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.

Christopher Way, Designee
Dept. of Business & Economic Affairs.

Dir. Craig Wright, Designee
Dept. of Environ.Serv.

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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WITNESS PANEL

JAMES PALMER
MICHAEL BUSCHER
JEREMY OWENS

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P R O C E E D I N G S

(Proceedings resumed at 12:55 p.m.)

PRESIDING OFFICER HONIGBERG: My understanding is that there's no other Intervenor Groups who are here who have questions for this Panel. I believe Ms. Percy is going to be here around 2 o'clock. So in order not to waste time, Mr. Needleman, what we've asked I hope is that you would start and be able to take a break at some point, allow Ms. Percy to do her questions and then you'd resume. That's okay with you?

MR. NEEDLEMAN: Yes.

PRESIDING OFFICER HONIGBERG: So I think with that, we're ready for you to begin.

MR. NEEDLEMAN: Thank you.

CROSS-EXAMINATION

BY MR. NEEDLEMAN:

Q Good afternoon, gentlemen. I'm Barry Needleman. I represent the Applicant. I think I've met all of you before. Except maybe Mr. Owens. I can't remember.

I'm going to direct my questions at you, Mr. Buscher, because you're in the middle. That
doesn't mean that if any of you have information that you think is relevant you shouldn't jump in, and if there's a particular question I ask or a topic I'm covering that one of you is better suited to cover, then please just let me know, and I would just ask all of us to try to work together to make sure that we don't talk over each other so that we have a clean record. Okay?

So Applicant's Exhibit 106 which I don't need to call up at this point, but I certainly will if you want me to, is the Draft Environmental Impact Statement that was prepared by the United States Department of Energy reviewing this Project for purposes of the Presidential permit. And my understanding is that you prepared the Visual Assessment Technical Report for that Draft EIS; is that right.

A (Buscher) That is correct.

A (Palmer) We prepared a Draft Visual Impact Assessment Report for the Draft EIS.

Q And my understanding is that you completed that work, and it was published on July 10th, 2015.
Does that sound right?

A (Buscher) I'm sorry. Could you repeat the question? I was still on the last question.

Q My understanding is that the completed work for that portion of the Project was published on July 10th, 2015. Sound about right?

A (Buscher) That sounds approximately right. I would have to confirm the exact date.

Q Okay. Exact date is not critical. Looking for a ballpark.

And then Applicant's Exhibit 205 is the Final Environmental Impact Statement for the Project prepared by the Department of Energy, and my understanding is that you also prepared the Final Technical Report for that document, correct?

A (Buscher) That is correct.

Q And I believe that your work on that was completed on August 10th, 2017. Sound about right?

A (Buscher) That sounds about right.

Q And the Final Environmental Impact Statement concluded that the proposed alternative, Alternative 7, was the Department of Energy's
preferred alternative; is that right?
A (Buscher) I believe that's correct.
Q Now, for purposes of the work that you've done
here in this docket, on May 13th, 2016, Counsel
for the Public sought permission to retain you
for purposes of this process. Is that your
understanding?
A (Buscher) That sounds about the approximate
timing.
Q And on May 25th, 2016, the Committee granted
that request. Sound right?
A (Buscher) Sounds appropriate.
Q And you completed your work and submitted your
Prefiled Testimony or you completed your initial
work and submitted your Prefiled Testimony here
on December 30th, 2016, right?
A (Buscher) That's correct.
Q So a fair portion of the time that you were
doing your work on this Project, there was also
temporal overlap with the work that you were
doing on the Draft Environmental Impact
Statement, correct?
A (Buscher) Yes.
Q Now, with respect to that Draft Environmental
Impact Statement, in the Technical Report, I believe you concluded that the total average scenic impact for the proposed alternative was in your numbers 1.76 which you quantified as very low to low. Does that sound right?

A (Palmer) I would have to see it, but I have --

Q I don't want to make it a memory test, Mr. Palmer, so I can pull it up.

A (Palmer) Yes. I think that's not accurate. I think that those numbers refer to a rating for a specific cell, and the problem was that it didn't incorporate, when you talk about the overall impact, the area that's being impacted. So there's a second index that does incorporate that.

Q So I'm going to call up Applicant's Exhibit 106, the Supplement to the Draft Environmental Impact Statement on page 5. And I'm looking at Alternative 7 which is the proposed action.

A (Palmer) The final analysis redid all of these numbers. None of this is -- it's all draft, right? This is all from the Draft?

Q My question to you, yes, was with respect to the Draft Environmental Impact Statement.
A (Palmer) Okay.

Q So now that you see this chart does that refresh your recollection?

A (Palmer) Yes. And the use of the average scenic impact there was criticized in public --

Q It's just a yes or no question.

MS. CONNOR: I believe he can explain his answer.

PRESIDING OFFICER HONIGBERG: Let's get the yes or no first, and then if he has an explanation, he can give it. Off the record.

(Discussion off the record)

A (Palmer) This appears to be a table from the supplementary report to the Draft VIA.

Q Correct. And the conclusion at that point was that the proposed action, number 7, according to you, the total average scenic impact was 1.76 which down below there you quantify as very low to low, correct?

A (Palmer) Yes. That's what it says.

Q Okay. Then in the Final Environmental Impact Statement, you concluded that the average scenic impact for the proposed alternative was 1.41 which was a net change of .03 over the existing
conditions. Does that sound right?

A (Palmer) That may be so, but the final VIA also describes why not to use that number.

Q We'll get to that. I'm just asking you if that sounds right.

A (Palmer) Okay. If you have it, I can look at it. I mean, it's going to be in that ballpark, correct.

Q Sure. It's page 272 of the Technical Report. Do you recognize this document?

A (Palmer) I do.

Q I think if we go to the bottom of that. Because if you look on the left side in the Total column, and then you follow across, I think we have the total there of 1.41. Is that right?

A (Palmer) I mean, it's real hard to say because I can't see what, the material that we're bringing this from.

Q What would you like to see?

A (Palmer) I just want to, I just want to read the heading.

Q Sure.

A (Palmer) So I can understand what figures you're showing me.
Q   Sure. Take your time.
A   (Palmer) Thank you.

MR. IACOPINO: Mr. Needleman, I know they have bigger screens than us, but is there any way this can be blown up so we can see it?

MR. NEEDLEMAN: Yes, we're happy to blow up whatever part you want to see.

MR. IACOPINO: Just generally so we can get an idea of what's on the paper.

MR. NEEDLEMAN: Sure. Does that help?

BY MR. NEEDLEMAN:

Q   This is your document, correct?
A   (Palmer) Yes. So 1.41 is the average scenic impact over the whole Project.

Q   Okay.
A   (Palmer) And that's, yes, in comparison to the existing line.

Q   All right. Thank you. So am I also correct that as part of that work that you did, you drew conclusions about visual impacts by region? There was a north region, a central region, a southern region and then the White Mountain National Forest?
A   (Palmer) We calculated statistics for each
region, but I don't think we drew conclusions.

Q Well, let's, we've put together Exhibit 322 which is a compilation of your statements regarding Alternative 7. This is a summary, and next to each of those we have the Final Environmental Impact Statement page reference. And I'm happy to call up any of those if you'd like, but what I'd like do for purposes of moving this along is just to run through those.

A (Palmer) Maybe I should let you know that we had no hand in writing the Final EIS so all of this material was written by someone else?

Q Sure.

A (Palmer) And I've not read the Final EIS.

Q But you did all of the underlying work that went into these conclusions; is that correct?

A (Palmer) Assuming that the people that wrote the Final EIS used our material, that's correct.

Q Do you ever check that?

A (Palmer) No. We were not asked to check that. Actually, we weren't even given an opportunity to check that.

Q Did you check any of that work in the context of the Draft Environmental Impact Statement?
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<td>A (Palmer) We did check things in relation to the Draft Environmental Impact Statement, but the Draft Environmental Impact Statement did not include Alternative 7.</td>
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<td>5</td>
<td>Q Did you find the work in the Draft Environmental Impact Statement with respect to Visual Assessment to be well done and sound?</td>
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<td>8</td>
<td>A (Palmer) We were asked to read specific sections, and we did that. We were specifically asked not to make a judgment about the significance which is a keyword in the federal NEPA language.</td>
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<td>13</td>
<td>Q And the sections that you read, did you find them to be well done and sound?</td>
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<td>A (Palmer) We offered suggested corrections, and those were made or not made. I didn't go back and check them.</td>
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<td>18</td>
<td>Q I'm not sure you answered my question.</td>
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<td>19</td>
<td>A (Palmer) I can't answer your question.</td>
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<td>Q Okay. So with respect to the northern section of the line which encompasses Coos County, the conclusion in the Final Environmental Impact Statement was that the scenic impact of the proposed conditions was 1.15 or very low to low.</td>
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Is that correct?

A (Palmer) I wouldn't use that average anymore as a result of the review of the Draft Environmental Impact Statement. The aggregate numbers were considered to be the better indicator.

Q But these are the numbers in the final Environmental Impact Statement from the United States Department of Energy.

A (Palmer) You cherry-picked some numbers that are in that statement. That's correct.

Q And I'm sure you will get an opportunity on redirect to explain why you disagree with them. What I'm asking you, and do you agree with me, that these are the final numbers from the Environmental Impact Statement representing this category?

A (Palmer) I'll take your word for it that you accurately did these. I didn't write the Final EIS so I can't say.

Q You've never seen this before.

A (Palmer) I have not read the Final EIS.

Q Well, that's not what I'm asking you. I'm asking you if you've ever seen this before. Not
this exhibit but these conclusions with respect to these sections.

A (Palmer) If they're the same as in the final VIA, then yes, I have seen them, but as I've said several times, I didn't have anything to do with writing the Final EIS.

Q Mr. Buscher or Mr. Owens, did you ever see these before?

A (Buscher) I would say the same thing that Jim has said. It's hard to verify without going back through the entire document to see if it was transposed correctly to the Final EIS and then to this exhibit.

Q Mr. Buscher?

A (Buscher) I've only loosely looked through the Final EIS. I wouldn't be able to tell you if that was the exact document or the exact chart from the EIS.

Q All right. Well, I'm certain that if we didn't get any of these average scenic impacts correct, then that will be cleared up on redirect. So we'll keep going for now.

A (Buscher) That sounds fine.

Q Based on the chart we have here, the central
section average scenic impact which is Grafton and Belknap County in the Final EIS was 1.62 which was also considered very low to low; is that correct?

A (Buscher) That's what this chart says yes.

Q And in the southern section, it was 1.76, also considered very low to low, correct?

A (Buscher) That, again, is what this chart says.

Q And then, finally, the chart says that in the White Mountain National Forest the impact was 2.45 which is low to moderate. Is that correct?

A (Buscher) Again, that is what this chart says, yes.

Q And in your work in this docket, you have offered the opinion that there are 29 specific locations where there will be unreasonable adverse effects on aesthetics; is that right?

A (Buscher) That's correct.

Q At the tech session, I asked you how you could analyze the same Project and reach what appear to be such different conclusions, and you said to me something along the lines of the report for the Department of Energy was at a landscape planning scale, and it wasn't looking at site
specific resources.

A (Buscher) That's correct. In fact, we were specifically directed in conducting the visual analysis for the DOE or on behalf of the DOE to pull back from looking at really specific site level details.

Q So it's your testimony then that there is no correlation between the work you did for the Environmental Impact Statement and the work you did here?

A (Buscher) There's correlation, but it's different work. It's looking for a different answer to a different question.

Q All right. Well, I want to dig into that a little bit.

So the T.J. Boyle Technical Report, which I guess is also known as the Visual Impact Assessment that supported the EIS, talked about how you went about doing your work there, and I'm going to call up Applicant's Exhibit 205, and this is page 2 of the Technical Report, and I want to take a moment to look at that.

This is a description of how you were undertaking the work in that process, and it
talks about there being two distinct approaches
to analyzing these visual impacts. The first
one captures what is framed as a big picture
approach using GIS to conduct visibility
analysis, a landscape assessment and evaluation
of exposure to roads, et cetera. And then it
says, quote, "The second is a more focused
viewpoint assessment that includes an extensive
visual inventory of the existing conditions and
the preparation of representative photo
realistic visual simulations. An evaluation of
Key Observation Points, KOP, provide an in-depth
description of the effects at specific
viewpoints." Correct?

A  (Buscher) Correct.

Q  So in this assessment, you engaged in a, quote,
"focused viewpoint assessment," and I believe
that that included visiting and documenting over
a thousand viewpoints; is that right?

A  (Buscher) As part of this process, we engaged in
a level of field analysis that involved
extensive field work and observation.

Q  And you prepared multiple photo simulations of
specific locations for this work; is that right?
A (Buscher) That is correct.

Q And you evaluated Key Observation Points using both leaf-on and leaf-off conditions to, quote, "provide in-depth descriptions at specific viewpoints," correct?

A (Buscher) That is correct.

Q And for the Draft EIS, it's my understanding that you selected 65 specific viewpoints to create photo simulations.

A (Palmer) I think it's more like 70, but you're in the neighborhood.

Q Yes. I thought the draft was 65, and in the final you selected 73.

A (Palmer) Yes. That could be, yes.

Q 73 sound right for the final?

A (Palmer) It does, yes. Thank you.

Q And Mr. Buscher, a moment ago you talked about doing field work in connection with this Project. You did extensive field work for the EIS; is that right?

A (Buscher) That is correct.

Q And that field work involved spending a lot of time in a range of specific locations to understand the character and detail of those
locations and the potential impact of those places, right?

A (Buscher) That is correct.

Q And you did a photo inventory which we received in discovery, and we counted that between 2013 and 2016 your team spent 46 days in the field; actually, two teams spent 46 days in the field; does that sound about right?

A (Buscher) I would have to look at the exact numbers, but we spent quite a bit of time out in the field.

Q And at page 52 of that Final EIS, you said, quote, "a field team visited each public road crossing of the proposed Project," close quote. Sound right?

A (Buscher) I'm sorry. Could you repeat the last thing that you said?

Q "A field team visited each public road crossing of the proposed project."

A (Buscher) Yes. Sounds correct.

Q And there were --

A (Buscher) Did you have something to add?

A (Palmer) I was just going to say meaning the overhead crossings but yes.
And there are 120 of those crossings; is that right?

(Palmer) That's in the ballpark, right.

And at page 53 of that document, it said that field teams collected information at each one of those points as part of your analysis. Does that sound right?

(Buscher) That sounds correct.

And all of the field sheets that were filled out were then inputted into a complete T.J. Boyle simulation viewpoint spreadsheet. Does that sound right?

(Buscher) It does.

And I'm going to call that spreadsheet up, and it's going to be a bit challenging, I think, for folks to read because you packed a lot of information into it, but I'm happy to go to any point on the sheet that anyone wants, but I want to use sections of it just for illustrative purposes.

So, Dawn, maybe we could start at the top and block off just the first half so people can see the categories of information there.

So my understanding is that Surveyors would
be the field team that went to a particular location; is that right?

Q And then you have the Location next to that. In this case, Pontook Reservoir looking northwest, right?

A (Buscher) Yes.

Q And before that you've got a date and a time that the people were there, right?

A (Buscher) That is correct.

Q And then GPS ID. I'm assuming that just is a way to figure out the GPS coordinates of the location?

A (Buscher) Yes. Each waypoint that was captured was given a unique identifier.

Q All right. And then Photo Number. So when it says 820 to 892, does that mean that you took 72 photos at that location?

A (Buscher) That is correct.

Q And you were just numbering your photos sequentially somehow?

A (Buscher) That's correct.

Q Okay. And then Photo Notes. I suppose that's just information about how photos were taken.
Correct me if I'm wrong.

What are those next categories, Observation NOT?

A  (Buscher) I believe that stands for observation notes.

Q  Okay. So it's talking about corridor visibility there. And then you have your next category, Designation, so I guess that would relate to whether there's some formal scenic designation like a cultural byway or some such thing?

A  (Buscher) It would.

Q  Okay. And then let's keep going over. So there's designation notes. What does scenic ATT mean?

A  (Palmer) It's attractiveness, an attractiveness rate.

Q  Okay. So you're rating the scenic quality or scenic attractiveness as a term of art?

A  (Palmer) I suppose. I mean, it would be a general scenic value rating, but yes. Yes.

Q  What does the next thing mean? Num resdn?

A  (Owens) Number of residences.

Q  So you're noting residences in the area?

A  (Owens) That were visible clearly from the
general area where we visited, yes.

Q  Okay.

A  (Buscher) Yes, because, obviously, there can be visibility over a larger area, we typically took that observation note from within, say, if it was a road crossing from within the road crossing itself.

Q  And then you have, I guess that's number of structures that would be visible?

A  (Palmer) Correct. That would be the existing line.

Q  And then you have primary use, secondary use, tertiary use; is that right?

A  (Buscher) That's correct.

Q  And then Dawn, let's see the rest.

A  (Palmer) So use being land use probably. We'd have to check that, but that's my guess based on what I'm seeing in the cells.

Q  Road Classification sounds obvious. What is Use, Use Intensity, I guess, right?

A  (Palmer) Correct.

Q  So what does that mean?

A  (Palmer) Well, if the use is, say, recreationists of some kind like kayakers and
canaoes, does it appear to be intensively used or not based on whatever we could tell just standing there at the viewpoint. We didn't talk to anybody about that.

Q So that was just a field observation. You didn't do any research to fill that category in?

A (Palmer) All of these are field observations. There's no research behind -- it's all field observation. Like notes.

A (Buscher) This only reflects information that was captured by the observation team when out in the field. There was no additional research that went into this.

