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STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

October 25, 2018 - 1:44 p.m. DAY 14  
49 Donovan Street Morning Session ONLY  
Concord, New Hampshire

{Electronically filed with SEC 11/1/18}

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<br>(Presiding Officer) | Public Member               |
| 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      |

ALSO PRESENT FOR THE SEC:

- Michael J. Iacopino, Esq., Counsel for SEC
- Iryna Dore, Esq.  
(Brennan, Lenehan, Iacopino & Hickey)
- Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

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

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WITNESS: JASON BAKER

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

2 PRESIDING OFFICER WEATHERSBY: Good  
3 morning all. Welcome back to the adjudicative  
4 hearing for the Seacoast Reliability Project.  
5 Before we get to our witness, we're going to  
6 have a word from Attorney Dore concerning  
7 exhibits.

8 MS. DORE: Hello and good morning,  
9 everyone. So it looks like we're on schedule.  
10 And if we're on schedule, tomorrow looks like we  
11 may wrap up the adjudicative hearing portion.  
12 And after we finish, if we finish tomorrow, we  
13 will proceed to discussing exhibits, precisely  
14 which exhibits are in and which exhibits are not  
15 part of the record. In this regard, the parties  
16 should be aware that they should be ready to  
17 make the arguments about the exhibits that are  
18 or should not be part of the record and should  
19 be ready to present those arguments to the  
20 Presiding Officer. We also expect the parties  
21 to try to stipulate to the exhibits that should  
22 be part of the record and that are not in  
23 dispute so that they can become part of the  
24 record and no arguments will be presented. And

1 we anticipate that we will hear the parties'  
2 arguments at the end of the adjudicative  
3 hearings. Okay?

4 PRESIDING OFFICER WEATHERSBY: Thank  
5 you. And we should remind you that you probably  
6 should be working on your briefs. Feel like my  
7 mother role came out there. Do your home work.  
8 [Laughter]

9 Okay. So if we could swear the  
10 witness in, please.

11 (WHEREUPON, JASON BAKER was duly sworn  
12 and cautioned by the Court Reporter.)

13 DIRECT EXAMINATION

14 BY MS. DORE:

15 Q. Good morning, Mr. Baker. My name is Iryna  
16 Dore. I will help you to get your prefiled  
17 testimony in the record.

18 A. Good morning.

19 Q. Please identify your name for the record.

20 A. Yes. Jason Baker. I'm the owner of Fat Dog  
21 Shellfish Company, LLC.

22 Q. Mr. Baker, did you file prefiled testimony  
23 with the Subcommittee in this docket?

24 A. I did.

1 Q. Did you file that as your Exhibit FDS1?

2 A. That's correct.

3 Q. And do you have any changes or amendments to  
4 that testimony today?

5 A. I don't have any changes.

6 Q. And do you swear to and adopt the testimony  
7 as your testimony today?

8 A. I do.

9 MS. DORE: The witness is ready for  
10 cross-examination.

11 PRESIDING OFFICER WEATHERSBY: Thank  
12 you.

13 Attorney Patch.

14 CROSS-EXAMINATION

15 BY MR. PATCH:

16 Q. Good morning, Mr. Baker.

17 A. Good morning.

18 Q. My name is Doug Patch. I'm counsel for the  
19 Town of Durham and UNH in this docket. I  
20 have a few questions for you.

21 First of all, in your testimony, and I'm  
22 looking at Page 1 -- actually, before we get  
23 to that, could you just remind the Committee  
24 of your educational background and your work

1 experience.

2 A. Sure. So my educational background is  
3 primarily in marine biology. I have an  
4 undergraduate degree in biology from Gordon  
5 College, and I have a master of environmental  
6 management degree from Duke University,  
7 focusing on coastal environmental management.  
8 Prior to becoming an oyster farmer, I worked  
9 for 13 years for the State of Massachusetts  
10 doing coastal planning and habitat  
11 restoration work. And then before that I had  
12 a number of jobs doing wildlife  
13 management-type of activities. I have about  
14 20 years of experience in coastal planning  
15 and environmental management.

16 Q. On Page 1 of your testimony, you indicate  
17 that oysters are filter feeders and that they  
18 draw nourishment exclusively from  
19 naturally-occurring plankton in the water  
20 column.

21 A. That is correct.

22 Q. And you went on to say that any interruption  
23 in flow or contamination by non-food  
24 particles can result in diminished growth and

1 product quality; is that correct?

2 A. That is correct. So we really depend on food  
3 availability in the water column to get good  
4 growth out of our oysters. And the food that  
5 they're feeding on is tiny plants in the  
6 water column called phytoplankton.

7 Q. And is it generally true that oysters are  
8 good for the ecology of the bay?

9 A. Yeah, they're very good. In cases where  
10 there are excess nutrients in the water,  
11 which is most estuaries in the Northeast,  
12 like Great Bay and Little Bay, they filter  
13 those plants out and kind of convert those  
14 nutrients into less viable forms that kind of  
15 diminish the overall nutrient load to the  
16 water body. So in cases -- over-nutrient  
17 enrichment is called "nutrification." In  
18 nutrified water bodies, you see excess  
19 turbidity that inhibits the ability of plants  
20 that are on the bottom, like seagrasses, to  
21 grow. And so oysters are kind of restoring a  
22 balance to the nutrient cycling in the water  
23 column.

24 Q. And I have up here on the screen what's been

1 marked as CLF, Conservation Law Foundation,  
2 Exhibit 26. And on Page 1 of this  
3 document -- is this a document you're  
4 familiar with?

5 A. I'm not familiar with this document.

6 Q. Well, I want to show you a -- actually, I  
7 think it's the second sentence in the  
8 Executive Summary, where it says, "The loss  
9 of filtering oysters results in diminished  
10 ecological benefits for water quality,  
11 nitrogen control, and other services that  
12 healthy oyster populations provide." Do you  
13 agree with that?

14 A. I do agree with that, yes.

15 Q. In your testimony, you talked about two kinds  
16 of culture methods for oysters, one being the  
17 cage culture, and the other, bottom planting  
18 or bottom seeding; is that correct?

19 A. Yeah, that's correct. We employ both of  
20 those, primarily caged culture to start.  
21 We've been in business for about five years,  
22 and that's been our initial focus. But more  
23 and more we're finding that we can grow a  
24 higher quality oyster by spreading them

1 directly on the substrate. So, more and more  
2 we're using that type of grow-out method.

3 PRESIDING OFFICER WEATHERSBY: I'm  
4 sorry to interrupt. If you could bring the  
5 microphone right close to you and speak right  
6 into it so we can all hear you. Thank you.

7 BY MR. PATCH:

8 Q. And in the bottom planting culture, you said  
9 oysters of 1 inch in size are simply  
10 scattered on the mud substrate. Is that fair  
11 to say?

12 A. That is correct, yeah.

13 Q. And you said that oysters cultivated in this  
14 way are particularly susceptible to  
15 sedimentation; is that correct?

16 A. Yeah. Oysters grown both ways really can be  
17 susceptible to sedimentation. The oysters  
18 that are spread on the bottom, typically  
19 during the summer months when they're  
20 feeding, can kind of keep themselves clear of  
21 excess sediment. And then what we see in the  
22 winter when they stop feeding, when they kind  
23 of enter this dormancy period, is a thin  
24 layer of sediment that just kind of

1 accumulates on the surface of the oysters.  
2 And I addressed this in my prefiled testimony  
3 as well. And then once the spring comes  
4 around and they start pumping and feeding  
5 again, they can actually just clear that  
6 sediment.

7 So there's this cycle that happens when,  
8 you know, summer months they're clear of that  
9 sediment; winter months, because of storms  
10 and excess turbidity, we kind of see a slight  
11 accumulation of sediment, and then they're  
12 able to clear themselves again in the spring.

13 Q. And I think in your testimony you referred to  
14 that as dormancy; correct?

15 A. Right. Yup. So the dormancy period begins  
16 around now, when the water temperature hits  
17 about 50 degrees. The oysters stop  
18 filtering, so they're not feeding and they're  
19 just respiring and enter this kind of  
20 hibernation period until the water  
21 temperature reaches 50 degrees again in the  
22 spring, usually sometime in early May.

23 Q. And I think you expressed a concern in your  
24 testimony that if a lot of sediment

1 accumulates while they're dormant, that  
2 increases the risk of mortality; is that fair  
3 to say?

4 A. Yeah, it certainly would increase the risk.  
5 I don't have any quantitative data on what  
6 that critical threshold is for the amount of  
7 sediment accumulation. But certainly it's a  
8 concern if there's too much sediment  
9 accumulation, that the oysters may not be  
10 able to re-emerge in the spring as a result  
11 of increased pumping activity.

12 Q. And do oysters grow naturally in the bay?

13 A. They do, though their populations over the  
14 last few decades are in severe decline.

15 Q. And the oysters that grow naturally in the  
16 bay, would they also be more susceptible to  
17 sedimentation than those that are in the  
18 cages?

19 A. I'm not -- well, like I said, I think both  
20 the cage-grown oysters and the bottom-planted  
21 oysters are susceptible to excess  
22 sedimentation because that sediment can also  
23 accumulate in the cages and there's a risk of  
24 mortality there. But the same risks that the

1 bottom-planted oysters are exposed to would  
2 also apply to naturally-occurring oyster  
3 populations.

4 Q. On Page 3 of your testimony, you talked about  
5 how harmful bacteria could lie latent in  
6 submerged sediments, and once they are  
7 disturbed, oysters can take them in during  
8 their natural feeding or filtration process;  
9 is that correct?

10 A. Yeah, that's correct. So, fine sediments  
11 like those on the substrate in Little Bay are  
12 very good at binding to contaminants. And  
13 those contaminants can include metals or  
14 organic contaminants, and they can also  
15 include bacteria, which can just be kind of  
16 sitting on the bottom, bound to those  
17 particles. And it's pretty well documented  
18 in the literature that disturbance of that  
19 sediment can disperse bacteria into the water  
20 column, like fecal coliform. And fecal  
21 coliform is the indicator bacteria we use to  
22 determine whether an oyster is safe to eat or  
23 not.

24 Q. And what about pathogens? Is there also a

1 risk from pathogens?

2 A. Yes. So, fecal coliform is kind of the proxy  
3 for bacterial pathogens in the water. So,  
4 fecal coliform is kind of a group of bacteria  
5 that grows in the gut of mammals. So we know  
6 if there's a lot of it in the water column,  
7 that's associated with, you know, sewerage or  
8 other types of contaminants. So, fecal  
9 coliform is kind of an indicator for other  
10 pathogens being in the water column.

11 Q. And what about, are you familiar with Dermo  
12 and MSX?

13 A. Yes. Dermo and MSX are diseases that are not  
14 a public health risk, but they're a risk.  
15 They cause mortality in oysters over time.

16 Q. Now, you expressed a concern that if a lot of  
17 sediment accumulates while they are dormant,  
18 that increases -- I'm sorry. We already went  
19 over that.

20 I want to show you what has been marked  
21 as CLF Exhibit 24. It's an announcement from  
22 the New Hampshire Department of Environmental  
23 Services and the Fish & Game Department about  
24 shellfish harvest rules in Little Bay and

1 Bellamy River from October of this year  
2 through March of 2019. Are you familiar with  
3 this?

4 A. I am. This looks like it is the new winter  
5 closure that DES has just implemented for  
6 parts of Little Bay. Is that correct?

7 Q. I believe that's correct. And it indicates  
8 that new harvest closures are being imposed  
9 due to recent findings of water-quality  
10 impacts from the Portsmouth wastewater  
11 treatment facility. Is that fair to say?

12 A. Yeah, that's correct. So, DES has in recent  
13 years undertaken some new monitoring efforts  
14 to look at viral pathogens associated with  
15 wastewater treatment plants. And this is  
16 actually something happening all around the  
17 country. And they found that in Upper little  
18 Bay, which is the portion of Little Bay  
19 furthest away from the proposed project, the  
20 viral concentrations, the indicator viruses,  
21 are too high to remain open during the winter  
22 months. And those viruses tend to persist  
23 longer in cooler temperatures. So in Lower  
24 Little Bay, it was determined that it's still

1 safe to harvest throughout the year. Some of  
2 the growers in Upper Little Bay are moving  
3 oysters to Lower Little Bay during the winter  
4 months so that they can continue to harvest.

5 Q. So it's fair to say that one of the  
6 implications of that closure is that oyster  
7 farmers in Lower Little Bay will not be able  
8 to harvest during this period of time.

9 A. That's correct.

10 Q. And is one of the options for farmers in the  
11 seasonally closed area to move their  
12 operation, I think you just said it, but into  
13 the upper bay because that's essentially a  
14 direction that brings them closer to where  
15 pollutants from the -- well, let me ask it  
16 this way. I mean, I think you've already  
17 said that, that farmers generally would be  
18 moving to Upper Little Bay.

19 And what about the jet plowing area?  
20 Can you explain to the Committee how that  
21 relates to where this closure is?

22 A. Yeah. So, several farmers in Lower Little  
23 Bay, which is kind of backwards because it's  
24 the northern part of Little Bay --

1 Q. I think it's on the map here, you know. And  
2 I have it up on the screen. May not be the  
3 clearest. But you say Lower Little Bay is to  
4 the south -- I'm sorry -- to the north,  
5 actually --

6 A. That's right.

7 Q. -- and Upper Little Bay is to the south.  
8 That's what makes it confusing.

9 A. Right. So Lower Little Bay is closer to the  
10 Portsmouth wastewater discharge. And that's  
11 the area that's been closed for the winter.  
12 So several farmers, oyster farmers in Lower  
13 Little Bay have already moved a number of  
14 their -- much of their gear to Upper Little  
15 Bay -- and my farm is one example of that --  
16 so they can continue to harvest throughout  
17 the summer. So it moves them away from the  
18 wastewater discharge in Portsmouth, but  
19 closer to the proposed jet plow area in Upper  
20 Little Bay.

21 Q. And so this closure essentially, you know,  
22 pushes farmers to find another place, and  
23 that other place is actually closer to the  
24 proposed route of the cable here; correct?

1 A. That's correct.

2 Q. On Page 3 of this document, there's a map  
3 which indicates that DES is announcing an  
4 expansion of areas open for harvest in Little  
5 Bay for part of the next two years; is that  
6 correct?

7 A. That's my understanding, yes.

8 Q. And from this map, it appears that the  
9 restricted area north of Adams Point will be  
10 substantially reduced in size, opening new  
11 acres of harvest; is that fair to say?

12 A. That is my understanding from informal  
13 conversations I've had with New Hampshire  
14 Fish & Game. I haven't talked to DES  
15 specifically about this. So I would defer to  
16 them on the exact nature of that expansion.

17 Q. That appears to be right where, or at least  
18 in close proximity to where the cable project  
19 is being planned; is that fair to say?

20 A. That area is closer, yes.

21 Q. Now, if the Project is approved and the cable  
22 is laid in the bed of Little Bay, what is  
23 your understanding of whether there will be  
24 some kind of temporary and/or permanent

1 restrictions on the location of any activity,  
2 like moorings and oyster farming, in the area  
3 that will be taken up with the cable  
4 crossing?

5 A. I think I would have to defer to DES and Fish  
6 & Game on any restrictions they would put in  
7 place on moorings or licensing new oyster  
8 growing areas.

9 Q. But fair to say you wouldn't be putting those  
10 on top of concrete mattresses, would you?

11 A. Probably not.

12 Q. So is it fair to say that this project will  
13 cause further restrictions on oyster farms in  
14 an already small available area?

15 A. Again, that is really up to the licensing  
16 agencies. I'm not sure exactly how they  
17 would restrict the availability of new  
18 licenses and exactly what bearing this  
19 project would have on new licenses.

20 Q. Now, is it true that no oyster farming is  
21 allowed in Great Bay?

22 A. That's correct.

23 Q. That's because of an MOU with NOAA for the  
24 Great Bay National Estuarine Research

1 Reserve?

2 A. Yeah, there are a number of research reserves  
3 around the country. I don't know exactly how  
4 many, but quite a few. Just about every  
5 coastal state has one. It's my understanding  
6 that aquaculture is prohibited in most of  
7 those due to that national research reserve  
8 designation.

9 Q. On Page 5 of your testimony, you suggested  
10 ways in which the Project impacts could be  
11 mitigated; is that correct?

12 A. That is correct.

13 Q. And they included choosing an alternate  
14 dredging technology, dredging during the  
15 growing season, implementing sediment control  
16 protocols. And then you had one that was  
17 finding an alternative route; correct?

18 A. Correct.

19 Q. I want to show you what's been marked as  
20 Newington Exhibit 7, which is a map that  
21 shows alternative routes that Eversource had  
22 considered. This is from a presentation they  
23 made to, I believe it was the Newington  
24 Planning Board, in 2015.

