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**VICKY BUNKER**

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**P R O C E E D I N G S****(Hearing resumed at 2:00 p.m.)**

PRESIDING OFFICER HONIGBERG: We're going to resume. Mr. Wright, you have the microphone.

DIR. WRIGHT: Thank you, Mr. Chairman.

QUESTIONS BY DIRECTOR WRIGHT:

Q Good afternoon, Ms. Widell.

A (Widell) Good afternoon, Mr. Wright.

Q Dr. Bunker.

A (Bunker) Good afternoon.

Q I think I mainly have some clarification questions at this point. That's one of the beauties of going a little bit later in this process. The other people ask questions and then you get to follow up on them.

Ms. Widell, I think this would go to you. So when you got down to the 194 historical sites where there was a sufficient visual relationship?

A (Widell) Um-hum.

Q Ms. Weatherby went down this road a little bit. I thought from that point there were four criteria you used to determine if there was an adverse impact. Am I missing something or is

1           there only three?

2       A     (Widell) Let me explain.

3       Q     Okay.

4       A     (Widell) No. That's not exactly accurate so let  
5           me explain.

6       Q     Okay.

7       A     (Widell) And this is on each of the Assessment  
8           Forms in the Assessment Report. You see the two  
9           from focal point and isolation.

10      Q     Yes.

11     A     (Widell) That's actually a tool that we use.  
12           Guidance that we used. We were applying the  
13           adverse effect, the 36 C.F.R. adverse effect  
14           definition, but that was a tool for applying  
15           that for finding a visual adverse effect. Did  
16           you want me to talk more about that?

17     Q     Just a little bit more so I want to make sure  
18           it's sunk into my brain.

19     A     (Widell) Okay. The definition of an adverse  
20           effect is when you have an undertaking that may  
21           directly or indirectly --

22     Q     Okay.

23     A     (Widell) -- diminish the character defining  
24           features. It could be the field the

1 architecture, the view in a way that it would  
2 affect its integrity which would mean it was no  
3 longer eligible for the National Register. And  
4 so there's 7 things of integrity. I can go into  
5 those if you want.

6 Q No, I don't think you need to.

7 A (Widell) So that's the big definition. You  
8 always are keeping that in your mind because  
9 that's the definition. We then use these tools  
10 for determining what views, what could affect,  
11 visually affect those character-defining  
12 features. So viewing of a building that has  
13 architectural significance from its primary  
14 facade certainly might cause a visual adverse  
15 effect or if the property is orienting toward  
16 where the Project is and it didn't have that in  
17 its viewshed and the viewshed is part of its  
18 importance, then that could cause an adverse  
19 effect.

20 If the new structures cause a focal point  
21 meaning it's right there, it's looming over the  
22 building itself or the associated agricultural  
23 field that it makes that property significant  
24 that could cause a visual adverse effect, and

1 the last one is where it would isolate it.  
2 Would the structures prevent the house and the  
3 barn from being connected with its associated  
4 agricultural fields.

5 So what you're seeing when we say to/from  
6 focal point or isolation is really short and  
7 it's a check box, but you can see that we're  
8 thinking very broadly about the significance of  
9 the property when we do that.

10 Q Okay. I think that helps. Thank you.

11 A (Widell) Thank you.

12 Q You mentioned some of the tools you used, and  
13 Ms. Weathersby went down this road also. But I  
14 do want to follow up on the 3-D modeling because  
15 that was one of the tools that you used to make  
16 that assessment.

17 A (Widell) Yes. Yes.

18 Q And now, I assume that modeling was actually  
19 done by the Preservation Company. That wasn't  
20 done by you?

21 A (Widell) No. The, there are different pieces of  
22 the tool. Some are Google Earth that all of us  
23 use, okay?

24 Q Yes. Okay.

1 A (Widell) The topography of a particular parcel  
2 of land comes from Google Earth. The type map  
3 that you can put on a piece of property that  
4 shows you what the views would be at a 7 foot  
5 high. That is part of the Google Earth  
6 modeling. The Project itself and where it's  
7 located on the landscape and the structures and  
8 the conductors and how they droop from one  
9 structure to another, I'm not very technical,  
10 but that was put together by the engineers  
11 associated with the Project that knew how that,  
12 I think it's Burns & McDonnell.

13 Q So ultimately, who puts all those pieces  
14 together?

15 A (Widell) We put it all together. Terry DeWan  
16 trained a couple of the Preservation Company  
17 team members, the younger ones who are more  
18 proficient in computers, and they spent time at  
19 Terry DeWan's office in getting an understanding  
20 of this computer 3-D modeling, and then we went  
21 through every historic property that we found  
22 had significance and possible visual adverse  
23 effect.

24 Q So did that modeling lead to a result in any of



1 the six adverse impact sites?

2 A (Widell) Yes.

3 Q Okay. So a couple of them were identified  
4 through that modeling?

5 A (Widell) Yes.

6 Q So, obviously, those are contained in the  
7 record.

8 A (Widell) Yes.

9 Q Were there some that were ruled out as a result  
10 of that modeling?

11 A (Widell) Yes.

12 Q Do we have that information?

13 A Yes. In every, in both the Assessment Forms  
14 that were done and the Effects Tables. It talks  
15 about the use of 3-D modeling when it was used  
16 as a decision maker.

17 Q When somebody is looking at the results of this  
18 3-D modeling, there's a yes and no question up  
19 front. It's either yes, the Project is visible  
20 or no, the Project is not visible, correct?

21 A (Widell) No. Not exactly.

22 Q Okay.

23 A (Widell) We go back to my, just because the  
24 Project is visible doesn't necessarily mean that

1 it is going to have an adverse effect.

2 Q Yes. I understand that. But somebody, that's a  
3 checkpoint in my mind. It's either visible or  
4 not visible.

5 A (Widell) Yes. That's where you start.

6 Q And then somebody goes to the next step?

7 A (Widell) Yes.

8 Q Who makes that next determination as to whether  
9 it's adverse?

10 A (Widell) I did that with the Preservation  
11 Company team and went through each of the  
12 properties to look at that.

13 Q Okay. So you personally reviewed all of those.

14 A (Widell) No, what we did was did we think it  
15 potentially had an adverse effect. The bottom  
16 line is in the Section 106 process, adverse  
17 effects are just actually established between  
18 the federal agency and the DHR, the State  
19 Historic Preservation Office, so they will  
20 determine finally which --

21 Q And that hasn't occurred yet.

22 A (Widell) That has not occurred yet.

23 Q We've heard, and this was asked of you already,  
24 but I want to follow up on it again. We've

1 heard multiple times through this process that  
2 there could be some changes to the configuration  
3 of the line. For example, somebody may want to  
4 move a tower structure to avoid a further  
5 wetlands impact. Does that impact what you've  
6 already done? Do you need to go back and look  
7 at it again in those cases?

8 A (Widell) In truth, it might, but my  
9 understanding is that those would be minimal.

10 Q Okay. Also in this model, you use a 40-foot  
11 tree wall.

12 A (Widell) Yes.

13 Q I think you described it in the report.

14 A (Widell) Yes.

15 Q How is the boundary of that tree wall  
16 established? Is that off of Google Earth or  
17 something like that?

18 A (Widell) It is. The topography, Google Earth  
19 shows you where stands of trees are. Now, it's  
20 not, they use the term wall. It actually is  
21 where there might be a forested part, and the  
22 40-foot is a conservative heighth for trees in  
23 this landscape is my understanding so that's how  
24 that was chosen. So it is delineated because

1 the topography map does not show 3-D. You have  
2 to place the 3-D in it.

3 Q Right.

4 A (Widell) So that tree wall is put in the areas  
5 where it's forested to give you an idea of what  
6 might prevent some views or not.

7 Q Okay. And the assumption is that that wall is,  
8 you can't see through that wall.

9 A (Widell) Yes. If, in fact, it is a forested  
10 portion. I mean, you can see that on the  
11 topography how, and that's the only depth that  
12 you would put the trees would be where they  
13 actually are indicated on the Google Earth view  
14 of the parcel.

15 Q And in the report, it noted in some limited  
16 cases greater than 40-foot was used where it was  
17 verified that the trees were above 40 feet?

18 A (Widell) That did not happen very often but yes,  
19 where we were able to verify it.

20 Q What about the reverse of that? Are there cases  
21 where the 40-foot tree wall would be a poor  
22 assumption? Was that verified at all?

23 A (Widell) I can tell you that if in fact it was  
24 not a forested portion and you did not have

1 40-foot trees, we would not have put it in the  
2 3-D modeling. Absolutely.

3 Q Okay. I was just worried that it might work the  
4 other way as well.

5 A (Widell) Fair enough. Fair enough. And that's  
6 absolutely, we were, we've really worked very  
7 hard to make this a conservative understanding.

8 Q I think most of my other questions were asked.  
9 So I think I'm good. But I'm going to check my  
10 notes to make sure.

11 PRESIDING OFFICER HONIGBERG: Commissioner  
12 Bailey?

13 COMMISSIONER BAILEY: Thank you,  
14 Mr. Chairman.

15 **QUESTIONS BY CMSR. BAILEY:**

16 Q Good afternoon.

17 A (Widell) Good afternoon.

18 Q I think most of my questions are for Dr. Bunker.  
19 So you might get a break.

20 A (Widell) Thank you so much, Commissioner.

21 Q Dr. Bunker, did you do a Phase 1-A Assessment on  
22 Old County Road where we've heard that there may  
23 be human remains?

24 A (Bunker) I did do a Phase 1-A on that road, yes.

1 Q Do you understand the area where people think  
2 there are human remains, that there was a  
3 cemetery, an unmarked cemetery?

4 A (Bunker) Yes, I do understand.

5 Q And did you do a Phase 1-A Assessment in that  
6 area?

7 A (Bunker) I did a Phase 1-A Assessment, and I  
8 revisited the area upon learning about these  
9 remains from a local person, and went back  
10 again. I understand the lay of the land, the  
11 topography, the features quite well, and our  
12 team interviewed a local person to get more  
13 information. So I have been there a couple of  
14 times.

15 Q Okay. And but you haven't done a Phase 1-B  
16 Assessment yet?

17 A (Bunker) that is correct. I have not.

18 Q And why is that?

19 A (Bunker) The Phase 1-B requires subsurface  
20 excavation which is not mechanical. We're not  
21 talking about backhoes. We're talking about  
22 shovels. And the Project submitted a request to  
23 the towns to conduct a Phase 1-B survey, and the  
24 towns declined our request.

1 Q And what about in the 20-foot APE off of the  
2 road?

3 A (Bunker) That was what it was for. That's  
4 included in the request.

5 Q And the town would not allow you to excavate  
6 that area to determine if there were human  
7 remains there?

8 A (Bunker) The town simply declined the request.  
9 I don't know about allowed or what was in their  
10 decision making process. I did not attend any  
11 of that.

12 Q So if the town declines your request, then does  
13 the Project, if it were sited, just proceed and  
14 then discover it as they're excavating?

15 A (Bunker) No. As I understand it, the Phase 1-B  
16 excavation would be, and the burials are  
17 subsumed under this Phase 1-B discussion, would  
18 be conducted later.

19 Q Why would the town permit you to do it later?

20 A (Bunker) I'm sorry. I don't know the nuances  
21 well enough to answer that.

22 Q Are you convinced that they are ever going to  
23 allow you to do it?

24 A (Bunker) I think at that point it's a request

1 from the Committee, not from the town. But I'm  
2 sorry to say I don't understand the process well  
3 enough beyond the work assignment to answer that  
4 in detail.

5 Q Okay. I think I understand.

6 You in answering another question said that  
7 generally you don't have to analyze roads  
8 because they've already been disturbed.

9 A (Bunker) Yes, I did say that.

10 Q Does that include what we've heard been called  
11 in these proceedings unbuilt roads where they  
12 just, you know, they were cow paths and then  
13 they got hardpacked and just sort of ended up  
14 being built by townspeople? Does that include  
15 those roads?

16 A (Bunker) Not necessarily. I can explain a  
17 little more detail if you wish.

18 Q Please.

19 A (Bunker) For the State roads, and the two  
20 federal roads components on US Route 3, for  
21 those roads I feel very confident that more  
22 modern activities would have compromised the  
23 subsurface integrity under the pavement, and the  
24 basis for my decision making on that is based



1 off from a series of construction plans from the  
2 early 20th century up to around the early 2000s  
3 that show significant modifications in  
4 maintenance, restoration, realignment, and such,  
5 which to my interpretation would have disturbed  
6 sufficiently any zones beneath the roads.

7 On the locally maintained roads which are  
8 some of them still dirt, your question is a good  
9 one, and for the most part these roads have also  
10 undergone quite a bit of modification, filling,  
11 grading, crowning, cutting into a slope,  
12 ditching along the edge, but the sensitivity  
13 areas along the margins of the road will still  
14 be examined and should artifacts or sites be  
15 found, will continue examination as the location  
16 suggests is appropriate.

17 Q When would that happen?

18 A (Bunker) That would happen when we do our Phase  
19 1-B studies on the locally maintained roads. I  
20 don't have a date.

21 Q Okay. And is that because you need the Site  
22 Evaluation Committee to give you a condition  
23 that says you have to do the 1-B analysis or --  
24 I mean, is it the same problem as Clarksville

1 where you can't get permission from the town?

2 A (Bunker) This is the Clarksville/Stewartstown  
3 leg of the journey. Yes. I might add, however,  
4 that we also did Phase 1-A and Phase 1-B on a  
5 series of off right-of-way access roads. That  
6 has successfully been completed.

7 Q Okay. All right. So assume that the Project  
8 gets sited and we make it a condition that you  
9 do 1-B analysis in this area and you discover  
10 that there are human remains in the area that  
11 needs to be excavated to install the Project.

12 A (Bunker) yes.

13 Q What happens?

14 A (Bunker) At that point, I would submit my  
15 findings for review to New Hampshire Division of  
16 Historic Resources and enter into consultation  
17 for them to look for guidance.

18 Q What do --

19 A (Bunker) What does that mean.

20 Q No. What would you expect them to do with the  
21 information. What typically happens when this  
22 sort of thing is discovered?

23 A (Bunker) Well, there would be more a request for  
24 more in-depth search into the actual burial of

1           these individuals to make a closer assessment of  
2           where they're most likely to be. There are  
3           field methods that could be employed involving  
4           deeper excavation perhaps with mechanical  
5           equipment. Some people are in favor of using  
6           ground penetrating radar to identify anomalies.  
7           Anomalies are not necessarily human remains or  
8           even coffins. They sometimes can be boulders or  
9           other natural features. And depending on those  
10          results and the recommendations of the experts  
11          that run that machinery, we could develop a  
12          strategy to explore the anomalies subsurface.

13                       However, also, having said that, if we  
14          identify where interments are, we could then  
15          invoke the 25-foot buffer and avoid them all  
16          together and leave them where they are.

17          Q       Well, if they're right in the path of the  
18          Project, how could you do that?

19          A       (Bunker) That would be difficult, if not  
20          impossible. I don't know the answer.

21          Q       Okay. If you had been permitted by the town to  
22          do the Phase 1-B analysis and you discovered a  
23          likelihood of human remains right in the path of  
24          the Project, what would your advice have been?

1 A (Bunker) Just what I told you. To consult with  
2 Division of Historic Resources and develop the  
3 best method to treat the discovery as thoroughly  
4 and respectfully and the best way possible.

