

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**VANDERBILT NAPLES HOLDINGS,
LLC,**

Petitioner,

vs.

**OGC CASE NO.: 24-2215
DOAH CASE NO.: 25-2482**

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION.**

Respondents.

_____ /

FINAL ORDER

On February 11, 2026, an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH) issued a Recommended Order in these proceedings. Petitioners had challenged an Order Denying Petition for Variance (the Order). In the Order, the Department provided notice of intent to deny a petition for variance submitted by Vanderbilt Holdings, LLC. (Petitioner), in ORCP file number CO-1264 V.

Petitioner had requested a variance or waiver under section 120.542, Florida Statutes from rules 62B-33.005(13) and 62B-33.0155(l)(n), Florida Administrative Code. The property in question is located seaward of the Coastal Construction Control Line located between approximately 200 feet and 1060 feet east of the Department's reference monument R-29, in Collier County. Following the notice of denial, Petitioner filed a Petition for Administrative Hearing, which the Department referred to DOAH. The ALJ conducted a formal

hearing and issued the Recommended Order recommending that Petitioner receive a variance, with the qualification that the recommendation was predicated on a lighting plan which calls for one light per balcony. The parties have filed a joint motion concurring with that recommendation and requesting an expedited resolution.

The Recommended Order fully describes the proceedings before DOAH. A transcript of the proceedings is in the record, and was available to the ALJ when he prepared the Recommended Order.

CONCLUSION

Having considered the applicable law and the Recommended Order, and otherwise being duly advised, it is ORDERED:

A. The Recommended Order (Exhibit A to this Final Order) is adopted and incorporated herein by reference, in its entirety.

B. The variance is granted.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; or by electronic mail to Agency_Clerk@dep.state.fl.us and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate

District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 12 day of March 2026 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



ALEXIS A. LAMBERT
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Lea Crandall  Digitally signed by Lea
Crandall
Date: 2026.03.16 12:24:11
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Clerk

March 16, 2026
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by electronic mail to the following on this 16th day of March 2026.

Frederick L. Aschauer, Jr., Esq. Nichole J. Poot, Esq. Christopher Perrigan, Esq. Lewis, Longman & Walker, P.A. 106 East College Avenue, Suite 1500 Tallahassee, Florida 32301 faschauer@llw-law.com npoot@llw-law.com cperrigan@llw-law.com <i>Counsel for Petitioner</i>	Rhonda E. Parnell, Esq. Florida Fish and Wildlife Conservation Commission 620 South Meridian Street Tallahassee, Florida 32399-1600 rhonda.parnell@myfwc.com <i>Counsel for Florida Fish and Wildlife Conservation Commission</i>
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STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Jeffrey Brown

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Tallahassee, FL 32399-3000

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

VANDERBILT NAPLES HOLDINGS,
LLC,

Petitioner,

vs.

Case No. 25-2482

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION AND
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents.

_____/

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in Tallahassee, Florida on August 25 through 27, and September 29 through 30, 2026, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

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For Respondent Florida Fish and Wildlife Conservation Commission:

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Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
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STATEMENT OF THE ISSUE

Whether Vanderbilt Naples Holdings, LLC (“Vanderbilt”) is entitled to a waiver or variance from the balcony railing tinting requirement in Florida Administrative Code Rules 62B-33.005(13) and 62B-33.0155(1)(n).

PRELIMINARY STATEMENT

On August 1, 2024, Vanderbilt filed a “Petition for Variance from Rule 62B-33.005(13) F.A.C. and 62B-33.0155(1)(n)” (“the Petition for Variance”) so that it could have clear balcony railings on a multi-story condominium project in Naples, Florida. On January 13, 2025, the Department of Environmental Protection (“the Department”) issued an Order denying the Petition based on a determination from the Florida Fish and Wildlife Conservation Commission (“the Commission”) that granting the Petition for Variance would result in a “take” of sea turtles. Vanderbilt responded by requesting a formal administrative hearing, and the Department referred this matter to DOAH on May 5, 2025. On May 22, 2025, the undersigned issued a Notice scheduling a final hearing for July 23, 25, and 28, 2025.

On July 9, 2025, the Department and the Commission filed a “Motion for Continuance of Final Hearing” requesting that the final hearing be continued in order to complete discovery. The undersigned issued an Order on July 10, 2025, granting that Motion and giving the parties until July 16, 2025, to provide mutual dates of availability. On July 14, 2025, the undersigned issued an Order rescheduling the final hearing for August 25 through 27 and September 12, 2025.

The final hearing was convened as scheduled. After conferring with the parties on August 27, 2025 regarding their availability, the undersigned rescheduled the final hearing to resume on September 29, 2025, and continue through October 1, 2025. However, the evidentiary portion of the final hearing was concluded on September 30, 2025.

Vanderbilt presented testimony from Keith Gelder, the President of Stock Luxury Apartment Living; Dr. Kirk Rusenko; Dr. Stephane Zsoldos; and Dr. Charles Menzie. Petitioner’s Exhibit 50 was accepted into evidence. Joint Exhibits 1 through 92 (including Joint Exhibit 60a) were accepted into evidence. The Department presented testimony from Douglas Aarons, P.E., but did not move any exhibits into evidence. The Commission presented testimony from Kristin Halley, Ronald Mezich, and Dr. Robin Trindell. Commission Exhibits 1 through 16 were accepted into evidence, and Commission Exhibits 17 through 21 were proffered.

A complete version of the final hearing Transcript was filed on December 23, 2025, and the parties’ Proposed Recommended Orders were timely filed on January 12, 2026. All of the Proposed Recommended Orders were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, the entire record of this proceeding, joint stipulations, and matters subject to official recognition, the following Findings of Fact are made:

Sea Turtles and Problems Caused by Artificial Lighting

1. Various species of sea turtles¹ are threatened and/or endangered.

A “threatened” species is at risk of becoming endangered, and an “endangered” species is at risk of becoming extinct if preventative action is not taken.

2. Nesting females prefer to nest in dark, silhouetted areas along the beach at night where they bury their eggs into the sand and immediately return to the sea after nesting. Newborn turtles, i.e., hatchlings, emerge from nests on a beach by digging to the top of the sand. The hatchlings then orient themselves across the beach and to the sea. Sea turtles can see 180 degrees from side to side and ten to 30 degrees up and down. They have the ability to distinguish seaward open light from landward dark areas created by dunes, vegetation, and structures. As a result, sea turtles rely on broad, bright, and open ocean waters in order to orient toward the sea.

3. Artificial light is one of the reasons why sea turtles are threatened and/or endangered. A Florida Fish and Wildlife Research Institute technical report entitled “Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtles Nesting Beaches,”² explains how artificial light endangers sea turtles:

Sea turtle populations have suffered declines worldwide, and their recovery largely depends upon

¹ Sea turtles will also be referred to herein as “marine turtles.”

² Witherington, B.E., R.E. Martin, and R.N. Trindell, 2014. Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtle Nesting Beaches, revised. Florida Fish and Wildlife Research Institute Technical Report TR-2. This publication was mentioned extensively during the final hearing, and the Commission’s expert witness was a co-author. Therefore, the undersigned elected to take official recognition of this article.

managing the effects of expanding human populations. One of these effects is light pollution – the presence of detrimental artificial light in the environment. Of the many ecological disturbances caused by humans, light pollution is among the most manageable. Light pollution on nesting beaches is detrimental to sea turtles because it alters critical nocturnal behaviors, namely, their choice of nesting sites, their return path to the sea after nesting, and how hatchlings find the sea after emerging.

