

**TESTIMONY OF KEVIN PLENZLER FOR THE  
POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT  
ESTABLISHMENT**

**1. Please state your name and business address.**

My name is Kevin Plenzler. My business address is 12051 Corporate Blvd., Orlando, Florida 32817.

**2. By whom are you employed and in what capacity?**

I am employed by Fishkind & Associates, Inc., where I serve as an Associate within both the District Management/Public Finance division as well as the firm's Real Estate Research division.

**3. Please briefly summarize your duties and responsibilities.**

Our company provides management and financial consulting services to the real estate development industry. We also work with many community development districts.

**4. Do you work with both public and private sector clients?**

Yes. I work with a number of public sector clients that include community development districts across the state. I also work with various private real estate developers.

**5. Prior to your current employment, by whom were you employed and what were your responsibilities in those positions?**

Prior to joining the staff at Fishkind & Associates, Inc., I was a Project Engineer in the environmental services industry for J.A. Jones Environmental Services Company in Jacksonville, Florida.

**6. Please describe your educational background.**

I earned a Bachelor of Science in Environmental Engineering Technology from University of Dayton in 1997, and a MBA from the University of Florida in 2004.

**7. Please describe your work with community development districts in Florida.**

Through Fishkind & Associates, the clients I serve are both resident-controlled and developer-controlled districts, depending on the stage in the life of the development. I assist the various Boards of Supervisors and residents by managing the accounting, official recordkeeping, and operations and management of the assets acquired or constructed by the

District. Fishkind & Associates has provided management and/or financial advising services to an estimated 70 community development districts across Florida.

- 8. Are any of these community development districts that you have worked with about the same size as the proposed Poitras East Community Development District in the City of Orlando, Florida (the “City”)?**

Yes, the districts that I have worked with range from approximately 30 acres to over 5,000 acres.

- 9. What has been your role with respect to the proposed Poitras East Community Development District (“District”) establishment proceeding and the preparation of the Petition to Establish the proposed District?**

I serve as a financial, economic, and management consultant relating to the establishment of the proposed District. I have worked closely with TDCP, LLC (the “Petitioner”) and its consultants in determining if a CDD is appropriate for this project. I also supervised the preparation of Exhibit 6 of the Petition, the Statement of Estimated Regulatory Costs (the “SERC”).

#### **DISTRICT MANAGEMENT**

- 10. Please address certain matters that are related to community development district management. Please describe the general manner in which a community development district (“CDD”) actually operates.**

CDDs are governed by a five-member board of supervisors. These board members are initially appointed by the establishment entity in its ordinance. Within 90 days of the establishment of the CDD, a new board is elected by the landowners in the CDD. The Board is the governing body of the CDD. The Board employs a district manager, who supervises the district’s services, facilities, and administrative functions. The Board annually considers and, after public notice and hearing, adopts a budget. The CDD submits a copy of the proposed budget to the applicable local general-purpose government for review and for optional comment prior to its adoption each year.

- 11. Are there requirements, such as the open meetings and public records laws, imposed upon CDDs in order to safeguard the public that are similar to those imposed upon other general purpose local governments?**

Yes, there are.

- 12. Please describe these requirements and safeguards.**

1 First, it is important to note that the establishment of a CDD does not change any  
2 requirements for local general purpose governmental approval of construction within the  
3 district. Any land development requirements and all state and local development regulations  
4 still apply.  
5

6 Second, members of the CDD Board of Supervisors must be residents of Florida and citizens  
7 of the United States. After the Board shifts to being elected by the resident electors of the  
8 CDD the supervisors must also be residents and electors of the CDD. Board members must  
9 annually file the same financial disclosure forms required by other local officials. All  
10 meetings of the CDD Board of Supervisors are open to the public and are subject to the  
11 government in the sunshine requirements of Chapter 286, *Florida Statutes*. Furthermore, the  
12 CDD's records must be open for public inspection in accordance with the Florida law  
13 governing public records.  
14