1           Now, if they chose either the northern  
2           route as it's marked here or the southern  
3           route, not the red line through the middle  
4           which is the proposed route, if they choose  
5           either of those alternatives, would that  
6           avoid the impact to oysters and the overall  
7           ecosystem in the bay?

8    A.    Yes, it's pretty clear that that would  
9           mitigate many, if not all of my concerns.

10   Q.    Thank. I appreciate your answers.

11                   PRESIDING OFFICER WEATHERSBY: Next  
12           examiner will be Attorney Geiger for the Town of  
13           Newington.

14   QUESTIONS BY MS. GEIGER:

15   Q.    Good morning, Mr. Baker. My name is Susan  
16           Geiger. I represent the Town of Newington.

17   A.    Good morning.

18   Q.    Mr. Baker, on the first page of your prefiled  
19           testimony, you indicated that the owners of  
20           your company, Fat Dog Shellfish, anticipate  
21           that the proposed jet plow and diver dredging  
22           operations associated with this project are  
23           likely to adversely impact your operations.  
24           Is that your testimony?

1 A. That's correct.

2 Q. Have you discussed your concerns with  
3 Eversource?

4 A. I have, yes.

5 Q. And what has Eversource responded?

6 A. We had a meeting about a month ago, maybe six  
7 weeks ago, and Eversource has proposed a few  
8 mitigation options for me that address -- may  
9 address some of the short-term impacts of the  
10 Project. And they include things such as  
11 providing a refrigerated storage unit so that  
12 I can harvest prior to jet plow operations  
13 and store oysters for harvest. They include  
14 cleaning, helping to clean the cages  
15 post-project to clear some of the sediment,  
16 and then submitting claims for any subsequent  
17 losses.

18 Q. And have these offers by Eversource met with  
19 your approval? Do you agree with them?

20 A. I would say they are an appreciated but  
21 partial approach to addressing some of the  
22 short-term concerns, and they come with some  
23 significant logistical challenges.

24 Q. So it sounds to me, and correct me if I'm

1 wrong, that you have not reached a final  
2 agreement with Eversource on an arrangement  
3 that would address the concerns that you have  
4 about the Project's impacts to your business.

5 A. That is correct.

6 Q. Okay. I believe that you indicated that  
7 Eversource has offered to provide you with a  
8 claims submission process; is that correct?

9 A. There was a claim submission process that was  
10 mentioned, but it was not clear what that  
11 process would be like.

12 Q. Has Eversource offered to compensate you  
13 financially for any lost revenues or  
14 inconvenience associated with the Project?

15 A. No, there's no mention of direct  
16 compensation.

17 Q. So I believe you indicated that the offer  
18 that you just described from Eversource  
19 partially addresses some of your concerns  
20 about short-term impacts. Do you continue to  
21 have concerns about this project on your  
22 business, the effects of the Project on your  
23 business?

24 A. I do, yes.

1 Q. And those concerns are outlined in your  
2 testimony; correct?

3 A. Correct.

4 Q. Do you have any additional concerns based on  
5 your knowledge, experience, you know, with  
6 marine biology, and obviously as an oyster  
7 farmer, that have not been expressed in your  
8 prefiled testimony that you'd like to  
9 indicate to the Committee?

10 A. My feeling is that I have captured kind of  
11 the universe of my concerns fairly well in  
12 the prefiled testimony.

13 Q. Okay. I believe, yes, on Page 3 of your  
14 prefiled testimony, you've indicated that  
15 following a significant rainfall event, the  
16 New Hampshire Department of Environmental  
17 Services closes Little Bay to harvest until  
18 testing shows that fecal coliform bacteria  
19 has dropped to safe levels which are set by  
20 federal water quality standards. Do you  
21 recall that testimony?

22 A. Yes, I do.

23 Q. Could you explain or just tell us how many  
24 times over the past, say two to three years,

1 DES has actually closed the bay to harvesting  
2 based on a rainfall event?

3 A. Sure. I don't have the exact numbers. And  
4 it's highly variable from year to year. So  
5 if we have a very dry summer, we may not have  
6 any rainfall closures. If we have lots of  
7 thunderstorms or a more tumultuous weather  
8 year, we can have more closures. This year I  
9 believe we've had three to four rainfall  
10 closures, and those closures have lasted  
11 somewhere between 3 days and 10 days, based  
12 on sampling results. I believe the last  
13 closure we had was in late September, and  
14 that was a 10-day closure.

15 Q. Your testimony goes on after that statement  
16 to say that it's your understanding that DES  
17 will treat the dredging phase of this project  
18 as a post-rainfall event and will be testing  
19 the waters to ensure that there's an  
20 acceptable level of bacterial contamination;  
21 is that correct?

22 A. Yeah, that's correct. Based on some informal  
23 conversations I've had, it's my understanding  
24 that DES will be sampling post-jet plow run

1 to ensure that fecal coliform levels are  
2 within safe ranges. If not, there would be  
3 further testing similar to a post-rainfall  
4 event that would be necessary in order to  
5 reopen the waters to harvesting.

6 Q. And how would you be notified of the results  
7 of DES's testing after the dredging or during  
8 the dredging process for this project?

9 A. So, prior to every harvest I have to get  
10 approval from the DES Shellfish Program. And  
11 that approval would include their  
12 understanding that the water bodies are safe  
13 for harvest. So that would be the most  
14 immediate way that I would learn about the  
15 results. In terms of how else they might  
16 communicate those results, I'm not sure.

17 Q. But is it fair to say that in the event that  
18 DES does notify you of unacceptable test  
19 results, and notifies you that you do have to  
20 close your operation for some period of time,  
21 that this would result in some lost revenues  
22 to your company; is that correct?

23 A. Yes, that's correct.

24 Q. Thank you for your testimony.

1                   PRESIDING OFFICER WEATHERSBY: I don't  
2                   see Mr. Irwin or Ms. Ludtke. Is there anyone  
3                   here for the Conservation Law Foundation?

4                   [No verbal response]

5                   PRESIDING OFFICER WEATHERSBY: Then  
6                   we'll move on to Durham Residents, Attorney  
7                   Brown. I don't see her either. Anyone here for  
8                   the Durham Residents?

9                   MR. FITCH: Durham Residents have no  
10                  questions.

11                  PRESIDING OFFICER WEATHERSBY: So  
12                  Durham Residents have no questions.

13                  Counsel for the Public, Mr. Miller.

14                  MR. MILLER: Thank you, Madam Chair.

15                  QUESTIONS BY MR. MILLER:

16                  Q. My name is Matt Miller. I'm representing  
17                  Counsel for the Public. Good morning, Mr.  
18                  Baker.

19                  A. Good morning.

20                  Q. So I just want to ask a couple questions  
21                  about the additional 9 acres that were  
22                  licensed after the original 4.5.

23                  A. Right.

24                  Q. So that additional 9 acres is to the west and

1 south of your original farm?

2 A. Correct.

3 Q. Are those additional 9 acres in use?

4 A. They are in use. My primary site is still my  
5 original site where I keep most of my gear.  
6 The farm to the south, the 4-1/2-acre  
7 licensed area to the south is being used for  
8 overwintering oysters. So during the winter  
9 months we move all our gear from shallow  
10 water, all of our cages to deep water to get  
11 under the reach of the ice basically in the  
12 winter. There's a deep water edge that runs  
13 along that licensed location that I use  
14 during the winter months. That southern site  
15 is also being used to host some of those  
16 other farmers that were affected by the Lower  
17 Little Bay closure related to the wastewater  
18 outfall.

19 Q. So is the new 9 acres closer to the Project  
20 than the original farm?

21 A. Four and a half of those 9 acres are closer,  
22 are south of my original farm.

23 Q. Okay. Thank you. So I want to turn to some  
24 of the concerns that you raised in your

1           prefiled testimony about the Project and just  
2           dig into those a little bit.

3                       So one of your concerns is that you  
4           would have to temporarily close the farm due  
5           to bacterial contamination; is that right?

6   A.   That is a concern.  Not a guaranty, but a  
7       concern.

8   Q.   Do you have any sense of the likelihood of  
9       that happening?

10  A.   I really don't.  It's common for those  
11       indicator bacteria that we've been talking  
12       about to bind to fine particles.  But there's  
13       really no way of knowing whether they're  
14       present until sampling occurs.

15  Q.   And if that were to occur, what would the  
16       effect be on your farm?

17  A.   So there would be -- as we have discussed,  
18       there would be an immediate closure once the  
19       levels are deemed unsafe.  And then DES would  
20       have to re-sample in order to document  
21       whether fecal coliform levels drop to safe  
22       harvest limits.  So the closure can last  
23       anywhere from three days to indefinite, until  
24       those fecal coliform levels drop again.

1 Q. So you're also concerned that you would  
2 potentially need to suspend sales due to  
3 sediment accumulation and also that your  
4 oysters could die because of sediment  
5 deposition?

6 A. Yeah. So the suspension of sales, we've had  
7 a few occasions, very rare over the last five  
8 years, where the water will become very  
9 turbid because of a storm event or a rainfall  
10 event. Because the oysters are  
11 filter-feeding, they're taking in those  
12 sediments. So the oysters will really be too  
13 gritty to sell, and so we have to wait for  
14 the water to clear. And the oysters will  
15 continue pumping and will clear that water  
16 and expel that grit over time. So if there's  
17 a persistent sediment plume, I would expect  
18 that the oysters may become gritty as a  
19 result of that plume.

20 Q. So that would result in lost oysters and  
21 presumably lost revenue?

22 A. That wouldn't necessarily result in lost  
23 oysters. It wouldn't result in mortality  
24 necessarily. But the suspension of sales

1           could result in lost revenue, yes.

2    Q.    So there would be a way to clean the gritty  
3           oysters?

4    A.    We wouldn't clean them.  They would clear  
5           themselves once the water column becomes  
6           clear again.

7    Q.    Okay.  So you also mentioned the possibility  
8           of overwintering mortality due to sediment  
9           deposition and anoxia?

10   A.    Yeah, that's right.  So as I mentioned  
11           previously, both cage-grown and  
12           bottom-planted oysters will accumulate that  
13           sediment over the winter months because the  
14           water tends to be more turbid anyway, and  
15           they're not pumping.  They're not filtering  
16           to clear that sediment.  So the oysters that  
17           are grown in cages, we see those cages start  
18           to fill up with sediment over the course of  
19           the winter.  Typically that's a level of  
20           sediment that they can tolerate and recover  
21           well from in the spring.  The concern is that  
22           an excess sediment load could be too much  
23           that they're able to recover from.  In rare  
24           cases, as I outlined in my prefiled

1 testimony, that sediment load will be so much  
2 inside of the cages, that the mud will become  
3 anoxic. And that's toxic to the oysters and  
4 will actually kill the oysters. It's very  
5 rare under kind of the current sediment loads  
6 that we've seen. But the concern is that if  
7 we're adding additional sediment, it might  
8 get us over a tipping point where oysters  
9 can't survive and recover. Same for the  
10 bottom-planted oysters. Right now they can  
11 recover from the typical winter sediment  
12 load. I'm concerned that an additional load  
13 may be more than they can recover from.

14 Q. And you said that this mortality currently  
15 occurs in, you said it's rare, in one cage  
16 per 100?

17 A. That's my best estimation. It's a few of my  
18 350 or so cages. We see it in only a few  
19 cages each spring.

20 Q. And if that increased following construction  
21 of the Project, how would you know that it  
22 was a direct result from that construction?

23 A. If I saw, you know, a higher percentage, if I  
24 saw 20 percent mortality in 20 percent of my

1 cages or more, I think it would be safe to  
2 attribute that to an excess sediment load if  
3 it's a typical winter.

4 Q. And lastly, you mentioned that you're worried  
5 about loss of your crop due to contamination  
6 by legacy pollutants.

7 A. That's correct.

8 Q. And you stated that while Eversource has  
9 tested for contamination in 12 locations in  
10 Little Bay, they were unable to target the  
11 depth of the jet plow?

12 A. That's correct. And it's my understanding  
13 that since I filed the testimony, Eversource  
14 has changed the target depth of the cable lay  
15 to address some of those concerns.

16 Q. Okay. What kinds of pollutants do you  
17 suspect are in the bay?

18 A. We know from the testing that Eversource has  
19 done that there are elevated levels of  
20 arsenic and copper. And that's my  
21 understanding. Estuaries in New England have  
22 a history of industrialization, so there's a  
23 whole suite of contaminants associated with  
24 past industrial practices that could be

1 present in the bay.

2 Q. And if additional pollutants were released,  
3 how would you detect them?

4 A. So under the recommendations of DES, there's  
5 a requirement for the testing of that suite  
6 of industrial contaminants. So there will be  
7 some pre- and post-testing of oyster meats  
8 and possibly other shellfish meats that will  
9 detect those contaminants and any elevation  
10 in those contaminants post-project.

11 Q. Okay. Thank you.

12 So I'd like to move on to one of the  
13 issues regarding assessment of the impacts  
14 from the Project. So, currently, Eversource  
15 is planning to install monitoring stations  
16 along the edge of the mixing zone. But the  
17 boundaries of the mixing zone are changing.  
18 And there most likely will not be a  
19 monitoring station directly at your farm. Is  
20 a monitoring station in the vicinity of your  
21 farm acceptable, or is a station at your site  
22 necessary?

23 A. One of the things I recommended in my  
24 prefiled testimony was setting up a

1 monitoring station. I called it an "oyster  
2 farm in miniature" at the southern boundary  
3 of my current site so that we could  
4 objectively assess the impacts of the  
5 proposed project.

6 Q. So I want to turn back to something that  
7 Attorney Patch mentioned about dredging, the  
8 preferability of dredging during the growing  
9 season.

10 So, under the Applicant's proposal,  
11 dredging in Little Bay would occur in  
12 September or October. In terms of effects on  
13 your farm, is there -- is either September or  
14 October preferable? What time frame would be  
15 best for your farm?

16 A. It's tough to say because September and  
17 October are -- that's the transition period  
18 when we're going from active pumping to  
19 dormancy. So we don't know exactly when that  
20 dormancy period will -- it depends on the  
21 ambient air temperatures. So if the project  
22 occurs while the oysters are pumping, I would  
23 say we're more likely to see short-term  
24 impacts, where the oysters may be consuming

1           those sediments and result in a short-term  
2           suspension of sales. If the Project occurs  
3           during the dormancy period, I would say there  
4           is a greater risk of that excess sediment  
5           load causing mortality in the oysters. So I  
6           think if the Project is occurring earlier,  
7           while the oysters are actively pumping, we  
8           reduce our risk of mortality related to the  
9           Project, but we have more risk of short-term  
10          suspension of sales. And then vice versa  
11          during the dormancy period.

12    Q.    So lastly I want to turn back to CLF  
13          Exhibit 24. Okay. So this is the  
14          announcement from DES and Fish & Game about  
15          the areas that will be closed to harvesting.

16                 So you mentioned that part of your farm  
17          had to move in anticipation of this closure?

18    A.    Not part of my farm. My farm is not in the  
19          closure area. But there is one other farm, a  
20          farmer in Upper Little Bay, who has moved his  
21          gear to my farm to remain in the open status.

22    Q.    Okay. Thank you for clarifying.

23                 So this red area right there, that  
24          includes the route of the cable; is that

1 right?

2 A. That's right. Yes.

3 Q. And that area was already closed to  
4 harvesting before this announcement from the  
5 DES?

6 A. Yes. It's my understanding that remains  
7 closed.

8 Q. Okay. Thank you very much for your time,  
9 Mr. Baker.

10 PRESIDING OFFICER WEATHERSBY:

11 Attorney Needleman or...

12 QUESTIONS BY MR. DUMVILLE:

13 Q. Good morning, Mr. Baker. As you know, we've  
14 met several times, and I represent the  
15 Applicant.

16 MR. DUMVILLE: Dawn, can we please  
17 pull up Applicant's Exhibit 255, please.

18 BY MR. DUMVILLE:

19 Q. Mr. Baker, what I'm showing you here is a  
20 compilation of the outreach that has gone on  
21 between Eversource and yourself. And if you  
22 take a second to look at it, I think we began  
23 outreach -- or the Applicant began outreach  
24 with you in July or so of 2015. Does that

1 sound about right?

2 A. It does, yes. I attended a technical session  
3 I believe that was hosted or put on by your  
4 consultants to provide an overview  
5 specifically to oyster farmers on the  
6 Project.

7 Q. I think there was a meeting in September of  
8 2015. I think that's probably what you're  
9 referring to. Does that sounds about right?

