 that we talked about, which is part of Exhibit Number 2, the
5 document from the EPA that's titled Riparian Buffer Width?

6 A. That is one of the studies.

7 Q. Okay. Which other studies are you referring to
8 besides this study?

9 A. There were a few studies that are on the thumb
10 drive and --

11 Q. Okay. Let me just do this, since we're talking
12 about it so that I don't have to go back to this issue:

13 A. Sure.

14 Q. All right. Can you help me, please, so that we can
15 locate it together in terms of where those other studies that
16 you're referring to may be located here.

17 A. So that's the -- I believe that's the EPA one
18 (indicating). Scroll down.

19 Q. Okay. Yes, that's the EPA one.

20 A. Open up this one or just click on it (indicating).

21 Q. The one that says National Menu of Best Management
22 Practices for Stormwater?

23 A. Yeah, that's -- you know, that was one thing that I
24 certainly looked at. Let's click the next one.

25 Q. It's titled Regulatory Program Overview.

1 A. Yeah, I don't know that that's -- let's look at that
2 one (indicating). Yeah, that's one that I looked at,
3 Planner's Guide to Wetland Buffers for Local Governments.

4 Q. Okay. All right. So of the materials that you
5 produced here at the deposition, the two studies that you are
6 relying upon to form the basis of opinion number two are the
7 EPA Riparian Buffer Width study and the document that is
8 titled Planner's Guide to Wetland Buffers for Local
9 Governments; is that correct?

10 A. I believe so, or, you know, whatever else is in the
11 file, but I'm sure that those are the two main ones.

12 Q. All right. Would you please -- so that I can make
13 sure that I don't miss anything else that you have relied
14 upon, could you take a moment -- and you can use it with the
15 computer -- and tell me if there's any other study that you
16 relied upon to formulate the basis for opinion number two,
17 again, which is the lack of any -- that there is a lack of
18 any scientific basis for the setbacks and easement required
19 by Manatee County.

20 A. You know, I may have. Well, I also looked at
21 this -- could you pull that up? I'm sorry about that.

22 Q. It's okay.

23 A. Thank you.

24 Q. You're welcome.

25 A. Okay. So there is in here TMDLs to Stormwater

1 Permits Handbook from the EPA dated November 2008. You know,
2 it's in here, so I reviewed this as well obviously in
3 formulating the opinion of reviewing the documents. Again, I
4 could not find anything that prescribed a set buffer
5 requirement.

6 Q. Okay. Let me just try to close this so I can see
7 where it is. Which one? Okay. This is TMDL. This is a
8 document that's titled United States --

9 A. If you scroll down, that's just the cover letter.

10 Q. Okay. But this is a document from the EPA; right?

11 A. Yeah.

12 Q. Okay. And the name of the document is TMDLs to
13 Stormwater Permits Handbook, and this is November 2008; is
14 that correct?

15 A. That's correct.

16 Q. Now, it says draft on there. Do you know if this is
17 the finalized version of this handbook?

18 A. I don't know. It's not uncommon for the federal
19 government to have drafts that never become finalized.

20 Q. Okay. Do you know whether the guidelines in this,
21 then, are actually in effect or in place if it was a draft
22 that wasn't finalized?

23 A. I do not know if it wasn't finalized.

24 Q. Okay. So this document and the other two studies
25 that we talked about are the three studies that you relied

1 upon to form your opinion that there is a lack of scientific
2 basis for setbacks and easements required by Manatee
3 County?

4 A. That's correct.

5 Q. Go ahead.

6 A. And just I want to be clear that in formulating that
7 opinion, it was based on trying to find similar standard
8 width buffer requirements, and so it's the lack of
9 information out there. It's not that a document
10 scientifically proved that a buffer width doesn't work. It's
11 that I didn't find any scientific evidence that would support
12 a fifty-foot buffer requirement.

13 Q. Okay. And the documents that you looked at in
14 determining -- the documents you were searching through to
15 determine if there was a fifty-foot buffer requirement were
16 the EPA study we talked about, the TMDL -- I want to make
17 sure I get the title right -- the EPA's TMDL to Stormwater
18 Permits Handbook, the state and federal statutes that you
19 referenced in your e-mail, and there was one more thing.
20 There was one more document, I think.

21 A. Yes. There's the Planner's Guide to local
22 permitting or wetland permitting, wetland buffer, or
23 something like that.

