

In Re: Florida Cabinet Meeting

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June 15, 2021

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**PHIPPS REPORTING**

*Raising the Bar!*

June 15, 2021

STATE OF FLORIDA

IN RE: MEETING OF THE GOVERNOR AND CABINET

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CABINET MEMBERS: GOVERNOR RON DESANTIS  
ATTORNEY GENERAL ASHLEY MOODY  
CHIEF FINANCIAL OFFICER JIMMY PATRONIS  
COMMISSIONER OF AGRICULTURE NIKKI FRIED

DATE: Tuesday, June 15, 2021

TIME: Commenced at 9:00 a.m.  
Concluded at 11:52 a.m.

LOCATION: Cabinet Meeting Room  
Lower Level, The Capitol  
Tallahassee, FL

STENOGRAPHICALLY REPORTED BY: Jo Langston, RPR

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1 P R O C E E D I N G S

2 GOVERNOR DESANTIS: Good morning and welcome  
3 to the June 15th meeting of the Governor and  
4 Cabinet. I'd like to welcome Lieutenant Dustin  
5 Hawkins from the Indian River County Fire  
6 Department to give an invocation and lead us in  
7 the Pledge of Allegiance.

8 (Whereupon, the invocation was given and the  
9 Pledge of Allegiance said.)

10 (Recognitions and resolutions were heard and  
11 presented.)

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1 OFFICE OF FINANCIAL REGULATION

2 Commissioner Russell Weigel

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4 GOVERNOR DESANTIS: I'd like to recognize  
5 Commissioner Weigel to present OFR's agenda.

6 MR. WEIGEL: Thank you, Governor. Good  
7 morning. Chief Patronis, Attorney General Moody,  
8 Commissioner Fried. The OFR has one item on the  
9 agenda today. The individual rule numbers are  
10 located in our rule materials for your reference.

11 Agenda item number 1, the OFR requests final  
12 approval to amend two securities rules. These  
13 rules are amended to allow Florida to join a  
14 multi-state electronic filing system administered  
15 by the North American Securities Administrators'  
16 Association, which OFR believes will facilitate  
17 Florida companies in being able to raise capital.  
18 OFR requests approval.

19 GOVERNOR DESANTIS: Okay. I move to  
20 approve. Is there a second?

21 ATTORNEY GENERAL MOODY: Second.

22 THE COURT: Any objection? Hearing none,  
23 the motion carries.

24 MR. WEIGEL: Thank you.

25 COMMISSIONER FRIED: Governor.

1 Commissioner, before you leave, I just wanted to  
2 know if there was an update on the conversation  
3 that we had last time in regards to the hemp  
4 memos.

5 MR. WEIGEL: Not really an update, but thank  
6 you for your question, Commissioner. We can say  
7 that we've been in communication with the  
8 Governor's Office and with the Attorney General's  
9 Office, and we've been requested to gather more  
10 data, and we're in the process of doing that.  
11 And we will stay in communication with your  
12 office, as we have been, and with each of our  
13 stakeholders.

14 COMMISSIONER FRIED: Thank you.

15 GOVERNOR DESANTIS: Thank you.

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1 STATE BOARD OF ADMINISTRATION  
2 Executive Director Ash Williams

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4 GOVERNOR DESANTIS: All right. Ash  
5 Williams, SBA.

6 MR. WILLIAMS: Good morning, Governor.

7 GOVERNOR DESANTIS: Good morning.

8 MR. WILLIAMS: Cabinet members. Let's open  
9 with a little performance as usual, if we could  
10 please. As of last night's close, June 14, the  
11 Florida Retirement Trust Fund year to date is up  
12 an estimated gross 28.65 percent. That's 99  
13 basis points ahead of target. The fund stands at  
14 a record balance of \$199.2 billion. That's up  
15 \$38.5 billion from the beginning of the year.  
16 And I think we ought to take just a second and  
17 look at what that 38.5 billion might mean.

18 Now, with actuarial science, one doesn't  
19 take single-point mark to market numbers and rely  
20 on them. You smooth them over five-year periods  
21 so that you don't have radical changes in plan  
22 sponsor contributions over time.

23 But the reason I draw your attention to that  
24 \$38.5 billion is that at the beginning of this  
25 fiscal year, almost a year ago, the plan was

1 underfunded by \$36 billion. 38.5 is greater than  
2 36, which has very, very powerful positive  
3 ramifications for the health of this plan. And I  
4 wanted to thank you and the other trustees and  
5 the legislature for your help in moving our  
6 actuarial return assumptions in an appropriate  
7 direction, being more conservative, more prudent,  
8 the legislature for their full funding.

9 And this just illustrates the power of that  
10 trinity of responsible funding, reasonable  
11 benefits and prudent investment. So headed in  
12 the right direction and just wanted to thank you.  
13 Unless there are any questions, I'm happy to  
14 start the agenda.

15 GOVERNOR DESANTIS: Go ahead.

16 MR. WILLIAMS: Thank you. Item 1, we have a  
17 resolution of the State Board of Administration  
18 approving the fiscal sufficiency of an amount not  
19 exceeding \$500 million State of Florida,  
20 Department of Transportation, turnpike revenue  
21 bonds, Series 2021. Request approval.

22 GOVERNOR DESANTIS: Move to approve. Is  
23 there a second?

24 ATTORNEY GENERAL MOODY: Second.

25 GOVERNOR DESANTIS: No objection. The



1 motion carries. Item 2.

2 MR. WILLIAMS: Thank you. Item 2, a  
3 resolution of the State Board of Administration  
4 making the fiscal determination in connection  
5 with the issuance of an amount not exceeding  
6 \$12,500,000 Florida Housing Finance Corporation  
7 multifamily mortgage revenue bonds 2021. This is  
8 the Park at Palo Alto, new construction of 120  
9 units of affordable housing in Bay County,  
10 Florida.

11 GOVERNOR DESANTIS: All right. I move to  
12 approve. Is there a second?

13 CFO PATRONIS: Second.

14 GOVERNOR DESANTIS: No objection. The  
15 motion carries. Item 3.

16 MR. WILLIAMS: Thank you. Item 3, a  
17 resolution of the State Board of Administration  
18 making a fiscal determination in connection with  
19 the issuance of an amount not exceeding  
20 \$13 million Florida Housing Finance Corporation  
21 multifamily mortgage revenue bonds 2021. This is  
22 the Saratoga Crossings 3 project, new  
23 construction, 75 units of affordable housing in  
24 Broward County.

25 GOVERNOR DESANTIS: I move to approve. Is

1 there a second?

2 ATTORNEY GENERAL MOODY: Second.

3 GOVERNOR DESANTIS: Hearing no objection,  
4 the motion carries. Item 4.

5 MR. WILLIAMS: Thank you. Item 4, request  
6 approval of the SBA quarterly report required by  
7 the Protecting Florida's Investments Act.  
8 There's only one change of any note, and it's not  
9 a significant one, in my judgment. And that is  
10 we added one company to the scrutinized list  
11 relating to Iran. It's called CNOOC Energy Tech  
12 and Services.

13 It's a publicly traded subsidiary of China  
14 National Offshore Oil Corp, which we have on our  
15 scrutinized list for transactions in Iran, and  
16 we're adding this one to that list. Request  
17 approval of the report.

18 GOVERNOR DESANTIS: All right. I move to  
19 approve. Is there a second?

20 ATTORNEY GENERAL MOODY: Second.

21 GOVERNOR DESANTIS: Hearing no objections,  
22 the motion carries.

23 MR. WILLIAMS: Thank you.

24 GOVERNOR DESANTIS: So just in terms of  
25 inflation and the economy, can you talk a little

1 bit about that, what you're seeing, and then how  
2 would that change the investment strategy, you  
3 know, if we did have a period of sustained  
4 inflation?

5 MR. WILLIAMS: Sure. A couple of things on  
6 that. I would say thought is generally  
7 bifurcated into two camps right now. You've  
8 heard the federal reserve using the term  
9 "transient" or "transient variables", transience  
10 as a condition in talking about inflation.

11 And this is something we touched on in our  
12 last conversation in our last meeting, which is  
13 right now you have an unusual confluence of  
14 events that are driving price comparisons to  
15 those of a year ago to extraordinary numbers.  
16 You're seeing the highest inflation numbers  
17 you've seen in more than a decade.

18 And that's a function of several things.  
19 First of all, if you went back to June of 2020,  
20 we were in the bottom of the pandemic and people  
21 weren't going out, consumption was suppressed,  
22 supply chains were interrupted.

23 And there are any number of reasons why  
24 activity, because economies around the world were  
25 shut down from the top for health safety reasons

1 in a lot of places that maybe overdid it by  
2 Florida standards, but at any rate, consumption  
3 was so low and economic activity was so low that  
4 the comparison today, when we're coming out very  
5 dramatically from the pandemic, is very, very  
6 stark. And it looks like major inflation is  
7 coming.

8 And you have the normal factors that we've  
9 talked about before, constraints of supply  
10 because of people not being able to work in a lot  
11 of industries because they couldn't get together  
12 in manufacturing plants or offices, et cetera.  
13 You had interruption of supplies, we discussed,  
14 global supply chains interrupted.

15 And then at the same time, you had people at  
16 home not going out to shop, not consuming the way  
17 they normally would, not traveling, not going to  
18 all the wonderful resorts here in Florida, not  
19 getting on cruise ships, et cetera. And all of  
20 that's changing. But the supply has not come  
21 back yet.

22 So you have a combination of pent-up demand  
23 in consumers. People are itching to get out and  
24 go to dinner and do all the wonderful things they  
25 used to do pre-pandemic. They've got money.

1 Household savings are at the highest level  
2 they've been at in history. Interest rates are  
3 still low. So people are consuming. And you've  
4 had a massive amount of federal stimulus.

5 So that peak in demand on top of supply  
6 that's still not fully recovered is creating an  
7 imbalance and driving up prices. And over that  
8 one-year comparison, it makes a really stark,  
9 stark comparison.

10 Let's break down why there's a split in the  
11 two camps. There's the Federal Reserve camp and  
12 a lot of other folks who take the view that this  
13 is a transient phenomenon and that as supply  
14 normalizes and full production of lumber products  
15 and silicon chips and every other dadgum thing  
16 that makes it right now very hard to get  
17 furniture, lumber, fittings, electronics -- just  
18 about anything is hard to get right now -- that  
19 will settle out and return to normalcy  
20 eventually.

21 The other thing that will happen is once  
22 people get out and take a couple of vacations and  
23 go out to dinner a few times and buy some of  
24 whatever it is they want to buy, that will calm  
25 down, too. Consumption should normalize. Supply

1 should normalize. You get back to some sort of  
2 stasis or balance between the two, and the  
3 inflation calms down.

4 There's another overriding reason to believe  
5 that will happen. And that's global  
6 demographics. We have the lowest birth rates in  
7 modern history in most industrialized nations.  
8 They're less than replacement birth rates.

9 A replacement birth rate means that if a  
10 couple has two children, they're replacing  
11 themselves. If the birth rate organically is  
12 less than 2.0, it signals a decline in  
13 population. And a decline in population means a  
14 reduction in housing starts, a reduction in  
15 household formations.

16 And as all of us know who have ever grown  
17 up, gotten married, done a house, there are eight  
18 zillion things you spend money on when you do a  
19 house that you never knew existed before. Very  
20 powerful driver to economic activity. So those  
21 demographic headwinds suggest that longer term  
22 deflation could be a bigger threat.

23 The only two parts of the world that have  
24 really powerful organic birth rates are  
25 Sub-Saharan Africa and the Middle East. And

1 those are the two of the most unstable parts of  
2 the world. They've not had the governance that a  
3 lot of other countries have and they've not been  
4 successful yet in solving problems of food  
5 adequacy and stable governance and a lot of other  
6 things.

7 So the flip side of that argument, which is  
8 the inflation will be with us for a year or two  
9 and it will calm down and go away and don't make  
10 too big of a deal out of it in the short-term,  
11 the flip side of that is the "not so fast," these  
12 conditions are durable.

13 And one of the other things that will  
14 affect -- that could affect this is, I think one  
15 of the lessons that was learned in the pandemic,  
16 in this country and others, is overdependence on  
17 long supply chains and looking at the sourcing of  
18 the inputs to a business, whether it's a service  
19 business or a production business.

20 Just trying to get everything at the lowest  
21 possible cost may not be the right thing to do  
22 for your country, because if key components are  
23 coming from -- pick a faraway place, China,  
24 India, wherever, because they have a low cost  
25 producer and that supply chain gets cut, guess

1 what. You don't have protection equipment. You  
2 don't have circuit boards. You don't have this,  
3 that and the other.

4 So I think there will be a real move, I hope  
5 there will be a real move, to move a lot of this  
6 production back to the United States, back to the  
7 UK, back to Europe, et cetera.

8 But that's not free. The reason that  
9 production moved overseas in the first place was  
10 to save money. And I think people may realize,  
11 on a total cost basis, looking at it very  
12 holistically, from a national security  
13 standpoint, we may be better off producing a lot  
14 of these things ourselves and saying, okay, we're  
15 going to pay a little more for whatever this  
16 thing is, but if it means it's secure and if it  
17 means American jobs, et cetera, et cetera, maybe  
18 that's a good thing. And there's a lot of  
19 activity here in Florida that suggests that may  
20 be a theme.

21 What are the ramifications depending on  
22 which side of the coin you come down on? The  
23 ramifications for us would be the asset classes  
24 that would benefit from inflation would include  
25 cash, certainly, because short-term interest



1 rates will go up and you'll get a better yield  
2 there. Equities, if you have companies that are  
3 growing and have pricing power and can keep up  
4 with inflation, equities will generally benefit.  
5 And then the other risk asset classes that are  
6 connected to them, private equity and venture  
7 capital will also tend to do better.

8 Real estate, depending on what type of real  
9 estate, will be okay. Hotels are the ideal thing  
10 in inflation because they reset their rents every  
11 night. You know, Hilton Hotels can dial in a new  
12 rent per room per hour per day. And if inflation  
13 is going up, they just change the numbers and  
14 that's that.

15 Office buildings are a little trickier  
16 because they tend to be 10- or 15-year leases.  
17 So the key there is what's the cliff between  
18 current lease rates and where the market is and  
19 can you roll your tenant base up and get them as  
20 high as possible if you're coming into what you  
21 believe to be a period of inflation. To the  
22 extent you roll into new tenants, you put  
23 escalators in the lease. We've been through this  
24 before. This happened in the seventies. It's  
25 not new. And there are ways to cope with it.

1           The thing that gets absolutely creamed is  
2 bonds. And bonds have been tough to begin with  
3 or have been tough for a while. If you look at  
4 our ten-year trailing return on fixed income,  
5 it's a whopping 3.32 percent, which is actually  
6 excellent performance. That's 37 basis points  
7 ahead of the benchmark for bonds over that  
8 trailing ten-year period, going back to 30  
9 April ten years ago.

10           And why is that important? It's important  
11 because bonds are the diversifier to global  
12 equity volatility. And traditionally,  
13 institutions have been able to have -- you've  
14 heard of the 60/40 portfolio, 60 percent equity,  
15 40 percent fixed income.

16           Well, the idea was that blend of 60/40, the  
17 40 would give you protection when the stock  
18 market is in trouble, help protect your capital,  
19 and the 60 would give you growth over the  
20 long-term to compound capital and to take  
21 advantage of inflation when it comes around.

22           The trick has been, for most of my lifetime,  
23 the 40 percent would give you a real return.  
24 That is a return net of inflation. At current  
25 levels, that doesn't happen. So what you've got

1 to do is find diversification somewhere else with  
2 something that has bond-like characteristics,  
3 pays a cash yield. We always say you can't pay  
4 benefits with nominal yield. That takes cash.  
5 And there's \$600 million a month going out the  
6 door for those.

7 So I think the important thing is to be able  
8 to remain in risk assets, equity and equity-like  
9 assets that are one or both of volatile or  
10 illiquid. Real estate is illiquid. Equities are  
11 volatile. Private equity and venture capital are  
12 both volatile and illiquid. What those things  
13 share is they all have significantly more  
14 powerful returns over the long term.

15 If you look at the ten-year equity number --  
16 well, our ten-year total fund number is  
17 8.82 percent. That's 85 basis points ahead of  
18 target annualized over a decade. If you look at  
19 global equity, a little over 10 percent, real  
20 estate just south of 10 percent, private equity  
21 pushing 16 percent, strategic investments, which  
22 is a non-bond diversifier, close to 8 percent.  
23 Cash is 0.73, less than inflation. So negative  
24 real return on cash over that decade.

25 Most people think cash is the safe thing.

1 It's not. Because if you're a long-term investor  
2 as an institution, you're guaranteed to lose  
3 money on inflation over time. So  
4 counterintuitively, cash is not the safest thing.

