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**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**October 9, 2014** - 11:03 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:** Harold C. Pachios, Esq.  
Matthew S. Warner, Esq.  
(Preti, Flaherty, Beliveau  
& Pachios)  
Joshua Stayn, Esq. (Brookfield)

**Counsel for the Public:** Peter C. L. Roth, Esq.  
Lauren Noether, Esq.  
Senior Asst. Attys. General  
Department of Justice

**Reptg. Windaction Group:** Lisa Linowes

**ALSO IN ATTENDANCE:**

Dr. C. William Kilpatrick (Counsel for the Public)  
Christopher Gray (Counsel for the Public)  
Kyle Murphy (Brookfield)  
Dr. Kenneth Kimball (AMC)



**P R O C E E D I N G**

MR. IACOPINO: Let's go on the record. We are here on Docket Number 2014-03 of the New Hampshire Site Evaluation Committee. This is the docket concerning the motion of Granite Reliable Power to amend the Certificate of Site and Facility. We are here for a technical session. At this technical session today, we have witnesses who have been proffered by Counsel for the Public and by the Windaction.org or Industrial Wind Action Group. And, the way that we are going to proceed is this is an informal technical session, although we are recording it verbatim. There has been an agenda that had an error in it that I had submitted to you about the order of inquiry. What we will do is I understand that, after I'm done explaining what we'll do, we'll have everybody go on the record and identify themselves, but we do have Dr. Kirkpatrick [Kilpatrick?] and Christopher Gray present here today. They will be the first two witnesses who will be subject to questioning by the parties.

The order of inquiry will be the Applicant, Granite Reliable Power will go first, followed by Ms. Linowes, and Commissioner Samson does not appear to be here, nor do I actually expect him.

And, then, when we shift over to

{SEC 2014-03} [Technical session] {10-09-14}

1 Ms. Linowes' testimony, it will be the Applicant will go  
2 first, followed by Counsel for the Public.

3 If there's no objection to that, please  
4 understand this is an informal inquiry. I cannot make  
5 evidentiary decisions that bind the Committee at this  
6 proceeding. If there are, in fact, data requests that  
7 come out of this proceeding, our normal course has been to  
8 require the answer to those data requests to be provided  
9 within seven days, but we will talk about that at the end  
10 of the proceeding today, so that in case there's anything  
11 special or any different timing that is needed.

12 To the extent that a party refuses to  
13 answer a question, the proper procedure is to file a  
14 motion to compel a discovery of the information, if I  
15 can't negotiate a agreement between the parties on some  
16 kind of response. I will try to mediate, to the extent  
17 that I can, to the extent the parties are willing, any  
18 disputes with respect to any questions.

19 And, at the end of the witness  
20 questions, we can also, if the parties are so inclined,  
21 talk informally about how to proceed with respect to both  
22 any outstanding discovery, any outstanding motions, and  
23 anything that might become an issue going forward.

24 With that, I'm going to start to my

1 left, and let's go clockwise around the table and have  
2 everybody here identify themselves.

3 MR. ROTH: Peter Roth, Counsel for the  
4 Public.

5 MS. NOETHER: Lauren Noether, Counsel  
6 for the Public.

7 MS. LINOWES: Lisa Linowes, Executive  
8 Director of Windaction Group.

9 MR. GRAY: Christopher Gray.

10 DR. KILPATRICK: Bill Kilpatrick.

11 DR. KIMBALL: Ken Kimball.

12 MR. MURPHY: Kyle Murphy, Brookfield.

13 MR. WARNER: Matt Warner, for  
14 Brookfield.

15 MR. PACHIOS: Harold Pachios, for  
16 Brookfield.

17 MR. IACOPINO: And, I don't think I  
18 introduced myself. I'm Mike Iacopino, Counsel to the  
19 Committee. All right. Granite Reliable Power, Dr.  
20 Kirkpatrick and Mr. Gray are here.

21 MR. ROTH: Kilpatrick.

22 MR. IACOPINO: Kilpatrick, sorry. We  
23 don't generally swear people in at these things, because  
24 it is an informal proceeding. So, why don't you begin.

1 We'll use them as a panel. So, you can address your  
2 questions to either one.

3 MR. PACHIOS: Well, as a preliminary  
4 matter, I want to address what Mr. Roth said at the  
5 beginning of this morning's session, before we went on the  
6 record, which is all of the redactions in all of the  
7 materials that were provided to us in response to data  
8 requests are redacted because of work product. And, I  
9 think it would be important to know, these redactions  
10 relate to, I think, the scope of the engagement of the  
11 expert. Is that true?

12 MR. ROTH: We're not going to answer any  
13 questions about the redactions today. If you'd like to  
14 file a motion to compel, we can take it up then.

15 MR. PACHIOS: Well, all I'm trying to do  
16 is shorten it, because motions to compel, heavy litigation  
17 in this thing is getting expensive for everyone. It would  
18 be useful if we could, in a less formal basis, try to  
19 resolve these things.

20 MR. ROTH: Then, we could try to resolve  
21 them in a less formal basis. Right now we're on the  
22 record, we're here for a technical session, and we're not  
23 going to discuss the redactions today.

24 MR. PACHIOS: All right.

[WITNESSES: Kilpatrick~Gray]

1                   MR. IACOPINO: Why don't you start with  
2 asking your questions. If there are questions that  
3 involve those areas, you can ask them, maybe it will  
4 come -- something will change, maybe it won't. And, I  
5 think the appropriate way to deal with the issue, because  
6 I don't think there's going to be much movement, is to, if  
7 you believe that it's an inappropriate invocation of the  
8 privilege, file the motion to compel.

9                   MR. ROTH: And, as I said, if you want  
10 to deal with it informally, we can do that on another  
11 occasion, through the phone, off-line. But this is a  
12 technical session to understand the views of the witness,  
13 and to answer questions from the witnesses, and not to  
14 have a skirmish over redactions.

15                   MR. PACHIOS: Well, of course, we're at  
16 a very big disadvantage in the technical session, because  
17 we asked to be provided with certain information, which  
18 relates to your opposition to this request to amend the  
19 Certificate, and we get a lot of redactions back. And,  
20 that puts us in a distinct disadvantage. And, I think  
21 it's unfair, but we'll do what you suggested, which is to  
22 file a motion.

23                   MR. ROTH: Well, what I also suggested  
24 was that we could have an informal discussion of this at

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[WITNESSES: Kilpatrick~Gray]

1 another occasion. So, if you choose to not avail us of  
2 that opportunity, that's your call.

3 MR. IACOPINO: All right. Let's --

4 MR. ROTH: I've made clear my desire to  
5 do it that way.

6 MR. PACHIOS: Okay. But, just so I  
7 understand, I just want it understood that I want to do as  
8 much as we can on the record.

9 MR. IACOPINO: And, my recommendation is  
10 you proceed in the way that you prepared to proceed. If  
11 there's an objection, he'll tell you, and maybe you'll  
12 have a better idea of what the scope of his assertion of  
13 the privilege is. And, then, you might walk out with more  
14 information than you had coming in, but probably not what  
15 you want, is what I'm saying.

16 So, why don't we begin. And, the  
17 witnesses are here, and let's use the time to ask them  
18 questions.

19 MR. PACHIOS: Okay.

20 **WITNESS: CHARLES WILLIAM KILPATRICK**

21 **WITNESS: CHRISTOPHER GRAY**

22 BY MR. PACHIOS:

23 Q. Dr. Kilpatrick, have you previously testified as an  
24 expert in a wind farm case?

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) Yes.

2 Q. Which one?

3 A. (Kilpatrick) Several.

4 Q. Several. Can you tell us which ones they are?

5 A. (Kilpatrick) West Mountain.

6 Q. Where is that?

7 A. (Kilpatrick) I'm sorry.

8 A. (Gray) East Mountain.

9 A. (Kilpatrick) East Mountain, West Mountain?

10 Q. East or West, where is it?

11 A. (Kilpatrick) This is in Vermont. All of these are in  
12 Vermont.

13 Q. Yes.

14 A. (Kilpatrick) So, it would be East Mountain, was the  
15 first one that I testified before the Public Service  
16 Board in. Secondly, I have testified in Deerfield.  
17 Thirdly, I have -- well, I actually testified twice in  
18 Deerfield, two different groups. And, I also testified  
19 in Sheffield.

20 Q. Okay. And, each time you testified, did you testify in  
21 behalf of people who were opposed to the project?

22 A. (Kilpatrick) So, there were four different testimonies,  
23 four of the times -- or, three of the times I testified  
24 for people who were opposed to the development. The

[WITNESSES: Kilpatrick~Gray]

1 fourth time I testified for the State of Vermont.

2 Q. And, the three times that you testified for people who  
3 were opposed to the development, who were the people  
4 that were opposed to the development?

5 A. (Kilpatrick) They were citizens who had organized  
6 groups, --

7 Q. Can you give their names?

8 A. (Kilpatrick) -- primarily local residents --

9 (Court reporter interruption.)

10 **CONTINUED BY THE WITNESS:**

11 A. (Kilpatrick) -- primarily local residents of the area.  
12 Kingdom Wind was one of -- or, Kingdom Commons was one  
13 of them. If I looked at my CV, I can probably pull up  
14 some of the others there.

15 (Short pause.)

16 MR. ROTH: Your CV is too long.

17 DR. KILPATRICK: Sorry about that.

18 **BY THE WITNESS:**

19 A. (Kilpatrick) Yes. Kingdom Commons Group, Ridge  
20 Protectors. There had to be another one, I don't see  
21 it, though. Those are two, and then the Agency of  
22 Natural Resources for the State of Vermont.

23 BY MR. PACHIOS:

24 Q. And, in those three were you were in opposition, did

[WITNESSES: Kilpatrick~Gray]

1           you -- was your opposition associated in any way with  
2           Windaction?

3   A.       (Kilpatrick) The organization "Windaction"?

4   Q.       Yes. Yes.

5   A.       (Kilpatrick) No.

6   Q.       So, Ms. Linowes was not a participant in those  
7           proceedings?

8   A.       (Kilpatrick) Not involving me. I think she was present  
9           at the Deerfield project.

10   Q.       Uh-huh.

11   A.       (Kilpatrick) Or, the Deerfield hearing. But I was not  
12           hired by her or retained as a consultant and hire her.

13   Q.       And, which one did you testify for the State of  
14           Vermont?

15   A.       (Kilpatrick) Deerfield.

16   Q.       Deerfield? So, you weren't on the same side in  
17           Deerfield, you were independent?

18   A.       (Kilpatrick) I was -- so, I initially testified for the  
19           Ridge Protectors, who I believe was the group who was  
20           opposed to it.

21                   MS. LINOWES: And, if I could -- perhaps  
22           I can help clarify it.

23                   DR. KILPATRICK: Yes.

24                   MS. LINOWES: In the Deerfield project,

[WITNESSES: Kilpatrick~Gray]

1 which was an Iberdrola wind project, there was another  
2 group called "Save Vermont Ridgelines", I believe their  
3 name was. And, they had originally hired Dr. Kilpatrick.  
4 Then, they withdrew from participating. And,  
5 Dr. Kilpatrick became a witness for the Agency for Natural  
6 Resources in the State of Vermont. I was at -- and there  
7 was a period while Save Vermont Ridgelines was still  
8 involved that I was working with them. So, we had  
9 consolidated our effort. But at no time, when I was doing  
10 that, was Dr. Kilpatrick a witness for them.

11 THE COURT: Okay. Thank you very much,  
12 Lisa.

13 DR. KILPATRICK: I was not aware of  
14 that.

15 BY MR. PACHIOS:

16 Q. And, Mr. Gray, was he a student of yours?

17 A. (Kilpatrick) He still is, yes.

18 Q. And still is. Was he as an undergraduate, too?

19 A. (Kilpatrick) Probably took at least one course from me  
20 as an undergraduate.

21 Q. I didn't like that pause, because I thought you  
22 remembered all of the outstanding students in your  
23 class?

24 A. (Kilpatrick) Forty years, not really.

[WITNESSES: Kilpatrick~Gray]

1 Q. So, as I understand your written responses to these  
2 data requests, Dr. Kilpatrick, the observations on  
3 which you base your analysis, which I guess is your  
4 report is your analysis, is that correct? I mean, what  
5 we have is a report, essentially?

6 A. (Kilpatrick) Yes.

7 Q. And, that is your analysis? I mean, that was what you  
8 were hired to provide, right?

9 A. (Kilpatrick) As a consultant, yes, I was asked to  
10 provide a review of the information that was available  
11 and produce a report.

12 Q. Right. And, so, it's -- we don't -- there isn't  
13 anything I'm missing now. We have a report, right, and  
14 that's what I should be looking at, in terms of your  
15 observations and view of this whole thing? Is there  
16 something more I'm missing?

17 MR. ROTH: His testimony.

18 BY MR. PACHIOS:

19 Q. Okay, the testimony. But the report has got the  
20 substance in it, right?

21 A. (Kilpatrick) It does. But the report also contains a  
22 number of references that are cited that certainly --

23 Q. Yes.

24 A. (Kilpatrick) -- form a major portion of my analysis, if

[WITNESSES: Kilpatrick~Gray]

1 you want, and --

2 Q. Yes. Fair enough.

3 A. (Kilpatrick) Okay.

4 Q. And, these citations that are cited in footnotes and  
5 other places, and in the body of the work, are  
6 essentially literature on the issues we're discussing,  
7 right?

8 A. (Kilpatrick) They are. And, at least several are  
9 direct studies on the site, *per se*.

10 Q. Right. And, those are studies that Brookfield  
11 commissioned as required by the SEC, is that --

12 A. (Kilpatrick) That's my understand, yes.

13 Q. Yes. Okay.

14 A. (Kilpatrick) Well, the majority are that. There are  
15 some that seem to be an independent.

16 Q. Studies of the site?

17 A. (Kilpatrick) Some original studies of the site, yes. A  
18 site visit, I don't remember exactly who it was done  
19 by, but something -- I can look it up again.

20 Q. Well, yes, wait. Maybe we can save you from that.

21 A. (Kilpatrick) Right.

22 Q. Was it -- were these independent studies not -- not  
23 commissioned by Brookfield, and done after the wind  
24 farm was built?

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[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) No. This was a visit to the site, I  
2 believe by some representative of a state agency that  
3 wrote a report about the condition of the forest,  
4 and --

5 Q. Okay.

6 A. (Kilpatrick) -- before the project was started.

7 Q. Okay. As I understand your written responses to our  
8 data requests again, though, your observations, aside  
9 from these studies and treatises and general literature  
10 on the scientific literature, your observations were  
11 based on photograph -- photographs, many photographs,  
12 and a report, onsite report from Mr. Gray, and talking  
13 with Dr. Kimball, Will Staats, and a couple of other  
14 people from New Hampshire Fish & Game. And, that's  
15 where you got your input, other than your independent  
16 knowledge as a scientist, and literature that you read  
17 and cited. I'm just trying to figure out if there's  
18 something I'm missing.

19 A. (Kilpatrick) No, I --

20 MR. ROTH: Is there a question?

21 MR. PACHIOS: Yes.

22 BY MR. PACHIOS:

23 Q. Is that true? That's the question.

24 A. (Kilpatrick) So, it's true, in part. But, again, I

[WITNESSES: Kilpatrick~Gray]

1 think there's a wealth of information in the literature  
2 that was done specifically on the site that is very  
3 different from the general literature that you're --

4 Q. Okay.

5 A. (Kilpatrick) -- you're tending to lump this all under.  
6 So, I think there's some very site-specific literature  
7 that's quite --

8 Q. Okay.

9 A. (Kilpatrick) -- intense, as far as its content, that  
10 certainly forms an important basis of my analysis.

11 Q. Okay. And, now, could you identify -- could you  
12 identify that study?

13 A. (Kilpatrick) Well, there's several studies. So, it  
14 goes back to the initial track surveys that were done  
15 by Stantec, prior to the construction of the site. It  
16 goes then to the work of Alex Siren on pine marten or  
17 American marten. It's the work of Parrish on the  
18 Bicknell thrush, again onsite. The two Master's theses  
19 that Brookfield -- or, Granite provide funding for to  
20 complete those studies as Master's theses at different  
21 universities. It also includes then the other pre and  
22 post bird and -- primarily bird analyses that were  
23 done.

24 Q. So, the post bird analyses that you referred to, those

[WITNESSES: Kilpatrick~Gray]

1 were ones that were commissioned as required by the  
2 SEC?

3 A. (Kilpatrick) Yes.

4 Q. Yes. Okay. So, I just want to make sure we know which  
5 ones you're referring to, and I think we understand.

6 A. (Kilpatrick) Right.

7 Q. Yes.

8 A. (Kilpatrick) Those would be the ones I'm referring to  
9 that were site-specific.

10 Q. Okay. Great. So, photographs, what I'd like to do is  
11 for you to identify for us photographs that you  
12 observed which assisted you in forming your opinion,  
13 your expert opinion, as contained in the report. And,  
14 so, what I did -- what we've done is we've numbered  
15 them, because they weren't numbered as we got them,  
16 just for identification purposes, so we all know what  
17 photograph we're looking at.

18 (Atty. Warner distributing documents to  
19 all parties.)

20 BY MR. PACHIOS:

21 Q. Dr. Kilpatrick, I think Mr. Iacopino is worried. He  
22 sees a big stack there. And, he's worried we're going  
23 to go photograph-by-photograph through this. What I'd  
24 like to do is just go through the ones where you

[WITNESSES: Kilpatrick~Gray]

1 observed something in the photograph that assisted you  
2 in writing your report. And, you know, I mean, there's  
3 some photographs down at the maintenance building that,  
4 for instance, somebody took, maybe Lisa took, that are  
5 pictures of what nice-looking people we are, and we  
6 assume those didn't find their way into your  
7 observations for the report.

8 A. Right.

9 Q. Okay. So, hopefully, we can just pick out the ones,  
10 and that might be a hard -- wait a minute, these are  
11 not numbered.

12 MR. ROTH: There's a number in the upper  
13 left-hand corner of each page. But the photo doesn't have  
14 a number.

15 MR. PACHIOS: Oh, these are page  
16 numbers. Okay. All right.

17 DR. KILPATRICK: Some of mine don't  
18 have -- oh, I see them. They're on the photos.

19 MR. PACHIOS: Yes.

20 BY MR. PACHIOS:

21 Q. So, --

22 A. (Kilpatrick) Well, you know, I can start with the top  
23 photo on Page 3.

24 Q. Top photo on Page 3.

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) I mean, there are several --

2 Q. Okay.

3 A. (Kilpatrick) -- several photos that show essentially  
4 the same thing.

5 Q. Okay.

6 A. You know, but here we have an example of the current --  
7 well, actually, the amended protocol that was under  
8 consideration being used for replanting or planting of  
9 spruce and fir trees at the site. You know, so, you  
10 can see that it's in the bark grindings, and you can  
11 see the spacing of the trees. You can see kind of a  
12 variety of success of whether these trees are growing  
13 or not really. There's some difference in sizes of the  
14 trees.

15 Q. So, let me just ask you to speak to that photograph.

16 A. (Kilpatrick) Sure.

17 Q. So, what does that photograph lead you to conclude?

18 A. (Kilpatrick) Well, it leads me to -- it in itself  
19 doesn't lead me to conclude anything. It shows me what  
20 this procedure looks like and what's being done.

21 Q. So, that -- we couldn't go to your report, and some  
22 conclusion you reach in your report, and tie it to that  
23 particular photograph? That just shows you the  
24 conditions as they are. But you don't look at it and

[WITNESSES: Kilpatrick~Gray]

1 conclude it's good, bad or otherwise?

2 A. (Kilpatrick) I conclude that you have no evidence that  
3 it's good. That, from the information that was  
4 provided about it, that you don't know whether it's  
5 good or it's bad. And, I can give you from the  
6 literature suggestions that it's not good. And,  
7 looking at it, it's going to lead to a plantation, not  
8 a complex forest that's needed by the species there.

9 Q. Okay. So, what is it, and looking at that photograph,  
10 I'm looking at it, if I were an expert like you, I  
11 would see that would lead me to the conclusion that  
12 "it's not good"?

13 A. (Kilpatrick) Does it look like a natural forest?

14 Q. Well, it looks to me like they're new trees. So, when  
15 I think of "forest", and I'm a layperson, I think of  
16 bigger trees.

17 A. (Kilpatrick) And, do you think of them evenly spaced?

18 Q. Oh, that these are evenly spaced, and natural forests  
19 are not evenly spaced, is that --

20 A. (Kilpatrick) I have never seen a natural forest that  
21 was eventually spaced.

22 Q. Okay. So, if these weren't evenly spaced, if they were  
23 randomly spaced, that would be better? I'm just trying  
24 to figure --

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) Well, that -- I won't say that that "would  
2 be better".

3 Q. Yes.

4 A. (Kilpatrick) I would say that that would lead to a  
5 potential of a more complex forest recovery. This, to  
6 me, is just planting of trees. I mean, there's no  
7 understory coming there.

