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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

July 24, 2014 - 10:14 a.m.
N.H. Public Utilities Comm.
21 South Fruit St. Suite 10
Concord, New Hampshire

**IN RE: SEC Docket No. 2014-03
GRANITE RELIABLE POWER, LLC:
Motion of Granite Reliable
Power, LLC, to Amend a
Certificate of Site and Facility,
with Request for Expedited Relief.
(Technical session)**

PRESENT:

Michael J. Iacopino, Esq.
(Brennan, Caron,
Lenehan & Iacopino)

SITE EVALUATION COMMITTEE:

Counsel to the Committee
(Presiding Officer for
this technical session)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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ALSO PRESENT:

Counsel for the Applicant: Matthew S. Warner, Esq.
Joshua Stayn, Esq.
(Preti, Flaherty, Beliveau
& Pachios)

Counsel for the Public: Peter Roth, Esq.
Senior Asst. Atty General
Department of Justice
Dr. William Kilpatrick

Reptg. Windaction Group: Lisa Linowes

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P R O C E E D I N G

1
2 MR. IACOPINO: Okay. We are here for a
3 technical session in the matter of the Motion of Granite
4 Reliable Power to Amend a Certificate of Site and
5 Facility. This is the New Hampshire Site Evaluation
6 Committee. It's Docket Number 2014-03. My name is
7 Michael Iacopino. I am counsel to the New Hampshire Site
8 Evaluation Committee in this matter. And, I will be here
9 to preside over the technical session. Before we have the
10 parties identify themselves, I'm just going to give you
11 all a short introduction to what a technical session is.
12 Most of you have experience with it, but for those who
13 don't, a technical session is an informal opportunity to
14 trade information amongst the parties. Today's technical
15 session is what I call the "Applicant Technical Session",
16 where the Applicant's witnesses are available for
17 questioning by Counsel for the Public and the intervenors
18 in this case. The questions do not have to be posed by
19 counsel. They can be posed by consultants. There can be
20 a discussion. It's not unusual to have the consultants
21 for each side break out into just a discussion of a
22 particular issue at these proceedings. But they are
23 informal, nobody is under oath. Although, we are
24 recording this particular session. In many cases, we do

1 not even record them.

2 So, we're going to go around the room
3 and have everybody identify themselves. First, I will
4 note that Dr. Kimball is on the speakerphone. So, please,
5 when you do speak, speak up loud enough so that he can
6 hear. And, that little round box right in front of Mr.
7 Warner is the speakerphone. So, have you heard everything
8 that I had to say, Dr. Kimball?

9 DR. KIMBALL: Yes, I have. Thanks.

10 MR. IACOPINO: Okay. So, starting with
11 Mr. Warner, and going clockwise around the table, why
12 don't we introduce ourselves.

13 MR. WARNER: I'm Matt Warner, attorney
14 for Granite Reliable Power.

15 MR. STAYN: I'm Joshua Stayn, attorney
16 for Brookfield and Granite Reliable Power.

17 MR. PHILLIPS: Tyler Phillips. I'm a
18 consultant with Horizons Engineering.

19 MR. CYR: John Cyr, Operations and
20 Maintenance Supervisor for Granite Reliable.

21 MR. IACOPINO: And, Mr. Cyr, I'm going
22 to ask that you keep your voice up. You have a deep
23 voice, it doesn't carry very well.

24 MR. CYR: Okay. Yes.

1 MS. LINOWES: Lisa Linowes, with the
2 Windaction Group, an intervenor.

3 DR. KILPATRICK: Dr. William Kilpatrick,
4 consultant.

5 MR. ROTH: Peter Roth, Counsel for the
6 Public.

7 MR. IACOPINO: Okay. And, the witnesses
8 that -- or, the testimony that has been presented by the
9 Applicant includes testimony of Mr. Cyr, Mr. Phillips, and
10 Dr. Kimball, who's on the phone. And, I know that there
11 is an objection, Peter, with respect to Dr. Kimball
12 appearing by telephone. Did you want to address that at
13 this point?

14 MR. ROTH: Sure. We object to the
15 presence, if you can call it that, of Dr. Kimball on the
16 phone. It seems the pre-conference -- or, the prehearing
17 order was pretty clear for the date that witnesses should
18 be here. The order of notice of this technical session
19 also provided that witnesses "must attend". We do not
20 intend to question Dr. Kimball over the phone. And, we
21 intend to very shortly move to strike his testimony.

22 MR. WARNER: And, if I could reply --

23 MR. IACOPINO: Yes.

24 MR. WARNER: -- on the record? I will

1 note that Dr. Kimball is in attendance by phone today.
2 This is not at all uncommon, not only in SEC data
3 sessions, but for hearings, which do occur under oath,
4 including depositions and even courtroom proceedings, here
5 in New Hampshire and around the country. Mr. Roth could
6 have subpoenaed Mr. Kimball. He knew that he was -- he
7 would be attending by phone. And, if he wanted to
8 question him or procure his attendance in a different
9 manner, he had the opportunity to subpoena him.

10 MR. ROTH: And, if I may just reply?

11 MR. IACOPINO: Okay.

12 MR. ROTH: If there were -- if Counsel
13 for the Public and other parties had agreed in advance to
14 have Dr. Kimball appear by the phone, that would be one
15 thing. But the rules don't provide for anybody to appear
16 by phone. No motion was made, no attempt to seek the
17 consent of the other parties was made. So, we object, and
18 we will move to strike.

19 MR. IACOPINO: All right. This is
20 what --

21 MS. LINOWES: May I --

22 MR. ROTH: I'm sorry. I'm sorry, Lisa.
23 Go ahead.

24 MS. LINOWES: I just had a question.

1 I'm trying to understand the status of Dr. Kimball in this
2 proceeding. His testimony was submitted by Brookfield,
3 but apparently he's not a witness for Brookfield. So,
4 what is his status here?

5 MR. IACOPINO: Well, clearly, his --
6 clearly, his testimony was submitted by Brookfield. So,
7 I've considered him to be a Brookfield witness. I mean,
8 that's my viewpoint that I have. I don't think anybody
9 particularly owns witnesses. But his prefiled testimony
10 was presented by Brookfield. It's my understanding, since
11 he was a signatory to the Agreement, that that was the
12 reason why they presented his testimony. And, when I say
13 "the Agreement", I mean the "High Altitude" -- "High
14 Elevation Mitigation Settlement Agreement", which occurred
15 in the original docket in this case.

16 MR. ROTH: I guess, pertinent to Ms.
17 Linowes' point, I thought I read something from Attorney
18 Warner kind of not claiming ownership of Dr. Kimball. Is
19 that -- did I misunderstand something? Maybe you can
20 address that.

21 MR. WARNER: I think it's fair to say
22 that Brookfield has no ownership of Dr. Kimball or the
23 AMC. However, Dr. Kimball did submit prefiled testimony
24 on behalf of the AMC and in support of Granite's Motion in

1 this proceeding.

2 MS. LINOWES: So, he is not your
3 witness?

4 MR. WARNER: He's testifying -- his
5 position supports ours, and he's testifying in support of
6 our Motion.

7 MS. LINOWES: He's not your witness.
8 There is no one at Brookfield that can adopt his testimony
9 sitting in this room today?

10 MR. IACOPINO: I would say that's
11 correct. There's nobody from Brookfield that could adopt
12 his testimony. He's not an employee of Brookfield. So --
13 nor do I think he would want anybody from Brookfield
14 adopting his testimony. But I think you're right in that
15 respect. However, every witness doesn't have to be
16 somebody whose testimony could be adopted by somebody
17 else.

18 This is how we're going to proceed,
19 okay, in light of the objection. Dr. Kimball is here. I
20 recommend that anybody who has questions for Dr. Kimball
21 ask the questions of him. Obviously, you're free to file
22 a motion to strike his testimony. You're free to file a
23 motion to take his deposition. However, this is a
24 technical session, which, as I explained before, and is in

1 the notice of this session, this is an informal
2 opportunity to obtain information. This is not a
3 deposition. This is not testimony. So that, and indeed,
4 things are not even under oath here, so that this is not a
5 formal proceeding in the sense that his physical presence
6 is required to obtain the information that would normally
7 be required to be obtained.

8 MR. ROTH: If I may?

9 MR. IACOPINO: That's the way we're
10 going to proceed. You can reserve and not ask any
11 questions, if that's what you choose to do. But, just a
12 fair warning, and I won't be the one making the decision,
13 you may wind up without the opportunity to ask him of any
14 questions.

15 MR. ROTH: Your notice clearly says
16 "attend". And, I don't think there's a court in this
17 state that would interpret "attend" to include "being on
18 the phone". And, for, I think, you know, you to make the
19 announcement that somehow now you believe that he is
20 actually attending, I think, you know, short of an order
21 from the presiding officer, I don't think you're in any
22 position to make that kind of a statement. And, I just
23 challenge that for this record.

24 MR. IACOPINO: I haven't made -- I

1 haven't made any order, nor am I authorized to make any
2 orders. What I'm saying is he is here by phone, and you
3 have the opportunity to ask him questions. You also have,
4 as I indicated, the ability to file a motion to strike or
5 a motion for any other type of relief that you would like.
6 But I'm just putting you on notice that you may wind up
7 not having the opportunity to question this witness.
8 Because, if your motions are denied, that's the position
9 you'll be in. So, I just want that on the table.

10 MR. ROTH: I'm aware of that. I don't
11 need your advice on that.

12 MR. IACOPINO: No, but there are other
13 parties here who are not lawyers, Peter, and may need that
14 advice. So, it's not just meant for you. So, why don't
15 we proceed --

16 MR. WARNER: May I also just note that,
17 based on your prehearing notice, I understand that the
18 witnesses are sitting as a panel today. So, if there is a
19 question posed which Dr. Kimball can best answer, I assume
20 that he would be free to answer that question.

21 MR. IACOPINO: I don't intend to stop
22 Dr. Kimball from answering any questions. So, --

23 MR. ROTH: I would object to any
24 response by Dr. Kimball in that manner. He's not even

1 their witness, and, so, he can't form a panel. He's not
2 here. I would object to his providing any responses to
3 questions.

4 MR. IACOPINO: That's the way we're
5 proceeding. So, let's begin --

6 MR. ROTH: What is "the way we're
7 proceeding"?

8 MR. IACOPINO: That they're sitting as a
9 panel, and he can respond to any question that's within
10 his -- that pertains to his particular prefiled testimony.

11 MR. ROTH: Mike, this has really gone
12 off the rails here, unfortunately. And, I'm going to ask
13 that we suspend this and obtain a protective order on this
14 process, because it is entirely unfair to do it this way.
15 And, I'd just repeat my request.

16 MR. IACOPINO: Peter, you haven't
17 mentioned anything, you haven't identified anything that's
18 unfair. The witness is here --

19 MR. ROTH: He's not here.

20 MR. IACOPINO: -- by telephone and he is
21 available to answer your questions.

22 MR. ROTH: He's not here.

23 MR. IACOPINO: This is a -- this is an
24 avenue to obtain information. It's not an avenue to put

1 somebody under oath and question them as if it's
2 testimony.

3 MR. ROTH: I repeat my request that we
4 suspend this proceeding --

5 MR. IACOPINO: Denied. Let's proceed.

6 MR. ROTH: You don't have the power to
7 "deny". This is a matter that we need to obtain --

8 MR. IACOPINO: Then, maybe you should
9 make your motion to the Committee. But we're going to
10 proceed here right now.

11 MR. ROTH: Again, but my objection is
12 that this proceeding should be suspended, and we should
13 have the opportunity to obtain a protective order from the
14 presiding officer on this issue.

15 MR. WARNER: I think you only have to
16 make your objection once, Peter. It's on the record.

17 MR. IACOPINO: All right. And, we don't
18 need to tell people how to make their objections.

19 That's how we're going to proceed, just
20 as I explained, Peter. So, why don't we begin. The order
21 that I had proposed was to have Commissioner Samson go
22 first. He's apparently not able to make it here today.
23 He did not call, but he did send me an e-mail saying he
24 was not sure if he was going to be able to make it or not.

[WITNESSES: Cyr~Phillips~Kimball]

1 So, with that in mind, Ms. Linowes, we
2 would turn to you for any questions that you have for the
3 witnesses from the Applicant.

4 MS. LINOWES: Okay. Thank you,
5 Mr. Chairman. The one thing I would like to go over in
6 detail, since I've had a lot of difficulty understanding,
7 is exactly what the changes are going to be to the plan.
8 And, what we've had so far are electronic documents, eight
9 by tens, and that's really difficult to read. So, I would
10 like to take some time this morning, kind of put the plans
11 out, I think, Tyler, you have some, and understand what's
12 going on here. So, that's going to be a lot of my first
13 set of questions.

14 **WITNESS: TYLER PHILLIPS**

15 **WITNESS: JOHN CYR**

16 **WITNESS: KENNETH KIMBALL (by telephone)**

17 BY MS. LINOWES:

18 Q. But I did, before I get into that, I have one question.
19 In my Data Request Number 21, I had asked for an
20 electronic copy of the Alteration of Terrain permit
21 application. And, the response back was that "Granite
22 responds that the New Hampshire DES has received the
23 proposed amendment to the High Elevation Restoration
24 Plan that was filed as Exhibit A" to the original

[WITNESSES: Cyr~Phillips~Kimball]

1 motion, "which was filed with NHDES on March 11". That
2 was not an answer to my question. Was there an
3 Alteration of Terrain permit application or an
4 amendment to the Application? If you didn't want to
5 provide it for me, was there one?

6 MR. PHILLIPS: Am I free to answer that
7 question?

8 MR. IACOPINO: Yes. If you know the
9 answer.

10 **BY THE WITNESS:**

11 A. (Phillips) To my knowledge, there's not been an
12 amendment to the Alteration of Terrain permit
13 application. We're still operating under the original
14 permit approval.

15 BY MS. LINOWES:

16 Q. Okay. Now, in the -- let me see. Okay. There was an
17 e-mail, this was part of data request responses
18 submitted to Attorney Roth, there was an e-mail, Tyler,
19 from you, to Clare Kirk, dated June 7th. And, in it,
20 in that e-mail, the subject line was "Reallocation of
21 trees at GRP."

22 MR. ROTH: Lisa, do you have the number?

23 MR. IACOPINO: Twenty-two.

24 MS. LINOWES: The data question? I

[WITNESSES: Cyr~Phillips~Kimball]

1 don't have that.

2 MR. ROTH: There should be a small
3 number printed at the bottom of the page.

4 MS. LINOWES: Oh, 23. Sorry.

5 MR. ROTH: Thank you.

6 MS. LINOWES: I'm sorry. Yes, 23.
7 Twenty-three, GRP.

8 BY MS. LINOWES:

9 Q. And, it's in that first paragraph. It says "Based upon
10 the foregoing," which talks about the trees being
11 replanted, and other changes, I guess, "Craig Rennie
12 has viewed this change as a minor one that need not go
13 back to the SEC. It would be good to get this in
14 writing. If you are concerned, you may certainly check
15 with the lawyers, however." What was considered "a
16 minor change" that Craig Rennie responded to or told
17 you?

18 A. (Phillips) My understanding is there are certain
19 changes that are -- my understanding today is probably
20 different than at the time. But my understanding at
21 the time was that Craig Rennie had certain
22 authorization to make changes to vegetation types or
23 techniques or something that might relate to the permit
24 application itself. In this case, I think it was -- I

[WITNESSES: Cyr~Phillips~Kimball]

1 think I was specifically referring to changes that
2 might occur to trees that were not in the High
3 Elevation Restoration area.

4 Q. Not in High Elevation Restoration?

5 A. (Phillips) Right.

6 Q. We're talking -- this appears to be talking about
7 reallocating the trees to the high elevation area.

8 A. (Phillips) Right. Right. These are different trees
9 than the ones we're referring to in the high elevation
10 area. There is revegetation of other portions of the
11 property, and there is a suggestion to move those trees
12 to other locations.

13 Q. Did Craig Rennie ever put anything in writing that
14 outlined what he thought was a "minor change"?

15 A. (Phillips) No. I think he -- not that I can recall. I
16 mean, you know, there was -- we would have e-mail
17 discussions or discussions if he came on-site, and we'd
18 talk about the progress of the Project. But, no, I
19 don't remember there being anything that Craig would
20 have put in writing. Again, there weren't -- I don't
21 recall there being many changes that we asked for in
22 either way -- either way.

23 Q. Okay. And, then, there was one other, and I'd like to
24 pull out the plans in a second, or that you have, but

[WITNESSES: Cyr~Phillips~Kimball]

1 there was also a discussion about "realigning the
2 roads", "horizontal realignment", I think was the
3 phrase. I'm looking for the question. Was that one of
4 those things that was done without an update to the
5 Alteration of Terrain permit?

6 A. (Phillips) I think -- I think I owe some clarification
7 to the term "horizontal realignment". That was my way
8 of describing that the road surface, recall that these
9 roads are built to 34 feet wide. The road itself, that
10 surfacing or that gravel that makes up the roadbed
11 still exists. All we've been talking about here is
12 what road surface, what gravel surface will remain
13 after this "restoration" is complete. So, of that
14 34-foot wide road, that still exists, and we're
15 covering all but, presently, all but 12 feet of that
16 gravel road with earth. So, all -- when I say a
17 "horizontal realignment", what I refer to is that
18 portion of the underlying 34 feet, there's a 12-foot
19 wide portion that were supposed to remain. And, what
20 we're saying is, there are certain areas where that 12
21 feet at corners where it doesn't allow vehicles to
22 negotiate those corners. So, what we're -- it's my
23 reference to the fact that there are certain areas
24 where the centerline of a vehicle driving down there

[WITNESSES: Cyr~Phillips~Kimball]

1 can't negotiate a corner, the corner has been widened.

2 There is no reconstruct -- so, "horizontal realignment"

3 refers to the drivable surface --

4 Q. Uh-huh.

5 A. (Phillips) -- of that 12 feet, or what we're proposing,

6 16 feet. And, in many ways, the horizontal realignment

7 is essentially at the corners.

8 Q. Okay.

9 A. (Phillips) So, we're not reconstructing any roads or

10 building anything new. It's just --

11 Q. Is it changing --

12 A. (Phillips) -- referring to that change, if you were to

13 look, as a bird, down on the site.

14 Q. So, none of that, none of the earth that you placed or

15 will be hoping to realign -- replace and put in a

16 different location, none of that's affecting drainage?

17 A. (Phillips) No. I mean, we -- certainly, there, you

18 know, it can affect -- it has some increase maybe on

19 the overall runoff, when compared to a, you know, at a

20 corner, it's 26 feet wide, there may be some increase

21 in runoff when compared to 12 feet. But, as I think I

22 indicated in my testimony, that we designed these roads

23 all assuming there was the full 34-foot wide gravel

24 surface exposed. We did not consider or take credit

[WITNESSES: Cyr~Phillips~Kimball]

1 for the fact that certain portions of these roads would
2 be revegetated. So, they were built -- they were
3 designed, the culverts, as well as the drainage
4 systems, were designed assuming there was no
5 restoration to ever take place. At the time we did our
6 design, we were not -- we were not contemplating this
7 restoration. We --

8 Q. What is the timing of your -- I'm sorry. Okay, the
9 restoration was part of -- you're talking about pre the
10 hearings themselves and pre-2009?

11 A. (Phillips) Correct. When we submitted our Application.
12 What I'm saying is that we designed conservatively in
13 this case. And, so, all the culverts assume, again,
14 no -- the whole Project was designed the same way. On
15 the ridgelines, all the roads are 34 feet wide. We
16 designed the culverts the same on this portion of the
17 Project on Kelsey as we would anywhere else. And, at
18 our analysis points, where we analyze whether there's
19 increased runoff and so forth, it never assumed that we
20 would be covering over a portion of that road with
21 organic material and grass, which may, you know, help,
22 some would consider might minimize the amount of water
23 that would be running off the site.

24 Q. Okay. So, now, do you have plans that you could --

[WITNESSES: Cyr~Phillips~Kimball]

1 MS. LINOWES: Oh. Sorry.

2 MR. IACOPINO: Lisa, before we go there,
3 you had asked him a question about Craig Rennie. I just
4 want to make sure. There was a letter that I had sent to
5 Craig Rennie about this. I want to make sure that you
6 have it. I don't know -- where Craig Rennie actually
7 inquired of me as Counsel to the Committee.

8 MS. LINOWES: I don't remember seeing
9 that. Prior to his making that statement?

10 MR. ROTH: September 13th?

11 MR. IACOPINO: I will make sure -- I
12 will make sure that you get it, that you get a copy of it.

13 MR. ROTH: Is it the September 13th
14 letter?

15 MR. IACOPINO: There's only one letter,
16 yes. So, it's the letter that --

17 MR. ROTH: So, that's GRP0001 and 0002.

18 MR. WARNER: I can show that to you, if
19 you'd like, Lisa? I have it right here.

20 MS. LINOWES: And, what is the date on
21 that? Is this --

22 MR. ROTH: September 13th.

23 MS. LINOWES: 2012?

24 MR. ROTH: Yes.

[WITNESSES: Cyr~Phillips~Kimball]

1 MS. LINOWES: Because this -- okay.

2 And, this e-mail was dated June 7th, 2012.

3 MR. WARNER: Mike, I think this is the
4 one.

5 MR. IACOPINO: It's obviously --

6 MS. LINOWES: Oh, I did see this. I'm
7 sorry, I have seen this. This is after --

8 MR. WARNER: I think that's a different
9 letter than -- Mike, are you referring to this e-mail?

10 (Atty. Warner showing document to Atty.
11 Iacopino.)

12 MR. IACOPINO: No. It was that one.

13 MR. WARNER: Oh. Okay.

14 MR. IACOPINO: She was asking about
15 changes.

16 MR. WARNER: Okay.

17 MR. IACOPINO: And, basically, I
18 responded, I forget the exact -- whether it was in a phone
19 call or an e-mail that I received from Craig Rennie, that
20 my September 13th letter, 2012, went back to advising him
21 that it was my opinion that they needed to file an
22 amendment to the Certificate, and that it would not
23 qualify as a --

24 MS. LINOWES: Yes.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: -- the changes in the
2 roadway would not qualify as a minor amendment that could
3 be done by --

4 MS. LINOWES: And, I remember that
5 letter.

6 (Court reporter interruption - multiple
7 parties speaking at the same time.)

8 MR. IACOPINO: -- a minor amendment that
9 would be allowed to be accomplished by DES alone.

10 MS. LINOWES: I remember that letter,
11 and I apologize. That one occurred more than a year after
12 this e-mail where Tyler states --

13 MR. IACOPINO: I just wanted to make
14 sure that you had it.

15 MS. LINOWES: Yes.

16 BY MS. LINOWES:

17 Q. Okay. So, what plans do you have, because I would like
18 to lay them out and understand what you --

19 A. (Phillips) I don't have a complete set of plans, I just
20 have a set of plans that kicks around in my truck,
21 that's color-coded. It's the same plan you have there.
22 So, I'm not sure if there's something you're in need of
23 that's --

24 Q. Well, "the same plan I have", you mean the plans that

[WITNESSES: Cyr~Phillips~Kimball]

1 were attached to your Motion, initial Motion by
2 Brookfield, and that they're these, Attachment 2?

3 A. (Phillips) I have -- yes. I have a color-coded,
4 because I thought that that may help provide some
5 differentiation if the black and white didn't show
6 through. But it's not -- it was more, I was bringing
7 it for my own exhibit, if I needed to --

8 DR. KILPATRICK: And, it's the same
9 scale?

10 MR. PHILLIPS: It is the same scale.
11 It's 11 by 17.

12 DR. KILPATRICK: The same size?

13 MR. PHILLIPS: So, it's actually larger.

14 MR. IACOPINO: If you have it, may I
15 suggest that you just show it to them, you know, bring it
16 down to the other end of the table to show them what you
17 brought.

18 MR. ROTH: Mike, as a data request,
19 which I think we talked about this at the meeting up in
20 Lancaster, --

21 MR. PHILLIPS: It's color-coded. I
22 don't have all the sheets or anything like that. It was
23 more --

24 MR. IACOPINO: If you can show them what

[WITNESSES: Cyr~Phillips~Kimball]

1 you brought, to see if it's helpful to them.

2 MR. PHILLIPS: Yes.

3 MR. ROTH: I would like to see a
4 readable set of the plans, whether it's that size or the
5 big sheet size, you know, it isn't important to me, as
6 long as that's readable. The documents that were provided
7 to me are not readable, because they're too small.

8 MR. IACOPINO: Mr. Phillips, let me pass
9 that down to them to let them know if that's readable to
10 them, and also if it's helpful at all, in terms of what
11 they're requesting.

12 MS. LINOWES: Is this copies of one?
13 Oh, okay. I mean, I share the -- I have the same concern,
14 because I can't tell what was or what is the current state
15 of the Project, and what the plan is. And, that's --
16 that's a big question I have.

17 MR. PHILLIPS: You're unable to read the
18 copies that you have, the eight and a half by eleven set?

19 BY MS. LINOWES:

20 Q. Okay. But, in looking at this, --

21 A. (Phillips) Yes.

22 Q. -- what is the current state of the Project and what
23 are the changes? Are the changes only those that are
24 reflected?

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: Feel free to go down and
2 point out for her.

3 **BY THE WITNESS:**

4 A. (Phillips) This plan was developed to show what was
5 proposed, what we're proposing in the amendment.

6 BY MS. LINOWES:

7 Q. Okay.

8 A. (Phillips) The purpose of me bringing this is because I
9 don't know that the colors show up very well there.

10 Q. Right. I understand that.

11 A. (Phillips) It's very difficult to distinguish between
12 the various features. So, if you become familiar with
13 the legend, that the -- what this plan shows is that
14 this brown area [indicating] would be that portion of
15 the roadway, 34-foot wide roadway, that's covered by
16 some form of organic material, dirt, let's call it
17 "dirt" for the shorthand. And, this, for instance,
18 this corner here [indicating], this shows where, at the
19 corners, that the dirt had to be narrowed, that the
20 surface of the road has to be widened.

21 Q. Let's stop right there. Did the original plan, the
22 Project as it exists today, that's up there, --

23 A. (Phillips) Yes.

24 Q. -- what does it look like, in this same area?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Well, it would look very similar to this
2 dirt portion here, because, after we had widened the
3 roadway, that's -- it was based on the multiple
4 maintenance events that actually allowed us to
5 determine that this was a workable road width. So, we
6 kind of gained that experience from that.

7 Q. Okay. Tyler, I just want to know, what does the
8 Project look like today? Okay. Maybe I'm not asking
9 the right question.

10 MR. ROTH: Could I help you?

11 MS. LINOWES: Thank you.

12 BY MR. ROTH:

13 Q. I think it would be helpful to us to see a comparison
14 of plans from what was approved, what was built, and
15 what is proposed, and how they differ or are similar to
16 each other.

17 A. (Phillips) No such plan ever existed similar to this.
18 We prepared this when we were meeting with Fish & Game,
19 in our discussions with Fish & Game and DES. Because
20 we thought this would -- this would provide a better
21 visual description of what we'd like to -- what we're
22 proposing.

23 Q. Understood.

24 A. (Phillips) There never was a plan such as this one

[WITNESSES: Cyr~Phillips~Kimball]

1 before. All that existed was a plan, a detail sheet
2 that showed a cross-section.

3 Q. But you do have a plan, what was approved?

4 A. (Phillips) Yes.

5 Q. A detailed plan --

6 A. (Phillips) The detail shows nothing related to --

7 Q. Understood.

8 A. (Phillips) Okay.

9 Q. You have a plan of the road alignment and the curves
10 and stuff that was approved. I assume, maybe I'm wrong
11 about this, you have one as-built?

12 A. (Phillips) There may have been as-builts done.

13 Q. And, then, we, you know, we understand this. So, I
14 think it would be helpful to see these segments in
15 approved, as-built, and this, in a size that's
16 readable.

17 A. (Phillips) Well, you may -- you may think it's helpful,
18 but what you're going to see is basically just a
19 roadway design. This was -- the way, when a
20 construction project has very -- a number of features
21 that are very similar in nature, we won't often show on
22 this plan view what's going to be -- what is proposed.
23 And, instead, we will rely on a detail, which is a more
24 detailed drawing that says "this is going to be the

[WITNESSES: Cyr~Phillips~Kimball]

1 typical way we're going to handle something" throughout
2 this "Project area" that it refers to. So, there
3 wouldn't -- if we -- I can show you. I mean,
4 basically, we took the original design plans and added
5 this to it. The original design plans would have
6 showed no dirt, would have showed no trees, none of
7 this stuff that we're proposing. It would just show a
8 roadway.

9 Q. Right.

10 A. (Phillips) And, I can provide that, but I don't know
11 that it would be very illuminating.

12 Q. I recall spending a lot of time with the roll of plans
13 that were first published and submitted to the
14 Committee in 2009. And, there was a fair amount of
15 detail about, you know, the cuts and the fills and the
16 turns. And, I think, and I shouldn't be getting ahead
17 here, but, hopefully, this is helpful. I can't
18 understand whether, since the time the Project was
19 approved, whether, one, the road and the cuts and the
20 fills and the turns was built as proposed, and, two,
21 how this fits in sort of as an overlay on top, in
22 addition to that.

23 So, what I'm looking for is, as a data
24 request, to have these segments of the road highlighted

[WITNESSES: Cyr~Phillips~Kimball]

1 proposed, that is originally proposed to the Committee,
2 as-built, and then these, all in a readable size.

3 MR. WARNER: I think we can produce what
4 we already have that's responsive to your data requests.
5 But I don't think that Brookfield is going to go out and
6 create new plans.

7 MR. ROTH: I'm not suggesting that. But
8 what I'm suggesting is, you have a proposed 2009, you have
9 as-built, whenever that was done, and then this, as I
10 said, in a readable size.

11 MR. IACOPINO: Actually, approved,
12 as-built, and --

13 MR. ROTH: Approved. Yes.

14 MR. IACOPINO: -- and then what the
15 amendment is. Okay. I've got that -- I've got that
16 listed as an "overlay".

17 MR. ROTH: Okay.

18 MR. IACOPINO: Just for lack of a better
19 term. And, I don't mean, when I say "overlay", I don't
20 mean that to mean anything specific engineering-wise, just
21 so you know. I mean, that's just a term to describe what
22 you're going to demonstrate.

23 MR. ROTH: Was that helpful?

24 MS. LINOWES: Yes.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MS. LINOWES:

2 Q. Well, the one thing that I wanted to make sure Tyler is
3 aware of, on the as-builts that I believe that I'm
4 looking for, and I think Peter Roth is asking, what we
5 wanted -- what we never saw was the Restoration Plan,
6 so, the High Elevation Restoration Plan, and where it
7 showed that earth was going to be placed. So, we were
8 told at the hearings it was clearly cited in the
9 Certificate that the road-widths would be 12 feet, and
10 I understand the underlying road is not, it's bigger.
11 The road-widths would be 12 feet. I do not recall 18
12 to 26-foot wide corner. I remember, and in the
13 testimony and the Certificate says "12 feet"
14 everywhere. There was no condition where it wasn't
15 12 feet. So, what I want to know, and what I think
16 Peter is saying, and I want to see, is where the dirt
17 was laid on the as-built?

18 MR. WARNER: And, I guess I would say
19 that we'll produce, I think we have seven days by the
20 terms of the order, is that right?

21 MR. IACOPINO: Uh-huh.

22 MR. WARNER: All I'm saying is we'll
23 produce within seven days documents in our possession
24 which are responsive to your question, but without a

[WITNESSES: Cyr~Phillips~Kimball]

1 guarantee that they'll necessarily answer all the
2 questions you have. I'm not -- documents that we created
3 just -- or plans we created may not have the answers
4 you're looking for.

5 BY MS. LINOWES:

6 Q. In the as-builts, where it was a 12-foot wide path that
7 was going to be a surface that would be drivable on,
8 was it 12 feet everywhere?

9 A. (Phillips) Yes. If you're asking what's -- I don't
10 know what's going to be shown on as-builts, if there
11 are as-builts. I think, ultimately, you're not going
12 to find what you -- obviously, you can obtain all that
13 information. I don't think it will be helpful in your
14 review, but I don't want to -- you wait and see.

15 Q. It's just a "yes" or "no" question. On the road --

16 A. (Phillips) They were built to 12 feet wide.

17 Q. Everywhere?

18 A. (Phillips) Yes.

19 Q. Even on the corners?

20 A. (Phillips) Yes. Yes.

21 DR. KILPATRICK: Can I follow up on
22 that? Or, I don't know the procedure.

23 MR. IACOPINO: Sure. Might as well.

24 BY DR. KILPATRICK:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. And, when you say they were done to "12 feet", that was
2 centerline or that was varied?

3 A. (Phillips) They were -- the portion of the road, a
4 portion of the road-width was covered leaving only a
5 12-foot wide gravel surface. Now, that surface, does
6 it vary, you know, to 10 feet in spots?

