

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NO. 17-5024-PET

PETITION OF CHELSEA SOLAR LLC, PURSUANT TO
30 V.S.A. SECTION 248, FOR A CERTIFICATE OF
PUBLIC GOOD AUTHORIZING THE INSTALLATION
AND OPERATION OF THE "CHELSEA SOLAR
PROJECT," A 2.0 MW SOLAR ELECTRIC GENERATION
FACILITY LOCATED OFF WILLOW ROAD IN
BENNINGTON, VERMONT

September 20, 2018
9:30 a.m.

112 State Street
Montpelier, Vermont

Evidentiary Hearing held before the
Vermont Public Utility Commission, at the Susan M. Hudson
Conference Room, People's United Bank Building, 112 State
Street, Montpelier, Vermont, on September 20, 2018,
beginning at 9:30 a.m.

P R E S E N T

HEARING OFFICER: Michael Tousley, Staff Attorney

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1 HEARING OFFICER TOUSLEY: Good morning.
2 This is an evidentiary hearing in Case Number
3 17-5024-PET, which is a petition filed by Chelsea
4 Solar LLC pursuant to 30 V.S.A. Section 248 for a
5 Certificate of Public Good authorizing the
6 installation and operation of the Chelsea Solar
7 project, a 2 megawatt solar electric generation
8 facility on Willow Road in Bennington, Vermont.

9 My name is Mike Tousley, and I'm a
10 staff attorney and the Hearing Officer. The
11 commission has appointed me to serve as the Hearing
12 Officer for this proceeding.

13 I'll start by taking notices of
14 appearance. So if you could please state your name
15 and your affiliation with this matter for the record.

16 MR. PORTER: Jim Porter on behalf of
17 the Department of Public Service.

18 MR. CLARK: Jacob Clark on behalf of
19 the Department of Public Service.

20 MS. ACEVES: Sarah Aceves on behalf of
21 the Department of Public Service.

22 MS. MILBURY-STONE: Alison Stone of the
23 Vermont Attorney General's office on behalf of the
24 Agency of Agriculture, Food and Markets.

25 MS. DINGLELINE: Brooke Dingleline on

1 behalf of Apple Hill Homeowners' Association and Mt.
2 Anthony Country Club. And I have Maru Leon for the
3 Country Club and Lora Block for the Homeowners'
4 Association.

5 HEARING OFFICER TOUSLEY: And just for
6 the record, I just want to clarify that Ms.
7 Dingleline has made -- her notice of appearance came
8 yesterday to serve in a limited capacity of
9 representation of the pro se representatives for the
10 Apple Hill Homeowners' Association and Mt. Anthony
11 Country Club. Just so that's clear on the record.

12 MS. DINGLELINE: And I would also like
13 to add for the record that I am representing both
14 parties pro se. I mean pro bono, excuse me.

15 HEARING OFFICER TOUSLEY: Okay.

16 MR. MELONE: Michael Melone for Chelsea
17 Solar.

18 MS. HAYDEN: Kimberly Hayden for
19 Chelsea Solar. And with us today is Brad Wilson,
20 Miles Waite, Ryan Haac. Dori Barton, Mike Buscher
21 and Mark Kane, the testifying witness for today.

22 HEARING OFFICER TOUSLEY: Something I
23 didn't ask, but I should have while we were off the
24 record, is -- who for the Petitioner is going to be
25 serving as the -- is going to be doing the cross

1 examination? Is it going to be primarily you Ms. --

2 MS. HAYDEN: Yes, it will be me.

3 HEARING OFFICER TOUSLEY: So I'm going
4 to ask inasmuch as you physically can attempt to do
5 that, Mr. Melone direct your questions through her.
6 I know sometimes it's hard to do that.

7 MR. MELONE: Sure.

8 HEARING OFFICER TOUSLEY: The same with
9 Ms. Block and Ms. Leon, if you have a question,
10 direct them through your counsel rather than
11 attempting to ask it yourself on the record because
12 then it's clear on the record. Okay?

13 MS. LEON: Okay.

14 MR. EINHORN: If I may, Don Einhorn,
15 Natural Resources Agency.

16 HEARING OFFICER TOUSLEY: That is the
17 check I haven't checked yet.

18 MR. EINHORN: Thank you.

19 HEARING OFFICER TOUSLEY: Okay.

20 MS. DINGLELINE: May I make a motion
21 that the Hearing Officer or the commission take
22 judicial notice of the law of the case from the prior
23 decision in this docket, the original application
24 pertaining to orderly development and aesthetics in
25 terms of the town plan, the decisions of the

1 commission.

2 HEARING OFFICER TOUSLEY: You can make
3 that motion. I will not rule on it today. It needs
4 to be briefed. And the other parties need the
5 opportunity to respond to it.

6 It's my understanding that there is no
7 need to correct any of the prefiled testimony, is
8 this correct?

9 MS. HAYDEN: That's correct to our
10 knowledge.

11 HEARING OFFICER TOUSLEY: Okay. And
12 the Petitioner has provided an exhibit list that's --
13 that isn't marked, but I think I would like to mark
14 it as Petitioner's A.

15 MS. HAYDEN: Okay.

16 HEARING OFFICER TOUSLEY: So that
17 rather than reading all those things that are on that
18 document into the record, we will just submit the
19 document into the record.

20 MS. HAYDEN: And I have that. I've
21 just marked it as Exhibit CS-A. I'll provide it.

22 HEARING OFFICER TOUSLEY: This is what
23 on its title indicates it's a stipulation admission
24 of evidence. And it's 8 pages, without signatures,
25 of different items of evidence that the parties have

1 stipulated to; is that correct?

2 MS. HAYDEN: That is correct.

3 HEARING OFFICER TOUSLEY: And it's my
4 understanding that the interveners are not
5 stipulating to the prefiled testimony of the
6 witnesses that will be cross examined today; is that
7 correct?

8 MS. DINGLELINE: Correct. Or their
9 exhibits.

10 HEARING OFFICER TOUSLEY: Or their
11 exhibits. So to the extent that the list otherwise
12 describes items that the parties have stipulated to,
13 and again I note that this Petitioner's A was not
14 signed by the interveners or by their counsel, so it
15 is -- I'm going to refer to it as Petitioner's A. I
16 am going to ask that a copy be placed in the record,
17 but I'm going to recognize on the record that not all
18 the items in this have been stipulated to. In
19 particular, the prefiled testimony and exhibits of
20 the Petitioner's witnesses who will be cross examined
21 today.

22 MS. HAYDEN: I would like to note that
23 the stipulation was filed pursuant to the Hearing
24 Officer's September 13 order which instructed the
25 Petitioner to file a joint stipulation and list all

1 prefiled testimony and exhibits for which there is no
2 objection into the evidentiary record. And that's
3 what we attempted to do. I haven't heard yet any
4 objections to testimony of the Petitioner, and I
5 would note that the 30-day period has well passed for
6 all of Petitioner's testimony and exhibits.

7 So we can go through the exercise of
8 introducing everything. I think it's going to take
9 up more time than it's worth.

10 HEARING OFFICER TOUSLEY: I tend to
11 agree. I think that your client may have foreclosed
12 the opportunity to object to this, the admission of
13 these items. That doesn't mean you can't rely upon
14 them in an attempt to challenge the credibility and
15 information that's provided in the testimony and
16 exhibits.

17 MS. DINGLELINE: Well they are pro se
18 litigants. They don't even understand what they were
19 supposed to do in terms of objecting. However, it is
20 my understanding that every tribunal in Vermont has
21 the obligation to be a gatekeeper to the evidence
22 that it allows into the record.

23 HEARING OFFICER TOUSLEY: And precisely
24 what is the nature of your objection to this
25 evidence?

1 MS. DINGLELINE: Well I will go through
2 it as we encounter each witness.

3 HEARING OFFICER TOUSLEY: Can you
4 characterize it?

5 MS. DINGLELINE: Sure. There is
6 hearsay. There is lack of expert credentials to be
7 opining about particular issues. Dori Barton, for
8 example, is not an expert on bats. She's relying on
9 hearsay information that she has brought forward.

10 Brad Wilson, for example, throughout
11 his prefiled testimony has all these quotes of what
12 Rob Woolmington, the town's lawyer, had to say at a
13 select board meeting in discussions with his -- with
14 the select board and members of the --

15 HEARING OFFICER TOUSLEY: So you're
16 suggesting that elements of the testimony that was
17 filed months ago needs to be not admitted into
18 evidence because of those concerns?

19 MS. DINGLELINE: Absolutely. And those
20 concerns --

21 HEARING OFFICER TOUSLEY: Well I'm
22 going to have to tell you no, because your clients
23 had the opportunity. Your clients are not naive.
24 They understand and have participated in other
25 proceedings. And I will allow you full reign to

1 cross examine, to challenge the quality of that
2 evidence, but it is admitted. Therefore, what's been
3 marked as Petitioner's Exhibit A is entered into
4 evidence in its entirety.

5 (The Prefiled Testimonies of Alex
6 Depillis, Lora Block, Maru Leon, David Raphael, Miles
7 Waite, Ryan Haac, Dori Barton, Michael Buscher, Mark Kane,
8 Brad Wilson, Ian Jewkes, Harmoor Dhaliwal and Scott
9 Reynolds were admitted into the record.)

10 (Exhibits marked Joint-ANR-CS-1, CS-A,
11 LB-AHHA-1, ML-MACC-1 (2), 2 through 8, PSD-DR-1 and 2,
12 CS-MW-1 and 2, CS-RH-1 through 3, CS-DB-1 through 6,
13 CS-MB-1 through 3, 4a and 4b, 5 through 7, CS-MK-1 through
14 4, CS-BW-1 through 74, 76 and 77, and 78 through 94,
15 CS-IJ-1 through 3, CS-HD-1 and 2, CS-SR-1 through 3 were
16 admitted into the record.)

1 Prefiled Direct Testimony of Alex Depillis

2 <http://epuc.vermont.gov/?q=downloadfile/274993/127312>

3 Prefiled Direct Testimony of Lora Block

4 <http://epuc.vermont.gov/?q=downloadfile/274993/127312>

5 Prefiled Direct Testimony of Maru Leon

6 <http://epuc.vermont.gov/?q=downloadfile/275010/127312>

7 Surrebuttal Testimony of Maru Leon

8 <http://epuc.vermont.gov/?q=downloadfile/300953/127312>

9 Prefiled Direct Testimony of David Raphael

10 <http://epuc.vermont.gov/?q=downloadfile/275063/127312>

11 Rebuttal Prefiled Direct Testimony of Miles Waite

12 <http://epuc.vermont.gov/?q=downloadfile/286420/127312>

13 Prefiled Direct Testimony of Ryan Haac

14 <http://epuc.vermont.gov/?q=downloadfile/239900/127312>

15 Rebuttal Testimony of Ryan Haac

16 <http://epuc.vermont.gov/?q=downloadfile/286435/127312>

17 Prefiled Direct Testimony of Dori Barton

18 <http://epuc.vermont.gov/?q=downloadfile/239058/127312>

19 Rebuttal Testimony of Dori Barton

20 <http://epuc.vermont.gov/?q=downloadfile/286404/127312>

21 Rebuttal Prefiled Direct Testimony of Michael Buscher

22 <http://epuc.vermont.gov/?q=downloadfile/286957/127312>

23 Prefiled Direct Testimony of Mark Kane

24 <http://epuc.vermont.gov/?q=downloadfile/239206/127312>

25 Rebuttal Testimony of Mark Kane

<http://epuc.vermont.gov/?q=downloadfile/286428/127312>

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2
3 Prefiled Direct Testimony of Brad Wilson

4 <http://epuc.vermont.gov/?q=downloadfile/238958/127312>

5 First Supp. Direct Testimony of Brad Wilson

6 <http://epuc.vermont.gov/?q=downloadfile/240070/127312>

7 Third Supp. Testimony of Brad Wilson

8 <http://epuc.vermont.gov/?q=downloadfile/259158/127312>

9 Rebuttal Testimony of Brad Wilson

10 <http://epuc.vermont.gov/?q=downloadfile/286439/127312>

11 Prefiled Direct Testimony of Ian Jewkes

12 <http://epuc.vermont.gov/?q=downloadfile/239078/127312>

13 Prefiled Direct Testimony of Harnoor Dhaliwal

14 <http://epuc.vermont.gov/?q=downloadfile/239068/127312>

15 Prefiled Direct Testimony of Scott Reynolds

16 <http://epuc.vermont.gov/?q=downloadfile/239097/127312>

17 Rebuttal Testimony of Scott Reynolds

18 <http://epuc.vermont.gov/?q=downloadfile/286411/127312>

19 Exhibits:

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21 CS-A

22 <http://epuc.vermont.gov/?q=downloadfile/312156/127312>

23 Joint-ANR-CS-1

24 <http://epuc.vermont.gov/?q=downloadfile/275107/127312>

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1 LB-AHHA-1
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3 ML-MAAC-1
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25 CS-BW-65

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7 CS-BW-68

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14 CS-BW-86
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5 CS-BW-94
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7 CS-IJ-1
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9 CS-IJ-2
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11 CS-IJ-3
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13 CS-HD-1
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1 MS. DINGLELINE: I'm not sure what
2 Petitioner's A is. I was having trouble --

3 HEARING OFFICER TOUSLEY: That's the
4 list of all the things that were stipulated to.

5 MS. DINGLELINE: That we said we didn't
6 stipulate to, and now you're saying --

7 HEARING OFFICER TOUSLEY: That you
8 didn't stipulate to and that you didn't object to.

9 MS. DINGLELINE: Okay. So for the
10 record --

11 HEARING OFFICER TOUSLEY: So we will
12 state for the record that they weren't stipulated to
13 but they are not objected to. Therefore, they are
14 entered into evidence.

15 MS. DINGLELINE: Okay. So I would like
16 to make a statement on the record if you don't
17 mind --

18 HEARING OFFICER TOUSLEY: Go right
19 ahead.

20 MS. DINGLELINE: -- for appeal purposes
21 to the Supreme Court. Because as I was trying to say
22 earlier before I stopped, there is a gatekeeping
23 function of every tribunal in the State of Vermont.
24 The Rules of Evidence require --

25 HEARING OFFICER TOUSLEY: I'm going to

1 ask you to brief this in your brief. I understand
2 your argument. You've made it before. Thank you.
3 We are going to move on.

4 MS. DINGLELINE: I've made it before in
5 another case.

6 HEARING OFFICER TOUSLEY: You made it
7 10 minutes ago, and I'm going to caution you not to
8 sit there and argue with me. If you sit there and
9 argue with me, you're going to be removed. Do you
10 understand me? Ms. Dingleline, do you understand me?
11 Do you understand me?

12 MS. DINGLELINE: I understand.

13 HEARING OFFICER TOUSLEY: Very well.
14 Good.

15 MS. DINGLELINE: I understand what
16 you're saying, sir. However, I have the right to
17 make a record right now.

18 HEARING OFFICER TOUSLEY: As you have
19 done and as I'm supporting you in.

20 MS. DINGLELINE: Okay. And what I want
21 to get on the record --

22 HEARING OFFICER TOUSLEY: Which I just
23 stated. So you don't have to state it again.

24 MS. DINGLELINE: I'm not stating what
25 you stated. I'm not stating that it should have been

1 done 30 days ago.

2 HEARING OFFICER TOUSLEY: Okay, then
3 state it.

4 MS. DINGLELINE: What my clients'
5 position is and what my clients need to have on the
6 record is regardless of whether or not there is an
7 objection filed by whatever deadline is created by
8 this -- by the Hearing Officer in these proceedings
9 --

10 HEARING OFFICER TOUSLEY: It's part of
11 the commission rules.

12 MS. DINGLELINE: As part of the
13 commission rules, that does not completely foreclose
14 and ignore competent evidence that all of this paper
15 is supposed to --

16 HEARING OFFICER TOUSLEY: You're using
17 up time you might want to use on your witnesses. I
18 understand your argument. If you want to write it
19 down and make it in your brief, you can do so for
20 appellate purposes.

21 MS. DINGLELINE: I'm objecting to being
22 shut down and not being able to articulate our
23 position.

24 HEARING OFFICER TOUSLEY: I understand
25 that.

1 MS. DINGLELINE: Thank you. You're
2 going to throw me out if I keep talking, I guess I
3 better be quiet.

4 HEARING OFFICER TOUSLEY: I'm going to
5 ask you to work with us to move this proceeding
6 forward in an efficient fashion consistent with the
7 items that have been agreed to by the parties,
8 including your clients.

9 Okay. So right now it looks like we
10 are up to the very first witness which is Mr. Waite.

11 Could you identify the witness, please?

12 MS. HAYDEN: Yes. Good morning, Mr.
13 Waite. Can you please state your full name for the
14 record?

15 MR. WAITE: Miles Earl Waite.

16 MS. HAYDEN: And what is your
17 occupation, sir?

18 MR. WAITE: I'm a senior hydrogeologist
19 with Waite-Heindel Environmental Management.

20 MS. HAYDEN: And did you prefile
21 testimony in this proceeding on August 10 consisting
22 of three pages?

23 MR. WAITE: Yes.

24 MS. HAYDEN: And was that prepared by
25 you and -- would you like me to ask these questions

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after you put him under oath? I apologize.

HEARING OFFICER TOUSLEY: Yes.

MS. HAYDEN: Yes.

1 MILES WAITE

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I swear.

5 HEARING OFFICER TOUSLEY: You may
6 proceed.

7 MS. HAYDEN: Thank you.

8 DIRECT EXAMINATION

9 BY MS. HAYDEN:

10 Q. So Mr. Waite, you have in front of you a
11 document Rebuttal Testimony of Miles Waite dated August 10
12 consisting of three pages; is that correct?

13 A. Yes.

14 Q. Was that prepared by you or under your
15 supervision?

16 A. Yes.

17 Q. Is it true and accurate to the best of your
18 knowledge and belief?

19 A. Yes.

20 Q. And then do you also have what's been marked
21 as Exhibit CS-MW-1, Resume of Miles Waite?

22 A. Yes.

23 Q. Is that true and accurate to the best of your
24 knowledge?

25 A. Yes.

1 Q. And then finally what's been marked as Exhibit
2 CS-MW-2. PFOA Analysis Report. Do you have that?

3 A. Yes.

4 Q. Was that prepared by you or under your
5 supervision?

6 A. Yes.

7 Q. Is it true and accurate to the best of your
8 knowledge and belief?

9 A. Yes.

10 MS. HAYDEN: I move the admission of
11 the Rebuttal Prefiled Testimony of Miles Waite
12 together with exhibits CS-MW-1 and CS-MW-2.

13 HEARING OFFICER TOUSLEY: Any
14 objections?

15 MR. PORTER: No objection.

16 MS. DINGLEEDINE: May I voir dire or --
17 before I make an objection or not cross examine the
18 witness?

19 HEARING OFFICER TOUSLEY: Yes.

20 MS. DINGLEEDINE: Thank you.

21 VOIR DIRE EXAMINATION

22 BY MS. DINGLEEDINE:

23 Q. Mr. Waite, I understand that you have
24 familiarity with the PFOA situation in Bennington separate
25 and apart from your testimony in this proceeding; is that

1 correct?

2 A. Yes.

3 Q. Okay. Can you describe what involvement that
4 you have had besides your prefiled rebuttal testimony that
5 you're offering today?

6 A. Certainly. We have a contract with the State
7 of Vermont Department of Environmental Conservation to do
8 testing of point-of-entry treatment systems on homes in
9 primarily the east side of Bennington. That work involves
10 testing the carbon filtration systems, testing the
11 influent and mid samples primarily, submitting them to a
12 lab, and managing the data on behalf of the state.

13 Q. And when you say the east side of Bennington,
14 what neighborhoods do those encompass? Let me rephrase.

15 Does that incorporate, for example, the Apple
16 Hill Homeowners' Association properties?

17 A. Yes.

18 Q. And could you describe very summarily what the
19 situation is currently with their drinking water supplies?

20 A. Well I must say that the east side -- I'm
21 sorry -- the Apple Hill neighborhood water systems we do
22 not any longer monitor. There was an agreement with the
23 DEC that we would not do those, and another consulting
24 firm is now doing the Apple Hill testing.

25 Q. And why is that?

1 A. Because there was a perceived conflict of
2 interest having -- doing work for Ecos and doing work at
3 the Apple Hill neighborhood. So it was a mutually agreed
4 decision between John Schmeltzer of the Vermont DEC and
5 myself that we would forego doing any more sampling in the
6 Apple Hill neighborhood. And we do -- there is dozens and
7 dozens of streets in the east side where we continue to do
8 sampling.

9 Q. Okay. In your prefiled testimony you did not
10 disclose that you had been hired by the state to work on
11 one of the other party's water supply issues for DEC State
12 of Vermont. Can you explain why you did not disclose that
13 in your prefiled testimony?

14 A. I didn't think it had any importance to the
15 testimony that we were doing.

16 Q. Did you disclose to the -- to DEC before you
17 were engaged by the Petitioner that you were going to
18 accept that employment?

19 A. We initially did some work for Ecos back in
20 February. And then we did some more work starting in May
21 and June. And I think it was about in early June when we
22 had the discussion with the state about whether there was
23 a perceived conflict of interest.

24 Q. Okay. So you accepted the engagement with the
25 Petitioner prior to telling DEC that you were engaged by

1 them; correct?

2 A. Yes.

3 Q. Okay. And then once it was determined that
4 there was a conflict of interest, that's when you agreed
5 with the state to no longer be helping the state at least
6 with regard to the folks that are affected by and have
7 intervener status in this proceeding, fair to say?

8 A. Yes.

9 Q. Okay. Is there any reason why your resume
10 does not include the PFOA Bennington case that you have
11 been involved with?

12 A. My resume does not list all my different
13 clients.

14 Q. Did you make a deliberate decision not to
15 include that in your resume?

16 A. To be honest with you, it didn't cross my
17 mind. Because we were looking at more hydrogeology,
18 soils, and what we do for the water treatment is nothing
19 other than getting into peoples' basements and collecting
20 samples, submitting them to the lab and evaluating data.
21 So it's a very different type of work. Did not involve
22 the type of opinions and consultations that I have been
23 providing to Ecos.

24 Q. In terms of the ground water how the ground
25 water is moving and migrating in this area, do you have

1 knowledge of -- based on competent evidence -- as to how
2 the ground water moves through this area?

3 A. I have seen the studies, the maps produced by
4 the DEC, the Vermont Geological Survey. So it's somewhat
5 limited in that I've seen maps provided by ANR, but the
6 work that we did for Ecos did not -- we did not encounter
7 ground water. It did not involve ground water wells or
8 ground water testing.

9 Q. And are the water supplies that are affected,
10 are they as a result of contamination of ground water in
11 the area?

12 A. The water wells in all of Bennington are
13 contaminated by PFOA, from likely ChemFab, yes. It's a
14 ground water contamination issue.

15 Q. Okay. How is that different than surface
16 water runoff or surface water movement?

17 A. There is not always an interaction, depending
18 on the geology. In this part of Bennington, there is a
19 glacial till layer over bedrock. And the wells in the
20 area are primarily drilled at 200, 300 feet deep, and are
21 encountering fractures in the bedrock.

22 So there is not always communication between
23 surface water and ground water. In this case the hillside
24 has poorly draining soils. It has dense loam layer above
25 bedrock. And there is -- there are no surface waters in

1 Petitioner's project area, and the nearest surface waters
2 are south and eventually flow into the Wallnoosic,
3 (phonetic), and we don't know how much communication there
4 is between surface water and ground water.

5 Q. Are you aware that the levels tested in the
6 water supply wells, the private wells of the homeowners at
7 Apple Hill, are you aware that those levels have deviated;
8 sometimes they go up, sometimes they go down?

9 A. That's the nature of testing at the parts per
10 trillion level.

11 Q. Okay. But can you -- do you have an
12 understanding or an opinion in regards to why we have seen
13 some homeowners whose levels continue to rise and others
14 whose levels have been reduced?

15 A. No. As I said, that's -- there are very few
16 chemicals where we test on the parts per trillion level,
17 and we also cannot predict Mother Nature. We cannot
18 predict a lot of things that would cause the concentration
19 on one day to be different than on another day. You
20 tolerate a level, a range, in values because we are
21 looking at such minute concentrations.

22 Q. Okay. So the deviations, in your mind, are
23 they within like the, you know, standard error deviations,
24 or are they a wider difference?

25 A. I'd say the deviations are within the standard

1 that you would expect for using a lab method that is
2 relatively new and relatively, you know, it's only been in
3 the last three or four years that there has been request
4 for use of EPA 537 modified. And it's -- so it's an
5 emerging chemical.

6 We do not have -- the labs do not have a lot
7 of experience in testing this. And so we are learning
8 that it's hard to replicate results when we are looking at
9 that minute levels.

10 Q. Okay. I understand that there are filtration
11 systems and also bottled water being provided to the Apple
12 Hill homeowners; is that correct to your knowledge?

13 A. Correct.

14 Q. And so suffice it to say that the well water
15 in many of these properties exceeds the threshold for
16 human health detrimental impacts; correct?

17 A. Well I would say that it's the Vermont
18 Department of Health's standard of 20 parts per trillion,
19 yes. Many of those wells exceed 20 parts per trillion.

20 Q. And given how new this science is and how
21 complicated this site is, fair to say that it's very
22 difficult to predict how this ground water is ultimately
23 going to move through this area and whether contamination
24 will get worse, better? Because folks really don't know
25 how much PFOA is in the environment?

1 A. Well there is two parts to your question. I
2 think we can be pretty confident in knowing where the
3 ground water and how the ground water is moving under this
4 property and that it moves to the south-southwest.

5 The other part of your question is you are
6 correct. Because it's an emerging contaminant, and we
7 don't have a lot of history, there is not a lot of data
8 that shows we don't know whether the PFOA that was in
9 place through airborne transport in 1975 is still
10 contributing or has it stopped contributing. So we just
11 don't have the record to show what the situation is.

12 Q. So it's possible, for example, that if some of
13 the PFOA is coming from the landfill, that we may see that
14 PFOA migrate downhill to the neighborhood and then
15 ultimately to the Chelsea Solar site?

16 A. Anything is possible. Again, we don't have
17 the data or the record to understand it. And --

18 Q. Have you done any ground water monitoring or
19 testing yourself?

20 A. For this project?

21 Q. For Bennington.

22 A. Other than the -- no. No. Other than the
23 testing of drilled wells and the soil and evaluation we
24 did for Ecos, it's the only work that we have done
25 relative to PFOA in Bennington.

1 Q. So when you're talking about, you know,
2 knowing information about the ground water, is that from
3 somebody else's testing?

4 A. It's from the Department of Environmental
5 Conservation website, as you know. There is lots of
6 resources online, and there is lots of memos that are
7 being submitted by the DEC. I've accessed all that.

8 Q. So it's a work in progress?

9 A. Yes.

10 Q. Okay. Now how many acres of land is going to
11 actually be cleared at the site, at the project site?

12 A. I don't know what the exhibit number is, but
13 I'm looking at the map prepared by Krebs & Lansing. Under
14 project area calculation it says: Free clearing plus or
15 minus 9.46 acres.

16 Q. Can you explain then why in your report on
17 page 2 you said that it was 6.377 acres of land?

18 A. It says area cleared, trees flushed and stumps
19 left in place 6.377. I think that's the number we were
20 referring to.

21 Q. Okay. But you would agree with me that it's
22 closer -- that it's almost 10 acres that's actually going
23 to have trees removed?

24 A. This is what the number says. Total clearing
25 which includes areas cleared, trees cut flush and stumps

1 left in place. And then areas cleared that will be
2 stumped, grubbed and graded to consistent slopes of 3.263
3 acres, so it equals 9.64 acres.

4 Q. Okay. So is the 9.64 acres the total amount
5 that you considered in terms of rendering your opinions
6 about, you know, whether or not the clearing of this
7 property would or would not ultimately result in an
8 adverse impact to the PFOA levels and the drinking wells
9 of the Apple Hill neighborhood?

10 A. Yes, we considered everything. We looked at
11 -- the first thing we did was to gauge the level of impact
12 that is proposed. So my opinion takes into account
13 everything proposed from the access drives to the clearing
14 to the regrading. Yes.

15 Q. And have you -- does your opinion include in
16 any way the Apple Hill Solar project in conjunction with
17 the Chelsea Solar Project that we are here today about?

18 A. My opinion relative to Chelsea Solar.

19 Q. So you did not in any way incorporate
20 basically double the area of clearance, i.e., from 9.64 to
21 18, 19, 20 acres. And so you didn't account for what
22 happens at the Apple Hill Solar project?

23 A. We provided services asked us by Ecos which is
24 to look at Chelsea Solar.

25 Q. So I take that as a yes you did not consider

1 Apple Hill?

2 A. We considered Chelsea Solar.

3 Q. Okay. So what's the impact of clear-cutting
4 the area of Chelsea Solar and -- in the light of the fact
5 that Apple Hill is contiguous to this and right next to
6 it?

7 A. Well I think we could probably make similar
8 conclusions in that the level of proposed impact given
9 topography, given soil, given the nature of PFOA, given
10 the hydrologic upgradient location of the Apple Hill
11 wells, I think we would come to the same conclusion that
12 impact at this level is very unlikely to have any material
13 change to the level of PFOA in the drinking water well
14 aquifer.

15 Q. Does any information or research exist about
16 the tree benefit or retaining trees, for example, on the
17 movement of PFOA?

18 A. I've seen no scientific evidence that talks
19 about that -- looks at whether trees can absorb PFOA from
20 the ground water. No scientific evidence.

21 Q. So then is it fair to say that your
22 supposition that the clearing of 9.64 acres really is not
23 rooted in any scientific studies or scientific knowledge
24 with regard to what impact removing all of those trees
25 will have on the movement of PFOA?

1 A. Well I do know what phytoremediation is.
2 Phytoremediation is the remediation or cleaning of water
3 or soil through vegetation. And the way phytoremediation
4 works is that trees and shrubs and vegetation can uptake
5 contaminants from the water, but what those trees do is
6 they typically absorb it into the plant matter. They
7 don't process it or biodegrade it.

8 So when the tree dies and falls, that PFOA is
9 still in the system. So it doesn't remove the PFOA from
10 the system. It can maybe bring it up through its
11 evapotranspiration, but it is not removing it from the
12 system. So it is possible that even if the trees did take
13 up PFOA, those trees now will eventually die, and PFOA
14 will remain in the upper soil.

15 Q. Maybe in 50 years when the tree dies; fair to
16 say?

17 A. We don't know. Again, there is no -- I don't
18 want to speculate on whether these trees are doing it.
19 But I just wanted to let the record show that I understand
20 the way phytoremediation worked, and it's not like the
21 trees change or take care of a contamination.

22 HEARING OFFICER TOUSLEY: If I could
23 ask a question. So if I'm understanding correctly,
24 phytoremediation, if the trees were removed, then any
25 PFOA that the trees had absorbed would be removed

1 from the site?

2 THE WITNESS: If the trees were
3 harvested so they use PFOA on apple orchard -- I'm
4 sorry. Phytoremediation, they plant specific types
5 of shrubs on apple orchards that can uptake the
6 arsenic, but they have to harvest those plants and
7 take them to a landfill in order to actually cleanse
8 the soil.

9 HEARING OFFICER TOUSLEY: Okay. Thank
10 you.

11 BY MS. DINGLEDINE:

12 Q. In other words, if they were cutting the trees
13 and shipping them and leaving all of the material of those
14 trees on site, that's actually reintroducing PFOA if there
15 is PFOA that's been absorbed --

16 A. I call it stasis. I would not say
17 reintroducing. I'm calling it static. It's not changing
18 one way or another over the time frame of a tree.

19 Q. All right. If you don't mind, let me finish
20 my question before you answer.

21 As I understand it, I'm a layperson, a tree
22 sucks up water that may have PFOA into in it; correct?

23 A. I can't speculate whether it would or not.

24 Q. You don't know whether a tree will actually
25 absorb the PFOA?

1 A. No, there is no studies that suggest that they
2 do.

3 Q. Okay. But you testify that there may be a
4 small increase in the amount of surface runoff due to the
5 tree clearing and that trees absorb and evapotranspire
6 more water than grassland. Do you agree that that was
7 your testimony?

8 A. Yes. I do.

9 Q. Okay. So there would be reduced infiltration
10 into ground water and increased runoff to the southwest
11 wetland; correct?

12 A. Correct.

13 Q. Okay.

14 A. The difference in terms of -- in terms of
15 without the evapotranspiration there could be a small
16 increase in surface water movement away from that site.
17 But based on TR55, which is an infiltration model that's
18 been there for years, it's a relatively small difference
19 between a grassland and a tree.

20 Q. What about the construction, excavating,
21 bulldozing, contouring, all of that soil disturbance? Are
22 you an expert who has the background and experience to
23 opine about creating dust and thereby releasing PFOA back
24 into the atmosphere in terms of the dust and soils that
25 are disturbed going into the air?

1 A. Airborne transport is -- we did consider it in
2 that, but mostly from a dust -- a danger of dust from a
3 construction worker or a nearby occupant, not
4 reintroducing PFOA back into the atmosphere. That's not
5 something that's likely, so it's not something we
6 considered.

7 But in terms of construction worker risk and
8 say neighbor risk who's abutting the property, our soil
9 data shows that the PFOA concentrations are well below the
10 soil standard, the risk-based standard that the DOH and
11 the DEC have prepared. And that risk standard is based on
12 ingestion, dermal contact or inhalation of PFOA.

13 And that level they came up with is 300 parts
14 per billion. And all of the soil that we tested is well
15 below 300 parts per billion. So I could opine there will
16 not be an air quality impact to the disturbance of soil
17 from PFOA.

18 Q. You indicate that based on your review it's
19 very unlikely the construction of the project with proper
20 erosion control measures or operation of the project will
21 cause material change in the contamination or mobilization
22 of the contamination that would impact the soils at the
23 site or the underlying bedrock aquifer and the drinking
24 water wells that draw from it. So you're saying no
25 material change in the levels of contamination as a result

1 of all the construction on this site?

2 A. Yes.

3 Q. Okay. But what do you mean by proper erosion
4 control measures?

5 A. That's an erosion control plan which has been
6 provided by Krebs & Lansing, and I'm sure is an exhibit to
7 the proceedings.

8 Q. All right. So if those erosion control
9 measures were not implemented, or they were not conditions
10 of this permitting, if they are given a permit, then there
11 would be a problem apparently based on your testimony?

12 A. There would be more propensity, more
13 likelihood. If they -- if they excavated soil and piled
14 it in a big pile just before a July rainstorm, that could,
15 you know, move sediment off the property, and they didn't
16 have silt fencing and they didn't -- then there is
17 possibility that sediment-laden water with PFOA in the
18 sediment could move off the property and that would be an
19 issue.

20 Q. All right. Now are you recommending
21 respirators or any kind of protective gear for the
22 construction workers who will be involved in digging up
23 this soil?

24 A. Not based on the data that we have that shows
25 it's well below 300 parts per billion.

1 HEARING OFFICER TOUSLEY: I'll just
2 note, Ms. Dingleline, that you're beyond your half
3 hour already but if you have more questions, you may
4 continue.

5 MS. DINGLELINE: I have just a couple,
6 Your Honor. Thank you.

7 BY MS. DINGLELINE:

8 Q. Did you take into account the Willow Road
9 construction in the analysis of whether or not either soil
10 or ground water would be impacted, or drinking wells?

11 A. We took into account -- again the exhibit is
12 the Krebs & Lansing plan that shows cleared areas which
13 will be fully disturbed in a sort of pink-purple color,
14 and that extends down -- somewhere down to Willow Road.

15 Q. But does it encompass the construction of --

16 MS. HAYDEN: I'm going to object.
17 There is no proposed construction on Willow Road.
18 That's in the record that's been stated. And I think
19 it's misleading to suggest that.

20 HEARING OFFICER TOUSLEY: I think what
21 we want to do is if someone can help Dr. Waite
22 identify the exhibit that he's examining, I can see
23 from here --

24 THE WITNESS: It's this exhibit here.

25 HEARING OFFICER TOUSLEY: -- that it

1 reflects the work that the project anticipates doing
2 on Willow Road.

3 THE WITNESS: It's under Ian Jewkes, I
4 think, is the first --

5 MS. HAYDEN: I believe is it under
6 label 2? Project site plan?

7 THE WITNESS: Yes.

8 MS. HAYDEN: And --

9 THE WITNESS: We evaluate everything in
10 terms of soil disturbance. It's the pink-purplish
11 highlighted area.

12 HEARING OFFICER TOUSLEY: And that's
13 marked as what on the record?

14 MS. HAYDEN: It's CS-IA -- I'm sorry --
15 CS-IJ-2. Project site plan.

16 HEARING OFFICER TOUSLEY: Okay. Thank
17 you.

18 MS. HAYDEN: It's an exhibit of Mr.
19 Jewkes.

20 HEARING OFFICER TOUSLEY: And does that
21 -- and that includes that purple thread that you were
22 talking about, that's beneath the project, and it's
23 like a roadway?

24 THE WITNESS: They will have to disturb
25 ground for the roadway, yes. For the access way, not

1 roadway.

2 BY MS. DINGLEDINE:

3 Q. Have you been on Willow Road yourself?

4 A. I have been to the end of Willow Road where
5 the gate is.

6 Q. Would you agree with me it's just a dirt path
7 right now and will have to be improved for the
8 construction vehicles on it?

9 MS. HAYDEN: Objection.

10 THE WITNESS: I don't know.

11 BY MS. DINGLEDINE:

12 Q. What happens to ground water when forests are
13 cut? When clear-cutting happens?

14 A. Well sometimes there can be -- because of the
15 reduced evapotranspiration there can be -- water table can
16 rise up slightly. You can have, you know, more
17 infiltration depending on the condition of the soil.

18 HEARING OFFICER TOUSLEY: I have a
19 question. I'm unclear. What's the difference
20 between surface water and ground water?

21 THE WITNESS: Ground water is beneath
22 the ground. Surface water is on top of the ground.

23 HEARING OFFICER TOUSLEY: Okay. So
24 rain would be surface water?

25 THE WITNESS: Rain is temporarily

1 surface water. But sometimes, for instance, easiest
2 way to describe it is there is a gaining stream and a
3 losing stream. A gaining stream ground water moves
4 into the stream and moves away the surface water.
5 Losing streams are streams that actually the water
6 leaves the streambed and becomes part of the ground
7 water. So it depends on what type of --

8 HEARING OFFICER TOUSLEY: Because
9 surface water generally flows downhill.

10 THE WITNESS: Surface water flows
11 downhill. Ground water flows downhill.

12 HEARING OFFICER TOUSLEY: Flows
13 downhill too. Thank you.

14 BY MS. DINGLEDINE:

15 Q. One last question that has to do with you're
16 talking about when talking about erosion control, there is
17 going to be stockpiling of soils that are dug up from the
18 site. Where is that soil going to go for 25 to 40 years?
19 And how is that not going to become an issue as you were
20 talking about if there is a big rainstorm and then the big
21 pile of dirt gets washed away?