10 A. I think so, yes. I don't know the exact  
11 date, but...

12 Q. And you've attended another meeting, I  
13 believe, with the Applicant and Fish & Game  
14 probably in around January of 2016. Does  
15 that sound about right?

16 A. I have only -- there may have been more  
17 meetings, but I only attended one, and it was  
18 at the Fish & Game offices. And I may be  
19 just not remembering the date correctly.

20 Q. Okay. And this past summer, in July, we had  
21 a technical session. And we asked you  
22 whether you'd be willing to meet with  
23 Eversource to go over some of your concerns.  
24 Do you recall that?

1 A. Yes, and we did meet.

2 Q. Right. We met in August of this past year;  
3 correct?

4 A. Correct.

5 Q. And following that meeting, Eversource sent  
6 you a letter dated October 9th. Do you  
7 recall that letter?

8 A. I do. Yup.

9 Q. And I believe that's Applicant's Exhibit 256.  
10 We'll come back to that in a minute.

11 So as we've discussed today, you've  
12 raised concerns in your prefiled testimony  
13 about the impacts of jet plow on your  
14 oysters. Have you conducted any studies or  
15 specific assessments to substantiate some of  
16 your concerns?

17 A. No, I have not.

18 Q. And were you present during the Applicant's  
19 testimony from the environmental experts?

20 A. I don't believe so.

21 Q. And when you -- prior to harvesting, I think  
22 we heard today that you generally rely on DES  
23 for conducting sampling for bacteria in the  
24 water; is that right?

1 A. Absolutely. Yes. Hundred percent.

2 Q. You don't do any of that yourself.

3 A. We do not.

4 Q. And am I correct that you typically do not  
5 sample the amount of sediment in the water  
6 column?

7 A. No, we don't do any quantitative water  
8 quality testing or monitoring.

9 Q. Okay. And we discussed a little bit today,  
10 also, I believe Attorney Geiger asked you  
11 some questions about closures in Little Bay  
12 due to bacteria. And you've raised some  
13 concerns in your prefiled testimony at Page 4  
14 about closures and your concerns. And I  
15 think at the technical session you said that  
16 you haven't done any specific analysis of the  
17 potential presence of bacteria in the  
18 sediment; is that right?

19 A. That's correct. Yes.

20 Q. And we also discussed today and at the tech  
21 sessions about certain rainfall events. And  
22 I believe you said earlier you couldn't  
23 recall the exact number of closures in Little  
24 Bay.

1 MR. DUMVILLE: So, Dawn, could we pull  
2 up Exhibit 257, please.

3 BY MR. DUMVILLE:

4 Q. This is a response to a data request that we  
5 asked you to provide the list of closures of  
6 Little Bay over the last few years. And, you  
7 know, there are at least 10 or 15 here over  
8 the last couple years.

9 A. Yeah.

10 Q. Do you recall responding to this list?

11 A. I do. Yes, that's my -- that is a  
12 communication I forwarded from DES.

13 Q. And there have been a few others since the  
14 end of this list. March of 2018; right?  
15 Three to four I think you said?

16 A. Yes, roughly.

17 Q. So it's fair to say that the closure of  
18 Little Bay, that you're familiar with those  
19 closures and have experience dealing with  
20 those closures?

21 A. Absolutely, yes.

22 Q. And those closures in the bay are generally  
23 due to the presence of bacteria; isn't that  
24 right?

1 A. Yes, almost always.

2 Q. And at the tech session I asked you, in the  
3 past have you lost any oysters due to the  
4 presence of bacteria, and I believe your  
5 answer was no; is that right?

6 A. That's right. We don't actually lose  
7 oysters. They don't harm the oysters at all.  
8 But what I do lose is sales.

9 Q. Right. And have you had a chance to review  
10 the final permit issued by the DES in this?

11 A. I have, yes.

12 Q. So you're aware that Wetland Condition 45  
13 requires the Applicant to develop a  
14 water-quality monitoring plan?

15 A. Yes.

16 Q. And that requires the Applicant to test for  
17 turbidity as well as fecal coliform and other  
18 bacterias?

19 A. Right.

20 Q. Okay. And that plan requires the Applicant  
21 to, in real-time, test turbidity. And to the  
22 extent there are issues with turbidity, the  
23 operations must stop; correct?

24 A. That's my understanding, yes.

1 Q. So in your testimony, you raised concerns  
2 about sediment in the water column. And  
3 that's the middle of Page 4 of your  
4 testimony. And we talked a little bit today  
5 about the two different ways that you harvest  
6 oysters, right, the cages and the bottom  
7 planting?

8 A. The two ways I grow them, yes.

9 Q. Sorry. Grow.

10 A. Yeah.

11 Q. And I believe in your testimony, at the top  
12 of Page 3, you said that for cage growing,  
13 the oysters tend to accumulate with sediment  
14 because of the increased sediment suspension  
15 due to more turbulent weather conditions and  
16 ice scour. Does that sound familiar?

17 A. Yes. Yeah.

18 Q. And then in the springtime you clean out your  
19 cages; right?

20 A. That's correct.

21 Q. Okay. And for the bottom planting, I believe  
22 you said in response to a data request that  
23 over the winter you can experience  
24 approximately an eighth of an inch of

1 sediment?

2 A. Yeah, and that is just my best approximation.  
3 I always refer to it as a "dusting" of  
4 sediment.

5 Q. Right. And generally in your experience, the  
6 sediment covers the oysters in the winter and  
7 they re-emerge in the spring; right?

8 A. Correct. Yup.

9 Q. So you would agree with me, then, that  
10 oysters naturally experience accumulation of  
11 sediment and are able to escape; correct?

12 A. Yes, under normal conditions. That's  
13 correct.

14 Q. In your experience, oysters also process out  
15 the sediment eventually; correct?

16 A. Correct.

17 Q. And in the past, my understanding is that  
18 over the winter period most of your crop  
19 loss, if any, is normally due to freezing  
20 temperatures coinciding with high winds and  
21 negative tides; correct?

22 A. That is correct.

23 Q. Not due to sediment; right?

24 A. Right.

1                   MR. DUMVILLE: So, Dawn, just quickly,  
2                   I'd like to pull up Applicant's Exhibit 104,  
3                   which is the Revised Modeling Sediment  
4                   Dispersion from Cable Burial in Little Bay,  
5                   which is dated June 30, 2017.

6 BY MR. DUMVILLE:

7 Q. And I want to draw your attention to the  
8                   figure on Page 50, which shows the bottom  
9                   deposition thickness due to jet plowing for  
10                  the combination of all three cable routes,  
11                  assuming that the sediment remains in place  
12                  from all three cable lays. And have you seen  
13                  this before?

14 A. I believe I have, yes.

15 Q. And is it fair to say that your oyster farms  
16                  are generally to the north and west of that  
17                  little green dot there?

18 A. Yes. Yeah.

19 Q. Fair to say that this model does not actually  
20                  show any sediment covering your oysters?

21                   MR. FITZGERALD: Excuse me. Could you  
22                   just demonstrate where your oyster farm is on  
23                   this?

24                   THE WITNESS: Sure. Yeah.

1 (Witness indicating)

2 BY MR. DUMVILLE:

3 Q. It's the island at the top left?

4 A. Yeah. So we're generally... it's really kind  
5 of under this key here. But the farms are  
6 generally in this area here, if I'm reading  
7 it correctly.

8 MR. FITZGERALD: And what is the  
9 distance to the --

10 THE WITNESS: It's about a thousand  
11 meters to the proposed cable crossing.

12 MR. FITZGERALD: Thank you.

13 BY MR. DUMVILLE:

14 Q. And if I'm reading this map correctly, the  
15 bright green shows .1 to .5 of a millimeter  
16 sediment accumulation over all three cable  
17 lays; right?

18 A. Yes, that's how I read it.

19 Q. All right. And the color is not actually  
20 over your oyster beds; correct?

21 A. That is correct.

22 Q. Okay. So assuming the model is accurate,  
23 it's fair to say that the sediment  
24 accumulation from this project is not

1 expected to cover your oysters; is that fair  
2 to say?

3 A. I'm not sure that's entirely fair. But we  
4 know that there will be a sediment plume --  
5 and that's captured by the models -- that  
6 does reach my farm. So there will be some  
7 amount of additional sediment accumulation  
8 resulting from that plume.

9 Q. But the bottom thickness won't increase any  
10 further based on this specific map; correct?

11 A. It may be outside of the bounds of the model,  
12 but there will be some additional sediment  
13 accumulation on the bottom.

14 Q. Okay. And to the extent that there is  
15 sediment deposition, I believe you've raised  
16 concerns about mortality of oysters due to  
17 sediment deposition as well as over the  
18 winter. And generally your concern, I  
19 believe, is that if you don't clean the cages  
20 quick enough and the mud goes anoxic, the  
21 oysters are in trouble.

22 A. That's correct.

23 Q. Okay. And based on the letter that we had  
24 sent you --

1 MR. DUMVILLE: And Dawn, can we pull  
2 up Applicant's 256, please. Those three bullets  
3 in the bottom there, can we highlight that,  
4 please?

5 BY MR. DUMVILLE:

6 Q. And in the second bullet here, my  
7 understanding is that Eversource has  
8 committed to provide advanced cleaning in the  
9 late fall of any of your cages or oysters if  
10 it is shown that sediments have been  
11 deposited over your oysters; is that fair to  
12 say?

13 A. That is correct, yes.

14 Q. Okay. And then the time of year issue that  
15 we discussed a little bit earlier, my  
16 understanding is that you had suggested in  
17 your prefiled testimony that the installation  
18 should be done May through October; right?

19 A. Yeah, that's correct. And that's basically  
20 the choice between seeing short-term impacts  
21 versus long-term mortality impacts.

22 Q. Okay. And so you're also aware, based on the  
23 current schedule and the testimony, that the  
24 installation of the Project is anticipated in

1 Little Bay from September and October?

2 A. Right.

3 Q. Okay. You also discussed a little bit with  
4 some of the prior questioners some of the new  
5 aquaculture licenses that are -- or the  
6 new -- the location of oyster beds due to  
7 some of the closure; right?

8 A. There are new licenses that are not  
9 associated with the closure. So there's two  
10 things. There have been a few new licenses  
11 issued even south -- or one new license  
12 issued south of my farm, and then there's the  
13 closure issue where gear is being moved from  
14 other farms to my location.

15 Q. Right. And I believe as part of that, is it  
16 fair to say that the oyster farmers and New  
17 Hampshire Fish & Game have to work together  
18 in order to make that move happen?

19 A. Yes. Absolutely.

20 Q. And you're aware that the Applicant and DES  
21 and New Hampshire Fish & Game are all  
22 coordinating with the oyster farmers as well;  
23 right?

24 A. DES and New Hampshire Fish & Game are

1 coordinating with the oyster farmers. I'm  
2 not aware of the Applicant coordinating with  
3 the oyster farmers, other than me.

4 Q. Okay. So you aren't aware of the  
5 communications that the Applicant's had with  
6 the other oyster farmers about this project.

7 A. I'm not.

8 Q. Okay.

9 A. Other than the meetings we've discussed.

10 Q. And it's fair to say that before those moves  
11 occur, or before a new license is issued, an  
12 oyster farmer must receive a license from  
13 Fish & Game; right?

14 A. That is correct. Yes.

15 Q. So it's fair to assume that New Hampshire  
16 Fish & Game, with knowledge of this project,  
17 would work with the oyster farmer?

18 A. Yes. The New Hampshire Fish & Game issues  
19 the license, so they are in constant  
20 communication with applicants.

21 Q. Okay. And I'd just like to discuss one other  
22 thing that you mentioned a little while ago  
23 about the turbidity plume moving to  
24 temporarily occupied space where your oyster

1 farms are.

2 A. Yeah.

3 Q. And you said you reviewed the New Hampshire  
4 DES final permit; right?

5 A. I have, yes.

6 Q. And are you familiar with the mixing zone  
7 requirement in the permit?

8 A. Not intimately, but I'm aware of it.

9 Q. Okay. So would it alleviate some of your  
10 concerns that the mixing zone shall not  
11 include any portion of an aquaculture site  
12 that has aquaculture product in the water  
13 during and up until 24 hours following jet  
14 plowing and hand-jetting activities?

15 A. I don't. My understanding is that doesn't  
16 really relate to my farms or my licensed  
17 locations because I'm not within the mixing  
18 zone.

19 Q. Okay. You would agree the DES final permit  
20 also requires notification to all aquaculture  
21 farmers at least 14 days prior to the cable  
22 installation; correct?

23 A. Yes, I did know that.

24 Q. And there's the shellfish monitoring program

1           that is required as part of the DES permit?

2   A.    Right.

3   Q.    And that includes a requirement that the  
4           Applicant submit a plan to DES prior to the  
5           installation?

6   A.    Yes.

7   Q.    And that includes sampling pre- and  
8           post-installation?

9   A.    Right.

10   Q.   And you have agreed to participate in that  
11          sampling; correct?

12   A.    I have, yes.

13                   MR. DUMVILLE: Dawn, can we go back --  
14                   oh, we're already here actually.

15   BY MR. DUMVILLE:

16   Q.    So to the extent there is cleaning that is  
17          required, the Applicant has offered to help  
18          you with that cleaning; right?

19   A.    Yes.  Yup.

20   Q.    I believe you said earlier that you're still  
21          interested in finalizing plans with the  
22          Applicant on that; right?

23   A.    Yeah, I am.  Yes.  There are some logistical  
24          challenges to what's been proposed.

1 Q. And those logistical challenges, assuming,  
2 can be worked out with Eversource?

3 A. I'm not sure they can because of the timing  
4 of the proposed cleaning that would be  
5 needed. It's during the winter months when  
6 oftentimes the farms are not accessible due  
7 to ice.

8 Q. Well, the Project is expected to have  
9 completed its installation by the end of  
10 October; right?

11 A. Jet plowing? I'm sorry. The diver dredging  
12 I think will still be going on into later in  
13 the fall; is that correct?

14 Q. My understanding, and the record can  
15 obviously speak for itself at this point, the  
16 installation of the cable project will be  
17 done by the end of October. So assuming that  
18 is the correct timing, does that alleviate  
19 any of your concerns with the cleaning of the  
20 cages?

21 A. Yeah, there would be an opportunity to clean  
22 cages post-project if everything is truly  
23 wrapped up by the end of October.

24 Q. Okay. And that's something we can work out

1 with you as part of our further discussions?

2 A. Sure.

3 Q. Okay. And there was some issues raised about  
4 to the extent that shellfish stock loss does  
5 occur. You're aware that the Applicant and  
6 Counsel for the Public have entered into this  
7 record here a proposed mitigation and dispute  
8 resolution conditions?

9 A. I was not aware of that.

10 Q. Okay. Well, we can provide you with a copy  
11 of that afterwards. And we're also working  
12 on a formal claim process with Counsel for  
13 the Public. Would it be helpful for us to  
14 send you a copy of that as well?

15 A. It would, thank you.

16 Q. Okay. And my understanding generally is that  
17 for your harvesting of oysters, you generally  
18 rely on DES for the closures -- or for  
19 testing of bacteria. So it's fair to say  
20 that DES generally does a good job of  
21 implementing its rules and regulations in  
22 confirming that all oysters are safe to eat?

23 A. Yes, they do.

24 Q. Do you have any reason to doubt DES's ability

1 to monitor and work with the Applicant on  
2 water quality for this project?

3 A. Not water quality related to closures.

4 Q. And at the technical session, I believe I  
5 asked you whether there were any other  
6 mitigation measures or issues you would like  
7 to see implemented with DES. Are there any?

8 A. Just those that I've outlined in my prefiled  
9 testimony.

10 Q. Okay. And have you raised any of those  
11 concerns specifically with DES?

12 A. I've had some informal conversations with DES  
13 about these concerns, yes.

14 Q. So fair to say DES is aware of your concerns?

15 A. Yes.

16 Q. Thank you very much, Mr. Baker.

17 PRESIDING OFFICER WEATHERSBY: Thank  
18 you, Mr. Dumville.

19 Questions from the Committee? Mr.  
20 Fitzgerald.

21 QUESTIONS BY SEC MEMBERS AND COUNSEL:

22 BY MR. FITZGERALD:

23 Q. Good morning.

24 A. Good morning.

1 Q. Thank you for your testimony.

2 Your prefiled testimony had a statement  
3 that indicated that there was no precedent  
4 for this type of project in a sensitive area,  
5 such as Little Bay. What is that based on?  
6 We've had a lot of testimony that jet plowing  
7 is very common in many other estuaries that  
8 have been designated as national significance  
9 and so on. What's the basis for your comment  
10 that there's no precedent for this? Did you  
11 look at installations?

