

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

May 5, 2017 - 9:25 a.m.
Public Utilities Commission
21 South Fruit Street - Suite 10
Concord, New Hampshire

(Delivered via e-mail 5/24/17)

IN RE: SEC DOCKET NO. 2015-02
ANTRIM WIND ENERGY, LLC:
Application of Antrim Wind,
Energy, LLC for a
Certificate of Site and
Facility.
(Joint Motions for Rehearing)

PRESENT FOR SITE EVALUATION SUBCOMMITTEE:

Cmsr. Robert R. Scott Public Utilities Commission
(Presiding as Presiding Officer)

Dr. Richard Boisvert (Designee)	Dept. of Cultural Resources Div. of Historical Resources
John S. Clifford (Designee)	Public Utilities Commission/ Legal Division
Dir. Eugene Forbes (Designee)	Dept. of Environ. Services/ Water Division
Patricia Weathersby	Public Member

Also Present for the SEC:

Michael J. Iacopino, Esq. (Brennan...)
Pamela Monroe, SEC Administrator

COURT REPORTER: SUSAN J. ROBIDAS, NH LCR NO. 44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

	PAGE
OPENING REMARKS BY PRES. OFFICER SCOTT	5
JOINT MOTIONS FOR REHEARING:	
SUBJECT: RES JUDICATA	14
DISCUSSION	14
SUBJECT: COLLATERAL ESTOPPEL	16
DISCUSSION	16
SUBJECT: APPROPRIATE QUORUM TO	22
LEGALLY CONVENE	
DISCUSSION	23
SUBJECT: WAIVER OF SEC RULES	24
BY SUBCOMMITTEE	
DISCUSSION	25
SUBJECT: PROCEDURAL FAIRNESS	30
DISCUSSION	31
SUBJECT: EFFECTS ON AESTHETICS	33
DISCUSSION	36
SUBJECT: VIEWSHED ANALYSIS AND	44
IDENTIFICATION OF	
SCENIC RESOURCES	
DISCUSSION	45
SUBJECT: VIEWER EFFECTS	47
DISCUSSION	48
SUBJECT: PHOTO SIMULATIONS	52
DISCUSSION	53
SUBJECT: MITIGATION	54
DISCUSSION	56
SUBJECT: DECOMMISSIONING	57
DISCUSSION	58

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

	PAGE
SUBJECT: PUBLIC HEALTH AND SAFETY-NOISE DISCUSSION	60 61
SUBJECT: PUBLIC HEALTH AND SAFETY - SHADOW FLICKER DISCUSSION	65 66
SUBJECT: ICE THROW DISCUSSION	69 69
SUBJECT: NATURAL EFFECT ON ENVIRONMENT DISCUSSION	70 70
SUBJECT: ORDERLY DEVELOPMENT OF REGION VIEW OF MUNICIPALITIES DISCUSSION	73 74
SUBJECT: ORDERLY DEVELOPMENT OF REGION REAL ESTATE VALUES DISCUSSION	77 77
SUBJECT: METEOROLOGICAL GROUP MOTION DISCUSSION	84 86
MOTION TO DENY METEOROLOGICAL GROUP'S MOTION FOR HEARING	
MADE BY Mr. Clifford SECONDED BY Dr. Boisvert DISCUSSION ON THE MOTION VOTE TAKEN	94 95 95
MOTION TO DENY JOINT MOTION FOR REHEARING	
MADE BY DIR. FORBES SECONDED BY VOTE TAKEN	96 96 96

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

PAGE

MOTION TO DENY COUNSEL FOR THE PUBLIC'S
MOTION FOR REHEARING

MADE BY DR. BOISVERT	97
SECONDED BY Ms. Weathersby	97
VOTE TAKEN	98

MOTION TO LIFT ORDER SUSPENDING DECISION
AND ORDER GRANTING A CERTIFICATE FOR SITE
AND FACILITY, EFFECTIVE 5/5/17

MADE BY DIR. FORBES	98
SECONDED BY Mr. Clifford	99
DISCUSSION ON MOTION	99
VOTE TAKEN	100

DENIED - REQUEST BY TOWN OF ANTRIM TO
REOPEN RECORD RE: LOI/EASEMENTS

MADE BY PRESIDING OFFICER SCOTT	101
---------------------------------	-----

1 P R O C E E D I N G S

2 PRESIDING OFFICER SCOTT: Good
3 morning, everybody. Welcome. Thank you for
4 coming. And again, this is a public meeting of
5 the Subcommittee for the New Hampshire Site
6 Evaluation Committee specifically regarding the
7 Application of the Antrim Wind Energy for a
8 Certificate of Site and Facility, which is SEC
9 Docket 2015-02. The primary purpose for our
10 meeting today is to discuss pending requests
11 for rehearing. Before turning to the agenda,
12 I'll ask the Subcommittee members to introduce
13 themselves, starting with Mr. Forbes.

14 DIR. FORBES: Yes, I'm Eugene Forbes,
15 representing the Department of Environmental
16 Services.

17 MS. WEATHERSBY: Good morning.
18 Patricia Weathersby, public member.

19 DR. BOISVERT: Good morning. Richard
20 Boisvert, New Hampshire Division of Historical
21 Resources.

22 MR. CLIFFORD: Good morning. John
23 Clifford, Staff attorney for the New Hampshire
24 Public Utilities Commission.

1 PRESIDING OFFICER SCOTT: And I'm Bob
2 Scott with the New Hampshire Public Utilities
3 Commission and Presiding Officer for this
4 docket.

5 I'd like to also introduce our
6 attorney, Mr. Iacopino, and the Administrator
7 for the SEC, which hopefully you all know by
8 now, Attorney Monroe.

9 So, just for clarity, this may not
10 be as fulfilling for everybody watching us,
11 but this is again another case where we will
12 be deliberating amongst ourselves. So I will
13 not be asking for appearances or taking
14 statements from the audience.

15 To give a little bit of background
16 since it's been a while since we met --
17 obviously, most of you are very familiar with
18 the docket. But for the record, and anybody
19 new, I'll give a little bit of the
20 background.

21 On October 2nd, 2015, Antrim Wind
22 Energy, LLC filed an Application for
23 Certificate of Site and Facility with the
24 Site Evaluation Committee. And again, as

1 you're aware hopefully, they proposed to site
2 and construct nine wind turbines capable of
3 generating roughly 3.2 megawatts each. The
4 Project is proposed to be located in Antrim,
5 on Tuttle Hill ridge line expanding southwest
6 towards the northern slope of Willard
7 Mountain. The Project has requested to be
8 constructed primarily on the ridge line that
9 starts approximately three quarters of a mile
10 south at Route 9 and runs southwest for
11 approximately 2 miles. The Project is to be
12 located in a rural conservation zoning
13 district on private lands owned by six
14 landowners and leased by Antrim Wind. Antrim
15 sought a Certificate of Site and Facility
16 approving site and construction and operation
17 of the Project.

18 On October 20th, 2015, pursuant to
19 RSA 162:4, the Chair of the Committee
20 appointed the Subcommittee in this docket.

21 On November 18th, 2015, the
22 Subcommittee reviewed the Application and
23 determined it was sufficient for the
24 Subcommittee to carry out the purposes of the

1 statute. Adjudicative hearings were held on
2 September 13, 15, 20, 22, 23rd, 28, 29,
3 October 3rd, 18th, 19th, 20th, and
4 November 1st and 7th of 2016. During the
5 hearings, the Applicants presented testimony
6 through witnesses who were cross-examined by
7 members of the Subcommittee, Counsel for the
8 Public and other related -- excuse me -- and
9 the Intervenors, of course. Counsel for the
10 Public presented testimony of their expert
11 witness and other related exhibits in this
12 docket. The Intervenors and witnesses also
13 presented testimony and were cross-examined.
14 In total, the Subcommittee received 220
15 exhibits. The Subcommittee also received a
16 number of public comments, oral and written,
17 from interested members of the public.

18 The Subcommittee also deliberated
19 for three days in December: December 7th,
20 9th and 12th of 2016. A decision and Order
21 granting the Certificate was finally issued
22 on March 17th, 2017. Following the issuance
23 of the decision and Order, the Subcommittee
24 received Motions for Rehearing and

1 Reconsideration from the meteorologist group
2 of Intervenors, the Joint Group of Abutting
3 resident Intervenors, the Non-Abutting
4 resident Group of Intervenors, the
5 Levesque-Allen Group of Intervenors, the
6 Stoddard Conservation Commission, and the
7 Windaction Group for rehearing. In addition,
8 last, but not least, certainly, Counsel for
9 the Public also filed a Motion for Rehearing
10 and Reconsideration.

11 It appears that the Motions for
12 Rehearing have been -- both for the
13 Intervenors and Counsel for the Public are
14 substantially similar, so I suggest that we
15 work through, starting with some of the major
16 legal issues that were raised, looking at
17 those two groups first, the Joint Intervenors
18 and Counsel for the Public's Motions for
19 Rehearing and Reconsideration.

20 So at this point I think what I'd
21 like to do is start again with some of the
22 larger legal issues and then kind of work our
23 way down. I think what we want to do is
24 address the meteorologist group -- Mr. Ward's

1 here, I see -- at the end. And depending on
2 how we rule, then there's some other
3 administrative things that we need to
4 address.

5 So, first and foremost -- not
6 foremost, but certainly first, again, some of
7 the larger legal issues. The issue of res
8 judicata was raised again in these motions.
9 And I'm going to broadly summarize.

10 Obviously you've all read the submissions.

11 So, again, to start on that, I'm
12 going to ask -- and maybe I'll back up a
13 little bit. I'm going to ask our counsel,
14 Attorney Iacopino, to broadly give us the
15 standard by which we would look at the
16 motions generally, what are the standards
17 before we start with the res judicata, but
18 generally what we'd be looking at if we
19 decide to take up these motions.

20 MR. IACOPINO: Yes, Mr. Chairman.
21 Each of the three Motions for Rehearing are
22 governed by the same standard under RSA 541,
23 and that is that the Movants, the people making
24 the motions to you, must demonstrate that your

1 decision was unlawful, unjust or unreasonable.
2 In considering these motions, it's incumbent
3 upon the Subcommittee to consider whether or
4 not the motions state good reasoning or good
5 cause to rehear the matter. The Supreme Court
6 has ruled that the purpose of the rehearing
7 process is for the parties to be able to direct
8 your attention to matters which they believe
9 have been overlooked or mistakenly conceived in
10 your original decision and invite
11 reconsideration on this. You are authorized to
12 grant reconsideration if you find that there is
13 good reason or good cause to do so. If you
14 find that there is no good reason or good cause
15 to do so, then the motions should be denied.
16 So that's basically the standard that you are
17 to adhere to when considering these three
18 motions.

19 PRESIDING OFFICER SCOTT: Thank you
20 for that. So now I'll start with res judicata
21 issues.

22 The Intervenors and Counsel for the
23 Public have asserted that the Project's
24 materially similar or the same as Antrim 1,

1 the first project that was heard and denied,
2 in that the physical characteristics of the
3 Project -- any changes were di minimus. And
4 they assert that it's unreasonable to
5 determine that the Project is substantially
6 different simply because the Applicant
7 proposed additional mitigation measures and
8 that those measures did not change the
9 impacts of the aesthetics. Again, I'm just
10 summarizing. I'm not making all the points
11 for all the parties.

12 Counsel for the Public argues that
13 the Subcommittee failed to identify, again,
14 material changes to the Project and how these
15 changes materially altered the impact of the
16 Project on aesthetics. She claims that the
17 Subcommittee erroneously concluded that the
18 Subcommittee in Antrim 1 invited the
19 submission of an amended Application.

20 The Intervenors argue that a change
21 to the Committee's rules did not render the
22 Project materially different. So, again, the
23 law and the rules had changed in the
24 meantime, or other rules were created from

1 the Antrim Project, and therefore,
2 effectively, they were the same.

3 The Applicant argued that the
4 Intervenor failed to identify any issues of
5 fact or law that we overlooked or
6 misapprehended. They further state that we
7 considered the changes to the Project, while
8 determined that it's not far from the
9 Doctrine of res judicata, and we specifically
10 addressed the differences between Antrim I
11 and the current project. They also -- this
12 is the Applicant -- claim that Counsel for
13 the Public erroneously concluded that the
14 Subcommittee could determine that the Project
15 is substantially different from Antrim I
16 project only after comparison between impacts
17 on aesthetics. So they took issue with that.
18 And they reminded us again that there was a
19 change in law between Antrim I and Antrim II.

20 So, again, I'm not intending to
21 fully outline, though certainly you can and
22 we can, all the arguments made on this issue.
23 But I guess what I'd like to do is kind of go
24 through these broad issues, stop here for res

1 judicata, and basically get people's
2 thoughts, to the extent you have any.

3 And first of all, before I give you
4 my thoughts, does anybody want to talk first?
5 Or I can -- Dr. Boisvert.

6 DR. BOISVERT: Yes. It happens that
7 I sat on the Antrim I Subcommittee. And we
8 reviewed that in some detail. It happens that
9 I voted in the majority, that the permit should
10 not be approved on the basis of aesthetics. It
11 was brought forward again to us with changes,
12 and I view that the changes that were offered
13 in Antrim II were indeed substantial. This was
14 not the same project. And I'm basing that upon
15 my experience sitting through the first Antrim
16 hearing and then sitting -- and then called to
17 this one, looking at the nature of what was
18 proposed. And in my opinion, it was not the
19 same project.

20 PRESIDING OFFICER SCOTT: Mr. Forbes.

21 DIR. FORBES: I would just comment
22 that I don't see any anything in the motions
23 that was new information here. I think that we
24 considered all of the arguments that were

1 brought to us in the hearing, and I don't see
2 anything here to change that decision.

3 PRESIDING OFFICER SCOTT: Attorney
4 Clifford.

5 MR. CLIFFORD: Likewise, I think we
6 painstakingly went through the differences
7 between Antrim I and Antrim II. And we noted,
8 I thought, the significant differences in terms
9 of the number of turbines, the height, the
10 conservation easement. It was a totally
11 different animal we were considering here, in
12 my understanding.

13 PRESIDING OFFICER SCOTT: I concur.
14 My recollection is we talked about the changes
15 physically to the Project. The law changed; we
16 discussed that. You know, there's a different
17 project owner; we talked about that. Different
18 mitigation. So I feel we've discussed this
19 fairly well on the record and in the
20 transcript.

21 I'll also note that on the original
22 deliberation to take jurisdiction, we also
23 had very similar conversations also, in that
24 the full Committee voted to take

1 jurisdiction. They were very similar
2 arguments made on that end.

3 So let me ask: Does anybody feel
4 there's a reason to reconsider based on this
5 topic?

6 MS. WEATHERSBY: No.

7 PRESIDING OFFICER SCOTT: I'm seeing
8 unanimous head nods "No," for the record.

9 All right. Then I'll move on to
10 collateral estoppel. Again, my intention
11 here is just to broadly outline the issues,
12 not to raise every point that was in the
13 record -- in the motions. Again, I'm kind of
14 grouping the Intervenors and Counsel for the
15 Public together here. Those parties argue
16 that, while determining which scenic
17 resources would be affected by the Project,
18 we should have applied the Doctrine of
19 Collateral Estoppel and analyzed the visual
20 impacts of the Project on scenic resources
21 that were identified in Antrim I. They argue
22 that the same parties are involved in this
23 docket as in Antrim I. The issue for the
24 Project's effect on aesthetics was fully

1 adjudicated in that final decision on Antrim
2 I 1, and the criteria employed to determine
3 scenic resources in this docket is identical
4 to the criteria for identification of scenic
5 resources in the Antrim I docket. They also
6 argue that we should not have considered
7 placement of land in the conservation
8 easements as a mitigation measure under the
9 Doctrine of Collateral Estoppel because the
10 Subcommittee in Antrim I determined that such
11 placement would not mitigate the Project's
12 effects on aesthetics.

13 The Applicant argues that the
14 Intervenor's reiterate arguments already
15 raised during the adjudicative hearings and
16 did not assert any facts that would warrant
17 rehearing. And they further assert that the
18 Subcommittee was not required to consider the
19 Project's impact on the same scenic resources
20 as identified in the first Antrim Project
21 because the Project and its effects on
22 aesthetics, including impacts on scenic
23 resources, has changed. They also argue that
24 the Committee's adoption of new rules

1 regarding the definition of "scenic
2 resources" and new criteria for evaluating
3 the effects on aesthetics is an important
4 consideration. As for mitigation measures,
5 they argue that the Committee was not
6 required to find that the placement of
7 conservation land and easements was not --
8 does not represent an effective mitigation
9 under this doctrine and that we're not bound
10 again by the Antrim I docket specifically.

11 So let me ask again. A lot of
12 these issues are very similar to what we just
13 discussed. Does anybody wish to offer some
14 comment?

15 [No verbal response]

16 PRESIDING OFFICER SCOTT: I guess I
17 will start. I'm sorry, Patty.

18 I'll note that when I looked at
19 the -- in fact, it was in the Counsel for the
20 Public's -- she pulled a quote out of the
21 original Antrim I Certificate denying --
22 excuse me -- it wasn't a certificate. It was
23 a denial of certificate. I read it
24 personally a little bit different.

1 So they talk about the language
2 about the dedication of lands to conserve
3 easements would not suitably impact --
4 suitably mitigate the aesthetic impact. They
5 say the dedication -- and this is a quote --
6 "The dedication of lands to a conservation
7 easement in this case" -- so they're talking
8 about that particular docket -- "would not
9 suitably mitigate the impact." My view of
10 the reading of the arguments are that in no
11 case could conservation easements basically
12 be used as mitigation. The language of that
13 order said it would "suitably." So that to
14 me is very specific. You know, whether you
15 believe we were bound by that first order or
16 not, I'm even reading the order itself a
17 little bit different perhaps than the other
18 parties.

19 Ms. Weathersby, I started talking
20 when you were ready. So you're next.

21 MS. WEATHERSBY: So I thought I'd
22 chime in because I didn't for the other
23 concerning the res judicata.

24 Concerning collateral estoppel, I

1 have the same conclusion. I think that we
2 thoroughly considered this issue during our
3 deliberations and that there are different
4 issues in Antrim II due to changes in the
5 rules and changes in the Application. I
6 think the effects of this Project are
7 different than the effects of the Antrim I
8 Project, even if it's basically the same
9 scenic resources that are affected. And I
10 don't think we're bound by a possible
11 decision in Antrim I that we can't use
12 conservation easements as mitigation. I
13 think we had a lengthy discussion about the
14 suitability of that. And given that it's
15 hard to screen -- mitigation for a wind
16 project is different than mitigation for, say
17 a stand-alone generating facility, where you
18 can put up fences and bushes and that type of
19 thing. You have to be able to be a little
20 more creative. I think we had full
21 discussion on that issue and that whatever
22 the decision was in Antrim I concerning
23 conservation easements, we're not bound by
24 that, given the changes in this Application.

1 PRESIDING OFFICER SCOTT: Dr.
2 Boisvert.

3 DR. BOISVERT: Again, falling on my
4 previous comment, your interpretation of the
5 wording in the denial is my understanding when
6 I voted in that manner, which is to say, it was
7 not a black-and-white situation; it was a
8 matter of suitability: Was it enough? And in
9 that instance, my opinion on that, which was in
10 the majority it happens, was not that
11 conservation lands weren't as a category
12 suitable, but that particular confirmation was
13 not suitable for that instance.

14 PRESIDING OFFICER SCOTT: Any other
15 comments?

16 You know, again I'll note I think
17 we certainly did discuss this rather
18 thoroughly I think in the transcripts.
19 Obviously, reasonable people can disagree
20 with our decision. But as far as meeting the
21 criteria that Attorney Iacopino mentioned, I
22 don't personally see, myself, that the
23 motions hit that threshold. Does anybody
24 feel the need to further explore this issue

1 or...

2 [No verbal response]

3 PRESIDING OFFICER SCOTT: Based on
4 that, we will move to the larger issue.
5 Another legal issue that was raised is did we
6 have an appropriate quorum to legally convene.

7 The Intervenors and Counsel for the
8 Public argue that, effectively, RSA 162-H
9 requires, which it does, two public members
10 serve on each subcommittee. But I think
11 where we differ perhaps is they also view
12 that the quorum requirement of five -- in
13 this case we had six -- also requires two
14 public members to be required on the
15 Subcommittee.

16 And then in the rebuttal, of sorts,
17 the Applicant reminds us that the law for the
18 quorum says, "Five members shall constitute a
19 quorum for the purposes of conducting state
20 business," with nothing in the statute
21 requiring public members on that
22 Subcommittee.

23 So I guess I would ask if anybody
24 has any comments on that. To me, this is

1 more how do you read the law. I think
2 paraphrasing some of the arguments, I think
3 there's some discussion of the spirit or
4 intent of the law. Anybody have comments on
5 quorum? Attorney Clifford.

6 MR. CLIFFORD: I just read the briefs
7 and I read the statute -- excuse me -- the
8 rules, and I think that we satisfied the quorum
9 requirement and that we were lawfully a lawful
10 body that acted properly in the scope of our
11 jurisdiction. I didn't see anything to give me
12 any pause otherwise.

13 PRESIDING OFFICER SCOTT: Another
14 fact that was brought up by the Applicant was
15 when was this issue brought up. So there's
16 also a suggestion that it's late to bring this
17 issue up, and it shouldn't be considered
18 because of that also. So I don't know if that
19 factors into anybody's discussion.

20 MS. WEATHERSBY: I would just say,
21 regardless of when it was brought up, I think
22 the statute and the rules have certain
23 requirements, and we've met those requirements.
24 You know, would it have been nice to have more

1 voices? Yes, I always welcome more input and
2 more discussion. But I think that legally we
3 met the requirements of the law in the rule.

4 PRESIDING OFFICER SCOTT: Any other
5 discussion of this issue? Anybody feel we have
6 reason to reconsider on this basis?

7 [No verbal response]

8 PRESIDING OFFICER SCOTT: I'm seeing
9 head nods, so I'll move on.

10 Another broad topic I'll try to
11 parse out a little bit. There was much
12 discussion over our ability to waive our own
13 rules and how that was or was not done. The
14 Intervenors and Counsel for the Public argue
15 that our decisions were unreasonable because
16 we waived noise and shadow flicker
17 restrictions, particularly as they applied to
18 participating landowners, without making a
19 determination that the waiver was in the
20 public interest and without giving
21 Intervenors the opportunity to address the
22 request for a waiver, as required in SEC Rule
23 202.15. They make -- they claim the decision
24 was unreasonable because we failed to make

1 specific findings indicating that the waiver
2 will "serve the public interest." So I think
3 some of that is did we use those words in our
4 deliberations and did we appropriately
5 consider them.