8 Q. What's an "understory"?

9 A. (Kilpatrick) Well, that's plants that are growing  
10 around and underneath the trees.

11 Q. Well, would you expect that, this looks like pretty  
12 new, brand new.

13 A. (Kilpatrick) Well, --

14 Q. Would you expect understory --

15 A. (Kilpatrick) So, let's look at the -- in comparison, on  
16 Page 4, looking at the bottom slide, the bottom  
17 photograph.

18 Q. Hold on.

19 A. (Kilpatrick) So, there you can see right along the road  
20 -- I'm sorry.

21 Q. Wait a minute. I don't know that -- oh. I couldn't  
22 see. You put the -- the "4" is on the picture.

23 A. (Kilpatrick) I didn't put it there. I'm sorry. That  
24 wasn't my doing.

[WITNESSES: Kilpatrick~Gray]

1 Q. You're not responsible for putting this "4" there?

2 A. (Kilpatrick) No, sir.

3 Q. All right.

4 A. (Kilpatrick) I take no responsibility for that.

5 MR. ROTH: Matt did it, I'm sure.

6 MR. PACHIOS: Yes.

7 BY MR. PACHIOS:

8 Q. Okay. So, we're looking at Page 4, where?

9 A. (Kilpatrick) The bottom photograph.

10 Q. The bottom photograph. Okay.

11 A. (Kilpatrick) So, there you can see the swath right by  
12 the road, with some planted trees in it. That's light  
13 in color with the bark grindings.

14 Q. Yes.

15 A. (Kilpatrick) And, there you can see the other areas  
16 with lots of vegetation, a more natural recovery coming  
17 along outside of that. Some of that probably has been  
18 planted, some of it has come up naturally. But, to me,  
19 that's a much more natural situation.

20 Q. Okay. I see what you're saying. It's not a very good  
21 photograph.

22 A. (Kilpatrick) Well, we can find a better one, if you'd  
23 like.

24 Q. I don't know who the photographer was, but it's not a

[WITNESSES: Kilpatrick~Gray]

1 very good photograph.

2 A. (Kilpatrick) All right.

3 MR. ROTH: It's an excellent photograph.  
4 It's just bad copying by you guys.

5 DR. KILPATRICK: I have to agree with  
6 Peter. The photograph actually looked better than that.  
7 See if I can find a better one for you.

8 MR. PACHIOS: Well, that's all right.  
9 Let's just keep going on in sequence, so we can move --

10 DR. KILPATRICK: There's a really good  
11 one.

12 MR. PACHIOS: We'll get to it. We'll  
13 get to it.

14 DR. KILPATRICK: Okay.

15 BY MR. PACHIOS:

16 Q. So, let's keep -- okay, we see that photograph. Okay.  
17 Next? Excuse me one second.

18 A. (Kilpatrick) Sure.

19 Q. So, that -- these two photographs that you identified  
20 so far underscore the point that you're making that the  
21 original planting protocol or revegetation protocol was  
22 superior, in your view, to the amended one, is that  
23 correct?

24 A. (Kilpatrick) I don't like the use of the word

[WITNESSES: Kilpatrick~Gray]

1 "superior".

2 Q. Okay.

3 A. (Kilpatrick) So, I don't know that it's superior.

4 Q. Yes.

5 A. (Kilpatrick) I don't know if there's any substantial  
6 difference between the two. And, my opinion then is  
7 that the original has the potential to recover a more  
8 natural forest, okay? If that's the -- that's the  
9 concern. And, I think Photograph 49, if you want to  
10 look at that one, shows that, is a much better  
11 photograph showing exactly the same thing.

12 MR. ROTH: Are you saying Lisa is a  
13 better photographer than I am?

14 DR. KILPATRICK: It's a bigger  
15 photograph.

16 MR. IACOPINO: What number? Forty?

17 DR. KILPATRICK: Forty-nine.

18 MR. ROTH: Forty-nine.

19 MR. IACOPINO: Much better.

20 BY MR. PACHIOS:

21 Q. Okay. So, looking at 49, does this depict that, what  
22 did you call it, "undercover" or --

23 A. (Kilpatrick) Yes. So, all the -- you can see the kind  
24 of dark green trees coming up in there.

[WITNESSES: Kilpatrick~Gray]

1 Q. Yes.

2 A. (Kilpatrick) And, then, there's a lighter green of the  
3 understory coming back.

4 Q. Understory, right.

5 A. (Kilpatrick) And, then, if you look over on the other  
6 side of the rocks, away from the road, you see even the  
7 natural recovery. So, here, we've had no replanting.  
8 We have trees just revegetating the area.

9 Q. So, --

10 A. (Kilpatrick) So, we've got all three treatments in that  
11 photo.

12 Q. Yes. All right. Of this Photo 49. And, the third  
13 treatment that you referred to is just --

14 A. (Kilpatrick) Natural.

15 Q. -- let it go and things will happen?

16 A. (Kilpatrick) Yes.

17 Q. Okay. All right. Any other photographs that you  
18 observed that helped you reach the conclusions you  
19 reached in your report?

20 A. (Kilpatrick) I'm going to skip out of Peter's. So, we  
21 don't have many of Chris's pictures in here. Okay.  
22 So, it appears to me that there's only two -- four of  
23 the whole assortment of Chris's photographs, which were  
24 the primary photographs that I used.

[WITNESSES: Kilpatrick~Gray]

1 MR. ROTH: So, the collection is not  
2 complete?

3 DR. KILPATRICK: It doesn't appear to me  
4 to be so.

5 MR. IACOPINO: You didn't take all of  
6 these large ones that are one page, starting on Page 17?

7 DR. KILPATRICK: No. I think those are  
8 all Lisa's.

9 MR. GRAY: Yes. Those are all Lisa's.

10 MR. PACHIOS: Yes. It might be  
11 easier -- wait a minute. I have the ones that Peter sent  
12 you via e-mail.

13 DR. KILPATRICK: Yes.

14 MR. PACHIOS: And, there's quite a few  
15 of them. Then, I have -- then, I have the ones that Chris  
16 provided to you, one, two, three, four -- I see only four  
17 from Chris.

18 MR. ROTH: Starting on -- there's a tab  
19 on Page 14 of the block you gave us today, --

20 DR. KILPATRICK: That was all the  
21 photographs that showed up in there?

22 MR. ROTH: -- 16, and then goes to 17 is  
23 a large one that looks like a Lisa picture.

24 DR. KILPATRICK: Right. But there

[WITNESSES: Kilpatrick~Gray]

1 were -- there should have been many more photographs than  
2 that.

3 MR. ROTH: So, there are only four here  
4 identified as "Chris Gray". And, let's see, what did we  
5 give them?

6 DR. KILPATRICK: Unless that file didn't  
7 contain all the photographs.

8 MR. ROTH: That's possible.

9 DR. KILPATRICK: There should have  
10 been --

11 MR. ROTH: Apparently, we only gave them  
12 those four.

13 DR. KILPATRICK: Hmm. Okay.

14 MR. ROTH: And, I don't know whether  
15 that's because you gave me less than the entirety --

16 DR. KILPATRICK: Yes.

17 MR. ROTH: -- or they were.

18 DR. KILPATRICK: That may have been that  
19 the file got corrupted somehow when it was converted. So,  
20 there should be about 25 photos in that. So, there's  
21 clearly some data missing there that was not intentional,  
22 but --

23 MR. PACHIOS: No, I'm certain it's not  
24 intentional.

[WITNESSES: Kilpatrick~Gray]

1 DR. KILPATRICK: Right.

2 MR. PACHIOS: I guess what we'll have to  
3 do is just kind of --

4 MR. IACOPINO: You want color copies of  
5 all of Chris Gray's photos.

6 MR. PACHIOS: Well, I want to pursue  
7 this question of which ones he relied on and why.

8 DR. KILPATRICK: Sure.

9 MR. PACHIOS: And, we can't do that now.  
10 So, the -- maybe an easier way to do it, so we don't have  
11 to reconvene to do it, might be if you provide those to us  
12 with, for each photograph that you select as one that was  
13 important to you, with a brief narrative observation which  
14 ties it to a conclusion or other observation in your  
15 report, so that we can, when we look at the report, we  
16 know what you you're referring to by looking at a  
17 photograph.

18 MR. ROTH: I think we can do something  
19 like that. But I think he's already testified that he  
20 doesn't tie the photos to a particular conclusion, but  
21 rather they assisted him in forming his conclusions that  
22 were made in the report. And, I would suspect that other  
23 photos, you know, just as the generality of them may also  
24 fit that description.

[WITNESSES: Kilpatrick~Gray]

1                   So, what I think what we're prepared to  
2 do is to provide those photos and to provide a brief  
3 narrative of what it is that he observes in that photo  
4 which he believes is significant. Is that acceptable?

5                   MR. PACHIOS: Yes. But, then, I'd like  
6 it to go a step further, or I can do it at the hearing,  
7 which is to look at his report and say "Okay, you say  
8 so-and-so. How do you know that this is happening?"

9                   "I looked at the photograph."

10                   "Which photograph tells you that?"

11                   I think we're entitled to know that?

12                   MR. IACOPINO: Do you have any problem,  
13 Peter, if it's possible for him to say --

14                   MR. ROTH: If it's possible, yes.

15                   MR. IACOPINO: -- "this relates to my  
16 conclusion on Page --

17                   MR. ROTH: Sure.

18                   MR. IACOPINO: -- 3 of my report", or  
19 whatever.

20                   MR. PACHIOS: Yes.

21                   MR. ROTH: If it's possible.

22                   MR. IACOPINO: And, if it's not  
23 something that -- it's something he only relied on for  
24 general purposes, to state that as well. Then, you would

[WITNESSES: Kilpatrick~Gray]

1 know.

2 MR. PACHIOS: Yes. But you said "rely  
3 on", "rely on for general purposes". What's a "general  
4 purpose"? What do I then know he saw in that photograph  
5 which is relevant?

6 MR. ROTH: Well, we'll do the best we  
7 can.

8 MR. IACOPINO: Yes. I guess --

9 MR. ROTH: And, if you think you need  
10 more, then we can, you know, convene another session or  
11 however you want to approach it. But I don't know that  
12 we're going to meet all of your needs for predicting  
13 what -- the way you would cross-examine him over each  
14 photo.

15 MR. IACOPINO: Just don't miss -- and  
16 don't misunderstand my statement of "general purposes".  
17 What I mean is, if there's a photo that he says "well,  
18 yes, I relied on this, but just to get, you know, a  
19 general perception of what the place looked like. It's  
20 not" --

21 MR. PACHIOS: Yes. No, that's fine.

22 MR. IACOPINO: "It's not combined to any  
23 particular finding in my report."

24 MR. PACHIOS: Yes.

[WITNESSES: Kilpatrick~Gray]

1 MR. IACOPINO: You know, that's what I'm  
2 talking about.

3 MR. PACHIOS: See, he's already -- it's  
4 been very helpful, because he says in his report that,  
5 essentially, "I don't think the new protocol is any  
6 improvement on the old protocol", and he's used  
7 photographs here this morning to say "this is what I'm  
8 talking about." And, it's been very helpful.

9 MR. ROTH: Uh-huh. And, we'll try to be  
10 as helpful about that as we can. But, as far as  
11 pinpointing a specific conclusion with respect to each  
12 photo, --

13 MR. PACHIOS: Well, you can't do that in  
14 every case.

15 MR. ROTH: -- that may not be possible.

16 MR. PACHIOS: But sometimes you have a  
17 photograph, and says "Look at this. What does this tell  
18 me?"

19 DR. KILPATRICK: It might even tell me  
20 nothing.

21 MR. IACOPINO: Well, it would be good if  
22 you could put that in your answer to the data request,  
23 okay?

24 MR. ROTH: Well, we're not going through

[WITNESSES: Kilpatrick~Gray]

1 every photo and say "this one tells me nothing."

2 MR. IACOPINO: He's just talking -- I  
3 think he's just talking about the ones that Chris -- that  
4 weren't provided, right?

5 MR. ROTH: I think the question was,  
6 from Harold, was "identify the photos in the Chris Gray  
7 collection that were important to you, more or less, --

8 MR. PACHIOS: Yes.

9 MR. ROTH: -- and, why they were  
10 important to you", and we can do that.

11 MR. PACHIOS: Yes.

12 DR. KILPATRICK: Yes.

13 MR. ROTH: Is that it?

14 MR. PACHIOS: Yes. And, that's exactly  
15 right. If he doesn't -- if he doesn't, there may be Chris  
16 Gray photographs that he says, you know, just we don't  
17 need to see, because it didn't mean much to him. A  
18 picture of you, for instance, standing up near one of  
19 those turbines. He might say "that doesn't" -- "I don't  
20 conclude anything from seeing Mr. Roth there."

21 MR. IACOPINO: Okay. Well, and that's  
22 what --

23 MR. ROTH: Well, I'd be hurt.

24 MR. IACOPINO: That's what we'll do.

[WITNESSES: Kilpatrick~Gray]

1 We'll make that a data request. And, we will determine  
2 when it will be due at the end of the proceeding today.

3 MR. PACHIOS: Yes. All right.

4 BY MR. PACHIOS:

5 Q. So, let's continue on. So, --

6 A. (Kilpatrick) You want me to go through the other photos  
7 that are here?

8 Q. Yes.

9 A. (Kilpatrick) So, on Page 16 then, the bottom  
10 photograph. This is one that Chris took. This is  
11 looking at the exposed edge of the forest, from the  
12 area that's been cleared. And, you see trees that are  
13 dying as the results of the -- probably wind and solar  
14 that they're getting, where they were in an interior  
15 forest before. So, you know, this to me shows that  
16 there is wind/snow action, *etcetera*, that is going to  
17 cause some further deterioration of the forest past  
18 just what was cleared.

19 Q. Is what you call "edge effect"?

20 A. (Kilpatrick) Well, yes. That's part of the edge  
21 effect. But that whole -- that whole clearing and  
22 forest, then that creates an edge.

23 Q. Yes.

24 A. (Kilpatrick) And, we get very different types of

[WITNESSES: Kilpatrick~Gray]

1 organisms that like to use that edge, compared to what  
2 would use the more interior areas of either habitat  
3 around it. They really -- some species avoid edges,  
4 other species really congregate to edges.

5 Q. Okay.

6 A. (Kilpatrick) But that's exactly the edge that we're  
7 talking about here.

8 Q. So, I have some land up in Maine, and there are logging  
9 roads on that land. And, you have edge effect on  
10 logging roads, too, right?

11 A. (Kilpatrick) You do.

12 Q. Yes.

13 A. (Kilpatrick) So, roads always create an edge effect.

14 Q. Yes. Okay. All right. So, we see the edge effect  
15 there. And, one last question about the edge effect.  
16 There are no way to, and, again, I'm a layman, but  
17 there's no way to avoid it, is there? If you're going  
18 to have a road or a clearing, you're going to have edge  
19 effect?

20 A. (Kilpatrick) Well, so, the way to avoid it would be not  
21 to create the road.

22 Q. Okay. Fair enough. Okay. Okay, continue please.

23 A. (Kilpatrick) I mean, a lot of these photos show exactly  
24 the same thing we've already discussed.

[WITNESSES: Kilpatrick~Gray]

1 Q. Yes. Look, I was there, Dr. Kilpatrick. These guys  
2 were taking photographs of everything they could see.  
3 Everything. Constantly clicking, clicking, clicking.

4 A. (Kilpatrick) Yes, I --

5 Q. They do, a lot of them show the same thing.

6 A. (Kilpatrick) They do.

7 Q. Yes.

8 A. (Kilpatrick) So, again, I don't know exactly -- 15?  
9 Yes.

10 MR. ROTH: Where are you?

11 **BY THE WITNESS:**

12 A. (Kilpatrick) So, Photo 71, which is showing a pad.  
13 And, some of those areas on the edges of the pad were  
14 proposed as being areas for Tier 1 plantings.

15 BY MR. PACHIOS:

16 Q. Yes.

17 A. (Kilpatrick) And, this was going to be by adding both  
18 some soil and root grindings. And, again, so, this  
19 informs me about both the likely solar exposition and  
20 wind exposure to those habitats. Just looking at this.  
21 In some of the photos Chris took, we had more clear  
22 ideas of actually where the Tier 1 plantings were going  
23 to be. So, I had more specific information there. So,  
24 again, it, to me, raised questions whether it's likely

[WITNESSES: Kilpatrick~Gray]

- 1 that these plantings on those sites will be successful.  
2 Because the trees that are planted there are going to  
3 be severely stressed by wind and sun --
- 4 Q. Yes.
- 5 A. (Kilpatrick) -- and snow.
- 6 Q. Okay. All right.
- 7 A. (Kilpatrick) And, again, Photo 75, you can see the dead  
8 forest along the edge.
- 9 Q. That's edge effect?
- 10 A. (Kilpatrick) That's, well, that's -- the dead itself is  
11 not necessarily edge effect. Edge effects are just  
12 causing the difference in the two habitats.
- 13 Q. Okay. So, that's a delineation of habitat?
- 14 A. (Kilpatrick) That is. And, here we're seeing then  
15 that, due to the creation of that new edge, that's  
16 actually causing death in the forest, some of the  
17 forest is dying there.
- 18 Q. Right.
- 19 A. (Kilpatrick) And, so, that edge is going to extend  
20 further into the forest. And, it's going to take time  
21 for reforestation in those areas to occur.
- 22 Q. Uh-huh.
- 23 A. (Kilpatrick) I think that's probably all that I can  
24 comment on from this group of photos.

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay. All right. So, is there anything, and  
2 Mr. Gray's narrative, as I read it, was a description  
3 of the visit and what we saw, number of miles traveled,  
4 number of miles up over 2,700 -- on the ridgeline, up  
5 over 2,700 feet, and what -- his observations. And, is  
6 there anything in his report to you that led you --  
7 that was the predicate for a conclusion that the  
8 photograph was not a predicate for? In other words,  
9 was there something beyond the photographs that he told  
10 you that was very useful?

11 A. (Kilpatrick) No. His narrative was primarily as you  
12 say, just providing me with clarification of what the  
13 photograph represented.

14 Q. Yes.

15 A. (Kilpatrick) Where it was along the roadway going up on  
16 Mount Kelsey. And, at times, and whether this was an  
17 area that was proposed for Tier 1/Tier 2 plantings, or  
18 whether this was an area where there had been the most  
19 recent planting protocol or the original planting,  
20 planting protocol.

21 Q. And, so, what's your understanding of the definition of  
22 "Tier 1" and "Tier 2"?

23 A. (Kilpatrick) My understanding of those is that "Tier 1"  
24 is sites that were preferred. And, so, these were

[WITNESSES: Kilpatrick~Gray]

1 areas where there was not any vegetation, any trees.

2 So, there would be plantings taking place in those to

3 try to hasten the reforestation of the area. "Tier 2"

4 then were areas where there was some recovery, but this

5 would be to supplement those areas with additional

6 planting of trees.

7 Q. Okay. Are you generally familiar with the purpose of

8 environmental mitigation plans?

9 A. (Kilpatrick) I believe so.

10 Q. And, what's your understanding of what an

11 "environmental mitigation plan" is and its purpose?

12 A. (Kilpatrick) It's purpose then is to provide some way

13 to reduce the effect of a permitted project. And, this

14 often is by providing property set aside that is of

15 similar habitat. Sometimes by studies that are done on

16 it. And, then, trying to recover the negative impacts

17 on especially species of particular interests that a

18 project may have imposed.

19 Q. Would -- in your view, does it include compensatory

20 acts? In other words, a wetland, for instance, if you

21 were going to disturb a wetland, sometimes you'll be

22 asked to create a new wetland?

23 A. (Kilpatrick) So, to me, that's a political decision,

24 not a biological decision.

[WITNESSES: Kilpatrick~Gray]

1 Q. By creating additional wetlands?

2 A. (Kilpatrick) Uh-huh.

3 Q. It's not a biological decision to create additional  
4 wetlands?

5 A. (Kilpatrick) I would not advise it.

6 Q. Okay. And, do you understand that, in the case of  
7 Granite, that part of the Mitigation Plan was to plant  
8 some trees?

9 A. (Kilpatrick) Yes, I do.

10 Q. In other areas not affected by the road?

11 MR. ROTH: Can you be more specific?

12 MR. PACHIOS: Yes.

13 BY MR. PACHIOS:

14 Q. I mean, is it your understanding that the Mitigation  
15 Plan approved by the SEC provided for the planting of  
16 trees only on the edge of the road?

17 A. (Kilpatrick) That's my understanding, yes.

18 Q. All right. And, what other mitigation -- you  
19 familiarized yourself with the High Elevation  
20 Mitigation Plan, what other mitigation factors do you  
21 understand it provided?

22 A. (Kilpatrick) I understand it provided funds for the two  
23 studies that we've mentioned, one on Bicknell's thrush  
24 or high-elevation birds, in general, and a second one

[WITNESSES: Kilpatrick~Gray]

1 on American martens. I understand that it also  
2 provided transfer of ownership of certain parcels of  
3 property to the Department of Fish & Wildlife, or Fish  
4 & Game, I guess it is, in New Hampshire.