7 Q. Yes.

8 A. (Phillips) Maybe as much as 14? I mean, we're
9 talking --

10 Q. But it never goes to the edge?

11 A. (Phillips) I'm sorry?

12 Q. It would never go to the edge of the 30-foot -- 34-foot
13 initially?

14 A. (Phillips) I'm not sure --

15 Q. It was always towards the center?

16 A. (Phillips) It's very similar to what you see in the
17 plans there today. It was -- that 12-foot wide section
18 was always on the left-hand side of the road as you
19 head in. So, it's all on -- it's not centered.

20 Q. Okay.

21 A. (Phillips) It's always on the left-hand side of the
22 road. And, yes, it was built to 12 feet wide in May of
23 2000 --

24 MS. LINOWES: Eleven?

1 **CONTINUED BY THE WITNESS:**

2 A. (Phillips) -- '12, I think, actually. Construction
3 completed in 2011, --

4 MS. LINOWES: Oh.

5 **CONTINUED BY THE WITNESS:**

6 A. (Phillips) -- went operational, and then they waited,
7 and it was the very next spring. And, that, as a
8 matter of fact, I believe was the e-mail you're
9 referring to, was a site visit by Fish & Game up there
10 to see the status. And, at that time, they were
11 placing that topsoil on the road.

12 BY MS. LINOWES:

13 Q. Okay. So, I want to make sure I heard you correctly.
14 You're saying that that 12-foot wide road hugged the
15 left side of the road the entire way?

16 A. (Phillips) It exists on the left-hand side of the road.
17 I don't know "hugged". But, yes, it's always on the
18 left-hand side of the road.

19 Q. Okay. Now, there were, in response to a question, a
20 data request by Attorney Roth, this would be Number 10,
21 there are meeting minutes on the -- dated May 31st,
22 2012. I don't have them with me. But there was a
23 section in there where it says "Fish & Game staff were
24 under the impression that tree planting on Kelsey" --

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: Can I just stop for a second?

2 MS. LINOWES: Yes.

3 MR. ROTH: Is this GRP000296?

4 MS. LINOWES: I don't have the number.

5 I didn't realize there were numbers. That is it, though.

6 That, in looking at it. Sorry.

7 MR. ROTH: So, meeting -- "Erosion

8 Control Meeting Minutes".

9 MS. LINOWES: Correct. And, there's

10 a --

11 MR. ROTH: That's GRP000296.

12 MS. LINOWES: And, there's a section

13 where, I think it's on Page 3 -- that's it.

14 BY MS. LINOWES:

15 Q. And, it says that, apparently, on -- Fish & Game went
16 to look at the Project site, some Fish & Game -- this
17 is a quote out of the minutes, "Some Fish & Game staff
18 were under the impression that tree planting on Kelsey
19 will be done in all areas of earth disturbance, and
20 they were initially concerned during the site visit
21 about the apparent amount of rock surfacing."

22 MR. ROTH: I'm sorry, Lisa, to interrupt
23 you. This is Page 000298?

24 MS. LINOWES: There it is.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: Okay. It's Page 5. Okay.

2 Thank you. This is GRP000300.

3 BY MS. LINOWES:

4 Q. So, and then it says that "The group reviewed the
5 Restoration Plan approved by Fish & Game, and it shows
6 the reclaimed roadway to be planted with trees." So,
7 what was -- I don't understand what Fish & Game is
8 concerned about. They raised a concern, they had an
9 impression that the road was going to look a certain
10 way with the trees. And, then, apparently, that
11 concern disappeared because you followed the letter of
12 the Restoration Plan. But were they satisfied still?

13 A. (Phillips) I think those meeting minutes, the reason we
14 provided them, was because it was a document in which
15 Will Staats was present at the meeting, as were a
16 number of other agencies. And, at that time period,
17 again, nothing had been planted.

18 Q. Uh-huh.

19 A. (Phillips) That was a meeting that was just reviewing
20 the status of various mitigation components of the
21 Project. One of which was to view the roadway
22 narrowing, if you will, while it was occurring. And, I
23 believe that there might have been one or -- might have
24 been Jill Kilborn, that said that it was her impression

[WITNESSES: Cyr~Phillips~Kimball]

1 that -- that there was going to be greater amount of
2 planting than we had described at that meeting. She
3 wasn't a signatory to it on behalf of Fish & Game.

4 Q. And, okay, what did it mean by "an apparent" -- they
5 were "concerned about an apparent amount of rock
6 surfacing"? Is that what that means, there was more
7 gravel in it?

8 A. (Phillips) No, I don't think that. I think she just
9 meant the overall slopes or -- I can't -- I mean, she
10 had concerns that we had used rock for guardrail, you
11 know, that we used large rock and it looked unnatural.
12 I think she was just referring to the areas that
13 there's rock surfacing, there's ledge on the Project in
14 some of the cuts, there's rock placed on some of the
15 steeper slopes. So, I think, you know, her concern was
16 that those areas were rock.

17 Q. So, when you say that "she wasn't a signatory to the
18 Agreement", does that mean her concerns were not
19 relevant?

20 A. (Phillips) No. But I think she hadn't -- I don't know
21 how much she was aware of what the -- what we were
22 obligated to do, what Fish & Game had approved. Fish &
23 Game approved a pretty specific prescription for
24 planting trees. And, so, I guess it was she was

[WITNESSES: Cyr~Phillips~Kimball]

1 surprised by the amount of rock, and I can't speculate
2 as to what she was thinking beyond that.

3 Q. So, was anything changed as a result of her concerns?

4 A. (Phillips) Well, I think that my job at the time was
5 to, because we hadn't yet planted trees, was to show
6 her that, a lot of the agency staff, that there was
7 significant natural regeneration of trees, seedlings, a
8 significant density of natural tree seedlings coming
9 in, even in the rock areas. And, so, we toured the
10 site. They picked spots, we'd look over the edge, and,
11 sure enough, trees are growing up through the rock,
12 despite us not planting anything. And, so, I think
13 what we were trying to say to them was the site will
14 naturally regenerate, albeit it will vary.

15 But -- so, as far as addressing her
16 concerns, I think, at the time, I was showing her that,
17 or, showing the group, that the site just had a pretty
18 good propensity to naturally regenerate.

19 MR. ROTH: Can I ask --

20 MS. LINOWES: Sure. Absolutely.

21 MR. ROTH: -- just two short questions
22 about this?

23 BY MR. ROTH:

24 Q. The High Elevation Restoration Plan that was approved

[WITNESSES: Cyr~Phillips~Kimball]

1 by Fish & Game that's referenced in here, is this the
2 one that was part of the original agreement that was
3 submitted to the Committee and approved by the
4 Committee? Or was there something else that was
5 developed afterwards?

6 A. (Phillips) I have to check the timing here. But there
7 was the High Elevation Mitigation Settlement Agreement,
8 correct? And, that was approved by the Committee, as I
9 recall, the SEC.

10 Q. Correct.

11 A. (Phillips) That out of the SEC hearing came two, I
12 think, pertinent conditions. One was to narrow the
13 roadway down, the other was -- on Kelsey, and the other
14 was to develop a plan to revegetate high elevation
15 areas. So, following those conditions, there was the
16 designer of record, which was RMT Construction, they
17 prepared a detail sheet that showed those things, the
18 road being narrowed and where we would plant trees.

19 Q. Okay.

20 A. (Phillips) That itself, combined with a narrative, I
21 think satisfied the objectives of the High Elevation
22 Mitigation Agreement.

23 MR. ROTH: Okay. Do we have a copy of
24 that RMT plan?

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. PHILLIPS: I believe you do.

2 MR. ROTH: And was that produced?

3 MR. WARNER: I'll have to double check,
4 but --

5 MR. PHILLIPS: I'm pretty sure it was.

6 MR. WARNER: Yes.

7 MR. PHILLIPS: It's -- yes, it's in --
8 bear with me here, I'm not -- it was in --

9 MS. LINOWES: If I could interject, I
10 only have a copy of the Revised High Elevation --

11 MR. PHILLIPS: No, no. This --

12 MR. ROTH: We have one dated --

13 MR. PHILLIPS: No, I saw it last night,
14 when I was looking this over.

15 MR. ROTH: We have one dated August of
16 2013.

17 MR. WARNER: I believe he's referring --

18 MR. ROTH: And, we have March of 2013.

19 MR. WARNER: I believe he's referring to
20 the plan --

21 MR. ROTH: 2014.

22 MR. WARNER: -- produced in response to
23 Ms. Linowes' data requests.

24 MR. PHILLIPS: Yes.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. WARNER: Which was dated --

2 MS. LINOWES: March 3rd, 2014?

3 MR. WARNER: -- August 2010.

4 MR. ROTH: Is that GRP000316 through

5 000319?

6 MR. PHILLIPS: Yes.

7 MR. WARNER: Yes.

8 MR. PHILLIPS: Yes, 000319.

9 MR. ROTH: Okay.

10 BY MR. ROTH:

11 Q. So, in terms, just as -- this is a clarification I
12 hope, in terms of this redesign and plan, is this the
13 entire document or were there sheets like this that
14 were also done?

15 A. (Phillips) No. No. Now I know your coding here,
16 000318 is the narrative. There was a meeting between
17 Fish & Game and various agencies that was held to
18 discuss the details of the plan. After that meeting,
19 and that happened sometime in 2010, I would imagine,
20 after that meeting, RMT developed a narrative and
21 associated plan. The plan would be 000319.

22 Q. So, it's just this one sheet?

23 A. (Phillips) That's it. That's what I was referring to.
24 That's the detail sheet.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Okay.

2 A. (Phillips) And, all we have done is more or less taken
3 the same thing, these two documents, and updated them
4 to reflect what we would like, what we propose to do.
5 In addition to that, we've added that color-coded plan.
6 So that -- now that, in its entirety, then satisfies
7 what we feel provides at least more information than
8 originally. And, that's what you have, you have our
9 current, complete Revised High Elevation Restoration
10 Plan.

11 MS. LINOWES: And, which is the March
12 3rd, 2014?

13 MR. PHILLIPS: Yes. Yes.

14 MS. LINOWES: I don't recall seeing the
15 original, the initial. I don't know, every time I called
16 it "original" or "initial" in my data requests, you
17 objected to how I was characterizing it. So, how you
18 characterize it, this thing that came before it was
19 revised, what is the date on that?

20 MR. WARNER: It says "August 2010" in
21 the footer.

22 MS. LINOWES: And, I have a copy, that
23 was part of something that --

24 MR. WARNER: That was produced in

[WITNESSES: Cyr~Phillips~Kimball]

1 response to your data requests.

2 MS. LINOWES: I do not recall seeing
3 that.

4 MR. ROTH: So, that's the narrative,
5 000318, is that right?

6 MR. PHILLIPS: 000318 and 000319.

7 MR. ROTH: 000316?

8 MS. LINOWES: Okay. I'll have to check
9 again.

10 MR. PHILLIPS: Oh, I'm sorry. I see how
11 your numbering this; 000316, 000317, 000318, and 000319
12 would be at complete.

13 BY MR. ROTH:

14 Q. So, this was the only High Elevation Restoration Plan
15 that was developed with Fish & Game before the
16 modifications began in this, I guess it was last
17 summer, 2013?

18 A. (Phillips) This was the original. And, it is the
19 only -- since then, we coordinated with them, we came
20 up with the Plan you see there.

21 Q. Okay.

22 A. (Phillips) Yes. In addition, I mean, we've provided,
23 again, there's nothing unique about the plan in front
24 of you, it's just the colors pop out. So, for me to

[WITNESSES: Cyr~Phillips~Kimball]

1 explain to you the various components, if you wanted to
2 understand those, but you have a copy of what we've
3 proposed, our new, and that's -- and I think we've
4 provided that a number of times in different formats.

5 Q. And, this one I noticed is marked "Draft". Is there a
6 "Final" or is this all there is right now?

7 A. (Phillips) That's a draft, until it's been finally
8 approved by the SEC.

9 Q. Okay.

10 A. (Phillips) So, no, there's nothing that -- no, that is
11 the document.

12 MR. ROTH: All right.

13 MS. LINOWES: Thank you.

14 BY MS. LINOWES:

15 Q. So, I do have some questions about that, but let me --
16 Now, actually, I'm wondering, if you could show on this
17 plan then where Turbine Number, is it 7 -- let's see,
18 Turbine Number 2 on Kelsey. Can you tell us what
19 happened? So, when there was -- you had a problem with
20 a gearbox.

21 A. (Phillips) Turbine 2 is not located on Kelsey.

22 Q. Okay. Which -- I thought that that was the one that
23 you were highlighting. Which one is on Kelsey?

24 A. (Phillips) I think that started, on Kelsey, at Turbine

[WITNESSES: Cyr~Phillips~Kimball]

1 10.

2 Q. It was 10?

3 A. (Phillips) And, subsequent to that was Turbine --

4 (Court reporter interruption.)

5 **CONTINUED BY THE WITNESS:**

6 A. (Phillips) The first one was Turbine 10. And, I think
7 she's -- the other maintenance issue I believe was on
8 Turbine 9.

9 BY MS. LINOWES:

10 Q. Where the blade -- that there was a lightning strike?

11 A. (Phillips) I don't --

12 A. (Cyr) Yes. Correct.

13 A. (Phillips) John might know the details.

14 A. (Cyr) Correct. Yes. There was a lightning strike,
15 yes.

16 A. (Phillips) But I can point out to you, and, again, this
17 is the same that you have, but this may be easier to
18 see. Okay. The sequence is from highest turbines,
19 down to the low, you know, they descend.

20 Q. In terms of the numbers?

21 A. (Phillips) In terms of the numbers, yes. So, this is
22 Turbine 10 here [indicating].

23 Q. Okay.

24 A. (Phillips) This is the pad associated with it, the road

[WITNESSES: Cyr~Phillips~Kimball]

1 via access up to it. Turbine 9, this, they take,
2 rather than waste paper here, we've taken -- this piece
3 here would connect to match, align this sheet. So,
4 this would connect to that [indicating].

5 Q. Okay. And, where is it from the string of turbines on
6 Kelsey?

7 A. (Phillips) Well, the very end would be Turbine 8. So,
8 it's third to last.

9 Q. The very end, the furthest away?

10 A. (Phillips) Furthest north.

11 Q. From the access, from where you enter on Kelsey?

12 A. (Phillips) Yes.

13 MR. ROTH: Are they numbered on the
14 plans?

15 MR. PHILLIPS: Yes.

16 MR. ROTH: Okay.

17 **BY THE WITNESS:**

18 A. (Phillips) I mean, I could draw you a picture.

19 BY MS. LINOWES:

20 Q. Okay.

21 A. (Phillips) But, basically, it's -- yes, you drive up to
22 the ridgeline, and then the road splits, one half goes
23 to Owl's Head and one half goes to Kelsey. And, on
24 Kelsey, the turbines -- the first turbines you're going

[WITNESSES: Cyr~Phillips~Kimball]

1 to see is 17, 16, 15, and then it descends. So, the
2 first work occurred on Turbine 10.

3 BY MR. ROTH:

4 Q. So, just in the Petition that was filed, it says
5 "Granite moves for" -- bear with me. I had it here
6 somewhere. Ah. In the Petition, on Page 2, it says
7 "On or about mid-August 2013, one of the turbines
8 located on Mount Kelsey required unscheduled
9 maintenance due to a bearing failure." Which turbine
10 was it in the sequence?

11 A. (Cyr) In 2013?

12 Q. Yes. The Petition says "mid-August 2013, one of the
13 turbines required unscheduled maintenance due to a
14 bearing failure."

15 A. (Cyr) Yes. Well, it was Turbine 9, but it wasn't a
16 bearing failure. It was a lightning strike.

17 Q. So, --

18 A. (Cyr) It was blade damage.

19 Q. So, this statement, "On or about mid-August 2013, one
20 of the turbines required unscheduled maintenance due to
21 a bearing failure" is not true?

22 A. (Cyr) Okay. Where are you reading that?

23 Q. Page 2 of the Petition that was filed in this case.

24 MS. LINOWES: Here it says, in here

[WITNESSES: Cyr~Phillips~Kimball]

1 there is a table, this is on GRP00010, there's a table
2 that says --

3 MR. ROTH: Let's just figure out what --

4 MR. IACOPINO: I don't know that he has
5 the Petition in front of him. Do you have the actual
6 Petition that was filed with the Site Evaluation
7 Committee?

8 MR. CYR: No. Not that I'm aware of.

9 MR. IACOPINO: Okay. So, why don't you
10 just read the statement again to him, Peter.

11 BY MR. ROTH:

12 Q. "On or about mid-August 2013, one of the turbines
13 located on Mount Kelsey required unscheduled
14 maintenance due to a bearing failure."

15 A. (Cyr) Yes. Not a bearing failure, no. That's not
16 correct. 2013 would have been Turbine 9 for blade
17 damage. August of 2012 was a bearing -- was a bearing
18 replacement on Turbine 10. Which it had not failed, it
19 was still operational.

20 Q. Okay. So, the blade replacement in August 2013 --

21 A. (Cyr) Wasn't a replacement, it was a repair.

22 Q. It was a repair.

23 A. (Cyr) Yes.

24 Q. And, in August 2013, which turbine was that that needed

[WITNESSES: Cyr~Phillips~Kimball]

1 the blade repaired?

2 A. (Cyr) Turbine 9, on Kelsey.

3 Q. Okay. So, the one that -- that's interesting. So, the
4 one that required the crane was August of '12?

5 A. (Cyr) They both required a crane.

6 Q. They both required a crane.

7 A. (Cyr) Yes.

8 Q. So, that the first crane requirement then was T-10?

9 A. (Cyr) Correct.

10 Q. And, then, a year later you needed a crane for T-9?

11 A. (Cyr) Correct.

12 Q. Okay.

13 MR. WARNER: It looks like the lawyer
14 drafting this Motion may have gotten the date wrong. So,
15 perhaps we can discuss after this how to amend that to
16 avoid confusing the Commission.

17 MS. LINOWES: All set, Peter?

18 MR. ROTH: Yes. Go ahead. All right.

19 BY MS. LINOWES:

20 Q. Now, in terms of the changes that you want to make, we
21 established that the as-built, with the new dirt, based
22 on the original, the August 2010 Restoration Plan would
23 have 12-foot wide roads all the way through on Kelsey,
24 in the high elevation area. And, the new plan now

[WITNESSES: Cyr~Phillips~Kimball]

1 calls not just to widen the roads to 16 feet, but also
2 to widen in six corners from 18 feet to 26 feet, is
3 that correct?

4 A. (Phillips) Uh-huh.

5 Q. So, and maybe you've done the math on this, but -- so,
6 what is it, and I apologize, I don't have it in front
7 of me, but you did -- did you calculate how much more
8 road surface is going to be exposed, total?

9 A. (Phillips) In aggregate?

10 Q. And, what it is?

11 A. (Phillips) I can provide that. I don't know, I'd be --
12 I've calculated things so many different ways, but it's
13 usually been in numbers of trees and so forth.

14 Q. Uh-huh.

15 A. (Phillips) I haven't calculated. I could provide that
16 to you, if that's of help. But I don't know that I
17 have that exact number that --

18 Q. Okay. That would be great. Thank you.

19 A. (Phillips) Yes.

20 MR. IACOPINO: So, what I have that is
21 "to provide a calculation of the aggregate increase in the
22 road-width under the new Plan." Does that sound right?

23 MR. ROTH: I just -- I know I had a
24 question like this. I just want to make sure if I can --

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: And, is that normally
2 done in square footage? Is that the --

3 MR. PHILLIPS: I can provide it in any
4 units you wish. I can provide it in square footage,
5 acres.

6 BY MR. ROTH:

7 Q. Yes. My question was with respect to your testimony,
8 you said it would "decrease the overall expanse of
9 gravel at the Project". And, my question was "by how
10 much?" Is that the same question?

11 A. (Phillips) I can provide that. It's a shade of the
12 same question. I can provide that. I know it to be
13 the case just because of how we calculated. But I
14 couldn't give you offhand the exact number. I know
15 that is a fact.

16 Q. But you can figure that out?

17 A. (Phillips) Oh, of course.

18 MR. ROTH: Okay.

19 BY MS. LINOWES:

20 Q. But that is assuming that you're also putting dirt on
21 turbine pads as well. Because, if you're increasing
22 the roads, you have to be doing something more than
23 just increasing the road-widths.

24 A. (Phillips) Well, rephrase that question, if you would.

[WITNESSES: Cyr~Phillips~Kimball]

1 I mean, I --

2 Q. If I understood what Peter said, the overall surface
3 would be reduced, the amount of gravel area would be
4 reduced. That would not be the case if you're just
5 widening the roads by 16 feet. You're obviously --

6 A. (Phillips) That takes into consideration --

7 Q. -- doing something else.

8 (Court reporter interruption.)

9 **CONTINUED BY THE WITNESS:**

10 A. (Phillips) That -- I said that takes into consideration
11 the surfacing of the pads, the turbine pads.

12 BY MS. LINOWES:

13 Q. Now, I was sitting through the hearings in 2009. So, I
14 am very aware of all of the testimony and
15 cross-examination pertaining to the 12-foot wide roads,
16 and the issues of getting vehicles up there for
17 maintenance, okay? With that said, Mr. Cyr, on Page 5
18 of your testimony, you say that the -- you talk about
19 the "established widths", this is Lines 5 through 9
20 that I'm looking at of Page 5 of your testimony. And,
21 it says that "these road widths", 16 feet wide and 18
22 to 26 foot at six corners, "are the minimum possible to
23 accommodate the tractor trailers needed to carry large
24 cranes and other heavy equipment". Did road-widths

[WITNESSES: Cyr~Phillips~Kimball]

1 change from 2009, necessary minimum road-widths or
2 travel surface widths for these tractor trailers change
3 since 2009? Why -- that apparently it wasn't a problem
4 in 2009, and it's a problem today.

5 A. (Cyr) Yes. I'm not aware of what the conversation was
6 back in 2009.

7 Q. It wasn't a conversation. It was testimony under oath.

8 A. (Cyr) Yes. And, I'm not aware of that, what the
9 testimony was.

10 Q. Did you read the transcripts?

11 A. (Cyr) Not all of it, no. No.

12 Q. Okay. So, you're saying, if we trust, and I don't have
13 them -- I have some of the transcripts here, but I
14 don't think I have that one, but you're saying, if you
15 were on the witness stand today, would you have agreed
16 to 12-foot wide road-widths?

17 A. (Cyr) Knowing what I know today, no, because a tractor
18 trailer cannot get around it.

19 Q. Tyler, you designed the roads. You were part of that
20 process, is that correct?

21 A. (Phillips) I didn't design them, but --

22 Q. Okay.

23 A. (Phillips) -- I was involved in some elements of it.

24 Q. Were you on the witness stand?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) No.

2 MR. ROTH: No. That was Steve LaFrance.

3 MS. LINOWES: Okay.

4 BY MS. LINOWES:

5 Q. So, I mean, Mr. Cyr, and also Tyler to some extent, in
6 your testimony you suggest that this was a learning
7 process, and that, you know, over the -- since 2000 --
8 December 2011, when the Project went into service, kind
9 of figured out the problem. Did you not know that
10 there will be a maintenance issue in the future? Did
11 you not know that roads -- that these vehicles had
12 fairly wide road requirements? I mean, what did you
13 know and when did you know it?

14 A. (Phillips) I think that -- I'm pretty sure that it was
15 contemplated at that time that there would be a need
16 for disruption of the road surface.

17 Q. At what time? At what time?

18 A. (Phillips) At the SEC hearings. I believe there were a
19 number of questions and responses that -- where it was
20 pretty clearly stated by Mr. LaFrance that there would
21 need to be -- the road would need to be -- the
22 vegetation would need to be disrupted as a result of
23 maintenance. And, I think our proposal here comes up
24 with a reasonable way of accommodating -- minimizing

[WITNESSES: Cyr~Phillips~Kimball]

1 the effect of these disruptions by planting the
2 vegetation elsewhere where it would not be disrupted,
3 which I think speaks to some of the issues that
4 Mr. Harrington had in 2009 as well. Where he indicated
5 that it's very possible that, if disruptions were
6 needed every five -- say, two, five, six years, that
7 this vegetation may never get to a mature level. And,
8 as I understand, the SEC, they weren't -- it was
9 approved, the order was granted. And, I think, looking
10 back at that, I think we're coming up with an
11 improvement for something that was never put into --
12 never acted on, I guess, at the SEC.

13 Q. So, I mean, there were people that raised questions,
14 but the Applicant had no problem with it. I mean, if
15 Mr. LaFrance had an issue, perhaps it should have been
16 more pronounced. I mean, everyone seemed to go along
17 with it. It was approved with the 12-foot wide roads.

18 MR. WARNER: Could I just ask that you
19 put these in a question format for the witnesses.

20 MS. LINOWES: Okay.

21 BY MS. LINOWES:

22 Q. All right. So, on Question 13 in my data requests, I
23 asked "if the Project was still under a manufacturer's
24 warranty?" And, the response was "Granite responds

[WITNESSES: Cyr~Phillips~Kimball]

1 that the Granite Windpark is not currently under a
2 manufacturer's warranty." So, my question is tied
3 to -- this is from the transcript of March 9th, 2009,
4 when people from Noble Environmental were -- and
5 Granite Reliable were on the witness stand. And, the
6 question was raised about the Vestas involvement in the
7 Project as it was ongoing. And, it says here -- the
8 response was, this was in answer to a question, but it
9 says "The first three years we are relegated to pay
10 Vestas so much per turbine per year while they -- in
11 their warranty period. And, it's a three-year
12 obligation for us to pay them to operate the park.
13 Now, the people that we have on-site will shadow
14 Vestas, but also be reliable for the maintenance of our
15 BOP", okay, so -- "which is a substation", he says.
16 So, Vestas is not operating the plant right now?
17 A. (Cyr) No. Their contract ended November 29th of 2013.
18 Q. 2013?
19 A. (Cyr) Correct.
20 Q. Okay. So, what was the duration of that then?
21 A. (Cyr) I'm not sure. I thought it was two years.
22 Q. Okay.
23 A. (Cyr) I believe we went -- yeah, I think it's two
24 years.

{SEC 2014-03} [Technical session] {07-24-14}

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Would it have started from the -- when? From the point
2 when the Project went into service or prior to that?

3 A. (Cyr) I'm not certain when it started.

4 Q. The Project, according to the data request response I
5 had, it went into service December 2011.

6 A. (Cyr) Yes. December 15th it went commercial
7 operational, yes.

8 Q. Okay. So, Vestas, when you had the blade failure or
9 the lightning strike, --

10 A. (Cyr) Yes.

11 Q. -- who fixed that?

12 A. (Cyr) We hired Vestas. But the lightning strikes were
13 outside of the contract with Vestas.

14 Q. Okay.

15 A. (Cyr) They were not responsible for, you know, they had
16 no control of lightning or damage like that.

17 Q. Okay.

18 A. (Cyr) Their warranty was more for, you know, say a
19 blade fell off.

20 Q. Uh-huh.

21 A. (Cyr) But they had no control over environmental.

22 Q. Okay. I'm almost done by the way. Okay. Now, in
23 the -- and I'm jumping around, I just want to get the
24 questions answered -- questions asked. Okay. So,

{SEC 2014-03} [Technical session] {07-24-14}

[WITNESSES: Cyr~Phillips~Kimball]

1 Vestas is out of the picture right now. And, you don't
2 have a third party at all. Brookfield is handling all
3 of the maintenance?

4 A. (Cyr) Correct.

5 Q. Okay. So, as part of the testimony also that took
6 place in 2009, Mr. Lyons, who was part of Granite
7 Reliable or Noble Environmental, made it clear that the
8 warranty, or at least his operations person informed
9 him and he stated under oath, that "the warranty may
10 prohibit seeding or placing vegetation on the turbine
11 pads", because of the difficulty of maintenance. You
12 don't have that problem?

13 A. (Cyr) Yes. You can plant trees on the pads around the
14 perimeter. But you couldn't completely plant the whole
15 pad, because you need to bring in cranes and equipment
16 to access the turbines.

17 Q. Okay. So, he, in that cross-examination, he had
18 indicated that "essentially you're going to have, for
19 the warranty period, or as required by the warranty, a
20 200-foot clearing around the turbines for maintenance
21 purposes?" And, he agreed with that. That was a
22 question, and he agreed. He said "I realize the answer
23 seems to be a bit convoluted, but I do recall asking
24 about that, after you asked. And, the response I got",

[WITNESSES: Cyr~Phillips~Kimball]

1 from his maintenance -- his operations person was
2 "while the warranty doesn't specify 200 feet, *per se*,
3 but does require sufficient space for the maintenance
4 work, which...would be about 200 feet."

5 A. (Cyr) Okay. Yes.

6 Q. Do you agree with that?

7 A. (Cyr) Say that again, because I'm not -- because we
8 don't have 200 feet around all of the turbines. Some
9 turbines are placed toward the edge of a pad. You
10 might have 75 feet to the woods, and on one side of the
11 turbine you may have 200 plus feet. So, --

12 Q. When you bring a crane -- okay. The question is, how
13 much space -- are you going to be back here in a year
14 or two years, three years, trying to get permission to
15 not vegetate on the turbine pads because there's been a
16 failure and you can't get your equipment in there?

17 A. (Cyr) The proposed plan that we have of planting trees
18 on the pads, on the side of the pads, would not inhibit
19 us from maintaining the -- so, the answer to your
20 question would be "no, we would not come back."

21 Q. You've done all the measurements that you need to know,
22 that you've anticipated every single turbine failing at
23 some point and being able to get in there with regard
24 to where the vegetation is?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) I would have to say "yes". Yes. Possibly, yeah.
2 Again, if you look at the proposed plan we have, it
3 allows for crane movements on the pads, and it also
4 allows for trees. The pads are quite large.

5 Q. Uh-huh. Okay. And, then, in the revised plan, on
6 Page -- I don't know what page it is, there's a section
7 called "Monitoring" and another section called
8 "Maintenance". Do you -- this would be on the March
9 3rd Plan, Restoration Plan. Do you know which sections
10 I'm talking about?

11 A. (Phillips) Yes.

12 Q. Okay. It's says --

13 A. (Phillips) Yes. I do know that.

14 Q. It says, under "Monitoring", "[Following] construction,
15 the Environmental Monitor will include [quantitative]
16 checks on planting areas during inspections and
17 determine the need for replanting." That's "during
18 construction". "Following construction, Granite will
19 provide annual monitoring of seedling survival for two
20 years. Successful tree establishment will be a
21 75 percent survival rate." Where are we now in this?
22 Construction is completed, correct?

23 A. (Phillips) Correct.

24 Q. So, what is meant by "following construction"? Are

[WITNESSES: Cyr~Phillips~Kimball]

1 we -- do you mean today?

2 A. (Phillips) I think the Plan was written prior to
3 construction. So, I think they knew that they wouldn't
4 be planting the trees until construction was completed
5 and -- in the original Plan. We carried the same
6 language through. We didn't want to change too much of
7 it. So, today is, yes, post-construction.

8 Q. So, the two years have passed?

9 A. (Phillips) I'm not sure, is your question with regard
10 to the original, the original work, or what we're
11 proposing today?

12 Q. Okay. It says "Following construction, Granite will
13 provide annual monitoring of seedling survival for two
14 years." It's been two years.

15 A. (Phillips) Yes. And, so, the spring, two years, we
16 replanted, meant out a number of dead trees. We're
17 kind of in this holding pattern waiting for the SEC to
18 determine. Because, clearly, if we widen the road, do
19 we start counting trees that we know don't exist or
20 not? So, it's --

21 Q. So, what would you -- what would you suggest that
22 should be changed to?

23 A. (Phillips) We would, I would think going -- well, I
24 think that what the Plan is indicating is, once we are

[WITNESSES: Cyr~Phillips~Kimball]

1 completed -- once we've completed any replanting
2 according to this, our proposed amendment, whether it's
3 granted or otherwise, if it's granted, we would go from
4 two years after we plant these trees elsewhere, and
5 follow those procedures. If it's not granted, we
6 revert back to the original Plan.

7 Q. Okay. So, that "following construction" phrase should
8 be changed then? "Following construction, Granite will
9 provide annual monitoring", that should be changed?

10 A. (Phillips) Yes. You could probably better phrase that,
11 "following planting" or some other trigger.

12 Q. Okay.

13 A. (Phillips) Because we, again, we took the same -- that
14 is RMT's original Restoration Plan.

15 Q. Okay.

16 A. (Phillips) We just modified it.

17 Q. And, I mean, in the event of a maintenance failure or a
18 maintenance issue, where you have to go out there, are
19 you envisioning reseeding after every single time? Or
20 is your plan that, once this is in place, you're never
21 going to have to go back and reseed, unless there's a
22 failure -- unless you have a 75 percent -- more than
23 75 percent failure rate on trees?