Circumstantial observations and experimental evidence show that artificial lighting on beaches tends to deter sea turtles from leaving the sea to nest . . .

Although turtles do tend to prefer dark beaches, many nest on lighted shores, but when they do so, hatchlings' lives are jeopardized. This threat comes from the way in which artificial lighting disrupts a critical nocturnal behavior of hatchlings – crawling from their nest to the sea. On naturally lighted beaches, hatchlings escaping from nests show an immediate and well-directed orientation toward the water. This robust sea-finding behavior is innate and is guided by visual cues that include brightness, shape, and, in some species, color in the horizon. On artificially lit beaches, hatchlings are misdirected by light sources, and they are left unable to find the water and vulnerable to high mortality from dehydration and predators. Hatchlings become misdirected because they tend to move in the direction with the brightest light and away from darker silhouettes, especially when the brightness in one direction is overwhelmingly greater than that of other directions. Artificial lighting on beaches is strongly attractive to hatchlings and can cause them to move in the wrong direction (misorientation) and interfere with their ability to orient in a constant direction (disorientation).

4. In order to fully understand why artificial light causes sea turtles to be threatened and/or endangered, it is important to know that visible light consists of photons whose wavelength establishes a light's "color."

Short wavelength light appears as blue, and longer wavelength lights appear as red. Human vision sensitivity peaks with red light having a wavelength of approximately 550 nanometers and decreases substantially as the wavelength approaches infrared light of approximately 700 nanometers.

5. Even though the structure of sea turtle eyes is similar to that of human eyes, sea turtles evolved so that they are more sensitive to short wavelength light. Short wavelength light sources, such as incandescent and fluorescent lights, contain blue and green wavelengths that blend into white light and attract sea turtles. Harmful white light comes from sources such as streetlights, interior condominium lights, and outdoor decorative lights.

6. Sky glow is another artificial light source that can cause disorientation. Sky glow is generally caused by the collective white light of inland development reflecting into the night sky and creating an atmospheric glow.

7. Sea turtle light sensitivity peaks around 500 nanometers and falls sharply as wavelengths approach 600 nanometers. As a result, long wavelength (amber or red) light, 560 nanometers or longer and properly shielded, can substantially reduce sea turtle disorientations.

8. The following excerpts from "Understanding, Assessing, and Resolving Light-Pollution Problems on Sea Turtles Nesting Beaches" express the general consensus on balancing protection of sea turtles with the need to provide necessary lighting for human safety:

[r]educing exposure to artificial lighting at night in coastal areas is critical for the survival of sea turtles. Managing artificial lighting at night also benefits humans by promoting safety and good health and by saving energy. Light-management options, such as the use of low-energy, long-wavelength lighting focused only where needed, reduces the potential for impacts to sea turtles and ensures adequate light for

nighttime human activities without increasing the risk of health hazards and harmful situations due to overly bright nighttime lighting.

The good news is that there are ways to provide lighting that ensures safety, security and efficiency without causing harm to sea turtles. First and foremost, there is simply *no substitute for naturally dark habitat*. Removing unnecessary lights is the simplest, most effective, and most energy-efficient solution to this issue. But when artificial lighting is absolutely required for safety and security, [the Commission] and the U.S. Fish and Wildlife Service (USFWS) recommend a simple and effective approach which requires that the elements of lighting design and luminaire should:

1. *Keep it low*. Mount the fixture as low as possible to minimize light trespass, and use the lowest amount of light needed for the task.
2. *Keep it shielded*. Fully shield the light so that bulbs or glowing lenses are not visible, minimizing light trespass.
3. *Keep it long*. Use long-wavelength light sources (ambers and reds) in appropriate lighting fixtures. [The Commission] and [the United States Fish and Wildlife Service] have teamed up to develop the Wildlife Lighting Certification Program. This program was designed to educate the public, the building industry, and government officials on how to minimize impacts of artificial light on wildlife by using proper lighting methods and identifying appropriate lighting fixtures, shields, and lamps.

(emphasis in original)

9. In order to protect sea turtles, the Commission recommends that outdoor lights produce only long wavelength light, i.e., 560 nanometers or greater, which is amber, orange, and red light.

10. Florida is home to the majority of the United States’ sea turtle population and has taken actions to protect sea turtles. For instance, the Florida Legislature has empowered the Commission to “[a]dopt rules pursuant to chapter 120 to prescribe terms, conditions, and restrictions for marine turtle conservation . . .” § 379.2431(1)(d)2., Fla. Stat. In addition, the Commission submits comments to other agencies “regarding applications for permits, licenses, or authorizations affecting the [C]ommission’s jurisdiction . . .”³

11. The Department also plays a part in sea turtle protection. For example, any application to the Department for a “permit or other type of approval for an activity that affects marine turtles or their nests or habitat shall be subject to conditions and requirements for marine turtle protection as part of the permitting or approval process.” § 379.2431(1)(f), Fla. Stat. The Department “may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting marine turtles and hatchlings and their habitat pursuant to s. 161.053(4).” § 379.2431(1)(g), Fla. Stat.

12. Also, the Department shall recommend denial of a permit application if the activity would result in a “take.” § 379.2431(1)(h), Fla. Stat. Section 379.2431(1)(c)2., Florida Statutes, defines a “take” as “an act that actually kills or injures marine turtles, and includes significant habitat

³ Section 20.331(10), Florida Statutes, describes the Commission’s “permit commenting authority” and states the following: “Comments submitted by the [C]ommission to a permitting agency regarding applications for permits, licenses, or authorizations affecting the [C]ommission’s jurisdiction must be based on credible, factual scientific data, and must be received by the permitting agency within the time specified by applicable statutes or rules, or within 30 days, whichever is sooner. Comments provided by the [C]ommission are not binding on any permitting agency . . . If the [C]ommission comments are used by a permitting agency as a condition of denial, approval, or modification of a proposed permit, license, or authorization, any party to an administrative proceeding involving such proposed action may require the [C]ommission to join as a party in determining the validity of the condition. In any action in which the [C]ommission is joined as a party, the [C]ommission shall bear only the actual cost of defending the validity of the credible, factual scientific data used as a basis for comments.”

modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.”

13. Of particular relevance to the instant case is the fact that the Department may condition permits “to alter, excavate, or construct on property *seaward of established coastal construction lines*” in a manner that provides “protection to nesting sea turtles and hatchlings and their habitat, pursuant to s. 379.2431 . . .” § 161.053(4)(c), Fla. Stat. (emphasis added)

14. Because artificial light can detrimentally impact sea turtles, the Department promulgated rule 62B-33.005(13), which mandates that:

[s]pecial conditions relative to the nature, timing, and sequence of construction shall be placed on permitted activities when necessary to protect marine turtles and their nests and nesting habitat. In marine turtle nesting areas, all forms of lighting shall be shielded, and utilize long wavelength light sources only (e.g. 560 nanometers (nm) or longer and absent wavelengths below 560 nm) with all lamps recessed within well shielded, full cut-off fixtures or otherwise designed so as not to disturb marine turtles. Tinted glass or similar light control measures shall be used for windows and doors which are visible from the nesting areas of the beach. *Tinted glass shall be 45 percent or less inside to outside light transmittance on all non-opaque doors, walls, balcony, deck railings, and windows.* The Department shall suspend any permitted construction when the permittee has not provided the required protection for marine turtles and their nests and nesting habitat.

