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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 29, 2018 - 1:04 P.M. DAY 2  
49 Donovan Street Afternoon Session ONLY  
Concord, New Hampshire

{Electronically filed with SEC 12/17/18}

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.  
(SEC Deliberations)

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      |
| Susan Duprey                               | Public Member               |

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

(Hearing resumed at 1:04 p.m.)

PRESIDING OFFICER WEATHERSBY: We are going to resume our deliberations on the topic of historic sites. Director Muzzey, you can pick up where we left off.

DIR. MUZZEY: Thank you. So this morning we ended with the list of what we call "above-ground resources" that were identified by the Applicant and concurred with by the review agencies of the list of historic sites within the Project area. I thought it might be useful now to discuss what the archeologists have done and how they went about their efforts to identify and evaluate archeological resources. There are a number of reports, as I mentioned, most of them marked confidential, of the different phases of archeological investigations that occurred within the Project area. I think rather than to work our way through all of those reports, it may be more helpful to look to testimony of Victoria Bunker, Dr. Victoria Bunker, who did the archeological investigation. She has

1 three exhibits of testimony: Exhibit 18,  
2 which dates from April 12, 2016; Exhibit 77,  
3 which dates from March 29th, 2017; and then  
4 Exhibit 144, which dates from July 27th, 2018.

5 MR. WAY: Eighteen, 77 --

6 DIR. MUZZEY: And 144.

7 So, looking at Exhibit 18, Dr.  
8 Bunker begins by discussing the various  
9 phases of archeology, beginning with what is  
10 Phase I-A, which is a review of the Project  
11 area from a historical perspective: What  
12 archeological sensitivities have been  
13 identified in the past; what reports have  
14 been done in the past; what are the land  
15 features, water features, expected area of  
16 sensitivity based on that, as well as areas  
17 of disturbance. That was completed for the  
18 entire width of the corridor. The review  
19 agencies did not request archeological  
20 investigations beyond the width of the  
21 corridor, except for in case of known laydown  
22 areas, marshaling yards, access roads, things  
23 happening that would have ground-disturbing  
24 characteristics outside of the right-of-way.

1           Those were reviewed as well from a Phase I-A  
2           perspective.

3                         And then for areas that were judged  
4           to be archeologically sensitive -- that means  
5           having a potential for archeological sites --  
6           the consultant team went out and did what was  
7           called Phase I-B surveys, which is where they  
8           actually go walk the area, put a shovel in  
9           the ground, may do some corings. I won't  
10          explain the entire steps of all the phases of  
11          archeology because I think that's recorded  
12          pretty well within our record already.

13                        At the end of both Phase I-A and  
14          Phase B investigations, reports were  
15          submitted to the Division of Historical  
16          Resources and, as appropriate, the Army Corps  
17          of Engineers for their review and either  
18          their concurrence or recommendations for work  
19          otherwise.

20                        Typically within the archeological  
21          process, affected areas coming out of a Phase  
22          I-B investigation would be recommended for  
23          Phase II, which is more intensive shovel test  
24          pits. This phase is to determine whether or

1 not an intact archeological site exists, what  
2 the extent of that site may be, and what  
3 would be its areas of significance that make  
4 it important. If the site at the end of  
5 Phase II has been identified and defined and  
6 does have importance, the nature, extent and  
7 significance of the site, and it is impacted  
8 by the project, then a Phase III  
9 archeological investigation would follow.  
10 That involves, again, even more testing  
11 underground, and some portion of the site  
12 would be recovered and curated and  
13 interpreted.

14 Given Dr. Bunker's work on this  
15 project, flipping now to the end of her  
16 testimony, Exhibit 18, prefiled testimony  
17 dating from 2016, her consultant team was  
18 still within the Phase 1-A and I-B  
19 investigations. So if we flip to 17 -- 77 --  
20 I've got too many PDFs open on my computer.  
21 Just a sec.

22 I'm going to suggest that we skip  
23 instead to 144. So, on Page 5, Dr. Bunker  
24 states that the Project has been designed to

1           avoid potential archeological sites and that  
2           no further work is needed. She then  
3           continues her testimony with an attachment  
4           that reviews a number of potential  
5           archeological resources that were identified  
6           by the Durham Historic Associates. And she  
7           addresses five of those and discusses efforts  
8           to use the Phase I-A Phase I-B methodology  
9           and that she could find no further need for  
10          survey.

11                           Of particular note, a grave marker  
12          that was found near the Main Street  
13          intersection at UNH that we saw this morning,  
14          it's referred to as an "isolated headstone,"  
15          where there is some concern from the Durham  
16          Historic Association that that may be an  
17          actual burial site. And although Dr. Bunker  
18          did not recommend the treatment, the  
19          Applicant has agreed to do what we heard  
20          called "ground-penetrating radar" in order to  
21          see whether the soils there are intact,  
22          whether they're undisturbed and whether  
23          there's anything that would suggest a grave  
24          shaft would be in place.

1                   PRESIDING OFFICER WEATHERSBY:  
2           Director Muzzey, is that the Samuel Hill grave  
3           site?

4                   DIR. MUZZEY: Yes, it is. Yes.

5                   PRESIDING OFFICER WEATHERSBY:  
6           Thank you.

7                   MR. WAY: Director Muzzey, and is  
8           that the only place that the  
9           ground-penetrating radar will be used on or  
10          needs to be used on that you're aware of?

11                  DIR. MUZZEY: It's the only place  
12          that I'm aware of that the Applicant has  
13          committed to using the ground-penetrating  
14          radar and the only place where it was  
15          specifically requested.

16                  MR. WAY: Only place requested.

17                  DIR. MUZZEY: Yes.

18                  MR. WAY: All right. Thank you.

19                  DIR. MUZZEY: Now, there are  
20          commitments in the Memorandum of Understanding  
21          and the Memorandum of Agreement that we can  
22          look at more specifically regarding  
23          archeology, and that has to do with if  
24          additional changes or additions are made to

1 areas of disturbance for this project -- for  
2 instance, if a new laydown area or marshaling  
3 yard or access way was identified -- the  
4 Applicant has committed to completing  
5 comparable archeological investigations in  
6 those areas to see whether there are any  
7 archeological resources that should be  
8 considered and/or avoided, as project plans  
9 may change.

10 Does anyone have any other  
11 additional questions or comments about how  
12 the archeological investigations unfolded for  
13 the Project?

14 [No verbal response]

15 DIR. MUZZEY: I'm wondering, then,  
16 since we've mentioned the MOA and MOU, if the  
17 group would like to turn to those agreements  
18 and see what the conditions are that were made  
19 to consider the adverse effects that were  
20 found for above-ground resource.

21 PRESIDING OFFICER WEATHERSBY:

22 Before we get there, would it be helpful just  
23 to summarize the results of all those surveys?  
24 It's my understanding that Dr. Bunker

1 determined that only the LaRoche Cellar Hole  
2 site in Durham would be considered as  
3 potentially eligible for listing in the  
4 National Register and recommended avoidance of  
5 that site and then --

6 DIR. MUZZEY: Not only avoidance of  
7 the site, which is achievable, but also its  
8 protection not only of the potential site  
9 itself, but then a buffer around it during  
10 construction. And I would add, of course  
11 during maintenance activities as well for the  
12 life of the Project so it's protection is  
13 ensured.

14 PRESIDING OFFICER WEATHERSBY: And  
15 she also addressed the sites suggested by the  
16 Durham Historic Association and reviewed those  
17 in her Phase I and Phase II as well, I  
18 believe -- sorry. Phase I-A and Phase I-B  
19 surveys --

20 (Court Reporter interrupts.)

21 PRESIDING OFFICER WEATHERSBY:  
22 Valentine Hill Canal, Norton Cellar Hole,  
23 Edgerly Farm, and found no evidence of  
24 archeological artifacts, features or

1 components. And then she went on and did that  
2 one at Samuel Hill graveyard where they -- she  
3 didn't need think anything needed to be done  
4 further, but they did agree to do the  
5 ground-penetrating radar.

6 DIR. MUZZEY: That was the  
7 agreement, I believe, with Counsel for the  
8 Public and the Applicant.

9 PRESIDING OFFICER WEATHERSBY: Right  
10 . And then the Moody graveyard suggested by  
11 DHA was determined to be outside of the  
12 right-of-way. Davis Thompson graveyard, and  
13 Ryan Stevens Memorials were outside of the  
14 access road by Foss Farm. So we thought that  
15 was kind of the results of her surveys?

16 DIR. MUZZEY: Well, those five areas  
17 you just discussed are summarized in  
18 Applicant's Exhibit 144, and they do represent  
19 additional work that the Applicant did in  
20 response to archeological concerns presented  
21 by Durham Historic Associates.

22 And I did want to make a note that,  
23 you know, throughout New Hampshire, but  
24 particularly on the seacoast, there is a

1 history of many, many family burial grounds  
2 and graveyards being present on the  
3 landscape, and often in places we don't  
4 expect because the surrounding landscape has  
5 changed remarkably since they were first used  
6 as family burial graveyards.

7 And I do appreciate the efforts of  
8 the Durham Historic Association to identify  
9 those graveyards and voice their concerns for  
10 them. Graveyards are protected not only as  
11 potential historical and archeological sites  
12 in New Hampshire state law, but they are also  
13 protected as graveyards, and there are a  
14 number of state laws which indicate that a  
15 25-foot buffer needs to be extended around  
16 those. We do know there's a history of  
17 people being buried outside what is now  
18 considered the cemetery boundaries, and hence  
19 the need for that type of 25-foot buffer, as  
20 well as just, you know, large construction  
21 equipment sometimes requires that type of  
22 buffering. So, those grave sites and  
23 graveyards will be protected in the Project  
24 not only through this historical review, but

1 by those other state laws.

2 MR. WAY: Quick question.

3 PRESIDING OFFICER WEATHERSBY: Mr.  
4 Way.

5 MR. WAY: So the ROW is basically  
6 your area of your APE for this project for  
7 archeological, correct, the width of the  
8 buffer -- the width of the ROW, the  
9 right-of-way?

10 DIR. MUZZEY: Yes.

11 MR. WAY: And you're talking about a  
12 buffer zone for those that have been  
13 identified. But if there's something  
14 immediately outside of the right-of-way, is  
15 there a buffer zone that impacts activity  
16 within the right-of-way, or is it either it's  
17 in or it's out?

18 DIR. MUZZEY: Well, any access roads  
19 and marshaling yards and laydown yards would  
20 be outside of the right-of-way, and those were  
21 considered because those do represent  
22 potentially ground-disturbing areas that could  
23 affect the archeological resource. There may  
24 be a chance when, not in this project that I'm

1           aware of, although it could be in another  
2           project, where an archeological site could  
3           extend beyond a right-of-way. And in those  
4           cases, the site would be identified and  
5           protected using the same types of tools that  
6           we've already mentioned.

7                       MR. WAY: All right. Thank you.

8                       PRESIDING OFFICER WEATHERSBY: So at  
9           the end of the day here, after all these  
10          studies were done, the only site that was  
11          identified by any party involved here of  
12          archeological concern within the right-of-way  
13          is the LaRoche Brook Cellar Hole site. Maybe  
14          I phrased that wrong. The only one that needs  
15          specific avoidance is that LaRoche Brook  
16          Cellar Hole site. How would you describe --  
17          how would you sum up the results of her  
18          surveys?

19                      DIR. MUZZEY: I would sum it up just  
20          as you have. We do have a condition that  
21          addresses the unexpected discovery of  
22          archeological resources. That's in the  
23          Memorandum of Understanding and the MOA. So I  
24          would add that discussion to it as well. So

1 if we could turn to the Memorandum of  
2 Agreement and Memorandum of Understanding, we  
3 can review those quickly.

4 Once again, I have paper copies of  
5 these documents. Does anyone have the  
6 exhibit number?

7 MR. SHULOCK: I think the MOU is  
8 Exhibit 200, but the MOA I'm not sure --

9 DIR. MUZZEY: MOA in that copy, the  
10 MOA may be an appendix to that.

11 MR. SHULOCK: It is an Appendix A.

12 DIR. MUZZEY: Okay. So if everyone  
13 could flip to Exhibit 200, that would be  
14 terrific, and I can quickly walk us through  
15 these to see if people have additional  
16 questions.

17 Again, just to refresh memories,  
18 the MOA is the agreement between the U.S.  
19 Army Corps of Engineers, the Division  
20 Historical Resources as the state historic  
21 preservation office, and Eversource. It  
22 relates to the areas within the APE that  
23 Corps took jurisdiction due to the presence  
24 of wetland impacts. And so it only considers

1           the adverse effects to historic and  
 2           archeological resources in those areas. If  
 3           we -- all of these agreements begin with a  
 4           number of "Whereas" clauses. But the  
 5           stipulations which designate mitigation begin  
 6           on the second page.

7                         The first stipulation lays out the  
 8           process for providing plans for what's called  
 9           "Historic American Engineering Recordation of  
 10          the Little Bay Underwater Cable House  
 11          Historic District." And you can read the  
 12          specificity of how those will be recorded.  
 13          This is providing archival documentation of  
 14          the cable houses as they were built and as  
 15          they exist today. The survey efforts that  
 16          were completed on this resource in particular  
 17          are not an archival record of them, and so  
 18          this archival record is specified. It's  
 19          reviewed and approved by not only the  
 20          Division of Historical Resources, but the  
 21          National Park Service, as well as the Army  
 22          Corps of Engineers.

23                         MS. DUPREY: Can you say what  
 24          exhibit you're on? I thought we were on 200.

1                   DIR. MUZZEY: We are. Again, I was  
2 using paper copies. So we're actually on the  
3 appendix to the MOU.

4                   PRESIDING OFFICER WEATHERSBY: It's  
5 PDF Page 9.

6                   MS. DUPREY: Thank you.

7                   DIR. MUZZEY: Sorry about that.

8                   The stipulations continue with  
9 specifying the process for stabilizing,  
10 relocating and then rehabilitating the Durham  
11 Cable House. I mentioned earlier that this  
12 is to be done in a manner that complies with  
13 the Secretary of the Interior Standards for  
14 the Treatment of Historic Properties, and  
15 it's approved by the New Hampshire SHPO and  
16 needs to be completed within five years of  
17 the execution of this agreement. And then  
18 exterior interpretive signage, as well as  
19 interior interpretive displays in Durham and  
20 Newington are specified. And these  
21 stipulations, of course, have an educational  
22 outreach component, and it's meant to share  
23 the information with the greater public and  
24 provide greater public benefit for the

1 activities that are going on with this  
2 resource. And those are to be completed  
3 within three years of the execution of the  
4 agreement.

5 The administrative conditions that  
6 follow --

7 MR. FITZGERALD: Excuse me. Does  
8 the public have access to those cable house  
9 areas other than from the bay?

10 DIR. MUZZEY: That's a good point.  
11 The one in Newington is privately owned. And  
12 so, no, there is no public access to that one.  
13 Visually, there's public access to anyone  
14 who --

15 MR. FITZGERALD: Sure.

16 DIR. MUZZEY: -- you know, is in a  
17 kayak, in a boat and that type of thing. The  
18 Durham one is on property that I believe is  
19 owned by Eversource. It's what we've been  
20 calling the "Getchell property."

21 MR. FITZGERALD: Right. But they  
22 haven't indicated any plans to allow public  
23 access to that, have they?

24 DIR. MUZZEY: I don't know the

1 answer to that question.

2 MR. FITZGERALD: Okay.

3 DIR. MUZZEY: Although, we do know  
4 that with the interpretive signage, as well as  
5 interpretive displays, that the public will  
6 have access to information about that  
7 resource. And that's part of the purpose of  
8 providing that public interpretation.

9 MR. FITZGERALD: I guess that's what  
10 I was getting at is how would the public  
11 access that information if they can't get to  
12 it.

13 DIR. MUZZEY: Outside of the water's  
14 edge view.

15 MR. FITZGERALD: Right.

16 PRESIDING OFFICER WEATHERSBY: I  
17 think the signage is going to be located at  
18 Fox Point you just said, on public land owned  
19 by the town of -- the town.

20 MR. FITZGERALD: Thank you.

21 DIR. MUZZEY: The administrative  
22 conditions that follow under Roman Numeral I,  
23 we have the post-review discoveries condition.  
24 This is one of several places the idea that if

1           some sort of archeological resource is  
2           discovered, how things should be handled. The  
3           duration of the agreement, there's a  
4           monitoring and reporting clause which asks the  
5           Applicant to provide a yearly summary of how  
6           the stipulations are being carried out and  
7           their progress, along with administrative  
8           stipulations that cover dispute resolution and  
9           then termination of the agreement. So  
10          that's --

11                   MR. WAY: Director Muzzey, what is  
12           the recourse if something isn't done? Some of  
13           these have durations of three years, of five  
14           years.

15                   DIR. MUZZEY: If you look under the  
16           Dispute Resolution section, as well as the  
17           Amendments section, it lays out a process of  
18           what would happen in cases where the agreement  
19           is not carried out as specified and what are  
20           each of the parties' responsibilities and when  
21           would the Advisory Council on Historic  
22           Preservation be called in in order to address  
23           a dispute.

24                   The format of this Memorandum of

1 Agreement is very similar to all Memorandums  
2 of Agreement that are used for Section 106  
3 reviews that result in adverse effects to the  
4 historic resources. And in fact, the  
5 Advisory Council on Historic Preservation has  
6 issued guidance as to how these documents  
7 should be formatted and clearly explains the  
8 nature of the adverse effect and the steps  
9 taken to avoid, minimize and then mitigate  
10 those adverse effects.

11 PRESIDING OFFICER WEATHERSBY: I  
12 have a question perhaps for counsel. These  
13 agreements have provisions that they can be  
14 amended. And if we make the compliance with  
15 these agreements a condition of approval, if  
16 the agreements are later amended, is there any  
17 further involvement with the SEC?

18 MR. IACOPINO: Depends on the actual  
19 wording of your condition. You can certainly  
20 require approval of any further amendments to  
21 them. I don't think that's been the practice.  
22 Generally when there's been MOUs and things  
23 like that that contain a dispute resolution,  
24 the matter is generally left to the parties,

1 and we've only dealt with the issue later on  
2 if it's actually brought to us with a request.

3 PRESIDING OFFICER WEATHERSBY: Okay.  
4 Thank you.

5 DIR. MUZZEY: The Division of  
6 Historical Resources has requested four  
7 conditions to be added to the Project's  
8 Application for a certificate if awarded.

