

1 **STATE OF NEW HAMPSHIRE**

2 **SITE EVALUATION COMMITTEE**

3 **October 20, 2017 - 2:02 p.m.** **DAY 49**
 4 49 Donovan Street **Afternoon Session ONLY**
 5 Concord, New Hampshire

6 *{Electronically filed with SEC on 11-06-17}*

7 **IN RE: SEC DOCKET NO. 2015-06**
 8 **Joint Application of Northern**
 9 **Pass Transmission, LLC, and**
 10 **Public Service Company of**
 11 **New Hampshire d/b/a Eversource**
 Energy for a Certificate
 of Site and Facility.
 (Hearing on the merits)

12 **PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

13 **Chrmn. Martin P. Honigberg** Public Utilities Comm.
 (Presiding as Presiding Officer)

14 **Cmsr. Kathryn M. Bailey** Public Utilities Comm.
 15 **Dir. Craig Wright, Designee** Dept. of Environ. Serv.
 16 **William Oldenburg, Designee** Dept. of Transportation
 17 **Patricia Weathersby** Public Member
 18 **Rachel Dandeneau** Alternate Public Member

19 **ALSO PRESENT FOR THE SEC:**

20 Michael J. Iacopino, Esq., Counsel for SEC
 (Brennan, Caron, Lenahan & Iacopino)

21 Pamela G. Monroe, SEC Administrator

22 *(No Appearances Taken)*

23 **COURT REPORTER: Steven E. Patnaude, LCR No. 052**
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I N D E X

PAGE NO.

		PAGE NO.
WITNESS:	STEPHAN T. NIX	
	Direct examination by Mr. Thompson	4
	Cross-examination by Mr. Aslin	9
	Cross-examination by Ms. Pastoriza	23
	Cross-examination by Ms. Saffo	60
	Cross-examination by Mr. Lakes	88
	Cross-examination by Ms. Draper	94
	Cross-examination by Mr. Hodgdon	96
	Redirect examination by Ms. Menard	143
	QUESTIONS BY THE SUBCOMMITTEE/ SEC COUNSEL BY:	
	Ms. Weathersby	115
	Mr. Oldenburg	121
	Cmsr. Bailey	135
	Mr. Iacopino	137

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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
Jt. Muni 302	Plan noted as Construction Plan Federal Aid Project for N.H. Project No. 12971, noted as "As-Built Plans"	54
Jt. Muni 301	Ancient map - noted as "S.R. Sheet 4-4 Clarksville Town Rec. Book 1, Page 10 1839 4 Rods"	58

[WITNESS: Nix]

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P R O C E E D I N G

(Hearing resumed at 2:02 p.m.)

CHAIRMAN HONIGBERG: Mr. Patnaude,
would you swear in the witness please.

(Whereupon **Stephan T. Nix** was
duly sworn by the Court
Reporter.)

CHAIRMAN HONIGBERG: I understand
that Mr. Thompson is going to get you started
here, Mr. Nix.

MR. THOMPSON: Good afternoon.

WITNESS NIX: Good afternoon.

STEPHAN T. NIX, SWORN

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Good afternoon, Mr. Nix, Attorney Nix. Would
you please give the Committee a brief synopsis
of your education, professional licenses, and
work experience.

CHAIRMAN HONIGBERG: After you've
given us your name and --

BY MR. THOMPSON:

Q Name and rank.

A Yes. My name is Stephan Nix. That's

[WITNESS: Nix]

1 S-t-e-p-h-a-n, N-i-x. I am -- my office is at
2 25 Country Club Road, Unit 502, Gilford, New
3 Hampshire 03249.

4 And just to move it along, if it's okay, I
5 am an attorney in New Hampshire, and I am also
6 a licensed land surveyor. I have a Bachelor of
7 Science degree from the University of New
8 Hampshire, a J.D. degree from Franklin Pierce
9 Law School, currently known as the University
10 of New Hampshire School of Law.

11 I -- excuse me -- have over 35 years
12 experience in land surveying, civil
13 engineering. In the early 1980s, I worked as a
14 land surveyor and engineering technician
15 designing subdivisions, commercial and
16 industrial site plans, roads, sewers, water
17 systems, utility systems, both aboveground and
18 belowground. I then -- I became licensed as a
19 land survivor, became a partner -- in the mid
20 '80s I became a partner in a civil engineering
21 company, I was a managing partner. I also was
22 a project manager in that capacity for many
23 years.

24 Went to law school in 1994, I believe, '4,

[WITNESS: Nix]

1 yes. Graduated in 1997. I have maintained my
2 surveyor's license, as well as being licensed
3 as an attorney. And my practice focuses on
4 land use issues, development issues. I still
5 consult as a surveyor.

6 And, as an aside other licenses that I've
7 held in the past include Level 2 Weld Inspector
8 on a tunnel project for I-95, digging
9 underneath the Baltimore Harbor, the Fort
10 McHenry Tunnel Project. I was also a licensed
11 septic designer for over twenty years. I let
12 that one go, and I just didn't want to keep
13 that one up anymore. I was also a licensed
14 septic installer. And I designed literally --
15 literally thousands of systems.

16 Q Thank you. Do you recall your prefiled
17 testimony dated December of 2016 and your
18 supplemental prefiled testimony dated March of
19 2017? Do you confirm and adopt that testimony
20 today?

21 A I do recall that testimony. And I do adopt and
22 confirm it as of the date that it was submitted
23 to the Committee. Since those dates, there
24 have been additional submittals by the

[WITNESS: Nix]

1 Applicant, which I have reviewed and come to
2 conclusions on.

3 Q Thank you. Will you please describe the
4 documents that were filed by Northern Pass
5 Transmission line after your -- after you
6 submitted your testimony that you reviewed?

7 A Well, if I answer the question the way you
8 phrased it, the list would go on and on, folks.
9 So, I'm going to narrow it down a little bit to
10 the ones that apply to my review: The Meridian
11 Survey Report, dated April 12th, 2017; the BL
12 Company Survey Report, dated April 19th, 2017;
13 the DOT Survey Report, which I call the
14 "rejection letter", dated August 11th, 2017,
15 with an addendum, which is a memorandum from
16 the Department of Transportation, I call it the
17 "Talon memo", dated August 1st, 2017; the DOT
18 letter amending the survey requirements, dated
19 October 3rd, 2017, with an addendum, the second
20 Talon memo, dated September 5th, 2017; and the
21 transcripts of the construction committee
22 testimony, dated September 29th, 2017 and
23 October 2nd, 2017.

24 There are also survey plans. The one I

[WITNESS: Nix]

1 have written down here was the "BL Survey
2 Plan", which was I believe submitted sometime
3 in May of 2017 to the Department of
4 Transportation.

5 MR. THOMPSON: Thank you. That's all
6 I have.

7 CHAIRMAN HONIGBERG: Okay. Mr.
8 Aslin, I assume you have questions for the
9 witness?

10 MR. ASLIN: I do. Thank you.

11 CHAIRMAN HONIGBERG: While he's
12 getting set up, who else has questions for this
13 witness?

14 I see Ms. Saffo. I see Mr. Palmer.
15 I see Ms. Pastoriza. I see Ms. Menard. I see
16 Ms. Draper -- I see two Drapers.

17 MR. DRAPER: No, not me. I'm
18 just pointing it out.

19 MS. DRAPER: Just a longer arm.

20 CHAIRMAN HONIGBERG: Yes.
21 Mr. Draper, you said your arm is longer.

22 MR. DRAPER: That's what I was trying
23 to do.

24 CHAIRMAN HONIGBERG: Was there

[WITNESS: Nix]

1 anybody else?

2 Oh, there are more. Okay. All
3 right. We've got all kinds of folks. We'll
4 call them in the order that I have them on the
5 sheet.

6 Mr. Aslin, you may proceed.

7 MR. ASLIN: Thank you, Mr. Chairman.
8 Attorney Nix, good afternoon, at this point.

9 My name is Chris Aslin. I'm from
10 the -- I'm an Assistant Attorney General, and
11 I've been designated as Counsel for the Public
12 in this proceeding.

13 I'm going to ask you a few questions
14 about your prefiled testimony and the
15 developments in the record that have come up
16 since then.

17 **CROSS-EXAMINATION**

18 BY MR. ASLIN:

19 Q Just as a preliminary matter, I assume, though
20 it was not 100 percent clear in your testimony,
21 that you were retained by the Thompsons to
22 provide expert testimony in this proceeding?

23 A Yes. And it's the -- in the supplemental it
24 states that the Thompsons, for the Northern

[WITNESS: Nix]

1 Abutters. So, it was Brad Thompson, as the
2 spokesman, that is my contact.

3 Q Okay. So, you're here on behalf of the entire
4 group of Combined?

5 A That's my understanding, yes.

6 Q Very good. And I did want to point out one
7 error it looked like, in your supplemental, the
8 date appears to have the wrong year. So,
9 Mr. Thompson referenced the date of it as being
10 "March of 2016", which -- or, "2017", which I
11 think is the actually correct date, but the
12 document itself has a different date?

13 A That would be correct. I will make that
14 amendment. I apologize.

15 Q Just wanted to clear that up for the record.
16 Your testimony, both your direct prefiled and
17 your supplement testimony, in essence, raised a
18 number of critiques to the survey -- the
19 right-of-way survey done by the Northern Pass
20 Project for the underground portion of the
21 Project. And would it be a fair summary to say
22 that you found numerous inadequacies in what
23 the original survey that was submitted by the
24 Applicant?

[WITNESS: Nix]

1 A That's correct. Right. The original survey
2 did not -- basically, had so little information
3 on it that it did not appear that an adequate
4 on-the-ground survey, if an on-the-ground
5 survey had been done at all. And it also --
6 the analysis, if there was any analysis, seemed
7 to be so poor that there were, and in my
8 supplemental I went on page-by-page to indicate
9 how the plans don't meet the requirements of
10 the Board of Licensure for land surveying in
11 New Hampshire.

12 Q Yes. And you referenced a minute ago with
13 Mr. Thompson the DOT letter from July 17th of
14 this year, which I will put up on the screen.
15 I believe it is -- oh, down here. I believe
16 this was marked earlier as "Counsel for the
17 Public Exhibit 493", although I don't have the
18 official version on my computer.

19 Is this the letter that you were
20 referencing in your exchange with Mr. Thompson?

21 A This is one of them. That's correct.

22 Q And do you understand that, in this letter,
23 DOT, in essence, rejected the survey that had
24 been submitted by the Applicant?

[WITNESS: Nix]

1 A That is correct. This is in response to the
2 submittal of the April -- or, submittal, I
3 think it has it in here, May 4th, 2017
4 submittal to DOT of the Meridian and the BL
5 Companies survey reports and plans.

6 Q And would you agree that part of the reasoning
7 from DOT was that the survey submitted failed
8 to satisfy the General Condition Number 4 of
9 the DOT Standards?

10 A That's correct. And I agree with I believe it
11 was Mr. Talon who wrote the underlying
12 memorandum on that. And I agree with him that
13 those plans did not meet the requirements of
14 the Board of Licensure rules for a boundary
15 survey.

16 Q And I believe you also testified with
17 Mr. Thompson that you're aware of the DOT
18 approving a procedure for Northern Pass to move
19 forward with creating and submitting a new
20 survey, is that correct?

21 A That is correct.

22 Q And are you familiar with this October 3rd,
23 2017 letter?

24 A I am. And, if you can scroll down to the

[WITNESS: Nix]

1 memorandum, --

2 Q Yes.

3 A -- I can comment on that.

4 Q Well, I'll ask you about it, so you can comment
5 on it.

6 A Okay.

7 Q Before we get to that, the substance, is it
8 your understanding then at this point a new
9 survey will be completed by the Applicant and
10 submitted for review by DOT?

11 A That's my understanding.

12 Q Okay. And, at this point, you haven't seen
13 that survey, because it hasn't been submitted,
14 is that correct?

15 A That is correct. I have not seen it.

16 Q Okay. So, I'll give you -- I guess you've
17 already reviewed this, but I'll give you a
18 second to take a look at it again. In your
19 opinion, will this procedure that has been
20 adopted or agreed to by DOT, for the creation
21 of a new survey by the Applicant, will that
22 address the concerns that you had raised in
23 your direct and supplemental testimony?

24 A No.

{SEC 2015-06}Day 49/Afternoon Session ONLY{10-20-17}

[WITNESS: Nix]

1 Q Why not?

2 A Well, first of all, the survey plans are, in
3 the overall permitting process, are coming in
4 at the eleventh hour. There was testimony by
5 Mr. Johnson and Mr. Bowes at the rehearing, I
6 guess, of the construction committee, that this
7 was an iterative process and that this is a
8 normal process that they go through. And I
9 completely disagree with that.

10 The design process is based upon baseline
11 information, which is the survey information.
12 In the 35 plus years that I've been working on
13 projects, the baseline information, which is
14 the boundary, is completed prior to the design
15 work being done. And that's with the caveat
16 that preliminary conceptual design work can be
17 done prior to the completion, but that's not
18 adequate for governmental review.

19 So, in other words, the survey and the
20 establishment of the boundaries are not part of
21 the design process. They are preliminary to
22 the design process. They need to be done prior
23 to the design process starting. So, to include
24 them as part of the design process is not

[WITNESS: Nix]

1 correct. They need to be done, or at least 95
2 or 98 percent done.

3 In this case, there's zero percent done.
4 We've got a plan that has no metes and bounds
5 on it. The April 5th BL Plan has no metes and
6 bounds on it. There is no tie-in to the road.
7 There is no tie-in to the Project. They don't
8 meet the standards for land surveying in New
9 Hampshire. And they're totally inadequate for
10 the purposes at hand, especially at the
11 eleventh hour of an application review of this
12 magnitude. This should have been done years
13 ago.

14 Q Okay. Attorney Nix, I understand that answer.
15 But what I'm asking is, to looking forward at
16 this point, if the Applicant follows the
17 procedure that's outlined in this memorandum
18 that's been adopted by DOT, is it your opinion
19 that the resulting survey will meet the
20 requirements of the surveying laws and rules
21 that you were referencing in your testimony?

22 A No.

23 Q Okay.

24 A This memorandum appears to be DOT's approach to

[WITNESS: Nix]

1 an end run around the Board of Licensure's
2 rules for the production of a land survey. And
3 I don't mean "end run" in a derogatory way. I
4 mean, the DOT does not have the authority to
5 determine what constitutes a boundary survey.
6 That is established in the Board of Licensure
7 rules, Lan 500.

8 And, so, many of these tasks that are
9 outlined would be tasks that the surveyor does.
10 But, at the end, when DOT says "This is all you
11 have to do, we'll be satisfied with the
12 boundary", is usurping the Board of Licensure's
13 authority in determining what is necessary.

14 There is one line item in here that DOT
15 does not have the authority at all under the
16 law, nor do the land surveyors, and that is the
17 third black bullet down, the third open bullet,
18 which "Prescriptive right-of-way centered on
19 existing traveled way lacking other evidence,
20 adjusted per private recorded plans and/or
21 field observations." A prescriptive
22 right-of-way is a right-of-way that was neither
23 laid out or dedicated and accepted. And a
24 prescriptive right-of-way, under New Hampshire

[WITNESS: Nix]

1 law, RSA 229, is a right-of-way that is
2 established by twenty years of public use prior
3 to January 1st, 1968.

4 Under *Gordon v. Rye* --

5 CHAIRMAN HONIGBERG: Whoa. Whoa,
6 whoa, whoa, whoa. We are so far beyond the
7 question that was asked. And I know you're a
8 lawyer, but you're not here to give legal
9 opinions, okay?

10 WITNESS NIX: My answer had to do
11 with land surveying. The definition of "land
12 surveying" states that --

13 CHAIRMAN HONIGBERG: Well, why don't
14 you just stop talking right now, and let
15 Mr. Aslin ask a more focused question that will
16 get a more focused answer.

17 MR. ASLIN: Thank you.

18 BY MR. ASLIN:

19 Q Attorney Nix, from what you were just
20 describing, am I correct in understanding that
21 your critique is that, while the survey itself
22 may depict the correct information at the end
23 of this process, it is not within the purview
24 of DOT to determine whether a survey meets the

[WITNESS: Nix]

1 Board of Surveyor's requirements?

2 A Well, if I could take the second half of that
3 question and say that I agree that the
4 Department of Transportation does not have the
5 authority to dictate what constitutes a
6 boundary survey.

7 MR. NEEDLEMAN: I'm going to object
8 to this. These are calling for legal
9 conclusions.

10 CHAIRMAN HONIGBERG: I think that was
11 a yes or no question. I think you answered "I
12 agree with the second part of what your
13 question said." Did I get that right?

14 WITNESS NIX: Yes.

15 CHAIRMAN HONIGBERG: Okay. You may
16 proceed, Mr. Aslin.

17 MR. ASLIN: Thank you.

18 BY MR. ASLIN:

19 Q And the first part of the question, if I'm
20 remembering it correctly, was whether this
21 process -- sorry -- whether you're challenging
22 that this process will create a valid, valid in
23 the sense of a factually accurate survey?

24 A Let me, if I may, I'll just restate what I

[WITNESS: Nix]

1 think you asked. Is that, "will this process
2 create a valid survey?"

3 Q Well, you've challenged the survey in the sense
4 that it doesn't meet legal standards under the
5 Board of Surveyors?

6 A Correct.

7 Q What I'm trying to get at is, with regard to
8 this process at the SEC, is it your opinion or
9 testimony here that this process that DOT has
10 set forth will not create a factually accurate
11 survey that the SEC can rely on?

12 A That's correct.

13 Q Okay. And, so, setting aside the legality of
14 who decides what is a proper survey under the
15 Board of Licensure, what do you believe is
16 missing from this approach that will not --
17 that will lead to an inaccurate or incomplete
18 survey?

19 A What is missing from this approach are the
20 requirements laid out in the Board of Licensure
21 rules, 503, which requires that a licensed land
22 surveyor look to additional evidence, and
23 there's a whole list of it. If you want to me
24 to go through it, I can?

[WITNESS: Nix]

1 Q No, that's okay. Because I think it's in your
2 testimony already.

3 A It is. It is. One of the issues that is
4 missing here are historic plans and records,
5 the 1860 wall maps, the 1895 Atlas, the 1909
6 USGS maps, if that's the date for that
7 particular part of the country, but in that
8 era. Those aren't on here.

9 The other issue that's on here is that a
10 land surveyor -- as a licensed land surveyor, I
11 may not certify that a road is a public highway
12 by prescription.

13 Q Okay.

14 A I cannot do that.

15 Q Let's not get into that issue quite yet.
16 You've mentioned a few things that are
17 required, in your opinion, under the
18 Licensure -- Board of -- sorry, the Board of
19 Surveyors. Is it your contention that the
20 information -- well, let me ask it a different
21 way. Do you believe that this process
22 precludes the Applicant from following what you
23 believe are the requirements under the Board of
24 Licensure rules? Or is it that this procedure

[WITNESS: Nix]

1 is not detailed enough to satisfy you that they
2 will follow those rules?

3 A I agree with your first statement. That this
4 does not preclude a land surveyor from doing a
5 proper survey of these roads.

6 Q Okay. And because you haven't seen the final
7 product, we don't yet know or you don't have an
8 opinion on whether the final product meets the
9 rules?

10 A Correct.

11 Q Okay. I want to ask about one other thing that
12 you addressed in your supplemental testimony,
13 which was at Page 9. You've made an argument
14 that, under Site 301.03(c)(3), the mapping
15 requirement in the SEC rules must or should be
16 read to require a Standard Property Survey.

17 Is it your position that the SEC can't
18 accept a map that doesn't -- isn't stamped by a
19 surveyor for the purposes of reviewing this
20 Project?

21 A For this Project, yes. That's my position.

22 Q Okay. You qualified it "for this Project". Is
23 it different for other projects?

24 A Well, there's other projects that may or may

[WITNESS: Nix]

1 not involve lands.

2 Q I see.

3 A So, --

4 Q Okay. And do you have any legal support for
5 that position that's not within the rules for
6 this body, the SEC rules?

7 A Yes. In the statute, 162-H, it specifically
8 says that private property rights are one of
9 the issues that this Board needs to address.
10 And, in order to properly address them, a
11 proper survey needs to be produced.

12 Q Okay. So, your contention is, because the
13 Board has to address property rights, they need
14 a survey of the property that's being affected?

15 A That's correct.

16 MR. ASLIN: Okay. I have no further
17 questions. Thank you.

18 CHAIRMAN HONIGBERG: Okay. Of the
19 folks who identified themselves, I believe, Ms.
20 Pastoriza, you'll be first.

21 So, let me just read the order, and
22 that will confirm that I have everybody: Ms.
23 Pastoriza; Ms. Saffo; Mr. Palmer and Mr. Lakes
24 were from the same group, so we're probably

[WITNESS: Nix]

1 going to ask you to specify what it is the two
2 of you are going to ask about; Ms. Menard;
3 Ms. Townsend; and Ms. Draper.

4 Did I miss anybody?

5 *[No verbal response.]*

6 CHAIRMAN HONIGBERG: Okay Ms.
7 Pastoriza, you may proceed.

8 MS. PASTORIZA: I'm Kris Pastoriza,
9 Eastern Conservation Commission. My questions
10 somewhat overlap Mr. Aslin's, but not exactly.
11 So, I'm going to proceed. And, if they
12 overlap, you can avoid the overlaps.

13 Could you turn on the screens, Apple
14 TV?

15 CHAIRMAN HONIGBERG: Apple TV.

16 BY MS. PASTORIZA:

17 Q So, this is Joint Muni 298. It's Paragraph 4
18 of the New Hampshire DOT General Conditions of
19 Approval for their permit that they issued to
20 Northern Pass for burial on April 3rd.

21 You are aware that one of the General
22 Conditions of Approval was that the Applicant
23 provide a certified survey report identifying
24 the means and methods used to determine the

[WITNESS: Nix]

1 right-of-way?

2 A Correct.

3 Q You're also aware that another Condition of
4 Approval was that a licensed surveyor certify
5 that the right-of-way lines shown on the
6 submitted plans should be defined by ground
7 survey and all pertinent research?

8 A Correct.

9 Q So, what is your understanding of the term
10 "pertinent research"?

11 A The "pertinent research" is research that is
12 required to establish the boundaries. The land
13 surveyor who is going to certify would
14 determine what is adequate research for that
15 particular job. So, in other words, there
16 isn't a defined list. There's generalities.
17 That some of those generalities are on the DOT
18 list, but then there's other sources.

19 Q So, could you just give us a short list of what
20 some of those might be?

21 A Sure. I talked about historic maps, parole
22 evidence, additional research in the town halls
23 up through today to determine whether any
24 portions of the road have been moved or

[WITNESS: Nix]

1 discontinued. There's physical evidence on the
2 ground that needs to be looked at as well.

3 Q And, so, six months have passed since this
4 letter was issued. What is your understanding
5 of whether the Applicants have complied with
6 these requirements to date?

7 A Well, my understanding is they have not.

8 Q So, this is Joint Muni 298. It's a page from
9 BL Companies' survey, which they sent to DOT on
10 April 12th. And it was uploaded to the
11 Department of Transportation's website on
12 August 18th. This survey was signed by
13 Jennifer Marks, a Licensed Land Surveyor in the
14 State of New Hampshire.

15 In your opinion, is this survey missing
16 any of the information required in Paragraph 4
17 of the Conditional Permit?

18 A Yes.

19 MR. NEEDLEMAN: Mr. Chair, I'm going
20 to object. This is beyond the scope of his
21 testimony. His testimony focused, I think, on
22 the state roads in the north, and this is
23 looking at 116 -- the town roads in the north.
24 This is looking at 116.

[WITNESS: Nix]

1 CHAIRMAN HONIGBERG: Ms. Pastoriza.

2 MS. PASTORIZA: His focus was on the
3 practice of surveying in general, which applies
4 to any road on this route.

5 CHAIRMAN HONIGBERG: Overruled. You
6 can answer.

7 **BY THE WITNESS:**

8 A This is typical of all of the plans that were
9 submitted in May. There are no metes and
10 bounds on these plans. There's no indication
11 of how the right-of-way was determined in the
12 different locations. What the surveyor did do,
13 in the bottom left-hand corner, is indicate
14 that, in a solid line, that there are areas
15 where they feel comfortable in determining the
16 right-of-way, but the dash lines are indicated
17 to be a line based on the centerline of the
18 road. And, then, the line with two dashes are
19 approximate right-of-way.

20 So, essentially, this is a very, very
21 preliminary plan of the surveyor's work, and
22 does not meet the requirements of Lan 500 for
23 plats. There's no indication of the -- what
24 evidence the surveyor obtained for the legal

[WITNESS: Nix]

1 status of the roads. So, in other words,
2 there's no note on here that states that the
3 road was laid out. There's no evidence to
4 indicate that it's determined to be a road by
5 prescription.

6 The only thing that is on here are --
7 well, it's not even on the plan. There's no
8 reference to why or how they determined the
9 solid lines on it.

10 Q So, can you see any reason why they hold to one
11 iron boundary there and not the concrete
12 monument there in the center?

13 A There's not enough information on this plan to
14 determine why they did that.

15 Q And there's no information as to why the paved
16 surface is wandering throughout the claimed
17 right-of-way?

18 A That, the wandering of the paved surface
19 throughout the right-of-way, does not
20 necessarily create a problem, because the road
21 is not always centered in the right-of-way.
22 You know, over time, they shift or they may
23 have been built off-center from the centerline
24 of the right-of-way.

[WITNESS: Nix]

1 However, if the -- excuse me -- if the --
2 can you move it back over to the left where the
3 legend is?

4 If you look at the approximate
5 right-of-way line based on centerline, and then
6 you go up to the top right-hand, where there's
7 two dashed lines, you will see that those
8 dashed lines are not centered on the
9 right-of-way. So, that raises a question of
10 what was really held. And there's not enough
11 information on there, but it's in direct --
12 it's internally inconsistent, where the legend
13 says they're holding the centerline, but the
14 line work does not hold the centerline. And
15 that's pretty graphically evidenced above the
16 Coots property, where the road is shifted over
17 to the left.

18 Q So, you would say that this document does not
19 contain notions on -- notations on all records
20 and plans, as required?

21 A No, it does not.

22 Q And would you consider notification of abutters
23 to a right-of-way, such as this one here, to be
24 part of the pertinent research?

[WITNESS: Nix]

1 A In a case like this, I would be contacting
2 abutters in locations that I didn't have any
3 other information. There is -- it's best
4 practices for a land surveyor to discuss with
5 abutters. As a matter of fact, the parole
6 evidence is one of the -- parole evidence is
7 evidence that's verbal evidence, where the land
8 surveyor will actually talk to landowners, and
9 because landowners have a huge wealth of
10 knowledge, especially if they've lived there
11 for a long time, about the land. So, the land
12 surveyor should be obtaining that parole
13 evidence.

14 Q Okay. So, this is Joint Muni 298, part of a
15 letter from DOT Commissioner Sheehan to Easton.
16 On July 17th, 2017, the Towns of Easton, Sugar
17 Hill, and Franconia wrote to Commissioner
18 Sheehan expressing concern with the
19 right-of-way boundaries, and asking her to
20 follow RSA 228.35, and have DOT establish the
21 right-of-way in areas of uncertainty.

22 Her response, in part, stated that "this
23 document", meaning the survey that Northern
24 Pass was going to produce, "will be certified

[WITNESS: Nix]

1 by a Licensed Land Surveyor in New Hampshire as
2 meeting the required standards for real
3 property surveys."

4 So, you are aware of recent testimony that
5 Northern Pass is actively in the process of
6 attempting a second survey that will meet these
7 required standards?

8 A (Scott) That's my understanding.

9 Q So, this is Joint Muni 298, which is a page --
10 one page of the Standards of Real Property
11 Survey from the New Hampshire Land Surveyors
12 Association, Ethics and Standards. So, under
13 502.01, there was a requirement that "In the
14 absence of sufficient record evidence
15 substantiating the property lines and corners
16 being surveyed, attempts shall be made to
17 obtain evidence from unrecorded sources."

18 Based on your review of this Project to
19 date, is it your opinion that there is an
20 absence of sufficient record evidence
21 substantiating the property lines and corners
22 being surveyed?

23 A The answer to the question is "yes". But,
24 preliminarily, this is not from the Land

[WITNESS: Nix]

1 Surveyors Association. This is the Rules of
2 Administrative Procedure from the Board of
3 Licensure of Land Surveyors for the minimum
4 standards for surveying.

5 Q So, in the terms of the requirement in
6 Paragraph 4 that an effort should be exerted to
7 obtain evidence from unrecorded sources, and we
8 just kind of went over this, would that include
9 notification of abutters or discussions with
10 abutters to obtain historical information about
11 property?

12 A Yes. The land surveyor, it's generally
13 accepted procedures, when there's a lack of
14 evidence, to approach the abutters and ask them
15 what they know about their property. Many
16 times throughout my career, when I've talked to
17 abutters, they have taken me to corners that
18 they knew about that were difficult to find, or
19 they knew it was buried five feet down, and we
20 dug down and found it. So, that type of
21 evidence is very valuable.

22 The other evidence is what they have in
23 their attics. You know, the old plans from the
24 1920's that a surveyor did that were never on

[WITNESS: Nix]

1 record, but they are, in fact, very weighty
2 evidence to the surveyor as to what existed at
3 that time period.

4 Q In terms of the requirements in Paragraph (2),
5 that "All abutting tracts be researched as far
6 back as practical", based on your review of the
7 documents to date, what is your opinion
8 regarding whether the Applicants have fulfilled
9 that requirement?

10 MR. NEEDLEMAN: Objection. Which
11 documents? And with respect to what part of
12 the Project?

13 MS. PASTORIZA: Any of the documents
14 in --

15 CHAIRMAN HONIGBERG: I don't have a
16 problem with the question being asked about
17 compliance with this set of rules or his
18 opinion about it.

19 But, Ms. Pastoriza, when you're
20 reading them, you're reading them differently
21 than they appear on the screen in front of us.
22 And I'm not quite sure what the source of the
23 disagreement is. You added the words "to the
24 extent reasonably practical", or something like

[WITNESS: Nix]

1 that, when you read it. So, I'm not sure
2 what's happening.

3 MS. PASTORIZA: There's two very
4 similar documents. One was the New Hampshire
5 Land Surveyors Association Ethics, the other
6 one was the Lan standards. So, what I was
7 looking at was the Ethics, and what we have on
8 the screen is the Land -- the Lan. So, that's
9 the difference in wording. And I don't know
10 why there are two very similar documents here.
11 I can try to look on the screen, but that's
12 going to slow things up.

13 CHAIRMAN HONIGBERG: It will
14 certainly be less confusing, for those of us
15 trying to follow along, if you use the document
16 that we're looking at. That's just -- but, if
17 there's some reason why both documents are
18 relevant, maybe you can explore that with the
19 witness.

20 MS. PASTORIZA: No.

21 CHAIRMAN HONIGBERG: I don't even
22 know.

23 MS. PASTORIZA: I can look at the
24 computer.

[WITNESS: Nix]

1 BY MS. PASTORIZA:

2 Q So, in terms of the requirements in Paragraph
3 (2), which is that "All abutting tracts shall
4 be researched to ensure the correctness of the
5 record evidence", what is your opinion
6 regarding whether the Applicants have fulfilled
7 that requirement from what you've seen?

8 A From what I have seen, I don't know whether
9 they have fulfilled that requirement or not.
10 They don't have any notes on the plan to
11 indicate what they did.

12 CHAIRMAN HONIGBERG: Off the record.

13 *[Brief off-the-record discussion*
14 *ensued.]*

15 BY MS. PASTORIZA:

16 Q Then, based on your review of the Project, are
17 there other requirements for real land surveys
18 that you believe have been neglected to date?

19 A Yes. Yes. I was on the site yesterday. I
20 took the plans, the BL plans for North Hill
21 Road, Bear Rock Road, and Old County Road, and
22 went up to see what was up there. And I got up
23 to the north end of Old -- yes, North Hill
24 Road, and there is a cemetery that abuts this

[WITNESS: Nix]

1 proposed area that is not mapped on these
2 plans. Next to the cemetery is an old section
3 of road that goes up to the cemetery, and it's
4 not very far. It's only from here to the
5 middle of the room. And it was apparent to me
6 that at some point the road was moved, because
7 the original road went up a steep bank next to
8 the cemetery in the way.

9 And it took -- I was there for at least a
10 half an hour going through these plans to
11 figure out where they -- where it should be on
12 the plans, and they are not mapped. The
13 cemetery, it really raises a question about the
14 complete adequacy of the fieldwork that's been
15 done out here.

16 The moving of the road, for a land
17 surveyor, it raises all kinds of questions
18 about whether the road was relaid out, whether
19 the old section was discontinued. In many
20 cases, the town road agent will sometimes just
21 move the road, which raises the question of
22 "what is it?" Is it really a public road or is
23 it an encroachment on private property?

24 None of that is mapped. It doesn't show

[WITNESS: Nix]

1 up. Again, I was there for quite a while. And
2 I can tell you that it's on -- I think it's
3 NRTH-17. I finally could figure out, through
4 abutting properties and the way the road goes,
5 and there's a brook and a couple roads nearby,
6 where this would be on the plans, and none of
7 that shows up. Which raises a question of the
8 validity of all the fieldwork.

9 Q So, I'm going to return to -- so, I'm going to
10 return to the October 3rd new conditions, and
11 if you could just quickly reiterate your
12 assessment. In your opinion, do these
13 conditions honor -- satisfy New Hampshire laws
14 regarding land survey standards referenced by
15 DOT, specifically Lan 503.03 and 503.04, and
16 which were required by Condition Number 4 in
17 DOT's Permit to Northern Pass?

18 MR. NEEDLEMAN: Objection. Asked and
19 answered, and it calls for a legal conclusion.

20 CHAIRMAN HONIGBERG: Ms. Pastoriza.

21 MS. PASTORIZA: What he was saying
22 was that a surveyor could, if they were doing
23 the right thing, use these rules and come up
24 with something good. My question is, if

[WITNESS: Nix]

1 someone follows these rules in a loose-handed
2 fashion, could they come up with something that
3 followed the rules without satisfying the Lan
4 503.03, *etcetera*?

5 CHAIRMAN HONIGBERG: Overruled. You
6 can answer.

7 **BY THE WITNESS:**

8 A Yes. Well, specifically, under "Fieldwork", it
9 says "Field locate observable monuments and
10 physical evidence". An "observable monument"
11 is a monument that you can see when you walk
12 down the road without doing anything further.
13 Many, many times there are monuments that are
14 buried. And, in order to -- you need to do
15 deed research, research the plan record, you
16 need to do some preliminary layout of the
17 abutting lots. And then you need to go out
18 with a metal locator and see if -- a metal
19 locator can locate a monument that's been
20 buried. Even if they're three or four feet
21 down, it will send an indication. Those should
22 all be found and dug up. And that's a basic
23 requirement of fieldwork.

24 The research does not indicate, looking at

[WITNESS: Nix]

1 any of the -- it indicates historic road layout
2 records, but it does not discuss historic or
3 even current road discontinuance records, which
4 need to be looked at.

5 Again, the prescriptive right-of-way, as a
6 land surveyor, we cannot determine whether it
7 is a public right-of-way or not. We are
8 finders of fact. So, a surveyor would map the
9 physical evidence in the field, indicate to
10 their client that they do not have the
11 authority to determine that it is a public
12 right-of-way, or where the limits of those
13 rights-of-way are. The land surveyor would
14 then work with the client in a court proceeding
15 to have those limits established.

16 I will say that I don't have a problem
17 with using the centerline for the metes and
18 bounds, and then doing the stationing to the
19 right or left. Although, on a route survey of
20 this nature, that would be relatively standard.
21 For a boundary survey, people would generally
22 see it along their frontage.

23 What else is not on here is that, under
24 the rules for surveying, it requires that, when

[WITNESS: Nix]

1 a boundary survey is performed, that monuments
2 be set. And, now, this is a pretty extensive
3 route survey, so I wouldn't expect a monument
4 to be set at every property corner. But I
5 would expect that, in areas where there are no
6 monuments, that the surveyor would determine
7 appropriate places to set monuments, so that
8 the next surveyor can follow in today's
9 surveyor's steps and reconstruct this.

10 And that's one of the underlying rules of
11 surveying, is that we follow in the prior
12 surveyor's steps. And we have to leave enough
13 evidence on the ground of what we did. And
14 that there's no indication here that there will
15 be any evidence or any monuments set.

16 And then, again, without seeing the final
17 plans, that's what I'm picking up off of this,
18 this list.

19 BY MS. PASTORIZA:

20 Q So, in regards to Paragraph 3, since
21 prescriptive right-of-ways are generally set or
22 the layout is unknown, or the width of the
23 layout was not stated, could you explain how
24 private survey markers set on the abutting

[WITNESS: Nix]

1 property by a surveyor, without knowledge of
2 the road right-of-way, could be used to
3 determine the road boundary?

4 A If there is no -- if there is no layout width
5 and it's determined to be by prescription, that
6 is simply evidence of the prior surveyor's
7 location. Many times the surveyor will note on
8 their plans that there is no determined width
9 of the right-of-way. And the surveyor will
10 pick a common width for that area, so they can
11 put a monument in to determine the line. If my
12 right arm pointing up is the road *[indicating]*,
13 and my left arm coming in at a perpendicular
14 *[indicating]* is the private property line
15 between two parties, the surveyor needs to pick
16 some place to put the monument. And they will
17 generally pick a width that is consistent with
18 other widths in the area.

19 And beyond that, it's -- again, the
20 surveyor's job is a fact-finder. Prescriptive
21 rights, all that evidence would be put in front
22 of the judge, and the judge would decide.

23 Q So, the private survey marker on an unknown
24 right-of-way is a convenience, and they just

[WITNESS: Nix]

1 had to pick a point to put it down. It's not
2 an indicator of the road right-of-way
3 generally?

4 A Generally, correct.

5 Q So, this covers something you already covered,
6 but I wanted to put it up. So, in this email
7 to me, DOT states that they are not requiring
8 the surveyor to place survey markers. And just
9 to confirm, in your opinion, this does not
10 conform with New Hampshire land survey
11 standards?

12 A That's correct.

13 Q And what is the purpose of placing survey
14 markers?

15 A So that future surveyors and landowners will be
16 able to walk in the footsteps of the current
17 land surveyor and reconstruct the survey,
18 today's survey, 30 or 40 or 50 years from now.

19 Q And would the lack of survey markers make it
20 difficult for abutters to determine the claimed
21 right-of-way?

22 A Absolutely. There's no indication here at all
23 that this right-of-way will be staked at all.

24 Q So, if a property owner wanted to defend their

[WITNESS: Nix]

1 property rights, in the face of an inaccurate
2 or incomplete survey, how would they do this?

3 A The property owner would have to, assuming
4 that -- assuming that this process goes
5 through. It's approved at the Committee. It's
6 approved by DOT. The only recourse the
7 property owners then have is to bring a quiet
8 title action in superior court.