15 Next, the CDD must provide financial reports to the state in the same form and manner as is  
16 required of all other political subdivisions. The CDD is annually audited by an independent  
17 certified public accountant. As I said before, the CDD budget is adopted annually by the  
18 board after a public hearing. All rates, fees, and charges imposed by the CDD must be  
19 adopted pursuant to Chapter 120, *Florida Statutes*.  
20

21 Finally, to impose special or non-ad valorem assessments under Chapter 170, 190 and 197, a  
22 CDD must provide published and mailed notice to those who are assessed providing them  
23 opportunity to appear before the Board of Supervisors and have an opportunity to comment  
24 on the advisability of the assessments. That assessment process entails preparation of an  
25 assessment methodology that fairly and equitably allocates the cost of the CDD's projects.  
26

27 **13. Please describe in general terms how a CDD operates financially, both on a day-to-day**  
28 **and a long-term basis.**  
29

30 In the early stages, particularly when a CDD is first formed, the CDD's operating funds may  
31 be funded by a "Funding Agreement" between the CDD and the landowner/developer in lieu  
32 of assessments that the CDD might have imposed on property within the CDD.  
33

34 In order to provide long term financing of capital projects, CDDs often issue bonds. All  
35 bonds issued by CDDs must be secured by a trust agreement, and any bond maturing over a  
36 period of more than five years must be validated and confirmed by court decree pursuant to  
37 Chapter 75, *Florida Statutes*. The district also may borrow funds on a long or short-term  
38 basis.  
39

40 Debt may be retired by the CDD through non ad valorem or special assessments imposed on  
41 benefited properties, or rates, fees, and charges imposed on users of CDD facilities and  
42 services. By law, debt of the CDD cannot become debt of any other government (city,  
43 county or state), without that government's consent.

1  
2 **14. What alternatives, other than CDDs, are you familiar with that might be available to**  
3 **provide community infrastructure for the lands within the proposed District?**  
4

5 In my opinion there are two alternatives that might provide community infrastructure such as  
6 the roads, streets and associated surface water management, bridges/waterway crossings,  
7 signalization, utilities, landscaping and entry features, wetland mitigation, and other  
8 improvements contemplated for the proposed District. First, the general-purpose local  
9 government could finance the improvements utilizing special assessments and/or general  
10 funds. Alternatively, the developer could provide infrastructure through private means,  
11 including private financing if available. As discussed later in my testimony, neither of these  
12 alternatives is preferable to use of the CDD concept.  
13

14 **15. Do you have an opinion, as someone experienced in district management and**  
15 **operations, as to whether the proposed District is the best available alternative for**  
16 **delivering community services and facilities to the areas that will be served by the**  
17 **proposed District?**  
18

19 Yes. For this project, the proposed District is the best alternative available for delivering the  
20 proposed services and facilities to the area that will be served. These improvements include,  
21 but are not limited to, roadways and associated surface water management, bridges/waterway  
22 crossings, signalization, utilities, landscaping and entry features, and wetland mitigation.  
23

24 **16. What is the basis for your opinion?**  
25

26 Looking at the alternatives, the City could finance and manage the improvements utilizing  
27 special assessments or general funds. The developer and/or a property owner's association  
28 ("POA") could provide these facilities as well through private financing.  
29

30 In evaluating the alternatives, it is important to consider whether the alternative can provide  
31 the best focus, can effectively and efficiently manage and maintain the facilities, and whether  
32 the alternative can secure low cost, long term public financing. The City clearly provides the  
33 long-term perspective and is a stable and relatively low cost source of financing and provider  
34 of services at sustained levels. However, the City has substantial demands over a broad  
35 geographical area that places a heavy management delivery load on its staff. In addition, if  
36 dependent district financing were used, the City would be responsible for all administrative  
37 aspects of the dependent district. The City would have to make time and meetings available  
38 for the monthly matters pertaining to the dependent district. By using a dependent district  
39 mechanism, the City would be increasing its responsibility and hence liability for the variety  
40 of actions that will take place in the Poitras East development. The City, through the  
41 dependent district, would also be the contracting party for all construction contracts, would  
42 have to deal with bid issues, enforce performance bonds, and participate in construction  
43 arbitration or litigation if necessary. They would deal with delay claims and budget