24 A. (Phillips) Are you talking about trees or grass?

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. I don't know. It says "75 successful tree" -- okay,
2 this says "successful tree establishment".

3 A. (Cyr) Are you asking, if we are able to go to the
4 amended Plan, will we ever have to touch this topsoil
5 again?

6 Q. Yes.

7 A. (Cyr) I would say "no". If we can widen the roads to
8 the amended -- to the Plan that we want to amend, the
9 equipment can come up there without having to roll the
10 topsoil up ever again.

11 Q. Okay.

12 A. (Phillips) With respect to the road-widening.

13 A. (Cyr) Yes.

14 A. (Phillips) As far as crane assembly areas, that's a
15 different matter.

16 A. (Cyr) Yes.

17 A. (Phillips) So, there's two separate objectives of this.
18 I can describe those, if you'd like?

19 Q. Yes, I would like to know that. Because those crane
20 assembly areas, are those new? Because I don't recall
21 those being part of the original Plan either, the
22 original Plan for Granite Reliable?

23 A. (Phillips) Again, there is no -- there was no plan,
24 such as the one that's there, that was never developed.

[WITNESSES: Cyr~Phillips~Kimball]

1 What was developed was a planting schedule. I think
2 what was contemplated at the SEC hearings was impacts
3 associated with crane assembly and tracking. All we're
4 doing is formalizing this and thinking ahead and saying
5 that, while everyone acknowledged that there would be
6 impacts, "how do we best deal with these impacts today
7 and in the future, so we don't have to come back here?"

8 Q. Okay. So, where did, when -- or, maybe it hasn't
9 happened yet, or it must have happened, where did the
10 crane get assembled when it had to come up there? Were
11 you working in an *ad hoc* area or had there been built
12 into the Project a crane assembly area or crane
13 assembly areas?

14 A. (Phillips) The crane -- well, I mean, the cranes would
15 be assembled in a location that meets their
16 requirements, which is a relatively straight length,
17 relatively flat area. So, at 10, it was assembled in
18 the vicinity of 10. At 9, it was assembled in the
19 vicinity of 9.

20 What we're providing here in this Plan
21 is, going forward, we've -- John's worked with people
22 that assemble cranes, that do this work, and they have
23 identified certain areas where a crane can be assembled
24 and have kind of a service area, if you will. Where a

[WITNESSES: Cyr~Phillips~Kimball]

1 crane can be -- you can't assemble a crane anywhere on
2 the Project. So, they found these locations and said
3 "okay, if we assemble it here, it can walk to a cluster
4 of turbines that would be nearby or adjacent to this
5 assembly area." Then, we would go to another, if
6 another cluster -- another group of turbines need to be
7 serviced, that would also have a crane assembly area.
8 This is in an effort to reduce assembling a crane and
9 having one designated spot, but needing to impact --
10 walk the crane, say, by four or five different turbines
11 impacting that vegetation. So, what we're trying to do
12 is identify areas that would be, in the future, crane
13 assembly areas, their service area, but preserving, to
14 the extent we can, a buffer of trees between these
15 service areas, such that we don't have to walk a crane
16 across the entire ridgeline.

17 Q. And, what is the width of the -- what is the size of a
18 crane assembly area in Kelsey, in the Kelsey area?

19 A. (Cyr) It's quite large. It's probably 30 feet.

20 A. (Phillips) Well, I think we said -- in terms of length
21 or --

22 A. (Cyr) Width.

23 Q. Yes, the dimensions of this. Are there dimensions to
24 this?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Well, we know it can be done on the road,
2 more or less.

3 Q. Uh-huh. Okay.

4 A. (Phillips) So, you know, the idea is to --

5 Q. And, 12 -- we're talking about a 12-foot wide road.
6 So, you're not talking about that now, in that area?

7 A. (Phillips) I mean, I --

8 A. (Cyr) Well, you know, to assemble a crane, these cranes
9 are almost 30 -- 34 feet wide, you know.

10 Q. No, I do understand that. So, --

11 A. (Phillips) The crane assembly, that's a different
12 activity. So, we're talking about road-widening. That
13 is a more frequent need. On the, I would say,
14 comparatively rarer situation where you may need a
15 crane to be up there and assembled, that is a less --
16 that's a second kind of scenario that this plan
17 addresses. In that case, we've selected areas, I
18 think, that were I think -- I believe about 400 feet
19 long.

20 Q. Uh-huh.

21 A. (Phillips) And the full width of the roadway. And, I
22 think in your --

23 Q. The 34 feet?

24 A. (Phillips) Correct. Not the 12 feet. The cranes

[WITNESSES: Cyr~Phillips~Kimball]

1 themselves are 34, 33 to 34 feet wide.

2 A. (Cyr) But the topsoil would stay in the area. The
3 topsoil would not be removed. The crane would be
4 assembled on top of the topsoil, correct?

5 A. (Phillips) Well, no. In the Plan, we've called for
6 rolling it back, and then putting it back, putting that
7 topsoil right back. I mean, there may be instances
8 where you could assemble, in a very flat spot. But, as
9 soon as you start moving it up the slopes, there are
10 going to be challenges.

11 A. (Cyr) Yes.

12 Q. And, how many crane assembly areas are there on Kelsey?

13 A. (Phillips) I believe we have four.

14 A. (Cyr) Four, I believe. Yes.

15 Q. There are --

16 A. (Phillips) Those are shown on this plan as well, Lisa,
17 if you --

18 MR. ROTH: Yes. Can you --

19 MR. PHILLIPS: Sure.

20 MR. ROTH: -- come and point this out?

21 Because I'm trying to find the 300-foot straight area on
22 these roads, and I'm not finding one of them, much less
23 four. But maybe "straight" is a relative term.

24 MR. PHILLIPS: These crosshatched, you

[WITNESSES: Cyr~Phillips~Kimball]

1 see this area?

2 MR. ROTH: Yes. It says "Crane assembly
3 and/or a walk".

4 MR. PHILLIPS: Yes. So, in this
5 particular case, the crane assembly area is the straight
6 stretch from between here [indicating], to this area here
7 [indicating]. And, then, it would be allowed to walk to a
8 certain, like I say, a service set, which would be 14.
9 And, so, these areas here [indicating] are areas where --
10 are the walk-through areas. I don't -- I think we may
11 have even provided John something that indicates the
12 location of the assembly area versus the walk-through
13 area. I mean, the impacts are more or less the same,
14 but -- potential impacts.

15 BY MS. LINOWES:

16 Q. I'm sorry, Tyler. Can you show where the 400-foot area
17 is again, the 400-foot stretch?

18 A. (Phillips) Well, don't quote me on the number.

19 MR. ROTH: From here [indicating], to
20 there [indicating].

21 **CONTINUED BY THE WITNESS:**

22 A. (Phillips) I mean, that's my rough idea.

23 BY MS. LINOWES:

24 Q. Is it to here [indicating]?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Yes.

2 Q. Okay.

3 A. (Phillips) Yes. It would start here [indicating].

4 And, you can -- you can go by road station, each of
5 these is 100 feet. So, 100, 200, 300, 400. And, then,
6 they would enter in to do their work.

7 Q. So, you would roll back this soil. Then, it would --
8 the crane will be assembled. And, then, that would be
9 the case for the duration of the repairs. And, then --
10 now, the area where it's walking, it doesn't need
11 34 feet?

12 A. (Phillips) It does need 34 feet.

13 A. (Cyr) It does.

14 A. (Phillips) So, that's -- What we're saying is, this
15 would be -- these crosshatched areas are areas where
16 the topsoil would be rolled back. Work is done, let's
17 say, if it was on Turbine 14, when they're completed,
18 they would haul the crane down utilizing the widened
19 road, which is required. And, they would roll the
20 topsoil back and cover it with mulch, allowing it to
21 naturally revegetate. And, what our Plan has done,
22 what we're calling for in the Plan, is that the trees
23 that are on here [indicating], presently today, have
24 been planted, are growing, that we would take these

[WITNESSES: Cyr~Phillips~Kimball]

1 trees and put them in other adjacent areas that we've
2 identified on that Plan.

3 BY MR. ROTH:

4 Q. So, you would go out there now and remove those trees?

5 A. (Phillips) We would go out -- no. The trees in these
6 crane assembly areas exist in almost all locations.
7 They exist today. They would continue to exist. And,
8 if there is never a need to either assemble a crane
9 here or walk this area, those trees would continue to
10 grow. What we're proposing is, in addition to those
11 trees, we will plant kind of their -- we will mitigate
12 by planting the same number of trees that he could
13 impact, we will plant those today. So that, even if
14 these are impacted, there is still a equivalent number
15 of trees. If they're never impacted, there will be
16 more trees. That there will be both trees that lie
17 within an unimpacted assembly area, as well as the ones
18 that we plant.

19 BY DR. KILPATRICK:

20 Q. But, once you have failure, and you have to do a crane
21 walk, then we have a 34-foot area that is not
22 vegetated, until it naturally revegetates?

23 A. (Phillips) Correct. Correct. Yes.

24 BY MR. ROTH:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. And, getting the crane parts up to the crane assembly
2 area, that can be accomplished with the 16-foot road
3 that's going to be --

4 A. (Phillips) Wider --

5 (Court reporter interruption - multiple
6 speakers at the same time.)

7 MR. PHILLIPS: I'm sorry.

8 BY MR. ROTH:

9 Q. You're proposing to reduce the road to -- or, increase
10 it to 16 feet.

11 A. (Phillips) Uh-huh.

12 Q. And, you've said they are not going to disturb anything
13 on either side of -- you know, you're not going to
14 change that 16 feet ever again. So, what I'm asking
15 is, and I think you answered this, is if you need a
16 34-foot wide crane assembly and walk path up at the
17 top, you know, in these crane assembly areas, you will
18 be able to get the crane components to that location on
19 the 16-foot wide path, is that correct?

20 A. (Phillips) Yes.

21 A. (Cyr) Yes. That's correct.

22 Q. You will not need to increase the 16 to 34 or some
23 other dimension in order to get the stuff up there?

24 A. (Phillips) Correct.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) That's correct.

2 BY MS. LINOWES:

3 Q. So, if you have four turbines -- rather, crane assembly
4 areas on Mount Kelsey to service Turbines 8 through 17,
5 how many turbines are you anticipating any one of those
6 servicing?

7 A. (Phillips) I don't know if it's written down somewhere.
8 But, I mean, it -- I know how it would split. I
9 mean, --

10 MR. IACOPINO: Is it apparent on that
11 plan?

12 MR. PHILLIPS: It is apparent on the
13 plan. I could go through here and tell you which service
14 areas are associated with each.

15 MR. IACOPINO: Is it on a legend or
16 anything that might --

17 MR. PHILLIPS: I thought we did provide
18 that, actually.

19 DR. KILPATRICK: There was a table
20 somewhere, I believe.

21 MR. PHILLIPS: Yes, I believe there was
22 a table.

23 MR. CYR: I had put out an e-mail to
24 show that --

[WITNESSES: Cyr~Phillips~Kimball]

1 DR. KILPATRICK: I saw it somewhere.

2 MR. CYR: Yes.

3 MR. WARNER: I believe that was also
4 produced in response to Ms. Linowes' data requests.

5 MR. CYR: Yes. That's the crane
6 assembly area out by Turbine 15, Turbine 15, 14, and 13.

7 MS. LINOWES: Oh, it was. I'm sorry.
8 You're right.

9 DR. KILPATRICK: I think there's as many
10 as four turbines that could be serviced.

11 MR. CYR: Yes. Yeah.

12 MR. PHILLIPS: And, the numbers in those
13 referred, you could look at the plans, that's the
14 stationing, the roadway stationing.

15 BY MS. LINOWES:

16 Q. That's -- okay, maybe you could help. Maybe I just
17 didn't understand what I was reading when I saw that.

18 A. (Cyr) Yes. That's correct. That's what that is.

19 Q. Can you interpret that for me?

20 A. (Cyr) Yes. So, Turbine 8 could be serviced from
21 station 191.00 to the backside of the pad. So, Turbine
22 8, you can assemble a crane on that pad.

23 Q. Okay.

24 A. (Cyr) Okay. So, you would not have to disturb the road

[WITNESSES: Cyr~Phillips~Kimball]

1 width at all. Providing the road width is 16 feet, we
2 can drive equipment all the way to Turbine 8, which is
3 the last turbine on Kelsey.

4 Q. Uh-huh.

5 A. (Cyr) We can assemble this crane on the pad and not
6 have to disturb seriously any topsoil. Turbine 9 is
7 similar. We can bring all the equipment to Turbine 9
8 pad, and we can assemble the crane in the area of
9 station 174.00 to 177.00. The boom would actually kind
10 of lay over where the trees that were growing. So, you
11 may have a little bit of impact there, but you won't
12 have to widen the road at all.

13 And, then, Station -- well, "Station 3"
14 for a lack of a better word, would service T-10, T-11,
15 and T-12, and that would be station 1 -- what's that?
16 161,000 feet? What's that, that "161"? That's --

17 A. (Phillips) Yes.

18 A. (Cyr) Yes. Okay. So --

19 A. (Phillips) 161.00 feet.

20 A. (Cyr) Okay.

21 A. (Phillips) It was hundred, right.

22 A. (Cyr) Yes, 161.00 feet from the start of the High
23 Elevation Restoration to 166.00 feet.

24 BY MR. ROTH:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Can you just show me on the plan, because I'm looking
2 at Location T-9, and I can't -- there's a match line,
3 I'm not sure where that goes. Does that go up here
4 [indicating]? Does that match line here [indicating]
5 connect to this [indicating]?

6 A. (Phillips) Correct. Yes.

7 Q. So, this is the extension of that?

8 A. (Phillips) Yes.

9 Q. So, there isn't a walk path down here?

10 A. (Phillips) Exactly.

11 Q. Okay.

12 A. (Phillips) I mean, the intent here was to preserve,
13 rather than say "we need to be able to walk
14 everywhere", you know, if we had to get out to
15 Turbine -- to this turbine [indicating], say "Oh, we
16 know we could set it up on Turbine 9." Do we just walk
17 it down here or do we leave this, you know, try to
18 preserve as much as we can?

19 Q. Okay. I'm just trying to make -- you know, get it
20 clear that this match was up here or --

21 A. (Phillips) So, this -- these numbers here refer to
22 these numbers on the plan. These are road station
23 numbers. If you look close, I mean, nonetheless, this
24 would give you the service area of each.

[WITNESSES: Cyr~Phillips~Kimball]

1 MS. LINOWES: Can Peter and I walk
2 away -- do you have two of these, that Peter and I could
3 each have one? Or, you're going to send them to us?

4 MR. WARNER: We could produce those with
5 other documents.

6 MR. PHILLIPS: Again, they are what you
7 have. It's just the color I think helps it a little bit.

8 MS. LINOWES: And, the size.

9 DR. KILPATRICK: And the size.

10 MS. LINOWES: The size.

11 MR. PHILLIPS: The size, too.

12 MS. LINOWES: Okay. I'm almost done. I
13 think I only have a couple more questions.

14 BY DR. KILPATRICK:

15 Q. And, Station 4 would do Towers 13 through 18?

16 A. (Phillips) I'm not so sure, Station 4 --

17 MR. ROTH: "13", "14", "15" it says.

18 MR. CYR: Correct. Yeah, 18 is on Owl
19 Head.

20 DR. KILPATRICK: Okay.

21 BY MS. LINOWES:

22 Q. Now, the section on "Maintenance", this is also on the
23 Revised Elevation Restoration Plan. I don't -- I was
24 looking at the original copy, didn't have a copy on

[WITNESSES: Cyr~Phillips~Kimball]

1 maintenance -- or, rather, a paragraph on
2 "maintenance". And, this says that "Where such
3 maintenance can occur through the use of the gravel
4 roadway surface, any tree trimming that needs to be
5 done should involve reasonable attempts to leave the
6 bottom one to three feet of the tree intact." That's
7 not leaving a whole lot of the tree. I mean, we -- we
8 know that those trees don't grow that high, because of
9 the environmental conditions up there. So, what are we
10 actually saying there? Is the tree going to survive?
11 A. (Phillips) It's my understanding that an additional
12 item that AMC had asked for was that -- was that, if
13 there is need to, as an example, if we get to a crane
14 assembly area, and we're able to assemble a crane
15 without impacting the trees, but that these trees have
16 grown up to be 15 feet high, if possible, rather than
17 destroy all the trees, if we don't need to roll back
18 the topsoil in that particular area, that we would cut
19 the trees leaving, in essence, what I understand AMC to
20 be interested in, is some ground -- some ground cover,
21 some physical cover provided by the lower portion of
22 that tree. This is as opposed to completely destroying
23 the tree. And, so, I think that, in the end, we agreed
24 that we'd do the best we could to trim the trees versus

[WITNESSES: Cyr~Phillips~Kimball]

1 just destroy them. And, I don't know that that
2 specifically refers to any one area. Because I think
3 we said we'd make a good faith effort to do trimming,
4 rather than destruction, to reflect AMC's interest.

5 Q. Okay.

6 BY DR. KILPATRICK:

7 Q. So, I'm trying to understand that. But the tread on
8 the crane, though, when you have to crane walk, is 30
9 feet wide, correct?

10 A. (Cyr) Yes. Thirty-four. Yes.

11 Q. Approximately.

12 A. (Cyr) Yes.

13 Q. So, you can't trim the trees there. It would have to
14 be something outside of that that you might have to
15 trim.

16 A. (Phillips) Right. I mean, there's, you know, there are
17 various other area -- I mean, there's trees growing up
18 not just on the roadway. As these things -- what we're
19 trying to do is address, I think, an omission or a
20 deficiency. There was never a discussion of how
21 maintenance would occur. So, we said "hey, let's not
22 have to come back to the SEC again for something that
23 was contemplated, was discussed." And, so, as far as
24 vegetation maintenance, we said "better to get this in

[WITNESSES: Cyr~Phillips~Kimball]

1 writing now, with an agreed-upon plan, of how we'll
2 deal with things." And, so, we took input from those
3 experts that SEC designated, as well as AMC, who was a
4 party, a signer of the High Elevation, and said "we'll
5 do the best we can." Whether these trees are trees
6 that are trees we plant in the roadway or trees, you
7 know, say a blade needs to come up, and there's an
8 overhang, and we've got to get by, and these trees have
9 grown to be 20, 30 feet high. How do we accommodate
10 some of the stuff that doesn't really -- may not even
11 relate to roadway width. And, the idea is, if we need
12 to trim these down, can we do it and still leave that
13 bottom half growing? And, so, that was really
14 something that was a request by AMC. And, I think
15 that, after a little bit of thinking, Granite agreed to
16 it.

17 BY MS. LINOWES:

18 Q. Okay. On Question -- on my data requests, 16, and this
19 question -- the purpose -- the question asked -- I'm
20 sorry, it wasn't 16. It was -- it had to do with -- I
21 was asking about the environmental -- post-construction
22 environmental. I wrote down "16", but it wasn't that.

23 MS. LINOWES: Bear with me for one
24 second.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: Steve, how are you doing?

2 (Brief off-the-record discussion ensued
3 regarding the taking of a recess.)

4 BY MS. LINOWES:

5 Q. I had asked about the timing, when the turbines were
6 shut off during that first, in 2012, and then again in
7 2013, and it appears that it was during the summer and
8 fall timeframe, late summer/early fall. And, I had
9 asked about the period of time when the turbines were
10 turned off, and was that during the post-construction
11 environmental studies? And, --

12 MR. WARNER: And, which question are you
13 referencing?

14 MS. LINOWES: Yes, I'm trying to find
15 it. It was -- it would have been one of my last ones.
16 Oh, it was Number 6, not 16, --

17 (Court reporter interruption.)

18 MS. LINOWES: It was Number 6.

19 BY MS. LINOWES:

20 Q. "During the dates when the turbines were shut off, what
21 post-construction environmental studies were occurring
22 including, but not limited to bird/bat mortality
23 studies?" The purpose of that question is to try and
24 understand to what extent the turbines being turned off

[WITNESSES: Cyr~Phillips~Kimball]

1 were not giving -- was that affecting the study itself?
2 Were we not getting a realistic view of impacts because
3 the turbines were turned off? That's was my -- that's
4 what I was asking. And, the response was "Granite
5 responds that it has performed no such studies and that
6 the only studies occurring were those studies required
7 [in] Granite's Certificate of Site and Facility." So,
8 I re-ask the question. According to the Certificate,
9 the Applicant was required to perform post-construction
10 bird and bat mortality studies designed by its
11 consultants and reviewed and approved by New Hampshire
12 Fish & Game, and to be conducted for three consecutive
13 years. And, then, also a --

14 MR. WARNER: Lisa, I'm going to object
15 to any question as to bird and bat mortality studies, in
16 that they're beyond the scope of this proceeding and
17 outside the scope of the prefiled testimony or
18 qualifications of the witnesses.

19 MS. LINOWES: Well, the reason I'm
20 asking the question, and maybe you could answer it, the
21 reason I'm asking the question is there -- we are -- one
22 of the thoughts is investigating possible additional
23 mitigation beyond the planting. And, so, we want to
24 understand what, if those studies were conducted --

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. WARNER: If you and I -- you and I
2 can have a conversation off the record after this
3 proceeding is over. But the purpose of today's data
4 session is to ask questions of the witnesses. I'm happy
5 to discuss questions you might have with you afterward.

6 MR. ROTH: I guess I'd like to say
7 something about this. And that is, you know, the
8 post-construction mortality studies, you know, regardless
9 of what Lisa's motives are for getting it, it seems to me
10 that, if the concern about the vegetation plan has to do
11 with impacts on marten, Bicknell's thrush, American
12 three-toed woodpecker, Canada lynx, to the extent that any
13 of those studies have any evidence about the impacts of
14 the Project on any of those species, then they are
15 certainly relevant and should be produced. And, I just --
16 I don't see why you wouldn't produce them.

17 It certainly, it sounds to me anyway,
18 that it's relevant. Because if there was -- if the
19 current, you know, the current road configuration is or is
20 not having an impact on, for example, Bicknell's thrush,
21 maybe there's something in those bird and bat studies that
22 you've been conducting that would provide some evidence of
23 that, that would either support what you're doing here or
24 not. But I think we should have a right to see them to

[WITNESSES: Cyr~Phillips~Kimball]

1 make that judgment, and to see whether we want to
2 introduce them and argue points about them.

3 MR. WARNER: And, Peter, this again
4 seems like an issue that we should address outside the
5 scope of this particular data session. If nothing else,
6 even if you argue it's within the scope of the hearing
7 itself, this is limited to the prefiled testimony of the
8 witnesses and their qualifications. So, again, I'll
9 object to any question outside of that scope as
10 irrelevant.

11 MR. ROTH: Well, we have two witnesses
12 here who have testified, you know, --

13 MR. WARNER: Three witnesses.

14 MR. ROTH: Well, I don't recognize the
15 third one. But there are two witnesses here who have
16 testified that this is environmentally beneficial to do
17 this. It seems to me that those documents are clearly
18 within the scope of today's testimony. And, I'll ask
19 them, you know, "have you done any studies about whether
20 the current road configuration has any impact on
21 Bicknell's thrush?" And, I'm sure he's going to answer me
22 "No." But, then, I don't know what's in the studies that
23 you have done. And, it seems to me that that's an
24 appropriate data request for the -- to be, you know, I'm

[WITNESSES: Cyr~Phillips~Kimball]

1 not saying, you know, "go and find them right now", but I
2 think we have a right to see them and you should produce
3 them.

4 MR. IACOPINO: I think you're right,
5 Peter, in terms of you can certainly ask these questions,
6 if they know, these witnesses, if they know if any studies
7 have been conducted. But the question about -- that Lisa
8 actually raised is "whether the studies" -- "whether the
9 studies that are contained in the" -- if I understand it,
10 and please correct me if I'm wrong, "whether the studies
11 contained in the decision that they were required to do
12 were ongoing at the time that these two turbines may have
13 been down?" And, I suppose, if they -- they know when the
14 turbines were down, I assume, we have their Project
15 Manager here, he should know who was on the site doing
16 studies. I mean, it was a Fish & Game study is my
17 understanding. The studies themselves are not really the
18 issue, it's what was the operation of the Project at the
19 time.

20 MR. WARNER: I guess I'd ask for a more
21 concise question, and then I'll object as needed.

22 MR. IACOPINO: Actually, I thought her
23 original question was pretty precise. The answer, I think
24 you were trying to protect some things, I think. But, I

[WITNESSES: Cyr~Phillips~Kimball]

1 mean, I think her original question was basically -- I'll
2 ask it, I'll take a shot at it, okay? And, I think, Mr.
3 Cyr, you may be the best person to answer it.

4 BY MR. IACOPINO:

5 Q. During the time when I believe it was Turbine Number --

6 MS. LINOWES: It would have been 9 and
7 10.

8 MR. IACOPINO: Yes. But one was for a
9 lightning strike.

10 BY MR. IACOPINO:

11 Q. During the time --

12 MR. ROTH: That was Number 2 -- or,
13 Number 9.

14 BY MR. IACOPINO:

15 Q. During the time that, in August of 2012, when there was
16 a bearing replacement on Turbine 10, --

17 A. (Cyr) Yes.

18 Q. -- okay, was there any wildlife studies being conducted
19 at that time, by New Hampshire Fish & Game or anybody
20 else, to the best of your knowledge?

21 A. (Cyr) Yeah, there were. Correct. Yes.

22 Q. Okay.

23 A. (Cyr) Yes, the pine marten studies were going on. And,
24 I'm not sure of all of the studies that were going at

[WITNESSES: Cyr~Phillips~Kimball]

1 the time, but there was -- there was a number that were
2 going on.

3 Q. Okay. And, then, in mid-August 2013, when Turbine 9
4 was struck by lightning, and you needed to repair the
5 blade, were there any studies being conducted by Fish &
6 Game or anybody else during that period of time?

7 A. (Cyr) Yes.

8 MR. WARNER: And, Mike, I'll just note
9 Granite's standing objection to --

10 (Court reporter interruption.)

11 MR. WARNER: I said "I'll note Granite's
12 standing objection to questions pertaining to wildlife
13 studies."

14 BY MR. IACOPINO:

15 Q. And, the other thing is, is these studies were to be
16 done, I believe, by Fish & Game or somebody that they
17 hired. I guess, are those studies all complete now, to
18 the best of your knowledge?

19 A. (Cyr) No. The bird/bat mortality study is still
20 ongoing. I believe the pine marten has ended, I
21 believe, yes.

22 BY MR. ROTH:

23 Q. Do you have -- are there reports from any of those
24 studies that have been made available to Granite

[WITNESSES: Cyr~Phillips~Kimball]

1 Reliable?

2 A. (Cyr) I would say, yes, there must be some reports out
3 there.

4 Q. Okay.

5 A. (Cyr) I don't receive them myself, personally.

6 MR. IACOPINO: They would have been done
7 by Fish & Game, in consultation with AMC.

8 BY MR. IACOPINO:

9 Q. Dr. Kimball, are you aware of the status of the
10 studies?

11 A. (Kimball) Yes. The Bicknell's thrush study and the
12 pine marten study were completed. And, we've seen
13 copies of them.

14 Q. Okay. So, there are actual reports for those two
15 studies?

16 A. (Kimball) Yes. Yes.

17 Q. And, they -- those reports were published by Fish &
18 Game?

19 A. (Kimball) I don't know that they were published. The
20 pine marten study was conducted, I believe, by a
21 graduate student from the University of New
22 Hampshire.

23 (Court reporter interruption.)

24 MR. IACOPINO: Graduate student.

1 **CONTINUED BY THE WITNESS:**

2 A. (Kimball) And, the Bicknell's study I believe was done
3 by a graduate student at Plymouth State University. I
4 believe those became thesis dissertations. And, those
5 studies were conducted under the auspices of New
6 Hampshire Fish & Game.

7 MR. IACOPINO: Okay. So, we know where
8 to go to get them.

9 MR. ROTH: Well, there is a document --
10 well, no. I think that the Applicant should produce
11 copies of them --

12 MS. LINOWES: It is a requirement in the
13 Certificate.

14 MR. ROTH: -- as a data request. And, I
15 think we have one of them. It appears, that was provided
16 to me, there's a study by Alexej Peder Kelly Siren, dated
17 September 2013, concerning "Population ecology of American
18 marten".

19 BY MR. IACOPINO:

20 Q. Is that the one that you're discussing, Dr. Kimball?

21 A. (Kimball) That is the one I'm referring to, yes.

22 MS. LINOWES: According to the
23 Certificate, Granite --

24 MR. IACOPINO: Wait, wait one minute.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. WARNER: Is that the other study,
2 Peter, which Dr. Kimball referred to?

3 MR. ROTH: We have another one by
4 Clinton Parrish, dated June 2013, "Impacts of wind
5 development on the abundance and distribution of high
6 elevation birds in northern New Hampshire, with a focus on
7 Bicknell's thrush."

8 MR. IACOPINO: And, who was the author?

9 MR. ROTH: Clinton Parrish.

10 BY MR. IACOPINO:

11 Q. Is the Clinton Parrish study the other one that --

12 MR. ROTH: Dr. Kilpatrick had this one.
13 I don't know where he got it.

14 BY MR. IACOPINO:

15 Q. Is the Clinton Parrish study the other one you're
16 discussing, Dr. Kimball?

17 A. (Kimball) I believe that is correct.

18 MR. IACOPINO: So, you have a couple of
19 them.

20 BY MR. IACOPINO:

21 Q. You just said you've never seen them, is that right,
22 Mr. Cyr?

23 A. (Cyr) No, I personally have not. I'm sure our -- well,
24 our environmental group gets them.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: But I think there were
2 questions that you asked, Mike, about the
3 post-construction mortality studies and whether those were
4 ongoing. And, I think the witness said that they were.
5 And, I just have a data request for any reports regarding
6 those studies. I think they were asked -- they should
7 have been responsive to the questions that I asked
8 already, but I would like to have them.

9 MR. IACOPINO: Well, you seem to have a
10 couple of them. But --

11 MR. ROTH: Well, those aren't -- those
12 aren't the post-construction mortality studies.

13 MR. IACOPINO: All right. Okay. I'm
14 going to put that on the list of documents. I don't know,
15 I mean, I don't know why, Matt, you would have an
16 objection? I mean, they were ordered by the Committee. I
17 mean, obviously, if they're not done, they're not done
18 yet. But I don't know why you would have an objection to
19 providing them. Whether or not they're advisable for any
20 purpose, and should be considered by the Committee in
21 whatever its deliberations are in this case, it might be a
22 different issue than whether or not they're discoverable.
23 Unless there's some reason that they're not discoverable,
24 because they are proprietary or something, and, in which

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1 case, what I would ask you to do is file a motion for
2 protective treatment. I can't imagine that that's the
3 case, though. Since they're done under the auspices of -

4 MR. ROTH: Required by the Certificate.

5 MR. IACOPINO: They're required by the
6 Certificate and they're done under the auspices of a State
7 agency. So, that pretty much, I mean, it should be a
8 public document. It should be available to the public. I
9 would imagine, unless there's something unusual about it,
10 I suppose.

11 MR. WARNER: And, to the extent any of
12 them are public documents, I'm sure that all the parties
13 can readily obtain them. And, in addition, I'll --

14 MR. IACOPINO: If you've got them -- if
15 you've got them, provide them, okay? Because that's the
16 easiest way to get this done. Otherwise, we'll be coming
17 back in three weeks, "I can't find the document", "Fish &
18 Game is giving me the runaround", we'll get that. So, if
19 you have them, please provide them.

20 MR. WARNER: I'll confer with my client
21 and we'll respond to them.

22 MS. LINOWES: Mike, there are three
23 conditions that are placed on the Applicant regarding pre-
24 and post-construction studies. The first one,

[WITNESSES: Cyr~Phillips~Kimball]

1 post-construction bird and bat, says "The study shall be
2 conducted for three consecutive years and a full report,
3 with analysis, shall be produced after each completed
4 year." On the pre-construction, it says "Full report,
5 with analysis, shall be submitted after each season of
6 study." And, the third one, post-construction breeding
7 bird, says "it will be done on the first, third, and five
8 years after construction, a full report, with analysis,
9 shall be submitted after each year of study."

10 I don't understand why those shouldn't
11 be --

12 MR. ROTH: So, there should be a fairly
13 good size stack of those studies at this point.

14 MR. WARNER: Are you reading from the
15 Certificate, Lisa?

16 MS. LINOWES: These sections are
17 cut-and-pasted into my questions.

18 MR. WARNER: Okay. Thank you.

19 MS. LINOWES: But they're derived from
20 the Certificate.

21 MR. IACOPINO: All right. And, that's
22 consistent with my recollection. Dr. Kent, who sat on the
23 Committee at the time, essentially formulated, I think,
24 during deliberations, the studies that would be -- that

[WITNESSES: Cyr~Phillips~Kimball]

1 were eventually approved by the full Committee.