9 The first condition notes the  
10 condition of certificate upon compliance with  
11 stipulations in the mitigation documents  
12 executed by DHR/SHPO, Corps and Applicant.

13 Because the agreement does have an  
14 Amendment clause and a process that would lay  
15 out how an amendment should be done, as well  
16 as a Dispute Resolution clause, my  
17 interpretation is that the Applicant, as well  
18 as the agencies involved, would be in  
19 compliance with the stipulations if it was  
20 amended, as long as it followed the process  
21 laid out in the agreement.

22 So, turning back to PDF Page 1, I  
23 believe, to the Memorandum of Understanding,  
24 this again is between the New Hampshire SHPO

1           Officer, as well as the Applicant. This is  
2           in accordance with RSA 227-C:9. That's the  
3           other area of jurisdiction we discussed.  
4           It's a similar-looking document; however,  
5           these deal with properties that are outside  
6           of what the Corps considered what its  
7           jurisdiction is. And they are listed at the  
8           bottom of first page of the Agreement:  
9           Alfred Pickering Farm in Newington, Durham  
10          Point Historic District, Little Bay  
11          Underwater Cable Terminal Houses, and the  
12          Newmarket and Bennett Roads Farms Historic  
13          District.

14                        If we turn to the second page of  
15          the stipulations, we have the first one  
16          addressing the Alfred Pickering Farm, where  
17          we note that the use of a weathering steel  
18          H-frame structure on the property minimizes  
19          the adverse effects to the farm. And then a  
20          second stipulation is the publication of a  
21          publicly-oriented booklet that will discuss  
22          the history of agriculture in Newington. And  
23          that booklet is to be prepared by a qualified  
24          architectural historian and drafts reviewed

1 by the DHR prior to its publication.

2 Both in our proceeding and the  
3 Public Comment Meeting we had at Pease during  
4 this proceeding, we heard criticism of this  
5 stipulation, although it does provide the  
6 public benefit that is so important with  
7 mitigation, as well as it does deal with the  
8 history of agriculture. And we are looking  
9 at a farm in this case that's adversely  
10 affected. Some provided comment that it was  
11 not a sufficient mitigation stipulation. So  
12 I'm wondering if others on the Committee have  
13 thoughts or concerns or possible resolution  
14 of the various opinions of this stipulation.

15 MS. DUPREY: I originally thought  
16 that, too, but it was partially out of  
17 ignorance. And when I read Ms. O'Donnell's  
18 report and people questioned her on various  
19 things that you could do to mitigate, they  
20 were very much, I thought, in the vein of  
21 this. And I think I just wasn't sufficiently  
22 educated and familiar with the types of things  
23 that could be done. Was anything else  
24 specifically suggested by people from the area

1           that they felt was a better option?

2                         DIR. MUZZEY: Well, if we turn to  
3           Applicant's Exhibit 248, it lists a number of  
4           preservation and history-related goals that  
5           the Town of Newington had suggested as  
6           possible mitigation. No. 1 on that list was  
7           construction of the transmission lines through  
8           Newington underground. And then if that was  
9           not possible, the following improvements are  
10          requested to mitigate what's referred to as  
11          the "damage" on this exhibit -- we would also  
12          call it "adverse effect." And you can see  
13          that they all deal with the National  
14          Register-listed Newington Center Historic  
15          District. There are eight items specified,  
16          from repair of the old stone school, chimney  
17          repair at the old parsonage and at the meeting  
18          house. There's a suggestion of tree planting,  
19          forest management. Again, the Newington  
20          Center Historic District was enlarged in the  
21          early '90s with the addition of the town  
22          forest. There's discussion of a soccer  
23          area --

24                         MR. WAY: What exhibit is that?

1 MS. DUPREY: 248.

2 DIR. MUZZEY: 248. Some work that  
3 could be done creating composite maps using  
4 historic maps and GPS technology, and then a  
5 set of trail markers for the town forest.  
6 It's the eighth -- well, what I assumed was  
7 the eighth request. There are also two  
8 bullets at the bottom that I believe you could  
9 consider as 9 and 10, which is manage the  
10 scenic aspect of the district, working to  
11 preserve existing stone walls and some that  
12 need repair, and then the idea of creating a  
13 buffer along Arboretum Drive to protect the  
14 district, town forest and residential areas.

15 MR. WAY: And were any -- I don't  
16 think any of these were considered -- well,  
17 they were considered, but I don't think any of  
18 these are put before us right now, correct,  
19 other than they're just in the exhibit?

20 DIR. MUZZEY: Earlier in the record  
21 there is discussion of potential chimney  
22 repairs at the old parsonage --

23 MR. WAY: I recall.

24 DIR. MUZZEY: -- and the meeting

1 house. Those were replaced with the  
2 agricultural history, public outreach effort.

3 MR. WAY: Because in terms of the  
4 booklet, with all due respect, I'm in the  
5 skeptical camp. You know, I think it was  
6 described almost as a "pamphlet," with a very  
7 limited, I would imagine, limited shelf life.  
8 It just didn't seem robust to me, in terms of  
9 the mitigation strategy. I remember when I  
10 was having the -- I was sitting through the  
11 presentation, and I remember looking at the  
12 exhibit as you just said, Exhibit --

13 DIR. MUZZEY: 248.

14 MR. WAY: -- 248, too many PDFs, and  
15 thinking that it would make more sense to do  
16 something a little bit more long-lasting and  
17 sustainable from that inventory list. I  
18 didn't go much further than that. And, you  
19 know, I'm not ready to give up completely on  
20 the pamphlet. But I wasn't really sold on the  
21 value of that. I don't know about anybody  
22 else.

23 MS. DUPREY: Since this is part of  
24 an MOU that's been signed, I'm just wondering

1 if we were to just say we wanted something  
2 instead of the pamphlet, what are the  
3 mechanics of that? Do we really have the  
4 ability to do that?

5 MR. IACOPINO: You have the legal  
6 authority to condition it if you're inclined  
7 to grant the certificate, to condition that  
8 certificate in any way pretty much that you  
9 choose, that there's a record for. If you  
10 believe that there is some impact on the  
11 historic resources that can be mitigated, you  
12 can issue additional conditions over and above  
13 their MOU for --

14 MS. DUPREY: Okay. So we can't  
15 trade it out. We can't take something out of  
16 the MOU. What we could do is add something.

17 MR. IACOPINO: No, I think you could  
18 say we condition the certificate on the MOU,  
19 with the exception of section whatever. I  
20 mean, I don't know what section this is.

21 MS. DUPREY: But even if we did  
22 that, this is still an agreement with the DHR.  
23 I mean, maybe for purposes of the SEC they  
24 don't have to do it. But they're still going

1 to have to do it.

2 MR. IACOPINO: Correct, but --

3 MS. DUPREY: I just think we should  
4 be clear about that.

5 MR. IACOPINO: Well, that's what I  
6 thought you were asking is what can the SEC  
7 do.

8 MS. DUPREY: No. I was asking is we  
9 can't trade one thing out for another. And  
10 what you're saying is you can add something on  
11 top of it.

12 MR. IACOPINO: Right.

13 PRESIDING OFFICER WEATHERSBY: And  
14 we could not hold them -- the SEC, we cannot  
15 hold them to a condition that we don't  
16 necessarily feel as though they need to comply  
17 with. And my guess is if we did that, they'd  
18 go back and seek to amend their MOU to  
19 eliminate that. But, you know, who knows.

20 I think there's some value to the  
21 pamphlet. I don't think it's enough. I  
22 think we've heard loud and clear from the  
23 people that lived in Newington, and from  
24 Mr. Hebert on behalf of the planning board

1 and his familiarity with the historic  
2 district, that they considered it vastly  
3 inadequate as mitigation. So I'm not sure --  
4 I don't think it's a bad idea, but I think we  
5 need to do -- I think the Applicant should do  
6 more. I can't prioritize what project should  
7 be dealt with. So I would probably be in  
8 favor of a sum of money that would go to the  
9 historic district to use for one of these  
10 projects. I think I'd take out the soccer  
11 field one.

12 MR. FITZGERALD: Is the historic  
13 district an entity?

14 DIR. MUZZEY: The historic district  
15 is a geographic area --

16 MR. FITZGERALD: Right. But so the  
17 historic district --

18 (Court Reporter interrupts.)

19 PRESIDING OFFICER WEATHERSBY: My  
20 understanding is there's a Historic District  
21 Commission.

22 DIR. MUZZEY: There is a Historic  
23 District Commission that is an arm of town  
24 government in Newington.

1           I will point out for the record  
2           that the property that is adversely affected  
3           within the town of Newington is the Alfred  
4           Pickering Farm. It is adjacent to the  
5           historic district, but it's not in the  
6           historic district as it is defined today.  
7           The owners of the Alfred Pickering Farm have  
8           not been interested in various mitigation  
9           options that may have existed for mitigation  
10          that is on their property. That would be  
11          normally the first focus of a mitigation  
12          effort, something to improve the historical  
13          values of this individual farm. And they  
14          have -- from what I've gathered from our  
15          proceeding, they have not been interested in  
16          that, but instead have asked for the focus to  
17          be on the Newington Center Historic District,  
18          which was not found to have an adverse  
19          effect. It's unusual in my experience for a  
20          property owner to specify I want the  
21          mitigation there in that historic district.  
22          Although, we have had a number of cases in  
23          the past where mitigation was not possible at  
24          an adversely affected resource, and so we

1           have cast a wider circle with mitigation in  
2           order to replace historical values elsewhere  
3           in the community, a historically-related  
4           property or to achieve some other goals  
5           stated in, say, a historical resources  
6           chapter in a master plan or some sort of  
7           other planning document in the community.

8                       PRESIDING OFFICER WEATHERSBY: Does  
9           anyone else want to chime in concerning  
10          possible mitigation for the Alfred Pickering  
11          Farm booklet versus something else? Do we  
12          want to resolve it or table this or...

13                      DIR. MUZZEY: I guess in order to  
14          continue the conversation about your  
15          suggestion, you had suggested some sort of  
16          dollar figure that would be awarded to the  
17          town's historic district commission or the  
18          town itself. Did you have a dollar figure in  
19          mind?

20                      PRESIDING OFFICER WEATHERSBY: I  
21          think that's something we can kick around. I  
22          think it needs to be enough to make a  
23          difference, but not enough to solve every  
24          problem in the district. You know, between

1 the 20- to 30,000 range, 15 to 30? Yeah, I  
2 mean, you look at some of these projects, and  
3 to do a couple of them, it's 10-, 12,000 or  
4 more for the smaller ones. I think there was  
5 a suggestion that the most important one to  
6 the town was the Stone School, I think. And  
7 that, of course, is 200,000, which I think is  
8 too much. I don't know. What do other people  
9 think?

10 MR. WAY: I'm also sensitive to the  
11 fact that, as I recall from testimony, that I  
12 think one of these was removed from the -- was  
13 taken off the table because it would have cost  
14 the community more in effort than it would  
15 have in value.

16 DIR. MUZZEY: The chimney repair was  
17 characterized in that --

18 MR. WAY: Right.

19 PRESIDING OFFICER WEATHERSBY: I'm  
20 wondering if there's some way to tie it back  
21 to the damage done. And maybe that's beyond  
22 our area of expertise. I guess the more I  
23 think about it, it probably is. But the  
24 effects to the farm, you know, are visual

1 effects to its integrity as a scenic farm,  
2 right. That was the --

3 DIR. MUZZEY: Well, in this case  
4 we're talking about a historic farm. So it's  
5 the historical attributes and the historic  
6 setting of the farm.

7 PRESIDING OFFICER WEATHERSBY: The  
8 setting was a part of the evaluation and the  
9 adverse affects.

10 DIR. MUZZEY: Yes, the setting and  
11 landscape.

12 MR. WAY: I like the idea of having  
13 some set amount of funds available to do  
14 something. I'm not exactly sure what that  
15 something is. I'm a little hesitant, even  
16 though I may not like the pamphlet or see a  
17 lot of value in it, to choose from this list.  
18 And since I don't necessarily know the  
19 priorities, I'm not sure how to move from  
20 there.

21 PRESIDING OFFICER WEATHERSBY: I  
22 would have it go to the Historic District  
23 Commission to use as they see fit with their  
24 priorities, obviously to be used in the

1 historic district for improvements there, to  
2 buildings or landscape, whether it's the trees  
3 or a building repair.

4 MR. WAY: We don't really know how  
5 much is being spent on the pamphlet either. I  
6 don't think that came out.

7 DIR. MUZZEY: I would say it's more  
8 unusual for there to be dollar figures  
9 attached to mitigation agreements. That's not  
10 the practice everywhere. But the practice in  
11 New Hampshire is, rather than quantify it from  
12 a dollar perspective, what appropriate  
13 mitigation is, is to address the effects, the  
14 adverse effects, and then to develop a  
15 mitigation package of actions that will  
16 address those adverse effects without  
17 specification to a dollar figure.

18 One exception to that is another  
19 project that was before the Site Evaluation  
20 Committee, where due to adverse effects to a  
21 historic village, historic district, a small  
22 grant program was established under the  
23 management of the Land and Community Heritage  
24 Investment program, which is part of New

1 Hampshire state government and has very  
2 well-established granting processes and  
3 procedures which protect historical  
4 properties all across the state of New  
5 Hampshire. And so there was a hundred  
6 thousand dollars in that case. And again,  
7 that is based on the nature of the effects  
8 contributed to a grant program. And then  
9 historic properties within the affected  
10 historic district could apply for that  
11 funding. That was a mitigation stipulation  
12 that worked out very well, in my opinion.

13 PRESIDING OFFICER WEATHERSBY: So,  
14 you know, another thing we could do is leave  
15 it up to the town to know what to do. Maybe  
16 the town works -- whether it's the town or the  
17 Historic District Commission, maybe we  
18 actually leave it with the town itself, the  
19 selectmen, to work with DHR to come up with a  
20 plan for spending whatever dollar amount we  
21 feel is fine, whether that's on a booklet or  
22 whether it's on improvement to a property or  
23 something that otherwise would mitigate the  
24 adverse effects to the Alfred Pickering Farm.

1           MR. WAY:  It's not a bad idea.  And  
2           even when we talked about the booklet, it may  
3           not just be the aspects of the booklet, but  
4           the fact that in the digital age, you know, it  
5           may be more a web site.  It may be some other  
6           things for distribution.  It may be an  
7           existing publication.  I seem to recall them  
8           saying there was an existing publication that  
9           might be enhanced and even distributed more.  
10          So we might be able to take that and make it  
11          into something even better.  But once again, I  
12          don't want to just be shooting in the dark and  
13          deciding for the community what's best for  
14          them.

15                 PRESIDING OFFICER WEATHERSBY:  I  
16          don't think we have that expertise.

17                 MR. IACOPINO:  I was just going to  
18          point out for the record that I believe that  
19          statement came at the Public Statement Meeting  
20          when we took public statements in Newington.

21                 MR. WAY:  That there was?

22                 MR. IACOPINO:  That there was a  
23          previous publication that addressed the same  
24          sort of subject matter.

1                   PRESIDING OFFICER WEATHERSBY: So as  
2                   I'm sitting here, I'm thinking of some issues  
3                   with my town with historic buildings and  
4                   preservation. And I think a lot of towns  
5                   struggle with the same kinds of things. So  
6                   one of it is just digitizing historic  
7                   documents. You know, maybe that's what we  
8                   want to spend it on. There's so many ranges  
9                   of things that they could use -- the funds  
10                  could be spent on whether it's a booklet or  
11                  whether it's digitizing records, not town  
12                  records but historical records, building  
13                  improvements. And I don't think we can judge  
14                  for the Town of Newington. So I think I would  
15                  be comfortable with a certain sum of money --  
16                  I'm not sure what that is -- to go to the  
17                  town, but with having working collaboration  
18                  with DHR, if you don't mind, Director Muzzey,  
19                  to come up with a plan to spend that money in  
20                  a way that benefits the history of the town of  
21                  Newington.

22                  MR. FITZGERALD: So I share some of  
23                  the concern about that we don't have the  
24                  expertise here to make a determination. So

1 one thought that comes to me is obviously  
2 someone in negotiation of this MOU had in mind  
3 an amount of money that was going to be spent  
4 to prepare this pamphlet. And I'm not sure  
5 whether the pamphlet is an adequate response  
6 or not. But I guess if we're thinking about  
7 an amount of money, that the money certainly  
8 should not exceed or, you know, should be  
9 equivalent to the amount that was going to be  
10 spent here. And I share Susan's concern that  
11 when we start popping things out, we have an  
12 MOA or MOU that requires them to do a pamphlet  
13 and we require them to donate money to the  
14 historic district, I understand we can impose  
15 above and beyond. But I would certainly be  
16 more comfortable with us pulling that -- you  
17 know, conditioning our approval on the MOA,  
18 with the exception of that. Then the historic  
19 office can do whatever they want with it and  
20 that we recommend an equivalent amount of  
21 money be donated to the historic society. And  
22 I understand that's basically what Susan --  
23 Ms. Duprey -- I'm sorry -- was calling for.

24 MR. WAY: So when you say "an

1           equivalent amount of money," would that mean  
2           that in the MOA the booklet would still be in  
3           place and purchased, or that they could  
4           substitute what they would have done on the  
5           booklet with a new project outside of the MOA?

6                       MR. FITZGERALD: I'm suggesting  
7           whatever amount of money they would have spent  
8           on the booklet would be the amount that they  
9           would donate as opposed to -- you know, and  
10          then it would be up to the parties to  
11          negotiate with the office of SHPO, whatever  
12          it's called, to determine whether or not they  
13          still need to do the booklet.

14                      MR. SCHMIDT: I think they  
15          originally agreed to do the chimney repair.  
16          So maybe the value we should use is the higher  
17          of the two.

18                      DIR. MUZZEY: Well, I would just  
19          like to remind folks that our Chair spoke that  
20          she didn't feel the booklet was sufficient.  
21          So I'm wondering if you felt that, both from  
22          the scope of the booklet, as well as the other  
23          educational programs attached to it, plus  
24          something additional was needed, that just

1 swapping out a dollar figure for the booklet  
2 would not address that insufficiency.

3 PRESIDING OFFICER WEATHERSBY: I  
4 think it needs to be more than a couple  
5 thousand dollars. I found the booklet  
6 inadequate. I found the booklet helpful, in  
7 that it would provide not only the Town of  
8 Newington, but anyone who was interested in  
9 researching this, more information about  
10 farming in the area through the ages. There  
11 was going to be a digitized copy. Presumably  
12 DHR would have it. So, you know, it would be  
13 a resource.