A (Owens) I'm sorry. Just to clarify, there were some scenic roads and things like that we had mapped that would help inform us if it was going to be scenic road that we could then put into the spreadsheet.

Q What's Scenery IN?

A (Palmer) Scenery interest.

Q How is that different from attractiveness, that earlier category?

A (Palmer) It's been several years since I did these ratings so I'd have to go back and look at
the code book which you discovered but we didn't bring. If you have that, it would be wonderful to bring it up, and then we could answer these more accurately.

Q  I don't think I do. What is Seg Vis Ra?
A  (Owens) It's the segment, yeah, I think it was a rating of the segment. Sometimes we took multiple photos from the same location so that would be photo group A, photo group B and might be from one side of a corridor and then looking at it from the other side. We'd have to look up what the full meaning is.
A  (Palmer) I'm not sure about that.
Q  Can we get the rest of the sheet, Dawn? I don't think we need to go through every category. Unless there's something that you want to say.

So it seems we have the team member or the team as you designated them. The town. Is the hyperlink just to where you store the photos?
A  (Owens). Yes, that was -- actually, that's not where we stored it on our computers but a link that would allow others to be able to go straight to see that group of photos.
Q  And what's that last category? I assume KOP is
Key Observation Point, but what does SIM mean in there?

A (Palmer) We had 73 sims all together as you indicated. Some of those were evaluated as KOPs and some of them were not further evaluated. They were just simulated so KOP have a detailed description in Appendix A.

Q Okay.

A (Owens) And just to clarify, those were added afterwards. There's not something that we did in the field. We were using this to track all our points later in the process.

Q So at each of these locations, I assume you took notes, right?

A (Palmer) These are the notes.

Q And you made determinations about whether it was a designated resource, you assessed scenic resource attractiveness, number of structures, primary and secondary uses, I think distance range, existing contrast I think was one of the categories, existing visual magnitude, scenery interest, viewpoint distance range, all these things for each one of these resources, right?

A (Palmer) At each viewpoint, correct.
And with the photo simulations that you developed for the Final Environmental Impact Statement, it's my understanding that you selected those from over a thousand viewpoints that your team documented; is that right?

I don't know the exact number, but there were quite a few viewpoint locations.

So I mean that process is described in the Final VIA.

Okay. So let me go back to where we started. When you described that summary of the work that you were doing with the two distinct approaches, and you talked about the second being a more focused viewpoint assessment with preparation of representative photo realistic simulations, in-depth descriptions, et cetera, you characterized in the EIS this effort as involving a substantial amount of site specific work; is that right?

That we described the effort we undertook for the EIS as -- can you repeat the question?

Yeah. It's fairly characterized as a substantial amount of site specific work for
that effort, isn't it?

A (Buscher) So we, just to be clear, the way that
that report ended up evolved through our process
and ongoing discussions with the DOE. So we
ended up doing some upfront work that we may not
have approached in a similar way if we knew how
the end result or what was required with the
report for a final product.

Q Okay. Let's go back to my question. It was
pretty straightforward.

The work you did for that effort, that
Project, involved a substantial amount of site
specific work. Correct?

A (Buscher) The work that we conducted, yes, did
involve.

Q All right. And so despite that, despite
everything we've gone through, you still
maintain that this was landscape scale only and
all the site specific work you did in the EIS is
completely separate from the site specific work
that you've done here for your SEC analysis?

A (Buscher) 100 percent.

Q Okay. Am I correct that, Mr. Buscher, other
than the very limited role that you played in
the Antrim Wind docket, none of you have ever
been involved in a proceeding before in front of
the New Hampshire Site Evaluation Committee?
A (Buscher) That's correct.
Q And none of you have participated in the SEC
rulemaking process that led to the creation of
the current set of rules?
A (Buscher) That's correct.
Q And this is the first time that you are
undertaking a professional effort to apply those
SEC rules; is that correct?
A (Buscher) Sure.
A (Owens) I would disagree in the sense that we
didn't actually create the VIA so we weren't
limited to those rules. We did a review based
on our understanding of those rules in someone
else's work.
Q Well, that wasn't my question though. My
question was, and I'm not sure which one you
were responding to, but I think you all agreed
that you didn't participate in the rulemaking
process. Is that right?
A (Owens) Yes.
A (Buscher) That is correct.
Q  And this is the first time that in a professional capacity any of you are actually in some way trying to apply those SEC rules; is that correct?

A  (Buscher) Yes, and I would add to that I think this is only the second project in which those rules are being applied.

Q  It's actually not right, but we'll get to that in a little while.

A  (Buscher) Sure.

Q  So you and Mr. DeWan have a substantial disagreement about the number of scenic resources that should be evaluated here; is that fair to say?

A  (Buscher) That's fair to say.

Q  T.J. Boyle said initially that there were 18,933 scenic resources within the area of potential visual impact when screened for topography that should be evaluated. That was your initial number, correct?

A  (Buscher) Yes. That was our initial number, and we even had some additional discussion about the volume of that number.

Q  That was, I think, the number contained in your
December 30th, 2016 report, right?

A (Buscher) That's correct.

Q And then you submitted Supplemental Testimony on April 17th, 2017. Correct?

A (Buscher) Yes. That's correct.

Q And in that testimony, you reduced the number to 7,417 resources; is that right?

A (Buscher) Yes. What we undertook based on some of the questions I believe we received under the technical review is we felt that it would be beneficial to start refining that raw data because that 18,000 number was raw data. Yet it still didn't include certain types of resources that we didn't have a database to include.

Q And my understanding is that the process of refining that data included when you looked at those 18,000 resources and got yourself down to 7,417, a good part of that process was removing a lot of duplicates. Is that right?

A (Buscher) That was part of it. Another part was combining roads that might stretch a hundred miles into a single road which might not be the most appropriate thing to do either.

A (Palmer) By duplicates, I think you mean that a
resource is listed twice because it's occurring in two towns, for instance. So, yeah, we would have stated it once. But that's also the case in the DeWan report. There are many instances of a single resource that's located more than, identified as more than once. The Pemi, for instance, is evaluated as a resource in several different towns.

Q And as you sit here today, it remains your view that DeWan missed thousands of scenic resources.

A (Buscher) Yes. That would be our contention.

Q And DeWan identified initially a total of 662 resources within the ten-mile viewshed between their original October 2015 filing and the filing of their Supplemental Prefiled Testimony. Does that sound right?

A (Buscher) That does sound right.

Q Based on topographic screening, that number dropped to 542 for bare-earth and 422 for the vegetative viewshed; does that sound right?

A (Buscher) I believe that's correct.

Q So what we have here is really an enormous disparity between the number of resources in DeWan's universe and the number of resources in
your universe, and that is a pretty substantial part of this case, and so what I want to do is spend a little bit of time looking at that disparity so that everyone can understand it.

We've already heard how Mr. DeWan went about identifying his resources, and I really don't want to revisit that. I think that we can agree that, and I will if you'd like me to pull it up, but he researched a range of public databases, he collected information generally from a range of databases, conservation lands, tourist destinations, things like that, and he compiled this into an initial database. Would you generally agree with that?

A (Buscher) I think he definitely stated that there was primary emphasis put on to designated resources.

Q Okay. T.J. Boyle identified resources in a somewhat different way. You started with numerous databases which I think you explained on pages 68 to 70 of your report. Is that right?

A (Buscher) Do you mind if I take a moment to pull those pages up?
Q  Sure.
A  (Buscher) Yes. Starting on page 68 we give a
detailed review of the databases that were used
in our assessment or identification of scenic
resources.
Q  And on page 68 you said, quote, or you said you
assumed, quote, "all or nearly all of the
resources identified in these databases possess
a scenic quality," close quote; is that right?
A  (Buscher) That is what the report states.
Q  And on top of your review of these databases you
also developed a list of community-identified
resources through these community workshops that
we've heard a little bit about; is that right?
A  (Buscher) That is correct.
Q  And at the community workshops, my understanding
is that 170 people filled out 991 resource
identification forms and collectively identified
848 resources. Sound correct?
A  (Buscher) That sounds approximately correct.
Q  And I'm just curious. Do professionals in your
field when you go about doing your work normally
ask that resources be identified this way at a
local level or do professionals in your field
normally expect or look to towns to identify resources of importance to them?

A (Buscher) So the first thing that I would say, I have a lot of background in Vermont. We don't look at scenic resources as a sole source. We look at general visibility. The whole scenic resource thing is sort of informative if there is specific designated components because it might give it a certain rate of sensitivity, but we're looking at overall visibility of a project. So it depends on what rules you're trying to follow. And in New Hampshire, I feel, and it was our interpretation, there's a very broad definition of what constitutes a scenic resource.

Q So I get the Vermont part of it. I assume that you've done this kind of work in jurisdictions that do use that phrase "scenic resource." Certainly you've done it here in New Hampshire. Have you done it anywhere else?

A (Buscher) Maine would be an example that has some specific laws that deal with scenic resources.

A (Palmer) So, as an example, the NRPA Chapter 315
Section 10, under this rule the Department considers a scenic resource is the typical viewpoint from which an activity in, on, over or adjacent to a protected natural resource is viewed.

So in Maine, the scenic resource is a viewpoint, not an area, and it includes viewpoints that are adjacent to a protected natural resource. So areas visible from a road, for instance, that might border a State Park.

A (Buscher) So it's very specific to the regulations that you're trying to adhere to.

Q So in jurisdictions where you do your work, and where scenic resources are an approach to doing that kind of work, I guess Vermont is not one, but there are ones where it is, back to my question.

Do people in your field typically expect that local resources of importance would be identified in some way by towns? Or would you simply use an ad hoc approach to local resource identification as you did here with the community workshops?

A (Palmer) Public involvement is identified as a
way to identify scenic resources in the Forest Service Landscape Assessment Manual, in the FHWA procedure. It's not unusual, and it would typically be part of informational hearings, but, yes, similar to those workshops.

Q Do any of you know Jean Vissering?
A (Buscher) Yes.
A (Owens) Yes.
Q Mr. Palmer?
A (Palmer) Yes. I know Jean.
Q Is she a competent visual impact assessor?
A (Buscher) Yes.
Q You think highly of her work?
A (Buscher) I think highly of Jean. I think she's very, a very talented person. We might have disagreements on specific approaches.
Q Were you aware that she served as the visual expert for Counsel for the Public in the first Antrim Wind docket before the New Hampshire Site Evaluation Committee?
A (Buscher) I am aware of that.
Q Were you aware that she also was hired by the Town of Antrim in 2011 to provide comments on its draft wind ordinance?
A (Buscher) I was not aware of that.
Q I want to pull up Applicant's Exhibit 324. This is a July 25th, 2011, memorandum that Ms. Vissering prepared and submitted to the town of Antrim which are her preliminary review of the wind ordinance and wind siting considerations. Is this a document you've ever seen before?
A (Buscher) It is not.
Q I certainly want you to have the opportunity to look at whatever part of it you'd like to, but what I want to do is call your attention to the second page. And I want you to take a look at this yellow highlighting. And take a minute to read that if you would.
A (Palmer) What's the date on this?
Q July 25th, 2011.
A (Palmer) So well before the new rules.
Q Yes. Are you set reading it?
A (Palmer) Yes.
Q So in the middle, Ms. Vissering says with respect to the Site Evaluation Committee that it was her opinion that they will be looking for clear language about particular resources or particular concerns. General statements about
rural character are not particularly helpful. If a lake or pond is noted only for its natural values, the scenic characteristics won't be given as much consideration.

Do you agree with Ms. Vissering?

A  (Buscher) Hundred percent agree that if a town goes out of its way to look and designate resources within its communities, but the reality of that being implemented and we have vast experience with how encumbered that towns are to do, especially small towns, to have that type of work done, it's difficult for them. But if that work is done for a community, it definitely is helpful for them.

A  (Palmer) So your question is whether we agree with this paragraph in relation to how the SEC would evaluate this statement? I mean, clearly they've passed whole new rules that have a lot more detail.

Q  I want to go back to what you said a moment ago, Mr. Buscher. Sounds to me like you're saying that you think it would be too burdensome for New Hampshire towns to identify local resources of scenic importance to them.
A (Buscher) I think it creates a burdensome situation for some communities to say that that is the sole way for the SEC to consider local scenic resources that are important to those communities.

Q I'm not sure anybody said anything about the sole way, but I think we understand what you're saying.

So as we discussed earlier, as we sit here today, your position remains that there are 7,417 potential scenic resources that should have been listed based on your interpretation of the SEC rules in Mr. DeWan's report, and you still fault him for not identifying those resources; is that correct?

A (Buscher) In fact, we've noted several times that there's lots of categories that we don't have databases for. And it's clear in the SEC rules that they're looking for very broad definition and a very broad list of what the scenic resources are.

Q By clear, you mean as you interpreted the rules going about doing your work for this Project.

A (Buscher) I think it's, I feel like the rules
are fairly clear, clearly written.

Q  Okay.

A  That's our interpretation, yes.

Q  Well, let's look at that. So I want to call up Applicant's Exhibit 325, and I want to just look at a couple of resources that are on your list of the 7,000 or so.

Now, you provided a document, Counsel for the Public Exhibit 139, Appendix G, which listed all of these various resources. Does that sound familiar?

A  (Buscher) That sounds familiar.

Q  So we went to that document and so, for example, in your document, you list this place called the Cheer Center, and for these various resources you provided specific information about where they were located; is that right?

A  (Buscher) Can you expand on what you mean by we've provided specific information?

Q  Well, if somebody wanted to know what you meant by the Cheer Center, they could look in the materials that you provided in discovery and they could figure out what you meant by the Cheer Center, right?
A (Buscher) Yes. I would agree with that.

Q So we did that. We looked at a couple of these resources. And so let's pull up the Cheer Center. That's the Cheer Center. It's in Allenstown. It's a fire station now. And based on our analysis it's 3.4 miles from the line. So I take it that it's your view that this is a scenic resource that would have bare-earth visibility of the line, and, therefore, should have been evaluated by Mr. DeWan.

A (Buscher) In some mechanism, yes.

Q I'm not going to go back to your list each time. I'm just going to represent to you that these photos I'm showing you are on your list, and if you doubt that for some reason, let me know and we will go to your list.

A (Palmer) I'm assuming that you're not in disagreement, though, that the standard database that we got from New Hampshire GRANIT listed this as a recreation resource.

Q We'll just go through your list because what we're talking about here is your determination and your criticism of Mr. DeWan for not including resources like this. This is your
work. So let's continue on.

The next one, Dawn, next photo?

So this is, do you know what this is?

Funspot in Laconia?

A (Buscher) I'm not familiar with it.

Q It's an indoor arcade and bowling alley which by our count is 8.8 miles from the Project. So I would assume that you think that that must be visible because of bare-earth. Fair assessment?

A (Buscher) So this is a component on a database that based on our review should represent scenic resources. You're asking me if we're saying that if we then went and started reviewing each and every one of those, are we going to conclude that it's definitely a scenic resource? We haven't done that evaluation.

Q It's one of the 7,417 on your list, correct?

A (Buscher) That is correct because it is an initial identification of scenic resources. And we were providing an example of what we would consider an appropriate way of identifying scenic resources.

Q And it's also one of many that you and others continue to fault Mr. DeWan and Ms. Kimball for
not including on their list.

A (Buscher) Not this particular site. What we're faulting is the methodology that was employed to identify scenic resources, and, furthermore, a filtering process that was used to eliminate scenic resources just purely for their identification.

Q Dawn, let's go to the next one, please.

Included on your list is the Weirs Beach Go-Cart Track which is also 8.8 miles away. Does that sound familiar?

A (Buscher) I am not familiar with this specific.

Q Let's go to the next one, Dawn.

This is Sheep Davis Road Dam in Concord. It's behind a mall and a movie theater and surrounded by parking lots and the Wal-Mart. I'm not even sure there's public access, but that's a separate issue. Does this look familiar to you?

A (Buscher) We did not visit this location.

Q Okay. Next one, please, Dawn?

So this is the University Heights Conservation Area. Also on your list. And what we were able to determine as far as we can tell,
and you can correct me if I'm wrong, that the conservation areas are the little strips of land between the houses in this development, and there are 12 strips so you counted them as 12 scenic resources, and I think this is about six miles from the Project.

Does this look familiar?

A (Buscher) No. We did not go. I think I've been clear we did not go to all these resources, and, quite honestly, we're not saying how they should be evaluated. We're not working for the Applicant. But we are saying there is a clear standard in the SEC rules that say there is a very broad expectation for an Applicant to identify scenic resources.

Q Do you think if Mr. DeWan agreed with you and went to Funspot and looked at it and said I am not going to include this on my list, would that make sense?

A (Buscher) If it were me, I would probably note it as being identified through our background research, and then clearly give a reason why it wouldn't be considered a scenic resource.

Q Let's go to the next one, Dawn.
It's the Riverside Speedway in Northumberland. Does that sound familiar to you?

A (Buscher) Again, we did not go specifically to this location.

Q Just one more. I'm not going to belabor the point. I think we understand what you're seeing here.

This is the Proulx Community Center in Franklin. Again, on your list. Does that sound familiar?

A (Buscher) I'm not personally familiar with this specific site.

Q So none of these places made Mr. DeWan's list, right?

A (Owens) We don't know that. We don't know if he ever identified this at all. It's not reported in any of the VIA materials.

Q So, Mr. Owens, you didn't have a chance during the course of this proceeding to look at all of the discovery materials and all the work that Mr. DeWan did and determine whether or not these resources were included on his list?