6 They further argue that we should
7 have explicitly provided an opportunity to
8 comment on any waiver request before the
9 Subcommittee.

10 The Applicant asserts that there's
11 ample evidence in the record where the
12 Intervenors addressed the legitimacy of such
13 waivers, and they argue that there was
14 appropriate and considerable discussion on
15 our end. So I'll -- based on that, again,
16 just so everybody understands, I'm not trying
17 to articulate everyone's argument in fine
18 detail.

19 Any discussion on that end, on
20 waivers of our rules as they apply to
21 participating landowners?

22 MS. WEATHERSBY: Sure, I'll chime in.
23 We concluded that the participating landowners
24 can contract away their rights. Just because

1 we didn't specifically say that allowing them
2 to do so was in the public interest in the
3 context of our discussion doesn't negate the
4 waiver. I think inherent in our decision to
5 grant the certification, where we made a
6 finding that granting a certificate was in the
7 public interest, that that larger finding that
8 the Project as a whole was in the public
9 interest incorporates the issue concerning
10 participating landowners.

11 PRESIDING OFFICER SCOTT: Mr.
12 Clifford.

13 MR. CLIFFORD: I would have to agree
14 we made an overall finding that the Application
15 on the whole at the end of the day met the
16 public interest standard. And to do so, I
17 don't think we could have done that without
18 allowing the participating landowners to waive
19 certain rights; otherwise, how would any
20 facility, whether it's wind or other generating
21 facility, ever get built? I just don't see it.
22 So I think we addressed it overall, and that
23 particular issue was subsumed by the overall
24 finding. That's where I come out.

1 PRESIDING OFFICER SCOTT: So, to
2 paraphrase, we made a general finding of public
3 interest when we issued the Certificate. And I
4 agree with that.

5 The second part of this is the
6 ability for, in granting a waiver, for the
7 opportunity to comment on the waiver before
8 being granted. Does anybody have any
9 feelings on that?

10 [No verbal response]

11 PRESIDING OFFICER SCOTT: Mr.
12 Clifford.

13 MR. CLIFFORD: Well, I would just say
14 the issue was between the participating
15 landowners and the waiver. So I don't -- I'm
16 not getting the nexus between the discussion
17 about that in the context of the Intervenors
18 having raised the issue to inject themselves
19 into what amounts to be, what seems to be a
20 private contract between the participating
21 landowner and the person looking for the site
22 and facility agreement. I mean, that's the
23 kick starter that gets the Application kind of
24 rolling in the first instance, anyway, is that

1 a contract between a participating landowner
2 with an entity or a person that wishes to or
3 desires to install a generating facility on
4 that person's property. So I don't see -- I
5 don't see where there really is any standing,
6 for example, for another party to involve
7 themselves in that specific relationship. Now,
8 overall, we have a set of rules that address
9 the site and facility, you know, the
10 Application itself. But as to that point, I
11 don't see the connection.

12 PRESIDING OFFICER SCOTT: Let me ask
13 you this: Even with your opinion you just
14 expressed, would you agree that -- do you feel
15 that we did hear comment from the Intervenors
16 on this topic?

17 MR. CLIFFORD: Yeah, I think we did.
18 I don't have any specific recollection. I
19 can't point to the record. But I think all the
20 parties were heard. So I don't see any basis
21 to overturn, at least in my opinion, our
22 decision.

23 PRESIDING OFFICER SCOTT: Attorney
24 Weathersby.

1 MS. WEATHERSBY: I know our rules
2 require for participating landowners to be --
3 for all landowners within certain zones, all
4 affected landowners, to be treated the same as
5 far as safety issues. And when we were
6 drafting those rules, I believe I was one of
7 the proponents that argued for that, in that if
8 they wanted to waive their safety, it was still
9 our jurisdiction to make sure that they were
10 not too unsafe. And that said, I was the
11 one -- I certainly voted finding that allowing
12 the participating landowners in this instance
13 to be subject to different standards was
14 appropriate and in the public interest. And I
15 think that it was known early on who the
16 participating landowners were, which
17 properties, and that we had many discussions
18 concerning those properties and how the Project
19 affected them and, of course, how the Project
20 affected others. So I think that everyone, all
21 Intervenors, all parties, had an opportunity to
22 explore the issue concerning the applicability
23 of standards for the participating landowners.

24 PRESIDING OFFICER SCOTT: Any other

1 comments? Does anybody feel the need to
2 reconsider our certificate based on this issue?

3 Seeing head nods again, if that's
4 the case, I'll move on. Again, this is a
5 broad topic, the issue of procedural and
6 fairness.

7 The Intervenors and Counsel for the
8 Public argue that there were procedural
9 unfairnesses to the prejudice of the Counsel
10 for Public and Intervenors that resulted in a
11 chilling effect on the Intervenors'
12 involvement and their inability to fully
13 develop the factual record. More
14 specifically, there was concern about the
15 requirement to have written prefiled
16 testimony submitted at the same time. They
17 assert that procedure was contrary to the
18 spirit of 541-A, and it was contrary to the
19 Administrative Rules, our Site 202.02,
20 because it benefitted the Applicant and did
21 not allow for admission of relevant evidence.

22 They further claim that they were
23 not allowed to rehabilitate their witness and
24 conduct friendly cross-examination. And,

1 again, specifically, Counsel for the Public
2 argued that the Presiding Officer's decision
3 to preclude her from asking additional
4 rebuttal questions for her expert was
5 arbitrary and unwarranted. Both the
6 Intervenors and Counsel for the Public
7 request that we reopen the record and allow
8 the Intervenors to rehabilitate their
9 witness.

10 The Applicant asserts that the
11 Intervenors failed to identify any error of
12 fact, reasoning or law, and establish that
13 the Committee's decision was unreasonable
14 because it relied on an underdeveloped
15 record. They further assert that the
16 Intervenors were not prejudiced by the
17 requirement to file their supplemental
18 prefiled testimony at the same time as the
19 Applicant because they had the opportunity to
20 address any and all issues raised in the
21 Applicant's testimony during
22 cross-examination of the Applicant's witness.

23 So, any discussion on this issue?

24 [No verbal response]

1 PRESIDING OFFICER SCOTT: Because I
2 will note on the -- obviously, as you'll
3 remember, on the issue of Counsel for the
4 Public's request to provide additional rebuttal
5 questions, I did ask her to provide an offer of
6 proof for the record. My opinion in reading
7 that, pretty much all the issues raised in that
8 offer of proof were in the record. So I guess
9 that would be one question for you to consider,
10 you know, was that effectively an issue.

11 So, again, anybody have any
12 comments?

13 MR. CLIFFORD: My recollection of the
14 proceedings was that there was a full and fair
15 opportunity for everyone to cross witnesses.
16 And I don't see -- or didn't feel like anyone
17 didn't get an opportunity to be heard during
18 the proceedings, from my standpoint. I thought
19 it was a fairly fair and robust discussion by
20 all parties, as well as cross-examination. I
21 think I'm comfortable with what we've done.

22 PRESIDING OFFICER SCOTT: While
23 waiting for somebody else, I'll note also that
24 it's in our rules, too, explicitly, that the

1 burden of proof is on the Applicant. And that
2 argues effectively for the Applicant, in
3 proving their own burden of proof, basically
4 having the last word.

5 Any comments on that? Mr. Forbes.

6 DIR. FORBES: I'll make two points.
7 I agree that everyone had fair and ample
8 opportunity to bring forth whatever arguments
9 they chose to make, and I don't see or hear any
10 new concerns that would be things that we
11 didn't -- or failed to consider. I do think
12 that there's no argument here that in my
13 opinion is cause for a rehearing.

14 PRESIDING OFFICER SCOTT: Does
15 anybody feel there's cause for reconsideration?

16 [No verbal response]

17 PRESIDING OFFICER SCOTT: All right.
18 With that, I'll move on to the broad topic of,
19 again, the effects on aesthetics.

20 The Intervenors and again Counsel
21 for the Public -- I'm relatively grouping
22 them in these topics -- argue that contrary
23 to our Rule 301.14, while determining the
24 effect of the Project on aesthetics, the

1 Subcommittee failed to analyze the scope and
2 scale of the changes in the landscape. They
3 assert that the decision was unreasonable
4 because the Subcommittee determined that the
5 Project to some degree will be a dominant
6 and/or prominent feature as viewed from the
7 identified scenic resources and determined
8 that the Project's effects on aesthetics will
9 be reasonable without addressing the
10 Project's scale and scope and without stating
11 why it was determined that they are
12 reasonable. They state that we made a
13 cursory finding only and that we mistakenly
14 concluded that Gregg Lake and Black Pond were
15 private resources.

16 Counsel for the Public further
17 argued that we underestimated the extent,
18 nature and duration of the public use of
19 identified scenic resources and made no
20 findings that would support the conclusion
21 that considered uses would not result in an
22 adverse impact.

23 The Applicant asserts that while
24 addressing the impacts of the Project's

1 aesthetics, we did appropriately consider the
2 existing character of the area, the
3 significance of the scenic resources, public
4 use of resources, day and nighttime visual
5 effects, and the proposed mitigation
6 measures, citing our deliberation transcripts
7 and the three days of deliberations. The
8 Applicant also argued that the Subcommittee
9 considered the scope and scale of the Project
10 when it evaluated each and every photo
11 simulation, assessed the prominence and
12 dominance of the Project in our
13 deliberations.

14 They further assert that the
15 Subcommittee never determined that the
16 resources were private and that they did not
17 consider the Counsel for the Public's
18 simulations demonstrating the effect of the
19 Project because it found that the photo
20 simulations were prepared from private
21 property and reflected the effect of the
22 property on -- the Project, rather, on the
23 private property.

24 So, again, I'm not trying to

1 outline in detail every particular argument.
2 We can do that if you feel the need. That
3 was broad brush the positions of the parties.
4 Any discussion on this issue? Dr. Boisvert.

5 DR. BOISVERT: I guess I feel
6 obligated to speak to this because I was -- I
7 voted that the Project did have an unreasonable
8 adverse effect on aesthetics. In coming to
9 that conclusion, I will concede that I had to
10 think about it very carefully, and I was on the
11 cusp for some time. I eventually came to the
12 conclusion that it did go over the line. As I
13 stated in my opinion verbally, it was an
14 improvement, but I did not feel it was enough
15 of an improvement to say there was no
16 unreasonable adverse effect. I think embedded
17 in that is my recognition there was
18 improvement. This was not -- my opinion was
19 not held by the others here. I can understand
20 that. I think that the information provided
21 was fair and just. I will admit that a number
22 of the photo simulations presented by the
23 Applicant's consultant did appear to not meet
24 the standards in the regulations.

1 And I'd like to take this
2 opportunity to comment that for all the other
3 categories that need to be reviewed before
4 this Subcommittee, there is a state agency
5 that looks at it and renders an opinion. It
6 might be Fish & Game, Cultural Resources,
7 Health and Human Services and so forth.
8 However, for aesthetics, there is no state
9 agency that handles aesthetics exclusively.
10 There's a little bit of DOT looking at scenic
11 highways. We have a Council for the Arts,
12 but that's quite different. So we receive
13 this information with no prior vetting, and
14 it's left on our doorstep to judge from the
15 beginning. There is no archeologist or
16 cultural resources manager who has looked at
17 the effects and the identification of
18 historic resources or archeological sites.
19 The Committee would be hard-pressed to come
20 to a knowledgeable conclusion on that without
21 some vetting by that agency -- it happens to
22 be mine.

23 We're presented with a difficult
24 situation on aesthetics. There is no review.

1 We look at an application to decide is it
2 complete. Have all the cultural resources
3 been identified? There's no review of the
4 studies on aesthetics to say yes, they did
5 indeed have all the photo simulations done
6 accurately. We have that kind of review in
7 historical resources.

8 So we're left to make a decision
9 very late in the game. I believe we made
10 good decisions in this and other committees.
11 We have honest differences of opinion, which
12 is why we have more than one person on a
13 subcommittee. It is a judgment made by a
14 group and the majority prevails. But I'd
15 just like to point out this difficulty for
16 the subcommittees. And it puts everyone at
17 risk because there is no pre-vetting. And I
18 guess I'm taking some of your time just to
19 express this frustration having been on the
20 only subcommittee that denied the permit for
21 aesthetics and then having been the only
22 person on this subcommittee who voted to deny
23 it on aesthetics. I have seen this and
24 thought about it, and this is what rises to

1 the surface. I don't know that there's
2 anything we can do about it. It would take
3 legislation. But it means that we have to
4 make a decision late in the game. And it may
5 be that future subcommittees may look at
6 someone's submission and say it really
7 doesn't meet the standards. You need to go
8 back and start over. That would be a
9 late-in-the-game decision which would have
10 all sorts of repercussions. But it's
11 possible. So those are my thoughts.

12 PRESIDING OFFICER SCOTT: So we'll
13 put in the record that DHR would like to get
14 legislative authority on aesthetics?

15 DR. BOISVERT: No. No. No. No.

16 PRESIDING OFFICER SCOTT: Joking
17 aside, based on your statements, again, I think
18 the criteria we needed to see here is do you
19 feel that we've overlooked or mistakenly
20 conceived checkcheck anything on aesthetics in
21 our original decision? I'll press you a little
22 bit.

23 DR. BOISVERT: I was on the losing
24 side, but I don't think it was unfair.

1 PRESIDING OFFICER SCOTT: Okay. Any
2 other discussion on this issue? Attorney
3 Clifford.

4 MR. CLIFFORD: Thanks. I hear what
5 Dr. Boisvert's saying, and I agree. And for
6 better or worse, the rules have laid aesthetics
7 on our doorstep. And as you can see, that is
8 one of the terms that is not defined. So I
9 think that the intent was to leave it up to the
10 Committee to determine whether that standard,
11 that quality aesthetics was met. And in this
12 case, I think we did do a thorough job. And it
13 just happens to be a difference of opinion at
14 the end of the day. But I thought that one of
15 the key things we did do was to painstaking --
16 when the first issue -- the first time that
17 issue came up, I can't remember the exact
18 location of the photo simulation, but the idea
19 was let's go through all of them, all the photo
20 sims filed by both the Applicant -- excuse
21 me -- yeah, the Applicant's visual expert, as
22 well as Counsel for the Public's.

23 So I thought that, given what we
24 had, we did a pretty thorough review. And I

1 don't think what we did was unreasonable, in
2 my view. We had a pretty -- we really kind
3 of ran through that pretty well, for better
4 or worse.

5 PRESIDING OFFICER SCOTT: Attorney
6 Weathersby.

7 MS. WEATHERSBY: I would agree with
8 what's been said. I think that our examination
9 with aesthetics was comprehensive. In addition
10 to going through all of the photo simulations,
11 we also had site visits. We carefully heard
12 testimony and examined experts about their
13 visual analysis and reports, neither of which I
14 found perfect, by any means. But having the
15 two visual impact assessments and the
16 difference of opinions I think helped us to
17 form our own opinions concerning the impact on
18 aesthetics.

19 We had good discussions concerning
20 lighting and insisting on the nighttime
21 lighting. We discussed dominant and
22 prominent, and private resources and public
23 resources. And I think that we did a good
24 job analyzing all of that in coming to what I

1 believe was the correct conclusion that there
2 were no unreasonable adverse impacts. There
3 certainly are adverse impacts. And I think
4 we all acknowledge that. I certainly feel
5 badly about that. But I think that that's
6 not the standard. The standard is are the
7 impacts "unreasonable." And I think that our
8 review and deliberations concerning that
9 issue were thorough and comprehensive and we
10 reached the correct conclusion.

11 PRESIDING OFFICER SCOTT: Director
12 Forbes.

13 DIR. FORBES: Yeah, I would agree. I
14 think the fact that there is no state agency
15 that is the authority on this is an important
16 consideration. But it is pointing to the fact
17 that this is a very subjective issue. You
18 know, what we heard here over the course of the
19 hearings was very comprehensive. For me, the
20 standard of, you know, today's deliberation to
21 consider whether or not we need to rehear this
22 issue on aesthetics is founded in whether or
23 not there's something new. I think that the
24 analyses were very comprehensive. They were

1 thorough. What I've seen in the motions here
2 is just basically disagreement with our
3 decision, not that we forgot or failed to
4 consider a resource that should have been
5 considered or an impact that was not adequately
6 reviewed. It was a very comprehensive review.
7 And I think that the subjective nature of
8 aesthetics is one where there will be
9 disagreement. And I think it is appropriate
10 for a group such as this board to make that
11 decision after hearing all of the arguments.
12 And we heard all those arguments. I would not
13 think there's any cause for rehearing.

14 PRESIDING OFFICER SCOTT: Anybody
15 else? So, again, the standard is we have to
16 find there would be good reason for a rehearing
17 and/or that we overlooked or mistakenly
18 conceived information in our original decision.

19 So, maybe head nods again if you
20 don't want to say anything. So it sounds
21 like we're not feeling a need to reconsider
22 based on this issue?

23 MR. CLIFFORD: Correct.

24 PRESIDING OFFICER SCOTT: So I'll

1 take that and move to the next topic.

2 The next broader issue regards
3 viewshed analysis and the identification of
4 scenic resources. And again a brief summary
5 here.

6 The Intervenors argue that the
7 Subcommittee's decision is unlawful and
8 unreasonable because it is based on basically
9 a flawed visual assessment. And testimony
10 from the Applicant's expert, Mr. Raphael,
11 they claim he erroneously eliminated a number
12 of scenic resources and take issue with the
13 way he conducted his analysis.

14 Counsel for the Public concurs with
15 that and asserts that they did not -- the
16 analysis from Mr. Raphael for the Applicant
17 did not comport with the Subcommittee's
18 rules.

19 The Applicant disagrees, stating
20 that Mr. Raphael testified during the
21 hearing -- in particular, as an example,
22 there was controversy in the motions on the
23 analysis based on hub or blade tip. They
24 suggest that he specifically testified during

1 the hearings that he did not base his
2 analysis on the hub but rather looked at the
3 whole project and the whole structure.

4 The Applicant further asserts that
5 the Intervenors merely reiterated the same
6 arguments that they've already raised during
7 the hearings and in their prefiled testimony.

8 Any discussion on that issue,
9 again, on viewshed analysis, how the analysis
10 was conducted and the identification of
11 scenic resources? A little bit overlap from
12 the last discussion I think. Attorney
13 Weathersby.

14 MS. WEATHERSBY: Sure. I'll start. I
15 think that our decision that the Project will
16 not have an unreasonable adverse impact on
17 aesthetics was not based solely, by any means,
18 on Dr. Raphael's report or testimony. I think
19 the parties as a whole did an excellent job of
20 presenting this information. And we heard a
21 lot of testimony concerning scenic resources
22 and aesthetics. I think we -- I think Counsel
23 for the Public did a good job of pointing out
24 problems with Dr. Raphael's report, his

1 classification system, the photo simulations
2 with less than ideal skies and foreground
3 objects. And I think all of that was taken
4 into account when we based our decision -- we
5 made our decision concerning aesthetics.

6 PRESIDING OFFICER SCOTT: Director
7 Forbes.

8 DIR. FORBES: I like the way you put
9 it before, that it's a reiteration of the
10 arguments. I feel that's what we've heard in
11 these motions here on this issue.

12 PRESIDING OFFICER SCOTT: Attorney
13 Clifford.

14 MR. CLIFFORD: I'd just like to --
15 I've reread all the briefs again last night,
16 and I come to the same conclusion, that
17 essentially we're -- they're just the same
18 arguments. The motions kind of disagree with
19 the result. But I thought that we did do a
20 complete vetting of the Application on an
21 aesthetics basis and we looked at -- we looked
22 at the record that was put before us, and we
23 did a very thorough job of that. So I'm
24 comfortable with what we did to reach the

1 conclusion that we reached. I didn't see
2 anything new.

3 PRESIDING OFFICER SCOTT: Anybody
4 want to discuss this issue further?

5 [No verbal response]

6 PRESIDING OFFICER SCOTT: Seeing head
7 nods, we'll move on. Again, these are related
8 issues.

9 The next broad topic in my mind was
10 viewer effects.

11 The Intervenors claim that the
12 Project's impact on 10 identified resources
13 was erroneous because it was based on a
14 determination of the number of turbines that
15 would be visible and assumes the Project will
16 have a high impact only on resources from
17 which a number of turbines will be visible.
18 The percent of visibility for the trails in
19 the area is based on the entire footage of
20 the trail rather than a particular view they
21 assert. They failed -- they cite the
22 Applicant failed to consider the existing
23 projects within the viewshed of Pitcher
24 Mountain. The analysis of the extent of view

1 and the remoteness contradict each other they
2 claim. And they claim the analysis ignored
3 the contributory impact of the scenic views
4 and the role of scenic impacts upon outdoor
5 activities.

6 And Counsel for the Public, in her
7 brief, further asserted more explicitly that
8 the Applicant's visual assessment again did
9 not comport with the rules.

10 The Applicant's rebuttal is that
11 each and every critique of the determination
12 of the view effect by Mr. Raphael was
13 addressed and adjudicated, citing the
14 transcripts. They further state that, again,
15 the Intervenors failed to provide any new
16 information or assert any error of law in our
17 evaluation of Mr. Raphael's methodology.

18 So, again, these are very related
19 topics I think. Anybody have any desire to
20 pick this up, or do we want to say "ditto," I
21 guess? Again, it's an important issue, so I
22 don't want to minimize any of this.

23 MS. WEATHERSBY: I think it's the
24 same analysis. We didn't accept Mr. Raphael's

1 analysis whole hog. We heard all kinds of
2 information from dueling experts. And we
3 looked at sites and we looked at photos. We
4 heard the pros and cons and faults of each
5 report, and we came to a conclusion based on
6 our analysis of all of that information. So I
7 think that our decision was the appropriate one
8 and took into account what was there and what
9 was said.

