

Cause No. CI62105

Port Freeport,	§	In the County Court at Law
<i>Plaintiff,</i>	§	
	§	
v.	§	No. 3 of
	§	
The Unknown Heirs of Lucille	§	
Marshall, Deceased, et al.,	§	
<i>Defendants.</i>	§	Brazoria County, Texas

**Introduction**

The properties at issue in this case have been in the Marshall family since 1940. Many generations of Marshalls have lived on this property, in some cases for their entire lives, and others have derived income from it. The land was a legacy, tying together and supporting the family. In 2020, however, Port Freeport decided to seize this property. Not because it needs the property or because it has any particular plans for it, but simply because it speculates that some unknown “private industrial and business users” might, at some point years in the future, want to use the property, and that these private parties might contribute to the economy of the region.

This is blatantly illegal, for two reasons. First, Texas explicitly outlawed these kinds of economic development takings by constitutional amendment in 2009. Second, even if the Port had not admitted that it intends to transfer these properties to third parties, its lack of a clear plan for the property is fatal. Courts have universally rejected this kind of “land banking” for vague and undefined future uses. The Port of Freeport’s motion for summary judgment, far from establishing that the

Port has a right to take these properties, conclusively establishes that these takings are illegal.

### **Facts**

The Port of Freeport has taken the Defendants' property, but it cannot tell us why. It has repeatedly admitted that it "does not have any specific plans" for the properties. Freeport MSJ Ex. A ¶ 7. The Port's CEO initially testified, as a Rule 199.1 representative, that the property at issue "could be," Ex. 1 at 11:24–25, used for "roadways," 11:23, "cargo storage areas," 12:5, "truck transfer facilities," 12:6, spaces for federal agencies to conduct inspections, 12:15–13:4, "additional office infrastructure," 13:5–6, or "[t]here could be storage areas, warehouses, or there could just be open storage areas; areas to stage trucks before they enter." 13:6–8. Since this deposition, the Port has apparently decided that the Defendants' properties will be "will be marketed to potential users for lease as industry and business sites." Ex. A ¶ 6. But who these "private industrial and business users" are, and what they will do with the property, the Port has no idea. Ex. A ¶ 7. The Port also admits that any development of this property is not imminent and could take five or even ten years. Ex. 1 at 20:6–7; 20:25; 21:20.

### **Argument**

In asserting that it has the right to take these properties, the Port of Freeport makes several errors. First, in asserting that it intends to hand these properties over to third parties for purposes of economic development, the Port has admitted all the facts necessary to find a violation of Article I, Section 17 of the Texas

Constitution, which explicitly forbids such economic development takings. Second, because the Port confuses the question of “public use” with the question of “public necessity,” it articulates the wrong standard of review, and it offers authorities that are simply irrelevant. Third, even if the Port did not intend to transfer possession of the property to third parties, the lack of a clear and provably feasible plan for this property also renders the taking unlawful, as courts around the country have held. Finally, the lack of a comprehensive plan makes this taking unconstitutional even under *Kelo v. City of New London*, which approved of an economic development taking under Fifth Amendment only because the taking was pursuant to a comprehensive and carefully considered plan.

**I. The Texas Constitution has been specifically amended to prohibit these kinds of economic development takings.**

In *Kelo v. City of New London*, the U.S. Supreme Court infamously held that the Fifth Amendment’s public use clause allows the government to seize private property and transfer it to other private parties, merely for purposes of economic development. 545 U.S. 469, 484 (2005). This decision was wildly unpopular, particularly in Texas, which promptly enacted legislation and amended its constitution to repudiate *Kelo*. The Texas Supreme Court explained that this 2009 constitutional amendment was “meant to codify the positions Justices O’Connor and Thomas took when they dissented in *Kelo*.” *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 193 (Tex. 2019). The amended language of Article I, Section 17, now provides that “‘public use’ does not include the taking of property ...

for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.” Yet the Port’s own testimony states that this is precisely why it is trying to take the properties at issue in this case.

In an affidavit attached to the Port’s motion for summary judgment, the Port’s CEO states that the defendants’ properties “will be marketed to potential users for lease as industry and business sites” and that doing so will “encourag[e] more investment in our region and state, creating more economic activity and jobs that will support families in our community.” Ex. A at ¶¶ 5–6. Yet, “[b]ecause the sites to be leased will be developed by private industrial and business users, Port Freeport does not have any specific plans for what will be developed . . . . [E]ach site will be developed according to the needs and specifications of the tenant.” Ex. A at ¶ 7. With such candid testimony, acknowledging that the Port is trying to do exactly what Texas outlawed—hand private property over to other private entities for purposes of economic development—this case is easy, and the condemnation must be set aside.<sup>1</sup>

## **II. The Port conflates “necessity” and “public use.”**

Even without the 2009 constitutional amendment, the condemnation at issue in this case would still be unlawful. Under both the United States and Texas

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<sup>1</sup> The property owners did not raise this Article I, Section 17 argument in their cross motion for summary judgment because, although the Port had testified that it has no particular plans for this land, it did not at that time assert an intention to hand over possession of this land to third parties for economic development purposes. In the affidavit that it attached to its motion for summary judgment, the Port has now done so, affording this additional basis for setting aside the condemnation.

constitutions, the power of “eminent domain can only be exercised for ‘public use.’” *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 363 S.W.3d 192, 194 (Tex. 2012). The Port’s motion for summary judgment offers just over one page of argument supposedly demonstrating that its condemnation meets this requirement. Br. 8–9. Yet nothing in this section of the Port’s brief (besides the section heading) has anything to do with public use. The Port instead offers arguments and cites authorities that are all about “public necessity.” This is a distinct issue. “Public use” is the question whether the purpose to which the condemnor intends to devote the land is sufficiently public. “Necessity” is the question whether the specific land is actually necessary for the project. *See KMS Retail*, 593 S.W.3d at 181 (“In short, these provisions require the municipality to demonstrate: (1) it intends to put the property to public use (the public-use requirement); and (2) the condemnation is necessary to advance or achieve that public use (the necessity requirement)”). A lawful condemnation must satisfy both requirements. As demonstrated below, the condemnation in this case satisfies neither.

The Port’s confusion about public use leads it to articulate the wrong standard of review. Although Texas courts have treated legislative determinations of necessity as “presumptively correct, absent proof by the landowner of the agency’s fraud or proof that the condemning authority acted arbitrarily or capriciously,” *FKM P’ship, Ltd. v. Bd. of Regents of Univ. of Hous. Sys.*, 255 S.W.3d 619, 629 (Tex. 2008), the same is not true of public use determinations. The Texas Supreme Court

has “long held that the ultimate question of whether a particular use is a public use is a judicial question to be decided by the courts.” *See Tex. Rice Land Partners*, 363 S.W.3d at 198 (internal quotations omitted). And while Texas courts have historically given *some* deference to public use determinations (though not much, *see id.*), the entire Texas Supreme Court has recently indicated that such deference may no longer appropriate in light of the 2009 amendment to the Texas Constitution. *See KMS Retail*, 593 S.W.3d at 193.<sup>2</sup> The defendants agree: In light of the 2009 amendment, this Court should at least review the Port’s public use determination without any deference.

Ultimately, however, the question is largely academic, at least on this record. As explained below, the uncontroverted record in this case overwhelmingly demonstrates that the taking here is unlawful. Even under the deferential standard of review that courts have historically applied to public necessity determinations, there is clearly no “necessity” to condemn land to be put to unknown uses, at an unknown time, with unknown financing. The Port’s finding of necessity is therefore arbitrary and capricious. Alternatively, this Court can reach the same result by looking at this condemnation through the lens of public use—a use that does not currently exist and may never emerge is not a “public use” in the first place. Courts

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<sup>2</sup> In *KMS Retail*, the dissenting justices argued that the amendments required that courts “eliminate deference to the government in takings cases, undo ... unjustified burden-shifting ... , and get rid of artificial restrictions on the defenses available to property owners.” *Id.* at 195 (Blacklock, J., dissenting). The majority said that it was “not unsympathetic to this argument” and that it “would welcome the opportunity to further explore [that position] in a future case in which the issue is directly presented.” *Id.* at 193–94.

around the country have taken both doctrinal approaches, but they are united in holding that these kinds of condemnations are illegal.

**III. Even if the Port were not trying to engage in an illegal economic development taking, its lack of any clear, feasible plan for the property is also unlawful.**

As the property owners explained in their cross-motion for summary judgment, the Port cannot take private property without a specific and feasible plan for how the property will be used. The Port here has candidly and repeatedly admitted that it has no idea what it is going to do with the property at issue in this case. Ex. A ¶ 7. It has even gone so far as to assert that it cannot come up with a plan until it owns the land. Ex. 1 at 14:7–11. It has no funding in place, Ex. 1 at 13:18–22, and it cannot even confidently assert that anything will be done with the land in the next ten years. Ex. 1 at 21:20–25. Courts around the country have repeatedly held that this type of “land banking,” where condemnors acquire property to hold for vague and undefined future uses, is unconstitutional. This Court should hold likewise, as Texas is certainly no less protective of private property than, for instance, New York, New Jersey, and California.

The Texas Property Code requires a petition for condemnation to “state ***with specificity*** the public use for which the entity intends to acquire the property[.]” Tex. Prop. Code § 21.012(b)(2) (emphasis added). And Texas courts hold condemnors to their stated use. *See, e.g., City of Corsicana v. Herod*, 768 S.W.2d 805, 811 (Tex. App.—Waco 1989, no writ) (holding that a petition seeking to condemn land for a

“gravel roadway” would not have encompassed a *public* gravel roadway). This requirement of a particular stated use makes sense because, as explained above, the existence of a public use is a “judicial question” in Texas. *KMS Retail*, 593 S.W.3d at 187. In order for a court to discharge its duty of examining whether a use is “public,” the condemnor must first identify the use. If a condemnor cannot name a specific use, it cannot condemn. This is the rule not only in Texas but nationwide, even if the condemning agency is charged with constructing classic public uses like roads.<sup>3</sup> In short, the Port fails at the most basic step of any condemnation—informing the Court why the taking is necessary and what it will do with the land it wants to take. The Port therefore cannot establish the right to lawfully condemn the land, and Plaintiff’s motion for summary judgment should be denied.

