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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

September 20, 2018 - 1:20 p.m. DAY 5  
49 Donovan Street Afternoon Session ONLY  
Concord, New Hampshire

{Electronically filed with SEC 10-04-18}

IN RE: SEC DOCKET NO. 2015-04  
Application of Public Service  
Company of New Hampshire, d/b/a  
Eversource Energy, for a  
Certificate of Site and  
Facility.  
(Adjudicative Hearing)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

- |                            |                             |
|----------------------------|-----------------------------|
| Patricia Weathersby        | Public Member               |
| (Presiding Officer)        |                             |
| David Shulock, Esq.        | Public Utilities Commission |
| Elizabeth Muzzey, Dir.     | Div. of Historic Resources  |
| Charles Schmidt, Admin.    | Dept. of Transportation     |
| Christopher Way, Dep. Dir. | Div. of Economic Dev.       |
| Michael Fitzgerald, Dir.   | Dept. of Env. Services      |
| Susan Duprey               | Public Member               |

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq., Counsel for SEC  
(Brennan, Lenahan, Iacopino & Hickey)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

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

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I N D E X

WITNESS PANEL: KURT NELSON  
(Resumed) SARAH ALLEN  
ANN PEMBROKE  
DR. CRAIG SWANSON  
BJORN BJORKMAN

PAGE

CROSS-EXAMINATION BY:

Ms. Ludtke 3  
Ms. Mackie 53  
Ms. Brown 68  
Mr. Richardson 95  
Mr. Aslin 161

EXHIBITS

PAGE

JCT 18 7/11/18 Letter from 99  
Mr. Crowley  
JCT 19 Photographs 155

(NOTE: OTHER EXHIBITS REFERRED TO WERE PREMARKED)

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

2 (Hearing resumed at 1:20 p.m.)

3 PRESIDING OFFICER WEATHERSBY: Okay.

4 Ms. Ludtke, you may continue.

5 CROSS-EXAMINATION (CONT'D)

6 BY MS. LUDTKE:

7 Q. Good afternoon. My last line of questioning  
8 before we broke for lunch involved the  
9 frequency of IRs, inadvertent return  
10 frack-outs. And I found the site I was  
11 looking for, and it's on Page 29 of the  
12 Horizontal Directional Drilling and Jet Plow  
13 Report, Exhibit 133, second paragraph. And  
14 it says, "Despite design and construction  
15 controls, IRs occur regularly in the HDD  
16 industry." And my question involved the  
17 frequency of IRs versus the frequency of  
18 large IRs. Do you have any information on  
19 that?

20 A. (Allen) I am not able to give you specifics  
21 on that.

22 Q. And another question I had involved the  
23 sentence that came immediately before that,  
24 which says, "In addition, the contractor

1           would be required to monitor and control  
2           downhole drill fluid pressures during  
3           drilling." And my question -- and again,  
4           this is probably one for the Construction  
5           Panel -- but wouldn't the monitoring control  
6           the release so that it wouldn't be a  
7           prolonged release?

8    A.    (Allen) Again, that's a question for the  
9           Construction Panel. But I can tell you he  
10          will say "not always." That's as far as I'll  
11          take it.

12   Q.    So when you're saying "not always," what do  
13          you know that would lead you to make that  
14          statement?

15   A.    (Allen) I've just heard him. In the course  
16          of talking this through from our perspective,  
17          he has said that large releases happen, and  
18          they're not always detected until they start  
19          breaking through the surface.

20   Q.    And in the materials that were provided, this  
21          directional drilling report, your  
22          testimony -- Ms. Pembroke's testimony, there  
23          was quite a bit of discussion about the risk  
24          of an inadvertent return. And are you aware

1 if that -- if any attempt has been made to  
2 quantify the risk, to say there's a  
3 5 percent, 10 percent, 50 percent chance of a  
4 risk of a horizontal directional drill on  
5 Little Bay?

6 A. (Nelson) I believe within the HDD technical  
7 report there was a figure that was provided  
8 by our HDD expert that showed a cross-section  
9 with some -- I guess it is Figure 9 -- some  
10 probabilities. I don't know if that number  
11 can be quantified into a probability  
12 percentage of whether there would or would  
13 not be an IR in Little Bay. Again, questions  
14 best posed to the Construction Panel and the  
15 HDD expert.

16 Q. Well, some probability could be from  
17 1 percent to 80 percent, and there would be a  
18 big difference between them.

19 A. (Nelson) Correct.

20 Q. Would you need to do additional work to  
21 quantify the probability of a risk of an IR  
22 in a horizontal directional drill?

23 A. (Nelson) If one were to do an HDD, there  
24 would be additional analysis that would be

1 done, yes.

2 Q. And would bedrock core drillings be useful in  
3 assessing the probability of an HDD -- of an  
4 inadvertent return?

5 A. (Nelson) That's my understanding.

6 Q. So, based on the information that is  
7 available right now, is it possible to say  
8 that an inadvertent return would be likely or  
9 unlikely?

10 A. (Nelson) I don't believe we're poised to  
11 answer that question.

12 Q. So your testimony is, at this moment you  
13 can't testify that in a horizontal  
14 directional drill, that an inadvertent return  
15 would be likely, and you can't testify it  
16 would be unlikely.

17 A. (Nelson) Yeah, that's correct.

18 Q. That's correct.

19 Now, what I'd like to do is wrap up on  
20 the horizontal directional drill comparison  
21 to jet plowing. And in reading that report,  
22 and in reading the testimony provided by Ms.  
23 Pembroke and the Environmental Panel, I get  
24 some sort of mixed conclusions. One

1 conclusion seems to be that, absent an  
2 inadvertent return, horizontal directional  
3 drilling would have essentially no  
4 environmental impact or no adverse  
5 environmental impact on Little Bay. Do you  
6 agree with that or not?

7 A. (Pembroke) Yes, we've stated that several  
8 times today.

9 Q. I think there's also been statements made  
10 that the impact, even absent an inadvertent  
11 return of a horizontal directional drill, is  
12 temporary and short duration, similar to jet  
13 plowing. So what I'm trying to clarify is  
14 whether your answer would be, no, there is  
15 not an impact, or there is a temporary  
16 impact.

17 A. (Pembroke) Well, as indicated in the report,  
18 the investigations, the geophysical  
19 investigations that need to take place prior  
20 to finalizing the design would have minor  
21 temporary impact to Little Bay.

22 Q. Well, I can represent to you that the expert  
23 for the Counsel for the Public prepared a  
24 chart. And his testimony -- and I'm sorry.

1 I don't have an exhibit number for his  
2 testimony, but it was Page 7 of his  
3 supplemental testimony. And he described the  
4 impacts of a horizontal directional drill on  
5 essentially the ecology and water quality in  
6 Little Bay as "none." Do you agree with  
7 that?

8 A. (Pembroke) The actual drilling process  
9 itself, absent an inadvertent return, I would  
10 agree with that.

11 Q. Thank you.

12 Now I wanted to turn a little bit to  
13 sediments and hand jetting. And that's the  
14 RPS report, which is Exhibit 104. And I'm  
15 going to read you something out of that  
16 report. I have a clean copy here if you want  
17 to take a look at the report. But I'll read  
18 you what I'm interested in. And it's the RPS  
19 report, Exhibit 104, Page 38.

20 A. (Swanson) I have it.

21 Q. I'll just read the sentence and you may not  
22 have to look at it. The sentence I'm going  
23 to ask you about says, "These sediments can  
24 continue to resuspend when the bottom stress

1 exceeds the critical sheer stress, (e.g.,  
2 high current velocities) during subsequent  
3 tidal cycles."

4 And the question I have is: The  
5 resuspension of the sediments that is  
6 referenced in that sentence, would that occur  
7 outside of the three-day window you were  
8 referring to?

9 A. (Swanson) No. No, the calculation we showed  
10 was that by after three days, the material is  
11 so dispersed, that you're not going to see it  
12 in a sense that it --

13 Q. The question would be --

14 (Court Reporter interrupts.)

15 A. (Swanson) -- in a sense that it could be  
16 resuspended.

17 Q. So the suspended/resuspended plume that  
18 exists in that three-day period deposits fine  
19 sediments in a dispersed area; is that  
20 correct?

21 A. (Swanson) Yes, it does.

22 Q. And when those sediments are deposited in a  
23 dispersed area, they aren't subject to any  
24 resuspension because of this critical shear

1 stress?

2 A. (Swanson) Yes, exactly. After a while, these  
3 sediments will longer resuspend because  
4 they've ended up in an area where they have  
5 deposited. And the shear stress due to the  
6 currents is insufficient to resuspend them  
7 for another time.

8 Q. But that's only when they end up in an area  
9 that isn't subject to the critical shear  
10 stress.

11 A. (Swanson) Exactly. And that's where it  
12 showed it took maybe up to three days to find  
13 that.

14 Q. And you are confident that all the suspended  
15 and resuspended sediments will ultimately be  
16 deposited in an area that would not be  
17 subject to any more critical shear stress.

18 A. (Swanson) Based on the tidal conditions that  
19 we used, which were spring tides. So that  
20 would be higher velocities than would be seen  
21 typically. I can't say never. But based on  
22 those calculations with higher than normal  
23 speeds, they have then found a location where  
24 they would no longer be resuspended.

1 Q. And you say that's a conservative estimate  
2 because with lower tide speeds they would be  
3 less likely to be deposited in an area  
4 subject to this critical shear stress.

5 A. (Swanson) Right. And also the resuspension  
6 calculation that we used does not account for  
7 all of the potential processes that were  
8 occurring. It was more of a general  
9 determination of material that lands on the  
10 bottom and then can be resuspended relatively  
11 easily. So we're not including the concept  
12 of consolidation, where if the material  
13 lands, ultimately it's going to dewater to an  
14 extent. And when it starts to dewater, it's  
15 not going to be as easily subject to  
16 resuspension. We did not include that  
17 process in the calculation we did. So,  
18 again, it becomes a conservative estimate.

19 Q. And would these estimates also apply to the  
20 sediment produced by hand jetting operation?

21 A. (Swanson) Yes. But you have to remember that  
22 most of the sediments generated by the hand  
23 jetting are retained inside the silt curtain,  
24 so it's only a relatively small fraction that

1 exits.

2 Q. But they're only retained when silt curtains  
3 are used.

4 A. (Swanson) Right, right. And those that  
5 aren't retained, the model then addresses  
6 them in the same way that it addresses the  
7 jetting particles.

8 Q. And the areas where silt curtains are not  
9 used for hand jetting are areas where the  
10 currents are too strong to use silt curtains;  
11 correct?

12 A. (Swanson) I believe that's the case, yes. I  
13 was given that information from the  
14 Normandeau people.

15 Q. And were those currents for the hand jetting  
16 siltation incorporated in your model to  
17 determine the dispersion of sediments from  
18 the hand jetting areas?

19 A. (Swanson) To the extent that we had done the  
20 hydrodynamics using the spring tide. So  
21 wherever the areas had silt curtains, they  
22 were subject to the same velocities as  
23 those -- or if there were no silt curtains  
24 there, because the silt curtains in theory

1 allow some flow through them, they just trap  
2 the silt --

3 Q. Well, you just testified that the areas  
4 without the silt curtains are the areas that  
5 are subject to the highest, strongest  
6 currents. And wouldn't the currents in those  
7 areas also have an impact on the dispersion  
8 of sediments from that?

9 A. (Swanson) Yes, they would.

10 Q. In fact, I believe the load -- and I could  
11 get you the specifics. But my recollection  
12 on the load is that it's over 50 percent on  
13 hand jetting.

14 A. (Swanson) On hand jetting without silt  
15 curtains, that was the --

16 Q. So that's a relatively high amount of  
17 sediments that then is released to an area  
18 with very strong currents.

19 A. (Swanson) Correct.

20 Q. And those currents, and the impact of those  
21 currents on your dispersion model, hasn't  
22 been modeled itself from that particular area  
23 of hand jetting without silt curtains.

24 A. (Swanson) No. We actually did do the

1 simulation of the entire hand jetting  
2 locations on the west side and on the east  
3 side.

4 Q. And you did the model without using the silt  
5 curtains or with using it?

6 A. (Swanson) In the areas that we were told  
7 there were no silt curtains, that's what we  
8 did. And then where there were silt  
9 curtains, that's what we did. Essentially,  
10 that means that the mobilization rate to get  
11 into the water column and move is different  
12 when there are silt curtains versus when  
13 there are not.

14 Q. And did you specifically characterize the  
15 type of sediments that would be impacted in  
16 the hand jetting operations?

17 A. (Swanson) Yes. There were vibracores done  
18 along the entire route. That included both  
19 the jet plowing, as well as the diver  
20 jetting.

21 Q. And I have an exhibit here. It's marked CLF  
22 Exhibit 17. And I'm going to put it up. And  
23 what I really need on this is just an  
24 explanation of what these numbers mean, in

1 terms of -- I think it is entitled, "Distance  
2 of Sediment Sampling Location From Each  
3 Proposed Cable." And if you could look at it  
4 and tell me what those numbers mean on that.

5 A. (Swanson) This is your table, not anything  
6 from my report?

7 Q. This I believe was produced in response to a  
8 record request made by Conservation Law  
9 Foundation. You don't have to answer it. If  
10 anyone on the Environmental Panel knows --

11 A. (Allen) I think we, Normandeau, developed  
12 this figure, and I believe it's referring  
13 to -- if you look at the first three numbers,  
14 C1 north, C1 middle, and C1 south are  
15 referring to the three cables. The 3.2 south  
16 means that the core was 3.2 -- I sure hope  
17 it's feet south --

18 Q. Well, that was my question. It's not  
19 identified. There's no measurements.

20 A. (Allen) Yeah, I'm quite certain it's feet  
21 south of the C1 north vibracore spot.

22 Q. So that is intended to -- the 3.2 is a  
23 measurement in feet --

24 A. (Pembroke) Yes.

1 Q. -- on the sampling location?

2 A. (Pembroke) Yes.

3 Q. So looking down this chart, I see C7 and C8,  
4 both which are north, and then there's C2.

5 Those are in the range of 50 or more feet  
6 away from the cable location. Would that be  
7 a correct interpretation?

8 A. (Pembroke) Yes, it would.

9 Q. And you're confident that a sample taken  
10 while at C2 is 54.7 feet away from the  
11 location. You're confident that that gives  
12 you an accurate idea as to the sediment in  
13 that area from both a chemical and physical  
14 property perspective?

15 A. (Pembroke) Yes.

16 Q. So there wouldn't be any -- if you saw that  
17 there were no contaminants 55 feet away from  
18 where you intended to put the cable, you  
19 would be confident there would also be no  
20 contaminants on the cable location.

21 A. (Pembroke) I'd be comfortable making that  
22 statement.

23 Q. How far away could you get before your  
24 comfort level diminished?

1 A. (Nelson) I'd like to address that a little  
2 bit, if I may.

3 In our sediment characterization, you  
4 know, I think what one has to do is look at  
5 the totality of the sampling that was done.  
6 We did 12 vibracores across the proposed  
7 crossing location. In evaluating that data,  
8 we found very little with respect to  
9 potential contaminants. And we didn't find  
10 any evidence that there was a source of  
11 anthropogenic release, if you will, of  
12 contaminants. We found generally that our  
13 data was consistent with data that had been  
14 collected in the past by previous EPA studies  
15 as well.

16 So if you go down the line of  
17 questioning with respect to how far away is  
18 one sample representative of a certain  
19 location relative to the jet plow area, you  
20 know, I don't know that this panel is going  
21 to give you a firm answer as, you know, a  
22 discrete distance. But when you look at the  
23 data on whole, I think we're very comfortable  
24 with the characterization that was done.

1 Q. Well, there had been cables installed in this  
2 going back to the early 1900s in this area;  
3 correct?

4 A. (Nelson) Correct.

5 Q. And isn't it possible that some of those  
6 cables contain lead?

7 A. (Nelson) Yes, some of these cables do contain  
8 lead.

9 Q. And that could be a source of contamination.

10 A. (Nelson) Potentially. On the record, we  
11 provided a cable removal plan. And in the  
12 cable removal plan we provided an analysis  
13 that was done on the existing cables within  
14 the bay currently. And in that report you  
15 can see sort of the nature of the lead  
16 associated with those cables. Typically what  
17 we're talking about is a lead sheath that  
18 surrounds the outside of the cable. That  
19 sheath is on the order of between, you know,  
20 approximately an eighth to quarter-inch thick  
21 or so. And it's a solid piece of metal that  
22 encases those cables.

23 Q. Well, if lead were one of the contaminants of  
24 concern, and the source for the lead was the

1           older cable, would you expect to see lead  
2           contamination 55 feet away?

3    A.   (Nelson) I don't know the answer to that  
4           particular question.

5    A.   (Bjorkman) If may contribute to that  
6           conversation, the answer to that is we did  
7           not -- in the samples we did, which were  
8           varied distances from that cable, there was  
9           no evidence of any footprint of elevated lead  
10          of any sort in any sample, which was a strong  
11          indication that there's not been an  
12          accumulation of lead from cables.

13   Q.   Now, on the sediments that you took, my  
14          understanding in reading the documents that  
15          have been marked as 104 and 105 -- and I'm  
16          referring to the RPS report that's  
17          Exhibit 104, and the Normandeau report, which  
18          is the sediment characterization report,  
19          which is Exhibit 105 -- and I assume you're  
20          familiar with both of those documents?

21   A.   (Swanson) I'm familiar with the modeling  
22          report I did, yes, the RPS report.

23   Q.   Now, in looking at those reports, it appears  
24          that in the Normandeau report -- or the

1 Normandeau work, Normandeau conducted some  
2 samplings and some analysis prior to engaging  
3 RPS to conduct its studies. And some  
4 concerns were raised regarding Normandeau's  
5 sampling and analytical methods using the  
6 vibracore technique and the homogenization  
7 method. Is that accurate?

8 A. (Pembroke) There were some concerns raised.

9 Q. And partially, or maybe more than partially,  
10 as a result of the concerns that were raised,  
11 RPS was retained to conduct additional work,  
12 and then RPS also did a model on the sediment  
13 dispersion.

14 A. (Pembroke) Well, RPS was retained to do the  
15 modeling. It really had nothing to do with  
16 questions that were raised about the sediment  
17 characterization.

18 Q. In the RPS report, RPS did some additional  
19 analytical work. And it appears that the  
20 additional analytical work RPS did was use  
21 the samples that had been taken by  
22 Normandeau; is that correct?

23 A. (Swanson) Yes, we took the samples from  
24 the -- or we used the samples from the

1 original field program, plus the secondary  
2 field program.

3 Q. And the samples that RPS took in its work,  
4 only the top 2 feet of the samples that RPS  
5 took were analyzed; right?

6 A. (Pembroke) RPS did not take samples. They  
7 received data from us, from Normandeau, just  
8 to be clear about that. They used data that  
9 we provided from our sediment sampling.

10 Q. Well, I can find the references in the RPS  
11 report. There are many references to the  
12 analysis of only the top 2 feet of the  
13 sample. Can you explain what that refers to?

14 A. (Pembroke) It refers, in RPS's usage, it  
15 refers to the fact that that was the segment  
16 of the sediment column that will be touched  
17 by the jet plow that has the greatest  
18 potential for being suspended into the water  
19 column. And so that was the purpose of doing  
20 analysis only on that portion.

21 Q. So only the top 2 feet were analyzed.

22 A. (Bjorkman) If I may amplify on this issue,  
23 the original sampling -- and I believe by  
24 your Exhibit 105, you're referring to the

1 supplemental characterization report.

2 Q. Correct.

3 A. (Bjorkman) In the original report, the  
4 samples were taken at zero to 4-foot  
5 interval. The issue that was raised was  
6 whether that 4-foot interval would be  
7 representative of what's in any given  
8 interval of sediment.

9 In the supplemental analysis, therefore,  
10 we added additional analysis, zero to 2-foot  
11 interval, and compared the results from zero  
12 to 2 to zero to 4 to see if there was any  
13 difference between the deeper and the  
14 shallower. The answer was, no, there wasn't.

15 Q. Well, I have a chart here from the Normandeau  
16 report, which is marked as Exhibit 105. And  
17 that chart appears to show a fairly  
18 substantial difference in the results. So,  
19 going through that chart, if you, for  
20 example, focus on the percent of fine sand,  
21 and you see the bottom column says Table 3b,  
22 "Physical Characteristics of Sediments Along  
23 the Route Sampled in 2016." And, for  
24 example, C4, you say percent of fine sand is

1           16.3 and it goes up to 19.6. But then, next  
2           to it is C5, and the percentage of fine sand  
3           goes from 24.3 percent to 64.8 percent.

4    A.    (Bjorkman) Let me just clarify one issue. I  
5           was referring to what was within my purview  
6           was primarily investigation of the  
7           contaminants contained in the sediment. You  
8           know, the issue here is related to the type  
9           of sediment, and my statement was not related  
10          to that.

11   Q.    Thank you. I was actually focusing on the  
12          physical characteristics.

13                    But what I'm trying to understand here  
14                    is two things: First of all, are the results  
15                    reported in these two tables, where in 2016  
16                    the physical characteristics are reported as  
17                    24.3 percent of percent of fine sand, and in  
18                    2017, on that same location, C5, it comes out  
19                    as 64.8 percent, and C7, 44.9 percent goes up  
20                    to 57.9, and so on and so forth. It's not  
21                    always in that direction. In C8, it goes  
22                    from 66 percent, and it appears to drop to  
23                    31 percent. But the numbers are vastly  
24                    divergent, and I have two questions.

1           First of all, do these charts represent  
2           the same samples with different analytical  
3           methods applied, or are they different  
4           samples? It appears from the report that  
5           they're the same samples with different  
6           analytical methods.

7   A.   (Pembroke) They are different samples. The  
8           stations were re-occupied a second time to  
9           collect additional material.

10   Q.   So these are the same sampling locations?

11   A.   (Pembroke) That's correct.

12   Q.   And additional material was collected or not?

13   A.   (Pembroke) Additional material was collected.

14   Q.   And when was that material collected?

15   A.   (Pembroke) May 2017 and September 2016.

16   Q.   And the numbers that appear on this chart are  
17           two different sample collections. Were the  
18           samples collected in the same manner?

19   A.   (Pembroke) Yes, they were.

20   Q.   Doesn't that give you some kind of cause to  
21           want to do some additional investigation when  
22           you're seeing these very different results  
23           from the same sampling locations and you're  
24           modeling sediment based upon characteristics

1 as you understand it?

2 A. (Nelson) Basically I just want to chime in  
3 here. The table that you just referenced,  
4 the difference in grain size that you'  
5 seeing, what you' seeing is the same general  
6 sampling location, two different sampling  
7 events. The first of those sampling events  
8 was a compositing of a zero to 4-foot  
9 interval. The second event you saw was a  
10 compositing of a zero to 2-foot interval.  
11 That can explain the variations in grain size  
12 amongst those two samples taken at the same  
13 location.

14 Q. Well, the jet plow goes down to over a 5-foot  
15 depth, doesn't it?

16 A. (Swanson) Yes, it does. But the mobilization  
17 is primarily coming from the upper portions  
18 of that because that's closest to the sea  
19 bed. It's not down four or five -- or three  
20 or five. The material down there will more  
21 than likely stay down there. It's the upper  
22 couple feet that's going to be more prone to  
23 mobilization or resuspension -- or suspension  
24 into the water column.

1 Q. Now I want to turn your attention to Page 10  
2 of the Normandeau report, Exhibit 105. And  
3 it has a table there, and it talks about the  
4 qualitative description of sediments along  
5 the cable route from vibracore collections,  
6 May 2017. And in fact, first of all, it  
7 talks about not actually being able to  
8 penetrate to the depth desired, which would  
9 be the 5-foot core. And it cites some  
10 sampling locations, which only went to  
11 20 inches, 40 inches, 44 inches, 46 inches.  
12 Do you see that? It's on Page 10.

13 A. (Pembroke) Yes, I see that. It's Table 2.

14 Q. So not all these were in a 5-foot depth.

15 A. (Pembroke) That's correct.

16 Q. And turning to the final sentence on that  
17 Field Characterization of Sediment Cores, it  
18 says, "The uppermost 2 feet of all the cores  
19 were processed and sent to Alpha Analytical  
20 Laboratory for physical and chemical  
21 analyses." Do you see that?

22 A. (Pembroke) Yes.

23 Q. So when the chart on Page 16 shows the  
24 physical characteristics of the samples that

1           were collected in 2017, what we're seeing  
2           there is the physical characteristics of only  
3           the top 2 feet?

4   A.   (Pembroke) That's correct.

5   Q.   Okay.  So the physical characteristics of the  
6           bottom 3-plus feet, do we have any  
7           information that's been provided on those?

8   A.   (Pembroke) Not from the cores that were  
9           collected in May.  But as we said, we  
10          occupied as close to the same positions as  
11          possible as the collections from September,  
12          whatever, 2016, as we could.  And because our  
13          sampling -- our field crew uses GPS, they can  
14          get very close to the same location.  And so  
15          in the September samples, we analyzed the  
16          full depth of material.

17  Q.   So when we look at this chart on Page 16 --  
18          and I can show it to you again if you would  
19          like to see it.

20  A.   (Pembroke) I have it.

21  Q.   Which do we believe?  Which is the better  
22          information?  Do we believe that the percent  
23          of fine sand on C5 is 64.8 percent or  
24          24.3 percent?  Or does it make any difference

1 at all? Do we care?

2 A. (Pembroke) For purposes of considering the  
3 sediments that are likely to be suspended  
4 into the water column and dispersed through  
5 the sediment plume, we're interested in the  
6 material that was collected and analyzed in  
7 May 2017. So the top part, Table 3a, is  
8 representative of that.

9 Q. And you're confident that the bottom 3-plus  
10 feet would not go -- none of that would go  
11 into suspension, even if it were very fine  
12 material.

13 A. (Pembroke) My understanding from work that's  
14 been done to evaluate the portion of material  
15 that is suspended during a jet plow operation  
16 makes me believe that that is the case, that  
17 we really only need to be concerned with the  
18 uppermost material.

19 A. (Swanson) That was also provided. That  
20 information was provided by one of the  
21 experts for the Counsel for the Public, in  
22 terms of his experience was that it's the  
23 nearer surface sediments that actually get  
24 mobilized.

1 Q. What I'm trying to understand, essentially,  
2 is what confidence we can really have in the  
3 numbers. Because what I've heard so far is  
4 dispersion is based on a model that you have  
5 confidence in. But it's a model. And the  
6 sediment sampling is based on the percentage  
7 of the sample core that you think will go in  
8 suspension. But right now, there's no  
9 empirical evidence that you can point to that  
10 would demonstrate exactly how much sediment  
11 is going to be released out of that  
12 5-foot-plus plowing and how that sediment  
13 will behave once it is released because you  
14 need a jet plow run to do that.

15 PRESIDING OFFICER WEATHERSBY: Ms.  
16 Ludtke, you' slipping into testimony again. If  
17 you can phrase your --

18 BY MS. LUDTKE:

19 Q. Do you need a jet plow run to really have  
20 confidence in understanding from an empirical  
21 basis what will happen here?

22 A. (Swanson) No. But one of the reasons the  
23 trial run is going to be conducted is to  
24 verify that. But based on our experience, we

1 know that the surface sediments are more  
2 likely to be suspended than the deeper  
3 sediments because the jet plow does not want  
4 to move more sediments than it has to. It  
5 really just wants to fluidize that sediment  
6 so that the cable can be placed at the  
7 bottom.

8 Q. Now, let me go back for a minute to the  
9 horizontal drilling/jet plow report, and  
10 that's Exhibit 133. Because in looking at  
11 that report, it appears that a lot of the  
12 language that is used to describe the impacts  
13 is a -- it doesn't express a high level of  
14 certainty. And let me explain what I mean.  
15 And I'd like your response.

16 In the hand jetting operations, you'  
17 concluding sentence -- and this is Page 12,  
18 and it's at the end of the paragraph on  
19 that -- "As such" -- and I think you've got a  
20 word missing -- "there are no anticipated  
21 impacts to water quality." So, instead of  
22 saying there will be no impacts to water  
23 quality, the phrase says that none are  
24 anticipated. And that language, I can point

1 out other many other examples. Page 14,  
2 bottom of the third paragraph, "No impacts to  
3 these farms are anticipated." Middle of the  
4 following paragraph, "plume nearing this  
5 facility are expected." So there's  
6 expectations and anticipation. Page 15, "It  
7 is likely that the artificial substrate," "It  
8 is expected," "This is unlikely to have a  
9 deleterious effect on lobsters and horseshoe  
10 crabs." "It is expected" -- and, you know,  
11 going over to 16, I have more areas  
12 underlined. Fish -- "This could be a  
13 deterrent." "It is not expected." "It is  
14 expected with wetlands."

15 So my question is: Did you intend to  
16 use this language because you wanted to  
17 express some degree of uncertainty as to what  
18 the results would be?

19 A. (Pembroke) Well, there is a degree of  
20 uncertainty as to what the results would be.  
21 The assessment of the likelihood of impact  
22 was based on our knowledge of the resources  
23 that are in the Project area and review of  
24 literature, peer-reviewed literature, reports

1 on projects that have been done using similar  
2 techniques and so on to assess whether or not  
3 impacts could be expected from such an  
4 action. You know, we won't have any  
5 certainty until the Project is actually built  
6 and has been monitored. And clearly, this  
7 process has to proceed doing that.

8 A. (Bjorkman) If I may be a little facetious for  
9 a moment. You're speaking to a bunch of  
10 scientists. We're never sure of anything.  
11 But what we do know is we know our business  
12 and that the language that you see in front  
13 of you is fairly typical for the description  
14 of an event for which we have considerable  
15 certainty that that is indeed the case. But  
16 there's always an out.

17 Q. Fair to say that this uncertainty is  
18 addressed in the DES conditions? And I have  
19 the most recent conditions, August 31, 2018.

20 MS. LUDTKE: Does that have an  
21 exhibit number?

22 MR. IACOPINO: 166, I think.

23 MS. LUDTKE: Oh, is it 166?

24 MR. ASLIN: 183.

1 MS. LUDTKE: Oh, 183.

2 (Pause in proceedings)

3 BY MR. LUDTKE:

4 Q. And I think Attorney Patch pointed up a  
5 number of these. This uncertainty, for  
6 example, this condition relates to the mixing  
7 zone plan, and particularly as it would  
8 affect the aquaculture sites in close  
9 proximity to the line. And that talks about  
10 the submission of a revised plan. And it's  
11 our understanding you'll be submitting a  
12 revised plan for the mixing zone. And it  
13 says the NHDES will notify the SEC when the  
14 plan has been approved by the DES.

15 Do you understand what would be -- what  
16 was the intent of notifying the SEC? Will  
17 the SEC even be in existence at the time that  
18 plan is approved?

19 A. (Allen) I'm not sure we can answer that for  
20 the SEC.

21 Q. Well, you had a discussion with DES regarding  
22 these conditions, didn't you?

23 A. (Allen) We did.

24 Q. And did you have an understanding regarding

1 notification to the SEC?

2 A. (Allen) That actually was not part of our  
3 discussion.

4 Q. Okay. And the jet plowing I think is another  
5 big issue. And I think that's addressed in  
6 the first part of the revised conditions, and  
7 that's Page 2 and 3.

8 A. (Pembroke) Yeah, I would point out that the  
9 jet plow run is a recommendation, not a  
10 condition. But it is something that the  
11 Project certainly plans to comply with.

12 Q. And originally the condition before you'  
13 discussions with DES required a period of 90  
14 days to provide time for NHDES to review the  
15 jet plow trial submarine report, to discuss  
16 and finalize the report, provide a  
17 recommendation to the SEC, and for the SEC to  
18 make a decision. And would you agree that  
19 the SEC now has been completely eliminated  
20 from involvement in the jet plow run?

21 A. (Allen) I would not agree with that.

22 Q. Well, how, under the revised condition, is  
23 the SEC involved?

24 A. (Allen) On Page 3, the second paragraph says,

1 "Cable installation in Little Bay by jet  
2 plowing will not be allowed to proceed until  
3 authorized by the SEC."

4 Q. Which page are you on?

5 A. (Allen) Page 3 of the August 31 letter,  
6 second paragraph.

7 Q. Okay. So it will be presented to the SEC,  
8 and then the SEC will make a decision as to  
9 whether the Project should proceed based on  
10 the results of the jet plowing. That's how  
11 you read that?

12 A. (Allen) I'm reading that DES will review the  
13 information and provide their recommendation  
14 to the SEC, and the SEC will issue a  
15 decision.

16 Q. So when the SEC makes its decision as a  
17 result of these hearings, that decision won't  
18 be a final decision until the SEC reviews the  
19 results of the jet plow run?

20 A. (Allen) I'm not sure which decision you're  
21 referring to.

22 Q. The decision that presumably the SEC will  
23 reach as a result of these hearings.

24 MR. NEEDLEMAN: Objection, Madam

1 Chair. First of all, the language speaks for  
2 itself. Second of all, sounds like this calls  
3 for a legal conclusion.

4 MS. LUDTKE: Well, I'm trying to  
5 understand how this process is going to  
6 proceed, because in our opinion, the jet plow  
7 run is a very important piece of information,  
8 given what we have, and understanding what the  
9 impact, the environmental impact would be on  
10 the installation of the jet plow. And I would  
11 like to know if we are going to have another  
12 opportunity to come back for a hearing on those  
13 results once those results are available, what  
14 their understanding is.

15 PRESIDING OFFICER WEATHERSBY: I'm  
16 going to sustain the objection. It does call  
17 for a legal opinion from these witnesses. So  
18 if you can move on, please.

19 BY MS. LUDTKE:

20 Q. Now, after the jet plow run is completed, you  
21 will have a better idea about what the  
22 environmental impact to jet plowing will be,  
23 won't you?

24 A. (Allen) Yes, we will.

1 Q. And are you aware of how the jet plow  
2 technique can be modified that would reduce  
3 the impact on water quality if the trial run  
4 showed that the impact on water quality was  
5 unacceptable?

6 A. (Allen) As we've said in the past, the  
7 primary ways to control the amount of  
8 sediment going up into suspension are the  
9 speed the jet plow is pulled through the  
10 sediment, and the water pressure in the jets.

11 Q. And the condition in the revised DES permit  
12 provides -- and again, this is Pages 2 and  
13 3 -- that if the results of the trial run  
14 indicate that New Hampshire surface water  
15 quality standards will not likely be attained  
16 during cable installation, or if results  
17 indicate that the model did not reasonably  
18 predict the suspended solids plume, the  
19 report should include recommendations  
20 regarding how these issues can be abated.

21 Are you confident that, based on how you  
22 understand the installation to be done at  
23 this point, that changes can be made that  
24 will abate the violation of the surface water

1           quality standards or the prediction of the  
2           suspended solids plume for jet plowing?

3    A.    (Allen) We are not anticipating violating  
4           surface water quality standards, so we have  
5           confidence in the work that we've done to  
6           date.

7    Q.    Well, one thing I'm trying to understand is  
8           that, if abatement is possible and you can  
9           operate the jet plow so that it doesn't  
10          produce the same turbidity or suspended  
11          solids or any other issues of environmental  
12          concern, why isn't that part of the protocol  
13          right now for doing the jet plow?  Wouldn't  
14          that be minimization of impact?

15                   MR. NEEDLEMAN:  Objection.  This has  
16                   been asked and answered.  Mr. Swanson  
17                   specifically testified earlier to this question  
18                   that the target is meeting the state water  
19                   quality standards.

20                   MS. LUDTKE:  Well, I take it this --  
21                   a variant of this question certainly has been  
22                   posed.  But I haven't heard a real answer to  
23                   it, and that's why I'm asking it.

24                   PRESIDING OFFICER WEATHERSBY:

1           Objection sustained.

2 BY MS. LUDTKE:

3 Q.    I wanted to ask you a few questions on the  
4       concrete mattresses.

5           Do you know what the square footage of  
6       concrete mattresses permitted at the present  
7       time is?

8 A.    (Allen) The number that we put in the  
9       Application I believe is 8,681 square feet.

10 Q.    When was that put in the Application?

11 A.    (Allen) It's the Application Supplement  
12       submitted in September 2017.

13           MR. NEEDLEMAN:  It's Exhibit 128.

14 BY MS. LUDTKE:

15 Q.    Well, I have Exhibit 166, and it's dated  
16       February 28, 2018.  And on Page 7 of that  
17       it's the permit.  And it's February 28, 2018  
18       Final Decision.  And that's Page 7, as I  
19       said.  Do you have that?

20 A.    (Allen) Yes.

21 Q.    And I'm looking at the Project description on  
22       that.  And it talks about the placement of  
23       concrete mattresses over shallow cable  
24       installation in Little Bay of 5,336 square

1 feet for construction. So, apparently that  
2 is what DES thought the permitted square  
3 footage was in February 28, 2018. Is that  
4 incorrect?

5 A. (Allen) I'm not going to speak for DES. But  
6 if you look at our letter of submittal -- or  
7 our letter to DES, I think it was submitted  
8 in April of 2018, we pointed out a number of  
9 corrections that were correcting either  
10 impact numbers or dates, which DES  
11 subsequently accepted.

12 Q. That would have been then referenced in the  
13 August 31, 2018 document, Exhibit 183?

14 A. (Allen) Yes. It's the last sentence of that  
15 document.

16 Q. Can you point out to me where the number of  
17 8,681 is in that document?

18 A. (Allen) That document, if you give me a  
19 second while I go there... where it says  
20 "Appendix A, Requested text corrections to  
21 DES Final Conditions," that's the document  
22 I'm referring to. And it would take me a  
23 little while to find that letter.

24 Q. Well, my document actually doesn't include an

1 Appendix A.

2 A. (Allen) No, he's referring to our 8/17  
3 letter.

4 Q. So you' letter is now a part of the permit?

5 A. (Allen) I couldn't answer that.

6 Q. In looking at the permit documents that were  
7 issued by New Hampshire DES, and I have two  
8 of them -- one dated February 28th, 2018 and  
9 one dated August 31st, 2018 -- I can't find  
10 any reference to the number 8,681 in either  
11 one of those documents.

12 A. (Allen) Like I say, it is referenced in that  
13 last response, that Appendix A, which they  
14 say they concur with the requested text  
15 corrections. Appendix A includes that  
16 8,681 square feet.

17 MR. IACOPINO: And that's the  
18 notation that's right above Mr. Pelletier's  
19 signature; is that correct?

20 WITNESS ALLEN: Yes, that's correct.

21 BY MS. LUDTKE:

22 Q. So these are requested text corrections.

23 A. (Allen) Correct.

24 Q. Okay. And the text correction that you're

1 referring to relates to the application for  
2 an increased amount of square footage for  
3 concrete mattresses?

4 MR. NEEDLEMAN: Objection. That's  
5 not what the record says. It was not an  
6 increase. It was the same amount that was  
7 included in the permit application.

8 WITNESS ALLEN: That's correct.

9 PRESIDING OFFICER WEATHERSBY: I  
10 think she just answered the question. We'll  
11 move on.

12 BY MS. LUDTKE:

13 Q. Well, I have the permit here from  
14 February 28th, 2018. And the permit that I  
15 have from February 2018 uses the number  
16 5,336 square feet.

17 A. (Allen) And I think in their August letter  
18 they acknowledge the error and are trying to  
19 correct it.

20 Q. Well, your permit application at the time, I  
21 believe, derived the number 5,336. I can --

22 A. (Allen) That was the original application  
23 back in 2016. The supplement that DES  
24 reviewed and included includes updated

1 numbers for the concrete mattress impacts.

2 Q. So the original permit, you agree, had the  
3 number 5,336 in it.

4 A. (Allen) Correct.

5 Q. And it has now been increased to 8,681.

6 A. (Allen) It was increased in our last  
7 supplement to our permit application.

8 Q. Now, with respect to concrete mattresses, can  
9 you explain to me how you come up with that  
10 number when -- the mattresses are, I believe,  
11 8 feet by 20 feet; is that correct?

12 A. (Allen) That's correct.

13 Q. Okay. And there's a certain number of  
14 mattresses that will be used?

15 A. (Allen) Yes.

16 Q. And there's a certain overlay that will occur  
17 for the mattresses?

18 A. (Allen) I'm less certain about the overlay.  
19 But yes, they are -- there's a square footage  
20 of impact.

21 Q. So, in looking at the number, it would seem  
22 that you could produce the number by almost  
23 multiplying the square footage of the  
24 mattresses. Presumably you're not going to

1 cut mattresses, are you?

2 A. (Allen) Correct.

3 Q. So how many mattresses are used with the  
4 square footage of 8,681?

5 A. (Allen) I think this was addressed by the  
6 Construction Panel. We relied on LS Cables  
7 calculation for the extent of mattresses  
8 required. And from that we developed a  
9 footprint of the mattresses, and that's how  
10 we calculated the 8,681 square feet.

11 Q. And is the footprint for the mattresses also  
12 part of the Appendix A?

13 A. (Allen) The square footage of impact is part  
14 of Appendix A. The footprint is shown on the  
15 environmental maps for that same September  
16 2017 Application Supplement.

17 Q. Are you aware that these mattresses are going  
18 to be placed on state-owned property?

19 A. (Allen) Yes.

20 Q. Do you know of any contacts that have been  
21 made to the State to obtain permission to  
22 place these mattresses on its property?

23 A. (Allen) We are working with the State for our  
24 wetlands permit. That is my primary

1 responsibility.

2 Q. Are you aware of the doctrine of the public  
3 trust, whereby the public has a right to  
4 use -- enjoy public waters, and the State has  
5 an obligation to preserve that easement of  
6 enjoyment --

7 MR. NEEDLEMAN: Objection.

8 Q. -- to the public?

9 Do you have knowledge about the Public  
10 Trust Doctrine?

11 A. (Allen) Not to the detail that I want to  
12 discuss it here.

13 Q. And you don't have any knowledge regarding  
14 statutes pertaining to public trust rights.

15 A. (Allen) I do not.

16 Q. And it's not unlikely that these mattresses  
17 will provide some challenges, navigational  
18 challenges for boating in the Little Bay, is  
19 it?

20 A. (Allen) I think that was also discussed  
21 previously.

22 Q. Are you aware of any condition in the DES  
23 permit that specifically addresses the  
24 concern regarding navigational issues?

1 A. (Allen) I believe there's a recognition that  
2 we will be contacting the appropriate Coast  
3 Guard, NOAA, and the other navigational  
4 requirements that we have to meet.

5 Q. Well, let me call your attention to Condition  
6 No. 52.

7 MR. IACOPINO: Of which document?

8 MS. LUDTKE: I'm on Exhibit 166, and  
9 it's Page 16.

10 A. (Allen) Yes.

11 BY MS. LUDTKE:

12 Q. And what does that condition require?

13 A. (Allen) Notify the marine patrol and/or the  
14 New Hampshire Department of Safety Marine  
15 Patrol, Division of Ports and Harbors to  
16 determine if placement of mattresses creates  
17 a navigational hazard. Is this what you're  
18 looking for?

19 Q. Correct. Does it say anything about NOAA?

20 A. (Allen) Does not.

21 Q. Say anything about the Coast Guard?

22 A. (Allen) It does not.

23 Q. And you have no understanding of the public  
24 rights regarding public trust property?

1 A. (Allen) I do not.

2 Q. Let me ask you about Condition No. 55 in the  
3 revised conditions.

4 Now, is it your understanding this is  
5 requiring submission of as-builts showing the  
6 location I think of the mattresses, is it  
7 or -- oh, it's, yeah, and location of the  
8 concrete mattresses. So it's submission of  
9 as-builts for concrete mattresses after the  
10 completion of the Project.

11 Do you know whether the actual location  
12 for the concrete mattresses will be  
13 determined before construction?

14 A. (Allen) They will not.

15 Q. So you're not going to know until you start  
16 construction where these mattresses will be  
17 placed.

18 A. (Allen) As we show in the environmental maps,  
19 we have shown their locations based on a  
20 conservative estimate of where we think they  
21 will be needed. Field conditions will  
22 determine where they're actually needed.

23 Q. But you don't know the exact location.

24 A. (Allen) That's correct.

1 Q. And what if when you're doing the  
2 construction you find that you actually need  
3 many more mattresses than you originally  
4 thought you would need?

5 A. (Allen) I don't anticipate that that's going  
6 to be an issue.

7 Q. You're aware that the permit requires a  
8 submission of a new permit if the impact to  
9 jurisdictional areas exceeds, I think,  
10 20 percent; is that correct?

11 A. (Allen) Correct.

12 Q. So if you went over 20 percent beyond the  
13 amount of 8,861, which would not be that many  
14 more mattresses, is it your understanding you  
15 would have to submit a new permit  
16 application?

17 A. (Allen) Our discussion with DES is that their  
18 interest in that is to make sure we have a  
19 vehicle for determining impacts and  
20 estimating -- and renegotiating if we find  
21 that impacts are either different or greater,  
22 or potentially less.

23 Q. So the number 8,800 is a guesstimate, a best  
24 judgment, guesstimate at this point?

1 A. (Allen) It's a conservative number based on  
2 what we know to be areas where we anticipate  
3 difficulty getting full burial depth.

4 Q. Well, wasn't the number 5,300 represented as  
5 a conservative number also?

6 A. (Allen) I would have to go back and read  
7 that.

8 Q. Well, I'll represent to you it was.

9 And from your testimony, and others, it  
10 appears that the issue of the concrete  
11 mattresses is an open-ended issue at this  
12 point. Is that a fair characterization of  
13 it?

14 A. (Allen) I would not say it's "open-ended." I  
15 think the requirements for when we need a  
16 concrete mattress is very well understood.  
17 And we have a good understanding of the depth  
18 that we should be able to achieve. So you  
19 put those two things together, and I think we  
20 have a high level of confidence of where  
21 we're going to need concrete mattresses.

22 Q. Do you regard the permit number as an  
23 open-ended permit number, and really the  
24 permit gives Eversource the right to use

1 concrete mattresses as needed to achieve the  
2 42-inch cover?

3 A. (Allen) I do not.

4 Q. So if, for example, you put out you'  
5 8,800 square feet of concrete mattresses and  
6 you discover you needed twice that amount,  
7 you would expect to put twice that amount in;  
8 isn't that correct?

9 A. (Allen) I think we'd look very hard at that  
10 before we attempted anything like that.

11 Q. Well, what would you do in that situation?

12 A. (Allen) Like I say, I don't anticipate that  
13 situation arising. And I don't think DES  
14 does either. Their condition is very clear  
15 as to what we need to be doing.

16 Q. Well, are you so confident at this point that  
17 you would be willing to say it won't be  
18 20 percent or more -- it won't be 20 percent  
19 greater or more than the 8,861 feet you have  
20 in the amended permit?

21 A. (Pembroke) I think the Construction Panel  
22 could have answered that question had they  
23 been asked that. It was really the  
24 Construction Panel that determined where they

1 felt cover would be insufficient using  
2 natural materials. And, you know, the  
3 impetus is on them to get the Project built  
4 in an efficient way. They certainly would  
5 prefer not to use more concrete mattresses.