24 Q. Those are all federal or state either statutes,
25 rules, or guidebooks; correct?

1 A. Everything in the file is either a federal or state
2 statute or a guidebook, or I believe one or two of them are
3 literature reviews behind the science of wetland buffers.

4 Q. Okay. Are you aware of any federal regulations at
5 all that require upland buffers or setbacks for wetlands?

6 A. A set buffer for a wetland? No.

7 Q. Okay. Is that because the federal government
8 doesn't regulate uplands?

9 A. The federal government -- so in the same way that
10 the state doesn't regulate uplands, the federal government
11 doesn't, but the -- but the state regulates or will typically
12 ask for reasonable assurance that the wetland is not going to
13 be impacted, and that's how you get to an upland buffer.

14 Q. And so then you'd agree that the state and local
15 governments regulate uplands, as we're talking about uplands
16 in the context of a buffer surrounding a wetland?

17 A. Yes. That's correct.

18 Q. And talking about the regulations, either the
19 statutes or whether they be federal or state statutes or
20 rules that you reference in your March 23rd, 2016, e-mail to
21 Mr. Moore, could we take a look at that, please.

22 A. Yes.

23 Q. All right. Now, this e-mail is an exhibit to the
24 expert interrogatory answers; correct?

25 A. That's correct.

1 Q. All right. And I believe, if you look at
2 interrogatory answers six and seven, that references this
3 e-mail.

4 A. Okay.

5 Q. Do you follow me? Interrogatory number six, the
6 answer says, Mr. DeLisi prepared a work product review of
7 state and federal regulations.

8 A. Yes.

9 Q. All right. And then number seven says, The full
10 e-mail reviewed by Mr. DeLisi is attached hereto as
11 Exhibit A.

12 A. That's correct.

13 Q. All right. Now, this is an e-mail that you authored
14 to Mr. Moore; correct?

15 A. That's correct.

16 Q. And it appears, based upon the first sentence or the
17 first line in this e-mail, it says, Bill, per your request, I
18 have reviewed state and federal statute and find the
19 following.

20 A. That's correct.

21 Q. All right. So apparently you were asked by
22 Mr. Moore to look at the state and federal statutes;
23 correct?

24 A. That's correct.

25 Q. And what was it specifically that you were asked by

1 Mr. Moore to evaluate in the state and federal statutes?

2 A. Within the regulatory processes that the state and
3 federal government uses to protect wetlands, is there
4 anything that doesn't allow mitigation or is a set regulatory
5 standard plus buffer.

6 Q. Okay. And your e-mail states that -- I'm looking at
7 the second I guess sentence of what I'll call the first full
8 paragraph there. It says, There are no blanket buffer
9 requirements under Chapter 373.

10 A. That's correct.

11 Q. Okay. Would you agree, though, that Chapter 373
12 includes directives aimed towards the conservation,
13 preservation, and protection of wetlands?

14 A. Yes.

15 Q. Now, your e-mail also references the Applicant's
16 Handbook issued by the DEP for environmental resource
17 permitting; correct?

18 A. DEP and the five water management districts.

19 Q. Okay. And related to that Applicant's Handbook you
20 state that the Applicant's Handbook does not require a
21 buffer, but if an applicant wants to avoid secondary impacts,
22 a minimum buffer of fifteen feet and an average buffer of
23 twenty-five feet is required; is that correct?

24 A. Yes, without further review. So you can -- you
25 know, as it says, you can impact a wetland and mitigate for

1 it. You can provide no buffer and mitigate with secondary
2 impacts or mitigate for your secondary impacts, or you can
3 propose your own buffer requirement that deviates from the
4 minimum of fifteen feet, average of twenty-five feet, and
5 you'll be evaluated based on the specifics of the site.

6 Q. Okay. And this particular guideline of minimum
7 fifteen feet, average of twenty-five, that's set forth by DEP
8 for all the water management districts; correct?

9 A. Yes. It's set forth by the water management
10 districts and DEP.

11 Q. And what you were just describing to me a moment ago
12 is a rule I guess I would categorize as presumptive; in other
13 words, if the applicant follows the minimum fifteen-foot,
14 average of twenty-five, then the applicant is presumed to
15 have avoided secondary impacts?

