

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

CASE NUMBER 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 21, 2018  
9 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 21, 2018,  
beginning at 9 a.m.

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1 HEARING OFFICER TOUSLEY: Good morning  
2 everyone. This is the day two of the hearing in Case  
3 Number 17-5024-PET. We're here for additional  
4 testimony and cross examination. The parties that  
5 were present in the hearing room yesterday are again  
6 present and I see that Mr. Raphael is on the stand.  
7 If you could identify your witness please.

8 DAVID RAPHAEL,

9 DIRECT EXAMINATION

10 BY MR. PORTER:

11 Q. Sure. If you could state your name and where  
12 you work for the record?

13 A. Yes. My name is David Raphael. I work at  
14 Landworks in Middlebury, Vermont.

15 HEARING OFFICER TOUSLEY: Mr. Raphael,  
16 if you could raise your right-hand.

17 (Mr. Raphael was duly sworn.)

18 BY MR. PORTER:

19 Q. Mr. Raphael, your aesthetics report has been  
20 admitted into evidence -- your report dated June 19, 2018.  
21 Do you have any corrections to this report?

22 A. Yes. I have four typographic corrections.  
23 The first is on page 13 in the first paragraph, I believe  
24 it's the second sentence, at the end Vermont 276 should  
25 read Vermont 279.

1           On page 22 -- this is the last full sentence  
2 at the bottom of page 22 before the bullet points --  
3 there's a parentheses that says page 49. It should be  
4 page 45.

5           On page 30 last paragraph the word second to  
6 last sentence I think it is -- no, third to last sentence  
7 it's -- changes is misspelled. I'm going to blame it on  
8 Word, but it should not have the N and the M before the A.  
9 So it should read changes, and then on page 33 last  
10 sentence ending in a colon it should read regional plan.  
11 So it's missing a P and a space.

12           Q.       Thank you, and are those all the corrections  
13 you have?

14           A.       To the best of my knowledge, yes.

15                   MR. PORTER: Thank you, and the witness  
16 is available for cross examination.

17                   HEARING OFFICER TOUSLEY: Okay.

18                   CROSS EXAMINATION

19 BY MS. HAYDEN:

20           Q.       Thank you. Mr. Raphael, can you please turn  
21 to page 8 of your report under Section 21D?

22           A.       Yes.

23           Q.       You say that the size and scale of the project  
24 is compatible with its surroundings on a regional scale,  
25 correct?

1 A. Correct.

2 Q. And you go on to say that its -- given its  
3 lower -- I'm sorry. I'm referring to page 10. Page 10  
4 Section 21C last sentence in the first paragraph.

5 A. Yes.

6 Q. Given its lower height and its placement  
7 within the topography the project will also not be  
8 skylined from any potential vantage point so it will be  
9 absorbed better into the background of the adjacent  
10 vegetation topography and hills, correct?

11 A. Correct.

12 Q. And I asked you this during your deposition.  
13 You felt that the colors and materials are suitable for  
14 the project?

15 A. Yes for the most part. I would add, though,  
16 that in winter with snow on the ground there's no question  
17 that the project and the array will stand out more  
18 prominently.

19 Q. Okay, but you did say that black is a suitable  
20 color. You said black fencing blends well into the  
21 background elements, correct, on page 10 second to the  
22 last sentence?

23 A. I don't think I said black.

24 Q. You say typically black fencing blends --

25 A. Where is that?

1 Q. It's the second --

2 A. Oh the last sentence. I'm sorry.

3 Q. Second to the last sentence. Typically black  
4 fencing --

5 A. Yes.

6 Q. -- blends well into the background elements  
7 and is a suitable color and material?

8 A. Correct. I did say that. Yes.

9 Q. And going to page 20 of your report --

10 A. What page?

11 Q. I'm now on page 20.

12 A. Yes.

13 Q. Sorry. It's page 19 under your second step of  
14 the Quechee analysis regarding clear community standard  
15 Section 2.2A, the second paragraph, not the quoted area,  
16 but the second paragraph in the second sentence you say  
17 that a review of the 2010 Bennington Town Plan, the 2004  
18 Town of Bennington Scenic Resource Inventory, the 2009  
19 Bennington Park and Open Space Plan, and the 2007  
20 Bennington County Regional Plan yields the conclusion that  
21 the project will not violate a clear community standard  
22 intended to preserve the aesthetics or scenic beauty of  
23 the area in accordance with the Quechee test, correct?

24 A. I said that then. My conclusions have changed  
25 with regard to that since this was written in June, and

1 subsequent site visits and information that's been  
2 available to me makes me feel as though -- gave me the  
3 sense that with regard to one aspect of Bennington's plan  
4 documents and standards that this project is at a  
5 threshold of violating a community standard with regard to  
6 the gateway delineation and designation.

7 Q. You're talking about the scenic resources  
8 inventory?

9 A. Yes.

10 Q. That document hasn't changed since you did  
11 your initial review of this project or the initial site  
12 visits that you conducted, correct?

13 A. That has not changed, no.

14 Q. Okay.

15 A. But my opinion has.

16 Q. Your opinion has changed that that document  
17 contains a clear community standard?

18 A. On subsequent review of the document and a  
19 closer read on, you know, discussions and testimony  
20 submitted by the town and subsequent site visits have  
21 highlighted the presence and importance of the gateway.

22 Q. And the gateway that you're referring to is  
23 Route 7 coming from the north descending towards the  
24 project; is that correct?

25 A. That is correct.



1 Q. And I think in your deposition you said that  
2 you thought that the beginning of that gateway was about a  
3 half mile north of the project?

4 A. That sounds about right. Yes.

5 Q. I'm going to refer you back to page 8 of your  
6 testimony.

7 A. In my report?

8 Q. Yes. I'm sorry. Your report. I don't think  
9 your testimony -- so -- and again the second paragraph  
10 Section 21B second sentence you note that the project is  
11 bounded on the south and west by U.S. Route 7 and 279  
12 interchange, the welcome center, and mixed residential and  
13 commercial -- commercial and industrial beyond. It's a  
14 busy high density area with lots of traffic, commerce, and  
15 day-to-day activity. There will be very limited  
16 visibility of the project from these areas and not likely  
17 noticeable given the activities that will occur here.  
18 That's what you wrote in your report about the visibility  
19 from the Route 7 interchange, correct?

20 A. Yeah. I mean I think I was referring  
21 generally speaking to the residential/  
22 commercial/industrial portions of the surrounding land use  
23 and landscape.

24 Q. You're not talking about the project site in  
25 any way? You note that from Route 7 there will be very

1 limited visibility.

2 A. That's a general statement with regard to the  
3 area identified -- the areas identified in that sentence,  
4 not just Route 7.

5 Q. Okay. Okay, and you just stated that your  
6 opinion had changed with regard to the scenic resources  
7 inventory whether or not that was a clear community  
8 standard, but it's true that your opinion has not changed  
9 that the project does not violate a clear community  
10 standard, correct?

11 A. I think there is a risk that this project will  
12 indeed violate that community standard and undermine the  
13 gateway area.

14 Q. All right. We're going to come back to that.  
15 Do you remember from your deposition -- do you recall that  
16 we had this discussion during your deposition?

17 A. I do.

18 Q. You did -- I think you pointed out in your  
19 report that the scenic resources inventory doesn't mention  
20 the project site?

21 A. No.

22 Q. And the views from Route 7 are -- the  
23 panoramic views that are addressed in the scenic resources  
24 inventory are towards the monument, correct?

25 A. Generally speaking clearly as you come down

1 it's a very broad view. It is towards the monument, but  
2 it encompasses 180 degrees or more as you come down the  
3 highway. You're certainly aware of the forested edge on  
4 the eastern side and conditions on the western side. So  
5 it's not a static view and it includes many different  
6 elements and characteristics.

7 Q. You say on page 20 -- regarding the town plan  
8 you say on page 21 at the bottom, last paragraph, you're  
9 discussing the rural conservation district standards?

10 A. Yes.

11 Q. And you do -- you quote from page 26 further  
12 above and we had a long discussion about this yesterday  
13 the development in this area cannot be sited in a  
14 prominently visible location on hillsides or ridgelines  
15 and shall utilize earthtone colors and non-reflective  
16 materials on exterior surfaces of all structures and must  
17 minimize clearing on the natural vegetation. Do you see  
18 where you quoted that?

19 A. Yes.

20 Q. And then the last paragraph of that page you  
21 say that the intent of the recommendations of the  
22 standards of the RCD are clear, but then you go on to  
23 state that they do not explicitly exclude or prohibit  
24 solar development, correct? That's at the very bottom of  
25 page 21.

1 A. That's correct.

2 Q. And I think you also say standards don't  
3 define what it means to be a hillside or to have a level  
4 of significant prominence, true?

5 A. Could you point me to that reference?

6 Q. It's halfway through the last paragraph. The  
7 hillside does not rise to the level of significant  
8 prominence, and then you go on to note that the plan does  
9 not specifically identify the project area as a  
10 prominently visible hillside or ridgeline, correct?

11 A. Yes.

12 Q. Okay. Thank you. Page 23 you discuss the  
13 scenic resources inventory in a little bit more detail.

14 MS. DINGLEDINE: Sorry.

15 BY MS. HAYDEN:

16 Q. Page 23.

17 A. Yes.

18 Q. And I'm looking at the last paragraph. You  
19 concluded there that the intent of the scenic resources  
20 inventory is distinct. You note in the second sentence  
21 that there are many illustrative photos of pretty views  
22 along roads and across -- going on to page 24, across  
23 meadows, but the project area is not specifically  
24 identified on the scenic resources overview map and there  
25 is no list that distinctly calls out the project site.

1 Moreover, there are no specific goals or policies that  
2 would specifically apply to the project or standards that  
3 detail how the project should be developed to meet those  
4 goals or policies. So you conclude there that it does not  
5 violate a specific community standard outlined in the  
6 scenic resources inventory. That is the last sentence of  
7 that first paragraph on page 24.

8 A. That's correct, but as I said earlier upon,  
9 you know, your opinion and your sense of a project the  
10 more time you spend with it evolves, and I think while I  
11 would not say here that the ultimate conclusion changes  
12 here, I would say I'm not retracting the conclusion in  
13 that sense except to say I believe that this is at a  
14 threshold, and that upon further review and consideration  
15 of the gateway area, even though it does not specifically  
16 identify this site, that will not necessarily be the  
17 nature of a gateway identification. You would generalize  
18 the area of the gateway and you wouldn't necessarily  
19 identify every single parcel or every single site within  
20 that, but I now certainly -- and I think there has been  
21 testimony to this effect that this project is part of that  
22 area and as such should be considered within the  
23 parameters of those standards.

24 Having said that, it is true that no  
25 specificity has been provided with regard to this site in

1 particular, but I think there are some general  
2 considerations and issues that emerge that warrant serious  
3 consideration, and where that leads me in part is to the  
4 final step of the Quechee project which is the mitigation  
5 measures.

6 Q. Okay. We'll get there in a minute --

7 A. The critical nature of addressing those  
8 mitigation measures to resolve the potential impacts and  
9 conflict with the community standard if this project is  
10 built.

11 Q. All right. Well you kind of jumped ahead of  
12 yourself there. I was asking about a clear community  
13 standard and whether one had been violated and you're not  
14 -- you're not retracting your report and opinions in your  
15 report that the -- there are no specific goals or policies  
16 that would specifically apply to the project, correct?

17 A. Within the scenic resource inventory.

18 Q. Right.

19 A. Yeah.

20 Q. Okay. Nor are there specific standards that  
21 detail how the project should be developed to meet any  
22 goals or policies to the extent they existed. So you said  
23 there are no policies or goals with respect to this  
24 project site and there are no standards that apply with  
25 respect to this project site, correct?

1 A. Correct.

2 Q. Okay. Let me bring you back to page 13.

3 MS. DINGLEEDINE: 18 you said?

4 BY MS. HAYDEN:

5 Q. No. I'm on 13. This is Section 21E. You  
6 talk about where the project may be visible from, right,  
7 and your conclusion was that a site reconnaissance  
8 conducted by Landworks in the area along the roads near  
9 the site yield a conclusion that there is limited to no  
10 visibility of the project from major public vantage  
11 points. Now -- and then you go on to describe the  
12 portions that may be minimally visible from the welcome  
13 center, U.S. 7, or Route 279 -- I believe you just  
14 corrected that from 276 -- correct?

15 A. Correct.

16 Q. All right, and that has not changed? I asked  
17 you about this in your deposition. These views from these  
18 locations have not changed?

19 A. Correct.

20 Q. Okay. Let's turn to your orderly development  
21 discussion which I think starts at page 30.

22 A. Yes.

23 Q. Well I guess before we go there let me ask you  
24 a question about -- I'll come back. Let's go to orderly  
25 development first. You note the Section 248(B)(1)

1 statutory standard, you quote a portion of it on page 30  
2 about halfway down the page. There are several instances,  
3 though, when your orderly development discussion and that  
4 standard is will not unduly interfere with the orderly  
5 development of the region with due consideration having  
6 been given to the recommendations of the municipal and  
7 regional planning commissions, the recommendations of the  
8 municipal legislative bodies, and land conservation  
9 measures contained in the plan of any affected  
10 municipality, and you quote from that and that is the  
11 standard. You're familiar with the statutory standard?

12 A. Yes.

13 Q. And you've applied it numerous times in other  
14 cases where you've analyzed projects and prepared  
15 aesthetic assessments of solar projects as well as wind  
16 projects, correct?

17 A. Correct.

18 Q. Okay. On page -- I think it's on page 31.  
19 Let me ask you this. The Section 248(B)(1) standard is  
20 not a conformance standard, correct? There's no  
21 requirement like there is in Act 250 to conform to the  
22 regional or municipal plan?

23 A. No. I mean again going back to the quote it  
24 references due consideration. It's not conformance.

25 Q. So it's not consistency with or compliance



1 with any standards in the municipal plan, correct?

2 A. Well correct. I mean it's -- however, you  
3 would certainly want to address whether those standards or  
4 those narratives and the intent in the town plan either  
5 supports the fact that it does not interfere or does not  
6 support the fact that it does not interfere.

7 Q. Okay. I gave you some documents, some of  
8 which were in the record. There's also two decisions --  
9 two court decisions in the documents I provided you. So  
10 these are not cross examination exhibits, but you have a  
11 copy and I have copies for the Hearing Officer. I  
12 apologize. One of these decisions came up yesterday.  
13 It's the in re: Rutland Renewable Energy.

14 MR. PORTER: I'm sorry, Kim. Did you  
15 give us a copy of those?

16 HEARING OFFICER TOUSLEY: I've just been  
17 handed by counsel a list of what's marked as a list  
18 of cross exhibits.

19 MS. HAYDEN: Those are cross documents.

20 HEARING OFFICER TOUSLEY: These are  
21 items that are already in evidence?

22 MS. HAYDEN: These are items -- except  
23 for the court decisions. Rutland Renewable Energy  
24 came up yesterday. I brought a copy because I am  
25 going to question the witness on Rutland Renewable

1 Energy.

2 HEARING OFFICER TOUSLEY: And in re:  
3 OMYA as well. So those two.

4 MS. DINGLELINE: May I have a copy  
5 please?

6 MS. HAYDEN: I believe you have a copy.

7 MS. DINGLELINE: Is that in the cross  
8 examination exhibits you gave me when we got here?

9 MS. HAYDEN: The Rutland Renewable  
10 Energy case is not going to be offered as a cross  
11 examination exhibit.

12 MS. DINGLELINE: Okay, but you are  
13 giving it to everybody else. Please give me a copy.

14 MS. HAYDEN: You had it yesterday.

15 MS. DINGLELINE: I don't know what you  
16 mean by that. I didn't have it yesterday.

17 MS. HAYDEN: You didn't have the case in  
18 front of you when you were questioning the witness?

19 MS. DINGLELINE: No.

20 MS. HAYDEN: I will note that yesterday  
21 many of our witnesses were cross examined and given  
22 things as they were standing up there or not provided  
23 the material, but you now have that.

24 MS. DINGLELINE: All of our exhibits  
25 from yesterday were provided to you and you were

1 given that opportunity to look through the few  
2 posterboards that we had. Everything else was record  
3 evidence.

4 MS. HAYDEN: I don't want to belabor  
5 that.

6 BY MS. HAYDEN:

7 Q. Are you familiar with the Rutland Renewable  
8 Energy decision -- the Supreme Court decision? It should  
9 be at the top, I think, of the documents for cross  
10 examination, and what I have done -- it's a copy of the  
11 decision.

12 A. I am not familiar with this one to be honest  
13 with you in any detail. I would have to -- I recall the  
14 Cold River Project. I do not know the particulars.

15 Q. Were you aware that this decision was issued  
16 by the Supreme Court after the Public Utility Commission's  
17 original decision in Docket 8302?

18 A. No.

19 Q. Okay, and so I would like to refer you to page  
20 35. So you didn't have this decision in mind when you  
21 wrote your orderly development discussion?

22 A. No. Page 35?

23 Q. I'm sorry. It's page 17 paragraph 35.

24 MS. DINGLEDINE: I'm sorry to interrupt.  
25 I beg your pardon. I'm not understanding what you

1           are talking about when you just said this has come  
2           out since the decision in the other docket on this  
3           Chelsea case? Is that what you're saying?

4                       MS. HAYDEN: Yes.

5                       MS. DINGLEDINE: Thank you.

6 BY MS. HAYDEN:

7           Q.        I think there was a ruling from the Hearing  
8           Officer that noted that. Paragraph 35 on page 17 --

9           A.        Yes.

10          Q.        -- of Justice Robinson's concurring opinion in  
11          that decision and she's talking about the due  
12          consideration standard. Do you see that?

13          A.        I do see a reference at the bottom to  
14          substantial deference and at the top that mirror  
15          consideration, and then above it I do see there's a  
16          discussion about due consideration.

17          Q.        Right. In paragraph 33 it says although the  
18          statute calls for due consideration of municipal  
19          recommendations it does not purport to describe what  
20          consideration is due. In the last sentence it states  
21          instead its admonition to the Board must afford the town  
22          standard due consideration is reminiscent of the phrase  
23          with all due respect which invariably precedes and  
24          qualifies a statement evincing little or no respect at  
25          all, correct?

1           A.       I see that.  Yes.

2           Q.       And the opinion goes on to compare other  
3 instances where the Legislature required an agency to  
4 defer completely or conditionally to judgment of another  
5 body, right, and --

6                   MS. DINGLEDINE:  Objection.  Who is  
7 testifying here?  This gentleman has testified he's  
8 not familiar with the thing.  If we want to give him  
9 a chance to read the opinion and then let him answer  
10 questions --

11                   MS. HAYDEN:  I'm sorry.

12                   HEARING OFFICER TOUSLEY:  Ms. Hayden, I  
13 want to hear her objection first.

14                   MS. DINGLEDINE:  First of all, we're  
15 talking about a concurring opinion which means I came  
16 to the same result for different reasons.  So there's  
17 no precedential value.  This is not a lawyer and this  
18 is not a legal analysis situation.  I think it's  
19 unfair to sit here and testify.