10 MR. CLIFFORD: I just want to agree.
11 I thought we did a full and fair analysis. We
12 poked both visual experts and probed pretty
13 well. I remember that was a keen area of
14 consideration. So I don't think there's any
15 one thing that jumps out at me that says, oh,
16 you missed that and that gives me pause to say,
17 well, let's reopen the record. I'm comfortable
18 with what was done and how we did it.

19 PRESIDING OFFICER SCOTT: Anybody
20 else? Director Boisvert.

21 DR. BOISVERT: A comment. Our
22 ability to look at the aesthetics depended a
23 great deal upon technology, which is to say the
24 ability to accurately pose simulations of the

1 towers on the landscape and know that they were
2 the right proportion on the horizon line, the
3 right spacing, et cetera, et cetera. It's only
4 possible through some sophisticated software.
5 It's an attempt to bring into this hearing room
6 the experience that can only be fully
7 understood in the future by being there after
8 it's built. Obviously, we can't do that. In
9 that line, the video simulations I thought were
10 a real step forward, and if I were on a
11 Subcommittee in the future for a wind farm, I
12 would be pleased to see good video simulations
13 taking the next step after the photo
14 simulations which are static. Now we're moving
15 up to moving. And I felt that gave me a much
16 better understanding. I have seen wind farms
17 that are already constructed and I can see the
18 blades turning and so forth and that is quite
19 different than simulations that I saw before
20 they were built. Not worse, not better, but
21 different because they were animated. I would
22 look forward to seeing that kind of information
23 being presented to the subcommittees in the
24 future, and then, of course, maybe subject to

1 revisions in the rules or standards and so
2 forth. But I think that was a positive step.
3 I think that we need to have some good quality
4 control.

5 Having said all that, we did go
6 through a photograph-by-photograph assessment
7 of each one. We looked at it. And in a
8 certain sense, we're all qualified to judge
9 aesthetics. That is the human condition.
10 And I think we did a good job. It wasn't a
11 slam dunk. We had to think about it. Thank
12 you.

13 PRESIDING OFFICER SCOTT: And I'll
14 just note that at least my opinion on the issue
15 of the video you were discussing for the
16 future, even that, of course, at least in this
17 case, I didn't find perfect. We had moving
18 blades, if I remember, but not moving water and
19 not moving trees. So I think if, as you say,
20 if we're going to change the rules in the
21 future, just like everything else, we need to
22 provide some guidance as to what we want to
23 see.

24 MS. WEATHERSBY: Virtual reality

1 headsets.

2 PRESIDING OFFICER SCOTT: Any other
3 discussion on this issue? Sounds like it's --
4 my sense of the Committee is that there's no
5 desire to reconsider based on that.

6 How about -- and Director Boisvert,
7 you kind of went there already, the photo
8 simulations themselves. We have in the
9 motions that there's cause for
10 reconsideration because the photo simulations
11 were not prepared under clear weather
12 conditions, at a time of day that provides
13 optimal clarity and contrast and did not
14 avoid all utility poles, fences, walls,
15 shrubs, sailboats, and were taken, some of
16 them, during cloudy and hazy conditions. So
17 that was the assertion. And therefore, the
18 assertion is they don't comport with our
19 rules.

20 The Applicant asserted to the
21 contrary, that they did indeed meet our rule
22 requirements and the intent.

23 Any discussion on the photo
24 simulations themselves?

1 [No verbal response]

2 PRESIDING OFFICER SCOTT: I guess I
3 would echo Dr. Boisvert. I don't think any of
4 them were, you know, perfection. I think, you
5 know -- but there's a lot of subjectivity in
6 all this issue, I think. Any discussion?

7 MR. CLIFFORD: Sure. I don't know if
8 they were perfect. But then, again, the rule
9 isn't perfect either. I mean, it was clear. I
10 don't know how clear "clear" needs to be. But
11 we could see the turbines. In my view, we
12 could see them in conditions that we would
13 probably find if we went out there on that
14 particular day. If we wanted to see them in
15 different conditions, then I think the rules
16 should so state, that we would, for example,
17 have them provided on a cloudy day, a bright
18 sunny day, a clear day. But what we got was
19 fairly representative of what we would have
20 seen. And I think they met the requirements of
21 the rule, in my opinion, and I don't see a need
22 to reopen.

23 PRESIDING OFFICER SCOTT: I do think
24 it's important that we remind ourselves that,

1 yes, we looked at Mr. Raphael's photo
2 simulations. But we also looked at Counsel for
3 the Public's expert's photo simulations also.
4 So I would argue it's not like we were -- I'm
5 not saying I agree with the statement. But
6 it's not like we were only looking at "one side
7 of the coin," if you will, on this issue.

8 Any other discussion?

9 MS. WEATHERSBY: Just that it was
10 pointed out during testimony that the problems
11 that different parties found with those
12 pictures -- so we heard, you know, discussion
13 of why is the mast in the picture, why is the
14 sky cloudy, why aren't you showing the hub?
15 You know, we heard discussion concerning all
16 the perceived faults with those photos and took
17 that into account in our analysis.

18 PRESIDING OFFICER SCOTT: Any other
19 discussion on photo simulations?

20 [No verbal response]

21 PRESIDING OFFICER SCOTT: Seeing head
22 nods, people would like to move on I'm hearing.

23 Another larger issue was
24 mitigation. The assertion from Counsel for

1 the Public and Intervenors again is that the
2 mitigation measures will not mitigate the
3 Project's effects on aesthetics. And they
4 cite that Rule 301.14 requires us to consider
5 the effectiveness of the measures proposed by
6 the Applicant to "avoid, minimize or mitigate
7 unreasonable and adverse effects on
8 aesthetics." They claim that the payments to
9 the town and the easements as part of the
10 mitigation package will not mitigate the
11 effect of the Project on aesthetics. They
12 further claim that the radar-detection
13 lighting system, the fact that -- claims that
14 that would mitigate aesthetics were
15 unfounded.

16 The Applicant argues this was
17 extensively discussed and litigated and that
18 it was -- we spent a fair amount of time
19 discussing this issue. So they take issue
20 with those assertions. And the Applicant
21 further suggests that there's no new evidence
22 here that we haven't already considered and
23 evaluated.

24 So, any discussion on mitigation?

1 Anybody?

2 [No verbal response]

3 PRESIDING OFFICER SCOTT: I guess
4 I'll start. I think mitigation is somewhat
5 like aesthetics. It's related. It's all in
6 the eye of the beholder I think. That's one of
7 the issues we're seeing here, I think.
8 Attorney Clifford.

9 MR. CLIFFORD: Well, I just wanted
10 to -- I think as a threshold matter, we first
11 found that there were no unreasonable adverse
12 effects. We talked about would the wind farm
13 have an effect. Yes, it would, and is it
14 unreasonable, which was our charge under the
15 rules. And then after finding that, we then
16 looked at the mitigation package, you know,
17 separately. And that satisfied our concerns
18 that these effects were taken into account
19 through different forms of mitigation: The
20 payments, for example, to the town; the
21 additional conservation areas; the conservation
22 areas themselves. So I think when you look at
23 it as a whole, it seemed to me there was
24 nothing -- they aren't, in my mind, a reason to

1 reopen and rehear. I think all those factors
2 were considered by us.

3 PRESIDING OFFICER SCOTT: Any
4 discussion on mitigation?

5 [No verbal response]

6 PRESIDING OFFICER SCOTT: Hearing
7 none, I'll take that as nobody wants to
8 reconsider based on mitigation.

9 Another broader topic raised was
10 decommissioning. The Intervenors and Counsel
11 for the Public argue that our Rule SEC 301.08
12 requires the Applicant's Decommissioning Plan
13 demonstrated that all underground
14 infrastructure at a depth less than 4 feet
15 below grade will be removed. They refer to
16 our discussion about Department of
17 Environment Services rules, and they assert
18 that we've acted contrary to the clear
19 language of our rule and committed a mistake
20 of law.

21 The Applicant argues that we --
22 that our decision was fully supported in the
23 record, and we did receive evidence from the
24 Department of Environmental Services that

1 were consistent with their requirements and
2 with our own rules.

3 So, any discussion on
4 decommissioning? Again, this is about the
5 4 feet, whether we allow the unearthed
6 concrete to be broken up, and does that meet
7 our rule.

8 DIR. FORBES: Speaking for the
9 Department of Environmental Services, I will
10 say this is a standard procedure for us to
11 allow that type of burial of inner concrete.
12 As far as whether that approval is unlawful,
13 I'll leave that to the lawyers to decide. But
14 I do feel it was considered and certainly taken
15 into account. Whether it's considered a waiver
16 of the language of the rule or not, it's
17 certainly, I think, something that is
18 indisputably an area that we did consider and
19 gave thoughtful time to that issue.

20 PRESIDING OFFICER SCOTT: Any other
21 discussion? Attorney Weathersby.

22 MS. WEATHERSBY: I think they
23 complied with the rule. I think they are
24 proposing to remove all underground

1 infrastructure at a depth of less than 4 feet
2 below grade. They take the concrete out. It's
3 gone. They pulverize it and put it back in.
4 At that point it's not infrastructure; it's
5 clean fill. And I don't think that -- so I
6 think by leaving the pulverized concrete in the
7 trench that that satisfies the rule.

8 MR. CLIFFORD: Again, we had a pretty
9 thorough discussion on this. I think they're
10 in compliance with the rule. When it's taken
11 out and pulverized down below, and even -- in
12 my opinion, if there were something left below
13 4 feet -- talking about the concrete footings,
14 I suppose -- I don't know if that any longer
15 meets the definition of "infrastructure." So I
16 think we talked about this. They complied with
17 the rules. I don't see anything to be gained
18 by reopening to discuss this issue any further.
19 We had a fair and robust conversation about
20 what was happening, what the rule meant.

21 PRESIDING OFFICER SCOTT: Any other
22 discussion on this issue?

23 [No verbal response]

24 PRESIDING OFFICER SCOTT: Seeing

1 none, I'd like to move on to public health and
2 safety, particularly noise.

3 The Intervenors asserted that we
4 erred because our decision was based on
5 unreliable sound assessments that did not
6 model worst-case scenarios for noise that
7 will be associated with the Project, and that
8 we erred by accepting Mr. O'Neal's ground
9 factor of .5, and that his analysis was
10 flawed, in that it failed to include the
11 tolerance required by ISO 9613-2 model for
12 the variability of sound propagation as
13 atmospheric conditions change at the Project
14 site. And further as to noise, they assert
15 that we failed to consider the Project's
16 noise will be above 40 dBA at the hunting
17 cabin that the Site Committee erroneously, in
18 their words, found to be delapidated.

19 The Applicant's response to that is
20 that Mr. O'Neal provided extensive testimony
21 regarding the reasoning for using the .5
22 ground factor and the decision not to include
23 tolerance to the ISA [sic] model.

24 So, any discussion on noise as it

1 relates to Mr. O'Neal's testimony and where
2 it should be impacted? Director Forbes.

3 DIR. FORBES: Yeah, I would say with
4 respect to any kind of model, and particularly
5 in this noise model, there are going to be
6 variables that need to be estimated based on
7 professional judgment. The experts can agree
8 or disagree on what the assumptions might be
9 that go into a model. But I think, you know,
10 the rules require this particular model to be
11 used and allow for, I think, the professional
12 judgment of those who put the model together.
13 And I think that in this case, the arguments or
14 flaws in the model were not compelling to us.
15 We talked about them a lot. We heard the
16 arguments on both sides about these various
17 variables that enter the model. We also heard
18 testimony about historical accuracy of some of
19 the modeling that had been done by the
20 Applicant's expert and whether or not they were
21 accurate. And I found it compelling to vote
22 the way we did. And I think that, again,
23 disagreements over any individual part of that
24 model was overwhelmed by the arguments that

1 supported the professional judgment of those
2 doing the modeling.

3 PRESIDING OFFICER SCOTT: Anybody
4 else?

5 [No verbal response]

6 PRESIDING OFFICER SCOTT: I have a
7 similar sense. And I'll get to Ms. Weathersby
8 next. You know, I agree that reasonable people
9 would disagree. But I think these issues were
10 pretty well discussed. And you know, when
11 we're done with the Intervenors and Counsel for
12 the Public, we'll talk about Mr. Ward's motion
13 also.

14 But, you know, I feel we
15 certainly -- all of us were very aware of
16 what the G Factor is, for instance, and the
17 pros and cons of what should and how it
18 should be used. So I feel -- I feel -- that
19 we very well vetted this. So it's not that
20 we certainly, in my opinion, that we didn't
21 consider this. To me, it seems more of you
22 didn't consider it in the way I would like
23 you to consider it, in my opinion.

24 So, Attorney Weathersby.

1 MS. WEATHERSBY: I'd simply concur
2 with what's been said. The only thing I have
3 to add is that we also heard testimony that if
4 the modeling, which I consider rather
5 conservative, if it proved to be inaccurate
6 under certain conditions, the technology was
7 available to curtail the noise and that they
8 would comply with the sound assessment --
9 sound-level requirements.

10 PRESIDING OFFICER SCOTT: And I think
11 that's a good point. There was a lot of
12 discussion in the motions about the
13 noise-reduction technology also. And we
14 certainly vetted that I think also. We had
15 discussions in our deliberations.

16 Attorney Clifford.

17 MR. CLIFFORD: I was just going to
18 say we spent a lot of time on this and we heard
19 two experts. We asked a lot of questions. We
20 heard a lot of questions and answers by the
21 parties in this proceeding. And I think at the
22 end of the day I felt that they were in
23 compliance with the rule. And as Ms.
24 Weathersby just noted, there is this additional

1 sort of level of comfort that the sound level
2 can be -- that there's some adjustment factor
3 built into this particular model of turbine.
4 So that gave me at least a little bit more
5 comfort that they were in compliance, and that
6 if there was a question about that, there's
7 still room for further adjustment down the
8 road. So I thought of it as it was also a
9 backstop kind of built into this thing, too,
10 which gave me more comfort than just saying,
11 well, here is the sound assessment. We can't
12 do anything about it if we're wrong, other than
13 not use them, for example, you know, turn them
14 off. So that gave me some comfort. And I
15 don't think there's anything here again that
16 warrants reopening anything that we should
17 rehear in this matter, I think. That's my
18 opinion.

19 PRESIDING OFFICER SCOTT: Director
20 Forbes.

21 DIR. FORBES: I'm glad you brought up
22 the idea of solving the problem. But I would
23 also remind the Committee that we heard
24 testimony about how the Applicant and the Town

1 might address complaints. And I think that not
2 only is there a solution to excessive noise, I
3 think there's mechanisms in place to hear
4 concerns and to bring them forth so that those
5 solutions are, you know, taken action on. So I
6 was very comfortable with the final decision in
7 this area.

8 PRESIDING OFFICER SCOTT: Again, any
9 other discussion?

10 [No verbal response]

11 PRESIDING OFFICER SCOTT: All right.
12 I'm going to -- I see the sense of the
13 Committee here is we move on.

14 The next issue I'd like us to
15 discuss is shadow flicker. Obviously, we
16 heard significant testimony on this issue.

17 The assertion is that we erred, in
18 that the analysis did not consider the effect
19 of shadow flicker outside one mile from the
20 zone of impact, and they asserted that our
21 Rule 301:08 requires that. They further cite
22 that we've erred in determining that the
23 Applicant will be able to control shadow
24 flicker within our required standards because

1 the controls being proposed were not tested
2 in the United States.

3 The Applicant asserts that the
4 rules don't require an analysis beyond one
5 mile, and they again assert that these issues
6 were raised and considered during the
7 adjudicative hearings and that we've
8 already -- basically, there's nothing new
9 here, to paraphrase.

10 Is there any discussion on this
11 issue of shadow flicker? And again,
12 obviously Dr. Ward has a motion on shadow
13 flicker. Shadow flicker is also addressed in
14 his motion, but we'll talk about that
15 separately. Anybody?

16 MS. WEATHERSBY: All right. I think,
17 like noise, this issue was thoroughly
18 investigated with expert testimony questioning.
19 And I think our decision was correct concerning
20 the flicker. I think, like noise, there was
21 also technology in place where you could -- I
22 think it was the SCADA system that they could
23 adjust the amount of flicker and reduce the
24 amount of flicker.

1 Concerning the one mile, it would
2 have been nice to have information as to
3 whether there was any flicker on properties
4 beyond one mile. But I don't think the rule
5 required that, and I think to have a
6 rehearing on that issue would be
7 inappropriate.

8 PRESIDING OFFICER SCOTT: Attorney
9 Clifford.

10 MR. CLIFFORD: Again, like Ms.
11 Weathersby noted, like noise, we addressed the
12 shadow flicker issue thoroughly. I think we
13 vetted it and met the requirement under the
14 rules. And again, as with the noise situation,
15 there's again also the benefit of that system,
16 that SCADA system in place that could curtail
17 the shadow flicker. So I think we acknowledged
18 there will be shadow flicker. And the
19 requirement was what do you do if it's over
20 eight hours. And they had a plan and a program
21 that is going to, I think, at least they
22 presented evidence as such, is going to solve
23 that. And we shall see.

24 PRESIDING OFFICER SCOTT: I'd like to

1 note for shadow flicker and noise that we're
2 not waiving anything in our rules for
3 non-participating members. Our rules have
4 maximums, and I think it's understood that we
5 expect the Applicant to meet those. So we're
6 not -- you know, that's the expectation. So
7 it's a matter of how the analysis is done, what
8 you believe out of that, I suppose. But I take
9 some comfort that we do have hard and fast
10 rules, and I did at the time when we made the
11 decision.

12 MR. CLIFFORD: I just wanted to say,
13 yeah, nothing in our discussions were -- or I,
14 think, the opinion as a whole represents any
15 waiver of the rule. They're still required to
16 comply with our rules. And what we've done is
17 analyzed and taken that framework when we
18 reviewed the Application. And we think they
19 will be -- compliance has been met or will be
20 met.

21 PRESIDING OFFICER SCOTT: Any other
22 discussion?

23 [No verbal response]

24 PRESIDING OFFICER SCOTT: All right.

1 Let's move on to ice throw.

2 Again, there's an assertion in the
3 motion that we incorrectly considered the
4 issues regarding the distance of ice throw
5 and failed to consider evidence presented by
6 the Intervenors. And in particular, there
7 was some discussion in the motions regarding
8 how many feet away and the veracity that ice
9 throws are realistic at and the veracity of
10 the statements made and our consideration of
11 them.

12 The Applicant argues that the
13 motion failed to identify any errors of fact
14 or reasoning of law and are simply just,
15 again, a disagreement with our decision.

16 So, any discussion on ice throws?
17 Attorney Clifford.

18 MR. CLIFFORD: I'll volunteer. I
19 think this was discussed and vetted. I don't
20 think there's anything new here to warrant
21 reopening. I thought that we thoroughly
22 discussed the issue and found that it -- we
23 weren't concerned -- we didn't have any
24 concerns in this particular area.

1 PRESIDING OFFICER SCOTT: Any other
2 discussion on ice throw? Attorney Weathersby.

3 MS. WEATHERSBY: I would concur. I
4 think we had a thorough discussion concerning
5 ice throw and blade shear and tower collapse.
6 You know, all those issues we thoroughly
7 investigated and found that the standards in
8 the -- that the standards would be met.

9 PRESIDING OFFICER SCOTT: I concur.
10 And I see the sense of the Committee is that
11 we'll move on to the next issue.

12 On the larger topic of effect on
13 natural environment, the motions also
14 contained concerns raised about the impact of
15 the Project on large animals, particularly
16 bears and bobcats.

17 The Applicant again suggests that
18 there's no new arguments here and that we've
19 already considered this.

20 Any discussion on this issue?
21 Attorney Clifford.

22 MR. CLIFFORD: This was discussed. I
23 mean, I'm comfortable with what we reviewed and
24 analyzed in connection with impacts on

1 wildlife. And for lack of a better term, we
2 did "poke the bear" on this one. We
3 specifically talked about them. And I recall
4 that. We've also talked about the impact on
5 humans, which are the other, you know, forms of
6 life here. And I'm comfortable with where --
7 with what we did, and I see no reason to reopen
8 based on this particular area. I didn't see
9 anything new that has been brought to our
10 attention now that gives me a good reason to
11 reopen.

12 PRESIDING OFFICER SCOTT: Dr.
13 Boisvert.

14 DR. BOISVERT: I'd just like to
15 comment that out of all the objections, this
16 one seems to me to be the one that they didn't
17 like our finding and didn't bring forward any
18 new evidence aside from "you're wrong." I
19 would have expected more support for this. It
20 seems to me a shotgun approach on this one.

21 It was reviewed. The information
22 was provided. We made our decision. And
23 it's just a matter of no new information or
24 please change your mind. I don't see that

1 there's any reason to do that.

2 PRESIDING OFFICER SCOTT: Attorney
3 Weathersby.

4 MS. WEATHERSBY: I would also just
5 point out that the report from Fish & Game had
6 no issues concerning bears or bobcats. And I
7 think that this Committee tried very hard -- we
8 did address bears, denning sites, et cetera,
9 and we worked very hard to help preserve the
10 boulders. So I think we thoroughly looked at
11 the issue.

12 PRESIDING OFFICER SCOTT: Attorney
13 Clifford.

14 MR. CLIFFORD: Just my recollection
15 is that we actually addressed one of the issues
16 was the initial site off the road had laydown
17 mats and there was a monitoring plan put in
18 place. I can't recall exactly right now what
19 animal it was. But there was some level of
20 monitoring that was supposed to occur at the
21 initial site where you're going to -- at the
22 staging area.

23 So I didn't see anything new here
24 at all. I agree with Dr. Boisvert. It just

1 seemed like a scatter shot approach on this
2 one.

3 PRESIDING OFFICER SCOTT: Any other
4 discussion?

5 [No verbal response]

6 PRESIDING OFFICER SCOTT: Okay. Now
7 I'll bring us to the large topic, overarching
8 topic of orderly development of the region,
9 particularly regarding the views of the
10 municipalities. And again, I'm paraphrasing.
11 So I apologize.

12 The assertion is that we failed to
13 consider the proposed land use, that it's
14 contrary to the priorities expressed in the
15 master plan for the town. It's not permitted
16 in the Rural Conservation Zone under the
17 zoning ordinance of the town, and the people
18 of Antrim indicated their opposition to the
19 Project by voting against an amendment to the
20 ordinance that would allow construction and
21 operation of the Project.