A (Owens) I didn't see a list that was included in
the actual VIA which is I believe where it should have been included that all of these locations that we've identified were looked at in some manner and then reported that they either weren't in some way qualifying of being scenic or in some way discarded as not being worth further investigation.

Q Understood. So these are the sites you're faulting Mr. DeWan for not looking at which is what we're trying to get at.

A (Buscher) So let's use this as an example. The photo you have up right now.

Q Sure.

A There's probably a very probable historic resource. I don't know the distance from the line. I forgot if you just mentioned it. But if the line was immediately adjacent to this particular site, yeah, we could be looking at this for a significant impact. It's possible.

A (Palmer) And it's my understanding that this comes from the recreational inventory which would be the GRANIT database for recreation points probably, and it was my understanding that that was also used in the DeWan VIA.
Now, in a screen visibility analysis, this may be discarded because it didn't fall within the screen viewshed, but within the terrain viewshed it may have so we put it in our list. But that doesn't mean that DeWan wouldn't have had it on his list at all. It may very well have been on his list.

Q We know it's on DeWan's list, right? He gave it to you, right?

A (Palmer) No. Actually, I don't. We didn't cross-check the 7,000 that we identified with DeWan's list to see which ones were on.

Q I'm quite certain that we don't need to have any sort of argument about this. DeWan's list is in evidence. People can read it for themselves.

Fair to say that these are examples of some of the thousands of resources that you criticized DeWan for not evaluating in some way?

A (Buscher) We, our criticism was in his identification of scenic resources.

A (Palmer) And we're not saying that the resources that he identified, the 600, are not also indicated in the 6000 that we identified. They are. And this may be an example of one that he
identified and that we identified.
Q There could literally be thousands of resources like this on your list, correct, that I just went through?
A (Buscher) Yeah, and that's what is being asked for by the SEC rules.
Q Have you ever been to the Swenson Granite Quarry in Concord?
A (Buscher) I haven't been to the granite quarry.
Q It's an industrial granite quarry.
A (Buscher) Yeah.
Q That's on your list.
A (Buscher) Yeah.
Q Does that surprise you?
A (Buscher) No. Not at all. I mean, I'm familiar with the Barre Granite Quarry. It's a huge tourist attraction. And then we would look at it and say hey, what's going on with the Project? Does it deserve an assessment? Yeah. Definitely.
A (Palmer) I may be mistaken, but I think actually there was an article about six months ago in the Concord paper about swimming in the granite quarry, and it is a recreation resource and it
wasn't clear what the ownership and stuff was.

Q Well, I'm looking forward to seeing that one on redirect. I'm sure we will.

How about the Groveton Fish & Game Club.
That's a membership-only shooting range. That's on your list. Does that surprise you?

A (Buscher) Doesn't surprise me.

Q A membership-only range would be a resource that you think needed to be evaluated?

A (Buscher) We would have to do that evaluation which we did not.

Q So when you did your work here, it was your understanding that the SEC rules required people in your profession to look at resources like this; is that correct?

A (Buscher) I'm looking at what the SEC requires as part of the Visual Impact Assessment.

Q And I think, Mr. Buscher, you said, but let's just be certain about this, you didn't visit any of these sites, did you?

A (Buscher) Oh, I'm certain, we certainly visited many of these sites.

Q Sites that we just looked at, the pictures?

A (Buscher) Not the sites that you just looked at.
Q Okay.
A (Buscher) That you just mentioned. Not that I can recall. Remember, we had four different teams going out and doing site visits so I'm not familiar with each and every site that we did visit.
Q So if you had personally visited any of these sites, would you still have kept them on your list and faulted Mr. DeWan for not evaluating them?
A (Buscher) I would fault him for not identifying them. Because it's not the evaluation, it's purely, I mean, it's a very, in my opinion, in our opinion, it's a clear rule that there is an identification requirement.
Q We discussed earlier that you went from the 18,000-plus to the 7,000-plus. So your approach initially caused you to list over 11,000 resources that actually should have been included on the list. Is that right?
A (Buscher) I wouldn't agree with that statement totally.
Q Why don't you characterize it the way you would.
A (Buscher) For instance, we have taken roads and
combined them into a single resource where, as Jim pointed out, even Mr. DeWan has evaluated different crossings of the Pemi River as a separate resource so that in of itself was a gigantic reduction in the number.

Q And a chunk of that effort was, I understand it, to eliminate double counting. I think you said that before, Mr. Palmer?

A (Palmer) No, you said double counting, and I asked, I think, what you meant about that. So double counting was things like the Pemi River that is occurring in different towns and so we consolidated that. I think that that was in response to comments that were made in the hearings.

Q So --

A (Palmer) In the tech sessions.

A (Buscher) And in general, we listened to some of the questions that were being asked, and we did that next step in starting to analyze that list to try to bring it into a more understandable level.

Q So we went back and looked a little bit more closely at your list of 7,417 resources, and I
guess my question to you is would it surprise you to learn that we still found a substantial amount of double counting?

A  (Buscher) It wouldn't surprise me.

Q  Let's look at some it. Applicant's Exhibit 326. And we can call places, we'll call this up in pieces. Again, I'm not going to go through the whole thing. But Turtle Pond, you've got that listed four times even though it's the same resource, and it appears it's listed four times because it's listed in four different databases; am I right about that?

A  (Palmer) It qualifies as a scenic resource in four different ways. That's correct.

Q  But there's only one Turtle Pond, right?

A  (Palmer) That's correct.

Q  But you've got four Turtle Ponds in your database. So that's double counting, right?

A  (Buscher) Are you asking us to do the Applicant's responsibility and analyze this list in totality right now?

Q  I'm asking you if on your list of 7,417 resources Turtle Pond is counted four times.

A  (Owens) I don't know that it is counted four
times. I think that some of this is a conservation easement that's right next to it, and we'd have to look at that to figure out if that, maybe it's only counted twice because there's two conservation easements or one is the pond, one is the river leading to it, one is the point that happens to be right next to the pond. So we could go into that further if you really want to get to the bottom of that.

Q I guess we'll find out.

How about the Soucook River? That's listed five times. Any explanation for that?

A (Palmer) Well, I think that these are all different brooks that are within the Soucook River drainage. I think that's pretty clear.

Q So every little brook is a potential scenic resource?

A (Palmer) They're all public waters. I mean, if, that's where they come from. They're listed in the State Public Waters. Yes.

Q There's five listings for the Salmon Brook. I guess you would say the same thing about that, right?

A (Palmer) I mean, isn't it pretty clear that
these are all separate streams that are feeding
into the --

Q It's actually not at all clear to me. That's
why I'm asking.

A (Palmer) Well, unlike Turtle Pond where they're
all Turtle Pond and what we're doing is looking
at it and assuming that the boat launch may be
treated as a resource separate from the pond, I
think it's pretty clear here that Salmon Brook
Main Stream is one and Salmon Brook Emerson
Brook is another, and each of those is separate.

Q Okay. A moment ago you talked about the Pemi
and in your initial count trying to deal with
those issues. I still count the Pemi 16 times
in this list. Is that a surprise to you?

A (Palmer) So some of those are because they're
recreation access points. At least one of those
is. I would say there's a clear double counting
for Ayers Island Hydro Station. It appears to
have come from the same database. Several of
these are sort of separate streams or resources.

Q I don't want to belabor the point. I think you
understand where I'm going.

A (Palmer) Yes.
Q I guess my question to you is as you sit here today, do you have any idea how much double counting there is in this database?

A (Buscher) We clearly understand that there needs to be a methodology to start to process that information to bring it into a reasonable level of analysis. That's not saying that we don't think this is the appropriate starting point.

Q So there could be hundreds, possibly even thousands of resources double counted here?

A (Palmer) I could even give you the thousand. But there's still 5,000 resources. There's double counting in the DeWan database also.

Q And I'm sure we've seen that pointed out.

A (Palmer) Actually, we haven't really pointed it out or belabored it, but it's there.

Q Pretty shocking that we've gotten to this point in the proceeding and no one has told us about it.

A (Palmer) Well, the Pemi is an example, and we did talk about that. Bear Brook State Park has several separate resources. There's others. But I'm not, we don't feel that it's really necessary to somehow clean the data in that way.
These are all important places, and they all should be evaluated, and we're really pleased that DeWan did that.

Q  Let's talk about public access. The threshold requirement is that before a resource can be considered scenic it has to be publicly accessible. You agree with that?

A   (Buscher) We would agree that the rules require a legal right of access.

Q  Yes. Site 102.45 says, quote, "Scenic resources means resources to which the public has a legal right of access." And then there's a bunch of listings. Are we on the same page with that?

A   (Palmer) We are.

Q  So T.J. Boyle, I believe, interpreted public access to mean, quote, "places to which the public has the ability, right and/or permission to enter or use," close quote. And I'm reading from page 10 of your report. Does that sound right?

A   (Buscher) That sounds correct.

Q  And DeWan approached it somewhat differently. In his VIA he determined that a legal right of access means, quote, "having a way to both
physically and legally access a property consistent with prior Visual Impact Assessments submitted to the New Hampshire Site Evaluation Committee." Does that sound familiar?

A (Buscher) That sounds familiar.

Q So do you understand that Mr. DeWan actually conducted a site-by-site assessment to determine whether individual resources were publicly accessible?

A (Buscher) What is your meaning of "site by site"?

Q I'm asking you if you were aware of that fact. That he went site by site through his list and made a determination about whether the resource was publicly accessible?

A (Buscher) Of his list of 600 and so resources?

Q Yeah. Did you know he did that?

A (Buscher) I think we did understand that.

Q Okay. But you actually never did that with your list, right?

A (Buscher) Our, the list of identified scenic resources?

Q The list of 7,000-plus.

A (Buscher) That's correct. We did not do that.
Q In fact, you told me at the tech session that you actually don't even know if the resources in this database that you reviewed and identified are publicly accessible, right?

A (Buscher) I'm sorry. Could you reask that?

Q Sure. You told me at the tech session that you actually don't know if the resources on this list of 7,000-plus are publicly accessible.

A (Buscher) I think that's the same question you asked before. You asked if we did the assessment to see, to assess whether these are, in fact, publicly accessible.

A (Palmer) I think that's not precisely accurate. There's some of them that we may not know, but many of them are public roads. Are you willing to accept that those are publicly accessible?

Q How many don't you know?

A (Palmer) I can't tell you that, but I can tell you that an awful lot of them are public roads. A significant number of them are State Waters which the public has the right of access.

Q I want to call up Applicant's Exhibit 327, and we can focus this discussion a little bit.

A (Palmer) Great.
And, again, these are resources that you identified, and if you'd like me to give you the references from where in your materials we got them, I'll let you know, but let's jump to the first picture, Dawn.

So this is the New Hampshire State Military Reservation, one of your identified resources. Would you agree with me that's not publicly accessible?

(Palmer) I have no idea what goes on there.

Think the public has a legal right of access to this installation?

(Palmer) I don't know anything about what goes on there.

Let's go to the next one, Dawn.

This one is interesting because this is listed in your database as the Northwood Driving Range, but it doesn't even exist anymore.

Did you make any effort to at least verify whether the resources you were identifying were still actually there?

(Buscher) I think we were pretty clear that this was an initial level and an initial methodology that we would suggest is appropriate and, have
to admit, I've been clear, we've not done that next level of review of analyzing this list of resources.

Q Let's go to the next one, Dawn.

This is the Pembroke Water Works. Does it look like the public has a legal right of access there?

A (Buscher) I could not say.

A (Palmer) It says no trespass.

Q Yeah. Next one, please, Dawn?

This is the Blood Conservation Easement which I think we heard from Mr. Roth about a while ago. Would you interpret that to mean that the public was welcome there?

A (Palmer) Well, what it says is that there's no hunting or trapping so I don't know.

Q Private property.

A (Palmer) That doesn't mean that the public is not welcome. It just means that it's posted no hunting.

Q Okay. I think we'll probably come back to that one, too. Dawn, let's look at one more.

This is the circa 1950 one-story home that I guess was identified in your list because that
commercial adjoining garage is an historic
outbuilding. Does this look like a publicly
accessible place?
A (Buscher) I can't tell from this. It looks like
it is possibly a publicly accessible location.
Q Okay.
A (Palmer) Is it a retail business?
Q No. It's a private home.
A (Buscher) Okay. So it sounds like you're
already doing the assessment work.
A (Palmer) I mean, it looks like they're selling
Troy-Bilt stuff so there's a couple Troy-Bilt
mowers on the lawn to the right and there's
another mower to the left. You sure this isn't
the retail establishment?
Q So you would interpret this as publicly
accessible, Mr. Palmer?
A (Palmer) If it's a retail establishment, I
believe it would be.
A (Owens) Or a museum maybe. Looks like there
might be more in the backyard.
Q So if you had done the work that Mr. DeWan did,
would all of these resources remain on your
list?
A (Buscher). Again, I think we were clear that this list is a methodology that would need further analysis.

Q But you continue to fault Mr. DeWan for not looking at resources like this. Is that correct?

A (Buscher) We faulted the methodology, and based on our alternative way of looking at it that there's no way that Mr. DeWan properly identified all of the scenic resources as defined by the SEC rules.

A (Palmer) Could we go back to the retail establishment?

Q You mean the private home that was just up there? Sure.

A (Palmer) I mean the Troy-Bilt Garage.

Q Yes. Let's go back to it.

A (Palmer) You stated that the garage is listed as an historic resource?

Q That's my best understanding. I actually couldn't figure it out. I was hoping you could tell me.

A (Palmer) What database did it come from? It would state where --
Q Why don't we pull it up just so you can be clear about it. Let's pull up CFP 004632.
A (Palmer) So it says that it comes from the Potential Historic Resource Database. That would be from the Preservation Company's inventory is my understanding.
Q Did the Preservation Company as part of the work that they did which they then handed off to you make any determinations about public accessibility?
A (Palmer) No. They did not. But if it's a retail establishment, it would be publicly accessible, and if it's an historic resource that possesses a scenic quality, some scenic quality, then it's a scenic resource. That's what the rules say.
Q We'll come back to that part in a minute. I'm focused on public access at the moment.
So just a couple more questions here. It's your understanding as professionals in the field that the Site Evaluation Committee rules require people like you to identify resources like this as part of this assessment process.
A (Palmer) I think the rules say that those that
are doing the VIA have to identify the scenic resources as 102.45 describe.

MR. NEEDLEMAN: So, Mr. Chair, I'm happy to keep going, but I'm not sure yet if you want me to take the break.

PRESIDING OFFICER HONIGBERG: If this is a break time for you, then why don't we do that.

MR. NEEDLEMAN: I didn't know if Ms. Percy was here ready to go.

PRESIDING OFFICER HONIGBERG: She is here.

MR. NEEDLEMAN: Okay. I'm happy to stop here for a break.

PRESIDING OFFICER HONIGBERG: Let's take ten minutes, let Ms. Percy get herself set up and she can do what she needs to do.

(Recess taken 2:09 - 2:26 p.m.)

PRESIDING OFFICER HONIGBERG: Ms. Percy, you may proceed.

CROSS-EXAMINATION

BY MS. PERCY:

Q Thank you, and I apologize for being late. I notice on my opening here I say good morning.

My name is Susan Percy, and I am spokesperson for the Dummer, Stark,
Northumberland group and also an Intervenor representing the Percy Summer Club, and I also like to introduce myself as representing the public because we have public access through Percy Summer Club lands to the Nash Stream Forest and the Calhoun Forest and the Percy State Forest.

So from that, I'm going to shorten things a lot in order to try to make sure that Attorney Needleman lets me keep going.

So with that, I put up the picture of the Christine Lake which is located in the town of Stark, and I'm only going to start on one piece of that. I used this exhibit before, and it's an aerial view up the lake and on the, you look at Potters Ledge on the top photograph which is across the lake and then you look directly down on Potters Ledge from the aerial view. Is that all right? Do you understand that?

A (Buscher) Yes.

Q Thank you. So Terry DeWan in his most recent testimony said that he was unable to hike Potters Ledge despite the fact that he tried, actually in the transcript it says several
times. You were able to hike Potters Ledge; is that correct?

A (Owens) I was able to hike Potters Ledge with another coworker of mine, yes.

Q Thank you. When you hiked Potters Ledge, did you hike that ledge coming from -- oh, next map.

MR. CUNNINGHAM: This is 51.

MS. PERCY: Sorry. I meant to do that.

Q So this is DNA/PSC 113.

This map has on it, this is from the Historic Resources, identifies Potters Ledge. Is that correct? Can you see that?

A (Owens) Yes. On the left side.

Q Thank you. Okay. Next map. And this is DNA/PSC number 55. This has also been shown. This is a rendering of the trails that were established in the 1880s behind the Percy Summer Club. Does that look like a fair representation of the trails?

A (Owens) What date did you say this was?

Q Well, they were established in 1880s so they are trails of historic significance.

A (Owens) Yes. I think there might be also a logging road that I was on that maybe doesn't
quite match one of these, but --

Q Yes, that was done at a later date, but you're quite correct. So in looking at that you also hiked Victor Head; is that correct?

A (Owens) That's correct.

Q And coming down from Victor Head, did you traverse across the Coos Trail?

A (Owens) I think you have to.

Q You do. Thank you. And so from the Coos Trail, you were able to then cut over to Potters Ledge on the trail there, is that correct?

A (Owens) That's correct.

Q And when you got to Potters Ledge, you were able to see the transmission corridor; is that correct?

