

# CONSTRUCTION DELAY AND COST CLAIM CONSIDERATIONS DURING COVID-19

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ATTORNEYS AT LAW



# INTRODUCTIONS



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June 16, 2020

Construction Delay and Cost Claim Considerations During COVID-19


# COVID-19 TASK FORCE

[www.arthurchapman.com/areas/covid-19-task-force](http://www.arthurchapman.com/areas/covid-19-task-force)


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**News**

- > Plan not Panic: Join us this week for two webinars on the changing legal landscape related to COVID-19
- > COVID-19: Plan not Panic
- > COVID-19: FAQ's for Employment, Coverage, and Workers' Compensation

**Resources**

- > ACKSP 2020 Families First Coronavirus Response Act Alert
- > ACKSP 2020 COVID-19 Resources

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# COVID-19 AND CONSTRUCTION

COVID-19 has affected projects in a variety of ways

- Project shutdowns
- Workforce shortages
- Additional OSHA and safety requirements
- Social distancing requirements (reduction in ability to stack trades)
- Material shortages or unavailability
- The list goes on...

# COVID-19 CLAIMS

- The various impacts may result in claims for (1) extension of time, and (2) increase in costs
- From a legal standpoint, these claims are primarily governed by the contract for the project
  - Claim notice provisions
  - Force Majeure provisions
  - No Damage for Delay provisions
  - Suspension or Termination provisions
  - Forward looking note – COVID-19 provision on future contracts – now foreseeable

# COVID-19 CLAIMS

- Contract interpretation
  - Talk to your lawyer – get a plan in place
- But remember – it doesn't hurt to ask.
  - We've been hearing that most Owners are willing to work with Contractors, regardless of contract language

# PROVING UP CLAIM

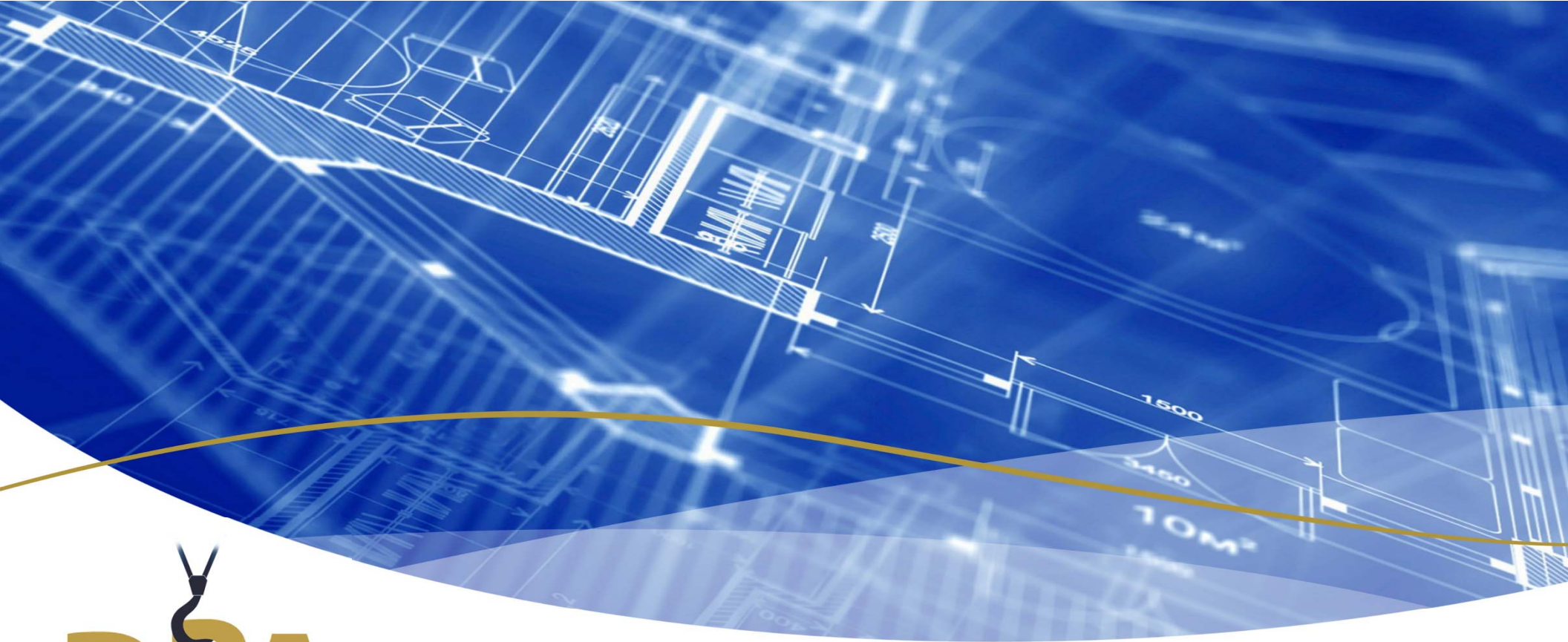
The real issue is how to substantiate claim.