Even if the Port had articulated a more specific public use for the land at issue here, though, its condemnation would still be unlawful because the Port has

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<sup>3</sup> See *Utah Dep’t of Transp. v. Carlson*, 332 P.3d 900, 907 (Utah 2014) (remanding because the agency “appears not to have clearly articulated its anticipated plans or purposes for the excess property at issue.”). *Krauter v. Lower Big Blue Nat. Res. Dist.*, 259 N.W.2d 472, 475–76 (Neb. 1977) (“a condemning agency must have a present plan and a present public purpose for the use of the property before it is authorized to commence a condemnation action” and that “the possibility that the condemning agency at some future time may adopt a plan to use the property for a public purpose is not enough to justify a present condemnation.”). *HBC Victor LLC v. Town of Victor*, 212 A.D.3d 121, 125 (N.Y. App. Div. 2022) (“Because the Town has not indicated what it intends to do with the property, we are unable to determine whether ‘the acquisition will serve a public use[.]’”). *State ex rel. Sun Oil Co. v. City of Euclid*, 130 N.E.2d 336 (Ohio 1955) (holding that land may not be appropriated for a contemplated but undetermined future use); *City of Stockton v. Marina Towers, LLC*, 88 Cal. Rptr. 3d 909, 913 (Cal. Ct. App. 2009) (rejecting “amorphous” resolutions of necessity as insufficient to support condemnation); *Regents of Univ. of Minn. v. Chi. & N.W. Transp. Co.*, 552 N.W.2d 578, 580 (Minn. Ct. App. 1996) (rejecting condemnation where condemnor identified multiple, conflicting “potential uses” of the property); *Borough of Glassboro v. Grossman*, 200 A.3d 419, 422 (N.J. App. Div. 2019) (requiring condemnor to “articulate a definitive need to acquire the parcel for an identified redevelopment project . . . more specific than the mere ‘stockpiling’ of real estate[.]”)



no prospect of completing a project anytime soon. It has no funding to build anything on the land. And it has no prospect of building anything on the land. Indeed, it cannot even promise that the land won't simply sit vacant for the next decade. This is not enough. *Cf.* Tex. Prop. Code § 21.101 (providing that if condemned property is not put to the stated public use within 10 years of condemnation, the previous owner has a right to repurchase it). While a condemnor is not required to prove the proposed public use will *absolutely* occur, it must still demonstrate a “reasonable probability” that the asserted public use will come to pass. *See Tex. Rice Land Partners*, 363 S.W.3d at 202 (requiring a “reasonable probability” that a pipeline would be a common carrier to authorize condemnation). The Port can provide no such assurances about the likelihood of its future use of this land, and it therefore has no lawful right to condemn it.

Here, too, courts across the country are in agreement and reject condemnations in these circumstances. Take, for example, *Casino Reinvestment Development Authority v. Birnbaum*, where a state agency sought to condemn property for a redevelopment project surrounding a new casino—only to be met with a series of economic reversals (including the closure of the casino) that imperiled the financial viability of its overall project. 203 A.3d 939, 944–46 (N.J. App. Div. 2019). The condemnor argued that these developments were irrelevant because its statutory mandate allowed it to acquire property “whether for immediate use” or not. *Id.* at 949. But the New Jersey courts rejected the taking anyway, reasoning that the statute must necessarily have an implicit “limitation of reasonably

foreseeable future use rather than limitless future use.” *Id.* at 950. The same must hold true here. As the trial court in *Birnbaum* aptly reasoned, “[o]ur legislature did not intend, and the Constitution does not permit, property to be acquired and remain idle indefinitely, without a reasonable assurance that the proposed plan to justify the taking will be implemented.” *Id.* at 945 (quoting trial-court opinion).

*Birnbaum* is no outlier. To the contrary, courts regularly reject takings where there is no reasonable expectation that it will be used in the near future.<sup>4</sup> If the constitutions of New Jersey and numerous other states have that much respect for property rights, surely Texas’s does as well.

These out-of-state cases also further illustrate the Port’s error in focusing on the question of “necessity.” As noted above, the Port places great weight on the fact that Texas courts generally defer to a condemnor’s determination that property is “necessary” to achieve a public use—that is, that a Texas court will generally not tell a condemnor it may not build a four-lane road when a two-lane road would, in

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<sup>4</sup> See, e.g., *People ex. rel. Dir. of Fin. v. YWCA*, 427 N.E.2d 70 (Ill. 1981) (finding condemnation unnecessary where contracts for construction or use of building not in place); *Regents of Univ. of Minnesota v. Chi. & N.W. Transp. Co.*, 552 N.W.2d 578 (Minn. Ct. App. 1996) (holding taking unnecessary where soil contamination precluded all proposed uses); *City of Helena v. DeWolf*, 508 P.2d 122, 128 (Mont. 1973) (holding that where parking would be needed only if other parts of the project succeeded, government could not seek property now “to await money, motivation, and hopes of the planners”); *Atkins v. Hooker*, 106 P.2d 485, 486 (Ariz. 1940) (“In this case, even though plaintiffs be given a right of way, the forest service might refuse to issue them a permit.”); *City of Phoenix v. McCullough*, 536 P.2d 230, 236–37 (Ariz. Ct. App. 1975) (rejecting taking as arbitrary where there was no reasonably expected use within 15 years); *State v. 0.62033 Acres of Land*, 112 A.2d 857, 860 (Del. 1955) (taking of land for highway without plan and that may be needed “some time in the future” is not in the reasonable foreseeable future and thus is not necessary); *Meyer v. N. Ind. Pub. Serv. Co.*, 258 N.E.2d 57, 58–59 (Ind. 1970) (holding taking of right of way for “sometime in the future, maybe as much as six or ten years” was a “purely speculative future need” that could not support condemnation).

the court's view suffice. Nothing in any of the Port's cases, however, suggests that a court should be similarly deferential to a condemnor's determination that a piece of property is necessary to a use the condemnor cannot even identify. And there is no better evidence of this than the fact that the jurisdictions cited above, all of which reject this sort of purposeless condemnation, *also* have similarly deferential language about "necessity." *Compare Burnett v. Abbott*, 102 A.2d 16, 17 (N.J. 1954) ("[I]n condemnation proceedings the quantity of land to be taken, its location and the time of taking are within the discretion of the body endowed by the Legislature with the right of eminent domain"), *with Birnbaum*, 203 A.3d at 949–50 (rejecting taking without a reasonably anticipated public use); *compare also City of Stockton v. Marina Towers, LLC*, 88 Cal. Rptr. 3d 909, 917 (Cal. Ct. App. 2009) (noting that a "valid resolution of necessity is clothed with a strong presumption of finality" and that such a resolution "*conclusively establishes* [that] the ... '[public interest and necessity require project ... ]'" (second brackets in original)), *with id.* at 921 (rejecting specific resolution of necessity because it was "woefully lacking in its identification of the project" justifying the condemnation"). Simply put, the Port seems to believe that the fact that Texas courts generally defer to legislative determinations of necessity means that it has free rein to condemn property for any reason or for no reason. But other states have just the same deference, and that deference does not stop their courts from rejecting amorphous, blue-sky takings like this one. It should not stop this Court either.

#### IV. This taking is unlawful even under *Kelo*.

Although Texas has rejected *Kelo* by amending its state constitution, it is notable that even under *Kelo* itself, the condemnation in this case would be unlawful. Supreme Court has held that economic development takings are only permissible when condemning agency has undergone an extensive planning process. As the Court noted in *Kelo*, the condemnor in that case had considered a wide variety of possible plans and uses, along with conducting a variety of studies and holding multiple public hearings before settling on the plan at the heart of that case. 545 U.S. at 473–74; *see also* Nicole Stelle Garnett, *Planning as Public Use?*, 34 *ECOLOGY L.Q.* 443, 447–48 (2007) (discussing *Kelo*’s “planning mandate” and Justice Kennedy’s concurrence “suggesting that the lack of comprehensive planning might render certain takings presumptively invalid”). The *Kelo* majority explicitly conditioned its approval of the condemnations in that case on “the comprehensive character of the plan [and] the thorough deliberation that preceded its adoption.” *Kelo*, 545 U.S. at 484.<sup>5</sup> Where those elements are missing, courts reject the condemnation. *See, e.g., Middletown Twp. v. Lands of Stone*, 939 A.2d 331, 338 (Pa. 2007) (concluding that “evidence of a well-developed plan of proper scope is significant proof that an authorized purpose truly motivates a taking”); *Mayor & City of Baltimore v. Valsamaki*, 916 A.2d 324, 352–53 (Md. 2007) (noting absence of

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<sup>5</sup> Of course, for all the Supreme Court’s lauding of the planning process in New London, that planning process was, in substance, a complete failure. Treasured homes and businesses were bulldozed, nothing was ever built, and the land sat vacant for nearly 20 years. *See* Johana Vasquez, *New London to sell remainder of Fort Trumbull Properties*, *The Day* (Jan. 19, 2023), *available at* <https://tinyurl.com/ybny58ku>. The risk of such an outcome is even greater when such planning is absent.

clear plan for the use of condemned property and contrasting with *Kelo*); *R.I. Econ. Dev. Corp. v. Parking Co., L.P.*, 892 A.2d 87, 104 (R.I. 2006) (emphasizing difference between condemnor’s approach in that case and the “exhaustive preparatory efforts that preceded the takings in *Kelo*”). The record in this case reflects no similarly exhaustive preparatory efforts—indeed, no preparatory efforts at all—and so this condemnation should be rejected even as a matter of federal constitutional law.

## Conclusion

The Port's motion for summary judgment should be denied, and the Defendants' cross motion should be granted.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2023.

/s/ Christopher S. Johns

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# **EXHIBIT 1**

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IN THE COUNTY COURT

AT LAW NO. 3

BRAZORIA COUNTY, TEXAS

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PORT FREEPORT,

Plaintiff,

v. Cause No.

THE UNKNOWN HEIRS OF LUCILLE CI62105

MARSHALL, DECEASED, et al.,

Defendants.

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VIDEOCONFERENCE DEPOSITION OF

CORPORATE REPRESENTATIVE FOR PORT FREEPORT - PHYLLIS

SAATHOFF

DATE: Wednesday, June 14, 2023

TIME: 10:03 a.m.