A (Owens) From my memory there were two overlooks at Potters Ledge. One that looked a little bit to the northeast and the other that looked a little more to the east. The northeast one you had to kind of stand out on the precipice there to get a good view, but from the other, the other overlook that looked more to the east you could definitely see the Project in the near ground or maybe of a quarter of a mile away.
I'd have to check that. And then also you could see it at a distance. About five miles away.

Q Thank you. And so the distance was looking out at Dummer Hill; is that correct? I mean, I'm sorry. Dummer. So you're looking east towards Dummer, and you see the right-of-way coming down that hill?

A (Owens) That's correct. I didn't look into exactly which hill that is, but I know which one I think that you're talking about, and it could have been.

Q Thank you. Were there any photo simulations done of Potters Ledge and the transmission line during that?

A (Owens) We didn't do any photo simulations from there, and I don't think that the DeWan office did any photo simulations from there either.

Q Would you think that that's a significant area that should be considered in the Nash Stream Forest?

A (Owens) I'd have to check whether or not, you had mentioned a lot of different tracts of land through there, the Calhoun Forest. I don't remember exactly which one that it was in, but I
would say that it would qualify as a scenic
resource based on what I saw in the trails that
led to it and the maps that I saw as well.

Q Great. Thanks. One last question.

Attorney Needleman was just talking about
the posted signage, and as you enter Percy
Summer Club land it says private property; is
that correct?

A (Owens) I do believe that it lets you know that
it's private property managed by the Club.

Q And all the access to all the trails noted in
all the public documents such as hiking manuals,
the Appalachian Mountain Club, the Coos Trail,
those all indicate that you walk through the
gate that has "private property" noted on it in
order to access the trail, and that's open to
the public; is that correct?

A (Owens) That's what we found when we were going
there as well.

Q Great. Thanks very much. I have no further
questions.

PRESIDING OFFICER HONIGBERG: Mr.
Needleman? You're back up.

CROSS-EXAMINATION CONTINUED
BY MR. NEEDLEMAN:

Q  I want to continue on where we left off. In your list of 7,417 or 19 resources you have 1359 historic sites listed. Is that correct?
A  (Buscher) Do you want to direct me to a spot and I can verify that?
Q  Yeah. It's Appendix G, Table 1, CFP 005287.
A  (Buscher) Just need to pull up the Appendix.
Q  What would you like to see?
A  (Buscher) Do you want to show me the specific location? I couldn't tell you if that number was accurate or not.
Q  So you don't think your report is accurate?
A  (Buscher) No, I just can't tell you, I can't remember what the number is in the report.
Q  Is it on your screen?
A  (Buscher) Yes. There it is.
Q  Okay. We were not communicating.
A  (Buscher) So yes. That's what we reported.
Q  Okay. And 1,290 of these came directly from Heritage Landscapes if I recall that correctly.
A  (Buscher) Could you repeat the question?
Q Yes. My recollection was that 1,290 of these historic resources came directly from Heritage Landscapes. Does that sound right?

A (Buscher) I don't think that is accurate.

Q You think it's more or less?

A (Buscher) Is there a way to find the data source?

A (Palmer) Can you go to the section of this Appendix probably above that talks about historic resources, please?

Q We can. I'll tell you it's not a particularly important point. I'm more focused on the 1359, but if you do want to go, we can do that.

A (Palmer) That's the only way we can check where it came from.

Q Okay. I tell you what. I will skip past that. We agree on the 1359.

So am I correct that with respect to these historic resources, the 1359, no specific analysis of criteria for eligibility on listing to the National or State Register was done; is that right?

A (Palmer) Could you state that again?

Q Yeah. Did you, the three of you or anybody in
your group, do any analysis with respect to these historic resources as to criteria for eligibility on listing for the National or State Register? Did you do that analysis?

A (Palmer) I think whoever gave us, however the database was acquired, which would have been described up above, I think, did that analysis.

Q Okay. And I think we discussed this earlier, but you didn't assess public accessibility for any of these historic resources, right?

A (Palmer) We didn't, no. That's correct.

Q So I want to pull up Applicant's Exhibit 116. And could we go to the cover page, Dawn, so these folks can see what it is? Do we have that? Not that one.

Have you seen this document before? I know it's appeared in this case before. I'm just not sure that you saw it.

A (Buscher) Personally, I have not seen this document before.

A (Palmer) I don't recognize it either.

Q So this is the DHR Policy Memorandum regarding Agency Review of Applications before the New Hampshire Site Evaluation Committee, and I want
to go to page 3 of this document.

And in that yellow highlighting it says, "In New Hampshire, aboveground historic properties meeting the definition of Site 102.23 are identified through the preparation and submission of area and individual inventory forms."

Were you aware of that?

A (Palmer) So I'm sorry. I was not paying good attention. Could you refresh me on what this document is about?

Q Sure. Let's go back to the first page.

A (Palmer) Thank you. I'm sorry.

Q This is New Hampshire Division of Historical Resources guidance about review of applications before the SEC as they relate to historic sites.

A (Palmer) And the date of this document is?

Q I don't know. Does it say it on there? Let's go to the last page. Yes. January 15th, 2016.

A (Palmer) Great.

Q So certainly available before you did your work, right?

A (Palmer) Correct.

Q Am I correct, sounds like at the time you did...
your initial work you weren't aware of this
document.

A (Buscher) No.

Q And at the time you did your Supplemental
Prefiled Testimony you weren't aware of this
document?

A (Buscher) As was stated.

Q So you did not have the benefit of DHR's
thinking with respect to how one thinks about
historic resources in the SEC context when you
went about doing your work; is that correct?

A (Buscher) I would not agree with that.

Q Okay. So why don't you tell me how it is you
absorbed the information in this document
without having seen it or been aware of it?

A (Buscher) Because we were using lists that were
created by historic consultants that I would
assume would be aware of this list.

Q Do you know if they were aware of this list?

A (Buscher) I do not know.

Q Did they represent to you that they were aware
of this guidance document?

A (Buscher) No.

A (Palmer) But further than that, my understanding
is that the definition of a historic resource is much broader than eligible for listing.

Q Would it surprise you that the DHR was trying to provide guidance to people like us in doing our work regarding resource identification in this context as it relates to historic resources?

A (Palmer) Clearly, that's what the title says, but nonetheless, the way that I read the rules which aren't part of the Department's, they're not the Department's rules, they're the SEC rules, and the SEC rules read as being broader.

Q Do you think professionals in your field going about your work would benefit from understanding what an agency like DHR thinks about the definition of historic resources?

A (Palmer) Yes.

Q And as far as you know, did Counsel for the Public or these historic resource experts prepare and submit an area or individual inventory form for all of the historic sites included in your database?

A (Palmer) You've got to go back and look at where the database came from. I think I've said that several times.
A (Buscher) So the database I can list the database because I looked it up. That database includes points within one mile of the NPT centerline representing properties constructed before 1968 as identified by Preservation Company 2015 during their field assessment.

A (Palmer) So that's their field assessment and there would be sheets for those.

Q Is there anything in the documents you were looking at or any of the materials you have access to that you can use to confirm that individual inventory forms were prepared and submitted to DHR for these sites?

A (Buscher) Is there anything available that we can reference?

Q Do you know if they were?

A (Buscher) I can't tell you. We would have to look that up.

Q And this DHR guidance says that historic properties meeting the definition at Site 102.23 are identified through that process of submitting these forms, right?

A (Buscher) That's what it says.

Q Okay. So as far as you know, sitting here
today, that guidance was not complied with. You just don't know.

A  (Palmer) That's correct. We don't know.

A  (Buscher) That's correct.

Q  Not knowing that, you still maintain that all of the resources you identified are historic resources within the meaning of the SEC rules.

A  (Buscher) Again, we are utilizing a database that was created specifically for this Project by a consultant that specializes in historic preservation. I would make the assumption that this is a legitimate database to use.

Q  Well, let's pull up Applicant's Exhibit 328. Is it a different number? Oh, right. I'm sorry. CFP Exhibit 138, Appendix D.

Dawn, can you highlight Baker Brook Cabins? So Baker Brook Cabins and Motor Inn area is listed among your 7,000 resources as a potential historic resource, correct?

A  (Buscher) I'm sorry. We were just having a small conversation. Could you repeat the question?

Q  Sure. Baker Brook Cabins and Motor Inn was listed on your list of 7,000-plus resources as a
potential historic resource, correct?

A (Buscher) That's correct.

Q Okay. And Dawn, can you now go to Exhibit 328? So that's Baker Brook Cabins, and are you aware of the fact that they've since been demolished?

A (Owens) I might have heard something, but I haven't been there to confirm that that's what happened.

Q Were you aware of that?

A (Buscher) We may have been. I can't tell you for certain.

Q So if that's the case, they wouldn't belong on the list, right?

A (Buscher) That's correct.

Q Let's go to the next one, Dawn? And I'm not going to keep jumping back to your initial list unless you want me to. We'll do the same thing here to keep moving this along, but I'm going to represent to you that this is from your list. It's called the Garneau Road area, and it's in Franklin, and there are four addresses on the list. 2, 3, 5, and 7 Garneau Road. Does this look familiar to you?
A (Buscher) We did not go to this specific location.

Q This is listed attractiveness potential historic resource that should have been evaluated.

A (Buscher) Based on work done by historic consultant if it came out from that 1000-plus number, yes.

Q And other houses in this development like that are included as well. Does that surprise you?

A (Buscher) That does not surprise me.

Q Next one, please, Dawn.

This is 8 Ed Brown Road in Pittsburg. Recognize that?

A (Buscher) I do not.

Q Looks like a private home, doesn't it?

A (Buscher) I'll take your word for it. I can't make that assumption from just looking at a photo.

Q Let's go to the next one. 1204 South Main Street in Franklin. This one is on your list.

A (Buscher) Okay.

Q As a potential historic resource.

A (Buscher) Okay.

Q Did you go there?
A (Buscher) Again, I'm going to reiterate that we used existing databases. This was a database that came from the historic preservation consultant. So we looked at whether those listed resources were going to be visible based on bare-earth assumptions. We did not then move on to the next part that would be required by an Applicant within the VIA to assess whether, yes, indeed, this should be listed as a scenic resource or not.

Q Dawn, one more, please?

So Webster Lake Terrace subdivision in Franklin is another one. Does that look private to you?

A (Buscher) That could be private.

Q So I know you said earlier that as part of your work you did visit sites. Am I correct, though, that you didn't visit any of these sites?

A (Buscher) I can't tell you for certain whether or not we visited these sites or not. They do not look familiar to me off the top of my head, but I also visited multiple hundreds of sites for the Project.

A (Owens) We did visit this subdivision. We
didn't visit the actual house.

Q Is this site familiar to you, Mr. Owens?

A (Owens) I know where it is. I haven't been there myself.

Q Okay. So you didn't go to this particular location?

A (Owens) I did not, but I did do simulations from nearby, and I visited the lake nearby, and I looked at a lot of maps, and I believe I understand where this subdivision is.

Q So, Mr. Owens, if you had visited all these particular sites, would you still keep them on your list? Or would you feel comfortable taking them off?

A (Owens) I don't know that it necessarily would need to come off of the list. I think it's, the list might still need to be there and it might need to be reported that there's some potential terrain visibility and that that would then be turned over to the SEC so that they would know that there's the potential for a historic resource to have visibility of the Project.

Q I think you said in your report that there are more than 120 road crossings and trails that are
crossed by the NPT corridor that are potential scenic resources. Does that sound familiar?

A (Buscher) That sounds approximately correct.

Q We asked you a Data Request to get some clarification about this, and that was DR 21 and I'm going to make that Exhibit 329.

And, Dawn, if you can highlight the relevant section? First paragraph under number of.

And you said here that it seems safe to assume that most public roads in New Hampshire, particularly those outside of urban areas, are, therefore, a scenic resource. And I guess you were referring to 102.45(c) when you said therefore. In addition, when presented with a view that possesses a scenic quality it is assumed that many drivers and passengers will appreciate it.

Do you recall saying that?

A (Buscher) Yes.

A (Palmer) Yes.

Q So it's fair to say that you simply assumed that all public roads, even if they're not designated, are scenic and should be evaluated.
Is that right?

A (Palmer) Possess a scenic quality, yes.

Q And 102.45(c), which we've seen a lot of in this proceeding, talks about lakes, ponds, rivers, parks, scenic drives and rides and other tourism designations that possess a scenic quality.

I take it you're familiar with that definition?

A (Buscher) Yes.

Q And I believe that you were all here when Attorney Connor was cross-examining Mr. DeWan and Ms. Kimball about four particular roads. Mount Prospect Road, Mountain Road, Deerfield Road, and Route 104. Do you remember that?

A (Buscher) We were here at that point.

Q And Ms. Connor seemed to be implying that all four roads qualify as scenic resources under this definition at 102.45(c). Do you remember that?

A (Buscher) I'm sorry. Could you repeat the question?

Q Sure. Seemed like Ms. Connor was implying that all four of these roads that we just talked about qualified as scenic resources under the
definition of 102.45(c). Do you remember that?

A (Buscher) Yes.

Q And I think we established that Mr. DeWan actually did evaluate Mount Prospect Road as a scenic resource because it's locally designated. Do you remember that?

A (Buscher) Vaguely. Yes.

Q And so the remaining three roads were the ones in question, and my question to you is, is it your opinion that any of those three roads are tourism destinations?

A (Buscher) So assuming that a scenic drive which that is our interpretation could be considered a tourism destination, yeah. It's not inconceivable to think that people might be out looking to drive and appreciate fall foliage, for instance, on any one of these roads.

Q So just to be clear, and I will not be arguing with you about interpretations. I just want to understand the work you did here. In your work with respect to those three roads, you believe that those are tourism destinations?

A (Buscher) We believe that they're scenic drives.

Q You didn't do any evaluation at all as to
whether those scenic drives were actually
tourist destinations?

A (Buscher) Are you asking if they are a
designated tourism destination?

Q No. I'm asking if in your opinion or in your
work you did any evaluation as to whether those
three locations were tourism destinations?

A (Buscher) I actually think that's irrelevant. I
feel as though they meet the definition of being
a scenic drive.

Q Without having any connection to being a tourism
destination.

A (Buscher) Like I said, I think that point is
irrelevant.

Q You're nodding yes, Mr. Palmer?

A (Palmer) Yes. I think tourist destination is
one of the categories like scenic drives and
rides is a category.

Q Okay. And I take it then that it's fair to
conclude that there is no information anywhere
in any of the work that you've done in this case
that would support the notion that any of those
roads are a tourist destination?

A (Buscher) I mean, we captured scenic
attractiveness ratings when we did our field
work, but we did not do any type of analysis to
identify which lakes, ponds, rivers, parks,
scenic drives and roads would also be considered
tourism destinations.

Q  Okay.  CFP 139, Exhibit A.  If we can call that
back up, Dawn.  We looked at this a few minutes
ago.  Appendix G.  I don't think that's the one,
Dawn.  There we go.  That one.

    So I want to just go up on that list a
little bit.

    And Dawn, if you can highlight the scenic
drive section.

    So of the 7,417 resources on your list,
3947 of them are in this scenic drive public
roads category; is that right?

A  (Buscher) That's correct.

Q  So that means that about 53 percent of all the
resources on this list fall into that category;
does that sound about right?

A  (Buscher) That would sound appropriate.  It's
our common experience that roads are by far the
most common location where the public interact
with a project such as the Northern Pass
Q And how many of these 3,947 roads are designated nationally by the state or by a town?
A (Buscher) We did not do that analysis.
Q So you have no sense as you sit here today?
A (Palmer) Is there a road designation category that's hidden by the --
Q No. It's your document. I don't know. Is there?
A (Buscher) So how many of those roads are, so if we cross-reference it with the databases we used for Site 102.45(a), designated scenic resources, we do have database files for Scenic Byways and Designated Rivers. Specifically, for Scenic Byways, it's 11. But if my recollection is correct, that doesn't include roads that are designated by towns.
Q Okay. So there's some handful in that list. We don't know how many that are actually designated.
A (Palmer) Because some of these are a hundred miles long and include many roads, but, yes, it's a small-ish number.
Q Okay.
A (Palmer) By comparison to 7,000.

Q And, conversely, what we now also know is that every road in that list that isn't designated, you have no information at all as to whether those roads are tourism destinations. You didn't do that analysis?

A (Buscher) That's what we previously stated. We feel that that fact is irrelevant.

Q Okay. Let's go to the next topic. In your initial assessment of the 18,000 scenic resources, and then your refined assessment of 7,417 resources --

A (Buscher) Can I be clear? We did not do an assessment of those resources.

Q Initial listing.

A Inventory would be a more appropriate.

Q Okay. We can use that word. In your initial inventory. And then in the followup inventory of 717, you didn't include any current use parcels, right?

A (Buscher) That is correct.

Q But it's your view as professionals in this field that the SEC rules require current use parcels to be assessed. Is that right?
A (Buscher) It's our feeling that it is most definitely a possibility that those should be assessed. I think they meet the description of a scenic resource.

A (Palmer) It's a subset of those parcels. So it's those current use parcels taxed for current use that have an additional 20 percent adjustment. In return, they give the public access for certain recreation purposes for a full 12 months.

Q You anticipated where I was going. So let's just clarify it a little bit.

So these are only the current use parcels that have that qualified recreational adjustment I think that's what you were talking about.

A (Palmer) Right. There's a trade that the public gets access, the State covers the liability issues, and they get 20 percent more on their current use adjustment.

Q And you said on page 69 of your report that, quote, "an existing spacial database has not been identified for these resources," close quote. Does that sound familiar?