- Need to (1) establish causation, (2) quantify and provide support for both time and cost implications.
- Documentation
- Documentation
- Documentation

# PROVING UP CLAIM

- Easy example: “it costs \$X more to purchase these light fixtures from a different vendor, but can get it delivered tomorrow.”
  - Easy change order to document.
- More difficult: “We’re incurring additional general conditions costs relating to COVID-19 safety requirements.”
- More difficult yet: “We’re experiencing manpower inefficiencies relating to our inability to have multiple trades working in the same space.”





# WEBINAR

June 16, 2020

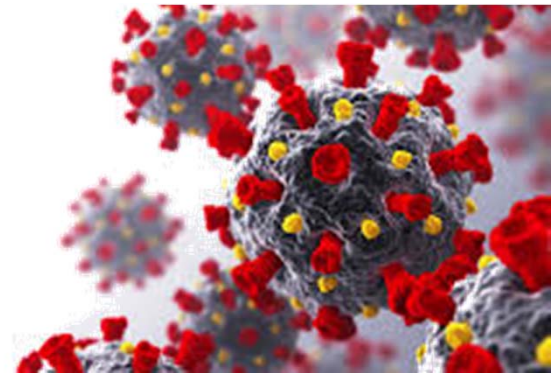
## OVERVIEW – COVID RELATED PRODUCTIVITY IMPACTS

### Key Considerations

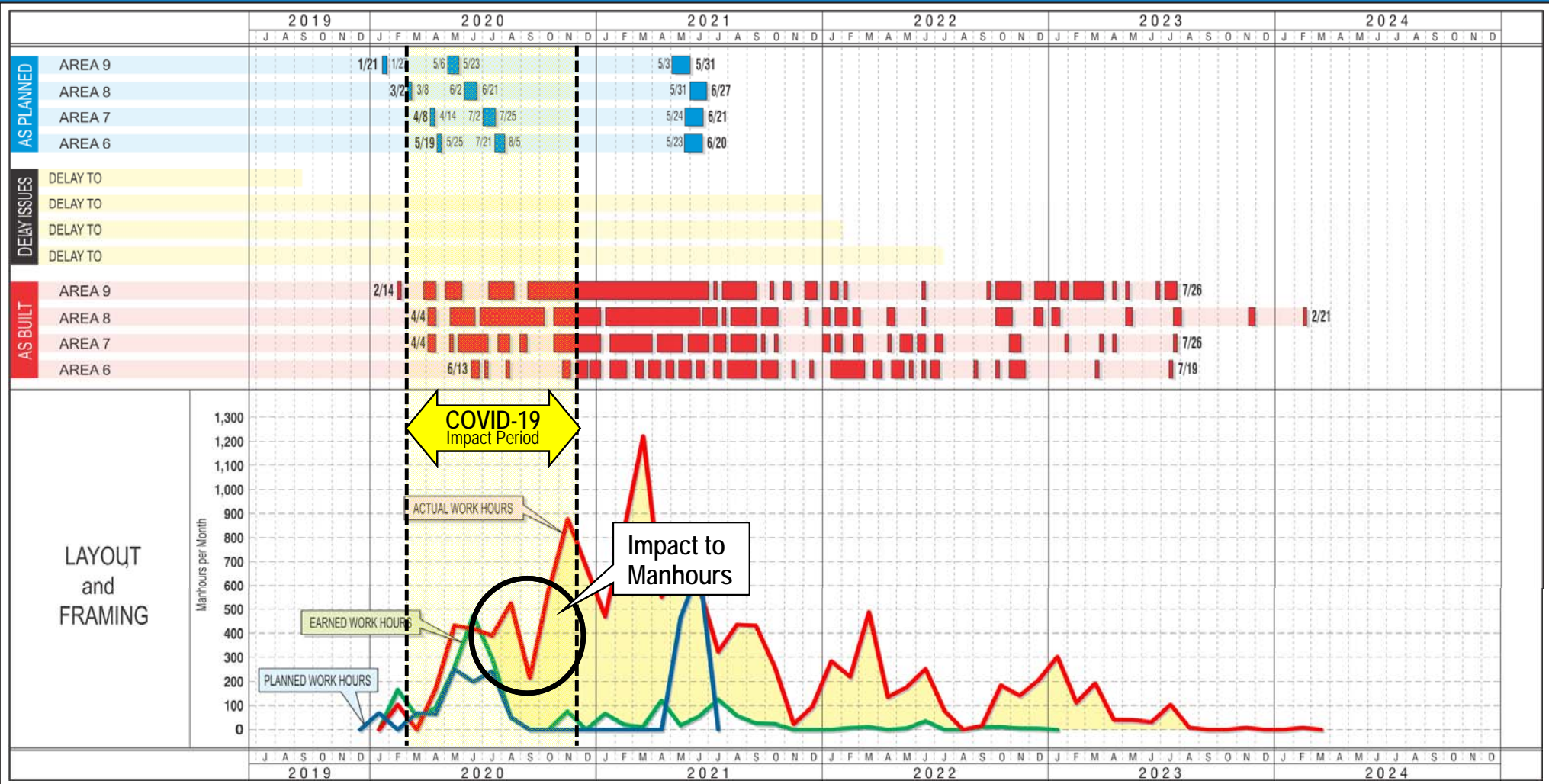
- Impact of COVID on schedule & productivity
- Separation of COVID vs non COVID related root causes including estimating errors
- Real time documentation is key...daily reports, email chains, formal letters & notifications, memoranda, etc.
- Establish baseline schedule at point of impact...update weekly
- Quantification of productivity impacts are sometimes difficult to discretely measure
- Measured Mile (MM) quantification of productivity impact is generally accepted industry practice
- MM best practice requires establishing detailed metrics tied to manpower/costs
  - Examples: % complete from pay apps, LF cable, # welds, CYD concrete, sqft framing, tons of steel
  - Time & motion studies, videos and pictures are also helpful