22 MS. HAYDEN: I'm going to object.

23 There is no evidence of stockpiling in the case. If
24 Ms. Dingledine wants to instruct the witness and
25 refer him to testimony or an exhibit, but again, I

1 think it's misleading the witness.

2 MS. DINGLEDINE: Well --

3 HEARING OFFICER TOUSLEY: Are you aware
4 of any stockpiling of soils on the site for the life
5 of the project?

6 THE WITNESS: You know, often -- again
7 I can't say for this because I haven't closely
8 studied all the project files -- often there is a
9 temporary soil stockpile identified in an erosion
10 control plan and usually the -- they are required to
11 be stabilized which means covered with hay and mulch.
12 And it's often within several weeks before grass
13 grows on it and it sheds water.

14 HEARING OFFICER TOUSLEY: But you're
15 not aware of --

16 THE WITNESS: But I'm aware of long
17 term -- other than maybe during the construction
18 process any long-term stockpiling.

19 HEARING OFFICER TOUSLEY: Thank you.

20 BY MS. DINGLEDINE:

21 Q. So if the reclamation plan talks about how
22 it's going to be restored by the stockpile piles coming
23 back to the site, do you have some directives or
24 recommendations about what should happen to that dirt?

25 A. Well I would say that stockpiled soils during

1 the construction process will be stabilized as per the
2 plan and will not unduly affect water; surface water or
3 ground water.

4 MS. DINGLELINE: That's all I have.

5 Thank you.

6 MS. HAYDEN: I just have a few
7 questions.

8 REDIRECT EXAMINATION

9 BY MS. HAYDEN:

10 Q. At the beginning of your cross examination you
11 were asked about your employment with the state. My
12 understanding is that you said that you -- your firm was
13 employed to take water samples; correct?

14 A. Correct.

15 Q. And but prior to filing your testimony and
16 preparing your report in August of this year, you stopped
17 doing that work?

18 A. Correct.

19 Q. Did the fact that you were retained by Chelsea
20 Solar in any way affect your water sampling in terms of
21 the findings or your -- how you handled water sampling?

22 A. No.

23 Q. Okay. And do the homeowners in Apple Hill
24 have filtration systems, or were you able to observe that?

25 A. From what I understand and from the data that

1 I've seen that's provided as public information to the DEC
2 website, is that there are over 30 homes in that area, and
3 they all have, or most of them at least, have point-of-
4 entry treatment systems functioning.

5 Q. What's the lay person's term for those? I
6 think I've heard carbon filtration?

7 A. Yeah. Carbon filtration systems.

8 Q. Okay. And can you just describe them very
9 briefly and whether they take the PFOA out of the water?

10 A. Sure. I think most of the carbon filtration
11 systems were installed by Culligan. And what they do is
12 they take the incoming water into the home, they add a new
13 filter, like a particulate filter. It goes through one
14 carbon canister to a sampling point, then another carbon
15 canister to a sampling point, and they add a UV filter
16 which kills bacteria, that on occasion carbon can be an
17 area where bacteria would be -- could grow. So they add a
18 UV filter which is very good for the homeowner because it
19 eliminates possibility of bacterial contamination of their
20 water source. And then that goes back into the pressure
21 tank, and it's distributed through the house.

22 Q. Okay. So I think that was a long answer.

23 A. Yeah.

24 Q. Does the carbon filtration system, the double-
25 canister carbon filtration system remove the PFOA from the

1 water?

2 A. Yes.

3 Q. And -- okay.

4 MS. HAYDEN: I have nothing further.

5 HEARING OFFICER TOUSLEY: Any cross?

6 MS. DINGLELINE: Nothing.

7 HEARING OFFICER TOUSLEY: Do any of the
8 other parties have questions for this witness?

9 MR. PORTER: No questions.

10 HEARING OFFICER TOUSLEY: No. Okay. I
11 don't have any more questions for you either, Dr.
12 Waite. I want to thank you for your testimony.
13 You're excused.

14 MS. HAYDEN: Just to clarify the
15 record, I started asking questions. I believe you
16 had admitted the stipulation and the stipulation
17 included his testimony.

18 HEARING OFFICER TOUSLEY: That's
19 correct.

20 MS. HAYDEN: I moved to admit it, but I
21 didn't need to because it's already in the record.

22 HEARING OFFICER TOUSLEY: That's
23 correct. The nature of the objection was that there
24 are elements of the testimony that are potentially
25 questionable. That doesn't mean that they weren't

1 otherwise admitted into the evidence.

2 MS. HAYDEN: Thank you. Mr. Haac, do
3 you have your testimony and exhibits with you?

4 MR. HAAC: I do not. They are in this
5 binder, right?

6 MS. HAYDEN: Yes. If you open the tab
7 to your name. Do you have that?

8 MR. HAAC: I do.

9 MS. HAYDEN: Okay.

10 HEARING OFFICER TOUSLEY: Could you
11 identify the witness?

12 MS. HAYDEN: Yes. Are you ready?

13 MR. HAAC: A-hum.

14 MS. HAYDEN: Could you please state
15 your name for the record?

16 MR. HAAC: My name is Thomas Ryan Haac.

17 MS. HAYDEN: And what is your
18 occupation?

19 MR. HAAC: I'm a senior analyst at RSG.

20 MS. HAYDEN: Okay.

21

22

23

24

25

1 THOMAS R. HAAC

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 HEARING OFFICER TOUSLEY: Your witness.

6 Do you have more questions for him?

7 MS. HAYDEN: I don't have. I
8 apologize.

9 HEARING OFFICER TOUSLEY: He's
10 available for cross examination.

11 MS. HAYDEN: Thank you.

12 CROSS EXAMINATION

13 BY MS. DINGLEDINE:

14 Q. Thanks. Mr. Haac, how are you?

15 A. Fine, thank you.

16 Q. So you did some noise analysis and recording
17 in this case. But from my reading of your reporting you
18 looked at a combination of project-generated noise and
19 traffic noise.

20 So what did you mean when you're talking about
21 project-generated noise? What elements of noise or part
22 of the project does that pertain to?

23 A. Yeah. The project-generated noise refers to
24 the elements that will be installed on the project site
25 and operate for the purpose of the project. That includes

1 the inverters and the transformers required.

2 Q. So after it's constructed you're figuring out
3 this thing is operating now, what kind of noise, if any,
4 will it be emitting?

5 A. That's correct. We looked at two scenarios.
6 One being the daytime and one being the nighttime, because
7 the inverters do not operate at night essentially is why.

8 Q. And in terms of your analysis of the project-
9 generated noise after construction and during operation,
10 did you take into account the time of year, snow cover,
11 for example, versus leaf-on conditions, what were the
12 assumptions that you made in terms that underlie your
13 opinions?

14 A. The question is about project-generated noise;
15 is that correct?

16 Q. Right.

17 A. The assumption was that there was not snow
18 cover. The reason that we don't assume snow cover is snow
19 absorbs sound, so that would decrease any
20 project-generated noise. What we looked at was really the
21 maximum project-generated noise during the project's
22 operation which includes when the transformers and
23 inverters are at full capacity.

24 Q. So but in terms of -- so no snow cover, but
25 leaf on, leaf off, what were those assumptions?

1 A. There's not a specific assumption about leaf
2 on or leaf off. It's more that there is a forest that --
3 or I should state more clearly -- foliage that absorbs
4 sound. And that forest was given a specific height that
5 we determined based on our on-site measurements.

6 Q. Okay. Let's go to the traffic noise. Are
7 your opinions based on the existing traffic that exists in
8 the area today?

9 A. Right. My opinions are based on the traffic
10 noise that was measured when we were there. And those
11 also took into account annual average daily traffic
12 volumes for that -- for Route 7 and 279.

13 Q. So you actually did some measurements of sound
14 levels and then utilized that information to derive your
15 projections?

16 A. Absolutely. Yes.

17 Q. Okay. Great. And so if foliage absorbs
18 sound, like we just said, how many acres of clear-cut did
19 you factor in in terms of this particular project?

20 A. Let me find that page here to give you the
21 correct number. Because I believe -- yeah. I'm showing
22 9.6 acres. I believe we were provided the same area that
23 Miles discussed and was in the Krebs & Lansing.

24 Q. And did you in any way analyze the combined
25 effect of this being right next to the Apple Hill Solar

1 project and the clearing for that project?

2 A. That was not included in what we submitted for
3 this project, but yes, I have analyzed that.

4 Q. So your -- but your results here pertain only
5 to the clearing for the Chelsea project?

6 A. That's correct.

7 Q. And the analysis that you did, you're talking
8 about for the Apple Hill project, that was also in
9 isolation just on the Apple Hill?

10 A. That's correct.

11 Q. Have you done any combination of those two
12 modeling opinions to determine what the combined noise
13 effects would be for both of these projects if they were
14 built?

15 A. Yes, I have looked at that. Yes.

16 Q. Okay. And is that a larger impact than either
17 looking at Chelsea Solar or Apple Hill in isolation?

18 A. Yes, it is larger than looking at only a
19 single one.

20 Q. Okay. So the traffic noise that you were
21 talking about is -- did that in any way incorporate the
22 truck and car trips during the construction phase of this
23 project?

24 A. No. It did not.

25 Q. Would you agree with me that that would be the

1 noisiest time for the many months that that would be going
2 on in terms of sound impacts on neighbors that surround or
3 abut or are nearby these projects?

4 A. Temporary construction noise will generate a
5 lot of sound levels associated with the project. Yes.

6 Q. But you were not hired to do any analysis or
7 to provide an opinion about whether there was an undue
8 adverse impact from construction noise, i.e., excavators,
9 bulldozers, chain saws, any of that, the 18-wheelers
10 coming in with the solar panels? None of that was
11 factored into your sound analysis on either of the Apple
12 Hill or the Chelsea?

13 A. That's correct. It was not factored into this
14 analysis.

15 Q. Why not?

16 A. Because on similar projects that's -- that has
17 been outside of the scope and, you know, I think typically
18 deemed unnecessary.

19 Q. Well if you were living nearby, would you deem
20 that unnecessary?

21 A. If I was living nearby would I deem what
22 unnecessary? Sorry.

23 Q. To not -- to not analyze and determine the
24 levels of sound during the construction phases of these
25 projects to determine whether there was an undue adverse

1 impact to noise, the aesthetics of noise, or air pollution
2 of noise?

3 A. Personally I would prefer that that was
4 studied. Yes.

5 Q. Okay. What about the fence that now I
6 understand is 10-feet high that they are going to put
7 around this Chelsea Solar array area. I think it's chain
8 link, is that your understanding?

9 A. That is my understanding. Yes.

10 Q. Normally with the chain link fence are there
11 any issues that you have encountered in your experience
12 where noise would emanate from maybe wind blowing through
13 a chain link fence?

14 A. No. We have never encountered that, and I
15 also asked the manufacturer of the, well, I guess it was
16 the screening material, if they have ever encountered that
17 or had any information about that, and they could not
18 provide any.

19 Q. Okay. So it's an unknown -- so you feel
20 comfortable that the actual fence itself would not be a
21 party to impacts, but with the plastic or mesh or whatever
22 the sheathing is that's going to be big, black, you know,
23 stuff that's going to be wrapped or connected to this
24 fence, you were not able to obtain any information from
25 the manufacturer to determine whether there would or would

1 not be any sound impacts from that?

2 A. No. They could not provide that. They merely
3 suggested that if there was going to be a great deal of
4 wind passing through it, that the mesh material should
5 allow air to pass through it and not be like a sheet of
6 canvas. Rather it's a more of a mesh, and I believe
7 that's what's been prescribed here.

8 Q. So if the wind goes through this mesh, did you
9 do any modeling to determine whether it would cause any
10 sound?

11 A. No. No, we have not, and I have no reason to
12 expect that it would create any more sound than the sound
13 of the wind through the trees that used to be in that
14 location.

15 Q. Would you agree with me that construction
16 noise from the two projects if you looked at them in
17 conjunction with one another, either there would be an
18 impact from the construction noise that is more
19 significant than the traffic noise study that you did as a
20 stand-alone proposition for Chelsea Solar or Apple Hill in
21 isolation from one another?

22 A. That's kind of difficult to offer, because
23 first use the word significant, which has a specific
24 meaning, and it's not really applicable.

25 Second, I don't understand the difference --

1 well, let me say it this way. Any construction noise
2 impact when considering both projects would most likely be
3 temporal in nature in that it's going to take twice as
4 much time.

5 But my understanding is they are not going to
6 be constructed together. I have no reason to believe they
7 will. They are separate projects.

8 Q. I see. So it's your belief that the
9 construction of these two projects would not be happening
10 simultaneously?

11 A. Correct.

12 Q. Okay. If they were going to happen
13 simultaneously, would you agree with me that it
14 conceivably would double the noise?

15 A. If there were two sets of equipment -- if
16 there was a set of equipment on each project site
17 operating simultaneously, yes, that would generate more
18 noise than a single project.

19 Q. And if they were not done simultaneously, then
20 obviously, you know, we would have a longer duration,
21 perhaps double the duration of that kind of construction
22 noise, fair to say?

23 A. Compared to a single project. Yes. That's
24 correct.

25 Q. Okay.

1 MS. DINGLEDINE: That's all I have,
2 Your Honor. Thank you.

3 CROSS EXAMINATION

4 BY MS. HAYDEN:

5 Q. Yes. You were asked some questions about the
6 combined effect of clearing for both Chelsea and Apple
7 Hill, tree clearing, and the impact that that may have on
8 sound generated by vehicles traveling along Route 7. I
9 would like to refer you to your testimony at pages 4 and
10 5. The bottom of 4 and top of 5.

11 HEARING OFFICER TOUSLEY: Which
12 testimony are you referring to?

13 MS. HAYDEN: It's the November 27, 2017
14 testimony.

15 HEARING OFFICER TOUSLEY: Okay.

16 BY MS. HAYDEN:

17 Q. If you could just read the -- starting on line
18 18 page 4, and continue on to your conclusion on the
19 following page.

20 A. You're asking me to read page 4 of 5 starting
21 at line 18?

22 Q. Page 4 line 18.

23 A. With a report that details and results.

24 Q. Yes. You don't need to read it out loud. I
25 just want to refresh your memory to read it.

1 A. Oh, okay. Okay.

2 Q. Okay. Having that in mind, and there your
3 conclusion is that with respect to Chelsea that the noise
4 levels would be -- any increase would be -- barely be
5 perceptible let alone substantial, adverse or unduly
6 adverse; correct?

7 A. Correct.

8 Q. And is that -- and you said you looked at both
9 projects together. Do you have the same or a different
10 conclusion with respect to noise levels from the combined
11 projects?

12 A. The conclusion is the same. The noise level
13 or the -- yeah, the noise level from traffic is slightly
14 higher. I believe it was less than one dB above what we
15 modeled here. But the overarching conclusion is the same.

16 MS. HAYDEN: Thank you.

17 HEARING OFFICER TOUSLEY: Just one
18 question in that regard. Did your modeling include
19 the potential sound deadening effect of the panels
20 themselves?

21 THE WITNESS: No. I don't believe the
22 panels will absorb all that much sound, and no, it
23 did not include them.

24 HEARING OFFICER TOUSLEY: Thank you.

25 As a general rule, you know, it is -- they are a

1 physical structure.

2 MR. MARREN: Many apologies. Do not
3 pay attention to the man behind the bench.

4 HEARING OFFICER TOUSLEY: I forgot what
5 I was asking.

6 THE WITNESS: You were asking about
7 panels and them being a structure.

8 HEARING OFFICER TOUSLEY: Yes. Are
9 there any studies that indicate whether or not solar
10 panels, and this is just for my general knowledge,
11 that, you know, a 10-acre solar field with densely-
12 mounted panels that are 10-feet high, have there been
13 studies that indicate whether or not those structures
14 act in the same way as a building might in terms of
15 absorbing or blocking sound?

16 THE WITNESS: There are no studies that
17 I'm aware of for solar panels.

18 HEARING OFFICER TOUSLEY: Okay. Thank
19 you.

20 REDIRECT EXAMINATION CONTINUED

21 BY MS. HAYDEN:

22 Q. Can I just ask you a follow-up on that? You
23 make a statement about -- on page 4 about considerable
24 attenuation provided by -- potentially provided by the
25 solar arrays. Can you explain the difference between what

1 you mean by attenuation, and then the kind of absorbing
2 the noise discussion that you were just having with the
3 Hearing Officer?

4 A. Sure. So attenuation essentially just
5 describes noise that does not arrive at a receiver that
6 was generated somewhere else. And so that could be
7 accomplished through absorbing sound. It could be
8 accomplished through blocking sound.

9 Q. Okay.

10 A. But attenuation is just the general sense of
11 sound no longer arriving --

12 Q. Okay.

13 A. -- somewhere. So it could be absorbed by air.
14 It could be absorbed by the ground. It could be absorbed
15 by trees. It could be blocked by barriers or what have
16 you.

17 Q. Could it be redirected?

18 A. Yes. It could be reflected as well.

19 Q. Okay.

20 MS. HAYDEN: I have nothing further.

21 HEARING OFFICER TOUSLEY: Well so
22 reflecting on that, you know, you indicated there's
23 no studies that have been done, but what do you
24 think? You know, if you were to have the opportunity
25 to conduct a study, what do you think the results

1 might be?

2 THE WITNESS: I would certainly expect
3 the panels to create a form of a barrier, and that
4 their effectiveness as a barrier would most certainly
5 be a function of the orientation. So if you stood on
6 the side of them and looked down or you stood behind
7 the panels, that would be different. They are most
8 certainly going to scatter the sound. And any
9 reflections would create a longer path for the sound
10 to travel before it reached the receiver. So it
11 would in that sense also act as a barrier.

12 HEARING OFFICER TOUSLEY: And attenuate
13 the sound.

14 THE WITNESS: And attenuate or decrease
15 any received sound.

16 HEARING OFFICER TOUSLEY: Okay. Thank
17 you. Other questions?

18 RE CROSS EXAMINATION

19 BY MS. DINGLEDINE:

20 Q. The modeling that you did was based on what
21 configuration? The one that is in -- on the site plan
22 right now where the panels were squished together closer,
23 or was your sound study based on the original application?

24 A. No. Our study was based on the clearing area
25 in the existing application. And just to clarify, we did

1 not include any sort of structure or barrier to represent
2 the panels. They were represented by semi-porous ground
3 which is a ground absorption factor of 0.7 which is
4 extremely conservative.

5 Q. So when you were talking about sound
6 attenuation because this will act as some kind of barrier,
7 where does the sound go? Does it like fall off to the
8 side? Does it go up in the air?

9 A. It would reflect. And that's all dependent on
10 the angle from which the sound is approaching the barrier,
11 since the panels are angled. And if sound was coming
12 directly from, you know, in front of them, or from I guess
13 the south in this case, would be reflected up. If it was
14 coming from the east, it would be reflected straight into
15 the ground.

16 Q. And one other question, you were asked about
17 the last statement you made in that prefiled testimony
18 about a 3 dB increase in sound level is not considered
19 substantial by the Vermont Noise Analysis and Abatement
20 policy? What level is considered substantial?

21 A. I believe it's a 15 dB increase.

22 Q. Okay.

23 A. And that's specifically in the context of type
24 one highway projects.

25 Q. Okay. What about the construction noise? How

1 many decibels is that going to increase the ambient noise
2 during the construction phase with all of those heavy
3 equipment and chain saws and all that?

4 A. Yeah. I can't say we looked at how much it's
5 going to increase the ambient noise. What we did look at
6 was some general distances of residences from the
7 construction site. And if I remember correctly, the range
8 of at the closest tree-clearing boundary to a residence is
9 about 100 meters.

10 And at that range I think of the several types
11 of construction equipment that we modeled from trucks to
12 chain saws and chippers, I think the range, if I remember
13 correctly, was about 55 to 70 dBA.

14 Q. Okay. So significantly over the 15 dBA or dB?

15 A. Well that's a traffic -- they are different.
16 You're comparing apples to oranges. One is traffic noise.
17 One is a construction noise.

18 Q. Okay. Would you consider -- and you're
19 telling me that you didn't model for Chelsea or for Apple
20 Hill on construction. You're talking about your general
21 knowledge of this or -- or did you model construction
22 noise for this project or Apple Hill?

23 A. We were asked to look at it for this project
24 after we submitted this testimony.

25 Q. And were you not then asked to produce a

1 report based on your findings?

2 A. We were not. Because it was never asked about
3 in -- as far as I know -- in rebuttals and whatnot.

4 Q. Do you agree with me that it's the applicant's
5 duty to at least provide affirmative evidence on
6 aesthetics or sufficient evidence on air pollution with
7 regard to noise which should encompass all aspects of the
8 project?

9 A. I would say that's fair to say. I do think
10 there is a direct comparison that you could make to Apple
11 Hill in that we did not look at construction noise for
12 that. And so we didn't look at it for this project
13 because it was not specifically asked.

14 Q. So in your expert opinion, do you believe that
15 it would have been appropriate for you to have modeled
16 that information and then reported it to provide a
17 comprehensive and sound analysis that addresses either the
18 aesthetic or the air pollution criteria for noise?

19 A. I do personally think it should be included.
20 The caveat there is that we are talking about two
21 different types of noise impacts. Construction noise is a
22 temporary noise impact. That is something that's accepted
23 by our society to be able to make progress, and you know,
24 get past it.

25 What we considered for the project most

1 specifically was the lasting impact, what is the -- what
2 the noise will generate by the project and what the
3 overall impact on background sound levels will be.

4 Q. But fair to say that the construction of just
5 this project would take several months, and the proposed
6 time frame for the construction is Monday to Friday, 8 to
7 5. Other work at other times that isn't as noisy on
8 weekends, but it is a substantial amount of time that that
9 temporary, quote unquote, noise impact would exist times
10 two given the other project that you indicated would
11 double the time period probably for the construction noise
12 period?

13 A. Sure.

14 Q. Okay.

15 MS. DINGLELINE: That's all I have.

16 Thank you.

17 CONTINUED REDIRECT EXAMINATION

18 BY MS. HAYDEN:

19 Q. I do have a redirect. When did you prepare
20 this or undertake this analysis of the construction
21 impact, potential construction impact noise?

22 A. It would have been within the last month.

23 Q. Okay. And --

24 A. Maybe two.

25 Q. Okay. And have you worked on other projects

1 related to solar development?

2 A. Yes.

3 Q. And to your knowledge is the construction --
4 the type of construction equipment that's being considered
5 here and that you considered similar to that that was
6 involved with respect to other solar projects?

7 A. Yes, it was similar.

8 Q. And to your knowledge have those other solar
9 projects received Certificates of Public Good?

10 A. Yes.

11 Q. Okay. Thank you.

12 HEARING OFFICER TOUSLEY: Recross?

13 CONTINUED RE CROSS EXAMINATION

14 BY MS. DINGLEDINE:

15 Q. Despite the fact that you did the groundwork
16 you weren't asked to report on it; right?

17 A. I think the case was more that by the time we
18 completed the study it was too late to submit it. I do
19 believe that if we would been asked to do that in some
20 rebuttal from the interveners that it would have been
21 submitted with my rebuttal testimony, but we could not
22 specifically report that because it was not specifically
23 asked about.

24 Q. You would agree with me, though, that the
25 burden of proof for the applicant is the burden of proof

1 regardless of what somebody brings up on some kind of
2 rebuttal testimony or, you know, what they bring up as a
3 landowner in the area; correct?

4 MS. HAYDEN: I'm going to object. This
5 is getting into legal opinions.

6 HEARING OFFICER TOUSLEY: I'm going to
7 sustain the objection. You're asking his legal
8 opinion, what the quality of the burden of proof is.
9 I'm not sure that's within his area of expertise.

10 THE WITNESS: It is not.

11 HEARING OFFICER TOUSLEY: I'm going to
12 sustain the objection.

13 BY MS. DINGLEDINE:

14 Q. Okay. Then I'll just -- just so we are clear.
15 You believe that the noise impacts from the construction
16 should have been reported and provided to this tribunal in
17 order to provide a comprehensive and adequate study of all
18 of the noise impacts from this project, fair to say?

19 A. That is fair to say. But I will add that
20 having done that analysis, it does not change my
21 professional opinion on the matter.

22 Q. Well that -- we don't have any information
23 from you, because it wasn't submitted, to test that
24 theory, to understand what level of sound, how that impact
25 would actually be experienced by the people around there.

1 Fair to say?

2 A. Okay.

3 Q. Thank you.

4 CONTINUED REDIRECT EXAMINATION

5 BY MS. HAYDEN:

6 Q. And I believe just to redirect you, Mr. Haac,
7 you did say that you reported a number that -- in your
8 prior testimony. I think it was 55.

9 MS. DINGLEDINE: Objection. Leading.

10 BY MS. HAYDEN:

11 Q. You reported a number under oath in response
12 to questions from Ms. Dingledine; correct?

13 A. Just now?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And with respect to the other projects
17 that you've worked on, is a noise study for temporary
18 construction noise typically requested of you and
19 typically included in the record before the Public Utility
20 Commission?

21 A. I would say it has been. But typically it is
22 not.

23 Q. Okay. Thank you.

24 HEARING OFFICER TOUSLEY: Do parties
25 have any additional questions for this witness?

CONTINUED RECROSS EXAMINATION

1
2 BY MS. DINGLEDINE:

3 Q. Because they want to save money; fair to say?

4 MS. HAYDEN: Objection.

5 HEARING OFFICER TOUSLEY: Sustained.

6 Mr. Haac, I want to thank you for your testimony.

7 You're excused. It's now 10 minutes after 11. We
8 will take a break until 11:25.

9 (Recess was taken.)

10 HEARING OFFICER TOUSLEY: Okay. It's
11 now 11:25. And I think we are going to go ahead and
12 come back into session.

13 I note that Ms. Barton is on the stand.
14 And that she's been allotted 60 minutes, or that the
15 parties, the interveners, have been allotted 60
16 minutes for her cross examination.

17 I would like to take a lunch break at
18 the end of that period. So let's go for an hour or
19 so, and then we will take lunch.

20 MS. DINGLEDINE: Actually, Your Honor,
21 I think -- Your Honor, I think it will be much
22 shorter than that.

23 HEARING OFFICER TOUSLEY: Oh, okay.
24 Well then if it's shorter, then we will take lunch
25 after that.

1 MS. DINGLEDINE: Great. Thank you.

2 HEARING OFFICER TOUSLEY: And then have
3 Mr. Buscher in the afternoon.

4 Okay. With that, if we could introduce
5 the witness.

6 MS. HAYDEN: Good morning, Ms. Barton.
7 Can you please state your full name for the record?

8 MS. BARTON: Dori Barton.

9 MS. HAYDEN: And what is your
10 employment?

11 MS. BARTON: I'm -- I work with
12 Arrowwood Environmental.

13 MS. HAYDEN: Thank you.

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1 DORI BARTON

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 MS. HAYDEN: The witness is free to be
6 cross examined.

7 CROSS EXAMINATION

8 BY MS. DINGLEDINE:

9 Q. Hi, Ms. Barton. How are you?

10 A. Good morning.

11 Q. You're a wetlands scientist primarily; is that
12 right?

13 A. So my title is wetland ecologist which is
14 probably more descriptive of my passion. If you actually
15 look at my educational background and what I do on a daily
16 basis for my work, it's much broader than that and much
17 more multidisciplinary. But wetland ecologist is kind of
18 where I started and kind of where my love is.

19 Q. So the wildlife issues here there was -- you
20 provided some testimony originally that said that it
21 didn't appear that any bat studies were required or
22 necessary. That was in your original prefiled testimony.
23 You recall giving that opinion?

24 A. Right. That's when we were looking at
25 Chelsea Solar individually. And so then what -- I believe

1 it was the agency requested that we, as far as the
2 clearing is concerned, total that together when making an
3 assessment about whether additional bats surveys would be
4 required, and when you add the clearing for both projects
5 together, then the trigger is met.

6 And so that's why there was a difference in
7 opinion about what our next steps would be. When you
8 combine the projects together, then we exceed the amount
9 that doesn't require the acoustic surveys.

10 Q. Is that an acreage amount of clearing or --

11 A. It's funny. It's a percentage actually. If
12 you clear more than 1 percent of the forest of the
13 surrounding 1 square mile, so it's not an acreage because
14 the amount of forest in a square mile is variable. And so
15 we essentially have to identify all of the forested areas
16 within 1 square mile, and then we do a ratio essentially
17 of what the clearing is. And we figure out whether we are
18 above or below one percent.

19 Q. I see. And so you determined that it was .78
20 percent which is less than one percent or -- initially,
21 and that's why you determined it was not required at that
22 point?

23 A. That was just for Chelsea, right. When you
24 add Apple Hill in, you go above.

25 Q. Okay. So in terms of your experience on bat

1 surveys, let's just get right to the point. Have you had
2 any background or educational, you know, learning or
3 experience, any other courses outside of your normal
4 discipline in college, in terms of how to conduct surveys
5 of bats or birds or any of these kinds of wildlife?

6 A. So it was in 2015 that northern long-eared bat
7 was listed. It was federally listed. And shortly
8 thereafter the Department of Fish and Wildlife offered
9 training for consultants and, I believe foresters were
10 invited as well, that I attended. And it was essentially
11 running through, you know, the new world of bats, and in
12 terms of the acoustic surveys, what methodologies we would
13 use and kind of requirements related to that. And I
14 attended that. Others in my office attended that.

15 I believe actually the gentleman that we
16 subcontract the actual acoustic surveys was there. So you
17 know, with white-nose syndrome and recent developments
18 bats have certainly become a bigger part of our work and
19 our world, not necessarily so back in the '90s when I was
20 doing my master's work. But I've certainly, you know,
21 with many things, keep up with the trainings, and have,
22 you know, practical experience working with the folks that
23 conduct the surveys.

24 I haven't actually conducted an acoustic bat
25 survey using the equipment, but as project manager I have

1 for this project and for other projects, been in charge of
2 reviewing the work plans that get submitted and approved
3 to the State of Vermont, service contact person, and again
4 work with the folks that we have used. We have used Allen
5 such as this case. We have worked with Stantech before.
6 And, you know, managed that. It's a component of the
7 project.

8 But you know, I'm -- as the lead ecologist on
9 the scene I'm in charge of looking at how all the pieces
10 fit together as far as our resource assessment goes.

11 Q. As part of the materials that you provided
12 along with Mr. Thompson's CV, he seems to have some status
13 or certification for doing bat surveys. Is that what I'm
14 looking at from the Agency of Natural Resources?

15 MR. TOUSLEY: What are you looking at?

16 MS. DINGLEEDINE: It's in -- it's Mr.
17 Thompson's resume that's Exhibit CS-DB-5. Resume of
18 Allen Thompson.

19 THE WITNESS: Is that the one page?

20 BY MS. DINGLEEDINE:

21 Q. It's one page and then there are two -- there
22 are some other papers after that --

23 A. Right.

24 Q. -- that show notification of eligibility
25 status. It says in the middle of the page, comments:

1 Allen Thompson meets all eligibility requirements for
2 conducting threatened and endangered bat surveys in the
3 State of Vermont. And then it has an eligibility status
4 period from 2017 to 2022.

5 Is that what I'm looking at? Like ANR -- he
6 went through some training with them and they gave him a
7 thumbs up that he was certified to do these kinds of
8 studies?

9 A. The permit that you're looking at is something
10 we actually acquire them -- we don't have one for doing
11 bat surveys. But we have one for doing rare plant
12 surveys. And so because the nature of the work is such
13 that we are dealing with threatened and endangered,
14 federally-listed species sometimes, the folks that obtain
15 these permits essentially have the approval to do their
16 work without violating the rules and regulations of
17 federal guidelines.

18 So it's similar to a takings permit for the
19 rare plants. Sometimes our biologists may need to take a
20 sample of a plant for identification purposes. But the
21 average person who doesn't have this permit cannot just
22 walk out and take a sample. And so it's a requirement to
23 do the work that -- for the bat surveys. Now to your
24 question about his qualifications, I'm certain that that
25 plays into the obtaining this permit.

1 Q. Okay. So to do one of these surveys ANR needs
2 to issue a permit to allow someone to do it in a specific
3 location or property or what have you?

4 A. Well so the way this works, this is giving him
5 authorization for a period of time to conduct the surveys.
6 But so --

7 Q. But it's not site specific?

8 A. It's not site specific. No. Site specific,
9 when you go site specific, we provide work plans for
10 approval for the specific project. And so those go into
11 Fish & Wildlife. So there was a work plan for this
12 project, site specific.

13 Q. And because he has this credential during this
14 time frame, he can apply to do that site-specific work; is
15 that accurate?

16 A. We are not actually applying to do the work.
17 We are getting the work authorized. I mean we certainly
18 want to have the work plan almost getting a stamp of
19 approval. So when we are in this proceeding, we all know
20 that the work was done properly per the guidelines to
21 conduct those acoustic surveys. And so the work plan is
22 submitted for review and approval by Fish and Wildlife.

23 Q. Okay. Do you have this similar type of
24 eligibility status approval for any kind of bat surveying?

25 A. To do this for the acoustic bat surveys, no.

1 That's what we subcontract with Allen.

2 Q. Okay. Okay. On page 4 of your rebuttal
3 testimony you said that the bat survey was conducted under
4 your supervision by Mr. Thompson. And you said the
5 results of the survey will be filed with ANR prior to
6 August 31, 2018 in compliance with the MOU you have with
7 them.

8 Has that -- have the results of that survey
9 been introduced into this proceeding as evidence, or was
10 it just sent to ANR?

11 A. It was sent to ANR. There was a preliminary
12 report that was filed. And then the final report which
13 supported the -- there was no change in the results. It
14 was, I guess by comparison, you could think of a memo
15 versus a report. And honestly, I don't know whether that
16 final report has been filed. ANR has it.

17 Q. My recollection was, you know, I saw that and
18 then I went through trying to find the survey if it was,
19 you know, the final report. And I didn't see it in any of
20 the materials. But I'm very new to this case, so I was
21 just trying to figure out if that ever got done, submitted
22 or put into evidence here.

23 So to your knowledge ANR may or may not have
24 gotten it, but it's not part of the record here?

25 A. I believe that ANR confirmed that they

1 received it. And but as far as this proceeding, I guess I
2 would have to defer to folks that know. I don't know how
3 that works. But I guess I don't know.

4 Q. Whose job would it have been to send it to ANR
5 pursuant to the MOU? If you know? Once that final
6 results were completed?

7 A. Who is legally responsible? I mean we sent
8 it.

9 Q. I mean in terms of your group, was it the
10 subcontractor Thompson?

11 A. No. We sent -- Arrowwood sent it. No. The
12 way that works is I review the materials, and then we
13 forward to the appropriate folks.

14 Q. I just have two quick questions about the
15 actual reporting on this or determination on this. There
16 was a bat call classified as from tri-colored bats which
17 was assigned to little brown or red bats based on what was
18 referred to as visual examination. Is visual examination
19 a sufficient standard by which to conclude the
20 classification, or are the calls analyzed in some other
21 method?

22 A. Well so that's essentially a three-step
23 process. There is the course field serve that is applied
24 on the front end to determine probable species and
25 looking at frequencies.

1 And then the next step is to feed the calls
2 into software. And then Kaleidoscope characterizes the
3 calls. And then the analyst -- at this point this would
4 be Allen, will periodically verify if he feels there is a
5 problem with Kaleidoscope, the output from Kaleidoscope,
6 or if he feels that he wants to just confirm what
7 Kaleidoscope did.

8 Or if we are dealing with rare, threatened and
9 endangered species which obviously has a higher level of
10 significance for the outcome, he may decide. So in this
11 case it was more the latter, that he went through an
12 additional step, which is actually he, the analyst,
13 looking at the -- reviewing the call signature through
14 SonoBat, which is another software program.

15 And I think if you look at the report you'll
16 see the pictures in the back, and that's what he's
17 referring to. Because the call of the different species
18 has a different fingerprint. And you can -- by looking at
19 that visually, that's what the visual is. You can
20 sometimes, if there is a problem with Kaleidoscope, you
21 can detect that.

22 Q. How do you know if there is a problem with
23 Kaleidoscope to go further and verify it through some
24 other means? You said so if he felt there were problems.

25 A. In this case it wasn't a problem. It was more

1 that he was verifying, which I think as a scientist,
2 that's a good step to verify before eliminating options.
3 And I think he actually re -- he reclassified and
4 identified little brown bat which has a higher level of
5 protection than what Kaleidescope had indicated.

6 Q. So the statistical results of the maximum
7 likelihood analysis are predictions, they are not fact.
8 Fair to say in terms of interpretation using Kaleidescope
9 Pro?

10 A. It is a software program. So, you know, it's
11 a statistical probability analysis.

12 Q. Okay. And then in terms of SonoBat, do you
13 believe that's an acceptable alternative method of
14 verification?

15 A. It's an additional method. And I mean that's
16 the -- if you go to the U.S. Fish & Wildlife, you know,
17 procedures and protocols, that is an acceptable means for
18 verification.

19 Q. Okay.

20 A. And all of that was, you know, has been
21 reviewed with ANR, with their bat experts. And that's the
22 protocol that's followed.

23 Q. Was there some reason why the results from the
24 SonoBat process were not provided with the reporting on
25 this?

1 A. Well they are in the report. But I don't know
2 if you have the report, I guess.

3 Q. Good question.

4 A. And you said you were new yesterday, so I'm
5 not sure.

6 Q. Well I got the prefiled testimony and Mr.
7 Thompson's report from it looks like July 26. Does that
8 sound like the final report?

9 A. That sounds like the preliminary -- where the
10 results were presented, but that doesn't sound like the
11 full report.

12 Q. That's Exhibit CS-DB-6. Preliminary results
13 report. So I just didn't see anything provided beyond
14 that preliminary analysis. And there was that notation
15 that there was supposed to be the final report by August
16 31. So I just had not seen that report. So I guess we
17 need to figure out if that's in evidence or not.

18 So to your recollection was there any
19 significant difference between the preliminary versus the
20 final report?

21 A. No. There was no difference in the findings.
22 The final report it was more of a documentation of
23 methodology and calibration and all, you know, it was just
24 a thorough detailing. The preliminary was a summary of
25 the results. But the results did not change.

1 Q. So would you agree with me that it's difficult
2 for someone other than you folks and ANR to consider the
3 actual methodology without seeing that final report?

4 MS. HAYDEN: I'm going to object. I
5 don't think this is in the nature of her -- of
6 questioning her on her report or the analysis that
7 was done. It's really -- I think Ms. Dingledine is
8 getting to the question of whether that report should
9 have been filed.

10 It was provided to the agency per the
11 stipulation. The parties have had opportunity to
12 request that. The Petitioner has no problem
13 supplementing the record with the final report
14 results. But it was not requested by any party. And
15 this testimony was filed on August 10th indicating
16 that the results would be sent to the Agency of
17 Natural Resources per the stipulation. So this
18 implication, I think --

19 HEARING OFFICER TOUSLEY: I understand.

20 MS. HAYDEN: I think is that the
21 Petitioner --

22 HEARING OFFICER TOUSLEY: I'm going to
23 ask Ms. Barton a question.

24 Ms. Barton, is it your understanding
25 that the Petitioner has satisfied the requirement of

1 the MOU to conduct a study in the summer of 2018?