(emphasis added)

15. In addition, rule 62B-33.0155 sets forth “general permit conditions,” and subsection (1)(n) mandates that “[a]ll non-opaque walls, balcony railings, deck railings, windows and doors visible from any point on the beach must be tinted to a transmittance value (light transmission from inside to outside) of 45 percent or less through the use of tinted glass or window film.”

Vanderbilt's Permit Application and its Petition for Variance

16. Section 161.053(1)(a), Florida Statutes, describes a coastal construction control line ("CCCL") as follows: "it is the intent of the Legislature to provide that the [D]epartment establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of America, or the Straits of Florida. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions." As noted above, the Department regulates excavation, construction, and certain other activities seaward of the CCCL. § 161.053(4)(c), Fla. Stat.

17. Vanderbilt is developing a multi-story condominium project near Vanderbilt Beach in Naples, Florida. In the area of Vanderbilt Beach, the CCCL runs from north to south and turns to the east around the middle of Vanderbilt's property. As a result, most of Vanderbilt's property is seaward of the CCCL.

18. On February 14, 2023, the Department issued CCCL Permit No. CO-1166 ("the CO-1166 permit") to Vanderbilt. The CO-1166 permit required that "[a]ll non-opaque walls, balcony railings, deck railings, windows and doors visible from any point on the beach must be tinted to a transmittance value (light transmission from inside to outside) of 45 percent or less through the use of tinted glass or window film." The CO-1166 permit included no exterior lighting plan for light fixtures such as balcony lighting.

19. On July 11, 2023, Vanderbilt applied to have the CO-1166 permit modified to include exterior and landscape lighting. The Department then sent that application to the Commission for an assessment of potential impacts to sea turtles. Over the next two years, Vanderbilt and the Commission discussed an exterior lighting plan with the Commission issuing

formal and/or informal Requests for Additional Information on August 30, 2023, February 23, 2024, May 7, 2024, and October 16, 2024.⁴

20. The Requests for Additional Information issued on August 30, 2023, May 7, 2024, and October 16, 2024 contained the following admonition about exterior lighting:

To provide reasonable assurance that exterior lights will not adversely affect marine turtles, [Commission] staff request the applicant develop an exterior lighting plan consistent with the [Commission]’s Sea Turtles Lighting Guidelines found on the [Commission’s] website at (<https://myfwc.com/media/18511/seaturtles-lightingguidelines.pdf>). In summary, all exterior lighting must use light fixtures that are not directly, reflectively, or cumulatively visible from the nesting beach. To accomplish this, all fixtures should be full-cutoff (well-shielded), fixtures that direct light downward only, and fitted with long-wavelength light source (wavelength readings of 560nm or higher, with no readings below that wavelength). Short-wavelength (white) light sources, lights pointing up or onto structures (uplights), unshielded lights, or decorative lights do not meet these guidelines.

21. The Requests for Additional Information took issue with Vanderbilt’s plan to have balcony lights, and two of them stated the following:

[p]rivate balcony lights are not recommended on the beach or shore-perpendicular sides of a structure as they are not required for human safety and increase the potential for adverse impacts to marine turtles. Please remove these fixtures from the proposed lighting plan.

⁴ Vanderbilt contemplates mounting FC610A Series luminaires, manufactured by FC Outdoor Lighting, on the balconies. More than 99 percent of the light emitted by those luminaires is amber or red light. There is almost no blue or green light that can be detected by turtles. Also, the luminaires are housed in cone-shaped shielding that limits the dispersion of light. The FC610A Series is “wildlife lighting” certified by the Commission. The proposed lights would be mounted next to the balcony doorways and near the rear of the balcony so that residents would have light when they step out onto the balconies.

22. On August 1, 2024, Vanderbilt filed the Petition for Variance with the Department. Vanderbilt sought a variance in order to have clear glass balcony railings. The Petition for Variance set forth the following assertions:

2. On February 14, 2023, the Department issued to [Vanderbilt] Permit Number CO-1166 Notice to Proceed and Permit for Construction or Other Activities Pursuant to section 161.053, F.S. (“the Permit”), subject to the general and specific conditions contained therein.

3. The Permit authorizes the construction of the following: a fourteen-story, multi-family dwelling (“Building 1 North”) located a maximum of 435.1 feet seaward relative to the control line; a fourteen-story, multi-family dwelling (“Building 1 South”) located a maximum of 252.0 feet seaward relative to the control line; a six-story, multi-family dwelling (“Building 2 West”) located a maximum of 272.8 feet seaward relative to the control line. However, only Building 1 North and Building 1 South are relevant to this Petition. [hereinafter Building 1 North and Building 1 South are collectively referred to as “the Buildings”).

* * *

5. The coastal construction control line (“CCCL”) also runs uniquely through the Property. From the north to south, the CCCL runs parallel with the coast of the Gulf of Mexico before it changes direction perpendicular to the east at the southern end of Vanderbilt Lagoon until a point approximately in the middle of the Property where it changes direction back to the south continuing parallel with the shore line. [] Ironically, structures north of [Vanderbilt’s property] are not seaward of the CCCL and not subject to this requirement. In fact, if older structures were removed and multi-story structures built, they would not be subject to this permit requirement as they would be landward of the CCCL.

6. As a result of the unique change of direction of the CCCL towards the east in this area, the Buildings are captured within the Department's CCCL permitting jurisdiction, despite neither of the Buildings fronting the beach and the Gulf of Mexico. The Property and the Buildings are not located on or adjacent to the beach. Instead, Gulfshore Drive is immediately to its west (seaward). Further west, adjacent to Gulfshore Drive, are beachfront condominiums located directly on the beach and directly in front of [Vanderbilt]'s property.

7. The Buildings include residential units with balconies where some, but not all, balconies, are partially visible from the beach only if viewing the balconies from south/southwest areas of the beach. The Buildings are not visible from the west, north northwest portions of the beach as they are blocked by existing multi-level developments directly adjacent to the beach. Each south/southwest facing balcony contains sea turtle amber lighting that complies with sea turtle lighting requirements contained in the first portion of rule 62B-33.005(13). The balcony lights are designed shielded and facing down and located closest to the interior balcony doors and away from the balcony railings. The balcony windows and doors are tinted in accordance with rule 62B-33.005(13). [Vanderbilt] conducted a photometric rendering of the transmittance of the balcony light, which evidences no reflection off the glass balcony railing will occur . . .

8. The majority of the residential units on [the] Buildings are not visible from the beach or turtle nesting areas. The existing Beachmoor Condominiums block the line of sight from sea turtle nesting areas to the balconies for the majority of the Buildings' units . . .

9. This Petition seeks a variance from the specific tinting requirement in 62B-33.005(13) and general permit condition (o) that balcony railings must also be tinted.

* * *

13. Chapter 161.053(4)(c), Florida Statutes', intent is to ensure permitted activities seaward of the CCCL provide protection to nesting sea turtles and hatchlings and their habitat. Rule 62B-33.005(13) is intended to further the intent of the language in chapter 161.053 to impose conditions to provide for the protection of nesting marine turtles and hatchlings and their habitat during the nesting season. The Department promulgated rule 62B-33.005(13) imposing tinting requirements on all non-opaque balcony railings; however, the rule fails to consider circumstances where its requirements do not further the legislative intent to aid in the protection to nesting sea turtles and hatchlings and their habitat during the nesting season.