A (Palmer) At the time that's what we found. But
there is a database, a tax database for at least a lot of the towns.

Q There's a spacial database for them with GIS coordinates?

A (Palmer) This is a statewide database of parcels that has parcel ID, and the towns maintain the actual tax records which you need to identify parcels that have the 20 percent adjustment and many towns subscribe to a service that maintains those records digitally.

Q So is it your testimony that when you said on page 69, an existing spacial database has not been identified for these resources, that's no longer accurate, and as you sit here today, there is now a spacial database for these resources?

A (Palmer) My understanding is that a spacial database for the 20 percent reduction could be built fairly easily.

Q Could be built. Does it exist today?

A (Palmer) Well, the full tax record database exists, and you just have to extract the 20 percent reduction. Yes. It's not a big deal.

Q On page 73, you provided a summary acreage and a
percent area of current use parcels in Table 5. Do you remember that?

A (Palmer) Yes.

Q Did you have any way to identify or provide a methodology on how those individual current use parcels could be identified? It's not anything you provided in your report, is it?

A (Palmer) Those figures are by town, and they come from a report that every town submits to the State.

Q So let's put up Applicant's Exhibit 330. And I'm pretty sure someone else has already put this up. I just can't remember when. This is A Layperson's Guide to New Hampshire Current Use. Have you seen this document before?

A (Palmer) I may have, but this cover does not look familiar to me so maybe not.

Q Okay. Let's jump to page 3, Dawn.

So according to that highlighted provision, there's nearly three million acres in current use or almost 60 percent of the taxable private land in the state. Does that sound about right?

A (Palmer) Yes, it does.
Q  And 27,000 landowners participate; is that right?
A  (Palmer) That's what it says.

Q  And based on your interpretation of the SEC rules, a Visual Impact Assessment would have to analyze each and every current use parcel with the recreational adjustment. Is that right?
A  (Palmer) Yes, but, of course, that's going to be a subset of that. But I will concede that it's still going to be a very large proportion of state.

Q  And you'd also have to identify which of those 27,000 landowners have opted for that recreational access discount. Is that right?
A  (Palmer) The tax records tell us that.

Q  And based on the chart that you provided on page 69, roughly 58 percent of all current use parcels receive that recreational adjustment, right?
A  (Palmer) Yes. So about a third of the state.

Q  Okay. So 58 percent of three million acres is somewhere north of a million and a half acres that you believe should have been evaluated as part of this assessment; is that correct?
A (Palmer) Well, that's not quite right because the whole state doesn't get evaluated. It's only within 10 miles of the centerline, and from our point of view 10 miles of the overhead portion but yes.

Q And am I right that you calculated that as something a little bit north of 800,000 acres?

A (Palmer) I can't tell you, but it's a lot of land. I understand that.

Q And you didn't do any analysis of these current use properties at all, right?

A (Palmer) We didn't do a VIA, and, actually, we were asked not to go do that analysis because we're not responsible for doing that work. The Applicant is.

Q And as we sit here today, you still fault Mr. DeWan for not doing analysis of that land; is that correct?

A (Buscher) For not considering that land in his analysis. That, I mean, I think what you've just shown us, it's clear that there's been considerable public effort to make this land available. Yes.

Q Okay. We talked a little while ago about the
other cases that have come before the SEC since the rules were amended. Do you remember that?

A (Buscher) I'm sorry. Can you repeat, please?

Q Yes. We talked a little while ago about the other cases that have come before the SEC since the rules were amended. Remember that?

A (Buscher) I think I made a small comment.

Q Yeah. Were you aware that when Mr. DeWan testified, he said that he carefully assessed the Visual Impact Assessments that were done in the Antrim Wind docket and the Merrimack Valley Reliability Project docket, including the Committee deliberations and decisions? Did you know that?

A (Buscher) I don't think I specifically knew that, but it would make sense.

Q And you said before, and I don't know if you misspoke, that there had been only one case that had come before the SEC under the new rules. Which case did you have in mind?

A (Buscher) The Antrim Wind Project.

Q So did you not know about the Merrimack Valley Reliability Project?

A (Buscher) I think I did know about it. I don't
think I was aware, I did not review the findings of that case, that it was subject to the new rules.

Q Were you aware that Mr. DeWan testified that he was guided by the methodologies from the VIAs in those cases, and he believed that the methodology that he used here is similar to the ones there in many key respects?

A (Palmer) Were those cases submitted before he started his methodology?

Q I'm asking you if you were aware that that's what he testified to. Were you?

A (Palmer) No.

Q Okay. And are you aware that both the Merrimack Valley Project and the Antrim Wind Project were actually heard and decided using these new rules?

A (Buscher) I am aware that the Antrim Wind Project was decided with the new rules.

Q Have you ever heard of somebody named John Hecklau?

A (Palmer) I have not.

A (Buscher) I have not.

Q Mr. Hecklau was the visual impact assessor in
MVRP so I take it that you weren't aware that he prepared a VIA there?

A (Buscher) That's correct.

Q And are you aware that in the Antrim Wind docket there were two VIAs prepared? One by Applicant's witness, David Raphael, and the other by Ms. Connelly, the witness for Counsel for the Public?

A (Buscher) I am aware of that.

Q And would it have had any relevance to you that if it turned out that the way resources were identified in those two cases was very similar to how Mr. DeWan identified scenic resources here?

A (Buscher) If that is the case, we would contend that their identification as scenic resources was improperly done.

Q I didn't hear what you said. Could you speak up?

A (Buscher) If that is the case, then I would contest that the identification of scenic resources were improperly done.

Q And if it turned out that the approach that you're using here was dramatically different
from the approaches they used, then I take it 
you would contend that they were all wrong?

A  (Buscher) I would contend that.

Q Okay. Would it surprise you that there were no 
parking lots or shopping areas like Loudon Road 
identified as scenic resources by any of those 
experts?

A  (Buscher) It would surprise me.

Q Would it surprise you that none of the VIAs 
considered current use parcels?

A  (Buscher) Would it surprise me? I don't know.

Q So if it turns out on all these issues 
Mr. DeWan's approach is consistent with how 
those other experts did their work and your 
approach was inconsistent, would that be a cause 
of concern for you?

A  (Buscher) No, I'm confident in the approach 
that we're proposing.

Q You testified earlier that you have no 
experience doing VIAs in New Hampshire and you 
didn't participate in the rulemaking process, 
right?

A  (Buscher) That is what we said.

Q So don't you think it would have benefited you
to see how other experts went about doing their work here, given your lack of experience in this state?

A (Buscher) We started reviewing this Project, in my opinion, before either the, I can't speak for the Merrimack case but before the Antrim Wind decision or hearings even occurred.

Q Do you know when the Merrimack Valley case was decided by the Site Evaluation Committee?

A (Buscher) I'm not aware.

Q If it was about June of 2016, would that be relevant to you?

A I will take your word for it that that's when it was decided.

Q Do you know when the Antrim case was decided by the Site Evaluation Committee?

A (Buscher) I believe it was some time after that.

Q Yes, it was decided in March so shortly before you issued your Supplemental Testimony. But the case was heard and deliberations occurred in December of 2016. Does that surprise you?

A (Buscher) No. That sounds appropriate.

A (Palmer) I don't understand. The DeWan have IA was submitted in December '15; is that correct?
Q: I don't recall. You'll have to check.
A: (Palmer) So I don't understand how he could have referenced those two findings and procedures if the cases were that late.
Q: I think what you should do is look at Mr. DeWan's testimony and Mr. DeWan's VIA and see how he described how he relied on those cases and that will answer your question.
A: (Palmer) Okay.
Q: Let's talk about public community workshops. We talked about this a little bit earlier, and my understanding is that with respect to the public workshops that were conducted here, it resulted in the initial identification of 848 scenic resources. Sound about right?
A: (Buscher) That sounds about right.
Q: And I think at the tech session you said to me that there were 444 resources that were identified once you removed duplicates and then screening on bare-earth visibility; does that sound right?
A: (Buscher) I would have to review those numbers specifically. Do you have a reference, page number that we can look at?
Q  Yes. CFP Exhibit 138, page 88 of the T.J. Boyle report.

A  (Buscher) 444 is what the reported number is.

Q  So that's the total number of community-identified resources, right?

A  (Buscher) That's after, I believe that's after we reduced for duplication.

Q  Right. That was my understanding.

Now, these workshops were held, and I'm a little confused here, in Concord, Ashland, Littleton, Lancaster and Colebrook; is that right?

A  (Buscher) Yes.

Q  And the reason I'm confused is because I only see five, but I think in your report you said there were six workshops, and I'm looking at page 70 of your report.

A  (Buscher) There were two workshops done in Colebrook.

Q  Okay. Got it. And in total 170 people attended these workshops; is that right?

A  (Buscher) That's correct.

Q  And so I take it you believe you had a good representation of people from each town or
subarea along the Project?

A (Buscher) I think we discussed that in our report specifically. Give me one second. I think we specifically note on page 70, the third paragraph from the bottom, that we do not represent that these data constitute a random sample of New Hampshire residents. Rather the community workshops were an attempt to engage people from affected communities in a constructive way to describe in simple terms how the landscape is important to them.

Q Did you find value in these workshops?

A (Buscher) Sure.

Q Why?

A (Buscher) We were able to identify locations within these communities that were important to the residents that turned up for these workshops. I think it's important to say that the materials we used and the way that we approached the Project actually was devoid of talking about the Northern Pass Project. In fact, we used maps that didn't even represent the Project on those maps. We were there really to talk about scenic resources in general and
give them the opportunity to let us know what resources were important to them.

Q So this was really purely an exercise on your part to gather the wisdom of the masses and figure out what the important resources were to these people. I guess that's what you're saying.

A (Buscher) Also to try to understand what types of resources might not be represented in statewide databases.

Q So they came up with 444 separate resources, right?

A (Buscher) That's what we reported.

Q And this is nowhere near the 7,417 resources that you came up with in your revised inventory, right?

A (Buscher) Sure. I would agree with that.

Q It is much closer, though, to the 662 resources that DeWan ultimately identified, isn't it?

A (Buscher) Technically, those numbers are similar. I don't see the correlation between the two.

Q Well, seems to me fair to say that the wisdom of the crowds here came up with about the same
number as DeWan and a lot less than you did. Does that seem right?

A (Buscher) I would say that as we noted our sample included 170 people and that we would not consider that would constitute a random sample. It seems like an entirely low number of people to represent the number of towns affected by this Project.

Q Well, if it's such a low number of people, are you saying that it's not something worth relying on?

A (Buscher) I'm not saying that at all.

Q Okay.

A (Buscher) I'm saying it's important for what we were able to obtain out of it. But we do feel that there's other probably better ways to ascertain types of information that we attempted to use this for.

Q All right. So I want to move away from the resource identification issue but just couple more questions.

We established earlier that on May 13th, 2016, Counsel for the Public sought to retain you, and then got authority to retain you on May
25th, right?

A (Buscher) That's correct.

Q And you submitted your initial report on December 31st, 2016, which contained over 18,000 resources in the inventory, right?

A (Buscher) That's correct.

Q And then when you submitted that, in your original testimony you included a scenic resource description evaluation for only three specific resources, right?

A (Buscher) Can you repeat the question?

Q Yes. When you submitted that December 31st testimony and report, you did a specific scenic resource evaluation for only three specific resources, right?

A (Buscher) That is not accurate.

Q Mr. Palmer was nodding yes so maybe you better check.

A (Buscher) No. That is not accurate. Could you repeat the question?

Q Sure. When you submitted your original report and testimony on December 31st, 2016, you included a scenic resource description evaluation for only three specific resources.
A (Buscher) So there's two different evaluations for individual scenic resources. One's more of a form-based analysis for which with the December report we included 41 specific scenic resources. In January, we provided a more comprehensive descriptive evaluation of 29 of those resources that were included within the 41.

Q Okay. So we're actually getting to the same place here.

A (Buscher) Sure.

Q So the January 20th, 2017, submittal had those 41 resources, and I think it was at that point that you did the analysis of the 29. Is that right?

A (Buscher) That's correct.

Q Okay. And I think you explained that you only analyzed 41 sites the way you just described it because that was all you had time to do, right?

A (Buscher) That's not the only reason.

Q Well, let's pull up CFP Exhibit 138, pages 97 and 98. We'll go to the bottom. And I think what you said at the time is that, quote, "time limitations imposed by the SEC review process
prevent a more in-depth or full analysis of all identified scenic resources."

Is that what you said?

A (Buscher) That's what the text specifically says right there.

Q Okay. So from the time that you started your work here, and I'm going to assume that you started right on May 25th, 2016, the day the SEC said it was okay for Counsel for the Public to hire you, until the time you provided that analysis in January of the 41 sites, about 8 months elapsed. Is that right?

A (Buscher) From the time that we were given permission to go, to that time, that's correct. However, we most certainly didn't have all the information that we required to do our analysis for that full 8 months.

Q Right. I'm actually giving you the benefit of the doubt here and assuming you did. You'll see where I'm going in a minute.

A (Buscher) Okay.

Q At that rate, do you know how long it would take to evaluate the 7,419 sites that are on your inventory list?
A (Buscher) Assuming that all of those resources would need a specific evaluation which we have not contended anywhere, then it would be a very long time.

Q Yeah. At the pace you did it which is by my calculation 5.1 resources per month, if you evaluated them all, it could take 121 years.

A (Buscher) Well, you have to realize that we weren't just tasked with evaluating scenic resources. We had a whole slew of things that we were doing for this Project.

Q I understand.

A (Buscher) I think that's an unfair representation.

Q That doesn't include current use parcels, right? You didn't even look at those.

A (Buscher) That's correct.

Q So if you were able to do it five times as fast as you actually did it, it would only take 24 years, right?

A (Buscher) If we had to go out and individually evaluate every single scenic resource on that list of 7,000, which I have to say we have never contested that, we're not saying that each one
of those scenic resources deserves a full evaluation, but if you had to, yeah, it would take a really long time.

Q All right.

A (Palmer) What we've been saying is that the rules require that the scenic resources be identified.

A (Buscher) Potentially.

A (Palmer) So that, and that's pretty much as far as we went. We only evaluated a small sample, if, in fact, the number of potential resources that appeared to be worthy of evaluation remains at, you know, 5, 6000, something like that, I would expect there to be a sampling scheme to identify which resources actually got evaluated, and then you would just extrapolate from that to find the overall impact of the Project. But it's important to know that there's that many potential scenic resources. The inventory is a requirement.

Q So up to this point, we've focused on that inventory or the identification of resources, the universe, so to speak. What I want to talk about now is the filtering process. And I think
we have a clear understanding of the fact that once Mr. DeWan identified his universe, whatever you may think of it, he then undertook a series of steps to filter resources out of his universe, right?

A (Buscher) That is described in his methodology.

Q Right. And one of the filters which I want to discuss first is visibility. And, again, the touchstone here is always the rule so let's start there.

Site 102.10 defines the area of potential visual impact. I assume you're familiar with that, right?

A (Buscher) Yes.

Q And it says, quote, "a geographic area from which a proposed facility would be visible and would result in potential visual impacts;" is that correct?

A (Buscher) That's correct.

Q All right. And focusing on your inventory of 7,417 resources, am I correct that your view is they might have a view of the Project based on bare-earth analysis?

A (Buscher) So I'm going to go back to
301.05(b)(1) in which it says the first requirement is that a description and map depicting locations of the proposed facility and talks about what encompasses the proposed facility. That would, the words that you're using, would be visible from any scenic resources based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation and other factors.

Q  Okay. Let's go back to my question.

   My question was, focusing on the 7,417 resources on your list, my understanding is you believe they may have a view of the Project based on bare-earth analysis, correct?

A  (Buscher) That's correct.

Q  And you don't know how many of these 7,417 resources would have potential visibility if the buildings and vegetative screening were considered. You didn't filter for that, did you?

A  (Buscher) That would be a logical step to include.

Q  It would be a logical step, but you didn't do
it, right?

A (Buscher) Right. We never, we don't contest that we further evaluated those resources. But I will add that even Mr. DeWan asserts in his testimony the complications with using obstruction-based visibility analysis and how that it's not going to represent visibility from certain viewpoints that are going to be obscured in that type of analysis.

Q So even if an important scenic resource has absolutely no visibility of the Project, you wouldn't know that based on the analysis you did, right?

A (Buscher) Again, we did not do analysis.

Q Based on the work you did.

A (Buscher) I'm sorry. Could you rephrase?

Q Yes. Even if an important scenic resource had absolutely no visibility of the Project, you wouldn't know that based on the work you did, right?

A (Buscher) That's right. We did not evaluate all those resources.

Q Now, DeWan filtered visibility by determining if vegetation or buildings blocked the view of the
Project from the scenic resource, right?

A (Buscher) To a certain extent. There's different data sources that were used. One data source would include things such as buildings. The other data source would not.

Q Okay. And you filtered visibility differently, right? You used bare-earth which didn't factor in vegetations or buildings.

A (Buscher) Actually, we prepared viewshed analysis maps, GIS-based viewshed analysis maps, that used both components.

Q You prepared both maps, but as you just said, you didn't apply the vegetative filter to your inventory of resources, right?

A Not to the specific inventory list.

Q So in bare-earth, unless there was some intervening topographic feature like a hill or a mountain, you would see the resource, right?

A (Buscher) It would indicate potential visibility. But what's really helpful with the bare-earth analysis is it tells you where the Project is definitely not going to be visible. So when you look at some of the factors Mr. DeWan talks about such as being on the edge
of a lake or on top of the hillside, you can use that bare-earth analysis to make that assessment.