9 Q And can you give a ballpark figure for how much
10 that might cost someone?

11 A Twenty to fifty thousand dollars, per lot.

12 Q So, a person without 20 or \$50,000 has no legal
13 recourse to dispute a boundary setting?

14 MR. NEEDLEMAN: Objection.
15 Relevance.

16 CHAIRMAN HONIGBERG: Well, it's
17 sustained.

18 MS. PASTORIZA: I withdraw the
19 question.

20 BY MS. PASTORIZA:

21 Q So, this is marked as "Grafton County 36".
22 Going to Page 10. Sorry about that. So, this
23 document shows that Northern Pass, in the
24 person of Mark Hodgdon, had the layout

[WITNESS: Nix]

1 documents for the proposed route in 2015.

2 They're stating "The overwhelming length of
3 Route 116 from Franconia to Route 112
4 intersection dates to an 1833 layout."

5 CHAIRMAN HONIGBERG: Slow down just a
6 little when you read.

7 MS. PASTORIZA: Yes.

8 BY MS. PASTORIZA:

9 Q And this is Applicants Exhibit 142, Page 7.
10 So, this is BL's description of the layout for
11 Franconia and Easton. So, given that, in the
12 2015 Application for burial, this 1833 layout
13 was cited, can you explain why Cynthia
14 Boisvert, of Arago, who did the research on
15 this survey, was not in possession of this
16 layout and was unable to find it or any other
17 at the New Hampshire State Archives?

18 MR. NEEDLEMAN: Objection. It's
19 beyond the scope of his testimony. And it also
20 relates to documents that were available to him
21 when he prepared his testimony, and they could
22 have been included.

23 CHAIRMAN HONIGBERG: Ms. Pastoriza.

24 MS. PASTORIZA: This survey, I only

[WITNESS: Nix]

1 found out about at the first hearing of the
2 construction panel. And, given the amount of
3 information flowing in, I think it's reasonable
4 to cover it at this point.

5 CHAIRMAN HONIGBERG: The question
6 isn't when you learned about it. The question
7 is when it was available, and whether it could
8 have been included in his original testimony.
9 I'm going to sustain the objection.

10 MS. PASTORIZA: I'd like to make an
11 offer of proof. And I've asked the question,
12 and I think what the answer would be was that
13 Mr. Nix has no idea how Cynthia Boisvert could
14 have missed the 1833 layout.

15 CHAIRMAN HONIGBERG: Okay. Thank
16 you.

17 BY MS. PASTORIZA:

18 Q So, I had three more questions on
19 discrepancies, but I have to pass those over.
20 This is Applicants Exhibit [*Bates Page?*] 62271,
21 marked as "Applicants 130", Page 1. So,
22 looking at paragraph two, which it might take
23 you a minute to read through, can you explain
24 why the Applicant's subcontractor PAR Request

[WITNESS: Nix]

1 for Proposal was to "verify and locate edges of
2 the state or local right-of-way", yet BL
3 Companies was only requested by the Applicant
4 to use evidence in the field and tax maps to
5 create their survey?

6 A This, what the surveyor did here in his report,
7 and quite properly so, was that he indicated in
8 his report exactly what the Applicant asked him
9 to do. And that was to locate the edges of the
10 right-of-way and adjacent parcel lines,
11 "plotted from a combination of evidence
12 measured during the field survey and
13 supplemental evidence available from tax
14 mapping" -- "assessors mapping and GIS".

15 This is typical of a preliminary request
16 from an engineering company. And the surveyor
17 did exactly what he was asked, and he wasn't
18 asked to produce a plan that met the
19 requirements of the Board of Licensure.

20 Q So, on Page 2, in the same document, the survey
21 shows three levels of certainty. One of these
22 was "Bold Solid for Determined", and they state
23 "This line remains un-used at this time. We
24 expected that there would be specific sections

[WITNESS: Nix]

1 of right-of-way where a full determination
2 would be requested, which would require
3 additional research, fieldwork, and LLS
4 evaluation. We have not received any requests
5 for this is level of effort."

6 Can you explain why the surveyors were not
7 asked for a full determination for any portion
8 of the right-of-way?

9 A Again, the surveyor properly indicated what he
10 was asked to do and what he was not asked to
11 do. I don't know why the design engineer or
12 Northern Pass did not ask to have a proper
13 survey performed.

14 Q So, you cannot explain why the Applicant
15 submitted a survey that they knew would not
16 satisfy the conditions of DOT's conditional --
17 Condition Number 4 permit for burial?

18 A I --

19 MR. NEEDLEMAN: Objection.

20 CHAIRMAN HONIGBERG: Grounds?

21 MR. NEEDLEMAN: It's assuming facts
22 not in evidence. The Applicants did intend for
23 it to satisfy those requirements.

24 CHAIRMAN HONIGBERG: Ms. Pastoriza.

[WITNESS: Nix]

1 MS. PASTORIZA: I find that hard to
2 believe.

3 CHAIRMAN HONIGBERG: Okay. The
4 objection is sustained.

5 BY MS. PASTORIZA:

6 Q Can you explain why DOT took more than three
7 months to reject this survey?

8 MR. NEEDLEMAN: Objection. He has no
9 basis to answer that.

10 CHAIRMAN HONIGBERG: Ms. Pastoriza.

11 MS. PASTORIZA: I would say he has a
12 lot of basis. He's done a lot of surveying.
13 He's probably assessed surveys. He would look
14 at this survey and have a good idea of how long
15 it would take an experienced surveyor to decide
16 whether it met the Lan standards.

17 CHAIRMAN HONIGBERG: That may be
18 true. But does he know what's going on within
19 the Department of Transportation?

20 MS. PASTORIZA: I would hope they
21 operate by the same standards as he's operating
22 by.

23 CHAIRMAN HONIGBERG: In terms of
24 their workload and how long it takes to get to

[WITNESS: Nix]

1 work?

2 MS. PASTORIZA: Well, if you --

3 CHAIRMAN HONIGBERG: Let's find out
4 if he has any idea. Do you have any idea?

5 WITNESS NIX: My understanding is
6 there's only one licensed land surveyor in the
7 Department of Transportation. They might have
8 hired another one in the recent past. But Bob
9 Talon is the only one in there. And he is in
10 charge of the Right-of-Way -- I forgot exactly
11 his department, but I know he has a lot on his
12 plate.

13 MS. PASTORIZA: That's all I have.
14 Thanks.

15 MS. FILLMORE: Just one moment
16 please, Mr. Chairman.

17 (Short pause.)

18 MS. FILLMORE: Mr. Chairman, we have
19 been reminded that the BL Companies' discussion
20 of Franconia, the objection to which you
21 sustained a moment ago, was under cover of a
22 letter dated April 19th, which was after the
23 April 17th deadline for supplemental prefiled
24 testimony. And it was uploaded to the

[WITNESS: Nix]

1 Department of Transportation's website in
2 August of 2017, which is when it would have
3 become available.

4 CHAIRMAN HONIGBERG: Mr. Needleman.

5 MR. NEEDLEMAN: Well, I didn't have
6 that in mind. What I had in mind is it was
7 referring to an October 2015 letter. So, I
8 don't know how the two relate together.

9 CHAIRMAN HONIGBERG: Yes. And I'm
10 not sure I do either. So, why don't we reopen
11 that issue.

12 If you have questions about this,
13 about the document that you say was generated
14 in April and uploaded in August, let's find out
15 what the question is. Maybe Mr. Needleman
16 still has an objection to it, but let's find
17 out at least what the question is you want to
18 ask about it.

19 MR. IACOPINO: And could you also
20 identify the exhibit number for that BL report?

21 MS. PASTORIZA: So, we're back on
22 Applicants Exhibit 142. And we have to show
23 this old and outdated document to ask questions
24 about the newer document, which is why it's up

[WITNESS: Nix]

1 there.

2 BY MS. PASTORIZA:

3 Q So, the question again was, as we're waiting
4 for BL Companies' assessment of Franconia and
5 Easton, can you explain how the 2015
6 Application for burial could have sited the
7 1833 layout for Route 116 in Franconia and
8 Easton, yet Cynthia Boisvert, of Arago, was not
9 in possession of this layout and was unable to
10 find it or any other at the New Hampshire State
11 Archives?

12 *(Short pause.)*

13 CHAIRMAN HONIGBERG: I think people
14 are having trouble understanding what the
15 question is and what it relates to.

16 BY MS. PASTORIZA:

17 Q So, under "Records Research", a state --
18 "research was conducted at the New Hampshire
19 State Archives Records", and they couldn't find
20 anything. So, in light of the fact that, in
21 2015, the Application to DOT included the 1833
22 layout, can you explain how the later survey,
23 which was rejected by DOT, in their records
24 research they state that they could not find

[WITNESS: Nix]

1 any layout at the archives for Route 116?

2 MR. NEEDLEMAN: I'm gone to -- to the
3 extent I understand it, I'm going to object
4 again, because it sounds like it's asking the
5 witness to speculate.

6 CHAIRMAN HONIGBERG: I'm sorry, Ms.
7 Pastoriza. It's probably me, but I am
8 confused. But what document am I looking at?
9 What's the -- you said this was -- this is an
10 old document that we're looking at?

11 MS. PASTORIZA: No. This is the new
12 summary by BL Companies of what they did for
13 research in the various towns and the roads.

14 CHAIRMAN HONIGBERG: The one that a
15 moment ago Ms. Fillmore said was created in
16 April and uploaded in August?

17 MS. PASTORIZA: Yes. So, in this
18 assessment, the surveyors state that they could
19 not find any road layouts for Route 116 in
20 Franconia and Easton. And I'm curious as to
21 how Northern Pass could have sited the 1833
22 layout in their Application?

23 CHAIRMAN HONIGBERG: Okay. And, so,
24 the missing piece that we're not seeing is the

[WITNESS: Nix]

1 older document from the Application? Is it
2 Mr. Hodgdon's letter from --

3 MS. PASTORIZA: Yes. Yes.

4 CHAIRMAN HONIGBERG: Okay. So,
5 that's what this ties back to.

6 MS. PASTORIZA: Yes.

7 CHAIRMAN HONIGBERG: A statement from
8 Mr. Hodgdon's letter, you're asking how that
9 representation in Mr. Hodgdon's letter matches
10 up with what we're looking at on the screen in
11 front of us?

12 MS. PASTORIZA: Yes.

13 CHAIRMAN HONIGBERG: Okay. I
14 apologize. As I said, this is probably just
15 me.

16 So, then I'm going to apologize again
17 and ask you to restate the question, now that I
18 have been brought up to the right place.

19 BY MS. PASTORIZA:

20 Q Can you explain why the surveyors and Cynthia
21 Boisvert, of Arago, were not in possession of
22 this layout when they did their research on the
23 right-of-way?

24 MR. NEEDLEMAN: And that's my

[WITNESS: Nix]

1 objection. It calls for speculation.

2 CHAIRMAN HONIGBERG: Okay. I'm going
3 to overrule it and allow you to answer.

4 **BY THE WITNESS:**

5 A As a land surveyor reading another land
6 surveyor's research report, in combination with
7 Mr. Hodgdon's letter, I read this that Cynthia
8 Boisvert does not agree with Mr. Hodgdon that
9 the layout that Mr. Hodgdon found or someone
10 else found is for the road in question.

11 BY MS. PASTORIZA:

12 Q If there were a 90 percent certainty that it
13 was for the road in question, would that change
14 your opinion?

15 MR. NEEDLEMAN: Again, well, there's
16 no basis for that, and it calls for
17 speculation.

18 CHAIRMAN HONIGBERG: Assume that
19 everyone was certain that we were talking about
20 the same thing, any explanation?

21 WITNESS NIX: I would have no
22 explanation -- if there was a 90 percent
23 certainty, no, I would have no explanation.

24 BY MS. PASTORIZA:

[WITNESS: Nix]

1 Q So, I'll read this slowly as we wait for it to
2 come onto the screen. This is "Easton and
3 Woodstock". "Research was conducted at the New
4 Hampshire Archive Records." They state that
5 "The majority of this right-of-way was defined
6 in State Project 12971", the "majority of this
7 right-of-way".

8 So, can you square that statement with
9 Exhibit 12971, which is --

10 CHAIRMAN HONIGBERG: That's not an
11 exhibit number. That's a page number.

12 MS. PASTORIZA: I think it's a
13 discovery number. It's going to be numbered
14 later. So, this is a DOT plan. It's showing
15 State Project 12971. And it will be marked as
16 "Joint Muni 302".

17 BY MS. PASTORIZA:

18 Q And it shows this Project is ending around
19 Olesons Brook, which is about ten miles from
20 where 112 ends in North Woodstock. And this is
21 in DOT records. It was given to Northern Pass,
22 I believe, in 2014.

23 So, can you square the fact that Northern
24 Pass had this document, it's easily accessible

[WITNESS: Nix]

1 on the DOT site, and yet the researcher was
2 confused as to where the Project ended by ten
3 miles?

4 MR. NEEDLEMAN: Objection. Now,
5 we're talking about documents that all predated
6 the filing of the testimony, as far as I can
7 tell.

8 CHAIRMAN HONIGBERG: I'm not sure. I
9 think they're asking, am I correct, that the
10 document you're asking for a contrast is that
11 same document that was created in April and
12 uploaded in August?

13 MS. PASTORIZA: Yes.

14 CHAIRMAN HONIGBERG: And, so, it --
15 you went through it without context. So, I got
16 lost, and it's possible that others got lost as
17 well.

18 MS. PASTORIZA: Yes.

19 CHAIRMAN HONIGBERG: So,
20 Ms. Fillmore, would you pull up the previous
21 document and the paragraph that you were
22 highlighting? And, so, the paragraph that is
23 partially highlighted makes a reference to that
24 12971 map that is the other document you just

[WITNESS: Nix]

1 had up.

2 All right. Now that we understand
3 what documents you're talking about, what's the
4 question that you would like Mr. Nix to answer?

5 BY MS. PASTORIZA:

6 Q Can you explain how this surveyor could state
7 that the 2002 State Project 12971 covers the
8 majority of Route 112, when this Project ended
9 at Olesons Brook, which is more than ten miles
10 from where 112 ends in North Woodstock?

11 WITNESS NIX: Mr. Chairman, I'm
12 completely unfamiliar with the plan.

13 CHAIRMAN HONIGBERG: Okay. He has no
14 answer for that question.

15 MS. PASTORIZA: Okay.

16 BY MS. PASTORIZA:

17 Q So, this is the same BL Companies' Records
18 Research for Clarksville. And it states that
19 "Old County Road was established in August
20 26...in Book 1 Page 10 as a four road",
21 implying that the whole of the road was a four
22 rod road.

23 And this a Clarksville-Stewartstown map
24 showing that layout. This is the layout that

[WITNESS: Nix]

1 was referenced in the records research that we
2 just looked at. And it's only a short segment
3 that is four rods. So, if you can see it, it's
4 13-4, upper left.

5 A Okay. I see that.

6 Q So, do you understand that to be the layout
7 that's referenced here? Book 1, Page 10? It's
8 4-4. It's a little farther down.

9 The point I'm trying to make here is that,
10 in the Research Report, it states that the road
11 was laid out at four rods. And, when you look
12 at the DOT mapping, it shows that a short
13 segment of the road, 4-4, was laid out at four
14 rods.

15 CHAIRMAN HONIGBERG: I think we know
16 what you're trying to do. I'm not sure that
17 Mr. Nix understands or has enough familiarity
18 with what you're showing him. I just don't
19 know.

20 Mr. Nix, what are your thoughts on
21 this?

22 WITNESS NIX: My thoughts are, I know
23 what's on the screen. This is a snapshot of a
24 page in one of the older right-of-way books

[WITNESS: Nix]

1 that lives at Department of Transportation.
2 And, over the years, as Department of
3 Transportation felt comfortable that they had
4 figured out where an ancient layout was on one
5 of these maps, they would highlight it and then
6 cross-reference. That's what the 4-4 is. So,
7 that cross-references back to this four rod
8 layout.

9 Without digging deep into the layout
10 and the analysis of it back into 1803, I can't
11 comment more than that. But to simply assume
12 that the entire layout is four rods is not
13 proper process immediately, without doing more
14 research.

15 MS. PASTORIZA: Thank you.

16 CHAIRMAN HONIGBERG: So, now, Ms.
17 Saffo.

18 *[Brief off-the-record discussion*
19 *ensued.]*

20 CHAIRMAN HONIGBERG: Ms. Fillmore or
21 Ms. Pastoriza, can we get an exhibit number on
22 that page, the ancient map we were just looking
23 at? Or has it not yet been marked?

24 MS. FILLMORE: It will be marked as

[WITNESS: Nix]

1 "Joint Muni 301".

2 CHAIRMAN HONIGBERG: Okay. Thank
3 you.

4 MS. FILLMORE: I apologize.

5 MR. ASLIN: Mr. Chair?

6 CHAIRMAN HONIGBERG: Who's up? Yes,
7 Mr. Aslin.

8 MR. ASLIN: Just for the record, I
9 neglected to mention that the document I showed
10 Mr. Nix, --

11 CHAIRMAN HONIGBERG: Yes.

12 MR. ASLIN: -- which would be the
13 October 3rd DOT letter, we will be marking that
14 as "Counsel for the Public 593", if anyone else
15 wants to reference it.

16 MR. NEEDLEMAN: I'll note it's
17 already marked.

18 MR. ASLIN: Oh, okay. What --

19 MR. NEEDLEMAN: Applicant 228.

20 MR. ASLIN: 228.

21 CHAIRMAN HONIGBERG: Okay. So, you
22 don't need to mark it. It's Applicant 228.

23 MR. ASLIN: Great. Thank you.

24 CHAIRMAN HONIGBERG: Off the record.

[WITNESS: Nix]

1 *[Brief off-the-record discussion*
2 *ensued.]*

3 CHAIRMAN HONIGBERG: Ms. Saffo.

4 MS. SAFFO: Thank you. So, good
5 afternoon, Attorney Nix.

6 WITNESS NIX: Good afternoon.

7 BY MS. SAFFO:

8 Q I have in front of us New Hampshire RSA
9 310-A:52 [310-A:53?], the "General Provisions".
10 And the chapter is "Land Surveyors". What's
11 the purpose of this chapter?

12 A This chapter creates the licensure of land
13 surveyors, as well as the practice of land
14 surveying. And the other underlying purpose is
15 for the safeguard of property and to promote
16 public welfare.

17 Q So, what surveyors do is defined by statute,
18 correct?

19 A That's correct.

20 Q And it also regulates the company, this
21 statute, correct?

22 A (Rockler) That is correct.

23 Q And that's the Lan regs that you were referring
24 to earlier?

[WITNESS: Nix]

1 A That's correct.

2 MS. SAFFO: Okay. Can we switch over
3 to the ELMO? Thank you.

4 BY MS. SAFFO:

5 Q And this is just a page from Grafton Exhibit
6 43, and which is the well-known survey. When
7 you look at this survey, how quickly does it
8 take you to realize that it doesn't comply with
9 the regulations?

10 A Less than a second.

11 Q So, it's pretty obvious, correct?

12 A Correct.

13 Q And then go into the legend part of it.

14 A Yes.

15 Q And this legend actually -- sorry --
16 specifically uses the word "approximate".

17 A That's correct.

18 Q And what does that mean in surveyor land?

19 A What that means is the surveyor did -- located
20 the evidence, did research, and was unable to
21 determine with the proper degree of certainty
22 the location, the historical location of the
23 line. So, they approximated as best they could
24 where the line is.

[WITNESS: Nix]

1 MS. SAFFO: Okay. And then going
2 back, expanding back so we can see the map
3 itself.

4 BY MS. SAFFO:

5 Q In this particular page, which is for the
6 record noting Phyllis Gilbert's land on the
7 left-hand side, we have two lines, major lines,
8 and one them indicates the edge of the roadway.
9 And do you see where that is?

10 A Yes. You're talking about the edge of the
11 traveled way?

12 Q Yes.

13 A The pavement, yes.

14 Q And can you point that out on this? Can you --
15 oh, no, you can't. Never mind. Okay. I was
16 going real high-tech for a second all by myself
17 in my head.

18 *[Laughter.]*

19 BY MS. SAFFO:

20 Q And then past that, there's another line. And
21 is that what is represented to be the
22 right-of-way in this particular document?

23 A Yes. I can -- for the record, I can describe
24 where the edge of the traveled way is.

[WITNESS: Nix]

1 Q Please do.

2 A And, first, for the record, the traveled way is
3 the area within the legal right-of-way that is
4 utilized as the viatic surface. So, in this
5 case, it's pavement. On a gravel road, it
6 would be the width of the gravel. There are
7 other areas within the right-of-way that are
8 used for drainage and culverts. But the
9 traveled way is the pavement. And, if you look
10 in the middle of this plan, it says "Franconia
11 Road (HWY", which stands for "Highway", "18)".
12 The dash line immediately above that is the
13 edge of the traveled way.

14 Then, if you go another half inch, let's
15 say, above that, there is a longer dash line,
16 and that represents the approximate edge of the
17 legal right-of-way, the edge of the easement.
18 The division between the private property
19 line -- the private property owner and the
20 public rights.

21 Q And is there any way to approximate the
22 distance between the traveled way and what is
23 represented to be the approximate right-of-way
24 in this document, by looking at this document?

[WITNESS: Nix]

1 WITNESS NIX: Can you scan back a
2 little bit? Okay. Can you go back farther?
3 And can you go down into the right-hand corner?

4 MS. MENARD: Down here?

5 WITNESS NIX: Yes. Oh, no. Yes.
6 Yes.

7 **BY THE WITNESS:**

8 A Yes, there is. Right at the bottom, in the
9 middle, there is a graphic scale.

10 BY MS. SAFFO:

11 Q Now, as far as scales are concerned, how
12 accurate is this one?

13 A Well, --

14 WITNESS NIX: Scan in a little
15 further.

16 **BY THE WITNESS:**

17 A Okay. So, this is -- given this scale, this
18 plan is drafted at a one inch equal to thirty
19 feet scale, which isn't bad. You could
20 graphically scale this to within, if you have a
21 very good first-generation print, you could
22 scale this probably within plus or minus a foot
23 or so.

24 BY MS. SAFFO:

[WITNESS: Nix]

1 Q Okay. And, if you're a citizen and you're
2 looking at this, and you're trying to figure
3 out where on your property this alleged
4 right-of-way is, is this a good document to be
5 able to do that? Can you tell?

6 A It would be very, very difficult to do that,
7 based on this, with this document.

8 Q And why is that?

9 A The only -- there are a few permanent features
10 that are shown on this plan. The building
11 corners are permanent features. You could
12 scale from the building corners out. There
13 appear to be some monuments. You could scale
14 those monuments. But it's -- once you start
15 doing that, there's error in the location of
16 the buildings, there's error in the drafting of
17 the buildings. Then, it's printed on the plan,
18 then the plan is copied. So, now you're
19 talking about errors, and you have your errors
20 in scaling. So, now you're talking, you know,
21 two or three feet to figure out a guess. It's
22 a guess at that point.

23 So, you need to have -- in order to use
24 this plan, you need to have -- locate physical

[WITNESS: Nix]

1 features that haven't changed. And, when I say
2 "haven't changed", the property owner didn't
3 add siding to his building. He didn't move his
4 building. That happens a lot. There's a
5 building in Laconia, where they call for the
6 corner of the brick as the witness to the
7 property corner. And every surveyor in Laconia
8 knows that, in the early 1920's, they added an
9 extra layer of brick on the outside of that
10 building. So, we have to deduct that. So, if
11 you don't know that that happened, you can get
12 in trouble.

13 So, that's -- I think that's the answer to
14 your question.

15 Q Okay. Thank you. And then you've already
16 testified, I won't ask you to reiterate it, how
17 this particular survey did not comply with the
18 regulations and the standards, correct?

19 A Yes. The list goes on and on.

20 Q And that there is a mechanism to do it right,
21 correct?

22 A That's correct.

23 Q And that's outlined in the regulations,
24 correct?

[WITNESS: Nix]

1 A That's correct.

2 Q And that's why we have the regulations to tell
3 us how to do them right?

4 A That's correct.

5 Q And those regulations are a very public
6 document, are they not?

7 A Yes, they are.

8 Q Now, if this was certified, what would it be
9 certified as? Can you think of like --

10 A If I were -- if this were labeled as a
11 "preliminary" document -- it is the work
12 product of a licensed land surveyor. So, when
13 you say "certified", when a licensed land
14 surveyor puts his stamp on a product, there
15 should be some definition on that product
16 describing what it is. So, in this case, and I
17 haven't seen these plans stamped. So, are
18 there plans that have been stamped?

19 Q Well, if there's been a representation by
20 Northern Pass that they have a "certified
21 stamped set of drawings"?

22 A I have never seen those.

23 Q Okay.

24 A I have seen a stamped surveyor's report that

[WITNESS: Nix]

1 described what the surveyors did.

2 Q Yes.

3 A And I have seen these plans. But these plans
4 do not carry the certification.

5 Q And these plans don't carry the certification.
6 The report that you did see, describe that?

7 A That's correct.

8 Q And what was that report that you did see?

9 A That report described pretty accurately what
10 the surveyors did and what they did not do.
11 The surveyors were limited by their client in
12 their research, they were limited in their
13 fieldwork. And, so, the surveyors, quite
14 properly, labeled the plans -- or, labeled
15 these lines as "approximate".

16 Q And when you said "they were limited by their
17 client in research", what did you mean by that?

18 A In the letter, I think it was the Meridian
19 letter, --

20 Q Uh-huh.

21 A -- which references the contract from the
22 Northern Pass electrical contractor, and I
23 don't remember what the name is offhand.

24 Q PAR?

[WITNESS: Nix]

1 A PAR, yes. That's correct.

2 Q And then "limited in fieldwork", what did you
3 mean by that? "Limited by client in
4 fieldwork"?

5 A Well, if we could look at that Meridian
6 document again, it would help.

7 MS. SAFFO: Can we switch back over
8 to the --

9 BY MS. SAFFO:

10 Q And, while we're doing that, so, if a client
11 limits the surveyor in their research and in
12 their fieldwork, and the client has decided to
13 rely on a document that is limited, at least as
14 far as the land survey standards are concerned,
15 correct?

16 A That's correct. It's a contractual
17 relationship between the client and the
18 surveyor.

19 Q Okay. And, so, if Northern Pass, the client,
20 says "we have a certified stamped set of
21 drawings we believe is accurate", if they're
22 the ones who created these conditions that made
23 it hard to do an accurate survey, it would
24 really be at their peril, correct?

[WITNESS: Nix]

1 A That's correct.

2 Q Or the peril of the people who --

3 A Well, it would be an incorrect statement.

4 UNIDENTIFIED SPEAKER: Dawn, could
5 you please turn on Apple TV. Okay. Thank you.

6 BY MS. SAFFO:

7 Q And, as we're doing that, these surveys are
8 particularly important to the private
9 landowners, correct?

10 A Yes. Oh, absolutely.

11 Q Because among the things happening in Grafton
12 County, we're looking at a burial of 130 vaults
13 the size of a boxcar, correct?

14 A Yes. I have seen those plans.

15 Q And then we're also looking at horizontal
16 diagonal drilling, which is going to take
17 significant staging areas, correct?

18 MR. NEEDLEMAN: Objection, Mr. Chair.
19 We're reiterating what could have or should
20 have been in the initial testimony.

21 CHAIRMAN HONIGBERG: Ms. Saffo.

22 MS. SAFFO: No. I think, in this
23 particular case, we have seen numerous
24 documents filed by Northern Pass since the

[WITNESS: Nix]

1 prefiled testimony deadline was due. We've
2 also seen these surveys rejected by DOT after
3 these deadlines were due, and that was August.
4 But we're looking at them submitted in May,
5 written in April, uploaded in May, and then
6 rejected by DOT in August. And, obviously,
7 DOT, we've learned, has only so many people.
8 But the fact of the matter is that didn't
9 happen until August. So, I think it's more
10 than fair.

11 CHAIRMAN HONIGBERG: Overruled. You
12 can continue.

13 WITNESS NIX: Can you repeat the
14 question?

15 MS. SAFFO: Yes. Do you mind reading
16 it into the record? Don't worry. I can
17 rephrase it. My little sign telling me to go
18 slow isn't up.

19 BY MS. SAFFO:

20 Q So, we're looking at the construction, the
21 temporary impacts and the permanent impacts of
22 this Project being significant on private
23 landowners, correct?

24 A Correct.

[WITNESS: Nix]

1 Q So, if we're going to be protecting private
2 rights, it's very vital that we have this
3 information up front, correct?

4 A Absolutely.

5 Q Now, when you make design plans, can you do a
6 design plan without a proper survey, if you're
7 interested in the impacts on private property?

8 A No.

9 Q And why not?

10 A The proper survey is a precursor to the design
11 plan. In any land use -- I've been in land
12 use, again, for thirty five years. In any land
13 use proceedings, municipalities, state, even in
14 federal government, before the project can
15 move, in many cases, before the governmental
16 agency will accept the project, a -- or, excuse
17 me, accept the application -- or, approve the
18 application, a complete boundary survey must be
19 completed, because it delineates the rights of
20 the applicant.

21 In this case, you had mentioned the
22 underground drilling. And, as I was fumbling
23 around, I was looking for one of the exception
24 reports that were recently filed regarding Bear

[WITNESS: Nix]

1 Rock Road. And the widths necessary for the
2 underground drilling, and I'm going to do this
3 from memory, but the width between the two
4 drillings they indicated need to be
5 approximately twenty feet, and -- because of
6 whatever technical reason. Then, they went on
7 to say that the drilling needs to be ten feet
8 from the property line. And then it indicated
9 that the error in the drilling is five feet
10 plus or minus.

11 Now, if you add all those numbers up, in
12 the worst case scenario, they're going to go
13 outside or be, unless it's done perfectly,
14 they're going to be outside of the
15 right-of-way, in some case, underground, if you
16 add those numbers up.

17 And that's one reason why it's so
18 important to know what the width of the
19 right-of-way is and where it is.

20 Q And then also letting the private landowners
21 know as well, correct?

22 A Exactly.

23 Q Because they can't evaluate the design plans
24 without having an accurate survey?

[WITNESS: Nix]

1 A Correct.

2 Q Okay. And you just mentioned that, in your
3 experience, applications are generally not
4 approved without an accurate survey, correct?

5 A That's correct.

6 Q And, so, if this Application was approved upon
7 a reliance of a survey that then deemed -- was
8 determined to be not accurate, is that a
9 problem with the approval right from the
10 beginning of this Project?

11 MR. NEEDLEMAN: Objection. Again,
12 we're talking about material that could have
13 and should have been included in the testimony.

14 CHAIRMAN HONIGBERG: And I think --
15 and it probably was.

16 MS. SAFFO: So, we did go into some
17 of this and the accuracy of the initial design
18 plans and the disclosure. I think it's also
19 appropriate for me to delve into this again,
20 because we're just finding out now, way past
21 this, that they're going to be providing us
22 with a whole new plan. That we don't even have
23 the final survey now, and it doesn't comply
24 with DOT.

[WITNESS: Nix]

1 CHAIRMAN HONIGBERG: But the opinions
2 that are in his original testimony cover what
3 you're asking him right now.

4 MS. SAFFO: Okay. I'll wait -- I'll
5 hold off then.

6 CHAIRMAN HONIGBERG: Off the record.

7 *[Brief off-the-record discussion*
8 *ensued.]*

9 BY MS. SAFFO:

10 Q So, while we're working through that, I've just
11 shown you the SHEB documents, which are the
12 plan documents. Are you familiar with the
13 design plan documents?

14 A Yes, I am.

15 Q So, again, for the record, can you just pick
16 one of the numbers of one of the pages? It
17 would be at the bottom, you'll see "SHEBC", and
18 I think we're at 106, but we might have flipped
19 it.

20 A Okay. Why don't you go ahead and ask, and then
21 I'll figure out what --

22 Q Yes. On the page that you're on, which page
23 are you on?

24 A I'm on 106.

[WITNESS: Nix]

1 Q Okay. So, taking SHEBC106, that particular
2 document, can you see if they overlaid their
3 survey on that document?

4 A No. And excuse me, are you talking about the
5 April 2016 survey document?

6 Q We'll start from that one.

7 A Okay. And are you asking me if the April 2017
8 document -- plan is overlaid on the
9 December 8th, 2016 design plan?

10 Q So, what I'm asking is, can you see if a survey
11 has been used in that particular plan?

12 MR. NEEDLEMAN: I'm going to object
13 to this. We're now talking about old documents
14 that could have and should have been included
15 in the testimony.

16 MS. SAFFO: Let me strike that.

17 BY MS. SAFFO:

18 Q Is the more recent documents reflected in the
19 design plans?

20 A No, they're not.

21 Q And they wouldn't be, unless the design plans
22 are dated after the more recent survey?

23 A That's correct.

24 Q Thank you. Okay. So, can you see in front of

[WITNESS: Nix]

1 you the Meridian Report?

2 A I cannot.

3 CHAIRMAN HONIGBERG: Off the record.

4 *[Brief off-the-record discussion*
5 *ensued.]*

6 WITNESS NIX: I have my own copy.

7 MS. SAFFO: Oh, perfect.

8 WITNESS NIX: It took me a minute.

9 MS. SAFFO: I'm right with him.

10 Okay.

11 So, if we can make it a little
12 smaller -- I mean, make it so I can see the
13 whole page.

14 BY MS. SAFFO:

15 Q Now, you were talking about the significance of
16 this document. Can you explain that?

17 A Yes. What this document is is the surveyor's
18 report indicating, and this is signed by Ken
19 Clinton of Meridian, he indicated to the client
20 what he was asked to do, and then he indicated
21 what he did do. And he actually went a little
22 bit further than what they asked. And the way
23 I'm reading this is that, limiting it to what
24 he was asked to do, he probably couldn't have

[WITNESS: Nix]

1 produced anything. And, so, he went a little
2 bit further and came up with the concept of the
3 solid lines for "determined rights-of-way",
4 bold dashed for "approximate", you know, with
5 annotations, and dashed for "approximate, based
6 on tax map and GIS".

7 So, he's stated quite clearly what he's
8 done. And he's also indicated to the client
9 that, if they want the rights-of-way to be
10 further determined, that additional work would
11 have to be done.

12 Q And, so, we're in April of 2017, and that's
13 where we're at, as far as the survey is
14 concerned, as far as the accuracy of the
15 survey?

16 A That's correct. April 12th.

17 Q Okay. Now, I'd like to turn to what has been
18 uploaded in the Grafton County Commissioners
19 Exhibit 2 [Track 2?] in ShareFile as "Grafton
20 Exhibit 51. And this is a letter from the Gale
21 River Motel. It's dated October 19th, 2017.
22 And it outlines a business's communication with
23 Northern Pass when they came to do a visit at
24 their business.

[WITNESS: Nix]

1 MS. SAFFO: So, if you want to switch
2 to the last page real quick, so we can see the
3 name for the record.

4 BY MS. SAFFO:

5 Q The name of the individual is Kevin Johnson,
6 and he's from the Gale River Motel.

7 MS. SAFFO: And we can go back to the
8 first page.

9 BY MS. SAFFO:

10 Q So, one of the things he specifically notes is
11 "They were unable to answer questions about
12 Right-of-Way access on my property." Does that
13 surprise you, in light of the status of the
14 survey where it is right now?

15 A No, because they don't have a survey.

16 MS. SAFFO: And then switching to the
17 next page. Oh, wait. I'm sorry. Go back to
18 the last paragraph on the first page.

19 BY MS. SAFFO:

20 Q And then it says "In fact, I provided more
21 detailed information about the project to your
22 representatives pointing out a sewer line that
23 runs under the roadway to a septic tank located
24 eight feet from the roadway which services my

[WITNESS: Nix]

1 residence and the water line crossing under the
2 roadway servicing my neighbor."

3 Are those details that you would put in a
4 plan?

5 A Yes, absolutely. And those are details that,
6 and I'm referencing back to the September 5th,
7 2017, I'm calling it the "Bob Talon memo", but
8 it was a draft conference report, where the DOT
9 has decided that only observable monuments and
10 physical evidence along the right-of-way needs
11 to be mapped. These are not observable.

12 Also, the only way, assuming that there's
13 nothing on record at the Registry of Deeds, the
14 only way that this surveyor would know about
15 these would be through communication with the
16 abutters.

17 Q And that's why the regulations require
18 communication with the abutters, correct?

19 A That's correct.

20 Q There's good reason for that, correct?

21 A That's correct.

22 Q Because an underground line -- transmission
23 line that goes through water lines and septic
24 systems is a problem, isn't it?

[WITNESS: Nix]

1 A That's correct.

2 Q And, so, these standards created by law in New
3 Hampshire protect against that, correct?

4 A That's correct.

5 Q By having people speak to the landowners and
6 the abutter?

7 A That's correct. And, if I could --

8 Q Sure.

9 A -- just clarify a statement. I said "the only
10 way would be to talk to the abutters", but
11 that's usually the easiest way. The land
12 surveyor could also find out this information
13 by reviewing the town building files for every
14 one of the lots. And, if this septic system
15 were constructed from about 1974 to date, there
16 should be something in the town files. Many
17 towns don't always keep everything. But they
18 could run -- the surveyor can also run a check
19 on the DES website. There's a one-stop check
20 there, and to find out whether there's septic
21 systems, water lines, wells, things like that.
22 They really should, in a case like this, run
23 every one of the names to see what's going on.

24 Q And, if Northern Pass has taken the position

[WITNESS: Nix]

1 that they would like to create their survey,
2 the one discussed on September 5th in the Talon
3 draft memo conference, and submitted to DOT for
4 approval, and only after that contact the
5 landowners, would that be a good idea, in your
6 opinion, as a surveyor?

7 A No. That would put -- that would eliminate --
8 essentially eliminate the ability of the land
9 surveyors to have any administrative input or
10 review. I can imagine that, if DOT approved
11 it, and then a land surveyor -- excuse me -- an
12 abutter stepped forward, after thirty days
13 after the approval, the DOT's attorneys would
14 argue that they didn't exhaust their
15 administrative remedies, and on and on it goes.
16 So, that the abutters are being shut out.

17 Q So, it would shut out the abutters, and it also
18 wouldn't comply with the land surveyor
19 regulations by shutting them out, correct?

20 A That's correct.

21 Q Now, there's been talk about this "iterative
22 process". As a surveyor, why does that concern
23 you?

24 A Well, the term "iterative" is not a term of art

[WITNESS: Nix]

1 in design. Essentially what it means is
2 "dynamic", means it's always changing. It's
3 sort of the floating dartboard. And, as a
4 surveyor, what concerns me is that this
5 Project, and with any project, is that being so
6 far in the design/review process before a
7 governmental body without having the baseline
8 survey information is a real problem. If it's
9 determined sometime in the future that one of
10 these roads is only two rods wide, and it's in
11 a location that one of these vaults is located,
12 or one of these drills are located, or there's
13 an extensive two-rod road, then this Project
14 may not work. And the question is "well, how
15 is that going to be figured out?" There's no
16 appeal. There's no review.

17 Q And, so, it's not government -- it's not
18 adequate for government review, is that another
19 way of saying it?

20 MR. NEEDLEMAN: Objection. It calls
21 for a legal conclusion.

22 CHAIRMAN HONIGBERG: Sustained.

23 MS. SAFFO: Okay.

24 BY MS. SAFFO:

[WITNESS: Nix]

1 Q Now, you talked earlier about this being
2 "baseline information" before you do the design
3 plans?

4 A Correct.

5 Q And, as you just said, it's not dynamic
6 information. This is -- surveys are
7 set-in-stone information, correct? I might be
8 oversimplifying it, so correct me.

