

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3
4 September 15, 2017 - 1:50 p.m. DAY 34
5 49 Donovan Street Afternoon Session ONLY
6 Concord, NH

7 {Electronically filed with SEC on 09-26-17}

8 IN RE: SEC DOCKET NO. 2015-06
9 Joint Application of Northern
10 Pass Transmission, LLC, and
11 Public Service Company of
12 New Hampshire d/b/a Eversource
13 Energy for a Certificate
14 of Site and Facility.
15 (Hearing on the merits)

16 PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:
17 Chrmn. Martin P. Honigberg Public Utilities Comm.
18 (Presiding as Presiding Officer)

19 Cmsr. Kathryn M. Bailey Public Utilities Comm.
20 Dir. Craig Wright, Designee Dept. of Environ. Serv.
21 Christopher Way, Designee Dept. of Resources &
22 Economic Development
23 William Oldenburg, Designee Dept. of Transportation
24 Patricia Weathersby Public Member
Rachel (Whitaker) Dandeneau Alternate Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq., Counsel to the SEC
Iryna Dore, Esquire, Co-counsel to the SEC
(Brennan, Caron, Lenehan & Iacopino)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Susan J. Robidas, NH LCR No. 44

{SEC 2015-06}[Day 34 Afternoon Session ONLY]{09-15-17}

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I N D E X

WITNESS PANEL: Terrence J. DeWan
Jessica Wagner Kimball

EXAMINATION	PAGE
Cross-examination by Ms. Crane (cont'd)	9
Cross-examination by Ms. Saffo	131

EXHIBITS	DESCRIPTION	PAGE
AD-N-ABTR 52	Maps and Photographs and documents	10
AD-N-ABTR 29	12/30/16 Letter to SEC from Mr. Masera	21
GRF 36	10/16/15 Letter to NHDOT from Atty. Hodgdon	131

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P R O C E E D I N G S

(Hearing resumed at 1:33 p.m.)

CHAIRMAN HONIGBERG: All right. Before we resume questioning of the panel, I understand, Ms. Boepple, you have something you need to bring to us?

MS. BOEPPLE: Yes, Chair. Thank you.

A couple things with respect to the procedural order that issued this week. One, let me start with the recall of the historic expert, Cheryl Widell. The order states specifically that she will be subject to cross strictly on the Programmatic Agreement. The cultural landscape reports were also not available during her testimony, and we're requesting that the recall of her cross be extended to include those.

CHAIRMAN HONIGBERG: Have you spoken with the Applicant's counsel about this?

MS. BOEPPLE: I have not. I've been talking with him about some other things.

CHAIRMAN HONIGBERG: Okay. Mr. Needleman.

1 MR. NEEDLEMAN: It's not
2 something I can respond to in the moment,
3 mainly because I wasn't the person handling
4 that.

5 CHAIRMAN HONIGBERG: So I
6 understand the request. I think it would be
7 possible that if you can get in touch with
8 Mr. Walker and get us a response sometime this
9 afternoon, that would be good. Beyond that, I
10 don't think it makes sense to say anything more
11 yet. I think they understand the request. I
12 doubt anyone else has anything substantive they
13 want to say on this topic. Am I correct?

14 [No verbal response]

15 CHAIRMAN HONIGBERG: All right.
16 Ms. Boepple, what else have you got?

17 MS. BOEPPLE: The other issue
18 with respect to the order has to do with the
19 submission of information related to
20 cross-examination by the September 22nd
21 deadline. Two things with respect to that:
22 One, we're asking for a clarification on the
23 types of witnesses that that information must
24 be submitted for. Does that include all, for

1 example, Counsel for the Public's expert
2 witnesses, No. 1?

3 And No. 2, the other question
4 that we have is whether or not we could
5 consider, and I have in fact consulted with
6 Attorney Needleman on this, to see if we
7 could reach some sort of an agreement on a
8 counterproposal to that deadline of the 22nd
9 for all the remaining witnesses, and that is
10 to build in a series of deadlines that would
11 allow all of the parties to submit their
12 proposed line of questioning for the cross,
13 for this supposed "friendly cross." It would
14 make it more manageable. Presumably it would
15 give all the parties a little more time to
16 really be thoughtful and produce information
17 that's sufficient for the Committee to make a
18 determination about the line of the
19 questioning for the cross. My fear is that
20 the September 22nd deadline, for everybody
21 involved, means that a lot of us will end up
22 scrambling to put something in by that
23 deadline, and it's likely to look a lot more
24 like a very generic sort of, well, I'm going

1 to ask these witnesses questions on orderly
2 development, for example.

3 So our proposal is that we be
4 allowed to spend a little more time trying to
5 come up with a proposal, a proposed
6 alternative to that single deadline.

7 CHAIRMAN HONIGBERG: Mr.
8 Needleman.

9 MR. NEEDLEMAN: Beth and I did
10 talk about this yesterday and again today. We
11 are willing to show some flexibility on this if
12 the Committee is inclined to do that. I think
13 it's important, though, that I state the
14 concern we've got about the impact that this
15 could potentially have on scheduling. What I
16 mean by that is we have a concern that if
17 everybody is not careful in terms of witness
18 management going forward, it could get quite
19 complicated. We could have days where
20 witnesses aren't ready to go, or we have gaps,
21 and we'd be very worried about that. And my
22 fear is that if we create a multiple set of
23 deadlines for these types of disclosures, it's
24 only going to enhance that potential problem.

1 So I think if the Committee
2 were inclined to go there, I think what we
3 could agree to would be two deadlines: One
4 on September 22nd for, say, the first half of
5 witnesses, and then another one 10 days later
6 for the second half.

7 CHAIRMAN HONIGBERG: I
8 understand the issue. It's something that I
9 did think about subsequent to issuing the
10 order. I think it makes sense for you to have
11 a conversation about this and see if you can
12 reach an agreement that will work for everyone.
13 I think that it is possible that your concern
14 is a valid one, Ms. Boepple, and it's also very
15 possible that Mr. Needleman's concern is a
16 valid one. So I suggest that you try to take
17 both into account.

18 Keep in mind, I think that the
19 timing of all of this shouldn't be quite as
20 bad as I think people are making it for
21 themselves, because there was a prehearing
22 conference in this matter in relatively early
23 August, as I recall, certainly within the
24 first two weeks of August, I think, at which

1 everyone was supposed to be prepared to
2 discuss how much time they needed with each
3 witness, which meant that each person who had
4 that testimony for many, many months would
5 have gone through that testimony and figured
6 out what it was they wanted to ask, so that
7 they would know how long it would take. So
8 we're really, I think, talking about people
9 going back through their notes and
10 identifying what it is they feel they need to
11 ask.

12 I'll also say, one of the
13 provisions of that order is, if you're
14 adverse and can explain how you're adverse to
15 the witness, you don't need to give any
16 information about what you intend to ask.
17 You're adverse and you'll be doing a
18 traditional adverse cross-examination. It's
19 this "friendly" examination where there needs
20 to be limits placed, because it doesn't make
21 any sense for a bunch of questions to be
22 asked of witnesses that reiterate their
23 testimony, expand on it beyond the scope of
24 what their direct was and just, I used the

1 phrase "guild the lily" in another context
2 yesterday, but same could be used here. So I
3 think there's certainly some agreement the
4 two of you can reach, and actually, all of
5 you can reach on scheduling.

6 With respect to the question
7 about whether it applies to Counsel for the
8 Public's witnesses, we're going to think
9 about that and respond later today. Later
10 today we'll give you an answer on that.

11 MS. BOEPPLE: Thank you.

12 CHAIRMAN HONIGBERG: I think
13 we're ready to resume questioning. No.

14 Off the record.

15 (Discussion off the record)

16 CHAIRMAN HONIGBERG: All right.
17 Ms. Crane, you may continue.

18 MS. CRANE: Thank you.

19 CROSS-EXAMINATION (cont'd)

20 BY MS. CRANE:

21 Q. I believe we were talking about access to
22 Sawhegenet Falls and the possibility of
23 accessing Sawhegenet Falls from the
24 campgrounds that are relatively close down

1 river. Is that where you remember us being?

2 A. (DeWan) In that general vicinity, yes.

3 Q. Let's just go. Let's look at the next slide,
4 remember what we were talking about.

5 The red indicator is -- the green text
6 above the red indicator says what, Mr. DeWan?

7 A. "Sawhegenet Falls Recreational Area."

8 Q. And it is -- if we trust Google Maps to
9 measure, and we are now on Page 47, which is
10 a Google Maps screen capture part of the
11 Ashland to Deerfield Non-Abutters Exhibit 52,
12 how far is it from Interstate 93?

13 A. (DeWan) Approximately 2100 feet.

14 Q. About 2100 feet. And do you see very much
15 else in the general landscape that would tend
16 to lower the visitor to Sawhegenet Falls
17 expectation of their experience there?

18 A. (DeWan) Only River Road on the west side.

19 Q. Only River Road on the west side. Okay.

20 Next slide. And this is a blow-up of
21 that same location. Can you tell us what the
22 designation on the furthest left arrow is?

23 A. (DeWan) I see an indication of a parking lot.

24 Q. And do you have any recollection, now that

1 you see the picture, what that parking lot
2 was like?

3 A. (DeWan) I do remember a relatively level area
4 at the base of the access road that we
5 described before, but not a formal parking,
6 designated parking area.

7 Q. Okay. I don't need to worry about the
8 meaning of the term "designation" yet again.

9 And the other label says what?

10 A. (DeWan) "Location of put-in."

11 Q. Okay. And so these are relatively crude ways
12 of getting to Sawhegenet either by car and
13 trying to leave your car in what I have
14 labeled "parking lot," or carrying a kayak or
15 a canoe across down there to the put-in place
16 if one wanted to launch from Sawhegenet;
17 correct?

18 A. (DeWan) It appears that way.

19 Q. Okay. So now we've got that in our heads.
20 And there is in this picture, in the middle
21 in the bottom, okay, and it isn't made out
22 very clearly, but I just want us to notice
23 that there is something there in the middle
24 of the river. And you've made some

1 suggestion that you understood what it was
2 when you looked at an earlier slide. Do you
3 recall what you might have thought that --

4 A. (DeWan) I thought there was an old abutment
5 of some sort in the river.

6 Q. Okay. And old abutment of some sort. Okay.
7 Let's keep going.

8 So now we're back trying to get on the
9 river by kayak. And we looked at this slide
10 before. This is Page 51, a photograph taken
11 from the bridge on Route 104 looking up the
12 Pemi. And what is the designation given to
13 the area pointed at by the left arrow on this
14 screen.

15 A. (DeWan) The label says "public boat launch."

16 Q. Okay. And the right arrow says?

17 A. (DeWan) "Davidson Campground."

18 Q. And do you recall that's the campground we
19 were talking about a few questions before the
20 break?

21 A. (DeWan) I would just have to assume that it
22 is.

23 Q. Okay. Subject to check, I think I can assert
24 that it is.

1 And next slide. This is another picture
2 taken from Route 104. I know it's quite hard
3 to read, but can you make out what that sign
4 says?

5 A. (DeWan) Looks like "Mooney Clark Landing."

6 Q. Mooney Park Landing. And what does the road
7 appear to be -- where does the road appear to
8 be leading us?

9 A. (DeWan) Well, I see a turnaround in the
10 immediate foreground, and the road either
11 dead ends or may go down the slope straight
12 ahead.

13 Q. Okay. And that down the slope would be
14 toward the river.

15 A. (DeWan) Appears that way.

16 Q. Okay. And will you accept my assertion that
17 that is, in fact, the entryway to the point
18 that was designated as a public boat launch?

19 A. (DeWan) I have no idea if that is or not.

20 Q. Would you like me to get you an aerial view
21 of that so you can accept my assertion?

22 A. (DeWan) For purpose of this discussion, sure.

23 Q. Okay. So there is -- are you willing to
24 accept my assertion that there is a boat

1 launch at this location?

2 A. (DeWan) I see there is a sign that says
3 "landing." I don't see any sign that says
4 "boat launch" here.

5 Q. What do you think I mean when I say "boat
6 launch"?

7 A. (DeWan) A place where the public could
8 generally go down and launch a boat of some
9 sort into the river.

10 Q. Okay. A boat of some sort. Fine. So I
11 think we can agree about that. Okay. Next.

12 Okay. So this is another orienting
13 picture. And the only thing that's different
14 about this one is the bottom blue arrow. And
15 the label on that is not a word you
16 necessarily have seen before, so I'll
17 pronounce it for you if you would like and
18 then you can repeat it. Cogliano. And after
19 "Cogliano"?

20 A. (DeWan) "Access."

21 Q. What does the arrow seem to be pointing
22 toward?

23 A. (DeWan) To the buffer between the river and
24 an opening in the forest.

1 Q. What do you mean by a "buffer"?

2 A. (DeWan) A stand of vegetation.

3 Q. Okay. And immediately to the left of the
4 stand of vegetation?

5 A. (DeWan) I see a field with three white dots
6 in it.

7 Q. Okay. A field with three white dots in it.

8 Okay. Next slide. And I apologize if
9 this seems inappropriate. This is an
10 obituary that was published in what I think
11 of as The Plymouth Record, and whatever else
12 it is now in 2008, of a man named -- I'm
13 sorry. Can you just read the name for me?

14 A. (DeWan) Anthony F. Cogliano.

15 Q. And we are looking at Page 54. Let's not
16 look at that anymore. Let's go to the next
17 slide.

18 This is the excerpts that I would have
19 you read from this. Can you help me reading
20 that?

21 A. (DeWan) "In 1972, he and his wife founded the
22 Cogwood Campground on River Road in
23 Bridgewater and operated it for many years."

24 Q. And the next line says?

1 A. "A celebration of his life will take place
2 this summer at the Cogwood Campground in
3 Bridgewater."

4 Q. And if you recall, the obituary was in 2008?

5 MR. NEEDLEMAN: Objection.
6 Relevance.

7 MS. CRANE: This post-dates his
8 data; right?

9 CHAIRMAN HONIGBERG: The
10 question, the pending question is, "Do you
11 recall that the date was 2008?" You can
12 answer.

13 A. (DeWan) I did not pay --

14 MS. CRANE: Then let's look at
15 the prior slide again. Not the next one, the
16 prior.

17 MR. NEEDLEMAN: Mr. Chair, I'm
18 objecting to the relevance of this whole line.
19 I don't understand it.

20 CHAIRMAN HONIGBERG: Yeah, she
21 hasn't gotten there yet.

22 MS. CRANE: I am content to
23 leave this question unanswered. I think I got
24 the date into the record myself.

1 Let's continue not one, but
2 two slides.

3 BY MS. CRANE:

4 Q. And what is on this Slide 56 of Exhibit 52?
5 What does it appear to be?

6 A. (DeWan) Well, there appears to be a picnic
7 table on the right. There seems to be a
8 pathway of some sort that goes down to a
9 river.

10 Q. And let's finish this slide. What does the
11 sign in the blown-up portion of this picture
12 say?

13 A. (DeWan) It says, "No lifeguard on duty. Swim
14 at own risk."

15 Q. And would you accept my assertion that we are
16 looking at the Pemi, at the old Cogliano
17 Campground?

18 A. (DeWan) I will accept that.

19 Q. Okay.

20 CHAIRMAN HONIGBERG: Ms. Crane,
21 what is the relevance of all this?

22 MS. CRANE: This is still an
23 active campground, it's just not publicly
24 advertised -- I'm sorry -- why we're still

1 talking about kayak and canoe and tube access
2 to the Pemi, and this is an additional place
3 where people regularly gain access to the
4 river.

5 CHAIRMAN HONIGBERG: Mr.
6 Needleman, you want to say something?

7 MR. NEEDLEMAN: I still don't
8 understand why it's relevant.

9 BY MS. CRANE:

10 Q. Could you remind me how you described the
11 users of this particular scenic resource?

12 A. (DeWan) When you say the "users" of the
13 resource, you're talking about the Pemi River
14 as a whole?

15 Q. Ah, well, that's an interesting question.
16 Why do we have any assessment of Sawhegenet
17 if it's only part of the Pemi as a whole?

18 A. (Kimball) It's also a conservation area.

19 Q. So if you're a conservation area and part of
20 the river, you still get analyzed, but if
21 you're a different part of the river you
22 don't?

23 A. (Kimball) I just looked to Site 102.45, the
24 definition of "scenic resources," and

1 conservation areas with right of public
2 access are scenic resources unto themselves.

3 Q. And what do we mean by "conservation area"
4 here? Because I do not believe that your
5 description of this particular location made
6 reference to that. Could you show me where
7 it does?

8 A. (Kimball) For Sawhegenet Falls?

9 Q. Yes.

10 A. (Kimball) We have it listed as a town
11 recreation area with trails and access to
12 Pemigewasset River in the table. I believe
13 we refer to it as a recreation area. But the
14 outline on the map that we have provided on
15 Page 4-8 is an outline of the Sawhegenet
16 Falls recreation area. That polygon follows
17 the outline of the conservation easement that
18 protects it.

19 Q. But you did not include any information about
20 that in your overall assessment of this
21 location, did you?

22 A. (DeWan) We described the Sawhegenet Falls
23 recreation area on Page 4-8.

24 Q. And that description, which the average

1 reader of your report would assume was
2 comprehensive in your discussion of
3 Sawhegenet, be the things you took into
4 account when evaluating Sawhegenet, wouldn't
5 it?

6 A. (Kimball) It's just what classifies it as a
7 scenic resource is that it is a conservation
8 area.

9 Q. Okay. So this is -- next slide. And what is
10 depicted in this slide?

11 A. (DeWan) A boat of some sort on what we assume
12 to be the Pemi River.

13 Q. And will you accept my assertion that this
14 was made only a few feet in front of the last
15 slide, that it's closer to the river than the
16 shot in the previous slide?

17 A. (DeWan) I will accept that.

18 Q. And does that boat appear to be a motorboat?

19 A. (DeWan) It appears to be.

20 Q. Okay. Unfortunately, I can only ask you --
21 no, I can't. Never mind.

22 So let's go on to the next slide, which
23 is Slide 58. It has been previously admitted
24 as Ashland to Deerfield Non-Abutters Exhibit

1 29. Could you read the sentence at the end
2 of the first paragraph?

3 A. (DeWan) Starting with the word "customers"?

4 Q. Thank you. Yes.

5 A. (DeWan) "Customers prefer a route from
6 Plymouth downriver to New Hampton rather than
7 the northern route coming to Plymouth because
8 of the volume of water that this river
9 carries due to the merger with the Baker
10 River, and also the lack of development and
11 the highly scenic experience on the southern
12 route."

13 Q. And who has written this letter?

14 A. (DeWan) This has been authored by Daniel
15 Masera from Plymouth Ski & Sports.

16 Q. And are you familiar with the business that
17 Plymouth Ski & Sports is involved in?

18 A. (DeWan) I am not.

19 Q. Will you accept my assertion that he rents
20 kayaks and canoes?

21 A. (DeWan) I wouldn't doubt that.

22 Q. Okay. And we can get that into the record in
23 a more appropriate way by having you read the
24 sentence that says "A significant...?"

1 A. (DeWan) Which paragraph?

2 Q. In the first paragraph.

3 A. (DeWan) "A significant portion of my
4 summertime business is based upon kayak,
5 canoe and tubing trips down the Pemigewasset
6 River."

7 Q. And then if I could just have the phrase that
8 begins "also" at the end of that paragraph
9 again.

10 A. (DeWan) "...also, the lack of development and
11 the highly scenic experience on the southern
12 route."

13 Q. And what does this letter suggest is the
14 expectation of kayak and canoers on the
15 southern portion of the Pemigewasset,
16 beginning moving southward from Plymouth?

17 A. (DeWan) The expectation, according to Mr.
18 Masera, is that they expect to see an
19 adequate volume of water and a scenic
20 experience on the river.

21 Q. And what makes that scenic experience
22 important to them, according to Mr. Masera?

23 A. (DeWan) Perhaps, among other things, the lack
24 of development.

1 Q. The lack of development. Thank you.

2 Is this the kind of expectation that you
3 would normally take into account in coming up
4 with your estimates of expectations for
5 potential users at scenic resources?

6 A. (DeWan) When you say "this," what are you
7 referring to?

8 Q. Observations like Mr. Masera's about what's
9 important to his customers.

10 A. (DeWan) Well, we look at, you know, the
11 subject property -- in this case, a portion
12 of the scenic resource -- and evaluate what's
13 out there right now and determine whether or
14 not there's any development, a lot of
15 development, minimal development, and what
16 type of development that you see. Are there
17 gravel pits, single-family homes,
18 transmission lines, railroad tracks and so
19 forth?

20 Q. And do you recall what your description at
21 Sawhegenet itself was in your -- in the
22 formal discussion in your report?

23 A. (DeWan) I think we covered that already. I
24 think we said --

1 Q. I'm just hoping that we can all have it in
2 our minds.

3 (Witness reviews document.)

4 A. (Kimball) We state that users expect some
5 cultural modifications in the landscape when
6 situated this close to Interstate 93.

7 Q. Okay. Next slide.

8 This is Slide 59, a photograph. And I'm
9 not sure that it's fair to expect you to
10 identify it just -- could you tell me what
11 you could see if you were evaluating this
12 view, in terms of its -- whatever you take
13 into account when you take into account human
14 development?

15 A. (DeWan) Well, as we've said many times, we
16 don't judge scenes like this on the basis of
17 an isolated photograph --

18 Q. I didn't ask you to --

19 A. (DeWan) Well, you asked me what I take into
20 account, so I --

21 Q. I asked you --

22 (Court Reporter interrupts.)

23 A. (DeWan) What we would do is go to this
24 location, do a 360-degree scan to find out

1 what we see upstream, downstream, across the
2 river, behind us, and then do an evaluation
3 based upon what we see, what we experience.

4 Q. And the question that I intended to ask was:
5 Looking at this picture, can you identify
6 anything that you would take into account in
7 that assessment of the development at this
8 location?

9 A. (DeWan) Certainly. You know, we look at land
10 form, we look at vegetation, we look at water
11 bodies and we look at human development.

12 Q. And I wanted you to address in particular the
13 human development characteristics.

14 A. (DeWan) Okay. I see a bright dot on the
15 left-hand shoreline. I have no idea what
16 that is, but it may indicate something
17 happening there. Immediately above that I
18 see a horizontal line which may indicate
19 there perhaps is some field of some sort
20 there. Photographic quality is a little bit
21 dark, so I can't see into the woods very much
22 on either side, so I really can't see
23 anything that we would normally look for when
24 we go to a situation like this.

1 Q. Okay. Do you see anything cutting across the
2 clouds that are lowest to the vegetation line
3 above that yellow dot?

4 A. (DeWan) I don't see anything.

5 Q. Well, let's go to the next slide and see if
6 you can figure out what you see. What are
7 the two blue arrows pointing at?

8 A. (DeWan) I don't know. I don't see anything
9 other than sky and clouds.

10 Q. Well, I guess I'll have to blow it up.

11 (Pause)

12 Q. What is the lower blue arrow -- can you make
13 out anything that the lower blue arrow is
14 looking at?

15 A. (DeWan) It may be the coarseness of the dot
16 pattern on my screen, but I'm still only
17 seeing the tops of the clouds.

18 Q. Well, would you accept my assertion that that
19 is the power -- the transmission lines at the
20 location that's this New Hampshire scenic
21 easement?

22 MR. NEEDLEMAN: Objection.

23 CHAIRMAN HONIGBERG: Ms. Crane,
24 all I'm seeing is clouds.

1 MS. CRANE: Okay. I apologize
2 that our devices -- I appreciate the quality of
3 your photographs instead.

4 BY MS. CRANE:

5 Q. Let's go back to the slide and talk about the
6 other things we could be talking about at
7 this slide.

8 Okay. Given that you can't see those
9 power lines and you can't make out what the
10 yellow dot is, there's not much human
11 development to be witnessed; is that
12 accurate?

13 A. (DeWan) No, it's not accurate because, as I
14 said, I can't see into the woods here.

15 Q. In this view there is not much human
16 development.

17 A. (DeWan) In this photograph --

18 Q. Yes, that's my question.

19 A. (DeWan) -- I see little human development.
20 But this view, in reality, may have more that
21 we're just not seeing here.

22 Q. This sight line. I don't know what you're
23 using as your definition of "view" but --

24 A. (DeWan) "View" refers to the experience of

1 actually being there as opposed to looking at
2 a photograph which represents one person's
3 visit there.

4 Q. I appreciate that. Okay. Let's go.

5 Okay. And this is in fact what the
6 put-in point at Sawhegenet looks like. We
7 don't need to spend any more time with this,
8 except to look at this picture.

9 Now, I apologize. I couldn't get a
10 version of this picture without a label. But
11 what does the label say? We are now on
12 slide 63.

13 A. (DeWan) Says "Pemi River at S falls.JPG."

14 Q. And from what advantage point does this
15 photograph seem to have been taken?

16 A. (DeWan) It appears to be from a snowmobile
17 trail perhaps adjacent to the river.

18 Q. Snowmobile trail adjacent to the river. And
19 I have it on good information that the person
20 who provided me with the picture intended
21 that the "S" means Sawhegenet, but I'm not
22 going to ask you to accept that assertion.
23 Let's just keep going because it's a
24 snowmobile trail along the river. Thank you.

1 Next slide. So could you remind me who
2 you identified as the user groups of
3 Sawhegenet?

4 A. (DeWan) Local residents and paddlers.

5 Q. And are you still comfortable with that being
6 an accurate summary of the ways that
7 Sawhegenet gets used?

8 A. (DeWan) Certainly, based upon that sign that
9 we saw at the top of the hill.

10 Q. And what was that sign? What did that sign
11 say?

12 A. (DeWan) Something to the effect that use is
13 limited to local residents only.

14 Q. The sign at the top of the road is the sign
15 we're talking about; correct?

16 A. (DeWan) That's correct.

17 Q. Are there other ways to get to Sawhegenet?

18 A. (DeWan) I suppose somebody could arrive by
19 water. But I don't know if some local
20 constable would have the ability to ask them
21 to leave based upon what we saw from that
22 sign.

23 Q. And do you remember the pile of rocks in the
24 middle of the river?

1 A. (DeWan) Yes.

2 Q. And do you imagine that the local constable
3 could exclude them from that location?

4 A. (DeWan) I would doubt it.

5 Q. Okay. And did you see any signs disinviting
6 people who did approach from the river?

7 A. (DeWan) No, I did not.

8 Q. And did you see any warning in the Davidson
9 Campground recommendation of it as a
10 destination that the local constable might
11 interact with them at this location?

12 A. (DeWan) You're referring to the publication
13 that you asked us to read the uses on?

14 Q. Yes.

15 A. (DeWan) I don't recall seeing anything to
16 that effect.

17 Q. Okay.

18 MS. CRANE: Let's go back to the
19 slide from the Davidson Campground, the
20 Sawhegenet directions. Forward two.

21 BY MS. CRANE:

22 Q. So, on this slide, the guests at Davidson
23 Campground can rent a boat. And on the next
24 slide they're being invited to go to

1 Sawhegenet Falls. They may be -- they have
2 two ways to get there. Would you agree? Or
3 at least two ways to get there, I should say.

4 (Witness reviews document.)

5 A. (DeWan) I think what you're meaning is can
6 they get there by water or get there by land.

7 Q. That wasn't the intent of my question. So
8 could you answer it?

9 A. (DeWan) Are there at least two ways to get
10 there? I know of one way to get there.

11 Q. And that would be?

12 A. (DeWan) Down the road, looking at that access
13 point that we talked about earlier.

14 Q. And what might be another?

15 A. (DeWan) I suppose one could arrive by water.

16 Q. One could arrive by water. And when you were
17 exploring Sawhegenet, did you notice any
18 other way to leave what I have described as
19 the parking area, the opening there at the
20 bottom of the road, other than going into the
21 water or up the road from which you came?

22 A. (DeWan) Any other ways to leave that area?

23 No.

24 Q. Where was that snowmobile going?

1 A. (DeWan) I have no idea. I don't know where
2 that snowmobile was relative to the parking
3 lot.

4 Q. Okay. We'll return to this possible way of
5 getting to and leaving Sawhegenet.

6 Next slide after this. Okay. We looked
7 at this earlier; correct?

8 A. (DeWan) We did.

9 Q. And we concluded that if there was positive
10 human development, five points would be added
11 to the analysis?

12 A. (DeWan) That's correct.

13 Q. And your assessment of Sawhegenet, if I
14 recall correctly, included only mention of
15 the natural landscape; is that correct?

16 A. (DeWan) We may have mentioned the possibility
17 that there may have been an old bridge
18 abutment in the river --

19 Q. Could you find where in your report you noted
20 that?

21 A. (DeWan) It may take a moment to find that.

22 (Witness reviews document.)

23 A. (DeWan) I don't see it right now. I know
24 that we recognized that it was there.

1 Q. Could you please offer to correct the record
2 if you find it?

3 (Witness reviews document.)

4 Q. We can move on if you'd like to wait until
5 some other moment --

6 A. (DeWan) Yes.

7 Q. But I think I can ask you. Do you know
8 whether there were any points for positive
9 human development added to the Sawhegenet
10 scoring?

11 A. (DeWan) It will take us a moment to find it.

12 (Witness reviews document.)

13 Q. We could go to the next slide while we're
14 waiting. And indeed, we've seen this one
15 several times, so we can go to the next one.

16 A. (DeWan) To answer your earlier question, we
17 did not reference any positive human
18 development when we did our evaluation of
19 existing scenic conditions.

20 Q. Thank you. And we are now looking at Slide
21 69. Did you assign any points for positive
22 human development at this location?

23 A. (DeWan) Could you identify where this
24 location is?

1 MS. CRANE: This location. He's
2 concerned about this location, so let's...

3 BY MS. CRANE:

4 Q. I'm sorry. Are you asking what the location
5 of the scene depicted in the slide was, or
6 are you asking --

7 A. (DeWan) My question is -- I don't know where
8 that location is.

9 Q. Okay. Let's look at the slide again.

10 MS. CRANE: I think he answered
11 that.

12 MR. IACOPINO: I think the
13 problem is that you've put another slide up on
14 the screen that he was looking at that was
15 not --

16 MS. CRANE: Oh, okay.

17 MR. IACOPINO: So he's confused
18 and I'm confused as to which location you're
19 now speaking about.

20 MS. CRANE: We have not moved an
21 inch.

22 A. (DeWan) Oh, I thought you moved to a
23 different location. So are we to assume that
24 was --

1 BY MS. CRANE:

2 Q. Let's go back and look at that old depiction.

3 Okay. Did your assessment assign any
4 points for human development at Sawhegenet?

5 A. (DeWan) I believe I just answered that. No,
6 we did not.

7 Q. Okay. Thank you. So let's go look at the
8 slide now.

9 MS. CRANE: Let's go back up
10 one.

11 BY MS. CRANE:

12 Q. And it's a little hard necessarily to see,
13 but that's the pile of rocks that you earlier
14 thought might have been a bridge abutment.

15 Yes?

16 A. (DeWan) I'm not sure. Could you show the
17 historic photograph?

18 Q. Okay. This is a photograph that we've now
19 looked at three or four times.

20 A. (DeWan) Yes.

21 Q. It's appearing here at Slide 68, but it's
22 already marked Exhibit 29. And I don't know
23 exactly where you took it from, but it's your
24 picture, not mine.

1 A. (DeWan) That's correct.

2 Q. And it's at Sawhegenet. Yes?

3 A. (DeWan) This is, yes.

4 Q. Yes. Okay. So let's try to identify this
5 pile of rocks.

6 MS. CRANE: Go on to the next
7 slide, please.

8 BY MS. CRANE:

9 Q. And this appears to be a relatively full
10 river with an old bridge abutment in it; does
11 it not?

12 A. (DeWan) It appears to be a wide section of a
13 river with two large bridge abutments.

14 Q. And there's a slight falls there that also
15 occurs -- I'm sorry.

16 Do you recall whether there was any
17 falls at the location named Sawhegenet Falls?

18 A. (DeWan) I don't believe we saw any.

19 Q. Okay. Next picture. What is depicted in
20 this?

21 A. (DeWan) This appears to be an old covered
22 bridge.

23 Q. And do you recognize the town in the
24 background?

1 A. (DeWan) Not from this photograph.

2 Q. Okay. Let's try one more slide. We may nail
3 this down.

4 Okay. This is Slide 71. It is a
5 picture of -- so what seems to be depicted
6 here?

7 A. (DeWan) This is what appears to be a ledge
8 outcrop with a pile of cut stones on the
9 right-hand side of it and partially on top of
10 it.

11 Q. And what would you associate with that?

12 A. (DeWan) It could have been any number of
13 things. It could have been an old bridge
14 abutment.

15 Q. And let's look at some of those trees. Do
16 you see a pine tree on the left and a pine
17 tree on the right?

18 A. (DeWan) I do.

19 MS. CRANE: Okay. So let's go
20 down a slide or two. We're moving ahead in the
21 action, but I need the pictures. So let's go.
22 Okay. That one doesn't -- let's see if I got
23 the other one in there. Oh, darn it.

24 BY MS. CRANE:

1 Q. Okay. I gather you're going to resist
2 accepting my assertion that --

3 MS. CRANE: Let's go to the
4 pictures that I was present when they were
5 taken, where the pine tree... okay.

6 BY MS. CRANE:

7 Q. Would you accept my assertion that that is in
8 fact at Sawhegenet Falls?

9 A. (DeWan) I know this is at Sawhegenet Falls,
10 yes.

11 Q. This is at Sawhegenet Falls?

12 A. (DeWan) Yeah, I believe this is an
13 enlargement of our photograph, or it looks
14 similar to one that's in our photographs.

15 Q. And there is stone, that appears to be cut
16 stone consistent with this being an old
17 bridge abutment in this photograph at
18 Sawhegenet.

19 A. (DeWan) As I said, this appears to be taken
20 at Sawhegenet Falls. It's similar to the
21 photograph we have on Page 4-8 in our VIA.

22 Q. Okay. And thank you for identifying the
23 picture that I thought I had and don't.

24 And so if there is an old bridge

1 abutment there, would that count as human
2 development, for the possibility of getting
3 positive points for positive human
4 development?

5 A. (DeWan) That depends on how visible it was.

6 Q. Is that actually all it would depend upon,
7 how visible it was? Wouldn't it also depend
8 upon the expectations of the people using the
9 place and the understanding of the
10 significance of the people who are using it?

11 A. (DeWan) That depends on sort of the
12 interpretation that was presented once they
13 got down there, people's sense of what to
14 expect when they arrive at the place. I
15 would...

16 Q. And did you ever discuss this location with
17 anyone?

18 A. (DeWan) No, we did not.

19 Q. No, you did not. If you did try to ask
20 someone, who would you ask?

21 A. (DeWan) Well, I think the first thing we
22 would do is consult with the local historical
23 society. Before that, we would probably look
24 online to see what references there were

1 available.

2 Q. Did you talk to the local historical society?

3 A. (DeWan) We did not.

4 Q. You did not. Did you look online to try to
5 identify what this pile of rocks was?

6 A. (Kimball) No.

7 Q. No. Okay.

8 MS. CRANE: Let's go back to the
9 post card.

10 BY MS. CRANE:

11 Q. And would you accept my assertion that that
12 is in fact a bridge over Sawhegenet Falls?

13 A. (DeWan) I have no way of telling where it
14 was.

15 Q. I'm asking you to accept my assertion.

16 A. (DeWan) For purposes of this discussion and
17 to move the discussion along, yes.

18 Q. And if it were the bridge over Sawhegenet
19 Falls that left those rocks that are now
20 still visible both in the middle and on the
21 far shore, would that affect your assessment
22 of positive human development at this
23 location?

24 A. (DeWan) Probably not. Just looking at the

1 photograph, the average person going down
2 there would see those rocks, and I don't
3 think they would have any appreciation of the
4 history of the area based upon the evidence
5 that is before them.

6 Q. So there would be no positive human
7 development points for this?

8 A. (DeWan) As I said, we do not assign any
9 points at this location.

10 Q. And if you were aware that this were the
11 structure, would there be any positive human
12 development points available?

13 A. (DeWan) If the structure -- if there's more
14 of a structure there, perhaps. But we didn't
15 feel that that would qualify as a
16 modification that added favorably to the
17 visual quality of the area. Those appear to
18 be a pile of rocks, just like there are a lot
19 of other rocks and other natural elements in
20 the landscape.

21 Q. So why were you guessing it was a bridge
22 abutment when we first started looking at the
23 pictures?

24 A. (DeWan) You develop a certain instinct for

1 these things when you see large rocks in the
2 middle of rivers and you see what appears to
3 be, you know, remnants on either side or
4 perhaps on the middle.

5 Q. And you do not expect people who kayak and
6 canoe and tube on rivers to understand that
7 as well?

8 A. (DeWan) They may.

9 Q. Okay. I think we've done enough here.

10 MS. CRANE: Next picture. No,
11 next.

12 BY MS. CRANE:

13 Q. Okay. And now we are going to the bottom
14 line. The arrow, could you read the bullet
15 point at that arrow?

16 A. (DeWan) The first one? "Limited or no
17 visibility during leaf-off [sic]
18 conditions," is that the one?

19 Q. Please read it correctly. Thank you.

20 A. (DeWan) "Little [sic] or no visibility during
21 leaf-on conditions" --

22 Q. Okay. Thank you.

23 A. (DeWan) -- "due to mixed vegetated buffer
24 along the Pemigewasset River."

1 Q. And the next bullet point.

2 A. (DeWan) "There may be filtered views of one
3 or two of the transmission structures through
4 the trees on the eastern bank of the river
5 during leaf-off conditions."

6 Q. Thank you.

7 Next slide. Do you recognize the
8 material presented on this slide?

9 A. (DeWan) That is correct.

10 Q. And it is part of your report's assessment of
11 Sawhegenet.

12 A. (DeWan) That is correct.

13 Q. Okay. And could you tell me a little bit
14 more about what the red arrow designates?

15 A. (DeWan) We wanted to determine the
16 effectiveness of the existing vegetation on
17 blocking or screening the views to the
18 proposed project, and we wanted to find out
19 if it would be possible to see the proposal
20 above the tree line. So this is a typical
21 cross-sectional diagram that we use, assuming
22 a person is on the opposite shore of the
23 river looking up into the sky and their
24 eyesight would be skimming the tops of the

1 trees, where would that line lead you
2 relative to the top of the proposed
3 structure.

4 Q. And where does the sight line begin?

5 A. (DeWan) Sight line begins at a point about
6 5 feet above the river bank.

7 Q. Five feet above the river bank?

8 A. (DeWan) Eye height.

9 Q. Huh?

10 A. (DeWan) Eye height.

11 Q. Eye height. And did you take any other sight
12 lines from this location?

13 A. (DeWan) We did not.

14 Q. If the only sight line you took from the
15 location was at the water, why wasn't this
16 just part of the river evaluation?

17 A. (DeWan) Well, we looked at it in three
18 dimensions on the computer, and we were able
19 to walk around and do an evaluation that way.
20 We also recognize that the point, if it was
21 to be visible, the point where it would be
22 most visible would be along the shoreline
23 where there wasn't any vegetation obstructing
24 your view over to the eastern shoreline.

1 Q. And so you never considered what the sight
2 line would be further up.

3 A. (DeWan) We considered it, but we felt it was
4 very difficult to look through those trees to
5 gain visual access to the other side of the
6 river.

7 Q. Okay. Through those trees. So you're
8 counting on the vegetation.

9 A. (DeWan) The vegetation around the falls park
10 area.

11 Q. Around, okay. And so you're also, if I'm
12 reading this depiction correctly, counting
13 on, at least from the water level and perhaps
14 from a little bit above the water level, the
15 trees on the east bank?

16 A. (DeWan) That is correct.

17 Q. That is correct. Okay.

18 And just because I don't understand it
19 and I don't want you to have to correct me,
20 can you read the language in the blue oval?

21 A. (DeWan) "Vertical exaggeration is used in
22 section."

23 Q. And could you tell me what that means?

24 A. (DeWan) That means we made the trees and the

1 transmission structure more prominent by
2 exaggerating the vertical scale.

