IN RE: SEC DOCKET NO. 2015-06
NORTHERN PASS TRANSMISSION - EVERSOURCE; Joint Application of Northern Pass Transmission LLC and Public Service of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility (Hearing on the Merits)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:
Chmn. Martin Honigberg (Presiding Officer) Public Utilities Comm.
Dir. Craig Wright, Designee Dept. of Environ. Serv.
Christoper Way, Designee Dept. of Business & Economic Affairs
William Oldenburg, Designee Dept. of Transportation
Patricia Weathersby Public Member

ALSO PRESENT FOR THE SEC:
Michael J. Iacopino, Esq. Counsel for SEC (Brennan, Caron, Lenehan & Iacopino)
Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14
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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
there only three?

A (Widell) Let me explain.

Q Okay.

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

Q Okay.

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

Q Yes.

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

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

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

Q Okay.

A (Widell) -- diminish the character defining features. It could be the field the
architecture, the view in a way that it would affect its integrity which would mean it was no longer eligible for the National Register. And so there's 7 things of integrity. I can go into those if you want.

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

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

If the new structures cause a focal point meaning it's right there, it's looming over the building itself or the associated agricultural field that it makes that property significant that could cause a visual adverse effect, and
the last one is where it would isolate it. Would the structures prevent the house and the barn from being connected with its associated agricultural fields.

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

Q Okay. I think that helps. Thank you.

A (Widell) Thank you.

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

A (Widell) Yes. Yes.

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

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

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

Q So ultimately, who puts all those pieces together?

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

Q So did that modeling lead to a result in any of
the six adverse impact sites?

A (Widell) Yes.

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

A (Widell) Yes.

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

A (Widell) Yes.

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

A (Widell) Yes.

Q Do we have that information?

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

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

A (Widell) No. Not exactly.

Q Okay.

A (Widell) We go back to my, just because the Project is visible doesn't necessarily mean that
it is going to have an adverse effect.

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

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

Q And then somebody goes to the next step?

A (Widell) Yes.

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

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

Q Okay. So you personally reviewed all of those.

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

Q And that hasn't occurred yet.

A (Widell) That has not occurred yet.

Q We've heard, and this was asked of you already, but I want to follow up on it again. We've
heard multiple times through this process that there could be some changes to the configuration of the line. For example, somebody may want to move a tower structure to avoid a further wetlands impact. Does that impact what you've already done? Do you need to go back and look at it again in those cases?

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

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

A (Widell) Yes.

Q I think you described it in the report.

A (Widell) Yes.

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

A (Widell) It is. The topography, Google Earth shows you where stands of trees are. Now, it's not, they use the term wall. It actually is where there might be a forested part, and the 40-foot is a conservative heighth for trees in this landscape is my understanding so that's how that was chosen. So it is delineated because
the topography map does not show 3-D. You have
to place the 3-D in it.

Q Right.

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

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

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

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

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

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

A (Widell) I can tell you that if in fact it was
not a forested portion and you did not have
40-foot trees, we would not have put it in the 3-D modeling. Absolutely.

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

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

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

PRESIDING OFFICER HONIGBERG: Commissioner Bailey?

COMMISSIONER BAILEY: Thank you, Mr. Chairman.

QUESTIONS BY CMSR. BAILEY:

Q Good afternoon.

A (Widell) Good afternoon.

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

A (Widell) Thank you so much, Commissioner.

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

A (Bunker) I did do a Phase 1-A on that road, yes.
Q  Do you understand the area where people think there are human remains, that there was a cemetery, an unmarked cemetery?

A  (Bunker) Yes, I do understand.

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

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

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

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

Q  And why is that?

A  (Bunker) The Phase 1-B requires subsurface excavation which is not mechanical. We're not talking about backhoes. We're talking about shovels. And the Project submitted a request to the towns to conduct a Phase 1-B survey, and the towns declined our request.
Q And what about in the 20-foot APE off of the road?

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

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

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

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

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

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

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

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

A (Bunker) I think at that point it's a request
from the Committee, not from the town. But I'm sorry to say I don't understand the process well enough beyond the work assignment to answer that in detail.

Q Okay. I think I understand.

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

A (Bunker) Yes, I did say that.

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

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

Q Please.

A (Bunker) For the State roads, and the two federal roads components on US Route 3, for those roads I feel very confident that more modern activities would have compromised the subsurface integrity under the pavement, and the basis for my decision making on that is based
off from a series of construction plans from the early 20th century up to around the early 2000s that show significant modifications in maintenance, restoration, realignment, and such, which to my interpretation would have disturbed sufficiently any zones beneath the roads.

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

Q When would that happen?

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

Q Okay. And is that because you need the Site Evaluation Committee to give you a condition that says you have to do the 1-B analysis or --

I mean, is it the same problem as Clarksville
where you can't get permission from the town?

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

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

A (Bunker) yes.

Q What happens?

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

Q What do --

A (Bunker) What does that mean.

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

A (Bunker) Well, there would be more a request for more in-depth search into the actual burial of
these individuals to make a closer assessment of where they're most likely to be. There are field methods that could be employed involving deeper excavation perhaps with mechanical equipment. Some people are in favor of using ground penetrating radar to identify anomalies. Anomalies are not necessarily human remains or even coffins. They sometimes can be boulders or other natural features. And depending on those results and the recommendations of the experts that run that machinery, we could develop a strategy to explore the anomalies subsurface. However, also, having said that, if we identify where interments are, we could then invoke the 25-foot buffer and avoid them all together and leave them where they are.

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

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

Q Okay. If you had been permitted by the town to do the Phase 1-B analysis and you discovered a likelihood of human remains right in the path of the Project, what would your advice have been?
A (Bunker) Just what I told you. To consult with Division of Historic Resources and develop the best method to treat the discovery as thoroughly and respectfully and the best way possible.