12 A. Yeah, I haven't done a formal review, but I'm  
13 not aware of any jet plow projects that have  
14 occurred in such close proximity to an oyster  
15 farm. But that's just based on my general  
16 understanding of the issue.

17 Q. Okay. You also indicated that the Applicant  
18 had not discussed compensation with you. But  
19 I believe Mr. Dumville just explained the  
20 claims process and so on. I assume that that  
21 would resolve that concern for you if there's  
22 a claims process that Counsel for the Public  
23 and the Applicant agreed to?

24 A. It helps. It doesn't necessarily resolve

1 concerns from a business perspective, because  
2 if I have an interruption in supply, that  
3 will result in me losing all of my customers.  
4 So, other than the financial losses, it will  
5 be a major setback for my business in kind of  
6 regaining those customers that I've  
7 accumulated over the last five years.

8 Q. Okay. So you had a lot of testimony  
9 regarding sedimentation. And I don't know if  
10 you were here Tuesday, but we had some  
11 discussion and testimony that the  
12 sedimentation for this project would be on  
13 the order possibly of 1500 tons, and  
14 obviously limited in the area that the  
15 modeling shows, as opposed to more than  
16 9,000 tons per year from natural  
17 sedimentation processes. So would you -- and  
18 I guess that gets at natural would also  
19 involve storms --

20 A. Right.

21 Q. -- and so on. So would you expect this  
22 project, with its rather narrow and limited  
23 scope, and based on the map that we just put  
24 up here and so on, to be more significant or

1 greater potential harm than large storms from  
2 a sedimentation standpoint?

3 A. Yeah, so I think the danger of comparing this  
4 project to an annual sediment load is, you  
5 know, we're talking about dispersing X-number  
6 of tons of sediment into the water column  
7 over a number of weeks or days versus  
8 stretching that out over the course of a  
9 year. So in terms of, you know, comparing  
10 this amount of sediment being dispersed into  
11 the water column to a big storm, it's not  
12 really for me to be able to say how they  
13 compare. I'm sure there's someone more  
14 qualified than me. But I know there will be  
15 dispersal of many tons of sediment into the  
16 water column over a very short period of  
17 time.

18 Q. Are you aware of plans for a trial run?

19 A. Yes.

20 Q. If the trial run is conducted and the  
21 sediment modeling impacts are confirmed,  
22 would that help alleviate your concerns for  
23 the major project?

24 A. It would help to alleviate concerns. One of

1 the things we talked about in our meeting in  
2 July was concerns I also have about the diver  
3 dredging and kind of a longer term, more  
4 consistent load that's being dispersed into  
5 the water column. So the jet plow is only  
6 one aspect of the Project that will be  
7 dispersing sediment into the water column.

8 So what the modeling doesn't really  
9 address is what the impacts of that plume  
10 that is being modeled, assuming that model is  
11 correct, will be on an oyster farm. So, just  
12 kind of numbers and duration of the plume, we  
13 haven't seen that type of plume before, I  
14 don't think, from a concentrated sediment  
15 dispersal event. So there's just a lot of  
16 uncertainty in terms of how the oysters will  
17 respond from kind of a oyster quality  
18 perspective over the short term and how they  
19 will respond to being confined to our gear  
20 over the long term.

21 Q. So it's your opinion that the diver  
22 hand-jetting operation will create more  
23 sediment than the jet plow dredging?

24 A. No, not that it will create more, but it will

1           be a more sustained period of turbidity. And  
2           how that turbidity could affect the oysters  
3           is an unknown, but it's a concern that I  
4           have.

5       Q.    What do you mean when you say "more  
6           sustained"? I mean, it's a relatively short  
7           length on both -- well, you would only be  
8           affected by that which occurs on the western  
9           end; correct?

10      A.    I'm not sure that's correct. I think that  
11           plume -- I think the diver dredging occurs  
12           over the course of weeks. And a steady plume  
13           of sediment could make the entire bay more  
14           turbid.

15      Q.    Okay. How do you actually -- what's the  
16           operation? How do you clean the beds?

17      A.    So in the cage culture -- the oysters that  
18           are planted on the bottom, we don't touch at  
19           all until we harvest them. So there's no  
20           cleaning involved there once they're spread  
21           on the bottom at about 1 inch in size.

22                    The cage-grown oysters are moved to  
23           deeper water in the winter for the winter  
24           months. And as we're moving them in the

1           spring from the deeper water to shallower  
2           water, we're cleaning the mud out of the  
3           cages with utility pumps, with gas-powered  
4           pumps.

5       Q.     So, like flushing water over them?

6       A.     Exactly.

7       Q.     Is that -- okay. And you have to conduct  
8           that routinely after storm events?

9       A.     Once a year.

10      Q.     Oh, just once a year?

11      A.     Yeah, once a year. Yeah. So that sediment  
12           just accumulates over the winter months  
13           because there's more natural sediment  
14           occurring in the water column and because the  
15           oysters are dormant. So once we clean them  
16           out in the spring, the oysters are pumping  
17           again, the water column is less turbid. So  
18           that mud doesn't accumulate until we move  
19           them to deeper water again the following  
20           fall.

21      Q.     Okay. I believe you testified that there  
22           was -- that related to certain events that  
23           you had -- I think you expressed it as 1 in  
24           100 or, you know, roughly 1 percent --

1 A. Right.

2 Q. -- mortality, was that related to bacteria or  
3 sedimentation?

4 A. That's the natural sediment load during the  
5 winter months.

6 Q. Natural sediment load?

7 A. Yes.

8 Q. Okay. Do you maintain any records that would  
9 help to establish a baseline, so that if you  
10 experienced significantly greater  
11 sedimentation and it went up to 10 percent or  
12 something, I mean do you have records that  
13 would establish a baseline?

14 A. Unfortunately, I don't have those records.  
15 It's all just recollection and informal  
16 observations.

17 Q. Okay. Thank you very much.

18 PRESIDING OFFICER WEATHERSBY: Mr.  
19 Schmidt.

20 QUESTIONS BY MR. SCHMIDT:

21 Q. Good morning. Couple of questions.

22 The additional 9 acres that you expanded  
23 your farm, is there a potential that you  
24 could move your crop into that area and get

1           it out, completely out of the zone of  
2           influence?

3       A.     So those areas are actually closer to the  
4           zone of influence. One of those areas is  
5           closer to the zone of influence, and one of  
6           the areas is equidistant from the cable  
7           crossing.

8       Q.     Okay. Thank you.

9                     Let's see. We talked about assessment  
10           of impacts, and I wanted to just make sure I  
11           was clear on something. Have you discussed  
12           setting up the additional testing location  
13           with Eversource?

14      A.     It was mentioned, but not part of the  
15           proposed mitigation activities.

16      Q.     Okay. And you talked about the sediment  
17           buildup over the winter just being  
18           approximately an eighth of an inch, realizing  
19           you haven't measured it. Do you have any  
20           sense of what a maximum -- what an oyster  
21           could survive, like how deep? We know they  
22           can get beyond the eighth of an inch.

23      A.     Yeah. Unfortunately, no. A lot of that  
24           depends on how quickly the oysters start

1           pumping, how large they are. Presumably a  
2           larger oyster could survive a greater  
3           sediment load. And as far as I know, there's  
4           nothing in the literature that sets sediment  
5           accumulation thresholds because each farm and  
6           sediment type and grain size are just so  
7           different, it'd be very difficult to narrow  
8           that down.

9                       MR. FITZGERALD: Can I follow-up on  
10           that for a second?

11                      MR. SCHMIDT: Absolutely.

12   QUESTIONS BY MR. FITZGERALD:

13   Q.    You said that you routinely get a dusting, an  
14           eighth of an inch or whatever.

15   A.    Right.

16   Q.    When larger accumulations occur and there is  
17           a significant impact, what's the -- is that  
18           just because there's too much sediment, or is  
19           it because the sediment, you know, becomes  
20           "anoxic" I think it was referred to?

21   A.    Yup, there are two things that could happen.  
22           The first is there's so much sediment built  
23           up, that the oysters that are breathing, that  
24           are aspiring, actually suck all of the oxygen

1 out of that sediment, and it causes a buildup  
2 of sulfer that's toxic to the oysters. So if  
3 I see a cage, for example, that has too much  
4 sediment in it, I can smell that sulfer or  
5 rotten egg smell, and I know I'm going to  
6 find lots of dead oysters.

7 The other thing that could happen is  
8 that it limits the access of the oysters to  
9 the water column, which is their food source.  
10 So over time the oysters could actually  
11 starve if they don't have access to the  
12 phytoplankton in the water column.

13 Q. And when you have that 1 in 100 event or  
14 whatever, it seems strange that 99 would be  
15 okay and one would be affected. Do you see  
16 something different? Do you see larger  
17 amounts of sediment in that cage, or it's  
18 just --

19 A. Not necessarily. The difference we see is  
20 the discoloration of the sediment. It will  
21 go from brown, which is oxygenated sediment,  
22 to black, which is anoxic sediment. So we  
23 know right away. We can smell the  
24 difference. But what it tells me, that it's

1           one out of a hundred and that we're not  
2           seeing it in the neighboring cages is that  
3           we're right on the threshold. We're right on  
4           kind of the tipping point of where those  
5           cages can go anoxic.

6    Q.    Okay. Thank you.

7    A.    Thanks.

8    QUESTIONS BY MR. SCHMIDT (CONT'D):

9    Q.    One final thing. Going back to the potential  
10         for relocation. I'm not even sure if this is  
11         an option. But how long would it take you to  
12         move all of your cages?

13   A.    It takes me several months to move all of my  
14         gear from shallow water to deep water in the  
15         fall if I were to remove everything. I have  
16         about 350 cages. Typically we like to do  
17         that at low tide so that we know exactly  
18         where we're dropping things. And the weather  
19         this time of year is just so spotty with high  
20         winds. So, for example, we haven't been able  
21         to move anything over the last three days  
22         because we've had winds in excess of 30 miles  
23         per hour. So that gets back to my concern  
24         over kind of the follow-up cleaning of the

1 cages, which will take weeks, if not longer.  
2 And the weather this time of year is just so  
3 unpredictable and so much harsher than the  
4 summer months, that there's some major  
5 logistical changes to both moving and  
6 cleaning cages.

7 Q. Okay. So if you -- you indicated at  
8 50 degrees is when they go into dormancy,  
9 roughly?

10 A. Correct.

11 Q. Is that when you begin to move your cages?

12 A. We actually begin to move them earlier  
13 because we -- the window closes rapidly once  
14 the water gets down to 50 degrees. That  
15 typically happens right at the end of the  
16 October. And I try to start moving cages  
17 late September, early October, because it  
18 takes so long.

19 Q. So do you ever -- when's the latest that  
20 you've moved cages, just out of curiosity?

21 A. January, just because I get so far behind. I  
22 like to have everything moved by the end of  
23 the calendar year because typically January  
24 and February are the icy months. Last year,

1           you may recall, we had frigid temperatures  
2           right around Christmas that kind of caught us  
3           off guard and resulted in some mortality.  
4           But I like to have most of my gear moved by  
5           Thanksgiving.

6    Q.    Okay. All right. Thank you very much.

7                       MR. SCHMIDT: That's all I have.

8                       PRESIDING OFFICER WEATHERSBY: Other  
9           questions? Director Muzzey.

10   QUESTIONS BY DIR. MUZZEY:

11   Q.    Good morning.

12   A.    Good morning.

13   Q.    Just some follow-up questions regarding those  
14           logistical challenges that you mentioned.

15                       So you begin moving your cages to their  
16           winter location late September through the  
17           end of the year-ish, depending on weather.

18   A.    Right.

19   Q.    At that time, do you typically clean the  
20           cages as well?

21   A.    Typically we don't really need to clean the  
22           cages at that time because the oysters are  
23           just kind of entering that dormancy period.  
24           So until they hit that mark, they're cleaning

1 the cages on their own. So I typically pop  
2 them up onto a boat and I just move them  
3 without cleaning them.

4 Q. And when you move them, that's within your  
5 4-1/2-acre active area?

6 A. That's correct. Well, it's within those  
7 three licensed locations, and each of those  
8 are 4-1/2 acres.

9 Q. So if this project does receive a certificate  
10 and plans on doing the jet plowing September  
11 and October-ish, is there -- will that change  
12 where you move things or when or how?

13 A. It won't. It won't change where I move  
14 things because I just have a very limited  
15 amount of deep water space that I can use.  
16 So I use pretty much every inch of that to  
17 host my cages for the winter.

18 Q. Is that closer to the project area or --

19 A. It's not. It's an east-west move, not a  
20 north-south move.

21 Q. Okay. Do you have any concerns about  
22 cleaning the cages, potentially cleaning the  
23 cages in the fall, whether that would in any  
24 way endanger the oysters if it's not

1 something you typically do?

2 A. Yes. So the way I envision it is there's two  
3 ways we can clean those cages. One way would  
4 be to lift all the cages up out of the deep  
5 water once they're there and clean them,  
6 which is problematic because, as we've  
7 discussed, bad weather and high winds, it's  
8 very hard to drop cages in the right place  
9 in bad weather.

10 Q. And you'd been doing it twice then it sounds  
11 like.

12 A. Yes. Yup. If we wait until after the  
13 Project period, we'd be moving the cages  
14 twice.

15 The other way I envision we can clean  
16 them is to actually put divers in the water  
17 and use underwater pumps to kind of flush the  
18 oysters out. That would be unprecedented.  
19 I'm not sure what impact -- I suspect that  
20 that would be fine for the oysters, but I'm  
21 not sure what impact they would have on  
22 oysters, just kind of mechanical stress on  
23 the oysters during the dormancy period when  
24 they're more sensitive. The major issue that

1 I see with that, again, is weather, is  
2 putting divers in the water when the water is  
3 really cold and the weather is bad.

4 Q. How deep are the cages suspended?

5 A. During the winter months, we try to get  
6 5 feet of water over the cages at mean low  
7 tide. So, low tide, they're 5 feet deep; at  
8 high tide, they're 15 to 20 feet deep.

9 Q. Do you see any other logistical challenges to  
10 the solutions that the Applicant presented in  
11 its more recent letter to you?

12 A. The challenges with the cold storage option  
13 relates, one, to the shelf life of the  
14 oysters. I can really only store oysters for  
15 about a week or less before I sell them. The  
16 other challenge is that those cold storage  
17 units actually need to be inspected and  
18 permitted by the Division of Health and Human  
19 Services. So it's not just a matter of  
20 bringing in a portable refrigeration unit.  
21 It's one that has to be there in time to be  
22 inspected and approved by the state before I  
23 can store oysters there.

24 Q. Do you have any idea how long that process

1 typically takes?

2 A. It probably wouldn't take too long. Maybe  
3 four to six weeks, I would guess.

4 Q. So there is some planning involved.

5 A. There is some planning involved, yes.

6 Q. Okay. And just let me check my notes. I  
7 thought I had one other question.

8 There was discussion about turbidity  
9 levels and that those will be actively  
10 monitored during the jet plow, both trial and  
11 the actual laying of cable, and that if  
12 certain turbidity levels were exceeded,  
13 changes would be made to the process.

14 A. Right.

15 Q. Do you know if the criteria for those  
16 turbidity levels are based on what you have  
17 found to be appropriate for oysters, or is  
18 there other criteria that's being used that  
19 would be helpful to your oyster concerns?

20 A. Right. So those are -- those turbidity  
21 standards are national water quality  
22 standards that aren't based around how they  
23 impact oysters necessarily. So those are  
24 points in time when those samples are being

1 taken and don't really address long-term  
2 accumulation or exposure to sediments. So it  
3 really is more about duration, currents and  
4 how long that plume is sitting over our farm  
5 that will drive how impacted both the meat  
6 quality of our oysters are and kind of  
7 longer-term mortality issues.

8 Q. Which in turn relate to your concerns for  
9 your customer base and that type of thing.

10 A. Correct.

11 Q. Okay. Thank you.

12 DIR. MUZZEY: That's all I have.

13 PRESIDING OFFICER WEATHERSBY: Any  
14 Committee members have additional questions?  
15 Mr. Schulock.

16 QUESTIONS BY MR. SCHULOCK:

17 Q. I know in your prefiled direct testimony you  
18 talked a little bit about the cost that this  
19 could impose on you. But if you could, could  
20 you describe to me as what you see as the  
21 best-case scenario going forward, if the  
22 Project is approved, for your business, what  
23 it would involve and how much of a cost that  
24 would impose on you, and what you view as the

1           worst-case scenario that could possibly  
2           happen to you and your business and the  
3           financial cost of that. Your best estimate  
4           at this point.