16 A. Yeah, I would agree with that.

17 Q. Okay. And that's the formula the state came up
18 with; right?

19 A. That's correct.

20 Q. And it's a way essentially for the applicant to
21 develop the property without the need to evaluate the impact
22 of the development to the wetlands; correct?

23 A. Well, there's always an evaluation. I mean, the ERP
24 process is pretty complex. I mean, there are engineering
25 calculations of water flow, retention. There are water

1 quality calculations to look at what your impacts are from a
2 water quality standpoint, the nutrients that are flowing off.
3 So, yes, it's presumptive in that that's a standard that the
4 state relies on, but there's still an analysis of what's
5 going on on your property.

6 Q. And is the state's minimum of fifteen-foot, average
7 of twenty-five buffer requirement based on any scientific
8 study that you're aware of?

9 A. What I'm aware of with how the state comes up with
10 its rules is there's pretty significant science and
11 evaluation that goes into it. So, you know, the water
12 management districts all employ dozens of engineers,
13 environmental scientists, ecologists, hydrogeologists. I
14 haven't read the study that came up with the fifteen- and
15 twenty-five-foot secondary impacts, but I can state with all
16 confidence that rule-making in the State of Florida is based
17 on and backed up by quite a bit of science.

18 Q. Do you know whether that study exists?

19 A. I don't. I haven't looked for it.

20 Q. So you've never personally seen it yourself?

21 A. I haven't.

22 Q. How would you try to go about getting that study if
23 you wanted to?

24 A. It's a good question. I'd probably call up DEP and
25 either do a public records request or just ask around.

1 Q. Have you personally been involved in any land use
2 projects of a size similar to or larger than the Riva Trace
3 development where an applicant successfully permitted the
4 property using some other guideline besides the state's
5 buffer guideline of fifteen-foot minimum, twenty-five-foot
6 average?

7 A. I can't recall. I've been involved with a lot of
8 permits where we have impacted wetlands entirely and had to
9 mitigate for them or encroached and had to mitigate for
10 secondary impacts. I can't recall any where we proposed a
11 different buffer requirement.

12 Q. None that you've personally been involved in where
13 you proposed a different buffer requirement?

14 A. That's correct.

15 Q. Is it true that upon completion of a land
16 development project where the state has issued a permit, that
17 the state has continuing authority to inspect the property
18 for compliance over the life of the permit?

19 A. Yes, yes, that the state has compliance authority.

20 Q. And did it have to do anything in order to avail
21 themselves of that compliance authority? Like do they have
22 to notify the landowner that they're going to go on their
23 property?

24 A. Certainly in some, yes, instances. I mean, you
25 know, if the state is driving by and sees an infraction, you

1 know, they don't have to notify the landowner that they were
2 driving by and saw an infraction.

3 Q. Okay. The second to last sentence of the first full
4 paragraph, Mr. DeLisi, you state that SWFWMD has a policy
5 where if you are a "rural or minor subdivision" -- here, let
6 me show you where I am. It's the second to last sentence
7 right here (indicating).

8 A. Yes, I see that.

9 Q. Okay. So it says, SWFWMD has a policy where if you
10 are a "rural or minor subdivision" and you meet a set of
11 criteria (one of which is a seventy-five-foot vegetated
12 buffer, of which only twenty-five feet needs to be
13 perpetually maintained in a conservation easement) you are
14 automatically deemed to meet water quality criteria; is that
15 correct?

16 A. Yes.

17 Q. All right. So as it relates to either these rural
18 or minor subdivisions, the state has another what I will call
19 presumptive rule that says if you meet these criteria, then
20 you're automatically deemed to meet the water quality
21 criteria and the buffer requirements on wetlands?

22 A. That's correct.

23 Q. Okay. And as it relates to the rural or minor
24 subdivisions, their requirement is for a seventy-five-foot
25 vegetated buffer, twenty-five feet of which needs to be

1 maintained in a conservation easement; is that correct?

2 A. That's correct.

3 Q. Are you aware of any scientific study that
4 formulates or that forms the basis for these buffer
5 requirements?

6 A. I did not research that.

7 Q. Do you know if one exists?

8 A. I don't.

9 Q. You're not personally aware of one?

10 A. I'm not.

11 Q. I'm going down now to the -- again, what I would
12 call the third full paragraph. I'm not including that little
13 introductory line where you said, Per your request. I'm
14 looking at the paragraph that starts, While wetland and
15 riparian buffers are listed in the CFR. Do you see that?