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

A (Bunker) No.

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

A (Bunker) Absolutely not.

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

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

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

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

Q A year?

A (Bunker) No.

Q Okay.

MR. WAY: Commissioner Bailey?
COMMISSIONER BAILEY: Yes.

QUESTIONS BY MR. WAY:

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

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

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

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

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

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

Q We have a resting place here. And I understand what you say. Obviously, minimization and
avoidance, you're going to try to go around it, but to her point if you can't go around it, why isn't that an unreasonable adverse effect?

A (Bunker) Because it could be mitigated.

Q I guess. All right. Thank you.

A (Bunker) You're welcome.

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

A (Bunker) Thank you.

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

QUESTIONS BY MR. IACOPINO:

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

A (Widell) Yes.

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

A (Widell) No.

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

A (Widell) Yes.
Q I think you used the term substantially complete or essentially complete during your testimony here over the last few days. Are there differences between those two terms as far as you're concerned?

A (Widell) No.

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

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

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

A (Widell) Yes.

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

A (Widell) No.

Q Ms. Bunker with respect to archeological, do you agree with that as well? I think that term in
the letter "close to completion" addressed both
aboveground and below ground identification.

A (Bunker) I agree.

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

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

Q So there are still some sites then that are
pending Phase 1-B analysis. Are there any that
are still pending Phase 1-A?
A (Bunker) Phase 1-A is complete.

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

A (Bunker) Yes.

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

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

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

A (Widell) Not all of them. They are still, some are still being completed for the underground portion of the Project.
Okay. That's right. And you said that's two weeks?

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

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

(Widell) Yes.

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

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

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

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

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

(Widell) I am. I just reviewed the cultural
landscape report that will be delivered Friday
so if you heard, yesterday, so if you hear my
hesitation that is all completed, and now it
will be up to the consultant to forward it to
Department of Energy on Friday. So that's what
you heard in my voice. I was going, let me
think, I just looked at that yesterday, and it's
going to be submitted Friday.

Q When you say the consultant, you mean yourself?
A (Widell) No. In this case, the consultant that
did the cultural landscape reports is the Public
Archeology Lab. You may remember that I talked,
that there have been 7 consultants working on
this material, and I have worked with all of
them.

Q So you're waiting for their staff to actually
put the stamp on it or however it gets filed
with DOE?
A (Widell) Yes.

Q To undertake that next step?
A (Widell) Yes.

Q Okay. And typically, you may have been asked
this question but I may have missed the answer.

How long does it typically take for the DOE once
they've received these things to issue them to
the SHPO and invite the comments?

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

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

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

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

A (Widell) Yes.

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

A (Widell) Pretty much all of them. I'm sure
there are some that I did not get to either
during winter or summer but yes, pretty much,
yes. Especially ones where there was any
possibility that there could actually be a
visual adverse effect. I made sure that I went
to those properties and viewed them personally.
I did travel the entire route, but there would be some that I would maybe not have stopped at in leaf in and leaf off.

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

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

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

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

Q But that would be two times then.

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

Q Okay. I think part of the reason why some of the questions that we hear and some of the
concerns that you hear are expressed is because you come from a discipline where it is essentially the consultative process that rules the day. And there is no permit that is granted. There's no up or down vote at the end of the day. Site Evaluation Committee has a requirement to make an up or down vote, and they have to consider historic sites in that context and determine whether or not there's an unreasonable adverse effect on historic sites.

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

A (Widell) Yes. Let me state that clearly in that I have not applied the unreasonable adverse effect before in a particular situation, but I have spent a good part of my career, and I think it's on my resume, initially working with Historic District Commission Landmark Commissions in Maryland and then in many places
throughout the country as training commissions how to make findings of fact in their decisions as to whether they were going to allow a demolition of a property or a change to historic property. Of course, some of these are in very small communities, but they are also in larger communities like Annapolis and Baltimore and so that is a permitting situation, and in Maryland that permit is not advisory to a Planning Commission or a mayor or council. It actually has to be appealed to the Circuit Court in Maryland.

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

A (Widell) It is based on their guidelines and usually when you're looking at changes to a historic property or a portion of the historic
district where buildings are going to be demolished or there's going to be new construction, you are looking at what are called the Secretary of Interior standards that give you recommended and not recommended actions for how to protect the character of a historic property. Those words should sound familiar because that is always the goal if you are going to care for historic properties that you're protecting that which makes it a historic property. Does that help? Did I answer your question?

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

A: (Widell) Yes.

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

A: (Widell) Yes.
Q Ms. Bunker, I'm going to ask you the same questions. Do you have any type of experience like that where your either participation or involvement is in a process where there's an up or down vote or a granting or denial of relief?

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

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

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

A (Widell) Yes. Generally, cemeteries are not eligible for the National Register unless they have particular importance and artistic design or can be directly related to the understanding
of a community. Burial sites of individuals generally are not considered eligible for the National Register. So yes, we did include those. I know we also looked at a property named Crystal Spring in Plymouth. That inventory form was completed and was found not eligible for the National Register, and I believe DHR, and once it is not then it's not, you can't apply the definition of an adverse effect on the property that doesn't have integrity. The reason why it wasn't, it didn't have integrity.

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

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

Q So with respect to Crystal Spring then, which DHR says not eligible, and, therefore, it's out
of the consideration, do you have an opinion as
to whether there's an adverse effect on that
particular site even though it's not eligible
for the National Register?

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

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

A (Widell) Yes.

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

A Um-hum.

Q Place called Woodstock. Okay? This is probably
a very historical event, all right? But it's
not 50 years old, and I know that it's been put
on the National Register since. But if that
were over here, something like that were over here in New Hampshire, the question, I guess, is is that something that I think most people would consider to be a historic place? Maybe not everybody, not my father, but everybody who's younger than him would consider that to be a historic place, and probably because of age, because of its youth wouldn't maybe qualify or be nominated for the National Register yet.