14 MR. WAY: Does it already exist,  
15 though?

16 PRESIDING OFFICER WEATHERSBY: But  
17 it may already exist. And what tends to  
18 happen I think with a lot of these things is  
19 it has limited utility to most people;  
20 whereas, everyone in the town of Newington is  
21 going to drive by the Alfred Pickering Farm  
22 probably at least once a week, but they're not  
23 going to go to the library or historical  
24 society and pull up the pamphlet from the

1 shelf or go online and seek it out. It's  
2 something that one's sort of in your face and  
3 one you have to go hunt for. So I don't think  
4 that the hidden -- I shouldn't say hidden --  
5 but the remediation addresses the impact. So  
6 I think there needs to be something more. Is  
7 the booklet a good idea? Sure. But it's very  
8 limited in its utility, in my opinion. So I  
9 would rather have a larger impact for the  
10 greater community in Newington and those that  
11 travel through that historic district that  
12 enhances the aesthetics of the district in  
13 some manner. Whether that's the tree planing  
14 or chimney -- I think the chimney repair is  
15 probably not a good idea -- but painting a  
16 building, buying new clapboards, something. I  
17 don't know what it is. That's why I don't  
18 want to make that decision. I think it should  
19 be left up to the community to know where that  
20 should be spent. So I think the \$2500 or  
21 whatever is too little. I think it needs to  
22 be significantly more. But nor do I think it  
23 needs to be \$100,000. But I think it needs to  
24 be more than the booklet.

1 MS. DUPREY: Just in response to  
2 that, because I looked down the list, and I'm  
3 not looking at it right this minute, but as I  
4 did look down, a lot of it had to do with tree  
5 planting. And it just occurs to me that the  
6 Applicant agreed of its own volition to do an  
7 incredible amount of tree planting. True, it  
8 has to do with the aesthetics and not the  
9 historic. But they're investing a lot of  
10 money that but for the fact they agreed with  
11 Mr. Lawrence they might well not have to do.  
12 So I feel like we've really done the tree  
13 planting thing as far as the Applicant goes.  
14 At least in my mind, I feel like they've made  
15 some pretty huge offers with respect to tree  
16 planting. And I'm not convinced that more  
17 tree planting added by us is really  
18 appropriate. So when I look at the other  
19 things that are on there, they didn't ask to  
20 paint a building. I mean, they put forth,  
21 like, eight things, and none of it was  
22 painting buildings. It was two chimneys,  
23 which apparently in retrospect they don't want  
24 to do a \$200,000 school, which we don't want

1 to do. So I just feel a little bit in a  
2 quandary about that. I'd rather give the  
3 amount of money for both chimneys. I feel  
4 like -- I know you feel like that's really  
5 low. I don't, given everything else that the  
6 Applicant is doing here.

7 But I did want to ask Director  
8 Muzzey how did the pamphlet get arrived at.  
9 Do we know how that -- because we're  
10 second-guessing it, and I'm wondering how did  
11 that come up. Because I'm remembering  
12 Ms. O'Donnell's testimony, and I've been  
13 scanning through trying to find where she was  
14 suggesting things that could be done as  
15 mitigation. And there were things like  
16 workshops and whatnot. They're not these  
17 huge things that we seem to be contemplating  
18 now. So that led me to question how did the  
19 pamphlet come up, who made that suggestion.  
20 And I just wanted to be sure before we're  
21 second-guessing it, you know, who we're  
22 second-guessing.

23 DIR. MUZZEY: I don't think there is  
24 a wealth of information within the record as

1 to the origins of this stipulation.

2 And I did want to note that of  
3 course it's the publication of a  
4 publicly-oriented booklet on the history of  
5 agriculture in the town of Newington, and it  
6 also includes, following the booklet's  
7 completion, a public presentation in the town  
8 to celebrate Newington's agricultural  
9 history, provide an overview of the research  
10 that was completed in order to publish the  
11 booklet with a wide variety of visuals for  
12 the public. Other information presented may  
13 include how to list a property to the New  
14 Hampshire state or National Registers of  
15 Historic Places, how to seek assistance with  
16 maintenance issues and/or other  
17 preservation-related issues. So the idea of  
18 a workshop or a public presentation, that  
19 type of thing, was included within this  
20 larger stipulation.

21 But to get more specifically to  
22 your question, earlier in the record we saw  
23 draft MOUs. They specified the chimney  
24 repairs. We did hear testimony that -- it

1 slips my mind right now as to where we  
2 learned that the town was less interested in  
3 chimney repairs. And then we have the  
4 information that additional consultation was  
5 held with the community and then have the new  
6 draft of the MOU with this idea in place.

7 MS. DUPREY: Thank you.

8 MR. WAY: I do remember, too, yeah,  
9 Counsel Iacopino. I remember the public  
10 hearing, and I do remember one person  
11 describing the mitigation efforts and sort of  
12 starting up here at a high level and then  
13 working down and down to the point it was a  
14 pamphlet. And that pamphlet, that booklet --  
15 and it wasn't very well regarded at that point  
16 in the hearing. And I remember that was sort  
17 of a consensus of the group, which might be  
18 expected. But that had an impact on me, as I  
19 think about it: How is it going to be  
20 accepted in the community? It's already kind  
21 of a point of -- it seemed like it was a point  
22 of derision at that meeting.

23 DIR. MUZZEY: I've been taking --  
24 oh, go ahead.

1                   MR. SCHMIDT: I do want to note in  
2                   the town's master plan, in the historic  
3                   chapter, there are certain recommendations  
4                   that they have requested, and they're of a  
5                   much grander scale. But maybe something could  
6                   be worked towards targeting one of those  
7                   highlights that the town itself has noted.  
8                   One is the Newington Old Town Center. They  
9                   recommend maintaining it and continuing the  
10                  character, et cetera. But there was one in  
11                  particular that struck my eye. Knights Brook  
12                  Corridor, one of the region's scenic and  
13                  historically significant landscapes, 250-acre  
14                  tract situated immediately northwest of the  
15                  town center, comprised of the Frink Farm,  
16                  Pickering, Hislop and former Rowe properties.  
17                  Every effort should be made to preserve this  
18                  open space.

19                         Maybe there's something we can  
20                         target in that avenue that would benefit  
21                         within the corridor of the proposal, but also  
22                         something that the town has specifically  
23                         highlighted a need for.

24                                 PRESIDING OFFICER WEATHERSBY: I

1 think it's an excellent idea. I just don't  
2 know how much it would cost, what it would  
3 be -- is it a preservation easement, a  
4 conservation easement, et cetera? I think  
5 it's something that should be left up to the  
6 town to work in consultation with DHR so that  
7 the town knows what they're priorities are and  
8 maybe they can leverage this to get grant  
9 funds or matching funds or -- you know, I  
10 don't know. I don't think we can solve what  
11 the answer is. I think we need to decide  
12 should we do a booklet, should we do funds or  
13 should we do a combination; and if we do  
14 funds, what's the right amount of money.

15 MR. WAY: Or give the parties the  
16 option, too. I mean, once we -- I mean, we  
17 obviously can say what we'd like to have  
18 happen. But I mean, if both parties, to Ms.  
19 Duprey's point, are married to the booklet,  
20 fine, yes. But I think from my standpoint,  
21 I'd like to have something a little bit more.  
22 I'd love to give the parties the option to  
23 explore that and decide on their own what that  
24 might be. I think you do have to have a

1 little bit of a sum of money in there above  
2 and beyond. I think if you're going to choose  
3 the other option, they should be able to  
4 forego the pamphlet and put that money towards  
5 whatever that second option might be. So, you  
6 know, I think it's something a little bit more  
7 flexible. But, I mean, obviously, I may be  
8 encouraging something more that's already in  
9 there.

10 MR. FITZGERALD: I'd just like to  
11 recognize, also, that we're mitigating for the  
12 Pickering Farm and we're mitigating for its  
13 cultural setting I guess or whatever.

14 DIR. MUZZEY: Its historic setting  
15 and landscape.

16 MR. FITZGERALD: Yeah. And  
17 certainly it's my feeling the intent of the  
18 booklet is related to farming, to highlight  
19 farming in Newington. I'm not sure how fixing  
20 chimneys or doing other activities relates to  
21 mitigating for a farm as a historic resource.  
22 So I just -- if we do something there, I think  
23 it should be, you know, signage for the farm  
24 or, you know, I don't know. But it should be

1 related to that.

2 DIR. MUZZEY: So just to summarize  
3 some things I've been hearing in this  
4 discussion, a possibility would be to set  
5 aside a certain sum of money to be managed by  
6 the Historic District Commission. The sum of  
7 money should provide wide public benefit, and  
8 the result of its use should be publicly  
9 accessible. Possible uses for this sum of  
10 money can be the publication of an  
11 agricultural history booklet, as specified in  
12 the MOU. It could be utilized to enhance the  
13 preservation values found in the Newington  
14 Center Historic District or further promote  
15 the town's agricultural history, or achieve  
16 goals as outlined in the historic resources  
17 chapter of the town's master plan.

18 A couple things that I would want  
19 to add to this type of stipulation, just  
20 representing best practices, would be to  
21 include a time limit on the utilization of  
22 the funds so that they are spent and made  
23 publicly available in a timely way. I would  
24 suggest some sort of reporting back to the

1 SEC, so the SEC has an understanding of how  
2 this mitigation measure unfolded. And as has  
3 been suggested, I would have the NHDHR play a  
4 review role in whatever activity is planned.

5 PRESIDING OFFICER WEATHERSBY: My  
6 only change to that is we haven't heard from  
7 anyone from the Historic District Commission  
8 itself of whether they're capable or willing  
9 to manage the funds. So I think we'd probably  
10 be better to look to the town itself to work  
11 with its bodies and then obviously in  
12 consultation with DHR to come up with a  
13 solution, but obviously specify it's for  
14 historic purposes. I think Mr. Fitzgerald  
15 wants to tailor it not to just historic, but  
16 historic/agriculture-related. I don't feel  
17 that's necessary, but I understand the tie-in.  
18 I don't know if that's too limiting.

19 How do people feel about this as a  
20 general concept?

21 DIR. MUZZEY: I think making  
22 mitigation measures in general, it's best to  
23 tie the mitigation measures as closely as  
24 possible to the nature of the adverse effect.

1 But when that is not possible, as I think I  
2 said earlier, it is possible to suggest other  
3 mitigation measures that achieve other  
4 preservation goals in the community. In this  
5 case, we've heard a great deal of criticism of  
6 the agricultural and historical ideas and ways  
7 to promote that. Like others have said, I  
8 still see value in doing that type of thing.  
9 So I'm comfortable listing it as one of the  
10 options that this mitigation fund could be  
11 used for, but not necessarily saying it's the  
12 only option, because the community has  
13 suggested other goals and, in particular,  
14 things happening in its historic district and  
15 the Knights Brook idea. I think giving some  
16 suggestions may encourage some creative  
17 thinking without tying them to one particular  
18 end result.

19 MR. WAY: And I know the answer to  
20 this question. At this point in the game --  
21 and Michael, I'm looking down at you -- at  
22 this point in the game, there's no reaching  
23 out here. So there's no way to reach out to  
24 the Durham Historic Association. There's no

1 way to reach out to the Applicant or anyone to  
2 try to marry this a little bit better so we're  
3 not putting something prescriptive in place or  
4 something that they don't even want. They may  
5 have bought lock, stock and barrel into this  
6 pamphlet and, you know, resent us even having  
7 this discussion. But I doubt that.

8 And so am I correct in saying,  
9 Mike, that we have to just deal with this  
10 amongst ourselves and there's no reaching out  
11 on this topic?

12 MR. IACOPINO: I would agree with  
13 that. And I would suggest that the only way  
14 for you to "reach out" is by the delegation  
15 authority that you have to delegate things  
16 like this to a state agency or the  
17 Administrator of this Committee. And if  
18 you're going to do that, I would request that  
19 you are as specific as possible with respect  
20 to that. In other words, you don't want to  
21 leave either the DHR or Ms. Monroe trying to  
22 figure out exactly what the mitigation should  
23 be, whether it should be limited to farm lands  
24 or something. You should make it as specific

1 as you can. For instance, if your condition  
2 is that there will be a sum of money put aside  
3 for X mitigation to be agreed upon by DHR and  
4 the Town of Newington, you're authorized to do  
5 that. You can delegate that authority to the  
6 DHR or to your Administrator to work with the  
7 Town and come up with a plan for the  
8 mediation -- for the mitigation. Sorry.

9 MR. WAY: And Director Muzzey  
10 mentioned about the LCHIP effort that was done  
11 in the past. In some of the previous cases,  
12 have we done something -- I have to imagine  
13 we've probably done something similar to this.

14 MR. IACOPINO: Primarily  
15 conservation easements.

16 MR. WAY: Conservation easements?  
17 But did it end up having sort of the same  
18 structure as what we're talking about right  
19 now?

20 MR. IACOPINO: I don't remember them  
21 coming up too much in the context of  
22 historical. I think they've come up in  
23 environmental --

24 MR. WAY: But in conservation, it

1 would be the same thing. It'd be a small  
2 bucket of money, or large, whatever that  
3 bucket is going to be, given to the  
4 Conservation Commission, and the Conservation  
5 Commission, they do whatever they're going to  
6 do with it in terms of their own organization.

7 MR. IACOPINO: Yes.

8 MR. WAY: But we would not prescribe  
9 what type of conservation.

10 MR. IACOPINO: Well, actually, we  
11 have.

12 MR. WAY: We have.

13 MR. IACOPINO: We have designated  
14 that these funds are to be used to obtain a  
15 conservation easement on a certain piece of  
16 property. I believe that happened in the  
17 Antrim case. So we have been very specific.  
18 Whether you have to be that specific, you'll  
19 have to understand what you're planning on  
20 doing. But you can be less specific than  
21 that. Of course, all of your findings have to  
22 be based upon the record before you. So  
23 you've got to find on your record that this  
24 mitigation is appropriate.

1                   MR. FITZGERALD: Does anyone recall  
2 who expressed dissatisfaction with the  
3 booklet, what testimony that was part of?

4                   PRESIDING OFFICER WEATHERSBY:  
5 There was lots of public comment about it at  
6 the meeting in Newington. I believe  
7 Mr. Hebert was asked specifically when he  
8 testified. We cross-examined him towards the  
9 end of the proceedings, and he also was  
10 critical of that, as I recall, in his  
11 testimony. Therefore, that lead us to  
12 question further the historical consultants  
13 when we had a chance to again cross-examine  
14 concerning possible other mitigation.

15                   MR. FITZGERALD: I guess I'm just  
16 going to suggest that most likely we arrived  
17 at a booklet or pamphlet related to farming  
18 because somebody at some point insisted that  
19 it be -- that mitigation be related to  
20 farming. And, you know, I can't think of a  
21 lot of things to mitigate the impact on a  
22 farm. But I would assume there was a lot of  
23 discussion. And although it might not be  
24 satisfactory, people arrived at a booklet and

1           some educational resources and so on. And so  
2           I guess I'd just be afraid that whatever we do  
3           ought to be in the same vein, if we decide to  
4           do something different than what's in here.

5                       PRESIDING OFFICER WEATHERSBY: It  
6           was my understanding, and maybe, Director  
7           Muzzey, you can correct me if I'm wrong, but I  
8           don't believe Newington had a lot of input  
9           into that mitigation decision. Is that  
10          typical that the mitigation package is worked  
11          out more between the Applicant and DHR, or do  
12          you -- or does DHR typically involve the  
13          community as part of that discussion?

14                      DIR. MUZZEY: My assumption would be  
15          that the community would have been involved  
16          with that discussion. That would have been  
17          the more typical pattern.

18                      MS. DUPREY: I feel like we're  
19          casting about a lot for something we don't  
20          need to be. Exhibit 248 is titled, "Newington  
21          Goals for Eversource Transmission Line  
22          Mitigation." It's quite specific. This is  
23          what the Town has asked for. So it seems to  
24          me that, if in fact we want to give a sum of

1 money, that we give a sum of money as the  
2 Chair woman has described to the Town in  
3 furtherance of their stated goals in 248. I  
4 don't know why we have to be necessarily  
5 looking to the master plan and other things to  
6 figure this out. They've given us a list that  
7 is evidenced in front of us in this  
8 proceeding. And so if the desire is to give a  
9 sum of money, I say we give it to the Town and  
10 we use this as the evidence that Attorney  
11 Iacopino's reminding us, that we need to be  
12 cognizant of, in furtherance of the goal of  
13 their choosing, along with Director Muzzey's  
14 suggestion, that it be spent within a certain  
15 amount of time. And I don't know if they  
16 report it to the DHR or what, that in fact it  
17 was spent for one of these goals, not all of  
18 which look historic to me I will admit. The  
19 fence at the soccer field doesn't look  
20 historic to me. But this is the mitigation  
21 that they've asked for. I mean, maybe the  
22 distinction here is it's not historic  
23 mitigation. Is that the concern that we have?  
24 It's not historic as opposed to maybe

1           aesthetics?

2                       MR. FITZGERALD: Well, I don't think  
3           Exhibit 248 is Newington's goals for the  
4           entire mitigation of the line through  
5           Newington. You know, their No. 1 is construct  
6           it underground. But then they say if you  
7           can't do that, then -- but it's not specific.  
8           I think what we're talking about is specific  
9           mitigation for impacts to the Alfred Pickering  
10          historic resource.

11                      PRESIDING OFFICER WEATHERSBY: I  
12          recall that this was their suggested  
13          mitigation to deal with properties that were  
14          still in the historic district, even though  
15          Pickering Farm is not. But it's on the line,  
16          just over the line. Probably should be in the  
17          district, but it's not, as Director Muzzey  
18          already talked about.

19                      So let's try to get a sense of  
20          where we are. Do people feel as though we  
21          should do something beyond the booklet? Is  
22          there anyone who doesn't feel we should do  
23          something beyond? Ms. Duprey and Mr.  
24          Fitzgerald feel as though the booklet's

1 sufficient mitigation. Mr. Shulock, Mr. Way,  
2 Mr. Schmidt, Ms. Muzzey and myself feel as  
3 though we should do more. Is that --  
4 Director Muzzey? Mr. Way's shaking his head  
5 "Yes" and other people "Yes."

6 MR. WAY: I'm not going to die for  
7 this one, but I don't see the value of a  
8 hundred copies.

9 MR. SCHMIDT: I do as well at the  
10 end of the day.

11 PRESIDING OFFICER WEATHERSBY:  
12 Director Muzzey.

13 DIR. MUZZEY: I think it would be  
14 more responsive to the concerns presented to  
15 us from the community of Newington if  
16 additional mitigation were supplied.