2 THE WITNESS: Yes.

3 HEARING OFFICER TOUSLEY: Okay. And
4 that report is available, the final report to your
5 knowledge is available?

6 THE WITNESS: Yes.

7 HEARING OFFICER TOUSLEY: Okay. Is
8 that something that you want, Ms. Dingledine?

9 MS. DINGLEDINE: Yes. Because I think
10 that we are entitled to see that and cross examine
11 the witness on it.

12 HEARING OFFICER TOUSLEY: Recognizing
13 that ANR has accepted it as satisfying its
14 requirement and its stipulation.

15 MS. HAYDEN: I would also interject, if
16 I may, that it has been over 30 days this testimony
17 was filed. If -- not only was there discovery and an
18 opportunity for discovery, but if there is a
19 objection, that the level of testimony was
20 incomplete, it should have been made.

21 What I'm concerned about is we do not
22 want to have an extension --

23 HEARING OFFICER TOUSLEY: I understand.

24 MS. HAYDEN: -- of this proceeding
25 because this party had failed to request and follow

1 up.

2 MS. DINGLELINE: I don't understand why
3 we have to request a piece of evidence that is being,
4 you know, given from one party to another when
5 everyone is supposed to know about this and have
6 access to all the information.

7 You have an ePUC thing now. You're
8 supposed to be able to go on there, see everything
9 that's been filed in the case. I don't understand
10 why it's my clients' burden 20 days after something
11 was supposed to be sent to ANR and nobody cares about
12 sharing that information with all the parties who
13 have standing on this very criteria. You know, and
14 then we have to listen -- well I'll stop.

15 MS. HAYDEN: If I may, there are many
16 instances where there is follow-up work that's done
17 by the parties under stipulation, follow-up work on
18 aesthetics. There is follow-up work with respect to
19 historic sites, and reporting to the various agencies
20 that supervise those resources. And this is very
21 much in the nature of that.

22 HEARING OFFICER TOUSLEY: I'm trying to
23 remember. What was the date that the ANR MOU was
24 filed?

25 MS. HAYDEN: ANR MOU. That was June

1 20, 2018.

2 HEARING OFFICER TOUSLEY: And Exhibit
3 CS-DB-6, the preliminary was filed?

4 MS. HAYDEN: August 10th.

5 HEARING OFFICER TOUSLEY: Okay. And we
6 have been in active discovery until just this last
7 week. So I would suggest that the interveners, like
8 all the parties, had the opportunity to inquire of
9 ANR or of the Petitioner as to whether or not that --
10 that condition in the stipulation had been achieved.

11 MS. HAYDEN: And I want to --

12 MS. DINGLELINE: Hang on just a minute.
13 The timing on this, they just said that they
14 submitted this in what date? The final report to
15 ANR? Pursuant to the MOU was in June or July?

16 MS. HAYDEN: No, no. The stipulation
17 with the agency was filed in ePUC in July.

18 MS. DINGLELINE: So when was the final
19 report sent to ANR?

20 MS. HAYDEN: The witness has answered
21 that. That was recently -- around -- the testimony
22 said August 31. Do you recall the specific date?

23 THE WITNESS: I don't. I don't know
24 exactly the date.

25 MS. HAYDEN: I do know that it was

1 after the rebuttal testimony deadline for the
2 Petitioner. And the Petitioner disclosed that this
3 was -- that the preliminary results were provided.
4 She's already testified that the final report doesn't
5 change anything. And your clients had the
6 opportunity to request it. We have been very up
7 front about this.

8 And I will say we have no problem
9 filing that as a record request or however the
10 Hearing Officer would like to have it. You know.

11 HEARING OFFICER TOUSLEY: I would
12 suggest go ahead, Ms. Dingleline. You appear to have
13 a question in mind.

14 MS. DINGLELINE: Well it's just really
15 troubling. I mean this is a secret thing going on
16 that my clients who are pro se's, they don't know
17 what's going on. We read this thing where we get
18 something on August 10th.

19 HEARING OFFICER TOUSLEY: Is there a
20 question, Ms. Dingleline?

21 MS. DINGLELINE: Yes. August 10th we
22 get this preliminary thing. And it says August 31
23 there is going to be a final report. It's 20 days
24 later. It's been -- gone from one party to the
25 other, and we have been left out in the cold. That

1 to me suggests that I don't understand why that
2 happened. But why is it my clients' burden to go
3 chasing after something when people are, you know,
4 giving evidence to one another that is referred to in
5 prefiled testimony, says that it's going to be
6 submitted by a certain date, and then nobody ever
7 gives it to us. That's my concern. I don't
8 understand.

9 HEARING OFFICER TOUSLEY: I understand.
10 Thank you. Are there additional questions for Ms.
11 Barton?

12 MS. HAYDEN: I have none.

13 MS. DINGLELINE: Just one moment,
14 please. Just for purposes of the record, I am
15 maintaining an objection to Mr. Thompson's reporting,
16 his prefiled testimony. It is hearsay the way that
17 it's been introduced through Ms. Barton.

18 No disrespect meant to Ms. Barton. I
19 understand she is a very accomplished scientist, but
20 not in this particular area of expertise. She
21 doesn't have the same certification nor has she ever
22 conducted bat surveys. While there may have been
23 some supervision, we do not think that the hearsay
24 rules should permit folks to not come and actually be
25 cross examined to be able to answer questions on the

1 actual survey.

2 MS. HAYDEN: The Hearing Officer has
3 already admitted this evidence into the record. The
4 request -- the motion was not made in writing in
5 advance. I can walk through the hearsay rule
6 exceptions, but I just don't think it's necessary.

7 HEARING OFFICER TOUSLEY: I also note
8 this is an administrative hearing and not a civil
9 court. And we have the option in administrative
10 hearing to accept a certain amount of hearsay. So
11 I'm going to -- I note your objection. Thank you.

12 MS. DINGLELINE: Thank you. That's all
13 I have.

14 HEARING OFFICER TOUSLEY: I just want
15 to -- I think I did ask this question, but I want to
16 make sure I ask it again to make sure I don't have to
17 do some more work.

18 Does -- so it's your understanding, Ms.
19 Barton, that the Petitioner has met the requirements
20 of the stipulation or of the ANR MOU at paragraph 2-C
21 which is the one that says do the test during the
22 summertime.

23 THE WITNESS: Yes, the test was
24 conducted in July.

25 HEARING OFFICER TOUSLEY: So I don't

1 have to write a condition in any CPG in this case
2 that requires it.

3 THE WITNESS: No.

4 HEARING OFFICER TOUSLEY: Okay. Thank
5 you. Thank you for your testimony. You may step
6 down. It's now ten minutes to 12. We'll take a
7 one-hour break until ten minutes before 1 o'clock.
8 Thank you.

9 (Recess was taken.)

10 HEARING OFFICER TOUSLEY: Okay. It's
11 now 12:55. We will go back on the record. I see Mr.
12 Buscher prepared to give testimony. If you could
13 introduce your witness, please.

14 MS. HAYDEN: Good afternoon, Mr.
15 Buscher. Can you please state your full name for the
16 record?

17 MR. BUSCHER: My name is Michael J.
18 Buscher.

19 MS. HAYDEN: And what is your
20 occupation?

21 MR. BUSCHER: I am a landscape
22 architect, land planner with T.J. Boyle Associates.

1 MICHAEL J. BUSCHER

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 HEARING OFFICER TOUSLEY: Thank you.

6 MS. HAYDEN: The witness is free to be
7 cross examined.

8 CROSS EXAMINATION

9 BY MS. DINGLEDINE:

10 Q. Mr. Buscher, is that how you pronounce it?

11 A. Buscher.

12 Q. Buscher. I wanted to start off by asking you
13 about the opaque mesh screening that you referred to on
14 page 2 of your report that's dated August 9, 2018. You
15 indicated that certain portions of the fence would be
16 covered with a partially opaque mesh screening. What
17 portions were you referring to?

18 A. To the best of my knowledge, these portions
19 haven't been specifically identified. That the opaque
20 mesh screening was proposed by the Petitioner and Mark
21 Kane as the original main aesthetic consultant for the
22 Petitioner in attempting to anticipate certain mitigation
23 elements that could help the project.

24 Q. Okay. So you don't know whether it's going to
25 be on the entire fence or just different areas of the

1 fence?

2 A. My understanding is the intention was not for
3 it to be around the entire fence, and that the Applicant
4 or the Petitioner is willing, based on a potential post-
5 construction review, to evaluate where and if that's one
6 of the better applications of mitigation treatment.

7 Q. All right. So what you're saying is we don't
8 know yet, and we are going to figure it out later, fair to
9 say?

10 A. My understanding is that the Petitioner made
11 several attempts to do outreach with adjoining property
12 owners.

13 Q. Excuse me.

14 MS. DINGLELINE: Can I ask that the
15 witness be instructed to answer the question? I'm
16 not asking him about what he understands about
17 conversations between the Petitioner and other people
18 that live there.

19 MS. HAYDEN: He's just answering --
20 he's trying to answer the question and put it in
21 context.

22 HEARING OFFICER TOUSLEY: Please re-ask
23 the question.

24 MS. DINGLELINE: Can you read it back
25 from the record?

1 (The record was read as requested)

2 HEARING OFFICER TOUSLEY: Do you have
3 an answer?

4 THE WITNESS: My understanding is that
5 the specific locations for the mesh -- opaque mesh
6 screening -- has not been finalized or specifically
7 identified.

8 BY MS. DINGLEDINE:

9 Q. Does your aesthetic analysis incorporate the
10 notion that this opaque mesh screening will or will not be
11 affixed to the fence around the project?

12 A. It has taken the possibility of that mesh
13 being possibly part of the project.

14 Q. I don't understand how you can give an opinion
15 about something that possibly might or might not happen.
16 Either it is going to happen, or it isn't going to happen,
17 right?

18 A. Well I can think of it in two different ways.
19 But more overall, my assessment is that the project has
20 very limited visibility, and therefore, the opaque mesh
21 would have, to some degree, limited impact on overall
22 assessment of the project.

23 Q. And whatever impact that you believe that that
24 mesh fabric will have in terms of visibility of the fence
25 line, is it your contention that the mesh mitigates or

1 exacerbates the visibility of the fence?

2 A. I think it's going to be specific to the
3 situation in which you're looking at the project where the
4 mesh would be incorporated. Again, I think it is -- my
5 understanding from the Petitioner is that it was an
6 attempt to look at potential mitigation that could or
7 could not be implemented.

8 Q. Well I guess that's sort of the question I'm
9 asking. Is this or is this not a mitigation? Or the
10 other way to ask the question is, is this going to make it
11 more visible from whatever vantage points, would this
12 black mesh fabric make it easier or harder to see the
13 fence?

14 A. So as a general rule of thumb, black is
15 actually a fairly suitable color to incorporate into the
16 landscape. It disappears quite easily. Where opposed to
17 a white house or a white picket fence is a very apparent
18 element in the landscape. So depending on the situation,
19 I think you could have a different result.

20 If it's put behind a buffer of vegetation
21 where there is some very limited windows that you prefer
22 to further screen the actual elements within the project,
23 I think that could be very successful, if it's an open
24 landscape, an open view, and the mesh could actually make
25 the fence more apparent.

1 Q. Okay. So which is it here? You're talking in
2 theoretical terms. We are talking about a project that
3 you claim to have an opinion about, and I'm trying to find
4 out on this project, Chelsea Solar, in the location that
5 now it's been revamped at, is it going to make it more or
6 less visible? And if that's a multi-part answer, then
7 from what vantage points will it make it more visible, and
8 from what vantage points will it make it less visible?

9 A. So my understanding from the Petitioner is
10 that views would be assessed post construction. And where
11 a mesh would make the project more visible, the mesh
12 wouldn't be used. Where the mesh could be helpful in
13 screening the project, it would be used. So therefore it
14 would make the project -- it would help mitigate the
15 visual impact of the project, if necessary.

16 Q. So in other words, you don't know, isn't that
17 fair to say?

18 A. I would disagree with that.

19 Q. Well you have conceded in your answer --

20 HEARING OFFICER TOUSLEY: Just so I'm
21 clear, the potential mitigating value of the mesh
22 screen, you indicated that it has a value in hiding a
23 project if it's behind vegetation.

24 THE WITNESS: Correct.

25 HEARING OFFICER TOUSLEY: But if it was

1 in an open field, it wouldn't.

2 THE WITNESS: I think that -- my
3 feeling is that it could increase the visibility of
4 the fence, whereas increasing the visibility of the
5 fence might not be in the overall benefit to --
6 because it might create actually more visibility.

7 HEARING OFFICER TOUSLEY: In an open
8 field.

9 THE WITNESS: Yes.

10 HEARING OFFICER TOUSLEY: But in a
11 wooded setting, it would look like it would help the
12 project hide in the shadows of the forest?

13 THE WITNESS: Correct. So for example,
14 when there's a buddy neighbor to the north that's
15 separated by a fairly good amount of existing woods,
16 but there are a few windows in this woods. So where
17 they would have some very filtered views to the rear
18 of the racks, of the racking systems, in that type of
19 a situation, I would see it as being beneficial.

20 HEARING OFFICER TOUSLEY: So I'm
21 picturing the layout of the project from north to
22 south and the proposed buffering around the edges.
23 There is extensive buffering to the north, and
24 extensive buffering on the highway side, so that's to
25 the west. As well as there is trees -- a pretty

1 extensive layer of trees to the south.

2 I guess it would be the western edge
3 that may or may not benefit from the fence; the mesh.

4 THE WITNESS: That's correct. That
5 would be my assumption.

6 HEARING OFFICER TOUSLEY: Okay.
7 Thanks.

8 MS. DINGLELINE: I have to object to
9 those questions on the record because they are
10 leading, and they are suggesting an answer to the
11 witness. I don't know whether you can sustain or
12 overrule an objection that you --

13 HEARING OFFICER TOUSLEY: Observed.

14 MS. DINGLELINE: -- of the question you
15 asked, so I'm just putting it on the record.

16 BY MS. DINGLELINE:

17 Q. What color mesh would you suggest on the
18 western portion, where the wooded area is, to mitigate?

19 A. I would suggest that any potential visibility
20 be assessed after the project is constructed.

21 Q. So in other words --

22 A. I'm sorry. Can I finish my answer? Post-
23 construction visits to review the effectiveness of
24 mitigation is a common practice with projects in Vermont.
25 It's a common requirement within the PUC proceedings.

1 That would be my recommendation.

2 Q. Just because it's a common project -- common
3 practice, doesn't mean it's a good practice. So --

4 HEARING OFFICER TOUSLEY: It's also a
5 commission rule too. Commission rule 5.800 refers to
6 the requirements for maintenance of -- installation
7 and maintenance of aesthetic mitigation projects.
8 And it addresses -- and I would suggest that the --
9 to the degree that it's relevant in this case, that
10 the parties reexamine 5.800 because it is a standard
11 now for the commission.

12 MS. DINGLELINE: Right. But it doesn't
13 eliminate the obligation on the part of the Applicant
14 to prove that this is mitigating measure that is
15 reasonable under the Quechee analysis.

16 BY MS. DINGLELINE:

17 Q. Mr. -- I'm sorry -- I forgot how to say your
18 name again.

19 A. Buscher.

20 Q. Could you turn to your simulation showing the
21 -- it's Appendix C, simulation number 2, sheet 3. If you
22 could turn to that, please. And that's showing the east
23 side.

24 MS. HAYDEN: Which simulation, Brooke?

25 MS. BLOCK: Simulation 2, sheet 3, I

1 think.

2 MS. DINGLEDINE: Let me ask it this
3 way.

4 BY MS. DINGLEDINE:

5 Q. Do you have a picture of a simulation or any
6 kind of photograph showing the fence and what it will look
7 like?

8 A. Do we have a simulation that shows the
9 proposed project fence? I just want to clarify the
10 question.

11 Q. Right. I believe from the east where you can
12 see the Bennington monument in the distance to the left of
13 center.

14 A. So simulation 2. Northeastern property line
15 does illustrate the proposed fence on the eastern portion
16 of the project.

17 Q. Okay. So this is showing this black fence, if
18 I'm looking at the same thing you are, that is where you
19 see grass in the foreground, and then you see a black
20 fence. And then there are trees to left and right and
21 beyond the fence.

22 A. That's correct.

23 Q. Okay. So how is it that that black mesh fence
24 is screened and not visible from that viewpoint?

25 A. Could you please clarify the question?

1 Q. Would you agree with me that it's highly
2 visible in this photograph?

3 A. Can you specify what you're referring to as
4 highly visible?

5 Q. Can you see it?

6 A. What are you asking?

7 HEARING OFFICER TOUSLEY: I think it's
8 the last photo in simulation 2 in the series of
9 photos just between the simulation 3 photo in Exhibit
10 CS-MB-5.

11 THE WITNESS: So I will clarify what my
12 question back to you is. I'm unsure whether you're
13 asking me is the fence visible, is the mesh visible.
14 I'm not specifically understanding what you are
15 asking me.

16 BY MS. DINGLEDINE:

17 Q. Do you think this is a fair and accurate
18 representation of what the fence with mesh on it will look
19 like from the viewpoint in Exhibit 2 sheet 3 of 3 in
20 CS-MB-4 --

21 MS. HAYDEN: MS.

22 BY MS. DINGLEDINE:

23 Q. MS-4. Sorry.

24 A. If you refer to sheet 1 of simulation 2.
25 There is 3 columns of texts. Under the third column under

1 sheet information under sheet 3, that notes simulated
2 conditions without mitigation. So the mesh has not been
3 incorporated to the best of my understanding.

4 These simulations are not personally created
5 by me but under my direction, to the best of my
6 understanding. I can clarify that, if I can have a
7 second, that the mesh is not incorporated with the
8 simulation.

9 Q. If I may approach the witness. I just want to
10 make sure we are looking at the same photograph. Because
11 I don't understand that answer. Would that be okay?

12 HEARING OFFICER TOUSLEY: Why don't you
13 just hold it up. Is that what you're -- that's the
14 same thing you're looking at; right?

15 THE WITNESS: That is correct.

16 BY MS. DINGLEDINE:

17 Q. Okay. And so what looks to me like a black
18 fence that goes along here --

19 A. Yes.

20 Q. -- is that with or without mesh?

21 A. That is without the specific opaque mesh. So
22 it incorporates the black chain link fencing.

23 Q. Oh, so it's a black chain link fence, not
24 silver like we normally see around a school or something?

25 A. That's correct.

1 Q. Okay. So this appears dark black to me. Do
2 you agree?

3 A. I believe that this appears somewhat opaque.
4 There are certain limitations into the modeling software
5 that we use. It is pretty accurate, but there is some
6 reasonable margin of error in how the software models that
7 type of a final textured material.

8 Q. So what location are we viewing this picture
9 from, this view from?

10 A. If you refer to sheet 1 of the simulation,
11 there are specific viewpoint information coordinates
12 provided. But generally this is from the northeastern
13 property line of the orchard property.

14 Q. Okay. So like Libby Harris would see this
15 kind of view at her house?

16 A. Yes, it is, I believe, within the line of
17 sight from Ms. Harris's property.

18 Q. Okay. So in other words, we are going to see
19 a fence, any trees going to block that? Be planted? Is
20 she going to be looking at this fence that's black and
21 possibly will have even blacker mesh on it?

22 A. So where this -- I'm trying to find the note.
23 I thought there was a note on this simulation. Wait a
24 second.

25 There is a note -- we talk about the

1 mitigation. So this does not incorporate the mitigation.
2 If the mitigation was incorporated in the simulation, we
3 would be looking at a wall of vegetation. Because we are
4 standing literally immediately to the north of where the
5 proposed mitigation on the plans issued by S.E. Group is
6 located.

7 Q. So these simulations are useless then because
8 they don't show the plantings that are going to be there,
9 so we really can't assess from this how much of the fence
10 is going to be visible, fair to say?

11 A. That is not fair to say. So when we do our
12 analysis of a project, we first look at it without any
13 mitigation because we -- without doing that type of
14 analysis, we wouldn't properly understand what type of
15 mitigation would be adequate or be effective to help
16 screen the project.

17 Q. Are you familiar with the town plan provision
18 regarding screening mitigation in terms of earth tone
19 colors?

20 A. I would prefer to see the text specifically
21 that you're --

22 HEARING OFFICER TOUSLEY: Which town
23 plan are you referring to?

24 MS. DINGLELINE: The one that applies
25 to this case. The 2010 one. I understand that

1 that's the one that was --

2 HEARING OFFICER TOUSLEY: Okay. Well
3 that's the answer to the question. Thank you.

4 THE WITNESS: Could you refer me to the
5 exhibit?

6 BY MS. DINGLEDINE:

7 Q. Let me ask you this. Black is not an earth
8 tone. You agree?

9 A. I couldn't say with specificity whether it is
10 or is not considered an earth tone.

11 Q. What is it? I thought you were a landscape
12 architect.

13 A. Not a specialist in colors.

14 Q. Okay. Ever Googled what earth tones are to
15 find out?

16 A. My general impression is earth tones are --
17 vary from a lighter to darker tone that usually don't
18 incorporate brighter pigments.

19 Q. Lighter and darker tones of what color?

20 A. It could be brown, it could be gray.

21 Q. But not black?

22 A. Black is a darker tone of gray.

23 Q. There was some discussion between the
24 Petitioner and the neighbors regarding the idea that the
25 black mesh could be changed to a different color, a green

1 or earth tone color. Are you familiar with the different
2 shades of mesh opaque material that is affixed to these
3 fences?

4 A. I am not specifically knowledgeable on precise
5 colors, but I would imagine that you could get mesh in
6 different colors.

7 Q. Okay. So have you ever seen the black mesh in
8 person?

9 A. I've witnessed SOLARSCRIM on the back of other
10 projects, and that's typically a black mesh. And if I'm
11 not mistaken, this might even be specifically SOLARSCRIM
12 which is a product sold to screen and also protect the
13 rear of racking systems and ground-installed solar
14 projects.

15 Q. Okay. So you're familiar with the black color
16 of that product?

17 A. Yes.

18 Q. Are you familiar with the green color of that
19 product?

20 A. Not specifically for solar projects. I can
21 think of green mesh that, for instance, is on -- I've seen
22 it on the side of chain link fences of tennis courts.

23 Q. Like bright green or a Master's green?

24 A. Hunter green.

25 Q. Is that what you're talking about?

1 A. Hunter green, forest green.

2 Q. Okay. So these were samples that were given
3 to the neighbors from the Petitioner. Can you tell me
4 what colors that they are?

5 A. The one on the right appears to be a very dark
6 green, and the one on the left appears to be black.

7 Q. And would you characterize either of these as
8 earth tones? Well I guess you don't know what earth tones
9 are. Never mind. I'll withdraw that question.

10 Okay. Would you agree with me that the
11 proposed distribution lines will be a new element in the
12 landscape?

13 A. There are portions of the proposed
14 distribution line where there is not an existing
15 distribution line.

16 Q. So it's a new element in the landscape?

17 A. There are other distribution lines within the
18 landscape. So there is portions of a distribution line
19 that will be installed where there currently is not a
20 distribution line.

21 Q. And what about where there isn't currently a
22 distribution line? Would that be a new element to the
23 landscape or not?

24 A. I believe I just answered that.

25 Q. You said where they already exist it wouldn't

1 be new.

2 A. I believe my answer was that there are
3 portions of the line that will be installed where there is
4 not an existing distribution line.

5 Q. And that would be a new element in the
6 landscape, yes or no?

7 HEARING OFFICER TOUSLEY: Which
8 landscape are you referring to? The landscape at
9 which the new distribution line is going to be
10 installed, or the overall landscape of the project
11 site?

12 BY MS. DINGLEDINE:

13 Q. Well let's go to page 10 of your orderly
14 development -- aesthetic and orderly development analysis
15 report because that's where that language exists, and we
16 can figure out from you the answer to that question.

17 A. Sure.

18 Q. And that's the August 9, 2018 report. If I
19 can find it.

20 HEARING OFFICER TOUSLEY: Are you
21 referring to Exhibit CS-MB-2?

22 MS. DINGLEDINE: It's just after the
23 CV. Let's see. Yes, CS-BW-24? I'm sorry. I'm not
24 sure what the number is.

25 MS. HAYDEN: I think it's -- I think

1 it's CS -- he only has two -- well it's MB-2. Is the
2 report.

3 MS. DINGLEEDINE: Is that the one right
4 after the Resume?

5 MS. HAYDEN: Yeah.

6 MS. DINGLEEDINE: Okay. Thank you.

7 BY MS. DINGLEEDINE:

8 Q. Yeah. The August 9 report. Could you say
9 again what the number was?

10 MS. HAYDEN: CS-MB-2.

11 MS. DINGLEEDINE: 2. Okay.

12 BY MS. DINGLEEDINE:

13 Q. So page 10 of that report.

14 MS. HAYDEN: Is there a question?

15 MS. DINGLEEDINE: I'm wondering if he's
16 on page 10.

17 THE WITNESS: Yes, I am. I'm sorry.

18 BY MS. DINGLEEDINE:

19 Q. Do you talk on page 10 about the distribution
20 lines being a new element or not in the landscape?

21 A. I think if you read the second paragraph on
22 page 10, there is -- so travelers moving northbound would
23 have visibility of the proposed distribution line and
24 structures as they proceed along Willow Road. So there
25 will be visibility of the new distribution line where

1 there currently is not distribution line.

2 Q. Okay. So is that introducing a new element
3 into the place where it is being erected?

4 A. Yes. You can consider it that.

5 Q. And so would you consider that a new element
6 in the landscape?

7 A. Sure.

8 Q. Okay. You also indicated that the new poles
9 will be substantially screened at some locations. Could
10 you specify what locations will be screened and which ones
11 will not be screened?

12 A. So there is sections of Willow Road that are
13 immediately adjacent to Route 7 that has very minimal
14 screening, so at that location the poles will be visible.
15 And as the road proceeds up a hill, there is existing
16 vegetation that will screen the poles. Further to the
17 east there is more existing vegetation that will screen
18 the poles when travelers going eastbound or westbound are
19 approaching this area.

20 Q. Okay. A question about what written standards
21 apply to this project under the Quechee analysis. And I'd
22 like to read you a statement from page 3 of Daniel Monks'
23 prefiled direct testimony that was dated June 22, 2018. I
24 want to see if you agree with his statement.

25 First, would you agree with me that the

1 provisions that were contained in the 2010 town plan that
2 is applicable to this proceeding, do you -- well let me
3 strike that.

4 Did you review the 2015 town plan as well as
5 the 2010 town plan?

6 A. No, I did not.

7 Q. So the only town plan you've looked at is
8 2010?

9 A. That is correct.

10 Q. Okay. Would you agree with me that in
11 addition to the town plan, that the town's Scenic Resource
12 Inventory is applicable to this project?

13 A. Uncertain in what specific way you mean. Is
14 it a valid document for this project? Is that what you're
15 asking?

16 Q. Well the exhibit for that inventory is
17 CS-BW-24 which I understand is a document that you relied
18 on?

19 A. Yes. So it was -- it's a document that was
20 adopted and reviewable and we considered in our assessment
21 of the project.

22 Q. Okay. So when Mr. Monks testified in his
23 prefiled testimony that there were other municipal
24 provisions that were applicable to this project and he
25 said yes --

1 MS. HAYDEN: I'm going to object. Just
2 the way this question is framed, it's being framed --
3 and I'm thinking about if this were reviewed on a
4 court by appeal, it's suggesting that this was
5 testimony that was provided under oath, and that's
6 not the case.

7 This is a document that has been
8 prefiled and then withdrawn. So I think it's
9 important to clarify that as these questions are
10 being asked.

11 MS. DINGLELINE: I think that's
12 irrelevant. I'm asking him whether or not he agrees
13 with someone's statement. It doesn't matter where
14 it's from or whether it's under oath. If this
15 gentleman agrees with this statement, he agrees the
16 statement. If he doesn't, he can explain why he
17 doesn't.

18 HEARING OFFICER TOUSLEY: Why is the
19 statement relevant?

20 MS. DINGLELINE: Because I want to make
21 sure that we are on the same page in terms of what --

22 HEARING OFFICER TOUSLEY: Well I mean
23 in terms of the foundation of the statement itself?
24 What gives the statement any relevance to the
25 inquiry? I mean it could be a statement from the

1 newspaper. It could be a statement from the
2 Internet.

3 MS. DINGLELINE: Sure.

4 HEARING OFFICER TOUSLEY: What is this
5 statement and what is its source? And you indicated
6 it was Mr. Monks' prefiled testimony from when? June
7 of 2018; is that correct?

8 MS. DINGLELINE: Yeah.

9 HEARING OFFICER TOUSLEY: Which was
10 withdrawn by the town.

11 MS. DINGLELINE: Yeah. And you
12 wouldn't let me put it into evidence. But then I
13 said but I'm going to read from this, and you said
14 okay.

15 HEARING OFFICER TOUSLEY: Actually we
16 talked about the deposition testimony being available
17 to be read from because that's a deposition, not the
18 prefiled testimony.

19 MS. HAYDEN: That's correct.

20 MS. DINGLELINE: You held that I
21 couldn't put this document in because I could not lay
22 a foundation for it, or nobody objected, and all that
23 other stuff. But that doesn't mean that I cannot ask
24 a witness if he agrees with a statement in a document
25 that people have seen whether it is --

1 HEARING OFFICER TOUSLEY: Understood.

2 MS. DINGLELINE: If somebody wants a
3 copy of it, I'm more than happy to provide that.

4 HEARING OFFICER TOUSLEY: I think what
5 counsel is asking, however, is the context of the
6 statement be also relayed into the record, and now we
7 have done that, so you can ask your question.

8 MS. DINGLELINE: Okay. Thank you.

9 BY MS. DINGLELINE:

10 Q. So you agreed with that. Now --

11 MS. HAYDEN: The witness -- I don't
12 believe the witness agreed with anything.

13 MS. DINGLELINE: Yes, he did. He said
14 the town's Scenic Resource Inventory is applicable to
15 this project and he --

16 MS. HAYDEN: Okay.

17 MS. DINGLELINE: -- acknowledged that
18 his own Exhibit CS-BW-24 is that inventory document;
19 correct?

20 THE WITNESS: I don't believe that we
21 specifically incorporated the document as part of our
22 exhibit. But my understanding it is an exhibit in
23 the Petitioner's --

24 BY MS. DINGLELINE:

25 Q. That you relied upon in deriving your

1 opinions, right?

2 A. That is correct.

3 Q. Okay. All right. You would agree with me
4 that the proposed project is sited in the town's rural
5 conservation district; correct?

6 A. Yes.

7 Q. Would you agree that the rural conservation
8 district is located in valley areas outside the urban
9 growth area which have retained their rural and open space
10 character?

11 A. Yes.

12 Q. Would you agree that the purpose of the rural
13 conservation district is to preserve this distinct rural
14 character while accommodating low-density residential
15 development in a manner that avoids the need for public
16 water supply and public sewer systems?

17 A. Not entirely.

18 Q. What do you disagree with?

19 A. That is a partial statement of what the town
20 plan reads as acceptable uses in that zone.

21 Q. Okay. But the town plan indicates a purpose
22 of the rural conservation district; does it not?

23 A. I would need to refresh myself by looking at
24 that specific verbiage.

25 Q. Sure. Feel free.

1 A. Could you lead me to where that exactly is?

2 MS. HAYDEN: I believe if you're going
3 to ask a witness to review a document, he should be
4 provided with that document.

5 MS. DINGLEEDINE: That's what I'm
6 getting right now. I thought he would have had the
7 town plan as part of his materials. Sorry.

8 BY MS. DINGLEEDINE:

9 Q. I think the exhibit -- Bennington town plan is
10 CS-BW-81. That would be Brad Wilson's documents.

11 MS. HAYDEN: Mr. Hearing Officer, if I
12 may, I've got a copy of it here.

13 HEARING OFFICER TOUSLEY: Sure.
14 Please. If it wasn't immediately in front of him.
15 (Handing document)

16 MS. DINGLEEDINE: Bear with me just a
17 moment.

18 BY MS. DINGLEEDINE:

19 Q. I think it's on page 25 is where that section
20 starts if you have caught up to -- you're passing me here.
21 Okay. So on page 25 the very bottom line the town plan
22 says: The purpose of the rural conservation district is
23 to preserve this distinct rural character while
24 accommodating low-density residential development in a
25 manner that avoids the need for public water supply and

1 public sewer systems.

2 A. I agree that's what the town plan reads.

3 Q. Okay. Great. And in keeping with that
4 purpose, specific design standards apply to new
5 development in the rural conservation districts in
6 recognition of the existence of a concentration of
7 agricultural and forest lands, and to protect the
8 extraordinary scenic resources such land and uses provide.

9 You agree with me that it says that?

10 A. Can you -- are you talking about the third
11 full paragraph down on page 26?

12 Q. The final paragraph in the section right above
13 the agricultural district A.

14 A. I agree that's what the town plan reads.

15 Q. Okay. And development in this area -- to
16 continue with that paragraph: Development in this area
17 cannot be sited in prominently visible locations, on
18 hillsides or ridges. Do you agree with me that it says
19 that?

20 A. I agree that is the language in the town plan.

21 Q. And it says -- goes on to say: Shall utilize
22 earth tone colors and non-reflective materials on exterior
23 surfaces of all structures, and must minimize clearing of
24 natural vegetation.

25 Do you agree with me?

1 A. I agree that is what the language in the town
2 plan says.

3 Q. Okay. And that's pretty specific language,
4 not some aspirational notion, some amorphous standard.
5 Would you agree with me?

6 A. I think you would need to put it in the
7 context in what you're discussing.

8 Q. Pardon?

9 A. Depending on the context of what you are
10 discussing.

11 Q. Well we are discussing this project.

12 A. There is language that is most definitely in
13 the town plan that says all of the things that you have
14 said.

15 Q. Okay. Great. And you agree with me that's a
16 specific statement about earth tones? About earth tones,
17 very specific, right?

18 A. I would agree that the town plan has language
19 that uses the word earth tones; and shall utilize earth
20 tone colors.

21 Q. That's not the question. Can you answer the
22 question, please?

23 A. That is my answer.

24 Q. The question is; and that is a specific
25 standard indicating earth tones for one, right?

1 A. There is a statement that says: Shall utilize
2 earth tone colors. When you start using the phrase
3 specific standard, I go back to the Quechee analysis. And
4 are you talking about a specific standard intended to
5 protect the aesthetics, scenic and natural beauty of the
6 area? I don't think -- I would not agree that it meets
7 that criteria.

8 Q. A mandatory word "shall" you would agree with
9 me means that it mandatorily has to be followed; correct?

10 A. There is -- there are previous decisions by
11 the PUC that talk about how standards are specific to a
12 project, to the project location, to how to preserve that.
13 I've used past decisions. I have a long list of criteria
14 that we evaluate when thinking about community standards
15 intended to preserve the scenic quality and beauty. In my
16 opinion this does not meet those criteria.

17 Q. Well you're right. There are previous
18 decisions by the Public Utility Commission, in fact on
19 this very case. Isn't there?

20 A. I believe that the -- I've not read the
21 previous decision. I don't understand completely if that
22 is a valid decision anymore. So I don't feel as if I can
23 answer that question.

24 Q. So you have never read the February 16, 2016
25 decision of the Public Utility Commission on Docket Number

1 8302?

2 A. When the decision originally came out, we were
3 asked to review portions of it. Employees in my office
4 have read it. I've never read the decision in its
5 entirety.

6 When we were approached to do a secondary
7 review of this project, one of the things that was
8 expressed to us was we just want an unbiased third-party
9 review. And therefore, I specifically restrained myself
10 from looking at other testimony, exhibits, decisions that
11 were part of this project.

12 Q. But you're here testifying about other
13 projects and standards from other projects but not this
14 very one that the Public Utility Commission has already
15 discussed in relation to the town plan, the 2010 town
16 plan, and whether or not there are -- there is a clear
17 written community standard or not; is that fair to say?

18 A. I'm not sure I fully understand the question.
19 What I was explaining to you is the set of criteria that I
20 used to evaluate whether something would be considered a
21 clearly written community standard in the context of the
22 Quechee analysis.

23 Q. And -- okay. Okay. Then why don't you tell
24 me whether you agree or disagree with this statement.

25 HEARING OFFICER TOUSLEY: What are you

1 referring to?

2 MS. DINGLELINE: Well can't I just ask
3 him whether he agrees or disagrees with the
4 statement?

5 HEARING OFFICER TOUSLEY: If there is
6 some context that could be placed in, it would be
7 helpful, so we understand for the record what we are
8 precisely asking about.

9 MS. DINGLELINE: Why don't we ask him
10 his answer first.

11 HEARING OFFICER TOUSLEY: No. I want
12 you to tell me what you're reading from.

13 MS. DINGLELINE: I'm reading from page
14 50 that is the decision of the Public Utility
15 Commission that rejected the Hearing Officer's
16 recommendation with regard to aesthetics and orderly
17 development and made specific findings after
18 rejecting --

19 HEARING OFFICER TOUSLEY: You're
20 referring to the February 16 decision?

21 MS. DINGLELINE: Yes, I am.

22 HEARING OFFICER TOUSLEY: In Chelsea
23 Solar in Docket 8302 on page --

24 MS. DINGLELINE: 50.

25 HEARING OFFICER TOUSLEY: Very well.

1 Do you have that case in front of you?

2 THE WITNESS: I do not.

3 HEARING OFFICER TOUSLEY: Can you
4 provide him with a copy of the case so he can look at
5 it?

6 MS. DINGLEDINE: No.

7 HEARING OFFICER TOUSLEY: Okay. Well
8 then read the question.

9 BY MS. DINGLEDINE:

10 Q. Okay. So this is what the Public Utility
11 Commission said: We nonetheless find it appropriate to
12 discuss it here, meaning the orderly development criteria,
13 because the town plan language at issue is also applicable
14 to Section 248(b)(1) criterion. Are you with me so far?
15 The orderly development criterion.

16 A. Sure. Do you want to just say it one more
17 time so I have it exactly?

18 Q. So it says that -- I'll read the whole
19 sentence so you have the whole context.

20 "While the specific language in the Bennington
21 town plan was not reviewed as an issue under the orderly
22 development criterion in this docket until after the
23 Hearing Officer had issued his PFD, we nonetheless find it
24 appropriate to discuss it here because the town plan
25 language at issue is also applicable to the Section

1 248(b)(1) criterion, which states quote: With respect to
2 an in-state facility, will not unduly interfere with the
3 orderly development of the region, with due consideration
4 having been given to the recommendations of the municipal
5 and regional planning commissions, the recommendations of
6 the municipal legislative bodies, and the land
7 conservation measures contained in the plan of any
8 affected municipality."

9 Okay? So you agree with me so far that
10 there's the orderly -- that I just quoted from this which
11 talks about the orderly development criteria 248(b)(1)?