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

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

Q Correct.

A (Widell) There is a category that's G, and it is very precisely outlined, and it is for properties of exceptional significance which is what Woodstock, and there are others, American band stand in Philadelphia decades ago was
listed on the National Register. Dulles Airport is another example, and they don't have to be huge things like that either. So you are always keeping that in mind. Seeing importance in mid-century, excuse me, mid-century modern residences and houses, and we were particularly paying attention to that because they have picture windows and views were a very important part of the architectural style of mid-century modern houses so we really thought very carefully about that, too.

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

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

Q  They're identified but not affected.
A  (Widell) That's correct.

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

Q  Is that an individual type of policy or is that like a form that's used for every construction, every construction job?
A  (Bunker) The plan is to create a document that's pertinent to this Project.  So it's not a boilerplate form.  Although it could have sort of, you know, a tailgate checklist to it, it will be created specifically for this Project.

Q  And it's not yet been created, correct?
A  That's correct.

Q  When in the process do you normally complete that or is that normally prepared?
A  (Bunker) It's completed with, I don't know if I should say the word out loud, the Programmatic Agreement.
Q Okay. So is that one of the subsequent agreements that the Programmatic Agreement anticipates?

A (Bunker) Correct.

Q I'm not afraid of the Programmatic Agreement.

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

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

A (Widell) No. I would also remind and display and give you urgence to look at the extraordinary amount of work and documentation
that has been completed for this Project. First, before we submitted, at the time we submitted the Application, we had looked at 1,284 properties and gone through the process of identifying very conservatively what could possibly be a historic site that could be affected by this Project. And then finding initially the 12 adverse effect and then using as well the Project Area Form that was completed by another set of eyes of identifying what was significant locally and contextually through the Protect Area Forms.

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

Yes, I have decades of experience, and I truly hope that my eyes and information and words are helpful in you all coming to a thoughtful decision, but the documentation as well speaks for itself, and I would really encourage you to consider that as well.
Q So if I can just put that in a shorter --
A Sorry if I went too long.
Q -- shorter explanation. Well, because I think
the Committee is going to want to understand.
So basically you're saying yes, you have to
trust my judgment, but my judgment is informed
by this comprehensive base of work?
A (Widell) Yes.
Q I don't have any other questions.

QUESTIONS BY CHAIRMAN HONIGBERG:

Q Referring to the work that the Department of
Energy has done in the analysis of the route, is
it your understanding that DOE assumes that the
line where it's buried will be buried in the
middle of the road?
A (Widell) I don't know what the DOE would assume,
but as far as assessment of historic properties
that is what was established as Alternative 7 in
the Final Environmental Impact Statement so yes.
Q So if in fact the route is expected to be on the
side of the road, or off of the roadway, does
the work need to be redone?
A (Widell) I want to clarify which work. You mean
the assessment of historic properties? If it is
outside of the area of potential effect, yes, if
there are properties that haven't been
considered. I don't think that would be very
many. But yes, if there is a change in the
location of the Project --

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

Q Dr. Bunker, if that would change where digging
took place to build the road, would additional
work need to be done on your end?
A (Bunker) No. We looked at, we looked at our
study area cold; in other words, without
knowledge of placement of the route. Therefore,
we looked at the entire APE. We considered it
as our study universe. We did our sampling
there. And it makes no difference to our, our
results, doesn't matter.

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

QUESTIONS BY MR. OLDENBURG:

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

A (Widell) Yes.

Q But my also understanding is that they used the plans or a plan which was under the road, sort of what the Chairman's question was, and since
we don't have the latest set of plans, the last set of plans that we've seen and I'm assuming that DOE has seen is for the line to be under the road. So the 20 feet would be conservative if the line is under the road. It might not be so conservative if the line isn't under the road, correct?

A (Widell) Yes.

Q Okay. That's all I have.

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

A (Bunker) I forgot the question.

BY MR. OLDENBURG:

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

A (Bunker) We did study it. If there was a larger deviation, it might warrant a review, but we covered it because we didn't have any plan in
PRESIDING OFFICER HONIGBERG: Mr. Walker, you have some redirect for the Panel?

MR. WALKER: Yes. Just very briefly.

Thank you, Mr. Chairman.

REDIRECT EXAMINATION

BY MR. WALKER:

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

A (Widell) Yes.

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

A (Widell) Yes.

Q At any point has she expressed any reservations about either your Prefiled Testimony, your
Supplemental Testimony, or your opinions in this matter?

A (Widell) No.

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

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

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

A (Widell) Yes. That's it.

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

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

A (Widell) Well, it provides a great deal of information, but I think for purposes of this discussion, under, it's on page 3, at the very
Hold on one second. Dawn, could you just blow up that paragraph B, please? Thank you.

And I'll just read the first sentence slowly.

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

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

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

Yes, but this had not been issued at that time so we were cognizant and kept in mind the broadest possible application of what could be considered under the historic site
I want to turn now to the question of cemeteries because you've been asked some questions, and I think you've already answered it, Ms. Widell, just recently that you did address cemeteries when you were identifying historic sites in your analysis?

(Widell) Yes.

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

(Bunker) Yes, I did.

How did you do that, just briefly?

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

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

(Bunker) Yes. Archeologically significant sites.
Q I'm sorry. I said sensitive.
A (Bunker) That's okay. It's hard to keep sensitivity straight from actual site from actual significance. But these four, and really only four for the whole Project, have been evaluated, and I believe are considered eligible for the National Register.
Q Did I hear you testify that the Project is able to avoid some of those four?
A (Bunker) Yes. Of the four, I've conversed with design engineers and looked at these four locations, and two of them we're very confident can be avoided. One of them is still under discussion. And only one is not avoidable. Unavoidable. That is to say impact cannot be avoided at only one of these sites.
Q And then what happens for that site?
A (Bunker) For that site, we will consult with New Hampshire Division of Historic Resources, and in that consultation, we will develop a mitigation plan. That for archeologists is an opportunity to continue our in-depth evaluations of the site through continued field investigation and continued research, both contextual research,
artifact specific research and answer research questions. It's a more theoretical information gathering endeavor, and we will collect the information from the site.