Q So in CFP 138, Appendix D, I just want to look at a couple of examples of how you did this work here.

Would you call that up, Dawn?

So I take it you recognize this document?

A (Buscher) Yes.

Q So this is your bare-earth viewshed map for Concord, right?

A (Buscher) That's correct.

Q And according to your bare-earth viewshed map for Concord, the light, I'll call it the light purple, is the bare-earth area of visibility; in other words, the place where the Project would be visible based on bare-earth analysis, right?

A (Buscher) That's correct.

Q And the pink in the middle is, I think you defined it as an urban area or something like that?

A (Buscher) That's correct.

Q Okay. And with respect to that pink in the middle, pretty much all of that area has
bare-earth visibility except for maybe those
little orange patches sort of to the west,
right?

A (Buscher) Yes.

Q And so if you, and I think folks in this room
probably can do this, if you figure out where
the State House is there, it's sort of right in
the middle of Concord just opposite Eagle Square
to the west; is that right?

A (Buscher) That seems appropriate.

Q So in your bare-earth analysis, that area right
in front of the State House, the State House
lawn which is considered a scenic resource,
would have visibility of the Project, right?

A (Buscher) I feel as if you're taking the context
away because we're looking at both components.
We just didn't get to that next phase. But
there are other locations where bare-earth
analysis might show visibility where
obstruction-based visibility analysis doesn't
that is very likely that there could be future
visibility. I would love to bring up our
obstruction-based visibility map for this same
location.
Q You do agree that based on your bare-earth map --
A Sure. That it shows potential visibility.
Q And really, practically speaking, and from a vegetative or a building screening map, it wouldn't have visibility because if you were standing on the State House lawn looking east, you'd see a row of buildings, right?
A (Buscher) 100 percent.
Q And the only way you'd have actually have real visibility would be to get rid of all those buildings.
A (Buscher) That's entirely accurate.
A (Palmer) But, nonetheless, the phrase "would be visible from any scenic resource," the analysis to define that phrase is based on both bare ground conditions and a screen vegetation.
Q We're going to get to that in a few minutes.
A (Palmer) Okay.
Q I just want to walk through a few more of these. Let's go to another one, Dawn.
A (Buscher) Is it possible to bring up the second map that we did for that same location?
Q I'm sure when Counsel for the Public does
redirect, she'll bring up anything you want.

A (Buscher) Duly noted.

Q Let's go to the next one.

So this is, I'm going to call up the Daniel Webster Historic Site, and this, according to your map, is in the purple so it's got bare-earth visibility, right? This would be a publicly accessible scenic resource that we probably all agree needs some evaluation, right? And this has bare-earth visibility according to you, correct?

A (Buscher) This is the bare-earth visibility viewshed analysis, yes.

Q And if we look at your vegetative map for this, no visibility, right?

A (Buscher) That's correct.

Q And just one other one. This is going to be Little Cherry Pond which is in the Pondicherry Wildlife Refuge, and according to your bare-earth analysis, most of that area and those trails do have bare-earth visibility, right?

A (Buscher) That's correct.

Q And then if we bring up the vegetative map for that same site, now there's very little
visibility around that area; is that correct?

A (Buscher) That's what the map is indicating, yes.

Q Right. And do you see where it says Cherry Pond?

A (Buscher) I do.

Q And if you look to the northwest of Cherry Pond you see that collection of hiking trails there?

A (Buscher) I do.

Q And those hiking trails are areas that do have bare-earth visibility but in the vegetative map are screened; do you see that?

A (Buscher) I see that.

Q So I want to call up the next slide.

So if you look on the bottom, this is from DeWan, I believe, or actually it's not. This is an exhibit we created. There's the pond right there, just to the east of that red arrow. Do you see that?

A (Buscher) I see that.

Q And that red arrow is a point in space looking towards the line, do you see that?

A (Buscher) I do.

Q And the photograph above is that point in space...
looking in that direction toward the line which
is 1.9 miles away. Do you see that?

A (Buscher) I do.

Q So in a bare-earth analysis, in order for this
scenic resource to have visibility, all those
trees would need to disappear. Is that right?

A (Buscher) That's true.

Q Okay.

A (Buscher) And if we go one step further we can
probably assess whether the potential impact on
that resource would be low, medium or high.

Q And, in fact, there are probably thousands of
locations just like the ones I showed you in
your list of 7400, right?

A (Buscher) I agree with that.

Q So when DeWan was doing his work, he was looking
at real visibility today based on actual
conditions, and you're looking at hypothetical
visibility based on bare-earth, right?

A (Buscher) As required by the SEC rules.

Q And as a consequence of this approach, your view
is the rules require thousands of resources to
be evaluated further even if in reality, like
these ones that we just looked at, there
actually is no real view of the line.

A (Buscher) Yes. And I'd like to -- can I talk about that for a second?

Q Sure.

A (Buscher) This Project isn't going to go away any time soon once it would be constructed. We would anticipate that this Project is going to be here for 100 years or more. So there are plenty of locations, maybe not the specific examples that you just showed us, that where there is a real possibility where the vegetation is going to be removed in a lot of locations specific to this report, to this Project, because the Project's located within lands that are managed for forest practices.

Q So as you did your work under the rules, you were assuming that all of these places might somehow have the landscape razed, and, as a consequence, those resources needed to be identified and evaluated.

A (Buscher) Not at all. We're following the rules. The further, the further evaluation would be to assess what is the likelihood that there could be a dramatic change in the forest
cover in a particular area. That's an evaluation that should be done regardless of what the SEC rules when you're conducting VIAs, but the SEC rules specifically require it in our interpretation and reading of those rules.

Q Okay. Would it surprise you to learn that the Applicant's expert in the Merrimack Valley Project also used vegetative screening when assessing visibility the way Mr. DeWan did?

A (Buscher) Using vegetative screening analysis is a very acceptable method along with a bare-earth analysis.

Q Would it surprise you to learn they didn't do bare-earth analysis like you did?

A (Buscher) I would contest it's not an appropriate way to approach it.

Q So I assume you'd say the same thing if the experts in Antrim also didn't do it your way?

A (Buscher) Yes. I would.

Q All right.

A (Buscher) We've done hundreds of analyses in which we look at both, and we appropriately give weight to each of those different types of analysis. And additionally, just by utilizing
the bare-earth analysis, you can easily find locations and we commonly find locations where there is visibility that's shown as not having visibility with vegetative or construction-based GIS analysis. And I think Mr. DeWan agrees with us that these are used as tools in orienting field investigation and going out and doing the work required for a VIA.

Q Would you agree with me that part of what makes a scenic resource a scenic resource is its existing character? Things like land forms and vegetation?

A (Buscher) The SEC has a very specific description of scenic resources and some of those descriptions or categories actually don't rely heavily on the degree of scenic attractiveness. I think that's what you're getting at.

Q I would assume you're aware of the fact that 301.14(a)(1) requires the SEC to consider the existing character of the area of potential visual impact?

A (Buscher) In their evaluation of unreasonableness.
Q Correct.
A (Buscher) Yes.
Q You were aware of that?
A (Buscher) Yes.
Q So if an entire forest in and around a scenic resource were removed, wouldn't that impact the character of that resource?
A (Buscher) It could.
Q And certainly possible that that resource would no longer be scenic, right?
A (Buscher) Not necessarily. It could.
Q So if all the trees in Bear Brook State Park were removed, would it still be a scenic resource in your view?
A (Buscher) I would have to make that assessment.
Q Certainly it would dramatically change the character of the resource, wouldn't it?
A (Buscher) It would.
Q So how can you possibly consider existing character at the same time that you analyze resources by assuming that the landscape is actually devoid of trees and buildings?
A (Buscher) I don't think that's an accurate characterization of anything that we said.
Q Why not?
A (Buscher) Because we didn't say it.
Q You've done your whole threshold analysis using bare-earth, isn't that right?
A (Buscher) We did an identification of resources based on bare-earth as is required by the SEC rules.
Q I want to talk for a few minutes about viewshed maps. You prepared this bare-earth map, and you also, as you talked about a few minutes ago, have vegetative viewshed analysis as well, right?
A (Buscher) Which is also a requirement of the SEC rules.
Q And I think it's in Appendix D to your December 30th, 2016, report that you have this information, and what I want to do is you were asking a moment ago to pull up one of your vegetative maps.
   Well, Let's start with bare-earth. So CFP 138, Appendix D. Let's pull up an example.
   So I assume you recognize this.
A (Buscher) Yes.
Q This is your document, as I understand it, it's
the bare-earth viewshed of Plymouth which you provided in Appendix D at page 57, right?

A I'll take your word for the page numbering.

Q And purple on this map represents potential visibility, right?

A (Buscher) That is correct.

Q And visibility means that in a raster, the computer is telling us that it can see a theoretical point at the top of the tower. That's my understanding. Am I correct?

A (Buscher) For multiple towers. I think it was --

Q It could be one. It could be a whole bunch of towers, right? Mr. Palmer, you're shaking your head? But it's that theoretical point at the top that the computer is saying from this little area I can see that.

A (Palmer) At eye level in the cell, right.

Q So purple areas could consist entirely of areas where only the very tops of a single structure or a couple of structures are visible to the computer, right?

A (Buscher) Right.

Q And this is really theoretical visibility that
people in your profession go out and field verify; is that right?

A (Buscher) Right.

Q And when you provided these maps to Mr. Kavet and Mr. Rockler for them to use, did you make them aware of these limitations that we just discussed?

A (Owens) I don't know if they, what they were doing with it after we provided it to them. So I don't --

A (Buscher) So I personally did not have any direct conversations with them about the use of these specific viewsheds, but I personally did not do that coordination. I believe both Jim and Jeremy probably had a more active role in that.

Q Let's find out. Mr. Owens, did you have conversations with them so that it was clear to them what the limitations were on these maps?

A (Owens) I don't recall specific conversations about limitations or exactly what they were going to use it for.

Q Mr. Palmer, did you?

A (Palmer) No.
Q Did, Mr. Buscher, to the best of your knowledge, or any of you, to the best of your knowledge, did anyone in your office involved with the work you're doing here have those conversations with Mr. Kavet and Mr. Rockler to make them aware of these limitations?

A (Buscher) Correct me if I'm wrong, Jeremy, but I believe, or Jim, I believe the transfer of data wasn't direct. I believe it was through the prime consultant.

Q What does that mean?

A (Buscher) We were subconsultants to a lead consultant on the Project, and they were working for the overall organization and direction of each of the individual consultants on the Project.

Q Are you sure that's with respect to the SEC process? And not the EIS process?

A (Palmer) I don't remember having contact with them at all. We did have contact with economists on the DOE evaluation, but I don't remember having contact with anybody on this side. So it's hard for me to say. Did they testify that they talked to us or is it that
they used our map? Or that -- I don't know where this is coming from.

Q Well, they certainly used your map, and all I'm trying to understand is what information, if any, aside from providing the maps to them, you all gave them and it's sound to me --

A (Buscher) I have to apologize. I was mixing up, you know, we're going back over five years of work on this Project. So I think the most interaction that we had with economic consultants were they participated in some of the public workshop meetings that Counsel for the Public hosted. We would probably need to go back and look at our records to understand -- I can't, I can't specifically remember providing them, and I don't know if Jim or Jeremy can, providing them the specific data files or if they were using paper maps that they acquired some other way. We would have to go back and look through our data on that.

Q Do any of you remember at any point Mr. Kavet or Mr. Rockler or anyone from their office calling you or anyone from your office and asking you, can you explain these maps to us?
A (Buscher) I'm pretty confident that I can say no, that didn't happen.

Q Okay. So, Dawn, can we pull up the next map?

So now, this is also from Appendix D at page 57, and this is the vegetated viewshed map of Plymouth which you provided. Do you recognize this?

A (Buscher) I do.

Q So Dawn, can you put them up side by side for a minute? I think we need bare-earth on one and vegetated on the other. Okay.

So that's your bare-earth on left and your vegetated on the right, correct?

A (Buscher) That's correct.

Q We don't need to zoom in, Dawn. Zoom back out.

So do you see the town of Plymouth there in orange?

A (Buscher) I do.

Q And just to the north of the town of Plymouth, there is a yellow line running horizontally across the map which I believe is the Tenney Mountain Highway; do you see that?

A (Buscher) Yes.

Q And it's on both maps. In bare-earth, there is
no visibility for the Tenney Mountain Highway. But then on the vegetated map, which presumably should show less visibility, now the Tenney Mountain Highway has visibility. How is that possible?

A (Owens) So the viewshed that we used for vegetated was from the DOE Project. We didn't rerun it for this Project. That included existing structures that continued north through the White Mountain National Forest.

When we ran the terrain-based viewshed which we did for the SEC side of things, that only included structures from where, from the beginning to the end of where they were proposing the Project. So that portion in between through the White Mountain National Forest, we ran the terrain-based viewshed without those structures. So they aren't really comparable. And in order to correct that we would have had to do quite a lot of work and rerun the vegetated viewshed analysis which we talked to Counsel for the Public and decided that that wasn't an undertaking that was worth doing. I think somewhere in our materials we
A (Buscher) I think we did explain that. And just to give you some concept of when Jeremy says a lot of work, to run these viewsheds at the detail level we're talking about, it's weeks. It's not, you know, four or five hours in a single day. It's GIS models running 24 hours consecutively.

A (Palmer) I think in addition to that, it requires access to the NEXTMap data which we do not have for the SEC Application. So we can't run a screened viewshed without reacquiring those data.

Q So let's dig into this a little bit.

A (Palmer) Yes.

Q Purple on the maps means visibility, right?

A (Palmer) Purple on the maps for the terrain is an evaluation of the Project submitted to the SEC. Purple on the map for the screened is the so-called Alternative 2 for the DOE Project.

Q Simple question. Purple represents potential visibility, right?

A (Palmer) That's correct.

Q Let's start with the bare-earth. Visibility of
what? This is Plymouth so this is an
underground section. So what do those purple
sections represent visibility of?

A (Buscher) Structures that are located somewhere
within 10 miles.

Q What kind of structures? Structures of the new
Project?

A (Palmer) Should be of Alternative 7, yes, the
new Project, the Project submitted to the SEC.

Q Okay. So your testimony is that the map on the
left represents bare-earth potential visibility
of Northern Pass structures if the Project were
built.

A (Palmer) Using bare ground.

Q Using bare ground. So what's the nearest
overhead structure to this map?

A (Buscher) Can you give us a minute?

Q Sure.

A (Buscher) Okay. Do you want us to give you an
actual measurement or do you want us to tell you
how to get that measurement?

Q I guess I'm just curious to know that if you're
in Plymouth and there's visibility, what's it
of? Are you saying it's visibility of the
places where the Project comes back aboveground in Bridgewater?

A (Buscher) Yes.

A (Owens) Yes.

A (Palmer) That's correct.

Q And that's something in the neighborhood of five miles away from there? Something like that?

A (Buscher) I don't think it's that far.

A (Owens) There's a scale on the map so if you wanted to answer that question you could measure, figure out what that measurement is to wherever it is that you're interested in how there's visibility.

Q All right.

A (Buscher) So in certain locations in Plymouth, it's less than probably half a mile.

Q Okay. And then we go over to the other map, and I thought my understanding was the purpose of the providing the other maps was then to figure out how vegetative screening would relate to scenic resources in the SEC process, but I guess what you're telling me is it doesn't tell us that.

A (Owens) It's from the DOE process.
Q I understand where it's from, but it doesn't tell us that, does it?

A (Owens) It doesn't say that on the map. I think we'd have to find where we've stated that that is a limitation. Are you interested in us finding that for you?

Q Well, you can probably find it at a break. I guess I'm more interested in understanding this better.

So what good is this to us in the SEC process?

A (Buscher) It tells us where the Project is going to be visible from with vegetation and other obstructions that would help limit visibility. And for certain areas as we describe in more detail in our report, it includes existing structures within the existing right-of-way going through the White Mountain Forest so we can use this map, and if we were doing a full analysis, and let's, for instance, make believe that proposed structures are going to be lower in height, we could use this to identify where the corridor in general or where structures within the corridor in general are visible from.
and then do an assessment of how the change would occur.

A (Owens) There is a limitation though. Where the Project is undergrounded, that the maps start to become, the vegetative viewshed map starts to become less useful in this scenario because it includes those existing structures.

Q Well, and that's what I want to get to here. I still don't understand why this map matters. And you said, Mr. Buscher, a moment ago, the Project would be visible. What Project? When we're looking at the map on the right, and we see that purple, what's visible there? It can't be Northern Pass because if Northern Pass wasn't visible there in bare-earth, it's not possible for it to be visible with vegetative screening. So what's visible?

A (Buscher) So I think it would be best if we pulled this up in our report to describe it in detail. I think the best way to handle this is to look up the more precise description that we have in our report.

Q Why don't you look up whatever you need to look up to answer this question.
PRESIDING OFFICER HONIGBERG: Off the record.

(Discussion off the record)

PRESIDING OFFICER HONIGBERG: Let's take a few minutes. We'll say ten.

(Recess taken)

(Recess taken 3:50 - 4:04 p.m.)

PRESIDING OFFICER HONIGBERG: All right.

Mr. Needleman.

MR. NEEDLEMAN: Thank you.

BY MR. NEEDLEMAN:

Q So I think, Mr. Buscher, before we broke, the question I asked you was with respect to the map on the right where it's showing visibility along the Tenney Mountain Highway and you said it's showing visibility of the Project. I'm curious. What Project?