20                   HEARING OFFICER TOUSLEY:  So on -- the  
21 basis of your objection is unfairness.

22                   MS. DINGLEDINE:  There's not even a  
23 question and it is outside the scope of what this  
24 gentleman's opinion was based upon.  He said this  
25 particular decision is not something that he was

1 familiar with.

2 HEARING OFFICER TOUSLEY: I'm going to  
3 allow it to continue. Overruled.

4 BY MS. HAYDEN:

5 Q. If you turn to page 18, Mr. Raphael --

6 A. Yes.

7 Q. -- halfway through that paragraph, it's  
8 paragraph 35 of the opinion, but at page 18 there's a  
9 discussion near the end regarding an Act 250 permit. An  
10 Act 250 permit may not be issued unless the project is in  
11 conformance with the duly adopted local or regional plan,  
12 and the Court goes on to say the Legislature has not  
13 included in Section 248 any language suggesting that the  
14 Board must afford any deference to town recommendations.  
15 Do you see that?

16 A. I do see that.

17 Q. Okay. Your report -- your report begins on  
18 page 30 with a description of the standard and then  
19 explains what that means, and I'm just curious why it is  
20 that you were not aware this is a 2016 decision of the  
21 Supreme Court that specifically addresses how Section 248  
22 (B) (1) should be interpreted and applied by the Public  
23 Utility Commission, and in particular in a solar siting  
24 case why it is that you were not familiar with this  
25 decision?

1           A.           The easy answer is that at any given time in  
2 my office I have upwards of 20 to 30 different projects  
3 where I am involved in developing testimony, review, and  
4 reports. I cannot keep track of, you know, the decisions  
5 of the Supreme Court and for that matter all the cases  
6 before the Public Utility Commission. I mean obviously if  
7 they are brought to my attention I would review and  
8 consider them, but this was not one that was brought to my  
9 attention and, you know, without really reading this whole  
10 decision I really don't feel I can comment substantively  
11 on it to be honest with you. However, I would say just  
12 looking down in the next section 36 it does say the  
13 statute requires that the Board consider and perhaps even  
14 address the town's recommendations as to the effect of the  
15 project on development in the region, however, and I would  
16 -- so I think, you know, to say why wasn't I aware of  
17 this, you know, volumes of information and decisions come  
18 out of the state government and the PUC and I can't  
19 possibly be aware or review all of those decisions.

20                       MR. PORTER: And if I may, to the extent  
21 that Miss Hayden wants to argue some analysis may be  
22 contrary to again a concurring opinion that the  
23 Legislature did take action after this case, Mr.  
24 Raphael has said that he did not -- was not familiar  
25 with the case. I'm wondering if this is more

1 appropriate for your briefing rather than -- or to  
2 ask him specifically what you think.

3 MS. HAYDEN: I established what I wanted  
4 to establish which was that he was not familiar with  
5 the controlling case.

6 MS. DINGLEDINE: Objection.

7 MS. HAYDEN: I'm sorry. I'm not sure  
8 why my cross examination today is being interrupted  
9 in multiple instances when yesterday we had --

10 HEARING OFFICER TOUSLEY: All right.  
11 Okay. Do we need to take a time out?

12 MS. HAYDEN: No.

13 HEARING OFFICER TOUSLEY: Okay. I think  
14 that the question as to why he didn't know about the  
15 decision is irrelevant. The fact is he didn't apply  
16 it and he's testified to that.

17 MS. HAYDEN: Right.

18 HEARING OFFICER TOUSLEY: Do you have  
19 any further questions with regard to this decision?

20 MS. HAYDEN: I don't.

21 HEARING OFFICER TOUSLEY: Very well.

22 Move on.

23 BY MS. HAYDEN:

24 Q. Can you please look at what's been marked as  
25 exhibit DPS 1?



1 A. Yes.

2 Q. Okay. So this is an October 24, 2012 letter  
3 that you wrote to Governor Shumlin and Commissioner  
4 Miller, correct?

5 A. Yes.

6 Q. And this was signed by you so you can  
7 authenticate this document?

8 A. Yes I can.

9 Q. Okay, and the subject was concerning the  
10 Governor's Energy Generation Siting Policy Commission,  
11 right?

12 A. Correct.

13 Q. Page 2 --

14 HEARING OFFICER TOUSLEY: I'm sorry, Ms.  
15 Hayden. I'm having a hard time. Can you give me the  
16 number of that exhibit please?

17 MS. HAYDEN: It's -- this is a cross  
18 exhibit, exhibit CS-Cross-DPS-1. It's --

19 HEARING OFFICER TOUSLEY: Okay. Got it.  
20 I was looking in the wrong place.

21 MS. HAYDEN: There's an exhibit list on  
22 the front just to help you locate documents. This is  
23 the very first one.

24 HEARING OFFICER TOUSLEY: This is  
25 something that's been marked but is not in evidence?

1 MS. HAYDEN: That's right.

2 HEARING OFFICER TOUSLEY: Okay. You may  
3 proceed. I'm sorry.

4 BY MS. HAYDEN:

5 Q. Page 2 you provide the Governor and  
6 Commissioner Miller with a number of key considerations  
7 regarding siting of energy projects, correct?

8 A. Correct.

9 Q. And the second bullet can you just read that  
10 into the record?

11 A. Beginning with the need?

12 Q. The second bullet is concerns.

13 A. Oh I'm sorry. Forgive me. Concerns with  
14 regard to the requirement of town approval for an energy  
15 project to go forward it strikes me this is the very  
16 reason these decisions are rightfully in the province of  
17 the state regulatory body. Most towns when given the  
18 opportunity will listen to the vocal and passionate  
19 opposition that exists for almost every proposed project  
20 and will not support the implementation of such projects.  
21 I would wager that the NRP would never have been built,  
22 for example, if individual towns had veto power. There  
23 does need to be a viable and meaningful participation  
24 opportunity for towns.

25 Q. Okay, and did the -- were you part of the

1 solar siting commission?

2 A. I attended several meetings and I provided  
3 testimony and documents to that committee.

4 Q. Okay, but the intent of this letter was to  
5 influence the siting policy commission as far as what they  
6 should or shouldn't do with respect to legislative  
7 initiatives?

8 A. It was sharing -- I wouldn't characterize it  
9 quite that way.

10 Q. Okay.

11 A. I believe it was sharing my experience and  
12 perspective having been involved with these types of  
13 projects, you know, for almost 30 years now. Also, and  
14 importantly, the perspective of somebody whose also been a  
15 long time planning commissioner and chair and development  
16 review board member and chair, regional planning  
17 commission member, and so it's really a sort of a broader  
18 perspective view sharing some thoughts and perspectives  
19 and, yes, some suggestions as to things that should be  
20 considered going forward in this process.

21 Q. You also in the fifth bullet down talk about  
22 the value of an impartial presentation and understanding  
23 of the actual impacts, correct?

24 A. Correct.

25 Q. And you say -- you refer to the actual impacts

1 of wind, solar, biomass, hydro, and transmission projects.  
2 You go on to say there's so much hyperbole and  
3 unsubstantiated information about impacts that we truly  
4 need to establish an objective baseline. What hyperbole  
5 are you referring to?

6 A. I think that's a general comment that's  
7 certainly I would say more characterized frankly from my  
8 experience with wind than with solar, but, you know, I  
9 think people become very passionate on both sides of the  
10 table with these types of projects, and in some instances  
11 certain potential impacts or facts may be perhaps a bit  
12 overblown or misconstrued, and I've certainly seen that in  
13 some cases and I think that's what that was trying to  
14 speak to.

15 Q. Okay. You concluded in your orderly  
16 development discussion and your report that the project  
17 would have an -- unduly interfere with orderly development  
18 of the region, but I want to bring you back to your  
19 aesthetics analysis of compatibility that appears on page  
20 8 Section 21B, and we talked about this already, but you  
21 say the size and scale of the Chelsea project is  
22 compatible with its surroundings on a regional scale.  
23 That's the only location -- do you see that? Okay and  
24 that's still your testimony? That hasn't changed?

25 A. It -- excuse me. It is in reference to the

1 specific design components of the project. So that's only  
2 one, you know, criterion among many in the first step of  
3 the Quechee analysis.

4 Q. I understand, but you said that the size and  
5 scale of the project is compatible with its surroundings  
6 on a regional scale. That you didn't --

7 A. With regard to the aesthetic considerations  
8 and components of the project itself, the materials and  
9 the elements, the array and so forth.

10 Q. Size and scale. What was the purpose of  
11 including the size and scale in that sentence if it didn't  
12 --

13 A. Again the important word there is regional  
14 because in terms of the region, if you step back, it  
15 doesn't necessarily rise to a level at that scale of being  
16 incompatible, but when you look at the immediate environs  
17 and surrounds and the area of the town that will be  
18 impacted by this project along with the gateway, there are  
19 some elements of it that will be ultimately incompatible  
20 with regard to the criteria that you would consider under  
21 orderly development. So there's a distinction there I  
22 want to make between the orderly development analysis and  
23 the aesthetic analysis.

24 Q. Okay. So you think even though there's -- do  
25 you agree that the project does not unduly interfere with

1 orderly development of the region?

2 A. Well I mean we're going to mince words here,  
3 but let's go back to the, you know, the statute. As you  
4 had me acknowledge previously -- let me get to that  
5 section here if I may -- the statute says orderly  
6 development of the region, correct, but in looking at the  
7 region you also have to look at the host community and the  
8 town itself which is an intrinsic part of the region, and  
9 in that regard there's a difference in terms of how the  
10 fit might look overall in the region versus how the fit  
11 and compatibility with orderly development works within  
12 the municipality.

13 Q. Let me -- I'm going to bring you back to the  
14 in re: Rutland Renewable Energy decision.

15 A. Okay.

16 Q. Page 5 paragraph 9.

17 A. The Supreme Court decision?

18 Q. The Supreme Court decision, yes, and if you  
19 need time to read that paragraph, I'm going to ask you  
20 some questions.

21 A. Which paragraph again?

22 Q. Paragraph 9. So I haven't asked the question.  
23 I'll just wait for you to look up.

24 A. Do I need to go to the next page?

25 Q. No.

1           A.       Okay.

2           Q.       The second to the last sentence the Court  
3 emphasizes that the statutory requirement in Section 248  
4 (B) (1) relates to the orderly development of the region  
5 and not to a particular municipality within the region,  
6 correct?

7           A.       Correct.

8           Q.       Did you -- were you aware that the court --  
9 when they issued this decision were you aware of their  
10 interpretation that this is the standard? It's focused on  
11 the region and not a particular municipality, and I should  
12 say were you aware at the time you wrote your report?

13          A.       I was not, but I don't read that quite the  
14 same way you read it and interpret it. I think while it  
15 says the statute relates to the region and not a  
16 particular municipality within the region, it does not go  
17 on to say that a particular municipality is part of the  
18 region, and so if this project affects that particular  
19 municipality as a part -- as an integral part of that  
20 region, I believe it has to be considered, and in this  
21 region the only place where larger scale or ongoing and  
22 dynamic development substantially exists is in Bennington,  
23 and so as Bennington goes in this regard so goes the  
24 region and I don't think you can separate the two, and I  
25 don't believe there is in this particular section any

1 specificity with regard to that understanding or that  
2 consideration.

3 Q. Okay. That's fine. Were you aware that the  
4 Bennington Regional Planning Energy Committee had filed  
5 comments on the -- on this Chelsea Solar project -- or I'm  
6 sorry. Let me rephrase that. Were you aware that the  
7 Bennington Regional Energy Committee had provided comments  
8 regarding the Chelsea Solar project in this case?

9 A. I think I was aware. Perhaps I don't recall  
10 what that was.

11 Q. In the -- you should have in the list of  
12 documents of existing exhibits what was marked as exhibit  
13 CS-BW-13. It's a two-page -- number 13. It's a Brad  
14 Wilson --

15 A. Comments of Bennington Regional Energy  
16 Committee.

17 MS. HAYDEN: It's not a cross 13. This  
18 is an existing exhibit. It's Brad Wilson's exhibit  
19 13.

20 MR. CLARK: Second stack.

21 BY MS. HAYDEN:

22 Q. I separated cross exhibits from existing  
23 exhibits and provided them just so you have them.

24 A. I'm confused. Where is that?

25 Q. You're looking at cross exhibits. This is in



1 the other pile of documents.

2 A. DPS 13 Raphael.

3 MS. HAYDEN: That's a cross exhibit.

4 May I approach the witness?

5 HEARING OFFICER TOUSLEY: Sure.

6 BY MS. HAYDEN:

7 Q. These are the --

8 A. I'm sorry. I'm looking in the wrong pile.  
9 Forgive me. I don't see it in here. I see the Bennington  
10 Regional Energy Plan. Is it attached on to that?

11 Q. No.

12 A. Thank you. It's in there. It's in the  
13 regional.

14 HEARING OFFICER TOUSLEY: That's CS-13.

15 Oh it's a sub element. It's in the back. I'm sorry.  
16 I gave you the wrong one.

17 MR. RAPHAEL: I think I have it here  
18 then.

19 MS. HAYDEN: It is 13.

20 HEARING OFFICER TOUSLEY: It's an one  
21 pager.

22 A. Okay. Would you like me to read it?

23 Q. I want to kind of move things on, but this is  
24 an e-mail from Jim Sullivan from the Regional Planning  
25 Commission to Brad Wilson, the project developer. Do you

1 see that?

2 A. Yes. I'm sorry. Forgive me. Yes. I do see  
3 that and I'm on 2 which is Chelsea Solar, yes.

4 Q. Is this the first time that you have seen this  
5 document?

6 A. I do recall it, but I have forgotten about it.  
7 I mean if I may, can I read it briefly?

8 Q. Uh-huh.

9 A. Thank you. Okay. I read it.

10 Q. Okay. You just read it. Have you read this  
11 previously?

12 A. Again I have a vague recollection, but I can't  
13 pull it out specifically.

14 Q. The statutory standards require due  
15 consideration to recommendations of the regional planning  
16 commission, correct?

17 A. Correct.

18 Q. What consideration -- what recommendations of  
19 the regional planning commission did you rely on or what  
20 regional planning commission recommendations were you  
21 aware of when you wrote your report in this case?

22 A. I relied on the regional plan.

23 Q. So you did not -- you did say in your  
24 testimony I believe, and it might have been in your  
25 deposition, that you consulted -- you spoke with people in

1 the town -- town officials, correct?

2 A. Correct.

3 Q. That informed your opinion quite a bit,  
4 correct?

5 A. It was one -- I wouldn't say quite a bit. It  
6 was one source of information that was factored in, and  
7 yeah I mean it certainly informed my thinking process. I  
8 wouldn't say quite a bit, but part of it.

9 Q. So the fact that the regional planning  
10 commission provided a specific recommendation with respect  
11 to this project didn't -- you were -- these exhibits were  
12 entered last November. You didn't think it was important  
13 to review that detail before making your opinion in this  
14 case?

15 A. Well again, as I said, I think I did maybe see  
16 this. I was left -- and I'm reading it now again that,  
17 you know, I was left without a clear sense of exactly  
18 where the energy committee stood on this other than to --  
19 I mean at the end it sort of says, you know, they are not  
20 changing their original opinion, but committee -- the  
21 recommendation that the BCRC's comments on the first  
22 project be carried forward to the new project with a note  
23 additional screening is being provided. So, yeah, I mean  
24 I think this is certainly a piece of information that is  
25 part of that -- you know it has certainly been provided by

1 the energy committee and is again another potential  
2 factor. So yeah.

3 Q. Okay.

4 A. But it's not substantive per se with regard or  
5 speak specifically with regard to orderly development as  
6 far as I see it here.

7 Q. Okay. Page -- would you agree with me that  
8 the project which is approximately 9.64, I think, acres is  
9 a small fraction of the total Town of Bennington land  
10 area?

11 A. Yes.

12 Q. Okay, and I think we discussed the rural  
13 conservation district in your deposition and we referred  
14 to map figure 3-2 which shows where all of the district  
15 boundaries for the various zoning districts. Do you  
16 recall that?

17 A. Yes.

18 Q. And it's true, isn't it, that you agreed with  
19 me that the rural conservation district makes up  
20 approximately 50 percent or half of a town?

21 A. That sounds right. Yes.

22 Q. Okay. So I'm going back to the cross  
23 examination exhibits which have the yellow stickers on  
24 them and exhibit 2 -- what's been marked as exhibit 2 is  
25 your response to a request to admit.

1 A. Yup.

2 Q. And so you've admitted that the project site  
3 is not identified as a bright line, barrier, buffer, or  
4 land use boundary, correct, in the Bennington Town Plan?

5 A. Correct.

6 Q. I'm going to -- before I lose track -- move to  
7 admit into the record exhibit cross -- exhibit Chelsea  
8 Solar Cross DPS 1 and exhibit Chelsea Solar Cross DPS 2.

9 HEARING OFFICER TOUSLEY: Is there any  
10 objection?

11 MR. PORTER: No objection.

12 MS. DINGLELINE: I would object to DPS  
13 -- or Cross DPS 1, the letter to the siting council.  
14 There was testimony elicited, but I haven't even had  
15 a chance to read the whole exhibit and I'm not sure  
16 why the exhibit would be introduced when this  
17 gentleman was just cross examined on the contents of  
18 it. It was read. She asked him to read the second  
19 bullet.

20 HEARING OFFICER TOUSLEY: Do you have a  
21 foundational basis or concern with this document?

22 MS. DINGLELINE: Yeah. I even haven't  
23 had a chance to read the thing and we're talking  
24 about one page of the whole document.

25 HEARING OFFICER TOUSLEY: Okay. Let's

1 take a 10-minute break and give you that opportunity.  
2 We'll come back at 15 minutes before the hour.

3 (Recess.)

4 HEARING OFFICER TOUSLEY: It's 15  
5 minutes before the hour. The parties are present and  
6 the witness is in the stand. You're reminded you're  
7 under oath.

8 MR. RAPHAEL: Indeed.

9 MS. DINGLELINE: I have no objection to  
10 the exhibit being admitted.

11 HEARING OFFICER TOUSLEY: Very well. So  
12 what has previously been marked as exhibit  
13 CS-Cross-DPS-1 is admitted.

14 (Exhibit CS-Cross-DPS-1 was admitted into  
15 the record.)

16 BY MS. HAYDEN:

17 Q. Have you -- in reviewing the rural  
18 conservation district, I'll just call them standards, have  
19 you evaluated whether other commercial solar projects have  
20 been sited within the rural conservation district?

21 A. Evaluated?

22 Q. Yes.

23 A. What do you mean by evaluated?

24 Q. I mean have you looked at any PUC filings,  
25 town documents, some of the exhibits that the Petitioner

1 filed that addressed other solar -- commercial solar  
2 projects in the Town of Bennington in the rural  
3 conservation district?