1 management and all the other challenges that come with being the owner in a public  
2 construction project. A district can be created to provide focused attention to a specific area  
3 in a cost effective manner. It also allows the City to focus staff time, finances, and other  
4 resources elsewhere and does not burden the general body of taxpayers in the City with the  
5 debt associated with this growth.  
6

7 The other alternative is the use of private means either through a POA or through the  
8 developer, or both in combination. This combination can clearly satisfy the high demand for  
9 focused service and facilities and managed delivery. However, only a public entity can  
10 assure a long term perspective, act as a stable provider of services and facilities, qualify as a  
11 lower cost source of financing, and pay for services at sustained levels. POAs lack the ability  
12 to effectively finance the improvements. Their ability to assure adequate funds for sustained  
13 high levels of maintenance is less than with a CDD.  
14

15 Furthermore, neither the developer nor a POA would be required to conduct all actions  
16 relating to the provision of these improvements in the “sunshine” as a CDD must, or abide by  
17 other public access requirements that are incumbent upon a CDD and its Board of  
18 Supervisors. Also, provision and long term operation and maintenance of these  
19 improvements, particularly the recreation roadway and drainage activities, by a CDD ensures  
20 that residents have guaranteed access to the body or entity making decisions about these  
21 facilities, and in fact will one day sit as the five member board making the decisions that  
22 impact their community directly.  
23

24 A CDD is an independent special purpose unit of local government designed to focus its  
25 attention on providing the best long-term service to its specifically benefited properties and  
26 residents. It has limited power and a limited area of jurisdiction. The CDD will be governed  
27 by its own board and managed by those whose sole purpose is to provide the CDD long term  
28 planning, management, and financing of these services and facilities. This long-term  
29 management capability extends to the operation and maintenance of the facilities owned by  
30 the CDD. Further, the sources for funding and manner of collection of funds will assure that  
31 the CDD facilities will be managed at the sustained levels of quality desired by residents well  
32 into the future.  
33

34 **17. Do you have an opinion, as someone experienced in district management and**  
35 **operations, as to whether the area of land to be included within the proposed District is**  
36 **of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable**  
37 **as one functional interrelated community?**  
38

39 Yes.  
40

41 **18. What is your opinion?**  
42

43 The proposed District has sufficient land area, and is sufficiently compact and contiguous to

1 be developed, with the roadway, drainage, water and sewer, and other infrastructure systems,  
2 facilities and services contemplated. The proposed District will operate as one functionally  
3 interrelated community.  
4

5 **19. What is the basis for your opinion?**  
6

7 The size of the proposed District is approximately 1,060.689 acres. Based on my previous  
8 experience, the proposed District is of sufficient size, compactness, and contiguity to be  
9 developed as a functional interrelated community.  
10

11 The qualities of compactness, contiguity, and size relate directly to whether an area can  
12 become one functional interrelated community. From the standpoint of the provision,  
13 management and operation of the community infrastructure expected to be provided by the  
14 proposed District, the acres contemplated for inclusion within the proposed District is  
15 sufficiently compact, contiguous and of sufficient size to maximize the successful delivery of  
16 these infrastructure improvements to these lands. The delivery of services and facilities to  
17 the lands within the proposed District will not be hampered by insurmountable barriers or  
18 spatial problems. The area within the proposed District is suitably configured to maximize  
19 the benefits available from the proposed District services and facilities to be provided.  
20

21 **20. Do you have an opinion, as someone experienced in district management and**  
22 **operations, as to whether the area that will be served by the proposed District is**  
23 **amenable to separate special district government?**  
24

25 Yes.  
26

27 **21. What is your opinion?**  
28

29 The proposed District is of sufficient size, compactness, and contiguity. Therefore, the area  
30 to be served by the proposed District is clearly amenable to separate special district  
31 governance. The configuration of the proposed District is not unlike other CDDs with which  
32 I have worked over time.  
33