3 Q. Tell me exactly what that involves. I'm
4 confused, because what would be the point of
5 not showing this in an accurate way?

6 A. (DeWan) Well, we could have done it that way.
7 It's just a little bit easier way of looking
8 at the relative differences between
9 existing -- between a viewpoint and the other
10 objects in the landscape.

11 Q. So what would it look like? How would it
12 change if it hadn't been exaggerated?

13 A. (DeWan) Think of the drawing as being this
14 big (indicating). It would have been
15 compressed about like that (indicating).

16 Q. Okay. So everything looks taller than it
17 actually is.

18 A. (DeWan) That's right. It wouldn't have
19 changed the outcome.

20 Q. Okay. Thank you.

21 Next slide. And do you recognize this
22 picture? It's already been part of the
23 Ashland to Deerfield Non-abutters Exhibit 29.
24 It's got a Bates Stamp of NPT DIS045441?

1 A. (DeWan) I do recognize it.

2 Q. What does it depict?

3 A. (DeWan) If I recall, this is looking directly
4 across the river from where we've taken a lot
5 of the photographs.

6 Q. And these are in fact the trees that you were
7 counting on obstructing the view of the
8 towers from the water; is that correct?

9 A. (DeWan) Those are the ones we described, yes.

10 Q. Okay. Next slide. And this is Slide 75,
11 Bates stamped NPT DIS045465. If you could
12 tell me what this is?

13 A. (Kimball) Sure. This is a representation of
14 the Intermap data that I described a little
15 earlier. And the colors represent the
16 vegetation height, or the difference between
17 the digital terrain model and the digital
18 surface model. So this is a representation
19 of the data that I described that we used to
20 do our viewshed mapping.

21 Q. And this is the same data that the smallest
22 unit of resolution is 5 meters by 5 meters?

23 A. (Kimball) That's correct.

24 Q. And how many meters from the river would you

1 guess from this picture the vegetation buffer
2 ends?

3 A. (Kimball) I don't have a scale on this map.
4 I can measure it through --

5 A. (DeWan) Which vegetation are you talking
6 about at this point?

7 Q. I'm talking about the same vegetation we were
8 looking at across the water in the prior
9 slide, the vegetation that I believe, and
10 correct me if I'm wrong, you are counting on
11 to be blocking the view of the user at the
12 water level at Sawhegenet of the transmission
13 towers in the field immediately across the
14 river from Sawhegenet.

15 A. (Kimball) The narrowest point, maybe
16 150 feet. I don't know what that is in
17 meters.

18 Q. A hundred and fifty feet? Okay.

19 MS. CRANE: Could you find a
20 Google Maps picture of this? I think there's
21 one close by.

22 (Pause)

23 A. (DeWan) We just did another couple of
24 measurements. The range is between 120 and

1 150 feet. Roughly half the distance of a
2 football field.

3 BY MS. CRANE:

4 Q. A third of the distance of a football field
5 with the end zones on it; right? Okay.

6 So let's go back. Sorry. And does the
7 Applicant have control on whether those trees
8 continue to exist?

9 A. (DeWan) No, they do not.

10 Q. And what might happen to those trees?

11 A. (DeWan) They would continue to mature. The
12 smaller trees that are within the shadow of
13 those trees would continue to flourish. They
14 would grow up. After trees die, they would
15 probably be replaced by other trees that are
16 in the riparian zone.

17 Q. But that landowner, if he chose to develop a
18 campground, for instance, could cut those
19 trees, could he not?

20 MR. NEEDLEMAN: Objection. That
21 actually calls for a legal conclusion.

22 CHAIRMAN HONIGBERG: Ms. Crane.

23 BY MS. CRANE:

24 Q. Are you assuming that those trees will not be

1 cut?

2 A. (DeWan) We are assuming that, knowing what we
3 know about New Hampshire law about dealing
4 with vegetation and buffer zones.

5 Q. And what is that law?

6 A. (DeWan) I could not quote it for you. I know
7 we've had situations where we --

8 Q. Well, let's go to the next slide.

9 MS. CRANE: Oh, wait, not the
10 next slide. Keep going, keep going. There we
11 go. That one.

12 BY MS. CRANE:

13 Q. Okay. Can you spend a second with this and
14 refresh your memory about what those
15 limitations are?

16 A. (DeWan) I'm sorry. I didn't hear the first
17 part of that question.

18 Q. Take a minute until you can refresh your
19 memory about what those limitations are.

20 (Witness reviews document.)

21 A. (DeWan) Talks about 150-foot-wide protective
22 vegetative buffer, which is the case right
23 here.

24 Q. And what can the landowner do within that

1 buffer?

2 (Witness reviews document.)

3 A. (DeWan) "Property owners must operate in
4 accordance with the guidelines below. The
5 first 50 feet..."

6 Q. Would you like to see the "guidelines below,"
7 or is your memory refreshed yet?

8 (Witness reviews document.)

9 A. (DeWan) From what I see here, looks very
10 similar to our shoreland zoning ordinance
11 that we operate under in the state of Maine.

12 Q. And what are you assuming -- assuming we
13 could see what is for some reason not quite
14 visible, what are your assumptions about what
15 that limitation would be?

16 A. (DeWan) If it's comparable to the state of
17 Maine, there's a real emphasis on maintaining
18 quality buffers between development and
19 waterfronts. And they do allow a certain
20 amount of cutting in certain parts of the
21 riparian zone, but the intent is to maintain
22 a visual buffer.

23 Q. Well, let's read New Hampshire's rule then.
24 Let's back up and identify my source here.

1 MR. NEEDLEMAN: Mr. Chair, we
2 object. The Shoreline Protection Act is state
3 law that speaks for itself. We'll stipulate to
4 what it requires.

5 MS. CRANE: And may I then state
6 what it requires?

7 CHAIRMAN HONIGBERG: For what
8 purpose is all this, Ms. Crane? Honestly.
9 What is the endpoint of this that you're going
10 to argue at the end based on all this?

11 MS. CRANE: Well, this is just
12 one of several places where I'm going to point
13 out that the assumption that the vegetation is
14 static and will remain static or become -- or
15 increase is inappropriate for these locations.

16 CHAIRMAN HONIGBERG: Wow. Okay.

17 MS. CRANE: Okay.

18 CHAIRMAN HONIGBERG: So what's
19 the Shoreland Protection Act provision that you
20 need to read into the record?

21 MS. CRANE: The Shoreland
22 Protection Act provision that I need to read
23 into the record is that the landowner is
24 entitled, for every 50 feet of shoreline, back

1 50 feet from the shoreline, to cut as many
2 trees as he or she can and still have enough
3 points on the point system. And let's go look
4 at what's -- hang on. Let's --

5 CHAIRMAN HONIGBERG: Whoa, whoa,
6 whoa.

7 MS. CRANE: We'll look at the
8 point system in just a second.

9 CHAIRMAN HONIGBERG: So you're
10 just going to meander through testimony about
11 the Shoreland Protection Act, or are you going
12 to read a provision of the Shoreland Protection
13 Act like you said you were going to?

14 MS. CRANE: I'm going to read
15 this summary of the Shoreland Protection Act.

16 CHAIRMAN HONIGBERG: No, you're
17 not. No, you're not. You're not reading any
18 summaries. You're not. You said you wanted to
19 get the Shoreland Protection Act into the
20 record. You wanted to read something into the
21 record. You can do that.

22 I'm sorry for going too fast.

23 You can do that. But you're
24 not reading summaries into the record. I

1 don't know what the source of that summary
2 is. I don't know what --

3 MS. CRANE: Let's go -- can I --

4 CHAIRMAN HONIGBERG: I don't
5 know what you're doing, and I'm not sure you do
6 either.

7 MS. CRANE: I most certainly do.
8 I'm sorry. Can we go back one
9 slide?

10 BY MS. CRANE:

11 Q. Mr. DeWan, could you read the title of this
12 document?

13 A. (DeWan) "Vegetative Maintenance Within the
14 Protected Shoreland."

15 Q. And who is offering this advice about
16 vegetative maintenance?

17 A. (DeWan) Appears to be coming from the New
18 Hampshire Department of Environmental
19 Services.

20 Q. And the date?

21 A. (DeWan) 2013.

22 Q. Okay. And let's go back, and let's go all
23 the way to the point system.

24 MS. CRANE: Three more slides.

1 MR. NEEDLEMAN: Mr. Chair, I
2 object. Mr. DeWan testified several hours ago
3 with respect to this questioning that he
4 recognized in his report that there may be
5 places where people on private land can cut
6 trees. He's acknowledged that.

7 MS. CRANE: But he did not
8 acknowledge it in his assessment of this view.

9 CHAIRMAN HONIGBERG: He's
10 acknowledged it on the record. Do you want him
11 to do it again? He'll do it again.

12 BY MS. CRANE:

13 Q. Mr. DeWan, did you acknowledge the fact that
14 this landowner could cut without regard to
15 its effect on visual impact, either of his
16 own or of the views from across the river
17 without -- that he could cut without regard
18 for the visual impact?

19 A. (DeWan) My understanding of the situation is
20 that if a person wanted to cut trees in this
21 area, they would have to do it under the
22 provision of the currently applicable law in
23 the state of New Hampshire, which, as I
24 understand it, includes consideration of the

1 effect that cutting in these situations may
2 have on the quality of the visual buffer that
3 is presently on the property.

4 Q. Okay. Let's look at the points.

5 MR. NEEDLEMAN: Objection.

6 CHAIRMAN HONIGBERG: Sustained.

7 BY MS. CRANE:

8 Q. Mr. DeWan, are you aware that if the
9 landowner can leave four trees with a
10 diameter of more than 12 inches --

11 MR. NEEDLEMAN: Same objection.

12 CHAIRMAN HONIGBERG: Sustained.

13 BY MS. CRANE:

14 Q. -- he will be allowed to cut?

15 CHAIRMAN HONIGBERG: Calls for a
16 legal conclusion.

17 BY MS. CRANE:

18 Q. What were you using as your assumption about
19 the number of trees that this landowner could
20 cut?

21 MR. NEEDLEMAN: Objection.

22 Asked and answered. He didn't have a specific
23 assumption. He acknowledged the provisions of
24 the law that may allow cutting.

1 MS. CRANE: And what was his
2 understanding of those provisions?

3 A. (DeWan) My understanding is that the
4 landowner would have to follow current policy
5 and regulations by the Department of
6 Environmental Services.

7 BY MS. CRANE:

8 Q. Let's go back. I may be able to capture my
9 point on...

10 (Pause)

11 Q. So, in order to come to the conclusions that
12 you came to, you had to assume that the
13 landowner would not be able to cut more than
14 the Shoreland Protection provisions require
15 or allow; is that correct?

16 A. (DeWan) That's an assumption made throughout
17 the entire document, that laws are there to
18 be followed.

19 Q. Okay.

20 MS. CRANE: Let's go ahead two
21 more slides just for fun. No, one more. One
22 more.

23 BY MS. CRANE:

24 Q. Can you tell me what that document is?

1 A. (DeWan) Appears to be a "Guide to New
2 Hampshire Timber Harvesting Laws."

3 Q. And can you tell me what the source is for
4 this? We are now on Slide 83.

5 A. (DeWan) It appears to be -- when you say "the
6 source," University of New Hampshire
7 Cooperative Extension.

8 Q. And what does the first sentence say?

9 A. (DeWan) "Surface Water Quality Protection Act
10 (SWQPA) formerly known as the Comprehensive
11 Shoreland Protection Act, was enacted to help
12 protect the water quality of New Hampshire's
13 surface waters."

14 Q. And does that mention anything about visual
15 buffer?

16 A. (DeWan) That sentence does not.

17 Q. Okay. And could you read the sentence that
18 begins with "according"?

19 A. (DeWan) "According to RSA 483-B:5-a II,
20 timber harvesting is exempt from SWQPA
21 regulations."

22 Q. So it is -- have you taken this rule into
23 account in your assessments of vegetative
24 buffers?

1 A. (DeWan) We did not take this particular rule
2 into account. I think we did our work with
3 the assumption that any clearing, any
4 harvesting would be done in accordance with
5 New Hampshire law.

6 Q. And what does New Hampshire law appear to be
7 from your reading of this document?

8 A. (DeWan) I have not read this document.

9 Q. You just read this document.

10 A. (DeWan) I read one sentence out of this
11 document.

12 Q. Okay. Then take your time and read the rest.

13 A. (DeWan) When you say this, this is a very
14 extensive guide to New Hampshire laws --

15 Q. I'm sorry. Just the next paragraph.

16 MR. IACOPINO: Professor Crane,
17 are you trying to indicate that the Shoreland
18 Protection Act does not reference visual or
19 aesthetics? Is that where you're going with
20 this?

21 MS. CRANE: That was one of the
22 places that I had hoped if we could have
23 scored --

24 MR. IACOPINO: Have you read RSA

1 483-B:2, which sets forth the reasons for the
2 Shoreland Protection Act, which includes to
3 promote wildlife habitat, scenic beauty and
4 scientific study?

5 MS. CRANE: I think I have. But
6 I don't --

7 MR. IACOPINO: Okay. I just
8 wanted to make sure.

9 MS. CRANE: Okay. I am not
10 pretending that the law doesn't include -- and
11 now I'm addressing the objection. I'm not
12 trying to build a question for him.

13 MR. IACOPINO: I only ask the
14 question so that the Committee understands
15 what's going on. Because that's what I thought
16 you were trying to do, and I just don't see
17 that in the purpose of the law. But --

18 MS. CRANE: But there's an
19 enormous exception for commercial logging. So
20 the compromise has been made in favor of
21 commercial logging. Commercial logging does
22 not include pulling out stumps. Commercial
23 logging does not include --

24 MR. NEEDLEMAN: Objection.

1 Ms. Crane is now testifying.

2 MS. CRANE: Well, unfortunately,
3 you are correct. I am conflicted here because
4 I have a dual role as someone with personal
5 knowledge, but also you were the one who was
6 objecting to allowing more to be developed in
7 the record about --

8 CHAIRMAN HONIGBERG: We're going
9 to take a ten-minute break and let Ms. Crane
10 settle out here and give her a chance to review
11 her notes and do a nice, crisp, efficient
12 examination of this witness so we can be done.
13 We'll be back in ten minutes.

14 (Brief recess taken at 2:47 p.m., and
15 the hearing resumed at 3:05 p.m.)

16 CHAIRMAN HONIGBERG: Ms. Crane,
17 you may continue.

18 BY MS. CRANE:

19 Q. Okay. We were talking about the analysis of
20 the impact of the proposed project on the
21 identified scenic resource, Sawhegenet Falls,
22 in Bridgewater; correct?

23 A. (DeWan) That is correct.

24 Q. And we are again looking at your analysis of

1 the sight lines from the water; is that
2 correct?

3 A. (DeWan) From the viewpoint about 5 feet above
4 the water.

5 Q. About 5 feet above the water. I'm sorry.

6 And in this depiction, the red line goes
7 entirely above the vegetation; does it not?

8 A. (DeWan) That's correct.

9 Q. But your conclusions suggest that there will
10 be a filtered view. Why would this line go
11 above the vegetation when your conclusion is
12 that there will be a filtered view?

13 A. (DeWan) Well, this is a cross-sectional
14 diagram created to evaluate the effectiveness
15 of the massive vegetation on the other side.
16 We didn't know how close the transmission
17 corridor was to the river relative to the
18 viewpoint across the way. This is just an
19 easy way to let us know, and therefore let
20 reviewers know, how that relationship worked;
21 in other words, how close would the
22 transmission line have to be to the river if
23 it were to be seen. As we can see from this,
24 it would have to be roughly 800 feet closer

1 to the river before you'd be able to see the
2 top of it.

3 Q. If these trees did not provide only a
4 filtered buffer; correct?

5 A. (DeWan) What I just explained was, yes, if
6 the trees were there, you know, and if the
7 line was 800 feet closer, then at that point
8 you'd be able to see the tops of it. If the
9 trees remain in place during the leaf-off
10 conditions, you may be able to see filtered
11 views of one or two structures at a distance
12 of roughly 1800 feet.

13 Q. Did you provide any pictures of leaf-off
14 views at this location?

15 A. (DeWan) We did not. We did not visit it
16 during leaf-off conditions.

17 Q. So we really don't know how much of a filter
18 those trees would provide in a leaf-off
19 condition; is that correct?

20 A. (DeWan) Well, we can assume that 150 feet of
21 vegetation is going to provide a pretty dense
22 stand of vegetation.

23 Q. I'm sorry. I'm confused. I thought you
24 already had concluded that there would be

1 filtered views.

2 A. (DeWan) We did, yes. But filtered views
3 means you're not going to see the entire
4 structure; you may see portions or parts of
5 it.

6 Q. And if one were just looking at this
7 cross-section, what part of this
8 cross-section helps you interpret that?

9 A. (DeWan) It's not designed to evaluate
10 filtered views.

11 Q. Okay. Thank you. So this actually doesn't
12 represent the view in any meaningful way. It
13 represents your first step in analyzing it,
14 but --

15 A. (DeWan) Well, it is meaningful, in that it
16 shows you that during the majority of the
17 time when the site is being used during
18 leaf-on conditions, you're not going to see
19 the structures.

20 Q. I'm sorry. Why are you assuming that the
21 majority of the time that this total area is
22 being used is in leaf-on conditions?

23 A. (DeWan) Just the assumption from looking at
24 the types of facilities that are there. You

1 know, a small beach, a picnic area, our
2 assumption was that people would go down
3 there to recreate along the river, provide
4 access to it, perhaps swim along the river.
5 I didn't say that was the only time.

6 Q. Would the presence of a snowmobile trail
7 alter that conclusion about the lack of use
8 in leaf-off conditions?

9 A. (DeWan) I didn't say anything about lack of
10 use in leaf-off conditions. I said that the
11 majority of the use probably occurs during
12 leaf-on conditions.

13 Q. Do you know that?

14 A. (DeWan) Don't know it for a fact. But, you
15 know, knowing my experience in other similar
16 situations, especially with snowmobile use,
17 the snowmobile going through here on the
18 trail that you showed earlier says to me that
19 a snowmobile is going to be passing through
20 here. I don't know if there's any rest stop
21 or campground or anything else associated
22 with the trail.

23 Q. Okay. So it's a matter of duration of stay
24 as opposed to number of visitors or anything

1 like that is what your assumption is based
2 on.

3 A. (DeWan) That's right. That's one of the
4 things that's asked for in the rules.

5 Q. Okay. So if I want you to assume for
6 purposes of the question that the landowner
7 can cut as many trees as she might want to,
8 as long as she leaves 4 that have a diameter
9 of at least 12 inches -- do you understand
10 that assumption?

11 A. (DeWan) Four within a 50-by-50-foot square.

12 Q. Within a 50-by-50-foot square. If the
13 landowner of this buffer were in fact to cut
14 to this maximum assumed limit, would it
15 change the nature of the filter that you are
16 relying on in your overall assessment of the
17 impact here?

18 A. (DeWan) Well, if that cutting had occurred
19 prior to or at the time that we did the
20 assessment, and we could see what the cutting
21 would look like, then it may have changed the
22 result. But our assignment was to take a
23 look at existing conditions. And in doing
24 so, we evaluated the way things look like

1 right now. We don't take into consideration
2 potential cutting that may or may not happen.
3 Likewise, we don't take credit for any
4 additional vegetation growth that may occur
5 that may actually block the structures at
6 some point.

7 Q. And so your position is that the existing
8 condition does not include the probability of
9 any change in the vegetation besides normal
10 maturity and decline.

11 A. (DeWan) Common professional practice is to
12 take a look at existing conditions and do an
13 evaluation on what is known about the
14 existing landscape. If we knew for a fact
15 that there was going to be harvesting, that
16 may be a different situation.

17 Q. If you knew for a fact that there was going
18 to be harvesting, that would be a different
19 condition. Is that what you just said?

20 A. (DeWan) That's right.

21 Q. Okay. Thank you.

22 So let's go to -- and what other reasons
23 besides cutting might threaten this buffer
24 that you're relying on?

1 A. (DeWan) That be very speculative on our part.
2 Any number of reasons that could cause a --
3 oops.

4 Q. Jumping ahead.

5 A. (DeWan) Any numbers of reasons that could
6 cause the loss of trees. Natural mortality,
7 for example. But as I said earlier, if a
8 tree dies, that creates light in the forest
9 and allows more trees the opportunity to
10 grow.

11 Q. But we're talking about a 150-foot buffer
12 that's already too thin to provide a
13 completely blocked visibility; right?

14 A. (DeWan) No.

15 Q. We're not talking about --

16 A. (DeWan) No. One hundred fifty feet, that's
17 certainly adequate to provide a blockage of
18 visibility during leaf-on conditions.

19 Q. Even though it's -- okay.

20 And so what else might happen to these
21 trees? This is Slide 76. Can you just
22 describe what has happened in this
23 photograph?

24 A. (DeWan) I don't know exactly what happened.

1 But in similar situations where I've seen
2 slumpage occur in some areas, this is
3 sometimes the result of that, where a piece
4 of earth has moved from an upper portion of
5 an embankment down to a lower portion of the
6 embankment.

7 Q. And would you accept my assertion that this
8 is made on the west bank of the Pemi, only a
9 couple dozen yards from Sawhegenet?

10 MR. NEEDLEMAN: Objection.
11 Relevance. The witness has testified multiple
12 times about the fact that they looked at this
13 based on existing conditions and that they
14 don't account for changes, either positive or
15 negative, in the future. So I don't understand
16 the need for these questions.

17 CHAIRMAN HONIGBERG: Ms. Crane.

18 MS. CRANE: I am trying to
19 establish whether that's an appropriate
20 approach to the definition of "existing
21 conditions" in these circumstances.

22 CHAIRMAN HONIGBERG: Well,
23 establishing appropriateness or not isn't
24 something you're going to do with this witness.

1 You're going to do that as a matter of law in
2 argument to us. You can find out what he did
3 and why he did it, and you can disagree with
4 him when it's appropriate to do so.

5 BY MS. CRANE:

6 Q. Okay. So, then, Mr. DeWan, you did not take
7 into account erosion along the banks of the
8 Pemi in assessing the adequacy of the visual
9 buffer here.

10 A. (DeWan) As I stated, we looked at existing
11 conditions. We recognized in some places
12 there was some erosion. You can see that in
13 places.

14 Q. And we are now looking at the Sawhegenet
15 location again, this time from the north.
16 Would you agree with that?

17 A. (DeWan) Yes.

18 Q. And there seems to be an incomplete buffer
19 there just to the left of the leaves that are
20 really close in the foreground here that you
21 can see through those trees?

22 A. (DeWan) I can see there's a place where you
23 can --

24 Q. We don't know what you could see, but --

1 A. (DeWan) Looks like you can see more of the
2 sky in some places, which is typical
3 throughout the entire riparian zone there.

4 Q. And what do we see in the foreground?

5 A. (DeWan) I see a dead log in the river.

6 Q. And in the middle of the picture, on the
7 left?

8 A. (DeWan) Middle of the picture, on the left, I
9 see, oh, another looks like a tree that may
10 have floated down from upstream.

11 Q. And in the immediate foreground on the left?

12 MR. NEEDLEMAN: Objection.
13 Relevance.

14 CHAIRMAN HONIGBERG: Ms. Crane.

15 MS. CRANE: I'm hoping to ask
16 him whether, if similar erosion happened closer
17 to the location, it would affect the adequacy
18 of the buffer.

19 CHAIRMAN HONIGBERG: Okay. That
20 sounds like a fair question.

21 BY MS. CRANE:

22 Q. If similar erosion happened closer to the
23 buffer, would it affect the adequacy of the
24 buffer?

1 A. (DeWan) It may cause an opening in the
2 buffer. And as I've said before, that would
3 then have the effect of allowing more light
4 to enter the ground plain, thus allowing some
5 of the young trees to achieve a higher rate
6 of growth.

7 Q. Okay. Thank you. Let's move on.

8 And we are now looking at slide 78,
9 Exhibit 52. Can you read what
10 the handwritten notation says?

11 A. (DeWan) "Webster Road toward bridge after
12 tornado, September 22, 1938."

13 Q. And do you know what happened on
14 September 21st and 22nd, 1938?

15 A. (DeWan) I don't. But I would just surmise
16 from the caption that there was a violent
17 windstorm, perhaps even a tornado.

18 Q. And will you accept my assertion that Webster
19 Road is a footpath now running north/south on
20 the west bank of the Pemigewasset?

21 A. (DeWan) I will accept that.

22 Q. And that if a similar natural occurrence were
23 to happen, there would be a likely loss of
24 trees in the buffer that we haven't yet

1 talked about on the west side of the river?

2 A. (DeWan) I suppose there's a remote
3 possibility of that happening, knowing how
4 often tornadoes hit this part of the
5 northeastern part of the United States.

6 MS. CRANE: Okay. We don't need
7 this, don't need this. And I'm going to skip
8 over these and go straight to the top of the
9 road. Oops. No. Back one.

10 BY MS. CRANE:

11 Q. So can you tell me again what this picture
12 from your analysis depicts?

13 MR. NEEDLEMAN: Objection.
14 Asked and answered.

15 CHAIRMAN HONIGBERG: That is
16 true.

17 BY MS. CRANE:

18 Q. Then can you read the caption, which I don't
19 believe we've done?

20 A. (DeWan) "Beech Road leading down to the
21 parking area. Recreation area is restricted
22 to Bridgewater residents. There will be no
23 views of the Project from Beech Road."

24 Q. And on what are you relying in concluding

1 that there's no views of the Project -- that
2 there will be no views of the Project from
3 Beech Road?

4 A. From our observations taken at the time that
5 we visited the site.

6 Q. And what was the reason for there being no
7 views?

8 A. (DeWan) The dense vegetation consisting of a
9 mixture of some deciduous and a lot of
10 softwood vegetation.

11 Q. And that softwood vegetation is currently in
12 what form?

13 A. (DeWan) Tree form.

14 Q. Huh?

15 A. (DeWan) Tree form.

16 Q. Tree form. Pine tree form.

17 A. Pines, hemlocks, furs, other --

18 Q. Oh, I hope there's a lot of hemlock in there,
19 yeah.

20 Okay. And if the landowner were
21 involved in a commercial tree farm, would
22 there be any restrictions on this landowner's
23 ability to remove this buffer?

24 A. (DeWan) When you say "this landowner," are we

1 talking about the falls area right here?

2 Q. I'm talking about the owner of the trees.

3 A. (DeWan) Of these trees?

4 Q. Of these trees.

5 A. (DeWan) I don't know if this landowner is
6 part of a tree farm or not.

7 Q. Okay. But if they were, if this landowner
8 were --

9 A. (DeWan) I would suspect if this was a tree
10 farm and for some reason they wanted to
11 remove those trees, they probably could be
12 done under whatever laws would govern tree
13 removal in this type of environment.

14 Q. Okay. Now, moving on. No, let me ask one
15 more question.

16 You did no other visual impact
17 assessments from any other elevation or
18 location along River Road in Bridgewater; is
19 that correct?

20 A. (DeWan) I don't believe we did.

21 Q. Okay. And will you accept my assertion that
22 this is a picture taken essentially from the
23 entrance to Sawhegenet, looking at the other
24 side of the road?

1 (Witness reviews document.)

2 A. (DeWan) I will take that statement. Yeah, I
3 have no way of verifying it.

4 Q. Okay. And if you were doing your field work
5 looking for other potential scenic resources,
6 what would your reaction to this scene be?

7 A. (DeWan) I would say this looks like a typical
8 woodland that we found throughout much of our
9 field evaluation. And I see an access road
10 going off at right angles to an existing,
11 what may have been a gravel road at one
12 point. The fact that there's a bar across it
13 implies a message that the public's not
14 welcome here.

15 Q. It implies that they might not be welcome.
16 But are they legally entitled to access?

17 MR. NEEDLEMAN: Objection.

18 BY MS. CRANE:

19 Q. Would you assume that they, that the public,
20 would have legal access here?

21 A. (DeWan) I would assume that there would not
22 be legal access that we're looking for when
23 we've done the type of evaluation we've been
24 doing here.

1 Q. And again I know this has been covered, but I
2 would like you to just summarize your
3 assumptions about what "public access" means
4 for these purposes.

5 MR. NEEDLEMAN: Objection.

6 Asked and answered multiple times.

7 CHAIRMAN HONIGBERG: If you can
8 just get us to a quick recap to move along.

9 A. (DeWan) "Public access," to us, is a right
10 that's granted to the general public that
11 allows the public to go onto a piece of
12 property without being questioned.

13 Q. Public access allows you to go on without
14 being questioned. So if I were to go to a
15 state park and jump the wall and not pay
16 admission, I wouldn't be questioned. Would I
17 be questioned?

18 A. (DeWan) With any definitions like that, there
19 are subtilties, of course. There has to be
20 some provision for allowances for
21 circumstances that protect public health,
22 safety and welfare. The state park, for
23 example, they have rules that say you shall
24 not go there at night.

1 Q. And they also have rules that require you to
2 pay admission; is that correct?

3 A. (DeWan) That's correct.

4 Q. And they are no less a scenic resource
5 because they charge admission; is that
6 correct?

7 A. (DeWan) It's a totally different situation
8 than a commercial operation that we talked
9 about earlier.

10 Q. Why?

11 A. (DeWan) I think, you know, in doing the work
12 we did, we relied upon a lot of thought. And
13 we also looked at precedent that may be
14 before us right now. We know in the case,
15 for example, with the Antrim Project, you
16 know, there is a consideration for a similar
17 situation where there is a facility on a body
18 of water that was accessible to the public.
19 You could walk down there, but you had to pay
20 a fee to get in there. It's our
21 understanding that it was the judgment of the
22 body we're before right now that that did not
23 constitute public access because it required
24 an individual or group of people to pay a fee

1 to get down there and use that particular
2 facility.

3 Q. Thank you.

4 Okay. Let's go to the next slide. And
5 can you tell us what appears on Slide 88?

6 A. (DeWan) It's a dense woodland with a red sign
7 that I cannot read. Maybe it says
8 "prohibited." I'm sorry. I can't read that.

9 Q. It does say "prohibited." And can you make
10 out what is prohibited?

11 A. (DeWan) I can't.

12 Q. Would you allow me to assert that it is a
13 picture of an ATV and a picture of a mountain
14 bike?

15 A. (DeWan) I will assume that's correct.

16 Q. And would you allow me to assert this is, in
17 fact, where the snowmobile trail that we saw
18 on an earlier picture comes up onto the River
19 Road level?

20 A. (DeWan) I have no reason to doubt that.

21 Q. Okay.

22 MS. CRANE: Let's go. We don't
23 need this one. We don't need this one. We
24 don't need this one. And this one's fun, but

1 let's keep going. No, keep going, keep going.
2 We'll come back if we feel we have time. Go,
3 go, go.

4 BY MS. CRANE:

5 Q. Okay. And you didn't take any impact
6 assessments of any areas along River Road or
7 of any of the elevated areas above River
8 Road; is that correct?

9 A. (DeWan) We did not do a formal visual impact
10 assessment except at those locations shown in
11 our VIA.

12 Q. And that was because you didn't identify any
13 scenic resources in those areas. Is that
14 likely correct? Indeed, I think that we
15 established a few hours ago that you didn't
16 even identify any possible areas of impact in
17 the elevations above River Road in the area.
18 You were going to --

19 A. (DeWan) Oh, I'm sorry. You were looking at
20 the viewshed map that you showed us before
21 and asked us if there's anything on those
22 slopes above the River Road and another road.

23 Q. That's correct.

24 A. (DeWan) We did not go up into those secondary

1 roads that were up there.

2 Q. And why?

3 A. (DeWan) They're not scenic resources.

4 Q. They're not scenic resources. Is a
5 snowmobile trail a scenic resource?

6 A. (DeWan) We identified snowmobile trails in
7 general as scenic resources. We've included
8 those in our evaluation.

9 Q. Did you assess the views from any particular
10 locations in snowmobile trails?

11 A. (DeWan) For the most part, we did not.

12 Q. So you're including them as scenic resources
13 but not evaluating views. Is that what
14 I'm -- what you're saying?

15 A. (Kimball) They were identified and described
16 in the list of scenic resources. Generally,
17 the assignment of "low" cultural value was
18 assigned to snowmobile trails, which filtered
19 them out to before receiving a formal
20 assessment like we saw at Sawhegenet Falls.

21 Q. Okay. Let's keep going.

22 And did you include bike trails in your
23 identification of scenic resources?

24 A. (Kimball) We included rails-to-trails that

1 are bike trails.

2 Q. And we are looking at Slide 99 now. Can you
3 help me with what this is?

4 A. (Kimball) Looks to be a map of recommended
5 bike routes.

6 Q. And the route that has "132" on it, that's
7 the route number -- that's the street -- the
8 road level. Can you identify any of the
9 features within the route defined by the loop
10 that is the smallest loop you can make that
11 includes the 132?

12 A. (DeWan) I'm not sure I understand what you
13 mean by "features."

14 Q. Well, unfortunately, the contrast is bad.
15 But there's a river and a conservation
16 easement that have been part of our earlier
17 slides. Will you accept my assertion that
18 this loop runs from along River Road on the
19 west bank of the Pemi?

20 A. (DeWan) It's not labeled as such, but I will
21 accept that. I see it goes through a bus
22 station down at the lower portion of it, and
23 it is located either side of Interstate 93.

24 Q. Actually, I think that's a Park & Ride. But

1 that's okay.

2 Did you include this as a scenic
3 resource in your analysis?

4 A. (DeWan) We looked at the designation of bike
5 routes. And bike routes, as I understand
6 them, are the roads. Our understanding was
7 that the bike routes were designated as
8 transportation, part of the transportation
9 infrastructure, not because they were
10 necessarily scenic routes.

11 Q. Okay. So it was your assumption that they
12 were not necessarily of scenic quality. Is
13 that --

14 A. (Kimball) No. When looking at Section
15 102.45, the definition of "scenic resources,"
16 bike routes or transportation corridors are
17 not listed as a potential scenic resource.

18 Q. So they can't be scenic resources, or they're
19 just not required to be identified?

20 A. (Kimball) They don't meet the definition of
21 "scenic resource."

22 Q. Because? I'm sorry. Could you read the
23 language again?

24 A. (Kimball) 102.45?

1 Q. Yeah.

2 A. (Kimball) Scenic resources --

3 Q. The one that includes trails.

4 A. (Kimball) "(d) Recreational trails, parks, or
5 areas established, protected or maintained in
6 whole or in part with public funds."

7 Q. And what does "trails" mean?

8 A. (DeWan) Trails, to me, implies that there is
9 an off-road facility for walking, ATVs,
10 snowmobiles, bicycles and some other use
11 separate from a roadway.

12 Q. Okay. So, even though the state is
13 maintaining a web site informing those who
14 want to find bicycle routes, those bicycle
15 routes wouldn't count as scenic resources, as
16 long as they are not separately located.

17 A. (DeWan) I'm sorry. This is labeled as a
18 "route," not as a "trail."

19 Q. Okay. Thank you.

20 MS. CRANE: Move on. Move on.
21 And I guess we better move on. That's my
22 morning light entertainment, and it's falling
23 flat. Keep moving. So I guess roller blading
24 wouldn't count either, or roller skiing. Let's

1 keep going. Good.

2 BY MS. CRANE:

3 Q. Okay. And did you happen to drive south on
4 River Road from Sawhegenet?

5 A. (Kimball) Yes.

6 Q. And did you notice this view as you drove by?

7 A. (Kimball) I'm sure we passed it.

8 Q. And part of your field work, you were
9 attempting to identify other scenic resources
10 that might not have been designated. Is that
11 the summary of your testimony over the last
12 couple days?

13 A. (DeWan) That's one of many reasons why we did
14 the field evaluation.

15 Q. And did you take any notes on this location?

16 A. (DeWan) I don't believe we did.

17 Q. What would you be looking for if you were
18 looking for new places to identify?

19 A. (DeWan) Well, looking for places that had
20 expansive views, a variety of different land
21 forms, the views of water, interesting
22 vegetation, things of that nature.

23 Q. So you're only looking for the views. You're
24 not looking for the view -- for the

1 observation points when you're doing your
2 field work.

3 A. (DeWan) Well, we look for any number of
4 different aspects of the landscape.

5 Q. Okay. But you did not notice this view in
6 particular.

7 A. (DeWan) This seems to us to be a view of a
8 private residence. Private residences, by
9 definition, are not "scenic resources."

10 MS. CRANE: And then next slide,
11 next slide.

12 BY MS. CRANE:

13 Q. In the foreground there appears to be a road
14 next to the same private residence. This is
15 slide 108. Is that correct?

16 A. (DeWan) It appears to be a road in front of
17 the residence.

18 Q. And in the foreground?

19 A. (DeWan) There appears to be a way that
20 vehicles have traveled. I don't know if it's
21 a road or driveway.

22 Q. Would you accept my assertion, and we'll see
23 it again more clearly in a moment, that
24 that's Cass Road, previously identified?

1 A. (DeWan) For purposes of this discussion,
2 we'll go with that.

3 Q. Okay. In any part of your evaluation, do you
4 take into account the historic significance
5 of a scenic resource, either the resource
6 itself or the views from it or of it?

7 A. (Kimball) We took scenic resource -- excuse
8 me. We took eligible historic properties and
9 historic properties on the National and State
10 Register into account if they had a legal
11 right of public access.

12 Q. But only if they had a legal right of access
13 to the residence itself?

14 A. (Kimball) That's the primary item in the
15 definition of scenic resources.

16 Q. But not of the landscape surrounding it, even
17 if there's public access to the landscape
18 around it?

19 A. (Kimball) The rules are very clear in several
20 locations that it is the view from the scenic
21 resources that we are supposed to evaluate.
22 And I'd be happy to go into the rules to
23 discuss that.

24 Q. No, we don't need that. Let's keep going.

1 Okay. And this is a summertime view of
2 the same location facing west instead of
3 south.

4 A. (DeWan) This is Cass Road?

5 Q. This is Cass Road. And while we're here --

6 A. (DeWan) I'm sorry. Cass Road is the dirt
7 road in front of us?

8 Q. Cass Road is the dirt road in front of us.

9 A. (DeWan) Not the one you're standing on.
10 Okay. That's River Road.

11 Q. River Road.

12 And if you were to notice this road --
13 as I understand it, one of the things that
14 you mentioned you took into account was
15 whether when finding a road or a path you
16 looked to see whether the public seemed to
17 be -- now I'm forgetting the language you
18 used -- but seemed to be invited rather than
19 discouraged; is that correct?

20 A. (DeWan) Well, can I address this particular
21 situation? Use this as a general example of
22 how we did our work. Again, we're going to
23 Section 102.45, what is a scenic resource.
24 And I think that's the basis of your question

1 right here. In addition to having public
2 access, one of the criteria, one of the
3 characteristics is lake, pond, rivers, parks,
4 scenic drives and rides and other tourism
5 destinations. So you could look at this and
6 say, oh, it's a nice, scenic drive or ride.
7 But the operative words right here is, is it
8 a "tourism destination"?

9 We look upon this road and we see it's a
10 gravel road. We saw it wasn't fully plowed
11 during the wintertime. We don't see any sign
12 out front. We don't consider this to be a
13 tourism destination. This may be a nice
14 country road. There may be a nice view at
15 the top of it. We don't put this in the same
16 category as the other well-known,
17 well-established tourism destinations that
18 New Hampshire is known for.

19 Q. So this is another place where, because there
20 is nothing shouting "come visit me," you're
21 assuming nobody wants to visit here, or at
22 least it's unimportant.

23 A. (DeWan) I'm not saying that at all. I
24 understand this must be a delightful place,

1 and a lot of people would love to go there
2 and visit it and maybe even enjoy the view at
3 the top. But what is "tourism"? Tourism to
4 us is the act of bringing people from
5 probably outside of the immediate area to
6 come to a location for its qualities, the
7 scenic quality, the recreation and so forth.
8 Usually, "tourism" implies some sort of an
9 infrastructure. It implies that there is
10 some sort of publicity mechanism. A
11 "destination" means that it's more than just
12 a way to get there; it's the arrival point.