4 A. I'm aware of references to other projects that  
5 the applicant has filed and pointed out on a site visit,  
6 that type of thing, yes. I wouldn't say I have evaluated  
7 it though.

8 Q. Well that's a question I have. Why is it that  
9 you would not look to see how the town addressed other  
10 commercial solar projects in the rural conservation  
11 district?

12 A. Well I mean I looked at the fact and was aware  
13 of the fact that there were other projects in the rural  
14 conservation district, noted that almost to a one they  
15 were of a different size and scale and in very different  
16 locations. You know typically, you know, the focus in a  
17 project review isn't on other projects. It's really on  
18 this project that we are charged to evaluate and review  
19 for its specifics and its conformity and its  
20 characteristics. So one decision made about one project  
21 may or may not have any bearing on another project  
22 necessarily.

23 Q. You mentioned -- so what are the two other  
24 projects -- or you mentioned several other. Which ones  
25 are you talking about?

1 A. I don't know them by heart, but I think --

2 Q. By reference to location.

3 A. I mean, again, we drove by one at the site  
4 visit I think that we were all at earlier this summer  
5 earlier. You know I'm not familiar with the specific  
6 projects.

7 Q. Are you familiar with the -- where the ER  
8 Bennington solar project is which is Route 7 near the  
9 police?

10 A. No.

11 Q. You didn't review that?

12 A. No.

13 Q. Okay.

14 A. That was not my charge to review those  
15 projects. My charge was to review this project.

16 Q. But you didn't consider how the town -- the  
17 town's position with respect to other solar development in  
18 the rural conservation district and how that may impact  
19 the town's view as to orderly development? You just --  
20 you don't think that's a relevant inquiry to see how other  
21 like projects have been -- have been considered by the  
22 town with respect to orderly development?

23 A. I mean it certainly could be considered. I  
24 don't know as if -- you know there may be some relevance,  
25 I would grant you that, but again you really have to look



1 at each individually, and my experience, for example, as  
2 someone who is on the development review board that has  
3 reviewed projects in my own town in the same district,  
4 decisions we make on one project may not have any  
5 applicability whatsoever to another project because there  
6 are very distinct characteristics including most  
7 importantly the site and the location.

8 Q. Is proximity to Route 7 should that be a  
9 consideration for the Route 7 solar project?

10 A. In what regard?

11 Q. If it's very visible from Route 7 is that  
12 something that should be considered as you're evaluating  
13 whether it's consistent with orderly development of the  
14 region?

15 A. Visibility is not a specific criterion with  
16 regard to orderly development per se and I think there's  
17 been -- yeah I would leave it at that.

18 Q. What about with respect to aesthetics?

19 A. It's certainly in the sphere of things that  
20 would enter into your review with regard to the notion of  
21 fit and intactness and some of the, you know, Quechee  
22 standards that you could apply to land use planning  
23 considerations, but orderly development is a planning  
24 consideration, a development consideration, not an  
25 aesthetic consideration per se as far as I've interpreted

1 it, and I've seen it interpreted and considered in  
2 previous cases.

3 Q. Let's go back to page 34 of your report -- I'm  
4 sorry -- the first paragraph under the quoted language.  
5 Do you see where I'm referring?

6 A. Yes.

7 Q. Second sentence you make a statement that  
8 while the RCD does not preclude development it is clear  
9 from the current town sentiment and efforts in changing  
10 the town plan that the community and the neighbors do not  
11 envision a project such as this, and I want to ask you  
12 about the portion of that sentence where you say it is  
13 clear from the current sentiment and efforts in changing  
14 the town plan. Why is this relevant to your orderly  
15 development discussion which you said was based primarily  
16 on your review of town plan documents?

17 A. It's another information point.

18 Q. Isn't it true that your conclusions with  
19 respect to orderly development are largely driven by what  
20 you perceive as being the current town sentiment?

21 A. No.

22 HEARING OFFICER TOUSLEY: If I could ask  
23 a quick question?

24 MS. HAYDEN: Sure.

25 HEARING OFFICER TOUSLEY: Are you aware

1 of the fact that the town no longer opposes this  
2 case?

3 MR. RAPHAEL: I am.

4 HEARING OFFICER TOUSLEY: Does that  
5 change the nature of your opinion that you have  
6 articulated here on page 34?

7 MR. RAPHAEL: No.

8 BY MS. HAYDEN:

9 Q. Was the reference to the current town  
10 sentiment in regard to changes made to the town plan in  
11 2015 and 2016 and 2018? Were you referring to efforts --  
12 you said efforts in changing the town plan. Are you  
13 referring to --

14 A. I was referring to that in part, that process,  
15 yes.

16 Q. So you're referring to documents that are not  
17 relevant to this case. Are you aware that the Hearing  
18 Officer has issued a ruling on vested rights?

19 A. I am.

20 Q. Okay, and so the plan that governs this  
21 proceeding is the 2010 town plan?

22 A. I understand that.

23 Q. Okay, and so why would sentiment regarding  
24 changing that plan and as it relates to the more current  
25 town plans be relevant?

1           A.        I think it's relevant in as far as the review  
2           and consideration of solar projects not just in Bennington  
3           but throughout Vermont is a work in progress and  
4           communities are struggling in part to get their arms  
5           around the impacts and the changes that this rapid  
6           development of solar projects is creating in communities,  
7           and I know that again from my own experience in my own  
8           town, and I think you can't -- you can't totally have  
9           blinders on about that process and it's certainly  
10          something to be noted and I think that was sort of the  
11          general reference intent there.

12          Q.        Okay. Your orderly development assessment  
13          does not discuss any renewable energy goals of the town or  
14          the region, isn't that correct?

15          A.        That's correct.

16          Q.        Did you evaluate -- do you need time to check?

17          A.        Yeah I mean I think, you know, and frankly  
18          again this sort of comes up again and again and again and  
19          that is that most Vermont towns and town plans now have  
20          sections obviously on renewable energy, and I think  
21          generally speaking we as a state, as a municipality that  
22          we may be a member of, and even as a homeowner are looking  
23          to ways to support and adopt renewable energy, but that's  
24          not a blanket, you know, dictum that would overrule any  
25          other consideration such as land development, land

1 planning, aesthetics, things of that nature.

2 Q. But you agree it's a relevant consideration  
3 when you're looking at orderly development that you  
4 consider the town -- the town's expressions regarding  
5 renewable energy just generally?

6 A. I think it's implicit.

7 Q. Okay, but you didn't address any renewable  
8 energy goals or anything from the town or the region in  
9 your report?

10 A. I did, in my report, address them.

11 Q. Can you show me where that is?

12 A. In the aesthetics section I believe.

13 Q. I'm talking about in the orderly development  
14 section.

15 A. Okay. Again in the orderly development energy  
16 goals and policies are again somewhat generalized. They  
17 don't necessarily attach to land planning specifics or  
18 dictum as I said a moment ago. They talk about the need  
19 to generate energy and the desire to meet certain goals  
20 and the desire to support certain types of energy, but  
21 then the town plan and other elements of town planning  
22 processes such as a scenic inventory, the open space plan  
23 would perhaps support and further address or delineate the  
24 land planning and the locational aspects of that, but  
25 energy policies and plans generally talk about energy

1 generation, the need for it, the need to meet certain  
2 goals, things of that nature without, you know, getting  
3 very specific about location. That is changing now with  
4 Act 174 and the ability of communities to connect within  
5 an overall energy plan of their town plan sites that are  
6 appropriate and not appropriate and that type of thing,  
7 but energy plan -- I don't think I need to read, although  
8 I did, you know, the regional plan and the town plan with  
9 regard to overall energy and general energy policy to, you  
10 know, make a determination with regard to orderly  
11 development specifically.

12 Q. Let me refer you to pages 20 and 21 of your  
13 report. You quote two of the goals -- actually I may have  
14 the wrong page here. I'm sorry. It's page 31. At the  
15 bottom you quote -- you quote the Bennington -- 2010  
16 Bennington Town Plan. You quote two goals, goals two and  
17 three.

18 A. Yes.

19 Q. You're aware that there are seven goals that  
20 are articulated in the Bennington Town Plan?

21 A. If you say. I didn't know the exact number.

22 Q. Let's turn to the town plan at page 3. So  
23 it's the 2010 town plan. Do you have that? It's not an  
24 exhibit. It would be --

25 MS. DINGLELINE: Whose testimony did

1           that come under?

2                       MS. HAYDEN: The label is exhibit  
3 CS-BW-81 Bennington Town Plan 2010 version.

4                       MR. PORTER: It's in the stack that's  
5 not the cross exhibits.

6           A.        I'm sorry. What page please?

7           Q.        Pages 2 and 3. So it's section 1.2. It  
8 discusses the goals --

9           A.        Yes.

10          Q.        -- and recommended actions. In the beginning  
11 of Section 1.2 it states that specific goals provide focus  
12 and direction to the policy statements and recommended  
13 actions set forth in each chapter of the town plan. Do  
14 you see that?

15          A.        Yes.

16          Q.        And it states these goals are consistent with  
17 Section 4302 of 24 V.S.A.?

18          A.        Yes.

19          Q.        And I had asked you about this in your  
20 deposition. You're familiar with that 24 V.S.A. Section  
21 4302 is the state land use planning law?

22          A.        Yes.

23          Q.        So you are aware that there are specific goals  
24 that are required to be addressed in each town plan?

25          A.        Yes.

1 Q. Okay. So I turned you to your report where  
2 you cited to two goals. Your report at page 31 and 32 you  
3 cite to goals two and three?

4 A. Right.

5 Q. But there are seven goals with the seventh  
6 being to promote efficient use of energy and utilization  
7 of renewable energy resources?

8 A. Yes.

9 Q. And again I don't want to belabor this too  
10 much, but you -- does the absence of it -- were you aware  
11 that this was a stated goal?

12 A. Sure.

13 Q. You were?

14 A. Yeah.

15 Q. Okay.

16 A. As I said every -- just about every single  
17 town plan in the State of Vermont has this as a goal.

18 Q. Okay, and at the beginning of the Section 1.2  
19 it states, and you have already read this, these specific  
20 goals provide focus and direction to these policy  
21 statements and recommended actions in each chapter of the  
22 town plan, correct?

23 A. Right.

24 Q. So the town plan energy chapter, which is -- I  
25 believe it's chapter 8 -- these goals are intended to



1 provide focus and direction for that, correct?

2 A. Sure.

3 Q. Okay, and equally I guess these goals and  
4 recommended actions also would provide focus and direction  
5 with respect to the land use planning chapter which is  
6 chapter 3 of the town plan, correct?

7 A. Certainly.

8 Q. Okay. So the energy chapter is near the end  
9 of the report. It begins at -- I'm sorry, not the report.  
10 It's at the end of the town plan beginning at page 92.

11 A. Yes.

12 Q. Did you review this chapter prior to writing  
13 your report?

14 A. Yeah I actually -- this chapter -- I did look  
15 at it, but this chapter was reviewed more in depth by  
16 another member of my staff.

17 Q. Okay. Going to pages 95 and 96 energy  
18 policies and recommendations --

19 A. Yes.

20 Q. -- did you review these? They are numbered  
21 and then bulleted policies and recommendations with  
22 respect to energy.

23 A. I reviewed them. Not in detail, but I did  
24 review them.

25 Q. Did you consider the goal number 2 which is --

1 or policy number 2 create support programs and facilities  
2 that provide stable, affordable, and clean renewable  
3 energy -- sources of energy including wood and other  
4 biomass, wind, water, hydroelectric, solar, and  
5 geothermal?

6 A. Again, as I said, yes. I mean this is, you  
7 know, a staple in a section like this for most town plans  
8 to address and promote in a general sense the use of  
9 renewable energy.

10 Q. Let me ask you this. We walked through some  
11 of your -- or reports that you have provided in other  
12 cases like Kingdom Wind. Isn't it true in other cases  
13 where you provide an opinion in the form of a report  
14 regarding orderly development that you have -- you have  
15 articulated some of the renewable energy goals of the town  
16 or the region?

17 A. Typically those are done under the community  
18 standards review and aesthetics, if you would, certainly  
19 site or mention that those goals exist. Absolutely.

20 Q. So your recollection is that you didn't do  
21 that in other cases with respect to orderly development?

22 A. Again I'm not certain. I don't know. I would  
23 have to go back and look at the reports. I mean that is  
24 always in the background, and as I mentioned a moment ago,  
25 you know, somewhat implicit that a community is striving

1 to implement this type of energy generation and so one  
2 understands that throughout a process of reviewing, you  
3 know, these types of projects.

4 Q. Okay. I've also given you a document that's  
5 currently in the record already. The Bennington Regional  
6 Energy Plan exhibit CS-BW-80. Do you have that?

7 A. Yes. Yes I do.

8 Q. I don't believe you refer to this in your  
9 report either, correct?

10 A. No not under orderly development.

11 Q. So I don't think we need to walk through this.  
12 I take it this didn't inform your opinion on orderly  
13 development, the Bennington Regional Energy Plan?

14 A. Again understand that regional planning  
15 commissions create energy plans, plan for energy, seek to  
16 site energy projects in appropriate locations. I did not  
17 need to necessarily cite it specifically or, you know,  
18 reference particular quotes to understand that as part of  
19 a consideration when you look at land use development.

20 Q. But I don't think that was my -- I asked you  
21 whether -- you said you hadn't read it?

22 A. No. I did say I looked at it. Yes I looked  
23 at it.

24 Q. You looked at it?

25 A. Yeah.

1 Q. So it did or did not inform your orderly  
2 development conclusions here?

3 A. I would say it did inform. I mean again as  
4 I've been trying to, you know, explain that -- let me say  
5 it again that it's implicit in most towns, if not all, in  
6 Vermont that renewable energy is a desirable goal for that  
7 community. So don't necessarily need to, you know, repeat  
8 it again and again, but it is part -- I mean I understand  
9 that, you know, applicants and developers are trying to  
10 locate -- as well as towns locations for -- suitable  
11 locations for renewable energy development, and I think I  
12 don't always have to, you know, write that or articulate  
13 that to have that as part of my internal thinking and  
14 decision making project -- decision making process in a  
15 project of this sort.

16 Q. Do you -- would you characterize the Town of  
17 Bennington's goals that we were just talking about, the  
18 seven goals and in particular number seven, as being a  
19 recommendation of the town as that term is used in Section  
20 248(B)(1)?

21 A. The recommendation I think in the orderly  
22 development statute -- go back to that -- the  
23 recommendations of the municipal bodies and the land  
24 conservation measures are contained in the plan. So I  
25 think there is a general reference to town planning goals

1 in that regard.

2 Q. Including renewable energy?

3 A. Certainly.

4 Q. Okay, and I'm going to refer you to the  
5 Bennington Municipal Energy Plan exhibit CS-BW-88. It's a  
6 2012 town plan?

7 A. Yes.

8 Q. Do you have that?

9 A. Yes.

10 Q. Did you review that before writing your  
11 report?

12 A. I don't -- I think a member of my staff may  
13 have reviewed this. I did not specifically remember  
14 reviewing this. Again it was not -- I'm not sure it was a  
15 document that was part of this docket. I may be wrong,  
16 but I think it was reviewed. I did not review this  
17 specifically.

18 Q. So you made no inquiry as to whether or not  
19 the Town of Bennington had an energy plan?

20 A. I knew Bennington had an energy plan. Many  
21 communities do so --

22 Q. Okay. So I'm going to refer you to page 38.

23 HEARING OFFICER TOUSLEY: Of which  
24 document?

25 MS. HAYDEN: This is the Bennington

1           Municipal Energy Plan.

2       BY MS. HAYDEN:

3           Q.       Page 38 commercial renewable energy  
4       opportunities in Bennington. Did you -- were you aware  
5       that they had a plan document that addressed that issue?

6           A.       I mean I understand that the community has  
7       addressed options in commercial renewable energy, yes.

8           Q.       Okay, but you hadn't looked at this. I think  
9       you said that, correct?

10          A.       Correct.

11          Q.       So let me just ask you because -- about  
12       whether you consider some of these things to be  
13       recommendations. The amount of money spent on energy in  
14       Bennington, as pointed out in previous suggestions, real  
15       economic benefits can be realized if some significant  
16       portion of that energy is generated from local sources.  
17       So in your opinion is that a recommendation that's within  
18       the meaning of Section 248(B)(1)?

19          A.       Certainly. I mean, again as I've been saying  
20       all along, it is understood that most communities are  
21       looking to support and develop in suitable locations  
22       renewable energy opportunities.

23          Q.       And the Town of Bennington is as well,  
24       correct?

25          A.       Correct.

1 Q. Page 43 of the plan talks about solar energy  
2 potential. I'm looking at the -- so there's a subpart of  
3 this plan that has the header solar energy potential on  
4 page 43 about halfway down. Do you see that?

5 A. Yes.

6 Q. In several sentences in that first paragraph  
7 is the statement given the huge amount of solar energy  
8 striking the earth's surface (the cumulative solar energy  
9 irradiating the earth in a day is equal to the energy in  
10 billions of barrels of oil). There are compelling reasons  
11 to attempt to implement solar technologies wherever  
12 possible, and again do you agree that this is a  
13 recommendation that should be considered within the  
14 meaning of Section 248(B)(1)?

15 A. Yes and it's not new news. I mean again the  
16 key consideration there when it comes to land planning is  
17 wherever possible. It doesn't say everywhere. It doesn't  
18 say every opportunity, every site, every place within a  
19 district. It just says wherever possible.

20 Q. Okay. Summary and recommendations appears at  
21 page 44 under subpart VIII. Do you see that?

22 A. Yes.

23 Q. Okay. It begins with the statement that  
24 energy is fundamental to all aspects of our lives, and  
25 goes on in the third sentence to say the information

1 provided in this plan illustrates the staggering amount of  
2 energy that is used in -- that's used just in Bennington  
3 and the tremendous outlay of financial resources that such  
4 energy use entails. Is that something that you reviewed  
5 the amount of energy used locally in Bennington?

6 A. No.

7 Q. Okay. The Municipal Energy Planning Committee  
8 that created the Bennington Planning Commission actually  
9 created this document and in doing this they looked at --  
10 on page 44 they looked at and evaluated how much money was  
11 being expended on energy, and they reference at the bottom  
12 of page 44 it's roughly a million dollars per year. Do  
13 you see that?

14 A. Where?

15 Q. At the bottom of page 44.

16 A. Oh yes I see. 50 million dollars a year.

17 Q. Yes.

18 A. Yes.

19 Q. In the sentence before that they note that a  
20 significant amount of energy expenditures are currently  
21 being exported from the local economy and could be --  
22 would be available to be reinvested in a local economic  
23 activity if those expenditures were happening in  
24 Bennington rather than being -- than being made to -- for  
25 energy imports out of state. Do you see that?



1 A. Yes.

2 Q. The recommended actions under this municipal  
3 energy plan begins at page 45. There's a list of  
4 recommended actions.