5 So that's why I raised the issue back in  
6 March when we were talking about the issue of  
7 closing the defined benefit plan, that the risk  
8 would be, if you cut off inflows of new members,  
9 you could impair our ability to be in these asset  
10 classes that basically pay the rent, which in  
11 turn would mean that the 60 percent plus of the  
12 cost of the Florida Retirement System that  
13 currently is paid by investment earnings might  
14 have to come from one of the other two sources.  
15 And those two sources are employer  
16 contributions/taxpayers or beneficiaries/  
17 employees.

18 So I think the way we're set up is  
19 completely appropriate for this environment. And  
20 if you're as big as we are, the Florida State  
21 Board is now managing a quarter of a trillion  
22 dollars, you can't go put that in a sock. You're  
23 going to have to have market exposure. And  
24 that's why the long-term view is so important.  
25 Long answer. Sorry for the --

1           GOVERNOR DESANTIS: Great. Okay. Well,  
2 thank you. Well done.

3           MR. WILLIAMS: Thank you.

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1 DIVISION OF BOND FINANCE

2 Director Ben Watkins

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4 GOVERNOR DESANTIS: Okay. Bond Finance.

5 MR. WATSON: Good morning, Governor --

6 GOVERNOR DESANTIS: Good morning.

7 MR. WATSON: -- and Cabinet Members. Item  
8 number 1 are the minutes from the  
9 March 9th meeting.

10 GOVERNOR DESANTIS: Move to approve. Is  
11 there a second?

12 COMMISSIONER FRIED: Second.

13 GOVERNOR DESANTIS: No objection. The  
14 motion carries.

15 MR. WATSON: Item number 2 are reports of  
16 award on three separate bond sales. The first is  
17 an \$11.8 million refunding for debt service  
18 savings for Florida State University's parking  
19 system. The bonds were awarded to the low bidder  
20 at a true interest cost of .7 percent. That  
21 allowed us to reduce interest rates from  
22 4.35 percent to .7 percent, generating gross debt  
23 service savings of 2.5 million, present value  
24 savings of 2.4 million, or 14.5 percent of the  
25 principal amount of the bonds being refunded.

1           2-B is the competitive sale of  
2     \$12.3 million, which was also a refunding for  
3     debt service savings for FSU's Student Wellness  
4     Center. We sold the bonds to the low bidder at  
5     true interest cost of .74 percent, which allowed  
6     us to reduce the interest rate from 4.32 percent  
7     to .74 percent, generating gross debt service  
8     savings of 3.4 million, present value savings of  
9     3.1 million, or 17.9 percent of the principal  
10    amount of the bonds being refunded.

11           Lastly on bond sales is item 2-C,  
12    competitive sale of \$232.8 million for the  
13    University of Florida Housing System. This was  
14    actually two separate sales, a \$215 million new  
15    money issue for a new 1400-bed dormitory at the  
16    University of Florida and a \$17 million  
17    refunding.

18           And the new money bonds were sold at a true  
19    interest cost of 2.31 percent for the 30-year  
20    loan. The refunding was sold at a .87 percent.  
21    The refunding allowed us to reduce interest rates  
22    from 3.45 percent to .87 percent, generating  
23    gross debt service savings of 2.9 million,  
24    present value savings of 2.6 million or  
25    12.4 percent of the principal amount of the bonds

1 being refunded.

2 Item 3 is a request for authorization and  
3 issuance of \$500 million in Turnpike revenue  
4 bonds for projects located throughout the state  
5 that's included in Turnpike's work program and  
6 included in the budget. And I need a motion and  
7 approval on that item.

8 GOVERNOR DESANTIS: Move to approve. Is  
9 there a second?

10 COMMISSIONER FRIED: Second.

11 GOVERNOR DESANTIS: No objection. The  
12 motion carries.

13 MR. WATSON: Item 4 is a resolution  
14 authorizing the solicitation of proposals and a  
15 recommendation regarding a consolidated equipment  
16 financing program. This is in effect a line of  
17 credit where we're in charge of soliciting  
18 proposals, taking the lowest borrowing cost we  
19 can. And then we hand that over to the CFO's  
20 office for them to administer. It's in effect a  
21 line of credit for equipment purchases for the  
22 State.

23 To give you an idea of the order of  
24 magnitude, so it's a three-year line of credit.  
25 We solicited proposals in 2019. It was a



1 \$30 million line, and only 7.1 million has been  
2 drawn on that. So it's not a big deal but it's a  
3 way for state agencies to access credit at a very  
4 favorable interest rate.

5 GOVERNOR DESANTIS: Okay. I move to  
6 approve. Is there a second?

7 CFO PATRONIS: Second.

8 GOVERNOR DESANTIS: Any objection? Hearing  
9 none, the motion carries.

10 MR. WATSON: Item number 5 is a resolution  
11 authorizing the redemption and payment prior to  
12 maturity of about \$8 million in dormitory revenue  
13 bonds for FAMU. The back story on this is that  
14 there's a loan program for historically black  
15 colleges and universities. We refinanced all of  
16 FAMU's debt outstanding about three years ago and  
17 also did a new money piece for a dormitory. So  
18 they had about \$125 million in debt outstanding,  
19 secured by all of the housing facilities at FAM.

20 That loan was forgiven under the CRRSA,  
21 which was the second of the three federal  
22 programs. All of the HBCU loans were forgiven.  
23 So this is the remaining piece. It was  
24 112 million. It was forgiven under the CRRSA  
25 Act. This is the remaining 8 million that is

1 going to be paid off with the debt service  
2 reserve funds that were created under the HBCU  
3 loan program. So it will basically wipe all of  
4 the debt, all of the housing debt off FAMU's  
5 books after this is effectuated.

6 GOVERNOR DESANTIS: Okay. I move to  
7 approve. Is there a second?

8 COMMISSIONER FRIED: Second.

9 GOVERNOR DESANTIS: No objection. The  
10 motion carries.

11 MR. WATSON: And lastly is a resolution  
12 authorizing the redemption and payment prior to  
13 maturity of any bonds that we have outstanding at  
14 a higher interest rate, so in effect prepaying  
15 loans in the short-term. So to the extent that  
16 there are bonds outstanding where we have cash  
17 available to us and we can prepay those, I'm  
18 asking for your authorization to do that.

19 GOVERNOR DESANTIS: I move to approve. Is  
20 there a second?

21 CFO PATRONIS: Second.

22 GOVERNOR DESANTIS: Any objections? All  
23 right. Hearing none, the motion carries.

24 MR. WATSON: Just follow-on, relative to  
25 general market conditions and the comments that

1 Mr. Williams made about interest rates and  
2 inflation and how does that work, how does that  
3 impact the State of Florida, so we keep a keen  
4 eye on the Fed. My job is very, very simple and  
5 straightforward relative to his job, because my  
6 job is to put in place the lowest possible  
7 borrowing cost, on new money issues as well as  
8 refinancing debt that's outstanding at lower  
9 interest rates.

10 And the credit conditions in the municipal  
11 space have been extraordinarily favorable, with  
12 money flowing into the space that needs to be  
13 invested, a derth of supply, and so we have a  
14 supply-demand imbalance which has worked to our  
15 favor.

16 Well, how have we taken advantage of that?  
17 Obviously, by executing refinancings and reducing  
18 the amount that has to be paid on an annual basis  
19 to repay the debt that we have outstanding. So  
20 to give you a sense of order of magnitude, we're  
21 coming up to the end of the fiscal year. This  
22 year we've executed \$2.4 billion in financings,  
23 900 million in new money, a billion and a half in  
24 refinancings, generating gross debt service  
25 savings of \$350 million.

1           So we've been able to -- and this is not the  
2 only year. So if you think back over the last  
3 several years, we've been able to refinance about  
4 80 percent of our loan portfolio that's  
5 outstanding, with about \$15 billion worth of  
6 refinancings.

7           So we've been -- we have a saying in the  
8 South, make hay while the sun shines. And that's  
9 exactly what we've been doing. And but for the  
10 impediment under tax law to do advance  
11 refundings, we could do many more. But you can  
12 see by the size of the refundings we're doing,  
13 \$12 million, that we're out of ammo, that we've  
14 got to wait until the call date for debt that's  
15 outstanding at higher interest rates in order to  
16 take advantage of the extraordinarily low market  
17 interest rates.

18           So we keep a keen eye on the Fed and what  
19 they're doing. So they're meeting this week.  
20 And make some sense of this. Last week CPI came  
21 in .6 percent. Year over year, 5 percent.  
22 Interest rates of ten-year Treasury went from a  
23 1.57 to a 1.48, went down, with 5 percent  
24 inflation to a 1.48. So a ten-year Treasury at a  
25 1.48 relative to 5 percent inflation, how does

1 that make any sense? And the answer is it  
2 doesn't.

3 And so from what I see where I sit is  
4 there's no doubt in my mind the Federal Reserve  
5 has control over the marketplace, because what  
6 they did in 2008 to combat the financial crisis,  
7 what was characterized as extraordinary measures  
8 in terms of QE, guaranteeing money market funds  
9 and the like, they've never unwound that.

10 So what they did was -- so QE has never gone  
11 away. So the extraordinary has now become the  
12 ordinary, because what did they do when the  
13 pandemic hit? Doubled down on QE, unlimited as  
14 to amount or duration, to instill confidence in  
15 the financial markets. So that, combined with  
16 fiscal policy, so Congress in three different  
17 acts, over \$3 trillion.

18 So what does that mean for the State? Money  
19 is raining out of the sky. So we're in a better  
20 position financially. Not only that, but because  
21 of the way you managed the pandemic, our economy  
22 has been on fire. So our revenue collections  
23 relative to estimates are nearly a billion  
24 dollars over what we expected to collect, largely  
25 because people want to get out and move and

1     hospitality has returned.  So we're ahead of  
2     other states where it's a different story.

3             But because of the extraordinary measures  
4     and because of the amount of money that's been  
5     deployed under CARES Act, then CRRSA, and now  
6     ARPA, we're in better financial position than  
7     we've ever been in before.  So the credit story  
8     is easy to tell.  From a credit perspective,  
9     we're in a great place.  So that's all I have to  
10    say about that.  Any questions?

11            GOVERNOR DESANTIS:  No.  Thank you.

12            MR. WATSON:  Yes, sir.

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1 DEPARTMENT OF REVENUE  
2 Executive Director Jim Zingale

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4 GOVERNOR DESANTIS: Okay. Revenue.

5 MR. ZINGALE: Good morning --

6 GOVERNOR DESANTIS: Good morning.

7 MR. ZINGALE: -- Governor and Cabinet. A  
8 little bit on the front end. I've been coming to  
9 cabinet for many, many, many years. One of the  
10 highlights of coming to these meetings is the  
11 public recognition that you do at the beginning  
12 of every session.

13 I typically stage down in the cafeteria.  
14 You know, you sit there. You see who comes in.  
15 Today I had the privilege of sitting next to the  
16 first responders down there. They were trying to  
17 figure out how to sneak in here, trying to get a  
18 feel for the size of it so they could sit in the  
19 back and recognize one of their colleagues that  
20 was being recognized by you today.

21 I want you to know how important being in  
22 front of you was to all of them and how  
23 enthusiastic they were in bragging about a  
24 colleague and bragging about what he did. It  
25 made my day. Thank you for that. And continue

1 to do that. That's a wonderful part of why we  
2 have a cabinet. That public recognition is  
3 important, not only to the one you're recognizing  
4 but the ones that are in back of them supporting  
5 them. It was an amazing time. They were really  
6 pumped up out there.

7 That said, I have a very short, not nearly  
8 as interesting agenda as my two predecessors, who  
9 I always learn from, but we have three little  
10 items here today. One is approval of the  
11 minutes.

12 GOVERNOR DESANTIS: All right. Move to  
13 approve. Is there a second?

14 COMMISSIONER FRIED: Second.

15 GOVERNOR DESANTIS: No objection. The  
16 motion carries.

17 MR. ZINGALE: The second item is eight  
18 rules, four primarily dealing with the  
19 Department's electronic address database and  
20 modifications to it, four dealing with sales tax.  
21 Three are recommended by JAPC and one is coming  
22 from a DOAH court ruling.

23 The nature of this I have to read. The  
24 Department respectfully requests approval of and  
25 authority to publish notice of proposed rules in



1 the Florida Administrative Register for rules  
2 relating to general tax administration and  
3 further requests approval to file and certify for  
4 final adoption under Chapter 120 Florida  
5 Statutes. If the substance of the proposed rules  
6 remain unchanged upon reaching the date of  
7 application for final adoption, request approval.

8 GOVERNOR DESANTIS: All right. I move to  
9 approve. Is there a second?

10 COMMISSIONER FRIED: Second.

11 GOVERNOR DESANTIS: Hearing no objection,  
12 the motion carries.

13 MR. ZINGALE: Item number 3 is one rule  
14 implementing 2020 legislation dealing with  
15 conflict of interest for special masters in VAB  
16 hearings. Request approval.

17 GOVERNOR DESANTIS: All right. I move to  
18 approve. Is there a second?

19 COMMISSIONER FRIED: Second.

20 GOVERNOR DESANTIS: Hearing no objection,  
21 the motion carries.

22 MR. ZINGALE: That's our big agenda.

23 GOVERNOR DESANTIS: How's the revenue coming  
24 in for June? Positive?

25 MR. ZINGALE: Just like the last four

1 months, amazing. I quit looking at it, it's  
2 coming in so far over forecast every month.  
3 There's no story anymore. It's a good side of  
4 it.

5 We are busily, though, with the legislation  
6 passed this session, having to implement  
7 everything. So since the session ended, between  
8 the tax-free holidays and Wayfair and certainly  
9 what we did on the RT rate side, it's been day  
10 and night for quite a while and will be for a  
11 little while longer.

12 GOVERNOR DESANTIS: Good. Well, thanks for  
13 your hard work. We appreciate it.

14 CFO PATRONIS: I've got a question,  
15 Governor.

16 GOVERNOR DESANTIS: Okay.

17 CFO PATRONIS: Dr. Z, thanks for being here  
18 and appreciate those comments you made. I had a  
19 small business owner reach out to me, and the  
20 legislature did -- like I said, the tax-free  
21 holidays were exciting. Some of the things I  
22 think were really out of the box that were great  
23 ways to stimulate some enthusiasm for what's  
24 going on in the state.

25 But when a business -- like one of them

1 reached out and said, Jimmy, I'm not sure how I  
2 would implement some of these exemptions, maybe  
3 because they're just technologically challenged.  
4 Is there a way that they can outreach to y'all to  
5 make sure they don't screw up?

6 MR. ZINGALE: You can call me. You can call  
7 Debbie. You can call Lisa. We'll get them  
8 connected up. First two, though, are pretty  
9 routine that we've had already. The third one is  
10 brand new. Freedom Week is brand new.  
11 Uniqueness with how the legislature passed, in  
12 terms of tagging things it had to deal with. So  
13 the programming of that is a little difficult.  
14 But certainly just have them reach out to me,  
15 like you always do.

16 CFO PATRONIS: Yeah, yeah. But I never  
17 thought about it from the perspective -- you know  
18 what I mean. I'm not in the office supply  
19 business. I never thought about dealing with  
20 sales tax and school supplies. But Freedom Week,  
21 I love the idea of it. I mean the enthusiasm has  
22 been crazy.

23 But, you know, it was a local, family-owned  
24 fishing shop. And he said, I've never done this  
25 before. You know, what do I do? I thought, you

1 know what? I just need to, you know, bring that  
2 up, because I don't want to get him in trouble.  
3 He wants to make sure he's abiding by the law.  
4 But he just wants to be able to participate in  
5 the right way.

6 MR. ZINGALE: And the website and the  
7 production and the information leading up to a  
8 few days down the road will also help.

9 CFO PATRONIS: Thanks. Appreciate you.

10 MR. ZINGALE: Appreciate it.

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1 BOARD OF TRUSTEES OF THE INTERNAL  
2 IMPROVEMENT TRUST FUND

3 Portia Sapp  
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5 GOVERNOR DESANTIS: Okay. Board of  
6 Trustees.

7 MS. SAPP: Good morning.

8 GOVERNOR DESANTIS: Good morning.

9 MS. SAPP: It's me today. So today I have  
10 two items for your consideration. The first is a  
11 new 3.2-acre bottom lease requested by Bay Shell  
12 Fish Company in Miguel Bay in Manatee County to  
13 expand their aquaculture business. Fish and  
14 Wildlife Conservation Commission and the  
15 Department of Environmental Protection's Florida  
16 Coastal Office have reviewed the items and had no  
17 comments.

18 Additionally, the National Marine Fishery  
19 Service and Army Corps have reviewed the item and  
20 determined the activities are compliant with our  
21 programmatic permit. The staff recommends  
22 approval.