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

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

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

A (Bunker) Yes, and I want to point out that when we think of archeological sites and we think of areas of potential effect, we're often thinking horizontally. How much of the corridor or the parcel is occupied by the archeological site.
But I also would like to point out that there's a vertical APE. And in the case of a buried occurrence such as this, we would consider that the potential effect is deeper, and we could potentially recommend going below that.

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

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

A (Bunker) Yes.

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

A (Bunker) The work plan, I can only speak from the archeological perspective. The work plan is a document that itemizes steps and methodology for conducting archeological survey for the Project, and these steps and methodologies are accompanied by supporting information such as copies of field recording forms, such as artifact curation policy statements and the...
like. I participated actively in this, provided
text, provided supporting documents, and was
involved in the preparation.

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

A (Widell) Yes.

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

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

Q We have nothing further.

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

A (Widell) Thank you, Chairman.

PRESIDING OFFICER HONIGBERG: Mr.

Needleman, I think we can probably knock that
visual impact witness off before the end
of the day?

MR. NEEDLEMAN: Let's get it done.

PRESIDING OFFICER HONIGBERG: Okay.

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

(Recess taken)

PRESIDING OFFICER HONIGBERG:

Mr. Needleman.

MR. NEEDLEMAN: Thank you, Mr. Chair.

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

TERRENCE DEWAN, SWORN

JESSICA KIMBALL, SWORN

DIRECT EXAMINATION

BY MR. NEEDLEMAN:

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

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

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

Q Could one of you just briefly describe your role
in this Project?

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

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

A (DeWan) Yes.

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

A (DeWan) No. We don't.

A (Kimball) No. We don't.

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

A (Kimball) Yes.

A (DeWan) Yes.

Q All set, Mr. Chair.

PRESIDING OFFICER HONIGBERG: All right.

Is there anyone here from the Business Group to ask questions of this Panel or I don't see anyone else. I think we're hitting up Counsel
for the Public then. Ms. Connor?

CROSS-EXAMINATION

BY MS. CONNOR:

Q Good afternoon. Thank you for waiting.

A (DeWan) We had no other choice.

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

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

A (DeWan) Visual Impact Assessment.

Q Thank you. Could we pull up Site Rule 301.05? Am I correct that site Rule 301.05 governs how Visual Impact Assessments must be prepared with respect to proceedings before this body?

A (DeWan) That is our understanding.

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

A (DeWan) That is generally our understanding.
Q And am I correct that one of the first 
requirements of the rule requires you to conduct 
a computer based visibility analysis to 
determine all areas of potential visual impact?
A (DeWan) That's one of the first things that we 
have to do.
Q And with regard to structures and rural areas 
that requires a study out how many miles?
A (DeWan) Ten miles.
Q And for structures in urban clusters, how many 
miles?
A (DeWan) As defined by the term "urban clusters," 
two miles.
Q Did your visibility analysis consider whether 
structures were within an urban cluster?
A (DeWan) Yes. We did.
Q And where did you do that?
A (DeWan) The primary place that urban clusters 
are found is in the town of Concord.
Q Did you do any studies with respect to urban 
clusters in any towns other than Concord?
A (DeWan) Looking at the map of Concord, I believe 
there's a small portion of it that may go 
outside of the boundaries of Concord, but for
the most part Concord is where we concentrated
the two-mile limit.
Q When you submitted your VIA in October of 2015,
what radius did you use for your visibility
analysis?
A (DeWan) At that point we used a three-mile
radius from the central line of the Project.
A (Kimball) To correct, it was a five-mile radius
in the first round.
Q Then am I correct that in October of 2015 this
Board was considering draft rules that would
require a ten-mile visibility analysis?
A (DeWan) That is correct.
Q And, ultimately, they adopted those rules in
December of 2015; is that correct?
A (DeWan) That is our understanding.
Q And as a result of that, did you have to expand
your visibility?
A (DeWan) We did.
Q Am I correct that the rules also make it clear
that you have to do this visibility analysis
based on both bare ground conditions?
A (DeWan) No. That is not our understanding.
Q What is your understanding with regard to site
Rule 301.05 that talks about the fact that visibility analysis should be based on both bare ground conditions and with consideration of screening by vegetation?

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

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

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

A (DeWan) We do not believe so.

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

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

Q But not initially.

A (DeWan) Not initially.

Q And you did not initially because it was your interpretation that (b)(4) trumped (b)(1)?
A (Kimball) (b)(4) is the description of what a computer-based visibility analysis is. That is the section of the rules that describes what a visibility analysis is composed of.

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

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

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

A (DeWan) That is correct.

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

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

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

A (DeWan) That's correct.

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

A (DeWan) That sounds about right.

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

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

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

A (DeWan) That sounds about right. Yes.

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

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

Q I am.
A (Kimball) Right.

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

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

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

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

A (DeWan) That is correct.

Q And I have in front of me that definition?

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

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

A (DeWan) That is correct.

Q And then the other aspect of the definition is that the resource must have a scenic quality or the public needs to have access to a recreational trail park or area maintained with public funds. Are those sort of the several
components of this definition?
A  (DeWan) That's correct.
Q  And the right of legal access is right in the beginning, but then we have various categories of scenic resources, right?
A  (DeWan) That's correct.
Q  Most of those categories of scenic resources define a resource that has to have a scenic quality, correct?
A  (DeWan) That's correct.
Q  The one exception to that is subsection (d) which talks about recreational trails, parks or areas established, protected or maintained in whole or in part with public funds, that particular subsection doesn't impose a scenic quality definition, does it?
A  (DeWan) It does not appear to.
Q  Am I correct that the New Hampshire SEC's definition of resources that qualify as scenic resources is much broader than what is required than under say the Maine Wind Energy Act?
A  (DeWan) To some extent it is a little bit broader, yes.
Q  And you agreed, I believe, earlier on when we
started that for these proceedings you were bound to follow the SEC rules.