LOCATION: Remote Proceeding

1100 Cherry Street

Freeport, TX 77541

REPORTED BY: Kyla Benson Buchan, Notary Public

JOB NO.: 5938917



A P P E A R A N C E S

ON BEHALF OF PLAINTIFF PORT FREEPORT:

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ON BEHALF OF DEFENDANTS THE UNKNOWN HEIRS OF LUCILLE  
MARSHALL, DECEASED, et al.:

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ALSO PRESENT:

David Johns, Executive Director/Paralegal for  
Johns & Counsel PLLC (by videoconference)

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P R O C E E D I N G S

THE REPORTER: Good morning. My name is Kyla Buchan; I am the reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 10:03 a.m., Central.

This is the deposition of the Corporate Representative for Port Freeport, taken in the matter of Port Freeport vs. The Unknown Heirs of Lucille Marshall, Deceased, et al., on Wednesday, June 14, 2023.

The reporter is located in Austin, Texas, and the witness is located in Freeport, Texas.

I am a notary authorized to take acknowledgments and administer oaths in Texas. Parties agree that I will swear in the witness remotely.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording of this proceeding:

- is intended for all uses permitted under applicable procedural and evidentiary rules and laws in the same manner as a deposition recorded

1 by stenographic means; and  
2 - shall constitute written stipulation  
3 of such.

4 At this time, will counsel in  
5 attendance please identify yourself for the record,  
6 beginning with the taking attorney.

7 MS. MANION: Good morning. This is  
8 Laura Manion with McFarland, PLLC, counsel for  
9 plaintiff Port Freeport.

10 MR. JOHNS: I'm Chris Johns. I am the  
11 attorney for the defendants.

12 THE REPORTER: Thank you.

13 Hearing no objection, I will now swear  
14 in the witness.

15 WHEREUPON,

16 PHYLLIS SAATHOFF,  
17 called as a witness and having been first duly sworn  
18 to tell the truth, the whole truth, and nothing but  
19 the truth, was examined and testified as follows:

20 THE REPORTER: Thank you.

21 You may proceed.

22 EXAMINATION

23 BY MR. JOHNS:

24 Q Good morning, Ms. Saathoff.

25 A Good morning.

1 Q How are you?

2 A Good, thank you.

3 Q Good.

4 A We're indoors in the air conditioning.

5 We're good; right?

6 Q Absolutely. No, it's great.

7 Thank you for being willing to show up this  
8 morning and have your deposition taken.

9 Just a couple of things. I want to make  
10 sure that, if there's something that you don't  
11 understand in what I've asked, please feel free to  
12 stop me and ask for clarification.

13 If I ask for an answer to a question, can we  
14 have an agreement that if you give an answer, that  
15 will be a full and complete answer?

16 A Of course.

17 Q Okay. Great.

18 You understand that I represent the unknown  
19 heirs of Lucille Marshall, who are the defendants in  
20 this case?

21 A Yes.

22 Q Well, I have some questions about your  
23 relation to the plaintiff in the case, Port Freeport.

24 What do you do for Port Freeport?

25 A I am the executive director and CEO for the

1 board.

2 Q How long have you been in that position?

3 A Since April 28th of 2016.

4 Q Fantastic.

5 You're familiar with the condemnation  
6 project in this case; is that correct?

7 A Yes.

8 Q How would you describe the project?

9 A I guess you want -- to be clear, do you  
10 want -- I mean, what do you want? Do you want to know  
11 the boundaries of the project area?

12 Q Yes. I mean, we can get into some more  
13 detail, but that would be a good place to start.

14 A Okay. There was an exhibit attached to the  
15 resolution, approved by the Port Commission in October  
16 of 2019 that defined that area. That area, just in  
17 general, was on the south -- I'm going to say the  
18 south. I think that is -- so the -- the line was  
19 drawn from the back property lines of the properties  
20 along East 8th Street, on the south side of East 8th  
21 Street. So the back property line. It continued on  
22 the east side of Terminal Street, all the way to East  
23 2nd. Then the line was drawn down East 2nd to FM  
24 1495, or also known as Pine Street, and continued  
25 along Pine Street on the eastern side of Pine Street.

1           So that incorporated all of the lots inside  
2     of an area, East 2nd through the back side of the  
3     properties on East 8th, and then boarded on the west  
4     and the east by FM 1495 and the eastern edge of  
5     Terminal Street.

6           Q     So I'm going hold up what I think you're  
7     referring to as the Exhibit A to the resolution that  
8     authorized the acquisition of the real property.

9           This piece of paper?

10          A     Yes. That's -- yes. On that piece of  
11     paper, the only thing that wouldn't be in that area  
12     would be that Block 1.

13          Q     Only thing that would not be in the area of  
14     the project --

15          A     In the project area was Block 1.

16          Q     Block 1.

17          A     As far as lots on that particular piece of  
18     paper.

19          Q     Okay. Let's go ahead and -- I'm going to  
20     ask David from my office to share this and just make  
21     sure we've got the right document in front of us.

22          A     Okay.

23                         MR. JOHNS: Maybe we mark that as  
24     Exhibit 1, and we'll have David send all the exhibits  
25     at the end, if that's okay with you, Laura.

1 MS. MANION: Yes, that's fine.

2 To clarify, is this what you had  
3 previously sent over as Exhibit 6?

4 THE WITNESS: Yes.

5 MS. MANION: Okay.

6 MR. JOHNS: Yeah, we probably want to  
7 mark this as Exhibit 1 rather than Exhibit 6, David,  
8 when we send a revised list of exhibits.

9 So it's -- yeah, it's this. Let's use  
10 that whole thing as our Exhibit 1.

11 (Defendant Exhibit 1 was marked for  
12 identification.)

13 THE WITNESS: Yes, sir, that is  
14 correct, and everything that's inside of the  
15 green-bounded area was the project area.

16 BY MR. JOHNS:

17 Q Project area. Perfect.

18 Okay. I'm a little curious about -- I'm  
19 going to be asking some questions about the project,  
20 but before I do, I want to kind of pan out and  
21 understand if the port has other -- is condemning  
22 other land right now that is not part of this  
23 particular project.

24 A No.

25 Q So this is it?



1           A     This is it.

2           Q     Okay.  What is the land in this project  
3 going to be used for?  What's the intent?

4           A     It'll be for normal port activities and  
5 purposes.  We are authorized to manage international  
6 commerce and much of that is waterborne, but it can  
7 also be by other modes of transportation.  But to  
8 facilitate international commerce and business  
9 development, and this area will be used in the same  
10 type of manners that we currently operate other  
11 facilities in the area.

12                   The --

13          Q     What --

14          A     Go ahead.

15          Q     No, no, go ahead.  I didn't mean to cut you  
16 off.

17          A     No, that's fine.  I'll let you ask your  
18 question.  I'm sure we'll get into further discussion,  
19 but that is it in a nutshell.

20                   It will be port-related purposes that are  
21 associated with the movement of international commerce  
22 and business and economic activity.

23          Q     Okay.  What does that really mean?  Like do  
24 you know what kind of end users, or are these -- yeah.  
25 I mean --

1           A     Sure.

2           Q     -- are these going to be buildings built by  
3 the port, for example?

4           A     So first I'll talk about ingress and egress  
5 and the management of just the flow of commerce and  
6 our governmental functions that we are required to do,  
7 but we do have to facilitate the efficient movement of  
8 commerce in and out of the port. That means we can't  
9 negatively impact other public -- like state roadways.  
10 And if you notice on the diagram that's still up,  
11 Navigation Boulevard, FM 1495, that is a state  
12 roadway, and port is bordered on two sides and then  
13 there -- it's no longer a truck route, but previously  
14 had been a truck route along the East 2nd to  
15 facilitate movement of commerce in and out of our  
16 facilities and comply with the requirements to provide  
17 federal governmental facilities to ensure that, you  
18 know, everything is safe and secure.

19                   Everything changed for ports after 9/11.  
20 There's a lot more that goes on at ports directly, and  
21 those facilities have to be provided by ports to do  
22 that.

23                   So there will be new roadways into the port  
24 to facilitate increased commercial movements. There  
25 could be -- and I'm going to say things that could be.

1 We don't have an exact plan for any of this. I can  
2 say that we do have some plans for some roadway  
3 infrastructure that will be prioritized. We can talk  
4 about that in a moment.

5 But there could be cargo storage areas.  
6 There could be truck transfer facilities if you're  
7 moving containerized cargo. For example, with the  
8 GreenFruit business, it comes in in refrigerated  
9 containers, and instead of sending their refrigerated  
10 containers out at the port, they transfer and  
11 customize loads for the end retail establishments such  
12 as a Kroger or an H-E-B; transfer those products and  
13 get the right mix. That has to be done at facilities  
14 that have some level of controlled environment.

15 The U.S. Customs and Border Protection does  
16 exams of cargoes. They do them randomly, and we have  
17 to provide those spaces in order for that to occur.

18 The U.S. Ag Department inspects fruit and  
19 other commodities that move. You have to provide  
20 those facilities. We have to provide office  
21 facilities for those government agencies. That  
22 is -- many people don't realize that, that they don't  
23 pay for their own facilities. Those are provided by  
24 ports.

25 So I have a multimillion-dollar building

1 built for our emergency operations. One floor is  
2 dedicated to U.S. Customs and Border Protection, and  
3 an additional 800,000 had to be spent to build it to  
4 their specifications.

5 So we'll be adding additional office  
6 infrastructure. There could be storage areas,  
7 warehouses, or there could just be open storage areas;  
8 areas to stage trucks before they enter.

9 Under the current environment where you  
10 enter certain ports in certain areas and it's a marine  
11 terminal secure area, they have to have TWIC cards.  
12 You have to stage trucks if they don't have their  
13 correct credentials or they don't have a TWIC. You  
14 know, you have to manage all of that, and that can't  
15 happen on state roadways.

16 So that's just an example of the type of  
17 things that can occur.

18 Some will be built by port. Some could be  
19 built in partnerships. Some might be partly state  
20 grant funded; may be partly federal grant funded.  
21 Just as the area is developed, we'll look at all of  
22 our means for funding that type of infrastructure.