12 A. You're asking me to agree with you that that's
13 a statement that was within that --

14 Q. I'm asking you are familiar with the 248(b)(1)
15 criterion on orderly development.

16 A. Yes, I am.

17 Q. Okay. And that language sounds familiar to
18 you?

19 A. Yes.

20 Q. Okay. So the PUC went on to say: For the
21 reasons discussed below, the language of the Bennington
22 town plan --

23 (Telephone noise)

24 MS. BLOCK: Apologies. I'm sorry.

25 BY MS. DINGLEDINE:

1 Q. "For the reasons discussed below, the language
2 of the Bennington town plan causes us to reject proposed
3 finding 3. And so reject proposed finding 3 too because
4 it does not accurately reflect the Bennington town plan's
5 provisions regarding development in Bennington's rural
6 conservation districts."

7 Okay. So I'm going to skip one paragraph on
8 page 51. And after they talk about this is what Chelsea
9 argues, that it's consistent with the town plan. And the
10 decision goes on to say: The town plan addresses all of
11 the land area of the town. It recognizes the need for
12 continued growth and promotes further concentrated
13 development that may occur in the urban growth area. The
14 town plan also includes rural areas designated for less
15 development. Specifically the town plan states that
16 quote: Although development will occur outside, brackets,
17 the urban growth area, close brackets, it will be much
18 less concentrated and shall not include new commercial
19 uses, because such uses are incompatible with the rural
20 character of the area. Period. Close quote.

21 So that statement, do you agree with it or
22 not?

23 A. I disagree with it.

24 Q. How so? That's what the Public Utility
25 Commission has already decided about this town plan in

1 this case. How is it that you can quarrel with that
2 conclusion?

3 A. There are town documents that specifically
4 note they envision electrical facilities within the rural
5 conservation district.

6 Q. Okay.

7 HEARING OFFICER TOUSLEY: I would also
8 note for the record that that was in case 8302, which
9 is a different case than this one which is
10 17-5024-PET. The projects are different, and they
11 are different cases.

12 MS. DINGLELINE: I thought that they
13 got in under the old town plan because this is just a
14 vested rights theory case where it's the exact same
15 application, and they have the rights to go back
16 under the original application because it's not a
17 different project, while it may have been altered in
18 some way, and that's why they were allowed to sneak
19 into the 2010 plan.

20 While it may have a different Docket
21 Number, I understood, and I thought I've done a
22 fairly good review of where this went, and how it got
23 decided and what the vested rights decision was by
24 the PUC, I don't understand that statement. There
25 are some -- the whole point --

1 HEARING OFFICER TOUSLEY: Are you
2 asking a question of the witness?

3 MS. DINGLEDINE: No.

4 HEARING OFFICER TOUSLEY: You're making
5 a speech.

6 MS. DINGLEDINE: I'm responding to your
7 speech. I don't understand why you would say that as
8 if somehow this is irrelevant information.

9 HEARING OFFICER TOUSLEY: It's not
10 irrelevant at all, ma'am.

11 MS. DINGLEDINE: This is law of the
12 case.

13 HEARING OFFICER TOUSLEY: Do you have a
14 question for the witness? I'm going to ask you to
15 move on. If you want to brief the law of the case as
16 we discussed earlier, you can do so in your brief.
17 This is not the appropriate setting.

18 MS. DINGLEDINE: I'm trying to see if
19 this gentleman, this expert --

20 HEARING OFFICER TOUSLEY: Ask him a
21 question.

22 MS. DINGLEDINE: -- agrees or
23 disagrees.

24 HEARING OFFICER TOUSLEY: He's answered
25 your question. He said he disagrees with your

1 interpretation.

2 MS. DINGLEDINE: He disagrees with the
3 PUC. But I don't understand why the Hearing Officer
4 is intervening.

5 HEARING OFFICER TOUSLEY: Because
6 you're calling it this case.

7 MS. DINGLEDINE: It is this case.

8 HEARING OFFICER TOUSLEY: No. That's
9 8302. This is 17-5024-PET.

10 MS. DINGLEDINE: I am putting an
11 objection on the record that I believe that you are
12 biased that your decision before was overturned by
13 the PUC and you are being obstructionist to the flow
14 of evidence in this case. You have already called my
15 clients names, and said they are not, in fact, you
16 know, naive. What do you mean they are not naive?

17 What's going on here is really
18 troubling. And I want that on the record. Because I
19 do not believe that my clients are being treated
20 fairly, and to suggest somehow that this is a
21 different case when that's the whole reason why they
22 got in under the 2010 plan, in my opinion, is
23 erroneous. But let me continue.

24 BY MS. DINGLEDINE:

25 Q. Do you agree with the statement by the PUC on

1 page 51, second full paragraph, first sentence: The town
2 plan addresses all of the land area of the town. Yes or
3 no?

4 A. I would agree that the town plan addresses all
5 of the land area within the town.

6 Q. Do you agree with this statement in the next
7 sentence: It recognizes the need for continued growth,
8 and promotes further concentrated development that may
9 occur in the urban growth area. Yes or no?

10 A. Are you asking me if I agree that's the
11 verbiage in the town plan?

12 Q. I'm asking you if you agree with the PUC's
13 opinion that says quote: It recognizes the need for
14 continued growth and promotes further concentrated
15 development that may occur in the urban growth area.

16 Yes or no?

17 A. So as far as --

18 Q. It's yes or no question. Either you agree or
19 you disagree.

20 A. I cannot agree with -- without further
21 explanation.

22 Q. Okay. Let's move on. Do you agree with this
23 sentence, the next one: The town plan also includes rural
24 areas designated for less development. Yes or no?

25 A. Yes.

1 Q. Do you agree that in the next sentence,
2 specifically the town plan states that quote: Although
3 development will occur outside the urban growth area, it
4 will be much less concentrated and shall not include new
5 commercial uses, because such uses are incompatible with
6 the rural character of the area. Unquote.

7 A. If that's verbiage in the town plan, I would
8 prefer it to have that pointed out to me.

9 Q. Okay. It looks like it's at page 16.

10 A. Could you point out where on page 16?

11 Q. It's at the very top of the page. First
12 sentence. Page 16. Land Use, Chapter 3.

13 A. I'm going to read some context just to give --
14 let me understand where in the town plan this is, and that
15 will help me answer your question. Could you now repeat
16 the question?

17 Q. Sure. Do you agree with the statement,
18 specifically the town plan states that quote: Although
19 development will occur outside, bracket, the urban growth
20 area close, bracket, it will be much less concentrated and
21 shall not include new commercial uses because such uses
22 are incompatible with the rural character of the area.

23 A. I believe that is language that is stated
24 within the town plan and the overall opening to Chapter 3
25 of land use.

1 Q. Yes would have been sufficient. Okay. So
2 let's try to move a little quicker. Do you agree with
3 this statement on page 52 of the PUC's decision:

4 Bennington's rural conservation districts are located in
5 valley areas outside the urban growth area and have
6 retained their rural and open space character.

7 A. There are most definitely locations within the
8 -- the RC district that I would argue do not retain their
9 rural character.

10 Q. So you disagree with that statement of the
11 PUC; is that fair to say?

12 A. I would disagree that the overall district is
13 completely intact as represented in this statement.

14 Q. Do you agree with the next sentence the PUC
15 wrote: The purpose of the rural conservation districts is
16 to preserve traditional rural and agricultural uses while
17 accommodating low-density residential development.

18 A. There are -- there are uses within town
19 documentation that are acceptable per the town regs.

20 Q. Can you answer the question? The purpose of
21 the rural conservation district is to preserve traditional
22 rural and agricultural uses while accommodating low-
23 density residential development.

24 A. Is that a statement in the town plan?

25 Q. Do you or do you not agree with that

1 statement? You're the expert. You tell me. Is that
2 something that the town plan says? Because that's what
3 the PUC says the town plan says.

4 Do you disagree with them?

5 MS. HAYDEN: I'm going to object. This
6 is almost badgering the witness.

7 HEARING OFFICER TOUSLEY: And I believe
8 the question has been asked and answered. She asked
9 the question, do you agree with this statement. He
10 said no.

11 MS. DINGLELINE: If he had said no, I
12 would have moved on. He didn't say no. I can't get
13 a straight answer from this witness.

14 THE WITNESS: If I'm wrong, but I
15 believe I have the right to explain my answers.

16 MS. DINGLELINE: But you're not giving
17 an answer.

18 HEARING OFFICER TOUSLEY: What's your
19 answer then, sir?

20 THE WITNESS: My answer is that my
21 review of town documentations include additional uses
22 beyond that description for this district.

23 HEARING OFFICER TOUSLEY: So do you
24 disagree with the commission's characterization in
25 its decision?

1 THE WITNESS: I do disagree.

2 BY MS. DINGLEDINE:

3 Q. Okey dokey. Do you agree or disagree with
4 this statement: For example, the town plan states that
5 quote; agriculture, forestry, very low-density single
6 family residential development, and certain limited uses
7 that are suitable in rural areas are permitted.

8 And that is on page 26. First full paragraph
9 on the page.

10 A. Yes.

11 Q. Okay. Do you agree with this statement: The
12 interchange of the junction of U.S. Route 7 and Vermont
13 Route 279 serves as the southwest corner of the rural
14 conservation district in which the project is proposed?

15 A. Yes.

16 Q. Do you agree that the area immediately to the
17 west of Route 7 is in an industrial district?

18 A. I would need to review the town land use plan.

19 Q. Do you agree then that the area immediately to
20 the south of the interchange is part of a mixed
21 residential district?

22 A. If you would let me look at the town land use
23 plan, I could answer these questions. Without having that
24 plan in front of me, I cannot answer these questions
25 precisely.

1 Q. Okay. That's fair.

2 (Handing document)

3 A. Thank you.

4 HEARING OFFICER TOUSLEY: So the
5 witness has just been handed something.

6 MS. HAYDEN: Do you want to state what
7 it is? It's my understanding it's page -- figure 3-2
8 from the 2010 town plan. Is that what it is?

9 MS. DINGLELINE: Yes.

10 THE WITNESS: Yeah. And it's
11 specifically Exhibit MACC-ML-5.

12 HEARING OFFICER TOUSLEY: So this is an
13 element of the town plan.

14 MS. DINGLELINE: Yeah. The page that
15 has the map on it.

16 HEARING OFFICER TOUSLEY: Okay. Map
17 3-2. On page 31.

18 BY MS. DINGLELINE:

19 Q. So is the area to the west of Route 7
20 industrial district?

21 A. Also incorporating part of the exchange with
22 Route 7 and 279. For a limited portion it's industrial
23 west of Route 7.

24 Q. Okay. And then the area immediately to the
25 south of the interchange is part of a mixed residential

1 district?

2 A. Yes. That is accurate.

3 Q. And the areas east of the project site are in
4 rural residential, rural conservation and agricultural
5 districts?

6 A. Yes.

7 Q. "The interchange highway complex thus serves
8 as a boundary between developed urban and industrial areas
9 in the western, central and southern portions of
10 Bennington and minimally developed rural and agricultural
11 areas in northeastern Bennington."

12 A. There is clearly visible development further
13 northeast of the proposed project site. It is -- the
14 project is located at what you characterized as the
15 southwest corner of that specific block of the RCON
16 district.

17 Q. Referring back to page 26 for this question.
18 In the town plan, the town plan makes the following design
19 standard applicable to any new development in the rural
20 conservation districts. And this is the quote: Specific
21 design standards shall apply to new development in the
22 rural conservation districts in recognition of the
23 existence of a concentration of agricultural and forest
24 lands, and to protect the extraordinary scenic resources
25 such lands and uses provide.

1 A. That is the language within the town plan.

2 Q. Okay. And it goes on to say on page 26: Any
3 use in the rural conservation district, including
4 single-family dwellings, shall require approval under
5 those regulatory guidelines. Are you with me?

6 A. I am following you. Yes.

7 Q. It says that, right?

8 A. It does say that.

9 Q. And then development in this area cannot be
10 sited in prominently visible locations on hillsides or
11 ridgelines.

12 A. That is the language.

13 Q. Shall utilize earth tone colors and non-
14 reflective materials on exterior surfaces of all
15 structures?

16 A. Yes.

17 Q. And must minimize clearing of natural
18 vegetation?

19 A. Yes.

20 Q. Okay. Do you agree or disagree with this next
21 statement by the PUC: This land conservation measure is
22 made specifically applicable to the project site by the
23 town of Bennington's land use plan.

24 And if you look at page 31, I give you that
25 reference. 31 is the map. I'm sorry. Do you want me to

1 read that again?

2 A. I'm sorry. Yes. Could you please?

3 Q. So they decided the land conservation measure
4 is made specifically applicable to the project site by the
5 town of Bennington's land use plan.

6 We are talking about is what we just read, and
7 you agreed that's what the town plan said about prominent
8 visible locations on hillsides, ridgelines, utilizing
9 earth tone colors, non-reflective materials. That that
10 paragraph, that land conservation measure is made
11 specifically applicable to this site by the town of
12 Bennington's land use plan.

13 Do you agree with that?

14 A. That is a paragraph in the land use -- in the
15 town plan specific to the rural conservation district.

16 Q. Do you agree that they are specifically
17 applicable to this project?

18 A. You need to look at this project, and how it
19 is the context in which you're looking at it. So did we
20 look at these components as part of this project? Yes, we
21 did.

22 Q. Because they are specifically applicable to
23 the project.

24 A. Because it's in the RCON district.

25 Q. Right. And this project is in the RCON

1 district.

2 A. That's correct.

3 Q. Okay. I think we are on the same page. This
4 is what they said next: While Chelsea has taken steps to
5 limit the visibility of the project on the hillside where
6 it is proposed to be located, the clearing of 10.6 acres
7 of existing vegetation runs directly afoul of this
8 provision in the town plan and its vision for orderly
9 future development.

10 Now this is the first version of this
11 project --

12 A. I understand.

13 Q. -- where the clearing was 10.6 acres. Do you
14 agree with that statement about the 10.6 acres?

15 A. I didn't assess the original project.

16 Q. Okay. All right. How many acres is being
17 cleared in this project?

18 A. 9 point -- I don't have the numbers directly
19 in front of me.

20 Q. 9.64?

21 A. I believe that's what was stated earlier
22 today.

23 Q. Okay. So we are talking about less than one
24 acre difference?

25 A. Okay.

1 Q. Between this project and at least what the PUC
2 understood the last project was doing. Because 10.6 minus
3 9.64 is less than one; correct?

4 A. I understand. Thank you.

5 Q. Do you believe that the clearing of 9.64 acres
6 of existing vegetation runs directly afoul of the
7 provision of the town plan we have been discussing?

8 A. I do not.

9 Q. The PUC -- we are almost done. We are closing
10 in on it.

11 But the PUC said next in its reply brief:
12 Chelsea argues that, quote, the only testimony in this
13 docket concerning the orderly development of the region
14 aesthetics, wind and noise, supports the conclusion that
15 the Petitioner satisfies the requirements of 30 V.S.A.
16 Section 248(b)(1) and (b)(5). That was Chelsea's argument
17 that the PUC was describing.

18 You go on to say: In support of this document
19 Chelsea cites the testimony of its aesthetics expert.
20 Then they say: Upon review we find this testimony to be
21 an inaccurate description of the town plan.

22 Do you have an opinion about that statement?

23 A. You would have to restate that.

24 Q. Okay. So in the reply brief Chelsea argued
25 the only testimony in that docket concerning orderly

1 development of the region, aesthetics, wind and noise,
2 supports the conclusion that the Petitioner had satisfied
3 the requirements of 248(b)(1) and (b)(5). And then they
4 in support of that notion they said, all right. That's
5 because our expert says so.

6 But the PUC said: Upon review we find this
7 testimony to be an inaccurate description of the town
8 plan.

9 Do you disagree with that?

10 A. I don't believe that provides me with enough
11 context to make --

12 MS. HAYDEN: I'm going to object. He
13 doesn't have the testimony that's even being
14 referenced. How could he give an opinion on it?

15 MS. DINGLELINE: I'll move on.

16 BY MS. DINGLELINE:

17 Q. On page 54 of the PUC in the second paragraph
18 says: Rather we find based on our review of the town plan
19 that the project will unduly interfere with the orderly
20 development of the region because the town plan
21 articulates specific land conservation measures applicable
22 to the project site that would be violated if the project
23 were to be constructed.

24 So you have agreed that there are specific
25 land conservation measures applicable to this project and

1 we went through those.

2 A. I agreed that there was specific language in
3 the town plan.

4 Q. Do you believe that -- that were applicable --
5 I'm sorry. Let me strike that.

6 So yes, you agreed that was in the town plan.
7 But you also agreed that it was -- these conservation
8 measures were applicable to this project. Correct?

9 A. I'm sorry. Could you repeat that?

10 Q. The land -- the fact that these articulated
11 specific land conservation measures that exist in the town
12 plan that you've agreed that's the language, but my
13 question is you're agreeing that they are applicable to
14 this project.

15 A. I think you misrepresented what I said. I
16 didn't agree that they were specific land conservation
17 measures.

18 Q. So you disagree with the PUC that even though
19 you agree that the language exists, you don't think those
20 are specific land conservation measures?

21 A. I do not.

22 Q. And do you believe -- so you don't believe
23 they apply to this project because you don't believe they
24 exist, is that fair to say?

25 A. I'm saying that I do not believe that they are

1 -- that that would constitute a measure that would be
2 considered land conservation.

3 Q. Okay. So you see no violation of the
4 provisions that we have been talking about, the specific
5 provisions that you apparently disagree are specific
6 provisions, but you don't think they apply because you
7 don't even think they are specific provisions?

8 A. I don't think that they apply specific land
9 conservation provisions.

10 Q. Okay. Do you agree with the statement on page
11 56 of the order of the decision that in order for a
12 provision to be considered a clear, written community
13 standard it must be quote: Intended to preserve the
14 aesthetics or scenic beauty of the area, close quote,
15 where the proposed project would be located and must apply
16 to specific resources in the proposed project area.

17 A. Yes.

18 Q. Do you agree with their statementL a clear,
19 written community standard must be more than simply,
20 quote, general in nature, unquote, and do more than seek
21 to, quote, promote good stewardship of scenic resources
22 without identifying specific actionable standards?

23 A. I agree.

24 Q. Okay. Do you agree with this, the next
25 paragraph: The town plan language for the rural

1 conservation district creates four specific requirements.
2 And the first one of which is only limited residential
3 development is permitted. And that has a citation to page
4 16.

5 A. I disagree that ultimately if you review all
6 the town documentation that only limited rural -- limited
7 residential development is the only use allowed in the
8 rural conservation district.

9 HEARING OFFICER TOUSLEY: So you're
10 saying the commission got it wrong?

11 THE WITNESS: Yes.

12 BY MS. DINGLELINE:

13 Q. How about the second requirement? No
14 development may be sited in prominently visible locations
15 on hillsides or ridges.

16 And they have a reference to page 26 on that
17 one.

18 A. So are you asking me if that's language within
19 the town plan? Yes.

20 Q. The statement is the town plan language for
21 the rural conservation district creates four specific
22 requirements.

23 A. Okay.

24 Q. So the first one was only limited residential
25 developments permitted, and you disagree with that. The

1 second one is no development may be sited in prominently
2 visible locations on hillsides or ridges. Do you agree or
3 disagree?

4 A. I agree that that is one of the criterion of
5 the town plan. Yes.

6 Q. Okay. And the third one is any development
7 must utilize earth tone colors and non-reflective
8 materials on exterior surfaces of all structures.

9 A. Yes.

10 Q. And number four is any development must
11 minimize the clearing of natural vegetation.

12 A. Yes.

13 Q. Okay. Thank you. So they go on to say the
14 project violates -- and this is the prior version --
15 violates three of these four specific requirements in the
16 town plan for development in the rural conservation
17 district. First, Chelsea Solar is not proposing a limited
18 residential development.

19 A. I agree that it is not a limited residential
20 development.

21 Q. Do you think then -- okay. But that violates
22 the first standard that you disagree with? Correct?

23 A. When I did my review of orderly development I
24 did a comprehensive review of this district and different
25 documents within the town's purview that orient how

1 development should occur. And I disagree that limited
2 residential development is the only allowed use in this
3 district.

4 Q. Okay. Then they go on to that second
5 criteria. Second, while Chelsea has developed an
6 extensive visual screening plan, the project would remain
7 visible on a hillside above the Vermont Welcome Center.

8 A. I disagree.

9 Q. You disagree with relation to this project?

10 A. Disagree that the project would be visible on
11 the hillside from the Vermont Welcome Center.

12 Q. Okay.

13 HEARING OFFICER TOUSLEY: Is that what
14 it says? From the Welcome Center or above the
15 Welcome Center?

16 MS. DINGLEEDINE: Above. I'm sorry.
17 Above the Welcome Center.

18 HEARING OFFICER TOUSLEY: It doesn't
19 say from the Welcome Center.

20 MS. DINGLEEDINE: If I misspoke, I
21 apologize.

22 HEARING OFFICER TOUSLEY: Okay. So do
23 you agree that it would be visible from locations --
24 from anywhere at a site above the Welcome Center?

25 THE WITNESS: There are locations where

1 the project will have visibility in the context that
2 the Welcome Center will also be visible. These
3 locations are typically distant locations.

4 BY MS. DINGLEDINE:

5 Q. So you disagree with the visibility part of
6 that; is that right?

7 A. I'm not sure I understand.

8 Q. Because the statement was: While Chelsea has
9 developed an extensive visual screening plan, the project
10 would remain visible on a hillside above the Vermont
11 Welcome Center. You're saying --

12 A. Based on my review, there will be some very
13 limited locations where the project will be visible, in a
14 view context, in which you'd also see the Vermont Welcome
15 Center.

16 Q. Do you disagree with the statement it's on a
17 hillside?

18 A. There is no clear definition of a hillside in
19 the town plan.

20 Q. So if there is no clear definition in -- in
21 the definition section of the town plan, how do we know
22 what a hillside is? What do you do to figure that out?

23 A. There are different degrees. Obviously most
24 everything could be considered a hill that has any type of
25 a slope to it. So to make that as blanket statement

1 doesn't provide enough specificity to really understand
2 what the town's intention was from that standard.

3 My personal guess would be that it would be on
4 higher elevations. That is a fairly low elevation where
5 the site is, it's a fairly modest slope. There is Bald
6 Mountain.

7 I was involved with the VELCO Bennington
8 substation in which that was definitely a concern, and we
9 worked well with the town to site that project which I
10 believe is also in the rural conservation district. So --

11 Q. Okay. We are talking about hillsides. You
12 mentioned the slope.

13 A. I was using that as an example of a hillside.

14 Q. Okay. Well you could say Mt. Mansfield is a
15 hillside too. So you're saying you disagree with the PUC
16 that this site is on a hillside or not?

17 A. I would disagree that this is on a prominent
18 hillside.

19 Q. I asked hillside. We talked about visibility
20 a minute ago. I'm talking about hillside. You reference
21 slope. What's the slope? You said it was modest. What's
22 the number?

23 A. Again I'm going to restate that there is no
24 clear definition of a hillside.

25 Q. I understand, but what's the slope? That's

1 the question pending.

2 MS. HAYDEN: I'm going to object. I
3 think he's asked and answered.

4 MS. DINGLELINE: He said moderate
5 slope, and he has not answered that question. He has
6 diverted to try to answer something else.

7 HEARING OFFICER TOUSLEY: Do you have
8 data that you are aware of in the case that there is
9 a rise in elevation?

10 THE WITNESS: Yes, there is.

11 BY MS. DINGLELINE:

12 Q. And do you know what the number -- what the
13 slope number is? What percentage?

14 A. I do not remember offhand. We did look at
15 that at one point.

16 Q. And then let's go on to the third one. The
17 project calls for clear-cutting of 10.6 acres of a densely
18 forested and undeveloped 27-acre parcel. Do you agree
19 with the statement, other than the number of acres, that
20 it's densely forested and undeveloped 27-acre parcel?

21 A. Could you please repeat?

22 Q. Sure. Okay. So third, the project calls for
23 clear-cutting. You agree it's being clear-cut?

24 A. Yes.

25 Q. Okay. In this case it was 10.6 acres?

1 A. Yes.

2 Q. So we are talking about 9.64 this time. So
3 let's skip over. So project calls for clear-cutting of a
4 densely forested and undeveloped 27-acre parcel. Do you
5 agree with that?

6 A. I'm agreeing that the project is requiring the
7 removal of vegetation off of 9.64 acres within the
8 forested portion of the project site.

9 Q. So it's being clear-cut, right?

10 A. I'm agreeing that there is -- 9.64 acres is
11 being removed, yes.

12 Q. Is being clear-cut or not?

13 A. Is being removed. Yes.

14 Q. The question is, is it being clear-cut, yes or
15 no?

16 A. Yes.

17 Q. Thank you. Does it have to be that difficult?

18 HEARING OFFICER TOUSLEY: Just to note
19 that the schedule for Mr. Buscher was for one hour
20 which began at 1 o'clock. It's now 2:20. So I'm
21 going to ask you, if you can, to conclude as soon as
22 you can.

23 MS. DINGLEDINE: I'll shorten up Mr.
24 Kane's cross to make up for it, if you don't mind.

25 HEARING OFFICER TOUSLEY: Okay. How

1 long do you think you're going to be?

2 MS. DINGLELINE: For Mr. Kane?

3 HEARING OFFICER TOUSLEY: For Mr.

4 Buscher.

5 MS. DINGLELINE: Oh, maybe another 10
6 minutes maybe.

7 HEARING OFFICER TOUSLEY: Okay.

8 MS. DINGLELINE: Thank you.

9 BY MS. DINGLELINE:

10 Q. So you disagree with the PUC on page 58 that
11 -- with their finding that the town plan language is
12 specific in nature, is specifically applicable to the
13 project site, and seeks to conserve scenic resources by
14 identifying a specific actionable requirement -- by
15 identifying specific actionable requirements and thus
16 constitutes a clear, written community standard. Do you
17 agree or disagree?

18 A. There was a lot of components to that. I'm
19 not familiar. I've not studied that decision. I feel as
20 if you're asking me these questions without my ability to
21 fully understand the context from where they are coming
22 from.

23 Q. Is -- or does the 2010 town plan language
24 constitute a clear, written community standard or not?

25 A. In respect to a Quechee analysis?

1 Q. Yeah.

2 A. No.

3 Q. It does not. Okay.

4 A. I should actually qualify. I should say no in
5 respect that the project does not violate the clear
6 standard.

7 Q. Okay. So that's really different. So are you
8 saying that there is or is not a clear, written community
9 standard contained in the 2010 town plan with regard to
10 the -- what do we call it -- the conservation -- rural
11 conservation district?

12 A. There are components to the town plan that lay
13 out generalized ideas of what the development should be.
14 This -- you're referring to the --

15 Q. I have to interrupt please. Please. I'll
16 withdraw the question, so please don't respond. The
17 question is; is there or is there not a clear, written
18 community standard that is applicable to this case that is
19 contained in the 2010 town plan with regard to the rural
20 conservation district. Yes or no?

21 A. Yes.

22 Q. Thank you. But you believe that applying that
23 clear, written community standard in the 2010 town plan to
24 this project results in a finding that there is no undue
25 adverse impact; correct?

1 A. Yes.

2 Q. Okay. Great.

3 MS. DINGLEEDINE: Can I just have one
4 moment to confer with my client, Your Honor?

5 (Pause)

6 MS. DINGLEEDINE: May I approach the
7 witness or -- this is one of the picture exhibits.

8 HEARING OFFICER TOUSLEY: Could you
9 describe for the record what you're holding up,
10 please?

11 MS. DINGLEEDINE: I certainly --

12 MS. LEON: MACC-ML-1 page 6 of 13.

13 MS. DINGLEEDINE: Your Honor, for the
14 record, I have this marked as Exhibit Cross 2. But
15 it is just a blow-up photograph of Exhibit MACC-ML-1
16 which is Maru Leon's testimony. Well the exhibits
17 that were with her testimony. It's page 6 of 13 of
18 that exhibit.

19 HEARING OFFICER TOUSLEY: Okay. So I'm
20 looking at her exhibit.

21 MS. DINGLEEDINE: It's the 6th page in.

22 HEARING OFFICER TOUSLEY: And what
23 you're holding up is an approximately 14 by 30 blow
24 up of the section of -- MACC-ML-1 on page 6 is
25 referred to as section of the full-sized panorama

1 showing Chelsea project site on Apple Hill. Okay.

2 BY MS. DINGLEDINE:

3 Q. So what I wanted to ask you was -- so this was
4 a photograph that was taken from the Bennington battle
5 monument from the upper window. And I wanted to know in
6 your opinion is this a fair and accurate representation of
7 the view from that location?

8 A. I did not believe that is a fair and accurate
9 representation of the view from that location.

10 Q. Okay. Why not? Well first, have you been up
11 the battle monument?

12 A. I have.

13 Q. Have you taken any pictures from there?

14 A. I have.

15 Q. Okay. And then tell us why you don't think
16 that is a fair and accurate representation.

17 A. If you refer to our Exhibit CS-MB-4.

18 Q. Just tell me. We don't need to look at
19 exhibits. Just explain. Why don't you think --

20 A. Because a picture is worth a million words,
21 and we have a picture that shows the view from the
22 Bennington -- the Bennington battle monument which is an
23 accurate representation of how visitors to the monument
24 would experience the view towards the project.

25 Q. Okay. So you disagree. Do you think -- so

1 have you done any photo simulations from Bennington battle
2 monument?

3 A. For this project?

4 Q. A-hum.

5 A. No.

6 Q. Okay. And in terms of -- so then I would
7 assume since you folks had a chance to look at Cross
8 Exhibit 4 which is a superimposed -- the two solar arrays.

9 MS. HAYDEN: I'm going to object to
10 this exhibit. I said that I would object.

11 HEARING OFFICER TOUSLEY: Yes. I'm not
12 sure what I'm looking at either. It hasn't been
13 described for me.

14 MS. DINGLELINE: That's what I'm trying
15 to do.

16 HEARING OFFICER TOUSLEY: Before you
17 ask a question, introduce what you're showing us.

18 MS. DINGLELINE: Okay. I am showing
19 you the exact same photograph we just looked at with
20 solar arrays superimposed from Google Earth.

21 HEARING OFFICER TOUSLEY: But there are
22 three pictures on that.

23 MS. DINGLELINE: Right. Solar array,
24 solar array, and this is the Google Earth document.

25 MS. LEON: Yes.

1 HEARING OFFICER TOUSLEY: So what I'm
2 looking at from the bench --

3 MS. DINGLELINE: Three photographs.

4 HEARING OFFICER TOUSLEY: -- is the
5 same size white backboard with a one in the corner,
6 what I think is a one in the corner.

7 MS. LEON: Correct.

8 HEARING OFFICER TOUSLEY: And in that
9 picture in the upper left-hand corner there is what
10 appears to be the same picture with some addition to
11 it. In the upper left -- in the upper right-hand
12 corner I don't know what I'm seeing there. And in
13 the bottom center is what looks like the same picture
14 with -- from this distance appears to be the project
15 as a photo simulation.

16 MS. HAYDEN: And the basis of my
17 objection is that these photographs have not been
18 authenticated.

19 MS. DINGLELINE: I'm not trying to
20 introduce this into evidence. I'm trying to ask a
21 question as a demonstrative aid at this point.

22 HEARING OFFICER TOUSLEY: So you're not
23 going to enter it into evidence?

24 MS. DINGLELINE: I may or may not.
25 Right now I'm not offering it.

1 MS. HAYDEN: The question though is
2 you're asking my witness to give an opinion.

3 MS. DINGLELINE: I haven't asked him
4 anything. No one has let me ask a question yet.

5 MS. HAYDEN: I am concerned about even
6 using these because I don't think they are
7 representative of the views. There's been no --

8 MS. DINGLELINE: He didn't say so. He
9 didn't say so. I wasn't even going to ask him that.

10 MS. HAYDEN: Okay.

11 HEARING OFFICER TOUSLEY: How are these
12 simulations -- we don't really know how the panoramic
13 view was created. We don't know how the panoramic
14 view simulations were created.

15 MS. DINGLELINE: You will.

16 HEARING OFFICER TOUSLEY: The exhibits
17 in this record that reflect simulations discuss how
18 those things occurred and describe it.

19 MS. DINGLELINE: Yeah. Yeah.

20 HEARING OFFICER TOUSLEY: I simply want
21 to have the same kind of information related to your
22 pictures.

23 MS. HAYDEN: And I will object because
24 the parties that are being represented had an
25 opportunity last Friday to file these.

1 MS. DINGLEEDINE: Can I --

2 HEARING OFFICER TOUSLEY: Please let
3 her finish her objection.

4 MS. HAYDEN: To authenticate these,
5 under the rules there has to be personal knowledge
6 under Rule 602.

7 MS. DINGLEEDINE: I'm not offering it to
8 be put into evidence.

9 MS. HAYDEN: Then it's not relevant.

10 HEARING OFFICER TOUSLEY: What purpose
11 --

12 MS. DINGLEEDINE: If you would just let
13 me ask the question, then you can object if you want.

14 MS. HAYDEN: You're tying a question to
15 a document that's neither relevant, its probative
16 value is outweighed by the prejudice and the
17 misimpression.

18 MS. DINGLEEDINE: There's no prejudice.
19 This is a professional gentleman who does this every
20 day of the year.

21 MS. HAYDEN: This question and answer
22 based on a document that you may not enter or may
23 enter is creating a prejudicial record because it's a
24 misrepresentation.

25 HEARING OFFICER TOUSLEY: If I can hear

1 what your question is.

2 MS. DINGLEDINE: Thank you.

3 HEARING OFFICER TOUSLEY: Then you can
4 offer an objection.

5 MS. DINGLEDINE: So --

6 HEARING OFFICER TOUSLEY: Now that I
7 have some understanding as to what you're showing us.

8 BY MS. DINGLEDINE:

9 Q. Okay. So the bottom picture is this
10 photograph. I understand you don't think it's a fair and
11 accurate representation. But my question is this.
12 Superimposed on this bottom one is -- are some solar
13 panels, solar arrays.

14 Why didn't you do photo simulations similar to
15 something like this where you actually inserted the photo
16 -- an actual representation of the solar arrays to the
17 appropriate scale from the Bennington battle monument?
18 Whether you think this is good, better or indifferent, it
19 is just representative of something that a novice
20 layperson did. Why didn't you, knowing how many hundreds
21 of thousands of people have visited the Bennington battle
22 monument, why didn't you think that that view was
23 important enough to create a photo simulation so we could
24 see what it looks like from there?

25 HEARING OFFICER TOUSLEY: Okay.

1 THE WITNESS: So the general practice
2 for creating photo simulations is that you want to go
3 to locations where you're anticipating the most
4 critical impacts of the project are going to be
5 experienced. We provided a simulation from the
6 Welcome Center because it is a very close context,
7 the project's in close proximity. We wanted to
8 understand what that impact would be.

9 We provided a simulation from the
10 northwestern property line because of the context,
11 not because of the frequency of usership, but because
12 we knew that there was a sensitivity from the nearby
13 neighbors. And we also provided a simulation from --
14 of the distribution line, because that is a road that
15 is commonly experienced on a daily use.

16 If you go up the Bennington battle
17 monument, the view is really oriented in four
18 different directions. And the reason for that is
19 because it's a stone monument, and where you get
20 views from the monument are directed through these
21 very long, narrow openings. If you refer to our
22 photo catalog, on page --

23 HEARING OFFICER TOUSLEY: This is
24 exhibit --

25 THE WITNESS: This is Exhibit CS-MB-4.

1 If you go to page B45. It's a portrait view standing
2 on the observation deck of the monument looking
3 obliquely through the opening in which people are
4 following the surrounding landscape from the
5 monument.

6 BY MS. DINGLEDINE:

7 Q. So let me ask you then --

8 A. I'm sorry. I haven't finished my explanation.

9 Q. That's fine. I think we are done.

10 HEARING OFFICER TOUSLEY: I have a
11 question. Okay. So you say you don't think that the
12 picture that is in MACC-1 on page 6 is an accurate
13 representation. Why don't you think so?

14 THE WITNESS: Well to really analyze it
15 I would want to know if it is representative at a 50
16 millimeter focal length.

17 HEARING OFFICER TOUSLEY: So you don't
18 know how it was created.

19 THE WITNESS: I don't know how it was
20 created. I don't know the angle of view. My
21 understanding is that the camera location was
22 actually extended outside of the window.

23 BY MS. DINGLEDINE:

24 Q. So let me ask you. How many people go to the
25 Bennington battle monument and stick their camera out the

1 window and take a picture? Do you have any idea?

2 A. I don't have that information.

3 Q. Well then how is it that you can give a
4 conclusion that this is not a fair and accurate view if
5 you don't know what the view looks like when somebody
6 holds their camera out the window and takes a photograph?

7 A. Because that's not --

8 Q. You would agree with me, would you not -- so
9 in other words, because you didn't do that, then you don't
10 know whether it's a fair and accurate representation if
11 the camera was being held out of the battle monument;
12 correct?

13 HEARING OFFICER TOUSLEY: If I could
14 ask a question, please. I'm looking at the
15 photographic -- at the page B46 photo that you're
16 referring to. The one that is in your -- is it 46?

17 MS. HAYDEN: B45.

18 HEARING OFFICER TOUSLEY: B45. How was
19 that photo taken?

20 THE WITNESS: That photo was taken --
21 so there is a long narrow opening. And that photo
22 was taken from the edge of the opening looking sort
23 of crosswise across it.

24 HEARING OFFICER TOUSLEY: How long --
25 how big is that opening? How wide is it?

1 THE WITNESS: Foot and-a-half.

2 HEARING OFFICER TOUSLEY: Foot
3 and-a-half is the opening from left to right?

4 THE WITNESS: Yeah. So you're --

5 HEARING OFFICER TOUSLEY: And the
6 density of the window space? Of the wall?

7 THE WITNESS: A couple of feet at
8 least.

9 HEARING OFFICER TOUSLEY: So this is --
10 so this photo was taken standing in front of that
11 hole and looking out in a place that -- at that
12 location?

13 THE WITNESS: Yeah. This is a very
14 narrow sliver where if you would move to the left,
15 that, you know, the view would become much wider and
16 be oriented away from the project.

17 HEARING OFFICER TOUSLEY: Do you have
18 an opinion as to how the photo that shows the
19 panoramic view was created?

20 THE WITNESS: My guess is that the
21 camera was held --

22 MS. DINGLEDINE: Objection. He's
23 guessing. He can't opine on something like that.

24 HEARING OFFICER TOUSLEY: How was then
25 -- I'll ask what was observed that --

1 MS. DINGLEDINE: I have a chance to put
2 my client on for cross if somebody wants to ask that
3 question.

4 THE WITNESS: It's not how people
5 experience the view.

6 BY MS. DINGLEDINE:

7 Q. How do you know that? How many people have
8 you talked to -- back that statement up. That's not how
9 people -- how many times have you been to the battle
10 monument, and how many times have you actually observed
11 somebody taking a picture from Bennington battle monument?