34 **22. What is the basis for your opinion?**  
35

36 Two criteria are needed to evaluate a land area as amenable to separate special district  
37 government. One, does the land area have need for the facilities and services and will its  
38 owners and residents benefit from facilities that the special district could provide? Two, is  
39 the land area of sufficient size, sufficient compactness and sufficiently contiguous to be the  
40 basis for a functional interrelated community?  
41

42 Under both criteria, the proposed District is a planned community of sufficient size with a  
43 need for the facilities and improvements that are presently expected to be provided by the  
44 proposed District. As described in the Petition, the proposed District will construct and

maintain certain needed facilities and services. Other facilities and improvements may be constructed by the proposed District and ultimately maintained by the City or County. Based on my experience, CDDs of this size are large enough to effectively provide and manage services. From a management and operations perspective, the land area is well suited to the provision of the proposed services and facilities.

- 23. Do you have an opinion, as someone experienced in district management and operations, as to whether the community development services and facilities of the proposed District will be incompatible with the capacity and use of existing local and regional community development services and facilities?**

Yes.

- 24. What is your opinion?**

The proposed services and facilities of the proposed District are not incompatible with the capacity and uses of existing local or regional community development services and facilities.

- 25. What is the basis for your opinion?**

There is no duplication or overlap of facilities or services because no other entity or unit of government is presently funding or providing the improvements proposed by the District. Furthermore, the proposed District is an efficient method to maintain and manage the necessary infrastructure improvements within the proposed District without overburdening the City's government and its taxpayers.

## **ECONOMICS AND FINANCING**

- 26. You stated earlier that you are familiar with the Petition, and its Exhibits, filed by the Petitioner, to establish the proposed District. Are you particularly familiar with Exhibit 6 to the Petition?**

Yes, Exhibit 6 is the Statement of Estimated Regulatory Costs ("SERC"), a requirement of Chapter 190, *Florida Statutes*, and was prepared by me.

- 27. Are there any updates that need to be made to Exhibit 6 of the Petition, the SERC, at this time?**

No.

- 28. What exactly is a "SERC"?**

1 The Statement of Estimated Regulatory Costs is actually a requirement under Section  
2 120.541(2), *Florida Statutes*, which has been incorporated into the law on establishment of  
3 community development districts.  
4

5 **29. In general terms, please summarize the economic analyses presented in the SERC.**  
6

7 An understanding of the SERC requires the recognition of the scope of review and evaluation  
8 for the establishment of a community development district as set out in Chapter 190. Section  
9 190.002(2)(d), *Florida Statutes*, states “[t]hat the process of establishing such a district  
10 pursuant to uniform general law [must] be fair and based only on factors material to  
11 managing and financing the service-delivery function of the district, so that any matter  
12 concerning permitting or planning of the development is not material or relevant.” Thus, the  
13 scope of the economic analysis included in the SERC addresses only the establishment of the  
14 proposed District, and not the planning or development of the property itself.  
15

16 The economic analysis sets out the assumptions about the development within the proposed  
17 district and the anticipated infrastructure to be provided by it. The analysis addresses each of  
18 the potentially affected parties defined in Chapter 120, *Florida Statutes*, and evaluates the  
19 impact of the proposed District on each such group.  
20

21 The proposed District is a specialized unit of local government. It is a special purpose unit of  
22 local government with a single objective: the provision of infrastructure and services for a  
23 planned new community. Its economic benefits exceed its economic cost to the Petitioner,  
24 the City of Orlando, and to all subsequent purchasers and landowners of the community - in  
25 short, to all affected parties.  
26

27 Once the proposed District is established, there are no direct costs to the City. While the  
28 proposed District will provide certain reports and budgets to the City for its discretionary  
29 review, there are no requirements that either incur any obligations or expense associated with  
30 its review. In addition, to the extent the proposed District utilizes the services of the Property  
31 Appraiser or Tax Collector under the provisions of Chapter 197, *Florida Statutes*, to collect  
32 its assessments, the proposed District must pay the costs associated with those services.  
33

34 It is important to note that under Chapter 190, the debt of the proposed District cannot  
35 become the debt of the City or the State of Florida. Since the proposed District will be an  
36 independent unit of government and issue its own bonds, the proposed District will not have  
37 any effect on the bonding capacity of the City or the State of Florida.  
38

39 **30. Please describe briefly the data and methodology used in preparing the SERC and**  
40 **related analyses.**  
41

42 The data for the analysis came from the landowner, other experts working on the Petition,  
43 and from the Petition itself. The methodology is standard economic impact assessment.