22 My recollection also is there was
23 some discussion that we didn't consider other
24 municipalities in the broader region, their

1 views.

2 The Applicant asserts that we have
3 done this and cites the deliberations and the
4 transcripts of our deliberations, and that we
5 did specifically receive testimony that
6 specifically addressed the impact of the
7 Project on the surrounding communities and
8 the ConVal School District which was brought
9 up.

10 Any discussion on our taking up of
11 the views of municipalities?

12 MS. WEATHERSBY: I'll take this one
13 because I think I led off this discussion.

14 I think we heard extensive
15 testimony, read numerous documents and during
16 our deliberations thoroughly vetted what we
17 could determine were the views of the people
18 of Antrim and of those in the surrounding
19 communities. We considered all of the
20 testimony and the evidence in a comprehensive
21 manner. There was conflicting information
22 that was from the various proposed
23 ordinances, votes, polls, postcards, et
24 cetera. And I think this board did a good

1 job trying to ascertain what the voters of
2 Antrim wanted. And my personal conclusion
3 was that the town of Antrim was split and
4 there was no clear direction being offered by
5 them. I think we also considered the views
6 of neighboring communities, particularly
7 Stoddard. I think there was a letter from
8 Deering. We talked about tax implications
9 with regard to school districts. So I think
10 that our analysis of this was comprehensive
11 and there's certainly not a reason to have a
12 rehearing.

13 PRESIDING OFFICER SCOTT: Any other
14 discussion? Dr. Boisvert.

15 DR. BOISVERT: My observation is that
16 there were so many moving targets, so many
17 variables to be considered comparing property
18 values, that it was very difficult to identify
19 where there would be an unreasonable adverse
20 effect for any individual. I came away with
21 the interpretation that with the public there
22 would be some, but it would not be possible to
23 identify given the available resources that we
24 have. Consequently, I couldn't be opposed to

1 issuing the permit on that basis. At the same
2 time, I think there may be better ways to look
3 at this issue. I am not a real estate expert,
4 but it seemed to me there are some ways to
5 better study it. I have some concerns about
6 looking at the issues in terms of a large
7 sampling which would then dampen down the
8 effects on the individual property. But my --

9 PRESIDING OFFICER SCOTT: To
10 interrupt, we're talking about the views of
11 municipalities right now; right?

12 DR. BOISVERT: Oh, I thought we were
13 on real estate values.

14 PRESIDING OFFICER SCOTT: I'll get to
15 that.

16 DR. BOISVERT: Oh, my apologies.

17 PRESIDING OFFICER SCOTT: That's an
18 important discussion.

19 DR. BOISVERT: I'm sorry. I turned
20 the page too quickly.

21 PRESIDING OFFICER SCOTT: Any other
22 discussion?

23 [No verbal response]

24 PRESIDING OFFICER SCOTT: I will say

1 that obviously we've had some dissenting views
2 clearly in the testimony. I don't think it's
3 contested that the Board of Selectmen for the
4 Town of Antrim support the Project. I think
5 that's uncontested, as far as that they're here
6 in the room. Obviously, people can disagree
7 that that represents the will of the whole
8 town, and that's another discussion.

9 So, any other discussion on this
10 issue before we move on to -- Director
11 Boisvert would really like to talk about real
12 estate values.

13 DR. BOISVERT: My apologies. I was
14 confused.

15 So let's just take my previous
16 statement and apply it here. I think that
17 there is an issue at hand. I do not see that
18 we have the ability to identify it properly.
19 Consequently, I would not -- I would say that
20 we addressed this as best we could. We could
21 not find other solutions. We were thorough
22 in looking at it. And it is a very, very
23 complex problem, and I think we did our very
24 best to consider it fairly, and I think we

1 can stand by our decision.

2 PRESIDING OFFICER SCOTT: So, to
3 frame the property, real estate value issue a
4 little bit, I think there's a disagreement
5 between the Intervenors and Counsel for the
6 Public and the Applicant over "here's my
7 opinion on the standards." So, you know, we've
8 ruled that it will have an unreasonable adverse
9 effect on property values generally. I think
10 some are taking the fact that we discussed that
11 there could be "an effect on some properties"
12 as being contrary to that. So I'm not viewing
13 the two as incompatible. We were trying to
14 make a broad statement under the law that
15 there's no unreasonable impact.
16 "Unreasonable," in my opinion, doesn't mean
17 there's no impact. But, you know, I think
18 that's a good discussion to be having now also,
19 you know, 'cause did we err in that I think is
20 really the crux of the issue here.

21 Director Forbes.

22 DIR. FORBES: Yeah, I think relating
23 to that, of course, is our long discussions
24 about property guarantees, valuation

1 guarantees. And I think we all did agree that
2 there could be some impact on real estate
3 values and a guaranty might, you know, have
4 some merit. We thoroughly discussed that and
5 how we may or may not be able to accomplish a
6 real estate guaranty. And we concluded it was
7 impractical, as I recall, for various reasons
8 expressed at the time.

9 The motions in front of us I think
10 fail to really explain why that was an error,
11 but did point to that as an error in our
12 judgment, that we should have, you know,
13 applied some kind of guaranty. I just didn't
14 see any argument of law here or a rational
15 discussion as to why that would be required.
16 We did consider it, and I think that we fell
17 on the right side of that decision. But I'm
18 sure that concern of reduced property values
19 is out there for those property owners.

20 PRESIDING OFFICER SCOTT: Any other
21 discussion on real estate value?

22 [No verbal response]

23 PRESIDING OFFICER SCOTT: Seeing
24 none, another issue that was brought up in the

1 context of mitigation, potential mitigation,
2 you know, technical mitigation for shadow and
3 noise flicker was an impact on, potential
4 impact on financial capability.

5 So the assertion is that we erred
6 because we failed to consider the effect of
7 the implementation of those issues on the
8 required generation of cash flow for the
9 operation.

10 The Applicant responded by pointing
11 to their witness, Mr. Weizner, and his
12 testimony that stated that that would not be
13 an issue. And further, again, they say --
14 the Applicant asserts that there's no legal
15 or factual issue that would warrant rehearing
16 in this docket.

17 Any discussion on that issue? So
18 this would be the impacts of the NRO, or the
19 shadow flicker technology.

20 Attorney Clifford.

21 MR. CLIFFORD: I recall that we asked
22 that question, and I think it was answered.
23 Did we do our job? Yes. And I don't know what
24 would be gained to reopen. They've stated that

1 they could comply and still have their
2 financial capability. I didn't hear any --
3 they were challenged on it. But I don't see
4 anything new to offer a good reason here. I
5 just I don't see it, but others may disagree.

6 PRESIDING OFFICER SCOTT: Any
7 opinions, comments? Is there a sense that we
8 should reconsider based on this issue?

9 [No verbal response]

10 PRESIDING OFFICER SCOTT: Seeing
11 none, okay. I believe that covers the -- hold
12 on a second.

13 (Discussion between Presiding Officer
14 Scott and Attorney Iacopino)

15 PRESIDING OFFICER SCOTT: In an
16 attempt to be thorough, our counsel reminds me
17 that I didn't cover Counsel for the Public
18 brought up the issue of our consideration of
19 Ms. Vissering's testimony and whether we can
20 properly consider that or not. She was not a
21 witness in this proceeding and did not file
22 testimony, as the Applicant reminds us. But
23 nevertheless, we did consider some of her
24 statements in our -- in the testimony and in

1 our discussions.

2 Anybody want to talk about that a
3 little bit?

4 [No verbal response]

5 PRESIDING OFFICER SCOTT: I know I'm
6 going to need a nature break soon. I'm sure
7 Sue needs a break.

8 MS. WEATHERSBY: So, Ms. Vissering
9 wasn't a witness in this Antrim II, we'll call
10 it. But that said, we heard a lot about her
11 conclusions and findings in the previous
12 docket, particularly with regard to mitigation
13 measures and how many of them were incorporated
14 into Antrim II. So I think that, you know, we
15 did, to the extent she wasn't here and we
16 didn't have a full analysis of her report, I
17 think we did incorporate some of her thought
18 process into our analysis.

19 PRESIDING OFFICER SCOTT: Dr.
20 Boisvert wants to speak, I can tell.

21 DR. BOISVERT: No.

22 PRESIDING OFFICER SCOTT: Attorney
23 Iacopino, is there anything that we're not
24 covering that you can think of on the Counsel

1 for the Public's or the Intervenors' statements
2 that we should probably address?

3 MR. IACOPINO: I think you've
4 addressed approximately 18 different claims of
5 error, and I think you've got them all. But if
6 you are going to take a break --

7 MR. WARD: Can't hear you, Mike.

8 MR. IACOPINO: Mr. Chairman, if you
9 are going to take a break, I will look through
10 the motions over the break and make sure.

11 PRESIDING OFFICER SCOTT: Okay.
12 We'll take a five-minute break. And we'll
13 attempt to do five minutes and be back. Thank
14 you.

15 (Whereupon a recess was taken at 11:07
16 a.m., and the hearing resumed at 11:21
17 a.m.)

18 PRESIDING OFFICER SCOTT: Back on the
19 record. We will next entertain the Motion for
20 Rehearing for the meteorologist group of
21 Intervenors. What I will attempt to do is
22 somewhat group the motions -- the issues raised
23 in that motion. And again, we've all read it,
24 so -- particularly for Dr. Ward, hopefully you

1 understand I'm not reiterating your whole
2 motion. I'm trying to paraphrase.

3 So, again, the meteorologist group
4 suggests that the Committee failed to
5 consider the validity of meteorological
6 evidence relevant --

7 MR. WARD: Relevant.

8 PRESIDING OFFICER SCOTT: Thank you.
9 I appreciate that.

10 MR. WARD: No charge.

11 PRESIDING OFFICER SCOTT: -- relevant
12 to the assessment of shadow flicker and noise.
13 In particular, there's discussions about
14 pre-construction noise, G Factor, use of G
15 Factor and modeling, post-construction noise,
16 meteorological issues related to ducting.
17 There's also, on the noise topic, still
18 discussion of a worst-case analysis for turbine
19 noise. There's discussion regarding -- which
20 is I think the last topic we left for the other
21 motions, on the impact of the Project's
22 efficiency on the -- caused by mitigation
23 measures, both for noise and shadow flicker.
24 There's discussion of concerns raised about our

1 treatment of shadow flicker, both
2 pre-construction and post-construction.
3 There's discussion about the solar enlargements
4 and shadow flicker impacts. There's discussion
5 of errors in responses for Mr. O'Neal regarding
6 shadow flicker.

7 Under a broad topic there's
8 discussion about failure to consider
9 appropriately wind direction, wind speed,
10 clouds and other meteorological factors and
11 their effect on sunshine and the appearance
12 of the sun and how those were considered.
13 There's discussion about accounting for the
14 reflection in shadow flicker. There's
15 discussion regarding the impact of shadow
16 flicker on traffic and associated hazards
17 related. There's discussion about ice throws
18 in the meteorologists' motion. There's
19 discussion of visual impacts and impacts on
20 aesthetics, nighttime impacts as we've
21 discussed, and the impact of flashing lights
22 and their effects.

23 In response, again paraphrasing,
24 from the Applicant, the Applicant asserts

1 that the meteorologist group failed to
2 establish, again, one of the criteria here of
3 good reason that warrants a rehearing. And
4 they suggest that the assessments were done
5 in compliance with our Committee rules.

6 So those are broad topics. I think
7 I started with, if I remember what I just did
8 myself, with noise. So, perhaps we could
9 start with the discussion over the different
10 noise components of the meteorological
11 group's motion. Any discussion?

12 Director Forbes.

13 DIR. FORBES: I guess I'll start.
14 Sounding a little bit like a broken record. I
15 don't know that I have seen anything in here
16 that's new evidence or new arguments. We have
17 heard about, you know, G Factors influencing
18 noise. We've heard the limitations and
19 failures of, you know, precise accuracy of the
20 modeling, the ISO 969613-2 modeling. You know,
21 we've heard all these, and the preponderance of
22 the evidence that has been presented. You
23 know, it leaves us with a different conclusion.
24 So I struggle to see a good reason in here why

1 we would, you know, reconsider this issue. I
2 do feel like this is in many respects some of
3 these items -- all of these items are, in
4 effect, rehashing testimony that we have heard
5 already.

6 PRESIDING OFFICER SCOTT: Any other
7 discussion on the noise issues discussed in the
8 motion? No one's making a noise.

9 Attorney Weathersby.

10 MS. WEATHERSBY: I just disagree with
11 Dr. Ward's assertion that we failed to consider
12 evidence that he presented during his -- that
13 he elicited during his rather lengthy, if I
14 recall, cross-examination of Mr. O'Neal. We
15 heard a lot of information. We heard
16 Dr. Ward's assessment of the problems with
17 Mr. O'Neal's testimony and modeling. And I
18 think that we considered that in our analysis.

19 PRESIDING OFFICER SCOTT: Any other
20 discussion regarding the noise issues raised in
21 the meteorologists' group motion? I'll give
22 my -- Director Forbes again.

23 DIR. FORBES: I was just going to
24 raise one other point. I see in the first

1 argument about the preponderance of evidence
2 claims, if you will, that we should
3 specifically consider and identify in
4 comparison to the evidence from the Applicant.
5 And I think that, while we considered all these
6 issues, the responsibility, as I understand it,
7 is not ours to counter one or the other or make
8 judgments on each of these different issues,
9 whether it's ducting or G Factor or whatever.
10 And I think that the argument that was made
11 that we must make a determination on all those
12 individual items is not valid. I think in
13 context of all of the arguments we've heard, we
14 made our conclusion on these issues. So I
15 don't know if there's an argument in support of
16 that point. But, you know, is it our job to
17 rule on whether a G Factor should be .5 or
18 zero? I don't think it is.

19 PRESIDING OFFICER SCOTT: At least
20 from my point of view, I'm hard-pressed to see
21 where we didn't consider all these issues.
22 Again, as we're well aware, there's a
23 difference between did we err legally and do we
24 have good cause to reopen and is there

1 agreement. And again, I think in many of these
2 issues we end up being somewhat subjective, and
3 I think reasonable people disagree. But that's
4 not the basis for reconsideration. My opinion.

5 And on noise, again, much of the
6 testimony regarding meteorologists --
7 meteorology was about the modeling, among
8 other things. I do take, I did and still do,
9 that that wasn't the end-all in our decision,
10 in my opinion, on these things. We have
11 rules. We had some post-construction
12 modeling -- monitoring requirements. So
13 there was an overall package here. So, not
14 to re-litigate the issue, but I'm not seeing
15 anything new here that was brought up in the
16 motion regarding noise.

17 Any other opinions? Anybody else
18 want to discuss this? Director Boisvert?

19 DR. BOISVERT: I'm waiting for shadow
20 flicker.

21 PRESIDING OFFICER SCOTT: So, seeing
22 none, I'd like to go on to, again in the same
23 meteorologist group motion, the issue of shadow
24 flicker. You know, again, I'm not going to

1 reiterate what I did in introducing these
2 topics. Does anybody find anything that we've
3 erred on or provides good cause for us to want
4 to reconsider? Any discussion on that issue?

5 DR. BOISVERT: I don't think that we
6 erred on shadow flicker. Dr. Ward brought
7 forward a number of conditions or phenomena
8 that exist and then proceeded to try to make a
9 claim that, having not considered them, that
10 that is sufficient reason to say there's an
11 unreasonable adverse effect. I don't follow
12 the logic. He never, in my mind, indicated
13 that there was an error in the analysis that
14 basically did not properly portray the effects
15 of solar enlargement and shadow flicker and so
16 forth. I'm just picking that out of the list.

17 And we did spend a good deal of
18 time considering the issues that he brought
19 forward and I believe that we took them into
20 account and I could find no reason that there
21 was an unreasonable adverse effect related to
22 the conditions that he mentioned. So I feel
23 that we have properly considered it and come
24 to a correct judgment that there was no

1 unreasonable adverse effect there.

2 PRESIDING OFFICER SCOTT: Again I
3 tried to parse this out under shadow flicker,
4 the broad category for now. Any other
5 discussion on this?

6 [No verbal response]

7 PRESIDING OFFICER SCOTT: All right.
8 Thank you. Then I'll move on to -- again,
9 these are broad categories -- discussion on ice
10 throws and that motion. Any -- well, anything
11 we haven't already said I guess would be the
12 question?

13 [No verbal response]

14 PRESIDING OFFICER SCOTT: All right.
15 Seeing none, I'll move on to the discussions
16 regarding visual impacts. Again, nighttime
17 visual impacts are one of the components. The
18 impacts of flashing lights and their effects
19 was also mentioned.

20 Any concern that those weren't
21 properly considered or we've erred in our
22 consideration in what we've taken up?

23 MR. CLIFFORD: I don't think we erred
24 in that area because we -- again, we addressed

1 that through the radar lighting system that
2 was -- the activated lighting system that was
3 ultimately approved. We were waiting on that
4 information and we looked at it. I mean, these
5 things do have to be lit at night for reasons
6 of aircraft. And it seems to me that that new
7 technology avoids the issue of having them on
8 from, you know, sunset to sunrise. So, to that
9 extent, I believe that we covered they were
10 only going to light up when radar -- excuse
11 me -- when jet aircraft approached, and for a
12 limited period of time. So I think we
13 discussed that, and so I see nothing new here.

14 PRESIDING OFFICER SCOTT: Any other
15 discussion on visual impacts or lighting
16 concerns?

17 [No verbal response]

18 PRESIDING OFFICER SCOTT: Again, from
19 my view, I do believe obviously there is a
20 difference between whether these issues were
21 fully discussed and whether we've erred in our
22 determination. To Dr. Ward's credit, I will
23 say it's not obvious to me that we would have
24 gone into the detail that we would have in

1 deliberations and in the hearings but for him
2 bringing up some of these issues. So I do
3 think there was a benefit on that. But again,
4 overall, my opinion is that we've not seen
5 anything new here in this filing.

6 Does anybody disagree with that?
7 Does anybody have any other issues with the
8 meteorologists' group motion that we wish to
9 address? Attorney Weathersby.

10 MS. WEATHERSBY: Dr. Ward and others
11 wish that we had been more specific and made
12 more specific findings on each issue that was
13 important to them, but that's not what we're
14 charged to do. We'd probably still be in
15 deliberations if that was the case. So I
16 understand that they're searching for a
17 concrete answer and a lengthy discussion on
18 every issue that was important to them, but
19 that's not the nature of these deliberations.
20 We heard extensive testimony from experts from
21 cross-examination, various reports, et cetera,
22 and I think we incorporated all of that into
23 the findings that we made.

24 PRESIDING OFFICER SCOTT: Any other

1 discussion on the meteorologist group's motion?

2 [No verbal response]

3 PRESIDING OFFICER SCOTT: Okay.

4 Seeing none, what I'd like to do now
5 procedurally is do a formal vote on the
6 motions. So I will start.

7 Do I need a motion to --

8 MR. IACOPINO: You do need a motion,
9 yeah.

10 PRESIDING OFFICER SCOTT: So, does
11 anybody --

12 MR. IACOPINO: Which motion are you
13 going to --

14 PRESIDING OFFICER SCOTT: So I'll
15 start with the -- where we left off, the
16 meteorologist group motion. Do we have a
17 motion regarding that?

18 MR. CLIFFORD: I guess you're looking
19 for a motion. I think that we should deny the
20 meteorological group's motion for a rehearing
21 and propose that we bring that to a vote.

22 PRESIDING OFFICER SCOTT: Do we have
23 a second?

24 DR. BOISVERT: Second.

1 PRESIDING OFFICER SCOTT: Second from
2 Dr. Boisvert.

3 MR. CLIFFORD: And my basis is we
4 find no -- I conclude that there's no good
5 reason to reopen the hearing -- excuse me -- to
6 reopen this for consideration on the basis of
7 what was filed in the motion.

8 PRESIDING OFFICER SCOTT: Any further
9 discussion?

10 [No verbal response]

11 PRESIDING OFFICER SCOTT: Ready for a
12 vote? I'm seeing head nods.

13 All in favor of the motion, please
14 say "aye."

15 [Multiple members indicating "aye".]

16 PRESIDING OFFICER SCOTT: Anybody
17 opposed?

18 [No verbal response]

19 PRESIDING OFFICER SCOTT: So that's
20 unanimous.

21 Next, do we have a motion regarding
22 the Joint Motion for Rehearing from the
23 Abutting Landowners Group, the Non-Abutting
24 Landowners Group, the Levesque-Allen Group,

1 the Stoddard Commission, and Windaction
2 Group? Do we have a motion? Director
3 Forbes.

4 DIR. FORBES: I would make a motion
5 to deny the motion for rehearing -- for
6 reconsideration.

7 PRESIDING OFFICER SCOTT: Do we have
8 a second?

9 MS. WEATHERSBY: Second.

10 PRESIDING OFFICER SCOTT: Any
11 discussion?

12 [No verbal response]

13 PRESIDING OFFICER SCOTT: Hearing
14 none, all in favor, please say "aye."

15 [Multiple members indicating "aye".]

16 PRESIDING OFFICER SCOTT: Any
17 opposed?

18 [No verbal response]

19 PRESIDING OFFICER SCOTT: Seeing
20 none, that's unanimous.

21 Finally, do we have a motion
22 regarding Counsel for the Public's Motion for
23 Rehearing? Director Boisvert.

24 DR. BOISVERT: I move that we reject

1 the motion for rehearing on res judicata, or
2 should I just do it for -- how would I properly
3 phrase this? We have res judicata and
4 collateral estoppel. Do you need me to do them
5 individually?

6 PRESIDING OFFICER SCOTT: It's up to
7 you. But unless you want to parse out,
8 bifurcate the vote, it's up to you.

9 DR. BOISVERT: Whatever's the most
10 judicious --

11 MS. WEATHERSBY: You can just deny
12 the motion.

13 DR. BOISVERT: Just deny the motion
14 then.

15 PRESIDING OFFICER SCOTT: Want to
16 rephrase that then?

17 DR. BOISVERT: I move that we deny
18 the Motion to Reconsider the Hearing.

19 PRESIDING OFFICER SCOTT: Do we have
20 a second?

21 MS. WEATHERSBY: Second.

22 PRESIDING OFFICER SCOTT: Any
23 discussion?

24 [No verbal response]

1 PRESIDING OFFICER SCOTT: Seeing
2 none, all in favor please "aye."

3 [Multiple members indicating "aye".]

