

THE ALBERTA ENERGY REGULATOR

IN THE MATTER OF Application No. 432  
to the Alberta Energy Regulator

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AER PROCEEDING

VOLUME 2

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Calgary, Alberta

March 6, 2024

1	TABLE OF CONTENTS		
2			
3	Description		Page
4	March 6, 2024	Morning Session	211
5	Opening Remarks		213
6	CHRIS NICHOLAS, KATRINA ROWE, MICHAELA DAVIS,		215
7	JOE MARCHESE, SCOTT FASH, Affirmed		
8	KALEN ANDERSON, Sworn		215
9	Direct Evidence of Developers Group Witness		215
10	Panel		
11	D. Brezina Cross-examines Developers Group		255
12	Witness Panel		
13	The Panel Questions Developers Group Witness		257
14	Panel		
15	D. Brezina Re-cross-examines Directors Group		269
16	Witness Panel		
17	A. Huxley Re-cross-examines Directors Group		270
18	Witness Panel		
19	PETER TSOUKALAS, Sworn		273
20	RICHARD WESTREN, Affirmed		273
21	Direct Evidence of Brookfield Residential		273
22	Alberta Limited Witness Panel		
23	The Panel Questions Brookfield Residential		287
24	Alberta Limited Witness Panel		
25	Discussion		288
26	Certificate of Transcript		292

1 Proceedings taken at Govier Hall, Calgary, Alberta

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3 March 6, 2024 Morning Session

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5 P. Meysami The Chair

6 H. Robinson Hearing Commissioner

7 E. McNaughtan Hearing Commissioner

8

9 D. Brezina AER Counsel

10 A. Huxley AER Counsel

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16 G. Fitch For Qualico Developments West Ltd.

17

18 E. Appelt For the Developers Group

19

20 E. Dixon For Brookfield Residential

21 Alberta Limited

22 M. Cherkawsky For Brookfield Residential

23 Alberta Limited

24

25

26

1 D. Naffin For Pembina Pipeline Corporation,  
2 Plains Midstream Canada ULC,  
3 and SECURE Energy Services  
4 T. Myers For Pembina Pipeline Corporation,  
5 Plains Midstream Canada ULC,  
6 and SECURE Energy Services  
7 T. Machell For Pembina Pipeline Corporation,  
8 Plains Midstream Canada ULC,  
9 and SECURE Energy Services  
10  
11 S. Duncanson For Keyera Corp.  
12 J. Baker For Keyera Corp.  
13  
14 D. Lopez, CSR(A), RPR Official Court Reporter

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1 (PROCEEDINGS COMMENCED AT 9:01 AM)

2 Opening Remarks

3 THE CHAIR: All right. Good morning,  
4 everyone, and welcome to Govier Hall. There are a  
5 couple of things that have been brought to my  
6 attention, and I'm going to talk about those first.

7 I've been told, yet again, I have been speaking  
8 too softly, so if you have trouble hearing me, just  
9 shake a hand.

10 The other thing is for the benefit of the court  
11 reporters, if you may please speak slowly and not  
12 together, and I know at times that is not avoidable,  
13 but it makes transcribing a bit more difficult.

14 And last but not least, video of the hearing is  
15 being live-streamed through a link on the AER webcast.  
16 We do not keep a record of the video cast, and the  
17 video is not an official transcript. The court  
18 reporters will prepare the only official transcript of  
19 the hearing, so any viewers who are observing the video  
20 cast, we advise that recording and rebroadcasting of  
21 the hearing, audio or video, is strictly prohibited.  
22 And the same applies to people who are in the room,  
23 please. We appreciate your observance.

24 So, with that, any preliminaries that you wish to  
25 bring to our attention? Hearing none.

26 So we have the Developers Group next. You may

1 proceed.

2 E. APPELT: Good morning, Madam Chair and  
3 Hearing Commissioners. As introduced yesterday, my  
4 name is Eric Appelt with McLennan Ross. I'm here today  
5 with Mr. Fitch. We are counsel for both the applicant  
6 in this matter, Qualico Developments, and, more notably  
7 for today's evidence, what we've been referring to as  
8 the Developers Group.

9 I'm very pleased to now present the Developers  
10 Group to you. Each witness will introduce themselves  
11 in turn once we get into the direct evidence, but I  
12 thought it would be helpful at the outset to just  
13 briefly note their name for the record.

14 First, we have Ms. Kalen Anderson with  
15 UDI Edmonton; we have Chris Nicholas with MLC Group; we  
16 have Katrina Rowe with Cantiro Communities; we have  
17 Michaela Davis with Melcor Developments; closest to me,  
18 we have Joe Marchese with Avillia Developments; and  
19 then closest to you, we have Scott Fash with BILD  
20 Alberta.

21 THE CHAIR: Sorry, Counsel. Are your  
22 witnesses going to take oath or affirmation?

23 E. APPELT: Has that been administered by  
24 the court reporter yet? If -- if not --

25 THE CHAIR: No, they haven't.

26 E. APPELT: -- we should.

1 THE CHAIR: We do it on record.

2 E. APPELT: Okay. We should go ahead with

3 that, then --

4 THE CHAIR: Yes, please.

5 E. APPELT: -- before the direct evidence

6 is entered.

7 THE CHAIR: Thank you.

8 CHRIS NICHOLAS, KATRINA ROWE, MICHAELA DAVIS,

9 JOE MARCHESE, SCOTT FASH, Affirmed

10 KALEN ANDERSON, Sworn

11 Direct Evidence of Developers Group Witness Panel

12 THE CHAIR: Okay. Thank you.

13 E. APPELT: Thank you.

14 Q E. APPELT: Ms. Anderson, good morning.

15 A K. ANDERSON: Good morning.

16 Q Can I get you to please introduce yourself for the

17 record as well as the organization that you're here

18 representing today on the witness panel.

19 A Sure. My name is Kalen Anderson. I'm the CEO of the

20 Urban Development Institute or the Edmonton Metro

21 Region. I have been working with the organization as

22 its leader for about two-and-a-half years. Previous to

23 that, I've been a professional planner for about 20 in

24 Alberta and in Ontario.

25 Q Thank you.

26 And so you are sitting today on this witness panel

1 as part of the Developers Group, as we've established.  
2 Can you confirm that it's your organization,  
3 UDI Edmonton, that's referenced at -- starting at  
4 page 11 of the Developers Group written submission  
5 that's found at Exhibit 66.01?

6 A Yes, I can.

7 Q And that submission, Ms. Anderson, was prepared under  
8 your direction and is adopted as the evidence of  
9 UDI Edmonton in these proceedings; is that correct?

10 A That is correct.

11 Q And is the evidence in that submission accurate, to the  
12 best of your knowledge and belief?

13 A It is.

14 Q Thank you.

15 I'll get you to now please describe for the  
16 Hearing Commissioners from a general sense the  
17 operations that UDI Edmonton undertakes.

18 A Thank you.

19 UDI is a nonprofit organization with over  
20 180 different member companies in the real estate  
21 development industry. Our members include developers,  
22 planners, architects, engineers, as well as school  
23 boards and various municipalities, including the  
24 City of Edmonton. On behalf of and in collaboration  
25 with our members, UDI participates in public policy  
26 discussions and provides expertise on municipal issues



1 that may impact the real estate development industry as  
2 well as economic development, more broadly speaking.

3 Q And sitting next to you is Scott Fash with  
4 BILD Alberta. Can you confirm whether UDI Edmonton  
5 is a -- a member of BILD Alberta?

6 A Yes. UDI is, in fact, a constituent member of  
7 BILD Alberta. We're a three-tiered organization,  
8 so UDI advances municipal interests, BILD Alberta  
9 covers provincial ones, and CHB National deals with  
10 federal concerns. So we work together across these  
11 orders of government, and where there are areas of  
12 overlap, such as today, we will collaborate on those  
13 proceedings.

14 Q Is the applicant in these proceedings, Qualico  
15 Developments, a member of UDI Edmonton?

16 A Yes, they are.

17 Q And does that make them also a member of BILD Alberta,  
18 to your knowledge?

19 A Yes, they are both a member of BILD Alberta and  
20 UDI Edmonton.

21 Q Thank you.

22 I'll ask you next, Ms. Anderson, to provide a  
23 summary of what exactly it is that UDI Edmonton's  
24 members have been saying about their experiences with  
25 pipeline operators over the past several years.

26 A Thanks for that.

1           So over the past few years, the issue of pipeline  
2 crossings has been a growing topic of conversation  
3 among our membership who are working in the Edmonton  
4 Metro Region. This includes municipalities, as I  
5 mentioned before, who are also members of UDI. So this  
6 is important to note because this impact is not just a  
7 private-to-private issue but affects public and private  
8 sector land development taken together.

9           What we've been hearing is that the lack of  
10 predictability when it comes to timelines, pipeline  
11 alteration costs, the sharing of costs, the  
12 transparency of role and responsibilities, these are  
13 all the themes that have been emerging from our  
14 membership.

15           And it's important to note that the Edmonton Metro  
16 Region contains the highest density of pipelines of any  
17 major metro area in North America. So this is a pretty  
18 important topic to us. In Alberta, most pipeline  
19 systems deliver to two central locations: Edmonton and  
20 Hardisty. Within the Edmonton Metro Region, many of  
21 our local jurisdictions are impacted, then, by this  
22 connectivity with a significant influence in the  
23 city of Edmonton's newly developing neighbourhoods.

24           And then added on to that, it's important to  
25 note that our city region is growing extremely quickly,  
26 and we're planning for ongoing expansion of all

1       13 municipalities. By just the third quarter, for  
2       example, of 2023, there were an additional 56,000  
3       residents who joined our region, and our regional board  
4       currently is planning for a growth of 1.5 million,  
5       which is our current state, to 2 million within about  
6       20 years. So that's another half million people who  
7       will need to be accommodated and need places to live.

8               So, therefore, given this context, the efficient  
9       and effective interface between urban and energy land  
10      uses is a really germane feature of the growth and  
11      development in our region in Alberta in particular,  
12      which is why this issue is so important to address.

13    Q    Given the members' concerns that you've just laid out,  
14       are you able to provide for the Hearing Commissioners a  
15       general sense of where exactly it is that these  
16       pipeline crossings rank in terms of the goals or  
17       objectives of UDI Edmonton?

18    A    Yeah. So every year, we make a bit of a top ten list  
19       of our top ten advocacy issues, and in early 2023, we  
20       actually identified the issue of pipeline crossings as  
21       one of our top ten advocacy priorities, and we put it  
22       out on our website well in advance of this hearing  
23       being called.

24               So I'll just maybe read what -- what we've  
25       said online, and it's still there today, which  
26       summarizes our position, and this is also summarized

1 in the Developers submission on -- in paragraph 65:  
2 (as read)

3 UDI Edmonton believes that pipeline  
4 operators' approaches to crossing agreements  
5 and rights-of-way are presenting impediments  
6 to efficient and responsible development and  
7 redevelopment. Pipeline crossings and  
8 conflicts are becoming more frequent as our  
9 population increases and demand for housing  
10 and civic facilities grow across the region.

11 Costs associated with these crossing  
12 agreements have reached a threshold where the  
13 public is losing from a variety of different  
14 angles that might not yet be entirely  
15 realized. We, therefore, believe that  
16 collaborative -- this collaborative approach  
17 in pursuit of effective pipeline crossings is  
18 in the public interest.

19 Q Thank you.

20 And just to confirm, that position that you've  
21 just described from the UDI Edmonton, would that be  
22 based on the complaints or reports received by  
23 UDI Edmonton from its public members?

24 A Yes, that's correct. We, in fact, have created  
25 recently a specific UDI subcommittee dedicated, in  
26 particular, to working through these oil and gas

1 interface issues within our region. So it is a -- an  
2 ongoing concern that we're taking seriously.

3 Q One of the, I guess, secondary issues spoken to  
4 yesterday during Qualico's evidence was the ability of  
5 developers to complete due diligence before acquiring  
6 lands that would ultimately be developed. Are you able  
7 to speak to that concept of due diligence from the  
8 perspective of UDI Edmonton?

9 A Yes. Certainly. I'm happy to.

10 And I'm just going to take a few moments maybe to  
11 raise it up a level to more of the policy gaze,  
12 which -- which is what we -- we apply at UDI. So when  
13 it comes to the issue of due diligence and any  
14 assumptions that developers would be in a position to  
15 know all of the factors that would -- and financial  
16 requirements that would impact the lands they either  
17 intend to acquire or have already acquired relative to  
18 existing pipeline infrastructure, there's a few  
19 important points that we need to note about how the  
20 planning and development system happens within our  
21 region.

22 We do have an Edmonton Metropolitan Region Board  
23 which governs and manages all regional development  
24 within the Edmonton area, and it has a long-term plan  
25 for growth which outlines where urban expansion will  
26 occur, to what level of intensity, and what general

1 land use. This is approved by a board of 13 mayors --  
2 they are the board -- and guided by a CEO.

3 Once that direction's been provided, all municipal  
4 development plans, so city plans, then set out the  
5 citywide growth strategy and more detailed area and  
6 neighbourhood structure plans, which bring that down  
7 closer to the ground, so to speak.

8 These area and neighbourhood structure plans are  
9 approved in a political forum by municipal councils,  
10 and all of these levels of plans are being prepared and  
11 amended regularly.

12 These policy directions that come out of the plans  
13 are then supported by local regulations in the land use  
14 bylaw as well as more detailed engineering and design  
15 and construction standards. So taken together, these  
16 plans and policies are both determined by our elected  
17 bodies and implemented through administrative  
18 structures.

19 It's important to note that in addition to what  
20 I've just described, there are also provincial rules  
21 and regulations that we must follow. So technical  
22 requirements and political policy direction of all type  
23 is updated often, and our industry, as UDI, is actively  
24 engaged in all of the relevant changes as -- as we can  
25 be, and we participate fully to ensure that our end --  
26 end users' needs are met. And in the case of thinking

1 about new neighbourhoods, the end user is ultimately  
2 the homebuyer.

3 So within this context, it's not possible to  
4 simply avoid traversing or crossing a pipeline as a  
5 proactive business decision of some type, either  
6 practically speaking or economically, nor is it  
7 possible to set out a very clear and unchangeable  
8 development vision at the point of due diligence and  
9 expect that no external impacts based on changing  
10 policies, regulations, or technical requirements  
11 will -- will affect those over time.

12 So this is why as an -- a collection of different  
13 groups under the Urban Development Institute's  
14 guidance -- what we're asking for is clarity in terms  
15 of process; we're asking for open and clear  
16 communication, and we really want to share -- establish  
17 shared expectations that are so important when  
18 assessing these potential impacts.

19 So, really, as table stakes in the Edmonton Metro  
20 Region, developers must grow contiguously, they have to  
21 meet the density targets that are set out by the  
22 different plans, and they also are not able to develop  
23 wherever they might see to be most advantageous for  
24 them at the time. Their decisions are highly  
25 constrained, so we need to grow the region in a logical  
26 and connected way.

1           So, as I mentioned earlier, the -- unlike the  
2 situation of pipeline crossings where interactions and  
3 outcomes are inconsistent or have been in the past, we  
4 make it a real point to try to get involved both at the  
5 political level and the administrative level wherever  
6 we can to help ensure that we have the clarity so that  
7 our businesses can operate with the most confidence.

8           At this point in time, for example, in Edmonton,  
9 there are a couple of policy activities that are  
10 ongoing which will impact how neighbourhoods are built  
11 and designed over time. We have a new terms of  
12 reference being established for area structure plans  
13 and neighbourhood structure plans, so that -- that  
14 show -- that will give direction to different  
15 development companies in terms of how they can plan  
16 their neighbourhoods, and we're also working through a  
17 technical exercise to develop new cross sections for  
18 roadways called complete streets.

19           In addition to that, we just adopted a new -- a  
20 zoning bylaw in Edmonton which will affect what kind of  
21 land development -- or development rights you can have  
22 on any parcel of land. So all of these are very kind  
23 of watershed policy amendments that our industry has  
24 been involved with and our -- our developers are  
25 subject to.

26           So when we think about all of these city-building



1 influences that are brought to bear when we're planning  
2 and developing new communities, we really can't expect  
3 an individual land developer who may be working within  
4 any of these areas to note every possible future  
5 outcome that would impact where specific crossings may  
6 or may not be required and indeed the -- the exact type  
7 of engineering that will be required at the time.  
8 That's just from a planning policy perspective,  
9 notwithstanding the regulations of the -- the pipeline  
10 infrastructure itself.

11 So the -- kind of to wrap up here and to bring it  
12 home, this is currently the situation in -- in our  
13 region to a fairly significant level. As was described  
14 yesterday by Mr. Fjeldheim, in the one area alone of  
15 Edmonton, Horse Hill, there are over 45 different  
16 crossing points, and Edmonton in 2019 recently annexed  
17 land from the county of Leduc, which is a major future  
18 growth area, and it also has quite a few pipeline  
19 crossings or future crossings.

20 So because this presents a risk that cannot be  
21 currently accounted for or mitigated, we -- it's  
22 characterized by uncertainty, and this is an area that  
23 we would really be hoping to get a little bit more  
24 clarity out of the hearing today.

25 What is really required at the end of the day to  
26 enable a high-functioning real estate development

1 industry that supports residential and nonresidential  
2 growth in Alberta's cities and towns is to maintain the  
3 most predictable and supportive regulatory environment  
4 possible that is informed by stakeholder input and  
5 keeps the needs of end users in mind.

6 Our members and UDI as an association work  
7 diligently to improve clarity, enable growth, support  
8 investment, and adapt to changing consumer needs, as  
9 well as economic impacts that ultimately adds up to  
10 building excellent and affordable communities for  
11 Albertans to call home.

12 The issue of pipeline crossings and the associated  
13 costs has been one area where the membership of UDI has  
14 not been able to achieve the needed clarity,  
15 transparency, and equity to a satisfactory degree.

16 We are indeed hopeful that more certainty can be  
17 brought to -- to our member companies through this  
18 process today.

19 Q Thanks very much.

20 My last question for you, Ms. Anderson: As you  
21 know, Qualico has brought this application seeking cost  
22 sharing in the circumstances that you've described,  
23 which Qualico says is in the public interest.

24 Can you confirm, from the perspective of  
25 UDI Edmonton, what -- what is your position in  
26 connection with Qualico's application on that issue in

1           these proceedings?

2    A    Thank you.

3           We are fully --

4    THE CHAIR:                    Sorry.  Before you proceed,  
5    may I interject?

6           Could you speak a bit slowly?  Because I can see  
7    it's going quite fast here with the transcribing, if  
8    you may.

9    E. APPELT:                    Sure.  Thank you.

10   THE CHAIR:                    Thank you.

11   A    K. ANDERSON:                My answer is yes.

12   Q    E. APPELT:                   Thank you, Ms. Anderson.

13           Those are all of my questions for you today.

14           Mr. Nicholas, good morning.  Can I get you to  
15   please introduce yourself and the organization that you  
16   are here on behalf of?

17   A    C. NICHOLAS:                My name is Chris Nicholas.

18           I'm with MLC Group.

19   Q    And what -- what is your group with the organization --  
20   that organization, sir, and how long have you filled  
21   it?

22   A    I've been with the company since 2010 and president of  
23   the company since 2014.

24   Q    What exactly is it that MLC does?

25   A    We're a land development management organization  
26   specializing in residential and commercial development

1 in Edmonton and area, and we're currently managing the  
2 development of over 15 communities in the capital  
3 region.

4 Q And I'll take you, sir, through the same housekeeping  
5 items that -- that I reviewed with Ms. Anderson first.

6 I see that MLC Group is referenced at page 7 of  
7 the written Developers Group submission. Again, that's  
8 Exhibit 66.01. Can you confirm that that submission  
9 was prepared under your direction?

10 A Yes.

11 Q And that the evidence in the submission is accurate, to  
12 the best of your understanding and belief?

13 A It is.

14 Q And what is MLC's overall position taken in connection  
15 with the application brought by Qualico in these  
16 proceedings?

17 A We're in full support.

18 Q Has MLC dealt with pipeline operators on crossings in  
19 any of its Edmonton neighbourhoods?

20 A We have, yeah.

21 Q And which neighbourhoods and pipeline operators would  
22 those be?

23 A Neighbourhoods: Marquis West, which is immediately  
24 adjacent to the Horse Hills land; Desrochers and  
25 Heritage Valley Town Centre, which are in Southwest  
26 Edmonton. And operators would include ATCO and the

1 respondents to Qualico's application, Pembina and  
2 Plains.

3 Q And can you describe for the Hearing Commissioners,  
4 Mr. Nicholas, MLC's experience in dealing with those  
5 particular operators on pipeline crossings in your  
6 Edmonton development?

7 A Yeah. It -- it seems to our organization that there's  
8 been a market change in the past three to four years on  
9 the operators' approach to these crossing agreements.  
10 Previously, for example, the neighbourhood of Quarry  
11 Ridge, which is immediately south of the Horse Hills  
12 neighbourhood -- which that was constructed about  
13 2008 -- or the neighbourhood was built -- and this is  
14 the exact pipeline in question that you heard about  
15 yesterday -- there -- there are no fees nor agreements  
16 nor anything needed to construct that neighbourhood.

17 Q Thank you.

18 And so we've heard these terms floated around this  
19 morning and yesterday: crossing agreements,  
20 backstopping agreements. Are you able to just provide  
21 a brief explanation for the Hearing Commissioners as --  
22 as to what exactly is meant by -- by those terms in  
23 MLC's experience?

24 A Sure. I'll do my best.

25 And I think the terms are interchangeable,  
26 depending on which operator you're dealing with, but

1 I'll pick on -- backstopping agreement is an agreement  
2 provided by operator to us to -- that has a cost  
3 estimate wherein we accept the cost, sign off on it,  
4 are obliged to pay, and that's the first step in order  
5 to gain the crossing agreement.

6 Q Thank you.

7 Now, two questions ago, you mentioned that over  
8 the past three or four years or so, MLC had noticed  
9 there had been a change in the process implemented by  
10 operators on these backstopping agreements. Are you  
11 able to, first, briefly describe what was the old  
12 system before the change, again, in MLC's experience?

13 A Prior to our dealings in our Marquis neighbourhood,  
14 there were -- I -- I was never aware of a backstopping  
15 agreement nor cost in order to obtain a -- a -- a  
16 crossing.