5 Q. And, you understand the reason for that was that there  
6 was going to be adverse environmental impacts from the  
7 creation of this wind project. There was an  
8 understanding that it would be adverse in several  
9 respects to the environment. And, so, these  
10 compensatory activities were required to kind of  
11 balance the scale a little bit?

12 A. (Kilpatrick) I'm not sure what you're asking me. Do I  
13 understand that?

14 Q. Yes. What is it -- yes. Tell me what you understand  
15 about it. Why did they -- do you think it did -- do  
16 you think it was for the purpose of balancing the  
17 scale?

18 MR. ROTH: I'm just going to voice this  
19 objection. I know objections don't count for a whole lot  
20 here. But the focus of Dr. Kilpatrick's testimony and his  
21 involvement in this case has been with respect to the  
22 activities on Mount Kelsey by the Applicant, and the  
23 desire by the Applicant to roll up the 12-foot  
24 revegetation. And, his opinions about whether, you know,

[WITNESSES: Kilpatrick~Gray]

1 other mitigations that were required or agreed to, not  
2 concerning this directly, are not really relevant or part  
3 of this proceeding.

4 MR. IACOPINO: Go ahead and answer,  
5 Doctor. It's close enough for this proceeding, for this  
6 part of the proceeding.

7 **BY THE WITNESS:**

8 A. (Kilpatrick) I guess, yes, I understand.

9 BY MR. PACHIOS:

10 Q. Okay. That's all I was asking.

11 A. (Kilpatrick) Okay.

12 Q. In addition to Mr. Gray's narrative, you had some  
13 telephone discussions, correct?

14 A. (Kilpatrick) Correct.

15 Q. And, who did you have -- well, why don't you -- we'll  
16 go through them one-by-one. Who did you have the  
17 telephone -- who was the first one to come to mind?

18 A. (Kilpatrick) John Cantor.

19 Q. Who's he?

20 A. (Kilpatrick) I believe he's the -- again, I'm not sure  
21 what they call it here, he's the Non-Game Wildlife  
22 Biologist for New Hampshire Department of Fish & --

23 MR. ROTH: Fish & Game.

24 BY MR. PACHIOS:

[WITNESSES: Kilpatrick~Gray]

1 Q. Did somebody suggest you call him?

2 A. (Kilpatrick) No.

3 Q. Okay.

4 A. (Kilpatrick) No. I essentially looked in the  
5 Department of Fish & Game's website, found out who  
6 their non-game biologist was. I actually okayed it  
7 with Peter, to make sure I was allowed to contact these  
8 people, because I wanted their information that they  
9 had. And, so, I contacted John first by e-mail, and  
10 then he was away for a while, and then eventually by  
11 phone, and spoke with him.

12 Q. And, what did he tell you that was useful in preparing  
13 your report?

14 A. (Kilpatrick) Primarily, the information that I got from  
15 John was to provide me with a copy of the Parrish study  
16 on high-elevation birds. So, he forwarded me a CD  
17 of -- no, he sent me a PDF file of that study that had  
18 been done on Mount Kelsey. He also provided me with  
19 websites where I could get ahold of some of the  
20 post-construction bird studies that had been done.

21 Q. Okay. Who else did you talk to on the phone?

22 A. (Kilpatrick) I talked to Will Staats, Biologist with  
23 the Vermont -- or, New Hampshire Fish & Game  
24 Department.

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay. Did you have one conversation with Staats?

2 A. (Kilpatrick) I believe I only had one conversation with  
3 him. If I had a second one -- if I had two  
4 conversations, the first one was to say "I can't talk  
5 with you right now. Can you call me at a different  
6 time?"

7 Q. Yes.

8 A. (Kilpatrick) I had one --

9 Q. That's not important.

10 A. (Kilpatrick) I had one meaningful conversation.

11 Q. Ah, that's what I was looking for.

12 A. (Kilpatrick) Okay.

13 Q. And, what did he tell you that was useful for your  
14 report?

15 A. (Kilpatrick) Will provided me some information about  
16 the status of the forest on Mount Kelsey,  
17 pre-construction. He also then provided me information  
18 on when various logging projects had taken place in the  
19 area, on the slopes of Mount Kelsey. He provided me  
20 some information on -- well, I asked him about the  
21 road, I don't think he could give me that information,  
22 even though he had just been up there.

23 Q. What information was that he couldn't give you?

24 A. (Kilpatrick) I asked him how long the road was, and he

[WITNESSES: Kilpatrick~Gray]

1 didn't know. He gave me some answer about the overall  
2 length, and suggest I could go to Google Earth and  
3 figure it out.

4 Q. Mr. Gray figure it out for you?

5 A. (Kilpatrick) He did it also.

6 Q. Yes.

7 A. (Kilpatrick) He provided me some initial knowledge  
8 about the survivorship of trees from the replantings  
9 that were going on, since he visits the site fairly  
10 regularly.

11 Q. What did he tell you, that they weren't surviving or --

12 A. (Kilpatrick) He told me there was some mixed results.  
13 That, in some areas, there was fairly good  
14 survivorship, other areas there weren't. We also  
15 talked about the whole idea of the change in the road  
16 width. So, the two different mitigations, and the  
17 compensation by planning on Tier 1/Tier 2 plantings,  
18 and, you know, how that might play out, the likelihood  
19 of success of those. So, I think those are the major  
20 topics we talked about.

21 Q. Did you tell him -- did you tell him what your views  
22 were of that?

23 A. (Kilpatrick) No, I did not.

24 Q. Okay. Logging projects, you wanted to know about

[WITNESSES: Kilpatrick~Gray]

- 1 logging projects. Why did you want to know about that?
- 2 A. (Kilpatrick) Well, there was a original report, again,  
3 by some agency of New Hampshire state government, I  
4 think the Natural Heritage Program maybe, that visited  
5 the site and did make comments about that  
6 high-elevation forest, and talked about how the logging  
7 had degradated the habitat. And, so, I wanted to  
8 follow up with him about the extent of that  
9 degradation, what elevation it was occurring at, how  
10 long ago it had been, those types of things.
- 11 Q. So, he provided you -- he had some information about  
12 that?
- 13 A. (Kilpatrick) He did.
- 14 Q. Yes. And, that's the Natural Heritage -- Bureau of  
15 Natural Heritage or something like that?
- 16 A. (Kilpatrick) I believe that is correct.
- 17 Q. Yes. Did you talk to those people on the phone?
- 18 A. (Kilpatrick) I did not. There was a written report  
19 that I included and cited that --
- 20 Q. Yes. Okay. So, we have Mr. Cantor, Will Staats. Who  
21 else did you talk to?
- 22 A. (Kilpatrick) Dr. Kimball.
- 23 Q. Once? Meaningful discussions?
- 24 A. (Kilpatrick) Well, we exchanged some e-mails.

[WITNESSES: Kilpatrick~Gray]

1 Q. Yes.

2 A. (Kilpatrick) And, we had one phone conversation.

3 Q. Okay. So, he gave you some information -- I think we  
4 have those e-mails.

5 A. (Kilpatrick) Right.

6 Q. He gave you some information in e-mails.

7 A. (Kilpatrick) Right.

8 Q. Then, you followed up --

9 A. (Kilpatrick) In a phone conversation.

10 Q. -- in a phone conversation. Okay. And, did he give  
11 you some information that was useful for your report?

12 A. (Kilpatrick) Yes, he did. He provided me with some  
13 information.

14 Q. What was the nature of that information?

15 A. (Kilpatrick) Well, it was primarily about the changes  
16 in the Restoration Plan. And, whether -- what the  
17 basis it was that was on, what data there was to  
18 support that this might be an improvement of  
19 survivorship of trees or why that whole change in the  
20 Restoration Plan was being proposed. We talked some  
21 about his view of what was causing the increase  
22 predator movement along the roadways going up the  
23 mountain. We talked about how long a recovery might be  
24 for reforestation to take place. We talked some about

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1 the advantages/disadvantages of different restoration  
2 plans, kind of the three that I mentioned; natural  
3 recovery, the original Restoration Plan, and the  
4 Amended Restoration Plan.

5 Q. So, of those three, did he have an opinion as to -- I  
6 understand he doesn't like the windpark up there, but  
7 did he have, in terms of --

8 A. (Kilpatrick) Yes. His opinion was that the Amended  
9 Restoration Plan was the choice, was his choice.

10 Q. And, you disagree with him?

11 A. (Kilpatrick) I do.

12 Q. Okay. And, what about his view of the increase in  
13 predatory activity? He told you why he thought that  
14 was happening?

15 A. (Kilpatrick) He gave me citations of a couple of papers  
16 of why he thought it was happening. And, yes, he did,  
17 he did give me his reason of why he thought it was  
18 happening.

19 Q. You don't share that reason?

20 A. (Kilpatrick) I do not.

21 Q. Okay. What was his view of the length of time for  
22 reforestation? And, I assume that's related to one of  
23 the three methods. The time it takes to reforest?

24 A. (Kilpatrick) I don't -- I don't think we were in any

[WITNESSES: Kilpatrick~Gray]

1 disagreement about the time. His opinion, his view was  
2 that it would take decades for reforestation.

3 Q. Uh-huh.

4 A. (Kilpatrick) And, he did not -- was not able to tell me  
5 that one method over the other would hasten that  
6 reforestation by any -- by any time period.

7 Q. Okay. All right. So, basically, your discussions with  
8 Dr. Kimball related to the best method to revegetate,  
9 is that correct?

10 MR. ROTH: I think he already testified  
11 that there were a number of things that they talked  
12 about, --

13 MR. PACHIOS: Okay.

14 MR. ROTH: -- in addition to the best  
15 method to revegetate.

16 **BY THE WITNESS:**

17 A. (Kilpatrick) Right. So, yes, I think it's little bit  
18 more complex than just "revegetate". So, --

19 BY MR. PACHIOS:

20 Q. So, let me get back to our previous colloquy here. I  
21 asked you three questions. I asked you about his view  
22 of increasing predator activity.

23 A. (Kilpatrick) Right.

24 Q. Doesn't that go to alternative ways to revegetate?

[WITNESSES: Kilpatrick~Gray]

1 Alternative revegetation plans?

2 A. (Kilpatrick) Well, yes, it does, but it's not -- it's  
3 not the revegetation that is the --

4 Q. Well, I understand, but --

5 A. (Kilpatrick) -- is the object that you're looking at  
6 there.

7 Q. I understand. I guess what I'm getting at here, your  
8 entire discussion with him was on a variety of issues,  
9 but all of those issues were related to one general  
10 issue, which is how best to revegetate.

11 MR. ROTH: I think you're putting words  
12 in his mouth. And, I think he's already answered this.

13 BY MR. PACHIOS:

14 Q. Okay. Well, I don't want to put any words in your  
15 mouth. And, so, why don't you help me here, all right?  
16 I wasn't at the discussion.

17 A. (Kilpatrick) Uh-huh.

18 Q. So, why don't you tell me what you discussed with him  
19 that did not relate to one of these three alternatives  
20 of revegetating?

21 A. (Kilpatrick) "What was the cause of the carnivores or  
22 predators using this pathway?"

23 Q. And, what did he tell you the cause was?

24 A. (Kilpatrick) Grass, and the attraction of, --

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay.

2 A. (Kilpatrick) -- I believe as he used the term "wood  
3 mice" to grassy areas.

4 Q. Okay. And, isn't whether or not you plant grass, is  
5 that not within the subject area of "methods to  
6 revegetate"?

7 A. (Kilpatrick) In part, but they're -- grasses and forbs  
8 will return to that area, in areas where the mulch is  
9 not being used, naturally from other sources other than  
10 mulching. So, it's not entirely under the realm of the  
11 Restoration Plan.

12 Q. Okay. So, another area of disagreement, not --  
13 different opinions was whether to use grass? You  
14 can -- help me out a little bit.

15 A. (Kilpatrick) Well, yes. It's not whether to use grass,  
16 it's whether, you know, is the bark grindings better  
17 than the grass or is the grass better than the bark  
18 grindings or is to do neither the better solution. So,  
19 we're back to these three alternatives to consider, but  
20 they have more impact than just -- just the recovery of  
21 the trees, the reforestation that we talked about, you  
22 know, and part of Dr. Kimball's reason for choosing  
23 this is he feels that it will have a major -- or, I  
24 won't put words in his mouth, it will have an impact on

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1 the movement of carnivores along those ways, because  
2 they will not be attracted there. That -- I do not  
3 share that opinion.

4 Q. Okay. I'm going to try this question one more time.  
5 The dialogue you had with Dr. Kimball was about the  
6 best techniques for bringing back or mitigating impacts  
7 on wildlife and avian life?

8 A. (Kilpatrick) No.

9 MR. ROTH: That's your characterization.

10 **BY THE WITNESS:**

11 A. (Kilpatrick) No, that was not our --

12 MR. PACHIOS: It is my characterization,  
13 and he can answer for himself.

14 **BY THE WITNESS:**

15 A. (Kilpatrick) And, my answer is "no".

16 BY MR. PACHIOS:

17 Q. Okay. Then, tell me -- you characterize it.

18 A. (Kilpatrick) It was about why he had the view that the  
19 Amended Restoration Plan was an improvement and what  
20 that would do.

21 Q. Oh. Okay.

22 A. (Kilpatrick) And, what was the basis of those -- his  
23 conclusions that he gave in his prefiled testimony.

24 Q. So, it's the -- you disagree with him on what kind of a

[WITNESSES: Kilpatrick~Gray]

1 plan should exist for revegetating that area on either  
2 side of the road or on the side of the road?

3 A. (Kilpatrick) At this point, I don't feel that we have a  
4 basis of knowledge to know what should be the plan for  
5 reforestation.

6 Q. Okay.

7 A. (Kilpatrick) I think it's -- what has happened is just  
8 do one thing, then we change it and do something else.  
9 And, we have no data that one is better than the other,  
10 there's any improvement, or is it worse? We're just  
11 changing the plan.

12 Q. Okay. And, is that your focus here, to figure out what  
13 is the best way to bring back the habitat?

14 A. (Kilpatrick) That is exactly my focus, with one  
15 clarification.

16 Q. Okay.

17 A. (Kilpatrick) Habitat does not translate to vegetation.  
18 And, a habitat is much more important than that. So, I  
19 want to see what can be done, you know, that the  
20 purpose of my report was to evaluate the data that was  
21 available, and to suggest mitigations that could lead  
22 to forest recovery and to reduce the impact on core  
23 important species of that area.

24 Q. Okay. So, part of your engagement was to make some

[WITNESSES: Kilpatrick~Gray]

1 recommendations based on your evaluation as to how to  
2 improve the habitat? I don't want to screw you up with  
3 words. Improve it, bring it back, whatever?

4 A. (Kilpatrick) So, I hesitate, because I'm not sure  
5 there's a great deal that can be done to improve the  
6 habitat within a short period of time.

7 Q. Yes.

8 A. (Kilpatrick) It's going to take decades. What I am  
9 suggesting at least is that we learn something from our  
10 attempts. And, if we just go and change from Plan A to  
11 Plan B to Plan C willy-nilly, we don't learn anything.  
12 We don't know which one worked, which one didn't work.  
13 We have no controls.

14 Q. So, there are, in a lot of forests and a lot of  
15 wildlife habitats, there are roads, regular roads,  
16 logging roads, snowmobile trails. This has to be  
17 something that you've run across before, the  
18 disturbance of wildlife habitat by these recreational  
19 and non-recreational activities which require some kind  
20 of an opening, a road, a path, something you're  
21 familiar with, isn't it?

22 A. (Kilpatrick) Sure.

23 Q. So, since this kind of environmental impact occurs in  
24 forests wherever there are roads, and I think that

[WITNESSES: Kilpatrick~Gray]

1 logging roads are very common in Maine and New  
2 Hampshire, what do they do? Don't you know what they  
3 do to mitigate the impact? It's common.

4 A. (Kilpatrick) What they do to mitigate the impacts?

5 Q. Well, let's do it this way. You agree that every road,  
6 logging road or otherwise, that goes through the forest  
7 has an adverse impact on the forest?

8 A. (Kilpatrick) Certainly.

9 Q. Okay. And, you're a wildlife biologist, did I  
10 mischaracterize it?

11 A. (Kilpatrick) That's, in part, of what I do, yes.

12 Q. Close enough, right?

13 A. (Kilpatrick) Right.

14 Q. Okay. So, this isn't the first time you have been  
15 engaged to make recommendations as to what to do about  
16 a road going through forest?

17 A. (Kilpatrick) There's two very different aspects, and  
18 one I do not deal with, and that's the policy or the  
19 political aspect.

20 Q. Okay.

21 A. (Kilpatrick) I do it based on biological  
22 recommendations.

23 Q. Fair enough. So, put aside the political thing. My  
24 question is, I'm not asking you to put on your

[WITNESSES: Kilpatrick~Gray]

1 political hat.

2 A. (Kilpatrick) Okay.

3 Q. My question is, you must have been engaged at somewhere  
4 along the line to make recommendations as to what to do  
5 about damage to forest habitat occurring as the result  
6 of a logging road, regular roads, whatever?

7 A. (Kilpatrick) Actually, I haven't.

8 Q. Okay. And, I can understand that with respect to  
9 logging roads, because the logging roads go in and  
10 nobody's --

11 A. (Kilpatrick) Right.

12 Q. -- saying "let's get a wildlife biologist in here to  
13 tell us how to do this."

14 A. (Kilpatrick) That's exactly right. And, in most states  
15 then, there's very little regulations on what -- at  
16 least in Vermont there's very little regulations that  
17 can be done to mitigate the production.

18 Q. Okay. And, in the three -- in the four cases where  
19 you've been an expert in connection with windpark  
20 developments in Vermont, were you asked to make  
21 recommendations on how to mitigate the damage or were  
22 you just asked to come in and testify as to why there  
23 will be a lot of environmental advantage -- a lot of  
24 environmental damage if this project is built?

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- 1 A. (Kilpatrick) For the most part, I was brought in to  
2 testify on the adverse impacts on wildlife. And,  
3 primarily, under the Vermont statute, how it would  
4 affect critical wildlife habitat. In the case of the  
5 Deerfield, I was also brought in to testify  
6 specifically about impacts on black bears, and involved  
7 in the mitigation plan of the study involving black  
8 bears and how it would -- how a pre and post  
9 construction study would allow us to determine better  
10 the negative impact on the bear population.
- 11 Q. And, in part, was the negative impact the result of  
12 cutting a road into the project?
- 13 A. (Kilpatrick) Not specifically. So, it was more a  
14 concern of the noise factor.
- 15 Q. Okay.
- 16 A. (Kilpatrick) And, the turbines on the ridgeline being  
17 a -- being actually the habitat fragmenter.
- 18 Q. Okay.
- 19 A. (Kilpatrick) And, causing avoidance of use of beech  
20 trees, which was part of their feeding grounds.
- 21 Q. So, of those four that you did in Vermont, in none of  
22 them did you testify or provide information as to how  
23 to best mitigate the effect of a road?
- 24 A. (Kilpatrick) I did not.

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1 Q. Okay. They all had roads associated with them, I  
2 trust?

3 A. (Kilpatrick) Yes, they did have.

4 Q. Yes. But --

5 A. (Kilpatrick) One is still not built, but --

6 Q. Yes. All right. Okay. So, I think we have an  
7 understanding of your discussion with Dr. Kimball and  
8 where you disagreed. Did you know of Dr. Kimball  
9 before?

10 A. (Kilpatrick) No, I did not.

11 Q. Okay. Who else did you talk to?

12 A. (Kilpatrick) I e-mailed Jill Kelly, but I never  
13 actually spoke to her on the phone.

14 Q. Who is she?

15 A. (Kilpatrick) Also a biologist with the New Hampshire  
16 Fish & Game.

17 Q. Okay.

18 A. (Kilpatrick) She's a person who did her Master's thesis  
19 on pine marten or American marten in this state. I  
20 have spoken with her at other times --

21 Q. At UVM? At UVM?

22 A. (Kilpatrick) No, at University of New Hampshire.

23 Q. Yes.

24 A. (Kilpatrick) I have spoken with her at other times

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1 about that.

2 Q. Uh-huh.

3 A. (Kilpatrick) I spoke with Chris, of course. I spoke  
4 with Peter.

5 Q. Speak with Lisa?

6 A. (Kilpatrick) No. No.

7 Q. You knew Lisa through other --

8 A. (Kilpatrick) Lisa knew me from Deerfield. I'm sorry to  
9 say that I did not know Lisa from Deerfield.

10 MR. PACHIOS: I'm sorry I brought it up.

11 MS. LINOWES: I guess I'm not memorable.

12 BY MR. PACHIOS:

13 Q. And, did you base any of your testimony, when I say  
14 "testimony" I'm including the report, on information or  
15 answers to questions provided at the technical session,  
16 when Dr. Kimball and Will Staats -- or, Dr. Kimball was  
17 on the phone, and Will Staats was here.