23 GOVERNOR DESANTIS: Okay. I move to  
24 approve. Is there a second?

25 COMMISSIONER FRIED: Second.

GOVERNOR DESANTIS: Okay. Hearing no

1 objection, the motion carries. Next item?

2 COMMISSIONER FRIED: And, Governor, just  
3 quickly, I just want to say that I'm excited to  
4 see another Fresh From Florida seafood  
5 opportunity for Florida Grown products here in  
6 Tampa Bay. So thank you for bringing that  
7 forward.

8 MS. SAPP: Absolutely. And he not only  
9 produces clams, he also produces clam seed and  
10 oyster seed for other growers, so it's great to  
11 see him expanding.

12 The second item for your consideration is a  
13 request for the delegation of authority to renew  
14 aquaculture leases for additional ten-year terms.  
15 On behalf of the Board, provided the Board has  
16 previously approved the use of the parcel for  
17 specific aquaculture purposes, the terms and  
18 conditions of the lease agreement are not  
19 substantially altered, and the requested action  
20 is not determined to be controversial.

21 So previously, when the Board approved new  
22 aquaculture leases, they were issued for ten  
23 years, with two renewals for ten additional year  
24 terms. And we expect to see a number of leases  
25 coming for renewal for a fourth year or fourth

1 term in the next few years. So, again, request  
2 for new leasing areas or renewals that include  
3 substantial changes or that are of heightened  
4 public concern will continue to be brought before  
5 the Board for approval. Staff recommends  
6 approval of this item.

7 GOVERNOR DESANTIS: Okay. I move to approve  
8 the item. Is there a second?

9 CFO PATRONIS: Second.

10 GOVERNOR DESANTIS: A third?

11 COMMISSIONER FRIED: Third.

12 GOVERNOR DESANTIS: Okay. All right. The  
13 motion carries. Thank you.

14 COMMISSIONER FRIED: Thank you. And,  
15 Governor, may I say also, speaking of Tampa  
16 Bay -- you can sit down, Portia -- which reminds  
17 me about also Piney Point. Governor, I'd like to  
18 ask for an update on when we're putting forward a  
19 nominee for DEP secretary.

20 As I know today, I'm meeting with the  
21 interim secretary but would like to know like --  
22 as you did the OFR, that we need to make sure  
23 that somebody is appointed and accountable to all  
24 of us in the Cabinet. So just wondering where we  
25 are in getting a nominee in front of us to

1 confirm or deny.

2 GOVERNOR DESANTIS: Well, it's an executive  
3 appointment, and so that's our prerogative, and  
4 we'll do it when we want to, and we'll let folks  
5 know about it.

6 COMMISSIONER FRIED: Except, Governor, it  
7 has to go through the approval or denial through  
8 the Cabinet.

9 GOVERNOR DESANTIS: Well, I think, if you  
10 actually look at the constitution, it says either  
11 the Cabinet or the Legislature or the Senate.  
12 The statute said both, but there's an argument  
13 that it conflicts and that it would be one or the  
14 other. My sense would be the Legislature would  
15 retain their authority rather than give the  
16 Cabinet authority. So that will be a live issue  
17 potentially, if we end up with a conflict.

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1 FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

2 Dylan Fisher

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4 GOVERNOR DESANTIS: Okay. Florida Land and  
5 Water Adjudicatory Commission.

6 MR. FISHER: Governor, Cabinet. We have one  
7 item for FLWAC. Item number 1 is the  
8 consideration of a petition to amend the boundary  
9 of the 6-mile Creek Community Development  
10 District. The district is located entirely  
11 within St. Johns County and covers approximately  
12 1300 acres of land. The district board  
13 recommends expanding the district by adding  
14 6.80 acres of land.

15 The commission staff has reviewed the  
16 petition and determines that it meets the Florida  
17 Statutes or the statutory requirements for review  
18 by the Governor and Cabinet under Chapter 190.

19 In line with the statutory requirements, a  
20 local public hearing on the petition was  
21 conducted before the district board at which the  
22 petitioner's experts attended and provided  
23 testimony.

24 Notice of the hearing was advertised in  
25 advance of the meeting and a transcript and

1 exhibits from the hearing were properly filed  
2 with the board for consideration. The chairman  
3 of the board ultimately issued a report  
4 concluding that the petition satisfies all  
5 statutory requirements.

6 As part of the review, DEO had also looked  
7 at the petition for compliance and did not  
8 identify any inconsistencies with either Chapter  
9 163 or the comprehensive plan of St. Johns  
10 County.

11 In making the decision today, Chapter 190  
12 Florida Statutes directs the commission to  
13 consider the entire record of the local hearing,  
14 the transcript of the hearing and any resolutions  
15 adopted by local, general purpose governments and  
16 various factors regarding the accuracy of the  
17 petition and the consistency, sufficiency,  
18 availability, compatibility and amenability of  
19 the district.

20 At this time, I'd like to ask if the  
21 commission has any questions.

22 GOVERNOR DESANTIS: Any questions? Okay. I  
23 move to approve the item. Is there a second?

24 CFO PATRONIS: Second.

25 GOVERNOR DESANTIS: Hearing no objection,

1 the motion carries. Thank you.

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1 ADMINISTRATIVE COMMISSION

2 Dylan Fisher

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4 GOVERNOR DESANTIS: Administrative  
5 Commission. Okay.

6 CFO PATRONIS: Thank you, Governor.

7 Governor, before we proceed to the next item, I  
8 need to make a point of order to enter into the  
9 record a voicemail that I received from one of  
10 the Miami-Dade County commissioners. I have not  
11 listened to the voicemail, but the transcript was  
12 reviewed by my general counsel, who I advised it  
13 enter it into the record.

14 ATTORNEY GENERAL MOODY: Governor, I also  
15 have a statement. As you know, Section 120.66  
16 prohibits a party from making any ex parte  
17 communication to an agency head relative to the  
18 merits after an agency head has received a  
19 recommended order. Appreciate the CFO entering  
20 his voicemail into the record.

21 In the case of an oral communication, an  
22 agency head who is involved in the decisional  
23 process and receives an ex parte communication is  
24 required to place it on the record so that any  
25 party that wants to rebut it has an opportunity

1 to do so.

2 In light of that statute, as the CFO has  
3 done, I'm disclosing a message that I also  
4 received. I've filed a transcribed version of  
5 that in the record, provided it to all the  
6 parties. It's also been provided prior to this  
7 hearing to every member of the Administration  
8 Commission.

9 I don't believe the communication, which was  
10 really not substantive in nature, requires me to  
11 withdraw from participation in the proceedings,  
12 particularly in light of the fact I did not  
13 respond to it or have any communications with the  
14 commissioner. But in an abundance of caution in  
15 compliance with the law, we have disclosed it and  
16 provided it as part of the record.

17 GOVERNOR DESANTIS: Okay. But before we get  
18 to all that, we do have a rule on something else.  
19 So we'll do the rule. Then we'll go to item 2.

20 MR. FISHER: Yes. There are two items for  
21 the Administration Commission. Item number 1 is  
22 a request for the authorization to publish notice  
23 of proposed rule to create Rule Chapters 28-42,  
24 municipal law enforcement agency budget appeal  
25 process, and 28-43, sheriff budget proceedings.

1 That first rule sets forth the rules of procedure  
2 to govern disposition of all appeals from  
3 municipal actions regarding law enforcement  
4 agency budgets, and that second, Chapter 28-43  
5 sets forth the rules of procedure to govern  
6 disposition of all appeals and applications from  
7 county commissions acting regarding sheriff  
8 budgets.

9 At this time I'd like to ask if the  
10 commission has any questions on those rules.

11 CFO PATRONIS: No.

12 COMMISSIONER FRIED: No, but I have a  
13 comment. Governor, I'm going to take a moment to  
14 point out that this continues a disturbing  
15 pattern in Tallahassee, bullying local  
16 governments into submission. We all support our  
17 law enforcement officers and the difficult job  
18 that they have to do. But it's a straight-up  
19 hypocritical interference yet again with cities  
20 and counties managing their budgets and doing  
21 their jobs.

22 I'm going to remind you of this, of your own  
23 words that you said in 2018, I reject the idea  
24 that government bureaucrats in a faraway capitol  
25 could plan our lives better than we can plan them

1 ourselves.

2 Now the so-called party of small government  
3 is yet again telling government closest to the  
4 people what they can and cannot do with their  
5 money. So as you vote today, ask yourself, who  
6 is really the big government bureaucrat in a  
7 faraway capitol. I will be a no.

8 GOVERNOR DESANTIS: Well, I think it's  
9 interesting because what the rule does is it says  
10 very clearly to the people of Florida, if your  
11 municipal government tries to defund law  
12 enforcement, we've got your back. We are going  
13 to protect you. We are not going to allow some  
14 rogue local government do insane things like  
15 defunding the police, like we have seen massive  
16 cuts in other parts of this country, where we've  
17 seen crime skyrocket out of control.

18 And so, yes, I don't know what the context  
19 of 2018 was. I don't remember people talking  
20 about defunding the police. This is something  
21 that's happening. It's a very live issue in our  
22 society unfortunately. And I think folks in  
23 Florida should rest assured that at the state  
24 level, we're going to do everything we can to  
25 make sure that you're protected and to make sure

1 that we stand behind the men and women of law  
2 enforcement.

3 COMMISSIONER FRIED: Thank you, Governor.

4 MR. FISHER: Governor and Cabinet, I do need  
5 a motion on two things. One is to publish the  
6 notices of rulemaking to create Rule Chapters  
7 28-42 and 28-43 and to then file the rule for  
8 final adoption if no request for public hearings  
9 are received or if no changes are needed in  
10 response to any public hearing.

11 GOVERNOR DESANTIS: Okay. I move to approve  
12 the item. Is there a second?

13 ATTORNEY GENERAL MOODY: Second.

14 GOVERNOR DESANTIS: All right. Any  
15 objections?

16 COMMISSIONER FRIED: Objection.

17 GOVERNOR DESANTIS: Okay. One objection,  
18 but the motion still carries. Okay. Item 2.

19 MR. FISHER: Item 2 is the consideration of  
20 the recommended order issued by the Division of  
21 Administrative Hearings in a consolidated  
22 proceeding of Limonar Development, LLC, Wonderly  
23 Holdings, LLC, and Mills Family, LLC, versus  
24 Miami-Dade County, and Tropical Audubon Society  
25 and Michelle Garcia versus Miami-Dade County.



1           Joshua Pratt, the commission's counsel and  
2 his colleague, Mark Buckles, special counsel,  
3 will have an overview of the proceeding and  
4 coordinate the parties' presentations relating to  
5 the DOAH recommended order. It is estimated that  
6 this agenda item is going to take about an hour  
7 and a half, and I just want to make sure the  
8 commission is ready to proceed.

9           GOVERNOR DESANTIS: Does anyone need a break  
10 or are we -- are we good? Okay. You can come  
11 up. I'm going to run really quick, but you can  
12 go ahead and start, and we'll get going.

13           MR. PRATT: Good morning, Governor and  
14 Cabinet. Today the Administration Commission has  
15 before it the recommended order in the case of  
16 Limonar Development, et al., v. Miami-Dade  
17 County. This agenda item is a challenge to the  
18 Miami-Dade County comprehensive plan amendment  
19 adopted by County Ordinance 2018-109.

20           The plan amendment in question amends the  
21 Miami-Dade County comprehensive plan in several  
22 ways to allow for the construction of the Kendall  
23 Parkway, a 14-mile six- and four-lane expressway  
24 intended to improve traffic flow and to relieve  
25 congestion in an area of Southwest Miami

1 bordering the Everglades.

2 On March 30th, 2020, following a hearing, an  
3 administrative law judge entered a recommended  
4 order determining that the plan amendment was not  
5 in compliance under Chapter 163 of the Florida  
6 Statutes.

7 The purpose of today's agenda item is for  
8 the commission to consider the ALJ's recommended  
9 order, the arguments of the parties and any  
10 public comment and to then discuss and  
11 potentially vote on final action.

12 After voting on any final action, the  
13 commission may vote on a final motion to direct  
14 commission staff to draft and circulate a final  
15 order to your offices consistent with the vote of  
16 the commission and to then present the final  
17 order for the commission's consideration and  
18 potential approval at the next meeting of the  
19 commission.

20 It should be noted that the commission is  
21 not being asked today to pass judgment on the  
22 policy merits of the plan amendment, which  
23 Miami-Dade County clearly had the authority to  
24 consider, weigh and enact. Nor is the commission  
25 being asked to quantify or weigh the ultimate

1 environmental impact of the proposed parkway.

2 To be clear, any future construction of the  
3 Kendall Parkway would be subject to all  
4 applicable laws and regulations regarding  
5 environmental permitting. The limited role of  
6 the commission in this case is to simply  
7 determine whether the ALJ made the correct legal  
8 recommendation under Florida law.

9 Now, there are two sets of petitioners in  
10 this case. Petitioners Limonar Development, LLC,  
11 Wonderly Holdings, LLC, and Mills Family, LLC,  
12 who are represented by John Lukacs and Francisco  
13 Pines. And the petitioners Tropical Audubon  
14 Society and Michelle Garcia are represented by  
15 Paul Schwiep and Richard Grosso. The respondent  
16 in this case, Miami-Dade County, is represented  
17 by Dennis Kerbel and Christopher Wahl.

18 Now, in advance of this meeting today, the  
19 record in its entirety, including the ALJ's  
20 recommended order, the transcript of the DOAH  
21 hearing and the parties' DOAH exhibits, were made  
22 available to the members of the commission and  
23 their staff.

24 In preparing for this meeting, attorneys for  
25 the commission have had the opportunity to meet

1 separately with counsel on each side of the  
2 matter regarding their legal positions. And in  
3 doing so, we have not advanced any particular  
4 outcomes or discussed the contents of our  
5 conversations with other parties.

6 I will now provide a very brief background  
7 overview of the case. On September 27th, 2018,  
8 the County adopted the plan amendment at issue.  
9 On October 26, 2018, both sets of petitioners  
10 filed petitions with DOAH challenging the plan  
11 amendment in which they allege, among other  
12 things, that the plan amendment was not based on  
13 relevant and appropriate data and analysis and  
14 was internally inconsistent with the Miami-Dade  
15 County comprehensive plan, in violation of  
16 Chapter 163.

17 Now, on November 15, 2018, after conducting  
18 the state-expedited review process set forth in  
19 Chapter 163, the Department of Economic  
20 Opportunity identified no provision of the plan  
21 amendment that would necessitate a challenge of  
22 the ordinance adopting the amendment.

23 The cases were assigned to Administrative  
24 Law Judge Suzanne Van Wyk and later consolidated.  
25 A multi-day final hearing was held in late July

1 of 2019, after which proposed recommended orders  
2 were submitted to the ALJ. On March 30th, 2020,  
3 the ALJ entered a recommended order that  
4 determined the plan amendment was not in  
5 compliance under Chapter 163. A brief synopsis  
6 of the plan amendment is set forth in relevant  
7 part in the ALJ's order as follows.

8 The plan amendment to the plan allows an  
9 extension of State Road 836, also known as the  
10 Dolphin Expressway, from its current terminus at  
11 Northwest 137th Avenue and Northwest 12th Street  
12 to the West Kendall suburban area of the county.  
13 The approximate 13-mile extension is planned as a  
14 six-lane expressway from its current terminus to  
15 Southwest Eighth Street and Southwest 167th  
16 Avenue, then continuing as a four-lane expressway  
17 to connect with the Southwest 136th Street and  
18 Kendall. The proposed extension is referred to  
19 as the new corridor.

20 The plan amendment incorporates the new  
21 corridor on the County's future land use map, as  
22 well as the transportation element map series,  
23 including both the circulation of traffic and  
24 mass transit elements. Additionally, the plan  
25 amendment changes some existing and adds several

1 new policies in the land use, transportation,  
2 open government and intergovernmental  
3 coordination elements.

4 At this time I'd like to turn things over to  
5 my colleague, Mark Buckles, special counsel, for  
6 discussion of the standards of review.

7 MR. BUCKLES: Thank you, Josh. I will now  
8 explain the standard of review for findings of  
9 fact and conclusions of law contained within an  
10 ALJ's recommended order.

11 A legal conclusion of an ALJ regarding  
12 comprehensive plan amendment consistency is an  
13 interpretation of law and is subject to the  
14 fairly debatable standard. Under the standard,  
15 an amendment to a comp plan shall be determined  
16 to be in compliance under the requirements of  
17 Chapter 163 if the local government's  
18 determination of compliance is fairly debatable.

19 Florida law further provides that the  
20 commission should only reject or modify the ALJ's  
21 conclusions of law if the commission states with  
22 particularity its reasons for modification or  
23 rejection and the commission makes a finding that  
24 its substituted conclusions are as or more  
25 reasonable than the ALJ's conclusions.