5       A.    Yeah. I think the best-case scenario is that  
6           we have a very short-term closure during the  
7           Project period. And so the cost will be, you  
8           know, minimal, a few weeks of sales, you  
9           know, resulting in \$10- or \$15,000 of losses  
10          during the suspended sales period.

11                    Putting a dollar figure on the  
12           worst-case scenario, I mean the worst-case  
13           scenario is that I lose a large percentage of  
14           my crop. Not only my crop, but my customer  
15           base. I have about a million and a quarter  
16           to a million and a half oysters on the farm  
17           right now, and I would have to do some  
18           longer-term math to give you a dollar figure  
19           of what those are valued at.

20                    Actually, in my response -- I can't  
21           remember if it was my prefiled testimony or a  
22           response to a data request -- the USDA has  
23           dollar values for their crop insurance  
24           program that they assign to oysters in each

1           year class. So those could be used to  
2           calculate a value on the crop, and then, you  
3           know, we'd have to add loss of longer-term  
4           revenue on top of that.

5    Q.    So as I remember from your prefiled direct,  
6           you did do some of those calculations for the  
7           loss of the crop.

8    A.    Right.

9    Q.    But I didn't see -- I don't remember a  
10          calculation for the loss of business  
11          following that.

12   A.    Right.

13   Q.    Okay. And you don't have to estimate that  
14          for us here now.

15   A.    It would be hard to estimate that right now.

16   Q.    And then your cost estimates that you've  
17          given, do those include the cost to you and  
18          your business of taking reasonable protective  
19          measures?

20   A.    No. I have not made those calculations  
21          either. You know, one of my concerns about  
22          mitigation options is that it's going to be  
23          very hard for someone else to actually  
24          perform the mitigation measures of cleaning

1 the cages, because I have a boat that has a  
2 crane that's set up for lifting cages of my  
3 size, and it's not just a matter of going out  
4 and hiring a consultant who can do that  
5 cleaning. It's going to be me that does that  
6 cleaning. So, me and the crew -- well, my  
7 crew over the course of a couple months. So  
8 those costs could be calculated, but I  
9 haven't done them yet.

10 Q. Thank you.

11 QUESTIONS BY PRESIDING OFFICER WEATHERSBY:

12 Q. One of my questions was when you clean the  
13 cages or when you move the cages, this is all  
14 done by you and some folks that work for you?

15 A. That's correct.

16 Q. Are there people available -- so if we wanted  
17 to give you help, say to move them quicker or  
18 in a shorter duration of time, or cleaning,  
19 are there people with the expertise available  
20 that could come and assist?

21 A. It's very hard to find people that know how  
22 to do this because it's such a niche  
23 practice. There aren't too many people with  
24 experience in oyster farming or cage culture

1           that are actually available to come out and  
2           assist. So my feeling is that if we go the  
3           picking up the cages and cleaning them route,  
4           it's going to fall to me because I have the  
5           equipment and the experience of doing it. If  
6           it's divers that we're putting in the water,  
7           then there are probably more options.

8    Q.    And just getting back to the cost impacts to  
9           your business. It sounds like there's some  
10          likelihood of some mortality, but it seems to  
11          me that sort of big or more likely risk is  
12          the suspension of the harvesting. Is that --  
13          do you agree with that?

14   A.    I think the risks to both are significant.  
15          We know that there will be some suspension of  
16          sales because there will be a sampling period  
17          associated with the cable crossing. That's  
18          my understanding based on informal  
19          conversations I've had with DES. So we know  
20          there will be at least be a few days of  
21          closure to confirm that the Project is not  
22          exceeding fecal coliform standards or  
23          resulting in the exceedence of fecal coliform  
24          standards.

1 Q. So when there's a suspension of harvesting  
2 and a suspension of your sales, whether it's  
3 due to bacteria or processing the sediment,  
4 getting the "grittiness" out as you described  
5 it, the pumping --

6 A. Yup.

7 Q. -- it's a suspension. I mean, the oysters  
8 are still alive.

9 A. Correct.

10 Q. You can still harvest them eventually.

11 A. Right.

12 Q. It's just a delay. And so you spoke about  
13 that you may lose some customers because you  
14 can't deliver the product on time.

15 A. Right.

16 Q. But since you can eventually sell these  
17 still, they're still alive, are there other  
18 impacts in having a delay?

19 A. No, it's more -- it's losing sales for that  
20 week. So, you know, just like a company  
21 that's manufacturing a product, I can't  
22 necessarily sell an oyster just because I  
23 have it. I have to meet demand that's there.  
24 So if I lose a week of sales, even though I

1 still have that inventory, that week of sales  
2 is lost.

3 Q. So the next week you can't sell twice --

4 A. No.

5 Q. -- as many to make up for it.

6 A. That's correct.

7 Q. Because there's only so much demand from,  
8 presumably, restaurants.

9 A. Right. I can encourage my friends to go to  
10 those restaurants, but I can't guarantee that  
11 I'll be able to sell more the following week.

12 Typically what I see after a rainfall  
13 closure is a lag in sales. I don't  
14 necessarily lose the customer. But what  
15 happens is, is that customer will have to  
16 scramble to stock up on other oysters that  
17 will then be there until they're gone. So  
18 just because we're reopening and I go back to  
19 my customer and I say, hey, we're open again,  
20 I have this inventory, they may say, well,  
21 we're still clearing out what we bought  
22 during your closure period, so catch up with  
23 us next week, or we'll do a reduced amount  
24 with you this week.

1 Q. Okay. Thank you.

2 PRESIDING OFFICER WEATHERSBY: Mr.  
3 Way.

4 QUESTIONS BY MR. WAY:

5 Q. Good morning, Mr. Baker. And I apologize for  
6 not being here earlier. I was interested in  
7 hearing your testimony. I've read your  
8 prefiled. Just a couple questions. And I  
9 apologize if you brought this up during the  
10 discussions this morning.

11 A. Sure.

12 Q. In your prefiled, because I was interested in  
13 looking at the value of your crops and I was  
14 looking at the NAP table, I noticed that  
15 there was a little bit of discrepancy in the  
16 value per oyster, dollar value per oyster,  
17 between '15 and '16 and then '16 and '17. So  
18 I think '15 it was like 390,000, and then the  
19 value in '16 was 260,000. Because that's  
20 real money to you.

21 A. Right.

22 Q. And can I assume '17 is .13 per oyster  
23 because you're in the mid-season of  
24 reporting?

1 A. Those oysters are of a lower value because  
2 they're small. Simply because they're  
3 smaller. So that's the newest year class and  
4 the smaller oysters. So that's how that  
5 value is assigned. Does that answer your  
6 question?

7 Q. I think so. And so when I go from .65 to .52  
8 as the value, how does that -- how do they  
9 calculate that difference?

10 A. It's just the size of the oyster.

11 Q. Just the size?

12 A. Their assumption is that a larger oyster is  
13 more valuable, which is not always correct.  
14 But they assign values based purely on size.

15 Q. Okay. And these are what you would use. So  
16 when you responded to Mr. Schulock and you  
17 said the worst-case scenario is a large  
18 percentage of my crop and crop value, you'd  
19 be going to these values here; would you not?

20 A. That's the best way I can see to assess  
21 value. And it seems to be pretty well  
22 accepted. So, yes.

23 Q. I imagine you probably talked about this, but  
24 tell me a little bit. I think I know who

1           your customer, your typical customer is, but  
2           I don't want to assume that. What is your  
3           customer footprint? Is it mostly local  
4           restaurants? Are you doing any, like, for  
5           example, national sales, overseas sales?

6    A.    Yeah, so this year I changed my business  
7           model a little bit. I was selling  
8           exclusively through distributors in 2017.  
9           This year I sold everything direct. So I had  
10          about 15 restaurants and small seafood  
11          retailers as a customer base. And the  
12          geographic range was from Boston to Portland,  
13          Maine.

14   Q.    And I imagine there's no contract there.  
15          It's as needed?

16   A.    That's right.

17   Q.    That's probably not typical to do in your  
18          business, I would imagine.

19   A.    No. It's a very informal kind of a process.  
20          It's a text message saying this is your  
21          typical delivery day and what can I get you  
22          and hope that they've been busy enough to  
23          order a bunch of oysters.

24   Q.    And your business model, in terms of planning

1           for the future, does this project impact that  
2           business model? Let's say, for example, you  
3           decided next year we're going to go into this  
4           market. Does this impact that or not impact?

5       A.    Only if it comes to limiting my inventory of  
6           oysters. The different markets are all about  
7           the inventory you have and the quality of  
8           your oysters. So if there are short-term  
9           changes in the quality of my oysters, that  
10          probably will not change the markets I'm able  
11          to reach. The response across the board  
12          would be pretty uniform.

13       Q.   And given the nature of your customer, if you  
14          lose a customer for whatever reason, how  
15          competitive is the market? How easy is it to  
16          get that customer back?

17       A.    It has changed dramatically over the last  
18          five years. When I first started selling  
19          oysters in probably 2014, as long as I had  
20          them, I could move them. But there are so  
21          many new entries into the oyster culture  
22          world, that has changed very dramatically  
23          over the last two years. So the markets are  
24          becoming much more competitive. And if a new

1 oyster moves into a wholesaler or restaurant,  
2 the likelihood that you can recapture that  
3 market is severely diminished.

4 So, to give you an example, I think I  
5 was the third oyster aquaculture license in  
6 Great Bay, and now there are 15 different  
7 companies or individuals who are growing  
8 oysters in Great Bay, and probably 25  
9 licenses because many hold multiple licenses.

10 Q. Are you, as a homeowner on Great Bay, are you  
11 able to grow your own oysters?

12 A. I am not a homeowner on Great Bay.

13 Q. No, I know you're not. But like a regular  
14 homeowner, are they allowed to grow their own  
15 oyster?

16 A. Only if they're captured by -- there's some  
17 program sponsored by the Nature Conservancy,  
18 for example, that's kind of a dockside  
19 grow-out, and then those oysters are used for  
20 restoration purposes. But you must have a  
21 license from Fish & Game to culture oysters  
22 before you can put anything into the water.  
23 And then before you are able to harvest  
24 anything, you have to have another license

1 from the Division of Health and Human  
2 Services. So the short answer is, no, you  
3 can't just grow dockside oysters for your own  
4 consumption.

5 Q. Thank you very much.

6 MR. WAY: Mr. Fitzgerald.

7 MR. FITZGERALD: Can I follow-up on  
8 that?

9 QUESTIONS BY MR. FITZGERALD:

10 Q. The chart that Mr. Way referred to, I didn't  
11 quite understand it. Obviously a very, very  
12 significant difference from 2016 from 2017.

13 You were, you know, three years prior, 65,  
14 65, 52, which is fine, but then down to 13 --

15 A. Yeah.

16 Q. -- although your quantity was significantly  
17 higher. What happened in 2017? I'm not sure  
18 if I missed that or --

19 A. Well, let's see. So the quantity in --  
20 you're talking about the explanation for the  
21 differences in the quantity of each year  
22 class?

23 Q. Well, not necessarily the quantity, but the  
24 value, the NAP value that was assigned.

1 A. Oh, right.

2 Q. 2017 went down to 13 cents. That's, you  
3 know, a huge drop.

4 A. It's because those oysters are small, and  
5 they expect many of them not to ever reach  
6 market size. So they're assessing value  
7 based on size and the likelihood that it will  
8 get to market some day. And so those 2017,  
9 those are the tiny seed oysters. So they're  
10 not assessing them a very high value.

11 Q. Is that value a national value number  
12 that's --

13 A. That is, yup. That's a standard of the  
14 National Crop Insurance Program.

15 Q. I'm still having a hard time understanding.  
16 Just NAP decided, based on some assessment,  
17 that oysters nationally were going to be  
18 smaller in 2017? How do they --

19 A. Oh, I'm sorry. I understand your question  
20 now. So these numbers are not the total crop  
21 numbers for each of those years. They are  
22 the oysters that are within that year class.  
23 So, these, the numbers for 2017 -- I see now  
24 why this is confusing -- are the oysters that

1           were born in 2017. So the total inventory of  
2           what I have on my farm is the sum of each of  
3           these year classes.

4   Q.    Okay. Okay. So the 2017 are just younger.

5   A.    They're just smaller oyster, yes.

6   Q.    Okay. And at some point in the future they  
7           will become larger and more valuable.

8   A.    That's the idea, yes. So at any given time,  
9           we typically have four overlapping year class  
10          on the farm. It takes about three to four  
11          years to go from a seed oyster to a  
12          market-size oyster. So we have each of these  
13          year classes on our farm right now --

14   Q.    Okay. That's very helpful.

15   A.    -- in addition to 2018s now.

16                           MR. WAY: Can I follow on that?

17   QUESTIONS BY MR. WAY (CONT'D):

18   Q.    So just to make sure that I understand what  
19          you're saying, once again, back to Mr.  
20          Schulock's question about worst-case  
21          scenario, we're talking about the last  
22          number, the \$1 million number --

23   A.    Yeah.

24   Q.    -- in terms of you said "a percentage of my

1 crop." I'm assuming it would be evenly  
2 distributed over those four overlapping  
3 years, however you do it.

4 A. You mean the losses?

5 Q. Yes.

6 A. I would expect that smaller oysters are more  
7 susceptible to losses from sedimentation.  
8 They're more sensitive. They're packed more  
9 tightly. They're in containment devices that  
10 have a smaller mesh size and tend to  
11 accumulate sediment more officially.

12 Q. So the larger percentage would be of the  
13 smaller oyster population.

14 A. That's what I would suspect, yes.

15 Q. All right. Thank you.

16 QUESTIONS BY MR. FITZGERALD:

17 Q. And what was it that drove you to change your  
18 business model from working with distributors  
19 to direct to restaurants?

20 A. The biggest driver I think was the risk of  
21 having only one or two customers. So,  
22 typically, if you're selling to a  
23 distributor, that distributor has its own set  
24 of customers, and they don't want to buy from

1           you and compete with you at the same time.  
2           So, typically, growers that are selling to a  
3           distributor are only selling to one or two.  
4           If that distributor decides that they like  
5           another oyster better or there's a shiny, new  
6           oyster on the market, they can easily cut you  
7           out, and then you're at a loss. So I decided  
8           to, for better or worse, take matters into my  
9           own hands and distribute on my own.

10        Q.    Was that just on a perceived concern, or were  
11           you actually seeing something that drove that  
12           change?

13        A.    Yeah, I was seeing lots of new oysters coming  
14           on to the market. And my distributor,  
15           because he was starting to buy those new  
16           oysters, was not promoting mine as heavily as  
17           he had been. And so I kind I saw the  
18           long-term writing on the wall and made the  
19           change.

20        Q.    And what is it that dictates -- what is a  
21           "shiny new oyster"? What are the factors --  
22           I mean, are oysters grown by one company --

23        A.    They can be very different based on how you  
24           grow them. You know, so the cage-grown

1 oysters look very different from the  
2 bottom-seeded oysters.

3 But just to give you my story, like I  
4 said, when I started, I was the third  
5 licensed grower in New Hampshire. And so we  
6 had all this market in New Hampshire that  
7 doesn't have a New Hampshire oyster. So when  
8 I first got started, that market was wide  
9 open. And everyone wants a local oyster. So  
10 it's very easy to move product. Now I'm  
11 competing with 15 other farms that are kind  
12 of starting to come online over the last few  
13 years. So, you know, people like a  
14 high-quality oyster for sure. That's very  
15 important. And you can definitely lose  
16 customers if you're not producing a good  
17 oyster. But an oyster from a new region with  
18 a new name, you know, is very popular for a  
19 while until there's the next new oyster that  
20 comes along that's interesting and local.

21 Q. And what dictates the quality of an oyster?

22 I mean, is it a characteristic taste or --

23 A. Yeah, there's quite a few things. The taste  
24 is certainly one; the fullness of the meat,

1           what we call the quality of the meat, you  
2           know, making sure there's something there to  
3           eat. The thickness of the shell is a big  
4           driver for those that are shucking it. They  
5           don't want to shuck a shell that just  
6           crumbles into pieces and the oyster is not  
7           presentable. So it's kind of the look, you  
8           know. The meat quality and the taste is kind  
9           of the thing that comes last. But it has to  
10          look appealing to customers and the shuckers,  
11          the chefs and the shuckers.

12    Q.    Thank you.

13                           PRESIDING OFFICER WEATHERSBY:   One  
14          last question I think.

15    QUESTIONS BY PRESIDING OFFICER WEATHERSBY:

16    Q.    Mr. Baker, does your company have crop  
17          insurance?

18    A.    Yes, we do. So it's not -- technically, it's  
19          the Non-insured Crop Disaster Assistance  
20          Program. So it doesn't rise to the level of  
21          traditional crop insurance payouts you would  
22          see for corn or soy beans or things like  
23          that. So it's actually just kind of a  
24          failsafe type of a crop insurance program.