16 A. I do.

17 Q. So there are wetland and riparian buffers that are
18 listed in the Code of Federal Regulations that you found?

19 A. That's correct.

20 Q. But you say that there's nothing that describes a
21 blanket buffer requirement in the CFR?

22 A. That's correct.

23 Q. You then reference I guess some specific federal
24 codes regarding regulation of wetlands and regulation of
25 pollutants; correct?

1 A. That's correct.

2 Q. And you're talking about Section 404 and 402 of the
3 Clean Water Act and then 13 U.S.C. 1342. Was that what
4 you're referring to as far as the federal codes that you
5 looked at?

6 A. That's correct.

7 Q. And as you go on in your e-mail, the first full
8 paragraph on page two you state, In general, there are no
9 outright requirements. Do you see what I'm referring to?

10 A. That's correct.

11 Q. All right. And by that statement, you're referring
12 to the fact that according to your review of the three
13 specific federal regulations that we talked about on the
14 first page, there's no outright requirement for a wetland
15 buffer in those federal statutes?

16 A. Yeah. I also did a word search in the entirety of
17 the CFR and the U.S. Code, and I couldn't find anything in
18 the entirety of the two.

19 Q. But would you agree that the federal government --
20 the federal government does not regulate upland use in the
21 State of Florida?

22 A. Again, to the same degree that the state is
23 regulating wetlands and looking at upland buffer requirements
24 as a wetland regulatory tool, you know, it's the same
25 comparable analysis.

1 Q. I'm not following you. I guess what I'm asking is
2 do the feds -- do the federal government, organizations or
3 entities like the EPA, do they regulate uplands like we would
4 have when we are utilizing a wetland buffer? First let me
5 take a step back.

6 You agree that a wetland buffer is made up of
7 uplands; correct?

8 A. That's correct.

9 Q. All right. So the feds, the federal government,
10 none of the agencies of the federal government regulate
11 uplands within the State of Florida?

12 A. That's correct.

13 Q. So you were looking for a statute that doesn't
14 exist, because the federal government doesn't regulate
15 uplands within the State of Florida?

16 MR. BOWMAN: Objection to the form of the
17 question.

18 A. Well, the same way that I was looking for -- the
19 State of Florida doesn't regulate uplands either, and in
20 fact, your comprehensive plan policy isn't about the
21 regulation of uplands. It's about the regulation of
22 wetlands, but it requires an upland buffer for the regulation
23 of wetlands. So what I was looking for is whether or not
24 there was a blanket upland buffer requirement in the
25 regulation of wetlands similarly to the upland buffer

1 requirements that the Manatee County Comprehensive Plan has
2 in the protection of wetlands.

3 BY MR. DeCARLO:

4 Q. Okay. Wouldn't you agree that regulation of things
5 like a wetland buffer falls under the jurisdiction of the
6 local government?

7 A. It can, yeah.

8 Q. And in fact, it does in many counties throughout the
9 State of Florida, does it not?

10 A. It does.

11 Q. And then you talk about or you go on to state that
12 the federal regulations regarding riparian and wetland
13 buffers are considered a BMP, a best management practice for
14 the removal of nitrogen and other pollutants and to reduce
15 nutrient removal; correct?

16 A. Yes.

17 Q. And those are water quality issues; correct?

18 A. That's correct.

19 Q. And would you agree that the wetland setback that
20 Manatee County has implements this best management
21 practice?

22 A. Not necessarily. I mean, so typically as planners,
23 when we would implement a BMP or natural resources staff,
24 which I'm involved with to try and implement BMPs, we do
25 really one of two things: We either provide incentives for

1 people to preserve areas so that we can implement that BMP,
2 or typically the way in the State of Florida we implement
3 BMPs is for local governments to buy properties and then, you
4 know, construct nutrient removal materials, you know, STAs,
5 stormwater treatment areas on them.

6 And so putting in a blanket regulatory buffer, you
7 know, there's no understanding of how much nutrients that
8 would actually remove. So when you implement a best -- when
9 you put your BMPs in place to implement your total maximum
10 daily loads, you actually need to do a calculation of how
11 much nitrogen or phosphorus, depending on what the TMDL is
12 for that water body, you're going to be removing. And so if
13 there's no understanding of that, then, you know, it's not a
14 very effective BMP to implement a total maximum daily load.