13 Q. So, does tourism include summer residents?

14 A. (DeWan) I suppose it could. But again --

15 Q. In your analysis, did you interpret tourists
16 to include summer residents?

17 A. (DeWan) We don't think of this as being a --
18 well, to answer your question, do we consider
19 summer residents, we didn't make a separate
20 analysis of who lives there or why they're
21 there, summertime versus wintertime. I don't
22 know if that would apply to this particular
23 situation or not. But it's pretty clear to
24 us, though, that what we're looking at right

1 now is clearly not an example of tourism
2 destinations that are described and we have
3 to consider as part of the rules.

4 Q. But if one were to include summer residents
5 and tourists within the category of
6 "tourists" for whom tourist destinations
7 might be relevant, would it not be the case
8 that they might actually prefer places of
9 more limited use?

10 A. (DeWan) That may be true. But summer
11 residents to us aren't necessarily tourists.
12 Tourists are people that come from someplace
13 else to visit for the purpose of enjoying a
14 destination.

15 Q. So how long does a visit last before you're
16 not a tourist under your assumption?

17 (Pause)

18 Q. Please, is there an answer to the question?

19 A. (DeWan) I don't have a pat answer to that. I
20 would think that someone who comes here to
21 enjoy the summertime would be considered to
22 be a summer resident as opposed to a tourist.

23 Q. Okay. So you're not likely to include
24 destinations and the uses of destinations by

1 summer residents. Is that what you're
2 meaning to say?

3 A. (DeWan) I think what I'm saying is that I'm
4 looking at this, and even if there were, you
5 know, 50 summer residents that had a camp on
6 the top of the hill here, it would not be a
7 tourism destination. It's not the sort of
8 place that's going to attract people, large
9 numbers of people that would constitute
10 tourism in it's broadest form to this
11 location.

12 Q. So, large numbers of people have to use
13 scenic resources in order for them to count
14 as scenic resources?

15 A. (DeWan) Our understanding of tourism is it's
16 more than a few people. It's some place that
17 has a destination to it that attracts
18 tourists.

19 Q. Okay. Let's move on.

20 CHAIRMAN HONIGBERG: Off the
21 record.

22 (Discussion off the record)

23 BY MS. CRANE:

24 Q. If we hadn't gone really quickly, we would

1 have learned that "Noah's Shoulder" is what
2 the local residents call the elevations that
3 you previously noted to the northwest of the
4 intersection of Cass Road and River Road;
5 correct?

6 A. (DeWan) That's correct. Yeah.

7 Q. And what do you see in this picture taken
8 from Noah's Shoulder?

9 A. (DeWan) I see a farmscape with a small pond
10 in the middle. I see agricultural fields. I
11 see what appears to be a road running roughly
12 diagonally through the landscape. I see
13 indistinct hills in the background. And the
14 rest of it's quite blurry.

15 Q. And if we had dwelled longer on the
16 immediately prior slides, you might have been
17 able to recognize the structure that you see
18 as the farmhouse that is still present on the
19 property. Will you accept that assertion?

20 A. (DeWan) That's the Webster Farmhouse or
21 Webster Farm? I think we saw a sign to that
22 effect.

23 Q. Yeah, this is what we call Webster Farms,
24 okay.

1 A. (DeWan) Okay.

2 Q. And the pond is consistent with the maps that
3 have labeled the pond as Webster Pond. Would
4 you agree?

5 A. (DeWan) I would agree, yes.

6 Q. And do I gather from our immediately prior
7 conversation that your not including Webster
8 Pond as a scenic resource has to do with not
9 anything about its visual qualities or
10 ability the see it from this distance, but
11 solely because of your assumptions about how
12 it's used and whether it's a tourist
13 destination; is that correct?

14 A. (DeWan) Not necessarily, no. When we did our
15 viewshed analysis, it did not come up as a
16 place where the Project would be potentially
17 visible.

18 Q. Okay. And let's look at the picture a little
19 harder. I know it's kind of blurry, but do
20 you see the cleared area that is roughly
21 parallel to the water that we can see
22 about -- starting at about the middle of the
23 photograph?

24 A. (DeWan) On which side of the pond are we

1 talking?

2 Q. On the east side of the pond, toward the top
3 of the picture.

4 A. (DeWan) On the far side of the pond.

5 Q. On the left-hand side of the picture.

6 A. (DeWan) I think I see what you're talking
7 about. Looks like there is scattered
8 vegetation still in what appears to be a
9 partially cleared field.

10 Q. And the little white dot that you see just
11 above that cleared field?

12 A. (DeWan) I'm sorry. I see a lot of white dots
13 here.

14 Q. Okay. You've got the cleared field, the
15 first cleared field?

16 A. (DeWan) The one immediately adjacent to the
17 pond or the other side of the River Road?

18 Q. The other side of River Road.

19 A. (DeWan) Okay.

20 Q. And then there's a little bit of tree?

21 A. (DeWan) Yes.

22 Q. And then there's a linear feature with a
23 white dot.

24 A. (DeWan) I see that horizontal line that runs

1 a third of the way across the photograph.

2 Q. And what do you suppose that horizontal line
3 to be?

4 A. (DeWan) A road of some sort, perhaps the
5 interstate. I don't know the date of this
6 photograph.

7 Q. Well, I don't either. But those other
8 structures besides the big, white house
9 burned in 1920.

10 A. (DeWan) That answers that question about the
11 interstate.

12 Q. Or 1919. Sorry. So it's a road on the other
13 side of the river, but not the interstate.

14 And so from this advantage point, if
15 this amount of vegetation were eliminated,
16 would you think that you should be doing an
17 assessment of whether the Project would be
18 visible?

19 A. (DeWan) There's no reason to. It's not a
20 scenic resource.

21 Q. And what would make it a scenic resource?

22 A. (DeWan) If this was a tourism destination.
23 When you say "this," are you talking about
24 the pond or the viewpoint that it's taken

1 from?

2 Q. Well, I would be willing to ask about both,
3 but I think I was talking about the viewpoint
4 itself.

5 A. (DeWan) So we're at an elevated viewpoint on
6 private property. Are we on private property
7 now?

8 Q. Well, we'll just put an asterisk. This is in
9 recreational current use right now.

10 A. (DeWan) So it's on private property;
11 therefore, it's not a scenic resource.

12 Q. Okay. Could you summarize how much less
13 vegetation there is in this picture than
14 had -- no, let me go back.

15 Your visibility analysis did not
16 identify this location; is that correct?

17 A. (DeWan) When you say "this location," I know
18 there was one point on the map that we showed
19 earlier that showed some visibility.

20 Q. That was south of Cass Road -- north of Cass
21 Road. That's why I asked you the question.

22 A. (DeWan) I don't know where we are
23 specifically to the map.

24 Q. So we are right next to the farmhouse. River

1 Road is running across the picture. Cass
2 Road is coming toward us. It's actually not
3 the road you can see. It's the break in the
4 trees closer to the pond that joins River
5 Road perpendicularly here. And your
6 visibility analysis did not reveal any areas
7 of potential effect in that quadrant?

8 A. (DeWan) Right. And that was true of a lot of
9 visibility analysis that we did. As I said
10 earlier, the visibility analysis, the
11 viewshed maps are not the endpoint. It's
12 simply a way of helping us determine where to
13 do further evaluation. However, we never
14 stopped there. If the visibility analysis
15 said there's no visibility, but we had a
16 sense that there may be an elevated viewpoint
17 that the public had access to, we would go
18 then to guidebooks, to descriptions online,
19 to other resources and see if there's a
20 description of a trail system, for example.
21 And we found this in the several occasions
22 where we went to places because the guidebook
23 said there's good views here, even though
24 those views didn't show up on our visibility

1 maps. We found places like that.

2 Q. But if they weren't in the guidebooks, you
3 wouldn't try to look for them?

4 A. (DeWan) When you're looking at 192 miles, we
5 did not -- we're not able to look at every
6 single elevated viewpoint along there,
7 especially on properties that were not
8 accessible to the public.

9 Q. But if the Project were only 5 miles long
10 instead of 192 miles long, you might have
11 spent a little more time trying to identify
12 those sources?

13 A. (Kimball) It still comes back to the issue of
14 public right of access.

15 Q. That is not responsive to my question.

16 A. (Kimball) Well, it is because we would have
17 identified it as a scenic resource and then
18 potentially visited it if we knew there was a
19 trail system from an elevated viewpoint. We
20 would have identified it and explored it.

21 A. (DeWan) If this had been a state park, for
22 example, we would have read the online or the
23 available information about it, and if there
24 was a description of a trail system offering

1 wonderful views off to the east, we would
2 have visited it.

3 Q. And would it make any difference if I told
4 you there is a designated snowmobile trail
5 that runs up Cass Road and it has a loop to
6 this viewpoint?

7 A. (Kimball) If that snowmobile trail exists,
8 it's not located in the state snowmobile
9 trail that we received from the state or the
10 recreational trail data base.

11 MS. CRANE: Okay. Let's just
12 jump forward a whole lot. Getting tiresome,
13 even for... Go to the trail map.

14 BY MS. CRANE:

15 Q. Okay. I just wanted to orient us on this web
16 page. This is the Parks and Recreation
17 interactive snowmobiling page. Will you
18 allow me to assert that? This is Slide 137
19 of Ashland to Deerfield Non-abutters Exhibit
20 52. Mr. DeWan, is that what it appears to
21 be?

22 A. (DeWan) Appears to be Slide 52 [sic], yes.

23 Q. And the next slide, this appears to be the
24 home page of the Bridgewater Mountain

1 Snowmobile Club. This is Slide 138. Would
2 you agree with that?

3 A. (DeWan) That's what it appears, yes.

4 Q. Okay. Let's go. I have other things to do
5 with this picture as well. But this is one
6 of the favorite pictures that is included in
7 the Bridgewater Mountain Snowmobile Club's
8 web page. It is a picture of what?

9 A. (DeWan) Appears to be the Route 3 bridge over
10 the river between Bridgeton -- Bridgewater
11 and Ashland.

12 Q. And what else?

13 A. (DeWan) And the railroad bridge in the
14 immediate foreground.

15 Q. And the railroad bridge in the immediate
16 foreground.

17 And I'm not going to fight with the
18 resolution. Would you allow me to assert
19 that the red arrow is pointing to where the
20 transmission lines are about to cross the
21 river?

22 A. (DeWan) In that general vicinity.

23 Q. Okay. Let's move on. And this is the state
24 park snowmobile map. Is that what it appears

1 to be?

2 A. (DeWan) It appears to be.

3 Q. And I want to stop for a minute and look at
4 the legend. The red bar indicates what?

5 A. (Kimball) Corridor trail system.

6 Q. And are you familiar enough with the trail
7 system to be able to tell us what the
8 designation of "corridor" means?

9 A. (Kimball) No.

10 Q. No? Even though you evaluated snowmobile
11 trails with their scenic impact in mind and
12 the volume of use and the duration of use was
13 a significant part of your assessment
14 elsewhere?

15 A. (DeWan) If it's similar to what we have in
16 Maine, we have what's called an
17 interconnected trail system. I would suspect
18 that these are part of the network --

19 Q. I'm sorry. I didn't get an answer to my
20 question.

21 A. (DeWan) I was trying to answer it.

22 Q. No. It was a "Yes" or "No" question.

23 MR. NEEDLEMAN: No, it's not.

24 Objection.

1 CHAIRMAN HONIGBERG: Sustained.

2 You want to try the question again?

3 BY MS. CRANE:

4 Q. You are not familiar with the designations on
5 this legend and the meaning; is that correct?

6 A. (DeWan) I'm not familiar with the specific
7 designations.

8 Q. And yet your assessment included an
9 assessment of the snowmobile trails affected
10 by the Project; is that correct?

11 A. (DeWan) That's correct.

12 Q. So you never analyzed the snowmobile trail
13 system enough to know which were the heavily
14 used routes and which weren't, because that
15 is the distinction that is being made. I'm
16 sorry. You never -- I'll stop with to know
17 the difference. So you never examined it
18 closely enough to become familiar with the
19 difference in these designations.

20 A. (DeWan) We identified snowmobile trails per
21 se and located them on the map based upon the
22 information that we received.

23 Q. And you didn't try to figure out which ones
24 were more heavily used?

1 A. (DeWan) We did not.

2 Q. Okay. Next slide. Sorry. That's just
3 making it easier to read. This is a blow-up
4 of the prior map. We are now on Slide 152.

5 Could you tell me what seems to be
6 happening right near the Interstate 93
7 symbol?

8 A. (DeWan) I'm sorry. It's somewhat of a blur
9 on my screen. I see a green line. I see a
10 shield that represents Interstate 93. I see
11 an eight. I see what appears to be the
12 interstate.

13 Q. And do you see where Ashland is?

14 A. (DeWan) I see the word "Ash."

15 Q. Okay. And we've looked at this same location
16 long enough today, that it probably says
17 Ashland. Would you agree?

18 A. (DeWan) No doubt.

19 Q. And where it says 24 --

20 A. (DeWan) I see a 24 there, yes.

21 Q. And it is leaving I-93 and the Pemigewasset
22 River and traveling west from there. And do
23 you recall what the terrain is like between
24 I-93 and Newfound Lake?

1 A. (DeWan) I don't recall specifically.

2 Q. So if I were to tell you that that is going
3 up over Bridgewater Mountain, would that
4 help?

5 A. (DeWan) I would say that sounds like my
6 distant recollection of it.

7 Q. Okay. So is it appropriate to conclude that
8 the trail, the snowmobile trail marked "24"
9 is leaving the Pemigewasset River just south
10 of Ashland -- that would be where the
11 Sawhegenet Park is, where we saw the trail
12 previously -- traveling south for a few
13 hundred yards along River Road, also where we
14 saw in a previous slide, and then traveling
15 west over Bridgewater Mountain? Is that a
16 fair --

17 A. (DeWan) I have no reason to doubt.

18 Q. But you never tried to do any visual impact
19 analysis along any of this route.

20 A. (Kimball) As I said, snowmobile trails were
21 identified, then assigned a low cultural
22 value and filtered out from a complete visual
23 impact analysis.

24 Q. Okay. But snowmobile trails do afford public

1 access to other potential scenic resources;
2 do they not?

3 A. (DeWan) That's right. And a lot of them are
4 located within transmission corridors.

5 Q. But these are not; is that correct?

6 A. (DeWan) I don't know. I cannot tell you
7 where these particular ones are located from
8 looking at this map.

9 Q. But if there had been another a transmission
10 corridor along this area, it would have
11 appeared on some of the other maps we have
12 been looking at, right, and you would have
13 taken the fact that they existed into account
14 when evaluating the views from those places.
15 So would you agree that it's safe to assume
16 that, at least going over that, the route
17 designated 24 is probably not in a
18 transmission corridor?

19 A. (DeWan) I can't make that judgment based upon
20 the information provided in this particular
21 map.

22 Q. Fair enough. And there's no information in
23 your head about this area enough to make that
24 conclusion either; is that correct?

1 A. (DeWan) That is correct.

2 Q. Okay. Next slide.

3 CHAIRMAN HONIGBERG: How many
4 more slides are in this deck?

5 MS. CRANE: I can cut it down to
6 10 or 15. They'll be quick ones.

7 Okay. And we're going to skip
8 over this one because it's the same
9 intersection. I hadn't found the other map
10 yet. Keep going.

11 BY MS. CRANE:

12 Q. And there's your summary of the snowmobile
13 trail in Bridgewater, like every other
14 snowmobile trail in the state. And this was
15 treated as an aggregate resource, I take it,
16 like the Pemi River itself; correct? You
17 just had one assessment for all snowmobile
18 trails? This slide does not represent that.
19 This is an entry for Bridgewater.

20 A. (DeWan) That's right. This is typically what
21 we looked at, you know, where's the closest
22 point to the snowmobile trail to the Project,
23 and we presented the distance to that.

24 Q. Okay. And there's very little -- there is

1 essentially the same entry for every
2 snowmobile trail within the Project corridor;
3 is that correct?

4 A. (DeWan) That's pretty much correct.

5 Q. Okay.

6 MS. CRANE: Next slide, next
7 slide, next slide.

8 BY MS. CRANE:

9 Q. And we are looking at the railroad bridge
10 again; is that correct?

11 A. (DeWan) Yes, we are.

12 Q. And did you ever consider this bridge as a
13 potential scenic resource?

14 A. (DeWan) We did. In fact, we thought about
15 going down to it, but on the Bridgewater side
16 there's a sign that said "Keep Out. Private
17 Property."

18 Q. On the bridge?

19 A. (DeWan) Not on the bridge. On the field that
20 led up to the bridge.

21 Q. Okay. So you didn't get a chance to get
22 closer to the bridge?

23 A. (DeWan) As close as the photograph that I
24 believe we took.

1 Q. And that's the reason why you didn't consider
2 it a scenic resource was because you couldn't
3 get there?

4 A. (DeWan) Again, does the public have a legal
5 right of access? If we saw a sign on the
6 property surrounding it --

7 Q. So the public doesn't have a right of legal
8 access to walk across the adjoining landowner
9 [sic] to look at the bridge, and therefore
10 it's not a scenic resource.

11 A. (DeWan) Well, again, if there had been a sign
12 that said "Public Access Way" or a pathway
13 that seemed to lead down there, we would have
14 taken it. We would have gone down there.

15 MS. CRANE: Move to the next
16 slide. That's just another view of the bridge.
17 Oh, yeah, let's keep going. Keep going, keep
18 going. Okay.

19 BY MS. CRANE:

20 Q. If you had gotten down to the bridge, may I
21 assert that this is what you would have seen?
22 This is Slide 155. Does it look like a
23 regular railroad bridge?

24 A. (DeWan) It looks like a railroad bridge.

1 Q. Yeah, and what else is it? Or what else is
2 different from most railroad bridges?

3 A. (DeWan) I see two parallel lines of tracks
4 here.

5 Q. Yeah?

6 A. (DeWan) And I see a wooden surface on either
7 side of the tracks.

8 Q. Is that common on railroad bridges?

9 A. (DeWan) I've seen a lot of railroad bridges
10 that have some type of covering over the
11 ties.

12 Q. And why might this -- why might a railroad
13 bridge have covering like this?

14 A. (DeWan) I suppose, you know, perhaps to allow
15 snowmobiles to travel over it.

16 Q. That would be to allow snowmobile to travel
17 over it, yes. I believe that is why these
18 are here.

19 MR. NEEDLEMAN: Objection.
20 Testimony.

21 MS. CRANE: Yeah, okay.

22 BY MS. CRANE:

23 Q. I'll just accept your supposition that --

24 CHAIRMAN HONIGBERG: Just give

1 him credit that he made a really good guess at
2 that? Sounds about right? We should move on.

3 BY MS. CRANE:

4 Q. Okay. Let's go. And I'm just going to ask
5 you to read the paragraph under Requested
6 Action.

7 A. "Authorize the Department of Resources and
8 Economic Development Division of Parks and
9 Recreation, Bureau of Trails, to award
10 Recreational Trails Program grants to the
11 organizations listed on the attached sheet,
12 vendor codes included, in the total amount of
13 \$722,575.16 for the development and
14 maintenance of recreational trails and
15 trail-related safety and educational projects
16 from June 1, 2015 through December 31, 2015,
17 100 percent federal funds."

18 Q. And the blue arrow is pointing towards what
19 label?

20 A. (DeWan) The Bridgewater Mountain Snowmobile
21 Club.

22 Q. And will you accept my -- no, let's just move
23 on. But let's just say that the state has
24 subsidized this club's activities in this

1 year.

2 MS. CRANE: Move on, move on.

3 BY MS. CRANE:

4 Q. Now I have a different map. And can you read
5 the part of the legend that the blue arrow is
6 pointing to?

7 A. (DeWan) It says is a parallel light green
8 line. The label is "State of New Hampshire
9 Active."

10 Q. And do you see running through essentially
11 the heart of the map a light green line?

12 A. (DeWan) I see several light green lines. I
13 see one right in the middle of it.

14 Q. And can you make out which towns it seems to
15 encompass?

16 A. (DeWan) I can read a label that says
17 "Concord-Lincoln Line, Plymouth and Lincoln
18 Railroad."

19 Q. Thank you. So, the Plymouth & Lincoln
20 Railroad is apparently owned by the State of
21 New Hampshire. Does that seem to be a
22 correct interpretation of this?

23 A. (DeWan) I have no idea.

24 Q. So the green indicates State of New

1 Hampshire. Legend is owner. And the stretch
2 that is labeled "Plymouth & Lincoln" is that
3 same green color?

4 A. (DeWan) Yes.

5 Q. Okay. And did you use this map in
6 identifying scenic resources?

7 A. (DeWan) No, we did not.

8 Q. Did you look for any railroads to identify as
9 scenic resources?

10 A. (DeWan) No, because railroads were not listed
11 as a category of scenic resources according
12 to the rules.

13 Q. Okay. This is that same bridge. The bridge
14 is part of this rail line. Will you accept
15 that for convenience, or do I need to go --

16 A. (DeWan) We're aware of the fact it's there,
17 yes.

18 Q. You're aware of the fact that it's there.
19 And are you aware of the fact that the State
20 owns it?

21 A. (DeWan) I can see from this description
22 that -- well, I don't see where it says
23 ownership. For purposes of argument, I will
24 assume that.

1 Q. I'm not arguing, I hope. I may soon, but not
2 yet.

3 Next page. And what does this page
4 depict? We are looking at Slide 160.

5 A. (DeWan) This appears to be a publication
6 regarding foliage train tours.

7 Q. And could you read the sentence that begins
8 at the blue arrow?

9 A. (DeWan) "This route is only traveled during
10 fall foliage season, so sit back in our comfy
11 coaches and enjoy the fall scenery. You will
12 pass Lake Waukegan and Lake Winona, follow
13 along and over the Pemigewasset River from
14 Ashland to Plymouth, with stations stops
15 along the way."

16 Q. And we can stop before we get to eat at the
17 Common Man. Sorry.

18 Next slide. And this is Slide 161.
19 I've included the URL here so I don't to have
20 to go through quite as much rigmarole to
21 identify it. But it is the home page of the
22 Hobo Railroad. Are you familiar with the
23 Hobo Railroad?

24 A. (DeWan) I am not.

1 Q. Did you evaluate scenic resources in Lincoln
2 and Franconia? Never mind. I withdraw the
3 question.

4 Can you read the last sentence?

5 A. (DeWan) "The B & M continued service as
6 required, but heavy rains in the summer of
7 1973 caused several washouts north of
8 Meredith which the B & M could not justify
9 repairing, thus the northern portion of the
10 line was embargoed."

11 Q. And the next page, a continuation of this
12 history.

13 A. "In 1975, the Profile Paper Company announced
14 intentions to reopen the mill at Lincoln,
15 provided that rail service was available.
16 The State of New Hampshire purchased the
17 Concord to Lincoln trackage on October 30,
18 1975, repaired it and resumed service, with
19 the Wolfeboro Railroad serving as the first
20 of several operators. The Lincoln Paper Mill
21 closed for good in 1977" --

22 Q. That's enough. Thanks. Next slide. And
23 this --

24 CHAIRMAN HONIGBERG: Is there a

1 question about what you just had him read into
2 the record?

3 MS. CRANE: I just wanted to
4 confirm that the --

5 CHAIRMAN HONIGBERG: That he
6 could read?

7 MS. CRANE: And that the State
8 in fact owns the railroad. He was challenging
9 that when --

10 CHAIRMAN HONIGBERG: Do you know
11 if the State owns the railroad?

12 WITNESS DeWAN: I assume so from
13 that one map that she showed.

14 CHAIRMAN HONIGBERG: But you
15 don't have any other knowledge of that; right?

16 WITNESS DeWAN: I haven't seen
17 any deeds of that --

18 CHAIRMAN HONIGBERG: Fair
19 enough. You may proceed.

20 BY MS. CRANE:

21 Q. Next slide. This is Slide 164. Can you tell
22 me what this slide shows?

23 A. (DeWan) This is a clip from a New York Times
24 article showing a section of some river that

1 looks like the Hobo River along the
2 Pemigewasset River at some point --

3 Q. I'm sorry. Let's start that again. It's the
4 Hobo Railroad.

5 A. (DeWan) I'm sorry. The Hobo Railroad running
6 along the Pemigewasset River in New
7 Hampshire. It doesn't identify where along
8 the river this is located.

9 CHAIRMAN HONIGBERG: How many
10 more slides are in this stack? Direct answer.
11 How many more slides are in this stack?

12 MS. CRANE: Six.

13 CHAIRMAN HONIGBERG: Are there
14 any questions after you're done with the six
15 slides?

16 MS. CRANE: I don't believe so.

17 BY MS. CRANE:

18 Q. Okay. So this is the Hobo Railroad along the
19 Pemigewasset. It is the Pemigewasset in
20 Area 3, not Area 4, but I'm not sure we're
21 supposed to care about that.

22 If the railroad were a scenic resource,
23 would it be a single scenic resource, the
24 same way the river is a single scenic

1 resource?

2 A. (DeWan) I would say I would consider it the
3 same way we've evaluated the rail trails as a
4 scenic resource.

5 Q. Okay. But you didn't identify this railroad
6 as a scenic resource; is that correct?

7 A. (DeWan) No, because we don't know about
8 public right of access. I don't know if
9 pedestrians are allowed to use this.

10 Q. And why would pedestrians need to be allowed
11 to use it in order to count a state-owned,
12 franchised train as a scenic resource?

13 A. (DeWan) I think we're getting into a legal
14 argument here. You know, we've looked at
15 legal rights of access to scenic resources,
16 and, you know, we've considered a situation
17 where, if pedestrians were on here, would
18 somebody have the ability to tell them not to
19 be there.

20 Q. And the train itself could not possibly be a
21 scenic resource?

22 A. (DeWan) The train itself?

23 Q. The Hobo Railroad that runs on a seasonal
24 basis, sharing the tracks with the snowmobile

1 clubs.

2 A. (DeWan) We have not considered the Hobo
3 Railroad as a scenic resource.

4 Q. You did not consider the Hobo Railroad --

5 CHAIRMAN HONIGBERG: He just
6 said that.

7 BY MS. CRANE:

8 Q. Okay. And can you summarize again for me
9 why?

10 A. I believe we --

11 (inaudible objection.)

12 CHAIRMAN HONIGBERG: Sustained.

13 BY MS. CRANE:

14 Q. And this is a continuation of the same New
15 York Times Travel Log web page. Can you read
16 what's circled in blue?

17 A. (DeWan) I could.

18 Q. Will you?

19 A. (DeWan) "Although the notion of 'foliage
20 trains' has been around since tourist
21 railroads replaced working ones, these trains
22 keep their popularity because most roll
23 through undeveloped land."

24 Q. Thank you. Let's move on.

1 And this is a totally different subject.
2 Do you recognize this location? Here's a
3 hint. The railroad is --

4 A. (DeWan) Oh, it's the same location, yes, just
5 a different viewpoint of it.

6 Q. Okay. So the railroad is down there coming
7 across the river --

8 A. (DeWan) The very bottom of the page where you
9 see the railroad bridge.

10 Q. Right, slicing the view in half. And are you
11 familiar enough with the Project overall to
12 take a guess at what the blue circle is
13 roughly trying to represent?

14 A. (DeWan) I am.

15 Q. And it would be?

16 A. (DeWan) A transition station.

17 Q. A transition station. And the five blue
18 stars?

19 A. (DeWan) That could be the representation of
20 locations for transmission structures.

21 Q. For transmission structures.

22 A. I should say general locations.

23 Q. And if the scenic railroad were a scenic
24 resource, would the presence of these

1 structures affect the visual quality of the
2 experience at the scenic resource?

3 A. (DeWan) Not having been on the railroad or
4 having walked the line, I can't make that
5 assessment. However, I would, if I were to
6 be down there, I would look at the existing
7 vegetation. I would look at the location of
8 the star closest to the word "Google" on the
9 bottom of the page, and I would put myself in
10 the mind of somebody inside of a railroad car
11 looking out towards the river and knowing
12 that that band of vegetation just north of
13 that star probably blocks most of the view of
14 the transmission structure from the viewpoint
15 of the person in the railroad.

16 Q. But you didn't do this analysis; is that
17 correct?

18 A. (DeWan) As I said, we were discouraged by the
19 fact that there was signs which indicated it
20 was private property in that field around
21 there.

22 Q. And so you did not designate the bridge as a
23 scenic resource and you did not designate the
24 railroad; correct?

1 MR. NEEDLEMAN: Objection.

2 Asked and answered.

3 CHAIRMAN HONIGBERG: Sustained.

4 BY MS. CRANE:

5 Q. Okay. Next slide. This is just another view
6 of the bridge. I think we can skip over
7 this.

8 Okay. This is one more slide, and it is
9 probably my last. Unfortunately, it is the
10 hardest to read. Are you familiar with this
11 map?

12 A. (DeWan) No, I'm not.

13 Q. You have never seen this map before?

14 (Witness reviews document.)

15 A. (DeWan) I don't believe we have --

16 A. (Kimball) We certainly have seen this area --

17 (Court Reporter interrupts.)

18 A. (DeWan) I don't believe we have.

19 Q. Okay. This map, if you read the red --

20 A. (DeWan) I can see there's red printing on the
21 map. I have a hard time reading. I see the
22 word "total."

23 Q. And beginning just to the left of the word
24 "river," what does it say?

1 A. (DeWan) I'm sorry. I couldn't hear what you
2 asked.

3 Q. I'm sorry. Just to the left of the word
4 "river," can you make out what it says?

5 A. (DeWan) No, I cannot.

6 Q. If I told you that it said "Proposed taking
7 for scenic easement or protective screen," is
8 that plausible?

9 A. (DeWan) If that is, then I think you may be
10 discussing the scenic easement that we
11 evaluated as one of the crossings in our
12 Visual Impact Assessment.

13 Q. And when you assessed it --

14 MS. CRANE: Could you zoom back
15 out again, or is that all we've got on this
16 one?

17 (Pause)

18 BY MS. CRANE:

19 Q. So do you see the circle that's a 3?

20 A. (DeWan) I'm sorry. I do not.

21 Q. Do you see where the scenic easement -- I'm
22 sorry -- where the right-of-way was when the
23 photograph was taken?

24 A. (DeWan) You're asking --

1 Q. Same right-of-way that's there now.

2 A. (DeWan) You're asking for a lot of detail on
3 a very obscure map that I'm having a hard
4 time making out.

5 Q. Is that easier now? Can you see the word
6 "power" and the word "line"?

7 A. (DeWan) I see the word "power" and I see the
8 word "line." Yes. Okay.

9 Q. Just below the word "line," what does it say?

10 A. (DeWan) I'm sorry.

11 CHAIRMAN HONIGBERG: What's the
12 point here? Is this a test, a reading test of
13 an illegible map?

14 MS. CRANE: My intent is to
15 ultimately ask him whether he took into account
16 who owned which rights at this location when he
17 made his assessment of the visual impact at
18 this location.

19 A. (DeWan) I believe we discussed this in detail
20 in our Visual Impact Assessment. This is a
21 scenic easement that was created to protect
22 the view from what was then the proposed
23 interstate highway. Our understanding at the
24 time, there was a view looking down to the

1 river. We went back there. We drove it. In
2 the intermediate years between the time that
3 the highway was built and the current
4 conditions, those trees that used to be this
5 tall are now of sufficient height, that when
6 you drive by on Interstate 93 you see the
7 river for a period of maybe three seconds.

8 BY MS. CRANE:

9 Q. Thank you. That was not where I was going.
10 The numeral 3 that was circled just above
11 "line" and the language just below it says
12 "Luther Drake Estate"?

13 A. (DeWan) I see that, yes.

14 Q. And it says "8.3 acres total taking"?

15 A. (DeWan) Yes, I see that.

16 Q. And the right-of-way intersects the area
17 designated as taken; is that correct?

18 A. (DeWan) I hesitate to agree with that without
19 knowing the details.

20 Q. Well, the land circumscribed within which it
21 says 8.3 acres --

22 MR. NEEDLEMAN: Mr. Chair,
23 objection. They testified they analyzed this
24 easement extensively. If there's a specific

1 question here in light of that analysis, it
2 should be asked.

3 CHAIRMAN HONIGBERG: Yeah, I
4 think there was -- you said you had a question
5 about ownership. Can you focus on that
6 question and ask it? I thought I heard it when
7 you said, "This is what I wanted to ask him."
8 That seems like a question he should be able to
9 answer.

10 BY MS. CRANE:

11 Q. So the question that I ultimately want to ask
12 is: Did you take into account or even -- I'm
13 sorry. Did you make note of the fact that
14 the land that was taken subject to the
15 right-of-way appears to have been taken by
16 the State, and the right-of-way actually runs
17 over the land subject to the easement?

18 A. (DeWan) If you go to Page 4-14 in our Visual
19 Impact Assessment, that's the start of two
20 pages where we describe this particular
21 easement and the effects that the Project
22 would have on the easement and the view from
23 the interstate.

24 Q. Did you take any note of who the owners of

1 the various rights were?

2 A. (DeWan) We saw documents. We did not include
3 that information in our VIA report.

4 Q. Do you think it might have been helpful for
5 the Committee to know --

6 A. (DeWan) I'm sorry. In terms of? I'm sorry.

7 CHAIRMAN HONIGBERG: Finish your
8 question.

9 BY MS. CRANE:

10 Q. -- who owns the subservient and dominant
11 estates at this particular site? I'm sorry.
12 I should say that in a different way. Who
13 the owners of the land subject to the
14 easement --

15 A. (DeWan) I don't know how important it is for
16 the Committee to know the specific owners. I
17 know that in our VIA, on Page 4-14, we do
18 talk about the easement and ownership and the
19 uses that are allowed on the land. And from
20 our Visual Impact Assessment, I think that's
21 the important information that needs to be
22 brought forward before the Committee.

23 Q. And did you include the impacts of the
24 Project on the landowners subject to the

1 easement across the river?

2 A. (DeWan) We know that the easement was on both
3 sides of the river, and the function of the
4 easement was to protect the view from
5 Interstate 93. Again, the analysis was done
6 and presented on Page 4-15.

7 Q. But you did no analysis that took into
8 account the land subject to the easement on
9 the opposite side as if it itself were a
10 scenic resource, nor did you -- no. Sorry.

11 A. (DeWan) Again, we provided the Committee with
12 as much information as we had available to
13 look at.

14 Q. This is a map that was obtained from the
15 Department of Transportation. Did somebody
16 not ask for it?

17 A. (DeWan) We have a map of the area shown on
18 Page 4-14. I don't know how it compares with
19 the map you have here.

20 Q. That's all my questions.

21 CHAIRMAN HONIGBERG: Ms. Crane,
22 your 1-1/4-hour examination of these witnesses
23 was accompanied by a slide deck of 170 slides.
24 You took almost four hours of questioning to do

1 that. That is unacceptable. That is not
2 reasonable. If you had some indication that
3 you needed more time, you needed to tell
4 someone, because people make plans based on the
5 estimates that were given.

6 Ms. Saffo, I'm sorry you had
7 to sit and wait for as long as you did. You
8 would have been called this morning had we
9 known what was going on.

10 Ms. Crane, please return to
11 your seat.

12 Off the record.

13 (Discussion off the record)

14 CHAIRMAN HONIGBERG: Let's take
15 a five-minute break.

16 (Whereupon a recess taken at 4:29 p.m.
17 and the hearing resumed at 4:36 p.m..)

18 CHAIRMAN HONIGBERG: We're going
19 to go back on the record. Before we resume
20 questioning, there's an outstanding issue about
21 whether the recently issued procedural order
22 regarding "friendly cross" applies to the
23 witnesses being presented by Counsel for the
24 Public. And we're going to rule from the Bench

1 that they do not. Those requirements do not
2 apply to witnesses for the Counsel -- to
3 Counsel for -- I can't even speak. It does not
4 apply to the witnesses being called by Counsel
5 for the Public. As that order indicates in
6 another context, Counsel for the Public has a
7 special statutory status here. They represent
8 the public for a variety of interests, and we
9 don't feel it's appropriate to apply that rule
10 to their witnesses and the examination of those
11 witnesses. That's not to say that
12 cross-examination of those witnesses isn't
13 appropriately limited to real cross-examination
14 and not repetitive, all of the same
15 requirements.

16 Ms. Boepple, does that cover
17 the issue?

18 MS. BOEPPLE: Yes. Thank you,
19 Chair.

20 CHAIRMAN HONIGBERG: All right.
21 Anyone have any questions on that?

22 [No verbal response]

23 All right. Ms. Saffo, you may
24 proceed.

1 MS. SAFFO: Thank you.

2 CROSS-EXAMINATION

3 BY MS. SAFFO:

4 Q. Going afternoon.

5 A. Good afternoon.

6 Q. I put a document in front of you that's going
7 to be Exhibit 36, Grafton Exhibit 36. And
8 I'm going to be limiting my questions to the
9 underground portion of the Project.

10 A. (DeWan) Okay.

11 Q. And my understanding from earlier testimony
12 is you did not do visual impact studies, and
13 in part, at the time you wrote your report
14 you thought it was going to be under
15 pavement, for lack of a better description.

16 A. (DeWan) That was our --

17 MR. NEEDLEMAN: I'm sorry. Mr.
18 Chair, could I interrupt for one minute? I
19 don't have a copy of the document that they're
20 looking at.

21 MS. SAFFO: We can put it onto
22 the ELMO.

23 CHAIRMAN HONIGBERG: We can't
24 see it either.

1 MS. SAFFO: Yup. And I'll
2 definitely as we talk about points in it.

3 BY MS. SAFFO:

4 Q. But at this point I'm not talking about the
5 document. I'm just talking about your
6 earlier testimony here; correct?

7 A. (DeWan) That is correct.

8 Q. And you did your joint prefiled testimony,
9 first part, on October 16, 2015; correct?

10 A. (DeWan) I think that's right.

11 Q. And the same day, Northern Pass submitted a
12 document to New Hampshire Department of
13 Transportation. And that is what's in front
14 of everyone as Grafton 36. And this was from
15 the Law Office of Mark Hodgdon, PLLC. And
16 you can tell by the caption there, it's the
17 Petition for Aerial Road Crossings, Railroad
18 Crossings and Underground Installations in
19 State-Maintained Highways.

20 Now, I'd like to turn to Page 72 of that
21 document. On the bottom, if you look at
22 bottom Bates numbers, I think it's Northern
23 Pass Transmission Discovery 30072. And if
24 you look at the -- there's a half paragraph

1 in the top. Second full paragraph down, it
2 says, "While the alignments vary slightly due
3 to technical constraints" -- this is now
4 going to be reading the goals of this
5 document -- "the underground sections propose
6 to make extensive use of the previously
7 disturbed areas within the traveled way,
8 ditches and shoulders of the road." So what
9 Northern Pass was doing was proposing to the
10 New Hampshire Department of Transportation to
11 use only previously disturbed areas along the
12 underground portion of the roadway.

13 And then it goes on to say why. "Using
14 the disturbed areas will speed construction
15 time, thereby reducing the impacts on the
16 traveling public and abutters," and then more
17 importantly for today, "avoid extensive
18 impact to wetlands and water resources,
19 historical properties, reduce ledge and
20 mature tree removal and preserve the natural
21 terrain." Do you see that?

22 A. (DeWan) I do.

23 Q. Okay. So what we're talking about in this
24 document is it's a permission to the New

1 Hampshire Department of Transportation to go
2 under pavement, ditches and the shoulders of
3 the road; correct?

4 A. (DeWan) I think so, yes.

5 Q. Okay. So at this time, on October 16, 2015,
6 the idea presented to you, as you drafted
7 your pretrial testimony, dated the same day
8 and presented to the New Hampshire Department
9 of Transportation, was to do just that, use
10 the disturbed area, paved shoulders and
11 ditches; correct?

12 A. (DeWan) That was our understanding, that it
13 was going to be primarily within the paved
14 surface of the right-of-way.

15 Q. And while that was your understanding, this
16 document shows that that was certainly
17 nothing guaranteed at that point in time;
18 correct?

19 A. (DeWan) At the time that we did our VIA, it
20 was our understanding the objective was to
21 locate it within the pavement of the road.

22 Q. And while that may have been an objective,
23 the petition hadn't been filed yet because
24 the petition is dated the same date as your

1 prefiled testimony; correct?