2 BY MS. LINOWES:

3 Q. And, then, in follow-up to the questions of whether the
4 turbines were operational, when a turbine is taken
5 down -- or, no, not "when", in this case, when Turbine
6 10 and Turbine 9 were taken down on those two
7 different -- separate occasions, were all of the
8 turbines on that string taken down in order to conduct
9 the maintenance or repairs or were just -- was just
10 that one turbine that was being repaired taken down?
11 So, what we need to understand -- I'm trying to
12 understand the extent to which the Project was
13 operational while those studies were happening.

14 A. (Cyr) Yes. Correct. Just the one turbine was taken
15 down. The rest of the park was operational.

16 Q. Okay. And, is that reflected, is that kind of
17 information reflected in the environmental study?

18 MS. LINOWES: Okay.

19 MR. IACOPINO: He doesn't know.

20 MS. LINOWES: I'm sorry. I think he
21 doesn't know.

22 MR. WARNER: Yes. I'm not sure that --

23 MR. IACOPINO: I don't know if Mr.

24 Phillips knows?

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. PHILLIPS: I don't know.

2 BY MR. IACOPINO:

3 Q. I don't know, maybe Mr. Kimball -- Dr. Kimball, do you
4 know if any of the wildlife studies made any reference
5 to the fact that various -- not "various turbines", but
6 a turbine or two may have been disabled during the
7 course of the study?

8 A. (Kimball) I do not. The Bicknell's thrush and the
9 American pine marten studies were part of the agreement
10 where the Applicant was to provide \$200,000 to Fish &
11 Game to conduct those studies, which I believe, and
12 those are separate than the other three studies I
13 believe you're talking about of bird mortality, bat
14 mortality, *etcetera*.

15 MR. IACOPINO: Okay. All right. Thank
16 you.

17 MS. LINOWES: Thank you, Mike. I'm all
18 set.

19 MR. IACOPINO: Let's take a break. It's
20 about two minutes of noon. How about 45 minutes for
21 lunch? Is that okay for everybody? Or, do you need an
22 hour? Do you need an hour?

23 MR. ROTH: No, 45 minutes should be
24 fine.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: All right. Thank you.

2 DR. KIMBALL: You want me to call back
3 in?

4 MR. ROTH: No.

5 MR. IACOPINO: Yes, if that's what you
6 would prefer to do, Dr. Kimball. Otherwise, we'll leave
7 you on the line and you can chat with us.

8 DR. KIMBALL: Okay. I will call back in
9 at, you're saying 12:45?

10 MR. IACOPINO: 12:45, yes. Thank you,
11 sir.

12 DR. KIMBALL: Okeydoke.

13 (Lunch recess taken at 11:57 a.m. and
14 the technical session resumed at 12:46
15 p.m.)

16 MR. IACOPINO: All right. We have
17 everybody back in the room. Lisa, you were just
18 finishing.

19 MS. LINOWES: Yes.

20 MR. IACOPINO: Did you have any other
21 questions for any of the witnesses, including Dr. Kimball?

22 MS. LINOWES: No more questions.

23 Thanks.

24 MR. IACOPINO: Okay. Peter.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: All right.

2 BY MR. ROTH:

3 Q. Just for my purposes, and a little bit of orientation
4 first, I'm looking at a Google Earth satellite image, I
5 guess, a satellite or aerial, the Project, with Mount
6 Kelsey at the top of the screen. Just so I am -- is
7 this turbine, at the top of the screen, which number is
8 that?

9 A. (Cyr) Would be Turbine 1.

10 Q. On Mount Kelsey?

11 MS. LINOWES: Eight.

12 **BY THE WITNESS:**

13 A. (Cyr) Oh, I'm sorry. That would be Turbine -- Turbine
14 8.

15 Q. That's 8?

16 A. (Cyr) On Mount Kelsey, correct.

17 Q. And, they go in ascending order, 9, 10, 11, 12, 13, 14,
18 15?

19 A. (Cyr) Correct.

20 Q. And, then, there's a couple more down here
21 [indicating]?

22 A. (Cyr) Yes. Sixteen (16) and 17, yes.

23 Q. And, then, these ones, in the second string down here
24 [indicating]?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Are Owl Head.

2 Q. Those are Owl Head. Okay. And, where's the -- in
3 respect to these turbines, roughly, where is the
4 2,700-foot line or are they all above the 2,700-foot
5 line?

6 A. (Phillips) Those are -- they're all above the 27 --

7 Q. Including these two down here [indicating]?

8 A. (Phillips) Those are close to the 2,700-foot line.

9 MR. STAYN: Maybe you can identify them
10 by number, just to --

11 **BY THE WITNESS:**

12 A. (Phillips) Yes. I think 17, the one that's a little
13 further down to your left, I believe that one there
14 would be about the 2,700-foot line.

15 BY MR. ROTH:

16 Q. So, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8. So,
17 everything on this string is above 2,700?

18 A. (Phillips) The ones you referred to, I believe 17 is at
19 the border, but 16 through 8 would be.

20 Q. Okay. And, these pictures here don't -- do they have
21 all of them or is it just -- so, we got 17, 16, 15, and
22 there are pictures all the way through to 8, on each
23 one?

24 A. (Phillips) Yes. Yes, that covers the entire string,

[WITNESSES: Cyr~Phillips~Kimball]

1 from the entire ridgeline, from 17, all the up through
2 8.

3 Q. All the way up. All right. Is there any, as part of
4 this proposal, is there any regrading or changing the
5 orient -- the alignment of the road?

6 A. (Phillips) Just to clarify, when you -- you mean the --
7 there's no -- you mean, the 12-foot wide road?

8 Q. No, no, no. I mean any road. Just the path of this
9 road, --

10 A. (Phillips) Uh-huh. Yes.

11 Q. -- as we see in the satellite, --

12 A. (Phillips) Yes.

13 Q. -- are you going to, you know, straighten this curve
14 out or --

15 A. (Phillips) No, no, no.

16 Q. -- or any of that kind of stuff?

17 A. (Phillips) Not at all. No. We would work entirely
18 within --

19 Q. Within the existing cut?

20 A. (Phillips) Oh, yes.

21 Q. Okay.

22 A. (Phillips) Well within the cut and well within the
23 width of the road, which is further inside that.

24 Q. All right. And, then, in the pictures here, I'm

[WITNESSES: Cyr~Phillips~Kimball]

1 turning to, sorry if I'm making a mess out of your
2 pictures here, but this is 14 and 15. And, these are
3 just examples, but I think that -- I think the other
4 ones have similar -- have a similar question.

5 A. (Phillips) Uh-huh.

6 Q. And, that is, I see there's a crosshatching marking on
7 the plan that the legend calls "Crane assembly and/or
8 crane walk area". And, what I observe is that, in
9 virtually every case, on turbine pads, the crane
10 assembly and/or crane walk area extends off of the
11 gray-colored area, which is described as "Existing
12 roadway to remain".

13 A. (Phillips) Uh-huh.

14 Q. And, what is there beyond the edge of that gray area?
15 And, I see there's some sort of a little scallopy line.
16 Is that the tree line?

17 A. (Phillips) That scallopy line indicates the tree line,
18 as it was shown, the proposed tree line as was shown on
19 the original construction, the approved plans. So,
20 that this shows the limit of, obviously, before this,
21 there was no -- there would be no scallop line, it was
22 all forest. And, what we're showing here is this
23 scallopy line represents the edge of the mature tree
24 line that was proposed in --

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. So, the existing or preexisting tree line forest begins
2 at that scalloped edge, correct?

3 A. (Phillips) Yes. Correct.

4 Q. Or beyond that scalloped edge?

5 A. (Phillips) Exactly. Yes.

6 Q. And, between the gray area, where it says "existing
7 roadway to remain", and the scallopy line, there is
8 what?

9 A. (Phillips) That's an area that has various treatments.
10 And, whether it was stone that was placed as a slope
11 for stabilization or topsoil, grass seed, there's
12 various, you know, it was revegetated per the -- per
13 the AOT permit, the Alteration of Terrain permit.

14 Q. Okay. And, on this page, for example, we have 15 and
15 14 both on it, displayed, and 15 shows a bunch of gray
16 stuff that, to my untrained eye, looks like rocks, off
17 of the edge of the gray paved area.

18 A. (Phillips) Uh-huh.

19 Q. Or, not "paved", existing roadway to remain.

20 A. (Phillips) Uh-huh.

21 Q. Is that a slope with rocks on it? Is that what that's
22 supposed be?

23 A. (Phillips) That's what it's representing, yes.

24 Q. And, what about the sort of gray that doesn't look like

[WITNESSES: Cyr~Phillips~Kimball]

1 rocks, it looks like sort of hatch marks or something?
2 A. (Phillips) Those would be areas that, as I recall from
3 the plans, there are areas where the -- Craig Rennie
4 had originally had concerns about large expanses of
5 rock slopes, and wanted to provide a more suitable
6 corridor that, you know, ungulates or other creatures
7 could cross unburdened, in his opinion, by these rock
8 slopes. And, so, they would have been filled -- the
9 rock would have been filled in with stump grindings or
10 some other organic material to provide a more suitable
11 crossing surface, in his opinion, for these large --
12 Q. For deer and --
13 A. (Phillips) yes. Exactly.
14 Q. -- moose and stuff?
15 A. (Phillips) Uh-huh.
16 Q. Okay. So, over here, at Number 14, it shows there's
17 nothing in that area between the existing roadway to
18 remain and the scallop. Does that mean it's just
19 simply a level area cleared of the preexisting forest?
20 A. (Phillips) Not necessarily. I mean, for clarity here,
21 we haven't shown all of the proposed grades. You would
22 see contours and so forth. So, in that particular, my
23 familiar -- familiarity with that location is that
24 it's -- it has a surface that's starting to regrow

[WITNESSES: Cyr~Phillips~Kimball]

1 trees naturally. But all of these surfaces, where
2 there is not rocks shown, would have been planted with
3 some form of high elevation grass seed that was
4 previously approved.

5 Q. Just the seed, the grass seed?

6 A. (Phillips) The grass seed. The trees, themselves,
7 would be -- are coming back naturally in those
8 locations.

9 Q. Okay. Now, in both of these circles, there's a dark
10 green area, --

11 A. (Phillips) Uh-huh.

12 Q. -- with numbers in a little box.

13 A. (Phillips) Yes.

14 Q. And, what is that supposed to depict?

15 A. (Phillips) The dark green areas, as you recall, we
16 have, if you'll allow me to explain the tier?

17 Q. Please.

18 A. (Phillips) Yes.

19 Q. I was going to ask you about it anyway. So, tell me.

20 A. (Phillips) So, the light green areas are areas that
21 Fish & Game, and I'm doing this in sequence of how we
22 came to this information, the light green areas are
23 areas that, through a meeting with Will Staats, we
24 drove around, he said, "you know, that area there looks

[WITNESSES: Cyr~Phillips~Kimball]

1 pretty good, but could use some trees." And, we were
2 talking about places where we might be able to move
3 these trees off of the roadway into adjacent areas, and
4 he identified the light green areas.

5 What we determined after that visit was
6 that there were still more, the number of trees that we
7 were proposing to move from, say, the roadway, to be
8 planted elsewhere, may exceed those areas that are
9 shown in the light green. And, so, we took Will
10 Staats' initial light green, and we tried to
11 accommodate that the best we could, by coming up with
12 these different "tiered" restoration areas. Will had
13 mentioned that, when we were in discussions, there was,
14 I think, a discussion about placing trees on the pads.
15 And, I think we determined that we needed to check into
16 that, placing -- planting trees on the pad, these
17 turbine pads, we needed to check into that for various
18 considerations. But he thought those were pretty high
19 priority. He said "These are large expanses of gravel.
20 And, our objective here is, really, we want to have the
21 greatest surface coverage by trees as possible." And,
22 so, we felt that these turbine pad locations, shown in
23 the dark green, are the areas that are considered "Tier
24 1", the highest priority of the areas that we

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[WITNESSES: Cyr~Phillips~Kimball]

1 identified with him for tree planting.

2 So, we located own the plans areas that
3 we could remove topsoil and plant trees on the pads,
4 that would not impact future maintenance activities on
5 the pads. I think John worked with Cianbro, some
6 experienced contractors, to determine how much room on
7 the pads would they need without destroying these trees
8 that we propose to plant.

9 So, those are the Tier 1 locations.

10 And, I can, if we want to get into detail later, the
11 Tier 2 areas would be -- are a different hatch. You
12 can see it's a blue box. And, those areas are, if you
13 read the legend, we consider these the next highest
14 priority, because they're areas where there's
15 limited -- areas with limited natural tree growth. So,
16 there would be no planted trees out there, of course,
17 and there is limited natural tree growth. So, in
18 addition to Will Staats' locations, we identified these
19 other areas, by walking the site and looking for
20 locations. The numbers within each of these boxes are
21 the estimated trees that we feel you could plant in
22 these locations.

23 Q. So, those numbers represent the number of trees that
24 would be put in there?

[WITNESSES: Cyr~Phillips~Kimball]

- 1 A. (Phillips) Yeah. It was more of an exercise for us to
2 assure that what, when we looked at our original
3 obligation of what we calculated the number of trees
4 that we had to plant, we wanted to make sure that we
5 had enough location, between the Tier 1, 2, and 3
6 areas, to provide an equivalent number of trees. I
7 think these numbers may underestimate the area that
8 could be planted, but we want to be conservative --
9 excuse me, the number of trees that we plant, we wanted
10 to be conservative.
- 11 Q. So, in a case -- the number indicates the number of
12 trees that you will plant, not the number of trees that
13 will be there when you're done?
- 14 A. (Phillips) Well, --
- 15 Q. So, if, for example, where the number "80" is here on
16 the curve, there may be already trees growing there,
17 just by naturally having seeded themselves?
- 18 A. (Phillips) Oh, yeah, yeah. No, there's hundreds of
19 thousands of trees growing up there.
- 20 Q. Okay. I don't doubt it.
- 21 A. (Phillips) Yes. Okay.
- 22 Q. So, the "80" is simply what you're going to add, not
23 what your end result is going to be?
- 24 A. (Phillips) Correct.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Okay.

2 A. (Phillips) Planted trees. Ones we would plant. Yes.

3 Q. And, if there's no crosshatch indicating the crane
4 assembly and/or crane walk area, these areas without
5 crosshatch will be undisturbed going forward *ad*
6 *infinitum*?

7 A. (Phillips) Well, you know, let me take that in two
8 parts. The areas that are in crosshatch -- they don't
9 have crosshatch, we are still, of course, proposing to
10 widen the road. But the areas that are not
11 crosshatched that are brown, meaning the brown
12 represents the dirt, those areas would continue to have
13 trees. And, we anticipate, based on our analysis here,
14 understanding of maintenance needs for hauling
15 equipment, cranes and so forth, that it's very unlikely
16 we would ever need to disturb those.

17 Q. Okay. And, then, but with respect to the green areas,
18 the light green, the dark green, or the blue boxes, --

19 A. (Phillips) Uh-huh.

20 Q. -- for example, where, in T-15, and there are 105 trees
21 painted in that sort of crescent there, --

22 A. (Phillips) Sure.

23 Q. -- is it your view that those trees need never be
24 disturbed in the future?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) That's my understanding. I didn't do,
2 personally, did not do the -- and John worked with
3 Cianbro to identify.

4 A. (Cyr) Uh-huh.

5 A. (Phillips) I drew up the plan. But I think, you know,
6 John, I don't know if you can speak to that.

7 A. (Cyr) Well, I wouldn't say that they would "never ever
8 be disturbed", depends on how big they get. If they
9 certainly grow to the 20 or 30-foot wide, then it may
10 pose a problem, you may have to trim them.

11 Q. Trim them --

12 A. (Cyr) Depending on how -- but the areas that we
13 identified, providing the trees stay within that area
14 there, we can adequately get a crane in there and do
15 the work we need.

16 Q. All right. Just I'm not holding you to precision here,
17 but --

18 A. (Cyr) Yes.

19 Q. -- with some degree of certainty, the trees in that
20 area, you're not going to need to cut them down to a
21 foot tall in order to do future maintenance activities?

22 A. (Cyr) I would say it's highly unlikely that we'll have
23 to ever disturb them.

24 Q. Well, then, I guess -- so, highly unlikely, but not

[WITNESSES: Cyr~Phillips~Kimball]

1 certain?

2 A. (Cyr) Not at this point. I guess, I mean, I can't
3 predict the future, but --

4 A. (Phillips) Nothing's absolute.

5 A. (Cyr) Yes.

6 A. (Phillips) But the plan was that these trees here
7 [indicating] are trees that would not need to be
8 disturbed in the future.

9 Q. Okay.

10 A. (Phillips) But we're talking about the difference
11 between a stem and a canopy. If you get the canopy of
12 the tree, as John was saying, if the tree gets 20 feet
13 wide and it hangs out beyond this green area, there is
14 the potential that they would have to be trimmed.

15 A. (Cyr) Trimmed, yes.

16 A. (Phillips) The potential. But the point here is the
17 trees, you could -- I think our certainty, high degree
18 of certainty, relates to this area here [indicating],
19 this green crescent area, being an area that does
20 not -- where the tree trunks themselves, in that area,
21 would be forest, planted and allowed to grow to
22 maturity.

23 Q. Okay.

24 BY DR. KILPATRICK:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Did you show an area of Tier 3? I still don't know
2 what it looks like on the map.

3 A. (Phillips) The reason -- I didn't even want to put
4 numbers for Tier 3.

5 Q. Okay. Is it not on the map?

6 A. (Phillips) Oh, no, we did. We did show numbers.

7 Q. Okay.

8 A. (Phillips) So that you will see there, there are
9 numbers on here that are neither associated with these
10 Tier 2, the blue box.

11 MR. ROTH: Oh, yes. For example, here
12 the number 25.

13 MR. PHILLIPS: Yes, the 80, for
14 instance.

15 DR. KILPATRICK: I got it. Yes, I
16 gotcha.

17 **BY THE WITNESS:**

18 A. (Phillips) The reason there is, if you look at the
19 definition, it says "New restoration areas where
20 natural tree seedlings may exist." The problem here is
21 not -- it is one of degree. Is that we estimated that
22 there was a paucity in this location of natural
23 regrowth. But it does one of these [indicating].

24 BY DR. KILPATRICK:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. All right.

2 A. (Phillips) It doesn't follow along. So, we estimated,
3 again, I think conservatively, that we could get 80
4 trees in that location.

5 DR. KILPATRICK: Okay.

6 BY MR. ROTH:

7 Q. In the -- I'm going to go through some of the materials
8 that were provided in response to my requests. And, on
9 number -- Page 3, GRP0003, there's a memo from
10 Brookfield to Resource Agencies, dated March 7th, 2014.
11 And, there's a reference in there to the New Hampshire
12 Natural Heritage Bureau. And, it says "Revisions to
13 the plan to accommodate the concerns of AMC and NHB, as
14 well as other regulatory requirements." Was there any
15 paperwork and correspondence received from the Natural
16 Heritage Bureau?

17 A. (Phillips) I didn't coordinate with them directly. A
18 gentleman from Brookfield, Kyle Murphy, was doing most
19 of the coordination with Natural Heritage Bureau. And,
20 this is 2014, this is in March?

21 Q. Yes.

22 A. (Phillips) Yes.

23 Q. And, do you know what the concerns of the Natural
24 Heritage Bureau were and what they were -- and how they

[WITNESSES: Cyr~Phillips~Kimball]

1 were accommodated?

2 A. (Phillips) I can't tell you specifically what their
3 concerns were. I knew historically what their concerns
4 were.

5 Q. But, in terms of this March 2014 statement, you don't
6 know?

7 A. (Phillips) I can't say for sure.

8 Q. Okay.

9 A. (Phillips) I may refresh my memory, but --

10 Q. And, do you know what was referenced to with respect to
11 "other regulatory requirements"?

12 A. (Phillips) Let me look at the document you're referring
13 to. You had said -- which is this?

14 Q. This is GRP Number 3. And, it's a March 7th, 2014
15 memo.

16 MR. WARNER: I'm not sure that they have
17 that document in front of them, Peter.

18 MR. ROTH: Do you have it?

19 MR. WARNER: I'm not sure I have it
20 easily accessible. Can I just pass it over to show to
21 them and we'll pass it back?

22 MR. ROTH: Well, I'll just tell you what
23 it says.

24 MR. WARNER: Yes. That's fine.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MR. ROTH:

2 Q. It says "Granite has incorporated revisions into this
3 plan to best accommodate the concerns of AMC and the
4 New Hampshire Department of Resources & Economic
5 Development Natural Heritage Bureau, NHB, as well as to
6 maintain other regulatory requirements. Discussions
7 with NHF&G and DES have resulted in no opposition to
8 these proposed plan modifications." So, do you know
9 what the -- the question is, do you know what the
10 "other regulatory requirements" are?

11 A. (Phillips) I do know what that referenced, "other
12 regulatory requirements" relates to there is also the
13 EPA, that we have a Construction General Permit that
14 we're covered underneath, and EPA has certain
15 requirements for stabilization. And, I believe what --
16 I really ought to look at that, I ought to look at
17 this, because I'm going on -- it sounds familiar, but I
18 want to make sure I'm referring to the right thing.

19 (Atty. Roth handing document to Mr.
20 Phillips.)

21 **BY THE WITNESS:**

22 A. (Phillips) Okay. The "other regulatory requirements"
23 would have been related to stabilization, as I recall.

24 MR. ROTH: Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MR. ROTH:

2 Q. In the letter from Attorney Iacopino to Craig Rennie,
3 which was copied to Attorney Pachios and Sigmund --
4 Attorney Schutz. Did you get a copy of this letter?
5 Did you see this letter?

6 A. (Phillips) I don't believe so. From --

7 Q. From Attorney Iacopino to --

8 A. (Phillips) I don't think I have seen that.

9 Q. -- Mr. Rennie, with CCs to a lot of people.

10 A. (Phillips) People have made reference to it.

11 Q. Okay.

12 A. (Phillips) But, as I understand, that was the letter
13 that indicated that hearings between the SEC would be
14 required.

15 Q. Do you know why informing the consultative mechanism
16 that the Applicant employed here, where you brought in
17 AMC and Fish & Game and NHB, presumably, it looks like
18 Army Corps, why nobody contacted my office until March
19 of 2014? Was there any discussion about why we
20 wouldn't talk to Counsel for the Public?

21 A. (Phillips) You know, I can't offer the opinion, or I
22 don't know why. My only thought here is that I think
23 we wanted to get -- that there was a history of the
24 SEC -- you know, initially, we were talking about

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[WITNESSES: Cyr~Phillips~Kimball]

1 trees. And, I think the SEC deferred judgment on
2 trees, as I understand it, to Fish & Game. We knew
3 that Fish & Game had the greatest concerns originally,
4 and were a party to the High Elevation Plan. And, so,
5 I think our assessment was that we would coordinate
6 directly with those parties first, to try to determine
7 whether or not this plan was acceptable. If it wasn't
8 acceptable, trying to involve others seemed probably
9 premature. So, like a lot of these things, where you
10 have multidisciplinary parties involved, it makes
11 sense, I think, to kind of move along incrementally,
12 and make sure that we have a plan that's workable,
13 before we start involving others that might have to,
14 you know, stamp the plan approved or something else.

15 Q. Okay. You hurt my feelings.

16 A. (Phillips) Well, I don't know, just, you know, trying
17 to save time, too, you know.

18 Q. Just kidding. All right. Now, back to this memo, the
19 March 7th memo, there was a reference in here to
20 "maintaining a 25-meter tree setback from turbine pads
21 for increased fire safety". Now, is the 25-meter
22 setback from the turbine or from -- what is the
23 25-meter setback from? Or from the edge of the pad?

24 A. (Phillips) It's -- I drew on the plans, the basis of

[WITNESSES: Cyr~Phillips~Kimball]

1 it, John maybe will answer better, but we drew here 25
2 meters from the turbine foundation.

3 Q. Okay. So, the foundation is --

4 A. (Phillips) Outward, basically.

5 Q. Okay. So, of these new areas where you're planting on
6 the turbine pads, do they still fall outside of that
7 25-meter circle?

8 A. (Phillips) Yes. Yes.

9 Q. Okay.

10 A. (Phillips) You're seeing -- you're seeing here these,
11 this crescent-shaped area, for instance, reflects both
12 the constraint that Cianbro had previously identified
13 in terms of their need for setup, as well as overlaid
14 the additional constraint of this fire setback.

15 Q. And, who -- where does that 25-meter figure come from?

16 A. (Phillips) My understanding was that was some work that
17 maybe Brookfield looked into. I don't know much, I
18 really don't know. I wasn't involved with that part.
19 We did go out and discuss it. But, as far as the final
20 say of it, I think came down to I think Clare --

21 A. (Cyr) Well, I think --

22 (Court reporter interruption.)

23 **CONTINUED BY THE WITNESS:**

24 A. (Phillips) To Clare Kirk, potentially.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Yes. Well, I think at the time we were trying to
2 figure what the setback was, we just basically looked
3 at the turbines as they were per the Project, and we
4 measured what was there now. I believe that's how we
5 came to that 25-meter setback, by what the plan already
6 called for. You had turbines already constructed
7 within 25 meters of the -- and, actually, I think
8 they're almost constructed less than 25 meters, and we
9 extended it to 25 meters, just to be on the safe side.

10 BY MR. ROTH:

11 Q. So that, I guess I'm -- I don't, and maybe it's not
12 that big a deal, but I'm trying -- I'm still -- I think
13 somebody said "Clare Kirk". And, who's Clare Kirk?

14 A. (Phillips) She's a former employee of Brookfield or --

15 A. (Cyr) Yes. She -- Clare was the environmental person
16 at the time with Brookfield. She's no longer with
17 Brookfield.

18 Q. Okay.

19 MS. LINOWES: Peter, could I ask a
20 question?

21 MR. ROTH: Uh-huh.

22 BY MS. LINOWES:

23 Q. Is there a safety plan that's in place that we can get
24 a copy of for the Project, that covers the issue --

[WITNESSES: Cyr~Phillips~Kimball]

1 questions about fire access?

2 A. (Cyr) I'm not aware of it. It's something we could
3 look into and see if we have it. I'm not aware of us
4 have a fire safety plan.

5 Q. Not just fire safety, but a safety plan?

6 A. (Cyr) Yes. Well, I'm not aware of it myself, at this
7 moment. But I'm sure we can look into it.

8 Q. Can it be made available?

9 A. (Cyr) If there is one.

10 MR. WARNER: Yes. You're assuming that
11 there is one. But we'll look and add that to your data
12 requests coming out of this session.

13 MS. LINOWES: Okay. Great. Thank you.

14 MR. IACOPINO: I think that your
15 Certificate required that there be one, in consultation
16 with the County Commissioners.

17 BY MR. ROTH:

18 Q. Now, I'm looking at a memo from Mr. Phillips to Mr.
19 Cyr, Mr. Staats, Rennie, and Clare Kirk, which is on
20 Page 5. And, it's an e-mail. And, it says "We
21 evaluated whether the High Elevation Restoration Plan's
22 prescription of placing humus and planting trees in the
23 roadway may be in conflict with future maintenance
24 activities associated with the Windpark. We agreed

[WITNESSES: Cyr~Phillips~Kimball]

1 that there is no sense simply reinstalling what was
2 impacted from the recent turbine maintenance work, if
3 its longevity would be in question due to future
4 Windpark maintenance work." What future maintenance
5 work were you contemplating when you said that? And,
6 this was August of 2012.

7 A. (Phillips) Just that. Maintenance -- not necessarily
8 anticipated maintenance, I wasn't necessarily aware of
9 that. But I guess the concern was, I mean, from my
10 perspective, was we had seemingly just put down these
11 trees and we're going to have to be impacting them.
12 And, I thought to myself, "Well, we need to come up
13 with a plan, that's acceptable to Fish & Game, to move
14 trees" --

15 Q. But you're going beyond the question.

16 A. (Phillips) Okay.

17 Q. The question was, "what future maintenance?" And, I
18 think the answer was "there wasn't any".

19 A. (Phillips) Yes. There was nothing, nothing that I saw.
20 I mean, I'm not -- understand my role here is kind of
21 more -- I don't have anything to do with planning
22 maintenance or understanding, I don't --

23 Q. Uh-huh.

24 A. (Phillips) -- frankly know much about electronics or

[WITNESSES: Cyr~Phillips~Kimball]

1 anything in the turbines.

2 Q. Okay.

3 MS. LINOWES: But that would be
4 Mr. Cyr's job, though.

5 MR. ROTH: Yes. And, I'll have
6 questions like that for him.

7 MS. LINOWES: Okay.

8 **CONTINUED BY THE WITNESS:**

9 A. (Phillips) That was really a meeting summary -- a
10 meeting, our meeting summary. That e-mail was really
11 more of a summary of our meeting.

12 A. (Cyr) And, this was dated August 30th.

13 A. (Phillips) Yes. We had had a meeting the prior day.

14 A. (Cyr) Yes.

15 BY MR. ROTH:

16 Q. Now, in the e-mail from Mr. Cyr to Clare, August 24th,
17 2012, and you said "We should plan to meet with Will,
18 Craig, and Charles as early as next week and agree on
19 what is acceptable to the agency. At this time, Vestas
20 is responsible to remediate the areas of the road
21 plantings that were tore up to replace the gearbox",
22 and "on WTG 28"?

23 A. (Cyr) Yes. That was -- that was a typo on my part. I
24 said it was "Wind Turbine Generator 28", but it was

[WITNESSES: Cyr~Phillips~Kimball]

1 actually Turbine 10.

2 Q. Okay. So, that --

3 A. (Cyr) Yes. That was a typo. It was done at the time I
4 sent it.

5 Q. Okay. Understood. "And are gearing up Cianbro and M&H
6 Logging to do so soon."

7 A. (Cyr) Yes. Yeah.

8 Q. So, the gearbox thing was done under warranty by
9 Vestas?

10 A. (Cyr) By Vestas, yes.

11 Q. And, so, they were responsible to remediate after they
12 had tore up --

13 A. (Cyr) Yes. At the time this gearbox needed to be
14 replaced, it was under warranty. Vestas would be
15 responsible. They hired Cianbro as the contractor.

16 Q. Okay. And, did Vestas do that work?

17 A. (Cyr) Yes. Yes. Well, actually Vestas hired Cianbro,
18 who hired M&H Logging.

19 Q. Uh-huh.

20 A. (Cyr) Who put the topsoil back. After they had rolled
21 it up, they put it back.

22 Q. Yes. Now, so, the topsoil was restored in accordance
23 with the original plan?

24 A. (Cyr) The top -- yes. Correct me if I'm wrong, Tyler,

[WITNESSES: Cyr~Phillips~Kimball]

1 but the topsoil was put back, I believe we blew straw
2 on it. But, at that point, I don't believe we planted
3 trees, because we started this process of --

4 Q. Okay.

5 A. (Phillips) Yes. Well, I think that the topsoil was --
6 there's, again, tracking our two features of this
7 proposed amendment. One is road-widening, the other
8 is --

9 Q. I'm trying to understand what happened with respect to
10 what's said in the e-mail here. So, let's just stick
11 to that. And, so, Vestas contractors put the topsoil
12 back, is that correct?

13 A. (Cyr) Yes. They brought an excavator --

14 A. (Phillips) In the crane assembly areas. Not the
15 road -- not related to road-widening.

16 A. (Cyr) No, they did. They --

17 A. (Phillips) They did?

18 A. (Cyr) On Turbine 10, yes. They came in with an
19 excavator, and they just pulled all the topsoil back
20 all the way down, all the way down to the --

21 Q. So, when Turbine 10 had to be taken down, --

22 A. (Cyr) Yes.

23 Q. -- they brought in the equipment up the existing
24 roadway, right?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Yes.

2 Q. And, I understand from the Petition that the roads were
3 "windrowed". What does that mean?

4 A. (Cyr) They took a grader and just rolled it over.
5 Windrowed it over.

6 Q. Okay. So, they brought up one of those road grader
7 machines up to make a wider path up the access road,
8 right?

9 A. (Cyr) Yes. Correct.

10 Q. All the way to Turbine 10?

11 A. (Cyr) Correct.

12 Q. And, then, they erected a crane?

13 A. (Cyr) Correct.

14 Q. And, then, when they were done, they disassembled the
15 crane, took everything back?

16 A. (Cyr) Yes.

17 Q. And, then, they -- Vestas employee -- or, contractors
18 came in and replaced the soil?

19 A. (Cyr) Yes. Not so much replaced, but they took an
20 excavator and they just rolled it.

21 Q. They graded it back into place?

22 A. (Cyr) Yes. They just pulled the same soil back to
23 where it was.

24 Q. And, does Vestas have any -- are they still on the hook

[WITNESSES: Cyr~Phillips~Kimball]

1 for anything else with respect to that restoration?