1           In addition, the commission should only  
2     reject or modify the ALJ's findings of fact if it  
3     determines that they are not based upon competent  
4     substantial evidence or the proceedings did not  
5     comply with the essential requirements of law.

6           Regarding the ALJ's conclusions of law and  
7     findings of fact, the ALJ's recommended order  
8     identified multiple findings of fact and  
9     conclusions of law. The ALJ determined the new  
10    corridor is a development which may occur within  
11    but not outside of the urban development  
12    boundary, otherwise known as the UDB, as opposed  
13    to infrastructure that is outside of the UDB and  
14    designed to serve areas within the UDB.

15          Relating to that finding, the ALJ  
16    nevertheless concluded that even infrastructure  
17    improvements like the proposed Kendall Parkway  
18    are prohibited from taking place outside the UDB  
19    of Miami-Dade's plan. The ALJ concluded that  
20    Miami-Dade's plan amendment would permit a road  
21    to be built through an area designated as, quote,  
22    critical habitat, inconsistent with the  
23    requirements of the plan.

24          The ALJ concluded that the County's plan  
25    requires assurance of zero risk of well field

1 contamination as opposed to mitigation of risk.  
2 The ALJ concluded that the plan amendment should  
3 have gone through a detailed Comprehensive  
4 Everglades Restoration Program, otherwise known  
5 as CERP, review by the South Florida Water  
6 Management District as part of the plan amendment  
7 process.

8 The ALJ concluded that the data showed that  
9 the improvements in West Kendall traffic  
10 congestion would be meager, and the ALJ  
11 determined that a plan amendment must  
12 affirmatively shift the travel mode in West  
13 Kendall from personal automobile to mass transit.

14 Based on the above and as more fully set  
15 forth in the recommended order, the ALJ's  
16 ultimate conclusion of law was that the  
17 petitioners have proven beyond fair debate that  
18 the plan is not in compliance under Florida law.

19 Regarding the exceptions to the proposed  
20 recommended order, on June 1st, 2020, the parties  
21 filed their exceptions to the ALJ's recommended  
22 order, raising various arguments. Collectively,  
23 the parties filed 50 exceptions, the majority of  
24 which were raised by the County. On June 4th of  
25 this year, at the request of the secretary to the



1 commission, the parties filed their proposed  
2 final orders with the commission.

3 At this time Josh Pratt will return to the  
4 podium to discuss the commission's options for  
5 final action.

6 MR. PRATT: Thanks, Mark. Now, before the  
7 parties come up to present their arguments, I  
8 would like to inform the commission in no  
9 particular order of three options for final  
10 action.

11 Under option number one, the commission  
12 could move to reject the ALJ's recommended order  
13 by simple majority vote and find the County's  
14 plan amendment to be in compliance under Florida  
15 law. This option would find the County's plan  
16 amendment to be in compliance under Florida law  
17 for the reasons stated by the commission on the  
18 record and here today.

19 This option, like option number two, would  
20 also direct staff to draft and circulate a final  
21 order to your offices consistent with the vote of  
22 the commission and to present the final order for  
23 the commission's consideration and potential  
24 approval at the next meeting of the commission.

25 Now, under option number two, the commission

1 could move to issue a final order that adopts the  
2 ALJ's recommended order by simple majority vote.  
3 This option would find the County's plan  
4 amendment to be not in compliance under Florida  
5 law for the reasons stated by the commission on  
6 the record and here today.

7 This option would also specify remedial  
8 action to bring the plan amendment into  
9 compliance with Florida law by directing the  
10 County to rescind the amendment to its  
11 comprehensive plan. It should be noted that  
12 option number two would not prohibit the County  
13 from reenacting the plan amendment in the future  
14 in some shape or form.

15 And finally, under option number three, the  
16 commission could take the case under advisement  
17 for discussion at a future meeting of the  
18 commission. The parties will now have a chance  
19 to present their arguments and to answer the  
20 commission's questions. Respondent and  
21 petitioners should limit their arguments to 15  
22 minutes each, and we'll help facilitate that.

23 Following each set of arguments, the  
24 commission will have the opportunity to ask  
25 questions of each side, and after the arguments

1 of the parties and the commission's questions,  
2 each side will then have two minutes of rebuttal  
3 to make any final points that they wish to make.

4 Following the parties' rebuttals, Mark and I  
5 will facilitate a time for members of the public  
6 to present their public comments, subject to a  
7 time limit of two minutes per person.

8 Now, before the parties present, I would  
9 like to remind the individuals presenting that  
10 the commission may only consider evidence that is  
11 part of the record from the proceedings below.  
12 Therefore, the presenters should limit their  
13 comments to the evidence in the record and avoid  
14 discussing any issues outside of it.

15 Any exhibits displayed by the parties to the  
16 commission, unless contained within the record,  
17 are to be presented solely as demonstrative aids.  
18 With all that being said, respondent, Miami-Dade  
19 County will present argument first and  
20 petitioners will present second.

21 MR. KERBEL: Good morning, Governor  
22 DeSantis, General Moody, Chief Patronis and  
23 Commissioner Fried. My name is Dennis Kerbel.  
24 I'm an assistant county attorney representing  
25 Miami-Dade County, and I'm joined by my

1 colleague, Christopher Wahl, and we thank you and  
2 your staff for the enormous time that reviewing  
3 this record requires. We know it is no easy  
4 task.

5 This project provides real benefits to the  
6 West Kendall community. And the ALJ made the  
7 only findings that are necessary to show that it  
8 is not only consistent with but also furthers the  
9 County's transportation policies.

10 West Kendall is a suburban area with a  
11 population of approximately 600,000 people, of  
12 which about 150,000 commute each weekday to other  
13 areas of the county. And West Kendall, as the  
14 record reflects, has a significant traffic  
15 problem, with half the roadway segments operating  
16 at slow speeds and about a third operating over  
17 or near capacity, meaning that the roads are very  
18 congested.

19 The ALJ found, albeit begrudgingly, that the  
20 Kendall Parkway would improve the level of  
21 service, meaning it would improve congestion for  
22 at least four major roadways within the study  
23 area. That's paragraph 155 of the recommended  
24 order.

25 The record also shows that numerous West

1 Kendall residents attended the numerous public  
2 hearings the County held on this plan amendment  
3 to voice their support for the Kendall Parkway.  
4 The people most affected by this had turned out  
5 to support the project.

6 And in addition, the plan amendment was  
7 sponsored by the county commissioner for the  
8 district, Commissioner Joe Martinez, who  
9 continues to support this project. So the ALJ  
10 found that it would improve level of service on  
11 major roadways.

12 The ALJ also specifically and correctly  
13 rejected the most significant of the petitioners'  
14 objections. She found that they failed to prove  
15 that their proposed improvements, which was to  
16 serve the area only with mass transit or only  
17 make design improvements to existing roadways,  
18 would provide any relief to West Kendall  
19 residents. She flatly rejected that.

20 She also rejected petitioners' theory that  
21 the new roadway capacity created by the Kendall  
22 Parkway would be eaten up by new development,  
23 what the petitioners refer to as induced demand  
24 or induced development. Let me repeat that. The  
25 ALJ expressly rejected petitioners' induced

1 demand theory. Of course, that hasn't stopped  
2 the petitioners from continuing to argue induced  
3 demand in their papers or in the press.

4 But contrary to their claims, the ALJ found  
5 that the protections the County adopted as part  
6 of the plan amendment to restrict the use of any  
7 improvements attributable to the Kendall Parkway  
8 to meet concurrency for new development and to  
9 require super-majority votes to approve any urban  
10 land uses in the area, that these new protections  
11 were sufficient to address this issue,  
12 particularly when coupled with the robust  
13 protections in the County's current comprehensive  
14 plan regarding changes to add land to the UDB.

15 The ALJ also rejected petitioners' claims  
16 that the project was inconsistent with  
17 Comprehensive Everglades Restoration Plan, or  
18 CERP. She rejected their argument that it  
19 violated policies requiring preservation of  
20 agriculture. She rejected their claims that the  
21 project was inconsistent with policies  
22 prohibiting uses that handle hazardous waste  
23 within the well field.

24 And the ALJ did not find that there were any  
25 impacts to state resources or any significant

1 impacts to the Everglades or other environmental  
2 resources, except for her unsupported finding  
3 involving critical habitat, which we will address  
4 shortly.

5 And she did not find that the project had  
6 any fatal flaws that could not be addressed  
7 through subsequent permitting processes. The ALJ  
8 should have stopped there. Those findings and  
9 legal conclusions should have been enough to find  
10 the plan amendment in compliance under the  
11 correct legal standard. And if she had to go  
12 further, she should have recognized that the plan  
13 amendment provides real environmental benefits as  
14 a matter of law.

15 New policy LU-3T requires that wetland  
16 mitigation be accomplished to the maximum extent  
17 feasible not only by buying but by restoring  
18 wetlands in the Bird Drive Basin and North Trail  
19 Basin, which is the area immediately around where  
20 the proposed parkway would go.

21 This legal requirement goes further than  
22 existing wetlands mitigation requirements, which  
23 would authorize purchasing credits through a  
24 mitigation bank in another location.

25 And of course, by purchasing wetlands

1 through this policy, those wetlands would enhance  
2 Everglades restoration efforts and it would make  
3 those lands no longer available for the sort of  
4 incompatible development that the County's  
5 policies call for. So it furthers the  
6 protections in the existing plan against unwanted  
7 urban development.

8 In addition to that, she could have  
9 recognized as a matter of law that new policy  
10 LU-1W imposes additional environmental  
11 protections in the form of new regulatory  
12 requirements that would not otherwise apply  
13 because it requires the expressway to avoid the  
14 more sensitive well field areas, and it requires  
15 the County, not just state agencies, to continue  
16 to review drainage plans.

17 Finally, she could have recognized as a  
18 matter of law that new policy LU-1W also protects  
19 the environment by requiring that the final  
20 design show that it would adequately retain  
21 wetlands hydrology and preserve surface water  
22 sheet flow and that subsequent permits would be  
23 required before the road connection be  
24 constructed, including permits that are required  
25 from the water management district and from FDOT.



1           She could have simply recognized that this  
2 plan amendment is the beginning of the road, not  
3 the end, and that getting to the end requires  
4 additional regulatory reviews, through which the  
5 detailed environmental impacts that petitioners  
6 have complained of could be addressed  
7 conclusively once final designs are available.  
8 She did none of those things. She should have,  
9 but she did not.

10           But for this commission, a finding of  
11 compliance today simply moves the project to the  
12 next stage. It's not the issuance of a final  
13 permit, nor legally is it supposed to be. But  
14 instead of applying the correct legal standard,  
15 the ALJ opted to sit as a super-planning official  
16 and second-guess the county commission's policy  
17 choice.

18           Before getting into the serious legal errors  
19 that the ALJ made, it's important to point out  
20 that none of these issues involve violations of  
21 substantive state law requirements. No state  
22 agency brought this challenge, as your staff  
23 recognized. All of these issues involve the  
24 County's interpretation of its own comprehensive  
25 plan and whether those interpretations are

1 supported by data and analysis.

2 We have submitted a proposed final order  
3 that shows in detail how the commission can  
4 modify the ALJ's proposed findings and  
5 conclusions to find the plan amendment in  
6 compliance, and I'll go over some of the  
7 highlights now.

8 The ALJ's decision presents fundamental  
9 questions about comprehensive planning; namely,  
10 how much data and analysis does a local  
11 government need to support a plan amendment, and  
12 who gets to decide whether the policy is worth  
13 pursuing based on that data and analysis.

14 According to the ALJ and the petitioners,  
15 the answer is you need all the data and analysis  
16 that you would ultimately need to approve  
17 subsequent permits. That's contrary to the  
18 language of the Community Planning Act itself,  
19 which only requires data and analysis to support  
20 a broader policy.

21 As the planning act says, it is not the  
22 intent of this part to require the inclusion of  
23 implementing regulations in the comprehensive  
24 plan but rather to require identification of  
25 those land development regulations that will be

1 part of the strategy for implementing the  
2 comprehensive plan.

3 So the ALJ's and the petitioners' view  
4 defeats one of the very purposes of the Community  
5 Planning Act, which is to establish parameters  
6 for subsequent regulatory processes but without  
7 predetermining their outcomes and allowing local  
8 governments to choose policies that are  
9 appropriate to their respective communities.

10 And as for who gets to decide how much data  
11 and analysis is enough, according to the  
12 petitioners and the ALJ, the answer is the ALJ,  
13 who, rather than determining whether data and  
14 analysis exists to support a policy, would  
15 instead be authorized to re-weigh the value of  
16 that data and analysis and thereby reevaluate and  
17 second-guess the policy that the local government  
18 has chosen.

19 But that theory and that approach is  
20 incorrect under the statute. As your counsel  
21 pointed out, the standard here is fairly  
22 debatable. Which means that deference is owed to  
23 the local government to make policy choices, so  
24 long as they are supported by some data and  
25 analysis. And this record, which contains

1 thousands of pages, contains ample data and  
2 analysis to support any number of policy choices.

3         Simply put, this not the Rogers v. Escambia  
4 County case that this commission recently heard,  
5 in which the record contained no data supporting  
6 the amendment and was ultimately only based on  
7 the opinion of the planner at the hearing. We  
8 are not in that situation. We have, as you all  
9 have seen, thousands of pages of data and  
10 technical reviews.

11         So petitioners want to make this case -- and  
12 the ALJ accepted it -- about whether the plan  
13 amendment will ultimately and conclusively solve  
14 West Kendall's traffic woes, and they think that  
15 the plan amendment should be rejected because  
16 it's not a complete solution. And they also want  
17 to make the focus of this proceeding about just  
18 commute times. None of those are the right  
19 questions.

20         The right question is whether planning for  
21 an expressway extension in this area is  
22 internally consistent with other CDMP policies  
23 that address where infrastructure can be built.  
24 And these are legal questions that are properly  
25 resolved by this commission.

1           Numerous county policies, including  
2   objective TC-1 and the transportation elements'  
3   overall goal, call for all roadways to operate at  
4   the adopted level of service or better and for  
5   the County to operate its roadway network at a  
6   level of service better than the base level of  
7   service standards contained herein.

8           That policy, as the ALJ herself found, is  
9   affirmatively furthered by this plan amendment.  
10   It does improve the level of service on major  
11   roadways.

12           In addition, the transportation element's  
13   overall goal is to develop and maintain an  
14   integrated multimodal transportation system to  
15   move people of all ages and abilities and goods  
16   in a manner consistent with overall countywide  
17   land use and environmental protection goals and  
18   integration of climate change considerations in  
19   the final decision-making process.

20           Well, this road would further those  
21   policies. It does take into account all the  
22   environmental issues, but most importantly, it is  
23   an integrated multimodal transportation system  
24   that successfully moves people that currently  
25   have limited options for mobility.

1           And it furthers the goal to develop, operate  
2           and maintain a safe, efficient and economical  
3           traffic circulation system that provides ease of  
4           mobility to all people and for all goods and is  
5           consistent with the environmental and land use  
6           goals that I mentioned and that stimulates  
7           economic growth. It also does that because it  
8           better connects people from one end of the county  
9           to the other.

10           The County's need to not only maintain but  
11           also upgrade infrastructure to support existing  
12           and future population is also an express policy  
13           of the CDMP that is furthered here.

14           CDMP expressly recognizes that the growth of  
15           Miami-Dade County is not projected to cease after  
16           the year 2030 and that prudent long-term planning  
17           for infrastructure may need to anticipate  
18           locations for possible future extension. And  
19           among those areas that the comp plan  
20           affirmatively authorizes for consideration for  
21           extension ease areas outside the UDB where  
22           necessary to complete a transportation network.

23           None of these policies which are furthered  
24           by this plan amendment require a showing of how  
25           much traffic improvement it's required to provide

1 in order to satisfy it. And the plan amendment  
2 furthers all of these policies.

3 The plan amendment is also not inconsistent  
4 with the policies that limit infrastructure  
5 outside the UDB. Those policies are about  
6 discouraging unwanted urban development in those  
7 areas. And, again, the ALJ specifically found  
8 that the plan amendment does not encourage  
9 unwanted urban development.

10 So whether the traffic improvement justifies  
11 the costs in money and resources of building the  
12 road are precisely the types of policy questions  
13 and trade-offs that the Community Planning Act  
14 leaves to local government. And in this case,  
15 the county commission made this decision after  
16 numerous public hearings at which it heard from  
17 its constituents, many of whom live in West  
18 Kendall and who support this project.

19 So the statute requires that the decision be  
20 based on some data and analysis, not that the  
21 benefits be proven beyond a reasonable doubt.  
22 And we have that data and analysis in the record.  
23 The issue is the ALJ's characterization. She  
24 characterized it as meager. The county staff, in  
25 their professional planning report, characterized

1 the improvements to the local surface streets as  
2 significant.