6 Q. Thank you. Nothing further.

7 PRESIDING OFFICER WEATHERSBY: Thank  
8 you.

9 Our next questioner will be Ms.  
10 Mackie for the Durham Historic Association.

11 MR. NEEDLEMAN: Madam Chair, before  
12 we start, there is a housekeeping issue.

13 PRESIDING OFFICER WEATHERSBY: Yes.

14 MR. NEEDLEMAN: The estimate that CLF  
15 gave this morning for cross-examination was an  
16 hour and a half. By my count, that was a  
17 little over three hours. As we have fewer and  
18 fewer witnesses to present, and some of them  
19 are traveling from a distance, it gets harder  
20 and harder for us to manage the time and keep  
21 things going. I don't know how to deal with  
22 this, but it's going to become an increased  
23 challenge to keep this --

24 MR. RICHARDSON: May I offer --

1 PRESIDING OFFICER WEATHERSBY:

2 Attorney Richardson.

3 MR. RICHARDSON: I don't think it's a  
4 material change, but we've been looking at the  
5 schedule and we're thinking that we're probably  
6 not going to ask questions of Bob Varney, using  
7 our 30 minutes. And I believe the same is true  
8 of Chalmers. We're just trying to budget our  
9 time and resources. So that's an hour, if that  
10 helps anyone. And rather than sending a  
11 letter, I thought it would be more efficient to  
12 just let the Committee know now.

13 PRESIDING OFFICER WEATHERSBY: Thank  
14 you. It would appreciated if people can do  
15 their utmost to try to stick to their  
16 estimates. Some slippage is fine. I  
17 understand one question leads to another you  
18 hadn't thought of, et cetera. But exceeding  
19 your estimate by a hundred percent means either  
20 your questions or you' estimate were off. So  
21 please take a look at your questions, take a  
22 look at your estimates and try to stick to them  
23 as best you can. And we'll just work with all  
24 parties to get the witnesses into the right

1 time slots.

2 MS. MONROE: If I might just add,  
3 Madam Chair -- Pam, down here.

4 PRESIDING OFFICER WEATHERSBY: Yes.

5 MS. MONROE: People can find me at  
6 any of the breaks. And if you have changes to  
7 you' estimates, just shoot me an e-mail, and I  
8 will update my list accordingly. I appreciate  
9 it.

10 PRESIDING OFFICER WEATHERSBY: We do  
11 have witnesses both for the Applicant and for  
12 intervenors that are traveling quite a  
13 distance, and arrangements have to be made. So  
14 it is an inconvenience to all if the  
15 schedule -- we're not going to be rigid about  
16 it, but if you could adhere to it as much as  
17 possible.

18 So, Ms. Mackie, you get to go next  
19 after hearing all that. Please proceed.

20 CROSS-EXAMINATION

21 BY MS. MACKIE:

22 Q. My name is Janet Mackie, and I represent the  
23 Durham Historic Association. My questions  
24 mostly have to do with the maps, the

1 environmental maps. And I assume that Sarah,  
2 this would be you' area.

3 A. (Allen) Let's see how that goes.

4 Q. My first question is how did you go about  
5 determining the scale that you would use on  
6 the map, which is 1 inch equals 150 feet?

7 A. (Allen) I've been thinking about your  
8 question since you asked it earlier. And  
9 picking the scale is always a challenge in  
10 trying to minimize the number of pages,  
11 maximize the amount of information you can  
12 get on it. In our view, we started with 150.  
13 We passed it by the team. The team agreed to  
14 it. And 150 it's been ever since.

15 Q. Who's on the team?

16 A. (Allen) I mean the Eversource team, including  
17 the engineers, project managers, legal team.

18 Q. Right. The historic resources are depicted  
19 on these maps also. This particular map I  
20 have up on the screen is called an  
21 environmental map. We have a separate set of  
22 maps which are based on these maps called the  
23 stone wall maps. And the information that's  
24 contained on the stone wall maps is not

1 contained on the environmental maps used by  
2 everybody else. And then, again, we also  
3 have the engineering maps.

4 When it comes to building the Project,  
5 will all these maps be consolidated into a  
6 single set or --

7 A. (Allen) They will. We're in the process of  
8 building what we're calling construction maps  
9 that we will put all the critical information  
10 on. A lot of this information will come off,  
11 and we will add on information that is  
12 important to the contractors to know either  
13 for avoidance or treatment areas or various  
14 techniques that are relevant to construction.

15 Q. Now, on these map pages are depictions of  
16 trees and trees to be cleared, the gray ones,  
17 and the existing poles and the new pole  
18 heights. And it looks look this is done on a  
19 scale of 1 inch equals 100 feet.

20 A. (Allen) I cannot answer to the scale. These  
21 were actually developed by the engineers  
22 based on their engineering design and  
23 provided to us. So I would not rely on the  
24 scale, per se, to be consistent and regular.

1 Q. Well, I measured one that said 100 feet, and  
2 it was an inch. So --

3 A. (Allen) It should be close to that, but  
4 probably not exact.

5 Q. Now, all the trees, the black trees, the  
6 permanent trees, all measured exactly 87-1/2  
7 feet tall. Do you know if that's accurate?

8 A. (Allen) I know it's not accurate. They're  
9 intended to be representative.

10 Q. Uh-huh. Okay. On this one map section,  
11 there's an enlarged map. This is a section  
12 of Map 6A of the environmental maps. And  
13 this particular page has a scale of 1 inch  
14 equals 60 feet. Do you know why that was  
15 done differently?

16 A. (Allen) Yes. This is what we call an "inset  
17 map." It's just to address an area where  
18 there's an awful lot of information that we  
19 felt could not be understood at the smaller  
20 scale.

21 Q. This is where the line crosses the Oyster  
22 River.

23 A. (Allen) That's correct.

24 Q. This particular map shows the quarry area

1           above Longmarsh Road. And there's an ellipse  
2           around the entire thing. Do you see what I'm  
3           referring to?

4    A.    (Allen) Yes.

5    Q.    And that indicates it's a sensitive area for  
6           historical stuff above the ground level.  
7           Will this kind of detail be on the final  
8           maps?

9    A.    (Allen) They will not. Well, it depends.  
10           For the contractors, they will be to alert  
11           both the contractors and the monitors that  
12           they're entering a sensitive area. It will  
13           be more specific than what we're showing  
14           here.

15   Q.    Now, the right-of-way is 100 feet wide  
16           through most of it. And with the scale of 1  
17           inch equals 150 feet, that means the width of  
18           the corridor is represented as two thirds of  
19           an inch on these maps.

20   A.    (Allen) Okay.

21   Q.    And I'm wondering, looking at that dotted red  
22           line, for example, right here --

23   A.    (Allen) Yes, the access road.

24   Q.    -- Mr. Bowes, on the second day of the

1 hearing, told us the roads are going to be  
2 16 feet wide --

3 A. (Allen) Right.

4 Q. -- through the easement. And this road's not  
5 drawn to scale. I measured it, and it's less  
6 than a sixteenth of an inch wide. So it  
7 looks like it underrepresents the width of  
8 the road by, I don't know, 50 percent or  
9 something.

10 A. (Allen) That's correct. In the upland,  
11 that's correct. In the wetland, it is  
12 correct. The correct width is shown.

13 Q. And why is there a difference in the road  
14 width between the uplands and the wetlands?

15 A. (Allen) It was mostly for simplification.  
16 Again, we were trying to keep information to  
17 be efficient.

18 Q. Well, it makes it hard for us to gauge the  
19 impact of the roads on the historic resources  
20 if they're not drawn to scale.

21 So what you're saying is the only place  
22 the roads are drawn to scale is in the  
23 wetlands?

24 A. (Allen) The only time the width is correctly

1 shown is in wetlands.

2 Q. Hmm. Well, you were evaluating the  
3 environmental impacts besides the wetlands.  
4 Did you consider the weight of the equipment  
5 that would be used within the easement?

6 A. (Allen) In what capacity?

7 Q. For example, when they're cutting the trees,  
8 there's quite a bit of tree clearing  
9 necessary to open up the whole 100 feet  
10 because the trees have been allowed to grow  
11 for 50 years. And so they're going to need  
12 feller bunchers and different types of heavy  
13 equipment all over the easement to clear the  
14 trees. Did you consider that, the impact of  
15 heavy equipment to clear the trees?

16 A. (Allen) Eversource clears rights-of-way  
17 routinely. They often use low-impact  
18 equipment.

19 WITNESS ALLEN: Kurt, could you talk  
20 a little bit about tree clearing?

21 A. (Nelson) Sure. Are you referring to wetland  
22 areas or the rights-of-way in the upland  
23 area?

24 Q. Whole thing.

1 A. (Nelson) Yeah, as Sarah was alluding to,  
2 generally the various equipment used for  
3 tree-clearing operations may be tracked  
4 equipment. Most likely may be wide,  
5 rubber-tired skidder equipment.

6 With respect to ground pressure, we have  
7 the results from -- if the line of  
8 questioning is with respect to archeological  
9 resources, we have those resources  
10 delineated, and the movement of equipment  
11 through those areas and around those areas is  
12 certainly accounted for.

13 Q. And what about the weight of cement trucks  
14 that weigh 30 tons or other heavy equipment?

15 A. (Nelson) With respect to sensitive,  
16 archeological areas --

17 Q. Right.

18 A. (Nelson) -- is that the question?

19 Q. Right.

20 A. (Nelson) Yeah. Without talking about any  
21 specific instance, yes, I mean, we have  
22 methods in place to protect sensitive  
23 underground archeological locations.

24 Q. For example, in this part, considering that

1 the scale is two thirds, you know, it's two  
2 thirds of an inch of the right-of-way, this  
3 blue business on the bottom is where the  
4 trees will be cut. That's a significant  
5 amount of tree clearing, for example.

6 A. (Nelson) Well, with respect to tree clearing,  
7 keep in mind when you're looking at that area  
8 that is represented inside the confines of  
9 the right-of-way, what you' seeing there is  
10 an aerial view of the tree canopy. So what  
11 you may be seeing is mostly crown and limbs.  
12 And that's my having been on this  
13 right-of-way corridor numerous times. I  
14 don't know it's a fair assessment to say that  
15 this right-of-way is especially overgrown  
16 throughout its entirety. A lot of the  
17 tree-clearing effort that will be required  
18 for this project is simply a limbing  
19 exercise.

20 Q. It's simply a what exercise?

21 A. (Nelson) A limbing exercise.

22 Q. Uh-huh. Did you consider -- I know in the  
23 wetlands they're planning to use a screw  
24 anchor for the guy lines on the poles. Did

1           you consider the impact of the Deadman  
2           anchors that would be used outside the  
3           wetlands and the impact that will have?

4    A.   (Nelson) In upland areas?

5                         WITNESS NELSON: You want to speak to  
6           that, Sarah?

7    A.   (Allen) When you say did we "consider," what  
8           are you thinking about?

9    Q.   Well, I don't know how large they're going to  
10       be, but they're generally big, flat pads of  
11       concrete, the Deadman anchor for the guy  
12       wires.

13   A.   (Allen) Right. And I'm not quite sure what  
14       your question is.

15   Q.   Well, are they going to squash vegetation, or  
16       what's the impact?

17   A.   (Allen) I'm not going to speak to how they're  
18       constructed. But I imagine if they are used,  
19       some excavation would be required, and the  
20       area would be -- it will be a small area.  
21       They would be regraded and receded if need  
22       be.

23   Q.   I'm asking because there are 17 poles in  
24       Durham that will have guy lines and up to 17

1           guy wires on one pole, for example, the  
2           second one in from the bay, which is quite a  
3           few guy lines on a single pole.

4    A.    (Allen) You'd have to ask the contractors if  
5           they're planning on using -- what they're  
6           planning on using.

7    Q.    Well, they say there's going to be 17 of  
8           them. But did you even consider what impact  
9           that would have?

10   A.    (Allen) On the Little Bay -- on the  
11           transition structure on Little Bay, it is  
12           lawn. So if it was disturbed, we would  
13           reseed it. We'd regrade it and reseed it.

14   Q.    So you' assuming the Deadman anchors would be  
15           buried.

16   A.    (Allen) Yes, they would.

17   Q.    All right.

18   A.    (Allen) At least that's my understanding,  
19           let's put it that way.

20   Q.    Okay. This is that same section where the  
21           line crosses the Oyster River. What does  
22           that square, hatched, brown section  
23           represent?

24   A.    (Allen) I think that's a GRANIT layer for a

1 bridge over the Oyster River. It's a  
2 historic resource.

3 Q. Right. The historic resources are hatched  
4 with brown?

5 A. (Allen) Correct.

6 Q. Can you explain to me why only bits and  
7 pieces of the UNH Historic District are  
8 marked that way, where the other two historic  
9 districts are fully filled in?

10 A. (Allen) I cannot explain that. That would be  
11 a better question for the historic and  
12 cultural folks. I can tell you that for this  
13 map, we relied on the GRANIT layer and --

14 Q. Well, where does the data come from for that  
15 GRANIT layer?

16 A. (Allen) I'm not sure. It's the kind of thing  
17 that you can go back and query. But I'm not  
18 sure how frequently it's updated and who  
19 maintains it.

20 Q. Well, the historic district was determined by  
21 Eversource's expert. So it's recent.

22 A. (Allen) So it probably would not have made  
23 its way to UNH GRANIT yet.

24 Q. Well, the other brand new historic district

1 at Durham Point is fully represented on the  
2 maps, so --

3 A. (Allen) I'm sorry. I'm not sure --

4 Q. It's inconsistent, and I'm questioning the  
5 consistency.

6 A. (Allen) Right. I understand that. I just  
7 don't think I have an answer for you.

8 Q. For example, this DHR form, the area form  
9 shows the extent of the UNH historic district  
10 mapped by Eversource's experts. And the thin  
11 bit there is where it crosses the Oyster  
12 River, but then it widens out to include all  
13 of east and west Foss Farm. So it would seem  
14 that that entire area should be hatched, but  
15 it hasn't been.

16 A. (Allen) If you look on the environmental  
17 maps, there's a note that basically  
18 references people looking for more detail on  
19 historic information to this historic report.

20 Q. Well, this is the historic report.

21 A. (Allen) Right.

22 Q. This is from the historic report. That's why  
23 I'm asking --

24 A. (Allen) Oh, maybe I misunderstood your

1 question. Can you reask your question?

2 Q. Yes. This is an example of the other, one of  
3 the other historic districts. The entire  
4 thing is a historic district. Yet, in the  
5 UNH Historic District, only little bits and  
6 pieces are colored in, which is inconsistent.  
7 That's my question. Do you know why they're  
8 missing?

9 A. (Allen) I don't know why they're missing. If  
10 you look, if you see in the lower right  
11 corner, you can just see the beginning of a  
12 reference box.

13 Q. Yes.

14 A. (Allen) If you look at that full reference  
15 box, it says the boundaries of the historic  
16 sites are from GRANIT. For a more precise  
17 description of historic site boundaries, see  
18 the New Hampshire DHR project area form.

19 Q. Which is what I just put up on the overhead.

20 A. (Allen) Right.

21 Q. And I checked with DHR, and they said that  
22 what was up on the overhead is in fact the  
23 area of the historic district.

24 A. (Allen) Exactly.

1 Q. So it hasn't been changed. So I don't know  
2 why the maps aren't correct.

3 A. (Allen) And I'm sorry if I'm not saying this  
4 clearly. We rely on a public historic data  
5 layer for this hatching. That's available  
6 publicly on the GRANIT data base from GIS.  
7 So I cannot answer why that database is not  
8 current.

9 Q. So you' suggesting that Cheryl Widdell would  
10 have the information?

11 A. (Allen) She may have that information. I  
12 suspect a better query would be to the UNH  
13 GIS Center who maintains the GRANIT layer.

14 Q. Right. But they just put up what they're  
15 given. Who supplies the data for the GRANIT  
16 layer?

17 A. (Allen) That I can't answer.

18 Q. Because obviously the areas within the  
19 historic district are subject to protections  
20 under Section 106.

21 A. (Allen) No, I agree. That's a valid point.  
22 And it should be.

23 Q. And the maps missing that coding evidently  
24 won't receive the protection they're required

1 to have, you know, based on you' experts.

2 A. (Allen) I'm less certain of that part. When  
3 you say they "won't receive the protection,"  
4 what do you mean?

5 Q. Well, if there's a stone wall or other  
6 feature that's within the historic district,  
7 it gets protected.

8 A. (Allen) Hmm-hmm.

9 Q. And there are 66 stone walls in Durham; 50 of  
10 them are agreed they need to be protected.  
11 But there are several in this section that  
12 does not have the proper coding that should  
13 be protected, and I'm trying to get at why  
14 there's an exception for the UNH Historic  
15 District that doesn't apply to the other two.

16 A. (Allen) I think that question is better put  
17 to the cultural experts.

18 Q. Thank you.

19 PRESIDING OFFICER WEATHERSBY: Okay.  
20 Next we'll hear from Attorney Brown for the  
21 Durham Residents.

22 CROSS-EXAMINATION

23 BY MS. BROWN:

24 Q. Good afternoon. I'm Marcia Brown, and I

1 represent Donna Heald, a gardener and  
2 intervenor in this matter. And I also am the  
3 spokesperson for the Durham Residents group.  
4 And I don't have very many dispersion model  
5 questions. It's mostly Ms. Allen that I'll  
6 be questioning.

7 So, Ms. Allen, I have put up  
8 Exhibit 148. And let me just enlarge it so  
9 it shows Ms. Heald's property. I don't know  
10 if you're familiar with this map.

11 A. (Allen) I am.

12 Q. Okay. I'd like to draw your attention to  
13 some of the white triangles to the right of  
14 Longmarsh Road. And I'll just put my cursor  
15 on it to highlight which one. And to  
16 confirm, this pole, this is an existing pole  
17 outside of a wetland impact; is that correct?

18 A. (Allen) That's correct.

19 Q. From your -- in your opinion, are there any  
20 environmental reasons why a pole, any pole,  
21 could not be located adjacent or near this  
22 pole?

23 A. (Allen) From an environmental reason?

24 Q. Correct.

1 A. (Allen) I'd say not. But I know there are  
2 many engineering reasons that these  
3 particular pole locations were selected.

4 Q. Just sticking to environmental issues, not  
5 the Construction Panel. But thank you.

6 A. (Allen) Okay.

7 Q. And the same question I have with respect to  
8 this second triangle.

9 MS. BROWN: And for the record, this  
10 is Exhibit 148, Page 18 of 31. It is  
11 electronic Page 19, and I am drawing the  
12 witness's attention to the second white  
13 triangle to the right of Longmarsh Road.

14 BY MS. BROWN:

15 Q. So the same question applies to that  
16 triangle, please.

17 A. (Allen) That one's a little bit closer to the  
18 wetland, so I'd be asking them to stay as far  
19 from the wetland as they can.

20 Q. Thank you.

21 Now I have a new exhibit, because in  
22 preparation I did not see this in the record  
23 already. But I'd like to ask you, Ms. Allen,  
24 if you are familiar with this document.

1 A. (Allen) I have seen this document.

2 Q. Okay. And is this -- do you mind if I pan  
3 through some of the pages? My question is:  
4 Are these depictions of how the timber  
5 matting discussed in the DES permit  
6 conditions, is this illustrative of how they  
7 will be used in the field for this project?

8 WITNESS ALLEN: Do you want to answer  
9 that?

10 A. (Nelson) Yeah, I would say generally, yes.

11 Q. Is it also correct that the timber mats -- go  
12 back to the exhibit, 148. When they are on  
13 Ms. Heald's property, are they expected to be  
14 in place for up to two years?

15 A. (Nelson) I don't believe that's the case. I  
16 don't have the construction sequence well  
17 memorized. But I don't believe that's the  
18 case, that it would be a two-year, continuous  
19 placement of mats there.

20 Q. Well, if I recall from the Construction  
21 Panel, they said -- and I hate to refer back  
22 to the Construction Panel, but I was trying  
23 to corroborate. They had, I thought, said  
24 two years. So I was trying to get a sense

1 from you all with these timber mats how long  
2 they are going to remain in place. So if I  
3 can give you that open-ended question -- and  
4 this only applies to Ms. Heald's property.

5 A. (Nelson) Again, I'm sorry. I can't speak  
6 with specifics about the duration, exact  
7 duration that the mats would be in place  
8 through that area. I wouldn't anticipate  
9 that they would be there for as long as two  
10 years. I know we have -- from my  
11 understanding of the construction schedule, I  
12 believe we have a one-year time frame,  
13 perhaps a little more, that's currently  
14 proposed.

15 Q. Next question is when the timber mats are  
16 down, is there any problem with the homeowner  
17 or the property owner traversing these to get  
18 to the other side of her property, in your  
19 opinion?

20 A. (Nelson) Difficulties not from the utility  
21 standpoint. If the property owner desired to  
22 cross these mats, by all means, they'd be  
23 more than welcome to do so. Again, I'm sure  
24 this was discussed during the Construction

1 Panel. You know, the main interest is  
2 safety. And during active construction  
3 periods, we request that any abutter stay  
4 away from the active construction zone. But  
5 outside of active construction, the property  
6 owner would be more than free to cross over  
7 at will.

8 Q. And is it your understanding, Mr. Nelson,  
9 that active construction is going to be  
10 periodic, that it's not going to be a  
11 continuous, multi-month, everyday event?

12 A. (Nelson) With respect to Ms. Heald's  
13 property, it would be periodic. I think Mr.  
14 Plante addressed this briefly about  
15 anticipated construction time frames.

16 Q. Yeah, so thank you for that corroboration.

17 With respect to the timber mats, is  
18 there any limit to how long they can be  
19 placed?

20 A. (Nelson) From an environmental standpoint?

21 Q. I'm sorry. Let me just rephrase that  
22 question.

23 Is there any outer foot limit to how  
24 long timber mats can be strung together?

1 A. (Nelson) Sorry. I'm not quite understanding.  
2 Outer limit of how long they can be strung  
3 together? I don't know what --

4 Q. I mean, bridge spans have a maximum limit,  
5 50 feet, 300 feet. So I'm trying to get a  
6 sense of is there a functional limit to these  
7 timber mats in how long you can string them  
8 along?

9 A. (Nelson) How long they can span an open area?  
10 Is that the --

11 Q. Perhaps it would be better to show you. I'll  
12 go back to the --

13 A. (Nelson) Sure. Timber mats can be layed  
14 directly on the ground surface. As you see  
15 in some of these photographs, they can span  
16 across a surface water area. The length of  
17 span, I believe the typical lengths of these  
18 are around 16 feet. I can't speak to, you  
19 know, how much loading these would  
20 anticipate. You know, so what your available  
21 span length is, I'm not a hundred percent  
22 sure. But these are certainly representative  
23 of some of the spans that can be achieved  
24 with these mats.

1 Q. Thank you. I think that's sufficient.

2 Now, the Construction Panel had referred  
3 to restoration questions to this panel, so  
4 I'm going to go back to Ms. Heald's property.  
5 And I think the question is to Ms. Allen, but  
6 Mr. Nelson, maybe you as well.

7 When these timber mats are finally  
8 removed after construction, how long will it  
9 take to restore the wetland functions that  
10 you see impacted on this Exhibit 148?

11 A. (Allen) That we see impacted where? Looking  
12 at a specific --

13 Q. Actually, maybe I should back up.

14 In the DES conditions, there were, I  
15 believe, 637,188 square feet of temporary  
16 wetland impacts that the Company had to  
17 restore.

18 So I guess first I should ask a base  
19 line question of are those temporary impacts  
20 on Ms. Heald's property, such that she could  
21 expect restoration?

22 A. (Allen) Those are temporary impacts, yes.

23 Q. Okay. Thank you. And so when restoration  
24 happens, do you know how long it will take

1 before full function is restored?

2 A. (Allen) I know the wetlands on her property.  
3 And the degree of impact is going to vary.  
4 In areas that are very wet, it takes a little  
5 bit longer. But they typically do the  
6 construction and do the timber mat layout in  
7 a way that minimizes the footprint of that.  
8 So it's kind of a counterbalance to the  
9 length of time that it would be there. So it  
10 would be a smaller footprint within that area  
11 that would be substantially impacted, whereas  
12 other portions of it would have fewer  
13 temporary impacts, less significant temporary  
14 impacts.

15 Q. Okay. Understood. So the full extent of  
16 restoration could vary on her property.

17 A. (Allen) Very much so.

18 Q. Okay. Thank you.

19 We understand that there is in the --  
20 sorry. The picture just -- the exhibit just  
21 disappeared. I got it pulled up on my  
22 computer, but I'll just keep going.

23 (Discussion off the record)

24 BY MS. BROWN:

1 Q. With the DES approval and conditions, it had  
2 a condition I believe to monitor the wetland  
3 restoration; is that correct?

4 A. (Allen) Correct.

5 Q. And that restoration is for a full growing  
6 season?

7 A. (Allen) Which condition are you referring to?

8 Q. Pardon me?

9 A. (Allen) Which condition are you referring to?

10 Q. I don't remember the paragraph in the DES  
11 permit conditions, but it's in the Natural  
12 Resource Impact Assessment, the revised one,  
13 which was Exhibit 97. And in there I believe  
14 it talks about -- oh, wait a minute. I'm  
15 sorry. I'm getting confused. I don't have  
16 the citation to the DES condition for the  
17 contractor to monitor the wetland function.

18 A. (Allen) The reason I'm asking is that we have  
19 several types of wetland monitoring that  
20 we're doing, so I want to make sure we're  
21 talking about the correct one.

22 Q. I'm only talking about fresh water, not salt  
23 marsh.

24 A. (Allen) Okay.

1 Q. So with respect to monitoring, it sounds like  
2 it is a general monitoring in the permit.  
3 But can it include specific monitoring? And  
4 the reason I ask that is this is a gardening  
5 business with specific plants. So will that  
6 monitoring -- can that monitoring plan apply  
7 to specific plants on a landowner's property?

8 A. (Nelson) Well, our condition with respect to  
9 monitoring would be primarily focused towards  
10 wetland areas. I know we have the unique  
11 situation on Ms. Heald's property. If there  
12 were specific plants on her property that  
13 were of concern, you know, Eversource could  
14 certainly make accommodations to monitor  
15 those areas to the best of our ability.

16 Q. Yes. And I apologize. I wasn't clear.  
17 Talking about the wetland issues. My  
18 question pertained to the wetland plants. So  
19 that's how I thought it would flow into you'  
20 monitoring, and that was the background of my  
21 question.

22 A. (Nelson) So is it specific native plants  
23 within the wetland on Ms. Heald's property  
24 that are of concern?

1 Q. I feel our roles are reversed. But yes.

2 A. (Nelson) Just for clarity, I'm trying to  
3 understand whether this was nursery,  
4 potential nursery stock that Ms. Heald is  
5 culturing or if we're referring to native  
6 vegetation that happens to be in the  
7 right-of-way corridor.

8 Q. Okay. To further elaborate on that  
9 clarification, some of the plant stock is  
10 native, and it is wetland species. So am I  
11 correct, then, that Eversource could be  
12 amenable to extending a monitoring plan to  
13 cover those plants?

14 A. (Nelson) Correct. I think what could be done  
15 is a pre-construction survey of areas that  
16 would be impacted by construction and then  
17 sort of a comparison post-construction.

18 Q. Okay. Question about there was a condition  
19 in the restoration plan that rye grass and  
20 other seeded mix could be substituted with  
21 different -- with other seedlings or other  
22 plant stock on a specific property. And I  
23 just want that clarification, that that is  
24 something that could be done on Ms. Heald's

1 property.

2 A. (Nelson) Yeah, I certainly believe we can  
3 make certain accommodations for Ms. Heald's  
4 property.

5 Q. With respect to chemicals, if there are any  
6 chemicals that are on the property as a  
7 result of the construction project, is there  
8 any assurance that Ms. Heald can have that  
9 the chemicals are either removed or have a  
10 baseline that there are no chemicals that  
11 were accidentally leaked onto the property?

12 A. (Nelson) Could you be more specific with  
13 respect to chemicals? There's no herbicide  
14 usage proposed as part of this project.  
15 There's no pesticide usage proposed as part  
16 of this project. With respect to chemicals,  
17 you know, this is going to be typical  
18 transmission line right-of-way construction,  
19 and the materials associated and equipment  
20 associated with that type of construction.  
21 So, chemicals, typically you're talking about  
22 petroleum fuels and that sort of thing.  
23 There is no -- as part of construction Best  
24 Management Practices, there's certainly no

1           desire or, you know, certainly not  
2           anticipated that chemicals would be spilled  
3           on anyone's property. That being said, in  
4           the event that there was an inadvertent spill  
5           event -- for example, a fuel line leak or a  
6           hydraulic line leak -- there are plans in  
7           place to deal with those sorts of events.

8    Q.    Thank you. Now, with respect to the  
9           restoration that we're seeking for  
10          Ms. Heald's property in using specific plants  
11          rather than rye grass, seed mix, et cetera,  
12          does Eversource, or you personally in you'  
13          expertise or experience, Ms. Allen,  
14          Mr. Nelson, have experience with this type of  
15          specific restoration?

16   A.    (Allen) And I'm going to ask you to specify  
17          what that "specific restoration" is.

18   Q.    Restoration that is not just the general rye  
19          grass seed mix, that's not just the generic  
20          used native plants. But has Eversource, or  
21          have you, been involved in other projects  
22          involving restoration that has used specific  
23          plants specific to a landowner's property?

24   A.    (Allen) I've certainly done a number of

1 restorations where specific species have been  
2 used or, as you say, seed mixes have been  
3 used to achieve either a particular community  
4 or some other design component.

5 A. (Nelson) I've also had experience with  
6 plantings and placement of seed in  
7 right-of-way areas as well. We've done -- in  
8 a former role, I was a transmission arborist  
9 and oftentimes worked with property owners to  
10 put together plantings in areas where we  
11 removed non-compliant vegetation. And  
12 certain applications where you're talking  
13 about a section of right-of-way that is  
14 covered with native vegetation, we've  
15 endeavored to put native-type plants back in  
16 those areas.

17 Q. Thank you for that response.

18 Ms. Pembroke, I have some questions for  
19 you. Now, Ms. Pembroke, the Construction  
20 Panel had explained that this visual  
21 assessment, that Eversource had developed the  
22 specifications for this visual simulation.  
23 So I'd like to follow up on this. And one of  
24 the specifications in here --

1                   PRESIDING OFFICER WEATHERSBY: I'm  
2                   going to ask you to pause for a minute. We  
3                   don't have it on the screen. Maybe you can  
4                   tell us the exhibit number and we can pull it  
5                   up on ours while Dawn works on --

6                   MS. BROWN: I'm referring to  
7                   Exhibit 186, and I'm on Page 4 of that  
8                   document, for the record.

9 BY MS. BROWN:

10 Q. Can you see it on you' monitor?

11 A. (Pembroke) I can.

12 Q. With respect to the base photograph, who at  
13 Eversource determined or decided to use this  
14 base photograph on this day?

15 A. (Pembroke) I have no idea. I wasn't involved  
16 in this simulation.

17 Q. Okay. Does anyone else on this Environmental  
18 Panel know?

19 A. (Allen) This was done by LandWorks, the  
20 visual assessment team.

21 Q. So is it that this particular specification,  
22 the selection of this base photograph, was  
23 not something that Eversource determined? Is  
24 that correct?

1 A. (Allen) I think you best ask LandWorks how  
2 that determination was made. It was not our  
3 environmental decision.

4 Q. Okay. That's the answer I was looking for,  
5 is if -- because thinking from the  
6 Construction Panel, that Eversource had a  
7 hand in selecting this, I wanted to find out  
8 if this particular specification -- and am I  
9 correct, Ms. Allen, you just said Eversource  
10 was not involved in the selection of this  
11 base photograph?

12 A. (Allen) No, I said the environmental team was  
13 not involved. I'm sure Eversource was  
14 involved at some point.

15 Q. Okay. Thank you for that clarification.

16 Ms. Pembroke, I have some follow-up  
17 questions regarding the barge work. I  
18 understand from the Construction Panel that  
19 the barge needs to stay afloat in order to do  
20 its work and not touch any of the intertidal  
21 area. Is that your understanding?

22 A. (Pembroke) That's my understanding.

23 Q. Okay. And is that so that there's no harm  
24 to -- or is that to mitigate harm to the

1 intertidal zone?

2 A. (Pembroke) I believe it has to do with what  
3 the contractor is comfortable with more than  
4 to specifically avoid impact to the  
5 substrate.

6 Q. Okay. All right. But it's the Environmental  
7 Panel's concern on any damage to the  
8 intertidal zone; is that correct?

9 A. (Pembroke) That's correct.

10 Q. Okay. And so if a barge touches the  
11 intertidal zone, that would be something that  
12 you would have to look at; is that correct?

13 A. (Pembroke) Yes. And our estimates for the  
14 impacts in those areas assumed that the barge  
15 sat on the substrate.

16 Q. Can you -- I'm sorry. I didn't hear that.

17 A. (Pembroke) When we evaluated impacts to the  
18 intertidal shallow subtidal zone on the tidal  
19 flats, we assumed that the barge actually did  
20 sit on the substrate. So we feel like we  
21 have identified those potential impacts and  
22 addressed them.

23 Q. Okay. Can you remind me which report that  
24 was in? Was that in the Natural Resources

1 Assessment?

2 A. (Pembroke) Well, it would be in the impact  
3 report.

4 Q. Thank you.

5 Now, the dispersion modeling -- or the  
6 dispersion model report had based a tidal  
7 range on 2 to 4 meters. Was that actually --  
8 let me just rephrase this.

9 Did the 2 to 4-meter reference to the  
10 tidal height in the dispersion model factor  
11 in to how many days -- or how many hours a  
12 day the barge could work out in the bay?

13 A. (Swanson) Could you point me to where in the  
14 report? Because it could have been a general  
15 description of what happened in the Great Bay  
16 estuary system, or more specifically to the  
17 neap and spring tides that we used in the  
18 model.

19 Q. Okay. That was Exhibit 104, and Page 2 of  
20 98, if you need to take a look at that. My  
21 question is just more general.

22 A. (Swanson) Page 2 as listed or the PDF?

23 Q. Let me find that. It's electronic.

24 A. (Pembroke) Trying to make sure we're in the

1 correct report. Is it the revised model  
2 report or the original model report?

3 Q. Revised, Exhibit 104.

4 A. (Pembroke) I'm sorry. I can't keep the  
5 exhibit numbers straight, so...

6 Q. That's okay. So do you see that reference  
7 now?

8 A. (Swanson) I see it on Page i.

9 Q. Roman little i, yes.

10 A. (Swanson) Okay. Yes. And that is the tides  
11 in the estuary system, not just Little Bay,  
12 vary between 2 and 4 meters.

13 Q. So the question was did that tide height  
14 factor in to the hours of the barge's ability  
15 to work on a given day, not grounding,  
16 basically?

17 A. (Swanson) No. That was a general description  
18 of the system and not having to do with the  
19 Little Bay tidal range.

20 Q. Okay. All right. So would you agree with me  
21 that tidal height in the estuary is more  
22 about -- is about 6 to 7 feet, in that range,  
23 on a given month?

24 A. (Swanson) Let me take a look.

1 (Witness reviews document.)

2 A. (Swanson) Assuming a tidal range of about 2.3  
3 meters, which would be roughly 2.3 yards,  
4 which will be roughly 8 feet, 7 feet, very  
5 roughly.

6 Q. Thank you for that.

7 Now, there was reference -- and forgive  
8 me, I don't remember the page citation --  
9 that the work would be done as close to slack  
10 high tide as possible. Do you remember that?

11 A. (Pembroke) Yes.

12 Q. And how long is that period of time?

13 A. (Pembroke) It's probably about two hours.  
14 One to two hours. It would have to start on  
15 the western flat at around slack high tide in  
16 order for the barge to be able to start  
17 across the bay.

18 Q. Okay. Now I want to turn to timing, because  
19 this equipment is going to be in front of a  
20 riparian owner property, how long will it  
21 take -- actually, as the tide changes, how  
22 much time is needed to move the barge to  
23 deeper water to keep it afloat?

24 A. (Pembroke) Well, I think it depends on the

1           tide, whether it's a spring tide or a neap  
2           tide, or one in between -- spring tide being  
3           a period when the tidal range is the greatest  
4           and neap tide is when the tidal range is the  
5           least. But the barge will be able to -- once  
6           it starts, it will remain in deep enough  
7           water to run the jet plow in any of the cases  
8           that were modeled, in terms of the rate of  
9           advancement. So we looked at three different  
10          speeds at which the jet plow could be drawn  
11          across the estuary. We're estimating that it  
12          will be between 7 and 13 hours,  
13          approximately, for the jet plow to get across  
14          the bay.

15    Q.    Yes, but this was more specific. And I guess  
16           the difficulty is this is a barge that's  
17           going to be in continuous motion rather than  
18           stopping and starting; is that right?

19    A.    (Pembroke) It will stop intermittently  
20           because it gets propelled by pulling against  
21           anchors. So the anchors have to be reset.  
22           So the anchors off the bow will be set as far  
23           in front of the barge as possible, and then  
24           it essentially pulls against those to propel

1 forward. Once they've caught up with the  
2 anchors, they have to stop and reset.

3 Q. And when you say "anchors," are these  
4 traditional anchors, or are these pilings  
5 that are lowered?

6 A. (Pembroke) Oh, they're traditional anchors,  
7 giant Danforth-type anchors.

8 Q. And how many anchors are deployed?

9 A. (Pembroke) The Construction Panel has  
10 indicated that they would have four, two  
11 forward and two aft.

12 Q. And so those are going to be disturbing the  
13 bottom?

14 A. (Pembroke) Yes.

15 Q. Okay. Is there any restoration plan for that  
16 disturbed intertidal area, the disturbance  
17 caused by the anchors?

18 A. (Pembroke) Well, the anchors won't be in the  
19 intertidal area, to the best of my knowledge.  
20 The intertidal area on the western shore  
21 actually doesn't go out as far as the  
22 topographic map implies it does. It's  
23 extremely shallow subtidal. Well, I mean,  
24 this is really Construction Panel to describe

1           this. But they're not able to set the jet  
2           plow all the way to the upper intertidal zone  
3           because of the depth requirements of the  
4           barge.

5   Q.    So with respect to the lower, I guess the  
6           deeper part of the intertidal area, the barge  
7           is going to be working in that area then;  
8           correct? Isn't that what you just said?

9   A.    (Pembroke) The jet plow will be. The barge  
10          will actually be located as close to the  
11          channel as possible and not really located on  
12          top of the shallow subtidal zone.

13   Q.    Just one more question on this. So with  
14          respect to the disturbance caused by anchors  
15          in the deeper intertidal area, you're saying  
16          that that is not going to occur because the  
17          anchors just aren't going to be there because  
18          the barge is so far into the channel?

19   A.    (Pembroke) Well, it's hard for us to know  
20          exactly where the anchors will be placed.  
21          The construction crew can't tell us. They  
22          have to determine when they're there. So  
23          there probably will be some anchor imprints,  
24          essentially, in the shallow subtidal area on

1 the western tidal flat. As is typically the  
2 case for this type of construction project,  
3 it's usually left to natural processes for  
4 the sediment to refill any impressions made  
5 by the anchors.

6 Q. And is that usual, what is done with this  
7 project, this specific project?

8 A. (Pembroke) That's been the intent.

9 Q. Okay. Thank you.

10 I just want to refresh on the DES  
11 approval. Condition 36 specified no time of  
12 year for the project, but what is the  
13 expected time of year for the project?

14 A. (Pembroke) For the jet plow work?

15 Q. For the jet plow.

16 A. (Pembroke) Yeah, they're looking at  
17 September, October.

18 Q. And a question about the sediment dispersion  
19 model. Did it take into consideration the  
20 seasonal fluctuation of the currents in the  
21 bay?

22 A. (Swanson) Not directly because it used the  
23 tide. But we ran the tide for the period of  
24 the September-October period. As you know,

1 the tide varies from one tide cycle to the  
2 next. But over a longer period, it kind of  
3 averages out to the typical tide. But we did  
4 look at the time -- we chose a spring tide  
5 where the tide range was the largest, and  
6 then a neap tide where it was relatively  
7 small.

8 Q. Yeah, I understand that it took into  
9 consideration the tides. What about current  
10 flows from the river?

11 A. (Swanson) Current flows from the river, yes.  
12 We used the USGS data for a 10-year period  
13 during the September-October time frame and  
14 looked at the flow rates for that  
15 September-October period over the decade.

16 Q. And does non-saline river water usually  
17 settle to the bottom, and the tide salt water  
18 would be on the top?

19 A. (Swan) No, it's actually the reverse, where  
20 the salt water is heavier.

21 Q. Thank you.

22 A. (Swan) The issue for late summer/early fall  
23 is the river flows are pretty much at their  
24 lowest level. So the amount of fresh water

1 coming into the system is minimal, as minimal  
2 as you would see it over the course of the  
3 year.

4 Q. Thank you. I have a question about the  
5 concrete mattresses.

6 When the ice -- actually, I'll back up.

7 Are you familiar with ice flows  
8 occurring in Little Bay?

9 A. (Pembroke) I understand that they do.

10 Q. And so when the concrete mattresses perhaps  
11 are shifted by the ice, is there any plan to  
12 restore the location of the concrete  
13 mattresses?

14 A. Well, it's my understanding from the  
15 construction experts that they selected the  
16 9-inch-thick concrete mattresses to avoid the  
17 likelihood of their being shifted by ice or  
18 other forces.

19 Q. So the Environmental Panel is not going to  
20 have been any involvement because of the  
21 Construction Panel concluding that these  
22 mattresses will not move?

23 A. (Pembroke) We have not addressed the need for  
24 mitigation in that event because it's our

1 understanding that the likelihood of it  
2 happening is so low.

3 Q. I think that's it for my questions. Thank  
4 you very much.

5 A. (Pembroke) Thank you.

6 PRESIDING OFFICER WEATHERSBY: Let's  
7 take a 15-minute break, be back at quarter of  
8 four, at which time we will have Attorney  
9 Richardson up next for the Crowley-Joyce  
10 Revocable Trust. Thank you.

11 (Recess was taken at 3:32 p.m.  
12 and the hearing resumed at 3:49 p.m.)

13 PRESIDING OFFICER WEATHERSBY: Okay.  
14 Back on the record. Attorney Richardson, you  
15 may proceed.

16 MR. RICHARDSON: Thank you, Madam  
17 Chair.

18 CROSS-EXAMINATION

19 BY MR. RICHARDSON:

20 Q. Good afternoon.

21 A. (Panel Members) Good afternoon.

22 Q. Justin Richardson with Upton Hatfield, here  
23 for Mark Joyce and the Crowley-Joyce Trust.

24 Which of the panel members were involved

1 in the preparation of the wetlands  
2 application? And I believe that's  
3 Applicant's Exhibit 32.

4 A. (Allen) I probably am the lead person for  
5 that.

6 Q. Okay. And do you have experience in  
7 permitting shoreline projects and docking  
8 structures, structures including like  
9 Eversource has proposed, or is this something  
10 that's new for you?

11 A. (Allen) I've done some shoreline permitting,  
12 yes.

13 Q. Okay. Let me -- I want to look at PDF Page  
14 181 of Applicant's Exhibit 32. And I'll pull  
15 that up for you so you can see it if you  
16 don't have that in front of you.

17 Do you see this? You recognize this as  
18 part of the Application that was originally  
19 submitted; right?

20 A. (Allen) Yes, I do.

21 Q. And I read here, and it says, "Per  
22 Env-Wt501.01(c), a butter notification is not  
23 required for projects in utility ROWs" --  
24 which is rights-of-way -- therefore, a butter

1 notification has not been completed for the  
2 portions of the Project located in existing  
3 and/or proposed utility ROW areas." And  
4 that's the position that Eversource took  
5 before DES; right?

6 A. (Allen) That's correct.

7 Q. And "abutter notification," that refers to,  
8 in the wetlands process, where you'd  
9 typically be required to provide, I believe,  
10 a copy of an application to the abutters, not  
11 just like a one-page notice.

12 A. (Allen) It's actually a notice that the  
13 Application has being filed.

14 Q. Okay. So it's a piece of paper that  
15 describes impacts. And it goes by certified  
16 mail with receipts to all the abutters?

17 A. (Allen) Correct.

18 Q. And that was not done in this case.

19 A. (Allen) That's correct.

20 Q. Okay. And it's also my understanding that  
21 DES may have accepted this interpretation and  
22 didn't provide notice to abutters as well; is  
23 that right?

24 A. (Allen) I am -- it would be unusual for DES

1 to provide notice. And, yes, we discussed it  
2 with them before we submitted this  
3 application.

4 Q. Have you been involved in projects where DES  
5 has issued notices before?

6 A. (Allen) Yes.

7 Q. Okay.

8 A. (Allen) I'm sorry. Just to be clear, when  
9 you say "DES has issued notice," that means  
10 that I have submitted permit applications  
11 that required abutter notifications. The  
12 Applicant usually does the notification.

13 Q. Right, right. Thank you for that  
14 clarification. My question was, obviously,  
15 whether DES issued notice, not the Applicant,  
16 not Eversource, but DES. And I believe you  
17 said they didn't and Eversource didn't. So  
18 is it fair to say that no one issued a  
19 written notice of the Application that went  
20 to my clients, Mark Joyce and Karen Crowley?

21 A. (Allen) I'm not aware that one was provided.

22 Q. Are any of the panel members aware of such a  
23 notice being given?

24 A. (Pembroke) I wasn't involved in that.

1 Q. Let me show you some correspondence that my  
2 client did get from Eversource. And why  
3 don't we -- I'll give you a copy. I'll put  
4 it up on the screen and give it to everyone  
5 and mark that as an exhibit. Excuse me. I  
6 thought I had it right in front of me. Oh,  
7 here it is.

8 So I want to turn your attention to my  
9 client's response of July 11th. And let me  
10 hand out a copy and give it to Applicant's  
11 counsel. And I'll make it available as well.

12 MS. MONROE: So this would be, based  
13 on my records, Attorney Richardson, JCT  
14 Exhibit 18?

15 MR. RICHARDSON: That is correct.  
16 Thank you.

17 (The document, as described, was  
18 herewith marked as JCT Exhibit 18  
19 for identification.)

20 BY MR. RICHARDSON:

21 Q. So what struck me about this is you can see  
22 this is 7/11/2018, which is just after, I  
23 believe, a technical session that was held  
24 this summer. And it says here, you see my

1 client saying in reference to the concrete  
2 mattresses, he says, "This is all new and  
3 very concerning information to us. The  
4 original explanation spoke to underground jet  
5 plow path up to the shore and then  
6 underground through our neighborhood.  
7 Everything seems to be very different in the  
8 proposal." And then he says, "We'd  
9 appreciate some accurate drawings of your  
10 proposal. Thank you."