9 A It's not granite. But it's -- again, they
10 should be between 90 and 100 percent. And
11 getting to that point will -- the surveyor will
12 at least identify the areas that need to be
13 determined, and we're not even there.

14 Q And in testimony there has been extensive
15 discussion about "prescriptive rights-of-way".
16 I know we don't want to go into a legal
17 opinion. But, as far as the definition of
18 "land surveying", how does that tie into these
19 prescriptive rights-of-way?

20 A A land surveyor does not have the legal
21 authority, under the statute, under the
22 licensing laws, to determine whether a road is
23 a public road by prescription, nor does the
24 land surveyor have the legal authority to

[WITNESS: Nix]

1 determine the width of a prescriptive easement.

2 What the land surveyor does is, the land
3 surveyor's role is as a fact-finder. So, the
4 land surveyor will map the road, provide the
5 evidence, and then, again, work with the client
6 and act -- generally, the land surveyor will
7 act as an expert witness in a court proceeding,
8 asking the court to determine if the road is a
9 public highway by prescription.

10 Q Okay. So, put another way, if there's a
11 dispute as to whether something's prescriptive
12 or not, the land surveyor can't resolve that?

13 A That's correct.

14 Q Now, the October 3rd, 2017 letter --

15 CHAIRMAN HONIGBERG: Off the record.

16 *[Brief off-the-record discussion*
17 *ensued.]*

18 BY MS. SAFFO:

19 Q Okay. So, we talked about the survey
20 markers, --

21 A Yes.

22 Q -- and why they're required. In the case where
23 people are questioning what the rights-of-way
24 are and what the survey should reflect and what

[WITNESS: Nix]

1 is on their property, can you think of any
2 reason why not to put markers down?

3 MR. NEEDLEMAN: Objection. This is
4 calling for generic information on surveying,
5 and could have and should have been included.

6 MS. SAFFO: You know, once again,
7 this is a situation where surveys were
8 provided. We relied on those surveys. We
9 learned in August. I think it's totally
10 appropriate.

11 CHAIRMAN HONIGBERG: Is it a
12 scene-setter for something else?

13 MS. SAFFO: Yes. It's just that now
14 they are redoing the survey.

15 CHAIRMAN HONIGBERG: Yes.

16 MS. SAFFO: But, in the course of
17 redoing the survey, knowing how complicated
18 this is with everybody, they're still not
19 putting markers in the ground so people can see
20 what they think is the boundaries.

21 And I'm wondering, in land --
22 surveying land, does that make any sense to a
23 land surveyor?

24 CHAIRMAN HONIGBERG: I think he's

[WITNESS: Nix]

1 already testified to that.

2 MS. SAFFO: Okay. Okay. Almost
3 done.

4 BY MS. SAFFO:

5 Q Okay. Last, but not least. So, I'm putting on
6 the screen Page 150, Day 9 Afternoon Session
7 ONLY, May 4th, 2017 testimony. And the
8 question is "Fair to say you've been saying
9 "You'd have to ask my surveyor"; correct?" And
10 the answer was "No. We have a certified
11 stamped set of drawings we believe is
12 accurate."

13 Now, based on what you have reviewed as
14 the only survey in place as of May 4th, 2017,
15 do you think they had a "certified stamped set
16 of drawings" they could rely on as accurate?

17 A No.

18 Q And why not?

19 A They don't exist.

20 MS. SAFFO: Thank you. No further
21 questions.

22 CHAIRMAN HONIGBERG: All right.

23 Let's take a break. But, before anybody leaves
24 the room, let's figure out how much more we're

[WITNESS: Nix]

1 going to try and do today. Off the record.

2 *[Brief off-the-record discussion*
3 *ensued. Thereafter a recess was*
4 *taken at 3:50 p.m. and the*
5 *hearing resumed at 4:05 p.m.]*

6 CHAIRMAN HONIGBERG: Mr. Palmer, I
7 understand you now have no questions for this
8 witness?

9 MR. PALMER: Yes. My questions have
10 all been asked and answered.

11 CHAIRMAN HONIGBERG: Thank you.
12 Mr. Lakes.

13 MR. LAKES: Yeah. All right. I've
14 cut my questions down by a couple as well. So,
15 I'm hoping, too, this would go fairly quickly.

16 Mr. Nix, thank you for being here.

17 WITNESS NIX: You're welcome.

18 BY MR. LAKES:

19 Q With regard to surveying, in this case
20 establishing the ROE boundaries, if a property
21 owner thinks their property is violated, but
22 does not bring suit, and the Project is
23 installed and found to be in violation
24 after-the-fact, is there any legal recourse at

[WITNESS: Nix]

1 that point for the landowner?

2 MR. NEEDLEMAN: Objection. Calls for
3 a legal conclusion.

4 CHAIRMAN HONIGBERG: Mr. Lakes, I
5 will confess, that does sound an awful lot like
6 a request for legal advice.

7 MR. LAKES: No. I think that this
8 would be -- I think everybody along the route
9 has that particular question in mind.

10 CHAIRMAN HONIGBERG: The objection is
11 sustained. Next.

12 MR. LAKES: Well, that makes it even
13 shorter. Thank you.

14 BY MR. LAKES:

15 Q In your testimony, you give what you call
16 "representative samples" of New Hampshire Code
17 of Administration Rules that require a plan be
18 prepared and sealed by a licensed land
19 surveyor. And then you mention some of these
20 representative samples. I'm just -- I want to
21 mention three of them and get your thoughts on
22 this.

23 First one is Department of Environmental
24 Services, DES, with regard to oil and

[WITNESS: Nix]

1 remediation programs, contaminated sites,
2 *etcetera*, activity and use restrictions. Now,
3 this is something that surveyors do as part of
4 their job?

5 A Yes. What you're referring to is a -- and I
6 can't remember whether it was a statutory
7 requirement or a rule, I think it was a DES
8 rule, that requires for these remediation sites
9 to have a boundary survey performed as part of
10 the remediation. That's something that I've
11 done, several of those, over the years. And
12 what that does is establish the interrelated
13 property rights of the parties. Sometimes
14 the -- if there's a leaking underground storage
15 tank, and it leaks onto an abutting property,
16 the parties need to figure out who's going to
17 be responsible for what. And so that's why we
18 prepare the boundary surveys for those.
19 They're required.

20 Q So that would be delineated along the entire
21 underground route, if, in fact, there were
22 areas, and there are, that are contaminated by
23 oil/gas or carbon materials?

24 A Well, in that particular rule, the baseline is

[WITNESS: Nix]

1 for the contaminated property. I have been
2 involved in cases where, if there is
3 underground travel of the contaminant, that the
4 client would then be required to survey other
5 properties to determine who and where that
6 contamination is.

7 Q Okay. The next representative sample you
8 mention is again with the DES: Drinking water
9 programs, water supply, land protection. What
10 does that entail? Is this the distance to
11 wells and things of that nature?

12 A Yes. Actually, I've done several of those as
13 well. Those rules, those DES rules have to do
14 with large either public or large private wells
15 and water systems. Say, if you have a
16 condominium unit, with 70 units and they have
17 their own on-site water, the wells are required
18 to have a protective well radius that is
19 completely controlled by the owner. So, in
20 order to understand whether you can control
21 that well radius, and sometimes those well
22 radiuses can be several hundred or a thousand
23 feet in diameter -- excuse me, in radius, which
24 is a very large piece of land.

[WITNESS: Nix]

1 So, to understand whether the owner can
2 control that land, we do the boundary survey to
3 determine where the bounds of the property are,
4 we locate the well, we put the radius on it,
5 and that's our charge to do that.

6 Q Does this also relate to reservoirs or
7 aquifers?

8 MR. NEEDLEMAN: Objection. It sounds
9 like we're just elaborating on existing
10 testimony.

11 CHAIRMAN HONIGBERG: Yes, it does.
12 But I'll let you answer this question. And
13 then ask Mr. Lakes to move on to another topic.

14 **BY THE WITNESS:**

15 A Okay. Aquifers and reservoirs, it depends. It
16 depends on what it is. The reservoir -- the
17 Massabesic Reservoir, I'm familiar with that,
18 and the City of Manchester is very concerned
19 about what they owned, who's doing what on it.
20 So, they have their own boundary surveys. But
21 I don't know whether they're required by the
22 statute to have them, but they do have them. I
23 know that.

24 As far as aquifers, that's a completely

[WITNESS: Nix]

1 different issue. That's the geologists
2 generally map those. You know, we get involved
3 if we're asked to help out.

4 BY MR. LAKES:

5 Q And the last sample I want to talk about,
6 again, it's a DES, and it's with regard to
7 water quality and quality programs with regard
8 to large groundwater withdrawals, water level
9 monitoring, locations, etcetera. How does that
10 play into the surveying that you would do?

11 A That's an interesting one. Generally, where
12 that -- the large quantity water withdrawals
13 come from is either (a) a bottling plant, which
14 there's been several of those, that's become
15 very popular, or the biggest impact that I know
16 of, and I've done several of these, are golf
17 courses, for irrigation purposes. So, what we
18 do is we map the limits of the property. We
19 map the wells. And then we give that to the
20 hydrologist, and, through the hydrologist's
21 magic, they add lines on the plans to show
22 where the water underground will be impacted.

23 Q Well, I was asking this in regard to horizontal
24 directional drilling, where water is needed in

[WITNESS: Nix]

1 that process to do the underground drilling,
2 would that be --

3 A Beyond my expertise.

4 MR. LAKES: Okay. I have no further
5 questions.

6 CHAIRMAN HONIGBERG: Ms. Menard, I
7 understand you have no questions?

8 Okay. Ms. Townsend?

9 MS. TOWNSEND: My questions have been
10 asked and answered. Thank you.

11 CHAIRMAN HONIGBERG: Ms. Draper?

12 MS. DRAPER: I have one question,
13 really building on what Mr. Lakes just said.

14 BY MS. DRAPER:

15 Q I'm interested in the surveys when you go out
16 into an undeveloped area. So, a place like it
17 might have streams, natural outcroppings,
18 springs, that kind of area that you're making a
19 survey map.

20 A Uh-huh.

21 Q Do you put all those in, is that correct?

22 A It completely depends on what the applicant
23 requested us to do.

24 Q What the client would be requesting?

[WITNESS: Nix]

1 A Excuse me, yes.

2 Q Yes.

3 A What the client asked us to do, right.

4 Q All right. And what about if you -- I'm
5 thinking about Bear Brook [Bear Rock?] Road,
6 and things like drainage and those kinds of,
7 perhaps, as you're mapping and you see
8 potential problems, again, it goes with what
9 the client has asked for, is that right?

10 A Well, yes. In the case of Bear Rock Road,
11 because this is a route survey for development
12 purposes, the surveyor would be picking up the
13 drainage, the existing culverts, the catch
14 basins, swales, runoffs, things like that,
15 encroachments, if there's other structures.
16 Utility poles should be picked up. Any
17 physical aspect of the road.

18 MS. DRAPER: All right. Thank you.

19 CHAIRMAN HONIGBERG: Mr. Reimers?

20 MR. REIMERS: I no longer have any
21 questions.

22 CHAIRMAN HONIGBERG: All right. Any
23 intervenors that we haven't called who have
24 questions?

[WITNESS: Nix]

1 *[No verbal response.]*

2 CHAIRMAN HONIGBERG: All right.

3 Mr. Needleman.

4 MR. NEEDLEMAN: Mr. Hodgdon has
5 questions.

6 CHAIRMAN HONIGBERG: Mr. Hodgdon.

7 MR. HODGDON: Thank you, Mr.
8 Chairman, members of the Committee. Mr. Nix.

9 WITNESS NIX: Mr. Hodgdon.

10 MR. HODGDON: My name is, for the
11 record, Mark Hodgdon. I'm an attorney for the
12 Applicant.

13 BY MR. HODGDON:

14 Q I want to be clear here just as your role, and
15 I know you have a couple of hats, as a lawyer
16 and a surveyor. You're not here as a legal
17 advocate for Mr. Thompson and the abutters,
18 correct?

19 A That's correct.

20 Q Okay. And you're not here telling the SEC
21 members that the Committee should be
22 substituting your legal judgment for theirs,
23 right?

24 A I have not done that, no.

[WITNESS: Nix]

1 Q All right. I'm just clarifying what you --
2 what's on the table here. And you recognize it
3 would be inappropriate to testify as a legal
4 advocate as a witness, correct?

5 A That's generally, yes. There are certain
6 exceptions.

7 Q I want to go back to your original prefiled
8 testimony, and I know there's some water under
9 that bridge, but I'm going to go back to it, if
10 you don't mind.

11 And on prefiled testimony, the
12 supplemental, Page 2, you stated that you
13 "reviewed the plans located in the Site
14 Evaluation Committee website dated 2/16/16 with
15 the heading Applicant's Response to DOT
16 Request". Recall that?

17 CHAIRMAN HONIGBERG: To be clear,
18 Mr. Hodgdon, "12/16/16"? That's I think what
19 it says --

20 MR. HODGDON: 12/16/16.

21 CHAIRMAN HONIGBERG: That's what it
22 says in the testimony.

23 **BY THE WITNESS:**

24 A Yes. Thank you.

[WITNESS: Nix]

1 BY MR. HODGDON:

2 Q And you reference a "cover letter" to the SEC
3 from Attorney Tom Getz, correct?

4 A That's correct.

5 Q And your criticism -- in that letter you quote
6 him as saying that those "comprise the final
7 design packages prepared for DOT". Do you
8 recall that?

9 A Yes, I do.

10 Q And much of your testimony and your
11 supplemental testimony is premised on whether
12 those are final design plans, correct?

13 A That's what the attorney -- that's correct.
14 That's what the attorney stated in his letter.

15 Q Okay. But, and you relied entirely from the
16 cover letter for that?

17 A For the statement that they were "final plans",
18 that's correct.

19 Q Okay. Now, clearly, based on your prefiled
20 statement, you scrutinized those plans fairly
21 closely?

22 A That's correct.

23 Q And I see that, at the time, you were looking
24 almost entirely at the local roads up in the

[WITNESS: Nix]

1 North Country?

2 A That's correct.

3 Q So, that would be the tail end of Bear Rock
4 Road to the east, I'll call it the "tail end",
5 but to the eastern section, and North Hill and
6 Old County?

7 A Correct.

8 Q And is it fair to say those are the plans you
9 scrutinized closely?

10 A Correct.

11 Q You didn't mention --

12 MR. HODGDON: And, Dawn, could you
13 pull up Applicants Exhibit 73 please, Page
14 41713 and 715.

15 MS. GAGNON: Side by side or one at a
16 time.

17 MR. HODGDON: If you could. We can
18 go with that first one, that's okay. And if
19 you can get 715 up? But, if you can't, that's
20 okay, the first one will work.

21 BY MR. HODGDON:

22 Q The cover sheet, 41713, do you notice down in
23 the lower right corner, did you notice that
24 those plans were marked "Preliminary - Not For

[WITNESS: Nix]

1 Construction"?

2 A That's correct.

3 Q Okay. But you didn't notice that -- you didn't
4 refer to that or mention that in your
5 testimony, did you?

6 A No, I -- well, you just asked two questions.

7 Q Right. You didn't mention the fact that it
8 was -- that it was noted as "Preliminary" in
9 your testimony, your prefiled testimony?

10 A That's correct.

11 Q And those plans also, if you look down in the
12 corner, if you go to 41715, Dawn, the lower --
13 yes, right there. Where it says "NRTHC100",
14 you see that?

15 A Yes.

16 Q What's the "C" designate?

17 A I don't know.

18 Q You don't know that that means "Civil
19 engineering plans"?

20 A Oh. Okay. That's fine. Yes.

21 Q Okay.

22 A That makes sense, yes.

23 Q And, if they were survey plans, they would
24 typically have an "S"?

[WITNESS: Nix]

1 A In -- yes. I'm going to take your --

2 Q Oh, if you don't know, --

3 A No, no.

4 Q -- I'm not trying to be unfair to you.

5 A Well, many different engineers will do it
6 different ways. And that is, you know, one of
7 the ways to do it.

8 Q Okay.

9 A Absolutely.

10 Q So, and those plans, there's nowhere on them
11 that they're stamped by a registered or
12 licensed certified land surveyor?

13 A That's correct.

14 Q Now, these plans, even the final plans, they're
15 not going to be recorded in the Registry of
16 Deeds, are they?

17 A I have no idea whether the final plans are
18 going to be recorded in the Registry or not.

19 Q Okay. But they're not going to be registered
20 as a plat, do you know?

21 A What final plans are you talking about?

22 Q The final plans for this Project, they're not
23 going to be registered as a plat in the
24 Registry of Deeds?

[WITNESS: Nix]

1 A Well, I would think that, on a project of this
2 magnitude, that the Applicant would probably
3 want to record them. Just like DOT records
4 many of its route surveys and highway plans.
5 But that's --

6 Q Well, --

7 A -- there's no requirement for that.

8 Q Okay. So, now, the Applicant, Northern Pass
9 and its surveyors, aren't working for DOT,
10 correct? They're submitting these to DOT for
11 review?

12 A That's my understanding. That's correct.

13 Q And --

14 CHAIRMAN HONIGBERG: Stop.

15 Mr. Hodgdon, the microphone is kind of
16 important.

17 MR. HODGDON: Thank you. Fair
18 enough.

19 CHAIRMAN HONIGBERG: Off the record.

20 *[Brief off-the-record discussion*
21 *ensued.]*

22 BY MR. HODGDON:

23 Q But that's -- the landowner in this case is
24 DOT, correct?

[WITNESS: Nix]

1 A No.

2 Q Well, who owns the right-of-way, let me ask it
3 that way?

4 A Well, it depends. It depends on whether it's a
5 state highway or whether it's a town highway.

6 Q Fair enough. But, in the case of the state
7 highways, the landowner is -- the agency having
8 jurisdiction over the public highway is NHDOT,
9 correct?

10 A The way you stated that, that is correct.

11 Q Okay.

12 A Yes.

13 Q And, for the town roads, the party that has
14 jurisdiction over the public highway are the
15 municipalities?

16 A That's correct.

17 Q Okay. And Northern Pass is neither a
18 municipality or a state agency, correct?

19 A That's correct.

20 Q And what they're doing is providing essentially
21 an existing conditions survey for permit
22 approval. Is that a fair statement?

23 A In "existing conditions", the question
24 doesn't -- it is not clear as to whether you're

[WITNESS: Nix]

1 speaking regarding the boundary portion or
2 whether it's the physical evidence on the field
3 portion.

4 Q Okay.

5 A Or both.

6 Q But, as to both the right-of-way and the
7 physical evidence, they're providing the
8 existing conditions. They're not laying out a
9 new road. They're not establishing new
10 boundaries. They're laying out the existing
11 conditions.

12 A They're mapping existing conditions, correct.

13 Q Right. And, so, if we get to what DOT actually
14 requested -- well, let me back up a bit before
15 I ask that question.

16 You've already mentioned, you know that
17 the survey work is ongoing. The surveyors are
18 working with NHDOT to meet the requirements
19 that DOT set forth, right?

20 A That's my understanding.

21 Q Right. And you acknowledge that NHDOT, and
22 especially their Right-of-Way Bureau, has far
23 more experience, including decades of
24 collective experience establishing or analyzing

[WITNESS: Nix]

1 public highways' right-of-ways?

2 A They have experience.

3 Q Right.

4 A Absolutely.

5 Q And, in fact, you know Bob Talon?

6 A I do know Bob Talon.

7 Q And he has a lot of experience establishing
8 public -- existing public highway
9 right-of-ways, right?

10 A Well, actually, I've never seen a survey
11 prepared by Bob Talon. Bob -- my interaction
12 with him has been as Bob being, and I can use
13 the word "administrator", I don't know if
14 that's what they call him at DOT, but he works
15 at DOT, and works -- my interaction with him
16 has been on obtaining plans, obtaining
17 information, historical information, things;
18 like that.

19 Q Okay. But he's a licensed land surveyor?

20 A He is a licensed land surveyor.

21 Q And, in fact, he's the chief of what they call
22 the "Land Title" section, if I recall
23 correctly?

24 A Thank you. I was struggling for that earlier.

[WITNESS: Nix]

1 Q And, so, when you look at --

2 MR. HODGDON: I'm going to use the
3 ELMO, if I could.

4 BY MR. HODGDON:

5 Q Condition 4, what the surveyors were actually
6 asked for, and I'm probably going to get this
7 upside-down, --

8 CHAIRMAN HONIGBERG: No, you guessed
9 right.

10 MR. HODGDON: Now I've got to be Phil
11 Donahue. Sorry, Mr. Chair.

12 BY MR. HODGDON:

13 Q If you look at Condition 4, that requires that
14 they "certify the survey report" -- they
15 "provide a certified survey report delineating
16 the means and methods of determining the
17 right-of-way as shown on the plans." Correct?

18 A That's correct.

19 Q In other words, that exactly says it's a
20 "certified survey report", not a "certified
21 survey plan". That's what it says?

22 A That's correct.

23 Q Okay.

24 CHAIRMAN HONIGBERG: Mr. Hodgdon,

[WITNESS: Nix]

1 what document are we looking at?

2 MR. HODGDON: This is Applicants Page
3 26961, Exhibit 107. This is the DOT
4 conditional order -- condition letter.

5 BY MR. HODGDON:

6 Q And then it also requires that they certify
7 that the right-of-way shown is accurate and the
8 "locations are defined by ground survey and
9 pertinent research". Correct?

10 A Correct.

11 Q And, with public highways, sometimes the level
12 of accuracy simply is impossible to get to 100
13 percent, correct?

14 A That's correct.

15 Q So, there's nowhere in that condition letter
16 that our NPT surveyors were asked to do a
17 boundary survey, correct?

18 A Are you asking me if the term "boundary survey"
19 is in that letter somewhere?

20 Q Yes.

21 A It is not.

22 Q And regarding -- you said twice, this was
23 Applicants Page 83397, I don't have the number,
24 I apologize, the exhibit number. But this is

[WITNESS: Nix]

1 the conference report. Oh, I'm sorry. It was
2 attached to Appellant's [Applicants?] Exhibit
3 228, from DOT. That's the draft conference
4 report that was attached to --

5 A Correct.

6 Q Right. And twice, in your direct testimony and
7 then to Ms. Saffo, you said that "this did not
8 meet the standards because it only required
9 fieldwork to locate observed monuments",
10 correct?

11 A That's correct.

12 Q Okay. Except that's not exactly what that
13 says, because what it continues on and says "or
14 as noted in viewed deeds and record plans".
15 Correct?

16 A That's correct.

17 Q So, in other words, they have to find the
18 monuments that are on record plans or in other
19 information they locate, correct?

20 A That's correct.

21 Q So, you understand that DOT has set forth the
22 criteria and the surveyors are meeting that
23 criteria as we speak?

24 A Well, that's my understanding. I don't have

[WITNESS: Nix]

1 any confirmation on that.

2 Q Okay. And you disagree with DOT's criteria?

3 A Well, I think -- yes, I do.

4 Q Okay. And that's the -- the problem then of
5 your essential argument here is that DOT isn't
6 requiring them to do a boundary survey under
7 the standards of the rules for licensed land
8 surveyors?

9 A That's correct.

10 Q Okay. But that's not what DOT has required,
11 right?

12 A Has required for what?

13 Q For -- based on the agreement, that is not what
14 DOT is requiring is a boundary survey? They're
15 not requiring that?

16 A That's what it appears. That's correct.

17 Q Right. And you also mentioned that one of your
18 criticisms was that Northern Pass isn't putting
19 bounds in the highways at the edges. Correct?

20 A That's correct.

21 Q Okay. Again, Northern Pass is not NHDOT,
22 correct?

23 A That's correct.

24 Q So, isn't it NHDOT's right-of-way? And

[WITNESS: Nix]

1 shouldn't, if they wanted to put bounds in, it
2 would be DOT's responsibility to do so,
3 correct?

4 A Not necessarily. The rules for land surveyors
5 specifically state that, when a boundary survey
6 is done, and I know -- I understand you're
7 arguing that this isn't a boundary survey, so
8 those rules don't apply, I think that's what
9 you're arguing. But the rules state
10 specifically that monuments shall be set. And
11 what my testimony was, and if it wasn't clear,
12 is that, in an extensive route survey of this
13 nature, there should be some agreement or --
14 between the Applicant, DOT, and the
15 municipalities, to monument this route survey,
16 so the future surveyors and property owners can
17 reestablish where these lines are.

18 Q Okay. But you know that DOT is not performing
19 this work, correct?

20 A That's correct.

21 Q And DOT has to authorize the bounds to be
22 placed on their right-of-way?

23 A That's not correct.

24 Q You don't believe -- you believe that Northern

[WITNESS: Nix]

1 Pass could put bounds on DOT's right-of-way
2 without their approval?

3 A Well, it depends on --

4 Q For the right-of-way?

5 A If I'm performing a boundary survey of an
6 abutting lot, and I've determined where the
7 boundary of the right-of-way is, as a land
8 surveyor, I have the authority to put bounds
9 in.

10 Q For the abutting lot?

11 A That's correct.

12 Q But you're not putting them in for DOT's
13 right-of-way?

14 A And, as I said earlier, the parties all need to
15 come to some type of agreement. I specifically
16 said that three minutes ago.

17 Q Okay.

18 A Including DOT, I believe --

19 Q But if DOT isn't -- I'm sorry.

20 A I specifically said DOT was one of those
21 parties.

22 Q If DOT does not require it, then that's their
23 prerogative?

24 A As a land surveyor, I would have difficulty in

[WITNESS: Nix]

1 being able to reconcile performing a boundary
2 survey of the right-of-way without leaving any
3 monuments at all. And I would have -- I would
4 be having a conversation with DOT about that.
5 There's a conflict. DOT does not have the
6 authority to overrule the rules for land
7 surveying, regardless of how much experience
8 they have.

9 Q Okay. But that's if DOT is requiring a
10 boundary survey?

11 A That's correct.

12 Q And there's nothing in those requests and
13 agreements with Northern Pass that says that
14 Northern Pass has to do -- meet the standards
15 of a boundary survey?

16 A The last bullet states that "A Survey Report
17 Addendum will be issued, explaining the
18 process, which is to include a Survey Plan
19 Set" -- "a Survey Plan Set which depicts the
20 resulting" -- the second bullet down, thank
21 you.

22 Q Where are you?

23 A Last dark bullet.

24 Q Yes.

[WITNESS: Nix]

1 A It says "A Survey Report Addendum...explaining
2 the process, which is to include a Survey Plan
3 Set", which is capitalized, "which depicts",
4 and then the second bullet down says "The
5 resulting right-of-way determination as noted
6 above." Those words indicate that DOT is
7 requiring a standard property survey as defined
8 under the law. They have capitalized the words
9 "Survey Plan Set".

10 Q You're telling me every survey plan set is, by
11 definition, a boundary survey?

12 A They're asking for this to be certified as to
13 the location of the right-of-way. Under the
14 definition of "boundary" -- excuse me,
15 "standard survey", it includes the easement
16 rights and road rights-of-way. So, by
17 definition, what they're asking for -- by law
18 what they're asking for is a Standard Property
19 Survey.

20 Q That's your interpretation?

21 A That is my interpretation as a land surveyor.

22 Q Okay. But DOT has never used those words or
23 never indicated to NPT that specifically that
24 that was a requirement. Is that fair?

[WITNESS: Nix]

1 A I just read the words they used.

2 Q Okay. Well, I read those words differently. I
3 understand you have an interpretation. NPT has
4 an interpretation. But it doesn't use the word
5 "standard boundary survey", does it?

6 A No.

7 MR. HODGDON: May I have just one
8 minute?

9 CHAIRMAN HONIGBERG: We're off the
10 record for a moment.

11 BY MR. HODGDON:

12 Q But, at the end of the day, if Northern Pass
13 submits survey plans to NHDOT, and NHDOT finds
14 that they meet their expectations and
15 requirements, and approve them, are you asking
16 the Committee to substitute your adjustment
17 judgment for NHDOT?

18 A You've created --

19 Q At the end of the day, --

20 A You've created a hypothetical.

21 Q Yes.

22 A And what I need to know is, at the end of what
23 day? If those plans are submitted to the
24 Committee prior to them making a decision, then

[WITNESS: Nix]

1 it is my understanding that everybody would be
2 able to review them. So, I guess I'm a little
3 lost as to where you're going with that.

4 Q When it comes to NHDOT's roads and NHDOT's own
5 right-of-way, wouldn't you agree that their
6 judgment is more sound and more appropriate to
7 rely on than yours?

8 A No.

9 MR. HODGDON: Okay. I have nothing
10 further.

11 CHAIRMAN HONIGBERG: Members of the
12 Committee have questions for Mr. Nix?

13 Ms. Weathersby.

14 MS. WEATHERSBY: Good afternoon, Mr.
15 Nix.

16 WITNESS NIX: Good afternoon.

17 BY MS. WEATHERSBY:

18 Q I think I heard you say that you do not feel
19 that New Hampshire DOT's requirement for a
20 certified survey report is adequate, is that
21 correct?

22 A Well, if I may explain. The report goes with
23 the plans. So, what the report would do would
24 be to describe what the surveyor did in the

[WITNESS: Nix]

1 preparation of the plans. And, in DOT's
2 outline of what they will accept, it is my
3 opinion that this does not meet the
4 requirements of a full boundary survey.

5 Q Okay. And you feel a full boundary survey is
6 necessary?

7 A It's the only way to establish the division
8 between the private and the public property
9 rights.

10 Q In my life, I've come across construction
11 surveys. Is a construction survey different
12 than a full boundary survey? And would a
13 construction survey, in your opinion, provide
14 adequate information for this Project?

15 A Yes and no.

16 Q Okay.

17 A A construction survey would be done, it would
18 include the topographic mapping, wetland
19 mapping, sometimes there are soils mapping,
20 overlaid if -- and then that would be used for
21 the site plan design.

22 In today's world, very, very rarely is a
23 site plan approved without having the
24 underlying boundary survey, and then the

[WITNESS: Nix]

1 construction survey laid on top of it. Is
2 doing, essentially, what -- what we have in our
3 hand from December is a construction survey.
4 And whether there's physical evidence missing
5 or not is beside the point, but this is
6 essentially a construction survey, with a best
7 guess that -- of the boundaries at the time.
8 And, because this is a route survey, very
9 narrow, and it's a rather large project that's
10 going to go within it, the protection of the
11 private property rights would require that a
12 boundary survey be performed on this.

13 Q Okay. Concerning monumentation, in your
14 experience, when a route is being surveyed,
15 do -- are monuments typical to be installed?

16 A Yes. As a matter of fact, DOT would require
17 them generally at the points of curvature,
18 points of --

19 *[Court reporter interruption.]*

20 **CONTINUED BY THE WITNESS:**

21 A -- points of curvature and points of tangency,
22 which are terms of art, and other important
23 places along the route, so surveyors can go
24 back later in time and determine where that

[WITNESS: Nix]

1 right-of-way is.

2 They're also important for the
3 construction of the project. Not knowing where
4 the right-of-way is, when the contractor shows
5 up on the site, they're going to have a plan
6 that has lines on it, but nothing to relate it
7 to the ground. And I remember, when I was a
8 young surveyor, the Winnepesaukee River Basin
9 Project, which is a huge sewer project around
10 the lakes, was -- it was at the end of the
11 project at that point, in the early '80s, and
12 they had some plans that were similar to these
13 preliminary plans. And the contractors just
14 dug the holes and laid the sewer in, and they
15 caused so much damage to the private property
16 over time. As a land surveyor, we went in, in
17 the '80s and '90s, and found that, because it
18 wasn't monumented, it wasn't properly surveyed,
19 that property corners all over the place had
20 been destroyed.

21 And it created huge economic problems for
22 people, as well as a lot of boundary disputes,
23 because it was around the lakes. And that's
24 very similar to what could happen here.

[WITNESS: Nix]

1 Q So, what I'm hearing is, is you believe that
2 monumentation is necessary not only for the
3 future, in establishing where the boundaries of
4 the right-of-way are, but are necessary for
5 construction of the Project to be in the exact
6 location in which it's planned to go?

7 A That's correct.

8 Q Okay. How difficult is it to install a
9 monument?

10 A It's not difficult at all.

11 Q Dig a hole, put in the granite pin --

12 A You could use iron -- you could use iron pipes
13 and pound them in, you could do offsets. It's
14 not difficult at all.

15 Q Okay. Aside from the survey and monumentation
16 issues, DOT has asked the Applicant to provide
17 a lot more detail and information. Do you feel
18 as though, if those are met, that other
19 concerns of yours would be adequately
20 addressed?

21 A As far as the physical evidence in the field,
22 again, you said "aside from the boundary
23 issue"?

24 Q Right. I'm not exactly sure what I'm referring

[WITNESS: Nix]

1 to. I know you have other -- your testimony
2 covered a lot of ground, and most of it
3 concerned the boundaries --

4 A Right.

5 Q -- and the layout. Do you have -- let me back
6 up. Do you have concerns beyond boundaries and
7 monumentation that DOT has also addressed?

8 A I believe that, in DOT's requirements, that
9 they are asking the surveyors to provide the
10 additional information. I don't really have a
11 problem with that part of it. I do have, as I
12 said earlier, I do have a problem with the
13 information that is not on these plans
14 regarding that cemetery and the road that had
15 been moved. They're just plain not there,
16 which raises a number of red flags. That was
17 on a municipal highway. And I don't know --
18 I'm not clear at this point whether DOT is
19 reviewing those municipal records or plans or
20 not.

21 MS. WEATHERSBY: Okay. Thank you. I
22 have nothing further.

23 CHAIRMAN HONIGBERG: Mr. Oldenburg.

24 MR. OLDENBURG: Thank you, Mr.

[WITNESS: Nix]

1 Chairman. Good afternoon, Mr. Nix. My name is
2 Bill Oldenburg. I work for the Department of
3 Transportation. I have a few questions. I'll
4 start with the easy ones first.

5 BY MR. OLDENBURG:

6 Q This is not a DOT project, is it?

7 A No, it's not.

8 Q Okay. And there is a difference between what
9 the DOT needs and what the Registry needs to
10 record a plan, correct?

11 A You mean --

12 Q If the DOT --

13 A -- if the DOT isn't going to record the plan?

14 Q This isn't our project. So, we're not going to
15 record plans.

16 A Okay.

17 Q All right. So, the DOT -- DOT needs
18 information to review and approve the Project,
19 correct?

20 A That's correct.

21 Q DOT is not going to record the plans. If
22 Northern Pass is going to record the plans,
23 there's a different need.

24 A That's correct.

{SEC 2015-06}Day 49/Afternoon Session ONLY{10-20-17}

[WITNESS: Nix]

1 Q Right?

2 A Well, my -- for DOT to adequately review this
3 Project, they need to know where the limits of
4 the rights-of-way are. Because, if part of the
5 design is outside the right-of-way, or it's so
6 close that it's going to impact the
7 right-of-way, without having that knowledge,
8 whether you record the plan or not is not
9 dispositive of having to know where that
10 right-of-way line is.

11 Q Exactly. So, let me go to the -- you've seen
12 it before, it's that -- it's on the DOT
13 requirements, Number 4, which, and I'll read it
14 to you, because I'm not going to bring it up,
15 is "The Applicant shall provide a certified
16 survey report delineating the means and methods
17 of determining the right-of-way shown on the
18 plans." And then it goes on, "The report shall
19 include all notations and all records and plans
20 used and the monumentation held to control the
21 right-of-way lines." And then "the report will
22 be certified by a licensed land surveyor in
23 charge that the right-of-way lines shown on the
24 submitted plans are accurate", and it

[WITNESS: Nix]

1 continues. DOT just cares where the
2 right-of-way is.

3 A That's correct.

4 Q It doesn't care where -- who owns the
5 properties on the other side of the
6 right-of-way, where the property lines are,
7 what a boundary survey is. They just care
8 where the right-of-way is, to ensure that the
9 Project is in the state right-of-way and not on
10 private land, correct?

11 A Correct.

12 Q So, if the requirement is that the plans have
13 to be registered and recorded at the Registry
14 by Northern Pass, that's a separate issue of
15 what the DOT needs to review the plans for that
16 compliance, right?

17 A If I may, and there may be a misunderstanding,
18 I didn't say that there is a requirement that
19 the plans be recorded. I think the question
20 was, is there a requirement -- is there a
21 requirement? And I think my answer was, and if
22 it wasn't, I'll clarify, is that, if I were
23 Northern Pass, I would want them recorded --

24 Q Okay.

[WITNESS: Nix]

1 A -- to protect myself. But that's their choice.
2 But that's not, whether the plan is recorded or
3 not, is not dispositive of whether a boundary
4 survey has to meet the requirements of Lan 500.

5 Q So, on -- and I lost it, I had it up here. In
6 the memo from Bob Talon, wasn't the very last
7 statement saying that the plans need to comply
8 with the requirements and -- for the licensed
9 land surveyor requirements in the RSAs?

10 A The first Bob Talon memo did, in fact, say
11 that. And the second Bob Talon -- I'm calling
12 it the "Bob Talon memo", but it's the
13 memorandum from the meeting, did not reiterate
14 that. So, I have taken that to mean that
15 Requirement Number 4, in the first Talon memo,
16 is not part of the requirements.

17 Q Okay. So, Meridian surveyors, they're licensed
18 in New Hampshire, correct?

19 A Yes. Yes, they are.

20 Q And BL Companies, they have folks who are
21 licensed in New Hampshire?

22 A I looked them up, too. Yes.

23 Q Okay. So, they know what it means to meet the
24 requirements of, you know, for developing a

[WITNESS: Nix]

1 stampable plan in New Hampshire?

2 A I believe they do, yes.

3 Q Okay. I'm sorry, my notes are going to -- I'm
4 going to bob all over the place here, so I
5 apologize.

6 Historic layouts. One of the things that
7 we talked about or heard testimony about was
8 historic layouts and how they're treated. So,
9 a lot of surveys start, you know, we've seen
10 evidence of the 1800's. So, how do you treat,
11 when you survey using your experience, when you
12 use a historic layout, what do you do if
13 there's nothing past that historic layout? And
14 some of the examples are, you know, "the survey
15 starts, you know, at a spike in the oak tree in
16 Captain Smith's front yard."

17 A Right.

18 Q And the tree is gone, the spike's gone, Captain
19 Smith is gone. So, how do you -- how do you
20 reconcile that historic layout with what's
21 there today?

22 A There is a lot of historical research that goes
23 into it. If -- now, these layouts I don't
24 think go back to 1803, maybe some of them did.

[WITNESS: Nix]

1 But, in 1803, there was a -- the Legislature
2 passed a statute that required that every town
3 in the State of New Hampshire map itself, and
4 show all major highways, boundary lines, major
5 water courses. Those maps were -- it took a
6 while to do it, most of them came out in 1806.
7 They were compiled in what's called the
8 "Carrigain Map". And, on the Carrigain Map --
9 and those original town surveys, for each town,
10 are in books at the Archives. You could
11 actually go to each town. Some are really
12 good, some are not so good.