5 A. Yes.

6 Q. The first one that's listed there says the  
7 town should maintain and support its municipal energy  
8 committee. That committee should pursue implementation of  
9 this plan, advocate for energy conservation and renewable  
10 energy projects, and report on a regular basis to the  
11 selectboard. Let me ask you about that first recommended  
12 action. Were you aware that that was a recommended action  
13 of the Town of Bennington?

14 A. Not that specifically, no.

15 Q. Okay. Would you agree that's a type of  
16 recommendation that should be considered under Section  
17 248(B)(1)?

18 A. Well, again, if it had specific elements  
19 relative to siting and land use and impacts on land and  
20 the context for the project, yes.

21 Q. I want to switch gears here a little bit to  
22 your aesthetics assessment of visibility and I think that  
23 discussion happens at around page 11 of your report. I  
24 guess this is under a broader section. So this is your  
25 aesthetic page 11 -- maybe it's page 12. I'm sorry. I'm

1 giving you the wrong page. Page 13 2.1E is your  
2 discussion of where is the project is visible from.

3 A. Yes.

4 Q. Here you don't mention -- you talk about the  
5 limited visibility from a number of vantage points, but  
6 you don't mention the Southern Vermont College, correct?

7 A. Correct.

8 Q. And that is -- would you agree with me that  
9 the college is about three miles away?

10 A. That sounds right.

11 Q. Okay, and you agree that the college would  
12 have limited visibility primarily because of the distance?

13 A. Yes.

14 Q. Okay. Your report then goes on in talking  
15 about visibility to talk -- on page 15 to talk about  
16 perception and I just want to focus on that a little bit.  
17 My understanding from reading your report at pages 14 and  
18 15 is that you're really addressing the Apple Hill  
19 neighborhood; is that right? You've got a photograph  
20 figure inlay that shows views from various parts of the  
21 Apple Hill neighborhood with arrows pointed at the  
22 project?

23 A. No actually. I think, you know, as I read it  
24 again I think my thinking there was, you know, right now,  
25 and I think we saw this really quite nicely from the golf

1 course, the gateway area and this site, you know, provides  
2 from that distance, which I think is about a mile maybe --  
3 well maybe -- I think that's right -- provides a really  
4 good view of the intact, more or less undeveloped or very  
5 low density developed area that this project is part of,  
6 and that contributes substantially I think to the rural  
7 character and the overall sense that this is an  
8 undeveloped hillside that is part of the gateway into the  
9 Town of Bennington, and from the golf course you can see  
10 the project from its entirety, and I think that loss of  
11 that green space, that open space, that rural landscape to  
12 a project of this scale will be noticeable and will make a  
13 difference and will have a change that will be  
14 substantial.

15 Q. But you're not talking about the golf course  
16 on page 15? Are you now suggesting that the golf course  
17 is one of the areas that you were referencing on page 15?

18 A. It doesn't matter whether you're on the golf  
19 course or at the welcome center that does not change.

20 Q. Okay. I had a different line of questions  
21 really about how perception fits into Quechee, but let me  
22 ask you this now that you have brought up the golf course.  
23 Your report doesn't mention it, correct?

24 A. Correct.

25 Q. And you didn't supplement or amend your report

1 to clarify what you just testified to, correct?

2 A. No.

3 Q. Is there a reason for that?

4 A. I don't think it -- it didn't occur to me to  
5 do that, I guess, but perhaps I should have.

6 Q. You didn't create any simulations of what the  
7 views would look like from the golf course, correct?

8 A. No.

9 HEARING OFFICER TOUSLEY: Can I ask a  
10 question because I'm a little bit confused about the  
11 language that's in 14 and 15 that you have  
12 highlighted on page 14 at the bottom. It says the  
13 project will be directly visible from nearby  
14 residences, most of which are oriented towards the  
15 project and the direction toward Mt. Anthony. So is  
16 it your testimony now this isn't about the visibility  
17 from the houses this is the visibility of the houses  
18 from those -- from the Mt. Anthony and the battle  
19 monument?

20 MR. RAPHAEL: I actually think it's  
21 both, frankly. I think it's specific visibility in  
22 the neighborhood and more widespread, you know,  
23 visibility overall.

24 HEARING OFFICER TOUSLEY: So looking at  
25 the diagram that's on page 15 -- so this isn't a line

1 of sight diagram to the project. This is a line of  
2 sight not even -- well it's not even a line of sight.  
3 It's sort of they look in this direction toward those  
4 things. So it's your testimony that you didn't do  
5 any line of sight assessment of the visibility from  
6 the neighbors' houses to the project?

7 MR. RAPHAEL: No I did not prepare that  
8 technical section. That's right.

9 HEARING OFFICER TOUSLEY: Thanks. So  
10 your conclusion it's directly visible isn't based on  
11 any kind of a simulation going from those properties  
12 that are shown on page 15?

13 MR. RAPHAEL: You know it's based on,  
14 you know -- it's based on being on the site and  
15 seeing that on the site.

16 HEARING OFFICER TOUSLEY: So again  
17 you're looking from the site back to the properties?

18 MR. RAPHAEL: Looking both from the  
19 driveway area, the extension of Apple Hill Road.

20 HEARING OFFICER TOUSLEY: Okay. I  
21 thought from Miss Harris's house you could see the  
22 project.

23 MR. RAPHAEL: Yes.

24 HEARING OFFICER TOUSLEY: Could you see  
25 it from any of these other houses? Did you make that

1 assessment?

2 MR. RAPHAEL: I did not because I could  
3 not go on private properties, but looking at both  
4 topography and vegetation it's my conclusion that at  
5 certain times of the year the project will be visible  
6 from those places.

7 HEARING OFFICER TOUSLEY: Okay. Did you  
8 look at Mr. Kane's visual assessments?

9 MR. RAPHAEL: Yes.

10 HEARING OFFICER TOUSLEY: Because he  
11 makes a different conclusion having done the  
12 simulations and the visual assessments. He says that  
13 they aren't visible from anywhere. I'm looking at  
14 exhibit CS-MK-3 and MK-2. MK-3 is figures that  
15 include the simulations and MK-2 is the report. So  
16 you didn't factor these documents into your statement  
17 on page 14 that they will be directly visible from  
18 nearby residences?

19 MR. RAPHAEL: I actually reviewed that  
20 and -- could I please just see that document for one  
21 second?

22 HEARING OFFICER TOUSLEY: I'm giving you  
23 exhibit CS-MK-3 which is a visual assessment figures  
24 prepared by Mr. Kane.

25 A. So yeah I think -- first of all, let me just

1 say that I had a tremendous amount of difficulty looking  
2 at these simulations and relying on them, number one,  
3 because I don't think these are fully accurate simulations  
4 of actually what's out there. I mean they use model  
5 trees, it's not the real trees that are there, and I think  
6 the other thing that was lacking in Mr. Kane's testimony,  
7 which is why I don't think it is totally reliable, is  
8 there's no real mention of the effects of the construction  
9 and seasonal views, and the fact that construction has  
10 impacts that no one I don't think in their right mind  
11 would predict to absolute specificity, and I have seen in  
12 a number of instances in Vermont where large clearings or  
13 project areas have been opened up and the consequent  
14 degrading of surrounding vegetation that might or might  
15 not be relied on for screening it can be and has been such  
16 that things that we thought weren't going to be seen now  
17 are being seen. So there's an element of unpredictability  
18 as to the short and/or long term impacts.

19 HEARING OFFICER TOUSLEY: Which is why  
20 you made your mitigation recommendation.

21 MR. RAPHAEL: Exactly.

22 HEARING OFFICER TOUSLEY: Okay. I don't  
23 have any other questions just now.

24 MR. RAPHAEL: Thank you.

25 BY MS. HAYDEN:

1           Q.       So I was going to go to page 15 of your  
2 report. You make the statement there that there is a  
3 perception of morality that is existing and expected, and  
4 then you go on with this discussion of perception given  
5 the project will be visible from these adjacent properties  
6 and appears out of place in this distinct context it can  
7 be concluded that while visibility alone will not be  
8 extreme, the effects on quote overall perception, quote  
9 sense of place end quote, and quote quality of life of the  
10 area will be adverse. Do you see that?

11           A.       Yes.

12           Q.       So you don't have a footnote that discusses  
13 what you're -- why you're putting quotation marks around  
14 the overall perception sense of place and quality of life  
15 statements, but I went back to your general approach  
16 discussion at page 1 of your report, Section 1.2 and noted  
17 that you used those very same terms on page 1. Do you see  
18 that in the paragraph under Section 1.2?

19           A.       Yes.

20           Q.       All right. You -- from that portion of your  
21 report you say that the Quechee analysis provides a clear  
22 framework for evaluating whether the aesthetic impacts of  
23 a project are adverse and undue, and then you go on to say  
24 the former Environmental Board has defined aesthetics as  
25 involving quote overall perception and quote the sense of



1 place and the quality of life that a place -- quality of  
2 life that a place affords end quote, and you quote to a  
3 reference to a Vermont Environmental Board 1999 decision,  
4 correct?

5 A. Yes.

6 Q. Okay. So I have a copy of that decision.  
7 That's the Quechee decision. It's been marked as a -- or  
8 not marked. It's been provided in the pile of documents  
9 that are not cross examination documents because this is a  
10 court decision or, I'm sorry, an Environmental Board  
11 decision.

12 A. Okay.

13 Q. So you'll see it's Vermont Environmental Board  
14 OMYA, Inc. on the cover page.

15 A. Yup. Got it.

16 Q. Okay, and if you turn to page 22 finding 108  
17 -- if you turn to page 22, 108 --

18 A. Yes.

19 Q. -- it discusses sense of place and quality of  
20 life. Is this the decision that you were quoting from at  
21 page 1 of your report and that you refer to at page 15?

22 A. Yes.

23 Q. Okay. I've looked at your other reports and  
24 we're going to walk through them in a little bit, but I  
25 did not see a sense of place, quality of life perception

1 discussion in your Quechee analysis for any other reports.  
2 Do you know why -- can you explain to me why you've  
3 articulated it here?

4       A.       Sure. So as this finding so aptly states, if  
5 I may, aesthetics involve -- the concept of aesthetics  
6 encompasses more than just visual. Aesthetics involves  
7 all the senses including sound, smell, and overall  
8 perception. Aesthetics involves a sense of a place and  
9 the quality of life that a place affords. The aesthetics  
10 of a Vermont village environment include all of the  
11 qualities that make it attractive and desirable to live in  
12 and visit. So this, you know, has been I think in the  
13 background. As your own experts have so aptly  
14 demonstrated they have completely focused on just  
15 visibility. They do not account for any other aspect of  
16 aesthetics.

17               As my thinking and experience with these types  
18 of projects has evolved I now recognize how important this  
19 is to communities, neighborhoods, and towns and that was  
20 driven home to me so dramatically in the case of the  
21 Vermont -- the Addison County natural gas project where  
22 one day the then Public Service Board had an occasion to  
23 meet with the residents of Cornwall out in a field where  
24 the gas pipeline was proposed for, and several members of  
25 Cornwall officials and residents made statements that I

1 found to be absolutely compelling, and those statements  
2 really reinforced this notion that you don't have to see a  
3 project to be unsettled by it. You don't have to have  
4 visibility to find that a project is going to affect your  
5 sense of well being and to that extent your quality of  
6 life, and clearly these people were deeply disturbed by  
7 the notion of an industrial major gas pipeline running  
8 through their bucolic pastoral landscape. It was an  
9 absolutely beautiful day, and I think that was when the  
10 tide turned, and soon thereafter Vermont Gas withdrew its  
11 proposal to extend the pipeline through that portion of  
12 Addison County, and that particular experience further  
13 reinforced my sense that we have to consider, as this  
14 particular note in this decision, all of the senses  
15 including your sense of well being and your sense of  
16 place.

17 Q. Well let's look at this footnote -- or, I'm  
18 sorry, this paragraph 108 or finding 108. This case  
19 involved an increase -- a proposed increase by OMYA of 170  
20 18-wheel 22 or 24-ton pickup trucks per day six days per  
21 week beginning at 6 in the morning through the Brandon --  
22 historic Brandon village, right?

23 A. Absolutely.

24 Q. And have you read this entire decision?

25 A. I don't know if I have read the entire

1 decision, but I'm -- I'm familiar with it -- a portion of  
2 it.

3 Q. The -- OMYA was denied its Act 250 permit.  
4 The Environmental Board at page 37 has quite an -- and on  
5 to page 38 has a long discussion about the fact that that  
6 project was shocking and offensive to the average person  
7 having that many trucks go through the Town of Bennington,  
8 the historic village, six days a week beginning at 6 a.m.  
9 in the morning; 170 large 22-wheel trucks was shocking and  
10 offensive, right?

11 A. Correct.

12 Q. Okay, and you understood those were -- that  
13 was the facts -- those were the facts that were before the  
14 Environmental Board when they used the language that they  
15 were using in finding 108. They were addressing -- they  
16 were addressing this high volume of truck traffic through  
17 the historic village?

18 A. It is true they were addressing the high  
19 volume of truck traffic going through the village. It is  
20 also true, as I read a moment ago, that they referenced  
21 aesthetics in a general sense and implied that it could  
22 consider this without any reference to a specific project.

23 Yes in this project because of the impacts the  
24 truck traffic made, or were potentially going to make,  
25 that was both a shocking and offensive determination, and

1 then again that sense of place determination that weighed  
2 into that. So yes it was specifically -- the decision  
3 ultimately was addressing the specifics of that project,  
4 but you know I cite the other quote in as far as the Board  
5 understood and articulated that any aesthetics review  
6 could take into account that understanding and definition  
7 of the aesthetics regardless of what the project type  
8 might be.

9 Q. So you don't agree that the evaluation of  
10 perception and sense of place relates, to the extent it  
11 relates at all, to the shocking and offensive portion of  
12 the Quechee test?

13 A. There is a relationship certainly, but it's  
14 not -- you know it's not, you know, completely overlapping  
15 in that sense.

16 Q. Okay, and you agree with me in this case you  
17 found that the project is not shocking and offensive to  
18 the average person? You say that at page 25 of your  
19 report.

20 A. That's right.

21 Q. Okay. Page 11. Let's talk about open space.  
22 You begin Section 21D with a definition -- your definition  
23 of open space. You say open space can be defined as any  
24 piece of land that is undeveloped (has no buildings or  
25 other built structures) and is accessible to the public or

1 contributes to open space views accessible to the public.

2 Correct?

3 A. Correct.

4 Q. And do you have a basis for that definition?

5 Is there a case that you didn't note here that you're

6 relying on for the open space views accessible to the

7 public?

8 A. I think that over -- I think that over time  
9 that is how I, in my experience, have certainly come to  
10 view what open space means. There is no specific  
11 definition of open space with regard to this statute and I  
12 don't believe Act 250 either. I am aware there may be  
13 certain definitions of open space that say it is, you  
14 know, landscapes that should be publicly accessible,  
15 however, I don't necessarily fully agree with that. You  
16 know accessibility could be visual, you know, essential in  
17 other ways and not just physical accessibility to that  
18 site.

19 Q. Let me refer you to cross exhibits 5 and 6.

20 We asked you some requests in discovery about the parks

21 and open space plan which you did not -- so the parks and

22 open space plan which you did not reference in your open

23 space discussion, right?

24 A. No.

25 Q. Okay, but you're familiar with the parks and

1 open space plan?

2 A. Yes.

3 Q. So exhibit -- I'm referring you to two pages  
4 that's exhibit 5 and 6 from the exhibit -- cross  
5 examination exhibits. It should be pretty close to the  
6 top.

7 A. Okay. This is from my discovery?

8 Q. Yes. So there are two back and back exhibits  
9 Cross 5 and Cross 6.

10 A. Yup. Got it.

11 Q. There you admitted that the parks and open  
12 space plan for the Town of Bennington at page 11  
13 identifies which parcels the town considers open space  
14 including conserved open space, correct?

15 A. Correct.

16 Q. Okay, and you also admitted in exhibit 6 that  
17 the parks and open space plan does not identify the  
18 project site as open space?

19 A. Correct because again, you know, for the  
20 purposes of the parks and open space plan they were  
21 looking at conserved open space and public park areas and  
22 were not, I don't think in that use of open space, which  
23 certainly is a valid use of it, looking at a broader kind  
24 of more holistic definition of open space.

25 Q. Okay. I did provide you with the park -- well

1 maybe it's not really even necessary to walk through then  
2 the park and open space discussion, but I do have just a  
3 couple of questions and I want to know if you considered  
4 this. The park and open space plan is exhibit CS-BW-49.  
5 That is in the pile of documents to the left. It's an  
6 existing exhibit.

7 A. I don't have that in front of me.

8 Q. It should be there. It's exhibit 49.

9 A. I'm sorry.

10 MR. CLARK: Is that CS-BW-49?

11 MS. HAYDEN: Yes.

12 A. Oh here it is. I'm sorry.

13 Q. No worries.

14 A. Forgive me. Lot of papers on my desk -- on  
15 this desk.

16 Q. So page 2 the park and open space plan which  
17 was prepared by the Bennington Planning Commission it's a  
18 2009 document. Discusses under description and standards  
19 what their approach was, correct?

20 A. Uh-huh. Yes. I'm sorry. Excuse me.

21 Q. That's okay. The second to the last sentence  
22 of that very first paragraph says that it is useful to  
23 compare Bennington's existing park and open space  
24 resources with established standards such as those  
25 promulgated by the National Recreation and Park



1 Association because other communities have used those  
2 standards as benchmarks. Do you see that?

3 A. I don't. Where are you again? I'm sorry.

4 Q. The top of page 2.

5 HEARING OFFICER TOUSLEY: Middle of the  
6 first paragraph.

7 BY MS. HAYDEN:

8 Q. In the very first paragraph.

9 A. Oh yes. I'm sorry. Thank you.

10 Q. So they are referring to -- they are referring  
11 to the NRPA or National Recreation and Park Association  
12 standards as kind of a benchmark for what Bennington maybe  
13 should be comparing their open space and park designated  
14 areas, right?

15 A. Right.

16 Q. And then on page 4 they actually discuss the  
17 area of land that is already protected open space in the  
18 town, and this is 2009 page 4 the third paragraph  
19 beginning with the word parks?

20 A. Yes.

21 Q. So the Planning Commission calculated that  
22 parks and protected open spaces occupy over 5600 acres of  
23 the land in Bennington?

24 A. Yes.

25 Q. Significantly exceeding the NRPA benchmark?

1 A. Yes. I see that.

2 Q. Okay, and then they go on to describe why they  
3 were able to achieve such a large amount of open space.  
4 Were you aware that the town had that much open space --  
5 protected open space?