17 Q And what -- what exactly has changed under this new  
18 system that you described as having arisen over the  
19 past couple of years?

20 A Previously we were obliged, you know, for reinforcement  
21 work or the -- the work to -- for -- for the  
22 infrastructure that we provide to roads specifically,  
23 you know, in -- in the tune of -- just to quantify it,  
24 fifteen -- fifteen -- \$60,000, and now these agreements  
25 come with a price tag of \$900,000-plus.

26 Q So there's been a change in the asking price made by

1 operators in your experience. Has there been any other  
2 changes that you've noticed over the past couple of  
3 years?

4 A I think it all comes down to transparency. It seems  
5 that the fees being requested are -- are somewhat  
6 arbitrary and indiscriminant [sic], but, moreover --  
7 I'll go back to the transparency. It's very hard to  
8 get the cost breakdowns for the engineering assessment  
9 specifically in -- in the Horse Hills neighbourhood.

10 Q And in MLC's dealings with pipeline operators on these  
11 crossings, is there any offering of cost sharing or any  
12 opportunity to negotiate the -- the total cost that's  
13 been requested by the operators?

14 A No. The costs have been provided on a -- a --  
15 basically a take-it-or-leave-it basis.

16 Q Thank you.

17 Now, turning the page somewhat. Earlier in your  
18 evidence, sir, you mentioned that Marquis West was one  
19 of the neighbourhoods that MLC has been responsible for  
20 developing and overseeing, and I'll -- I'll ask you  
21 first to confirm where exactly is that Marquis West  
22 neighbourhood?

23 A It's immediately adjacent -- it's west of Qualico's  
24 Horse Hill neighbourhood.

25 Q And was there a crossing of a Plains pipeline that was  
26 required in that area?

1 A There was, yes.

2 Q And I take it that was the crossing at Meridian Street  
3 and 172nd Avenue?

4 A Correct, yeah.

5 Q Can you describe for the Hearing Commissioners the  
6 circumstances surrounding the alteration work that was  
7 completed at that intersection?

8 A Our joint venture called Marquis JV Ltd., we entered  
9 into an agreement with Plains and -- who completed the  
10 work to -- in order to proceed with development.  
11 Marquis paid for the crossing under protest,  
12 understanding it would be encompassed by Qualico's  
13 application. Again, it was -- it was out of necessity  
14 because the crossing is right across the entrance to  
15 our neighbourhood.

16 Q And final set of questions for you this morning,  
17 Mr. Nicholas.

18 You also mentioned the Desrochers Village  
19 neighbourhood in Edmonton. Can you confirm exactly  
20 where that -- that is located in Edmonton?

21 A Southwest Edmonton. It's west of the highway on  
22 James Mowatt Trail and 41st Avenue.

23 Q Some of the -- the issues and the challenges that  
24 you've just described in dealing with pipeline  
25 operators on crossings, in this particular case on the  
26 Desrochers Villages development, did you also encounter



1 to -- some of those same problems in that case?

2 A It's an identical situation, yes.

3 Q And any other specific concerns to note for Desrochers  
4 Villages from your experience?

5 A Well, I think as previously mentioned, but we're --  
6 we're specifically 18 months delayed from request to  
7 getting correspondence back in -- in the form of that  
8 backstopping agreement that I previously referenced  
9 from the operator in this case.

10 Q In terms of that delay you just mentioned, can you  
11 briefly summarize for the Hearing Commissioners the  
12 challenges --

13 A M-hm.

14 Q -- that delay poses to MLC in its operations as a land  
15 management organization?

16 A Sure. So in this case, there's a collector road which  
17 is a major collector between east and west. There's a  
18 20-metre gap which represents the area that would be  
19 the crossing over the pipeline in this case. The  
20 gap -- obviously it's paved up until this place.  
21 It's -- it's impassable by vehicle and very unsafe for  
22 pedestrians to go across. This collector happens to be  
23 the main feeder for a K to 9 school as well as a  
24 brand-new high school, Anne -- Dr. Anne  
25 Stevenson [sic], which, obviously, has a huge impact on  
26 all our residents and the students.

1           The delays in response and the costs that have  
2           been requested, obviously, affect MLC's ability to  
3           deliver housing affordability in a timely manner.

4    Q    Thank you very much, sir.  Those are all my questions  
5           for you this morning.

6           Moving one spot to the right, Ms. Rowe, good  
7           morning.  Can I please get you to state your full name  
8           and your organization for the record.

9    A    K. ROWE:                    Good morning.  I'm Katrina  
10           Rowe with Cantiro Communities.

11   Q    Thank you, Ms. Rowe.

12           And what -- what is your position with Cantiro  
13           Communities?

14   A    I'm president of Cantiro Communities.  I have been  
15           since 2022, and I've been with the company since 2012.

16   Q    In terms of broad strokes, what -- what type of work  
17           does Cantiro Communities engage in?

18   A    Cantiro is an integrated real estate company.  We build  
19           communities, we build houses, commercial properties,  
20           and investment properties across Alberta, Ontario, and  
21           British Columbia.

22   Q    For the Developers Group written submission, can you  
23           confirm, Ms. Rowe, that it is your organization,  
24           Cantiro Communities, that's referenced at page 10 of  
25           that written submission?

26   A    That's correct.

1 Q And, again, I'll ask you to confirm that that  
2 submission was prepared under your direction and that  
3 the evidence is accurate, to the best of your knowledge  
4 and belief.

5 A That's correct.

6 Q Ms. Anderson earlier this morning spoke briefly to the  
7 concept of due diligence, which, again, was raised  
8 yesterday. My question for you is: When Cantiro  
9 Communities is considering the prospect of acquiring  
10 lands which will be -- which will ultimately be  
11 developed, what -- what does the due diligence process  
12 entail, again, from the perspective of Cantiro  
13 Communities? And, more specifically, if you could  
14 speak to the factors that can be investigated during  
15 that process, that would be much appreciated.

16 A Most typically upon signing a purchase and sale  
17 agreement, we would have a 90-day due diligence period.  
18 Sometimes this can be as short as 30 days, and the  
19 longest I've ever seen is 180 days. During this time,  
20 we determine if the lands have already been provided  
21 with any development rights through municipal  
22 development plans, area structure plans, or  
23 neighbourhood structure plan approvals.

24 We also check for zoning and subdivision  
25 approvals, some of which Ms. Anderson with UDI Edmonton  
26 has already touched upon. We review any environmental

1 studies, geotechnical reports, or engineering reports  
2 that might already exist. If nothing exists, we would  
3 generally conduct geotechnical assessments and do an  
4 environmental site assessment.

5 We also take a preliminary look at the engineering  
6 requirements to service the land; we look at the  
7 topography of the land, any relevant features or  
8 amenities and rights-of-ways that exist, especially  
9 pipeline right-of-ways.

10 We walk the land. We also look at the market  
11 conditions in the area, population growth,  
12 demographics, and try to determine what types of  
13 housing would make sense for the area. Once we've  
14 completed all of the research we can, we would begin  
15 making educated assumptions to come up with a pro forma  
16 and cash flow based on all of the information we have  
17 to determine if the project is financially viable.

18 Due diligence can be a very intense period of time  
19 with a lot of work happening in a short time frame.

20 Q Thank you.

21 So you've provided a helpful summary of the  
22 factors that Cantiro can look into during a due  
23 diligence process and understand. What conversely --  
24 in your experience, what are some of the factors that  
25 cannot be fully understood or fully delineated even by  
26 way of the comprehensive due diligence process that you

1 just described?

2 A We cannot understand everything there is to know about  
3 the lands in a few months. As an example, we can see  
4 if any planning approvals have been obtained, but we  
5 don't know, ultimately, if the Municipality will  
6 approve development. We can look into the  
7 rights-of-ways that exist, but we can't always learn  
8 everything about them. Pipeline rights-of-way are  
9 especially challenging, as we can't usually find much  
10 information within a 90-day period. We look at what  
11 rights-of-ways exist, where they're located, how close  
12 to them we are, and what regulations we understand to  
13 exist at that time.

14 Further to Ms. Anderson's commentary, it's not  
15 possible for an individual land developer to know all  
16 possible future outcomes that would impact where  
17 specific crossings may or may not be required. This is  
18 particularly the case in areas where land is acquired  
19 for development prior to any high-level or detailed  
20 planning taking place.

21 We do not know the expense of a potential pipeline  
22 crossing even if we know that a pipeline crossing will  
23 be required. We're not provided timely or consistent  
24 information regarding the age of pipeline's depth,  
25 classification, condition, et cetera by operators  
26 within a due diligence period or sometimes ever at all.

1 Q And those last factors that you just described  
2 regarding the -- the technical aspects of the pipeline,  
3 isn't Cantiro able to inquire with the operators for  
4 that information and to receive it that way?

5 A Yes, inquiries can be made and almost always are;  
6 however, based on past experiences, Cantiro is unlikely  
7 to receive a response by the operator within the due  
8 diligence time period, which, again, is usually  
9 90 days. No urgency is shown by the operators in these  
10 situations, what makes it impossible for Cantiro to  
11 fully understand the scope and cost of any crossing  
12 agreements at an early stage.

13 Most recently, Cantiro required a proximity  
14 agreement for a pipeline in Southeast Edmonton. It  
15 took us 16 months, from December 2021 to April 2023, to  
16 obtain a proximity agreement which allows us to develop  
17 alongside the pipeline. This wasn't even for a  
18 crossing agreement. This was a relatively simple  
19 situation. And the proximity agreement took a long  
20 time, during which we were unclear what the issues were  
21 or what work was happening in the background.

22 Q Thank you.

23 And I'll ask you to confirm as well the position  
24 taken by Cantiro in connection with Qualico's  
25 application for cost sharing in the public interest in  
26 these proceedings.

1 A We are fully in support of Qualico's application.

2 Q Thank you very much.

3 Moving one further to the right, Ms. Davis. Good  
4 morning. Can you please introduce yourself and your  
5 company.

6 A M. DAVIS: Yeah. My name is Michaela  
7 Davis, and I work for Melcor Developments.

8 Q And what is your role with Melcor Developments?

9 A I'm a regional manager in our community development  
10 division. I've been in this role for over ten years  
11 and at Melcor Developments for over 12 years.

12 Q What is it exactly that Melcor does?

13 A Melcor Developments is a real estate development and  
14 management company operating in Western Canada and  
15 parts of the United States. My role as regional  
16 manager is -- in Melcor's community development  
17 division includes acquiring land, planning land through  
18 municipal and statutory approvals, coordinating the  
19 engineering of land with consultants, coordinating the  
20 grading and servicing of land with contractors, and  
21 ultimately selling subdivided residential, commercial,  
22 or industrial lots to builders and/or end users.

23 Q And I take it, Ms. Davis, that you've reviewed the  
24 portion of the Developers Group written submission that  
25 speaks to your organization, Melcor Developments?

26 A Yes.

1 Q And can you confirm that that submission is adopted as  
2 the evidence of Melcor in these proceedings and that  
3 the evidence is accurate, to the best of your  
4 understanding?

5 A Yes.

6 Q I note that in the Developers Group written submission,  
7 it is indicated that Melcor is not currently in the  
8 midst of a crossing dispute with a pipeline operator  
9 but that it has dealt with operators on crossings in  
10 the past. Is that accurate?

11 A Yes, that is correct.

12 Q And which -- which neighbourhoods is it in Edmonton  
13 specifically that Melcor is involved in developing and  
14 managing?

15 A Currently Melcor is involved in approximately  
16 20 neighbourhoods in Edmonton, including Rosenthal,  
17 Rosewood at Secord, Cavanagh Ridge, Jagare Ridge, Lewis  
18 Estates, and new communities in Glenridding, The  
19 Uplands, and Mattson in Southeast Edmonton.

20 Q That last neighbourhood that you mentioned, Mattson in  
21 Southeast Edmonton, where exactly is that located?

22 A Mattson is located south of 25th Avenue Southwest and  
23 east of 66th Street Southwest immediately adjacent to  
24 the Orchards of Ellerslie development, which is managed  
25 by Brookfield Residential.

26 Q Are you aware of which operator it is that holds the



1 right-of-way encumbrance for the necessary pipeline  
2 crossing in that Mattson neighbourhood?

3 A Yes. Keyera Corp.

4 Q Can you please describe for the Hearing Commissioners  
5 what exactly was required for that crossing in terms of  
6 alteration work.

7 A Yes. So in 2022, Keyera presented different options  
8 for replacement and lowering and reinforcement, which  
9 were dependent under the construction timing and if the  
10 work could be done or can -- and completed in  
11 conjunction with the crossing and the lowering being  
12 completed in the adjacent Brookfield lands. Overall  
13 costs were vague and changed a bit over the course of  
14 the crossing agreement discussions. Final costs were  
15 \$830,000 in the agreement, but we did not receive a --  
16 a detailed cost breakdown which identified any sort of  
17 overall cost sharing or any detail on costs associated  
18 with pipeline reinforcement work.

19 Initially it was indicated that the cost was to  
20 be -- was to be paid after the work was completed.  
21 Then it was requested that the funds be paid completely  
22 up front. Ultimately the agreement was written to  
23 require a partial payment upon execution of the  
24 agreement and a second payment on an agreed-upon date  
25 later on through the construction process.

26 We did receive a small refund later in the fall of

1 2022 after the final construction costs were  
2 reconciled, but a detailed final breakdown was not  
3 provided.

4 I'd like to note that we were not able to  
5 anticipate any of these costs during our due diligence  
6 period when we purchased the land, as we would not have  
7 known that the pipe would need to be lowered to  
8 accommodate the grades of the crossing, and we would  
9 not have been able to anticipate that the portion of  
10 the pipe would need to be reinforced due to changes in  
11 allowable pipeline wall fixes. Additionally, had the  
12 adjacent developer not been developing at the same  
13 time, our crossing would have been delayed until a  
14 future pipeline shut down later in fall of 2023, which  
15 would have been about 18 months later.

16 Melcor had crossed this right-of-way in other  
17 locations in previous development stages. We were told  
18 that increases to the cost this time around had come as  
19 a result of new CSA rules that required the pipe to be  
20 reinforced to meet a certain wall thickness. Again,  
21 not something we could have anticipated during our due  
22 diligence period.

23 Q Is there a neighbourhood adjacent to Mattson that is  
24 also impacted on by this Keyera Corp. pipeline that  
25 you've just described?

26 A Yes.

1 Q And who -- who's the developer for that neighbourhood?

2 A Brookfield Residential.

3 Q Have you had any discussions with Brookfield  
4 Residential as to their dealings with Keyera Corp.  
5 on that same pipeline?

6 A Yeah. Melcor worked closely with Brookfield during the  
7 period of time that we were working through the  
8 agreements, discussing the requirements of the crossing  
9 agreement. Melcor did perceive that Keyera utilized  
10 some inconsistencies in terms of payment timing,  
11 contingencies, insurance, the agreements. We worked on  
12 it through a period of time, and -- and some  
13 inconsistencies were noticed.

14 Q Thank you, Ms. Davis.

15 And, again, I'll ask you to confirm the position  
16 taken by Melcor Developments in connection with these  
17 proceedings.

18 A Yeah, we fully support it. Thank you.

19 Q Mr. Marchese, you're up next. Good morning.

20 Can you please state your full name for the record  
21 as well as the organization that you're here on behalf  
22 of.

23 A J. MARCHESE: Good morning. Joe Marchese  
24 with Avillia Developments.

25 Q And what -- what is your role with that organization,  
26 sir?

1 A My role is vice president. I've been with Avillia for  
2 approximately 16 months.

3 Q What business is Avillia Developments in?

4 A Avillia is a land developer and a land development  
5 manager of residential and industrial projects within  
6 the province of Alberta and British Columbia.

7 Q In terms of the same housekeeping questions, sir, I  
8 take it you've reviewed the written submission that was  
9 tendered on behalf of the Developers Group in these  
10 proceedings?

11 A Yes.

12 Q And that submission is accurate, to the best of your  
13 knowledge and belief; is that correct?

14 A Correct.

15 Q And can you confirm the position taken by Avillia  
16 Developments in respect of Qualico's application that  
17 brings us here today?

18 A Avillia is in full support of Qualico's application.

19 Q Thank you.

20 Can you describe for the Hearing Commissioners  
21 Avillia's experience in dealing with pipeline operators  
22 on crossings in any of the Edmonton neighbourhoods that  
23 it oversees and manages?

24 A Sure. Our -- our most recent experience is -- is in  
25 our Quarry Landing project, which is in Horse Hills  
26 Neighbourhood 1A immediately south of Qualico's Horse

1 Hills neighbourhood.

2 On our lands, we do have two pipelines: one being  
3 Imperial Oil, the other being Pembina Pipelines. Our  
4 experiences were extremely different from one to the  
5 other. Our experience with Imperial Oil required us to  
6 provide them with an engineering assessment or an  
7 integrity assessment, depending what you want to call  
8 it, at a cost of approximately \$20,000, a report  
9 completed of which we were unable to get any  
10 information from. It was withheld from us.

11 That was the only cost. We executed our service  
12 agreements, and everything was in place to proceed with  
13 the crossing of the Imperial pipeline crossing.

14 Our -- our experience with Pembina was -- was  
15 vastly different. In our communications, we were told  
16 that in order to enter into an agreement, we needed a  
17 backstopping agreement, which has been outlined  
18 previously by some of the colleagues on the panel. The  
19 cost of this backstopping agreement was going to be  
20 \$1.3 million, and we needed to sign it in order to get  
21 the agreements in place -- were completed for us to  
22 proceed with any surface structures -- crossing --  
23 sorry -- surface crossings.

24 Q Thank you.

25 Sir, you've described Avillia's experience in the  
26 Quarry Landing development. Can you explain how that

1 experience compares with Avillia's prior dealings with  
2 Pembina or other pipeline operators?

3 A Sure. Avillia in the past has dealt with different  
4 pipelines in areas such as Salisbury Village in our  
5 Sherwood Park -- in Sherwood Park, rather; Laurin in  
6 Sturgeon County [sic]; and, again, most recently, our  
7 Quarry Landing project. In the past, there was not any  
8 requirements at all for any backstopping agreements or  
9 any costs other than the required surface structure to  
10 cross the pipelines to protect the integrity of the  
11 pipeline.

12 Q Thank you.

13 And can you describe just briefly your overall  
14 impression, again, in Avillia's experience in dealing  
15 with the operators on these crossings?

16 A Yeah. Just -- again, Mr. Nicholas touched on it. It  
17 just seems very arbitrary now that there isn't any  
18 inconsistency either between one pipeline to the other,  
19 and ideally, obviously, we'd like to see some  
20 consistency so we know what we're dealing with when  
21 we're approaching anywhere near pipeline crossings.

22 Q Thank you very much, Mr. Marchese. Those are all of my  
23 questions during direct for you today.

24 A Thank you.

25 Q Last but not least, Mr. Fash. Good morning. Can you  
26 please state your name for the record and your

1 organization, sir.

2 A S. FASH: Yeah. My name is Scott Fash,  
3 and I am the CEO of the Building Industry and Land  
4 Development Association of Alberta. So we were formed  
5 by an amalgamation of legacy organizations, being  
6 UDI Alberta and CHBA Alberta, in around 2017. So we  
7 have a number of constituent associations across the  
8 province, including Fort McMurray, Grande Prairie,  
9 Edmonton, Red Deer, Calgary, Lethbridge, and  
10 Medicine Hat.

11 Q And you've touched on it briefly, but can you explain  
12 exactly what -- what it is that BILD Alberta does in  
13 terms of its operational mandate?

14 A Yeah. So we -- we represent 1,300 member companies who  
15 are involved in home building, land development,  
16 renovations, as well as kind of the supporting  
17 industries, the trades, so the suppliers, the  
18 consultant -- the consulting firms that kind of help  
19 make everything happen.

20 So we're -- we're an advocacy organization, and we  
21 focus on provincial legislation, regulation, or  
22 processes that have an impact on residential  
23 construction, land development, and specifically how  
24 that might interface with housing affordability.

25 Q I believe Ms. Anderson may have touched on this  
26 earlier, but are you able to confirm whether Qualico is

1 a member of BILD Alberta?

2 A Yes, that's correct.

3 Q Thank you.

4 And as with your fellow panel members, sir, I take  
5 it you've had a chance to review the Developers Group  
6 written submission that was tendered in these  
7 proceedings?

8 A Yes.

9 Q And that -- the portion of that submission speaking to  
10 BILD Alberta was -- is adopted by yourself as evidence  
11 in these proceedings?

12 A Yes.

13 Q And I'll, again, ask you to confirm the overall  
14 position taken by BILD Alberta in connection with  
15 Qualico's application that brings us here today.

16 A Yeah. We're fully in support.

17 Q Thank you.

18 I'll get you, Mr. Fash, to please provide a  
19 summary of what exactly it is that BILD Alberta's  
20 members have been saying over the past several --  
21 several years regarding their experiences with pipeline  
22 operators on crossings.

23 A Yeah. So I -- I think we really started hearing about  
24 this in 2021 and -- and more so leading into 2022.

25 Whenever a member brings an issue to us, we -- we have  
26 to first kind of do a bit of an analysis of, Is this a



1 broader issue, or is this a one-off? Meaning we don't  
2 advocate on a member's specific project on a specific  
3 issue. We have to ascertain, Is -- is this a broader  
4 issue that's being experienced by either a group of  
5 developers in a region or all of the developers  
6 province-wide?

7 So after that, we then try to understand the  
8 impact on affordability and -- and then also what are  
9 the pathways -- potential pathways for a resolution,  
10 either regulator, legislative change, or -- or other  
11 means. So we -- we brought this to our provincial land  
12 development committee and then did some direct outreach  
13 to active developers in -- in Grande Prairie, Edmonton,  
14 Red Deer, and Calgary. And what we found is that while  
15 a number of developers across the province have to  
16 regularly deal with pipeline crossings, it was really  
17 the only -- only the Edmonton area developers who  
18 seemed to be dealing with issues of transparency,  
19 delays, and escalating costs.

20 So the developers that are active in -- in the  
21 other jurisdictions, they -- they still had to deal  
22 with pipelines in their projects; they still had to pay  
23 for crossings but largely found that the companies were  
24 being responsive in terms of when they would get back  
25 to folks but then also reasonable in our infrastructure  
26 asks.