12 A. I couldn't answer that question.

13 Q. And do you know about the magnets that they
14 sell in the gift shop that have this panoramic view, and
15 all of the people that purchase that, and the calendars --

16 A. What I can tell you --

17 Q. -- and the looks and the pictures --

18 HEARING OFFICER TOUSLEY: Let her ask
19 her question.

20 BY MS. DINGLEDINE:

21 Q. -- and the framed prints. Do you have any
22 idea how many of the 28 to 35,000 people per year purchase
23 those products with this view from the Bennington battle
24 monument?

25 A. My assessment is based --

1 Q. Do you have any information about that? That
2 is the question.

3 MS. HAYDEN: I object. You're
4 interrupting him.

5 MS. DINGLELINE: He's not answering the
6 question.

7 THE WITNESS: You are stopping me from
8 speaking before I can get three words out of my
9 mouth.

10 HEARING OFFICER TOUSLEY: Okay. Okay.
11 I want to take a 10-minute break. I will come back
12 at 10 minutes before the hour. And then at that
13 point you have five more minutes with Mr. Buscher.

14 MS. DINGLELINE: He should answer --
15 thank you.

16 (Recess was taken.)

17 HEARING OFFICER TOUSLEY: Okay. It's
18 now 8 minutes before 3. We are back on the record.
19 Mr. Buscher is on the stand. You're still under
20 oath, sir.

21 Ms. Dingleline, do you have a question
22 for the witness?

23 MS. DINGLELINE: Before I go, Your
24 Honor, I just wanted to put on record that I have an
25 objection to register, and that is during the break

1 the witness was discussing his testimony with counsel
2 and Petitioner. I asked them to please stop doing
3 that. Because this is not a take-home exam. He
4 should not be coached during the hearing. He's in
5 the middle of his cross examination and ought not to
6 be discussing with counsel what his answer should be
7 going forward.

8 So I asked that it stop. It did. So
9 I'm glad about that. But it was concerning, and I
10 was told that's how we do it here. I've never heard
11 of that before in the middle of someone's cross
12 examination being able to be coached by a lawyer.
13 But so I have an objection that that happened.

14 MS. HAYDEN: We -- and I will agree
15 that we were discussing his testimony with the
16 witness. We were also discussing the cross
17 examination and the fact that he has not been able to
18 get answers into the record.

19 It is common practice when there are at
20 this -- in this -- in these proceedings it's common
21 practice when there are breaks, that the witness
22 confers with counsel. It happens in virtually every
23 case -- contested case I work on.

24 HEARING OFFICER TOUSLEY: Okay. I'm
25 going to note the objection.

1 MS. DINGLELINE: Thank you.

2 HEARING OFFICER TOUSLEY: And the
3 response.

4 MS. HAYDEN: And the response. Thank
5 you.

6 HEARING OFFICER TOUSLEY: Do you have a
7 question?

8 MS. DINGLELINE: Very briefly. Just to
9 finish up.

10 BY MS. DINGLELINE:

11 Q. Would you be able to turn to page 41 of the
12 town plan. That's Chapter 4, Natural Scenic and
13 Historical Resources.

14 HEARING OFFICER TOUSLEY: BW-81?

15 THE WITNESS: Yes.

16 BY MS. DINGLELINE:

17 Q. Okay. The photograph that appears on that
18 scenic resource page which has a caption under it, it
19 says: Bennington's natural and built environment combine
20 to create a truly unique sense of place with outstanding
21 scenic qualities.

22 Do you agree it says that underneath the
23 photograph?

24 A. I agree.

25 Q. Now I would like you to take a look at the

1 surrebuttal testimony of Maru Leon on behalf of the Mt.
2 Ascutney Country Club. It was submitted September 14,
3 2018.

4 MS. HAYDEN: Do you have a copy for the
5 witness?

6 MS. DINGLELINE: I do.

7 (Handing document).

8 MS. DINGLELINE: And that is Exhibit
9 MACC-ML-1.

10 MS. LEON: That's the number in the
11 file, the 300? Okay.

12 BY MS. DINGLELINE:

13 Q. So if you can turn to the second page of the
14 Exhibit MACC-ML-1. Just turn the page to the second page
15 of that exhibit.

16 A. Yes.

17 Q. That photograph -- these are the
18 photographers' images of Bennington that are sold and
19 there's been -- the surrebuttal prefiled testimony
20 indicated such. And this was a photographer named Ann
21 Smith who sells this image. And it's a -- I'm sorry.
22 This is the photo magnet image showing the view from
23 Southern Vermont College Orchard House, which is sold at
24 the Bennington battle monument gift shop and some other
25 places in Bennington.

1 Would you compare this photograph on page 2 by
2 Ann Smith with the photograph on page 41 of the scenic
3 resource section and tell me in your opinion if you
4 believe that this is from a similar vantage point as the
5 photograph in the town plan?

6 A. It's depicting the same -- the approximate
7 same portion, the stone wall, the angle of view slightly
8 different between the two images. But generally it's
9 representing the same view.

10 Q. Okay. And you would -- would you -- so you
11 did not, for example, take the photograph from the scenic
12 resource section of the town plan and superimpose the
13 solar array in that or some similar view from the Southern
14 Vermont College area. Did you?

15 A. We did not provide a photo simulation from
16 Southern Vermont College.

17 Q. Or from Mt. Anthony Country Club?

18 A. Or from Mt. Anthony Country Club.

19 Q. So if you turn the page of the exhibit from
20 Maru Leon -- if you turn to page 5 of that exhibit, 5 of
21 13, and those are Greg Nesbit who is the photographer.
22 And he has photographs from Mt. Anthony Country Club.

23 So this indicates views where there is an
24 arrow depicting approximately the location of the solar
25 array. Would you agree with me?

1 A. Generally, yes.

2 Q. Okay. You didn't do any photo simulations
3 from the Mt. Anthony Country Club?

4 A. We did not provide any simulations from the
5 Mt. Anthony Country Club.

6 Q. So would you agree with me that it looks at
7 least from these vantage points that this is an area of
8 the solar array project, 9.64 acres was clear-cut, it does
9 appear that it would be visible from Mt. Anthony Country
10 Club; does it not?

11 A. I believe if you refer to our report we note
12 that there will be portions from Mt. Anthony Country Club
13 where portions of the project will be visible.

14 Q. So if that's the case, then why didn't you do
15 any photo simulations from the locations where you were
16 pretty darn sure that this was going to be visible from so
17 that we could see what it's going to look like?

18 A. We did simulations from areas where we felt
19 they had the most sensitivity.

20 Q. Okay. But we have interveners here, and Mt.
21 Anthony Country Club is here at this hearing, has put in
22 evidence, photographic views, has repeatedly, you know,
23 indicated that there are going to be undue adverse
24 impacts. Yet you didn't think it was important enough
25 given all the people that play golf and go and have

1 events, weddings, and they have a very robust restaurant,
2 many people go there.

3 You didn't think that that was important
4 enough given the public nature of that area and how many
5 people of the public, in-state, out-of-state visitors, et
6 cetera, would be coming to visit?

7 A. We --

8 Q. And you just thought it wasn't important
9 enough?

10 A. We most certainly felt that evaluating the
11 project from all areas where there would be visibility
12 publicly accessible was important, and we did do that
13 assessment.

14 Q. But you didn't do Mt. Anthony. Right? You
15 already said yes. So correct?

16 A. You're asking if we prepared photo simulation
17 or not?

18 Q. Right.

19 A. It's not saying that we didn't assess the
20 project.

21 Q. Okay. We are wordsmithing. So didn't think
22 it was important enough given the many visitors and people
23 that play at the country club and use that for special
24 events, didn't think that that large number of people from
25 the public who would see this from various holes and

1 vantage points on Mt. Anthony Country Club, you chose not
2 to create photo simulations so that we could see what it
3 would look like from that vantage point, fair to say?

4 A. I believe I answered that. We prepared
5 simulations from areas --

6 Q. You didn't --

7 HEARING OFFICER TOUSLEY: I'm going to
8 tell you, let the witness answer the question as
9 asked.

10 MS. DINGLEDINE: I'm sorry. Beg your
11 pardon.

12 THE WITNESS: We evaluate areas that
13 have the most sensitivity. Obviously the Vermont
14 Bennington Welcome Center has a substantially greater
15 importance than a private facility in which you need
16 to pay access to. So we chose the locations where we
17 felt had the greatest sensitivity, and those are the
18 locations we provided simulations from.

19 BY MS. DINGLEDINE:

20 Q. So if you have to pay to play golf, your views
21 don't matter, is what you're saying?

22 A. No. I'm saying that it restricts the amount
23 of usership that is at that location compared to a
24 location such as the Vermont Welcome Center which has a
25 more statewide significance.

1 Q. Do you have any idea how many people go to the
2 restaurant at the Mt. Anthony Country Club and what a
3 robust business that is?

4 A. I do not.

5 Q. Well okay. Then you made a judgment with non-
6 complete information I guess?

7 A. Yes.

8 Q. What about Southern Vermont College? Awful
9 lot of people there. Didn't make any photo sims from that
10 location, right?

11 A. So we looked at the project from --

12 Q. Yes or no. Did you?

13 HEARING OFFICER TOUSLEY: Are there
14 facts in evidence to articulate the numbers that
15 you're referring to at those locations?

16 MS. DINGLEEDINE: Pardon?

17 HEARING OFFICER TOUSLEY: Are there
18 facts in evidence that show the numbers that you're
19 referring to at those locations as opposed to the
20 numbers at the Welcome Center?

21 MS. DINGLEEDINE: I certainly can put
22 that evidence on when I call my witnesses.

23 MS. HAYDEN: Then I would object,
24 because it's not in the record.

25 MS. DINGLEEDINE: If that's of interest.

1 After all, we need to hide the truth, don't we? I
2 know you will object. Unfortunately.

3 MS. HAYDEN: For the record, I'm not
4 objecting to hide the truth. We have had an orderly
5 process where testimony was prefiled. And I've been
6 very patient, but I will object to the constant
7 testimonial statements that are being provided by Ms.
8 Dingleline and also to her consistently cutting off
9 the witness.

10 It's -- it's very difficult for a
11 witness to answer questions under cross as it is, but
12 she's badgering him and cutting him off, and the
13 record is not going to reflect his opinions as a
14 result.

15 MS. DINGLELINE: He's not answering the
16 question, Your Honor.

17 MS. HAYDEN: He's not answering the
18 question --

19 HEARING OFFICER TOUSLEY: Okay. I hear
20 this. It's understood. You need to make sure you
21 give him the opportunity to answer the question which
22 you have not been doing. And you need to ask -- to
23 answer the questions as they are asked, not as you
24 wish they were asked.

25 BY MS. DINGLELINE:

1 Q. Southern Vermont College. Are you aware that
2 that's a national historic site?

3 A. Yes.

4 Q. You did not do any photo simulations from that
5 property, did you?

6 A. We did not.

7 MS. DINGLEDINE: That's all I have,
8 Your Honor.

9 HEARING OFFICER TOUSLEY: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. HAYDEN:

12 Q. Thank you. Mr. Buscher, can you please turn
13 to your report which is Exhibit MB-2 at page 26. It's
14 your orderly development discussion.

15 A. Yes.

16 Q. And you don't need to read it out loud, but
17 you provide -- you recite there the Section 248(b)(1)
18 standard. Does this standard require that there be
19 conformance with a town plan or town plan provisions?

20 A. No.

21 Q. Does -- and -- have you worked on projects
22 that go through the Act 250 review process?

23 A. I have.

24 Q. And are you aware of whether or not a
25 conformance standard is required under the Act 250

1 criteria?

2 MS. DINGLEDINE: Objection. Relevance.

3 MS. HAYDEN: I'll withdraw that.

4 BY MS. HAYDEN:

5 Q. Let's go to page 28. The second paragraph.

6 It's actually a quote from page 26 of the town plan.

7 Which is Exhibit CS-BW-81. Do you see that?

8 A. Yes.

9 Q. Okay. So I believe there was a lot of
10 discussion about standards in your cross examination. And

11 I want to ask you about the last sentence in the quote
12 which I believe was already read into the record. Is it
13 your opinion that the project will be sited in a
14 prominently visible location?

15 A. I do not believe the project is being sited in
16 a prominently visible location.

17 Q. And is it your opinion that the project -- and
18 let me ask this.

19 Is it your opinion that this standard or
20 statement cannot be sited in a prominently visible
21 location on hillsides, is it your opinion that that's a
22 clear community standard?

23 A. I do not believe that's a clear community
24 standard.

25 Q. And let's go to the next one. That it shall

1 utilize earth tone colors and non-reflective materials.

2 Do you believe that that's a clear community standard?

3 A. No, I do not.

4 Q. And that it must minimize clearing on natural
5 vegetation. Do you believe that's a clear community
6 standard?

7 A. No.

8 Q. Do you have -- okay. And do you believe to
9 the extent that these are standards at all, that the
10 project violates any one of these standards?

11 A. I do not believe the project violates these
12 standards.

13 Q. You were asked some questions about the views
14 from the college. Southern Vermont College.

15 A. Yes.

16 Q. So you visited the Southern Vermont College?

17 A. I have.

18 Q. And the document that you were shown by, I
19 don't know if it's going to be entered into an exhibit,
20 but the document from Ms. Maru's testimony from the
21 college. Try to see which page that is.

22 HEARING OFFICER TOUSLEY: Are you
23 referring to MACC-ML-1?

24 MS. HAYDEN: Yes.

25 HEARING OFFICER TOUSLEY: Aesthetic

1 report.

2 MS. HAYDEN: Yes.

3 BY MS. HAYDEN:

4 Q. The aesthetic report. Which has a photograph
5 from -- it was one of the first ones that you were asked
6 about. It's on page 2 of that exhibit. The photograph
7 with the rock wall in front and the apple orchard behind
8 it with the monument in the background. You've seen that
9 photograph?

10 A. I have.

11 Q. And does that, in your opinion, reflect what I
12 would call a normal view or a -- like a 50 millimeter lens
13 view of the project site and the monument from that
14 location?

15 MS. DINGLELINE: Objection. Lack of
16 foundation.

17 MS. HAYDEN: I just asked the witness if
18 he's been to this location.

19 MS. DINGLELINE: He has not taken
20 pictures there. He doesn't have -- hasn't produced
21 any photographs that he would be able to compare, and
22 to opine about unless he has --

23 MS. HAYDEN: That's fine.

24 MS. DINGLELINE: You haven't laid that.

25 BY MS. HAYDEN:

1 Q. I'll show you what's been marked as exhibits
2 CM-Cross-Leon-1 and CM-Cross- Leon-2. Do you have those
3 documents?

4 A. I do.

5 Q. Did you prepare those documents?

6 A. I did.

7 HEARING OFFICER TOUSLEY: Do all the
8 parties have copies of these documents?

9 MS. HAYDEN: Yes.

10 HEARING OFFICER TOUSLEY: Is there a
11 copy I can see?

12 MS. HAYDEN: Yes.

13 HEARING OFFICER TOUSLEY: These have
14 been marked but not entered.

15 MS. HAYDEN: That's right.

16 BY MS. HAYDEN:

17 Q. Can you explain -- you said you prepared
18 these, but can you explain what you did with respect to
19 the preparation of Exhibit Cross-Leon-1?

20 A. Cross-Leon-1, that is the image on --

21 MS. DINGLELINE: Objection, Your Honor.
22 This is a cross examination exhibit that now the
23 Petitioner is trying to put into evidence through
24 their own witness. This is not cross examination.

25 HEARING OFFICER TOUSLEY: What I see

1 marked as Cross-Exhibit-1, Leon-1 is MACC-L --
2 MACC-ML-1 at page 2. It's the same photo. So I'm
3 going to overrule your objection.

4 MS. DINGLELINE: But I guess I don't
5 understand.

6 HEARING OFFICER TOUSLEY: Because it's
7 already in evidence. It's already been offered.
8 It's already in evidence.

9 MS. DINGLELINE: But it was put in by
10 my client, not by this gentleman.

11 HEARING OFFICER TOUSLEY: It's in
12 evidence. It's available for him to be questioned
13 about.

14 MS. DINGLELINE: Okay. But she asked
15 him if he prepared this photograph, and it's not his
16 exhibit. I don't understand. I'm sorry.

17 HEARING OFFICER TOUSLEY: Re-ask your
18 question.

19 MS. HAYDEN: To clarify, what I'm
20 trying -- I had questions for the witness and I was
21 told I needed to lay a foundation.

22 BY MS. HAYDEN:

23 Q. Mr. Buscher, you -- so the photograph that has
24 been marked as Cross-Leon-1 is the same photograph that is
25 -- appears at page two of Ms. Leon's aesthetic report;

1 correct?

2 A. It is.

3 Q. And it's just been enlarged?

4 A. That's correct.

5 Q. There was no enhancement or manipulation of
6 the photograph?

7 A. It's simply a crop of that page from that
8 exhibit.

9 Q. Okay. And then what's been marked as exhibit
10 Cross-Leon-2 can you please identify and explain what that
11 is?

12 A. That was a photograph I took from Southern
13 Vermont College trying to approximate the same view taken
14 with a normal lens setting.

15 Q. And what are your conclusions about --

16 MS. DINGLELINE: Objection.

17 HEARING OFFICER TOUSLEY: Basis?

18 MS. DINGLELINE: So this number 2 is
19 not in evidence presently.

20 MS. HAYDEN: I'm questioning the
21 witness on this document.

22 HEARING OFFICER TOUSLEY: She is laying
23 a foundation for the document.

24 MS. DINGLELINE: Right. But --

25 HEARING OFFICER TOUSLEY: So what's the

1 nature of your objection?

2 MS. DINGLELINE: That it wasn't put in
3 by whatever deadlines you people have.

4 HEARING OFFICER TOUSLEY: Because it
5 was developed as a cross exhibit is my understanding.

6 MS. DINGLELINE: But she's not cross
7 examining any witness right now. This is her own
8 witness, and she is just trying to put in a document.
9 It's like if I put Maru up there and said, here, Maru
10 created this photo simulation. Let's put it in
11 evidence. And you're telling me I couldn't do that.

12 HEARING OFFICER TOUSLEY: I didn't tell
13 you you couldn't do that.

14 MS. DINGLELINE: I thought everything
15 had to be put in ahead of time, and you're telling us
16 --

17 HEARING OFFICER TOUSLEY: Cross
18 exhibits and exhibits that -- I did offer at the
19 beginning of the day if there are exhibits that the
20 parties wish to enter that have not already been
21 entered into evidence, they need to be provided to
22 the other parties.

23 MS. DINGLELINE: Okay. But for cross
24 examination purposes, this witness is not being cross
25 examined.

1 HEARING OFFICER TOUSLEY: I'm going to
2 overrule your objection. You may ask the question.

3 BY MS. HAYDEN:

4 Q. I think the question was, can you explain --
5 and I don't know if you -- I think you were cut off. Do
6 you mind reading back the record?

7 (A discussion was held off the record.)

8 BY MS. HAYDEN:

9 Q. Let me go back because it's a little confusing
10 about where we ended. Exhibit Cross-Leon-2.

11 A. Yes.

12 Q. That's a photograph; correct?

13 A. That's a photograph that I took.

14 Q. So you took that photograph. And when was
15 that taken?

16 A. That was taken on Monday.

17 Q. And what type of lens did you use?

18 A. I was using a 50 millimeter equivalent lens on
19 a 35 million SLR camera, so that would be considered a
20 normal lens setting.

21 Q. All right. And when you say normal lens
22 setting, what does that mean?

23 A. It's been accepted for the creation of
24 photographic exhibits that that is the lens setting that
25 most appropriately represents human acuity.

1 Q. Okay. And going back to what is in Exhibit
2 MACC-ML-16 at page 2. Do you have a sense of whether that
3 photograph was taken with a 50 million lens?

4 MS. DINGLELINE: Objection.

5 MS. HAYDEN: What's the objection?

6 MS. DINGLELINE: Lack of foundation.

7 HEARING OFFICER TOUSLEY: Overruled.

8 You may answer the question.

9 THE WITNESS: So the point of me taking
10 this photo after examining Exhibit MACC-ML-1 was I
11 just happened to be going back down to the site to
12 refresh myself. And this exhibit didn't look
13 perspectively right to me. So by framing the wall
14 and lining up the monument with where the step in the
15 wall was, I was able to ascertain whether the
16 photograph provided on page 2 of MACC-ML-1 would have
17 been taken with a normal lens. And it appears to
18 have been taken with a telephoto lens which creates
19 significant distortions in the perspectives of an
20 image.

21 MS. DINGLELINE: Objection. This is
22 lack of credibility and expertise. This man is not a
23 photographer. And --

24 HEARING OFFICER TOUSLEY: Overruled.

25 MS. DINGLELINE: And I don't understand

1 why this exhibit is being allowed to be in evidence.

2 HEARING OFFICER TOUSLEY: She hasn't
3 sought to offer it into evidence yet. She simply
4 used it to refresh his recollection about his
5 opinions with regard to the piece of evidence that
6 you offered already.

7 MS. DINGLELINE: He did not say that he
8 didn't remember.

9 HEARING OFFICER TOUSLEY: I am not
10 going to engage in argument with you, Ms. Dingleline.
11 If you're going to engage in argument with me, you
12 can do so from outside.

13 MS. DINGLELINE: Excuse me.

14 HEARING OFFICER TOUSLEY: If you want
15 to make an objection, you must wait until the person
16 talking stops.

17 MS. DINGLELINE: Excuse me.

18 HEARING OFFICER TOUSLEY: Can you wait
19 until the person who is talking stops?

20 MS. DINGLELINE: Not if you speak to me
21 like this, pointing your finger at me and threatening
22 to throw me out of this proceeding like you did this
23 morning.

24 HEARING OFFICER TOUSLEY: You need to
25 show respect to the commission.

1 MS. DINGLELINE: I've never been
2 treated like this.

3 HEARING OFFICER TOUSLEY: You're
4 abusive. You've abused this witness. You've abused
5 other witnesses. I will not take that abuse. If
6 you're going to talk -- if you're going to ask a
7 question, that's great, and I'll respond to it. But
8 you do not interrupt which you have done repeatedly
9 throughout this hearing.

10 As I was saying, what's been marked as
11 Cross Exhibit 2 has not been offered into evidence.
12 It was used by the Petitioner to refresh the
13 recollection of the witness as to his understanding
14 of what was entered into evidence as MACC-ML-1 at
15 page 2.

16 MS. DINGLELINE: May I make a --

17 HEARING OFFICER TOUSLEY: You may
18 continue your questions.

19 MS. DINGLELINE: May I make a statement
20 for the record or I don't know what to call it. An
21 objection.

22 HEARING OFFICER TOUSLEY: When it's
23 your opportunity to, yes.

24 MS. DINGLELINE: But it pertains to
25 what you just said. Refreshing recollection. Which

1 he didn't say that he couldn't remember something and
2 needed his memory refreshed --

3 HEARING OFFICER TOUSLEY: You're right.
4 You're absolutely right.

5 MS. DINGLELINE: -- which was a
6 prerequisite.

7 HEARING OFFICER TOUSLEY: That was the
8 purpose that she used it for without making that
9 statement. That's how I'm going to treat it in this
10 setting. And I'm not going to engage in an argument
11 with you.

12 Okay. Do we have additional questions
13 on redirect for this witness?

14 MS. HAYDEN: I don't even remember.

15 BY MS. HAYDEN:

16 Q. Just one moment. One final question. Are you
17 aware of whether there are other commercial solar
18 facilities sited in the rural conservation district?

19 A. Yes.

20 Q. And --

21 MS. DINGLELINE: Objection. Outside
22 the scope.

23 MS. HAYDEN: It's not outside the
24 scope. There were a lot of questions about what's
25 allowed in the RCON district.

1 MS. DINGLEEDINE: Not other projects
2 that had been -- that has nothing to do with this.
3 And it's way outside the scope. And we are supposed
4 to be in a funnel getting smaller and smaller. You
5 don't get to ask stuff that hasn't been asked the
6 last time.

7 MS. HAYDEN: I don't even know where to
8 begin. It's absolutely relevant whether or not
9 something other than residential development is
10 allowed in the rural conservation district. It's
11 very relevant if other solar -- commercial solar
12 projects have been allowed and are sited in the rural
13 conservation district. And unless --

14 HEARING OFFICER TOUSLEY: I'm going to
15 overrule the objection. I believe it is within the
16 scope. This witness, in fact, did talk about having
17 observed other documents and other projects in the
18 area while he was on cross exam, so it's within the
19 scope. You may continue.

20 MS. DINGLEEDINE: Then I would like to
21 object because it's duplicative, and it is wasteful
22 of our time. It is in the record, and multiple cases
23 have been put in, I think it's Mr. Wilson's testimony
24 about all the other projects that have been, you --
25 know --

1 HEARING OFFICER TOUSLEY: Overruled.

2 MS. DINGLELINE: And the town --

3 HEARING OFFICER TOUSLEY: You may ask a
4 question.

5 MS. DINGLELINE: And the town didn't do
6 anything about it.

7 BY MS. HAYDEN:

8 Q. Could you please turn to page 22 of your
9 report, Mr. Buscher, which is Exhibit MB-2.

10 A. Yes.

11 Q. The -- that page talks about the rural
12 conservation district. And to refresh your memory you can
13 look at page 21 to see the source of that.

14 MS. DINGLELINE: I'm going to object
15 about leading questions and giving somebody testimony
16 to read. Can we just ask the person questions?
17 That's what a live hearing is for, to ask some
18 questions, not have them read their testimony, to
19 refresh the recollection when they haven't even said
20 that they don't remember something.

21 MS. HAYDEN: I'm trying to move this
22 along.

23 HEARING OFFICER TOUSLEY: If you could
24 restate the question.

25 MS. HAYDEN: All right.

1 BY MS. HAYDEN:

2 Q. Mr. Buscher, could you please look at page 21
3 and 22 of your report. Review it. And to the extent you
4 need to, just refresh your memory on what is contained on
5 the bottom of page 21 on to page 22.

6 MS. DINGLELINE: This is improper. It
7 is leading. It is giving him information. If you
8 have a question for the witness, you need to ask the
9 question of the witness. If he says --

10 HEARING OFFICER TOUSLEY: Sustained.

11 Ask the question.

12 MS. DINGLELINE: If he says I don't
13 remember --

14 BY MS. HAYDEN:

15 Q. Mr. Buscher, is the rural conservation
16 district a zoning district?

17 A. Yes.

18 Q. And is the -- are the standards for the rural
19 conservation district with respect to allowed uses those
20 are -- these are all zoning standards?

21 A. They are.

22 Q. And this list that you are showing on page 22
23 from table 3.13 of the town zoning regulations, does
24 provide a fairly long list of allowed uses that are not
25 residential; is that correct?

1 A. It does. That's correct.

2 Q. And did Ms. Dingleline refer you to this list
3 when she was cross examining you earlier to the best of
4 your recollection?

5 A. No.

6 Q. Is this the document that you were referring
7 to when you said there are other land use documents that
8 allow uses other than residential?

9 A. Yes.

10 MS. HAYDEN: I have nothing further.

11 HEARING OFFICER TOUSLEY: Recross.

12 MS. DINGLELINE: Nothing. Except I
13 would like to put on the record that despite your
14 sustaining my last objection, the witness sat there
15 reading the materials in front of him while the
16 questions were being asked. So it's the same
17 difference. It's just like leading him because he
18 sat there reading it. Just my observations.

19 HEARING OFFICER TOUSLEY: Ms.
20 Dingleline, I'll remind you that the statements of
21 counsel are not evidence. Only the statements of the
22 witnesses.

23 Do any other members -- any other
24 parties have questions for this witness?

25 MR. PORTER: No questions.

1 HEARING OFFICER TOUSLEY: Very well.
2 Mr. Buscher, you may step down. Thank you for your
3 testimony.

4 THE WITNESS: Should I take this stuff?

5 HEARING OFFICER TOUSLEY: It's up to
6 him.

7 MR. KANE: I might need it. Why don't
8 you leave it there.

9 THE WITNESS: Are these the bench
10 copies?

11 HEARING OFFICER TOUSLEY: Give those to
12 her.

13 MS. HAYDEN: Oh, thank you.

14 HEARING OFFICER TOUSLEY: If you could
15 identify the witness, please.

16 MS. HAYDEN: Yes. Mr. Kane, can you
17 please state your full name for the record?

18 MR KANE: Mark David Kane.

19 MS. HAYDEN: And what is your
20 occupation?

21 MR. KANE: I am director for the firm
22 of S.E. Group.

23 MS. HAYDEN: And the witness is free to
24 be sworn in.

25

1 MARK D. KANE

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 MS. HAYDEN: Witness is free to be
6 cross examined.

7 CROSS EXAMINATION

8 BY MS. DINGLELINE:

9 Q. Mr. Kane, how are you?

10 A. Good. How are you?

11 Q. I'm fine. Thank you. Are you familiar with
12 the RCON standards?

13 A. Yes.

14 Q. I believe that they are contained at Exhibit
15 MACC-ML-7. That's Maru Leon's testimony --

16 MS. HAYDEN: Do you have a copy for the
17 witness?

18 MS. DINGLELINE: It's with her
19 testimony. Surrebuttal, I think.

20 MS. HAYDEN: That is -- he's got the
21 Petitioner's testimony.

22 THE WITNESS: I actually have her
23 testimony. So it was MACC -- excuse me?

24 MS. DINGLELINE: MACC-ML-7.

25 THE WITNESS: Okay. I have that

1 exhibit.

2 BY MS. DINGLEDINE:

3 Q. Okay. Could you turn to page 4 of that
4 exhibit, please?

5 A. Yes.

6 Q. And that talks about hillsides and ridgelines.
7 That's the beginning words on that page?

8 A. Yes.

9 Q. Are you familiar with these standards?

10 A. Yes.

11 HEARING OFFICER TOUSLEY: I'm not
12 familiar with these standards. Where did this
13 document derive from?

14 THE WITNESS: These are in the land
15 development regulations.

16 HEARING OFFICER TOUSLEY: Okay. Now I
17 understand.

18 BY MS. DINGLEDINE:

19 Q. And you told me before you testified that you
20 believed these were applicable to this proceeding and this
21 project, would you agree with that?

22 A. The land development regulations, no.

23 Q. So in terms of -- so did you review these --
24 this document in relation to your opinions in this case?

25 A. I looked at all the regulations in the town

1 including this document. But I still don't believe they
2 are applicable as a community standard under Quechee.

3 Q. Okay. Why then, if you know, was this talked
4 about so much, and zoning regulations were talked about by
5 the Petitioner? And why was there so much discussion
6 about all these different standards besides the town plan
7 if they are not applicable?

8 A. Well one of the challenges, I think, that this
9 docket has suffered from is the fact that the town plan,
10 the 2010 town plan, sort of commingles its land
11 development regulations with the town plan language.
12 There is a lot of overlap and similarities. So there is
13 not a very distinctive line between the two at times in
14 terms of language. As to applicability to the Quechee I
15 have relied on the town plan language.

16 Q. Okay. And so you do not believe that the
17 reference to particular standards that are being
18 referenced in a document like this apply to this
19 proceeding because you think it's confined just to the
20 2010 town plan, fair to say?

21 A. Yes.

22 Q. Okay. All right. That's fair. We have had a
23 couple meetings before today. We had -- I cross examined
24 you in Apple Hill Solar.

25 A. I remember it well.

1 Q. And then a case before that.

2 A. Middletown Springs.

3 Q. Middletown Springs. So my question -- I want
4 to go very briefly through this. It's my recollection
5 from your testimony before that you regularly work for
6 either Public Service Department or Petitioners in this
7 process, in terms of your involvement expressing opinions
8 about the Quechee analysis and whether there is aesthetic
9 impacts or orderly development impacts. Fair to say?

10 A. Yes.

11 Q. Okay. And almost without exception the
12 overwhelming majority of your cases you are -- you have
13 opined that there was no undue adverse impact to the
14 aesthetics of the area based on your analysis of the
15 Quechee test; is that fair to say?

16 A. For the majority of them. Yes. Not
17 exclusively for sure.

18 Q. And you may have had one or two opportunities
19 where you've met with a client and just said this doesn't
20 pass muster, and then you didn't continue to be employed
21 because they were dissuaded from going forward with the
22 process. Fair to say?

23 A. Or I was no longer under their employ.

24 Q. Okay. So I just wanted to ask you very
25 briefly about three cases you were involved in, involved

1 with. You were involved in providing a Quechee analysis
2 on aesthetics in Deerfield?

3 A. Yes.

4 Q. And Lowell?

5 A. Yes.

6 Q. And in Sheffield?

7 A. Yes.

8 Q. And in all three of those cases you determined
9 there was no undue adverse impact on the scenic and
10 natural beauty of the area?

11 A. To refresh my memory for a few of them, they
12 are quite far back. My recollection under Lowell was that
13 I did originally conclude that there was not an undue
14 adverse impact, but there was some subsequent changes to
15 the plan that ameliorated those impacts.

16 Q. So you have been involved in the prior
17 proceeding relating to -- that was called Chelsea Solar --
18 whether it was a different case or this case, you were
19 involved in being the expert on that portion of the case.
20 Fair to say?

21 A. Yes.

22 Q. And that was a case that was denied on
23 aesthetics and orderly development by the Public Utility
24 Commission recently; correct?

25 A. Yes.

1 Q. Okay. Did you have occasion to review the
2 decision of the Public Utility Commission?

3 A. I did.

4 Q. And so I wanted to ask you and give you the
5 opportunity --

6 MS. HAYDEN: I'm going to object. If
7 we are going to go through what will take an hour to
8 have questions read in from the record, the record
9 speaks for itself. That is a different case. And
10 the project has changed since that decision was
11 issued.

12 HEARING OFFICER TOUSLEY: I'm going to
13 overrule the objection. You may ask the question.

14 BY MS. DINGLEDINE:

15 Q. So in my looking at the -- I think Mr. Wilson
16 had some maps that he shows what the -- where the fence is
17 going to be and where the clearing's going to be of that
18 project versus this project to demonstrate how it's been
19 altered. You're familiar with some of those exhibits?

20 A. I have some of those exhibits. Yes.

21 Q. And then they were superimposed on one another
22 so you can get a really good idea of the exact difference.

23 A. I would need to see them again to refresh my
24 memory, but I'm aware of them. Yes.

25 Q. Okay. So I looked at those, and then I looked

1 at the acreage which I think we have established in the
2 record. It has been reduced for the clearing of the site
3 by less than one acre.

4 A. I believe that's an error. I believe that the
5 order from the PUC actually had the acreage wrong in it,
6 and that the acreage that they cited in that order was
7 actually the acreage for the Apple Hill project.

8 And my recollection, again, not having looked
9 at it in awhile, but my recollection was that the actual
10 clearing for the Chelsea project was more like 13.8 acres.
11 So the net difference was not one acre. It was, you know,
12 four or five acres. Five acres.

13 Q. So there were some calculations in some of the
14 materials that talked about the percentage of decrease,
15 that it was shrunk. And I recall reading 40 percent.

16 A. Yes. I believe I've seen the number of 40
17 percent as well.

18 Q. Okay. Do you know who did the calculations on
19 that? Because I'm not sure the math is right. Even given
20 your indication of the acreage.

21 A. Yeah. I don't recall exactly who did the
22 calculations, but my review of the difference between the
23 two projects was, I think there is a 32 percent reduction
24 in the actual clearing or 33 percent reduction in the
25 actual clearing, and a 40 percent reduction in the area

1 within the fence.

2 So as you might recall, as you know, I think
3 is a matter of fact here, the array has gotten smaller in
4 terms of being closer together, the arrays, so that the
5 fence line actually has shrunk too. Shrunk
6 disproportionately to the amount of clearing that has
7 changed.

8 Q. The other thing that I seem to notice was, you
9 know, now there is some buffer instead of clearing all the
10 way to the property boundary I guess on the west or
11 southern side. Sort of where the highway area --

12 A. That's the west side.

13 Q. That's the west side. Okay. So that -- so
14 some tree buffer is being retained that was not
15 previously, fair to say?

16 A. No. Actually there was a buffer previously.
17 I think the buffer is increased by 50 to 60 feet from
18 original. I think it was 150. Now it's more like 200.
19 So there always was buffer in even the original docket.

20 Q. Okay. What's happened to the buffer on the
21 north and the east side? Has that been reduced?

22 A. The north side buffer I don't believe has
23 changed much. It's a little bit. The east side buffer,
24 is it east side you were can go or south side? East.

25 Q. We will get to south in a minute.

1 A. We will work our way around. On east side I
2 can't recall exactly what the buffers were, but I believe
3 it's not changed significantly from what it was
4 originally.

5 Q. Okay. Has any of the Chelsea I, I'll call it,
6 project clearing area, has any of that been absorbed into
7 the Apple Hill project?

8 A. I haven't done a detailed analysis of the
9 differences in those clearing areas in terms of the net
10 effect, the net balance on the property. Mr. Wilson may
11 actually know that answer.

12 Q. We will be sure to ask him. Do you agree with
13 the Public Utility Commission in terms of the town plan
14 having a fair written community standard that's applicable
15 in this case?

16 A. No.

17 Q. So then I guess you don't think any clear
18 written community standard has been violated if none
19 exists?

20 A. Correct.

21 Q. Okay. It's my understanding that the Vermont
22 Supreme Court decision known as Rutland Renewable Energy
23 established that neighbors are considered an average
24 person under the Quechee test. Do you disagree with that?

25 A. I don't disagree that that was the decision.

1 I think there is -- there is some space within which the
2 consideration of neighbor impacts or resident impacts is
3 important. But whether or not they are given the same
4 status as an average person under the second prong of the
5 Quechee test, I think, is a misapplication from my
6 opinion.

7 That being said, in this docket and in many
8 dockets that I'm involved with, we take significant
9 strides to understand and evaluate and in many cases
10 ameliorate the impacts of those most closely affected
11 which tend to be residents and neighbors.

12 Q. But you also take the position that neighbors
13 are not average people. A reasonable person standard,
14 right?

15 A. Yeah. I think that -- I think that the
16 decision -- the decision that was reached in Rutland
17 Renewable was sort of a continuation of the evolution of
18 our understanding of how these -- how projects like this
19 fit into the Vermont context. And the recognition that we
20 need to make sure we don't ignore the impacts on
21 residents. So again, from my perspective, I apply, I
22 think very liberally, if you will, the test under Quechee
23 for a shocking or offensive to make sure we don't ignore
24 whether they are given the same weight as a quote, average
25 person, is -- in my opinion is a different matter. I try

1 to weight the average person to be an -- it's an
2 abstraction. It's trying to find disinterest -- excuse me
3 -- disinterested persons so that we can make an objective
4 decision about the potential aesthetic impact of the
5 project.

6 That being said, we don't -- I'm not blind to
7 the fact that there are people that live in and around the
8 project site that we are consulting for, so we try to find
9 a balance between those two things. I do.

10 Q. But you disagree basically with the Supreme
11 Court that those private folks, those, you know, that may
12 have some private interest, you don't feel that they are
13 on a level playing field in terms of their opinion just
14 because they are biased?