18 A. (Kilpatrick) Will Staats was not here.

19 Q. Will Staats was not here, okay. Just Tyler, yes.

20 Tyler --

21 MR. WARNER: Phillips.

22 BY MR. PACHIOS:

23 Q. -- Phillips.

24 A. (Kilpatrick) My answer would be "not directly." To

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1 that, certainly, you know, part of my understanding of  
2 the plans --

3 Q. Yes.

4 A. (Kilpatrick) -- for the facility were obtained during  
5 that technical session.

6 Q. Right. Okay. On August 5th, you sent an e-mail to Mr.  
7 Roth saying that you were having difficulty finishing  
8 your testimony, which at that time was to be  
9 August 8th. And, you needed some studies, you were  
10 looking for some studies that you needed in order to do  
11 your testimony. And, you asked for "bat studies". Why  
12 did you ask for bat studies? You want me to get that  
13 e-mail?

14 MR. WARNER: I have it right here.

15 BY MR. PACHIOS:

16 Q. You want me to read it? Or, show it to you?

17 MR. PACHIOS: Show it to him.

18 (Atty. Warner distributing documents.)

19 **BY THE WITNESS:**

20 A. (Kilpatrick) Well, I believe that the reason I asked  
21 for that, because the citation that I had found for  
22 that study was a combined bird and bat study. So, I  
23 probably shouldn't have put the comma in there, that  
24 there were two different studies.

[WITNESSES: Kilpatrick~Gray]

1 BY MR. PACHIOS:

2 Q. Okay.

3 A. (Kilpatrick) But I think, if you look at that study,  
4 that it is a report on birds and bats.

5 Q. All right. You didn't need information about bats for  
6 your report, right?

7 A. (Kilpatrick) No.

8 Q. Okay.

9 A. (Kilpatrick) There's nothing in my report about bats.

10 Q. So, while we have this e-mail in front of us, the stuff  
11 that you were looking for, the first thing you listed  
12 was "Readable colored plans for the proposed Amendment  
13 showing road widths, planting areas, and crane assembly  
14 and walking areas." Did you get that?

15 A. (Kilpatrick) I got that, I believe, on the afternoon of  
16 whatever the date was that the original report was due.

17 Q. Yes. Okay. But you did get it ultimately?

18 A. (Kilpatrick) Yes, like 3:00, 3:00 p.m. or 4:00 p.m. on  
19 that day.

20 Q. Yes.

21 MR. ROTH: Just for the record, the  
22 plans were provided pursuant to the post technical session  
23 list or order to me, and I had sent them by Federal  
24 Express or UPS overnight --

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1 DR. KILPATRICK: Yes.

2 MR. ROTH: -- to Dr. Kilpatrick the same  
3 day that I received them.

4 BY MR. PACHIOS:

5 Q. Okay. Number 2. "Overlay of approved project, project  
6 as constructed, and project as proposed in the  
7 amendment." Did you get that?

8 A. (Kilpatrick) Not really.

9 Q. Not really. Okay. All right. And, do you think that  
10 that was an obstacle, not an "obstacle", do you think  
11 that it adversely affected your ability to provide what  
12 you were engaged to provide in this report?

13 A. (Kilpatrick) No.

14 Q. Okay. Next, "Results of road widths on the aggregate  
15 surface area of the roads." Did you get that?

16 A. (Kilpatrick) I got a number.

17 Q. And, it's the number of square feet or linear feet or  
18 something that --

19 A. (Kilpatrick) Yes. It wasn't very informative, but I  
20 did get a number.

21 Q. And, why did you need that? And, did that impede you  
22 somehow?

23 A. (Kilpatrick) Well, I thought that was an important --  
24 well, first reason was it was something that was

[WITNESSES: Kilpatrick~Gray]

1 requested in the technical session.

2 Q. Okay.

3 A. (Kilpatrick) And, so, that wasn't I that requested it,  
4 but I wanted to see it. And, so, that provided some  
5 information in evaluating the impacts on revegetation  
6 of the original Restoration Plan versus the Amended  
7 Restoration Plan.

8 Q. And, tell us how it affected that?

9 A. (Kilpatrick) Well, it provided a number of the  
10 increased amount of square feet of gravel habitat that  
11 would exist.

12 Q. Okay. So, is that in your -- is the effects of the  
13 increased amount of gravel habitat in your report? Do  
14 you deal with that?

15 A. (Kilpatrick) Well, the number is there, but, since I  
16 don't know how the number was obtained, and I don't  
17 know what the values were before, it's not very useful.

18 Q. What is the effect of increasing the amount of gravel  
19 habitat?

20 A. (Kilpatrick) It's essentially habitat that will never  
21 become reforested.

22 Q. Uh-huh.

23 A. (Kilpatrick) Or will be much, much slower in being  
24 reforested.

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[WITNESSES: Kilpatrick~Gray]

1 Q. Uh-huh.

2 A. (Kilpatrick) It's going to be maintained as gravel  
3 habitat.

4 Q. Okay. And, that would include the turbine areas?

5 A. (Kilpatrick) That would include -- this, I believe, was  
6 directly just to the difference in the 12-foot roads  
7 and the 16-foot roads. So, just of the road surface.

8 Q. Uh-huh. And, so, what you got was not informative, but  
9 that wasn't the thrust of your report anyway, was it?

10 A. (Kilpatrick) Well, it --

11 Q. I mean, --

12 A. (Kilpatrick) It wasn't the thrust, but it would have  
13 been nicer to have had an idea of how those values were  
14 obtained. So, what the value was before and how much  
15 is the increase. So, we got the increase, but we don't  
16 know the value prior. And, so, I don't know the total,  
17 total value.

18 Q. But isn't the thrust -- isn't the thrust of your report  
19 your recommendations as to a revegetation plan and  
20 mitigation? And, that's at the end of your report, and  
21 you have several things, recommendations.

22 A. (Kilpatrick) That was one of the things I was asked as  
23 a consultant to include in the report, was to evaluate  
24 the Restoration Plans, the Amended versus the original

[WITNESSES: Kilpatrick~Gray]

1 Restoration Plans. So, in that sense, yes, that's part  
2 of the report.

3 Q. Okay.

4 A. (Kilpatrick) I would not say that's the total thrust of  
5 the report.

6 Q. Well, what else is there? I mean, I'm just  
7 generalizing, but what --

8 A. (Kilpatrick) Well, again, the Restoration Plans talked  
9 solely about reforestation. And, that's only a part of  
10 the impact that the project is having on the wildlife  
11 on Mount Kelsey.

12 Q. So, what else is there in the report, besides your  
13 recommendations as to how to reforest?

14 A. (Kilpatrick) The other ways of which the wildlife is  
15 impacted that is not dealt with in the Restoration  
16 Plans.

17 Q. Such as?

18 A. (Kilpatrick) Such as the edge effect. Such as --

19 Q. Well, what can you do about the edge effect? I mean,  
20 what can anybody do, the road's there?

21 A. (Kilpatrick) Okay. So, which has a less of an edge, a  
22 circle or a area with convolutions on it?

23 Q. What do you mean "convolutions"?

24 A. (Kilpatrick) Interdigitations. (Witness Kilpatrick

[WITNESSES: Kilpatrick~Gray]

1 drawing.) So, this [indicating] versus that  
2 [indicating].

3 Q. Yes. Some -- we'll keep talking. Somebody -- I'm not  
4 a smart lawyer like some of these guys. So, I don't  
5 get a lot of this.

6 A. (Kilpatrick) So, the point is, does one of the  
7 Restoration Plans actually create more edge habitat?

8 Q. Okay. Now, I'm with you. And, what do you think  
9 creates more edge habitat?

10 A. (Kilpatrick) If the plantings on the turbine pads were  
11 to be successful, it would create additional edge  
12 habitat.

13 Q. Okay. So, --

14 A. (Kilpatrick) Because we're breaking up that circle --

15 Q. Yes.

16 A. (Kilpatrick) -- by additional area coming in.

17 Q. Okay. So, this -- this again goes to your views as to  
18 how to best reforest and increase the habitat?

19 A. (Kilpatrick) No. I did not make a judgment about what  
20 the best way would be. I tried to point out the  
21 potential downfalls of each of the Restoration Plans.

22 Q. Okay. All right. So, if I go into your report, is  
23 there, and I don't have it in front of me, I suppose I  
24 could review it right now, but I'm not, is there

[WITNESSES: Kilpatrick~Gray]

1 anything in the report that relates to the aggregate  
2 surface area of roads?

3 A. (Kilpatrick) I know it's mentioned in the report.

4 Q. Well, is it -- is it your view that the -- I mean, what  
5 does the report say about it?

6 A. (Kilpatrick) It says the information that I had  
7 available on it, --

8 Q. Yes.

9 A. (Kilpatrick) -- what the difference would be between  
10 the two Restoration Plans. And, so, that is in the  
11 report.

12 Q. Uh-huh.

13 A. (Kilpatrick) And, so, that is a point for evaluation of  
14 the two different Restoration Plans.

15 Q. Okay. All right. "Results of increased planting on  
16 turbine pads on the aggregate surface area of gravel  
17 surfaces", same kind of question, only this relates not  
18 to road -- or, same kind of information, but it relates  
19 to the turbine pads, instead of the roads. Did you get  
20 that information?

21 A. (Kilpatrick) Again, I got a number.

22 Q. Okay. And, not particularly informative, but a number?

23 A. (Kilpatrick) Right.

24 Q. Okay. The post construction studies, "bird, bat and

[WITNESSES: Kilpatrick~Gray]

1 wildlife reports", you got those?

2 A. (Kilpatrick) I did.

3 Q. Okay. And, the "concerns of the Natural Heritage  
4 Bureau", you never did get that?

5 A. (Kilpatrick) I believe I -- I don't know.

6 Q. Yes. All right.

7 A. (Kilpatrick) Not clear.

8 Q. All right.

9 A. (Kilpatrick) Shouldn't say.

10 Q. All right.

11 A. (Kilpatrick) Not that I know of.

12 Q. Okay. All right.

13 MR. ROTH: While you're gathering your  
14 thoughts, I'm going to slip away. I'll check back in.

15 DR. KILPATRICK: Okay.

16 MR. PACHIOS: Can we take a one-minute  
17 break.

18 MR. IACOPINO: Sure.

19 MR. PACHIOS: It's not that I can't find  
20 what I'm looking for, it's just that I want to give  
21 Dr. Kilpatrick a break.

22 DR. KILPATRICK: Good.

23 (Brief off-the-record discussion  
24 ensued.)

[WITNESSES: Kilpatrick~Gray]

1 MR. IACOPINO: All right. Why don't we  
2 break for ten minutes. Then, in that way, we know who  
3 runs the show.

4 (Recess taken at 12:36 p.m. and the  
5 technical session resumed at 12:51 p.m.)

6 MR. IACOPINO: Okay. Let's go back on  
7 the record. Mr. Pachios, why don't you continue.

8 BY MR. PACHIOS:

9 Q. We've been talking about your testimony and the report.  
10 Is there -- is there any other memos, reports, letters,  
11 on other issues relating to this wind farm that you  
12 have -- you have created?

13 A. (Kilpatrick) On this wind farm?

14 Q. On this wind farm, yes.

15 A. (Kilpatrick) No.

16 Q. Nothing that will surprise us in any way that "well, I  
17 did an analysis of such and such, and I can provide  
18 it"?

19 A. (Kilpatrick) No.

20 Q. Okay. You have a Ph.D from North Texas State  
21 University, which I know to be in Denton, and in  
22 Zoology. So, did you teach zoology?

23 A. (Kilpatrick) Do I teach zoology now?

24 Q. Yes. Yes. Do you teach it now?

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1 A. (Kilpatrick) So, I was originally hired at the  
2 University of Vermont to teach zoology.

3 Q. Yes.

4 A. (Kilpatrick) I hold an Endowed Chair as a Professor of  
5 Zoology and Natural History. But the Zoology  
6 Department has disappeared, and now it's part of the  
7 Biology Department. Just a change of names. So, now I  
8 teach biology, but my concentration is still in  
9 zoology.

10 Q. And, how does that relate to the discipline of ecology?

11 A. (Kilpatrick) Well, zoology then is the study of  
12 animals, biology is the study of life, and ecology then  
13 is usually defined as "the study of the interactions  
14 between plants, animals, and any biotic factors of the  
15 environment.

16 Q. So, really, what we've been talking about is ecology?

17 A. (Kilpatrick) Yes, in part, a lot of it is certainly in  
18 ecology.

19 Q. So, what do you -- do you teach just graduate students  
20 now?

21 A. (Kilpatrick) No. I teach --

22 Q. Undergrads too?

23 A. (Kilpatrick) I teach undergrads also.

24 Q. And, so, what are you teaching? Like this year, what

[WITNESSES: Kilpatrick~Gray]

1 are you teaching?

2 A. (Kilpatrick) So, right now, I teach a course in  
3 mammalogy, or mammals, that I generally teach every  
4 fall. And, I also direct a seminar in forensics.

5 Q. Okay. This -- I don't know much about science. I did  
6 take a geology course when I was in college, because  
7 there was a science requirement.

8 A. (Kilpatrick) Ah.

9 Q. But have you taught ecology?

10 A. (Kilpatrick) Well, ecology is taught in my mammalogy  
11 course. So, I teach them about the ecology of mammals  
12 in that particular course.

13 Q. Uh-huh.

14 A. (Kilpatrick) I also teach a course called "Molecular  
15 Ecology". I teach that in springs of even-numbered  
16 years.

17 Q. What's "Molecular Ecology"?

18 A. (Kilpatrick) Well, it's using molecules, primarily DNA  
19 techniques, to address ecological questions. So, we  
20 can -- we can address questions about the sizes of  
21 populations, about movement of animals, by looking at,  
22 essentially, DNA forensic-type techniques that may  
23 be -- so, as an example, we could go out with some of  
24 the stuff that's been done on bears, we could put up

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1 barbed wire and have bears go under the barbed wire and  
2 leave little traces of hair. And, then, we can analyze  
3 their DNA, their DNA fingerprint, if you want, from  
4 that hair. And, so, we can see if they move or we  
5 could see if the cross a turbine string of wind  
6 turbines, so see if that really is a barrier to them.  
7 So, that's some of the types of questions you can  
8 answer with molecular ecology. So, you don't have to  
9 necessarily sample the animal itself. We've also done  
10 work with scat-detecting dogs. When they're trained to  
11 locate scats of particular species. So, then, we can  
12 mark them by taking GPS movements about where they're  
13 moving on the landscape. So, those types of approach.  
14 So, it's definitely ecology. It's the modern tools of  
15 ecology.

16 Q. In the data responses, we were told that other things  
17 that you relied on are in binders. I think that  
18 they're these papers and so forth.

19 A. (Kilpatrick) Yes.

20 Q. And, we've not seen one of these binders. We don't  
21 know what's in it.

22 A. (Kilpatrick) Yes.

23 Q. Can I look at them?

24 A. (Kilpatrick) Sure. So, here are the three binders.

[WITNESSES: Kilpatrick~Gray]

1 This is the other one here.

2 (Witness Kilpatrick handing binders to  
3 Atty. Pachios.)

4 BY MR. PACHIOS:

5 Q. So, going back to my initial questions beginning this  
6 morning, how can we trace the information, if we read  
7 these and find information in it, will we find -- we'll  
8 find some citations in your report, will we?

9 A. (Kilpatrick) Yes, you will.

10 Q. We'll find citations for certain conclusions tied to  
11 these writings?

12 A. (Kilpatrick) Correct.

13 Q. And, will we find anything else in there, other than,  
14 you know, "here's what I say, and here's what I relied  
15 on, here's the citation"? Is there -- is there  
16 anything else in these things that --

17 A. (Kilpatrick) I don't --

18 Q. I think, are they only useful to tie them to the  
19 citations which underlie your testimony?

20 A. (Kilpatrick) I would say "yes".

21 MR. PACHIOS: Okay. All right. We'll  
22 leave them here for now. We're not going to read them  
23 right now.

24 MS. NOETHER: Okay. That's what I

[WITNESSES: Kilpatrick~Gray]

1 thought you wanted, you don't quite have the time to read  
2 them right now.

3 MR. PACHIOS: It might take a couple  
4 hours and then some.

5 MS. NOETHER: These are -- just for the  
6 record, these binders are studies that you've cited in  
7 your report, so they can be found.

8 DR. KILPATRICK: They were actually  
9 listed in the discovery request of -- this is not  
10 discovery. Data requests of what they were. So, it's --  
11 one is the Siren dissert -- or, Master's thesis, the other  
12 is the Parrish Master's thesis. And, then, most of the  
13 others are actually documents that you guys have produced  
14 that I relied upon.

15 BY MR. PACHIOS:

16 Q. Okay. You know, we got notes of your telephone  
17 conversations, but we didn't see one for John Cantor.  
18 Do you have notes of your discussion with John Cantor?

19 A. (Kilpatrick) No, I don't.

20 Q. Okay.

21 A. (Kilpatrick) It was a very brief conversation.

22 Q. Okay. All right.

23 A. (Kilpatrick) As were the e-mails I had with John.

24 Q. Get the one August 5th, 5:48. This is a -- we're going

[WITNESSES: Kilpatrick~Gray]

1 to show it to you, one of your e-mails, one of your  
2 e-mails that was sent on Tuesday, August 5th. I think  
3 it's when you were under a lot of pressure to meet an  
4 August 8th deadline, and you didn't have much  
5 information.

6 (Atty. Warner distributing documents.)

7 MR. IACOPINO: Thank you.

8 BY MR. PACHIOS:

9 Q. Do you remember the e-mail?

10 A. (Kilpatrick) I'm looking at it, yes.

11 Q. Yes, yes. Go ahead. Just tell me when you finish  
12 reading it.

13 A. (Kilpatrick) Okay.

14 Q. So, in the last paragraph you say "I'm going to  
15 continue to work on this report, placing comments in  
16 brackets regarding those areas I can not currently  
17 address." What areas were those that you couldn't  
18 address?

19 A. (Kilpatrick) Well, they were things like I could not  
20 address at the time the total number of miles of the  
21 road, what the area of the crane walk and crane  
22 construction sites would involve. I could not really  
23 determine the locations of the Tier 1/Tier 2/Tier 3  
24 plantings. They were primarily that type of thing,

[WITNESSES: Kilpatrick~Gray]

1 where I couldn't get some idea of the magnitude of  
2 those particular components of the various Restoration  
3 Plans.

4 Q. And, why did you need the total number of miles of road  
5 in order to write the report that we've read?

6 A. (Kilpatrick) Well, you can present data or statistics  
7 in very different ways. So, one could present the idea  
8 that the area impacted by this road is not very  
9 substantial by presenting it in the number of square  
10 feet. Okay? Whereas, if you present it in length, it  
11 has a very different visual impact.

12 Q. And, the length is also important with respect to the  
13 amount of edge effect, is that --

14 A. (Kilpatrick) Absolutely.

15 Q. Yes. Though, nothing, and I think we discussed this  
16 before, if a road is five miles long, it's going to  
17 have edge effect, because roads have edge effect. And,  
18 if it's two miles long, I understand the linear issue  
19 now, --

20 A. (Kilpatrick) Right.

21 Q. If it's two miles long, you have less edge effect.

22 A. (Kilpatrick) You do.

23 Q. Gotcha. Okay. So, let's go to another e-mail. And,  
24 I've only got a couple more questions now. Another

[WITNESSES: Kilpatrick~Gray]

1 e-mail, this one is on September 2nd. And, this is a  
2 month later, and you're coming up against the deadline.

3 (Atty. Warner distributing documents.)

4 DR. KILPATRICK: Okay.

5 BY MR. PACHIOS:

6 Q. In the first paragraph, you say "The revegetating does  
7 not look like it has been very successful." Does your  
8 report give us some direction on how it could be more  
9 successful?

10 A. (Kilpatrick) Not directly.

11 Q. Okay. You agree, there is only so much you can do, the  
12 road is there? It's been done. And, the pads are  
13 there, the turbine pads are there. So, there's only so  
14 much can be done. You can't restore it back to the way  
15 it was.

16 A. (Kilpatrick) I do not disagree with that. The point I  
17 tried to make was that, instead of just trying things,  
18 that maybe the most easiest or most convenient, without  
19 knowing what impacts they have on success, is not going  
20 to do us much in the long run.

21 Q. Okay. So, in the first paragraph, you talk about the  
22 problems you observe in both of the plans, the original  
23 one and the Amended one, I think you're referring to  
24 that. You say, in the last sentence, "I have not seen

[WITNESSES: Kilpatrick~Gray]

1 any evidence that the plantings have any higher  
2 survival rates in the bark mulched areas than in the  
3 initial areas that were replanted."