17 PRESIDING OFFICER WEATHERSBY: So it  
18 sounds like a majority of the board wishes us  
19 to go beyond or instead of the booklet.

20 MR. WAY: But if I could, as Ms.  
21 Duprey mentioned, I would opt to keep it as  
22 simple and flexible as possible, non-  
23 prescriptive, based upon what has been  
24 presented to us, working with DHR and the

1 conditions that were put forth by Director  
2 Muzzey.

3 PRESIDING OFFICER WEATHERSBY: So  
4 I'm going to put you on the spot. What's your  
5 proposal? What's the first step of your  
6 proposal to talk about?

7 MR. WAY: In terms of a dollar  
8 figure?

9 PRESIDING OFFICER WEATHERSBY: Just  
10 what you think the condition should read, both  
11 in dollar and terms.

12 MR. WAY: I actually thought your  
13 amount of 20,000 was a fair amount to get some  
14 things done. And in terms of the actual  
15 wording, I might like to think about that a  
16 little bit. But I mean, the only thing I'm  
17 not sure of is who it should go to. Should it  
18 go to the association or the Town of Durham?

19 DIR. MUZZEY: I don't want to put  
20 you on the spot, but we're talking about  
21 Newington.

22 MR. WAY: I'm sorry.

23 DIR. MUZZEY: So your worry is over.

24 MR. WAY: No, no. I was thinking --

1 I'm sorry.

2 MR. FITZGERALD: Durham was very  
3 excited.

4 DIR. MUZZEY: Sorry, Durham.

5 MR. WAY: Sorry, Durham.

6 PRESIDING OFFICER WEATHERSBY: He  
7 meant Newington but said Durham.

8 MR. WAY: You almost walked out of  
9 this, Todd. So, my apologies.

10 So, yeah, I would say probably  
11 \$20,000. I think it also should have the  
12 ability of switching out the funds that would  
13 have been done on the booklet and be used  
14 towards that \$20,000. Or are we getting  
15 overly complicated at that point?

16 MR. FITZGERALD: Hmm-hmm.

17 MR. WAY: I'm hearing "Yes."

18 MS. DUPREY: Hmm-hmm.

19 MR. SHULOCK: I thought the four of  
20 you were talking about the booklet plus  
21 something. Or are you talking no booklet at  
22 all?

23 MR. WAY: I see no value to the  
24 booklet myself, particularly because the

1 community said, as I recall, that there was  
2 already a booklet in place. I mean, we can  
3 keep it but --

4 PRESIDING OFFICER WEATHERSBY: I see  
5 the booklet as being an option for them; if  
6 they have \$20,000, that they can use it for  
7 the booklet if they'd like, or they could use  
8 it on something else. But that's a decision  
9 for the Town. I see it go either -- what I  
10 meant when I was polling everyone was do we  
11 just do a booklet, or do we do funds that can  
12 be used for a booklet or some other project.

13 MR. SCHMIDT: Right. That's the way  
14 I understood it. I think 20,000 is a fair  
15 number, and the Town can choose to use the  
16 money towards the booklet. I think the money  
17 should go to the Town, targeted for historic  
18 preservation.

19 DIR. MUZZEY: My suggestion would be  
20 for the funding to go to the Town to work in  
21 partnership with the Historic District  
22 Commission to achieve preservation goals for  
23 the community.

24 PRESIDING OFFICER WEATHERSBY: With

1 or without oversight of DHR?

2 DIR. MUZZEY: I would suggest the  
3 continuing oversight of the DHR.

4 MR. WAY: And that should be right  
5 in the condition.

6 DIR. MUZZEY: And I still believe  
7 that it's important that whatever the activity  
8 is they fund provide wide public benefit, that  
9 there be a time frame attached to its  
10 expenditure, and that they provide reporting  
11 back to the SEC as to how the funds were  
12 utilized.

13 MR. WAY: Last time was two years,  
14 as I recall, for the booklet.

15 MR. FITZGERALD: Yes.

16 MR. WAY: I think that's sufficient.

17 DIR. MUZZEY: It was actually two  
18 years for the booklet, and then there was the  
19 public presentation that would follow. So I  
20 think two years is kind of too short.

21 MR. WAY: You think so?

22 DIR. MUZZEY: Yeah.

23 MR. SCHMIDT: I agree. I was  
24 thinking five or ten. When a project goes

1 through an entire process, it certainly would  
2 take more than two years, and that's if they  
3 choose to use it for a project type of issue.  
4 So I was thinking five to ten.

5 MR. WAY: So, five to ten to spend  
6 \$20,000?

7 DIR. MUZZEY: I'd be comfortable  
8 with five years. I mean, \$20,000 is not that  
9 much money. What may add to the project time  
10 frame is if they actually use that to leverage  
11 other funding. But I still think five years  
12 is probably a good target goal. And they  
13 would have the opportunity to seek an  
14 amendment if needed.

15 MR. SCHMIDT: When I went to the  
16 higher end, I was thinking for a match.

17 And maybe, Director Muzzey, you can  
18 help me. If a town was to apply for some  
19 sort of matching grant, what is the current  
20 wait for that? Is there a process to get  
21 into a program or to get approved for funds,  
22 and the backlog is maybe several years or no  
23 or...

24 DIR. MUZZEY: It really depends on

1 the program. Common preservation-related  
2 grant programs in New Hampshire are the  
3 Conservation License Plate Program, as well as  
4 the Land and Community Heritage Investment  
5 Program. So it's not a question of how long  
6 the backlog is, it's more a question of how  
7 competitive the grant round is, whether or not  
8 a project was chosen for the round. Those  
9 rounds occur every year. And so, you know, in  
10 the event that the town did seek to apply for  
11 a grant, they would still, within the  
12 five-year time frame, would have time to apply  
13 for the next round.

14 MR. SCHMIDT: Okay.

15 MR. WAY: But even, Director Muzzey,  
16 your idea of keeping this flexible, I think if  
17 they have an opportunity that came up that  
18 extended beyond five years, Mr. Schmidt's time  
19 frame, I think that's fine as well.

20 MR. SCHMIDT: Yes, I'd be fine with  
21 that. What I'm concerned about is there's a  
22 project for 100,000 and they go for a match,  
23 get 20,000 for a match. I don't know about  
24 the bureaucratic delay, if it's doable. But

1 if we could build in some sort of process  
2 that's initiated within the five years or  
3 something like that, I'm fine with that.

4 PRESIDING OFFICER WEATHERSBY: So it  
5 sounds like we have a five-year term unless  
6 extended by agreement between Town of  
7 Newington and DHR, with a progress report  
8 perhaps to the SEC at that five-year time  
9 period or before, when the funds are spent.

10 Attorney Iacopino, do we have any  
11 issues regarding the state agency with  
12 changing the terms of permits, or is there  
13 anything there we need to be thinking of?

14 MR. IACOPINO: Well, it depends what  
15 you decide to do. If you -- RSA 162-H:7(a)  
16 says that if you intend to propose certificate  
17 conditions that are different than those  
18 proposed by the agencies having permitting or  
19 other regulatory authority, you have to notify  
20 the agency to get their input on whether or  
21 not what you're proposing is in conformity  
22 with the law and whether or not it's  
23 appropriate in light of the agency's statutory  
24 responsibilities. I don't know that this is a

1 change because I don't know exactly what it is  
2 that you're proposing. Right now there's a  
3 Memorandum of Understanding that, as I  
4 understand it, there's a recommendation from  
5 DHR that you adopt the Memorandum of  
6 Understanding. I don't know that that's a  
7 condition. So, I don't know that that would  
8 actually trigger it.

9 DIR. MUZZEY: I don't believe it  
10 actually was a recommendation from the agency.  
11 It's from a letter dated August 1st, 2017. If  
12 the Site Evaluation Committee approves this  
13 project, the Project's application for  
14 certificate, the DHR/SHPO requests the  
15 following conditions be included: No. 1,  
16 condition the certificate upon compliance and  
17 stipulations in the mitigation documents  
18 executed by the DHR, the Corps and the  
19 Applicant. So I think we could characterize  
20 it as a "request." But if we don't condition  
21 the certificate, if awarded, on the rest of  
22 the mitigation stipulations, we're going to  
23 get into some pretty fancy wording.

24 MR. IACOPINO: I lost you at the

1 very end there. You consider this to just be  
2 a request for this condition. That's why I'm  
3 saying it's a recommendation, not a permit  
4 that has a condition in it.

5 DIR. MUZZEY: They have requested  
6 that four conditions be added to the  
7 certificate, if awarded. If we don't do  
8 No. 1, condition the certificate upon  
9 compliance with stipulations in the mitigation  
10 documents, we'll have to condition the  
11 certificate individually on all of these  
12 mitigation conditions. Or we can just say,  
13 no, it doesn't matter.

14 PRESIDING OFFICER WEATHERSBY: So  
15 that's a request, not a permit condition?

16 DIR. MUZZEY: Correct.

17 MR. IACOPINO: That was my first  
18 thought. I guess ultimately it depends upon  
19 what it is you want to try to do here. Is  
20 this something that's going to be in addition  
21 to what is in the MOU, or is it going to be  
22 something that changes the MOU?

23 PRESIDING OFFICER WEATHERSBY: My  
24 understanding of our discussion was that we

1           were going to leave the MOU alone, not require  
2           compliance with the section concerning the  
3           booklet at the SEC level, leave any agreement  
4           between the parties to the parties, and  
5           condition the certificate, on a separate  
6           condition, that a sum of, it's been suggested  
7           \$20,000, be given to the Town of Newington to  
8           work in concert with the Historic District  
9           Commission and New Hampshire DHR to decide how  
10          to spend those funds and to then spend those  
11          funds within five years. Is that -- it's not  
12          eloquently put, but basically what we've  
13          been -- is that everyone's understanding of  
14          what we're talking about as a certificate  
15          condition?

16                       MR. WAY: That's the bones of it,  
17                       yes.

18                       MR. IACOPINO: It's in addition to.

19                       DIR. MUZZEY: I feel it may be  
20                       better practice to take the avenue that our  
21                       attorney just mentioned about contacting the  
22                       state agency and suggesting whether the change  
23                       can be made and then just being able to make  
24                       the blanket statement that these agreement

1 documents are part of the certificate.

2 MR. FITZGERALD: Can I make a  
3 suggestion? Seems to me we could accept the  
4 condition of the MOA, MOU, whatever it is,  
5 with the exception of that one, that satisfies  
6 the SEC. Whatever the historic office wants  
7 to do beyond that is fine. And then we  
8 condition the Applicant spend an amount,  
9 \$20,000 or whatever, and delegate the  
10 authority for doing that to the historical  
11 office to work in conjunction with the Town of  
12 Newington and Newington Historic Commission  
13 and representatives of the Pickering Farm to,  
14 you know, implement a plan for the use of that  
15 money.

16 PRESIDING OFFICER WEATHERSBY:  
17 Trying to get that farm piece in there. Give  
18 you credit.

19 MR. FITZGERALD: I don't care. It  
20 doesn't necessarily have to be the Pickering  
21 Farm or something. But, you know --

22 PRESIDING OFFICER WEATHERSBY: I  
23 think there's been -- my understanding of the  
24 involvement with the folks that own Pickering

1 Farm is that they haven't been particularly  
 2 willing to have a lot of dialogue concerning  
 3 the Project. So I wouldn't want to condition  
 4 this on their approval or their input if they  
 5 do not want to participate in that process.

6 DIR. MUZZEY: One of my concerns is  
 7 I wouldn't want the Site Evaluation Committee  
 8 to put a state agency into an administrative  
 9 difficulty, where one of the aspects of their  
 10 agreement documents is now not part of the  
 11 certificate. I think that puts the agency in  
 12 a difficult position and reopens negotiations  
 13 on the agreement between the community, the  
 14 agency and the Applicant as to whether or not  
 15 that was an appropriate stipulation and what  
 16 should now be done with it. That's why I  
 17 would prefer to exercise what I believe I  
 18 heard is the Committee's option to go back to  
 19 the state agency, see whether the stipulation  
 20 can be changed within this document and then  
 21 have what I view as the need or solution where  
 22 the two documents just become part of the  
 23 certificate.

24 PRESIDING OFFICER WEATHERSBY: So,

1 Attorney Iacopino, could we then do an  
2 either/or condition where the Applicant and  
3 parties to the MOU will seek to replace that  
4 condition with that as suggested by the  
5 Committee and amend that agreement? And if  
6 that does not occur, then instead we will then  
7 go to what we said where the Committee then  
8 will impose that condition? That pretty much  
9 assures that the agreement will be amended.

10 MS. DUPREY: Can we not just assign  
11 an arbitrary value to the pamphlet, like let's  
12 say it's \$1500 and the grant's another  
13 \$18,500, and let them figure out how to get  
14 out from under the pamphlet? I just think  
15 that we're doing too much here. I don't think  
16 we need to do all this. Maybe you think the  
17 pamphlet's worth \$500. I don't know what it  
18 is. But whatever it is, let's just come up  
19 with our own number and let the DHR thing  
20 alone, and the parties that are expert at  
21 this, they can figure it out.

22 PRESIDING OFFICER WEATHERSBY: I  
23 think we are spending too much time on this.  
24 I agree.

1 (Various SEC members voicing agreement.)

2 PRESIDING OFFICER WEATHERSBY: But I  
3 don't think that solution solves Director  
4 Muzzey's -- you know, why don't we take a  
5 10-minute break, get clear our heads a little  
6 bit, maybe talk to counsel and then come back.

7 (Recess was taken at 2:39 p.m.

8 and the hearing resumed at 2:50 p.m.)

9 PRESIDING OFFICER WEATHERSBY: So  
10 let's resume our deliberations concerning  
11 mitigation for the Alfred Pickering Farm's  
12 work site. Ms. Duprey, I think you may have a  
13 suggestion.

14 MS. DUPREY: I did. And I wouldn't  
15 be true to myself if I didn't first try to put  
16 something on the record. So I would once  
17 again like to call people's attention to  
18 Patricia O'Donnell's remarks towards the end  
19 of her testimony. I went back and looked at  
20 the transcript, and of course did not note the  
21 page, but noted in there that she was asked  
22 about mitigation. And she was asked about  
23 this pamphlet specifically. And I think it  
24 might have actually been you, Madam Chair, who

1           asked her were there other kinds of  
2           mitigation -- or someone did, let me say  
3           that -- were there other kinds of mitigation  
4           that she could suggest. And she suggested  
5           perhaps a workshop on rebuilding your stone  
6           wall, and I think another one on historic  
7           stone walls. So I just put that out there  
8           because I think that's very much in keeping  
9           with the kind of thing we're looking at here.  
10          And she went on to say there's all kinds of  
11          things you could do. It's such a rich pallet.  
12          And by that, I don't think she was really  
13          referring to going and spend money. I think  
14          she was referring to the kind of things you  
15          can do to educate the public, which this is  
16          very much in keeping with that. So I think it  
17          was an appropriate mitigation effort. That  
18          said, I'm in the minority. I can count heads.  
19          And we've been struggling with how to manage  
20          this situation, and I think the best thing  
21          that we can do is to set aside an amount of  
22          money -- and I'm going to propose \$20,000;  
23          that's a number that's been discussed here,  
24          and people can take issue with that -- and to

1 say that we unlink it from the MOU and MOA and  
2 leave those documents as they are. I don't  
3 think going back to the agency is a good idea.  
4 I think it's just overly complicated, and the  
5 lawyers will spend \$2,000 figuring that out.  
6 So let's just give a sum of money. Give it to  
7 the Town to be spent in furtherance of their  
8 notion of mitigating the Pickering Farm, with  
9 oversight or review by DHR, and to be spent  
10 within five years. And I think that's it. I  
11 think that's enough.

12 PRESIDING OFFICER WEATHERSBY: So  
13 just to make sure I understand what you're  
14 proposing, it's what we were talking about  
15 before the break, but uncoupling it from the  
16 requirement in the MOU that the booklet and  
17 educational presentation be done.

18 MS. DUPREY: That will remain.

19 PRESIDING OFFICER WEATHERSBY: So  
20 that will remain.

21 MS. DUPREY: Yes.

22 PRESIDING OFFICER WEATHERSBY: And  
23 this will be a condition that the Committee  
24 imposes in addition to whatever is in that

1           MOU.

2                       MS. DUPREY:   Correct.

3                       PRESIDING OFFICER WEATHERSBY:   Am I  
4           understanding you correctly?

5                       MS. DUPREY:   Yes.   And if the  
6           parties on their own separately decide they  
7           want to approach DHR to unencumber themselves  
8           of the booklets, I think that's between the  
9           parties and DHR.   I don't think that we need  
10          to be in the middle of that.   So I suggest  
11          that we do this separately; that it be in  
12          mitigation of the Pickering Farm, where there  
13          was a lot of consideration to going  
14          underground.   We're not doing that, so I think  
15          we're justified in giving a sum of money, if  
16          that's what we so decide.   And I think the  
17          only thing that's up in the air is \$20,000.  
18          I'm suggesting that as the number that you all  
19          had been tossing around before.   Thank you.

20                      PRESIDING OFFICER WEATHERSBY:  
21          Thank you.   I actually like your suggestion.  
22          We've all felt, and I think I vocalized and  
23          many of us have vocalized that there's value  
24          to what has been proposed as mitigation, and

1 we just didn't feel it was far enough. So I  
2 actually like that proposal. I'll just leave  
3 it at that.

4 How do other people feel about this  
5 proposal, both uncoupling and dollar amounts,  
6 or any other terms concerning the proposal?

7 MR. WAY: I like the proposal, and I  
8 like the uncoupling. I accept not changing  
9 the agreements whatsoever.

10 Did you mention about reporting  
11 back to the SEC? I think we probably want  
12 to --

13 MS. DUPREY: I did not.

14 MR. WAY: We probably would like to  
15 keep that in there. I think I'm good.

16 MR. SCHMIDT: I'm good as well.

17 PRESIDING OFFICER WEATHERSBY: And  
18 Director Muzzey, you look like you're going to  
19 say something.

20 DIR. MUZZEY: I like that solution  
21 as well. It's far more efficient, far more  
22 straightforward. I do have a concern about  
23 the dollar value. We're talking about  
24 preservation activities here that are being

1 done by professionals, potentially talking  
2 about doing things to repair historic  
3 buildings, potentially large projects, trying  
4 to match those large projects. I actually had  
5 a dollar figure in mind closer to \$50,000. I  
6 certainly would be willing to compromise on  
7 that. But I just think not too much in this  
8 day and age with professionals involved can be  
9 accomplished with \$20,000.