6 A. I was aware that the town had, you know, a  
7 significant acreage. I didn't have the 5600 acres  
8 embedded in my memory --

9 Q. Okay.

10 A. -- needless to say.

11 Q. Exhibit -- this is not a cross exhibit so it  
12 would be the documents that I've provided you that I would  
13 be asking about that are existing exhibits. There's an  
14 exhibit CS-BW-11. Exhibit CS-BW -- I'm sorry. I said  
15 11. I meant to say 17. Exhibit CS-BW-17 e-mail from Don  
16 Campbell to Libby Harris.

17 MR. CLARK: The one without the  
18 stickers. What's the number? CS-BW-what?

19 BY MS. HAYDEN:

20 Q. 17 and it says in prominent words e-mail from  
21 Don Campbell to Libby Harris.

22 A. Got it.

23 Q. Before I ask you about that and let me -- I  
24 want to move into the record before I forget the cross  
25 exhibits regarding open space which were exhibits Cross 5

1 and 6.

2 HEARING OFFICER TOUSLEY: Is there any  
3 objection?

4 MR. PORTER: No objection.

5 MS. DINGLELINE: I'm sorry. We're  
6 talking about the CS-Cross-DPS-5 and 6?

7 MS. HAYDEN: Yes.

8 MS. DINGLELINE: Were those requests to  
9 admit? Okay. No objection.

10 HEARING OFFICER TOUSLEY: What have  
11 previously been marked as exhibit CS-Cross-DPS-5 and  
12 6 are entered into evidence.

13 (Exhibits marked CS-Cross-DPS 5 and 6  
14 were admitted into the record.)

15 BY MS. HAYDEN:

16 Q. Sorry. I want to keep up with that  
17 recordkeeping otherwise I'll forget at the end. So in  
18 your -- we did ask you a question about this in discovery.  
19 You read this e-mail before, correct?

20 A. Yes.

21 MS. DINGLELINE: Objection about using  
22 this e-mail. There's no foundation for it and I  
23 don't know who these people are and it's apparently  
24 from Brad Wilson, but he testified earlier.

25 MS. HAYDEN: The witness is familiar

1 with the document and I'm questioning the witness on  
2 the document. He has a discovery response 111 that  
3 states he's familiar with the document and this  
4 exhibit has been in the record since last November.

5 MS. DINGLELINE: The e-mail has been?

6 MS. HAYDEN: Yes.

7 MS. DINGLELINE: I'm sorry. You gave it  
8 in this pile so I thought it wasn't part of the  
9 record. So this e-mail is already admitted as an  
10 exhibit?

11 HEARING OFFICER TOUSLEY: Yes. It's  
12 exhibit CS-BW-17.

13 MS. DINGLELINE: Sorry. Got confused.

14 MR. CLARK: Just to be clear anything  
15 that's marked -- that's described as CS-BW is Chelsea  
16 Solar Brad Wilson, and that list of stipulated  
17 testimony, the links, those are a continuation that  
18 we stipulated.

19 MS. DINGLELINE: Got you. Thanks.

20 BY MS. HAYDEN:

21 Q. Were you aware that Don Campbell worked with  
22 the land trust?

23 A. Actually you know what? I have not seen this  
24 e-mail. Forgive me. I misspoke. No I have -- I am not  
25 familiar with this e-mail.

1 Q. Okay.

2 A. And I don't recall you asking me about it in  
3 my deposition either for some reason.

4 Q. I didn't ask you in your deposition. I did  
5 ask in discovery.

6 A. I'm sorry.

7 Q. That's okay. Let me pull it up.

8 A. Maybe it was provided but --

9 Q. I might have asked you about it in your  
10 deposition.

11 A. I don't recall but --

12 Q. I'm going to give you your response. I'll  
13 read the question and then you can look at it.

14 HEARING OFFICER TOUSLEY: Just a second.  
15 So what you're looking at is what?

16 MS. HAYDEN: His discovery response  
17 where he admitted he had read this e-mail.

18 HEARING OFFICER TOUSLEY: Okay and the  
19 date?

20 MS. HAYDEN: The date is July 31, 2018.

21 HEARING OFFICER TOUSLEY: And there's a  
22 number on it too, right?

23 MS. HAYDEN: It's Chelsea DPS 1-11.

24 HEARING OFFICER TOUSLEY: And you're  
25 offering it to refresh his recollection?

1 MS. HAYDEN: Yes. I didn't think I would  
2 be needing to introduce this and I probably won't.  
3 I'm just going to ask him if he remembers this.

4 HEARING OFFICER TOUSLEY: Okay.

5 A. Yeah I got to tell you I had 151 questions in  
6 discovery and it may be that that was a misunderstanding  
7 on my part. I don't recall the question. If that were  
8 the case, then obviously it may be that someone in my  
9 office reviewed it and mentioned that to me so they are  
10 aware of it, but I don't remember this e-mail  
11 specifically. I might have been thinking of another  
12 e-mail perhaps.

13 Q. Just for the completeness of the record since  
14 I don't know if you have a copy of your full set of  
15 discovery responses -- does he have a copy of this?

16 MR. CLARK: I do not.

17 MS. HAYDEN: Okay and I assume others  
18 don't so I'm going to read in the question.

19 MR. CLARK: Sure.

20 BY MS. HAYDEN:

21 Q. Okay. So this is from first set of discovery  
22 dated July 31, 2018. The question -- or, I'm sorry, it's  
23 a response dated July 31, 2018. The question 1-11 admit  
24 in an email to Libby -- to intervenor Libby Harris dated  
25 June 16, 2017 the vice chair of the Bennington

1 Selectboard, Don Campbell, made the following statement  
2 regarding the project site and then it says see exhibit  
3 CS-BW-17, which is the exhibit, and the statement that is  
4 in quotes in this question or request to admit is the  
5 following. In this case the lot is small. There is no  
6 river or lake to protect. The forest is in terrible  
7 condition. Transbasal area is so low it barely qualifies  
8 as forest in many places and it is rife with invasives.)  
9 It does not connect to other conserved lands. It is not  
10 part of an animal corridor. It does not provide  
11 significant public access. It is not high quality  
12 farmland nor is it a suitable -- nor is it suitable for  
13 low income housing and it is not tribal or cultural  
14 heritage land end quote, and so I've read the question in  
15 the record. Your response to that question to admit was  
16 admitted?

17 A. Yes. So -- but that's not what this e-mail  
18 says.

19 Q. I'm sorry but it does and I can direct --

20 HEARING OFFICER TOUSLEY: She didn't  
21 read the whole e-mail, but the e-mail which is in BW  
22 -- CS-BW-17 in the middle of the --

23 A. I see. Yes. All right. Okay. So I don't  
24 think -- here's where I got that. I think I had seen Mr.  
25 Campbell's comments, yes, and I can't remember whether it

1 was in selectboard minutes or that he -- and maybe that  
2 was why I was confused. I know that I was aware Mr.  
3 Campbell had an opinion with regard to -- individual  
4 opinion with regard to this property. So to that extent I  
5 was not falsely admitted -- admitting something I hadn't  
6 seen. I hadn't seen this whole e-mail as you have  
7 provided to me, but I do remember Mr. Campbell's opinion  
8 about the property and I don't know whether that was in a  
9 selectboard minutes that I may have looked at or in an  
10 excerpt from an e-mail.

11 HEARING OFFICER TOUSLEY: Is there an  
12 objection?

13 MR. PORTER: It may have shown up in a  
14 brief or two that was filed, but I guess my question  
15 now is do you need a minute to review the e-mail?

16 MS. HAYDEN: I don't have any further  
17 questions on it. He's pretty much -- I wanted to get  
18 him -- I -- what I wanted to do was offer him an  
19 opportunity to explain why he changed his -- what  
20 looked to me like he changed his admission, but I  
21 don't have any questions on the e-mail.

22 MR. CLARK: We were familiar with that  
23 quote, Kim, as it was filed in another Chelsea filing  
24 not in the sense that it was in this full e-mail  
25 format. That's just my recollection.



1 MS. HAYDEN: Okay and -- okay. It  
2 really was to address -- the line of questioning was  
3 more around whether the property itself qualifies  
4 based on the town's perspective as open space type  
5 property.

6 HEARING OFFICER TOUSLEY: Ms.  
7 Dingledine, do you have an objection?

8 MS. DINGLELINE: I'm not sure because I  
9 don't know the -- I don't have a copy of the actual  
10 request to admit. I was not clear on what the --  
11 what that says versus -- and now there's some quote  
12 and is it this e-mail? So I'm -- I guess I'll wait  
13 until cross to try to understand exactly what the  
14 position of the witness is with regard to admitting  
15 or not whatever the question is from the discovery  
16 because it seems like that's something different than  
17 the e-mail.

18 MS. HAYDEN: And then I'm not moving  
19 question and answer 11 into discovery. We have  
20 already read it into the record.

21 HEARING OFFICER TOUSLEY: Okay.

22 BY MS. HAYDEN:

23 Q. But my question is this. Do you think that  
24 that statement by Don Campbell qualifies as a  
25 recommendation that would be considered within the context

1 of 248(B) (1)?

2 MS. DINGLEDINE: Objection. What  
3 statement are we talking about, in the e-mail or this  
4 thing that's in the discovery, the quoted --

5 MS. HAYDEN: The quoted language from  
6 the discovery. It's a portion of the e-mail and it  
7 characterizes the parcel. I think the witness  
8 understands the question.

9 A. Yes I do and if you just repeat the last part  
10 of that question again.

11 MR. PORTER: Can I just -- if we're  
12 going to read an excerpt from this into the record,  
13 can we go ahead and also do the next sentence which  
14 talks about what its main attribute is.

15 MS. HAYDEN: I think you can do that on  
16 redirect.

17 MR. PORTER: Okay. If you're going to  
18 ask him his opinion about what was read into the  
19 record, I think it's missing a piece of it.

20 BY MS. HAYDEN:

21 Q. We can frame it as the e-mail and my question  
22 is do these statements by Mr. Campbell reflect a  
23 recommendation of the Town?

24 A. No.

25 Q. Okay.

1 A. It's a personal opinion.

2 Q. Okay.

3 HEARING OFFICER TOUSLEY: Let me just  
4 ask a question. It's just about noon. How much  
5 longer do you think you're going to be?

6 MS. HAYDEN: You have to leave at --

7 HEARING OFFICER TOUSLEY: How much  
8 longer do you think -- how much more time do you  
9 think you require? You have until 12:40 so you have  
10 another 40 minutes based on the request for time.  
11 Ms. Dingledine has an hour. She promised it would be  
12 shorter if we let her go later so she has less than  
13 an hour.

14 MS. HAYDEN: I will stop at 12:40.

15 HEARING OFFICER TOUSLEY: Okay.

16 MS. HAYDEN: I don't know that I need  
17 that much time and I will -- there are a number of  
18 other reports that the witness has provided in Public  
19 Utility Commission proceedings. I was going to walk  
20 through three of those. What I may do is get them  
21 admitted into the record and only address one.

22 HEARING OFFICER TOUSLEY: If you're  
23 going to stick to the schedule, we'll take a break at  
24 12:40.

25 MS. HAYDEN: I'm at the last portion of

1 my questioning.

2 MS. DINGLEDINE: When I was asked  
3 earlier today if I wanted to go first --

4 HEARING OFFICER TOUSLEY: Which is what  
5 you were scheduled to do.

6 MS. DINGLEDINE: Oh I didn't know I was  
7 scheduled to do that first. Okay. Didn't realize  
8 that. I thought it was -- so my point was my cross  
9 would be much longer if I was not second because I  
10 didn't want to be duplicative of what --

11 HEARING OFFICER TOUSLEY: Right. I  
12 understand. So my inference, my conclusion, was that  
13 you would need less than an hour because it would be  
14 shorter than what you had planned for.

15 MS. DINGLEDINE: Okay. I'll try to be  
16 as short as I can. I didn't know I was compromising  
17 the hour that we estimated.

18 HEARING OFFICER TOUSLEY: Okay. You  
19 will get your hour, but not an hour and a half or  
20 two.

21 MS. DINGLEDINE: Understood.  
22 Understood.

23 MS. HAYDEN: Okay. I will try to go  
24 through this quickly.

25 BY MS. HAYDEN:

1 Q. Cross exhibit 11. It's got a sticker on it  
2 and it's assessment and review of aesthetics and orderly  
3 development for the Babcock Solar Development.

4 A. Got it.

5 Q. Do you recognize this document?

6 A. Yes I do.

7 Q. This was prepared by Landworks?

8 A. Yes.

9 Q. Was this prepared by you?

10 A. No.

11 Q. Okay, but under your supervision?

12 A. Yes.

13 Q. Okay, and it's dated August 2018, correct?

14 A. Yes.

15 Q. And the Babcock solar project is another 2.2  
16 megawatt project; is that correct?

17 A. Yes.

18 Q. It's being proposed in the Town of Brandon?

19 A. Correct.

20 Q. Were you aware when you wrote your report that  
21 several -- that there were public comments that had been  
22 provided; one by a neighbor and another by the Rutland  
23 Regional Planning Commission?

24 HEARING OFFICER TOUSLEY: If I could  
25 just ask a question foundationally?

1 MS. HAYDEN: Sure.

2 HEARING OFFICER TOUSLEY: Did you  
3 prepare this report?

4 MR. RAPHAEL: This report was actually  
5 prepared by another -- an associate of mine. Yes I  
6 guess under my supervision. I would say under my  
7 auspices rather than supervision.

8 HEARING OFFICER TOUSLEY: Did you review  
9 the report before it was submitted?

10 MR. RAPHAEL: I did, yes. So I am  
11 familiar with the report.

12 BY MS. HAYDEN:

13 Q. Let me just follow up with that, and in fact  
14 this report was an exhibit that accompanied your prefiled  
15 testimony that was filed in that case, correct?

16 A. Correct.

17 Q. Okay. So you sponsored this --

18 A. Yes I did.

19 Q. -- report?

20 HEARING OFFICER TOUSLEY: Okay.

21 A. Yes. Absolutely.

22 Q. Thank you. Okay. Were you aware when you  
23 prepared this report that a landowner and the Rutland  
24 Regional Planning Commission had filed public comments  
25 with the Public Utility Commission raising concerns about

1 the project?

2 A. Yes.

3 Q. Okay, but you didn't mention that?

4 A. Again I did not write the report so it was not  
5 -- you know I endorsed the report, the report was  
6 submitted by Landworks, but by a different individual in  
7 my office and so I didn't write it.

8 Q. That's fine, but you did -- you did provide it  
9 as an exhibit with your testimony in that case which  
10 reached conclusions and provided opinions to the  
11 Commission in that case, correct?

12 A. Right, and maybe to get back to your question  
13 about was I aware and why didn't I mention that is because  
14 I didn't write it and the other individual in my office  
15 clearly made the decision not to.

16 Q. Okay.

17 A. So that's how I would have to leave it.

18 Q. On page 2 of your -- of this report -- I'm  
19 sorry, Mr. Raphael. It's actually -- I'm referring to  
20 page 1 at the Section 1.2 general approach.

21 A. Yes.

22 Q. You make a note that locations that involve  
23 residential areas in close proximity to the proposed solar  
24 project are considered, although review of aesthetics  
25 under Section 248 using the Quechee analysis specifically

1 does not guarantee that views from individual homes and  
2 properties will never change, correct?

3 A. Correct.

4 Q. And on page 4 at the bottom, the very last  
5 paragraph where it's in the section -- the aesthetics  
6 assessment section 1.4, page 4 bottom last paragraph you  
7 have the statement that our analysis for energy projects  
8 subject to 248 approval does not end, however, with the  
9 results of the Quechee test. Instead, our assessment is  
10 significantly informed by the overall societal benefits of  
11 the project and beginning with significantly and ending  
12 with project you have that in quotation marks, correct?

13 A. Correct.

14 Q. And you've cited the Northern Loop Project in  
15 Docket 6792 as the basis for that quote, correct?

16 A. Correct.

17 Q. In this case you did not -- you did not in  
18 your methodology section of the report mention the  
19 societal benefits standard that's now incorporated in the  
20 modified version of the Quechee test that the Board  
21 applies, correct?

22 A. Correct.

23 Q. Okay. The project in that case on page 5 you  
24 describe its surroundings?

25 MR. PORTER: Can we clarify when you're



1 saying you, you mean the report not you because he's  
2 testified he didn't write it.

3 MS. HAYDEN: The report is sponsored by  
4 Landworks.

5 MR. PORTER: Is you Landworks? That's  
6 just what I --

7 BY MS. HAYDEN:

8 Q. Let me phrase it this way and when I say you  
9 from now on I will mean Landworks, but with the  
10 understanding that Mr. Raphael reviewed this and attached  
11 this as his exhibit and supporting his testimony in that  
12 case, correct?

13 A. Well, again, it is Landworks' exhibit and I  
14 think again we have to make that distinction because I did  
15 not -- I certainly sponsored the report and the testimony.  
16 I did not write the report.

17 Q. You are the principal of Landworks?

18 A. Yes I am.

19 Q. Okay. I will refer to Landworks. I think we  
20 have the understanding of context.

21 A. I mean if I may, Ms. Hayden, you know for your  
22 information, you know, we had a period of time where we  
23 were involved in quite a few solar projects, transmission  
24 projects, wind projects in Maine, and in our office one  
25 individual took on all of those solar works, and in fact

1 there are quite a few projects that, you know, she wrote,  
2 she analyzed. I had no involvement with them whatsoever.  
3 I mean I'm sure you can understand in a large firm could  
4 have a name on the cover, but that an individual or one  
5 element of that firm would be conducting the work. So I  
6 just wanted to make that distinction.

7 HEARING OFFICER TOUSLEY: I'm a little  
8 bit confused. So did you adopt this report?

9 MR. RAPHAEL: I did sponsor it.

10 HEARING OFFICER TOUSLEY: And you  
11 sponsored it. Okay. We'll treat it as such. This  
12 is the exhibit that you submitted that is the report  
13 of Landworks for that case?

14 MR. RAPHAEL: Correct.

15 HEARING OFFICER TOUSLEY: And you  
16 sponsored it in that case?

17 MR. RAPHAEL: I did.

18 HEARING OFFICER TOUSLEY: Very well.

19 You can proceed.

20 BY MS. HAYDEN:

21 Q. I had a question but -- let's turn to page 5.  
22 The Babcock solar project is located at the edge of  
23 Brandon village in the rural residential land use  
24 district. That's what it says, the report, correct?

25 A. Yes.

1 Q. Is that -- that's a zoning district much like  
2 the rural conservation district is a zoning district,  
3 correct?

4 A. Well there's one very important distinction.

5 Q. Okay.

6 A. And that's in the nature of the district  
7 designation. It's called rural conservation in Bennington  
8 for a specific reason and with standards and  
9 representations that support that. In many communities  
10 like Brandon, like my own home town, rural residential  
11 districts are just that. They are understood to be a  
12 lower density rural quality and not necessarily intended  
13 or described as an area for conservation per se or a  
14 conservation of certain values that are articulated. They  
15 could be, but they may not be. So I think there's an  
16 important distinction when a town designates a district as  
17 conservation versus rural.