### COVID Impacts on Current DPA Construction Monitoring Projects

- Supply chain/material delays
- Travel restrictions effecting craft & key personnel site visits
- Distancing requirements – elevators, apartment units
- Permanent & temporary job shutdowns
- Crew no-shows
- Shift check-in requirements

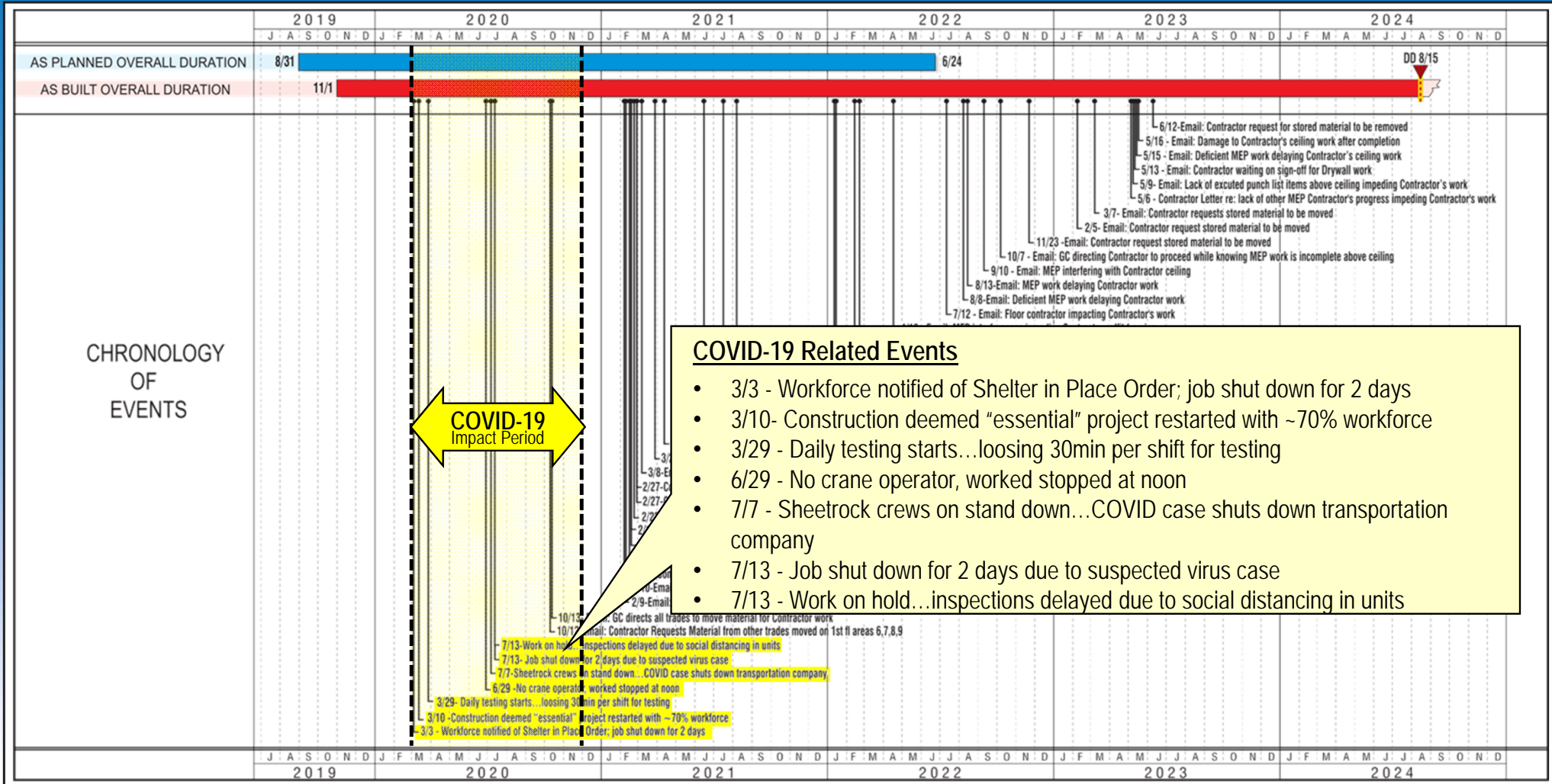


# LIGHT LAB AREA - LEVEL 2 - LAYOUT & FRAMING SCHEDULE/LABOR ANALYSIS



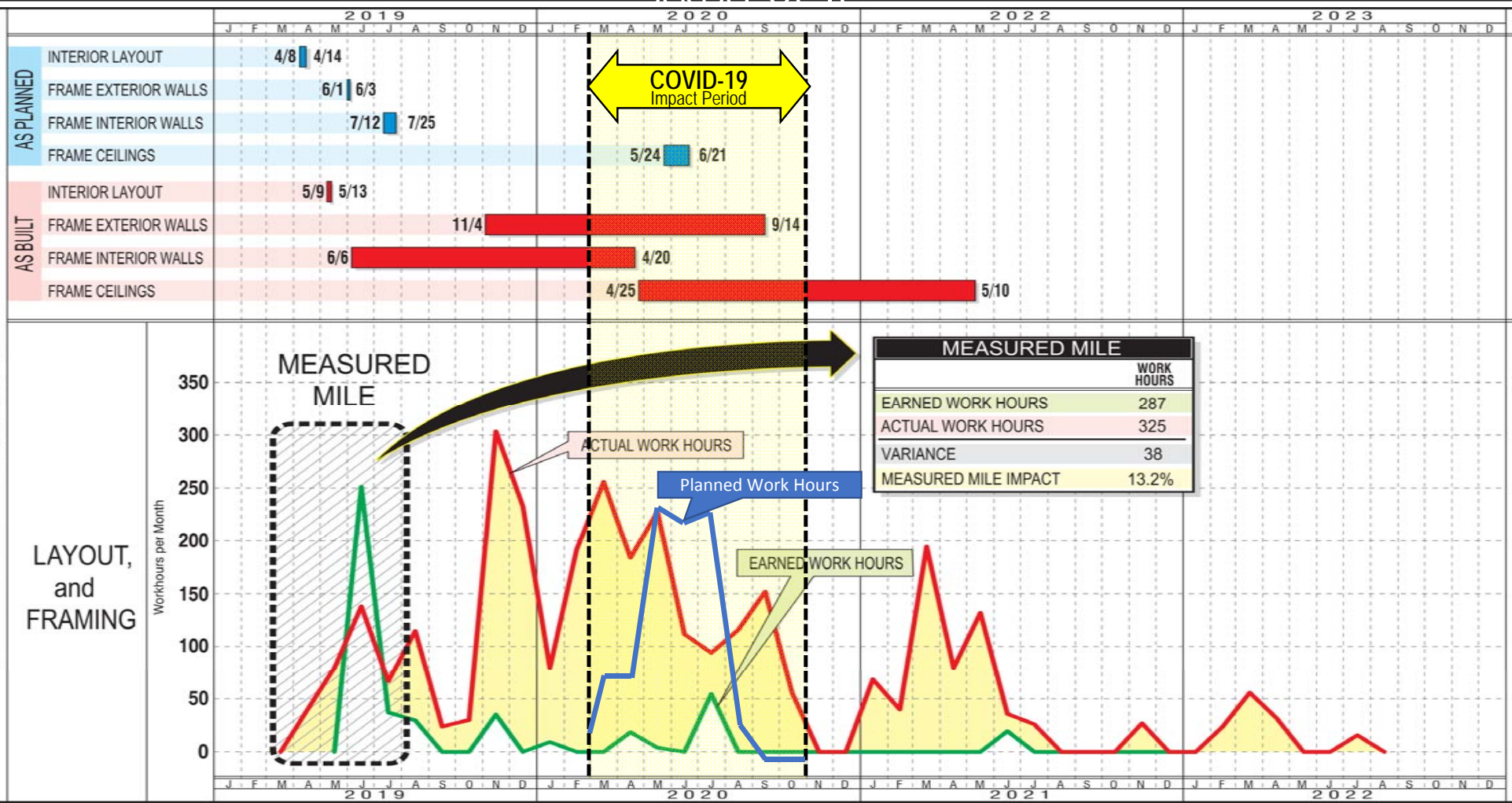


# CHRONOLOGY RELATING TO PROJECT TRADE COORDINATION



# EAST BUILDING - FLOOR 2 - PART 7 - LAYOUT & FRAMING LABOR ANALYSIS

AREA 27



# DIRECT LABOR ADJUSTMENT FOR MEASURED MILE

Step #1 – Validate estimate using Measure Mile approach

Cost Phase Description	Conformed Estimate		Measured Mile Adjustment		Measured Mile Adjusted Estimate		
	Work Hours	Labor	Work Hours	Labor	Work Hours	Labor	Earned
Framing	930	\$69,750	124	\$9,346	1054	\$79,096	100%
				13.20%			

Measured Mile Adjustment for Estimating Error

Planned 1054 hours for 100% complete during impact period

Step #2 – Measure actual vs planned performance over impact period

Cost Phase Description	Work Hours	Plan		Work Hours	Actual	
		Labor	Earned		Labor	Earned
Framing	1054	\$79,069	100%	755	\$56,525	10%