4 PRESIDING OFFICER SCOTT: Any
5 opposed?

6 [No verbal response]

7 PRESIDING OFFICER SCOTT: Again,
8 that's unanimous.

9 So, having dispensed with the
10 motions, there's a couple items to further
11 address for the Committee as a whole
12 Subcommittee.

13 As you're aware, under 541-A, as
14 Presiding Officer, when we had the original
15 motion from the meteorological group, I
16 suspended the Certificate, again, not because
17 there was anything, any action that the
18 Applicant's done, but basically because of
19 the operation of that law. I guess I would
20 ask: Do we have a motion to lift that
21 suspension? Is that something people would
22 like to do? Director Forbes.

23 DIR. FORBES: Yes, I would make a
24 motion to lift the order suspending decision

1 and order granting a Certificate of Site and
2 Facility.

3 PRESIDING OFFICER SCOTT: Do we have
4 a second?

5 MR. CLIFFORD: I'll second that.

6 PRESIDING OFFICER SCOTT: Any
7 discussion?

8 MS. WEATHERSBY: Just a clarifying
9 question. Would that be effective today? Is
10 your motion to --

11 DIR. FORBES: Effective today.

12 PRESIDING OFFICER SCOTT: That's a
13 friendly amendment then.

14 MS. WEATHERSBY: Just for
15 clarification. I just wasn't sure.

16 PRESIDING OFFICER SCOTT: Any other
17 discussion on that motion?

18 [No verbal response]

19 PRESIDING OFFICER SCOTT: Remind me,
20 we did have a second somewhere.

21 MR. CLIFFORD: Yes. And I second it
22 with the change as noted by Ms. Weathersby. So
23 it would be effective today should this motion
24 pass.

1 PRESIDING OFFICER SCOTT: Okay. Any
2 other discussion?

3 [No verbal response]

4 PRESIDING OFFICER SCOTT: Okay. All
5 in favor please say "aye."

6 [Multiple members indicating "aye".]

7 PRESIDING OFFICER SCOTT: Any
8 opposed?

9 [No verbal response]

10 PRESIDING OFFICER SCOTT: None. Let
11 the record just show that's unanimous.

12 And not for the Committee, but as
13 Presiding Officer, we also have a request to
14 open the record in the context of a letter --
15 an LOI or an easement with the Town of Town
16 of Antrim. I'll point out that our
17 Certificate as a condition referenced
18 Appendix 10 of the Application which requires
19 an easement with the Town of Antrim. In that
20 context, I don't see any grounds for granting
21 the motion to reopen the record. And I will
22 assume that, just like any other condition in
23 this Certificate, if the Applicant wishes to
24 do something different, they will come in to

1 amend the Certificate. So, in that context,
2 I'm denying the request to reopen the record.

3 Members of the Committee and
4 Attorney Iacopino, are there any other issues
5 that we need to resolve and address today?
6 Anybody?

7 [No verbal response]

8 PRESIDING OFFICER SCOTT: With that,
9 I think that concludes our business today, and
10 I thank you for coming. And again, as I think
11 I mentioned at the conclusion of the original
12 proceedings, I do appreciate everybody's time.
13 We thoroughly understand these are very weighty
14 issues for everybody involved, so thank you for
15 your time and effort. Have a good day.

16 (Whereupon the hearing was adjourned at
17 11:42 a.m.)

	add (1) 63:3	19,20	analyses (1) 42:24	100:23
[addition (2) 9:7;41:9	again (74) 5:4;6:11;24;9:21; 10:6,8,11;12:9,13,22; 13:18,20;14:11;	analysis (25) 41:13;44:3,13,16, 23;45:2,9,9;47:24; 48:2,24;49:1,6,11;	Applicants (1) 8:5
[Multiple (4) 95:15;96:15;98:3; 100:6	additional (5) 12:7;31:3;32:4; 56:21;63:24	16:10,13;18:10,11; 21:3,16;25:15;30:3, 4;31:1;32:11;33:19, 20;35:24;39:17;	54:17;60:9;65:18; 66:4;68:7;75:10; 82:16,18;84:18; 87:18;90:13	Applicant's (11) 31:21,22;36:23; 40:21;44:10;48:8,10; 57:12;60:19;61:20; 98:18
[No (34) 18:15;22:2;24:7; 27:10;31:24;33:16; 47:5;53:1;54:20; 56:2;57:5;59:23; 62:5;65:10;68:23; 73:5;76:23;79:22; 81:9;82:4;91:6,13; 92:17;94:2;95:10,18; 96:12,18;97:24;98:6; 99:18;100:3,9;101:7	address (11) 9:24;10:4;24:21; 28:8;31:20;65:1; 72:8;83:2;93:9; 98:11;101:5	46:15;47:7;48:8,14, 18,21;53:8;55:1; 58:4;59:8;61:22; 64:15;65:8;66:5,11; 67:10,14,15;69:2,15; 70:17;73:10;80:13; 83:23;84:3;85:23; 86:2;87:22;88:22; 89:1,5,22,24;91:2,8, 16,24;92:18;93:3; 98:7,16;101:10	and/or (2) 34:6;43:17	Application (13) 5:7;6:22;7:22; 12:19;20:5,24;26:14; 27:23;28:10;38:1; 46:20;68:18;100:18
[sic] (1) 60:23	addressed (11) 13:10;25:12;26:22; 48:13;66:13;67:11; 72:15;74:6;77:20; 83:4;91:24	83:4;91:24	analyze (1) 34:1	applied (3) 16:18;24:17;79:13
A	addressing (2) 34:9,24	86:2;87:22;88:22; 89:1,5,22,24;91:2,8, 16,24;92:18;93:3; 98:7,16;101:10	analyzing (1) 41:24	apply (2) 25:20;77:16
	adequately (1) 43:5	adhere (1) 11:17	animal (2) 15:11;72:19	appointed (1) 7:20
ability (5) 24:12;27:6;49:22, 24;77:18	adhere (1) 11:17	against (1) 73:19	animals (1) 70:15	appreciate (2) 84:9;101:12
able (4) 11:7;20:19;65:23; 79:5	adjoined (1) 101:16	agency (4) 37:4,9,21;42:14	animated (1) 50:21	approach (2) 71:20;73:1
above (1) 60:16	adjudicated (2) 17:1;48:13	agenda (1) 5:11	answered (1) 80:22	approached (1) 92:11
Abutting (2) 9:2;95:23	Adjudicative (3) 8:1;17:15;66:7	agree (13) 26:13;27:4;28:14; 33:7;40:5;41:7; 42:13;49:10;54:5; 61:7;62:8;72:24;79:1	Antrim (38) 5:7;6:21;7:4,14,14; 11:24;12:18;13:1,10, 15,19,19;14:7,13,15; 15:7,7;16:21,23;17:1, 5,10,20;18:10,21; 20:4,7,11,22;73:18; 74:18;75:2,3;77:4; 82:9,14;100:16,19	appropriate (5) 22:6;25:14;29:14; 43:9;49:7
accept (1) 48:24	adjust (1) 66:23	agreement (2) 27:22;89:1	apologies (2) 76:16;77:13	appropriately (3) 25:4;35:1;85:9
accepting (1) 60:8	adjustment (2) 64:2,7	aircraft (2) 92:6,11	approval (1) 58:12	approved (2) 14:10;92:3
accomplish (1) 79:5	administrative (2) 10:3;30:19	allow (6) 30:21;31:7;58:5, 11;61:11;73:20	approving (1) 7:16	approved (2) 14:10;92:3
account (6) 46:4;49:8;54:17; 56:18;58:15;90:20	Administrator (1) 6:6	allowed (1) 30:23	apologize (1) 73:11	approval (1) 58:12
accounting (1) 85:13	admission (1) 30:21	allowing (3) 26:1,18;29:11	appear (1) 36:23	approximately (3) 7:9,11;83:4
accuracy (2) 61:18;86:19	admit (1) 36:21	altered (1) 12:15	appearance (1) 85:11	arbitrary (1) 31:5
accurate (1) 61:21	adoption (1) 17:24	always (1) 24:1	appearances (1) 6:13	archeological (1) 37:18
accurately (2) 38:6;49:24	adverse (13) 34:22;36:8,16; 42:2,3;45:16;55:7; 56:11;75:19;78:8; 90:11,21;91:1	amend (1) 101:1	appears (1) 9:11	archeologist (1) 37:15
acknowledge (1) 42:4	aesthetic (1) 19:4	amended (1) 12:19	Appendix (1) 100:18	area (9) 35:2;47:19;49:13; 58:18;65:7;69:24; 71:8;72:22;91:24
acknowledged (1) 67:17	aesthetics (39) 12:9,16;13:17; 14:10;16:24;17:12, 22;18:3;33:19,24; 34:8;35:1;36:8;37:8, 9,24;38:4,21,23; 39:14,20;40:6,11; 41:9,18;42:22;43:8; 45:17,22;46:5,21; 49:22;51:9;55:3,8,11, 14;56:5;85:20	amendment (2) 73:19;99:13	applicability (1) 29:22	areas (2) 56:21,22
acted (2) 23:10;57:18	affected (5) 16:17;20:9;29:4,	among (1) 89:7	Applicant (39) 12:6;13:3,12; 17:13;22:17;23:14; 25:10;30:20;31:10, 19;33:1,2;34:23; 35:8;40:20;44:16,19; 45:4;47:22;52:20; 55:6,16,20;57:21; 64:24;65:23;66:3; 68:5;69:12;70:17; 74:2;78:6;80:10,14; 81:22;85:24,24;88:4;	argue (15) 12:20;16:15,21; 17:6,23;18:5;22:8; 24:14;25:6,13;30:8; 33:22;44:6;54:4; 57:11
action (2) 65:5;98:17		amongst (1) 6:12		argued (5) 13:3;29:7;31:2; 34:17;35:8
activated (1) 92:2		amount (3) 55:18;66:23,24		argues (6) 12:12;17:13;33:2; 55:16;57:21;69:12
activities (1) 48:5		amounts (1) 27:19		argument (7)
actually (1) 72:15		ample (2) 25:11;33:7		

<p>25:17;33:12;36:1; 79:14;88:1,10,15 arguments (18) 13:22;14:24;16:2; 17:14;19:10;23:2; 33:8;43:11,12;45:6; 46:10,18;61:13,16, 24;70:18;86:16; 88:13 articulate (1) 25:17 Arts (1) 37:11 ascertain (1) 75:1 aside (2) 39:17;71:18 assert (12) 12:4;17:16,17; 30:17;31:15;34:3; 35:14;47:21;48:16; 57:17;60:14;66:5 asserted (5) 11:23;48:7;52:20; 60:3;65:20 assertion (8) 52:17,18;54:24; 65:17;69:2;73:12; 80:5;87:11 assertions (1) 55:20 asserts (9) 25:10;31:10;34:23; 44:15;45:4;66:3; 74:2;80:14;85:24 assessed (1) 35:11 assessment (7) 44:9;48:8;51:6; 63:8;64:11;84:12; 87:16 assessments (3) 41:15;60:5;86:4 associated (2) 60:7;85:16 assume (1) 100:22 assumes (1) 47:15 assumptions (1) 61:8 atmospheric (1) 60:13 attempt (4) 50:5;81:16;83:13, 21 attention (2) 11:8;71:10 attorney (28) 5:23;6:6,8;10:14; 15:3;21:21;23:5; 28:23;40:2;41:5; 45:12;46:12;56:8;</p>	<p>58:21;62:24;63:16; 67:8;69:17;70:2,21; 72:2,12;80:20;81:14; 82:22;87:9;93:9; 101:4 audience (1) 6:14 authority (2) 39:14;42:15 authorized (1) 11:11 available (2) 63:7;75:23 avoid (2) 52:14;55:6 avoids (1) 92:7 aware (4) 7:1;62:15;88:22; 98:13 away (3) 25:24;69:8;75:20 aye (4) 95:14;96:14;98:2; 100:5 aye] (4) 95:15;96:15;98:3; 100:6</p>	<p>beginning (1) 37:15 beholder (1) 56:6 below (4) 57:15;59:2,11,12 benefit (2) 67:15;93:3 benefitted (1) 30:20 best (2) 77:20,24 better (7) 40:6;41:3;50:16, 20;71:1;76:2,5 beyond (2) 66:4;67:4 bifurcate (1) 97:8 bit (13) 6:15,19;10:13; 18:24;19:17;24:11; 37:10;39:22;45:11; 64:4;78:4;82:3;86:14 Black (1) 34:14 black-and-white (1) 21:7 blade (2) 44:23;70:5 blades (2) 50:18;51:18 board (3) 43:10;74:24;77:3 Bob (1) 6:1 bobcats (2) 70:16;72:6 body (1) 23:10 BOISVERT (36) 5:19,20;14:5,6; 21:2,3;36:4,5;39:15, 23;49:20,21;52:6; 53:3;71:13,14;72:24; 75:14,15;76:12,16, 19;77:11,13;82:20, 21;89:18,19;90:5; 94:24;95:2;96:23,24; 97:9,13,17 Boisvert's (1) 40:5 both (7) 9:12;31:5;40:20; 49:12;61:16;84:23; 85:1 boulders (1) 72:10 bound (4) 18:9;19:15;20:10, 23 break (6) 82:6,7;83:6,9,10,12</p>	<p>brief (2) 44:4;48:7 briefs (2) 23:6;46:15 bright (1) 53:17 bring (7) 23:16;33:8;50:5; 65:4;71:17;73:7; 94:21 bringing (1) 93:2 broad (11) 13:24;24:10;30:5; 33:18;36:3;47:9; 78:14;85:7;86:6; 91:4,9 broader (3) 44:2;57:9;73:24 broadly (3) 10:9,14;16:11 broken (2) 58:6;86:14 brought (13) 14:11;15:1;23:14, 15,21;64:21;71:9; 74:8;79:24;81:18; 89:15;90:6,18 brush (1) 36:3 built (5) 26:21;50:8,20; 64:3,9 burden (2) 33:1,3 burial (1) 58:11 bushes (1) 20:18 business (2) 22:20;101:9</p>	<p>7:2 carefully (2) 36:10;41:11 carry (1) 7:24 case (9) 6:11;19:7,11; 22:13;30:4;40:12; 51:17;61:13;93:15 cash (1) 80:8 categories (2) 37:3;91:9 category (2) 21:11;91:4 cause (10) 11:5,13,14;33:13, 15;43:13;52:9;78:19; 88:24;90:3 caused (1) 84:22 certain (5) 23:22;26:19;29:3; 51:8;63:6 certainly (13) 9:8;10:6;13:21; 21:17;29:11;42:3,4; 58:14,17;62:15,20; 63:14;75:11 Certificate (15) 5:8;6:23;7:15; 8:21;18:21,22,23; 26:6;27:3;30:2; 98:16;99:1;100:17, 23;101:1 certification (1) 26:5 cetera (5) 50:3,3;72:8;74:24; 93:21 Chair (1) 7:19 Chairman (2) 10:20;83:8 challenged (1) 81:3 change (8) 12:8,20;13:19; 15:2;51:20;60:13; 71:24;99:22 changed (3) 12:23;15:15;17:23 changes (11) 12:3,14,15;13:7; 14:11,12;15:14;20:4, 5,24;34:2 character (1) 35:2 characteristics (1) 12:2 charge (2) 56:14;84:10 charged (1)</p>
	B			
			C	

<p>93:14 checkcheck (1) 39:20 chilling (1) 30:11 chime (2) 19:22;25:22 chose (1) 33:9 cite (3) 47:21;55:4;65:21 cites (1) 74:3 citing (2) 35:6;48:13 claim (10) 13:12;24:23;30:22; 44:11;47:11;48:2,2; 55:8,12;90:9 claims (4) 12:16;55:13;83:4; 88:2 clarification (1) 99:15 clarifying (1) 99:8 clarity (2) 6:9;52:13 classification (1) 46:1 clean (1) 59:5 clear (7) 52:11;53:9,10,10, 18;57:18;75:4 clearly (1) 77:2 CLIFFORD (40) 5:22,23;15:4,5; 23:5,6;26:12,13; 27:12,13;28:17; 32:13;40:3,4;43:23; 46:13,14;49:10;53:7; 56:8,9;59:8;63:16, 17;67:9,10;68:12; 69:17,18;70:21,22; 72:13,14;80:20,21; 91:23;94:18;95:3; 99:5,21 clouds (1) 85:10 cloudy (3) 52:16;53:17;54:14 coin (1) 54:7 collapse (1) 70:5 collateral (5) 16:10,19;17:9; 19:24;97:4 comfort (5) 64:1,5,10,14;68:9 comfortable (6)</p>	<p>32:21;46:24;49:17; 65:6;70:23;71:6 coming (4) 5:4;36:8;41:24; 101:10 comment (9) 14:21;18:14;21:4; 25:8;27:7;28:15; 37:2;49:21;71:15 comments (8) 8:16;21:15;22:24; 23:4;30:1;32:12; 33:5;81:7 Commission (4) 5:24;6:3;9:6;96:1 committed (1) 57:19 Committee (18) 5:6;6:24;7:19; 15:24;18:5;37:19; 40:10;52:4;60:17; 64:23;65:13;70:10; 72:7;84:4;86:5; 98:11;100:12;101:3 committees (1) 38:10 Committee's (3) 12:21;17:24;31:13 communities (3) 74:7,19;75:6 comparing (1) 75:17 comparison (2) 13:16;88:4 compelling (2) 61:14,21 complaints (1) 65:1 complete (2) 38:2;46:20 complex (1) 77:23 compliance (5) 59:10;63:23;64:5; 68:19;86:5 complied (2) 58:23;59:16 comply (3) 63:8;68:16;81:1 components (2) 86:10;91:17 comport (3) 44:17;48:9;52:18 comprehensive (7) 41:9;42:9,19,24; 43:6;74:20;75:10 concede (1) 36:9 conceived (3) 11:9;39:20;43:18 concern (3) 30:14;79:18;91:20 concerned (1)</p>	<p>69:23 concerning (16) 19:23,24;20:22; 26:9;29:18,22;41:17, 19;42:8;45:21;46:5; 54:15;66:19;67:1; 70:4;72:6 concerns (8) 33:10;56:17;65:4; 69:24;70:14;76:5; 84:24;92:16 conclude (1) 95:4 concluded (5) 12:17;13:13;25:23; 34:14;79:6 concludes (1) 101:9 conclusion (14) 20:1;34:20;36:9, 12;37:20;42:1,10; 46:16;47:1;49:5; 75:2;86:23;88:14; 101:11 conclusions (1) 82:11 concrete (6) 58:6,11;59:2,6,13; 93:17 concur (4) 15:13;63:1;70:3,9 concurs (1) 44:14 condition (3) 51:9;100:17,22 conditions (8) 52:12,16;53:12,15; 60:13;63:6;90:7,22 conduct (1) 30:24 conducted (2) 44:13;45:10 conducting (1) 22:19 confirmation (1) 21:12 conflicting (1) 74:21 confused (1) 77:14 connection (2) 28:11;70:24 cons (2) 49:4;62:17 Consequently (2) 75:24;77:19 conservation (13) 7:12;9:6;15:10; 17:7;18:7;19:6,11; 20:12,23;21:11; 56:21,21;73:16 conservative (1) 63:5</p>	<p>conserve (1) 19:2 consider (31) 11:3;17:18;25:5; 32:9;33:11;35:1,17; 42:21;43:4;47:22; 55:4;58:18;60:15; 62:21,22,23;63:4; 65:18;69:5;73:13,23; 77:24;79:16;80:6; 81:20,23;84:5;85:8; 87:11;88:3,21 considerable (1) 25:14 consideration (7) 18:4;42:16;49:14; 69:10;81:18;91:22; 95:6 considered (24) 13:7;14:24;17:6; 20:2;23:17;34:21; 35:9;43:5;55:22; 57:2;58:14,15;66:6; 69:3;70:19;74:19; 75:5,17;85:12;87:18; 88:5;90:9,23;91:21 considering (4) 11:2,17;15:11; 90:18 consistent (1) 58:1 constitute (1) 22:18 construct (1) 7:2 constructed (2) 7:8;50:17 construction (2) 7:16;73:20 consultant (1) 36:23 contained (1) 70:14 contested (1) 77:3 context (7) 26:3;27:17;80:1; 88:13;100:14,20; 101:1 contract (3) 25:24;27:20;28:1 contradict (1) 48:1 contrary (7) 30:17,18;33:22; 52:21;57:18;73:14; 78:12 contrast (1) 52:13 contributory (1) 48:3 control (2) 51:4;65:23</p>	<p>controls (1) 66:1 controversy (1) 44:22 ConVal (1) 74:8 convene (1) 22:6 conversation (1) 59:19 conversations (1) 15:23 Council (1) 37:11 Counsel (34) 8:7,9;9:8,13,18; 10:13;11:22;12:12; 13:12;16:14;18:19; 22:7;24:14;30:7,9; 31:1,6;32:3;33:20; 34:16;35:17;40:22; 44:14;45:22;48:6; 54:2,24;57:10;62:11; 78:5;81:16,17;82:24; 96:22 counter (1) 88:7 couple (1) 98:10 course (6) 8:9;29:19;42:18; 50:24;51:16;78:23 Court (1) 11:5 cover (1) 81:17 covered (1) 92:9 covering (1) 82:24 covers (1) 81:11 created (1) 12:24 creative (1) 20:20 credit (1) 92:22 criteria (6) 17:2,4;18:2;21:21; 39:18;86:2 critique (1) 48:11 cross (1) 32:15 cross-examination (5) 30:24;31:22;32:20; 87:14;93:21 cross-examined (2) 8:6,13 crux (1) 78:20 Cultural (3)</p>
---	---	--	--	--