2 Or, did they get a --

3 A. (Cyr) Not that I'm --

4 Q. Did they get a, what do they call it, a certificate of
5 completion or something like that?

6 A. (Cyr) Not that I'm aware of, no. I don't believe
7 Vestas is still on the hook for that, --

8 Q. Okay.

9 A. (Cyr) -- after they put the topsoil back.

10 Q. Now, there was an e-mail from Mr. Staats to Ms. Kirk,
11 Craig Rennie, Charlie Bridges, Mr. Cyr, where he -- and
12 this was dated August 22nd, 2012. And, he suggested
13 "Perhaps we should plant less of the road surface and
14 use the balance of trees on the cut edges. Do you
15 anticipate more of these major turbine changes in the
16 future?" So, I have two questions about that. What do
17 you believe that he meant by "using the balance of
18 trees on the cut edges"? What did --

19 A. (Phillips) I don't understand the word "balance". But
20 I believe what he means is, "let's take the trees that
21 are impacted in the roadway and place them in these --
22 these green areas", for instance. We hadn't defined
23 the green areas at that point in time.

24 Q. So that those are the "cut edges"?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Yes.

2 Q. Okay.

3 A. (Phillips) Yes. Within that scalloped area you talked
4 about.

5 Q. Yes.

6 A. (Phillips) The area between the scallop and the road.

7 Q. Okay. And, then, he asked "Do anticipate more of these
8 major turbine changes in the future?" And, I don't see
9 any correspondence back to him saying "yes" or "no".

10 Do you know whether anybody ever answered his question?

11 A. (Cyr) Yes. Yes, I think so. Because we had
12 conversations with Will, yes. You know, we discussed,
13 you know, the potential for blade damage, lightning
14 strikes.

15 Q. Okay. So, in conversations you had with him?

16 A. (Cyr) Yes.

17 Q. Now, looking at Number 10, at GRP Number 10, and this
18 says "Fall 2012 gearbox replacement schedule". And, it
19 has replacement date, turbine up, turbine down, and
20 then turbine numbers.

21 A. (Cyr) Yes.

22 Q. So, the only turbine on Mount Kelsey that was replaced
23 was Number 10?

24 A. (Cyr) Correct.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. And, do either of you know why the same defect that was
2 experienced at Number 10 was not experienced at all the
3 other turbines on Mount Kelsey? Or, is it latent and
4 about to happen?

5 A. (Cyr) No, it's not. Hansen, the manufacturer of the
6 gearbox, identified that we had only six gearbox that
7 had this defect with this particular bearing. The
8 remainder, 27 turbines, they identified did not have
9 this same defected bearing. So, there's only six
10 identified by Hansen, the supplier of the gearbox.

11 Q. Okay. So, there's no plan to augment this schedule and
12 go out there two years from now and take down the
13 other --

14 A. (Cyr) No. No, there's no need to on the other
15 turbines.

16 Q. All right. Who is "Susan Wooten"?

17 MR. WARNER: That's my assistant.

18 MR. ROTH: Okay. So, she just printed
19 e-mail, is that --

20 MR. WARNER: Yes.

21 MR. ROTH: Okay.

22 BY MR. ROTH:

23 Q. Now, looking at an e-mail from Steven Weber to Clare
24 Kirk in June of 2012. And, in the middle of it, and I

[WITNESSES: Cyr~Phillips~Kimball]

1 don't know if you have this e-mail, but I can show it
2 to you, it says "STEVE", in all caps, "the work as you
3 describe above is underway." And, what he was asking
4 about is "trees scheduled for planting on the cut slope
5 of the Paris switchyard be reallocated to high
6 elevation areas on Mount Kelsey or other high elevation
7 ridgelines that could use additional plantings",
8 *etcetera*. So, this was the initial implementation of
9 the plan after the completion of construction, is that
10 correct? This was June 2012.

11 A. (Phillips) We had a meeting on-site, in which we did
12 look at -- we did look at the High Elevation
13 Restoration area, along with other -- reviewed other
14 post-construction pieces. So, I think that, again, was
15 kind of a summary after the meeting, "Hey, we had a
16 visit with you", I think, at the top, it may refer to
17 kind of "bird and bat studies", and it goes all the way
18 through. And, I think he's referring -- his reference
19 there relates more to the switchyard and some of his
20 desires in other areas. He does reference, I think,
21 moving more trees up into the high elevation area and
22 plant more.

23 Q. Okay. And, so, it says "the work is underway". So, as
24 far as Mr. Weber was concerned, you were moving trees

[WITNESSES: Cyr~Phillips~Kimball]

1 from the Paris switchyard and the Dixville laydown area
2 up to Mount Kelsey?

3 A. (Phillips) I think so -- it could have been that. I
4 saw that, too. And, I'm gathering that was her "the
5 work is underway", it's related to that.

6 Q. And, that was Clare Kirk?

7 A. (Phillips) That's my --

8 Q. The bold type was Clare Kirk?

9 A. (Phillips) Apparently. And, I'm looking at this now,
10 the first -- I saw it last night for -- I hadn't seen
11 it for a long time.

12 Q. Yes.

13 A. (Phillips) But that's my assumption. It's Clare.

14 Q. So, this looks like perhaps her source -- her e-mail
15 question.

16 A. (Phillips) I think what she was saying is, "we have
17 only recently discussed this, but the guys wanted to
18 get the trees in." And, they said "hey, we're" -- this
19 is, again, these are on lower areas of the Project.
20 So, --

21 Q. Do you know how many trees might have been moved
22 according to Mr. Weber's request?

23 A. (Phillips) Yes. It depends on what -- I mean, he was
24 asking for a number of things. He asked that trees

[WITNESSES: Cyr~Phillips~Kimball]

1 instead, for instance, at the switchyard, rather than
2 planting them all across the -- sorry, not the
3 "switchyard", let me back up. At the laydown area,
4 instead of planting them all dispersed, he had
5 suggested, and I think actually, seeing his e-mail,
6 moving all the trees to the edges. So, planting them
7 kind of more densely spaced at the edge of this large
8 laydown area, leaving a grassy area in the middle.
9 This is low elevation. A lot of this was --

10 Q. Yes. Because he wanted -- he wanted open space for
11 deer. But he also said he wanted to move them up to
12 Kelsey.

13 A. (Phillips) In some instances, right. In some --

14 Q. The question is, do you know how many trees he moved up
15 to Kelsey pursuant to his request?

16 A. (Phillips) I know that we moved all of the trees that
17 were supposed be in the other laydown areas up there.
18 I didn't count them personally.

19 Q. Okay.

20 A. (Phillips) But I could tell you approximately how many
21 were moved.

22 Q. Yes. That would be helpful, as a magnitude.

23 A. (Phillips) Yes. Yes. I would basically just take
24 those that were planned for the switchyard and know

[WITNESSES: Cyr~Phillips~Kimball]

1 that they were moved up there. You get what I'm
2 saying?

3 Q. Yes.

4 A. (Phillips) They have procured the trees, and they're
5 ready to plant them in the switchyard. And, all of a
6 sudden, met with the agencies and they say, "you know,
7 rather than plant them down here at 1,000 feet or
8 1,200 feet, let's put them up there."

9 Q. Understood.

10 A. (Phillips) So, I could, yes.

11 Q. Give an order of magnitude of how many trees there
12 were?

13 A. (Phillips) Yes.

14 Q. You don't have that number right now?

15 A. (Phillips) I don't, no.

16 Q. Okay.

17 A. (Phillips) No.

18 Q. And, in the Tier 1, 2, 3, the 5,000 some trees, right,
19 are those trees included in that figuring?

20 A. (Phillips) No.

21 Q. Okay. So, they're just up there somewhere --

22 A. (Phillips) There up there. And, we've been careful to
23 identify -- to separate those from any tree plantings,
24 so that we're not double-counting those.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Uh-huh.

2 A. (Phillips) So, you know, we anticipated that we don't
3 want to have any kind of confusion here.

4 Q. Right.

5 A. (Phillips) So, those trees are reallocated up here.

6 Q. Now, Mr. Cyr, you wrote an e-mail on July 28th, 2012.
7 And, you said that "Beginning on Monday, July 30th,
8 2012, a large crane and 25 tractor loads" -- "tractor
9 trailer loads of crane and turbine parts will work
10 their way up the mountain over a period of a couple of
11 days." And, that was your estimate at that time,
12 right?

13 A. (Cyr) Estimate of what?

14 Q. Of the number of tractor trailer loads.

15 A. (Cyr) Yes. Approximately, yes.

16 Q. Okay. And, do you know how many actually went?

17 A. (Cyr) No. I don't know the exact number.

18 Q. Okay. Were you there when they all went up?

19 A. (Cyr) Yes.

20 Q. Okay.

21 A. (Cyr) I was.

22 Q. Was it -- you know, did it seem like 25 or did it seem
23 like 50 or did it seem like 10?

24 A. (Cyr) No, no, no. It was probably closer to 25, yes.

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[WITNESSES: Cyr~Phillips~Kimball]

- 1 Q. Okay. And, did it seem like an unusually large number?
- 2 A. (Cyr) No, it's -- it was the first time I experienced,
3 you know, witnessed a crane that size myself,
4 personally.
- 5 Q. Uh-huh.
- 6 A. (Cyr) Yeah.
- 7 Q. There was a statement made that the road was going to
8 be "restored from the 34 to 16, except in certain
9 corners". Is there something in the plans that shows
10 which corners?
- 11 A. (Phillips) Yes. We indicated here this is not to
12 scale, just because, you know, it's -- this is a pretty
13 reduced scale. But you can -- I did have them draw.
14 So, here is, for instance, you can see here we said
15 16-foot wide roadway to remain. And, as it comes
16 around this corner, --
- 17 Q. It gets wider.
- 18 A. (Phillips) -- begin taper, from 16 feet to 26 feet wide
19 on the corner, end taper. So, that's the end of it.
20 Then, it's back to the 16 feet.
- 21 Q. Okay.
- 22 A. (Phillips) So that this brown is representative of
23 dirt.
- 24 Q. So, the dirt -- the dirt skinnies out to make --

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Exactly.

2 Q. And, so, the plan says, in each instance, how much is
3 going to -- what that corner is going to look like?

4 A. (Phillips) Correct.

5 Q. Okay. Now, John, you sent an e-mail to someone named
6 "Mike Daigle"?

7 A. (Cyr) Yes.

8 Q. Who is Mike Daigle?

9 A. (Cyr) Mike Daigle was the -- he was the Construction
10 Manager at the time -- well, I say "construction", he
11 was the Maintenance Manager for Cianbro.

12 Q. So, he was Cianbro?

13 A. (Cyr) Oh, no. This is on Turbine 10, it would have
14 been -- he was with Vestas at the time. I take that
15 back.

16 Q. So, he was with Vestas?

17 A. (Cyr) Yes.

18 Q. And, you sent an e-mail to him on, it looks like
19 Friday, August 24th. And, this was after the gearbox
20 swap, I take it?

21 MS. LINOWES: What year? 2012?

22 MR. ROTH: 2012.

23 **BY THE WITNESS:**

24 A. (Cyr) Okay. You said "August 24th".

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) "We are currently entering into"?

2 BY MR. ROTH:

3 Q. Yes.

4 A. (Cyr) Okay. Yes.

5 Q. And, this, and correct me if I'm wrong, but this sounds
6 like somewhat of a response to Mr. Staats' comment
7 about "moving trees from the roadway to the cut bank",
8 or whatever he called it, the "cut areas". And, you
9 say "The agency has raised a concern that the existing
10 plantings are not doing well in the roadway, and that
11 it may be in the best interest of the environment to
12 allow us to replant the new trees on the side slopes of
13 the mountain."

14 A. (Cyr) Okay.

15 Q. Is my assumption correct that this was your response or
16 you're identifying Mr. Staats' suggestion that "trees
17 be moved from the road to the cut area", or however he
18 described it?

19 A. (Cyr) Yes, I would say that was correct. He had met
20 Tyler and I and --

21 (Court reporter interruption.)

22 **CONTINUED BY THE WITNESS:**

23 A. (Cyr) Myself, Tyler, Clare Kirk, and Will had met, and
24 I was just echoing, I think, Will's concerns.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MR. ROTH:

2 Q. Okay.

3 A. (Cyr) Yes.

4 Q. And, what do you think -- what did you mean or what do
5 you think the agency meant by saying they "are not
6 doing well in the roadway"?

7 A. (Cyr) You know, I'm not really clear at the time
8 where --

9 Q. Is it -- were the trees, seedlings or plantings dying
10 in the roadway?

11 A. (Cyr) You know, I'm not sure. I'm not sure exactly
12 what my thought process was there by "not doing well".
13 It could possibly be that some of them were dying.

14 Q. I mean, having been up there any number of times, would
15 you say that the trees were not doing well in the
16 roadway or they were doing well in the roadway?

17 A. (Cyr) No, they were doing well. I mean, we met the
18 75 percent, right, we had -- 75 percent of them had to
19 do well, and --

20 A. (Phillips) There are certain areas that do better than
21 others.

22 A. (Cyr) Yes.

23 A. (Phillips) I think, also, what Will had, my
24 understanding when we met with him, and I don't know if

[WITNESSES: Cyr~Phillips~Kimball]

1 this was prior to drafting that, but was that Will was
2 saying, "you know, in addition to your needs, the trees
3 might do better planting them on the sides than in this
4 roadway." Whether it's -- I mean, Will is a former
5 forester. So, he's pretty familiar with that stuff.
6 And, I think he may have questioned the ability of the
7 trees to take in the roadway.

8 MS. LINOWES: That's a very different
9 characterization than the words used in that memo, though.

10 MR. ROTH: Yes, and I agree, but I'm not
11 going to quarrel about that.

12 MR. PHILLIPS: Well, I shouldn't
13 speculate on what he thought about. I was trying to
14 reiterate what our discussion entailed.

15 BY MR. ROTH:

16 Q. All right. Now, we were provided a copy of a marten
17 study. Have either of you seen the marten study?

18 A. (Cyr) I have not.

19 Q. No?

20 A. (Phillips) I have looked at it briefly online.

21 Q. Okay. And, there is a paragraph in there where the
22 scientist who conducted this study said "Current and
23 future threats to marten populations include logging,
24 wind development, and climate change, but wind farm

[WITNESSES: Cyr~Phillips~Kimball]

1 development is the most immediate threat to high
2 elevation habitat." Do you agree with that statement?

3 A. (Phillips) I'm not a -- I don't know that I'm a
4 biologist that can make that kind of assessment. I
5 don't have that experience.

6 Q. Okay. Mr. Cyr?

7 A. (Cyr) Neither do I. I do not have the experience.

8 Q. And, on the next page, the scientist said "Marten are
9 sensitive to landscape fragmentation, with occupancy
10 rate dropping sharply in landscapes comprised of", I
11 think this -- I'm terrible at math, "greater than
12 30 percent non-forested habitat." Do either of you
13 agree with that statement?

14 A. (Cyr) I don't have the expertise to make a comment.

15 A. (Phillips) Me neither.

16 Q. Okay. That's fair enough. He also said "Of concern is
17 that wind farm construction and operation includes
18 permanent roads and turbine pads that would fragment
19 and reduce high elevation habitat and increase edge
20 favored by many generalist species. Further, high
21 elevation roads would presumably expose the forest to
22 increased windthrow along road edges." Do you agree
23 with that statement or those statements?

24 A. (Phillips) Was that his -- was that his hypothesis or

[WITNESSES: Cyr~Phillips~Kimball]

1 is that his conclusion? I guess I'm --

2 Q. I just asked the question. Do you agree with the
3 statement? "Of concern is that wind farm construction"
4 -- would you like me to read it again?

5 A. (Phillips) Please.

6 Q. "Of concern is that wind farm construction and
7 operation includes permanent roads 20 to 50 meters wide
8 and turbine pads 80 to 100 meters wide that would
9 fragment and reduce high elevation habitat and increase
10 edge favored by may generalist species. Further, high
11 elevation roads would presumably expose the forest to
12 increased windthrow along road edges."

13 A. (Cyr) Yes, I don't have the expertise myself to
14 comment.

15 A. (Phillips) Yes. I think there's some incorrect
16 statements in there. So, I guess I wouldn't agree.

17 Q. Oh. Okay.

18 A. (Phillips) The road widths are not 50 meters wide.

19 Q. All right. So, factually, you agree with the 20 to
20 50 -- that none of these roads are 20 to 50 meters
21 wide?

22 A. (Phillips) Yes. The roads aren't 20 meters wide or
23 50 meters wide at all.

24 Q. Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 DR. KILPATRICK: But the pads are.

2 BY MR. ROTH:

3 Q. Are the pads 80 to 100 meters wide?

4 A. (Phillips) The pads -- they may be, yes.

5 Q. Okay.

6 A. (Phillips) And, then, the last one, as far as, again,
7 I -- the last statement he makes regarding --

8 Q. "Expose the forest to increased windthrow along road
9 edges."

10 A. (Phillips) There is some increased windthrow, of
11 course.

12 Q. Okay.

13 A. (Phillips) I have a little more expertise on that than
14 I do climate change.

15 Q. Okay. He also stated "These roads represent a
16 potential travel corridor for terrestrial predators, as
17 they are gradually sloped and compacted from regular
18 grooming." Do you agree with that statement?

19 A. (Phillips) I guess I don't have the expertise of
20 winter -- of knowledge of winter travel by these, these
21 organisms. My knowledge --

22 Q. He didn't specify "winter travel", he just said --

23 A. (Phillips) Well, that's what he's referring to, right?
24 "Grooming", he's referring to --

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) He said "compaction", right?

2 A. (Phillips) -- compaction of the snow.

3 Q. Fair enough. Have you seen terrestrial predators using
4 the Project roadways?

5 A. (Cyr) I have not.

6 Q. Foxes, coyotes?

7 A. (Phillips) I have seen foxes way down low, a den. But
8 well below, there's a family of foxes right along the
9 existing roadways that have always been there.

10 Q. Do they steal golf balls?

11 A. (Phillips) No. No. They get a lot of attention,
12 though. I mean, they would sit there and wait. But,
13 no.

14 Q. I played on a golf course in Hillsborough, where
15 between the two -- in the middle of the fairway, while
16 you were walking towards your ball, a fox would come
17 out and take it.

18 MR. IACOPINO: That would be good for
19 me.

20 MR. ROTH: What do you do with that? Is
21 that a mulligan?

22 MR. IACOPINO: Train that fox to run the
23 ball right up to the hole and drop it in.

24 MR. PHILLIPS: But, to answer your

[WITNESSES: Cyr~Phillips~Kimball]

1 question, no, we have not up in the -- I have not, in the
2 high elevation area, seen anything, anything. And, I
3 spend -- I'm up there at least once a week. And, I have
4 not seen anything that I would indicate is a --

5 MR. ROTH: Okay.

6 MR. PHILLIPS: Yes, something that I
7 would be familiar with for a predator of any --

8 MR. ROTH: You know, what's interesting
9 is, and this is just a comment, in other projects, the
10 developers are very fond of showing photographs of all the
11 wildlife using the turbine pad areas.

12 MR. PHILLIPS: Well, that's a different
13 question, though. I mean, I have seen a lot of wildlife,
14 but I have not seen predators.

15 MR. ROTH: Haven't seen coyotes or --

16 MR. PHILLIPS: I have photos of moose.
17 And, I have photos of a lot of stuff that's up there.

18 MR. ROTH: Yes.

19 MR. PHILLIPS: But not -- not predators.

20 BY MR. ROTH:

21 Q. All right. So, now, Mr. Phillips, looking at your
22 resumé that was attached to your testimony.

23 A. (Phillips) Uh-huh.

24 Q. It appears, let's see, --

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. WARNER: Peter, can I jump in here
2 and note that, on the way here, Mr. Phillips noted that he
3 has one very minor amendment he'd like to note to his
4 prefiled testimony. It may be helpful if he explains
5 that, before you jump into the testimony itself?

6 MR. ROTH: Sure.

7 MR. PHILLIPS: It was something that, I
8 can -- it's on Page 4, Line 17. And, it's -- it just was
9 poorly worded, and actually can have a different meaning
10 than I intended. I don't know if you're following along
11 here, but the present wording is "To minimize the impact
12 on any crane assembly area, however, Granite would plant
13 immediately, in designated Tier I through III Restoration
14 Areas", and so on. In there, my intent is to describe the
15 notion that we are planting trees that are to mitigate the
16 effects of using these crane assembly areas. So, I would
17 prefer the language "to offset an impact associated with
18 using any crane assembly areas". So, I would strike -- I
19 don't know, I mean, I can -- how you best want to take
20 this for the record, but I would --

21 MR. ROTH: You need to submit a --

22 MR. PHILLIPS: Okay.

23 MR. ROTH: -- a revised testimony. That
24 would be my preference anyways.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: That would be mine as
2 well. So that --

3 MR. WARNER: And, we'll do so. I just
4 wanted to make sure that --

5 MR. ROTH: Okay.

6 MR. WARNER: -- during the questioning
7 today, the parties are aware.

8 BY MR. ROTH:

9 Q. Now, your experience and training seems to be focused
10 on stormwater management, water quality, erosion and
11 sediment control, subsurface issues. Is that fair to
12 say, based on your resumé?

13 A. (Phillips) Yes.

14 Q. Okay. And, do you have any Endangered Species Act
15 experience?

16 A. (Phillips) You mean -- I'm familiar with it.

17 Q. Uh-huh.

18 A. (Phillips) But, you mean, have I had projects where we
19 had numerous endangered -- this Project had probably
20 the most endangered or threatened species of a project
21 I've dealt with.

22 Q. Okay. Or wildlife management or biology training or
23 experience?

24 A. (Phillips) I have taken some courses in college. And,

[WITNESSES: Cyr~Phillips~Kimball]

1 with aquatic resources, I have significant experience.

2 Q. Okay.

3 A. (Phillips) But, as far as marten and those, no.

4 Q. All right. Back to your testimony, and Page 2, Lines 9
5 and 10, you said "it is now apparent that Mount Kelsey
6 roadways must be permanently widened and horizontally
7 realigned." Now, I understand you explained what you
8 meant by "horizontal realignment", I think. But what
9 is it that has made it now apparent that they "must be
10 permanently widened"? Was it the two instances of
11 bringing cranes up, the bearing replacement and the
12 blade failure, the blade lightning strike?

13 A. (Phillips) Yes. I would say it's the -- the frequency
14 of those experiences has called into question whether
15 or not you could maintain the widths as provided and
16 still meet the objectives of the High Elevation
17 Restoration.

18 Q. Okay. And, you say on Page -- on Line 12 and 13 of
19 that page, you want to -- "by planting tree seedlings
20 in adjacent high elevation where they will have the
21 most benefit". What you do you mean by "the most
22 benefit"?

23 A. (Phillips) Well, --

24 Q. What is that based on and what benefit are you talking

[WITNESSES: Cyr~Phillips~Kimball]

1 about?

2 A. (Phillips) Well, my understanding is that the objective
3 of replanting these trees is to try to restore forest
4 cover in areas that were cut. And, I think, in there,
5 I'm comparing the idea of planting in a roadway, which
6 may be subject to disruption at varying frequencies,
7 that those trees will never reach the maturity that
8 they need to form a dense stand. Whereas, if we were
9 to relocate them to other areas, we can form that dense
10 stand, in an area that's maybe only 20, 30 feet away
11 from the roadway. In doing so, we're able to have kind
12 of a better effective accomplishment of a habitat
13 objective.

14 Q. And, what do you believe is the importance of a "dense
15 stand"?

16 A. (Phillips) Well, I am not a wildlife biologist, but my
17 understanding is really informed more from taking a
18 look at that marten study. It talks about that snow
19 compaction and so forth, that Bicknell's likes areas of
20 fir waves, the dense, so they can forage on the ground
21 and feel somewhat protected. I don't -- I'm not aware
22 of the habitat needs of the three-toed woodpecker.

23 Q. So that --

24 A. (Phillips) It's really, my understanding is, that they

[WITNESSES: Cyr~Phillips~Kimball]

1 wanted to recreate, we're not trying to create new
2 habitat, that we're trying to replicate the uniqueness
3 of that high elevation habitat. The most unique
4 element, as I understand it, is that dense stand of
5 spruce fir.

6 MS. LINOWES: Peter, may I ask a
7 question? May I ask a question?

8 MR. ROTH: Yes. Please.

9 BY MS. LINOWES:

10 Q. You keep coming back to the fact that there's going to
11 be turbine failures, you're anticipating them in the
12 future, but you haven't given any suggestion of that.

13 MR. ROTH: I'll be getting into that in
14 a few.

15 MS. LINOWES: Oh, you will?

16 MR. ROTH: Oh, yeah.

17 MS. LINOWES: Okay.

18 MR. ROTH: Yes.

19 MS. LINOWES: Then, I'll hold my
20 questions.

21 DR. KILPATRICK: Could I ask a question,
22 Peter?

23 MR. ROTH: Sure.

24 BY DR. KILPATRICK:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. So, you've talked about the width of the roads, and
2 we've talked about the width of the cranes and the
3 trucks going up. What about the height that's needed?
4 So, I mean, the part of the -- part of the forest is to
5 get the closed canopy. So, is it going to be possible
6 to have closed canopy over these roadways and still
7 move vehicles up there?

8 A. (Phillips) I believe so. At 7 feet on center, I don't
9 believe that -- I mean, we talked about trimming.

10 Q. Right.

11 A. (Phillips) So, we talked about tree trimming.

12 Q. So, you could keep a tunnel essentially open?

13 A. (Phillips) Well, I think that if you, maybe this is
14 overly simplistic, but I think of the air space above
15 the road, this 12-foot wide road, or in the case of a
16 16-foot wide road, would be cleared of vegetation. I'm
17 not saying we'd need to do this. But, in simplistic
18 views, I do not view a canopy necessarily existing
19 there. I view this as kind of a clear zone.

20 Q. Okay.

21 A. (Phillips) And that, as far as needs to -- where we do
22 need to do some trimming, that would otherwise
23 potentially destruct the entire tree down to its base,
24 what we've offered up, as a result of discussions with

[WITNESSES: Cyr~Phillips~Kimball]

1 AMC, is, to the extent we can, that we need to do
2 trimming outside of this roadway, to, say, negotiate a
3 blade or any such thing, is that we try to maintain
4 some vegetation at a one to three-foot level off the
5 ground. Now, that's -- that's where we, you know, in
6 my view, that's something that's a -- we try to best do
7 that. But that's not -- that's different from -- we
8 don't anticipate having to come back and trim the trees
9 that are on -- that are, again, in the air space above
10 this dirt surface, nor the adjacent ones we're
11 planting.

12 Q. So, --

13 A. (Phillips) So, it's really -- my point here is that,
14 you know, we kind of view these, we have not
15 considered, you know, a canopy closure, the "tunnel"
16 you referred to, over the roadway.

17 Q. Right.

18 A. (Phillips) I think that would be -- Because we'd just
19 be back to the SEC again to say, you know, "Hey, we're
20 30 years into this, but now we can't bring something up
21 because of that closure at the top." So, I think, in
22 distinct terms, we view it as kind of, I think, a
23 corridor that we could maintain, with no vertical
24 constraint along that roadway.

[WITNESSES: Cyr~Phillips~Kimball]

1 DR. KILPATRICK: Okay.

2 BY MR. ROTH:

3 Q. In your -- back to on Page 2 of your testimony, you
4 reference your experience, "Much of my work has been
5 involved" -- "has involved assessing a project's
6 effects on water quality and habitat".

7 A. (Phillips) Uh-huh.

8 Q. And, you mentioned a minute ago "habitat for aquatic
9 species", I believe. And, have you, other than this
10 Project here, have you had experience working with
11 habitat for pine marten?

12 A. (Phillips) No.

13 Q. Bicknell's thrush?

14 A. (Phillips) A little bit, yes. A little bit, yes, on a
15 ski area project.

16 Q. What ski area was that?

17 A. (Phillips) Cannon Mountain/Mittersill.

18 Q. And, when you say "a little bit", what do you mean by
19 that?

20 A. (Phillips) Well, what I mean is that I'm involved with
21 that project and the various permits. And, when we
22 identified that there are concerns related to certain
23 habitat, certain species, that we look and see what
24 kind of -- how can we continue to meet the project

[WITNESSES: Cyr~Phillips~Kimball]

1 objectives, but be creative in such a way as to
2 minimize any effects on that species. So, whether --
3 if it was Bicknell's, we might, in this instance, try
4 to keep -- keep kind of an edge that's -- we allow the
5 contractor to do a little bit more, we don't need a
6 straight-edge line, that having a scalloped-edge, that
7 thinning out trees and letting a flourish of growth
8 along the edge is probably a good thing. But I guess
9 what I'm saying is, I'm not the scientist who went out
10 and said "there's Bicknell's, we need this kind of
11 mitigation."

12 Q. Okay.

13 A. (Phillips) It's more just as, once I'm on that kind of
14 a project, I know there's, you know, --

15 Q. You're responding -- is it fair to say that you're
16 responding to mitigation recommendations made by others
17 or implementing them?

18 A. (Phillips) Well, it may be -- yes, in that we may have
19 looked at what past other projects have been required
20 to do. But we usually try to come to a project with
21 ideas first of how we'll preempt that concern. So, I
22 guess what I'm saying is, we don't wait until someone
23 says "you've got a mitigation need up here."

24 Q. I understand. What I'm getting at is, is your role in

[WITNESSES: Cyr~Phillips~Kimball]

1 this process one of implementing, and I'm not saying
2 you're going to wait until Fish & Game complains about
3 Bicknell's thrush. But, once your team has identified
4 a Bicknell's thrush issue at Cannon, --

5 A. (Phillips) Uh-huh.

6 Q. -- are you the person they turn to for information
7 about how to implement those concerns?

8 A. (Phillips) Yes, we work as a team. And, I might offer
9 suggestions.

10 Q. Okay. What about Canada lynx? Do you have experience,
11 other than this case, working on habitat for them?

12 A. (Phillips) No. No.

13 Q. Okay. American three-toed woodpecker?

14 A. (Phillips) No. No.

15 Q. Any other species that are endemic to high elevation
16 areas like this one that I haven't mentioned?

17 A. (Phillips) Terrestrial? Terrestrial? No, I wouldn't
18 say I'm -- no.

19 Q. Okay. Are you aware of, in any instance, whether
20 during this process anybody has mentioned concerns
21 about habitat for Bicknell's thrush, Canada lynx or
22 three-toed woodpecker?

23 A. (Phillips) Yes.

24 Q. Okay. And, who was that?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) From my recollection, and, again, I was not
2 involved in the original SEC process, but --

3 Q. Not in the original SEC process, in this process?

4 A. (Phillips) Okay. The question is, am I --

5 Q. Formulating the revisions to the Plan, preparing
6 testimony, that kind of thing, has there been attention
7 paid, in this particular subset of the process, --

8 A. (Phillips) Sure. Certainly. I mean, --

9 Q. -- to Bicknell's, etcetera?

10 A. (Phillips) Yes. I guess I'd start by saying, we've
11 deferred to those that we understood to have the
12 expertise. That being Will Staats, Jill Kilborn, and
13 various other Agency staff that have gone out there.
14 We listened to what they wanted. They had talked
15 about, you know, there was even a discussion about "can
16 we, you know, create more snags and complexity and so
17 forth?" So, we would say "Hey, contractor, when you're
18 going to put out this dirt, if you've got a couple
19 stumps or root wads or something, you don't have to --
20 this doesn't have to be broom-clean like a sidewalk.
21 It's good to have complexity." So, to some extent,
22 that kind of stuff informs our decision.

23 Q. But, in this, the Revised High Elevation Plan, --

24 A. (Phillips) Uh-huh.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. And, if I'm not giving it the right name, forgive me.

2 A. (Phillips) No.

3 Q. But is there anything in there that you're aware of
4 that's specifically focused on the issues of habitat
5 for Bicknell's, lynx or the woodpecker?

6 A. (Phillips) Only to --

7 Q. Or is this all about pine marten?

8 A. (Phillips) No. Only to the extent that, if those
9 species are present in the natural habitat, our
10 interest in trying to return the restored portion back
11 to natural habitat should provide similar type of
12 habitat for all those species that we know exist.

13 Q. Okay. But there's nothing specifically in here that
14 says that?

15 A. (Phillips) That says that was our objective or --

16 Q. Yes.

17 A. (Phillips) I don't know if it -- I don't know. I'd
18 have to look and see. I mean, I think it talks
19 about -- I think our plan refers to the idea of
20 recreating high elevation habitat. I don't know that
21 we specifically said in the Plan that "this habitat is
22 needed for these various species", but I think that's
23 implied. That was the -- we did mention, in terms of
24 stabilization, we did refer to the use of straw mulch

[WITNESSES: Cyr~Phillips~Kimball]

1 to address that concern. But, as far as tree cover,
2 you know, as I mentioned, it's generally trying to
3 recreate the similar habitat for --

4 Q. But you don't know really what the habitat requirements
5 might be for Bicknell's thrush, lynx?

6 A. (Phillips) Generally, I do. But yes, I'm not an expert
7 at it, but I understand that they like a dense forest.
8 I believe, actually, that the dense forest is really
9 preferred by the Bicknell's thrush, is my
10 understanding. Whereas pine marten don't necessarily
11 need that dense forest, they can have a mixed forest.
12 But, up on this particular piece of property, again, if
13 there's -- if these -- if it truly is inhabited by
14 these species, then our recreating a similar thing, one
15 only -- in my mind, to create at least the things we
16 have control over, the forested habitat, one only has
17 to walk into the forest and determine "What are we
18 looking at?" "What are we trying to recreate?" And,
19 in those cases, it's generally a dense stand of trees,
20 spruce fir.