Expended 755 hours for 10% complete during(Covid) impact period

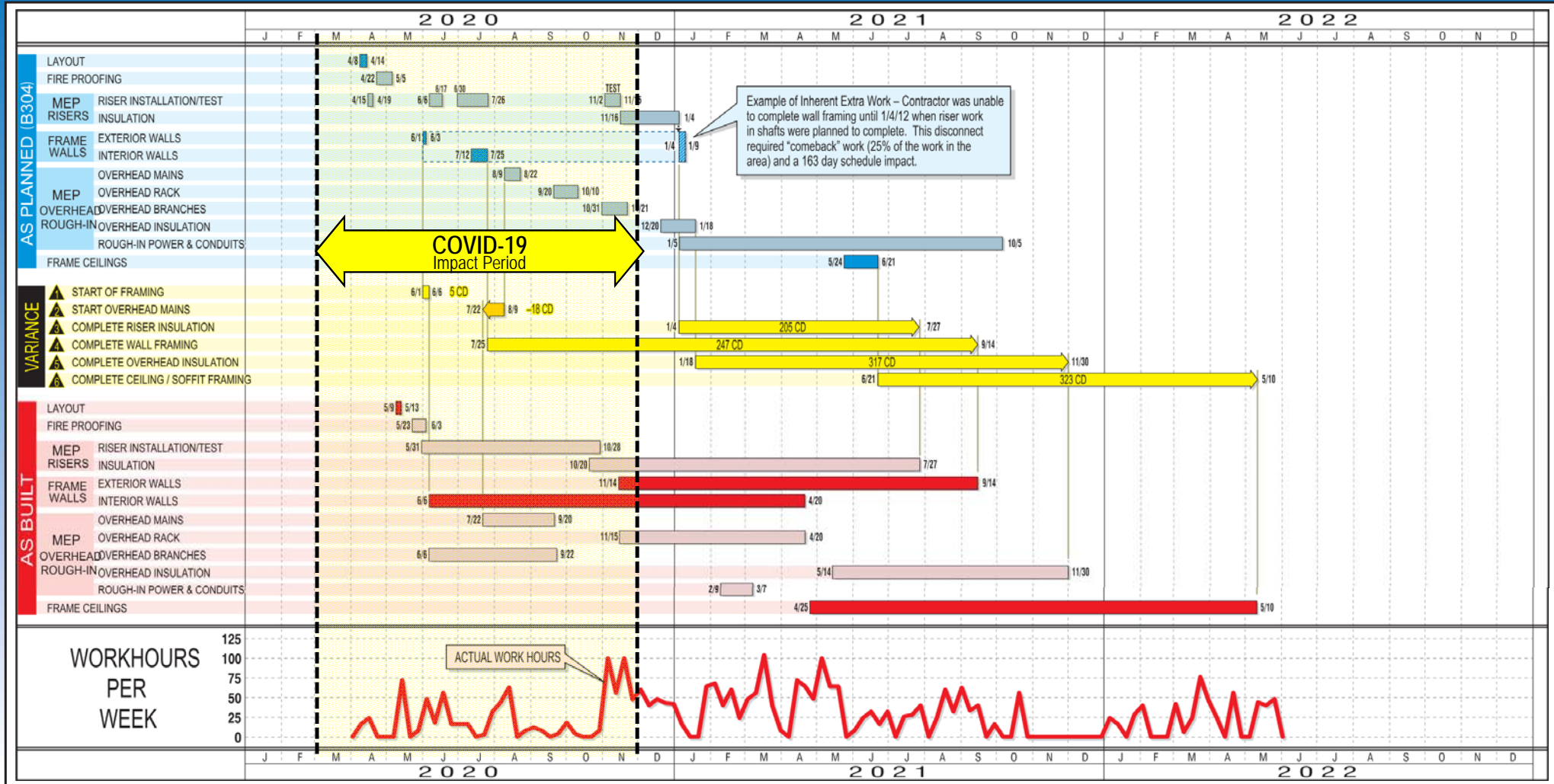
Step #3 – Quantify productivity impact

Cost Phase Description		Plan	Actual	Should	Impact
Framing	Earned	100%	10%	10%	
	Hours	1054	755	105.4	650
	Labor	\$79,069	\$56,525	\$7,905	\$ 48,620

Quantified Productivity impact for Framing during Covid period



# AS PLANNED vs AS BUILT - FRAMING FLOOR 2 - PART 7



# BASELINE SCHEDULE DURATION ADJUSTMENT TO GENERAL CONDITIONS

Order Entry	Cost Phase	Group	Cost Phase Description	Baseline Schedule			Baseline Schedule Duration Adjustment	
				Monthly Rate	Planned Months	Estimate Total	As Built Schedule	Estimate Total
<b>General Conditions</b>							<b>34</b>	
43	01-101	08_Super	PROJECT MANAGER	\$8,000	26	\$208,000	8	\$64,000
44	01-102	08_Super	SUPERINTENDENT	\$8,000	26	\$208,000	8	\$64,000
70	01-606	09_Clean	GENERAL CLEAN-UP LABORERS	\$7,762	26	\$201,812	8	\$62,096