1           So before you can even apply to cover your  
2           losses, you have to demonstrate that you've  
3           lost as a result of a single event at least  
4           50 percent of the value of your crop, of your  
5           farm. So the bar is very high. And, you  
6           know, it's probably likely that if you're  
7           there, you're kind of done anyway. So I've  
8           never qualified to even apply for the -- or  
9           to receive crop insurance because I haven't  
10          had a disaster of that magnitude.

11        Q.    So it's unlikely that it would cover any  
12          losses as a result of this project.

13        A.    Oh, it definitely wouldn't. It has to be a  
14          weather-related event that causes the loss or  
15          some other natural disaster.

16                        PRESIDING OFFICER WEATHERSBY: Does  
17          anybody else on the Committee have any final  
18          questions? Attorney Dore?

19                        Okay. Well, thank you for your  
20          testimony.

21                        WITNESS BAKER: All right. Thank you.

22                        PRESIDING OFFICER WEATHERSBY: We  
23          appreciate it. You're excused.

24                        We're going to take a break and be

1 back at five minutes past eleven, at which  
2 time we'll hear from Mr. Lawrence, I believe.  
3 Yes, Mr. Lawrence. So we'll reconvene in 15  
4 minutes. Thank you.

5 (Recess was taken at 10:51 a.m.  
6 and the hearing resumed at 11:10 a.m.)

7 PRESIDING OFFICER WEATHERSBY: We're  
8 ready to resume.

9 MR. ASLIN: Thank you, Madam Chair.  
10 (WHEREUPON, MICHAEL LAWRENCE was duly  
11 sworn and cautioned by the Court  
12 Reporter.)

13 DIRECT EXAMINATION

14 BY MR. ASLIN:

15 Q. Good morning, Mr. Lawrence.

16 A. Good morning.

17 Q. If you could please state your full name for  
18 the record and tell us where you're employed.

19 A. I'm Michael Lawrence. I'm employed at  
20 Michael Lawrence & Associates.

21 Q. Okay. Thank you.

22 And do you have in front of you your  
23 prefiled testimony which has been marked as  
24 Counsel for the Public Exhibit 4 and was

1 filed on July 31st, 2017?

2 A. Yes.

3 Q. And as an attachment to that was your  
4 aesthetic analysis review report, which is  
5 marked as CFP Exhibit 4-A. Do you have that  
6 as well?

7 A. Yes, I do.

8 Q. And do you have any corrections or changes to  
9 that testimony that you'd like to make today?

10 A. Yes.

11 Q. Could you tell us what the change is and  
12 point us to the location in the testimony  
13 that you're changing.

14 A. Yes.

15 On Page 1, Line 8 and 9, I said I am a  
16 member of the American Society of Landscape  
17 Architects. At the time that I filed that, I  
18 was not a member. My membership had lapsed.  
19 And it is now back in. I'm now in good  
20 standing again.

21 Q. Okay. Thank you. And when did you come back  
22 into good standing?

23 A. April 2nd of this year.

24 Q. Okay. Thank you.

1                   Any other changes or corrections?

2     A.     No.

3     Q.     And just for the record, that was Page 1 of  
4            your prefiled testimony, which is Counsel for  
5            the Public Exhibit 4; is that right?

6     A.     I'm not sure I understand the question.

7     Q.     I'll just make a statement. That was Counsel  
8            for the Public Exhibit 4 that you were  
9            amending.

10    A.     Okay.

11    Q.     Okay. So with that change or correction to  
12            your testimony, do you swear to and adopt  
13            that testimony today as your -- what you  
14            would say today if you were asked those same  
15            questions?

16    A.     Yes.

17    Q.     Okay. Thank you.

18                   MR. ASLIN: Mr. Lawrence is available  
19            for cross.

20                   PRESIDING OFFICER WEATHERSBY: Okay.  
21            Thank you. First examiner will be Attorney  
22            Patch.

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CROSS-EXAMINATION

BY MR. PATCH:

Q. Good morning, Mr. Lawrence.

A. Good morning.

Q. My name is Doug Patch. I represent the Town of Durham and the University of New Hampshire.

Are you familiar with the stipulations that Public Counsel and Eversource have filed with the Committee?

A. I'm not sure that I do know.

Q. Okay. I'm going to show you a couple of provisions and ask you a few questions about them.

A. Okay.

Q. The first one is what's been marked as Exhibit 184. It's the August 15th stipulation. And there are, I believe, two paragraphs in this one that pertain to your area of expertise. And I have them on the screen, Paragraphs 11 and 12. Do those look familiar to you? Have you looked at those?

A. Let me take a minute and read them.

Q. Sure.

1 (Witness reviews document.)

2 A. I'm familiar with those two statements, yes.

3 Q. And did they change anything in your  
4 testimony?

5 A. No.

6 Q. I'm going to show you Exhibit 194, which I  
7 believe has a Paragraph 12 that supercedes  
8 the Paragraph 12 that I just showed you. It  
9 was an amendment to that Paragraph 12, and  
10 it's a little bit longer than the other one  
11 was. I don't know if you looked at that or  
12 if you want to take a minute to look at it.

13 A. Okay.

14 (Witness reviews document.)

15 A. I'm not familiar exactly with that, but my  
16 understanding was that that was going to be  
17 described like that.

18 Q. So that one does seem to change your  
19 testimony, if I understand correctly, in  
20 terms of the 13 locations at least; is that  
21 fair to say?

22 A. Yes.

23 Q. And then the other one I want to show you is  
24 Exhibit 193, which is also dated

1           September 17th. And there are two paragraphs  
2           in there that I believe pertain to your area  
3           of expertise, 32 and 33. Could you take a  
4           look at those and let us know if you're  
5           familiar with those.

6    A.    Yes.

7                         (Witness reviews document.)

8    A.    I've read them.

9    Q.    Okay. And other than the change that you  
10          talked about with the prior stipulation, the  
11          change to the 13 locations, do these in any  
12          way change your testimony?

13   A.    Only that I think this resolves the issue  
14          that I have -- that I had in my testimony.

15   Q.    All of the issues?

16   A.    Yes, I believe so.

17   Q.    Okay. Well, I'd like to walk through that a  
18          little bit with you. But I want to start by  
19          asking you about Paragraph 33. It refers to  
20          "planting plans." What do you anticipate  
21          seeing in those, and what will the residents  
22          anticipate -- should they anticipate seeing  
23          in those planting plans?

24   A.    I think planting helps to screen the corridor

1 and the new structures in the corridor from  
2 the right-of-ways, from where the roads pass  
3 through the right-of-ways, or where there's  
4 pedestrian crossings under the right-of-ways.

5 Q. In your prefiled testimony, and I'm looking  
6 at CFP 4, Page 2, you concluded that at  
7 certain locations at road crossings and  
8 across portions of the UNH campus, the  
9 Project will be highly visible. That was  
10 what you had in your testimony; correct?

11 A. Correct.

12 Q. And so with these planting plans, won't the  
13 Project still be highly visible at least for  
14 some period of time?

15 A. Yes.

16 Q. Approximately how long would you guess it  
17 would still be highly visible?

18 A. I think it may always be highly visible.

19 Q. And that's different than what's there now.

20 A. Yes.

21 Q. And when you say "highly visible," you mean  
22 compared to what's there now.

23 A. Correct.

24 Q. And you cited the combination of

1 significantly taller structures. You said  
2 double or triple the height of existing  
3 structures and substantial tree removal to  
4 the full width of the ROW and said it would  
5 dramatically change the visual character and  
6 decrease the aesthetic quality of those  
7 locations; correct?

8 A. Correct.

9 Q. And so this stipulation won't change that,  
10 will it?

11 A. Well, I think it will offer some mitigation  
12 to that.

13 Q. But over a period of time, presumably, and  
14 will never totally mitigate it.

15 A. That's correct.

16 Q. Part of your assessment, Exhibit 4,  
17 electronic Page 10 -- actually, I think I may  
18 have the wrong electronic page. But maybe  
19 you can help me. Part of your assessment  
20 included a review of the impacts on the  
21 Little Bay shoreline; is that fair to say?

22 A. Yes.

23 Q. Have you seen Mr. Raphael's supplemental  
24 testimony that was filed in July of this

1 year?

2 A. Yes.

3 Q. And I want to show you a section of that. I  
4 believe it's electronic Page 24 of  
5 Exhibit 142. This was attached to his  
6 July 2018 testimony. And on this page  
7 there's a picture of Little Bay. And in the  
8 lower right-hand corner, it's a little bit  
9 hard to read, but there's a narrative that  
10 contains the following statement. It says,  
11 "The purpose of this exhibit is to  
12 demonstrate that the existing development and  
13 specific structures along and near to the  
14 shoreline create a visual pattern that will  
15 not be undermined or altered by the  
16 visibility of a short section of concrete  
17 matting as proposed in this section." Did I  
18 read that correctly?

19 A. I believe so.

20 Q. Are you familiar with the amount of concrete  
21 matting that's planned for Little Bay?

22 A. I've read the dimensions of it and, I can't  
23 recall exactly what those dimensions are  
24 right at this minute.

1 Q. Would you agree that the existing development  
2 and specific structures along and near that  
3 shoreline create a visual pattern that will  
4 not be undermined by the concrete matting?

5 A. Yes.

6 Q. Do you agree with that statement?

7 A. I do.

8 Q. You do? Okay. Have you ever looked at  
9 concrete mats before?

10 A. No, I haven't.

11 Q. And what did you do in this, as part of your  
12 work on this particular project, to review  
13 concrete mats and visual impacts?

14 A. Really looked at the photo simulations that  
15 David Raphael prepared.

16 Q. So that's all that you did was to look at  
17 those photo simulations?

18 A. Right.

19 Q. Now, the photo simulations that he provides  
20 are basically pictures of Little Bay that  
21 appear to be taken from the boat. And I  
22 think, as he said, it's about halfway across  
23 the bay. Does that sound right to you?

24 A. That sounds right.

1 Q. And on this particular page in the -- again,  
2 it's kind of small printing. But in the  
3 lower right-hand corner there is a narrative  
4 that says that existing elements provide a  
5 visual pattern which can readily accommodate  
6 the proposed mats and their limited  
7 visibility. And he then says that the actual  
8 area of visible mats will be limited to an  
9 expanse of approximately 24 to 28 feet wide  
10 and 34 feet long.

11 Now, based on your prior answer, do I  
12 assume that you agree with that statement as  
13 well?

14 A. Yes.

15 Q. And he said the mats will be, quote, unquote,  
16 an unobtrusive element. Do you agree with  
17 that?

18 A. Yes.

19 Q. And it's based on this photograph taken from  
20 essentially more than -- I think the total  
21 width of the bay at that point is about, I  
22 think, over a mile. So this photograph  
23 presumably was taken from about 2600 feet  
24 away from the Durham shoreline; correct?

1 A. Yes.

2 Q. And so based on that photograph, you think  
3 it's quote, unquote, and unobtrusive element;  
4 is that fair to say?

5 A. Yes.

6 Q. But there are no other simulations that  
7 you're aware of, and you didn't look at it  
8 from any other angles other than what he  
9 provided here; is that fair to say?

10 A. Yes. And I think my understanding of what he  
11 described as kind of the weathering of this  
12 over time, that it would end up being similar  
13 in color, similar in texture to the exposed  
14 rock around it.

15 Q. Okay. So you took that at face value,  
16 essentially.

17 A. I did.

18 Q. I'm going to show you what's been marked as  
19 Exhibit 186, and I believe it's electronic  
20 Page 6, which I was already on. And at the  
21 bottom of that, and this is very fine print,  
22 it says that it represents the proposed  
23 concrete mattresses without any color  
24 tinting. Is that correct?

1 A. Yes.

2 Q. And then if you look further down, I think  
3 the next page, it says with color tinting;  
4 correct?

5 A. Yes.

6 Q. So what's your understanding of what color  
7 tinting is used or was used in those photo  
8 simulations?

9 A. Well, I'm familiar with color tinting. It's  
10 kind of a pigment added to the concrete to  
11 darken it, or you can color it various shades  
12 of orange and reds and grays. So I'm  
13 familiar with that.

14 Q. Okay. And what's your understanding of what  
15 color would be used here?

16 A. I would assume it's a dark gray.

17 Q. Okay. Is there anything -- and if you're  
18 familiar with tinting of concrete objects,  
19 then how is that tinting done? Do you know?  
20 Is it paint? Is it some other chemical? How  
21 is that done?

22 A. There are a couple different ways. The ideal  
23 way for this concrete would be for the  
24 pigment to be mixed in while the concrete is

1           being rotated in the truck or mixed so that  
2           it's the entire batch of concrete.

3    Q.    And are you aware of any side effects to  
4           using that, particularly if it's used in  
5           water? Any chemicals that could be released  
6           into the water or anything of that? Is that  
7           something you looked at?

8    A.    I haven't looked at it.

9    Q.    I want to show you Counsel for the Public  
10           Exhibit 17, which are, as I understand it,  
11           photographs of Little Bay at low tide, and  
12           ask you if you have been on Little Bay at low  
13           tide. Have you looked at Little Bay from,  
14           say, the shoreline on either shore?

15   A.    I have.

16   Q.    And so does this look consistent with what  
17           you saw when you looked there?

18   A.    Yes.

19   Q.    And there's a few photographs in here. I'm  
20           just going to kind of scroll through. For  
21           example, that one, obviously at low tide  
22           there's a fair amount of tidal flat exposed;  
23           correct?

24   A.    Yes.

1 Q. And what is your understanding in terms of  
2 what somebody who is standing on the shore  
3 would see if the concrete mattresses are put  
4 in as described by the Applicant?

5 A. My understanding is they would see more of a  
6 flat surface than this pitted or sort of  
7 interrupted surface.

8 Q. And so at least until -- whether they're  
9 tinted or not obviously would have some  
10 bearing I guess on what they would see.  
11 Although they would still see the mattresses,  
12 regardless of the color; correct?

13 A. Yes.

14 Q. Now, in exhibit -- I want to ask you to also  
15 look at Durham Residents Exhibit 8,  
16 electronic Pages 3, 4 and 6. I'll scroll  
17 through them. These are photographs of the  
18 Durham and Newington sides of Little Bay at  
19 low tide. And obviously in this particular  
20 one that I have up on the screen, somebody  
21 has attempted to put into the picture a  
22 simulation of what the concrete mattresses  
23 would look like. I mean, do you have any  
24 comments on that? Is that consistent with

1           what you would think they would look like or  
2           not?

3       A.   Well, this appears to be a symbol to  
4           demonstrate dimension.  And I think it would  
5           not be -- it would not stand out in reality  
6           the way this is depicted.

7       Q.   But they would still be visible in the tidal  
8           flats.

9       A.   Yes.  Yes.

10      Q.   And again, a couple more pictures of concrete  
11           mattresses, for one thing.  This is a picture  
12           that they included of concrete mattresses.

13           Is that consistent with what your  
14           understanding is of what concrete mattresses  
15           look like?

16      A.   No.  I imagined a much finer texture from  
17           what I -- the description that I read.  I  
18           thought it was a much finer texture object,  
19           if you will.

20      Q.   What do you mean by "finer texture"?

21      A.   Well, this was hard to understand the scale  
22           of this, but this almost looks like  
23           rectangular box blocks.  And I was imagining  
24           more like a woven, finer texture.

1 Q. And that was from a narrative description,  
2 but not from any pictures you saw?

3 A. That's correct.

4 Q. So you formed an opinion based on something  
5 you read, not any pictures you saw.

6 A. Yes.

7 Q. I want to show you -- I want to go back to  
8 Exhibit 142, which was Mr. Raphael's  
9 supplemental testimony, and on electronic  
10 Page 21. On this page, he said that the  
11 visual assessment done by the Applicant  
12 concluded that the overall visual sensitivity  
13 to change for Little Bay was moderate, and  
14 because it was moderate with regard to  
15 culture and scenic values, it was not  
16 analyzed further. Do you recall that?

17 A. Yes.

18 Q. Did you agree with that?

19 A. No, I didn't agree with that.

20 Q. Why not?

21 A. Well, it seemed like a very important place.  
22 And it seemed like to eliminate it, based on  
23 what my understanding was -- was publication  
24 material -- was a little premature and that

1           it required careful study.

2   Q.   Now, Mr. Raphael's assessment concluded  
3       with -- and this is on, I believe, electronic  
4       Page 23. He concludes that concrete  
5       mattresses will be a very minor feature of  
6       the landscape and will only minimally affect  
7       the viewer's experience of the water, the bay  
8       and the views to the shoreline. Do you agree  
9       with that statement?