4 A. (Kilpatrick) Right.

5 Q. So, --

6 A. (Kilpatrick) So, I don't know that the new plan is  
7 better than the old plan.

8 Q. Right. That's what you're talking about here?

9 A. (Kilpatrick) That's what I'm talking about there.

10 Q. Yes. Right. And, then, you say "I'm not sure what can  
11 be done. I thought I was to evaluate the differences  
12 in the initial high elevation mitigation agreement and  
13 the proposed amendment". And, I think what you're  
14 saying is "I think they're" -- "I found both wanting"?

15 A. (Kilpatrick) That's true.

16 Q. Isn't that what you're saying there?

17 A. (Kilpatrick) That's what I'm saying.

18 Q. Yes. And, this business about a "farce", was he  
19 talking about the initial or the Amended or both? It  
20 says "The mitigation agreement is in your words a  
21 farce", is he talking about both of them, as you are,  
22 because you're talking about both of them?

23 A. (Kilpatrick) I'm talking about both of them.

24 Q. Yes. All right.

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1 A. (Kilpatrick) I don't know what -- not sure what  
2 somebody else is talking about.

3 Q. Yes. Okay. All right. Now, you refer to, in your  
4 report, to "browsing".

5 A. (Kilpatrick) Yes.

6 Q. Evidence of browsing, carnivore browsing?

7 A. (Kilpatrick) No.

8 Q. No.

9 A. (Kilpatrick) Carnivores don't browse.

10 Q. I would have known that, if I had taken something more  
11 than geology.

12 A. (Kilpatrick) Herbivores browse.

13 Q. Okay. So, do you -- how did you observe, on what do  
14 you base that observation?

15 A. (Kilpatrick) Well, there were photographs that showed  
16 clearly browsing.

17 Q. Oh. Okay. Not to delay this, but we do want to see  
18 the photographs that show browsing.

19 A. (Kilpatrick) Well, I don't think there's any of them on  
20 the photos that I had. Chris certainly had some  
21 photographs that showed browsing.

22 Q. Could you provide those to us?

23 A. (Gray) Yes.

24 Q. The photographs that you observed that on what you base

[WITNESSES: Kilpatrick~Gray]

1 your conclusion that there's browsing?

2 A. (Kilpatrick) Absolutely.

3 MS. LINOWES: Excuse me, if I could  
4 interject. Chris was on the site walk. He can talk to  
5 what he observed on the trees.

6 MR. PACHIOS: I'm with this guy here  
7 now.

8 MS. LINOWES: Oh. As a panel.

9 MR. PACHIOS: I'll get to Chris. Thank  
10 you.

11 MS. LINOWES: Oh, okay. Sorry.

12 BY MR. PACHIOS:

13 Q. Okay. So, if you can send those to us, we would  
14 appreciate it.

15 A. (Kilpatrick) Right.

16 MS. NOETHER: Well, we already discussed  
17 previously some photographs.

18 MR. PACHIOS: Right.

19 MS. NOETHER: So, I'm assuming those  
20 will be part of that?

21 DR. KILPATRICK: Right.

22 MR. PACHIOS: Good. Okay.

23 BY MR. PACHIOS:

24 Q. When you look at a photograph and conclude that there's

[WITNESSES: Kilpatrick~Gray]

1           been browsing, what are you looking at? What shows  
2           browsing? What's evidence of browsing?

3   A.   (Kilpatrick) Well, usually then, a young tree is going  
4           to have branches coming off at various heights. And,  
5           you get -- you see branches at the very bottom and  
6           branches at the very top, and nothing in between.

7   Q.   Branches gone?

8   A.   (Kilpatrick) Branches gone. They have been removed.  
9           Sometimes the top is gone out of it, too, but --

10   Q.   Yes. All right.

11                           (Atty. Pachios conferring with Atty.  
12                           Warner and Atty. Stayn.)

13   BY MR. PACHIOS:

14   Q.   Going back to that e-mail we just looked at on 9/2, on  
15           September 2nd, 5:06. You asked, in the next to the  
16           last paragraph, last sentence, "Can we suggest other  
17           mitigation efforts?" Did he tell you you could suggest  
18           other mitigation efforts?

19   A.   (Kilpatrick) Yes, he did.

20   Q.   Yes. And, did you?

21   A.   (Kilpatrick) Yes.

22   Q.   Okay. And, was mitigation part of the scope of your  
23           engagement? That is, were you engaged -- what was your  
24           engagement? What were you supposed to tell us in the

[WITNESSES: Kilpatrick~Gray]

1 report or opine on? What was the area of your -- that  
2 your expertise was to illuminate?

3 A. (Kilpatrick) My understanding of what I was hired to  
4 provide was an assessment of the agreed upon  
5 Restoration Plan or Mitigation Settlement, and the  
6 proposed Amended Restoration Plan.

7 Q. Both of them?

8 A. (Kilpatrick) Both of them. I was supposed to compare  
9 them. And, I was supposed to compare them to delineate  
10 their effects of mitigation on wildlife and wildlife  
11 habitat on Mount Kelsey high-elevation forest site.

12 Q. Fair enough. The original one was adopted in 2009, the  
13 original Mitigation Plan, or the agreement was  
14 executed, and then incorporated into the decision by  
15 the Site Evaluation Committee in 2009. Part of your  
16 engagement, one of the things you were engaged to do,  
17 was to take a look at that and see if that was any  
18 good, is that correct?

19 A. (Kilpatrick) I guess I would not say whether it was any  
20 good, but whether the difference in the two plans, and  
21 I did come to the conclusion that the Restoration Plan  
22 was -- was lacking.

23 Q. It could be better, is that correct?

24 A. (Kilpatrick) Yes.

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay.

2 A. (Kilpatrick) It wasn't doing a whole lot with the real  
3 problems.

4 Q. And, that includes the initial plan, the 2009 Plan?

5 A. (Kilpatrick) Either one of them.

6 Q. Either one of them.

7 A. (Kilpatrick) Right.

8 Q. Okay. And, that was part of your engagement, to look  
9 at those two things?

10 A. (Kilpatrick) I was asked to evaluate them, and that's  
11 what I did.

12 Q. Okay. So, the bottom line is, the second one is  
13 neither better nor worse than the first one, they're  
14 both lousy, not "lousy", but they're both not very  
15 good?

16 A. (Kilpatrick) I think it has aspects in it that make it  
17 worse.

18 Q. Uh-huh. Okay. And, that's what you've been hired to  
19 look at and to tell us?

20 MS. NOETHER: He's asked and answered  
21 that several times now.

22 **BY THE WITNESS:**

23 A. (Kilpatrick) Yes. I wouldn't phrase it that way. I've  
24 been hired to evaluate it and give you my assessment of

[WITNESSES: Kilpatrick~Gray]

1           it. I was not hired to tell you one specific thing.

2 BY MR. PACHIOS:

3 Q.   Well, you were hired to tell us what a better  
4       mitigation plan would be.

5 A.   (Kilpatrick) Okay. I was hired to evaluate the two  
6       mitigation plans and make recommendations.

7                   MR. PACHIOS: Okay. Thank you very  
8       much. Appreciate your cooperation and assistance. And, I  
9       did learn something.

10                   MR. IACOPINO: Do you have any other  
11       questions for Mr. Gray?

12                   DR. KIMBALL: I have some questions, but  
13       I also have a deadline, I've got to leave at -- I've got  
14       to be back in the North Country at 4:00.

15                   MR. PACHIOS: If you want us to defer,  
16       we will?

17                   DR. KIMBALL: Yes, if I could.

18 BY DR. KIMBALL:

19 Q.   Have you ever done restoration work in the subalpine  
20       and alpine area in the Northeast?

21 A.   (Kilpatrick) No. I don't do restoration work.

22 Q.   What understory species would you expect to find in  
23       this area? Please name the species.

24 A.   (Kilpatrick) Well, on other sites that I've been to,

[WITNESSES: Kilpatrick~Gray]

1           certainly, I've seen an understory of viburnum being  
2           present.

3   Q.    In a subalpine S3 --

4                               (Court reporter interruption.)

5   BY DR. KIMBALL:

6   Q.    In a heritage site that's ranked as S3, known as a  
7           spruce/fir/birch forest?

8   A.    (Kilpatrick) No, not in the forest itself. But in  
9           the --

10   Q.    Because that's the kind of forest we're talking about.

11                           MS. NOETHER: That's not the question  
12           you asked.

13                           DR. KILPATRICK: Yes. You didn't ask --

14                           DR. KIMBALL: I asked him what, in this  
15           particular area, what understory species would he expect  
16           to see?

17   **BY THE WITNESS:**

18   A.    (Kilpatrick) And, in the recovering area, such as the  
19           open spaces there that are being reforested, I would  
20           expect to see viburnum being a understory species.

21   BY DR. KIMBALL:

22   Q.    Would you expect grass to be one of the understory  
23           species?

24   A.    (Kilpatrick) At other sites that I have been to, I have

[WITNESSES: Kilpatrick~Gray]

1           seen grass at those sites. Again, where it was a  
2           regenerating forest along the edge.

3   Q.   Above 2,700 feet?

4   A.   (Kilpatrick) Above 2,700 feet.

5   Q.   And, those are native?

6   A.   (Kilpatrick) Don't know.

7   Q.   You know the differences between grasses and sedges?

8   A.   (Kilpatrick) I do.

9   Q.   Which would you expect to find up there?

10  A.   (Kilpatrick) I have certainly seen sedges, but I've  
11       also seen grasses.

12  Q.   That are native in subalpine?

13  A.   (Kilpatrick) Again, I don't know whether they were  
14       native or not.

15  Q.   You also misrepresented both my conversation with you,  
16       as well as my testimony.

17                   MS. NOETHER: Can we just ask the  
18       question, instead of testifying please?

19  BY DR. KIMBALL:

20  Q.   Where did I ever say definitively that this habitat  
21       would bring in additional prey?

22  A.   (Kilpatrick) So, I don't -- so, let's be specific about  
23       what habitat you're talking about.

24  Q.   Going along the road edge.

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) You specifically sent me references that  
2 referred to animals using grasslands as being  
3 additional prey species.

4 Q. Okay.

5 A. (Kilpatrick) You sent me two studies.

6 Q. I think what you asked me, and the e-mails would show  
7 something a little different than that, but that's  
8 okay.

9 MS. NOETHER: Again, I'm going to ask to  
10 strike any testimony. Questions are allowed, but --

11 MR. IACOPINO: This is informal. I'm  
12 not going to strike anybody's testimony. But, if you  
13 could just -- just ask questions and --

14 BY DR. KIMBALL:

15 Q. What other species outside of viburnum would you expect  
16 at this elevation and this habitat type?

17 A. (Kilpatrick) I don't know right offhand.

18 Q. Would you provide documentation that you would expect  
19 to find viburnum up there?

20 A. (Kilpatrick) I have seen viburnum at other sites of  
21 spruce/fir forest edges at similar elevations.

22 Q. In the interior forest or just along the edges?

23 A. (Kilpatrick) Along the edges.

24 DR. KIMBALL: All right. I think I've

[WITNESSES: Kilpatrick~Gray]

1 got enough of what I need. Thank you.

2 MS. NOETHER: You're welcome.

3 MR. IACOPINO: Lisa, do you have any  
4 questions?

5 MS. LINOWES: Yes.

6 MR. IACOPINO: I'm sorry. Nobody at  
7 this end of the table had any more questions for Mr. Gray  
8 either, correct?

9 MR. PACHIOS: Correct.

10 MR. IACOPINO: Okay.

11 MS. LINOWES: I did have --

12 MR. WARNER: He's asking for Mr. Gray  
13 now.

14 MR. PACHIOS: Oh, Mr. Gray, yes, we do.

15 MR. IACOPINO: Okay.

16 MR. PACHIOS: Yes.

17 MR. IACOPINO: How much do you have of  
18 Mr. Gray?

19 MR. PACHIOS: About a minute or two.

20 MR. IACOPINO: Okay.

21 MR. WARNER: Ken, what time do you have  
22 to leave?

23 DR. KIMBALL: In about fifteen minutes.

24 MR. IACOPINO: All right.

[WITNESSES: Kilpatrick~Gray]

1 DR. KIMBALL: I need two and a quarter  
2 hours to get back, and I have a 4:00 appointment.

3 MR. PACHIOS: Do you have questions of  
4 Mr. Gray?

5 DR. KIMBALL: No.

6 MR. WARNER: Do you have questions for  
7 Ms. Linowes?

8 DR. KIMBALL: I do not.

9 MR. WARNER: Okay.

10 MR. IACOPINO: All right. Then, why  
11 don't we do this then. Lisa, why don't you ask your  
12 questions of Dr. Kilpatrick, and then we'll get  
13 Dr. Gray -- Mr. Gray.

14 MR. PACHIOS: He hasn't gotten his  
15 doctorate.

16 MR. IACOPINO: Soon to be "Doctor", some  
17 day "Dr. Gray".

18 MS. LINOWES: Okay.

19 BY MS. LINOWES:

20 Q. Dr. Kilpatrick, in your testimony, your prefiled  
21 testimony, on Page 4, you state that the project is  
22 having a "significant adverse impact on the natural  
23 environment". And, then, in your conclusion of your  
24 testimony, you say that it -- that the adverse impacts

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1 are "unreasonable". I just, and this may be a question  
2 more for your attorney than for you, but are the words  
3 "significant" and "unreasonable" synonymous, and are  
4 you using those terms in the same legal sense as are --  
5 as the law governing the Site Evaluation Committee?  
6 That will be RSA 162-H:16, which I don't expect you to  
7 know, but --

8 A. (Kilpatrick) So, my understanding of the situation is  
9 that my testimony is that this is having a significant  
10 impact on these two species, which are both endangered  
11 species in the State of New Hampshire. And, as I  
12 understand the regulations then, that this amount of  
13 negative impact is an unreasonable impact on those  
14 species.

15 MS. LINOWES: Excuse me. I just have a  
16 question offline, if I could ask off?

17 MR. IACOPINO: Okay.

18 (Ms. Linowes conferring with Ms.  
19 Noether.)

20 MS. LINOWES: Okay. Then, I'll leave  
21 that as an open question then. Perhaps something that  
22 Peter could answer whether or not the use of the word  
23 "unreasonable" is in line with the RSA.

24 MR. IACOPINO: Lisa, where exactly are

[WITNESSES: Kilpatrick~Gray]

1 you referring to of him saying it was "unreasonable"? I  
2 see where it says "significant" on Page 4.

3 MS. LINOWES: It's in the conclusion of  
4 his written -- of the actual prefiled testimony, that  
5 would be at the bottom of Page -- I'm sorry. It's in the  
6 report itself.

7 DR. KILPATRICK: The report. Yes.

8 MS. LINOWES: In the report itself. My  
9 apologies. Let me just get the page. At the bottom of --

10 DR. KILPATRICK: Page 9.

11 MS. LINOWES: -- Page 9.

12 DR. KILPATRICK: Of the report.

13 MS. LINOWES: It says, under  
14 "Conclusions", that last paragraph, "The adverse impacts  
15 of this windpark on the populations of American marten and  
16 Bicknell's thrush on Mount Kelsey were unreasonable."

17 MR. IACOPINO: Okay.

18 BY MS. LINOWES:

19 Q. Okay. On Page 1 of your report, and this is in the  
20 second paragraph, this is the report now, the second  
21 paragraph, about six lines down, you talk about  
22 "complex stands are patches of blown down trees, a  
23 result of fir-waves and insect and wind events, that  
24 create small openings and dense early succession spruce

[WITNESSES: Kilpatrick~Gray]

1 and fir growth that provides habitat for other  
2 species." Is that a characterization of what you would  
3 expect the forest to look like, if it were unimpacted?

4 A. (Kilpatrick) Yes.

5 Q. Now, those small openings, can you, given that  
6 elevation and the habitat that's up there, can you  
7 apply a dimension to that? Is it -- how big would a  
8 small opening be?

9 A. (Kilpatrick) Well, it certainly would be generally less  
10 than an acre.

11 Q. So, nothing on the scale of what's up there today?

12 A. (Kilpatrick) Nothing on that scale.

13 Q. So, there will be no natural event that will result in  
14 a clearing as your seeing today?

15 A. (Kilpatrick) Not on the magnitude of the linearity of  
16 it.

17 Q. Okay.

18 A. (Kilpatrick) So, certainly, there could be natural  
19 events that might be equivalent to the total acreage,  
20 but as a more uniformed dimension, not as a long,  
21 narrow dimension.

22 Q. Okay. And, then, when you talk about the early  
23 successional spruce and fir growth --

24 MR. WARNER: I'm sorry, Lisa. Could you

[WITNESSES: Kilpatrick~Gray]

1 point me to the page you're on?

2 MS. LINOWES: Yes. I'm on Page 1 of the  
3 report itself. Second paragraph, about six lines down.

4 DR. KILPATRICK: It's in the  
5 Introduction.

6 MS. LINOWES: Yes.

7 MR. WARNER: Thank you.

8 BY MS. LINOWES:

9 Q. Is it your opinion that the plantings that you observed  
10 in the photographs are representative of that early  
11 successional spruce and fir growth?

12 A. (Kilpatrick) No.

13 Q. Will those plantings ever reach that characterization?

14 A. (Kilpatrick) No.

15 Q. Okay. Now, you mention on Page 7 of your report, this  
16 would be down towards the bottom, that second  
17 paragraph, about ten lines from the beginning of that  
18 paragraph, where you talk about a communication with  
19 Dr. Kimball. I don't know if you can see that. Maybe  
20 it's about ten lines.

21 A. (Kilpatrick) Uh-huh.

22 Q. Okay. And, then, it says, according to Dr. Kimball,  
23 "part of the lack of survival", of the existing trees  
24 that were planted, I believe, "was due to the planting

[WITNESSES: Kilpatrick~Gray]

1 of bare root stock." Can you explain what that is?

2 A. (Kilpatrick) As I understand it, that meant that the  
3 plea -- the plants then were dug up, there was no soil  
4 around the roots, so they were kept moist, as bare root  
5 stock, and then they were put out simply by making an  
6 opening and planting them in the ground. And, with the  
7 later modified plan, they have gone to essentially  
8 potting them or growing them in sight for a while, and  
9 then transplanting them with soil around the roots, so  
10 no longer are bare root stocks that are being used.

11 Q. And, do you agree that some of the more -- the rate of  
12 the trees not surviving is because of that or do you --  
13 or is that a guess?

14 A. (Kilpatrick) Well, it's hard to know. That certainly  
15 sounds like a very reasonable contributing factor, for  
16 the low survival rate of the trees that were planted a  
17 couple of years ago. Yes, a couple of years ago. The  
18 problem is that the -- under the new restoration plan,  
19 they have only been in the ground a few months. So,  
20 there's no clear indication that that's having any  
21 substantial impact.

22 Q. So, is it -- if you had to characterize the approach  
23 that was taken so far with the original Restoration  
24 Plan, and then this amendment to it, are there -- is it

[WITNESSES: Kilpatrick~Gray]

1 a "let's try this and see if it works"? Is it a  
2 guesswork? Or, is there actually a -- you know, "we're  
3 finding there's failures, and now we have to go in and  
4 do something to see if it will fix it"? Or, are these  
5 really legitimate recommendations in the amendment?  
6 Can you speak to that?

7 A. (Kilpatrick) I think it's a mixture. I mean, some of  
8 the amended changes seem to make very logical sense,  
9 some of them I don't see that there's clear evidence of  
10 what impact they will have.

11 Q. Okay.

12 A. (Kilpatrick) And, I think there's potential for  
13 negative impacts.

14 Q. Now, when you had your conversation with Mr. Staats?

15 A. (Kilpatrick) Uh-huh.

16 Q. I'm looking at your notes that were included as part of  
17 the data requests.

18 A. (Kilpatrick) Right.

19 Q. And, you list that you -- you talk about the overall  
20 opinion of the proposed amendment. Now, I'm assuming  
21 that these notes are notes that you took stating what  
22 Mr. Staats had said to you. These are not your notes  
23 of your opinion, is that correct?

24 A. (Kilpatrick) That's correct.

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay. So, on (b) --

2 MS. LINOWES: Does everyone have a copy  
3 of the notes?

4 UNIDENTIFIED SPEAKER: No.

5 MS. LINOWES: I will read this then.

6 BY MS. LINOWES:

7 Q. You have three main points. And, under the third one,  
8 you have (a) and (b). And, under (b), you have three  
9 concerns that were raised about the tree plantings.  
10 One says "Lots of dead and dying trees along the edge  
11 of the development. Sun exposure, wind, rock, and soil  
12 over trunks", I believe that's what it says.

13 A. (Kilpatrick) Right.

14 Q. What trees is he referring to there?

15 A. (Kilpatrick) He's talking about the forest edge there.

16 Q. Okay.

17 A. (Kilpatrick) That the forest edge, that newly created  
18 edge habitat, --

19 Q. Okay.

20 A. (Kilpatrick) -- that there's a lot of dying trees  
21 there.

22 Q. The second thing he says is, that you wrote, was  
23 "Planted trees doing well along" --

24 A. Yes. --

[WITNESSES: Kilpatrick~Gray]

1 (Court reporter interruption.)