1           On the other hand, what we -- what we heard from  
2           the Edmonton developers consistently indicated a lack  
3           of responsiveness from the operators and lost  
4           construction seasons as a result, being required to pay  
5           significant sums of monies for studies that they then  
6           aren't permitted to see. That leads to them paying  
7           significantly larger sums of money on infrastructure  
8           when they're not actually sure if it's required, if the  
9           cost is reasonable, or if they should even be  
10          responsible for it.

11           And then, lastly, limited recourse should they  
12          disagree.

13    Q    Thank you.

14           So in addition to what you've just described in  
15          terms of what you've heard from BILD's members in terms  
16          of complaints regarding lack of responsiveness, large  
17          sums of money being requested by operators, and no  
18          negotiation of cost sharing, are there any other  
19          specific concerns that have been raised by BILD's  
20          members that you've been made aware of over the past  
21          several years?

22    A    Well, yeah. I mean, yes, in terms of affordability and  
23          its -- its impact on affordability. So there's,  
24          obviously, the hard infrastructure cost that I think  
25          I've -- have -- everybody's kind of gone into in terms  
26          of what's required, not only on the crossing side but

1           potentially any improvements that might be required  
2           from a pipe -- pipeline operator. So those can be, as  
3           we've heard, in the hundreds of thousands upwards to  
4           potentially the millions on a given project.

5           So then there's also the impact of the delays that  
6           can come from a lack of responsiveness. Again, I think  
7           it was mentioned yesterday, but our construction season  
8           in Alberta is very short. We might have six to eight  
9           months where you have the time to get -- get the road,  
10          the pipe, all of that work done on -- on the  
11          subdivision side of things. So what might -- a  
12          six-month delay might seem minor for some. That  
13          ultimately results in a -- in a lost construction  
14          season, and -- and in doing that, you've basically  
15          delayed the construction of new housing units, limiting  
16          the supply that could have otherwise be -- brought  
17          online, which ultimately has an impact on housing  
18          affordability.

19          Beyond that, there's also, then, yeah, the  
20          interest costs that are associated with delays, you  
21          know, that -- that still has to be funded by a  
22          developer and then ultimately the home builder and --  
23          and the end homebuyer.

24    Q       Thank you.

25                 And you -- you provided a nice segue just at the  
26                 end of your answer, but can you confirm base -- based

1 on your discussions with the members of BILD Alberta,  
2 are the pipeline crossing costs typically borne by the  
3 developers at the end of the day, or are they passed on  
4 to homebuyers as the ultimate consumers of housing  
5 products?

6 A Yes, it's -- it's like any other hard or soft cost  
7 associated with -- with residential construction and  
8 home building. The developer's going to recover these  
9 costs through the price of the lot that they sell to a  
10 builder. The builder is then going to recover those  
11 costs of that lot in the sale of the home to the end  
12 user, which is the homebuyer. If the market doesn't  
13 allow for either of those parties to recover those  
14 costs, they're typically going to hold off until  
15 conditions allow them to do so.

16 Q Thank you.

17 Skipping ahead, Mr. Fash. You had mentioned  
18 earlier on that BILD Alberta fills somewhat of an  
19 advocacy role by making recommendations on legislation,  
20 policies, regulations, and so forth. Can you  
21 confirm -- I guess to start with, has BILD Alberta had  
22 any specific discussions in the past with government  
23 departments regarding these concerns raised by its  
24 members?

25 A Yes.

26 Q And which -- which governmental department would that

1 be?

2 A The Ministry of Energy.

3 Q Can you please describe from a high-level perspective  
4 exactly what those discussions with the Minister of  
5 Energy entailed?

6 A Yeah. So we -- we sent a letter to minister --  
7 then-Minister Pete Guthrie in November of 2022 to -- to  
8 raise high-level concerns with what we were seeing kind  
9 of happen within the Edmonton region. That led to a  
10 meeting in February of 2023 with Assistant Deputy  
11 Minister Mike Simpson. Typically with an issue that --  
12 that has -- involves a regulator or an appeal body,  
13 so -- like the Alberta Energy Regulator or -- we often  
14 deal with matters in front of the Alberta Utilities  
15 Commission or the Land and Property Rights Tribunal.  
16 Government from both the nonpolitical and political  
17 side typically doesn't want to start looking at or  
18 considering legislative change while there is a matter  
19 that is being considered that might provide clarity --  
20 otherwise clarity that would negate the need to -- to  
21 go through kind of that legislative process.

22 So it's, again, been in my experience when there's  
23 an active matter in -- in front of a commission that --  
24 again, you're not going to be able to kind of go into  
25 the detail of potential legislative change, even to  
26 have those discussions, until it's been resolved. So

1 we had the meeting, understanding this matter was going  
2 to be reconsidered basically with the -- an  
3 understanding that we'll circle back pending the  
4 outcome of the decision here. And if the direction's  
5 provided, if we get the precedent set, I think -- that  
6 everybody's comfortable with, then we may not need to  
7 pursue legislative change. But if -- if additional  
8 clarify is needed, that's typically when BILD Alberta  
9 would then step in, have those additional meetings, do  
10 that additional advocacy to discuss potential  
11 legislative or regulatory changes if -- if they're  
12 required.

13 Q Thank you very much, Mr. Fash. Those are all of my  
14 questions for you today, and that concludes the direct  
15 evidence of the Developers Group.

16 E. APPELT: Madam Chair, the witness panel  
17 is now available for cross-examination.

18 THE CHAIR: Thank you very much.

19 And thank you, everyone, for your direct. I am  
20 checking my cheat sheet to see if we have a break  
21 planned. No, we don't.

22 So are you prepared to proceed with your cross?

23 D. NAFFIN: Good morning, Madam Chair.  
24 Plains, Pembina, and SECURE have no questions for this  
25 panel. Thank you.

26 THE CHAIR: Thank you very much.

1           So next is AER staff.

2           Counsel, do you wish to have a break, or you would  
3 like to proceed?

4           D. Brezina Cross-examines Developers Group Witness  
5 Panel

6    Q    D. BREZINA:                    I'm actually curious about  
7 what you just spoke about, Mr. Fash, potential  
8 legislative change.

9           Can you go into what sorts of changes you were  
10 thinking about?

11   A    S. FASH:                        I wouldn't speak to the  
12 specific legislative wording or anything along those  
13 lines because, again, we would defer to -- to expert  
14 panels like this to kind of have a -- do an evaluation,  
15 make a decision, make an evaluation of what the current  
16 legislation says, how it applies, those sorts of  
17 things.

18           What we'd be looking for is clarity or some  
19 direction in the legislation regulation, again, if  
20 required, specifying transparency associated with the  
21 costs, responsiveness, and requirements for industry to  
22 fund those crossings, but not any improvements to the  
23 actual pipeline themselves. That's a high-level, I  
24 guess, overview of what we'd be looking at if those  
25 legislative requirements -- or changes -- sorry --  
26 are -- are required. Does that make sense?

1 Q Yes. And specifically for legislation under the AER's  
2 jurisdiction, like the pipeline legislation --

3 A That -- and it -- I wouldn't know exactly -- the full  
4 extent of what -- what is going to be required. I  
5 think that would be a really exhaustive process,  
6 pending the decision of this, of figuring out what that  
7 would have to look like or even if the Government of  
8 Alberta would entertain it. I -- I don't have enough  
9 knowledge now to say whether they would or not. As  
10 mentioned, those are discussions that are typically  
11 deferred until a decision's been made.

12 Q Okay. And I -- I don't want to get off --

13 A M-hm.

14 Q -- topic here, but anything regarding the Municipal  
15 Government Act or that area of legislation?

16 A Yeah, we'd like to -- likely have to look if that  
17 interfaces with the MGA as well with -- the Municipal  
18 Government Act, yes.

19 Q Thank you.

20 A Yes.

21 THE CHAIR: Does that summarize your  
22 questions?

23 D. BREZINA: No more questions. Thanks.

24 THE CHAIR: Thanks, Counsel.

25 So the Panel may, I think, have questions, but we  
26 will take a brief break to caucus, and then we'll come



1 back and ask our questions. Thanks for your patience.

2 So I'm targeting 20 past. That's a test of my  
3 punctuality.

4 (ADJOURNMENT)

5 THE CHAIR: So we have some questions for  
6 the panel, for individual members of the panel.

7 Commissioner McNaughtan, please go ahead.

8 E. MCNAUGHTAN: Thank you, Madam Chair.

9 The Panel Questions Developers Group Witness Panel

10 Q E. MCNAUGHTAN: Thank you for your -- your  
11 evidence this morning.

12 I have a question for Mr. Marchese, please, of  
13 Avillia. First of all, you mentioned an experience --  
14 I think it was in Quarry Landing; is that correct? Or  
15 south of -- with two pipelines south of the Horse  
16 Hills --

17 A J. MARCHESE: I'm sorry. I missed the first  
18 part of that. I didn't hear that.

19 Q In --

20 E. DIXON: I -- I hesitate to rise, but I  
21 am having difficulty hearing.

22 E. MCNAUGHTAN: Okay. Sorry about that. I  
23 apologize. Having a lifetime of being told I mumble, I  
24 apologize.

25 Q E. MCNAUGHTAN: You mentioned, I believe, this  
26 morning your experience with two pipelines -- crossing

1 two pipelines in -- was it Quarry Landing, just south  
2 of -- so an Imperial pipeline and a Pembina pipeline?

3 A J. MARCHESE: That's correct.

4 Q And in your submission, you point to the Pembina  
5 pipeline, you give some numbers about the cost you  
6 expect at that crossing, you put it in your estimate of  
7 development, and that was -- you budgeted \$300,000 for  
8 that crossing?

9 A That's correct. Our office had budgeted \$300,000.

10 Q As a preliminary --

11 A Correct.

12 Q -- sort of?

13 And when you spoke about Imperial's crossing  
14 experience, they charged you approximately \$20,000 for  
15 an engineering study but no further cost. Was further  
16 work done on the crossing? Did Imperial do work? Did  
17 you do work?

18 A To my knowledge, there was no additional work that was  
19 being done. It was just paying for the impact  
20 assessment, and that was it.

21 Q So then you expected that there would be work at the  
22 Pembina crossing that needed to be done, and you had  
23 budgeted \$300,000 for that; correct?

24 A Our -- our original budget would have been 300,000. It  
25 would assume just the proper surface structure in order  
26 to cross the pipelines to protect the integrity of the

1 pipeline. So that --

2 Q And that --

3 A That would have been the budgeted cost estimate for a  
4 preliminary budget.

5 Q Okay. Thank you.

6 And then I understand that what changed was a  
7 backstopping agreement that -- am I still mumbling?  
8 Sorry.

9 A No. No.

10 That's correct. We -- we -- we later had a  
11 backstopping agreement that came to us in order to  
12 cross the pipe -- Pembina pipeline of the \$1.3 million  
13 originally. Yes, that's correct.

14 Q Okay. Thank you.

15 And just to point out, my interest is that we have  
16 heard quite a number of different cost estimates given  
17 to us of what potential crossing work would cost,  
18 anywhere from zero to one over a million dollars. And  
19 I wanted some clarity on what a zero-cost estimate  
20 might entail. So thank you very much.

21 A Okay. Thank you.

22 THE CHAIR: Commissioner Robinson.

23 H. ROBINSON: Thank you very much,  
24 Madam Chair.

25 Q H. ROBINSON: Ms. Rowe, I -- I think I heard  
26 you, when you were speaking to due diligence, would

1       make inquiries of pipeline operators about age of  
2       pipeline, condition, depth, those sorts of things, to  
3       help make an informed decision during that 90-day sort  
4       of window that you had to do that.

5               I thought I heard you say that the companies sort  
6       of seldom got back to you. That suggests to me that  
7       sometimes they did. Can you speak to -- or help me  
8       understand, you know, if they did, when they did, what  
9       did -- what did that look like, and, you know --  
10       recently, as -- or are you talking about the distant  
11       past?

12    A    K. ROWE:                    Thank you for the question.

13               I don't have any experiences where I've received  
14       meaningful information within a due diligence period.  
15       The example I gave where it took us 16 months to get a  
16       crossing -- sorry -- a proximity agreement -- we  
17       submitted a request on December 7th, for example, for a  
18       proximity agreement. On December 10th, Pembina  
19       responded that they received our request. From that  
20       time, we followed up, we followed up, we followed up.  
21       We didn't really receive any relevant or material  
22       information for a very long time.

23    Q    Thank you.

24               Is there alternative ways to get information, you  
25       know, about the -- more than just where the pipelines  
26       are that perhaps anyone from the Developers Group sort

1 of is interested in or -- or has successfully tapped  
2 into to help with your due diligence?

3 A C. NICHOLAS: I -- I know of no helpful  
4 database of the -- the -- obviously, the alignment you  
5 have, the depth. We can sometimes look back and see  
6 how old the pipeline is, but as far as depths and  
7 condition and/or the construction thereof, I -- I --  
8 we've had no luck in finding any of that information  
9 and rely on the operators to provide.

10 Q Okay. And if -- if I'm hearing you right, I think a  
11 theme in your submissions is that the lack of  
12 transparency and timeliness in your dealings with  
13 pipeline companies when alterations are required due to  
14 new road crossings diminishes your sort of capacity to  
15 do your due diligence and make informed decisions with  
16 respect to future development. I think I've got that  
17 right, and I see some nodding.

18 I've also, I think, heard you clearly say --  
19 because I think part of our -- our job is to determine  
20 what is or isn't in the public interest -- that cost  
21 sharing -- you jumped to sort of the end and suggest  
22 cost sharing ought to be part of the public interest.

23 I'm wondering, in relation to transparency,  
24 timing, you know, you might call this "business  
25 efficacy" -- that relates back to your ability to then  
26 exercise due diligence. Is business efficacy something

1           that, you know, would or could form part of the public  
2           interest, if we can isolate that, or does that make no  
3           sense?

4    A    I -- I think that's well said.  I don't think --  
5           that -- that phrase hadn't occurred to me, but, as the  
6           Panel can respect, like, we -- we deal in the  
7           regulatory process, and our timelines are long, but we  
8           deal with a very stringent set of rules, whether it be  
9           provincially or municipally, which, obviously, would --  
10          which governs ethics.  There's no such guideline, so  
11          terms of -- or -- terms of engagement and -- and  
12          business ethics, expectations on both sides, which  
13          amounts -- which I think -- if I'm interpreting wrong,  
14          please correct me -- is a collaboration, which that's  
15          very much what we deal with within our government  
16          agencies.  We -- I -- I think that's right, yeah.  Hit  
17          it well.

18   A    K. ANDERSON:                    We --

19   Q    There's also an element of --

20            Oh, I -- I apologize.  Please -- please go ahead.

21   A    No, maybe just -- sorry.  Maybe just as a quick  
22          follow-up.

23            In terms of that question of business efficacy and  
24          ensuring that we have a predictable regulatory  
25          environment, I think -- I think that is truly at the --  
26          at the core.  It's less about which dollar or which

1 month some part of a long-term planning process occurs  
2 and more about can we try to streamline it, and can we  
3 predict it, and can -- if you're a developer, can you  
4 actually go to your bank and, you know, transact on  
5 that kind of assumption. And that's -- that's one of  
6 the pieces that's missing from that business efficacy  
7 point of view with respect to this situation.

8 Q Thanks.

9 A question I have too is: I mean, there's the  
10 public interest elements under Section 33, and then  
11 there's the question of discretion in that little  
12 May -- in -- in -- in the section and what might  
13 persuade us to trigger the discretion to issue an  
14 order, and this tracks back to this -- what I'm hearing  
15 around transparency, the timeliness, and the effects of  
16 that on due diligence.

17 So in addition to the question of whether it could  
18 or should form part of the public interest -- which I  
19 don't know -- could or should it inform the activation  
20 of our discretion to issue an order at all, this  
21 question of dealings and perhaps dealings over the last  
22 three or four years inform our -- the activation of our  
23 discretion?

24 A Can we just take a moment to caucus?

25 Q Yeah. Thanks.

26 A C. NICHOLAS: Okay. Apologize for the --

1 I'm just trying to get this. I guess the question --  
2 the answer to the question is, and use at the Panel's  
3 discretion, is yes. Love some discretion in terms  
4 of --

5 THE CHAIR: Could you speak up --

6 A C. NICHOLAS: Sorry.

7 THE CHAIR: -- or bring the mic closer?

8 A C. NICHOLAS: Love -- yes, we would -- we  
9 would encourage discretion in -- in -- in public  
10 interest, not only -- but I want to just clarify. It's  
11 not only in the -- the due diligence period. We can't  
12 construct these facilities that we -- like roads which  
13 we build for the neighbourhood. We can't build roads  
14 because the same unreactiveness, lack of transparency.  
15 So utilizing your discretion, it's -- it's -- it'd be  
16 wholistic of the request of this panel.

17 Q H. ROBINSON: Any other thoughts on -- in  
18 relation to my question?

19 A S. FASH: Yeah. Maybe I'll try to  
20 expand. So I think getting this -- this clarity  
21 through this process is -- is critical. As mentioned,  
22 it's not just through the due diligence phase, it's  
23 then when you're actually able to begin construction.

24 So last year in Alberta, we probably needed to  
25 double our housing starts to meet up with the  
26 actual in-migration of -- of -- of new residents to the



1 province. That's despite Calgary building more homes  
2 than they've ever built, Edmonton building above its  
3 ten-year average. We're expecting those same pressures  
4 that are facing -- that have faced Calgary the past  
5 couple of years to start in Edmonton. I'm sure we've  
6 already seen it in -- in demand.

7 So it's the due diligence phase to kind of get  
8 that project ready, going, buy the land, get the  
9 approvals. Beyond that, it's missing consecutive  
10 construction seasons. You're putting housing out  
11 five-plus years as a result of that.

12 So getting the clarity here, I think, then gives  
13 the industry the ability to kind of activate much  
14 more confidently knowing that there has been  
15 potentially a precedent set or discretion used by this  
16 panel on matters related to this. I hope that answers  
17 the question.

18 Q Yeah, that -- that, as you said, expands on the initial  
19 answer, so thank you for entertaining my -- my  
20 questions.

21 H. ROBINSON: That -- that's it from me,  
22 Madam Chair.

23 THE CHAIR: Thank you. Thank you very  
24 much.

25 Q THE CHAIR: So I have some questions for  
26 you as well. Where do I begin?

1           So this should be just a clarification question  
2           for you, Mr. Fash. You mentioned that you're  
3           advocating that the industry pay for the crossing but  
4           the pipeline company pays for the -- for the upgrades  
5           that may be required as a result of it. Did I  
6           understand you correctly?

7    A    S. FASH:                    Yeah. That's -- in discussion  
8           with the developers who are being impacted by this  
9           within the Edmonton region, as well as those who  
10          operate in other jurisdictions where this has not been  
11          an issue, the standard practice has been industry funds  
12          a crossing to protect the integrity of the pipe.  
13          Anything required beyond that is -- is required or  
14          should be funded by the -- the pipeline company.

15   Q    And by "industry", you mean development industry?

16   A    Development industry, yes. Sorry.

17   Q    Thank you.

18   A    Sorry. Yeah.

19                 And I -- correct me if I'm wrong, but that's based  
20                 on our initial conversations that would -- you know, if  
21                 we were to have to go down that route of trying to look  
22                 at legislative or regulatory change, that would be kind  
23                 of the -- the starting point for those discussions.

24   Q    And that's irrespective of new or existing crossing; is  
25          that correct?

26                 Let's say there is a rural road that you need to

1 upgrade, such as the Meridian Street here, or there is  
2 a brand-new crossing that happens as a result of  
3 development, irrespective of that, that's what you're  
4 advocating for?

5 A Yes, that's likely what we'd be advocating for, again,  
6 pending the -- the -- the outcome of this, yes.

7 Q And I see heads nodding from the executives of the  
8 development companies as well. Okay. Thank you.

9 G. FITCH: Madam Chair, again, we're  
10 having trouble at the back here.

11 THE CHAIR: I apologize. I'm a lifelong  
12 whisperer. Now I am chairing. It's an adjustment.

13 Q THE CHAIR: So that answers my question.

14 Now, I have a question for Ms. Anderson and  
15 Mr. Fash. You both represent advocacy groups for a  
16 specific industry, but this challenge of Edmonton  
17 growing, specific to Edmonton, is now a real challenge  
18 for development industry to know how to deal with the  
19 pipeline crossings.

20 In your work with the stakeholders and advocacy  
21 work, have you engaged any of the pipeline companies,  
22 pipeline representatives?

23 A K. ANDERSON: Neither of us have engaged  
24 with the pipeline companies directly.

25 Q Okay. Thank you.

26 So at a policy level or at a broader perspective,

1           there hasn't been any?

2    A    S. FASH:                    No.  And I think from our end,  
3           we haven't kind of gotten into that policy discussion  
4           with -- with government.  Again, we're -- we're always  
5           trying to be very careful and respectful of any  
6           regulatory process that may be in place, so it's --  
7           it's been kind of a -- high-level introductory  
8           discussions with government.  Our anticipation would  
9           be -- you know, again, pending the outcome of this  
10          decision is that is where we would kind of engage more  
11          fulsomely, both the Government of Alberta, but then  
12          also, obviously, the other stakeholders, those being  
13          the -- the pipeline operators.

14   Q    Okay.  Thank you very much.

15                Now, this question is specific to Marquis JV.  
16           Yesterday we had a panel member, a witness from ARA,  
17           and they gave me a little bit of a lesson on how the  
18           levy system works.  But in the evidence that has been  
19           filed and submissions of different parties, as I read  
20           it, the Marquis JV at the intersection of 172 chose not  
21           to take the levy route and absorb the cost of the  
22           crossing.  So can you elaborate why that was, how  
23           that -- and how is it being reimbursed, the details of  
24           it?

25   A    C. NICHOLAS:                I'll -- I'll try to give you  
26           the details without getting into the weeds.  It's not a

1 choice. Arterial roads are identified based on -- you  
2 know, like, they're identified through the statutory  
3 planning process, and those are roads that -- that --  
4 one step away from, you know, a -- a highway; right?  
5 So if it's an arterial road, it goes into a levy cost  
6 shareable. A collector road, which -- and this is all  
7 based on volume of traffic, based -- easiest way: That  
8 can't be shareable. It's -- it has to be absorbed. A  
9 collector and/or a local has to be absorbed by the  
10 neighbourhood or -- or the ownership of the land.