21 Q. What do you base your opinion about what is good for
22 Bicknell's thrush or woodpeckers or Canada lynx?
23 What's --

24 A. (Phillips) My -- maybe I'm repeating myself here. My

[WITNESSES: Cyr~Phillips~Kimball]

1 understanding is that those species are present up
2 there.

3 Q. I understand. But what is your -- that's your
4 understanding. But what do you base your
5 understanding? Where do you get that understanding?

6 A. (Phillips) From the record, from the original SEC
7 record, that indicated it was a suitable habitat for
8 those, for those species. I have not come to my own
9 opinion, if that's what you're asking about. The
10 density of those species, whether, in fact, it is
11 suitable or not, I've -- no, I have not come to that
12 kind of personal opinion.

13 BY DR. KILPATRICK:

14 Q. So, do you equate "habitat" with "forest cover"?

15 A. (Phillips) In this Plan, I think that's the thing we
16 have the biggest control over. So, I do equate "forest
17 cover" with "habitat".

18 Q. Okay.

19 A. (Phillips) Yes. Yes. For those, for the types of
20 species there. I would say "dense forest cover" is
21 what we've been told.

22 DR. KILPATRICK: Okay.

23 BY MR. ROTH:

24 Q. Now, we spoke a while ago about your statement that the

[WITNESSES: Cyr~Phillips~Kimball]

1 work that's being proposed by this new plan "will
2 decrease the overall expanse of gravel within the
3 Project". And, that's in Line 24 on Page 3.

4 A. (Phillips) Uh-huh.

5 Q. And, as I under -- maybe we already went over this,
6 you're going to do a calculation of that for us?

7 A. (Phillips) Uh-huh.

8 Q. To show us how much that is?

9 A. (Phillips) Yes.

10 Q. Okay. Now, the High Elevation Plan itself, did you
11 write this, the document?

12 A. (Phillips) I had significant input on it. The final
13 version, I believe, was Clare Kirk. But I wrote pieces
14 of it, substantial.

15 Q. And, the August 21st version of it, last summer, was
16 that you or Clare?

17 A. (Phillips) It was -- yes, it would have been both of us
18 again.

19 Q. Okay. And, when did Clare leave?

20 A. (Phillips) I'm not sure.

21 A. (Cyr) Not sure, if it was last -- I'm not sure. If it
22 was this past spring or last fall, I'm not clear.

23 Q. And, do you know why she left? Where she went?

24 A. (Cyr) No.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) No. I don't know. No.

2 Q. You don't know where she is?

3 A. (Cyr) No.

4 Q. She's not in the company any longer?

5 A. (Cyr) Not that I'm aware of.

6 A. (Phillips) I don't work for Brookfield. I don't report
7 to her. I report to Kyle Murphy at this point.

8 Q. Now, there's a reference here, you say "Fish & Game
9 determined that the pads are the highest priority
10 location." Did they -- who made that determination?
11 Was that Will?

12 A. (Phillips) Yes.

13 Q. And, do you know whether that he made some sort of a --
14 did somebody ask him to make that determination? Was
15 there an application to get that?

16 A. (Phillips) I think we were in discussions with him
17 regarding, in the -- we had an on-site visit with him,
18 and that would have been in August 2012. And, that
19 visit, he was talking about relocating them off to the
20 sides. And, I think what we tried to determine was,
21 you know, "Will, because we can't pick out all these
22 exact locations, we'd like to have a little insight" --

23 Q. I think you misunderstand my question, and I understand
24 you -- but the question is, did somebody send an

[WITNESSES: Cyr~Phillips~Kimball]

1 application for a determination of some sort to the
2 Fish & Game Department?

3 A. (Phillips) Certainly not an application for a
4 determination, no.

5 Q. Okay. And, was there a written decision from the Fish
6 & Game Department about that, that made that
7 determination?

8 A. (Phillips) Only his -- I mean, my understanding is Will
9 said he was taking responsibility for this in an
10 earlier correspondence, that he would be the one that's
11 acting on Fish & Game's behalf.

12 Q. But, maybe you misunderstand my question, is there a
13 document, that's a written decision from the Fish &
14 Game Department saying that "the highest priority
15 planting location is the turbine pads"?

16 A. (Phillips) Not that I'm aware of, no.

17 Q. Okay. Now, was there any public comment or public
18 notice of Fish & Game's intent to make a determination
19 like that?

20 A. (Phillips) I would doubt if there was such a
21 determination.

22 Q. Okay. Is it fair to say that this was just Will
23 Staat's determination, and not the Fish & Game
24 Department's determination?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) No. I think you could say it was both --
2 that, on that day, it was Will Staats indicating his
3 preference. I think he also, though, was -- he and
4 Jill Kilborn work pretty closely together, and I think
5 he was carrying her concerns for it as well. But, no,
6 I mean, it wasn't a Department -- it wasn't at the top
7 of Fish & Game who decided that.

8 Q. Okay. So, it was Will and Jill? I like that.

9 A. (Phillips) Yes. And, it wasn't -- I mean, Jill --

10 MR. IACOPINO: Went up the hill.

11 **CONTINUED BY THE WITNESS:**

12 A. (Phillips) Jill indicated in the past what her
13 interests were. But it was Will who was the one who
14 identified these green areas we talked about, and that
15 it would be great if those pads were --

16 BY MR. ROTH:

17 Q. Okay.

18 A. (Phillips) -- revegetated.

19 Q. Now, on Page 4 of your testimony, you said it was --
20 you said "Per Fish & Game's advice, areas where no
21 natural or planted seedlings currently exist and where
22 there is natural growth, but are no planted seedlings
23 to date, were also designated for planting." Now, I
24 understand that this was pursuant to your conversation

[WITNESSES: Cyr~Phillips~Kimball]

1 with Will and Jill, did you have your own opinion about
2 that?

3 A. (Phillips) My own opinion is that the area is
4 revegetating quite well on its own. And, that I think
5 it --

6 Q. So, you didn't think it was necessary?

7 A. (Phillips) Well, you have to be specific about what --
8 no. I just felt that, in large part, the area is doing
9 quite a good job revegetating with the spruce fir
10 seedlings that are endemic to the area. And that our
11 -- I think, if I understand your question, is that I
12 think that we came up with a tiered approach to reflect
13 that, in the higher tiered areas, there are no
14 seedlings present. In the lower tiered areas, there
15 may be seedlings present. But we should try to put as
16 much as we can in those areas that don't have either
17 natural or planted seedlings.

18 Q. So, that was Fish & Game's advice, and your opinion was
19 that there was enough going on there already?

20 A. (Phillips) No. All right. My understanding of Fish &
21 Game's interest and their advice is that they wanted to
22 reduce the areas of vast expanse of gravel surfaces,
23 and turn to those, to the extent we can, back to
24 forest. Where that was already being accomplished by

[WITNESSES: Cyr~Phillips~Kimball]

1 nature, I think all of us agreed, Fish & Game, as well
2 as myself and I think Granite, that our efforts should
3 focus on areas that had -- where that natural
4 regeneration was lacking, because that would -- the
5 intent of this is to really get a jump-start. I mean,
6 if we did nothing, planted no trees, eventually this
7 would grow back. But the idea here of planting is to
8 get that jump-start. So, we tiered these planting
9 locations based on the likelihood for that natural
10 regrowth, and said "We're going to focus on the areas
11 that are toughest to regrow." And, I think Fish & Game
12 concurs with that approach.

13 Q. Okay. Fish & Game wanted there to be trees planted
14 where there is natural growth, and --

15 A. (Phillips) But no planted seedlings.

16 Q. -- but no planted seedlings. So, they wanted that
17 designated for planting. And, so, was it your view
18 that you didn't need to do that?

19 A. (Phillips) Yes. My view is that those trees would be
20 better planted somewhere else, to be honest.

21 Q. Okay. That's all. Now, on Page 5 of your testimony,
22 you, and the bottom of Page 4, you indicate that along
23 the roadways in these areas was previously used grass
24 and hay mulch. Now, those were -- that was done

[WITNESSES: Cyr~Phillips~Kimball]

1 pursuant to the original plan?

2 A. (Phillips) I'm not sure I understand the question.

3 Yes. We followed the original plan when we --

4 Q. Which called for grass, high elevation grass and hay
5 mulch?

6 A. (Phillips) High elevation grass and hay mulch.

7 Q. Okay. And, was using high elevation grass and hay
8 mulch your idea?

9 A. (Phillips) Yes.

10 Q. Okay.

11 A. (Phillips) Well, let me rephrase that. It was -- it's
12 what's called for in the Alteration of Terrain permits.
13 It was my idea to come up with a specialized high
14 elevation grass seed that was intended to address
15 concerns that were stated early on in the SEC process
16 about suppress -- that certain grasses might suppress
17 natural regrowth of trees. So, our high elevation
18 grass seed was intended to be a species that would not
19 have great longevity, because we were dealing with
20 competing interests. DES wanted the site stable, and
21 yet you could only stabilize it using grass at the
22 time, you couldn't count the trees. So, how would we
23 concurrently stabilize the site and not suppress the
24 tree growth? So, I tried to pick a species that would

[WITNESSES: Cyr~Phillips~Kimball]

1 come up quickly, --

2 Q. Uh-huh.

3 A. (Phillips) -- but wouldn't have longevity, and would
4 provide a bridge until the trees simply would
5 out-compete the grass.

6 Q. Okay. And, so, now we're doing away with the hay
7 mulch.

8 A. (Phillips) Uh-huh.

9 Q. And, the hay mulch, coming from my experience
10 gardening, you don't want to use hay mulch, because it
11 has weed seeds, right?

12 A. (Phillips) Yes.

13 Q. And, straw mulch is better, because it doesn't have the
14 weed seeds in it?

15 A. (Phillips) Correct. Correct.

16 Q. And, was the straw mulch idea yours as well?

17 A. (Phillips) Well, AMC expressed concern about having
18 grass, any kind of grass up there. As a -- and I guess
19 I won't say "novel", but different than what we had
20 focused on before, which was that we were concerned
21 with the grass itself competing with trees, and AMC
22 brought up a concern that the grass itself may provide
23 habitat or forage for small rodents that, in terms,
24 could prey on.

{SEC 2014-03} [Technical session] {07-24-14}

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Okay.

2 A. (Phillips) So, when they asked us "could we come up
3 with an alternative mulch -- we come up with an
4 alternate to grass seeding?" And, we said "well, we
5 just won't seed." But we knew we still had to
6 stabilize certain areas.

7 Q. Okay.

8 A. (Phillips) And, so, how would be accomplish that with a
9 material that wouldn't import additional seed, i.e.,
10 hay mulch? And, so, we went with straw. Which could
11 meet a stabilization objective, without incidentally
12 seeding grass up there.

13 Q. Okay. Now, this is something that sort of is an issue
14 that I see repeated in your testimony and in Mr. Cyr's
15 testimony. And, it's the reference to "maintenance on
16 the turbines" and "maintenance vehicles". And, it's --
17 and, you know, it shows up in your testimony, I think
18 maybe the first time, or the first time I noticed it,
19 was on Page 5. And, I'm trying to understand what --
20 whether, you know, I have to think about whether -- you
21 know, what do I think of as "maintenance" for a wind
22 turbine? And, having spent a fair amount of time in
23 these proceedings over the last, how many years, ten --
24 number of years, one of the things that is recurring is

{SEC 2014-03} [Technical session] {07-24-14}

[WITNESSES: Cyr~Phillips~Kimball]

1 that maintenance is relatively simple, straightforward,
2 conducted by small crews, using light vehicles. And,
3 includes things like, I don't know, changing the oil
4 and cutting the grass around them. And, so, when I see
5 that you're referring to bringing a 30-foot wide crane
6 to the top of the Project to swap out a major component
7 of the turbine, and you're referring to that as
8 "maintenance", it sort of, you know, alerts my
9 credibility detector, because that doesn't sound like
10 maintenance to me. Nor does a lightning strike of a
11 turbine blade sound like maintenance to me. So, I'm
12 having trouble with your use of the word "maintenance
13 vehicles" and "maintenance".

14 MR. WARNER: Are you getting to a
15 question here, Peter?

16 MR. ROTH: Yes.

17 MR. PHILLIPS: Actually, I want to find
18 where I'm talking about this, but go ahead.

19 BY MR. ROTH:

20 Q. Well, on Page 5 of your testimony, on Line 15. "After
21 widening the Mount Kelsey roadways in 2012 to allow for
22 maintenance vehicle access". So, is the "maintenance
23 vehicle" you're referring to here the 25 tractor
24 trailers that were necessary to bring up an entire

[WITNESSES: Cyr~Phillips~Kimball]

1 crane that was reconstructed to take down a turbine for
2 which the bearing was going to fail?

3 A. (Phillips) Yes. Yes. It was --

4 Q. Okay.

5 A. (Phillips) Well, it was related to all the vehicles
6 needed for that, for that work.

7 Q. Okay. So, all of those 25 tractor trailers that went
8 up the mountain, those were all maintenance vehicles?

9 A. (Cyr) Well, you haven't defined "maintenance". You
10 have "corrective maintenance" and you have "predictive
11 maintenance".

12 Q. You have what maintenance?

13 A. (Cyr) You have "corrective maintenance", such as a
14 lightning strike on a blade. That would be
15 "corrective". But typical maintenance on a turbine
16 requires pickup trucks. And, for instance, you know,
17 we're doing services right now on the turbines, it
18 requires nothing more than a pickup truck to perform
19 maintenance on these turbines, change filters, sample
20 oil.

21 When you have an issue where you have
22 like a lightning strike or a gearbox fail, major
23 component failure, then you're looking at the tractor
24 trailers, cranes.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Right. And, that's my point. And, I've always
2 understood, and it sounds like you agree with me, that
3 typical maintenance on a wind turbine requires only a
4 light vehicle, a pickup truck.

5 A. (Cyr) I wouldn't say "only a light vehicle", because,
6 in the wintertime, we use snowcats, which are quite
7 heavy.

8 Q. All right. A snow -- I mean "light", as opposed to an
9 18-wheeler --

10 A. (Cyr) Yes.

11 Q. -- or a, you know, a 30-foot wide crane, right?

12 A. (Cyr) Yes. Typical, scheduled maintenance/predictive
13 maintenance would be a pickup truck, snowcat, snow
14 sled.

15 Q. Okay.

16 A. (Cyr) Yes.

17 Q. And, when I think of a bearing failure and a
18 disassembly of the nacelle or major component of the
19 nacelle, I don't think of that as "maintenance". And,
20 yet, you refer to it as "corrective maintenance".
21 Isn't that really a repair? Same with the blade
22 replacement?

23 A. (Cyr) Yes. It would be called a "maintenance repair".
24 I mean, maintenance is maintenance, right? It's a

[WITNESSES: Cyr~Phillips~Kimball]

1 maintenance repair.

2 Q. Well, you know, I think simply my car, all right? I
3 hit a pothole and the tire blows.

4 A. (Cyr) Yes.

5 Q. I take it back to the shop and they say "we'll repair
6 your tire." They don't say "we will maintain your
7 tire". So, --

8 A. (Cyr) But they will perform maintenance on your
9 vehicle.

10 Q. Right. Which is, I think, --

11 A. (Cyr) It's just a play of words.

12 Q. -- changing the oil. Well, that's, I mean, to me,
13 you're using the -- you guys are using the word
14 "maintenance" in a sort of a --

15 A. (Cyr) Catch-all?

16 Q. Well, maybe that's a more charitable way to put it, but
17 I was thinking as "kind of a stretch". If replacing a
18 turbine blade that's struck by lightning is
19 maintenance, then I just, you know, I have trouble with
20 that. And, so, --

21 MR. WARNER: Are you asking them what
22 they call it or what it is?

23 BY MR. ROTH:

24 Q. Do you have documentation, you know, a maintenance

[WITNESSES: Cyr~Phillips~Kimball]

1 manual or other papers that refer to things like
2 replacing a turbine blade or a major component in the
3 nacelle as "maintenance"?

4 A. (Cyr) Okay. You want to repeat that.

5 Q. Do you have documentation, either manuals, memos,
6 anything, that refers to replacing a major component,
7 like a blade or a bearing or a generator, as
8 "maintenance"?

9 A. (Cyr) Vestas has what's called "work instructions" to
10 change out a component, performing maintenance on the
11 component. It's actually a detailed how to perform
12 maintenance on this gearbox, be it to change out a heat
13 exchanger or a hose or a gearbox or a blade, they have
14 work instructions, maintenance work instructions.

15 Q. Okay. And, do those documents refer to, you know,
16 large component changes as "maintenance"?

17 A. (Cyr) You know, I'm not -- I'm not aware of that, I
18 guess. I'm not sure.

19 Q. Okay.

20 A. (Cyr) I would think so. I mean, that's what I do. I'm
21 a Maintenance Supervisor, as well as an Operations
22 Supervisor. So, what my guys do, they perform
23 maintenance, daily maintenance, yearly maintenance.

24 Q. Okay. Now, Mr. Phillips, in your testimony, on Page 7,

[WITNESSES: Cyr~Phillips~Kimball]

1 you say that "it is clear that the vegetation planted
2 along the roadbeds is very unlikely to reach maturity
3 if periodically disrupted by maintenance vehicles."

4 So, when you're talking about "maintenance vehicles" in
5 this instance, you're not talking about the snowcat and
6 the pickup truck, are you?

7 A. (Phillips) I wasn't referring to a snowcat or the
8 pickup truck. No, I'm referring to, again, the need to
9 widen the road, because otherwise it would be disrupted
10 by keep windrowing it. So, I'm --

11 (Court reporter interruption.)

12 **BY THE WITNESS:**

13 A. (Phillips) We'd keep disrupting the soil alongside the
14 road. SO, --

15 BY MR. ROTH:

16 Q. The question is about "maintenance vehicles". Do
17 you -- you know, you heard the question or the
18 statement --

19 A. (Phillips) The tractors --

20 Q. -- about "25 tractor trailers". Do you think of those
21 as -- is that the kind of "maintenance vehicles" that
22 you were thinking about, in terms of making --

23 A. (Phillips) That's what's driving the need to widen the
24 road. What we call them, I'm not sure. I view

[WITNESSES: Cyr~Phillips~Kimball]

1 those --

2 Q. Well, you call them "maintenance vehicles" in your
3 testimony.

4 A. (Phillips) And, I would stand by that. I'm not an
5 expert in maintenance, but I guess what I'd say is, it
6 is shorthand for our more frequent need, which we have
7 tried to address by widening the road, as opposed to
8 what we anticipate would be a less frequent need, which
9 relates to the crane -- the impacts associated with the
10 crane assembly and walk-through areas.

11 Q. So, I guess I'm still, you know, do you accept this
12 idea? I mean, if your engine blew on your car, because
13 you failed to maintain it by putting oil in it, and you
14 took it back to the shop, would you think of having the
15 engine replaced as "maintenance" or is that a major
16 repair?

17 A. (Phillips) No, that would be a major repair. But I'm
18 not -- I don't know that that's a good analogy to --

19 A. (Cyr) Well, that would be called "major maintenance".

20 A. (Phillips) Yes. Yes. I don't know.

21 A. (Cyr) That's what it's called. When you change out a
22 gearbox, it's major maintenance. Whether it's small
23 maintenance or major maintenance, it's all one in the
24 same.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Because in the next sentence --

2 A. (Phillips) I view it as a more frequent need.

3 Q. Mr. Phillips, in the next sentence you say, it's
4 actually the one after that, I'm sorry, "The best way
5 to keep the Project in working order".

6 A. (Phillips) Uh-huh.

7 Q. And, when I think about keeping a project or a machine
8 in working order is I guess we'll call it "routine
9 maintenance" or "periodic maintenance".

10 A. (Phillips) Uh-huh.

11 Q. You know, this seems a little bit too cute, you know,
12 to keep it in working order with maintenance, but, in
13 fact, what you're talking about with "maintenance", in
14 your use of the word, is major repairs of catastrophic
15 failures. Right?

16 A. (Phillips) No. No, I guess I'm not -- the way -- "the
17 best way to keep the Project in working order" --

18 Q. You're not a mechanical engineer, right?

19 A. (Phillips) Excuse me?

20 Q. You're not a mechanical engineer?

21 MR. WARNER: Peter, I think this is
22 asked and answered. You've asked the question 15
23 different ways now, and they've answered it every time.

24 MR. IACOPINO: All right. Just let him

[WITNESSES: Cyr~Phillips~Kimball]

1 answer it. Go ahead. Finish your answer to the question.

2 **BY THE WITNESS:**

3 A. (Phillips) I believe what I'm saying there is that
4 there are -- there are needs for tractor trailers to go
5 up there, and that associated need comes with an impact
6 to these trees.

7 BY MR. ROTH:

8 Q. I understand.

9 A. (Phillips) And, so, to continue to be able to utilize
10 tractor trailers, and not have to shut down turbines
11 and wait to get SEC approval that may take a year
12 before you perform maintenance, we determined it was
13 wiser to come up with a proactive plan that would
14 permanently widen the road to accommodate that more
15 frequent type of work, --

16 Q. That point is well made today.

17 A. (Phillips) -- whether you call it maintenance --

18 MR. IACOPINO: Let him finish please.

19 Let him finish.

20 **BY THE WITNESS:**

21 A. (Phillips) -- that type of work.

22 BY MR. ROTH:

23 Q. So, do either of you have a maintenance schedule for
24 the coming year or even the coming five years, which --

[WITNESSES: Cyr~Phillips~Kimball]

1 or even the coming ten years, which has on it a single
2 instance of a tractor trailer or anything other than
3 the typical maintenance vehicles going up these roads,
4 in the next year, five years, or ten years? Is there
5 any maintenance schedule that shows that?

6 A. (Cyr) Scheduled maintenance to change out a major
7 component that would require a tractor trailer?

8 Q. No. Do you have any maintenance -- we'll take this in
9 baby steps. Do you have a maintenance schedule for the
10 turbines on Mount Kelsey?

11 A. (Cyr) We do.

12 Q. You do. Okay. I would like you to produce that. And,
13 does the maintenance -- does your maintenance schedule
14 have on it anywhere a component change or any activity
15 that would require a tractor trailer or a crane?

16 A. (Cyr) Not that I'm aware of, no.

17 Q. And, how far out does the maintenance schedule go?

18 A. (Cyr) Well, when we're -- now, we're currently doing
19 our three-year services. There's a four-year service
20 plan, there's a five-year service plan. They're mostly
21 the same thing every year. You change filters one
22 year, you might not change filters the next year. You
23 change brushes on your generator every year.

24 Q. Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Again, most of that, 99 percent of that you can
2 do with a pickup, with a maintenance vehicle pickup.

3 Q. And, the other one percent?

4 A. (Cyr) What's that?

5 Q. The other one percent, what do you need?

6 A. (Cyr) I'm thinking, typically, if you lost a generator,
7 let's say you had to make a repair on a generator.

8 Q. I'm asking about the maintenance schedule. What's on
9 the one percent of the maintenance schedule?

10 A. (Cyr) Our regular scheduled maintenance, we use
11 basically pickup trucks, snowcats, snow sleds.

12 Q. Okay.

13 A. (Cyr) Yes.

14 Q. So, there's nothing on your maintenance schedule that
15 shows the need for anything other than those vehicles?

16 A. (Cyr) Not that I'm aware of.

17 Q. Okay.

18 MS. LINOWES: Peter, I do have questions
19 along those same lines, if you were going to change
20 topics, I would like to ask them.

21 MR. ROTH: Yeah, I probably am. You can
22 go ahead. If that's okay with Mike?

23 MR. IACOPINO: Fine with me.

24 BY MS. LINOWES:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. The times that you need a tractor trailer, is that only
2 when you're bringing the crane in or is it something
3 else? Are there times when you bring a tractor trailer
4 in and you're not bringing the crane in?

5 A. (Cyr) Correct.

6 Q. There are times?

7 A. (Cyr) Yes. Yes, for example, if we had to change a
8 generator, a generator can be changed out with a
9 internal hoist. But the generator needs to be
10 transported, --

11 Q. Okay.

12 A. (Cyr) -- you know, by a boom truck and a tractor
13 trailer.

14 Q. Okay. And, I wanted to talk just a little bit about
15 the numbers here. And, I'll give you my numbers. I
16 would like to have you, you know, tell me if I'm wrong
17 or right. But the Project went on line in December
18 2011. So, it's been operational for about two and a
19 half years. Thirty-three (33) turbines, 8,760 hours in
20 a year, two and a half years, I get 722,700 hours of
21 operating time. In that time, let's not assume your --
22 well, did Vestas give you an expected up-time or
23 equipment availability time, an anticipated equipment
24 availability time?

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[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) I did, yes. I believe the contract did, yes.

2 Q. Do you know what it was?

3 A. (Cyr) I think it was 97. Ninety-seven (97).

4 Q. Ninety-seven percent availability time?

5 A. (Cyr) Ninety-seven percent, yes.

6 Q. So, it would be somewhere close to 700,000 hours that
7 the turbines should be operational without failure, --

8 A. (Cyr) Okay.

9 Q. -- based on that. Is that correct?

10 Ninety-seven percent of 722,000?

11 A. (Cyr) Yes. Yes, if your math is right, I believe so.

12 Q. Okay.

13 A. (Cyr) If they met a 97 percent availability rating.

14 MR. WARNER: Lisa, are these questions
15 related to maintenance?

16 MS. LINOWES: Yes, they are. It's
17 related to this plan.

18 MR. WARNER: Okay. So, I'll just note
19 an objection, to the extent that it relates to anything
20 outside of their prefiled testimony.

21 MS. LINOWES: Let me ask the question,
22 and then you could object.

23 BY MS. LINOWES:

24 Q. Okay. So, now, I don't have the exact wording, I don't

[WITNESSES: Cyr~Phillips~Kimball]

1 have it in front of me, but Attorney Roth said that,
2 according to Mr. Phillips, the best way to maintain
3 this Project is to widen the roads and proceed with the
4 planting in this plan for restoration. But what I'm
5 seeing here is we had six turbines that had to have the
6 bearing cage replaced, and we had one turbine that had
7 a lightning, of which two of those were on Kelsey --
8 or, one was on Kelsey. And, then, we had one turbine
9 that had, on Kelsey, that had a lightning strike. And,
10 if you added all of those up, the number of hours,
11 according to your documentation on the number of days
12 and hours those turbines were down, they were down less
13 than one percent of the time, of the overall hours of
14 up-time. So, I mean, if we're talking about turbines
15 having an up-time of 97 percent, the failure rate is
16 very low, I guess I'm trying to understand why we're
17 here? Why is it better for the plan to, given the
18 infrequency with which this is going to occur, based on
19 two and a half years of operations, unless there's
20 something else going on here. What is the problem? I
21 don't get it.

22 A. (Phillips) I mean, maybe I -- I mean, maybe I haven't
23 done a good job describing this. But the problem for
24 the environment is that every single time we windrow

[WITNESSES: Cyr~Phillips~Kimball]

1 topsoil, every time there is that need, your trees that
2 are planted in that topsoil go back to zero.

3 Q. I understand that.

4 A. (Phillips) And, so, whether it's --

5 Q. But I'm looking at the percentages. The percentages
6 are extremely low.

7 A. (Phillips) The percent -- okay, but let's not divorce
8 that from reality. The reality is that, if these trees
9 need a certain time period to reach maturity, whether
10 it's seven years, ten years, it doesn't matter if it's
11 a half a percent, all you need is one minute of need to
12 create the impact. And, so, it's not -- to look at it
13 percentagewise, at least in that line of thinking, I
14 think fails to recognize that what we're trying to do
15 here is move these trees to a location that they can
16 perform their function. Rather than close our eyes and
17 ignore the fact that, even if we have a need for only
18 one minute of maintenance, at some end of the turbine,
19 we could be upsetting this growth along the roadway.

20 Q. With all due respect, I'm waiting for that same
21 argument to come back --

22 MR. IACOPINO: Let him finish his answer
23 please, okay?

24 MS. LINOWES: Okay.

1 **BY THE WITNESS:**

2 A. (Phillips) I don't know that there's an answer. I'm
3 just telling you, I think that's failing to recognize
4 the fact that we're trying to avoid impacts to the
5 vegetation. And, it's -- you can't look at -- you
6 can't assume that the impacts are only one percent, if
7 we only use one percent of that downtime.

8 BY MS. LINOWES:

9 Q. I mean, I guess, if I were to argue back, I would say
10 continue with the vegetation on the pads, and add in
11 the vegetation elsewhere. And, that will be wonderful,
12 and put all those new trees in there. I'm still not
13 seeing the frequency. Even though you're saying it
14 happens -- it will happen, the fact that it will happen
15 means we have to address it. It's the frequency of it
16 happening could be so rare, that it's a lot of work and
17 a lot of discussion here, when it's, you know, your
18 numbers aren't -- don't appear to be justifying the
19 need.

20 A. (Cyr) But it could also be more frequent. We had a
21 lightning storm last night. Three turbines were hit by
22 lightning. We have yet to inspect them. I could come
23 back tomorrow and find I've got three blades that need
24 to come down.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Are they operating now? Are they turned off?

2 A. (Cyr) We actually shut two of them down yesterday, yes.
3 Two of the three. Or maybe -- I'm not sure, we could
4 have shut down three out of three. But the point is --

5 Q. My understanding is those blades are not always
6 replaced. They're repaired in the field.

7 A. (Cyr) Yes. And, with these blades, such as the one on
8 Turbine 9, Turbine 9 had a lightning strike of, I don't
9 know, 70,000, 80,000 amps, and it damaged the spar,
10 which is the spine of the blade. And, according to
11 Vestas, at the time, the only way that could be
12 repaired, that blade had to come down on the ground,
13 had to secure it on the ground, and they made the
14 repairs. Because, while it's on the turbine, you can't
15 have the blade doing this while you're trying to have
16 your epoxy and stuff set up. So, you know, I could
17 walk out of here today and check my e-mails and find
18 that I've got three turbines that have three blades
19 that need to be dropped.

20 So, we're very fortunate, in the last
21 two and a half years, that we have not suffered that
22 extent of damage. But we certainly have a lot of
23 lightning on Mount Kelsey, if not on the other three
24 mountains. Just, you know, given the height of the

[WITNESSES: Cyr~Phillips~Kimball]

1 mountains, at what 3,400, 3,600, then you've got
2 another 300, plus the 145 feet.

3 MR. ROTH: Well, frankly, that's, you
4 know, the kind of information that was -- was or should
5 have been known to the developer when the location was
6 selected, and taken into account when they made that
7 decision to invest as much money as they did and cause as
8 much harm to the environment by including this Project.
9 So, I guess, you know, if we're trying to persuade one
10 another here, I'm not buying that either.

11 MR. IACOPINO: Well, I think he was
12 answering her question.

13 MR. ROTH: Yes. The question --

14 MR. IACOPINO: I don't think he was
15 offering to persuade anybody. Her question was about
16 what, you know, what types of things would require the
17 trucks to go up there.

18 MR. ROTH: Right. And, my --

19 MR. IACOPINO: And, I think what he has
20 told you is lightning strikes are more frequent than as
21 many as three last night.

22 MR. CYR: Yes.

23 BY MR. ROTH:

24 Q. Do you have any sort of analysis of the probabilities

[WITNESSES: Cyr~Phillips~Kimball]

1 of major components being -- having to be replaced or
2 repaired, such that equipment of the kind you're
3 speaking of, the 25 tractor trailers, is going to be
4 necessary?

5 A. (Cyr) No, I do not.

6 Q. Do you have a probability or a risk analysis for that?

7 A. (Cyr) I do not, no.

8 Q. Okay. Do you know whether Brookfield or Granite
9 Reliable Power has such an analysis?

10 A. (Cyr) Not that I'm aware of, no.

11 Q. Okay.

12 A. (Cyr) You're talking analysis of as far as like
13 lightning strikes and --

14 Q. Yes.

15 A. (Cyr) Okay.

16 Q. Like, you know, they say "lightning never strikes twice
17 in the same place".

18 A. (Cyr) Well, that's --

19 (Multiple speakers talking at the same
20 time.)

21 BY MR. ROTH:

22 Q. So, it leads to a probability of how likely it is that,
23 in the next year, five years, ten years, twenty years,
24 you're going to need to do what -- to, you know, tear

[WITNESSES: Cyr~Phillips~Kimball]

1 up the road again.