13 But the point is is that, if there's a
14 major road shown on those plans, there's a
15 very, very high probability that it was laid
16 out as a highway. And, so, that's one place we
17 go to look.

18 Another place would be the 1860's Wall
19 Map. Where we compare the location of those
20 roads, which are generally -- the Wall Maps
21 were done for insurance purposes, on a
22 county-by-county basis. And the insurance was
23 that, if your house was on the map, you could
24 get insurance. But, if it wasn't on the map,

[WITNESS: Nix]

1 you couldn't get insurance. And they were very
2 accurate, and they were accurate as to the
3 roads. So, we'd look at where those roads are.

4 There's an 1895 Atlas that was published.
5 Actually, I have one of the original copies.
6 That's another place that we go to look. And
7 we look to see if that road follows that early
8 layout. Is it generally there?

9 We also look at the U.S. -- early USGS
10 maps. And that earlier map that Kris had put
11 up, that's based on the -- that's what the
12 underlying map is. And we look at that and
13 compare it to later USGS maps to see if the
14 roads moved. Many, many times, it's
15 interesting, but roads move.

16 And, so, that's -- those are the
17 processes. Then, we also look at the deeds.
18 And, in order to tie into those ancient --
19 because -- those ancient layouts, which were
20 from Smith to Jones's house, we had to figure
21 out where Smith lived and where Jones lived.
22 And I've done that in -- well, I did one in
23 Gilford, on Watson Road, where I found the
24 oldest house on the south end and the oldest

[WITNESS: Nix]

1 house on the north end, and took those back,
2 and, sure enough, you know, found the layout.
3 That's sort of the process.

4 If there's -- if there's a disagreement as
5 to the layout, then, as a land surveyor, if I
6 had a private client, I would explain it to him
7 and they -- there are processes. You can go to
8 the selectmen and ask them to re-layout the
9 road. DOT has that same statute. Where you
10 notify the abutters, you know, and then if --
11 they have a certain amount of time to object or
12 not object. If they object, then it goes into
13 a new layout process. So, that can establish
14 it. That's probably the easiest, one of the
15 easiest ways to do it.

16 Or, you go to superior court and ask the
17 court to determine that. You present the court
18 with a plan and ask the court to determine that
19 that is where the layout is. That's another
20 method of doing it. So, there's ways to do it.

21 Q So, it's a jigsaw puzzle you're putting
22 together?

23 A It's an absolute jigsaw --

24 Q Parcel by parcel, --

[WITNESS: Nix]

1 A Yes.

2 Q -- and sometimes there's pieces missing.

3 A That's right.

4 Q And you take more or less a best guess or best
5 estimate, based upon --

6 A That's right.

7 Q -- physical evidence and deeds --

8 A That's right.

9 Q -- and information to fill in that line.

10 A Right.

11 Q And that's why a lot of times you see on a plan
12 it's an approximate right-of-way.

13 A That's right. That's correct.

14 Q Because there's not enough information for you
15 to definitely say that's where it is?

16 A That's correct.

17 Q Okay.

18 A That's correct.

19 Q So, it's not unreasonable for someone to have
20 an "approximate right-of-way" on a right-of-way
21 plan?

22 A Well, it depends on what you're doing. This
23 Project is -- the magnitude of this Project,
24 and how it fits between the lines, is so large

[WITNESS: Nix]

1 that knowing where those lines are and
2 establishing those lines is very important.
3 It's like the reconstruction of 93, or the
4 construction of new 93 down south. In order
5 for DOT to know where those lines are, they
6 went through the whole process. And they
7 actually took additional land. And, when they
8 took the land, they surveyed it. You know,
9 I've seen those plans. DOT knew exactly what
10 they were getting. And that's not happened
11 here.

12 Q Well, it's because, on that project, they're
13 purchasing land. So, they can set where the
14 new right-of-way line is. On this, there's no
15 land being purchased. So, it's that jigsaw
16 puzzle of figuring out exactly where the
17 existing right-of-way is?

18 A That's right. Yes.

19 Q Okay. So, some of the timeline, in your
20 opinion, from what you know about the Project,
21 the original plans that were submitted with the
22 Project had the line underneath the pavement.
23 Would there be a need for a survey, if the line
24 was totally underneath the pavement, because it

[WITNESS: Nix]

1 would be under public roads?

2 A Well, the example of the road that moved by the
3 cemetery. We don't know whether the new road
4 is actually in the right-of-way or not. So,
5 just to assume that it's under the pavement is
6 not good enough. Just to assume that under the
7 pavement is within the right-of-way is not good
8 enough. There's places along --

9 *[Court reporter interruption.]*

10 **CONTINUED BY THE WITNESS:**

11 A -- Chemung Road, in Meredith, where the town
12 moved the road without laying out a new road,
13 and significantly. And, you know, the land
14 surveyors in that area, we all know about it,
15 and that hasn't been solved.

16 But the DOT in Alton, when you go from the
17 old Route 11 to the new Route 11, down near
18 11D, that corner has moved over time. And
19 there's no new layout for that. We're fully
20 aware of that. But, you know, the landowners
21 haven't objected, but the road's better.

22 BY MR. OLDENBURG:

23 Q So, but in the case of where the line is
24 underneath the pavement, knowing exactly where

[WITNESS: Nix]

1 the right-of-way is wasn't as important with
2 the Project that -- that was in the original
3 application. And then it moved to more or less
4 under the edge of pavements. And then the
5 requirement from the DOT, in April of '17, was
6 really where they said "you need to be as close
7 to the right-of-way as possible." Wasn't it
8 really in April of '17 where that right-of-way
9 became a critical component? And, so, there's
10 been a lot of talk back and forth about the
11 timeline. Wasn't that really when this became
12 an issue? Because --

13 A Well, this -- I understand that you're coming,
14 correct me if I'm wrong, but you're coming at
15 it from the point of view of an engineer. I'm
16 a land surveyor, and I look at a project of
17 this magnitude, and, from day one, the
18 right-of-way is important. If that
19 right-of-way were the width of I-93, and you --
20 and they were putting that line between the two
21 lanes, north and southbound lane, that's fine.
22 No problem. You're so far away from it. But,
23 in many cases, these are three rod
24 right-of-ways, 49 and a half feet. For the

[WITNESS: Nix]

1 vaults, I forgot what the width of them are,
2 but they're relatively wide. And just to get
3 the excavation done, and stay within the 49, is
4 going to be a little bit of a challenge.

5 Q So, the plans that were shown, you were shown
6 some plans that had the right-of-way lines on
7 them, it was sort of the set that you were
8 asked what the distance were. And you've seen
9 some of those plans that were submitted by the
10 Applicant where it was -- that they weren't to
11 standard, as you said?

12 A Correct.

13 Q Okay. But there was no label on those. They
14 weren't stamped. Could those -- so, there was
15 no portrayal that those were "completed plans".
16 And the Applicant, when the Construction panel
17 was up last, one of the questions I asked them
18 was "were they going to prepare plans and stamp
19 plans?" And they said "yes". That most of --
20 most of the information for the title work, the
21 abstracting was complete, and that they have, I
22 think the quote was "a number of survey crews
23 in the field today collecting data".

24 So, if we ignore those plans that you saw

[WITNESS: Nix]

1 and say that the plans that are submitted meet
2 the licensing requirements and could be stamped
3 by a land surveyor, would you have an issue
4 with them, if they only showed the
5 right-of-way? Or do you think that they, to be
6 stampable plans, they have to do total boundary
7 surveys of every boundary along the sixty miles
8 of underground?

9 A Oh, you mean of every lot?

10 Q Yes.

11 A Oh, no. They don't have to do that. They need
12 to establish where the limits of the
13 right-of-way are. Right.

14 Q Okay. So, they don't need a -- you wouldn't
15 say, to be stampable, they don't need a
16 boundary survey for all that?

17 A Not for every single abutting lot.

18 Q Okay.

19 A The boundary survey is the boundary of the
20 right-of-way. The problem is where we're at
21 the eleventh hour, and the Committee is going
22 to make a decision without having the benefit
23 of the boundary survey that, in basically 99
24 percent of the projects of this magnitude,

[WITNESS: Nix]

1 would have been done before the plans were even
2 submitted. So, we wouldn't be having this
3 conversation today.

4 Q Okay. Thank you for that clarification,
5 because that was a lot of my question. Because
6 I was wondering if you were going to make them
7 do a boundary survey of the White Mountain
8 National Forest. Not that you would make them,
9 but if that was your recommendation.

10 In your prefiled testimony, you had
11 mentioned that you had worked on DOT highway
12 right-of-way plans. Have you ever worked for
13 the NHDOT?

14 A No, I haven't.

15 MR. OLDENBURG: Okay. All right.
16 Thank you. I have no other questions. Thank
17 you.

18 CHAIRMAN HONIGBERG: Commissioner
19 Bailey.

20 CMSR. BAILEY: I'll try one question
21 or so. Mr. Oldenburg clarified a lot of things
22 that were not clear in my mind.

23 BY CMSR. BAILEY:

24 Q But you said you weren't sure whether DOT was

[WITNESS: Nix]

1 going to be reviewing the municipal highway
2 rights-of-way. And let's assume, for purposes
3 of this question, that they are not going to
4 take jurisdiction over the municipal highways.
5 I believe that leaves it to the Site Evaluation
6 Committee?

7 A That's correct.

8 Q And, so, --

9 A Well, I think --

10 Q Let me ask the question --

11 A I think there's a dispute about that. And I
12 don't want to get into a --

13 Q Legal --

14 A -- making a legal argument about that dispute.

15 Q Right. Right.

16 A Right.

17 Q So, assume that we think we have to grant
18 permission for the Project to be located in the
19 municipal right-of-way. What advice would you
20 give to us about how we should evaluate whether
21 or not to approve that? Would it be that they
22 have to have stamped plans in the municipal
23 rights-of-way? I mean, can you just elaborate
24 a little bit?

[WITNESS: Nix]

1 A Yes. It would be -- yes. They should have
2 stamped survey plans of the entire route,
3 whether it's in the state highway or whether
4 it's in the municipal highways. And that, if
5 the Committee is going to review it and DOT is
6 not, then they should be held to the standard
7 of the Board of Licensure rules and
8 regulations.

9 CMSR. BAILEY: Okay. Thank you.
10 That's all I have.

11 CHAIRMAN HONIGBERG: Mr. Iacopino.

12 BY MR. IACOPINO:

13 Q I just want to clear up some terminology first,
14 Mr. Nix, because I'm a little bit confused. In
15 your supplemental prefiled testimony, you give
16 three examples of places where, and it's on
17 Page 11 and 12, I think it's three, three
18 examples of instances where the DOT requires
19 "boundary survey plans". And, in the question,
20 it says "Does New Hampshire DOT require
21 boundary survey plans meeting the requirements
22 of Lan 100 through 500 by a licensed land
23 surveyor?" And the first sentence of your
24 answer says "Yes. The following are references

[WITNESS: Nix]

1 to manuals adopted by NHDOT regarding the
2 requirement for a Standard Property Survey."

3 Is a "boundary survey" and a "Standard
4 Property Survey" the same thing?

5 A In the context of my prefiled testimony, yes.
6 And I apologize for mixing terms.

7 Q Okay. So, now let's talk about the context of
8 your testimony here today then.

9 A Yes.

10 Q In your testimony -- in your testimony today,
11 is there a difference between when you've
12 mentioned "boundary survey" and any other type
13 of survey?

14 A Well, a "boundary survey", in my terminology,
15 is equivalent to the "Standard Property Survey"
16 as defined in Lan 500. "Boundary survey" is
17 the general term that's used. I think
18 "construction survey" was mentioned. That is
19 different in the way I described it. It's used
20 by the engineers for their design work. It's
21 laid on top of the Standard Property Survey.

22 The "route survey" that I mentioned
23 earlier is a subset of a Standard Property
24 Survey. A route survey is a survey of -- it's

[WITNESS: Nix]

1 a longitudinal survey of a highway. We also do
2 them of railroads, establishing the boundaries.
3 If there's a very long, say, sewer -- a sewer
4 line, and there's an easement surrounding that,
5 that would be a route survey as well.

6 But those are all subsets of the Standard
7 Boundary Survey.

8 Q Okay. And they have lesser requirements?

9 A No. They have the same requirements.

10 Q They have the same requirements?

11 A Yes. It's just the way -- it's just the term
12 for a very long, narrow survey.

13 Q And I think you were asked this question by
14 Mr. Hodgdon, but I'm not sure I understood the
15 answer. So, I'm just going to ask it again.

16 Is it your understanding that the
17 Department of Transportation has requested a
18 "boundary survey" from the Applicant in order
19 to meet its requirements?

20 A I apologize. Because, after Mr. Oldenburg
21 questioned me about that, I'm not sure exactly
22 what DOT is asking for at this point. If the
23 provisions of the first Talon memo are still
24 applicable, then the answer is "yes".

[WITNESS: Nix]

1 Q Okay.

2 A If it's not applicable, then the answer is
3 "no". No, no. That isn't correct. The
4 first -- the first Talon memo specifically
5 cites the requirements of Lan 500. And then
6 the second Talon memo lays out "this is what we
7 will accept for a boundary survey." So, it
8 becomes conflicting.

9 Q Okay. So, the Committee then should look at
10 those memos to make that determination on their
11 own?

12 A (No verbal response).

13 *[Court reporter interruption.]*

14 WITNESS NIX: That was a non-answer.

15 *[Laughter.]*

16 BY MR. IACOPINO:

17 Q Well, you sort of raised your hand like "maybe
18 so". But do you have -- do you have an answer
19 to that?

20 A I don't have an answer to that.

21 Q In your prefiled testimony, you reference a
22 number of places, I think to demonstrate why
23 surveys are so important, different places in
24 New Hampshire law that licensed land surveyors

[WITNESS: Nix]

1 are required to do their work and particular
2 surveys are required. I assume that you looked
3 through the law, through the various laws,
4 before you filed your prefiled testimony,
5 correct?

6 A Oh, yes.

7 Q Okay. You're aware then that the RSA 162-H,
8 which is the enabling statute for the Site
9 Evaluation Committee, does not contain such a
10 requirement, right?

11 A I, unlike Mr. Bowes, I did read RSA 162-H. And
12 it says in the enabling -- in the beginning of
13 the enabling that the private property rights
14 should be considered.

15 Q Absolutely. But that's not my question.

16 A Okay.

17 Q My question is whether the statute requires a
18 boundary survey?

19 A No.

20 Q Okay. And did you look at our administrative
21 regulations to determine --

22 A Yes.

23 Q -- if they required a boundary survey?

24 A Yes, I did.

[WITNESS: Nix]

1 Q And did they?

2 A It doesn't specifically say "boundary survey",
3 no.

4 Q Okay. All right. And I guess --

5 MR. IACOPINO: Well, I think I'm all
6 done. Thank you.

7 CHAIRMAN HONIGBERG: Thank you. All
8 right. I have no questions that haven't been
9 answered.

10 Mr. Thompson, do you have any
11 redirect for Mr. Nix? I sense the answer is
12 "yes"?

13 MR. THOMPSON: Yes. I've just been
14 handing something that I'm trying to
15 understand.

16 CHAIRMAN HONIGBERG: Let's go off the
17 record.

18 *[Brief off-the-record discussion*
19 *ensued.]*

20 CHAIRMAN HONIGBERG: All right.
21 You've asked Ms. Menard to ask your question
22 for you. Is that right, Mr. Thompson?

23 MR. THOMPSON: That's correct.

24 CHAIRMAN HONIGBERG: All right.

[WITNESS: Nix]

1 MS. MENARD: Thank you, Mr. Chairman.
2 Thank you, Mr. Nix.

3 **REDIRECT EXAMINATION**

4 BY MS. MENARD:

5 Q There's been discussion regarding stamped plans
6 and the anticipation that these stamped plans
7 be provided to the DOT for state roads. And
8 Ms. Bailey was asking you questions about
9 stamped plans as being also a requirement for
10 the SEC. So, based on the timing of the plans,
11 what, if any, concerns do you have about
12 abutters being able to dispute the boundaries
13 determined by the survey before potential
14 approval of the Project?

15 A If --

16 MR. NEEDLEMAN: Objection.

17 CHAIRMAN HONIGBERG: Hang on. Hang
18 on, Mr. Nix.

19 MR. NEEDLEMAN: Objection. I don't
20 think that's within the scope of redirect.

21 CHAIRMAN HONIGBERG: Yes. What are
22 you tying that back to, Ms. Menard? What
23 testimony that's occurred here today are you
24 tying that to?

[WITNESS: Nix]

1 MS. MENARD: There was some great
2 discussion with Commissioner Bailey -- I mean,
3 excuse me, Lara Saffo regarding property owners
4 and the burden of property owners, regarding
5 having to be put in a position of dispute after
6 the approval process.

7 So, I believe that Mr. Nix's
8 experience as a land surveyor, to any opinion
9 regarding preempting property disputes, whether
10 the timing of decisions is important to avoid
11 that whole scenario.

12 CHAIRMAN HONIGBERG: Boy, I'm not
13 even sure I remember that.

14 MS. MENARD: I'm sorry.

15 CHAIRMAN HONIGBERG: I remember a
16 question that drew an objection that was
17 sustained. Mr. Needleman, was there something
18 else? Does anybody -- Mr. Aslin, do you --
19 Mr. Aslin looks like he has something.

20 MR. ASLIN: Well, I do recall the
21 line of questioning. I don't recall whether
22 there was an objection that was sustained on
23 that question or not. We'd have to look back
24 at the record, I think.

[WITNESS: Nix]

1 CHAIRMAN HONIGBERG: Mr. Needleman.

2 MR. NEEDLEMAN: I'm pretty sure I did
3 object, and it was sustained.

4 CHAIRMAN HONIGBERG: Yes. I'm
5 concerned that you're going outside of the
6 scope of cross, of cross that was allowed.

7 MS. MENARD: I'm going to have to
8 defer to your judgment.

9 CHAIRMAN HONIGBERG: Well, I --

10 MS. MENARD: And I appreciate the
11 opportunity to put it out there.

12 CHAIRMAN HONIGBERG: Don't back off
13 just yet.

14 MS. MENARD: Okay. This is a
15 property rights issue that -- or, property
16 value burden concern.

17 CHAIRMAN HONIGBERG: You've got a
18 surveyor up here.

19 MS. MENARD: Yes. And he has
20 experience in preventing -- or, he has
21 experience that demonstrates what happens when
22 things go wrong, and he used the example in
23 Meredith. Where there was tremendous burdens
24 to private property owners as a result of not

[WITNESS: Nix]

1 having survey plans.

2 So, to avoid disputes between
3 property owners and the Project, it would make
4 sense to have a review period, well, I'm asking
5 Mr. Nix if he agrees that the timing could
6 prevent -- should allow for a review period.

7 CHAIRMAN HONIGBERG: Mr. Needleman.

8 MR. NEEDLEMAN: I think it's been
9 established that the purpose of these plans is
10 not for that purpose. So, I'm not sure the
11 question has any meaning. These aren't to
12 establish boundaries that people can rely on
13 for purposes of court proceedings.

14 CHAIRMAN HONIGBERG: I'll going to
15 sustain the objection, Ms. Menard.

16 Is there anything else? I think the
17 answer is "no". That Mr. Thompson doesn't have
18 any other questions.

19 MR. THOMPSON: I will say that
20 Mr. Thompson has no more questions.

21 CHAIRMAN HONIGBERG: All right. That
22 brings us to the end then of the day. Thank
23 you, Mr. Nix.

24 WITNESS NIX: Thank you very much.

1 CHAIRMAN HONIGBERG: Mr. Aslin?

2 MR. ASLIN: This could be off the
3 record.

4 CHAIRMAN HONIGBERG: Okay. Then,
5 let's -- we're going to adjourn. We'll be
6 resuming Monday morning, at nine o'clock.

7 (Whereupon the **Day 49 Afternoon**
8 **Session** was adjourned at 5:17
9 p.m., and the hearing to resume
10 on **October 23, 2017**, commencing
11 at 9:00 a.m.)
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C E R T I F I C A T E

I, **Steven. E. Patnaude**, a Licensed Shorthand Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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

Steven E. Patnaude, LCR
Licensed Court Reporter
N.H. LCR No. 52
(RSA 310-A:173)

BY CMSR.
BAILEY: [1]
135/22
BY MR. ASLIN:
[3] 9/17 17/17
18/17
BY MR.
HODGDON: [8]
96/12 97/24 99/20
102/21 106/3
106/11 107/4
114/10
BY MR.
IACOPINO: [2]
137/11 140/15
BY MR. LAKES:
[3] 88/17 89/13
93/3
BY MR.
OLDENBURG: [2]
121/4 131/21
BY MR.
THOMPSON: [2]
4/14 4/21
BY MS. DRAPER:
[1] 94/13
BY MS.
MENARD: [1]
143/3
BY MS.
PASTORIZA: [16]
23/15 33/24 34/14

39/18 42/19 43/7
44/16 47/4 50/1
50/15 52/18 53/10
53/23 54/16 56/4
56/15
BY MS. SAFFO:
[18] 60/6 61/3 62/3
62/18 64/9 64/23
69/8 70/5 71/18
75/8 76/16 77/13
79/3 79/8 79/18
83/23 85/17 87/3
BY MS.
WEATHERSBY:
[1] 115/16
CHAIRMAN
HONIGBERG:
[111] 4/2 4/7 4/19
8/6 8/10 8/19 8/23
17/4 17/12 18/9
18/14 22/17 23/5
23/14 25/24 26/4
32/14 33/12 33/20
34/11 36/19 37/4
42/15 43/4 43/22
44/4 44/14 46/19
46/23 47/2 47/9
47/16 47/22 48/2
49/3 49/8 50/12
51/5 51/13 51/22
52/3 52/6 52/12
53/1 53/17 54/9

55/7 55/13 55/18
56/12 57/14 58/15
58/19 59/1 59/5
59/10 59/20 59/23
60/2 70/20 71/10
74/13 74/24 75/5
77/2 83/21 85/14
86/10 86/14 86/23
87/21 88/5 88/10
89/3 89/9 92/10
94/5 94/10 95/18
95/21 96/1 96/5
97/16 97/20 102/13
102/18 106/7
106/23 114/8
115/10 120/22
135/17 137/10
142/6 142/15
142/19 142/23
143/16 143/20
144/11 144/14
144/24 145/3 145/8
145/11 145/16
146/6 146/13
146/20 146/24
147/3
CMSR. BAILEY:
[2] 135/19 137/8
MR. ASLIN: [13]
8/9 9/6 17/16 18/16
22/15 59/4 59/7
59/11 59/17 59/19

MR. ASLIN:... [3]
59/22 144/19 147/1
MR. DRAPER: [2]
8/16 8/21
MR. HODGDON:
[11] 96/6 96/9
97/19 99/11 99/16
102/16 106/1 106/9
107/1 114/6 115/8
MR. IACOPINO:
[2] 49/18 142/4
MR. LAKES: [4]
88/12 89/6 89/11
94/3
MR.
NEEDLEMAN:
[28] 18/6 25/18
32/9 36/17 42/13
43/17 46/18 46/20
47/7 49/4 51/1
52/23 53/14 55/3
59/15 59/18 70/17
74/10 76/11 83/19
86/2 89/1 92/7 96/3
143/15 143/18
145/1 146/7
MR.
OLDENBURG: [2]
120/23 135/14
MR. PALMER:
[1] 88/8

MR. REIMERS:
[1] 95/19
MR.
THOMPSON: [5]
4/10 8/4 142/12
142/22 146/18
MS. DRAPER: [3]
8/18 94/11 95/17
MS. FILLMORE:
[4] 48/14 48/17
58/23 59/3
MS. GAGNON:
[1] 99/14
MS. MENARD:
[8] 64/3 142/24
143/24 144/13
145/6 145/9 145/13
145/18
MS. PASTORIZA:
[27] 23/7 26/1
32/12 33/2 33/19
33/22 36/20 42/17
43/6 43/23 44/9
46/24 47/10 47/19
48/1 48/12 49/20
51/10 51/16 52/2
52/5 52/11 54/11
55/12 55/17 56/14
58/14
MS. SAFFO: [20]
60/3 61/1 61/24
69/6 70/21 71/14

74/15 75/3 76/15
77/6 77/8 78/24
79/6 79/15 83/22
86/5 86/12 86/15
87/1 87/19
MS. TOWNSEND:
[1] 94/8
MS.
WEATHERSBY:
[2] 115/13 120/20
**UNIDENTIFIED
SPEAKER:** [1]
70/3
WITNESS NIX:
[19] 4/11 17/9
18/13 48/4 53/20
56/10 57/21 60/5
63/24 64/4 64/13
71/12 77/5 77/7
88/16 96/8 115/15
140/13 146/23

\$

\$50,000 [1] 42/12

'

'17 [2] 132/5 132/8
'4 [1] 5/24
'80s [3] 5/20 118/11
118/17
'90s [1] 118/17

0	130 [2] 44/21 70/12	1994 [1] 5/24
052 [1] 1/24	135 [1] 2/17	1997 [1] 6/1
06 [1] 1/7	137 [1] 2/18	19th [3] 7/12 48/22
1	142 [2] 43/9 49/22	78/21
10 [4] 3/7 42/22	143 [1] 2/12	1st [2] 7/17 17/3
56/20 57/7	150 [1] 87/6	2
100 [4] 9/20 84/10	16 [3] 97/14 97/18	2/16/16 [1] 97/14
107/12 137/22	97/20	20 [2] 1/3 42/12
106 [2] 75/18 75/24	162-H [3] 22/7	2002 [1] 56/7
107 [1] 107/3	141/7 141/11	2014 [1] 54/22
11 [3] 131/17	17 [2] 1/6 36/3	2015 [5] 43/1 43/12
131/17 137/17	17th [3] 11/13	49/7 50/5 50/21
11-06-17 [1] 1/6	29/16 48/23	2015-06 [1] 1/7
112 [4] 43/3 54/20	18 [1] 63/11	2016 [4] 6/17 10/10
56/8 56/10	1800's [1] 125/10	76/5 76/9
115 [1] 2/15	1803 [3] 58/10	2017 [24] 1/3 6/19
116 [6] 25/23 25/24	125/24 126/1	7/11 7/12 7/14 7/17
43/3 50/7 51/1	1806 [1] 126/6	7/19 7/20 7/22 7/23
51/19	1833 [6] 43/4 43/12	8/3 10/10 12/3
11D [1] 131/18	44/14 50/7 50/21	12/23 29/16 49/2
11th [1] 7/14	51/21	76/7 78/12 78/21
12 [1] 137/17	1839 [1] 3/7	80/7 85/14 87/7
12/16/16 [2] 97/18	1860 [1] 20/5	87/14 147/10
97/20	1860's [1] 126/18	228 [4] 59/19 59/20
121 [1] 2/16	1895 [2] 20/5 127/4	59/22 108/3
12971 [6] 3/5 54/6	18th [1] 25/12	228.35 [1] 29/20
54/9 54/15 55/24	1909 [1] 20/5	229 [1] 17/1
56/7	1920's [2] 31/24	23 [2] 2/7 147/10
12th [3] 7/11 25/10	66/8	25 [1] 5/2
78/16	1968 [1] 17/3	26...in [1] 56/20
13-4 [1] 57/4	1974 [1] 81/15	26961 [1] 107/3
	1980s [1] 5/13	298 [4] 23/17 25/8

<p>2</p> <p>298... [2] 29/14 30/9 29th [1] 7/22 2:02 [2] 1/3 4/2 2nd [1] 7/23</p>	<p>4:05 [1] 88/5 4th [3] 12/3 87/7 87/14</p> <p>5</p>	<p>8</p> <p>83397 [1] 107/23 88 [1] 2/9 8th [1] 76/9</p>
<p>3</p> <p>30 [1] 41/18 301 [2] 3/6 59/1 301.03 [1] 21/14 302 [2] 3/4 54/16 310-A:173 [1] 148/19 310-A:52 [1] 60/9 310-A:53 [1] 60/9 35 [2] 5/11 14/12 36 [1] 42/21 3:50 [1] 88/4 3rd [6] 7/19 12/22 23/20 36/10 59/13 85/14</p>	<p>50 [1] 41/18 500 [6] 16/7 26/22 124/4 137/22 138/16 140/5 502 [1] 5/2 502.01 [1] 30/13 503 [1] 19/21 503.03 [2] 36/15 37/4 503.04 [1] 36/15 51 [1] 78/20 52 [1] 148/18 54 [1] 3/4 58 [1] 3/6 593 [1] 59/14 5:17 [1] 147/8 5th [4] 7/20 15/5 80/6 82/2</p>	<p>9</p> <p>90 [3] 53/12 53/22 84/10 93 [3] 130/3 130/4 132/19 94 [1] 2/10 95 [2] 6/8 15/1 96 [1] 2/11 98 [1] 15/2 99 [1] 134/23 9:00 [1] 147/11</p>
<p>4</p> <p>4-4 [4] 3/7 57/8 57/13 58/6 40 [1] 41/18 41713 [2] 99/14 99/22 41715 [1] 100/12 43 [1] 61/6 49 [5] 1/3 1/4 132/24 133/3 147/7 493 [1] 11/17</p>	<p>6</p> <p>60 [1] 2/8 62271 [1] 44/20</p> <p>7</p> <p>70 [1] 91/16 715 [2] 99/14 99/19 73 [1] 99/13</p>	<p>A</p> <p>a.m [1] 147/11 A:173 [1] 148/19 A:52 [1] 60/9 A:53 [1] 60/9 ability [2] 82/8 148/8 able [5] 41/16 65/5 112/1 115/2 143/12 about [56] 9/14 13/4 21/11 23/2 24/21 29/11 31/10 31/15 31/18 32/16 32/18 35/13 35/18 42/22 44/1 44/6 49/12 49/13 49/18</p>

A

about... [37] 49/24
53/19 54/19 55/5
56/3 62/10 65/19
74/12 76/4 76/13
77/15 79/11 79/21
80/14 81/15 82/21
84/1 84/15 85/19
92/19 93/5 95/4
95/5 101/21 112/4
125/7 125/7 130/20
131/14 132/10
136/11 136/14
136/20 138/7
139/21 143/8
143/11
above [4] 28/15
63/12 63/15 113/6
aboveground [1]
5/17
absence [2] 30/14
30/20
absolute [1] 128/23
absolutely [7]
41/22 70/10 72/4
80/5 101/9 105/4
141/15
abstracting [1]
133/21
abuts [1] 34/24
abutter [2] 81/6
82/12

abutters [17] 10/1
28/22 29/2 29/5
31/9 31/10 31/14
31/17 41/20 80/16
80/18 81/10 82/16
82/17 96/17 128/10
143/12
abutting [9] 32/5
34/3 36/4 37/17
39/24 90/15 111/6
111/10 134/17
accept [5] 21/18
72/16 72/17 116/2
140/7
accepted [2] 16/23
31/13
access [1] 79/12
accessible [1] 54/24
accuracy [3] 74/17
78/14 107/12
accurate [15] 18/23
19/10 64/12 69/21
69/23 73/24 74/4
74/8 87/12 87/16
107/7 122/24 127/2
127/2 148/5
accurately [1] 68/9
acknowledge [1]
104/21
across [1] 116/10
act [2] 85/6 85/7
action [3] 42/8

148/12 148/15
actively [1] 30/5
activity [1] 90/2
actually [12] 10/11
29/8 61/15 77/21
91/12 104/13
105/10 106/5
126/11 127/5 130/7
131/4
add [4] 66/3 73/11
73/16 93/21
added [2] 32/23
66/8
addendum [3] 7/15
7/19 112/17
Addendum...explai
ning [1] 113/1
additional [7] 6/24
19/22 24/22 46/3
78/10 120/10 130/7
address [4] 13/22
22/9 22/10 22/13
addressed [3] 21/12
119/20 120/7
adequacy [1] 35/14
adequate [6] 11/3
14/18 24/14 83/18
115/20 116/14
adequately [2]
119/19 122/2
adjacent [1] 45/10
adjourn [1] 147/5

<p>A</p> <p>adjourned [1] 147/8</p> <p>adjusted [1] 16/20</p> <p>adjustment [1] 114/16</p> <p>Administration [1] 89/17</p> <p>administrative [4] 31/2 82/9 82/15 141/20</p> <p>administrator [2] 1/21 105/13</p> <p>adopt [2] 6/19 6/21</p> <p>adopted [3] 13/20 15/18 138/1</p> <p>advice [2] 89/6 136/19</p> <p>advocate [2] 96/17 97/4</p> <p>affected [1] 22/14</p> <p>after [12] 4/20 7/5 7/5 48/22 71/2 76/22 82/4 82/12 82/13 88/24 139/20 144/5</p> <p>after-the-fact [1] 88/24</p> <p>afternoon [12] 1/4 4/11 4/12 4/16 9/8 60/5 60/6 87/6 115/14 115/16</p>	<p>121/1 147/7</p> <p>again [24] 13/18 36/1 38/5 39/16 40/19 46/9 50/3 51/4 52/16 53/15 69/6 72/12 74/11 74/19 75/15 84/9 85/5 86/6 91/8 93/6 95/8 109/21 119/22 139/15</p> <p>against [1] 81/3</p> <p>agency [3] 72/16 103/7 103/18</p> <p>agent [1] 35/20</p> <p>ago [5] 11/12 15/13 48/21 51/15 111/16</p> <p>agree [8] 12/6 12/10 12/12 18/3 18/12 21/3 53/8 115/5</p> <p>agreed [1] 13/20</p> <p>agreement [3] 109/13 110/13 111/15</p> <p>agreements [1] 112/13</p> <p>agrees [1] 146/5</p> <p>ahead [1] 75/20</p> <p>Aid [1] 3/4</p> <p>all [53] 8/5 9/2 9/3 11/5 14/2 16/10 16/15 24/7 26/8</p>	<p>28/19 32/5 34/3 35/17 36/8 37/22 40/21 41/22 41/23 48/13 55/5 56/2 62/16 73/11 87/22 88/10 88/13 94/21 95/4 95/18 95/22 96/2 97/1 111/14 112/3 118/19 119/10 119/14 121/17 122/19 122/19 125/4 126/4 131/14 134/16 135/15 137/10 139/6 142/4 142/5 142/7 142/20 142/24 146/21</p> <p>alleged [1] 65/3</p> <p>allow [2] 53/3 146/6</p> <p>allowed [1] 145/6</p> <p>almost [2] 87/2 98/24</p> <p>along [9] 5/4 33/15 38/22 80/10 89/8 90/20 117/23 131/8 134/7</p> <p>already [7] 13/17 20/2 41/5 59/17 66/15 87/1 104/16</p> <p>also [31] 1/19 5/5 5/21 6/10 6/13 7/24</p>
--	---	--

A	ancient [5] 3/6 58/4 58/22 127/18 127/19	46/7 48/4 48/4 50/10 51/1 51/19 53/20 63/21 72/11 72/12 82/9 83/5 86/1 86/22 88/24 95/16 95/20 95/22 109/1 112/2 138/12 142/10 143/11 144/8 146/11 146/18 148/11 148/13
also... [25] 11/5 12/16 24/3 43/19 49/19 60/20 70/15 71/2 73/20 74/18 78/8 80/12 81/12 81/18 82/17 92/6 100/11 107/6 109/17 118/2 120/7 127/9 127/17 139/1 143/9	and/or [1] 16/20 annotations [1] 78/5 another [11] 24/3 48/8 53/5 62/20 63/14 83/18 85/10 92/13 126/18 127/6 128/19 answer [26] 7/7 15/14 17/10 17/16 26/6 30/23 37/6 44/12 47/9 53/3 56/4 56/14 66/13 79/11 87/10 92/12 123/21 137/24 139/15 139/24 140/2 140/14 140/18 140/20 142/11 146/17	anybody [4] 9/1 23/4 87/23 144/18 anymore [1] 6/13 anyone [1] 59/14 anything [4] 37/12 50/20 78/1 146/16 apologize [8] 10/14 52/14 52/16 59/4 107/24 125/5 138/6 139/20
Alternate [1] 1/16 although [2] 11/17 38/19 Alton [1] 131/16 always [3] 27/21 81/17 83/2 am [12] 5/1 5/5 5/5 12/24 17/20 51/7 51/8 55/9 75/14 148/10 148/12 148/14	answered [5] 18/11 36/19 88/10 94/10 142/9 anticipation [1] 143/6 any [42] 11/6 22/4 24/23 25/16 26/4 27/10 29/2 32/13 34/10 38/1 39/15 39/15 43/16 46/4	apparent [1] 35/5 appeal [1] 83/16 appear [3] 11/3 32/21 65/13 Appearances [1] 1/23 appears [3] 10/8 15/24 109/16 Appellant's [1] 108/2 Apple [3] 23/13
amending [1] 7/18 amendment [1] 10/14 among [1] 70/11 amount [2] 44/2 128/11 analysis [3] 11/6 11/6 58/10 analyzing [1] 104/24		

A		
Apple... [2] 23/15 70/5	appreciate [1] 145/10	49/14 51/16 55/11 71/5 76/5 76/7
applicable [2] 139/24 140/2	approach [4] 15/24 19/16 19/19 31/14	78/12 78/16 132/5 132/8
applicant [24] 7/1 10/24 11/24 13/9 13/21 15/16 20/22 23/22 45/3 45/8 46/14 59/19 59/22 72/20 94/22 96/12 102/2 102/8 110/14 119/16 122/15 133/10 133/16 139/18	appropriate [4] 39/7 74/19 86/10 115/6	April 2016 [1] 76/5 April 2017 [1] 76/7
Applicant's [2] 44/24 97/15	approval [10] 23/19 23/22 24/4 74/9 82/4 82/13 103/22 111/2 143/14 144/6	aquifers [3] 92/7 92/15 92/24
Applicants [12] 25/5 32/8 34/6 43/9 44/20 44/21 46/22 49/22 99/13 107/2 107/23 108/2	approve [4] 72/17 114/15 121/18 136/21	Arago [3] 43/14 50/8 52/21
application [11] 1/8 15/11 43/12 50/6 50/21 51/22 52/1 72/17 72/18 74/6 132/3	approved [6] 42/5 42/6 74/4 74/6 82/10 116/23	Archive [1] 54/4
applications [1] 74/3	approving [1] 12/18	archives [5] 43/17 50/11 50/19 51/1 126/10
applies [1] 26/3	approximate [11] 26/19 28/4 61/16 63/16 63/21 63/23 68/15 78/4 78/5 129/12 129/20	are [127] 7/24 9/2 12/22 14/2 14/3 14/20 14/21 16/8 17/6 18/8 19/19 20/4 20/16 20/23 22/8 23/2 23/21 24/17 26/9 26/14 26/16 26/18 27/6 28/8 30/4 32/1 33/10 33/17 34/16 35/12 37/13 37/13 38/7 38/13 39/5 39/21 41/7 50/14 57/20 57/22 63/6 63/7 64/11 65/9 65/10 65/11 67/5 67/6 67/7 67/17 69/14 70/7 74/3
apply [2] 7/10 110/8	approximated [1] 61/23	
	approximately [1] 73/5	
	April [18] 7/11 7/12 12/2 15/5 23/20 25/10 48/22 48/23	