18 Q. Let me just on that point --

19 A. Sure.

20 Q. -- the Bennington Rural Conservation District  
21 you have already testified it makes up over half of the  
22 area of the Town of Bennington, correct?

23 A. Yup.

24 Q. And it doesn't preclude solar development,  
25 correct?

1 A. Correct.

2 Q. Okay. So there are no policies or goals  
3 regarding conservation of this project, meaning the  
4 Chelsea project, site in the rural conservation district  
5 of the Town of Bennington, right?

6 A. No I think I disagree with that. I think  
7 there are some -- there is language and standards or yes  
8 -- well directives to consider certain conservation  
9 elements and conservation related practices to sustain the  
10 conservation nature and intent of that district --

11 Q. Okay.

12 A. -- which, for example, Brandon did not have  
13 under the provisions of the rural residential district in  
14 that case.

15 HEARING OFFICER TOUSLEY: Are you aware  
16 that Bennington has both a rural residential and a  
17 rural conservation district?

18 MR. RAPHAEL: I did -- I think I did  
19 know that. Yes.

20 HEARING OFFICER TOUSLEY: It's in the  
21 town plan so they have both. So they allow for that  
22 distinction you're referring to.

23 MR. RAPHAEL: Yes.

24 BY MS. HAYDEN:

25 Q. Let me refer you to page 6 and your discussion

1 or Landworks' discussion of open space.

2 A. Yes.

3 Q. It's a short description or discussion I  
4 should say. It doesn't include the definition that you  
5 had in your Chelsea report about open space views, right?

6 A. Correct.

7 Q. Why is there a difference in the Landworks  
8 report on open space with respect to what this report says  
9 is the project does not affect any conserved lands or open  
10 space identified for public use for future conservation.  
11 That's the standard that you applied in the Babcock solar  
12 space in terms of defining what open space is, correct?

13 A. Well not entirely. I mean I think, you know,  
14 what's not said is that it certainly I think was a  
15 consideration that the open space in this sense did not  
16 have applied to it some of the factors and  
17 characteristics, for example, that the open space that  
18 Chelsea's impact has and I think that's an important  
19 distinction, two different projects.

20 Q. I understand that. I'm just talking about the  
21 standards that you're applying on this concept that open  
22 space encompasses views not just publicly accessed open  
23 space area. That's quite a distinction, don't you agree?

24 A. Not necessarily. I think this project  
25 warranted a certain review and assessment based on

1 existing conditions and the character of the area and the  
2 context within which the project is being proposed.  
3 Chelsea warranted a whole different set of considerations  
4 given the district and the location and the open space  
5 that it would impact.

6 Q. Let me --

7 HEARING OFFICER TOUSLEY: I want to ask  
8 a question and make sure. Chelsea is not located in  
9 an identified open space area that's amongst those  
10 5600 acres?

11 MR. RAPHAEL: Correct.

12 HEARING OFFICER TOUSLEY: Okay.

13 BY MS. HAYDEN:

14 Q. Earlier I had asked you if you are aware of  
15 the fact that at least one resident had filed a public  
16 comment and had concerns about the project, correct?

17 A. Yes.

18 Q. Have you read what was filed on ePUC?

19 A. I think I did. I can't -- but I don't  
20 recollect the contents. I did see that.

21 Q. I'm going to -- exhibit Cross DPS 17 is a  
22 printout from the Public Utility Commission's web site.  
23 It's a -- if you go to public comments tab and you want to  
24 print it, this is how it prints. I printed it myself.  
25 The first couple of pages I think really give you more

1 information about what the case is. I'll let you find it  
2 first.

3 A. Yes.

4 Q. And there's a comment on the last page of that  
5 exhibit March 21, 2018 from Carol Byrne B-Y-R-N-E. Do you  
6 see that?

7 A. Yes.

8 Q. Is that the comment that you had in mind when  
9 you said you were aware there were public comments?

10 A. I think that was at least one of them that I  
11 have been aware of. I've also -- it was brought to my  
12 attention some public comments in newspaper articles  
13 relevant to this as well.

14 Q. The last sentence of that she states that  
15 she's a homeowner in proximity of the proposed solar  
16 project. Homeowners in proximity of this will -- proposed  
17 solar project are very concerned, and her last sentence  
18 states without question it will create an adverse -- it  
19 will create an intolerable -- not adverse, an intolerable  
20 view of black solar panels filling the fields next to Park  
21 Street Extension. So I think we were discussing -- the  
22 reason I raise this exhibit with you is because you were  
23 trying to characterize or distinguish the open space  
24 standard that you applied in that case -- in the Babcock  
25 solar case and here -- and you made a distinction --

1 correct?

2 A. Yes.

3 Q. And you made a distinction based on -- correct  
4 me if I'm wrong and disagree with me, but I thought what  
5 you said it kind of depends on the reaction or the  
6 importance of that open space area in terms of how it's  
7 been perceived?

8 A. No.

9 Q. Okay.

10 A. That's not what I was -- I think two quick  
11 things. One is that, again as I said earlier, Chelsea --  
12 the Chelsea site clearly has some other town developed  
13 representations and narratives that relate to that site  
14 with some specifics and some guidance as to how that site  
15 should be considered. Brandon had -- has no such  
16 representations. It's not part of a gateway. It's not  
17 called a conservation district, and I would also add this  
18 comment was made before it looks like -- if I have my  
19 dates right, I'm fairly certain this comment was made  
20 before there was an opportunity subsequent to that to  
21 present to the town and the community an appropriate  
22 screening and mitigation plan, and so I think it was  
23 provided in a -- without a full set of information that  
24 the applicant has taken, you know, steps -- suitable steps  
25 to mitigate the view of the project upfront for adjoining



1 residents.

2 Q. Let's talk about mitigation in Babcock solar.  
3 Landworks discusses that at page 13 under Section 2.2(C).  
4 This is the Quechee -- has the applicant taken general  
5 available reasonable steps that a reasonable person would  
6 take to improve the harmony of the project with its  
7 surroundings. Do you see that?

8 A. Yes.

9 Q. In the first sentence in that section you  
10 state that the selection of an appropriate site is the  
11 first factor in consideration of mitigation measures?

12 A. Correct.

13 Q. You didn't make that statement in your report  
14 in this case, correct?

15 A. Right.

16 Q. In fact, you criticized Mr. Kane's report for  
17 identifying site selection as a mitigating step?

18 A. This is a difference of opinion. You know I  
19 don't -- I don't think this is saying is a mitigation  
20 step. I guess it is an important -- it says it's an  
21 important step because it characterizes the site. I think  
22 there's a difference of opinion as to how to articulate  
23 that, you know, and I think some people have come out and  
24 said site selection could be considered a mitigating  
25 factor, but it's not typically what we normally think of

1 under mitigation because clearly the mitigation is more  
2 designed to mitigate the effects of the project as  
3 proposed.

4 So I think in general clearly, you know, site  
5 selection is very, very important, but it could be  
6 considered a mitigating factor under that step of the  
7 Quechee review. That is subject to a difference of  
8 opinion I think among experts.

9 Q. Well I'm confused then because this sentence  
10 says the selection of an appropriate site is the first  
11 factor in the consideration of mitigation measures.

12 A. Yes because if you select a good site, then  
13 it's likely that the mitigation measures required could be  
14 lessened or reduced dramatically.

15 Q. Okay.

16 HEARING OFFICER TOUSLEY: And that's  
17 because the site by its nature mitigates concerns?

18 MR. RAPHAEL: Correct.

19 BY MS. HAYDEN:

20 Q. And I think we talked about this during your  
21 deposition. Would you agree with me that retaining  
22 screening around the periphery of a site, meaning  
23 vegetative screening, not clearing all of that screening,  
24 that that's also -- can be a measure that's considered a  
25 mitigation measure?

1 A. Yes.

2 Q. And in this case the applicant had modified  
3 its plans to reduce the amount of tree clearing so as to  
4 retain more screening. You're aware of that, right?

5 A. Yes.

6 Q. That was an appropriate mitigation measure?

7 A. Yes.

8 Q. Okay. We were just talking about the rural  
9 conservation district. Do you agree with me that is a  
10 zoning district?

11 A. Yes, but it's also a land use planning and  
12 land use plan element in the town plan and identified as  
13 such.

14 Q. All right. I think what I'll do is there's  
15 exhibit Cross 10. Just want to spend a little bit of time  
16 on another solar project that you reviewed. I believe we  
17 discussed this at your deposition. Did you prepare this  
18 report?

19 A. Yes I did.

20 Q. This was for a 2.2 megawatt project -- solar  
21 project in South Burlington, Vermont, correct?

22 A. Yes.

23 Q. And it's dated 2010. Did you provide this  
24 report with testimony that was submitted to the Public  
25 Utility Commission requesting a CPG?

1           A.       Yes with the clarification at that time it was  
2 the Public Service Board.  Sorry.

3           Q.       Correct.  That's fine.  Let's look at your  
4 discussion of the district -- the area of the town where  
5 -- South Burlington it would be a city -- of the  
6 municipality where this project is located.  You say at  
7 the top of page 6 of the report that a portion of the  
8 project site also falls within an area designated by the  
9 city as a scenic overlay?

10          A.       Yes.

11          Q.       Does that -- was that a scenic overlay  
12 district?  Is it a zoning district?

13          A.       You know I mean typically an overlay is part  
14 of a zoning provision, and so I don't know if you could  
15 call it a district, but an overlay actually could  
16 encompass more than one underlying district.  I may be  
17 mincing words here just being particular, but --

18          Q.       Okay.  That's fine.  You've answered the  
19 question.  Page 2 you describe the project, and although  
20 it's a similar project in the sense that it's two  
21 megawatts this project was -- the design was for all sun  
22 tracker solar panels and the project would occupy 22.5  
23 acres, correct?

24          A.       Yes.

25          Q.       So all trackers are much larger types of solar

1 panels, correct?

2 A. Yes.

3 Q. They have a higher profile?

4 A. Yes they do.

5 Q. And you get into that in your description so  
6 we don't need to belabor that. Page 7 -- 6 and 7 you talk  
7 about the project's compatibility, at the bottom of page  
8 6, with its surroundings and you have a discussion at the  
9 bottom of 6 about the nature of these installations is  
10 such that they are developed as an array of moving panels  
11 that follow the course azimuth of the sun to maximize the  
12 solar gain, and I guess there you determined that because  
13 these trackers basically follow the sun that they are  
14 compatible with the surrounding?

15 A. I don't see where you get that.

16 Q. Only because the header is the project's  
17 design compatible with its surroundings and you talk about  
18 this feature of this type of solar design following the  
19 sun and capturing -- energy capture function of solar  
20 powered generation. You say that at the top of page 7.  
21 Did that inform your determination about the project's  
22 compatibility with its surroundings?

23 A. I think it was really just a descriptor and  
24 that the second paragraph I think is the more relevant one  
25 in which, you know, we describe what the fit is and the

1 load profile I notice is not referring to the structures  
2 themselves, but the fact that this project was in a low  
3 area below neighborhoods and below any views that were  
4 part of that scenic overlay which were designed to protect  
5 views from I think it's the road -- I can't remember the  
6 road -- the nearby road. I don't have a context map here,  
7 but the views were from the main road above the area and  
8 the neighborhood, the Hinesburg Road maybe I think it is,  
9 and because the project itself was quite a bit below the  
10 project road elevation it would have no interruption or  
11 even presence in the longest of views to the western --  
12 the western foothills of the Green Mountains that the  
13 overlay district or designation was designed to protect.

14 Q. In that case -- in your report for that case  
15 like in Babcock you don't mention the societal benefits  
16 consideration under Quechee, correct?

17 A. Correct.

18 Q. I'm sorry. You do. You mention it on page 1  
19 of your report. You didn't in the Chelsea report. You  
20 have a panel on page 1 that specifically highlights the  
21 project?

22 A. Correct.

23 Q. Or of a project and that's a consideration of  
24 your Quechee, correct?

25 A. Yes.

1 Q. All right. I also had marked as exhibit 15  
2 your testimony in that proceeding. If you want to turn to  
3 that, I just want you to identify it for the record and  
4 confirm this is your testimony.

5 MS. DINGLEDINE: What number is it?

6 MS. HAYDEN: Cross 15.

7 A. Yes that is my testimony.

8 Q. All right. So your testimony accompanied the  
9 report that we've just walked through?

10 A. Yes.

11 Q. Okay, and it's true and accurate to the best  
12 of your knowledge?

13 A. Yes.

14 Q. And it was prepared for that project?

15 A. Yes.

16 Q. Has that project been built?

17 A. Yes.

18 Q. Okay. I would move the admission of exhibit  
19 Cross 11 which is the Babcock solar report. Exhibit --

20 HEARING OFFICER TOUSLEY: Is there any  
21 objection?

22 MR. PORTER: No objection.

23 MS. DINGLEDINE: Objection on relevancy.  
24 He's been cross examined and there are questions in  
25 the record. Why do we need another document from a

1 wholly different case.

2 MS. HAYDEN: I think the report provides  
3 the full context that should be in the record.

4 HEARING OFFICER TOUSLEY: Completeness.  
5 Overruled.

6 (Exhibit CS Cross DPS 11 was admitted  
7 into the record.)

8 MS. HAYDEN: Did I just move -- I moved  
9 exhibit 11. Okay. I'm also moving exhibit 10 which  
10 is the Landworks aesthetic report for South  
11 Burlington Solar Farm together with exhibit 15 which  
12 is prefiled testimony of David Raphael Re: South  
13 Burlington Solar Farm.

14 MR. PORTER: No objection.

15 MS. DINGLELINE: I'm going to object.  
16 These are surprise documents. No one -- I haven't  
17 had the opportunity to review them and what's the  
18 relevance of this? You know it's dangerous  
19 precedent. I guess the next time I cross examine  
20 Mark Kane I'll bring every single document he's ever  
21 filed in any case. I don't understand. We're  
22 talking about this gentleman. If you want to assail  
23 his credibility --

24 HEARING OFFICER TOUSLEY: Well I'm not  
25 going to -- I can see a relevance inasmuch as these



1 documents challenge the quality and nature of the  
2 assessment that was conducted in this case by using  
3 comparable cases that have differing language.

4 Therefore, I'm going to overrule your objection.

5 (Exhibits marked CS Cross DPS 10 and 15  
6 were admitted into the record.)

7 BY MS. HAYDEN:

8 Q. And in order to -- you also prepared reports  
9 for two wind projects, the Kingdom Wind and the Georgia  
10 Mountain Wind case, correct?

11 A. Correct.

12 Q. You were the -- you were the consultant for  
13 the Petitioners for both the Kingdom Community Wind  
14 project and Georgia Mountain Community Wind, correct?

15 A. Correct.

16 Q. I think we worked together on Georgia  
17 Mountain?

18 A. Yes we did.

19 Q. And I have marked as exhibits Cross DPS 8 and  
20 Cross DPS 9. Cross DPS 8 is the Kingdom Community Wind  
21 project aesthetic assessment. It says aesthetic  
22 assessment includes orderly development and public  
23 investments. Do you have that in front of you?

24 A. Yes.

25 Q. That was prepared by Landworks in 2010 --

1 A. Correct.

2 Q. -- is that correct?

3 A. Yes.

4 Q. It was marked as exhibit Petitioner, on the  
5 bottom left-hand corner, DR-2. So I take it that means  
6 David Raphael 2?

7 A. Yes.

8 Q. Okay. Did you write this report?

9 A. I wrote large sections of it but not the  
10 entire report. Again I work with a team in my office to  
11 do these.

12 Q. And it was offered into evidence in support of  
13 obtaining a CPG for that particular project, correct?

14 A. Correct.

15 Q. And has that project obtained a CPG to your  
16 knowledge?

17 A. Yes.

18 Q. And it's been built in fact, correct?

19 A. Correct.

20 MS. HAYDEN: I'm going to move the  
21 admission of exhibit CS-Cross DPS 8 and it's for the  
22 very same reason. The relevance relates to the  
23 standards that were applied and relied on which are  
24 different than what appears in Mr. Raphael's report  
25 here.

1 HEARING OFFICER TOUSLEY: Is there an  
2 objection?

3 MR. PORTER: No objection.

4 MS. DINGLELINE: Objection. I don't  
5 know whether -- whose testifying or whether that's an  
6 offer of prove but --

7 HEARING OFFICER TOUSLEY: I also find it  
8 duplicative. I'm not sure why we need to have more  
9 than a couple to challenge the credibility and  
10 quality of the assessment in this case. I'm sure  
11 there are probably other -- I'm sure he writes no two  
12 reviews in the same way and you haven't really  
13 highlighted in this one why this one challenges the  
14 assessment in this case and the other two you did. I  
15 think you're just adding them to the others. I can't  
16 see a reason why I would look at it when I'm making  
17 my decision, therefore, I'm going to sustain the  
18 objection and not admit these documents.

19 MS. HAYDEN: Okay. Then I'm done.

20 HEARING OFFICER TOUSLEY: Great and we  
21 have cross examination. I think I would like to take  
22 a 15-minute break and then, Miss Dingleline, you will  
23 have until 2 o'clock to -- so we'll come back at  
24 quarter to 1 and you will have until 2 and then we  
25 have to secure -- because I need to eat lunch and we

1 need to clear the room before the next event which  
2 I'm also in.

3 MS. DINGLELINE: I'm happy to go even  
4 shorter so DPS --

5 MR. PORTER: We're going to have a  
6 little bit.

7 HEARING OFFICER TOUSLEY: I'm sorry. Do  
8 you want to do redirect now?

9 MR. PORTER: Probably rather let's let  
10 --

11 HEARING OFFICER TOUSLEY: You want to do  
12 redirect at the end?

13 MR. PORTER: Yes.

14 HEARING OFFICER TOUSLEY: Okay. Let's  
15 take a 10-minute break and come back at 20 minutes  
16 before the hour.

17 (Recess.)

18 HEARING OFFICER TOUSLEY: All right.  
19 It's 12:45. This is -- the hearing in Case Number  
20 17-5024-PET is back in session. Parties that were  
21 present when we went into recess are again present.  
22 Mr. Raphael is still on the stand and still under  
23 oath. I just want to note again for the parties that  
24 during the break I went up and was informed that I  
25 absolutely have to have an empty room here at 2

1 o'clock because there are certain security measures  
2 that need to be applied for the next session which I  
3 have to be back in here at 2:15 to set up. So we're  
4 going to want to make sure we have -- we can't linger  
5 at the very end where you might otherwise. With  
6 that, Miss Dingleline, Mr. Raphael is your witness  
7 for cross examination.

8 MS. DINGLELINE: Thank you.

9 CROSS EXAMINATION

10 BY MS. DINGLELINE:

11 Q. Mr. Raphael, I'm going to try to move very  
12 quickly, but I'm going to be jumping around to different  
13 topics so please let me know if you're not sure what I'm  
14 talking about.

15 A. Certainly.

16 Q. Were you familiar with the Public Utility  
17 Commission's decision on petition of Chelsea Solar LLC  
18 from the first docket issued an order February 16th of  
19 2016 that determined that there would be an undue adverse  
20 impact on orderly development and aesthetics?