3 The ALJ's task here was simple, to survey  
4 the record and determine does data and analysis  
5 exist to support this amendment. The county  
6 staff report and the County's expert  
7 transportation planner's testimony about  
8 significant improvements to surface streets  
9 should have been sufficient. And she notably did  
10 not find that that testimony was in any way  
11 inadmissible or not credible. She simply ignored  
12 the opinion of significance and decided to make  
13 her own finding.

14 Let me briefly run through a couple of very  
15 brief points. She -- the ALJ made the erroneous  
16 conclusion that this expressway constitutes  
17 development under the County's comp plan. It  
18 does not. It is infrastructure. The land use  
19 element is clear about that.

20 The one factual finding that is of  
21 significant import here is about critical  
22 habitat. And I cannot state this clearly enough.  
23 The record shows that there is no critical  
24 habitat designation in the area that's impacted  
25 by this expressway, none.



1           The ALJ had no basis on which to find that  
2           this is in any way impaired -- or that this in  
3           any way impairs critical habitat or impairs  
4           habitat that is in any way critical to the  
5           survival of any listed species. That was just a  
6           flat factual error on her part.

7           And with that, I see my time is up. So we  
8           would urge you to find this in compliance based  
9           on our proposed final order. Thank you.

10          MR. PRATT: At this time we'll open up for  
11          the commission any questions you have of the  
12          respondent county.

13          GOVERNOR DESANTIS: I thought we were going  
14          to do both, do their press, and then each one  
15          will then come up and do -- why don't we do that?

16          MR. PRATT: We can do that. Yes.

17          GOVERNOR DESANTIS: Okay.

18          MR. GROSSO: Good morning, Governor  
19          DeSantis, General Moody, Chief Patronis,  
20          Commissioner Fried. My name is Richard Grosso.  
21          I'm co-counsel, along with Mr. Paul Schwiep, for  
22          the petitioners Michelle Garcia and Tropical  
23          Audubon Society. I'll speak for a while. I'll  
24          turn it over to Mr. Schwiep. Our client, Paola  
25          Ferreira, will speak briefly, and then counsel

1 for Limonar, our co-petitioner, will speak.

2 The administrative law judge made clear  
3 determinations about credibility. She didn't  
4 ignore the County's testimony on most of the big  
5 issues. She found it not credible and she gave  
6 credit to our witnesses. That's her exclusive  
7 function.

8 The County's exceptions are replete with  
9 these arguments that she ignored our testimony,  
10 she ignored our claims. She found them not  
11 credible. She found them not supported by the  
12 evidence.

13 And a big part of the problem here was when  
14 people were turning out in Kendall and they  
15 wanted congestion relief, they were responding to  
16 PR campaigns. They were responding to claims  
17 about how good this would be for congestion. And  
18 then when those claims were reduced to  
19 cross-examination and review in an administrative  
20 hearing, the law judge found them not to be  
21 credible.

22 That's the real problem here. That's what  
23 the purpose of an administrative hearing is, is  
24 to subject those kinds of claims to some actual  
25 scrutiny and for a law judge to find them to be

1 accurate or not. And on the key points, the law  
2 judge found the County's claims not to be  
3 accurate.

4 The next important point that I need to  
5 correct is that the law judge found violations of  
6 state law, not just the County's comprehensive  
7 plan. The basic, most fundamental requirement  
8 that all plan amendments be supported by, react  
9 affirmatively to the data and analysis about the  
10 character of the land, about the impact on  
11 facilities, she found that violation to be clear.  
12 That's a state law requirement, not just a county  
13 comprehensive plan requirement.

14 The County ignored its own data. The County  
15 ignored its own plan. The law judge did not  
16 substitute her policy preferences for ours. She  
17 found that the County ignored its own adopted  
18 comprehensive plan policies.

19 The first point on the data and analysis of  
20 your agencies: The Department of Environmental  
21 Protection, the South Florida Water Management  
22 District, when this amendment was first proposed,  
23 said, You haven't given us the analysis on the  
24 impact on all of those wetlands that are  
25 Everglades wetlands, you haven't given us an

1 analysis on the impact of our CERP, Comprehensive  
2 Everglades Restoration Plan project that you're  
3 going to run a highway through.

4 And instead of giving that information, the  
5 County said, We don't have to give it to you.  
6 Instead of giving that information, the County  
7 actually made the project worse. From a proposed  
8 project that the agency said, Give us the  
9 analysis, the County said, I'm not going to give  
10 you the analysis and I'm going to move the  
11 highway even further west into the Everglades,  
12 and I don't have to give you that analysis.

13 The County says here today that the law  
14 judge insisted and we insisted on a detailed,  
15 permitting-level, engineering analysis. That is  
16 not accurate whatsoever.

17 The analysis this law requires, the analysis  
18 the comprehensive plan of Dade County requires,  
19 the analysis that the law judge found missing,  
20 was a basic planning-level analysis, an analysis  
21 that says, this is the appropriate location for a  
22 highway. That's a planning-level analysis. It's  
23 not a permitting-level analysis. We're not into  
24 that level of detail.

25 There's no way on this record, on these

1 facts, there's no way, under the Dade County's  
2 own plan, under state law, that one could  
3 conclude that a highway outside of the County's  
4 own urban boundary that by its own definition is  
5 an envelope for public facilities through the  
6 Everglades that this state has invested  
7 \$20 billion or \$10 billion trying to restore,  
8 through farmland so scarce that this county has a  
9 transfer of development rights program to try to  
10 keep it in place, there's no way that one can  
11 reasonably conclude -- and those are the County's  
12 own policies -- that this is consistent with the  
13 County's own plan.

14 There's no way one could conclude that that  
15 data and analysis that tells you that's where  
16 this road is going to go is suitable under the  
17 County's own plan or under state law. That would  
18 be a completely unreasonable assumption.

19 And then, on the other end, to the extent  
20 the County says, Well, we need it for traffic  
21 congestion, the County says, We should have the  
22 authority, the County only, to unilaterally say,  
23 six-minute impact on the two-way commute, that's  
24 enough to compromise Everglades restoration, to  
25 eviscerate the most important policies of our

1 comprehensive plan, this strict urban boundary  
2 concept, not some of the detailed things that the  
3 law judge didn't go with, the most important  
4 things.

5 The County says, We get to unilaterally  
6 decide that's enough traffic benefit to  
7 compromise the state's priorities, which also  
8 were priorities written into the County's own  
9 comprehensive plan. I think that's where the  
10 argument that you should let the County decide  
11 really falls down.

12 Your agencies were clear. This is an  
13 analysis we need at the planning stage. They're  
14 the permitting agencies. They know the  
15 difference between permitting analysis and  
16 planning analysis. They were unmistakable, the  
17 DEP and the water management district, in their  
18 demand that that information be given now, before  
19 you decide this is a good place for a highway.  
20 That information never came. The County refuses  
21 to acknowledge the requirements of state law.

22 On the Pennsuco Wetland, the Bird Drive  
23 Basin Everglades restoration project, the County  
24 has argued the water management district doesn't  
25 really need that whole area for CERP. And there

1 was at one point several years ago a concept of a  
2 smaller footprint for that CERP engineering  
3 project. But the larger project is still on the  
4 table. The water management district has not  
5 arrived at a final decision on exactly the shape  
6 and scope of that CERP engineering project.

7 And even the smaller project that the County  
8 would hope for so it can run a highway through  
9 there, the water management district and DEP  
10 said, You haven't even shown us you're consistent  
11 with that.

12 And then the final piece of that puzzle is  
13 the County's own wetland expert testified at  
14 trial. Regardless of whether those wetlands are  
15 going to be used for a water movement CERP  
16 project, they're Everglades wetlands, they're to  
17 be protected.

18 Any way you slice it, there's no way you can  
19 justify running a highway through these wetlands  
20 that your water management district and DEP are  
21 still struggling to undo the damage of prior  
22 highways. The idea that we would actually  
23 gratuitously run a new highway through the very  
24 Everglades wetlands we're trying to restore here  
25 in 2021 is really kind of an amazing concept and

1 an amazing claim, all in the interest of a  
2 three-minute improvement on a one-way commute.

3 The Pennsuco Wetlands. I'll give the County  
4 one point, the law judge did, in one of her  
5 findings, incorrectly say these Pennsuco Wetlands  
6 were designated federal critical habitat. That's  
7 not correct.

8 But that's not what the policy in the  
9 County's plan says. The policy in the County's  
10 plan does not say, We protect only federally  
11 designated critical habitat. It talks about  
12 habitat critical to endangered species. The  
13 record is replete with the value of this land to  
14 endangered species. So that one error by the law  
15 judge does not change the outcome of this case  
16 whatsoever. I need to make that clear.

17 The Pennsuco Wetlands, the County argues  
18 mitigation, we have a mitigation policy. Their  
19 own wetland expert testified, We ran the numbers  
20 and we're short of mitigation credits. We can't  
21 tell you now that we actually can mitigate for  
22 all the impacts of those wetlands.

23 A big reason for that is they're scarce.  
24 Everglades wetlands, they're strategically  
25 located. You can't just go find them somewhere



1 else to mitigate. The agency has told the  
2 County, those Pennsuco Wetlands, they're already  
3 preserved as mitigation for another project. So  
4 you want to use them again for mitigation, for a  
5 new highway? How are you going to do that?  
6 That's a double whammy to those wetlands. But  
7 the County ignored that.

8 The final point that I want to make about  
9 compliance overall, the County says, Trust us,  
10 fairly debatable. It's not fairly debatable. In  
11 order for this commission to overturn the law  
12 judge's findings and rulings, you would have to  
13 say that a reasonable reading of Dade County's  
14 comprehensive plan and its urban development  
15 strategy is that you can run a highway, that is  
16 otherwise discouraged outside of the urban  
17 boundary, 14 miles outside of the urban boundary,  
18 that's an envelope for infrastructure, into  
19 Everglades you're trying to preserve, through  
20 farmland we're trying to preserve for a  
21 three-minute value.

22 I cannot see how any reasonable person could  
23 conclude that that's a reasonable reading of what  
24 the Dade County comprehensive plan is all about.  
25 It's interpretive text that tells you, everything

1 we've said in the rest of this document, this is  
2 what it means. That's what the interpretive text  
3 says it means. Our primary strategy is this  
4 urban boundary strategy.

5 And it's not just urban land use strategy,  
6 and the County harps on that, that they're not  
7 changing land uses. It's an urban service. You  
8 keep facilities out of the areas you're trying to  
9 protect and preserve.

10 The law judge made findings of fact that are  
11 unassailable, completely supported by your agency  
12 comments, our witnesses. There's no basis  
13 whatsoever to overturn those findings of fact.  
14 And the County's convoluted legal arguments as to  
15 how those findings of fact still equate to this  
16 "doesn't violate their own plan or state law" are  
17 just too convoluted. They're not reasonable.  
18 You can't say them with a straight face, with all  
19 due respect.

20 With that, I would turn it over, to get into  
21 a bit of the detail of the traffic issues, to my  
22 co-counsel, Paul Schwiep. Thank you very much.

23 MR. SCHWIEP: May it please the Governor,  
24 members of the Cabinet. Thank you. I was  
25 responsible for the mobility issues at the trial.

1 We did have a trial over a two-week period. And  
2 with all due respect to my colleague from the  
3 County, there was no data or analysis whatsoever  
4 presented at the trial by the County that this  
5 extension, if it were built, would actually  
6 improve travel times into downtown Miami, the  
7 airport, the hospital district. And so,  
8 therefore, the amendment fails of its own  
9 purpose.

10 The amendment was approved -- this is  
11 TC-1M -- only to the extent necessary to provide  
12 faster connection to downtown Miami. That was  
13 the justification for this project. And that's  
14 how MDX sold this to the public.

15 In fact, what occurred is MDX created a very  
16 narrow arbitrary traffic study area in West  
17 Kendall and then analyzed what would happen  
18 within that traffic study area if you built a  
19 six-lane highway. They did not look at all, they  
20 put blinders on, in terms of what the effect  
21 would be if you commuted from West Kendall into  
22 downtown Miami or to the airport or to the  
23 hospital.

24 And in fact, the evidence that was developed  
25 on that issue showed that on the existing segment

1 of 836, from 107th Avenue all the way into  
2 downtown, a ten-mile stretch, traffic would  
3 double on the existing segment of 836. And if  
4 this extension is built, because it puts a  
5 13-mile tail on the existing segment of 836, the  
6 level of service on 836 actually drops from C to  
7 D.

8 So what occurs is, for people who are  
9 currently commuting on 836 -- and it's not  
10 surprising. Adding 14 miles of additional  
11 highway to the end of 836 will make those  
12 commuters' lives more difficult. That was the  
13 evidence at the hearing, and it was undisputed.

14 There was no data -- this is from the  
15 County's own experts, from MDX's own expert, that  
16 looked at the impacts outside of this narrow  
17 traffic study area on the commute times into  
18 downtown.

19 And then within the traffic study area, as  
20 the ALJ found, based on the evidence at trial,  
21 the improvements would be meager. At best,  
22 5 percent in travel time, 5 percent improvement  
23 on travel time for a billion-dollar roadway.

24 And then what the evidence showed is that if  
25 you applied that -- if you assume that that

1 5 percent benefit within their traffic study area  
2 applied to commuters all the way downtown, giving  
3 them the benefit of that, that the improvement on  
4 your travel time for commuters from West Kendall  
5 into downtown would be a grand total of three  
6 minutes each way, six minutes total.

7 So this is a billion-dollar project where  
8 you're imperiling Everglades restoration, you're  
9 affecting the well field, destroying wetlands for  
10 six minutes of benefit.

11 With regard to the County's requirement in  
12 its plan that the plan shift modes of travel from  
13 personal automobiles to transit, the judge found,  
14 not surprisingly, that building a 14-mile highway  
15 outside the UDB is inconsistent with the County's  
16 own comp plan requirement that they develop in a  
17 way that shifts travel modes.

18 Again, that is a fact-finding that is  
19 unassailable, because the County's own expert  
20 said -- and this is a quote -- that the plan  
21 amendment will not shift travel mode from single  
22 occupancy vehicles to mass transit. It does not  
23 reduce dependence on the use of personal  
24 automobiles. That was the County's evidence. So  
25 the judge's findings with regard to that issue,

1 again, are unassailable.

2 And then with regard to well fields, the map  
3 shows the west well field is the one that's  
4 furthest to the west. And this highway, if it's  
5 built, would traverse in the light red area just  
6 outside the ten-day (sic) travel time.

7 The County's comp plan provides that it must  
8 control land uses within the west well field to  
9 those that pose no threat to water quality.  
10 Their witnesses admitted that this does pose a  
11 risk to the west well field if it's built,  
12 because of its proximity to that well field.

13 So, again, its inconsistent with their own  
14 plan. And for all those reasons, the plan is  
15 contrary to state law, and we request that you  
16 adopt the recommended order from the  
17 administrative law judge.

18 MR. PRATT: And, Governor, at this time  
19 would the commission prefer to hear rebuttals and  
20 final arguments, or would you prefer to go into  
21 the question and answer section?

22 GOVERNOR DESANTIS: I think we might as well  
23 do question and answer. Then we'll do rebuttal  
24 and final arguments.

25 MR. PRATT: Sounds good. The County,

1 please.

2 MR. KERBEL: Good morning again.

3 GOVERNOR DESANTIS: So I think the argument  
4 that the petitioners made was this imperils the  
5 Everglades restoration, that it's inconsistent  
6 with state policy and then it's inconsistent with  
7 the County's plan. So how do you respond to  
8 that?

9 MR. KERBEL: Let me start by saying, they  
10 keep saying it's in the Everglades. It's not in  
11 the Everglades. This is miles away from  
12 Everglades National Park. It does run through  
13 wetlands that have been identified as part of the  
14 Comprehensive Everglades Restoration Plan, as  
15 part of CERP.

16 And our response to that is -- and, again,  
17 this commission doesn't have to decide exactly  
18 this, but the comments that we received from the  
19 water management district are that the CERP  
20 project for the area is going to be a conveyance  
21 canal. And the data showed that the road could  
22 be built in a manner that is consistent with a  
23 canal, and so therefore would preserve the  
24 existing project.

25 And certainly that final analysis would be

1 done as part of the water management district's  
2 permitting requirements, at which they will have  
3 the opportunity to view detailed designs and see  
4 to what extent it does or does not conflict with  
5 their proposed canal.

6 What the petitioners want is for you to  
7 re-litigate what the water management district is  
8 planning to do for CERP in that area. That is  
9 not a question you have to reach, nor is it a  
10 question that the ALJ reached.

11 The County relied on the comments received  
12 from the water management district. That comment  
13 letter said only, We need more information about  
14 how you're going to be consistent with our  
15 proposed canal.