A (DeWan) That is correct.

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

A (DeWan) That would be an understatement.

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

A (DeWan) That's correct.

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

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

Q Did you perform any kind of analysis with regard to the 7400 scenic resources identified by public expert?
A (DeWan) First of all, I don't think that it's accurate to consider them to be scenic resources. Some of them may be potential scenic resources, but they're simply points or lines of areas on the study area. But we did look at a lot of them.

Q Did you look at all of them?

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

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

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

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

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

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

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

Q Right. How many was that?

A (Kimball) I don't have the numbers in front of me, but it was less than a 100.
Q  Wasn't it less than 20?
A  (Kimball) There was a number of different methods that we took so there were some based on the revised land covered data some based on the historic sites. It was certainly more than 20.
Q  Can we pull up Applicant Exhibit 1, Appendix 17? Can you focus in just on the flow chart? We've pulled up an exhibit that is from your report. Am I correct that this is your methodology chart?
A  (DeWan) That is from our report. That is correct.
Q  And is this chart a reasonable representation of the methods and procedures you used to conduct your VIA?
A  (DeWan) I think this presents a reasonable overview of the process that we went through. I won't say that we followed it exactly step by step. There was a lot of modification as we went through here, but I think this gives you a good sense of the process that we went through.
Q  In the first step, identifying scenic resources, did you follow the definition that we went through a few minutes ago, Site Rule 102.45?
A (Kimball) Yes. I would say the only addition that was made in April of 2017 was the addition of historic sites that were developed using the DHR's database.

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

A (DeWan) That's correct.

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

A (DeWan) Yes.

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

A (DeWan) They do have a legal right of access according to our understanding of that, but we do not believe that is the intent of Section 102.45 to include those properties because that includes about 60 percent of the land area of the State of New Hampshire.
Q I understand that, but right now I'm just trying to figure out whether we agree that public lands that are posted open for purposes of current use taxation, whether you agree that the public has a right of access to those lands.

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

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

A (DeWan) Generally, yes.

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

A (Kimball) We had, to begin with, we read documents, primarily master plans, material online from various conservation groups, anything that we could come up with that was public documentation that represented parks,
conservation areas, lakes, et cetera. So we used a variety are of different documentation to build up that list to come up with that total number.

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

A (DeWan) An inexact science?

Q Yes.

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

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

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

Q Wouldn't you agree that there may also be scenic resources that are important to local
communities that aren't in their master plan?

A (Kimball) I would not agree with that.

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

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

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

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

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

A (Kimball) Our research went beyond local master plans.
Q Well, when I asked you to identify all of the places that you went to try to determine whether public had access to it, you didn't mention any other sources.

A (Kimball) I did.

Q Okay. You mentioned master plans.

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

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

A (Kimball) Correct.

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

A (DeWan) No. I believe that if we were to find a place during the course of our field work that
we thought was exceptionally scenic we would have added that to our inventory.

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

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

Q I'm going to get into the specifics of your work, but right now I was asking more about theoretical question. I'm simply trying to get an answer to whether you agree or disagree that a scenic resource doesn't have to be identified in a published database in order to qualify as a
A (DeWan) Again, going back to our experience in doing these sort of studies over the past three decades, you know, I can't think of any resource that we have ever encountered that has not been published in one form or another.

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

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

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

A (DeWan) No.

Q And why is it that it doesn't?

A (DeWan) There's no reference to any database in A.
Q What I'm referring to is the fact that when you're trying to figure out whether a particular resource is, quote, unquote, "designated," you know that you're either going to go to a national, state or municipal authority to determine what that resource is, correct?

A (DeWan) Generally, that's correct.

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

A (DeWan) That's correct.

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

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

Q And even locally designated, correct?

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

Q You're right. Locally designated roads.

A (DeWan) Locally designated scenic roads.

Q Yes. When we're dealing with scenic roads, regardless of whether they're designated by
national, state or municipalities, am I correct that the designation deals with the view from the particular road as opposed to the road itself?

A (DeWan) No.

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

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

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

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

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

A (DeWan) No.
Q Why not?
A (DeWan) I understand the Scenic Byways program is to encourage tourism along these fairly lengthy and very often interconnected roadways, and it exposes travelers to a variety of different cultural, historic, scenic locations. And part of the publicity that goes along with it is an identification of some of those scenic, cultural, historic, natural sites along the way.
Q And when those Scenic Byways have lookout stops, at those particular lookout spots, is the public being directed to look at the road or at the view that's off in the distance?
A (DeWan) First of all, there's very few lookout spots, and I don't think "lookout spots" is a term that's used by the Scenic Byways program. There are a couple. Let's talk the Route 2 overlook in Lancaster. There is no direction there. It's just a paved parking lot. The public has the ability to look in one direction to the White Mountains, another direction to the Christie easement, another direction to a campground.
Q And when that public person is stopping at that
overlook and looking out at the view, they don't need to have access to what it is that they are looking at in order for them to be looking at the scenic resource, do they?

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

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

A (DeWan) That's correct.

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

A (DeWan) Category B.

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

A (DeWan) I do not, I would not use the word specifically.
Q Okay. Subsection (b) talks about conservation land or easements that possess a scenic quality.

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

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

A (DeWan) That's what it says.

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

A (DeWan) It's stated 102.44.

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

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

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

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

PRESIDING OFFICER HONIGBERG: Off the record.