15 Q. Okay. You're not saying that the wetland buffer has
16 no use or utility for purposes of implementing that BMP, are
17 you?

18 A. I'm saying I don't know how much use it has. I
19 mean, it depends on what the land uses adjacent to it are,
20 topography, and plantings within the wetland buffer. If it's
21 barren, it may have no nutrient uptake. If it's planted, it
22 may have a lot. If it's sloped, again, it may have nothing.
23 If it's flat, it may have -- you know, it may serve a role.

24 Q. The answers to the interrogatories indicate that you
25 did not generate any other written report in this case;

1 correct?

2 A. That's correct.

3 Q. Were you asked not to generate a written report?

4 A. I wasn't asked to not generate a written report. I
5 just didn't generate a written report.

6 Q. Other than this e-mail, you haven't generated
7 anything in writing related to this case?

8 A. That's correct.

9 Q. And the expert witness testimony history that you
10 provided to me, if memory serves from the last time I deposed
11 you, there were approximately nine cases on here; is that
12 correct?

13 A. Yes.

14 Q. Okay. And of the nine times -- of those nine cases,
15 those are cases where you testified either as an expert
16 witness in a deposition or a trial or an administrative
17 hearing?

18 A. Yes.

19 Q. All right. And of those nine times, seven times you
20 testified on behalf of plaintiffs or applicants; correct?

21 A. That's correct.

22 Q. And twice on behalf of a governmental entity?

23 A. I don't believe so. There were times that I
24 testified on behalf of defendants.

25 MR. DeCARLO: Okay. Defendants. Okay. All right.

1 Let me take a moment to kind of check over my notes. I
2 think I may be done here. And I just want to take a
3 look at what you have, as we talked about earlier, on
4 the thumb drive to make sure I don't have any questions
5 about that.

6 THE WITNESS: Okay.

7 (Brief break.)

8 BY MR. DeCARLO:

9 Q. Okay. I have a few follow-ups, Mr. DeLisi. I had
10 asked you a question regarding whether wetlands were good for
11 water quality. Do you recall that?

12 A. I don't recall the exact question, but I do recall
13 discussing it.

14 Q. Okay. Do you agree wetlands are important for water
15 quality?

16 A. Yes.

17 Q. Okay. You also testified that you're not an
18 environmental scientist, you haven't testified as a wetland
19 expert, and you --

20 MR. BOWMAN: Objection to form. Sorry.

21 BY MR. DeCARLO:

22 Q. Okay. I was trying to do them all at once. Let me
23 break them up. You testified you're not an environmental
24 scientist; right?

25 A. That's correct.

1 Q. You told me earlier that you've never testified as a
2 wetland expert.

3 A. That's correct.

4 Q. And you told me previously this afternoon that
5 you've never testified as a wetland buffer expert.

6 A. That's correct.

7 Q. Now, in reference to this second opinion that you --
8 what I'm calling opinion number two. And again, for your
9 reference, I'm on page four of seven. I'm on the last full
10 sentence of answer to interrogatory number five.

11 A. Yes.

12 Q. It says, Mr. DeLisi will also opine as to the lack
13 of any scientific basis for the setbacks and easement
14 required by Manatee County. Do you see that opinion?

15 A. I do.

16 Q. Okay. Just to be clear with regard to that opinion,
17 you're not giving an expert opinion that there is no
18 scientific basis for wetland setbacks and the easement that
19 the county requires, are you?

20 A. No.

21 Q. Okay. You're just saying that you, in your research
22 of the federal and state statutes and rules, did not locate
23 anything demonstrating a scientific basis for the wetland
24 buffer setbacks?

25 A. That's correct.

1 Q. Do you know whether the federal agencies such as the
2 Army Corps of Engineers or the EPA have authority to regulate
3 the use of uplands under the Clean Water Act?

4 A. I don't know of any regulatory authority that they
5 have under the Clean Water Act to regulate uplands.

6 Q. Okay. In reference to your statement where we were
7 talking about the Applicant's Handbook in reference to the
8 portion of your e-mail that you sent to Mr. Moore, which is
9 Exhibit A to the answers to the interrogatories, there was a
10 portion of that e-mail, and it's the second sentence of the
11 first full paragraph where we were talking about the
12 presumptive rule for rural or minor subdivisions.

13 A. Yes.

14 Q. Okay. And when we were discussing that, you had
15 indicated to me that the Applicant's Handbook, as it relates
16 to those buffer requirements, also provides options for
17 things like variable width buffers; correct?