15 MS. HAYDEN: I'm going to object. I
16 don't have a copy with me, but I'm very familiar with
17 that case having tried it. And I think it's
18 inaccurate to say -- to characterize the ruling in
19 that case the way counsel has done. And it may be
20 misleading the witness.

21 HEARING OFFICER TOUSLEY: Sustained.

22 MS. HAYDEN: Not leading but
23 misleading.

24 BY MS. DINGLEDINE:

25 Q. So on your rebuttal testimony on page 6 that's

1 the August 10th rebuttal.

2 A. Just a moment, please. Yes.

3 Q. So line 13. You were asked the question on
4 page 25 of his report, Raphael, who is DPS's expert,
5 states that: While some of the neighbors would find the
6 project offensive, they aren't considered an average
7 person under the second prong of the Quechee test. And
8 then shocking and offensive question's asked, and you were
9 asked do you agree. And your answer was yes. As
10 discussed in my report in prefiled testimony, while my
11 analysis has considered potential impacts to both the
12 broader public and from neighbors, I agree with Raphael
13 that such private interests are not recognized as, quote,
14 average persons, unquote. And even if they were, the
15 project does not shock or offend the average person.

16 So that I'm not misstating anything or
17 misleading anybody, that was what your testimony was.
18 What does private interests got to do with whether or not
19 from a particular vantage point that might be a private
20 property, there is or is not an undue adverse impact by --
21 as a result of someone perceiving it as shocking and
22 offensive?

23 A. Okay. So parse that out a little bit. So my
24 interpretation of the Quechee method is that it does give
25 significant deference to public vantage points, in part

1 recognizing the importance that the public has to views.
2 There is an important aspect of preserving Vermont's
3 scenic qualities and making sure from public vantage
4 points those views are preserved and at least evaluated.

5 I don't believe anything under Quechee is -- I
6 don't think Quechee was intended to prevent development
7 anywhere from every vantage point. I think the
8 distinction I'm making and I think Mr. Raphael is making,
9 and I think Mr. Buscher is making, is that from a basis of
10 evaluating whether something is able to shock or offend,
11 you do look at the average person. You do look at folks
12 that are disinterested so that they don't come to the
13 construct of the impact from the position of having a
14 particularized interest. And that is, I think, the big
15 distinction.

16 If you're on a public road, there is a
17 presumption that the public view is yours. If you're in
18 your backyard, you have interests there that are not
19 public interests. Those are your personal interests. So
20 I think that my interpretation of Quechee has been pretty
21 consistent in the sense it's stated here, and it
22 reiterates what I just told you, that I do not ignore the
23 impacts on neighbors. I think that's a very important and
24 good thing to do relative to developing projects like
25 this, or any other project for that matter. But you can't

1 give the same weight and consideration under the Quechee
2 test to one particular neighbor over the sum and substance
3 of all public vantage points.

4 Q. Okay. But see you're mixing two different
5 things in my -- from what I understand what you're saying.
6 Don't you agree with me that there is two different things
7 you are talking about here? There is whether someone is a
8 reasonable person, and basically what I think you're
9 saying is if you are somebody who is right next door to a
10 project, that you may have a bias. And so your opinion
11 may be swayed because of your private interest in not
12 wanting to see, you know, a shocking and offensive project
13 be, in your opinion, be built versus whether or not a
14 reasonable person's viewpoint is assessed from a location,
15 whether it's public or private.

16 And my understanding -- so my understanding is
17 from Supreme Court precedent, is that private and public
18 views are both important and reviewed and looked at under
19 the Quechee analysis. But it is the particularized
20 interest or bias or whatever that has to be removed in
21 terms of the individual's objectivity of what they think
22 from that viewpoint whether it's public or private. Do
23 you agree with what I've been explaining?

24 A. I'm not quite following it entirely. And I
25 think it's sort of I'm trying to understand the -- I think

1 I've been clear in the fact that I consider when I'm
2 evaluating Quechee with the eye toward the average person
3 the ability to shock or offend the average person. The
4 methodology I employ, the consideration I give to that, is
5 where are these people who may see this project. You
6 know, what's their perspective? Where are they coming
7 from.

8 And I think the test under Quechee for the
9 average person was to try to remove some of that bias as
10 you describe it, some of the sort of particularized
11 interests to that. So that when the PUC's making a
12 decision, they are not making it solely on the purview of
13 one person's perspective.

14 That being said, again just to what I
15 testified in my rebuttal testimony, I don't ignore and I
16 think the PUC does not ignore either the interests of
17 individuals who may be affected by a project. But whether
18 or not those have the same weight, to your point, I think
19 is the question. And I think that's something that the
20 PUC does is it weighs the impacts relative to those
21 different perspectives and tries to find the right
22 solution.

23 So my job as an aesthetic consultant is to
24 identify where those vantage points are, to characterize
25 the impact to the average person, and to try to remove at

1 least some of the bias, if I can.

2 Q. Okay. So what I hear you saying is you don't
3 think private views are as important as public views, fair
4 to say?

5 A. That's not what I'm saying at all. I'm saying
6 I try to give them -- give consideration to both sets of
7 views in my evaluation, but I do feel that the
8 consideration needs to be reflected in terms of the
9 broader impact. So if there is one vantage point for one
10 -- from one private location, and there is no visibility
11 from a thousand public locations, that does enter into my
12 mind.

13 Q. Okay. I understand. Thank you for explaining
14 that. Okay.

15 But the PUC goes to many, many public and
16 private locations. And aren't they the folks who need to
17 make that decision in terms of what they are looking at
18 and whether it shocks or offends them if they are stepping
19 in the shoes to test the credibility of the experts that
20 are telling them, yes, it's shocking and offensive, or no,
21 it's not shocking and offensive?

22 A. PUC can go wherever it wants, and often,
23 you're right, does go to public and private vantage points
24 to look at the project. We tend not to go to private
25 vantage points because we are oftentimes not allowed to do

1 so, so that does limit our ability to evaluate that.

2 Q. So what is Mt. Anthony Country Club? Is that
3 a public or a private viewpoint?

4 A. I'm going to hedge and say it's quasi public.
5 I mean it really is. I think at the end of the day it's a
6 private facility. It's a private business. It's not
7 owned by a cooperative, I don't believe or --

8 Q. Why do you think it's a private business?
9 That doesn't allow the public?

10 A. No, no. Let me finish the question. It's
11 owned by somebody. Somebody owns and operates that
12 facility. So presumably they could tomorrow say we don't
13 want anybody on this property. I mean just
14 hypothetically. So in that sense it's a private business.
15 It operates at its own business interests. Maybe I'm
16 wrong there, but my understanding is that it is a private
17 business. It has owners, and they can do that. It
18 doesn't mean the public's not allowed there. Any business
19 they could invite the public and allow the public to use
20 it.

21 Q. IBM is owned by somebody; right?

22 A. Whether they let the public in is another
23 question.

24 Q. Okay. But Mt. Anthony Country Club, do you
25 have some evidence or information that it's not a public

1 facility that anybody can come to and spend money and buy
2 food and play golf?

3 A. I didn't say that at all. I said it's quasi
4 public in the sense that Mr. Buscher's testimony earlier,
5 my understanding is to play golf there you do need to pay
6 which makes -- which is different than being on a road in
7 Vermont. You don't pay to get on a road or a public trail
8 or a public park generally. So I think that makes --
9 there is a distinction in the -- from the locale.

10 Q. So if you go to Walmart and spend money at
11 Walmart it's not a public place even though they are
12 subject to public accommodation laws and can't exclude and
13 discriminate against the public?

14 A. Yeah. Well I'm not an expert in
15 discrimination laws, so I'm not going to get into that.
16 But I do think there is a distinction between a place that
17 you pay to use versus a place that you do not have to pay
18 to go to. I mean you don't have to buy anything at
19 Walmart, my understanding. I've been there I think a few
20 times at this point.

21 Q. So Southern Vermont College private because
22 you have to pay tuition to be a student there?

23 A. It's okay -- let's -- maybe I can be clearer
24 with you. It's not a public facility. It's not a place
25 owned by the public within the public interests. It's not

1 a park. It's not a -- it's not a road. It's not a public
2 facility. It's not the Vermont Welcome Center. It does
3 not have the status of being publicly owned, operated or
4 otherwise clearly accessible to the public at all times
5 for no interest at all represented other than that you
6 have access to it.

7 For Southern Vermont College I understand it's
8 a private college. And again, I'm presuming if they
9 wanted to, they could decide they didn't want people to
10 come on their property. I don't know, you know, that's
11 how -- again, that's the basis on which I'm answering your
12 question. I don't know what more you would like me to
13 opine about.

14 Q. Are you aware that there are public walking
15 trails all over Vermont Southern Vermont College campus?

16 A. I have heard, and I was at the site visit and
17 on a previous visit to the college, and I'm aware there
18 are some public trails. Yes.

19 Q. So did that enhance your concern about the
20 shocking and offensive reasonable person response? Did
21 they get elevated because they allowed public in any time
22 to walk on their trails, or because you've got to pay
23 tuition they are not so important --

24 A. Again I think that's a mischaracterization of
25 what's important. I mean look at everything. I think Mr.

1 Buscher was talking about the fact you do look at the
2 entire visual context and try to understand the impacts
3 more broadly. For the college, in general, I think one of
4 the things that factored in my decision as to whether or
5 not there is an ability to shock or offend from that
6 vantage point is that many places within the campus you're
7 15,000 feet away from the project. You're three miles
8 away. And, you know, that does factor into my
9 understanding of the ability of a visual and the landscape
10 to shock or offend.

11 So I would give it some weight for being
12 available to the public, but also give it some
13 consideration from the fact that it's very far from a
14 project that's being proposed.

15 Q. How much money has your company made thus far
16 between Apple Hill and Chelsea Solar?

17 A. Well thanks to you -- no. I don't know.

18 Q. You're welcome.

19 A. I don't know honestly. I don't know what the
20 current total is.

21 Q. I think you said something like 50 or 60 grand
22 when we talked last time in Apple Hill?

23 A. It's more than that obviously.

24 Q. You were the aesthetic expert on Apple Hill,
25 and now you are on Chelsea. Have you done any analysis in

1 terms of the combined effect or cumulative effect of the
2 two projects both being permitted and how that would alter
3 or change the analysis under either orderly development or
4 aesthetics?

5 A. I believe if you look through the Apple Hill
6 filing in the docket, my analysis for that docket did
7 consider -- visual analysis of that docket did consider
8 the presence of both projects. The simulations included
9 both projects. The analysis represented both projects.

10 And just to make the record clear, we started
11 -- I started this project first with the understanding
12 that Apple Hill was probably going to be second. But as
13 time has come on, this project is now second. So the -- I
14 think the analysis that was considered in Apple Hill that
15 was one of the bases for the Proposal for Decision that's
16 been issued in that docket did consider the potentially
17 cumulative effects of both projects.

18 Q. Okay. So if the Public Utility Commission
19 denied this project the last time when it was a larger
20 clearing area, and the other gentleman said that he
21 thought there may have been a mistake or something in the
22 opinion about that?

23 A. I said that.

24 Q. Oh, you said that. I'm sorry.

25 A. It's a long day.

1 Q. So what is the total combined acreage between
2 Apple Hill and Chelsea as it's proposed now?

3 A. I would have to go back. Honestly do not
4 remember the Apple Hill number. It's 9.64 whatever plus
5 whatever the Apple Hill number was. I'm sure Mr. Wilson
6 can rattle that off.

7 Q. Under 10 acres?

8 A. I believe it's under 10 acres, but I can't
9 remember exactly.

10 Q. One moment please. Let me just ask you
11 briefly about -- in your testimony you said that you
12 observed two solar projects?

13 A. So which testimony are we talking about,
14 please?

15 Q. Rebuttal.

16 A. On what page?

17 Q. Page 13, line 8.

18 A. Yes. 13, line 8.

19 Q. You said that you observed two solar projects
20 that were in very close proximity to a public travel way,
21 Route 7?

22 A. Yes.

23 Q. And where no screening was proposed.

24 A. Yes.

25 Q. You didn't -- I noted that you didn't say that

1 you could not -- that you could see them from Route 7.

2 And I've never seen them from Route 7. Are they visible
3 from --

4 A. Yes. If you go to CS-MK-4. And you look on
5 sheet 1, figure 1, there is a little E all the way at the
6 left-hand side. And that correlates to photographs I took
7 of the solar project on sheet figure 4. This is -- I
8 think it's near the State Police facility.

9 Q. So you think those are undue adverse impacts?

10 A. I haven't analyzed them. I think the purpose
11 of my testimony was just to note the fact that there are
12 other solar projects in, you know, proximity to Route 7
13 that are in this particular case unmitigated. To make a
14 point that that was -- and if I had been working on the
15 docket, for some reason I get lucky, I probably would have
16 had a lot of mitigation to propose.

17 Q. Okay. So the point being they should be
18 screened because they are shocking and offensive?

19 A. No. I think more to a point of whether or not
20 in the town's consideration of other solar projects that
21 they have been consistent in the application of both their
22 town plan language as well as their solar screening
23 ordinance. And, you know, I don't know exactly the timing
24 of this one. But if projects are to be screened relative
25 to the screening ordinance, then this one seems sorely

1 lacking.

2 Q. Okay. When did the screening ordinance come
3 into being?

4 A. I have to remember. I think it's 2016, as I
5 recall.

6 Q. And when was this permitted?

7 A. I don't know exactly when it was permitted.
8 That's why I qualified my answer.

9 Q. So we don't know whether that was in effect or
10 not?

11 A. The town plan language was certainly in
12 effect.

13 Q. Right. But the town is not responsible for
14 permitting under their town plan. It's not regulatory --

15 A. No. But they can participate in PUC.

16 Q. And they can spend \$200,000 and then have to
17 negotiate out of it because --

18 MS. HAYDEN: Objection.

19 MS. DINGLEDINE: -- they spent a lot of
20 money; right?

21 HEARING OFFICER TOUSLEY: You want to
22 avoid making speeches, if you can, please.

23 MS. DINGLEDINE: He opened the door.

24 HEARING OFFICER TOUSLEY: Precisely
25 what's the nature of the evidence that you're trying

1 to achieve from this witness?

2 MS. DINGLELINE: The gentleman
3 testified that the town can do whatever they want to
4 do to intervene and be heard on a particular docket,
5 but we are in a particular docket where they have had
6 to bow out and make a --

7 MS. HAYDEN: Objection.

8 MS. DINGLELINE: -- decision to accept
9 \$200,000.

10 MS. HAYDEN: Objection.

11 MS. DINGLELINE: And not to protect
12 their town plan or to continue to litigate this.

13 MS. HAYDEN: Objection.

14 HEARING OFFICER TOUSLEY: So do you
15 have a question?

16 MS. DINGLELINE: I do.

17 HEARING OFFICER TOUSLEY: Which is?

18 BY MS. DINGLELINE:

19 Q. So the -- there are other reasons why towns do
20 not involve themselves in the Public Utility Commission
21 process, fair to say?

22 A. I can't speak for every town. But they can
23 make the decision if they want to or not.

24 Q. Specifically Bennington. There might be other
25 reasons why they were not involved in those dockets, or

1 why they won't be involved in dockets in the future?

2 MS. HAYDEN: The witness has already
3 answered. Objection. The witness has already
4 answered.

5 HEARING OFFICER TOUSLEY: I'm going to
6 overrule the objection. You may ask a couple more
7 questions in this area.

8 THE WITNESS: Just to repeat the
9 question because I'm not sure --

10 BY MS. DINGLEDINE:

11 Q. So Bennington, in fact, may have other reasons
12 why they have either not been involved in a project in the
13 past, or in fact, definitely will not be involved in a
14 project in the future. Right?

15 A. I think that's a question that would be best
16 asked to Bennington. I mean I can't opine as to why they
17 would choose to participate or not. My point was -- is
18 that they are allowed to participate with the Public
19 Utility Commission on dockets that relate to solar
20 development. So whether they choose to do that or not, is
21 up to them.

22 Q. Right. But there may be other reasons other
23 than reluctance to enforce their screening ordinances or
24 town plan provisions, fair to say?

25 HEARING OFFICER TOUSLEY: I think he's

1 already answered the question, and he said that it
2 calls for speculation, that he didn't want to do
3 that; is that correct?

4 THE WITNESS: Yeah. I do not know why
5 -- I have no understanding of why they would decide
6 not to. But my point still stands is that can be the
7 outcome of that particular project is clearly not one
8 that shows a lot of screening. So some decision was
9 made, whether it be through the town plan review --
10 when they were looking at the town plan and looking
11 at the project that was before them, to not
12 participate or to participate and not require
13 additional screening. I do not know what the basis
14 for that decision was.

15 BY MS. DINGLEDINE:

16 Q. How many proceedings for energy projects have
17 you been involved in in your career before the Vermont
18 Public Service Department or the Vermont Utility -- Public
19 Utility Commission?

20 A. I think I'm over 30 at this point. But I
21 can't recall exactly.

22 Q. Of those 30, how many of those proceedings
23 involved active participation of a town in the proceeding
24 where they hired a lawyer and actually engaged in the
25 full-blown testimony process in your recollection?

1 A. I don't have a number. I would have to
2 speculate. It's not a significant percentage.

3 Q. A small percentage?

4 A. Except in New Haven. They have been
5 participating a lot.

6 Q. And the number of individual interveners is
7 also quite small, is it not?

8 A. I would disagree with that. I think that in
9 many -- because of a lot of work I have done with the
10 Department of Public Service, a lot of those proceedings
11 do have at least, at some level, whether they stay
12 throughout the entire proceeding or not, but there's been
13 a lot of intervention or at least interest and concern
14 about projects from neighbors and some choose to
15 intervene. Some choose to intervene for awhile and then
16 don't want to learn everything.

17 Q. How many of those individuals that you've
18 encountered have a lawyer?

19 MS. HAYDEN: Objection. I don't see
20 the relevance of this line of questioning to the
21 testimony that this witness is offering.

22 HEARING OFFICER TOUSLEY: Do you have a
23 response? How is this relevant? How is the question
24 about pro se representation relevant?

25 MS. DINGLELINE: Because of his

1 response to the last question.

2 HEARING OFFICER TOUSLEY: I don't
3 understand.

4 MS. HAYDEN: This is not an evidentiary
5 issue that this witness has provided any testimony
6 on. If Ms. Dingleline --

7 MS. DINGLELINE: He just did.

8 MS. HAYDEN: If Ms. Dingleline wants to
9 brief it, she could brief it, but it's not relevant
10 to the testimony he's offered.

11 HEARING OFFICER TOUSLEY: I'm not
12 ruling to sustain the objection yet. I want to
13 understand why this is relevant.

14 MS. DINGLELINE: Because he responded
15 in a way with an answer that indicated --

16 HEARING OFFICER TOUSLEY: I understand
17 that, but why is it relevant?

18 MS. DINGLELINE: It is meeting the
19 evidence that he just testified to. So if you want
20 to strike his answer, then I would move to strike his
21 answer.

22 HEARING OFFICER TOUSLEY: What's your
23 question again?

24 MS. DINGLELINE: I don't even remember
25 anymore. I'll just move on.

1 HEARING OFFICER TOUSLEY: Okay.

2 BY MS. DINGLEDINE:

3 Q. You indicated on page 12 line 21 that the
4 Applicant has retained vegetation along its entire
5 periphery of varying widths?

6 A. I'm sorry. Which exhibit are you looking at?

7 Q. The same one. We were just on 13, so we are
8 going back to 12. Page 12.

9 MS. HAYDEN: Is this the August 10th?

10 MS. DINGLEDINE: Yeah.

11 THE WITNESS: And page 12?

12 BY MS. DINGLEDINE:

13 Q. Yeah.

14 A. And what line please?

15 Q. 21.

16 A. Yes.

17 Q. Is that true that the applicant has retained
18 vegetation along its entire periphery of varying widths?

19 A. Yes.

20 Q. Well so I understand they maintained
21 vegetation along the west, the north, and the southern
22 borders. But I thought that they were proposing to cut
23 all vegetation on the eastern border. Is that not true?

24 A. All trees, yes. Vegetation, no.

25 Q. Oh.

1 A. There is a distinction.

2 Q. Well is there vegetation other than trees that
3 provides any significant screening?

4 A. Certainly. Shrubs can provide great
5 screening.

6 Q. Yeah, but not 50 feet high.

7 A. No. It doesn't necessarily -- that's not
8 necessarily what the intention of the screening needs to
9 be there, so I think the point is there is much more
10 forest vegetation left on the periphery of the north and
11 the west and the south. But on the east it is largely
12 cleared, but there is still vegetation there.

13 Q. All right. But all the trees are getting cut;
14 right?

15 A. Yes.

16 Q. Okay. Thanks.

17 MS. DINGLEDINE: That's all I have.

18 Thank you.

19 THE WITNESS: Thank you.

20 HEARING OFFICER TOUSLEY: Redirect?

21 MS. HAYDEN: I have no redirect.

22 HEARING OFFICER TOUSLEY: Do any of the
23 other parties have questions for this witness?

24 MR. PORTER: No questions.

25 HEARING OFFICER TOUSLEY: Mr. Kane, I

1 want to thank you for your testimony. You may stand
2 down.

3 Why don't we take a break, a shorter
4 break, until quarter after the hour, and then we will
5 begin with Mr. Wilson.

6 MS. DINGLEDINE: Would we be able to
7 have my clients go next since they cannot return
8 tomorrow? And I assume Mr. Wilson would be here
9 anyway, if we needed to go over a little to tomorrow.

10 HEARING OFFICER TOUSLEY: Is there any
11 objection?

12 MS. HAYDEN: I don't have any questions
13 at this point for Ms. Block. We are -- we do want to
14 offer in and have admitted the cross examination --
15 in lieu of cross examination, the discovery responses
16 from the Homeowners' Association.

17 HEARING OFFICER TOUSLEY: So you need
18 both of them. Is there any objection to them going
19 before Mr. Wilson?

20 MS. HAYDEN: I don't need both of them
21 is I guess what I'm saying. There is no objection.

22 HEARING OFFICER TOUSLEY: Okay.

23 MS. HAYDEN: But I think that -- and I
24 won't have very long cross examination for Ms. Leon,
25 so there is no objection.

1 HEARING OFFICER TOUSLEY: Okay. I
2 think we are going to go ahead and make the swap and
3 put -- is it Ms. Block first followed by Ms. Leon?
4 And they will be available for testimony at 20
5 minutes after the hour.

6 MS. HAYDEN: Just to clarify, I have no
7 questions for Ms. Block.

8 HEARING OFFICER TOUSLEY: Okay. Okay.
9 We are adjourned until 20 after.

10 (Recess was taken.)

11 HEARING OFFICER TOUSLEY: Are we ready?
12 Okay. Let's go back on the record then. What are
13 all these binders that are on the witness table?

14 MR. WILSON: Those are for me.

15 HEARING OFFICER TOUSLEY: For you. I
16 don't want to hide -- make Ms. Leon have to look
17 through all those.

18 MS. HAYDEN: Those were for Mr. Wilson.

19 HEARING OFFICER TOUSLEY: That will
20 take more than 10 minutes. Identify the witness,
21 please.

22 MS. DINGLELINE: Would you please state
23 your name.

24 MS. LEON: Sure. I'm Maru Leon from
25 Mt. Anthony Country Club in Bennington, Vermont.

1 MARU LEON

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I swear. Yes.

5 MS. HAYDEN: Thank you. I have --

6 HEARING OFFICER TOUSLEY: Did you have
7 something you wanted to say before you offered her
8 cross examination?

9 MS. DINGLELINE: Yes. Just one
10 housekeeping issue, because there was mention of
11 deposition -- I mean interrogatories that weren't
12 signed or notarized or something. So I thought an
13 easy way to remedy that would just be to ask my
14 witness if she -- all the discovery responses that
15 she has provided were true to the best of your
16 knowledge, and just do a verbal notarization of it.
17 Or --

18 MS. HAYDEN: I didn't intend to ask any
19 questions about the discovery.

20 HEARING OFFICER TOUSLEY: Okay. Your
21 witness.

22 MS. HAYDEN: Thank you.

23 CROSS EXAMINATION

24 BY MS. HAYDEN:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. So I'm referring to your report, your
3 aesthetic report, MACC-ML-1, and I have number of
4 questions about that.

5 A. Okay.

6 Q. Let's turn to page 2 the photograph. It's
7 entitled Photographer's images, Ann Smith. Who is Ann
8 Smith?

9 A. She's a local photographer who sells her
10 photographs in town.

11 Q. And where did you obtain this photograph from?

12 A. Bakkerij Krishnen. It's an Austrian bakery on
13 Main Street.

14 Q. Do you have any personal knowledge of what
15 type of camera or lens was used for this photograph?

16 A. I don't.

17 Q. You don't know if this was from a 50
18 millimeter lens?

19 A. I have no idea.

20 Q. Okay. Do you know a year?

21 A. No. I don't know the year. I bought the
22 magnet many years ago and have had it on my refrigerator.

23 Q. Well similar question for the two photographs
24 on page 3 by Dave Kutchukian. K-U-T-C-H-U-K-I-A-N. Do
25 you have any personal knowledge of the camera that was

1 used or the lens that was used for these photographs?

2 A. I do not.

3 Q. Do you know where the photographer was, or I
4 should say do you know where -- whether it was on the
5 ground or aerial where these photographs were taken from?

6 A. I do not know where he was standing. It
7 doesn't seem to me that they were aerial photographs. It
8 sounds like to me like he was just from a higher point on
9 the same -- I think those are from the apple orchard where
10 we did the last visit, the last stop in our site visit.

11 Q. And so but you don't have any personal
12 knowledge, you're speculating?

13 A. I'm speculating. Those are all photographs,
14 by the way, that are all public photographs that these
15 photographers use to sell, to promote. They do note
16 cards, they do postcards. They have -- they are all
17 vehicles for them to make a living. They are all artists
18 residing in Bennington.

19 Q. Do you -- and you don't know whether these are
20 zoomed in or zoomed out? You don't have any personal
21 knowledge?

22 A. I don't even know them. I don't even know
23 these photographers, so I wouldn't know.

24 Q. Did you see that both of these photographs say
25 at the bottom that they are copyright protected?

1 A. Yes.

2 Q. Did you get permission to reproduce them?

3 A. We called the people that were in, and they
4 said that would be fine.

5 Q. Similar question, page four.

6 A. Yeah.

7 Q. Do you have any personal knowledge as to this
8 -- again is a different photographer, not yourself, as to
9 what type of camera lens was used for this photograph?

10 A. I do not.

11 Q. Okay. And same question for page 5. There
12 are two photographs from Greg Nesbit. Do you know what
13 type of camera and lens were used?

14 A. I know Greg more personally because he takes
15 photographs for me and for my family and for the country
16 club. But I have never asked him what type of equipment
17 he uses for his work.

18 Q. Whether -- and whether he uses a 50 millimeter
19 lens?

20 A. I don't know. I have never asked that
21 question.

22 Q. Okay. The photograph on page 6 which is the
23 panoramic --

24 HEARING OFFICER TOUSLEY: If I could
25 ask a question just about the one on page 5. Do you

1 know when these photos were taken?

2 THE WITNESS: It doesn't say it in
3 there?

4 HEARING OFFICER TOUSLEY: Just a phone
5 number.

6 THE WITNESS: I would imagine they were
7 from this year 2017 or 2016.

8 HEARING OFFICER TOUSLEY: But you don't
9 know for sure?

10 THE WITNESS: I'm not sure. I mean I
11 could definitely bring that back into the record
12 because he takes photographs for us every year, but I
13 know that they are not from 2018.

14 HEARING OFFICER TOUSLEY: Okay. Thank
15 you.

16 BY MS. HAYDEN:

17 Q. And on page 6 there is a panoramic photograph
18 taken by Greg Nesbit?

19 A. Nesbit, yeah.

20 Q. From the -- N-E-S-B-I-T. From the Bennington
21 battle monument?

22 A. From the monument.

23 Q. Did you download that from the website that
24 you provide under the photograph? Is that where this
25 exhibit --

1 A. I actually -- I asked him for photograph, if
2 he had ever taken photographs from the monument. That I
3 wanted to see. And he said, oh, actually I have this
4 great photograph that I've taken that -- it's a panoramic.
5 And I said: Oh my God, how did you do this? And he very
6 -- he explained to me how it's very easy to do. You just
7 put it into your iPod, and there is a panoramic feature
8 and it connects. You basically stick your camera out
9 which is by -- everybody else, by the way, in the
10 monument. You stick your camera out of the monument and
11 you go like this, and you go to the next opening, and you
12 go like this. And then Apple -- basically the application
13 for the iPhoto connects the horizon line and connects all
14 of the points on a 360 degree.

15 Q. What about the photograph below it, which says
16 it's a full-size panorama? It's different than the one
17 above.

18 A. What that is is I did that. And that what
19 this is is a close-up of the proposed area, and that was
20 from my point from my usage to try to do simulations. I
21 went into Greg's photograph with his permission, to
22 basically isolate the area where the proposed project is
23 being -- you know -- for the project being proposed.

24 Q. You went in -- and I mean it looks to me like
25 what you did was zoom in, because I can see the area in

1 the distance on the panorama above. But it looks that you
2 really had to zoom in quite a bit to show what you have
3 shown as the second photograph; correct?

4 A. Correct.

5 Q. Do you know how much you zoomed in to achieve
6 that larger-scale view of the project site?

7 A. I could probably answer that easier if I
8 brought my exhibit that I have with the simulations,
9 because that's exactly where I went in to do that from.

10 Q. You don't have your exhibits with you?

11 A. The exhibit that I did on the simulation that
12 I brought in today. This one. So what I did is --

13 HEARING OFFICER TOUSLEY: Just for the
14 record, the witness has been handed the piece of
15 demonstrative evidence that previously had been used.
16 Is this the one with just two pictures on it?

17 THE WITNESS: This is the one with the
18 two pictures.

19 HEARING OFFICER TOUSLEY: Okay. Can I
20 see it please?

21 THE WITNESS: Yes.

22 HEARING OFFICER TOUSLEY: This is the
23 same as the one before. Okay. So it's -- okay. Got
24 it.

25 THE WITNESS: Actually I thought that I

1 had here the monument. But basically what I did is
2 that I went -- I zoomed in -- into this area. And
3 brought it -- I mean what percentage I would imagine
4 it would be at least 300 percent from the point of
5 view -- from the exact point that I cropped in.

6 BY MS. HAYDEN:

7 Q. Okay. And then I don't think we have to go
8 through each one of these. You have on pages 7, 8, -- 7
9 and 8 you have photographs of Lee Krohn, K-R-O-H-N, and
10 John Davis. Do you have any personal knowledge of the
11 type of camera or lens that was used for these
12 photographs?

13 A. Again, I do not. These are professional
14 photographers who do this for a living, and these are
15 images that are on their Facebook pages, on their web
16 sites. They are sold in the local stores as cards and
17 postcards.

18 Q. And I assume that you superimposed the arrows
19 that appear on pages 7 and 8?

20 A. Yes. Those -- just to identify how visible
21 the proposed area is from this point of view in the town.

22 Q. And page 9 there is a photograph, where did
23 this come from?

24 A. Sorry. Page 9. Let me look that up. Page 9.
25 It is a photo taken of the website from the apple barn

1 which was our -- from the apple orchard which was our last
2 visit during -- the last stop during our site visit when
3 we all did that site visit. So this photograph is on
4 their website for the apple barn who owns the apple
5 orchards.

6 Q. Do you have any personal knowledge of the
7 location from which this was taken, whether it was on the
8 ground along the roadside of the apple orchard, was it
9 taken from an airplane or a drone above the ground?

10 A. I have no idea.

11 Q. And I take it that you have no personal
12 knowledge of the camera or lens that was used?

13 A. Again, no. Again.

14 Q. Similar questions for pages -- the photographs
15 on pages 10 and 11. Do you have any personal knowledge of
16 the camera or the lens that was used for these
17 photographs?

18 A. No. I do not.

19 Q. Page 13 is a photograph that it says that you
20 took. It's a little boy.

21 A. Page 13?

22 Q. Yes.

23 A. Yeah. That's my daughter.

24 Q. Oh.

25 A. Wait. Wait. That's my son. Yes.

1 Q. That's your son. Okay. And on the cover page
2 there is another photograph that it says that you took
3 that.

4 A. Yeah. Both of those are mine.

5 Q. They are both your photographs and both your
6 children?

7 A. Yeah.

8 Q. Okay. I was just curious, were they taken
9 from the same location?

10 A. Yes, they were.

11 Q. They both say 2008 so they were standing in
12 approximately the same location in both photographs?

13 A. Identical location.

14 Q. Okay. And these were not taken from a fairway
15 but above a fairway?

16 A. They are right above -- they're on hole number
17 7, I believe. And they are from the fairway. Like on the
18 higher point, the higher elevation from the fairway.

19 Q. Okay. Can you explain why the photograph of
20 your daughter on the cover shows the site -- the project
21 site being much more distant than the photograph of your
22 son? It's -- the image looks different to me looking at
23 those, comparing those two photographs.

24 A. I think they are not standing in the exact
25 same spot. The reason I wanted them together, and that

1 was my Christmas picture that year, and I ended up having
2 to put them next to each other, two pictures, because they
3 didn't want to take them together. At that age they don't
4 really like each other very much.

5 Q. Yes,.

6 A. So I don't know exactly how far apart they
7 were standing, but I took a picture of him. Those were
8 taken with my phone.

9 Q. With your iPhone?

10 A. Yeah, with my iPhone.

11 Q. Okay. So let me -- but how far apart were
12 they standing when you took the photograph?

13 A. I would say a few feet apart.

14 Q. Okay. And your iPhone, to your knowledge,
15 does that have a 50 millimeter lens?

16 A. I wouldn't know.

17 Q. I have nothing further.

18 HEARING OFFICER TOUSLEY: Is there
19 redirect?

20 MS. DINGLEDINE: Thank you.

21 REDIRECT EXAMINATION

22 BY MS. DINGLEDINE:

23 Q. So the aesthetic report photographs. Page 1.
24 Beautiful daughter. You took -- you took that photograph
25 in 2008; correct?

1 A. Correct.

2 Q. Does that photograph, is that a fair and
3 accurate representation of what you observed with your own
4 eyes at the time at which you took this photograph?

5 A. Yes.

6 Q. Same question about the back page, your son.
7 Is this a fair -- you took the photo yourself?

8 A. Correct.

9 Q. Is this a fair and accurate representation of
10 what you observed with your own eyes at the moment at
11 which you took the photograph?

12 A. Correct. Yes.

13 Q. Okay. And I do notice that one is just
14 enlarged, the boy -- your son's photo is larger on the
15 page. And your daughter -- I think because you have the
16 aesthetic report --

17 A. It's a smaller image. Yeah.

18 Q. You made the actual photo.

19 A. I made more room for the title within the
20 page.

21 Q. Sure. Okay. But other than that, you're in
22 the same approximate location on fairway 7 standing on the
23 fairway taking the photograph?

24 A. Right.

25 Q. Going to the second page, Ann Smith's

1 photograph. With this -- with the --

2 A. Magnet.

3 Q. The wall --

4 A. Oh.

5 Q. Yeah, the magnet photo where you have the
6 beautiful stone wall. Have you ever been at that
7 location?

8 A. Yes. Many times.

9 Q. Okay. And you have looked out at the
10 Bennington battle monument when you've been standing
11 there?

12 A. Yes. Many times.

13 Q. To your recollection is this a fair and
14 accurate representation of your recollection of the view
15 from this approximate location?

16 A. Yes. Especially when you're on the deck.

17 Q. Let's switch to the Dave Kutchukian, page 3.
18 This is images taken from Southern Vermont Orchards. Is
19 that an area where -- that you're familiar with at all?

20 A. Yes. I visited the orchards many times.

21 Q. Okay. So these two images that were taken,
22 one is -- looks like it's the orchards themselves, and
23 then the bottom one shows a red barn in it with a lake or
24 pond?

25 A. Yes.

1 Q. From your recollection of being at the
2 Southern Vermont Orchards, are these fair and accurate
3 representations of what you experienced as the view from
4 those locations?

5 A. Yes.

6 Q. I would assume page 4 you probably don't know
7 the exact location, or is it the Eddington House Inn?

8 A. That's where it came from. The gentleman who
9 took that photograph, I tried to contact him after I saw
10 the picture at the Eddington Inn, and the only reason I
11 knew that because I do some stay and play packages with
12 the Eddington House, and I had seen that picture, but the
13 photographer has had a stroke and I wasn't able to
14 communicate with him. So that was -- that's why that
15 picture is such poor quality. It's the only access I
16 could have had to put it in. But I took it right off the
17 Eddington House's website where they feature all of his
18 photography.

19 Q. And just in terms of that's an area to your
20 knowledge that you can see the Bennington monument from?

21 A. Yes.

22 Q. And it does look out towards the solar array
23 area?

24 A. Yeah. Towards the gateway to Route North, 7
25 north.

1 Q. All right. Page 5. Greg Nesbit who took
2 these photographs for you either in 2016 or 2017. Tell
3 us where on the golf course these two photograph views are
4 taken from. Can you tell us is it a deck, a certain hole,
5 a tee?

6 A. No. They are from the golf course, and they
7 are, I believe, I don't have them in front of me because I
8 left them back at my desk, but I believe the first one is
9 from --

10 Q. Hang on. Hang on.

11 (Handing document)

12 A. Hole number -- oh, thank you. Yes. So the
13 top photograph is from hole number 10.

14 Q. Okay.

15 A. And that's the green from hole number 10.

16 Q. Is that a fair and accurate representation of
17 the photographic view to your recollection of what you saw
18 when you stand in that location?

19 A. Yes.

20 Q. Okay. And the bottom one?

21 A. The bottom one is the view from the tee box
22 from hole number 8. Or the fairway, I mean the tee box
23 from hole number 8. It's a little bit farther to the
24 left. This could have been taken from there or from the
25 fairway of hole number 11 which is the green that you see

1 below, where you see that person pointing below.

2 Q. So those two locations are right next to each
3 other?

4 A. They are very close. They are very proximate,
5 yeah.

6 Q. Is that a fair and accurate representation
7 when one views towards the solar array proposed site?

8 A. Yeah. That is the view you can see very
9 clearly, the highway, right? Where you're in those
10 locations and the hill where the proposed Chelsea project
11 is.

12 Q. Okay. So the next page, page 3, 180 degree
13 panoramic photograph by Greg Nesbit. This is what you
14 were describing about the panorama --

15 A. Yes.

16 Q. -- that you were told how to do. Have you
17 been up to the top of the Bennington monument?

18 A. Yes, many times.

19 Q. Have you ever taken a photograph?

20 A. Many times.

21 Q. And have you ever stuck your camera out the
22 window and done this?

23 A. It's the only way to take a picture when
24 you're up there because you -- all the other gentleman
25 said is true. The stone is very deep, and the opening is

1 only like one and-a-half feet wide or two feet wide, so
2 your view carries the depth of the stone. If you want to
3 see the view, you have to really stick your pictures out.
4 So that's what everyone does.