11 So it's just not -- it wasn't a choice for us not  
12 to take this to a steering committee. It's just not a  
13 leviable item, unfortunately. We just have to -- we  
14 have to absorb it -- or the -- my residents have to  
15 absorb it in the end, unfortunately.

16 Q Okay. That clarifies it very well. Thank you.

17 And that is all my questions. Thank you very  
18 much. I appreciate your time.

19 D. BREZINA: Excuse me.

20 THE CHAIR: Sure.

21 D. BREZINA: Sorry. I have a few follow-up  
22 questions if that's okay.

23 THE CHAIR: Sure. Go ahead.

24 D. Brezina Re-cross-examines Directors Group Witness  
25 Panel

26 Q D. BREZINA: So given that this is an

1 application by Qualico under Section 33 to direct  
2 Plains and Pembina to alter pipelines, I'm curious how  
3 this panel, the Developers Group -- how they think that  
4 the -- the AER, the decision-makers, can do what is  
5 being asked for on page 16 of the Developer Group  
6 written submissions of December 13, 2023.

7 I'm just curious how you think that this panel can  
8 direct certain policy things. Or is this more a legal  
9 question that --

10 G. FITCH: Yeah.

11 Q D. BREZINA: -- Gavin's going to answer?

12 Okay.

13 G. FITCH: Well, I -- what I'm going to  
14 say is I do think it's a legal question, and it's one  
15 that we're prepared to address and will address in  
16 final argument.

17 D. BREZINA: Okay.

18 G. FITCH: I don't think it's really  
19 appropriate for the witness panel --

20 D. BREZINA: That's fine. Thank you.

21 G. FITCH: -- in my respectful view.

22 A. HUXLEY: And just one more question for  
23 this panel.

24 A. Huxley Re-cross-examines Directors Group Witness  
25 Panel

26 Q A. HUXLEY: I'm just wondering, as you've

1           talked about the differences in the Edmonton region  
2           versus elsewhere in the province, if there's any  
3           reasoning for that that you're aware of or finding that  
4           things are more difficult in Edmonton Metro than  
5           elsewhere?

6    A    S. FASH:                            No.  Honestly, I -- we --  
7           we -- we haven't really been able to figure out what  
8           the difference is other than, necessarily, the parties  
9           involved.  That's been really the only differentiating  
10          factor, and -- and, you know, these are anecdotal  
11          discussions I'm having with the developers in, again,  
12          Grande Prairie, Red Deer, Calgary, and Edmonton.  It's  
13          seemingly related to the Edmonton region and with the  
14          specific operators that we're talking about here  
15          through these hearings.

16   Q    Okay.

17   A    Yeah.

18        THE CHAIR:                        Is that all?  Okay.

19                Thank you very much, everyone, and thank you, the  
20                witness panel, for your time.  I'm assuming you all  
21                came from Edmonton, so ...

22                (WITNESS PANEL STANDS DOWN)

23        THE CHAIR:                        And next on our agenda -- so  
24                the Panel is released.  Thank you for that.

25                Next on our agenda, we have Brookfield.  Now, we  
26                have scheduled you for after lunch, but we are still

1 ways away from lunch, so I'm wondering if you're  
2 prepared to proceed, or ...

3 E. DIXON: Good morning, Madam Chair.  
4 Brookfield is certainly prepared to proceed at this  
5 moment if that -- if that's the preference of the  
6 Panel?

7 THE CHAIR: Just before we proceed.

8 Mr. Fitch, you stood up, and I -- I missed an item  
9 on my agenda. Did you have any re-direct for this  
10 panel?

11 E. APPELT: No -- no re-direct. Thank  
12 you.

13 THE CHAIR: No re-direct.

14 Thank you. I apologize.

15 So if you're -- do you want a bit of a break, or  
16 you're happy to proceed right away?

17 E. DIXON: I think if we just have three  
18 or four minutes to clear the panel and get my panel  
19 seated, we're certainly prepared to proceed at that  
20 point.

21 THE CHAIR: Thank you very much.

22 (DISCUSSION OFF THE RECORD)

23 THE CHAIR: Whenever you're ready,  
24 Mr. Dixon.

25 E. DIXON: Good morning, Madam Chair,  
26 Members of the Panel. Once again, my name is Evan



1 Dixon, and I am counsel to Brookfield Residential  
2 Alberta LP, who, for the purposes of my presentation, I  
3 will simply refer to either as "Brookfield" or  
4 "Brookfield Residential".

5 If it would be convenient now, Madam Chair, I  
6 would ask that the witnesses be sworn or affirmed.

7 THE CHAIR: Yes, please.

8 If you may swear the witnesses, that would be  
9 great.

10 PETER TSOUKALAS, Sworn

11 RICHARD WESTREN, Affirmed

12 Direct Evidence of Brookfield Residential Alberta  
13 Limited Witness Panel

14 THE CHAIR: Please proceed, Mr. Dixon.

15 E. DIXON: Thank you, Madam Chair.

16 It is my great privilege to introduce the panel  
17 for Brookfield. Sitting closest to you, we have  
18 Mr. Rich Westren; and next to Mr. Westren, closest to  
19 me, is Mr. Peter Tsoukalas.

20 Q E. DIXON: I have a few short questions  
21 for you, gentlemen, following which -- I understand,  
22 Mr. Westren, that you have prepared an opening  
23 statement.

24 E. DIXON: After that, I -- obviously, my  
25 panel will be available for cross.

26 Q E. DIXON: Mr. Tsoukalas, can you please

1 confirm your name and current position with Brookfield.

2 A P. TSOUKALAS: Peter Tsoukalas, director of  
3 planning and development.

4 Q And, Mr. Tsoukalas, can you confirm that your  
5 curriculum vitae has been filed with the Regulator as  
6 Exhibit 77.2 in this proceeding?

7 A Yes.

8 Q And, Mr. Tsoukalas, does your CV accurately describe  
9 your education, work background, and professional  
10 qualifications?

11 A Yes, it does.

12 Q And can you please describe for the Panel, sir, what  
13 your role and responsibility was with respect to the  
14 evidence that has been filed on behalf of Brookfield in  
15 this proceeding as Exhibits 25.01, which is  
16 Brookfield's request to participate, and 65.01, which  
17 is Brookfield's written submission.

18 A I have assisted with the preparation and review of the  
19 written submission filed on behalf of Brookfield  
20 Residential.

21 Q And can you confirm, sir, that the evidence that you  
22 prepared is accurate and true, to the best of your  
23 knowledge and belief?

24 A Yes.

25 Q Mr. Tsoukalas, can you confirm that in preparing for  
26 this hearing, you reviewed the evidence submitted by

1 Keyera Corp. in this proceeding, which is referred to  
2 as "Exhibit 72.01"?

3 A Yes, I have.

4 Q And, Mr. Tsoukalas, do you have any specific comments  
5 or response to any of the evidence that was filed on  
6 behalf of Keyera that you wish to provide the Panel  
7 today?

8 A Yes. Based on my review of the -- of Keyera's  
9 submission, some of the dates referenced in  
10 paragraph 10 do not align with my understanding of what  
11 happened or with the internal records I have reviewed  
12 in preparation for the -- this hearing. However, none  
13 of the -- none of this is material in terms of  
14 impacting the general narrative regarding the timelines  
15 provided by both Keyera and Brookfield.

16 There is, however, one specific point made by  
17 Keyera at paragraph 11 of its written submission that  
18 Brookfield would like to clarify for the Panel. Within  
19 paragraph 11, Keyera states it did not cancel  
20 Brookfield's existing proximity agreement, as alleged  
21 in paragraph 58 in Brookfield's submissions. Instead,  
22 Keyera understands that the agreement expired on its  
23 terms.

24 At that particular time in question, April 2021,  
25 Brookfield was a party to a hydrovac crossing agreement  
26 with Keyera that was valid until October 2021.

1 Brookfield was also still awaiting approval of a  
2 submitted application for a earthworks proximity  
3 agreement from Keyera submitted January 27, 2021.  
4 Keyera advised Brookfield mid-March 2021 that this  
5 request was in the field for approval and the agreement  
6 would be provided as soon as possible.

7 On April 15th, 2021, without prior notice or  
8 advisement, Keyera advised Brookfield that it was  
9 suspending the hydrovac crossing agreement for an  
10 indefinite period and as well had rejected the  
11 submitted proximity -- pardon me -- proximity  
12 agreement. No explanation for these were provided at  
13 the time by Keyera other than their indication that:  
14 (as read)

15 There were larger agreements in play right  
16 now that Brookfield can speak to, and for now  
17 can we keep you [meaning Brookfield]

18 30 metres away for the time being?

19 My recollection was that Brookfield was -- did not know  
20 why Keyera had cancelled the agreement. We can only  
21 surmise that Keyera was reacting to Brookfield's  
22 advising that it intended to bring an application  
23 forward to the AER at that point in time.

24 As set out in Brookfield's evidence submitted in  
25 the proceeding, Keyera's retaliatory actions in  
26 cancelling or failing to issue what otherwise would

1           have been routine agreements to the course of business  
2           was why Brookfield did not bring its own application  
3           through Section 33 of the Pipelines Act to the AER and  
4           why it initially refrained from intervening in  
5           Qualico's application.

6       Q    And, Mr. Tsoukalas, can you confirm that during the  
7           time period you just described that you were  
8           responsible for corresponding and coordinating with  
9           Keyera on behalf of Brookfield in respect of its  
10          Orchards developments, as discussed in your written  
11          evidence?

12       A    Yes, I had overall responsibility for the project at  
13          the time, but the primary correspondence and  
14          communications were with our consultant Stantec, but I  
15          was copied on all correspondence.

16       Q    Thank you, Mr. Tsoukalas.

17                    And does this conclude your direct evidence at  
18          this time?

19       A    Yes.

20       Q    Mr. Westren, turning to you. Can I please have you  
21          confirm your name and current position with Brookfield.

22       A    MR. WESTREN:                    Yes. Rich Westren, senior  
23          vice president of land development.

24       Q    And, Mr. Westren, can you confirm for the Panel that  
25          your curriculum vitae was filed the Regulator as  
26          Exhibit 77.03 in this proceeding?

1 A Yes, it was.

2 Q And, Mr. Westren, does your CV accurately describe  
3 your education, work background, and professional  
4 qualifications?

5 A Yes.

6 Q And, Mr. Westren, can you please describe for the Panel  
7 what your role and responsibility was with respect to  
8 the evidence that has been filed on behalf of  
9 Brookfield as Exhibits 25.01, namely Brookfield's  
10 request to participate, and 65.01 of Brookfield's  
11 written submission, and what aspects of the evidence  
12 you will be speaking to in this proceeding.

13 A Yes. I was involved in the preparation of the written  
14 evidence filed on behalf of Brookfield. I will be  
15 providing Brookfield's corporate evidence and position  
16 for all aspects of this proceeding other than what has  
17 been spoken by Mr. Tsoukalas next to me.

18 Q And, Mr. Westren, can you confirm that all of the  
19 materials/evidence previously mentioned were prepared  
20 under your direction and control?

21 A Yes, that is correct.

22 Q And do you have any corrections that you wish to make  
23 to the evidence at this time?

24 A No, I don't.

25 Q And, Mr. Westren, is the evidence that has been filed  
26 on behalf of Brookfield in this proceeding accurate and

1 true, to the best of your knowledge and belief?

2 A Yes.

3 Q And, Mr. Westren, do you adopt this evidence as the  
4 evidence of Brookfield in respect of this proceeding?

5 A Yes, I do.

6 Q And, Mr. Westren, I understand that you have prepared  
7 an opening statement on behalf of Brookfield. I will  
8 ask you now to please read your opening statement into  
9 the record.

10 A Good afternoon, Members of the Panel, Counsel, and  
11 participants. My name is Rich Westren. I am senior  
12 vice president for land development in Alberta for  
13 Brookfield. I am joined by my colleague Peter  
14 Tsoukalas, director of planning and development for  
15 Brookfield. We are pleased to be here today  
16 representing Brookfield and acting as Brookfield's  
17 witnesses in these proceedings.

18 Brookfield is a large North American land  
19 development and housing company. We have significant  
20 operations in Alberta dating back over 65 years. We  
21 entitle and develop land to create communities; we also  
22 build and sell homes.

23 Brookfield's position with respect to the subject  
24 matter of these proceedings is fairly straightforward.  
25 Brookfield believes and is advocating for a fair,  
26 transparent, and efficient process with respect to the

1 interaction between developers and pipeline owners when  
2 it comes to working together to move, lower, upgrade,  
3 or simply cross or work in proximity to existing  
4 pipelines.

5 In Brookfield's experience, as has been set out in  
6 the evidence filed on behalf of Brookfield and as will  
7 be borne by our testimony here, the current process is  
8 none of these things.

9 Brookfield strongly believes that there is an  
10 intersection between the public good that pipelines  
11 provide and the public good that real estate  
12 development provides. Both endeavours contribute to  
13 Alberta's economy, employ -- and employ tens of  
14 thousands of people as well as supplying goods and  
15 services vital to Albertans' well-being.

16 Both endeavours represented by the applicant and  
17 its supporters and the respondent pipeline companies  
18 are in the public interest, and what -- what -- pardon  
19 me -- and whatever other evidence is provided by  
20 Brookfield at this hearing, Brookfield's position is  
21 not that the public good provided by one industry or  
22 the other is of greater importance or value; rather,  
23 Brookfield's position is that the construction and  
24 production of communities as well as the existence of  
25 pipelines must both continue to exist and to coexist.  
26 This requires a predictable, fair, and equitable



1 solution to how costs are to be allocated in situations  
2 where pipelines must be relocated or altered to allow  
3 development to proceed.

4 This can only be accomplished by a positive  
5 decision from the Alberta Energy Regulator in this  
6 proceeding confirming that such a mechanism is  
7 available in the overall public interest.

8 It is where existing and proposed roads cross  
9 pipelines where consider -- considerations of what is  
10 in the public interest are most on display as is -- as  
11 in the present case. Fair, transparent, and efficient  
12 cooperation between developers and pipeline companies  
13 serve the interests of the public.

14 Conversely, it can be a disservice if it is  
15 allowed to become bogged down in corporate bureaucracy  
16 or -- or petty "who matters most" philosophies. We can  
17 and should work together to create successful, safe  
18 communities where developers and pipelines coexist and  
19 where both players contribute collaboratively to the  
20 safety and success, all contributing to the public  
21 well-being.

22 Some of the respondents have questioned the  
23 appropriateness of Brookfield's involvement in this  
24 hearing. They have collectively argued that  
25 Brookfield's experience in other developments or with  
26 different pipeline operators is irrelevant to the

1 question at hand. In response to that, we say that it  
2 is precisely this uncooperative, misaligned, and  
3 unproductive attitude that has too long characterized  
4 Brookfield and many other developers' interaction with  
5 pipelines as developers work to build new communities  
6 and provide much-needed housing for Alberta's growing  
7 cities and towns.

8 Further, as Brookfield discussed in its request to  
9 participate in this hearing, Brookfield originally  
10 refrained from participating in the original proceeding  
11 at the time it was negotiating the relocation of  
12 pipeline infrastructure with Keyera, and Brookfield was  
13 concerned that seeking to participate as an intervenor  
14 in respect to Qualico's amended application or even  
15 filing its own separate application would prejudice its  
16 negotiation -- negotiating position and negatively  
17 impact its ability to meet the commercial timelines  
18 associated with this development.

19 You will also hear the pipeline companies arguing  
20 that since the pipeline predated the purchase of or the  
21 development of the land it runs beneath, the developer  
22 knew or ought to have known that there would be cost to  
23 protecting, relocating, or altering the pipeline in  
24 some way. To this, we say: Of course we do.

25 But there is a major difference between  
26 conceptually knowing that there might be some work

1 required to run municipally required roadways overtop  
2 of a pipeline and the realities of how communities and  
3 cities are actually built and who ultimately pays the  
4 cost for that.

5 To conclude these opening remarks, allow me to  
6 provide some colour surrounding the process that we are  
7 hoping can emerge from this hearing. Brookfield is  
8 advocating for the AER to make the correct decision  
9 which would greatly assist in establishing a fairer  
10 playing field and would undoubtedly assist in creating  
11 an industry-wide standard process for negotiating with  
12 pipelines that is fair, transparent, and efficient.

13 In order to be fair, the costs of the  
14 investigation, design work, and work for pipeline  
15 crossings and alterations needs to be shared. We will  
16 argue that each of the pipelines and the developers  
17 receive benefit from the work, and so each should  
18 contribute financially to it. That is fair. A process  
19 that requires one party to bear the entirety of the  
20 cost for the work that benefit both is commercially  
21 unreasonable.

22 In order for the process to be transparent, both  
23 parties engaged in negotiation need access to the same  
24 information. The asymmetry and access to information,  
25 particularly with respect to the age, status, and life  
26 cycle of pipelines, as well as the costs associated

1 with the work that is strictly required and then what  
2 is nice to have has led to an inequity of bargaining  
3 powder -- power that exacerbates the relationship  
4 between the parties and can lead to bad faith  
5 negotiations.

6 This asymmetry to -- pardon me. This asymmetry in  
7 access to information can be highlighted by the fact  
8 that during the course of this proceeding, Brookfield  
9 asked Keyera to respond to an informal request relating  
10 to two integrity digs in late 2017 on the Rimbe  
11 pipeline in -- in proximity to the 66th Street crossing  
12 discussed in Brookfield's written evidence at  
13 paragraphs 49 to 62.

14 Brookfield's request was made in response to  
15 Keyera refuting the notion that certain alterations or  
16 upgrades to pipelines that are paid for by developers  
17 may represent a potential windfall or other type of  
18 benefit to the pipeline companies. In response, Keyera  
19 refused to respond or provide any information  
20 officially on the proceeding record relating -- related  
21 to these two integrity digs on the basis that the  
22 information isn't relative -- sorry -- isn't relevant  
23 while also indicating that it would be happy to discuss  
24 with Brookfield directly, a promise which rings hollow  
25 given Brookfield's experience to date.

26 And, thirdly, in order for the process to be

1 efficient, there needs to be regulatory guidance issued  
2 by the AER that provides much-needed clarity to all  
3 parties. A positive decision by the AER applying  
4 Section 33 of the Pipeline Act will encourage more  
5 constructive dialogue and, hopefully, serve to limit  
6 undue and potentially vindictive delays and the  
7 resultant financial hardship such as those encountered  
8 by Brookfield in respect to its Orchards development.

9 In summary, Brookfield submits that the original  
10 decision under reconsideration -- pardon me. In  
11 summary, Brookfield submits that the original decision  
12 under reconsideration incorrectly concludes that  
13 developers cannot rely on Section 33 of the Pipeline  
14 Act when a dispute arises over the allocation of costs  
15 of a pipeline relocation.

16 The result of the decision exacerbates --  
17 exacerbated the difficulties already faced by property  
18 developers and had a number of negative consequences on  
19 the development of lands in proximity to or crossing  
20 pipeline facilities.

21 For the reason discussed in my opening statement  
22 as well as the evidence filed on behalf of Brookfield  
23 in this proceeding, Brookfield respectfully requests  
24 the AER confirm that an equitable -- sorry -- confirm  
25 that an equitable cost sharing formula for the pipeline  
26 crossings at issue in Qualico's application is in the

1 public interest.

2 Brookfield respectfully submits that it is  
3 imperative for the AER to establish a workable  
4 precedent that parties like Brookfield, Qualico, and  
5 other land developers, and, in fact, all -- all  
6 industries represented in this proceeding, can rely on  
7 in order to move development projects ahead in a  
8 predictable and timely manner. This would align with  
9 the economic, orderly, and efficient development of  
10 pipelines called for by the Pipeline Act and would  
11 clearly be in the best interest of the public.

12 Thank you.

13 Q Thank you, Mr. Westren.

14 I have one final question for you. Just to be  
15 clear, Mr. Westren, does Brookfield support Qualico's  
16 current application?

17 A Yes, we do.

18 Q Thank you.

19 E. DIXON: Madam Chair, that concludes  
20 Brookfield's direct evidence, and the panel is now  
21 available for cross-examination.

22 THE CHAIR: Thank you very much.

23 So I'm going to turn to counsel from Pembina,  
24 Plains, and SECURE. Do you wish to conduct your  
25 cross-examination now, or you would rather to do it  
26 after lunch, maybe 12:30?

1 D. NAFFIN: Madam Chair, Plains, Pembina,  
2 and SECURE have no questions for this panel, so at  
3 least there's no timing issue. Thank you.

4 THE CHAIR: Okay. Thank you.

5 So I'm turning to counsel and staff for AER.

6 D. BREZINA: We have no questions. Thank  
7 you.

8 THE CHAIR: Thank you.

9 So we have a couple of -- or maybe one, depending  
10 on the answer, question for the panel.

11 The Panel Questions Brookfield Residential Alberta  
12 Limited Witness Panel

13 Q THE CHAIR: Thank you for coming and thank  
14 you for your statement. My question is -- I -- if I  
15 heard you correctly, you mentioned the work alteration,  
16 relocation, et cetera, benefits both pipeline companies  
17 and development companies. Can you elaborate on how it  
18 would benefit the pipeline companies?

19 A R. WESTREN: Thank you.

20 What -- what we're referring to by that work that  
21 benefits the pipeline companies -- I think, similar to  
22 earlier statements that were made -- is relating to the  
23 upgrading or replacing or alterations of aging  
24 infrastructure that -- that would clearly benefit both  
25 parties.

26 Q Thank you very much.

1 THE CHAIR: You're good?

2 Okay. That summarizes our evidence, so --  
3 sorry -- our questions. My apologies.

4 We don't have any further questions for your  
5 panel, Mr. Dixon, so they can be released. Thank you  
6 very much -- oh, do you have any re-direct?

7 E. DIXON: We do not have any re-direct,  
8 and I wish to thank the Panel for its time this  
9 morning. Thank you.

10 THE CHAIR: Thank you.

11 Thank you very much.

12 (WITNESS PANEL STANDS DOWN)

13 Discussion

14 THE CHAIR: So we are quite ahead of the  
15 schedule, and we can adjourn for the day, or if you're  
16 ready, Pembina, Plains, SECURE, we could go to your  
17 direct.