10  A.   I do agree with that statement.

11  Q.   What about views from the shoreline? That's  
12       a different situation, isn't it?

13  A.   Yes.

14  Q.   And so do you think it's a very minor feature  
15       of the landscape when you're looking at low  
16       tide from the shoreline?

17  A.   I think it depends on the perspective. And  
18       I'm sure right there at the shoreline, right  
19       where the mat enters the water, it will  
20       change the character of that particular spot.

21  Q.   On Page 4 of your testimony, you said that  
22       Mr. Raphael produced a detailed visual  
23       assessment in which he used an overly  
24       complicated methodology that

1 under-represented scenic resources and  
2 minimized visual impacts. That's what you  
3 said in your testimony; correct?

4 A. Yes.

5 Q. Has anything in the stipulations changed that  
6 view?

7 A. No.

8 Q. You said that he failed to identify key  
9 observation points where the Project would be  
10 prominently visible. Did you say that in  
11 your testimony?

12 A. I did.

13 Q. Has anything in the stipulations changed  
14 that?

15 A. No.

16 Q. Thank you.

17 A. You're welcome.

18 PRESIDING OFFICER WEATHERSBY:

19 Attorney Boepple.

20 MS. BOEPPLE: Thank you, Madam Chair.

21 QUESTIONS BY MS. BOEPPLE:

22 Q. Good morning.

23 A. Good morning.

24 Q. Mr. Lawrence, my name is Elizabeth Boepple,

1 and I represent the Town of Newington.

2 Fortunately, Attorney Patch covered some  
3 of my questions, so I think I'll take a  
4 little less time than I estimated.

5 A. Okay.

6 Q. So do I understand, generally speaking, that  
7 your testimony represents that you reviewed  
8 the Applicant's aesthetic witness's visual  
9 impact assessment for completeness of its  
10 identification of scenic resources?

11 A. Yes.

12 Q. And you also reviewed it for the overall  
13 aesthetic impact that the Project would have;  
14 is that correct?

15 A. Yes.

16 Q. Thank you. And in your prefiled testimony,  
17 which was Counsel for the Public's Exhibit 4,  
18 you stated that you included those 13  
19 additional locations that were not included  
20 in the LandWorks visual impact assessment;  
21 correct?

22 A. Correct.

23 Q. Excuse me. And could I assume that you also  
24 read Mr. Raphael's supplemental prefiled

1 testimony where he critiqued your pointing  
2 out those additional 13 locations?

3 A. Yes, I did.

4 Q. Okay. Thank you. And as Attorney Patch was  
5 asking you just a few minutes ago, the  
6 Applicant has agreed to certain conditions  
7 that presumably would address your concerns  
8 related to those 13 locations; is that  
9 correct?

10 A. Yes.

11 Q. Okay. So do I understand that those measures  
12 would be planting plans to mitigate the  
13 effects on those locations?

14 A. Yes.

15 Q. Okay. So we have up on the screen a portion  
16 of your report. And this is Counsel for the  
17 Public's Exhibit 4-A. And I'm showing you  
18 the first two pages that show Fox Point Road  
19 crossing in Newington; is that correct?

20 A. Yes.

21 Q. And the photo on the left, can you tell us  
22 what that represents?

23 A. Yes. That's on the far eastern end of Fox  
24 Point Road where there's a cul-de-sac and

1 looks like a bike path going into the woods.  
2 So in looking at that, I was imagining -- I  
3 never saw anybody biking, but I was imagining  
4 that people must be biking in this direction  
5 and that Fox Point Road had kind of a slower  
6 travel speed on it, and therefore people were  
7 traveling a little more slowly and they were  
8 enjoying being outdoors.

9 Q. And in that enjoyment, you envisioned the  
10 impact it would have on the increased pole  
11 heights and the widening of the right-of-way;  
12 is that correct?

13 A. That's correct.

14 Q. Now, the next page in this same exhibit shows  
15 a diagram and indicates areas where there  
16 would be some clearing. Do you see where it  
17 says "existing 60 to 70-foot oaks."

18 A. Yes.

19 Q. And you had a specific concern about that; is  
20 that correct?

21 A. Yes.

22 Q. And what was that concern?

23 A. That the character of the crossing today is,  
24 with the combination of the lower poles and

1           that foliage extending into the right-of-way,  
2           is not a great interruption in the passage of  
3           people on Fox Point Road, and that once  
4           that's removed, that's going to open that up  
5           and it's going to split the -- the definition  
6           of the word "fragmentation." It's going to  
7           fragment the landscape side to side in that  
8           area.

9       Q.    So I understand that as a visual impact  
10           concern. How would a planting plan provide  
11           adequate mitigation for that kind of change?

12       A.   Well, it probably is never going to  
13           completely ameliorate the loss, but it's at  
14           least an attempt to help people keep their  
15           attention focused on something on the ground  
16           and kind of compete, at least compete with  
17           all of the other things that are going on in  
18           the new proposal.

19       Q.    So it's a distraction method; is that fair to  
20           say?

21       A.    I think it's fair to say it's mitigation.  
22           But, again, I think there's going to be a  
23           loss there that probably can't be completely  
24           healed.

1 Q. Similar question. Is there a way with the  
2 planting plan to screen an 84-foot-tall pole?

3 A. No.

4 Q. And what about -- I'm going to show you  
5 another picture that's part of your Fox Point  
6 Road review. You see the corridor here?

7 A. Yes.

8 Q. And what kind of a planting plan would screen  
9 the kind of impact that this large project  
10 would have on this?

11 A. Again, the idea being to block the view down  
12 the corridor is the -- would be the strategy.

13 Q. But as you look in this photograph, would it  
14 be fair to say that there's something about  
15 the character of this that is part of the  
16 Newington landscape?

17 A. Yes.

18 Q. And so would mitigation to block that  
19 actually be protecting one of the resources  
20 that are important to Newington?

21 A. I think given the scale of the Project, this  
22 is not -- you know, we're not able to  
23 actually maintain that character at that  
24 point. There's going to be some loss of

1 character. And the mitigation plan is really  
2 to say we're going to try to stem the loss.

3 Q. So as part of the problem, would it be fair  
4 to say that there's a character that is going  
5 to be impacted?

6 A. Yes.

7 Q. Okay. The Applicant's aesthetics and  
8 historic witnesses both made statements in  
9 their prefiled testimony. Did you review  
10 both of their testimonies?

11 A. I think just the landscape piece --

12 Q. Okay.

13 A. -- the aesthetic piece.

14 Q. Okay. I will just focus on his testimony  
15 then.

16 So, for example, in Mr. Raphael's  
17 supplemental testimony, which is Applicant's  
18 Exhibit 142, I believe, on Page 7 -- let me  
19 get there -- Lines 8 through 11, not the  
20 highlighted section, but the next paragraph,  
21 Line 14, where he states, "In my professional  
22 opinion, I do not think that additional  
23 planting plans are necessary to avoid adverse  
24 effects on road crossings because for the

1 most part the road crossings are  
2 pre-existing." And then he goes on and talks  
3 about the views are not scenic resources, et  
4 cetera. Do you see that?

5 A. Yes.

6 Q. Okay. Do you agree, in your professional  
7 opinion, that a transmission line has the  
8 same visual impact as a distribution line?

9 A. No, I disagree.

10 Q. And what's the difference?

11 A. The scale. And again, the fact that that  
12 distribution line over the course of time,  
13 lots of things have grown up in that  
14 right-of-way. So that right-of-way corridor  
15 is not just a sharp edge, but it's much more  
16 soft, much more organic, I guess you'd say  
17 much easier on the eyes.

18 Q. So I would also like to draw your attention  
19 to Newington's Exhibit 1-6. Are you familiar  
20 with Newington's exhibits? Did you review  
21 any of those?

22 A. I did not.

23 Q. Okay. So I'd like to just orient you a  
24 little bit. This is a portion of Newington's

1 Master Plan. And this is their section of  
2 their Master Plan that is Recommendations.  
3 And you see the highlighted area. Could you  
4 read that for us, please.

5 A. Hmm-hmm. Under Roads, "The scenic road  
6 ordinance regulates activities affecting  
7 trees and stone walls in the vicinity of  
8 town-owned roads. The historic character of  
9 Newington's rural roads should be respected.  
10 Work near these roadways should be carefully  
11 monitored, and this section of the ordinance  
12 should be strictly enforced."

13 Q. So would you say that that's a pretty strong  
14 statement about Newington's concern about  
15 impacts on its rural roads and suburban  
16 areas?

17 A. Yes.

18 Q. And in your professional opinion, would you  
19 say that what is being proposed, in terms of  
20 mitigation measures of planting plans and  
21 screenings, will adequately address these  
22 kinds of concerns?

23 A. All I can say is it's moving in the right  
24 direction. I guess that's my answer.

1 Q. Does it go far enough?

2 A. I think that there's going to be a net loss,  
3 you know, in this project in some of those  
4 spots.

5 Q. The Applicant's aesthetics expert also talked  
6 about specific roads in Newington. One of  
7 them was Nimble Hill Road. Are you familiar  
8 with Nimble Hill Road?

9 A. Yes.

10 Q. And on Page 4, let's see, of Mr. Raphael's  
11 prefiled testimony, can you see the  
12 highlighted section there --

13 A. Yes.

14 Q. -- where he says, "Nimble Hill Road has some  
15 pleasant scenery and historic buildings, but  
16 it is not a unique road and does not possess  
17 long, distant views or outstanding scenery  
18 that draw attention and stand out as a  
19 high-value scenic resource." Do you see  
20 that?

21 A. I do.

22 Q. Do you agree that the scenic resource must be  
23 of a high value to consider whether a project  
24 will have an unreasonable adverse effect on

1           it?

2                       MR. NEEDLEMAN:  Objection.  That  
3           mischaracterizes the testimony.

4                       MS. BOEPPLE:  I'm just reading his  
5           testimony further on in Mr. Raphael's, both in  
6           his prefiled testimony, as well as in his  
7           addendum to his visual impact assessment.  He  
8           does characterize Nimble Hill Road as basically  
9           just another road.  And I don't think that's a  
10          mischaracterization.  And I can find the  
11          specific area of that if you'd like.

12                      PRESIDING OFFICER WEATHERSBY:  
13          Attorney Needleman.

14                      MR. NEEDLEMAN:  Well, first of all, I  
15          think if you're going to characterize how Mr.  
16          Raphael characterized Nimble Hill Road, you  
17          should quote the testimony.  Second of all, that  
18          was unrelated to my objection because you  
19          inserted the phrase in relation to "unreasonable  
20          adverse effect," which is not in the testimony.

21                      PRESIDING OFFICER WEATHERSBY:  So I  
22          think the question was more hypothetical:  Does  
23          it have to be of high value, and not necessarily  
24          referring to Mr. Raphael's saying that.  So I

1 think I'm going to overrule the objection.

2 You may answer that question.

3 MS. BOEPPLE: Thank you.

4 A. Could you ask it one more time?

5 BY MR. BOEPPLE:

6 Q. Yes. In your opinion, would a scenic  
7 resource need to be of a high value in order  
8 for -- I've got to find my question. Does it  
9 have to be of a high value in order for a  
10 project to have an unreasonable adverse  
11 effect?

12 A. No.

13 Q. Could it be just a scenic resource that might  
14 be of value to the town?

15 A. Yes.

16 Q. And based on your knowledge of Nimble Hill  
17 Road, would you agree that that is an  
18 important resource to the town?

19 A. I would agree.

20 Q. Okay. Applicant's Exhibit 193, which you  
21 looked at before with Attorney Patch, talks  
22 about specific mitigation for aesthetics  
23 specific to the 13 locations, including Fox  
24 Point Road crossing; correct?

1 A. Yes.

2 Q. And there's reference here to planting plans  
3 for each location; correct?

4 A. Yes.

5 Q. Further on within this condition where I have  
6 it highlighted, it says that the Applicant  
7 further agrees to provide planting plans to  
8 you, Michael Lawrence, for review and comment  
9 prior to finalizing the planting plans for  
10 each location; correct?

11 A. Yes.

12 Q. What is your understanding with respect to  
13 your authority when it comes to the review of  
14 these plans?

15 A. I actually am a little unclear as to exactly  
16 what my authority is. My understanding is  
17 they're going to submit them to me and I'm  
18 going to comment, but I'm not quite sure what  
19 happens after that.

20 Q. For example, if the plan did not provide  
21 adequate screening, you could comment, but  
22 that wouldn't force the Applicant to do  
23 anything; is that correct?

24 A. As I say, I don't -- I'm not sure. So I

1           guess maybe I have a hard time answering.

2   Q.    Based on the language as you read it today,  
3           where they'll submit it for your review and  
4           comment, would that indicate to you that  
5           you're given some additional authority?

6   A.    It would -- it would indicate that I don't  
7           have any authority.

8   Q.    Okay.  And so do you see any language as you  
9           read the conditions that are being proposed  
10          that would address future problems?  So, for  
11          example, if a planting plan was approved and  
12          you did review it, somehow it met some kind  
13          of standards that's not been identified  
14          within these conditions, but nevertheless it  
15          goes forward, assuming a certificate is  
16          granted, did you see anything in the  
17          conditions that would provide for failure of  
18          some of those plantings?

19   A.    I did not.

20   Q.    And did you see anything that would address  
21          not only the failure of the plantings -- so  
22          plants die, right -- or that they didn't  
23          provide adequate screening, that some other  
24          measures would be implemented?  Do you see

1 anything in the conditions as they're  
2 presented that would address that?

3 A. No.

4 Q. Thank you.

5 I'm going to ask you to take a look at  
6 another section of Newington's Master Plan  
7 which you probably also have not seen. But  
8 it's been submitted as Newington 1-4. And  
9 this is the section captioned "Utility  
10 Easements." And I'd like to ask you to read  
11 this section that's highlighted, the first  
12 paragraph, please.

13 A. Hmm-hmm. "The proposed installation of an  
14 electric transmission line between the  
15 Gundalow Landing neighborhood, through the  
16 Frink Farm heritage site, the Hannah Lane  
17 neighborhood, and continuing through the Fox  
18 Point Road neighborhood towards the Spaulding  
19 Turnpike, would interject a significant  
20 visual blight upon Newington's small  
21 residential district. Such a transmission  
22 line development with utility towers at  
23 heights from 65 to 90 feet or higher would  
24 have considerable negative view impacts from

1 many homes and upon the viewshed of the  
2 Town's historic district."

3 Q. In your discussions and in your review of the  
4 proposed conditions and addressing the issues  
5 with the 13 locations and proposed planting  
6 plans, do you see anything in those proposed  
7 conditions that would address this concern of  
8 the Town's?

9 A. Well, certainly through the Frink Farm, the  
10 fact that the line is being buried certainly  
11 addresses that. And certainly at Fox Point  
12 Road, as I said, there's going to be a loss  
13 of some of that character. So that's my  
14 answer.

15 Q. Okay. Thank you. Why don't we read the next  
16 paragraph, please.

17 A. Okay. "It has been the Town's policy to  
18 require land developers to place their  
19 electric utility service improvements in the  
20 residential district underground. This  
21 policy should extend also to electric  
22 transmission line improvements. It is  
23 strongly recommended that electric  
24 transmission line improvements, if they must

1 pass through Newington from east to west,  
2 that the transmission line follow the  
3 approximate route used by the PNGTS gas  
4 transmission line that skirts the  
5 northwestern boundary of the Pease  
6 Development Authority. Such utility  
7 infrastructure improvements should be kept at  
8 the very periphery of the residential  
9 district, should be placed underground, and  
10 under no circumstances should such  
11 improvements be permitted to be constructed  
12 above ground within existing easements that  
13 bisect the heart of the residential  
14 district."

15 Q. So would you, from that reading, based on  
16 your professional experience, interpret or  
17 see that perhaps the Town has anticipated  
18 that there might be some project that would  
19 come into Newington that would have a  
20 negative impact on its visual and scenic  
21 resources?

22 A. Yes.

23 Q. And would you say that they've tried to come  
24 up with a solution to that?

1 A. Yes.

2 Q. So in your professional opinion, given the  
3 limitations of what can be accomplished  
4 through landscape planting and screening,  
5 would you agree that perhaps burying the line  
6 throughout Newington could adequately address  
7 the negative effects that this project would  
8 have?