10 MS. DUPREY: I guess I'm not sure  
11 we're the only ones who have to contribute to  
12 the pool of money. So I think 50,000 is  
13 really a lot. And I'm going to leave it to  
14 others to say how they feel about it. But  
15 it's higher than what I had in mind, that's  
16 for sure.

17 MR. SCHMIDT: I agree. Like I  
18 mentioned earlier, there's opportunity to use  
19 whatever money we allocate as a matching fund  
20 to leverage other -- I'm not sure what  
21 percentage you have the ability to match. But  
22 say it's 80 percent or whatever. I think  
23 20,000 is a comfortable level.

24 MR. WAY: I think I'll stick with

1           20,000.

2                       PRESIDING OFFICER WEATHERSBY: I'm  
3 getting the sense that 20,000 we feel is  
4 enough. I can go higher. Having done some  
5 preservation projects, coordinated a few  
6 myself, I know that that doesn't go far by a  
7 portion of a project. But then, you know,  
8 \$20,000, it depends on what the mitigation is.  
9 Twenty thousand could go a long way towards a  
10 stone wall educational seminar and, you know,  
11 some of the other smaller projects. So I'd  
12 love to go higher, but I understand there has  
13 to be -- I think 20 would be a minimum. Maybe  
14 we could go to 30 or 40. But I'm sensing 20  
15 is the amount that the group is kind of  
16 settling on. Is that --

17                       Mr. Shulock, how are you feeling?

18                       MR. SHULOCK: I'm actually  
19 indifferent to the amount. I'm just happy  
20 that the pamphlet remains because I think it  
21 actually would be beneficial to the town to  
22 have a historically, professionally researched  
23 and prepared booklet on the history of the  
24 town made available to everybody. I think

1           that that will have a lasting effect well  
2           beyond trimming the tree or whatever they  
3           might do with the money. So I'm comfortable  
4           with the proposal as it is, and I'll look to  
5           other people to decide an amount.

6                       PRESIDING OFFICER WEATHERSBY: So  
7           I'm sensing \$20,000 as not interfering at all  
8           with the MOU. Are people -- is anyone  
9           objecting to that?

10                      [No verbal response]

11                      PRESIDING OFFICER WEATHERSBY: So,  
12           none.

13                      MR. FITZGERALD: Sold.

14                      PRESIDING OFFICER WEATHERSBY: Going  
15           , going, gone. All right. For now, let's  
16           have that as our condition and say, "It's not  
17           over until the fat lady sings," and we can  
18           revisit it if someone really wants to. But  
19           let's move on. I don't even know where we  
20           are. Director Muzzey will reorient us.

21                      DIR. MUZZEY: Why don't we continue  
22           with our discussions of the stipulations in  
23           the Memorandum of Understanding. And we can  
24           travel across Little Bay to Item II, the

1 Durham Point Historic District.

2 The Durham Historic Association has  
3 been very active in identifying a variety of  
4 stone features that are within the project  
5 area or are adjacent to the project area.  
6 These include stone walls, stone fences,  
7 cellar holes, some stone features that relate  
8 to the railroad corridor, mile markers and  
9 culverts. We've heard discussions of  
10 foundations, quarries, grave sites and burial  
11 grounds. And so the stipulation has  
12 identified a number of stone walls within the  
13 Durham Point Historic District and lays out a  
14 process for either avoiding or minimizing the  
15 impacts to those stone walls. This would be  
16 during both construction and maintenance of  
17 the line. We have mapping that identifies  
18 WP-32, 33, all of these walls and where they  
19 appear on plan sheets.

20 I will add that we also had  
21 discussion during testimony, I believe both  
22 with the construction or environmental panel,  
23 as well as the historical consultants, I  
24 believe Vicky Bunker or Cherilyn Widell, that

1 discussed the fact that one of the measures  
2 to avoid the stone walls is the use of timber  
3 matting. It's a technology or tool that was  
4 used initially with wetlands, wetlands  
5 impacts and avoiding those. There's some  
6 concern about the fragility of some of the  
7 stone features within the project area. And  
8 so the Applicant has agreed to first test  
9 whatever method is used on the stone wall,  
10 whether it's the use of timber matting and/or  
11 timber matting in conjunction with a bridge,  
12 and then to be assured, given the way the  
13 equipment that would cross the wall in that  
14 situation, that the stone wall is not damaged  
15 by it and then report back to the Division of  
16 Historical Resources in order to confirm  
17 that's appropriate treatment for these  
18 fragile resources.

19 We also had quite a bit of  
20 discussion of the granite quarry and the  
21 stone remains affiliated with those within  
22 and adjacent to the project area. Those are  
23 addressed in Item II. Again, the use of  
24 timber matting is suggested there as a

1 protective measure.

2 Moving on to Part III of the  
3 stipulations covering the Newmarket and  
4 Bennett Roads Farms Historic District,  
5 another large historic district with a lot of  
6 stone walls that may or may not be impacted  
7 by construction and maintenance. And again  
8 we have the stone walls identified and the  
9 treatments specified for those walls.

10 Administrative conditions follow.  
11 You'll notice some similarities with the  
12 administrative conditions in the MOA that we  
13 discussed first, some general provisions,  
14 including the use of environmental inspectors  
15 who have been trained in the identification  
16 and appropriate treatments for cultural  
17 resources such as human remains,  
18 grave-associated artifacts, other types of  
19 unintended discoveries that sometimes happen  
20 on construction projects, dispute resolution,  
21 monitoring and reporting, similar to the  
22 other document. And then amendments and  
23 termination clauses -- I'm sorry. I think I  
24 have in my copy -- I've actually skipped a

1           portion of the Memorandum of Agreement, that  
2           if folks don't mind we could circle back to.  
3           Surprised none of my Committee partners  
4           pointed my mistake out, but I appreciate  
5           that.

6                           Amendment to the Memorandum  
7           agreement. That's the agreement that  
8           includes the U.S. Army Corps of Engineers  
9           where a number of plans will assist the  
10          Applicant in constructing the Project in a  
11          manner that avoids harm to historic  
12          resources. Plans are dated May 2nd, 2018,  
13          and they are: Historic properties monitoring  
14          plan, unanticipated discovery plan, historic  
15          properties training plan, and a curation and  
16          repatriation plan. So these plans provide  
17          further procedures, as well as standards for  
18          how historic properties should be treated  
19          within the corridor. They specify what  
20          qualifications are needed for professionals  
21          who will be caring for them and how they will  
22          be integrated into other construction  
23          documents and maintenance processes.

24                           MR. SHULOCK: And for people looking

1 for it, that all begins on PDF Page 38.

2 MS. DUPREY: That's Appendix B?

3 MR. SHULOCK: Appendix C.

4 DIR. MUZZEY: Did anyone have  
5 further comments or questions about the  
6 agreement documents or the associated plans  
7 that are meant to ensure their success?

8 PRESIDING OFFICER WEATHERSBY: So,  
9 Director Muzzey, I understand there's four  
10 plans that DHR has required and has reviewed  
11 and approved: Historic properties monitoring  
12 plan, an unanticipated discovery plan,  
13 historic properties training plan, and  
14 curation and repatriation plan. Those have  
15 each been completed and accepted by or  
16 approved by DHR; is that correct?

17 DIR. MUZZEY: That's correct.

18 PRESIDING OFFICER WEATHERSBY: Thank  
19 you.

20 MS. DUPREY: Sorry. I was  
21 referencing plan plans, maps, and I see these  
22 plans now in Appendix C. Thank you.

23 DIR. MUZZEY: If we're set with that  
24 topic, I think we have a couple more that we

1 need to cover, one being the additional  
2 concerns of the Durham Historic Association  
3 and then the concerns presented by the Counsel  
4 for the Public's historical expert.

5 PRESIDING OFFICER WEATHERSBY: I  
6 don't think we've reviewed -- have we reviewed  
7 in detail the proposed MOU between Eversource  
8 and the Town of Durham? Because there are  
9 some conditions in there that we may want to  
10 extend beyond just the Town of Durham. That  
11 was Exhibit 270.

12 MS. DUPREY: Exhibit 70 did you say?

13 PRESIDING OFFICER WEATHERSBY: 270.

14 DIR. MUZZEY: I believe that also  
15 relates to some of the concerns of the Durham  
16 Historic Association.

17 PRESIDING OFFICER WEATHERSBY:  
18 Pretty much addresses those concerns --

19 DIR. MUZZEY: So I think we look at  
20 those together.

21 PRESIDING OFFICER WEATHERSBY: Okay.  
22 Great.

23 DIR. MUZZEY: Let's start with  
24 Exhibit 270.

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MR. WAY: Looking at Page 9,  
electronic Page 9.

(SEC members reviewing document.)

DIR. MUZZEY: Everybody all set? So  
under the category of Historical Resources,  
the Applicant has agreed to take all  
appropriate and necessary steps to avoid  
and/or minimize impacts to historic resources  
in the Town of Durham. Particularly noted are  
historic stone walls and cellars that are in  
the easement area. Eversource will monitor  
work adjacent to those resources, seeking to  
avoid or minimize impacts, and they will also  
have agreed to comply in this document with  
the four plans we were just talking about in  
the mitigation documents with the Division of  
Historical Resources. B notes that in the  
event new information or evidence of historic  
sites, archeological sites or other resources  
is found within the direct area of potential  
effect -- so this is talking about things that  
will be directly affected by construction or  
operation, ground-disturbing activities, that  
type of thing -- Eversource agrees to report

1 the findings to the SEC, the DHR, the Town of  
2 Durham, the Durham Historic Association, with  
3 a notice that a report has been filed. Any  
4 change in construction plans that could affect  
5 resources need to -- the Applicant needs to  
6 notify the SEC, DHR, Town of Durham. That's a  
7 commitment that's been made in a number of  
8 other places as well.

9 Under D, the Applicant will be  
10 taking all necessary and appropriate steps to  
11 protect the following historic resources in  
12 Durham: We have stone walls listed in a  
13 letter that I know is on the record, dated  
14 May 17th, to protect walls situated in  
15 wetlands in Durham shall be protected by  
16 timber mats. Impacts to other stone walls,  
17 boundary stone walls within the rights-of-way  
18 or access roads shall be avoided through the  
19 implementation of the measures that we've  
20 been talking about, either not traversing the  
21 wall, traversing through an existing breach,  
22 traversing using timber matting or a  
23 temporary bridge, or placing a work pad on  
24 top of the timber matting to alleviate -- to

1           elevate the work pad above the wall. This is  
2           where we find the commitment to do  
3           ground-penetrating radar of the Samuel Hill  
4           family burial site near Main Street in  
5           downtown Durham. And the Applicant commits  
6           to complying with all the recommended  
7           requirements of the unanticipated discovery  
8           plan, which is Appendix C of the Memorandum  
9           of Understanding, between the SHPO office and  
10          the Applicant. And I would also note that,  
11          as I mentioned earlier today, cemeteries and  
12          grave sites are protected under other state  
13          laws as well. And under 227-C:8 there are  
14          very detailed instructions as to how the  
15          state archeologist, as well as the medical  
16          examiner, get involved if human remains are  
17          found and the steps that need to be taken.  
18          So that protection is very well and very  
19          specifically spelled out in state law.

20                   MR. WAY: Director Muzzey, in terms  
21          of the training of workers to identify remains  
22          as they encounter them possibly during  
23          construction, in your opinion, your  
24          experience, that's effective and that's

1 something we can rely on?

2 DIR. MUZZEY: I was going to flip to  
3 the actual verbiage on that in the plan. I  
4 can speak in general. In my experience,  
5 people do not like to encounter human remains,  
6 or they're concerned with human remains --

7 MR. WAY: I think that goes without  
8 saying.

9 DIR. MUZZEY: I think at this point  
10 in our day it does cause a chuckle. But it's  
11 also a very sensitive issue, and it can become  
12 an even more sensitive issue if they're Native  
13 American human remains. And we have some  
14 special requirements placed upon us with  
15 those.

16 There's both orientation training  
17 as well as supervisor training that is part  
18 of the plan. This is in addition to what  
19 Applicants are typically required to do. And  
20 so with additional training, my hope would be  
21 that compliance with this would be even more  
22 secure.

23 MR. WAY: And in the past, your  
24 experience is that that has been effective.

1 The training has sufficed.

2 DIR. MUZZEY: You know, I may not be  
3 remembering accurately at this point in the  
4 day, but this training represents a new type  
5 of mitigation measure to many, many of our  
6 projects. So I can't say that, you know,  
7 we've done training six times and it's been a  
8 hundred percent helpful. I'm assuming it will  
9 be helpful, and it is more effort than other  
10 projects have put forth. So --

11 MR. WAY: Certainly can't hurt.  
12 Fair enough.

13 MS. DUPREY: I would just add to  
14 that, that one of us asked that of one of the  
15 experts, and her answer was that generally  
16 people very much wanted to comply with these  
17 terms and, you know, felt that -- my words,  
18 not theirs -- it would be being a "good  
19 citizen," shorthand way of describing it. So  
20 she was an expert who hired those people. She  
21 was asked if she would be the expert  
22 overseeing this, and she said she hadn't been  
23 retained yet. But just for whatever that's  
24 worth.

1 DIR. MUZZEY: Okay. So, back to the  
2 Town of Durham/Eversource MOU. Bottom of PDF  
3 9, top of PDF 10, we continue with the quarry  
4 sensitive area. Boundary shall be expanded  
5 west. We heard testimony from the Durham  
6 Historic Association that they had concerns  
7 about how the site was defined. And that's  
8 specified here to include the granite slab  
9 bench near the top of the steep quarry cut,  
10 and that would be flagged during construction  
11 in order to protect it. And then there's also  
12 a fifth commitment for the Applicant to use  
13 timber matting on the Class VI portion of  
14 Beech Hill Road. That's the road that the  
15 Durham Historic Association felt was  
16 originally part of the Province Road, a very  
17 historic road from early in the state's  
18 history, and protect the historic stone walls  
19 and wetlands that surround it. On Foss Farm  
20 Road, another use of timber matting as a  
21 protective measure shall be taken along with  
22 efforts to protect the historic stone walls  
23 and wetlands.

24 It's my understanding that the

1           Durham Historic Association, with these  
2           additions to the Town's MOU, were satisfied  
3           with the protections that would be put in  
4           place for the properties that they felt were  
5           locally important.

6                     Does anyone have any further  
7           comments or questions about these as well?

8                     MS. DUPREY: Did you say we were  
9           going to go through the Durham Historic  
10          Association matters separately, or were they  
11          encompassed fully in this review we just did?

12                    DIR. MUZZEY: I think it would be  
13          wise to look at perhaps their post-hearing  
14          brief and see if there are any additional  
15          things that we felt should be incorporated.

16                    MS. DUPREY: I was just going  
17          through the post-hearing brief again. I read  
18          it last weekend and just wanted to comment  
19          that I thought it was really an excellent  
20          brief. We decided differently than they've  
21          asked for in a number of cases, but I just  
22          found it clearly written, very helpful, and I  
23          appreciated it.

24                    DIR. MUZZEY: Did you note any

1 additional areas that may require protections?

2 MS. DUPREY: Flipping through it  
3 right now, thanks.

4 DIR. MUZZEY: Oh, okay.

5 MR. FITZGERALD: Do you have an  
6 exhibit number?

7 MS. DUPREY: Of the brief?

8 MR. FITZGERALD: Oh, oh, okay.

9 (SEC members reviewing documents.)

10 PRESIDING OFFICER WEATHERSBY: I  
11 think one thing I noted in my notes regarding  
12 archeological resources was the issue raised  
13 by DHA. They were disputing Dr. Bunker's  
14 determination that the Nathaniel Norton Cellar  
15 was not a cellar, and they wanted examination  
16 of that site by an independent expert. I  
17 think there are other concerns concerning  
18 archeological issues that were resolved by Dr.  
19 Bunker. Personally, I take a lot of faith in  
20 Dr. Bunker's analysis and I don't feel that's  
21 necessary. I think it was very thorough. But  
22 that's something that they're asking for that  
23 was not resolved as part of the archeological  
24 resources.

1 MR. WAY: Which page are you on?

2 PRESIDING OFFICER WEATHERSBY: I  
3 just have it in my notes, but I can probably  
4 find it if you give me a minute.

5 MR. FITZGERALD: While you're  
6 looking, I would concur. Dr. Bunker's  
7 testimony on that was pretty solid and  
8 convincing that she had given it a very  
9 adequate and thorough evaluation, in my  
10 opinion.

11 MS. DUPREY: I would also note that  
12 a major point in this brief is about the APE.  
13 And I thought Director Muzzey's comparison of  
14 the APE to what's done with telecommunications  
15 towers that are quite a bit taller than this  
16 was very instructive and made sense to me as  
17 to why the APE was set as it was. And that  
18 didn't get -- wasn't discussed when the  
19 hearing was going on, so the DHA didn't have a  
20 chance to hear that. But it was useful for me  
21 to understand that.

22 PRESIDING OFFICER WEATHERSBY: I  
23 actually don't see in their brief the issue  
24 about the Nathaniel Norton Cellar Hole. It

1 must have been in another party's... or  
2 perhaps it was addressed, but I don't see it  
3 in the brief.

4 MR. SHULOCK: So it looks like they  
5 did have a disagreement on the Samuel Hill  
6 family burial site?

7 DIR. MUZZEY: Hmm-hmm.

8 MR. SHULOCK: Is that right?

9 DIR. MUZZEY: Hmm-hmm. And that's  
10 the site when I was outlining the conditions  
11 in the Town of Durham and Eversource MOU where  
12 the Applicant has committed to doing  
13 ground-penetrating radar in order to determine  
14 whether that site actually does contain a  
15 grave shaft or if it is more of a  
16 commemorative placement of a grave stone in a  
17 general location of where the community feels  
18 that person was buried.

19 MR. WAY: Mr. Shulock, do you have a  
20 page number where the Samuel Hill burial was  
21 mentioned?

22 MR. SHULOCK: Page 31 of the brief.

23 (SEC members reviewing documents.)