2 A. (DeWan) It appears to be.

3 Q. Okay. Now, this particular document talks
4 about why Northern Pass Transmission was
5 proposing to go underneath the paved areas.
6 And one of the reasons was to avoid impact on
7 the land around the paved areas, shoulders
8 and ditches. And just to make it easier for
9 the record, I'm going to say "paved areas."
10 Every time I say that, I mean shoulders and
11 ditches as well.

12 But the reason why Northern Pass
13 presented this document was because they
14 didn't want to see other adverse impacts in
15 the surrounding land; correct?

16 A. (DeWan) That's what it appears to be, yes.

17 Q. Now, at this point in time, October 16, 2015,
18 had you provided any guidance whatsoever to
19 Northern Pass on impacts along the
20 underground portion of the roadway?

21 A. (DeWan) Did we provide any guidance to them?
22 We took what they said was going to be the
23 assumed route -- i.e., underneath the paved
24 section -- and we did our evaluation based

1 upon that. We drove the entire route. We
2 didn't see anything that immediately jumped
3 out at us as being unusual, for the most
4 part.

5 Q. But you were assuming that the route was
6 going to go underneath the roadway; correct?

7 A. (DeWan) With the exception of the two
8 endpoints.

9 Q. Yeah, yeah. So as you're driving those
10 52 miles, you're presuming -- never mind.
11 Strike that.

12 (Court Reporter interrupts.)

13 Q. Sorry. So, Attorney Hodgdon would have
14 written this document without your input; is
15 that fair to say?

16 A. (DeWan) It's the first time I've seen this
17 document.

18 Q. Okay. Now, as it turned out, the request to
19 bury under the paved areas was not granted
20 for a variety of reasons. And so now we're
21 in Plan B; is that fair to say?

22 A. (DeWan) I don't know what Plan B is. But I
23 know that there is a reaction on the part of
24 the Department of Transportation that they

1 did not want to see it in the roadway.

2 Q. Yeah. So it's fair to say that Plan A, which
3 is in the roadway, is no longer a valid plan,
4 correct, as things stand right now?

5 A. (DeWan) I don't know the status of the
6 Project right now --

7 Q. Okay.

8 A. (DeWan) -- exactly.

9 Q. So that's one of the concerns is that you
10 don't know the status, as the aesthetic
11 person and the aesthetic panel. If you don't
12 know the status of these 52 miles of
13 roadways, do you have any information as to
14 what the landowners along those 52 miles of
15 roadway might know?

16 A. (DeWan) I don't know what the landowners
17 know. I've been informed of what the current
18 discussions have been with the Department of
19 Transportation.

20 Q. And what's your understanding of the current
21 discussions?

22 A. (DeWan) Well, since the last time we talked
23 about this, we did have some conversations
24 with the engineering team, and we know that

1 there's been a number of exceptions filed
2 with the Department of Transportation. It's
3 my understanding -- again, I'm not the
4 engineer. I'm relying primarily on what the
5 conversations I've had with Don Cortez, one
6 of the engineers with SGC Engineering on the
7 underground portion, and Tom Hannigan from
8 Quanta, who told us about recent
9 conversations and meetings that they've had
10 with the Department of Transportation.

11 I think the overall objective, of
12 course, is to minimize disturbance to the
13 landscape, to put it in their proper
14 location, to work with them in a way that
15 will satisfy the concerns of the Site
16 Evaluation Committee and the Department of
17 Environment -- the Department of
18 Transportation. From what we've been told,
19 again, in conversations with these
20 individuals, the primary location for the
21 facility, underground facility, would be in
22 the shoulder, roughly -- again, these are
23 general terms -- roughly 3 feet away from the
24 edge of the pavement, the ditch itself. The

1 underground section would have a width of
2 about 3 feet, and that would be the ideal
3 location. Now, the final location, of
4 course, would have to be set based upon
5 survey information, looking at things like
6 the edge of the right-of-way, the existence
7 of utility poles, underground water lines,
8 fire hydrants, those sort of things which may
9 prove to be a conflict with the underground
10 facility.

11 Q. And what was your understanding of what needs
12 to be cleared for construction in order to
13 put these ditches 3 feet away from the
14 pavement?

15 A. (DeWan) When you say "cleared for
16 construction," in most of these areas there's
17 virtually no trees. And again, to continue
18 on, you didn't let me finish --

19 Q. Okay. I apologize.

20 A. (DeWan) Now, that's the ideal. Most of the
21 roads, as you know, have a drainage ditch on
22 one side or both sides of the road. So the
23 other limiting factor may be the outer edge
24 of the drainage ditch within which this

1 facility might be located. I don't know how
2 far that might be off the road, but it's
3 generally fairly close to the edge of the
4 road. But you can imagine the roadway to the
5 shoulder, to the drainage ditch, not the sort
6 of place one normally finds large trees or
7 other types of vegetation.

8 Now, again, as I said, it's our
9 understanding in talking with these
10 individuals, a final location for the
11 location of the line has not been set yet,
12 the duct bank. It would be based upon
13 further engineering, which is in progress
14 right now, as I understand it. Continuing
15 discussions with the Department of
16 Transportation I'm certain will ensue to
17 arrive at a final determination.

18 Another thing that was talked about, and
19 I've heard some mention made when we sat in
20 on some of the earlier sessions with the
21 Committee, is the location of splice pits.
22 As you know, they would be located roughly
23 every 2,000 feet. There's been enough site
24 evaluation done at this point so that the

1 splice pits are going to be located in places
2 where there are no trees right now. And we
3 were told, again by the engineering team,
4 that there's certain flexibilities in the
5 location of the splice pits, that they can be
6 moved, I think the term was "several hundred
7 feet in one direction," to avoid any specific
8 site issues. I also found out in these
9 discussions that once the splice pits were
10 put into place -- and again, not being the
11 engineer, I don't know exactly what
12 constitutes a splice pit; it's an underground
13 facility where the lines are joined
14 together -- that the manhole that provides
15 access to these splice pits would either be
16 sealed off or covered over, and so a person
17 driving or walking by wouldn't see the
18 location of the splice pits. They would look
19 like any other part of the gravel surface or
20 the grass ditch, or if it was even located in
21 the road, it would be paved over.

22 The other thing that we heard again in
23 these discussions is that there may be a few
24 locations where you have to go outside of

1 that roughly 20 feet away from the edge of
2 the road. But those locations are primarily
3 in areas -- there are four locations that
4 have been identified. And I don't know where
5 they are, but I was told these are all in
6 lands that are owned by the Department of
7 Transportation. These are areas that have
8 been disturbed already. These are areas that
9 do not have any trees in them.

10 So that is a summary of what I
11 understand to be the current state of the
12 discussion with the Department of
13 Transportation.

14 Q. So that's kind of a fancy way of saying,
15 though, that no one still knows how far off
16 the pavement is needed to be cleared for
17 construction and for to put these cables in
18 the ground; correct?

19 A. (DeWan) As I said, based upon what we've
20 heard, the intent is to locate them in such a
21 way that would have minimal amount of tree
22 clearing.

23 Q. So I understand intent and I understand goals
24 and I understand aspirations and I understand

1 desires. The question for the landowners and
2 for the public is: Where are these cables
3 going to be buried, and what kind of impact
4 is going to happen on aesthetics and on the
5 public private land? So I think my main
6 question is -- I understand goals and hopes
7 and aspirations. My question is: What is
8 going to happen? Where is the holes going to
9 be dug? And what needs to be cleared along
10 the way to build this?

11 So have they told you how big the
12 machinery is to install the splice vaults and
13 to do the trench operations?

14 A. (DeWan) We did not get into the mechanics of
15 the construction. I was more interested in,
16 you know, what ultimately is going have to be
17 disturbed and what the final result would be,
18 and ultimately what effect it would have on
19 the visual characteristics, primarily on
20 Route 116 which as we know is a scenic byway.

21 Q. Absolutely. So when you're looking at -- I
22 live on 116. I'm not on this part of
23 Northern Pass. I'm on the other side of it.
24 I'm very familiar with that road, just so you

1 know.

2 A. (DeWan) Okay.

3 Q. What ultimately has to be disturbed? I think
4 that is the issue. What ultimately has to be
5 disturbed? And what ultimately has to be
6 disturbed would include what has to be
7 clear-cut to build these to bury these lines;
8 correct?

9 A. (DeWan) Again, it's my understanding in
10 talking to the team that we've been in
11 contact with that there would be minimal
12 amounts of tree clear-cutting.

13 Q. Okay.

14 A. (DeWan) There may be some trees. I don't
15 know. I have not gone and looked at
16 individual trees. But, you know, the
17 conversation that we've had is that, if there
18 are trees that are cut that are part of
19 someone's property, let's say, and, you know,
20 we've heard commitments on the part of Ken
21 Bowes and others before this Committee that
22 if there was disturbance of landscaping that
23 affected someone's property -- and we're
24 talking about public property here, not

1 talking about private property -- that if
2 there were disturbances that landowners felt
3 needed to be addressed, the Applicant is
4 willing to work with those Applicants [sic]
5 to address the issue, if there is an issue.

6 Q. Okay. So you haven't been here for a lot of
7 the testimony. So the Applicants initially
8 have testified that they initially told the
9 landowners what they told you, which is the
10 hope is it would be under the pavement and
11 not in their roadway. Now the public and
12 private owners are saying that there's this
13 construction easement onto their private
14 property, and that within that construction
15 easement on their private property -- and
16 there's been a lot of testimony about
17 easements and what they are. I won't bother
18 you with that, not relevant for this
19 question -- that it's their position they can
20 clear anything in that DOT construction
21 easement. There's also been testimony, and
22 this is just forming my next question, that
23 Northern Pass is maintaining a 66-foot --
24 maintaining there's a 66-foot New Hampshire

1 DOT construction easement along a lot of this
2 roadway, including 116.

3 Now, 116 is about 24 at its widest feet
4 wide. So if there's a construction easement
5 of 66 feet, that would be approximately
6 20 feet on both sides of that road. If
7 20 feet on either side of that road, just
8 pick one side or the other, is cleared, would
9 that have a significant impact on aesthetics?

10 A. (DeWan) If that was the clearing that had to
11 happen, which I don't believe is going to be
12 the case, it would be something which we
13 would look at. But I don't believe that
14 there is the situation as it was described to
15 us where that would be the result.

16 Q. Okay. What exactly -- have you been shown a
17 map showing you what's going to be cleared
18 along Route 116?

19 A. (DeWan) I have not seen any engineering
20 drawings.

21 Q. Okay. So if you have not seen any
22 engineering drawings and there is no concrete
23 information about how far they have to go off
24 the road, how can you make a determination

1 that there isn't going to be a significant
2 adverse impact?

3 A. (DeWan) Based upon the information that was
4 provided to us as I described earlier, that
5 the location for the underground ductwork is
6 going to be usually 6 feet away from the edge
7 of -- the outer edge is going to be 6 feet
8 away from the edge of the pavement, from what
9 we know about Route 116, you know, this will
10 result in minimal visual impact to the
11 overall scenic byway.

12 Q. Okay. So if you're on Route 116 in between
13 Franconia and Route 112 and they have to go
14 more than 6 feet -- let's say they have to go
15 15 feet -- would that be a significant visual
16 aesthetic impact on Route 116?

17 A. (DeWan) That's impossible to say at this
18 point without knowing the specifics. But as
19 I said, the outer edge of what they would
20 anticipate going is to the outer edge of the
21 ditch, and these are locations that generally
22 do not have any trees.

23 Q. And they haven't explained to you that they
24 need about 25 feet for their equipment when

1 they're digging that ditch?

2 A. (DeWan) Again, I'm not the construction
3 panel. I know there's a lot of
4 construction-related issues here that you're
5 bringing up. And I think that portions of
6 the construction panel certainly would be
7 willing to come back and talk about these
8 issues before the SEC.

9 Q. The only thing I'm asking you about, to be
10 clear, just to be clear, is what has to be
11 clear-cut in order to build. So if what has
12 to be clear-cut in order to build is about
13 25 feet, that the equipment to do all the
14 drilling and the trench building and placing
15 those cables requires 25 feet of space, and
16 they only can go halfway into the roadway, so
17 they only have 12 feet to the center line of
18 the roadway, so they need another 12 feet off
19 the pavement, if you presume that as part of
20 construction, so they have to clear-cut that
21 as part of construction, does that clear-cut
22 result in an adverse impact?

23 A. (DeWan) Again, I'm dealing with the
24 information that I have in front of me --

1 Q. Okay. Now I'm asking you to deal with my
2 information. If they have to go 12 feet from
3 the pavement into the woods or people's front
4 yards -- just presume that, 12 feet -- would
5 that be a significant adverse impact if
6 they're doing that all along Route 116?

7 A. (DeWan) If you're asking me if by taking
8 trees from the edge of the pavement out
9 12 feet, would that be a significant impact?
10 I don't know of many locations, if there's
11 any, where there are that density of trees
12 that are that close to the road.

13 Q. Okay. Well, we can show the Site Evaluation
14 Committee a lot of pictures, and we can show
15 you. Take it from me, who lives on that
16 road, that's probably half the road.

17 But putting that aside, if you have to
18 clear-cut 12 feet from the edge of the
19 pavement into people's front yards, and all
20 along 116 -- so it isn't just removing mature
21 trees; you're removing stone walls, you're
22 removing fences, you're removing the
23 shrubbery and landscaping in front of
24 people's houses -- would that be an adverse

1 impact?

2 A. (DeWan) Well, I believe that Ken Bowes and
3 others have testified that if things had to
4 be removed, they would be replaced.

5 Q. Okay. Now, have you learned that you're not
6 allowed to -- well, first of all, have you
7 read that we can't replace trees and
8 shrubbery on top of where the cables are dug?
9 Is that new information for you?

10 A. (DeWan) I have not had that conversation with
11 them, but that's typical of any sort of
12 utility information.

13 Q. So, wherever the utility is located, for at
14 least 3 meters on both sides you can't
15 replace anything there; right?

16 A. (DeWan) I don't know that.

17 Q. Okay. Does it make sense to you that you
18 don't want roots and trees growing around
19 utilities?

20 A. (DeWan) That's typically why they don't allow
21 vegetation on top of underground facilities
22 like this.

23 Q. So if you heard there was a restriction on
24 the planting of trees and hedges over the

1 cables within 3 meters of the cable trench to
2 prevent encroachment by vegetation, would
3 that make sense to you?

4 A. (DeWan) That would seem like a logical
5 practice.

6 Q. And if the residents had landscaping that
7 cannot only not be rebuilt or replanted, it
8 could never be replanted; correct?

9 A. (DeWan) According to the rules as you
10 presented them to me. Again, I don't know
11 what restrictions there would be on
12 landscaping.

13 Q. So, again, to confirm your testimony, it's
14 your understanding that along Route 116 and
15 the underground route, chances are they don't
16 need to take more than 6 feet from the
17 pavement; correct?

18 A. (DeWan) No, I didn't say that.

19 Q. Okay. What's your understanding?

20 A. (DeWan) My understanding is that the location
21 that was explained to me where they intend to
22 build the majority of the line is starting at
23 the edge of the pavement. The trench would
24 start at roughly 3 feet and extend a width of

1 3 feet; so, 6 feet away from the edge of the
2 pavement. In some places it may be necessary
3 to go to the outside edge of the ditch line.
4 And that may be a variable distance.

5 Q. And if on one side of the road it immediately
6 goes into a slope, so that there isn't even a
7 walkway or any ditch, and if on the other
8 side road it immediately goes into a stream
9 instead of a ditch, would you agree there'd
10 be an adverse impact on either the slope or
11 the stream in order to put something there?

12 A. (DeWan) Well, I don't think those are the
13 sort of places you'd expect to see the
14 transmission line go. You know, the intent
15 is to put it under the pavement, especially
16 in those situations where there may be a very
17 steep slope on one side and an environmental
18 restriction on the other side.

19 Q. So in those cases, would they -- presuming
20 they need 24 feet to build these trenches,
21 24 feet for their equipment because their
22 equipment needs that much space, then on
23 those locations where you have a slope on one
24 side and an environmental item on the other

1 side, they'd have to basically then have to
2 go under the road there.

3 A. (DeWan) That would be the desirable location,
4 yes.

5 Q. And they would have to close the road in
6 order to build it there.

7 A. (DeWan) I don't know that.

8 Q. So if there's no way to fit the equipment on
9 one side of the road, do you agree they'd
10 have to then take over more than --

11 MR. NEEDLEMAN: Objection.

12 CHAIRMAN HONIGBERG: Sustained.

13 BY MS. SAFFO:

14 Q. Okay. So as you talked to Northern Pass
15 about the impacts, you didn't ask them how
16 much space they needed to clear in order to
17 build this trench for their equipment?

18 A. (DeWan) It's my understanding that's
19 information that was discussed with the
20 Committee by the construction panel.

21 Q. But for you making your analysis on
22 aesthetics, sitting here right now, you still
23 don't know the width needed to build this
24 trench.

1 MR. NEEDLEMAN: Objection.

2 Asked and answered.

3 CHAIRMAN HONIGBERG: Ms. Saffo.

4 MS. SAFFO: I don't think it has
5 been. I think he's been dancing around it.
6 Now it's a very clear question. I just asked
7 him, How much space do you think is needed to
8 build this trench?

9 BY MS. SAFFO:

10 Q. If you're saying -- I understand you're
11 saying the trench will be 3 feet from the
12 roadway. But to build that trench, to
13 construct that trench, what is the width that
14 you understand needs to be cleared?

15 MR. NEEDLEMAN: Same objection.

16 A. (DeWan) I'm not a construction manager. I
17 don't know.

18 BY MS. SAFFO:

19 Q. And so you haven't considered that in your
20 analysis.

21 A. (DeWan) I know there's a variety of different
22 ways it could be built. I don't know what is
23 being proposed in this situation.

24 Q. Okay. Thank you.

1 Now, you updated your testimony on
2 April 17, 2017; correct? You did a
3 supplemental testimony?

4 A. (DeWan) That's correct.

5 Q. And you still didn't write anything about the
6 underground portion; correct?

7 A. (DeWan) I believe that's correct.

8 Q. But by this time, you know that what you knew
9 back in 2015, which you thought back in 2015,
10 which is they were going under the pavement,
11 was no longer the case; correct?

12 A. (DeWan) I don't know if we had much
13 information about that portion of the Project
14 when we wrote that.

15 Q. Okay. So I'd like to ask -- turn to Page 72.
16 We're still on that page, on 72. The very
17 top line I have underlined in front of us,
18 the first word is on the previous page, which
19 is just the word "the." But "The underground
20 design is laid out to avoid unnecessary
21 impacts on the roadsides and abutters along
22 these historic, scenic and largely rural
23 roads."

24 Do you agree that the roads on the

1 underground portion are historic, scenic and
2 largely rural?

3 A. (DeWan) I can't address the word "historic."
4 I know that it's a scenic byway and therefore
5 would qualify for the word "scenic." And a
6 large part of it goes through rural
7 landscapes.

8 Q. So you don't dispute Mark Hodgdon's
9 characteristic here.

10 A. (DeWan) Certainly is scenic and rural.

11 Q. Okay. And then turning to the previous page,
12 on 71, in the bottom, Mr. Hodgdon writes to
13 the New Hampshire Department of
14 Transportation, "The proposed underground
15 construction techniques are intended to avoid
16 undue impacts on the roadways, environmental
17 resources, historic and archeological sites,
18 scenic areas and local residents. By staying
19 within the previously disturbed areas,
20 substantial impacts on natural, scenic,
21 environmental, archeologic and historic
22 resources are greatly reduced, if not
23 eliminated." Did I read correctly?

24 A. (DeWan) Appears to be, yes.

1 Q. Conversely, if we don't stay within the
2 previously disturbed areas, there will be
3 substantial impacts on natural, scenic,
4 environmental, archeologic and historic
5 resources; correct?

6 A. (DeWan) I wouldn't agree to that.

7 Q. Do you agree that that would be the same way
8 of saying what he's saying here?

9 A. (DeWan) The word "substantial" doesn't
10 necessarily flow from the opposite of what
11 you just read. There could be minor impacts.

12 Q. So let's turn to the impacts listed by Mr.
13 Hodgdon on behalf of Northern Pass
14 Transmission.

15 If you look at the next page, 72, yeah,
16 we already read about -- the third full
17 paragraph down, starting with the word
18 "furthermore." "Furthermore, using the
19 disturbed areas will preserve the nature of
20 these roadways"; correct?

21 A. (DeWan) That's what it says.

22 Q. So if we don't use the disturbed areas, we
23 would have a concern about the nature of
24 these roadways; correct?

1 A. (DeWan) Depends upon what's adjacent to the
2 disturbed areas.

3 Q. Yeah. He goes on to say, "Many of the
4 impacted roads have numerous historic,
5 environmental and archeological features that
6 would be adversely impacted by the extensive
7 roadside construction necessary for the
8 Project to be sited outside the disturbed
9 areas." Do you see that?

10 A. (DeWan) That's what he says.

11 Q. Basically saying to the New Hampshire
12 Department of Transportation that, if we do
13 not stay in the roadway, extensive roadside
14 construction necessary for the Project would
15 be sited outside the disturbed areas; right?

16 MR. NEEDLEMAN: Objection. The
17 document speaks for itself.

18 CHAIRMAN HONIGBERG: Ms. Saffo.

19 MS. SAFFO: I think it's fair to
20 see if this particular expert agrees with Mr.
21 Hodgdon's characteristic.

22 CHAIRMAN HONIGBERG: Sure, you
23 can ask if he agrees.

24 BY MS. SAFFO:

1 Q. Do you agree with what Mr. Hodgdon is saying
2 there?

3 A. (DeWan) Not totally. I would not say "would
4 be adversely affected" without seeing them
5 and seeing what the effects may be.

6 Q. And you haven't been shown exact effects yet,
7 have you?

8 A. (DeWan) I have not seen any of the current
9 plans for the underground section.

10 Q. So, turning to Page 75, at this point, now
11 Mr. Hodgdon discusses specific roads. So
12 we're going to go through the roads.

13 First one on 75 he discusses is
14 Clarksville.

15 MS. SAFFO: If you want to pull
16 it down and focus on that first top paragraph,
17 you can zoom it a little bit and people can
18 read it a little better.

19 BY MS. SAFFO:

20 Q. So this is Northern Pass Transmission
21 Discovery 30075 in Exhibit 36.

22 At this part he says, starts off by
23 talking about the Clarksville portion. He
24 says it has no recorded layout, dates back to

1 around 1828. He then goes on to say, "It's
2 therefore considered a prescriptive highway.
3 Without a specific right-of-way width,
4 locating the Northern Pass Transmission
5 outside of the traveled way and beyond the
6 [disturbed] ditch lines is legally
7 problematic."

8 He then goes on to say, "This is
9 especially so since existing utilities,
10 notably distribution lines, occupy much of
11 the roadside and greatly complicate the
12 installation of the underground transmission
13 line."

14 But what I want to point your direction
15 to is the next two sentences. "Furthermore,
16 the Route 145 roadside contains several
17 residences, stone walls, fences and heavy
18 tree cover just beyond the shoulder and ditch
19 lines. A few steep roadside grades and wet
20 areas are present as well. Construction of
21 the underground transmission line in this
22 area outside of the disturbed area would
23 result in significant and likely unacceptable
24 impacts due to these characteristics." Do

1 you see that?

2 A. (DeWan) I do.

3 Q. Do you know what part of Route 145 he's
4 talking about here?

5 A. (DeWan) Not specifically. I know where the
6 transition station in Clarksville is, and I
7 know where it goes under the roadway.

8 Q. Do you have any reason to dispute his
9 characterization that Route 145 in
10 Clarksville contains "several residences,
11 stone walls, fences and heavy tree cover just
12 beyond the shoulder and ditch line"?

13 A. (DeWan) That's not my recollection of that
14 section of 145.

15 Q. But if that is correct, would that mean that
16 there might be significant and likely
17 unacceptable impacts if he's correct?

18 (Witness reviews document.)

19 A. (DeWan) We're looking at that section of 145.

20 Q. It's the Old County Road.

21 A. (DeWan) Yes. It's mostly fields on one side
22 of the road. There is a line of trees on the
23 east side of the road. There is one farm on
24 the west side of the road. I don't see any

1 stone walls. I don't see the type of
2 landscape that he's describing right here.

3 Q. Well, if he's correct, and portions of Route
4 145 do contain several residences, stone
5 walls, fences and heavy tree cover just
6 beyond the shoulder and ditch line, would
7 that be problematic for aesthetics?

8 A. (DeWan) We don't like to deal with
9 hypotheticals when we have the reality in
10 front of us.

11 Q. Right now, as you just scanned that, how many
12 miles of that road did you look at?

13 A. (DeWan) About two tenths of a mile.

14 Q. Is it longer than two tenths of a mile there?

15 A. (DeWan) We just measured it on Google Earth.

16 Q. Okay. Now continuing on to Mr. Hodgdon's
17 analysis.

18 Bear Rock Road, Stewartstown,
19 District 1. So now we're in Stewartstown.
20 This part talks about the state-maintained
21 portion of Bear Rock Road running from Route
22 145 to Guy Placey Road. He noted that,
23 although the traveled way measures
24 approximately 20 feet, fences, stone walls,

1 trees, wetlands and steep slopes consistently
2 occupy between 8 to 10 feet on both sides of
3 the traveled way and shoulder. The last line
4 he says, "While the northern roadside slopes
5 sharply upward from the ditch line, it is
6 covered with numerous wetlands, stone walls,
7 utility poles, fences, and dense, mature tree
8 growth, often within 10 feet or so of the
9 traveled way."

10 If he's correct, and there is dense,
11 mature tree growth, would clear-cutting that
12 change the character of this road?

13 A. (DeWan) We haven't looked at this in detail.
14 Bear Rock Road, from our estimation, is not a
15 scenic resource.

16 Q. Okay. Now I'd then like to turn to the next
17 page, which is 76. Now we're looking at the
18 White Mountain National Forest part of the
19 underground road.

20 MS. SAFFO: You may want to go
21 to the relevant portion. See Route 302? Slide
22 it over. Thank you.

23 BY MS. SAFFO:

24 Q. This part, he talks about the relevant

1 portion of Route 302 in Bethlehem. So now
2 we're in the town of Bethlehem, and now we're
3 on Route 302.

4 He writes there that is no defined
5 right-of-way width. "The pertinent portion
6 of Route 18 from Route 302 intersection in
7 Bethlehem to the intersection of Route 116 in
8 Franconia was originally laid out in the
9 1800s as a 4-rod layout." Then he notes, "In
10 practicality, however, it is a narrow, rural,
11 two-lane highway. Dense, mature woods and
12 old stone walls line the roadway through most
13 of Sugar Hill."

14 He then says, "South of Streeter Pond
15 Road, Route 18 is bounded to the west by
16 Coffin Pond and the Gale River, which it
17 follows south, making work outside the
18 roadway non-viable. As Route 18 passes Route
19 117, it becomes Franconia's main street,
20 lined closely with numerous businesses and
21 residents. Signs, fences, walls,
22 landscaping, walkways, and likely a few
23 structures would be impacted by any attempt
24 to utilize the margins of the right-of-way in

1 this area. Due to its age, historic and
2 archeological features are located adjacent
3 to this stretch, most notably the last stone
4 iron works in New Hampshire." Do you see
5 that?

6 A. (DeWan) I do see that.

7 Q. Did you consider the last stone iron works in
8 New Hampshire?

9 A. (DeWan) We looked at this section of Route 18
10 and do not recognize it as a scenic resource.

11 Q. And did Northern Pass Transmission give you
12 this information that they were giving to
13 DOT?

14 A. (DeWan) Which information are you talking
15 about? This letter that we're reading right
16 here?

17 Q. Anything that -- any stuff I'm reading to you
18 from the letter. You already said you didn't
19 see the letter itself. But any of the
20 information --

21 A. (DeWan) I do not believe so.

22 Q. Okay. So they're relaying this information
23 to the Department of Transportation, but you
24 don't recall them relaying it to you.

1 A. (DeWan) They've given us information about
2 the general location of the underground
3 section.

4 Q. Okay.

5 A. (DeWan) Yeah.

6 Q. Okay. Now turning to Route 116 in Franconia
7 and Easton. Again we start with talking
8 about the layout, skipping -- "Ancient layout
9 issues aside, the road is a narrow, two-lane
10 highway with modest traffic. Numerous
11 wetlands, historic resources, water courses
12 and ponds sporadically adorn the roadside.
13 Mature trees crowd much of its length."

14 Now, you said you didn't recall that.
15 As someone who drives on 116 on a very
16 regular basis, the mature trees is something
17 that stands out to me that would need to be
18 cleared. I'm trying to figure out why that
19 wouldn't be something that would have been
20 considered by you?

21 A. (DeWan) You're talking about trees growing
22 right up against the pavement.

23 Q. No, talking about trees that would have to be
24 cleared in order to construct this project.

1 But in this case, I think you're right. Even
2 if we went with your 6-foot space needed off
3 the pavement, you're still hitting trees on
4 116; correct?

5 A. (DeWan) Depends on what side of the road it's
6 on. And I don't know --

7 Q. Do you know what side of the road it's going
8 to be on?

9 A. (DeWan) Again, based upon the conversation I
10 had with the design engineers, that's a
11 decision that has not been made yet. And
12 it's going to be made based upon a lot of
13 factors that I've outlined earlier.

14 Q. But how do you do an aesthetical impact if
15 you don't even know what side of the road
16 it's going to be on, never mind how far into
17 the road you're going?

18 A. (DeWan) Based upon the information that's
19 been provided to us --

20 Q. Which is that they don't know what side of
21 the road it's going to be on yet.

22 A. (DeWan) Well, the information that we
23 provided at the time we did the VIA was based
24 on an assumption that the line would be in

1 the road and therefore minimize or eliminate
2 any disturbance to the adjacent vegetation.

3 Q. But that assumption has long since been taken
4 off the table; correct?

5 A. (DeWan) I know there's been exceptions that
6 have been submitted, but the ideal location
7 is still going to be within the pavement.
8 And again, it's still part of the discussion
9 with the Department of Transportation.

10 Q. So we're now in September of 2017 and we
11 still don't know if this project is going on
12 the right side of a scenic byway or the left
13 side of a scenic byway; correct?

14 A. (DeWan) As far as I know, the final
15 engineering has not been done.

16 Q. So you don't know how much clearing has to be
17 happening and whether it's going to be on the
18 right side or the left side yet; correct?

19 A. (DeWan) Again, my information from the people
20 we've talked with is to minimize disturbances
21 to utilities, to trees, to the various
22 resources that we've been concerned about.

23 Q. The issue isn't that they want to minimize
24 disturbances. The issue is what is going to

1 happen. So this goal I keep hearing over and
2 over again, the goal is to minimize
3 disturbance. Well, what if they don't?
4 That's the whole issue in front of the Site
5 Evaluation Committee right now. It isn't
6 people hoping not to do something. It is
7 what is going to happen. That's what we have
8 to base our decisions on; correct?

9 A. (DeWan) Ultimately the SEC will make that
10 determination. And ultimately it will be a
11 decision reached by the Department of
12 Transportation.

13 Q. Absolutely. And you're here as the aesthetic
14 experts. Both of you are here as the
15 aesthetics experts; correct?

16 A. (DeWan) That is correct.

17 Q. So what we need from you is what is going to
18 happen aesthetically on Route 116, a scenic
19 byway, a promoted scenic byway in the state
20 of New Hampshire. But what you're telling me
21 right now is you don't even know what side of
22 the road it's going to be on. And you're
23 looking like you're cautiously optimistic,
24 based on conversations, that people are

1 hoping to build it within 6 feet of the
2 pavement. Earlier testimony makes that
3 highly unlikely. If it's built within 6 feet
4 of the pavement, and the pavement is 12 feet
5 because they can't take over the whole
6 road -- we can't close the road, so you have
7 to leave one lane open -- leaving one lane
8 open is still difficult for everybody, but
9 it's at least one lane.

10 So you have 12 feet of pavement. If
11 you're correct and there's 6 feet off
12 pavement, that's 18 feet. The construction
13 panel has already been clear that they need
14 more than 18 feet to build these trenches and
15 to install these cables, okay. So if I'm
16 correct that the construction panel has been
17 crystal clear that they need more than
18 18 feet to build these trenches, that would,
19 by definition, mean your 6-foot hope is
20 inaccurate; correct?

21 MR. NEEDLEMAN: Objection. It
22 mischaracterizes the testimony of the
23 construction panel, and it's asked and
24 answered.

1 CHAIRMAN HONIGBERG: Ms. Saffo.

2 MS. SAFFO: I think it's a fair
3 question.

4 CHAIRMAN HONIGBERG: Do you
5 think it accurately recounts the testimony of
6 the panel?

7 MS. SAFFO: I do. My
8 recollection is I thought they needed over
9 20 feet.

10 CHAIRMAN HONIGBERG: For every
11 foot along the line?

12 MS. SAFFO: For every foot along
13 the line, that the equipment that they use to
14 dig the trench and to then fill in the trench
15 and to pull the wires --

16 CHAIRMAN HONIGBERG: So if you
17 are wrong, then whatever answer he gives you is
18 invalid; right? Just so it's clear. I mean,
19 this is a hypothetical --

20 MS. SAFFO: This is a
21 hypothetical.

22 CHAIRMAN HONIGBERG: You asked
23 him to assume a bunch of things are true. And
24 if those things aren't true, you accept the

1 consequences of it not being true, just like he
2 has to -- they have to --

3 MS. SAFFO: Absolutely.

4 (Court Reporter interrupts.)

5 CHAIRMAN HONIGBERG: So you
6 understand the hypothetical, Mr. DeWan? I'm
7 going to let you go. Do you understand the
8 hypothetical, Mr. DeWan? It is being presented
9 as a hypothetical.

10 WITNESS DeWAN: It's a
11 hypothetical.

12 CHAIRMAN HONIGBERG: Yup.

13 Why don't you go through it
14 again. What do you want him to assume is
15 true?

16 BY MS. SAFFO:

17 Q. So, assuming that they need to clear-cut what
18 space they need to construct the trenches,
19 okay, and assuming they need more than
20 18 feet of space to build --

21 A. (DeWan) Measured from the center line.

22 Q. -- measured from the center line, that their
23 equipment will take more than 18 feet of
24 space, does that mean your 6-foot hope from

1 the pavement is inaccurate?

2 A. (DeWan) I don't know. When you say they need
3 more than 18, I don't know what the
4 requirements are. I don't know how the
5 construction team would handle specific
6 situations like that. I don't know what
7 sensitivities are brought to bear. Having
8 worked a lot with construction crews, I know
9 that they are instructed that there are
10 certain precautions that have to be taken in
11 certain situations to preserve environmental
12 features, trees and so forth.

13 Q. Okay. Now, you know there's exceptions. So
14 they were told they couldn't bury under the
15 pavement, and now the hope is these
16 exceptions go through; correct?

17 A. (DeWan) I'm not aware of the wording of the
18 exceptions. I know that they're looking for
19 exceptions that would allow them to put the
20 line under the pavement in certain designated
21 areas.

22 Q. Over a hundred designated areas. You aware
23 of that?

24 A. (DeWan) I know there was a great deal, a

1 great number that had been submitted.

2 Q. Okay. So I want to ask, that comment of Mr.
3 Hodgdon about "the last stone iron works in
4 New Hampshire," do you know anything about
5 that?

6 A. (DeWan) I do not.

7 Q. Okay. Turning to Easton and Franklin, they
8 also noted -- we talked about the mature
9 trees crowding much of its length. Stone
10 walls and existing utilities occupy the land
11 just past the ditch lines and shoulders. Is
12 that correct? Am I reading that correct?

13 A. (DeWan) That seems to be, yes.

14 Q. Do you agree that stone lines -- stone walls
15 are aesthetically pleasing?

16 A. (DeWan) Absolutely -- well, generally, yes.

17 Q. Okay.

18 A. (DeWan) I don't say there's any absolutes.

19 Q. Turning to the last page. I'm almost done
20 here. 30077, first paragraph. Now we're
21 heading east from the intersection with Route
22 116, and Route 112 passes through the scenic
23 Kinsman Notch and skirts along Lost River.
24 The last line -- well, second to the last

1 line says, "Numerous utility structures
2 already occupy the roadside extensively,
3 including some underground installations
4 which would be impacted by further roadside
5 construction. More importantly, the road's
6 scenic quality would invariably be altered by
7 the additional widening, tree removal and
8 terrain changes necessary to place the NPT
9 underground facility in the undisturbed
10 areas." Do you see that?

11 A. (DeWan) That's what I read, yes.

12 Q. Did Northern Pass tell you that additional
13 widening, tree removal and terrain changes
14 are necessary?

15 A. (DeWan) No. As I stated earlier, the
16 assumption was made that the Project would be
17 located within the paved portion of the
18 roadway.

19 Q. And when we learned that it wasn't going to
20 be in the paved portion, did they come to you
21 and say, We can't put it in the paved portion
22 anymore?

23 A. (DeWan) We have had no further discussion
24 about it since we submitted that part of the

1 VIA.

2 Q. Although you did supplement in April of 2017;
3 correct?

4 A. (DeWan) That's correct.

5 Q. And as part of the April 2017, you were not
6 asked to supplement your testimony in light
7 of now understanding that you can't put it in
8 the pavement?

9 A. (DeWan) I don't believe there had been a
10 final decision made about the location at
11 that point.

12 Q. Okay. Now we lastly go to Route 3, and
13 that's Woodstock, Thornton, Campton, Plymouth
14 and Bridgewater. What he wrote here is,
15 "Extending south from the center of
16 Woodstock, Route 3 has a long-established
17 presence in the communities it serves."

18 Fair to say from your drive on Route 3,
19 you'd agree with that?

20 A. (DeWan) Long-established presence, yes.

21 Q. "This importance is reflected in a relatively
22 densely built roadside with numerous
23 residences, institutions and businesses
24 crowding the right-of-way along its length."

1 Do you agree with that?

2 A. (DeWan) I would maybe dispute the word
3 "crowding." But I would say there are
4 institutions, residences, businesses along
5 the right-of-way.

6 Q. And there are some within 5 feet of the
7 right-of-way; correct?

8 A. (DeWan) I'm just objecting to the word
9 "crowding." There's a lot of implications
10 there.

11 Q. But he might have meant crowding because some
12 of those residences and buildings are
13 literally within 10 feet of the road;
14 correct?

15 A. (DeWan) I don't know that for a fact. I
16 don't know where they're located.

17 Q. Did you look at how closely residences and
18 buildings are located to the roadway there?

19 A. (DeWan) We did not measure them.

20 Q. Okay. Then he goes on to say, "Innumerable
21 signs, landscaping, trees, curbs, parking
22 spaces, walls and fences lie just beyond the
23 traveled surface"; correct?

24 A. (DeWan) That's what it says, yes.

1 Q. And is that your recollection from traveling
2 that road?

3 A. Yes.

4 Q. And then a variety of water courses and
5 rivers weave across and along the highway;
6 correct?

7 A. That's correct.

8 Q. Do you agree with his characterization, that
9 attempting to construct a utility of this
10 nature outside the disturbed area of the
11 roadway is "highly problematic"?

12 A. (DeWan) That's an engineering consideration,
13 and I really have not studied that in detail.
14 I don't know what is meant by "highly
15 problematic." He's certainly outlined some
16 of the issues that may be faced.

17 Q. "Construction outside the roadway's disturbed
18 area would unnecessarily impact these
19 abutting properties" --

20 A. (DeWan) That's what it says.

21 Q. -- "several of which undoubtedly have
22 historical significance." That's what it
23 says.

24 A. (DeWan) That's what it says.

1 Q. Did Northern Pass Transmission, who gave this
2 information to DOT, give you this
3 information, that there are several abutting
4 properties which undoubtedly have historic
5 significance?

6 A. (DeWan) Again, we were dealing with the
7 information that was provided us when we did
8 our initial VIA.

9 Q. Were you given any items that have historic
10 significance on Route 3?

11 A. (Kimball) It's possible there are historic
12 properties on Route 3. Again, we are
13 concerned with those where there's a legal
14 right of public access. So...