A

are... [74] 75/2
75/11 75/12 75/23
76/4 76/7 76/22
80/3 80/5 80/11
82/16 83/12 84/6
85/23 85/24 86/14
90/22 90/22 91/17
92/3 93/16 97/5
98/12 99/8 101/16
101/17 101/21
103/14 104/17
107/1 107/8 107/18
108/18 108/22
110/17 112/22
114/15 114/23
116/19 117/15
117/22 119/4 119/4
119/18 120/9 122/4
122/24 123/6
124/19 124/20
125/3 125/14
126/10 126/11
126/12 126/20
127/3 127/16 128/7
130/1 130/5 132/23
133/1 134/1 134/13
136/3 137/24 139/6
139/23 140/23
141/1 141/2 143/21
143/23
area [7] 35/1 40/10

40/18 63/3 94/16
94/18 131/14
areas [7] 26/14
29/21 39/5 63/7
70/17 84/12 90/22
aren't [3] 20/8
102/9 146/11
argue [1] 82/14
arguing [2] 110/7
110/9
argument [3] 21/13
109/5 136/14
arm [4] 8/19 8/21
40/12 40/13
around [5] 16/1
54/18 72/23 118/9
118/23
art [2] 82/24 117/22
as [131] 1/13 3/4
3/5 3/5 3/6 5/9 5/13
5/18 6/2 6/2 6/3 6/5
6/6 6/22 9/11 9/19
10/1 10/9 11/16
14/24 20/10 25/2
27/15 28/20 28/23
29/5 30/1 32/2 32/5
32/6 38/5 42/21
44/21 47/21 50/3
51/20 52/14 53/5
54/1 54/15 55/2
55/6 55/6 55/16
56/20 58/2 58/24

59/14 60/13 60/13
61/23 63/4 64/11
64/11 66/6 67/9
67/10 68/15 69/13
69/14 70/7 72/22
73/21 78/13 78/13
78/14 78/14 78/19
82/6 82/22 83/3
84/5 84/17 84/17
85/3 85/7 85/11
87/13 87/14 87/16
88/14 90/3 90/9
91/12 92/24 92/24
95/7 96/14 96/15
96/16 97/3 97/4
98/6 100/8 101/20
101/23 103/24
104/6 105/12
106/17 108/14
108/23 111/7
111/14 111/24
113/5 113/7 113/12
113/21 115/3
117/16 118/16
118/22 118/22
119/18 119/21
119/21 120/11
126/16 127/2 128/4
128/5 132/1 132/6
132/7 133/11
138/16 139/5 143/9
144/8 145/24

A

As-Built [1] 3/5
aside [4] 6/6 19/13
119/15 119/22
ask [24] 9/13 13/4
17/15 20/20 21/11
23/1 23/2 31/14
46/12 49/18 49/23
52/17 66/16 75/20
87/9 92/13 103/2
104/15 128/8
128/16 128/18
136/10 139/15
142/21
asked [27] 17/7
19/1 32/16 36/18
44/11 45/8 45/17
45/18 46/7 46/10
46/10 77/20 77/22
77/24 88/10 93/3
94/10 95/3 95/9
100/6 106/6 107/16
119/16 133/8
133/17 139/13
142/21
asking [20] 15/15
29/19 51/4 52/8
55/9 55/10 75/3
76/7 76/10 85/8
93/23 107/18
113/12 113/17
113/18 114/15

120/9 139/22 143/8
146/4
Aslin [10] 2/6 8/8
9/6 9/9 17/15 18/16
59/7 144/18 144/19
147/1
Aslin's [1] 23/10
aspect [1] 95/17
assessed [1] 47/13
assessment [3]
36/12 50/4 51/18
assessors [1] 45/14
Assistant [1] 9/10
Association [3]
30/12 31/1 33/5
assume [9] 8/8 9/19
53/18 58/11 131/5
131/6 136/2 136/17
141/2
assuming [4] 42/3
42/4 46/21 80/12
Atlas [2] 20/5 127/4
attached [2] 108/2
108/4
attempting [1] 30/6
attempts [1] 30/16
attics [1] 31/23
attorney [14] 4/16
5/5 6/3 9/8 9/10
15/14 17/19 60/5
96/11 98/3 98/13
98/14 148/10

148/13
attorneys [1] 82/13
August [12] 7/14
7/17 25/12 49/2
49/14 51/16 55/12
56/19 71/3 71/6
71/9 86/9
authority [9] 16/4
16/13 16/15 18/5
38/11 84/21 84/24
111/8 112/6
authorize [1]
110/21
available [4] 43/20
44/7 45/13 49/3
avoid [3] 23/12
144/10 146/2
aware [6] 12/17
23/21 24/3 30/4
131/20 141/7
away [1] 132/22
awful [1] 89/5

B

Bachelor [1] 5/6
back [25] 28/2 32/6
49/21 52/5 58/7
58/10 62/2 62/2
64/1 64/2 69/7 79/7
79/17 80/6 97/7
97/9 104/14 117/24
120/5 125/24 128/1
132/10 143/22

B

back... [2] 144/23
145/12

bad [1] 64/19

Bailey [5] 1/14 2/17
135/19 143/8 144/2

ballpark [1] 42/9

Baltimore [1] 6/9

bank [1] 35/7

based [14] 14/10
26/17 28/5 30/18

32/6 34/16 65/7

78/5 87/13 98/19

109/13 127/11

129/5 143/10

baseline [5] 14/10

14/13 83/7 84/2

90/24

basic [1] 37/22

basically [2] 11/2

134/23

Basin [1] 118/8

basins [1] 95/14

basis [4] 47/9 47/12

53/16 126/22

Bates [1] 44/20

be [143] 10/13

10/21 11/7 13/9

14/16 14/22 15/1

15/24 16/9 16/11

21/15 22/11 22/20

24/6 24/20 25/2

26/17 27/4 28/23

29/1 29/12 29/24

30/16 31/6 32/5

33/14 34/4 35/11

36/6 37/22 38/4

38/20 39/2 39/4

39/15 40/2 40/5

40/21 41/15 41/23

44/12 45/24 46/2

47/17 54/13 54/15

57/6 58/24 59/12

59/13 62/21 63/6

63/23 65/4 65/6

65/13 67/8 67/15

69/24 70/3 72/1

72/18 73/4 73/7

73/13 73/14 74/8

74/21 75/17 76/21

78/9 78/11 80/11

80/15 81/10 81/16

82/5 83/15 84/7

84/10 84/12 88/23

89/8 89/17 90/17

90/20 91/4 91/22

93/22 94/2 94/24

95/12 95/16 96/14

96/21 97/3 97/17

99/3 101/4 101/15

101/18 101/19

101/23 106/10

110/2 110/10

110/13 110/21

112/4 112/17

113/12 115/1

115/24 116/17

116/20 117/12

117/15 119/5

119/19 122/22

123/13 123/17

123/19 126/18

130/23 131/1 132/6

133/4 134/2 134/5

134/15 135/2 136/1

136/18 136/21

137/1 137/6 139/5

141/14 143/7 144/5

147/2 147/5

Bear [6] 34/21

72/24 95/5 95/5

95/10 99/3

became [5] 5/18

5/19 5/20 132/9

132/11

because [32] 13/13

20/1 21/6 22/12

27/20 29/9 35/6

51/4 70/11 72/19

73/5 73/23 74/20

79/15 80/22 95/11

108/8 108/13 117/8

118/17 118/23

122/4 122/14

127/19 129/14

130/12 130/24

B	being [18] 6/2 10/9 14/15 22/14 30/16 30/22 32/16 71/22 82/16 83/5 84/1 88/16 105/12 112/1 117/14 130/15 143/9 143/12	94/3 120/6 biggest [1] 93/15 Bill [1] 121/2 bit [8] 7/9 64/2 77/22 78/2 104/14 133/4 136/24 137/14
because... [5] 132/12 135/5 135/5 137/14 139/20	become [2] 49/3 93/14	BL [13] 7/11 8/1 12/4 15/5 25/9 34/20 45/2 48/19 49/20 50/4 51/12 56/17 124/20
becomes [1] 140/8	been [46] 6/24 9/11 11/5 11/24 13/13 13/19 14/12 15/12 15/18 24/24 27/23 34/18 35/14 37/19 43/22 44/8 48/19 52/18 58/23 67/18 67/19 70/20 72/11 74/13 76/11 76/14 78/17 82/21 84/14 86/5 87/8 88/10 91/1 93/14 94/9 105/12 105/16 118/20 120/15 131/15 132/10 135/1 142/8 142/13 143/5 146/8	BL's [1] 43/10 black [1] 16/17 Board [17] 11/10 12/14 16/1 16/6 16/12 18/1 19/5 19/15 19/20 20/18 20/18 20/23 22/9 22/13 31/2 45/19 137/7
before [11] 13/7 72/14 72/15 83/6 84/2 87/23 104/14 122/12 135/1 141/4 143/13	believe [23] 5/24 8/2 11/15 11/15 12/10 12/16 19/15 20/21 20/23 22/19 34/18 47/2 54/22 69/21 87/11 110/24 110/24 111/18 119/1 120/8 125/2 136/5 144/7	body [2] 22/6 83/7 Boisvert [5] 43/14 44/13 50/8 52/21 53/8
beginning [2] 74/10 141/12	belowground [1] 5/18	bold [2] 45/22 78/4
behalf [1] 10/3	benefit [1] 134/22 beside [1] 117/5 best [6] 29/3 61/23 117/6 129/4 129/4 148/7 better [1] 131/21 between [13] 40/15 63/18 63/22 69/17 73/3 84/10 110/14 116/8 121/8 129/24 132/20 138/11 146/2 beyond [6] 17/6 25/20 40/19 43/19	

B	126/4 134/6 134/7 134/16 134/19 134/19 134/23 135/7 137/19 137/21 138/3 138/12 138/14 138/16 139/7 139/18 140/7 141/18 141/23 142/2	brought [1] 52/18 building [8] 65/10 65/12 66/3 66/4 66/5 66/10 81/13 94/13
Book [3] 3/7 56/20 57/7	138/12 138/14 138/16 139/7 139/18 140/7 141/18 141/23 142/2	buildings [2] 65/16 65/17
books [2] 57/24 126/10	bounds [10] 15/4 15/6 26/10 38/18 92/3 109/19 110/1 110/21 111/1 111/8	built [2] 3/5 27/23
both [5] 5/17 10/16 33/17 104/5 104/6	Bowes [2] 14/5 141/11	bullet [6] 16/17 16/17 112/16 112/20 112/23 113/4
bottling [1] 93/13	boxcar [1] 70/13	burden [2] 144/4 145/16
bottom [3] 26/13 64/8 75/17	Boy [1] 144/12	burdens [1] 145/23
boundaries [13] 14/20 24/12 29/19 86/20 88/20 104/10 117/7 119/3 120/3 120/6 139/2 143/12 146/12	Brad [1] 10/1	Bureau [1] 104/22
boundary [59] 12/14 14/14 16/5 16/12 18/6 27/11 38/21 39/1 40/3 42/13 72/18 90/9 90/18 92/2 92/20 104/1 107/17 107/18 109/6 109/14 110/5 110/7 111/5 111/7 112/1 112/10 112/15 113/11 113/14 114/5 116/4 116/5 116/12 116/24 117/12 118/22 119/22 123/7 124/3	break [1] 87/23	burial [5] 23/20 43/12 46/17 50/6 70/12
	Brennan [1] 1/20	buried [3] 31/19 37/14 37/20
	brick [2] 66/6 66/9	business [1] 78/24
	bridge [1] 97/9	business's [1] 78/22
	brief [10] 4/17 34/13 58/18 60/1 75/7 77/4 85/16 88/2 102/20 142/18	C
	bring [3] 42/7 88/22 122/14	call [8] 7/13 7/16 9/4 66/5 89/15 99/4 105/14 105/21
	brings [1] 146/22	called [2] 95/23 126/7
	brook [4] 36/5 54/19 56/9 95/5	calling [4] 18/8 80/7 86/4 124/11
		calls [5] 36/19 53/1

C

calls... [3] 53/16
83/20 89/2

came [3] 78/2 78/23
126/6

can [77] 12/24 13/3

13/4 14/16 19/11

19/24 23/12 26/6

27/10 28/2 33/11

33/18 33/23 36/2

37/6 37/11 37/19

39/8 40/10 42/9

43/13 44/23 46/6

47/6 50/5 50/22

52/20 54/8 54/23

55/6 56/6 57/3

58/21 61/2 62/2

62/14 62/14 62/23

62/23 64/1 64/2

64/3 65/5 66/11

67/9 69/7 71/12

71/13 71/16 72/5

72/14 75/15 76/2

76/10 76/24 77/11

77/12 77/16 79/2

79/7 81/18 82/10

86/1 86/19 91/20

91/22 92/1 99/17

99/19 105/12

110/16 117/23

128/7 128/13

130/13 136/23

146/12

can't [7] 21/17

58/10 62/15 73/23

85/12 90/6 99/19

cannot [4] 20/14

38/6 46/14 77/2

capacity [1] 5/22

capitalized [2]

113/3 113/8

Captain [2] 125/16

125/18

carbon [1] 90/23

care [2] 123/4

123/7

career [1] 31/16

cares [1] 123/1

Caron [1] 1/20

Carrigain [2] 126/8

126/8

carry [2] 68/4 68/5

case [16] 15/3 29/1

63/5 67/16 70/23

72/21 73/12 73/15

81/22 85/22 88/19

95/10 102/23 103/6

131/23 148/14

cases [4] 35/20

72/15 91/2 132/23

catch [1] 95/13

caused [1] 118/15

caveat [1] 14/15

cemetery [7] 34/24

35/2 35/3 35/8

35/13 120/14 131/3

center [2] 27/12

27/23

centered [3] 16/18

27/21 28/8

centerline [6] 26/17

27/23 28/5 28/13

28/14 38/17

certain [3] 53/19

97/5 128/11

certainly [1] 33/14

certainty [4] 45/21

53/12 53/23 61/21

Certificate [1] 1/10

certification [2]

68/4 68/5

certified [17] 23/23

29/24 67/8 67/9

67/13 67/20 69/20

87/10 87/15 101/12

106/15 106/20

106/20 113/12

115/20 122/15

122/22

certify [7] 20/11

24/4 24/13 106/14

107/6 148/4 148/10

Chair [4] 25/19

59/5 70/18 106/11

Chairman [7] 9/7

48/16 48/18 56/11

C	135/4	collective [1]
Chairman... [3]	clarified [1] 135/21	104/24
96/8 121/1 143/1	clarify [2] 81/9	combination [2]
challenge [1] 133/4	123/22	45/11 53/6
challenged [1] 19/3	clarifying [1] 97/1	Combined [1] 10/4
challenging [1]	Clarksville [3] 3/7	come [9] 7/1 9/15
18/21	56/18 56/23	36/23 37/2 54/2
change [1] 53/13	Clarksville-Stewart	67/15 93/13 111/15
changed [2] 66/1	stown [1] 56/23	116/10
66/2	clear [9] 9/20 10/15	comes [1] 115/4
changing [1] 83/2	96/14 97/17 103/24	comfortable [2]
chapter [3] 60/10	110/11 120/18	26/15 58/3
60/11 60/12	135/22 137/13	coming [4] 14/3
charge [3] 48/10	clearly [2] 78/7	40/13 132/13
92/5 122/23	98/19	132/14
check [2] 81/18	client [17] 38/10	Comm [2] 1/13
81/19	38/14 68/11 68/17	1/14
Chemung [1]	69/3 69/10 69/12	commencing [1]
131/11	69/17 69/19 77/19	147/10
chief [1] 105/21	78/8 85/5 91/4	comment [3] 13/3
choice [1] 124/1	94/24 95/3 95/9	13/4 58/11
Chris [1] 9/9	128/6	commercial [1]
Chrmn [1] 1/13	Clinton [1] 77/19	5/15
cited [1] 43/13	close [2] 122/6	Commission [1]
cites [1] 140/5	132/6	23/9
citizen [1] 65/1	closely [2] 98/21	Commissioner [4]
City [1] 92/18	99/9	29/15 29/17 135/18
civil [3] 5/12 5/20	Club [1] 5/2	144/2
100/18	Cmsr [2] 1/14 2/17	Commissioners [1]
claimed [2] 27/16	Code [1] 89/16	78/18
41/20	collecting [1]	committee [18] 1/2
clarification [1]	133/23	1/12 4/17 6/23 7/21

C		
committee... [13] 14/6 42/5 96/8 96/21 97/14 114/16 114/24 115/12 134/21 136/6 137/5 140/9 141/9	complicated [1] 86/17 complied [1] 25/5 comply [5] 61/8 66/17 74/23 82/18 124/7	106/5 106/13 107/4 107/15
common [1] 40/10	component [1] 132/9	conditional [3] 25/17 46/16 107/4
communication [3] 78/22 80/15 80/18	comprise [1] 98/6	conditions [12] 23/18 23/22 36/10 36/13 46/16 69/22 103/21 103/23
Companies [4] 12/5 45/3 51/12 124/20	computer [2] 11/18 33/24	104/8 104/11 104/12 148/8
Companies' [4] 25/9 48/19 50/4 56/17	concept [1] 78/2	condominium [1] 91/16
company [5] 1/9 5/21 7/12 45/16 60/20	conceptual [1] 14/16	conducted [2] 50/18 54/3
compare [2] 126/19 127/13	concern [3] 29/18 82/22 145/16	conference [4] 80/8 82/3 108/1 108/3
compiled [1] 126/7	concerned [6] 64/11 69/14 78/14 92/18 120/3 145/5	confess [1] 89/5
complete [3] 35/14 72/18 133/21	Concerning [1] 117/13	confirm [4] 6/19 6/22 22/22 41/9
completed [4] 13/9 14/14 72/19 133/15	concerns [5] 13/22 83/4 119/19 120/6 143/11	confirmation [1] 109/1
completely [5] 14/9 56/12 91/19 92/24 94/22	conclusion [3] 36/19 83/21 89/3	conflict [1] 112/5
completion [1] 14/17	conclusions [2] 7/2 18/9	conflicting [1] 140/8
compliance [2] 32/17 123/16	Concord [1] 1/4	conform [1] 41/10
	concrete [1] 27/11	confused [3] 51/8 55/2 137/14
	condition [8] 12/8 24/3 36/16 46/17	confusing [1] 33/14
		Conservation [1] 23/9
		consider [1] 28/22
		considered [1]

C	continue [1] 71/12	correct [140] 10/11
considered... [1]	CONTINUED [2]	10/13 11/1 11/21
141/14	117/20 131/10	12/1 12/10 12/20
consistent [1] 40/17	continues [2]	12/21 13/14 13/15
constitutes [2] 16/5	108/13 123/1	15/1 17/20 17/22
18/5	contract [1] 68/21	19/6 19/12 21/10
constructed [1]	contractor [2]	22/15 24/2 24/8
81/15	68/22 118/4	41/4 41/12 55/9
construction [18]	contractors [1]	60/18 60/19 60/21
3/4 7/21 14/6 44/2	118/13	60/22 61/1 61/11
71/20 100/1 116/10	contractual [1]	61/12 61/17 66/18
116/11 116/13	69/16	66/21 66/22 66/24
116/17 117/1 117/3	contrast [1] 55/10	67/1 67/4 68/7 69/1
117/6 118/3 119/5	control [3] 91/20	69/15 69/16 69/24
130/4 133/16	92/2 122/20	70/1 70/9 70/13
138/18	controlled [1]	70/17 71/23 71/24
consult [1] 6/5	91/19	72/3 73/21 74/1
contact [2] 10/2	convenience [1]	74/4 74/5 76/23
82/4	40/24	78/16 80/18 80/19
contacting [1] 29/1	conversation [2]	80/20 80/21 81/1
contain [2] 28/19	112/4 135/3	81/3 81/4 81/7
141/9	Coots [1] 28/16	82/19 82/20 84/4
contaminant [1]	copied [1] 65/18	84/7 84/8 85/13
91/3	copies [1] 127/5	87/9 94/21 96/18
contaminated [3]	copy [1] 77/6	96/19 97/4 98/3
90/1 90/22 91/1	corner [8] 26/13	98/4 98/12 98/13
contamination [1]	39/4 64/3 66/6 66/7	98/18 98/22 99/2
91/6	99/23 100/12	99/7 99/10 100/2
contention [2]	131/18	100/10 101/13
20/19 22/12	corners [6] 30/15	102/10 102/12
context [3] 55/15	30/21 31/17 65/11	102/24 103/9
138/5 138/7	65/12 118/19	103/10 103/16

C**correct... [49]****103/18 103/19****104/12 106/17****106/18 106/22****107/9 107/10****107/13 107/14****107/17 108/5****108/10 108/11****108/15 108/16****108/19 108/20****109/9 109/16****109/19 109/20****109/22 109/23****110/3 110/19****110/20 110/23****111/11 112/11****115/21 119/7****121/10 121/19****121/20 121/24****123/3 123/10****123/11 124/18****129/13 129/16****129/18 132/14****133/12 136/7 140/3****141/5 142/23****correctly [2] 18/20****105/23****correctness [1]****34/4****cost [1] 42/10****could [47] 18/2****23/13 24/19 36/3****36/11 36/22 37/2****39/23 40/2 43/21****44/7 44/13 49/19****50/6 50/24 51/18****51/21 56/6 61/23****64/19 64/21 65/11****65/13 69/5 70/4****70/19 74/12 76/14****81/7 81/12 81/18****86/5 87/16 99/12****99/17 106/3 111/1****118/24 119/12****119/12 119/13****126/10 126/23****133/14 134/2 146/5****147/2****couldn't [3] 50/19****77/24 127/1****counsel [7] 1/20****2/14 9/11 11/16****59/14 148/11****148/14****country [3] 5/2****20/7 99/1****county [8] 34/21****42/21 56/19 70/12****78/18 99/6 126/22****126/22****county-by-county****[1] 126/22****couple [3] 36/5****88/14 96/15****course [1] 86/16****courses [2] 93/17****126/5****court [16] 1/24 4/6****38/14 42/8 85/7****85/8 117/19 128/16****128/17 128/17****128/18 131/9****140/13 146/13****148/4 148/18****cover [6] 44/4****48/21 75/2 98/2****98/16 99/22****covered [2] 41/5****120/2****covers [2] 41/5 56/7****Craig [1] 1/15****create [6] 18/22****19/2 19/10 27/20****45/5 82/1****created [7] 51/15****55/11 69/22 81/2****114/18 114/20****118/21****creates [1] 60/12****creating [1] 12/19****creation [1] 13/20****crews [1] 133/22****criteria [3] 108/22****108/23 109/2****critical [1] 132/9**

C	D	
<p>criticism [1] 98/5 criticisms [1] 109/18 critique [1] 17/21 critiques [1] 10/18 cross [11] 2/6 2/7 2/8 2/9 2/10 2/11 9/17 58/6 58/7 145/6 145/6 Cross-examination [7] 2/6 2/7 2/8 2/9 2/10 2/11 9/17 cross-reference [1] 58/6 cross-references [1] 58/7 crossing [1] 80/1 culverts [2] 63/8 95/13 curious [1] 51/20 current [2] 38/3 41/16 currently [1] 5/9 curvature [2] 117/17 117/21 cut [1] 88/14 Cynthia [5] 43/13 44/13 50/8 52/20 53/7</p>	<p>d/b/a [1] 1/9 damage [1] 118/15 Dandeneau [1] 1/16 dark [1] 112/23 dartboard [1] 83/3 dash [3] 26/16 63/12 63/15 dashed [4] 28/7 28/8 78/4 78/5 dashes [1] 26/18 data [1] 133/23 date [12] 6/22 10/8 10/9 10/11 10/12 20/6 25/6 30/19 32/7 34/18 81/15 148/7 dated [13] 6/17 6/18 7/11 7/12 7/14 7/17 7/18 7/20 7/22 48/22 76/22 78/21 97/14 dates [2] 6/23 43/4 Dawn [3] 70/4 99/12 100/12 day [8] 1/3 87/6 114/12 114/19 114/23 132/17 146/22 147/7 days [1] 82/12 deadline [2] 48/23</p>	<p>71/1 deadlines [1] 71/3 decades [1] 104/23 December [3] 6/17 76/9 117/3 December 8th [1] 76/9 decide [2] 40/22 47/15 decided [2] 69/12 80/9 decides [1] 19/14 decision [2] 114/24 134/22 decisions [1] 144/10 dedicated [1] 16/23 deduct [1] 66/10 deed [1] 37/15 deeds [6] 80/13 101/16 101/24 108/14 127/17 129/7 deemed [1] 74/7 deep [1] 58/9 defend [1] 41/24 defer [1] 145/8 defined [7] 24/6 24/16 54/5 60/17 107/8 113/7 138/16 definitely [1] 129/15</p>

D	describe [4] 7/3 62/23 68/6 115/24	79/21
definition [6] 17/11 67/15 84/17 113/11 113/14 113/17	described [3] 68/1 68/9 138/19	details [2] 80/3 80/5
degree [3] 5/7 5/8 61/21	describing [2] 17/20 67/16	determination [4] 46/1 46/7 113/5 140/10
delineated [1] 90/20	description [1] 43/10	determine [22] 16/5 17/24 23/24 24/14 24/23 27/14 38/6 38/11 39/6 40/3 40/11 41/20 61/21 84/22 85/1 85/8 91/5 92/3 117/24 128/17 128/18 141/21
delineates [1] 72/19	design [25] 14/10 14/14 14/16 14/21 14/22 14/23 14/24 46/11 72/5 72/6 72/10 73/23 74/17 75/13 76/9 76/19 76/21 83/1 83/6 84/2 98/7 98/12 116/21 122/5 138/20	determined [13] 26/11 27/4 27/8 40/5 40/8 45/22 74/8 78/3 78/10 83/9 84/13 111/6 143/13
delineating [2] 106/15 122/16	design/review [1] 83/6	determining [4] 16/13 26/15 106/16 122/17
delve [1] 74/19	designate [1] 100/16	developing [1] 124/24
demonstrate [1] 140/22	designated [1] 9/11	development [2] 6/4 95/11
demonstrates [1] 145/21	designed [1] 6/14	developments [1] 9/15
department [13] 7/16 8/3 18/4 25/11 47/19 48/7 48/11 49/1 58/1 58/2 89/23 121/2 139/17	Designee [2] 1/15 1/15	diagonal [1] 70/16
depends [7] 92/15 92/16 94/22 103/4 103/4 111/3 129/22	designer [1] 6/11	diameter [1] 91/23
depict [1] 17/22	designing [1] 5/15	dictate [1] 18/5
depicts [2] 112/19 113/3	destroyed [1] 118/20	
Dept [2] 1/15 1/15	detail [1] 119/17	
derogatory [1] 16/3	detailed [2] 21/1	
DES [6] 81/19 89/24 90/7 91/8 91/13 93/6		

D

did [43] 10/6 11/2
11/3 12/13 18/13
23/4 26/12 27/14
31/24 34/11 39/13
43/14 45/6 45/17
46/12 46/22 51/12
52/22 61/19 61/20
66/17 68/1 68/6
68/8 68/10 68/10
68/17 69/2 74/16
77/21 99/23 100/5
108/7 115/24
124/10 124/13
125/24 127/22
141/11 141/20
141/24 142/1 145/2
didn't [12] 6/12
29/2 49/5 66/2 66/3
71/8 82/14 99/11
100/3 100/3 100/7
123/18
difference [3] 33/9
121/8 138/11
different [11] 10/12
20/20 21/23 26/12
93/1 101/5 101/6
116/11 121/23
138/19 140/23
differently [2]
32/20 114/2
difficult [6] 31/18

41/20 65/6 119/8
119/10 119/14
difficulty [1]
111/24
Dig [1] 119/11
digging [2] 6/8 58/9
Dir [1] 1/15
direct [6] 2/5 4/14
10/16 13/23 28/11
108/6
directional [1]
93/24
disagree [2] 14/9
109/2
disagreement [2]
32/23 128/4
disclosure [1] 74/18
discontinuance [1]
38/3
discontinued [2]
25/1 35/19
discovery [1] 54/13
discrepancies [1]
44/19
discuss [2] 29/4
38/2
discussed [1] 82/2
discussion [13]
34/13 48/19 58/18
60/1 75/7 77/4
84/15 85/16 88/2
102/20 142/18

143/5 144/2
discussions [1] 31/9
dispositive [2]
122/9 124/3
dispute [6] 42/13
85/11 136/11
136/14 143/12
144/5
disputes [3] 118/22
144/9 146/2
distance [3] 63/22
91/10 133/8
division [2] 63/18
116/7
do [101] 6/16 6/19
6/21 6/21 8/10 8/23
11/22 16/11 16/16
17/10 19/15 20/14
20/21 22/4 26/12
36/12 37/14 37/16
38/10 42/2 45/9
46/10 46/11 48/4
49/10 57/6 57/16
60/17 62/9 63/1
65/5 65/6 66/20
67/3 68/4 68/10
69/23 71/15 72/5
73/2 77/20 77/21
77/24 78/23 84/2
87/15 88/1 90/3
91/13 92/2 92/5
92/22 93/10 93/18

D

do... [47] 94/1
94/21 94/23 95/3
98/7 98/9 99/22
101/5 101/7 101/20
105/6 107/16 109/3
109/6 110/2 112/14
115/18 115/23
117/15 119/13
119/17 120/5 120/6
120/11 120/12
125/2 125/10
125/12 125/12
125/19 125/19
126/6 128/15
128/20 134/5 134/6
134/11 135/7 139/1
140/18 140/18
141/1 142/10
143/11 144/18
144/20 148/4
DOCKET [1] 1/7
document [34]
10/12 28/18 29/23
33/15 42/23 45/20
49/13 49/23 49/24
51/8 51/10 52/1
54/24 55/10 55/11
55/21 55/24 59/9
62/22 63/24 63/24
65/4 65/7 67/6
67/11 69/6 69/13

76/2 76/3 76/5 76/8
77/16 77/17 107/1
documents [17] 7/4
32/7 32/11 32/13
33/4 33/10 33/17
43/1 43/20 55/5
56/3 70/24 75/11
75/12 75/13 76/13
76/18
does [38] 16/4 16/9
16/15 18/4 21/4
26/22 27/19 28/14
28/18 28/21 37/24
38/2 41/9 47/18
53/8 61/7 61/18
79/12 82/22 84/18
84/20 84/23 85/2
86/22 88/22 89/5
90/12 91/10 92/6
92/11 93/9 111/22
112/5 114/5 116/3
137/20 141/9
144/18
doesn't [10] 19/4
21/18 35/24 61/8
74/23 103/24 114/4
123/4 142/2 146/17
doing [13] 21/4
36/22 37/12 38/18
58/13 65/15 69/10
70/7 92/19 103/20
117/2 128/20

129/22
dollars [1] 42/11
don't [50] 11/9
11/17 15/7 16/3
17/13 21/7 21/7
32/15 33/9 33/21
34/8 34/10 38/16
46/11 49/8 49/10
57/18 59/22 66/11
68/5 68/23 71/16
74/22 75/20 79/15
81/17 84/16 87/19
92/21 97/10 100/17
100/18 101/2
105/13 107/23
108/24 110/8
110/24 120/10
120/17 125/23
131/3 134/11
134/14 134/15
136/12 140/20
143/19 144/21
145/12
Donahue [1]
106/11
done [26] 10/19
11/5 14/15 14/17
14/22 15/1 15/2
15/3 15/12 35/15
47/12 73/13 78/8
78/11 87/3 90/11
91/12 93/16 96/24

D

done... [7] 110/6
116/17 126/21
127/22 133/3 135/1
142/6
Donovan [1] 1/4
DOT [94] 7/13 7/17
11/13 11/23 12/4
12/7 12/9 12/17
13/10 13/20 15/18
16/4 16/10 16/14
17/24 19/9 23/18
24/17 25/9 29/15
29/20 36/15 41/7
42/6 47/6 50/21
50/23 54/14 54/21
55/1 57/12 59/13
71/2 71/6 71/7
74/24 80/8 82/3
82/10 97/15 98/7
102/3 102/9 102/10
102/24 104/13
104/19 105/14
105/15 107/3 108/3
108/21 109/5
109/10 109/14
110/14 110/18
110/21 111/18
111/19 111/20
111/22 112/4 112/5
112/9 113/6 113/22
117/16 119/16

120/7 120/18 121/6
121/9 121/12
121/13 121/17
121/17 121/21
122/2 122/12 123/1
123/15 128/9 130/5
130/9 131/16 132/5
135/11 135/24
137/5 137/18
137/20 139/22
143/7
DOT's [11] 15/24
36/17 46/16 82/13
109/2 110/2 111/1
111/12 115/19
116/1 120/8
down [23] 7/9 8/1
11/15 12/24 16/17
31/19 31/20 37/12
37/21 41/1 43/5
57/8 64/3 64/4 86/2
88/14 99/22 100/11
106/7 112/20 113/4
130/4 131/17
draft [3] 80/8 82/3
108/3
drafted [1] 64/18
drafting [1] 65/16
drainage [3] 63/8
95/6 95/13
Draper [5] 2/10
8/16 8/21 23/3

94/11
Drapers [1] 8/16
drawings [4] 67/21
69/21 87/11 87/16
drew [1] 144/16
drilling [7] 70/16
72/22 73/2 73/7
73/9 93/24 94/1
drillings [1] 73/4
drills [1] 83/12
Drinking [1] 91/8
due [2] 71/1 71/3
dug [3] 31/20 37/22
118/14
duly [1] 4/6
during [1] 45/12
dynamic [2] 83/2
84/5

E

each [2] 126/9
126/11
earlier [8] 11/16
60/24 84/1 105/24
111/14 120/12
127/10 138/23
early [5] 5/13 66/8
118/11 127/7 127/9
easement [4] 63/17
85/1 113/15 139/4
easiest [3] 81/11
128/14 128/15
easily [1] 54/24

E	106/3	engineers [2] 101/5
east [1] 99/4	else [8] 8/12 9/1	138/20
eastern [2] 23/9	38/23 53/10 59/14	enough [11] 21/1
99/5	86/12 144/18	27/13 28/10 39/12
Easton [7] 29/15	146/16	57/17 102/18 103/6
29/16 43/11 50/5	email [1] 41/6	128/2 129/14 131/6
50/8 51/20 54/2	employed [2]	131/8
easy [1] 121/4	148/11 148/14	ensued [9] 34/14
economic [1]	employee [1]	58/19 60/2 75/8
118/21	148/13	77/5 85/17 88/3
edge [7] 62/8 62/10	enabling [3] 141/8	102/21 142/19
62/24 63/13 63/16	141/12 141/13	ensure [2] 34/4
63/17 132/4	encroachment [1]	123/8
edges [3] 45/1 45/9	35/23	entail [1] 91/10
109/19	encroachments [1]	entire [4] 10/3
education [1] 4/18	95/15	58/12 90/20 137/2
effort [2] 31/6 46/5	end [14] 16/1 16/3	entirely [2] 98/15
eight [1] 79/24	16/10 17/22 34/23	98/24
either [3] 49/10	99/3 99/4 114/12	Environ [1] 1/15
91/14 93/13	114/19 114/22	Environmental [1]
elaborate [1]	118/10 127/24	89/23
136/23	128/1 146/22	equal [1] 64/18
elaborating [1]	ended [2] 55/2 56/8	equivalent [1]
92/9	ending [1] 54/18	138/15
electrical [1] 68/22	ends [2] 54/20	era [1] 20/8
Electronically [1]	56/10	error [4] 10/7 65/15
1/6	Energy [1] 1/10	65/16 73/9
eleventh [3] 14/4	engineer [2] 46/11	errors [2] 65/19
15/11 134/21	132/15	65/19
eliminate [2] 82/7	engineering [5]	especially [3] 15/10
82/8	5/13 5/14 5/20	29/10 104/22
ELMO [2] 61/3	45/16 100/19	Esq [1] 1/20

E

essence [2] 10/17
11/23

essential [1] 109/5

essentially [6]
26/20 82/8 83/1
103/20 117/2 117/6

establish [7] 24/12
29/20 90/12 116/7
128/13 134/12
146/12

established [5] 16/6
17/2 38/15 56/19
146/9

establishing [7]
88/20 104/9 104/24
105/7 119/3 130/2
139/2

establishment [1]
14/20

estimate [1] 129/5
etcetera [3] 37/4
90/2 93/9

Ethics [3] 30/12
33/5 33/7

evaluate [2] 73/23
136/20

evaluation [6] 1/2
1/12 46/4 97/14
136/5 141/9

even [11] 27/7
33/21 37/20 38/3

72/13 74/22 84/13
89/12 101/14 135/1
144/13

ever [1] 135/12

Eversource [1] 1/9

every [9] 39/4 66/7
81/13 81/23 113/10
126/2 134/7 134/9
134/17

everybody [4]
22/22 86/18 89/8
115/1

everyone [1] 53/19

everything [1]
81/17

evidence [39] 16/19
19/22 24/22 25/1
26/24 27/3 29/6
29/6 29/7 29/7
29/13 30/14 30/17
30/20 31/7 31/14
31/21 31/22 32/2
34/5 37/10 38/9
39/13 39/15 40/6
40/21 45/4 45/11
45/13 46/22 61/20
80/10 85/5 104/2
104/7 117/4 119/21
125/10 129/7
evidenced [1] 28/15
exact [1] 119/5
exactly [13] 23/10

45/8 45/17 48/10

73/22 106/19

108/12 119/24

122/11 130/9

130/16 131/24

139/21

examination [11]
2/5 2/6 2/7 2/8 2/9
2/10 2/11 2/12 4/14
9/17 143/3

example [2] 131/2
145/22

examples [3]
125/14 137/16
137/18

excavation [1]
133/3

Except [1] 108/12

exception [1] 72/23

exceptions [1] 97/6

exchange [1] 11/20

excuse [9] 5/11 28/1
72/16 76/4 82/11
91/23 95/1 113/14
144/3

exerted [1] 31/6

exhaust [1] 82/14

exhibit [16] 3/3
11/17 43/9 44/20
49/20 49/22 54/9
54/11 58/21 61/5
78/19 78/20 99/13