24 MR. WAY: So that's addressed.

1                   DIR. MUZZEY: As I'm sure we all  
2 recall, the Durham Historic Association had a  
3 rather long list of stone walls and stone  
4 features that are present within the  
5 right-of-way, both within identified and  
6 evaluated historic districts, such as Durham  
7 Point and the Bennett Road Historic District,  
8 and some that were outside of those areas as  
9 well. And it has been a challenge to locate  
10 all of those stone features and determine  
11 whether or not they're within an already  
12 historic district or not. Dr. Bunker's final  
13 testimony addresses some of those features, as  
14 does the final or supplemental testimony of  
15 Cherilyn Widell. They went back and looked  
16 through the list of DHR concerns and responded  
17 to them, and that's here in one of the  
18 exhibits. I believe it's Applicant's Exhibit  
19 143 for Widell's responses, which we haven't  
20 looked at yet. So if we turn to Page 12 and  
21 then 13, it begins a list of approximately 50  
22 areas of concern. Let me just flip ahead.  
23 17 -- I'm sorry. I overstated.

24                   So I found this a very careful

1 review. I don't know if everyone else has  
2 had the opportunity to go through these  
3 concerns. They address both above-ground and  
4 below-ground resources. The types of stone  
5 resources that the DHA has been referring to  
6 are sort of on the edge of a below-ground or  
7 above-ground concern. They're both of them.  
8 And an interdisciplinary approach such as the  
9 one the Applicant took is helpful in that  
10 matter.

11 At the risk of suggesting another  
12 plan be added to the duties of the Applicant  
13 in order to fully address the Town of  
14 Durham's and the DHA's concerns for these  
15 types of stone features on the landscape,  
16 particularly those outside of the designated  
17 historic districts, I think some of the  
18 conditions could be combined into a plan that  
19 provides stewardship for these areas both  
20 during construction and operations. We know  
21 from experience that, you know, it's natural  
22 for there to be a great detail of attention  
23 placed on things during construction.  
24 Although, given the importance of these areas

1 to the local community, it would be wise to  
2 have a plan in place in order to ensure their  
3 protection and appropriate treatment through  
4 the life of the Project, including  
5 maintenance activities during operations.

6 So I would like to suggest, in  
7 order to make sure we have taken into  
8 consideration all of these smaller features  
9 on the landscape, that that type of plan be  
10 put in place to ensure their stewardship and,  
11 you know, provide the Applicant with an  
12 opportunity to demonstrate the stewardship of  
13 these resources.

14 PRESIDING OFFICER WEATHERSBY: And  
15 Director Muzzey, before we get into a  
16 discussion of that, backing up to DHA for a  
17 moment, is it fair to say that every site  
18 identified by DHA as potentially being an  
19 impacted historic site has been evaluated by  
20 the Applicant, and either a mitigation measure  
21 has been suggested for it or it has been  
22 determined that there's been no adverse  
23 effect -- no impact to that site? It seems  
24 like the review, I think it was 31, however

1 many resources it was attached to Ms. Widell's  
2 testimony, seemed to address each of the sites  
3 brought to her attention by DHA. And I think  
4 there was some discussion with her about this  
5 point as kind of closing that loop if it's  
6 still open.

7 DIR. MUZZEY: There were some stone  
8 features outside of the designated historic  
9 districts that the DHA had concern with. And  
10 my interpretation of the DHA concerns were not  
11 just whether the construction of the Project  
12 would have an adverse or no adverse effect on  
13 those features, but as we move forward in  
14 time, and with maintenance activities, how the  
15 stone features may be treated in that area.  
16 So even if we had no adverse effect on a  
17 resource today, they were questioning whether  
18 or not future maintenance activities may  
19 present some adverse effects. And so my  
20 intent would be that if a stone feature, or  
21 whatever the appropriate title may be,  
22 stewardship plan was put into place, that that  
23 would provide additional insurance that those  
24 locally important features would be cared for

1 in the future.

2 PRESIDING OFFICER WEATHERSBY: By  
3 way of stone features, you're referring not  
4 only to walls, but cellar holes and -- could  
5 you tell us what you mean by "stone features"?

6 DIR. MUZZEY: Stone walls and  
7 fences, stone features that may relate to the  
8 railroads, construction such as culverts and  
9 mile markers. There are various types of  
10 foundations. There's the quarrying  
11 activities.

12 PRESIDING OFFICER WEATHERSBY: So,  
13 pretty much any man-made stone creation, but  
14 not a boulder field. There has to be  
15 something that's created by humans through  
16 history. Is that --

17 DIR. MUZZEY: Something that's been  
18 altered for human activity.

19 PRESIDING OFFICER WEATHERSBY: And  
20 the reason for a plan, as I understand it, is  
21 not only to address construction issues, which  
22 I think for Durham this MOU does a pretty good  
23 job of, but extending it to other towns during  
24 construction, but also dealing with

1 maintenance, line maintenance, et cetera, for  
2 basically as long as the Project is in  
3 existence or through decommissioning?

4 DIR. MUZZEY: That would be my  
5 recommendation. I mean, I think there's an  
6 opportunity here for this line to actually  
7 provide important stewardship of these  
8 features. I think if this utility corridor  
9 had instead been available for various types  
10 of modern construction, those features would  
11 be lost. And I think the goals of having both  
12 the transmission line in place, as well as  
13 protecting these resources, can happen  
14 together and provide a tremendous amount of  
15 public benefit.

16 PRESIDING OFFICER WEATHERSBY: I  
17 have a concern, and maybe it's not a valid  
18 concern. But are we asking the Applicant to  
19 address not only impacts to the stone features  
20 that it creates, but also to somehow maintain  
21 these features as they are impacted by others?  
22 Or nature? I don't want to get -- I think a  
23 stewardship plan is they're basically adopting  
24 the care of these things through their life.

1           And while that would be wonderful, I think  
2           that's a burden to put on the Applicant to  
3           address, you know, somebody comes through on  
4           an ATV, and I don't know what, but, you know,  
5           it'll be an impact by someone else and they  
6           have to go out and fix it. I don't want --  
7           I'm hesitant to impose such a -- that kind of  
8           burden on them.

9                         DIR. MUZZEY: Well, that's  
10           understandable. Even within this project's  
11           development, we've seen record of local  
12           concerns and discussion of whether natural  
13           degradation had harmed the stone resource  
14           versus more active human interactions. So  
15           that may be something that needs to be  
16           discussed and communicated between local  
17           advocates and the Applicant. But I don't  
18           believe it needs to be a stumbling block for  
19           the entire plan.

20                        MR. FITZGERALD: I guess I'm raising  
21           a concern that the utility or Applicant  
22           doesn't have control over these lands. They  
23           have an easement and a right to construct  
24           their project, and therefore they have a

1 responsibility to ensure these historic  
2 archeological resources are not damaged. But  
3 do they have -- I mean, I don't want to say --  
4 I don't have any issue. I think, you know,  
5 the thought of trying to maintain these and  
6 ensure they're not damaged is a positive  
7 thought. But I guess my question would be:  
8 Is that the responsibility of the Applicant  
9 over the long term, where they don't have  
10 control over the property?

11 MS. DUPREY: Could you state what  
12 you want to do again? I'm sorry. I've  
13 forgotten, given how much discussion we've had  
14 here. And I just want to be sure, as I'm  
15 listening to what people are saying, I'm  
16 looking through the lens of what you actually  
17 suggested. And so I don't want to let go of  
18 that.

19 DIR. MUZZEY: These types of plans  
20 follow different names. So it could be called  
21 any number of things. But I would call it a  
22 "stewardship plan" for the historic stone  
23 features that exist within the corridor. And  
24 it could be specified during Applicant's

1 operations, maintenance and construction to  
2 avoid the problem that Mr. Fitzgerald just  
3 mentioned, and our Chair as well, and how  
4 those will be treated throughout the entire  
5 corridor.

6 MS. DUPREY: So you're asking that  
7 they prepare a plan like they did for  
8 environmental resources, if you will. Could  
9 have been a monitoring plan or whatever it  
10 is --

11 DIR. MUZZEY: It could be a section  
12 in the Best Management Plans.

13 MS. DUPREY: That they provide some  
14 plan for how they're going to protect these  
15 resources that they've agreed that they're not  
16 going to touch in the course of the  
17 construction and maintenance of the Project.  
18 Is that what you're saying?

19 DIR. MUZZEY: Yeah.

20 MS. DUPREY: So let us know how  
21 you're going to avoid these things, if you  
22 will. We know what they're going to do with  
23 stone walls, but this might be a part of it.  
24 You're going to go over them, you're going to

1 go through an existing opening, you're going  
2 to take it down and rebuild it as a last  
3 resort, and the first being don't touch it in  
4 the first place. That kind of thing, is that  
5 what your --

6 DIR. MUZZEY: And also as a way to  
7 consolidate the many responsibilities that  
8 begin to touch on these types of measures in a  
9 lot of different conditions and a lot of  
10 different locations, it seems like a wise idea  
11 to combine all of those responsibilities and  
12 commitments into one basic document that  
13 extends throughout the corridor.

14 MS. DUPREY: So it would be a  
15 document that in effect says what they're  
16 going to do to protect these things in the  
17 course of their construction and maintenance  
18 afterwards.

19 DIR. MUZZEY: Yes.

20 MS. DUPREY: It's a written plan to  
21 say what they're going to do to not violate  
22 these stone resources, if you will.

23 DIR. MUZZEY: Yes.

24 MR. WAY: And you see this as a

1 consolidation of all the other conditions that  
2 are included.

3 DIR. MUZZEY: Yes.

4 MR. WAY: That's a good idea.

5 DIR. MUZZEY: There are  
6 tremendous -- I mean, I know the Applicant has  
7 wide-ranging resources, but there are a lot of  
8 conditions with this project that have been  
9 proposed. So I was looking for a way to  
10 perhaps make their implementation efficient  
11 and straightforward and more trackable.

12 MR. WAY: I think that's more  
13 streamlined, provided, as the Chair mentioned,  
14 that we're not saddling them with the  
15 oversight from this point forward or forever.  
16 I think it's a good idea.

17 PRESIDING OFFICER WEATHERSBY:  
18 Director Muzzey, this would be a plan that  
19 they would develop in consultation with or  
20 approval by -- I think we need to have DHR  
21 integration here somehow that it's developed  
22 to DHR's standards.

23 DIR. MUZZEY: Well, and DHR is  
24 referenced in a lot of the other conditions as

1 well. So I think it would be beneficial to  
2 that agency in order to have a more  
3 consolidated approach. But I would agree that  
4 they could review and approve the plan.

5 PRESIDING OFFICER WEATHERSBY: Part  
6 of their job is to ensure employment for the  
7 Department of Historic Resources.

8 DIR. MUZZEY: I think there are a  
9 lot of people working on that. Don't worry  
10 about that.

11 MS. DUPREY: I'm okay with it as  
12 long as it's related to their operations, not  
13 anybody else's. It's what they're going to do  
14 out there. I would think they're going to put  
15 something like this together anyway to be  
16 certain that there's uniformity in their  
17 operations as they build out something like  
18 this. So I could see it.

19 PRESIDING OFFICER WEATHERSBY: Do  
20 you feel a need to sketch out in general terms  
21 how these would be treated, such as was done  
22 in the MOU for Durham with the use of timber  
23 matting, to report back if it's not being  
24 successful? I don't know how deep we need to

1 go or just say -- because we want to be sure  
2 all stone walls and cellar holes, et cetera,  
3 are protected. That was a major point  
4 throughout the discussion about historic  
5 properties and historic sites. And everyone  
6 was kind of in agreement, I thought, about  
7 let's get a condition that protects all stone  
8 walls and stone features throughout the  
9 corridor. So this type of agreement I think  
10 will do that, but I don't know how specific  
11 you think we need to be with our condition, or  
12 maybe it can be suggested by counsel as to how  
13 specific we need to be, or whether we leave it  
14 to DHR and the Applicant to work through.

15 Any thoughts on that, Mr. Iacopino?

16 MR. IACOPINO: I would recommend  
17 that you be as specific as possible in any  
18 order that we make so that DHR knows what  
19 you're delegating them to do. So, to the  
20 extent that Director Muzzey can provide us  
21 with sort of a list of the things she thinks  
22 should be in there, we could then turn that  
23 into a condition in the final order.

24 MS. DUPREY: Can we say something

1 along the lines of the Applicant will develop  
2 a list of protocols for the protection of the  
3 stone features in order to meet the terms of  
4 the permit, if it's granted, so that the  
5 direction is that's what it's supposed to be  
6 doing? So we talked about stone walls and  
7 places and the protocol being: First, avoid;  
8 second, go over; third, go through; fourth,  
9 take down and rebuild. It seems to me that if  
10 we link it back up to the requirements that  
11 are imposed should the permit be granted, the  
12 certificate be granted, that that will give  
13 the direction. I don't want this to grow. I  
14 don't want there to be 40 new steps that they  
15 need to take that are beyond what our  
16 certificate would state. So, for me, that  
17 would be the parameter I would feel would give  
18 DHR guidance.

19 Director Muzzey, do you feel like  
20 that gives DHR enough guidance?

21 DIR. MUZZEY: I do. I think that's  
22 a final suggestion. I think the Applicant is  
23 well on its way to creating appropriate  
24 protocols and there's not a great need for us

1 to wordsmith or provide a detailed  
2 explanation.

3 MS. DUPREY: To me, this is a  
4 take-off in part from the training for the  
5 personnel they're going to have out in the  
6 field. I mean, it's the same kind of thing.

7 DIR. MUZZEY: Hmm-hmm.

8 PRESIDING OFFICER WEATHERSBY: So  
9 are folks in agreement that the stone features  
10 stewardship plan is -- that creation and  
11 adherence to such a plan would be a beneficial  
12 condition if a certificate is to be granted?  
13 Or is there anyone who doesn't think so would  
14 like to talk about this further?

15 MS. DUPREY: I don't like the title.  
16 I really don't. It's not a joke.

17 PRESIDING OFFICER WEATHERSBY: Yeah,  
18 stone feature protection --

19 MS. DUPREY: Protection protocol.  
20 I'm way better with that.

21 MR. IACOPINO: Well, how does this  
22 sound as a condition: That the Applicant  
23 shall develop and comply with the protocols,  
24 subject to DHR's review and approval,

1 identifying measures that will be implemented  
2 to preserve historic stone features located  
3 within the right-of-way during construction,  
4 operation and maintenance of the Project?

5 PRESIDING OFFICER WEATHERSBY: I  
6 think I would add decommissioning, if it is  
7 decommissioned.

8 MS. DUPREY: Could you read it again  
9 into the mic.

10 MR. IACOPINO: Sorry. The Applicant  
11 shall develop and comply with the protocol,  
12 subject to DHR's review and approval,  
13 identifying measures that will be implemented  
14 to preserve historic stone features located  
15 within the right-of-way during construction,  
16 operation and maintenance of the Project. And  
17 the Chair recommended to put it through to  
18 decommissioning.

19 MS. DUPREY: Do we not somewhere  
20 have laid out what they're supposed to be  
21 doing in terms of the protection? My only  
22 quarrel with what you've read there is that it  
23 leaves it to the imagination of someone, I'm  
24 not sure exactly who, what they're doing. I

1 thought we knew what was happening. I thought  
2 we knew we were avoiding something, going over  
3 something, that sort of thing. I just don't  
4 want this to get way bigger than it already  
5 is.

6 PRESIDING OFFICER WEATHERSBY: So  
7 there was testimony that was from the experts  
8 that that was the proper way to do it and that  
9 they intended to adhere to that. But at the  
10 same time, they haven't been hired to do the  
11 monitoring. We do have the MOU between  
12 Eversource and the Town of Durham that  
13 specifies protection for the stone walls  
14 through avoidance, not traversing through the  
15 existing breach, traversing the wall using  
16 timber matting or temporarily bridging. This  
17 is in the MOU between Eversource and the Town,  
18 as I said.

19 MR. IACOPINO: It's on Page 9 of the  
20 MOU.

21 PRESIDING OFFICER WEATHERSBY: So  
22 that's there. But it's between -- it's an  
23 agreement that's just between Durham and  
24 Eversource. So we don't -- I don't think we

1           have anywhere else in our certificate  
2           conditions yet that goes beyond the Town of  
3           Durham concerning stone walls.

4                       MS. DUPREY: What you're citing is  
5           who is the enforcing party, to some degree.  
6           And what I'm concerned about is that the  
7           activity that needs to be done isn't growing.  
8           Because I thought we knew what we were doing  
9           to protect these various things. And I don't  
10          have any problem with that being memorialized  
11          and people signing on the dotted line. And  
12          Eversource can state, you know, with more  
13          particularity how it happens, and DHR can look  
14          at it. I just don't want it to grow. That's  
15          really what I'm saying.

16                      PRESIDING OFFICER WEATHERSBY: So we  
17          could just extend this condition to all towns  
18          along the route and maybe wordsmith it a  
19          little bit so it continues through maintenance  
20          and decommissioning, et cetera.

21                      But Director Muzzey, could you tell  
22          us if there's a benefit and what the benefit  
23          is to having sort of a separate document  
24          concerning the protection of stone features,

1           rather than just a condition in the  
2           certificate? Is there a benefit; and if so,  
3           what would that be from a DHR or historic  
4           site perspective?

5                         DIR. MUZZEY: We have a number of  
6           commitments that are scattered across  
7           different conditions. And my sense is that  
8           not all of them cover all of the features that  
9           the Durham Historic Association identified, as  
10          well as stone features throughout the  
11          corridor. So having a plan that the Applicant  
12          can incorporate, and incorporate into their  
13          normal daily business activities throughout  
14          the life of the Project, gives them something  
15          to refer back to after the certificate has  
16          long been granted, if so granted, and  
17          implemented. It seems to be in line with  
18          their commitment to Best Management Practices.  
19          It presents Best Management Practices for a  
20          specific type of feature. And it seems to  
21          also pair well with the four plans that have  
22          been specified in the Memorandum of  
23          Understanding with the Division of Historical  
24          Resources.

1                   MR. SHULOCK:  If I may?  I think the  
2                   benefit of making it a requirement is that it  
3                   would give the Company a head start on  
4                   preparing an operations manual, because they  
5                   will most likely -- well, I feel confident  
6                   that if we tell the Company that they have to  
7                   protect stone features anytime they conduct  
8                   construction or maintenance activities within  
9                   the corridor, that they will do that.  And  
10                  what they will most likely do is prepare an  
11                  operations manual or a section in their  
12                  operations manual for their employees or their  
13                  contractors to follow so that they know what  
14                  it is they're supposed to do when they go in  
15                  and do the maintenance in that corridor.  And  
16                  they will have all of those requirements in  
17                  one place for their employees and their  
18                  contractors to read so that they're aware of  
19                  those requirements as they go in.