11 Now, just for context -- go back. Did I  
12 read that correctly?

13 A. (Allen) I think so.

14 Q. Were you at that July 11th technical session?

15 A. (Allen) I'm quite certain I was. I think it  
16 was July 10th.

17 Q. Okay. So let's go back a page. And you'll  
18 see in the middle of Page 2 of what's been  
19 marked as JCT Exhibit 18, it looks like the  
20 Eversource personnel, Lauren M. Cote --  
21 that's an Eversource employee; is that right?

22 A. (Allen) Correct.

23 Q. Okay. Looks like she's providing a visual  
24 simulation of the concrete mattresses, but

1           then says this is the Durham shore. But it  
2           gives an idea of what it would look like. "I  
3           will send in the next e-mail. These are  
4           large files."

5                        So as late as July of this year,  
6           Eversource wasn't enable to give my client a  
7           picture or a simulation of what the concrete  
8           mattresses would look like in front of their  
9           properties. Does that sound like -- I guess,  
10          I mean, isn't that a problem, in terms of  
11          giving landowners notice of what the impacts  
12          are going to be on their property?

13   A.    (Allen) I'm sorry. I haven't been involved  
14          in negotiations with Mr. Crowley.

15   Q.    Oh, okay. But you prepared the wetlands  
16          application; right?

17   A.    (Allen) Yes.

18   Q.    Okay. So here's -- I mean, did you prepare  
19          that Abutter Notification section that I  
20          showed before?

21   A.    (Allen) I did.

22   Q.    Okay. What I read here is a representation  
23          where it says in the second paragraph on --  
24          and this is Applicant's Exhibit 32, PDF Page

1           181, it says, "It should be noted that the  
2           Project has conducted and will continue to  
3           conduct proactive outreach actions throughout  
4           Project permitting and construction, and  
5           public hearings will take place in accordance  
6           with the NH SEC rules."

7                        So, I mean, that statement seems to  
8           suggest there's been a very active campaign  
9           to provide information; yet, as late as this  
10          year, my client's still unable to get a  
11          picture or simulation of what the mattresses  
12          would be and is also claiming that Eversource  
13          represented to him that it was all  
14          underground. Is that consistent with your  
15          description here?

16                       MR. NEEDLEMAN: Objection. Madam  
17          Chair, Mr. Bowes was specifically disclosed as  
18          the person that dealt with outreach on this  
19          matter. That's what his testimony deals with.  
20          His Exhibit 140, Attachment A, has a very  
21          detailed summary of the Project outreach. And  
22          I'm quite certain if he had been asked these  
23          questions, he could have addressed them,  
24          especially since the email we're seeing from

1 Ms. Cote is someone who's part of the outreach  
2 team.

3 MR. RICHARDSON: But my question is  
4 whether the statement to DES that this witness  
5 prepared is consistent with this e-mail here.  
6 And I'll be frank. I meant to ask this from  
7 Mr. Bowes and neglected to do so. So this is  
8 my only chance.

9 PRESIDING OFFICER WEATHERSBY: So the  
10 objection is sustained. Perhaps you can  
11 rephrase your question to what you just stated,  
12 which is --

13 MR. RICHARDSON: Thank you. I'd be  
14 happy to do so.

15 BY MR. RICHARDSON:

16 Q. So is a landowner being able to or unable,  
17 excuse me, to get a picture of or simulation  
18 of what the concrete mattresses are going to  
19 look like in front of their property -- and  
20 in fact, they claim they haven't even heard  
21 of it -- that that doesn't sound like what  
22 you were describing, as "proactive outreach  
23 action throughout the project permitting."  
24 Was that what you envisioned happening when

1           you wrote this to DES?

2    A.    (Allen) I can't speak to the specifics.  I do  
3           know that Eversource, from what I've seen,  
4           has had a very aggressive outreach program.  
5           And I do know that this Application has been  
6           public for at least three years now, since  
7           public hearings began in Newington.  And all  
8           information is available on the web site.

9    Q.    But it looks to me like, at least according  
10           to what my client wrote to Eversource, that  
11           they were told consistently up to this point  
12           everything was going to be underground.  And  
13           they only learned of this until July 10 when  
14           the technical session was held.

15   A.    (Allen) Everything is underground in the  
16           vicinity of this property.

17   Q.    Except for the concrete mattresses; right?

18   A.    (Allen) The cable is entirely underground.

19   Q.    Okay.  And was my client supposed to draw  
20           that type of distinction?  I mean, if an  
21           Eversource employee came up to them and said,  
22           Oh, it's all going to be underground, it's  
23           all going to be on your neighbor's property,  
24           they would expect that would mean

1 "underground" means you won't see it. Isn't  
2 that a reasonable assumption to make?

3 A. (Allen) I'm sorry. I can't speak to what was  
4 said to Mr. Crowley.

5 Q. Okay. Thank you. I'll move on then.

6 Let me just pull up, if I can -- and I  
7 apologize. My photos that I had for the  
8 witnesses on Tuesday, I believe -- or excuse  
9 me -- on Monday disappeared, so I only have  
10 my copy that I'll put on the Elmo. But this  
11 is JCT Exhibit 7. And I'll assume that  
12 you're aware that my clients have intervened  
13 and you recognize this. So what do we see  
14 here?

15 A. (Allen) This looks like the intertidal flat  
16 below Mr. Crowley and Ms. Beswick's house.

17 Q. Okay. And in the -- you can see that rock  
18 outcropping that's shown in some of the  
19 environmental maps. And that's kind of  
20 near -- that's the general distance out where  
21 we'd see some of these concrete mattresses  
22 being placed; right?

23 A. (Allen) They will be further to the left of  
24 that image.

1 Q. Right. Further. Exactly. But... so this is  
2 JCT 16 that I'm showing you. And you can see  
3 the location relative to where the barge  
4 layout is, and then you can see the concrete  
5 mattresses. And it looks like they're down  
6 all in this area where the purple is marked  
7 here; right?

8 A. (Allen) Yes.

9 Q. And those rocks that we saw a second ago,  
10 those would be somewhere over probably in  
11 that area where my finger is right now;  
12 right?

13 A. (Allen) That's about right, yes.

14 Q. All right. Let me pull that up. And if  
15 everyone can just follow like where the dock  
16 is, where the peninsula is. So I'll bring  
17 that picture back up.

18 (Pause in proceedings)

19 So it looks to me like that route --  
20 like that rock outcropping is actually out a  
21 little bit further than the end of the  
22 peninsula, and the concrete mattresses are  
23 actually nearer to shore than where that is.

24 A. (Allen) The concrete mattresses are coming

1 from approximately the end of that rock  
2 outcrop and heading partway up the shore,  
3 yes.

4 Q. Closer to the shoreline from where --

5 A. (Allen) Coming into the shoreline, yes.

6 Q. I mean, this tidal zone can be pretty exposed  
7 when the low tide's out. It's flat. It's  
8 not covered by water. I think this is --  
9 it's probably the mud flats are visible for  
10 about half of the tide cycle. Would that  
11 sound about right to you?

12 A. (Allen) I think that's an overestimate. But  
13 I understand you' point that it's quite  
14 shallow here.

15 Q. Hmm-hmm. And so if half is an  
16 overestimation, how would you estimate, you  
17 know, when the mud flats would be visible,  
18 like we see here?

19 A. (Allen) I would have said that was  
20 approaching mean low water.

21 Q. Okay. Now let's go back to -- I want to pull  
22 out Applicant's Exhibit 166, Page 21 of 25.  
23 That's on the top. That's the DES final  
24 decision. So you'll probably get to that

1 before I can.

2 (Pause in proceedings)

3 Q. And so let's start with Finding No. 24, which  
4 is down at the bottom. Have you got it  
5 there? I've got it on the screen for you  
6 here.

7 A. (Allen) you' in the back in the findings?

8 Q. Yes. I'm sorry. It's up on top, says Page  
9 21 of 25.

10 A. (Allen) I've got it.

11 Q. So, Finding 501.01(c), "Abutter notification  
12 is not required for projects within ROWs."  
13 Reason I say that is it looks to me like DES  
14 adopted exactly what you wrote, that citation  
15 to 501.01(c); right?

16 A. (Allen) I would say so, yes.

17 Q. And are you aware that that's not actually  
18 the right rule; it's 501.01(e) that should be  
19 referenced?

20 A. (Allen) I did not cross-reference it.

21 Q. But DES has copied exactly what was written  
22 in you' application. It essentially relied  
23 on what your office and Eversource submitted.

24 A. (Allen) I can't speak to that. That's not

1 uncommon. They're busy people.

2 Q. Okay. Well, the reason I want to bring this  
3 up is -- and let me bring that rule to you  
4 because I think there's a nuance to it that  
5 we should go over.

6 (Document handed to witness.)

7 Q. So, down at the bottom -- I just copied the  
8 DES rules for you. And I believe the correct  
9 rule as I noted is in the WT 501.01(e). And  
10 what it says is, "The notification required  
11 by RSA 482-A:3,I(d) shall not be required for  
12 minimum impact forestry, minimum impact  
13 agricultural projects in utility  
14 rights-of-way or public highway  
15 construction." And that was probably the  
16 rule that you meant to refer to and the DES  
17 likely meant to refer to. But you both got  
18 the rule slightly wrong.

19 A. (Allen) By referencing C rather than E?

20 Q. Correct. Yes.

21 A. (Allen) Yes.

22 Q. So, 482-A:3, that's the requirement that the  
23 notice gets sent to all abutters by the  
24 Applicant prior to filing; right?

1 A. (Allen) I'd have to -- I'd have to look it up  
2 to confirm, but I trust you with this.

3 Q. But subject to check, that's what you would  
4 normally do, except in cases under this rule  
5 where it's not required for utility  
6 right-of-way projects. Does that sound  
7 right?

8 A. (Allen) That does sound right.

9 Q. Okay. So this is not a minimum impact or  
10 forestry project. This project was a major  
11 project because it was in the tidal flats,  
12 and for a variety of reasons; right?

13 A. (Allen) It was.

14 Q. Okay. So I want to flip this over. And I'm  
15 going to show you the citation to 482-A:3,  
16 the I(d). But then I want to show you two  
17 other provisions at the same time, and we can  
18 go over them. Let me zoom out so I can get  
19 it for you. Okay. I think I've got that  
20 there now.

21 And you see there the reference to  
22 482-A:3, I(d). "At the time the Applicant  
23 files the Application with the Department,  
24 the Applicant shall provide written notice of

1 the Project to," and then it says "all  
2 abutters." So you're not subject to that  
3 requirement.

4 But there is another law, and it's RSA  
5 482:8 that's below, as well as 9, which I  
6 quoted for you. And it says in 8, "The  
7 Department shall provide reasonable  
8 opportunity for public comment on proposals."  
9 And then it says where I've underlined there,  
10 "for projects with significant impact on the  
11 resources protected by this chapter or of  
12 substantial public interest." And that  
13 phrase about the "significant impact on the  
14 resources," that's the language in the rules  
15 that refers to what major projects are;  
16 right?

17 A. (Allen) I'm not quite sure where you're going  
18 with this, but I'll say yes for now.

19 Q. Okay. I mean, subject to check, that's  
20 the -- I don't know if I have that rule in  
21 front of me, but that's my reading of it.

22 But then below that, under A:9, so when  
23 we're dealing with major projects, the  
24 statute says, "Like notice shall be mailed to

1 all known abutting landowners." And I  
2 believe you said before that the Department  
3 did not provide notice to abutting property  
4 owners, and neither did the Applicant in this  
5 case.

6 A. (Allen) I can speak definitively for the  
7 Applicant.

8 Q. And none of the panel members were aware of  
9 whether or not the DES ever gave notice to  
10 Mark Joyce.

11 A. (Pembroke) I have no knowledge of that.

12 A. (Nelson) No.

13 Q. Now, the SEC held joint hearings back on  
14 August 31st, 2016, in Newington. Were  
15 members of this panel involved in those  
16 hearings?

17 A. (Allen) I was.

18 Q. Okay. Let me pull up the notice for that  
19 hearing.

20 (Pause in proceedings)

21 Q. So you see here there's an August 5th notice  
22 for the hearing in Newington that was held on  
23 August 31st, 2016. And that was the hearing  
24 you referred to.

1           Were you also at the Durham hearing that  
2           took place on September 1st?

3   A.   (Allen) Yes.

4   Q.   Okay. And when you look at this, it just  
5           references it's an SEC hearing. And I don't  
6           believe that any members of the DES Wetlands  
7           Bureau came. Obviously, Bob Scott was on the  
8           committee then. What's your recollection?

9   A.   (Allen) Oh, I'm not sure. I would have to  
10          look at the sign-in list. There were quite a  
11          few people there. I'm not sure about that.

12   Q.   So who has the sign-in list?

13   A.   (Allen) I don't know the answer to that.

14   Q.   So DES maintains a sign-in list, is that  
15          right, of the hearings it holds?

16   A.   (Allen) I believe for the public hearings, I  
17          believe that there's a sign-in list for  
18          people coming in.

19   Q.   And when you look at the first page of this  
20          Order of Notice, it actually only references  
21          an SEC hearing. But what I want to do is I  
22          want to flip it over, because accompanying  
23          this order there actually was a public notice  
24          to be posted. I don't know if I made this

1           too small for anyone to read. And this is  
2           part --

3    A.    (Allen) Can you focus that a little bit,  
4           please?

5    Q.    Sorry?

6    A.    (Allen) Could you focus that a little bit?

7    Q.    Sure.

8    A.    (Allen) Thank you.

9    Q.    So I'm looking at the third paragraph.  
10           That's the one I wanted to focus on. And  
11           what it says in the middle of that third  
12           paragraph is, "The public hearing is a joint  
13           hearing with representatives of the state  
14           agencies that have permitting or other  
15           regulatory authority over the subject matter  
16           and shall be in lieu of all hearings  
17           otherwise required by any of the other  
18           agencies." And the reason I ask you about  
19           that, and I want to ask you about that, is I  
20           reviewed the transcripts for both hearings,  
21           and I don't see that any representatives of  
22           the DES shoreland or wetlands program  
23           attended those hearings. And you've just  
24           told me today there's apparently a sign-in

1 list, which I don't think is part of this  
2 record in this proceeding.

3 So is it -- do any of the panel members  
4 recall the DES shoreline permit program  
5 holding a joint hearing with the SEC?

6 A. (Allen) No, it wouldn't have been -- well, I  
7 don't recall if they attended the SEC public  
8 hearing.

9 Q. And we've already gone over that certainly we  
10 know that the DES didn't issue a separate  
11 notice, as required by RSA 482:9, or at least  
12 according to what it says. Was that -- you  
13 were nodding your head "Yes"?

14 A. (Allen) I'm agreeing with you.

15 Q. Okay. Thank you. The stenographer has to --

16 A. (Allen) That's true. I'm sorry.

17 Q. No, that's all right, that's all right.

18 So, typically, you know, if this were a  
19 project and it wasn't for an energy facility  
20 and the DES were to issue a notice, it would  
21 describe the types of impacts that you would  
22 see. Like you would see, you know, 150 feet  
23 of riprap, if that was proposed, or you'd  
24 see, you know, dredge and fill of

1           1,000 square feet as proposed. Those are the  
2           types of things that go out in DES notices.

3    A.    (Allen) In very broad terms, yes.

4    Q.    And if someone were to propose concrete  
5           mattresses -- or let's say it was a boat  
6           ramp. I know from the Lake Sunapee cases,  
7           you would see the DES notice would say  
8           exactly, you know, it's a double-wide, these  
9           are what the dimensions are, it's in the  
10          shoreline, that's the type of thing. You  
11          would expect to see that; right?

12   A.    (Allen) For the concrete mattresses, I  
13          suspect they would have been mentioned. I'm  
14          not sure how carefully they would have been  
15          described.

16   Q.    Okay. Now, the Applicant has held numerous  
17          meetings, and I don't want to go through all  
18          the exhibits. But I did see a couple that  
19          have come in recently that indicate there  
20          have been ongoing discussions, basically  
21          negotiating the terms and conditions. And  
22          I've heard reference to that in your  
23          testimony. Is that -- how long have those  
24          discussions been ongoing?

1 A. (Allen) I would not say that we were  
2 negotiating terms and conditions. I'd say  
3 that we were discussing and looking for  
4 clarity on their terms or on their  
5 conditions. We began in early May. We've  
6 met with them five times.

7 Q. May of what year?

8 A. (Allen) Of this year.

9 Q. And I believe I saw e-mail going back to 2017  
10 and 2016 in some of the exhibits that have  
11 been filed in response to the Town of  
12 Durham's record request. Does that sound  
13 right?

14 A. (Allen) We've met with DES, or DES has  
15 attended various meetings. I actually  
16 counted. It was almost 20 times.

17 Q. Okay. And DES didn't issue notice of those  
18 meetings, did they?

19 A. (Allen) No.

20 Q. How many of those were attended by Counsel  
21 for the Public? Do you know?

22 A. (Allen) Most of those meetings were either  
23 Applicant meetings with DES, which is a very  
24 common project process. Some of them were

1 joint meetings with other agencies to make  
2 sure that we were basically fulfilling our  
3 regulatory requirements.

4 Q. Are you aware that in some proceedings like  
5 this one, for example, it's not allowed for  
6 the Applicant to just meet with the members  
7 of the Committee because that would be what's  
8 called an "ex parte" communication.

9 A. (Allen) I am aware of that.

10 Q. Did that ever come up during the discussions  
11 with DES, that their decision should be made  
12 as part of a public hearing?

13 A. (Allen) No, it did not. My understanding  
14 with DES is that they were to conduct their  
15 regulatory review per Normandeau procedure.

16 Q. Let me pull Exhibit 166 back up for a moment.  
17 In fact, it appears that what DES  
18 determined -- I'm going to try to find it. I  
19 think it's Finding 32. Oh, yeah, 32. I'm on  
20 Page 22 or 25 of the NHDES final decision.  
21 That's 166, Applicant's Exhibit. And you see  
22 there it says, "Public hearings will be held  
23 by the New Hampshire SEC to allow citizens  
24 the opportunity to comment on the overall

1 project." Did I read that right?

2 A. (Allen) You did.

3 Q. Okay. And that's actually exactly what I  
4 believe Eversource and your team told DES in  
5 the Application. I'll put that up for you.

6 We're back at Applicant's Exhibit 32,  
7 Section 14, Abutter Notification. It says  
8 right there in the bottom paragraph, the  
9 second paragraph at the end, "Public hearings  
10 will take place in accordance with the SEC  
11 rules." But the statute actually requires  
12 DES to hold a hearing as well, based on what  
13 482-A:9 and A:8 said, I believe.

14 MR. NEEDLEMAN: Objection. This  
15 calls for a legal conclusion.

16 MR. RICHARDSON: And I'm sorry. I'm  
17 not asking her for a legal conclusion. I'm  
18 just asking to contrast, to make sure there was  
19 no DES hearing is really the purpose of my  
20 question.

21 PRESIDING OFFICER WEATHERSBY: You  
22 did ask for a legal conclusion, so I'm going to  
23 sustain the objection. Perhaps you can  
24 rephrase.

1 MR. RICHARDSON: Thank you.

2 BY MR. RICHARDSON:

3 Q. So we saw before that RSA 482:A-8 and 9  
4 appear to be somewhat different, and that's  
5 probably a legal issue to be decided. Does  
6 that sound fair?

7 MR. NEEDLEMAN: Same objection.

8 PRESIDING OFFICER WEATHERSBY:

9 Sustained.

10 MR. RICHARDSON: Yeah, I agree. I  
11 don't think there's a way -- I think the  
12 point's been made. I'm not sure I can phrase  
13 it without going down that road, so I'll move  
14 on.

15 BY MR. RICHARDSON:

16 Q. Let's follow through, though, with what DES  
17 did, because obviously DES is a state agency,  
18 and they have to make legal determinations  
19 when they review process --

20 PRESIDING OFFICER WEATHERSBY:

21 Attorney Richardson, you will be circling us  
22 back to the scope of you' testimony at some  
23 point; correct?

24 MR. RICHARDSON: I am. I obviously

1 have to get it in the record because DES, I  
2 think, didn't hold a hearing in this case. And  
3 so my only opportunity to talk about what DES  
4 did is through the only party that was at those  
5 meetings and how that resulted in where we're  
6 at. But I'm actually almost -- I think I have  
7 one more question on this subject, so --

8 MR. NEEDLEMAN: Madam Chair, I'm  
9 actually going to object at this point. That's  
10 not accurate. It's his only opportunity  
11 because his client chose to not intervene until  
12 probably over two years after the Application  
13 was filed. They had multiple opportunities for  
14 that sort of participation. And so I think to  
15 continue the questioning of this panel that  
16 really has absolutely no bearing on their  
17 testimony is just not reasonable.

18 MR. RICHARDSON: And if I may remind  
19 the Committee about the evidence heard earlier,  
20 just a moment ago. My client's position at  
21 least is that he was told the Project would be  
22 underground and on the abutter's property. So,  
23 I mean, I think that would tend to explain why  
24 his involvement was what it was and the

1 surprise when he learned otherwise.

2 PRESIDING OFFICER WEATHERSBY: So you  
3 have one more question on this subject; is that  
4 correct?

5 MR. RICHARDSON: Yes, that's correct.

6 PRESIDING OFFICER WEATHERSBY: I'll  
7 overrule the objection and allow you to ask one  
8 more question.

9 BY MR. RICHARDSON:

10 Q. So you see below Finding No. 32 which we  
11 looked at, that DES says here that the New  
12 Hampshire SEC has jurisdiction over the  
13 entire project and therefore will ultimately  
14 decide if the Project is approved or denied.  
15 Did I read that correctly?

16 A. (Allen) Yes, you did.

17 Q. And do you interpret that to mean, as I do,  
18 that DES is saying here that they're not  
19 making a determination of whether the Project  
20 should or shouldn't be built; they're just  
21 deciding whether the Project complies with  
22 their rules? Is that a fair -- does that  
23 reflect you' discussions with DES?

24 MR. NEEDLEMAN: Objection. Calls for

1 a legal conclusion. The document speaks for  
2 itself.

3 MR. RICHARDSON: The same response.  
4 This witness was involved in the discussions  
5 with DES that lead to these permit conditions.  
6 I'm actually hoping to ask questions about her  
7 experience and whether we see conditions like  
8 this in other projects.

9 PRESIDING OFFICER WEATHERSBY: I  
10 think the question that was asked was about  
11 their understanding, so --

12 MR. RICHARDSON: Okay. I'll  
13 rephrase --

14 PRESIDING OFFICER WEATHERSBY: Could  
15 you repeat what his actual question was?  
16 That's all right. I think it was their  
17 understanding rather than calling for a legal  
18 conclusion. So I will allow it, but that is  
19 your question.

20 MR. RICHARDSON: And I think I agree.  
21 Your point's well taken. I think I should  
22 probably rephrase it. So I'll go ahead and do  
23 that.

24 BY MR. RICHARDSON:

1 Q. That's an unusual permit condition. You  
2 don't typically see DES saying, look, we're  
3 not here to decide whether something gets  
4 built or not.

5 MR. NEEDLEMAN: Objection. How would  
6 these witnesses know whether that's a unusual  
7 permit condition or not?

8 MR. RICHARDSON: They're wetlands  
9 experts.

10 PRESIDING OFFICER WEATHERSBY:  
11 Sustained.

12 MR. RICHARDSON: Excuse me one  
13 moment. I'm looking for the next line to  
14 follow through on.

15 (Pause in proceedings)

16 Q. Were any of the panel members involved in  
17 the -- I'm sorry. Before we jump to that, I  
18 want to ask a few more questions about the  
19 DES conditions.

20 Now, why don't we turn to -- let's start  
21 with this is page -- it's Finding No. 4 on  
22 the DES conditions. And that's going to be  
23 on Page 19 of 25 of Exhibit 166. And what I  
24 want to ask you is: This statement isn't

1           technically correct, is it? No. 4 says, "The  
2           Project proposes all work to be within an  
3           existing power line right-of-way." That's --

4   A.   (Allen) And your question is?

5   Q.   That's not technically, entirely true in this  
6           case. It's certainly not true for the  
7           portions that are immediately in front of the  
8           Crowley-Joyce property; right?

9   A.   (Allen) Are you talking about the subtidal  
10          portion that's considered a cable area rather  
11          than a right-of-way?

12   Q.   That's right, yes.

13   A.   (Allen) I'm aware of the distinction. I  
14          guess I'm not sure how it's interpreted by  
15          law.

16   Q.   Okay. Well, I think Eversource made a  
17          determination when you submitted the  
18          Application. I'll bring this up again. It's  
19          Exhibit 32, and it's at Section 14. There's  
20          two categories there. They're located in  
21          existing and/or proposed utility ROW areas.  
22          And that's -- so you' drawing up two  
23          categories. There's the existing  
24          rights-of-way, and then there's new ones,

1           such as where this line will approach the  
2           Beswick property and come into an area where  
3           there wasn't previously a right-of-way before  
4           this project was proposed.

5       A.     (Allen) Correct.

6       Q.     So it's different than what DES made as its  
7           finding.

8           Let's look at the next one DES did. And  
9           I believe it's on the next page, and it's No.  
10          10, Finding 10 of Exhibit 166. And before we  
11          get down to Subparagraph F, I want to ask you  
12          about the top, where it says, The Applicant  
13          indicates that their application and the plan  
14          is the alternative with the least adverse  
15          impact to areas and environments under the  
16          Department's jurisdiction, per Administrative  
17          Rules 302.03.A.2. And my question to you  
18          about that is: That's a required finding in  
19          order to issue a permit on just about any  
20          project, isn't it? You have to show by plan  
21          and example that the project is the least  
22          impacting alternative?

23       A.     (Allen) The word "reasonable" or  
24           "practicable" is often included in there. So

1           it's a balance between environmental impacts  
2           and constructability and feasibility.

3   Q.    Okay.  Thank you.

4                    So then it looks like there's a series  
5           of findings in support of that overall  
6           conclusion that the Department made to  
7           support its permit.  And we see that again in  
8           Paragraph F.  "Impacts to estuarian wetlands  
9           are restricted to existing cable crossing  
10          corridors which has been utilized in the past  
11          and contains de-energized cables that are  
12          obsolete.  But there are estuarian wetlands  
13          impacts that are outside that area we just  
14          reviewed; right?

15  A.    (Allen) All of our work is included within  
16          the mapped cable corridor.

17  Q.    Okay.  But this is a change from where the  
18          prior 11-foot easement was; isn't that right?

19  A.    (Allen) On Mrs. Beswick's land?

20  Q.    Yes.

21  A.    (Allen) It comes in on the side of Mrs.  
22          Beswick's land as opposed to the end of it.

23  Q.    Do you think that if the Department knew that  
24          there were new easement areas proposed, or if

1           they paid close attention to that, they would  
2           have wanted to look at other alternatives  
3           that might have less impact?

4                       MR. NEEDLEMAN:  Objection.  Calls for  
5           speculation.  How could these witnesses know  
6           what the Department might have thought.

7                       MR. RICHARDSON:  I asked them if they  
8           knew that the easement had changed, would they  
9           have done this differently.  It has to be a  
10          hypothetical.

11                      PRESIDING OFFICER WEATHERSBY:  You  
12          asked them what they think DES would have done,  
13          and that objection is sustained.

14  BY MR. RICHARDSON:

15  Q.    So if you had several different alternatives  
16          in front of you, one would be to go over the  
17          Beswick's land where there was lawn and  
18          minimal wetlands; another proposed easement  
19          area where it was all natural forest land,  
20          there was salt marsh grasses, there were eel  
21          grasses.  Clearly you'd need to compare the  
22          two, to look at which one was the least  
23          impacting alternative; right?

24  A.    (Allen) I would agree with that.  I disagree

1 with you' characterizing the new site as  
2 "forested and with wetlands."

3 Q. Understood. I was trying to ask just a  
4 hypothetical to explain the process, not to  
5 describe the particular land here. But with  
6 that caveat, I think you were agreeing to my  
7 proposition that, if you had several  
8 alternative areas, you'd want to look at  
9 which one was the least impacting.

10 A. (Allen) We had a discussion with DES prior to  
11 making this design change. They were aware  
12 of the design change and the reasons for it.

13 Q. Okay. And so it's your position, then, that  
14 because the proposed route is within the  
15 1,000-foot envelope, or that really wide  
16 corridor, that there's no need to evaluate  
17 whether one impact has more than another, or  
18 one particular direction has one or the  
19 other? Is that your interpretation of how  
20 the rules work?

21 A. (Allen) I don't think I said that. We did do  
22 a full evaluation of the new route, including  
23 the additional impacts to marine  
24 environments.

1 Q. Let's look at -- let me go over one more  
2 finding then, and we'll then discuss those  
3 different routes.

4 And this is, I believe, No. 25 at the  
5 bottom of the next page. And this one seems  
6 very definitive. "All work is within the  
7 Applicant's existing ROW which convey the  
8 right to construct and replace the  
9 transmission lines in support of the  
10 reliability of the transmission system." Did  
11 I read that correctly?

12 A. (Allen) You did.

13 Q. Now, I guess what I'm -- the Department isn't  
14 talking about a cable crossing here, because  
15 what they're saying is a right-of-way that  
16 conveys a property right to construct. Do  
17 you see that distinction?

18 A. (Allen) I see the distinction.

19 Q. But there was new right-of-way. And did the  
20 Department ever compare the old right-of-way  
21 on the Beswick property to the new one?

22 A. (Allen) I don't think I can answer that for  
23 them.

24 Q. So you don't know.

1 A. (Allen) They were aware of the design change.  
2 They were also fully aware of the cable  
3 corridor as opposed to an easement.

4 Q. Are any of the panel members aware of whether  
5 the Department did an alternatives analysis  
6 of the prior right-of-way, the 1950 one,  
7 versus the new one, or coming across at  
8 different locations?

9 A. (Nelson) Your question is did the DES do an  
10 alternatives analysis?

11 Q. Correct.

12 A. (Nelson) Not that we're aware of.

13 Q. And did Eversource ever negotiate with the  
14 Beswicks putting the easement in a different  
15 location so it could present alternatives?

16 A. (Nelson) I'm not privy to all the discussions  
17 with the Beswicks. I believe the route  
18 chosen was the route that was the most  
19 feasible from a construction standpoint.

20 Q. Okay. But the other findings were that this  
21 impact -- this one was the least impacting  
22 alternative, and that was because it was an  
23 existing right-of-way. But some of it's a  
24 new right-of-way; isn't that right?

1 A. (Allen) I'm not exactly sure. Are you asking  
2 whether we recognize that there's a new  
3 easement along there?

4 Q. Let me rephrase that question and concept for  
5 you. I think I can do it more easily by  
6 reference to a plan. So I'm going to pull up  
7 JCT, I believe it's Exhibit 7. Just give me  
8 a second. Actually, this is JCT Exhibit 10.  
9 And I believe this is one of the better  
10 resolution images.

11 And you're aware that the prior  
12 easement -- first of all, were the panel  
13 members here when I was asking Mr. Bowes  
14 questions about how the easement was moved?  
15 So are you aware of where the old easement  
16 was and where the current one is?

17 A. (Allen) Yes.

18 A. (Nelson) Yes.

19 Q. Thank you. So what I'm looking at here, in  
20 terms of evaluating impacts to resources, we  
21 have essentially lawn areas passing right  
22 through where the old easement was. There's  
23 not really significant salt marsh habitat in  
24 those areas, is there?

1                   MR. NEEDLEMAN:  Objection.  The rules  
2                   call for analysis of alternatives to the extent  
3                   that they're practicable.  Construction Panel  
4                   already testified that that was not a  
5                   practicable alternative because of the steep  
6                   slope.  So there's no relevance to this line of  
7                   inquiry.

8                   MR. RICHARDSON:  Well, the real  
9                   question is what did DES do, because that's  
10                  what I'm concerned about.  And obviously we're  
11                  here to decide the Committee's criteria, but  
12                  also whether the DES acted lawfully, because  
13                  that's an issue that we want to preserve for  
14                  appeal.

15                  PRESIDING OFFICER WEATHERSBY:  And I  
16                  don't think this panel can answer the question  
17                  of what DES did.

18                  MR. RICHARDSON:  They discussed with  
19                  DES the Project.  They provided findings that  
20                  DES incorporated into their final decision.  I  
21                  want to know what information the Applicant  
22                  provided so we can understand how DES may have  
23                  evaluated it.

24                  MR. NEEDLEMAN:  All of the

1 information the Applicant provided is in the  
2 report. There's actually far more in this  
3 record regarding that issue than most records.

4 MR. RICHARDSON: I think it's a fair  
5 question to ask about what DES did. I mean, if  
6 we're here to talk about the alternatives  
7 analysis, I need to ask questions about the  
8 alternatives.

9 PRESIDING OFFICER WEATHERSBY: I'm  
10 going to sustain the objection. I don't think  
11 it's fair to the panelists to --

12 MR. RICHARDSON: All right.

13 PRESIDING OFFICER WEATHERSBY: - keep  
14 asking them what DES did.

15 MR. RICHARDSON: Understand.

16 PRESIDING OFFICER WEATHERSBY: Off  
17 the record.

18 (Discussion off the record.)

19 BY MR. RICHARDSON:

20 Q. So you agree with me that there's one  
21 alternative which Attorney Needleman has just  
22 testified is not practical, and then there's  
23 another alternative that's going right  
24 through sensitive resource areas. I mean,

1           this is -- you've been to this area. You've  
2           prepared a shoreline protection analysis of  
3           what's there; right? I mean, isn't this --  
4           doesn't this area here qualify as an  
5           unaltered state?

6    A.    (Allen) As an unaltered state? Which portion  
7           of it are you describing?

8    Q.    I'm referring to the forested area that we  
9           see here.

10   A.    (Allen) No. In my opinion it did not. It's  
11          mowed underneath.

12   Q.    Okay. Let me show you some pictures of that.  
13          And actually, I'll start by pulling one out  
14          from the shoreline application.

15                   (Pause in proceedings)

16   Q.    So, Ms. Allen, were you involved in the  
17          preparation of the shoreline application  
18          submitted to DES?

19   A.    (Allen) The shoreland application, yes.

20   Q.    Yes. Thank you. So do you recognize that as  
21          a photo taken of the area I was just showing  
22          you a moment ago in JCT Exhibit 10?

23   A.    (Allen) Yes.

24   Q.    And you're saying that that treed area is

1 mowed?

2 A. (Allen) The cable actually enters that  
3 forested area to the far left, and on  
4 Ms. Beswick's property it is mowed.

5 Q. Okay. On the Beswick property it's mowed.  
6 In fact, as we saw there before -- but in the  
7 ravine area going up through the middle,  
8 which is essentially where the property line  
9 is, it's not mowed. And in fact, it's  
10 crossing -- because there's a salt marsh  
11 mitigation plan, it's crossing the salt marsh  
12 that's right there; isn't that right?

13 A. (Allen) It is crossing a salt marsh section,  
14 yeah.

15 Q. And this picture is taken in the off season,  
16 I assume, when we can see through the trees a  
17 little bit. And the salt marsh is lying  
18 dormant; right?

19 A. (Allen) It looks like early spring, if I had  
20 to guess.

21 Q. So you would expect that salt marsh to be  
22 pretty green, and you would expect natural  
23 vegetation to come up in those forested areas  
24 that are shown here.

1 A. (Allen) Not in the mowed section, which is  
2 where the cable is going.

3 Q. I'm sorry. Let's go to -- do you have JCT --  
4 well, this is JCT 16. I don't have 17 in  
5 front of me. But that shows the area to be  
6 cleared. And it looks to me like that is  
7 right in the middle of the forested area.  
8 That's not a mowed section, is it?

9 A. (Allen) There are mature trees with grass  
10 underneath it, and the grass is mowed.

11 Q. Okay. I want to pull out some pictures for  
12 you.

13 But let's do this: As you all know,  
14 there was a discussion of where the  
15 transmission line was going to be. And as  
16 shown on this one, you can see it's shown  
17 crossing the property line. And then on  
18 redirect for the first time, we saw a new  
19 plan showing the shoreline in a new area.  
20 And so I want to show this to you. This is  
21 Applicant's Exhibit 195. Now, there's a  
22 couple things that I want to go over on this.  
23 And let me see if I can zoom in a little for  
24 you.

1           Okay. The first thing is you see --  
2           just for reference, you see there's this  
3           approximate water line. And it says "Per  
4           reference plan." And we follow that over,  
5           and it looks like it goes to a pin. You see  
6           that right there where the pin is?

7    A.    (Allen) Yes.

8    Q.    And did you get a chance to see this plan?  
9           Are you familiar with it? I don't want to  
10           have --

11   A.    (Allen) I have seen this plan.

12   Q.    All right. Thank you. I'll try to go a  
13           little faster then.

14           Reference plans are referred to in the  
15           bottom. And I'll have to read this to you.  
16           Let me put it in focus. I have extra copies  
17           here if people want to see the paper copy. I  
18           don't know if the Committee members can  
19           follow along. But what I'm seeing is that  
20           there's two references in the reference plan:  
21           Little Bay Estates, located in Newington, NH,  
22           dated February 13, 1984, Kimball Chase  
23           Company, and then it refers to the registry  
24           of deeds plan. And you see how that line

1           there is -- it follows the same path as JCT  
2           Exhibit 1, which was a 1984 subdivision plan.  
3           So when it says "per reference plan," that's  
4           saying that's the water line --

5                         MR. NEEDLEMAN:  Objection.  This is  
6           testimony.

7                         MR. RICHARDSON:  She's reviewed the  
8           plans.  I'm trying to get her to agree to a  
9           point that that line there, the new location,  
10          is taken from the 1984 plan.

11                        PRESIDING OFFICER WEATHERSBY:  You  
12          can ask her.  I'm going to sustain the  
13          objection.  Ask her a question without  
14          editorializing and testifying.

15                        MR. RICHARDSON:  Sure.  Understand,  
16          when I ask the question like that, I'm trying  
17          to help the witness by giving them all the  
18          things I'm thinking about so they can agree or  
19          disagree.  I'm not trying to force the witness  
20          to accept the facts or to testify.  I want them  
21          to tell me if I am wrong.  So that's -- I hope  
22          the Committee at least understands that.

23   BY MR. RICHARDSON:

24   Q.   So tell me, are you aware that the 1984

1 subdivision plan is the source of what this  
2 high water line is?

3 A. (Allen) I'd have to read it to refresh. I  
4 can't quite see it.

5 Q. Okay. Let me bring you a copy of it 'cause I  
6 think that would be much easier I think for  
7 everyone.

8 And the other thing I'll do is I want  
9 you to read where it says that's the  
10 reference plan. And then there's another  
11 plan. It's a 2015 one. And it's the  
12 easement relocation plan. And apparently  
13 it's a survey by Doucette Survey that they've  
14 had since 2015.

15 What I'm going to put up for you is JCT  
16 Exhibit 1, which is the 1984 plan. My point  
17 in doing this is to just show you can see --  
18 sorry. You can see that these plans follow  
19 more or less the same curvature. I may have  
20 just made a mistake because I think I'm  
21 looking at it incorrect.

22 (Pause in proceedings.)

23 MR. RICHARDSON: Why don't I do this:  
24 I have in my pile of papers here the Newington

1 tax maps. And what I wanted to show is the  
2 Newington tax maps were what the original  
3 application materials were based on. We may  
4 chase -- the plans speak for themselves. It  
5 may take me too long to get everything  
6 organized here. I'm obviously responding to  
7 new information that I learned on Tuesday. Is  
8 that all right?

9 MR. NEEDLEMAN: Thank you.  
10 Understanding where you're going now, I do  
11 object because I think this is well beyond the  
12 scope of any aspect of the testimony of this  
13 panel.

14 MR. RICHARDSON: Well, what I was  
15 trying to get at is... I'm sorry. I thought I  
16 had this right in front of me.

17 PRESIDING OFFICER WEATHERSBY: How  
18 are these the correct witnesses to address  
19 property lines?

20 MR. RICHARDSON: Well, what I wanted  
21 to show was that the Application that the  
22 Project is based on was taking the shoreline  
23 from the Newington tax maps. And the Newington  
24 tax maps contain a statement that they're only

1           approximate and they're not to be used for deed  
2           purposes, and that they say that. And for the  
3           life of me, I had it right in front of me when  
4           I walked up here and it has disappeared.

5                   MR. IACOPINO: Justin, can I ask you  
6           a question? The exhibit, the 195, it says what  
7           the reference plans are. And those are plans  
8           that apparently are recorded at the registry of  
9           deeds.

10                   MR. RICHARDSON: Exactly. And then  
11           the exhibit also says, when you go over to the  
12           left a little bit, it says edge of water per  
13           Newington tax map. This line was shown on  
14           Exhibit 13 -- that's JCT Exhibit 13 -- as the  
15           surveyed edge of water. However, it was not  
16           survey-located. So, JCT 13, which I do have --

17                   MR. IACOPINO: So that speaks for  
18           itself, though.

19                   MR. RICHARDSON: Yes. But what I'm  
20           looking for is the note on the tax maps that  
21           say that they're approximate and they shouldn't  
22           be relied on. And I have...

23                   MR. IACOPINO: Yeah, why don't you  
24           just make an offer of proof.

1                   PRESIDING OFFICER WEATHERSBY: Just  
2                   make an offer of proof of that and then move on  
3                   to a different line of questioning.

4                   MR. RICHARDSON: Thank you. I'll do  
5                   that. And those documents do speak for  
6                   themselves.

7 BY MR. RICHARDSON:

8 Q. Okay. Let me get to one of my final points.  
9                   This is... all right. I want to pull up DES  
10                  Rule 304.04, which is referenced in the  
11                  Application as well. Hold on one second.  
12                  I'm sorry. I pulled everything apart and  
13                  I've completely lost myself.

14                  (Pause in proceedings)

15 Q. Do you recall that in your wetlands  
16                  application you submitted a statement that  
17                  DES Rule 304.04 does not apply? Do you  
18                  remember that.

19 A. (Allen) You'd have to help me remember what  
20                  that rule is.

21 Q. Okay. That's the rule that says that DES  
22                  cannot approve project impacts within 20 feet  
23                  of a property line without the assent of an  
24                  abutter.

1 A. (Allen) I do remember some discussion. I'd  
2 have to pull it up to get the exact language.

3 Q. Yeah, and I believe -- do you know where that  
4 is in your application?

5 A. (Allen) It's in the original Application.

6 MR. RICHARDSON: I'm sorry. Could I  
7 have two minutes? I apologize. This is very  
8 unprofessional of me. I've lost a whole  
9 section that I had set aside in my binders and  
10 I've scattered myself apart here. I hate  
11 making you all wait.

12 PRESIDING OFFICER WEATHERSBY: Take  
13 two minutes, get yourself organized.  
14 Understanding that your beyond your time  
15 estimate, get organized and come back and be  
16 efficient and then finish up.

17 MR. RICHARDSON: Thank you.

18 (Recess was taken at 4:57 p.m.  
19 and the hearing resumed at 5:03 p.m.)

20 PRESIDING OFFICER WEATHERSBY:  
21 Attorney Richardson, you may proceed.

22 MR. RICHARDSON: Yes. Thank you.  
23 And I apologize. I did not have the folder in  
24 front of me, so I was going crazy looking for

1           it.

2   BY MR. RICHARDSON:

3   Q.   So, Section 15 of the wetlands application,  
4        which is Exhibit 32, do you have that in  
5        front of you?

6   A.   (Allen) I don't. I'm sorry.

7   Q.   Let me give you a copy. And I'll put it up  
8        on the screen as well. So I wanted to start  
9        with this because this is the explanation  
10       that you gave to Eversource -- or on behalf  
11       of Eversource -- that you gave on behalf of  
12       Eversource to DES. And what it says here is  
13       that -- and it's about permission for work  
14       within 20 feet. If you're doing a dock  
15       project or any type of wetlands construction  
16       next to a property and your within 20 feet of  
17       the property line, you need permission;  
18       right?

19   A.   (Allen) Correct.

20   Q.   But you say here, "Per review of regulations  
21        with NHDES staff, this notification" --  
22        actually, it's "this permission" is what it  
23        probably should say -- "is not required"; is  
24        that right?

1 A. (Allen) That's correct.

2 Q. Okay. And I should have asked as a separate  
3 question. In fact, what the rule requires is  
4 the permission from the abutting property  
5 owner; right?

6 A. (Allen) That's correct.

7 Q. And you say, in support of that, "Little Bay  
8 is the only water body in the Project with  
9 in-water work, and there are no permanent  
10 structures in Little Bay to which the 20-foot  
11 setback from an imaginary extension of the  
12 property line would apply." Is that  
13 Eversource's permission -- or position?

14 A. (Allen) Yes, it is.

15 Q. Okay. Let me pull up the rule here just so  
16 we can all be aware of what it says. And  
17 I've got it right here. Can you read that,  
18 or do you want me to zoom in?

19 A. (Allen) You best zoom in, please.

20 Q. So, setbacks from property lines. The  
21 Department shall limit the location of a  
22 project to at least 20 feet from abutting  
23 property line or imaginary extension thereof  
24 over surface water, unless it receives a

1 written agreement from the affected abutter  
2 concerning -- or concurring with any impact  
3 that may result to the abutter's interests.  
4 And I assume Eversource hasn't obtained a  
5 letter like that. And per the document we  
6 just read, it took the position it didn't  
7 need that.

8 A. (Allen) That's correct.

9 Q. Now, you've reviewed the DES permit  
10 conditions. And I'll represent to you that  
11 DES didn't waive this rule, did it?

12 A. (Allen) Did it -- it did not waive this rule.

13 Q. That's what I observed.

14 A. (Allen) Yes.

15 Q. Are you aware of DES actually issuing a  
16 waiver of this rule?

17 A. (Allen) They did not.

18 Q. Okay. And in fact, there were other DES  
19 rules that Eversource did seek a waiver of,  
20 and DES granted I believe in writing; right?

21 A. (Allen) That's correct.

22 Q. But not this one.

23 A. (Allen) Yup.

24 Q. And if we were to extend the property line --

1 I'll take this plan, which is I think  
2 approximate -- and if we would extend the  
3 property line, we would see that it would  
4 bisect pretty much the entire area where the  
5 concrete mattresses are proposed?

6 A. (Allen) Correct. Actually, that's not quite  
7 true. The concrete mattresses are below  
8 where the property line would intersect.

9 Q. So, actually in front of the Joyce property.

10 A. (Allen) Yes.

11 Q. Okay. And now what I'm curious about is what  
12 did you mean in your statement there?

13 Because you're aware that DES has a separate  
14 rule and a statutory provision under 482-A:3  
15 for dock setbacks, and that expressly  
16 requires permission. But this refers to  
17 projects, not merely shoreline structures.

18 So what did you mean when you said that? I  
19 mean, what are you trying to get at as to why  
20 this rule shouldn't apply?