(Discussion off the record)

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

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

PRESIDING OFFICER HONIGBERG: Ms. Connor.

You may continue.

MS. CONNOR: Thank you.

BY MS. CONNOR:

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

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

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

A (DeWan) That's correct.
Q So you would agree with me that those bodies of water are bodies to which the public has access? A legal right of access?
A (DeWan) I think that's generally my understanding.
Q And, therefore, if those bodies of water to which the public has access also possess a scenic quality, then they would qualify as a scenic resource.
A (DeWan) That's correct. If they were so designated as having scenic, a scenic quality.
Q Well, in fact, they don't have to be designated as having scenic quality. They simply have to have it, correct, under subsection (c)?
A (DeWan) Well, again, as a frame of reference, as you mentioned before, I've done a lot of work in Maine over the years, and one of the things that differentiates the Maine experience from the New Hampshire experience is the fact that in Maine all the lakes and all the ponds have been rated for scenic quality. That is not the case here. So we have a certain frame of reference when we come into a situation like this. We know how at least one other state looks at scenic quality.
for things like lakes and ponds. And so when we look at a body of water, we have a certain mindset that perhaps not all lakes are equally scenic, that there may be some factors that make some lakes more scenic than others.

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

A (DeWan) Well, the term scenic quality from our way of looking at it is somewhat ambiguous. Scenic quality can mean a lot of different things to different people. The word scenic is an adjective. If you use the term scenic overlook, for example, when you get to a scenic overlook you expect to see some pretty memorable scenery. If you look at a scenic river or a scenic byway, you're not looking at your ordinary street. So to us, the word scenic is
really a way of looking at a place, an area, a
viewpoint that has an elevated sense of scenery
beauty, of intrinsic beauty.

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

A (DeWan) That's correct.

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

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

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

A (DeWan) We, for all the lakes we visited most of
them. Those that were within 3 to 5 miles we
evaluated them. Those that were beyond five
miles I think for the most part had no visibility.

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

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

Q Within ten miles.

A (DeWan) Within ten miles.

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

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

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

A (DeWan) There is some that we did an evaluation on. I perhaps misstated before when I said we evaluated every one of them. We did, we did look at every pond. We, well, if I could go back and say that once you get beyond a certain distance, the distance factor really enters into the discussion here. I realize that the rules
call for an evaluation of property and lakes and resources out to ten miles. At some point you sort of have to ask the question is it really germane to the discussion.

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

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

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

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

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

A (Kimball) If you look to our Supplement that we submitted in February of 2016, we make a blanket statement about all resources beyond five miles as having virtually no visibility because of the
distance, and any ponds that were identified from three to five miles were addressed in that Supplement.

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

A (DeWan) I think that's correct.

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

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

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

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

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

A  (DeWan) That's correct.

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

A  (DeWan) That's what it says.

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

A  (DeWan) That's correct.

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

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

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

A  (DeWan) To us that meant roads that have been designated as Scenic Byways at either a national or state level or at a town level as scenic roads.
Q. Well, then wouldn't those specifically designated byways be included within subsection (a)?

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

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

A. (DeWan) It appears that way.

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

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

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

A. (DeWan) That's one of the reasons we do field work. What we do is not just data collection and research. But it's also getting out and
seeing what the landscape looks like and identifying if there are places that may qualify for this ambiguous phrase of scenic drive and ride.

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

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

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

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

A (DeWan) That's correct.

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

A (DeWan) Well, as we said before, we have some issues with the ambiguous nature of the
Q All right. And I take it that your concern about the definition of scenic quality is that different reasonable people may have different opinions about what is a scenic quality. Is that fair?

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

Q Sandy, can we pull up Applicant 71826? Applicant Exhibit 71826? Do you have a picture on your screen?

A (DeWan) I see it, yes.

Q Sometimes there's a delay.

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

Q In Lancaster?

A (DeWan) Lancaster in Coos County.

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

A (DeWan) That is correct.
MS. MERRIGAN: For the record, this is Applicant's Exhibit 71-1, Attachment 8.

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

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

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

A (DeWan) I do.

Q Why?

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

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

A No.

Q And why is that?

A (DeWan) Because this is a view from a very specific point on the back side of an individual's home.
Q Are you telling this Committee that there is no view of these mountains on Mount Prospect Road in Lancaster?
A (DeWan) No.
Q The views that are available from Mount Prospect Road in Lancaster, those are views to which the public has a right of legal access, correct?
A (DeWan) That's correct. If they're on a public road.
Q And assuming that there is a view like this from Mount Prospect Road, a public road, would you agree that that would make this a scenic drive?
A (DeWan) I would say so.
Q And if this is a scenic drive, you should have completed a visual effect rating form, correct?
A (DeWan) This is also a locally designated scenic road which we have identified.
Q But you didn't complete a visual effect rating form for it, did you?
A (DeWan) We provided a lot of information relative to the characteristics of the road and the people that would be using it.
Q You did not complete a visual effect rating form, did you?
A (DeWan) We did not.

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

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

A (DeWan) That is correct.

Q Would you say it possesses a scenic quality?

A (DeWan) Yes, it does.

Q And why does it possess a scenic quality?

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

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

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

Q Would that make it a scenic resource?
A (DeWan) Not necessarily.

Q Public access, scenic quality.
A (DeWan) This is not a publicly accessible location.

Q I didn't ask about the driveway. I asked about this view on Mountain Road. Wouldn't that make it a scenic resource?
A (DeWan) I guess it would depend on what we mean by the term resource. Is just an opening in the woods framed by a private home a resource?

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

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

PRESIDING OFFICER HONIGBERG: I heard it as a hypothetical. I heard the "if" at the beginning of the original question. That was your question, was it not?
MS. CONNOR: It was.

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

MS. CONNOR: It was.

PRESIDING OFFICER HONIGBERG: All right.

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

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

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

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

A (DeWan) That's correct.