15 Q. Are you saying that, to your knowledge, there
16 are no abutting properties with historic
17 significance that have right of public
18 access?

19 A. (Kimball) I would have to go back and look at
20 the list of historic properties. But nothing
21 is coming to mind immediately.

22 Q. Okay. Fifty-two miles of clearing along a
23 road, on one side of the road through
24 Bethlehem, Sugar Hill, Franklin, Easton,

1 Woodstock, Thornton, Campton, Plymouth and
2 Bridgewater, that would impact the aesthetics
3 of a town; correct?

4 MR. NEEDLEMAN: Objection. It
5 mischaracterizes the facts.

6 CHAIRMAN HONIGBERG: Ms. Saffo.

7 MS. SAFFO: I think it's very
8 clear. The testimony's been very clear that
9 there's going to be an underground -- the plan
10 and the proposal is for an underground trench
11 to be constructed along these 52 miles. I
12 think my characterization is more than
13 appropriate.

14 CHAIRMAN HONIGBERG: So what's
15 the question again?

16 MS. SAFFO: Fifty-two miles of
17 clear-cutting along a road through all these
18 towns --

19 CHAIRMAN HONIGBERG: No,
20 that's -- the problem with the question is the
21 "clear-cutting." That word "clear-cutting" is
22 a problem with the question.

23 MS. SAFFO: See, I don't think
24 it is, because to build this, you have to clear

1 everything.

2 CHAIRMAN HONIGBERG: Well --

3 MS. SAFFO: I can be ruled
4 against, obviously. That's just my opinion.

5 CHAIRMAN HONIGBERG: Well, there
6 is no testimony that clear-cutting is required
7 along 52 miles of the underground portion. I'm
8 fairly confident of that. Because if there's
9 nothing there, nothing needs to be cut; right?

10 MS. SAFFO: How many places --
11 I'm not going to debate this.

12 CHAIRMAN HONIGBERG: Yeah.
13 Well, then maybe try the question a different
14 way and see if you can get what you need.

15 BY MS. SAFFO:

16 Q. Burying a trench along 52 miles alongside a
17 roadside where you have to go in to beyond
18 the currently disturbed areas would have a
19 significant impact; correct?

20 MR. NEEDLEMAN: Same objection.

21 CHAIRMAN HONIGBERG: Well, I
22 think the very end of the question may have
23 saved it. I think it turned into a
24 hypothetical at the end.

1 MR. NEEDLEMAN: As long as it's
2 a hypothetical, that's fine.

3 CHAIRMAN HONIGBERG: Want to
4 repeat the question, please?

5 WITNESS DeWAN: I think I
6 understand the question.

7 BY MS. SAFFO:

8 Q. Okay.

9 A. (DeWan) Hypothetically, if it had to go
10 outside of the area that I've described, it
11 may have an effect.

12 Q. Okay. And the area you described is 6 feet
13 off the pavement.

14 A. (DeWan) In general. But it may in some
15 places extend to the outer edge of the ditch,
16 which includes the ditch itself. These are
17 the areas that generally you don't find trees
18 because they've already been maintained by
19 the Department of Transportation.

20 Q. So if I mailed you pictures with tape
21 measurements going 6 feet off the ditch, and
22 you saw there are lots of trees there, would
23 that change your opinion?

24 A. (DeWan) No, because I wouldn't know where the

1 underground cable would be located.

2 Q. Okay. Curbside appeal is important, correct,
3 in front of residences?

4 A. (DeWan) That's what realtors tell us.

5 Q. And you're a landscape architect. That's
6 your undergrad degree; correct?

7 A. (DeWan) That is correct.

8 Q. Yeah. You rated scenic significance for the
9 overhead portion of this project; correct?

10 A. (DeWan) That is correct.

11 Q. But you've submitted no information regarding
12 the underground portion; correct?

13 A. (DeWan) That's not correct.

14 Q. Okay. What information have you submitted in
15 writing regarding the underground portion?

16 A. (DeWan) In the Visual Impact Assessment, we
17 divided the entire study area to various
18 sections, subsections, and our Section 3
19 deals with the underground section.

20 MS. SAFFO: Thank you. No
21 further questions.

22 CHAIRMAN HONIGBERG: All right.
23 That is the entire list that I have of
24 intervenors to question this panel. Let's go

1 off the record for a minute.

2 (Discussion off the record)

3 CHAIRMAN HONIGBERG: So it looks
4 like we're going to break for the day and
5 resume on Monday and do everything in our power
6 to get through in the morning. I don't see any
7 obstacle there, given the amount of time that
8 the Subcommittee members indicate they have.
9 Again, if past is a good predictor, each of us
10 will ask each other's questions in some
11 instances, and there'll be some give and take
12 and some follow-up. And then again, given what
13 you have done in the past, Mr. Needleman, and
14 your colleagues, I don't expect your redirect
15 to take a long time. So I do think there's a
16 very high likelihood that the panel will be
17 done in the morning.

18 MR. NEEDLEMAN: In terms of
19 planning, then, we'll have Mr. Varney here in
20 the morning and ready to go.

21 CHAIRMAN HONIGBERG: All right.
22 We'll look forward to seeing him.

23 Is there anything else we need
24 to do today before we --

1 MR. NEEDLEMAN: There's one
2 thing I should probably say, which is to answer
3 your question earlier about the cultural
4 landscape issue.

5 I had a chance to confer with
6 my colleagues, and we won't object to people
7 asking questions regarding the cultural
8 landscape reports that have been made
9 available. We would hope that those wouldn't
10 be duplicative, and that people and the panel
11 would have in mind that many elements of
12 those reports do relate to historic resources
13 that have already been evaluated, so that
14 people would not ask questions that they
15 could have already asked.

16 CHAIRMAN HONIGBERG: I'm also
17 optimistic that people will be sensitive to
18 that. And I'm sure Mr. Walker, if he's here
19 when that -- Mr. Walker will probably have to
20 be here when that happens.

21 MR. NEEDLEMAN: Yeah.

22 CHAIRMAN HONIGBERG: And he will
23 be sensitive it to as well and alert us if
24 there's a problem.

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Any other issues we need to
take up before we leave today?

[No verbal response]

CHAIRMAN HONIGBERG: All right.
Thank you all. We are adjourned.

(Whereupon the Day 34 Afternoon
Session was adjourned at 5:38
p.m., with Day 35 hearing to resume
on Monday, September 18, 2017
commencing at 9:00 a.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
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	106:1;109:5,8,12; 118:8,15;141:15; 179:14,18	addressed (1) 145:3	108:10;109:4,11; 117:3;119:8;123:15; 128:5,11;138:3,19, 22;139:17;140:8; 141:3,10,22;144:9; 148:2,23;151:10,13; 166:7;167:9;168:8, 19;169:2;172:14; 179:6,12;180:15; 184:9,12	19;106:10;114:13, 15;117:1,6,7,18; 133:11;135:19; 137:14;143:9;146:1, 18;149:6,20;151:14; 155:21;171:11,12; 174:23;176:24; 177:4;178:5;179:22; 180:11,17;181:7,16
§	accessible (2) 78:18;99:8	addressing (1) 60:11	against (2) 166:22;181:4	alongside (1) 181:16
\$722,575.16 (1) 111:13	accessing (1) 9:23	adequacy (3) 70:8;71:17,23	age (1) 165:1	alter (1) 65:7
[accompanied (1) 128:23	adequate (2) 22:19;68:17	aggregate (1) 107:15	altered (1) 175:6
[disturbed] (1) 160:6	accordance (2) 51:4;59:4	adjacent (6) 28:17,18;95:16; 158:1;165:2;168:2	ago (2) 55:2;80:15	alternative (1) 6:6
[No (3) 4:14;130:22;186:3	according (6) 22:17,22;58:18,19; 113:11;151:9	adjoining (1) 109:8	agree (20) 7:3;14:11;31:2; 70:16;94:4,5;101:2; 104:17;106:15; 125:18;152:9;153:9; 155:24;157:6,7; 159:1;174:14; 176:19;177:1;178:8	Although (3) 119:19;162:23; 176:2
[sic] (5) 42:17,20;100:22; 109:9;145:4	account (18) 7:17;20:4;23:3; 24:13,13,20;25:6; 58:23;59:2;69:14; 70:7;87:4,10;88:14; 106:13;124:15; 126:12;128:8	adjourned (2) 186:5,7	agreement (4) 3:15;5:7;7:12;9:3	among (1) 22:23
A	achieve (1) 72:5	admission (3) 77:16;78:2,5	agricultural (1) 93:10	amount (5) 51:20;96:15; 111:12;142:21;184:7
ability (4) 29:20;74:23;94:10; 118:18	acknowledge (2) 55:8,13	admitted (1) 20:23	Ah (1) 18:15	amounts (1) 144:12
able (10) 44:18;57:8,13; 63:1,8,10;93:17; 99:5;102:7;126:8	acknowledged (3) 55:6,10;56:23	adorn (1) 166:12	ahead (4) 13:12;37:20;57:20; 68:4	analysis (22) 32:11;61:19,24; 73:12;83:3;90:15,20; 94:15;97:15;98:6,9, 10,14;105:19,23; 121:16;126:1;128:5, 7;153:21;154:20; 162:17
above (16) 10:6;25:17;26:3; 43:20;44:6,7;45:14; 62:3,5,7,11;80:7,17, 22;95:11;125:10	acres (2) 125:14,21	adverse (10) 8:14,14,17,18; 135:14;147:2; 148:22;149:5,24; 152:10	Alert (1) 185:23	analyzed (3) 18:20;103:12; 125:23
Absolutely (4) 143:21;169:13; 172:3;174:16	across (15) 11:15;25:1;26:1; 47:4;48:8,13;55:16; 62:18;76:12;96:1; 98:1;109:8;120:7; 128:1;178:5	advised (1) 17:24	alignments (1) 133:2	analyzing (1) 64:13
ability (4) 29:20;74:23;94:10; 118:18	Act (12) 52:2,19,22;53:11, 13,15,19;58:9,11; 59:18;60:2;90:4	advice (1) 54:15	allow (12) 5:11;51:19;56:24; 57:15;79:12,16; 100:18;101:18; 110:14,16;150:20; 173:19	Ancient (1) 166:8
able (10) 44:18;57:8,13; 63:1,8,10;93:17; 99:5;102:7;126:8	action (2) 37:21;111:6	aerial (2) 13:20;132:17	allowances (1) 77:20	angles (1) 76:10
above (16) 10:6;25:17;26:3; 43:20;44:6,7;45:14; 62:3,5,7,11;80:7,17, 22;95:11;125:10	active (2) 17:23;112:9	aesthetic (4) 137:10,11;147:16; 169:13	allowed (6) 6:4;56:14;118:9, 10;127:19;150:6	announced (1) 115:13
Absolutely (4) 143:21;169:13; 172:3;174:16	activities (1) 111:24	aesthetical (1) 167:14	allowing (3) 61:6;72:3,4	answered (8) 34:10;35:5;56:22; 73:14;77:6;122:2; 154:2;170:24
ability (4) 29:20;74:23;94:10; 118:18	actually (11) 9:4;28:1;39:6; 46:17;49:21;64:11; 67:5;82:24;91:8; 98:2;126:16	aesthetics (7) 59:19;143:4;146:9; 153:22;162:7; 169:15;180:2	allows (3) 68:9;77:11,13	Anthony (1) 15:14
able (10) 44:18;57:8,13; 63:1,8,10;93:17; 99:5;102:7;126:8	added (3) 32:10;33:9;41:16	affect (4) 40:21;71:17,23; 121:1	almost (2) 128:24;174:19	anticipate (1) 147:20
above (16) 10:6;25:17;26:3; 43:20;44:6,7;45:14; 62:3,5,7,11;80:7,17, 22;95:11;125:10	addition (1) 89:1	affected (3) 103:9;144:23; 159:4	along (42) 28:24;40:17;42:24; 44:22;65:3,4;70:7; 75:18;77:8;80:6; 82:18;99:6;105:13,	Antrim (1) 78:15
Absolutely (4) 143:21;169:13; 172:3;174:16	additional (4) 18:2;67:4;175:7,12	afford (1) 105:24	alongside (1) 181:16	anymore (2) 15:16;175:22
ability (4) 29:20;74:23;94:10; 118:18	address (4) 25:12;88:20;145:5; 156:3	afternoon (4) 4:9;131:4,5;186:6	apparently (1) 112:20	apologize (4) 15:8;27:1;28:9; 139:19
able (10) 44:18;57:8,13; 63:1,8,10;93:17; 99:5;102:7;126:8		again (48) 6:10;11:8;16:15; 22:9;34:9;55:11,11; 61:24;70:15;73:11; 77:1;83:23;86:23; 88:22;90:14;103:2;		

<p>appeal (1) 183:2</p> <p>appear (6) 13:7,7;17:5;20:18; 41:17;59:6</p> <p>appeared (1) 106:11</p> <p>appearing (1) 35:21</p> <p>appears (34) 11:18;13:15;17:6; 20:19;28:16;36:9,12, 21;37:7;38:15,19; 42:2;54:17;58:1,5; 79:5;86:13,16,19; 93:11;95:8;100:20, 22,23;101:3,9,24; 102:2;104:11;114:5; 126:15;135:2,16; 156:24</p> <p>applicable (1) 55:22</p> <p>Applicant (2) 49:7;145:3</p> <p>Applicants (2) 145:4,7</p> <p>Applicant's (1) 3:20</p> <p>applies (2) 9:7;129:22</p> <p>apply (4) 90:22;130:2,4,9</p> <p>appreciate (2) 27:2;28:4</p> <p>appreciation (1) 41:3</p> <p>approach (2) 30:6;69:20</p> <p>appropriate (6) 21:23;69:19;70:4; 105:7;130:9;180:13</p> <p>appropriately (1) 130:13</p> <p>appropriateness (1) 69:23</p> <p>Approximately (3) 10:13;146:5; 162:24</p> <p>April (3) 155:2;176:2,5</p> <p>archeologic (2) 156:21;157:4</p> <p>archeological (3) 156:17;158:5; 165:2</p> <p>architect (1) 183:5</p> <p>Area (42) 10:7;11:3,6;12:13; 18:18,19;19:3,11,13, 16,23;20:8;31:19,22; 41:4,17;45:10;55:21; 64:21;65:1;73:21,21;</p>	<p>75:1;80:17;90:5; 94:20;106:10,23; 117:20,20;122:16; 125:16;128:17; 134:10;160:22,22; 165:1;178:10,18; 182:10,12;183:17</p> <p>areas (33) 19:1;69:2;80:6,7, 13,16;84:5;98:6; 133:7,11,14;135:5,7, 9;136:19;139:16; 142:3,7,8;156:18,19; 157:2,19,22;158:2,9, 15;160:20;173:21, 22;175:10;181:18; 182:17</p> <p>argue (1) 52:10</p> <p>arguing (1) 114:1</p> <p>argument (3) 70:2;113:23; 118:14</p> <p>around (10) 44:19;45:9,11; 87:18;119:20; 121:20;135:7; 150:18;154:5;160:1</p> <p>arrival (1) 90:12</p> <p>arrive (5) 29:18;31:15,16; 39:14;140:17</p> <p>arrow (14) 10:22;12:13,16; 14:14,21;26:12,13; 42:14,15;43:14; 101:19;111:18; 112:5;114:8</p> <p>arrows (1) 26:7</p> <p>article (1) 116:24</p> <p>Ash (1) 104:14</p> <p>Ashland (9) 10:11;20:24;46:23; 100:19;101:11; 104:13,17;105:10; 114:14</p> <p>aside (2) 149:17;166:9</p> <p>aspects (1) 86:4</p> <p>aspirations (2) 142:24;143:7</p> <p>assert (6) 12:23;79:12,16; 100:18;101:18; 109:21</p> <p>assertion (18) 13:16,21,24;17:15;</p>	<p>20:13;21:19;26:18; 28:22;38:2,7;40:11, 15;69:7;72:18;75:21; 82:17;86:22;93:19</p> <p>assess (1) 81:9</p> <p>assessed (1) 123:13</p> <p>assessing (1) 70:8</p> <p>assessment (24) 18:16;19:20;25:7; 32:13;35:3;40:21; 43:10;55:8;66:16,20; 80:10;81:20;96:17; 102:13;103:8,9; 107:17;121:5; 123:12;124:17,20; 126:19;127:20; 183:16</p> <p>assessments (3) 58:23;75:17;80:6</p> <p>assign (3) 33:21;35:3;41:8</p> <p>assigned (2) 81:18;105:21</p> <p>assignment (2) 66:22;81:17</p> <p>associate (1) 37:11</p> <p>associated (1) 65:21</p> <p>assume (15) 12:21;20:1,11; 34:23;57:12;63:20; 66:5;76:19,21;79:15; 106:15;113:24; 116:12;171:23; 172:14</p> <p>assumed (2) 66:14;135:23</p> <p>assuming (10) 43:21;49:24;50:2; 51:12,12;64:20; 89:21;136:5;172:17, 19</p> <p>assumption (14) 52:13;56:18,23; 57:16;59:3;64:23; 65:2;66:1,10;83:11; 91:16;167:24;168:3; 175:16</p> <p>assumptions (3) 51:14;77:3;94:11</p> <p>asterisk (1) 97:8</p> <p>attached (1) 111:11</p> <p>attempt (1) 164:23</p> <p>attempting (2) 85:9;178:9</p> <p>Attorney (2)</p>	<p>5:6;136:13</p> <p>attract (1) 92:8</p> <p>attracts (1) 92:17</p> <p>ATV (1) 79:13</p> <p>ATVs (1) 84:9</p> <p>August (2) 7:23,24</p> <p>authored (1) 21:14</p> <p>Authorize (1) 111:7</p> <p>available (7) 3:16;40:1;41:12; 99:23;115:15; 128:12;185:9</p> <p>average (2) 19:24;41:1</p> <p>avoid (5) 133:17;135:6; 141:7;155:20;156:15</p> <p>award (1) 111:9</p> <p>aware (7) 41:10;56:8;113:16, 18,19;173:17,22</p> <p>away (6) 138:23;139:13; 142:1;147:6,8;152:1</p>	<p>based (21) 22:4;25:3;29:8,21; 41:4;52:10;66:1; 69:13;103:21; 106:19;129:4; 135:24;139:4; 140:12;142:19; 147:3;167:9,12,18, 23;169:24</p> <p>basically (8) 153:1;158:11</p> <p>basis (4) 24:16;88:24; 118:24;166:16</p> <p>Bates (3) 46:24;47:11; 132:22</p> <p>beach (1) 65:1</p> <p>Bear (4) 162:18,21;163:14; 173:7</p> <p>beauty (1) 60:3</p> <p>become (2) 52:14;103:18</p> <p>becomes (1) 164:19</p> <p>Beech (3) 73:20,23;74:3</p> <p>begin (1) 44:4</p> <p>beginning (2) 22:16;122:23</p> <p>begins (4) 22:8;44:5;58:18; 114:7</p> <p>behalf (1) 157:13</p> <p>behind (1) 25:2</p> <p>below (4) 51:4,6;124:9; 125:11</p> <p>Bench (1) 129:24</p> <p>besides (3) 67:9,23;96:8</p> <p>Beth (1) 6:9</p> <p>Bethlehem (4) 164:1,2,7;179:24</p> <p>better (3) 84:21;131:15; 159:18</p> <p>Beyond (8) 4:9;8:23;160:5,18; 161:12;162:6; 177:22;181:17</p> <p>bicycle (2) 84:14,14</p> <p>bicycles (1) 84:10</p>
B				
<p>back (27) 8:9;12:8;27:5; 30:18;35:2,9;40:8; 49:6;51:24;52:24; 54:8,22;57:8;61:13; 73:9;80:2;97:14; 99:13;114:10; 123:14;125:1; 129:19;148:7;155:9, 9;159:24;179:19</p> <p>background (2) 36:24;93:13</p> <p>bad (2) 7:20;82:14</p> <p>Baker (1) 21:9</p> <p>band (1) 121:12</p> <p>bank (8) 43:4;44:6,7;45:15; 69:8;72:20;82:19; 140:12</p> <p>banks (1) 70:7</p> <p>bar (2) 76:12;102:4</p> <p>base (3) 11:4;100:10;169:8</p>	<p>back (27) 8:9;12:8;27:5; 30:18;35:2,9;40:8; 49:6;51:24;52:24; 54:8,22;57:8;61:13; 73:9;80:2;97:14; 99:13;114:10; 123:14;125:1; 129:19;148:7;155:9, 9;159:24;179:19</p> <p>background (2) 36:24;93:13</p> <p>bad (2) 7:20;82:14</p> <p>Baker (1) 21:9</p> <p>band (1) 121:12</p> <p>bank (8) 43:4;44:6,7;45:15; 69:8;72:20;82:19; 140:12</p> <p>banks (1) 70:7</p> <p>bar (2) 76:12;102:4</p> <p>base (3) 11:4;100:10;169:8</p>			

<p>big (3) 46:14;96:8;143:11</p> <p>bike (8) 79:14;81:22;82:1, 5;83:4,5,7,16</p> <p>bit (6) 25:20;43:13;45:14; 46:7;95:20;159:17</p> <p>blading (1) 84:23</p> <p>block (1) 67:5</p> <p>blockage (1) 68:17</p> <p>blocked (1) 68:13</p> <p>blocking (2) 43:17;48:11</p> <p>blocks (1) 121:13</p> <p>blow (1) 26:10</p> <p>blown-up (1) 17:11</p> <p>blow-up (2) 10:20;104:3</p> <p>blue (11) 14:14;26:7,12,13; 45:20;111:18;112:5; 114:8;119:16; 120:12,17</p> <p>blur (1) 104:8</p> <p>blurry (2) 93:14;94:19</p> <p>boat (10) 12:15;13:18,24; 14:4,5,8,10;20:11,18; 30:23</p> <p>bodies (1) 25:11</p> <p>body (2) 78:17,22</p> <p>Boepple (9) 3:5,7,21;4:16,17; 7:14;9:11;130:16,18</p> <p>both (9) 7:17;40:20;97:2; 128:2;139:22;146:6; 150:14;163:2;169:14</p> <p>bother (1) 145:17</p> <p>bottom (9) 11:21;14:14;31:20; 42:13;120:8;121:9; 132:21,22;156:12</p> <p>bounded (1) 164:15</p> <p>Bowes (2) 144:21;150:2</p> <p>break (5) 12:20;61:9;98:3; 129:15;184:4</p>	<p>bridge (33) 12:11;32:17;35:14; 36:10,13,22;37:13; 38:17,24;40:12,18; 41:21;72:11;101:9, 13,15;108:9,12,18, 19,20,22;109:9,16, 20,23,24;110:13; 113:13,13;120:9; 121:22;122:6</p> <p>bridges (3) 110:2,8,9</p> <p>Bridgeton (1) 101:10</p> <p>Bridgewater (16) 15:23;16:3;61:22; 73:22;75:18;100:24; 101:7,10;105:3,15; 107:13,19;108:15; 111:20;176:14;180:2</p> <p>Brief (1) 61:14</p> <p>bright (1) 25:14</p> <p>bring (1) 3:6</p> <p>bringing (2) 90:4;148:5</p> <p>broadest (1) 92:10</p> <p>brought (2) 127:22;173:7</p> <p>buffer (22) 14:23;15:1;42:23; 48:1;50:4,22;51:1, 22;56:2;58:15;63:4; 66:13;67:23;68:11; 70:9,18;71:18,23,24; 72:2,24;74:23</p> <p>buffers (2) 51:18;58:24</p> <p>build (18) 5:10;60:12;143:10; 144:7;148:11,12; 151:22;152:20; 153:6,17,23;154:8, 12;170:1,14,18; 172:20;180:24</p> <p>building (1) 148:14</p> <p>buildings (2) 177:12,18</p> <p>built (4) 125:3;154:22; 170:3;176:22</p> <p>bullet (2) 42:14;43:1</p> <p>bunch (2) 8:21;171:23</p> <p>Bureau (1) 111:9</p> <p>buried (1) 143:3</p>	<p>burned (1) 96:9</p> <p>bury (3) 136:19;144:7; 173:14</p> <p>Burying (1) 181:16</p> <p>bus (1) 82:21</p> <p>business (2) 21:16;22:4</p> <p>businesses (3) 164:20;176:23; 177:4</p> <p>byway (7) 143:20;147:11; 156:4;168:12,13; 169:19,19</p>	<p>107:5;112:4,14,16; 113:21;114:16; 115:4;116:21;119:8, 15;122:6,20;123:4; 124:5;126:5;131:21; 132:16;140:4;141:5; 145:19;146:24; 148:16;149:13,14; 158:23;159:17,17; 181:3,14</p> <p>canoe (4) 11:15;18:1;22:5; 42:6</p> <p>canoers (1) 22:14</p> <p>canoes (1) 21:20</p> <p>caption (3) 72:16;73:18; 132:16</p> <p>capture (2) 10:10;57:8</p> <p>car (3) 11:12,13;121:10</p> <p>card (1) 40:9</p> <p>care (1) 117:21</p> <p>careful (1) 6:17</p> <p>carries (1) 21:9</p> <p>carrying (1) 11:14</p> <p>case (7) 23:11;50:22;78:14; 91:7;146:12;155:11; 167:1</p> <p>cases (1) 152:19</p> <p>Cass (10) 86:24;88:4,5,6,8; 93:4;97:20,20;98:1; 100:5</p> <p>category (3) 89:16;91:5;113:11</p> <p>cause (3) 68:2,6;72:1</p> <p>caused (1) 115:7</p> <p>cautiously (1) 169:23</p> <p>celebration (1) 16:1</p> <p>center (4) 148:17;172:21,22; 176:15</p> <p>certain (8) 41:24;51:19,20; 140:16;141:4; 173:10,11,20</p> <p>certainly (11) 7:23;9:3;25:9;</p>	<p>29:8;54:7;68:17; 122:16;134:16; 148:6;156:10;178:15</p> <p>Chair (7) 3:7;16:17;52:1; 55:1;125:22;130:19; 131:18</p> <p>CHAIRMAN (81) 3:3,19,23;4:5,15; 6:7;7:7;9:12,16;16:9, 20;17:20;18:5;26:23; 49:22;52:7,16,18; 53:5,9,16;54:4;55:9; 56:6,12,15;61:8,16; 69:17,22;71:14,19; 73:15;77:7;92:20; 103:1;107:3;110:24; 115:24;116:5,10,14, 18;117:9,13;119:5, 12;122:3;124:11; 126:3;127:7;128:21; 129:14,18;130:20; 131:23;153:12; 154:3;158:18,22; 171:1,4,10,16,22; 172:5,12;180:6,14, 19;181:2,5,12,21; 182:3;183:22;184:3, 21;185:16,22;186:4</p> <p>challenging (1) 116:8</p> <p>chance (3) 61:10;108:21; 185:5</p> <p>chances (1) 151:15</p> <p>change (5) 46:12;66:15;67:9; 163:12;182:23</p> <p>changed (2) 46:19;66:21</p> <p>changes (3) 69:14;175:8,13</p> <p>character (1) 163:12</p> <p>characteristic (2) 156:9;158:21</p> <p>characteristics (4) 25:13;89:3;143:19; 160:24</p> <p>characterization (3) 161:9;178:8; 180:12</p> <p>charge (1) 78:5</p> <p>check (1) 12:23</p> <p>Cheryl (1) 3:12</p> <p>chose (1) 49:17</p> <p>circle (2) 120:12;123:19</p>
C				
		<p>cable (2) 151:1;183:1</p> <p>cables (6) 142:17;143:2; 148:15;150:8;151:1; 170:15</p> <p>call (2) 93:2,23</p> <p>called (3) 102:16;129:8; 130:4</p> <p>calls (2) 49:21;56:15</p> <p>came (2) 31:21;57:12</p> <p>camp (1) 92:5</p> <p>Campground (11) 12:17,18;15:22; 16:2;17:17,23;30:9, 19,23;49:18;65:21</p> <p>campgrounds (1) 9:24</p> <p>Campton (2) 176:13;180:1</p> <p>can (93) 4:2,7;7:11;8:14; 9:4,5;10:21;12:23; 13:3,21;14:11,18; 15:13,19;16:11; 20:20;21:22;24:1; 25:5;26:6,12;30:23; 31:5;33:4,7,15; 45:20;48:4;50:13,18, 24;53:2,21,23;54:3,8; 55:5;56:9;57:24; 58:3;61:12;62:23; 63:20;66:7;68:21; 70:2,3,12,21,22,23; 71:1;72:9;73:11,18; 77:7;79:5,9;82:2,8, 10;88:20;94:21;98:3;</p>		

<p>circled (2) 119:16;125:10</p> <p>circumscribed (1) 125:20</p> <p>circumstances (2) 69:21;77:21</p> <p>clarification (1) 4:22</p> <p>Clark (1) 13:5</p> <p>Clarksville (4) 159:14,23;161:6, 10</p> <p>classifies (1) 20:6</p> <p>clear (13) 87:19;90:23; 145:20;148:10,10; 153:16;154:6; 170:13,17;171:18; 180:8,8,24</p> <p>clear-cut (7) 144:7;148:11,12, 20,21;149:18;172:17</p> <p>clear-cutting (6) 144:12;163:11; 180:17,21,21;181:6</p> <p>cleared (14) 94:20;95:9,11,14, 15;139:12,15; 142:16;143:9;146:8, 17;154:14;166:18,24</p> <p>clearing (5) 59:3;142:22; 146:10;168:16; 179:22</p> <p>clearly (3) 11:22;86:23;91:1</p> <p>clip (1) 116:23</p> <p>close (11) 9:24;24:6;48:21; 62:16,21;70:20; 108:23;140:3; 149:12;153:5;170:6</p> <p>closed (1) 115:21</p> <p>closely (3) 103:18;164:20; 177:17</p> <p>closer (7) 20:15;62:24;63:7; 71:16,22;98:4; 108:22</p> <p>closest (2) 107:21;121:8</p> <p>clouds (4) 26:2,9,17,24</p> <p>Club (2) 101:1;111:21</p> <p>clubs (1) 119:1</p> <p>Club's (2)</p>	<p>101:7;111:24</p> <p>coaches (1) 114:11</p> <p>coarseness (1) 26:15</p> <p>codes (1) 111:12</p> <p>Coffin (1) 164:16</p> <p>Cogliano (4) 14:18,19;15:14; 17:16</p> <p>Cogwood (2) 15:22;16:2</p> <p>colleagues (2) 184:14;185:6</p> <p>color (1) 113:3</p> <p>colors (1) 47:15</p> <p>comfortable (1) 29:5</p> <p>comfy (1) 114:10</p> <p>coming (6) 21:7;23:3;54:17; 98:2;120:6;179:21</p> <p>commencing (1) 186:10</p> <p>comment (1) 174:2</p> <p>commercial (6) 60:19,21,21,22; 74:21;78:8</p> <p>commitments (1) 144:20</p> <p>Committee (14) 5:17;6:12;7:1; 60:14;127:5,16,22; 128:11;138:16; 140:21;144:21; 149:14;153:20;169:5</p> <p>Common (3) 67:11;110:8; 114:17</p> <p>communities (1) 176:17</p> <p>Company (1) 115:13</p> <p>comparable (1) 51:16</p> <p>compares (1) 128:18</p> <p>complete (1) 105:22</p> <p>completely (1) 68:13</p> <p>complicate (1) 160:11</p> <p>complicated (1) 6:19</p> <p>comprehensive (2) 20:2;58:10</p>	<p>compressed (1) 46:15</p> <p>compromise (1) 60:20</p> <p>computer (1) 44:18</p> <p>concern (5) 6:14,16;7:13,15; 157:23</p> <p>concerned (3) 34:2;168:22; 179:13</p> <p>concerns (2) 137:9;138:15</p> <p>conclude (1) 105:7</p> <p>concluded (2) 32:9;63:24</p> <p>concluding (1) 73:24</p> <p>conclusion (5) 49:21;56:16;62:11; 65:7;106:24</p> <p>conclusions (2) 57:11;62:9</p> <p>Concord (1) 115:17</p> <p>Concord-Lincoln (1) 112:17</p> <p>concrete (1) 146:22</p> <p>condition (3) 63:19;67:8,19</p> <p>conditions (18) 33:19;42:18,21; 43:5;63:10,16;64:18, 22;65:8,10,12;66:23; 67:12;68:18;69:13, 21;70:11;125:4</p> <p>confer (1) 185:5</p> <p>conference (1) 7:22</p> <p>confident (1) 181:8</p> <p>confirm (2) 116:4;151:13</p> <p>conflict (1) 139:9</p> <p>conflicted (1) 61:3</p> <p>confused (4) 34:17,18;46:4; 63:23</p> <p>consequences (1) 172:1</p> <p>conservation (7) 18:18,19;19:1,3, 17;20:7;82:15</p> <p>consider (9) 5:5;89:12;90:18; 91:3;108:12;109:1; 118:2;119:4;165:7</p>	<p>consideration (4) 55:24;67:1;78:16; 178:12</p> <p>considered (8) 45:1,3;91:21; 118:16;119:2; 154:19;160:2;166:20</p> <p>consistent (2) 38:16;94:2</p> <p>consistently (1) 163:1</p> <p>consisting (1) 74:8</p> <p>constable (3) 29:20;30:2,10</p> <p>constitute (2) 78:23;92:9</p> <p>constitutes (1) 141:12</p> <p>constraints (1) 133:3</p> <p>construct (4) 154:13;166:24; 172:18;178:9</p> <p>constructed (1) 180:11</p> <p>construction (27) 133:14;139:12,16; 142:17;143:15; 145:13,14,20;146:1, 4;148:2,6,20,21; 153:20;154:16; 156:15;158:7,14; 160:20;170:12,16,23; 173:5,8;175:5; 178:17</p> <p>construction-related (1) 148:4</p> <p>consult (1) 39:22</p> <p>consulted (1) 5:5</p> <p>contact (1) 144:11</p> <p>contain (1) 162:4</p> <p>contains (2) 160:16;161:10</p> <p>cont'd (1) 9:19</p> <p>content (1) 16:22</p> <p>context (2) 9:1;130:6</p> <p>continuation (2) 115:11;119:14</p> <p>continue (7) 9:17;17:1;49:8,11, 13;61:17;139:17</p> <p>continued (1) 115:5</p> <p>Continuing (2) 140:14;162:16</p>	<p>contrast (1) 82:14</p> <p>control (1) 49:7</p> <p>convenience (1) 113:15</p> <p>conversation (5) 7:11;94:7;144:17; 150:10;167:9</p> <p>conversations (5) 137:23;138:5,9,19; 169:24</p> <p>Conversely (1) 157:1</p> <p>Cooperative (1) 58:7</p> <p>copy (1) 131:19</p> <p>correctly (4) 32:14;42:19;45:12; 156:23</p> <p>corridor (6) 62:17;102:5,8; 106:10,18;108:2</p> <p>corridors (2) 83:16;106:4</p> <p>Cortez (1) 138:5</p> <p>counsel (8) 3:20;5:1,9;7; 129:23;130:2,3,4,6</p> <p>count (5) 39:1;84:15,24; 92:13;118:11</p> <p>counterproposal (1) 5:8</p> <p>counting (4) 45:8,12;47:7;48:10</p> <p>country (1) 89:14</p> <p>County (1) 161:20</p> <p>couple (4) 3:9;48:23;69:9; 85:12</p> <p>course (3) 77:19;138:12; 139:4</p> <p>courses (2) 166:11;178:4</p> <p>Court (4) 24:22;122:17; 136:12;172:4</p> <p>cover (4) 130:16;160:18; 161:11;162:5</p> <p>covered (5) 23:23;36:21;77:1; 141:16;163:6</p> <p>covering (2) 110:10,13</p> <p>Crane (117) 9:17,18,20;16:7,14,</p>
--	--	---	--	--