18 T. MYERS: Thank you, Madam Chair.

19 As we indicated in one of our prior filings, the  
20 witness panel is not ready to appear until tomorrow due  
21 to a couple of the witnesses who aren't available  
22 today, so, unfortunately, we'll have to get started in  
23 the morning.

24 THE CHAIR: And you propose that you may  
25 want to start a little bit earlier. Was that just  
26 Friday or as well tomorrow?



1 T. MYERS: So the Pembina witness -- one  
2 of the Pembina witnesses is only available tomorrow, so  
3 to the extent there are questions for Pembina  
4 specifically, we'd ask that those questions get asked  
5 tomorrow, given that he won't be available on Friday.  
6 The rest of the panel as well as one of the Pembina  
7 representatives is available on Friday, so, certainly,  
8 they'll be ready to continue on the stand on Friday if  
9 we don't get through everything tomorrow, but that was  
10 the only scheduling issue.

11 And then the other scheduling issue is that two of  
12 our expert witnesses are not available after the end of  
13 the day on Friday, so we'd like to be wrapped up on  
14 Friday, if at all possible, given that the -- the  
15 current schedule has the Plains, Pembina, and SECURE  
16 panel going into Monday. But, again, we heard back  
17 from the AER on that advising that we think we can  
18 likely get finished up by -- by the end of the day on  
19 Friday.

20 THE CHAIR: I would suspect that we can.

21 Counsel, is it possible to ask your questions  
22 tomorrow for Pembina witness -- that particular -- I  
23 don't know if you know or not who that particular  
24 witness may be.

25 G. FITCH: Madam Chair, it's Mr. Fitch  
26 for Qualico.

1           So long as there's one Pembina witness available  
2 on Friday, I don't see the fact that the other witness  
3 is not available as a problem, so that would be my  
4 first comment.

5           Secondly, I provided the AER with what were fairly  
6 generous time estimates for cross-examination. I doubt  
7 I will need all of that time, so I think there's a  
8 reasonably good chance we could wrap everything, in  
9 terms of the cross-examination of the Pembina, Plains,  
10 SECURE witness panel, tomorrow, and if we don't, it  
11 would just be a few kind of cleanups -- questions on  
12 Friday morning.

13           So I don't think we're going to have any problem  
14 scheduling-wise if we adjourn now and reconvene  
15 tomorrow.

16 THE CHAIR:                           Okay. Thank you very much.

17           And is that satisfactory for you, Mr. Myers?

18 T. MYERS:                           Yeah, that's fine. And -- and  
19 just in terms of the comment about one of the Pembina  
20 witnesses still being available on Friday, it would be  
21 our preference to have the panel appear as a complete  
22 panel, both in terms of responding to -- to any  
23 questions from my friends as well as responding from  
24 questions from the Panel and AER counsel and staff.

25           So, again, if we can perhaps sit a little bit late  
26 if it looks like we have a good chance of finishing up

1 tomorrow, that would be our preference just to ensure  
2 you've got the benefit of our full panel before you  
3 for -- for any questions that might be asked.

4 THE CHAIR: That is probably very doable.

5 T. MYERS: Thank you.

6 THE CHAIR: Thank you.

7 So, with that, today's session is adjourned, and  
8 see you tomorrow at 9:00.

9  
10 \_\_\_\_\_  
10 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, MARCH 7, 2024

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1 CERTIFICATE OF TRANSCRIPT:

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3 I, Derek Lopez, certify that the foregoing pages  
4 are a complete and accurate transcript of the  
5 proceedings taken down by us in shorthand and  
6 transcribed from our shorthand notes to the best of our  
7 skill and ability.


8 Dated at the City of Calgary, Province of Alberta,  
9 this 6th day of March 2024.

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14 D. Lopez, CSR(A), RPR

15 Official Court Reporter

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--	--	--	---	--

289:17 290:5,24  
**AER's** 256:1  
**affect** 223:11  
 224:20 234:2  
**affects** 218:7  
**affirmation**  
 214:22  
**affirmed** 215:9  
 273:6,11  
**affordability**  
 234:3 247:24  
 249:8 250:22,23  
 251:18  
**affordable**  
 226:10  
**afternoon** 279:10  
**age** 237:24 260:1  
 283:25  
**agencies** 262:16  
**agenda** 271:23,  
 25 272:9  
**aging** 287:23  
**agreed-upon**  
 241:24  
**agreement**  
 230:1,5,15 232:9  
 233:8 235:17  
 238:14,16,18,19  
 241:14,15,22,24  
 243:9 245:16,17,  
 19 259:7,11  
 260:16,18  
 275:20,22,25  
 276:3,5,9,12,20  
**agreements**  
 220:4,12 229:9,  
 15,19,20 230:10,  
 24 238:12 243:8,  
 11 245:12,21  
 246:8 276:15  
 277:1  
**ahead** 215:2  
 252:17 257:7  
 262:20 269:23  
 286:7 288:14

**Alberta** 214:20  
 215:24 217:4,5,7,  
 8,17,19 218:18  
 219:11 234:20  
 244:6 247:4,6,12  
 248:1,10,14  
 251:8 252:1,18,  
 21 253:13,14  
 254:8 256:8  
 264:24 268:11  
 273:2,12 279:12,  
 20 281:5 287:11  
 292:8  
**Alberta's** 226:2  
 248:19 280:13  
 282:6  
**Albertans**  
 226:11  
**Albertans'**  
 280:15  
**align** 275:10  
 286:8  
**alignment** 261:4  
**alleged** 275:20  
**allocated** 281:1  
**allocation** 285:14  
**allowable** 242:11  
**allowed** 281:15  
**alongside** 238:17  
**alter** 270:2  
**alteration** 218:11  
 232:6 241:6  
 287:15  
**alterations**  
 261:13 283:15  
 284:15 287:23  
**altered** 281:2  
**altering** 282:23  
**alternative**  
 260:24  
**amalgamation**  
 247:5  
**amended** 222:11  
 282:14

**amendments**  
 224:23  
**amenities** 236:8  
**America** 218:17  
**American**  
 279:18  
**amounts** 262:13  
**analysis** 248:26  
**and/or** 239:22  
 261:7 269:9  
**Anderson** 214:14  
 215:10,14,15,19  
 216:7 217:22  
 226:20 227:11,12  
 228:5 235:6,25  
 247:25 262:18  
 267:14,23  
**Anderson's**  
 237:14  
**anecdotal** 271:10  
**angles** 220:14  
**Anne** 233:24  
**annexed** 225:16  
**answers** 265:16  
 267:13  
**anticipate** 242:5,  
 9  
**anticipated**  
 242:21  
**anticipation**  
 268:8  
**apologies** 288:3  
**apologize**  
 257:23,24 262:20  
 263:26 267:11  
 272:14  
**appeal** 253:12  
**Appelt** 214:2,4,  
 23,26 215:2,5,13,  
 14 227:9,12  
 254:16 272:11  
**applicant** 214:5  
 217:14 280:16

**application**  
 226:21,26 228:15  
 229:1 232:13  
 238:25 239:1  
 244:16,18 248:15  
 270:1 276:2,22  
 277:2,5 282:14,  
 15 285:26 286:16  
**applies** 213:22  
 255:16  
**apply** 221:12  
**applying** 285:3  
**appreciated**  
 235:15  
**approach** 220:16  
 229:9  
**approaches**  
 220:4  
**approaching**  
 246:21  
**appropriateness**  
 281:23  
**approval** 276:1,5  
**approvals**  
 235:23,25 237:4  
 239:18 265:9  
**approve** 237:6  
**approved** 222:1,  
 9  
**approximately**  
 240:15 244:2  
 245:8 258:14  
**April** 238:15  
 275:24 276:7  
**ARA** 268:16  
**arbitrary** 231:6  
 246:17  
**architects** 216:22  
**area** 218:17  
 221:24 222:5,8  
 224:12 225:14,  
 18,22 226:13  
 228:1 231:26  
 233:18 235:22

236:11,13 249:17  
 256:15  
**areas** 217:11  
 225:4 237:18  
 246:4  
**argue** 283:16  
**argued** 281:24  
**arguing** 282:19  
**argument** 270:16  
**arisen** 230:18  
**arises** 285:14  
**arterial** 269:1,5  
**ascertain** 249:3  
**asks** 249:26  
**aspects** 238:2  
 278:11,16  
**assessing** 223:18  
**assessment**  
 231:8 236:4  
 245:6,7 258:20  
**assessments**  
 236:3  
**assist** 283:9,10  
**Assistant** 253:10  
**assisted** 274:18  
**association**  
 226:6 247:4  
**associations**  
 247:7  
**assume** 258:25  
**assuming** 271:20  
**assumption**  
 263:5  
**assumptions**  
 221:14 236:15  
**asymmetry**  
 283:24 284:6  
**ATCO** 228:26  
**attention** 213:6,  
 25  
**attitude** 282:3  
**audio** 213:21

**Avenue** 232:3,22  
240:22

**average** 265:3

**Avillia** 214:18  
243:24 244:1,3,4,  
15,18 246:3  
257:13

**Avillia's** 244:21  
245:25 246:1,14

**avoid** 223:4

**avoidable** 213:12

**awaiting** 276:1

**aware** 230:14  
240:26 250:20  
271:3

---

## B

---

**back** 231:7 233:7  
249:24 254:3  
257:1 260:6  
261:5,25 263:14  
267:10 279:20  
289:16

**background**  
238:21 274:9  
278:3

**backstopping**  
229:20 230:1,10,  
14 233:8 245:17,  
19 246:8 259:7,  
11

**bad** 284:4

**bank** 263:4

**bargaining**  
284:2

**base** 251:26

**based** 220:22  
223:9 236:16  
238:6 251:26  
266:19 269:1,7  
275:8

**basically** 231:15  
251:14 254:2

**basis** 231:15  
284:21

**bear** 225:1  
283:19

**begin** 236:14  
264:23 265:26

**behalf** 216:24  
227:16 243:21  
244:9 274:14,19  
275:6 277:9

278:8,14,26  
279:7 280:6  
285:22

**belief** 216:12  
228:12 235:4  
244:13 274:23  
279:1

**believes** 220:3  
279:25 280:9

**beneath** 282:21

**benefit** 213:10  
283:17,20 284:18  
287:18,24 291:2

**benefits** 287:16,  
21

**BILD** 214:19  
217:4,5,7,8,17,19  
247:12 248:1,10,  
14,19 252:1,18,  
21 254:8

**BILD's** 250:15,  
19

**bit** 213:13 219:18  
225:23 227:6  
241:13 248:26  
268:17 272:15  
288:25 290:25

**board** 219:3  
221:22 222:1,2

**boards** 216:23

**bodies** 222:17

**body** 253:12

**bogged** 281:15

**borne** 252:2

280:7

**brand-new**  
233:24 267:2

**break** 254:20  
255:2 256:26  
272:15

**breakdown**  
241:16 242:2

**breakdowns**  
231:8

**Brezina** 255:4,6  
256:23 269:19,  
21,24,26 270:11,  
17,20 287:6

**briefly** 214:13  
230:11 233:11  
235:6 246:13  
247:11

**bring** 213:25  
222:6 225:11  
264:7 276:22  
277:2

**brings** 244:17  
248:15,25

**British** 234:21  
244:6

**broad** 234:16

**broader** 249:1,3  
267:26

**broadly** 217:2

**Brookfield**  
240:25 241:12  
243:2,3,6 271:25  
272:4 273:1,3,4,  
12,17 274:1,14,  
19 275:15,18,25  
276:1,4,8,16,17,  
19 277:2,9,21  
278:9,14,26  
279:4,7,13,15,16,  
18,25 280:6,9,20  
282:4,8,9,12  
283:7 284:8,24  
285:8,9,11,22,23  
286:2,4,15

287:11

**Brookfield's**  
274:16,17  
275:20,21  
276:21,24 278:9,  
10,15 279:16,23  
280:5,20,23  
281:23,25  
284:12,14,25  
286:20

**brought** 213:5  
225:1 226:17,21  
228:15 249:11  
251:16

**budget** 258:24  
259:4

**budgeted** 258:7,  
9,23 259:3

**build** 234:18,19  
264:13 279:22  
282:5

**builder** 251:22  
252:10

**builders** 239:22

**building** 226:10  
247:3,15 252:8  
265:1,2

**built** 224:10  
229:13 265:2  
283:3

**bureaucracy**  
281:15

**business** 223:5  
244:3 261:24,26  
262:12,23 263:6  
277:1

**businesses** 224:7

**buy** 265:8

**bylaw** 222:14  
224:20

---

## C

---

**Calgary** 247:9  
249:14 265:1,4

271:12 292:8

**call** 226:11 245:7  
261:24

**called** 219:23  
224:18 232:8  
286:10

**Canada** 239:14

**cancel** 275:19

**cancelled** 276:20

**cancelling**  
276:26

**Cantiro** 214:16  
234:10,12,14,17,  
18,24 235:8,12  
236:22 238:3,6,  
10,13,24

**capacity** 261:14

**capital** 228:2

**careful** 268:5

**case** 222:26  
232:25 233:1,9,  
16,19 237:18  
281:11

**cash** 236:16

**cast** 213:16,20

**caucus** 256:26  
263:24

**Cavanagh**  
240:17

**central** 218:19

**Centre** 228:25

**CEO** 215:19  
222:2 247:3

**certainty** 226:16

**CERTIFICATE**  
292:1

**certify** 292:3

**cetera** 237:25  
287:16

**Chair** 213:3  
214:2,21,25  
215:1,4,7,12  
227:4,10 254:16,

18,23,26 256:21, 24 257:5,8 259:22,24 264:5, 7 265:22,23,25 267:9,11,13 269:20,23 271:18,23 272:3, 7,13,21,23,25 273:5,7,14,15 286:19,22 287:1, 4,8,13 288:1,10, 14,18,24 289:20, 25 290:16 291:4, 6	<b>circle</b> 254:3 <b>circumstances</b> 226:22 232:6 <b>cities</b> 226:2 282:7 283:3 <b>city</b> 216:24 218:23,25 222:4 292:8 <b>city-building</b> 224:26 <b>citywide</b> 222:5 <b>civic</b> 220:10 <b>clarification</b> 266:1 <b>clarifies</b> 269:16 <b>clarify</b> 254:8 264:10 275:18 <b>clarity</b> 223:14 224:6 225:24 226:7,14 253:19, 20 255:18 259:19 264:20 265:12 285:2 <b>classification</b> 237:25 <b>cleanups</b> 290:11 <b>clear</b> 223:7,15 272:18 286:15 <b>close</b> 237:11 <b>closely</b> 243:6 <b>closer</b> 222:7 264:7 <b>closest</b> 214:17,19 273:17,18 <b>coexist</b> 280:25 281:18 <b>collaborate</b> 217:12 <b>collaboration</b> 216:24 262:14 <b>collaborative</b> 220:16 <b>collaboratively</b> 281:19	<b>colleague</b> 279:13 <b>colleagues</b> 245:18 <b>collection</b> 223:12 <b>collectively</b> 281:24 <b>collector</b> 233:16, 17,22 269:6,9 <b>colour</b> 283:6 <b>Columbia</b> 234:21 244:6 <b>comfortable</b> 254:6 <b>COMMENCED</b> 213:1 <b>comment</b> 290:4, 19 <b>commentary</b> 237:14 <b>comments</b> 275:4 <b>commercial</b> 227:26 234:19 239:21 282:17 <b>commercially</b> 283:20 <b>commission</b> 253:15,23 <b>Commissioner</b> 257:7 259:22 <b>Commissioners</b> 214:3 216:16 219:14 229:3,21 232:5 233:11 241:4 244:20 <b>committee</b> 249:12 269:12 <b>communication</b> 223:16 <b>communications</b> 245:15 277:14 <b>communities</b> 214:16 225:2 226:10 228:2 234:10,13,14,17,	19,24 235:9,13 240:18 279:21 280:24 281:18 282:5 283:2 <b>community</b> 239:9,16 <b>companies</b> 216:20 224:15 226:17 247:14 249:23 260:5 261:13 267:8,21, 24 280:17 281:12 282:19 284:18 287:16,17,18,21 <b>company</b> 227:22, 23 234:15,18 239:5,14 266:4, 14 279:19 <b>compares</b> 246:1 <b>complaints</b> 220:22 250:16 <b>complete</b> 221:5 224:18 290:21 292:4 <b>completed</b> 232:7, 9 236:14 241:10, 12,20 245:9,21 <b>completely</b> 241:21 <b>comprehensive</b> 236:26 <b>concept</b> 221:7 235:7 <b>conceptually</b> 282:26 <b>concern</b> 221:2 <b>concerned</b> 282:13 <b>concerns</b> 217:10 219:13 233:3 250:19 252:23 253:8 <b>conclude</b> 277:17 283:5	<b>concludes</b> 254:14 285:12 286:19 <b>condition</b> 237:25 260:2 261:7 <b>conditions</b> 236:11 252:15 <b>conduct</b> 236:3 286:24 <b>confidence</b> 224:7 <b>confidently</b> 265:14 <b>confirm</b> 216:2 217:4 220:20 226:24 228:8 231:21 232:19 234:23 235:1 238:23 240:1 243:15 244:15 247:26 248:13 251:26 252:21 274:1,4,21,25 277:6,21,24 278:18 285:24 <b>confirming</b> 281:6 <b>conflicts</b> 220:8 <b>conjunction</b> 241:11 <b>connected</b> 223:26 <b>connection</b> 226:26 228:14 238:24 243:16 248:14 <b>connectivity</b> 218:22 <b>consecutive</b> 265:9 <b>consequences</b> 285:18 <b>considerations</b> 281:9 <b>considered</b> 253:19
---	--	--	--	---



<b>consistency</b> 246:20	<b>contributing</b> 281:20	269:5 282:22 283:4,20 285:25	229:9,19 230:5, 16 231:25 232:2, 11,14 233:19	<b>dates</b> 275:9
<b>consistent</b> 237:23	<b>control</b> 278:20	<b>costs</b> 218:11	237:22 238:11,18 240:8 241:2,5,11, 14 242:8,13	<b>dating</b> 279:20
<b>consistently</b> 250:2	<b>convenient</b> 273:5	220:11 226:13	243:8 245:13,22 250:26 252:2	<b>Davis</b> 214:17 215:8 239:3,6,7, 23 243:14
<b>constituent</b> 217:6 247:7	<b>conversation</b> 218:2	231:14 234:1	257:26 258:6,8, 13,16,22 259:17	<b>day</b> 225:25 252:3 288:15 289:13,18 292:9
<b>constrained</b> 223:25	<b>conversations</b> 266:20	242:1,5 246:9	260:16 266:3,12, 24 267:2 268:22	<b>days</b> 235:18,19 238:9
<b>construct</b> 229:16 264:12	<b>conversely</b> 236:23 281:14	249:19 251:20	275:25 276:9 284:11 285:19	<b>deal</b> 249:16,21 253:14 262:6,8, 15 267:18
<b>constructed</b> 229:12	<b>cooperation</b> 281:12	252:2,9,11,14	<b>crossings</b> 218:2	<b>dealing</b> 229:4,26 232:24 244:21 246:14,20 249:18
<b>construction</b> 222:15 241:9,25 242:1 247:23	<b>coordinating</b> 239:18,19 277:8	255:21 281:1	219:16,20 220:7, 17 224:2 225:5, 19 226:12 228:18	<b>dealings</b> 230:13 231:10 243:4 246:1 261:12 263:21
250:4 251:7,13, 15 252:7 261:7	<b>copied</b> 277:15	283:13,26 285:14	229:5 231:11 232:25 237:17	<b>deals</b> 217:9
264:23 265:10 280:23	<b>core</b> 262:26	<b>councils</b> 222:9	240:9 244:22	<b>dealt</b> 228:18 240:9 246:3
<b>constructive</b> 285:5	<b>Corp</b> 241:3 242:24 243:4 275:1	<b>counsel</b> 214:5,21 255:2 256:24 273:1 279:10	245:23 246:15,21 248:22 249:16,23	<b>December</b> 238:15 260:17,18 270:6
<b>consultant</b> 247:18 277:14	<b>corporate</b> 278:15 281:15	286:23 287:5 289:21 290:24	255:22 261:14 267:19 283:15 285:26	<b>decision</b> 223:5 254:4 255:15 256:6 260:3 268:10 281:5 283:8 285:3,10, 11,16
<b>consultants</b> 239:19	<b>correct</b> 216:9,10 220:24 232:4 234:26 235:5 240:11 244:13,14 248:2 257:14 258:3,9,11,23 259:10,13 262:14 266:19,25 278:21 283:8	<b>county</b> 225:17 246:6	<b>CSA</b> 242:19	<b>decision's</b> 256:11
<b>consulting</b> 247:18	<b>corrections</b> 278:22	<b>couple</b> 213:5 224:9 230:19 231:2 265:5 287:9 288:21	<b>CSR(A)</b> 292:14	<b>decision-makers</b> 270:4
<b>consumer</b> 226:8	<b>correctly</b> 266:6 287:15	<b>court</b> 213:10,17 214:24 292:15	<b>curious</b> 255:6 270:2,7	<b>decisions</b> 223:24 261:15
<b>consumers</b> 252:4	<b>correspondence</b> 233:7 277:13,15	<b>covers</b> 217:9	<b>current</b> 219:5 255:15 274:1 277:21 280:7 286:16 289:15	<b>dedicated</b> 220:25
<b>context</b> 219:8 223:3	<b>cost</b> 226:21 230:2,3,15 231:8, 11,12 238:11,25 241:16,17,19 242:18 245:8,11, 19 250:9,18,24 252:6 258:5,15 259:3,16,17 261:20,22 268:21	<b>create</b> 279:21 281:17	<b>curriculum</b> 274:5 277:25	<b>Deer</b> 247:9 249:14 271:12
<b>contiguously</b> 223:20		<b>created</b> 220:24	<b>CV</b> 274:8 278:2	<b>defer</b> 255:13
<b>contingencies</b> 243:11		<b>creating</b> 283:10	<b>cycle</b> 283:26	<b>deferred</b> 256:11
<b>continue</b> 280:25 289:8		<b>critical</b> 264:21		<b>degree</b> 226:15
<b>contractors</b> 239:20		<b>cross</b> 224:17 246:10 254:22 258:26 259:12 273:25 280:3 281:8	<b>D</b>	
<b>contribute</b> 280:12 281:19 283:18		<b>cross-examination</b> 254:17 286:21,25 290:6,9	<b>database</b> 261:4	
		<b>Cross-examines</b> 255:4	<b>date</b> 241:24 284:25	
		<b>crossed</b> 242:16	<b>Dated</b> 292:8	
		<b>crossing</b> 220:4, 11 223:4 225:16		