21 A. (Allen) We had -- I'm dredging this up from,  
22 you know, over two years ago at this point.  
23 But we had discussions with DES as to whether  
24 or not we could -- we needed to do

1 notification for this work relative to this  
2 particular piece of property. And their  
3 decision -- their statement to me was, no, we  
4 did not need to do that.

5 Q. Okay. But did you ever discuss with DES, are  
6 you familiar with the term "littoral rights"?

7 A. (Allen) I am not.

8 Q. But you understand that if a property owner  
9 who's a riparian or shoreline owner, they  
10 have a right, for example, to put a dock out  
11 on the property in front of them, subject to  
12 permits obviously, and that's their right as  
13 shorefront owners; right?

14 A. (Allen) Right.

15 Q. Okay. And that also -- I mean, it's just  
16 common sense, I suppose, that that means  
17 another property owner can't construct  
18 something right in front of your property if  
19 you own it; right?

20 A. (Allen) If you're talking about a dock, I'd  
21 say yes.

22 Q. I mean, if I owned property here, my neighbor  
23 couldn't put a dock on my property or in  
24 front of it unless they had my permission.

1           And that's at least one of the purposes that  
2           this rule appears to protect.

3           I'm going to read to you, and I suppose  
4           we don't need to mark it as an exhibit, but I  
5           want to show you a case that discusses some  
6           other issues about shoreline property owners  
7           and see if you are aware of this.

8           MR. NEEDLEMAN: Objection. I don't  
9           know how he could show case law to these  
10          witnesses and it would not call for a legal  
11          conclusion.

12          MR. RICHARDSON: Well, it relates to  
13          the construction of structures, and it relates  
14          to the purposes that this rule is intended to  
15          protect. I'm not going to ask her to interpret  
16          it. I'm just going to ask her if she was aware  
17          of this.

18          PRESIDING OFFICER WEATHERSBY: So he  
19          hasn't asked a question yet.

20          So when you ask the question, if it  
21          calls for a legal opinion, you'll get an  
22          objection and it'll be sustained.

23          MR. RICHARDSON: Okay.

24          BY MR. RICHARDSON:

1 Q. Well, let me ask you this then: I'm going to  
2 show you a case. I'm not going to ask you to  
3 interpret it. But I'm going to ask you if  
4 you're aware of this concept. And this is --  
5 let me read it for the record. This is  
6 Sundell v. New London, and it's 119 NH 839,  
7 decided in 1979. And the provision I first  
8 want to draw your attention to is, "Our cases  
9 uniformly hold, however, that 'littoral  
10 owners have rights which are more extensive  
11 than those of the public generally.'"

12 So my question is: When you submitted  
13 Section 15, were you aware of that concept?

14 MR. NEEDLEMAN: Objection. This does  
15 call for a legal conclusion, and it asks the  
16 witnesses to look at one sentence in a long  
17 document and interpret is not fair.

18 MR. RICHARDSON: I just want to know  
19 if she was aware of that concept.

20 PRESIDING OFFICER WEATHERSBY:  
21 Objection sustained. It's not relevant and it  
22 calls for legal interpretation.

23 MR. RICHARDSON: Okay.

24 BY MR. RICHARDSON:

1 Q. Were you aware of the concept that property  
2 owners, littoral property owners, have rights  
3 in the waters that are in front of them that  
4 are different than those held by the public  
5 in general?

6 MR. NEEDLEMAN: Same objection.

7 MR. RICHARDSON: We know that DES has  
8 made the determination that Eversource has the  
9 property rights based on the representations  
10 that all of the Project was in existing  
11 rights-of-way. I want to simply show that this  
12 one is not and that there is a concept out  
13 there that is inconsistent with the statement  
14 made in the Application, Section 15.

15 MR. IACOPINO: The concept you're  
16 trying to make is a legal argument. This is  
17 not factual argument. These aren't facts that  
18 are relevant with respect to this panel. If  
19 you want to make a legal argument, you can  
20 certainly make your legal argument at the  
21 appropriate time. But we're sitting here, and  
22 you're asking them about things that they're  
23 not qualified to testify about.

24 MR. RICHARDSON: Okay. I'll move on.

1 I wanted to bring this forward because I wanted  
2 the Committee to be aware of what is  
3 essentially a defect and have the opportunity  
4 to ask this witness questions on that subject.

5 MR. IACOPINO: And if you have  
6 questions about actual facts on the ground,  
7 then you can ask those.

8 BY MR. RICHARDSON:

9 Q. So how does -- how is building a concrete  
10 mattress directly in front of my client's  
11 property different than building a dock on  
12 their property? They're both located, or  
13 they can be located below the mean high water  
14 mark. What distinguishes the two? How does  
15 Eversource have a right to -- strike that.

16 How are they different factually?

17 A. (Allen) The discussion we had with DES, and  
18 again I'm going from recollection here, was  
19 that the concrete mattresses were a  
20 relatively minor change in the environment  
21 versus a dock that implies use and activity.  
22 These were passive structures not to be  
23 actively used.

24 Q. But isn't -- strike that. I was going to ask

1           you a legal question.

2                     But isn't a -- factually, isn't a  
3           concrete structure there, and it prevents --  
4           I mean, if my client wants to maintain an  
5           area that's free of docks, you know, the  
6           smallest dock in the world my neighbor  
7           wouldn't have a right to put there. So, I  
8           mean, doesn't that conflict with the property  
9           owner's right to keep a property free from  
10          obstructions?

11                    MR. NEEDLEMAN: Objection. Calls for  
12          a legal conclusion.

13                    PRESIDING OFFICER WEATHERSBY:  
14          Sustained.

15                    MR. RICHARDSON: Okay. I'm sorry.  
16          This is a tough one. My last exhibit here.

17 BY MR. RICHARDSON:

18 Q.    I just wanted to show you some photographs.  
19          Have you been on the Beswick property before?

20 A.    (Allen) Yes, I have.

21 Q.    Okay. Let me bring them up to you. And I'll  
22          give a copy to your counsel as well. I  
23          believe we're up to Exhibit 19 now.

24                    (Document handed to witness.)

1 MS. MONROE: Right. Yes, this would  
2 be JCT 19. I see you have it premarked as 18,  
3 so I'm going to mark it as 19.

4 (The document, as described, was  
5 herewith marked as JCT Exhibit 19  
6 for identification.)

7 Q. So you were here the other day when you heard  
8 Mr. Bowes refer to the monument that was  
9 where the water line is shown on Applicant's  
10 Exhibit 195. And I'll represent to you that  
11 this is looking down the property line  
12 towards that monument. Does this look like  
13 the property, that area to you?

14 A. (Allen) I'm still getting a little bit  
15 oriented. What is the stake in the front in  
16 the foreground?

17 Q. So the stake is a boundary marker that's  
18 leading in a straight line down towards the  
19 monument. And I'm looking at Page 1 of this  
20 Exhibit JCT 19.

21 A. (Allen) Okay.

22 Q. But does that -- I mean, what I'm really  
23 asking you is, is that what the general area  
24 looks like? You've been to the property

1           where this comes ashore, where the  
2           construction will take place.

3    A.    (Allen) I've not seen it from this angle.  
4           I'm actually still getting oriented.  So I'll  
5           hold that opinion.

6    Q.    Sure.  So, well, let's flip a page.  And  
7           No. 2, this is hard to make out, but my  
8           client has indicated to me right there where  
9           that pencil is pointing, you can see that's a  
10          stake where the monument is.  And I'll show  
11          you that from the other direction.  So this  
12          is looking down the property line.  And if  
13          you don't recognize that at all, then feel  
14          free to me tell me.  I'm not trying to force  
15          you to accept something to be true or not if  
16          you don't know.

17   A.    (Allen) I have not walked the property line.

18   Q.    But before I heard you say that there were  
19          lawn areas where the Project was going to be;  
20          right?

21   A.    (Allen) That's correct.

22   Q.    And if this were the property line and the  
23          Project were on the right side and the  
24          Crowley-Joyce property is on the left, that's

1 not what you were talking about when you said  
2 that it was a lawn area that would be  
3 impacted; right?

4 A. (Allen) Correct.

5 Q. This looks like an unaltered area under the  
6 Shoreline Protection Act.

7 A. (Allen) It does not look like lawn.

8 Q. How does it not look unaltered? How does  
9 this not look like a natural area to you?

10 A. (Allen) It looks like there's been some  
11 clearing in the understory. But again, I'm  
12 not going to go down that path.

13 Q. Okay. Do you mean significant clearing?  
14 Does this look like a disturbed area to you?

15 A. (Allen) No, it does not.

16 Q. Okay. Thank you.

17 Now, here we're looking over towards the  
18 Beswick property from the property line. And  
19 I need to be... I'm looking at the third  
20 picture. So you can see there's clearly lawn  
21 areas towards the Beswick retaining wall.  
22 You can see that in the third picture; right?

23 A. (Allen) I can.

24 Q. And then in front of that, is that what you

1           were referring to as a "lawn area"?

2   A.    (Allen) I'm certainly seeing grass in there.

3   Q.    Okay. Let me keep going. This is what I  
4           wanted to show you. So this is the area  
5           where you see that monument. And that's the  
6           monument that was shown in Applicant's 195 to  
7           be the edge of the water line; right?

8                   MR. NEEDLEMAN: Madam Chair,  
9           objection. I'm going to object to these  
10          exhibits. There's no authentication for them.  
11          We actually have no idea whether they are what  
12          they purport to be. And in particular, ones  
13          that are on the screen now and ones that follow  
14          have tape measurements on them. There's just  
15          no way to have any sense of whether they're  
16          correct or accurate or in this location, et  
17          cetera.

18                   MR. RICHARDSON: What I'm trying to  
19          show here is just pictures of where that is.  
20          It's true that I'm representing that this is  
21          where that monument is. The witness can say, I  
22          don't know if your right or your wrong. And  
23          that's a perfectly acceptable answer if that's  
24          what they want to say.

1                   PRESIDING OFFICER WEATHERSBY: I'm  
2 going to sustain the objection, but perhaps you  
3 could be creative in the way you use these  
4 photos by asking them to assume certain facts  
5 and ask your questions, or just move on.

6                   MR. RICHARDSON: Okay.

7                   MR. NEEDLEMAN: Madam Chair,  
8 understood. I'm not objecting any further. I  
9 do want to note for the record it's my  
10 understanding that if any party has an  
11 objection to an exhibit, it needs to be made at  
12 the time. And so I am going to object to this  
13 exhibit and ask that it be struck at the  
14 appropriate time.

15                   PRESIDING OFFICER WEATHERSBY:  
16 Understood. Thank you.

17 BY MR. RICHARDSON:

18 Q. So I'm going to show you -- we're looking at  
19 Page 7 now. I've blown it up here on JCT.  
20 It's marked 18, and we'll change that to 19.  
21 You can see -- well, first of all, does this  
22 look like the shoreline where the  
23 Joyce-Crowley property is?

24 A. (Allen) It's very hard to tell from this

1 photo, but it could be.

2 Q. But this is the type of environment there.  
3 And I'll represent to you that you can see  
4 the monument that's up there.

5 Do you have any reason to doubt that  
6 that would be the type of shoreline where  
7 that is in Applicant's Exhibit 195, where  
8 that monument is?

9 MR. NEEDLEMAN: Objection. I think  
10 the witnesses already stated they have no  
11 reason to doubt. If Mr. Richardson wants to  
12 ask the questions consistent with your  
13 direction, that's fine.

14 BY MR. RICHARDSON:

15 Q. I'm sorry. I couldn't -- was your answer  
16 that you had no reason to doubt, or did  
17 you not --

18 MR. RICHARDSON: I don't remember  
19 what the witness said.

20 A. (Allen) I'm not going to doubt you.

21 BY MR. RICHARDSON:

22 Q. Okay. Here we have a view, and I'll  
23 represent to you I think it's looking out  
24 towards the shoreline. And does this appear

1 to be the salt marsh that's going to be  
2 restored and impacted by the Project?

3 A. (Allen) It seems -- it's hard to tell the  
4 angle for this project. That's very  
5 important. But...

6 Q. Okay. All right. And that's Page 10 of JCT  
7 Exhibit 18; right?

8 MR. IACOPINO: Nineteen.

9 Q. Nineteen. Excuse me.

10 A. (Allen) Yes.

11 MR. RICHARDSON: Thank you. I have  
12 no further questions. I appreciate your  
13 patience.

14 PRESIDING OFFICER WEATHERSBY: Thank  
15 you. Off the record.

16 (Discussion off the record)

17 PRESIDING OFFICER WEATHERSBY: Back  
18 on the record. Thank you.

19 Attorney Aslin, you may proceed  
20 with your questions.

21 CROSS-EXAMINATION

22 BY MR. ASLIN:

23 Q. Good evening. For the record, I'm Chris  
24 Aslin, acting as Counsel for the Public.

1 A. (Panel Members) Good evening.

2 Q. I want to ask you questions about the  
3 wetlands portion of the Project. First, it's  
4 my understanding from the Application  
5 materials that the wetlands were delineated  
6 in the 2014-2015 time period. Is that  
7 correct, or has that been updated?

8 A. (Allen) No, that's correct. We actually  
9 started in 2013.

10 Q. So was the last delineation done in 2015?

11 A. (Allen) No. We did the bulk of the  
12 delineations mostly in 2013, 2014, 2015.  
13 We've done some minor additional route checks  
14 and changes as they've come along all through  
15 the Project.

16 Q. Okay. By "minor route checks and additions,"  
17 I take that to be different from having done  
18 a full review of the original delineations?

19 A. (Allen) That's correct.

20 Q. Is there a plan or commitment to do a  
21 pre-construction check of all the original  
22 delineations?

23 A. (Allen) Yes, we'll do that.

24 Q. And what time frame is that anticipated for?

1 A. (Allen) Typically right before construction  
2 we'll go out and re-stake the wetlands for  
3 the contractor's purpose, and at that time  
4 we'll do a ground check.

5 Q. Thank you.

6 In general, there are both temporary and  
7 permanent impacts to wetlands; correct?

8 A. (Allen) Correct.

9 Q. And am I correct that the permanent impacts  
10 to all kinds of wetlands proposed in this  
11 project are limited to the location of  
12 structures, foundations, or the structures  
13 themselves, and the concrete mattresses in  
14 Little Bay?

15 A. (Allen) That's correct.

16 Q. Okay. And the temporary impacts include the  
17 placement -- well, any trenching through  
18 wetland areas, the placement of timber mats,  
19 other access roads. So those are sort of the  
20 physical things that impact the wetlands.

21 Does it also include buffer impacts?

22 A. (Allen) We did calculate buffer impacts to  
23 streams. Depending on the type of stream, it  
24 got a different distance for a buffer.

1 Q. Specific to streams, there are buffer impacts  
2 included in the temporary impact  
3 calculations?

4 A. (Allen) Yes.

5 Q. In the Application, I think it's in  
6 Applicant's Exhibit 97, which is the revised  
7 Impact Assessment, there's a reference to  
8 "vernal pool buffer impacts." Do you recall  
9 that?

10 A. (Allen) Yes.

11 Q. And I'll just represent the number is  
12 7,377 square feet. Does that sound correct?

13 A. (Allen) I'm going to say yes to that. I'd  
14 have to check that number.

15 Q. I believe it's on Page 12 of Applicant's  
16 Exhibit 97. Are those vernal pool buffer  
17 impacts included in the temporary wetland  
18 impact calculations?

19 A. (Allen) I believe that they are. I'd have to  
20 go back to see exactly how we added them up.  
21 They were included as temporary impacts --

22 (Court Reporter interrupts.)

23 A. -- and included as temporary wetland impacts.

24 Q. I wanted to clarify one thing that came up

1 earlier in the cross-examination, in terms of  
2 the numbers that are reported in the final  
3 DES permit.

4 There was some testimony earlier about  
5 the square footage of the concrete mattresses  
6 in Little Bay that is permitted or is part of  
7 the final decision by DES. Do you recall  
8 that testimony?

9 A. (Allen) I do.

10 Q. And I believe you said that this statement,  
11 which is on Page 17 of 17 in Applicant's  
12 Exhibit 183, which is the DES response  
13 letter, I believe you testified earlier that  
14 this reference to Appendix A is DES's  
15 concurrence with the corrections that you  
16 suggested to the original -- the number that  
17 was in the final determination letter; is  
18 that correct?

19 A. (Allen) That's true. There were a number of  
20 incorrect either areas or dates that we  
21 offered corrections to.

22 Q. And is it your testimony that the Appendix A  
23 that's referenced here is Appendix A that was  
24 submitted by the Applicant in the letter? I

1 think there is an April letter and then a  
2 follow-up August letter requesting certain  
3 adjustments to the DES conditions?

4 A. (Allen) From that text there, I interpreted  
5 it to be Appendix A of the August 17th  
6 letter.

7 Q. And I'm not sure that August 17th letter is  
8 in the record, but the April 27th letter is.  
9 Do you have any -- do you know if they differ  
10 in any substantial way?

11 A. (Allen) Not in any substantial way. I think  
12 we reviewed it and we might have caught a  
13 couple of things.

14 Q. Okay. So, Appendix A, at least in the April  
15 letter, which is Applicant's Exhibit 182, is  
16 titled, "Requested Text Corrections to DES  
17 Final Conditions." Do you see that?

18 A. (Allen) Yes.

19 Q. And then on the next page, Page 7, which is  
20 PDF Page 7, is this red text that's boxed  
21 here with arrows. Does that represent the  
22 proposed text corrections by the Applicant?

23 A. (Allen) That's correct.

24 Q. Okay.

1 A. (Allen) It was very clear at the time.

2 Q. And so towards the end of this paragraph, am  
3 I correct that this is what you reference in  
4 terms of text corrections to the Little Bay  
5 concrete mattresses, where initially -- well,  
6 let me back up.

7 Is the black text taken directly from  
8 the DES final conditions letter?

9 A. (Allen) Yes.

10 Q. So the box down towards the bottom right of  
11 the screen where it says 8,681 square feet,  
12 is that the request to change the square  
13 footage of the concrete mattress impact?

14 A. (Allen) Yes.

15 Q. And I believe you testified earlier that that  
16 number was submitted to DES as part of the  
17 revised wetlands application in September of  
18 2017?

19 A. (Allen) Yes.

20 Q. And that's Applicant's 128?

21 A. (Allen) I'd have to look at that. That's  
22 correct.

23 Q. So this is Applicant's Exhibit 128 on the  
24 screen. I'm not sure if it even has a date

1 on it, but probably at the end here.

2 So, Mr. Nelson, is that your signature  
3 with the date of 9/15/2017 --

4 A. (Nelson) Yes, it is.

5 Q. -- on the bottom of Page 2.

6 And then on Page 4, is this what you  
7 were referring to, the tidal water impacts,  
8 the permanent impacts, the 8,681?

9 A. (Allen) Yes.

10 Q. Okay. Thank you. So that clears that  
11 question up for me.

12 Looking at this, can you tell, and you  
13 may not be able to, but can you tell whether  
14 the vernal pool buffer impacts are included  
15 in any of the temporary impact calculations?

16 A. (Allen) I cannot tell from that. I'd have to  
17 go back to our calculation sheet.

18 Q. And do you know whether the vernal pool  
19 buffer impact impacts are required to be  
20 included in temporary impacts to wetlands  
21 under the DES wetland permits?

22 A. (Allen) I think they are. Again, I'd have to  
23 go back and look. I'm drawing a blank on how  
24 that was handled.

1 Q. That's fair enough. You testified a little  
2 bit earlier about the barge laydown areas  
3 that are shown on the environmental maps.  
4 And we had some testimony from the  
5 Construction Panel as well. And I think you  
6 were consistent with that this morning,  
7 saying they would not anticipate that the  
8 barges actually lay down on the bay floor; is  
9 that correct?

10 A. (Allen) That's what the Construction Panel  
11 stated, yes.

12 Q. But you included those impacts, potential  
13 impacts in the permitting calculations?

14 A. (Allen) We did.

15 Q. Okay. And do you know offhand, roughly how  
16 much of an impact area that is?

17 A. (Allen) Oh, I'm sorry. Again, I'd have to go  
18 back to look at our calculations.

19 Q. That's fair.

20 I want to look briefly at the final DES  
21 determination, which was Applicant's Exhibit  
22 166, Condition No. 35.

23 A. (Allen) Did you say Condition 35?

24 Q. Yes. So, on Page 10 of 25, Permit

1 Condition 35 in the Wetlands section of the  
2 final DES permit decision, which is  
3 Applicant's --

4 A. (Allen) I'm sorry. Are you in the August or  
5 the February?

6 Q. I'm in the February letter.

7 A. (Allen) Okay.

8 Q. Applicant's 166. Are you there?

9 A. (Allen) I am, yeah.

10 Q. So, Condition No. 35 references  
11 project-specific BMPs -- and that stands for  
12 Best Management Practices; correct?

13 A. (Allen) Correct.

14 Q. That they shall be developed in coordination  
15 with NHB and NHFGD and submitted to NHDES for  
16 review and approval. Have those BMPs been  
17 put down on paper and submitted to those  
18 various agencies at this point?

19 A. (Allen) They have. They're in our  
20 Construction Best Management Practices  
21 document.

22 Q. So the specific BMPs called for in this  
23 condition are the ones you've put forward in  
24 that document, which I think is Applicant's

1 Exhibit 124. But that's your understanding,  
2 is that there are not any additional BMPs  
3 that are required that this is talking about.  
4 Because this talks about construction mat use  
5 and other construction-type things as a  
6 condition for wildlife and plant.

7 A. (Allen) The way we wrote our BMPs was by  
8 resource. So, for some resources, handling  
9 of things such as construction mats and  
10 construction access was handled within that  
11 resource, and other resources such as the  
12 Little Bay work, for instance, it would not  
13 apply. So if you look at that document,  
14 you'll see it's written resource by resource  
15 as opposed to taking it through these items  
16 that he's got listed.

17 Q. Yes, I would agree with that. But what I'm  
18 trying to get at is do you interpret this  
19 condition as applying to only environmental  
20 resources, or does it apply to construction  
21 more generally, such as erosion control or  
22 other types of BMPs?

23 A. (Allen) Because it references National  
24 Heritage and Fish and Game, I was reading it

1 as environmental.

2 Q. That's fair enough. Thank you.

3 Let me take a look briefly at  
4 Applicant's Exhibit 97, which is the Natural  
5 Resource Impact Assessment, as amended. On  
6 Page 7 of the PDF, which is Page 4 of the  
7 report, at the bottom of the page there's a  
8 reference to "high-risk sites." And I  
9 understand this to be in terms of erosion and  
10 other soil disturbance issues that could  
11 occur --

12 A. (Allen) Yes, they are.

13 Q. -- and that there may be special BMPs  
14 required for those high-risk sites.

15 A. (Allen) Right.

16 Q. Is that something that you, as the  
17 environmental team, reviewed specifically in  
18 terms of impacts to natural resources?

19 A. (Allen) We did.

20 Q. Okay. Going down the list, it looks like  
21 many of these are steep slopes. What kind of  
22 BMPs are employed for --

23 A. (Allen) We looked primarily at the handling  
24 of water. So we looked at the need for

1           either a side ditch or use of trap rock to  
2           prevent erosion and, you know, obviously  
3           erosion control measures, such as silt  
4           fencing. So that was our primarily interest.

5   Q.   And have you developed specific BMPs for each  
6       of these sites?

7   A.   (Allen) We have not yet.

8   Q.   But you plan to do so before construction?

9   A.   (Allen) That will be something done before  
10       construction.

11   Q.   And just to make sure we're clear, am I  
12       correct that the BMPs, the high-risk sites,  
13       are those that are marked on the  
14       environmental plans with this black line --  
15       go down to the key here. It's labeled here  
16       as "steep slope BMPs" on the environmental  
17       plans; is that correct?

18   A.   (Allen) Correct.

19   Q.   So, for example, in Applicant's Exhibits 148,  
20       on Page 1, which is Map 1, we see a steep  
21       slope BMP around the work pad for Structure  
22       F107-6 and part of the access route; is that  
23       correct?

24   A.   (Allen) Yes.

1 Q. And so would that be this first high-risk  
2 area that's listed in Applicant's Exhibit 97,  
3 steep slope associated with Madbury Road?

4 A. (Allen) I think so. I assume that's adjacent  
5 to a wetland, MW1. Yes, it is.

6 Q. Okay. Thank you.

7 In addition to steep slopes, are there  
8 any other -- I don't see any, but I want to  
9 ask. Are there any other factors that are  
10 considered high risk in your list here?

11 A. (Allen) Can you define "high risk"?

12 Q. Well, you've created in this document things  
13 that are identified as "high-risk sites," and  
14 I'm just trying to understand if that is  
15 limited to steep slopes or if it goes to some  
16 other factor that might be deemed "high  
17 risk"?

18 A. (Allen) That specific paragraph is looking at  
19 high risk -- sorry -- steep slopes.

20 Q. Okay. Are there other factors that could  
21 occur anywhere in the project area that would  
22 be considered high risk other than steep  
23 slopes?

24 A. (Allen) Well, I think the work in Little Bay

1 will certainly require some construction  
2 BMPs. I know we intend to do those.

3 Q. All right. Thank you.

4 You also have on electronic Page 11, and  
5 it's Page 8 of this report, which is  
6 Applicant's Exhibit 97, a list of the  
7 proposed temporary stream impacts for, I  
8 believe this is all the streams that are  
9 impacted by the Project; is that correct?

10 A. (Allen) Yes, it is.

11 Q. And for most of these, it would appear that  
12 the proposed crossings is by a mat bridge; is  
13 that correct?

14 A. (Allen) Correct.

15 Q. Can you describe what a "mat bridge" is?

16 A. (Allen) These are timber mat bridges where --  
17 this is going to be an environmental  
18 description of a timber mat bridge. But they  
19 lay temporary headers with timber mats on  
20 either side of the bridge and span the water  
21 body with a timber mat so it's supported off  
22 the ground.

23 Q. Okay. And the point is to avoid any impact  
24 to the stream itself?

1 A. (Allen) Correct.

2 Q. So that's the majority. And then there are  
3 also two other categories that I see. One is  
4 temporary culvert; is that correct?

5 A. (Allen) Yes.

6 Q. The other is diversion trench and mat bridge?

7 A. (Allen) Yes.

8 Q. Could you describe the difference between  
9 those two categories?

10 A. (Allen) The temporary culvert is used, for  
11 instance, in areas where either timber mat  
12 bridges cannot be constructed. Some areas  
13 I'm thinking about are where a stream is  
14 actually kind of running under a work pad, so  
15 they would need to cross over that. The  
16 trench, I can't remember exactly the term I  
17 used. But the diversion trench and mat  
18 bridge is looking at stream crossings where  
19 we actually need to excavate in the stream to  
20 pass under it. That's at College Brook and  
21 Pickering Brook over in Newington. And those  
22 two will have diversion such as were  
23 described by the Construction Panel to divert  
24 water around the work area so that trenching

1 can be done, and then it will be put back  
2 with timber mat bridges used to access across  
3 the stream body itself. Not sure if that  
4 made any sense at all, but --

5 Q. Made some sense. But is it true that in both  
6 cases, with a temporary culvert and a  
7 diversion, that the water flow and the stream  
8 is changed temporarily?

9 A. (Allen) That's true.

10 Q. Okay. For those culverts, what size is  
11 proposed to be used?

12 A. (Allen) We did not specify size. That will  
13 be up to the contractor.

14 Q. Okay. Does the size of the culvert have an  
15 impact on animal or fish or plant life that  
16 is in the stream?

17 A. (Allen) It would. It would, yeah.

18 Q. Will you be, as the environmental team,  
19 consulted on the sizing of the culverts?

20 A. (Allen) We will.

21 Q. What kind of impacts can diversion of the  
22 stream through a culvert have on flora and  
23 fauna?

24 A. (Allen) Primarily aquatic organism passage.

1           So the ability for fish and other organisms  
2           to transit through the area will be halted  
3           for the length of time that the diversion is  
4           in place.

5                     I do want to point out that the  
6           diversions are intended to be very short  
7           term, on the order of days, in order to get  
8           the construction across the stream.

9    Q.    Is that also true for culverts, or is a  
10          culvert allowed --

11   A.    (Allen) No, culverts will be a longer term  
12          while their work pads are in place for  
13          construction.

14   Q.    And do culverts restrict the passage of  
15          aquatic resources?

16   A.    (Allen) One of our goals as an environmental  
17          monitor would be to make sure that that's at  
18          a minimum. We should be able put culverts in  
19          that do not restrict organisms. Most of  
20          these streams, I might point out, are very  
21          small.

22   Q.    Okay. Thank you.

23                     And is there any impact to turtles or  
24          other amphibians that may use streams as

1 habitat?

2 A. (Allen) There could be, yes, in terms of  
3 creating a barrier by the diversion itself.  
4 Or a lot of those animals are reluctant to go  
5 through small culverts. So, again, the goal  
6 would be to have a large enough culvert that  
7 they could pass.

8 Q. Okay. Are there any other means to mitigate  
9 the impacts to amphibians? I'm thinking  
10 specifically of some of the threatened and  
11 endangered turtles that are expected to be in  
12 the area in some parts of the Project.

13 A. (Allen) Most of the sites that we're  
14 requiring these kinds of culverts especially  
15 are not particularly suitable for the  
16 presence of, I'm thinking of like Blanding's  
17 or spotted turtles. I would not expect them  
18 to be -- we've not identified any aquatic  
19 habitat likely to support them in the Project  
20 area where we're using culverts or trenching.

21 Q. Okay. Thank you.

22 We were talking a couple minutes ago  
23 about Best Managements Practices and  
24 Construction Plan for Protected Wildlife and

1 Plants. Is that this document --

2 A. (Allen) Yes.

3 Q. -- Exhibit 124? Is this the most updated  
4 version of proposed BMPs?

5 A. (Allen) What is the date on this?

6 Q. September 15 --

7 A. (Allen) Yes. Yes, that is.

8 Q. Is this something that could be updated  
9 further in consultation with various state  
10 agencies going forward?

11 A. (Allen) I suspect it will be updated,  
12 especially with the new information about  
13 eagles and sturgeon. The sturgeon plan is  
14 actually pretty accurate the way it's  
15 written. We will probably do a direct  
16 discussion on the eagle nest just to make  
17 sure that it's in the record.

18 Q. And the Fresh Water BMPs section of this  
19 document, which appears at electronic  
20 Page 13, report Page 9, again, Applicant's  
21 Exhibit 124, this calls for hand clearing of  
22 vegetation I guess within the stream buffers.

23 A. (Allen) For the Oyster River and Valentine  
24 Canal.

1 Q. So, for the two perennial streams that are  
2 impacted specifically?

3 A. (Allen) Yes.

4 Q. Okay.

5 A. (Allen) Well, no. Just to be clear, the  
6 Oyster River is not -- we're not proposing  
7 clearing along the banks of the Oyster River  
8 at this point.

9 (Court Reporter interrupts.)

10 A. The contractors think they do not need to be  
11 clearing.

12 Q. You were anticipating my question. But I  
13 wanted to look at the crossing of the Oyster  
14 River -- or sorry -- the right-of-way  
15 crossing. The Project, as I understand it,  
16 is not proposing any direct impacts of the  
17 Oyster River; is that correct?

18 A. (Allen) That's correct.

19 Q. So this is Environmental Map 6A in  
20 Applicant's 148. And am I -- it's a little  
21 bit hard to see on this document. But this  
22 orange stippling is representative of the  
23 stream buffer; is that correct?

24 A. (Allen) Yes, it is.

1 Q. And there seems to be some overlapping stream  
2 buffers in this area.

3 A. (Allen) There are funny little tribs that  
4 come down from various places that get stream  
5 buffers, so that's why you get this. I'm  
6 looking at the one that bisects the Oyster  
7 River. That stream buffer actually applies  
8 to that stream. Correct.

9 Q. The DS61 -- or 51.

10 A. (Allen) Thank you.

11 Q. So my question with regard to the BMP for  
12 tree clearing, this environmental map, which  
13 is from, again, I think September of --  
14 sorry -- July of this year, the most recent  
15 environmental map, it does show tree clearing  
16 along the banks of both sides of the  
17 right-of-way along the banks of the Oyster  
18 River; is that correct?

19 A. (Allen) It does.

20 Q. And is it your testimony that that tree  
21 clearing is no longer proposed?

22 A. (Allen) That is my understanding.

23 Q. Okay. If tree clearing were going to be  
24 occurring within that stream buffer around

1 Oyster River, would it be done by hand?

2 Pursuant to the BMPs?

3 A. (Allen) Yes, it would. That's one of the  
4 things that we recommended.

5 Q. Mr. Nelson looks like he has something to --

6 A. (Nelson) I believe there might be potential  
7 that there is clearing in the vicinity of the  
8 Oyster River, yes.

9 Q. Okay. So there may be some clearing still.

10 A. (Nelson) Correct. There will be vegetation  
11 maintenance activities going on prior to the  
12 construction. My recollection of that area,  
13 there is not -- I would not call it  
14 significant clearing, but there's a potential  
15 that there would have to be some tree  
16 removals up to the close vicinity of the  
17 brook itself. A lot of this activity might  
18 be limbing, for example.

19 Q. Okay. Thank you.

20 And pursuant to that BMPs we looked at,  
21 it would be done by hand to reduce impacts  
22 to --

23 A. (Nelson) That's the goal in this area. As  
24 you can see from the plans, we're calling

1           that a "steep slope BMP" to access portions  
2           of this area. It would be my call that we  
3           would not bring, unnecessarily bring in heavy  
4           equipment for the vegetation portion of this  
5           project unnecessarily. This is work that can  
6           be done by climbing crews.

7    Q.    But there is a proposed structure here that  
8           will require some equipment.

9    A.    (Nelson) Absolutely.

10   Q.    And how large -- it's difficult to tell from  
11           this map, but how large are the stream  
12           buffers for this Oyster River?

13   A.    (Allen) One hundred feet.

14   Q.    Okay. And then --

15   A.    (Allen) I'm sorry. Stream buffers that we  
16           used to calculate temporary impacts are 100  
17           feet.

18   Q.    Okay. So that's what would apply to the  
19           hand-clearing BMP.

20   A.    (Allen) I don't believe we specified the  
21           width of the hand clearing. That would be  
22           subject to the environmental monitor.

23   Q.    Okay. So it sounds like the hand clearing  
24           could be limited to a smaller area than the

1 hundred-foot buffer based on the  
2 recommendation of environmental monitors? I  
3 think that's what you just said, but just  
4 looking for clarification.

5 A. (Nelson) Yeah, we would look to minimize  
6 undue disturbance in this area. I believe a  
7 lot of the question is referring to tree  
8 clearing along the edges of the right-of-way  
9 corridor. Having looked at that area, I'm  
10 confident a lot of that work can be done by  
11 hand as we discussed in the documents that  
12 we've put forth. I would just clarify that a  
13 lot of that work would be manual.

14 With respect to accessing the structure  
15 itself, there may need to be, most likely  
16 need to be some mechanical mowing work that  
17 would need to be done to facilitate the work  
18 area for the structure itself.

19 MR. IACOPINO: Can I just ask a  
20 question? When you say "done by hand," you  
21 mean there would be no chainsaws or power  
22 tool-type use?

23 WITNESS NELSON: Okay. No. With  
24 respect to tree-clearing work, we say "manual."

1           There will be chainsaws. But it most likely  
2           would be done by climbing crews versus being  
3           done with equipment such as feller bunchers or  
4           bucket equipment.

5 BY MR. ASLIN:

6 Q.    So, looking back at Applicant's Exhibit 124,  
7           it appears that the other stream or river  
8           that this would apply to, this BMP would  
9           apply to, is Longmarsh Brook?

10 A.    (Allen) Yes.

11 Q.    And similarly, would the extent of the hand  
12           clearing that's needed be determined by  
13           environmental monitors, or is that a  
14           designated buffer area that would be  
15           applicable?

16 A.    (Allen) My intent was that it would be  
17           determined in the field by the monitors.

18 Q.    Okay. To clarify, this Longmarsh Brook is  
19           the brook here to the east of Route 108 --

20 A.    (Allen) Correct.

21 Q.    -- in Durham. And that's Applicant's  
22           Exhibit 148, Environmental Map 13. And again  
23           it looks like there's less tree clearing  
24           proposed in the vicinity of the brook, but

1           there's some within that buffer?

2   A.   (Allen) It's fairly open in that area anyway.

3   Q.   Okay. Thank you.

4                   MR. ASLIN: This might be a good  
5                   stopping place.

6                   PRESIDING OFFICER WEATHERSBY: Let's  
7                   break for the day, back at 9:00 tomorrow and  
8                   continue with Counsel for the Public. And  
9                   we'll hear from the Committee and redirect, and  
10                  then we're done with the Environmental Panel.  
11                  We still have, I believe, all three potential  
12                  witnesses. Mr. Varney, Dr. Shapiro and Mr.  
13                  Cullen are all potential witness for tomorrow?

14                   MR. NEEDLEMAN: They are. I'm going  
15                   to talk to them when we're done here.

16                   PRESIDING OFFICER WEATHERSBY: Okay.  
17                   Thank you. So we're adjourned for the day.

18                   (Whereupon the Day 5 Afternoon  
19                   Session was adjourned at 6:00  
20                   p.m., with Day 6 to resume  
21                   on September 21, 2018  
22                   commencing at 9:00 a.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
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place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

I further certify that I am neither  
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employed by any of the parties to the  
action; and further, that I am not a  
relative or employee of any attorney or  
counsel employed in this case, nor am I  
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Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)

<b>A</b>	<b>11:6</b>	<b>additional (13)</b>	<b>106:9;121:20;</b>	<b>129:10,21;130:12,18,</b>
<b>A8 (1)</b> 119:13	<b>accounted (1)</b> 60:12	5:20,24;20:11,18, 20;22:10;24:9,12,13, 21;129:23;162:13;	<b>135:22;148:22;</b>	<b>22;131:1;132:1,17;</b>
<b>A9 (1)</b> 111:22	<b>accumulation (1)</b> 19:12	171:2	<b>179:22</b>	<b>135:6,10,16,19,23;</b>
<b>abate (1)</b> 37:24	<b>accurate (8)</b> 16:12;20:7;56:7,8;	<b>additions (1)</b> 162:16	<b>agree (15)</b> 7:6;8:6,10;34:18,	<b>136:2,13,19;137:1,9;</b>
<b>abated (1)</b> 37:20	100:9;121:10;	<b>address (3)</b> 17:1;56:17;141:18	21;43:2;67:21;87:20;	<b>138:7,11;140:3;</b>
<b>abatement (1)</b> 38:8	158:16;180:14	<b>addressed (7)</b> 32:18;34:5;44:5;	120:10;123:20;	<b>143:19;144:1,5;</b>
<b>ability (3)</b> 78:15;87:14;178:1	<b>achieve (3)</b> 49:18;50:1;82:3	73:14;85:22;94:23;	128:24;134:20;	<b>145:6,19;146:1,6,14,</b>
<b>able (9)</b> 3:20;26:7;49:18;	<b>achieved (1)</b> 74:23	102:23	139:8,18;171:17	<b>19;147:8,12,14,17,</b>
<b>abate (1)</b> 37:20	<b>acknowledge (1)</b> 42:18	<b>addresses (3)</b> 12:5,6;45:23	<b>agreed (2)</b> 54:13;68:10	<b>149:7,14,20;153:17;</b>
<b>above (3)</b> 41:18;57:1,6	<b>across (8)</b> 17:6;74:16;88:17;	<b>adhere (1)</b> 53:16	<b>agreeing (2)</b> 115:14;129:6	<b>154:20;155:14,21;</b>
<b>absent (3)</b> 7:1,10;8:9	89:11,13;131:7;	<b>adjacent (2)</b> 69:21;174:4	<b>agreement (1)</b> 147:1	<b>156:3,17,21;157:4,7,</b>
<b>absolutely (2)</b> 121:16;184:9	177:2;178:8	<b>adjoined (2)</b> 187:17,19	<b>agricultural (1)</b> 109:13	<b>10,15,23;158:2;</b>
<b>abutter (10)</b> 73:3;96:22,24;	<b>Act (1)</b> 157:6	<b>adjustments (1)</b> 166:3	<b>alert (1)</b> 57:10	<b>159:24;160:20;</b>
<b>abutters (5)</b> 97:10;16,22;	<b>acted (1)</b> 133:12	<b>Administrative (1)</b> 126:16	<b>Allen (354)</b> 3:20;4:8,15;15:11,	<b>161:3,10;162:8,11,</b>
<b>abutter's (2)</b> 121:22;147:3	<b>acting (1)</b> 161:24	<b>adopted (1)</b> 108:14	20;33:19,23;34:2,21,	<b>19,23;173:7,9,18,24;</b>
<b>abutting (4)</b> 112:1,3;146:4,22	<b>action (2)</b> 32:4;103:23	<b>advancement (1)</b> 89:9	24;35:5,12,20;36:24;	<b>174:4,11,18,24;</b>
<b>accept (2)</b> 139:20;156:15	<b>actions (1)</b> 102:3	<b>adverse (2)</b> 7:4;126:14	37:6;38:3;39:8,11,	<b>175:10,14,16;176:1,</b>
<b>acceptable (1)</b> 158:23	<b>active (5)</b> 73:2,4,5,9;102:8	<b>aerial (1)</b> 61:10	20;40:5,14,18;41:2,5,	<b>5,7,10;177:9,12,17,</b>
<b>accepted (2)</b> 40:11;97:21	<b>actively (1)</b> 153:23	<b>affect (1)</b> 33:8	12,20,23;42:8,17,22;	<b>20,24;178:11,16;</b>
<b>access (6)</b> 57:23;163:19;	<b>activities (1)</b> 183:11	<b>affected (1)</b> 147:1	43:4,6,12,15,18;44:2,	<b>179:2,13;180:2,5,7,</b>
<b>accessing (1)</b> 185:14	<b>activity (2)</b> 153:21;183:17	<b>afloat (2)</b> 84:19;88:23	5,13,19,23;45:11,15,	<b>11,23;181:3,5,18,24;</b>
<b>accidentally (1)</b> 80:11	<b>actual (4)</b> 8:8;47:11;123:15;	<b>aft (1)</b> 90:11	20;46:1,10,13,20,22;	<b>182:3,10,19,22;</b>
<b>accommodations (2)</b> 78:14;80:3	153:6	<b>afternoon (5)</b> 3:7;68:24;95:20,	47:1,14,18,24;48:5,	<b>183:3;184:13,15,20;</b>
<b>accompanying (1)</b> 113:22	<b>actually (46)</b> 13:24;23:11;26:7;	21;187:18	11,17;49:1,6,14;50:3,	<b>186:10,16,20;187:2</b>
<b>accordance (2)</b> 102:5;119:10	28:23;32:5;34:2;	<b>again (21)</b> 4:3,8;5:13;11:18;	9,12;54:3,7,16;55:7,	<b>allow (4)</b> 13:1;118:23;122:7;
<b>according (2)</b> 104:9;115:12	40:24;47:22;48:2;	27:18;29:16;37:12;	20;56:3,8,16,23;57:4,	<b>allowed (4)</b> 35:2;59:10;118:5;
<b>accordingly (1)</b> 53:8	55:21;75:13;85:19;	55:2;58:16;72:5,23;	9,20,23;58:3,10,15,	<b>178:10</b>
<b>account (1)</b>	108:17;113:20,23;	125:18;127:7;	24;59:6,16,19;62:7,	<b>alluding (1)</b> 60:1
	117:15;119:3,11;	153:18;157:11;	13,17;63:4,10,16,18,	<b>almost (3)</b> 43:22;117:16;
	121:6,9;123:6;132:8;	168:22;169:17;	24;64:5,10,16,22;	121:6
	145:22;147:15;	179:5;180:20;	65:3,6,16,21,24;66:9,	<b>along (11)</b> 14:18;22:22;26:4;
	148:6,9;156:4;	182:13;186:22	14,20,24;67:3,11,17,	74:8;132:3;138:19;
	158:11;162:8;169:8;	<b>against (2)</b> 89:20,24	21;68:2,8,16,69:5,7,	162:14;181:7;
	176:14,19;180:14;	<b>agencies (5)</b> 114:14,18;118:1;	11,18,23;70:1,6,17,	182:16,17;185:8
	182:7	170:18;180:10	23;71:1,8;75:5,11,22;	<b>Alpha (1)</b> 26:19
	<b>add (2)</b> 53:2;55:11	<b>agency (1)</b> 120:17	76:2,17;77:4,7,9,18,	<b>alternative (8)</b> 126:14,22;128:23;
	<b>added (2)</b> 22:10;164:20	<b>aggressive (1)</b> 104:4	24;81:13,16,24;	129:8;131:22;133:5;
	<b>addition (2)</b> 3:24;174:7	<b>ago (5)</b>	83:19;84:1,9,12;96:4,	134:21,23
			11,20;97:6,12,17,19,	<b>alternatives (8)</b> 128:2,15;131:5,10,
			24;98:6,8,21;100:13,	15;133:2;134:6,8
			15,22;101:13,17,21;	<b>always (6)</b> 4:10,12,18;23:21;
			104:2,15,18;105:3,	32:16;54:9
			15,23;106:8,13,24;	<b>amenable (1)</b> 79:12
			107:5,12,19;108:7,	
			10,16,20,24;109:19,	
			21;110:1,8,13;	
			111:17;112:6,17;	
			113:3,9,13,16;114:3,	
			6,8;115:6,14,16;	
			116:3,12;117:1,8,14,	
			19,22;118:9,13;	
			119:2;122:16;125:4,	
			9,13;126:5,23;	
			127:15,19,21;128:24;	