<p>E</p> <p>exhibit... [3] 107/3 107/24 108/2</p> <p>exist [1] 87/19</p> <p>existed [1] 32/2</p> <p>existing [10] 16/19 92/9 95/13 103/21 103/23 104/8 104/10 104/12 105/8 130/17</p> <p>expanding [1] 62/2</p> <p>expect [2] 39/3 39/5</p> <p>expectations [1] 114/14</p> <p>expected [1] 45/24</p> <p>experience [13] 4/19 5/12 74/3 104/23 104/24 105/2 105/7 112/7 117/14 125/11 144/8 145/20 145/21</p> <p>experienced [1] 47/15</p> <p>expert [2] 9/22 85/7</p> <p>expertise [1] 94/3</p> <p>explain [13] 39/23 43/13 44/23 46/6 46/14 47/6 50/5 50/22 52/20 56/6 77/16 115/22 128/6</p> <p>explaining [1]</p>	<p>112/17</p> <p>explanation [3] 53/20 53/22 53/23</p> <p>explore [1] 33/18</p> <p>expressing [1] 29/18</p> <p>extensive [4] 39/2 83/13 84/14 110/12</p> <p>extent [2] 32/24 51/3</p> <p>extra [1] 66/9</p>	<p>familiar [3] 12/22 75/12 92/17</p> <p>familiarity [1] 57/17</p> <p>far [14] 17/6 32/5 35/4 55/6 64/11 69/14 78/13 78/14 83/6 84/17 92/24 104/22 119/21 132/22</p> <p>farther [2] 57/8 64/2</p>
<p>expectations [1] 114/14</p> <p>expected [1] 45/24</p> <p>experience [13] 4/19 5/12 74/3 104/23 104/24 105/2 105/7 112/7 117/14 125/11 144/8 145/20 145/21</p> <p>experienced [1] 47/15</p> <p>expert [2] 9/22 85/7</p> <p>expertise [1] 94/3</p> <p>explain [13] 39/23 43/13 44/23 46/6 46/14 47/6 50/5 50/22 52/20 56/6 77/16 115/22 128/6</p> <p>explaining [1]</p>	<p>F</p> <p>face [1] 42/1</p> <p>Facility [1] 1/10</p> <p>fact [16] 29/5 32/1 38/8 40/20 50/20 54/23 71/8 79/20 85/3 88/24 90/21 100/7 105/5 105/21 117/16 124/10</p> <p>fact-finder [2] 40/20 85/3</p> <p>facts [1] 46/21</p> <p>factually [2] 18/23 19/10</p> <p>failed [1] 12/7</p> <p>fair [8] 10/21 71/10 87/8 99/8 102/17 103/6 103/22 113/24</p> <p>fairly [2] 88/15 98/20</p>	<p>fashion [1] 37/2</p> <p>features [3] 65/9 65/11 66/1</p> <p>federal [2] 3/4 72/14</p> <p>feel [4] 26/15 115/18 116/5 119/17</p> <p>feet [10] 31/19 37/20 64/19 65/21 73/5 73/7 73/9 79/24 91/23 132/24</p> <p>felt [1] 58/3</p> <p>few [4] 9/13 20/16 65/9 121/3</p> <p>field [8] 16/21 37/9 38/9 45/4 45/12 104/2 119/21 133/23</p> <p>fieldwork [10]</p>

F	50/19 50/24 51/19	follow [5] 21/2
fieldwork... [10]	81/12 81/20 108/17	29/20 33/15 39/8
35/14 36/8 37/8	finder [2] 40/20	39/11
37/23 46/3 68/13	85/3	followed [1] 37/3
69/2 69/4 69/12	finders [1] 38/8	following [2] 20/22
108/9	finding [1] 74/20	137/24
fifty [1] 42/11	finds [1] 114/13	follows [3] 15/16
figure [9] 35/11	fine [2] 100/20	37/1 127/7
36/3 42/9 65/2	132/21	foot [1] 64/22
65/21 75/21 87/24	first [20] 14/2 18/19	footsteps [1] 41/16
90/16 127/20	21/3 22/20 44/1	foregoing [1] 148/4
figured [2] 58/4	63/2 64/21 79/8	Forest [1] 135/8
83/15	79/18 89/23 99/18	forgot [2] 48/10
figuring [1] 130/16	99/20 121/4 124/10	133/1
filed [5] 1/6 7/4	124/15 137/13	Fort [1] 6/9
70/24 72/24 141/4	137/23 139/23	forth [5] 19/10
files [2] 81/13 81/16	140/4 140/4	104/19 108/21
filing [1] 55/6	first-generation [1]	132/10 148/7
fill [1] 129/9	64/21	forward [3] 12/19
Fillmore [3] 51/15	fits [1] 129/24	15/15 82/12
55/20 58/20	five [3] 31/19 72/12	found [10] 10/22
final [11] 21/6 21/8	73/9	31/20 37/22 44/1
39/16 74/23 98/6	flags [1] 120/16	53/9 53/10 88/23
98/12 98/17 101/14	flipped [1] 75/18	118/17 127/23
101/17 101/21	floating [1] 83/3	128/2
101/22	flowing [1] 44/3	four [8] 37/20
finally [1] 36/3	focus [1] 26/2	56/20 56/21 57/3
financially [1]	focused [3] 17/15	57/11 57/13 58/7
148/14	17/16 25/21	58/12
find [13] 31/18	focuses [1] 6/3	Franconia [8]
43/16 47/1 48/3	folks [4] 7/8 9/3	29/17 43/3 43/11
49/14 49/16 50/10	22/19 124/20	48/20 50/4 50/7

F

Franconia... [2]

51/20 63/10

Franklin [1] 5/8

front [7] 32/21

40/21 52/11 60/8

72/3 76/24 125/16

frontage [1] 38/22

fulfilled [3] 32/8

34/6 34/9

full [5] 46/1 46/7

116/4 116/5 116/12

fully [1] 131/19

fumbling [1] 72/22

further [12] 22/16

37/12 64/15 77/22

78/2 78/10 87/20

94/4 115/10 120/22

148/10 148/12

future [4] 41/15

83/9 110/16 119/3

G

Gale [2] 78/20 79/6

gas [1] 90/23

general [7] 9/10

12/8 23/18 23/21

26/3 60/9 138/17

generalities [2]

24/16 24/17

generally [14]

31/12 38/21 39/21

40/17 41/3 41/4

74/3 85/6 93/2

93/11 97/5 117/17

126/20 127/8

generated [1] 49/13

generation [1]

64/21

generic [1] 86/4

geologists [1] 93/1

get [19] 4/9 13/7

17/16 18/13 19/7

20/15 47/24 58/21

66/11 89/21 93/2

99/19 104/13 106/6

107/12 126/24

127/1 133/2 136/12

getting [3] 8/12

84/11 130/10

Getz [1] 98/3

Gilbert's [1] 62/6

Gilford [2] 5/2

127/23

GIS [2] 45/14 78/6

give [10] 4/17 13/16

13/17 17/8 24/19

42/9 89/15 93/19

136/20 137/15

give you [1] 13/16

given [5] 4/21 43/11

44/2 54/21 64/17

go [36] 6/12 7/8

14/8 19/24 28/6

37/17 61/13 63/14

64/2 64/3 71/17

73/12 74/16 75/20

79/7 79/17 84/16

88/15 94/15 97/7

97/9 99/18 100/12

117/10 117/23

119/6 122/11

125/24 126/11

126/17 127/6 128/7

128/16 131/16

142/16 145/22

goes [11] 35/3 36/4

42/4 66/19 80/23

82/15 95/8 115/22

122/18 125/22

128/12

going [65] 4/9 7/9

9/13 18/7 23/1 23/2

23/11 24/13 25/19

29/24 33/12 35/10

36/9 36/9 42/22

44/9 47/18 51/3

52/16 53/2 54/13

62/1 62/16 70/16

72/1 73/2 73/12

73/14 74/21 76/12

81/23 83/15 88/1

90/16 97/9 101/1

101/15 101/18

101/19 101/23

106/2 106/6 115/3

G

going... [22] 117/10
 118/5 121/13
 121/14 121/21
 121/22 122/6
 122/14 125/3 125/4
 133/4 133/18
 134/21 135/6 136/1
 136/3 137/5 139/15
 145/5 145/7 146/14
 147/5
 golf [1] 93/16
 gone [4] 51/2
 125/18 125/18
 125/19
 good [20] 4/11 4/12
 4/16 9/8 10/6 36/24
 47/14 60/4 60/6
 64/21 65/4 80/20
 82/5 115/14 115/16
 121/1 126/12
 126/12 131/6 131/7
 Gordon [1] 17/4
 got [7] 9/3 15/4
 34/22 55/15 55/16
 106/10 145/17
 government [3]
 72/14 83/17 83/18
 governmental [3]
 14/18 72/15 83/7
 Graduated [1] 6/1
 Grafton [5] 42/21

61/5 70/11 78/18
 78/19
 granite [2] 84/9
 119/11
 grant [1] 136/17
 graphic [1] 64/9
 graphically [2]
 28/15 64/20
 gravel [2] 63/5 63/6
 great [2] 59/23
 144/1
 ground [9] 11/4
 11/4 24/6 25/2
 39/13 86/19 107/8
 118/7 120/2
 Grounds [1] 46/20
 groundwater [1]
 93/8
 group [2] 10/4
 22/24
 guess [8] 13/16 14/6
 65/21 65/22 115/2
 117/7 129/4 142/4
 guessed [1] 106/8

H

had [25] 11/2 11/5
 11/23 13/22 17/10
 41/1 42/24 44/18
 49/6 54/24 56/1
 58/3 72/21 87/15
 118/12 118/19
 120/14 124/5

127/10 127/20
 128/6 130/22 133/6
 135/10 135/11
 half [4] 18/2 35/10
 63/14 132/24
 halls [1] 24/22
 HAMPSHIRE [31]
 1/1 1/4 1/9 5/3 5/5
 5/8 5/10 11/11 15/9
 16/24 23/18 25/14
 30/1 30/11 33/4
 36/13 41/10 43/17
 50/10 50/18 54/4
 60/8 81/3 89/16
 115/19 124/18
 124/21 125/1 126/3
 137/20 140/24
 hand [7] 15/10
 26/13 28/6 62/7
 64/3 117/3 140/17
 handed [1] 37/1
 handing [1] 142/14
 Hang [2] 143/17
 143/17
 happen [2] 71/9
 118/24
 happened [2] 66/11
 130/10
 happening [2] 33/2
 70/11
 happens [2] 66/4
 145/21

H		
Harbor [1] 6/9	having [13] 50/14 73/24 81/5 83/7	help [2] 69/6 93/3 her [2] 29/19 29/22
hard [2] 47/1 69/23	103/7 112/4 116/23	here [37] 4/10 8/1
has [52] 8/12 10/12	122/7 122/9 134/22	10/3 11/15 12/3
12/3 13/19 15/4	135/2 144/5 146/1	16/14 17/8 19/9
15/5 19/9 22/13	he [33] 36/21 43/21	20/4 20/8 20/9 27/2
42/12 44/13 47/8	45/7 45/17 45/17	27/6 28/23 33/10
47/11 48/4 48/11	46/9 46/10 47/8	35/4 35/15 38/23
49/16 56/13 57/17	47/11 47/13 47/18	39/14 41/22 45/6
58/23 69/12 71/7	48/4 48/9 48/11	57/7 57/9 64/4
76/11 78/17 80/9	56/13 66/3 77/19	88/16 96/14 96/16
81/24 84/14 89/9	77/20 77/20 77/21	96/20 97/2 109/5
95/9 96/4 103/13	77/21 77/24 77/24	118/24 124/5 125/4
104/22 105/7	78/1 79/10 105/7	130/11 138/8
105/12 105/16	105/14 105/20	143/23 145/18
108/21 109/10	144/19 145/19	hereby [1] 148/4
109/12 110/21	145/20 145/22	hereinbefore [1]
112/14 113/22	146/5	148/7
114/3 118/6 119/16	he's [11] 8/11 47/12	high [2] 62/16
120/7 124/4 128/9	47/13 47/21 78/7	126/15
131/18 139/17	78/7 78/8 79/6	high-tech [1] 62/16
144/19 145/19	86/24 105/19	highlight [1] 58/5
145/20 146/11	105/21	highlighted [1]
146/20	head [1] 62/17	55/23
hasn't [2] 13/13	heading [1] 97/15	highlighting [1]
131/15	heard [2] 115/18	55/22
hats [1] 96/15	125/7	highway [15] 20/11
have [180]	hearing [6] 1/11 4/2	63/11 85/9 102/4
haven't [9] 13/12	44/1 88/5 119/1	103/5 103/5 103/8
21/6 66/1 66/2	147/9	103/14 105/8
67/17 95/23 131/21	held [4] 6/7 28/10	120/17 126/16
135/14 142/8	122/20 137/6	135/11 136/1 137/3

H	106/24 139/14	huge [3] 29/9 118/9
highway... [1]	Hodgdon's [4] 52/2	118/21
139/1	52/8 52/9 53/7	huh [2] 68/20 94/20
highways [6] 103/7	hold [3] 27/10	hundred [1] 91/22
107/11 109/19	28/14 75/5	HWY [1] 63/11
126/4 136/4 137/4	holding [1] 28/13	hydrologist [1]
highways' [1] 105/1	hole [1] 119/11	93/20
Hill [4] 29/17 34/20	holes [1] 118/14	hydrologist's [1]
34/23 99/5	Honigberg [1] 1/13	93/20
him [11] 12/12	honor [1] 36/13	hypothetical [1]
43/20 45/8 57/18	hope [1] 47/20	114/20
75/3 77/9 98/6	hoping [1] 88/15	
105/12 105/14	horizontal [2]	I
105/15 128/6	70/15 93/23	I'd [2] 44/10 78/17
hired [1] 48/8	hour [4] 14/4 15/11	I'll [16] 13/4 13/16
his [16] 25/20 25/21	35/10 134/21	13/17 18/24 54/1
26/2 32/17 43/19	house [4] 126/23	59/16 75/4 75/4
43/21 44/8 45/6	127/20 127/24	75/21 92/12 99/4
45/8 48/11 48/11	128/1	121/3 122/13
66/3 66/3 67/14	how [32] 11/9	123/22 135/20
75/2 98/14	26/11 27/8 39/23	146/14
historic [9] 20/4	42/2 42/9 44/13	I'm [79] 7/9 8/17
24/21 38/1 38/2	47/14 47/24 49/8	9/9 9/10 9/13 15/15
125/6 125/8 125/12	50/5 50/22 51/21	18/7 18/19 19/7
125/13 125/20	52/8 56/6 61/7	23/8 23/11 25/19
historical [4] 31/10	64/11 66/16 67/3	32/22 33/1 36/9
61/22 105/17	83/14 84/18 86/17	36/9 39/17 44/9
125/22	87/24 93/9 112/7	49/9 51/2 51/3 51/6
Hodgdon [12] 2/11	119/8 125/8 125/10	51/20 52/16 53/2
42/24 53/8 53/9	125/19 125/19	55/8 56/11 57/9
96/4 96/6 96/9	129/24 136/20	57/16 73/2 75/24
96/11 97/18 102/15	However [1] 28/1	76/10 76/12 77/9
		77/23 79/17 80/6

I	101/17	include [7] 6/7
I'm... [42] 80/7	identified [1] 22/19	14/23 31/8 112/18
86/21 87/5 88/15	identify [2] 49/20	113/2 116/18
89/20 92/17 94/15	84/12	122/19
95/4 96/11 97/1	identifying [1]	included [6] 43/22
97/9 101/1 101/4	23/23	44/8 50/21 74/13
106/2 106/6 108/1	ignore [1] 133/24	76/14 86/5
111/5 111/19 115/2	imagine [1] 82/10	includes [1] 113/15
119/1 119/24	immediately [2]	including [2]
119/24 120/18	58/13 63/12	104/23 111/18
122/14 124/11	impact [2] 93/15	incomplete [2]
125/3 125/3 132/14	122/6	19/17 42/2
132/15 137/14	impacted [1] 93/22	inconsistent [1]
139/14 139/15	impacts [3] 71/21	28/12
139/21 142/5	71/21 72/7	incorrect [1] 70/3
142/14 144/12	implying [1] 56/21	indicate [7] 11/8
144/14 145/2 145/4	important [10]	26/13 27/4 34/11
145/7 146/4 146/10	70/8 73/18 102/16	37/24 38/9 113/6
I've [18] 6/6 9/11	117/22 118/2 130/2	indicated [9] 26/16
14/12 31/16 44/11	132/1 132/18	45/7 46/9 73/4 73/8
72/11 75/10 88/13	140/23 144/10	77/19 77/20 78/8
90/10 91/12 93/16	impossible [1]	113/23
105/10 106/10	107/12	indicates [2] 38/1
111/6 116/10	inaccurate [2]	62/8
127/22 130/9	19/17 42/1	indicating [3] 40/12
142/13	inadequacies [1]	40/14 77/18
I-93 [1] 132/19	10/22	indication [5] 26/10
I-95 [1] 6/8	inadequate [1] 15/9	26/23 37/21 39/14
Iacopino [4] 1/20	inappropriate [1]	41/22
1/20 2/18 137/11	97/3	indicator [1] 41/2
idea [6] 44/13 47/14	inch [2] 63/14	individual [1] 79/5
48/4 48/4 82/5	64/18	industrial [1] 5/16

I	94/15 148/15	123/14 132/12
information [32]	interesting [2]	134/3 145/15
11/2 14/11 14/11	93/11 127/15	issued [3] 23/19
14/13 17/22 20/20	internally [1] 28/12	25/4 112/17
25/16 27/13 27/15	interpretation [4]	issues [5] 6/4 6/4
28/11 29/3 31/10	113/20 113/21	20/3 22/9 119/16
44/3 72/3 79/21	114/3 114/4	it [274]
81/12 83/8 84/2	interrelated [1]	it's [98] 5/4 9/23
84/6 84/7 86/4	90/12	20/1 23/17 25/8
105/17 105/17	interruption [3]	27/4 27/7 28/11
108/19 116/14	117/19 131/9	28/12 29/3 31/12
119/17 120/10	140/13	35/3 35/4 36/2 36/2
120/13 121/18	intersection [1]	40/5 40/19 41/1
129/9 129/14	43/4	42/5 42/5 42/16
133/20	intervenors [1]	43/18 44/3 46/21
initial [2] 70/20	95/23	49/24 51/4 51/7
74/17	involve [1] 22/1	54/12 54/13 54/14
input [1] 82/9	involved [2] 91/2	54/24 55/16 57/2
Inspector [1] 6/7	93/2	57/3 57/7 57/8
install [1] 119/8	iron [3] 27/11	59/16 59/22 61/11
installed [2] 88/23	119/12 119/12	63/5 65/14 65/17
117/15	irrigation [1] 93/17	65/21 69/16 71/9
installer [1] 6/14	is [403]	72/2 73/13 73/17
instances [1]	isn't [14] 21/18	74/18 78/21 83/2
137/18	24/16 44/6 64/19	83/2 83/8 83/10
insurance [4]	71/18 80/24 109/5	83/17 83/17 84/5
126/21 126/22	109/18 109/24	84/9 84/9 86/9
126/24 127/1	110/7 111/19	86/13 93/6 93/6
intend [1] 46/22	121/13 121/14	103/4 103/5 104/2
interaction [2]	140/3	106/19 116/7 117/9
105/11 105/15	issue [9] 20/9 20/15	119/6 119/10
interested [3] 72/7	49/11 93/1 119/23	119/13 121/7 122/5

I
it's... [24] 122/6
122/12 122/12
124/12 127/14
128/21 128/23
129/12 129/19
130/3 130/12
130/15 131/5 137/3
137/4 137/16
137/17 138/19
138/20 138/24
139/11 139/11
140/2 146/8
item [1] 16/14
iterative [3] 14/7
82/21 82/24
its [3] 102/4 102/9
139/19
itself [4] 10/12
17/21 62/3 126/3

J
J.D [1] 5/8
January [1] 17/3
Jennifer [1] 25/13
jigsaw [3] 128/21
128/23 130/15
job [3] 24/15 40/20
90/4
Johnson [2] 14/5
79/5
Joint [7] 1/8 23/17

25/8 29/14 30/9
54/16 59/1
Jones [1] 127/21
Jones's [1] 127/20
Jt [2] 3/4 3/6
judge [2] 40/22
40/22
judgment [4] 96/22
114/17 115/6 145/8
July [2] 11/13
29/16
jurisdiction [3]
103/8 103/14 136/4
just [56] 5/4 6/12
8/18 8/19 9/19
10/15 17/14 17/19
18/24 22/21 24/19
31/8 33/16 35/20
36/11 40/24 41/8
43/5 48/15 52/14
55/24 57/2 57/18
58/22 59/8 61/5
74/2 74/20 75/10
75/15 81/9 84/5
86/13 89/20 92/9
94/13 96/14 97/1
100/6 102/3 114/1
114/7 118/13
120/15 123/1 123/7
131/5 131/6 133/2
136/23 137/13
139/11 139/11

139/15 142/13
145/13
just pointing [1]
8/18

K
Kathryn [1] 1/14
keep [2] 6/12 81/17
Ken [1] 77/18
Kevin [1] 79/5
kind [3] 31/8 94/18
102/15
kinds [3] 9/3 35/17
95/6
knew [4] 31/18
31/19 46/15 130/9
know [59] 17/7
21/7 27/22 31/15
31/23 33/9 33/22
34/8 46/11 47/18
48/11 49/8 57/15
57/19 57/22 65/20
66/11 73/18 73/21
78/4 80/14 84/16
86/6 92/21 92/23
93/2 93/15 96/15
97/8 100/17 100/18
101/2 101/6 101/20
104/16 105/5 105/6
105/13 110/6
110/18 114/22
120/1 120/17 122/3
122/9 124/23

K	94/13 118/10 118/23	111/7 111/24 112/6 113/21 118/16
know... [13] 124/24 125/9 125/14 125/15 128/2 128/10 130/5 130/8 130/20 131/3 131/13 131/14 131/20	Lan [12] 16/7 26/22 33/6 33/8 36/15 37/3 47/16 60/23 124/4 137/22 138/16 140/5	122/22 123/10 124/9 128/5 130/7 130/8 130/13 130/15 131/13 132/16 134/3 137/22 140/24 144/8
knowing [4] 86/17 118/3 130/1 131/24	land [93] 5/6 5/12 5/14 5/19 6/4 11/10 15/8 16/2 16/16 17/11 17/11 19/21 20/10 20/10 21/4 24/12 25/13 29/4 29/7 29/11 29/11 30/1 30/11 30/24 31/3 31/12 33/5 33/8 34/17 35/16 36/14 38/6 38/13 41/10 41/17 48/6 53/5 53/5 60/10 60/12 60/13 61/18 62/6 67/12 67/13 69/14 72/11 72/11 72/12 81/11 82/8 82/11 82/18 84/18 84/20 84/24 85/2 85/2 85/4 85/6 85/12 86/21 86/22 86/23 89/18 91/9 91/24 92/2 101/12 105/19 105/20 105/22 109/7 110/4	landowner [3] 89/1 102/23 103/7 landowners [9] 29/8 29/9 41/15 70/9 71/23 73/20 81/5 82/5 131/20 lands [1] 22/1 lane [1] 132/21 lanes [1] 132/21 Lara [1] 144/3 large [7] 91/14 91/14 91/24 93/8 93/12 117/9 129/24 last [8] 79/2 79/18 87/5 93/5 112/16 112/23 124/6 133/17 later [4] 50/22 54/14 117/24 127/13 Laughter [2] 62/18 140/15 law [10] 5/9 5/10
L		
label [1] 133/13 labeled [3] 67/10 68/14 68/14 lack [2] 31/13 41/19 lacking [1] 16/19 Laconia [2] 66/5 66/7 laid [9] 16/23 19/20 27/3 57/11 57/13 117/1 118/14 126/15 138/21 lakes [8] 2/9 22/23 88/12 89/4 92/13		

L	lead [1] 19/17	less [4] 33/14 61/10 129/4 132/3
law... [8] 5/24 16/16 17/1 81/2 113/8 113/17 140/24 141/3	leaking [1] 90/14	lesser [1] 139/8
laws [4] 15/20 36/13 84/22 141/3	leaks [1] 90/15	let [12] 6/11 17/14 18/24 20/20 22/21 76/16 92/12 103/2 104/14 120/5 122/11 136/10
lawyer [2] 17/8 96/15	learned [3] 44/6 71/7 86/9	let's [11] 20/15 48/3 49/14 49/16 63/14 87/23 87/24 136/2 138/7 142/16 147/5
layer [1] 66/9	least [6] 15/1 35/9 49/17 69/13 84/12 87/5	letter [26] 7/14 7/18 11/13 11/19 11/22 12/23 25/4 29/15 48/22 49/7 52/2 52/8 52/9 53/7 59/13 68/18 68/19 78/20 85/14 98/2 98/5 98/14 98/16 107/4 107/15 107/19
laying [3] 104/8 104/10 131/12	leave [1] 39/12	letting [1] 73/20
layout [36] 37/16 38/1 39/22 39/23 40/4 42/24 43/4 43/10 43/12 43/16 44/14 50/7 50/9 50/22 51/1 51/22 52/22 53/9 56/24 56/24 57/6 58/4 58/8 58/9 58/12 120/5 125/12 125/13 125/20 127/8 128/2 128/5 128/8 128/13 128/19 131/19	leaves [2] 87/23 136/5	level [4] 6/7 46/5 93/8 107/11
layouts [5] 51/19 125/6 125/8 125/23 127/19	leaving [1] 112/2	levels [1] 45/21
lays [1] 140/6	left [7] 26/13 28/2 28/17 38/19 40/13 57/4 62/7	license [1] 6/2
LCR [3] 1/24 148/17 148/18	left-hand [2] 26/13 62/7	licensed [26] 5/6 5/18 6/2 6/10 6/13 19/21 20/10 24/4 25/13 30/1 48/6 67/12 67/13 89/18
	legal [21] 17/8 18/8 19/4 22/4 26/24 36/19 42/12 63/3 63/17 83/21 84/16 84/20 84/24 88/24 89/3 89/6 96/16 96/22 97/3 136/13 136/14	
	legality [1] 19/13	
	legend [4] 28/3 28/12 61/13 61/15	
	Legislature [1] 126/1	
	Lenehan [1] 1/20	
	length [1] 43/2	

L	limiting [1] 77/23	43/6 57/8 64/2
licensed... [12]	limits [6] 38/12	64/14 71/17 77/11
101/12 105/19	38/15 69/11 93/18	77/21 78/1 115/2
105/20 109/7	122/3 134/12	133/4 136/24
122/22 124/8	line [30] 7/5 16/14	137/14
124/17 124/21	26/14 26/17 26/18	lived [3] 29/10
137/22 140/24	28/5 28/14 40/11	127/21 127/21
148/3 148/18	40/14 45/23 61/23	lives [1] 58/1
licenses [2] 4/18 6/6	61/24 62/20 63/12	LLC [1] 1/8
licensing [2] 84/22	63/15 63/19 73/8	LLS [1] 46/3
134/2	79/22 80/1 80/22	local [2] 45/2 98/24
licensure [11]	80/23 122/10 129/9	locate [8] 37/9
11/10 12/14 16/6	130/14 130/22	37/19 45/1 45/9
19/15 19/20 20/18	130/23 131/23	65/24 92/4 108/9
20/24 31/3 45/19	132/20 139/4	108/19
60/12 137/7	144/21	located [6] 61/19
Licensure's [2]	lines [26] 24/5	79/23 83/11 83/12
16/1 16/12	26/16 27/9 28/7	97/13 136/18
life [1] 116/10	28/8 30/15 30/21	location [8] 40/7
light [2] 50/20	45/10 62/7 62/7	61/22 61/22 65/15
79/13	68/15 78/3 80/23	83/11 113/13 119/6
like [21] 10/7 29/1	81/21 93/21 110/17	126/19
32/24 44/10 51/4	118/6 122/21	locations [4] 26/12
56/4 67/9 78/17	122/23 123/6 126/4	29/2 93/9 107/8
81/21 81/22 82/1	129/24 130/1 130/2	locator [2] 37/18
89/5 92/9 94/16	130/5 133/6	37/19
95/6 95/14 102/3	list [7] 7/8 19/23	long [5] 29/11
105/18 130/3	24/16 24/18 24/19	47/14 47/24 139/3
140/17 144/19	39/18 66/19	139/12
limited [6] 68/11	literally [2] 6/14	longer [4] 8/19 8/21
68/12 68/16 69/2	6/15	63/15 95/20
69/3 69/13	little [14] 7/9 11/2	longitudinal [1]

L
longitudinal... [1]
139/1
look [24] 13/18
19/22 28/4 33/11
33/23 47/13 57/11
61/7 63/9 69/5
100/11 106/1
106/13 126/17
127/3 127/6 127/7
127/9 127/12
127/17 132/16
140/9 141/20
144/23
looked [6] 10/7
25/2 38/4 57/2
124/22 141/2
looking [20] 15/15
25/23 25/24 33/7
33/16 37/24 44/22
51/8 51/10 52/10
58/22 63/24 65/2
70/12 70/15 71/4
71/20 72/23 98/23
107/1
looks [1] 144/19
loose [1] 37/1
loose-handed [1]
37/1
lost [4] 55/16 55/16
115/3 124/5
lot [20] 42/11 47/12

47/12 48/11 66/4
89/5 105/7 111/6
111/10 118/22
119/17 120/2 125/9
125/22 129/11
132/10 134/9
134/17 135/5
135/21
lots [2] 37/17 81/14
lower [2] 99/23
100/12

M
made [3] 21/13
30/16 69/22
magic [1] 93/21
magnitude [5]
15/12 102/2 129/23
132/17 134/24
maintained [1] 6/1
major [4] 62/7
126/4 126/4 126/14
majority [3] 54/5
54/6 56/8
make [13] 10/13
41/19 44/10 57/9
72/5 77/11 77/12
86/22 134/22 135/6
135/8 140/10 146/3
makes [3] 55/23
89/12 100/22
making [3] 94/18
114/24 136/14

manager [1] 5/22
managing [1] 5/21
Manchester [1]
92/18
manuals [1] 138/1
many [15] 5/22
16/8 31/15 35/19
37/13 37/13 40/7
71/7 72/15 81/16
101/5 102/4 127/14
127/14 132/23
map [21] 3/6 21/18
38/8 55/24 56/23
58/22 62/2 78/6
85/4 93/2 93/18
93/19 94/19 126/3
126/8 126/8 126/19
126/23 126/24
127/10 127/12
mapped [4] 35/1
35/12 35/24 80/11
mapping [9] 21/14
45/14 45/14 57/12
95/7 104/12 116/18
116/19 116/19
maps [9] 20/5 20/6
24/21 45/4 58/5
126/5 126/20
127/10 127/13
March [2] 6/18
10/10
mark [3] 42/24

M

mark... [2] 59/22
96/11
marked [8] 11/16
42/21 44/21 54/15
58/23 58/24 59/17
99/24
marker [1] 40/23
markers [7] 39/24
41/8 41/14 41/19
85/20 86/2 86/19
marking [1] 59/13
Marks [1] 25/13
Martin [1] 1/13
Massabesic [1]
92/17
matches [1] 52/9
material [1] 74/12
materials [1] 90/23
matter [4] 9/19
29/5 71/8 117/16
may [22] 8/3 9/6
12/3 17/22 18/15
18/24 20/11 21/24
21/24 23/7 26/9
27/22 47/17 71/4
71/5 83/14 87/7
87/14 114/7 115/22
123/17 123/17
maybe [4] 33/18
49/15 125/24
140/17

McHenry [1] 6/10
me [34] 5/11 8/17
18/24 19/23 20/20
22/21 28/1 31/17
35/5 41/7 51/7
52/15 71/17 72/17
74/19 76/4 76/7
76/16 77/8 82/11
83/4 84/8 91/23
95/1 104/14 107/18
113/10 113/14
120/5 122/11
132/14 136/10
139/21 144/3
mean [11] 16/3
16/4 61/18 68/17
69/3 77/12 121/11
124/14 134/9
136/23 144/2
meaning [2] 29/23
146/11
means [8] 23/24
61/19 83/1 83/2
100/18 106/16
122/16 124/23
measured [1] 45/12
mechanism [1]
66/20
meet [16] 11/9
12/13 15/8 15/19
19/4 26/22 30/6
104/18 108/8

112/14 114/14
116/3 124/4 124/23
134/1 139/19
meeting [4] 30/2
108/22 124/13
137/21
meets [2] 17/24
21/8
Member [2] 1/16
1/16
members [3] 96/8
96/21 115/11
memo [11] 7/17
7/20 80/7 82/3
124/6 124/10
124/12 124/15
139/23 140/4 140/6
memorandum [6]
7/15 12/12 13/1
15/17 15/24 124/13
memory [1] 73/3
memos [1] 140/10
Menard [7] 2/12
8/15 23/2 94/6
142/21 143/22
146/15
mention [7] 59/9
89/19 89/21 91/8
99/11 100/4 100/7
mentioned [9]
20/16 72/21 74/2
104/16 109/17

M	97/10 135/22	monuments [14]
mentioned... [4]	minimum [1] 31/3	37/9 37/13 39/1
135/11 138/12	minus [2] 64/22	39/6 39/7 39/15
138/18 138/22	73/10	65/13 65/14 80/9
Meredith [2]	minute [4] 11/12	108/9 108/18
131/11 145/23	44/23 77/8 114/8	110/10 112/3
Meridian [7] 7/10	minutes [1] 111/16	117/15
12/4 68/18 69/5	miss [1] 23/4	more [20] 9/2 17/15
77/1 77/19 124/17	missed [1] 44/14	17/16 44/18 47/6
merits [1] 1/11	missing [7] 19/16	56/9 58/11 58/13
met [3] 45/18 47/16	19/19 20/4 25/15	71/9 76/18 76/22
119/18	51/24 117/4 129/2	79/20 87/24 104/23
metal [2] 37/18	misunderstanding	115/6 115/6 119/17
37/18	[1] 123/17	129/4 132/3 146/20
metes [4] 15/4 15/5	mixing [1] 138/6	morning [1] 147/6
26/9 38/17	moment [4] 48/15	most [4] 120/2
method [1] 128/20	48/21 51/15 114/10	126/6 133/19
methods [3] 23/24	Monday [1] 147/6	133/20
106/16 122/16	monitoring [1] 93/9	Motel [2] 78/21
Michael [1] 1/20	Monroe [1] 1/21	79/6
microphone [1]	months [2] 25/3	Mountain [1] 135/7
102/15	47/7	move [8] 5/4 12/18
mid [1] 5/19	monument [9]	28/2 35/21 66/3
middle [3] 35/5	27/12 37/10 37/11	72/15 92/13 127/15
63/10 64/9	37/19 39/3 40/11	moved [8] 24/24
might [7] 24/20	40/16 110/15 119/9	35/6 120/15 127/14
42/10 44/22 48/7	monumentation [5]	131/2 131/12
75/18 84/7 94/17	117/13 119/2	131/18 132/3
miles [4] 54/19 55/3	119/15 120/7	moving [1] 35/16
56/9 134/7	122/20	Mr [41] 2/5 2/6 2/9
mind [7] 49/6 49/6	monumented [1]	2/11 2/16 2/18 4/10
62/15 71/15 89/9	118/18	8/7 8/14 9/7 22/23

M

Mr... [30] 23/10
25/19 44/13 48/16
48/18 56/4 56/11
57/17 59/5 59/10
70/18 88/6 88/16
96/4 96/7 96/8
115/12 115/14
120/24 121/1
137/14 142/11
143/1 143/2 143/18
144/7 144/18 146/5
146/23 147/1
Mr. [52] 4/3 4/9
4/16 8/21 9/6 10/9
11/13 11/20 12/11
12/17 14/5 14/5
17/15 18/16 22/23
49/4 49/15 52/2
52/8 52/9 53/7 53/8
53/9 57/20 59/7
88/12 89/4 92/13
94/13 95/19 96/3
96/6 96/9 96/17
97/18 102/15
106/11 106/24
120/23 135/21
137/11 139/14
139/20 141/11
142/10 142/22
144/17 144/19
145/1 146/7 146/17

146/20
Mr. Aslin [5] 9/6
17/15 18/16 59/7
144/19
Mr. Bowes [2] 14/5
141/11
Mr. Chair [1]
106/11
Mr. Draper [1]
8/21
Mr. Hodgdon [8]
53/8 53/9 96/6 96/9
97/18 102/15
106/24 139/14
Mr. Hodgdon's [4]
52/2 52/8 52/9 53/7
Mr. Iacopino [1]
137/11
Mr. Johnson [1]
14/5
Mr. Lakes [5]
22/23 88/12 89/4
92/13 94/13
Mr. Needleman [6]
49/4 49/15 96/3
144/17 145/1 146/7
Mr. Nix [2] 4/16
57/20
Mr. Oldenburg [3]
120/23 135/21
139/20
Mr. Patnaude [1]

4/3
Mr. Reimers [1]
95/19
Mr. Talon [1]
12/11
Mr. Thompson [10]
4/9 10/9 11/13
11/20 12/17 96/17
142/10 142/22
146/17 146/20
Ms [31] 2/7 2/8
2/10 2/12 2/15 8/14
8/15 22/19 22/22
22/23 23/2 23/3
23/6 26/1 32/19
36/20 43/23 46/24
47/10 51/6 51/15
58/16 58/21 60/3
70/21 94/11 108/7
115/13 143/8
143/22 146/15
Ms. [8] 8/15 8/16
23/3 55/20 58/20
94/6 94/8 142/21
Ms. Draper [1]
8/16
Ms. Fillmore [2]
55/20 58/20
Ms. Menard [3]
8/15 94/6 142/21
Ms. Townsend [2]
23/3 94/8

M

much [6] 42/9
87/24 98/10 112/7
118/15 146/24
Muni [8] 3/4 3/6
23/17 25/8 29/14
30/9 54/16 59/1
municipal [7]
120/17 120/19
136/1 136/4 136/19
136/22 137/4
municipalities [3]
72/13 103/15
110/15
municipality [1]
103/18
must [2] 21/15
72/18
my [58] 4/24 5/1
6/1 6/3 7/10 9/9
10/2 10/5 11/7
11/18 13/11 17/10
21/21 23/9 25/7
30/8 31/16 36/24
40/11 40/13 48/5
52/24 57/22 62/17
71/17 77/6 79/12
79/24 80/2 87/9
88/9 88/14 94/3
94/9 96/10 102/12
103/2 104/20
105/11 105/15

108/24 110/11
113/21 115/1 116/2
116/10 121/1 122/2
123/21 125/3 135/5
135/22 138/5
138/14 141/15
141/17 148/5 148/7
myself [2] 62/16
124/1

N

N-i-x [1] 5/1
N.H [2] 3/5 148/18
name [9] 4/21 4/23
4/24 9/9 68/23 79/3
79/5 96/10 121/1
names [1] 81/23
narrow [3] 7/9
117/9 139/12
National [1] 135/8
natural [1] 94/17
nature [3] 38/20
91/11 110/13
near [1] 131/17
nearby [1] 36/5
necessarily [2]
27/20 110/4
necessary [5] 16/13
73/1 116/6 119/2
119/4
need [23] 14/22
15/1 22/13 37/14
37/16 37/17 38/4

59/22 65/23 65/24
73/4 84/12 90/16
111/14 114/22
121/23 122/3 124/7
130/23 132/6
134/11 134/14
134/15
needed [1] 93/24
Needleman [6] 49/4
49/15 96/3 144/17
145/1 146/7
needs [10] 22/9
22/11 25/2 40/15
73/7 80/10 121/9
121/9 121/17
123/15
neglected [2] 34/18
59/9
neighbor [1] 80/2
neither [3] 16/22
103/17 148/10
never [6] 31/24
62/15 67/22 105/10
113/22 113/23
new [46] 1/1 1/4 1/9
5/2 5/5 5/7 5/10
11/11 12/19 13/8
13/21 15/8 16/24
23/18 25/14 30/1
30/11 33/4 36/10
36/13 41/10 43/17
50/10 50/18 51/11