18 A. Yes.

19 Q. For the applicant to impact wetlands and provide
20 mitigation of impacts; correct?

21 A. Yes.

22 Q. Okay. In the context of this case, have you
23 reviewed the Manatee County Land Development Code regulations
24 to determine whether the county provides similar or analogous
25 options for the applicant to do things like propose a

1 variable width buffer or impact the wetland and mitigate?

2 A. I have done a review of the policies that were in
3 question, and, yes, I mean, to that extent and the policies
4 as written seem to be pretty definitive on what you could or
5 could not do.

6 Q. Okay. So are you aware as to whether or not the
7 county has similar options for an applicant to, again,
8 propose a variable width buffer or to propose a wetland
9 impact and then propose mitigation?

10 A. Yeah. In my review of the policies, it seemed to
11 indicate that they did not have the ability to impact
12 wetlands. I mean, there are limited circumstances, let me
13 say, that you can impact wetlands, and I believe that's under
14 goal three. I forget the exact policy citations, but I
15 didn't do a comprehensive review to see if there's anything
16 that would contradict those policies.

17 Q. Okay. Did you look at the land development code as
18 opposed to the comprehensive plan to determine whether those
19 options are available to the applicant?

20 A. I didn't.

21 Q. Do you know whether the land development code in
22 Manatee County allows an applicant to apply for, for example,
23 a specific approval to not dedicate a conservation
24 easement?

25 A. I don't know.

1 MR. DeCARLO: Okay. All right. I have no further
2 questions.

3 CROSS-EXAMINATION

4 BY MR. BOWMAN:

5 Q. Okay. I got a couple here. So, Mr. DeLisi, in
6 reviewing your resume -- I believe this is part of Exhibit 2,
7 the composite exhibit that was the whole file. Is this what
8 you refer to as your resume?

9 A. Yes. That's correct.

10 Q. Okay. I notice in here that you have worked on
11 permitting on various developments.

12 A. That's correct.

13 Q. Have you permitted subdivisions in the past?

14 A. Yes.

15 Q. As part of your permitting of subdivisions, do you
16 deal with buffer areas around wetlands?

17 A. Yes.

18 Q. Have you had negotiations with permitting entities
19 over the width of those buffers?

20 A. I'm typically not the one that negotiates the width
21 of those buffers, but, yes, I've worked on projects where we
22 have dealt with wetland either impacts or preservation.

23 Q. Including the width of buffers?

24 A. Yes, including the width of buffers or the lack of
25 buffers or the elimination of the wetland.

1 Q. Now, is that a typical planning-type job task?

2 MR. DeCARLO: Object to the form of the question.

3 A. Typically, you know, look, I'm probably a little
4 more engaged, especially within the last year, on water
5 management district issues than planners typically are, but
6 typically it's the ecologist that deals with all of that.
7 You know, in the past, even before I was chief of staff with
8 the water management district, you know, and served on the
9 governing board, I would have some knowledge of what was
10 going on with the regulatory world on directly my projects,
11 and before that, you know, I would get somewhat engaged as
12 typically the landowner's representative, but it's typically
13 the ecologist that negotiates buffers.

14 BY MR. BOWMAN:

15 Q. But as a planner, for instance, do you do site
16 planning?

17 A. You know, I personally don't put pen to paper, but I
18 have overseen a lot of site planning.

19 Q. And as part of that site planning, are buffers
20 depicted on those site plans?

21 A. Yes.

22 Q. Have you ever heard, in your experience, of a term
23 of wetland buffer expert?

24 A. A wetland buffer expert? No.

25 Q. After Mr. DeCarlo's questioning related to the

1 Manatee County Land Development Code and the provisions in
2 the code that might impact buffer areas, would you agree to
3 take a look at those relevant code provisions after today's
4 deposition?

5 A. Sure. They may already be, you know, on the CD. I
6 did this back in March. I did pull the land development code
7 at some point, really the provision cited in the filing. I
8 reviewed those and the sections they were part of to see the
9 context that they were part of. The same thing with comp
10 plan policies, I pulled those. But, yeah, I can take a look
11 at any other provisions as well that are applicable.

12 MR. BOWMAN: That's all I have.

13 REDIRECT EXAMINATION

14 BY MR. DeCARLO:

15 Q. Let me just ask you a couple follow-ups. You're not
16 holding yourself out in this case as an expert in wetlands,
17 are you?