23 Q Understood.

24 Well, I will ask some questions about all  
25 the things you just said. Well, maybe not all of the

1 things, but some of what you said.

2 I wanted to make sure I heard you right.

3 Right now, you said there's not an exact  
4 plan for any of those kinds of specific projects; is  
5 that right?

6 A First of all, we have been spending our  
7 time -- before we planned out everything, we had to  
8 complete the acquisition of the properties. We had to  
9 relocate individuals or residents; do that in a very  
10 accommodating way. Then we've had to demolish  
11 structures. That has taken time. We still have  
12 utilities and other things to relocate, and that has  
13 now been agreed upon with the City of Freeport and how  
14 that will be executed, and we can have continuity of  
15 service to the port and others that are tied into the  
16 systems.

17 Again, we do have, as I mentioned, one  
18 project that we are moving forward. It will be  
19 partially funded by a state grant, and that will be to  
20 improve 8th Street and Terminal Street, and -- the  
21 connector into Velasco Terminal so that our back gate  
22 can be reoriented into this area and not letting onto  
23 East 2nd Street. That gate positioning and structure  
24 does not facilitate truck movements into the port.

25 Q Yes. Thank you for that answer. I just

1 want to make sure you listen carefully to my questions  
2 and actually answer them, because I'm not sure I got  
3 an answer to my last question.

4 A Well, I'll be happy to try again, so just  
5 ask me again.

6 Q The last question was, it sounds like with  
7 the exception of the one project that's partially  
8 funded by the State which is a road project, with the  
9 exception of that, there isn't an exact plan for how  
10 any of the rest of this project area is going to be  
11 used; isn't that correct?

12 A No. You know, again, not specific yet, but  
13 it will be used for all the purposes laid out  
14 previously.

15 Q I'd like to turn to an article that I think  
16 you wrote. It was a guest column on the facts.com.

17 A Yes.

18 Q Are you familiar with that article? Do you  
19 remember writing it?

20 A Yes.

21 MR. JOHNS: Yeah. So if we turn to the  
22 second page, there, David. It's the second paragraph  
23 there, third sentence.

24 BY MR. JOHNS:

25 Q "While the port has not initiated any

1 projects in the area, we anticipate it will  
2 accommodate operations necessary to facilitate  
3 additional international commerce and allow for the  
4 efficient management of truck traffic, reducing both  
5 congestion and emissions."

6 Is that still a true statement of where the  
7 port stands with this project?

8 A I will say the exception to that is we have  
9 initiated the one project by signing a funding  
10 agreement with the Texas Department of Transportation  
11 and have engineering underway for the improvements  
12 related to that grant funding. The engineering  
13 contract was let earlier this year.

14 Q How much funding is in place for that  
15 project in dollars?

16 A About 6.2 million for -- that's state  
17 mobility funds, and then the port's portion will  
18 be -- I'm going to just round. It's about 2 million  
19 related to the project.

20 Q So 6.2 is coming from TxDOT, and about 2  
21 million is coming from the port?

22 A Yes.

23 Q That amount, that \$8.2 million  
24 approximately, is that fully funded?

25 A Yes.

1           Q     How much additional funding would need to be  
2     done to do the road project that you described  
3     earlier?

4           A     Well, that's what we're expecting it will  
5     be. We'll know, once the project is bid, what the  
6     final required funds will be, and those will be funded  
7     by the port.

8           Q     Got you. Okay.

9                     Are you familiar with the location of my  
10    client's property?

11          A     Yes.

12          Q     Is my client's property needed for that road  
13    project?

14          A     Not that specific road project.

15          Q     Okay. I mean, you had a long list  
16    of -- U.S. Customs, maybe the port itself would have  
17    some buildings, potential USDA buildings or facilities  
18    there, potentially border protection, some areas for  
19    storage of trucks, cargo storage. I just want to be  
20    clear.

21                     As to those things, there is currently not a  
22    specific plan for how the port will -- you know, which  
23    of those pieces will go in this particular project.  
24    Is that right?

25          A     I would anticipate that it will be cargo



1 storage areas and possibly truck transfer facilities  
2 also, where Customs can do inspections and department  
3 of agriculture can do inspections.

4 That's not set in stone. I don't have a  
5 specific plan yet to present on that, but that is a  
6 discussion among staff.

7 Q When would you anticipate that you'll have a  
8 specific plan for how to use this area?

9 A Again, the specific plan -- the plan is for  
10 cargo storage, transfer facilities. It may be related  
11 maintenance. It could be areas outside the port or  
12 non-TWIC trucks to pick up cargoes. It will be used  
13 in those fashions. I can't tell you the exact  
14 orientation of a building or where perhaps plugs for  
15 refrigerated containers might be or a repair building,  
16 but it will have that type of activity located on it.

17 Until we're closer to having an exact design  
18 and capacity that's needed, we won't do designs and  
19 specific layouts. You do that closer to the point to  
20 which you need to do your engineering.

21 I mean, are you looking -- I guess I'm not  
22 sure what you're looking for.

23 Anyway, go ahead.

24 Q You've answered the questions; that, you  
25 know, there's not a specific site plan, things aren't

1 set in stone, but you have a general idea of what it  
2 may be used for in the future.

3 A Correct.

4 Q When would facilities begin to be built  
5 there, aside from the road project that we talked  
6 about before?

7 A You know, it just depends on demand and  
8 other needs. You know, structures or building, paving  
9 of additional areas could begin next year, it could be  
10 the year after, but there will be development in this  
11 area within the coming years. This is not an area  
12 that will be -- you know, it to sit and not be  
13 developed for a long period. That will be developed  
14 in the near term.

15 Q Okay. Before we move on from the guest  
16 column that you wrote, if it's fine with you, let's  
17 mark that as our Exhibit 2.

18 A Okay.

19 (Defendant Exhibit 2 was marked for  
20 identification.)

21 Q You know, if there were changes in the  
22 market or demand weren't where you expected it to be,  
23 is it possible it could be five years before you began  
24 construction of these other non-road facilities here?

25 A Again, you sound as though the non-road is a

1 part of the project or development. It is a very much  
2 important part of it, and there will be additional  
3 roadways constructed as we move forward; again, to  
4 manage everything in the area.

5 We will begin utility development in the  
6 area to support development, but I expect there will  
7 be -- within five years, there will be other  
8 developments as described, similar, maybe not exact,  
9 but will be developed in this area.

10 Q Well, part of why I ask is because I'm  
11 concerned about my particular client's property which  
12 is not part of the road takings that would need to  
13 happen, and I want to know when things would be built  
14 on my client's property.

15 I'm curious again -- you know, I asked a  
16 question, and I appreciate your attempting to give me  
17 an answer, but I'm just asking again, you know. You  
18 said that things depend on demand and where the market  
19 is.

20 Is it possible that no facilities would be  
21 built on my client's property within the next five  
22 years?

23 MS. MANION: Objection, form.

24 A That's kind of -- you know, is it possible?  
25 Yes, it's possible, but it's -- the area will begin to

1 be developed, and it will be done in phases. So, you  
2 know, I can't give you an exact timeline. There's a  
3 high likelihood that that particular area will be  
4 developed.

5 Q Okay. So you mentioned that it's, in your  
6 opinion, unlikely that it wouldn't be developed within  
7 five years; that you anticipate it would be. But if  
8 I've heard you right, you also said it's possible that  
9 my client's particular property wouldn't be developed  
10 within the next five years. Correct?

11 MS. MANION: Objection, form.

12 A You're asking the same question two  
13 different ways. Said it is possible, and if you say  
14 it's possible, it's also possible it might not. So  
15 that's just the same question.

16 Q Okay. Are there any current plans within  
17 the next ten years for something to be built on my  
18 client's property?

19 A There are plans to build the property, and  
20 it can occur one year, two year, five year, ten year,  
21 but we have plans to develop that entire area in ways  
22 that will support port operations and the movement of  
23 international commerce.

24 Q Did I mishear you before? I understood that  
25 there wasn't an exact plan for any --

1           A     I know, and you're defining plan -- okay,  
2     let me change the words.

3                     There are intentions to develop this area.  
4     That is the purpose for -- it's laid out in the  
5     resolution, proceeding with eminent domain; that those  
6     were the intentions of the port in acquiring those  
7     remaining properties so that we could move forward  
8     with our development plans of the area.

9           Q     Okay.

10           A     When I say -- the development intentions and  
11     the needs to continue to support the efficient  
12     movement of commerce in and out of Port Freeport.

13           Q     Okay. As you say that, you don't know what  
14     will be built on my client's land?

15           A     I do not have a specific plan today to  
16     present to you, no.

17           Q     Okay. Are you familiar with the port's  
18     website?

19           A     Yes.

20           Q     Are you involved in creating the content  
21     that goes onto the website?

22           A     Some content. I'm more directly involved  
23     than others.

24           Q     How much empty space, kind of unused,  
25     undeveloped area, apart from what we've marked in

1 Exhibit 1 as the project, how much other undeveloped  
2 land does the port own?

3 MS. MANION: I'm going to object to  
4 that question on the basis of relevance as not being  
5 included in the topics provided.

6 MR. JOHNS: Well, I mean, we've asked  
7 about public necessity, and, you know, I'm asking  
8 about the port's need for this land, and I think it's  
9 a fair question to ask what other land the port has  
10 available to it. But I understand your objection.

11 MS. MANION: I'd be fine if you asked  
12 the witness regarding the public necessity for the  
13 project.

14 BY MR. JOHNS:

15 Q Well, how much undeveloped land does the  
16 port own outside of this particular project?

17 MS. MANION: Again, I'm going to make  
18 the same relevance objection and instruct the witness  
19 not to answer.

20 MR. JOHNS: So you're giving an  
21 instruction not to answer?

22 MS. MANION: Correct. You know, the  
23 other assets of the port was not identified as a topic  
24 on this deposition notice.

25 MR. JOHNS: Well, I guess we'll take

1       that up with the judge.

2       BY MR. JOHNS:

3           Q       Is this project that we identified in  
4       Exhibit 1 going to be used for what you've called the  
5       Velasco Container Terminal Expansion?

6           A       This property is immediately adjacent to  
7       existing port operations and including Velasco  
8       Container Terminal.