N

**new... [21] 54/3
60/8 74/22 81/2
89/16 104/9 104/9
115/19 124/18
124/21 125/1 126/3
128/13 130/4
130/14 131/3
131/12 131/17
131/19 137/20
140/24
newer [1] 49/24
next [6] 35/2 35/7
39/8 79/17 89/11
91/7
NHDOT [9] 103/8
104/18 104/21
109/21 114/13
114/13 114/17
135/13 138/1
NHDOT's [3]
109/24 115/4 115/4
nine [1] 147/6
NIX [27] 2/4 4/5
4/10 4/13 4/16 4/16
4/24 9/8 15/14
17/19 44/13 56/4
57/17 57/20 59/10
60/5 88/16 96/8
115/12 115/15
121/1 137/14
142/11 143/2**

**143/18 146/5
146/23
Nix's [1] 144/7
no [92] 1/7 1/23
1/24 2/3 3/3 3/3 3/5
8/17 13/24 15/4
15/5 15/6 15/7
15/22 18/11 20/1
22/16 23/5 26/9
26/10 26/23 27/2
27/3 27/7 27/15
28/21 33/20 39/5
39/14 40/4 40/4
40/8 41/22 42/12
44/13 47/8 51/11
53/16 53/21 53/23
53/23 56/13 62/15
64/5 70/22 72/8
76/4 76/20 79/15
82/7 83/15 83/16
87/10 87/17 87/20
88/7 89/7 94/4 94/7
95/20 96/1 96/24
100/6 101/3 101/3
101/17 102/7 103/1
106/8 114/6 115/8
116/15 121/7
130/14 131/19
132/22 133/13
133/15 134/11
135/14 135/16
139/9 140/3 140/3**

**140/3 140/12
141/19 142/3 142/8
146/17 146/20
148/18
non [1] 140/14
non-answer [1]
140/14
none [2] 35/24 36/6
normal [1] 14/8
north [11] 25/22
25/23 34/20 34/23
34/23 54/20 56/10
99/1 99/5 128/1
132/21
Northern [31] 1/8
7/4 9/24 10/19
12/18 23/20 29/23
30/5 36/17 42/23
46/12 51/21 54/21
54/23 67/20 68/22
69/19 70/24 78/23
81/24 102/8 103/17
109/18 109/21
110/24 112/13
112/14 114/12
121/22 123/14
123/23
not [170]
notations [2] 28/19
122/19
note [3] 27/2 40/7
59/16**

<p>N</p> <p>noted [6] 3/4 3/5 3/6 100/8 108/14 113/5</p> <p>notes [4] 34/10 79/10 125/3 148/6</p> <p>nothing [6] 80/13 112/12 115/9 118/6 120/22 125/13</p> <p>notice [3] 99/22 99/23 100/3</p> <p>notification [2] 28/22 31/9</p> <p>notify [1] 128/10</p> <p>noting [1] 62/6</p> <p>notions [1] 28/19</p> <p>now [33] 17/14 39/2 41/18 52/17 55/4 56/2 58/16 64/11 65/18 65/20 67/8 72/5 73/11 74/20 74/23 75/3 76/13 77/15 78/17 79/14 82/21 84/1 85/14 86/13 87/13 88/7 90/2 98/19 101/14 102/8 106/10 125/23 138/7</p> <p>nowhere [2] 101/10 107/15</p> <p>NPT [3] 107/16</p>	<p>113/23 114/3</p> <p>NRTH [1] 36/3</p> <p>NRTH-17 [1] 36/3</p> <p>NRTHC100 [1] 100/13</p> <p>number [16] 10/18 12/8 36/16 46/17 49/20 54/11 54/11 54/13 58/21 107/23 107/24 120/16 122/13 124/15 133/22 140/22</p> <p>numbered [1] 54/13</p> <p>numbers [3] 73/11 73/16 75/16</p> <p>numerous [2] 10/22 70/23</p> <hr/> <p>O</p> <p>o'clock [1] 147/6</p> <p>oak [1] 125/15</p> <p>object [8] 18/7 25/20 51/3 76/12 128/11 128/12 128/12 145/3</p> <p>objected [1] 131/21</p> <p>objection [24] 32/10 36/18 42/14 43/18 44/9 46/19 47/4 47/8 48/20 49/16 53/1 55/4 70/18 74/11 83/20</p>	<p>86/3 89/2 89/10 92/8 143/16 143/19 144/16 144/22 146/15</p> <p>observable [4] 37/9 37/10 80/9 80/11</p> <p>observations [1] 16/21</p> <p>observed [1] 108/9</p> <p>obtain [3] 30/17 31/7 31/10</p> <p>obtained [1] 26/24</p> <p>obtaining [3] 29/12 105/16 105/16</p> <p>obvious [1] 61/11</p> <p>obviously [1] 71/6</p> <p>occurred [1] 143/23</p> <p>October [10] 1/3 7/19 7/23 12/22 36/10 49/7 59/13 78/21 85/14 147/10</p> <p>October 2015 [1] 49/7</p> <p>off [23] 27/23 34/12 34/13 39/17 58/18 59/24 60/1 75/5 75/6 75/7 77/3 77/4 85/15 85/16 88/1 88/2 102/19 102/20 114/9 142/16 142/18 145/12</p>
---	---	--

O

off... [1] 147/2
off-center [1] 27/23
off-the-record [9]
34/13 58/18 60/1
75/7 77/4 85/16
88/2 102/20 142/18
offer [1] 44/11
offhand [1] 68/23
office [1] 5/1
Officer [1] 1/13
official [1] 11/18
offsets [1] 119/13
oh [14] 9/2 11/15
59/18 62/15 64/5
70/10 77/7 79/17
100/20 101/2 108/1
134/9 134/11 141/6
oil [2] 89/24 90/23
oil/gas [1] 90/23
okay [120] 5/4 8/7
9/2 10/3 13/6 13/12
13/16 15/14 15/23
17/9 18/15 19/13
20/1 20/13 21/6
21/11 21/22 22/4
22/12 22/16 22/18
23/6 29/14 44/15
47/3 51/23 52/4
52/13 53/2 56/13
56/15 57/5 59/2
59/18 59/21 61/2

62/1 62/15 64/2
64/17 65/1 66/15
67/23 69/19 70/5
74/2 75/4 75/20
76/1 76/7 76/24
77/10 78/17 83/23
85/10 85/19 87/2
87/2 87/5 91/7
92/15 94/4 94/8
96/20 98/15 98/19
99/18 99/20 100/3
100/20 100/21
101/8 101/19 102/8
103/11 103/17
104/4 105/19
106/23 108/12
109/2 109/4 109/10
109/21 110/18
111/17 112/9
113/22 114/2 115/9
116/5 116/16
117/13 119/8
119/15 120/21
121/8 121/16
123/24 124/17
124/23 125/3
129/17 130/19
133/13 134/14
134/18 135/4
135/15 137/9 138/7
139/8 140/1 140/9
141/7 141/16

141/20 142/4
145/14 147/4
old [11] 31/23
34/21 34/23 35/2
35/19 49/23 51/10
56/19 76/13 99/6
131/17
Oldenburg [6] 1/15
2/16 120/23 121/2
135/21 139/20
older [2] 52/1 57/24
oldest [2] 127/24
127/24
Olesons [2] 54/19
56/9
on-site [1] 91/17
on-the-ground [2]
11/4 11/4
once [2] 65/14 86/6
one [59] 6/12 6/13
7/24 10/6 11/21
16/14 20/3 21/11
22/8 23/21 27/10
28/23 29/6 30/10
33/4 33/6 39/10
45/21 48/6 48/8
48/9 48/15 51/14
57/24 58/4 62/8
64/12 64/18 72/23
73/17 75/16 75/16
76/6 79/10 81/14
81/19 81/23 82/2

O

one... [21] 83/9
83/11 83/12 89/23
93/11 94/12 99/15
99/18 99/20 101/6
109/17 111/20
114/7 125/6 126/16
127/5 127/22
128/14 132/17
133/17 135/20
one-stop [1] 81/19
ones [3] 7/10 69/22
121/4
ongoing [1] 104/17
only [23] 1/4 27/6
35/4 42/6 43/24
45/3 48/6 48/9 57/2
65/9 71/7 80/9
80/12 80/14 81/9
82/4 83/10 87/7
87/14 108/8 116/7
119/2 134/4
open [1] 16/17
operate [1] 47/21
operating [1] 47/21
opinion [19] 13/19
15/18 19/8 20/17
21/8 25/15 30/19
32/7 32/18 34/5
36/12 41/9 53/14
82/6 84/17 116/3
116/13 130/20

144/8
opinions [2] 17/9
75/1
opportunity [1]
145/11
order [10] 9/4
22/10 22/21 37/14
65/23 91/20 107/4
127/18 130/4
139/18
original [10] 10/23
11/1 35/7 44/8 75/2
97/7 126/9 127/5
130/21 132/2
other [32] 6/6 14/19
16/19 20/9 21/11
21/23 21/24 24/15
24/18 27/1 29/3
31/22 33/5 34/17
40/18 43/16 50/10
55/24 60/14 63/7
91/4 95/15 106/19
108/17 108/18
117/22 119/18
120/1 123/5 135/16
138/12 146/18
others [1] 55/16
our [5] 92/5 107/16
117/2 121/14
141/20
out [43] 8/18 10/6
16/23 19/20 27/3

35/11 35/15 35/18
36/3 37/17 44/1
48/3 49/14 49/17
57/11 57/13 58/4
62/14 65/3 65/12
65/21 74/20 75/21
79/22 81/12 81/20
82/16 82/17 82/19
83/15 87/24 90/16
93/3 94/15 104/8
104/10 126/6
126/16 127/21
130/16 131/12
140/6 145/11
outcroppings [1]
94/17
outdated [1] 49/23
outline [1] 116/2
outlined [3] 15/17
16/9 66/23
outlines [1] 78/22
outside [5] 66/9
73/13 73/14 122/5
145/5
over [18] 5/11 6/11
27/22 28/2 28/16
31/8 44/19 58/2
61/2 69/7 90/11
103/8 103/14
118/16 118/19
125/4 131/18 136/4
overall [1] 14/3

O

overlaid [3] 76/2
76/8 116/20

overlap [2] 23/10
23/12

overlaps [1] 23/12

overrule [2] 53/3
112/6

Overruled [3] 26/5
37/5 71/11

oversimplifying [1]
84/8

overwhelming [1]
43/2

own [5] 77/6 91/17
92/20 115/4 140/11

owned [1] 92/19

owner [7] 41/24
42/3 63/19 66/2
88/21 91/19 92/1

owners [6] 42/7
110/16 144/3 144/4
145/24 146/3

owns [2] 103/2
123/4

P

p.m [5] 1/3 4/2 88/4
88/5 147/9

packages [1] 98/7

page [34] 2/3 3/3
3/7 11/8 11/8 21/13

25/8 30/9 30/10
42/22 43/9 44/20
44/21 45/20 54/11
56/20 57/7 57/24
58/22 61/5 62/5
75/22 75/22 77/13
79/2 79/8 79/17
79/18 87/6 97/12
99/13 107/2 107/23
137/17

page-by-page [1]
11/8

pages [1] 75/16
Palmer [3] 8/14
22/23 88/6

Pamela [1] 1/21

panel [2] 44/2
133/16

PAR [3] 44/24
68/24 69/1

paragraph [10]
23/17 25/16 31/6
32/4 34/2 39/20
44/22 55/21 55/22
79/18

parcel [3] 45/10
128/24 128/24

parole [4] 24/21
29/5 29/6 29/12

part [16] 12/6
14/20 14/24 18/12
18/19 20/7 28/24

29/14 29/22 32/11
61/13 90/3 90/9
120/11 122/4
124/16

partially [1] 55/23

particular [11]

20/7 24/15 62/5
62/22 66/17 70/23
76/1 76/11 89/9
90/24 141/1

particularly [1]
70/8

parties [6] 40/15
90/13 90/16 111/14
111/21 148/12

partner [3] 5/19
5/20 5/21

party [1] 103/13

pass [31] 1/8 7/4
10/19 12/18 23/20
29/24 30/5 36/17
42/23 44/19 46/12
51/21 54/21 54/24
67/20 68/22 69/19
70/24 78/23 81/24
102/8 103/17
109/18 109/21
111/1 112/13
112/14 114/12
121/22 123/14
123/23

109/18 109/21

111/1 112/13

112/14 114/12

121/22 123/14

123/23

passed [2] 25/3

P	perfect [1] 77/7	129/7
passed... [1] 126/2	perfectly [1] 73/13	pick [5] 40/10
past [5] 6/7 48/8	performed [4] 39/1	40/15 40/17 41/1
62/20 74/20 125/13	46/13 90/9 117/12	75/15
Pastoriza [14] 2/7	performing [3]	picked [1] 95/16
8/15 22/20 22/23	110/18 111/5 112/1	picking [2] 39/17
23/7 23/8 26/1	perhaps [1] 95/7	95/12
32/19 36/20 43/23	peril [2] 69/24 70/2	piece [2] 51/24
46/24 47/10 51/7	period [3] 32/3	91/24
58/21	146/4 146/6	pieces [1] 129/2
Patnaude [4] 1/24	permanent [3] 65/9	Pierce [1] 5/8
4/3 148/3 148/17	65/11 71/21	pin [1] 119/11
Patricia [1] 1/16	permission [1]	pipes [1] 119/12
pause [2] 48/17	136/18	place [11] 40/16
50/12	permit [5] 23/19	41/8 52/18 87/14
paved [2] 27/15	25/17 36/17 46/17	94/16 118/19 125/4
27/18	103/21	126/16 126/18
pavement [8] 62/13	permitting [1] 14/3	127/6 148/6
63/5 63/9 130/22	perpendicular [1]	placed [1] 110/22
130/24 131/5 131/7	40/13	places [6] 39/7
131/24	person [2] 42/12	117/23 131/8
pavements [1]	42/24	137/16 140/22
132/4	pertinent [5] 24/7	140/23
people [9] 38/21	24/10 24/11 28/24	placing [1] 41/13
50/13 70/2 71/7	107/9	plain [1] 120/15
81/5 85/23 86/19	Phil [1] 106/10	plan [46] 3/4 3/4
118/22 146/12	phrased [1] 7/8	8/2 15/4 15/5 26/21
per [2] 16/20 42/11	Phyllis [1] 62/6	27/7 27/13 34/10
percent [8] 9/20	physical [11] 25/1	37/15 45/18 54/14
15/2 15/3 53/12	37/10 38/9 65/24	56/12 63/10 64/18
53/22 84/10 107/13	80/10 95/17 104/2	65/10 65/17 65/18
134/24	104/7 117/4 119/21	65/24 72/6 72/11

P

plan... [25] 74/22
75/12 75/13 76/8
76/9 76/11 80/4
89/17 106/21
112/18 112/19
113/2 113/9 113/10
116/21 116/23
118/5 121/10
121/13 122/8 124/2
125/1 128/18
129/11 129/21
planned [1] 119/6
plans [98] 3/5 5/16
7/24 11/9 12/5
12/13 14/2 16/20
20/4 24/6 26/8
26/10 28/20 31/23
34/20 34/20 35/2
35/10 35/12 36/6
39/17 40/8 67/17
67/18 68/3 68/3
68/5 68/14 70/14
72/5 73/23 74/18
76/19 76/21 84/3
93/21 97/13 98/12
98/17 98/20 99/8
99/24 100/11
100/19 100/23
101/10 101/14
101/14 101/17
101/21 101/22

102/4 105/16
106/17 108/14
108/18 114/13
114/23 115/23
116/1 118/12
118/13 120/13
120/19 121/15
121/21 121/22
122/18 122/19
122/24 123/12
123/15 123/19
124/7 126/14 130/9
130/21 133/5 133/6
133/9 133/15
133/18 133/19
133/24 134/1 134/6
135/1 135/12
136/22 137/2
137/19 137/21
143/5 143/6 143/9
143/10 146/1 146/9
plant [1] 93/13
plat [2] 101/20
101/23
plate [1] 48/12
plats [1] 26/23
play [1] 93/10
please [7] 4/4 4/17
7/3 48/16 63/1 70/5
99/13
plotted [1] 45/11
plus [3] 14/12 64/22

73/10
point [19] 9/8 10/6
13/8 13/12 15/16
35/6 41/1 44/4 57/9
62/14 65/22 84/11
89/1 117/5 118/11
120/18 126/13
132/15 139/22
pointing [3] 8/18
40/12 79/22
points [4] 117/17
117/18 117/21
117/21
poles [1] 95/16
poor [1] 11/7
popular [1] 93/15
portion [4] 10/20
46/7 104/1 104/3
portions [1] 24/24
portrayal [1]
133/15
position [5] 21/17
21/21 22/5 81/24
144/5
possession [3]
43/15 50/9 52/21
possible [2] 55/16
132/7
potential [2] 95/8
143/13
pound [1] 119/13
practical [2] 32/6

P		
practical... [1] 32/24	prerogative [1] 111/23	118/15 123/10 128/6 141/13 145/24
practice [3] 6/3 26/3 60/13	prescription [5] 20/12 27/5 40/5 84/23 85/9	probability [1] 126/15
practices [1] 29/4	prescriptive [10] 16/18 16/21 16/24 38/5 39/21 40/20 84/15 84/19 85/1 85/11	probably [10] 22/24 47/13 51/7 52/14 64/22 74/15 77/24 102/2 106/6 128/14
preclude [1] 21/4	present [4] 1/12 1/19 128/17 148/8	problem [11] 27/20 32/16 38/16 74/9 80/24 83/8 109/4 120/11 120/12 132/22 134/20
precludes [1] 20/22	Presiding [2] 1/13 1/13	problems [2] 95/8 118/21
precursor [1] 72/10	pretty [5] 28/15 39/2 61/11 68/9 145/2	procedure [5] 12/18 13/19 15/17 20/24 31/2
predated [1] 55/5	prevent [1] 146/6	procedures [1] 31/13
preempting [1] 144/9	preventing [1] 145/20	proceed [4] 9/6 18/16 23/7 23/11
prefiled [15] 6/16 6/18 9/14 10/16 48/23 71/1 97/7 97/11 98/19 100/9 135/10 137/15 138/5 140/21 141/4	previous [1] 55/20	proceeding [4] 9/12 9/22 38/14 85/7
preliminarily [1] 30/24	print [1] 64/21	proceedings [3] 72/13 146/13 148/6
preliminary [10] 9/19 14/16 14/21 26/21 37/16 45/15 67/11 99/24 100/8 118/13	printed [1] 65/17	process [27] 14/3 14/7 14/8 14/10 14/21 14/22 14/23 14/24 17/23 18/21
premised [1] 98/11	prior [7] 14/14 14/17 14/22 17/2 39/11 40/6 114/24	
preparation [1] 116/1	private [21] 16/20 22/8 35/23 39/24 40/14 40/23 63/18 63/19 70/8 71/22 72/1 72/7 73/20 91/14 116/8 117/11	
prepare [2] 90/18 133/18		
prepared [4] 43/21 89/18 98/7 105/11		

P		
<p>process... [17] 18/22 19/1 19/8 19/9 20/21 30/5 42/4 58/13 82/22 83/6 94/1 112/18 113/2 128/3 128/13 130/6 144/6</p>	<p>102/1 116/14 117/9 118/3 118/9 118/9 118/11 119/5 121/6 121/14 121/18 122/3 123/9 129/23 129/23 130/12 130/20 130/22 132/2 132/16 136/18 143/14 146/3</p>	<p>73/8 79/12 86/1 88/20 88/21 90/13 90/15 91/1 92/3 93/18 110/16 113/7 113/18 116/8 117/11 118/15 118/19 123/6 138/2 138/4 138/15 138/21 138/23 141/13 144/3 144/4 144/9 145/15 145/15 145/24 146/3</p>
<p>processes [2] 127/17 128/7</p>	<p>projects [4] 14/13 21/23 21/24 134/24</p>	<p>Proposal [1] 45/1 proposed [2] 35/1 43/1</p>
<p>produce [2] 29/24 45/18</p>	<p>promote [1] 60/15</p>	<p>protect [2] 81/3 124/1</p>
<p>produced [2] 22/11 78/1</p>	<p>proof [1] 44/11</p>	<p>protecting [1] 72/1 protection [2] 91/9 117/10</p>
<p>product [5] 21/7 21/8 67/12 67/14 67/15</p>	<p>proper [8] 19/14 21/5 22/11 46/12 58/13 61/21 72/6 72/10</p>	<p>protective [1] 91/18 provide [8] 9/22 23/23 85/4 106/15 116/13 119/16 120/9 122/15</p>
<p>production [1] 16/2</p>	<p>properly [5] 22/10 45/7 46/9 68/14 118/18</p>	<p>provided [3] 79/20 86/8 143/7</p>
<p>professional [1] 4/18</p>	<p>properties [3] 36/4 91/5 123/5</p>	<p>providing [3] 74/21 103/20 104/7</p>
<p>programs [3] 90/1 91/9 93/7</p>	<p>property [57] 21/16 22/8 22/13 22/14 28/16 30/3 30/10 30/15 30/21 31/11 31/15 35/23 39/4 40/1 40/14 41/24 42/1 42/3 42/7 60/15 63/18 63/19 65/3 66/2 66/7 72/7</p>	<p>provisions [2] 60/9 139/23</p>
<p>project [53] 3/4 3/5 5/22 6/8 6/10 10/20 10/21 15/7 21/20 21/21 21/22 30/18 32/12 34/16 54/6 54/15 54/18 55/2 56/7 56/8 71/22 72/14 72/16 74/10 79/21 83/5 83/5 83/13 88/22 101/22</p>		

P
public [27] 1/9 1/13
1/14 1/16 1/16 9/11
11/17 17/2 20/11
35/22 38/7 38/11
59/14 60/16 63/20
67/5 84/23 85/9
91/14 103/8 103/14
105/1 105/8 105/8
107/11 116/8 131/1
published [1] 127/4
pull [2] 55/20 99/13
purchased [1]
130/15
purchasing [1]
130/13
purpose [5] 41/13
60/11 60/14 146/9
146/10
purposes [7] 15/10
21/19 93/17 95/12
126/21 136/2
146/13
purview [1] 17/23
put [19] 11/14
40/11 40/16 40/21
41/1 41/6 80/3 82/7
85/10 86/2 92/4
94/21 110/1 111/1
111/8 119/11
127/10 144/5
145/11

puts [1] 67/14
putting [6] 86/19
87/5 109/18 111/12
128/21 132/20
puzzle [2] 128/21
130/16

Q
qualified [1] 21/22
quality [2] 93/7
93/7
quantity [1] 93/12
question [48] 7/7
17/7 17/15 18/3
18/11 18/13 18/19
28/9 30/23 32/16
35/13 35/21 36/7
36/24 42/19 44/5
44/6 44/11 49/15
49/17 50/3 50/15
52/17 53/10 53/13
56/4 56/14 66/14
71/14 83/14 87/8
89/9 92/12 94/12
103/23 104/15
123/19 135/5
135/20 136/3
136/10 139/13
141/15 141/17
142/21 144/16
144/23 146/11
questioned [1]
139/21

questioning [2]
85/23 144/21
questions [30] 2/13
8/8 8/12 9/13 22/17
23/9 35/17 44/18
49/12 49/23 79/11
87/21 88/7 88/9
88/14 94/5 94/7
94/9 95/21 95/24
96/5 100/6 115/12
121/3 133/17
135/16 142/8 143/8
146/18 146/20
quick [1] 79/2
quickly [3] 36/11
61/7 88/15
quiet [1] 42/7
quite [6] 20/15
32/22 36/1 45/7
68/13 78/7
quote [2] 98/5
133/22

R
Rachel [1] 1/16
radius [4] 91/18
91/21 91/23 92/4
radiuses [1] 91/22
railroads [1] 139/2
raised [3] 10/17
13/22 140/17
raises [6] 28/9
35/13 35/17 35/21

R	Rec [1] 3/7	121/15 121/21
raises... [2] 36/7	recall [7] 6/16 6/21	121/22 122/8
120/16	97/16 98/8 105/22	142/17 142/18
rank [1] 4/23	144/20 144/21	144/24 147/3
rarely [1] 116/22	received [1] 46/4	recorded [7] 16/20
rather [1] 117/9	recent [4] 30/4 48/8	101/15 101/18
re [2] 1/7 128/8	76/18 76/22	123/13 123/19
re-layout [1] 128/8	recently [1] 72/24	123/23 124/2
read [11] 21/16	recess [1] 88/3	records [14] 20/4
22/21 33/1 43/6	recognize [1] 97/2	28/19 38/2 38/3
44/23 53/7 54/1	recommendation	50/17 50/19 50/23
114/1 114/2 122/13	[1] 135/9	54/4 54/21 56/17
141/11	reconcile [2] 112/1	57/1 102/3 120/19
reading [5] 32/20	125/20	122/19
32/20 53/5 71/15	reconstruct [2]	recourse [3] 42/6
77/23	39/9 41/17	42/13 88/24
real [6] 30/2 30/10	reconstruction [1]	red [1] 120/16
34/17 62/16 79/2	130/3	redirect [4] 2/12
83/8	record [45] 9/15	142/11 143/3
realize [1] 61/8	10/15 30/14 30/20	143/20
really [11] 28/10	32/1 34/5 34/12	redoing [2] 86/14
35/13 35/22 69/24	34/13 37/15 58/18	86/17
81/22 94/13 120/10	59/8 59/24 60/1	reestablish [1]
126/11 132/6 132/8	62/6 62/23 63/2	110/17
132/11	71/16 75/6 75/7	refer [1] 100/4
reason [6] 27/10	75/15 77/3 77/4	reference [6] 27/8
33/17 73/6 73/17	79/3 80/13 85/15	55/23 58/6 59/15
80/20 86/2	85/16 88/1 88/2	98/2 140/21
reasonable [1] 44/3	96/11 102/3 102/19	referenced [5] 10/9
reasonably [1]	102/20 108/14	11/12 36/14 57/1
32/24	108/18 114/10	57/7
reasoning [1] 12/6	121/10 121/13	references [3] 58/7

R

references... [2]

68/21 137/24

referencing [3]

11/20 15/21 80/6

referring [4] 49/7

60/23 90/5 119/24

reflect [1] 85/24

reflected [1] 76/18

regard [6] 19/7

88/19 89/24 93/6

93/7 93/23

regarding [12] 32/8

34/6 36/14 72/24

104/1 107/22

120/14 138/1 143/5

144/3 144/4 144/9

regardless [1]

112/7

regards [1] 39/20

registered [4]

101/11 101/19

101/23 123/13

Registry [6] 80/13

101/15 101/18

101/24 121/9

123/13

regs [1] 60/23

regulates [1] 60/20

regulations [9] 61/9

66/18 66/23 67/2

67/5 80/17 82/19

137/8 141/21

rehearing [1] 14/5

Reimers [1] 95/19

reiterate [3] 36/11

66/16 124/13

reiterating [1]

70/19

reject [1] 47/7

rejected [4] 11/23

50/23 71/2 71/6

rejection [1] 7/14

relaid [1] 35/18

relate [3] 49/8 92/6

118/6

related [1] 148/11

relates [2] 43/20

50/15

relationship [1]

69/17

relative [1] 148/13

relatively [2] 38/20

133/2

Relevance [1]

42/15

relevant [1] 33/18

reliance [1] 74/7

relied [2] 86/8

98/15

rely [5] 19/11 69/13

87/16 115/7 146/12

remains [1] 45/23

remediation [3]

90/1 90/8 90/10

remedies [1] 82/15

remember [5]

68/23 90/6 118/7

144/13 144/15

remembering [1]

18/20

reminded [1] 48/19

reopen [1] 49/10

repeat [1] 71/13

rephrase [1] 71/17

report [29] 7/11

7/12 7/13 23/23

45/6 45/8 49/20

53/6 57/10 67/24

68/6 68/8 68/9 77/1

77/18 80/8 106/14

106/15 106/20

108/1 108/4 112/16

113/1 115/20

115/22 115/23

122/16 122/18

122/21

reporter [7] 1/24

4/7 117/19 131/9

140/13 148/4

148/18

reports [2] 12/5

72/24

representation [2]

52/9 67/19

representative [3]

R		
representative... [3] 89/16 89/20 91/7	32/9 34/7 34/9 37/23 90/7 102/7 113/24 115/19	50/18 50/24 51/13 52/22 53/6 54/3 56/18 57/1 57/10
representatives [1] 79/22	123/12 123/18 123/20 123/21 124/15 132/5 138/2	58/14 61/20 68/12 68/17 69/11 107/9 125/22
represented [2] 62/21 63/23	141/10 143/9	researched [2] 32/5 34/4
represents [1] 63/16	requirements [31] 7/18 11/9 12/13 15/20 18/1 19/20 20/23 25/6 26/22 32/4 34/2 34/17 45/19 46/23 104/18 114/15 116/4 120/8 122/13 124/4 124/8 124/9 124/16 124/24 134/2 137/21 139/8 139/9 139/10 139/19 140/5	researcher [1] 55/1 reservoir [2] 92/16 92/17 reservoirs [2] 92/6 92/15 residence [1] 80/1 resolve [1] 85/12 respect [1] 32/11 response [6] 12/1 23/5 29/22 96/1 97/15 140/12 responsibility [1] 110/2
request [4] 44/24 45/15 89/6 97/16	requires [7] 19/21 38/24 90/8 106/13 107/6 137/18 141/17	responsible [1] 90/17 restate [2] 18/24 52/17 restrictions [1] 90/2 result [1] 145/24 resulting [3] 15/19 112/20 113/5 resume [1] 147/9 resumed [2] 4/2
requested [5] 45/3 46/2 94/23 104/14 139/17	requiring [6] 41/7 109/6 109/14 109/15 112/9 113/7	
requesting [1] 94/24	research [29] 24/7 24/10 24/11 24/11 24/14 24/22 28/24 37/15 37/15 37/24 43/14 46/3 50/17	
requests [2] 46/4 112/12		
require [8] 21/16 46/2 80/17 89/17 111/22 117/11 117/16 137/20		
required [19] 20/17 24/12 25/16 28/20 30/2 30/7 36/16 85/22 90/19 91/4 91/17 92/21 108/8 109/10 109/12 126/2 141/1 141/2 141/23		
requirement [20] 21/15 30/13 31/5		

R

resumed... [1] 88/5
resuming [1] 147/6
retained [1] 9/21
return [2] 36/9
36/10
review [19] 7/10
13/10 14/18 15/11
30/18 32/6 34/16
82/10 83/6 83/16
83/18 102/11 115/2
121/18 122/2
123/15 137/5 146/4
146/6
reviewed [5] 7/1
7/6 13/17 87/13
97/13
reviewing [4] 21/19
81/13 120/19 136/1
right [162]
right-hand [2] 28/6
64/3
right-of-way [94]
10/19 16/18 16/22
16/22 16/24 17/1
24/1 24/5 26/11
26/16 26/19 27/17
27/19 27/21 27/24
28/5 28/9 28/23
29/19 29/21 38/5
38/7 38/12 40/2
40/9 40/24 41/2

41/21 41/23 45/2
45/10 46/1 46/8
48/10 52/23 54/5
54/7 57/24 62/22
63/3 63/7 63/17
63/23 65/4 73/15
73/19 79/12 80/10
103/2 104/6 104/22
106/17 107/7
109/24 110/22
111/1 111/4 111/7
111/13 112/2 113/5
113/13 115/5 118/1
118/4 119/4 122/5
122/7 122/10
122/17 122/21
122/23 123/2 123/6
123/8 123/9 129/12
129/20 129/20
130/14 130/17
131/4 131/7 132/1
132/7 132/8 132/18
132/19 133/6 134/5
134/13 134/20
135/12 136/19
right-of-ways [4]
39/21 105/1 105/9
132/24
rights [23] 22/8
22/13 38/13 40/21
42/1 63/20 72/2
72/19 78/3 78/9

84/15 84/19 85/23
90/13 113/16
113/16 116/9
117/11 122/4 136/2
136/23 141/13
145/15
rights-of-way [10]
38/13 78/3 78/9
84/15 84/19 85/23
113/16 122/4 136/2
136/23
River [3] 78/21
79/6 118/8
road [63] 5/2 15/6
20/11 24/24 26/4
26/18 27/3 27/4
27/20 28/16 34/21
34/21 34/21 34/24
35/3 35/6 35/7
35/16 35/18 35/20
35/21 35/22 36/4
37/12 38/1 38/3
40/2 40/3 40/12
41/2 51/19 53/10
53/13 56/19 56/20
56/21 56/22 57/10
57/13 63/5 63/11
73/1 83/13 84/22
84/23 85/4 85/8
95/5 95/10 95/17
99/4 104/9 113/16
120/14 126/14

R

road... [8] 127/7
127/23 128/9 131/2
131/3 131/11
131/12 131/12
road's [1] 131/21
roads [19] 5/16
21/5 25/22 25/23
27/1 36/5 51/13
57/11 83/10 98/24
103/13 115/4
126/20 127/3 127/3
127/14 127/15
131/1 143/7
roadway [4] 62/8
79/23 79/24 80/2
Rock [5] 34/21 73/1
95/5 95/10 99/3
Rockler [1] 60/22
rod [4] 56/22 58/7
83/13 132/23
rods [5] 3/7 57/3
57/14 58/12 83/10
ROE [1] 88/20
role [2] 85/3 96/14
room [2] 35/5 87/24
route [25] 26/4
38/19 39/3 43/1
43/3 43/3 50/7 51/1
51/19 56/8 89/8
90/21 95/11 102/4
110/12 110/15

117/8 117/14
117/23 131/17
131/17 137/2
138/22 138/24
139/5
RSA [6] 17/1 29/20
60/8 141/7 141/11
148/19
RSAs [1] 124/9
rule [3] 90/7 90/8
90/24
rules [27] 12/14
15/20 16/2 16/7
19/21 20/24 21/2
21/9 21/15 22/5
22/6 31/1 32/17
36/23 37/1 37/3
38/24 39/10 89/17
91/13 91/13 109/7
110/4 110/8 110/9
112/6 137/7
run [5] 16/1 16/3
81/18 81/18 81/22
runoffs [1] 95/14
runs [1] 79/23
Rye [1] 17/4

S

S-t-e-p-h-a-n [1]
5/1
S.R [1] 3/6
safeguard [1] 60/15
Saffo [8] 2/8 8/14

22/23 58/17 60/3
70/21 108/7 144/3
said [20] 8/21 18/13
51/9 51/15 52/14
68/16 81/9 84/5
94/13 107/22 108/7
111/14 111/16
111/20 119/22
120/12 132/6
133/11 133/19
135/24
same [10] 22/24
45/20 47/21 53/20
55/11 56/17 128/9
138/4 139/9 139/10
sample [2] 91/7
93/5
samples [2] 89/16
89/20
satisfied [1] 16/11
satisfy [5] 12/8 21/1
36/13 46/16 46/23
satisfying [1] 37/3
saw [1] 133/24
say [22] 10/21 18/3
28/18 38/16 47/11
49/13 63/15 66/1
67/13 73/7 87/8
91/15 99/8 115/18
123/18 124/10
129/15 134/1
134/15 139/3 142/2

S	32/21 33/8 33/11 52/10 54/2 57/23 87/6	seeing [2] 39/16 51/24
say... [1] 146/19	screens [1] 23/13	seemed [1] 11/6
saying [5] 36/21 83/19 87/8 98/6 124/7	scroll [1] 12/24	seen [17] 13/12 13/15 21/6 34/7 34/8 67/17 67/22 67/24 68/3 70/14 70/23 71/2 105/10 122/11 125/9 130/9 133/8
says [20] 16/10 22/8 28/13 37/9 63/10 69/20 79/20 97/19 97/22 100/13 106/19 106/21 108/13 108/13 112/13 113/1 113/4 137/20 137/24 141/12	scrutinized [2] 98/20 99/9	segment [2] 57/2 57/13
scale [7] 64/9 64/17 64/19 64/20 64/22 65/12 65/13	sealed [1] 89/18	selectmen [1] 128/8
scales [1] 64/11	SEC [14] 1/6 1/7 1/19 1/20 1/21 2/14 19/8 19/11 21/15 21/17 22/6 96/20 98/2 143/10	send [1] 37/21
scaling [1] 65/20	second [11] 7/19 13/18 18/2 18/12 30/6 61/10 62/16 112/20 113/4 124/11 140/6	sense [6] 18/23 19/3 86/22 100/22 142/11 146/4
scan [2] 64/1 64/14	section [4] 35/2 35/19 99/5 105/22	sent [1] 25/9
scenario [2] 73/12 144/11	sections [1] 45/24	sentence [1] 137/23
scene [1] 86/12	see [33] 8/14 8/14 8/15 8/15 8/15 8/16 22/2 27/10 28/7 34/22 37/11 37/18 38/22 57/3 57/5 62/2 62/9 68/6 68/8 75/17 76/2 76/10 76/24 77/12 79/2 81/23 86/19 95/7 98/23 100/14 127/7 127/13 129/11	separate [1] 123/14
scene-setter [1] 86/12		September [4] 7/20 7/22 80/6 82/2
school [3] 5/9 5/10 5/24		septic [6] 6/11 6/14 79/23 80/23 81/14 81/20
Science [1] 5/7		Serv [1] 1/15
scope [4] 25/20 43/19 143/20 145/6		Service [1] 1/9
Scott [1] 30/8		services [2] 79/24 89/24
screen [8] 11/14		servicing [1] 80/2
		Session [3] 1/4 87/6 147/8

S	29/18	shows [6] 36/7
set [25] 8/12 19/10	sheet [3] 3/7 9/5	42/23 45/21 54/18
32/17 39/2 39/4	99/22	57/12 118/4
39/7 39/15 39/21	shift [1] 27/22	shut [2] 82/16
39/24 67/21 69/20	shifted [1] 28/16	82/17
84/7 87/11 87/15	short [5] 24/19	shutting [1] 82/19
104/19 108/21	48/17 50/12 57/2	side [4] 62/7 99/15
110/10 112/19	57/12	99/15 123/5
112/19 113/3 113/9	shorter [1] 89/13	siding [1] 66/3
113/10 130/13	Shorthand [1]	sign [1] 71/17
133/7 148/7	148/3	signed [2] 25/12
set-in-stone [1]	should [25] 15/12	77/18
84/7	21/15 24/6 29/12	significance [1]
setter [1] 86/12	31/6 35/11 37/21	77/15
setting [2] 19/13	67/15 70/19 74/13	significant [2]
42/13	76/14 81/16 81/22	70/17 71/22
several [5] 90/11	84/10 85/24 86/5	significantly [1]
91/12 91/22 93/14	95/16 96/21 110/13	131/13
93/16	136/20 137/1 137/6	similar [4] 33/4
sewer [5] 79/22	140/9 141/14 146/6	33/10 118/12
118/9 118/14 139/3	shouldn't [1] 110/1	118/24
139/3	show [4] 35/24	simply [3] 40/6
sewers [1] 5/16	49/22 93/21 126/4	58/11 107/12
shall [5] 30/16 34/3	showed [2] 59/9	since [5] 6/23 9/16
110/10 122/15	134/4	25/3 39/20 70/24
122/18	showing [3] 54/14	single [1] 134/17
ShareFile [1] 78/19	56/24 57/18	site [14] 1/2 1/10
SHEB [1] 75/11	shown [10] 24/5	1/12 5/16 21/14
SHEBC [1] 75/17	65/10 75/11 106/17	34/19 55/1 91/17
SHEBC106 [1]	107/7 122/17	97/13 116/21
76/1	122/23 126/14	116/23 118/5 136/5
Sheehan [2] 29/15	133/5 133/5	141/8