2 BY MS. LINOWES:

3 Q. "Planted trees doing well along roads."

4 A. (Kilpatrick) So, yes, that was his overall opinion.

5 That, overall, a lot of the trees were surviving, but  
6 there were areas where there weren't trees surviving.

7 Q. Now, and this conversation took place in August, the  
8 site walk -- August 5th. The site walk was August 29,  
9 that maybe this is a question for Chris, but the sense  
10 what was -- what is your sense from looking at the  
11 photographs, and your conversations with Dr. Kimball  
12 and others?

13 A. (Kilpatrick) My sense from the photographs and the  
14 conversation is that there's real mixed results in the  
15 original plantings. That there are some areas where  
16 trees are doing well. There are other areas where  
17 there's a lot of missing trees or trees that were  
18 planted that haven't survived. From the latest  
19 planting, it looks like things are doing well, because  
20 they're so recently planted, they haven't been exposed  
21 to much of anything. So, it's hard to make any  
22 evaluation there.

23 Q. Now, trees that have been browsed on, do they generally  
24 do well or do they -- especially when they're young or

[WITNESSES: Kilpatrick~Gray]

1 does that really stress them?

2 A. (Kilpatrick) That's very stressful on them.

3 Q. And, the third item he has is -- that you wrote here is  
4 "Lots of mortality of planted trees in areas where  
5 stump grinding had been used to produce duff layer,  
6 lack of canopy versus lack of canopy results and" --

7 A. (Kilpatrick) The surface drying out.

8 Q. -- "surface drying out." And, what area was he talking  
9 about there?

10 A. (Kilpatrick) Again, from the conversation with him, he  
11 was -- sounded like he was talking about areas along  
12 the road that were exposed to wind and sun, where there  
13 had been mortality of the recently planted trees, and  
14 he thought it was due to the lack of moisture being  
15 maintained by these root grindings.

16 Q. Okay. So that -- and, I'm sorry, I guess I'm trying  
17 to -- I'm trying to visualize. Now, are you saying  
18 that this is the edge effect, as well as the plantings,  
19 or mainly the plantings?

20 A. (Kilpatrick) Well, --

21 Q. The edge trees, rather.

22 A. (Kilpatrick) So, -- no, not the edge effect. So, the  
23 argument for the Amended -- or, one of the arguments  
24 for the Amended Restoration Plan and using the root

[WITNESSES: Kilpatrick~Gray]

1 grindings has been it would be a more natural forest  
2 floor, it would be inducive to bringing back the normal  
3 vegetation, and it should hold more moisture and help  
4 the survivorship of the planted trees. And, that  
5 certainly would be the conditions along the edge of the  
6 forest as it is revegetating, that -- where it's  
7 getting some shading, --

8 Q. Uh-huh.

9 A. (Kilpatrick) -- that those areas would retain more  
10 moisture. But, if you put this mulch, essentially, out  
11 in the middle of the area that's exposed to lots of  
12 solar radiation, no shade, lots of wind, depending on  
13 the year, it could be a very dry situation and not  
14 necessarily increase the survivorship of those trees.  
15 And, he pointed out to me, although I didn't see any in  
16 the photographs, that there were areas like that.

17 Q. Like this, with the stump grinding?

18 A. (Kilpatrick) Exactly.

19 Q. Okay. Okay. Now, on -- you also state, and I  
20 apologize, I don't think I wrote down the page number,  
21 it may have been part of that same section.

22 A. (Kilpatrick) Back to the report?

23 Q. Yes, back to the report. You mention that "In  
24 addition, there are sites along the road and turbine

[WITNESSES: Kilpatrick~Gray]

1 pads which are talus slopes." And, then, it's -- I  
2 don't have that marked on where I found that in your  
3 report.

4 MS. NOETHER: It is on Page 7.

5 MS. LINOWES: Oh, it is on 7?

6 MS. NOETHER: Bottom of Page 7, I  
7 believe.

8 DR. KILPATRICK: Yes.

9 MS. LINOWES: Oh, yes. I'm sorry,  
10 you're right.

11 BY MS. LINOWES:

12 Q. Right at the last sentence, two sentences on Page 7.

13 It says "While both of these types of areas may  
14 eventually become reforested, the rate of reforestation  
15 will be slower." What is a "talus slope"? What is  
16 that?

17 A. (Kilpatrick) It's rock. So, where you have -- it comes  
18 from the idea of mining. So, as you mine out an area,  
19 and you let the rock fall down from the base of the  
20 mine, you have all this rock, exposed rock, that's  
21 referred to as "talus". So, it's often -- you could  
22 have loose talus or --

23 Q. Okay. Thank you. That's helpful.

24 A. (Kilpatrick) Right.

[WITNESSES: Kilpatrick~Gray]

1 Q. So, this was a question I was going to ask Chris,  
2 but --

3 A. (Kilpatrick) There are certainly some photographs of  
4 talus areas in here.

5 Q. Yes. And, I do remember seeing that. So, let me ask  
6 you this question. During the technical session, where  
7 I believe it was Mr. Phillips, Tyler Phillips, when he  
8 was here, this is the July 24th, you were here. And,  
9 there were questions being asked of him regarding  
10 communications with Jill Kilborn, who is a biologist  
11 with the Fish & Game.

12 A. (Kilpatrick) Same as Jill Kelly, they're the same  
13 person. So, --

14 Q. Oh, really?

15 A. (Kilpatrick) Yes.

16 Q. Okay.

17 A. (Kilpatrick) Married name versus maiden name.

18 Q. So, she apparently was expressing some concern about  
19 the vegetation -- revegetation that was going on. And,  
20 this is from the transcript from the -- this is  
21 July 24th. He writes "We'd look over the edge", and  
22 talking about looking over the edge of where there was  
23 the rock that was laid out, --

24 (Court reporter interruption.)

1 BY MS. LINOWES:

2 Q. "We looked over the edge", where there's the rocks that  
3 had fallen, "and, sure enough, trees are growing up  
4 through the rock, despite us not planting anything.  
5 And, so, I think that we were trying to say to them",  
6 Jill, "was that the site will naturally regenerate,  
7 albeit it will vary." That's from the transcript of  
8 July 24th. So, that sense that, you know, you look  
9 over and you see hundreds of seedlings all growing up  
10 through the rocks, and you may actually see them on the  
11 turbine pads, what is the -- what is the survival rate  
12 of those trees? And, how much, whatever those  
13 naturally planting -- naturally growing seedlings,  
14 what's the survival rate? What are the chances of  
15 those growing into an actual forest, without any  
16 intervention?

17 A. (Kilpatrick) My only answer can be is I don't think  
18 there's any evidence to suggest that it's any lower  
19 than the proposed Restoration Plans.

20 MR. WARNER: For ease of reference to  
21 this transcript later, could I just say this is on Page 38  
22 of the transcript from the last technical session.

23 MS. LINOWES: Yes. You are right. I  
24 have -- and, I apologize, I should have given you the page

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1 number. It is Page 38.

2 BY MS. LINOWES:

3 Q. So, you don't think it's any lower?

4 A. (Kilpatrick) I don't think it's any lower.

5 Q. Okay. So, you have land that's -- that the land where  
6 the turbine pad is, that's very compacted with  
7 gravel --

8 A. (Kilpatrick) I think that's very different from looking  
9 over the edges, at --

10 Q. Okay.

11 A. (Kilpatrick) -- Where there's some rock and some bare  
12 soils. So, on those areas over the edge that you were  
13 referring to, --

14 Q. All right.

15 A. (Kilpatrick) -- I think there will be natural recovery.

16 Q. Okay.

17 A. (Kilpatrick) On the turbine pads, though, those are  
18 going to be maintained as gravel habitat. So, even  
19 though there may be seedlings coming up, they're not  
20 going to survive.

21 Q. Uh-huh. Okay. Now, on Page 8 of your report, this is  
22 in the first paragraph there, again, talking about  
23 Dr. Kimball's discussion about grasses and attracting  
24 rodents. Which, in turn, is attracting coyotes and

[WITNESSES: Kilpatrick~Gray]

1 fox. That's how it's presented, that presentation --

2 A. (Kilpatrick) Right.

3 Q. -- of Dr. Kimball's understanding of things. Given the  
4 well-defined roads that are in the Project, the type of  
5 replanting that has gone on so far, even with the  
6 grasses, is it your sense that, if you -- if we used  
7 mulch or replanted with grass, there will be a  
8 difference in terms of predation or at least those  
9 predators entering the site?

10 A. (Kilpatrick) No.

11 Q. So that, in your opinion, I apologize, I know that  
12 you've answered some of this before, but the grass, in  
13 your opinion, is not having an impact?

14 A. (Kilpatrick) That's correct.

15 Q. Okay. Now, I was going to ask you some questions about  
16 the pre and -- this would be on the pre and post  
17 construction bird/bat studies review, and the -- just  
18 bear with me for a second. That I think you make a  
19 statement in your report, and you comment that there  
20 was a -- that Curry and Killinger -- Kerlinger had  
21 found a significant decline in avian activity at the  
22 site we're looking at, right?

23 A. (Witness Kilpatrick nodding in the affirmative).

24 Q. Now, --

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) That was between 2009 and 2012, that's  
2 what I remember.

3 Q. Okay. Thank you. And, they indicate that the removal  
4 of habitat along the ridgeline could have been a factor  
5 in bird communities. But they also found that, when  
6 they went downslope on at least three of the mountains  
7 or the ridgelines, they all also found that there was a  
8 significant reduction in bird activity. Do you  
9 remember?

10 A. (Witness Kilpatrick nodding in the affirmative).

11 Q. Okay. They explain that in a number of ways. But one  
12 of the explanations they gave was that -- that their  
13 field biologist was highly qualified for this study,  
14 and that it may have been more conservative in  
15 reporting -- in recording individual birds than the  
16 Stantec observers. So, they're saying that, from 2009  
17 to 2012, the big difference could have been the  
18 individuals that are out there in the field. Do you  
19 have any comment about that?

20 A. (Kilpatrick) I really don't. I know both groups. I  
21 would give more credence to Stantec.

22 Q. Okay. So, and to see that level of reduction, and I  
23 think it was like 47 percent, --

24 A. (Kilpatrick) Yes, 47 to 52, or something like that.

[WITNESSES: Kilpatrick~Gray]

1 Q. Now, you also said in your testimony -- or, in your  
2 report that there -- you did not -- that there was not  
3 a decline in marten population. This is on Page 4,  
4 paragraph two. And, I was wondering how you could  
5 arrive at that? And, do we know at this point if there  
6 has been a -- if there has been a decline?

7 A. (Kilpatrick) Well, so, the Siren thesis then had  
8 animals that were marked that were radio tagged. And,  
9 so, there was essentially the same number of animals  
10 using the ridge habitat during construction -- well,  
11 yes, there was a similar number of animals using the  
12 habitat along the ridgelines following construction  
13 than during construction.

14 Q. Okay.

15 A. (Kilpatrick) They changed their areas that they were  
16 using and they changed their behavior some. So, they  
17 moved farther away from the ridgeline, but he had no  
18 indication that there was a drastic drop in the number  
19 of animals. I think you're exactly right, we really  
20 don't know that there has not been an impact, because  
21 his study did show some increased mortality post  
22 construction. And, so, long term, that might have an  
23 impact on the size of the population.

24 Q. And, that study was 2009, was it?

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) I believe it was 2010 through 2012.

2 Q. Okay.

3 A. (Kilpatrick) And, it's mainly 2011 -- yes, mainly 2011  
4 and 2012.

5 Q. When the observations were being made?

6 A. (Kilpatrick) Right.

7 Q. Okay. And, then, the other question is that, you  
8 had -- you listed in there, and I -- listed in your  
9 report, this is also on Page 4, the second paragraph,  
10 you talk about the differences in the number of tracks  
11 found for fox, fisher, marten, and coyote. And, so  
12 that it looks -- the fox tracks went from 1 in 2007 to  
13 258 in 2013. And, we don't know if that's like one fox  
14 that's walking around a lot, or maybe you do?

15 A. (Kilpatrick) Well, a set means it's a group of tracks  
16 that are here. So, we're not following the animal and  
17 counting every track.

18 Q. Okay.

19 A. (Kilpatrick) But, you're right, it could be an animal  
20 that went here and went off and came back, and we  
21 counted it twice.

22 Q. Okay.

23 A. (Kilpatrick) But we're not counting every track that we  
24 see.

[WITNESSES: Kilpatrick~Gray]

1 Q. Okay. But still that's a pretty significant increase  
2 clearly?

3 A. (Kilpatrick) It's a very substantial increase in  
4 tracks.

5 Q. And, the same with the coyote, it went --

6 A. (Kilpatrick) Right.

7 Q. -- from 4 to 97. But the martens also went up. Do you  
8 have a -- that went from 94 to 122. Could that -- does  
9 that mean anything?

10 A. (Kilpatrick) Yes. I think what it means, and one thing  
11 is that there was a longer area that were being  
12 surveyed. So, the initial survey that was done was  
13 only done by snowshoe, because there were no snowmobile  
14 trails and there was no packed road.

15 Q. Okay.

16 A. (Kilpatrick) So, the latter study was done on all three  
17 habitats. So, I think the increase in marten, because  
18 you did get some of those tracks incidentally occurring  
19 on those other -- other types of substrate.

20 Q. Okay. Okay. And, then, my one last question for you  
21 is, when you have an animal like a pine marten is a  
22 resident, in that habitat, I'm gathering, is perfect  
23 for -- prior to the Project being built, was prime  
24 habitat for the pine marten?

[WITNESSES: Kilpatrick~Gray]

1 A. (Kilpatrick) Yes. It was considered what in Vermont we  
2 would consider "best habitat" or -- I'm drawing a blank  
3 on the word, but, anyway, it was core habitat --

4 Q. Okay.

5 A. (Kilpatrick) -- for martens to occur. So, Jill Kelly's  
6 or Kilborn's study had shown that this was clearly at  
7 that definition.

8 Q. So, when the Project went in place, and now the animals  
9 may be by the turbines or may not be, but they are --  
10 if they're going to avoid the turbines, whether because  
11 of noise or because of exposure, they're going to go  
12 down ridge --

13 A. (Kilpatrick) They are.

14 Q. Okay. When they do that, do they -- are they entering  
15 into land that's less optimal for them?

16 A. (Kilpatrick) They're -- yes. Like in every study,  
17 there are aspects that don't get into the publication.  
18 So, we are doing some electoral work on pine marten,  
19 including the material that was collected by Siren in  
20 New Hampshire.

21 Q. Uh-huh.

22 A. (Kilpatrick) So, I've had several conversations with  
23 Alex. And, his conclusion was that there was some  
24 increase in home ranges, which generally suggests that

[WITNESSES: Kilpatrick~Gray]

1 animals are trying to adapt, because they're in lower  
2 quality habitat. He makes that statement in his  
3 thesis, but he didn't really present the reason behind  
4 that. He just suggests that they are using lower  
5 quality habitat.

6 Q. So, when you say "they increase their home ranges",  
7 that means that they're having to travel further for  
8 their food and mating and all --

9 A. (Kilpatrick) Right. Well, to find all the things they  
10 need, they're having to use a larger area than they had  
11 to use previously, which, you know, increases their  
12 chances of mortality, due to predation, *etcetera*, --

13 Q. Okay.

14 A. (Kilpatrick) -- by more exposure, essentially, by  
15 having that larger home range.

16 MS. LINOWES: Okay. Thank you. That is  
17 very helpful. I'm all set.

18 DR. KILPATRICK: Okay.

19 MS. LINOWES: I do have questions for  
20 Chris, should I just ask them?

21 MR. IACOPINO: Do you mind if she starts  
22 with Chris?

23 MS. LINOWES: There are only two  
24 questions.

[WITNESSES: Kilpatrick~Gray]

1 MR. WARNER: Sure. Go ahead.

2 MS. LINOWES: Okay.

3 BY MS. LINOWES:

4 Q. Chris, in your testimony on Page 4, Lines 3 through 8,  
5 and I'll get that, you said the replanted trees "were  
6 commonly browsed" and "there were stretches in the  
7 replanting where over 50 percent of the trees were dead  
8 and/or missing completely." Is it your sense that,  
9 and, again, I don't know how much you've looked into  
10 the amended plan versus what's the current product, but  
11 is it your sense that the changes that have been  
12 recommended in the amended revegetation plan will  
13 improve the conditions for the trees and their ability  
14 to grow?

15 A. (Gray) I would say that I don't know for sure. But  
16 it's just more of a complex habitat. And, it may  
17 provide -- the prior treatment may provide more -- the  
18 complex habitat on that prior treatment may foster  
19 better survivorship. But I can't know for sure.  
20 They're both -- both treatments will be as exposed to  
21 wind and sun.

22 Q. And, actually, that was my second question for you. On  
23 Question -- your Question 6, you say that "The Tier 1  
24 areas" -- in your answer you say "The Tier 1 areas had

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1 high levels of exposure to wind and sun", "Tier 1  
2 level" -- "locations were mostly flat gravel areas."

3 Is your expectation that trees in this area, even if we  
4 put down wonderful soil and, you know, do what we think  
5 the trees need on the ground, will fair better than  
6 those that we witness along the road?

7 A. (Gray) I think that the ones on the pads will be more  
8 exposed to wind and sun. Because, at least on the  
9 roadway, there's tree, you know, the existing edge will  
10 provide some wind -- it will buffer --

11 Q. Buffer the wind?

12 A. (Gray) -- Break the wind a little more than on the  
13 pads, which are, as you've seen in some of the photos,  
14 they're right on the edge of the ridge, and there's no  
15 trees on the majority, you know, more than 60 percent  
16 of the sides of the pads. So, there's high exposure to  
17 wind and sun.

18 Q. And, then, one last question, following up, and either,  
19 this could be for Dr. Kilpatrick or you. The question  
20 that is nagging me right now is that the Project went  
21 into service the end of 2011. It is 2014. And, you  
22 know, there's been monitoring of the trees, the  
23 revegetation. But I'm not entirely sure the Site  
24 Evaluation Committee would have been made aware of some

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1 of -- any of us in the room, other than the folks that  
2 are affiliated with the Project, would have been aware  
3 of the mortality on the trees and other kinds of  
4 things.

5 So, if, let's say everything is -- that  
6 the Site Evaluation Committee agrees with the amended  
7 revegetation plan. What would you -- what will be the  
8 timing for validating the success of that? Say,  
9 Dr. Kilpatrick, this isn't a case where they don't  
10 agree with your recommendations. This is revegetate  
11 according to the new plan. How many years before we  
12 can know if that's working and go back and fix that or  
13 would you make a recommendation like that?

14 A. (Kilpatrick) I mean, I think that the amended plan, as  
15 I understand it, would continue monitoring for two  
16 years. I think that is not a long enough of a snapshot  
17 to really give you an idea, especially in these exposed  
18 areas, especially given that we can have very wet  
19 summers versus very dry summers, and probably the  
20 timing of those weather conditions can have a lot of  
21 impact in the year that the tree is planted. So, you  
22 know, I would think that something along more a  
23 five-year level might be more meaningful to get an  
24 evaluation. But I think it is -- you brought up a

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1 point I hadn't thought of, the fact that we don't -- we  
2 know that there was some mortality, but we don't really  
3 have an assessment of how much mortality there's been  
4 at this point. So, it seems like an annual report,  
5 especially before they do replacement of what's -- of  
6 some of the trees that have died, would be very useful  
7 information, especially comparing the two different  
8 treatments.

9 Q. An annual report from 2011, when the original plantings  
10 happened?

11 A. (Kilpatrick) Yes, if that would be available. But at  
12 least at current what's going on.

13 MS. LINOWES: Okay. Thank you. I'm all  
14 set, Mike.

15 MR. IACOPINO: Do you guys have any  
16 questions for Mr. Gray?

17 MR. PACHIOS: No. Oh, for Mr. Gray?

18 MR. IACOPINO: Yes.

19 MR. PACHIOS: Mr. Gray.

20 BY MR. PACHIOS:

21 Q. Mr. Gray, you graduated from the University of Vermont  
22 in 2008. And, did you go directly to graduate school  
23 then?

24 A. (Gray) Yes, I did.

[WITNESSES: Kilpatrick~Gray]

1 Q. And, you've been in graduate school since 2008?

2 A. (Gray) Yes.

3 Q. And, you take some semesters off to go and do small  
4 mammal surveys?

5 A. (Gray) Yes. I went to Africa twice. And, in the  
6 summers, I'm busy doing small mammal surveys in  
7 Vermont.

8 Q. But, during the school year, with the exception of two  
9 autumns when you were in Africa, you've been in  
10 graduate school?

11 A. (Gray) Correct.

12 Q. Okay. And, you were here when Dr. Kirpatrick --  
13 Kilpatrick told me about his specialty, and I think  
14 that's what you're doing your work in, right?