37:6,16;38:2 current (1) 13:11 cursor (1) 34:13 curtail (2) 63:7;67:16 cusp (1) 36:11	20:3;25:4;35:7,13; 42:8;63:15;74:3,4, 16;93:1,15,19 demonstrate (1) 10:24 demonstrated (1) 57:13 demonstrating (1) 35:18 denial (2) 18:23;21:5 denied (3) 11:15;12:1;38:20 denning (1) 72:8 deny (6) 38:22;94:19;96:5; 97:11,13,17 denying (2) 18:21;101:2 Department (4) 5:15;57:16,24;58:9 depended (1) 49:22 depending (1) 10:1 depth (2) 57:14;59:1 desire (2) 48:19;52:5 desires (1) 28:3 detail (4) 14:8;25:18;36:1; 92:24 determination (5) 24:19;47:14;48:11; 88:11;92:22 determine (5) 12:5;13:14;17:2; 40:10;74:17 determined (7) 7:23;13:8;17:10; 34:4,7,11;35:15 determining (3) 16:16;33:23;65:22 develop (1) 30:13 development (1) 73:8 DHR (1) 39:13 di (1) 12:3 differ (1) 22:11 difference (4) 40:13;41:16;88:23; 92:20 differences (4) 13:10;15:6,8;38:11 different (23) 12:6,22;13:15;	15:11,16,17;18:24; 19:17;20:3,7,16; 29:13;37:12;50:19, 21;53:15;54:11; 56:19;83:4;86:9,23; 88:8;100:24 difficult (2) 37:23;75:18 difficulty (1) 38:15 DIR (14) 5:14;14:21;33:6; 42:13;46:8;58:8; 61:3;64:21;78:22; 86:13;87:23;96:4; 98:23;99:11 direct (1) 11:7 direction (2) 75:4;85:9 Director (14) 42:11;46:6;49:20; 52:6;61:2;64:19; 77:10;78:21;86:12; 87:22;89:18;96:2,23; 98:22 disagree (9) 21:19;46:18;61:8; 62:9;77:6;81:5; 87:10;89:3;93:6 disagreement (4) 43:2,9;69:15;78:4 disagreements (1) 61:23 disagrees (1) 44:19 discuss (6) 5:10;21:17;47:4; 59:18;65:15;89:18 discussed (15) 15:16,18;18:13; 41:21;55:17;62:10; 69:19,22;70:22; 78:10;79:4;85:21; 87:7;92:13,21 discussing (2) 51:15;55:19 discussion (81) 20:13,21;23:3,19; 24:2,5,12;25:14,19; 26:3;27:16;31:23; 32:19;36:4;40:2; 45:8,12;52:3,23; 53:6;54:8,12,15,19; 55:24;57:4,16;58:3, 21;59:9,22;60:24; 63:12;65:9;66:10; 68:22;69:7,16;70:2,4, 20;73:4,23;74:10,13; 75:14;76:18,22;77:8, 9;78:18;79:15,21; 80:17;81:13;84:18, 19,24;85:3,4,8,13,15,	17,19;86:9,11;87:7, 20;90:4;91:5,9; 92:15;93:17;94:1; 95:9;96:11;97:23; 99:7,17;100:2 discussions (8) 29:17;41:19;63:15; 68:13;78:23;82:1; 84:13;91:15 dispensed (1) 98:9 dissenting (1) 77:1 distance (1) 69:4 district (2) 7:13;74:8 districts (1) 75:9 ditto (1) 48:20 Division (1) 5:20 Docket (12) 5:9;6:4,18;7:20; 8:12;16:23;17:3,5; 18:10;19:8;80:16; 82:12 Doctrine (4) 13:9;16:18;17:9; 18:9 documents (1) 74:15 dominance (1) 35:12 dominant (2) 34:5;41:21 done (12) 24:13;26:17;32:21; 38:5;49:18;61:19; 62:11;68:7,16;74:3; 86:4;98:18 doorstep (2) 37:14;40:7 DOT (1) 37:10 down (4) 9:23;59:11;64:7; 76:7 DR (40) 5:19;14:5,6;21:1,3; 36:4,5;39:15,23; 40:5;45:18,24;49:21; 53:3;66:12;71:12,14; 72:24;75:14,15; 76:12,16,19;77:13; 82:19,21;83:24; 87:11,16;89:19;90:5, 6;92:22;93:10;94:24; 95:2;96:24;97:9,13, 17 drafting (1) 29:6	ducting (2) 84:16;88:9 due (1) 20:4 dueling (1) 49:2 dunk (1) 51:11 duration (1) 34:18 During (14) 8:4;17:15;20:2; 31:21;32:17;44:20, 24;45:6;52:16;54:10; 66:6;74:15;87:12,13
E				
early (1) 29:15 easement (4) 15:10;19:7;100:15, 19 easements (7) 17:8;18:7;19:3,11; 20:12,23;55:9 echo (1) 53:3 effect (21) 16:24;30:11;33:24; 35:18,21;36:8,16; 48:12;55:11;56:13; 65:18;70:12;75:20; 78:9,11;80:6;85:11; 87:4;90:11,21;91:1 effective (4) 18:8;99:9,11,23 effectively (4) 13:2;22:8;32:10; 33:2 effectiveness (1) 55:5 effects (18) 17:12,21;18:3; 20:6,7;33:19;34:8; 35:5;37:17;47:10; 55:3,7;56:12,18; 76:8;85:22;90:14; 91:18 efficiency (1) 84:22 effort (1) 101:15 eight (1) 67:20 either (1) 53:9 elicited (1) 87:13 eliminated (1) 44:11 else (6) 32:23;43:15;49:20;				

51:21;62:4;89:17 embedded (1) 36:16 employed (1) 17:2 end (8) 10:1;16:2;25:15; 19;26:15;40:14; 63:22;89:2 end-all (1) 89:9 Energy (2) 5:7;6:22 enlargement (1) 90:15 enlargements (1) 85:3 enough (2) 21:8;36:14 enter (1) 61:17 entertain (1) 83:19 entire (1) 47:19 entity (1) 28:2 Environment (2) 57:17;70:13 Environmental (3) 5:15;57:24;58:9 err (2) 78:19;88:23 erred (10) 60:4,8;65:17,22; 80:5;90:3,6;91:21, 23;92:21 erroneous (1) 47:13 erroneously (4) 12:17;13:13;44:11; 60:17 error (6) 31:11;48:16;79:10, 11;83:5;90:13 errors (2) 69:13;85:5 essentially (1) 46:17 establish (2) 31:12;86:2 estate (7) 76:3,13;77:12; 78:3;79:2,6,21 estimated (1) 61:6 estoppel (5) 16:10,19;17:9; 19:24;97:4 et (5) 50:3,3;72:8;74:23; 93:21 Eugene (1)	5:14 evaluated (2) 35:10;55:23 evaluating (1) 18:2 Evaluation (3) 5:6;6:24;48:17 even (5) 19:16;20:8;28:13; 51:16;59:11 eventually (1) 36:11 everybody (4) 5:3;6:10;25:16; 101:14 everybody's (1) 101:12 everyone (4) 29:20;32:15;33:7; 38:16 everyone's (1) 25:17 evidence (14) 25:11;30:21;55:21; 57:23;67:22;69:5; 71:18;74:20;84:6; 86:16,22;87:12;88:1, 4 exact (1) 40:17 exactly (1) 72:18 examination (1) 41:8 examined (1) 41:12 example (5) 28:6;44:21;53:16; 56:20;64:13 excellent (1) 45:19 excessive (1) 65:2 exclusively (1) 37:9 excuse (6) 8:8;18:22;23:7; 40:20;92:10;95:5 exhibits (2) 8:11,15 exist (1) 90:8 existing (2) 35:2;47:22 expanding (1) 7:5 expect (1) 68:5 expectation (1) 68:6 expected (1) 71:19 experience (2)	14:15;50:6 expert (7) 8:10;31:4;40:21; 44:10;61:20;66:18; 76:3 experts (6) 41:12;49:2,12; 61:7;63:19;93:20 expert's (1) 54:3 explain (1) 79:10 explicitly (3) 25:7;32:24;48:7 explore (2) 21:24;29:22 express (1) 38:19 expressed (3) 28:14;73:14;79:8 extensive (3) 60:20;74:14;93:20 extensively (1) 55:17 extent (5) 14:2;34:17;47:24; 82:15;92:9 eye (1) 56:6	86:19 fair (7) 32:14,19;33:7; 36:21;49:11;55:18; 59:19 fairly (4) 15:19;32:19;53:19; 77:24 fairness (1) 30:6 falling (1) 21:3 familiar (1) 6:17 far (5) 13:8;21:20;29:5; 58:12;77:5 farm (2) 50:11;56:12 farms (1) 50:16 fast (1) 68:9 faults (2) 49:4;54:16 favor (4) 95:13;96:14;98:2; 100:5 feature (1) 34:6 feel (20) 15:18;16:3;21:24; 24:5;28:14;30:1; 32:16;33:15;36:2,5, 14;39:19;42:4;46:10; 58:14;62:14,18,18; 87:2;90:22 feeling (1) 43:21 feelings (1) 27:9 feet (5) 57:14;58:5;59:1, 13;69:8 fell (1) 79:16 felt (2) 50:15;63:22 fences (2) 20:18;52:14 file (2) 31:17;81:21 filed (4) 6:22;9:9;40:20; 95:7 filing (1) 93:5 fill (1) 59:5 final (2) 17:1;65:6 finally (2) 8:21;96:21	financial (2) 80:4;81:2 find (10) 11:12,14;18:6; 43:16;51:17;53:13; 77:21;90:2,20;95:4 finding (9) 26:6,7,14,24;27:2; 29:11;34:13;56:15; 71:17 findings (5) 25:1;34:20;82:11; 93:12,23 fine (1) 25:17 first (14) 9:17;10:5,6;12:1; 14:3,4,15;17:20; 19:15;27:24;40:16, 16;56:10;87:24 Fish (2) 37:6;72:5 five (3) 22:12,18;83:13 five-minute (1) 83:12 flashing (2) 85:21;91:18 flawed (2) 44:9;60:10 flaws (1) 61:14 flicker (29) 24:16;65:15,19,24; 66:11,13,13,20,23, 24;67:3,12,17,18; 68:1;80:3,19;84:12, 23;85:1,4,6,14,16; 89:20,24;90:6,15; 91:3 flow (1) 80:8 follow (1) 90:11 Following (1) 8:22 footage (1) 47:19 footings (1) 59:13 Forbes (27) 5:13,14,14;14:20, 21;33:5,6;42:12,13; 46:7,8;58:8;61:2,3; 64:20,21;78:21,22; 86:12,13;87:22,23; 96:3,4;98:22,23; 99:11 foreground (1) 46:2 foremost (2) 10:5,6 forgot (1)
		F		
		Facility (10) 5:8;6:23;7:15; 20:17;26:20,21; 27:22;28:3,9;99:2 fact (9) 13:5;18:19;23:14; 31:12;42:14,16; 55:13;69:13;78:10 factor (8) 60:9,22;62:16; 64:2;84:14,15;88:9, 17 factors (4) 23:19;57:1;85:10; 86:17 facts (1) 17:16 factual (2) 30:13;80:15 fail (1) 79:10 failed (19) 12:13;13:4;24:24; 31:11;33:11;34:1; 43:3;47:21,22;48:15; 60:10,15;69:5,13; 73:12;80:6;84:4; 86:1;87:11 failure (1) 85:8 failures (1)		

<p>43:3 form (1) 41:17 formal (1) 94:5 forms (2) 56:19;71:5 forth (6) 33:8;37:7;50:18; 51:2;65:4;90:16 forward (6) 14:11;50:10,22; 71:17;90:7,19 found (8) 35:19;41:14;54:11; 56:11;60:18;61:21; 69:22;70:7 founded (1) 42:22 frame (1) 78:3 framework (1) 68:17 friendly (2) 30:24;99:13 front (1) 79:9 frustration (1) 38:19 fulfilling (1) 6:10 full (5) 15:24;20:20;32:14; 49:11;82:16 fully (6) 13:21;16:24;30:12; 50:6;57:22;92:21 further (21) 13:6;17:17;21:24; 25:6;30:22;31:15; 34:16;35:14;45:4; 47:4;48:7,14;55:12, 21;59:18;60:14;64:7; 65:21;80:13;95:8; 98:10 future (6) 39:5;50:7,11,24; 51:16,21</p>	<p>generating (4) 7:3;20:17;26:20; 28:3 generation (1) 80:8 gets (1) 27:23 given (4) 20:14,24;40:23; 75:23 gives (2) 49:16;71:10 giving (1) 24:20 glad (1) 64:21 Good (30) 5:2,17,19,22;11:4, 4,13,13,14,14;38:10; 41:19,23;43:16; 45:23;50:12;51:3,10; 63:11;71:10;74:24; 78:18;81:4;86:3,24; 88:24;90:3,17;95:4; 101:15 governed (1) 10:22 grade (2) 57:15;59:2 grant (2) 11:12;26:5 granted (1) 27:8 granting (5) 8:21;26:6;27:6; 99:1;100:20 great (1) 49:23 Gregg (1) 34:14 ground (2) 60:8,22 grounds (1) 100:20 group (21) 9:1,2,4,5,7,24; 38:14;43:10;83:20, 22;84:3;86:1;87:21; 89:23;93:8;94:16; 95:23,24,24;96:2; 98:15 gained (2) 59:17;80:24 Game (4) 37:6;38:9;39:4; 72:5 gave (5) 50:15;58:19;64:4, 10,14 general (1) 27:2 generally (3) 10:16,18;78:9</p>	<p>32:8;36:5;38:18; 48:21;53:2;56:3; 86:13;91:11;94:18; 98:19 guidance (1) 51:22</p>	<p>41:16 here's (1) 78:6 high (1) 47:16 highways (1) 37:11 Hill (1) 7:5 historic (1) 37:18 Historical (3) 5:20;38:7;61:18 hit (1) 21:23 hog (1) 49:1 hold (1) 81:11 honest (1) 38:11 hopefully (3) 6:7;7:1;83:24 horizon (1) 50:2 hours (1) 67:20 hub (3) 44:23;45:2;54:14 Human (2) 37:7;51:9 humans (1) 71:5 hunting (1) 60:16</p>	<p>II (6) 13:19;14:13;15:7; 20:4;82:9,14 impact (25) 12:15;17:19;19:3, 4,9;34:22;41:15,17; 43:5;45:16;47:12,16; 48:3;65:20;70:14; 71:4;74:6;78:15,17; 79:2;80:3,4;84:21; 85:15,21 impacted (1) 61:2 impacts (19) 12:9;13:16;16:20; 17:22;34:24;42:2,3, 7;48:4;70:24;80:18; 85:4,19,19,20;91:16, 17,18;92:15 implementation (1) 80:7 implementations (1) 75:8 important (7) 18:3;42:15;48:21; 53:24;76:18;93:13, 18 impractical (1) 79:7 improvement (3) 36:14,15,18 inability (1) 30:12 inaccurate (1) 63:5 inappropriate (1) 67:7 include (2) 60:10,22 including (1) 17:22 incompatible (1) 78:13 incorporate (1) 82:17 incorporated (2) 82:13;93:22 incorporates (1) 26:9 incorrectly (1) 69:3 incurbent (1) 11:2 indeed (3) 14:13;38:5;52:21 indicated (2) 73:18;90:12 indicating (5) 25:1;95:15;96:15; 98:3;100:6 indisputably (1) 58:18 individual (4)</p>
<p style="text-align: center;">G</p>	<p>gained (2) 59:17;80:24 Game (4) 37:6;38:9;39:4; 72:5 gave (5) 50:15;58:19;64:4, 10,14 general (1) 27:2 generally (3) 10:16,18;78:9</p>	<p style="text-align: center;">H</p> <p>Hampshire (4) 5:5,20,23;6:2 hand (1) 77:17 handles (1) 37:9 happening (1) 59:20 happens (5) 14:6,8;21:10; 37:21;40:13 hard (4) 20:15;68:9;72:7,9 hard-pressed (2) 37:19;88:20 hazards (1) 85:16 hazy (1) 52:16 head (7) 16:8;24:9;30:3; 43:19;47:6;54:21; 95:12 headsets (1) 52:1 Health (2) 37:7;60:1 hear (6) 28:15;33:9;40:4; 65:3;81:2;83:7 heard (29) 12:1;28:20;32:17; 41:11;42:18;43:12; 45:20;46:10;49:1,4; 54:12,15;61:15,17; 63:3,18,20;64:23; 65:16;74:14;82:10; 86:17,18,21;87:4,15, 15;88:13;93:20 hearing (12) 14:16;15:1;43:11; 44:21;50:5;54:22; 57:6;83:16;95:5; 96:13;97:18;101:16 hearings (8) 8:1,5;17:15;42:19; 45:1,7;66:7;93:1 height (1) 15:9 held (2) 8:1;36:19 help (1) 72:9 helped (1)</p>	<p style="text-align: center;">I</p> <p>Iacopino (11) 6:6;10:14,20; 21:21;81:14;82:23; 83:3,8;94:8,12;101:4 ice (8) 69:1,4,8,16;70:2,5; 85:17;91:9 idea (2) 40:18;64:22 ideal (1) 46:2 identical (1) 17:3 identification (4) 17:4;37:17;44:3; 45:10 identified (6) 16:21;17:20;34:7, 19;38:3;47:12 identify (8) 12:13;13:4;31:11; 69:13;75:18,23; 77:18;88:3 ignored (1) 48:2</p>	<p>inappropriate (1) 67:7 include (2) 60:10,22 including (1) 17:22 incompatible (1) 78:13 incorporate (1) 82:17 incorporated (2) 82:13;93:22 incorporates (1) 26:9 incorrectly (1) 69:3 incurbent (1) 11:2 indeed (3) 14:13;38:5;52:21 indicated (2) 73:18;90:12 indicating (5) 25:1;95:15;96:15; 98:3;100:6 indisputably (1) 58:18 individual (4)</p>

61:23;75:20;76:8; 88:12 individually (1) 97:5 influencing (1) 86:17 information (15) 14:23;36:20;37:13; 43:18;45:20;48:16; 49:2,6;50:22;67:2; 71:21,23;74:21; 87:15;92:4 infrastructure (4) 57:14;59:1,4,15 inherent (1) 26:4 initial (2) 72:16,21 inject (1) 27:18 inner (1) 58:11 input (1) 24:1 insisting (1) 41:20 install (1) 28:3 instance (5) 21:9,13;27:24; 29:12;62:16 intending (1) 13:20 intent (3) 23:4;40:9;52:22 intention (1) 16:10 interest (8) 24:20;25:2;26:2,7, 9,16;27:3;29:14 interested (1) 8:17 interpretation (2) 21:4;75:21 interrupt (1) 76:10 Intervenors (38) 8:9,12;9:2,3,4,5,13, 17;11:22;12:20;13:4; 16:14;17:14;22:7; 24:14,21;25:12; 27:17;28:15;29:21; 30:7,10;31:6,8,11,16; 33:20;44:6;45:5; 47:11;48:15;55:1; 57:10;60:3;62:11; 69:6;78:5;83:21 Intervenors' (2) 30:11;83:1 into (16) 23:19;27:19;46:4; 49:8;50:5;54:17; 56:18;58:15;61:9;	64:3,9;82:14,18; 90:19;92:24;93:22 introduce (2) 5:12;6:5 introducing (1) 90:1 investigated (2) 66:18;70:7 invite (1) 11:10 invited (1) 12:18 involve (1) 28:6 involved (2) 16:22;101:14 involvement (1) 30:12 ISA (1) 60:23 ISO (2) 60:11;86:20 issuance (1) 8:22 issue (74) 10:7;13:17,22; 16:23;20:2,21;21:24; 22:4,5;23:15,17; 24:5;26:9,23;27:14, 18;29:22;30:2,5; 31:23;32:3,10;36:4; 40:2,16,17;42:9,17, 22;43:22;44:2,12; 45:8;46:11;47:4; 48:21;51:14;52:3; 53:6;54:7,23;55:19, 19;58:19;59:18,22; 65:14,16;66:11,17; 67:6,12;69:22;70:11, 20;72:11;76:3;77:10, 17;78:3,20;79:24; 80:13,15,17;81:8,18; 87:1;89:14,23;90:4; 92:7;93:12,18 issued (2) 8:21;27:3 issues (37) 9:16,22;10:7; 11:21;13:4,24;16:11; 18:12;20:4;29:5; 31:20;32:7;47:8; 56:7;62:9;66:5;69:4; 70:6;72:6,15;76:6; 80:7;83:22;84:16; 87:7,20;88:6,8,14,21; 89:2;90:18;92:20; 93:2,7;101:4,14 issuing (1) 76:1 items (4) 87:3,3;88:12;98:10	J jet (1) 92:11 job (9) 40:12;41:24;45:19, 23;46:23;51:10;75:1; 80:23;88:16 John (1) 5:22 Joint (3) 9:2,17;95:22 Joking (1) 39:16 judge (2) 37:14;51:8 judgment (6) 38:13;61:7,12; 62:1;79:12;90:24 judgments (1) 88:8 judicaria (8) 10:8,17;11:20; 13:9;14:1;19:23; 97:1,3 judicious (1) 97:10 jumps (1) 49:15 jurisdiction (4) 15:22;16:1,23;11; 29:9	17:7;18:7;73:13 landowner (2) 27:21;28:1 landowners (15) 7:14;24:18;25:21, 23;26:10,18;27:15; 29:2,3,4,12,16,23; 95:23,24 lands (4) 7:13;19:2,6;21:11 landscape (2) 34:2;50:1 language (4) 19:1,12;57:19; 58:16 large (3) 70:15;73:7;76:6 larger (6) 9:22;10:7;22:4; 26:7;54:23;70:12 last (5) 9:8;33:4;45:12; 46:15;84:20 late (3) 23:16;38:9;39:4 late-in-the-game (1) 39:9 law (15) 12:23;13:5,19; 15:15;22:17;23:1,4; 24:3;31:12;48:16; 57:20;69:14;78:14; 79:14;98:19 lawful (1) 23:9 lawfully (1) 23:9 lawyers (1) 58:13 laydown (1) 72:16 leased (1) 7:14 least (7) 9:8;28:21;51:14, 16;64:4;67:21;88:19 leave (2) 40:9;58:13 leaves (1) 86:23 leaving (1) 59:6 led (1) 74:13 left (5) 37:14;38:8;59:12; 84:20;94:15 legal (5) 9:16,22;10:7;22:5; 80:14 legally (3) 22:6;24:2;88:23 legislation (1)	39:3 legislative (1) 39:14 legitimacy (1) 25:12 lengthy (3) 20:13;87:13;93:17 less (3) 46:2;57:14;59:1 letter (2) 75:7;100:14 level (3) 64:1,1;72:19 Levesque-Allen (2) 9:5;95:24 life (1) 71:6 lift (2) 98:20,24 light (1) 92:10 lighting (6) 41:20,21;55:13; 92:1,2,15 lights (2) 85:21;91:18 Likewise (1) 15:5 limitations (1) 86:18 limited (1) 92:12 line (5) 7:5,8;36:12;50:2,9 list (1) 90:16 lit (1) 92:5 litigated (1) 55:17 little (14) 6:15,19;10:13; 18:24;19:17;20:19; 24:11;37:10;39:21; 45:11;64:4;78:4; 82:3;86:14 LLC (1) 6:22 located (2) 7:4,12 location (1) 40:18 logic (1) 90:12 LOI (1) 100:15 long (1) 78:23 longer (1) 59:14 look (8) 10:15;38:1;39:5; 49:22;50:22;56:22;
		K keen (1) 49:13 key (1) 40:15 kick (1) 27:23 kind (12) 9:22;13:23;16:13; 27:23;38:6;41:2; 46:18;50:22;52:7; 61:4;64:9;79:13 kinds (1) 49:1 knowledgeable (1) 37:20 known (1) 29:15		
		L lack (1) 71:1 laid (1) 40:6 Lake (1) 34:14 land (3)		