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

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

Q And Deerfield Road goes in front of this
A (DeWan) That's correct. This is a very brief opening in the vegetation along the road.

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

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

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

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

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

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

Q I'm trying to --
A It's a simple gap in the roadside vegetation which is very common throughout much of the roadways in New Hampshire.

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

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

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

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

Q All right.

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

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

A (DeWan) Again, let me step back and say that what you're asking would apply to probably
hundreds of if not thousands of miles of roadways within our study area.

Q That's true.

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

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

A (DeWan) Well, we respectively disagree.

Q And your disagreement in this sense is not based
on the scenic quality, but the fact that it is visually accessible from the public road and you don't believe that scenic views from public roads are scenic resources.

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

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

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

Q So you just told me that this view is not a view
that is along the whole stretch of the road. Is that what you're telling me?

A (DeWan) That is correct.

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

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

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

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

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

A (DeWan) We did not.

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

A (DeWan) That is correct.

Q Would you agree that this simulation shows the
Project having a prominent visual effect on this particular view?

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

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

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

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

A (DeWan) Like we've done for every other example of the photo simulations that we've done for the Project. We go there, we photograph it, we photograph the view looking towards the Project, we photograph the context, we photograph any
vegetation that may be between the observer and
the proposed Project to get a general, to get a
very well defined sense of what the landscape
feels like and anything that may affect the
evaluation of the effect.

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

A (DeWan) That is correct.

Q Can we go to APP 36097?

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

A (DeWan) Yes, it is.

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

A My screen just went blank.

Q So did mine. There we go.

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

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

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

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

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

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

Q Well, we established --

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

Q When we started today I asked you whether in fact this definition as drafted talked in the
alternative because it uses commas and it uses the word or. It does not use the word and. Correct?

A (DeWan) That is correct.

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

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

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

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

Q A junk yard has an intrinsic beauty, sir?

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

Q We're talking about views, sir. Did you just tell us that the views of a junkyard have
intrinsic beauty?
A (DeWan) Again, to some people it may. I'm not saying to everybody.
Q Under the SEC Rule 102.44, are you telling us that a junkyard has a scenic quality?
A (DeWan) Again, if you think of scenic quality being from zero to ten, probably fall down in the lower end of that continuum.
Q With respect to this view, which has a scenic quality, which is on a public road, that means it qualifies as a scenic resource under subsection (c), correct?
A (DeWan) Because it, you're thinking this is a part of a scenic drive or ride, is that what you're asking?
Q No, sir. Subsection (c)?
A Yes.
Q A scenic drive and ride that possess a scenic quality.
A (DeWan) So you're asking would this qualify as a scenic drive and ride.
Q Correct.
A (DeWan) Again, you need to think about the context here. Is this a place that you would
drive to as part of a Sunday afternoon drive. This particular location was photographed because it was representative of a view from a private residence which is immediately in back of us. If you look off to the right, there's a gravel pit and there were a lot of trucks that were screaming by. It's not what I would consider a very scenic location because of the other things that were happening in the context of this particular location.

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

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

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

A (DeWan) Just looking at what we have in front of us, I would say this possesses some level of scenic quality.
My question was whether this is a scenic resource.

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

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

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

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

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

Q You just mentioned that this is a very common view that would be seen on Sunday afternoon
Q: I thought that's what I heard. Would you agree, sir, that there are hundreds of miles along this Project where the New Hampshire public is going to have a potential view of the Project?

A: No. I would not agree to that.

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

A: I think that's a fair statement. You know, I know that Counsel for the Public looked at virtually every single road that was in the Project area.

Q: And you did not.

A: We made no attempt to look at the thousands of different road segments that were in the Project area.

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

A: As I said before, we looked at those
areas that were designated as towns' scenic roads as well as Scenic Byways and any places that also showed up on our viewshed mapping.

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

A (DeWan) That's correct.

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

A (DeWan) That is found at 102.23.

Q Can you read that definition for us, sir?

A (DeWan) Quote, "Historic sites," unquote, means "historic property," unquote, as defined in RSA 227-C:1, VI, namely, quote, "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities or the nation," unquote. The term includes, quote, "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior," unquote,
pursuant to 36 C.F.R. 800.16(1)(1).

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

A (DeWan) That is correct.

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

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

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

A (Kimball) Correct.

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

A (Kimball) They had to be determined eligible.
Q  So somebody had to put them on a list?
A  (Kimball) Correct.
Q  And if they weren't on a list, even though the
definition of historic sites under the SEC's
rules is much broader, you didn't include those
sites?
A  (Kimball) We rely on databases.
Q  Can we pull up CFP Exhibit 441?
A  (DeWan) That's what it appears.
Q  And that includes North Road and Grain Road in
Lancaster.
A  (DeWan) That's correct.
Q  And it was determined that those two roads
comprise a district that is eligible for
designation, correct?
A  (DeWan) That's correct.
Q  Okay. Let's pull up Applicant Exhibit 1,
Appendix 18. Possible to blow that up just a
tad? The two photos?
A  (DeWan) That's correct.
Q  On your screen are two photos from the
North Road Agricultural Historic District that
are eligible for designation. You see those two views?

A (DeWan) Yes.

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

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

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

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

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

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

Q And those would include the views from the road,
would it not?

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

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

A (Kimball) It is not.

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

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

Q Can we pull up 822?

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

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

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

Perfect. So this is the photo that you took
that shows the existing conditions?

A (DeWan) That is correct.