15 A. (Gray) Yes. I'm studying --

16 Q. The same thing?

17 A. (Gray) I'm studying molecular ecology, and more  
18 specifically of bobcats in Vermont.

19 Q. You say it's "molecular ecology"?

20 A. (Gray) Yes.

21 Q. Okay. And, that's using the satellite and  
22 transmitters?

23 A. (Gray) I'm using DNA markers. So, microsatellites are  
24 a DNA marker, and also DNA sequences, to look at the

[WITNESSES: Kilpatrick~Gray]

1 population structuring of bobcats in Vermont.

2 Q. Okay. Now, how do you feel your training to date has  
3 qualified you to be an expert with respect to the issue  
4 in this case?

5 A. (Gray) So, firstly, I went as an observer. So, I was  
6 there to observe the habitat on the mountain, and give  
7 my opinion of what the current state was. So, my  
8 training, I've studied, I've taken numerous ecology at  
9 classes at UVM. I have had to -- I've done fieldwork  
10 in Vermont, where I need to go into a habitat where I'm  
11 doing a small mammal survey, assess what the habitat  
12 is, understand what mammal species may be there, and  
13 how the habitat itself will encourage such species to  
14 be there.

15 I have also gone, obviously, to, I  
16 mentioned, going to Liberia, in West Africa, I had to  
17 go there. And, when I was there, I was doing work for  
18 a mining company, where they were -- I was doing an  
19 environmental impact assessment, where I had to go in  
20 and do small mammal surveys there as well, to look to  
21 see what species were there, if they were endangered or  
22 not, and also understand how the habitat and how the  
23 degradation of that habitat, from, in this case -- in  
24 that case, the iron ore mining would affect the habitat

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[WITNESSES: Kilpatrick~Gray]

1 of the rain forest there, and thus how it would affect  
2 the mammal species that were present, and make an  
3 assessment of how post mining those mammal species, the  
4 composition of that mammal species community might  
5 change.

6 Q. Is the ecology in the rain forest significantly  
7 different than the ecology up at Mount Kelsey?

8 A. (Gray) It certainly would be different. But the  
9 underlying mechanisms that work in a habitat or an  
10 environment are the same all -- on Earth they're the  
11 same everywhere. So, the underlying mechanisms that I  
12 have studied and my understanding of those mechanisms  
13 is the same, I'm just applying them to different types  
14 of habitat.

15 Q. And, does it -- does grass grow differently in the rain  
16 forest than it does in subalpine altitude?

17 A. (Gray) It certainly would.

18 Q. And, are you familiar with subalpine ecology?

19 A. (Gray) I am not intimately familiar. I've never --  
20 this was my first trip to a subalpine wind farm.

21 Q. Was it your first trip to a subalpine area?

22 A. (Gray) No.

23 Q. No.

24 A. (Gray) I hike a lot in the summer.

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[WITNESSES: Kilpatrick~Gray]

1 Q. Yes.

2 A. (Gray) So, I'm familiar with what a general --  
3 generally subalpine forest should and do look like.

4 Q. What's a "spruce/fir-wave"?

5 A. (Gray) A "spruce/fir-wave"? Is -- or, what I believe  
6 you're referring to is -- or, well, what are you  
7 referring to?

8 Q. Just the phenomenon known as a "spruce/fir-wave".

9 A. (Gray) I don't know what you're referring to.

10 Q. Okay. You -- I'm just curious about this. This is to  
11 satisfy my personal curiosity. I show you a picture  
12 with an orange sign.

13 A. (Gray) Right.

14 Q. I saw you take the picture.

15 A. (Gray) So, that was -- so, there was, at the start of  
16 the 2.3 miles, there was a delineation on two trees,  
17 one on the left side of the road and one on the right.  
18 Those were the delineation for the -- I believe it was  
19 the New Hampshire Fish & Game line for the beginning of  
20 the Project. It bisected the road. And, that's where  
21 the new replantings occurred. So, I took a picture of  
22 that, just so that I remembered that it was delineated  
23 on the trees from a survey that was done by the New  
24 Hampshire Fish & Game or whatever agency was in charge

[WITNESSES: Kilpatrick~Gray]

1 of that. And, that's where the replantings began.

2 MS. NOETHER: What was the number of  
3 that picture?

4 MR. PACHIOS: We don't know the number  
5 of it.

6 MS. NOETHER: Okay.

7 MR. WARNER: I'm sure the number is in  
8 there, but I can just give you a copy of the picture, if  
9 you'd like.

10 MS. NOETHER: Sure.

11 MR. WARNER: I think this is actually  
12 one of the pictures that Lisa took.

13 DR. KILPATRICK: That's Lisa's picture.

14 MR. GRAY: Yes.

15 MS. NOETHER: Okay.

16 MR. GRAY: They're Lisa's pictures. It  
17 was pointed out by one of the Brookfield individuals, so I  
18 made note of it.

19 MS. NOETHER: Just for the record, I  
20 think it was 38 and 39 of the packet that we were  
21 discussing earlier.

22 MR. IACOPINO: Thank you.

23 BY MR. PACHIOS:

24 Q. Is there anything beyond your prefiled testimony here

[WITNESSES: Kilpatrick~Gray]

1 that you would testify to at the hearing next month?

2 A. (Gray) What you see is what I had.

3 Q. And, you, essentially, your testimony, tell me whether  
4 this is a accurate summary, your testimony is similar  
5 to Dr. Kilpatrick's, in that your conclusion is that  
6 the Project is, one, the Project has had an adverse  
7 impact. Is that one of your conclusions?

8 A. (Gray) Yes.

9 Q. Okay. And, it's had a high -- it's had an adverse  
10 impact on, one, the high elevation habitat?

11 A. (Gray) Yes.

12 Q. Your conclusion is that the road provides a path for  
13 predators?

14 A. (Gray) Yes.

15 Q. Your conclusion is that there's an edge effect on the  
16 road?

17 A. (Gray) Not the way you worded it. So, the edge is  
18 being affected because of the conditions in place.  
19 Edge effect is just the juxtaposition of two different  
20 habitats.

21 Q. Yes.

22 A. (Gray) And what -- and the fauna it fosters.

23 Q. So, what conditions could have created the edge effect  
24 that you observed?

[WITNESSES: Kilpatrick~Gray]

1 A. (Gray) The building of the road and the turbines.

2 Q. Okay. Okay. So, there is an edge effect because  
3 there's a road there, and there are turbines?

4 A. (Gray) Because the road and the turbines were placed  
5 there, there is an edge. And, that edge is being  
6 affected more strongly than a full forest, because it's  
7 exposed on that side.

8 Q. Uh-huh.

9 A. (Gray) So, --

10 Q. This is an effect --

11 A. (Gray) The use of "edge effect" is more of a biological  
12 term talking about two habitats coming together; so,  
13 grass land and forest.

14 Q. Uh-huh.

15 A. (Gray) It's not -- it's not referring to the exposure  
16 that you're trying --

17 Q. Okay. Your testimony is, if I could summarize, and you  
18 correct me if you disagree with this summary, that the  
19 construction of a windpark, road, turbine pads, and  
20 turbines, all of those, have had, as you observed, an  
21 adverse impact on the environment?

22 A. (Gray) Yes. I believe I already answered that.

23 Q. And, is there anything else that your testimony tells  
24 us, other than that?

[WITNESSES: Kilpatrick~Gray]

1 A. (Gray) Well, my testimony also discusses the  
2 replantings.

3 Q. Okay.

4 A. (Gray) And, --

5 Q. It says that you disagree with Dr. Kimball as to the  
6 best method of revegetating the road. You believe that  
7 the replanting program under the -- under the  
8 Company's original plan is better than the amended  
9 plan, correct?

10 A. (Gray) Yeah. Well, so that I can't tell that one of  
11 them is necessarily better than the other. I just  
12 believe that the newer treatment, so the amended  
13 treatment, is -- there is no way that it will be better  
14 than the previous treatment.

15 Q. Okay. So, this hopefully is the last question, back to  
16 my summary question. In summary, your testimony is  
17 that the environment has been degraded by the  
18 construction of this Project, and -- and one of the  
19 remedial programs, that is the replanting along the  
20 roadway, is not very effective?

21 A. (Gray) I believe that the Project itself has had an  
22 adverse effect on the environment. And, that the three  
23 treatments that we have, so, we have the edge, which is  
24 outside the boulders, between the boulders and the edge

[WITNESSES: Kilpatrick~Gray]

1 of the forest, is naturally colonizing. And, then, we  
2 have the prior treatment, which is colonizing with the  
3 planted trees. And, then, the third treatment, that is  
4 the new treatment in only the rolled back areas, I  
5 believe that neither of the two treatments that have  
6 been put in place -- or, I don't believe, yes, I don't  
7 believe that those, either of those treatments are any  
8 better than the third.

9 Q. And, did you, when you gave -- when you went back to  
10 school and you reported to Professor Kilpatrick, did  
11 you tell him that orally, too?

12 A. (Gray) I first gave him the photos, and then we  
13 discussed it.

14 Q. And, did you tell him or did he tell you that neither  
15 of the remediation programs were effective?

16 A. (Gray) Did he tell me or did I tell him?

17 Q. Yes. In your testimony, it reflects what he testified  
18 to this morning. So, is this -- are these conclusions  
19 reached because they're his conclusions?

20 A. (Gray) I reached those conclusions while I was on site,  
21 and once I got back I related them to him.

22 MR. PACHIOS: Okay. Anything else?

23 That's it. Thank you very much.

24 MS. NOETHER: Thank you.

[WITNESSES: Kilpatrick~Gray]

1 MR. IACOPINO: Okay. No more questions  
2 for Dr. Kilpatrick or Mr. Gray.

3 MR. PACHIOS: No. They can proceed to  
4 Vermont.

5 MS. LINOWES: You want me to sit up  
6 there?

7 MR. IACOPINO: Actually, it might be  
8 easier if you could just switch sides, because it would be  
9 easier for them to ask you questions, being on the other  
10 side of the table.

11 DR. KILPATRICK: So, do you want to look  
12 at these notebooks any?

13 MR. WARNER: Yes.

14 MR. PACHIOS: I think we do. But the  
15 way it's -- we would love it if there was another way to  
16 look at them, other than in this room, while we're doing  
17 this.

18 MR. WARNER: Oh, we can't -- these  
19 aren't to take with us?

20 MS. NOETHER: No.

21 MR. PACHIOS: And, you won't let us take  
22 them. Why won't you let us take them? Is it a state  
23 secret or something? What is it?

24 DR. KILPATRICK: It's the only copy I

1 have.

2 MR. PACHIOS: Oh. Okay. That's why.

3 DR. KILPATRICK: Right.

4 MS. NOETHER: This is available by other  
5 means.

6 DR. KILPATRICK: All of it's available  
7 by other means.

8 MS. NOETHER: Yes. So, these are --

9 MR. PACHIOS: What? Do our own  
10 research?

11 MR. WARNER: I think we'd like it in the  
12 order that's in the binders, too.

13 MS. NOETHER: No, but he's cited --

14 DR. KILPATRICK: I provided you with the  
15 order that was in the binders.

16 MR. IACOPINO: One at a time.

17 DR. KILPATRICK: Okay. Sorry.

18 MR. IACOPINO: So, my understanding  
19 right now is that these studies, you've provided a list  
20 that -- and these are all studies, I take it?

21 DR. KILPATRICK: They are.

22 MR. IACOPINO: And, you've provided a  
23 list of what they were?

24 DR. KILPATRICK: There have been some

1 things added since then that weren't among the list.

2 MR. IACOPINO: Okay. But you didn't  
3 provide --

4 (Multiple parties speaking at the same  
5 time.)

6 MR. IACOPINO: You didn't provide copies  
7 of the studies, because you felt that they could find them  
8 on their own.

9 DR. KILPATRICK: Most of them are there  
10 own products.

11 MR. IACOPINO: And, you're asking for a  
12 copy of what's in the --

13 MR. WARNER: Well, it's standard  
14 discovery practice that, when you ask for documents and  
15 their responses, you get the documents, not references to  
16 documents.

17 MS. NOETHER: But some of those  
18 documents were sourced from you, is what he's saying. You  
19 have them, in other words.

20 MR. PACHIOS: Well, we'll handle the  
21 ones that we gave you. What about the other ones? Can  
22 you make us copies of the other ones?

23 MS. NOETHER: Why don't you make a  
24 request of Attorney Roth of the ones that you want that

1 you don't have.

2 MR. IACOPINO: Actually, it's a data  
3 request right now at the tech session. And, normally, if  
4 there's going to be an objection, you know, --

5 MS. NOETHER: Well, I guess I'm  
6 objecting to --

7 MR. IACOPINO: -- if you're going to  
8 object, you can file an objection, too.

9 (Multiple parties speaking at the same  
10 time.)

11 MR. IACOPINO: They're making the  
12 request as part of the tech session. So, usually, what we  
13 do is, at the end of the tech session, we would say "okay,  
14 how long is it going to take you to get that material to  
15 them?" So, that's where we're at. If you're going to  
16 object to it, I'll list it as "objected to", and then they  
17 will have to file a motion to compel. But that's -- I  
18 just want to make sure we're clear on what the process is.

19 MS. NOETHER: Okay. Let me be clear  
20 what I'm objecting to first and foremost. I'm objecting  
21 to reproducing information that you have already. That  
22 I'm objecting to.

23 MR. PACHIOS: We're not asking for that.

24 MR. IACOPINO: Let her finish her

1 objection.

2 MS. NOETHER: So, I don't know what you  
3 have -- I don't know what you're -- what of this you're  
4 asking for that you don't have. That's what I would like  
5 to know. So, when you say "can we have that?" I need  
6 some specifics.

7 MR. PACHIOS: Well, we're going to --  
8 this is getting too complicated. Pretty simple, we want  
9 to -- this is a response to a data request, and we want to  
10 look at it. So, --

11 MR. IACOPINO: None of the materials  
12 your witness relied on.

13 MS. NOETHER: Sure. And, they're here.  
14 If you want to look at it and jot down what you don't  
15 have, that would be -- what I'm saying is, that would be  
16 helpful to me. I don't know what you don't have of this  
17 that you urgently need.

18 MR. PACHIOS: But I don't know when  
19 we're going to do it. That's the problem. We're -- I  
20 mean, I guess let's discuss it afterwards. Let's just go  
21 ahead. But, I mean, we don't -- we've never looked inside  
22 the covers. We don't know what's inside those.

23 MR. IACOPINO: Okay. I understand what  
24 everybody is saying.

1 MS. NOETHER: And, for the record, you  
2 have been allowed to do that. So, and I understand what  
3 you're saying, is right now we don't have the --

4 MR. PACHIOS: When?

5 MS. NOETHER: When you asked today, the  
6 answer that Attorney Roth gave was "please look at that  
7 then."

8 MR. PACHIOS: But we were also asked to  
9 come here in this technical session and question the  
10 witnesses, but we couldn't do two things at once.

11 MR. IACOPINO: Okay. Let me just go  
12 where -- what I have for -- go over what I have for data  
13 requests coming out of this technical session with respect  
14 to these two witnesses.

15 Number one, I have the photographs taken  
16 by Chris Gray, I think the estimate was there was about 25  
17 of them, with a narrative of the observations tying it to  
18 the conclusions or observations made in the report.

19 The next data request I have coming out  
20 of this technical session is -- my note isn't that good --  
21 something about "photos of browsing".

22 DR. KILPATRICK: Right.

23 MR. IACOPINO: But I understand that  
24 those may be contained in the --

1 DR. KILPATRICK: Those will be in the  
2 other set, yes.

3 MR. IACOPINO: Okay. And, then, the  
4 third thing that I have is a request for copies of those  
5 three binders that Dr. Kilpatrick brought with him. Were  
6 there any other requests that I missed from the Applicant  
7 for documents?

8 MR. PACHIOS: No. I don't think there  
9 are any you missed.

10 MR. IACOPINO: Okay. Those are the  
11 three that I'm going to report as being the data requests  
12 from at least this panel of the tech session. We'll talk  
13 at the end of the day here about what -- whether there's  
14 further objection or if there's --

15 MS. LINOWES: Mike?

16 MR. IACOPINO: -- whether there's some  
17 kind of agreement we can make.

18 MS. LINOWES: Sorry, I didn't mean to  
19 interrupt you.

20 MR. IACOPINO: Did you have a request,  
21 too?

22 MS. LINOWES: It was the question of  
23 "unreasonable", the use of the term "unreasonable". And,  
24 I think that is a Peter Roth question.

1 MR. IACOPINO: Okay. But Peter is not a  
2 witness. So, I mean, if you want to talk to Peter, and  
3 he's happy enough to talk to you about what his belief  
4 about what that word means, that's fine.

5 MS. LINOWES: Oh. It doesn't have to  
6 be --

7 MR. IACOPINO: I mean, Peter is a  
8 lawyer, he's not a witness. I mean, my understanding of  
9 the answer to your question was that you told the witness  
10 "well, you don't understand what that means anyway", in  
11 terms of the statute.

12 MS. LINOWES: Yes.

13 MR. IACOPINO: So, you have a question  
14 basically of Counsel for the Public, whether he's  
15 asserting that that "unreasonable" is the same as under  
16 the statute.

17 MS. LINOWES: Okay.

18 MR. IACOPINO: So, you should ask him on  
19 your own.

20 MS. LINOWES: That's fine.

21 MR. IACOPINO: I can't make him answer  
22 that. Okay?

23 MS. LINOWES: That sounds good. Thanks.

24 MR. IACOPINO: Because he's not a

1 witness. So, now, if we could switch sides.

2 MS. LINOWES: Okay.

3 MR. IACOPINO: So that Lisa Linowes can  
4 be inquired of.

5 MS. NOETHER: And, may Dr. Kimball  
6 [Kilpatrick?] and Mr. --

7 DR. KILPATRICK: Gray.

8 MS. NOETHER: -- Gray, thank you, be  
9 excused?

10 MR. IACOPINO: Yes, I have no problem  
11 with them being excused. The only question, is it going  
12 to be easier for us to deal with the issues of those  
13 binders if they leave them here?

14 MS. NOETHER: Well, --

15 MR. IACOPINO: I mean, if one of the  
16 questions is "what's in them?"

17 MS. NOETHER: I honestly don't know if  
18 Peter --

19 DR. KILPATRICK: Why don't we just -- I  
20 don't think this is going to take all this long. So, why  
21 don't we just wait.

22 MR. IACOPINO: I'm sorry. Okay.

23 DR. KILPATRICK: Is that okay?

24 MR. IACOPINO: Yes, that's fine. If

[WITNESS: Linowes]

1 you're willing to do that?

2 DR. KILPATRICK: Yes.

3 MR. IACOPINO: I'm sorry to hold you up.

4 DR. KILPATRICK: Not a problem.

5 MR. IACOPINO: Are you going to

6 Burlington?

7 DR. KILPATRICK: Yes, and north.

8 MR. IACOPINO: Sorry.

9 DR. KILPATRICK: Let's switch sides.

10 MR. IACOPINO: Although, I guess  
11 everybody has got some traveling to do here, except for  
12 maybe me and Lauren and Steve. You're up.

13 MR. PACHIOS: Okay.

14 **WITNESS: LISA LINOWES**

15 BY MR. PACHIOS:

16 Q. Ms. Linowes, your prefiled testimony, Item 2 says  
17 "Please summarize your education and background as it  
18 relates to this matter." Do you have anything to add  
19 to this? You gave an answer, and is it complete?

20 A. I believe it is.

21 Q. Okay.

22 A. If you have specific questions about my experience  
23 beyond what I put here, I'm happy to answer them now.

24 Q. No. I'm just trying to understand what it is. You're

[WITNESS: Linowes]

1           testifying as an expert? Maybe that's a technical  
2           lawyer's term, and maybe that's unfair to ask you that.  
3           You don't know, you're just testifying, right?

4   A.    That's correct.

5   Q.    Okay. All right.

6   A.    Although, I will say that I do have a particular  
7           expertise in tracking wind energy development and its  
8           impacts. I'm not a --

9   Q.    What did you say? Speak up a little bit. I don't hear  
10          very well.

11  A.    Okay. I'm not a biologist.

12  Q.    Yes.

13  A.    I'm not a forester. I can not speak to the kinds of  
14          things that Dr. Kilpatrick and Chris Gray can speak to.  
15          But I can speak to the issues of wind generation, the  
16          impacts of wind generation in an area in a general  
17          sense and identify the issues.

18  Q.    Okay. So, your testimony as it relates to high  
19          elevation ecosystems and impact on American marten,  
20          Bicknell's thrush, that's not your area of expertise,  
21          right?

22  A.    Are you speaking specifically? I may be citing that  
23          from the existing reports. But exactly where are you  
24          pointing to?

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[WITNESS: Linowes]

1 Q. Well, let me just say, on Page 5, Line 15, you say "The  
2 HEMSA as initially approved, was a requirement in order  
3 to find that the project would not produce an  
4 unreasonable adverse effect on the natural environment.  
5 The intent of re-vegetating the road back to 12-feet  
6 was to help minimize fragmentation impacts along the  
7 high elevation ridgelines. This combined with  
8 restricting motorized access would encourage use of the  
9 area by marten."