5 Q And does the history of the remains, who they  
6 are, make a difference sometimes?

7 A (Bunker) No.

8 Q Would you treat a Civil War hero different than  
9 you'd treat a farmer?

10 A (Bunker) Absolutely not.

11 Q If you can't move the Project and the remains  
12 are there, is that an unreasonable adverse  
13 effect?

14 A (Bunker) If you can't move the Project and the  
15 remains are there, we would consider removing  
16 and moving the remains.

17 Q Okay. How long does that take? You don't know.

18 A (Bunker) I don't really know. It depends on  
19 soil conditions and such. But it does not have  
20 to take decades.

21 Q A year?

22 A (Bunker) No.

23 Q Okay.

24 MR. WAY: Commissioner Bailey?

1 COMMISSIONER BAILEY: Yes.

2 **QUESTIONS BY MR. WAY:**

3 Q So back to her previous point. You say you'd  
4 consider moving the remains. Which kind of  
5 means you'd consider wanting us to give you  
6 permission to move the remains, as I understand  
7 it, but why wouldn't that be an unreasonable  
8 effect? It seems like you kind of skirted  
9 around that. Wouldn't that be considered  
10 unreasonable if you had human remains right in  
11 the pathway?

12 A (Bunker) Not necessarily. If they can, if the  
13 effect can be mitigated through archeological  
14 methods, then the effect has been remedied, if  
15 you will.

16 Q So if you have a resting place. That's not  
17 necessarily a resting place in this condition.

18 A (Bunker) I'm a tiny bit confused.

19 Q Well, like, for example, if you had a historical  
20 property, you wouldn't move the historical  
21 property. Am I making sense at all?

22 A (Bunker) Not quite -- I'm not sure.

23 Q We have a resting place here. And I understand  
24 what you say. Obviously, minimization and

1 avoidance, you're going to try to go around it,  
2 but to her point if you can't go around it, why  
3 isn't that an unreasonable adverse effect?

4 A (Bunker) Because it could be mitigated.

5 Q I guess. All right. Thank you.

6 A (Bunker) You're welcome.

7 COMMISSIONER BAILEY: I think that's all I  
8 have. Thank you.

9 A (Bunker) Thank you.

10 PRESIDING OFFICER HONIGBERG: Mr. Iacopino,  
11 I think you have some questions.

12 **QUESTIONS BY MR. IACOPINO:**

13 Q First of all, Ms. Widell, nothing to do with  
14 this case, but when you worked at the Naval  
15 Academy in 2000.

16 A (Widell) Yes.

17 Q You did not recommend any changes to the Herndon  
18 monument, did you?

19 A (Widell) No.

20 Q Okay. Thank you. All right. There is an  
21 August 25th, 2017, letter from the DHR to the  
22 Committee. That letter terms the identification  
23 process as being close to complete.

24 A (Widell) Yes.

1 Q I think you used the term substantially complete  
2 or essentially complete during your testimony  
3 here over the last few days. Are there  
4 differences between those two terms as far as  
5 you're concerned?

6 A (Widell) No.

7 Q So you believe that you and the DHR are on the  
8 same page with respect to the status of the  
9 identification of the Historic Resources?

10 A (Widell) Yes. We agree with the list of  
11 inventoried properties that are attached to that  
12 August 25th letter, yes.

13 Q And they're also waiting, I believe there are a  
14 few forms they are waiting on, and, of course,  
15 the cultural landscapes?

16 A (Widell) Yes.

17 Q Okay. So you don't see, with respect to the  
18 aboveground, you don't see any difference  
19 between what they're saying and what your  
20 position is with respect to the identification  
21 process?

22 A (Widell) No.

23 Q Ms. Bunker with respect to archeological, do you  
24 agree with that as well? I think that term in

1 the letter "close to completion" addressed both  
2 aboveground and below ground identification.

3 A (Bunker) I agree.

4 Q So and I think you've told us a little bit about  
5 what needs to be done, and I guess the one  
6 question that I have is with the aboveground, I  
7 kind of think I understand where identification  
8 stops and effects assessment begins. I'm not  
9 quite sure with you. Is 1-A considered to be  
10 the identification process?

11 A (Bunker) Phase 1 combined A and B identify.  
12 Phase 1 identifies areas, Phase 1-A, excuse me,  
13 identifies areas of sensitivity. It can also  
14 identify known archeological sites from archival  
15 sources, and it can also identify new  
16 archeological sites that are visible on the  
17 ground surface. This might be a cellar hole,  
18 for example. Phase 1-B confirms site presence  
19 in the subsurface context through excavation.  
20 So at the end of Phase 1, the sites are  
21 identified.

22 Q So there are still some sites then that are  
23 pending Phase 1-B analysis. Are there any that  
24 are still pending Phase 1-A?



1 A (Bunker) Phase 1-A is complete.

2 Q Okay. So there are some that are pending Phase  
3 1-B and you just discussed one of the issues  
4 that you're having, you can't get the town to  
5 agree to allow you on the property to do the  
6 excavation?

7 A (Bunker) Yes.

8 Q Okay. I guess this question then goes to both  
9 of you, and it's a very comprehensive broad  
10 question, but is everything that the Applicant  
11 is supposed to have submitted in the 106  
12 process, has it been submitted now to either the  
13 DOE or the DHR, whatever state agency involved  
14 in the 106 process is supposed to receive it?

15 A (Widell) The properties that you mentioned will  
16 be submitted, yes, within the next two weeks,  
17 and that's paperwork and also the Effects  
18 Tables, and yes, that would make everything  
19 submitted, yes, in the next two weeks, yes.

20 Q My understanding was the Effects Tables have  
21 been submitted. Am I wrong about that?

22 A (Widell) Not all of them. They are still, some  
23 are still being completed for the underground  
24 portion of the Project.

1 Q Okay. That's right. And you said that's two  
2 weeks?

3 A (Widell) Yes. That's my understanding, yes.

4 Q And those ones are no different than the tables  
5 you've already provided. They go to DOE first  
6 and then DOE invites DHR to issue their comments  
7 on them?

8 A (Widell) Yes.

9 Q And other than the Effects Tables for the  
10 underground section, is there anything else  
11 other than that and, of course, the cultural  
12 landscapes that are pending?

13 A (Widell) Not to my knowledge, no. No.

14 Q Have those cultural landscape reports actually  
15 gone over to DOE yet or are they still somewhere  
16 in between?

17 A (Widell) Yes, they have except for one that is  
18 being delivered -- tomorrow's Friday.

19 Q This is maybe too deep into the weeds, but why  
20 is there sort of the hesitation in terms of,  
21 where is it going once you're done with it? I  
22 mean, I figured you would be the last person  
23 before it goes to DOE?

24 A (Widell) I am. I just reviewed the cultural

1 landscape report that will be delivered Friday  
2 so if you heard, yesterday, so if you hear my  
3 hesitation that is all completed, and now it  
4 will be up to the consultant to forward it to  
5 Department of Energy on Friday. So that's what  
6 you heard in my voice. I was going, let me  
7 think, I just looked at that yesterday, and it's  
8 going to be submitted Friday.

9 Q When you say the consultant, you mean yourself?

10 A (Widell) No. In this case, the consultant that  
11 did the cultural landscape reports is the Public  
12 Archeology Lab. You may remember that I talked,  
13 that there have been 7 consultants working on  
14 this material, and I have worked with all of  
15 them.

16 Q So you're waiting for their staff to actually  
17 put the stamp on it or however it gets filed  
18 with DOE?

19 A (Widell) Yes.

20 Q To undertake that next step?

21 A (Widell) Yes.

22 Q Okay. And typically, you may have been asked  
23 this question but I may have missed the answer.  
24 How long does it typically take for the DOE once

1           they've received these things to issue them to  
2           the SHPO and invite the comments?

3       A     (Widell) I'm sorry. I can't --

4       Q     Well, you've been a SHPO. I think you might  
5           have an idea of what the typical timeframes are.

6       A     (Widell) Normally, normally, that would be done  
7           in 30 days in my experience as SHPO of  
8           California. Once they have the materials, they  
9           have a responsibility to turn around rather  
10          quickly.

11      Q     Little more of the sort of getting into the  
12           weeds. Ms. Widell, when you were questioned by  
13           the representative, I forget, from Bridgewater,  
14           you discussed that you visited the sites both in  
15           leaf on and leaf off conditions?

16      A     (Widell) Yes.

17      Q     Is that the case for all of the affected sites?

18      A     (Widell) Pretty much all of them. I'm sure  
19           there are some that I did not get to either  
20           during winter or summer but yes, pretty much,  
21           yes. Especially ones where there was any  
22           possibility that there could actually be a  
23           visual adverse effect. I made sure that I went  
24           to those properties and viewed them personally.

1 I did travel the entire route, but there would  
2 be some that I would maybe not have stopped at  
3 in leaf in and leaf off.

4 Q That's what I'm getting at. When you say you  
5 viewed them personally, you mean you viewed them  
6 personally once when the vegetation was on and  
7 once when the vegetation was off or once all  
8 together?

9 A (Widell) No. More often I wanted to see these  
10 properties when the vegetation was off.

11 Q Okay. So it wouldn't be correct then to assume  
12 from your answer that you went to each of these  
13 sites two times.

14 A (Widell) No. It would not be correct that I  
15 went to every single one two times. More likely  
16 those that were likely to have a visual adverse  
17 effect I would have made sure that I had gone to  
18 in leaf on and leaf off.

19 Q But that would be two times then.

20 A (Widell) Yes, it would be two times. I'm sorry  
21 if I'm confusing it. It's 3:30 or that time  
22 when you begin to get tired. Forgive me.

23 Q Okay. I think part of the reason why some of  
24 the questions that we hear and some of the

1 concerns that you hear are expressed is because  
2 you come from a discipline where it is  
3 essentially the consultative process that rules  
4 the day. And there is no permit that is  
5 granted. There's no up or down vote at the end  
6 of the day. Site Evaluation Committee has a  
7 requirement to make an up or down vote, and they  
8 have to consider historic sites in that context  
9 and determine whether or not there's an  
10 unreasonable adverse effect on historic sites.

11 Have you ever, either of you, ever provided  
12 opinions in a permitting situation like that in  
13 the past where there's going to be a  
14 determination as to whether it's adverse or an  
15 unreasonable adverse impact and that makes the  
16 difference in the granting of a certificate or a  
17 permit?

18 A (Widell) Yes. Let me state that clearly in that  
19 I have not applied the unreasonable adverse  
20 effect before in a particular situation, but I  
21 have spent a good part of my career, and I think  
22 it's on my resume, initially working with  
23 Historic District Commission Landmark  
24 Commissions in Maryland and then in many places

1 throughout the country as training commissions  
2 how to make findings of fact in their decisions  
3 as to whether they were going to allow a  
4 demolition of a property or a change to historic  
5 property. Of course, some of these are in very  
6 small communities, but they are also in larger  
7 communities like Annapolis and Baltimore and so  
8 that is a permitting situation, and in Maryland  
9 that permit is not advisory to a Planning  
10 Commission or a mayor or council. It actually  
11 has to be appealed to the Circuit Court in  
12 Maryland.

13 Q So when you train those people and when you  
14 participate in those proceedings, how do you  
15 recommend that the decider make that decision in  
16 terms of, I mean, I assume you still are using  
17 all the 106 language and field, but then they  
18 have to make an up or down decision. What do  
19 you recommend to those boards or those  
20 commissions either as a litigant or as a trainer  
21 as to how they go about that?

22 A (Widell) It is based on their guidelines and  
23 usually when you're looking at changes to a  
24 historic property or a portion of the historic

1 district where buildings are going to be  
2 demolished or there's going to be new  
3 construction, you are looking at what are called  
4 the Secretary of Interior standards that give  
5 you recommended and not recommended actions for  
6 how to protect the character of a historic  
7 property. Those words should sound familiar  
8 because that is always the goal if you are going  
9 to care for historic properties that you're  
10 protecting that which makes it a historic  
11 property. Does that help? Did I answer your  
12 question?

13 Q Well, I guess, I'm going to figure out if you  
14 answered it in a second with the next question  
15 is that you, you seem to rely on a set of  
16 standards.

17 A (Widell) Yes.

18 Q And you recommend to that committee. So I take  
19 it in this proceeding, it would be most  
20 appropriate for this Committee to rely on those  
21 rules that it's promulgated on what to consider  
22 in determining whether or not there's an  
23 unreasonable adverse impact on historic site.

24 A (Widell) Yes.



1 Q Ms. Bunker, I'm going to ask you the same  
2 questions. Do you have any type of experience  
3 like that where your either participation or  
4 involvement is in a process where there's an up  
5 or down vote or a granting or denial of relief?

6 A (Bunker) Well, I'm not exactly sure because my  
7 work has filtered up lines. However, I have  
8 worked on numerous types of construction  
9 projects. I've worked on many highway projects,  
10 I've worked on gas pipeline projects. I don't  
11 know the permitting processes for those. But if  
12 they apply, I have worked on those. Sorry to be  
13 vague.

14 Q No. No I understand. I understand where, I  
15 mean, your work is going to go through other  
16 people. I understand that.

17 Ms. Widell, did you identify any site in  
18 your study for this Project that you considered  
19 to be historic but did not qualify for National  
20 Registry eligibility?

21 A (Widell) Yes. Generally, cemeteries are not  
22 eligible for the National Register unless they  
23 have particular importance and artistic design  
24 or can be directly related to the understanding

1 of a community. Burial sites of individuals  
2 generally are not considered eligible for the  
3 National Register. So yes, we did include  
4 those. I know we also looked at a property  
5 named Crystal Spring in Plymouth. That  
6 inventory form was completed and was found not  
7 eligible for the National Register, and I  
8 believe DHR, and once it is not then it's not,  
9 you can't apply the definition of an adverse  
10 effect on the property that doesn't have  
11 integrity. The reason why it wasn't, it didn't  
12 have integrity.

13 Q Let me break that down into the two categories  
14 then. With respect to the cemeteries, those are  
15 the cemeteries that you discussed with Ms.  
16 Weathersby, is that correct? Or prior  
17 questioner?

18 A (Widell) Just generally. We included cemeteries  
19 wherever we went that we found within the APE.  
20 Some were included in the Assessment Forms where  
21 they may have characteristics that could be  
22 affected by visual effects from the Project.

23 Q So with respect to Crystal Spring then, which  
24 DHR says not eligible, and, therefore, it's out

1 of the consideration, do you have an opinion as  
2 to whether there's an adverse effect on that  
3 particular site even though it's not eligible  
4 for the National Register?

5 A (Widell) No, because the reason it wasn't  
6 eligible, it didn't have integrity, and it is  
7 hard to identify an adverse effect on a historic  
8 property that doesn't have integrity, meaning it  
9 doesn't have significance in its features that  
10 embody historic importance.

11 Q Okay. As a layperson what I hear you saying is  
12 it's not really historic. That's kind of what I  
13 hear you saying. And is that your opinion with  
14 respect to Crystal Spring?

15 A (Widell) Yes.

16 Q Okay. In 1969, this month actually, which would  
17 be one year, when you use your cutoff date,  
18 okay? There was a very large concert in upstate  
19 New York.

20 A Um-hum.

21 Q Place called Woodstock. Okay? This is probably  
22 a very historical event, all right? But it's  
23 not 50 years old, and I know that it's been put  
24 on the National Register since. But if that

1           were over here, something like that were over  
2           here in New Hampshire, the question, I guess, is  
3           is that something that I think most people would  
4           consider to be a historic place? Maybe not  
5           everybody, not my father, but everybody who's  
6           younger than him would consider that to be a  
7           historic place, and probably because of age,  
8           because of its youth wouldn't maybe qualify or  
9           be nominated for the National Register yet.