76:2;83:9 looked (13) 18:18;37:16;45:2; 46:21,21;49:3,3; 51:7;54:1,2;56:16; 72:10;92:4 looking (9) 9:16;10:18;14:17; 27:21;37:10;54:6; 76:6;77:22;94:18 looks (1) 37:5 losing (1) 39:23 lot (10) 18:11;45:21;53:5; 61:15;63:11,18,19, 20;82:10;87:15	39:3;41:14;45:17 meant (1) 59:20 meantime (1) 12:24 measure (1) 17:8 measures (8) 12:7,8;18:4;35:6; 55:2,5;82:13;84:23 mechanisms (1) 65:3 meet (5) 36:23;39:7;52:21; 58:6;68:5 meeting (3) 5:4,10;21:20 meets (1) 59:15 megawatts (1) 7:3 member (1) 5:18 members (13) 5:12;8:7,17;22:9, 14,18,21;68:3;95:15; 96:15;98:3;100:6; 101:3 mentioned (4) 21:21;90:22;91:19; 101:11 merely (1) 45:5 merit (1) 79:4 met (10) 6:16;23:23;24:3; 26:15;40:11;53:20; 67:13;68:19,20;70:8 meteorological (6) 84:5,16;85:10; 86:10;94:20;98:15 meteorologist (8) 9:1,24;83:20;84:3; 86:1;89:23;94:1,16 meteorologists (1) 89:6 meteorologists' (3) 85:18;87:21;93:8 meteorology (1) 89:7 methodology (1) 48:17 might (4) 37:6;61:8;65:1; 79:3 Mike (1) 83:7 mile (5) 7:9;65:19;66:5; 67:1,4 miles (1) 7:11	mind (4) 47:9;56:24;71:24; 90:12 mine (1) 37:22 minimize (2) 48:22;55:6 minus (1) 12:3 minutes (1) 83:13 misapprehended (1) 13:6 missed (1) 49:16 mistake (1) 57:19 mistakenly (4) 11:9;34:13;39:19; 43:17 mitigate (7) 17:11;19:4,9;55:2, 6,10,14 mitigation (24) 12:7;15:18;17:8; 18:4,8;19:12;20:12, 15,16;35:5;54:24; 55:2,10,24;56:4,16, 19;57:4,8;80:1,1,2; 82:12;84:22 model (12) 60:6,11,23;61:4,5, 9,10,12,14,17,24; 64:3 modeling (9) 61:19;62:2;63:4; 84:15;86:20,20; 87:17;89:7,12 monitoring (3) 72:17,20;89:12 Monroe (1) 6:8 more (14) 20:20;23:1,24; 24:1,2;30:13;38:12; 48:7;62:21;64:4,10; 71:19;93:11,12 morning (4) 5:3,17,19,22 most (2) 6:17;97:9 Motion (45) 9:9;62:12;66:12, 14;69:3,13;83:19,23; 84:2;85:18;86:11; 87:8,21;89:16,23; 91:10;93:8;94:1,7,8, 12,16,17,19,20;95:7, 13,21,22;96:2,4,5,21, 22;97:1,12,13,18; 98:15,20,24;99:10, 17,23;100:21 Motions (29)	8:24;9:11,18;10:8, 16,19,21,24;11:2,4, 15,18;14:22;16:13; 21:23;43:1;44:22; 46:11,18;52:9;63:12; 69:7;70:13;79:9; 83:10,22;84:21;94:6; 98:10 Mountain (2) 7:7;47:24 Movants (1) 10:23 move (17) 16:9;22:4;24:9; 30:4;33:18;44:1; 47:7;54:22;60:1; 65:13;69:1;70:11; 77:10;91:8,15;96:24; 97:17 moving (6) 50:14,15;51:17,18, 19;75:16 much (4) 24:11;32:7;50:15; 89:5 municipalities (4) 73:10,24;74:11; 76:11 must (2) 10:24;88:11 myself (2) 21:22;86:8	69:20;70:18;71:9,18, 23;72:23;81:4;86:16, 16;89:15;92:6,13; 93:5 next (10) 19:20;44:1,2;47:9; 50:13;62:8;65:14; 70:11;83:19;95:21 nexus (1) 27:16 nice (2) 23:24;67:2 night (2) 46:15;92:5 nighttime (4) 35:4;41:20;85:20; 91:16 nine (1) 7:2 nobody (1) 57:7 nods (7) 16:8;24:9;30:3; 43:19;47:7;54:22; 95:12 noise (29) 24:16;60:2,6,14,16, 24;61:5;63:7;65:2; 66:17,20;67:11,14; 68:1;80:3;84:12,14, 15,17,19,23;86:8,10, 18;87:7,8,20;89:5,16 noise-reduction (1) 63:13 Non-Abutting (2) 9:3;95:23 none (11) 57:7;60:1;79:24; 81:11;89:22;91:15; 94:4;96:14,20;98:2; 100:10 non-participating (1) 68:3 northern (1) 7:6 note (7) 15:21;18:18;21:16; 32:2,23;51:14;68:1 noted (4) 15:7;63:24;67:11; 99:22 November (2) 7:21;8:4 NRO (1) 80:18 number (7) 8:16;15:9;36:21; 44:11;47:14,17;90:7 numerous (1) 74:15
M		N		
O				

<p>objections (1) 71:15</p> <p>objects (1) 46:3</p> <p>obligated (1) 36:6</p> <p>observation (1) 75:15</p> <p>obvious (1) 92:23</p> <p>obviously (10) 6:17;10:10;21:19; 32:2;50:8;65:15; 66:12;77:1,6;92:19</p> <p>occur (1) 72:20</p> <p>October (3) 6:21;7:18;8:3</p> <p>off (4) 64:14;72:16;74:13; 94:15</p> <p>offer (4) 18:13;32:5,8;81:4</p> <p>offered (2) 14:12;75:4</p> <p>OFFICER (129) 5:2;6:1,3;11:19; 14:20;15:3,13;16:7; 18:16;21:1,14;22:3; 23:13;24:4,8;26:11; 27:1,11;28:12,23; 29:24;32:1,22;33:14, 17;39:12,16;40:1; 41:5;42:11;43:14,24; 46:6,12;47:3,6; 49:19;51:13;52:2; 53:2,23;54:18,21; 56:3;57:3,6;58:20; 59:21,24;62:3,6; 63:10;64:19;65:8,11; 67:8,24;68:21,24; 70:1,9;71:12;72:2, 12;73:3,6;75:13; 76:9,14,17,21,24; 78:2;79:20,23;81:6, 10,13,15;82:5,19,22; 83:11,18;84:8,11; 87:6,19;88:19;89:21; 91:2,7,14;92:14,18; 93:24;94:3,10,14,22; 95:1,8,11,16,19;96:7, 10,13,16,19;97:6,15, 19,22;98:1,4,7,14; 99:3,6,12,16,19; 100:1,4,7,10,13; 101:8</p> <p>Officer's (1) 31:2</p> <p>one (28) 14:17;29:6,11; 32:9;38:12;40:8,14; 43:8;49:7,15;51:7; 54:6;56:6;65:19;</p>	<p>66:4;67:1,4;71:2,16, 16,20;72:15;73:2; 74:12;86:2;87:24; 88:7;91:17</p> <p>O'Neal (3) 60:20;85:5;87:14</p> <p>O'Neal's (3) 60:8;61:1;87:17</p> <p>one's (1) 87:8</p> <p>only (11) 13:16;34:13;38:20, 21;47:16;50:3,6; 54:6;63:2;65:2;92:10</p> <p>open (1) 100:14</p> <p>operation (4) 7:16;73:21;80:9; 98:19</p> <p>opinion (23) 14:18;21:9;28:13, 21;32:6;33:13;36:13, 18;37:5;38:11;40:13; 51:14;53:21;59:12; 62:20,23;64:18; 68:14;78:7,16;89:4, 10;93:4</p> <p>opinions (4) 41:16,17;81:7; 89:17</p> <p>opportunity (9) 24:21;25:7;27:7; 29:21;31:19;32:15, 17;33:8;37:2</p> <p>opposed (5) 75:24;95:17;96:17; 98:5;100:8</p> <p>opposition (1) 73:18</p> <p>optimal (1) 52:13</p> <p>oral (1) 8:16</p> <p>Order (7) 8:20,23;19:13,15, 16;98:24;99:1</p> <p>orderly (1) 73:8</p> <p>ordinance (2) 73:17,20</p> <p>ordinances (1) 74:23</p> <p>original (7) 11:10;15:21;18:21; 39:21;43:18;98:14; 101:11</p> <p>others (4) 29:20;36:19;81:5; 93:10</p> <p>otherwise (2) 23:12;26:19</p> <p>ours (1) 88:7</p>	<p>ourselves (2) 6:12;53:24</p> <p>out (19) 7:24;18:20;24:11; 26:24;38:15;45:23; 49:15;53:13;54:10; 59:2,11;68:8;71:15; 72:5;79:19;90:16; 91:3;97:7;100:16</p> <p>outdoor (1) 48:4</p> <p>outline (3) 13:21;16:11;36:1</p> <p>outside (1) 65:19</p> <p>over (9) 24:12;36:12;39:8; 42:18;61:23;67:19; 78:6;83:10;86:9</p> <p>overall (6) 26:14,22,23;28:8; 89:13;93:4</p> <p>overarching (1) 73:7</p> <p>overlap (1) 45:11</p> <p>overlooked (4) 11:9;13:5;39:19; 43:17</p> <p>overturn (1) 28:21</p> <p>overwhelmed (1) 61:24</p> <p>own (4) 24:12;33:3;41:17; 58:2</p> <p>owned (1) 7:13</p> <p>owner (1) 15:17</p> <p>owners (1) 79:19</p>	<p>participating (12) 24:18;25:21,23; 26:10,18;27:14,20; 28:1;29:2,12,16,23</p> <p>particular (13) 19:8;21:12;26:23; 36:1;44:21;47:20; 53:14;61:10;64:3; 69:6,24;71:8;84:13</p> <p>particularly (8) 24:17;60:2;61:4; 70:15;73:9;75:6; 82:12;83:24</p> <p>parties (12) 11:7;12:11;16:15, 22;19:18;28:20; 29:21;32:20;36:3; 45:19;54:11;63:21</p> <p>party (1) 28:6</p> <p>pass (1) 99:24</p> <p>Patricia (1) 5:18</p> <p>Patty (1) 18:17</p> <p>pause (2) 23:12;49:16</p> <p>payments (2) 55:8;56:20</p> <p>pending (1) 5:10</p> <p>people (9) 10:23;21:19;54:22; 62:8;73:17;74:17; 77:6;89:3;98:21</p> <p>people's (1) 14:1</p> <p>perceived (1) 54:16</p> <p>percent (1) 47:18</p> <p>perfect (4) 41:14;51:17;53:8,9</p> <p>perfection (1) 53:4</p> <p>perhaps (3) 19:17;22:11;86:8</p> <p>period (1) 92:12</p> <p>permit (3) 14:9;38:20;76:1</p> <p>permitted (1) 73:15</p> <p>person (4) 27:21;28:2;38:12, 22</p> <p>personal (1) 75:2</p> <p>personally (2) 18:24;21:22</p> <p>person's (1) 28:4</p>	<p>phenomena (1) 90:7</p> <p>photo (15) 35:10,19;36:22; 38:5;40:18,19;41:10; 46:1;50:13;52:7,10, 23;54:1,3,19</p> <p>photograph-by-photograph (1) 51:6</p> <p>photos (2) 49:3;54:16</p> <p>phrase (1) 97:3</p> <p>physical (1) 12:2</p> <p>physically (1) 15:15</p> <p>pick (1) 48:20</p> <p>picking (1) 90:16</p> <p>picture (1) 54:13</p> <p>pictures (1) 54:12</p> <p>Pitcher (1) 47:23</p> <p>place (4) 65:3;66:21;67:16; 72:18</p> <p>placement (3) 17:7,11;18:6</p> <p>Plan (4) 57:12;67:20;72:17; 73:15</p> <p>please (5) 71:24;95:13;96:14; 98:2;100:5</p> <p>pleased (1) 50:12</p> <p>point (13) 9:20;16:12;28:10, 19;38:15;59:4;63:11; 72:5;79:11;87:24; 88:16,20;100:16</p> <p>pointed (1) 54:10</p> <p>pointing (3) 42:16;45:23;80:10</p> <p>points (2) 12:10;33:6</p> <p>poke (1) 71:2</p> <p>poked (1) 49:12</p> <p>poles (1) 52:14</p> <p>polls (1) 74:23</p> <p>Pond (1) 34:14</p> <p>portray (1) 90:14</p>
		P		
		<p>package (3) 55:10;56:16;89:13</p> <p>page (1) 76:20</p> <p>painstake (1) 40:15</p> <p>painstakingly (1) 15:6</p> <p>paraphrase (1) 84:2</p> <p>paraphrase (2) 27:2;66:9</p> <p>paraphrasing (3) 23:2;73:10;85:23</p> <p>parse (3) 24:11;91:3;97:7</p> <p>part (3) 27:5;55:9;61:23</p>		

<p>pose (1) 49:24</p> <p>positions (1) 36:3</p> <p>positive (1) 51:2</p> <p>possible (4) 20:10;39:11;50:4; 75:22</p> <p>postcards (1) 74:23</p> <p>post-construction (3) 84:15;85:2;89:11</p> <p>potential (2) 80:1,3</p> <p>precise (1) 86:19</p> <p>preclude (1) 31:3</p> <p>pre-construction (2) 84:14;85:2</p> <p>prefiled (3) 30:15;31:18;45:7</p> <p>prejudice (1) 30:9</p> <p>prejudiced (1) 31:16</p> <p>prepared (2) 35:20;52:11</p> <p>preponderance (2) 86:21;88:1</p> <p>presented (10) 8:5,10,13;36:22; 37:23;50:23;67:22; 69:5;86:22;87:12</p> <p>presenting (1) 45:20</p> <p>preserve (1) 72:9</p> <p>PRESIDING (130) 5:2;6:1,3;11:19; 14:20;15:3,13;16:7; 18:16;21:1,14;22:3; 23:13;24:4,8;26:11; 27:1,11;28:12,23; 29:24;31:2;32:1,22; 33:14,17;39:12,16; 40:1,41:5;42:11; 43:14,24;46:6,12; 47:3,6;49:19;51:13; 52:2;53:2,23;54:18, 21;56:3;57:3,6; 58:20;59:21,24;62:3, 6;63:10;64:19;65:8, 11;67:8,24;68:21,24; 70:1,9;71:12;72:2, 12;73:3,6;75:13; 76:9,14,17,21,24; 78:2;79:20,23;81:6, 10,13,15;82:5,19,22; 83:11,18;84:8,11; 87:6,19;88:19;89:21; 91:2,7,14;92:14,18;</p>	<p>93:24;94:3,10,14,22; 95:1,8,11,16,19;96:7, 10,13,16,19;97:6,15, 19,22;98:1,4,7,14; 99:3,6,12,16,19; 100:1,4,7,10,13; 101:8</p> <p>press (1) 39:21</p> <p>pretty (7) 32:7;40:24;41:2,3; 49:12;59:8;62:10</p> <p>prevails (1) 38:14</p> <p>pre-vetting (1) 38:17</p> <p>previous (3) 21:4;77:15;82:11</p> <p>primarily (1) 7:8</p> <p>primary (1) 5:9</p> <p>prior (1) 37:13</p> <p>priorities (1) 73:14</p> <p>private (7) 7:13;27:20;34:15; 35:16,20,23;41:22</p> <p>probably (3) 53:13;83:2;93:14</p> <p>probed (1) 49:12</p> <p>problem (2) 64:22;77:23</p> <p>problems (3) 45:24;54:10;87:16</p> <p>procedural (2) 30:5,8</p> <p>procedurally (1) 94:5</p> <p>procedure (2) 30:17;58:10</p> <p>proceeded (1) 90:8</p> <p>proceeding (2) 63:21;81:21</p> <p>proceedings (3) 32:14,18;101:12</p> <p>process (2) 11:7;82:18</p> <p>professional (3) 61:7,11;62:1</p> <p>program (1) 67:20</p> <p>Project (47) 7:4,7,11,17;12:1,3, 5,14,16,22;13:1,7,11, 14,16;14:14,19; 15:15,17;16:17,20; 17:20,21;20:6,8,16; 26:8;29:18,19;33:24; 34:5;35:9,12,19,22;</p>	<p>36:7;45:3,15;47:15; 55:11;60:7,13;70:15; 73:19,21;74:7;77:4</p> <p>projects (1) 47:23</p> <p>Project's (11) 11:23;16:24;17:11, 19;34:8,10,24;47:12; 55:3;60:15;84:21</p> <p>prominence (1) 35:11</p> <p>prominent (2) 34:6;41:22</p> <p>proof (4) 32:6,8;33:1,3</p> <p>propagation (1) 60:12</p> <p>properly (7) 23:10;77:18;81:20; 90:14,23;91:21;97:2</p> <p>properties (4) 29:17,18;67:3; 78:11</p> <p>property (11) 28:4;35:21,22,23; 75:17;76:8;78:3,9, 24;79:18,19</p> <p>proponents (1) 29:7</p> <p>proportion (1) 50:2</p> <p>propose (1) 94:21</p> <p>proposed (9) 7:1,4;12:7;14:18; 35:5;55:5;66:1; 73:13;74:22</p> <p>proposing (1) 58:24</p> <p>pros (2) 49:4;62:17</p> <p>proved (1) 63:5</p> <p>provide (4) 32:4,5;48:15;51:22</p> <p>provided (5) 25:7;36:20;53:17; 60:20;71:22</p> <p>provides (2) 52:12;90:3</p> <p>proving (1) 33:3</p> <p>public (46) 5:4,18,24;6:2;8:8, 10,16,17;9:9,13; 11:23;12:12;13:13; 16:15;22:8,9,14,21; 24:14,20;25:2;26:2,7, 8,16;27:2;29:14; 30:8,10;31:1,6; 33:21;34:16,18;35:3; 41:22;44:14;45:23; 48:6;55:1;57:11;</p>	<p>60:1;62:12;75:21; 78:6;81:17</p> <p>Public's (8) 9:18;18:20;32:4; 35:17;40:22;54:3; 83:1;96:22</p> <p>pulled (1) 18:20</p> <p>pulverize (1) 59:3</p> <p>pulverized (2) 59:6,11</p> <p>purpose (2) 5:9;11:6</p> <p>purposes (2) 7:24;22:19</p> <p>pursuant (1) 7:18</p> <p>put (7) 20:18;39:13;46:8, 22;59:3;61:12;72:17</p> <p>puts (1) 38:16</p>	<p>rather (6) 21:17;35:22;45:2; 47:20;63:4;87:13</p> <p>rational (1) 79:14</p> <p>reach (1) 46:24</p> <p>reached (2) 42:10;47:1</p> <p>read (7) 10:10;18:23;23:1, 6,7;74:15;83:23</p> <p>reading (3) 19:10,16;32:6</p> <p>ready (2) 19:20;95:11</p> <p>real (8) 50:10;76:3,13; 77:11;78:3;79:2,6,21</p> <p>realistic (1) 69:9</p> <p>reality (1) 51:24</p> <p>really (6) 28:5;39:6;41:2; 77:11;78:20;79:10</p> <p>reason (16) 11:13,14;16:4; 24:6;43:16;56:24; 71:7,10;72:1;75:11; 81:4;86:3,24;90:10, 20;95:5</p> <p>reasonable (5) 21:19;34:9,12; 62:8;89:3</p> <p>reasoning (4) 11:4;31:12;60:21; 69:14</p> <p>reasons (2) 79:7;92:5</p> <p>rebuttal (4) 22:16;31:4;32:4; 48:10</p> <p>recall (5) 71:3;72:18;79:7; 80:21;87:14</p> <p>receive (3) 37:12;57:23;74:5</p> <p>received (3) 8:14,15,24</p> <p>recess (1) 83:15</p> <p>recognition (1) 36:17</p> <p>recollection (5) 15:14;28:18;32:13; 72:14;73:22</p> <p>reconsider (10) 16:4;24:6;30:2; 43:21;52:5;57:8; 81:8;87:1;90:4;97:18</p> <p>Reconsideration (9) 9:1,10,19;11:11,</p>
Q				
		<p>qualified (1) 51:8</p> <p>quality (2) 40:11;51:3</p> <p>quarters (1) 7:9</p> <p>quickly (1) 76:20</p> <p>quite (2) 37:12;50:18</p> <p>quorum (6) 22:6,12,18,19;23:5, 8</p> <p>quote (2) 18:20;19:5</p>		
R				
		<p>radar (2) 92:1,10</p> <p>radar-detection (1) 55:12</p> <p>raise (2) 16:12;87:24</p> <p>raised (14) 9:16;10:8;17:15; 22:5;27:18;31:20; 32:7;45:6;57:9;66:6; 70:14;83:22;84:24; 87:20</p> <p>ran (1) 41:3</p> <p>Raphael (4) 44:10,16,20;48:12</p> <p>Raphael's (5) 45:18,24;48:17,24; 54:1</p>		