5 Q. And you have personally observed many people
6 doing that with their cameras?

7 A. Yes. And in fact my family when they visit
8 from South America, when everybody visits, France,
9 everybody. That's the first thing do is stick their
10 cameras out the window. It's not a window. It's just an
11 opening in the stone work.

12 Q. And the pictures that these folks are taking
13 are towards the proposed site --

14 MS. HAYDEN: Objection. Objection.

15 THE WITNESS: -- in that area?

16 MS. HAYDEN: This goes way beyond my
17 direct or my cross examination.

18 HEARING OFFICER TOUSLEY: You may
19 continue. I'll allow it.

20 THE WITNESS: They take pictures from
21 all different four openings, not just that one. I
22 should say, though, I should add that because I'm the
23 golf course owner, especially when I bring people to
24 the monument, which is my first stop that I tell them
25 to visit, and I bring them in, they make sure to take

1 photographs of the golf course and the view because
2 those are the people -- I'm bringing them and they
3 want to document that. So -- that specific opening
4 is more popular when they are being brought in by me;
5 Remy, my husband.

6 BY MS. DINGLEDINE:

7 Q. When people take photographs on your golf
8 course, do you ever have weddings there where they take
9 wedding photographs?

10 A. Yeah, we do. We have lots of weddings.

11 Q. I think there is one in the record with a
12 beautiful bride from the rear with her veil showing. So
13 to your -- do you believe that that view is really
14 important to your business?

15 A. Yes, it's very important.

16 MS. HAYDEN: Objection. Objection.

17 This is beyond -- I asked questions about --

18 HEARING OFFICER TOUSLEY: I understand.

19 Ms. Dingledine, you want to stick to the pictures
20 that are here.

21 MS. DINGLEDINE: Yeah. Will do. Thank
22 you.

23 BY MS. DINGLEDINE:

24 Q. Last is page 7, not last, but page 7 Lee
25 Krohn, a view from Southern Vermont College. Have you

1 ever been to a location at Southern Vermont College to
2 observe the view yourself?

3 A. Yes, I have.

4 Q. Okay. And are you able to indicate whether
5 this to your recollection is a fair and accurate
6 representation of views from Southern Vermont College that
7 you've observed?

8 A. I would imagine that this is taken from their
9 hiking trail. Not necessarily from the -- just from
10 looking at it, I wouldn't say that it's taken from the
11 actual mansion, from the Everett mansion, but from their
12 hiking trail just based on the angle. But again, I don't
13 know exactly where. But that's what I would say.

14 Q. Okay. And those are public trails?

15 A. Yes. These are the public trails. They are
16 very popular in town.

17 Q. Page 8, John Davis photography. This is two
18 pictures from Southern Vermont Orchards. Are those
19 familiar views to you? Have you been up to Southern
20 Vermont Orchards?

21 A. Yes.

22 Q. Okay. And to your recollection have you
23 observed views that are fairly and accurately represented
24 by these photographs?

25 A. Yes.

1 Q. And then page 9 from the apple barn. Southern
2 Vermont Orchards' website. Is this a view that you
3 remember seeing -- well have you been up to the Southern
4 Vermont Orchards?

5 A. Yes. Yes. And I mentioned before this was
6 our last stop in our site visit that we did with all --
7 with the developer. I don't know exactly from what point
8 this was taken, but --

9 Q. Do you recognize the land masses and the roads
10 and so forth?

11 A. Yeah. Yup.

12 Q. Okay. And the next one is page 10. View from
13 Southern Vermont College. Benningtonhomes.com website.
14 Is that a familiar view to you, view from Southern Vermont
15 College?

16 A. Yeah. And this is on somebody's website. I
17 think this is a realtor's website.

18 Q. And is this a fair and accurate representation
19 from the college?

20 A. Yup.

21 Q. Page 11. We are almost done. Southern
22 Vermont College. Tell us where this is from. If you
23 know? If you know.

24 A. I think this is from -- there is a development
25 right on the West Road called apple -- called Colgate

1 Heights, and it's -- if you're familiar with where Camelot
2 Village is, it's to the right of Camelot Village. And I
3 believe this is to the higher point from that development.

4 Q. So this is looking from across town from where
5 we were talking about the college was; is that right?

6 A. The Back Rambler's image?

7 Q. Yeah.

8 A. This is from -- it's not where Southern
9 Vermont College is. It's from -- actually this could go
10 from the hiking trail too, now that I see that building.
11 It says there actually Southern Vermont, Bennington. I'm
12 trying to see, that is one of their dorms. I can't --
13 yeah. This is from southern Vermont. I'm sorry. I
14 thought this was from the Colgate Heights, but it's not.

15 Q. So then we have page 12. Looks like a
16 Facebook post?

17 A. Yes.

18 Q. And this is, I guess, a picture thanking you
19 and talking about the golf course being beautiful; is that
20 right?

21 A. Yeah. And that was something somebody posted.
22 Their kid just had taken a golf camp. And this was the
23 next day she took her son to play golf and she posted
24 that. She tagged me on her post.

25 Q. So you're quite familiar with this location, I

1 assume?

2 A. Yeah. This was right from our -- right before
3 she -- it's right above the patio. Where is this? No
4 actually, no. This is not from the patio. This is from
5 hole number 10 from the fairway on number 10.

6 Q. At like the 100-yard marker?

7 A. Yeah. 150.

8 Q. 150, right. Okay. So are we seeing --

9 A. This was taken from her iPhone. I can just
10 see her doing a selfie that way.

11 Q. And that is a fair and accurate representation
12 from the golf course, from that hole in the fairway?

13 A. Yes.

14 Q. Okay. And are we looking at -- to the right
15 of the little boy's club, in between the golf club that
16 he's holding in the air and the trees that -- where we see
17 the road, is that the area where the solar array would be,
18 just to the right of that?

19 A. Correct.

20 Q. Okay. And lastly, we already did your son.
21 So I think we covered all of those. What was the purpose
22 of providing these views that you've testified are fair
23 and accurate representations of these various vantage
24 points?

25 A. Sure. I mean my -- as a business owner, and

1 as an artist, my biggest issue with this project is the --

2 MS. HAYDEN: I'm going to object. This
3 is -- I did not ask any cross examination on her
4 testimony. I asked about -- I asked questions to
5 authenticate the photographs, whether she had
6 personal knowledge about how they were prepared. And
7 that was the scope of my cross examination, and the
8 redirect should be limited to that.

9 MS. DINGLELINE: That's fine, I'll move
10 on.

11 THE WITNESS: Very well.

12 HEARING OFFICER TOUSLEY: Do you have
13 any further questions?

14 MS. DINGLELINE: Yeah, I just have a
15 couple others. I'll get the --

16 THE WITNESS: Do you want this back?

17 MS. DINGLELINE: Just hang onto it.

18 THE WITNESS: You want this back?

19 MS. DINGLELINE: Thank you.

20 BY MS. DINGLELINE:

21 Q. So Maru, I wanted to ask you about exhibit
22 Cross Number 4 which are the three photographs. We
23 already established the bottom one is the same picture as
24 Cross Number 2 that we have upside down there. And then
25 we also discussed how you created that because that's the

1 question that you were being asked. That's from the
2 panorama view --

3 A. Correct.

4 Q. -- of the gentleman who took the picture from
5 the Bennington thing --

6 A. Monument.

7 Q. -- monument?

8 A. Right.

9 Q. So what is it that you created on these top
10 two, and tell us how you went about that.

11 A. Sure.

12 Q. Explain what those are.

13 A. And again I'm not --

14 MS. HAYDEN: I'm -- this is way beyond
15 the scope of the redirect or the cross examination
16 that I did. I did not ask any questions about a
17 simulation that has not been entered into evidence.
18 I did not ask this witness any questions on these.
19 And it's not appropriate for her to be entering them
20 into the -- or even questioning the witness beyond
21 that scope.

22 MS. DINGLEDINE: She absolutely did.
23 She opened the door wide. She asked how these
24 simulations were created. She said what did you do.
25 You isolated this. You went -- you enlarged it,

1 zoomed it, whatever she said. I wrote that down. We
2 can go back in the record if need be. But the
3 simulations were asked how they were created.

4 HEARING OFFICER TOUSLEY: Well she
5 asked about the photo. I don't know that she asked
6 about the simulation.

7 MS. HAYDEN: I absolutely did not ask
8 about any simulations. I asked about a photograph
9 that was in the exhibit at page -- page 6 which has a
10 cropped photograph in it. That's what I asked about.
11 I did not ask about these simulations.

12 MS. DINGLELINE: Wrote down the word
13 simulation, and she said that, and she asked how was
14 it created, and the witness responded to that
15 information.

16 MS. HAYDEN: I was --

17 HEARING OFFICER TOUSLEY: Okay. Okay.
18 Let's just check the record and verify because I
19 don't recall any discussion. I mean I remember that
20 being up, but it was more about the photo that's in
21 the record, not about this photo -- these photos that
22 are not in the record is my recollection.

23 MS. HAYDEN: I did not ask any
24 questions about this what's been marked as Exhibit 4.
25 I was only asking about what's on page 6.

1 HEARING OFFICER TOUSLEY: Okay. Can we
2 do somehow a search of the record to determine if she
3 asked about the simulation?

4 MS. HAYDEN: And just to clarify Mr.
5 Wilson reminds me what happened was when I was asking
6 about this question, at that point the simulation was
7 brought up by counsel.

8 THE WITNESS: I asked for it.

9 MS. HAYDEN: Yes.

10 THE WITNESS: I said if I could please
11 have that exhibit to show what I did by pulling in to
12 this image and closing in. So I asked for it.

13 MS. HAYDEN: I did not ask about a
14 simulation.

15 (A discussion was held off the record.)

16 MS. DINGLELINE: We will just withdraw
17 the question.

18 HEARING OFFICER TOUSLEY: Okay. Do you
19 have any further questions on redirect?

20 MS. DINGLELINE: Anything else I forgot
21 to ask you that you want to tell the --

22 HEARING OFFICER TOUSLEY: As long as
23 it's within the scope of what she asked you about.

24 THE WITNESS: I think there is a common
25 thread on all the questions that you asked me about

1 the photographers, which was like how did they take
2 their pictures, what equipment they take. I would
3 like to say that as an artist I don't -- I don't
4 question how they do their work. This is the subject
5 -- is the key part of how they make a living and how
6 artists that reside in Bennington are, you know,
7 basically supporting themselves. So I feel like the
8 subject matter will change by this proposed project,
9 and it will change forever.

10 MS. HAYDEN: I object. I object.

11 HEARING OFFICER TOUSLEY: I'm going to
12 allow her to finish, and I'll give it the weight
13 that's appropriate.

14 THE WITNESS: This project will forever
15 change the views of Bennington that have been enjoyed
16 not only by the Bennington monument, which is the
17 most historic -- the most visited historic site in
18 the state with, you know, over 34,000 visitors a year
19 that take those pictures when they stick their camera
20 out the window. And also, by all these artists that
21 I have very easily documented that sell their
22 photographs in Bennington in many places in forms of
23 postcards, note cards, book marks. And it is
24 alarming to see that this view from our country club
25 which is over 100 years old will be forever changed,

1 and with the project that goes against our town plan.

2 HEARING OFFICER TOUSLEY: Thank you,
3 Ms. Leon. You may stand down. Mr. Wilson?

4 MS. DINGLELINE: Your Honor is --

5 THE WITNESS: Thank you.

6 MS. DINGLELINE: Is it possible to pick
7 up tomorrow morning with Mr. Wilson?

8 MR. HAYDEN: I don't know how that's
9 going to happen if we have a limited day. We start
10 at 9. We start at 9.

11 MS. DINGLELINE: It's -- David Raphael
12 is the only witness tomorrow.

13 MS. HAYDEN: David. And we have -- we
14 have reserved -- together there is four hours of
15 cross examination that's been estimated.

16 HEARING OFFICER TOUSLEY: I think we
17 need to go now.

18 MS. DINGLELINE: Four hours? What did
19 we list? Are they asking for three hours of cross
20 for David Raphael?

21 MS. HAYDEN: I did.

22 HEARING OFFICER TOUSLEY: Yes.

23 MS. DINGLELINE: Oh my goodness.

24 MS. HAYDEN: Would you like me to have
25 the witness state his name?

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HEARING OFFICER TOUSLEY: Yes, please.

MS. HAYDEN: Good afternoon. Can you please state your full name for the record?

MR. WILSON: Bradley John Wilson.

MS. HAYDEN: And what is your occupation?

MR. WILSON: I'm a project developer with Ecos Energy.

1 BRADLEY J. WILSON

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I swear.

5 MS. HAYDEN: The witness is free to be
6 cross examined.

7 CROSS EXAMINATION

8 BY MS. DINGLEEDINE:

9 Q. I'm sorry. I'm looking for my big white
10 binder.

11 (Handing document)

12 MS. DINGLEEDINE: Thank you.

13 BY MS. DINGLEEDINE:

14 Q. Mr. Wilson, why did you put excerpts of Rob
15 Woolmington's conversations at the select board meetings
16 into your prefiled testimony?

17 A. I believe you're referring to excerpts from
18 exhibits, I just want to make sure I'm correct here,
19 CS-BW-12. I think the testimony speaks for itself as far
20 as how we are using it, but I suppose in general we are
21 using statements made by the town about solar project
22 design, solar project siting, solar project location as it
23 relates to the town plan.

24 Q. How is -- how is a conversation between -- how
25 is a conversation between the town's attorney and the

1 select board testimony of the town?

2 A. I don't believe anywhere in my testimony do I
3 claim it is testimony of the town.

4 Q. You just said that.

5 A. I absolutely did not say that. I think again
6 the exhibit stands for itself. It's clear what it is,
7 what it contains. It's a transcript of a select board
8 meeting where the Bennington town select board made some
9 very specific decisions as it relates to solar project
10 siting in their own town plan.

11 Q. It's not the position of the town. It's some
12 lawyer telling them what may or may not be his opinion
13 based on all -- any number of factors, issues, realities,
14 costs, benefits, risk analysis; correct?

15 A. I don't think I would agree with that
16 necessarily. But again, I'm not claiming to speak for the
17 town.

18 Q. Well --

19 A. This is a transcript of a public meeting that
20 happened. And it's entered into the record for
21 consideration by the commission.

22 Q. Was Mr. Woolmington put under oath?

23 A. Not that I'm aware of.

24 Q. Then why would we put his testimony in this
25 proceeding when everybody else who speaks has to be sworn

1 and has to take an oath to tell the truth?

2 A. I'm not claiming it's his testimony by Mr.
3 Woolmington. It's a transcript of comments that he and
4 other select board members made in a public meeting.

5 Q. Well that would have been one thing to just
6 put it in as an exhibit.

7 MS. HAYDEN: I'm going to object. This
8 testimony is in the record. I don't know where this
9 line of questioning is going. We have been debating
10 this issue of --

11 HEARING OFFICER TOUSLEY: I recognize
12 that this is not an objection to the admissibility of
13 the testimony. It's an attempt to characterize and
14 understand the nature of the testimony so that the
15 commission can give it the appropriate weight.

16 I will make two comments. One, Mr.
17 Wilson, you don't want -- you want to make sure that
18 you're answering the question that's asked, not the
19 one that you wish she had asked. And Ms. Dingleline,
20 I want to make sure just to caution you again, not to
21 interrupt the witness when he's talking, you haven't
22 done that yet. I just know that it may happen here
23 given the nature of the questions and where they are
24 going. But you may proceed down this line.

25 MS. DINGLELINE: Thank you.

1 HEARING OFFICER TOUSLEY: The objection
2 is overruled.

3 BY MS. DINGLELINE:

4 Q. You testified on page two of your prefiled
5 direct testimony of November 27, 2017, that the amended
6 design of this project, meaning from the first time you
7 tried to get a permit that was denied, now this is an
8 amended application. Is that what you're talking about?
9 Amended design. You've redesigned the project from the
10 core?

11 A. I'm not sure I exactly understand the
12 question. But I'll make my best attempt. The site design
13 that is under consideration in this docket is a revised
14 version of the site design that was under consideration in
15 Docket 8302.

16 Q. Okay. You said that it reduces the project's
17 footprint and clearing area compared to the original
18 design in Docket 8302. Tell me what the difference
19 between the cleared area and the footprint is.

20 A. Absolutely. The cleared area is the area of
21 existing vegetation on the project site that would be
22 cleared for the purpose of this project's construction.
23 When we talk about project's footprint, we are talking
24 about the project itself. In this case, that's defined as
25 the perimeter of the -- well here. Let me check. It's

1 either the fence or the solar array, and I want to make
2 sure I give you the right answer. Let me check something
3 very quickly for you.

4 Q. Thank you.

5 A. Yes. That's defined as the area within the
6 project fence.

7 Q. The footprint, that's what you're calling it?

8 A. Correct.

9 Q. And what is that acreage?

10 A. 7.1 acres.

11 Q. 7.1. And then what is the total amount of the
12 cleared area now?

13 A. The total cleared area for this project, as
14 proposed, I believe the number is 9.64 acres.

15 Q. I was right on that. We didn't get confused
16 on that. Does that include any road or driveway or
17 traveled way in or out?

18 A. That does include the access road of the
19 project. Yes.

20 Q. Okay. So the access road to the project, what
21 road are we talking about that will be used? Or let me
22 rephrase that. Tell me any roads that are being used in
23 conjunction with construction or maintenance of this
24 project.

25 A. The way I heard the question, it seems a

1 little bit broad. Let me answer and see if it's what
2 you're looking for.

3 The project site is accessible by a single
4 public road, Willow Road. As far as any road that might
5 be used in conjunction with the project, I couldn't
6 possibly define that. But Willow Road is the public road
7 that has frontage to this property.

8 Q. Well I mean I don't mean like, you know, I-89
9 or, you know, what I was talking about is to access the
10 site. Is the only ingress and egress to the project site
11 Willow Road?

12 A. That's correct.

13 Q. Okay. So I understand that there is property
14 owned by the Petitioner that is called the orchard lot?

15 A. I'm familiar with that. Yes.

16 Q. Okay. And the orchard lot, I think the deed
17 is in evidence about restrictions on that lot because it's
18 part of the Homeowners' Association; is that correct?

19 A. I apologize. I didn't hear the question
20 because I got sidetracked. I would like to add to my
21 previous answer about the orchard lot.

22 Q. Sure.

23 A. That orchard lot is not owned by the
24 Petitioner, but I'm familiar with the lot you're referring
25 to.

1 Q. Who is it owned by?

2 A. A company called PLH, LLC. The Petitioner's
3 Chelsea Solar, LLC.

4 Q. Okay. So who is this what -- was it PHL?

5 A. PLH, LLC. And it is a company under indirect
6 common ownership with the Petitioner, but it is not the
7 same company as the Petitioner.

8 Q. Well it's fair to say that then that lot is
9 owned or controlled by the Petitioner or not?

10 A. No. The Petitioner is Chelsea Solar, LLC.
11 And currently Chelsea Solar, LLC has no rights or control
12 over the orchard lot.

13 Q. Who owns Chelsea Solar, LLC?

14 A. I can't speak to the exact ownership structure
15 of Chelsea Solar, LLC. I'm not fully aware of that.

16 Q. You don't know who the members of the LLC are?

17 A. I don't know exactly how the company is
18 structured, no, I don't.

19 Q. Are they a Vermont LLC, or are they
20 incorporated -- or a limited liability company under some
21 other state's laws?

22 A. I don't know the exact specifics of where
23 Chelsea Solar, LLC was incorporated.

24 Q. Is it fair to say that Thomas or Michael
25 Melone are involved in the ownership of Chelsea Solar,

1 LLC?

2 A. Again, I work with both of those gentlemen on
3 a regular basis. I don't know the specifics of how
4 Chelsea Solar, LLC's ownership is structured in the
5 company formation documents. I do not know.

6 Q. Well who do you take your orders from?

7 A. My boss at Ecos Energy is a gentleman named
8 Chris Little.

9 Q. Okay. And your company has been hired by
10 Chelsea Solar, LLC?

11 A. Our company offers services to Chelsea Solar,
12 LLC. Ecos Energy is also under indirect common ownership
13 with Chelsea Solar, LLC.

14 Q. Okay. And this PLH, LLC is that also owned by
15 the Melones?

16 A. I just want to be careful because I do not
17 know the exact specifics of how those companies are
18 structured. You speak about the Melones. I don't know if
19 one or both of them are perhaps -- I don't know. I do not
20 know how these companies are structured.

21 Q. Who pays the bills for you to be working on
22 this case?

23 A. Who pays the bills? We pay our bills.

24 Q. So do you have a financial interest in this
25 project?

1 A. Me personally?

2 Q. Yes. You personally?

3 A. No.

4 Q. How about the company that you work for?

5 A. Well yes. It's a project we are working on
6 developing.

7 Q. When I say financial interest, I'm talking
8 about some kind of ownership of the company; shareholder,
9 member of an LLC. Not we are hired by the owners to do a
10 job, and we get paid, you know, for the bills that we send
11 them.

12 A. Right. Ecos Energy LLC the entity does not
13 have any sort of ownership stake in the project. I want
14 to be mindful of time. I do not know the specifics of how
15 Chelsea Solar, LLC; Ecos Energy, LLC; PLH, LLC are
16 structured. I do know that they ultimately flow up into
17 the same ownership structure. And I can say with
18 certainty that Thomas Melone is involved. I don't
19 particularly know if Michael's name is involved in the
20 ownership structure of these companies or not.

21 Q. Okay. So to your knowledge does Thomas Melone
22 --

23 MS. HAYDEN: I'm going to object. I
24 don't see the relevance of these questions to the
25 testimony that's been offered by this witness which

1 relates to the project and its impacts. I see no
2 relevance to the -- and this witness has already
3 asked -- has been asked and answered the same
4 question probably five times --

5 HEARING OFFICER TOUSLEY: Okay.

6 MS. HAYDEN: -- about ownership
7 structure, and he does not know the details of it.
8 He said that.

9 HEARING OFFICER TOUSLEY: Is there a
10 response?

11 MS. DINGLELINE: Yes. This is the
12 gentleman that I understand has put into evidence the
13 reclamation plan and all the documents that show all
14 the blanks about who needs to be responsible and who
15 would be, you know, there are questions like
16 creditworthiness, the assignment of the project
17 ownership and/or reclamation obligation in those
18 documents talks about that the assignment of this --
19 and GMP's agreement, how the assignment of that
20 contract or if the project were sold to another
21 entity, it would have to be to another entity of
22 equal financial -- I've forgotten what the name is
23 but like rating viability from a financial
24 perspective.

25 MS. HAYDEN: This --

1 MS. DINGLELINE: I think that we are
2 entitled to know who this company is and who is
3 running it and --

4 MS. HAYDEN: This is outside -- this is
5 not a Section 203 company. It's not regulated as a
6 Section 203 company like Green Mountain Power is.
7 This is a Section 248 proceeding, not a Certificate
8 of Public Good proceeding, for a company which is
9 actually called something other than a Certificate of
10 Public Good. But this proceeding is not about
11 Section 203 of Title 30.

12 Those kinds of questions are asked
13 about companies that want to form a new business in
14 and do business in the state. PURPA preempts
15 regulation of these companies, and they are not
16 regulated by Section 203 of Title 30. So these
17 questions are all outside the scope.

18 HEARING OFFICER TOUSLEY: I just want
19 to know how does this line of questioning relate to
20 the document that has to be created to either approve
21 or deny the project?

22 MS. DINGLELINE: Because I'm trying to
23 understand -- I mean -- we have just got a simple
24 answer. I'm sorry this is taking so long, but I
25 didn't anticipate this was going to be some hide-the-

1 ball kind of response.

2 HEARING OFFICER TOUSLEY: I think I'm
3 going to ask if -- he's given you, I believe, a
4 straight answer indicating what he knows and
5 indicating what he doesn't know with some clarity.

6 MS. DINGLEDINE: So are we entitled to
7 ask Mr. Melone questions about --

8 HEARING OFFICER TOUSLEY: He's not a
9 witness.

10 MS. DINGLEDINE: I know, but if they --

11 HEARING OFFICER TOUSLEY: He didn't
12 provide any testimony. I'll allow you two more
13 questions.

14 MS. HAYDEN: And I just want to point
15 out these decommissioning -- the decommissioning rule
16 requires that the financial assurance -- it's very
17 specific. It's got to be provided by an A-rated
18 financial institution.

19 HEARING OFFICER TOUSLEY: I understand
20 that.

21 MS. HAYDEN: So all of these questions
22 are irrelevant. Because the financial assurance that
23 stands behind that letter of credit for the project
24 is what matters, and the rule already takes care of
25 that.

1 HEARING OFFICER TOUSLEY: I understand.

2 I'm going to let her ask two more questions. If I
3 see no relevance, I'm going to sustain the objection.

4 BY MS. DINGLEDINE:

5 Q. Would you -- would you agree to a condition of
6 the CPG that the orchard lot is not to be used for any
7 purposes whatsoever related to this commercial project
8 including traversing roads, rights of way, or planting
9 trees for screening because it is not the project parcel?

10 A. That's not something I can agree to
11 immediately. I certainly think it's something that the
12 Petitioner could consider. I'm not in a position to
13 unilaterally agree to conditions here on the stand. I
14 will say that the, you know, visual mitigation plan that
15 has been presented in this case does show, and it's been
16 very clear that the orchard parcel is not proposed, for
17 any form of access to a project site, but there is some
18 landscaping mitigation that has been proposed with the
19 view of an adjacent landowner in mind.

20 Q. On the apple orchard lot?

21 A. On the orchard parcel. Correct. If that
22 landowner has different preferences regarding the
23 installation of that mitigation on the orchard parcel, we
24 are absolutely willing to entertain that and be flexible
25 with where that mitigation is planted, or if that

1 mitigation is planted at all. We reached out to that
2 landowner a number of times to try to get her input on
3 what her preferences would be.

4 Q. Let's not go there.

5 A. I would like to finish my answer please. She
6 did not respond to us. So the mitigation that's proposed
7 on the orchard parcel is, you know, our best attempt to do
8 something that would be beneficial for her viewpoint. But
9 again, if I hear you asking would we consider a scenario
10 where we did not plant that mitigation, I think that's
11 something we would consider with the correct stakeholder
12 input.

13 Q. Something you would consider. You have just
14 testified that you don't even know who owns that land, and
15 that it has nothing to do with the company that is here
16 trying to get a CPG. So why is this project -- why does
17 it have part of the project being proposed for property
18 that is not part of the project site, owned by somebody
19 else, we don't know who, and gee whiz, we won't tell you
20 either?

21 A. I disagree with your characterization of what
22 I said. I did not say we have no idea who owns the
23 project site. I said it's owned by PLH, LLC. I said I do
24 not know the specific particulars of how that LLC was
25 organized. I have stated clearly that PLH, LLC is under

1 indirect common ownership with Chelsea Solar, LLC. It's
2 my understanding that the same ownership entity has
3 ownership interest in both of those companies.

4 Q. And who is that?

5 A. Again, I've stated I do not know the exact
6 specifics how the ownership of those corporations are
7 structured.

8 Q. You just said the same ownership entity
9 basically owns both of them. Who is the ownership entity?
10 Who are we talking about?

11 A. I do not know how to answer your question,
12 ma'am.

13 Q. I don't understand why that is secret. It
14 must be the Melones; correct? Is that your basic
15 understanding?

16 MS. HAYDEN: Objection. Asked and
17 answered.

18 HEARING OFFICER TOUSLEY: Sustained.

19 Please move on to a different line of questioning.

20 BY MS. DINGLEDINE:

21 Q. Are you aware that the orchard lot has deed
22 restrictions that do not allow any commercial aspect
23 related to any commercial project to be sited on that
24 property?

25 MS. HAYDEN: Objection. It's beyond

1 the scope of his testimony. There is no development
2 being proposed for the orchard lot in this
3 proceeding. It's irrelevant.

4 MS. DINGLELINE: He just said that
5 there are -- screening the trees --

6 HEARING OFFICER TOUSLEY: I'm going to
7 overrule the objection. There is a linkage. You may
8 continue.

9 THE WITNESS: I am aware of the
10 language in the deed for the orchard lot. I do not
11 believe what you characterized is accurate.

12 BY MS. DINGLELINE:

13 Q. Why not?

14 A. I apologize, I do not have the deed handy, but
15 I have read it a number of times. There is -- and again
16 I'm going to paraphrase from my own memory. There is
17 discussion in the deed of the orchard lot about a deed
18 restriction against commercial uses. I can't recall your
19 exact wording, but you extended it when you were
20 describing it about commercial uses or anything linked or
21 related to a commercial use. And the deed does not say
22 that.

23 What has been proposed on the orchard parcel
24 is some landscaping, some shrubs and trees. Again, I'll
25 point out we are very open to working with interested

1 stakeholders on the exact placement of that landscaping if
2 they would like to participate and discuss with us.

3 Q. And --

4 A. I do not believe that deed restriction issues
5 really have a place in this type of proceeding. I don't
6 believe that PUC typically considers such issues in their
7 decision making, but I also do not believe that the
8 planting of some bushes and shrubs constitutes a
9 commercial use.

10 Q. Well isn't that part of the mitigation that
11 you're proposing for this project?

12 HEARING OFFICER TOUSLEY: Okay. I'm
13 going to cut off, because you're asking for evidence
14 that will not be adjudicated by the commission. The
15 commission will not make a determination as to
16 whether or not the planting of trees and shrubs on
17 that property is a commercial use in violation of the
18 deed.

19 MS. DINGLEDINE: I understand that.

20 HEARING OFFICER TOUSLEY: That needs to
21 be done by a separate jurisdiction and is irrelevant
22 in this proceeding.

23 MS. DINGLEDINE: I understand that,
24 Your Honor. However, we have an Applicant here who
25 has been involved in serial litigation, multiple

1 cases against --

2 MS. HAYDEN: Objection. Objection.

3 MS. DINGLELINE: -- against Bennington,
4 for example.

5 MS. HAYDEN: Objection.

6 MS. DINGLELINE: And excuse me. Let me
7 finish.

8 HEARING OFFICER TOUSLEY: Wait until
9 she finishes her question.

10 MS. HAYDEN: I'm trying to prevent her
11 from finishing actually. She is making very
12 malicious, derogatory statements about my client.

13 HEARING OFFICER TOUSLEY: You can make
14 an objection once she finishes.

15 MS. DINGLELINE: That they are involved
16 in litigation against Bennington?

17 MS. HAYDEN: Serial litigation?

18 HEARING OFFICER TOUSLEY: Enough.

19 MS. DINGLELINE: Mr. Melone told me the
20 other day he is --

21 HEARING OFFICER TOUSLEY: Please. Let
22 her ask her question. Then you may make an
23 objection.

24 MS. DINGLELINE: Mr. Melone told me the
25 other day at --

1 MS. HAYDEN: Is this a question?

2 MS. DINGLEDINE: No. I'm discussing
3 this --

4 HEARING OFFICER TOUSLEY: Again, I'll
5 remind counsel that the statements of counsel are not
6 evidence. Only the statements of witnesses.

7 MS. DINGLEDINE: I understand.

8 HEARING OFFICER TOUSLEY: You may
9 proceed.

10 MS. DINGLEDINE: Thank you. That he is
11 involved in suing Green Mountain Power in federal
12 court.

13 HEARING OFFICER TOUSLEY: Is there a
14 question here?

15 MS. DINGLEDINE: I'm trying to explain
16 to you --

17 HEARING OFFICER TOUSLEY: I want you to
18 ask a question so that I can hear it.

19 MS. DINGLEDINE: Okay.

20 HEARING OFFICER TOUSLEY: I don't know
21 what question you're asking.

22 MS. DINGLEDINE: I was interrupted by
23 opposing counsel when I was in the middle of trying
24 to explain.

25 HEARING OFFICER TOUSLEY: Right, and I

1 wanted to give you an opportunity to ask that
2 question.

3 MS. DINGLELINE: I was trying to
4 explain to you why I was trying to elicit this
5 information. It has nothing to do with having --

6 HEARING OFFICER TOUSLEY: I don't know
7 what the information is. I did not hear a question.
8 Please ask the question again.

9 MS. DINGLELINE: All right. So I don't
10 have a question. I need to respond to you. You said
11 to me that I'm not -- that the commission is not
12 going to worry about deed restrictions, and I
13 understand that you're not going to adjudicate that
14 issue.

15 The reason why I am trying to gather
16 information from this gentleman, and he has just made
17 the point that he doesn't think that this has
18 anything to do with anything. But in fact, if this
19 screening, which is under the jurisdiction, and you
20 know, people checking it for years and making sure it
21 is or isn't good, and it has to be replanted, and it
22 is part of this project, that is a commercial use.
23 And the reason why --

24 HEARING OFFICER TOUSLEY: Well I'm not
25 sure that the commission will make that

1 jurisdictional determination.

2 MS. DINGLEDINE: I'm not asking them
3 to.

4 HEARING OFFICER TOUSLEY: I've stated
5 that to you.

6 MS. DINGLEDINE: I'm not asking them
7 to. But the reason why I'm trying to get some
8 information at this point is because the commission
9 needs to understand based on the litigious nature and
10 the threats of litigation that have been involved in
11 this very proceeding, including on this very issue
12 with the Homeowners' Association being sold, well you
13 know what, go over to superior court and bring a
14 declaratory ruling. If the commission does not
15 appreciate and understand that that -- those
16 plantings and the involvement of this lot will put
17 the Homeowners' Association in a position to have to
18 litigate it in order to enforce their rights, then --

19 HEARING OFFICER TOUSLEY: The
20 commission is aware of that. We don't have
21 jurisdiction. If you want to resolve that, it has to
22 be done elsewhere.

23 MS. DINGLEDINE: But the Applicant --
24 it's like apparently the Applicant and the orchard
25 owner is the same person or people. So the problem

1 being that the Melones are ones who get the
2 homeowners notices sent to them so we know --

3 HEARING OFFICER TOUSLEY: You're making
4 a cut-the-corporate-veil argument that would be more
5 appropriate in a different court.

6 MS. DINGLELINE: For people who can't
7 afford to go to court. And all I'm asking is that
8 the commission have a little bit of information so
9 they know --

10 HEARING OFFICER TOUSLEY: The
11 commission understands that the Apple Hill
12 Homeowners' Association has a claim that deviates
13 from the deed. And they are aware of that. It's in
14 evidence.

15 MS. HAYDEN: And it's been ruled on
16 actually that it's beyond the commission's
17 jurisdiction.

18 HEARING OFFICER TOUSLEY: That's
19 correct. And --

20 MS. DINGLELINE: But it doesn't mean
21 that they can't use that information in the calculus
22 when they analyze and decide whether or not they are
23 going to give it a CPG.

24 HEARING OFFICER TOUSLEY: Absolutely.
25 And that's why it's in the Proposal for Decision

1 that's been presented in Apple Hill. And for the
2 same reason it would be in this Proposal for
3 Decision. So that it can be considered in making
4 that public good determination. However, they will
5 not make a ruling about it.

6 MS. DINGLEDINE: Okay. Thank you.

7 BY MS. DINGLEDINE:

8 Q. So there is no plan to use any road over the
9 orchard lot; correct?

10 A. That's correct. There is no plan to build a
11 road over the orchard lot.

12 Q. And what about driving over the lot to get to
13 the project site?

14 A. There is no plan to drive over the orchard lot
15 to get to the project site.

16 Q. Okay. What road -- and I'm sorry if this is a
17 little off kilter -- but I don't know enough about the
18 roads and all. But Apple Hill, that's being accessed by a
19 different road not Willow Road; is that right?

20 A. You're talking about the Apple Hill Solar
21 project.

22 Q. Right.

23 A. The proposal is for the Apple Hill Solar
24 project, and that's a different docket, but that would
25 have a private access driveway coming off of Willow Road.

1 Q. So Willow Road will be used for both projects?

2 A. I would say Chelsea and Apple Hill both have
3 private access driveways that connect to Willow Road.

4 Q. Okay. Willow Road is public?

5 A. Willow Road is a public road. Correct.

6 Q. So you're going to build two access driveways
7 off of Willow Road or one?

8 A. Well again, I don't want to conflate the
9 projects. There will be an access road for the Apple Hill
10 project -- assuming both projects proceed -- there will be
11 an access driveway for Apple Hill off of Willow Road.
12 There will be a second separate access driveway off of
13 Willow Road for Chelsea Solar.

14 Q. And they are separate driveways that come off
15 of Willow Road in different locations?

16 A. That's correct.

17 Q. Okay. Thank you. Fencing height on this --
18 around the array has been increased to 10 feet. What was
19 it before?

20 A. In the original proposal in Docket 8302, I
21 believe the fencing was described as 8 feet in height.

22 Q. Okay. How tall are the tops of the arrays
23 from the ground?

24 A. I can find the exact number if you want me to
25 spend a minute hunting, but it's approximately 8 feet in

1 height from average ground surface to the top of the solar
2 -- highest solar module.

3 Q. Can you indicate where this mesh fabric stuff
4 is going to be placed on that fence?

5 A. I think Mr. Buscher earlier really accurately
6 described the way that mesh screening is called out in
7 both his testimony and my testimony. Again, I can find
8 the exact location. But it's described as being installed
9 in certain locations. And the way Mr. Buscher described
10 how those locations would be determined is entirely
11 accurate.

12 Board Rule 5.800 is in play. Typically there
13 is a post-construction site visit related to mitigation,
14 and what we would propose in this case and, you know,
15 thank you for the opportunity to explain it in more
16 detail, because the site is wooded. I think it can be
17 difficult prior to clearing to have a perfect
18 understanding of exactly where, you know, any thin spots
19 in the retained vegetation might be. And so in this
20 instance, I think we envision, and I believe this is, you
21 know, one thing that made it in to our agreement with the
22 town, is that, you know, post clearing, you know, the site
23 would be evaluated with -- hopefully with stakeholder
24 input to determine where that screening could be installed
25 that it would be a benefit and to avoid locations where

1 stakeholders believe it would be a detriment.

2 Q. The site after the trees are removed, is it
3 going to be all mulch, or is there going to be grass
4 planted?

5 A. Both. During the clearing itself, the wooded
6 material that will be cut down will be chipped and spread
7 on site. But grass will also be planted following project
8 construction.

9 Q. So is topsoil going to be put on top of that
10 chipped wood stuff?

11 A. No. Typically the woody material will mix
12 with the soil. We anticipate. This is based upon other
13 projects we have built. In fact, one particularly
14 recently during construction, the, you know, chip material
15 does mix with the soil pretty well, and you can come in
16 and put hydro seed after the project is built and have a
17 nice green vegetated ground cover.

18 Q. Are you talking about that stuff you have a
19 hose and it's like green, and there is seed in it? Is
20 that what you were talking about?

21 A. That's one form of hydro seed. Yeah. It's a
22 mix that has -- in addition to the seed itself -- provides
23 initial hydration for that seed to germinate and take
24 root.

25 Q. Is that part of the mitigation or landscaping

1 plan?

2 A. My testimony does describe the project will be
3 seeded after construction.

4 Q. But is there any -- pardon me. Is there any
5 representation about the actual area that seed will be
6 planted? Is it the entire location that it's going to be
7 cleared?