10                    Do you think that the analysis that you've  
11           done is comprehensive enough to include a place  
12           like that?

13   A           (Widell) Yes. As professionals in the field we  
14           would always consider certainly something like  
15           Woodstock, but in more serious, there is  
16           actually a category. You've heard us just  
17           talking about Criteria A, B, C and D and that A  
18           and C are the ones.

19   Q           Correct.

20   A           (Widell) There is a category that's G, and it is  
21           very precisely outlined, and it is for  
22           properties of exceptional significance which is  
23           what Woodstock, and there are others, American  
24           band stand in Philadelphia decades ago was

1 listed on the National Register. Dulles Airport  
2 is another example, and they don't have to be  
3 huge things like that either. So you are always  
4 keeping that in mind. Seeing importance in  
5 mid-century, excuse me, mid-century modern  
6 residences and houses, and we were particularly  
7 paying attention to that because they have  
8 picture windows and views were a very important  
9 part of the architectural style of mid-century  
10 modern houses so we really thought very  
11 carefully about that, too.

12 Q But none of that seems to have appeared in your  
13 assessment? I mean I didn't see, maybe it is  
14 and maybe I've overlooked it. I didn't see any  
15 mid-century modern house or I didn't see like  
16 something, tallest building ever built in the  
17 State of New Hampshire. Something that to a  
18 layperson we might consider to be fairly  
19 historic. Is it just because those things  
20 weren't in the study area?

21 A (Widell) No. There were a number of mid-century  
22 modern ranch houses in the area of potential  
23 effect, and they are listed in the data table  
24 for that, but they were not in that area

1 affected by the Project.

2 Q They're identified but not affected.

3 A (Widell) That's correct.

4 Q Okay. Ms. Bunker, I have one question. You've  
5 mentioned that there would be an archeological  
6 compliance policy, I think you called it, at the  
7 site that would be followed by construction  
8 crews and whatnot after they were trained?

9 A (Bunker) Yes.

10 Q Is that an individual type of policy or is that  
11 like a form that's used for every construction,  
12 every construction job?

13 A (Bunker) The plan is to create a document that's  
14 pertinent to this Project. So it's not a  
15 boilerplate form. Although it could have sort  
16 of, you know, a tailgate checklist to it, it  
17 will be created specifically for this Project.

18 Q And it's not yet been created, correct?

19 A That's correct.

20 Q When in the process do you normally complete  
21 that or is that normally prepared?

22 A (Bunker) It's completed with, I don't know if I  
23 should say the word out loud, the Programmatic  
24 Agreement.

1 Q Okay. So is that one of the subsequent  
2 agreements that the Programmatic Agreement  
3 anticipates?

4 A (Bunker) Correct.

5 Q I'm not afraid of the Programmatic Agreement.

6 PRESIDING OFFICER HONIGBERG: Save it for  
7 the rest of us.

8 Q Sorry, guys. All right. And finally, I guess  
9 you've probably been asked this question, Ms.  
10 Widell a number of different ways, but I'm going  
11 to ask it straight up. You make this  
12 determination based on the overall Project not  
13 being unreasonably adverse to historic sites,  
14 and you say that you don't have a formula for  
15 that, there wasn't an algorithm you used, there  
16 wasn't an enumerator or denominator, but you ask  
17 us to essentially, I guess, put our trust in  
18 your experience. Is that pretty much the basis,  
19 the sole basis for your determination of there  
20 being no unreasonable adverse effect, that's  
21 based on your experience?

22 A (Widell) No. I would also remind and display  
23 and give you urgency to look at the  
24 extraordinary amount of work and documentation

1           that has been completed for this Project.  
2           First, before we submitted, at the time we  
3           submitted the Application, we had looked at  
4           1,284 properties and gone through the process of  
5           identifying very conservatively what could  
6           possibly be a historic site that could be  
7           affected by this Project. And then finding  
8           initially the 12 adverse effect and then using  
9           as well the Project Area Form that was completed  
10          by another set of eyes of identifying what was  
11          significant locally and contextually through the  
12          Protect Area Forms.

13                 And then another entire set of information  
14          put together on the inventory forms that DHR  
15          requested, and then another entire set of  
16          Effects Tables, very carefully following the  
17          language that is in the federal law for  
18          determining adverse effect.

19                 Yes, I have decades of experience, and I  
20          truly hope that my eyes and information and  
21          words are helpful in you all coming to a  
22          thoughtful decision, but the documentation as  
23          well speaks for itself, and I would really  
24          encourage you to consider that as well.



1 Q So if I can just put that in a shorter --

2 A Sorry if I went too long.

3 Q -- shorter explanation. Well, because I think  
4 the Committee is going to want to understand.

5 So basically you're saying yes, you have to  
6 trust my judgment, but my judgment is informed  
7 by this comprehensive base of work?

8 A (Widell) Yes.

9 Q I don't have any other questions.

10 **QUESTIONS BY CHAIRMAN HONIGBERG:**

11 Q Referring to the work that the Department of  
12 Energy has done in the analysis of the route, is  
13 it your understanding that DOE assumes that the  
14 line where it's buried will be buried in the  
15 middle of the road?

16 A (Widell) I don't know what the DOE would assume,  
17 but as far as assessment of historic properties  
18 that is what was established as Alternative 7 in  
19 the Final Environmental Impact Statement so yes.

20 Q So if in fact the route is expected to be on the  
21 side of the road, or off of the roadway, does  
22 the work need to be redone?

23 A (Widell) I want to clarify which work. You mean  
24 the assessment of historic properties? If it is

1 outside of the area of potential effect, yes, if  
2 there are properties that haven't been  
3 considered. I don't think that would be very  
4 many. But yes, if there is a change in the  
5 location of the Project --

6 Q The change is feet.

7 A Yeah. That's -- yes. So that's why I think  
8 when you're identifying features adjacent to a  
9 roadway, you're looking roughly at 20 feet, but  
10 if something, as I said, is a couple feet out  
11 and that, we would include that as well. If it  
12 were a stone wall, you'd be looking at not just  
13 the 20 feet of the stone wall, you'd be looking  
14 at all of it, and we would be avoiding a feature  
15 like that anyway.

16 Q Dr. Bunker, if that would change where digging  
17 took place to build the road, would additional  
18 work need to be done on your end?

19 A (Bunker) No. We looked at, we looked at our  
20 study area cold; in other words, without  
21 knowledge of placement of the route. Therefore,  
22 we looked at the entire APE. We considered it  
23 as our study universe. We did our sampling  
24 there. And it makes no difference to our, our

1 results, doesn't matter.

2 Q Okay. That's all I have. Any member of the  
3 Subcommittee have any further questions for the  
4 panel? Mr. Oldenburg?

5 **QUESTIONS BY MR. OLDENBURG:**

6 Q I just want to close the loop on our APE  
7 discussion before. So I found the reference in  
8 the Final EIS. And it basically says that the  
9 DOE -- and I will speak slowly -- used a  
10 conservative approach for considering the width  
11 of the work space that would be needed for the  
12 roadway burial for those alternatives that is  
13 consistent with the DOE's analysis for all  
14 alternatives for this Project. DOE has  
15 determined that a 20-foot wide work space from  
16 the edge of payment would be the width of the  
17 direct APE for roadway burial for alternatives  
18 2, 3, 5 A, 5 C, and 7 which was the selected  
19 one. So my inference from that is that DOE set  
20 the 20 feet?

21 A (Widell) Yes.

22 Q But my also understanding is that they used the  
23 plans or a plan which was under the road, sort  
24 of what the Chairman's question was, and since

1 we don't have the latest set of plans, the last  
2 set of plans that we've seen and I'm assuming  
3 that DOE has seen is for the line to be under  
4 the road. So the 20 feet would be conservative  
5 if the line is under the road. It might not be  
6 so conservative if the line isn't under the  
7 road, correct?

8 A (Widell) Yes.

9 Q Okay. That's all I have.

10 COMMISSIONER BAILEY: Well, can we get an  
11 answer from Dr. Bunker on that question?

12 A (Bunker) I forgot the question.

13 BY MR. OLDENBURG:

14 Q So the line isn't off the road. I think you  
15 sort of answered it with the Chairman's  
16 question. If the line isn't off the road, and  
17 outside the APE, you've already studied that is  
18 what I got the inference? You studied the area  
19 between the road and basically the right-of-way  
20 that could be impacted, whether it's outside  
21 the, a few feet outside the APE or not, correct?

22 A (Bunker) We did study it. If there was a larger  
23 deviation, it might warrant a review, but we  
24 covered it because we didn't have any plan in

1 mind.

2 Q Okay. Thank you.

3 PRESIDING OFFICER HONIGBERG: Mr. Walker,  
4 you have some redirect for the Panel?

5 MR. WALKER: Yes. Just very briefly.  
6 Thank you, Mr. Chairman.

7 **REDIRECT EXAMINATION**

8 **BY MR. WALKER:**

9 Q First question, Ms. Widell, there was some,  
10 you've talked a lot about how you worked closely  
11 with Lynne Monroe and the Preservation Company.  
12 A couple days ago Attorney Roth asked you a  
13 question at one point why is she not here  
14 testifying, and I wanted to follow up a bit on  
15 that. Did you during the course of your work  
16 with Ms. Monroe, did you share your Prefiled  
17 Testimony and your Supplemental Testimony with  
18 her?

19 A (Widell) Yes.

20 Q And did you also share your opinions with her on  
21 this matter?

22 A (Widell) Yes.

23 Q At any point has she expressed any reservations  
24 about either your Prefiled Testimony, your

1 Supplemental Testimony, or your opinions in this  
2 matter?

3 A (Widell) No.

4 Q You've asked a lot of, you've been asked a lot  
5 of questions about the definition of historic  
6 sites under the SEC rules that were promulgated  
7 in 2015, and I want to just beat that dead horse  
8 a bit more. You've explained how you construe  
9 that definition. Are you aware of any guidance  
10 from the New Hampshire DHR on that issue?

11 A (Widell) Yes. DHR issued a Policy Memorandum in  
12 January of 2016.

13 Q And just let me just stop you there so the  
14 Committee has it before them. That's Exhibit  
15 116, is that right?

16 A (Widell) Yes. That's it.

17 Q Dawn, if you could pull that up, please? I'm  
18 sorry. I'm looking at the one in front of me.

19 Help me understand what you take from that  
20 policy memorandum with regard to the definition  
21 of historic sites.

22 A (Widell) Well, it provides a great deal of  
23 information, but I think for purposes of this  
24 discussion, under, it's on page 3, at the very

1 top of the page, V.

2 Q Hold on one second. Dawn, could you just blow  
3 up that paragraph B, please? Thank you.

4 A (Widell) And I'll just read the first sentence  
5 slowly.

6 "In New Hampshire, aboveground historic  
7 properties meeting the definition at Site 102.23  
8 are identified through the preparation and  
9 submission of area and individual inventory  
10 forms."

11 And then the rest of the paragraph goes  
12 through, DHR discusses how those inventory forms  
13 are then viewed, used to determine whether those  
14 properties are eligible. So from my  
15 professional opinion it appears that they are  
16 identifying those properties that are on or  
17 eligible as meeting the historic site definition  
18 under 102.23.

19 Q And was your identification methodology  
20 consistent with this approach in that paragraph?

21 A (Widell) Yes, but this had not been issued at  
22 that time so we were cognizant and kept in mind  
23 the broadest possible application of what could  
24 be considered under the historic site

1 definition.

2 Q I want to turn now to the question of cemeteries  
3 because you've been asked some questions, and I  
4 think you've already answered it, Ms. Widell,  
5 just recently that you did address cemeteries  
6 when you were identifying historic sites in your  
7 analysis?

8 A (Widell) Yes.

9 Q How about you, Dr. Bunker? Did you address  
10 cemeteries in your analysis?

11 A (Bunker) Yes, I did.

12 Q How did you do that, just briefly?

13 A (Bunker) Through archival research using town  
14 histories, town historical maps, through the New  
15 Hampshire old graveyards database, and through  
16 actual field inspection, boots on the ground.

17 Q Dr. Bunker, you were asked some questions I  
18 think by Mr. Way with regard to mitigation when  
19 there is an impact to an archeological site, and  
20 I just want to be clear. You've identified four  
21 archeologically sensitive sites that could be  
22 impacted by this Project; is that right?

23 A (Bunker) Yes. Archeologically significant  
24 sites.



1 Q I'm sorry. I said sensitive.

2 A (Bunker) That's okay. It's hard to keep  
3 sensitivity straight from actual site from  
4 actual significance. But these four, and really  
5 only four for the whole Project, have been  
6 evaluated, and I believe are considered eligible  
7 for the National Register.

8 Q Did I hear you testify that the Project is able  
9 to avoid some of those four?

10 A (Bunker) Yes. Of the four, I've conversed with  
11 design engineers and looked at these four  
12 locations, and two of them we're very confident  
13 can be avoided. One of them is still under  
14 discussion. And only one is not avoidable.  
15 Unavoidable. That is to say impact cannot be  
16 avoided at only one of these sites.

17 Q And then what happens for that site?

18 A (Bunker) For that site, we will consult with New  
19 Hampshire Division of Historic Resources, and in  
20 that consultation, we will develop a mitigation  
21 plan. That for archeologists is an opportunity  
22 to continue our in-depth evaluations of the site  
23 through continued field investigation and  
24 continued research, both contextual research,

1 artifact specific research and answer research  
2 questions. It's a more theoretical information  
3 gathering endeavor, and we will collect the  
4 information from the site.

5 Q A few minutes ago Ms. Bailey asked you what  
6 would happen if during construction of the  
7 Project were you to run into in the underground  
8 section some human remains, and I think you  
9 answered that it may be impossible to avoid.  
10 Are you aware of the Project's ability to do  
11 directional drilling or horizontal directional  
12 drilling?

13 A (Bunker) Yes, I am, and I discussed that with  
14 design engineers several years ago as a  
15 potential method.

16 Q A method in that case where there is a discovery  
17 of something, if there were a discovery like  
18 that that's a method that could be used to  
19 avoid?

20 A (Bunker) Yes, and I want to point out that when  
21 we think of archeological sites and we think of  
22 areas of potential effect, we're often thinking  
23 horizontally. How much of the corridor or the  
24 parcel is occupied by the archeological site.

1 But I also would like to point out that there's  
2 a vertical APE. And in the case of a buried  
3 occurrence such as this, we would consider that  
4 the potential effect is deeper, and we could  
5 potentially recommend going below that.

6 Q We've talked a bit about the Programmatic  
7 Agreement. I just want to make clear for the  
8 record that has been uploaded to ShareFile, and  
9 it's Exhibit 204.

10 You were asked some questions, Dr. Bunker,  
11 about involvement in the Programmatic Agreement,  
12 and I want to ask you if you are aware that the  
13 Programmatic Agreement requires a work plan.

14 A (Bunker) Yes.

15 Q And what is the work plan for the Committee's  
16 benefit?

17 A (Bunker) The work plan, I can only speak from  
18 the archeological perspective. The work plan is  
19 a document that itemizes steps and methodology  
20 for conducting archeological survey for the  
21 Project, and these steps and methodologies are  
22 accompanied by supporting information such as  
23 copies of field recording forms, such as  
24 artifact curation policy statements and the

1           like. I participated actively in this, provided  
2           text, provided supporting documents, and was  
3           involved in the preparation.