S

sited [2] 50/6 51/21
sites [2] 90/1 90/8
situation [1] 86/7
six [1] 25/3
sixty [1] 134/7
size [1] 70/13
skill [1] 148/8
slow [3] 33/12 43/5
71/18
slowly [1] 54/1
smaller [1] 77/12
Smith [3] 125/19
127/20 127/21
Smith's [1] 125/16
snapshot [1] 57/23
so [210]
soils [1] 116/19
solid [4] 26/14 27/9
45/22 78/3
solved [1] 131/15
some [23] 24/17
24/20 33/17 35/6
37/16 40/16 65/13
73/15 74/16 89/19
97/8 110/13 111/15
118/12 125/14
125/24 126/11
126/12 130/19
133/6 133/9 137/13
144/1
someone [4] 37/1

42/10 53/9 129/19
something [11]
32/24 36/24 37/2
41/5 81/16 86/12
90/3 90/10 142/14
144/17 144/19
something's [1]
85/11
sometime [2] 8/2
83/9
sometimes [6]
35/20 90/13 91/21
107/11 116/19
129/2
somewhat [1] 23/10
somewhere [1]
107/19
sorry [11] 18/21
20/18 42/22 51/6
61/15 79/17 106/11
108/1 111/19 125/3
144/14
sort [4] 83/3 128/3
133/7 140/17
sound [2] 89/5
115/6
sounds [2] 51/4
92/8
source [1] 32/22
sources [3] 24/18
30/17 31/7
south [2] 127/24

130/4
southbound [1]
132/21
speak [2] 81/5
108/23
speaking [1] 104/1
specific [1] 45/24
specifically [12]
22/7 36/15 37/8
61/16 79/10 110/5
110/10 111/15
111/20 113/23
140/4 142/2
specify [1] 23/1
speculate [1] 51/5
speculation [2]
53/1 53/17
spike [1] 125/15
spike's [1] 125/18
spokesman [1] 10/2
springs [1] 94/18
square [2] 54/8
54/23
staging [1] 70/17
staked [1] 41/23
stamp [2] 67/14
133/18
stampable [3]
125/1 134/6 134/15
stamped [16] 21/18
67/17 67/18 67/21
67/24 69/20 87/11

S	103/5 103/6 103/18	Stewartstown [1]
stamped... [9]	110/5 110/9 123/9	56/23
87/15 101/11	126/3 137/3 143/7	still [4] 6/4 49/16
133/14 134/2	stated [6] 29/22	86/18 139/23
136/22 137/2 143/5	39/23 78/7 97/12	stone [1] 84/7
143/6 143/9	98/14 103/10	stop [3] 17/14 81/19
standard [14]	statement [9] 21/3	102/14
21/16 38/20 113/7	52/7 54/8 70/3 81/9	storage [1] 90/14
113/15 113/18	98/17 98/20 103/22	streams [1] 94/17
114/5 133/11 137/6	124/7	Street [1] 1/4
138/2 138/3 138/15	states [7] 9/24	strike [1] 76/16
138/21 138/23	17/12 27/2 41/7	structures [1]
139/6	56/18 57/10 112/16	95/15
standards [19] 12/9	stating [1] 43/2	struggling [1]
15/8 19/4 30/2 30/7	stationing [1] 38/18	105/24
30/10 30/12 31/4	status [2] 27/1	SUBCOMMITTEE
33/6 36/14 41/11	79/13	[2] 1/12 2/13
47/16 47/21 66/18	statute [9] 22/7	SUBCOMMITTEE
69/14 81/2 108/8	60/17 60/21 84/21	/SITE [1] 1/12
109/7 112/14	92/22 126/2 128/9	subcontractor [1]
stands [1] 63/11	141/8 141/17	44/24
start [4] 65/14 76/6	statutory [1] 90/6	subdivisions [1]
121/4 125/9	stay [1] 133/3	5/15
started [1] 4/9	steep [1] 35/7	submits [1] 114/13
starting [1] 14/23	stenographic [1]	submittal [3] 12/2
starts [1] 125/15	148/5	12/2 12/4
state [26] 1/1 25/14	STEPHAN [4] 2/4	submittals [1] 6/24
25/22 43/17 45/2	4/5 4/13 4/24	submitted [19] 6/22
45/22 50/10 50/17	stepped [1] 82/12	7/6 8/2 10/23 11/24
50/19 50/24 51/18	steps [2] 39/9 39/12	12/7 13/10 13/13
54/4 54/6 54/15	Steven [3] 1/24	24/6 26/9 46/15
56/6 56/7 72/13	148/3 148/17	71/4 82/3 114/23

S	supply [1] 91/9	32/2 35/17 36/22
submitted... [5]	support [1] 22/4	38/6 38/8 38/13
122/24 130/21	sure [15] 24/21	39/6 39/8 40/1 40/7
133/9 134/1 135/2	32/22 33/1 49/10	40/9 40/15 41/8
submitting [2]	55/8 57/16 81/8	41/17 45/6 45/16
12/19 102/10	119/24 128/2	46/9 47/15 48/6
subset [1] 138/23	135/24 139/14	53/5 56/6 61/18
subsets [1] 139/6	139/21 144/13	61/19 66/7 67/12
substance [1] 13/7	145/2 146/10	67/14 69/11 69/18
substantiating [2]	surface [3] 27/16	80/14 81/12 81/18
30/15 30/21	27/18 63/4	82/6 82/11 82/18
substitute [1]	surprise [1] 79/13	82/22 83/4 84/11
114/16	surrounding [1]	84/20 84/24 85/2
substituting [1]	139/4	85/4 85/6 85/12
96/22	survey [190]	86/23 87/9 89/19
such [2] 28/23	surveyed [5] 30/16	95/12 96/16 101/12
141/9	30/22 117/14	105/19 105/20
sufficient [2] 30/14	118/18 130/8	111/8 111/24
30/20	surveying [18] 5/12	113/21 115/24
Sugar [1] 29/16	11/10 15/8 15/20	118/8 118/16
suit [1] 88/22	17/11 17/12 26/3	122/22 124/9 128/5
summary [2] 10/21	31/4 38/24 39/11	132/16 134/3
51/12	47/12 60/14 84/18	137/23 144/8
superior [2] 42/8	86/4 86/22 88/19	145/18
128/16	93/10 112/7	surveyor's [11] 6/2
supplement [1]	surveyor [85] 5/6	18/1 26/21 39/9
10/17	5/14 6/5 16/9 19/22	39/12 40/6 40/20
supplemental [11]	20/10 20/10 21/4	53/6 67/24 77/17
6/18 9/23 10/7 11/8	21/19 24/4 24/13	85/3
13/23 21/12 45/13	25/13 26/12 26/24	surveyors [33]
48/23 97/12 98/11	29/4 29/8 29/12	16/16 19/5 20/19
137/15	30/1 31/12 31/24	30/11 31/1 31/3

<p>S</p> <p>surveyors... [27] 33/5 41/15 46/6 51/18 52/20 60/10 60/13 60/17 68/1 68/10 68/11 68/13 82/9 90/3 102/9 104/17 106/5 107/16 108/22 109/8 110/4 110/16 117/23 120/9 124/17 131/14 140/24</p> <p>surveys [18] 30/3 34/17 47/13 70/7 71/2 84/6 86/7 86/8 90/18 92/20 94/15 102/4 116/11 125/9 126/9 134/7 140/23 141/2</p> <p>survivor [1] 5/19</p> <p>sustain [2] 44/9 146/15</p> <p>sustained [8] 42/17 47/4 48/21 83/22 89/11 144/17 144/22 145/3</p> <p>swales [1] 95/14</p> <p>swear [1] 4/4</p> <p>switch [3] 61/2 69/7 79/1</p> <p>switching [1] 79/16</p>	<p>sworn [2] 4/6 4/13</p> <p>synopsis [1] 4/17</p> <p>system [1] 81/14</p> <p>systems [6] 5/17 5/17 6/15 80/24 81/21 91/15</p> <hr/> <p>T</p> <p>table [1] 97/2</p> <p>tail [2] 99/3 99/4</p> <p>take [10] 13/18 18/2 44/22 47/15 61/8 70/16 87/23 101/1 129/4 136/4</p> <p>taken [6] 1/23 31/17 81/24 88/4 124/14 148/6</p> <p>takes [1] 47/24</p> <p>taking [1] 76/1</p> <p>talk [6] 29/8 81/10 82/21 93/5 132/10 138/7</p> <p>talked [5] 24/21 31/16 84/1 85/19 125/7</p> <p>talking [12] 17/14 53/19 55/5 56/3 62/10 65/19 65/20 74/12 76/4 76/13 77/15 101/21</p> <p>Talon [17] 7/17 7/20 12/11 48/9 80/7 82/2 105/5</p>	<p>105/6 105/11 124/6 124/10 124/11 124/12 124/15 139/23 140/4 140/6</p> <p>tangency [1] 117/21</p> <p>tank [2] 79/23 90/15</p> <p>tasks [2] 16/8 16/9</p> <p>tax [3] 45/4 45/13 78/6</p> <p>tech [1] 62/16</p> <p>technical [1] 73/6</p> <p>technician [1] 5/14</p> <p>tell [4] 36/2 55/7 65/5 67/2</p> <p>telling [3] 71/17 96/20 113/10</p> <p>temporary [1] 71/21</p> <p>ten [4] 54/19 55/2 56/9 73/7</p> <p>term [6] 24/9 82/24 82/24 107/18 138/17 139/11</p> <p>terminology [2] 137/13 138/14</p> <p>terms [6] 31/5 32/4 34/2 47/23 117/22 138/6</p> <p>testified [3] 12/16 66/16 87/1</p>
--	---	---

T

testify [1] 97/3
testimony [55] 6/17
6/18 6/19 6/21 7/6
7/22 9/14 9/20 9/22
10/16 10/17 13/23
14/4 15/21 19/9
20/2 21/12 25/21
25/21 30/4 43/19
43/21 44/8 48/24
55/6 70/20 71/1
74/13 75/2 76/15
84/14 87/7 89/15
92/10 97/8 97/11
97/22 98/10 98/11
100/5 100/9 100/9
108/6 110/11 120/1
125/7 135/10
137/15 138/5 138/8
138/10 138/10
140/21 141/4
143/23
than [9] 32/21 47/6
56/9 58/11 61/10
71/10 77/22 115/7
116/12
thank [40] 6/16 7/3
8/5 8/10 9/7 17/17
18/17 22/17 44/15
58/15 59/2 59/23
60/4 61/3 66/15
70/5 76/24 87/20

88/11 88/16 89/13
94/10 95/18 96/7
97/24 102/17
105/24 112/20
120/21 120/24
135/4 135/16
135/16 137/9 142/6
142/7 143/1 143/2
146/22 146/24
Thanks [1] 48/14
that [625]
that in [1] 127/22
that's [161]
their [38] 23/19
31/15 31/23 38/10
38/22 40/8 41/24
45/5 47/24 50/23
51/22 52/22 68/11
68/12 68/12 68/16
69/11 69/12 69/24
76/2 78/24 82/1
82/14 86/1 88/21
90/4 91/17 92/20
104/22 110/22
111/2 111/22
114/14 115/5 124/1
138/20 140/10
141/1
theirs [1] 96/22
them [36] 9/4 9/4
11/21 14/24 22/10
31/14 32/20 32/20

62/8 67/3 71/4
82/19 89/21 92/22
92/22 101/10 102/3
109/6 111/12
114/15 114/24
115/2 117/17
119/13 123/23
124/22 125/24
126/6 128/8 133/1
133/7 133/17 134/4
135/6 135/8 139/2
themselves [1]
22/19
then [65] 5/18 9/16
13/8 24/18 26/18
28/5 34/16 37/17
38/14 38/18 39/16
42/7 52/16 58/5
61/13 62/1 62/20
63/14 65/17 65/18
66/15 69/2 70/15
71/5 73/6 73/8
73/20 74/7 75/5
75/20 77/20 79/16
79/20 82/11 83/13
85/5 89/19 91/4
92/13 93/19 107/6
108/7 109/4 111/22
113/4 114/24
116/20 116/24
122/18 122/21
127/17 128/5

T

then... [13] 128/10
128/12 132/3 132/4
137/6 138/8 139/24
140/2 140/5 140/9
141/7 146/22 147/4
there [80] 6/23 7/24
8/24 9/2 11/6 11/7
14/4 15/6 15/7
16/14 24/15 26/9
26/14 27/11 27/12
28/11 29/3 29/10
30/13 30/19 33/10
34/17 34/22 34/24
35/9 36/1 37/13
39/5 39/14 40/4
40/4 40/8 45/24
48/9 50/1 53/12
53/22 63/6 63/15
63/21 64/8 64/9
65/9 65/12 66/20
67/14 67/18 81/15
81/20 84/13 84/14
88/24 90/21 90/22
91/2 97/5 100/13
110/13 116/19
120/15 121/8
123/17 123/18
123/20 123/20
125/21 125/22
126/1 127/8 128/7
130/23 133/13

133/14 138/11
144/1 144/17
144/22 145/11
145/23 146/16
there's [65] 15/3
19/23 21/24 24/16
24/18 25/1 26/10
26/23 27/2 27/3
27/7 27/13 27/15
28/6 28/10 31/13
33/3 33/17 36/5
39/14 41/22 48/6
53/15 62/20 65/15
65/16 66/4 67/19
80/12 80/20 81/19
81/20 82/21 83/12
83/15 83/16 85/10
90/14 93/14 95/15
97/8 101/10 102/7
107/15 112/5
112/12 117/4
121/23 125/13
126/13 126/14
127/4 128/4 128/4
128/20 129/2
129/14 130/14
131/8 131/19 132/9
136/11 139/3 139/4
143/5
Thereafter [1] 88/3
these [43] 16/8 18/8
21/5 25/6 26/10

30/6 35/1 35/10
36/12 36/23 37/1
45/21 58/5 67/17
68/3 68/3 68/5
68/15 69/22 70/7
71/2 71/3 80/11
80/15 81/2 83/10
83/11 83/12 84/18
89/19 90/8 93/16
101/14 102/10
110/17 118/12
120/13 125/23
132/23 143/6 146/9
146/11 148/6
they [148] 14/8
14/21 14/22 15/1
15/7 21/1 22/13
23/11 23/19 25/7
25/9 26/15 27/8
27/10 27/14 27/22
27/22 31/15 31/17
31/18 31/19 31/22
32/1 32/21 34/9
34/10 34/11 35/11
35/12 36/22 37/2
38/10 40/10 40/16
40/24 41/7 42/2
43/21 45/22 46/15
47/20 48/7 50/19
50/24 50/24 51/12
51/18 52/22 54/4
58/3 58/5 61/23

T

they... [96] 61/23
66/5 66/8 67/6 67/7
67/20 68/10 68/12
68/16 73/4 73/6
73/23 76/2 76/21
77/22 78/9 78/23
79/11 79/15 81/17
81/22 82/1 82/14
84/9 86/14 86/20
87/15 87/16 87/19
91/16 92/19 92/20
92/22 93/21 98/17
100/23 100/23
101/16 105/2
105/14 105/21
106/14 106/14
107/6 108/17
108/19 110/1 112/8
113/8 114/1 114/14
116/2 118/12
118/14 120/9 122/3
123/7 124/19
124/20 124/23
125/2 126/7 127/1
127/2 128/7 128/11
128/12 130/5 130/6
130/7 130/8 130/10
130/13 132/6
132/20 133/10
133/13 133/18
133/19 133/21

134/4 134/5 134/6
134/11 134/11
134/14 134/15
136/3 136/21 137/1
137/6 139/8 139/9
139/10 141/23
142/1
they're [36] 15/9
28/13 37/20 43/2
55/9 69/21 73/12
73/14 74/21 76/20
85/22 86/18 90/19
92/21 101/11
101/14 101/19
101/22 102/10
103/20 104/7 104/8
104/9 104/10
104/12 109/14
113/12 113/17
113/18 118/2 118/5
120/15 124/17
125/8 130/12 133/2
they've [1] 29/10
thing [5] 21/11 27/6
36/23 53/20 138/4
things [12] 20/16
33/12 70/11 79/10
81/21 91/11 95/6
95/14 105/17 125/6
135/21 145/22
think [52] 10/11
12/3 18/10 18/11

19/1 20/1 25/21
36/2 44/3 44/12
50/13 54/12 55/9
57/15 66/13 67/9
68/18 70/22 71/9
74/14 74/18 75/18
86/1 86/9 86/20
86/24 87/15 89/7
89/8 90/7 97/18
102/1 109/3 110/8
115/18 123/19
123/21 125/24
133/22 134/5 136/9
136/11 136/17
137/17 138/17
139/13 140/22
142/5 143/20
144/24 146/8
146/16
thinking [1] 95/5
thinks [1] 88/21
third [2] 16/17
16/17
thirty [3] 64/18
72/12 82/12
this [229]
Thompson [12] 2/5
4/9 10/1 10/9 11/13
11/20 12/17 96/17
142/10 142/22
146/17 146/20
Thompsons [2]

T		
Thompsons... [2] 9/21 9/24	thoughts [3] 57/20 57/22 89/21	129/11
those [68] 6/23 12/13 20/8 21/2 24/17 24/20 28/7 33/14 37/21 38/12 38/15 44/19 46/23 65/14 67/5 67/22 70/14 73/11 73/16 80/3 80/5 86/8 90/11 90/18 91/12 91/13 91/13 91/21 93/2 93/14 94/21 95/6 98/6 98/12 98/20 99/8 99/24 100/11 101/10 110/8 111/20 112/12 113/6 113/22 114/2 114/23 119/18 120/19 126/5 126/9 126/14 126/19 127/3 127/16 127/18 127/19 128/1 130/1 130/2 130/5 130/9 133/9 133/13 133/14 133/15 133/24 139/6 140/10	thousand [2] 42/11 91/22 thousands [1] 6/15 three [11] 37/20 44/18 45/21 47/6 65/21 89/21 111/16 132/23 137/16 137/17 137/17 through [16] 14/8 19/24 24/23 35/10 36/3 42/5 44/23 55/15 75/10 80/15 80/23 93/20 130/6 137/22 141/3 141/3 throughout [3] 27/16 27/19 31/16 tie [4] 15/6 15/7 84/18 127/18 tie-in [2] 15/6 15/7 ties [1] 52/5 time [12] 27/22 29/11 32/3 45/23 98/23 99/16 117/7 117/24 118/16 128/11 131/18 148/9 timeline [2] 130/19 132/11 times [5] 31/16 37/13 40/7 127/14	143/10 144/10 146/5 title [3] 42/8 105/22 133/20 today [9] 6/20 24/23 88/1 125/21 133/23 135/3 138/8 138/10 143/23 today's [3] 39/8 41/18 116/22 together [2] 49/8 128/22 Tom [1] 98/3 too [2] 88/15 124/22 took [8] 34/20 35/9 47/6 77/8 126/5 128/1 130/7 130/8 top [3] 28/6 117/1 138/21 topic [1] 92/13 topographic [1] 116/18 total [1] 134/6 totally [3] 15/9 86/9 130/24 town [13] 3/7 24/22 25/23 35/20 81/13 81/16 103/5 103/13 126/2 126/9 126/9 126/11 131/11
though [2] 9/19 119/18		

T

towns [3] 29/16
51/13 81/17
Townsend [2] 23/3
94/8
Track [1] 78/19
tracts [2] 32/5 34/3
transcript [1] 148/5
transcripts [1] 7/21
transmission [3]
1/8 7/5 80/22
Transportation [10]
1/15 7/16 8/4 18/4
47/19 48/7 58/1
58/3 121/3 139/17
Transportation's
[2] 25/11 49/1
travel [1] 91/3
traveled [7] 16/19
62/11 62/24 63/2
63/9 63/13 63/22
treat [1] 125/10
treated [1] 125/8
tree [2] 125/15
125/18
tremendous [1]
145/23
trouble [2] 50/14
66/12
true [2] 47/18 148/5
try [3] 33/11 88/1
135/20

trying [8] 8/22 19/7
33/15 57/9 57/16
65/2 101/4 142/14
tunnel [2] 6/8 6/10
turn [3] 23/13 70/5
78/17
TV [3] 23/14 23/15
70/5
twenty [4] 6/11
17/2 42/11 73/5
twice [2] 107/22
108/6
two [16] 8/16 23/1
26/18 28/7 33/3
33/10 40/15 44/22
49/8 62/7 65/21
73/3 83/10 83/13
100/6 132/20
two-rod [1] 83/13
tying [2] 143/22
143/24
type [3] 31/20
111/15 138/12
typical [3] 26/8
45/15 117/15
typically [1] 100/24

U

U.S [1] 127/9
uestion [1] 137/19
Uh [2] 68/20 94/20
Uh-huh [2] 68/20
94/20

un [1] 45/23
un-used [1] 45/23
unable [4] 43/16
50/9 61/20 79/11
uncertainty [1]
29/21
under [26] 16/15
16/24 17/4 19/4
19/14 20/17 20/23
21/14 30/12 37/8
38/23 48/21 50/17
79/23 80/1 84/21
84/21 97/8 109/6
113/8 113/13 131/1
131/5 131/6 132/4
148/8
underground [11]
10/20 72/22 73/2
73/15 80/22 90/14
90/21 91/3 93/22
94/1 134/8
underlying [5]
12/11 39/10 60/14
116/24 127/12
underneath [4] 6/9
130/22 130/24
131/24
understand [15]
4/8 11/22 15/14
51/3 56/2 57/6 88/7
91/20 92/1 94/7
108/21 110/6 114/3

<p>U</p> <p>understand... [2] 132/13 142/15</p> <p>understanding [15] 10/5 13/8 13/11 17/20 24/9 25/4 25/7 30/8 48/5 50/14 102/12 104/20 108/24 115/1 139/16</p> <p>understands [1] 57/17</p> <p>understood [1] 139/14</p> <p>undeveloped [1] 94/16</p> <p>unfair [1] 101/4</p> <p>unfamiliar [1] 56/12</p> <p>unit [2] 5/2 91/16</p> <p>units [1] 91/16</p> <p>University [2] 5/7 5/9</p> <p>unknown [2] 39/22 40/23</p> <p>unless [2] 73/13 76/21</p> <p>unlike [1] 141/11</p> <p>unreasonable [1] 129/19</p> <p>unrecorded [2] 30/17 31/7</p>	<p>until [1] 71/9</p> <p>up [47] 6/13 8/12 9/15 10/15 11/14 24/23 28/6 33/12 34/22 34/22 34/22 35/3 35/7 36/1 36/7 36/23 37/2 37/22 39/17 40/12 41/6 49/24 52/10 52/18 55/20 56/1 59/6 71/18 72/3 73/11 73/16 78/2 95/12 95/16 98/24 99/13 99/19 104/14 118/5 120/6 122/14 124/5 124/22 127/11 133/17 137/13 145/18</p> <p>uploaded [7] 25/10 48/24 49/14 51/16 55/12 71/5 78/18</p> <p>upon [3] 14/10 74/6 129/5</p> <p>upper [1] 57/4</p> <p>upside [1] 106/7</p> <p>upside-down [1] 106/7</p> <p>us [12] 4/21 24/19 32/21 33/14 52/11 60/8 67/3 74/21 94/23 95/3 136/20 146/22</p>	<p>use [16] 6/4 17/2 33/15 36/23 45/4 65/23 72/11 72/12 72/13 90/2 105/12 106/2 114/4 119/12 119/12 125/12</p> <p>used [12] 23/24 40/2 45/23 63/8 76/11 113/22 114/1 116/20 122/20 138/17 138/19 145/22</p> <p>uses [1] 61/16</p> <p>USGS [3] 20/6 127/9 127/13</p> <p>using [2] 38/17 125/11</p> <p>usually [1] 81/11</p> <p>usurping [1] 16/12</p> <p>Utilities [2] 1/13 1/14</p> <p>utility [2] 5/17 95/16</p> <p>utilized [1] 63/4</p> <hr/> <p>V</p> <hr/> <p>valid [3] 18/22 18/22 19/2</p> <p>validity [1] 36/8</p> <p>valuable [1] 31/21</p> <p>value [1] 145/16</p> <p>various [2] 51/13 141/3</p>
--	---	---

V

vaults [3] 70/12
83/11 133/1
verbal [4] 23/5 29/7
96/1 140/12
verify [1] 45/1
version [1] 11/18
very [28] 10/6
26/20 26/20 31/21
32/1 33/3 33/10
35/4 64/21 65/6
65/6 67/5 72/2
91/24 92/18 93/15
116/22 116/22
117/8 118/24 124/6
126/15 126/15
127/1 130/2 139/3
139/12 146/24
viatic [1] 63/4
view [1] 132/15
viewed [1] 108/14
violated [1] 88/21
violation [1] 88/23
visit [1] 78/23
vital [1] 72/2

W

wait [3] 54/1 75/4
79/17
waiting [1] 50/3
walk [2] 37/11
41/16

wall [3] 20/5
126/18 126/20
wandering [2]
27/16 27/18
want [16] 6/12 10/6
19/23 21/11 49/17
78/9 79/1 84/16
89/20 93/5 96/14
97/7 102/3 123/23
136/12 137/13
wanted [4] 10/15
41/6 41/24 110/1
wants [1] 59/15
was [160]
wasn't [10] 45/17
110/11 118/18
118/18 123/22
124/6 126/24 132/1
132/7 132/11
water [15] 5/16
80/1 80/23 81/21
91/8 91/9 91/15
91/17 93/7 93/8
93/12 93/22 93/24
97/8 126/5
Watson [1] 127/23
way [130] 7/7 10/19
16/3 16/18 16/19
16/22 16/22 16/24
17/1 20/21 24/1
24/5 26/11 26/16
26/19 27/17 27/19

27/21 27/24 28/5
28/9 28/23 29/19
29/21 35/8 36/4
38/5 38/7 38/12
38/13 40/2 40/9
40/24 41/2 41/21
41/23 45/2 45/10
46/1 46/8 48/10
52/23 54/5 54/7
57/24 62/11 62/22
62/24 63/2 63/3
63/7 63/9 63/13
63/17 63/21 63/22
63/23 65/4 73/15
73/19 74/20 77/22
78/3 78/9 79/12
80/10 80/12 80/14
81/10 81/11 83/19
84/15 84/19 85/10
85/23 103/2 103/3
103/10 104/6
104/22 106/17
107/7 109/24
110/22 111/1 111/4
111/7 111/13 112/2
113/5 113/13
113/16 115/5 116/7
118/1 118/4 119/4
122/4 122/5 122/7
122/10 122/17
122/21 122/23
123/2 123/6 123/8

W

way... [23] 123/9
129/12 129/20
129/20 130/14
130/17 131/4 131/7
132/1 132/7 132/8
132/18 132/19
133/6 134/5 134/13
134/20 135/12
136/2 136/19
136/23 138/19
139/11
ways [8] 39/21
101/6 101/7 105/1
105/9 128/15
128/20 132/24
we [81] 13/7 17/6
21/7 31/7 31/19
33/7 38/6 38/7
39/11 39/12 39/13
45/23 46/4 48/18
49/10 49/22 53/19
54/1 56/2 57/1
57/15 58/21 58/22
59/13 61/2 62/2
62/7 66/10 67/2
69/5 69/7 69/20
69/21 70/23 72/2
74/16 74/22 75/18
77/11 79/2 79/7
84/16 85/19 86/8
86/8 87/10 87/11

90/17 92/2 92/4
92/4 93/2 93/17
93/18 93/18 93/19
95/23 99/17 104/13
107/1 108/23 117/2
118/16 125/7
126/16 126/19
127/6 127/7 127/9
127/12 127/17
127/20 131/3
131/14 133/24
135/2 136/17
136/17 136/20
139/1 140/6
we'd [2] 127/3
144/23
we'll [4] 9/3 16/11
76/6 147/5
we're [32] 22/24
33/16 49/21 50/3
51/10 51/24 52/10
55/5 69/10 70/7
70/12 70/15 70/19
71/4 71/20 72/1
74/12 74/20 75/10
75/18 76/13 78/12
78/13 84/13 87/24
92/9 93/3 114/9
121/14 131/19
134/20 147/5
we've [5] 9/3 15/4
71/1 71/7 125/9

wealth [1] 29/9
Weathersby [3]
1/16 2/15 115/13
website [4] 25/11
49/1 81/19 97/14
weighty [1] 32/1
welcome [1] 88/17
Weld [1] 6/7
welfare [1] 60/16
well [65] 6/2 7/7
13/4 14/2 17/13
18/2 19/3 20/20
21/24 25/2 25/7
27/7 37/8 42/16
48/2 49/5 53/15
55/17 60/13 61/6
64/13 67/19 69/5
70/3 73/21 82/24
83/14 88/14 89/12
90/24 91/13 91/18
91/21 91/21 92/4
93/23 95/10 100/6
101/5 102/1 102/6
103/2 103/4 104/14
105/10 108/24
109/3 111/3 114/2
115/22 118/22
122/2 127/22
129/22 130/12
131/2 132/13 136/9
138/14 139/5
140/17 142/5

W

well... [3] 144/20
145/9 146/4

well-known [1]
61/6

wells [5] 81/21
91/11 91/14 91/17
93/19

went [11] 5/24 11/8
31/8 34/22 35/7
55/15 73/6 77/21
78/1 118/16 130/6

were [61] 7/4 9/21
11/7 11/19 15/21
17/19 22/24 26/8
31/18 31/24 36/16
36/22 43/20 46/6
52/21 53/12 53/19
55/21 58/22 60/23
67/10 67/10 68/11
68/12 68/16 71/3
72/24 77/15 79/11
81/15 86/7 90/21
98/17 98/23 99/24
100/23 106/5
107/16 118/12
123/22 126/5 126/7
126/21 127/1 127/2
127/19 130/10
130/21 132/19
132/20 133/5 133/5
133/7 133/8 133/9

133/15 133/18
135/1 135/6 135/22
139/13

weren't [3] 133/10
133/14 135/24

wetland [1] 116/18

what [163]

what's [11] 33/2
47/18 51/9 56/3
57/23 60/10 81/23
97/2 100/16 125/20
126/7

whatever [1] 73/6

when [37] 16/10
31/13 31/16 32/19
33/1 37/11 38/24
43/6 43/21 44/6
44/7 49/2 52/22
56/8 57/11 61/6
66/1 67/12 67/13
68/16 72/5 78/23
94/15 106/1 110/5
115/4 117/14 118/4
118/7 125/11

125/11 130/7

131/16 132/11

133/16 138/11

145/21

where [70] 26/15

28/2 28/6 28/12

28/16 29/7 35/11

35/11 36/6 38/12

39/5 46/1 54/20

55/2 56/10 58/4

61/24 62/9 62/24

65/3 66/5 73/19

78/13 79/14 80/8

85/22 86/7 91/2

91/5 92/3 93/11

93/22 93/24 100/13

110/17 111/6

112/22 115/3

117/24 118/3 119/3

122/3 122/9 123/1

123/4 123/6 123/8

126/19 127/3

127/21 127/21

127/23 128/9

128/19 129/15

130/1 130/5 130/13

130/16 131/11

131/23 131/24

132/6 132/8 133/10

134/12 134/20

137/16 137/18

145/23

Whereupon [2] 4/5

147/7

whether [40] 17/24

18/20 18/21 21/8

24/23 25/5 32/8

34/6 34/8 35/18

35/18 38/6 44/7

47/16 81/20 84/22

W

whether... [24]
85/11 90/6 91/20
92/1 92/21 98/11
101/17 103/4 103/5
103/24 104/2 117/4
120/18 122/8 124/2
124/3 131/3 135/24
136/20 137/3 137/3
141/17 144/9
144/21
which [56] 7/1 7/13
7/15 8/2 10/10
10/10 11/14 14/11
14/13 16/18 19/21
21/13 25/9 26/3
30/9 32/10 34/3
35/21 36/7 36/16
38/3 44/22 46/2
48/20 48/22 49/2
49/24 50/23 54/9
54/19 56/9 59/12
61/6 62/5 63/11
64/19 68/21 70/16
75/11 75/22 79/24
91/23 93/13 112/18
112/19 113/2 113/3
113/3 117/22 118/9
119/6 120/16
122/13 126/20
127/19 141/8
while [6] 8/11

17/21 36/1 69/10
75/10 126/6
White [1] 135/7
who [13] 8/12
12/11 19/14 22/19
24/13 43/14 69/22
70/2 91/5 95/23
103/2 123/4 124/20
who's [3] 59/6
90/16 92/19
whoa [5] 17/5 17/5
17/6 17/6 17/6
whole [6] 19/23
56/21 74/22 77/13
130/6 144/11
why [30] 14/1
17/13 27/8 27/10
27/14 27/15 33/10
33/17 43/13 44/24
46/6 46/11 46/14
47/6 49/10 49/24
52/20 65/8 67/2
72/9 73/17 75/20
80/17 82/22 85/22
86/2 87/18 90/17
129/11 140/22
wide [2] 83/10
133/2
width [11] 39/22
40/4 40/8 40/10
40/17 63/6 73/3
73/18 85/1 132/19

133/1
widths [2] 40/18
73/1
will [46] 7/3 10/13
11/14 13/9 13/19
13/21 15/19 17/15
18/22 19/1 19/10
19/16 19/17 21/2
22/22 28/7 29/8
29/24 30/6 33/13
35/20 37/21 38/16
39/14 40/7 40/9
40/16 41/15 41/23
54/15 58/24 59/13
72/16 84/11 84/11
85/4 85/6 89/5
93/22 99/20 101/5
112/17 116/2
122/21 140/7
146/19
William [1] 1/15
Winnepesaukee [1]
118/8
withdraw [1] 42/18
withdrawals [2]
93/8 93/12
within [11] 17/23
22/5 47/18 63/3
63/7 64/20 64/22
117/10 131/7 133/3
143/20
without [18] 37/3

W

without... [17]
 37/12 39/16 40/1
 42/12 55/15 58/9
 58/13 72/6 73/24
 74/4 83/7 111/2
 112/2 116/23 122/7
 131/12 134/22
 witness [19] 2/4 4/4
 8/9 8/13 26/7 33/19
 37/7 51/5 53/4 64/7
 64/16 66/6 85/7
 88/8 92/14 97/4
 97/23 117/20
 131/10
 won't [1] 66/16
 wondering [2]
 86/21 135/6
 Woodstock [3] 54/3
 54/20 56/10
 word [3] 61/16
 105/13 114/4
 wording [1] 33/9
 words [11] 14/19
 24/15 27/1 32/23
 106/19 108/17
 113/6 113/8 113/22
 114/1 114/2
 work [18] 4/19
 14/15 14/16 26/21
 28/14 38/14 48/1
 67/11 78/10 83/14

85/5 99/20 104/17
 110/19 121/2
 133/20 138/20
 141/1
 worked [3] 5/13
 135/11 135/12
 working [4] 14/12
 75/10 102/9 104/18
 workload [1] 47/24
 works [2] 105/14
 105/15
 world [1] 116/22
 worry [1] 71/16
 worst [1] 73/12
 would [99] 4/4 4/16
 7/8 10/13 10/21
 12/6 16/9 24/13
 28/18 28/22 29/1
 31/8 36/6 38/8
 38/13 38/20 38/21
 39/5 39/6 40/21
 40/22 41/19 42/2
 42/3 44/12 45/24
 46/2 46/2 46/15
 47/11 47/13 47/15
 47/20 49/2 53/13
 53/21 53/23 55/20
 56/4 58/5 59/12
 63/6 65/6 67/8 69/6
 69/23 70/3 75/17
 78/10 80/3 80/14
 80/15 81/10 82/1

82/5 82/7 82/7
 82/13 82/17 88/15
 89/8 90/20 91/4
 93/10 94/2 94/24
 95/12 97/3 99/3
 100/23 102/1 102/2
 110/2 111/24 112/3
 112/3 115/1 115/23
 115/23 116/12
 116/17 116/17
 116/20 117/11
 117/16 119/19
 123/23 126/18
 128/6 130/23 131/1
 134/3 135/1 135/8
 136/19 136/21
 137/1 139/5 146/3
 wouldn't [6] 39/3
 76/21 82/18 115/5
 134/14 135/2
 Wright [1] 1/15
 written [2] 8/1 71/5
 wrong [3] 10/8
 132/14 145/22
 wrote [2] 12/11
 29/17

Y

yard [1] 125/16
 Yeah [1] 88/13
 year [2] 10/8 11/14
 years [10] 5/11 5/23
 6/11 14/12 15/12

Y

years... [5] 17/2
41/18 58/2 72/12
90/11
yes [97] 4/24 6/1
8/20 9/23 10/5
11/12 13/2 18/11
18/14 21/21 22/7
25/18 30/23 31/12
34/19 34/19 34/23
37/8 43/7 49/9
51/17 52/3 52/3
52/6 52/12 55/13
55/18 59/6 59/11
61/14 62/10 62/12
62/13 62/23 64/5
64/5 64/6 64/8
66/19 67/7 68/2
69/1 70/10 70/14
71/15 75/14 75/22
77/17 80/5 85/21
86/13 86/15 88/9
90/5 91/12 92/11
95/1 95/2 95/10
97/5 97/24 98/9
100/13 100/15
100/20 100/22
101/1 103/12
107/20 109/3
112/24 114/21
116/15 117/16
124/19 124/19

124/22 125/2 129/1
130/18 133/19
134/10 137/1 137/1
137/24 138/5 138/9
139/11 139/24
141/6 141/22
141/24 142/12
142/13 143/21
145/4 145/19
yesterday [1] 34/19
yet [7] 20/15 21/7
45/2 50/8 55/1
58/23 145/13
you [366]
You'd [1] 87/9
you'll [2] 22/20
75/17
you're [41] 10/3
12/17 17/7 17/8
18/21 24/3 32/19
32/20 52/8 55/10
56/3 57/16 57/18
62/10 65/1 65/1
65/2 65/18 65/20
72/6 75/3 75/22
88/17 90/5 94/18
95/7 96/16 96/20
103/24 110/6 110/9
111/12 113/10
115/3 128/21
129/22 132/13
132/14 132/22

141/7 145/5
you've [16] 4/20
13/16 19/3 20/16
21/13 34/7 66/15
87/8 104/16 114/18
114/20 122/11
133/8 138/11
142/21 145/17
young [1] 118/8
your [86] 4/18 4/21
6/16 6/17 7/5 7/6
8/21 9/14 9/20 10/7
10/16 10/16 10/17
11/20 13/8 13/18
13/23 15/18 15/21
17/21 18/12 19/8
20/1 20/17 20/19
21/3 21/12 21/17
22/12 24/9 25/4
25/15 30/18 30/19
32/6 32/7 34/5
34/16 36/11 36/12
41/9 53/14 57/20
65/3 65/19 66/14
74/2 79/21 82/5
89/15 89/21 96/14
96/22 97/7 98/5
98/10 98/10 98/19
100/4 100/9 100/9
101/1 108/6 109/5
109/17 113/20
114/16 116/13

Y

**your... [18] 117/13
120/1 125/11
126/23 130/19
135/9 135/10
137/15 137/23
138/8 138/10
138/10 139/16
140/17 140/21
141/4 142/21 145/8
yours [2] 115/7
119/19**

Z

zero [1] 15/3