2 A. (Cyr) I'm not sure that you could do an accurate
3 analysis of when lightning is going to strike.

4 Q. I'll bet your insurance company has done it. But you
5 don't have any of that kind of analysis performed?

6 A. (Cyr) Not that I'm aware of.

7 Q. Okay. And, so, your perception of what is at risk here
8 is -- where does that come from? Who's making that
9 judgment?

10 A. (Cyr) Well, just based on past experience in the last
11 couple years. We've had, you know, we've had one blade
12 that's had to come down.

13 Q. So, are you therefore expecting that each year, for the
14 rest of the life of the Project, you're going to need
15 to bring that kind of equipment back up to the -- back
16 up to the ridgeline?

17 A. (Cyr) That's hard to say. No. I don't anticipate
18 that. It's Mother Nature. I mean, you can't control
19 Mother Nature.

20 Q. Right. But you just said it's the experience of having
21 to do that each year for the last two years. Does that
22 inform you that you're going to have to do it every
23 year?

24 A. (Cyr) No. I mean, that doesn't indicate that we're

[WITNESSES: Cyr~Phillips~Kimball]

1 going to have to do it every year. Just what I'm
2 saying is it's happened. I mean, she's basing the
3 fact that we've had 97 percent up-time on these
4 turbines. And, all I'm saying is, we have had turbines
5 struck by lightning. We had one blade that we've had
6 to drop. We have two more blades right now that have
7 damage from ice. We're currently repairing those
8 hopefully in place. But it's something you can't
9 predict. Maybe an insurance company can, I certainly
10 can't predict it.

11 Q. Okay. So, it's based on your -- is it your judgment
12 that this is, you know, your periodic disruption by
13 maintenance is going to create a high unlikelihood of
14 trees reaching maturity?

15 A. (Cyr) Given the lightning that we see up to -- and the
16 weather conditions up to Kelsey, I would anticipate
17 that sometime -- sometime in the future we're going to
18 have to roll that topsoil back up and go up and repair
19 these turbines.

20 Q. Isn't it possible you could go 20 years and never have
21 to do that?

22 A. (Cyr) It could be possible, yes. I pray on it, yes.
23 It's a lot of work.

24 A. (Phillips) And, that's reflected, that possibility,

[WITNESSES: Cyr~Phillips~Kimball]

1 Peter, I would say is reflected in the fact that we
2 have these two different elements of the Plan. One is
3 road-widening, for a more frequent need, although
4 albeit debatable, according to you. But the other is
5 the crane assembly areas, where we have trees there.
6 Those trees, we're not proposing to go out and kill
7 off, cut down the trees that exist out there, because
8 we know that -- we anticipate the frequency of need for
9 the cranes is less. So, we're saying we don't need to
10 go and clear these areas and say "you know what,
11 because we might need them in 20 years or a lesser
12 frequency in the road, we'll go clear them all out."

13 Q. So, what is --

14 A. (Phillips) We're trying to say "We'll keep those trees
15 there." We'll still plant the mitigating trees. But,
16 you understand, I mean, this -- kind of this hierarchy
17 of need that we have determined, and then, based on
18 that, our plan has tracked that.

19 Q. What is the frequency of needing to bring a crane up
20 there that you anticipate?

21 A. (Phillips) Less, I would say less than the need to
22 operate the -- to bring the tractor trailers up.
23 Because, by definition, you need the tractor --

24 Q. What else would you bring the tractor trailers up for

[WITNESSES: Cyr~Phillips~Kimball]

1 other than to construct a crane? Isn't that what you
2 did -- isn't that why you brought them up the first
3 time?

4 A. (Cyr) No, you can bring a tractor trailer up there to
5 transport a generator.

6 Q. Okay. And, how do you get the generator up there?
7 With a crane?

8 MR. WARNER: Ms. Linowes asked the same
9 question previously.

10 MR. CYR: Yes, she did. I answered it.
11 We have an internal crane inside that --

12 MR. ROTH: Ah. Okay.

13 MR. CYR: -- that does not require a
14 track crane or a hydraulic crane.

15 MR. ROTH: Okay.

16 BY MR. ROTH:

17 Q. And, generators. So, you're talking about having to
18 "replace a generator". Aren't they rated for the life
19 of the Project to last 20 years?

20 A. (Cyr) I'm not sure what they're rated for. Just my
21 past experience with any type of electrical generator
22 or motor, they fail. You have bearings that fail, you
23 have windings that fail. We could have an arc flash as
24 we're speaking right now and we'd have to change a

[WITNESSES: Cyr~Phillips~Kimball]

1 generator. The brushes, the brushes might wear a
2 little too thin, and they arc flash, and -- boom -- now
3 your generator has got to be changed.

4 Q. Okay. But you don't have any data to support the
5 frequency that that's going to happen at any given time
6 in the next 20 years?

7 A. (Cyr) I don't have any data.

8 Q. No.

9 A. (Cyr) Not that I can draw on, no.

10 Q. No. And, Mr. Phillips, you don't have any of that
11 either?

12 A. (Phillips) No. That determination is his.

13 BY MS. LINOWES:

14 Q. I just wanted to make a clarification of something you
15 had said. You said something to Peter about "having to
16 wait a year before the SEC approves something". You're
17 aware that this Project does not need to come before
18 the SEC if you have to alter or roll back the
19 vegetation, and then replace it and restore it? That
20 is something that's built into the -- that's
21 acceptable, without going to the SEC on that.

22 MR. ROTH: Correct?

23 **BY THE WITNESS:**

24 A. (Phillips) Yes. I guess it is. I don't know.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. WARNER: I think this calls for a
2 legal conclusion.

3 MR. PHILLIPS: Yes.

4 BY MR. ROTH:

5 Q. What do you think?

6 A. (Phillips) I'll put it to you this way. When we
7 need -- I think Brookfield has done a good job of
8 trying to reach out to agencies when there is advance
9 notice, any kind of advance notice of need. But,
10 seeing as there have been a lot of parties that are
11 involved with this high elevation, that can hamper the
12 ability to quickly, I mean, could hamper the ability to
13 quickly maintain some of these turbines. So, my -- I
14 think, through this process thus far, I feel that this
15 is something that we want to get ahead of. And, we
16 want this Plan to deal with areas that weren't dealt
17 with before at the SEC, and be something that can be a
18 document that can involve less hearings and waiting and
19 so forth, to be able to maintain their turbines. And,
20 I think we've come up with a plan to do that.

21 Q. Mr. Cyr, I have some questions for you about your
22 testimony.

23 (Court reporter interruption regarding
24 the taking of a recess.)

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: Yes. Excellent idea.

2 (Recess taken at 2:37 p.m. and the
3 technical session resumed at 2:44 p.m.)

4 MR. IACOPINO: All right. We'll go back
5 on the record then. Are you still with us, Dr. Kimball?

6 DR. KIMBALL: Yes, I am.

7 MR. IACOPINO: Thank you, sir. Go
8 ahead, Peter.

9 BY MR. ROTH:

10 Q. Mr. Cyr, in your testimony, on Page 2, you say, on Line
11 8, "Turbine maintenance often requires use of large
12 cranes that require tractor trailer support." Now,
13 we've heard an awful lot about that today. But the
14 question is, how often?

15 A. (Cyr) Well, I would like to think -- I'd like to think
16 not very often. Typically, where you would bring in a
17 large crane would be more for major component changes,
18 such as a blade, a gearbox, a transformer, a nacelle.
19 Those are major. So, --

20 Q. Okay. Yes. I mean, you listed a number of things
21 here, and I'm going to ask you about them. But, in
22 terms of frequency, you don't really know, --

23 A. (Cyr) No, I don't.

24 Q. -- is that right?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) That's correct. No. You can't predict it,
2 right. I mean, --

3 Q. So, for you to say "often requires use of large
4 cranes", you really -- you really can't say that, isn't
5 that true?

6 A. (Cyr) Yes. I would tone that down, yes. Yes. Well,
7 like I say, I hope it's not. "Often" would be -- it
8 could be often. We could have three turbines that have
9 three blades that are damaged.

10 Q. I mean, wouldn't it be more true to say "in unusual
11 circumstances turbine maintenance", if you want to call
12 it that, you know, --

13 A. (Cyr) Yes, I wouldn't use --

14 Q. -- "requires use of large cranes"?

15 A. (Cyr) I wouldn't use the word "unusual". I mean, you
16 know, these turbines operate in very severe
17 environments. So, I wouldn't say it's "unusual" that a
18 turbine, you know, gets hit by lightning or the
19 turbine, you know, --

20 Q. Not unusual that a turbine gets hit by lightning
21 disabling it?

22 A. (Cyr) Again, I don't know if --

23 A. (Phillips) Isn't your reference to, once those
24 conditions -- those needs exist, they often need the

[WITNESSES: Cyr~Phillips~Kimball]

1 crane?

2 A. (Cyr) Yes.

3 A. (Phillips) It's not so much the frequency.

4 A. (Cyr) The frequency.

5 Q. That's not what he said. I'm just going with what he
6 says here. "Turbine maintenance" --

7 MR. WARNER: What page and line are you
8 on, Peter?

9 BY MR. ROTH:

10 Q. -- "often requires use of large cranes that require
11 tractor trailer support."

12 A. (Cyr) Yes. "Turbine maintenance often requires use of
13 cranes that require tractor trailer support."

14 MR. WARNER: Peter, which page and line
15 are you on?

16 MR. ROTH: This is Page 2, Line 8 to 9.
17 "Turbine maintenance often requires use of large cranes
18 that require tractor trailer support."

19 **BY THE WITNESS:**

20 A. (Cyr) Yes. Probably I should have put "turbine major
21 maintenance".

22 BY MR. ROTH:

23 Q. Okay.

24 A. (Cyr) Yes.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. You going to change your testimony then?

2 A. (Cyr) No. I don't see a need to change my testimony.

3 Q. Okay.

4 A. (Cyr) I mean, it's turbine maintenance, whether it's
5 major maintenance, right, it's maintenance. I mean,
6 you know, we --

7 Q. Well, we disagree about that. But --

8 A. (Cyr) Yes. But maintenance is maintenance. Whether
9 you're changing a blade or you're changing an oil
10 filter, it's all maintenance.

11 Q. So, would you --

12 A. (Cyr) It's not operations, right?

13 Q. We already went through this.

14 A. (Cyr) Yes.

15 Q. But I think you agree that all the stuff on your list
16 for the next four or five years, none of it requires
17 tractor trailers and a crane, right?

18 A. (Cyr) None of the scheduled maintenance.

19 Q. Right.

20 A. (Cyr) Correct.

21 Q. Okay.

22 A. (Cyr) Yes.

23 Q. Now, you had listed a few things here. Let's see,
24 where the heck were they? Lines 11 through 15, is that

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[WITNESSES: Cyr~Phillips~Kimball]

- 1 right? Okay. You say, on Lines 11, 12, "does not
2 require any immediate maintenance, and no maintenance
3 using heavy equipment is currently scheduled." Right?
4 That's what you say here?
- 5 A. (Cyr) Correct. Yes.
- 6 Q. And, has that changed since you wrote this testimony?
- 7 A. (Cyr) Yes. So, "The Windpark does not require any
8 immediate maintenance, and no maintenance using heavy
9 equipment is currently scheduled." At the time I wrote
10 this, correct.
- 11 Q. Okay. But is it still true today?
- 12 A. (Cyr) No, it's not true today. We currently have a
13 heavy-duty lift coming in to repair the blade on one of
14 our turbines on Kelsey.
- 15 Q. On Mount Kelsey, okay.
- 16 A. (Cyr) Oh, no. Let me back up. No, I'm sorry. No,
17 it's not Kelsey. It's on our Fishbrook turbines.
- 18 Q. Okay. So, that doesn't apply here?
- 19 A. (Cyr) Yes.
- 20 Q. So, I suppose it is true that the Windpark, but, if
21 we -- if I were to say "does Mount Kelsey", is it still
22 true with respect to Mount Kelsey?
- 23 A. (Cyr) At this point, it does not, yes.
- 24 Q. Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) I would say is true, yes.

2 Q. And, is there anything sort of, you know, in your
3 five-year master plan that maybe you have in your head
4 or that you anticipate, with some degree of certainty,
5 that is, "yes, after X number of hours, you know, the
6 nacelle yaw ring wears out and must be replaced"? Is
7 there anything like that?

8 A. (Cyr) No. I don't anticipate that.

9 Q. Okay. Or any other sort of major components that,
10 through normal use, are going to wear out and require
11 large equipment, tractor trailers, cranes, to replace
12 or repair them?

13 A. (Cyr) No, I don't anticipate that, as long as the
14 turbines are maintained properly.

15 Q. Okay.

16 A. (Cyr) Like I say, barring a lightning strike --

17 (Court reporter interruption.)

18 BY MR. ROTH:

19 Q. Go ahead.

20 A. (Cyr) Yes. No. No, I don't anticipate any cranes
21 being brought in for normal maintenance on the turbines
22 on Kelsey.

23 Q. Okay. And, you were saying "barring a lightning
24 strike"?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Yeah. Again, you know, if we had a lightning
2 strike, ice damage, blade had to come down, certainly
3 we would have to bring in a piece of heavy equipment to
4 service it, or maintain it.

5 Q. Okay. Now, in your qualifications, on your resumé and
6 in this next paragraph of your testimony, you have a
7 considerable amount of experience in the paper
8 industry. And, I'm sorry, for all of us, that you're
9 not still in the paper industry. I'm sure, you know, I
10 think the paper industry is a good industry. And, I've
11 watched with dismay as it's shrunk in New Hampshire.
12 But your experience working in the power industry has
13 only begun in 2011, is that correct?

14 A. (Cyr) Yeah. Yes. I'd say that's correct, yes.

15 Q. So, the two experiences that you've had that were --

16 A. (Cyr) I want to retract that. No, let me take that
17 back.

18 Q. Okay.

19 A. (Cyr) I worked in the power industry for Great Northern
20 Paper, when I was -- I had the boiler house, I had the
21 utilities, I had hydros. So, that's power. When I
22 worked with Sappi Fine Paper, I had the boiler house,
23 utilities. So, I'm going to strike it. Yes. Yes, I
24 have experience in the power industry.

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[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Okay. Fair enough. Thank you for that clarification.
2 But this is your first experience with wind power,
3 correct?

4 A. (Cyr) Correct.

5 Q. So, the paper companies you worked for didn't have wind
6 turbine facilities?

7 A. (Cyr) No, they did not.

8 Q. And, have you had any specific training in wind energy,
9 provided to you by Brookfield or anybody else?

10 A. (Cyr) Not so much, no. Mostly hands-on.

11 Q. Does Brookfield have a, you know, a training academy or
12 training program, where, you know, they would send you
13 to, you know, Brazil to learn wind turbine maintenance
14 or anything like that?

15 A. (Cyr) Not that I'm aware of.

16 Q. Maui?

17 A. (Cyr) They, you know, Brookfield did send me out to
18 Vestas, Portland, Portland, Oregon. Yes, Portland,
19 Oregon. And, they sent me to learn on the V-90
20 turbines.

21 Q. And, how long was that program?

22 A. (Cyr) That was for a week.

23 Q. Okay. And, any other? Any other training programs
24 that you've attended, with respect to wind energy?

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[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) No.

2 Q. Okay.

3 A. (Cyr) No.

4 Q. And, have you done any sort of, you know, online
5 self-tutorial stuff, you know, or other kinds of
6 self-learning? And, what would that involve?

7 A. (Cyr) No. Most of my learning is from my techs, and
8 actually going into the turbines and watching those
9 guys maintain it.

10 Q. So, you have windmill mechanics on your staff?

11 A. (Cyr) We do, yes.

12 Q. Wind turbine mechanics?

13 A. (Cyr) Yes. I mean, the majority of the equipment in a
14 turbine is much like a paper -- much like a paper mill.
15 It's bearings and pumps and motors and gears.

16 Q. Uh-huh. Except paper mills generally aren't 400 feet
17 up in the air and on top of a mountain, are they?

18 A. (Cyr) Not that I'm aware of.

19 Q. And, is it -- isn't it true that the wind turbines are
20 generally designed to withstand and deal with lightning
21 strikes? Aren't they, in fact, struck by lightning
22 quite often and do just fine?

23 A. (Cyr) Yeah, they do. Yes. Correct. Depends on the
24 amount of amperage during the lightning strike, they

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[WITNESSES: Cyr~Phillips~Kimball]

1 actually have -- they actually have lightning, what's
2 the word, little buttons on the blades for when the
3 lightning strikes, it will ground it to the ground, so
4 to dissipate that energy.

5 Q. Uh-huh.

6 A. (Cyr) But, again, if you get a lightning strike that's
7 so severe, it sometimes won't handle that amount of
8 energy.

9 Q. And, in fact, sometimes don't they explode the turbines
10 and set them on fire?

11 A. (Cyr) Not that I'm aware of.

12 Q. No?

13 A. (Cyr) I hope not.

14 Q. Okay. Well, I think probably Lisa would tell you that
15 they do once in a while.

16 MS. LINOWES: It's been known to happen.

17 BY MR. ROTH:

18 Q. All right. Now, I want to ask you about, there are a
19 number of things that you mentioned in -- or, that were
20 mentioned, I guess, it wasn't necessarily you, but I'll
21 ask you about them, since this is your area. I asked
22 some -- I asked for some -- "to identify all periodic
23 future maintenance that would require greater than a
24 12-foot road width." And, the response was, in

[WITNESSES: Cyr~Phillips~Kimball]

1 addition to a bunch of objections, it said "Granite
2 responds that it may need to replace the nacelle yaw
3 ring, to replace one or more blades due to severe
4 damage, to remove and re-install one or more blades in
5 order to repair spar or extensive cover damage, and to
6 remove and/or replace one or more blade bearing, hub,
7 gearbox, generator and/or transformer." Right? Did
8 you help in making that answer?

9 A. (Cyr) I did, yes. And, where are we --

10 Q. This is in the -- this is in the answer to my requests
11 for information.

12 A. (Cyr) Okay. So, this isn't in my testimony?

13 Q. No, it's not in your testimony. No.

14 A. (Cyr) Okay.

15 Q. This is your area. So, I thought I would ask you.

16 A. (Cyr) But, yes. I provided those answers, yes.

17 Q. Do you agree that Granite -- with that statement that
18 Granite may need to replace all those things or make
19 those repairs?

20 A. (Cyr) I would hope not.

21 Q. Oh. Okay.

22 A. (Cyr) But it's possible, yes.

23 Q. Isn't it actually quite expensive to bring cranes up
24 there?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Oh, it is. Yes.

2 Q. How much? Do you know?

3 A. (Cyr) Past experience, you're looking at over 200,000
4 plus.

5 Q. 200,000 plus?

6 A. (Cyr) Yes. Depending on what you're doing --

7 (Court reporter interruption.)

8 **BY THE WITNESS:**

9 A. (Cyr) About 200,000, to a quarter of a million dollars.

10 BY MR. ROTH:

11 Q. To bring a crane up to the ridge?

12 A. (Cyr) That's everything. That's the crane, that's
13 performing the work. Yes.

14 BY MS. LINOWES:

15 Q. That is the actual rental of the unit, though. It's
16 not the -- right? It's not the actual work of taking
17 the nacelle down or whatever you have --

18 A. (Cyr) It's everything. Well, for example, Turbine 9,
19 last year, with the blade, we had to drop the blade,
20 fix the blade, put the blade back up. That whole
21 project was over \$200,000.

22 MR. ROTH: Okay.

23 **BY THE WITNESS:**

24 A. (Cyr) But that was -- that was Vestas, that was

[WITNESSES: Cyr~Phillips~Kimball]

1 Cianbro, that was --

2 MR. ROTH: Okay.

3 **BY THE WITNESS:**

4 A. (Cyr) Yes. That was the manpower and materials.

5 BY MR. ROTH:

6 Q. And, do you know what the crane cost alone was?

7 A. (Cyr) I think the crane alone was probably about 125,
8 probably. Yes.

9 Q. So, the crane cost was a large portion of the repair
10 bill, right?

11 A. (Cyr) It was. And, what drives a lot of that, too, is
12 the weather. If you bring a crane and manpower on top
13 of a mountain, and you can't use it because the winds
14 are so high. You're paying.

15 MS. LINOWES: By the day?

16 BY MR. ROTH:

17 Q. By the day?

18 A. (Cyr) By the day, yes.

19 Q. Right.

20 A. (Cyr) So, you could be up there for weeks on end, you
21 know.

22 Q. But you can't do it in the winter, right?

23 A. (Cyr) You can do it in the winter, yes. You know,
24 you'd have to plow the roads. But you can --

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. You'd have to plow the roads though?

2 A. (Cyr) Yes.

3 Q. So, the things that were listed in response to Number
4 4, the "nacelle yaw ring", is that something that would
5 require a crane to replace?

6 A. (Cyr) Yes.

7 Q. How about "replacing blades due to severe damage"?

8 A. (Cyr) Yes.

9 Q. How about "to remove and re-install blades to repair
10 spar or extensive cover damage"?

11 A. (Cyr) Correct. Yes.

12 Q. What about just plain cover damage?

13 A. (Cyr) It depends on how bad it is. We have -- we have
14 two blades right now that -- well, actually, we have
15 probably six or seven blades right now that have
16 lightning damage, ice damage, and we actually have a
17 company by the name of "Rope Partners" --

18 Q. They rapelle --

19 (Court reporter interruption.)

20 **BY THE WITNESS:**

21 A. (Cyr) Rope Partners. Yes, they rapelle.

22 BY MR. ROTH:

23 Q. Uh-huh.

24 A. (Cyr) So, they're down there fixing these small

[WITNESSES: Cyr~Phillips~Kimball]

1 repairs.

2 Q. Yes. So, you don't have to take the blades down when
3 you can bring in Rope Partners?

4 A. (Cyr) Any time we can do that, that's our preferred
5 method, if we can. Yes.

6 Q. I have a friend who does that.

7 A. (Cyr) Oh, really?

8 Q. Yes.

9 A. (Cyr) Yes.

10 Q. He's sent some amazing pictures.

11 A. (Cyr) Oh, it's incredible.

12 Q. Dangling over the North Sea, 300 feet off of the end of
13 a rope.

14 A. (Cyr) Yes.

15 Q. "Blade bearings", does that require a crane?

16 A. (Cyr) Yes, it does. Yes.

17 Q. And, the "hub"? Does that require a crane?

18 A. (Cyr) Yeah. Yes, if you're going to remove the hub,
19 certainly. Yes.

20 Q. "Gearbox"?

21 A. (Cyr) Gearbox, that would require a large crane, yes.

22 Q. Okay. "Generator"?

23 A. (Cyr) A generator, again, can be done internally. If
24 we had -- if we had a crane on-site for something else,

[WITNESSES: Cyr~Phillips~Kimball]

1 we certainly would probably use the crane to change the
2 generator.

3 Q. Okay.

4 A. (Cyr) You know, if it were right there.

5 Q. And, the "transformer"?

6 A. (Cyr) Transformer, yes, as well. That requires a
7 crane.

8 Q. So, does that require like, I don't know, maybe I'm
9 misunderstanding the transformer. I think of a
10 transformer as kind of, you know, about the size of a
11 big trash can?

12 A. (Cyr) Oh, no. These are pretty big. These are --
13 there's three of them up in the top, in the top of the
14 nacelle. I can't remember what the weight on them was.
15 It's quite a bit. It's like 12,000 pounds.

16 Q. Okay.

17 A. (Cyr) They're solid copper, I guess. So, they're very,
18 very heavy.

19 Q. Okay. So, you can't lower them using the crane that's
20 associated with the turbine itself?

21 A. (Cyr) No. No, the internal crane doesn't go over that
22 section. And, it wouldn't handle it anyways. The
23 internal crane -- well, it just can't, it won't reach.

24 Q. Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) It's not designed for that.

2 Q. Now, back in your testimony, on Page 3, you again
3 refer, on Line 17-18, "necessary maintenance
4 equipment". And, we're still talking about the tractor
5 trailers that are needed for what I would call
6 "unusual" events, correct? Not the usual pickup or
7 snowcat?

8 A. (Cyr) Yeah. Yes, that's your word. You can use
9 "unusual", but --

10 Q. But you're not, when you talk about "necessary
11 maintenance equipment", you're not referring to the
12 pickup truck or the snowcat?

13 A. (Cyr) Well, in, is it Line 10, "Maintenance can be
14 necessitated by everything from lightning strikes
15 requiring blade repair or replacement" -- where are
16 you?

17 Q. I'm looking at, where you, in Line 18, --

18 A. (Cyr) Oh, Line 18.

19 Q. -- you say "necessary maintenance equipment". I just
20 want to make clear that you're not there talking about
21 pickup trucks and snowcats?

22 A. (Cyr) Line 17, "While each and every instance of
23 project maintenance may not involve large cranes or
24 other heavy equipment, such cranes and equipment will

[WITNESSES: Cyr~Phillips~Kimball]

1 be needed for any issues with turbine blades (weighing
2 7 tons), gearboxes (weighing 26 tons)" --

3 Q. Where are you reading? I'm looking at Page 3, Line
4 7 -- Line 18.

5 A. (Cyr) All right. I'm looking at Line 18, Page 4.
6 Okay.

7 Q. Sorry.

8 A. (Cyr) Go ahead. No, I'm sorry.

9 Q. I just want to -- I just want to be sure that we're not
10 missing something. That there's some kind of --
11 there's some big piece of equipment that needs the
12 16-foot wide road on a regular basis. And, is that --
13 so, is there any big piece of equipment that you need a
14 16-foot wide road on a regular basis?

15 A. (Cyr) Well, I would like to think not on a regular
16 basis. I would love not to have to bring anything up
17 there on a regular basis.

18 Q. Okay.

19 A. (Cyr) Yes.

20 Q. Now, on the next page, on Page 4, Line 8, you say "it
21 is impossible to know exactly what turbine maintenance
22 issues might arise".

23 A. (Cyr) Correct.

24 Q. And, you stand by that today?

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Yes. I mean, it's much like driving your
2 vehicle. You just don't know what -- you don't know
3 when you're going to get a flat, right? So, yes,
4 "While it is impossible to know exactly what turbine
5 maintenance issues might arise".

6 Q. Okay. And, then, you go on to say that you're
7 "reasonably certain that periodic maintenance will be
8 required", right?

9 A. (Cyr) "Has made me reasonably certain that periodic
10 maintenance will be required."

11 Q. Okay.

12 A. (Cyr) Yes.

13 Q. And, what period are you talking about there?

14 A. (Cyr) Well, when I say "periodic", I'm thinking, just
15 in hindsight, you know, where I've been here now for
16 the last two and a half years, and the lightning strike
17 on T-9, the lightning strikes that we have, --

18 Q. Are you talking five years? Ten years? Every other
19 month?

20 A. (Cyr) Well, --

21 Q. What's your period?

22 A. (Cyr) Every -- I'm confident that every year, every
23 year we're going to have to repair blades. At this
24 time, we have seven or eight blades that have lightning

[WITNESSES: Cyr~Phillips~Kimball]

1 and ice damage.

2 Q. On Mount Kelsey?

3 A. (Cyr) Throughout the park.

4 Q. I'm talking about on Mount Kelsey.

5 A. (Cyr) Okay. So, just Mount Kelsey. I was just trying
6 to think if we had any blades on Mount Kelsey right
7 now. Yes, I think, yes, Turbine 8, on Mount Kelsey,
8 had some ice damage. Rope Partners was able to go up
9 there and rapelle down and fix it. So that, to me, is
10 periodic maintenance.

11 Q. But Rope Partners doesn't need a tractor trailer, do
12 they?

13 A. (Cyr) No, they don't. No.

14 Q. But --

15 A. (Cyr) But --

16 Q. -- what period? And, I guess I'm back on that. I'm
17 still stuck on that.

18 A. (Cyr) On "periodic"?

19 Q. Yes.

20 A. (Cyr) I don't know that I can give you a definitive
21 "every 365 days we're going to have to do this type of
22 maintenance." But, from what we're seeing, given the
23 environment up there, you know, how nasty it is, it's
24 safe to say that there's a high probability that we

[WITNESSES: Cyr~Phillips~Kimball]

1 will have to do periodic maintenance on the blades, on
2 the turbines, that may require heavy equipment, other
3 than a pickup truck.

4 Q. Okay. And, you say "high probability". What do you
5 think -- what's a "high probability"? Fifty percent?
6 Two to one? I mean, 80 percent?

7 A. (Cyr) I don't even -- I don't know, I don't even want
8 to take a guess. I would like to think it's zero
9 probability. But, again, it's -- we're dealing with
10 Mother Nature. I don't have --

11 Q. You just don't know?

12 A. (Cyr) Yes. I don't have enough -- maybe after a
13 five-year period I can look back and say "you know,
14 pretty safe to say a 20 percent probability."

15 BY MS. LINOWES:

16 Q. If I can ask, if Vestas gave these turbines a 97
17 percent up-time, wouldn't it be a 3 percent chance?

18 A. (Cyr) No. I don't know that I'd say that.

19 MR. ROTH: Wouldn't it be less, Lisa?

20 MS. LINOWES: It's less than that, yes.

21 Because they don't always --

22 MR. ROTH: Since 3 percent includes that
23 it's just, you know, something is wrong that they can fix
24 by climbing the tower, right?

[WITNESSES: Cyr~Phillips~Kimball]

1 MS. LINOWES: Correct. Less than
2 3 percent.

3 MR. CYR: Yes.

4 MS. LINOWES: And, then, in Kelsey, it
5 would even be --

6 MR. CYR: Yes.

7 MR. PHILLIPS: And, that's for each
8 turbine, right?

9 MR. CYR: That was --

10 MR. PHILLIPS: It's not the -- it's not
11 the --

12 MR. CYR: Well, no, it's --

13 MR. PHILLIPS: -- multiplier effect of
14 all turbines.

15 MR. CYR: No, it's the multiplier
16 effect. It's 97 percent of the park. So, theoretically,
17 you could have one turbine down for, and I don't know, I'd
18 say for a week or so, and it won't really affect that --

19 MR. ROTH: Uh-huh.

20 MR. CYR: -- to the point where you
21 would get below 97 percent.

22 MS. LINOWES: It is for the whole park?
23 Not for --

24 MR. ROTH: That's in the fine print of

[WITNESSES: Cyr~Phillips~Kimball]

1 the warranty, right?

2 MR. CYR: It's a 97 percent availability
3 of the park. Not of every turbine of the park.

4 BY MS. LINOWES:

5 Q. Operating at full capacity -- well, I --

6 A. (Cyr) Yes. Operation. If the wind never blew, --

7 Q. Right.

8 A. (Cyr) -- and the turbines just sat there, they'd be
9 able to maintain it. As long as they're running, as
10 long as the motors are running, then they get a
11 97 percent, yeah.

12 BY MR. ROTH:

13 Q. On Line 14 of your testimony, on Page 4, --

14 A. (Cyr) Yes.

15 Q. -- you say "the occasional need for maintenance and
16 repairs is inevitable". And, I think we might even
17 agree on that, but I'm trying to figure out what that
18 occasion is. And, maybe --

19 A. (Cyr) Yes.

20 Q. -- that's the same question as "periodic". And, how
21 often is "occasional" in your mind?

22 A. (Cyr) I don't know, once a year, maybe. It's, again,
23 Kelsey is a very nasty environment up there.

24 Q. Well, maybe you shouldn't have built it there then.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Cyr) Well, there's plenty of wind up there.

2 Q. Not if you can't get it. Let's see. So, other than
3 these two, these two events, the -- well, never mind.

4 A. (Phillips) I seem to recall something, John, related --
5 I don't know how, if I can jump in here, but related to
6 the other types of vehicles it might need. That you
7 had said something about snowcat safety as well. That,
8 once these trees, this may not be apparent now, but,
9 once these trees grow to majority, --

10 A. (Cyr) Yes.

11 A. (Phillips) -- that having them 12 feet wide, with the
12 amount of snowdrifts and so forth that are up there.

13 A. (Cyr) Yes.

14 A. (Phillips) And, that's -- I don't know that that's the
15 primary need, but that is certainly something I think
16 you mentioned to me as a side --

17 MR. ROTH: Can I just stop you there?
18 There's nothing in anybody's testimony about that. And,
19 if we're going to be restricted to what's in the
20 testimony, then you should not be talking about that.

21 MR. WARNER: I think the questions have
22 gone beyond the bounds of the testimony today. He should
23 at least be allowed to finish his thought.

24 MR. ROTH: Ah. Your rule works for us,

[WITNESSES: Cyr~Phillips~Kimball]

1 but not for you?