16 And so what they want is for the County to  
17 have to prove up at the plan amendment stage all  
18 of the things that would have to be proven up  
19 through permitting. That's not what the  
20 Community Planning Act requires.

21 So it's not the Everglades. Our new policy  
22 actually furthers Everglades restoration because  
23 it requires that the land for wetlands mitigation  
24 be bought as much as possible around this  
25 proposed extension. And that's not a current



1 requirement under state law or any other county  
2 policy. That's new, the requirement that if  
3 you're going to build this, you have to buy the  
4 wetlands around it. So that's a positive benefit  
5 for restoration. So the --

6 GOVERNOR DESANTIS: So today our job is to  
7 determine plan amendment consistency. Is the  
8 whole issue with CERP, is that a separate process  
9 that -- will there be separate environmental  
10 reviews? In other words, if it's found to be  
11 consistent today, does that mean that those  
12 environmental reviews are going to go in your  
13 favor, or might they come back negative?

14 MR. KERBEL: They could come back negative.  
15 Again, we're not predetermining the outcome of an  
16 actual regulatory permitting review. And also to  
17 be clear about what you're reviewing today,  
18 you're not reviewing consistency with CERP.  
19 You're reviewing internal consistency with the  
20 County's policy CON-7J, the text of which is that  
21 the County, in reviewing an application, has to  
22 consider CERP and deny an application that is  
23 found to be inconsistent.

24 Well, this is a plan amendment. We are not  
25 required at this stage to make a final

1 determination of consistency. And the record had  
2 enough data and analysis to show we are not  
3 inconsistent. That is the only determination  
4 that was required here, and the ALJ erred as a  
5 matter of law.

6 The arguments that I addressed with you this  
7 morning, other than critical habitat, aren't  
8 attacks on findings of fact. They're on legal  
9 interpretations.

10 Here the ALJ erred by saying that in order  
11 to show consistency with CON-7J, purely a matter  
12 of the County's comp plan and its internal  
13 consistency, we were obligated to obtain a final  
14 determination from the water management district  
15 as to ultimate consistency with CERP. We were  
16 not.

17 And we submit to you that as a matter of  
18 law, that is a choice that you can interpret and  
19 find that the County correctly interpreted its  
20 own plan. It is owed deference on that point.

21 GOVERNOR DESANTIS: What about the point  
22 about the agriculture land? The County's plan  
23 says that they want to preserve agriculture land.  
24 I think that they require at least 50,000 acres  
25 to maintain a viable agriculture industry. And I

1 think the petitioners are saying this is really  
2 going to hinder agriculture in the county. How  
3 do you respond?

4 MR. KERBEL: The ALJ affirmatively rejected  
5 that argument. The ALJ found that we are not  
6 inconsistent with policies regarding preservation  
7 of agriculture. She made, again, a legal  
8 misinterpretation about one county policy that  
9 refers to participating in a transferable  
10 development rights program.

11 Again, this is a question of law. The plan  
12 amendment actually has affirmative requirements  
13 regarding participation for this project in  
14 agricultural preservation. And so she made a  
15 legal error in -- to the extent that she found an  
16 inconsistency with the policy LU-1R regarding  
17 agriculture restoration. And as to the rest, she  
18 rejected their challenges.

19 GOVERNOR DESANTIS: So I guess there was an  
20 issue in the proposed order about whether a road  
21 would be considered development or  
22 infrastructure. And I guess your position is  
23 that it would be infrastructure. I mean, I think  
24 actually a lot of people say infrastructure means  
25 everything nowadays, but -- so how do you -- why

1 did the judge get it wrong, in your judgment,  
2 then, to say that it was development rather than  
3 infrastructure?

4 MR. KERBEL: Well, as to why she got it  
5 wrong, I can't speculate. But how she got it  
6 wrong was two things. She wrongly imported into  
7 the County's comp plan text -- and, again, this  
8 is all interpretation of the County's own plan --  
9 a statutory definition regarding what constitutes  
10 development. And on top of that she used the  
11 wrong definition.

12 So she relied on the statutory definition of  
13 development and the exception regarding work by  
14 utilities in the right-of-way. That's -- even if  
15 you were going to define development according to  
16 the statutes for these purposes, that's not the  
17 right one.

18 So she relied on the Florida Power and Light  
19 case that we were parties to, where we  
20 successfully challenged an interpretation of that  
21 piece. This would travel under a completely  
22 different exception, which relates to work for --  
23 by an agency for roadway improvements. That's a  
24 different standard.

25 Nevertheless -- so even on her stated basis,

1 she got it legally wrong, but it wasn't necessary  
2 to address the statutory definition of  
3 development, because what matters here again is  
4 the text of our plan.

5 And our plan is very clear in the land use  
6 element. It's either a development or use on the  
7 one hand or it's infrastructure service facility.  
8 And a road is very clearly, under the plan, under  
9 the land use element, service facility or  
10 infrastructure.

11 GOVERNOR DESANTIS: And so then how did  
12 the -- you have the boundary, and I think the  
13 plan says -- I don't think it prohibits beyond  
14 that, but it says it discourages. And so how do  
15 you address that issue?

16 MR. KERBEL: Yeah, of course. The  
17 comprehensive plan discourages because it's about  
18 preventing urbanizing uses outside the UDB. But  
19 it doesn't prohibit, in appropriate locations,  
20 infrastructure that's going to serve the  
21 urbanized area.

22 And I think we've very well shown on this  
23 record, this roadway is designed and the policies  
24 that surround it protect the area around it. It  
25 is designed to serve the 600,000 residents of

1 West Kendall who currently have a very severe  
2 traffic problem. It's only going to get worse.

3 And, again, the ALJ found, none of the other  
4 proposed solutions provide any relief to the  
5 residents of West Kendall. So even traveling  
6 under her own findings, she found improvements to  
7 levels of service on four roadways, on four major  
8 roadways. And that's enough to find it in  
9 compliance.

10 But if I could address the argument about  
11 commutes. Unfortunately, I ran out of time  
12 during my presentation. So first -- and Mr.  
13 Schwiep did accurately read the policy that the  
14 County adopted. TC-1M does say that the purpose  
15 of this road is to relieve traffic congestion in  
16 the southwestern part of the county and to  
17 provide a reliable, robust and faster connection  
18 to downtown Miami.

19 Notice what word doesn't appear there? The  
20 word "commute" does not appear anywhere in there.  
21 So that's not the legal standard. The legal  
22 standard is not, do we provide a better commute.  
23 It's do we provide a traffic improvement or  
24 transportation improvement. And we definitely  
25 do.

1           But I also -- let me be clear. The traffic  
2 studies in the record do demonstrate that the  
3 Kendall Parkway will improve commute times. It's  
4 at -- if you're commuting from, for example,  
5 Southwest 56th Street and 157th Avenue to the  
6 Homestead extension, the Kendall Parkway would  
7 save you about 18 minutes of your morning drive  
8 on that segment.

9           If you're commuting from Southwest 136th and  
10 Southwest 157th Avenue to the Homestead  
11 extension, you'll save about 29 minutes on those  
12 segments, because those segments are the ones  
13 that are extremely congested. And those showed  
14 double digit, up to in some cases 50 percent  
15 improvement in the traffic volume.

16           And finally someone commuting from 157th  
17 Avenue and 88th Street, Kendall Drive, to the  
18 Homestead extension today, well, they would save  
19 approximately 18 minutes.

20           And so I think what's been missed in the  
21 discussion, the ALJ and really the press has  
22 harped on this six minutes. They love to cite  
23 that. The six minutes was testimony that they  
24 elicited on cross-examination. And I'll give the  
25 credit. It was a very effective cross.

1 Mr. Grosso was exceptional in this moment.

2 But he was questioning our transportation  
3 planner about a table, Table 12 for those that  
4 want to follow along, and it's in the County's  
5 traffic report, that shows the average  
6 improvements for the entire study area.

7 So that six minutes is everybody in the  
8 study area. But the reason the county staff, the  
9 professional planners supported this road is  
10 because on specific segments, the ones that are  
11 the most congested during the morning and evening  
12 commute, on those roadways there were  
13 double-digit improvements in the throughput so  
14 that people could get through the study area,  
15 through West Kendall.

16 And the study area, by the way, was not  
17 arbitrary. The study area was designed based on  
18 the SERPM model that the County's transportation  
19 planning organization uses. And the SERPM model  
20 was -- you put inputs about the proposed roadway  
21 improvements, and the SERPM model then says,  
22 okay, we're going to project within what area  
23 impacts from this project are felt and then where  
24 they're no longer felt.

25 So the study area was drawn based on -- the



1 boundaries of it were, we no longer see any  
2 impact of this roadway when you get past, I think  
3 it's 87th, Northwest 87th Avenue, which is fine.  
4 That just means that the commute is the same from  
5 there on out.

6 And then one last point, if I may, their  
7 statement about the existing roadway segment that  
8 would drop from LOS C, level of service C to  
9 level of service D, the County's adopted level of  
10 service for that roadway is D. So it doesn't  
11 fail the level of service. It does go below.

12 And it's also worth pointing out that  
13 there -- and the ALJ recognized, that she said  
14 that there wasn't a time frame for it but that  
15 there is another project that improve that level  
16 of service back to C. You don't have to get into  
17 that, but it's in the record and I wanted to  
18 assure you that that's a very technical point.

19 The main legal point is that we're not  
20 violating any level of service, because the level  
21 of service is D. It just means we're going down  
22 to what it's currently adopted at.

23 GOVERNOR DESANTIS: Anybody?

24 ATTORNEY GENERAL MOODY: Even if you -- you  
25 know, I heard -- first let me just say, what an

1 admirable lawyer you are, commending the other  
2 side on their impeccable cross-examination. I  
3 don't think I've ever heard that done in a  
4 proceeding. That was great.

5 MR. KERBEL: Thank you.

6 ATTORNEY GENERAL MOODY: Even if you were to  
7 agree with them or if they were to agree that it  
8 caused a three-minute delay in, or excuse me,  
9 improvement, both directions, which would be,  
10 what, six minutes a day, 30 minutes a week, two  
11 hours a month, extrapolate that out to a year of  
12 someone's life, would that be, in your argument,  
13 a significant traffic improvement or a traffic  
14 improvement? Let's just stay there.

15 MR. KERBEL: It would be a traffic  
16 improvement. And I think the county commission  
17 could, in its judgment, decide this is worth  
18 doing because there's no other option for giving  
19 any relief to these residents. And mass transit  
20 is not going to do it. It was studied.

21 GOVERNOR DESANTIS: So I just -- I mean,  
22 just in terms of -- so they have a plan. It's  
23 being pointed out six minutes. Obviously you  
24 point out other ways that it would be more in  
25 different parts, but a billion dollars for six

1 minutes.

2 But, I mean, is that within the political  
3 choices of the county commission to make, or does  
4 that cost/benefit violate something in the  
5 comprehensive plan?

6 MR. KERBEL: Governor, I think you've hit  
7 exactly our point. That is precisely the sort of  
8 cost/benefit analysis that is left to the county  
9 commission as the local legislature representing  
10 its constituents, having heard from its  
11 constituents. So, yes, the Community Planning  
12 Act, the fairly debatable standard, would require  
13 deference on that point.

14 GOVERNOR DESANTIS: And then I have one more  
15 just about the critical habitat. I mean, I did  
16 see in the proposed order from petitioners as  
17 well that -- I think the administrative law judge  
18 said that it had been identified as a critical  
19 habitat. No one has identified it as a critical  
20 habitat.

21 But then they point out, well, it doesn't --  
22 the Miami-Dade plan doesn't necessarily require  
23 that the federal -- that this is designated  
24 federally. So how do you interpret what the  
25 County is trying to do in its plan and then what

1 effect this may have on that?

2 MR. KERBEL: Their argument is a bit of a  
3 slight of hand because the plan -- I mean,  
4 they're correct as far as it goes. The plan says  
5 you shall not degrade or destroy habitat that is  
6 critical to any listed species. That's correct.

7 What they're failing to acknowledge is that  
8 there is no evidence in this record to show  
9 either that it's designated critical habitat or  
10 that it would impair any habitat that is critical  
11 to any listed species. It may be used by listed  
12 species.

13 GOVERNOR DESANTIS: But you're saying,  
14 regardless of what it would be designated, you're  
15 saying there's not evidence that it is in fact  
16 critical to any of those species.

17 MR. KERBEL: That is exactly correct,  
18 Governor, yes. That is our argument.

19 GOVERNOR DESANTIS: Anybody else? Okay.  
20 Petitioners.

21 STENOGRAPHER: Excuse me. I need to use the  
22 restroom.

23 GOVERNOR DESANTIS: We can do it now. What  
24 do you need? Five minutes? I'll tell you what,  
25 what time is it now? It's 11:00 sharp. Why

1 don't we just come back at 11:15.

2 (Recess from 11:00 a.m. until 11:12 a.m.)

3 GOVERNOR DESANTIS: Okay.

4 MR. GROSSO: Thank you. Richard Grosso  
5 again. I'm not that good of a lawyer. The facts  
6 are the facts. The facts that the law judge  
7 found did not include the numbers we heard Mr.  
8 Kerbel on traffic. That's the first we've ever  
9 heard of those numbers today.

10 They were not testified to at trial. They  
11 were not proven at trial. They're totally  
12 inconsistent with the law judge's factual  
13 findings, that the traffic methods would be  
14 meager, which also includes what Mr. Schwiep told  
15 you would be in some parts of the --

16 GOVERNOR DESANTIS: Why would, though -- I  
17 mean, I know they had said six minutes. It's  
18 going to cost a billion dollars. But, I mean,  
19 why is that not just a bad policy decision? How  
20 does that violate their comprehensive plan?

21 MR. GROSSO: Because the comprehensive plan  
22 has on overarching emphasis on keeping  
23 infrastructure outside of the urban boundary,  
24 keeping it away farmland and from the Everglades,  
25 not just, Governor DeSantis, to prevent new urban

1 sprawl development, but because those lands, that  
2 scarce farmland, those Everglades, of their own  
3 value, need to not have roads.

4 GOVERNOR DESANTIS: I get that, but the --  
5 when this was being debated, I remember a few  
6 years locally down there, it was, if you do the  
7 road, then it's going to lead to sprawl and it's  
8 going to impinge eventually on Everglades and all  
9 that.

10 But I think the judge found that was not  
11 supported. And I don't think you guys are  
12 contesting that right now. So the record before  
13 us is that that is not something that is a viable  
14 concern, right?

15 MR. GROSSO: She noted a policy, that they  
16 wrote a policy that says, In the future we won't  
17 consider the existence of this road when there  
18 are future development applications. That's what  
19 they said in their policy.

20 Now, we think that policy is as good as the  
21 next Tuesday county commission meeting, but she  
22 gave that policy credit. She said, on the face  
23 of that policy, they say they aren't going to --

24 GOVERNOR DESANTIS: But they would have to  
25 then go through all these same hurdles if they

1 ever wanted to do anything, correct?

2 MR. GROSSO: They would have to amend the  
3 comprehensive plan to do that.

4 GOVERNOR DESANTIS: Now -- and then on the  
5 agriculture, I know -- you know, that's obviously  
6 a policy that they're -- in their plan. The  
7 judge -- do you disagree? The County said that  
8 the judge -- and when I reviewed it, I don't  
9 remember off the top of my head, basically this  
10 is not impinging on agriculture?

11 MR. GROSSO: No, that's not what she said.  
12 It is going to displace between 3- and 400 acres  
13 of farmland. Those are the facts. What she said  
14 was -- and we actually --

15 GOVERNOR DESANTIS: That would take it from,  
16 what, about -- it's about 60-some thousand now  
17 and they said a minimum of 50,000 was the county  
18 policy?

19 MR. GROSSO: That's just about right, yes.  
20 Now, we actually argued in our exceptions. Her  
21 interpretation is they don't violate the County's  
22 policy of maintaining a critical mass of farmland  
23 unless and until they've actually lowered that  
24 critical mass.

25 We think that's a mistake of interpretation

1 of this law. It's one of our exceptions. If  
2 it's a policy to protect ag land, to keep the  
3 critical mass, you don't wait until you've killed  
4 the farming industry to say you've violated the  
5 plan.

6 Your policy has to be, unless there's a darn  
7 good reason to gobble up another 400 acres of  
8 farmland that's scarce and irreplaceable, you  
9 shouldn't. That's a point we've made that we do  
10 think, Governor DeSantis, that the law judge got  
11 wrong on that point.

12 GOVERNOR DESANTIS: Let me ask you about the  
13 CERP review. So this is -- this is a plan  
14 consistency determination, I guess. Aren't they  
15 going to have to -- because I think you guys are  
16 saying this is going to hurt CERP, it's going to  
17 hurt what the State is trying to do.