1  
2 **31. As an economic and financial advisor, do you have an opinion regarding the financial**  
3 **viability and feasibility of the proposed District?**

4  
5 Yes, I do.  
6

7 **32. What is that opinion?**  
8

9 In my opinion, based on my experience with other districts, the proposed District is expected  
10 to be financially viable and feasible.  
11

12 **33. Are you familiar with the State Comprehensive Plan found in Chapter 187, *Florida***  
13 ***Statutes*?**  
14

15 Yes.  
16

17 **34. As a financial and economic advisor, do you have an opinion as to whether the**  
18 **proposed District is inconsistent with the State Comprehensive Plan from an economic**  
19 **perspective?**  
20

21 Yes.  
22

23 **35. What is that opinion?**  
24

25 It is my opinion the proposed District is not inconsistent with any applicable element or  
26 portion of the state comprehensive plan.  
27

28 **36. What is the basis for your opinion?**  
29

30 I have reviewed, from an economic and financial perspective, the State Comprehensive Plan,  
31 particularly those portions that relate to CDDs. The State of Florida Comprehensive Plan  
32 (Chapter 187, *Florida Statutes*) “provides long-range policy guidance for the orderly social,  
33 economic, and physical growth of the state.” From an economic and financial perspective,  
34 four subjects, subjects 15, 17, 20, and 25 of the State Comprehensive Plan are relevant to the  
35 establishment of a CDD.  
36

37 Subject 15, titled Land Use, recognizes the importance of locating development in areas that  
38 have the fiscal abilities and service capacity to accommodate growth. It is relevant because  
39 CDDs are designed to provide infrastructure services and facilities in a fiscally responsible  
40 manner to the areas that can accommodate development. The establishment of the proposed  
41 District will not be inconsistent with this goal because the proposed District will have the  
42 fiscal capability to provide the specified services and facilities within its boundaries.  
43

1 Subject 17, titled Public Facilities, relates to (i) protecting investments in existing public  
2 facilities; (ii) providing financing for new facilities, (iii) allocating the costs of new public  
3 facilities on the basis of the benefits received by future residents; (iv) implementing  
4 innovative but fiscally sound techniques for financing public facilities; and (v) identifying  
5 and using stable revenue sources for financing public facilities. The establishment of the  
6 proposed District will further these State Comprehensive Plan Goals and Policies.  
7

8 Subject 20, titled Governmental Efficiency, provides that governments shall economically  
9 and efficiently provide the amount and quality of services required by the public. The  
10 proposed District will be consistent with this element because the proposed District will  
11 continue to:  
12

- 13 (i) cooperate with other levels of Florida government;
- 14
- 15 (ii) be established under uniform general law standards as specified in Chapter  
16 190, *Florida Statutes*;
- 17
- 18 (iii) be professionally managed, financed, and governed by those whose property  
19 directly receives the benefits;
- 20
- 21 (iv) not burden the general taxpayer with costs for services or facilities inside the  
22 proposed District; and
- 23
- 24 (v) plan and implement cost efficient solutions for the required public  
25 infrastructure and assure delivery of selected services to residents.  
26

27 Subject 25, titled Plan Implementation, calls for systematic planning capabilities to be  
28 integrated into all levels of government throughout the state, with particular emphasis on  
29 improving intergovernmental coordination and maximizing citizen involvement. The  
30 proposed District is consistent with this element of the State Comprehensive Plan.  
31

32 **37. Based on your work with districts and from an economic and financial perspective, do**  
33 **you have an opinion as to whether the area of land that is proposed to be included**  
34 **within the proposed District is of sufficient size, sufficient compactness, and sufficient**  
35 **contiguity to be developable as one functional interrelated community?**  
36