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

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

Q Right. If I go back to and I don't need to you pull this up, Sandie. I'll reference it. Counsel for the Public Exhibit 441 which is the determination of eligibility for this district and this road, it talks about the fact that it is significant because it's a group of buildings and associated landscape features that are part of the agricultural context of Lancaster. So the buildings and the associated landscape feature that is eligible for designation is visually accessible from this public road, is it not?
A (DeWan) Part of it is.
Q Yes, and so would that, sir, not make it,
wouldn't that make it a historic site under
subsection (e) provided it possesses a scenic
quality?
A (Kimball) It would be visually accessible as you
stated. We agree it would not be publicly
accessible.
Q We can argue about the semantics of whether you
can access this by driving down the road. Will
you agree that it possesses a scenic quality?
A (DeWan) There's no doubt that it does have a lot
of components that people would describe as
being scenic. Especially if the fog would lift
here. But it is a combination of structures,
landscape, a road that goes through it.
Q So it has a scenic quality because of the
landscape. What were the other characteristics
you gave me?
A (DeWan) The way the road follows the contour of
the land, the patterns of open space, the
position of the buildings on the land.
Q The last one you indicated that if the cloud
were lifted, we might able to tell more, too,
As you can see in the photograph here, there is some indication of the mountains behind it.

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

A much warmer day also. You certainly are able to see a lot more of the landscape at this point.

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

Yes.

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

I don't know if the building is historic or not, but it certainly is a visible preference.
and a change from the prephotograph condition.

Q  How tall is that structure?
A  (DeWan) I don't know what the height of the
structure off the top of my head. It might be
in the previous pages in this particular.

Q  Is it fair to say it's about two thirds taller
than the Lancaster building?
A  (DeWan) I don't know what the back side of that
looks like.

Q  And in addition to the one that is most visible
because it's broad, there's also a monopole a
little bit in front of it, to the side, that's
new?
A  (DeWan) That's correct.

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

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

A  (DeWan) We have not done an evaluation of this
particular location.

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

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

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

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

Q I understand that.

A (DeWan) And in leaf-off conditions.

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

A (DeWan) There's no requirement to do specific number of photo simulations if that's what you're asking.
Q No, sir. You did a photo simulation. I'm asking whether or not you were required under the rules to do an additional --

A (DeWan) Evaluation.

Q Yes.

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

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

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

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

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

Q Would you agree, sir, that the impact on this particular location is high?
A (DeWan) Again, I do not make judgments based upon a single photograph. I would have to look at it from a variety of different viewpoints and be there to do the evaluation.

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

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

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

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

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

A (DeWan) Generally, very true. Unless, of course, there are private properties that make up village centers, but I think by your definition by the places that we have seen and in fact they're a town center or village center
that implies that there's land that's commonly held and, therefore, accessible to the public.

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

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

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

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

Q Did you visit every town and village center within the 2800 square mile area surrounding this Project?
A (DeWan) We certainly did when we did our initial study looking. Going out three miles because that was our initial understanding. When we went out looking at everything within ten miles, we were guided by a recognition that once you get beyond a certain distance, you're not going to see this Project. So did we visit every town center within ten miles, I would say no.

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

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

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

A (DeWan) That's correct.

Q And you've just told me that with regard to towns and village centers, you made the
A (DeWan) When we did our initial work that was our first volume that we submitted we went out three miles. Actually, we concentrated on three miles. Our computer analysis went out five miles. After we got the final draft of the rules in December of that year, we amended it to go out to ten miles.

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

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

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

A (DeWan) That's what D says.

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

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

Q Right. Can we see Exhibit 459?

This, sir, I will represent is a play field
for Profile School, a public elementary school in Bethlehem. Would you agree that this is a recreational area established or maintained in whole or in part with public funds?

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

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

A (DeWan) I would say so.

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

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

Q Under D?

A (DeWan) Or recreational parks or areas.

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

A (DeWan) We looked at all the schools within three miles when we did our initial evaluation. And then when we did our supplemental evaluation based upon the new rules, we went out to the ten
miles and looked at areas that may be affected.

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

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

Q Did you go to Profile School in Bethlehem?

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

A (DeWan) Several times.

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

A (DeWan) We did.

Q What is the impact?

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

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

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

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

A (Kimball) Conservation areas, in addition to the
databases, looking at master plans, that would have referenced playgrounds or public parks or recreational playing fields.

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

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

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

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

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

A (Kimball) Potentially.

Q And you didn't look at those.

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

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

A (Kimball) Or any other documentation that we conducted our research through.
Q  You're certainly not going to represent to this Committee that you looked at every playground and every public school along 2800 square miles, are you?

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

Q  Within three miles?

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

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

A  (DeWan) That's correct.

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

A  (Kimball) No.

A  (DeWan) We don't believe so. In looking at the
past record of other Projects that have come before this body, I don't think that's ever been counted as a scenic resource.

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

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

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

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

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

Q Did you not consider it because it's a
significant amount of public land?

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

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

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

PRESIDING OFFICER HONIGBERG: Ms. Connor?

MS. CONNOR: I will rephrase the question.

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

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

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

A (Kimball) Right. The word "received" is not in the definition.
Q  So why is it you didn't consider the private lands to which the public has access in the state for recreation?

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

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

A  (Kimball) It doesn't exist.

Q  The current use lands don't exist?

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

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

A  (Kimball) No. As I said, the primary reason we didn't look at it is because it is not protected or maintained in whole or in part with public funds.
Q: Would you agree that these lands to which the public has a statutory and express right of public access could also qualify as a scenic resource because they have a scenic quality?

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

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

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

Q: What do you mean when you say no spacial identification?

A: (Kimball) The list is not tied to the tax maps, and I don't know if that list is held with the
state or by the town. I believe it's held by the state.

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

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

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

A (Kimball) What's your question?

Q Wouldn't you be able to do that?

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

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

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

Q But in this case you didn't attempt to make that
analysis, did you?
A (Kimball) I'm telling you my analysis now is that it is not considered a scenic resource.
Q I understand that's your conclusion. I'm asking whether you attempted to locate this data or to access these lands?

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

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

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

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

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

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

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

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

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

______________________________
Cynthia Foster, LCR