4       Q     Ms. Widell, turning to you, there's some  
5           questions about the underground route of the  
6           Project. Are you aware that the Project is  
7           working with the DOT on the final design of the  
8           underground route?

9       A     (Widell) Yes.

10      Q     There was some questions from Ms. Weathersby  
11           with respect to stone walls and how those would  
12           be addressed. Do you have, are you aware of how  
13           those will be addressed?

14      A     (Widell) Yes. My understanding is that they  
15           will be avoided.

16      Q     We have nothing further.

17                   PRESIDING OFFICER HONIGBERG: All right. I  
18           think then you ladies are allowed to step down,  
19           although there's a possibility that you may be  
20           recalled to discuss the Programmatic Agreement  
21           should that be necessary.

22      A     (Widell) Thank you, Chairman.

23                   PRESIDING OFFICER HONIGBERG: Mr.  
24           Needleman, I think we can probably knock that

1 visual impact witness off before the end  
2 of the day?

3 MR. NEEDLEMAN: Let's get it done.

4 PRESIDING OFFICER HONIGBERG: Okay.

5 MR. NEEDLEMAN: I'd ask Ms. Kimball and  
6 Mr. DeWan to come on up.

7 (Recess taken)

8 PRESIDING OFFICER HONIGBERG:

9 Mr. Needleman.

10 MR. NEEDLEMAN: Thank you, Mr. Chair.

11 (Whereupon, **Terrence DeWan** and **Jessica Kimball** were  
12 duly sworn by the Court Reporter.)

13 **TERRENCE DEWAN, SWORN**

14 **JESSICA KIMBALL, SWORN**

15 **DIRECT EXAMINATION**

16 **BY MR. NEEDLEMAN:**

17 Q Could you both please state your names and where  
18 you work?

19 A (DeWan) My name is Terrence DeWan, and I work in  
20 Yarmouth, Maine, at Terrence DeWan & Associates.

21 A (Kimball) And my name is Jessica Kimball. I  
22 also work in Yarmouth, Maine, at Terrence DeWan  
23 & Associates.

24 Q Could one of you just briefly describe your role

1 in this Project?

2 A (DeWan) We have been hired to prepare a visual  
3 impact assessment of the Northern Pass  
4 Transmission Project.

5 Q And you have in front of you two exhibits. The  
6 first one is Applicant's Exhibit 16. And that  
7 is your Joint Prefiled Direct Testimony. You  
8 also have Applicant's Exhibit 92 that is your  
9 Supplemental Joint Prefiled Testimony. Do you  
10 both see that?

11 A (DeWan) Yes.

12 Q Do either of you have any corrections to either  
13 one of those documents?

14 A (DeWan) No. We don't.

15 A (Kimball) No. We don't.

16 Q That being the case, do both of you swear to and  
17 affirm that testimony?

18 A (Kimball) Yes.

19 A (DeWan) Yes.

20 Q All set, Mr. Chair.

21 PRESIDING OFFICER HONIGBERG: All right.  
22 Is there anyone here from the Business Group to  
23 ask questions of this Panel or I don't see  
24 anyone else. I think we're hitting up Counsel

1 for the Public then. Ms. Connor?

2 **CROSS-EXAMINATION**

3 **BY MS. CONNOR:**

4 Q Good afternoon. Thank you for waiting.

5 A (DeWan) We had no other choice.

6 Q My name is Doreen Connor, and I appear today as  
7 Counsel for the Public and we are going to get  
8 through some of the aesthetic cross. I don't  
9 have any expectation, unfortunately, that we can  
10 finish, but we'll do what we can.

11 I want to begin by directing everyone's  
12 attention to sort of where we start with regard  
13 to VIAs, and when I say VIAs, you understand  
14 that I'm referring to your study, correct?

15 A (DeWan) Visual Impact Assessment.

16 Q Thank you. Could we pull up Site Rule 301.05?

17 Am I correct that site Rule 301.05 governs  
18 how Visual Impact Assessments must be prepared  
19 with respect to proceedings before this body?

20 A (DeWan) That is our understanding.

21 Q And so we're in agreement that that particular  
22 rule mandates the methods and procedures that  
23 you have to follow in your VIA?

24 A (DeWan) That is generally our understanding.

1 Q And am I correct that one of the first  
2 requirements of the rule requires you to conduct  
3 a computer based visibility analysis to  
4 determine all areas of potential visual impact?

5 A (DeWan) That's one of the first things that we  
6 have to do.

7 Q And with regard to structures and rural areas  
8 that requires a study out how many miles?

9 A (DeWan) Ten miles.

10 Q And for structures in urban clusters, how many  
11 miles?

12 A (DeWan) As defined by the term "urban clusters,"  
13 two miles.

14 Q Did your visibility analysis consider whether  
15 structures were within an urban cluster?

16 A (DeWan) Yes. We did.

17 Q And where did you do that?

18 A (DeWan) The primary place that urban clusters  
19 are found is in the town of Concord.

20 Q Did you do any studies with respect to urban  
21 clusters in any towns other than Concord?

22 A (DeWan) Looking at the map of Concord, I believe  
23 there's a small portion of it that may go  
24 outside of the boundaries of Concord, but for



1 the most part Concord is where we concentrated  
2 the two-mile limit.

3 Q When you submitted your VIA in October of 2015,  
4 what radius did you use for your visibility  
5 analysis?

6 A (DeWan) At that point we used a three-mile  
7 radius from the central line of the Project.

8 A (Kimball) To correct, it was a five-mile radius  
9 in the first round.

10 Q Then am I correct that in October of 2015 this  
11 Board was considering draft rules that would  
12 require a ten-mile visibility analysis?

13 A (DeWan) That is correct.

14 Q And, ultimately, they adopted those rules in  
15 December of 2015; is that correct?

16 A (DeWan) That is our understanding.

17 Q And as a result of that, did you have to expand  
18 your visibility?

19 A (DeWan) We did.

20 Q Am I correct that the rules also make it clear  
21 that you have to do this visibility analysis  
22 based on both bare ground conditions?

23 A (DeWan) No. That is not our understanding.

24 Q What is your understanding with regard to site

1 Rule 301.05 that talks about the fact that  
2 visibility analysis should be based on both bare  
3 ground conditions and with consideration of  
4 screening by vegetation?

5 A (Kimball) 301.05(b)(4) is the section of the  
6 rules that describes the computer-based  
7 visibility analysis, and it discusses the radius  
8 that we talked about, but there isn't any  
9 reference to vegetation or bare earth conditions  
10 in that definition or description of the work.

11 Q Can we go back to (b)(1), Sandie, and can you  
12 blow it up so it's actually legible? (b)(1)?

13 I've blown up 301.05(b)(1), and doesn't  
14 this rule require an analysis both on bare  
15 ground as well as screening?

16 A (DeWan) We do not believe so.

17 Q Okay. And so we're clear, then you chose to  
18 avoid the bare ground analysis?

19 A (DeWan) No, we did not. We submitted a bare  
20 ground analysis at another point.

21 Q But not initially.

22 A (DeWan) Not initially.

23 Q And you did not initially because it was your  
24 interpretation that (b)(4) trumped (b)(1)?

1 A (Kimball) (b)(4) is the description of what a  
2 computer-based visibility analysis is. That is  
3 the section of the rules that describes what a  
4 visibility analysis is composed of.

5 Q Well, if it's your interpretation that a bare  
6 ground analysis was not required, then why did  
7 you do one?

8 A (DeWan) We were requested by several people  
9 during some of the testimony that we attended to  
10 produce one. We still do not believe that  
11 (b)(1) requires a visibility analysis. I don't  
12 believe that the words "visibility analysis" are  
13 contained in (b)(1).

14 Q Okay. In your first report, you identified 525  
15 potential scenic resources within approximately  
16 a 900-square-mile Project; is that correct?

17 A (DeWan) That is correct.

18 Q Approximately how many months did it take to  
19 complete that 900-square-mile inquiry?

20 A (DeWan) Little bit less than a year and a half.

21 Q It's my understanding that then five months  
22 later you supplemented your review by  
23 identifying all potentially impacted scenic  
24 resources ten miles out from each structure. Is

1           that correct?

2           A     (DeWan) That's correct.

3           Q     So to summarize, it took a year and a half to  
4           inventory 900 square miles, and it took five  
5           months to inventory an additional 1500 miles.  
6           Is that correct?

7           A     (DeWan) That sounds about right.

8           Q     So even though you more than doubled the area  
9           that you had to investigate, it took a third of  
10          the time.

11          A     (DeWan) And there's a lot of reasons for that.

12          Q     Well, initially I'm just trying to make sure my  
13          math is right on the timing. Am I correct?

14          A     (DeWan) That sounds about right. Yes.

15          Q     And when you expanded your study from five miles  
16          to ten miles from each structure, am I correct  
17          that you only come up with an additional, came  
18          up with an additional 72 potentially impacted  
19          scenic resources?

20          A     (Kimball) That were located within the APBI.  
21          That's correct. I don't have the number in  
22          front of me, but I'm trusting you're taking that  
23          from our --

24          Q     I am.

1 A (Kimball) Right.

2 Q So 525 in the first five miles and then 72 in  
3 the next five miles?

4 A (Kimball) The 525 initially identified includes  
5 all scenic resources regardless of whether or  
6 not they're in the APBI.

7 Q Okay. Can we pull up definition Site Rule  
8 102.45?

9 So in addition to defining what is required  
10 in a VIA, the SEC rules also define scenic  
11 resources; do they not?

12 A (DeWan) That is correct.

13 Q And I have in front of me that definition?

14 A (DeWan) I see it on the screen. Yes.

15 Q Okay. Good. The first aspect of this  
16 definition is that a scenic resource must be one  
17 to which the public has a legal right of access.  
18 Is that correct?

19 A (DeWan) That is correct.

20 Q And then the other aspect of the definition is  
21 that the resource must have a scenic quality or  
22 the public needs to have access to a  
23 recreational trail park or area maintained with  
24 public funds. Are those sort of the several

1 components of this definition?

2 A (DeWan) That's correct.

3 Q And the right of legal access is right in the  
4 beginning, but then we have various categories  
5 of scenic resources, right?

6 A (DeWan) That's correct.

7 Q Most of those categories of scenic resources  
8 define a resource that has to have a scenic  
9 quality, correct?

10 A (DeWan) That's correct.

11 Q The one exception to that is subsection (d)  
12 which talks about recreational trails, parks or  
13 areas established, protected or maintained in  
14 whole or in part with public funds, that  
15 particular subsection doesn't impose a scenic  
16 quality definition, does it?

17 A (DeWan) It does not appear to.

18 Q Am I correct that the New Hampshire SEC's  
19 definition of resources that qualify as scenic  
20 resources is much broader than what is required  
21 than under say the Maine Wind Energy Act?

22 A (DeWan) To some extent it is a little bit  
23 broader, yes.

24 Q And you agreed, I believe, earlier on when we

1 started that for these proceedings you were  
2 bound to follow the SEC rules.

3 A (DeWan) That is correct.

4 Q You understand that your starting point of a  
5 little under 600 scenic resources within a  
6 2800-mile area is substantially small in  
7 comparison to what Counsel for the Public's  
8 expert came up with.

9 A (DeWan) That would be an understatement.

10 Q Okay. And you understand that Counsel for the  
11 Public once they took out for duplication and  
12 whatnot that they came up with a little bit more  
13 than 7,000 potentially affected scenic  
14 resources.

15 A (DeWan) That's correct.

16 Q And I take it from looking at your report that  
17 you didn't review those 7,000 potentially  
18 affected scenic resources identified by expert  
19 for the public, did you?

20 A (DeWan) I do not understand what you mean by  
21 "didn't review."

22 Q Did you perform any kind of analysis with regard  
23 to the 7400 scenic resources identified by  
24 public expert?

1 A (DeWan) First of all, I don't think that it's  
2 accurate to consider them to be scenic  
3 resources. Some of them may be potential scenic  
4 resources, but they're simply points or lines of  
5 areas on the study area. But we did look at a  
6 lot of them.

7 Q Did you look at all of them?

8 A (DeWan) We did not look at all 7,000 of them.

9 Q Can you tell this Panel how many of them you  
10 looked at?

11 A (DeWan) We looked at the number that we've  
12 already identified as the number that we've  
13 looked at as part of our study.

14 Q So, in other words, the 597 that you came up  
15 with.

16 A (DeWan) Plus the additional ones that we looked  
17 at when we went out ten miles.

18 Q Actually, 597 includes those. You started with  
19 525 and then you had 72 additional.

20 A (Kimball) We also added additional in April of  
21 2017 as part of our Supplemental Prefiling.

22 Q Right. How many was that?

23 A (Kimball) I don't have the numbers in front of  
24 me, but it was less than a 100.



1 Q Wasn't it less than 20?

2 A (Kimball) There was a number of different  
3 methods that we took so there were some based on  
4 the revised land covered data some based on the  
5 historic sites. It was certainly more than 20.

6 Q Can we pull up Applicant Exhibit 1, Appendix 17?  
7 Can you focus in just on the flow chart? We've  
8 pulled up an exhibit that is from your report.  
9 Am I correct that this is your methodology  
10 chart?

11 A (DeWan) That is from our report. That is  
12 correct.

13 Q And is this chart a reasonable representation of  
14 the methods and procedures you used to conduct  
15 your VIA?

16 A (DeWan) I think this presents a reasonable  
17 overview of the process that we went through. I  
18 won't say that we followed it exactly step by  
19 step. There was a lot of modification as we  
20 went through here, but I think this gives you a  
21 good sense of the process that we went through.

22 Q In the first step, identifying scenic resources,  
23 did you follow the definition that we went  
24 through a few minutes ago, Site Rule 102.45?

1 A (Kimball) Yes. I would say the only addition  
2 that was made in April of 2017 was the addition  
3 of historic sites that were developed using the  
4 DHR's database.

5 Q We talked a little bit that the first element of  
6 the definition of scenic resource under the  
7 SEC's rule requires that the public had a legal  
8 right of access to the property, right?

9 A (DeWan) That's correct.

10 Q Would you agree that the public has a legal  
11 right of access to all public roads?

12 A (DeWan) Yes.

13 Q Do you agree that under in New Hampshire's  
14 current use taxation program that when a  
15 landowner allows public access to those lands in  
16 order to qualify for an additional tax break  
17 that that would be land to which the public has  
18 a legal right of access?

19 A (DeWan) They do have a legal right of access  
20 according to our understanding of that, but we  
21 do not believe that is the intent of Section  
22 102.45 to include those properties because that  
23 includes about 60 percent of the land area of  
24 the State of New Hampshire.

1 Q I understand that, but right now I'm just trying  
2 to figure out whether we agree that public lands  
3 that are posted open for purposes of current use  
4 taxation, whether you agree that the public has  
5 a right of access to those lands.

6 A (DeWan) I think that might be a legal point, and  
7 we're certainly not prepared to discuss  
8 legalities of it. I know there are some  
9 conditions placed upon properties that are under  
10 that statute.

11 Q What about an example of a conservation area  
12 that you discover during field work that has a  
13 maintained trail and parking. Would you  
14 consider that to be an area to which there is  
15 public access?

16 A (DeWan) Generally, yes.

17 Q How did you determine how many locations there  
18 were within a 2800 square mile area to which the  
19 public had a legal right of access?