9 A. Yes.

10 Q. Thank you.

11 A. You're welcome.

12 PRESIDING OFFICER WEATHERSBY: Anyone  
13 here for the Conservation Law Foundation to ask  
14 questions?

15 [No verbal response]

16 PRESIDING OFFICER WEATHERSBY: Hearing  
17 none, we'll move to -- is Attorney Brown here or  
18 Mr. Fitch?

19 MR. FITCH: Couple questions.

20 PRESIDING OFFICER WEATHERSBY: Okay.

21 MR. FITCH: Thank you.

22 QUESTIONS BY MR. FITCH:

23 Q. Mr. Lawrence, my name is Matthew Fitch. I'm  
24 part of the Durham Residents Intervenor

1 Group. And I just have a handful of  
2 questions I want to ask you today.

3 In looking at your assessment report  
4 here on Page 21, this is specifically in  
5 reference to the Durham Point crossing in  
6 Durham, you have a statement here that says  
7 that the 100-foot-wide clearing will expose  
8 the new poles and wires along this section of  
9 the Project from Durham Point Road.

10 On Page 23 of the same report you  
11 reference that the 100-foot cleared zone  
12 offering views of multiple poles receding in  
13 the landscape against the sky will  
14 dramatically alter the existing view looking  
15 northwest at Durham Point Road.

16 So, would you consider, referencing the  
17 eastern portion, which was on Page 21, where  
18 the 100-foot-wide clearing will expose new  
19 poles and wires along this section of the  
20 Project, would you consider this also a  
21 dramatic change as you described the  
22 situation looking northwest?

23 A. Yes.

24 Q. And in your opinion, would you also quantify

1           that or describe that as a "material change"  
2           to this area from the existing condition?

3    A.    I would.

4    Q.    Would you consider 85- to 90-foot  
5           transmission poles a visual complement to the  
6           rural area in existing condition as this area  
7           stands currently?

8    A.    Complement?

9    Q.    A positive visual complement.

10   A.    No.

11   Q.    From a visual standpoint, would it matter if  
12           the existing distribution line serviced any  
13           of the homes in the area, or in service at  
14           all?

15   A.    No.

16   Q.    Upon cross-examination, Mr. Raphael made a  
17           statement to the effect that, and I'm  
18           paraphrasing here, that people rarely  
19           complain about projects like this after  
20           they're constructed. Do you agree with that  
21           assessment?

22   A.    That's a challenging one. I think people  
23           notice. I don't know how much they complain.  
24           I think it depends on who you are and maybe

1           how often you go by it and your proximity to  
2           it, what you remember from what it used to be  
3           like. I think there are a lot of different  
4           things. So I would think some people would  
5           complain. You know, I think it impacts  
6           different people a little bit differently.

7    Q.    Are you familiar with any mechanism someone  
8           would have in New Hampshire or elsewhere to  
9           formally complain or officially express  
10          dissatisfaction with the visual look of the  
11          Project after construction?

12   A.    I'm not aware of anything like that.

13   Q.    Are you familiar with any mechanism someone  
14          would have for recourse of any sort in that  
15          situation as well if they were to express  
16          dissatisfaction?

17   A.    No.

18   Q.    If a town prohibits the installation of  
19          transmission towers via their zoning  
20          ordinances, could one of the reasons they do  
21          that be due, in your professional opinion, to  
22          the impact on the visual aspect of the area?

23   A.    Yes.

24   Q.    As I understand from the Application and the

1 plans the Applicant has supplied, the  
2 existing distribution lines from Durham Point  
3 Road east to the bay will be removed upon  
4 construction of this project. Would that --  
5 would those old distribution towers being  
6 removed and being replaced by the  
7 transmission line or transmission towers  
8 solely, would that change your opinion or  
9 assessment of the visual impact of that area?

10 A. No.

11 Q. Thank you very much for your time.

12 MR. FITCH: That's all I have. Thank  
13 you.

14 PRESIDING OFFICER WEATHERSBY: Thank  
15 you, Mr. Fitch.

16 Why don't we hear from Durham  
17 Historic Association, Ms. Mackie.

18 For planning purposes, we'll  
19 probably hear from Ms. Mackie and Ms. Frink  
20 and then break for lunch.

21 QUESTIONS BY MS. MACKIE:

22 Q. Hello again. Janet Mackie from the Durham  
23 Historic Association. I have a few  
24 questions.

1           As I understand it, you were retained by  
2           the Counsel for the Public to evaluate  
3           Mr. Lawrence's report. And in doing that --  
4           I'm sorry -- Mr. Raphael's report. And in  
5           doing that, you used the LandWorks report and  
6           the environmental maps and engineering plans  
7           as a guide. But you didn't go back to square  
8           one and compile a list of scenic resources;  
9           is that correct?

10       A.     That's correct.

11       Q.     Okay. Now, Mr. Raphael included the  
12           Newington Historic District as a scenic  
13           resource. That was evaluated in his report.  
14           He did not include the Durham Historic  
15           District as a scenic resource. If you were  
16           doing this kind of report, would you have  
17           included that as a national listed historic  
18           district?

19       A.     Yes.

20       Q.     Also, in Durham, other historic districts  
21           listed on the National Register include the  
22           Wiswall Falls Historic District, Smith Chapel  
23           and Wiswall Falls mill site. Would you have  
24           include those as well?

1 A. Yes.

2 Q. They were not included in Mr. Raphael's  
3 report. Also --

4 MR. NEEDLEMAN: Objection. That's  
5 testimony, and I don't believe that's accurate.

6 PRESIDING OFFICER WEATHERSBY: So  
7 there wasn't a question there to object to, but  
8 it was testimony. So please --

9 MS. MACKIE: I'll rephrase the  
10 question. Thank you.

11 BY MS. MACKIE:

12 Q. If you were doing the assessment from square  
13 one and you were including national historic  
14 sites, National Register listed buildings  
15 state register listed buildings and sites,  
16 would you have included those?

17 A. Yes.

18 Q. Thank you.

19 Another area that we're interested in,  
20 which is owned by the public, whether it's  
21 conservation land owned by the state,  
22 conservation land owned by the town or land  
23 owned by the university, we have -- none of  
24 these things were included in Mr. Raphael's

1 report. So I'm asking you if you would  
2 include them in your report.

3 MR. NEEDLEMAN: Same objection.

4 MS. MACKIE: Well, I'll just ask it as  
5 a straight question.

6 PRESIDING OFFICER WEATHERSBY: Ask it  
7 as a straight question and probably not what Mr.  
8 Raphael included.

9 BY MS. MACKIE:

10 Q. If you had started from square one in doing a  
11 visual assessment of this project, would you  
12 have included public trails within and  
13 beneath the easement --

14 A. Yes.

15 Q. -- in public lands?

16 A. Yes.

17 Q. This is a trail map showing -- the pink is  
18 East Foss Farm. This area right here and  
19 here being visible from the trails, would  
20 that be considered an important item that  
21 should be assessed as a scenic resource?

22 A. Yes.

23 Q. What about this one?

24 A. I think if it's a public trail and it

1 interfaces with the transmission line, then  
2 it should be studied and recommendations for  
3 mitigation.

4 Q. Do you think that the scale on this map being  
5 about three quarters of an inch equals  
6 500 feet means that those trails are within  
7 view of the easement?

8 A. Probably somebody that's familiar with the  
9 trails could answer that. And of course, had  
10 it been studied, then someone could give a  
11 definite answer to that. But I don't know.  
12 It could be all in the woods.

13 Q. Do you know that it's in a field?

14 A. I don't know.

15 Q. Thank you.

16 This is a different section of town.  
17 This is the easement. If you had done this  
18 report, would you have included the trails  
19 marked in red?

20 A. If they're public trails, I would have, yes.

21 MS. DORE: And what is the exhibit  
22 number?

23 MS. MACKIE: I'm sorry?

24 MS. DORE: What are we looking at?

1           What is the exhibit number of this document?

2                       MS. MACKIE:  Oh, the first I showed is  
3           DHA Exhibit No. 10.  And the second one, which  
4           is between Sandy Brook Drive and Durham Point  
5           Road, is DHA Exhibit No. 9.

6  BY MS. MACKIE:

7  Q.    This is a drawing from Mr. Raphael's exhibit  
8        of the viewshed.  And the trails that we just  
9        looked at are in these locations right here  
10       and right here.  Are you aware that this is a  
11       section of Durham that has no public water,  
12       no public sewer, no fire hydrants?  The  
13       zoning prohibits construction of utility  
14       facilities.  It's a very rural area.

15                   MR. NEEDLEMAN:  Madam Chair,  
16       objection.  My understanding was that this  
17       party's role was limited to historic resources.  
18       I don't understand how this is relevant to that.

19                   MS. MACKIE:  Well, it is relevant  
20       because it includes three historic districts and  
21       a scenic historic road.

22                   PRESIDING OFFICER WEATHERSBY:  The  
23       objection's overruled.

24                   MS. MACKIE:  Thank you.

1 BY MS. MACKIE:

2 Q. My question has to do with the rural scenic  
3 character of this particular section of the  
4 easement and how you would evaluate, you  
5 know, that context in combination with the  
6 installation of transmission lines in the  
7 right-of-way.

8 A. Well, I think this goes to an earlier  
9 question, which was if there's access to the  
10 public, then someone who's doing an aesthetic  
11 analysis would be -- would want to include  
12 that. If there's no access to the public in  
13 there, I would still want to go back and take  
14 a look and get a sense of it. And I had  
15 driven back in there and looked around, but  
16 it seemed like the places that were most  
17 important is where the public interfaced with  
18 the corridor.

19 Q. I think maybe I'll ask another way.

20 Is the impact of a high-voltage  
21 transmission line more of an impact in a  
22 rural area or historic district area than it  
23 would be, for example, in a developed area?

24 A. That's a good question. I think that it

1           impacts both areas, depending who's there and  
2           how they're using it.

3       Q.    Okay. Your testimony takes a look at and  
4           evaluates road crossings.

5       A.    Yes.

6       Q.    And you just agreed that public trails should  
7           also be evaluated. I'm wondering in the  
8           evaluation of the effectiveness of mitigation  
9           from tree planting, were you aware that the  
10          clearance below the lowest cable on these  
11          transmission lines varies from 18 to 24 feet  
12          in height?

13      A.    Yes.

14      Q.    And does that inform your opinion as to  
15          whether mitigation would be effective --

16      A.    Yes.

17      Q.    -- in blocking the views?

18      A.    Yes.

19      Q.    So do I understand you to say that a tree  
20          which must be kept with a maximum of 18 to  
21          24 feet high would not be affected?

22      A.    No. I think that planting trees is  
23          effective. It's going to change the  
24          character of the area. And it can -- it

1           certainly -- probably reality is that it  
2           can't completely mitigate the impact of the  
3           transmission line, but it can help.

4    Q.   Well, I'm thinking of the road crossings, for  
5           example, like Mill Road, for example, where  
6           you see a long line of utility poles.  If you  
7           have an 18-foot-high tree against a  
8           100-foot-high pole into the distance, how can  
9           that help?

10   A.   Well, I think as long as the trees are  
11           planted close to the crossing, I mean, you  
12           can almost create almost an umbrella, almost  
13           a tunnel, if you will, for people to go  
14           through.  Again, it has to be done  
15           sensitively if it's a wooded environment.  
16           And you want to -- you know, you don't want  
17           to change the character to kind of a  
18           manicured, formalized landscape.  But I think  
19           you have to accept some compromise in saying  
20           this is -- if this is a reality, if this is  
21           going to happen, how can we best ameliorate  
22           it, and then discuss the strategies and agree  
23           that, hey, this is a reasonable way of doing  
24           it.

1 Q. So if I understand what you're saying, you're  
2 saying it depends how close the poles are to  
3 the crossing, the road crossing, as to where  
4 they should be planted or could be planted?

5 A. Well, probably the distance of the planting  
6 itself. The closer it is to the person who's  
7 viewing, the better.

8 Q. So if I understand you, then a pole that's  
9 within 50 feet of the road that's 100 feet  
10 high would be more difficult to hide --

11 A. Very much so --

12 Q. -- for example.

13 A. -- yes.

14 Q. Now, as far as the public trails within the  
15 easement, or across the easement -- and we  
16 have one trail, this one here, that actually  
17 follows the easement, right here. Now, this  
18 is within what we call the "quarry sensitive  
19 site." It's full of old granite quarries.

20 If you have a trail within the easement,  
21 is there any way that that can be mitigated,  
22 the view of the poles?

23 A. Again, yes. I mean, you could do a tunnel of  
24 trees. You could plant them, I'm thinking of

1 a low-growing tree, but with kind of like a  
2 canopy over it could help.

3 Q. So what you do is you would be giving up the  
4 view of the surrounding area in order to  
5 prevent a view of the poles.

6 A. Exactly.

7 Q. I see. Thank you.

8 A. You're welcome.

9 PRESIDING OFFICER WEATHERSBY: Ms.  
10 Frink, questions?

11 QUESTIONS BY MS. FRINK:

12 Q. Good morning, Mr. Lawrence. My name is Helen  
13 Frink, and I represent the Darius Frink Farm.  
14 And I have questions about your work as it  
15 pertains to the Town of Newington.

16 A. Good morning.

17 Q. Did you include the Frink Farm among your  
18 list of scenic resources?

19 A. It was on the list of scenic resources that  
20 David Raphael provided; so, yes, I certainly  
21 looked at it.

22 Q. And what was your assessment of the visual  
23 impact to the farm?

24 A. Well, when I started, the proposal was to

1           have an overhead transmission line through  
2           the meadow, and that disturbed me. And when  
3           the proposal was changed to have that line  
4           undergrounded, I breathed a sigh of relief  
5           and felt it was a huge improvement.

6    Q.    I see. In your report, you wrote that you  
7           took photos in the corridor and that you  
8           measured the heights of represented trees and  
9           existing poles. Did you do this in  
10          Newington's historic and residential area,  
11          too?

12   A.    I know we did it in the meadow adjacent to  
13          the farm, and we did it further west in the  
14          transmission line corridor heading west.

15   Q.    I'm a little confused by what you mean about  
16          "the meadow." I'm thinking that what you  
17          really mean is that it was part of the hay  
18          field on the farm.

19   A.    The hay field on the farm, yes.

20   Q.    Okay. And I'd like to show you some images  
21          of the existing line and the trees  
22          surrounding it, if I may.

23   A.    Okay.

24   Q.    And just for clarification, this is the

1 existing line and the right-of-way between  
2 the Frink property and looking toward the  
3 west toward the Pickering property, actual  
4 photos.

5 If the power poles that you see here for  
6 the existing line are 35 to 40 feet tall, how  
7 tall would you guess that the trees are?

8 A. In the neighborhood of, I think they were  
9 right in the neighborhood of 50 feet.

10 Q. And again, this is a view showing the  
11 right-of-way clearing that I think you also  
12 noted in your report?

13 A. Yes.

14 Q. In your work, did you receive any images or  
15 actual photographs of what the transition  
16 structures would look like? I think you  
17 already knew that there would be a transition  
18 structure located right where you see this  
19 pole that's closest to the front of the  
20 image.

21 A. Yes, I looked at the proposed poles.

22 Q. And did you see any actual photos or images  
23 of what these transition towers would look  
24 like?

1 A. You know, I can't remember seeing any actual  
2 photos. I certainly saw the engineering  
3 elevations that showed them to scale.

4 Q. So I think you looked at the engineering  
5 drawings or the diagrams, basically.

6 A. They were -- there was a set of engineering  
7 drawings that described the specific poles  
8 and the height and the type, and then there  
9 was kind of a key description giving a  
10 number. Then there was another sheet in the  
11 engineering set that detailed each pole.

12 Q. And this is a photograph supplied to the  
13 property owners of the Frink Farm showing the  
14 75-foot-tall transition tower monopole.

15 How does this compare in height to the  
16 poles that we just looked at in the  
17 right-of-way as it exists now?

18 A. It's at least twice as high and maybe higher.

19 Q. And in your report, you suggested some  
20 plantings as a form of mitigation; is that  
21 correct?

22 A. Yes.

23 Q. And how could this 75-foot-tall monopole be  
24 screened by vegetation?

1 A. It's going to take a long time.

2 Q. Any estimate of whether it would be screened  
3 during the 30- to 40-year lifetime of this  
4 project?

5 A. It won't probably ever be completely  
6 screened.

7 Q. So it will continue to be visible, for  
8 example, from Nimble Hill, from the farm  
9 fields, and to passersby on the Nimble Hill  
10 and Old Post Roads.

11 A. Yes.

12 Q. Thank you very much.

13 A. You're welcome.

14 MS. FRINK: No further questions,  
15 Madam Chair.

16 PRESIDING OFFICER WEATHERSBY: Thank  
17 you, Ms. Frink.

18 Let's break for lunch and be back  
19 at 1:30 when the Applicant will have  
20 questions.

21 (Lunch recess taken at 12:27 p.m. and  
22 concludes the Morning Session. The  
23 hearing continues under separate cover  
24 in the transcript noted as Day 14  
Afternoon Session.)

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C E R T I F I C A T E

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