14. Imposing the tinting requirements of rule 62B-33.005(13) on the Building's balcony railings violates the principles of fairness, imposes a substantial hardship on Petitioner, and does not further the legislative intent for the following reasons: 1) Petitioner's balcony lights utilize long wavelength light sources that are 560 nanometers (nm) or longer and will not reflect off the balcony railings, 2) the majority of balcony railings are not visible from the beach turtle nesting areas, not within their line of sight, and a significant distance away from the beach, 3) balcony railings tinting would not enhance protections to nesting sea turtles, and may in fact cause adverse impacts to nesting sea turtles.^[5] The cost of tinting the balcony railings pursuant to the rule is approximately \$150,000 more than typical glass railings. This cost creates a substantial hardship on Petitioner that is unnecessary and not expressly required by the statute.

15. The Building's balcony lights are currently designed so as not to disturb sea turtles as they are shielded, downfacing, and utilize longwave length light sources that meet the standard in rule 62B-

⁵ Vanderbilt did not make this argument during the final hearing.

33.005(13) for being 560 nm or longer and absent wavelengths below 560 nm. The long wavelength light[] sources are positioned furthest away from the balcony railings and closest to the balcony doors and windows, which are appropriately tinted at 45% or less. Photometrics of the sea turtle friendly balcony lights indicate such sea turtle friendly light during the nesting season will not transmit to the balcony railing[,] effectively making tinted balcony glass [] purposeless.

18. . . . [T]he majority of the balconies on the Buildings are either not visible from nesting areas on the beach, or produce light transmittance to the beach resulting in an insignificant or de minimis effect because of the significant distance of the Buildings from the beach.

* * *

22. The intent of the statute and the rule has clearly been achieved by other means – 1) the location of the Buildings’ private balconies being blocked by existing development and vegetation, 2) the unique design of the Buildings being a significant distance from the beach and primarily facing south/southwest to minimize light and/or possible light reflection, 3) balcony doors and windows being tinted, 4) and balcony lighting that is shielded and downfacing containing long wavelength light sources that meet the light requirements of rule 62B-33.005(13) and which is positioned so as not to reflect off the balcony railing glass.

23. Requiring [] balcony railings to be tinted imposes an unnecessary and substantial economic burden on [Vanderbilt] as the cost of 45% or less tinted railings is substantial as compared to clear glass railings. The additional cost of tinted balcony railings is \$150,000 more than clear glass, which is a substantial [cost] considering tinted balcony railings will not result in a measurable positive effect, and potentially a detrimental effect.

24. Requiring the literal application of the tinting rule to Petitioner's private balcony railings also violates principles of fairness as Petitioners have demonstrated that the statute to protect sea turtles has been met by other methods. Petitioner's circumstances are also unique compared to other CCCL permits, which are typically located directly adjacent to the beach and sea turtles nesting areas and where balcony railing glass and associated lighting effects are directly visible to nesting sea turtle areas. Moreover, should structures immediately north of Petitioner develop into multi-story structures they would not be subject to this permit requirement as they would be landward of the CCCL.

25. Tinting requirements in rule 62B-33.005(13), F.A.C. are primarily imposed upon structures directly adjacent to the beach and nesting areas. In this case, the CCCL in the project location makes a unique change in direction on the Property that brings the Buildings into the CCCL permitting jurisdiction of the Department despite the Buildings not being located directly on the beach. Strictly imposing the tinting requirement for Buildings over 340 feet landward of nesting areas, particularly where the requirement is imposed for properties directly adjacent to the beach, is unfair to Petitioner and only imposes additional financial burdens.

The Department forwarded the Petition to the Commission for review.

23. On January 13, 2025, the Commission transmitted a letter to the Department explaining that the Petition did not satisfy sections 161.053(4)(c) and 379.2431(1):

[Commission] staff have completed our review of the proposed petition for a permanent variance from the criteria in Florida Administrative Code (F.A.C.) [Rules] 62B-33.005(13) and 62B-33.0155(n) relating to the tinting of balcony railings. The information provided by the petition states that a majority of the balcony railings are a substantial distance from the

beach and not visible from the beach, the balcony windows and doors on the structure will meet the rule tinting requirement of 45% Visible Light Transmittance to minimize exposure of interior lights, and the proposed balcony lights would meet the lighting rule requirements.

While the measures proposed by the petitioner will assist in minimizing impacts to marine turtles, lights visible from the beach can cause negative impacts to nesting and hatchling marine turtles, especially balcony lights elevated above ground level on the seaward and shore perpendicular sides of the structure, as currently proposed. Tinted balcony railings reduce the amount of light emanating from behind the balcony railings and minimize impacts to nesting and hatchling marine turtles including take as defined in Florida Statutes 379.2431(1)(C)2. Therefore due to expected impacts resulting in the take of marine turtles and their hatchlings, [the Commission] does not recommend favorably for the requested variance to waive the requirement for tinting balcony railings under F.A.C. 62B-33.005(13) as it does not meet Florida Statutes 379.2431(1) and 161.053(4)(C).

Additionally, the applicant and [the Commission] have not finalized an exterior lighting plan under permit application CO-1166M1. [The Commission] staff has informed the applicant that the tinting of balcony railings would be waived through the permitting process provided the proposed exterior balcony lights are removed from the exterior lighting plan.

24. On January 13, 2025, the Department issued an Order denying the Petition. In doing so, the Department determined that strict application of rules 62B-33.005(13) and 62B-33.0155(n) *would result* in a substantial hardship and a violation of the principles of fairness:

17. Literal or strict application of Rules 62B-33.005(13) and 62B-33.0155(1)(n), F.A.C., would require the Petitioner to install tinted balcony

railings at an increased cost, as the rule fails to consider circumstances where its requirements do not further the legislative intent to aid in the protection to nesting sea turtles and hatchlings and their habitat during the nesting season.

18. Requiring the literal application of the tinting rule to Petitioner's private balcony railings also violates principles of fairness. Petitioner's circumstances are unique to other CCCL permits in the immediate area, which are typically located directly adjacent to the beach and sea turtle nesting areas and where balcony railing glass and associated lighting effects are directly visible to nesting sea turtle areas.

19. Moreover, should structures immediately north of Petitioner develop into multi-story structures they would not be subject to this permit requirement as they would be landward of the CCCL. Tinting requirements in rule 62B-33.005(13), F.A.C., are primarily imposed upon structures directly adjacent to the beach and nesting areas. In this case, the CCCL in the project location makes a change in direction on the Property that brings the Buildings into the CCCL permitting jurisdiction of the Department despite the Buildings not being located directly on the beach.

20. The facts set forth in the Petition and supporting documentation, which are summarized above, establish that strict application of Rules 62B-33.005(13) and 62B-33.0155(n), F.A.C., would result in a substantial hardship and a violation of [the] principles of fairness.

25. Despite agreeing with Vanderbilt's assertion that strict application of rules 62B-33.005(13) and 62B-33.0155(n) would violate the principles of fairness and result in a substantial hardship to Vanderbilt, the Department, based on the Commission's determination that a take would occur, denied the Petition.