A (Buscher) I want to clarify. So it's showing visibilities of structure within the existing right-of-way. So on page 72 of our review we note that the screen visibility analysis was originally conducted as part of the US Department of Energy's Environmental Impact Assessment, and the methods are described in the
Based on that we, in our Rebuttal Testimony on page 3 of 8, the question beginning at line 6. The question reads, please refer to the screen viewshed provided in Appendix D to Exhibit CFP Boyle 4. That includes existing structures between the Bethlehem and Bridgewater Transition Stations. Do you wish to clarify your approach here? If so, please explain. Our answer is the screen viewshed was developed as part of the analysis for the DOE EIS and VIA. In the DOE EIS the visual magnitude of the new NPT structures, the new structures that will replace removed PSNH structures and existing PSNH structures that will remain is compared to the visual magnitude of the existing PSNH structures. In the terminology of the DOE EIS, this is a comparison of Alternative 7, proposed action, to Alternative 1, no action. The screen viewshed provided in Appendix D to Exhibit CFP Boyle 4 uses the results from an intermediate step of the visual magnitude analysis. The analysis used higher quality NEXTMap terrain and land cover heights for the area within 1.5 miles.
of the proposed right-of-way. These data were licensed only for use in preparing the DOE EIS. As a result it is not permitted to use them to evaluate the SEC Permit Application. Exhibit CFP Boyle 6, Appendix H, corrections to NPT VIA review includes corrections where the screen viewshed is referenced that make it clear that it's for proposed and existing to remain structures.

Q So I have to confess I'm not sure I understand, but let me try to ask this simply.

The map on the right where it's showing purple for visibility along Tenney Mountain Highway, I think what you're telling me is that is visibility of the existing line that's out there today.

A (Buscher) That includes visibility of the existing line. We did not, we had limitations to accessibility of the NEXTMap data which I believe was in the realms of $30,000? Something to that extent. And while we had use of that for the DOE Project, we then did not have use, we did not have the license rights to use that for the SEC review. So we understand that that
viewshed incorporates existing structures that we would have probably preferred not have but we were under limitations of how to amend that data. The only way we could have amended it was running viewsheds by either purchasing $30,000 of data or by running it with less accurate data.

Q But just to be clear, again, focusing on the map on the right, you said that that's showing visibility of existing structures. Those things that are out there today that we could drive up and take a look at, right?

A (Buscher) Existing structures and proposed structures.

Q That's what doesn't make sense to me. How is it that proposed structures on that map on the right are visible along the Tenney Mountain Highway with vegetative screening, but they're not visible in the bare-earth map?

A (Buscher) Because it includes visibility of both existing structures to remain and proposed structures.

A (Owens) I get your point, and that's correct.

If process of elimination would mean that it can
be visible, it can't be invisible in the terrain viewshed and then be visible in the other one. So in those locations you'd have to assume that what you're seeing for the purple along Tenney Mountain Highway is the existing structures.

A (Buscher) So in the bare ground analysis that was, none of the existing structures north of that Transition Station were used in that analysis which is why it's not showing visibility on the bare-earth analysis.

Q So am I correct that you have not presented to us or the SEC for Plymouth an accurate vegetated map that would allow us to understand your perspective with regard to the Northern Pass Project? We don't have that.

A (Buscher) We have not provided a map, and, again, we'll reiterate, and we commonly put notations on our viewshed maps that these are a tool primarily used by us in understanding visibility to go out and identify resources and the impacts of those resources. So we are able to utilize this map, but could it create some misrepresentation to the public? Yes. I would probably agree with you for a limited portion of
the Project which is why we've included this clarification in our Supplemental Testimony.

Q You said these are a tool. Just to be clear, these, this map is not a tool for gaining any insight at all into where the Northern Pass Project would be visible based on vegetative screening, right? This one on the right. That doesn't tell us anything about that.

A (Buscher) Sure it does. This is Alternative 7. So --

Q I think Mr. Owens just told me it doesn't, but maybe I just don't understand.

A (Owens) It does for the purposes of the DOE analysis. For the SEC analysis there's a limitation, as I said earlier, between areas where the Project is being undergrounded through the White Mountain National Forest.

A (Buscher) So it's a limitation. It doesn't mean that they're not able to be utilized.

Q So are you representing that with respect to the map on the right all of the areas in purple are places where there is visibility or potential visibility of the Northern Pass Project in this area?
A (Buscher) Not of the proposed structures, no.
Q That's what I understood. And there is no map anywhere in your documents that we can look to to get that information. Is that right?
A (Buscher) So there is a limited number of maps that has this complication associated with it.
Q All right. Let me call up the next map and maybe you can help me with that because that may be another one.

And Dawn, let's just put them side-by-side.
So these are your Sugar Hill maps, right?
A (Buscher) That's correct.
Q And which one of these is the bare-earth?
A (Buscher) The bare-earth is the map on the left.
Q All right. And the vegetated one is the one on the right, correct?
A (Buscher) That's correct.
Q So it seems to me that we have the same defect here in terms of lots of purple on the right showing visibility which actually does not represent visibility of Northern Pass. Is that right?
A (Buscher) This represents the exact same situation that we were just discussing. So this
is the northern end of that underground section of line.

Q So what's the scope of this problem? Can you explain it?

A (Buscher) What's the scope of this problem?

Q Yeah. How many of these maps have this problem?

A (Owens) It's the maps for the towns in between the undergrounding. I think you'd have to count that up. I think we did maps for each community although I'd have to go back and find out in the APE.

Q So all the vegetated maps that you provided from Bethlehem to Bridgewater have this defect?

A (Owens) I don't know if I would refer to it as a defect because it is something that we've stated comes from the DOE analysis. Not all of them would have that problem where you have different representations of visibility specifically north or south of the two maps that we've just talked about. The viewshed starts to be more accurate with regard to continuity with the terrain viewshed.

Q How do you know that? Have you confirmed that?

A (Owens) Do you mean did I go back and -- I know
that from the sense that I constructed them, and so within 10 miles of, maybe there's a little bit of overlap because you're looking at existing structures between those two transition stations going back to the south or back to the North for 10 miles. So there's a little bit of issue there.

Q So it sounds like you're saying the issue extends potentially south of Bridgewater and potentially north of Bethlehem.

A (Owens) Yes, although that's much more minor because the structures that we're talking about are much shorter than the proposed Northern Pass structures.

A (Buscher) And if my recollection is correct, we actually, you know, we were frustrated with the fact that we couldn't use the NEXTMap data and we had, Jim, I believe you had several conversations with them trying to get them to agree that we were able to use it. Again, our hands were sort of tied on this matter. And to a certain degree, we already understand what the situation is so we're able to accommodate for it in our review.
I further go on to say that if, say, we did the next step to try to understand which scenic resources that we identified through bare-earth, wanted to go through a filter because a logical filter would be also to see where they land on the vegetated or obstructed base, we would have to devise a way to deal with this problem in that type of analysis.

Q Just one other question on this topic before I move on.

Am I correct that these, my word, defective, vegetative maps are the ones you provided to Kavet Rockler?

A (Buscher) I would not call them defective.

Q Did you provide them to Kavet Rockler?

A (Buscher) I would have to check our records to see what we provided to them.

Q So as you sit here today you don't know if these are the maps they relied on to do their work?

A (Buscher) I do not know that answer.

Q Okay. So I want to move on to the next topic.

On page 19 of your report, you assert that the Northern Pass VIA, the DeWan VIA, didn't consider bare ground visibility analysis as
required by site 301.05 (b)(1), right?

A  (Buscher) I'd like to see exactly what we said. Was that a --

Q  Yes.  Dawn, it's page 19 of Exhibit 138. It's really the first line. Do you see this?

A  (Buscher) Yes, I do.

Q  And Site 301.05(b) lists the required components for a Visual Impact Assessment, right?

A  (Buscher) Yes, it does.

Q  And I want to call up 301.05 (b)(1), Dawn, if you can do that.

This is something you've referred to multiple times.

A  (Buscher) Sure.

Q  So this is the segment that I think you were referring to within what the requirements are for Visual Impact Assessment, and it calls for a description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components and all areas to be cleared and graded that would be visible from any scenic resources based on both bare ground conditions
using topographic screening only and with consideration of screening by vegetation or other factors.

That's the provision you were referring to earlier, right?

A (Buscher) Yes.

Q And in his supplement, Mr. DeWan provided that bare-earth map, right?

A (Buscher) He did.

Q And he also provided a map showing visibility with screening as part of the initial filing, right?

A (Buscher) He did.

Q And Site 301.05(b)(1) is, I believe, the only place anywhere in the SEC rules where bare-earth is mentioned. Is that correct?

A (Buscher) I believe it's the only location where those specific words are used, but part of that statement notes, specifically, what I'd like to point out, is it talks about "would be visible."

Q I understand your interpretation. And we'll get there. But I'm asking you. Is 301.05(b)(1) as far as you know the only place in the SEC rules where bare-earth is mentioned?
A (Buscher) That is where the specific verbiage bare-earth is used.

Q And as far as you know, is Section 301.05(b)(1) cross-referenced anywhere in the SEC rules?

A (Buscher) I'm sorry. First of all, I'd like to correct where it say it's, actually it states bare ground.

Q Bare ground. I'll rephrase the question.

Is that the only place where bare ground is mentioned in the SEC rules?

A (Buscher) I believe that's the only place where that specific verbiage is used.

Q And am I also correct that Site 301.05(b)(1) is not cross-referenced anywhere else in the SEC rules?

A (Buscher) I think (b)(1) sets up a series of components that are used, and our interpretation is that it clearly says that would be visible and if we go down to (b)(5), there's a requirement, an identification of all scenic resources within the area of potential visual impact and a description of the scenic resources from which the Project would be visible. So I think there's a direct correlation between those
specific two points.

Q Do you remember my question?

A (Buscher) If that verbiage was cross-referenced specifically?

Q No. Was the section cross-referenced anywhere else in the rules?

A (Palmer) I don't think so.

MR. ASLIN: Mr. Chairman, I'm happy to let this question be answered, but to the extent we're asking what the rules say, the rules speak for themselves, and this is kind of getting repetitive.

MR. NEEDLEMAN: I'm not asking what the rules say.

PRESIDING OFFICER HONIGBERG: No. He's not really.

MR. ASLIN: He's asking if these words occur, if there's a cross-reference within the rules.

PRESIDING OFFICER HONIGBERG: I'd rather have him do that than ask him what it means.

MR. ASLIN: Fine.

A (Palmer) I don't think that Site 301.05(b)(1) is referenced anywhere else in the new rules.
That's the question, right?

Q So with respect to this section, Mr. DeWan complied with it. He provided both a bare-earth map and a vegetated screening map.

A (Buscher) To what effect though?

Q He provided what was required here. Do we agree on that?

A (Buscher) It's like providing a glass to catch water that was poured five minutes ago.

Q I'm not sure you answered my question, but I guess I'll take that as a yes.

A (Owens) Hold on a second. Can you specifically say again what you just asked?

Q My question was did Mr. DeWan provide the bare-earth or bare ground map and the vegetated screening map?

A (Buscher) Yes. He checked the box.

A (Owens) The map, yes. I don't know about the description though.

Q All right. Now, you said that DeWan did not include a bare-earth, quote, "analysis," right?

A (Buscher) That's correct.

Q And it's your opinion, you went about doing your work operating under the assumption that a
bare-earth analysis is required, and so you
fault Mr. DeWan for not doing that, right?
A (Buscher) That's correct.
Q And you would agree with me that there's no
place in 301.05(b)(1) that requires a bare-earth
analysis or even uses that word?
A (Palmer) I'm not sure that I would agree with
that. The rules require, define the way you
determine visibility is with a computer
analysis, and that would be visible from any
resource is based on both bare ground
conditions, blah, blah, blah, and screening by
vegetation. So I think it's clear that the
expectation is that the computer analysis is
used. That would be visible from any scenic
resource is based on both of those, and DeWan
didn't use bare ground in his identification of
scenic resources that would be visible from any
scenic resource.
Q All right. I understand what you're saying.
Let me go a step further. 301.05(b)(5)
requires, quote, an identification of all scenic
resources within the area of potential visual
impact and a description of those scenic
resources from which the proposed facility would be visible, right?

A (Buscher) That's correct.

Q And Site 102.10 defines area of potential impact to mean a geographic area from which a proposed facility would be visible and would result in potential visual impacts subject to the aerial limitations specified in 301.05(b)(4), right?

A (Buscher) Yes.

Q So when you did your work here, you interpreted the definition of visibility in 301.05(b)(5) to mean hypothetical visibility. In other words, what the computer would determine to be visible using bare-earth analysis without any existing trees or buildings and not actual real world visibility based on current conditions.

A (Buscher) I would not agree with that.

Q And why is that?

A (Buscher) Because you're paraphrasing holistically a statement that we did not say and that Mr. DeWan repetitively repeats in his Supplemental Testimony.

Q Well, I'm not relying on Mr. DeWan. I'm trying to understand how you did your work, and my
understanding of how you did your work is that's how you interpreted the rules and that's how you did your work.

A (Buscher) Our interpretation of the rules is scenic resources need to be identified first based on bare-earth conditions because that is the most encompassing methodology to do it. You then need to also consider obstruction-based visibility.

Q So when you went about doing your work here, and you read Site 102.10 which said would be visible and would result in potential impacts, you interpreted that to mean hypothetical bare-earth visibility versus actual visibility?

A (Buscher) Again, you're jumping to one way or the other, and, no, that's not what we're saying. We're saying that there needs to be consideration given to bare-earth condition as well there needs to be consideration given to the screening effect by in-place objects and the possible removal of those objects at some future date.

Q Okay. So I want to turn now to the next filtering mechanism which is scenic quality, and
Mr. DeWan applied a methodology to determine the scenic quality of the resources he identified, right?

A (Buscher) Yes. That's correct.

Q And he used this to filter out certain resources that he concluded would then not need a full assessment, is that right?

A (Buscher) I believe he didn't do an assessment on those resources. That's correct.

Q He filtered them out. And then you didn't do this analysis up front. I think as we discussed earlier, you assumed all resources possess scenic quality.

A (Buscher) What we said is that the resources we identify felt was a valid starting point to assess whether something would be considered a scenic resource.

Q So, Mr. Buscher, one of those places on your list is Loudon Road. That's listed as a scenic drive, right?

A (Buscher) I don't, let's see. I'd like to pull up that evaluation.


A Could we look at the actual assessment form that
we did for Loudon Road?

Q Well, you did a photo simulation for Loudon Road, right?

A Right.

Q Can we look at the assessment form? This was one of the 29 resources that we did an assessment. I think it would be more appropriate to see how we described it because, again, this is just a list of identifications so Loudon Road is a road, and we felt being a road in New Hampshire that generally has high scenic quality throughout the state, it's appropriate to evaluate all roads.

Q And you actually said a moment ago that Loudon Road was on that list of 41, right?

A (Buscher) That's correct.

Q And, in fact, it's not just on your list of 41. It's one of the 29 that you concluded would have an unreasonable adverse effect, right?

A (Buscher) That's correct.

Q So I want to call up Applicant's Exhibit 338. Now, Mr. Palmer, I'm willing to bet you recognize that article.

A (Palmer) Yes, I do.
Q  Mr. Buscher, do you recognize it?
A  (Buscher) I do recognize it. It's been a while since I read it.
Q  Okay. Let's go over, I think it's page 2, Dawn. And Mr. Palmer, do you remember when you wrote this article?
A  (Palmer) I do.
Q  When was that?
A  (Palmer) Well, I can't tell you the time but I can remember -- I'm sorry. I don't remember when, but I do remember writing it.
Q  And I misspoke. You didn't write it, did you? I think you were interviewed for it? Or did you write it?
A  (Palmer) Well, it was some questions and I wrote out responses and emailed it in, and they asked some more questions and asked for some illustrations. So it was an online interview.
Q  And Mr. Buscher, do you recognize that photograph there?
A  (Buscher) Sure.
Q  What is that?
A  It's a view taken from the road looking towards the corridor through what, the Shaw's parking
lot to the side and parking lot in front.

Q Right. And that's Loudon Road, right?
A (Buscher) That's correct.
Q And according to Mr. Palmer, in that yellow, he says, "This first image below is a landscape most Americans would agree is not scenic, an open field of asphalt visually enclosed by a shopping center, transmission lines and trees," right?
A (Palmer) Correct.
Q So I guess, Mr. Buscher, if Mr. Palmer had no trouble concluding relatively quickly that this was not scenic, how is it that it not only remains scenic in your analysis but you actually even find that there's an unreasonable adverse effect here?
A (Owens) Well, first of all, it's identified by the City of Concord as a gateway with specific goals to improve the visual aesthetics. So, number one, we're looking at this as a designated resource because it clearly states that in planning documents for the City of Concord.
Q Is it your testimony that the City of Concord
designated this area as a scenic resource?

A (Buscher) It's my contention that they designated it as a gateway for improved aesthetics. Yes, I would consider that a scenic resource. I don't think the City of Concord, I would have to review the text, used the specific words "scenic resource."

Q So I take it then that you disagree with Mr. Palmer when he says this is not scenic.

A (Buscher) I would -- we've had conversations about this, and I think that there is definitely a lower scenic quality at this location, but because we not only sometimes think about the existing character, but we also think about the planned character of an area.

Q Well, he says most Americans would agree it is not scenic. So sounds to me like you don't agree with most Americans.

A (Buscher) Again, I'm going to, when we are doing our assessment for this Project, we're not only considering the existing conditions but also the planned conditions or the planned character of the area.