22;17:3,20,22;18:9; 26:23;27:1,4;30:18, 21;34:1,3,10,16,20; 35:1,9,11;36:6,8; 37:19,24;38:3,6,40;8, 10;42:10,12,48;19; 49:3,22,23;50:9,12; 52:5,8,11,17,21;53:7, 14;54:3,7,10,24;55:7, 12;56:7,13,17;57:1,7, 20,23;59:16,21;60:5, 9,18;61:1,2,9,16,18; 69:17,18;70:5;71:14, 15,21;73:6,10,17; 76:18;79:22;80:4; 84:20;85:2;86:10,12; 92:23;100:11,14; 103:3;107:5,11; 108:6,8;109:15,19; 110:21,22;111:3; 112:2,3;116:3,7,20; 117:12,16,17;119:7, 13;122:4;123:14,18; 124:14;125:8; 126:10;127:9; 128:21;129:10 create (1) 6:22 created (2) 62:14;124:21 creates (1) 68:8 credit (2) 67:3;111:1 crews (1) 173:8 crisp (1) 61:11 criteria (1) 89:2 cross (7) 3:14,18;5:12,13, 19;101:20;129:22 cross-examination (6) 4:20;8:18;9:19; 130:12,13;131:2 crossings (3) 123:11;132:17,18 cross-section (2) 64:7,8 cross-sectional (2) 43:21;62:13 crowd (1) 166:13 crowding (5) 174:9;176:24; 177:3,9,11 crude (1) 11:11 crystal (1) 170:17 cultural (6) 3:15;24:5;81:17;	105:21;185:3,7 curbs (1) 177:21 Curbside (1) 183:2 current (7) 57:4;97:9;125:3; 137:17,20;142:11; 159:8 currently (3) 55:22;74:11; 181:18 customers (3) 21:3,5;23:9 cut (17) 37:8;38:15;49:18; 50:1;53:1;55:5,14,17, 20;56:14,20;57:13; 66:7,13;107:5; 144:18;181:9 cutting (8) 26:1;51:20;56:1, 24;66:18,20;67:2,23	183:19 debate (1) 181:11 December (1) 111:16 deciduous (1) 74:9 decision (3) 167:11;169:11; 176:10 decisions (1) 169:8 deck (2) 107:4;128:23 decline (1) 67:10 deeds (1) 116:17 Deerfield (4) 10:11;20:24;46:23; 100:19 defined (2) 82:9;164:4 definitely (1) 132:2 definition (8) 18:24;27:23;69:20; 83:15,20;86:9;87:15; 170:19 definitions (1) 77:18 degree (1) 183:6 delightful (1) 89:24 dense (6) 63:21;74:8;79:6; 163:7,10;164:11 densely (1) 176:22 density (1) 149:11 Department (23) 54:18;57:5;111:7; 128:15;132:12; 133:10;134:1,8; 136:24;137:18; 138:2,10,16,17; 140:15;142:6,12; 156:13;158:12; 165:23;168:9; 169:11;182:19 depend (2) 39:6,7 depends (4) 39:5,11;158:1; 167:5 depict (2) 47:2;114:4 depicted (4) 20:10;34:5;36:19; 37:5 depiction (3)	35:2;45:12;62:6 depicts (1) 73:12 describe (2) 68:22;126:20 described (13) 11:5;18:10;19:22; 31:18;47:9,14,19; 81:15;91:2;146:14; 147:4;182:10,12 describing (1) 162:2 description (7) 19:5,24;23:20; 98:20;99:24;113:21; 131:15 descriptions (1) 98:18 design (2) 155:20;167:10 designate (2) 121:22,23 designated (9) 11:6;13:18;83:7; 85:10;100:4;106:17; 125:17;173:20,22 designates (1) 43:14 designation (5) 10:22;11:8;12:12; 83:4;102:8 designations (3) 103:4,7,19 designed (1) 64:9 desirable (1) 153:3 desires (1) 143:1 destination (9) 30:10;89:8,13; 90:11;91:14;92:7,17; 94:13;96:22 destinations (6) 89:5,17;91:2,6,24, 24 detail (4) 124:2,19;163:13; 178:13 details (1) 125:19 determination (4) 5:18;140:17; 146:24;169:10 determine (3) 23:13;43:15;98:12 develop (2) 41:24;49:17 developed (1) 61:6 development (29) 6:2;21:10;22:10, 24;23:1,14,15,15,16;	24:14;25:7,11,13; 27:11,16,19;32:10; 33:9,18,22;35:4;39:2, 4;40:22;41:7,12; 51:18;111:8,13 devices (1) 27:2 DeWan (490) 10:2,6,13,18,23; 11:3,10,18;12:4,15, 17,21;13:5,9,15,19, 22;14:2,7,20,23;15:2, 5,14,21;16:13;17:6, 13,18;18:12;19:22; 20:11,17,19;21:3,5, 14,18,21;22:1,3,10, 17,23;23:6,10,23; 24:15,19,23;25:9,14; 26:4,8,15;27:13,17, 19,24;28:13,16;29:4, 8,12,16,18;30:1,4,7, 12,15;31:5,9,12,15, 22;32:1,8,12,16,21, 23;33:6,11,16,23; 34:7,22;35:5,16,20; 36:1,3,12,18,21;37:1, 7,12,18;38:9,12,19; 39:5,11,18,21;40:3, 13,16,24;41:8,13,24; 42:8,16,20,23;43:2,9, 12,15;44:5,8,10,13, 17;45:3,9,16,21,24; 46:6,13,18;47:1,3,9; 48:5,23;49:9,11;50:2, 6,16,21;51:3,9,16; 54:11,13,17,21;55:2, 13,19;56:8;57:3,16; 58:1,5,9,16,19;59:1, 8,10,13;61:23;62:3,8, 13;63:5,15,20;64:2,9, 15,23;65:9,14;66:3, 11,18;67:11,20;68:1, 5,14,16,24;70:6,10, 17,22;71:1,5,8;72:1, 11,15,21;73:2,20; 74:8,13,15,24;75:3,5, 9,20;76:2,7,21;77:9, 18;78:3,7,11;79:6,11, 15,20;80:9,19,24; 81:3,6,11;82:12,20; 83:4;84:8,17;85:13, 16,19;86:3,7,16,19; 87:1;88:4,6,9,20; 89:23;90:14,17; 91:10,19;92:3,15; 93:6,9,20;94:1,5,14, 24;95:4,6,12,16,19, 21,24;96:4,10,19,22; 97:5,10,17,22;98:8; 99:4,21;100:20,22; 101:3,9,13,22;102:2, 15,21;103:6,11,20; 104:1,8,14,18,20;
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<p>105:1,5,17;106:3,6, 19;107:1,20;108:4, 11,14,19,23;109:4, 11,24;110:3,6,9,14; 111:20;112:7,12,16, 23;113:4,7,10,16,21; 114:5,9,24;115:5; 116:12,16,23;117:5; 118:2,7,13,22;119:2, 17,19;120:4,8,14,16, 19;121:3,18;122:12, 15,18,20;123:1,5,9, 20,24;124:2,7,10,19; 125:13,15,18;126:18; 127:2,6,15;128:2,11, 17;131:10,16;132:7, 10;133:22;134:4,12, 19;135:2,16,21; 136:7,16,22;137:5,8, 16,22;139:15,20; 142:19;143:14; 144:2,9,14;146:10, 19;147:3,17;148:2, 23;149:7;150:2,10, 16,20;151:4,9,18,20; 152:12;153:3,7,18; 154:16,21;155:4,7, 12;156:3,10,24; 157:6,9,21;158:1,10; 159:3,8;161:2,5,13, 19,21;162:8,13,15; 163:13;165:6,9,14, 21;166:1,5,21;167:5, 9,18,22;168:5,14,19; 169:9,16;172:6,8,10, 21;173:2,17,24; 174:6,13,16,18; 175:11,15,23;176:4, 9,20;177:2,8,15,19, 24;178:12,20,24; 179:6;182:5,9,14,24; 183:4,7,10,13,16</p> <p>diagonally (1) 93:12</p> <p>diagram (2) 43:21;62:14</p> <p>diameter (2) 56:10;66:8</p> <p>die (1) 49:14</p> <p>dies (1) 68:8</p> <p>difference (4) 47:16;100:3; 103:17,19</p> <p>differences (1) 46:8</p> <p>different (15) 14:13;18:21;34:23; 67:16,18;78:7;85:20; 86:4;110:2;112:4; 120:1,5;127:12; 154:21;181:13</p>	<p>difficult (2) 45:4;170:8</p> <p>dig (1) 171:14</p> <p>digging (1) 148:1</p> <p>digital (2) 47:17,17</p> <p>dimensions (1) 44:18</p> <p>direct (2) 8:24;117:10</p> <p>direction (2) 141:7;160:14</p> <p>directions (1) 30:20</p> <p>directly (1) 47:3</p> <p>dirt (2) 88:6,8</p> <p>DIS045441 (1) 46:24</p> <p>DIS045465 (1) 47:11</p> <p>disagree (1) 70:3</p> <p>disclosures (1) 6:23</p> <p>discouraged (2) 88:19;121:18</p> <p>Discovery (2) 132:23;159:21</p> <p>discuss (3) 8:2;39:16;87:23</p> <p>discussed (2) 124:19;153:19</p> <p>discusses (2) 159:11,13</p> <p>discussing (1) 123:10</p> <p>Discussion (13) 9:15;13:22;20:2; 23:22;40:16,17;87:1; 92:22;129:13; 142:12;168:8; 175:23;184:2</p> <p>discussions (5) 137:18,21;140:15; 141:9,23</p> <p>disinviting (1) 30:5</p> <p>dispute (3) 156:8;161:8;177:2</p> <p>distance (6) 49:1,4;63:11; 94:10;107:23;152:4</p> <p>distant (1) 105:6</p> <p>distinction (1) 103:15</p> <p>distribution (1) 160:10</p> <p>District (1)</p>	<p>162:19</p> <p>disturbance (4) 138:12;144:22; 168:2;169:3</p> <p>disturbances (3) 145:2;168:20,24</p> <p>disturbed (20) 133:7,11,14; 134:10;142:8; 143:17;144:3,5,6; 156:19;157:2,19,22; 158:2,8,15;160:22; 178:10,17;181:18</p> <p>ditch (19) 138:24;139:21,24; 140:5;141:20; 147:21;148:1;152:3, 7,9;160:6,18;161:12; 162:6;163:5;174:11; 182:15,16,21</p> <p>ditches (6) 133:8;134:2,11; 135:8,11;139:13</p> <p>divided (1) 183:17</p> <p>Division (1) 111:8</p> <p>document (31) 24:3;31:4;32:22; 33:3,12;50:20;51:2, 8;54:12;57:17,24; 59:7,8,9,11;76:1; 122:14;131:6,19; 132:5,12,21;133:5, 24;134:16;135:3,13; 136:14,17;158:17; 161:18</p> <p>documents (1) 127:2</p> <p>dominant (1) 127:10</p> <p>Don (1) 138:5</p> <p>done (14) 42:9;46:6;59:4; 61:12;73:19;75:12; 76:23;117:14;128:5; 140:24;168:15; 174:19;184:13,17</p> <p>dot (10) 25:14;26:3,15; 27:10;95:10,23; 145:20;146:1; 165:13;179:2</p> <p>dots (3) 15:5,7;95:12</p> <p>doubt (6) 4:12;21:21;30:4; 79:20;104:18;105:17</p> <p>down (30) 9:24;11:15;13:11, 13;14:8;17:8;22:5; 31:12;37:3,20;39:13;</p>	<p>41:1;65:2;69:5; 71:10;73:20;78:19; 79:1;82:22;107:5; 108:15;109:13,14,20; 120:6;121:6;124:24; 133:1;157:17;159:16</p> <p>downriver (1) 21:6</p> <p>downstream (1) 25:1</p> <p>dozen (1) 69:9</p> <p>drafted (1) 134:6</p> <p>drainage (3) 139:21,24;140:5</p> <p>Drake (1) 125:12</p> <p>drawing (1) 46:13</p> <p>drawings (2) 146:20,22</p> <p>drilling (1) 148:14</p> <p>drive (4) 85:3;89:6;125:6; 176:18</p> <p>drives (2) 89:4;166:15</p> <p>driveway (1) 86:21</p> <p>driving (2) 136:9;141:17</p> <p>drove (3) 85:6;125:1;136:1</p> <p>dual (1) 61:4</p> <p>duct (1) 140:12</p> <p>ductwork (1) 147:5</p> <p>due (5) 21:9;42:23;133:2; 160:24;165:1</p> <p>dug (2) 143:9;150:8</p> <p>duplicative (1) 185:10</p> <p>duration (2) 65:23;102:12</p> <p>during (12) 3:16;42:17,20; 43:5;63:9,16;64:16, 17;65:11;68:18; 89:11;114:9</p> <p>duty (1) 17:13</p> <p>dwelled (1) 93:15</p>	<p>12:2;31:13;32:7; 33:16;35:13;47:15; 65:18;68:7;78:9; 79:18;82:16;97:19; 98:10;131:11;132:6; 140:20;147:4; 167:13;170:2; 175:15;185:3</p> <p>early (1) 7:22</p> <p>earth (2) 69:4;162:15</p> <p>easement (22) 19:17;26:21;82:16; 123:7,10,21;124:21; 125:24;126:17,21,22; 127:14,18;128:1,2,4, 8;145:13,15,21; 146:1,4</p> <p>easements (1) 145:17</p> <p>easier (4) 46:7;104:3;124:5; 135:8</p> <p>east (5) 45:15;95:2;100:1; 161:23;174:21</p> <p>eastern (2) 43:4;44:24</p> <p>Easton (3) 166:7;174:7; 179:24</p> <p>easy (1) 62:19</p> <p>eat (1) 114:16</p> <p>Economic (1) 111:8</p> <p>edge (16) 138:24;139:6,23; 140:3;142:1;147:6,7, 8,19,20;149:8,18; 151:23;152:1,3; 182:15</p> <p>educational (1) 111:15</p> <p>effect (9) 29:12;30:16;55:15; 56:1;72:3;93:22; 98:7;143:18;182:11</p> <p>effectiveness (2) 43:16;62:14</p> <p>effects (3) 126:21;159:5,6</p> <p>efficient (1) 61:11</p> <p>eight (1) 104:11</p> <p>either (17) 11:12;13:10;25:22; 42:3;54:6;55:15; 69:14;82:23;84:24; 87:5;96:7;106:24;</p>
E				
earlier (21)				

110:6;131:24; 141:15;146:7;152:10 elements (2) 41:19;185:11 elevated (5) 80:7;97:5;98:16; 99:6,19 elevation (1) 75:17 elevations (2) 80:17;93:2 eligible (1) 87:8 eliminate (1) 168:1 eliminated (2) 96:15;156:23 ELMO (1) 131:22 else (11) 4:12,16;10:15; 15:11;65:21;68:20; 91:13;101:12;110:1, 1;184:23 elsewhere (1) 102:14 embankment (2) 69:5,6 embargoed (1) 115:10 emphasis (1) 51:17 enacted (1) 58:11 encompass (1) 112:15 encroachment (1) 151:2 end (7) 5:21;21:1;22:8; 49:5;52:10;181:22, 24 endpoint (2) 52:9;98:11 endpoints (1) 136:8 ends (2) 13:11;48:2 engineer (2) 138:4;141:11 engineering (8) 137:24;138:6; 140:13;141:3; 146:19,22;168:15; 178:12 engineers (2) 138:6;167:10 enhance (1) 6:24 enjoy (3) 90:2;91:21;114:11 enjoying (1) 91:13	enlargement (1) 38:13 enormous (1) 60:19 enough (12) 42:9;53:2;102:6; 103:13,18;104:16; 106:22,23;115:22; 116:19;120:11; 140:23 ensue (1) 140:16 enter (1) 72:4 entertainment (1) 84:22 entire (6) 57:17;64:3;71:3; 136:1;183:17,23 entirely (1) 62:7 entitled (2) 52:24;76:16 entrance (1) 75:23 entry (2) 107:19;108:1 entryway (1) 13:17 environment (2) 75:13;138:17 Environmental (9) 54:18;57:6;152:17, 24;156:16,21;157:4; 158:5;173:11 equipment (8) 147:24;148:13; 152:21,22;153:8,17; 171:13;172:23 erosion (4) 70:7,12;71:16,22 especially (4) 65:16;99:7;152:15; 160:9 essentially (3) 75:22;108:1; 112:10 establish (1) 69:19 established (2) 80:15;84:5 establishing (1) 69:23 Estate (1) 125:12 estates (1) 127:11 estimates (2) 23:4;129:5 estimation (1) 163:14 evaluate (5) 23:12;62:14;64:9;	87:21;115:1 evaluated (5) 66:24;102:10; 118:3;123:11;185:13 evaluating (4) 20:4;24:11;81:13; 106:14 evaluation (16) 25:2;33:18;44:16, 19;67:13;76:9,23; 81:8;85:14;87:3; 98:13;135:24; 138:16;140:24; 149:13;169:5 Even (17) 68:19;72:17;80:16; 84:12;87:16;90:2; 92:4;98:23;100:13; 102:10;126:12; 130:3;141:20;152:6; 167:1,15;169:21 everybody (3) 5:20;6:17;170:8 everyone (3) 7:12;8:1;132:14 evidence (1) 41:4 exact (1) 159:6 exactly (6) 35:23;46:3;68:24; 137:8;141:11;146:16 exaggerated (1) 46:12 exaggerating (1) 46:2 exaggeration (1) 45:21 examination (4) 8:19;61:12;128:22; 130:10 examined (1) 103:17 example (9) 5:1;6:2;68:7; 77:23;78:15;88:21; 91:1;98:20;99:22 except (2) 28:8;80:10 exception (2) 60:19;136:7 exceptions (6) 138:1;168:5; 173:13,16,18,19 excerpts (1) 15:18 exclude (1) 30:3 excuse (1) 87:7 exempt (1) 58:20 Exhibit (10)	10:11;17:4;20:24; 35:22;46:23;72:9; 100:19;131:7,7; 159:21 exist (1) 49:8 existed (1) 106:13 existence (1) 139:6 existing (14) 33:19;43:16;46:9; 66:23;67:7,12,14; 69:13,20;70:10; 76:10;121:6;160:9; 174:10 exists (1) 100:7 expand (1) 8:23 expansive (1) 85:20 expect (7) 22:18;24:4,9; 39:14;42:5;152:13; 184:14 expectation (4) 10:17;22:14,17; 23:2 expectations (2) 23:4;39:8 experience (9) 10:17;21:11;22:11, 20,21;25:3;27:24; 65:15;121:2 expert (3) 3:12;5:1;158:20 experts (2) 169:14,15 explain (1) 8:14 explained (3) 63:5;147:23; 151:21 explored (1) 99:20 exploring (1) 31:17 extend (2) 151:24;182:15 extended (1) 3:18 Extending (1) 176:15 Extension (1) 58:7 extensive (5) 59:14;133:6,17; 158:6,13 extensively (2) 125:24;175:2 Eye (3) 44:8,10,11	eyesight (1) 43:24 <hr/> F <hr/> faced (1) 178:16 facilities (2) 64:24;150:21 facility (9) 78:17;79:2;84:9; 138:21,21;139:10; 140:1;141:13;175:9 facing (1) 88:2 fact (23) 5:5;13:17;28:5; 38:8;40:12;47:6; 55:13;65:14;66:13; 67:14,17;69:12; 76:12;79:17;106:13; 108:14;113:16,18,19; 116:8;121:19; 126:13;177:15 factor (1) 139:23 factors (1) 167:13 facts (1) 180:5 fair (11) 24:9;71:20;105:16; 106:22;116:18; 136:15,21;137:2; 158:19;171:2;176:18 fairly (2) 140:3;181:8 fall (2) 114:10,11 falling (1) 84:22 Falls (21) 9:22,23;10:7,16; 19:8,16,22;31:1; 36:14,17,17;38:8,9, 11,20;40:12,19;45:9; 61:21;75:1;81:20 falls.JPG (1) 28:13 familiar (9) 21:16;102:6;103:4, 6,18;114:22;120:11; 122:10;143:24 fancy (1) 142:14 far (8) 10:12;40:21;95:4; 140:2;142:15; 146:23;167:16; 168:14 farm (5) 74:21;75:6,10; 93:21;161:23
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<p>farmhouse (3) 93:18,20;97:24</p> <p>Farms (1) 93:23</p> <p>farmscape (1) 93:9</p> <p>fast (1) 53:22</p> <p>favor (1) 60:20</p> <p>favorably (1) 41:16</p> <p>favorite (1) 101:6</p> <p>fear (2) 5:19;6:22</p> <p>feature (1) 95:22</p> <p>features (5) 82:9,13;158:5; 165:2;173:12</p> <p>federal (1) 111:17</p> <p>fee (2) 78:20,24</p> <p>feel (4) 8:10;41:15;80:2; 130:9</p> <p>feet (66) 10:13,14;20:14; 44:6,7;48:16,18; 49:1;51:5;52:24; 53:1;62:3,5,24;63:7, 12,20;68:16;138:23; 139:2,13;140:23; 141:7;142:1;146:3,5, 6,7;147:6,7,14,15,24; 148:13,15,17,18; 149:2,4,9,18;151:16, 24;152:1,1,20,21; 154:11;162:24; 163:2,8;170:1,3,4,10, 11,12,14,18;171:9; 172:20,23;177:6,13; 182:12,21</p> <p>felt (2) 45:3;145:2</p> <p>fences (8) 149:22;160:17; 161:11;162:5,24; 163:7;164:21;177:22</p> <p>few (8) 12:19;20:14;80:15; 92:16;105:12; 141:23;160:19; 164:22</p> <p>field (17) 15:5,7;25:19; 48:13;49:2,4;76:4,9; 85:8,14;86:2;95:9,11, 14,15;108:19;121:20</p> <p>fields (2) 93:10;161:21</p>	<p>fifty (2) 48:18;68:16</p> <p>Fifty-two (2) 179:22;180:16</p> <p>fight (1) 101:17</p> <p>figure (3) 26:6;103:23; 166:18</p> <p>figured (1) 8:5</p> <p>filed (2) 134:23;138:1</p> <p>fill (1) 171:14</p> <p>filter (2) 63:17;66:15</p> <p>filtered (10) 43:2;62:10,12; 63:4,10;64:1,2,10; 81:18;105:22</p> <p>final (6) 139:3;140:10,17; 143:17;168:14; 176:10</p> <p>find (10) 24:24;32:19,21; 33:2,11;43:18;48:19; 70:2;84:14;182:17</p> <p>finding (1) 88:15</p> <p>finds (1) 140:6</p> <p>Fine (2) 14:10;182:2</p> <p>finish (3) 17:10;127:7; 139:18</p> <p>fire (1) 139:8</p> <p>first (20) 7:4,24;21:2;22:2; 39:21;41:22;42:16; 50:16;51:5;58:8; 64:13;95:15;115:19; 132:9;136:16;150:6; 155:18;159:13,16; 174:20</p> <p>fit (1) 153:8</p> <p>five (3) 32:10;44:7;120:17</p> <p>five-minute (1) 129:15</p> <p>flat (1) 84:23</p> <p>flexibilities (1) 141:4</p> <p>flexibility (1) 6:11</p> <p>floated (1) 71:10</p> <p>flourish (1)</p>	<p>49:13</p> <p>flow (1) 157:10</p> <p>focus (2) 126:5;159:16</p> <p>foliage (3) 114:6,10;119:19</p> <p>follow (2) 57:4;114:12</p> <p>followed (1) 57:18</p> <p>follows (2) 19:16;164:17</p> <p>follow-up (1) 184:12</p> <p>foot (2) 171:11,12</p> <p>football (2) 49:2,4</p> <p>footpath (1) 72:19</p> <p>foreground (8) 13:10;70:20;71:4, 11;86:13,18;101:14, 16</p> <p>forest (3) 14:24;68:8;163:18</p> <p>forgetting (1) 88:17</p> <p>form (7) 25:10;74:12,13,15, 16,16;92:10</p> <p>formal (4) 11:5;23:22;80:9; 81:19</p> <p>formerly (1) 58:10</p> <p>forming (1) 145:22</p> <p>forms (1) 85:21</p> <p>forth (4) 23:19;60:1;90:7; 173:12</p> <p>forward (5) 6:18;30:20;100:12; 127:22;184:22</p> <p>found (5) 76:8;98:21;99:1; 107:9;141:8</p> <p>founded (1) 15:21</p> <p>four (5) 35:19;56:9;66:11; 128:24;142:3</p> <p>franchised (1) 118:12</p> <p>Franconia (4) 115:2;147:13; 164:8;166:6</p> <p>Franconia's (1) 164:19</p> <p>Franklin (2)</p>	<p>174:7;179:24</p> <p>friendly (3) 5:13;8:19;129:22</p> <p>front (15) 20:14;86:16;88:7, 8;89:12;131:6; 132:13;148:24; 149:3,19,23;155:17; 162:10;169:4;183:3</p> <p>full (3) 36:9;133:1;157:16</p> <p>fully (1) 89:10</p> <p>fun (2) 57:21;79:24</p> <p>function (1) 128:3</p> <p>funds (2) 84:6;111:17</p> <p>furs (1) 74:17</p> <p>further (6) 45:2;98:13;140:13; 175:4,23;183:21</p> <p>furthermore (3) 157:18,18;160:15</p> <p>furthest (1) 10:22</p> <p>future (1) 69:15</p>	<p>165:12</p> <p>goal (2) 169:1,2</p> <p>goals (3) 133:4;142:23; 143:6</p> <p>goes (12) 17:8;62:6;82:21; 133:13;152:6,8; 156:6;158:3;160:1,8; 161:7;177:20</p> <p>good (8) 4:9;28:19;85:1; 98:23;111:1;115:21; 131:5;184:9</p> <p>Google (5) 10:8,10;48:20; 121:8;162:15</p> <p>govern (1) 75:12</p> <p>grades (1) 160:19</p> <p>Grafton (2) 131:7;132:14</p> <p>granted (2) 77:10;136:19</p> <p>grants (1) 111:10</p> <p>grass (1) 141:20</p> <p>gravel (4) 23:17;76:11;89:10; 141:19</p> <p>great (2) 173:24;174:1</p> <p>greatly (2) 156:22;160:11</p> <p>green (7) 10:5;104:9;112:7, 11,12,24;113:3</p> <p>ground (2) 72:4;142:18</p> <p>group (1) 78:24</p> <p>groups (1) 29:2</p> <p>grow (2) 49:14;68:10</p> <p>growing (2) 150:18;166:21</p> <p>growth (4) 67:4;72:6;163:8,11</p> <p>guaranteed (1) 134:17</p> <p>guess (6) 26:10;48:1;84:21, 23;111:1;120:12</p> <p>guessing (1) 41:21</p> <p>guests (1) 30:22</p> <p>guidance (2) 135:18,21</p>
G				
			<p>gain (2) 18:3;45:5</p> <p>Gale (1) 164:16</p> <p>gaps (1) 6:20</p> <p>gather (2) 38:1;94:6</p> <p>gave (1) 179:1</p> <p>general (10) 10:2,15;77:10; 81:7;88:21;101:22; 120:22;138:23; 166:2;182:14</p> <p>generally (6) 14:8;81:16;140:3; 147:21;174:16; 182:17</p> <p>generic (1) 5:24</p> <p>gets (1) 29:7</p> <p>given (7) 12:12;27:8;129:5; 166:1;179:9;184:7, 12</p> <p>gives (1) 171:17</p> <p>giving (1)</p>	

<p>Guide (2) 58:1;59:14 guidebook (1) 98:22 guidebooks (2) 98:18;99:2 guidelines (2) 51:4,6 guild (1) 9:1 Guy (1) 162:22</p>	<p>harder (1) 94:19 hardest (1) 122:10 Harvesting (5) 58:2,20;59:4; 67:15,18 head (1) 106:23 heading (1) 174:21 heads (1) 11:19 health (1) 77:21 hear (2) 50:16;123:1 heard (6) 126:6;140:19; 141:22;142:20; 144:20;150:23 Hearing (5) 3:2;61:15;129:17; 169:1;186:8 heart (1) 112:11 heavily (2) 103:13,24 heavy (4) 115:6;160:17; 161:11;162:5 hedges (1) 150:24 height (5) 44:8,10,11;47:16; 125:5 help (4) 15:19;58:11;82:3; 105:4 helpful (1) 127:4 helping (1) 98:12 helps (1) 64:8 hemlock (1) 74:18 hemlocks (1) 74:17 Here's (1) 120:2 hesitate (1) 125:18 high (1) 184:16 higher (1) 72:5 highly (5) 21:11;22:11;170:3; 178:11,14 highway (6) 124:23;125:3; 160:2;164:11;</p>	<p>166:10;178:5 Highways (1) 132:19 hill (4) 29:9;92:6;164:13; 179:24 hills (1) 93:13 hint (1) 120:3 historical (20) 3:12;35:17;87:4,8, 9;155:22;156:1,3,17, 21;157:4;158:4; 165:1;166:11;179:4, 9,11,16,20;185:12 historical (4) 39:22;40:2;133:19; 178:22 history (2) 41:4;115:12 hit (1) 73:4 hitting (1) 167:3 Hobo (9) 114:22,23;117:1,4, 5,18;118:23;119:2,4 Hodgdon (7) 132:15;136:13; 156:12;157:13; 159:1,11;174:3 Hodgdon's (3) 156:8;158:21; 162:16 holes (1) 143:8 home (2) 100:24;114:21 homes (1) 23:17 Honestly (1) 52:8 HONIGBERG (81) 3:3,19,23;4:5,15; 6:7;7:7;9:12,16;16:9, 20;17:20;18:5;26:23; 49:22;52:7,16,18; 53:5,9,16;54:4;55:9; 56:6,12,15;61:8,16; 69:17,22;71:14,19; 73:15;77:7;92:20; 103:1;107:3;110:24; 115:24;116:5,10,14, 18;117:9,13;119:5, 12;122:3;124:11; 126:3;127:7;128:21; 129:14,18;130:20; 131:23;153:12; 154:3;158:18,22; 171:1,4,10,16,22; 172:5,12;180:6,14, 19;181:2,5,12,21;</p>	<p>182:3;183:22;184:3, 21;185:16,22;186:4 hope (7) 74:18;114:1; 145:10;170:19; 172:24;173:15;185:9 hoped (1) 59:22 hopes (1) 143:6 hoping (4) 24:1;71:15;169:6; 170:1 horizontal (3) 25:18;95:24;96:2 hours (3) 55:2;80:15;128:24 house (1) 96:8 houses (1) 149:24 Huh (2) 44:9;74:14 human (16) 24:13;25:11,13; 27:10,15,19;32:10; 33:9,17,22;35:4;39:1, 3;40:22;41:6,11 hundred (5) 48:18;68:16; 105:13;141:6;173:22 hydrants (1) 139:8 hypothetical (8) 171:19,21;172:6,8, 9,11;181:24;182:2 Hypothetically (1) 182:9 hypotheticals (1) 162:9</p>	<p>80:12,16;82:8;85:9, 18;97:16;99:11; 113:8;114:21;117:7; 118:5 identifying (3) 8:10;38:22;113:6 ie (1) 135:23 II (1) 58:19 illegible (1) 124:13 imagine (2) 30:2;140:4 immediate (5) 13:10;71:11;90:5; 101:14,15 immediately (10) 15:3;25:17;48:13; 93:16;94:6;95:16; 136:2;152:5,8; 179:21 impact (35) 6:14;55:15,18; 61:20;66:17;75:16; 80:5,9,16;102:11; 105:18,23;123:12; 124:17,20;126:19; 127:20;131:12; 133:18;135:6;143:3; 146:9;147:2,10,16; 148:22;149:5,9; 150:1;152:10; 167:14;178:18; 180:2;181:19;183:16 impacted (4) 158:4,6;164:23; 175:4 impacts (13) 127:23;133:15; 135:14,19;153:15; 155:21;156:16,20; 157:3,11,12;160:24; 161:17 implications (1) 177:9 implies (5) 76:13,15;84:8; 90:8,9 importance (1) 176:21 important (6) 6:13;22:22;23:9; 127:15,21;183:2 importantly (2) 133:17;175:5 impossible (1) 147:17 inaccurate (2) 170:20;173:1 inappropriate (2) 15:9;52:15 inaudible (1)</p>
H				
<p>habitat (1) 60:3 half (6) 7:4,6;49:1;120:10; 132:24;149:16 halfway (1) 148:16 Hampshire (26) 26:20;50:3;54:18; 55:23;58:2,6;59:5,6, 14;89:18;112:8,21; 113:1;115:16;117:7; 132:12;133:10; 134:1,8;145:24; 156:13;158:11; 165:4,8;169:20; 174:4 Hampshire's (2) 51:23;58:12 Hampton (1) 21:6 handle (1) 173:5 handling (1) 4:3 handwritten (1) 72:10 hang (1) 53:4 Hannigan (1) 138:7 happen (11) 49:10;67:2;68:20; 72:23;85:3;143:4,8; 146:11;169:1,7,18 happened (5) 68:22,24;71:16,22; 72:13 happening (4) 25:17;73:3;104:6; 168:17 happens (1) 185:20 happy (1) 87:22 hard (4) 13:2;35:12;122:21; 124:3</p>			<p>hoped (1) 59:22 hopes (1) 143:6 hoping (4) 24:1;71:15;169:6; 170:1 horizontal (3) 25:18;95:24;96:2 hours (3) 55:2;80:15;128:24 house (1) 96:8 houses (1) 149:24 Huh (2) 44:9;74:14 human (16) 24:13;25:11,13; 27:10,15,19;32:10; 33:9,17,22;35:4;39:1, 3;40:22;41:6,11 hundred (5) 48:18;68:16; 105:13;141:6;173:22 hydrants (1) 139:8 hypothetical (8) 171:19,21;172:6,8, 9,11;181:24;182:2 Hypothetically (1) 182:9 hypotheticals (1) 162:9</p>	<p>I</p>
			I	
			<p>I-93 (2) 104:21,24 IACOPINO (6) 34:12,17;59:16,24; 60:7,13 idea (5) 13:19;25:15;32:1; 112:23;134:6 ideal (3) 139:2,20;168:6 identification (1) 81:23 identified (11) 29:2;61:21;81:6, 15;83:19;86:24; 99:17,20;103:20; 105:21;142:4 identify (17) 24:10;25:5;33:23; 36:4;40:5,51;24;</p>	

119:11 inch (1) 34:21 inches (2) 56:10;66:9 inclined (2) 6:12;7:2 include (16) 3:18;4:24;19:19; 60:10,22,23;67:8; 81:22;83:2;90:13,16; 91:4,23;127:2,23; 144:6 included (7) 32:14;81:7,24; 101:6;103:8;111:12; 114:19 includes (5) 55:24;60:2;82:11; 84:3;182:16 including (4) 81:12;94:7;146:2; 175:3 incomplete (1) 70:18 increase (1) 52:15 indeed (2) 33:14;80:14 indicate (4) 25:16,18;59:17; 184:8 indicated (1) 121:19 indicates (3) 102:4;112:24; 130:5 indicating (2) 46:14,15 indication (2) 10:23;129:2 indicator (2) 10:5,6 indistinct (1) 93:13 individual (2) 78:24;144:16 individuals (2) 138:20;140:10 information (36) 4:19,23;5:16;8:16; 19:19;28:19;99:23; 103:22;106:20,22; 127:3,21;128:12; 137:13;139:5; 146:23;147:3; 148:24;149:2;150:9, 12;153:19;155:13; 165:12,14,20,22; 166:1;167:18,22; 168:19;179:2,3,7; 183:11,14 informed (1)	137:17 informing (1) 84:13 infrastructure (2) 83:9;90:9 initial (1) 179:8 initially (2) 145:7,8 Innumerable (1) 177:20 input (1) 136:14 inside (1) 121:10 install (2) 143:12;170:15 installation (1) 160:12 Installations (2) 132:18;175:3 instance (1) 49:18 instances (1) 184:11 instead (4) 27:3;88:2;99:10; 152:9 instinct (1) 41:24 institutions (2) 176:23;177:4 instructed (1) 173:9 intend (2) 8:16;151:21 intended (3) 25:4;28:20;156:15 intent (6) 31:7;51:21;124:14; 142:20,23;152:14 intentions (1) 115:14 interact (1) 30:11 interactive (1) 100:17 interconnected (1) 102:17 interested (1) 143:15 interesting (2) 18:15;85:21 interests (1) 130:8 Intermap (1) 47:14 intermediate (1) 125:2 interpret (2) 64:8;90:15 interpretation (2) 39:12;112:22	interrupt (1) 131:18 interrupts (4) 24:22;122:17; 136:12;172:4 intersection (5) 93:4;107:9;164:6, 7;174:21 intersects (1) 125:16 Interstate (13) 10:12;24:6;82:23; 96:5,11,13;104:6,10, 12;124:23;125:6; 126:23;128:5 intervenors (1) 183:24 into (43) 7:17;14:9;16:24; 20:3;21:22;23:3; 24:13,13,19;25:6,21; 27:14;31:20;43:23; 52:20,23;53:19,20, 24;58:22;59:2;67:1; 70:7;80:24;87:4,10, 22;88:14;106:13; 116:1;118:13; 124:15;126:12; 128:7;141:10; 143:14;148:16; 149:3,19;152:6,8; 167:16;181:23 invalid (1) 171:18 invariably (1) 175:6 invited (2) 30:24;88:18 involved (3) 5:21;21:17;74:21 involves (1) 46:3 iron (3) 165:4,7;174:3 isolated (1) 24:17 issue (12) 4:17;7:8;99:13; 129:20;130:17; 144:4;145:5,5; 168:23,24;169:4; 185:4 issued (2) 3:10;129:21 issues (6) 141:8;148:4,8; 166:9;178:16;186:1 issuing (1) 7:9 item (2) 87:14;152:24 items (1) 179:9	J joined (1) 141:13 joins (1) 98:4 joint (1) 132:8 judge (1) 24:16 judgment (2) 78:21;106:19 jump (2) 77:15;100:12 jumped (1) 136:2 Jumping (1) 68:4 June (1) 111:16 justify (1) 115:8 K kayak (6) 11:14;12:9;18:1; 22:4,14;42:5 kayaks (1) 21:20 Keep (19) 7:18;12:7;28:23; 50:10,10;80:1,1,1; 81:21;84:23;85:1; 87:24;107:10; 108:16;109:17,17,17; 119:22;169:1 Ken (2) 144:20;150:2 Kimball (33) 18:18,23;19:8,10; 20:6;24:4;40:6; 47:13,23;48:3,15; 81:15,24;82:4;83:14, 20,24;84:2,4;85:5,7; 87:7,14,19;99:13,16; 100:7;102:5,9; 105:20;122:16; 179:11,19 kind (4) 23:2;94:19;142:14; 143:3 Kinsman (1) 174:23 knew (4) 67:14,17;99:18; 155:8 knowing (6) 50:2;65:15;73:3; 121:11;125:19; 147:18 knowledge (3)	61:5;116:15; 179:15 known (4) 58:10;67:13;89:18; 129:9 knows (1) 142:15 L label (8) 11:9;12:15;14:15; 28:10,11;111:19; 112:8,16 labeled (5) 11:14;82:20;84:17; 94:3;113:2 lack (7) 21:10;22:10,23; 23:1;65:7,9;131:15 laid (2) 155:20;164:8 lake (4) 89:3;104:24; 114:12,12 land (15) 25:9;31:6;55:5; 85:20;119:23; 125:20;126:14,17; 127:13,19;128:8; 135:7,15;143:5; 174:10 Landing (3) 13:5,6;14:3 landowner (15) 49:17;50:24;52:23; 55:14;56:9,19;57:4, 13;66:6,13;74:20,24; 75:5,7;109:8 landowners (6) 127:24;137:14,16; 143:1;145:2,9 landowner's (1) 74:22 lands (1) 142:6 landscape (16) 3:15;10:15;24:5; 32:15;41:20;46:10; 67:14;86:4;87:16,17; 93:12;138:13;162:2; 183:5;185:4,8 landscapes (1) 156:7 landscaping (6) 144:22;149:23; 151:6,12;164:22; 177:21 lane (3) 170:7,7,9 language (4) 45:20;83:23;88:17; 125:11
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<p>large (6) 36:13;42:1;92:8, 12;140:6;156:6</p> <p>largely (2) 155:22;156:2</p> <p>last (13) 20:14;85:11;91:15; 115:4;122:9;137:22; 163:3;165:3,7;174:3, 19,24,24</p> <p>lastly (1) 176:12</p> <p>later (3) 7:5;9:9,9</p> <p>launch (7) 11:16;12:15;13:18; 14:1,4,6,8</p> <p>law (11) 50:3,5;52:3;55:22; 56:24;59:5,6;60:10, 17;70:1;132:15</p> <p>laws (4) 57:17;58:2;59:14; 75:12</p> <p>layout (4) 159:24;164:9; 166:8,8</p> <p>lead (2) 44:1;109:13</p> <p>leading (2) 13:8;73:20</p> <p>leaf-off (8) 42:17;43:5;63:9, 13,16,18;65:8,10</p> <p>leaf-on (5) 42:21;64:18,22; 65:12;68:18</p> <p>learned (3) 93:1;150:5;175:19</p> <p>least (8) 31:3,9;45:13;66:9; 89:22;106:16; 150:14;170:9</p> <p>leave (8) 11:13;16:23;29:21; 31:18,22;56:9;170:7; 186:2</p> <p>leaves (2) 66:8;70:19</p> <p>leaving (4) 32:5;104:21;105:9; 170:7</p> <p>led (1) 108:20</p> <p>ledge (2) 37:7;133:19</p> <p>left (13) 10:22;12:13;15:3; 37:16;40:19;70:19; 71:7,8,11;122:23; 123:3;168:12,18</p> <p>left-hand (2) 25:15;95:5</p>	<p>legal (11) 49:21;56:16;76:20, 22;87:10,12;109:4,7; 118:13,15;179:13</p> <p>legally (2) 76:16;160:6</p> <p>legend (4) 102:4;103:5;112:5; 113:1</p> <p>length (3) 166:13;174:9; 176:24</p> <p>less (2) 78:4;97:12</p> <p>letter (5) 21:13;22:13; 165:15,18,19</p> <p>level (6) 11:3;45:13,14; 48:12;79:19;82:8</p> <p>lie (1) 177:22</p> <p>life (1) 16:1</p> <p>lifeguard (1) 17:13</p> <p>light (8) 68:8;72:3;84:22; 112:7,11,12;126:1; 176:6</p> <p>likelihood (1) 184:16</p> <p>likely (7) 5:23;72:23;80:14; 91:23;160:23; 161:16;164:22</p> <p>Likewise (1) 67:3</p> <p>lily (1) 9:1</p> <p>limit (1) 66:14</p> <p>limitation (1) 51:15</p> <p>limitations (2) 50:15,19</p> <p>limited (4) 29:13;42:16;91:9; 130:13</p> <p>limiting (2) 131:8;139:23</p> <p>limits (1) 8:20</p> <p>Lincoln (7) 112:17,19;113:2; 115:1,14,17,20</p> <p>line (53) 5:12,18;15:24; 16:18;25:18;26:2; 27:22;42:14;43:20; 44:1,4,5,14;45:2; 62:6,10,22;63:7; 95:24;96:2;104:9;</p>	<p>112:8,11,17;113:14; 115:10;121:4;124:6; 8,9;125:11;140:11; 148:17;151:22; 152:3,14;155:17; 160:13,21;161:12,22; 162:6;163:3,5; 164:12;167:24; 171:11,13;172:21,22; 173:20;174:24;175:1</p> <p>linear (1) 95:22</p> <p>lined (1) 164:20</p> <p>lines (16) 23:18;26:19;27:9; 44:12;62:1;101:20; 110:3;112:12;139:7; 141:13;144:7;160:6, 10,19;174:11,14</p> <p>list (3) 81:16;179:20; 183:23</p> <p>listed (5) 19:10;83:17; 111:11;113:10; 157:12</p> <p>literally (1) 177:13</p> <p>little (17) 5:15;6:4;25:20; 27:19;35:12;42:20; 43:13;45:14;46:7; 47:14;94:18;95:10, 20;99:11;107:24; 159:17,18</p> <p>live (1) 143:22</p> <p>lives (2) 90:20;149:15</p> <p>Local (9) 29:4,13,19;30:2, 10;39:22;40:2;93:2; 156:18</p> <p>locate (2) 134:21;142:20</p> <p>located (17) 82:23;84:16;100:8; 103:21;106:4,7; 117:8;140:1,22; 141:1,20;150:13; 165:2;175:17; 177:16,18;183:1</p> <p>locating (1) 160:4</p> <p>location (55) 10:21;11:10;14:1; 19:5,21;24:24;25:8; 26:20;30:3,11;33:22, 24;34:1,2,4,8,18,23; 36:17;39:16;40:23; 41:9;44:12,15;63:14; 70:15;71:17;75:18;</p>	<p>85:15;88:2;90:6; 92:11;97:16,17; 104:15;120:2,4; 121:7;124:16,18; 138:14,20;139:3,3; 140:10,11,21;141:5, 18;147:5;151:20; 153:3;166:2;168:6; 176:10</p> <p>locations (12) 52:15;80:10;81:10; 87:20;120:20,22; 141:24;142:2,3; 147:21;149:10; 152:23</p> <p>log (2) 71:5;119:15</p> <p>logging (4) 60:19,21,21,23</p> <p>logical (1) 151:4</p> <p>long (11) 8:7;66:8;84:16; 91:15;99:9,10; 104:16;129:7;168:3; 182:1;184:15</p> <p>longer (4) 93:15;137:3; 155:11;162:14</p> <p>long-established (2) 176:16,20</p> <p>look (48) 5:23;10:3;15:16; 16:14;23:10;25:9,10, 10,11,23;28:8;34:9; 35:2,7;37:15;39:23; 40:4;45:4;46:11; 53:3,7;56:4;66:21,23, 24;67:12;86:3;89:5, 9;94:18;99:3,5; 102:3;109:9,22; 113:8;121:6,7; 128:13;132:21,24; 141:18;146:13; 157:15;162:12; 177:17;179:19; 184:22</p> <p>looked (17) 12:2,9;18:23;32:6; 35:19;44:17;69:12; 70:10;78:13;83:4; 88:16;104:15; 107:21;118:14; 144:15;163:13;165:9</p> <p>looking (47) 12:11;15:15;17:16; 25:5;26:14;28:1; 31:12;33:20;34:14; 40:24;41:22;43:23; 46:7;47:3;48:8; 61:24;64:6,23;70:14; 72:8;75:23;76:5,22; 80:19;82:2;83:14;</p>	<p>85:17,18,19,23,24; 90:24;92:4;99:4; 106:8,12;108:9; 114:4;121:11; 124:24;131:20; 139:5;143:21; 161:19;163:17; 169:23;173:18</p> <p>Looks (13) 13:5;28:6;38:13; 46:16;51:9;71:1,9; 76:7;82:4;95:7; 109:24;117:1;184:3</p> <p>loop (4) 82:9,10,18;100:5</p> <p>loss (2) 68:6;72:23</p> <p>Lost (1) 174:23</p> <p>lot (27) 5:21,23;10:23; 11:1,14;23:14;32:3; 41:18;47:4;74:9,18; 78:12;90:1;95:12; 98:8;100:12;106:3; 110:9;124:2;145:6, 16;146:1;148:3; 149:14;167:12; 173:8;177:9</p> <p>lots (1) 182:22</p> <p>love (1) 90:1</p> <p>low (2) 81:17;105:21</p> <p>lower (5) 10:16;26:12,13; 69:5;82:22</p> <p>lowest (1) 26:2</p> <p>Luther (1) 125:12</p>
M				
				<p>machinery (1) 143:12</p> <p>mailed (1) 182:20</p> <p>main (2) 143:5;164:19</p> <p>Maine (3) 51:11,17;102:16</p> <p>mainly (1) 4:3</p> <p>maintain (1) 51:21</p> <p>maintained (2) 84:5;182:18</p> <p>maintaining (4) 51:17;84:13; 145:23,24</p> <p>Maintenance (3)</p>