26. On March 17, 2025, Vanderbilt submitted a response to a Commission request for additional information and stated that “[a]ll proposed balcony lighting has been removed.” Two days later, Vanderbilt issued a letter stating that its March 17, 2025 response was submitted “under protest.”⁶

Dr. Kirt Rusenko’s Expert Testimony

27. Prior to retiring in 2021, Dr. Kirt Rusenko spent over 25 years working as a marine conservationist for the City of Boca Raton. His duties included, but were not limited to: (a) being responsible for sea turtle nesting surveys; (b) establishing a sea turtle rehabilitation facility; (c) reviewing all sea turtle lighting plans for new construction and fixture replacement at beachfront residences; (d) reviewing beachfront construction permits and reporting potential impacts to sea turtle nests; and (e) monitoring beach renourishment projects for sea turtle nesting.

28. During his tenure as a marine conservationist, Dr. Rusenko dealt with lighting issues “practically every day” and co-authored several abstracts discussing the impact of light on turtles: (a) “Does Background Illumination by Cloud Cover Reduce the Influence of Artificial Lighting on Hatchling Orientation?”; (b) “Using GIS to Determine the Effect of Skyglow on Nesting Sea Turtles Over a Ten-Year Period;” (c) “Is the Wavelength of City Glow Getting Shorter? Parks with No Beachfront Lights Record Adult Aversion and Hatchling Disorientation in 2004;” (d) “Effects of Exposed Streetlights on a Sea Turtle Nesting Beach;” and (e) “The First Year of the Spanish River Park Embedded Roadway Lighting Project: Response of Sea Turtle Hatchlings.”

⁶ In its Proposed Recommended Order, Vanderbilt notes that an agreement has been reached on an exterior lighting plan that has no balcony lights. Based on that agreement, the Department: (a) issued CO-1166 MI on April 25, 2025; and (b) granted Vanderbilt a separate variance from the balcony railing tinting requirements. As stated by Vanderbilt, “when [Vanderbilt] removed balcony lights from its exterior lighting plan under protest, [the Commission] ultimately supported a variance for clear glass railings with ***no balcony lights***.” (emphasis in original). Nevertheless, Vanderbilt has maintained this action.

29. From 2013 through 2016, the Dark-Sky Association invited Dr. Rusenko to serve as a “sea turtle lighting expert” for a project to retrofit lighting in Florida Panhandle parks.

30. From 2012 through 2015, Dr. Rusenko reviewed beachfront lighting plans for Hollywood Beach, Florida’s Community Redevelopment Agency.

31. In addition to giving many lectures on sea turtle lighting and spending 12 years as the scientific advisor for Sea Turtle Oversight Protection in Broward County, Dr. Rusenko has received awards from the International Dark-Sky Association for (a) sea turtle protection, and (b) lighting retrofits for two beachfront condominiums in Boca Raton.⁷

32. The undersigned accepted Dr. Rusenko as an expert in sea turtle conservation and biology.

33. Dr. Rusenko was retained by Exponent⁸ to ascertain whether the balcony lights contemplated by Vanderbilt would affect sea turtles.

34. Dr. Rusenko opined that “you can light a beachfront building and not negatively impact sea turtles or have a very minimal impact on sea turtles, if you do it correctly.” Over the course of his career, Dr. Rusenko observed that narrowband, amber lights did very little to modify the behavior of sea turtles and hatchlings. He considers such lights to be a “godsend” and is a strong proponent of them.

35. After reviewing the project plans, photometric reports, and aerial depictions of the project site, Dr. Rusenko determined that the balcony lights

⁷ Dr. Rusenko testified that he “received a lighting design award in 2012 for changing the lighting in one of my condominiums in Boca Raton. They had 186 globe fixtures lighting their grounds. It was across the highway from the beach, so it could have significant impact. And we had all shielded amber lighting put in.”

⁸ Vanderbilt’s other expert witnesses, whose testimony will be described below, are scientists currently employed by Exponent. Dr. Rusenko was paid \$250 an hour and had spent ten hours on this case by the time of the final hearing.

contemplated by Vanderbilt were unlikely to have any impact on sea turtles.⁹ His determination was partially based on the fact that the Vanderbilt project is 350 feet from the beach and that “most lighting ordinances only cover up to 300 feet.”¹⁰ This is related to the inverse square law of light which Dr. Rusenko described as follows:

[I]t simply means light intensity falls off exponentially with distance. So I actually used that to argue against development in Boca on the beach and was successful for 20 years of keeping one project from going. But in this case, 350 feet away, the light fixtures put out about 430 lumens of light, which is roughly equivalent to a 40 watt lightbulb. And if you do the calculation with the inverse square law, the amount of light reaching the beach were it directly visible from the beach would be like .00001 lumens, so very small.

36. In addition, Dr. Rusenko does not believe that the balcony lights contemplated by Vanderbilt would contribute to sky glow because “[t]he lights are nicely shielded, and they are narrowband amber LED, so they’re not as likely to interact with the moisture in the atmosphere . . .”

37. Also, Dr. Rusenko believed that having tinted balcony railings would have no appreciable impact because

the majority of the light you’re going to get off that balcony is going to be light reflected from the floor to the ceiling. And most of that is going to be going over

⁹ In his report, which was accepted into evidence as Joint Exhibit 79, Dr. Rusenko wrote that “[c]onstruction of the buildings at the site east of Vanderbilt Beach in Naples, FL with the proposed balcony lights and clear glass railings are extremely unlikely to negatively impact nesting sea turtles or their hatchlings.”

¹⁰ When asked how he became familiar with the project, Dr. Rusenko testified as follows: “Initially, a description of the siting of the project and the railings being tinted and lights on the balconies. And when I heard about where it was located on the beach relative to the [] dune, I was surprised to hear that that was an issue. Working 350 feet away from the beach, most lighting ordinances only cover up to 300 feet. So it was strange. Once you get outside that range, lighting, you know, falls off with distance. So it’s much less of an issue.”

the railing, so it's a very small amount of light that would actually go through it.^[11]

38. Dr. Rusenko was skeptical that tinted balcony railings would mitigate any impact caused by the balcony lights because, "I've had glass railings around pool decks in some of my condos. And actually, as long as the lighting behind them was very nice with amber LED lighting, I had no issues on the beach."

Dr. Stephane Zsoldos's Expert Testimony

39. Dr. Stephane Zsoldos is a scientist employed by Exponent since February of 2025. Dr. Zsoldos was a Marie Curie Fellow in Particle Physics at King's College London and the Kavli Institute for Physics and Mathematics at the University of Tokyo. Since 2016, Dr. Zsoldos has worked in the field of computer vision, which he describes as the study of how an observer collects, sees, and ultimately converts light into an image.

40. The undersigned accepted Dr. Zsoldos as an expert in physics, the modeling of light, and computer vision.

41. Exponent assigned Dr. Zsoldos to evaluate the light that would be emitted by Vanderbilt's proposed balcony lights.

42. During the course of his assignment, Dr. Zsoldos noted that human and turtle eyes have rods and cones that produce an electric signal when stimulated by light. That signal is then processed into an image by their brains. In contrast to humans, turtles have an additional cone that is sensitive to short wavelength light that humans cannot detect.

43. Dr. Zsoldos had done no turtle-related work prior to this assignment.

44. Dr. Zsoldos designed an experiment to determine how light from Vanderbilt's proposed balcony lights would be perceived, in terms of

¹¹ Dr. Rusekno included a photometric of the proposed balcony lights in his report and noted "that the light output does not reach the outer side of the balcony where the railing is. All of the light reaching the beach from any floor level will be reflected light from the floor to the ceiling [and] the vast majority of this reflected light will pass over the railing."

brightness, by sea turtles on Vanderbilt beach. The experiment was conducted on June 2 and 3, 2025, at the project site after 10:00 p.m. and under overcast skies. One team was stationed on balconies on the first and third floors above the project's lobby. Another team was stationed on the beach.