<p><b>amended (2)</b> 50:20;172:5</p> <p><b>amongst (1)</b> 25:12</p> <p><b>amount (10)</b> 13:16;37:7;42:2,6; 48:13;50:6,7;54:11; 61:5;93:24</p> <p><b>amphibians (2)</b> 178:24;179:9</p> <p><b>amplify (1)</b> 21:22</p> <p><b>analyses (1)</b> 26:21</p> <p><b>analysis (12)</b> 5:24;18:12;20:2; 21:12,20;22:9,10; 131:5,10;133:2; 134:7;135:2</p> <p><b>analytical (6)</b> 20:5,19,20;24:2,6; 26:19</p> <p><b>analyzed (4)</b> 21:5,21;27:15;28:6</p> <p><b>anchor (3)</b> 61:24;62:11;91:23</p> <p><b>anchors (17)</b> 62:2;63:14;89:21, 21,22;90:2,3,4,6,7,8, 17,18;91:14,17,20; 92:5</p> <p><b>and/or (3)</b> 46:13;97:3;125:21</p> <p><b>angle (2)</b> 156:3;161:4</p> <p><b>animal (1)</b> 177:15</p> <p><b>animals (1)</b> 179:4</p> <p><b>answered (3)</b> 38:16;42:10;50:22</p> <p><b>anthropogenic (1)</b> 17:11</p> <p><b>anticipate (6)</b> 48:5;49:2;50:12; 72:8;74:20;169:7</p> <p><b>anticipated (6)</b> 30:20,24;31:3; 73:15;81:2;162:24</p> <p><b>anticipating (2)</b> 38:3;181:12</p> <p><b>anticipation (1)</b> 31:6</p> <p><b>apart (2)</b> 143:12;144:10</p> <p><b>apologize (4)</b> 78:16;105:7;144:7, 23</p> <p><b>apparently (4)</b> 40:1;114:24; 140:12;142:8</p> <p><b>appeal (1)</b> 133:14</p>	<p><b>appear (4)</b> 24:16;120:4; 160:24;175:11</p> <p><b>appears (11)</b> 19:23;20:19;22:17; 23:22;24:4;30:11; 49:10;118:17;150:2; 180:19;186:7</p> <p><b>Appendix (11)</b> 40:20;41:1,13,15; 44:12,14;165:14,22, 23;166:5,14</p> <p><b>applicable (1)</b> 186:15</p> <p><b>Applicant (16)</b> 53:11;98:12,15; 109:24;110:22,24; 112:4,7;116:16; 117:23;118:6; 126:12;133:21; 134:1;165:24;166:22</p> <p><b>Applicant's (30)</b> 96:3,14;99:10; 101:24;107:22; 118:21;119:6;130:7; 137:21;155:9;158:6; 160:7;164:6,15; 165:11;166:15; 167:20,23;169:21; 170:3,8,24;172:4; 173:19;174:2;175:6; 180:20;181:20; 186:6,21</p> <p><b>Application (38)</b> 39:9,10,11;42:1,7, 20,22;43:7;44:16; 48:16;96:2,18;97:10, 13;98:3,19;101:16; 104:5;108:22; 110:23;119:5; 121:12;125:18; 126:13;135:14,17,19; 141:3,21;143:11,16; 144:4,5;145:3; 152:14;162:4;164:5; 167:17</p> <p><b>applications (2)</b> 82:12;98:10</p> <p><b>applied (1)</b> 24:3</p> <p><b>applies (3)</b> 70:15;72:4;182:7</p> <p><b>apply (11)</b> 11:19;68:15;78:6; 143:17;146:12; 148:20;171:13,20; 184:18;186:8,9</p> <p><b>applying (1)</b> 171:19</p> <p><b>appreciate (3)</b> 53:8;100:9;161:12</p> <p><b>appreciated (1)</b> 52:14</p>	<p><b>approach (1)</b> 126:1</p> <p><b>approaching (1)</b> 107:20</p> <p><b>appropriate (3)</b> 46:2;152:21; 159:14</p> <p><b>approval (3)</b> 77:1;92:11;170:16</p> <p><b>approve (1)</b> 143:22</p> <p><b>approved (3)</b> 33:14,18;122:14</p> <p><b>approximate (4)</b> 138:3;142:1,21; 148:2</p> <p><b>approximately (3)</b> 18:20;89:13;107:1</p> <p><b>April (4)</b> 40:8;166:1,8,14</p> <p><b>aquaculture (1)</b> 33:8</p> <p><b>aquatic (3)</b> 177:24;178:15; 179:18</p> <p><b>arborist (1)</b> 82:8</p> <p><b>archeological (3)</b> 60:8,16,23</p> <p><b>area (80)</b> 9:19,23;10:4,8,16; 11:3;13:17,22;16:13; 17:19;18:2;31:23; 54:2;56:17,24;57:5, 12;59:23;61:7;62:20, 20;65:8,14;66:18,23; 72:8;74:9,16;76:10; 84:21;90:16,19,20; 91:6,7,15,24;106:6, 11;125:10;126:2; 127:13;128:19; 135:1,4,8,21,24; 136:3,7;137:5,7,19; 148:4;154:5;155:13, 23;157:2,5,9,14; 158:1,4;169:16; 174:2,21;176:24; 178:2;179:12,20; 182:2;183:12,23; 184:2,24;185:6,9,18; 186:14;187:2</p> <p><b>areas (42)</b> 12:8,9,18,21;13:3, 4,7;14:6;31:11;48:9; 49:2;55:13;59:22; 60:11,11,16;62:4; 67:18;76:4;78:10,15; 79:15;82:7,10,16; 85:14;97:3;125:21; 126:15;127:24; 129:8;132:21,24; 134:24;136:23; 156:19;157:21;</p>	<p>163:18;165:20; 169:2;176:11,12</p> <p><b>argument (4)</b> 152:16,17,19,20</p> <p><b>arising (1)</b> 50:13</p> <p><b>around (7)</b> 57:2;60:11;74:18; 88:15;173:21; 176:24;182:24</p> <p><b>arrangements (1)</b> 53:13</p> <p><b>arrows (1)</b> 166:21</p> <p><b>artificial (1)</b> 31:7</p> <p><b>as-builts (2)</b> 47:5,9</p> <p><b>ashore (1)</b> 156:1</p> <p><b>aside (1)</b> 144:9</p> <p><b>ASLIN (6)</b> 32:24;161:19,22, 24;186:5;187:4</p> <p><b>aspect (1)</b> 141:12</p> <p><b>assent (1)</b> 143:23</p> <p><b>assess (1)</b> 32:2</p> <p><b>assessing (1)</b> 6:3</p> <p><b>assessment (8)</b> 31:21;61:14;77:12; 82:21;83:20;86:1; 164:7;172:5</p> <p><b>associated (4)</b> 18:16;80:19,20; 174:3</p> <p><b>Association (2)</b> 51:10;53:23</p> <p><b>assume (7)</b> 19:19;54:1;105:11; 136:16;147:4;159:4; 174:4</p> <p><b>assumed (2)</b> 85:14,19</p> <p><b>assuming (2)</b> 63:14;88:2</p> <p><b>assumption (1)</b> 105:2</p> <p><b>assurance (1)</b> 80:8</p> <p><b>Attachment (1)</b> 102:20</p> <p><b>attained (1)</b> 37:15</p> <p><b>attempt (1)</b> 5:1</p> <p><b>attempted (1)</b> 50:10</p> <p><b>attended (4)</b></p>	<p>114:23;115:7; 117:15,20</p> <p><b>attention (7)</b> 26:1;46:5;69:12; 70:12;99:8;128:1; 151:8</p> <p><b>Attorney (10)</b> 33:4;52:2;68:20; 95:8,14;99:13; 120:21;134:21; 144:21;161:19</p> <p><b>August (12)</b> 32:19;35:5;40:13; 41:9;42:17;112:14, 21,23;166:2,5,7; 170:4</p> <p><b>authentication (1)</b> 158:10</p> <p><b>authority (1)</b> 114:15</p> <p><b>authorized (1)</b> 35:3</p> <p><b>available (6)</b> 6:7;36:13;67:5; 74:20;99:11;104:8</p> <p><b>averages (1)</b> 93:3</p> <p><b>avoid (3)</b> 85:4;94:16;175:23</p> <p><b>avoidance (1)</b> 55:13</p> <p><b>aware (32)</b> 4:24;37:1;44:17; 45:2,22;48:7;98:21, 22;105:12;108:17; 112:8;118:4,9; 125:13;129:11; 131:1,2,4,12;132:11, 15;139:24;146:16; 147:15;148:13; 150:7,16;151:4,13, 19;152:1;153:2</p> <p><b>away (7)</b> 16:6,10,17,23; 17:17;19:2;73:4</p> <p><b>awful (1)</b> 56:18</p>
<b>B</b>				
<p><b>back (35)</b> 18:2;30:8;36:12; 42:23;49:6;64:17; 71:12,21;74:12;75:4, 13;82:15;94:6;95:7, 14;100:11,17; 106:17;107:21; 108:7;112:13;117:9; 118:16;119:6; 120:22;144:15; 161:17;164:20; 167:6;168:17,23; 169:18;177:1;186:6;</p>				

187:7 <b>background (1)</b> 78:20 <b>balance (1)</b> 127:1 <b>banks (3)</b> 181:7;182:16,17 <b>barge (17)</b> 84:17,19;85:10,14, 19;86:12;88:16,22; 89:5,16,23;91:4,6,9, 18;106:3;169:2 <b>barges (1)</b> 169:8 <b>barge's (1)</b> 87:14 <b>barrier (1)</b> 179:3 <b>base (6)</b> 67:6;75:18;83:12, 14,22;84:11 <b>based (22)</b> 6:6;10:18,21; 24:24;29:4,6,24; 31:22;35:9;37:21; 47:19;49:1;54:22; 55:22;68:1;86:6; 99:12;119:12;141:3, 22;152:9;185:1 <b>baseline (1)</b> 80:10 <b>Basically (5)</b> 25:2;65:17;87:16; 116:20;118:2 <b>basis (1)</b> 29:21 <b>Bay (29)</b> 5:5,13;7:5,21;8:6; 18:14;35:1;39:24; 45:18;63:2,10,11; 86:12,15;87:11,19; 88:17;89:14;92:21; 94:8;138:21;146:7, 10;163:14;165:6; 167:4;169:8;171:12; 174:24 <b>bearing (1)</b> 121:16 <b>become (1)</b> 51:22 <b>becomes (1)</b> 11:18 <b>bed (1)</b> 25:19 <b>bedrock (1)</b> 6:2 <b>began (2)</b> 104:7;117:5 <b>beginning (1)</b> 66:11 <b>behalf (2)</b> 145:10,11 <b>behave (1)</b>	29:13 <b>below (6)</b> 105:16;111:5,22; 122:10;148:7;153:13 <b>besides (1)</b> 59:3 <b>best (11)</b> 5:14;48:23;52:23; 78:15;80:23;84:1; 90:19;146:19; 170:12,20;179:23 <b>Beswick (6)</b> 126:2;130:21; 136:5;154:19; 157:18,21 <b>Beswicks (2)</b> 131:14,17 <b>Beswick's (5)</b> 105:16;127:19,22; 128:17;136:4 <b>better (7)</b> 27:21;36:21;64:11; 67:12;68:16;74:11; 132:9 <b>beyond (3)</b> 48:12;141:11; 144:14 <b>big (3)</b> 5:18;34:5;62:10 <b>binders (1)</b> 144:9 <b>bisect (1)</b> 148:4 <b>bisects (1)</b> 182:6 <b>bit (16)</b> 4:23;8:12;17:2; 59:8,20;65:11;70:17; 76:5;106:21;114:3,6; 136:17;142:12; 155:14;169:2;181:21 <b>bits (2)</b> 64:6;66:5 <b>Bjorkman (5)</b> 19:5;21:22;22:3; 23:4;32:8 <b>black (3)</b> 56:5;167:7;173:14 <b>Blanding's (1)</b> 179:16 <b>blank (1)</b> 168:23 <b>blown (1)</b> 159:19 <b>blue (1)</b> 61:3 <b>BMP (5)</b> 173:21;182:11; 184:1,19;186:8 <b>BMPs (16)</b> 170:11,16,22; 171:2,7,22;172:13, 22;173:5,12,16;	175:2;180:4,18; 183:2,20 <b>boat (1)</b> 116:5 <b>boating (1)</b> 45:18 <b>Bob (2)</b> 52:6;113:7 <b>body (3)</b> 146:8;175:21; 177:3 <b>both (12)</b> 14:18;16:4,13; 19:20;53:11;57:11; 109:17;114:20; 153:12;163:6;177:5; 182:16 <b>bottom (18)</b> 8:24;11:10;22:21; 27:6;28:9;30:7;31:2; 61:3;90:13;93:17; 108:4;109:7;119:8; 130:5;138:15; 167:10;168:5;172:7 <b>boundaries (2)</b> 66:15,17 <b>boundary (1)</b> 155:17 <b>bow (1)</b> 89:22 <b>Bowes (5)</b> 57:24;102:17; 103:7;132:13;155:8 <b>box (3)</b> 66:12,15;167:10 <b>boxed (1)</b> 166:20 <b>brand (1)</b> 64:24 <b>break (2)</b> 95:7;187:7 <b>breaking (1)</b> 4:19 <b>breaks (1)</b> 53:6 <b>bridge (8)</b> 64:1;74:4;175:12, 15,18,20;176:6,18 <b>bridges (3)</b> 175:16;176:12; 177:2 <b>briefly (3)</b> 73:14;169:20; 172:3 <b>bring (9)</b> 106:16;109:2,3; 125:18;140:5;153:1; 154:21;184:3,3 <b>broad (1)</b> 116:3 <b>broke (1)</b> 3:8 <b>Brook (7)</b>	176:20,21;183:17; 186:9,18,19,24 <b>brown (10)</b> 63:22;64:4;68:20, 23,24;70:9,14;76:24; 83:6,9 <b>bucket (1)</b> 186:4 <b>budget (1)</b> 52:8 <b>buffer (14)</b> 163:21,22,24; 164:1,8,16;168:14, 19;181:23;182:7,24; 185:1;186:14;187:1 <b>buffers (5)</b> 180:22;182:2,5; 184:12,15 <b>building (4)</b> 55:4,8;153:9,11 <b>built (4)</b> 32:5;51:3;122:20; 124:4 <b>bulk (1)</b> 162:11 <b>bunch (1)</b> 32:9 <b>bunchers (2)</b> 59:12;186:3 <b>Bureau (1)</b> 113:7 <b>burial (1)</b> 49:3 <b>buried (1)</b> 63:15 <b>business (3)</b> 32:11;61:3;78:5 <b>busy (1)</b> 109:1	15:15;18:1,6,7,13, 16,22;19:12;44:6; 127:11 <b>calculate (2)</b> 163:22;184:16 <b>calculated (1)</b> 44:10 <b>calculation (5)</b> 9:9;11:6,17;44:7; 168:17 <b>calculations (6)</b> 10:22;164:3,18; 168:15;169:13,18 <b>call (8)</b> 36:16;46:5;56:16; 133:2;150:10; 151:15;183:13;184:2 <b>called (4)</b> 54:20,22;118:8; 170:22 <b>calling (3)</b> 55:8;123:17; 183:24 <b>calls (8)</b> 36:2;119:15; 122:24;128:4; 150:21;151:22; 154:11;180:21 <b>came (4)</b> 3:23;104:21;113:7; 164:24 <b>campaign (1)</b> 102:8 <b>can (105)</b> 4:9;5:11;7:22; 8:23;11:10;18:15; 21:10,13;25:11; 27:13,18;29:2,9,17; 30:6,24;33:19;36:18; 37:2,20,23;38:8; 40:16;42:21;43:8; 52:14,23;53:5;54:11; 64:6,12,17;66:1,11; 70:19;72:3;73:18,24; 74:2,7,9,13,15,23; 78:3,6;80:2,8;83:3,4, 10,11;85:16,23; 96:15;99:21;103:10; 105:6,17;106:2,4,15; 107:6;108:1;110:17, 18;112:6;114:3; 119:23;120:12; 130:22;132:5; 133:16,22;136:16; 137:16,23;138:18; 139:12,18;140:17,18; 142:5;146:16,17; 152:19;153:7,13; 156:9;157:20,22,23; 158:21;159:21; 160:3;168:12,13; 174:11;175:15; 177:1,21;183:24;
<b>C</b>				
<b>C1 (4)</b> 15:14,14,14,21 <b>C2 (2)</b> 16:4,10 <b>C4 (1)</b> 22:24 <b>C5 (3)</b> 23:2,18;27:23 <b>C7 (2)</b> 16:3;23:19 <b>C8 (2)</b> 16:3;23:21 <b>Cable (22)</b> 15:3;16:6,18,20; 18:11,12,18;19:1,8; 26:5;30:6;35:1; 37:16;39:23;104:18; 125:10;127:9,16; 130:14;131:2;136:2; 137:2 <b>cables (10)</b>				

184:5;185:10,19 <b>Canal (1)</b> 180:24 <b>canopy (1)</b> 61:10 <b>capacity (1)</b> 59:6 <b>care (1)</b> 28:1 <b>carefully (1)</b> 116:14 <b>case (13)</b> 12:12;28:16;32:15; 71:15,18;92:2;97:18; 112:5;121:2;125:6; 150:5,9;151:2 <b>cases (5)</b> 89:7;110:4;116:6; 151:8;177:6 <b>categories (4)</b> 125:20,23;176:3,9 <b>caught (2)</b> 90:1;166:12 <b>cause (2)</b> 24:20;140:5 <b>caused (2)</b> 90:17;91:14 <b>caveat (1)</b> 129:6 <b>cement (1)</b> 60:13 <b>Center (1)</b> 67:13 <b>certain (12)</b> 15:20;17:18;43:13, 16,18;68:2;80:3; 82:12;100:15; 102:22;159:4;166:2 <b>certainly (15)</b> 34:11;38:21;51:4; 60:12;74:22;78:14; 80:2,24;81:1,2,4; 115:9;125:6;152:20; 158:2;175:1 <b>certainty (3)</b> 30:14;32:5,15 <b>certified (1)</b> 97:15 <b>cetera (3)</b> 52:18;81:11; 158:17 <b>chainsaws (2)</b> 185:21;186:1 <b>Chair (8)</b> 36:1;51:11;53:3; 95:17;102:17;121:8; 158:8;159:7 <b>challenge (2)</b> 51:23;54:9 <b>challenges (2)</b> 45:17,18 <b>Chalmers (1)</b> 52:8	<b>chance (3)</b> 5:3;103:8;138:8 <b>change (8)</b> 52:4;127:17; 129:11,12;131:1; 153:20;159:20; 167:12 <b>changed (3)</b> 67:1;128:8;177:8 <b>changes (4)</b> 37:23;53:6;88:21; 162:14 <b>channel (2)</b> 91:11,18 <b>chapter (1)</b> 111:11 <b>Characteristics (7)</b> 22:22;23:12,16; 24:24;26:24;27:2,5 <b>characterization (7)</b> 17:3,24;19:18; 20:17;22:1;26:17; 49:12 <b>characterize (1)</b> 14:14 <b>characterizing (1)</b> 129:1 <b>chart (8)</b> 7:24;16:3;22:15, 17,19;24:16;26:23; 27:17 <b>charts (1)</b> 24:1 <b>Chase (2)</b> 138:22;141:4 <b>check (5)</b> 110:3;111:19; 162:21;163:4;164:14 <b>checked (1)</b> 66:21 <b>checks (2)</b> 162:13,16 <b>chemical (2)</b> 16:13;26:20 <b>chemicals (8)</b> 80:5,6,9,10,13,16, 21;81:2 <b>Cheryl (1)</b> 67:9 <b>chime (1)</b> 25:2 <b>chose (2)</b> 93:4;121:11 <b>chosen (1)</b> 131:18 <b>Chris (1)</b> 161:23 <b>circling (1)</b> 120:21 <b>citation (4)</b> 77:16;88:8;108:14; 110:15 <b>cites (1)</b>	26:9 <b>citizens (1)</b> 118:23 <b>claim (1)</b> 103:20 <b>claiming (1)</b> 102:12 <b>clarification (5)</b> 79:9,23;84:15; 98:14;185:4 <b>clarify (5)</b> 7:13;23:4;164:24; 185:12;186:18 <b>clarity (2)</b> 79:2;117:4 <b>clean (1)</b> 8:16 <b>clear (9)</b> 21:8;50:14;59:13, 15;78:16;98:8;167:1; 173:11;181:5 <b>cleared (2)</b> 55:16;137:6 <b>clearing (21)</b> 59:8,20;61:5,6; 157:11,13;180:21; 181:7,11;182:12,15, 21,23;183:7,9,14; 184:21,23;185:8; 186:12,23 <b>clearly (4)</b> 32:6;67:4;128:21; 157:20 <b>clears (2)</b> 59:16;168:10 <b>CLF (2)</b> 14:21;51:14 <b>client (8)</b> 99:2;100:1;101:6; 104:10,19;121:11; 154:4;156:8 <b>clients (2)</b> 98:20;105:12 <b>client's (4)</b> 99:9;102:10; 121:20;153:10 <b>climbing (2)</b> 184:6;186:2 <b>close (8)</b> 27:10,14;33:8; 56:3;88:9;91:10; 128:1;183:16 <b>closer (2)</b> 70:17;107:4 <b>closest (1)</b> 25:18 <b>Coast (2)</b> 46:2,21 <b>coding (2)</b> 67:23;68:12 <b>collect (1)</b> 24:9 <b>collected (8)</b>	17:14;24:12,13,14, 18;27:1,9;28:6 <b>collections (3)</b> 24:17;26:5;27:11 <b>College (1)</b> 176:20 <b>colored (1)</b> 66:6 <b>column (6)</b> 14:11;21:16,19; 22:21;25:24;28:4 <b>comfort (1)</b> 16:24 <b>comfortable (3)</b> 16:21;17:23;85:3 <b>coming (6)</b> 25:17;94:1;106:24; 107:5;113:18;131:7 <b>commencing (1)</b> 187:22 <b>comment (2)</b> 111:8;118:24 <b>commitment (1)</b> 162:20 <b>Committee (8)</b> 52:12;113:8;118:7; 121:19;138:18; 139:22;153:2;187:9 <b>Committee's (1)</b> 133:11 <b>common (2)</b> 117:24;149:16 <b>communication (1)</b> 118:8 <b>community (1)</b> 82:3 <b>Company (2)</b> 75:16;138:23 <b>compare (2)</b> 128:21;130:20 <b>compared (1)</b> 22:11 <b>comparison (2)</b> 6:20;79:17 <b>completed (2)</b> 36:20;97:1 <b>completely (2)</b> 34:19;143:13 <b>completion (1)</b> 47:10 <b>complies (1)</b> 122:21 <b>comply (1)</b> 34:11 <b>component (1)</b> 82:4 <b>compositing (2)</b> 25:8,10 <b>computer (1)</b> 76:22 <b>concept (8)</b> 11:11;132:4;151:4, 13,19;152:1,12,15	<b>concern (6)</b> 18:24;38:12;45:24; 78:13,24;85:7 <b>concerned (2)</b> 28:17;133:10 <b>concerning (2)</b> 100:3;147:2 <b>concerns (3)</b> 20:4,8,10 <b>concluding (2)</b> 30:17;94:21 <b>conclusion (11)</b> 7:1;36:3;119:15, 17,22;123:1,18; 127:6;150:11; 151:15;154:12 <b>conclusions (1)</b> 6:24 <b>concrete (40)</b> 39:4,6,23;42:3; 43:1,8;47:8,9,12; 49:10,16,21;50:1,5; 51:5;62:11;94:5,10, 12,16;100:1,24; 101:7;103:18; 104:17;105:21; 106:4,22,24;116:4, 12;148:5,7;153:9,19; 154:3;163:13;165:5; 167:5,13 <b>concur (1)</b> 41:14 <b>concurrency (1)</b> 165:15 <b>concurring (1)</b> 147:2 <b>condition (26)</b> 33:6;34:10,12,22; 37:11;45:22;46:5,12; 47:2;50:14;77:2,7,9, 16;78:8;79:18;92:11; 124:1,7;169:22,23; 170:1,10,23;171:6,19 <b>conditions (23)</b> 10:18;32:18,19; 33:22;34:6;40:21; 47:3,21;71:6;75:14; 77:1,11;116:21; 117:2,5;123:5,7; 124:19,22;147:10; 166:3,17;167:8 <b>conduct (4)</b> 20:3,11;102:3; 118:14 <b>conducted (3)</b> 20:1;29:23;102:2 <b>confidence (5)</b> 29:2,5,20;38:5; 49:20 <b>confident (8)</b> 10:14;16:9,11,19; 28:9;37:21;50:16; 185:10
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<b>confines (1)</b> 61:8	180:9	<b>Cores (3)</b> 26:17,18;27:8	<b>crew (2)</b> 27:13;91:21	12:2,8,10,21,23,24; 13:4,15,23;14:5,7,9, 12
<b>confirm (2)</b> 69:16;110:2	<b>consulted (1)</b> 177:19	<b>corner (1)</b> 66:11	<b>crews (2)</b> 184:6;186:2	<b>curvature (1)</b> 140:19
<b>conflict (1)</b> 154:8	<b>contacting (1)</b> 46:2	<b>correcting (1)</b> 40:9	<b>criteria (1)</b> 133:11	<b>cut (2)</b> 44:1;61:4
<b>confused (1)</b> 77:15	<b>contacts (1)</b> 44:20	<b>correction (1)</b> 41:24	<b>critical (6)</b> 9:1,24;10:9,17; 11:4;55:9	<b>cutting (1)</b> 59:7
<b>Conservation (1)</b> 15:8	<b>contain (3)</b> 18:6,7;141:24	<b>corrections (9)</b> 40:9,20;41:15,22; 165:15,21;166:16,22; 167:4	<b>cross (3)</b> 72:22;73:6;176:15	<b>cycle (2)</b> 93:1;107:10
<b>conservative (5)</b> 11:1,18;47:20; 49:1,5	<b>contained (3)</b> 23:7;54:24;55:1	<b>correctly (4)</b> 58:24;100:12; 122:15;130:11	<b>crosses (3)</b> 56:21;63:21;65:11	<b>cycles (1)</b> 9:3
<b>consider (6)</b> 59:4,14;61:22; 62:1,7;63:8	<b>contains (1)</b> 127:11	<b>correspondence (1)</b> 99:1	<b>CROSS-EXAMINATION (7)</b> 3:5;51:15;53:20; 68:22;95:18;161:21; 165:1	<b>D</b>
<b>considerable (1)</b> 32:14	<b>contaminants (6)</b> 16:17,20;17:9,12; 18:23;23:7	<b>corridor (7)</b> 57:18;61:13;79:7; 127:16;129:16; 131:3;185:9	<b>crossing (9)</b> 17:7;127:9;130:14; 136:10,11,13;137:17; 181:13,15	<b>damage (1)</b> 85:7
<b>consideration (2)</b> 92:19;93:9	<b>contamination (2)</b> 18:9;19:2	<b>corridors (1)</b> 127:10	<b>crossings (2)</b> 175:12;176:18	<b>Danforth-type (1)</b> 90:7
<b>considered (3)</b> 125:10;174:10,22	<b>CONT'D (1)</b> 3:5	<b>corroborate (1)</b> 71:23	<b>cross-reference (1)</b> 108:20	<b>data (11)</b> 17:7,13,13,23;21:7, 8;64:14;67:4,6,15; 93:12
<b>considering (2)</b> 28:2;60:24	<b>context (1)</b> 100:11	<b>corroboration (1)</b> 73:16	<b>cross-section (1)</b> 5:8	<b>database (1)</b> 67:7
<b>consistency (1)</b> 65:5	<b>continue (5)</b> 3:4;8:24;102:2; 121:15;187:8	<b>Cote (2)</b> 100:20;103:1	<b>Crowley (4)</b> 98:20;101:14; 105:4,16	<b>date (4)</b> 38:6;167:24;168:3; 180:5
<b>consistent (6)</b> 17:13;55:24; 102:14;103:5; 160:12;169:6	<b>continuous (3)</b> 71:18;73:11;89:17	<b>Counsel (7)</b> 7:23;28:21;99:11; 117:20;154:22; 161:24;187:8	<b>Crowley-Joyce (4)</b> 95:9,23;125:8; 156:24	<b>dated (4)</b> 39:15;41:8,9; 138:22
<b>consistently (1)</b> 104:11	<b>contractor (4)</b> 3:24;77:17;85:3; 177:13	<b>count (1)</b> 51:16	<b>crown (1)</b> 61:11	<b>dates (2)</b> 40:10;165:20
<b>consolidated (1)</b> 55:5	<b>contractors (5)</b> 55:12;57:10,11; 63:4;181:10	<b>counted (1)</b> 117:16	<b>Cullen (1)</b> 187:13	<b>Dawn (1)</b> 83:5
<b>consolidation (1)</b> 11:12	<b>contractor's (1)</b> 163:3	<b>counterbalance (1)</b> 76:8	<b>cultural (2)</b> 64:12;68:17	<b>day (9)</b> 57:24;83:14;86:12; 87:15;155:7;187:7, 17,18,20
<b>construct (3)</b> 130:8,16;149:17	<b>contrast (1)</b> 119:18	<b>couple (5)</b> 25:22;116:18; 137:22;166:13; 179:22	<b>culturing (1)</b> 79:5	<b>days (5)</b> 9:10;10:12;34:14; 86:11;178:7
<b>constructability (1)</b> 127:2	<b>contribute (1)</b> 19:5	<b>course (2)</b> 4:15;94:2	<b>culvert (7)</b> 176:4,10;177:6,14, 22;178:10;179:6	<b>Deadman (3)</b> 62:1,11;63:14
<b>constructed (2)</b> 62:18;176:12	<b>control (5)</b> 4:1,5;37:7;171:21; 173:3	<b>Court (3)</b> 9:14;164:22;181:9	<b>culverts (9)</b> 177:10,19;178:9, 11,14,18;179:5,14,20	<b>deal (2)</b> 51:21;81:7
<b>construction (64)</b> 3:14;4:4,9;5:14; 40:1,44;6;47:13,16; 48:2;50:21,24;55:8, 14;70:5;71:16,20,22; 72:11,24;73:2,4,5,9, 15;75:2,8;76:6; 79:16;80:7,18,20,23; 82:19;84:6,18;90:9, 24;91:21;92:2;94:15, 21;102:4;109:15; 131:19;133:3; 145:15;150:13; 156:2;163:1;169:5, 10;170:20;171:4,9, 10,20;173:8,10; 175:1;176:23;178:8, 13;179:24;183:12	<b>controls (1)</b> 3:15	<b>cover (3)</b> 50:2;51:1;79:13	<b>curious (1)</b> 148:11	<b>dealing (1)</b> 111:23
<b>consultation (1)</b> 171:5	<b>conversation (1)</b> 19:6	<b>covered (2)</b> 82:14;107:8	<b>current (5)</b> 9:2;67:8;93:9,11; 132:16	<b>deals (1)</b> 102:19
	<b>convey (1)</b> 130:7	<b>crabs (1)</b> 31:10	<b>currently (2)</b> 18:14;72:13	<b>dealt (1)</b> 102:18
	<b>conveys (1)</b> 130:16	<b>crazy (1)</b> 144:24	<b>currents (9)</b> 10:6;12:10,15; 13:6,6,18,20,21; 92:20	<b>decade (1)</b> 93:15
	<b>coordination (1)</b> 170:14	<b>created (1)</b> 174:12	<b>cursor (1)</b> 69:14	<b>decide (3)</b> 122:14;124:3; 133:11
	<b>copied (2)</b> 108:21;109:7	<b>creates (1)</b> 46:16	<b>curtain (1)</b> 11:23	<b>decided (3)</b> 83:13;120:5;151:7
	<b>copies (1)</b> 138:16	<b>creating (1)</b> 179:3	<b>curtains (13)</b>	<b>deciding (1)</b> 122:21
	<b>copy (9)</b> 8:16;97:10;99:3, 10;105:10;138:17; 140:5;145:7;154:22	<b>creative (1)</b> 159:3		<b>decision (17)</b>

34:18;35:8,15,16, 17,18,20,22;39:18; 84:3;107:24;118:11, 20;133:20;149:3; 165:7;170:2	27:16;49:3,17;91:3	<b>detailed (1)</b> 102:21	<b>directly (4)</b> 74:14;92:22; 153:10;167:7	<b>ditch (1)</b> 173:1
<b>deed (1)</b> 142:1	<b>derived (1)</b> 42:21	<b>detected (1)</b> 4:18	<b>disagree (2)</b> 128:24;139:19	<b>diver (1)</b> 14:19
<b>deeds (2)</b> 138:24;142:9	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>determination (7)</b> 11:9;84:2;122:19; 125:17;152:8; 165:17;169:21	<b>disappeared (3)</b> 76:21;105:9;142:4	<b>divergent (1)</b> 23:24
<b>deemed (1)</b> 174:16	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>determinations (1)</b> 120:18	<b>disclosed (1)</b> 102:17	<b>diversion (7)</b> 176:6,17,22;177:7, 21;178:3;179:3
<b>de-energized (1)</b> 127:11	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>determine (4)</b> 12:17;46:16;47:22; 91:22	<b>discover (1)</b> 50:6	<b>diversions (1)</b> 178:6
<b>deep (1)</b> 89:6	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>determined (8)</b> 47:13;50:24;64:20; 83:13,23;118:18; 186:12,17	<b>discrete (1)</b> 17:22	<b>divert (1)</b> 176:23
<b>deeper (5)</b> 22:13;30:2;88:23; 91:6,15	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>determining (2)</b> 48:19;54:5	<b>discuss (4)</b> 34:15;45:12;130:2; 149:5	<b>Division (1)</b> 46:15
<b>defect (1)</b> 153:3	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>deterrent (1)</b> 31:13	<b>discusses (1)</b> 150:5	<b>dock (9)</b> 106:15;145:14; 148:15;149:10,20,23; 153:11,21;154:6
<b>define (1)</b> 174:11	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>developed (6)</b> 15:11;44:8;55:21; 82:21;170:14;173:5	<b>discussing (1)</b> 117:3	<b>docking (1)</b> 96:7
<b>definitive (1)</b> 130:6	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>dewater (2)</b> 11:13,14	<b>discussion (12)</b> 4:23;33:21;34:3; 48:17;76:23;129:10; 134:18;137:14; 144:1;153:17; 161:16;180:16	<b>docks (1)</b> 154:5
<b>definitively (1)</b> 112:6	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>DHR (3)</b> 65:8;66:18,21	<b>discussions (8)</b> 34:13;116:20,24; 118:10;122:23; 123:4;131:16;148:23	<b>doctrine (2)</b> 45:2,10
<b>degree (3)</b> 31:17,19;76:3	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>differ (1)</b> 166:9	<b>dispersed (4)</b> 9:11,19,23;28:4	<b>document (25)</b> 40:13,15,17,18,21, 24;46:7;70:24;71:1; 83:8;88:1;99:17; 109:6;123:1;147:5; 151:17;154:24; 155:4;170:21,24; 171:13;174:12; 180:1,19;181:21
<b>deleterious (1)</b> 31:9	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>difference (7)</b> 5:18;22:13,18; 25:4;27:24;58:13; 176:8	<b>dispersion (10)</b> 12:17;13:7,21; 20:13;29:4;69:4; 86:5,6,10;92:18	<b>documents (6)</b> 19:14,20;41:6,11; 143:5;185:11
<b>delineated (2)</b> 60:10;162:5	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>difficult (1)</b> 184:10	<b>distances (1)</b> 19:8	<b>done (38)</b> 6:1;12:19;14:17; 17:5,24;18:13;28:14; 32:1;37:22;38:5; 55:18;56:15;79:14, 24;81:24;82:7;83:19; 88:9;92:6;96:11; 97:18;128:9,12; 162:10,13,17;173:9; 177:1;183:1,21; 184:6;185:10,17,20; 186:2,3;187:10,15
<b>delineation (1)</b> 162:10	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>difficulties (1)</b> 72:20	<b>distinct (4)</b> 104:20;125:13; 130:17,18	<b>Donna (1)</b> 69:1
<b>delineations (3)</b> 162:12,18,22	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>difficulty (2)</b> 49:3;89:16	<b>distinguishes (1)</b> 153:14	<b>dormant (1)</b> 136:18
<b>demonstrate (1)</b> 29:10	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>dimensions (1)</b> 116:9	<b>District (10)</b> 64:7,20,24;65:9; 66:4,5,23;67:19;68:6, 15	<b>dotted (1)</b> 57:21
<b>denied (1)</b> 122:14	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:21;169:20; 170:2	<b>diminished (1)</b> 16:24	<b>disturbance (4)</b> 90:16;91:14; 172:10;185:6	<b>double-wide (1)</b> 116:8
<b>Department (11)</b> 46:14;110:23; 111:7;112:2;127:6, 23;128:6;130:13,20; 131:5;146:21	<b>DES (104)</b> 32:18;33:14,21; 34:13;35:12;37:11; 40:2,5,7,10,21;41:7; 42:23;45:22;48:17; 50:13;71:5;75:14; 77:1,10,16;92:10; 97:5,21,24;98:4,9,15, 16;103:4;104:1; 107:23;108:13,21; 109:8,16;112:9; 113:6,14;114:22; 115:4,10,20;116:2,7; 117:14,14,17,23; 118:11,14,17;119:4, 12,19;120:16,17; 121:1,3;122:11,18, 23;123:5;124:2,19, 22;126:6,8;128:12; 129:10;131:9;133:9, 12,17,19,20,22; 134:5,14;135:18; 143:9,17,21;145:12; 147:9,11,15,18,20; 148:13,23;149:5; 152:7;153:17;165:3, 7,12;166:3,16;167:8, 16;168:2			

19,20,21;53:3;72:16; 106:5;108:4;109:7; 120:13;126:11; 155:11,18;156:12; 157:12;167:10; 169:8;170:17; 172:20;173:15;182:4	<b>early (3)</b> 18:2;117:5;136:19 <b>easement (16)</b> 45:5;58:4;59:5,13; 127:18,24;128:8,18; 131:3,14;132:3,12, 14,15,22;140:12 <b>easier (1)</b> 140:6 <b>easily (3)</b> 11:11,15;132:5 <b>east (3)</b> 14:2;65:13;186:19 <b>ecology (1)</b> 8:5 <b>edge (3)</b> 142:12,15;158:7 <b>edges (1)</b> 185:8 <b>editorializing (1)</b> 139:14 <b>eel (1)</b> 128:20 <b>effect (1)</b> 31:9 <b>efficient (4)</b> 51:4;52:11;58:17; 144:16 <b>effort (1)</b> 61:17 <b>eg (1)</b> 9:1 <b>eighth (1)</b> 18:20 <b>either (13)</b> 40:9;41:10;48:21; 50:14;52:19;55:12; 80:9;82:3;117:22; 165:20;173:1; 175:20;176:11 <b>elaborate (1)</b> 79:8 <b>electronic (4)</b> 70:11;86:23;175:4; 180:19 <b>elevated (1)</b> 19:9 <b>eliminated (1)</b> 34:19 <b>ellipse (1)</b> 57:1 <b>Elmo (1)</b> 105:10 <b>else (2)</b> 55:2;83:17 <b>email (1)</b> 102:24 <b>e-mail (4)</b> 53:7;101:3;103:5; 117:9 <b>empirical (2)</b> 29:9,20 <b>employed (1)</b>	172:22 <b>employee (2)</b> 100:21;104:21 <b>enable (1)</b> 101:6 <b>encases (1)</b> 18:22 <b>end (8)</b> 10:8;30:18;106:21; 107:1;119:9;127:22; 167:2;168:1 <b>endangered (1)</b> 179:11 <b>endeavored (1)</b> 82:15 <b>ended (1)</b> 10:4 <b>energy (1)</b> 115:19 <b>engaging (1)</b> 20:2 <b>engineering (3)</b> 55:3,22;70:2 <b>engineers (2)</b> 54:17;55:21 <b>enjoy (1)</b> 45:4 <b>enjoyment (1)</b> 45:6 <b>enlarge (1)</b> 69:8 <b>enlarged (1)</b> 56:11 <b>enough (4)</b> 89:6;169:1;172:2; 179:6 <b>entering (1)</b> 57:12 <b>enters (1)</b> 136:2 <b>entire (7)</b> 14:1,18;57:2; 65:14;66:3;122:13; 148:4 <b>entirely (2)</b> 104:18;125:5 <b>entirety (1)</b> 61:16 <b>entitled (1)</b> 15:1 <b>envelope (1)</b> 129:15 <b>environment (2)</b> 153:20;160:2 <b>Environmental (43)</b> 6:23;7:4,5;15:10; 36:9,22;38:11;44:15; 47:18;54:1,21;55:1; 56:12;59:3;65:16; 69:20,23;70:4,73;20; 83:17;84:3,12;85:6; 94:19;105:19;127:1; 169:3;171:19;172:1,	17;173:14,16; 175:17;177:18; 178:16;181:19; 182:12,15;184:22; 185:2;186:13,22; 187:10 <b>environments (2)</b> 126:15;129:24 <b>envisioned (1)</b> 103:24 <b>Env-Wt501.01c (1)</b> 96:22 <b>EPA (1)</b> 17:14 <b>equals (4)</b> 54:6;55:19;56:14; 57:17 <b>equipment (15)</b> 59:4,13,15,18;60:2, 4,5,10,14;80:19; 88:19;184:4,8;186:3, 4 <b>erosion (4)</b> 171:21;172:9; 173:2,3 <b>error (1)</b> 42:18 <b>especially (4)</b> 61:15;102:24; 179:14;180:12 <b>essentially (10)</b> 7:3;8:5;14:9;29:1; 89:24;91:24;108:22; 132:21;136:8;153:3 <b>Estates (1)</b> 138:21 <b>estimate (8)</b> 11:1,18;47:20; 51:14;52:19,20; 107:16;144:15 <b>estimates (5)</b> 11:19;52:16,22; 53:7;85:13 <b>estimating (2)</b> 48:20;89:11 <b>estuarian (2)</b> 127:8,12 <b>estuary (4)</b> 86:16;87:11,21; 89:11 <b>et (3)</b> 52:18;81:11; 158:16 <b>evaluate (2)</b> 28:14;129:16 <b>evaluated (2)</b> 85:17;133:23 <b>evaluating (3)</b> 17:7;59:2;132:20 <b>evaluation (1)</b> 129:22 <b>even (6)</b> 7:10;28:11;33:17;	63:8;103:20;167:24 <b>evening (2)</b> 161:23;162:1 <b>event (6)</b> 25:9;32:14;73:11; 81:4,5;94:24 <b>events (3)</b> 25:7,7;81:7 <b>Eversource (36)</b> 49:24;54:16;59:16; 78:13;79:11;81:12, 20;82:21;83:13,23; 84:6,9,13;96:9;97:4; 98:16,17;99:2; 100:20,21;101:6; 102:12;104:3,10,21; 108:23;119:4; 125:16;131:13; 145:10,11,12;147:4, 19;152:8;153:15 <b>Eversource's (3)</b> 64:21;65:10; 146:13 <b>everybody (1)</b> 55:2 <b>everyday (1)</b> 73:11 <b>everyone (3)</b> 99:4;106:15;140:7 <b>evidence (4)</b> 17:10;19:9;29:9; 121:19 <b>evidently (1)</b> 67:23 <b>ex (1)</b> 118:8 <b>exact (4)</b> 47:23;56:4;72:6; 144:2 <b>exactly (15)</b> 10:2,11;29:10; 56:6;66:24;91:20; 106:1;108:14,21; 116:8;119:3;132:1; 142:10;164:20; 176:16 <b>example (17)</b> 22:20,24;33:6; 50:4;57:22;59:7; 60:24;61:5;63:1; 65:8;66:2;81:5; 118:5;126:21; 149:10;173:19; 183:18 <b>examples (1)</b> 31:1 <b>excavate (1)</b> 176:19 <b>excavation (1)</b> 62:19 <b>exceeding (1)</b> 52:18 <b>exceeds (2)</b>
<b>E</b>				
<b>eagle (1)</b> 180:16 <b>eagles (1)</b> 180:13 <b>earlier (8)</b> 38:17;54:8;121:19; 165:1,4,13;167:15; 169:2				