20 A (Kimball) We had, to begin with, we read  
21 documents, primarily master plans, material  
22 online from various conservation groups,  
23 anything that we could come up with that was  
24 public documentation that represented parks,

1 conservation areas, lakes, et cetera. So we  
2 used a variety are of different documentation to  
3 build up that list to come up with that total  
4 number.

5 Q Would you agree that trying to determine how  
6 many potentially scenic resources there are to  
7 which the public has a right of access is  
8 somewhat inexact signs?

9 A (DeWan) An inexact science?

10 Q Yes.

11 A (DeWan) I would hesitate to even call it a  
12 science.

13 Q Okay. And that's in part because you just told  
14 me that you relied on databases, but there are,  
15 am I correct that there are going to be a number  
16 of scenic resources to which the public has a  
17 right of access that aren't in any database?

18 A (Kimball) Well, in addition to databases, we  
19 would also use master plans. So, in theory, if  
20 there was a publicly accessible place that was  
21 important to the community, it would be listed  
22 within the master plan document.

23 Q Wouldn't you agree that there may also be scenic  
24 resources that are important to local

1 communities that aren't in their master plan?

2 A (Kimball) I would not agree with that.

3 Q So it's your position that unless the resource  
4 has been designated by the town in some  
5 document, it can never qualify as a scenic  
6 resource?

7 A (DeWan) Not by the town. There are other ways  
8 to look at type of resources that might be  
9 considered scenic resources. iBooks, for  
10 example. Online resources.

11 Q But am I correct that that was what you just  
12 told me, that it has to be designated by the  
13 municipality in some respect?

14 A (Kimball) I didn't say that it had to be  
15 designated by the municipality. Oftentimes in  
16 master plans they make a reference to  
17 conservation areas, scenic viewsheds, parks.

18 Q But if a community for some reason hasn't gone  
19 to that step of either locally designating or  
20 recognizing the resource in their master plan,  
21 that's an area that a scenic, potential scenic  
22 resource that you could miss?

23 A (Kimball) Our research went beyond local master  
24 plans.

1 Q Well, when I asked you to identify all of the  
2 places that you went to try to determine whether  
3 public had access to it, you didn't mention any  
4 other sources.

5 A (Kimball) I did.

6 Q Okay. You mentioned master plans.

7 A Conservation area groups such as the Bear Paws  
8 Conservation Group or the Pemigewasset River  
9 Group that preserves that area. I don't have  
10 them off the top of my head of particular groups  
11 that we went to. As Terry mentioned,  
12 guidebooks, databases, so all of the lakes that  
13 have public accessibility are listed by the  
14 state. So there was a variety of resources. It  
15 certainly wasn't limited to local master plans.

16 Q But it was, in fact, limited to published  
17 materials.

18 A (Kimball) Correct.

19 Q And I think what you just told me a minute ago  
20 that if for some reason a scenic resource didn't  
21 appear in a published form, it was likely that  
22 the resource was, couldn't be a scenic resource?

23 A (DeWan) No. I believe that if we were to find a  
24 place during the course of our field work that

1 we thought was exceptionally scenic we would  
2 have added that to our inventory.

3 Q So you agree in fact that there are resources  
4 that could qualify as scenic resources that  
5 don't appear in any published database?

6 A (Dewan) Not necessarily. I think that we did a  
7 very good job of looking at every single town  
8 along the 192-mile route looking at all  
9 available information using the best of our  
10 professional ability to find resources that have  
11 been and would be considered scenic resources.  
12 We also followed criteria that we've always used  
13 as part of our 30 years of experience in doing  
14 Visual Impact Assessments. Also looked at the  
15 type of research that has been done by other  
16 VIAs that have come before the SEC. And we feel  
17 that the work that we did is certainly on par  
18 with all that work.

19 Q I'm going to get into the specifics of your  
20 work, but right now I was asking more about  
21 theoretical question. I'm simply trying to get  
22 an answer to whether you agree or disagree that  
23 a scenic resource doesn't have to be identified  
24 in a published database in order to qualify as a

1 scenic resource.

2 A (DeWan) Again, going back to our experience in  
3 doing these sort of studies over the past three  
4 decades, you know, I can't think of any resource  
5 that we have ever encountered that has not been  
6 published in one form or another.

7 Q Okay. Subsection (a), the SEC's definition of  
8 scenic resources talks about those that are  
9 designated by national, state or municipal  
10 authorities, and is it fair to characterize that  
11 as being perhaps the easiest category of scenic  
12 resources to locate?

13 A (DeWan) I don't know if they're the easiest to  
14 locate, but they certainly are well-known.  
15 There are not that many that are designated by  
16 national authorities. Certainly quite a few by  
17 state and municipal authorities.

18 Q But that's a definition of a scenic resource  
19 that directs you to a particular database, does  
20 it not?

21 A (DeWan) No.

22 Q And why is it that it doesn't?

23 A (DeWan) There's no reference to any database in  
24 A.



1 Q What I'm referring to is the fact that when  
2 you're trying to figure out whether a particular  
3 resource is, quote, unquote, "designated," you  
4 know that you're either going to go to a  
5 national, state or municipal authority to  
6 determine what that resource is, correct?

7 A (DeWan) Generally, that's correct.

8 Q As opposed to having to do field work to  
9 determine whether there are scenic resources out  
10 there in the first instance?

11 A (DeWan) That's correct.

12 Q When we're talking, and am I correct that one of  
13 the designations that you run into under  
14 subsection (a) are Scenic Byways; is that  
15 correct?

16 A (DeWan) That's correct. Both state and  
17 nationally designated Scenic Byways.

18 Q And even locally designated, correct?

19 A (DeWan) No. There's no locally designated  
20 Scenic Byways.

21 Q You're right. Locally designated roads.

22 A (DeWan) Locally designated scenic roads.

23 Q Yes. When we're dealing with scenic roads,  
24 regardless of whether they're designated by

1 national, state or municipalities, am I correct  
2 that the designation deals with the view from  
3 the particular road as opposed to the road  
4 itself?

5 A (DeWan) No.

6 Q So it's your opinion then that the paved portion  
7 of the road has some scenic quality to it?

8 A (DeWan) I think you've changed the question  
9 here. You asked is the view from the road what  
10 makes it scenic, and I, for example, in many of  
11 the state scenic and cultural byways, it's to  
12 guide people through parts of the state that  
13 have both a scenic, historic, cultural, natural  
14 experience.

15 Q I'm talking about Scenic Byways, not cultural  
16 byways.

17 A (DeWan) I believe that's one and the same  
18 definition in the State of New Hampshire.

19 Q Would you agree when we're talking about byways  
20 that are designated for a scene as opposed to  
21 directing you into a particular area of town  
22 that the designation is directed at the view as  
23 opposed to the road itself?

24 A (DeWan) No.

1 Q Why not?

2 A (DeWan) I understand the Scenic Byways program  
3 is to encourage tourism along these fairly  
4 lengthy and very often interconnected roadways,  
5 and it exposes travelers to a variety of  
6 different cultural, historic, scenic locations.  
7 And part of the publicity that goes along with  
8 it is an identification of some of those scenic,  
9 cultural, historic, natural sites along the way.

10 Q And when those Scenic Byways have lookout stops,  
11 at those particular lookout spots, is the public  
12 being directed to look at the road or at the  
13 view that's off in the distance?

14 A (DeWan) First of all, there's very few lookout  
15 spots, and I don't think "lookout spots" is a  
16 term that's used by the Scenic Byways program.  
17 There are a couple. Let's talk the Route 2  
18 overlook in Lancaster. There is no direction  
19 there. It's just a paved parking lot. The  
20 public has the ability to look in one direction  
21 to the White Mountains, another direction to the  
22 Christie easement, another direction to a  
23 campground.

24 Q And when that public person is stopping at that

1 overlook and looking out at the view, they don't  
2 need to have access to what it is that they are  
3 looking at in order for them to be looking at  
4 the scenic resource, do they?

5 A (DeWan) No. They have to have visual access,  
6 not physical access.

7 Q Correct. And that visual access that the public  
8 needs to have to the scenic resource out in the  
9 distance is the same type of visual access that  
10 an individual would need to have along any New  
11 Hampshire public road, correct?

12 A (DeWan) That's correct.

13 Q In addition to designated scenic resources, the  
14 rule then goes on to talk about conservation  
15 lands or easements that possess a scenic quality  
16 as another subcategory of scenic resources,  
17 correct?

18 A (DeWan) Category B.

19 Q Right. And that requires a determination about  
20 whether those lands possess a scenic quality  
21 which is also a specifically defined term of  
22 art, correct?

23 A (DeWan) I do not, I would not use the word  
24 specifically.

1 Q Okay. Subsection (b) talks about conservation  
2 land or easements that possess a scenic quality.

3 A (DeWan) That's what I see, yes.

4 Q Okay. So I don't, am I correct then that these  
5 lands, these settlement areas must possess a  
6 scenic quality?

7 A (DeWan) That's what it says.

8 Q Okay. And what's the definition of a scenic  
9 quality?

10 A (DeWan) It's stated 102.44.

11 Q And what's the definition of a scenic quality?

12 A (DeWan) To read it, quote, "scenic quality,"  
13 unquote, means a reasonable person's perception  
14 of the intrinsic beauty of land forms, water  
15 features, or vegetation in the landscape as well  
16 as any visible human additions or alterations to  
17 the landscape.

18 Q And that definition in terms of items that may  
19 have a scenic quality is written in such a way  
20 that it is alternatives. It can be intrinsic  
21 beauty of land form or water features or  
22 vegetation; is that correct?

23 A (DeWan) That's right. Those are three of the  
24 four things that you normally look at to define

1 the landscape.

2 PRESIDING OFFICER HONIGBERG: Off the  
3 record.

4 (Discussion off the record)

5 PRESIDING OFFICER HONIGBERG: We're going  
6 to take a ten-minute break.

7 (Recess taken 3:42 - 3:56 p.m.)

8 PRESIDING OFFICER HONIGBERG: Ms. Connor.  
9 You may continue.

10 MS. CONNOR: Thank you.

11 BY MS. CONNOR:

12 Q I'm going to continue on here with scenic  
13 resources under Rule 102.45. That rule also  
14 talks about the fact that all lakes that possess  
15 a scenic quality are scenic resources so long as  
16 the public has a legal right of access; is that  
17 correct?

18 A (DeWan) That's what it says, yes.

19 Q Okay. And you are aware, are you not, that in  
20 New Hampshire all natural bodies of fresh water  
21 situated in the state with an acreage of more  
22 than 10 acres are held in public trust by the  
23 state for public use?

24 A (DeWan) That's correct.

1 Q So you would agree with me that those bodies of  
2 water are bodies to which the public has access?  
3 A legal right of access?

4 A (DeWan) I think that's generally my  
5 understanding.

6 Q And, therefore, if those bodies of water to  
7 which the public has access also possess a  
8 scenic quality, then they would qualify as a  
9 scenic resource.

10 A (DeWan) That's correct. If they were so  
11 designated as having scenic, a scenic quality.

12 Q Well, in fact, they don't have to be designated  
13 as having scenic quality. They simply have to  
14 have it, correct, under subsection (c)?

15 A (DeWan) Well, again, as a frame of reference, as  
16 you mentioned before, I've done a lot of work in  
17 Maine over the years, and one of the things that  
18 differentiates the Maine experience from the New  
19 Hampshire experience is the fact that in Maine  
20 all the lakes and all the ponds have been rated  
21 for scenic quality. That is not the case here.  
22 So we have a certain frame of reference when we  
23 come into a situation like this. We know how at  
24 least one other state looks at scenic quality

1           for things like lakes and ponds. And so when we  
2           look at a body of water, we have a certain  
3           mindset that perhaps not all lakes are equally  
4           scenic, that there may be some factors that make  
5           some lakes more scenic than others.

6       Q    I understand that you would certainly come to  
7           the Project with your own set of experiences.  
8           But in terms of applying the national rules  
9           which we have all agreed govern this particular  
10          proceeding, a lake or pond in New Hampshire to  
11          which the public has a right of access qualifies  
12          as a scenic resource so long as it has a scenic  
13          quality and it doesn't have to be designated to  
14          have a scenic quality, correct?

15       A    (DeWan) Well, the term scenic quality from our  
16           way of looking at it is somewhat ambiguous.  
17           Scenic quality can mean a lot of different  
18           things to different people. The word scenic is  
19           an adjective. If you use the term scenic  
20           overlook, for example, when you get to a scenic  
21           overlook you expect to see some pretty memorable  
22           scenery. If you look at a scenic river or a  
23           scenic byway, you're not looking at your  
24           ordinary street. So to us, the word scenic is



1 really a way of looking at a place, an area, a  
2 viewpoint that has an elevated sense of scenery  
3 beauty, of intrinsic beauty.

4 Q Well, would you agree with me that when the SEC  
5 adopted their rules they made a distinction  
6 between scenic resources that carry a  
7 designation and those that simply have a scenic  
8 quality. Those are two very different things,  
9 are they not?

10 A (DeWan) That's correct.

11 Q And unlike those that are specifically  
12 designated which is subsection (a), when we get  
13 down to subsection (c), the lakes and ponds and  
14 rivers simply need to possess a scenic quality.  
15 They do not need to be designated by anybody,  
16 correct?

17 A (DeWan) That's one way of looking at it.

18 Q Okay. You did not evaluate the potential visual  
19 impact on all of the lakes with potential  
20 visibility within ten miles of this Project, did  
21 you?

22 A (DeWan) We, for all the lakes we visited most of  
23 them. Those that were within 3 to 5 miles we  
24 evaluated them. Those that were beyond five

1 miles I think for the most part had no  
2 visibility.

3 Q Sir, my question was, you did not evaluate the  
4 potential visual impact on all lakes within ten  
5 miles of this Project, did you?

6 A (DeWan) I do not believe that's true. I believe  
7 we did evaluate potential visual impact on all  
8 lakes.

9 Q Within ten miles.

10 A (DeWan) Within ten miles.

11 Q Then where were the ratings for that work  
12 because they were not part of discovery.

13 A (Kimball) The identification of all lakes and  
14 ponds were made and the, within three miles of  
15 the Project the rating norms were provided.

16 Q So we have rating forms for all of these ponds  
17 within three miles but not within ten miles?

18 A (DeWan) There is some that we did an evaluation  
19 on. I perhaps misstated before when I said we  
20 evaluated every one of them. We did, we did  
21 look at every pond. We, well, if I could go  
22 back and say that once you get beyond a certain  
23 distance, the distance factor really enters into  
24 the discussion here. I realize that the rules

1 call for an evaluation of property and lakes and  
2 resources out to ten miles. At some point you  
3 sort of have to ask the question is it really  
4 germane to the discussion.

5 Q My question was whether you have evaluated the  
6 potential visual impact to all lakes within ten  
7 miles of the Project. I believe the answer is  
8 no. But I just want to make sure I'm correct.

9 A (DeWan) I believe we have. I don't believe, I  
10 don't think that we could supply you with the  
11 data form that gives you that evaluation.

12 Q Well, if you think the answer is yes, then why  
13 did we get into the discussion that it really  
14 wasn't germane because you really couldn't see  
15 once you get out to a certain number of miles?

16 A (DeWan) Because that has to do with whether it's  
17 going be a visual impact.

18 Q So we have rating forms for this review within  
19 three miles, but we don't have any rating forms  
20 beyond that? Is that correct?

21 A (Kimball) If you look to our Supplement that we  
22 submitted in February of 2016, we make a blanket  
23 statement about all resources beyond five miles  
24 as having virtually no visibility because of the

1 distance, and any ponds that were identified  
2 from three to five miles were addressed in that  
3 Supplement.