45. In order to measure the efficacy of balcony tinting, Dr. Zsoldos used a movable apparatus to mimic a glass balcony railing with and without tint. Dr. Zsoldos used an automotive tinted film with 15 percent tint on his apparatus and opined that his apparatus was a reasonable facsimile of glass tinted to 45 percent opacity. The balcony team also utilized a black carpet on the balcony floor in order to ascertain how such a carpet would affect illuminance.

46. The team stationed on a balcony began the experiment by activating a balcony light, and the second team, stationed at the nearest turtle nesting site on the beach, took photographs of that light utilizing the same camera setting that Dr. Rusenko used to detect lights associated with hatchling disorientation.¹² The team on the beach used tripods, set at the height level of a sea turtle, and took pictures from different points on the beach that were all more than 300 feet from the project.

47. The resulting photographs indicate that the red/amber light produced by the contemplated balcony fixtures appears almost dark to sea turtles.

48. Dr. Zsoldos used the photographic results from a single illuminated balcony to extrapolate how the project, with 50 and 100% occupancy, would appear to a sea turtle on the beach. The results show that a sea turtle would perceive each balcony light as an extremely dim pinpoint of light and that the individual pinpoints would not combine to create one large light source.

¹² That camera setting was intended to overexpose white light into a sunburst. During his work for Boca Raton, Dr. Rusenko used that method to identify harmful white light.

49. Based on the result of his experiment, Dr. Zsoldos concluded that the contemplated balcony lights would not cause sea turtle disorientation or misorientation:

The amber balcony fixture does not produce the same perceived brightness for hatchlings as it does for humans. Using a standard spectral weighting analysis, the hatchling-effective brightness is approximately 8% of a comparable white light source at the same photometric level. This magnitude is consistent with the scientific literature on hatchling sea [turtles], which shows strong attraction to short-wavelength light and much reduced responsiveness to longer-wavelength amber light.

50. Dr. Zsoldos found no discernable difference in how sea turtles would perceive the balcony lights when different tints on his movable apparatus were utilized.¹³ Also, the balcony lights would not contribute to sky glow because the amber and red light from the balcony fixtures are a different wavelength than the white and blue light associated with sky glow. Nor would the individual balcony lights become blended as one moves farther away.

51. As for whether the balcony lights would have a cumulative impact with the building's other lights, Dr. Zsoldos testified that "[t]here is no such thing as . . . the cumulative effect of light in our field."

52. In short, Dr. Zsoldos concluded that "[t]he turtle's perceived brightness of the balcony amber lights is negligible compared to the current light perceived on the beach."¹⁴

53. Dr. Zsoldos qualified his opinions by stating that he was not opining on how sea turtles would react to seeing the contemplated balcony lights.

¹³ Dr. Zsoldos determined that the black carpet's impact was "negligible."

¹⁴ While Dr. Zsoldos's experiment is based on hatchlings, he believes that his experiment is equally relevant to nesting sea turtles because their sensitivity to light is the same. He also believes that the results would be the same for different species of sea turtles.

Expert Testimony from Dr. Charles Menzie

54. Dr. Charles Menzie is a scientist employed by Exponent in its Ecological and Biological Sciences Group. He earned a bachelor's degree in biology from Manhattan College and a Ph.D. in biology from the City University of New York.

55. All of Dr. Menzie's work has involved environmental issues. Risk assessment is one of his specialties, and that involves assessing what effect a particular factor could have on a given population. For example, Dr. Menzie has studied the impact of nets on whales in the Atlantic Ocean and the danger to animals of being exposed to herbicides or pesticides.

56. Prior to working for Exponent, Dr. Menzie owned a firm that was internationally recognized for environmental and human health risk assessment.

57. The undersigned accepted Dr. Menzie as an expert in ecological risk assessment and causal analysis.¹⁵

58. Dr. Menzie was retained to assess whether the balcony lights at issue would result in a take of sea turtles on Vanderbilt Beach.¹⁶ He began his analysis assessing the two goals of Vanderbilt's lighting plan:

[W]ith regard to the lighting plan, there are two goals that are being balanced. One is to provide safety for people stepping out on the balcony at night. I understood this was likely included [for] the older individuals and that the developer wanted to be able to provide that as an option to be able to turn on the light to step out to the balcony. But at the same time to ensure that what was done would be protective of turtles nesting on the beach and the hatchlings, so those two twin goals. And . . . I recognize, too, from reviewing [the Commission's] research documents that that has been a long-term

¹⁵ The transcript indicates the undersigned misspoke and accepted Dr. Menzie as an expert in biological risk assessment when he was not tendered as an expert in that field.

¹⁶ Dr. Menzie's hourly rate is \$475, and he estimated during the final hearing that he had devoted 150 hours to the instant case.

aspect of the mission of the [Commission] to properly balance protection of human health and safety with protection of the turtles.

59. Dr. Menzie believes those goals can be simultaneously accomplished:

[L]ight assessment options such as the use of low energy, long wavelength lighting focused only where needed reduces the potential for impacts to sea turtles and ensures adequate light for nighttime human activities without increasing the risk of health hazards and harmful situations due to overly bright nighttime light . . . The good news is that there are ways to provide lighting that ensures safety, security, and efficiency without public harm to sea turtles. So, that seemed to be in line with what was being proposed and advanced and the basis for the request for permit to allow that to happen in this case.

60. In assessing the risk that Vanderbilt's proposed balcony lights posed to sea turtles, Dr. Menzie focused on a segment of Vanderbilt Beach, approximately 1,200 feet long, located southwest of the project.

The assessment considered the following six factors: (a) proximity to the beach; (b) wavelength of light; (c) design of the luminaire; (d) timing of the lighting; (e) occupancy of the completed building; (f) silhouettes; and (g) glow potential.

61. With regard to proximity to the beach, Dr. Menzie noted that all areas of the beach assessment segment are more than 300 feet from the high tide mark specified in Collier County's lighting ordinance for new development. Accordingly, "[t]he amber light intensity from the [Commission]-compliant luminaire will diminish with distance from the balcony in accordance with the inverse square law." As for the wavelength of light, Dr. Menzie referred to Dr. Zsoldos's experiment which concluded that the project's amber balcony lights would be virtually imperceptible to sea turtles. Dr. Menzie also noted that the balcony lights contemplated by Vanderbilt comply with the

Commission's guidelines for outdoor lighting. According to Dr. Menzie, all of the foregoing factors mitigated against the possibility of a take.

62. As for the timing of the lighting, Dr. Menzie assessed whether there would be any overlap between the months of hatchling emergence and peak occupancy for the project. His research indicated that hatchling emergence typically occurs from May through October. In contrast, the Vanderbilt project's peak occupancy would occur from October to April each year, i.e., "snowbird" season. Because there would be fewer occupants and activated balcony lights when hatchlings would be emerging, Dr. Menzie concluded this factor lessened the possibility of a take.

63. As for the remaining factors, Dr. Menzie noted that "the majority of the Beach Assessment Segment has less than 30% visibility [of] the project's balconies" and that "[a]mber lights are recognized as a very low cause of atmospheric glow in comparison to white light."