9                   There are activities that occur immediately  
10       adjacent to the container terminal with regard to the  
11       berth on stacking and storing of cargo. There are  
12       other activities that are related and associated with  
13       the movement of cargo across the berths.

14                   And we also don't just do containers. We  
15       handle other types of cargo that is roll-on, roll-off  
16       cargo. But those types of vessels that are  
17       accommodated there at what we call Velasco Container  
18       Terminal, have other associated activities that  
19       require additional storage and transfer operations  
20       that don't have to be immediately adjacent to the  
21       berth.

22                   So yes, there could be associated activity.  
23       For example, just a new roadway and gate interchange  
24       into the terminal area, into that terminal area, is an  
25       associated activity and an example of the -- that

1       there is some association there.

2               Q       Why weren't the port's -- I want to  
3       understand the necessity for taking the land in this  
4       particular project.

5               Why wasn't the port's existing land  
6       ownership sufficient for the port's needs?

7               A       First of all, almost all of the land that is  
8       immediately adjacent to that terminal has been  
9       improved, and what is left is being improved and is  
10      generally fully utilized. So it is essentially  
11      developed. Now, it may be further improved, but it is  
12      already being utilized for cargo activities.

13              MR. JOHNS: David, I'd like to turn as  
14      Exhibit 3 -- maybe we can go ahead and mark that at  
15      the beginning -- to the webpage that's called Port  
16      Freeport, Texas Ports, Infrastructure. It looks like  
17      it starts here. If you could put that up.

18              Could you turn to the second page  
19      there? Right there. Down at the bottom. I'm just  
20      going to read this.

21              (Defendant Exhibit 3 was marked for  
22      identification.)

23      BY MR. JOHNS:

24              Q       "In addition to access, Port Freeport also  
25      possesses an abundance of available land. With



1 additional acreage available for development, you can  
2 be sure we have the room your company needs to grow."

3 Do you know, when you refer to an abundance  
4 of available land, was this project that we've  
5 identified as the condemnation project, included in  
6 what the port's talking about right there in saying it  
7 has an abundance of available land?

8 MS. MANION: Objection, form.

9 MR. JOHNS: What's the objection,  
10 Laura?

11 MS. MANION: You haven't established  
12 that Phyllis wrote this website or has any knowledge  
13 regarding it.

14 Again, you know, she was designated to  
15 testify to the topics that you identified in your  
16 deposition notice. You did not say, identify the  
17 person who has the most knowledge with respect to this  
18 website.

19 BY MR. JOHNS:

20 Q All right, Ms. Saathoff. Were you involved  
21 in drafting the language for this website?

22 A This particular webpage was in place when I  
23 returned to Port Freeport in 2016.

24 Q So you're saying that this statement is  
25 language that's existed on the website, as far as you

1 know, since 2016?

2 A Yes.

3 Q And even though the day that we accessed  
4 this website was yesterday, in your opinion, is this a  
5 correct statement of where the port stands with  
6 whether it has an abundance of available land?

7 MS. MANION: I'm going to object to  
8 this line of questioning, and the specific question is  
9 outside of the scope of the deposition topics  
10 identified, and instruct the witness not to answer.

11 MR. JOHNS: I disagree with you, Laura.  
12 I completely disagree, and I'm surprised that you're  
13 instructing your witness not to answer.

14 This is a publicly available statement  
15 by a governmental entity, and I'm asking your client  
16 rep whether it's an accurate statement of the port's  
17 resources.

18 MS. MANION: You did not attach this as  
19 an exhibit to your deposition notice and ask for  
20 somebody knowledgeable of this issue. You did not  
21 list as a topic the general holdings of the port, in  
22 which case we would have objected to that topic and,  
23 you know, already cleared this issue with the Court.

24 So I'd request that you stick to the  
25 topics identified which relate to the project.

1 MR. JOHNS: It goes to public  
2 necessity, Laura. Whether the port needs to take  
3 additional land right now, when it's stating on its  
4 website that it has an abundance of available land,  
5 it's absolutely relevant to the issue of public  
6 necessity which we did identify on our deposition  
7 notice.

8 MS. MANION: The real property owned by  
9 the port is a matter of public record and it's not  
10 identified as a topic on the deposition notice, so  
11 again, I'm going to instruct the witness not to  
12 answer. She did not write this website.

13 MR. JOHNS: I don't think you have  
14 proper grounds to instruct the witness not to answer,  
15 but I guess we'll take this up with the judge.

16 BY MR. JOHNS:

17 Q So did the port go about making the decision  
18 that there was a public necessity to take more land  
19 for itself?

20 MS. MANION: Objection, form.

21 MR. JOHNS: What's the objection?

22 MS. MANION: The characterization of  
23 the port itself. It's taking for a government  
24 purpose.

25 MR. JOHNS: No, I'm asking how the port

1 decided that it needed more land. It's a simple  
2 question.

3 Are you instructing your witness not to  
4 answer that question?

5 MS. MANION: No, I was just  
6 objecting --

7 MR. JOHNS: Okay.

8 MS. MANION: -- to the form of your  
9 question, the previous version of your question that  
10 included "for itself" because I think that is  
11 ambiguous as to what you're insinuating.

12 But your second question does not have  
13 that same issue, so I don't have an objection to that  
14 question.

15 THE WITNESS: All right. So ask your  
16 question again. I want to make sure I'm answering the  
17 right question.

18 BY MR. JOHNS:

19 Q So how did the port decide that it needed  
20 additional land?

21 A The port evaluates and reviews its business,  
22 its growth. We built infrastructure in advance to  
23 stay ahead of that growth. And we look at what is  
24 necessary to, again, provide all of the things that  
25 are necessary to operate a port and to do that in an

1 efficient and effective manner in compliance with law,  
2 in compliance with what is required federally, and in  
3 that evaluation, that area, again, is immediately  
4 adjacent to existing port operations bordered on a  
5 third side by a state roadway and mostly industrial or  
6 commercial development on the north side. It was  
7 identified as an area that would be necessary to  
8 continue to carry out our responsibilities as a port  
9 authority operating in Brazoria County and is enacted  
10 by the State.

11 It's clear in the statute, in the water  
12 code, that, you know, the operation of a port and the  
13 industrial and economic activity is a public purpose  
14 and a public necessity.

15 Q So if I hear you right, you consider  
16 proximity to the port's existing facilities and the  
17 accessibility with the road system?

18 A Correct.

19 Q Two of the factors you consider?

20 A Yes, and there's access by adjacent rail  
21 infrastructure as well.

22 Q Did you consider whether the port's existing  
23 land holdings could satisfy the need that you saw in  
24 taking the --

25 A I -- I'm sorry. I cut you off. I

1 apologize.

2 Q Did you consider the port's other land that  
3 could have been potentially used for development when  
4 you were deciding that, you know, we actually need to  
5 take this land?

6 A We have no other land immediately adjacent  
7 to our existing port facilities in that area.

8 The other was under development or had plans  
9 to be fully developed into a container berth area.

10 Q Did you consider the potential costs of  
11 acquisition in deciding whether to take this property?

12 A Of course.

13 Q Did you consider the racial makeup of the  
14 residents of that area?

15 A The racial makeup was considered, and it was  
16 diverse.

17 Q Tell me about that.

18 A Just in a -- we looked at it. Our initial  
19 acquisitions were directly Caucasian, white. We have  
20 acquired Hispanic. We have acquired African-American.  
21 It was a diverse makeup of an area.

22 Q When you say "diverse," did you consider a  
23 particular percentage of different racial or ethnic  
24 groups?

25 MS. MANION: I'm going to object to

1 this line of questioning. Again, it is outside of the  
2 scope of the topics that were noticed for this  
3 deposition.

4 The consideration of public use and  
5 public necessity, I believe Phyllis has explained in  
6 detail.

7 MR. JOHNS: I'm asking for the  
8 considerations that the port authority considered as  
9 it was making the decision to take the client's  
10 property.

11 MS. MANION: So can you point to me  
12 what topic that is covered under?

13 MR. JOHNS: Well, I mean, let me look  
14 at our notice.

15 Public necessity and facts and other  
16 issues related to the port's assertion of public  
17 necessity and taking the subject property.

18 I'm just looking at the issue of  
19 deciding -- they decided to take it and decided there  
20 was a public necessity. I just want to know the  
21 factors that it considered when it was making the  
22 decision to take this particular land.

23 MS. MANION: Okay. I'm not really  
24 following this line of questioning, how racial makeup  
25 relates to either public necessity or public use.

1 MR. JOHNS: I mean, if you want, read  
2 the Kelo opinion, and there's sense there. Read  
3 whatever you want, but, you know, Justice Thomas talks  
4 about, in the consideration of what areas are taken,  
5 that there's heightened concern that minority  
6 communities tend to be targeted in the consideration  
7 of what land should be taken and whether that's an  
8 appropriate thing to do when you're taking land from  
9 people.

10 So I think it's a fair question. There  
11 might not be anything here. I'm just exploring -- I'm  
12 exploring that because I've got to make a record.

13 MS. MANION: Could you repeat the  
14 question, please?

15 BY MR. JOHNS:

16 Q Well, as I understand things, you said that  
17 you did consider who you were taking the property from  
18 in terms of demographics. You considered potential  
19 cost of acquisition. You looked and determined that  
20 this would be taking from a diverse set of landowners,  
21 and I want to know more about what was discussed.

22 When you say that you determined that there  
23 was a taking from a diverse set of landowners, I just  
24 want to know the facts around that.

25 Was any analysis done to reach your



1 conclusion that this was a diverse group of landowners  
2 that you were taking property from?

3 A Let me ask a question. I don't know whether  
4 I ask it of you or ask it of Laura.

5 When we say taking, please define taking.  
6 Because there was an acquisition in this area that  
7 spanned more than two decades.

8 Q I'm happy to answer the question.

9 I mean, taking -- anything that's acquired  
10 under the threat of condemnation is what I refer to as  
11 taking. Whether it's done through a court process or  
12 through negotiations where there's a threat of  
13 condemnation hanging out in the background, I would  
14 consider that a taking.

15 A The analysis I refer to was on the onset of  
16 our acquisitions in the area. At the time of taking,  
17 we owned the majority of the property in the area.

18 Q So is there some kind of written analysis  
19 that was done of who you were taking the property  
20 from?

21 A There was a listing at the time of taking of  
22 property owners -- the properties to be acquired and  
23 who was thought to own those properties.