12;33:15;52:10;89:4; 96:6 record (21) 6:18;15:19;16:8, 13;25:11;28:19; 30:13;31:7,15;32:6, 8;39:13;46:22;49:17; 57:23;83:19;86:14; 100:11,14,21;101:2 reduce (1) 66:23 reduced (1) 79:18 refer (1) 57:15 referenced (1) 100:17 reflected (1) 35:21 reflection (1) 85:14 regard (2) 75:9;82:12 regarding (16) 5:6;18:1;60:21; 69:4,7;73:9;84:19; 85:5,15;87:20;89:6, 16;91:16;94:17; 95:21;96:22 regardless (1) 23:21 regards (1) 44:2 region (2) 73:8,24 regulations (1) 36:24 rehabilitate (2) 30:23;31:8 rehashing (1) 87:4 rehear (4) 11:5;42:21;57:1; 64:17 rehearing (22) 5:11;8:24;9:7,9,12, 19;10:21;11:6;17:17; 33:13;43:13,16;67:6; 75:12;80:15;83:20; 86:3;94:20;95:22; 96:5,23;97:1 reiterate (2) 17:14;90:1 reiterated (1) 45:5 reiterating (1) 84:1 iteration (1) 46:9 reject (1) 96:24 related (8) 8:8,11;47:7;48:18; 56:5;84:16;85:17; 90:21 relates (1) 61:1 relating (1) 78:22 relationship (1) 28:7 relatively (1) 33:21 relevant (4) 30:21;84:6,7,11 relied (1) 31:14 re-litigate (1) 89:14 remember (5) 32:3;40:17;49:13; 51:18;86:7 remind (3) 53:24;64:23;99:19 reminded (1) 13:18 reminds (3) 22:17;81:16,22 remoteness (1) 48:1 remove (1) 58:24 removed (1) 57:15 render (1) 12:21 renders (1) 37:5 reopen (12) 31:7;49:17;53:22; 57:1;71:7,11;80:24; 88:24;95:5,6;100:21; 101:2 reopening (3) 59:18;64:16;69:21 repercussions (1) 39:10 rephrase (1) 97:16 report (5) 45:18,24;49:5; 72:5;82:16 reports (2) 41:13;93:21 represent (1) 18:8 representative (1) 53:19 representing (1) 5:15 represents (2) 68:14;77:7 request (6) 24:22;25:8;31:7; 32:4;100:13;101:2 requested (1) 7:7 requests (1) 5:10 require (3) 29:2;61:10;66:4 required (10) 17:18;18:6;22:14; 24:22;60:11;65:24; 67:5;68:15;79:15; 80:8 requirement (6) 22:12;23:9;30:15; 31:17;67:13,19 requirements (8) 23:23,23;24:3; 52:22;53:20;58:1; 63:9;89:12 requires (6) 22:9,13;55:4; 57:12;65:21;100:18 requiring (1) 22:21 reread (1) 46:15 res (8) 10:7,17;11:20; 13:9,24;19:23;97:1,3 resident (2) 9:3,4 resolve (1) 101:5 resource (1) 43:4 Resources (29) 5:21;16:17,20; 17:3,5,19,23;18:2; 20:9;34:7,15,19;35:3, 4,16;37:6,16,18;38:2, 7;41:22,23;44:4,12; 45:11,21;47:12,16; 75:23 respect (1) 61:4 respects (1) 87:2 responded (1) 80:10 response (2) 60:19;85:23 response] (34) 18:15;22:2;24:7; 27:10;31:24;33:16; 47:5;53:1;54:20; 56:2;57:5;59:23; 62:5;65:10;68:23; 73:5;76:23;79:22; 81:9;82:4;91:6,13; 92:17;94:2;95:10,18; 96:12,18;97:24;98:6; 99:18;100:3,9;101:7 responses (1) 85:5 responsibility (1) 88:6 restrictions (1) 24:17 result (2) 34:21;46:19 resulted (1) 30:10 resumed (1) 83:16 review (6) 37:24;38:3,6; 40:24;42:8;43:6 reviewed (7) 7:22;14:8;37:3; 43:6;68:18;70:23; 71:21 revisions (1) 51:1 Richard (1) 5:19 ridge (2) 7:5,8 right (13) 16:9;33:17;50:2,3; 65:11;66:16;68:24; 72:18;76:11,11; 79:17;91:7,14 rights (2) 25:24;26:19 rises (1) 38:24 risk (1) 38:17 road (2) 64:8;72:16 robust (2) 32:19;59:19 role (1) 48:4 rolling (1) 27:24 room (3) 50:5;64:7;77:6 roughly (1) 7:3 Route (1) 7:10 RSA (3) 7:19;10:22;22:8 rule (21) 10:2;24:3,22; 33:23;52:21;53:8,21; 55:4;57:11,19;58:7, 16,23;59:7,10,20; 63:23;65:21;67:4; 68:15;88:17 ruled (2) 11:6;78:8 rules (33) 12:21,23,24;17:24; 20:5;23:8,22;24:13; 25:20;28:8;29:1,6; 30:19;40:6;44:18; 48:9;51:1,20;52:19; 53:15;56:15;57:17; 58:2;59:17;61:10; 66:4;67:14;68:2,3,10, 16;86:5;89:11 rulestoo (1) 32:24 runs (1) 7:10 runal (2) 7:12;73:16				
S				
safety (3) 29:5,8;60:2 sailboats (1) 52:15 same (18) 10:22;11:24;13:2; 14:14,19;16:22; 17:19;20:1,8;29:4; 30:16;31:18;45:5; 46:16,17;48:24;76:1; 89:22 sampling (1) 76:7 sat (1) 14:7 satisfied (2) 23:8;56:17 satisfies (1) 59:7 saw (1) 50:19 saying (3) 40:5;54:5;64:10 SCADA (2) 66:22;67:16 scale (3) 34:2,10;35:9 scatter (1) 73:1 scenarios (1) 60:6 scenic (18) 16:16,20;17:3,4,19, 22:18:1;20:9;34:7, 19;35:3;37:10;44:4, 12;45:11,21;48:3,4 School (2) 74:8;75:9 scope (4) 23:10;34:1,10;35:9 SCOTT (127) 5:2;6:1,2;11:19; 14:20;15:3,13;16:7; 18:16;21:1,14;22:3; 23:13;24:4,8;26:11; 27:1,11;28:12,23; 29:24;32:1,22;33:14, 17;39:12,16;40:1; 41:5;42:11;43:14,24;				

46:6,12;47:3,6; 49:19;51:13;52:2; 53:2,23;54:18,21; 56:3;57:3,6;58:20; 59:21,24;62:3,6; 63:10;64:19;65:8,11; 67:8,24;68:21,24; 70:1,9;71:12;72:2, 12;73:3,6;75:13; 76:9,14,17,21,24; 78:2;79:20,23;81:6, 10,14,15;82:5,19,22; 83:11,18;84:8,11; 87:6,19;88:19;89:21; 91:2,7,14;92:14,18; 93:24;94:3,10,14,22; 95:1,8,11,16,19;96:7, 10,13,16,19;97:6,15, 19,22;98:1,4,7;99:3, 6,12,16,19;100:1,4,7, 10;101:8	66:11,12,13;67:12, 17,18;68:1;80:2,19; 84:12,23;85:1,4,6,14, 15;89:19,23;90:6,15; 91:3 shall (2) 22:18;67:23 shear (1) 70:5 shot (1) 73:1 shotgun (1) 71:20 show (1) 100:11 showing (1) 54:14 shrubs (1) 52:15 side (3) 39:24;54:6;79:17 sides (1) 61:16 significance (1) 35:3 significant (2) 15:8;65:16 similar (6) 9:14;11:24;15:23; 16:1;18:12;62:7 simply (3) 12:6;63:1;69:14 sims (1) 40:20 simulation (2) 35:11;40:18 simulations (17) 35:18,20;36:22; 38:5;41:10;46:1; 49:24;50:9,12,14,19; 52:8,10,24;54:2,3,19 Site (16) 5:5,8;6:23,24;7:1, 15,16;27:21;28:9; 30:19;41:11;60:14, 17;72:16,21;99:1 sites (3) 37:18;49:3;72:8 sitting (2) 14:15,16 situation (3) 21:7;37:24;67:14 six (2) 7:13;22:13 skies (1) 46:2 sky (1) 54:14 slam (1) 51:11 slope (1) 7:6 software (1)	50:4 solar (2) 85:3;90:15 solely (1) 45:17 solution (1) 65:2 solutions (2) 65:5;77:21 solve (1) 67:22 solving (1) 64:22 somebody (1) 32:23 someone's (1) 39:6 somewhat (3) 56:4;83:22;89:2 somewhere (1) 99:20 soon (1) 82:6 sophisticated (1) 50:4 sorry (2) 18:17;76:19 sort (1) 64:1 sorts (2) 22:16;39:10 sought (1) 7:15 sound (5) 60:5,12;63:8;64:1, 11 Sounding (1) 86:14 sound-level (1) 63:9 sounds (2) 43:20;52:3 south (1) 7:10 southwest (2) 7:5,10 spacing (1) 50:3 speak (2) 36:6;82:20 Speaking (1) 58:8 specific (6) 19:14;25:1;28:7, 18;93:11,12 specifically (11) 5:6;13:9;18:10; 26:1;30:14;31:1; 44:24;71:3;74:5,6; 88:3 speed (1) 85:9 spend (1)	90:17 spent (2) 55:18;63:18 spirit (2) 23:3;30:18 split (1) 75:3 Staff (1) 5:23 staging (1) 72:22 stand (1) 78:1 stand-alone (1) 20:17 standard (10) 10:15,22;11:16; 26:16;40:10;42:6,6, 20;43:15;58:10 standards (10) 10:16;29:13,23; 36:24;39:7;51:1; 65:24;70:7,8;78:7 standing (1) 28:5 standpoint (1) 32:18 start (12) 9:21;10:11,17; 11:20;18:17;39:8; 45:14;56:4;86:9,13; 94:6,15 started (2) 19:19;86:7 starter (1) 27:23 starting (2) 5:13;9:15 starts (1) 7:9 state (9) 11:4;13:6;22:19; 34:12;37:4,8;42:14; 48:14;53:16 stated (3) 36:13;80:12,24 statement (3) 54:5;77:16;78:14 statements (5) 6:14;39:17;69:10; 81:24;83:1 States (1) 66:2 static (1) 50:14 stating (2) 34:10;44:19 statute (4) 8:1;22:20;23:7,22 step (3) 50:10,13;51:2 still (7) 29:8;64:7;68:15;	81:1;84:17;89:8; 93:14 Stoddard (3) 9:6;75:7;96:1 stop (1) 13:24 structure (1) 45:3 struggle (1) 86:24 studies (1) 38:4 study (1) 76:5 Subcommittee (32) 5:5,12;7:20,22,24; 8:7,14,15,18,23;11:3; 12:13,17,18;13:14; 14:7;17:10,18;22:10, 15,22;25:9;34:1,4; 35:8,15;37:4;38:13, 20,22;50:11;98:12 subcommittees (3) 38:16;39:5;50:23 Subcommittee's (2) 44:7,17 subject (2) 29:13;50:24 subjective (3) 42:17;43:7;89:2 subjectivity (1) 53:5 submission (2) 12:19;39:6 submissions (1) 10:10 submitted (1) 30:16 substantial (1) 14:13 substantially (3) 9:14;12:5;13:15 subsumed (1) 26:23 Sue (1) 82:7 sufficient (2) 7:23;90:10 suggest (3) 9:14;44:24;86:4 suggestion (1) 23:16 suggests (3) 55:21;70:17;84:4 suitability (2) 20:14;21:8 suitable (2) 21:12,13 suitably (4) 19:3,4,9,13 summarize (1) 10:9 summarizing (1)
--	---	--	--	---

<p>12:10 summary (1) 44:4 sun (1) 85:12 sunny (1) 53:18 sunrise (1) 92:8 sunset (1) 92:8 sunshine (1) 85:11 supplemental (1) 31:17 support (4) 34:20;71:19;77:4; 88:15 supported (2) 57:22;62:1 suppose (2) 59:14;68:8 supposed (1) 72:20 Supreme (1) 11:5 Sure (8) 25:22;29:9;45:14; 53:7;79:18;82:6; 83:10;99:15 surface (1) 39:1 surrounding (2) 74:7,18 suspended (1) 98:16 suspending (1) 98:24 suspension (1) 98:21 system (7) 46:1;55:13;66:22; 67:15,16;92:1,2</p>	<p>49:23;63:6,13; 66:21;80:19;92:7 term (1) 71:1 terms (3) 15:8;40:8;76:6 tested (1) 66:1 testified (2) 44:20,24 testimony (31) 8:5,10,13;30:16; 31:18,21;41:12;44:9; 45:7,18,21;54:10; 60:20;61:1,18;63:3; 64:24;65:16;66:18; 74:5,15,20;77:2; 80:12;81:19,22,24; 87:4,17;89:6;93:20 Thanks (1) 40:4 therefore (2) 13:1;52:17 thorough (9) 40:12,24;42:9; 43:1;46:23;59:9; 70:4;77:21;81:16 thoroughly (10) 20:2;21:18;66:17; 67:12;69:21;70:6; 72:10;74:16;79:4; 101:13 though (1) 13:21 thought (13) 15:8;19:21;32:18; 38:24;40:14,23; 46:19;49:11;50:9; 64:8;69:21;76:12; 82:17 thoughtful (1) 58:19 thoughts (3) 14:2,4;39:11 three (5) 7:9;8:19;10:21; 11:17;35:7 threshold (2) 21:23;56:10 throw (4) 69:1,4;70:2,5 throws (4) 69:9,16;85:17; 91:10 tip (1) 44:23 today (6) 5:10;99:9,11,23; 101:5,9 today's (1) 42:20 together (2) 16:15;61:12</p>	<p>tolerance (2) 60:11,23 took (4) 13:17;49:8;54:16; 90:19 topic (14) 16:5;24:10;28:16; 30:5;33:18;44:1; 47:9;57:9;70:12; 73:7,8;84:17,20;85:7 topics (4) 33:22;48:19;86:6; 90:2 total (1) 8:14 totally (1) 15:10 towards (1) 7:6 tower (1) 70:5 towers (1) 50:1 town (11) 55:9;56:20;64:24; 73:15,17;75:3;77:4, 8;100:15,15,19 traffic (1) 85:16 trail (1) 47:20 trails (1) 47:18 transcript (1) 15:20 transcripts (4) 21:18;35:6;48:14; 74:4 treated (1) 29:4 treatment (1) 85:1 trees (1) 51:19 trench (1) 59:7 tried (2) 72:7;91:3 try (2) 24:10;90:8 trying (5) 25:16;35:24;75:1; 78:13;84:2 turbine (2) 64:3;84:18 turbines (5) 7:2;15:9;47:14,17; 53:11 turn (1) 64:13 turned (1) 76:19 turning (2)</p>	<p>5:11;50:18 Tuttle (1) 7:5 two (7) 9:17;22:9,13;33:6; 41:15;63:19;78:13 type (2) 20:18;58:11</p>	<p>10:12,19;20:18; 23:14,15,17,21;40:9, 17;48:20;50:15;58:6; 64:21;74:9,10;79:24; 81:18;89:2,15;91:22; 92:10;93:2;97:6,8 upon (4) 11:3;14:14;48:4; 49:23 use (7) 20:11;25:3;34:18; 35:4;64:13;73:13; 84:14 used (3) 19:12;61:11;62:18 uses (1) 34:21 using (1) 60:21 Utilities (2) 5:24;6:2 utility (1) 52:14</p>
T		U		
<p>talk (6) 14:4;19:1;62:12; 66:14;77:11;82:2 talked (8) 15:14,17;56:12; 59:16;61:15;71:3,4; 75:8 talking (4) 19:7,19;59:13; 76:10 targets (1) 75:16 tax (1) 75:8 technical (1) 80:2 technology (6)</p>	<p>ultimately (1) 92:3 unanimous (5) 16:8;95:20;96:20; 98:8;100:11 uncontested (1) 77:5 under (12) 10:22;17:8;18:9; 52:11;56:14;63:6; 67:13;73:16;78:14; 85:7;91:3;98:13 underdeveloped (1) 31:14 underestimated (1) 34:17 underground (2) 57:13;58:24 understands (1) 25:16 understood (2) 50:7;68:4 unearthed (1) 58:5 unfair (1) 39:24 unfairnesses (1) 30:9 unfounded (1) 55:15 United (1) 66:2 unjust (1) 11:1 unlawful (3) 11:1;44:7;58:12 unless (1) 97:7 unreasonable (23) 11:1;12:4;24:15, 24;31:13;34:3;36:7, 16;41:1;42:2,7;44:8; 45:16;55:7;56:11,14; 75:19;78:8,15,16; 90:11,21;91:1 unreliable (1) 60:5 unsafe (1) 29:10 unwarranted (1) 31:5 up (24)</p>	<p style="text-align: center;">V</p> <p>valid (1) 88:12 validity (1) 84:5 valuation (1) 78:24 value (2) 78:3;79:21 values (6) 75:18;76:13;77:12; 78:9;79:3,18 variability (1) 60:12 variables (3) 61:6,17;75:17 various (4) 61:16;74:22;79:7; 93:21 veracity (2) 69:8,9 verbal (34) 18:15;22:2;24:7; 27:10;31:24;33:16; 47:5;53:1;54:20; 56:2;57:5;59:23; 62:5;65:10;68:23; 73:5;76:23;79:22; 81:9;82:4;91:6,13; 92:17;94:2;95:10,18; 96:12,18;97:24;98:6; 99:18;100:3,9;101:7 verbally (1) 36:13 vetted (5) 62:19;63:14;67:13; 69:19;74:16 vetting (3)</p>		

37:13,21;46:20 video (3) 50:9,12;51:15 view (10) 14:12;19:9;22:11; 41:2;47:20,24;48:12; 53:11;88:20;92:19 viewed (1) 34:6 viewer (1) 47:10 viewing (1) 78:12 views (8) 48:3;73:9;74:1,11, 17;75:5;76:10;77:1 viewshed (3) 44:3;45:9;47:23 Virtual (1) 51:24 visibility (1) 47:18 visible (2) 47:15,17 visits (1) 41:11 Vissering (1) 82:8 Vissering's (1) 81:19 visual (12) 16:19;35:4;40:21; 41:13,15;44:9;48:8; 49:12;85:19;91:16, 17;92:15 voices (1) 24:1 volunteer (1) 69:18 vote (5) 61:21;94:5,21; 95:12;97:8 voted (6) 14:9;15:24;21:6; 29:11;36:7;38:22 voters (1) 75:1 votes (1) 74:23 voting (1) 73:19	58:15;68:15 waivers (2) 25:13,20 waiving (1) 68:2 walls (1) 52:14 wants (2) 57:7;82:20 Ward (7) 66:12;83:7,24; 84:7,10;90:6;93:10 Ward's (5) 9:24;62:12;87:11, 16;92:22 warrant (3) 17:16;69:20;80:15 warrants (2) 64:16;86:3 watching (1) 6:10 water (1) 51:18 way (5) 9:23;44:13;46:8; 61:22;62:22 ways (2) 76:2,4 weather (1) 52:11 WEATHERSBY (40) 5:17,18;16:6; 19:19,21;23:20; 25:22;28:24;29:1; 41:6,7;45:13,14; 48:23;51:24;54:9; 58:21,22;62:7,24; 63:1,24;66:16;67:11; 70:2,3;72:3,4;74:12; 82:8;87:9,10;93:9, 10;96:9;97:11,21; 99:8,14,22 weighty (1) 101:13 Weizner (1) 80:11 Welcome (2) 5:3;24:1 weren't (3) 21:11;69:23;91:20 Whatever's (1) 97:9 what's (2) 41:8;63:2 Whereupon (2) 83:15;101:16 whole (11) 26:8,15;45:3,3,19; 49:1;56:23;68:14; 77:7;84:1;98:11 wildlife (1) 71:1 Willard (1)	7:6 Wind (11) 5:7;6:21;7:2,14; 20:15;26:20;50:11, 16;56:12;85:9,9 Windaction (2) 9:7;96:1 wish (3) 18:13;93:8,11 wishes (2) 28:2;100:23 within (3) 29:3;47:23;65:24 without (6) 24:18,20;26:17; 34:9,10;37:20 witness (7) 8:11;30:23;31:9, 22;80:11;81:21;82:9 witnesses (3) 8:6,12;32:15 word (1) 33:4 wording (1) 21:5 words (2) 25:3;60:18 work (2) 9:15,22 worked (1) 72:9 worse (3) 40:6;41:4;50:20 worst-case (2) 60:6;84:18 written (2) 8:16;30:15 wrong (2) 64:12;71:18	12th (1) 8:20 13 (1) 8:2 15 (1) 8:2 162:4 (1) 7:19 162-H (1) 22:8 17th (1) 8:22 18 (1) 83:4 18th (2) 7:21;8:3 19th (1) 8:3 1st (1) 8:4	65:21 3rd (1) 8:3
			2	4
				4 (4) 57:14;58:5;59:1,13 40 (1) 60:16
				5
				5 (3) 60:9,21;88:17 541 (1) 10:22 541-A (2) 30:18;98:13
				7
				7th (2) 8:4,19
				9
				9 (1) 7:10 9613-2 (1) 60:11 969613-2 (1) 86:20 9th (1) 8:20
		Z		
		zero (1) 88:18 zone (2) 65:20;73:16 zones (1) 29:3 zoning (2) 7:12;73:17	2 (1) 7:11 20 (1) 8:2 2015 (3) 6:21;7:18,21 2015-02 (1) 5:9 2016 (2) 8:4,20 2017 (1) 8:22 202.02 (1) 30:19 202.15 (1) 24:23 20th (2) 7:18;8:3 22 (1) 8:2 220 (1) 8:14 23rd (1) 8:2 28 (1) 8:2 29 (1) 8:2 2nd (1) 6:21	
W		1		
waiting (3) 32:23;89:19;92:3 waive (3) 24:12;26:18;29:8 waived (1) 24:16 waiver (10) 24:19,22;25:1,8; 26:4;27:6,7,15;		1 (3) 11:24;12:18;17:2 10 (2) 47:12;100:18 11:07 (1) 83:15 11:21 (1) 83:16 11:42 (1) 101:17	3	
				3.2 (1) 7:3 301.08 (1) 57:11 301.14 (2) 33:23;55:4 301:08 (1)