64. Dr. Menzie's assessment led him to two conclusions:

So the first one is the ecological risk assessment based on weight of [the] evidence [which] indicates that the proposed lighting plan for balconies, which is a single amber luminaire positioned to support safe passage onto the balconies in tandem with a clear railing is unlikely to result in disorientation of hatchling turtles and thereby a take.

65. His second opinion is that

[t]he [Commission's] conclusion that a take is expected unless a tinted railing is used rather than a clear railing is not supported with site-specific analysis but appears to be based on the premise that if a human can see a light at the beach, disorientation and a take can be expected. This conclusion does not consider light or site-specific factors and does not recognize that hatchling sea turtles do not see light as humans do.

* * *

I think the biggest disconnect really that exists here is . . . that turtles see long wavelength light, amber light, exactly like humans do. That's not true.

Expert Testimony from Dr. Robin Trindell

66. Dr. Robin Trindell has a bachelor's degree in Marine Sciences from Stockton State College, a master's degree in biology from the University of Texas, and a Ph.D. in Marine Sciences from the University of North Carolina at Chapel Hill. Since 1996, she has been the lead for the Commission's Marine Turtle Management Program. She describes Marine Turtle Management as follows:

Marine Turtle Management involves having a sufficient background in the biology and recovery requirements for sea turtles to be able to successfully identify threats, develop strategies to minimize those threats, and to procure funding and to implement those strategies, to promulgate rules designed to protect sea turtles, to implement the statutes and the federal laws that protect sea turtles, to hire staff to implement those programs, to procure and manage and implement funding through grant processes and things like that.

67. Dr. Trindell has co-authored the following publications on the impact of lighting on turtles: (a) "Can Darker Window Tints Reduce Interior Light Impacts to Hatchling Sea Turtles on Developing Coastlines? An Experimental Assessment;" (b) "Light Brightness Data Near Sea Turtle Nests as Measured from the Horizon and Zenith Using a Sky Quality Meter Data in Brief;" (c) "Balancing Human and Sea Turtle Safety: Evaluating Long-Wavelength Streetlights as a Coastal Roadway Management Tool;" and (d) "Understanding, Assessing, and Resolving Light Pollution Problems on Sea Turtle Nesting Beaches."

68. Dr. Trindell described her research as follows:

I've been very involved in lighting research, trying to look at how lighting impacts turtle behavior on the nesting beach. We've also looked at the efficacy

of tints and different levels of tint for inside-to-outside light transmittance on sea turtle behavior and orientation. I have done studies on beach nourishment; how different beach profile designs influence sea turtle nesting and survival. So mostly focused on beach nourishment and lighting aspects.

69. The undersigned accepted Dr. Trindell as an expert in marine turtle management.

70. Because no light is invisible to sea turtles, Dr. Trindell characterizes tinted glass as a means to “reduce the potential for take and negative impact.”

71. Because the Florida Building Code does not consider balcony lights to be necessary for human safety, the Commission requires such lights to be removed from lighting plans in order to prevent any detrimental impact to sea turtles.

72. Dr. Trindell criticized Dr. Zsoldos’s experiment as not being reflective of the conditions that will be present when the project is completed. She also opined that Vanderbilt’s proposed lighting was contrary to the Commission’s mantra to “keep it low, keep it shielded, and keep it long:”

Q: [H]ave you had a chance to review the experiment and [determine] whether or not you had any opinion on that experiment?

A: I did not see this experiment until the testimony of, of Dr. Menzie. And I have reviewed it since then. And I do think that this is not reflective. This experiment does not reflect the actual conditions that will exist. It was based on one balcony, one light. And it’s not even representative of the conditions because the glass that was put in place was not across the entire balcony.

* * *

Q: Is what is proposed by the lighting plan, is it a single source of light?

A: The lighting plan I referenced that included balcony lights; my understanding [is] it included double balcony lights on all the buildings, the taller buildings, as well as some lights on the second building.

Q: From your perspective, does that mean that if you're doing an experiment with a single point of light, and you've got multiple lights, that you're not going to get the same result?

A: Correct.

Q: Do the proposed balcony lights comply with [the Commission]'s mantra of "keep it low, keep it shielded, and keep it long?"

A: No.

Q: Why?

A: Because they are mounted high up over the doors instead of low, close to the surface [] they're trying to illuminate.

Q: If they were mounted lower on the wall, how would the tinted balcony railing effect that light?

A: It would reduce the transmittance of light from the interior of the balcony out into the night sky by whatever percentage the visual light [is] transmitted.

73. While Dr. Trindell acknowledged the existence of the inverse square law, she believed that sea turtles could still be impacted by the contemplated balcony lights:

Q: So in slide 25, what does this appear to say to you on this slide?

A: This says, as you get farther away from a light source, the direct – the brightness decreases and the size of the source light also decreases in these volumes.

Q: Would you agree with this assessment?

A: Yes.

Q: Does this change the fact that it may affect the actual light emerging from this?

A: We have no data to suggest that the fact that a light that is still visible from the beach, as you move—as you move along the beach, it gets smaller, it gets less bright, but you can still see it. Our understanding is there's still a potential for that to impact sea turtle orientation.

Q: This is all based on a single point of light. Is that your understanding of this slide?

A: Yes.

Q: Does this change when it's a row of five lights?

A: Yes, there is a cumulative effect.

Q: Does it change when there is an entire façade that is lit up?

A: Yes. And this example doesn't represent actually the fact that there will be glow around that point source of light.

74. Dr. Trindell was unable to credit Dr. Zsoldos's experiment “[b]ecause of some discrepancies in the methodology that was used to generate the turtle vision view that I’ve not been able to substantiate with my review of the literature and my understanding of the different methodologies . . . I cannot take my actual practical field experience and look at the way that these views were created and, and understand the validity of it.”

75. Even though the balcony lights contemplated by Vanderbilt comply with the Commission's guidelines, Dr. Trindell believes they could still have an impact on sea turtles:

Again, long-wavelength lighting is not invisible to sea turtles. Long-wavelength lighting is a compromise made to accommodate humans. So any light introduced into the night sky, into the environment along the beach has the potential to disorient sea turtles and the cumulative [impact] of adding light can have a negative impact. Long-wavelength lighting was found to be a compromise since it's less likely to effect orientation, but it still is – there's still potential for that. It's just a light source where [a] light source is [not] needed for [human] safety. So it should really be called human safe lighting, not sea turtle safe lighting.

* * *

So, again, the long-wavelength light was a compromise to accommodate human safety needs. That's why the other minimization measures are needed because it's not invisible. It can still trigger attraction or aversion depending on the species, and it does vary with intensity. So that's why we have to keep it low, keep it long, keep it shielded, you know, mount it close to the ground where it's not going to be visible from the beach. Keep the intensity low.

Long wavelength is another minimization management [measure], but it doesn't obliterate the fact that turtles will orient towards that light if it's visible or too intense or if there's just too much of it, if there's a whole façade lit up. And then keep it shielded. So you're blocking as much of the light as you can. But, again, none of those guarantee that they won't be impacted by the light.

Ultimate Findings

76. As explained in more detail in the Conclusions of Law, Dr. Rusenko was the most credible expert witness because of his 25 years of experience working as a marine conservationist for the City of Boca Raton and dealing with issues directly relevant to the question at issue in the instant case.