20                  MS. DUPREY:  The only difference I  
21                  would cite -- and I hear you.  But when you  
22                  prepare an operations manual, usually you're  
23                  doing it yourself.  You're not having any  
24                  agency then oversee it.  And that's -- I just

1 don't want there to be regulatory creep here.  
2 I guess that's really what my concern is.  
3 They're mandated to do this, and now we bring  
4 DHR in to oversee those plans. I don't know.  
5 Would it anyway, Director Muzzey?

6 DIR. MUZZEY: Not necessarily, no.  
7 That's why I saw the value of having a plan  
8 that specified all this. And then as the  
9 Company chose to -- and with that plan being  
10 approved by the DHR, then they can implement  
11 that in their operations manual and other  
12 places without further interference of a  
13 government agency.

14 MS. DUPREY: Do you see this as  
15 being something, these sorts of issues as  
16 being something there's been great contest  
17 over, the way that you protect these types of  
18 resources?

19 DIR. MUZZEY: Outside of the request  
20 to do a trial, particularly with timber  
21 matting over stone walls, I think it's all  
22 fairly common sense.

23 MS. DUPREY: Okay.

24 PRESIDING OFFICER WEATHERSBY: It's

1           our responsibility to be sure that these sites  
2           that have been identified are protected. And  
3           I don't think it's the SEC's role to oversee  
4           that. So that would be something that we ask  
5           for assistance with DHR sort of in the normal  
6           course. We ask the Applicant to develop  
7           protocols, which they will do anyway, but to  
8           outline those protocols and run them by DHR to  
9           be sure that they're adequate. I think it's  
10          certainly acceptable, and that gives me some  
11          reassurance that the Committee, and in  
12          conjunction with relying on DHR, is actually  
13          protecting these things which everyone has  
14          agreed are very important and very prevalent  
15          in this area.

16                    MS. DUPREY: So have we done this in  
17                    other cases?

18                    DIR. MUZZEY: We do have historic  
19                    property management plans on other portions of  
20                    utility corridors.

21                    MS. DUPREY: Okay. Good. That  
22                    makes me feel better.

23                    PRESIDING OFFICER WEATHERSBY: So,  
24                    do folks feel as though developing a protocol

1 plan to address stone features as described by  
2 Director Muzzey is a good idea?

3 Do you need me to be more specific?

4 MR. IACOPINO: I just need to know  
5 the language that we have is sufficient to  
6 cover what you're asking the Applicant to do.

7 MR. WAY: Can you read it one more  
8 time?

9 MR. IACOPINO: Sure. The Applicant  
10 shall develop and comply with the protocol,  
11 subject to DHR's review and approval,  
12 identifying measures that will be implemented  
13 to preserve historic stone features located  
14 within the right-of-way during construction,  
15 operation and maintenance of the Project, and  
16 shall remain in effect until decommissioning  
17 of the Project.

18 MR. SCHMIDT: I don't think we want  
19 to limit it to within the right-of-way. Maybe  
20 within the construction limits. We have  
21 laydown yards and so on, marshaling yards.

22 MS. DUPREY: Are we marshaling in  
23 areas that have historic features in them?

24 MR. SCHMIDT: We haven't seen them

1 all, but maybe a stone wall.

2 MS. DUPREY: Okay.

3 MR. IACOPINO: Would the term  
4 "project site" satisfy you, Mr. Schmidt?

5 MR. SCHMIDT: Yes.

6 DIR. MUZZEY: I think that language  
7 sounds appropriate.

8 PRESIDING OFFICER WEATHERSBY: I  
9 agree. Anyone feel as though it doesn't and  
10 they want to talk about it some more?

11 [No verbal response]

12 PRESIDING OFFICER WEATHERSBY: Okay.  
13 So I think we're done with stone features for  
14 now. What's our next topic?

15 DIR. MUZZEY: I believe when we were  
16 talking about the DHR's final reporting to the  
17 Site Evaluation Committee and its request for  
18 additional conditions, we spent a great deal  
19 of time talking about the first condition,  
20 which is conditioning the certificate upon  
21 compliance with stipulations in the mitigation  
22 documents. This is found in a letter dated  
23 August 1st, 2017, from the Division to the  
24 Site Evaluation Committee. But I did want to

1 note there were three other requested  
2 conditions by the agency. All three are  
3 common conditions that have been placed in  
4 past SEC proceedings.

5 Two, if the Applicant changes plans  
6 for the proposed project, and such changes  
7 lead to newly discovered effects on historic  
8 properties, the Applicant shall consult with  
9 the DHR/SHPO to resolve any adverse effects.

10 Three, if any unanticipated  
11 archeological resource, historic properties  
12 or other cultural resources are discovered as  
13 a result of project planning or construction,  
14 the Applicant shall consult with the DHR/SHPO  
15 to determine the need for appropriate  
16 evaluative studies, determinations of  
17 National Register eligibility, and/or  
18 mitigation measures if needed to resolve  
19 adverse effects.

20 This type of condition would come  
21 into play if a different marshaling yard or  
22 laydown area was chosen, that type of thing,  
23 or with some of -- during the proceeding we  
24 also talked about requested mitigation in

1 areas such as Wagon Hill Farm for other  
2 resource protection. Those types of changes  
3 are what we were talking about with  
4 Condition 3.

5 Condition 4, authorizing the  
6 DHR/SHPO to specify the use of any  
7 appropriate technique, methodology, practice  
8 or procedure associated with archeological,  
9 historical and other cultural resources  
10 affected by the Project; however, any action  
11 to enforce the conditions must be brought  
12 before the Committee. I believe that  
13 language is taken out of the RSA 162-H. So I  
14 wanted to make sure those were on the record  
15 and to see if any Committee members had any  
16 questions about those.

17 MS. DUPREY: Could you read the last  
18 one again.

19 DIR. MUZZEY: Yeah, that language is  
20 not --

21 MR. IACOPINO: There's some language  
22 missing from --

23 DIR. MUZZEY: Is there?

24 MR. IACOPINO: It's from the

1 delegation statute. So it should say  
2 "delegating authority to DHR to specify the  
3 use of appropriate techniques or procedures  
4 associated with archeological, historical or  
5 other cultural resources affected..." it's on  
6 Page 3 of Exhibit 167, where it just looks  
7 like they left out some words there trying to  
8 mimic the statute.

9 MR. WAY: Where is it, Michael?

10 MR. IACOPINO: Applicant's  
11 Exhibit 167, bottom of Page 3, Subparagraph 4.  
12 (SEC members reviewing document.)

13 MR. WAY: Director Muzzey, none of  
14 these conditions are already included in other  
15 aspects of what we're doing in MOUs -- no,  
16 never mind.

17 DIR. MUZZEY: All set?

18 MR. WAY: I am.

19 DIR. MUZZEY: Thank you.

20 PRESIDING OFFICER WEATHERSBY: Am I  
21 correct, Attorney Iacopino, that these are  
22 standard conditions?

23 MR. IACOPINO: Yeah. Yes, they are.  
24 The fourth one is a sort of catch-all,

1           assuming it's going to deal with situations  
2           where something comes up and the Applicant and  
3           DHR can deal with it in the first instance.  
4           Therefore, it would be delegating the  
5           authority to DHR to specify the use of  
6           appropriate technique, methodology, practice  
7           or procedure addressing the archeological,  
8           historical or cultural resources affected by  
9           the Project. So we can massage that into the  
10          language that has been in other decisions as  
11          well.

12                   MR. WAY: These seem reasonable to  
13                   me.

14                   MR. SCHMIDT: Yeah.

15                   MS. DUPREY: Were these not part of  
16                   the stipulation between Counsel for the Public  
17                   and the Applicant?

18                   MR. IACOPINO: I don't think so.

19                   PRESIDING OFFICER WEATHERSBY: Now,  
20                   the only stipulated condition concerning  
21                   historic sites is that they were going to file  
22                   with their Best Management Practices for work  
23                   near archeological and historic sites and will  
24                   adhere to the BMPs --

1 (Court Reporter interrupts.)

2 PRESIDING OFFICER WEATHERSBY: Will  
3 adhere to the Best Management Practices  
4 consistent with all state and federal permit  
5 requirements. I think these would be good to  
6 have as conditions of our certificate, if we  
7 are to grant one. Does anyone disagree with  
8 that or would like to talk about this further?

9 [No verbal response]

10 PRESIDING OFFICER WEATHERSBY: Okay.  
11 Hearing none, let's move on.

12 DIR. MUZZEY: Let's move on. The  
13 only other item on my list, and you folks may  
14 have others, is that the Counsel for the  
15 Public of course had a consultant that  
16 addressed above-ground resources and critiqued  
17 the Applicant's submissions on those and  
18 recommended some things that were very  
19 different from what we've talked about all  
20 day. So I feel that we may at least want to  
21 review a few of those in order to make sure  
22 that we're all on track on how things are  
23 being done. The material is within the  
24 testimony sections, of course, and it is also

1 within Counsel for the Public's Exhibit, I  
2 believe, it's 5-a. Yes, it is, as well as the  
3 post-hearing brief by Counsel for the Public.

4 MR. WAY: Do you have a page on 5-a?

5 DIR. MUZZEY: Well, we could begin  
6 with one of the issues that was very different  
7 from the review we've talked about throughout  
8 the day on Page 8, E, Comprehensive  
9 Identification of Above-Ground Historic Sites.  
10 And there are a number of bullets listed.

11 The consultant, Heritage Landscapes  
12 out of Vermont, throughout this document was  
13 recommending a broad definition of "historic  
14 sites," particularly those holding cultural  
15 value, regardless of their assessed age, and  
16 in particular, listed the types of resources  
17 in the bullets that follow: Historic  
18 graveyards, conservation lands, recreation  
19 lands, designated scenic roads, trails,  
20 public waters, current use lands,  
21 town-identified sites of scenic or cultural  
22 value, and stone walls and fences.

23 Related to that is the issue that  
24 the Heritage Landscapes report disagreed with

1 the area of potential effect that was defined  
2 by the review agencies for this project.  
3 They felt it should be much larger and  
4 suggested an area of potential effect that  
5 extended for either three or ten miles. The  
6 report, in my reading, also merges some of  
7 the criteria that are assigned to the  
8 aesthetics area of the New Hampshire Site  
9 Evaluation Committee review and that are not  
10 appropriately discussed here under our  
11 Historic sections. Perhaps in the  
12 consultant's professional experience those  
13 two areas are evaluated in similar fashions.  
14 But with the rules before the New Hampshire  
15 Site Evaluation Committee, we review  
16 aesthetic resources under one set of criteria  
17 that includes historic sites, but that have a  
18 second set of criteria to focus specifically  
19 on historic site impacts.

20 So if we take a look at the list on  
21 Page 8 under E, I have confidence that the  
22 review completed to date did consider  
23 historic graveyards. We have several  
24 conditions that relate to those, as well as

1 state laws even outside of the Site  
2 Evaluation Committee laws that address their  
3 protection.

4 Conservation lands, including town  
5 forests, I was frankly surprised that she  
6 felt those types of resources were not  
7 considered in the review of this project.

8 Interestingly, we do have a town forest  
9 that's been designated historic, and it has  
10 been since the early 1990s, being the  
11 Newington Center Historic District and the  
12 town forest that is included there.

13 Similarly, recreation lands would have been  
14 considered as well. We've had discussion of  
15 designated scenic roads under the aesthetics  
16 considerations. We don't -- trails were also  
17 considered under the aesthetics  
18 consideration, as were public waters,  
19 designated rivers and public water access  
20 points. We also do have a historic site that  
21 crosses Little Bay, as we discussed earlier,  
22 and that does include a portion of public  
23 waters. We've had a discussion of  
24 current-use listed parcels already, and I

1           feel that that was not a missing aspect of  
2           the historic resources review. And we've  
3           spent a great deal of time talking about  
4           town-identified sites of scenic or cultural  
5           value, particularly as it relates to stone  
6           features within the right-of-way, which also  
7           then in turn relates to the last bullet as  
8           well, stone walls and fences.

9                        So I felt these areas were  
10           appropriately covered within our review and  
11           in the materials that we had reviewed in this  
12           proceeding. But certainly I do want to hear  
13           from others to see if you shared any of these  
14           concerns as well.

15                      MS. DUPREY: I think part of the  
16           complaint was that perhaps the Applicant's  
17           experts didn't identify all these things. But  
18           regardless of that, certainly I think we  
19           discussed them all and they got before us.  
20           So, for purposes of our decision making, I  
21           feel like we did review these things.

22                      MR. WAY: Agreed.

23                      MR. SCHMIDT: Hmm-hmm.

24                      PRESIDING OFFICER WEATHERSBY:

1           Concerning the definition of "historic sites,"  
2           I agree with Ms. O'Donnell, to the extent that  
3           what should be considered an historic site is  
4           beyond that which is listed in or eligible for  
5           the historic register. But at the same time,  
6           even Ms. O'Donnell, in her cross-examination,  
7           agreed that there had to be some age  
8           associated with a property to be considered  
9           historic. It had to be both important in some  
10          manner in history or culture, and it had to  
11          have some longevity. And we talked about the  
12          playground or tot lot or something, and that  
13          even if that was something on her list as  
14          something that was missed, it really didn't  
15          qualify as a historic site that this Committee  
16          and the experts should be spending time  
17          evaluating in great depth.

18                        So I feel as though the sites that  
19                        were identified were comprehensive, and sites  
20                        that were brought to their attention by  
21                        others, where they indicated they should have  
22                        been considered, the Applicant's experts then  
23                        did consider those. I don't know of any  
24                        property that is being claimed as being

1 historically significant that has not been  
2 addressed. I mean, there's a long list I  
3 suppose from Ms. O'Donnell. But I think the  
4 Applicant has addressed what's on that list  
5 and said, no, that really doesn't belong here  
6 in our analysis. I found Ms. O'Donnell's  
7 list to be overly broad.

8 MS. DUPREY: Didn't her list in part  
9 come from the APE that she was advocating for,  
10 which I thought that Director Muzzey so well  
11 laid out the rationale behind what it was? So  
12 I think that, to the extent that it was in the  
13 APE, that I think we've all agreed was the  
14 appropriate APE, that we did review all of  
15 them. I think her issue is, in large part,  
16 that it should just be a way bigger APE than  
17 what we felt was necessary.

18 DIR. MUZZEY: My read of her report  
19 is that, you know, there's a large number of  
20 places that she should of -- she thought  
21 should have been evaluated further. That  
22 number is made larger by the fact that she was  
23 suggesting a larger APE than we've considered  
24 for this project. So the numbers would be

1           diminished just by diminishing the APE down to  
2           the half-mile that we are looking for this  
3           project.

4                       I also remember questioning Ms.  
5           O'Donnell. We were talking about  
6           conservation lands because obviously  
7           conservation is very important in the  
8           historic context in New Hampshire. It's  
9           something people in New Hampshire have been  
10          working on since the 19th Century, and it's  
11          something where we have a number of  
12          historical properties and historic districts  
13          across the state that address the  
14          significance of conservation activities in  
15          that area. It's not something that is  
16          ignored on a regular basis here in New  
17          Hampshire. I did question her about, well,  
18          if the conservation land -- if the  
19          conservation activities dated from a hundred  
20          years ago, should that be evaluated? She  
21          agreed. And then I said, well, what if they  
22          were, and I forget the date, but it was 2005  
23          or something fairly recent? And she agreed,  
24          no, that was too recent of an activity. I'm

1 not certain whether conservation is an  
2 important historic context for other places  
3 Ms. O'Donnell has worked, but it is an  
4 important context here in New Hampshire. And  
5 I feel if there were conservation lands  
6 within the Project area, they would have been  
7 recognized in the effort that the Applicant  
8 applied.

9 MS. DUPREY: I would just also like  
10 to say that I reread the briefs last night on  
11 this particular issue. And while I'm not  
12 going to be sufficiently eloquent to summarize  
13 it, the Applicant's brief was very, very  
14 strong on the definition in particular and  
15 what the protocol has apparently been. Maybe  
16 "protocol" is too strong of a word. What  
17 people have done previously in coming before  
18 this Committee in terms of what they should be  
19 looking at. And I was persuaded by that  
20 section of their brief, that both what the  
21 Applicant had done and what we had done was in  
22 keeping with our past procedures.

23 DIR. MUZZEY: I can also note, I  
24 don't think I mentioned this earlier in the

1 day, that at least from a regulatory sense,  
2 the state historic preservation office in  
3 every state is assigned the responsibility of  
4 coming up with a process for identifying and  
5 evaluating both above-ground and below-ground  
6 historical resources. So that's a common  
7 responsibility across the country. And in  
8 this case, the Applicant did utilize both the  
9 guidance and the processes that the state  
10 historic preservation office specified for  
11 identifying and evaluating resources.

12 PRESIDING OFFICER WEATHERSBY: It is  
13 important to note, however, that the SEC  
14 process is different and separate from the 106  
15 Review Process, and it is broader than that.  
16 I'll just leave it at that.

17 DIR. MUZZEY: Did anyone else have  
18 any additional concerns that came out of the  
19 testimony and the reporting of Heritage  
20 Landscapes, as well as Counsel for the  
21 Public's post-hearing brief, that relate to  
22 historical or archeological properties that we  
23 need to talk about?

24 (SEC members reviewing documents.)

1                   PRESIDING OFFICER WEATHERSBY: Just  
2                   one more issue, or at least one. But there's  
3                   one more issue to address with regard to  
4                   historic sites. If folks could pull up Durham  
5                   Historic Association's brief, Page 25, PDF  
6                   Page 25.

7                   MS. DUPREY: I don't think we have a  
8                   hard copy, so do you have a cite to that?

9                   PRESIDING OFFICER WEATHERSBY: It's  
10                  Page 23 of the hard copy.

11                  MS. DUPREY: Thank you.

12                  PRESIDING OFFICER WEATHERSBY: So in  
13                  there, Durham Historic Association makes an  
14                  allegation, and everyone probably remembers  
15                  the image to which she was referring, the  
16                  section of the right-of-way going through  
17                  Durham with the lines. It was hard to tell  
18                  how many lines there were. But there were,  
19                  like, four lines as we looked at it. And  
20                  there was an allegation that the Google Earth  
21                  aerial image had been doctored or  
22                  Photoshopped, and she showed eight or more  
23                  gray electric lines in the easement where only  
24                  three thin black lines exist presently. And

1 Ms. Widell was examined about that. So I  
2 think we should make a finding of fact as to  
3 whether we believe that image had been  
4 doctored or Photoshopped to make the existing  
5 conditions look more egregious or perhaps more  
6 intense -- save the judgment part -- more  
7 intense of a use than what is actually there.