18 A. No.

19 Q. Are you holding yourself out as an expert in wetland
20 buffers?

21 A. I'm holding myself out as someone who deals with
22 environmental regulation on a regular basis.

23 Q. Okay. But an ecologist or environmental scientist
24 is the one that actually calculates buffers?

25 A. Yes.

1 Q. Evaluates the water quality that's in wetlands?

2 A. Typically the engineer is the one that evaluates
3 water quality.

4 Q. Okay. Delineates the wetlands?

5 A. An ecologist, yes.

6 Q. Those are not the types of things that you would do,
7 per se, as a planner?

8 A. That's correct.

9 Q. You would take the results of the work done by the
10 environmental engineer or the ecologist or whoever that
11 person is, and you would incorporate them into the overall
12 site plan as the certified planner?

13 A. Exactly.

14 Q. Okay.

15 A. Or on a policy standpoint, you know, when I was with
16 the government, I would typically take the work of the
17 scientists that worked at the agency and incorporate that
18 into policy decisions.

19 MR. DeCARLO: Okay. My only other thing, Jackson,
20 is I obviously can't preclude him from looking at
21 provisions of the LDC, but my request would be that if
22 he looks at the LDC and amends or revises his opinions,
23 then I would reserve my right to redepose him as to
24 those issues.

25 MR. BOWMAN: Absolutely. I have no problem with

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that.

MR. DeCARLO: Okay. I don't have any further questions.

MR. BOWMAN: Then he'll read.

(End Deposition of DANIEL B. DeLISI, AICP;
3:56 p.m.; 9/16/16.)

CERTIFICATE OF OATH

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STATE OF FLORIDA)
COUNTY OF SARASOTA)

I, the undersigned authority, certify that DANIEL B. DeLISI, AICP, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 16th day of September, 2016.

Lorial L. Milazzo



LORIAL L. MILAZZO, RPR

Notary Public

State of Florida

My Commission #FF 948773

Expires: March 02, 2020

1 STATE OF FLORIDA)
2)
3 COUNTY OF SARASOTA)

4 I, LORIAL L. MILAZZO, Registered Professional Reporter,
5 certify that I was authorized to and did stenographically
6 report the deposition of DANIEL B. DeLISI, AICP, pages 1
7 through 63, that a review of the transcript was requested,
8 and that the transcript is a true and complete record of my
9 stenographic notes.

10
11 I further certify that I am not a relative, employee,
12 attorney, or counsel of any of the parties, nor am I a
13 relative or employee of any of the parties' attorney or
14 counsel connected with the action, nor am I financially
15 interested in the action.

16
17 DATED this 20th day of September, 2016.

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LORIAL L. MILAZZO, RPR
Notary Public
State of Florida
My Commission #FF 948773
Expires: March 02, 2020

ERRATA SHEET

TO BE ATTACHED TO DEPOSITION OF WITNESS: Daniel B. DeLisi, AICP

IN THE CASE OF: Mandarin Development, Inc., v. Manatee County

INSTRUCTIONS: Please read the transcript of your deposition and make note of any errors in transcription on this page. DO NOT MARK ON THE TRANSCRIPT ITSELF. Please sign and date this sheet. Thank you, Lorial Milazzo, RPR.

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I have read the transcript and, except for the changes noted above, I subscribe to the transcript as an accurate record of the statements made by me.

_____ Witness	_____ Date
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September 20, 2016

Daniel B. DeLisi, AICP
15598 Bent Creek Road
Wellington, Florida 33414
dan@delisi-inc.com

Re: Mandarin Development, Inc. vs. Manatee County

Dear Mr. DeLisi:

Your deposition taken on the 16th day of September, 2016, in the above-styled case has been transcribed.

The reading and signing of your deposition transcript was not waived. Therefore, I am forwarding you a copy of said transcript. Please read your transcript, note any corrections on the errata sheet and sign it, and then forward the original errata sheet to Attorney Christopher M. DeCarlo and a copy of the errata sheet to Attorney Jackson H. Bowman. Their addresses are on the second page of the transcript.

If you have any questions, please contact my office at 941-955-4946.

Thank you,


Lorial L. Milazzo, RPR

cc: Christopher M. DeCarlo, Esq.
Jackson H. Bowman, Esq.

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