**delay** 233:10,14  
251:12

**delayed** 233:6  
242:13 251:15

**delays** 234:1  
249:19 251:5,20  
285:6

**delineated**  
236:25

**deliver** 218:19  
234:3

**demand** 220:9  
265:6

**demographics**  
236:12

**density** 218:16  
223:21

**department**  
252:26

**departments**  
252:23

**dependent** 241:9

**depending**  
229:26 245:7  
287:9

**depth** 237:24  
260:2 261:5

**depths** 261:6

**Deputy** 253:10

**Derek** 292:3

**describe** 216:15  
229:3 230:11  
232:5 241:4  
244:20 246:13  
253:3 274:8,12  
278:2,6

**design** 222:14  
283:14

**designed** 224:11

**Desrochers**  
228:24 232:18,26  
233:3

**detail** 241:17  
253:25

**detailed** 222:5,14  
237:19 241:16  
242:2

**details** 268:23,26

**determine**  
235:20 236:12,17  
261:19

**determined**  
222:16

**develop** 223:22  
224:17 238:16  
279:21

**developed** 221:6  
235:11

**developer** 225:3  
237:15 242:12

243:1 244:4  
251:22 263:3  
270:5 282:21

**developer's**  
252:8

**developers**  
213:26 214:8,9  
215:11 216:1,4,  
21 220:1 221:5,  
14 223:20 224:24

228:7 234:22  
239:24 240:6  
244:9 248:5

249:5,13,15,17,  
20 250:2 252:3  
254:15 255:4  
257:9 260:26

266:8 270:3  
271:11 280:1  
281:12,18 282:5  
283:16 284:16  
285:13,18 286:5

**developers'**  
282:4

**developing**  
218:23 225:2  
231:20 240:13  
242:12

**development**  
215:20 216:21

217:1,2 218:8  
219:11 220:6  
221:20,23 222:4  
223:8,13 224:15,  
21 225:26

227:25,26 228:2  
229:6 232:10,26  
235:21,22 237:6,  
19 239:9,13,16  
240:24 242:17  
244:4 245:26  
247:4,15,23  
249:12 258:7

261:16 266:15,16  
267:3,8,18 274:3  
277:23 279:12,  
14,19 280:12  
281:3 282:18,21  
285:8,19 286:7,9  
287:17

**developments**

214:6,17,18  
217:15 239:7,8,  
11,13,25 243:16,  
24 244:3,16  
277:10 281:25

**dialogue** 285:5

**difference** 271:8  
282:25

**differences**  
271:1

**differentiating**  
271:9

**difficult** 213:13  
271:4

**difficulties**  
285:17

**difficulty** 257:21

**digs** 284:10,21

**diligence** 221:5,  
7,13 223:8 235:7,  
11,17 236:18,23,  
26 237:26 238:8  
242:5,22 259:26  
260:14 261:2,15,  
26 263:16

264:11,22 265:7

**diligently** 226:7

**diminishes**  
261:14

**direct** 214:11  
215:5,11 246:23  
249:12 254:14,19  
270:1,8 273:12  
277:17 286:20  
288:17

**direction** 216:8  
222:22 224:14  
228:9 235:2  
255:19 278:20

**direction's** 222:3  
254:4

**directions**  
222:12

**directly** 267:24  
284:24

**director** 274:2  
279:14

**Directors** 269:24  
270:24

**disagree** 250:12

**discretion**  
263:11,13,20,23  
264:3,9,15  
265:15

**discuss** 254:10  
284:23

**discussed** 277:10  
282:8 284:12  
285:21

**discussing** 243:8

**discussion** 266:7  
268:3 272:22  
288:13

**discussions**  
216:26 241:14  
243:3 252:1,22  
253:4,26 256:10  
266:23 268:8  
271:11

**display** 281:10

**dispute** 240:8  
285:14

**disservice** 281:14

**distant** 260:10

**division** 239:10,  
17

**Dixon** 257:20  
272:3,17,24,25  
273:1,14,15,20,  
24,26 286:19  
288:5,7

**doable** 291:4

**dollar** 262:26

**dollars** 259:18

**double** 264:25

**doubt** 290:6

**due** 221:5,7,13  
223:8 235:7,11,  
17 236:18,22,26  
237:26 238:7  
242:5,10,21  
259:26 260:14  
261:2,13,15,26  
263:16 264:11,22  
265:7 288:20

---

## E

---

**earlier** 224:1  
231:17 235:6  
247:26 252:18  
287:22 288:25

**early** 219:19  
238:12

**earthworks**  
276:2

**easiest** 269:7

**east** 233:17  
240:23

**economic** 217:2  
226:9 286:9

**economically**  
223:6

<b>economy</b> 280:13	<b>encompassed</b> 232:12	<b>entirety</b> 283:19	278:8,11,14,15, 23,25 279:3,4	<b>expense</b> 237:21
<b>Edmonton</b> 214:15 215:20 216:3,9,17,24 217:4,15,20 218:3,15,19,20 219:17 220:3,21, 23 221:8,22,24 223:19 224:8,20 225:15,16 226:25 228:1,19,26 229:6 232:19,20, 21 235:25 238:14 240:12,16,19,21 244:22 247:9 249:13,17 250:2 253:9 265:2,5 266:9 267:16,17 271:1,4,12,13,21	<b>encounter</b> 232:26	<b>entitle</b> 279:21	280:6,19 284:12 285:22 286:20 288:2	<b>experience</b> 229:4,23 230:12 231:1 233:4 236:24 244:21,24 245:5,14,25 246:1,14 253:22 257:13,26 258:14 280:5 281:25 284:25
<b>educated</b> 236:15	<b>encountered</b> 285:7	<b>entrance</b> 232:14	<b>exacerbated</b> 285:17	<b>experienced</b> 249:4
<b>education</b> 274:9 278:3	<b>encourage</b> 264:9 285:4	<b>environment</b> 226:3 262:25	<b>exacerbates</b> 284:3 285:16	<b>experiences</b> 217:24 238:6 245:4 248:21 260:13
<b>effective</b> 219:9 220:17	<b>encumbrance</b> 241:1	<b>environmental</b> 235:26 236:4	<b>exact</b> 225:6 229:14	<b>expert</b> 255:13 289:12
<b>effects</b> 263:15	<b>end</b> 222:25,26 223:1 225:25 226:5 239:22 251:23,26 252:3, 11 261:21 268:2 269:15 289:12,18	<b>equitable</b> 280:26 285:24,25	<b>excellent</b> 226:10	<b>expertise</b> 216:26
<b>efficacy</b> 261:25, 26 262:23 263:6	<b>endeavours</b> 280:12,16	<b>equity</b> 226:15	<b>Excuse</b> 269:19	<b>expired</b> 275:22
<b>efficient</b> 219:8 220:6 279:26 281:11 283:12 285:1 286:9	<b>energy</b> 219:9 253:2,5,13 281:5	<b>Eric</b> 214:4	<b>executed</b> 245:11	<b>explain</b> 245:26 247:11
<b>elaborate</b> 268:22 287:17	<b>engage</b> 234:17 268:10	<b>escalating</b> 249:19	<b>execution</b> 241:23	<b>explanation</b> 229:21 276:12
<b>elected</b> 222:16	<b>engaged</b> 222:24 267:21,23 283:23	<b>establish</b> 223:16 286:3	<b>executives</b> 267:7	<b>extent</b> 256:4 289:3
<b>element</b> 262:19	<b>engagement</b> 262:11	<b>established</b> 216:1 224:12	<b>exercise</b> 224:17 261:26	<b>external</b> 223:9
<b>elements</b> 263:10	<b>engineering</b> 222:14 225:7 231:8 236:1,5 239:19 245:6 258:15	<b>establishing</b> 283:9	<b>exhaustive</b> 256:5	<b>extremely</b> 218:25 245:4
<b>Ellerslie</b> 240:24	<b>engage</b> 234:17 268:10	<b>estate</b> 216:20 217:1 225:26 234:18 239:13 280:11	<b>Exhibit</b> 216:5 228:8 274:6 275:2 277:26	
<b>emerge</b> 283:7	<b>engaged</b> 222:24 267:21,23 283:23	<b>Estates</b> 240:18	<b>Exhibits</b> 274:15 278:9	<b>F</b>
<b>emerging</b> 218:13	<b>engagement</b> 262:11	<b>estimate</b> 230:3 258:6 259:3,19	<b>exist</b> 236:2,8 237:7,11,13 280:25	<b>faced</b> 265:4 285:17
<b>employ</b> 280:13	<b>engineering</b> 222:14 225:7 231:8 236:1,5 239:19 245:6 258:15	<b>estimates</b> 259:16 290:6	<b>existence</b> 280:24	<b>facilities</b> 220:10 264:12 285:20
<b>enable</b> 225:26 226:7	<b>engineers</b> 216:22	<b>ethics</b> 262:10,12	<b>existing</b> 221:18 266:24 275:20 280:3 281:8	<b>facing</b> 265:4
	<b>ensure</b> 222:25 224:6 291:1	<b>evaluation</b> 255:14,15	<b>expects</b> 223:9 225:2 258:6	<b>fact</b> 217:6 220:24 284:7 286:5 290:2
	<b>ensuring</b> 262:24	<b>Evan</b> 272:26	<b>expectations</b> 223:17 262:12	<b>factor</b> 271:10
	<b>entail</b> 235:12 259:20	<b>everybody's</b> 250:25 254:6	<b>expected</b> 258:21	<b>factors</b> 221:15 235:14 236:22,24 238:1
	<b>entailed</b> 253:5	<b>evidence</b> 214:7, 11 215:5,11 216:8,11 221:4 228:11 231:18 235:3 240:2,3 248:10 254:15 257:11 268:18 273:12 274:14, 21,26 275:5 276:24 277:11,17	<b>expecting</b> 265:3	
	<b>enter</b> 245:16			
	<b>entered</b> 215:6 232:8			
	<b>entertain</b> 256:8			
	<b>entertaining</b> 265:19			

<b>failing</b> 276:26	<b>financial</b> 221:15 285:7	<b>friends</b> 290:23	<b>goals</b> 219:16	25 267:17 282:6
<b>fair</b> 279:25 280:26 281:11 283:12,13,18	<b>financially</b> 236:17 283:18	<b>front</b> 241:22 253:14,23	<b>good</b> 213:3 214:2 215:14,15 227:14 234:6,9 239:3 243:19,23 246:25 254:23 272:3,25 279:10 280:10, 11,21 288:1 290:8,26	<b>growth</b> 219:4,10 221:25 222:5 225:18 226:2,7 236:11
<b>fairer</b> 283:9	<b>find</b> 237:9	<b>full</b> 228:17 234:7 243:20 244:18 256:3 291:2	<b>goods</b> 280:14	<b>guess</b> 221:3 252:21 255:24 264:1
<b>fairly</b> 225:13 279:24 290:5	<b>finding</b> 261:8 271:3	<b>fully</b> 222:25 227:3 236:25 238:11 239:1 243:18 248:16	<b>government</b> 217:11 252:22 253:16 256:7,15, 18 262:15 268:4, 8,11	<b>guidance</b> 223:14 285:1
<b>faith</b> 284:4	<b>fine</b> 270:20 290:18	<b>fulsomely</b> 268:11	<b>governmental</b> 252:26	<b>guided</b> 222:2
<b>fall</b> 241:26 242:14	<b>finished</b> 289:18	<b>fund</b> 255:22	<b>governs</b> 221:23 262:10	<b>guideline</b> 262:10
<b>Fash</b> 214:19 215:9 217:3 246:25 247:2 248:18 252:17 254:13 255:7,11 264:19 266:2,7 267:15 268:2 271:6	<b>finishing</b> 290:26	<b>funded</b> 251:21 266:14	<b>Govier</b> 213:4	<b>Guthrie</b> 253:7
<b>fast</b> 227:7	<b>firms</b> 247:18	<b>funds</b> 241:21 266:11	<b>grades</b> 242:8	
<b>feature</b> 219:10	<b>Fitch</b> 214:5 267:9 270:10,13,18,21 272:8 289:25	<b>future</b> 225:4,17, 19 237:16 242:14 261:16	<b>grading</b> 239:20	<hr/> <b>H</b> <hr/>
<b>features</b> 236:7	<b>five-plus</b> 265:11		<b>Grande</b> 247:8 249:13 271:12	<b>half</b> 219:6
<b>February</b> 253:10	<b>fixes</b> 242:11	<hr/> <b>G</b> <hr/>	<b>great</b> 273:9,16	<b>Hall</b> 213:4
<b>federal</b> 217:10	<b>Fjeldheim</b> 225:14	<b>gain</b> 230:5	<b>greater</b> 280:22	<b>hand</b> 213:9 250:1 282:1
<b>feeder</b> 233:23	<b>floated</b> 229:18	<b>gap</b> 233:18,20	<b>greatly</b> 283:9	<b>happen</b> 247:19 253:9
<b>fees</b> 229:15 231:5	<b>flow</b> 236:16	<b>gas</b> 220:26	<b>ground</b> 222:7	<b>happened</b> 275:11
<b>fellow</b> 248:4	<b>focus</b> 247:21	<b>gave</b> 260:15 268:17	<b>group</b> 213:26 214:8,10,15 215:11 216:1,4 227:18,19 228:6, 7 234:22 239:24 240:6 244:9 248:5 249:4 254:15 255:4 257:9 260:26 269:24 270:3,5, 24	<b>happening</b> 236:19 238:21
<b>field</b> 276:5 283:10	<b>folks</b> 249:25	<b>Gavin's</b> 270:11	<b>groups</b> 223:13 267:15	<b>happy</b> 221:9 272:16 284:23
<b>fifteen</b> 230:24	<b>follow</b> 222:21	<b>gaze</b> 221:11	<b>grow</b> 220:10 223:20,25	<b>hard</b> 231:7 250:24 252:6
<b>figure</b> 271:7	<b>follow-up</b> 262:22 269:21	<b>general</b> 216:16 219:15 221:26 275:14	<b>growing</b> 218:2,	<b>Hardisty</b> 218:20
<b>figuring</b> 256:6	<b>foregoing</b> 292:3	<b>generally</b> 236:3		<b>hardship</b> 285:7
<b>filed</b> 268:19 274:5,14,19 275:5 277:25 278:8,14,25 280:6 285:22	<b>form</b> 233:7 262:1 263:18	<b>generous</b> 290:6		<b>Hat</b> 247:10
<b>filed</b> 268:19 274:5,14,19 275:5 277:25 278:8,14,25 280:6 285:22	<b>formula</b> 285:25	<b>gentlemen</b> 273:21		<b>heads</b> 267:7
<b>filing</b> 282:15	<b>Fort</b> 247:8	<b>geotechnical</b> 236:1,3		<b>hear</b> 257:18 282:19
<b>filings</b> 288:19	<b>forum</b> 222:9	<b>germane</b> 219:10		<b>heard</b> 229:14,18 250:1,15 251:3 259:16,25 260:5 261:18 287:15 289:16
<b>filled</b> 227:20	<b>forward</b> 276:23	<b>give</b> 224:14 258:5 268:25		<b>hearing</b> 213:8, 14,19,21,25 214:3 216:16 218:9 219:14,22
<b>fills</b> 252:18	<b>found</b> 216:5 249:14,23	<b>Glenridding</b> 240:18		
<b>final</b> 232:16 241:14 242:1,2 270:16 286:14	<b>frame</b> 236:19			
	<b>frequent</b> 220:8			
	<b>Friday</b> 288:26 289:5,7,8,13,14, 19 290:2,12,20			

225:24 229:3,21  
232:5 233:11  
241:4 244:20  
248:23 257:21  
261:10 263:14  
274:26 275:12  
280:20 281:24  
282:9 283:7

**hearings** 271:15

**helpful** 214:12  
236:21 261:3

**Heritage** 228:25

**hesitate** 257:20

**high** 233:24

**high-functioning**  
225:26

**high-level** 237:19  
253:3,8 255:23  
268:7

**highest** 218:16

**highlighted**  
284:7

**highly** 223:24

**highway** 232:21  
269:4

**Hill** 225:15  
231:24

**Hills** 228:24  
229:11 231:9  
244:25 245:1  
257:16

**Hit** 262:16

**hold** 252:14

**holds** 240:26

**hollow** 284:24

**home** 225:12  
226:11 247:15  
251:22 252:8,11

**homebuyer**  
223:2 251:23  
252:12

**homebuyers**  
252:4

**homes** 265:1  
279:22

**Honestly** 271:6

**hope** 265:16

**hopeful** 226:16

**hoping** 225:23  
283:7

**Horse** 225:15  
228:24 229:11  
231:9,24 244:25,  
26 257:15

**housekeeping**  
228:4 244:7

**houses** 234:19

**housing** 220:9  
234:3 236:13  
247:24 251:15,17  
252:4 264:25  
265:10 279:19  
282:6

**huge** 233:25

**hundreds** 251:3

**Huxley** 270:22,  
24,26

**hydrovac** 275:25  
276:9

---

**I**

---

**ideally** 246:19

**identical** 233:2

**identified** 219:20  
241:16 269:1,2

**immediately**  
228:23 229:11  
231:23 240:23  
244:26

**impact** 217:1  
218:6 221:16  
224:10 225:5  
233:25 237:16  
247:22 249:8  
250:23 251:5,17  
258:19 282:17

**impacted** 218:21  
242:24 266:8

**impacting**  
275:14

**impacts** 223:9,18  
226:9

**impassable**  
233:21

**impediments**  
220:5

**imperative** 286:3

**Imperial** 245:3,  
5,13 258:2,16

**Imperial's**  
258:13

**implemented**  
222:17 230:9

**importance**  
280:22

**important** 218:6,  
15,18,24 219:12  
221:19 222:19  
223:17

**impossible**  
238:10

**impression**  
246:14

**improve** 226:7

**improvements**  
251:1 255:22

**in-migration**  
264:26

**include** 216:21  
228:26

**includes** 218:4  
239:17

**including** 216:23  
240:16 247:8

**inconsistencies**  
243:10,13

**inconsistency**  
246:18

**inconsistent**  
224:3

**incorrectly**  
285:12

**increases** 220:9  
242:18

**indefinite** 276:10

**indicating**  
284:23

**indication**  
276:13

**indiscriminant**  
231:6

**individual** 225:3  
237:15 257:6

**industrial** 239:22  
244:5

**industries**  
247:17 286:6

**industry** 216:21  
217:1 222:23  
224:23 226:1  
247:3 255:21  
265:13 266:3,11,  
15,16 267:16,18  
280:21

**industry-wide**  
283:11

**inequity** 284:2

**influence** 218:22

**influences** 225:1

**inform** 263:19,22

**informal** 284:9

**information**  
236:16 237:10,24  
238:4 245:10  
260:14,22,24  
261:8 283:24  
284:7,19,22

**informed** 226:4  
260:3 261:15

**infrastructure**  
221:18 225:10  
230:22 249:25  
250:7,24 282:12  
287:24

**initial** 265:18  
266:20

**initially** 241:19  
277:4

**input** 226:4

**inquire** 238:3

**inquiries** 238:5  
260:1

**Institute** 215:20

**Institute's**  
223:13

**insurance** 243:11

**integrated**  
234:18

**integrity** 245:7  
246:10 258:26  
266:12 284:10,21

**intend** 221:17

**intended** 276:22

**intense** 236:18

**intensity** 221:26

**interaction**  
280:1 282:4

**interactions**  
224:2

**interchangeable**  
229:25

**interest** 220:18  
226:23 238:25  
251:20 259:15  
261:20,22 262:2  
263:10,18 264:10  
280:18 281:7,10  
286:1,11

**interested** 261:1

**interests** 217:8  
281:13

**interface** 219:9  
221:1 247:24

**interfaces** 256:17

**interject** 227:5

**internal** 275:11

<b>interpreting</b> 262:13	232:23 238:20 249:18	253:8,21,24 255:14 263:5 265:7,13 266:22 268:3,7,10 290:11	276:15	<b>lines</b> 255:13
<b>intersection</b> 232:7 268:20 280:10	<b>item</b> 269:13 272:8	<b>knew</b> 282:22	<b>lastly</b> 250:11	<b>link</b> 213:15
<b>intervening</b> 277:4	<b>items</b> 228:5	<b>knowing</b> 265:14 282:26	<b>late</b> 284:10 290:25	<b>list</b> 219:18
<b>intervenor</b> 282:13	<hr/> <b>J</b> <hr/>	<b>knowledge</b> 216:12 217:18 235:3 244:13 256:9 258:18 274:23 279:1	<b>Laurin</b> 246:5	<b>live</b> 219:7
<b>introduce</b> 214:10 215:16 227:15 239:4 273:16	<b>Jagare</b> 240:17	<b>land</b> 218:8 219:9 222:1,13 224:21, 22 225:3,17 227:25 228:24 233:14 236:6,7, 10 237:15,18 239:17,19,20 242:6 244:4 247:3,15,23 249:11 253:15 265:8 269:10 277:23 279:12, 18,21 282:21 286:5	<b>lead</b> 284:4	<b>live-streamed</b> 213:15
<b>introduced</b> 214:3	<b>James</b> 232:22	<b>landed</b> 219:13	<b>leader</b> 215:22	<b>local</b> 218:21 222:13 269:9
<b>introductory</b> 268:7	<b>January</b> 276:3	<b>landings</b> 244:25 245:26 246:7 257:14 258:1	<b>leading</b> 248:24	<b>located</b> 232:20 237:11 240:21,22
<b>investigated</b> 235:14	<b>job</b> 261:19	<b>lands</b> 221:6,16 235:10,20 237:3 241:12 245:2 285:19	<b>leads</b> 250:6	<b>locations</b> 218:19 242:17
<b>investigation</b> 283:14	<b>Joe</b> 214:18 215:9 243:23	<b>large</b> 250:16 279:18	<b>learn</b> 237:7	<b>logical</b> 223:25
<b>investment</b> 226:8 234:20	<b>joined</b> 219:3 279:13	<b>largely</b> 249:23	<b>led</b> 253:9 284:2	<b>long</b> 227:20 238:19 260:22 262:7 282:3 290:1
<b>involved</b> 224:4, 24 240:13,15 247:15 271:9 278:13	<b>joint</b> 232:8	<b>larger</b> 250:7	<b>Leduc</b> 225:17	<b>long-term</b> 221:24 263:1
<b>involvement</b> 281:23	<b>jumped</b> 261:21		<b>legacy</b> 247:5	<b>longest</b> 235:19
<b>involves</b> 253:12	<b>jurisdiction</b> 256:2		<b>legal</b> 270:8,14	<b>Lopez</b> 292:3,14
<b>irrelevant</b> 281:26	<b>jurisdictions</b> 218:21 249:21 266:10		<b>legislation</b> 247:21 252:19 255:16,19 256:1, 2,15	<b>losing</b> 220:13
<b>irrespective</b> 266:24 267:3	<b>JV</b> 232:8 268:15, 20		<b>legislative</b> 249:10 253:18, 21,25 254:7,11 255:8,12,25 266:22	<b>lost</b> 250:3 251:13
<b>isolate</b> 262:2	<hr/> <b>K</b> <hr/>		<b>lesson</b> 268:17	<b>lot</b> 236:19 252:9, 11
<b>issue</b> 218:1,7 219:12,20 221:13 226:12,26 248:25 249:1,3,4 253:11 263:13,20 266:11 276:26 285:26 287:3 289:10,11	<b>Kalen</b> 214:14 215:10,19		<b>Lethbridge</b> 247:9	<b>lots</b> 239:22
<b>issued</b> 285:1	<b>Katrina</b> 214:16 215:8 234:9		<b>letter</b> 253:6	<b>Love</b> 264:3,8
<b>issues</b> 216:26 219:19 221:1,3	<b>Keyera</b> 241:3,7 242:24 243:4,9 275:1,6,15,17,19, 22,26 276:3,4,8, 13,20,21 277:9 282:12 284:9,15, 18		<b>level</b> 221:11,26 224:5 225:13 267:26	<b>lower</b> 280:2
	<b>Keyera's</b> 275:8 276:25		<b>levels</b> 222:10	<b>lowered</b> 242:7
	<b>kind</b> 224:20,22 225:11 247:16,18 248:26 250:25		<b>leviable</b> 269:13	<b>lowering</b> 241:8, 11
			<b>levy</b> 268:18,21 269:5	<b>LP</b> 273:2
			<b>Lewis</b> 240:17	<b>luck</b> 261:8
			<b>life</b> 283:25	<b>lunch</b> 271:26 272:1 286:26
			<b>lifelong</b> 267:11	<hr/> <b>M</b> <hr/>
			<b>lifetime</b> 257:23	<b>M-HM</b> 233:13 256:13
			<b>limit</b> 285:5	<b>Madam</b> 214:2 254:16,23 257:8 259:24 265:22
			<b>limited</b> 250:11 273:13 287:12	
			<b>limiting</b> 251:15	