24 Q So I'm going to go back to this Exhibit 3,  
25 where it says, "The port has over 1,800 additional

1        acres of property to support future growth and  
2        development. All our parcels are accessible by water,  
3        highway, and rail."

4                Were you involved in drafting any of that  
5        language on the website?

6            A        Where are you referring to?

7            Q        It's at the bottom of the page right here,  
8        where I highlighted there.

9                The port has over 1,800 acres of property to  
10       support future growth and development. All of our  
11       parcels are accessible by water, highway, and rail.

12               MS. MANION: Chris, again, I'm going to  
13       object and instruct my witness not to answer regarding  
14       a website that she's not the author of. You didn't  
15       ask for the person in charge of the website  
16       information, and --

17               MR. JOHNS: Okay. It doesn't have to  
18       be the website -- I can ask a question about whether,  
19       to her knowledge, that is a true statement or not.

20               MS. MANION: You did not ask for the  
21       person with the most knowledge of all of the port's  
22       holdings. Again, this is a corporate rep deposition  
23       based on topics that you discuss.

24               If you want to conduct discovery about  
25       the other holdings of the port, you know, you're free

1 to do that. We'll make objections, and we'll get the  
2 judge to sort it out, but this is not a general  
3 deposition. This is a corporate representative  
4 deposition.

5 MR. JOHNS: And I understand that. I  
6 understand it's a corporate representative deposition.  
7 The last bullet point in my notice is the port's  
8 public necessity and facts and other issues related to  
9 the port's assertion of public necessity in taking the  
10 subject property. That is in our deposition.

11 BY MR. JOHNS:

12 Q I'm not asking whether -- at this  
13 point -- Ms. Saathoff, you mentioned that you had not  
14 drafted any of the language at the first part of that  
15 paragraph. I'm asking if you were involved in  
16 drafting or giving input on the language that's  
17 highlighted right now on the screen.

18 Were you involved in drafting that language?

19 A I did not draft the language that's on this  
20 page.

21 Q Okay. Fair enough.

22 In considering public necessity, did the  
23 port consider the availability of other assets that it  
24 had?

25 A There are -- okay, I thought you were

1 finished.

2 Q In deciding whether there was a public  
3 necessity for the taking of this project that we  
4 identified in Exhibit 1, did the port consider its  
5 other available assets?

6 A The land in the taking is immediately  
7 adjacent to other properties that were acquired and  
8 already had been acquired in an area adjacent to  
9 existing port facilities. There are no other lands  
10 that meet that definition or meet that requirement.

11 Q Yeah, and I understand that. You've asked  
12 and answered that. I'm not asking that question.

13 I'm asking whether in deciding whether to  
14 take the property in this case, did the port consider  
15 its other available assets?

16 A Again, there are no other assets that  
17 accomplish that. So no.

18 Q Objection, nonresponsive.

19 I'm asking a question. I want a yes or no  
20 answer to it.

21 In deciding to take the land for this  
22 project, did the port consider its other available  
23 assets?

24 A I feel like this is some trick question.

25 Q I mean, pause for a second. I am a lawyer.

1 I'm not trying to trick you, but I am trying to get  
2 answers from you, and I'm doing it to try to advance  
3 my client's interests. And I understand you're  
4 protecting the port's interests, and your attorney is  
5 doing a very good job, maybe even over aggressively  
6 telling you not to respond to some things. But I'm  
7 allowed to ask questions, and I'm allowed to get a yes  
8 or no answer to the question. I've asked it two or  
9 three times now.

10 Do you want me to ask it again?

11 A I am not avoiding a question. I think I've  
12 answered the question.

13 Q No. I disagree with you.

14 I understand that this is the only land  
15 that's next to other land that the port owns. I get  
16 that it's contiguous. I get that it's on -- you know,  
17 some of it's on the water. Well, is it? I'm not sure  
18 about that.

19 A No.

20 Q But it's next to a roadway. I get that. I  
21 understand that the port felt like it wanted to take  
22 it, had the need to take it.

23 I'm asking a simpler question. As part of  
24 your consideration, your determination to take this  
25 particular property, did you consider the port's other

1 available assets?

2 A Yes.

3 Q Yes.

4 Does the port have 1,800 available acres of  
5 property outside of this project?

6 MS. MANION: I'm going to object,  
7 again, to that on the same basis of this deposition  
8 notice did not cover the other holdings in the port.  
9 She has not been identified as the person with  
10 knowledge of whatever number of acres or whatever the  
11 port holds.

12 BY MR. JOHNS:

13 Q Let me ask this question, then.

14 Do you know how many available acres the  
15 port has?

16 A I do not have a specific number. The port  
17 does own additional acreage.

18 Q Is it over 1,000 acres?

19 MS. MANION: Well, Chris, again, I'm  
20 going to object and instruct her not to answer. I'm  
21 really not trying to be overaggressive or anything,  
22 but this is a particular type of deposition. You  
23 didn't notice Phyllis individually. You noticed a  
24 corporate representative on certain topics, and now  
25 you're asking the witness about how many acres do you

1 think the port could own.

2 MR. JOHNS: Laura, I hear you, but we  
3 put the port's public necessity and facts and other  
4 issues related to the port's assertion of public  
5 necessity.

6 There's been a response that yes, they  
7 did consider other available assets and yet determined  
8 that it still needed this particular property. I get  
9 that, but it's fair for me to ask -- if you have a  
10 public necessity for something, there has to be -- if  
11 you've got enough already, then you don't have -- you  
12 potentially don't have a need for something else.

13 So I'm allowed to ask about the other  
14 assets, and she's allowed to say why those particular  
15 things weren't suitable. I get that, but I'm allowed  
16 to ask why the port's other assets were not enough and  
17 why it needed to take additional assets. I mean,  
18 that's at the heart of what public necessity is, and  
19 we asked about public necessity.

20 So I am allowed to ask your corporate  
21 rep, who was involved in these decisions and has  
22 knowledge of the port's other assets, to know why  
23 those other assets weren't sufficient to satisfy the  
24 port's needs. Needs. Public necessity.

25 I mean, maybe we need to just take it

1 off the record and have a separate conversation, but  
2 this is outrageous. I've never had this kind of  
3 blowback when I'm asking about the other assets that  
4 an entity has.

5 MS. MANION: If you want to go off the  
6 record for a second, I'm fine with that.

7 MR. JOHNS: Let's go off the record. I  
8 don't know if we're able to be put in a separate room,  
9 but let's -- perhaps we call the judge right now,  
10 because I don't want to waste everybody's time and  
11 have to do this again, but this is ridiculous.

12 THE REPORTER: Do you want to go off  
13 the record?

14 MR. JOHNS: Let's go off the record.

15 THE REPORTER: Going off the record.  
16 The time is 11:03 a.m., Central.

17 (Off the record.)

18 THE REPORTER: We're back on the  
19 record. The time is 11:42 a.m., Central.

20 MR. JOHNS: Thank you.

21 David, I think you can take down the  
22 exhibit, please. Okay. Great.

23 BY MR. JOHNS:

24 Q Well, thank you. I hope it's okay if I call  
25 you Phyllis. If you'd prefer me to call you something



1       else, I'm happy to do so.

2           A       Phyllis is fine. Thank you.

3           Q       Feel free to call me Chris if the need  
4       arises.

5           A       Okay.

6           Q       So we're not going to talk about the website  
7       and the numbers on the website, but I'd like to, you  
8       know, ballpark, get an idea from you about how many  
9       undeveloped acres the port owns.

10          A       The port owns more than -- I'm just going to  
11       use a general number that -- because I'm not being  
12       exact.

13                   More than 1,500 acres.

14          Q       Okay. Did you consider any of those acres  
15       for the particular project that we talked about before  
16       with cargo storage areas, U.S. Customs, you know,  
17       USDA, inspection stations, border protection, truck  
18       storage, that kind of thing? Did you consider those  
19       acres for the kind of infrastructure that you want to  
20       have in place that you're going to use this project  
21       for?

22          A       No, because the proximity.

23          Q       When --

24          A       Proximity to a secure port facility. And to  
25       do the governmental functions that are required,

1       they've got to be in close proximity.

2           Q       Okay.  Where is the closest undeveloped  
3       acreage to the secure facilities that you're talking  
4       about, do you know?

5           A       It's probably at least -- if you measured it  
6       out, 2 miles.  Again, I don't know exact.

7           Q       Okay.  But that explains why the port  
8       decided that this particular land was the better  
9       option, is because of its proximity to those existing  
10      secure facilities.

11                  Am I understanding you right?

12          A       Correct.

13          Q       Okay.  So just so I understand the port's  
14      needs and what it's doing.  You had a list of items;  
15      cargo storage, truck storage, the USDA facilities,  
16      Customs, border patrol, office infrastructure.

17                  Maybe I've missed something else, but just  
18      so I understand, what would those other, you know,  
19      more than 15 [sic] acres of undeveloped land be used  
20      for other than those kinds of things?  What other uses  
21      does the -- what other activities does the port engage  
22      in that are not the things that are on the list you've  
23      given me before?

24          A       There are other industrial uses, other large  
25      warehousing distribution facilities that are not

1 necessarily on -- you can't put all infrastructure on  
2 dock or near dock. It's not possible. But we have  
3 opportunity to bring other economic development,  
4 investment, or build other infrastructure to provide  
5 dredge material placement areas. That's a large  
6 responsibility of the port.

7 Q Understood.

8 So how would -- before I get there. I may  
9 have asked this question, and Laura, feel free to  
10 object, but I don't remember asking this question  
11 exactly.

12 So you've mentioned having over \$8 million  
13 for the road project, but for all the other  
14 infrastructure uses that you mentioned before related  
15 to this project, is there funding in place to build  
16 those facilities?

17 A We operate port facilities. We have  
18 tenants. We have revenue streams. We have the  
19 ability to issue debt or acquire additional funding  
20 through other grant sources to use as additional  
21 facilities are needed and built. We'll use the same  
22 funding strategies that we currently use in developing  
23 port infrastructure.

24 Q Am I right to say that you haven't actually  
25 made an allocation for the other facilities to be

1 built because you don't know yet exactly what those  
2 facilities will be? Is that a fair statement?