4 Q So again, we have rating forms for ponds within  
5 three miles of structures but nothing beyond  
6 that?

7 A (DeWan) I think that's correct.

8 Q Okay. And you're aware that the rule required  
9 out to ten miles.

10 A (Kimball) I don't believe there's anywhere in  
11 the rules that suggest that there need to be a  
12 rating form, but it does ask that we include  
13 them in our inventory and look at the visual  
14 impact which we did.

15 Q The rule requires that you look at the visual  
16 impact, the potential visual impact at all lakes  
17 and ponds out ten miles, and if you don't supply  
18 a rating form beyond three miles, then you  
19 effectively preclude cross-examination, don't  
20 you?

21 A (DeWan) No. I think that as Jessica said  
22 before, we made a blanket statement that once  
23 you get beyond a certain distance it's virtually  
24 impossible to have a visual impact on a resource

1           that's beyond that distance.

2           Q       So you looked at them within three miles.  
3                    Beyond three miles it's your representation that  
4                    there was not a potential visual impact.

5           A       (DeWan) That's correct.

6           Q       Site Rule 102.45(c) also talks about drives and  
7                    rides that possess a scenic quality; is that  
8                    correct?

9           A       (DeWan) That's what it says.

10          Q       And again, this is different from those  
11                    designated in subsection (a) because this falls  
12                    under subsection (c), correct?

13          A       (DeWan) That's correct.

14          Q       And so a scenic drive or a ride under subsection  
15                    (c) requires an evaluation of the scenic quality  
16                    of that drive and ride.

17          A       (DeWan) I think what it first demands though is  
18                    a definition of what is a scenic drive and ride.

19          Q       And what is your definition of what a scenic  
20                    drive or ride is with regard to subsection (c)?

21          A       (DeWan) To us that meant roads that have been  
22                    designated as Scenic Byways at either a national  
23                    or state level or at a town level as scenic  
24                    roads.

1 Q Well, then wouldn't those specifically  
2 designated byways be included within subsection  
3 (a)?

4 A (DeWan) There's a lot of places here where  
5 resources can be part of A through F.

6 Q But a scenic drive that is not designated can't  
7 be a scenic resource within A. It can only be a  
8 scenic resource within C, right?

9 A (DeWan) It appears that way.

10 Q And, therefore, scenic drives and rides with the  
11 scenic quality in subsection (c) are something  
12 different than those that are designated in  
13 subsection (a)?

14 A (DeWan) Again, I would have looked to have seen  
15 a definition of what a scenic drive and ride is.  
16 I don't know if a ride means a horseback ride.

17 Q So if you're not sure what that term means which  
18 is what I think you're telling us right now, how  
19 did you determine what scenic drives and rides  
20 were within ten miles of this Project with  
21 scenic qualities?

22 A (DeWan) That's one of the reasons we do field  
23 work. What we do is not just data collection  
24 and research. But it's also getting out and

1           seeing what the landscape looks like and  
2           identifying if there are places that may qualify  
3           for this ambiguous phrase of scenic drive and  
4           ride.

5       Q     Actually, rides has no qualifications whatsoever  
6           in this rule other than that it possesses a  
7           scenic quality, correct?

8       A     (DeWan) I'm not sure I understand what you're  
9           saying there. Are you saying that rides stands  
10          alone?

11      Q     Can we pull this up? And zoom in. I don't want  
12          to lose scenic quality, but just from the top  
13          down to C. Perfect. All right.

14                So under subsection (c), we have scenic  
15          drives and rides which has no qualifier in front  
16          of it. And the only other requirement for a  
17          ride to be a scenic resource is that it must  
18          possess a scenic quality and the public has to  
19          have access to it, correct?

20      A     (DeWan) That's correct.

21      Q     And there's no real ambiguity because scenic  
22          quality is defined by the SEC rules.

23      A     (DeWan) Well, as we said before, we have some  
24          issues with the ambiguous nature of the

1 definition.

2 Q All right. And I take it that your concern  
3 about the definition of scenic quality is that  
4 different reasonable people may have different  
5 opinions about what is a scenic quality. Is  
6 that fair?

7 A (DeWan) I think that my understanding of what a  
8 Visual Impact Assessment tries to get at is  
9 where are the places that have intrinsic beauty,  
10 and, as we know, that may be considered to be in  
11 the eye of the beholder, but it's a term that we  
12 use here as a place holder to go through the  
13 process of a Visual Impact Assessment.

14 Q Sandy, can we pull up Applicant 71826?  
15 Applicant Exhibit 71826?

16 Do you have a picture on your screen?

17 A (DeWan) I see it, yes.

18 Q Sometimes there's a delay.

19 A (DeWan) It's called Mount Prospect Road.

20 Q In Lancaster?

21 A (DeWan) Lancaster in Coos County.

22 Q Correct. And that's from your submission,  
23 correct?

24 A (DeWan) That is correct.



1 MS. MERRIGAN: For the record, this is  
2 Applicant's Exhibit 71-1, Attachment 8.

3 Q Would you say that the view from this road  
4 possesses a scenic quality?

5 A (DeWan) First of all, this is not a view from  
6 the road. This is the view from the back of a  
7 private home.

8 Q Okay. Would you say that this possesses a  
9 scenic quality?

10 A (DeWan) I do.

11 Q Why?

12 A (DeWan) It's a combination of land form,  
13 vegetation, and to a minor extent some changes  
14 brought by the hand of man. It's a combination  
15 of various distance zones that we're looking at.

16 Q You just mentioned that this was a view from the  
17 back of a private property. In fact, isn't this  
18 view also visually accessible from Mt. Prospect  
19 Road in Lancaster?

20 A No.

21 Q And why is that?

22 A (DeWan) Because this is a view from a very  
23 specific point on the back side of an  
24 individual's home.

1 Q Are you telling this Committee that there is no  
2 view of these mountains on Mount Prospect Road  
3 in Lancaster?

4 A (DeWan) No.

5 Q The views that are available from Mount Prospect  
6 Road in Lancaster, those are views to which the  
7 public has a right of legal access, correct?

8 A (DeWan) That's correct. If they're on a public  
9 road.

10 Q And assuming that there is a view like this from  
11 Mount Prospect Road, a public road, would you  
12 agree that that would make this a scenic drive?

13 A (DeWan) I would say so.

14 Q And if this is a scenic drive, you should have  
15 completed a visual effect rating form, correct?

16 A (DeWan) This is also a locally designated scenic  
17 road which we have identified.

18 Q But you didn't complete a visual effect rating  
19 form for it, did you?

20 A (DeWan) We provided a lot of information  
21 relative to the characteristics of the road and  
22 the people that would be using it.

23 Q You did not complete a visual effect rating  
24 form, did you?

1 A (DeWan) We did not.

2 Q Can we go to the next example? 828 of Applicant  
3 Exhibit 71-1. Do you want the APP number? APP  
4 36081.

5 This view is from Mountain Road in Dalton,  
6 New Hampshire. This is also from your  
7 materials, correct?

8 A (DeWan) That is correct.

9 Q Would you say it possesses a scenic quality?

10 A (DeWan) Yes, it does.

11 Q And why does it possess a scenic quality?

12 A (DeWan) It allows an individual passing by, this  
13 is actually a representation of a view from a  
14 private residence as required by the rules. But  
15 it does show a layered landscape and the ability  
16 to see both the foreground/midground and the  
17 background with a lot of different variations in  
18 land form and vegetative cover.

19 Q And if this scenic view is accessible from other  
20 spots on Mountain Road, it would make it a  
21 scenic drive under Rule 102.45, correct?

22 A (DeWan) Again, there's no definition of a scenic  
23 drive, but somebody driving along this road  
24 would see views like this at a limited number of

1 other locations.

2 Q Would that make it a scenic resource?

3 A (DeWan) Not necessarily.

4 Q Public access, scenic quality.

5 A (DeWan) This is not a publicly accessible  
6 location.

7 Q I didn't ask about the driveway. I asked about  
8 this view on Mountain Road. Wouldn't that make  
9 it a scenic resource?

10 A (DeWan) I guess it would depend on what we mean  
11 by the term resource. Is just an opening in the  
12 woods framed by a private home a resource?

13 Q I'm talking about a scenic drive or a ride that  
14 possesses a scenic quality. Wouldn't this view  
15 from Mountain Road in Dalton qualify?

16 MR. WALKER: I'm going to object,  
17 Mr. Chairman. Is this a hypothetical? Is the  
18 witness to assume that such views exist because  
19 the only evidence we have is this photo from a  
20 private property.

21 PRESIDING OFFICER HONIGBERG: I heard it as  
22 a hypothetical. I heard the "if" at the  
23 beginning of the original question. That was  
24 your question, was it not?

1 MS. CONNOR: It was.

2 PRESIDING OFFICER HONIGBERG: If the same  
3 view, if people would get the same view from the  
4 road. That was the way you set it up, right?

5 MS. CONNOR: It was.

6 PRESIDING OFFICER HONIGBERG: All right.

7 A (DeWan) It might be considered a scenic  
8 resource.

9 Q And again, you didn't complete a visual effect  
10 rating form for the view at this location, did  
11 you?

12 A (DeWan) We were asked to submit this because the  
13 SEC regulations required a representative  
14 sampling of views from private property which is  
15 what this represents.

16 Q Can we go to APP 36133? This is also from the  
17 sample of photographs you took, correct?

18 A (DeWan) That's correct.

19 Q And this is a view from Deerfield Road in  
20 Allenstown, New Hampshire, correct?

21 A (DeWan) This is representative of what a home on  
22 the left side of the photograph would see from  
23 their private property.

24 Q And Deerfield Road goes in front of this

1 property, does it not?

2 A (DeWan) That's correct. This is a very brief  
3 opening in the vegetation along the road.

4 Q And would you agree that the scenery from this  
5 opening in Deerfield Road possesses a scenic  
6 quality?

7 A (DeWan) It has, you can describe the landscape.  
8 Again, it's a combination of vegetation and land  
9 form.

10 Q Do you agree that this view from Deerfield Road  
11 possesses a scenic quality?

12 A (DeWan) It has a scenic quality. I wouldn't  
13 call it the sort of scenery that at least we  
14 think that the SEC is most concerned about.

15 Q Well, under the definition of scenic quality,  
16 you indicated that that view, that this view has  
17 intrinsic beauty in terms of the land form and  
18 the vegetation. Is that what I heard you say?

19 A (DeWan) I didn't say it was intrinsic beauty. I  
20 said it has those characteristics. This is, I  
21 think this is also a view that's primarily a  
22 view from a private property. Therefore, it  
23 would not be considered a scenic resource.

24 Q I'm trying to --

1 A It's a simple gap in the roadside vegetation  
2 which is very common throughout much of the  
3 roadways in New Hampshire.

4 Q Do you agree, sir, that this view possesses a  
5 scenic quality?

6 A (DeWan) If you want to be absolute and say  
7 scenic quality can run the gamut from common all  
8 the way up to spectacular, you know, somewhere  
9 along that continuum there is a, you can rate  
10 this scenic quality.

11 Q I'm not asking you to rate it, sir. I'm just  
12 asking you whether it has a scenic quality.

13 A (DeWan) It has a scenic quality. Let's let it  
14 go at that.

15 Q All right.

16 A (DeWan) I don't think it's comparable to a lot  
17 of the other scenery that you have shown us.

18 Q And if this same view that, the scenic quality  
19 view is available from the public road,  
20 Deerfield Road, in front of this picture, would  
21 you say that the Project, that that, too, would  
22 qualify as a scenic drive?

23 A (DeWan) Again, let me step back and say that  
24 what you're asking would apply to probably

1 hundreds of if not thousands of miles of  
2 roadways within our study area.

3 Q That's true.

4 A (DeWan) That's right. And I think that having  
5 done these things a number of years, this is not  
6 the sort of resource that we typically evaluate  
7 to give a regulatory body a sense of visual  
8 impact on scenic resources in general. If  
9 you're asking is this going to be considered  
10 part of a valuation process that would  
11 ultimately end up looking at thousands and  
12 thousands of viewpoints like this, you know, I  
13 suppose we could, but we would still be working  
14 at this for the next five years.

15 Q Well, the definitions adopted by this Panel are  
16 extremely broad and they include any ride that  
17 possesses a scenic quality, and I think we've  
18 already established this view has a scenic  
19 quality, we know it's on a public road, so it  
20 has public access, so I believe under the  
21 definitions imposed or adopted by this Panel, it  
22 qualifies as a scenic resource.

23 A (DeWan) Well, we respectively disagree.

24 Q And your disagreement in this sense is not based



1 on the scenic quality, but the fact that it is  
2 visually accessible from the public road and you  
3 don't believe that scenic views from public  
4 roads are scenic resources.

5 A (DeWan) Our disagreement was that this is a view  
6 that's representative of a view from a private  
7 property, and, by definition, does not qualify  
8 as a scenic resource.

9 Q But if this same view, and I'm saying if, if  
10 this same view is accessible from the public  
11 road, Deerfield Road, doesn't that make it a  
12 scenic resource?

13 A (DeWan) I guess the real question here is would  
14 this be part of a scenic drive. Again, going  
15 back to riding along Deerfield Road, this is a  
16 pretty long straight road. There's very few  
17 places where you get any views outside the  
18 immediate foreground. I don't think that this  
19 would fit the definition of the road or the  
20 drive or the ride having a scenic quality that,  
21 again, it's our understanding that the SEC is  
22 looking for. This is an incident along a very  
23 long road.

24 Q So you just told me that this view is not a view

1           that is along the whole stretch of the road. Is  
2           that what you're telling me?

3       A     (DeWan) That is correct.

4       Q     So in that few instances that you can see it  
5           makes it all the more special, does it not?

6       A     (DeWan) Not necessarily. There's a lot to see  
7           along the road. There's a lot of houses, old  
8           trees, stone walls and so forth.

9       Q     To the extent that there are any openings on  
10          Deerfield Road that possess this scenic view  
11          which you've already told me possesses at least  
12          some scenic quality that would then make that  
13          road opening a scenic resource, correct?

14      A     (DeWan) I still would never consider this, that  
15          particular road on the basis of this one  
16          photograph to be a scenic resource.

17      Q     You didn't complete a visual rating form at this  
18          site either, did you?

19      A     (DeWan) We did not.

20      Q     Can you pull up APP 36134. This is a simulation  
21          that you did at the same location, is that  
22          correct?

23      A     (DeWan) That is correct.

24      Q     Would you agree that this simulation shows the

1 Project having a prominent visual effect on this  
2 particular view?

3 A (DeWan) We have not done an evaluation of this  
4 particular viewpoint. We simply provided a  
5 representative photograph and photo simulation  
6 from private viewpoints.

7 Q With your expertise, sir, would you say that  
8 this Project will have a prominent visual effect  
9 on this view?

10 A (DeWan) We generally do not make snap judgments  
11 like you're asking us to do right now. An  
12 assessment of prominence, dominance and so forth  
13 is based upon an understanding of a lot of  
14 different factors. The context of the landscape  
15 that we're looking at.

16 Q Sir, what would you need to be able to do to  
17 offer an opinion to this Panel as to whether  
18 those structures have a prominent visual effect  
19 on this view?

20 A (DeWan) Like we've done for every other example  
21 of the photo simulations that we've done for the  
22 Project. We go there, we photograph it, we  
23 photograph the view looking towards the Project,  
24 we photograph the context, we photograph any

1           vegetation that may be between the observer and  
2           the proposed Project to get a general, to get a  
3           very well defined sense of what the landscape  
4           feels like and anything that may affect the  
5           evaluation of the effect.