18 But that hasn't been determined yet. I  
19 mean, won't there be an opportunity, if it is  
20 going to do that, for South Florida Water  
21 Management District to be able to find as such?  
22 Won't DEP -- I mean, it just seems like all this  
23 stuff, if what you're saying is true, that will  
24 end up happening, where they will end up saying  
25 that it impinges on what they're trying to



1 accomplish, correct?

2 MR. GROSSO: Well, that's the County's  
3 argument. And here's the problem with that  
4 argument. That argument works if this law  
5 doesn't exist, if there is not a comprehensive  
6 planning law that requires plan amendments like  
7 this to only allow land uses and infrastructure  
8 that are suitable for the location.

9 If that law didn't exist, then that would  
10 work. The County's entire argument is, forget  
11 the growth management, forget the comprehensive  
12 planning law, forget the state review, forget the  
13 administrative law judge. Everything is put on  
14 the permitting process.

15 And that's just not the law. That would  
16 repeal this law. The whole idea of this law is  
17 to nip bad things in the bud. The whole idea of  
18 this law is to say, you only make future land use  
19 decisions, you only make big ticket,  
20 billion-dollar transportation decisions when  
21 you've demonstrated through the data and analysis  
22 this is a suitable location for it.

23 That's where this fails. They refused to do  
24 that. They say, We are only going to play at the  
25 permit level. And by the way, I think it would

1 be news to the water management district that it  
2 has made a final decision that it's only using a  
3 small amount of the Bird Drive Basin for the CERP  
4 project. That's not accurate. It has not done  
5 that.

6 And I remind the commission that the  
7 testimony is clear, whether or not used in the  
8 CERP project, these are Everglades wetlands. And  
9 I do have to correct my opposing counsel. These  
10 are Everglades wetlands. Everglades is not just  
11 Everglades National Park. These are Everglades  
12 wetlands, bought by the State, bought by the  
13 federal government for future restoration  
14 projects.

15 These are the kinds of things that have to  
16 be considered at the comprehensive plan amendment  
17 stage, and that's where we are here. So that  
18 "We'll defer it to permit," Governor DeSantis, is  
19 just really incorrect legally.

20 GOVERNOR DESANTIS: The notion that the road  
21 would not be considered infrastructure, is it  
22 unreasonable to view this road as infrastructure?

23 MR. GROSSO: I don't think there's any  
24 dispute that the road is infrastructure. It's  
25 infrastructure. It's a facility. The issue the

1 County has raised is that it's not development.  
2 The law judge said that that's a nonissue.  
3 That's a red herring. That doesn't affect the  
4 outcome whatsoever.

5 And by the way, actually, the only -- under  
6 state law, the only way a road project is not  
7 considered development is if the road building  
8 agency, in this situation MDX, owns the land.  
9 And they don't. The State owns the land. The  
10 federal government owns the land. Some of it's  
11 privately owned land. So the County can't even  
12 take advantage of that.

13 But that's really a side point. Whether  
14 it's development is a nonissue. It's clearly  
15 infrastructure. It's clearly a major public  
16 facility. That's -- those things have to comply  
17 with the Growth Management Act, with the  
18 comprehensive planning law, with the County's own  
19 plan, which makes a big deal about where we put  
20 infrastructure.

21 And I think that would be, if I may -- oh,  
22 the last piece of it. I also have to correct my  
23 esteemed opposing counsel. There's lots of  
24 testimony, in the PD&E studies, the County's own  
25 wetland expert, that these wetlands, Pennsuco and

1 Bird Drive Basin, are indeed important. They've  
2 identified several threatened and endangered  
3 species in the vicinity of this project, in this  
4 area. That's why we're trying to restore it.  
5 They're Everglades wetlands.

6 So that was a misstatement by my opposing  
7 counsel. There is evidence to support the fact  
8 that these are critical. They're important. Not  
9 federally designated critical, but they are very  
10 important to several threatened and endangered  
11 species, which, after all, is what a big part of  
12 Everglades restoration is about, on top of  
13 preventing floods in Miami-Dade County, on top of  
14 ensuring future water supply for Miami-Dade  
15 County.

16 That's why the County's own plan has support  
17 for CERP, for Everglades restoration. It's  
18 supposed to be nipped in the bud at planning  
19 stage, not put off to permitting. That's the  
20 fundamental problem here with the County's  
21 argument.

22 The law judge got it right. If anything,  
23 the law judge rejected some of our arguments that  
24 we think was error to reject, bending over maybe  
25 too far backwards in the County's favor.

1           But to approve what the County is asking you  
2           to approve is to do gratuitous, unnecessary  
3           damage, to allow MDX, a toll authority, to force  
4           commuters to spend a billion dollars to undermine  
5           \$20 billion worth of investment the State and the  
6           federal government, in partnership, have made.

7           The idea that they get to unilaterally make  
8           that decision under this law is just not  
9           reasonable, given the priority in state law of  
10          Everglades restoration.

11          GOVERNOR DESANTIS: The voters have a say on  
12          who they elect to the county commission, correct?

13          MR. GROSSO: They do, Governor DeSantis.  
14          And that's -- the law does respond to that. This  
15          law does give the elected officials the benefit  
16          of the doubt on some of the calls, because of  
17          what you just said.

18          The problem is that they violated their own  
19          policies. The law judge -- we are not making new  
20          policy. She enforced the policy that the Board  
21          of County Commissioners had put into play that  
22          they ignored with this highway. That's the  
23          point, I think, Governor DeSantis.

24          ATTORNEY GENERAL MOODY: Previously you  
25          stipulated to the incorrect fact that was in the

1 order. Are there any other facts that you agree  
2 should be modified by the commission in its final  
3 order?

4 MR. GROSSO: No. There was one point of a  
5 page typo, I think, in our response to the  
6 exceptions. It was page 160 versus 161. But in  
7 terms of material facts, that's the only one.

8 ATTORNEY GENERAL MOODY: Your position is  
9 it's not officially designated but that these  
10 lands still are critical for certain endangered  
11 species, et cetera, and therefore the ALJ order  
12 should be upheld and adopted as a final --

13 MR. GROSSO: Yes, Attorney General Moody.  
14 There's a clear law that we can't rewrite the  
15 comprehensive plan. Had the plan meant to give  
16 protection only to federally designated critical  
17 habitat, that's what it would have said. That's  
18 the Gulf County v. Johnson case. And it doesn't  
19 say that.

20 You'd have to be rewriting the County's own  
21 policy in order to grant the County's exceptions  
22 here.

23 ATTORNEY GENERAL MOODY: One of the  
24 interesting things I saw within the exceptions is  
25 the County said, If you find these to be critical

1 lands or endangered lands, we would ask the  
2 commission to draw a remedial route around them.

3 Do you -- what is your position as to that?  
4 Do you believe that's permissible for the  
5 commission to do? Do you believe there's data or  
6 evidence, analysis that would allow us to do  
7 that?

8 MR. GROSSO: You'd have to have that clear  
9 in the record already. And the record does not  
10 support a remedial amendment of the type the  
11 County would be arguing for. The proper  
12 procedure, given where the posture of this case  
13 is, is the County would have to go back and redo  
14 a comprehensive plan amendment, this time with  
15 providing the proper analysis.

16 They can't just show up now and say, come up  
17 with an alternative that hasn't been vetted in  
18 the hearing process, that hasn't been heard by an  
19 administrative law judge, subject to  
20 cross-examination and scrutiny. That would be  
21 pretty improper at this point of the proceedings.

22 And if I may, I've taken all the time of  
23 my -- of counsel for Limonar, the other  
24 petitioner. I would like to give him at least 30  
25 seconds, if I could, to --

1           COMMISSIONER FRIED: I just had one  
2 question. And it's going off a little bit of  
3 what was already previously asked dealing with  
4 agriculture land and going off of AG Moody's just  
5 thoughts right now, that if they were to come  
6 back and actually redraw the map, would it --  
7 your thought would be whether or not it would  
8 also interfere with agricultural land at that  
9 point. It's below the 50,000 threshold.

10           And I think part of the argument the  
11 Governor was also making is whether or not that  
12 in fact it may not fall under the 50,000 acres  
13 threshold, that if you do in fact have sprawl, at  
14 that point, it would, in essence, would cause  
15 people to sell their land and change the way that  
16 the agricultural land is designated in that area.

17           MR. GROSSO: That is always a concern, yes.  
18 Thank you all very much.

19           MR. LUKACS: Good morning, Governor  
20 DeSantis, General Moody, Mr. Patronis and  
21 Ms. Fried. I'm here on behalf of petitioners  
22 Limonar, Wonderly and the Mills Family. There's  
23 nothing more that I can add to the arguments thus  
24 far that have been articulated by my  
25 co-petitioners. Simply, the point I want to make



1 is is that the record is replete and it's quite  
2 an extensive record, from what everybody has  
3 seen.

4 So with that being said, and simply by way  
5 of introduction, my co-counsel, Mr. Pines, is  
6 here as well. We all participated in the lower  
7 proceedings and will continue throughout this  
8 fight on behalf of our respective clients. We  
9 appreciate the time and energy that the Cabinet  
10 and staff have relegated to this very important  
11 question. Thank you very much.

12 MR. PRATT: And, Governor, if the commission  
13 is ready, we can now move to rebuttals and final  
14 arguments. Each side would have two minutes.

15 GOVERNOR DESANTIS: Okay. Before his two  
16 minutes, just -- so if we accept yours, it's  
17 going to end up being litigated, and if we accept  
18 theirs -- I mean, it just seems like we're just  
19 like some intermediate step, where it's  
20 ultimately going to go to an appeals court. Am I  
21 wrong about that?

22 MR. KERBEL: Well, we certainly think that  
23 your decision in our favor would be incredibly  
24 valuable. It would also have a legal effect,  
25 which is our comprehensive plan would become

1 effective and it would allow for the proceedings  
2 to go forward absent the Court ordering a stay.  
3 So it would be a very meaningful decision for you  
4 to rule for us today.

5 But we have raised legal arguments, and so,  
6 since the county commission adopted this  
7 ordinance, if you were to rule in favor of the  
8 petitioners, I would anticipate pursuing those  
9 legal arguments to defend the county commission's  
10 decision.

11 GOVERNOR DESANTIS: Go ahead. Sorry. He  
12 gets his two minutes.

13 MR. KERBEL: Always happy to respond to your  
14 questions, Governor. First, let me just say a  
15 moment, General Moody, your question to opposing  
16 counsel about the compliance amendment, we  
17 inserted that because the statute requires that  
18 if it's not in compliance, that this commission  
19 tell us what we need to do to find it in  
20 compliance.

21 There is under the statute a compliance  
22 amendment process, and so we think that it would  
23 be appropriate not, if you go down this road --  
24 we don't think you need to for the reasons that  
25 we've stated, but if you were to be concerned

1 about that issue, that it would be something that  
2 you could order us to go back and do a limited  
3 amendment to address that issue, which would then  
4 go through the process, but I don't think we'd  
5 need to start over again. But, again, we don't  
6 need to get there.

7 Let me make a point about, they keep saying  
8 it's a billion dollars. It's not a billion  
9 dollars that the County has floating around  
10 that's going to be spent on this expressway. If  
11 the expressway is not built, that billion dollars  
12 doesn't -- just doesn't build this roadway and  
13 that billion dollars would -- it would be paid by  
14 the road agency or whoever built it and would be  
15 paid back through the tolls.

16 So it's not like you're taking a billion  
17 dollars from affordable housing and putting it  
18 here. This is all within the confines of the  
19 road.

20 As to the critical habitat, again, they're  
21 pursuing their slight of hand. There is no  
22 evidence in the record that this habitat in the  
23 Pennsuco Wetlands is critical. Not that it's not  
24 important, not that it's not used by species.  
25 The testimony is it's used by species. But there

1 is no evidence that it is critical to the  
2 survival of those species. So that's what the  
3 policy says. And they didn't file an exception  
4 on that point, so they've waived that argument to  
5 begin with.

6 As for preservation of agriculture, the  
7 County does not have a "no net loss of ag"  
8 policy, which is ultimately what they're pushing.  
9 We are consistent, and the ALJ found we are  
10 consistent, internally consistent with our  
11 policies about preservation of agriculture.

12 It's also worth pointing out, most of this  
13 expressway runs through the area that's  
14 designated as an urban expansion area. So even  
15 though it's currently ag, it's already envisioned  
16 in the plan that some day it could become an  
17 urban use. That's what the urban expansion area  
18 is. But you have to go through the amendment  
19 process when the time is right and we have a need  
20 for that additional area.

21 So for all of the reasons that we have  
22 previously discussed, and we're available to  
23 answer any additional questions, we would urge  
24 you to find the plan amendment in compliance and  
25 respect the county commission's decision as the

1 local government of the area. Thank you very  
2 much for your attention.

3 MS. FERREIRA: Dear Governor and Cabinet  
4 Members --

5 GOVERNOR DESANTIS: Before you do your two,  
6 I'm going to ask you the same question I asked  
7 him. Do you anticipate this will be further --  
8 there will be further litigation on this one or  
9 another most likely?

10 MS. FERREIRA: Hopefully not.

11 GOVERNOR DESANTIS: What's that?

12 MS. FERREIRA: Hopefully not.

13 GOVERNOR DESANTIS: Oh, hopefully not.  
14 Okay. But you think there's -- you don't think  
15 that there would be?

16 MS. FERREIRA: If you approve in our favor,  
17 there will not be, hopefully not.

18 GOVERNOR DESANTIS: Hopefully, okay.

19 MS. FERREIRA: So before my counsel  
20 proceeds, Dear Governor and Cabinet Members, my  
21 name is Paola Ferreira. I am the executive  
22 director of Tropical Audubon Society, as you  
23 know, one of the petitioners in this case.

24 I would like to thank the Governor for his  
25 leadership and commitment to Everglades

1 restoration, as well as the Florida agencies that  
2 have provided comments. In particular, DEP and  
3 the South Florida Water Management District have  
4 conveyed their concerns about the project, which  
5 the County, as you have heard before, has  
6 ignored.

7 I would also like to thank the Cabinet  
8 members for the leadership on advancing the  
9 State's environmental agenda.

10 The issue in front of the Cabinet today is  
11 of crucial importance to the residents of  
12 Miami-Dade County, Tropical Audubon Society and  
13 its members. The construction of the State Road  
14 836 extension would seriously compromise  
15 investment in Everglades restoration. It would.

16 In particular, it would preclude the  
17 benefits of the Bird Drive Basin and Pennsuco  
18 Wetlands in the southern Everglades. These  
19 wetlands should be used and have been acquired to  
20 restore the Everglades, as done by CERP, and are  
21 critical for the security, the water security of  
22 Miami-Dade County residents.

23 Therefore, Tropical Audubon Society urges  
24 you to uphold the ALJ's recommended order and  
25 prioritize the Everglades, and hopefully we won't

1 have to appeal if that happens. Thank you for  
2 your time.

3 MR. GROSSO: Two quick points in closing,  
4 and thank you very much. Well fields. We've  
5 glossed over the well fields problem. The law  
6 judge found that the policies in the Dade County  
7 comprehensive plan are to keep the final well  
8 field that it has, that hasn't already been  
9 developed around, to keep it pristine and keep it  
10 safe.

11 She found that running a highway through,  
12 based on their admitted testimony, is not going  
13 to protect this last well field. There's nowhere  
14 else to go. This is the final well field that  
15 the County has that hasn't already been  
16 surrounded by development.

17 In terms of the billion dollars, a lot of  
18 money has been spent planning this highway. A  
19 lot of money has been spent on PR campaigns and  
20 promoting it already. We think the Cabinet  
21 should end this, what appears to be a boondoggle.

22 Put it to an end, no more money invested  
23 into pursuing a project that really doesn't meet  
24 the needs of mobility in Dade County and  
25 certainly makes Everglades restoration a lot more

1 expensive and a lot more complicated.

2 Thank you very much for giving us all the  
3 time and attention that you have this morning to  
4 this pretty critical issue of statewide  
5 importance. Thank you all very much.

6 GOVERNOR DESANTIS: Great. Who do we have  
7 now?

8 MR. PRATT: Governor, we have public  
9 comment. And I'll invite Dylan up. He has a  
10 list of people who are ready to appear. I'd like  
11 to remind the commenters that they should limit  
12 their comments to two minutes.

13 MR. FISHER: So first up is Alex Feiro,  
14 representing Congressman Gimenez, his chief of  
15 staff.

16 MR. FERRO: Good morning, Governor and  
17 members of the Cabinet. Just to clarify, I'm not  
18 representing him in his official capacity as a  
19 Congressman, just for the record. My name is  
20 Alex Ferro, and I am here on behalf of Carlos A.  
21 Gimenez.

22 I have worked with Mr. Gimenez for close to  
23 a decade. I am proud to represent a public  
24 servant that has served our community for over 40  
25 years. Unfortunately, Mr. Gimenez couldn't be



1 here today, but he asked me to deliver his  
2 position on the Kendall Parkway.