<p>9:1;48:9  <b>Except (2)</b>                  104:17;110:4  <b>exception (1)</b>                  68:14  <b>Excuse (5)</b>                  99:5;103:17;105:8;                  124:12;161:9  <b>exercise (3)</b>                  61:19;20:21  <b>Exhibit (80)</b>                  3:13;8:1,14,19;                  14:21,22;19:17,19;                  21:24;22:16;26:2;                  30:10;32:21;39:13,                  15;40:13;46:8;69:8;                  70:10,21;71:12;                  75:10;76:20;77:13;                  83:4,7;86:19;87:3,5;                  96:3,14;99:5,14,18;                  100:19;101:24;                  102:20;105:11;                  107:22;118:16,21;                  119:6;124:23;                  125:19;126:10;                  132:7,8;135:22;                  137:21;139:2;                  140:16;142:6,11,14,                  14;145:4;150:4;                  154:16,23;155:5,10,                  20;159:11,13;160:7;                  161:7;164:6,16;                  165:12;166:15;                  167:23;169:21;                  171:1;172:4;174:2;                  175:6;180:3,21;                  186:6,22  <b>exhibits (4)</b>                  116:18;117:10;                  158:10;173:19  <b>existence (1)</b>                  33:17  <b>existing (11)</b>                  18:13;55:17;69:16;                  97:2;125:3,21,23;                  127:9;130:7;131:23;                  152:10  <b>exists (1)</b>                  9:18  <b>exits (1)</b>                  12:1  <b>expect (8)</b>                  19:1;50:7;75:21;                  104:24;116:11;                  136:21,22;179:17  <b>expectations (1)</b>                  31:6  <b>expected (9)</b>                  31:5,8,10,13,14;                  32:3;71:13;92:13;                  179:11  <b>experience (7)</b>                  28:22;29:24;81:13,</p>	<p>14;82:5;96:6;123:7  <b>expert (4)</b>                  5:8,15;7:22;64:21  <b>expertise (1)</b>                  81:13  <b>experts (6)</b>                  28:21;65:10;68:1,                  17;94:15;124:9  <b>explain (8)</b>                  21:13;25:11;30:14;                  43:9;64:6,10;121:23;                  129:4  <b>explained (1)</b>                  82:20  <b>explanation (3)</b>                  14:24;100:4;145:9  <b>exposed (1)</b>                  107:6  <b>express (2)</b>                  30:13;31:17  <b>expressly (1)</b>                  148:15  <b>extend (2)</b>                  147:24;148:2  <b>extending (1)</b>                  79:12  <b>extension (2)</b>                  146:11,23  <b>extensive (1)</b>                  151:10  <b>extent (7)</b>                  11:14;12:19;44:7;                  65:9;76:15;133:2;                  186:11  <b>extra (1)</b>                  138:16  <b>extremely (1)</b>                  90:23</p>	<p>152:17  <b>factually (2)</b>                  153:16;154:2  <b>Fair (12)</b>                  32:17;49:12;61:14;                  98:18;120:6;122:22;                  134:4,11;151:17;                  169:1,19;172:2  <b>fairly (3)</b>                  22:17;32:13;187:2  <b>fall (1)</b>                  93:22  <b>familiar (7)</b>                  19:20,21;69:10;                  70:24;94:7;138:9;                  149:6  <b>far (10)</b>                  4:10;16:23;17:17;                  29:3;70:18;89:22;                  90:21;91:18;134:2;                  136:3  <b>Farm (1)</b>                  65:13  <b>farms (1)</b>                  31:3  <b>faster (1)</b>                  138:13  <b>fauna (1)</b>                  177:23  <b>feasibility (1)</b>                  127:2  <b>feasible (1)</b>                  131:19  <b>feature (1)</b>                  68:6  <b>February (9)</b>                  39:16,17;40:3;                  41:8;42:14,15;                  138:22;170:5,6  <b>feel (3)</b>                  79:1;85:20;156:13  <b>feet (50)</b>                  15:17,20,23;16:5,                  10,17;19:2;21:4,12,                  21;25:22;26:18;27:3,                  6;28:10;39:9;40:1;                  41:16;42:16;43:11,                  11;44:10;50:5,19;                  54:6;55:19;56:1,7,                  14;57:15,17;58:2;                  59:9;74:5,5,18;                  75:15;87:22;88:4,4;                  115:22;116:1;                  143:22;145:14,16;                  146:22;164:12;                  167:11;184:13,17  <b>feller (2)</b>                  59:12;186:3  <b>felt (2)</b>                  51:1;56:19  <b>fencing (1)</b>                  173:4  <b>few (4)</b></p>	<p>39:3;63:3;113:11;                  124:18  <b>fewer (3)</b>                  51:17,18;76:12  <b>field (7)</b>                  21:1,2;26:17;                  27:13;47:21;71:7;                  186:17  <b>figure (3)</b>                  5:7,9;15:12  <b>filed (3)</b>                  97:13;117:11;                  121:13  <b>files (2)</b>                  101:4;110:23  <b>filing (1)</b>                  109:24  <b>fill (1)</b>                  115:24  <b>filled (1)</b>                  64:9  <b>final (16)</b>                  26:16;35:18;39:18;                  40:21;57:7;107:23;                  118:20;133:20;                  143:8;165:2,7,17;                  166:17;167:8;                  169:20;170:2  <b>finalize (1)</b>                  34:16  <b>finalizing (1)</b>                  7:20  <b>finally (1)</b>                  75:7  <b>find (11)</b>                  10:12;17:9;21:10;                  40:23;41:9;48:2,20;                  53:5;84:7;86:23;                  118:18  <b>Finding (9)</b>                  108:3,11;118:19;                  122:10;124:21;                  126:7,10,18;130:2  <b>findings (4)</b>                  108:7;127:5;                  131:20;133:19  <b>fine (9)</b>                  9:18;22:20,24;                  23:2,17;27:23;28:11;                  52:16;160:13  <b>finger (1)</b>                  106:11  <b>finish (1)</b>                  144:16  <b>firm (1)</b>                  17:21  <b>first (17)</b>                  15:13;23:14;24:1;                  25:7;26:6;34:6;36:1;                  54:4;75:18;113:19;                  132:12;137:18;                  138:1;151:7;159:21;                  162:3;174:1</p>	<p><b>Fish (4)</b>                  31:12;171:24;                  177:15;178:1  <b>five (3)</b>                  25:19,20;117:6  <b>flat (5)</b>                  62:10;88:15;92:1;                  105:15;107:7  <b>flats (4)</b>                  85:19;107:9,17;                  110:11  <b>flip (3)</b>                  110:14;113:22;                  156:6  <b>floor (1)</b>                  169:8  <b>flora (1)</b>                  177:22  <b>flow (4)</b>                  13:1;78:19;93:14;                  177:7  <b>flows (4)</b>                  93:10,11,23;94:7  <b>fluctuation (1)</b>                  92:20  <b>fluid (1)</b>                  4:2  <b>fluidize (1)</b>                  30:5  <b>focus (5)</b>                  22:20;114:3,6,10;                  138:16  <b>focused (1)</b>                  78:9  <b>focusing (1)</b>                  23:11  <b>folder (1)</b>                  144:23  <b>folks (1)</b>                  64:12  <b>follow (8)</b>                  82:23;106:15;                  120:16;124:14;                  138:4,19;140:18;                  158:13  <b>following (1)</b>                  31:4  <b>follows (1)</b>                  139:1  <b>follow-up (2)</b>                  84:16;166:2  <b>foot (1)</b>                  73:23  <b>footage (9)</b>                  39:5;40:3;42:2;                  43:19,23;44:4,13;                  165:5;167:13  <b>footprint (6)</b>                  19:9;44:9,11,14;                  76:7,10  <b>force (2)</b>                  139:19;156:14  <b>forces (1)</b></p>
	<b>F</b>			
	<p><b>F107-6 (1)</b>                  173:22  <b>facetious (1)</b>                  32:8  <b>facilitate (1)</b>                  185:17  <b>facility (2)</b>                  31:5;115:19  <b>fact (10)</b>                  13:10;21:15;26:6;                  66:22;103:20;                  118:17;136:6,9;                  146:3;147:18  <b>factor (3)</b>                  86:10;87:14;                  174:16  <b>factors (2)</b>                  174:9,20  <b>facts (4)</b>                  139:20;152:17;                  153:6;159:4  <b>factual (1)</b></p>			

94:18 <b>foreground (1)</b> 155:16 <b>forest (1)</b> 128:19 <b>forested (5)</b> 129:2;135:8;136:3, 23;137:7 <b>forestry (2)</b> 109:12;110:10 <b>forgive (1)</b> 88:7 <b>form (3)</b> 65:8,8;66:18 <b>former (1)</b> 82:8 <b>forth (2)</b> 23:20;185:12 <b>forward (5)</b> 90:1,11;153:1; 170:23;180:10 <b>Foss (1)</b> 65:13 <b>found (4)</b> 3:10;10:23;17:8,12 <b>Foundation (1)</b> 15:9 <b>foundations (1)</b> 163:12 <b>four (3)</b> 25:19;90:10;95:8 <b>frack-outs (1)</b> 3:10 <b>fraction (1)</b> 11:24 <b>frame (3)</b> 72:12;93:13; 162:24 <b>frames (1)</b> 73:15 <b>frank (1)</b> 103:6 <b>free (4)</b> 73:6;154:5,9; 156:14 <b>frequency (3)</b> 3:9,17,17 <b>frequently (1)</b> 64:18 <b>fresh (3)</b> 77:22;93:24; 180:18 <b>front (23)</b> 32:12;88:19;89:23; 96:16;99:6;101:8; 103:19;111:21; 125:7;128:16;137:5; 141:16;142:3; 144:24;145:5;148:9; 149:11,18,24;152:3; 153:10;155:15; 157:24 <b>fuel (1)</b>	81:5 <b>fuels (1)</b> 80:22 <b>fulfilling (1)</b> 118:2 <b>full (8)</b> 27:16;49:3;66:14; 76:1,15;77:5;129:22; 162:18 <b>fully (3)</b> 64:9;65:1;131:2 <b>function (2)</b> 76:1;77:17 <b>functional (1)</b> 74:6 <b>functions (1)</b> 75:9 <b>funny (1)</b> 182:3 <b>further (8)</b> 51:6;79:8;105:23; 106:1,21;159:8; 161:12;180:9  <b>G</b>  <b>Game (1)</b> 171:24 <b>gardener (1)</b> 69:1 <b>gardening (1)</b> 78:4 <b>gauge (1)</b> 58:18 <b>gave (4)</b> 51:15;112:9; 145:10,11 <b>general (11)</b> 11:8;25:5;78:2; 81:18;86:14,21; 87:17;105:20;152:5; 155:23;163:6 <b>generally (5)</b> 17:12;60:2;62:10; 71:10;171:21 <b>generally' (1)</b> 151:11 <b>generated (1)</b> 11:22 <b>generic (1)</b> 81:19 <b>geophysical (1)</b> 7:18 <b>gets (5)</b> 51:19;68:7;89:20; 109:23;124:3 <b>giant (1)</b> 90:7 <b>GIS (2)</b> 67:6,13 <b>given (7)</b> 12:13;22:7;36:8; 67:15;87:15,23;	98:23 <b>gives (3)</b> 16:11;49:24;101:2 <b>giving (2)</b> 101:11;139:17 <b>goal (2)</b> 179:5;183:23 <b>goals (1)</b> 178:16 <b>goes (9)</b> 23:1,3,19,21; 25:14;54:3;97:15; 138:5;174:15 <b>Good (8)</b> 3:7;49:17;68:24; 95:20,21;161:23; 162:1;187:4 <b>GPS (1)</b> 27:13 <b>grain (2)</b> 25:4,11 <b>GRANIT (8)</b> 63:24;64:13,15,23; 66:16;67:6,13,15 <b>granted (1)</b> 147:20 <b>grass (6)</b> 79:19;81:11,19; 137:9,10;158:2 <b>grasses (2)</b> 128:20,21 <b>gray (1)</b> 55:16 <b>Great (1)</b> 86:15 <b>greater (2)</b> 48:21;50:19 <b>greatest (2)</b> 21:17;89:3 <b>green (1)</b> 136:22 <b>ground (6)</b> 57:6;60:6;74:14; 153:6;163:4;175:22 <b>grounding (1)</b> 87:15 <b>group (1)</b> 69:3 <b>grow (1)</b> 59:10 <b>growing (1)</b> 77:5 <b>Guard (2)</b> 46:3,21 <b>guess (9)</b> 5:9;75:18;89:15; 91:5;101:9;125:14; 130:13;136:20; 180:22 <b>guesstimate (2)</b> 48:23,24 <b>guy (5)</b> 61:24;62:11,24;	63:1,3  <b>H</b>  <b>habitat (3)</b> 132:23;179:1,19 <b>half (3)</b> 51:16;107:10,15 <b>halted (1)</b> 178:2 <b>Hampshire (6)</b> 37:14;41:7;46:14; 66:18;118:23;122:12 <b>hand (22)</b> 8:13;11:20,22; 12:9,15,18;13:13,14, 23;14:1,16;30:16; 84:7;99:10;180:21; 183:1,21;184:21,23; 185:11,20;186:11 <b>hand-clearing (1)</b> 184:19 <b>handed (2)</b> 109:6;154:24 <b>handled (2)</b> 168:24;171:10 <b>handling (2)</b> 171:8;172:23 <b>happen (2)</b> 4:17;29:21 <b>happened (1)</b> 86:15 <b>happening (2)</b> 95:2;103:24 <b>happens (2)</b> 75:24;79:6 <b>happy (1)</b> 103:14 <b>Harbors (1)</b> 46:15 <b>hard (7)</b> 50:9;58:18;91:19; 156:7;159:24;161:3; 181:21 <b>harder (2)</b> 51:19,20 <b>harm (2)</b> 84:23,24 <b>hatched (3)</b> 63:22;64:3;65:14 <b>hatching (1)</b> 67:5 <b>hate (2)</b> 71:21;144:10 <b>Hatfield (1)</b> 95:22 <b>hazard (1)</b> 46:17 <b>HDD (6)</b> 3:15;5:6,8,15,23; 6:3 <b>head (1)</b> 115:13	<b>headers (1)</b> 175:19 <b>heading (1)</b> 107:2 <b>Heald (3)</b> 69:1;79:4;80:8 <b>Heald's (11)</b> 69:9;71:13;72:4; 73:12;75:4,20;78:11, 23;79:24;80:3;81:10 <b>hear (3)</b> 68:20;85:16;187:9 <b>heard (8)</b> 4:15;29:3;38:22; 103:20;116:22; 121:19;155:7;156:18 <b>Hearing (20)</b> 3:2;36:12;53:19; 58:1;95:12;112:19, 22,23;113:1,5,21; 114:12,13;115:5,8; 118:12;119:12,19; 121:2;144:19 <b>hearings (13)</b> 35:17,23;102:5; 104:7;112:13,16; 113:15,16;114:16,20, 23;118:22;119:9 <b>heavier (1)</b> 93:20 <b>heavy (4)</b> 59:12,15;60:14; 184:3 <b>height (3)</b> 86:10;87:13,21 <b>heights (1)</b> 55:18 <b>held (7)</b> 99:23;104:14; 112:13,22;116:16; 118:22;152:4 <b>help (2)</b> 139:17;143:19 <b>helps (1)</b> 52:10 <b>herbicide (1)</b> 80:13 <b>here's (1)</b> 101:18 <b>herewith (2)</b> 99:18;155:5 <b>Heritage (1)</b> 171:24 <b>high (13)</b> 9:2;13:16;30:13; 49:20;88:10,15; 140:2;153:13; 174:10,11,16,19,22 <b>higher (2)</b> 10:20,22 <b>highest (1)</b> 13:5 <b>highlight (1)</b>
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69:15 <b>high-risk (5)</b> 172:8,14;173:12; 174:1,13 <b>highway (1)</b> 109:14 <b>Historic (26)</b> 51:10;53:23;54:18; 58:19;64:2,3,7,8,11, 20,24;65:9,19,19,20, 22;66:3,4,5,15,17,23; 67:4,19;68:6,14 <b>historical (1)</b> 57:6 <b>Hmm (1)</b> 59:2 <b>Hmm-hmm (2)</b> 68:8;107:15 <b>hold (5)</b> 119:12;121:2; 143:11;151:9;156:5 <b>holding (1)</b> 115:5 <b>holds (1)</b> 113:15 <b>homeowner (1)</b> 72:16 <b>homogenization (1)</b> 20:6 <b>hope (2)</b> 15:16;139:21 <b>hoping (1)</b> 123:6 <b>Horizontal (9)</b> 3:12;5:4,22;6:13, 20;7:2,11;8:4;30:9 <b>horseshoe (1)</b> 31:9 <b>hour (2)</b> 51:16;52:9 <b>hours (6)</b> 51:17;86:11;87:14; 88:13,14;89:12 <b>house (1)</b> 105:16 <b>housekeeping (1)</b> 51:12 <b>hundred (3)</b> 52:19;74:21; 184:13 <b>hundred-foot (1)</b> 185:1 <b>hydraulic (1)</b> 81:6 <b>hydrodynamics (1)</b> 12:20 <b>hypothetical (2)</b> 128:10;129:4	142:5,17,23;152:15; 153:5;161:8;185:19 <b>ice (4)</b> 94:6,7,11,17 <b>Id (2)</b> 110:16,22 <b>idea (5)</b> 16:12;36:21;83:15; 101:2;158:11 <b>identification (2)</b> 99:19;155:6 <b>identified (4)</b> 15:19;85:21; 174:13;179:18 <b>illustrative (1)</b> 71:6 <b>image (1)</b> 105:24 <b>images (1)</b> 132:10 <b>imaginary (2)</b> 146:11,23 <b>imagine (1)</b> 62:18 <b>immediately (2)</b> 3:23;125:7 <b>impact (52)</b> 7:4,5,10,15,16,21; 13:7,20;31:21;36:9,9, 22;37:3,4;38:14; 40:10;43:20;44:13; 48:8;58:19;59:14; 62:1,3,16;63:8; 69:17;76:3;77:12; 85:4;86:2;109:12,12; 110:9;111:10,13; 126:15;128:3; 129:17;131:21; 147:2;163:20;164:2, 7,18;167:13;168:15, 19;169:16;172:5; 175:23;177:15; 178:23 <b>impacted (9)</b> 14:15;75:10,11; 76:11;79:16;157:3; 161:2;175:9;181:2 <b>impacting (4)</b> 126:22;128:23; 129:9;131:21 <b>impacts (51)</b> 8:4;30:12,21,22; 31:2;32:3;43:1; 48:19,21;59:3;75:16, 19,22;76:13,14; 85:14,17,21;97:15; 101:11;115:21; 127:1,8,13;129:23; 132:20;143:22; 163:7,9,16,21,22; 164:1,8,17,21,23; 168:7,8,14,19,20; 169:12,13;172:18;	175:7;177:21;179:9; 181:16;183:21; 184:16 <b>impetus (1)</b> 51:3 <b>implies (2)</b> 90:22;153:21 <b>important (3)</b> 36:7;55:12;161:5 <b>impressions (1)</b> 92:4 <b>imprints (1)</b> 91:23 <b>inadvertent (9)</b> 3:9;4:24;6:4,8,14; 7:2,10;8:9;81:4 <b>inch (8)</b> 54:6;55:19;56:2, 13;57:17,19;58:6; 61:2 <b>inches (4)</b> 26:11,11,11,11 <b>include (7)</b> 11:16;37:19;40:24; 65:12;78:3;163:16, 21 <b>included (12)</b> 14:18;42:7,24; 126:24;127:15; 164:2,17,21,23; 168:14,20;169:12 <b>includes (2)</b> 41:15;42:24 <b>including (4)</b> 11:11;54:16;96:8; 129:22 <b>inconsistent (3)</b> 65:4;66:6;152:13 <b>inconvenience (1)</b> 53:14 <b>incorporated (2)</b> 12:16;133:20 <b>incorrect (3)</b> 40:4;140:21; 165:20 <b>increase (1)</b> 42:6 <b>increased (4)</b> 42:2;43:5,6;51:22 <b>indeed (1)</b> 32:15 <b>indicate (3)</b> 37:14,17;116:19 <b>indicated (3)</b> 7:17;90:10;156:8 <b>indicates (2)</b> 57:5;126:13 <b>indication (1)</b> 19:11 <b>industry (1)</b> 3:16 <b>information (25)</b> 3:18;6:6;12:13;	27:7,22;28:20;35:13; 36:7;54:11,23;55:9, 10,11;56:18;58:16; 65:19;67:10,11; 100:3;102:9;104:8; 133:21;134:1;141:7; 180:12 <b>initially (1)</b> 167:5 <b>inquiry (1)</b> 133:7 <b>inset (1)</b> 56:16 <b>inside (2)</b> 11:23;61:8 <b>installation (5)</b> 35:1;36:10;37:16, 22;39:24 <b>installed (1)</b> 18:1 <b>instance (3)</b> 60:21;171:12; 176:11 <b>instead (1)</b> 30:21 <b>insufficient (2)</b> 10:6;51:1 <b>intend (2)</b> 31:15;175:2 <b>intended (5)</b> 15:22;16:18;56:9; 150:14;178:6 <b>intent (3)</b> 33:16;92:8;186:16 <b>interest (4)</b> 48:18;73:1;111:12; 173:4 <b>interested (2)</b> 8:18;28:5 <b>interests (1)</b> 147:3 <b>intermittently (1)</b> 89:19 <b>interpret (5)</b> 122:17;150:15; 151:3,17;171:18 <b>interpretation (4)</b> 16:7;97:21;129:19; 151:22 <b>interpreted (2)</b> 125:14;166:4 <b>interrupts (3)</b> 9:14;164:22;181:9 <b>intersect (1)</b> 148:8 <b>intertidal (12)</b> 84:20;85:1,8,11, 18;90:16,19,20;91:2, 6,15;105:15 <b>interval (6)</b> 22:5,6,8,11;25:9,10 <b>intervene (1)</b> 121:11	<b>intervened (1)</b> 105:12 <b>intervenor (1)</b> 69:2 <b>intervenor (1)</b> 53:12 <b>into (18)</b> 5:11;14:11;21:18; 25:24;28:4,11;29:16; 37:8;52:24;55:5; 78:19;91:18;92:19; 93:8;94:1;107:5; 126:2;133:20 <b>investigation (2)</b> 23:6;24:21 <b>investigations (2)</b> 7:18,19 <b>involved (17)</b> 3:8,16,22;34:23; 81:21;83:15;84:10, 13,14;95:24;98:4,24; 101:13;112:15; 123:4;124:16;135:16 <b>involvement (3)</b> 34:20;94:20; 121:24 <b>involving (1)</b> 81:22 <b>in-water (1)</b> 146:9 <b>IR (2)</b> 5:13,21 <b>IRs (4)</b> 3:9,15,17,18 <b>issue (18)</b> 21:22;22:5;23:4,8; 34:5;35:14;48:6; 49:10,11;51:12; 93:22;115:10,20; 117:17;120:5; 126:19;133:13;134:3 <b>issued (5)</b> 41:7;98:5,9,15,18 <b>issues (7)</b> 37:20;38:11;45:24; 70:4;78:17;150:6; 172:10 <b>issuing (1)</b> 147:15 <b>items (1)</b> 171:15
<b>I</b>				<b>J</b>
<b>IACOPINO (10)</b> 32:22;41:17;46:7;				<b>Janet (1)</b> 53:22 <b>JCT (19)</b> 99:13,18;100:19; 105:11;106:2;132:7, 8;135:22;137:3,4; 139:1;140:15; 142:14,16;155:2,5, 20;159:19;161:6

<p><b>Jet (35)</b>                  3:12;6:21;7:12;                  14:19;17:19;21:17;                  25:14;28:15;29:14,                  19;30:3;34:4,9,15,20;                  35:1,10,19;36:6,10,                  20,22;37:1,9;38:2,9,                  13;89:7,10,13;91:1,9;                  92:14,15;100:4</p> <p><b>jets (1)</b>                  37:10</p> <p><b>jetting (14)</b>                  8:13;11:20,23;                  12:7,9,15,18;13:13,                  14,23;14:1,16,20;                  30:16</p> <p><b>joint (4)</b>                  112:13;114:12;                  115:5;118:1</p> <p><b>Joyce (4)</b>                  95:23;98:20;                  112:10;148:9</p> <p><b>Joyce-Crowley (1)</b>                  159:23</p> <p><b>judgment (1)</b>                  48:24</p> <p><b>July (6)</b>                  99:9;100:14,16;                  101:5;104:13;182:14</p> <p><b>jump (1)</b>                  124:17</p> <p><b>jurisdiction (2)</b>                  122:12;126:16</p> <p><b>jurisdictional (1)</b>                  48:9</p> <p><b>Justin (2)</b>                  95:22;142:5</p>	<p><b>known (1)</b>                  112:1</p> <p><b>knows (1)</b>                  15:10</p> <p><b>Kurt (1)</b>                  59:19</p> <p style="text-align: center;"><b>L</b></p> <p><b>labeled (1)</b>                  173:15</p> <p><b>Laboratory (1)</b>                  26:20</p> <p><b>Lake (1)</b>                  116:6</p> <p><b>land (5)</b>                  127:19,22;128:17,                  19;129:5</p> <p><b>landowner (1)</b>                  103:16</p> <p><b>landowners (2)</b>                  101:11;112:1</p> <p><b>landowner's (2)</b>                  78:7;81:23</p> <p><b>lands (2)</b>                  11:9,13</p> <p><b>LandWorks (2)</b>                  83:19;84:1</p> <p><b>language (7)</b>                  30:12,24;31:16;                  32:12;36:1;111:14;                  144:2</p> <p><b>large (7)</b>                  3:18;4:17;62:9;                  101:4;179:6;184:10,                  11</p> <p><b>largest (1)</b>                  93:5</p> <p><b>last (6)</b>                  3:7;40:14;41:13;                  43:6;154:16;162:10</p> <p><b>late (3)</b>                  93:22;101:5;102:9</p> <p><b>Lauren (1)</b>                  100:20</p> <p><b>Law (4)</b>                  15:8;111:4;125:15;                  150:9</p> <p><b>lawfully (1)</b>                  133:12</p> <p><b>lawn (8)</b>                  63:12;128:17;                  132:21;156:19;                  157:2,7,20;158:1</p> <p><b>lay (2)</b>                  169:8;175:19</p> <p><b>laydown (1)</b>                  169:2</p> <p><b>layed (1)</b>                  74:13</p> <p><b>layer (6)</b>                  63:24;64:13,15;                  67:5,13,16</p>	<p><b>layout (2)</b>                  76:6;106:4</p> <p><b>lead (12)</b>                  4:13;18:6,8,15,17,                  23,24;19:1,9,12;96:4;                  123:5</p> <p><b>leading (1)</b>                  155:18</p> <p><b>leads (1)</b>                  52:17</p> <p><b>leak (2)</b>                  81:5,6</p> <p><b>leaked (1)</b>                  80:11</p> <p><b>learned (3)</b>                  104:13;122:1;                  141:7</p> <p><b>least (15)</b>                  63:18;89:5;104:6,                  9;115:11;121:21;                  126:14,21;128:22;                  129:9;131:21;                  139:22;146:22;                  150:1;166:14</p> <p><b>left (5)</b>                  92:3;105:23;136:3;                  142:12;156:24</p> <p><b>legal (19)</b>                  36:3,17;54:17;                  119:15,17,22;120:5,                  18;123:1,17;150:10,                  21;151:15,22;152:16,                  19,20;154:1,12</p> <p><b>length (4)</b>                  74:16,21;76:9;                  178:3</p> <p><b>lengths (1)</b>                  74:17</p> <p><b>less (9)</b>                  11:3;43:18;48:22;                  58:5;68:2;76:13;                  128:3;140:19;186:23</p> <p><b>letter (20)</b>                  35:5;40:6,7,23;                  41:3,4;42:17;52:11;                  147:5;165:13,17,24;                  166:1,2,6,7,8,15;                  167:8;170:6</p> <p><b>level (5)</b>                  16:24;30:13;49:20;                  57:6;93:24</p> <p><b>lieu (1)</b>                  114:16</p> <p><b>life (2)</b>                  142:3;177:15</p> <p><b>likelihood (3)</b>                  31:21;94:17;95:1</p> <p><b>likely (13)</b>                  6:8,15;11:3;25:21;                  28:3;30:2;31:7;                  37:15;60:4;109:17;                  179:19;185:15;186:1</p> <p><b>limbing (3)</b>                  61:18,21;183:18</p> <p><b>limbs (1)</b>                  61:11</p> <p><b>limit (6)</b>                  73:18,23;74:2,4,6;                  146:21</p> <p><b>limited (3)</b>                  163:11;174:15;                  184:24</p> <p><b>line (41)</b>                  3:7;17:16;33:9;                  56:21;57:22;60:7;                  63:21;75:19;80:18;                  81:5,6;124:13;125:3;                  126:1;133:6;136:8;                  137:15,17;138:3,24;                  139:4,9;140:2;                  142:13;143:3,23;                  145:17;146:12,23;                  147:24;148:3,8;                  155:9,11,18;156:12,                  17,22;157:18;158:7;                  173:14</p> <p><b>lines (6)</b>                  61:24;62:24;63:3;                  130:9;141:19;146:20</p> <p><b>list (9)</b>                  53:8;113:10,12,14,                  17;115:1;172:20;                  174:10;175:6</p> <p><b>listed (3)</b>                  86:22;171:16;                  174:2</p> <p><b>literature (2)</b>                  31:24,24</p> <p><b>Little (44)</b>                  5:5,13;7:5,21;8:6,                  12;17:1,8;32:8;35:1;                  39:24;40:23;45:18;                  51:17;59:20;63:10,                  11;66:5;70:17;72:13;                  76:4;87:9,11,19;                  94:8;106:21;114:3,6;                  136:17;137:23;                  138:13,21;142:12;                  146:7,10;155:14;                  163:14;165:6;167:4;                  169:1;171:12;                  174:24;181:20;182:3</p> <p><b>littoral (3)</b>                  149:6;151:9;152:2</p> <p><b>load (2)</b>                  13:10,12</p> <p><b>loading (1)</b>                  74:19</p> <p><b>lobsters (1)</b>                  31:9</p> <p><b>located (8)</b>                  69:21;91:10,11;                  97:2;125:20;138:21;                  153:12,13</p> <p><b>location (23)</b>                  10:23;15:2;16:1,6,                  11,20;17:7,19;23:18;                  25:6,13;27:14;47:6,7,                  11,23;94:12;106:3;                  131:15;139:9;                  146:21;158:16;                  163:11</p> <p><b>locations (8)</b>                  14:2;24:10,23;                  26:10;47:19;60:23;                  70:3;131:8</p> <p><b>London (1)</b>                  151:6</p> <p><b>long (14)</b>                  72:1,9;73:18,24;                  74:2,7,9;75:8,24;                  88:12,20;116:23;                  141:5;151:16</p> <p><b>longer (6)</b>                  10:3,24;76:5;93:2;                  178:11;182:21</p> <p><b>Longmarsh (5)</b>                  57:1;69:14;70:13;                  186:9,18</p> <p><b>look (48)</b>                  8:17,22;15:3,13;                  17:4,22;27:17;40:6;                  50:9;52:21,22;55:18;                  65:16;66:10,14;                  85:12;86:20;87:24;                  93:4;96:13;101:2,8;                  103:19;110:1;113:4,                  10,19;124:2;126:8;                  128:2,22;129:8;                  130:1;151:16;                  155:12;157:7,8,9,14;                  159:22;167:21;                  168:23;169:18,20;                  171:13;172:3;                  181:13;185:5</p> <p><b>looked (7)</b>                  89:9;93:14;122:11;                  172:23,24;183:20;                  185:9</p> <p><b>looking (35)</b>                  3:11;16:3;19:23;                  30:10;39:21;41:6;                  43:21;46:18;52:4;                  57:21;61:7;65:18;                  75:11;84:4;92:16;                  114:9;117:3;124:13;                  132:19;140:21;                  142:20;144:24;                  155:11,19;156:12;                  157:17,19;159:18;                  160:23;168:12;                  174:18;176:18;                  182:6;185:4;186:6</p> <p><b>looks (19)</b>                  55:18;58:7;100:19,                  23;104:9;105:15;                  106:5,19;108:13;                  127:4;136:19;137:6;                  138:5;155:24;157:5,</p>
<p style="text-align: center;"><b>K</b></p> <p><b>Karen (1)</b>                  98:20</p> <p><b>keep (10)</b>                  51:20,23;58:16;                  61:7;76:22;87:4;                  88:23;134:13;154:9;                  158:3</p> <p><b>key (1)</b>                  173:15</p> <p><b>Kimball (1)</b>                  138:22</p> <p><b>kind (9)</b>                  24:20;57:7;64:16;                  76:8;93:2;105:19;                  172:21;176:14;                  177:21</p> <p><b>kinds (2)</b>                  163:10;179:14</p> <p><b>knew (2)</b>                  127:23;128:8</p> <p><b>knowledge (5)</b>                  31:22;45:9,13;                  90:19;112:11</p>	<p><b>largest (1)</b>                  93:5</p> <p><b>last (6)</b>                  3:7;40:14;41:13;                  43:6;154:16;162:10</p> <p><b>late (3)</b>                  93:22;101:5;102:9</p> <p><b>Lauren (1)</b>                  100:20</p> <p><b>Law (4)</b>                  15:8;111:4;125:15;                  150:9</p> <p><b>lawfully (1)</b>                  133:12</p> <p><b>lawn (8)</b>                  63:12;128:17;                  132:21;156:19;                  157:2,7,20;158:1</p> <p><b>lay (2)</b>                  169:8;175:19</p> <p><b>laydown (1)</b>                  169:2</p> <p><b>layed (1)</b>                  74:13</p> <p><b>layer (6)</b>                  63:24;64:13,15;                  67:5,13,16</p>	<p><b>length (4)</b>                  74:16,21;76:9;                  178:3</p> <p><b>lengths (1)</b>                  74:17</p> <p><b>less (9)</b>                  11:3;43:18;48:22;                  58:5;68:2;76:13;                  128:3;140:19;186:23</p> <p><b>letter (20)</b>                  35:5;40:6,7,23;                  41:3,4;42:17;52:11;                  147:5;165:13,17,24;                  166:1,2,6,7,8,15;                  167:8;170:6</p> <p><b>level (5)</b>                  16:24;30:13;49:20;                  57:6;93:24</p> <p><b>lieu (1)</b>                  114:16</p> <p><b>life (2)</b>                  142:3;177:15</p> <p><b>likelihood (3)</b>                  31:21;94:17;95:1</p> <p><b>likely (13)</b>                  6:8,15;11:3;25:21;                  28:3;30:2;31:7;                  37:15;60:4;109:17;                  179:19;185:15;186:1</p> <p><b>limbing (3)</b>                  61:18,21;183:18</p> <p><b>limbs (1)</b>                  61:11</p> <p><b>limit (6)</b>                  73:18,23;74:2,4,6;                  146:21</p> <p><b>limited (3)</b>                  163:11;174:15;                  184:24</p> <p><b>line (41)</b>                  3:7;17:16;33:9;                  56:21;57:22;60:7;                  63:21;75:19;80:18;                  81:5,6;124:13;125:3;                  126:1;133:6;136:8;                  137:15,17;138:3,24;                  139:4,9;140:2;                  142:13;143:3,23;                  145:17;146:12,23;                  147:24;148:3,8;                  155:9,11,18;156:12,                  17,22;157:18;158:7;                  173:14</p> <p><b>lines (6)</b>                  61:24;62:24;63:3;                  130:9;141:19;146:20</p> <p><b>list (9)</b>                  53:8;113:10,12,14,                  17;115:1;172:20;                  174:10;175:6</p> <p><b>listed (3)</b>                  86:22;171:16;                  174:2</p> <p><b>literature (2)</b>                  31:24,24</p> <p><b>Little (44)</b>                  5:5,13;7:5,21;8:6,                  12;17:1,8;32:8;35:1;                  39:24;40:23;45:18;                  51:17;59:20;63:10,                  11;66:5;70:17;72:13;                  76:4;87:9,11,19;                  94:8;106:21;114:3,6;                  136:17;137:23;                  138:13,21;142:12;                  146:7,10;155:14;                  163:14;165:6;167:4;                  169:1;171:12;                  174:24;181:20;182:3</p> <p><b>littoral (3)</b>                  149:6;151:9;152:2</p> <p><b>load (2)</b>                  13:10,12</p> <p><b>loading (1)</b>                  74:19</p> <p><b>lobsters (1)</b>                  31:9</p> <p><b>located (8)</b>                  69:21;91:10,11;                  97:2;125:20;138:21;                  153:12,13</p> <p><b>location (23)</b>                  10:23;15:2;16:1,6,                  11,20;17:7,19;23:18;                  25:6,13;27:14;47:6,7,                  11,23;94:12;106:3;                  131:15;139:9;                  146:21;158:16;                  163:11</p> <p><b>locations (8)</b>                  14:2;24:10,23;                  26:10;47:19;60:23;                  70:3;131:8</p> <p><b>London (1)</b>                  151:6</p> <p><b>long (14)</b>                  72:1,9;73:18,24;                  74:2,7,9;75:8,24;                  88:12,20;116:23;                  141:5;151:16</p> <p><b>longer (6)</b>                  10:3,24;76:5;93:2;                  178:11;182:21</p> <p><b>Longmarsh (5)</b>                  57:1;69:14;70:13;                  186:9,18</p> <p><b>look (48)</b>                  8:17,22;15:3,13;                  17:4,22;27:17;40:6;                  50:9;52:21,22;55:18;                  65:16;66:10,14;                  85:12;86:20;87:24;                  93:4;96:13;101:2,8;                  103:19;110:1;113:4,                  10,19;124:2;126:8;                  128:2,22;129:8;                  130:1;151:16;                  155:12;157:7,8,9,14;                  159:22;167:21;                  168:23;169:18,20;                  171:13;172:3;                  181:13;185:5</p> <p><b>looked (7)</b>                  89:9;93:14;122:11;                  172:23,24;183:20;                  185:9</p> <p><b>looking (35)</b>                  3:11;16:3;19:23;                  30:10;39:21;41:6;                  43:21;46:18;52:4;                  57:21;61:7;65:18;                  75:11;84:4;92:16;                  114:9;117:3;124:13;                  132:19;140:21;                  142:20;144:24;                  155:11,19;156:12;                  157:17,19;159:18;                  160:23;168:12;                  174:18;176:18;                  182:6;185:4;186:6</p> <p><b>looks (19)</b>                  55:18;58:7;100:19,                  23;104:9;105:15;                  106:5,19;108:13;                  127:4;136:19;137:6;                  138:5;155:24;157:5,</p>

<p>10;172:20;183:5;                  186:23  <b>lost (2)</b>                  143:13;144:8  <b>lot (9)</b>                  30:11;55:10;56:18;                  61:16;179:4;183:17;                  185:7,10,13  <b>low (3)</b>                  95:2;107:7,20  <b>lower (3)</b>                  11:2;66:10;91:5  <b>lowered (1)</b>                  90:5  <b>lowest (1)</b>                  93:24  <b>low-impact (1)</b>                  59:17  <b>LS (1)</b>                  44:6  <b>Ludtke (17)</b>                  3:4,6;29:16,18;                  32:20,23;33:1,3;36:4,                  19;38:20;39:2,14;                  41:21;42:12;46:8,11  <b>lunch (1)</b>                  3:8  <b>lying (1)</b>                  136:17</p>	<p>51:20  <b>Management (3)</b>                  80:24;170:12,20  <b>Managements (1)</b>                  179:23  <b>managers (1)</b>                  54:17  <b>manner (1)</b>                  24:18  <b>manual (2)</b>                  185:13,24  <b>many (12)</b>                  21:11;31:1;44:3;                  48:3,13;69:4;70:2;                  86:11,11;90:8;                  117:20;172:21  <b>map (19)</b>                  54:6,19,21;55:15;                  56:10,11,12,17,24;                  64:13;69:10;90:22;                  142:13;173:20;                  181:19;182:12,15;                  184:11;186:22  <b>mapped (2)</b>                  65:10;127:16  <b>maps (27)</b>                  44:15;47:18;53:24;                  54:1,19,22,22,23,24;                  55:1,3,5,8;56:12;                  57:8,19;65:2,17;67:2,                  23;105:19;141:1,2,                  23,24;142:20;169:3</p>	<p><b>mats (15)</b>                  71:11,19;72:1,7,15,                  22;73:17,24;74:7,13,                  24;75:7;163:18;                  171:9;175:19  <b>matter (3)</b>                  69:2;102:19;                  114:15  <b>matting (1)</b>                  71:5  <b>mattress (4)</b>                  43:1;49:16;153:10;                  167:13  <b>mattresses (53)</b>                  39:4,6,23;42:3;                  43:8,10,14,17,24;                  44:1,3,7,9,11,17,22;                  45:16;46:16;47:6,8,9,                  12,16;48:3,14;49:11,                  21;50:1,5;51:5;94:5,                  10,13,16,22;100:2,                  24;101:8;102:11;                  103:18;104:17;                  105:21;106:5,22,24;                  116:5,12;148:5,7;                  153:19;163:13;                  165:5;167:5  <b>mature (1)</b>                  137:9  <b>maximize (1)</b>                  54:11  <b>maximum (1)</b>                  74:4  <b>may (32)</b>                  3:4;8:21;17:2;                  19:5;21:22;24:15;                  26:6;27:9;28:7;32:8;                  51:24;60:3,4;61:11;                  67:11;95:15;97:21;                  117:5,7;121:18;                  133:22;140:19;                  141:3,5;144:21;                  147:3;161:19;                  168:13;172:13;                  178:24;183:9;185:15  <b>maybe (6)</b>                  10:12;20:9;65:24;                  75:6,13;83:3  <b>mean (32)</b>                  14:24;15:4;30:14;                  54:16;60:21;68:4;                  74:4;90:23;101:10,                  18;102:7;104:20,24;                  107:6,20;111:19;                  121:23;122:17;                  134:5,24;135:3;                  148:12,18,19;149:15,                  22;153:13;154:4,8;                  155:22;157:13;                  185:21  <b>means (9)</b>                  14:10;15:16;52:19;                  57:17;72:22;98:9;</p>	<p>105:1;149:16;179:8  <b>meant (3)</b>                  103:6;109:16,17  <b>measured (3)</b>                  56:1,6;58:5  <b>measurement (1)</b>                  15:23  <b>measurements (2)</b>                  15:19;158:14  <b>measures (1)</b>                  173:3  <b>mechanical (1)</b>                  185:16  <b>meet (2)</b>                  46:4;118:6  <b>meeting (1)</b>                  38:18  <b>meetings (7)</b>                  116:17;117:15,18,                  22,23;118:1;121:5  <b>Members (13)</b>                  95:21,24;98:22;                  112:8,15;113:6;                  115:3;118:6;124:16;                  131:4;132:13;                  138:18;162:1  <b>memorized (1)</b>                  71:17  <b>mentioned (1)</b>                  116:13  <b>merely (1)</b>                  148:17  <b>met (2)</b>                  117:6,14  <b>metal (1)</b>                  18:21  <b>meters (3)</b>                  86:7;87:12;88:3  <b>method (1)</b>                  20:7  <b>methods (4)</b>                  20:5;24:3,6;60:22  <b>middle (6)</b>                  15:14;31:3;100:18;                  114:11;136:7;137:7  <b>might (9)</b>                  53:2;128:3,6;                  166:12;174:16;                  178:20;183:6,17;                  187:4  <b>mind (2)</b>                  61:7;71:2  <b>minimal (3)</b>                  94:1,1;128:18  <b>minimization (1)</b>                  38:14  <b>minimize (2)</b>                  54:10;185:5  <b>minimizes (1)</b>                  76:7  <b>minimum (4)</b>                  109:12,12;110:9;                  178:18</p>	<p><b>minor (4)</b>                  7:20;153:20;                  162:13,16  <b>minute (3)</b>                  30:8;77:14;83:2  <b>minutes (4)</b>                  52:7;144:7,13;                  179:22  <b>missing (4)</b>                  30:20;66:8,9;67:23  <b>mistake (1)</b>                  140:20  <b>misunderstood (1)</b>                  65:24  <b>mitigate (2)</b>                  84:24;179:8  <b>mitigation (2)</b>                  94:24;136:11  <b>mix (3)</b>                  79:20;81:11,19  <b>mixed (1)</b>                  6:24  <b>mixes (1)</b>                  82:2  <b>mixing (2)</b>                  33:6,12  <b>mobilization (3)</b>                  14:10;25:16,23  <b>mobilized (1)</b>                  28:24  <b>model (15)</b>                  12:5,16;13:21;                  14:4;20:12;29:4,5;                  37:17;69:4;86:6,10,                  18;87:1,2;92:19  <b>modeled (2)</b>                  13:22;89:8  <b>modeling (4)</b>                  19:21;20:15;24:24;                  86:5  <b>modified (1)</b>                  37:2  <b>moment (6)</b>                  6:12;32:9;118:16;                  121:20;124:13;                  135:22  <b>Monday (1)</b>                  105:9  <b>monitor (7)</b>                  4:1;77:2,17;78:14;                  83:10;178:17;184:22  <b>monitored (1)</b>                  32:6  <b>monitoring (10)</b>                  4:5;77:19;78:1,2,3,                  6,6,9,20;79:12  <b>monitors (4)</b>                  57:11;185:2;                  186:13,17  <b>MONROE (4)</b>                  53:2,5;99:12;155:1  <b>month (1)</b>                  87:23</p>
<b>M</b>				
<p><b>Mackie (4)</b>                  51:10;53:18,21,22  <b>Madam (8)</b>                  35:24;51:11;53:3;                  95:16;102:16;121:8;                  158:8;159:7  <b>Madbury (1)</b>                  174:3  <b>mail (1)</b>                  97:16  <b>mailed (1)</b>                  111:24  <b>main (1)</b>                  73:1  <b>maintain (1)</b>                  154:4  <b>maintains (3)</b>                  64:19;67:13;                  113:14  <b>maintenance (1)</b>                  183:11  <b>major (3)</b>                  110:10;111:15,23  <b>majority (1)</b>                  176:2  <b>makes (3)</b>                  28:16;35:16;58:18  <b>making (4)</b>                  16:21;122:19;                  129:11;144:11  <b>manage (1)</b></p>	<p><b>Marcia (1)</b>                  68:24  <b>marine (3)</b>                  46:13,14;129:23  <b>Mark (7)</b>                  95:23;98:20;99:5;                  112:10;150:4;                  153:14;155:3  <b>marked (10)</b>                  14:21;19:15;22:16;                  64:8;99:18;100:19;                  106:6;155:5;159:20;                  173:13  <b>marker (1)</b>                  155:17  <b>marsh (9)</b>                  77:23;128:20;                  132:23;136:10,11,13,                  17,21;161:1  <b>mat (11)</b>                  76:6;171:4;175:12,                  15,16,18,21;176:6,                  11,17;177:2  <b>material (14)</b>                  9:10;11:9,12;24:9,                  12,13,14;25:20;                  27:16;28:6,12,14,18;                  52:4  <b>materials (5)</b>                  4:20;51:2;80:19;                  141:3;162:5</p>	<p><b>mats (15)</b>                  71:11,19;72:1,7,15,                  22;73:17,24;74:7,13,                  24;75:7;163:18;                  171:9;175:19  <b>matter (3)</b>                  69:2;102:19;                  114:15  <b>matting (1)</b>                  71:5  <b>mattress (4)</b>                  43:1;49:16;153:10;                  167:13  <b>mattresses (53)</b>                  39:4,6,23;42:3;                  43:8,10,14,17,24;                  44:1,3,7,9,11,17,22;                  45:16;46:16;47:6,8,9,                  12,16;48:3,14;49:11,                  21;50:1,5;51:5;94:5,                  10,13,16,22;100:2,                  24;101:8;102:11;                  103:18;104:17;                  105:21;106:5,22,24;                  116:5,12;148:5,7;                  153:19;163:13;                  165:5;167:5  <b>mature (1)</b>                  137:9  <b>maximize (1)</b>                  54:11  <b>maximum (1)</b>                  74:4  <b>may (32)</b>                  3:4;8:21;17:2;                  19:5;21:22;24:15;                  26:6;27:9;28:7;32:8;                  51:24;60:3,4;61:11;                  67:11;95:15;97:21;                  117:5,7;121:18;                  133:22;140:19;                  141:3,5;144:21;                  147:3;161:19;                  168:13;172:13;                  178:24;183:9;185:15  <b>maybe (6)</b>                  10:12;20:9;65:24;                  75:6,13;83:3  <b>mean (32)</b>                  14:24;15:4;30:14;                  54:16;60:21;68:4;                  74:4;90:23;101:10,                  18;102:7;104:20,24;                  107:6,20;111:19;                  121:23;122:17;                  134:5,24;135:3;                  148:12,18,19;149:15,                  22;153:13;154:4,8;                  155:22;157:13;                  185:21  <b>means (9)</b>                  14:10;15:16;52:19;                  57:17;72:22;98:9;</p>	<p>105:1;149:16;179:8  <b>meant (3)</b>                  103:6;109:16,17  <b>measured (3)</b>                  56:1,6;58:5  <b>measurement (1)</b>                  15:23  <b>measurements (2)</b>                  15:19;158:14  <b>measures (1)</b>                  173:3  <b>mechanical (1)</b>                  185:16  <b>meet (2)</b>                  46:4;118:6  <b>meeting (1)</b>                  38:18  <b>meetings (7)</b>                  116:17;117:15,18,                  22,23;118:1;121:5  <b>Members (13)</b>                  95:21,24;98:22;                  112:8,15;113:6;                  115:3;118:6;124:16;                  131:4;132:13;                  138:18;162:1  <b>memorized (1)</b>                  71:17  <b>mentioned (1)</b>                  116:13  <b>merely (1)</b>                  148:17  <b>met (2)</b>                  117:6,14  <b>metal (1)</b>                  18:21  <b>meters (3)</b>                  86:7;87:12;88:3  <b>method (1)</b>                  20:7  <b>methods (4)</b>                  20:5;24:3,6;60:22  <b>middle (6)</b>                  15:14;31:3;100:18;                  114:11;136:7;137:7  <b>might (9)</b>                  53:2;128:3,6;                  166:12;174:16;                  178:20;183:6,17;                  187:4  <b>mind (2)</b>                  61:7;71:2  <b>minimal (3)</b>                  94:1,1;128:18  <b>minimization (1)</b>                  38:14  <b>minimize (2)</b>                  54:10;185:5  <b>minimizes (1)</b>                  76:7  <b>minimum (4)</b>                  109:12,12;110:9;                  178:18</p>	<p><b>minor (4)</b>                  7:20;153:20;                  162:13,16  <b>minute (3)</b>                  30:8;77:14;83:2  <b>minutes (4)</b>                  52:7;144:7,13;                  179:22  <b>missing (4)</b>                  30:20;66:8,9;67:23  <b>mistake (1)</b>                  140:20  <b>misunderstood (1)</b>                  65:24  <b>mitigate (2)</b>                  84:24;179:8  <b>mitigation (2)</b>                  94:24;136:11  <b>mix (3)</b>                  79:20;81:11,19  <b>mixed (1)</b>                  6:24  <b>mixes (1)</b>                  82:2  <b>mixing (2)</b>                  33:6,12  <b>mobilization (3)</b>                  14:10;25:16,23  <b>mobilized (1)</b>                  28:24  <b>model (15)</b>                  12:5,16;13:21;                  14:4;20:12;29:4,5;                  37:17;69:4;86:6,10,                  18;87:1,2;92:19  <b>modeled (2)</b>                  13:22;89:8  <b>modeling (4)</b>                  19:21;20:15;24:24;                  86:5  <b>modified (1)</b>                  37:2  <b>moment (6)</b>                  6:12;32:9;118:16;                  121:20;124:13;                  135:22  <b>Monday (1)</b>                  105:9  <b>monitor (7)</b>                  4:1;77:2,17;78:14;                  83:10;178:17;184:22  <b>monitored (1)</b>                  32:6  <b>monitoring (10)</b>                  4:5;77:19;78:1,2,3,                  6,6,9,20;79:12  <b>monitors (4)</b>                  57:11;185:2;                  186:13,17  <b>MONROE (4)</b>                  53:2,5;99:12;155:1  <b>month (1)</b>                  87:23</p>