Q Would it surprise you if the expert in the
Merrimack Valley Project screened out resources based on scenic quality in a manner similar to Mr. DeWan?

A  (Buscher) Wouldn't surprise me.

Q Would it surprise you if the expert in Antrim, Mr. Raphael did the same thing?

A  (Buscher) It would surprise me.

Q And I guess you would say they were both wrong for doing that.

A  (Buscher) Given my familiarity with Mr. Raphael's work in other places, I would think it's definitely contrary to some of his other assessment work.

Q Okay. Let's move on to the next topic. You and Mr. DeWan both talk about the concept of distance zones; is that right?

A  (Palmer) Yes.

Q And my understanding is that distance zones are used as a frame of reference to discuss landscape attributes or scenic effect of human activities on the landscape. Is that generally right?

A  (Palmer) They're a way to sort of simplify characterization of the kind of detail that we
And in the EIS I think you used distance zones, right?

A (Palmer) In the visual assessment for the DOE, correct.

Q And there were 7 of them I think, right? It was immediate, foreground, near middle ground, far middle ground, near background, far background, and distant.

A (Palmer) Correct. So distant would be past.

Q Greater than 10 miles?

A (Palmer) Greater than 10 miles.

Q So that one doesn't really matter for our purposes. Far background is five to ten so we're talking about really six distance zones for purposes of the Site Evaluation Committee?

A (Palmer) That's correct.

Q Okay. So in the final Environmental Impact Statement in your Visual Impact Assessment Technical Report, you said that the zone of visual influence extended out to 10 miles through the far background, right?

A (Palmer) That's correct.

Q And then you said, "However, the possibility of
severe visual impacts was anticipated to primarily occur when visible in the immediate foreground and near middle ground, parentheses, 0.0 to 1.5 miles, comma, except under special conditions," close quote, right?

A (Palmer) Because those are the areas where there's the greatest potential visual magnitude of the Project. In other words, if you're near a structure, it's going to occupy a large part of your field of view.

Q So I want to start with what you termed the far middle ground which is I think 1.5 to 3 miles, right? Is that correct?

A (Palmer) Could be. I'd have to check. Do you have that page to show us?

Q You don't remember?

A (Palmer) No.

Q Okay. Well, I'll pull it up in a minute. And in fact, why don't we do it now because I want to quote from it. So Applicant's Exhibit 106, which is the Draft EIS, and I'm going to ask you about the final one in a minute, but we're looking at the Draft first. Page 20.

And, Dawn, can you highlight the "it is
recognized" language? Middle of that first full
paragraph.

So do you see where I am right after it
says in the ZVI, comma, though?

A  (Palmer) Yes. I see that.

Q And then you say it is recognized that the
potential for visual impacts from the proposed
structures is increasingly unlikely beyond 1.5
miles. Right?

A  (Palmer) That's what the text says.

Q Now, this statement struck me as significant
when I read it, but I noticed that you dropped
it from your analysis in the Final Environmental

A  (Palmer) That's correct.

Q And we asked you about this statement at the
tech session before the Final EIS was issued; do
you remember that?

A  (Palmer) I do.

Q So did you dropping this statement from the
final version have anything to do with us
focusing on it at the tech session?

A  (Palmer) We heard comments about that in several
places. The tech session was one, but also in
public hearings.

Q  What kind of comments did you hear that would have caused you to drop it?

A  (Palmer) It was that the comment may be appropriate for structures but was not appropriate for the cleared right-of-way which can be visible and have a significant, potentially significant change over much further distances.

Q  So is the comment then still appropriate for structures?

A  (Palmer) Yes. I think that starting at a mile and a half and then going to maybe three miles, my expectation would be that the potential for severe impacts greatly reduces. You would have to be in situations where you're probably elevated and maybe the lighting is such that the structures are highlighted past three miles.

A  (Owens) Or you're seeing multiple structures in a row that come together and take up more.

A  (Palmer) So things like you get reflection off of the structures of the conductors would be visible five or six miles but yeah.

Q  So let me just make sure I get this right. You
originally said it is recognized that the potential for visual impacts from the proposed structures is increasingly unlikely beyond 1.5 miles.

A (Palmer) Right.

Q There's nothing in there about the corridor which is what I thought you said.

A (Palmer) No. I'm sorry. There's another, I think that there's a place where we are actually defining these distance zones, you'll probably bring that up in a bit, that talk about the corridor and the structures. I think that's what was revised.

Q I guess my question is, do you stand by this statement or do you no longer stand by it?

A (Palmer) No. I stand by the statement that it begins at around this distance and the potential decreases. Starting here.

Q Okay. So I'm going to ask you to help me synthesize this now because I want to go to the Final EIS which is Applicant's Exhibit 205 at page 37. And now there's a good summary for you of all these distances if you need to have your recollection refreshed, and I want to focus on
this far middle ground again, the 1.5 to 3, and have you take a chance to read that paragraph for a minute.

A (Palmer) This is a different part of the report, correct?

Q This is the Final EIS.

A (Palmer) Yes, but a different part.

Q But, again, both talking about distance zones, and, in particular, the far middle ground, right?

A (Palmer) Yes. Correct.

Q Okay. So take a minute to read that, and then I have a question for you.

A (Palmer) Okay.

Q So in that very first sentence, there are very few visible details at this distance and there is a growing sense that the Project is distant. I assume since that's in the Final EIS you still stand by that.

A (Palmer) That's correct. In this distance zone, that's what's happening.

Q All right.

A (Palmer) For a transmission line.

Q Okay. And I think you said in the Final EIS
Tech Report that when you're out in the field, it's not possible to see conductors from a thousand feet away unless they're catching light just the right way to produce glare. Does that sound familiar?

A (Palmer) Yes. Well, because of the thickness of the conductor or they could be overlapping or something like that. But in general, they're not thick enough, yes.

A (Owens) But they are paired sometimes so you essentially double that intensity that you see which you can see from further than a thousand feet.

Q So continuing on with Applicant's 205 at page 33, here you say, "It is expected that the potential for adverse impacts in most areas are significantly reduced beyond 1.5 miles from a structure because of land cover screening," right?

A (Palmer) That's what it says.

Q So now we have land cover screening coming into the analysis here, and this seems to comport with what you said earlier about this diminishing likelihood of adverse impacts from
structures at this distance, right?

A (Palmer) That's correct.

Q Do you have any idea how many of the 7,419 resources in your initial inventory are in each of the distance zones?

A (Palmer) I do not.

Q Do you have any sense at all of how much of those resources are between 1.5 and 3 miles?

A (Palmer) I do not.

Q So going back to what you just said a moment ago regarding resources at this distance, whatever that number is, we can now say using your language that the potential for adverse impacts at most of those resources are significantly reduced, right?

A (Palmer) That's what I would anticipate. However, the rules require the identification of resources out to 10 miles.

Q Understood.

A (Palmer) Okay.

Q Let's go to the near background. 3.3-5 miles. And we'll start with the Final EIS which is, again, Applicant's 205, and we'll go to page 37. Take a minute to read it, please. Let me know
when you're set.

A (Palmer) Yes.

Q Okay. So that last sentence is what I want to focus on. You say, "Under most conditions, a transmission line could not dominate a view from this distance," right? Three to five miles?

A (Palmer) The structures. That's correct.

Q Okay.

A (Palmer) Yes. Under most conditions. That's correct.

Q And then go to page 51. And I'm looking at the second sentence here. Here you say beyond, and this distance is three miles here, so beyond three miles, and you can confirm that if you'd like, the proposed Project is visually part of the background and will only have modest visual presence, correct?

A (Palmer) That's what it says.

Q So do you have any idea how many of the 7,000-plus structures are in this 3- to 5-mile zone? I take it you don't.

A (Palmer) That's correct.

Q But we can agree that whatever that number is, using your language, under most conditions
beyond three miles the transmission line couldn't dominate the view at those resources.

A (Palmer) It's not that it couldn't, but it would be much less -- it would be unlikely, yes.

Q Well, you said on page 37 could not dominate a view from this distance. You didn't qualify it. Are you now qualifying it?

A (Palmer) Did I say the structures would not dominate the view or the transmission line wouldn't, which includes the right-of-way, wouldn't dominate the view?

Q Let's go back to 37 so you can get it correct and see what you said.

A (Palmer) Um-hum.

Q You said under most conditions a transmission line could not dominate a view from this distance.

A (Palmer) So under most conditions it couldn't. But under potentially some conditions, it might.

Q Understood. You agree with me that the purpose of producing photo simulations is generally to provide a representative sampling of potential effects?

A (Palmer) The purpose of visual simulations is to
show the proposed condition from a viewpoint, and the viewpoints get chosen for different kinds of reasons. Typically, they're chosen because they show the Project in a prominent impact position, worst case scenarios.

Q Okay. As far as you know, did you during the course of doing your work here do any photo simulations from beyond three miles?

A (Palmer) Yes.

Q Where?

A (Buscher) So as part of the DOE process we looked at several different Project alternatives.

Q I may be able to shortcut this. I'm referring to the SEC process.

A (Buscher) So, first of all, we did very, very few simulations specifically for the SEC process. We incorporated simulations that were provided as part of the DOE process.

Q All right. So for purposes of your SEC analysis, did you do any photo simulations beyond three miles or did you incorporate into your SEC analysis any photo simulations from beyond three miles?
(WITNESS PANEL: PALMER, BUSCHER, OWENS)

A  (Owens) I would have to check back and see what
the distance zones are for some of those. Some
are, for instance, Apple Hill Farm has both
close proximity and distant proximity, and we
didn't identify that full range. So I'm
thinking that that one would be beyond three but
I might be wrong, and I'd have to go back to
answer that question specifically.

Q  So as you sit here today, is it fair to say you
can't think of any beyond maybe the possibility
of Apple Hill Farm?

A  (Palmer) We typically labeled our simulations by
the closest structure. So we don't really know
what the distance of the farthest structure is.

Q  But, again, going back to my question as you sit
here today, you can't think of any, right? They
may be there.

A  (Buscher) I think what we're saying is we would
need to go back and take a look.

Q  Okay.

A  (Buscher) I think we said that.

Q  And doing those simulations would be important
because those would provide these representative
samples that you were talking about, right?
A (Buscher) That's correct.

Q So any sort of absence of simulations at that distance or a paucity of simulations at that distance would at least suggest that you didn't perceive there to be a risk of great effects at that distance.

A (Buscher) Again, we did not do an analysis. Can't make that any more clear. We were retained to do a review of the analysis provided to the SEC by the Applicant.

Q Let's talk about one more distance zone which is the far background. I think you told us earlier that you were present when Attorney Connor was questioning Mr. DeWan and Ms. Kimball on the afternoon of August 31st. Does that sound right?

A (Palmer) Yes. I think that that's true.

Q And she was asking them about visibility beyond certain distances. Do you have any recollection of that?

A (Palmer) Maybe if you keep going it will help.

Q All right. Mr. DeWan said that in the 2016 supplement to their VIA that, quote, "Once you get beyond a certain distance, it's virtually
impossible to have a visual impact on a resource," close quote. Do you remember him saying that?

A (Palmer) I remember him saying a statement similar to that, right.

Q And he further explained what you meant in his February 2016 Supplement and his Supplemental Prefiled Testimony; do you recall that?

A (Palmer) I don't recall exactly what he said, but I think I'm familiar with his position.

Q Ms. Connor was, I think, critical of Mr. DeWan for those statements so what I want to do is I want to look at what you said about these issues. So let's pull up Applicant's Exhibit 106 again which is the Draft Environmental Impact Statement. And we'll look at page 29. And I guess we're into the far background.

So here you said even on the clearest days, humidity reduces a visual contrast to such an extent that structures and the cleared corridor are difficult to distinguish as other than a vague smudge on the landscape.

Do you remember saying that in the draft?

A (Palmer) That's what it says in the draft, yes.
Q And, in fact, Mr. DeWan then cited this quote in his February 2016 filing with the Committee, right?


Q But this quote was then removed from the Final EIS, right? We'll go to that in a minute.

A (Palmer) I can't say that it was removed. It was revised, I think.

Q It was revised. Fair enough.

A (Palmer) Yes.

Q Was it revised because Mr. DeWan cited it?

A (Palmer) It was revised because we had feedback during meetings about the impacts of structures from a great distance, and we had one simulation at about 6.7 miles, I think, where the right-of-way was quite clear. It wasn't a smudge.

Q So what exactly was that feedback? Who gave it to you?

A (Palmer) I don't know. It was in public meetings. It was in a public meeting.

A (Owens) I can say I also gave some feedback in internal discussions in our office about that particular subject as well.
Q So, Mr. Owens, you didn't see the draft before it was published? You only reviewed it after it was published?

A (Owens) I helped edit parts of that report so --

Q So you waited until after it was published to provide the feedback?

A (Owens) No. I gave feedback pretty much the whole time, but, I mean, essentially we had discussions about topics at various times throughout the entire Project and some of that revolved around theoretical issues that maybe one or more of us had in the office with certain statements like that.

A (Buscher) And that's part of the benefit of having a draft.

Q Let's go to the Final Environmental Impact Statement, Exhibit 205, page 38, far background.

So I think you said a moment ago, Mr. Palmer, that you revised it. So this is the revised version, right?

A (Palmer) Yes. I think so.

Q Take a second to look at that.

A (Palmer) Okay.

Q What you did here, I think, was you changed this
regarding the corridor, but you didn't make any change regarding structures, right?

A (Palmer) I think at this distance that it's accurate from the field work that we have done and the simulations that we created which are based on CAD information placed in these, scaled CAD information placed in the photographs, that we felt comfortable about the vague smudges in relation to structures. The comments that we had were specifically about the corridor and in particularly about one simulation where we had a corridor at 6.7 miles and it wasn't a vague smudge. So we corrected the language to separate those two.

A (Owens) Also some Projects have different size corridors. We've worked on projects that are as much as 250 feet wide at least in terms of the right-of-way, projects that maybe only half of that had cleared corridor, and then they would add another line in the second half, essentially widening that corridor. Two hundred and fifty feet wide of a corridor under snow conditions is pretty readily apparent at distances greater than five miles.
Q  But just to be clear, we agree that, quote, "structures may be difficult to distinguish as other than evaluating smudges in the landscape," close quote, at this five- to 10-mile distance, right?

A  (Palmer) Yes. And, again, looking closely at how the simulation where the corridor was 6.7 miles, that's the beginning, the closest part, in evaluating the CAD, the placement of the CAD structures and the scale and those sorts of things, that led to this change.

A  (Buscher) I actually don't think it was just the simulation. I also think it was the visibility of an existing line in that corridor that we're not simulating that was observed. I think I actually took that photograph.

A  (Palmer) Yes. It is a thing that we talked about in the office a fair amount.

Q  And just one other question.

So however many scenic resources on your list of 7,419 are in this 5- to 10-mile zone, whatever that number is, for those resources, structures viewed from those resources would just be a vague smudge on the landscape, right?
A (Palmer) Under most conditions, that's correct.
A (Buscher) If you're asking that we think that there is a factor employed when doing an assessment on an identified resource does distance have an effect on the impact? Is that what you're asking?
Q No. I'm asking if for all the resources within 5 to 10 miles based on Mr. Palmer's language we can fairly conclude that structures may be difficult to distinguish as other than vague smudges on the landscape. Sounds like he said yes.
A (Palmer) Yes.
A (Buscher) That was Mr. Palmer's language, and I agree that there is a diminishing effect with distance. I don't know if I would necessarily characterize it as a smudge on the landscape.
Q So you and Mr. Palmer now disagree on this.
A (Buscher) I think we could disagree easily on specific verbiage, yes.
A (Owens) And also it depends on what you mean by structure. Some people would consider a substation a structure so that may have more than a smudge.
Q: I'm just reading what Mr. Palmer said.

A: (Palmer) So I'm not thinking about substations. I'm thinking about the structures of the line, and I'm not thinking of conditions where there's glare or -- I mean all of those, those are the exceptional conditions, but, in general, I would agree with what you're trying to say here.

Q: Okay. I was going to stop there, but I'm confused now about glare. I think what we heard before is that glare basically is not an issue beyond a thousand feet and I think Mr. Owens said --

A: (Palmer) Oh, no. No, no, no. Where did that come from? That is definitely not us.

Q: Well, let's hang on a minute. Dawn, if you can find that more quickly than I can, let me know. FEIS Technical Report at page 34. Page 78916. So you wrote the Technical Report, right?

A: (Palmer) So we're talking about the sentence that says, "However, field observations will demonstrate that it is not possible to see conductors from a thousand feet away unless they're catching the light just right to produce glare"?
Q Yes.

A (Palmer) Yes, well, you can only see a conductor because of the width of the conductor, a couple inches. At a thousand feet that sort of disappears unless you've got two conductors overlapping and then the apparent diameter is bigger than that.

A (Owens) Or more. Sometimes up to four conductors.

A (Palmer) And so it drops away unless they are catching the light just right to produce glare. Then you can see it for miles away.

Q Okay. Understood. Mr. Chair. I think I'm --

A (Palmer) Thank you for clarifying that.

Q Well, I appreciate it. I didn't understand it.

I'll make a quick public service announcement. Someone left their glasses up here.

PRESIDING OFFICER HONIGBERG: And we needed that on the record. So is that it for today?

MR. NEEDLEMAN: I think so.

PRESIDING OFFICER HONIGBERG: We'll adjourn for the day. We'll be back together again on Monday.
(Hearing recessed at 4:58 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
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interested in this action.

Dated at West Lebanon, New Hampshire, this 22nd
day of October, 2017.

___________________________
Cynthia Foster, LCR