267:9 272:3,25 273:5,15 286:19 287:1 288:18 289:25	<b>Marquis</b> 228:23 230:13 231:18,21 232:8,11 268:15, 20	<b>member</b> 216:20 217:5,6,15,17,19 226:17 247:14 248:1,25 268:16	<b>millions</b> 251:4	<b>Mowatt</b> 232:22
<b>made</b> 230:26 238:5 250:20 256:11 275:16 284:14 287:22	<b>material</b> 260:21 275:13	<b>member's</b> 249:2	<b>mind</b> 226:5	<b>much-needed</b> 282:6 285:2
<b>main</b> 233:23	<b>materials/ evidence</b> 278:19	<b>members</b> 216:21, 25 217:24 218:5 220:23 226:6 248:4,20 250:15, 20 252:1,24 257:6 272:26 279:10	<b>minister</b> 253:4,6, 11	<b>mumble</b> 257:23
<b>maintain</b> 226:2	<b>matter</b> 214:6 253:18,23 254:1 279:24	<b>members'</b> 219:13	<b>Ministry</b> 253:2	<b>mumbling</b> 259:7
<b>major</b> 218:17 225:17 233:17 282:25	<b>matters</b> 253:14 265:16 281:16	<b>membership</b> 218:3,14 226:13	<b>minor</b> 251:12	<b>municipal</b> 216:26 217:8 222:3,9 235:21 239:18 256:14,17
<b>make</b> 217:17 219:18 224:4 236:13 247:19 255:15,26 260:1, 3 261:15 262:2 278:22 283:8	<b>Mattson</b> 240:19, 20,22 241:2 242:23	<b>mentioned</b> 218:5 224:1 230:7 231:18 232:18 233:5,10 240:20 251:7 252:17 256:10 257:13,25 264:21 266:2 278:19 287:15	<b>minutes</b> 272:18	<b>municipalities</b> 216:23 218:4 219:1
<b>makes</b> 213:13 238:10	<b>mayors</b> 222:1	<b>Meridian</b> 232:2 267:1	<b>misaligned</b> 282:2	<b>Municipality</b> 237:5
<b>making</b> 236:15 252:19	<b>McIennan</b> 214:4	<b>met</b> 222:26	<b>missed</b> 257:17 272:8	<b>municipally</b> 262:9 283:1
<b>managed</b> 240:24	<b>Mcmurray</b> 247:8	<b>metres</b> 276:18	<b>missing</b> 263:6 265:9	<b>Myers</b> 288:18 289:1 290:17,18 291:5
<b>management</b> 227:25 233:15 239:14	<b>Mcnaughtan</b> 257:7,8,10,22,25	<b>metro</b> 215:20 218:4,15,17,20 223:19 271:4	<b>mitigated</b> 225:21	<hr/>
<b>manager</b> 239:9, 16 244:5	<b>meaning</b> 249:1 276:17	<b>Metropolitan</b> 221:22	<b>MLC</b> 214:15 227:18,24 228:6, 18 230:8 231:19 233:14	<b>N</b>
<b>manages</b> 221:23 244:23	<b>meaningful</b> 260:14	<b>MGA</b> 256:17	<b>MLC's</b> 228:14 229:4,23 230:12 231:10 234:2	<hr/>
<b>managing</b> 228:1 240:14	<b>means</b> 249:11	<b>mic</b> 264:7	<b>moment</b> 263:24 272:5	<b>NAFFIN</b> 254:23 287:1
<b>mandate</b> 247:13	<b>meant</b> 229:22	<b>Michaela</b> 214:17 215:8 239:6	<b>moments</b> 221:10	<b>narrative</b> 275:14
<b>manner</b> 234:3 286:8	<b>mechanism</b> 281:6	<b>mid-march</b> 276:4	<b>Monday</b> 289:16	<b>National</b> 217:9
<b>March</b> 291:10 292:9	<b>Medicine</b> 247:10	<b>midst</b> 240:8	<b>money</b> 250:7,17	<b>necessarily</b> 271:8
<b>Marchese</b> 214:18 215:9 243:19,23 246:22 257:12,17 258:3	<b>meet</b> 223:21 242:20 264:25 282:17	<b>Mike</b> 253:11	<b>monies</b> 250:5	<b>necessity</b> 232:13
<b>market</b> 229:8 236:10 252:12	<b>meeting</b> 253:10 254:1	<b>million</b> 219:4,5,6 245:20 259:12,18	<b>month</b> 263:1	<b>needed</b> 226:14 229:16 245:16,20 254:8 258:22 264:24
	<b>meetings</b> 254:9		<b>months</b> 233:6 237:3 238:15 242:15 244:2 251:9 260:15	<b>negate</b> 253:20
	<b>Melcor</b> 214:17 239:7,8,11,12,13, 25 240:2,7,13,15 242:16 243:6,9, 16		<b>morning</b> 213:3 214:2 215:14,15 227:14 229:19 232:16 234:5,7,9 235:6 239:4 243:19,23 246:25 254:23 257:11,26 272:3,25 288:9, 23 290:12	<b>negatively</b> 282:16
	<b>Melcor's</b> 239:16		<b>move</b> 280:2 286:7	<b>negotiate</b> 231:12
			<b>Moving</b> 234:6 239:3	<b>negotiating</b> 282:11,16 283:11
				<b>negotiation</b> 250:18 282:16 283:23

<b>negotiations</b> 284:5	<b>notion</b> 284:15	<b>operate</b> 224:7 266:10	<b>organizations</b> 247:5	288:5,8,12,20 289:6,16 290:10, 21,22,24 291:2
<b>neighbourhood</b> 222:6,8 224:13 229:10,12,13,16 230:13 231:9,22, 24 232:15,19 235:23 240:20 241:2 242:23 243:1 244:26 245:1 264:13 269:10	<b>notwithstanding</b> 225:9	<b>operating</b> 239:14	<b>original</b> 258:24 282:10 285:9,11	<b>Panel's</b> 264:2
<b>neighbourhoods</b> 218:23 223:1 224:10,16 228:19,21,23 231:19 240:12,16 244:22	<b>November</b> 253:7	<b>operational</b> 247:13	<b>originally</b> 259:13 282:9	<b>panels</b> 255:14
<b>newly</b> 218:23	<b>number</b> 247:7 249:15 259:16 285:18	<b>operations</b> 216:17 233:14 279:20	<b>outcome</b> 225:5 254:4 267:6 268:9	<b>paragraph</b> 220:1 275:10,17,19,21
<b>nice</b> 251:25 284:2	<b>numbers</b> 258:5	<b>operator</b> 229:26 230:2 233:9 238:7 240:8,26 251:2	<b>outcomes</b> 224:3 237:16	<b>paragraphs</b> 284:13
<b>Nicholas</b> 214:15 215:8 227:14,17 229:4 232:17 246:16 261:3 263:26 264:6,8 268:25	<b>O</b>	<b>operators</b> 217:25 228:18,21,26 229:5 230:10 231:1,10,13 232:25 237:25 238:3,9 240:9 244:21 246:2,15 248:22 250:3,17 260:1 261:9 268:13 271:14 281:26	<b>outlined</b> 245:17	<b>parcel</b> 224:22
<b>nodding</b> 261:17 267:7	<b>oath</b> 214:22	<b>operators'</b> 220:4 229:9	<b>outlines</b> 221:25	<b>pardon</b> 276:11 280:18 284:6 285:10
<b>nonpolitical</b> 253:16	<b>objectives</b> 219:17	<b>opportunity</b> 231:12	<b>outreach</b> 249:12	<b>Park</b> 246:5
<b>nonprofit</b> 216:19	<b>obliged</b> 230:4,20	<b>options</b> 241:7	<b>outset</b> 214:12	<b>part</b> 216:1 257:18 261:19,22 262:1 263:1,18
<b>nonresidential</b> 226:1	<b>observance</b> 213:23	<b>Orchards</b> 240:24 277:10 285:8	<b>overlap</b> 217:12	<b>partial</b> 241:23
<b>North</b> 218:17 279:18	<b>observing</b> 213:19	<b>order</b> 230:4,15 232:10 245:16,20 258:25 259:11 263:14,20 283:13,22 284:26 286:7	<b>overseeing</b> 231:20	<b>participants</b> 279:11
<b>notably</b> 214:6	<b>obtain</b> 230:15 238:16	<b>orderly</b> 286:9	<b>oversees</b> 244:23	<b>participate</b> 222:25 274:16 278:10 282:9,13
<b>note</b> 214:13 218:6,15,25 221:19 222:19 225:4 233:3 240:6 242:4	<b>obtained</b> 237:4	<b>orders</b> 217:11	<b>overview</b> 255:24	<b>participates</b> 216:25
<b>notes</b> 292:6	<b>occur</b> 221:26	<b>organization</b> 215:17,21 216:2, 19 217:7 227:15, 19,20,25 229:7 233:15 234:8,23 239:25 243:21,25 247:1,20	<b>owners</b> 280:1	<b>participating</b> 282:10
<b>notice</b> 276:7	<b>occurred</b> 262:5		<b>ownership</b> 269:10	<b>parties</b> 252:13 268:19 271:8 283:23 284:4 285:3 286:4 287:25
<b>noticed</b> 230:8 231:2 243:13	<b>occurs</b> 263:1		<b>P</b>	<b>parts</b> 239:15
	<b>October</b> 275:26			<b>party</b> 275:25 283:19
	<b>offering</b> 231:11			<b>passed</b> 252:3
	<b>office</b> 258:9			<b>past</b> 217:25 218:1 224:3 229:8 230:8,19 231:2 238:6 240:10 246:3,7 248:20 250:20 252:22 257:2 260:11 265:4
	<b>official</b> 213:17,18 292:15			
	<b>officially</b> 284:20			
	<b>oil</b> 220:26 245:3,5			
	<b>one-off</b> 249:1			
	<b>ongoing</b> 218:26 221:2 224:10			
	<b>online</b> 219:25 251:17			
	<b>Ontario</b> 215:24 234:20			
	<b>open</b> 223:15			
	<b>opening</b> 213:2 273:22 279:7,8 283:5 285:21			



<b>pathways</b> 249:9	<b>philosophies</b> 281:16	284:16 286:10	<b>political</b> 222:9,22 224:5 253:16	<b>prejudice</b> 282:15
<b>patience</b> 257:1	<b>phrase</b> 262:5	<b>place</b> 233:20 237:20 245:12,21 268:6	<b>population</b> 220:9 236:11	<b>preliminaries</b> 213:24
<b>paved</b> 233:20	<b>pick</b> 230:1	<b>places</b> 219:7	<b>portion</b> 239:24 242:9 248:9	<b>preliminary</b> 236:5 258:10 259:4
<b>pay</b> 230:4 249:22 250:4 266:3	<b>pieces</b> 263:6	<b>Plains</b> 229:2 231:25 232:9 254:24 270:2 286:24 287:1 288:16 289:15 290:9	<b>poses</b> 233:14	<b>preparation</b> 274:18 275:12 278:13
<b>paying</b> 250:6 258:19	<b>pipe</b> 242:7,10,19 251:2,10 259:12 266:12	<b>plan</b> 221:24 224:15 235:23	<b>position</b> 219:26 220:20 221:14 226:25 228:14 234:12 238:23 243:15 244:15 248:14 274:1 277:21 278:15 279:23 280:20,23 282:16	<b>prepare</b> 213:18
<b>payment</b> 241:23, 24 243:10	<b>pipeline</b> 217:25 218:1,10,18 219:16,20 220:3, 7,17 221:18 223:4 224:2 225:9,18 226:12 228:18,21 229:5, 14 231:10,25 232:24 233:19 236:9 237:8,21, 22 238:2,14,17 240:8 241:1,18 242:11,14,24 243:5 244:21 245:13 246:2,11, 18,21 248:21 249:16 251:2 252:2 255:23 256:2 258:2,5 259:1,12 260:1,2 261:6,13 266:4, 14 267:19,21,22, 24 268:13 280:1, 17 281:12,26 282:12,19,20,23 283:2,14 284:11, 18 285:4,13,15, 20,25 286:10 287:16,18,21	<b>planner</b> 215:23	<b>positive</b> 281:4 285:3	<b>prepared</b> 216:7 222:10 228:9 235:2 254:22 270:15 272:2,4, 19 273:22 274:22 278:19 279:6
<b>pays</b> 266:4 283:3	<b>pipeline's</b> 237:24	<b>planned</b> 254:21	<b>potential</b> 223:18 237:21 249:9 253:25 254:10 255:7 259:17 284:17	<b>preparing</b> 274:25
<b>pedestrians</b> 233:22	<b>pipelines</b> 218:16 245:2,3 246:4,10 249:22 257:15,26 258:1,26 260:25 270:2 277:3 280:4,10,25 281:2,9,18 282:5 283:12,16,26	<b>planners</b> 216:22	<b>potentially</b> 251:1,4 265:15 285:6	<b>present</b> 214:9 281:11
<b>Pembina</b> 229:1 245:3,14 246:2 254:24 258:2,4, 22 259:12 260:18 270:2 286:23 287:1 288:16 289:1,2,3,6,15,22 290:1,9,19		<b>planning</b> 218:26 219:4 221:20 225:1,8 237:4,20 239:17 263:1 269:3 274:3 279:14	<b>presentation</b> 273:2	<b>presented</b> 241:7
<b>pending</b> 254:3 256:6 267:6 268:9		<b>plans</b> 222:4,6,8, 10,12,16 223:22 224:12,13 235:22	<b>powder</b> 284:3	<b>presenting</b> 220:5
<b>people</b> 213:22 219:6 280:14		<b>play</b> 276:15	<b>power</b> 284:3	<b>presents</b> 225:20
<b>perceive</b> 243:9		<b>players</b> 281:19	<b>practically</b> 223:6	<b>president</b> 227:22 234:14 244:1 277:23 279:12
<b>period</b> 235:17 236:18 237:10,26 238:8 242:6,22 243:7,12 260:14 264:11 276:10 277:7		<b>playing</b> 283:10	<b>practice</b> 266:11	<b>pressures</b> 265:3
<b>permitted</b> 250:6		<b>pleased</b> 214:9 279:15	<b>Prairie</b> 247:8 249:13 271:12	<b>pretty</b> 218:17
<b>perspective</b> 221:8 225:8 226:24 235:12 253:3 267:26		<b>point</b> 223:8 224:4,8 258:4 259:15 263:7 266:23 272:20 275:16 276:23	<b>precedent</b> 254:5 265:15 286:4	<b>previous</b> 215:22 242:17
<b>persuade</b> 263:13		<b>points</b> 221:19 225:16	<b>precisely</b> 282:2	<b>previously</b> 229:10 230:20 233:5,8 245:18 278:19
<b>Pete</b> 253:7		<b>policies</b> 222:16 223:10 252:20	<b>predated</b> 282:20	<b>price</b> 230:25,26 252:9
<b>Peter</b> 273:10,19 274:2 279:13		<b>policy</b> 216:25 221:11 222:12,22 224:9,23 225:8 267:26 268:3 270:8	<b>predict</b> 263:3	<b>primary</b> 277:13
<b>petty</b> 281:16			<b>predictability</b> 218:10	<b>prior</b> 230:13 237:19 246:1 276:7 288:19
<b>phase</b> 264:22 265:7			<b>predictable</b> 226:3 262:24 280:26 286:8	<b>priorities</b> 219:21
			<b>preference</b> 272:5 290:21 291:1	

**private** 218:7  
**private-to-private** 218:7  
**privilege** 273:16  
**pro** 236:15  
**proactive** 223:5  
**problem** 290:3, 13  
**problems** 233:1  
**proceed** 214:1  
 227:4 232:10  
 245:12,22 254:22  
 255:3 272:2,4,7, 16,19 273:14  
 281:3  
**proceeding**  
 274:6,15 275:1  
 276:25 277:26  
 278:12,16,26  
 279:4 281:6  
 282:10 284:8,20  
 285:23 286:6  
**proceedings**  
 213:1 216:9  
 217:13,14 227:1  
 228:16 238:26  
 240:2 243:17  
 244:10 248:7,11  
 279:17,24 291:10  
 292:5  
**process** 223:15  
 226:18 230:9  
 235:11,15  
 236:23,26 241:25  
 253:21 256:5  
 262:7 263:1  
 264:21 268:6  
 269:3 279:26  
 280:7 283:6,11, 18,22 284:26  
**processes** 247:22  
**production**  
 280:24  
**products** 252:5

**professional**  
 215:23 274:9  
 278:3  
**prohibited**  
 213:21  
**project** 236:17  
 244:25 246:7  
 249:2 251:4  
 265:8 277:12  
**projects** 244:5  
 249:22 286:7  
**promise** 284:24  
**proper** 258:25  
**properties**  
 234:19,20  
**property** 253:15  
 285:17  
**propose** 288:24  
**proposed** 281:8  
**prospect** 235:9  
**protect** 246:10  
 258:26 266:12  
**protecting**  
 282:23  
**protest** 232:11  
**provide** 217:22  
 219:14 229:20  
 230:22 245:6  
 248:18 253:19  
 261:9 275:6  
 280:11 282:6  
 283:6 284:19  
**provided** 222:3  
 230:2 231:14  
 235:20 236:21  
 237:23 242:3  
 251:25 254:5  
 275:15 276:6,12  
 280:19,21 290:5  
**providing** 278:15  
**province** 244:6  
 247:8 249:15  
 265:1 271:2  
 292:8

**province-wide**  
 249:6  
**provincial** 217:9  
 222:20 247:21  
 249:11  
**provincially**  
 262:9  
**proximity**  
 238:13,16,19  
 260:16,18 275:20  
 276:2,11 280:3  
 284:11 285:19  
**public** 216:25  
 218:7 220:13,18, 23 226:23 238:25  
 261:20,22 262:1  
 263:10,18 264:9  
 280:10,11,18,21  
 281:7,10,13,20  
 286:1,11  
**punctuality**  
 257:3  
**purchase** 235:16  
 282:20  
**purchased** 242:6  
**purposes** 273:2  
**pursue** 254:7  
**pursuit** 220:17  
**put** 219:21 258:6  
**putting** 265:10

---

## Q

---

**Qualico** 214:6  
 217:14 226:21,23  
 228:15 247:26  
 270:1 286:4  
 289:26  
**Qualico's** 221:4  
 226:26 229:1  
 231:23 232:12  
 238:24 239:1  
 244:16,18,26  
 248:15 277:5  
 282:14 285:26

286:15  
**qualifications**  
 274:10 278:4  
**quantify** 230:23  
**Quarry** 229:10  
 244:25 245:26  
 246:7 257:14  
 258:1  
**quarter** 219:1  
**question** 226:20  
 229:14 235:8  
 257:12 260:12  
 262:23 263:9,11, 17,21 264:1,2,18  
 265:17 266:1  
 267:13,14 268:15  
 270:9,14,22  
 275:24 282:1  
 286:14 287:10,14  
**questioned**  
 281:22  
**questions** 227:13  
 230:7 232:16  
 234:4 244:7  
 246:23 254:14,24  
 256:22,23,25  
 257:1,5,9 265:20, 25 269:17,22  
 273:20 287:2,6, 11 288:3,4 289:3, 4,21 290:11,23, 24 291:3  
**quick** 262:21  
**quickly** 218:25