8 MR. FITZGERALD: What page are you  
9 on?

10 PRESIDING OFFICER WEATHERSBY: I'm  
11 on Durham Historic Association's brief, PDF  
12 Page 25. It's Page 23, and it refers -- we  
13 can pull up the image if you folks don't  
14 remember it.

15 Do you have a cite for the image,  
16 Mr. Iacopino?

17 DIR. MUZZEY: Okay. I have at least  
18 one of them. If we look at Exhibit 164, on  
19 Page 67, the image at the top of the page I  
20 believe may be one of the images that she had  
21 concerns with.

22 MR. WAY: 164 where?

23 PRESIDING OFFICER WEATHERSBY:  
24 Applicant's Exhibit 164. Which PDF Page?

1 DIR. MUZZEY: PDF 27, and the top  
2 image.

3 PRESIDING OFFICER WEATHERSBY: And  
4 we should also look at Committee Exhibit 11.  
5 That was a response to a request for more  
6 information where the Applicant confirms there  
7 was only a three-phase, meaning three  
8 conductor lines comprising three overhead  
9 wires on the top of each pole with a neutral  
10 wire below. It attributes it to a distortion  
11 created by enlargement of the image.

12 MS. DUPREY: Was there something  
13 unique about this particular area that would  
14 cause someone, if they were to look at this  
15 entire project and doctor something, that this  
16 would be what they would pick? Because I can  
17 think of a lot of other places I'd be  
18 doctoring. I mean, Little Bay would pop right  
19 up there at the top. So I'm disinclined to  
20 think anyone selected this particular thing to  
21 doctor up. I do understand Durham's  
22 sensitivity to these things. I really do. I  
23 think they've, you know, shown some distress  
24 over this process. And so I think that leads

1 people to maybe conclude things that they  
2 might otherwise not. And I just don't see the  
3 sense of why you would choose this particular  
4 image to doctor among the dozens of images  
5 that we have. And I couldn't support any kind  
6 of finding that someone doctored it without  
7 more evidence. So I would say we find that it  
8 was not doctored, at least not intentionally.

9 MR. SHULOCK: If I could add to  
10 that? I think I would actually need some form  
11 of expert testimony to tell me whether a  
12 digital image taken from a satellite had been  
13 doctored. I just don't think that I have the  
14 wherewithal to determine that on my own.

15 MR. FITZGERALD: Committee  
16 Exhibit 11, we have a statement from the  
17 Applicant that says, "We have confirmed with  
18 Preservation Company that they did not alter  
19 the photo." Unless we have information other  
20 than somebody's guess that -- and I think I  
21 recall at the time that we compressed the  
22 photo a little bit, you know, and looked at  
23 it. And so I don't see how, just based on an  
24 assertion that it looks doctored, that we

1           could take any position other than to accept  
2           the Company's...

3                       PRESIDING OFFICER WEATHERSBY:   So  
4           I'm getting the sense that the Committee feels  
5           as though we do not believe that the -- we  
6           take the Applicant at its word and do not  
7           believe the photos in Exhibit 164, on Page 9,  
8           have been doctored by the Applicant.  Is there  
9           anyone who disagrees with that or would like  
10          to discuss that further?

11                     [No verbal response]

12                     PRESIDING OFFICER WEATHERSBY:  We  
13          have one other request from Durham Historic  
14          Association, and that is back to what we  
15          started with yesterday I think.  They've  
16          requested an independent monitor of historic  
17          resources to be sure they're complying with  
18          all the Best Management Practices and  
19          agreements and memorandums.

20                     DIR. MUZZEY:  I'm wondering if our  
21          counsel could just review for us what an  
22          intervenor or community, what recourse they  
23          have if they feel, anyone, any member of the  
24          public, that the Applicant is not abiding by

1 the conditions of the certificate.

2 MR. IACOPINO: Any person can make a  
3 complaint to the Administrator of the  
4 Committee. The Administrator of the Committee  
5 would then investigate it. And if it warrants  
6 further evaluation, there's an entire  
7 enforcement procedure under RSA 162-H:12 which  
8 has some timelines when a notice would be  
9 given to the Applicant that's in violation.  
10 Obviously there would be a quasi-judicial  
11 process involved. Ultimately, sanctions could  
12 be imposed up to and including suspension of  
13 the certificate.

14 MS. DUPREY: And on top of that, I  
15 presume all of the enforcement authority that  
16 DHR has, you know, that someone would go  
17 register a complaint with DHR or the Attorney  
18 General's office. I don't know. I think  
19 there are a lot of avenues to discuss issues  
20 with people who would be willing to listen.

21 PRESIDING OFFICER WEATHERSBY: So I  
22 interpret some of this desire for an  
23 independent monitoring going back to the stone  
24 wall issue and cellar holes that were very

1 important to Durham Historic Association --

2 (Court Reporter interrupts.)

3 PRESIDING OFFICER WEATHERSBY: -- in  
4 addition to other concerns they had. But they  
5 had a major concern about stone walls. So I'm  
6 just trying to, in my head, play out a  
7 situation where we have a protocol in place  
8 that's been approved by DHR, and Best  
9 Management Practices have been submitted,  
10 memorandums are in place, during construction,  
11 inadvertently or on purpose, you know, a  
12 bridge collapses and a wall is damaged and  
13 it's not fixed. And I'm trying to  
14 understand -- you know, and the homeowner is  
15 back in the back 40. Nobody notices it for a  
16 while. So what happens then? So I want to  
17 understand how that plays out.

18 Director Muzzey, is there any way  
19 you can address -- would DHR have any role  
20 there, or would they have to file a dispute  
21 with the dispute resolution? I guess they  
22 could come back to the Committee and say --  
23 I'm just thinking out loud here, stream of  
24 consciousness here. They could come back to

1 the Committee and say they're not following  
2 through on these conditions of the  
3 certificate. Would Counsel or Director  
4 Muzzey or anyone else like to comment on my  
5 stream of consciousness?

6 MS. DUPREY: Why can't that be in  
7 the protocols? I mean, isn't that what the  
8 protocols are about to some degree? If you  
9 knocked over a stone wall, maybe you have to  
10 tell somebody.

11 PRESIDING OFFICER WEATHERSBY: But  
12 my situation is they do not live up to the  
13 protocol. They do not fix the wall --

14 MS. DUPREY: But isn't --

15 PRESIDING OFFICER WEATHERSBY: --  
16 and what happens? That's why the independent  
17 monitor I think is sought, so that they're  
18 trying to have another person there with a  
19 stick saying you will do what you're supposed  
20 to do.

21 MS. DUPREY: So you've got to call  
22 this independent monitor up every single time  
23 you might go near a stone wall? I don't know.  
24 They're going to be 24/7 on duty?

1                   PRESIDING OFFICER WEATHERSBY: I'm  
2                   not trying to advocate for it. I'm just  
3                   trying to understand how their concern is  
4                   addressed.

5                   MS. DUPREY: I think their concern  
6                   is addressed the same way any other concern is  
7                   addressed. Someone discovers it and they  
8                   report it to the appropriate agency, and  
9                   that's what happens. I don't think somebody  
10                  can be out there every day doing this. I  
11                  mean, maybe when they finish a segment,  
12                  somebody comes in and looks it over. I could  
13                  maybe live with that. I just think without  
14                  some parameter around it, it's just more  
15                  burdensome than the benefit is.

16                  MR. WAY: I think it goes back to  
17                  that discussion we had yesterday when we were  
18                  looking at technical capability and talking  
19                  about it's the element of trust. I think,  
20                  one, we decided there is a technical  
21                  capability, and I don't think there's been  
22                  anything put forth to us that said they  
23                  wouldn't be able to implement this. We put  
24                  into place some other protections today. I

1 think we have a complaint procedure. And, you  
2 know, I think to do much more than that in  
3 this case would just be overburdensome.

4 DIR. MUZZEY: My interpretation of  
5 the suggestion of having an independent  
6 historic monitor is that in areas of  
7 historically sensitive areas, the monitor  
8 would be in place in order to avoid the  
9 problem of a breached stone wall, a destroyed  
10 cellar hole site. And so we wouldn't -- to  
11 avoid getting into enforcement. Because the  
12 problems would not happen in the first place  
13 because an independent monitor would be on  
14 hand to ensure that. I find I'm having  
15 difficulty understanding how that type of  
16 process would be put in place in any type of  
17 way that approaches practicality. The only  
18 time that we, the Division of Historical  
19 Resources, have requested monitoring is in  
20 areas of archeological sensitivity where the  
21 expectation is fairly low of archeological  
22 resources being present. But it exists to the  
23 degree that we feel archeological monitoring  
24 during construction would be helpful to be

1           able to call off the bulldozers if  
2           expectations change. And we have put that  
3           type of monitor in place for very specific  
4           archeological situations. None of those were  
5           identified for this project. And so I  
6           would -- I just don't see how this type of  
7           request could be implemented. It's difficult.

8                         PRESIDING OFFICER WEATHERSBY: I  
9           think it goes back to the training. And there  
10          is a training plan and reporting plan. And if  
11          those are done correctly, this won't happen;  
12          or if it does, it will be reported. And if  
13          there is a problem, you can complain to the  
14          SEC or complain to DHR. They can go through a  
15          dispute resolution process. So I don't feel  
16          there's a need in this instance for an  
17          independent monitor as well. I'm getting the  
18          sense that that's the sense of the  
19          Subcommittee. Does anyone want to talk about  
20          this further or disagree?

21                        MR. FITZGERALD: I just want to -- I  
22          think we did talk about this yesterday. I  
23          think there's some inherent distrust with  
24          small entities and individuals dealing with a

1 major corporation. I think that sense of  
2 trust has been exacerbated, in particular with  
3 the Durham Historic Association and the  
4 failure to meet with them. I would hope the  
5 Applicant would take away from that that it  
6 might be wise to sit down and talk to folks  
7 who have concerns. But I think in this case,  
8 this opens a Pandora's box for us if we --  
9 because basically what this is saying is we  
10 don't trust the Company to monitor this  
11 appropriately. And if we don't trust them to  
12 monitor this, do we trust them with any other  
13 plan? I think this creates a significant  
14 problem. So I would certainly not support it.

15 MS. DUPREY: I would just also say  
16 that if the Applicant isn't able to establish  
17 some kind of trust, we're going to have an  
18 independent monitor and it's going to be the  
19 Durham Historic Association. You might want  
20 to create some relationship there.

21 MR. FITZGERALD: Might rather deal  
22 with the Administrator.

23 PRESIDING OFFICER WEATHERSBY: Does  
24 anyone have other issues concerning historic

1 sites that we should address?

2 DIR. MUZZEY: We're good.

3 PRESIDING OFFICER WEATHERSBY: I  
4 think we're ready to poll the board.

5 After hearing everything concerning  
6 the identification and analysis concerning  
7 the effects on historic sites and the  
8 mitigation plans and all the other plans and  
9 conditions concerning historic sites that  
10 we've been discussing, whether at this point,  
11 which again is not final, at this point,  
12 whether you feel as though the Project will  
13 have an unreasonable adverse effect on  
14 historic sites.

15 Mr. Fitzgerald.

16 MR. FITZGERALD: I believe that the  
17 Applicant has met all the requirements and we  
18 can move ahead.

19 PRESIDING OFFICER WEATHERSBY: Do  
20 you feel as though the Project will have an  
21 unreasonable adverse effect on historic sites?

22 MR. FITZGERALD: Do I believe it  
23 will have an adverse effect?

24 PRESIDING OFFICER WEATHERSBY: Do

1           you believe it will --

2                       MR. FITZGERALD:   No.

3                       PRESIDING OFFICER WEATHERSBY:  --  
4           have an adverse effect, an unreasonable  
5           adverse effect?

6                       MR. FITZGERALD:   My conscience is  
7           whispering in my ear.  No.

8                       PRESIDING OFFICER WEATHERSBY:  Ms.  
9           Duprey.

10                      MS. DUPREY:    No.

11                      PRESIDING OFFICER WEATHERSBY:  Mr.  
12           Way.

13                      MR. WAY:       No.

14                      PRESIDING OFFICER WEATHERSBY:  Mr.  
15           Schmidt.

16                      MR. SCHMIDT:   No.

17                      PRESIDING OFFICER WEATHERSBY:  Mr.  
18           Shulock.

19                      MR. SHULOCK:   No.

20                      PRESIDING OFFICER WEATHERSBY:  
21           Director Muzzey.

22                      DIR. MUZZEY:    No.

23                      PRESIDING OFFICER WEATHERSBY:  Nor  
24           do I.

1           I think we have time just to do air  
2           quality. Do you want a five-minute break and  
3           we'll do air quality? I think that's our  
4           next topic. I'm not sure we'll have a chance  
5           to get into water quality. Why don't we  
6           break for five minutes. We can discuss and  
7           at least do air, and then we'll discuss if we  
8           want go beyond. But my inclination is  
9           probably to stop after air. So let's take a  
10          five-minute break.

11                   (Recess was taken at 4:37 p.m.

12                   and the hearing resumed at 4:47 p.m.)

13                   PRESIDING OFFICER WEATHERSBY: Okay  
14           we are going to reconvene and discuss the  
15           Project's impact on air quality. Mr.  
16           Fitzgerald can you lead us off.

17                   MR. FITZGERALD: Certainly. As  
18           Assistant Director of the Air Division, I've  
19           been waiting for this for a long time, and I  
20           hope that we're willing to dedicate the  
21           remainder of our day to this topic.

22                   So, in terms of air quality issues  
23           with this project, the only guiding document  
24           is the site rule which requires us to make a

1 determination that there will not be an  
2 unreasonable adverse effect to air quality.  
3 And then there's, of course, all of the  
4 departmental rules and requirements. Nothing  
5 in this project rises to the level of a  
6 permitting requirement with regards to the  
7 Department. And really, the only suggested  
8 air quality issue is that of dust control and  
9 suppression during construction activities.  
10 And the Department has very specific  
11 regulations. Env-A 1000 requires of all  
12 construction projects that require no  
13 specific -- there be no emissions of dust  
14 from activities such as these and requires  
15 Best Management Practices and the use of  
16 water wetting down the sites, et cetera, to  
17 ensure dust is not generated and does not  
18 leave the site.

19 So, assuming that we believe that  
20 the Best Management Practices have been  
21 proposed, the Applicant has asserted that  
22 construction may have short-term effects  
23 resulting from fugitive dust. And to  
24 minimize this, environmental monitors will

1 review ongoing activities and will confirm  
2 that BMPs, such as mulching, covering soil  
3 stockpiles, installing wind breaks, water  
4 trucks and installing crush stone aprons,  
5 will be complied with, and that contractors  
6 will adhere to state laws relative to idling,  
7 excessive idling of the vehicles.

8 So those are the only issues that  
9 have been raised. And I don't believe that  
10 there was any testimony or further  
11 information that would support taking any  
12 other actions with regards to air quality.

13 DIR. MUZZEY: I wouldn't want to  
14 disappoint.

15 MR. FITZGERALD: Is it a farming  
16 question?

17 DIR. MUZZEY: No, it's not.

18 So, according to our rules, as we  
19 determine whether or not a project has an  
20 unreasonable adverse effect on air quality,  
21 we are charged with determining -- with  
22 considering the determinations of the New  
23 Hampshire Department of Environmental  
24 Services in regard to this issue. So, in

1           that no sort of approval or permit is  
2           required from the Air Division of DES, you're  
3           telling us that we have nothing to consider?

4                       MR. FITZGERALD: That's correct.  
5           But I'd like to confirm that under the state  
6           agency permits and DES review and  
7           determination, there was nothing -- there was  
8           nothing from DES.

9                       DIR. MUZZEY: Thank you.

10                      PRESIDING OFFICER WEATHERSBY: I  
11           would just like to point out that Mr.  
12           Frizzell, in his prefiled direct testimony, I  
13           think was the only one who raised an air  
14           quality issue. It was very vague. It states  
15           will the Project have an unreasonable adverse  
16           effect upon the air quality, water quality,  
17           natural environment and wildlife on the  
18           Frizzell property? And his response was some  
19           adverse environmental effects will inevitably  
20           occur.

21                      MR. FITZGERALD: But none specific  
22           to air.

23                      PRESIDING OFFICER WEATHERSBY: No.  
24           Just a general that he's going to have some

1 environmental effects. But the question  
2 concerned air quality. So I just wanted to  
3 get it out there that a concern may have been  
4 raised about air, but it was not specific.

5 Does anyone have anything else  
6 they'd like to say concerning air quality and  
7 effects of this project on air quality?

8 [No verbal response]

9 PRESIDING OFFICER WEATHERSBY: I  
10 will then poll you as to whether you believe  
11 this project will have an unreasonable adverse  
12 effect on air quality.

13 Mr. Fitzgerald.

14 MR. FITZGERALD: I do not.

15 PRESIDING OFFICER WEATHERSBY: Ms.  
16 Duprey.

17 MS. DUPREY: No.

18 PRESIDING OFFICER WEATHERSBY: Mr.  
19 Way.

20 MR. WAY: No.

21 PRESIDING OFFICER WEATHERSBY: Mr.  
22 Schmidt.

23 MR. SCHMIDT: No.

24 PRESIDING OFFICER WEATHERSBY: Mr.

1 Shulock.

2 MR. SHULOCK: No.

3 PRESIDING OFFICER WEATHERSBY:

4 Director Muzzey.

5 DIR. MUZZEY: No.

6 PRESIDING OFFICER WEATHERSBY: Nor

7 do I.

8 All right. I think it's too late  
9 in the day to get into water quality, which  
10 will be our next subject to take it up when  
11 we next meet, which is Monday afternoon.

12 MS. MONROE: 1:00.

13 PRESIDING OFFICER WEATHERSBY: Yeah,  
14 Monday at 1:00. Have a nice weekend  
15 everybody. We'll adjourn for the day.

16 (Whereupon the Day 2 Afternoon  
17 Session was adjourned at 4:53  
18 p.m., and the hearing to resume  
19 on Monday, December 3, 2018  
20 commencing at 1:00 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of these proceedings taken at the  
place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by any of the parties to the  
action; and further, that I am not a  
relative or employee of any attorney or  
counsel employed in this case, nor am I  
financially interested in this action.

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Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)

|   |   |  |   |   |
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