<p>54:13,16;111:14 majority (4) 64:16,21;65:11; 151:22 makes (4) 4:10;7:10;22:21; 170:2 making (5) 7:20;104:3;124:4; 153:21;164:17 man (2) 15:12;114:17 manageable (1) 5:14 management (1) 6:18 manager (1) 154:16 manhole (1) 141:14 many (16) 8:4,4;15:23;24:15; 47:24;53:1;66:7; 85:13;107:3;117:9, 11;149:10;158:3; 162:11;181:10; 185:11 map (27) 19:14;48:3;80:20; 82:4;97:18,23; 100:13;101:24; 103:21;104:4;106:8, 21;107:9;112:4,11; 113:5;116:13; 122:11,13,19,21; 124:3,13;128:14,17, 19;146:17 mapping (1) 47:20 Maps (7) 10:8,10;48:20; 94:2;98:11;99:1; 106:11 margins (1) 164:24 Mark (2) 132:15;156:8 marked (2) 35:22;105:8 Masera (3) 21:15;22:18,22 Masera's (1) 23:8 massive (1) 62:15 material (1) 43:8 matter (3) 7:22;65:23;70:1 mature (9) 49:11;133:20; 149:20;163:7,11; 164:11;166:13,16;</p>	<p>174:8 maturity (1) 67:10 maximum (1) 66:14 may (54) 9:17;13:11;25:16, 18;26:15;27:20;31:1; 32:16,17,21;37:2; 42:8;43:2;52:5;55:4; 56:1,24;57:8;61:17; 63:10;64:4;66:21; 67:2,2,4,5,16;71:9; 72:1;76:11;78:13; 89:13,14;91:10; 98:16;109:20;114:1; 116:19;123:9; 130:23;134:22; 139:8,23;141:23; 144:14;152:2,4,16; 159:5;163:20; 178:16;181:22; 182:11,14 maybe (6) 48:15;79:7;90:2; 125:7;177:2;181:13 mean (11) 6:16;14:5;15:1; 19:3;82:13;84:7; 135:10;161:15; 170:19;171:18; 172:24 meander (1) 53:10 meaning (4) 11:8;31:5;92:2; 103:5 meaningful (2) 64:12,15 means (8) 5:21;28:21;45:23, 24;64:3;77:3;90:11; 102:8 meant (3) 8:3;177:11;178:14 measure (3) 10:9;48:4;177:19 measured (3) 162:15;172:21,22 measurements (2) 48:24;182:21 measures (1) 162:23 mechanics (1) 143:14 mechanism (1) 90:10 meet (1) 83:20 meetings (1) 138:9 members (1) 184:8</p>	<p>memory (3) 50:14,19;51:7 mention (3) 32:14;58:14; 140:19 mentioned (2) 32:16;88:14 Meredith (1) 115:8 merger (1) 21:9 message (1) 76:13 meters (6) 47:22,22,24;48:17; 150:14;151:1 middle (11) 11:20,23;29:24; 40:20;42:2,4;71:6,8; 93:10;94:22;112:13 might (22) 12:3;30:10;31:14; 35:14;49:10;66:7; 67:23;68:20;76:15; 85:10;91:7,8;93:16; 99:10;110:12,12; 127:4;137:15;140:1, 2;161:16;177:11 mile (2) 162:13,14 miles (12) 99:4,9,10;136:10; 137:12,14;162:12; 179:22;180:11,16; 181:7,16 mill (2) 115:14,20 mind (9) 7:18;20:21;102:11; 115:2;121:10; 136:10;167:16; 179:21;185:11 minds (1) 24:2 mine (1) 35:24 minimal (4) 23:15;142:21; 144:11;147:10 minimize (5) 138:12;168:1,20, 23;169:2 minor (1) 157:11 minute (4) 50:18;102:3; 131:18;184:1 minutes (1) 61:13 mischaracterizes (2) 170:22;180:5 mixed (1) 42:23</p>	<p>mixture (1) 74:9 model (2) 47:17,18 modest (1) 166:10 modification (1) 41:16 modifications (1) 24:5 moment (5) 4:2;32:21;33:5,11; 86:23 Monday (2) 184:5;186:9 months (1) 8:4 Mooney (2) 13:5,6 more (46) 4:10;5:14,15,23; 6:4;21:23;27:20; 28:7;37:2;41:13; 43:14;46:1;54:24; 56:10;57:13,21,21, 22;61:6;68:9;71:1; 72:3;75:15;86:23; 90:11;91:9;92:16; 99:11;103:24;107:4; 117:10,11;122:8; 129:3;133:16; 143:15;147:14; 151:16;153:10; 170:14,17;172:19,23; 173:3;175:5;180:12 morning (5) 84:22;129:8;184:6, 17,20 mortality (1) 68:6 most (11) 44:22;54:7;81:11; 110:2;119:22; 121:13;136:3; 139:16,20;164:12; 165:3 mostly (1) 161:21 motorboat (1) 20:18 mountain (7) 79:13;100:24; 101:7;105:3,15; 111:20;163:18 move (15) 33:4;40:17;72:7; 77:8;84:20,20,21; 92:19;101:23; 109:15;111:2,22; 112:2,2;119:24 moved (4) 34:20,22;69:4; 141:6</p>	<p>moving (4) 22:16;37:20;75:14; 84:23 much (19) 8:2;10:14;25:21; 27:10,15;63:17;76:8; 97:12;108:4;114:20; 128:12;152:22; 153:16;154:7; 155:12;160:10; 166:13;168:16;174:9 multiple (3) 6:22;69:11;77:6 must (3) 4:23;51:3;89:24 myself (2) 16:24;121:9</p>
N				
				<p>nail (1) 37:2 name (1) 15:13 named (2) 15:12;36:17 narrow (2) 164:10;166:9 narrowest (1) 48:15 National (2) 87:9;163:18 natural (7) 32:15;41:19;68:6; 72:22;133:20; 156:20;157:3 nature (5) 66:15;85:22; 157:19,23;178:10 near (1) 104:6 necessarily (7) 14:16;35:12;83:10, 12;91:11;94:14; 157:10 necessary (5) 152:2;158:7,14; 175:8,14 need (32) 3:6;8:10,15;11:7; 28:7;37:21;52:20,22; 69:16;73:6,7;79:23, 23,24;87:24;113:15; 118:10;147:24; 148:18;151:16; 152:20;166:17; 169:17;170:13,17; 172:17,18,19;173:2; 181:14;184:23;186:1 needed (10) 8:2;129:3,3; 142:16;145:3; 153:16,23;154:7;</p>

167:2;171:8 Needleman (39) 3:24;4:1;5:6;6:8,9; 16:5,17;18:6,7; 26:22;49:20;52:1; 55:1;56:5,11,21; 60:24;69:10;71:12; 73:13;76:17;77:5; 102:23;110:19; 122:1;125:22; 131:17;153:11; 154:1,15;158:16; 170:21;180:4; 181:20;182:1; 184:13,18;185:1,21 Needleman's (1) 7:15 needs (7) 8:19;127:21; 139:11;143:9; 152:22;154:14;181:9 negative (1) 69:15 network (1) 102:18 New (33) 21:6;26:20;50:3; 51:23;54:17;55:23; 58:1,6,12;59:5,6,14; 85:18;89:18;112:8, 21,24;115:16; 116:23;117:6; 119:14;132:12; 133:10,24;134:8; 145:24;150:9; 156:13;158:11; 165:4,8;169:20; 174:4 Newfound (1) 104:24 next (50) 10:3,20;13:1; 14:11;15:8,16,24; 16:15;20:9,22;24:7; 26:5;29:1;30:23; 32:6;33:13,15;36:6, 19;42:10,11;43:1,7; 46:21;47:10;50:8,10; 59:15;79:4;86:10,11, 14;97:24;100:23; 104:2;107:2;108:6,6, 7;109:15;114:3,18; 115:11,22;116:21; 122:5;145:22; 157:15;160:15; 163:16 nice (4) 61:11;89:6,13,14 night (1) 77:24 Noah's (2) 93:1,8 nobody (1)	89:21 Non-Abutters (4) 10:11;20:24;46:23; 100:19 non-viable (1) 164:18 nor (1) 128:10 normal (1) 67:9 normally (3) 23:3;25:23;140:6 north (4) 70:15;97:20;115:7; 121:12 north/south (1) 72:19 northeastern (1) 73:5 northern (18) 21:7;115:9;132:11, 22;133:9;135:4,12, 19;143:23;145:23; 153:14;157:13; 159:20;160:4;163:4; 165:11;175:12;179:1 northwest (1) 93:3 notably (2) 160:10;165:3 notation (1) 72:10 Notch (1) 174:23 note (2) 126:13,24 noted (4) 32:19;93:3;162:22; 174:8 notes (4) 8:9;61:11;85:15; 164:9 notice (5) 11:22;31:17;85:6; 86:5;88:12 notion (1) 119:19 NPT (3) 46:24;47:11;175:8 number (8) 37:12;56:19;65:24; 68:2;82:7;86:3; 138:1;174:1 numbers (4) 68:5;92:9,12; 132:22 numeral (1) 125:10 numerous (6) 158:4;163:6; 164:20;166:10; 175:1;176:22	O obituary (2) 15:10;16:4 object (3) 52:2;55:2;185:6 objecting (3) 16:18;61:6;177:8 Objection (25) 16:5;26:22;49:20; 56:5,11,21;60:11,24; 69:10;71:12;73:13; 76:17;77:5;102:24; 110:19;119:11; 122:1;125:23; 153:11;154:1,15; 158:16;170:21; 180:4;181:20 objective (3) 134:20,22;138:11 objects (1) 46:10 obscure (1) 124:3 observation (1) 86:1 Observations (2) 23:8;74:4 obstacle (1) 184:7 obstructing (2) 44:23;47:7 obtained (1) 128:14 obviously (1) 181:4 occasions (1) 98:21 occupy (4) 160:10;163:2; 174:10;175:2 occur (2) 67:4;69:2 occurred (1) 66:18 occurrence (1) 72:22 occurs (2) 36:15;65:11 October (4) 115:17;132:9; 134:5;135:17 Off (21) 9:14,15;76:10; 92:20,22;100:1; 129:12,13;140:2; 141:16;142:15; 146:23;148:18; 159:22;167:2;168:4; 170:11;182:13,21; 184:1,2 offer (1)	33:1 offering (2) 54:15;99:24 Office (1) 132:15 off-road (1) 84:9 often (2) 73:4;163:8 old (12) 12:4,6;17:16; 32:17;35:2;36:10,21; 37:13;38:16,24; 161:20;164:12 once (2) 39:12;141:9 One (82) 3:11;4:22;7:3,5,14, 16;8:12;11:16;14:14; 16:15;17:1;28:2; 31:10,15,16;33:14, 15;35:10;37:2,22,23; 38:14;42:16,18;43:2; 48:21;50:11;52:12; 54:8;57:21,21;59:10, 21;61:5;63:11;64:6; 66:3;68:16;73:9; 75:14;76:11;79:23, 23,24;84:3;85:13; 88:9,13;89:2,2;91:4; 95:16;97:18;101:5; 107:8,17;112:13; 116:13;122:8; 123:11,16;131:18; 135:6;137:9;138:5; 139:22;140:6;141:7; 142:15;146:8;152:5, 17,23;153:9;159:13; 161:21,23;170:7,7,9; 179:23;185:1 ones (5) 47:9;103:23;106:7; 107:6;119:21 one's (1) 79:24 online (4) 39:24;40:4;98:18; 99:22 only (24) 6:24;10:18,19; 14:13;18:17;20:14, 20;26:16;29:13; 32:14;44:14;60:13; 63:3;65:5;69:8; 85:23;87:12;99:9; 114:9;133:11;148:9, 16,17;151:7 onto (4) 77:11;79:18; 131:21;145:13 oops (2) 68:3;73:9 open (2)	170:7,8 opening (3) 14:24;31:19;72:1 operate (2) 51:3,11 operated (1) 15:23 operation (1) 78:8 operations (1) 143:13 operative (1) 89:7 operators (1) 115:20 opinion (2) 181:4;182:23 opportunity (1) 68:9 opposed (3) 28:1;65:24;91:22 opposite (3) 43:22;128:9; 157:10 optimistic (2) 169:23;185:17 order (17) 3:10,13;4:18;7:10; 8:13;57:11;92:13; 118:11;129:21; 130:5;139:12; 148:11,12;152:11; 153:6,16;166:24 orderly (1) 6:1 ordinance (1) 51:10 organizations (1) 111:11 orient (1) 100:15 orienting (1) 14:12 originally (1) 164:8 others (2) 144:21;150:3 other's (1) 184:10 out (33) 8:6;11:21;13:3; 23:13;24:24;26:6,13; 27:9;43:18;52:13; 59:10;60:22;61:10; 70:2;79:10;81:19; 89:12;103:23; 105:22;108:16; 112:14;121:11; 123:4,15;124:4; 136:3,18;141:8; 149:8;155:20;164:8; 166:17,18 outcome (1)
---	---	--	--	---

<p>46:19 outcrop (1) 37:8 outer (5) 139:23;147:7,19, 20;182:15 outline (3) 19:14,15,17 outlined (2) 167:13;178:15 outside (11) 90:5;141:24;152:3; 158:8,15;160:5,22; 164:17;178:10,17; 182:10 outstanding (1) 129:20 oval (1) 45:20 over (26) 40:12,18;44:24; 73:8;85:11;101:9; 105:3,15;106:16; 107:8;110:10,15,17; 114:13;122:6; 126:17;141:16,21; 150:24;153:10; 163:22;169:1,2; 170:5;171:8;173:22 overall (5) 19:20;66:16; 120:11;138:11; 147:11 overhead (1) 183:9 own (2) 17:14;55:16 owned (3) 112:20;124:16; 142:6 owner (2) 75:2;113:1 owners (5) 51:3;126:24; 127:13,16;145:12 ownership (3) 113:23;126:5; 127:18 owns (4) 113:20;116:8,11; 127:10</p>	<p>128:6,18;132:20; 155:15,16,18;156:11; 157:15;159:10; 163:17;174:19 pages (1) 126:20 panel (12) 3:4;137:11;148:3, 6;153:20;170:13,16, 23;171:6;183:24; 184:16;185:10 Paper (2) 115:13,20 paragraph (11) 21:2;22:1,2,8; 59:15;111:5;132:24; 133:1;157:17; 159:16;174:20 parallel (3) 94:21;110:3;112:7 Park (8) 13:6;45:9;77:15, 22;82:24;99:21; 101:24;105:11 parking (9) 10:23;11:1,5,6,14; 31:19;32:2;73:21; 177:21 parks (4) 84:4;89:3;100:16; 111:8 part (43) 10:10;18:17,19,21; 43:10;44:16;46:22; 50:17;64:7;68:1; 73:4,5;75:6;81:11; 82:16;83:8;84:6; 85:8;87:3;91:3; 102:13,18;112:5; 113:14;131:13; 132:9;136:4,23; 141:19;143:22; 144:18,20;148:19,21; 156:6;159:22;161:3; 162:20;163:18,24; 168:8;175:24;176:5 partially (2) 37:9;95:9 particular (15) 18:11;19:5;25:12; 59:1;79:1;81:9;86:6; 88:20;90:22;106:7, 20;126:20;127:11; 135:3;158:20 parties (2) 5:11,15 parts (2) 51:20;64:4 pass (16) 114:12;132:11,23; 133:9;135:4,12,19; 143:23;145:23; 153:14;157:13;</p>	<p>159:20;160:4; 165:11;175:12;179:1 passed (1) 85:7 passes (2) 164:18;174:22 passing (1) 65:19 past (3) 174:11;184:9,13 pat (1) 91:19 path (1) 88:15 pathway (2) 17:8;109:12 pattern (1) 26:16 Pause (5) 26:11;48:22;57:10; 91:17;123:17 paved (11) 134:10,13;135:5,7, 9,23;136:19;141:21; 175:17,20,21 pavement (30) 131:15;134:2,21; 138:24;139:14; 142:16;145:10; 147:8;148:19;149:3, 8,19;151:17,23; 152:2,15;155:10; 166:22;167:3;168:7; 170:2,4,4,10,12; 173:1,15,20;176:8; 182:13 pay (5) 16:13;77:15;78:2, 19,24 pedestrians (3) 118:9,10,17 Pemi (11) 12:12;17:16;18:2, 13,17;20:12;28:13; 69:8;70:8;82:19; 107:16 Pemigewasset (12) 19:12;22:5,15; 42:24;72:20;104:21; 105:9;114:13;117:2, 6,19,19 pending (1) 16:10 people (26) 7:20;8:8;18:3; 30:6;39:8,10;42:5; 55:5;65:2;78:24; 90:1,4;91:12;92:8,9, 12,16;129:4;159:17; 168:19;169:6,24; 185:6,10,14,17 people's (4) 39:13;149:3,19,24</p>	<p>per (1) 103:20 percent (1) 111:17 Perhaps (10) 22:23;25:19;28:17; 41:14;42:4;45:13; 65:4;72:17;96:4; 110:14 period (1) 125:7 permission (1) 133:24 perpendicularly (1) 98:5 person (9) 4:3;8:3;28:19; 41:1;43:22;55:20; 121:15;137:11; 141:16 personal (1) 61:4 person's (1) 28:2 pertinent (1) 164:5 Petition (3) 132:17;134:23,24 photograph (19) 12:10;24:8,17; 27:17;28:2,15;35:17, 18;37:1;38:13,17,21; 41:1;68:23;94:23; 96:1,6;108:23; 123:23 Photographic (1) 25:20 photographs (3) 27:3;38:14;47:5 phrase (2) 9:1;22:7 pick (1) 146:8 picnic (2) 17:6;65:1 picture (32) 11:1,20;13:1; 14:13;17:11;25:5; 28:8,10,20;35:24; 36:19;37:5;38:23; 42:10;46:22;48:1,20; 71:6,8;73:11;75:22; 79:13,13,18;93:7; 94:18;95:3,5;97:13; 98:1;101:5,8 pictures (7) 37:21;38:4;41:23; 63:13;101:6;149:14; 182:20 piece (2) 69:3;77:11 pile (6) 29:23;35:13;36:5;</p>	<p>37:8;40:5;41:18 pine (4) 37:16,16;38:5; 74:16 Pines (1) 74:17 pit (1) 141:12 pits (7) 23:17;140:21; 141:1,5,9,15,18 place (16) 11:15;14:7;16:1; 18:2;39:9,14;63:9; 70:22;89:19,24;92:8, 16;94:16;140:6; 141:10;175:8 placed (1) 8:20 places (17) 52:12;55:5;59:22; 70:11,13;71:2;85:18, 19;91:8;98:22;99:1; 106:14;141:1;152:2, 13;181:10;182:15 Placey (1) 162:22 placing (1) 148:14 plain (1) 72:4 Plan (5) 136:21,22;137:2,3; 180:9 planning (1) 184:19 plans (2) 129:4;159:9 planting (1) 150:24 plausible (1) 123:8 please (6) 33:1;36:7;42:19; 91:18;129:10;182:4 pleasing (1) 174:15 PLLC (1) 132:15 plowed (1) 89:10 Plymouth (12) 15:11;21:6,7,15, 17;22:16;112:17,19; 113:2;114:14; 176:13;180:1 pm (6) 3:2;61:14,15; 129:16,17;186:8 point (34) 13:17;28:6,14; 31:13;42:15;43:1; 44:5,20,21;46:4;48:6,</p>
P				
<p>paddlers (1) 29:4 Page (30) 10:9;12:10;15:15; 19:15,23;38:21; 100:16,17,24;101:8; 114:3,3,21;115:11; 119:15;120:8;121:9; 126:18;127:17;</p>				

<p>15;52:12;53:3,8; 54:23;57:9;63:7; 67:6;76:12;90:12; 96:14;97:18;107:22; 117:2;124:12;132:4; 134:17;135:17; 140:24;147:18; 159:10;160:14; 176:11 pointed (1) 12:13 pointing (5) 14:21;26:7;101:19; 111:18;112:6 points (12) 32:10;33:8,21; 35:4;39:3;41:7,9,12; 53:3;56:4;86:1;132:2 poles (2) 139:7;163:7 policy (1) 57:4 polygon (1) 19:16 pond (14) 89:3;93:9;94:2,3,3, 8,24;95:2,4,17;96:24; 98:4;164:14,16 ponds (1) 166:12 popularity (1) 119:22 portion (27) 17:11;22:3,15; 23:11;69:4,5;82:22; 115:9;131:9;133:12; 135:20;138:7;155:6, 13;156:1;159:23; 162:21;163:21; 164:1,5;175:17,20, 21;181:7;183:9,12,15 portions (3) 64:4;148:5;162:3 position (2) 67:7;145:19 positive (10) 32:9;33:8,17,21; 39:3,3;40:22;41:6, 11;69:14 possibility (4) 9:22;32:16;39:2; 73:3 possible (7) 4:7;7:13,15;32:4; 43:19;80:16;179:11 possibly (1) 118:20 post (1) 40:9 post-dates (1) 16:7 potential (8) 6:24;23:5;67:2;</p>	<p>76:5;83:17;98:7; 106:1;108:13 potentially (3) 6:15;94:16;99:18 power (5) 26:19;27:9;124:6, 7;184:5 practicality (1) 164:10 practice (2) 67:11;151:5 precautions (1) 173:10 precedent (1) 78:13 predictor (1) 184:9 prefer (2) 21:5;91:8 prefiled (2) 132:8;135:1 prehearing (1) 7:21 prepared (1) 8:1 prescriptive (1) 160:2 presence (4) 65:6;120:24; 176:17,20 present (3) 38:4;93:18;160:20 presented (10) 39:12;43:8;107:23; 128:6;129:23;134:6, 8;135:13;151:10; 172:8 presently (1) 56:3 preserve (3) 133:20;157:19; 173:11 Presumably (1) 5:14 presume (2) 148:19;149:4 presuming (2) 136:10;152:19 pretending (1) 60:10 pretrial (1) 134:7 pretty (3) 63:21;90:23;108:4 prevent (1) 151:2 previous (4) 20:16;105:14; 155:18;156:11 previously (8) 20:23;86:24;93:3; 105:12;133:6,11; 156:19;157:2</p>	<p>primarily (4) 134:13;138:4; 142:2;143:19 primary (2) 87:14;138:20 printing (1) 122:20 prior (7) 16:15,16;48:8; 66:19;93:16;94:6; 104:4 private (14) 55:5;86:8,8,14; 97:6,6,10;108:16; 121:20;143:5;145:1, 12,13,15 probability (1) 67:8 probably (13) 39:23;40:24;49:15; 65:11;75:11;90:5; 104:16;106:17; 121:13;122:9; 149:16;185:2,19 problem (5) 6:24;34:13;180:20, 22;185:24 problematic (4) 160:7;162:7; 178:11,15 procedural (2) 3:10;129:21 proceed (2) 116:19;130:24 produce (1) 5:16 professional (1) 67:11 Professor (1) 59:16 Profile (1) 115:13 Program (1) 111:10 Programmatic (1) 3:14 progress (1) 140:13 prohibited (3) 79:8,9,10 project (24) 43:18;61:20;73:23; 74:1,2;78:15;94:16; 96:17;99:9;103:10; 107:22;108:2; 120:11;126:21; 127:24;131:9;137:6; 155:13;158:8,14; 166:24;168:11; 175:16;183:9 projects (1) 111:15 prominent (1)</p>	<p>46:1 promote (1) 60:3 promoted (1) 169:19 pronounce (1) 14:17 proper (1) 138:13 properties (9) 87:8,9;99:7; 133:19;178:19; 179:4,12,16,20 property (17) 23:11;51:3;56:3; 77:12;93:19;97:6,6, 10;108:17;109:6; 121:20;144:19,23,24; 145:1,14,15 proposal (4) 6:3,5;43:19;180:10 propose (1) 133:5 proposed (9) 5:12;6:5;43:18; 44:2;61:20;123:6; 124:22;154:23; 156:14 proposing (2) 133:9;135:5 protect (4) 58:12;77:21; 124:21;128:4 Protected (2) 54:14;84:5 Protection (12) 52:2,19,22;53:11, 12,15,19;57:14;58:9, 11;59:18;60:2 protective (2) 50:21;123:7 protects (1) 19:18 prove (1) 139:9 provide (8) 63:3,13,18,21; 65:3;68:12,17; 135:21 provided (10) 19:14;28:20; 106:20;115:15; 128:11;135:18; 147:4;167:19,23; 179:7 provides (1) 141:14 provision (5) 52:19,22;53:12; 55:22;77:20 provisions (4) 8:13;56:23;57:2,14 public (37)</p>	<p>12:15;13:18;14:7; 19:1;76:19;77:3,9,10, 11,13,21;78:18,23; 84:6;87:11,17;88:16; 89:1;98:17;99:8,14; 105:24;109:4,7,12; 118:8;129:24;130:5, 6,8;133:16;143:2,5; 144:24;145:11; 179:14,17 publication (2) 30:12;114:5 publicity (1) 90:10 publicly (1) 17:23 Public's (3) 5:1;9:8;76:13 published (1) 15:10 pull (2) 159:15;171:15 pulling (1) 60:22 purchased (1) 115:16 purpose (4) 13:22;52:8;60:17; 91:13 purposes (5) 40:16;66:6;77:4; 87:1;113:23 put (16) 5:22;34:13;89:15; 97:8;121:9;131:6,21; 138:13;139:13; 141:10;142:17; 152:11,15;173:19; 175:21;176:7 put-in (3) 11:10,15;28:6 putting (1) 149:17</p>
Q				
			<p>quadrant (1) 98:7 qualify (2) 41:15;156:5 qualities (2) 90:6;94:9 quality (11) 25:20;27:2;41:17; 51:18;56:2;58:9,12; 83:12;90:7;121:1; 175:6 Quanta (1) 138:8 quick (2) 77:8;107:6 quickly (1) 92:24</p>	

<p>quite (6) 6:18;7:19;13:2; 51:13;93:14;114:20</p> <p>quote (1) 50:6</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rail (3) 113:14;115:15; 118:3</p> <p>railroad (34) 23:18;101:13,15; 108:9;109:23,24; 110:2,8,9,12;112:18, 20;114:22,23; 115:19;116:8,11; 117:4,5,18,22;118:5, 23;119:3,4;120:3,6,9, 23;121:3,10,15,24; 132:17</p> <p>railroads (3) 113:8,10;119:21</p> <p>rails-to-trails (1) 81:24</p> <p>rains (1) 115:6</p> <p>range (1) 48:24</p> <p>rate (1) 72:5</p> <p>rated (1) 183:8</p> <p>rather (2) 21:6;88:18</p> <p>reach (4) 5:7;7:12;9:4,5</p> <p>reached (1) 169:11</p> <p>reaction (2) 76:6;136:23</p> <p>read (45) 13:3;15:13,19; 21:1,23;30:13;42:14, 19;45:20;51:23; 52:20,22;53:12,14, 20;54:11;58:17;59:8, 9,10,12,24;72:9; 73:18;79:7,8;83:22; 99:22;104:3;111:5; 112:4,16;114:7; 115:4;116:1,6; 119:15;122:10,19; 150:7;156:23; 157:11,16;159:18; 175:11</p> <p>reader (1) 20:1</p> <p>reading (11) 15:19;45:12;53:17, 24;59:7;122:21; 124:12;133:4; 165:15,17;174:12</p>	<p>ready (3) 6:20;9:13;184:20</p> <p>real (2) 51:17;130:13</p> <p>reality (2) 27:20;162:9</p> <p>really (8) 5:16;8:8;25:22; 63:17;70:20;92:24; 111:1;178:13</p> <p>realtors (1) 183:4</p> <p>reason (9) 51:13;74:6;75:10; 79:20;96:19;105:17; 109:1;135:12;161:8</p> <p>reasonable (1) 129:2</p> <p>reasons (7) 60:1;67:22;68:2,5; 85:13;135:6;136:20</p> <p>rebuilt (1) 151:7</p> <p>recall (16) 3:11,17;7:23;12:3, 18;16:4,11;23:20; 30:15;32:14;36:16; 47:3;104:23;105:1; 165:24;166:14</p> <p>recap (1) 77:8</p> <p>received (2) 100:9;103:22</p> <p>receiving (1) 81:19</p> <p>recent (1) 138:8</p> <p>recently (1) 129:21</p> <p>recess (2) 61:14;129:16</p> <p>recognize (8) 36:23;43:7;44:20; 46:21;47:1;93:17; 120:2;165:10</p> <p>recognized (3) 32:24;55:4;70:11</p> <p>recollection (5) 10:24;105:6; 161:13;171:8;178:1</p> <p>recommendation (1) 30:9</p> <p>recommended (1) 82:4</p> <p>record (22) 9:14,15;15:11; 16:24;21:22;33:1; 52:20,23;53:20,21, 24;55:10;61:7;92:21, 22;116:2;129:12,13, 19;135:9;184:1,2</p> <p>recorded (1) 159:24</p>	<p>recounts (1) 171:5</p> <p>recreate (1) 65:3</p> <p>recreation (8) 19:11,13,16,23; 73:21;90:7;100:16; 111:9</p> <p>Recreational (6) 10:7;84:4;97:9; 100:10;111:10,14</p> <p>red (9) 10:5,6;43:14;62:6; 79:6;101:19;102:4; 122:19,20</p> <p>redirect (1) 184:14</p> <p>reduce (1) 133:19</p> <p>reduced (1) 156:22</p> <p>reducing (1) 133:15</p> <p>refer (1) 19:13</p> <p>reference (3) 19:6;33:17;59:18</p> <p>references (1) 39:24</p> <p>referring (2) 23:7;30:12</p> <p>refers (1) 27:24</p> <p>reflected (1) 176:21</p> <p>refresh (2) 50:14,18</p> <p>refreshed (1) 51:7</p> <p>regard (2) 55:14,17</p> <p>regarding (5) 114:6;129:22; 183:11,15;185:7</p> <p>Register (1) 87:10</p> <p>regular (2) 109:23;166:16</p> <p>regularly (1) 18:3</p> <p>regulations (2) 57:5;58:21</p> <p>reiterate (1) 8:22</p> <p>relate (1) 185:12</p> <p>related (1) 4:19</p> <p>relationship (1) 62:20</p> <p>relative (4) 32:2;44:2;46:8; 62:17</p>	<p>relatively (6) 7:22;9:24;11:3,11; 36:9;176:21</p> <p>relaying (2) 165:22,24</p> <p>Relevance (5) 16:6,18;17:21; 69:11;71:13</p> <p>relevant (5) 18:8;91:7;145:18; 163:21,24</p> <p>relied (1) 78:12</p> <p>relying (4) 66:16;67:24;73:24; 138:4</p> <p>remain (2) 52:14;63:9</p> <p>remaining (1) 5:9</p> <p>remember (4) 10:1,4;11:3;29:23</p> <p>remind (2) 18:10;29:1</p> <p>remnants (1) 42:3</p> <p>remote (1) 73:2</p> <p>removal (4) 75:13;133:20; 175:7,13</p> <p>remove (2) 74:23;75:11</p> <p>removed (1) 150:4</p> <p>removing (4) 149:20,21,22,22</p> <p>rent (1) 30:23</p> <p>rents (1) 21:19</p> <p>reopen (1) 115:14</p> <p>repaired (1) 115:18</p> <p>repairing (1) 115:9</p> <p>repeat (2) 14:18;182:4</p> <p>repetitive (1) 130:14</p> <p>replace (2) 150:7,15</p> <p>replaced (3) 49:15;119:21; 150:4</p> <p>replanted (2) 151:7,8</p> <p>report (6) 20:1;23:22;32:19; 55:4;127:3;131:13</p> <p>Reporter (4) 24:22;122:17;</p>	<p>136:12;172:4</p> <p>reports (3) 3:15;185:8,12</p> <p>report's (1) 43:10</p> <p>represent (5) 47:15;64:12; 107:18;120:13;130:7</p> <p>representation (3) 47:13,18;120:19</p> <p>representations (3) 28:2;64:13;104:10</p> <p>request (3) 4:6,11;136:18</p> <p>Requested (1) 111:5</p> <p>requesting (1) 3:17</p> <p>require (2) 57:14;78:1</p> <p>required (4) 78:23;83:19;115:6; 181:6</p> <p>requirements (3) 130:1,15;173:4</p> <p>requires (3) 52:4,6;148:15</p> <p>residence (4) 86:8,14,17;87:13</p> <p>residences (9) 86:8;160:17; 161:10;162:4; 176:23;177:4,12,17; 183:3</p> <p>resident (1) 91:22</p> <p>residents (14) 29:4,13;73:22; 90:13,16,19;91:4,11; 92:1,5;93:2;151:6; 156:18;164:21</p> <p>resist (1) 38:1</p> <p>resolution (2) 47:22;101:18</p> <p>resource (37) 18:11,13;20:7; 23:12;61:21;78:4; 81:5;83:3,17,21;87:5, 5,7;88:23;94:8; 96:20,21;97:11; 99:17;107:15; 108:13;109:2,10; 117:22,23;118:1,4,6, 12,21;119:3;120:24; 121:2,23;128:10; 163:15;165:10</p> <p>resources (36) 18:24;19:2;23:5; 76:5;80:13;81:3,4,7, 12,16,23;83:15,18; 84:2,15;85:9;86:9; 87:15,21;92:13,14;</p>
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<p>98:19;106:1;111:7; 113:6,9,11;115:1; 118:15;133:18; 156:17,22;157:5; 166:11;168:22; 185:12 respect (5) 3:9;4:18,21;9:6; 55:3 respond (2) 4:2;9:9 response (1) 4:8 response] (3) 4:14;130:22;186:3 responsive (1) 99:15 rest (3) 59:12;65:20;93:14 restricted (1) 73:21 restriction (2) 150:23;152:18 restrictions (2) 74:22;151:11 result (7) 66:22;69:3;143:17; 146:15;147:10; 148:22;160:23 resume (5) 3:4;9:13;129:19; 184:5;186:8 resumed (4) 3:2;61:15;115:18; 129:17 return (2) 32:4;129:10 reveal (1) 98:6 review (1) 61:10 reviewers (1) 62:20 reviews (11) 24:3;31:4;32:22; 33:3,12;50:20;51:2, 8;76:1;122:14; 161:18 Ride (2) 82:24;89:6 rides (1) 89:4 right (68) 3:3;4:15;9:16; 12:16;16:8;17:7; 19:1;23:13;32:23; 37:17;46:18;49:5; 50:22;66:3;67:1,20; 68:13;75:1;76:10; 77:9;78:14,22;87:11, 12;89:1,7;90:24; 97:9,24;98:8;99:14; 104:6;106:3,12;</p>	<p>107:20;109:5,7; 111:2;112:13; 116:15;118:8; 120:10;130:20,23; 132:10;137:4,6; 140:14;141:2; 150:15;153:22; 158:15;162:2,11; 165:15;166:22; 167:1;168:12,18; 169:5,21;171:18; 179:14,17;181:9; 183:22;184:21;186:4 right-hand (1) 37:9 right-of-way (13) 123:22;124:1; 125:16;126:15,16; 134:14;139:6;160:3; 164:5,24;176:24; 177:5,7 rights (3) 118:15;124:16; 127:1 rigmarole (1) 114:20 riparian (3) 49:16;51:21;71:3 risk (1) 17:14 river (90) 10:1,18,19;11:24; 12:5,9;13:14;14:9, 23;15:22;17:9;18:4, 13,20,21;19:12; 20:12,15;21:8,10; 22:6,20;25:2;28:13, 17,18,24;29:24;30:6; 32:18;36:10,13; 42:24;43:4,23;44:6,7, 16;45:6;47:4,24; 48:14;55:16;62:17, 22;63:1;65:3,4;71:5; 73:1;75:18;79:18; 80:6,7,17,22;82:15, 18;85:4;88:10,11; 93:4;95:17,18;96:13; 97:24;98:4;101:10, 21;104:22;105:9,13; 107:16;114:13; 116:24;117:1,2,6,8, 24;120:7;121:11; 122:24;123:4;125:1, 7;128:1,3;164:16; 174:23 rivers (4) 42:2,6;89:3;178:5 Road (110) 10:18,19;11:4; 13:6,7,10;15:22; 29:14;31:12,20,21; 72:11,19;73:9,20,23; 74:3;75:18,24;76:9,</p>	<p>11;79:19;80:6,8,17, 22,22;82:8,18;85:4; 86:13,16,21,24;88:4, 5,6,7,8,8,10,11,12,15; 89:9,10,14;93:4,4,11; 95:17,18;96:4,12; 97:20,21;98:1,2,3,5; 100:5;105:13; 132:17;133:8;134:3, 21;139:22;140:2,4, 141:21;142:2; 143:24;146:6,7,24; 149:12,16,16;152:5, 8;153:2,5,9;161:20, 22,23,24;162:12,18, 21,22;163:12,14,19; 164:15;166:9;167:5, 7,15,17,21;168:1; 169:22;170:6,6; 177:13;178:2; 179:23,23;180:17 roads (2) 81:1;83:6;139:21; 155:23,24;158:4; 159:11,12 road's (1) 175:5 roadside (11) 158:7,13;160:11, 16,19;163:4;166:12; 175:2,4;176:22; 181:17 roadsides (1) 155:21 roadway (20) 84:11;133:12; 135:20;136:6;137:1, 3,15;140:4;145:11; 146:2;148:16,18; 154:12;158:13; 161:7;164:12,18; 175:18;177:18; 178:11 roadways (4) 137:13;156:16; 157:20,24 roadway's (1) 178:17 Rock (3) 162:18,21;163:14 rocks (9) 29:23;35:13;36:5; 40:5,19;41:2,18,19; 42:1 role (1) 61:4 roll (1) 119:22 roller (2) 84:23,24 roots (1) 150:18 Roughly (11)</p>	<p>49:1;62:24;63:12; 93:11;94:20;120:13; 138:22,23;140:22; 142:1;151:24 Route (50) 12:11;13:2;21:5,7, 12;22:12;82:6,7,9; 84:18;101:9;105:19; 106:16;114:9; 135:23;136:1,5; 143:20;146:18; 147:9,12,13,16; 149:6;151:14,15; 160:16;161:3,9; 162:3,21;163:21; 164:1,3,6,6,7,15,18, 18;165:9;166:6; 169:18;174:21,22; 176:12,16,18;179:10, 12 routes (9) 82:5;83:5,5,7,10, 16;84:14,15;103:14 RSA (2) 58:19;59:24 rule (5) 51:23;58:22;59:1; 129:24;130:9 ruled (1) 181:3 rules (8) 66:4;77:23;78:1; 87:19,22;91:3; 113:12;151:9 running (6) 72:19;93:11;98:1; 112:10;117:5;162:21 runs (5) 82:18;95:24;100:5; 118:23;126:16 rural (5) 155:22;156:2,6,10; 164:10</p>	<p>107:8;108:1;113:3, 13;117:24;118:3; 119:14;120:4;124:1; 130:14;132:11; 134:7,24;154:15; 157:7;181:20 sat (1) 140:19 satisfy (1) 138:15 saved (1) 181:23 saw (12) 29:9,21;36:18; 79:17;81:20;89:10; 93:21;105:11,14; 109:5;127:2;182:22 Sawhegenet (44) 9:22,23;10:7,16; 11:12,16;18:16;19:8, 15,22;20:3,4;23:21; 28:6,21;29:3,7,17; 30:20;31:1,17;32:5, 13;33:9;35:4;36:2, 17;38:8,9,11,18,20; 40:12,18;43:11; 48:12,14;61:21;69:9; 70:14;75:23;81:20; 85:4;105:11 saying (12) 81:14;89:23;92:3; 142:14;145:12; 154:10,11;157:8,8; 158:11;159:1;179:15 scale (2) 46:2;48:3 scan (1) 24:24 scanned (1) 162:11 scattered (1) 95:7 scene (2) 34:5;76:6 scenery (1) 114:11 scenes (1) 24:16 scenic (96) 18:11,24;19:2; 20:7;21:11;22:11,19, 21;23:5,12;26:20; 33:19;60:3;61:21; 76:5;78:4;80:13; 81:3,4,5,7,12,16,23; 83:2,10,12,15,17,18, 21;84:2,15;85:9; 86:9;87:5,7,15,20; 88:23;89:4,6;90:7; 92:13,14;94:8;96:20, 21;97:11;99:17; 102:11;106:1; 108:13;109:2,10;</p>
S				
			<p>safe (1) 106:15 safety (2) 77:22;111:15 Saffo (35) 129:6;130:23; 131:1,3,21;132:1,3; 153:13;154:3,4,9,18; 158:18,19,24;159:15, 19;163:20,23;171:1, 2,7,12,20;172:3,16; 180:6,7,16,23;181:3, 10,15;182:7;183:20 same (25) 9:2;10:21;47:21; 48:7;56:11;86:14; 88:2;89:15;104:15;</p>	