Through Dr. Rusenko's testimony, Vanderbilt proved, by a preponderance of the evidence, that it should receive a variance from the balcony railing tinting requirement in rules 62B-33.005(13) and 62B-33.0155(1)(n) because its proposed clear balcony railings will not result in a "take" as defined in section 379.2431(1)(c)2. Nothing in Dr. Trindell's hearing or deposition testimony effectively rebutted Dr. Rusenko's opinion that any concerns about sea turtles were unfounded given the Vanderbilt project's distance from the beach.

CONCLUSIONS OF LAW

77. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.542(8) and 120.57(1), Florida Statutes.¹⁷

78. Section 120.542 states, in pertinent part, that:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation . . . Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency's implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government . . .

¹⁷ The parties stipulated that: (a) Vanderbilt's substantial interests "are directly impacted by the Department's Variance Denial;" and that (b) Vanderbilt "has standing to challenge the denial of the Variance."

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

79. Therefore, in order to obtain a variance or waiver, section 120.542(2) establishes a two-prong test. First, a petitioner must establish that “the purpose of the underlying statute will be or has been achieved by other means.” Second, a petitioner must demonstrate that application of the rule to their situation would create a “substantial hardship” or “violate principles of fairness.”

80. With regard to the instant case, Vanderbilt only has the burden of demonstrating, by a preponderance of the evidence, that the purpose of the underlying statute will be or has been achieved by other means. *See Balino v. Dep’t of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat. In the Order denying the Petition, the Department determined that strict application of rules 62B-33.005(13) and 62B-33.0155(n) *would result* in a substantial hardship and a violation of the principals of fairness.¹⁸

81. Rule 62B-33.005(13) mandates that:

[s]pecial conditions relative to the nature, timing,

¹⁸ In the Joint Pre-Hearing Stipulation, the Commission argued it was not bound by the Commission’s determination that “the tinting requirements of rule 62B-33.005(13) create a substantial hardship or would violate the principles of fairness” if applied to Vanderbilt. In an “Order Granting, in Part, Petitioner’s Motion in Limine,” the undersigned interpreted section 20.331(10), and concluded that the Commission would be limited to arguing that granting the Petition for Variance would result in a take of marine turtles and their hatchlings.

and sequence of construction shall be placed on permitted activities when necessary to protect marine turtles and their nests and nesting habitat. In marine turtle nesting areas, all forms of lighting shall be shielded, and utilize long wavelength light sources only (e.g. 560 nanometers (nm) or longer and absent wavelengths below 560 nm) with all lamps recessed within well shielded, full cut-off fixtures or otherwise designed so as not to disturb marine turtles. Tinted glass or similar light control measures shall be used for windows and doors which are visible from the nesting areas of the beach. *Tinted glass shall be 45 percent or less inside to outside light transmittance on all non-opaque doors, walls, balcony, deck railings, and windows.* The Department shall suspend any permitted construction when the permittee has not provided the required protection for marine turtles and their nests and nesting habitat. (emphasis added)

(emphasis added)

82. In addition, rule 62B-33.0155(1)(n) mandates that “[a]ll non-opaque walls, balcony railings, deck railings, windows and doors visible from any point on the beach must be tinted to a transmittance value (light transmission from inside to outside) of 45 percent or less through the use of tinted glass or window film.”

83. Both of the rules at issue cite section 161.053(4) among the laws being implemented, and subsection (4)(c) empowers the Department to condition permits “to alter, excavate, or construct on property *seaward of established coastal construction lines* in a manner that provides “protection to nesting sea turtles and hatchlings and their habitat, pursuant to s. 379.2431 . . .”

(emphasis added) Section 379.2431(1)(b) requires the Department to recommend denial of a permit application if the activity would result in a “take.” Section 379.2431(1)(c)2., defines a “take” as “an act that actually kills or injures marine turtles, and includes significant habitat modification or

degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.”

84. Accordingly, Vanderbilt should receive a variance from rules 62B-33.005(13) and 62B-33.0155(1)(n) if it can prove, by a preponderance of the evidence, that having clear balcony railings will not result in “significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.”

85. Of all the expert witnesses heard in the instant case, Dr. Rusenko was the most credible because of his 25 years of experience dealing with subject matter directly on point with the question at issue in the instant case. He also demonstrated a sincere concern for the well-being of sea turtles. Because the portion of Vanderbilt’s property at issue is 350 feet away from the beach, Dr. Rusenko was surprised that Vanderbilt’s proposed balcony lights would be an issue because “most lighting ordinances only cover up to 300 feet.” Due to the inverse square law, Dr. Rusenko opined that the amount of light reaching the beach would be “very small.”

86. Dr. Rusenko’s opinion regarding distance is corroborated by the fact that Vanderbilt is only required to seek a variance due to an anomaly with the CCCL that results in it turning perpendicular to the shore and running through Vanderbilt’s property. In the Order denying the Petition, the Department determined that strict application of rules 62B-33.005(13) and 62B-33.0155(1)(n) *would result* in a substantial hardship and a violation of the principles of fairness because buildings equally distant from the beach would not be subject to the tinting requirements:

17. Literal or strict application of Rules 62B-33.005(13) and 62B-33.0155(1)(n), F.A.C., would require the Petitioner to install tinted balcony railings at an increased cost, as the rule fails to consider circumstances where its requirements do not further the legislative intent to aid in the

protection to nesting sea turtles and hatchlings and their habitat during the nesting season.

18. Requiring the literal application of the tinting rule to Petitioner's private balcony railings also violates principles of fairness. Petitioner's circumstances are unique to other CCCL permits in the immediate area, which are typically located directly adjacent to the beach and sea turtle nesting areas and where balcony railing glass and associated lighting effects are directly visible to nesting sea turtle areas.

19. Moreover, should structures immediately north of Petitioner develop into multi-story structures they would not be subject to this permit requirement as they would be landward of the CCCL. Tinting requirements in rule 62B-33.005(13), F.A.C., are primarily imposed upon structures directly adjacent to the beach and nesting areas. In this case, the CCCL in the project location makes a change in direction on the Property that brings the Buildings into the CCCL permitting jurisdiction of the Department despite the Buildings not being located directly on the beach.

87. Dr. Rusenko's opinion was also influenced by the balcony lights that Vanderbilt is seeking to use because "[t]he lights are nicely shielded, and they are narrowband amber LED so they're not as likely to interact with the moisture in the atmosphere . . ."

88. Assuming that Vanderbilt conforms to the lighting plan reviewed by Dr. Rusenko and Dr. Menzie, Vanderbilt has demonstrated, by a preponderance of the evidence, that it should receive a variance from the balcony railing tinting requirement in rules 62B-33.005(13) and 62B-33.0155(1)(n).¹⁹

¹⁹ Dr. Rusenko's report, Joint Exhibit 79, and Dr. Menzie's testimony indicate that Vanderbilt's lighting plan calls for one light on each balcony. However, Dr. Trindell testified to her belief that there would be two lights for each balcony. The conclusions and

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Vanderbilt Naples Holdings, LLC, receive a variance from the balcony railing tinting requirement in rules 62B-33.005(13) and 62B-33.0155(1)(n).

DONE AND ENTERED this 11th day of February, 2026, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of February, 2026.

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recommendation in this Recommended Order are predicated on the finding that the Vanderbilt condominium balconies will each have a single, shielded narrowband amber LED light, and the competent, substantial evidence that such lighting will not result in a take.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.