3 A We have not specifically, other than right  
4 now for the roadways and gate interchange development  
5 into the port.

6 Q You did not --

7 A Those are the immediate ones in the budget,  
8 yes.

9 Q Okay. But like today as we speak, there's  
10 no financing plan decided on for how you're going to  
11 develop the other facilities; is that right?

12 A That would be correct. We wouldn't have a  
13 specific plan.

14 Q Okay.

15 A We have -- I'll just leave it at that.

16 Q Thank you.

17 So I'm curious. Once these facilities are  
18 built, I read in some -- maybe in some board meeting  
19 minutes that about -- and I don't want to necessarily  
20 hold you to a specific number, but maybe you have some  
21 knowledge about it. I'm just trying to understand  
22 kind of how the port operates.

23 It sounds like about two-thirds of the  
24 port's revenues come from lease payments, so the port,  
25 in large part, is -- it helps creates the

1 infrastructure and then has tenants on the port's  
2 property and that that's where the port derives a lot  
3 of its revenue.

4 Am I right about that, or could you tell me  
5 where I'm wrong or misunderstood something?

6 A We are what you would consider a landlord  
7 port.

8 Q Okay.

9 A We don't handle the direct operations of  
10 handling the cargo. We allow tenants and stevedores  
11 to do that.

12 Q So --

13 A And that contracted through either lease  
14 agreements or terminal service agreements or a  
15 stevedore license.

16 Q Okay. So when you talk about USDA  
17 inspection stations, is it the USDA -- maybe it's GSA,  
18 I don't know -- somebody in the federal government is  
19 paying for their structures, but you're the  
20 underlying -- do they own ground leases? How does  
21 that work?

22 A The federal government makes us provide it,  
23 and there can be a lease, but they pay nothing for it.

24 Q Okay. So USDA and Customs not the best  
25 example.

1           A     No.

2           Q     Okay.

3           A     Do you want to help me fix that? That'd be  
4 great.

5           Q     That's outrageous.

6                 Okay. So USDA is off the table.

7                 U.S. Customs, border protection. Okay.

8                 Truck storage facilities, would those be  
9 built by somebody else, or are those built by the port  
10 and then leased? I'm just trying to understand how  
11 that works as far as who pays for the improvements.

12           A     We often pay for the improvements, then  
13 we'll have a lease that's leased space to a tenant to  
14 conduct their operations; could be a truck storage  
15 area.

16           Q     Is the same true for like refrigeration  
17 facilities?

18           A     Uh-huh.

19           Q     The port would build the infrastructure,  
20 then lease that?

21           A     That is a possibility, yes. We've done that  
22 before. Or it could be a larger situation where  
23 there's a tenant that they lease the ground and they  
24 make the infrastructure that reverts to the port at  
25 the end of the lease.

1           Q     Okay. Are you involved in approving  
2 particular leases, or is that somebody else in your  
3 organization?

4           A     When you say approve, the Port Commission  
5 has the only authority to I guess approve leases.

6           Q     Okay.

7           A     The staff is only involved in the  
8 negotiation and the business arrangements surrounding  
9 them and then presenting it to the Port Commission for  
10 approval.

11                   MR. JOHNS: Okay. Yeah, I mean, I'm  
12 not sure I need to go -- and probably it's a little --  
13 potentially off topic. I just wanted to have some  
14 kind of understanding of what these facilities are  
15 that would be built and how they're held, but I think  
16 you've given me an idea there.

17                   Would you mind, Laura and Phyllis, if  
18 we took like a five-minute break? I might be getting  
19 close to the end of my questions for today.

20                   THE WITNESS: Okay. That's fine.

21                   THE REPORTER: Okay. We're going off  
22 the record. The time is 11:54 a.m., Central.

23                   (Off the record.)

24                   THE REPORTER: We're on the record.

25                   The time is 12:00 p.m., Central.

1 BY MR. JOHNS:

2 Q Phyllis, thank you so much. I think were  
3 nearing the end.

4 I want to pull up just a map of the general  
5 area. If you don't know the answers to what property  
6 the port owns, understandable, and you can just let me  
7 know you don't know. I'm figuring out a way that we  
8 could mark this as I ask you about some particular  
9 pieces.

10 MR. JOHNS: Could you zoom in a little,  
11 David?

12 So if we could, Kyla, let's mark this  
13 as Exhibit 4.

14 (Defendant Exhibit 4 was marked for  
15 identification.)

16 BY MR. JOHNS:

17 Q I believe the maroon flag is the approximate  
18 location of my client's property and that that whole  
19 kind of relatively -- looks like empty-ish block,  
20 rectangle, you know, bordered by Pine Street on one  
21 side and it looks like some pretty intensive port  
22 facilities to the right side of that area. I believe  
23 that's the approximate location of the project.

24 Is that a fair assessment of that, the area  
25 we marked with red?



1           A     That's correct.

2           Q     It looks like what I would assume is to the  
3 north of the port's facilities, this area that David's  
4 marking with a circle, is that land that's owned by  
5 the port?

6           A     No.

7           Q     No. Okay.

8                     MR. JOHNS: So let's leave that up,  
9 David, and just -- that's not the port. Yes, that  
10 area.

11 BY MR. JOHNS:

12          Q     Is that land that's owned by the port?

13          A     No.

14          Q     No.

15                     Do you know who owns that property?

16          A     The specific ownership is a company that  
17 does offshore supply.

18          Q     Oh, okay. Okay. So that's not port land  
19 either.

20                     MR. JOHNS: So where the words Port  
21 Freeport appear on this map, kind of just over top and  
22 maybe to the left, it looks like kind of an empty  
23 area. David, further to the left. Like this general  
24 area.

25 BY MR. JOHNS:

1 Q Is that Port land?

2 A Not right where you have your circle, no.  
3 There's a little white spot there. You can see where  
4 the port administration building is --

5 Q Okay.

6 A -- underneath that circle, under the words  
7 port, under the T. But there is property that  
8 parallels what says 288, along that drainage canal.  
9 We do own the fair amount of property along there.

10 Q Is that on both sides of 288?

11 A We do own property on the other side of 288.

12 Q Okay.

13 A And that's all under development right now.

14 Q Oh, okay. What is that being developed for?

15 A That is off-terminal vehicle parking,  
16 storage, processing.

17 Q Okay. Understood.

18 MR. JOHNS: David, let's mark that area  
19 with -- let's do a green kind of indicator so we can  
20 figure it out from the transcript what we were talking  
21 about on the map.

22 BY MR. JOHNS:

23 Q As you're looking at this Exhibit 4, are  
24 there other -- just to have an understanding of, you  
25 know, what the port owns and doesn't own, are there

1 any vacant, you know, large tracts of land that the  
2 port owns that you can see on this map?

3 A Well, pull it up just slightly further. No,  
4 the other way. I'm sorry. Forgive me. There you go.

5 Where it says 1495 --

6 Q Yes.

7 A -- right in that area, we own that large  
8 parcel of land. Approximate.

9 Q When you said that the port owns some other  
10 areas of land that were about 2 miles away, is that  
11 the green circle area and now this new circle that  
12 David has created that's kind of a lavender color?

13 A Yes.

14 Q Those are the two areas that we're talking  
15 about --

16 A Right.

17 Q -- is that right?

18 A Yes.

19 Q Okay. Well, that's very helpful to know.

20 One other thing. It seems like there's  
21 quite a big vacant area right along 288 and South  
22 Velasco Boulevard, to what I would assume is north of  
23 288.

24 Is that port property as well?

25 A Those are areas -- yes, we do own some of

1       that.  There's large highline powerlines that run  
2       along that corridor, and that is also immediately  
3       adjacent to, you know, residential areas and a school.

4           Q       Understood.

5                   Let's mark that area with -- let's do  
6       orange.

7           A       And some of that is, you know, easements,  
8       under easement.  Like I said, to center point.  
9       There's easements to Velasco Drainage District.  So  
10      you can't consider that all is really available  
11      developable property for ...

12          Q       Understood.

13                  So when you were talking about needing  
14      something existing next to your secured facilities, I  
15      just want to make sure that we're marking the secured  
16      facilities you were talking about as well.

17                  You know, we've identified the project.  
18      There's an area that looks like it's kind of to the  
19      south where the words Port Freeport kind of show up,  
20      so that area, and then we've also got -- is that  
21      the --

22          A       That's the secured area, yes.

23                  MR. JOHNS:  Let's mark that, David,  
24      with something else.  Let's mark it with maybe hot  
25      pink.  Good.

1 BY MR. JOHNS:

2 Q In the area that's to the east of  
3 there -- yeah, where the cursor is -- are those port  
4 facilities as well?

5 A Yes.

6 Q So when you were describing things before,  
7 the project area that we identified in Exhibit 1, it's  
8 really bounded on kind of two sides, both to the south  
9 and to the east?

10 A Correct.

11 MR. JOHNS: Correct. Okay.  
12 Understood.

13 Yeah, let's mark that area on the east  
14 with -- let's get another color. Yeah, let's do that  
15 turquoise.

16 Okay. I don't believe I have any more  
17 questions right now. I pass the witness.

18 MS. MANION: Thank you, Chris. I have  
19 just a brief redirect, and I have an exhibit to use  
20 with it, so I'm going to email that to you right now.  
21 I don't know if I have the ability to screen share.  
22 I'll also screen share it and ask Phyllis to identify  
23 it. But if you just bear with me for a second. I was  
24 not planning on doing a redirect, so I'm trying to  
25 find where I can attach this to my email really quick.

1 MR. JOHNS: Sure.

2 Would you mind emailing it to David as  
3 well?

4 MS. MANION: Yes. I'm going to reply  
5 to the email where you sent the exhibits.

6 MR. JOHNS: Great.

7 (Plaintiff Exhibit 1 was marked for  
8 identification.)

9 EXAMINATION

10 BY MS. MANION:

11 Q Do you recall earlier in your testimony when  
12 Counsel asked you if there were plans related to the  
13 subject property for the project?

14 A Right. I do recall.

15 Q When he asked you that, you answered no  
16 because you interpreted plans to mean construction  
17 plans of a definitive nature; is that correct?

18 A Yes.

19 Q Okay. But there are kind of schematic ideas  
20 of uses to which the East End Project will be  
21 rendered; is that correct?