8 A. I don't recall if my testimony specifically
9 calls that out. But I'm willing to state here that, yes,
10 the intention would be to seed the entire cleared area
11 with the exception of locations such as the driveway or
12 the equipment pad, for example, obviously.

13 Q. And then how would the area be kept mowed or
14 whatever, is that --

15 A. Yeah. Periodically during the, you know, the
16 growing season, we would go in and mow it. Have it mowed.
17 Mechanically.

18 Q. How often?

19 A. It all depends on rainfall, growth rate. But
20 I would say on average we typically see once every 6; 5, 6
21 weeks or so go in and have something mowed.

22 Q. And does the fact that your solar panels are
23 fairly flat, not vertical, have an impact on maintenance
24 of the site in terms of keeping the grass mowed or
25 something like that?

1 A. Not especially. The tilt angle is 15 degrees
2 as I think you're referring to. But the racking system is
3 designed for there to be approximately 36 inches of ground
4 clearance between the ground and the lowest point of the
5 solar modules. So that provides a significant amount of
6 space to access for mowing equipment.

7 Q. On page 7 of your testimony towards the bottom
8 of the page, line 18. You were talking about vehicles and
9 equipment associated with the clearing work will access
10 the site via the vehicle access driveway off of Willow
11 Road. Then you say: Vehicle traffic could vary from
12 day-to-day but may reach up to a maximum of six heavy
13 trucks and 30 passenger vehicles to and from the site per
14 day.

15 How many people do you have working at this
16 site that you need 30 trips to and from in passenger
17 vehicles?

18 A. There might be some confusion about how those
19 numbers are used. They are intended to be the number of
20 trips. I would never anticipate there would be 30
21 different people working on the site at a time, although I
22 can't give an exact number because that kind of depends on
23 the contractor we hire and how they plan to proceed. But
24 these are estimates.

25 And I should also point out this is a maximum

1 amount. And the next sentence says: Average traffic per
2 day over the course of the clearing phase would likely be
3 substantially less than this.

4 Q. Yeah. I thought that was kind of interesting.
5 Because you say substantially less than the average. So
6 what does that mean? You're going to have days where
7 there is like masses of people in trips coming and going,
8 and others where nobody is, to get that average?

9 A. Sure. I didn't say substantially less than
10 the average. I said substantially less than the estimated
11 maximum. Your average day is going to be substantially
12 less than an estimated maximum. Again, you know, if I
13 imagine a day during the clearing phase, you know, typical
14 operations just based upon my own experience, you might
15 have five or six guys on site at a time, and that would be
16 the extent of the vehicle traffic to and from the site
17 that day. That might be a typical average day.

18 But especially at the beginning of the
19 clearing phase, when you're making the first cuts into the
20 site and you're trying to get, you know, the first portion
21 of the driveway installed, you know, concurrently, the
22 clearing equipment itself is being delivered, you might
23 have a, you know, a spike of traffic for, you know, a
24 couple days right at first.

25 And that's why we -- I tried to estimate the

1 maximum anticipated daily traffic that could be
2 experienced. But also mention that your average day is
3 likely to be substantially less than that.

4 Q. But yet when you get to the construction work
5 on the next page, page 8 around line 18, you didn't use
6 the word substantially. You just said would be less than
7 that when you were talking about the average versus the
8 maximum. Line 18 you say: Maximum of four heavy trucks
9 and 40 passenger vehicles to and from the site per day.
10 Average traffic per day over the course of construction
11 phase would be less than this. Not substantially less.

12 A. Right. You're correct that the word
13 substantially is not included in that line. During
14 construction we would have likely more employees on site
15 working than during the clearing phase.

16 If you have the solar modules getting
17 installed, for example, you know, there might be a crew of
18 10 individuals working in tandem to install the racking,
19 and then come along behind them with solar modules.

20 So again, I tried to provide an estimated
21 maximum daily traffic number, and then followed it up
22 saying still on average your average day is going to be
23 less than the estimated maximum.

24 Q. And more than the estimated minimum, though
25 you didn't estimate that.

1 A. I did not provide estimated minimums. No. I
2 mean I think that would probably be zero.

3 Q. So let me ask you about these hours and how
4 many months. It looks like three to six months is the
5 combined amount of time for clearing versus construction.
6 Is that about right?

7 A. Those are estimates. But yes, I believe
8 that's what the testimony reflects.

9 Q. It seems like an awful broad difference. If,
10 you know, your company has been involved in so many of
11 these projects, why would there be such a wide divergence
12 of, you know, the amount of time that would be necessary
13 to clear and then construct a certain amount of acreage?

14 A. Well that's a great question. Construction on
15 this scale is subject to a number of variables that are
16 entirely outside of our control, weather being primarily
17 one of them; equipment delivery schedules, when materials
18 are available; availability of labor. You could build a
19 project in three months with one contractor that takes a
20 different contractor six months depending on the amount of
21 employees they put on the site at any given time.

22 Those -- the estimates that I included in my
23 testimony are based upon my own experience managing
24 construction of exactly these kinds of projects over the
25 last eight years.

1 Q. In terms of the people you're hiring for the
2 clearing and construction, are those local jobs, or are
3 you bringing in people from out of state typically?

4 A. We have not identified a contractor for this
5 job, and would not at this point in the development
6 process.

7 Q. On page 9 -- so I guess you can't represent
8 that there would be a benefit to the State of Vermont by
9 creating jobs, at least for temporary jobs, based on what
10 you just testified to.

11 A. No where in my testimony does it guarantee
12 that employees working on construction would be local
13 Vermont employees. I would say it's likely. But I can
14 certainly make no guarantees. I would not -- the way you
15 worded that, I just want to make clear, I can make
16 arguments that this project provides benefits to the State
17 of Vermont. Just not specifically in the topic you're
18 discussing now.

19 Q. Yeah. That's fair. That's all I was getting
20 at.

21 And how many projects has your company been
22 involved in to clear-cut or to construct these kinds of
23 facilities?

24 A. I'm going to look something up so I can give
25 you an exact number. 23.

1 Q. Of those 23, how many of those projects did
2 you hire Vermont workers to fill?

3 MS. HAYDEN: Objection.

4 MS. DINGLELINE: At least 50 percent of
5 the jobs?

6 MS. HAYDEN: Objection. 248(b)(4) is
7 not even, which is the economic benefit criterion, is
8 not applicable in this proceeding. The witness has
9 not offered testimony on economic benefit in this
10 proceeding. And the question is beyond the scope of
11 anything that's provided in his testimony.

12 MS. DINGLELINE: This pertains to the
13 traffic that will be related to this project, as to
14 where these folks would be coming from, and if they
15 are coming from out of state. Because that's the
16 rule rather than the exception. I'm just curious to
17 know what the composition of these workers are.

18 MS. HAYDEN: I think he's already
19 answered that he -- you're asking about other
20 projects. He's already answered your question as to
21 this project. They haven't been retained yet. So
22 how would he know? He doesn't know. He's already
23 said that.

24 MS. DINGLELINE: I understand that.

25 HEARING OFFICER TOUSLEY: Are you

1 concerned with the impact of Vermont roads by out-of-
2 state people?

3 MS. DINGLELINE: Well there are a
4 myriad of issues that it relates to, greenhouse gas
5 emissions --

6 HEARING OFFICER TOUSLEY: Given the
7 numbers of employees that he estimates here, you have
8 that concern?

9 MS. DINGLELINE: I was not sure how
10 many employees there are going to be. I was unclear
11 on that.

12 HEARING OFFICER TOUSLEY: He does give
13 an estimate of -- didn't we just go through the whole
14 potential maximum and approximate minimum or
15 approximate average?

16 MS. DINGLELINE: Well for trips. But I
17 don't know how many people are going to be in the
18 car.

19 HEARING OFFICER TOUSLEY: Why is this
20 relevant?

21 MS. DINGLELINE: It may be relevant to
22 other issues.

23 HEARING OFFICER TOUSLEY: Such as?

24 MS. DINGLELINE: We will come back to
25 it later. I'll move on to something else.

1 BY MS. DINGLEDINE:

2 Q. I want to talk to you about water usage. You
3 testified on page 9 lines 18, 19, something like that.
4 Washing of the solar modules is not anticipated in the
5 Vermont environment. But if module washing is needed,
6 that would be performed with only water, no solvents, that
7 is trucked in from off site.

8 So which is it? Is it needed or is it not
9 needed? Based on your 23 other projects that you have
10 been involved in.

11 A. Right. This is one -- I think the testimony
12 does speak very clearly and I'll -- you just read it to
13 me. I don't want to be duplicative. Washing of the
14 modules is not anticipated in the Vermont environment. We
15 have another operating project in Vermont. We have never
16 had to do module washing there. We have also got
17 operating projects in Connecticut and Massachusetts which
18 are, you know, close enough to be proximal, and we have
19 never had to do module washing there.

20 The reason for that is that the snow cover we
21 get in the winter as it collects on the modules and then
22 slides down the module faces, it melts. Does a great job
23 of cleaning the surface of those modules. In other
24 environments manual module washing is needed such as
25 California, more southern locations. Or you know,

1 locations located directly next to active agricultural
2 operations, things of that nature.

3 So I would say no, we do not anticipate based
4 upon our experience module washing to be required for this
5 project. I do not want to preclude the possibility that
6 we may at some point in the future decide, hey, we would
7 like to have the option of scrubbing these modules, if
8 needed.

9 Q. How much water is needed to clean and wash
10 solar panels that comprise the size of this particular
11 project?

12 A. I don't know the answer to that question.

13 Q. How many solar panels are there now that
14 you've squished them together and gone up in their
15 productivity?

16 A. I don't know the exact quantity. But I
17 believe for the Chelsea project in its current
18 configuration is around 7,000 individual solar modules.

19 Q. Why didn't you do any modeling on the
20 construction noise?

21 A. I'm not a noise analyst.

22 Q. Why didn't -- okay. Let me rephrase. So RSG
23 did sound studies to prove that there is no adverse impact
24 -- undue adverse impact regarding noise. And they said --
25 well nobody gave us any rebuttal testimony so we didn't --

1 weren't asked to do anything else about the construction
2 phase, either the cutting with chain saws or digging with
3 excavators, trucks, bulldozers, blah-blah-blah.

4 Why -- I assume you're sort of the guy in
5 charge of this project. Why would you ignore that impact
6 to the surrounding landowners without having modeled that,
7 you know, taken readings and/or used information from
8 other sites and modeled it according to the project site
9 that we are -- that is at issue here?

10 A. I certainly don't believe it's accurate to
11 state that we have ignored the question of construction
12 noise or noise generated during the construction phase. I
13 think the detailed description given in my testimony of
14 the construction activity that would be taking place on
15 site paint a very clear picture of the type of equipment
16 that would be used. Also very clearly define the days in
17 the week and the hours of operation where that equipment
18 would be used. And based upon typical evidence entered
19 into other cases like this, I think that gives a sense of
20 a temporary typical construction impact.

21 You're correct. We did not ask RSG to do a
22 technical acoustic modeling exercise regarding
23 construction noise. I think we typically, when deciding
24 what evidence to ask our witnesses to prepare, we
25 obviously have a vested interest in making sure the

1 docket, you know, contains all the information that the
2 commission might want to look at. We take a look at other
3 projects that have been through the process recently and
4 been approved. Take a look at the commission's orders in
5 these projects and what evidence they are seeking, what
6 evidence they are saying was missing or not.

7 And based upon that, a modeled -- technical
8 acoustic model of construction noise was not something
9 that occurred to us to perform. Furthermore, in each
10 individual case it's different. We often rely on input
11 and questioning from other stakeholders involved in the
12 process. And this is the first time I'm hearing that any
13 one -- any of the parties have had an interest in
14 construction noise. If any of the parties had brought
15 that forward earlier in the case, perhaps that is
16 something we would have pursued.

17 To clarify something Mr. Haac said earlier, we
18 filed our original evidence in November 2017. The other
19 parties, I believe, filed their prefiled testimony in June
20 2018. The evidence filed by your clients did not contain,
21 you know, any questions or evidence regarding construction
22 noise, and so when we prepared Mr. Haac's rebuttal
23 testimony to your client's prefiled testimony,
24 construction noise was not a topic we had in mind at that
25 time.

1 Q. Lora Block's prefiled testimony did not
2 contain information regarding -- or concerns expressed
3 about construction noise?

4 A. I can pull it up right here if you would like
5 me to take a closer look.

6 Q. Stockpiled soils. Oh, before I go on to
7 stockpiled soils. I think that was on the prefiled
8 testimony of Lora Block, June 22, 2018. The question
9 number 10 in her prefiled is: As a resident of Apple Hill
10 who has experienced an increase in traffic noise after the
11 construction of Route 279, and having read the prefiled
12 testimony in this case: What is your opinion of the noise
13 study commissioned by the Petitioner? And her answer on
14 line one of page four is: The study shows that noise in
15 Apple Hill will increase if the forest is cut, but the
16 claim is that it will not be by very much. We believe
17 that study is inadequate. The Route 279 interchange has
18 already increased our traffic noise, especially from
19 trucks, and it will be made worse by clear-cutting for the
20 solar project which is not acceptable. Our neighborhood
21 should not be required to deal with yet more traffic
22 noise.

23 Hang on. Anyway, she is going to look
24 further. So I'll come back to that issue.

25 MS. BLOCK: That was a while ago.

1 Sorry.

2 BY MS. DINGLEDINE:

3 Q. Stockpiled soils. The construction of this
4 project you are digging into the soil and having to remove
5 soil and then pour concrete for footings, or how is that
6 going to happen?

7 A. No, not at all. No concrete footings are
8 proposed for the solar racks themselves. There is a
9 limited size concrete equipment pad that's described in my
10 testimony, the footprint of that probably approximately 10
11 by 20. And that's the only concrete foundation proposed
12 for this project. But concrete footings are not proposed
13 for the racks themselves.

14 Q. Okay. But I mean where does the stockpiled
15 soils come in?

16 A. I'm not familiar with any stockpiled soils
17 that are proposed for this site.

18 Q. You said in your testimony about the
19 decommissioning phase which is on page 10 of your prefiled
20 direct, you said: Decommissioning involves removal of
21 project equipment from the site, restoration of any
22 stockpiled soils, revegetation and restoration of the
23 project site to a natural state.

24 A. Right.

25 Q. You tell me that's just some general statement

1 that you made that's not applicable to this project?

2 A. Well so let me start by saying this is my
3 original prefiled testimony in this case filed with the
4 petition to begin this docket. This statement says: Any
5 stockpiled soils on the site would be restored. If there
6 aren't any, then there are none to be restored.

7 When we filed this petition, prepared this
8 language here, we did not yet know whether or not the
9 Agency of Agriculture was going to participate in this
10 docket. They have in previous dockets, and have requested
11 the addition of conditions that require stockpiling
12 certain soils. Having been through that a number of
13 times, and, you know, not knowing what that agency would
14 do in this case, I believe this language wanted to leave
15 the door open in case such a condition came about. It did
16 not.

17 Q. Okay. Thanks. Then the other thing I want to
18 ask you about is underground, this is on line 17:
19 Underground conduits, wiring and foundation posts will be
20 cut off at a depth of 24 inches below ground surface level
21 and backfilled.

22 So that means that you're leaving electrical
23 wires in the ground?

24 A. No. That's not correct. That is what the
25 testimony says here. But after the filings of this

1 testimony, we received a communication from the -- either
2 the hearing officer or the commission reminding us that
3 such a requirement is not compliant with the PUC's current
4 rules regarding decommissioning plans. So a revised
5 decommissioning plan was filed shortly thereafter, I
6 believe, on December 4.

7 Q. Got you. Yeah. Because I saw it in the
8 difference there. And then monitoring for invasive
9 species for a period of one year. That sounds like that
10 would not be an adequate amount of time to remove and
11 ensure that invasive species are completely eradicated and
12 are not coming back.

13 Why such a short time period for that?

14 A. Well I'll start by saying I believe that the
15 plan -- the decommissioning plan on the record is
16 compliant with the PUC rules for decommissioning plans.
17 The project will reach a point at some point in the future
18 where it is decommissioned and no longer exists. And the
19 property at that point ceases to become the solar project
20 site and reverts back to just being a private property
21 owned by a private property owner. And, you know, we are
22 saying that for, you know, a period of a year we will
23 monitor and, you know, try to keep invasive species out of
24 there.

25 At some point though, the obligation of that

1 property owner after the project has been fully
2 decommissioned must, you know, stop being obligated to the
3 conditions of the solar project. That's a particular
4 condition that if you know that was a really point of
5 concern for any particular party in this proceeding, we
6 would absolutely be open to being flexible on that period
7 of time.

8 Q. You have also reviewed the dollar amount in
9 terms of the bond or financial obligation on the
10 decommissioning. I've forgotten what the amount is.
11 Hundred something thousand. How do you determine that? I
12 saw your little chart. And I understand you were
13 conveying that information in 2017 dollars. But how does
14 one figure out whether, for example, you say, you know, we
15 will recycle stuff at a nearby recycling facility. What
16 nearby recycling facility in 25 to 40 years? How do you
17 know what the costs are going to be at that point in time?

18 A. Right. I think the word estimate is used
19 pretty liberally when describing these numbers. I have no
20 idea where the nearest recycling facility will be in 40
21 years. There is obviously no way I could know that. We
22 review the -- to come up with these numbers, I reviewed
23 the scope of the project design with three different
24 contractors that we worked with in the past to get their
25 feedback on the amount of labor that would be necessary to

1 perform this work. Using that information we prepared
2 these numbers that were submitted. And based upon, you
3 know, my experience managing construction of these
4 projects, I find them to be reasonable estimates.

5 Q. Let me move on to page 14 line 17 of your
6 prefiled direct testimony wherein you state: The town
7 select board held several public meetings on the revised
8 plans culminating in August 2017 in the select board
9 voting to withdraw its opposition to the Apple Hill Solar
10 project. Because in the words of the town attorney, the
11 revised plans are, quote, consistent with what I see is
12 the text of the town plan. And then you say see Exhibit
13 CS-BW-12. Transcript of August 14, 2017 select board
14 meeting at 38.

15 So that's not just putting an exhibit in and
16 showing what a discussion was had at a select board
17 meeting. You are making an affirmative representation
18 that the town made a decision and acted, and then you
19 attribute their actions and explain a reason why by
20 quoting part of a discussion that the town's attorney had
21 with the select board. Do you see how that appears
22 disingenuous and, you know, troubling to people? That you
23 would attribute the decision of a select board that are
24 elected officials, who are charged with making a decision,
25 and you somehow attribute their reasons to their behavior

1 which not even a select board member would be competent to
2 explain or testify because boards act through their votes
3 and their public action of actually making decisions that
4 they vote upon in public session.

5 A. No. I don't.

6 Q. Do you think that's a fair and accurate
7 representation of what Rob Woolmington's conversation
8 means?

9 A. Yes.

10 Q. You think it's appropriate for you as a
11 developer to lift his conversation, albeit in public, and
12 to attribute actions of this board and try to explain it
13 by something that he said, among many things that he said
14 during a conversation, to try to explain it -- that to
15 your benefit as the Applicant here?

16 A. I don't believe that's what my testimony
17 attempts to do. I was at that meeting in person. I've
18 also reviewed the transcript that is in evidence in this
19 case. And I present the comments that are included in my
20 testimony as facts of the conversation that took place
21 that evening.

22 I also took part in numerous discussions and
23 other meetings leading up to that meeting, so in the
24 overall context this is what I believe took place that
25 night. The transcript itself is on the record. It speaks

1 for itself.

2 Q. Then why didn't you let it speak for itself?
3 Why did you try to take information, little snippets out
4 of a -- how many pages is this conversation? 50. And you
5 tried to take that information where the conversation was
6 -- an attorney tried to give a town different
7 perspectives, issues, legal concerns, blah-blah-blah, and
8 then you -- who are you to take Mr. Woolmington's
9 conversation and attribute some, you know, motivation or
10 explanation that this is why the board decided to do this?
11 The board is not Rob Woolmington.

12 You don't see that as being problematic, that
13 you under oath have made that representation when you have
14 no personal knowledge whatsoever other than sitting in a
15 room and listening to a conversation? Are you inside the
16 heads of these board members?

17 A. My participation in that process was more than
18 just sitting in a room listening to the conversation.

19 Q. Are you on that board? Were you in an
20 executive session wherein you discussed it with your other
21 board members and came out of executive session and voted
22 on something? Do you know what was going on in executive
23 session?

24 A. No. I'm not a member of the Bennington select
25 board.

1 Q. Okay.

2 A. No. I did not participate in any of the
3 Bennington select board executive sessions.

4 Q. Then how dare you --

5 MS. HAYDEN: Objection. Objection.
6 Objection.

7 MS. DINGLELINE: -- attribute this to
8 this town?

9 HEARING OFFICER TOUSLEY: Sustained.
10 He's asked and answered that he sees no problem using
11 the quote that he does. I'm not sure why you want to
12 lecture him on that issue. I'm going to sustain the
13 objection and ask you to move on to another area.

14 It's 6 o'clock. We have already gone
15 well beyond the initial time. It's already an hour
16 into Mr. Wilson's testimony period. How much more
17 time do you need?

18 MS. DINGLELINE: Half an hour.

19 HEARING OFFICER TOUSLEY: Proceed.

20 BY MS. DINGLELINE:

21 Q. And then you are taking Bennington select
22 board vice chair Don Campbell's email to Libby Harris and
23 putting that into your testimony when she forwarded you
24 that email and said let's sit down, and I'll be happy to
25 sit down with you and talk after having this conversation

1 to settle -- for settlement discussions.

2 Do you see that as problematic that somehow
3 you have now taken this information and tried to put it
4 into your testimony as if this is under oath personal
5 knowledge about -- I'm not even sure what -- some guy on
6 the Bennington select board has an opinion? Do you think
7 that's proper testimony to put before this tribunal?

8 A. You know, I'm not an attorney. I can't speak
9 to what is and is not proper testimony. But --

10 Q. Well you have an attorney that prepared this
11 document and sent it in, right?

12 A. Attorneys were involved in reviewing this
13 document. I can't speak for them. No. I don't see it as
14 problematic. That was a statement made by, at the time, a
15 party opponent. Project opponent.

16 Q. Right. Pursuant to settlement discussions,
17 and this is on page 16 of line 16, 17, 18.

18 A. I disagree with the characterization that that
19 was part of settlement discussions.

20 Q. Well when she said I'll sit down and talk with
21 you, that was to work out issues and concerns and try to
22 settle some of the dispute, right?

23 MS. HAYDEN: I'm going to object to --
24 the witness has already answered the question. This
25 exhibit has been in the record. It was never

1 objected to previously. And the characterization
2 that these were Rule 408 settlement discussions, I
3 think, is overstated.

4 I don't know what the point is that
5 it's being made here other than to lecture this
6 witness about questions that are really legal
7 questions.

8 MS. DINGLELINE: Let's hope he doesn't
9 repeat his behavior in the future.

10 MS. HAYDEN: I --

11 BY MS. DINGLELINE:

12 Q. So let's move on to -- okay. On page 31 of
13 your testimony you said on page -- I mean on line say
14 starting 8. Well let's start a little sooner than that.
15 5. Some neighboring residents have raised concerns that
16 the proposed removal of trees on the project property
17 might result in an undue adverse increase in vehicle noise
18 at the expense of their homes. The vehicle noise in
19 question is generated by vehicles traveling on highway
20 Route 7 which is located south and west of the property.
21 In my own words, the vehicle noise in question is not
22 generated by the project or on the project property and it
23 is not generated by a source that is associated with the
24 project in any way. The vehicle noise in question is not
25 generated by a source that the Petitioner has any control

1 over or any responsibility for.

2 Would you agree with me that all of these
3 truck trips, all of these passenger car trips, is going to
4 increase the noise because otherwise these folks would not
5 be there, there wouldn't be any of the construction noise,
6 all of that. So that statement specifically -- well it's
7 really not true because there is traffic noise being
8 generated by the project, fair to say?

9 A. Not fair to say. No.

10 Q. Okay. Then I guess we disagree.

11 A. The statement that you read was in regards to
12 the neighbors' concerns over highway noise generated by
13 vehicles traveling on Route 7. It's not related to the
14 vehicles traveling to and from the project site. So --

15 Q. So are you -- no one's going to go on Route 7
16 to get to the project site?

17 A. I don't know.

18 Q. Exactly. I'll move on. Maybe you know,
19 what's the slope of this project site inside the footprint
20 area?

21 A. It's somewhere between 8 and 9 percent.

22 Q. So you would agree with me that that's a
23 moderate slope?

24 A. I don't know what qualifies as a moderate
25 slope.

1 Q. Well I think we had this discussion the last
2 time. I can't remember if it was with you or one of the
3 other witnesses.

4 A. It was with Mark.

5 Q. With Mark. Okay. You take a position that is
6 not a hillside even though there is a slope of moderate
7 grade?

8 A. I don't think I've addressed the topic of
9 whether or not the project site is a hillside in my
10 testimony.

11 Q. I think you talked about on page 35 whether
12 the project was sited in a prominently visible location on
13 a hillside. And you said no. First, there is no
14 definition of what a hillside -- of what is a hillside.
15 So it is impossible to apply that guideline and create any
16 meaningful development standards, but regardless of the
17 issue of what constitutes a hillside, the project is not
18 sited in a prominent visible location.

19 So your testimony is -- what did you say the
20 slope was again?

21 A. Somewhere between 8 and 9 percent.

22 Q. Okay. So an 8 to 9 percent slope is not a
23 hillside?

24 A. I don't believe I ever said that.

25 Q. Well that's the equivalent of what you're

1 saying. You're saying it's not on a hillside because
2 there's no definition of hillside, but you've testified 8
3 to 9 percent is a slope here. And so you must be
4 concluding that 8 to 9 percent is not a hillside.

5 A. I completely disagree with your
6 characterization of my testimony. My testimony says no,
7 the project is not -- no, the project is not sited in a
8 prominently visible location on a hillside. My testimony
9 makes no judgment as to whether or not the project is
10 sited on a hillside. It does describe -- I do not believe
11 that the term hillside is defined anywhere in any town
12 plan or related document. But I'm not speaking to whether
13 or not I believe that 8 to 9 percent slope constitutes a
14 hillside because I do not know what standard would be
15 applied to reach that conclusion.

16 Q. How about common sense standard?

17 A. Sometimes I'm not as familiar with that one as
18 I would like to be.

19 Q. You're the one who put in all of the
20 definitions from Merriam Webster and American Heritage
21 Dictionary, and it says an incline, especially of a road,
22 a slope. 8 to 9 percent slope is not a slope?

23 A. Well, it is a slope. Any incline greater than
24 zero percent can be defined as a slope, and I think that's
25 the point of the definitions that are included in my

1 testimony to show that by standard dictionary definitions
2 a hillside could really be defined as, you know, any piece
3 of land with greater than zero slope, and then tie that
4 back to a discussion of how the town plan does not include
5 a definition of what constitutes a hillside.

6 Q. Why did you say that a critical importance --
7 this is on page 37. Of critical importance the bylaw
8 makes it clear that development is not prohibited. What's
9 that got to do with anything? Your other expert -- the
10 first fellow -- I've forgotten his name. He talked all
11 about how -- I think Mark Kane may have done it. I'm not
12 sure which. But what has the zoning bylaw got to do with
13 anything. He's the one who said, no. Mark said, no,
14 nothing else applies. It's only the town plan. Yet, you
15 know, you're trying to use the bylaw when it suits your
16 purpose. And yet then you say you don't want to use the
17 bylaw through another witness when it doesn't suit your
18 purpose.

19 Do you see the inconsistency in the
20 presentation that we are dealing with?

21 A. No, I don't.

22 Q. One witness says the bylaw is critically
23 important. And the other says we don't pay attention to
24 that at all. You don't think that's a conflict in the
25 information that you've given the PUC on this case?

1 A. I don't think my testimony says the bylaw is
2 critically important. I say: Of critical importance, the
3 bylaw makes it clear that development is not prohibited.

4 Q. Okay. But isn't zoning prohibited under this
5 process here that we are involved in? The bylaws mean
6 nothing because they are preempted. Do you know what
7 preemption means? That they don't apply.

8 A. I disagree that they mean nothing. I
9 understand that, again, I'm a layman. I'm not an
10 attorney. But my understanding of the statute is that
11 zoning bylaws should not control the outcome of a 248
12 proceeding. However, especially in a case such as
13 Bennington where there is so much intermingling and
14 overlap between the town plan and the land use
15 regulations, I think the land use regulations implement
16 the town plan to a certain extent. And the land use
17 regulations make it clear that's what we can look to to
18 see all these other types of uses including energy
19 generation facilities, that the town's own land use
20 regulations say are allowed in the rural conservation
21 zone.

22 The point here is that development of many
23 types, including this project, are not prohibited by the
24 town's bylaws in the rural conservation district.

25 Q. You say you're not a lawyer. You say you're

1 not an expert, but gosh darn, you have a lot of testimony
2 in here that is making all sorts of representations about
3 whether we use bylaws, what your opinion is, whether or
4 not the town plan is intertwined with the zoning.

5 MS. HAYDEN: Objection. We are going
6 to be here until 7 o'clock tonight if this continues.
7 He's answered the question.

8 HEARING OFFICER TOUSLEY: I'm going to
9 overrule the objection.

10 THE WITNESS: I can --

11 HEARING OFFICER TOUSLEY: If I can
12 continue. The interveners have the opportunity
13 through cross examination to characterize, to limit,
14 to expose the testimony of the Petitioner's
15 witnesses, so that that testimony is given the
16 appropriate weight.

17 I will note that it is 6:15. And she
18 has 15 minutes left.

19 THE WITNESS: You are correct that I'm
20 not an attorney.

21 MS. DINGLELINE: There is no question
22 pending.

23 THE WITNESS: Oh, there was.

24 BY MS. DINGLELINE:

25 Q. On the bottom of 36 you say on line 17; go to

1 line 16: Development shall be blended into the existing
2 natural landscape to minimize its visual impact from
3 public roads and the land. This effect shall be
4 accomplished through one or more of the following: Siting
5 of structures within forest or forest edge areas.

6 That is precisely what has been done with this
7 project. It is located within or at the edge of the
8 wooded area. How is it if you're clear-cutting that it's
9 within a wooded area?

10 A. For starters, I would point out that this
11 section of my testimony is a discussion of zoning
12 regulations that we believe do not apply to this
13 proceeding. But the project is being placed within a
14 wooded area. It's being surrounded on almost every
15 direction by hundreds of feet of existing forest and
16 vegetation.

17 Q. I guess it depends on the definition of "is."
18 And then you say: It is not visible from the Vermont
19 Welcome Center or other public lands or the neighbors, and
20 visibility from public roads and the neighbors is
21 screened, of critical importance, and then we go into that
22 bylaw thing.

23 No exception, no wiggle room here. You claim
24 that it is not visible from public roads and the neighbors
25 and the Welcome Center, right?

1 A. That is what the testimony says.

2 Q. Okay. And then on page 41 of 41 you make an
3 argument about this 10-acre rule applying to solar only
4 and no other kind of development in Bennington. It's
5 unconstitutionally discriminatory on its face. But you're
6 not a lawyer? And you've made that accusation in your
7 prefiled testimony.

8 MS. HAYDEN: I'm going to object only
9 because this line of questioning relates to a
10 document that the commission has ruled is not
11 relevant in its vested rights ruling. This is the
12 solar screening ordinance.

13 HEARING OFFICER TOUSLEY: I understand.
14 I would overrule your objection. Again, this is --
15 this question doesn't have anything to do with the
16 specifics of what's in this paragraph that starts at
17 4. It's with the interveners' attempts to
18 characterize the testimony of this witness.

19 THE WITNESS: You're correct.

20 MS. DINGLELINE: It goes to the
21 credibility of the witness.

22 THE WITNESS: You're correct. I'm not
23 an attorney. This information is based upon my
24 understanding after multiple discussions with other
25 people on our team.

1 BY MS. DINGLEDINE:

2 Q. On page -- System Impact Study CS-BW-9.

3 A. What page?

4 Q. Page 38. You say in 5.0: Cost estimate, a
5 budgetary estimate of the interconnection costs will
6 follow under separate cover. Did you ever provide that?

7 A. I don't believe that has been provided in this
8 docket.

9 Q. When is that going to happen?

10 A. I don't think we were planning on entering
11 that information. This is not my language. This is GMP
12 telling us that they will provide us a separate cost
13 estimate under separate cover. There is not me saying
14 that I will provide a separate cost estimate.

15 Q. Bouncing back to your rebuttal testimony
16 August 10, 2018, page 11 of 44 on line 19 you say: The
17 Apple Hill Project is proposed as a separate facility on a
18 different portion of the same parcel of land as the
19 Chelsea Solar project; is that correct? It's all on one
20 parcel?

21 A. Give me just a moment to pull up that
22 reference. It's in a different binder.

23 Q. You don't need to look it up. Are there two
24 projects on the same parcel of land?

25 A. Yes.

1 Q. And that land is owned by whom?

2 A. The project site is owned by PLH, LLC.

3 Q. What is the vertical differential between the
4 -- of the array in terms of the vertical rise or
5 difference in elevation of the lowest point of the array
6 in the front of or closest to the south versus the highest
7 point at the height of the land? For the actual solar
8 array?

9 A. I don't know the answer to that off the top of
10 my head. I do know that information was provided as one
11 of our discovery responses to the interveners in this
12 case. But I don't have that with me.

13 Q. Would you look at the exhibit -- the 45-day
14 notice materials Exhibit CS-BW-4. A few pages in there is
15 some kind of cross sectional thing that shows the proposed
16 array.

17 A. Are you talking about sheet C-101?

18 Q. My copy doesn't have any --

19 MR. CLARK: Lower right-hand corner?

20 MS. DINGLEEDINE: It's got like these
21 cross sections, a green --

22 THE WITNESS: That's the same sheet I'm
23 looking at.

24 BY MS. DINGLEEDINE:

25 Q. It looks to me like the high is at 752 and the

1 low is at 710; is that right?

2 A. I would say there is a -- what this document
3 reflects and that's probably fairly close to what was
4 actually filed. But keep in mind this is the 45-day plans
5 and not the project site plans that were actually filed.

6 Q. Oh, okay. So then because there is a map in
7 this section that talks about the clearing for the project
8 is 9.58 acres?

9 A. You're talking about CS-BW-2; is that correct?

10 Q. When I printed these they didn't all get on
11 the page, I guess. Anyway, we are clear on the amount --

12 A. Yeah.

13 Q. -- that you testified earlier you're certain
14 of the two amounts of the footprint versus the cleared
15 area?

16 A. Correct. The cleared area for this project is
17 9.64 acres.

18 Q. And the footprint is 7.1, right?

19 A. That's correct.

20 Q. Okay. Can you tell me how much of the Chelsea
21 project area, the original Chelsea project area, got added
22 to the new Apple Hill project area? You reduced the
23 Chelsea project to these numbers we just talked about.
24 Apple Hill it got expanded how? How much?

25 A. I don't have the answers to that readily

1 available. I don't have the documentation with me that I
2 would need to reference.

3 MS. DINGLELINE: So we had the
4 Settlement Agreement in evidence. Your Honor, has
5 that been submitted as an exhibit in this case?

6 HEARING OFFICER TOUSLEY: Yes.

7 MS. DINGLELINE: It has. Okay. Just
8 one moment.

9 BY MS. DINGLELINE:

10 Q. In terms of the negotiation that resulted in a
11 Settlement Agreement in the prior proposal that was made
12 to the town of Bennington, I understand that there were
13 requested -- that the Petitioner requested not just that
14 the town withdraw from the proceeding and withdraw --

15 MS. HAYDEN: Objection. Settlement
16 discussions are not -- are not allowed to be in
17 evidence. I don't see the relevance. We have a
18 final stipulation that resulted from settlement
19 agreements or settlement discussions, but the
20 settlement discussions under Rule 408 are --

21 MS. DINGLELINE: The draft is made
22 public though.

23 MS. HAYDEN: You're asking about
24 discussions.

25 BY MS. DINGLELINE:

1 Q. Okay. The prior draft that was submitted to
2 the town that was discussed in public and circulated
3 required that the town not just withdraw, and not just
4 take and withdraw Mr. Monks' testimony, but it also
5 required that the town actually take the position that
6 this project complied with the town plan, yet that is not
7 now in the actual Settlement Agreement.

8 And do you have any knowledge? Were you there
9 at the meeting about why that provision was taken out of
10 the agreement and the town refused to agree to that
11 provision?

12 A. I think we are going to tread into territory
13 we were walking on earlier where I feel like now you're
14 asking me to try to read the minds of the select board
15 members. I did -- I did not participate in this round of
16 settlement discussions with the town. But I did observe
17 the meeting that took place when they discussed it
18 publicly and voted on it.

19 I have a personal opinion on why that might
20 be, but I just don't think that it's appropriate for me to
21 say that's why they did it because I was not part of those
22 conversations this time around.

23 Q. Were you there physically at the meeting?

24 A. No. I watched the video of the meeting.

25 Q. Afterwards or in real time?

1 A. It was not live streamed. I watched it a day
2 later.

3 Q. So when you watched it, did you hear any
4 conversation -- public conversation about that issue?

5 A. I did.

6 Q. So forget about speculating about why a
7 decision was made. What do you recall hearing about this
8 issue in terms of opposition to taking the position that
9 the town plan is not violated by this and should be
10 supported because it complies with the town plan?

11 A. What I observed, discussion on that particular
12 topic, were some of the association neighbors speaking
13 that they were very unhappy that the town was even
14 considering this, that they felt slighted by the whole
15 thing. And they asked the town to consider at least
16 taking that language out of it.

17 Q. That's all I have. Thank you.

18 MS. HAYDEN: No redirect.

19 HEARING OFFICER TOUSLEY: Do the other
20 parties have any questions?

21 MR. PORTER: No questions.

22 HEARING OFFICER TOUSLEY: Mr. Wilson, I
23 want to thank you for your testimony. You may stand
24 down. This hearing is in recess until tomorrow
25 morning at 9 o'clock. Please drive safely.

(Whereupon, the proceeding was
adjourned at 6:30 p.m.)

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C E R T I F I C A T E

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2
3 I, Kim U. Sears, do hereby certify that I
4 recorded by stenographic means the Evidentiary Hearing re:
5 Case No. 17-5024-PET, at the Susan M. Hudson Hearing Room,
6 People's United Bank Building, 112 State Street,
7 Montpelier, Vermont, on September 20, 2018, beginning at
8 9:30 a.m.

9 I further certify that the foregoing
10 testimony was taken by me stenographically and thereafter
11 reduced to typewriting and the foregoing 321 pages are a
12 transcript of the stenograph notes taken by me of the
13 evidence and the proceedings to the best of my ability.

14 I further certify that I am not related to
15 any of the parties thereto or their counsel, and I am in
16 no way interested in the outcome of said cause.

17 Dated at Williston, Vermont, this 26th day
18 of September, 2018.

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