21 A. Yes.

22 Q. And are you aware from that -- your review of  
23 that particular decision that the Public Utility  
24 Commission believes that the town plan in fact is the  
25 equivalent of a clear written community standard?

1           A.       Yes.

2           Q.       I've heard some information yesterday and I  
3 think it was referred to very briefly today. In terms of  
4 town planning documents is it your experience that they  
5 set goals and they are basically planning documents that  
6 express aspirations of a town?

7           A.       Certainly.

8           Q.       And then zoning ordinances or other kinds of  
9 ordinances are more in the regulatory arena in terms of  
10 implementing those overall goals and they should be  
11 consistent with those overall town plan expressions of  
12 where the town wishes to go?

13          A.       Yes.

14          Q.       Okay. So -- but in this process and in Act  
15 250 and the criteria that were imported from Act 250 to  
16 this process compliance or violation of a town plan, for  
17 example, is something that needs to be looked at in  
18 regards to whether or not that clear written community  
19 standard which a town plan can be utilized in that regard,  
20 whether that -- so you recognize the town plans in fact  
21 generally and Act 250 and certainly in this arena are  
22 regularly used and many times are found not to have clear  
23 written community standards because they are too  
24 aspirational and don't have mandatory language, for  
25 example. Fair to say?

1           A.       Yes.

2           Q.       Okay.  So in terms of the decision that  
3 previously issued in this case the PUC said there was  
4 approximately 10 acres for this site and we were corrected  
5 yesterday that the applicant believes that that project  
6 was actually 14 and change in terms of acreage, but given  
7 that the PUC has already determined that the 10 acre site  
8 would have violated the two criteria, orderly development  
9 and aesthetics, vis-a-vis the evidence it had before them  
10 and the applicability of the town plan specifications for  
11 the rural conservation district, do you believe that that  
12 prior precedent -- because I think your report does refer  
13 to prior precedent is applicable in this proceeding in  
14 terms of, number one, whether or not the town plan is a  
15 clear written community standard with regard to orderly  
16 development and aesthetics such that applicability is  
17 consistent now and should be applied in this proceeding?

18          A.       Well I think in terms of the orderly  
19 development piece that the town provides some guidance, if  
20 not certainty, about how they view this area and the  
21 district in a general sense, and one can take from that  
22 and apply specific considerations to this site that  
23 certainly could be construed as a standard in that regard.

24          Q.       The PUC also determined in Docket Number 8302  
25 that the project violated three of the four specific

1 requirements in the town plan for development in the  
2 district, and so those four criteria, three of which had  
3 been violated before, are also applicable to this  
4 proceeding, correct?

5 A. I think those considerations are applicable.

6 Q. And they are clear written community standards  
7 which was a determination of the PUC in the prior Chelsea  
8 application?

9 A. Well I think again this is a tough one and I  
10 did struggle a bit with where we reach that threshold and,  
11 you know, this notion of community standards is still  
12 subject somewhat to interpretation. Obviously the more  
13 specific you can be the better in terms of applying a  
14 standard. You know this has been a long project. There's  
15 been a lot of changes and other factors that, you know,  
16 have to be considered, not the least of which is the  
17 potential presence and approval of the Apple Hill project  
18 and, therefore, taken together, you know, I think one  
19 could construe that if you view them as standards they are  
20 still certainly applicable.

21 Q. In the first Chelsea case the PUC said that  
22 they appreciated the efforts of Chelsea and the Public  
23 Service Department to propose unprecedented and costly  
24 vegetative screening to mitigate the visual impacts of the  
25 project, but the PUC went on to say, however, our



1 conclusion that the project would violate a clear written  
2 community standard intended to preserve the aesthetics or  
3 scenic beauty of the project site and its surrounding area  
4 concludes our analysis of the aesthetic impacts of the  
5 project using the Quechee test.

6           So would you agree with me that the PUC has  
7 thereby acknowledged that you come to us with a project  
8 and that is what we are here to decide whether as proposed  
9 the project does or does not pass the various criteria  
10 that are at issue?

11           A.       Yes I would agree with that.

12           Q.       Okay, and so at this point we know what the  
13 proposal is. We know what the screening components are.  
14 Could you just briefly comment on the screening that is  
15 proposed because I think you had information in your  
16 report that expressed concerns about the screening that  
17 does exist that's proposed?

18           A.       Yes. I mean several things. One is I think  
19 we are finding in specific experience and specific  
20 examples that yes we rely on screening as a tool and it  
21 can be effective, but the establishment of effective  
22 screening is a bit -- is much more of a challenge for any  
23 number of reasons, and I think that has been evidenced in  
24 some other, as I mentioned, instances and cases where a  
25 project was approved with mitigation screening required

1 and that mitigation screening either has taken too long to  
2 establish, has not established itself effectively, or has  
3 failed because of circumstances which aren't always, you  
4 know, considered, and I've learned over time that it's  
5 wonderful to draw circles on paper and say these trees are  
6 going to block the view and so forth, but it doesn't  
7 always take into account how those mitigation plantings  
8 are going to be installed and managed and maintained over  
9 time, number one.

10           Number two, it doesn't necessarily consider  
11 taking into account the site conditions themselves. For  
12 example, the mitigation plantings in this project are  
13 proposed in some instances in areas where there's going to  
14 be a lot of shading and so their establishment and growth  
15 could be affected by that and I've seen that happen, and  
16 then relying on the mitigation measures of the surrounding  
17 buffer I think is a double-edged sword, and I'm also  
18 painfully aware of that in the sense yes there's a buffer  
19 and yes to the applicant's credit, and I do refer to that  
20 in the report, steps have been -- I think good faith steps  
21 have been made to provide mitigation, but there is no  
22 recognition that the buffer being relied on could in fact  
23 be greatly impacted by conditions beyond the control of  
24 the applicant and I'll give you two examples.

25           One is to Mr. Campbell's quote that I was

1 asked to comment on earlier and he talked about this is  
2 not a high value forest. You know it's degraded. It's  
3 got invasives. I mean, you know, show me a forest in the  
4 valley of Vermont or the Champlain Valley that isn't  
5 fighting invasives depending on quality, but that's maybe  
6 beside the point. One thing I noticed was the stem  
7 density, and he talks about this, references it, the stem  
8 density of the surrounding buffer is very open. In other  
9 words, there's not big lots of big trees and lots of  
10 evergreens, stems, you know, individual plants in the  
11 buffer, and there's also I observed on our site visit  
12 quite a few ash trees in that buffer, which as many of you  
13 may know are also under threat in Vermont now that we've  
14 established that the emerald ash borer is here. In fact,  
15 the Town of Rutland -- the City of Rutland is taking the  
16 drastic step of removing all their ash trees in that  
17 regard, and so that's a factor that has to be considered  
18 in terms of the integrity, efficacy, and longevity of the  
19 buffer that we're relying on. So beyond the mitigation  
20 plantings, number one.

21           Number two, because of the stem density being  
22 very, very small trees and fewer larger trees screening in  
23 winter is going to be less effective; and, finally, number  
24 three, the effects of climate and wind. I have seen  
25 buffers left that don't last because once you remove a

1 forest cover no matter what the integrity or the health of  
2 that forest is you're creating gaps that other trees rely  
3 on. Individual trees in a forest, particularly taller  
4 ones, rely on each other for support. The minute you do a  
5 large clearcut like is being proposed in this project is  
6 -- the minute you are exposing some of those newly opened  
7 up trees to things like sun scald, wind throw, more  
8 perhaps susceptibility to pests. So those are the  
9 concerns I have with regard to the mitigation.

10 Q. You talk about the fencing, the black against  
11 the snow cover. You have indicated that that would stand  
12 out more drastically than against a wooded or non-wooded  
13 background non-snow pack, right?

14 A. Correct.

15 Q. In terms of the requirement in the town plan  
16 with regard to earthtones do you believe that black is an  
17 earthtone?

18 A. No, but I will say in defense of that honestly  
19 that we found that black material -- black fencing  
20 actually is really better absorbed as sort of background  
21 trees. It's not quite as visible with the exception  
22 certainly being in the snow cover condition. So I think  
23 when you're talking about large surfaces no question that  
24 earthtone, you know, is important and amenable color  
25 schemes, but I think in terms of the fencing, you know,

1 the black is the right choice.

2 Q. And black is the color of these panels as  
3 well?

4 A. True.

5 Q. So is it not true that this would appear as a  
6 big black mass?

7 A. I think there is that potential, yes.

8 Q. Okay. I'm going to ask you you've reviewed  
9 prefiled testimony in this case?

10 A. Yes. Some not all.

11 Q. Did you review the prefiled direct testimony  
12 of Daniel Monks who is the planning director of the Town  
13 of Bennington?

14 A. Yes.

15 Q. So you read the actual document?

16 A. Yes.

17 Q. May I approach the witness, Your Honor?

18 MS. HAYDEN: I'm going to object if he's  
19 going to be cross examined on the Monks' testimony  
20 which has been withdrawn. It hasn't been offered  
21 into evidence in this case.

22 HEARING OFFICER TOUSLEY: By the town.  
23 It doesn't mean she can't offer it as long as she can  
24 provide a foundation.

25 MS. DINGLEEDINE: That's what I would

1           like to do.

2       BY MS. DINGLEDINE:

3           Q.       If you can look at the document that I just  
4       gave you that I marked for identification as Cross 1 --

5                   HEARING OFFICER TOUSLEY:  If we could  
6       just make that -- to make sure it's not confused with  
7       any of the other cross exhibits it would be INT Cross  
8       1 for the intervenors.

9       BY MS. DINGLEDINE:

10          Q.       Okay.  INT Cross 1 which is titled prefiled  
11       direct testimony of Daniel Monks, planning director for  
12       the Town of Bennington, and that's docket number  
13       17-5024-PET, this is a document that you are familiar with  
14       that we were just discussing?

15          A.       Yes.

16          Q.       And you did have an opportunity to review that  
17       in detail prior to today?

18          A.       Yes.

19                   MS. DINGLEDINE:  I would move the  
20       admission of this document and then would like to  
21       cross the witness on it given that I have laid the  
22       foundation for the document.

23                   HEARING OFFICER TOUSLEY:  So where did  
24       this document come from?

25                   MS. DINGLEDINE:  This is the -- all

1 right.

2 BY MS. DINGLEDINE:

3 Q. Mr. Raphael, is this the document that you  
4 reviewed during the pendency of this case in terms of your  
5 review and then ultimately in your job in conveying your  
6 expert opinions in this case?

7 A. Yes, but I would point out that this was  
8 reviewed after I developed my report.

9 Q. Okay, but you believe this to be the same  
10 document that was actually filed in this case by the town  
11 previously?

12 A. Yes I believe so.

13 MS. DINGLEDINE: I would move the  
14 admission of the document.

15 MS. HAYDEN: Objection.

16 HEARING OFFICER TOUSLEY: Basis.

17 MS. HAYDEN: There's no foundation.

18 This witness can't authenticate the statements that  
19 are made in this prefiled testimony, and I would  
20 imagine that he's going to be asked his opinions with  
21 respect to the statements that are made in this  
22 prefiled testimony.

23 The other basis for that is that the  
24 town specifically withdrew this testimony from the  
25 record because it doesn't reflect the current

1 position of the town. The town has settled with the  
2 Petitioner and it would be misleading to both have  
3 this in the record and to cross examine this witness  
4 on it. I think under Rule 403 of the Rules of  
5 Evidence it would -- it's prejudicial and it would be  
6 misleading.

7 HEARING OFFICER TOUSLEY: I have a  
8 question too as to relevance given the fact that Mr.  
9 Raphael has said that this document did not inform  
10 his assessment. What is the relevance with relation  
11 to this individual?

12 MS. DINGLELINE: Because I want to  
13 determine whether or not he takes the information  
14 contained therein because part of his testimony in  
15 his expert reports pertained to the position of the  
16 town, the position of the intervenors.

17 HEARING OFFICER TOUSLEY: Well he just  
18 said he didn't read it until after he wrote his  
19 report.

20 MS. DINGLELINE: I understand that, but  
21 I think I should be entitled to ask him now that it's  
22 authenticated with him whether he agrees or disagrees  
23 with the issues contained therein about the gateway  
24 of Bennington, the location of it which is described  
25 by this particular witness, to see if he agrees with



1 and whether this position expressed in this document  
2 is consistent or supports or not the opinions the  
3 witness has already placed into evidence.

4 HEARING OFFICER TOUSLEY: If this is no  
5 longer being offered by the town as its  
6 interpretation of its own plan, why is it relevant?

7 MS. DINGLEDINE: Well just like we have  
8 some e-mail from a guy who this gentleman actually  
9 indicated is a person even though he might hold a  
10 position this e-mail is being used by the applicant.

11 HEARING OFFICER TOUSLEY: So this  
12 individual is the planning director for the Town of  
13 Bennington and on June 22, 2018 he rendered a  
14 statement that was otherwise previously filed in this  
15 docket that has been withdrawn by the town. I'm  
16 going to allow its entrance into evidence with those  
17 -- with that context.

18 MS. HAYDEN: I would note that the  
19 stipulation entered into between the town and the  
20 Petitioner calls for that that not be in the record,  
21 and so admitting this now after the fact without the  
22 town's consent is inconsistent with the stipulation.

23 MS. DINGLEDINE: There's no consent  
24 needed because they are not a party any longer. Just  
25 because they said something before and as we

1 demonstrated yesterday Mr. Wilson has all sorts of  
2 quotes from the town attorney who said something at a  
3 selectboard meeting.

4 HEARING OFFICER TOUSLEY: I'm sorry.  
5 Can you show me where in the stipulation this  
6 specific document is addressed?

7 MS. HAYDEN: It's on the very first  
8 numbered paragraph; in consideration of the mutual  
9 promises and representations and intending to be  
10 legally bound, the town having an opportunity to  
11 fully review and assess the Apple Hill project and  
12 Chelsea project agree not to oppose either of such  
13 projects. The word not to oppose with respect to  
14 Apple Hill and Chelsea shall mean that the town shall  
15 withdraw the testimony of Dan Monks in the Chelsea  
16 proceeding.

17 HEARING OFFICER TOUSLEY: Okay. Well  
18 they have done that. I don't see that that precludes  
19 another party from entering it into evidence and  
20 having -- otherwise having all the indicia of a piece  
21 of evidence that would be entered. So I'm going to  
22 overrule your objection and allow the admission into  
23 evidence of this document. So INT Cross 1 is  
24 admitted. You may proceed.

25 (Exhibit INT-Cross-1 was admitted into

1 the record.)

2 MS. DINGLEDINE: Thank you, Your Honor.

3 HEARING OFFICER TOUSLEY: Recognizing,  
4 however, that he did not use this document in  
5 preparing his testimony.

6 MS. DINGLEDINE: Understood.

7 BY MS. DINGLEDINE:

8 Q. Mr. Raphael, earlier today you testified that  
9 the more you have considered this after the filing of your  
10 prefiled testimony, taking into account some opinions that  
11 have been expressed by others, you reconsidered  
12 particularly that gateway area issue. Was Mr. Monks'  
13 testimony part of the information that you considered in  
14 terms of now evolving to the point of recognizing that in  
15 this case the gateway areas issue is of higher concern  
16 than when you actually wrote your report?

17 A. It reinforced the decision or the  
18 consideration that I came to with regard to the gateway.  
19 I wouldn't say it, you know, influenced me in that regard.  
20 I certainly was aware of the gateway. The more I  
21 understood and looked at the physical parameters of that  
22 gateway and as the -- certainly informed as always by any  
23 visit to the site and our last site visit with the PUC  
24 added to that. So I guess it was --

25 HEARING OFFICER TOUSLEY: I want to ask

1 a question. So this has been withdrawn by the town.  
2 The town does not call this their position.

3 MR. RAPHAEL: Understood.

4 HEARING OFFICER TOUSLEY: Does that  
5 influence your opinion?

6 MR. RAPHAEL: No.

7 HEARING OFFICER TOUSLEY: Proceed.

8 MS. DINGLELINE: Thank you.

9 HEARING OFFICER TOUSLEY: So it's not a  
10 town recommendation.

11 MR. RAPHAEL: I understand that.

12 HEARING OFFICER TOUSLEY: Okay. It's a  
13 private individual who --

14 MR. RAPHAEL: Well yes, but who has some  
15 standing as a planner and as a planning --

16 HEARING OFFICER TOUSLEY: Understood.

17 MS. HAYDEN: I'm going to object. We're  
18 treating this as if it were testimony being offered  
19 in the case. I have not had an opportunity to cross  
20 examine this witness and so therefore -- or the  
21 testimony that's provided. I took a long deposition  
22 of Mr. Monks and there were a lot of significant  
23 areas that we identified which I would have covered  
24 on cross examination. So offering this testimony  
25 into evidence and allowing the witness to treat it as

1 if it were testimony by the town or an individual  
2 within the town but somehow purporting to represent  
3 the town's position I think is completely  
4 inappropriate.

5 HEARING OFFICER TOUSLEY: Understood.  
6 Overruled. You may proceed.

7 BY MS. DINGLELINE:

8 Q. So that's in evidence. We're going to move on  
9 to something else because we're really time limited and I  
10 want DPS to have their opportunity with you. The Rutland  
11 Renewable Energy case that is part of the documents that  
12 the Petitioner brought today --

13 A. Yes.

14 Q. -- the one you said you were not -- you hadn't  
15 read or didn't know about ahead of time --

16 A. Right.

17 Q. -- let me just read you one sentence and I  
18 want to ask you if you agree or disagree. On page 10 very  
19 bottom of that document the decision says in determining  
20 whether there has been an undue adverse impact considering  
21 the sensibilities of the average person the Board can and  
22 should consider all vantage points including from private  
23 property. Do you agree with that in terms of the analysis  
24 under Quechee for what vantage points should be  
25 considered?

1           A.       Yes, and I think in previous cases, including  
2 one that Ms. Hayden wanted to introduce but didn't, the  
3 applicant's witness, Mr. Kane, highlighted a private  
4 property that was going to be impacted by Kingdom  
5 Community Wind -- I'm sorry. Excuse me. Not Kingdom  
6 Community. Let me correct that. I think it was  
7 Sheffield. Mr. Kane highlighted on behalf of the  
8 Department in fact a private property that then became an  
9 important consideration in the review of the project. So  
10 while we are concerned with the public realm and the  
11 public view it doesn't mean we exclude consideration of  
12 private properties and in particular when they comprise  
13 neighborhoods.

14           Q.       And so your analysis in this case in  
15 considering the surrounding neighborhood is in compliance  
16 with that standard that the Vermont Supreme Court has  
17 articulated in a recent case, correct?