---

## R

---

**raise** 221:11  
 253:8  
**raised** 235:7  
 250:19 252:23  
**rank** 219:16  
**Re-cross-examines** 269:24  
 270:24

**re-direct** 272:9, 11,13 288:6,7  
**reached** 220:12  
**reacting** 276:21  
**read** 219:24  
 220:2 268:19  
 276:14 279:8  
**ready** 265:8  
 272:23 288:16,20  
 289:8  
**real** 216:20 217:1  
 224:4 225:26  
 234:18 239:13  
 267:17 280:11  
**realities** 283:2  
**realized** 220:15  
**reason** 285:21  
**reasonable**  
 249:25 250:9  
**reasoning** 271:3  
**rebroadcasting**  
 213:20  
**receive** 238:4,7  
 241:15,26 260:21  
 283:17  
**received** 220:22  
 260:13,19  
**recent** 244:24  
**recently** 220:25  
 225:16 238:13  
 246:6 260:10  
**recollection**  
 276:19  
**recommendations** 252:19  
**reconciled** 242:2  
**reconsideration**  
 285:10,12  
**reconsidered**  
 254:2  
**reconvene**  
 290:14  
**record** 213:16  
 214:13 215:1,17

234:8 243:20 246:26 272:22 279:9 284:20	<b>regulator</b> 249:10 253:12,13 274:5 277:25 281:5	<b>replacing</b> 287:23	<b>research</b> 236:14	249:24
<b>recording</b> 213:20	<b>regulatory</b> 226:3	<b>report</b> 245:8	<b>residential</b> 226:1	<b>responsiveness</b>
<b>records</b> 275:11	254:11 262:7,24	<b>reporter</b> 214:24	227:26 239:21	250:3,16 251:6
<b>recourse</b> 250:11	266:22 268:6	292:15	240:25 243:2,4	255:21
<b>recover</b> 252:8,10, 13	285:1	<b>reporters</b>	244:5 247:22	<b>rest</b> 289:6
<b>Red</b> 247:9 249:14	<b>reimbursed</b>	213:11,18	252:7 273:1,4,12	<b>result</b> 242:19
271:12	268:23	<b>reports</b> 220:22	274:20 287:11	250:4 265:11
<b>redevelopment</b>	<b>reinforced</b>	236:1	<b>residents</b> 219:3	266:5 267:2
220:7	242:10,20	<b>represent</b> 247:14	233:26 264:26	285:16
<b>refer</b> 273:3	<b>reinforcement</b>	267:15 284:17	269:14	<b>resultant</b> 285:7
<b>reference</b> 224:12	230:20 241:8,18	<b>representatives</b>	<b>resolution</b> 249:9	<b>results</b> 251:13
<b>referenced</b> 216:3	<b>rejection</b> 276:10	267:22 289:7	<b>resolved</b> 253:26	<b>retaliatory</b>
228:6 233:8	<b>related</b> 265:16	<b>represented</b>	<b>respect</b> 244:16	276:25
234:24 275:9	271:13 284:20	280:16 286:6	261:16 262:6	<b>review</b> 235:26
<b>referred</b> 275:1	<b>relates</b> 261:25	<b>representing</b>	263:7 274:13	248:5 274:18
<b>referring</b> 214:7	<b>relating</b> 284:9,20	215:18 279:16	277:9 278:7	275:8
287:20	287:22	<b>represents</b>	279:4,23,26	<b>reviewed</b> 228:5
<b>refrained</b> 277:4	<b>relation</b> 261:23	233:18	282:14 283:25	239:23 244:8
282:10	264:18	<b>request</b> 233:6	285:8	274:26 275:11
<b>refund</b> 241:26	<b>relationship</b>	260:17,19 264:16	<b>respectful</b> 268:5	<b>Rich</b> 273:18
<b>refused</b> 284:19	284:3	274:16 276:5	270:21	277:22 279:11
<b>refuting</b> 284:15	<b>relative</b> 221:17	278:10 282:8	<b>respectfully</b>	<b>RICHARD</b>
<b>region</b> 215:21	284:3	284:9,14	285:23 286:2	273:11
218:4,16,20,25	<b>released</b> 271:24	<b>requested</b> 231:5, 13 234:2 241:21	<b>respond</b> 284:9,19	<b>Ridge</b> 229:11
219:3,11 220:10	288:5	250:17	<b>responded</b>	240:17
221:1,21,22	<b>relevant</b> 222:24	<b>requests</b> 285:23	260:19	<b>right-of-way</b>
223:20,25 225:13	236:7 260:21	<b>require</b> 241:23	<b>respondent</b>	241:1 242:16
228:3 249:5	284:22	<b>required</b> 225:6, 7,25 231:26	280:17	<b>right-of-ways</b>
253:9 266:9	<b>relocated</b> 281:2	237:17,23 238:13	<b>respondents</b>	236:9
271:1,13	<b>relocating</b>	241:5 242:19	229:1 281:22	<b>rights</b> 224:21
<b>regional</b> 219:3	282:23	245:5 246:9	<b>responding</b>	235:21 253:15
221:23 239:9,15	<b>relocation</b>	250:4,8,26 251:1	290:22,23	<b>rights-of-way</b>
<b>regularly</b> 222:11	282:11 285:15	254:12 255:20,26	<b>response</b> 234:1	220:5 237:8
249:16	287:16	256:4 261:13	238:7 275:5	<b>rights-of-ways</b>
<b>regulation</b>	<b>rely</b> 261:9 285:13	266:5,13 283:1	282:1 284:14,18	236:8 237:7,11
247:21 255:19	286:6	284:1	<b>responsibilities</b>	<b>Rimbey</b> 284:10
<b>regulations</b>	<b>remarks</b> 213:2	<b>requirements</b>	218:12	<b>rings</b> 284:24
222:13,21 223:10	283:5	221:16 222:22	<b>responsibility</b>	<b>rise</b> 257:20
225:9 237:12	<b>renovations</b>	223:10 236:6	274:13 277:12	<b>risk</b> 225:20
252:20	247:16	243:8 246:8	278:7	<b>road</b> 233:16
<b>replacement</b>	<b>replacement</b>	255:21,25	<b>responsible</b>	251:9 261:14
241:8	241:8	<b>requires</b> 280:26	220:6 231:19	266:26 269:5,6
		283:19	250:10 277:8	<b>roads</b> 230:22
			<b>responsive</b>	264:12,13 269:1,

3 281:8	271:26	<b>service</b> 236:6 245:11	<b>similar</b> 287:21	221:7 222:7
<b>roadways</b> 224:18	<b>scheduling</b>	<b>services</b> 280:15	<b>simple</b> 238:18	227:6 235:14
283:1	289:10,11	<b>servicing</b> 239:20	<b>simply</b> 223:4	255:11 260:7
<b>Robinson</b>	<b>scheduling-wise</b>	<b>session</b> 291:7	273:3 280:3	264:5 276:16
259:22,23,25	290:14	<b>set</b> 222:4 223:7,21	<b>Simpson</b> 253:11	<b>speaking</b> 213:7
264:17 265:21	<b>school</b> 216:22	232:16 254:5	<b>sir</b> 227:20 228:4	217:2 223:6
<b>role</b> 218:12	233:23,24	262:8 265:15	231:18 234:4	248:9 259:26
239:8,10,15	<b>scope</b> 238:11	276:24 280:5	243:26 244:7	278:12
243:25 244:1	<b>Scott</b> 214:19	<b>shake</b> 213:9	245:25 247:1	<b>speaks</b> 239:25
252:19 274:13	215:9 217:3	<b>share</b> 223:16	248:4 274:12,21	<b>specializing</b>
278:7	247:2	<b>shareable</b> 269:6,	<b>sit</b> 290:25	227:26
<b>room</b> 213:22	<b>season</b> 251:7,14	8	<b>site</b> 236:4	<b>specific</b> 220:25
<b>Rosenthal</b>	<b>seasons</b> 250:4	<b>shared</b> 223:17	<b>sitting</b> 215:26	225:5 233:3
240:16	265:10	283:15	217:3 273:17	237:17 249:2
<b>Rosewood</b>	<b>seated</b> 272:19	<b>sharing</b> 218:11	<b>situation</b> 224:2	250:19 252:22
240:17	<b>secondary</b> 221:3	226:22 231:11	225:12 233:2	255:12 267:16,17
<b>Ross</b> 214:4	<b>Secord</b> 240:17	238:25 241:17	238:19 263:7	268:15 271:14
<b>route</b> 266:21	<b>section</b> 263:10,12	250:18 261:21,22	<b>situations</b> 238:10	275:4,16
268:21	270:1 277:3	285:25	281:1	<b>specifically</b>
<b>routine</b> 277:1	285:4,13	<b>sheet</b> 254:20	<b>six-month</b>	230:22 231:9
<b>Rowe</b> 214:16	<b>sections</b> 224:17	<b>Sherwood</b> 246:5	251:12	233:6 235:13
215:8 234:6,9,10,	<b>sector</b> 218:8	<b>short</b> 235:18	<b>skill</b> 292:7	240:13 247:23
11,23 259:25	<b>SECURE</b> 254:24	236:19 251:8	<b>Skipping</b> 252:17	256:1 289:4
260:12	286:24 287:2	273:20	<b>slowly</b> 213:11	<b>spoke</b> 235:6
<b>RPR</b> 292:14	288:16 289:15	<b>shorthand</b> 292:5,	227:6	255:7 258:13
<b>rules</b> 222:20	290:10	6	<b>small</b> 241:26	<b>spoken</b> 221:3
242:19 262:8	<b>seeking</b> 226:21	<b>show</b> 224:14	<b>soft</b> 252:6	278:17
<b>run</b> 283:1	282:13	<b>shown</b> 238:9	<b>softly</b> 213:8	<b>spot</b> 234:6
<b>runs</b> 282:21	<b>seemingly</b>	<b>shut</b> 242:14	<b>solution</b> 281:1	<b>staff</b> 255:1 287:5
<b>rural</b> 266:26	271:13	<b>sic</b> 231:6 233:25	<b>sort</b> 241:16	290:24
	<b>segue</b> 251:25	246:6	258:12 260:3,5,	<b>stage</b> 238:12
	<b>seldom</b> 260:6	<b>side</b> 250:26	26 261:14,21	<b>stages</b> 242:17
<b>S</b>	<b>sell</b> 252:9 279:22	251:11 253:17	<b>sorts</b> 255:9,16	<b>stakeholder</b>
<b>safe</b> 281:17	<b>selling</b> 239:21	<b>sides</b> 262:12	260:2	226:4
<b>safety</b> 281:20	<b>senior</b> 277:22	<b>sign</b> 230:3 245:20	<b>south</b> 229:11	<b>stakeholders</b>
<b>sale</b> 235:16	279:11	<b>significant</b>	240:22 244:26	267:20 268:12
252:11	<b>sense</b> 216:16	218:22 225:13	257:15 258:1	<b>stakes</b> 223:19
<b>Salisbury</b> 246:4	219:15 236:13	250:5 279:19	<b>Southeast</b> 238:14	<b>stand</b> 289:8
<b>satisfactory</b>	255:26 262:3	<b>significantly</b>	240:19,21	<b>standard</b> 266:11
226:15 290:17	<b>separate</b> 282:15	250:7	<b>Southwest</b>	283:11
<b>schedule</b> 288:15	<b>serve</b> 281:13	<b>signing</b> 235:16	228:25 232:21	<b>standards</b>
289:15	285:5		240:22,23	222:15
<b>scheduled</b>			<b>speak</b> 213:11	<b>STANDS</b> 271:22
				288:12

<b>Stantec</b> 277:14	258:25	<b>summarizes</b> 219:26 288:2	<b>taking</b> 221:2 237:20	<b>thirdly</b> 284:26
<b>start</b> 252:21 253:17 265:5 288:25	<b>structures</b> 222:18 245:22	<b>summary</b> 217:23 236:21 248:19 285:9,11	<b>talk</b> 213:6	<b>thought</b> 214:12 260:5
<b>started</b> 248:23 288:22	<b>students</b> 233:26	<b>sums</b> 250:5,7,17	<b>talked</b> 271:1	<b>thoughts</b> 264:17
<b>starting</b> 216:3 266:23	<b>studies</b> 236:1 250:5	<b>suppliers</b> 247:17	<b>talking</b> 260:10 271:14	<b>thousands</b> 251:3 280:14
<b>starts</b> 264:25	<b>study</b> 258:15	<b>supply</b> 251:16	<b>tapped</b> 261:1	<b>three-tiered</b> 217:7
<b>state</b> 219:5 234:7 243:20 246:26	<b>Sturgeon</b> 246:6	<b>supplying</b> 280:14	<b>targeting</b> 257:2	<b>threshold</b> 220:12
<b>statement</b> 273:23 279:7,8 285:21 287:14	<b>subcommittee</b> 220:25	<b>support</b> 226:7 228:17 239:1 243:18 244:18 248:16 286:15	<b>targets</b> 223:21	<b>time</b> 223:11,24 224:8,11 225:7 235:19 236:18,19 237:13 238:8,20 242:13,18 243:7, 12 251:9 260:20, 22 269:18 271:20 275:24 276:13, 18,23 277:7,13, 18 278:23 282:11 288:8 290:6,7
<b>statements</b> 287:22	<b>subdivided</b> 239:21	<b>supported</b> 222:13	<b>technical</b> 222:21 223:10 224:17 238:2	<b>timelines</b> 218:10 262:7 275:14 282:17
<b>states</b> 239:15 275:19	<b>subdivision</b> 235:24 251:11	<b>supporters</b> 280:17	<b>ten</b> 219:18,19,21 239:10	<b>timeliness</b> 261:12 263:15
<b>status</b> 283:25	<b>subject</b> 224:25 279:23	<b>supporting</b> 247:16	<b>ten-year</b> 265:3	<b>timely</b> 234:3 237:23 286:8
<b>statutory</b> 239:18 269:2	<b>submission</b> 216:4,7,11 220:1 228:7,8,11 234:22,25 235:2 239:24 240:1,6 244:8,12 248:6,9 258:4 274:17,19 275:9,17 278:11	<b>supportive</b> 226:3	<b>tendered</b> 244:9 248:6	<b>times</b> 213:12
<b>steering</b> 269:12	<b>submits</b> 285:9,11 286:2	<b>supports</b> 226:1	<b>tens</b> 280:13	<b>timing</b> 241:9 243:10 261:24 287:3
<b>step</b> 230:4 254:9 269:4	<b>submitted</b> 260:17 274:26 276:2,3,11,24	<b>surface</b> 245:22, 23 246:9 258:25	<b>terms</b> 219:16 223:14 224:11,15 229:18,22,25 233:10 234:16 241:5 243:10 244:7 247:13 249:24 250:15, 22,25 262:11,23 264:3 275:13,23 290:9,19,22	<b>today</b> 214:4 215:18,26 217:12 219:25 225:24 226:18 227:13 244:17 246:23 248:15 254:14 275:7 279:15 288:22
<b>Stevenson</b> 233:25	<b>submissions</b> 261:11 268:19 270:6 275:21	<b>surmise</b> 276:21	<b>tens</b> 280:13	<b>today's</b> 214:7 291:7
<b>stood</b> 272:8	<b>surrounding</b> 232:6 283:6	<b>surrounding</b> 232:6 283:6	<b>test</b> 257:2	<b>told</b> 213:7 242:17 245:15 257:23
<b>straightforward</b> 279:24	<b>submit</b> 285:9,11 286:2	<b>suspect</b> 289:20	<b>testimony</b> 280:7	<b>tomorrow</b> 288:20,26 289:2,
<b>strategy</b> 222:5	<b>successfully</b> 261:1	<b>suspending</b> 276:9	<b>theme</b> 261:11	
<b>streamline</b> 263:2	<b>submitted</b> 260:17 274:26 276:2,3,11,24	<b>swear</b> 273:8	<b>themes</b> 218:13	
<b>Street</b> 232:2 240:23 267:1 284:11	<b>success</b> 281:20	<b>sworn</b> 215:10 273:6,10	<b>then-minister</b> 253:7	
<b>streets</b> 224:18	<b>successful</b> 281:17	<b>system</b> 221:20 230:12,18 268:18	<b>thereof</b> 261:7	
<b>strictly</b> 213:21 284:1	<b>successfully</b> 261:1	<b>systems</b> 218:19	<b>thickness</b> 242:20	
<b>stringent</b> 262:8	<b>suggest</b> 261:21		<b>thing</b> 213:10	
<b>strokes</b> 234:16	<b>suggests</b> 260:6		<b>things</b> 213:5 251:11 255:17 260:2 270:8 271:4 280:8	
<b>strongly</b> 280:9	<b>summarize</b> 233:11 256:21		<b>thinking</b> 222:26 255:10	
<b>structure</b> 222:6,8 224:12,13 235:22,23 246:9	<b>summarized</b> 219:26			
		<b>T</b>		
		<b>table</b> 223:19		
		<b>tag</b> 230:25		
		<b>take-it-or-leave-it</b> 231:15		

5,9,22 290:10,15  
291:1,8  
**top** 219:18,19,21  
**topic** 218:2,18  
256:14  
**topography**  
236:7  
**total** 231:12  
**touched** 235:26  
246:16 247:11,25  
**Town** 228:25  
**towns** 226:2  
282:7  
**tracks** 263:14  
**trades** 247:17  
**traffic** 269:7  
**Trail** 232:22  
**transact** 263:4  
**transcribed**  
292:6  
**transcribing**  
213:13 227:7  
**transcript**  
213:17,18 292:1,  
4  
**transparency**  
218:12 226:15  
231:4,7 249:18  
255:20 261:12,23  
263:15 264:14  
**transparent**  
279:26 281:11  
283:12,22  
**traversing** 223:4  
**Tribunal** 253:15  
**trigger** 263:13  
**trouble** 213:8  
267:10  
**true** 274:22 279:1  
**Tsoukalas**  
273:10,19,26  
274:2,4,8,25  
275:4 277:6,16

278:17 279:14  
**tune** 230:23  
**turn** 214:11  
286:23  
**turning** 231:17  
277:20 287:5  
**two-and-a-half**  
215:22  
**type** 222:22 223:5  
225:6 234:16  
284:17  
**types** 236:12  
**typically** 235:16  
252:2,14 253:11,  
17 254:8 256:10

---

**U**

---

**UDI** 214:15  
216:3,9,17,19,25  
217:4,6,8,15,20,  
23 218:5 219:17  
220:3,21,23,25  
221:8,12 222:23  
226:6,13,25  
235:25 247:6  
**ultimate** 252:4  
**ultimately** 221:6  
223:1 226:9  
235:10 237:5  
239:21 241:22  
251:13,17,22  
283:3  
**unable** 245:9  
**uncertainty**  
225:22  
**unchangeable**  
223:7  
**unclear** 238:20  
**uncooperative**  
282:2  
**understand**  
236:23 237:2,12  
238:11 249:7  
259:6 260:8

266:6 273:21  
279:6  
**understanding**  
228:12 232:12  
240:4 254:1,3  
275:10  
**understands**  
275:22  
**understood**  
236:25  
**undertakes**  
216:17  
**undoubtedly**  
283:10  
**undue** 285:6  
**United** 239:15  
**units** 251:15  
**unlike** 224:1  
**unproductive**  
282:3  
**unreactiveness**  
264:14  
**unreasonable**  
283:21  
**unsafe** 233:21  
**updated** 222:23  
**upgrade** 267:1  
280:2  
**upgrades** 266:4  
284:16  
**upgrading**  
287:23  
**Uplands** 240:19  
**upwards** 251:3  
**urban** 215:20  
219:9 221:25  
223:13  
**urgency** 238:9  
**user** 223:1 252:12  
**users** 226:5  
239:22  
**users'** 222:26

**Utilities** 253:14  
**utilized** 243:9  
**utilizing** 264:15

---

**V**

---

**vague** 241:13  
**valid** 275:26  
**Valley** 228:25  
**variety** 220:13  
**vastly** 245:15  
**vehicle** 233:21  
**venture** 232:8  
**versus** 271:2  
**viable** 236:17  
**vice** 244:1 277:23  
279:12  
**video** 213:14,16,  
17,19,21  
**view** 263:7  
270:21  
**viewers** 213:19  
**Village** 232:18  
246:4  
**Villages** 232:26  
233:4  
**vindictive** 285:6  
**vision** 223:8  
**vitae** 274:5  
277:25  
**vital** 280:15  
**volume** 269:7

---

**W**

---

**walk** 236:10  
**wall** 242:11,20  
**wanted** 259:19  
**watershed**  
224:23  
**ways** 260:24  
272:1

**webcast** 213:15  
**website** 219:22  
**weeds** 268:26  
**well-being**  
280:15 281:21  
**west** 228:23  
231:18,21,23  
232:21 233:17  
**Western** 239:14  
**Westren** 273:11,  
18,22 277:20,22,  
24 278:2,6,18,25  
279:3,6,11  
286:13,15 287:19  
**whisperer**  
267:12  
**wholistic** 264:16  
**windfall** 284:17  
**window** 260:4  
**withheld** 245:10  
**witnesses** 214:22  
273:6,8 279:17  
288:21 289:2,12  
290:20  
**wondering**  
261:23 270:26  
272:1  
**wording** 255:12  
**work** 217:10  
226:6 230:21  
232:6,10 234:16  
236:19 238:21  
239:7 241:6,10,  
18,20 251:10  
258:16,17,18,21  
259:17 267:20,21  
274:9 278:3  
280:3 281:17  
282:5,26 283:14,  
17,20 284:1  
287:15,20  
**workable** 286:3  
**worked** 243:6,11

**working** 215:21  
218:3 220:26  
224:16 225:3  
243:7 280:2

**works** 268:18

**wrap** 225:11  
290:8

**wrapped** 289:13

**written** 216:4  
228:7 234:22,25  
239:24 240:6  
241:22 244:8  
248:6 270:6  
274:17,19 275:17  
277:10 278:11,13  
284:12

**wrong** 262:13  
266:19

---

**Y**

---

**year** 219:18  
264:24

**years** 215:22  
217:25 218:1  
219:6 229:8  
230:8,19 231:3  
239:10,11 248:21  
250:21 263:22  
265:5,11 279:20

**yesterday** 214:3  
221:4 225:14  
229:15,19 235:8  
251:7 268:16

---

**Z**

---

**zero-cost** 259:19

**zoning** 224:20  
235:24