10 A. Yes.

11 Q. "The new plan gets us no closer to meeting these  
12 intentions." How do you know?

13 A. Well, first, let me say that, with regard to the HEMSA,  
14 the High Elevation Mitigation Plan, the -- back in  
15 2009, when we went through the proceedings, the Project  
16 was identified as having an unreasonable adverse effect  
17 on the natural environment, in particularly with regard  
18 to Dixville and Kelsey. The Mitigation Plan for  
19 correcting -- bringing the unreasonable adverse effect  
20 on Dixville to an adverse effect was the purchase of  
21 the additional land, the 700 -- I believe it was the  
22 additional land that was around the retained area or it  
23 was the \$750,000 to be allocated to buy land  
24 comparable. Then, in order to bring Kelsey from being

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1 an "unreasonable adverse" to just "adverse" involved  
2 the 12-foot revegetation of the road. Okay, that is  
3 information -- I'm citing there the expectations as  
4 they were -- came out of the hearings back in 2009.

5 And, then, the specific point about  
6 restricting motorized access and the revegetation to  
7 12 feet was -- I cite Adam Gravel and Steven  
8 Pelletier's testimony, supplemental testimony, where  
9 they state right in there that that is the case.

10 Q. So, you say "The new plan gets us no closer to meeting  
11 these intentions." Those are your words.

12 A. Those are my --

13 Q. That's your conclusion.

14 A. You're exactly right. Those are my words.

15 Q. Well, how do you know? How do you know it gets us no  
16 closer?

17 A. I know what landscaping looks like at a Dunkin Donuts.  
18 And, that's what I saw up on the site. I did not see  
19 anything that even looked remotely like the forest that  
20 was there or even something that would get us to the  
21 forest that exists up there.

22 Q. Okay.

23 A. And, I was responding to that. And, plus, I can hear,  
24 I can listen, I can process the information that I was

[WITNESS: Linowes]

1 hearing on the site walk.

2 Q. You mean you can repeat what other people say?

3 A. Yes.

4 Q. And, so, you're --

5 A. No, I don't -- no, I'm not a puppet. I'm not just  
6 repeating what people say. I can process the  
7 information and draw conclusions from it. I'm not --

8 Q. But you have no training in this area whatsoever in  
9 ecology. None.

10 A. I think I know the difference between supermarket  
11 landscaping escaping and forested mountaintop.

12 Q. Okay.

13 A. I don't think I need an expert --

14 Q. So, your conclusions are based on common sense and a  
15 general understanding of the difference between  
16 supermarket or Dunkin Donut landscaping and what you  
17 saw?

18 A. Correct.

19 Q. Is that correct?

20 A. That's correct.

21 Q. Okay. So, what was your educational training? In what  
22 areas? Where did you go to college?

23 A. I went to the Rochester Institute of Technology. I  
24 have a degree in computer software engineering.

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[WITNESS: Linowes]

1 Q. Software engineering?

2 A. Right.

3 Q. Okay. And, did you go to graduate school after that?

4 A. Yes.

5 Q. The same, computer?

6 A. No, an MBA. A Master's of Business Administration.

7 Q. Yes.

8 A. I ran a business, a software development company for  
9 ten years.

10 Q. Okay. And, you got into this opposing wind sites in  
11 2006?

12 A. I don't -- I'm not in the business of opposing wind  
13 sites.

14 Q. You're not?

15 A. Uh-uh. I am in the business of tracking wind energy  
16 development and their potential impacts of the projects  
17 on the natural environment and on community --

18 Q. So, you don't oppose them?

19 A. I don't oppose wind projects.

20 Q. Okay. So, you're not -- you did not oppose the Granite  
21 Project?

22 A. I was an intervenor on the Granite Reliable Project.

23 Q. Yes. But you did not oppose it?

24 A. My purpose in participating as an intervenor, I think

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[WITNESS: Linowes]

1 if you were to look at the testimony or any of my  
2 comments, was that I was looking to bring information  
3 to the proceedings, so that the Site Evaluation  
4 Committee can make a determination with as much  
5 information as possible. And, I thought I was bringing  
6 information that was valid.

7 Q. But not scientific information, correct? Just  
8 information of a non-scientific nature?

9 A. Okay. I do bring information, and it's -- I will offer  
10 the SEC to make a determination as to whether or not  
11 the validity of the information, if they discount it  
12 all because I don't have -- I don't know how to answer  
13 that question.

14 Q. Okay.

15 A. I'm bringing information. The information I bring  
16 is -- is substantiated as I possibly can make it, as I  
17 can substantiated it, with information.

18 Q. It's not expert scientific analysis of the issues in  
19 these cases, in these wind cases, it's you're against  
20 them?

21 A. No, you --

22 Q. A straight "no", you don't have to agree with me.

23 A. I am not using that word again.

24 Q. Say "I disagree" and tell me why.

[WITNESS: Linowes]

1 A. Well, you're putting words in my mouth. I didn't say I  
2 was opposing the project.

3 Q. Okay.

4 A. So, if you can cite a location where I've stated I've  
5 opposed a project then, okay, tell me, and I'll tell  
6 you.

7 Q. No, I'm just asking.

8 A. And, I'm telling you that I would appreciate you not  
9 putting words in my mouth. I don't think you'd find  
10 anything --

11 Q. Okay. Do you have --

12 MS. NOETHER: Can I just say, she's not  
13 quite being allowed to finish her answer, and I think she  
14 should be.

15 MR. PACHIOS: I couldn't agree with you  
16 more.

17 MS. NOETHER: Great.

18 MR. PACHIOS: And, I apologize. How's  
19 that.

20 MS. NOETHER: Thank you.

21 MR. PACHIOS: You're 100 percent right.  
22 You have more to say?

23 MS. LINOWES: I'm fine.

24 BY MR. PACHIOS:

[WITNESS: Linowes]

1 Q. Okay. So, are you ideologically opposed to wind power?

2 A. I don't know why this is relevant. But, to the

3 point -- and I have no comment about my -- I mean, I

4 have nothing to say about that. I have told you, I am

5 not opposed to wind energy. I have no opinion about

6 wind energy. I have only information that I bring

7 forward, in terms of the impacts of the projects on the

8 natural environment and the communities where they may

9 be sited. And, if that's information the people can

10 use, that's great. If it's information that they can't

11 use, it's fine. But it's not my opinion -- okay, the

12 only area that you will hear me talk about my opinion,

13 which is an informed opinion, is when I'm talking to

14 you about the policies associated with renewable

15 energy. And, I have been in that field for -- since

16 2006-2007, specifically on the policies, the renewable

17 energy market, the REC market, and the costs and the

18 economics of wind. And, I can talk to you about that

19 as an expert and how that whole market works. And, I

20 will introduce opinions as to why, for instance, the

21 State of New Hampshire has not been able to meet its

22 RPS obligations, I could tell you why. And, it would

23 be an opinion based on the information I know on the

24 market today. So, that's where I go with my opinions.

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[WITNESS: Linowes]

1 Beyond that, I don't -- we could argue that this is an  
2 opinion here, that's one statement that you called out,  
3 that "the new plan gets us no closer to meeting these  
4 intentions." I think we have heard ample information  
5 today from the experts that we aren't, including those  
6 that are recommending that the plan be changed, that  
7 are -- that the vegetation plan that's in place today  
8 is not getting us to the point of minimizing  
9 fragmentation and encouraging the natural habitat to  
10 return back.

11 Q. So, you're just repeating what others said? This is  
12 not your own view. You've listened to people, and  
13 you've decided that this is what you believe?

14 A. I am stating -- okay. Fine.

15 Q. You also say, in the next paragraph, "The initial  
16 growth" -- "rate of growth may appear rapid, but will  
17 likely slow as the trees get bigger." How do you know?

18 A. I think we've heard that also today and elsewhere.  
19 I've listened to the people that were speaking at  
20 the -- on the site walk. But, adding to that, I happen  
21 to own a clear-cut area in the State of New Hampshire.  
22 And, two areas, it's a 600 -- just less than 600 acres  
23 in size. It was clear-cut. It has two landings where  
24 they had trees when they were collected were gathered.

[WITNESS: Linowes]

1 And, those areas where the landings were are very  
2 similar to a turbine pad, smaller, but they're very  
3 similar. They were highly graveled. And, I could tell  
4 you that vegetation in those areas, that that area was  
5 clear-cut in 1995, between 1995 and 1997, you did not  
6 see trees growing on those areas. They're highly  
7 compacted, the soil is very dense. And, we see grasses  
8 growing up. But we don't see any -- any trees that  
9 attempt to grow don't -- nothing like a forested area.  
10 I mean, we're talking something that looks akin to  
11 what's been planted, but not as regular as what you see  
12 on the mountaintop, on Kelsey.

13 Q. So, you have --

14 A. So, I have my own experience with it.

15 Q. You have written a lot about renewable power, right?

16 A. Yes.

17 Q. You've just told us you were an expert in that?

18 A. Yes. And, I've testified on that.

19 Q. And testified. And, generally, in opposition to the  
20 notion that the United States needs more renewable  
21 power capacity?

22 A. I'm talking -- well, I testified before Congress on the  
23 cost of renewable -- the subsidies for renewable  
24 energy, and whether or not those programs were actually

[WITNESS: Linowes]

1 delivering.

2 Q. Generally, you've testified in opposition to the notion  
3 that the United States needs more renewable power  
4 capacity?

5 A. No. Have you read my testimony?

6 Q. I've read a lot about you. So, I'm just asking.

7 A. I did not testify to that.

8 Q. Is that wrong?

9 A. I could not walk into the Halls of Congress and state  
10 "The United States doesn't need more renewable energy."  
11 Do you know how far I would get? Not very. I would  
12 not even be invited to talk. That is not -- that's not  
13 the setting for anything like that. And, that's not  
14 what I would do.

15 Q. Do you write a blog?

16 A. I write -- I write essays.

17 Q. Essays. For Mercatus Institute and others?

18 A. For who?

19 Q. Mercatus?

20 A. I don't know.

21 Q. Okay. And, in your blogs, do your blogs argue against  
22 increasing renewable power capacity?

23 A. I'd have to look at -- well, I have one with me now.

24 Q. If you don't know whether they do or not, you say --

[WITNESS: Linowes]

1 A. I don't -- I don't talk about whether or not we should  
2 be increasing renewable energy use or not. What I  
3 generally talk about are the economics of it. I talk  
4 about the -- of renewable energy. I talk about the  
5 subsidies and the costs -- the amount of money that's  
6 being spent in subsidies and what we are getting in  
7 return. And, my goal, my purpose in writing those  
8 essays is mainly to talk about the realities of  
9 renewable energy.

10 Q. Has Windaction --

11 A. Because a lot of people assume that renewable energy  
12 equals nuclear power equals gas equals all the other  
13 options, and it doesn't. There are differences. So,  
14 that's what I talk about.

15 Q. And, where does Windaction get its funding?

16 A. We take donations.

17 Q. You get any grants from any nonprofits? Just  
18 individual --

19 A. And, we're not funded by the Koch brothers either. In  
20 case you were going to ask.

21 Q. Now you're really disappointing me?

22 A. I'm sorry.

23 Q. Now you're really disappointing me.

24 A. I'm disappointed, too.

[WITNESS: Linowes]

1 Q. Really? Those guys don't give you anything?

2 MR. PACHIOS: Okay. I don't --

3 MS. LINOWES: You see? It gives you an  
4 idea of where I come, what my --

5 MR. PACHIOS: I don't have any more  
6 questions.

7 MR. IACOPINO: I just have one question.

8 MS. LINOWES: Sure.

9 MR. IACOPINO: I want to make sure I'm  
10 clear on this. Your Footnote Number 4 in your testimony,  
11 it's in the wrong place, is that correct? Footnote Number  
12 4 references back to Adam Gravel and Steve Pelletier's  
13 testimony.

14 MS. LINOWES: You're right.

15 MR. IACOPINO: It should be -- where  
16 should it go, so that the Committee knows what --

17 MS. LINOWES: Yes. It should, and I  
18 could double check that, but they specifically cited the  
19 purpose of the plan, which is to reduce fragmentation and  
20 the impacts of the fragmentation, and also the motorized  
21 access would be eliminated, which would encourage more use  
22 of the Project area by marten. So, you're right. It  
23 should be after the word "marten".

24 MR. IACOPINO: Okay, after. So, it's

[WITNESS: Linowes]

1 after the sentence before the one that it is. Okay.

2 MS. LINOWES: Correct.

3 MR. IACOPINO: Thanks.

4 MS. LINOWES: You know, I should double  
5 check it and check their source and e-mail you on that,  
6 but I believe that that is where it goes.

7 MR. IACOPINO: Okay. That would be  
8 appreciated. Okay. I had no notes of any requests of any  
9 documents from Ms. Linowes from the Applicant. Did you  
10 have questions of Ms. Linowes?

11 MS. NOETHER: I do not. Thank you.

12 MR. IACOPINO: Okay. Then, it looks  
13 like we are done for the day, at least with the witnesses.  
14 Thank you very much.

15 And, I suppose we'll go off record and  
16 talk about what we're going to do about these binders.  
17 Steve, if you could hang for a minute, in case we have to  
18 go back on.

19 (Off-the-record discussion ensued.)

20 MR. IACOPINO: Okay. We are back on the  
21 record here at the tech session. What I'm going to do is  
22 I'm going to ask if a representative of the Applicant  
23 would first express, they have had an opportunity to look  
24 through three notebooks that were brought by the witness.

1 Please express what it is that you are requesting to be  
2 produced.

3 MR. WARNER: While looking through the  
4 notebooks, it appears that the materials have been  
5 organized in a particular way, in which we are interested.  
6 And, it appears that Dr. Kilpatrick has made notes and  
7 highlights and other markings, which we are also  
8 interested in, on many of the documents, if not all of the  
9 documents. I did offer to avoid the Counsel for the  
10 Public having to go to the additional burden of organizing  
11 and tabbing each document as it is tabbed in this binder,  
12 to simply take pictures of the tabs with my phone now and  
13 then we could organize them. Counsel for the Public  
14 refused.

15 Accordingly, we are requesting the  
16 contents of all three binders, including the tabs as  
17 currently organized.

18 MR. IACOPINO: And, what say Counsel for  
19 the Public?

20 MS. NOETHER: Counsel for the Public  
21 says that it is not going to produce, absent a motion to  
22 compel, the organizational aspects of the binder that --  
23 in terms of the tabs and whatnot. There were very few  
24 pages that were highlighted. And, I can't, when something

1 gets photocopied, it is not going to -- you're not going  
2 to see the highlighting, that's just a feature of  
3 photocopying. And, I don't think that's vital to know  
4 what he's highlighted. You will see whatever markings  
5 he's put on stuff, whether it be an asterisk, as I saw on  
6 a page here, I think there was another page where there  
7 were a couple of words, "vegetation", and a couple other  
8 words, that will come out on the photocopying.

9 As far as the documents that came from  
10 the Applicant, we're not going to re-reproduce those and  
11 send those back. Nor will we re-reproduce the testimony  
12 that's already been provided, which is also part of the  
13 doctor's binder.

14 So, we're happy to produce the thesis  
15 and the other binder, which I think was a study as well,  
16 even though these are available from other sources, we  
17 will reproduce those, but not the binder that already  
18 contains information that the Applicant has, came from the  
19 Applicant, and not the tabs that the doctor made for the  
20 convenience of his organization.

21 MR. IACOPINO: There's also a reference  
22 in his request that there was notes. And, I know you  
23 mentioned the highlighting. So, if I understand you  
24 correctly, you're willing to provide it with the notes,

1 but, because highlighting isn't going to come out when you  
2 copy, you can't tell them that they will have the  
3 highlighting. So, what you're willing to produce would  
4 include any written notes of the witnesses, but not  
5 highlighting.

6 MS. NOETHER: In these, notes in these  
7 binders, any other notes that he's done, and I don't know  
8 that there are in that particular binder, but that's  
9 information that was sourced from the Applicant himself.  
10 So, he's -- and we've made available his reports and his  
11 notes of conversations, those were all already produced.

12 MR. IACOPINO: I understand that. But,  
13 in terms of notes in the other binder, what -- you don't  
14 know if there's notes in there, is that what you're  
15 saying?

16 MS. NOETHER: I don't know if there's  
17 notes in there, you know, highlighted aspects or whatever.

18 MR. WARNER: In an effort -- in an  
19 effort at compromise here, to further reduce the burden on  
20 Counsel for the Public, we have an office in Concord, we  
21 being Preti Flaherty, and I could simply take this binder  
22 right now and have one of our paralegals copy the binder  
23 and bring it back.

24 MS. NOETHER: I'm not willing to do

1 that.

2 MR. PACHIOS: But can I interject here?

3 MS. NOETHER: I'm happy to give you  
4 these two to copy right now.

5 MR. PACHIOS: I understand that the  
6 rules of evidence don't technically apply here. And, so,  
7 Counsel for the Public has a problem in this objection.  
8 On the other side of the coin, in discovery, normally, you  
9 make it available for inspection and copying, and that's  
10 all we're asking, is it be made available to us for  
11 inspection and copying. And, that often happens with  
12 voluminous documents that are burdensome for the other  
13 side to produce. The one requesting it then says "okay",  
14 and I've had cases where people have had to go to Florida  
15 to inspect the documents and copy them.

16 MR. IACOPINO: And bring their own copy  
17 machine?

18 MR. PACHIOS: No, because we made our  
19 own copying machine available to them, because we're good  
20 guys.

21 MR. IACOPINO: Okay. All right. And,  
22 actually, just before you -- so, there are the two  
23 smaller, a green binder and a blue binder, and you're  
24 willing to let them take that now and make copies. I

1 don't know what your capacity is at your office. But, if  
2 you have the capacity to copy those with the highlighting,  
3 why don't you do that. That takes care of, well, --

4 MR. PACHIOS: Half.

5 MR. IACOPINO: Yes, 50 percent, depends  
6 how you count it. If you go by binders, two-thirds of the  
7 problem; if you go by pages, probably half.

8 MS. NOETHER: Or less.

9 MR. IACOPINO: Yes. So, why don't we do  
10 that. At least that much of it we'll get them. So,  
11 you'll have those, along with the highlighting, if you can  
12 reproduce it, --

13 MR. WARNER: Yes.

14 MR. IACOPINO: -- in a manner that's  
15 satisfactory to you. And, then, it's just that binder  
16 that --

17 MR. PACHIOS: Is the problem that you  
18 can't -- you can't be without that binder for a couple of  
19 days for some other reason?

20 MS. NOETHER: You know what, the problem  
21 is -- the problem is in producing information that you  
22 already have. I don't see the need to re-reproduce  
23 information that you already have, or that we -- that we  
24 have already produced once. And, I do have a problem with

1 you needing to know exactly how he's organized his binder  
2 of notes. So, I do have a problem with that.

3 MR. PACHIOS: Okay. Is that the  
4 obstacle for us taking the thing and photocopying it? I  
5 just need to know.

6 MS. NOETHER: Yes.

7 MR. PACHIOS: That's the reason. Okay.

8 MS. NOETHER: Yes.

9 MR. PACHIOS: You don't want us to know  
10 how it was organized. But, other than that, but for that,  
11 we could do that, right? We're just trying to save you  
12 the trouble.

13 MS. NOETHER: If you want -- you're not  
14 saving the environment's trouble by re-reproducing stuff.  
15 And, I don't know how it's going to copy from that,  
16 because many of those copies appear to be light to me.  
17 They're cover pages of information that you provided. If  
18 you want to have at it and re-copy everything you sent to  
19 us, you have it already.

20 MR. PACHIOS: Yes. The stuff that we  
21 sent to you, okay?

22 MS. NOETHER: Yes.

23 MR. PACHIOS: As you say, if we want to  
24 be fools and reproduce what we already have in our files,

1 go to it. That's what you said.

2 MS. NOETHER: Yes, but you don't -- what  
3 I'm saying here is you don't need me for that.

4 MR. PACHIOS: We don't need you for  
5 that. Well, we need to know what's in these books, okay?  
6 And, we're entitled to know. And, that's all we're trying  
7 to do.

8 MR. IACOPINO: And, the most we can do  
9 here today is what we disagree on. We're disagreeing  
10 about that one binder. I would recommend, if you want it,  
11 file a motion, they would be required to respond, and  
12 we'll deal that through the Chairman's office.

13 MS. NOETHER: Perfect.

14 MR. IACOPINO: And, if you guys can work  
15 out some accommodation in the meantime, so that you don't  
16 have to go through the motion process, that would be  
17 recommended by me.

18 MR. PACHIOS: And by me.

19 MR. IACOPINO: And, also highly  
20 appreciated by at least the Chair of the Committee.

21 So, and with that, I think we are done.  
22 Thank you very much, Steve.

23 MS. NOETHER: Thank you.

24 **(Whereupon the technical session was adjourned at 2:58 p.m.)**