37 Yes.

38  
39 **38. What is your opinion?**  
40

41 Based on my previous experience, the proposed District is of sufficient size, compactness,  
42 and contiguity to be developed as a functional interrelated community.  
43

44 **39. What is the basis for your opinion?**  
45

1 The project is compact with land use typical of a planned community. The development of  
2 the land has been planned to be a functional interrelated community making the most  
3 efficient use of public funds available.  
4

5 **40. As an economic and financial advisor, do you have an opinion as to whether the**  
6 **proposed District is the best alternative available for providing the proposed**  
7 **community development services and facilities to the area to be served?**  
8

9 Yes.  
10

11 **41. What is your opinion?**  
12

13 The proposed District is the best alternative to provide community development facilities to  
14 the area to be served. This is true for the landowners and the governmental entities for the  
15 following reasons.  
16

17 From the perspective of current and future property owners within the proposed District, the  
18 proposed District is the best alternative for providing community facilities, infrastructure,  
19 and services. The land development envisioned for the area within the proposed District  
20 boundaries will require substantial provision of infrastructure, facilities and services. A  
21 CDD is an alternative method to provide these necessary services. A CDD can access the  
22 tax-exempt public capital markets and thereby fund these facilities and services at a lower  
23 cost than the alternative of developer funding. Furthermore, unlike a property owners  
24 association ("POA") a CDD has the power to assess property and collect those assessments  
25 along with other property taxes. Therefore, a CDD can fund large capital improvement  
26 programs that a POA cannot.  
27

28 With regard to the operations and maintenance of community facilities and services, a CDD  
29 is also the best alternative. A CDD is preferable to a POA to future landowners for the  
30 following reasons. First, unlike a POA, a CDD collects funds for operations and  
31 maintenance directly from assessments collected along with all other property taxes, which is  
32 a more assured income stream. Unlike a POA, a CDD is a unit of local government, and it  
33 must hold its meetings in the sunshine and bid out its contracts where required by law. A  
34 CDD provides control to the landowners much sooner in time than a POA. A CDD is  
35 focused on providing the community with services, facilities, and their maintenance in a way  
36 the general-purpose government, with its competing interests and broad responsibilities, is  
37 not. This level of local control serves the best interests of property owners in a CDD.  
38

39 From the perspective of the City, a CDD is the best alternative for providing community  
40 facilities and their operations and maintenance for a variety of reasons. First, as noted above,  
41 compared to a POA, a CDD is a more powerful and more responsive organization for  
42 providing and maintaining infrastructure and services. Second, without a CDD the City may  
43 have to assume greater responsibility for construction, operations, and maintenance of  
44 community facilities and services. Even if the City formed a dependent district to provide

community facilities and services to the area to be served by the proposed District, and charged appropriately for these services, the City would be enmeshed in the responsibilities and in the management of those facilities. Furthermore, without a CDD the City cannot be assured that only residents of the area to be served by the proposed District would bear the full costs of the needed facilities and services.

**42. As an economic and financial advisor, do you have an opinion as to whether the services and facilities to be provided by the proposed District will be incompatible with the uses and existing local and regional facilities and services?**

Yes.

**43. What is your opinion?**

The proposed District covers approximately 1,060.689 acres of land. The configuration of the land is sufficiently compact and contiguous. As such, it will not create any economic disincentives to the provision of the infrastructure facilities contemplated in this case.

Given the scope and expected cost of facilities to be provided, 1,060.689 acres for a residential development provides a sufficient economic base to absorb the debt costs and annual operating costs for district administration and to efficiently apportion the cost of improvements.

**44. From an economic and financial perspective, do you have an opinion as to whether the area that will be served by the proposed District is amenable to separate special district government?**

Yes.

**45. What is your opinion and its basis?**

It is my opinion that the area within the boundaries of the proposed District is amendable to a separate special district government. The lands within the proposed District's boundaries have the need for basic infrastructure.

The land is of sufficient size, compactness, and contiguity and meets those tests. Therefore, from an economic and financial perspective, the area to be served by the proposed District is clearly amendable to separate special district governance.

**46. Does this conclude your testimony?**

Yes it does.