<b>monument (9)</b> 155:8,12,19; 156:10;158:5,6,21; 160:4,8	143:13;144:10	<b>negotiations (1)</b> 101:14	115:13	61:13;116:16
<b>more (39)</b> 10:17;11:8;16:5; 20:9;25:20,22;30:1, 4;31:11;48:3,14; 50:18,19;51:5;52:11; 57:13;65:18;66:16; 72:13,23;73:6;80:12; 85:3;86:16,21;87:21; 89:15;91:13;121:7; 122:3,8;124:18; 129:17;130:1;132:5; 134:2;140:19; 151:10;171:21	<b>N</b>	<b>neighbor (2)</b> 149:22;154:6	<b>non-compliant (1)</b> 82:11	<b>nursery (2)</b> 79:3,4
<b>morning (2)</b> 51:15;169:6	<b>name (1)</b> 53:22	<b>neighborhood (1)</b> 100:6	<b>none (4)</b> 8:6;28:10;30:23; 112:8	<b>O</b>
<b>most (14)</b> 11:22;32:19;57:16; 60:4;117:22;131:18; 134:3;175:11; 178:19;179:13; 180:3;182:14; 185:15;186:1	<b>National (1)</b> 171:23	<b>neighbor's (1)</b> 104:23	<b>non-saline (1)</b> 93:16	<b>object (4)</b> 121:9;141:11; 158:9;159:12
<b>mostly (5)</b> 53:24;58:15;61:11; 69:5;162:12	<b>native (5)</b> 78:22;79:5,10; 81:20;82:14	<b>neither (1)</b> 112:4	<b>normal (1)</b> 10:22	<b>objecting (1)</b> 159:8
<b>motion (1)</b> 89:17	<b>native-type (1)</b> 82:15	<b>Nelson (54)</b> 5:6,19,23;6:5,10, 17;17:1;18:4,7,10; 19:3;25:2;59:21; 60:1,15,18,20;61:6, 21;62:4,5;71:10,15; 72:5,20;73:8,12,20; 74:1,9,13;75:6;78:8, 22;79:2,14;80:2,12; 81:14;82:5;112:12; 131:9,12,16;132:18; 168:2,4;183:5,6,10, 23;184:9;185:5,23	<b>normally (1)</b> 110:4	<b>Objection (30)</b> 35:24;36:16;38:15; 39:1;42:4;45:7; 102:16;103:10; 119:14,23;120:7; 122:7,24;124:5; 128:4,13;133:1; 134:10;139:5,13; 150:8,22;151:14,21; 152:6;154:11;158:9; 159:2,11;160:9
<b>move (11)</b> 14:11;30:4;36:18; 42:11;88:22;94:22; 105:5;120:13;143:2; 152:24;159:5	<b>natural (9)</b> 51:2;77:11;85:24; 92:3;128:19;136:22; 157:9;172:4,18	<b>nest (1)</b> 180:16	<b>Normandeau (11)</b> 12:14;15:11;19:17, 24;20:1,1,22;21:7; 22:15;26:2;118:15	<b>obligation (1)</b> 45:5
<b>moved (1)</b> 132:14	<b>nature (1)</b> 18:15	<b>New (28)</b> 37:14;41:7;46:14; 48:8,15;55:17;64:24; 66:18;70:21;96:10; 100:2;118:23; 122:11;125:24; 127:24;129:1,22; 130:19,21;131:7,24; 132:2;137:18,19; 139:9;141:7;151:6; 180:12	<b>Normandeau's (1)</b> 20:4	<b>observed (1)</b> 147:13
<b>movement (1)</b> 60:10	<b>navigational (4)</b> 45:17,24;46:3,17	<b>Newington (10)</b> 104:7;112:14,22; 138:21;140:24; 141:2,23,23;142:13; 176:21	<b>north (3)</b> 15:14,21;16:4	<b>obsolete (1)</b> 127:12
<b>mowed (8)</b> 135:11;136:1,4,5, 9;137:1,8,10	<b>neap (4)</b> 86:17;89:1,4;93:6	<b>next (14)</b> 23:1;51:9;53:18; 68:20;72:15;93:2; 95:9;101:3;124:13; 126:8,9;130:5; 145:16;166:19	<b>notation (1)</b> 41:18	<b>obstructions (1)</b> 154:10
<b>mowing (1)</b> 185:16	<b>near (2)</b> 69:21;105:20	<b>next (14)</b> 23:1;51:9;53:18; 68:20;72:15;93:2; 95:9;101:3;124:13; 126:8,9;130:5; 145:16;166:19	<b>note (3)</b> 65:17;142:20; 159:9	<b>obtain (1)</b> 44:21
<b>Mrs (2)</b> 127:19,21	<b>nearer (2)</b> 28:23;106:23	<b>NH (3)</b> 102:6;138:21; 151:6	<b>noted (2)</b> 102:1;109:9	<b>obtained (1)</b> 147:4
<b>much (10)</b> 29:10;53:16;74:19; 76:17;88:22;93:23; 95:4;140:6;148:4; 169:16	<b>nearing (1)</b> 31:4	<b>NHB (1)</b> 170:15	<b>noticed (2)</b> 97:11,12,22;98:1,9, 15,19,23;101:11; 109:23;110:24; 111:24;112:3,9,18, 21;113:20,23;115:11, 20;116:7;117:17	<b>obviously (9)</b> 67:18;98:14;113:7; 120:17,24;133:10; 141:6;149:12;173:2
<b>mud (2)</b> 107:9,17	<b>necessary (1)</b> 59:9	<b>NHDES (5)</b> 33:13;34:14; 118:20;145:21; 170:15	<b>notice (22)</b> 97:11,12,22;98:1,9, 15,19,23;101:11; 109:23;110:24; 111:24;112:3,9,18, 21;113:20,23;115:11, 20;116:7;117:17	<b>occupied (1)</b> 27:10
<b>multi-month (1)</b> 73:11	<b>need (31)</b> 5:20;7:19;14:23; 28:17;29:14,19;48:2, 4;49:15,21;50:15; 59:11;62:21;68:10; 86:20;94:23;128:21; 129:16;134:7; 145:17;147:7;149:4; 150:4;157:19; 172:24;176:15,19; 181:10;185:15,16,17	<b>NHFGD (1)</b> 170:15	<b>notices (2)</b> 98:5;116:2	<b>occur (6)</b> 3:15;9:6;43:16; 91:16;172:11;174:21
<b>multiple (1)</b> 121:13	<b>needed (7)</b> 47:21,22;50:1,6; 88:22;148:24;186:12	<b>Nineteen (2)</b> 161:8,9	<b>notification (11)</b> 34:1;96:22;97:1,7; 98:12;101:19; 108:11;109:10; 119:7;145:21;149:1	<b>occurring (3)</b> 11:8;94:8;182:24
<b>multiplied (1)</b> 43:23	<b>NEEDLEMAN (27)</b> 35:24;38:15;39:13; 42:4;45:7;51:11,14; 102:16;119:14; 120:7;121:8;122:24; 124:5;128:4;133:1, 24;134:21;139:5; 141:9;150:8;151:14; 152:6;154:11;158:8; 159:7;160:9;187:14	<b>NOAA (2)</b> 46:3,19	<b>notifying (1)</b> 33:16	<b>October (1)</b> 92:17
<b>MW1 (1)</b> 174:5	<b>needs (2)</b> 84:19;159:11	<b>nodding (1)</b>	<b>nuance (1)</b> 109:4	<b>off (10)</b> 52:20;55:10;76:23; 89:22;134:16,18; 136:15;161:15,16; 175:21
<b>myself (2)</b>	<b>neglected (1)</b> 103:7		<b>number (29)</b> 5:10;8:1;32:21; 33:5;39:8;40:8,16; 41:10;42:15,21;43:3, 10,13,21,22;48:23; 49:1,4,5,22,23;54:10; 81:24;83:4;164:11, 14;165:16,19;167:16	<b>offer (3)</b> 51:24;142:24; 143:2

<p>38:24;42:9;51:7,13;                  52:1,13;53:4,10;                  68:19;83:1;95:6,13;                  103:9;119:21;120:8,                  20;122:2,6;123:9,14;                  124:10;128:11;                  133:15;134:9,13,16;                  139:11;141:17;                  143:1;144:12,20;                  150:18;151:20;                  154:13;159:1,15;                  161:14,17;187:6,16</p> <p><b>often (2)</b>                  59:17;126:24</p> <p><b>oftentimes (1)</b>                  82:9</p> <p><b>old (3)</b>                  130:20;132:15,22</p> <p><b>older (1)</b>                  19:1</p> <p><b>once (4)</b>                  29:13;36:13;89:5;                  90:1</p> <p><b>one (67)</b>                  4:4;5:23;6:24;17:4,                  18;18:23;23:4;28:20;                  29:22;38:7;41:8,9,                  11;52:17;56:1,10;                  63:1,2;66:2;69:15;                  77:12,21;82:23;                  88:14;89:2;91:13;                  93:1;98:18,21;                  114:10;118:5;121:7;                  122:3,7;124:12;                  126:8;128:16,22;                  129:9,17,18,18;                  130:1,5,21;131:6,7,                  21;132:9,16;134:20;                  135:13;137:16;                  140:11;143:8,11;                  147:22;150:1;                  151:16;152:12;                  154:16;164:24;                  176:3;178:16;182:6;                  183:3;184:13</p> <p><b>one-page (1)</b>                  97:11</p> <p><b>ones (5)</b>                  55:16;125:24;                  158:12,13;170:23</p> <p><b>one's (1)</b>                  70:17</p> <p><b>one-year (1)</b>                  72:12</p> <p><b>ongoing (2)</b>                  116:20,24</p> <p><b>only (26)</b>                  10:8;11:24;12:2;                  21:4,12,20,21;26:10;                  27:2;28:17;58:21,24;                  64:6;66:5;72:4;                  77:22;103:8;104:13;                  105:9;113:20;121:3,</p>	<p>4,10;141:24;146:8;                  171:19</p> <p><b>onto (1)</b>                  80:11</p> <p><b>open (3)</b>                  59:9;74:9;187:2</p> <p><b>open-ended (4)</b>                  49:11,14,23;72:3</p> <p><b>operate (1)</b>                  38:9</p> <p><b>operation (2)</b>                  11:20;28:15</p> <p><b>operations (3)</b>                  14:16;30:16;60:3</p> <p><b>opinion (7)</b>                  36:6,17;69:19;                  72:19;135:10;                  150:21;156:5</p> <p><b>opportunities (1)</b>                  121:13</p> <p><b>opportunity (6)</b>                  36:12;111:8;                  118:24;121:3,10;                  153:3</p> <p><b>opposed (3)</b>                  127:22;131:3;                  171:15</p> <p><b>orange (1)</b>                  181:22</p> <p><b>order (8)</b>                  18:19;84:19;88:16;                  113:20,23;126:19;                  178:7,7</p> <p><b>organism (1)</b>                  177:24</p> <p><b>organisms (2)</b>                  178:1,19</p> <p><b>organized (3)</b>                  141:6;144:13,15</p> <p><b>oriented (2)</b>                  155:15;156:4</p> <p><b>original (12)</b>                  21:1,23;22:3;                  42:22;43:2;87:2;                  100:4;141:2;144:5;                  162:18,21;165:16</p> <p><b>originally (3)</b>                  34:12;48:3;96:18</p> <p><b>others (1)</b>                  49:9</p> <p><b>otherwise (2)</b>                  114:17;122:1</p> <p><b>ours (1)</b>                  83:5</p> <p><b>out (30)</b>                  8:15;23:18;29:11;                  31:1;32:16;34:8;                  40:8,16;50:4;65:12;                  84:7;86:12;90:21;                  93:3;99:10;105:20;                  106:20;107:7,22;                  110:18;116:2;                  135:13;137:11;</p>	<p>149:10;152:12;                  156:7;160:23;163:2;                  178:5,20</p> <p><b>outcrop (1)</b>                  107:2</p> <p><b>outcropping (2)</b>                  105:18;106:20</p> <p><b>outer (2)</b>                  73:23;74:2</p> <p><b>outreach (6)</b>                  102:3,18,21;103:1,                  22;104:4</p> <p><b>outside (6)</b>                  9:7;18:18;62:2;                  69:17;73:5;127:13</p> <p><b>over (31)</b>                  13:12;25:14;31:11;                  39:23;48:12;51:17;                  59:13;64:1;73:6;                  93:2,15;94:2;106:10;                  109:5;110:14,18;                  113:22;114:15;                  115:9;121:12;                  122:12;128:16;                  130:1;137:22;138:4;                  142:11;146:24;                  148:22;157:17;                  176:15,21</p> <p><b>overall (2)</b>                  118:24;127:5</p> <p><b>overestimate (1)</b>                  107:12</p> <p><b>overestimation (1)</b>                  107:16</p> <p><b>overgrown (1)</b>                  61:15</p> <p><b>overhead (2)</b>                  66:19,22</p> <p><b>overlapping (1)</b>                  182:1</p> <p><b>overlay (2)</b>                  43:16,18</p> <p><b>overrule (1)</b>                  122:7</p> <p><b>own (1)</b>                  149:19</p> <p><b>owned (1)</b>                  149:22</p> <p><b>owner (8)</b>                  72:17,21;73:6;                  88:20;146:5;149:8,9,                  17</p> <p><b>owners (7)</b>                  82:9;112:4;149:13;                  150:6;151:10;152:2,                  2</p> <p><b>owner's (1)</b>                  154:9</p> <p><b>Oyster (14)</b>                  56:21;63:21;64:1;                  65:11;180:23;181:6,                  7,13,17;182:6,17;                  183:1,8;184:12</p>	<p style="text-align: center;"><b>P</b></p> <p><b>pad (2)</b>                  173:21;176:14</p> <p><b>pads (2)</b>                  62:10;178:12</p> <p><b>Page (57)</b>                  3:11;8:2,19;26:1,                  12,23;27:17;30:17;                  31:1,6;34:7,24;35:4,                  5;39:16,18;46:9;                  56:13;70:10,11;83:7;                  86:19,22;87:8;88:8;                  96:13;100:17,18;                  101:24;107:22;                  108:8;113:19;                  118:20;124:21,23;                  126:9;130:5;155:19;                  156:6;159:19;161:6;                  164:15;165:11;                  166:19,19,20;168:5,                  6;169:24;172:6,6,7;                  173:20;175:4,5;                  180:20,20</p> <p><b>Pages (4)</b>                  37:12;54:10;55:15;                  71:3</p> <p><b>paid (1)</b>                  128:1</p> <p><b>Pam (1)</b>                  53:3</p> <p><b>pan (1)</b>                  71:2</p> <p><b>Panel (42)</b>                  4:5,9;5:14;6:23;                  15:10;17:20;44:6;                  50:21,24;70:5;71:21,                  22;73:1;75:2,3;                  82:20;83:18;84:6,18;                  90:9,24;94:19,21;                  95:21,24;98:22;                  112:8,15;115:3;                  121:15;124:16;                  131:4;132:12;133:3,                  16;141:13;152:18;                  162:1;169:5,10;                  176:23;187:10</p> <p><b>panelists (1)</b>                  134:11</p> <p><b>Panel's (1)</b>                  85:7</p> <p><b>paper (3)</b>                  97:14;138:17;                  170:17</p> <p><b>papers (1)</b>                  140:24</p> <p><b>paragraph (15)</b>                  3:13;30:18;31:2,4;                  34:24;35:6;77:10;                  101:23;114:9,12;                  119:8,9;127:8;167:2;                  174:18</p>	<p><b>Pardon (1)</b>                  77:8</p> <p><b>part (21)</b>                  28:7;34:2,6;38:12;                  41:4;44:12,13;60:24;                  68:2;80:14,15,23;                  91:6;96:18;103:1;                  114:2;115:1;118:12;                  165:6;167:16;173:22</p> <p><b>parte (1)</b>                  118:8</p> <p><b>partially (2)</b>                  20:9,9</p> <p><b>participation (1)</b>                  121:14</p> <p><b>particles (1)</b>                  12:7</p> <p><b>particular (13)</b>                  13:22;19:4;54:19;                  56:13,24;70:3;82:3;                  83:21;84:8;129:5,18;                  149:2;158:12</p> <p><b>particularly (2)</b>                  33:7;179:15</p> <p><b>parties (1)</b>                  52:24</p> <p><b>parts (1)</b>                  179:12</p> <p><b>partway (1)</b>                  107:2</p> <p><b>party (2)</b>                  121:4;159:10</p> <p><b>pass (2)</b>                  176:20;179:7</p> <p><b>passage (2)</b>                  177:24;178:14</p> <p><b>passed (1)</b>                  54:13</p> <p><b>passing (1)</b>                  132:21</p> <p><b>passive (1)</b>                  153:22</p> <p><b>past (3)</b>                  17:14;37:6;127:10</p> <p><b>Patch (1)</b>                  33:4</p> <p><b>path (3)</b>                  100:5;139:1;                  157:12</p> <p><b>patience (1)</b>                  161:13</p> <p><b>patrol (2)</b>                  46:13,15</p> <p><b>Pause (9)</b>                  33:2;83:2;106:18;                  108:2;112:20;                  124:15;135:15;                  140:22;143:14</p> <p><b>PDF (5)</b>                  86:22;96:13;                  101:24;166:20;172:6</p> <p><b>peer-reviewed (1)</b>                  31:24</p>
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<p><b>Pelletier's (1)</b> 41:18</p> <p><b>Pembroke (60)</b> 6:23;7:7,17;8:8; 15:24;16:2,8,15,21; 20:8,14;21:6,14,24;7, 11,13,15,19;26:13, 15,22;27:4,8,20;28:2, 13;31:19;34:8;50:21; 82:18,19;83:11,15; 84:16,22;85:2,9,13, 17;86:2,24;87:4; 88:11,13,24;89:19; 90:6,9,14,18;91:9,19; 92:8,14,16;94:9,23; 95:5;98:24;112:11</p> <p><b>Pembroke's (1)</b> 4:22</p> <p><b>pencil (1)</b> 156:9</p> <p><b>penetrate (1)</b> 26:8</p> <p><b>peninsula (2)</b> 106:16,22</p> <p><b>people (8)</b> 12:14;52:14;53:5; 65:18;109:1;113:11, 18;138:17</p> <p><b>per (9)</b> 55:24;96:21; 118:15;126:16; 138:3;139:3;142:12; 145:20;147:5</p> <p><b>percent (26)</b> 5:3,3,3,17,17; 13:12;22:20,24;23:3, 3,17,17,19,19,22,23; 27:22,23,24;48:10, 12;50:18,18;52:19; 58:8;74:21</p> <p><b>percentage (3)</b> 5:12;23:2;29:6</p> <p><b>perennial (1)</b> 181:1</p> <p><b>perfectly (1)</b> 158:23</p> <p><b>perhaps (6)</b> 72:13;74:11;94:10; 103:10;119:23;159:2</p> <p><b>period (10)</b> 9:18;34:13;88:12; 89:3;92:23,24;93:2, 12,15;162:6</p> <p><b>periodic (2)</b> 73:10,13</p> <p><b>periods (1)</b> 73:3</p> <p><b>permanent (5)</b> 56:6;146:9;163:7, 9;168:8</p> <p><b>permission (8)</b> 44:21;145:13,17, 22;146:4,13;148:16;</p>	<p>149:24</p> <p><b>permit (33)</b> 37:11;39:17;41:4, 6;42:7,13,14,20;43:2, 7;44:24;45:23;48:7, 8,15;49:22,23,24; 50:20;71:5;77:11; 78:2;98:10;115:4; 123:5;124:1,7; 126:19;127:7;147:9; 165:3;169:24;170:2</p> <p><b>permits (2)</b> 149:12;168:21</p> <p><b>permitted (3)</b> 39:6;40:2;165:6</p> <p><b>permitting (6)</b> 96:7,11;102:4; 103:23;114:14; 169:13</p> <p><b>person (2)</b> 96:4;102:18</p> <p><b>personally (1)</b> 81:12</p> <p><b>personnel (1)</b> 100:20</p> <p><b>perspective (2)</b> 4:16;16:14</p> <p><b>pertained (1)</b> 78:18</p> <p><b>pertaining (1)</b> 45:14</p> <p><b>pesticide (1)</b> 80:15</p> <p><b>petroleum (1)</b> 80:22</p> <p><b>photo (2)</b> 135:21;160:1</p> <p><b>photograph (4)</b> 83:12,14,22;84:11</p> <p><b>photographs (2)</b> 74:15;154:18</p> <p><b>photos (2)</b> 105:7;159:4</p> <p><b>phrase (4)</b> 29:17;30:23; 111:13;120:12</p> <p><b>physical (9)</b> 16:13;22:22;23:12, 16;26:20,24;27:2,5; 163:20</p> <p><b>Pickering (1)</b> 176:21</p> <p><b>picking (1)</b> 54:9</p> <p><b>picture (8)</b> 76:20;101:7; 102:11;103:17; 106:17;136:15; 157:20,22</p> <p><b>pictures (3)</b> 135:12;137:11; 158:19</p> <p><b>piece (4)</b></p>	<p>18:21;36:7;97:14; 149:2</p> <p><b>pieces (2)</b> 64:7;66:6</p> <p><b>pile (1)</b> 140:24</p> <p><b>pilings (1)</b> 90:4</p> <p><b>pin (2)</b> 138:5,6</p> <p><b>place (15)</b> 7:19;44:22;58:21; 60:22;71:14;72:2,7; 81:7;102:5;113:2; 119:10;156:2;178:4, 12;187:5</p> <p><b>placed (6)</b> 30:6;44:18;47:17; 73:19;91:20;105:22</p> <p><b>placement (6)</b> 39:22;46:16;71:19; 82:6;163:17,18</p> <p><b>places (1)</b> 182:4</p> <p><b>plan (35)</b> 18:11,12;33:7,10, 12,14,18;78:6;79:12, 19;90:15;94:11; 126:13,20;132:6; 136:11;137:19; 138:4,8,11,20,24; 139:2,3,10;140:1,10, 11,12,16;148:1; 162:20;173:8; 179:24;180:13</p> <p><b>planning (3)</b> 61:23;63:5,6</p> <p><b>plans (11)</b> 34:11;81:6;138:14; 139:8;140:18;141:4; 142:7,7;173:14,17; 183:24</p> <p><b>plant (4)</b> 79:9,22;171:6; 177:15</p> <p><b>Plante (1)</b> 73:14</p> <p><b>plantings (2)</b> 82:6,10</p> <p><b>plants (11)</b> 78:5,7,12,18,22; 79:13;81:10,20,23; 82:15;180:1</p> <p><b>please (6)</b> 36:18;52:21;53:19; 70:16;114:4;146:19</p> <p><b>Plow (28)</b> 3:12;17:19;21:17; 25:14;28:15;29:14, 19;30:3,9;34:9,15,20; 35:19;36:6,10,20; 37:1,9;38:9,13;89:7, 10,13;91:2,9;92:14,</p>	<p>15;100:5</p> <p><b>plowing (9)</b> 6:21;7:13;14:19; 29:12;34:4;35:2,10; 36:22;38:2</p> <p><b>plume (5)</b> 9:17;28:5;31:4; 37:18;38:2</p> <p><b>plus (1)</b> 21:1</p> <p><b>pm (6)</b> 3:2;95:11,12; 144:18,19;187:20</p> <p><b>point (24)</b> 29:9;30:24;34:8; 37:23;40:16;48:24; 49:12;50:16;65:1; 67:21;84:14;86:13; 104:11;107:13; 120:23;121:9;139:9; 140:16;148:22; 170:18;175:23; 178:5,20;181:8</p> <p><b>pointed (2)</b> 33:4;40:8</p> <p><b>pointing (1)</b> 156:9</p> <p><b>points (1)</b> 143:8</p> <p><b>point's (2)</b> 120:12;123:21</p> <p><b>poised (1)</b> 6:10</p> <p><b>pole (9)</b> 55:17;63:1,3; 69:16,16,20,20,22; 70:3</p> <p><b>poles (3)</b> 55:17;61:24;62:23</p> <p><b>pool (4)</b> 164:8,16;168:14, 18</p> <p><b>portion (6)</b> 21:20;28:14; 125:10;135:6;162:3; 184:4</p> <p><b>portions (5)</b> 25:17;76:12;97:2; 125:7;184:1</p> <p><b>Ports (1)</b> 46:15</p> <p><b>posed (2)</b> 5:14;38:22</p> <p><b>position (5)</b> 97:4;121:20; 129:13;146:13;147:6</p> <p><b>positions (1)</b> 27:10</p> <p><b>possible (8)</b> 6:7;18:5;27:11; 38:8;53:17;88:10; 89:23;91:11</p> <p><b>post-construction (1)</b></p>	<p>79:17</p> <p><b>posted (1)</b> 113:24</p> <p><b>potential (10)</b> 11:7;17:9;21:18; 79:4;85:21;169:12; 183:6,14;187:11,13</p> <p><b>Potentially (2)</b> 18:10;48:22</p> <p><b>power (2)</b> 125:3;185:21</p> <p><b>practicable (3)</b> 126:24;133:3,5</p> <p><b>practical (1)</b> 134:22</p> <p><b>Practices (4)</b> 80:24;170:12,20; 179:23</p> <p><b>precise (1)</b> 66:16</p> <p><b>pre-construction (2)</b> 79:15;162:21</p> <p><b>predict (1)</b> 37:18</p> <p><b>prediction (1)</b> 38:1</p> <p><b>prefer (1)</b> 51:5</p> <p><b>premarked (1)</b> 155:2</p> <p><b>preparation (3)</b> 70:22;96:1;135:17</p> <p><b>prepare (1)</b> 101:18</p> <p><b>prepared (4)</b> 7:23;101:15;103:5; 135:2</p> <p><b>presence (1)</b> 179:16</p> <p><b>present (3)</b> 39:6;51:18;131:15</p> <p><b>presented (1)</b> 35:7</p> <p><b>preserve (2)</b> 45:5;133:13</p> <p><b>PRESIDING (43)</b> 3:3;29:15;36:15; 38:24;42:9;51:7,13; 52:1,13;53:4,10; 68:19;83:1;95:6,13; 103:9;119:21;120:8, 20;122:2,6;123:9,14; 124:10;128:11; 133:15;134:9,13,16; 139:11;141:17; 143:1;144:12,20; 150:18;151:20; 154:13;159:1,15; 161:14,17;187:6,16</p> <p><b>pressure (2)</b> 37:10;60:6</p> <p><b>pressures (1)</b> 4:2</p>
---	---	---	--	--

<p><b>presumably (2)</b> 35:22;43:24</p> <p><b>pretty (5)</b> 93:23;107:6; 136:22;148:4;180:14</p> <p><b>prevent (1)</b> 173:2</p> <p><b>prevents (1)</b> 154:3</p> <p><b>previous (1)</b> 17:14</p> <p><b>previously (2)</b> 45:21;126:3</p> <p><b>primarily (6)</b> 23:6;25:17;78:9; 172:23;173:4;177:24</p> <p><b>primary (2)</b> 37:7;44:24</p> <p><b>prior (8)</b> 7:19;20:2;109:24; 127:18;129:10; 131:6;132:11;183:11</p> <p><b>privy (1)</b> 131:16</p> <p><b>proactive (2)</b> 102:3;103:22</p> <p><b>probabilities (1)</b> 5:10</p> <p><b>probability (4)</b> 5:11,16,21;6:3</p> <p><b>probably (17)</b> 4:4;52:5;56:4; 64:22;88:13;91:23; 96:4;106:10;107:9, 24;109:15;120:5; 121:12;123:22; 145:23;168:1;180:15</p> <p><b>problem (2)</b> 72:16;101:10</p> <p><b>procedure (1)</b> 118:15</p> <p><b>proceed (8)</b> 32:7;35:2,9;36:6; 53:19;95:15;144:21; 161:19</p> <p><b>proceeding (1)</b> 115:2</p> <p><b>proceedings (9)</b> 33:2;106:18;108:2; 112:20;118:4; 124:15;135:15; 140:22;143:14</p> <p><b>process (9)</b> 8:8;11:17;32:7; 36:5;55:7;97:8; 117:24;120:19;129:4</p> <p><b>processed (1)</b> 26:19</p> <p><b>processes (2)</b> 11:7;92:3</p> <p><b>produce (2)</b> 38:10;43:22</p> <p><b>produced (2)</b></p>	<p>11:20;15:7</p> <p><b>program (5)</b> 21:1,2;104:4; 114:22;115:4</p> <p><b>Project (61)</b> 31:23;32:5;34:11; 35:9;39:21;47:10; 51:3;54:17;55:4; 61:18;66:18;71:7; 80:7,14,16;92:2,7,7, 12,13;97:2;102:2,4, 21;103:23;110:10,10, 11;111:1;115:19; 117:24;119:1; 121:21;122:13,14,19, 21;125:2;126:4,20, 21;133:19;141:22; 143:22;145:15; 146:8,22;152:10; 156:19,23;161:2,4; 162:3,15;163:11; 174:21;175:9; 179:12,19;181:15; 184:5</p> <p><b>projects (13)</b> 32:1;81:21;96:7, 23;98:4;108:12; 109:13;110:6; 111:10,15,23;123:8; 148:17</p> <p><b>project-specific (1)</b> 170:11</p> <p><b>prolonged (1)</b> 4:7</p> <p><b>prone (1)</b> 25:22</p> <p><b>proof (2)</b> 142:24;143:2</p> <p><b>propel (1)</b> 89:24</p> <p><b>propelled (1)</b> 89:20</p> <p><b>proper (1)</b> 68:12</p> <p><b>properties (1)</b> 101:9</p> <p><b>property (82)</b> 16:14;44:18,22; 46:24;69:9;71:13; 72:4,17,18,21;73:5, 13;75:4,20;76:2,16; 78:7,11,12,23;79:22; 80:1,4,6,11;81:3,10, 23;82:9;88:20; 101:12;103:19; 104:16,23;112:3; 121:22;125:8;126:2; 130:16,21;136:4,5,8; 137:17;141:19; 143:23;145:16,17; 146:4,12,20,23; 147:24;148:3,8,9; 149:2,8,11,17,18,22,</p>	<p>23;150:6;152:1,2,9; 153:11,12;154:8,9, 19;155:11,13,24; 156:12,17,22,24; 157:18,18;159:23</p> <p><b>proposal (2)</b> 100:8,10</p> <p><b>proposals (1)</b> 111:8</p> <p><b>propose (1)</b> 116:4</p> <p><b>Proposed (24)</b> 15:3;17:6;72:14; 80:14,15;96:9;97:3; 115:23;116:1; 125:21;126:4; 127:24;128:18; 129:14;148:5; 163:10;166:22; 175:7,12;177:11; 180:4,182:21;184:7; 186:24</p> <p><b>proposes (1)</b> 125:2</p> <p><b>proposing (2)</b> 181:6,16</p> <p><b>proposition (1)</b> 129:7</p> <p><b>protect (3)</b> 60:22;150:2,15</p> <p><b>protected (5)</b> 68:7,10,13;111:11; 179:24</p> <p><b>protection (4)</b> 67:24;68:3;135:2; 157:6</p> <p><b>protections (1)</b> 67:19</p> <p><b>protocol (1)</b> 38:12</p> <p><b>provide (11)</b> 34:14,16;35:13; 45:17;97:9,22;98:1; 102:9;110:24;111:7; 112:3</p> <p><b>provided (14)</b> 4:20;5:7;6:22; 18:11,12;21:9;27:7; 28:19,20;55:23; 98:21;133:19,22; 134:1</p> <p><b>provides (1)</b> 37:12</p> <p><b>providing (1)</b> 100:23</p> <p><b>provision (2)</b> 148:14;151:7</p> <p><b>provisions (1)</b> 110:17</p> <p><b>proximity (1)</b> 33:9</p> <p><b>Public (29)</b> 7:23;28:21;45:2,3,</p>	<p>4,8,9,14;46:23,24; 67:4;102:5;104:6,7; 109:14;111:8,12; 113:16,23;114:12; 115:7;117:21; 118:12,22;119:9; 151:11;152:4; 161:24;187:8</p> <p><b>publicly (1)</b> 67:6</p> <p><b>pull (12)</b> 83:4;96:14;105:6; 106:14;107:21; 112:18;118:16; 132:6;137:11;143:9; 144:2;146:15</p> <p><b>pulled (3)</b> 37:9;76:21;143:12</p> <p><b>pulling (2)</b> 89:20;135:13</p> <p><b>pulls (1)</b> 89:24</p> <p><b>purple (1)</b> 106:6</p> <p><b>purport (1)</b> 158:12</p> <p><b>purpose (3)</b> 21:19;119:19; 163:3</p> <p><b>purposes (4)</b> 28:2;142:2;150:1, 14</p> <p><b>Pursuant (2)</b> 183:2,20</p> <p><b>purview (1)</b> 23:5</p> <p><b>put (30)</b> 14:22;16:18;39:8, 10;49:19;50:4,7; 55:9;63:19;66:19; 67:14;68:16;69:7,14; 82:10,15;99:3; 105:10;119:5; 138:16;140:15; 145:7;149:10,23; 154:7;170:17,23; 177:1;178:18;185:12</p> <p><b>putting (1)</b> 131:14</p>	<p><b>quantify (2)</b> 5:2,21</p> <p><b>quarry (1)</b> 56:24</p> <p><b>quarter (1)</b> 95:7</p> <p><b>quarter-inch (1)</b> 18:20</p> <p><b>query (2)</b> 64:17;67:12</p> <p><b>questioner (1)</b> 51:9</p> <p><b>quite (14)</b> 4:23;15:20;53:12; 59:8;62:13;63:2; 74:1;100:15;102:22; 107:13;111:17; 113:10;140:4;148:6</p> <p><b>quoted (1)</b> 111:6</p>
<b>R</b>				
			<p><b>raised (5)</b> 20:4,8,10,16;22:5</p> <p><b>ramp (1)</b> 116:6</p> <p><b>ran (1)</b> 92:23</p> <p><b>range (8)</b> 16:5;86:7;87:19, 22;88:2;89:3,4;93:5</p> <p><b>rate (2)</b> 14:10;89:8</p> <p><b>rates (1)</b> 93:14</p> <p><b>rather (6)</b> 52:10;81:11;89:17; 109:19;123:17; 125:10</p> <p><b>ravine (1)</b> 136:7</p> <p><b>reach (1)</b> 35:23</p> <p><b>read (19)</b> 8:15,17,21;35:11; 49:6;96:21;100:12; 101:22;114:1;119:1; 122:15;130:11; 138:15;140:3,9; 146:17;147:6;150:3; 151:5</p> <p><b>reading (6)</b> 6:21,22;19:14; 35:12;111:21;171:24</p> <p><b>real (2)</b> 38:22;133:8</p> <p><b>really (15)</b> 14:23;20:15;28:17; 29:2,19;30:5;49:23; 50:23;90:24;91:11; 119:19;121:16; 129:15;132:23;</p>	
<b>Q</b>				
			<p><b>qualified (1)</b> 152:23</p> <p><b>qualify (1)</b> 135:4</p> <p><b>qualitative (1)</b> 26:4</p> <p><b>quality (9)</b> 8:5;30:21,23;37:3, 4,15;38:1,4,19</p> <p><b>quantified (1)</b> 5:11</p>	

155:22 <b>reask (1)</b> 66:1 <b>reason (9)</b> 69:23;77:18;78:4; 108:13;109:2; 114:18;160:5,11,16 <b>reasonable (4)</b> 105:2;111:7; 121:17;126:23 <b>reasonably (1)</b> 37:17 <b>reasons (5)</b> 29:22;69:20;70:2; 110:12;129:12 <b>recall (6)</b> 71:20;115:4,7; 143:15;164:8;165:7 <b>receded (1)</b> 62:21 <b>receipts (1)</b> 97:16 <b>receive (2)</b> 67:24;68:3 <b>received (1)</b> 21:7 <b>receives (1)</b> 146:24 <b>recent (3)</b> 32:19;64:21; 182:14 <b>recently (1)</b> 116:19 <b>Recess (2)</b> 95:11;144:18 <b>recognition (1)</b> 46:1 <b>recognize (5)</b> 96:17;105:13; 132:2;135:20;156:13 <b>recollection (4)</b> 13:11;113:8; 153:18;183:12 <b>recommendation (4)</b> 34:9,17;35:13; 185:2 <b>recommendations (1)</b> 37:19 <b>recommended (1)</b> 183:4 <b>record (22)</b> 15:8;18:10;42:5; 70:9,22;76:23;83:8; 95:14;115:2;117:12; 121:1;134:3,17,18; 151:5;159:9;161:15, 16,18,23;166:8; 180:17 <b>recorded (1)</b> 142:8 <b>records (2)</b> 99:13;134:3 <b>red (2)</b>	57:21;166:20 <b>redirect (2)</b> 137:18;187:9 <b>reduce (2)</b> 37:2;183:21 <b>refer (4)</b> 71:21;109:16,17; 155:8 <b>reference (21)</b> 41:10;66:12,14; 86:9;87:6;88:7; 100:1;110:21; 116:22;132:6;138:2, 4,14,20;139:3; 140:10;142:7;164:7; 165:14;167:3;172:8 <b>referenced (7)</b> 9:6;25:3;40:12; 41:12;108:19; 143:10;165:23 <b>references (8)</b> 21:10,11;65:18; 113:5,20;138:20; 170:10;171:23 <b>referencing (1)</b> 109:19 <b>referred (3)</b> 75:2;112:24; 138:14 <b>referring (20)</b> 9:8;15:12,15; 19:16;21:24;23:5; 35:21;40:22;41:2; 42:1;57:3;59:21; 77:7,9;79:5;83:6; 135:8;158:1;168:7; 185:7 <b>refers (7)</b> 21:13,14,15;97:7; 111:15;138:23; 148:16 <b>refill (1)</b> 92:4 <b>reflect (1)</b> 122:23 <b>refresh (2)</b> 92:10;140:3 <b>regard (2)</b> 49:22;182:11 <b>regarding (9)</b> 20:4;33:21,24; 37:20;45:13,24; 46:24;84:17;134:3 <b>registry (2)</b> 138:23;142:8 <b>regrade (1)</b> 63:13 <b>regraded (1)</b> 62:21 <b>regular (1)</b> 55:24 <b>regularly (1)</b> 3:15	<b>regulations (1)</b> 145:20 <b>regulatory (3)</b> 114:15;118:3,15 <b>related (2)</b> 23:8,9 <b>relates (4)</b> 33:6;42:1;150:12, 13 <b>relative (3)</b> 17:19;106:3;149:1 <b>relatively (5)</b> 11:10,24;13:16; 93:6;153:20 <b>release (3)</b> 4:6,7;17:11 <b>released (3)</b> 13:17;29:11,13 <b>releases (1)</b> 4:17 <b>relevance (1)</b> 133:6 <b>relevant (3)</b> 55:14;151:21; 152:18 <b>reliability (1)</b> 130:10 <b>relied (4)</b> 44:6;64:13;108:22; 142:22 <b>relocation (1)</b> 140:12 <b>reluctant (1)</b> 179:4 <b>rely (2)</b> 55:23;67:4 <b>remain (2)</b> 72:2;89:6 <b>remember (9)</b> 11:21;77:10;88:8, 10;143:18,19;144:1; 160:18;176:16 <b>remind (2)</b> 85:23;121:18 <b>removal (2)</b> 18:11,12 <b>removals (1)</b> 183:16 <b>removed (3)</b> 75:8;80:9;82:11 <b>renegotiating (1)</b> 48:20 <b>re-occupied (1)</b> 24:8 <b>repeat (1)</b> 123:15 <b>rephrase (7)</b> 73:21;86:8;103:11; 119:24;123:13,22; 132:4 <b>replace (1)</b> 130:8 <b>Report (43)</b>	3:13;4:21;5:7; 6:21;7:17;8:14,16,17, 19;15:6;18:14;19:16, 17,18,22,22,24; 20:18;21:11;22:1,3, 16;24:4;26:2;30:9, 11;34:15,16;37:19; 65:19,20,22;85:23; 86:3,6,14;87:1,2,2, 134:2;172:7;175:5; 180:20 <b>reported (3)</b> 23:15,16;165:2 <b>Reporter (3)</b> 9:14;164:22;181:9 <b>reports (2)</b> 19:23;31:24 <b>represent (12)</b> 7:22;24:1;49:8; 53:22;63:23;69:1; 147:10;155:10; 160:3,23;164:11; 166:21 <b>representation (1)</b> 101:22 <b>representations (1)</b> 152:9 <b>representative (6)</b> 17:18;22:7;28:8; 56:9;74:22;181:22 <b>representatives (2)</b> 114:13,21 <b>represented (5)</b> 49:4;57:18;61:8; 65:1;102:13 <b>representing (1)</b> 158:20 <b>request (4)</b> 15:8;73:3;117:12; 167:12 <b>Requested (4)</b> 40:20;41:14,22; 166:16 <b>requesting (1)</b> 166:2 <b>require (3)</b> 46:12;175:1;184:8 <b>required (20)</b> 4:1;34:13;44:8; 61:17;62:19;67:24; 96:23;97:9;98:11; 108:12;109:10,11; 110:5;114:17; 115:11;126:18; 145:23;168:19; 171:3;172:14 <b>requirement (2)</b> 109:22;111:3 <b>requirements (4)</b> 46:4;49:15;91:3; 118:3 <b>requires (4)</b> 48:7;119:11;146:3;	148:16 <b>requiring (2)</b> 47:5;179:14 <b>reseed (2)</b> 63:13,13 <b>reset (2)</b> 89:21;90:2 <b>Residents (2)</b> 68:21;69:3 <b>resolution (1)</b> 132:10 <b>resource (8)</b> 64:2;77:12;134:24; 171:8,11,14,14;172:5 <b>resources (16)</b> 31:22;52:9;54:18; 58:19;60:9,9;64:3; 85:24;111:11,14; 132:20;171:8,11,20; 172:18;178:15 <b>respect (22)</b> 17:8,17;43:8;60:6, 8,15;61:6;70:7; 73:12,17;78:1,8;80:5, 13,16;81:8;83:12; 91:5,14;152:18; 185:14,24 <b>responding (1)</b> 141:6 <b>response (8)</b> 15:7;30:15;41:13; 82:17;99:9;117:11; 123:3;165:12 <b>responsibility (1)</b> 45:1 <b>re-stake (1)</b> 163:2 <b>restoration (13)</b> 75:3,21,23;76:16; 77:3,5;79:19;81:9,15, 17,18,22;90:15 <b>restorations (1)</b> 82:1 <b>restore (3)</b> 75:9,17;94:12 <b>restored (2)</b> 76:1;161:2 <b>restrict (2)</b> 178:14,19 <b>restricted (1)</b> 127:9 <b>result (5)</b> 20:10;35:17,23; 80:7;147:3 <b>resulted (1)</b> 121:5 <b>results (13)</b> 22:11,18;23:14; 24:22;31:18,20; 35:10,19;36:13,13; 37:13,16;60:7 <b>resume (1)</b> 187:20
---	--	---	--	--