60	01-302	10_EQ	LIFT TRUCK	\$1,154	26	\$30,000	8	\$9,231
61	01-303	10_EQ	SMALL TOOLS	\$500	26	\$13,000	8	\$4,000
65	01-308	10_EQ	OIL & GASOLINE	\$1,000	26	\$26,000	8	\$8,000
49	01-202	11_GC	FIELD OFFICE/TRAILER	\$1,100	26	\$28,600	8	\$8,800
50	01-203	11_GC	FIELD OFFICE UTILITIES	\$100	26	\$2,600	8	\$800
54	01-210	11_GC	TELEPHONE USAGE	\$600	26	\$15,600	8	\$4,800
57	01-214	11_GC	RADIOS/PAGERS	\$125	26	\$3,250	8	\$1,000
58	01-216	11_GC	BOTTLED WATER	\$50	26	\$1,300	8	\$400
66	01-409	11_GC	FIRST AID & SAFETY	\$1,000	26	\$26,000	8	\$8,000
73	01-703	11_GC	LIVING EXPENSES	\$2,500	26	\$65,000	8	\$20,000
74	01-704	11_GC	AIR TRAVEL	\$1,500	26	\$39,000	8	\$12,000
77	01-802	11_GC	PROJECT PHOTOGRAPHS	\$75	26	\$1,950	8	\$600
<b>Subtotal General Conditions</b>				<b>\$33,466</b>		<b>\$870,112</b>		<b>\$267,727</b>



# THANK YOU



**Corey Bronczyk**



**David Pattillo**



**Alan Sides**