6       Q     But based upon the photo simulation that you  
7           did, you apparently don't feel comfortable  
8           offering an opinion about whether those  
9           structures have a prominent visual affect in  
10          this view?

11       A     (DeWan) That is correct.

12       Q     Can we go to APP 36097?

13                 Sir, this is also a photograph that you  
14           took. Is it on your monitor?

15       A     (DeWan) Yes, it is.

16       Q     This view is from Route 104 in Bristol. Would  
17           you say that this particular view possesses a  
18           scenic quality under Rule 102.44?

19       A     My screen just went blank.

20       Q     So did mine. There we go.

21                 Sir, would you agree that this scene  
22           possesses a scenic quality under Rule 102.44?

23       A     (DeWan) You can certainly describe the scenery  
24           here and you can describe it in qualitative

1 terms.

2 Q Would you agree that a reasonable person's  
3 perception of the beauty of either the land  
4 forms, the vegetation, as well as any visible  
5 human additions or alterations makes it have at  
6 least one of those scenic qualities?

7 A (DeWan) I don't understand what you mean by one  
8 of those scenic qualities.

9 Q Scenic quality as defined by this Panel at  
10 102.44 talks about a reasonable person's  
11 perception of the intrinsic beauty of either the  
12 land forms, the water features which are not  
13 visible here or vegetation in the landscape or  
14 any human additions or alterations to the  
15 landscape.

16 A (DeWan) It doesn't say either. It says the  
17 beauty of land forms, water forms, features or  
18 vegetation as well as human additions.

19 Q Well, we established --

20 A (DeWan) When we describe visual quality, we use  
21 a way of evaluating all four of those different  
22 features.

23 Q When we started today I asked you whether in  
24 fact this definition as drafted talked in the

1 alternative because it uses commas and it uses  
2 the word or. It does not use the word and.  
3 Correct?

4 A (DeWan) That is correct.

5 Q Okay. And would you agree that this particular  
6 view to a reasonable person possesses a scenic  
7 quality either in terms of the beauty of the  
8 land form or the vegetation in the landscape or  
9 the absence of significant visible human  
10 additions or alterations?

11 A (DeWan) Again, scenic quality being a very broad  
12 term here, on a scale of zero to 10 it falls  
13 somewhere in that vicinity.

14 Q It has at least a scenic quality. Under this  
15 definition?

16 A (DeWan) It may be very low scenic quality, but  
17 it has a scenic quality. Even a junk yard has a  
18 scenic quality. Maybe low scenic quality.

19 Q A junk yard has an intrinsic beauty, sir?

20 A (DeWan) There are a lot of people, I know an  
21 artist right now who makes a living by  
22 assembling piles of junk. To that individual --

23 Q We're talking about views, sir. Did you just  
24 tell us that the views of a junkyard have

1 intrinsic beauty?

2 A (DeWan) Again, to some people it may. I'm not  
3 saying to everybody.

4 Q Under the SEC Rule 102.44, are you telling us  
5 that a junkyard has a scenic quality?

6 A (DeWan) Again, if you think of scenic quality  
7 being from zero to ten, probably fall down in  
8 the lower end of that continuum.

9 Q With respect to this view, which has a scenic  
10 quality, which is on a public road, that means  
11 it qualifies as a scenic resource under  
12 subsection (c), correct?

13 A (DeWan) Because it, you're thinking this is a  
14 part of a scenic drive or ride, is that what  
15 you're asking?

16 Q No, sir. Subsection (c)?

17 A Yes.

18 Q A scenic drive and ride that possess a scenic  
19 quality.

20 A (DeWan) So you're asking would this qualify as a  
21 scenic drive and ride.

22 Q Correct.

23 A (DeWan) Again, you need to think about the  
24 context here. Is this a place that you would

1 drive to as part of a Sunday afternoon drive.  
2 This particular location was photographed  
3 because it was representative of a view from a  
4 private residence which is immediately in back  
5 of us. If you look off to the right, there's a  
6 gravel pit and there were a lot of trucks that  
7 were screaming by. It's not what I would  
8 consider a very scenic location because of the  
9 other things that were happening in the context  
10 of this particular location.

11 Q Sir, my question was much more limited than  
12 that. I simply want to know whether you agree  
13 that this view on a public road which has a  
14 scenic quality qualifies as a scenic resource.

15 A (DeWan) What we're seeing here is a very limited  
16 part of a view. A view is a person's. When  
17 you're in the landscape it's not just looking at  
18 the 37 and a half degrees that this photograph  
19 represents.

20 Q Can you answer the question with respect to what  
21 we do have in front of us, sir?

22 A (DeWan) Just looking at what we have in front of  
23 us, I would say this possesses some level of  
24 scenic quality.



1 Q My question was whether this is a scenic  
2 resource.

3 A (DeWan) I do not believe it's the type of scenic  
4 resource that the SEC is looking for when  
5 they've asked us to do an evaluation of scenic  
6 resources.

7 Q I'm not asking you to determine what the SEC is  
8 going to determine. I'm asking you whether in  
9 your professional opinion under the rules does  
10 this qualify as a scenic resource?

11 A (DeWan) No. Because having been there, we do  
12 not consider, I don't think there's any way we  
13 would have considered this particular location  
14 to be a scenic drive or ride. This is meant  
15 merely to be a view from a private residence.

16 Q I understand that, sir. But if this view is  
17 also visible to those hundreds of thousands of  
18 tourists taking scenic rides in New Hampshire,  
19 wouldn't that qualify as a scenic resource?

20 A (DeWan) Not necessarily. I think this is an  
21 isolated incident along this particular section  
22 of the roadway.

23 Q You just mentioned that this is a very common  
24 view that would be seen on Sunday afternoon

1 rides, correct?

2 A (DeWan) No.

3 Q I thought that's what I heard. Would you agree,  
4 sir, that there are hundreds of miles along this  
5 Project where the New Hampshire public is going  
6 to have a potential view of the Project?

7 A (DeWan) No. I would not agree to that.

8 Q You didn't attempt to investigate scenic views  
9 from the nondesignated public roads of  
10 visibility of this Project, did you?

11 A (DeWan) I think that's a fair statement. You  
12 know, I know that Counsel for the Public looked  
13 at virtually every single road that was in the  
14 Project area.

15 Q And you did not.

16 A (DeWan) We made no attempt to look at the  
17 thousands of different road segments that were  
18 in the Project area.

19 Q You made no attempt to investigate the potential  
20 visual impact on public roads even though the  
21 definition of scenic resource includes every  
22 scenic drive and ride in New Hampshire so long  
23 as it possesses a scenic quality.

24 A (DeWan) As I said before, we looked at those

1 areas that were designated as towns' scenic  
2 roads as well as a Scenic Byways and any places  
3 that also showed up on our viewshed mapping.

4 Q Site Rule 102.45(e) talks about or defines as  
5 scenic resources historic sites that possess a  
6 scenic quality, correct?

7 A (DeWan) That's correct.

8 Q We've gone over it some length the definition of  
9 scenic quality. What is the definition of a  
10 historic site?

11 A (DeWan) That is found at 102.23.

12 Q Can you read that definition for us, sir?

13 A (DeWan) Quote, "Historic sites," unquote, means  
14 "historic property," unquote, as defined in RSA  
15 227-C:1, VI, namely, quote, "any building,  
16 structure, object, district, area or site that  
17 is significant in the history, architecture,  
18 archeology or culture of this state, its  
19 communities or the nation," unquote. The term  
20 includes, quote, "any prehistoric or historic  
21 district, site, building, structure, or object  
22 included in, or eligible for inclusion in, the  
23 National Register of Historic Places maintained  
24 by the Secretary of the Interior," unquote,

1           pursuant to 36 C.F.R. 800.16(1)(1).

2       Q     And although this definition includes those  
3           historic sites that are specifically designated,  
4           it also includes sites that are not designated,  
5           correct?

6       A     (DeWan) That is correct.

7       Q     And in this case, am I correct in terms of  
8           reviewing historic sites to which the public has  
9           a right of access that might have a potential  
10          view of this Project, you relied on those that  
11          are specifically designated?

12      A     (Kimball) We relied on those that are on the  
13          National Register, on the State Register, and  
14          all those determined by the New Hampshire DHR to  
15          be eligible for inclusion in the National  
16          Register that could be spacially identified.

17      Q     So you relied on those that are already  
18          designated and those that are eligible for  
19          designation.

20      A     (Kimball) Correct.

21      Q     You did not include any other historic sites  
22          that possess a scenic quality that aren't  
23          designated or eligible, correct?

24      A     (Kimball) They had to be determined eligible.

1 Q So somebody had to put them on a list?

2 A (Kimball) Correct.

3 Q And if they weren't on a list, even though the  
4 definition of historic sites under the SEC's  
5 rules is much broader, you didn't include those  
6 sites?

7 A (Kimball) We rely on databases.

8 Q Can we pull up CFP Exhibit 441?

9 This exhibit is the New Hampshire  
10 Division's Determination of Eligibility of the  
11 North Road Agricultural District, correct?

12 A (DeWan) That's what it appears.

13 Q And that includes North Road and Grain Road in  
14 Lancaster.

15 A (DeWan) That's correct.

16 Q And it was determined that those two roads  
17 comprise a district that is eligible for  
18 designation, correct?

19 A (DeWan) That's correct.

20 Q Okay. Let's pull up Applicant Exhibit 1,  
21 Appendix 18. Possible to blow that up just a  
22 tad? The two photos?

23 On your screen are two photos from the  
24 North Road Agricultural Historic District that

1 are eligible for designation. You see those two  
2 views?

3 A (DeWan) Yes.

4 Q And it's my understanding that under the  
5 definition that you just gave me, in terms of  
6 determining the scenic resources, this would be  
7 one of them because it is determined to be a  
8 Historic District that is in fact eligible?

9 A (Kimball) No, because it is made up of a  
10 composition of private property. The public  
11 doesn't have access to go on to the farmland  
12 that makes up the district.

13 Q Well, according to the paperwork it is in fact  
14 the whole North Road that is designated as an  
15 Agricultural Historic District, and these are  
16 photos of North Road, are they not?

17 A (Kimball) These are photos of North Road and the  
18 private properties that abut North Road.

19 Q And they've been, that whole road has been  
20 designated as an historical district?

21 A (Kimball) The area has been designated as a  
22 Historic District and the road runs through the  
23 district.

24 Q And those would include the views from the road,

1 would it not?

2 A (Kimball) Those photos are views from the road.

3 Q And even though we have an eligible Historic  
4 District, this is not one of the districts or  
5 the roads that you considered, is it?

6 A (Kimball) It is not.

7 Q It does appear, however, coincidentally even  
8 though you didn't mean to include this, you did  
9 take a photo of this, didn't you?

10 A (Kimball) As a representative sampling from  
11 private properties that would be impacted.

12 Q Can we pull up 822?

13 So this is the photo you took from along  
14 North Road in Lancaster which is where the  
15 Historic Agricultural District is located. In  
16 fact, it's the same photo that we just saw but  
17 back a little bit. And you took that photo from  
18 the public road to show the impact of this  
19 Project, correct? This actually is the photo  
20 sim I meant to do.

21 A (DeWan) This is the photo sim. I don't believe  
22 you showed the existing conditions photograph.

23 Q Can we show the one that was prior to that?

24 Perfect. So this is the photo that you took

1 that shows the existing conditions?

2 A (DeWan) That is correct.

3 Q Historic District on a public road. It  
4 qualifies under subsection (e) as a scenic  
5 resource, does it not?

6 A (DeWan) Well, that's, yeah. Again, the area,  
7 the Historic District is not publicly  
8 accessible. The road that goes through it is  
9 accessible, obviously. It's a public road.  
10 This is described in the historic consultant's  
11 report, and we've been hearing that discussion  
12 over the last several days.

13 Q Right. If I go back to and I don't need to you  
14 pull this up, Sandie. I'll reference it.  
15 Counsel for the Public Exhibit 441 which is the  
16 determination of eligibility for this district  
17 and this road, it talks about the fact that it  
18 is significant because it's a group of buildings  
19 and associated landscape features that are part  
20 of the agricultural context of Lancaster. So  
21 the buildings and the associated landscape  
22 feature that is eligible for designation is  
23 visually accessible from this public road, is it  
24 not?



1 A (DeWan) Part of it is.

2 Q Yes, and so would that, sir, not make it,  
3 wouldn't that make it a historic site under  
4 subsection (e) provided it possesses a scenic  
5 quality?

6 A (Kimball) It would be visually accessible as you  
7 stated. We agree it would not be publicly  
8 accessible.

9 Q We can argue about the semantics of whether you  
10 can access this by driving down the road. Will  
11 you agree that it possesses a scenic quality?

12 A (DeWan) There's no doubt that it does have a lot  
13 of components that people would describe as  
14 being scenic. Especially if the fog would lift  
15 here. But it is a combination of structures,  
16 landscape, a road that goes through it.

17 Q So it has a scenic quality because of the  
18 landscape. What were the other characteristics  
19 you gave me?

20 A (DeWan) The way the road follows the contour of  
21 the land, the patterns of open space, the  
22 position of the buildings on the land.

23 Q The last one you indicated that if the cloud  
24 were lifted, we might able to tell more, too,

1 correct?

2 A (DeWan) As you can see in the photograph here,  
3 there is some indication of the mountains behind  
4 it.

5 Q Coincidentally, Counsel for the Public took a  
6 picture at this same spot so can we have Exhibit  
7 460? That, sir, was taken tn a substantially  
8 brighter day. Would you agree that that view,  
9 the land form and the landscape possess a scenic  
10 quality?

11 A (DeWan) A much warmer day also. You certainly  
12 are able to see a lot more of the landscape at  
13 this point.

14 Q And would you agree, sir, that that mountain  
15 view possesses a scenic quality?

16 A (DeWan) Yes.

17 Q Let's go back to the photo simulation you did in  
18 terms of what this scenic view, scenic resource  
19 is going to look like if this Project goes  
20 forward. The obvious big change is that steel  
21 structure that stands substantially above the  
22 historic building; is that correct?

23 A (DeWan) I don't know if the building is historic  
24 or not, but it certainly is a visible preference

1 and a change from the prephotograph condition.

2 Q How tall is that structure?

3 A (DeWan) I don't know what the height of the  
4 structure off the top of my head. It might be  
5 in the previous pages in this particular.

6 Q Is it fair to say it's about two thirds taller  
7 than the Lancaster building?

8 A (DeWan) I don't know what the back side of that  
9 looks like.

10 Q And in addition to the one that is most visible  
11 because it's broad, there's also a monopole a  
12 little bit in front of it, to the side, that's  
13 new?

14 A (DeWan) That's correct.

15 Q How close are those, can we put up the two?  
16 No. Sandie, can you pull up -- that's our  
17 Exhibit 460. No. I want the after -- 460 is a  
18 little bit closer view and little easier to see.  
19 The bottom photo and Counsel for the Public 460.

20 Sir, would you agree that the steel  
21 structure that sort of dwarfs the building in  
22 the bottom photo will have a significant visual  
23 impact on the scenic resource?

24 A (DeWan) We have not done an evaluation of this

1 particular location.

2 Q I understand that, sir. I'm asking you for your  
3 professional judgment given that we now know  
4 these buildings in this road is part of an  
5 eligible Historic District whether this  
6 structure will have a visual impact.