18           A.       Yes.

19           Q.       The Supreme Court went on to say we  
20 acknowledge that in addition to considering neighbors'  
21 interest the Board ruled that the test definition of an  
22 average person meant the average member of the viewing  
23 public who would see a particular project from the vantage  
24 point of the public. That is while the Board must  
25 consider all vantage points it does so from an objective

1 as opposed to a subjective and neighborly perspective. Do  
2 you understand and agree that -- with that statement?

3 A. Yes I do.

4 Q. And your analysis has been in compliance with  
5 that Supreme Court precedent in terms of looking at the  
6 private views, but analyzing them from an objective not  
7 from the subjective neighbor's perspective. Fair to say?

8 A. Yes.

9 Q. Thank you. One thing I wanted to ask you  
10 about that letter that you sent to Peter Shumlin and  
11 Commissioner Elizabeth Miller on the Energy Siting Policy  
12 Commission thing you talked about sometimes towns -- you  
13 mention the word hyperbole and that sometimes they would  
14 be -- unsubstantiated information might drive the town to  
15 get involved or to overreact I guess. Is that a fair way  
16 to say that?

17 A. Yes.

18 Q. Is it also your experience that there are  
19 many, many towns, especially small municipalities, that do  
20 not intervene in proceedings before this body or Act 250,  
21 for example, because they just don't have the money or  
22 people who have the level of expertise, knowledge, or  
23 understanding of how to be involved in those processes  
24 from the perspective of any municipality?

25 A. Yes. Absolutely.

1 Q. Sorry. I feel like I'm drowning in paper  
2 here. In terms of the views that you highlighted in your  
3 report and your testimony today you do believe that the  
4 views from Mt. Anthony Country Club are important in terms  
5 of whether they would be impacted. That is an important  
6 vantage point in your opinion?

7 A. Yes.

8 Q. Okay. Have you had an opportunity to see the  
9 surrebuttal testimony of Maru Leon, the owner of the  
10 country club? There are a number of photographs from  
11 those vantage points and others within the town.

12 A. Yes I did look at that.

13 Q. Okay. Are the views from the country club --  
14 you have been there. You were on the site visit. Do you  
15 think they are fair and accurate representations of what  
16 it looks like when you're standing on the golf course from  
17 those vantage points where the photos were taken?

18 A. Which views are you referring to? The  
19 photographic views -- the photographs that were presented?

20 Q. Right. The photographs from the actual  
21 country club.

22 A. Yes. I mean I think those certainly from her  
23 perspective provide a sense of the viewscape that she and  
24 the operators of the golf course feel are important.

25 Q. And just because they weren't with some



1 special camera or lens or whatever and might have been  
2 taken with an iPhone camera is there any reason not to  
3 look at those views, remember back to the site visit, and  
4 appreciate them and give them some weight in terms of  
5 evidence?

6 A. Yeah. The views provide information. You  
7 know you will have to and you do have to distinguish  
8 between photographs that are taken for simulations.  
9 Simulations provide or attempt to provide a more accurate  
10 view of what the eye would see with the project in place  
11 and, therefore, there are certain parameters that are  
12 accepted among experts for creating those types of  
13 simulations. In terms of representative views of the area  
14 that are put into reports or used as evidence to provide  
15 information about what one might potentially see, I think  
16 they are valid.

17 Q. In terms of simulations that were introduced  
18 by the applicant do you think that they provided  
19 sufficient simulations from places that you believe are  
20 important and within the town like the Mt. Anthony Country  
21 Club or other public venues like the welcome center area?

22 A. You know, again, there are several new  
23 simulations submitted by Mr. Buscher, I believe, and I was  
24 struck by the fact that he looked in two different  
25 directions but not straight ahead with his simulation, but

1 that's -- you know that's the choice, I guess, of the  
2 individual preparing those simulations. The simulations  
3 provided, as I said earlier, by Mr. Kane I have a lot of  
4 trouble with because I do not think they are an accurate  
5 representation given that they use again not real -- not  
6 the real landscape that's present, but created the  
7 landscape to simulate the entire landscape and then  
8 simulate the changes in the landscape.

9 Q. You're concerned about the cumulative effect  
10 of this plus the Apple Hill solar project because the  
11 total clearing would be over 19 acres?

12 A. Yes.

13 Q. And that cumulative effect would that only  
14 enhance your concerns in terms of the undue adverse impact  
15 of the combination of these two solar sites that are  
16 literally on the same piece of property and practically  
17 touch one another?

18 A. Yes.

19 Q. I'm intrigued by your testimony about site  
20 selection and as a mitigating factor. It's pretty  
21 duplicative. It kind of conflates two legs of the Quechee  
22 test into one, does it not?

23 A. Yes I think so.

24 Q. So in your opinion you have to figure out is  
25 there an adverse impact as proposed? Is that an undue

1 adverse impact in terms of as proposed and one of the  
2 undue factors -- I don't know which number it is. I  
3 always looked at it as the third, but the mitigation that  
4 is what steps have been taken that a reasonable person  
5 would in order to mitigate the undue and adverse impact,  
6 correct?

7 A. Correct.

8 Q. And the undue -- the three factors for the  
9 undue analysis each one of those must be met, correct?

10 A. Yes.

11 Q. So by meshing together this notion of whether  
12 it's shocking and offensive with mitigation to say well  
13 it's not shocking and offensive if you put these  
14 mitigation issues -- you do planting or what have you,  
15 that in fact nullifies in effect that very first analysis  
16 of whether or not it's shocking and offensive. Would you  
17 agree with that?

18 A. Yeah. I mean if you find that a project is  
19 shocking and offensive as it is proposed with even the  
20 mitigation measures indicated, which the applicant would  
21 typically do in any kind of an analysis under aesthetics,  
22 that would not change potentially the shocking and  
23 offensive. It's very hard to undue, if you will, not to  
24 use the word in a different way, but to -- if the project  
25 by its very nature is considered to be shocking and

1 offensive in toto, then no amount of mitigation  
2 potentially will change that unless somehow you can bury  
3 it or you can make it go away, and of course that would be  
4 one instance where the shocking and offensive  
5 determination could result in a mitigation measure that  
6 could change that, but in some instances it could be  
7 considered unreasonable because of cost or impossible to  
8 implement because of site factors that would prevent  
9 certain mitigation or undergrounding, that type of thing.

10 MS. DINGLELINE: Thank you very much.

11 That's all I have.

12 HEARING OFFICER TOUSLEY: Mr. Porter.

13 REDIRECT EXAMINATION

14 BY MR. PORTER:

15 Q. Mr. Raphael, I'm going to be very fast because  
16 if I'm not you're going to encounter some people you  
17 referenced earlier from another case. Very quickly do you  
18 remember -- and they may try to put you on the stand. Do  
19 you remember Miss Hayden went through with you the 2009  
20 Bennington Regional Energy Plan?

21 A. Yes.

22 Q. And I believe she dealt with the energy  
23 section largely I think that maybe began on page 34. Is  
24 there anything in that report that alters your opinion of  
25 your analysis and conclusion in this case?

1 A. No.

2 Q. I'll ask you the same question for the 2012  
3 Bennington Municipal Energy Plan that Miss Hayden went  
4 through with you. Do you remember that?

5 A. Yes.

6 Q. Anything in there alter your analysis or  
7 conclusion in this case?

8 A. No.

9 Q. And in the areas of the energy section you  
10 remember she was discussing specifically about the 2010  
11 Bennington Town Plan and upon review of that with Ms.  
12 Hayden does anything change your analysis or conclusion in  
13 Chelsea Solar?

14 A. No.

15 Q. Miss Hayden admitted I believe a report that  
16 had been prepared by you for South Burlington solar system  
17 and then one that was under your direction for Babcock,  
18 and I think as Mr. Tousley said these documents were  
19 relevant for her to challenge the quality and nature of  
20 your testimony in this case. How many assessments have  
21 you filed in your career?

22 A. Oh my gosh, you know, I would say maybe a  
23 hundred or more.

24 Q. Okay, and they weren't admitted, but I think  
25 there was some discussion of two large wind projects, but

1 should we be concerned that in these two cases that were  
2 admitted of similar size that there was a different  
3 finding than you had in the Chelsea case?

4 A. No.

5 Q. Why not?

6 A. Because again, you know, as I said before and  
7 I've -- as a landscape architect you look at sites for  
8 their intrinsic and obvious characteristics. Vermont is a  
9 very diverse state. Every site is different; different  
10 topography, often different vegetation, different uses,  
11 different placement, different presence in the viewshed.  
12 All of those things are distinct on a project-by-project  
13 basis and, therefore, each project warrants a review that  
14 reflects those differences and those distinct qualities,  
15 and often the review will be more straightforward and more  
16 direct because the project does not have the nuances or  
17 the challenges or the impacts that projects such as  
18 Chelsea and Apple Hill seem to have or have. So it really  
19 is an one by one by one type of process and, in fact, you  
20 know, I have found that it might seem that you could  
21 review two 2.2 megawatt projects with the same parameters  
22 and the same conclusions, and to that effect certainly the  
23 Quechee provides that sameness in that framework, but the  
24 first step of Quechee really asks you to look at the  
25 characteristics of the land not just the visibility of the

1 project. That's one piece of it, but there are a number  
2 of other elements, and I think from my experience every  
3 single site is different.

4           You know in my own town, again, we have three  
5 different solar sites that are less than a mile apart and  
6 each of them are completely different in terms of their  
7 setting, their siting, their effect, their visibility, and  
8 even the nature of their acceptance by the community. So  
9 you know you could have a neighborhood where people just  
10 don't like solar and really are offended by it or you can  
11 have -- or a town or you can have a neighborhood where  
12 people understand and certainly respond to that need of  
13 renewable energy. So long story short they are all  
14 different.

15           Q.       And should we make anything of the fact -- I  
16 think this came up in some of your reports, maybe most,  
17 you have this purple box that has a quote from 6860. This  
18 is not contained in your Chelsea report; is that correct?

19           A.       That's correct.

20           Q.       Was there any --

21           A.       You know it was not intentionally --

22           Q.       -- reason behind that?

23           A.       -- left out or included. I mean it was a  
24 standard operating procedure I think because we, you know,  
25 I think early on aesthetic consultants needed to

1 understand, you know, the parameters within which projects  
2 are reviewed, and I think that was a piece of information  
3 that for a while I felt was important to include and we  
4 did, but you know there was no intention to ignore that or  
5 not keep it in this process honestly.

6 Q. Thank you. So Mr. Tousley asked you earlier  
7 if you were aware that the Town of Bennington had reached  
8 a settlement in this case and he asked you if that had  
9 changed your opinion I believe.

10 A. Yes.

11 Q. And you said no; is that correct?

12 A. That is correct.

13 Q. Why not?

14 A. Because I have to do my job on my own. I have  
15 to approach this as an independent and, you know,  
16 objective to the best of my ability analysis that I am  
17 being asked to review the project with the tools and  
18 experience that I have and have been trained to apply over  
19 dare I say 45 years of practice, and so you know that  
20 really forms ultimately the basis of my conclusion. Those  
21 types of information are, as I have said and I have  
22 written, informative, but they are not conclusive. What  
23 is conclusive in my review, you know, is looking at a site  
24 like Chelsea Solar and finding that a project of this  
25 nature is not a good fit there.



1 MR. PORTER: Thank you. Nothing  
2 further. Thank you.

3 HEARING OFFICER TOUSLEY: It's 1:30. Do  
4 either of the parties desire limited recross?

5 MS. HAYDEN: No.

6 MS. DINGLEDINE: No thank you.

7 HEARING OFFICER TOUSLEY: Very well.  
8 Since there's time I may ask a couple questions.

9 MR. RAPHAEL: By all means.

10 HEARING OFFICER TOUSLEY: But I won't  
11 miss my lunch.

12 MR. RAPHAEL: We'll temper that then.

13 MR. PORTER: Short answers.

14 MR. RAPHAEL: Okay. Yes or no. I'm  
15 lecturing on Tuesday and Thursdays. I think that's  
16 why I tend to talk. Forgive me.

17 MR. PORTER: We would have no idea you  
18 were an lecturer.

19 MR. RAPHAEL: My students do though.  
20 Goodness.

21 HEARING OFFICER TOUSLEY: Many of my  
22 questions you have already addressed and I appreciate  
23 that. You talked to the mitigation recommendations;  
24 that you would find this project to be not unduly  
25 adverse if the mitigation recommendations that you

1 make are accepted by Chelsea. Do you know if they  
2 have been accepted by Chelsea?

3 MR. RAPHAEL: I do not know. I know  
4 that some mitigation measures may have been adopted  
5 in the settlement vis-a-vis the town and the  
6 applicant, but I do not know which those are.

7 HEARING OFFICER TOUSLEY: Yesterday I  
8 mentioned offhandedly but purposefully Commission  
9 Rule 5.800 which addresses many of the concerns I  
10 believe that arise in your concern about mitigation  
11 sites because it goes to the installation and  
12 maintenance of the site mitigation. Are you familiar  
13 with the latest version which was effective September  
14 1st of 2017?

15 MR. RAPHAEL: I think I have seen it.  
16 You know I don't recall the specifics.

17 HEARING OFFICER TOUSLEY: Okay. So you  
18 did not review this document, which may or may not be  
19 applicable even in this case, to -- in your  
20 assessment of or in your recommendations regarding  
21 this case?

22 MR. RAPHAEL: Not specifically, no. I  
23 looked at really what I felt from my experience,  
24 again as a landscape architect, would be required and  
25 necessary to mitigate the undue adverse effects.

1 HEARING OFFICER TOUSLEY: So you can't  
2 say whether or not if we directed Chelsea to --  
3 condition Chelsea a CPG in this case on observations  
4 of this requirement whether or not that would meet  
5 your concerns?

6 MR. RAPHAEL: Not without reviewing it  
7 in detail.

8 HEARING OFFICER TOUSLEY: It's only  
9 three pages. Why don't you take 10 minutes to look  
10 at it and I want to talk with the parties about  
11 briefing schedule. We're going to go off the record  
12 now.

13 (Off-the-record discussion.)

14 HEARING OFFICER TOUSLEY: Mr. Raphael,  
15 you've indicated that you have had an opportunity to  
16 review Commission Rule 5.800. Would the application  
17 of this rule satisfy your concerns regarding  
18 mitigation of the site?

19 MR. RAPHAEL: It would with the  
20 understanding that the mitigation measures obviously  
21 that I believe are worthy of adoption to avoid that  
22 undue adverse determination are part of that.

23 HEARING OFFICER TOUSLEY: Oh absolutely.  
24 This is the whole package.

25 MR. RAPHAEL: Yes they would.

1 HEARING OFFICER TOUSLEY: Okay. Very  
2 well. Questions in light of my questions and answers  
3 -- his answer.

4 MR. PORTER: One question.

5 BY MR. PORTER:

6 Q. Your answer is just as to aesthetics however,  
7 correct?

8 A. Correct.

9 HEARING OFFICER TOUSLEY: This has to do  
10 with the mitigation measures required. Any other  
11 questions? Very well, Mr. Raphael --

12 BY MS. DINGLEDINE:

13 Q. If I may, so a minute ago when I was talking  
14 with you we talked about a decision of the Public Utility  
15 Commission in terms of the analysis and determining  
16 whether or not there's an undue adverse impact and where  
17 that analysis ends. Would you agree with me that the  
18 Quechee analysis ends at that point and the further  
19 notions of whether or not massive screening could be  
20 incorporated is not part of that process if it was not  
21 proposed by the applicant, correct?

22 A. Not necessarily. I mean it could be something  
23 that an intervenor or another party wants or recommends or  
24 would like to see.

25 Q. But if other folks can contest the fact that

1 even that mitigation would in any way remedy the concerns  
2 of either orderly development or aesthetics, would you  
3 agree with me that this is not part of whether or not the  
4 Petitioner having now a second bite at the apple flunking  
5 the first time, now they have come back with a  
6 significantly altered proposal and yet they still -- and  
7 right now it needs to be determined whether they did or  
8 didn't pass the bar on its own merit?

9 HEARING OFFICER TOUSLEY: I don't see  
10 how this is within the scope of the question that I  
11 asked which was specifically limited to Commission  
12 Rule 5.800. So I'm not going -- you don't have to  
13 answer that question. I find it irrelevant. Okay.  
14 Well --

15 MS. DINGLELINE: Can I just then ask one  
16 other question?

17 HEARING OFFICER TOUSLEY: As long as  
18 it's within the scope of my questions that were asked  
19 with relation to Commission Rule 5.800.

20 MS. DINGLELINE: It is.

21 BY MS. DINGLELINE:

22 Q. Your opinion that you just expressed in  
23 response to the Hearing Officer's question about your  
24 concerns would be allowed, but what about the -- in terms  
25 of the cumulative effect this -- does this rule and what

1 can happen with mitigation and alteration of that  
2 mitigation for screening is that alleviated in terms of  
3 both of these projects and its cumulative effect?

4 A. That's a separate issue.

5 Q. Right, but given that cumulative effect that  
6 you have expressed concerns about --

7 HEARING OFFICER TOUSLEY: I'm going to  
8 find your questioning outside the scope because it  
9 has nothing to do with mitigating measures under Rule  
10 5.800. Mr. Raphael, I want to thank you for your  
11 testimony. You may step down.

12 MR. RAPHAEL: Thank you.

13 HEARING OFFICER TOUSLEY: Today is  
14 September 21st. We're going to go off the record for  
15 a while.

16 (Recess.)

17 HEARING OFFICER TOUSLEY: We're back on  
18 the record. While we were off the record the parties  
19 addressed a briefing schedule. There had previously  
20 been a schedule assigned. The dates in that schedule  
21 have been extended. Initial briefs will be due  
22 October 19th. Reply briefs will be due November 2nd.  
23 Anticipate seeing, to the extent the parties wish to  
24 do it, some proposed findings of fact as part of the  
25 initial briefs. I understand from the parties that

1 there are no other matters to take up. This hearing  
2 is adjourned.

3 (Whereupon, the proceeding was  
4 adjourned at 1:45 p.m.)

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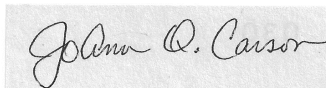
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C E R T I F I C A T E

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4  
5 I, JoAnn Q. Carson, do hereby certify that  
6 I recorded by stenographic means the evidentiary hearing  
7 re: Case Number 17-5024-PET at the Susan M. Hudson  
8 Hearing Room of the Public Utility Commission, 112 State  
9 Street, Montpelier, Vermont, on September 21, 2018,  
10 beginning at 9 a.m.

11 I further certify that the foregoing  
12 testimony was taken by me stenographically and thereafter  
13 reduced to typewriting, and the foregoing 143 pages are a  
14 transcript of the stenograph notes taken by me of the  
15 evidence and the proceedings, to the best of my ability.

16 I further certify that I am not related to  
17 any of the parties thereto or their Counsel, and I am in  
18 no way interested in the outcome of said cause. Dated at  
19 Burlington, Vermont, this 25th day of September, 2018.  
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JoAnn Q. Carson



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Registered Merit Reporter  
Certified Real Time Reporter