22 A Yes. There have been preliminary schematics  
23 of how the space could be incorporated, yes, and how  
24 it would be used.

25 Q Okay. Could you identify the document that

1 I am screen sharing, which would be Plaintiff's  
2 Exhibit 1 to this deposition?

3 A Yes. That is one schematic on a potential  
4 full buildout of the container terminal and  
5 configuration of container storage, new gate  
6 interchange, routing, and storage of potential empty  
7 containers or other repair facilities, other locations  
8 for other inspections or interchange-type  
9 arrangements.

10 Q The east end acquisition area is outlined in  
11 green on this exhibit?

12 A Correct.

13 Q What is outlined in yellow?

14 A That is what we consider port -- that is the  
15 port-owned area. What you see where you have a  
16 schematic with the ships, the little white tips for  
17 the bow, that is the Velasco terminal area where we  
18 currently have two berths and currently equipped with  
19 cranes, and that's where your immediate, you know,  
20 discharge and loading of containers would occur to and  
21 from the vessels. Then other storage behind that  
22 configured differently.

23 There's some areas that are outside that  
24 yellow area or have some existing storage on them.

25 Q That was my next question.

1                   These areas outside of the yellow, are they  
2 part of the port?

3           A       Yes.

4           Q       Okay. I don't know how well you can see my  
5 cursor, but this --

6           A       Correct.

7           Q       -- area in the bottom left, that is also  
8 part of the port?

9           A       Those are our existing warehouse and  
10 transfer facilities, processing facilities, yes.  
11 Storage.

12                   MS. MANION: Okay. I have no further  
13 questions at this time, and I pass the witness.

14                   MR. JOHNS: Thank you.

15                               EXAMINATION

16 BY MR. JOHNS:

17           Q       So this Plaintiff's Exhibit 1, it says it's  
18 a preliminary draft subject to change.

19                   Has this been adopted or approved by the  
20 port as the plan for the property that's being taken?

21           A       No, it has not been adopted as a plan. They  
22 have a plan for full buildout of Velasco Container  
23 Terminal and the berths, and we've completed two  
24 phases of that, and have 1,725 feet of container  
25 berthing space, vessel berthing space, plus a 85-foot



1 RORO platform. But there's still a third phase to  
2 building out the berth line capability on that and,  
3 you know, we're building out in phases the full  
4 concreted storage areas. Most of it's in  
5 limestone-based areas. Right now there's a portion of  
6 it that's limestone-based. It's all being utilized at  
7 this point, but just for different uses.

8 Q So this is kind of a potential concept plan  
9 for how it could be used?

10 A Correct.

11 Q But isn't actually -- it hasn't been finally  
12 determined that this is what will be installed there?

13 A When you say "there," please define.

14 Q Well, particularly on my client's property.  
15 This is a concept plan, but it's not something that's  
16 been approved to be built on my client's land. Is  
17 that a fair statement?

18 A Yes. You know, again, you have concept  
19 plans and -- to be done in phases. You're correct,  
20 it's a concept plan, and until the point at which the  
21 budget's approved and the contract is approved to  
22 construct -- you know, all of that has to go through  
23 the Port Commission for approval.

24 Q On this Plaintiff's Exhibit 1, are you able  
25 to guide the cursor to show approximately where my

1 client's property would be? I'm just trying to get my  
2 bearings here.

3 MS. MANION: I think it's right about  
4 here-ish, but if I do a little side by side, maybe I  
5 can figure that out better.

6 THE WITNESS: It's in those purple  
7 rows.

8 MS. MANION: Yeah, I think it's back  
9 here, but I don't want to --

10 THE WITNESS: Right.

11 MS. MANION: -- be marking and be  
12 inaccurate.

13 BY MR. JOHNS:

14 Q So the purple rows on this concept plan, if  
15 I'm reading it right, it says top handler.

16 Does that say grounded containers?

17 A Correct.

18 Q Okay. These grounded containers, are those  
19 the kind of -- when we talk about a containership -- I  
20 had a case one time involving a containership that  
21 broke in half in the North Atlantic. They're huge  
22 containers that go on those real big ships.

23 Are those the kind of containers that  
24 would --

25 A It could be a 20-foot or a 40-foot container

1 that you would traditionally see going down the road  
2 that even has Amazon on the side or maybe Dole Fresh  
3 Fruit. It's a shipping container, and they generally  
4 are either 20 foot or 40 foot.

5 Q So these would be things that would go on  
6 trucks, but are they also things that can be put on a  
7 ship? I mean, when you talk about a containership, is  
8 it that kind of container, or a different kind of  
9 container?

10 A And those go from a ship, stacked on a ship  
11 to sitting on a chassis or being picked up by a piece  
12 of equipment and stacked, but exactly what you see on  
13 a ship or going down the road is what has most likely  
14 been on a ship.

15 MR. JOHNS: Okay. I just wanted to  
16 understand what the purple was.

17 Okay. Unless you've got another set of  
18 questions, Laura, I think I'm done.

19 MS. MANION: I do not. I just thought  
20 that that exhibit might be helpful for you to have in  
21 conjunction with the one that you guys just did,  
22 marking the other stuff.

23 MR. JOHNS: Great.

24 THE REPORTER: Before we go off the  
25 record, Ms. Manion, did you want Ms. Saathoff to read

1       and sign the transcript?

2                       MS. MANION:   Yes, please.

3                       THE REPORTER:   All right.   Did you want  
4       to order a copy of the transcript?

5                       MS. MANION:   Yes.

6                       THE REPORTER:   Okay.   Thanks.

7                       Everyone ready to go off the record?

8                       MR. JOHNS:    Yes.

9                       MS. MANION:   Yes.

10                      THE REPORTER:   We're going off the  
11       record.   The time is 12:20 p.m., Central.

12                      (Signature reserved.)

13                      (Whereupon, at 12:20 p.m., the  
14       proceeding was concluded.)

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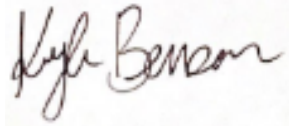
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CERTIFICATE OF DEPOSITION OFFICER

I, KYLA BENSON BUCHAN, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KYLA BENSON BUCHAN  
Notary Public in and for the  
State of Texas

☒ Review of the transcript was requested.

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CERTIFICATE OF TRANSCRIBER

I, JENNIFER FENIMORE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JENNIFER FENIMORE

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

I, KYLA BENSON BUCHAN, the officer before whom the foregoing proceedings were taken, do hereby certify:

That the deposition transcript was submitted to the witness or to the attorney for the witness for examination and signature on \_\_\_\_\_; or [ ]examination and signature was waived;

That the transcript [ ]was/[ ]was not returned by the witness, and if so, on \_\_\_\_\_;

That, if returned, the attached Changes and Signature page contains any changes and the reasons therefor;

That the transcript was delivered in accordance with Rule 203.3;

That the amount of time used by each party at the deposition is as follows:

Mr. Johns - 01 HRS: 23 MIN

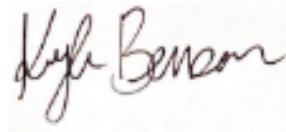
Ms. Manion - 00 HRS: 03 MIN

That \$ \_\_\_\_\_ is the deposition officer's charges to the \_\_\_\_\_ for preparing the original deposition transcript and any copies of exhibits;

That a copy of the certificate was served on

1 all parties on \_\_\_\_\_, and filed with  
2 the Clerk.

3 Certified this \_\_\_\_\_ day of \_\_\_\_\_,  
4 202\_\_\_\_.

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8 KYLA BENSON BUCHAN

9 Notary Public in and for the

10 State of Texas

11 Veritext Firm Registration No. 571  
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1 Port Freeport v. Unknown Heirs OBO Marshall, Lucille  
2 Phyllis Saathoff , Corp Rep Job No. 5938917

3 E R R A T A S H E E T

4 PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

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6 REASON\_\_\_\_\_

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23 \_\_\_\_\_

24 Phyllis Saathoff , Corp Rep Date

25

1 Port Freeport v. Unknown Heirs OBO Marshall, Lucille  
2 Phyllis Saathoff , Corp Rep 5938917

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Phyllis Saathoff , Corp Rep, do hereby declare that I  
5 have read the foregoing transcript, I have made any  
6 corrections, additions, or changes I deemed necessary as  
7 noted above to be appended hereto, and that the same is  
8 a true, correct and complete transcript of the testimony  
9 given by me.

10

11

12 \_\_\_\_\_  
Phyllis Saathoff , Corp Rep

\_\_\_\_\_ Date

13 \*If notary is required

14

SUBSCRIBED AND SWORN TO BEFORE ME THIS

15

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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1 lmanion@mcfarlandpllc.com

2 June 30, 2023

3 Port Freeport v. Unknown Heirs OBO Marshall, Lucille

4 DEPOSITION OF: Phyllis Saathoff , Corp Rep 5938917

5 The above-referenced witness transcript is  
6 available for read and sign.

7 Within the applicable timeframe, the witness  
8 should read the testimony to verify its accuracy. If  
9 there are any changes, the witness should note those  
10 on the attached Errata Sheet.

11 The witness should sign and notarize the  
12 attached Errata pages and return to Veritext at  
13 errata-tx@veritext.com.

14 According to applicable rules or agreements, if  
15 the witness fails to do so within the time allotted,  
16 a certified copy of the transcript may be used as if  
17 signed.

18 Yours,

19 Veritext Legal Solutions  
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[& - accordance]

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[accuracy - area]

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[area - boulevard]

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[boundaries - commodities]

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[communities - credentials]

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[protecting - remote]

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Texas Rules of Civil Procedure  
Part II, Section 9, Evidence and Discovery  
Rule 203

203.1 Signature and Changes.

(a) Deposition transcript to be provided to witness. The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness.

(b) Changes by witness; signature. The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer. If the witness does not return the transcript to the deposition officer within 20 days of the date the transcript was provided to the witness or the

witness's attorney, the witness may be deemed to have waived the right to make the changes.

(c) Exceptions. The requirements of presentation and signature under this subdivision do not apply:

(1) if the witness and all parties waive the signature requirement;

(2) to depositions on written questions; or

(3) to non-stenographic recordings of oral depositions.

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