7 A (DeWan) It will have a visual impact. I don't  
8 know the severity of it. We have not done an  
9 evaluation of this particular location.

10 Q Should you have done one since this is a  
11 historical district?

12 A (DeWan) We were asked to, well, we provided this  
13 because of the requirement that we do a view  
14 from a private property.

15 Q I understand that.

16 A (DeWan) And in leaf-off conditions.

17 Q But I'm asking whether in fact you should have  
18 done it as part of the requirement under the  
19 rules that asks you to include all eligible  
20 historic sites from which there is a view with a  
21 scenic quality.

22 A (DeWan) There's no requirement to do specific  
23 number of photo simulations if that's what  
24 you're asking.

1 Q No, sir. You did a photo simulation. I'm  
2 asking whether or not you were required under  
3 the rules to do an additional --

4 A (DeWan) Evaluation.

5 Q Yes.

6 A (DeWan) Again, we, if, we did not do it from  
7 location because this is part of a historic,  
8 potential eligible Historic District which is  
9 private property.

10 Q But the views that we're looking at we don't  
11 need to go on any public property to access, do  
12 we?

13 A (DeWan) Not from the views that we've taken. I  
14 think that what we've done is we provided as  
15 part of our VIA a representative sampling of  
16 other views that may be comparable to this type  
17 of view.

18 Q Wouldn't you agree that the visual impact in  
19 this particular scenic resource is high?

20 A (DeWan) No. Again, the resource is a very  
21 large, by your definition is a very large area,  
22 and we're seeing a very small part of it.

23 Q Would you agree, sir, that the impact on this  
24 particular location is high?

1 A (DeWan) Again, I do not make judgments based  
2 upon a single photograph. I would have to look  
3 at it from a variety of different viewpoints and  
4 be there to do the evaluation.

5 Q And you're not willing to give us your  
6 professional opinion about whether this is a  
7 high visual impact from this vantage point?

8 A (DeWan) Again, as you know from reading our VIA,  
9 the process of doing an evaluation takes into  
10 account a lot of different factors. It may end  
11 up being high, but, you know, I don't do snap  
12 judgments like you're asking.

13 Q Okay. I want to move on to towns and village  
14 centers now. Site Rule 102.45(f) also includes  
15 as scenic resources town and village centers  
16 that possess a scenic quality, correct?

17 A (DeWan) That's correct. Item F.

18 Q And towns and village centers are certainly  
19 resources to which the public has access, right?

20 A (DeWan) Generally, very true. Unless, of  
21 course, there are private properties that make  
22 up village centers, but I think by your  
23 definition by the places that we have seen and  
24 in fact they're a town center or village center

1           that implies that there's land that's commonly  
2           held and, therefore, accessible to the public.

3       Q     So the real part of that aspect of the scenic  
4           resource definition is to determine whether the  
5           publicly accessible town or village center  
6           possesses a scenic quality. That's what we need  
7           to determine in order to find out how many towns  
8           and village centers constitute scenic resources,  
9           right?

10      A     (DeWan) That's correct. Sort of also begs the  
11           question of what is a village center. Village  
12           center can mean many different things. It can  
13           be just the initial historic center of a town  
14           that may only be four or five buildings. It  
15           might be all the buildings that have been added  
16           in the last 15 to 20 years.

17      Q     The fact that it could be quite broad simply  
18           means that your study had to be quite broad,  
19           does it not?

20      A     (DeWan) I think we have to be observant when we  
21           go and look at these places.

22      Q     Did you visit every town and village center  
23           within the 2800 square mile area surrounding  
24           this Project?

1 A (DeWan) We certainly did when we did our initial  
2 study looking. Going out three miles because  
3 that was our initial understanding. When we  
4 went out looking at everything within ten miles,  
5 we were guided by a recognition that once you  
6 get beyond a certain distance, you're not going  
7 to see this Project. So did we visit every town  
8 center within ten miles, I would say no.

9 Q You didn't even visit every town and village  
10 center within five miles, did you?

11 A (DeWan) Like I said, we visited everything  
12 within three miles. And in driving around, I'm  
13 sure we went out, went to some that were within  
14 that three- to five-mile range. In looking at,  
15 you know, where to go in our time that we spent  
16 in the field we were guided by our viewshed maps  
17 which indicated where it may be likely that the  
18 Project may be visible.

19 Q Site Rule 301.05 requires you to conduct a  
20 visibility analysis of the areas of potential  
21 visual impact at a radius of ten miles. Right?

22 A (DeWan) That's correct.

23 Q And you've just told me that with regard to  
24 towns and village centers, you made the



1 determination to do that study within three  
2 miles.

3 A (DeWan) When we did our initial work that was  
4 our first volume that we submitted we went out  
5 three miles. Actually, we concentrated on three  
6 miles. Our computer analysis went out five  
7 miles. After we got the final draft of the  
8 rules in December of that year, we amended it to  
9 go out to ten miles.

10 Q But you did not visit every town and village  
11 center after ten miles?

12 A (DeWan) Not if there's no potential visual  
13 impact.

14 Q Recreational areas. The Site Rules also define  
15 as a scenic resource recreational trails, parks  
16 or areas established, protected or maintained in  
17 whole or in part with public funds, correct?

18 A (DeWan) That's what D says.

19 Q And D does not require that these recreational  
20 trails, parks or areas possess a scenic quality?

21 A (DeWan) It's the only one of the six that it  
22 does not.

23 Q Right. Can we see Exhibit 459?

24 This, sir, I will represent is a play field

1 for Profile School, a public elementary school  
2 in Bethlehem. Would you agree that this is a  
3 recreational area established or maintained in  
4 whole or in part with public funds?

5 A (DeWan) If that is the Profile School, then we  
6 know that it's a public school. So yes.

7 Q So would you agree that under subsection (d) it  
8 would qualify as a scenic resource as it is a  
9 recreational area established in whole or in  
10 part with public funds?

11 A (DeWan) I would say so.

12 Q And that would be true even if it didn't also  
13 happen to have a spectacular view, right?

14 A (DeWan) If the view is not or the scenic quality  
15 is not a consideration.

16 Q Under D?

17 A (DeWan) Or recreational parks or areas.

18 Q Did you evaluate the potential visual impact on  
19 all of the public school playing fields within  
20 the 2800 square miles surrounding this Project?

21 A (DeWan) We looked at all the schools within  
22 three miles when we did our initial evaluation.  
23 And then when we did our supplemental evaluation  
24 based upon the new rules, we went out to the ten

1 miles and looked at areas that may be affected.

2 Q So you're telling us you did look at every  
3 public school playing field within 2800 square  
4 miles?

5 A (Kimball) If it was located in the databases  
6 that we used, then it would have come up.

7 Q Did you go to Profile School in Bethlehem?

8 A (Kimball) We did go to Profile School in  
9 Bethlehem.

10 A (DeWan) Several times.

11 Q And did you consider the impact of this Project  
12 on that school?

13 A (DeWan) We did.

14 Q What is the impact?

15 A (Kimball) The Project will be underground at  
16 this location. There will be no impact.

17 Q What about schools further south where it's not  
18 going to be buried? Did you look at all those  
19 schools?

20 A (Kimball) If they came up on a database, then  
21 they would have been included.

22 Q What database did you look at to come up with  
23 the public schools?

24 A (Kimball) Conservation areas, in addition to the

1 databases, looking at master plans, that would  
2 have referenced playgrounds or public parks or  
3 recreational playing fields.

4 Q Did those two databases include the public  
5 schools in each town and village?

6 A (Kimball) Oftentimes when there is a  
7 recreational, when the recreational --

8 Q I didn't ask about oftentimes. I asked whether  
9 they did.

10 A (Kimball) The public school itself would not be  
11 a scenic resource. It would be the playing  
12 field.

13 Q Wouldn't you agree that most public schools have  
14 at least one playground?

15 A (Kimball) Potentially.

16 Q And you didn't look at those.

17 A (Kimball) We would only look at those scenic  
18 resources that would come up through the  
19 databases or the research that we did.

20 Q So only if the playground at the public school  
21 was in a conservation area or on a master plan  
22 somewhere?

23 A (Kimball) Or any other documentation that we  
24 conducted our research through.

1 Q You're certainly not going to represent to this  
2 Committee that you looked at every playground  
3 and every public school along 2800 square miles,  
4 are you?

5 A (Kimball) Within the area of potential visual  
6 impact we did a pretty good job.

7 Q Within three miles?

8 A (Kimball) Even beyond. Within the area of  
9 potential visual impact.

10 Q We talked a little bit earlier about the 20  
11 percent reduction that folks here in New  
12 Hampshire can obtain from their property taxes  
13 if they allow the public access to their land,  
14 remember that?

15 A (DeWan) That's correct.

16 Q Since public funding is used to obtain the legal  
17 right of access for recreation on those lands,  
18 20 percent off their property taxes, would you  
19 agree that if those lands are accessible to the  
20 public, won't those sites qualify under  
21 subsection (d) as a scenic resource regardless  
22 of scenic quality?

23 A (Kimball) No.

24 A (DeWan) We don't believe so. In looking at the

1 past record of other Projects that have come  
2 before this body, I don't think that's ever been  
3 counted as a scenic resource.

4 A (Kimball) In addition, I would add that a tax  
5 break is not necessarily receiving public funds.

6 Q So under subsection (d) of scenic resources, it  
7 includes any area established, protected or  
8 maintained in whole or in part with public  
9 funds. You're telling us that the public who  
10 holds open their land in exchange for a 20  
11 percent reduction in current use property tax,  
12 that that's not an area established, protected  
13 or maintained in part with public funds?

14 A (Kimball) I don't know very much about the  
15 current use program, but I wouldn't consider  
16 them receiving public funds by having a 20  
17 percent discount on how much they pay.

18 Q So it's fair to say then you didn't consider any  
19 of the land to which members of the public in  
20 New Hampshire have access to through the current  
21 use program?

22 A (Kimball) The three million acres of land in the  
23 State of New Hampshire were not considered.

24 Q Did you not consider it because it's a

1 significant amount of public land?

2 A (Kimball) We did not consider it because it does  
3 not receive public funds.

4 Q You're talking about receive public funds. The  
5 taxpayer receives a break, but it is the  
6 municipality that gives up money in order to  
7 give the public access to these lands. Isn't  
8 that not the state providing public access with  
9 public funds?

10 MR. NEEDLEMAN: Objection. At this point I  
11 think it calls for a legal conclusion. The  
12 witness has stated their basis for this.

13 PRESIDING OFFICER HONIGBERG: Ms. Connor?

14 MS. CONNOR: I will rephrase the question.

15 Q Ms. Kimball, you mentioned that you didn't  
16 consider these current use public lands because  
17 the landowners didn't receive funds. Isn't that  
18 what I just heard?

19 A (Kimball) Correct. That's what I said.

20 Q As I look at subsection (d) it doesn't speak,  
21 the word "received" is not in the definition, is  
22 it?

23 A (Kimball) Right. The word "received" is not in  
24 the definition.

1 Q So why is it you didn't consider the private  
2 lands to which the public has access in the  
3 state for recreation?

4 A (Kimball) As I said, we didn't consider a tax  
5 break to those landowners as land that was  
6 protected or maintained in whole or in part with  
7 public funds. In addition, I would add that  
8 there is no mapping or spacial identification of  
9 these places maintained by the state.

10 Q So, in other words, to determine these resources  
11 requires a little more investigative work on  
12 your part?

13 A (Kimball) It doesn't exist.

14 Q The current use lands don't exist?

15 A (Carbonneau) As a spacial database. As a  
16 spacial entity to identify their location it  
17 does not exist.

18 Q So because there's no database from which to  
19 retrieve this information, you didn't look at  
20 it?

21 A (Kimball) No. As I said, the primary reason we  
22 didn't look at it is because it is not protected  
23 or maintained in whole or in part with public  
24 funds.



1 Q Would you agree that these lands to which the  
2 public has a statutory and express right of  
3 public access could also qualify as a scenic  
4 resource because they have a scenic quality?

5 A (DeWan) In order to know that, we need to find  
6 out where they are, and as Jess said, the  
7 mapping doesn't exist. Some of them may have a  
8 scenic quality. Some of them may be hay fields  
9 and some of them may be wood lots. I think one  
10 thing which we look for is the precedence, what  
11 has come before this Board in the past. How has  
12 that issue been treated. And from our  
13 knowledge, there's never been a case that's been  
14 brought before the SEC that considers that.

15 Q Am I correct that each town would have a  
16 database that would tell you what land is  
17 receiving a current use break, and, therefore,  
18 open to the public?

19 A (Kimball) The town would have a list but no  
20 spacial identification of those.

21 Q What do you mean when you say no spacial  
22 identification?

23 A (Kimball) The list is not tied to the tax maps,  
24 and I don't know if that list is held with the

1 state or by the town. I believe it's held by  
2 the state.

3 Q Are you telling this Committee that if you went  
4 to a town along this route, you wouldn't be able  
5 to get a list from the Town Hall of those lands  
6 in current use?

7 A (Kimball) We wouldn't be able to get a spacial  
8 database, a spacial representation of where  
9 those exist.

10 Q How about if you asked somebody at the Town Hall  
11 the addresses for various land that are in  
12 current use?

13 A (Kimball) What's your question?

14 Q Wouldn't you be able to do that?

15 A (Kimball) To go to each town and spacially map  
16 the location of the current use?

17 Q To go to the each town and even ask the  
18 question. Go to the Town Hall, you get the tax  
19 maps, you know what land's in current use, you  
20 ask somebody how do I get there?

21 A (Kimball) Fundamentally, we don't agree that  
22 current use properties would be considered  
23 scenic resources.

24 Q But in this case you didn't attempt to make that

1 analysis, did you?

2 A (Kimball) I'm telling you my analysis now is  
3 that it is not considered a scenic resource.

4 Q I understand that's your conclusion. I'm asking  
5 whether you attempted to locate this data or to  
6 access these lands?

7 PRESIDING OFFICER HONIGBERG: And that's  
8 been asked and answered. The answer to that is  
9 no.

10 MS. CONNOR: All right. I'll move on.

11 PRESIDING OFFICER HONIGBERG: You should  
12 probably come to a breaking point whenever it is  
13 convenient for you.

14 MS. CONNOR: That's convenient because I'm  
15 about to go into a new area.

16 PRESIDING OFFICER HONIGBERG: There you go.  
17 We're going to adjourn for the day. The next  
18 time we're together is September 11th. And at  
19 that point we'll resume with this Panel. Ms.  
20 Connor will have the microphone.

21 (Whereupon Day 30 Afternoon Session  
22 adjourned at 5:15 p.m.)

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**C E R T I F I C A T E**

1  
2 I, Cynthia Foster, Registered Professional  
3 Reporter and Licensed Court Reporter, duly authorized  
4 to practice Shorthand Court Reporting in the State of  
5 New Hampshire, hereby certify that the foregoing  
6 pages are a true and accurate transcription of my  
7 stenographic notes of the hearing for use in the  
8 matter indicated on the title sheet, as to which a  
9 transcript was duly ordered;

10 I further certify that I am neither  
11 attorney nor counsel for, nor related to or employed  
12 by any of the parties to the action in which this  
13 transcript was produced, and further that I am not a  
14 relative or employee of any attorney or counsel  
15 employed in this case, nor am I financially  
16 interested in this action.

17 Dated at West Lebanon, New Hampshire, this 6th  
18 day of September, 2017.

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Cynthia Foster, LCR  
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