3 This is one of the most important projects  
4 for our community, Miami-Dade County, but  
5 specifically to an area called Kendall. Every  
6 day in Kendall, an area of over 600,000  
7 residents, our citizens are paralyzed in traffic  
8 that consumes hours of their days, hours that  
9 residents could be spending with their families  
10 and loved ones.

11 The Kendall Parkway is the first realistic  
12 project to give our community an additional  
13 option to the daily gridlock that has become an  
14 everyday reality for many of us. This project is  
15 not without controversy. But, sadly, the reasons  
16 against it are not based in reality.

17 The rally cry that the opponents use is that  
18 this project will endanger our plans for  
19 Everglades restoration. It centers around an  
20 outdated plan to use an area referred to as the  
21 Bird Basin as a recharge area. This strategy was  
22 abandoned almost 15 years ago. Why? Because the  
23 strategy would have endangered neighboring lands  
24 to flooding and was deemed cost-prohibitive.

25 The South Florida Water Management District

1 changed course and decided to pursue a better  
2 alternative. The current plan is to construct a  
3 canal parallel to Krome Avenue, a highway west of  
4 the proposed 836 extension. That's right, west  
5 of the 836 extension. It's closer to the  
6 Everglades than the project that we are talking  
7 about today and contemplating.

8 The Kendall Parkway will offer commuters  
9 mobility choices while complying with all  
10 environmental requirements and regulations. The  
11 project will include a number of important  
12 safeguards to protect the area from future  
13 overdevelopment.

14 The Kendall Parkway also restores  
15 approximately 100 acres, 1,000 acres of land for  
16 conservation and places it in the public trust.  
17 This is a once-in-a-lifetime opportunity to build  
18 a major transportation infrastructure corridor of  
19 countywide significance that can transform the  
20 lives of our citizens in West Kendall. We humbly  
21 ask for your support. Thank you.

22 GOVERNOR DESANTIS: Thank you.

23 MR. FISHER: Up next we have Anna Upton with  
24 the Everglades Foundation.

25 MS. UPTON: Good morning. I'm Anna Upton on

1     behalf of the Everglades Foundation.    The  
2     Everglades Foundation has been a leader in  
3     Everglades restoration for over two decades.  We  
4     support the advancement of Everglades restoration  
5     by securing funds for completion of the  
6     Comprehensive Everglades Restoration Project.  
7     It's CERP for short.

8             Billions of taxpayer dollars, both state and  
9     federal, have been spent to restore America's  
10    Everglades, and we can't stop now.  Restoration  
11    of America's Everglades is the largest ecosystem  
12    restoration project in the world.  It involves 68  
13    different components that together will update  
14    South Florida's antiquated flood control system  
15    and build large-scale water infrastructure  
16    projects to reroute the harmful flow of water  
17    from Lake Okeechobee in a more beneficial way,  
18    ultimately protecting the water supply for  
19    Florida's growing population.

20            The Everglades Foundation is not a party to  
21    this case, but it cares about the outcome because  
22    it involves a road going through lands that were  
23    purchased and have been set aside for an  
24    Everglades restoration project.  The question is  
25    whether Miami-Dade County, at the request of the

1 rogue and now legislatively dissolved Miami-Dade  
2 Expressway Authority, also known as MDX, followed  
3 the law and its own rules in amending its  
4 comprehensive plan to allow this road project to  
5 go forward.

6 The administrative law judge found that the  
7 County did not. And from an Everglades  
8 perspective, these lands really can't be  
9 replaced. You can build a road in a different  
10 location. You can't get these lands back.

11 They're strategically located near  
12 Everglades National Park and intended for an  
13 Everglades restoration project that will benefit  
14 the Everglades and Miami-Dade County's water  
15 supply. The ALJ's findings of fact support this.

16 Water is one of the most pressing issues of  
17 our time. The Everglades Foundation respectfully  
18 asks you to enter a final order affirming the  
19 recommendation of the administrative law judge  
20 that the County's comprehensive plan amendment  
21 was not in compliance with Florida law.

22 In so doing, you aren't saying that the  
23 County can't build a road to address traffic  
24 concerns of its residents. You're saying, if  
25 they want to do it, they have to follow the law.

1 Thank you.

2 GOVERNOR DESANTIS: Thank you.

3 MR. FISHER: Laura Reynolds, project  
4 delivery team member for BBSEER.

5 MS. REYNOLDS: Hi. Thank you. And I think  
6 I've handed out portions of Exhibit 97 that were  
7 used in this case, just so you have a visual to  
8 follow with my comments. Thank you for the time  
9 on public comment. Governor, Cabinet, appreciate  
10 it.

11 So I wanted to let you know that, you know,  
12 this has been a very long journey for me  
13 personally. I've lived in the town of Cutler Bay  
14 for 20 years, and we passed a resolution there  
15 opposing this project, and I'm the Hold the Line  
16 Coalition organizing representative who worked to  
17 try to bring this issue forward.

18 And, of course, the issue we brought up was  
19 we've been working for 35 years to protect these  
20 lands for Everglades restoration, and there's  
21 good reason. If you look at page 15 -- it's the  
22 second page in your packet -- Figure 7, you can  
23 see the entire East Coast buffer is something  
24 we've been working for at least 20 years, if not  
25 30, to collect those lands all the way up and

1 down.

2 And the reason for that is we have to be  
3 able to send more water south without flooding  
4 the infrastructure and the built environment to  
5 the east. And in order to do that, you have to  
6 be able to step down from the more water that you  
7 send south, you have to have that buffer in  
8 between.

9 And that concept was there from 1999, and  
10 the year 2000 was when this was approved by  
11 Congress. And that concept is still important.  
12 So you can sort of see that image there. That's  
13 what we're trying to achieve, and it's still  
14 important today, probably more so than before  
15 because of sustainability.

16 We have to recharge our groundwater and  
17 protect our water supply from saltwater  
18 intrusion. And in order to do that, you have to  
19 have a place for that water to recharge  
20 groundwater.

21 The second image I wanted to show you is the  
22 next page, a blow-up of Bird Drive Basin. It  
23 shows you that concept that was originally  
24 approved in 2000. That image may not be exactly  
25 the way it's planned today, but as a member of

1 the project delivery team for BBSEER, we are  
2 looking at how we can get more water to Biscayne  
3 Bay because we don't have enough fresh, clean  
4 water to improve Biscayne Bay. And as you know,  
5 it's at its tipping point. We have to. And we  
6 know that the water supply comes from the buffer  
7 areas to the west.

8 So this project is not only critical to  
9 Taylor Slough and the Everglades, this project is  
10 critical to Biscayne Bay. And representing the  
11 town of Cutler Bay, I can tell you that they have  
12 pulled out all the stops, because they're  
13 adjacent to that entire project.

14 This is the only project that will help  
15 Biscayne Bay. And so we're trying to improve  
16 everything that's adjacent to it. And we  
17 recognize that there is no reservoir right next  
18 to Biscayne Bay. We have to rely on lands all  
19 the way west to bring that water into the area.  
20 So this is being redesigned as we speak.

21 So I ask you today to uphold the judge's  
22 ruling to protect not only the Everglades but  
23 Biscayne Bay. Thank you.

24 GOVERNOR DESANTIS: Thanks.

25 MR. FISHER: Deborah Foote with the Sierra

1 Club.

2 MS. FOOTE: Good morning, everybody.  
3 Deborah Foote. I'm the acting chapter director  
4 of the Sierra Club, and I want to add our 240,000  
5 members and supporters in encouraging you to  
6 accept the recommendation of the judge.

7 I want to echo a little bit of what Laura  
8 Reynolds talked about, and that is that these  
9 critical areas are, while not formally a  
10 designated line that has been created by  
11 governments, these wetlands are still critically  
12 important to all of the aspects that have been  
13 talked about.

14 We also wanted to mention that we were  
15 pleased when this board spent time in thinking  
16 about the Harmony Ranch development, which would  
17 have negatively impacted agricultural land within  
18 the urban services district.

19 This particular project would impact even  
20 more. And we are glad that you rejected the  
21 Harmony Ranch project and would encourage you, on  
22 some of the similar arguments, to reject this as  
23 well. So as a long-term member of the Everglades  
24 Coalition, who you will also hear from, we please  
25 ask that you continue to uphold this decision.



1 Thank you.

2 MR. FISHER: Paul Owens, 1000 Friends of  
3 Florida.

4 MR. OWENS: I appreciate the opportunity.  
5 I'm Paul Owens, president of 1000 Friends of  
6 Florida. We promote environmentally and fiscally  
7 sustainable development throughout our state.

8 The proposal before you today addressed in  
9 the ruling from ALG Van Wyk is neither  
10 environmentally nor fiscally sustainable. The  
11 route to extend the Dolphin Expressway 14 miles  
12 outside Miami-Dade's UDB would destroy wetlands  
13 and wildlife habitat, threaten the region's water  
14 supply and reduce critical flow, not only to the  
15 Everglades but, as we've heard, to Biscayne Bay.

16 It would cost at least a billion dollars  
17 but, more importantly, threaten to undermine  
18 billions more spent or committed on Everglades  
19 restoration projects. Yet the high cost in  
20 dollars and damage from this project would  
21 shorten the average commuter's time by just a few  
22 minutes, according to the County's own experts.  
23 That's very little bang for a lot of bucks.

24 1000 Friends of Florida also believes in  
25 community planning. And that's ultimately why

1 ALG Van Wyk's order must be affirmed. She ruled  
2 that the amendment violates state law and the  
3 County's comp plan. For those reasons, the  
4 project shouldn't go forward.

5 So we are calling on each of you to be true  
6 to your records as leaders in restoring the  
7 Everglades. Uphold Judge Van Wyk's order. Stand  
8 up for the environment, taxpayers, planning and  
9 the law. Thank you.

10 MR. FISHER: And then concluding our public  
11 comment, unless we have others -- feel free to  
12 come up after this as well if there are, but our  
13 final public comment, we believe, is Julie  
14 Wraithmell with Audubon Florida and National  
15 Audubon Society.

16 MS. WRAITHMELL: Thank you very much. Julie  
17 Wraithmell. I'm the executive director of  
18 Audubon Florida. I wanted to underscore that  
19 this is not merely a local issue but has profound  
20 implications for a substantial state interest in  
21 both the Pennsuco Wetlands as well as the Bird  
22 Drive Basin and, frankly, the federally  
23 threatened wood storks that depend on both, as  
24 well as the resources of Biscayne Bay and Taylor  
25 Slough to which these wetlands flow.

1           This decision would jeopardize these  
2 resources, the large investment of public tax  
3 dollars already made in Everglades restoration,  
4 as well as the State's collective ambitions to  
5 restore the flow to Everglades National Park and  
6 Florida Bay.

7           Over the last decade of this project, the  
8 State's own agencies, DEP, the water management  
9 districts and others, have voiced these concerns.  
10 And there always must be careful consideration in  
11 proposals like this, because major land use  
12 changes like this simply are a bell that can't be  
13 unrung.

14           This reinforces that the ALJ got it right.  
15 The proposed extension of 836 will only deliver  
16 meager traffic benefits at best in exchange for  
17 profound impacts to the progress that we've  
18 already made to Everglades restoration and our  
19 ability to ever deliver on the promise of CERP.

20           And so on behalf of Audubon's members, I  
21 urge you to affirm the ALJ's recommended order.  
22 Miami-Dade County simply didn't follow their own  
23 laws, and limited gains in exchange for lasting  
24 harm is not in the public interest. Thank you  
25 for your consideration.

1 GOVERNOR DESANTIS: Thank you.

2 MR. PRATT: Unless there's any public  
3 comment, I believe that concludes that portion of  
4 the meeting. At this time, prior to turning the  
5 meeting over to the commission for discussion and  
6 voting on final action, I would like to remind  
7 the commission of the three options for voting.

8 Under option number one, the commission  
9 could adopt an alternative final order, with  
10 substituted findings of fact and conclusions of  
11 law, which would find the plan amendment to be in  
12 compliance under Chapter 163. This option, like  
13 option number two, would direct commission staff  
14 to draft, circulate and present a final order at  
15 a later date for the commission's consideration  
16 and potential approval.

17 Under option number two, the commission  
18 could adopt the recommended order issued by the  
19 ALJ, which would affirm the ALJ's recommendation  
20 that the plan amendment be found to be not in  
21 compliance under Chapter 163, and also specify  
22 remedial actions to be taken by the County. And  
23 finally, under option number three, the  
24 commission could take the case under advisement  
25 to be decided at a later date.

1 I will now turn the meeting over to the  
2 Governor and the remainder of the commission.

3 GOVERNOR DESANTIS: Okay. Does anyone have  
4 anything?

5 ATTORNEY GENERAL MOODY: I would just be  
6 mindful that we're sitting as the agency head in  
7 determining whether we adopt the recommended  
8 final order, but there will need to be, based on  
9 stipulations of the parties, some corrections to  
10 the facts in our ultimate order.

11 COMMISSIONER FRIED: That's fine. Obviously  
12 there's been a misstatement of facts. It's  
13 something that we can review and make those  
14 changes to.

15 GOVERNOR DESANTIS: Well, I mean, the two  
16 big issues that I kept seeing come up were, one,  
17 whether this is a good idea in terms of  
18 taxpayers, and then, two, what impact it will  
19 have on state interests in terms of Everglades  
20 restoration.

21 In terms of the former, I mean, to me,  
22 that's a political decision, that's a local  
23 decision. In terms of impacting a state  
24 interest, obviously that would be something that  
25 would be more something that we would be

1 concerned about.

2 But I also think that this has not been  
3 approved to be consistent at all with anything  
4 that we're doing with Everglades restoration. I  
5 mean, it's not like this is going to happen. I  
6 mean, they've got to go through all those  
7 environmental reviews.

8 And so I think it's premature to say it's  
9 going to do some of the things, because I think  
10 if some of the things that are happening, that  
11 are posited do happen, I don't think it's going  
12 to get permitted by South Florida Water  
13 Management District.

14 And so I just wasn't convinced that this all  
15 needed to happen on the front end. I didn't see  
16 law either way on that. And so basically I think  
17 that, you know, you have, I guess, fairly  
18 debatable applications of the comprehensive plan.

19 And so for that reason, I would do the -- I  
20 think we should recommend the County work with  
21 that proposed order and issue that.

22 COMMISSIONER FRIED: I just want to follow  
23 up on that, Governor. You know, it is always --  
24 being from Miami, driving Kendall, I get it.  
25 Trust me. I understand it and have seen the

1 congestion. And that's part of the things that  
2 we always need to balance as we're looking to  
3 expand growth in our state, is have that happy  
4 balance between growth but also protecting our  
5 environment.

6 And so that's why there are county plans  
7 that need to be put in place to make sure that  
8 we're doing what's right for both growth and for  
9 protection of our environmental impacts.

10 So, based on that, you know, I would be  
11 supportive with the changes going back down to  
12 the County to work with on any changes in the  
13 order, but I would be supportive of the ALJ's  
14 order.

15 GOVERNOR DESANTIS: Okay.

16 COMMISSIONER PATRONIS: (Indiscernible).

17 ATTORNEY GENERAL MOODY: So the question  
18 presented to the commission is whether or not we  
19 would adopt as a final order the recommended  
20 order to us as an agency head with factual  
21 findings, finding that her conclusions of law  
22 that the amendment is consistent with the plan,  
23 that that was fairly debatable but that -- that  
24 her recommended order, we would adopt that or we  
25 don't. But I'm trying to -- I guess the Governor

1 is going to be the --

2 GOVERNOR DESANTIS: If it's fairly  
3 debatable, then the law would be then we would  
4 have to -- if the County's position is fairly  
5 debatable, then we'd have to side with the  
6 County.

7 ATTORNEY GENERAL MOODY: Right. If the  
8 factual findings were not supported by competent  
9 substantial evidence, we would find that we would  
10 not adopt the recommended order, and that would  
11 be the decision today.

12 GOVERNOR DESANTIS: Right.

13 ATTORNEY GENERAL MOODY: Okay.

14 GOVERNOR DESANTIS: And so you're no. I'm  
15 yes. You're --

16 COMMISSIONER PATRONIS: Yes.

17 GOVERNOR DESANTIS: You're yes.

18 ATTORNEY GENERAL MOODY: I'll concur with  
19 the Governor.

20 GOVERNOR DESANTIS: Okay. So that's done.  
21 All right. That's it for today. Long meeting.  
22 Thank you.

23 (The meeting concluded at 11:52 a.m.)

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MEETING CERTIFICATE

STATE OF FLORIDA  
COUNTY OF LEON

I, JO LANGSTON, RPR, certify that I was authorized to and did stenographically report the foregoing meeting, and that the transcript is a true and complete record of my stenographic notes.

Dated this 25th day of June 2021.



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JO LANGSTON, RPR

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