<p><b>resumed (3)</b> 3:2;95:12;144:19</p> <p><b>resuspend (3)</b> 8:24;10:3,6</p> <p><b>resuspended (4)</b> 9:16;10:15,24; 11:10</p> <p><b>resuspension (5)</b> 9:5,24;11:5,16; 25:23</p> <p><b>retained (5)</b> 11:23;12:2,5; 20:11,14</p> <p><b>retaining (1)</b> 157:21</p> <p><b>return (8)</b> 3:9;4:24;6:4,8,14; 7:2,11;8:9</p> <p><b>reverse (1)</b> 93:19</p> <p><b>reversed (1)</b> 79:1</p> <p><b>review (8)</b> 31:23;34:14;35:12; 118:15;120:19; 145:20;162:18; 170:16</p> <p><b>reviewed (7)</b> 42:24;114:20; 127:14;139:7;147:9; 166:12;172:17</p> <p><b>reviews (2)</b> 35:18;88:1</p> <p><b>revised (11)</b> 33:10,12;34:6,22; 37:11;47:3;77:12; 87:1,3;164:6;167:17</p> <p><b>Revocable (1)</b> 95:10</p> <p><b>RICHARDSON (72)</b> 51:24;52:2,3;95:9, 14,16,19,22;99:13, 15,20;103:3,13,15; 119:16;120:1,2,10, 15,21,24;121:18; 122:5,9;123:3,12,20, 24;124:8,12;128:7, 14;133:8,18;134:4, 12,15,19;139:7,15, 23;140:23;141:14, 20;142:10,19;143:4, 7;144:6,17,21,22; 145:2;150:12,23,24; 151:18,23,24;152:7, 24;153:8;154:15,17; 158:18;159:6,17; 160:11,14,18,21; 161:11</p> <p><b>right (111)</b> 6:7;11:5;12:4,4; 21:5;29:8;38:13; 41:18;45:3;49:24; 52:24;54:18;57:22;</p>	<p>58:3;60:17,19;62:13; 63:17;64:3;65:6,21; 66:10,20;67:14; 69:13;70:13;85:6; 87:20;89:18;96:19; 97:5,23;98:13,13; 99:6;100:21;101:16; 104:17;105:22; 106:1,7,11,12,13,14; 107:11;108:15,18; 109:24;110:7,8,12; 111:16;113:15; 115:17,17;116:11; 117:13;119:1,8; 123:16;125:8,12; 127:14,18;128:23; 130:8,16;131:24; 132:21;134:12,23; 135:3;136:12,12,18; 137:7;138:6,12; 141:8,16;142:3; 143:9;145:18,24; 146:5,17;147:20; 149:10,12,13,14,18, 19;153:15;154:7,9; 155:1;156:8,20,23; 157:3,22;158:7,22; 161:6,7;163:1; 167:10;172:15;175:3</p> <p><b>right-of-way (22)</b> 57:15;61:2,9,13, 15;79:7;80:18;82:7, 13;110:6;125:3,11; 126:3;130:15,19,20; 131:6,23,24;181:14; 182:17;185:8</p> <p><b>rights (6)</b> 45:14;46:24;149:6; 151:10;152:2,9</p> <p><b>rights-of-way (6)</b> 59:16,22;96:24; 109:14;125:24; 152:11</p> <p><b>rigid (1)</b> 53:15</p> <p><b>riparian (2)</b> 88:20;149:9</p> <p><b>riprap (1)</b> 115:23</p> <p><b>risk (9)</b> 4:23;5:2,4,21; 174:10,11,17,19,22</p> <p><b>River (19)</b> 56:22;63:21;64:1; 65:12;93:10,11,16, 23;180:23;181:6,7, 14,17;182:7,18; 183:1,8;184:12; 186:7</p> <p><b>Road (8)</b> 57:1,23;58:8,13; 69:14;70:13;120:13; 174:3</p>	<p><b>roads (4)</b> 58:1,19,22;163:19</p> <p><b>road's (1)</b> 58:4</p> <p><b>rock (4)</b> 105:17;106:20; 107:1;173:1</p> <p><b>rocks (1)</b> 106:9</p> <p><b>role (1)</b> 82:8</p> <p><b>roles (1)</b> 79:1</p> <p><b>Roman (1)</b> 87:9</p> <p><b>roughly (4)</b> 88:3,4,5;169:15</p> <p><b>route (12)</b> 14:18;22:23;26:5; 106:19;129:14,22; 131:17,18;162:13,16; 173:22;186:19</p> <p><b>routes (1)</b> 130:3</p> <p><b>routinely (1)</b> 59:17</p> <p><b>ROW (3)</b> 97:3;125:21;130:7</p> <p><b>ROWS (2)</b> 96:23;108:12</p> <p><b>RPS (15)</b> 8:14,18;19:16,22; 20:3,11,12,14,18,18, 20;21:3,4,6,10</p> <p><b>RPS's (1)</b> 21:14</p> <p><b>RSA (4)</b> 109:11;111:4; 115:11;120:3</p> <p><b>rubber-tired (1)</b> 60:5</p> <p><b>rule (20)</b> 108:18;109:3,9,16, 18;110:4;111:20; 143:10,17,20,21; 146:3,15;147:11,12, 16;148:14,20;150:2, 14</p> <p><b>rules (9)</b> 102:6;109:8; 111:14;119:11; 122:22;126:17; 129:20;133:1;147:19</p> <p><b>run (11)</b> 29:14,19,23;34:9, 20;35:19;36:7,20; 37:3,13;89:7</p> <p><b>running (1)</b> 176:14</p> <p><b>rye (3)</b> 79:19;81:11,18</p>	<p style="text-align: center;"><b>S</b></p> <p><b>Safety (2)</b> 46:14;73:2</p> <p><b>salt (11)</b> 77:22;93:17,20; 128:20;132:23; 136:10,11,13,17,21; 161:1</p> <p><b>same (25)</b> 12:6,22;23:18; 24:2,5,10,18,23;25:5, 12;27:10,14;38:10; 42:6;44:15;52:7; 63:20;70:7,15; 110:17;120:7;123:3; 139:1;140:19;152:6</p> <p><b>sample (6)</b> 16:9;17:18;19:10; 21:13;24:17;29:7</p> <p><b>Sampled (1)</b> 22:23</p> <p><b>samples (16)</b> 19:7;20:21,23,24; 21:3,4,6;22:4;24:2,4, 5,7,18;25:12;26:24; 27:15</p> <p><b>Sampling (14)</b> 15:2;16:1;17:5; 20:5;21:9,23;24:10, 23;25:6,6,7;26:10; 27:13;29:6</p> <p><b>samplings (1)</b> 20:2</p> <p><b>sand (5)</b> 22:20,24;23:2,17; 27:23</p> <p><b>Sarah (3)</b> 54:1;60:1;62:6</p> <p><b>sat (1)</b> 85:15</p> <p><b>saw (7)</b> 16:16;25:9;106:9; 117:9;120:3;136:6; 137:18</p> <p><b>saying (12)</b> 4:12;30:22;58:21; 67:3;91:15;100:1; 122:18;124:2; 130:15;135:24; 139:4;169:7</p> <p><b>scale (12)</b> 54:5,9;55:19,20, 24;56:13,20;57:16; 58:5,20,22;61:1</p> <p><b>scattered (1)</b> 144:10</p> <p><b>schedule (3)</b> 52:5;53:15;72:11</p> <p><b>scientists (1)</b> 32:10</p> <p><b>scope (2)</b> 120:22;141:12</p>	<p><b>Scott (1)</b> 113:7</p> <p><b>screen (8)</b> 54:20;83:3;99:4; 108:5;145:8;158:13; 167:11,24</p> <p><b>screw (1)</b> 61:23</p> <p><b>se (1)</b> 55:24</p> <p><b>sea (1)</b> 25:18</p> <p><b>season (2)</b> 77:6;136:15</p> <p><b>seasonal (1)</b> 92:20</p> <p><b>SEC (26)</b> 33:13,16,17,20; 34:1,17,17,19,23; 35:3,7,8,14,14,16,18, 22;102:6;112:13; 113:5,21;115:5,7; 118:23;119:10; 122:12</p> <p><b>second (16)</b> 3:13;24:8;25:9; 34:24;35:6;36:2; 40:19;57:24;63:2; 70:8,12;101:23; 106:9;119:9;132:8; 143:11</p> <p><b>secondary (1)</b> 21:1</p> <p><b>section (19)</b> 56:10,11;63:20,22; 67:20;68:11;82:13; 101:19;119:7; 125:19;136:13; 137:1,8;144:9;145:3; 151:13;152:14; 170:1;180:18</p> <p><b>sediment (23)</b> 11:20;15:2;16:12; 17:3;19:18;20:12,16; 21:9,16;22:8;23:7,9; 24:24;26:17;28:5; 29:6,10,12;30:5;37:8, 10;92:4,18</p> <p><b>sediments (20)</b> 8:13,23;9:5,19,22; 10:3,15;11:22;12:17; 13:8,17;14:15;19:13; 22:22;26:4;28:3,23; 30:1,3,4</p> <p><b>seed (4)</b> 81:11,19;82:2,6</p> <p><b>seeded (1)</b> 79:20</p> <p><b>seedlings (1)</b> 79:21</p> <p><b>seeing (9)</b> 24:22;25:5,5;27:1;</p>
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61:9,11;102:24; 138:19;158:2 <b>seek (1)</b> 147:19 <b>seeking (1)</b> 81:9 <b>seem (2)</b> 43:21;65:13 <b>seems (6)</b> 7:1;100:7;102:7; 130:5;161:3;182:1 <b>segment (1)</b> 21:15 <b>selected (2)</b> 70:3;94:15 <b>selecting (1)</b> 84:7 <b>selection (2)</b> 83:22;84:10 <b>send (1)</b> 101:3 <b>sending (1)</b> 52:10 <b>sense (8)</b> 9:12,15;71:24; 74:6;149:16;158:15; 177:4,5 <b>sensitive (5)</b> 57:5,12;60:15,22; 134:24 <b>sent (2)</b> 26:19;109:23 <b>sentence (8)</b> 3:23;8:21,22;9:6; 26:16;30:17;40:14; 151:16 <b>separate (4)</b> 54:21;115:10; 146:2;148:13 <b>September (11)</b> 24:15;27:11,15; 39:12;44:15;92:17; 113:2;167:17;180:6; 182:13;187:21 <b>September-October (3)</b> 92:24;93:13,15 <b>sequence (1)</b> 71:16 <b>series (1)</b> 127:4 <b>session (4)</b> 99:23;100:14; 104:14;187:19 <b>set (5)</b> 54:21;55:6;89:22; 91:1;144:9 <b>setback (1)</b> 146:11 <b>setbacks (2)</b> 146:20;148:15 <b>settle (1)</b> 93:17 <b>several (5)</b>	7:7;68:11;77:19; 128:15;129:7 <b>shall (7)</b> 109:11;110:24; 111:7,24;114:16; 146:21;170:14 <b>shallow (6)</b> 39:23;85:18;90:23; 91:12,24;107:14 <b>shallower (1)</b> 22:14 <b>Shapiro (1)</b> 187:12 <b>shear (5)</b> 9:24;10:5,9,17; 11:4 <b>sheath (2)</b> 18:17,19 <b>sheer (1)</b> 9:1 <b>sheet (1)</b> 168:17 <b>shifted (2)</b> 94:11,17 <b>shoot (1)</b> 53:7 <b>shore (5)</b> 90:20;100:5;101:1; 106:23;107:2 <b>shorefront (1)</b> 149:13 <b>shoreland (2)</b> 114:22;135:19 <b>shoreline (18)</b> 96:7,11;107:4,5; 115:4;116:10;135:2, 14,17;137:19; 141:22;148:17; 149:9;150:6;157:6; 159:22;160:6,24 <b>short (2)</b> 7:12;178:6 <b>show (23)</b> 22:17;27:18;47:18; 74:11;99:1;110:15, 16;126:20;135:12; 137:20;140:17; 141:1,21;150:5,9; 151:2;152:11; 154:18;156:10; 158:4,19;159:18; 182:15 <b>showed (5)</b> 5:8;9:9;10:12; 37:4;101:20 <b>showing (5)</b> 47:5;57:13;106:2; 135:21;137:19 <b>shown (12)</b> 44:14;47:19;58:12; 59:1;105:18;136:24; 137:16,16;142:13; 155:9;158:6;169:3	<b>shows (5)</b> 26:23;56:24;65:9; 69:9;137:5 <b>side (7)</b> 14:2,3;72:18; 127:21;156:23; 173:1;175:20 <b>sides (1)</b> 182:16 <b>signature (2)</b> 41:19;168:2 <b>significant (7)</b> 61:4;76:13;111:10, 13;132:23;157:13; 183:14 <b>sign-in (5)</b> 113:10,12,14,17; 114:24 <b>silt (16)</b> 11:23;12:2,8,10,21, 23,24;13:2,4,14,23; 14:4,7,8,12;173:3 <b>siltation (1)</b> 12:16 <b>similar (2)</b> 7:12;32:1 <b>similarly (1)</b> 186:11 <b>simplification (1)</b> 58:15 <b>simply (3)</b> 61:18,20;152:11 <b>simulation (7)</b> 14:1;82:22;83:16; 100:24;101:7; 102:11;103:17 <b>single (2)</b> 55:6;63:3 <b>sit (1)</b> 85:20 <b>site (4)</b> 3:10;66:17;104:8; 129:1 <b>sites (8)</b> 33:8;66:16;172:8, 14;173:6,12;174:13; 179:13 <b>sitting (1)</b> 152:21 <b>situation (3)</b> 50:11,13;78:11 <b>sixteenth (1)</b> 58:6 <b>size (5)</b> 25:4,11;177:10,12, 14 <b>sizing (1)</b> 177:19 <b>skidder (1)</b> 60:5 <b>slack (2)</b> 88:9,15 <b>slightly (1)</b>	109:18 <b>slippage (1)</b> 52:16 <b>slipping (1)</b> 29:16 <b>slope (5)</b> 133:6;173:16,21; 174:3;184:1 <b>slopes (5)</b> 172:21;174:7,15, 19,23 <b>slots (1)</b> 53:1 <b>small (6)</b> 11:24;62:20;93:7; 114:1;178:21;179:5 <b>smaller (3)</b> 56:19;76:10; 184:24 <b>smallest (1)</b> 154:6 <b>soil (1)</b> 172:10 <b>solid (1)</b> 18:21 <b>solids (3)</b> 37:18;38:2,11 <b>someone (2)</b> 103:1;116:4 <b>somewhat (1)</b> 120:4 <b>somewhere (1)</b> 106:10 <b>sorry (32)</b> 7:24;65:3;67:3; 72:5;73:21;74:1; 76:20;77:15;85:16; 87:4;98:8;101:13; 105:3;108:8;114:5; 115:16;119:16; 124:17;137:3; 140:18;141:15; 143:12;144:6;145:6; 154:15;160:15; 169:17;170:4; 174:19;181:14; 182:14;184:15 <b>sort (7)</b> 6:24;18:15;19:10; 79:17;80:22;121:14; 163:19 <b>sorts (1)</b> 81:7 <b>sound (8)</b> 101:9;103:21; 107:11;110:6,8; 117:12;120:6;164:12 <b>sounds (3)</b> 36:2;78:1;184:23 <b>source (4)</b> 17:10;18:9,24; 140:1 <b>south (4)</b>	15:14,15,17,21 <b>span (5)</b> 74:9,15,17,21; 175:20 <b>spans (2)</b> 74:4,23 <b>speak (11)</b> 40:5;62:5,17;72:5; 74:18;104:2;105:3; 108:24;112:6;141:4; 143:5 <b>speaking (1)</b> 32:9 <b>speaks (3)</b> 36:1;123:1;142:17 <b>special (1)</b> 172:13 <b>species (2)</b> 79:10;82:1 <b>specific (22)</b> 57:13;60:21;75:12; 78:3,5,7,12,22;79:22; 80:12;81:10,15,17, 22,23;82:1;89:15; 92:7;164:1;170:22; 173:5;174:18 <b>specifically (9)</b> 14:14;38:17;45:23; 85:4;86:16;102:17; 172:17;179:10;181:2 <b>specification (2)</b> 83:21;84:8 <b>specifications (2)</b> 82:22,24 <b>specifics (4)</b> 3:20;13:11;72:6; 104:2 <b>specified (2)</b> 92:11;184:20 <b>specify (2)</b> 81:16;177:12 <b>speculation (1)</b> 128:5 <b>speed (1)</b> 37:9 <b>speeds (3)</b> 10:23;11:2;89:10 <b>spill (1)</b> 81:4 <b>spilled (1)</b> 81:2 <b>spoke (1)</b> 100:4 <b>spokesperson (1)</b> 69:3 <b>spot (1)</b> 15:21 <b>spotted (1)</b> 179:17 <b>spring (7)</b> 10:19;12:20;86:17; 89:1,2;93:4;136:19 <b>square (20)</b>
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39:5,9,24;40:2; 41:16;42:2,16;43:19, 23;44:4,10,13;50:5; 63:22;75:15;116:1; 164:12;165:5; 167:11,12 <b>squash (1)</b> 62:15 <b>staff (1)</b> 145:21 <b>stake (3)</b> 155:15,17;156:10 <b>standards (4)</b> 37:15;38:1,4,19 <b>standpoint (3)</b> 72:21;73:20; 131:19 <b>stands (1)</b> 170:11 <b>start (9)</b> 4:18;47:15;51:12; 88:14,16;108:3; 124:20;135:13;145:8 <b>started (2)</b> 54:12;162:9 <b>starting (1)</b> 89:18 <b>starts (2)</b> 11:14;89:6 <b>state (9)</b> 38:18;44:21,23; 45:4;114:13;120:17; 135:5,6;180:9 <b>stated (4)</b> 7:7;103:11;160:10; 169:11 <b>statement (12)</b> 4:14;16:22;23:9; 102:7;103:4;124:24; 141:24;143:16; 148:12;149:3; 152:13;165:10 <b>statements (1)</b> 7:9 <b>state-owned (1)</b> 44:18 <b>stations (1)</b> 24:8 <b>statute (2)</b> 111:24;119:11 <b>statutes (1)</b> 45:14 <b>statutory (1)</b> 148:14 <b>stay (4)</b> 25:21;70:18;73:3; 84:19 <b>steep (10)</b> 133:5;172:21; 173:16,20;174:3,7, 15,19,22;184:1 <b>stenographer (1)</b> 115:15	<b>stick (2)</b> 52:15,22 <b>sticking (1)</b> 70:4 <b>still (5)</b> 102:10;155:14; 156:4;183:9;187:11 <b>stippling (1)</b> 181:22 <b>stock (3)</b> 79:4,9,22 <b>stone (4)</b> 54:23,24;68:5,9 <b>stop (2)</b> 89:19;90:2 <b>stopping (2)</b> 89:18;187:5 <b>straight (2)</b> 87:5;155:18 <b>stream (21)</b> 163:23;175:7,24; 176:13,18,19;177:3, 7,16,22;178:8; 180:22;181:23; 182:1,4,7,8,24; 184:11,15;186:7 <b>streams (6)</b> 163:23;164:1; 175:8;178:20,24; 181:1 <b>stress (7)</b> 8:24;9:1;10:1,5,10, 17;11:4 <b>strike (2)</b> 153:15,24 <b>string (1)</b> 74:7 <b>strong (3)</b> 12:10;13:18;19:10 <b>strongest (1)</b> 13:5 <b>struck (2)</b> 99:21;159:13 <b>structure (6)</b> 63:11;154:3; 173:21;184:7; 185:14,18 <b>structures (8)</b> 96:8,8;146:10; 148:17;150:13; 153:22;163:12,12 <b>strung (2)</b> 73:24;74:2 <b>studies (2)</b> 17:14;20:3 <b>stuff (1)</b> 57:6 <b>surgeon (2)</b> 180:13,13 <b>subdivision (2)</b> 139:2;140:1 <b>subject (17)</b> 9:23;10:9,17;11:4,	15;12:22;13:5;67:19; 110:3;111:2,19; 114:15;121:7;122:3; 149:11;153:4;184:22 <b>submarine (1)</b> 34:15 <b>submission (4)</b> 33:10;47:5,8;48:8 <b>submit (1)</b> 48:15 <b>submital (1)</b> 40:6 <b>submitted (14)</b> 39:12;40:7;96:19; 98:2,10;108:23; 125:17;135:18; 143:16;151:12; 165:24;167:16; 170:15,17 <b>submitting (1)</b> 33:11 <b>Subparagraph (1)</b> 126:11 <b>subsequent (1)</b> 9:2 <b>subsequently (1)</b> 40:11 <b>substantial (4)</b> 22:18;111:12; 166:10,11 <b>substantially (1)</b> 76:11 <b>substituted (1)</b> 79:20 <b>substrate (4)</b> 31:7;85:5,15,20 <b>subtidal (5)</b> 85:18;90:23;91:12, 24;125:9 <b>sufficient (1)</b> 75:1 <b>suggest (1)</b> 102:8 <b>suggested (1)</b> 165:16 <b>suggesting (1)</b> 67:9 <b>suitable (1)</b> 179:15 <b>summary (1)</b> 102:21 <b>summer (1)</b> 99:24 <b>summer/early (1)</b> 93:22 <b>Sunapee (1)</b> 116:6 <b>Sundell (1)</b> 151:6 <b>Supplement (4)</b> 39:11;42:23;43:7; 44:16 <b>supplemental (3)</b>	8:3;22:1,9 <b>supplies (1)</b> 67:15 <b>support (5)</b> 127:5,7;130:9; 146:7;179:19 <b>supported (1)</b> 175:21 <b>suppose (2)</b> 149:16;150:3 <b>supposed (1)</b> 104:19 <b>sure (34)</b> 15:16;32:10;33:19; 35:20;48:18;59:21; 62:13;64:16,18;65:3; 72:23;74:13,22; 77:20;84:13;86:24; 111:17;113:9,11; 114:7;116:14;118:2; 119:18;120:12; 125:14;132:1; 139:15;156:6;166:7; 167:24;173:11; 177:3;178:17;180:17 <b>surface (9)</b> 4:19;28:23;30:1; 37:14,24;38:4;74:14, 16;146:24 <b>surprise (1)</b> 122:1 <b>surrounds (1)</b> 18:18 <b>survey (3)</b> 79:15;140:13,13 <b>surveyed (1)</b> 142:15 <b>survey-located (1)</b> 142:16 <b>suspect (3)</b> 67:12;116:13; 180:11 <b>suspended (8)</b> 10:14;21:18;28:3, 15;30:2;37:18;38:2, 10 <b>suspended/resuspended (1)</b> 9:17 <b>suspension (4)</b> 25:23;28:11;29:8; 37:8 <b>sustain (5)</b> 36:16;119:23; 134:10;139:12;159:2 <b>sustained (8)</b> 39:1;103:10;120:9; 124:11;128:13; 150:22;151:21; 154:14 <b>Swan (2)</b> 93:19,22 <b>Swanson (34)</b> 8:20;9:9,15,21;	10:2,11,18;11:5,21; 12:4,12,19;13:9,14, 19,24;14:6,17;15:5; 19:21;20:23;25:16; 28:19;29:22;38:16; 86:13,22;87:8,10,17, 24;88:2;92:22;93:11 <b>system (5)</b> 86:16;87:11,18; 94:1;130:10
<b>T</b>				
			<b>table (6)</b> 15:5;22:21;25:3; 26:3,13;28:7 <b>tables (1)</b> 23:15 <b>talk (4)</b> 59:19;121:3;134:6; 187:15 <b>talking (14)</b> 4:16;18:17;60:20; 77:21,22;78:17; 80:21;82:12;125:9; 130:14;149:20; 157:1;171:3;179:22 <b>talks (6)</b> 26:3,7;33:9;39:22; 77:14;171:4 <b>tall (1)</b> 56:7 <b>tape (1)</b> 158:14 <b>target (1)</b> 38:18 <b>tax (6)</b> 141:1,2,23,24; 142:13,20 <b>team (11)</b> 54:13,13,15,16,17; 83:20;84:12;103:2; 119:4;172:17;177:18 <b>technical (4)</b> 5:6;99:23;100:14; 104:14 <b>technically (2)</b> 125:1,5 <b>technique (2)</b> 20:6;37:2 <b>techniques (2)</b> 32:2;55:14 <b>temporarily (1)</b> 177:8 <b>temporary (22)</b> 7:12,15,21;75:15, 19,22;76:13,13; 163:6,16;164:2,17, 21,23;168:15,20; 175:7,19;176:4,10; 177:6;184:16 <b>tend (1)</b> 121:23	

<b>term (4)</b> 149:6;176:16; 178:7,11	86:6,10;87:19,21; 88:2;89:3,4;92:1; 107:6;110:11;168:7	<b>Town (1)</b> 117:11	7:13;23:13;29:1; 36:4;38:7;42:18; 52:8;54:10;58:16; 68:13;71:22,24;74:5; 79:2;86:24;129:3; 139:8,16,19;141:15; 148:19;152:16; 156:14;158:18; 171:18;174:14	31:17,20;32:17; 33:5
<b>terms (14)</b> 15:1;28:22;89:8; 101:10;116:3,21; 117:2,4;132:20; 165:1;167:4;172:9, 18;179:2	<b>tide (21)</b> 11:2;12:20;87:13; 88:10,15,21;89:1,1,2, 2,4;92:23,23;93:1,1, 3,4,5,6,17;107:10	<b>tracked (1)</b> 60:3	63:11	<b>uncommon (1)</b> 109:1
<b>testified (7)</b> 13:3;38:17;133:4; 134:22;165:13; 167:15;169:1	<b>tides (4)</b> 10:19;86:17;87:10; 93:9	<b>traditional (2)</b> 90:4,6	<b>transcripts (1)</b> 114:20	<b>under (10)</b> 34:22;67:20;110:4; 111:22;126:15; 148:14;157:5; 168:21;176:14,20
<b>testify (4)</b> 6:13,15;139:20; 152:23	<b>timber (17)</b> 71:4,11;72:1,15; 73:17,24;74:7,13; 75:7;76:6;163:18; 175:16,18,19,21; 176:11;177:2	<b>transit (1)</b> 178:2	<b>transmission (5)</b> 80:18;82:8;130:9, 10;137:15	<b>underground (10)</b> 60:23;100:4,6; 102:14;104:12,15,18, 22;105:1;121:22
<b>testimony (20)</b> 4:22,22;6:12,22; 7:24;8:2,3;29:16; 49:9;102:19;116:23; 120:22;121:17; 139:6;141:12;165:4, 8,22;169:4;182:20	<b>times (4)</b> 7:8;61:13;117:6,16	<b>transition (1)</b> 63:11	<b>travelling (2)</b> 51:19;53:12	<b>underlined (2)</b> 31:12;111:9
<b>theory (1)</b> 12:24	<b>timing (1)</b> 88:18	<b>trap (2)</b> 13:1;173:1	<b>traversing (1)</b> 72:17	<b>underneath (2)</b> 135:11;137:10
<b>therefore (3)</b> 22:9;96:24;122:13	<b>titled (1)</b> 166:16	<b>traveling (2)</b> 51:19;53:12	<b>tree (12)</b> 59:8,20;61:5,6,10; 182:12,15,20,23; 183:15;185:7;186:23	<b>underrepresents (1)</b> 58:7
<b>thereof (1)</b> 146:23	<b>today (2)</b> 7:8;114:24	<b>tree-clearing (3)</b> 60:3;61:17;185:24	<b>treed (1)</b> 135:24	<b>understands (1)</b> 139:22
<b>thick (1)</b> 18:20	<b>together (4)</b> 49:19;73:24;74:3; 82:10	<b>tree (12)</b> 55:16,16;56:5,5,6; 59:7,10,14,15;61:4; 136:16;137:9	<b>two (34)</b> 23:14,15,24;24:17; 25:6,12;41:7;49:19; 57:18;61:1,1;64:8; 68:15;71:14,24;72:9; 88:13,14;90:10,11; 110:16;121:12; 125:20,22;128:22; 138:20;144:7,13; 148:22;153:14; 176:3,9,22;181:1	<b>understood (6)</b> 49:16;56:19;76:15; 129:3;159:8,16
<b>thin (1)</b> 65:10	<b>told (6)</b> 14:6;58:1;104:11; 114:24;119:4;121:21	<b>trench (3)</b> 176:6,16,17	<b>two-year (1)</b> 71:18	<b>understory (1)</b> 157:11
<b>thinking (8)</b> 52:5;54:7;62:8; 84:5;139:18;176:13; 179:9,16	<b>tomorrow (2)</b> 187:7,13	<b>trenching (3)</b> 163:17;176:24; 179:20	<b>type (11)</b> 14:15;23:8;80:20; 81:14;92:2;104:20; 116:10;145:15; 160:2,6;163:23	<b>undue (1)</b> 185:6
<b>third (5)</b> 31:2;114:9,11; 157:19,22	<b>tons (1)</b> 60:14	<b>trial (4)</b> 29:23;34:15;37:3, 13	<b>typical (4)</b> 32:13;74:17;80:17; 93:3	<b>UNH (6)</b> 64:7,23;65:9;66:5; 67:12;68:14
<b>thirds (3)</b> 57:18;61:1,2	<b>took (9)</b> 10:12;19:13;20:23; 21:3,5;93:8;97:4; 113:2;147:6	<b>triangle (3)</b> 70:8,13,16	<b>types (5)</b> 59:12;77:19; 115:21;116:2;171:22	<b>uniformly (1)</b> 151:9
<b>thought (2)</b> 120:16;142:18	<b>tool-type (1)</b> 185:22	<b>triangles (1)</b> 69:13	<b>typically (9)</b> 10:21;18:16;76:5; 80:21;92:1;97:9; 115:18;124:2;163:1	<b>unique (1)</b> 78:10
<b>thought (9)</b> 40:2;48:4;52:11, 18;71:23;78:19;99:6; 128:6;141:15	<b>top (10)</b> 21:4,12,21;27:3; 28:7;91:12;93:18; 107:23;108:8;126:12	<b>tribs (1)</b> 182:3	<b>ultimately (3)</b> 10:15;11:13; 122:13	<b>unless (2)</b> 146:24;149:24
<b>threatened (1)</b> 179:10	<b>topographic (1)</b> 90:22	<b>trucks (1)</b> 60:13	<b>unable (2)</b> 102:10;103:16	<b>unlikely (4)</b> 6:9,16;31:8;45:16
<b>three (9)</b> 9:10;10:12;15:13, 15;25:19;51:17;89:9; 104:6;187:11	<b>totality (1)</b> 17:5	<b>true (11)</b> 52:7;115:16;125:5, 6;148:7;156:15; 158:20;165:19; 177:5,9;178:9	<b>unacceptable (1)</b> 37:5	<b>unnecessarily (2)</b> 184:3,5
<b>three-day (2)</b> 9:7,18	<b>touch (1)</b> 84:20	<b>trust (7)</b> 45:3,10,14;46:24; 95:10,23;110:2	<b>unaltered (4)</b> 135:5,6;157:5,8	<b>unprofessional (1)</b> 144:8
<b>throughout (3)</b> 61:16;102:3; 103:23	<b>touched (1)</b> 21:16	<b>try (4)</b> 52:15,22;118:18; 138:12	<b>uncertainty (4)</b>	<b>unusual (3)</b> 97:24;124:1,6
<b>tidal (14)</b> 9:3;10:18;85:18;	<b>touches (1)</b> 85:10	<b>trying (26)</b>	<b>U</b>	<b>up (64)</b> 6:19;10:4,8,12; 14:22;23:1,19;33:4; 37:8;43:9;54:20; 59:9;62:24;66:19,22; 67:14;69:7;71:14; 75:13;76:21;82:23; 83:5;90:1;94:6;95:9; 96:15;99:4;100:5; 104:11,21;105:6; 106:14,17;107:2; 108:8;109:3;110:1; 112:18;118:10,16; 119:5;125:18,22; 132:6;136:7,23; 140:15;142:4;143:9; 144:2,16;145:7; 146:15;148:21;

	V	W		
154:21,23;159:19; 160:4;164:20,24; 167:6;168:11; 177:13;183:16 <b>update (1)</b> 53:8 <b>updated (6)</b> 42:24;64:18;162:7; 180:3,8,11 <b>upland (3)</b> 58:10;59:22;62:4 <b>uplands (1)</b> 58:14 <b>upon (1)</b> 24:24 <b>upper (3)</b> 25:17,21;91:2 <b>uppermost (2)</b> 26:18;28:18 <b>Upton (1)</b> 95:22 <b>usage (3)</b> 21:14;80:14,15 <b>use (16)</b> 12:10;20:20;31:16; 45:4;49:24;51:5; 54:5;59:17;61:23; 83:13;153:21;159:3; 171:4;173:1;178:24; 185:22 <b>used (29)</b> 10:19;11:6;12:3,9; 20:24;21:8;30:12; 43:14;44:3;55:1; 59:5;60:2;62:2,18; 71:7;81:20,22;82:2, 3;86:17;92:22;93:12; 142:1;153:23; 176:10,17;177:2,11; 184:16 <b>useful (1)</b> 6:2 <b>uses (2)</b> 27:13;42:15 <b>USGS (1)</b> 93:12 <b>using (11)</b> 12:20;14:4,5;20:5; 32:1;51:1;52:6;63:5, 6;81:10;179:20 <b>usual (1)</b> 92:6 <b>usually (3)</b> 92:3;93:16;98:12 <b>utility (6)</b> 72:20;96:23;97:3; 109:13;110:5;125:21 <b>utilized (1)</b> 127:10 <b>utmost (1)</b> 52:15	<b>Valentine (1)</b> 180:23 <b>valid (1)</b> 67:21 <b>variant (1)</b> 38:21 <b>variations (1)</b> 25:11 <b>varied (1)</b> 19:8 <b>varies (1)</b> 93:1 <b>variety (1)</b> 110:12 <b>various (6)</b> 55:13;60:2;117:15; 170:18;180:9;182:4 <b>Varney (2)</b> 52:6;187:12 <b>vary (3)</b> 76:3,16;87:12 <b>vastly (1)</b> 23:23 <b>vegetation (8)</b> 62:15;79:6;82:11, 14;136:23;180:22; 183:10;184:4 <b>vehicle (1)</b> 48:19 <b>velocities (3)</b> 9:2;10:20;12:22 <b>verify (1)</b> 29:24 <b>vernal (4)</b> 164:8,16;168:14, 18 <b>version (1)</b> 180:4 <b>versus (5)</b> 3:17;14:12;131:7; 153:21;186:2 <b>vibracore (3)</b> 15:21;20:6;26:5 <b>vibracores (2)</b> 14:17;17:6 <b>vicinity (4)</b> 104:16;183:7,16; 186:24 <b>view (3)</b> 54:12;61:10; 160:22 <b>violating (1)</b> 38:3 <b>violation (1)</b> 37:24 <b>visible (2)</b> 107:9,17 <b>visual (4)</b> 82:20,22;83:20; 100:23	<b>wait (2)</b> 77:14;144:11 <b>waive (2)</b> 147:11,12 <b>waiver (2)</b> 147:16,19 <b>walked (2)</b> 142:4;156:17 <b>wall (4)</b> 54:23,24;68:5; 157:21 <b>walls (1)</b> 68:9 <b>wants (3)</b> 30:5;154:4;160:11 <b>water (40)</b> 8:5;14:11;21:18; 25:24;28:4;30:21,22; 37:3,4,10,14,24;38:4, 18;74:16;77:22; 88:23;89:7;93:16,17, 20,24;107:8,20; 138:3;139:4;140:2; 142:12,15;146:8,24; 153:13;155:9;158:7; 168:7;172:24; 175:20;176:24; 177:7;180:18 <b>waters (2)</b> 45:4;152:3 <b>way (14)</b> 12:6;51:4;63:19; 64:8,23;76:7;91:2; 120:11;158:15; 159:3;166:10,11; 171:7;180:14 <b>ways (1)</b> 37:7 <b>WEATHERSBY (43)</b> 3:3;29:15;36:15; 38:24;42:9;51:7,13; 52:1,13;53:4,10; 68:19;83:1;95:6,13; 103:9;119:21;120:8, 20;122:2,6;123:9,14; 124:10;128:11; 133:15;134:9,13,16; 139:11;141:17; 143:1;144:12,20; 150:18;151:20; 154:13;159:1,15; 161:14,17;187:6,16 <b>web (1)</b> 104:8 <b>weigh (1)</b> 60:14 <b>weight (2)</b> 59:4;60:13 <b>welcome (1)</b> 72:23	<b>west (2)</b> 14:2;65:13 <b>western (3)</b> 88:15;90:20;92:1 <b>wet (1)</b> 76:4 <b>wetland (20)</b> 58:11;59:21;69:17; 70:18,19;75:9,16; 77:2,17,19;78:10,17, 18,23;79:10;163:18; 164:17,23;168:21; 174:5 <b>wetlands (31)</b> 31:14;44:24;58:14, 23;59:1,3;61:23; 62:3;76:2;96:1;97:8; 101:15;113:6; 114:22;124:8;127:8, 12;128:18;129:2; 143:15;145:3,15; 162:3,5;163:2,7,10, 20;167:17;168:20; 170:1 <b>what's (6)</b> 22:7;62:16;100:18; 113:8;118:7;135:3 <b>whereas (1)</b> 76:11 <b>whereby (1)</b> 45:3 <b>Whereupon (1)</b> 187:18 <b>wherever (1)</b> 12:21 <b>white (2)</b> 69:13;70:12 <b>whole (4)</b> 17:23;59:9,24; 144:8 <b>Who's (3)</b> 54:15;103:1;149:9 <b>Widdell (1)</b> 67:9 <b>wide (5)</b> 57:15;58:2,6;60:4; 129:15 <b>widens (1)</b> 65:12 <b>width (6)</b> 57:17;58:7,12,14, 24;184:21 <b>wildlife (2)</b> 171:6;179:24 <b>willing (1)</b> 50:17 <b>window (1)</b> 9:7 <b>wires (2)</b> 62:12;63:1 <b>within (20)</b> 5:6;18:13;23:5; 59:5;67:18;68:6;	76:10;78:23;108:12; 125:2;127:15; 129:14;130:6; 143:22;145:14,16; 171:10;180:22; 182:24;187:1 <b>without (8)</b> 13:4,14,23;14:4; 60:20;120:13; 139:13;143:23 <b>WITNESS (17)</b> 41:20;42:8;59:19; 62:5;71:8;88:1; 103:4;109:6;123:4; 139:17,19;153:4; 154:24;158:21; 160:19;185:23; 187:13 <b>witnesses (12)</b> 36:17;51:18;52:24; 53:11;105:8;124:6; 128:5;141:18; 150:10;151:16; 160:10;187:12 <b>witness's (1)</b> 70:12 <b>wondering (1)</b> 57:21 <b>word (2)</b> 30:20;126:23 <b>word (34)</b> 5:20;20:1,11,19, 20;21:3;28:13;38:5; 52:23;84:17,20; 86:12;87:15;88:9; 92:14;125:2;127:15; 129:20;130:6; 145:13;146:9;149:1; 171:12;173:21; 174:24;176:14,24; 178:12;184:5; 185:10,13,16,17,24 <b>worked (1)</b> 82:9 <b>working (2)</b> 44:23;91:7 <b>works (1)</b> 83:5 <b>world (1)</b> 154:6 <b>wrap (1)</b> 6:19 <b>writing (1)</b> 147:20 <b>written (6)</b> 98:19;108:21; 110:24;147:1; 171:14;180:15 <b>wrong (3)</b> 109:18;139:21; 158:22 <b>wrote (4)</b> 104:1,10;108:14;

**SEC 2015-04 PSNH,D/B/A EVERSOURCE ENERGY ADJUDICATIVE HEARING - DAY 5 AFTERNOON ONLY**  
**APPLICATION FOR CERTIFICATE OF SITE & FACILITY** **September 20, 2018**

171:7 <b>WT (1)</b> 109:9	8:14,19;19:15,17; 86:19;87:3 <b>105 (5)</b> 19:15,19;21:24; 22:16;26:2 <b>106 (1)</b> 67:20 <b>108 (1)</b> 186:19 <b>10th (1)</b> 100:16 <b>10-year (1)</b> 93:12 <b>11 (1)</b> 175:4 <b>119 (1)</b> 151:6 <b>11-foot (1)</b> 127:18 <b>11th (2)</b> 99:9;100:14 <b>12 (3)</b> 17:6;30:17;164:15 <b>124 (4)</b> 171:1;180:3,21; 186:6 <b>128 (3)</b> 39:13;167:20,23 <b>13 (7)</b> 89:12;138:22; 142:14,14,16;180:20; 186:22 <b>133 (2)</b> 3:13;30:10 <b>14 (3)</b> 31:1;119:7;125:19 <b>140 (1)</b> 102:20 <b>148 (7)</b> 69:8;70:10;71:12; 75:10;173:19; 181:20;186:22 <b>15 (5)</b> 31:6;145:3;151:13; 152:14;180:6 <b>150 (5)</b> 54:6,12,14;57:17; 115:22 <b>15-minute (1)</b> 95:7 <b>16 (8)</b> 26:23;27:17;31:11; 46:9;58:2;74:18; 106:2;137:4 <b>16.3 (1)</b> 23:1 <b>166 (11)</b> 32:22,23;39:15; 46:8;107:22;118:16, 21;124:23;126:10; 169:22;170:8 <b>17 (7)</b> 14:22;62:23,24;	63:7;137:4;165:11, 11 <b>17th (2)</b> 166:5,7 <b>18 (7)</b> 70:10;99:14,18; 100:19;155:2; 159:20;161:7 <b>181 (2)</b> 96:14;102:1 <b>182 (1)</b> 166:15 <b>183 (4)</b> 32:24;33:1;40:13; 165:12 <b>186 (1)</b> 83:7 <b>19 (8)</b> 70:11;124:23; 154:23;155:2,3,5,20; 159:20 <b>19.6 (1)</b> 23:1 <b>1900s (1)</b> 18:2 <b>195 (5)</b> 137:21;142:6; 155:10;158:6;160:7 <b>1950 (1)</b> 131:6 <b>1979 (1)</b> 151:7 <b>1984 (5)</b> 138:22;139:2,10, 24;140:16 <b>1st (1)</b> 113:2	22:23;23:15;24:15; 27:12;42:23;112:14, 23;117:10 <b>2017 (9)</b> 23:18;24:15;26:6; 27:1;28:7;39:12; 44:16;117:9;167:18 <b>2018 (11)</b> 32:19;39:16,17; 40:3,8,13;41:8,9; 42:14,15;187:21 <b>20-foot (1)</b> 146:10 <b>21 (3)</b> 107:22;108:9; 187:21 <b>22 (1)</b> 118:20 <b>24 (1)</b> 108:3 <b>24.3 (3)</b> 23:3,17;27:24 <b>25 (6)</b> 107:22;108:9; 118:20;124:23; 130:4;169:24 <b>27th (1)</b> 166:8 <b>28 (3)</b> 39:16,17;40:3 <b>28th (2)</b> 41:8;42:14 <b>29 (1)</b> 3:11 <b>2-feet (1)</b> 22:10 <b>2-foot (1)</b> 25:10	96:3,14;101:24; 118:19,19;119:6; 122:10;125:19;145:4 <b>35 (4)</b> 169:22,23;170:1, 10 <b>36 (1)</b> 92:11 <b>38 (1)</b> 8:19 <b>3a (1)</b> 28:7 <b>3b (1)</b> 22:21 <b>3-plus (2)</b> 27:6;28:9
<b>Y</b>			<b>4</b>	
<b>yards (1)</b> 88:3 <b>year (8)</b> 92:12,13;94:3; 101:5;102:10;117:7, 8;182:14 <b>years (7)</b> 59:11;71:14,24; 72:10;104:6;121:12; 148:22 <b>you' (24)</b> 25:4,5;29:16; 30:16;34:12;41:4; 50:4;52:20;53:7; 54:2;61:9;63:14; 67:9;68:1;78:19; 81:12;83:10;107:13; 108:7,22;120:22; 122:23;125:22;129:1 <b>Yup (1)</b> 147:23				
<b>Z</b>				
<b>zero (6)</b> 22:4,10,11,12;25:8, 10 <b>zone (10)</b> 33:7,12;73:4;85:1, 8,11,18;91:2,12; 107:6 <b>zoom (4)</b> 110:18;137:23; 146:18,19				
<b>1</b>		<b>2</b>	<b>3</b>	
<b>1 (10)</b> 5:17;54:6;55:19; 56:13;57:16;139:2; 140:16;155:19; 173:20,20 <b>1,000 (1)</b> 116:1 <b>1,000-foot (1)</b> 129:15 <b>1:20 (1)</b> 3:2 <b>10 (10)</b> 5:3;26:1,12; 104:13;126:10,10; 132:8;135:22;161:6; 169:24 <b>100 (5)</b> 55:19;56:1;57:15; 59:9;184:16 <b>104 (6)</b>	<b>2 (17)</b> 21:4,12,21;22:12; 26:13,18;27:3;34:7; 37:12;86:7,9,19,22; 87:12;100:18;156:7; 168:5 <b>2.3 (2)</b> 88:2,3 <b>20 (11)</b> 26:11;43:11;48:10, 12;50:18,18;117:16; 143:22;145:14,16; 146:22 <b>2013 (2)</b> 162:9,12 <b>2014 (1)</b> 162:12 <b>2014-2015 (1)</b> 162:6 <b>2015 (4)</b> 140:11,14;162:10, 12 <b>2016 (8)</b>	<b>3 (4)</b> 34:7,24;35:5;37:13 <b>3.2 (3)</b> 15:15,16,22 <b>3:32 (1)</b> 95:11 <b>3:49 (1)</b> 95:12 <b>30 (2)</b> 52:7;60:14 <b>300 (1)</b> 74:5 <b>302.03A2 (1)</b> 126:17 <b>304.04 (2)</b> 143:10,17 <b>31 (5)</b> 23:23;32:19;35:5; 40:13;70:10 <b>31st (3)</b> 41:9;112:14,23 <b>32 (9)</b>	<b>4 (8)</b> 22:12;83:7;86:7; 87:12;124:21;125:1; 168:6;172:6 <b>4:57 (1)</b> 144:18 <b>40 (1)</b> 26:11 <b>42-inch (1)</b> 50:2 <b>44 (1)</b> 26:11 <b>44.9 (1)</b> 23:19 <b>46 (1)</b> 26:11 <b>482:8 (1)</b> 111:5 <b>482:9 (1)</b> 115:11 <b>482-A3 (4)</b> 109:22;110:15,22; 148:14 <b>482-A3Id (1)</b> 109:11 <b>482A-8 (1)</b> 120:3 <b>482-A9 (1)</b> 119:13 <b>4-foot (3)</b> 22:4,6;25:8 <b>4-meter (1)</b> 86:9	
			<b>5</b>	
			<b>5 (2)</b> 5:3;187:18 <b>5,300 (1)</b> 49:4 <b>5,336 (4)</b> 39:24;42:16,21; 43:3 <b>5:03 (1)</b>	

144:19 <b>50 (7)</b> 5:3;13:12;16:5; 58:8;59:11;68:9;74:5 <b>501.01c (2)</b> 108:11,15 <b>501.01e (2)</b> 108:18;109:9 <b>51 (1)</b> 182:9 <b>52 (1)</b> 46:6 <b>54.7 (1)</b> 16:10 <b>55 (3)</b> 16:17;19:2;47:2 <b>57.9 (1)</b> 23:20 <b>5-foot (3)</b> 25:14;26:9,14 <b>5-foot-plus (1)</b> 29:12 <b>5th (1)</b> 112:21	167:11;168:8 <b>8,800 (2)</b> 48:23;50:5 <b>8,861 (2)</b> 48:13;50:19 <b>8/17 (1)</b> 41:2 <b>80 (1)</b> 5:17 <b>839 (1)</b> 151:6 <b>87-1/2 (1)</b> 56:6			
<b>6</b>	<b>9</b>			
<b>6 (2)</b> 87:22;187:20 <b>6:00 (1)</b> 187:19 <b>60 (1)</b> 56:14 <b>637,188 (1)</b> 75:15 <b>64.8 (3)</b> 23:3,19;27:23 <b>66 (2)</b> 23:22;68:9 <b>6A (2)</b> 56:12;181:19	<b>9 (4)</b> 5:9;111:5;120:3; 180:20 <b>9/15/2017 (1)</b> 168:3 <b>9:00 (2)</b> 187:7,22 <b>90 (1)</b> 34:13 <b>97 (6)</b> 77:13;164:6,16; 172:4;174:2;175:6 <b>98 (1)</b> 86:20 <b>9-inch-thick (1)</b> 94:16			
<b>7</b>				
<b>7 (12)</b> 8:2;39:16,18; 87:22;88:4;89:12; 105:11;132:7; 159:19;166:19,20; 172:6 <b>7,377 (1)</b> 164:12 <b>7/11/2018 (1)</b> 99:22				
<b>8</b>				
<b>8 (4)</b> 43:11;88:4;111:6; 175:5 <b>8,681 (9)</b> 39:9;40:17;41:10, 16;43:5;44:4,10;				