<p>113:6,9,11;115:1; 117:22,23,24;118:4, 6,12,15,21;119:3; 120:23,23;121:2,23; 123:7,10,21;124:21; 128:10;143:20; 147:11;155:22; 156:1,4,5,10,18,20; 157:3;163:15; 165:10;168:12,13; 169:18,19;174:22; 175:6;183:8</p> <p>scheduling (2) 6:15:9:5</p> <p>scientific (1) 60:4</p> <p>scope (1) 8:23</p> <p>scored (1) 59:23</p> <p>scoring (1) 33:10</p> <p>scrambling (1) 5:22</p> <p>screen (6) 10:10;12:14;26:16; 34:14;104:9;123:7</p> <p>screening (1) 43:17</p> <p>se (1) 103:21</p> <p>sealed (1) 141:16</p> <p>season (1) 114:10</p> <p>seasonal (1) 118:23</p> <p>seat (1) 129:11</p> <p>SEC (2) 148:8;169:9</p> <p>second (5) 7:6;50:13;53:8; 133:1;174:24</p> <p>secondary (1) 80:24</p> <p>seconds (1) 125:7</p> <p>section (14) 36:12;45:22;83:14; 88:23;116:24; 135:24;139:1;159:9; 161:14,19;165:9; 166:3;183:18,19</p> <p>sections (2) 133:5;183:18</p> <p>seeing (7) 26:17,24;27:21; 30:15;159:4,5; 184:22</p> <p>seem (4) 14:21;28:15; 112:21;151:4</p>	<p>seemed (3) 88:16,18;109:13</p> <p>seems (9) 15:9;17:7;37:5; 70:18;86:7;104:5; 112:14;126:8;174:13</p> <p>sense (7) 4:10;7:10;8:21; 39:13;98:16;150:17; 151:3</p> <p>sensitive (2) 185:17,23</p> <p>sensitivities (1) 173:7</p> <p>sentence (8) 21:1,24;58:8,16, 17;59:10;114:7; 115:4</p> <p>sentences (1) 160:15</p> <p>separate (2) 84:11;90:19</p> <p>separately (1) 84:16</p> <p>September (7) 4:20;5:20;7:4; 72:12,14;168:10; 186:9</p> <p>series (1) 5:10</p> <p>serves (1) 176:17</p> <p>service (3) 115:5,15,18</p> <p>Services (2) 54:19;57:6</p> <p>serving (1) 115:19</p> <p>Session (1) 186:7</p> <p>sessions (1) 140:20</p> <p>set (3) 6:22;139:4;140:11</p> <p>sets (1) 60:1</p> <p>settle (1) 61:10</p> <p>several (14) 33:15;52:12;55:2; 87:19;98:21;112:12; 115:7,20;141:6; 160:16;161:10; 162:4;178:21;179:3</p> <p>SGC (1) 138:6</p> <p>shadow (1) 49:12</p> <p>shall (1) 77:23</p> <p>sharing (1) 118:24</p> <p>sharply (1)</p>	<p>163:5</p> <p>sheet (1) 111:11</p> <p>shield (1) 104:10</p> <p>shore (2) 40:21;43:22</p> <p>shoreland (12) 51:10;52:19,21; 53:11,12,15,19; 54:14;57:14;58:11; 59:17;60:2</p> <p>shoreline (6) 25:15;44:22,24; 52:2,24;53:1</p> <p>shot (1) 20:16</p> <p>Shoulder (8) 93:1,8;138:22; 140:5;160:18; 161:12;162:6;163:3</p> <p>shoulders (6) 133:8;134:2,10; 135:7,10;174:11</p> <p>shouting (1) 89:20</p> <p>show (6) 6:11;19:6;35:16; 98:24;149:13,14</p> <p>showed (5) 65:18;80:20;97:18, 19;116:13</p> <p>showing (3) 46:5;116:24; 146:17</p> <p>shown (4) 80:10;128:17; 146:16;159:6</p> <p>shows (3) 64:16;116:22; 134:16</p> <p>shrubbery (2) 149:23;150:8</p> <p>side (44) 10:18,19;25:22; 37:9;42:3;45:5; 62:15;73:1;75:24; 82:23;94:24;95:2,4,5, 17,18;96:13;108:15; 110:7;128:9;139:22; 143:23;146:7,8; 152:5,8,17,18,24; 153:1,9;161:21,23, 24;167:5,7,15,20; 168:12,13,18,18; 169:21;179:23</p> <p>sides (5) 128:3;139:22; 146:6;150:14;163:2</p> <p>sight (7) 27:22;44:4,5,11, 14;45:1;62:1</p> <p>sign (16)</p>	<p>13:3;14:2,3;17:11; 29:8,10,10,14,14,22; 79:6;89:11;93:21; 108:16;109:5,11</p> <p>significance (7) 39:10;87:4;178:22; 179:5,10,17;183:8</p> <p>significant (11) 21:24;22:3;102:13; 146:9;147:1,15; 149:5,9;160:23; 161:16;181:19</p> <p>signs (4) 30:5;121:19; 164:21;177:21</p> <p>similar (10) 38:14,20;51:10; 65:15;69:1;71:16,22; 72:22;78:16;102:15</p> <p>simply (1) 98:12</p> <p>single (4) 6:6;99:6;117:23,24</p> <p>single-family (1) 23:17</p> <p>sit (2) 114:10;129:7</p> <p>Site (10) 18:23;64:17;74:5; 84:13;127:11; 138:15;140:23; 141:8;149:13;169:4</p> <p>sited (2) 158:8,15</p> <p>sites (1) 156:17</p> <p>sitting (1) 153:22</p> <p>situated (1) 24:6</p> <p>situation (10) 25:24;55:19;67:16; 78:7,17;88:21;90:23; 118:16;146:14; 154:23</p> <p>situations (7) 50:7;56:1;65:16; 69:1;152:16;173:6, 11</p> <p>Six (2) 117:12,14</p> <p>Ski (2) 21:15,17</p> <p>skiing (1) 84:24</p> <p>skimming (1) 43:24</p> <p>skip (3) 73:7;107:7;122:6</p> <p>skipping (1) 166:8</p> <p>skirts (1) 174:23</p>	<p>sky (3) 26:9;43:23;71:2</p> <p>sleep (1) 163:1</p> <p>slicing (1) 120:10</p> <p>slide (81) 10:3,20;12:2,9; 13:1;15:8,17;16:15; 17:4,10;20:9,10,15, 16,22,23;24:7,8;26:5; 27:5,7;28:12;29:1; 30:19,22,24;32:6; 33:13,20;34:5,9,13; 35:8,21;36:7;37:2,4, 20;43:7,8;46:21; 47:10,10;48:9;50:8, 10;54:9;58:4;68:21; 72:8;79:4,5;82:2; 86:10,11,15;100:18, 22,23;101:1;104:2,4; 105:14;107:2,18; 108:6,7,7;109:16,22; 114:4,18,18;115:22; 116:21,21,22;122:5, 8;128:23;163:21</p> <p>slides (10) 17:2;54:24;57:21; 82:17;93:16;107:4; 117:10,11,15;128:23</p> <p>slight (1) 36:14</p> <p>slightly (1) 133:2</p> <p>slope (6) 13:11,13;152:6,10, 17,23</p> <p>slopes (3) 80:22;163:1,4</p> <p>slumpage (1) 69:2</p> <p>small (2) 65:1;93:9</p> <p>smaller (1) 49:12</p> <p>smallest (2) 47:21;82:10</p> <p>snowmobile (35) 28:16,18,24;31:24; 32:2;65:6,16,17,19; 79:17;81:5,6,10,18; 100:4,7,8;101:1,7,24; 102:10;103:9,12,20; 105:8,20,24;107:12, 14,17,22;108:2; 110:16;111:20; 118:24</p> <p>snowmobiles (2) 84:10;110:15</p> <p>snowmobiling (1) 100:17</p> <p>society (2) 39:23;40:2</p>
--	---	---	--	--

softwood (2) 74:10,11	130:3	6:13;24:4;51:11, 16;52:2,5;55:23; 77:15,22;84:12;87:9;	98:14	sufficient (2) 5:17;125:5
solely (1) 94:11	speaking (1) 34:19	speaks (2) 99:21;100:8,9; 101:23;107:14;	stops (1) 114:14	Sugar (2) 164:13;179:24
somebody (4) 29:18;118:18; 121:10;128:15	52:3;158:17	special (1) 130:7	straight (2) 13:11;73:8	suggest (3) 7:16;22:13;62:9
someone (5) 39:20;61:4;91:20; 129:4;166:15	specific (8) 56:22;103:6; 125:24;127:16; 141:7;159:11;160:3; 173:5	specifically (4) 3:13;97:23;105:1; 161:5	stream (2) 152:8,11	suggestion (1) 12:1
someone's (2) 144:19,23	speculative (1) 68:1	specifics (1) 147:18	street (2) 82:7;164:19	summaries (2) 53:18,24
someplace (1) 91:12	speed (1) 133:14	speculatively (1) 68:1	Streeter (1) 164:14	summer (10) 16:2;90:13,16,19; 91:4,10,22;92:1,5; 115:6
sometime (1) 4:8	spend (3) 6:4;28:7;50:13	speed (1) 104:8	stretch (2) 113:1;165:3	summertime (4) 22:4;88:1;90:21; 91:21
sometimes (1) 69:3	spent (1) 99:11	soon (1) 114:1	strictly (1) 3:14	supplement (2) 176:2,6
somewhat (1) 104:8	splice (8) 140:21;141:1,5,9, 12,15,18;143:12	sorry (39) 15:13;17:24;34:4; 36:15;49:6;50:16; 53:22;54:8;59:15; 62:5;63:23;64:20; 79:8;80:19;83:22; 84:17;88:6;95:12; 96:12;102:19; 103:16;104:2,8; 114:17;117:3,5; 123:1,3,20,22; 124:10;126:13; 127:6,6,11;128:10; 129:6;131:17;136:13	Strike (1) 136:11	supplemental (1) 155:3
sort (18) 5:7,24;12:5,6;14:9, 10;17:8;20:11,25;19; 39:11;90:8,10;92:7; 96:4;139:8;140:5; 150:11;152:13	spoken (1) 3:20	sort (1) 114:1	structure (8) 41:11,13,14;44:3; 46:1;64:4;93:17; 121:14	summer (10) 16:2;90:13,16,19; 91:4,10,22;92:1,5; 115:6
sounds (3) 71:20;105:5;111:2	sporadically (1) 166:12	sort (1) 114:1	structures (10) 43:3;63:11;64:19; 67:5;96:8;120:20,21; 121:1;164:23;175:1	summertime (4) 22:4;88:1;90:21; 91:21
source (4) 51:24;54:1;58:3,6	Sports (2) 21:15,17	sort (1) 114:1	studied (1) 178:13	supplement (2) 176:2,6
sources (1) 99:12	square (2) 66:11,12	sort (1) 114:1	studies (1) 131:12	supplemental (1) 155:3
south (8) 85:3;88:3;97:20; 105:9,12;164:14,17; 176:15	stack (2) 117:10,11	sort (1) 114:1	study (2) 60:4;183:17	suppose (6) 29:18;31:15;73:2; 90:14;96:2;110:14
southern (3) 21:11;22:11,15	Stamp (1) 46:24	sort (1) 114:1	stuff (1) 165:17	supposed (4) 5:13;8:1;87:21; 117:21
southward (1) 22:16	stamped (1) 47:11	sort (1) 114:1	stumps (1) 60:22	supposition (1) 110:23
space (8) 148:15;152:22; 153:16;154:7;167:2; 172:18,20,24	stand (4) 15:2,4;63:22;137:4	sort (1) 114:1	Subcommittee (1) 184:8	sure (11) 13:22;24:9;35:16; 47:13;54:5;60:8; 82:12;85:7;117:20; 158:22;185:18
spaces (1) 177:22	standing (1) 88:9	sort (1) 114:1	subject (9) 3:14;12:23;23:11; 120:1;126:14,17; 127:13,24;128:8	surface (7) 47:18;58:9,13; 110:6;134:14; 141:19;177:23
speak (1)	stands (1) 166:17	sort (1) 114:1	submission (1) 4:19	surmise (1) 72:15
	star (2) 121:8,13	sort (1) 114:1	submit (1) 5:11	surrounding (3) 87:16;109:6; 135:15
	stars (1) 120:18	sort (1) 114:1	submitted (7) 4:24;132:11;168:6; 174:1;175:24; 183:11,14	survey (1) 139:5
	start (5) 3:11;117:3;126:19; 151:24;166:7	sort (1) 114:1	subsections (1) 183:18	suspect (2) 75:9;102:17
	started (1) 41:22	sort (1) 114:1	subsequent (1) 7:9	Sustained (6) 56:6,12;103:1; 119:12;122:3;153:12
	Starting (4) 21:3;94:22;151:22; 157:17	sort (1) 114:1	subsidized (1) 111:24	Swim (2) 17:13;65:4
	starts (1) 159:22	sort (1) 114:1	substantial (3) 156:20;157:3,9	SWQPA (2) 58:10,20
	state (27)	sort (1) 114:1	substantive (1) 4:12	symbol (1) 104:7
		sort (1) 114:1	subtilties (1) 77:19	system (10) 53:3,8;54:23;

98:20;99:19,24; 102:5,7,17;103:13	testifying (1) 61:1	54:11	112:14;180:18	107:15
T	testimony (23) 3:16;8:4,5,23; 53:10;85:11;110:20; 131:11;132:6,8; 134:7;135:1;145:7, 16,21;151:13;155:1, 3;170:2,22;171:5; 176:6;181:6	today (7) 6:10;9:9,10; 104:16;133:17; 184:24;186:2	trackage (1) 115:17	tree (25) 37:16,17;38:5; 43:20;68:8;71:9; 74:13,15,16,16,21; 75:6,9,12;95:20; 133:20;142:21; 144:12;160:18; 161:11;162:5;163:7, 11;175:7,13
table (3) 17:7;19:12;168:4	testimony's (1) 180:8	together (1) 141:14	tracks (4) 23:18;110:3,7; 118:24	trees (65) 37:15;43:4;44:1; 45:4,7,15,24;47:6; 49:7,10,12,13,14,15, 19,24;53:2;55:6,20; 56:9,19;63:3,6,9,18; 66:7;68:6,9,21; 70:21;72:5,24;75:2,3, 4,11;98:4;125:4; 139:17;140:6;141:2; 142:9;144:14,16,18; 147:22;149:8,11,21; 150:7,18,24;161:22; 163:1;166:13,16,21, 23;167:3;168:21; 173:12;174:9; 177:21;182:17,22
talk (6) 6:10;27:5;40:2; 127:18;132:2;148:7	Thanks (1) 115:22	told (10) 100:3;123:6;138:8, 18;141:3;142:5; 143:11;145:8,9; 173:14	traditional (1) 8:18	trench (14) 143:13;148:14; 151:1,2,3;153:17,24; 154:8,11,12,13; 171:14,14;180:10; 181:16
talked (8) 31:13;73:1;78:8; 137:22;140:18; 153:14;168:20;174:8	thereby (1) 133:15	Tom (1) 138:7	traffic (1) 166:10	trenches (4) 152:20;170:14,18; 172:18
talking (33) 3:22;8:8;9:21; 10:4;12:19;18:1,13; 27:6;29:15;48:5,7; 61:19;68:11,15;75:1, 2;95:1,6;96:23;97:3; 132:4,5;133:23; 140:9;144:10,24; 145:1;159:23;161:4; 165:14;166:7,21,23	there'd (1) 152:9	took (11) 20:3;35:23;44:14; 87:7,8;88:14;108:24; 124:15;128:7,24; 135:22	trail (28) 28:17,18,24;65:6, 18,22;79:17;81:5; 84:18;98:20;99:19, 24;100:4,7,9,10,13; 102:5,6,17;103:12; 105:8,8,11;107:13, 14,22;108:2	tried (1) 105:18
Talks (4) 50:21;135:3; 162:20;163:24	therefore (6) 62:19;97:11;109:9; 156:4;160:2;168:1	top (15) 29:9,14;37:9;44:2; 63:2;73:8;89:15; 90:3;92:6;95:2; 133:1;150:8,21; 155:17;159:16	trail-related (1) 111:15	trips (1) 22:5
tall (1) 125:5	there'll (1) 184:11	topic (1) 4:13	trails (20) 19:11;81:6,10,18, 22;82:1;84:3,4,7,8; 102:11;103:9,20; 105:20,24;107:18; 111:9,10,14;118:3	trials (1) 119:21
taller (1) 46:16	thin (1) 68:12	topics (3) 26:17;43:24;63:8	train (4) 114:6;118:12,20, 22	trains' (1) 119:20
tape (1) 182:20	third (3) 49:4;96:1;157:16	tornado (2) 72:12,17	trains (1) 119:21	transition (3) 120:16,17;161:6
team (4) 137:24;141:3; 144:10;173:5	Thornton (2) 176:13;180:1	tornadoes (1) 73:4	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
team (4) 137:24;141:3; 144:10;173:5	thought (13) 12:3,4;34:22; 35:14;38:23;60:15; 63:23;78:12;108:14; 126:6;131:14;155:9; 171:8	total (4) 64:21;111:12; 122:22;125:14	transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
technical (1) 133:3	thoughtful (1) 5:16	totally (3) 78:7;120:1;159:3	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trials (1) 119:21
techniques (1) 156:15	threaten (1) 67:23	touch (1) 4:7	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trains' (1) 119:20
telling (2) 40:13;169:20	three (6) 15:5,7;35:19; 44:17;54:24;125:7	tourism (13) 89:4,8,13,17;90:3, 3,8,13;91:1;92:7,10, 15;96:22	transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
ten (1) 61:13	throughout (3) 57:16;71:3;76:8	tourist (5) 91:6,16,22;94:12; 119:20	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trains (1) 119:21
tend (1) 10:15	thus (2) 72:4;115:9	tourists (6) 90:15;91:5,6,11, 12;92:18	transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
ten-minute (1) 61:9	ties (1) 110:11	tours (1) 114:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trains' (1) 119:20
tenths (2) 162:13,14	Timber (2) 58:2,20	toward (5) 13:14;14:22;72:11; 95:2;98:2	transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
term (2) 11:8;141:6	times (7) 24:15;33:15;35:19; 69:12;77:6;116:23; 119:15	towards (2) 111:18;121:11	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trains (1) 119:21
terms (5) 6:17;24:12;127:6; 138:23;184:18	timing (1) 7:19	towers (2) 47:8;48:13	transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1
terrain (5) 47:17;104:23; 133:21;175:8,13	tiresome (1) 100:12	town (4) 19:10;36:23;164:2; 180:3	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trains' (1) 119:20
test (2) 124:12,12	title (1)	towns (2)	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1	trials (1) 119:21
testified (5) 55:2;69:11;125:23; 145:8;150:3			transition (3) 120:16,17;161:6	transmission (24) 23:18;26:19;43:3; 46:1;48:12;62:16,22; 101:20;106:4,9,18; 120:20,21;121:14; 132:23;135:4; 152:14;157:14; 159:20;160:4,12,21; 165:11;179:1

<p>turned (2) 136:18;181:23</p> <p>turning (5) 156:11;159:10; 166:6;174:7,19</p> <p>Two (21) 4:21;7:3,24;9:4; 17:2;26:7;30:20; 31:2,3,9;36:13; 37:20;43:3;57:20; 63:11;110:3;126:19; 136:7;160:15; 162:13,14</p> <p>two-lane (2) 164:11;166:9</p> <p>type (5) 23:16;75:13;76:23; 110:10;162:1</p> <p>types (4) 4:23;6:23;64:24; 140:7</p> <p>typical (4) 43:20;71:2;76:7; 150:11</p> <p>typically (2) 107:20;150:20</p>	<p>60:14</p> <p>understood (1) 12:1</p> <p>undeveloped (1) 119:23</p> <p>undisturbed (1) 175:9</p> <p>undoubtedly (2) 178:21;179:4</p> <p>undue (1) 156:16</p> <p>Unfortunately (4) 20:20;61:2;82:14; 122:9</p> <p>unimportant (1) 89:22</p> <p>unit (1) 47:22</p> <p>United (1) 73:5</p> <p>University (1) 58:6</p> <p>unlikely (1) 170:3</p> <p>unnecessarily (1) 178:18</p> <p>unnecessary (1) 155:20</p> <p>unto (1) 19:2</p> <p>unusual (1) 136:3</p> <p>up (23) 5:21;6:5;12:11; 23:3;26:10;31:21; 34:13;35:9;43:23; 45:2;49:14;51:24; 79:18;80:24;81:1; 94:15;98:24;100:5; 105:3;108:20;148:5; 166:22;186:2</p> <p>updated (1) 155:1</p> <p>upon (20) 22:4;25:3;29:8,21; 39:6,8;41:4;78:12; 89:9;103:21;106:19; 136:1;139:4;140:12; 142:19;147:3;158:1; 167:9,12,18</p> <p>upper (1) 69:4</p> <p>upstream (2) 25:1;71:10</p> <p>upward (1) 163:5</p> <p>URL (1) 114:19</p> <p>use (22) 29:12;43:21;65:7, 10,11,16;79:1;84:10; 88:21;91:9;92:12; 97:9;102:12,12;</p>	<p>113:5;118:9,11; 133:6,11;134:9; 157:22;171:13</p> <p>used (12) 8:24;9:2;29:7; 45:21;47:19;64:17, 22;88:18;94:12; 103:14,24;125:4</p> <p>user (2) 29:2;48:11</p> <p>users (4) 18:11,12;23:5;24:4</p> <p>uses (3) 30:13;91:24; 127:19</p> <p>using (6) 27:23;39:8,10; 56:18;133:13;157:18</p> <p>Usually (2) 90:8;147:6</p> <p>utilities (4) 150:19;160:9; 168:21;174:10</p> <p>utility (6) 139:7;150:12,13; 163:7;175:1;178:9</p> <p>utilize (1) 164:24</p>	<p>58:23</p> <p>vehicles (1) 86:20</p> <p>vendor (1) 111:12</p> <p>verbal (3) 4:14;130:22;186:3</p> <p>verifying (1) 76:3</p> <p>version (1) 28:10</p> <p>versus (1) 90:21</p> <p>Vertical (2) 45:21;46:2</p> <p>VIA (8) 38:21;80:11;127:3, 17;134:19;167:23; 176:1;179:8</p> <p>vicinity (2) 10:2;101:22</p> <p>view (29) 13:20;24:12;27:15, 20,23,24;44:24;47:7; 48:11;55:8;62:10,12; 64:12;85:6,24;86:5, 7;87:20;88:1;89:14; 90:2;109:16;120:10; 121:13;122:5; 124:22,24;126:22; 128:4</p> <p>viewpoint (12) 46:9;62:3,18; 96:24;97:3,5;98:16; 99:6,19;100:6;120:5; 121:14</p> <p>views (22) 43:2,17;55:16; 63:11,14;64:1,2,10; 73:23;74:1,2,7;81:9, 13;85:20,21,23;87:6; 98:23,24;100:1; 106:14</p> <p>viewshed (4) 47:20;80:20;94:15; 98:11</p> <p>violent (1) 72:16</p> <p>virtually (1) 139:17</p> <p>visibility (12) 42:17,20;68:13,18; 97:15,19;98:6,9,10, 14,15,24</p> <p>visible (8) 39:5,7;40:20; 44:21,22;51:14; 94:17;96:18</p> <p>visit (7) 28:3;63:15;89:20, 21;90:2;91:13,15</p> <p>visited (3) 74:5;99:18;100:2</p>	<p>visitor (1) 10:16</p> <p>visitors (1) 65:24</p> <p>visual (25) 41:17;45:5;51:22; 55:15,18;56:2;58:14; 59:18;70:8;75:16; 80:9;94:9;105:18,22; 121:1;123:12; 124:17,20;126:18; 127:20;131:12; 143:19;147:10,15; 183:16</p> <p>volume (3) 21:8;22:19;102:12</p>
U				
<p>ultimately (9) 124:15;126:11; 143:16,18;144:3,4,5; 169:9,10</p> <p>unacceptable (3) 129:1;160:23; 161:17</p> <p>unanswered (1) 16:23</p> <p>under (15) 51:11;55:21;75:12; 91:16;111:5;131:14; 134:2;136:19; 145:10;152:15; 153:2;155:10;161:7; 173:14,20</p> <p>undergrad (1) 183:6</p> <p>underground (32) 131:9;132:18; 133:5,12;135:20; 138:7,21;139:1,7,9; 141:12;147:5; 150:21;151:15; 155:6,19;156:1,14; 159:9;160:12,21; 163:19;166:2;175:3, 9;180:9,10;181:7; 183:1,12,15,19</p> <p>underlined (1) 155:17</p> <p>underneath (3) 135:5,23;136:6</p> <p>understands (1)</p>	<p>unto (1) 19:2</p> <p>unusual (1) 136:3</p> <p>up (23) 5:21;6:5;12:11; 23:3;26:10;31:21; 34:13;35:9;43:23; 45:2;49:14;51:24; 79:18;80:24;81:1; 94:15;98:24;100:5; 105:3;108:20;148:5; 166:22;186:2</p> <p>updated (1) 155:1</p> <p>upon (20) 22:4;25:3;29:8,21; 39:6,8;41:4;78:12; 89:9;103:21;106:19; 136:1;139:4;140:12; 142:19;147:3;158:1; 167:9,12,18</p> <p>upper (1) 69:4</p> <p>upstream (2) 25:1;71:10</p> <p>upward (1) 163:5</p> <p>URL (1) 114:19</p> <p>use (22) 29:12;43:21;65:7, 10,11,16;79:1;84:10; 88:21;91:9;92:12; 97:9;102:12,12;</p>	<p style="text-align: center;">V</p> <p>valid (3) 7:14,16;137:3</p> <p>value (2) 81:17;105:22</p> <p>variable (1) 152:4</p> <p>variety (5) 85:20;130:8; 136:20;154:21;178:4</p> <p>various (3) 127:1;168:21; 183:17</p> <p>Varney (1) 184:19</p> <p>vary (1) 133:2</p> <p>vaults (1) 143:12</p> <p>vegetated (1) 42:23</p> <p>vegetation (35) 15:2,4;25:10;26:2; 43:16;44:23;45:8,9; 47:16;48:1,5,7,9; 50:4;52:13;62:7,11, 15;63:21,22;67:4,9; 74:8,10,11;85:22; 95:8;96:15;97:13; 121:7,12;140:7; 150:21;151:2;168:2</p> <p>vegetative (4) 50:22;54:13,16;</p>	<p>wait (3) 33:4;50:9;129:7</p> <p>waiting (1) 33:14</p> <p>walk (3) 44:19;78:19;109:8</p> <p>walked (1) 121:4</p> <p>Walker (3) 4:8;185:18,19</p> <p>walking (2) 84:9;141:17</p> <p>walkway (1) 152:7</p> <p>walkways (1) 164:22</p> <p>wall (1) 77:15</p> <p>walls (12) 149:21;160:17; 161:11;162:1,5,24; 163:6;164:12,21; 174:10,14;177:22</p> <p>wants (1) 89:21</p> <p>warning (1) 30:8</p> <p>washouts (1) 115:7</p> <p>water (26) 21:8;22:19;25:10; 29:19;31:6,15,16,21; 44:15;45:13,14;47:8; 48:8,12;58:9,12;62:1, 4,5;78:18;85:21; 94:21;133:18;139:7; 166:11;178:4</p> <p>waterfronts (1) 51:19</p> <p>waters (1) 58:13</p> <p>Waukewan (1) 114:12</p> <p>way (38)</p>	

11:18;13:15;21:23; 31:10,18;32:4;40:13; 44:19;46:5,6,7; 54:23;62:18,19; 64:12;66:24;76:3; 86:19;90:12;96:1; 98:12;109:12; 114:15;117:24; 118:3;127:12;133:7; 138:14;142:14,21; 143:10;153:8;157:7; 160:5;162:23;163:3, 9;181:14 ways (8) 11:11;29:6,17; 31:2,3,9,22;154:22 weave (1) 178:5 web (4) 84:13;100:15; 101:8;119:15 Webster (7) 72:11,18;93:20,21, 23;94:3,7 week (1) 3:11 weeks (1) 7:24 welcome (2) 76:14,15 welfare (1) 77:22 well-established (1) 89:17 well-known (1) 89:16 weren't (2) 99:2;103:14 west (11) 10:18,19;69:8; 72:20;73:1;82:19; 88:2;104:22;105:15; 161:24;164:15 wet (1) 160:19 wetlands (4) 133:18;163:1,6; 166:11 what's (14) 23:8,12;52:18; 53:4;60:15;102:16; 119:16;124:11; 132:13;137:20; 146:17;151:19; 158:1;180:14 whatsoever (1) 135:18 where's (1) 107:21 Whereupon (2) 129:16;186:6 wherever (1) 150:13	white (7) 15:5,7;95:10,12, 23;96:8;163:18 Whoa (3) 53:5,5,6 whole (7) 16:18;18:14,17; 84:6;100:12;169:4; 170:5 wide (2) 36:12;146:4 Widell (1) 3:12 widening (2) 175:7,13 widest (1) 146:3 width (6) 139:1;151:24; 153:23;154:13; 160:3;164:5 wife (1) 15:21 wildlife (1) 60:3 willing (5) 6:11;13:23;97:2; 145:4;148:7 windstorm (1) 72:17 Winona (1) 114:12 wintertime (2) 89:11;90:21 wires (1) 171:15 withdraw (1) 115:2 within (26) 7:23;49:12;50:24; 54:13;66:11,12;82:9; 91:5;106:4;108:2; 125:20;133:7; 134:13,21;139:24; 145:14;151:1; 156:19;157:1;163:8; 168:7;170:1,3; 175:17;177:6,13 without (11) 28:10;55:14,17,17; 77:12,13;125:18; 136:14;147:18; 159:4;160:3 witness (21) 6:17;8:3,15;24:3; 31:4;32:22;33:3,12; 50:20;51:2,8;61:12; 69:11,24;76:1; 116:12,16;122:14; 161:18;172:10;182:5 witnessed (1) 27:11 witnesses (15)	4:23;5:2,9;6:1,20; 7:5;8:22;9:8;128:22; 129:23;130:2,4,10, 11,12 Wolfeboro (1) 115:19 wonderful (1) 100:1 wooden (1) 110:6 woodland (2) 76:8;79:6 woods (4) 25:21;27:14;149:3; 164:11 Woodstock (3) 176:13,16;180:1 word (21) 14:15;21:3;104:14; 121:8;122:22,23; 123:3;124:5,6,7,8,9; 155:18,19;156:3,5; 157:9,17;177:2,8; 180:21 wording (1) 173:17 words (2) 62:21;89:7 work (10) 7:12;59:2;76:4; 78:11;85:8;86:2; 88:22;138:14;145:4; 164:17 worked (2) 62:20;173:8 working (1) 119:21 works (3) 165:4,7;174:3 worried (1) 6:21 worry (1) 11:7 Wow (1) 52:16 write (1) 155:5 writes (2) 156:12;164:4 writing (1) 183:15 written (2) 21:13;136:14 wrong (2) 48:10;171:17 wrote (3) 131:13;155:14; 176:14	19 year (1) 112:1 years (2) 15:23;125:2 yellow (2) 26:3;27:10 yesterday (2) 6:10;9:2 York (2) 116:23;119:15 young (1) 72:5 Yup (2) 132:1;172:12	132 (2) 82:6,11 137 (1) 100:18 138 (1) 101:1 145 (7) 160:16;161:3,9,14, 19;162:4,22 15 (2) 107:6;147:15 150 (3) 48:16;49:1;63:20 150-foot (1) 68:11 150-foot-wide (1) 50:21 152 (1) 104:4 155 (1) 109:22 16 (3) 132:9;134:5; 135:17 160 (1) 114:4 161 (1) 114:18 164 (1) 116:21 17 (1) 155:2 170 (1) 128:23 18 (11) 164:6,15,18;165:9; 170:12,14,18;172:20, 23;173:3;186:9 1800 (1) 63:12 1800s (1) 164:9 1828 (1) 160:1 1919 (1) 96:12 192 (2) 99:4,10 1920 (1) 96:9 1938 (2) 72:12,14 1972 (1) 15:21 1973 (1) 115:7 1975 (2) 115:13,18 1977 (1) 115:21
		Z		
		zone (3) 49:16;51:21;71:3 zones (2) 49:5;50:4 zoning (1) 51:10 zoom (2) 123:14;159:17		
		1		
		1 (3) 5:2;111:16;162:19 1:33 (1) 3:2 10 (5) 7:5;107:6;163:2,8; 177:13 100 (1) 111:17 102.45 (4) 18:23;83:15,24; 88:23 104 (2) 12:11;13:2 108 (1) 86:15 1-1/4-hour (1) 128:22 112 (2) 147:13;174:22 116 (17) 143:20,22;146:2,3, 18;147:9,12,16; 149:6,20;151:14; 164:7;166:6,15; 167:4;169:18;174:22 117 (1) 164:19 12 (10) 56:10;66:9;148:17, 18;149:2,4,9,18; 170:4,10 120 (1) 48:24		
		Y		
		yards (4) 69:9;105:13;149:4,		

<p>2 (1) 5:3 2,000 (1) 140:23 2:47 (1) 61:14 20 (5) 142:1;146:6,7; 162:24;171:9 2008 (3) 15:12;16:4,11 2013 (1) 54:21 2015 (7) 111:16,16;132:9; 134:5;135:17;155:9, 9 2017 (5) 155:2;168:10; 176:2,5;186:9 2100 (2) 10:13,14 21st (1) 72:14 22 (1) 72:12 22nd (5) 4:20;5:8,20;7:4; 72:14 24 (7) 104:19,20;105:8; 106:17;146:3; 152:20,21 25 (3) 147:24;148:13,15 29 (3) 21:1;35:22;46:23</p>	<p>186:6 35 (1) 186:8 36 (4) 131:7,7;132:14; 159:21 360-degree (1) 24:24</p>	<p>6 (10) 147:6,7,14;151:16; 152:1;170:1,3,11; 182:12,21 63 (1) 28:12 66 (1) 146:5 66-foot (2) 145:23,24 68 (1) 35:21 69 (1) 33:21 6-foot (3) 167:2;170:19; 172:24</p>		
	4			
	<p>4 (2) 66:8;117:20 4:29 (1) 129:16 4:36 (1) 129:17 4-14 (3) 126:18;127:17; 128:18 4-15 (1) 128:6 47 (1) 10:9 4-8 (3) 19:15,23;38:21 483-B2 (1) 60:1 483-B5-a (1) 58:19 4-rod (1) 164:9</p>			
	5		7	
			<p>71 (2) 37:4;156:12 72 (4) 132:20;155:15,16; 157:15 75 (3) 47:10;159:10,13 76 (2) 68:21;163:17 78 (1) 72:8</p>	
			8	
			<p>8 (1) 163:2 8.3 (2) 125:14,21 800 (2) 62:24;63:7 83 (1) 58:4 88 (1) 79:5</p>	
3			9	
<p>3 (18) 101:9;117:20; 123:19;125:10; 138:23;139:2,13; 150:14;151:1,24; 152:1;154:11; 176:12,16,18;179:10, 12;183:18 3:05 (1) 61:15 30 (1) 115:17 30072 (1) 132:23 30075 (1) 159:21 30077 (1) 174:20 302 (4) 163:21;164:1,3,6 31 (1) 111:16 34 (1)</p>	<p>5 (7) 44:6;47:22,22; 62:3,5;99:9;177:6 5:38 (1) 186:7 50 (4) 51:5;52:24;53:1; 92:5 50-by-50-foot (2) 66:11,12 51 (1) 12:10 52 (11) 10:11;17:4;72:9; 100:20,22;136:10; 137:12,14;180:11; 181:7,16 54 (1) 15:15 56 (1) 17:4 58 (1) 20:23 59 (1) 24:8</p>			
	6			