2 MR. IACOPINO: All right.

3 MR. ROTH: There's nothing in the
4 testimony about snowcat --

5 MR. IACOPINO: Next question, Peter.
6 Okay?

7 MR. ROTH: Okay.

8 MR. IACOPINO: Next question.

9 MR. ROTH: All right.

10 MR. IACOPINO: Go to the next question.

11 MR. PHILLIPS: Sorry. I don't know the
12 rule. I thought it would add to that.

13 MR. CYR: Learn as we go.

14 BY MR. ROTH:

15 Q. This is, and maybe I've missed -- maybe I've already
16 had this answered, but maybe you can help me out,
17 Tyler. And, that is, I think in your testimony you say
18 that the Plan that was agreed to between GRP and Fish &
19 Game and AMC, essentially, it allows you the crane
20 construction and walkway. Does that sound -- does that
21 sound like something you said? That that's in the
22 Plan?

23 A. (Phillips) The originally approved plan?

24 Q. No. The one that you've just gotten --

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) Okay.

2 Q. -- that you just got signed up that we're here to talk
3 about.

4 A. (Phillips) Okay. Yes.

5 Q. Okay? Is that correct? That the Plan allows you to
6 have those areas, right?

7 A. (Phillips) To have crane walk and assembly areas?

8 Q. Yes.

9 A. (Phillips) Yes. Sure.

10 Q. Okay. Now, I'm trying to find -- can you point out to
11 me --

12 A. (Phillips) Page 4.

13 Q. -- in the Plan where it is?

14 MR. IACOPINO: In the Plan?

15 MR. ROTH: Yes.

16 MR. IACOPINO: Didn't they show them to
17 you before?

18 MR. PHILLIPS: Sure. Yes, I guess --

19 MR. ROTH: No, the Plan itself, which is
20 this document [indicating]. So, --

21 MR. PHILLIPS: Well, this is part of the
22 Plan, but --

23 MR. ROTH: -- the Revised High Elevation
24 Restoration Plan.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MR. ROTH:

2 Q. So, it's shown on the charts, right? The little
3 crosshatching, that's on the charts?

4 A. (Phillips) Yes.

5 Q. But where in the narrative part of the Plan is it?

6 A. (Phillips) I'm sure it mentions it in there.

7 Q. Is it in Paragraph 5?

8 A. (Phillips) I didn't think so. Let me see. Certainly,
9 there's a piece in there related to Paragraph 5. I
10 think it might be in here earlier as well. Bear with
11 me here.

12 Q. I couldn't find it. The only place I found mention of
13 it was in Paragraph 5.

14 MR. WARNER: And, just to clarify,
15 Peter. You're only talking about the narrative part of
16 the Plan. Not the part of the Plan that includes the
17 diagrams.

18 MR. ROTH: Yes, the charts. Right, the
19 narrative. I'm asking him to find in the narrative where
20 it says that they can have those crane erection and crane
21 walk areas.

22 **BY THE WITNESS:**

23 A. (Phillips) Yes. I don't see it here in the narrative,
24 other than that, in "Maintenance", because that was

[WITNESSES: Cyr~Phillips~Kimball]

1 kind of a unique element to that. That's what
2 differentiated it from the permanent road-widening.

3 BY MR. ROTH:

4 Q. Okay. Thank you for confirming that. And, I would ask
5 you, have you seen the Application that was filed with
6 the SEC?

7 A. (Phillips) This recent -- this present one?

8 Q. By GRP. Did you review that at all?

9 A. (Phillips) I must have at some --

10 MR. WARNER: Are you talking about the
11 Motion filed in earlier this year?

12 MR. ROTH: Yes.

13 BY MR. ROTH:

14 Q. Yes, the "Motion", "Application", whatever you want to
15 call it, that was filed by GRP on March 11th?

16 A. (Phillips) I'm sure I have reviewed portions of it. I
17 don't know that I've read it.

18 Q. Okay. Do you recall seeing anything in there about the
19 crane walk and erection areas?

20 A. (Phillips) I don't -- I'm not familiar enough, I would
21 have to review it. But, if it contained this Plan,
22 then I would say it did mention that, because the Plan
23 indicates what the intention is.

24 Q. So, going back to the maps, the restoration drawings,

[WITNESSES: Cyr~Phillips~Kimball]

1 right?

2 A. (Phillips) Yes. Made part of the Plan.

3 Q. But the text of the Motion, Application itself, doesn't
4 mention this issue, does it?

5 A. (Phillips) I have no idea if it does or not. I guess,
6 if this -- I believe this is part of that motion, is it
7 not?

8 Q. And, in your conversations with Fish & Game and the
9 AMC, did you discuss the crane walk path and the crane
10 erection path -- or, the crane erection locations in
11 detail with them?

12 A. (Phillips) I think that came as a later phase. I think
13 there was the initial talk about widening. And, I
14 think the idea of dealing with that, with a condition
15 of needing a crane, was brought up later. Because we
16 were trying to determine, you know, if this was an
17 infrequent need, maybe we just continue along at least
18 with the cranes, and we'd roll back the topsoil and
19 replant. And, that was one discussion. And, then, we
20 determined, I think, that that still didn't meet the
21 test that we had set for ourselves that this vegetation
22 needs to mature. And, so that, instead what we
23 suggested I think at that time was, "why don't we
24 assume these areas will be impacted, leave the trees in

[WITNESSES: Cyr~Phillips~Kimball]

1 place in the crane areas, until such time as, you know,
2 we need to impact it, but immediately we'll plant trees
3 in lieu of those crane impact areas." So, I think that
4 was kind of how we -- I think the crane assembly and
5 impact areas came up as a latter -- was a discussion
6 that came after the road-widening.

7 Q. So, the first draft that --

8 A. (Phillips) We weren't -- yes. Okay.

9 Q. -- that was circulated in August of 2013, did that
10 include these crane construction and crane walk paths?

11 A. (Phillips) I believe so, yes.

12 Q. It did?

13 A. (Phillips) August 2013?

14 Q. Yes.

15 A. (Phillips) I believe so.

16 Q. All right.

17 A. (Phillips) Pretty sure.

18 Q. So, what I notice --

19 A. (Phillips) I mean, I think what you have is what we
20 provided in August 2013.

21 Q. Yes. I just can't read these charts. They're too
22 small. But the text of the document, if I -- I notice
23 that it does not have Paragraph Number 5, and it
24 doesn't, I'm guessing here, but I'll bet it doesn't --

[WITNESSES: Cyr~Phillips~Kimball]

1 it also doesn't have any textual reference to the crane
2 walk areas and crane assembly areas. The same way that
3 the current --

4 A. (Phillips) Yes.

5 Q. -- version doesn't. Is that fair to say?

6 A. (Phillips) It may be. Yes. I think, again, at that
7 point in time, we were trying to get agency input, and
8 figured that the text would follow and fill in details
9 not conveyed on the plans.

10 Q. Uh-huh.

11 A. (Phillips) And, so, that --

12 Q. Were they -- go ahead.

13 A. (Phillips) Well, and so that I think we brought up that
14 section on "Maintenance" when we had the discussions
15 with AMC regarding grass, and also discussing "How
16 would we treat these areas? Would it be better to try
17 to keep replanting them or leave them as is and replant
18 elsewhere?"

19 Q. So, you engaged AMC in like January/February of 2014,
20 right?

21 A. (Phillips) I was part of the discussions. I didn't
22 contact them directly. It was Kyle Murphy that did it.

23 Q. Okay. But the first contact that GRP had with AMC was
24 January/February?

{SEC 2014-03} [Technical session] {07-24-14}

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) I don't know that. But the first one I was
2 aware of and involved with was that, in that time
3 period.

4 MR. WARNER: I think there's one member
5 of our panel that may know the answer to that question, by
6 phone.

7 BY MR. ROTH:

8 Q. Well, I'll just ask about the e-mail here. So, I have
9 an e-mail from Mr. Kimball and from Kyle Murphy, which
10 includes Mr. Kimball, from March of 2014, March 11th
11 and 10th, which was a couple of days before the filing.
12 And, then, in your answers to my interrogatory, said
13 that "On January 27th, Granite contacted AMC to discuss
14 the Restoration Plan. Conference call on February 10th
15 with AMC." So, did the consulted parties have these
16 nice color pictures provided to them?

17 A. (Phillips) I believe so, yes.

18 Q. Okay.

19 A. (Phillips) Yes. They certainly had them. I don't know
20 if they were color. I believe they did. Again, AMC
21 may be able to answer that. I'm pretty sure they had
22 decipherable plans.

23 DR. KIMBALL: Want me to answer that
24 question?

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. IACOPINO: Sure. Go ahead, Doctor.

2 DR. KIMBALL: The answer is "yes".

3 MR. ROTH: I don't remember what the
4 question was.

5 MR. IACOPINO: "Did they have
6 decipherable plans?"

7 MR. ROTH: Okay. Thank you. All right.
8 I think that may be all I had. You had a question, right?

9 DR. KILPATRICK: I got a couple of
10 questions that I'd like to follow up on.

11 BY DR. KILPATRICK:

12 Q. So, one of the questions was, once you've done this
13 repair work on Turbine Pad 9 and Turbine Pad 10, and
14 you've gone back to the roadways at this point, have
15 you returned them to 12-foot widths or 16-foot widths
16 presently?

17 A. (Cyr) On Turbine 9, we've not, we've not rolled them
18 back in.

19 A. (Phillips) Right.

20 A. (Cyr) Because we started this process here to do -- to
21 make it permanent. So, we have not --

22 Q. So, that was your last repair?

23 A. (Cyr) Correct. On Turbine 10, we rolled everything
24 back.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Okay.

2 A. (Cyr) And, then, a year later, we had Turbine 9, and
3 that's when we continued pursuing widening, so we won't
4 have to keep tearing this up.

5 Q. The only other question I have, and maybe I don't have
6 the final agreement, that was the original Plan,
7 because the one I'm looking at is the one that's
8 attached to the decision by the Siting and Facilities
9 conditions, on July 15th, 2009. And, in it, it has a
10 Section 5, and it talks about "additional cutting".
11 But, when we go to Exhibit A in this Revised Plan,
12 we're striking Paragraph 5, or it's unclear to me
13 whether we're striking the final sentences or the
14 entire Paragraph 5 of that agreement.

15 A. (Phillips) Could you just be specific --

16 Q. So, my question has to do with --

17 A. (Phillips) Okay. Which document is the "original" one
18 you're referring to?

19 Q. Okay.

20 A. (Phillips) I just want to make sure I understand your
21 question. Mind if I see it?

22 Q. Sure. Hang on just a second. Of course, you can't
23 find it. Okay. So, here was the original.

24 A. (Phillips) Uh-huh.

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. Section 5. That had to do --

2 A. (Phillips) Okay.

3 Q. -- with cutting.

4 A. (Phillips) Yes.

5 Q. And, then, when we go to this --

6 A. (Phillips) Okay. And, this was the Mitigation
7 Agreement?

8 Q. Right.

9 A. (Phillips) I just want to see the title, so I know what
10 you're talking about.

11 Q. And, this is --

12 A. (Phillips) Okay. All right. Settlement Agreement.
13 Okay.

14 Q. Right.

15 A. (Phillips) Yes. And, now, you're saying here --

16 Q. Yes. So, what part of this agreement still retains to
17 this?

18 A. (Phillips) Well, I'm afraid that, you know, that wasn't
19 my handy work after all that familiarity. I mean, I
20 could compare the two, but I didn't write that piece of
21 it. Yes, I didn't have anything to do with the
22 Mitigation Settlement Agreement. That was Kyle, and I
23 think Ken, and Legal. But is your -- what you're
24 saying is it's missing --

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[WITNESSES: Cyr~Phillips~Kimball]

1 Q. It's just not clear to me that, whether it's really the
2 entire Section 5.

3 MR. ROTH: Uh-huh.

4 BY DR. KILPATRICK:

5 Q. So, here was -- it's three sentences.

6 MR. ROTH: Yes.

7 BY DR. KILPATRICK:

8 Q. Whether it's just striking the last sentence in that
9 paragraph or the entire paragraph?

10 MS. LINOWES: Looking to strike the
11 final, but do you know the reasoning why?

12 DR. KILPATRICK: The final was the
13 12-foot width.

14 MR. ROTH: Well, you said -- I'm not
15 sure -- okay. So, this has been struck from the revised,
16 the amended agreement?

17 MS. LINOWES: This amendment agreement
18 says "Strike the final sentence".

19 MR. ROTH: Final sentence of 5, which
20 says -- oh, okay.

21 DR. KILPATRICK: I guess it's just to
22 the "12-foot".

23 MR. ROTH: Means to strike, yes, the
24 rest of it --

[WITNESSES: Cyr~Phillips~Kimball]

1 DR. KILPATRICK: But the rest of it
2 stays.

3 MR. ROTH: Yes.

4 DR. KILPATRICK: Okay.

5 MR. ROTH: So, the part where it says
6 "only those trees necessary for Project construction will
7 be cut. Once completed, no commercial timber harvesting."
8 That still is good.

9 DR. KILPATRICK: That still remains.

10 MR. ROTH: Is that your understanding?

11 MR. PHILLIPS: You know, I guess I'm
12 embarrassed to say, I can't offer, without looking at it
13 specifically, I can't. I think you answered your own
14 question, right?

15 MR. ROTH: I hope so.

16 MR. PHILLIPS: There's one line that was
17 removed, and it related -- removed, and it was related to
18 "12 feet".

19 DR. KILPATRICK: Right.

20 MR. PHILLIPS: Is that the question?

21 MR. ROTH: Okay.

22 MR. PHILLIPS: I can't offer -- I know
23 what the intent was, but I don't --

24 BY MS. LINOWES:

[WITNESSES: Cyr~Phillips~Kimball]

1 Q. What is the intent? Because I don't understand the
2 intent.

3 A. (Phillips) I believe the intent was to allow for a
4 wider road than 12 feet. I think that's -- I think
5 that's what we're really -- you know, I think that's
6 the --

7 DR. KILPATRICK: I just wanted a
8 clarification on what was struck there.

9 MR. PHILLIPS: Yes. Sure.

10 MR. ROTH: All right.

11 BY MS. LINOWES:

12 Q. Is it the -- the sentence that is being stricken is,
13 get the right wording, "Within the retained land on
14 Mount Kelsey, only those trees necessary for project
15 construction will be cut. Once construction is
16 completed, there will be no commercial timber
17 harvesting in this area." What is it about the Plan
18 that now makes that sentence unenforceable or a
19 problem?

20 MR. WARNER: Lisa, that's not a correct
21 characterization of the sentence being struck.

22 DR. KILPATRICK: It's only the last
23 sentence being struck.

24 MR. WARNER: What you're reading is a --

[WITNESSES: Cyr~Phillips~Kimball]

1 MS. LINOWES: Oh, the whole paragraph --

2 MR. WARNER: -- is a portion of the
3 paragraph that remains.

4 MR. ROTH: Can I ask you a different
5 question on that?

6 BY MR. ROTH:

7 Q. If you strike the statement or the requirement that
8 "the road get revegetated back to 12 feet", what is
9 left in that document, in that agreement, which would
10 prohibit you from making the roads larger than 16 feet
11 or on the curves, whatever they are?

12 MR. WARNER: That's, again, you're
13 asking for a legal conclusion.

14 MR. PHILLIPS: Yes.

15 MR. WARNER: I can give you the answer,
16 if you'd like?

17 MR. ROTH: Well, yes. Sure.

18 MR. IACOPINO: Go ahead.

19 MR. WARNER: If you refer to Paragraph 2
20 of the amendment, your answer is in there.

21 MR. ROTH: And, what is that answer?

22 MR. WARNER: Simply that the High
23 Elevation Restoration Plan is incorporated by reference
24 into this Agreement. The Parties' Agreement is subject to

[WITNESSES: Cyr~Phillips~Kimball]

1 incorporation of the terms of that Plan.

2 MR. ROTH: And, so, the High Elevation
3 Restoration Plan has the restrictions on road-width. Is
4 that what you're saying?

5 MR. WARNER: I think the Plan speaks for
6 itself. I think this whole document speaks for itself.

7 MR. ROTH: Okay. It's not a very
8 helpful answer.

9 MS. LINOWES: Can we have a site walk?

10 MR. ROTH: Yes. My consultant would
11 like to visit the site.

12 MS. LINOWES: It would be really helpful
13 to see what the trees look like.

14 MR. IACOPINO: You will check with your
15 client and --

16 MR. WARNER: Yes. I will check with my
17 client and get back to you.

18 MR. ROTH: Can you do that in the next
19 two days, because time's flying? I don't mean to be
20 ornery about it, but he's got to do testimony, and the
21 schedule marches on.

22 MR. WARNER: I'm not sure about the next
23 two days, but I will -- we will avoid any unnecessary
24 delay. I'll get back to you.

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: Okay.

2 MR. IACOPINO: Do you have any other
3 questions? I'm sorry, did you have any questions?

4 MS. LINOWES: No. I'm all set.

5 MR. ROTH: No.

6 MR. IACOPINO: Did you have any other
7 questions? Does anybody have any questions for
8 Dr. Kimball?

9 (No verbal response)

10 MR. IACOPINO: Hearing none. Okay, I'm
11 just going to go through what I understand the documents
12 that need to be turned over in the next seven -- not
13 "turned over", but shared in the next seven days.

14 MR. WARNER: Actually, Mike, can I jump
15 in? Mr. Cyr testified somewhat inconsistently in two
16 different spots. Can I just run one question by him to
17 clarify his testimony?

18 MR. IACOPINO: Sure, if you'd like.

19 BY MR. WARNER:

20 Q. All right. John, in response to a question that Lisa
21 asked you, you stated that, to your knowledge, if --
22 and I'm going to just characterize you, it may not be
23 word-for-word, but you stated that, "to your knowledge,
24 if this amendment is approved, the Project's

[WITNESSES: Cyr~Phillips~Kimball]

1 road-widths and plantings will never again need to be
2 altered under any circumstances", is the implication I
3 understood. In response to a question by Mr. Roth, you
4 stated you "could not definitely say that forever *ad*
5 *infinitum* Granite would never need to." Can you just
6 tell us which one of those two responses is correct?

7 A. (Cyr) Yes. By me saying that "we would never ever have
8 to widen the road", that's not correct. And, what I
9 meant to say that there's the -- there's a possibility
10 that we may have to, some point down the road,
11 depending on the different equipment that's available
12 to us.

13 Q. Your point is you just don't know, is that right?

14 A. (Cyr) I just don't know, yes.

15 MR. WARNER: Okay. Thank you.

16 MR. IACOPINO: Is that it?

17 MR. WARNER: That's it.

18 MR. IACOPINO: Okay.

19 MR. ROTH: Can I just follow up on that?

20 I'm sorry.

21 MR. IACOPINO: Sure.

22 BY MR. ROTH:

23 Q. I mean, given everything that we've talked about today,
24 is there anything in the -- for example, the list of

[WITNESSES: Cyr~Phillips~Kimball]

1 major components that we just went through, you know,
2 the yaw collar, whatever it was called, and the hub,
3 and the blades, what turbine components that you are
4 aware of would necessitate equipment that would mean
5 having to widen the road beyond 16 feet?

6 A. (Cyr) Possibly a nacelle, possibly a tower.

7 BY DR. KILPATRICK:

8 Q. And, that would have to go back to a 34-foot?

9 A. (Cyr) I don't know that, I don't know that it would
10 have to go to 34-foot, but I suspect we may have to
11 widen the road, in the event -- if we had to transport
12 something like that down the mountain or up the
13 mountain. Because those are quite large, much learner
14 components than a generator or a transformer.

15 BY MR. ROTH:

16 Q. Do you consider the -- and we talked a lot about
17 probabilities and likelihoods and occasions, in terms
18 of the kind of thing that would necessitate replacing
19 an entire nacelle or a tower, you know, does, and this
20 is bit glib, but do either of those fit on your
21 maintenance schedule?

22 A. (Cyr) I would hope not. But, for instance, a blade,
23 you know, a blade is 145 feet long. And, to make the
24 statement that I made that "we'd never have to widen

[WITNESSES: Cyr~Phillips~Kimball]

1 the road", I don't know what's really involved in
2 trying to get a blade up there.

3 Q. So, you might need to widen the road beyond 16 to get a
4 blade up?

5 A. (Cyr) Maybe at -- possibly at certain points. I mean,
6 a blade is 145 feet long, and you're trying to go
7 around corners, you know.

8 Q. So, is --

9 A. (Cyr) So, there is a -- I'm just saying there is a
10 possibility that we may have to at one point. I don't
11 know that, though.

12 A. (Phillips) We're referring here to "permanent
13 widening", correct? I mean, you know that we would
14 have to temporarily widen the road to deal with cranes
15 here.

16 Q. Well, that's what we're talking about. I mean, in
17 terms of the access road, coming up to the first
18 turbine on the, you know, on the string, right now the
19 requirement is, until you get to the crane walk area,
20 you're going to revegetate that to 16 feet, if you get
21 what you're asking for. But now what we're hearing is
22 that possibly even a blade might necessitate windrowing
23 up to 16. And, --

24 A. (Cyr) Certain areas, to get this blade around the

[WITNESSES: Cyr~Phillips~Kimball]

1 corners and some of the --

2 Q. So, what is such an elegant solution doesn't seem so
3 elegant anymore.

4 A. (Cyr) I don't know if it's elegant or not, but --

5 Q. Because much of your discussion, Mr. Cyr, about the
6 probabilities of something happening focused on blade
7 destruction. So, that seemed to me to -- you know,
8 isn't that the most likely thing that you believe would
9 happen, is that a blade would be destroyed?

10 A. (Cyr) Well, most of -- yes, most of our conversation
11 around blades were dropping a blade. Bringing a crane
12 in to lower a blade down to repair it on the ground, to
13 put it back. We didn't talk about transporting a blade
14 up or down the mountain during our conversations today.
15 So, --

16 Q. Okay. Fair enough.

17 A. (Cyr) You know, so, I don't have enough experience to
18 say what it would take to bring a blade up there. But
19 I do know a blade is 145 meters long -- 145, yes,
20 meters long -- 145 feet long. So, I'm not sure what
21 that will entail. So, for me to say "I would never
22 ever have to widen any part of that road" would be --
23 is not accurate.

24 Q. Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 A. (Phillips) But we did take into consideration the
2 planting of trees that might not -- we didn't want to
3 plant trees, if we relocate them off the road, to plant
4 them in the outside of a turn where they would
5 be future impacted -- potentially impacted in the
6 future for that rare occurrence of transporting a
7 blade, we purposefully avoided that. So, --

8 A. (Cyr) Yes.

9 A. (Phillips) -- it was a consideration, but, along the
10 hierarchy of probability, it's lower down on the scale
11 of probability.

12 Q. A hierarchy of probabilities of which you have no data,
13 right?

14 A. (Phillips) Well, that's -- it's not for me to decide
15 this stuff. You know, I only have the experience.

16 Q. You're just making the arguments. So, that's --

17 A. (Phillips) No, no.

18 Q. My point is that you don't have any data about any of
19 the probabilities of this stuff.

20 MR. WARNER: We've already gone through
21 this multiple times.

22 MR. ROTH: Right.

23 MR. WARNER: Let's --

24 MR. ROTH: Okay.

[WITNESSES: Cyr~Phillips~Kimball]

1 BY MS. LINOWES:

2 Q. If I could just add on, I guess part of what I'm
3 struggling with is that there are, as you know,
4 transport companies that transport these products.

5 A. (Cyr) Yes.

6 Q. And, they have already done all the analysis on what
7 they need. And, when I see, okay, you need to go 16
8 feet wide for roads and then 26-foot wide for turning,
9 did someone actually do the calculations on that or did
10 you contact the transport companies and find out what
11 they need? Or, did you just come up with that number
12 on your own? I mean, I'm just worried that you're back
13 here again trying to get wider roads than this, because
14 you didn't actually do the analysis.

15 A. (Cyr) Well, we -- well, the numbers we came up with, it
16 was based on transporting the large crane to the pads
17 to do the work that they did.

18 Q. So, you didn't look at blades?

19 A. (Cyr) We talked about blades, we talked about, as Tyler
20 had mentioned earlier today, you know, in the areas
21 where you've got to go around a corner, we want to make
22 sure we don't have -- we may have to trim those trees
23 or we may not plant trees in that area so the blade
24 would get around the corner. But, as far as the

[WITNESSES: Cyr~Phillips~Kimball]

1 equipment that would transport that blade, no, I'm not
2 really familiar with what --

3 MR. ROTH: Or the nacelle or the tower?

4 MR. CYR: Yes.

5 MS. LINOWES: I'm not asking you to be
6 familiar with it. There are companies that you
7 hire that --

8 MR. ROTH: That do that.

9 MS. LINOWES: -- that's all they do.

10 MR. WARNER: His prefiled testimony
11 addresses that. The fact that he worked with Cianbro to
12 come up with these.

13 BY MS. LINOWES:

14 Q. Okay. So, then, does --

15 MR. WARNER: These measurements.

16 MR. PHILLIPS: Our widths of roads that
17 we're proposing here are informed. We've gone out and
18 measured what was actually needed for that transport
19 equipment, not including a blade, but those --

20 MR. ROTH: Or a nacelle?

21 MR. PHILLIPS: Or a nacelle. It was
22 based on --

23 MR. ROTH: Or a tower?

24 MR. PHILLIPS: No. And, I don't,

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1 personally, I know John may not know this, but I don't
2 think that a tower section is going to be a constraint. A
3 nacelle is a constraint from weight and a grade issue. It
4 may not be a horizontal radius issue. A blade may be a
5 horizontal issue, meaning the blade can overhang. But --
6 and that may require a slightly wider road. I don't know
7 that. But, I'm saying that, on the scale of needing
8 things, that would be lower down on the probability. What
9 we tried to do was present a plan that where we're asking
10 for the most permanence is for probabilities that are the
11 highest. That is that we need a crane, we know we need
12 tractor trailers. Tractor trailers are needed for -- have
13 the highest probability of those different items.

14 BY MR. ROTH:

15 Q. And, what's the data that you have to support those
16 probability assessments?

17 MR. WARNER: We've been through this
18 multiple times now. I'd object on --

19 MR. IACOPINO: Do you know what the data
20 is to support the probabilities?

21 MR. PHILLIPS: The hierarchy, yeah. But
22 I don't know about the probability, no.

23 MR. ROTH: Okay.

24 MR. IACOPINO: Any other questions?

[WITNESSES: Cyr~Phillips~Kimball]

1 MR. ROTH: No.

2 MR. IACOPINO: Any other questions?

3 (No verbal response)

4 MR. IACOPINO: Any other questions for
5 Dr. Kimball?

6 (No verbal response)

7 MR. IACOPINO: Hearing none. I'm going
8 to go through the list of what I've got. So, listen up
9 and let me know if I've missed anything. I'm going to
10 make sure that everybody has a copy of that September
11 13th, 2012 letter from me. That was the first thing.

12 You're going to get plans for all the
13 parties in a size that is legible for them to review.

14 You're going to provide an overlay that
15 demonstrates the Project as approved, as-built, and then
16 including your amendment. And, when I say "overlay", I'm
17 not talking about any fancy engineering word. I just mean
18 an exhibit that shows those things.

19 Number four, you're going to provide a
20 calculation that calculates the aggregate increase in
21 road-width under the new Plan. And, I think we've agreed
22 on using square footage as the measure.

23 Number five, you're going to provide
24 another calculation of the aggregate of how much of a

1 decrease there is in the overall surface gravel areas,
2 supporting your statement in your testimony, Mr. Phillips.

3 MR. PHILLIPS: Uh-huh.

4 MR. IACOPINO: That's number five.

5 Number six, you're going to provide with -- you're going
6 to provide the parties with copies of all wildlife, bird
7 and bat studies that are in your possession.

8 Number seven, actually, I have a
9 question mark, and it's because I didn't know if you
10 actually asked for it, Peter. But you had mentioned that
11 there was correspondence from the Natural Heritage bureau
12 of March 14th, I didn't get the year. I didn't know if
13 you had actually asked for copies of that?

14 MR. ROTH: I asked if there was any, and
15 I didn't -- I think the answer was that he didn't know or
16 he didn't have any.

17 MR. IACOPINO: If there is, are you
18 asking for it?

19 MR. ROTH: But, if there is any, I would
20 like to see them.

21 MR. IACOPINO: Okay. And, do you
22 remember what year that was? I had it -- actually, it
23 might be March 2014. It's probably more like that.

24 DR. KILPATRICK: That's what I have.

1 MR. IACOPINO: Yes. Okay. So, I --
2 yes, I did it numerically.

3 MR. ROTH: Yes. It's March 2014.

4 MR. IACOPINO: So, if you have any
5 correspondence from Natural Heritage Bureau, and that
6 would be just prior to the filing, right?

7 MR. ROTH: Yes. Or anything between
8 August 2013, when the first proposal was made, and the
9 filing date.

10 MR. IACOPINO: Okay.

11 MR. ROTH: Or since, if you've got it,
12 for that matter.

13 MR. IACOPINO: Okay. Number 8, a copy
14 of any safety plan.

15 Number 9, a calculation of the number of
16 trees transferred from the laydown yards and switchyards
17 to higher elevations.

18 Number 10, the maintenance schedule for
19 the turbines on Mount Kelsey.

20 Number 11 is the request for a site
21 visit.

22 So, those are the 11 things that need
23 responses. Anybody -- did I miss anything does anybody
24 know?

1 MR. ROTH: None that I can think of.

2 MR. WARNER: Right. Two quick points.

3 The wildlife studies, I believe we'd ask for the completed
4 studies, which the request is simply for "completed
5 wildlife studies", is that correct?

6 MR. IACOPINO: Right, that are in your
7 possession.

8 MR. WARNER: And that are in our
9 possession. I just wanted to clarify.

10 MR. ROTH: To be clear, it's reports
11 that are required to be prepared in accordance with the
12 original Certificate.

13 MR. WARNER: Completed and in our
14 possession.

15 MR. IACOPINO: Well, you can't give them
16 if you don't have them. So, --

17 MS. LINOWES: How can you not have them?
18 Were they not --

19 MR. ROTH: Well, if they didn't do them.
20 You know, then they're in violation of their Certificate.

21 MR. IACOPINO: Or Fish & Game may not
22 have sent them to them. They may be completed, they
23 haven't been sent. I mean, there's all sorts of
24 possibilities. None of them are -- shed particularly good

1 light on the parties involved. But, you know, it could be
2 that they're not in their possession. But, yes, but there
3 are -- and, there's the follow-ups that are in there.
4 There's the one-, the three-, the five-year studies that
5 were required by the Certificate.

6 MR. WARNER: And, then, your --

7 MR. IACOPINO: Which shouldn't be, I
8 mean, I don't think that would be a -- it shouldn't be a
9 problem for you, I wouldn't think.

10 MR. WARNER: And, then, the way you
11 phrased the "overlay of the Project as proved, as
12 built" --

13 MR. IACOPINO: Right. I didn't want --
14 the only thing I'm saying about the word "overlay", is I
15 don't mean that to mean some fancy thing with, you know --
16 I mean, I think what they want is they want to see -- have
17 all three sets of plans so that they can view them
18 side-by-side and see what changes were made.

19 MR. WARNER: I just want to -- to the
20 extent that exists, I want to qualify, we'll produce it.

21 MR. ROTH: Uh-huh. And, I don't need
22 plans for the whole facility, just the Kelsey portion.

23 MR. WARNER: Right.

24 MR. ROTH: I've got the roll somewhere,

1 although, it's probably down in storage.

2 MS. LINOWES: So, just to be clear,
3 there was the original plan that was approved. What I was
4 looking for, and I think it's the same thing you were
5 asking for, is the plan with the restoration in place,
6 from the initial restoration, and then we've got this
7 plan.

8 MR. IACOPINO: Right. So, that's an
9 as-built.

10 MR. PHILLIPS: Well, okay. And, to the
11 extent they exist. I mean, so, basically, we're going to
12 give you the SEC-approved plans, because that was the
13 original. This, what we're proposing. And, we'll look
14 and see if there's an as-built done and reflective of that
15 completion. Is that correct?

16 MR. IACOPINO: If you don't have it, you
17 don't have it. Just, if you don't have it, report that
18 you don't.

19 MR. WARNER: We'll provide what they've
20 requested, if it exists.

21 MR. PHILLIPS: I mean, I may have photos
22 and evidence of it being completed, if that's what you
23 mean. But I don't know that we've done --

24 MR. IACOPINO: No, I think they're

1 looking for plans, right?

2 MR. ROTH: Yes. As-built plans.

3 MR. IACOPINO: I mean, they're not
4 looking for somebody's cherry-picked photographs. Yes,
5 as-built plans. If one was never completed, it was never
6 completed. There's nothing you can do about that right
7 now.

8 MS. LINOWES: Uh-huh.

9 MR. IACOPINO: Are we all set?

10 MR. ROTH: Anything else?

11 DR. KILPATRICK: No.

12 MR. IACOPINO: All right. We are
13 adjourned.

14 **(Whereupon the technical session was**
15 **adjourned at 3:45 p.m.)**

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