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E X H I B I T S (continued)

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
AD N-ABTRS 59	Document consisting of 9 pages, consisting of Google Earth photos, etc.	18
APP 366	Excerpt of transcript pages from Day 1 Morning Session ONLY Deliberations in SEC Docket No. 2015-02 held on 12-07-16, consisting of Pages 1, 85-86, and 100-102	46
APP 369	Document titled NH Community Workshop Identified Sites with Both Historic and Scenic value - Heritage Landscapes, DR#5 6 March 2017 (13 pages)	76
APP 368	NPT Host Town Map	93
APP 372	Excerpt of transcript pages from SEC Docket No. 2014-04, from 08-18-15, consisting of Pages 1-3 and 16-17	113

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[WITNESS: O'Donnell]

1 **P R O C E E D I N G**

2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here for Day 54.

4 Ms. Saffo is in position to start her
5 questioning. Is there anything we need to do
6 before we let her grab the microphone?

7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: Ms. Saffo, you
9 may proceed.

10 *(Continuation of the*
11 *cross-examination of*
12 ***Patricia O'Donnell.**)*

13 MS. SAFFO: Thank you. Good morning.
14 I'm just going to be focusing on one issue this
15 morning, and that's stone walls. I know you
16 touched upon this on Friday, and then also your
17 prefiled testimony talks about it. So, I don't
18 want to reiterate that, but wanted to just go
19 into a little more detail.

20 BY MS. SAFFO:

21 Q Is it fair to say that the first step, the
22 first needed step, now that the underground
23 portion of the route is appearing to be more
24 adjacent to the road than under the road, do

[WITNESS: O'Donnell]

1 you agree that the first step will be to
2 inventory existing stone walls that might be
3 impacted by this Project?

4 A Yes.

5 Q And could you tell us a little bit about how
6 you would recommend inventorying stone walls in
7 the underground portion? Like what do you do
8 to inventory stone walls?

9 A The standard steps in an inventory of anything
10 is to observe and map, and then calculate what
11 your findings are.

12 Q And to your knowledge that has not been done
13 yet, correct?

14 A I haven't found any evidence of that inventory
15 of stone walls, no.

16 Q And, so, as far as the current plans that
17 you've had the opportunity to see, you haven't
18 seen this inventory?

19 A No.

20 Q Okay. So, this is a photograph that I'll
21 represent is on Route 116, in Franconia, one
22 recently taken on October 28th, 2017. If, on
23 the bottom of that, there's -- that's actually
24 pavement, would that be a stone wall close

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1 within the purported right-of-way that would
2 need to be included in an inventory?

3 A It appears to be close, yes.

4 Q Exhibit 58, do you agree it's the same?

5 A This one is definitely within the 20 feet.

6 MS. SAFFO: And, for the record, that
7 one is in Sugar Hill, on Route 18, on the
8 proposed path.

9 This is Exhibit 60 uploaded in the
10 exhibits, Track 2, under "Grafton".

11 BY MS. SAFFO:

12 Q Route 302, in Bethlehem, again would that be a
13 stone wall that should be part of an inventory?

14 A This one is very close to the road.

15 Interestingly, this is -- looks like a historic
16 wall that's fallen over. So, it's an
17 interesting case.

18 Q And what do you mean by that?

19 A Well, the other two that you showed looked like
20 they were what we would call "standing walls".

21 Q Uh-huh.

22 A That their integrity of construction was in
23 place. All of these are appearing to be
24 hand-built and no mortar.

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[WITNESS: O'Donnell]

1 Q And why is that significant, the "hand-built/no
2 mortar" designation or notation?

3 A The issue with hand-built walls is that they're
4 normally built without a foundation, often on a
5 narrow bed of gravel or broken rock.

6 Q Uh-huh.

7 A And they are crafted, essentially. It's a
8 stone mason skill. So, disturbance to them can
9 result in a loss of their original craft and
10 style and appearance, what we would call, in a
11 cultural landscape, its "defining features",
12 its "character-defining features".

13 Q And, so, put another way, you just can't
14 rebuild a wall like this?

15 A It's difficult. We've done projects where
16 historic walls had to be taken down and
17 reconstructed. And it requires very good
18 documentation, and then what we would call
19 "site supervision", "construction
20 administration" during the rebuild, with the
21 photos and the documentation in place, and
22 willing masons to do the work with a high
23 degree of accuracy.

24 Q And those past projects that you're

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[WITNESS: O'Donnell]

1 referencing, would that reflect like a single
2 location, as opposed to 52 miles of potential
3 locations?

4 A Generally, it's a single location, yes.

5 Q So, just for a single location it's very
6 work-extensive?

7 A It's a quality control issue during
8 construction.

9 Q Thank you. Then, Exhibit 59, and now we're in
10 Campton, New Hampshire. And again, is that
11 another stone wall?

12 A It certainly is. Don't know what it's exact
13 distance off the road edge is.

14 Q Now, do you even know at this point
15 categorically which side of the road they're
16 planning on burying this underground line?

17 A I have not seen documentation of the exact
18 location of the underground line. No.

19 Q So, that would make it hard to evaluate the
20 impacts if we do inventory these stone walls,
21 correct?

22 A The location of the line will predict potential
23 impacts. The inventory should, as the
24 Applicant has stated, knowing where things are,

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[WITNESS: O'Donnell]

1 they will try to be avoided. But you need to
2 know where they are.

3 Q So, the first step is know where they are. And
4 I presume that would be a recommendation that
5 would include putting it on a survey, and the
6 construction details as well, so you can match
7 up construction and the stone wall, correct?

8 A You should be showing it on the construction
9 drawings so that you know where it exists.

10 Q Okay. Now, and then you said "avoidance".
11 Tell us about avoidance as the next step.

12 A My understanding of the documentation on the
13 underground route is that there will be a
14 trench cut from 8 to 10 feet wide, and I
15 believe it's 6 feet deep. When you do that
16 type of excavation, you're going to have
17 disturbance at the margins or you're going to
18 be moving material away, to take away what's in
19 the trench so that you can work with the
20 trench. So, in construction practices, the
21 documents would need to guide how those means
22 and methods were pursued. Where it was okay to
23 put the material, where it was okay to bring a
24 truck. Because the activity of digging the

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[WITNESS: O'Donnell]

1 trench, or even the activity of directional
2 drilling, has a sphere of where people are
3 moving and machines are moving and trucks are
4 moving. So, it needs to be a guided process.

5 Q And a guided process, because, just the
6 drilling, even if you're not drilling a
7 location where you have to actually dismantle
8 the stone wall, the drilling nearby can impact
9 the stone wall. Is that what you're trying to
10 say?

11 A What I'm actually trying to say is that you --
12 your point is well taken, yes. The drilling
13 could disturb the wall. The excavation can
14 disturb the wall. As I mentioned earlier,
15 these walls generally have no foundation. So,
16 any alteration of grades nearby, what often
17 happens in working with a trench is what you do
18 is called "laying back the slope".

19 Q Uh-huh.

20 A So, the profile doesn't look perpendicular to
21 the surface. You lay back the edges. So, it's
22 not clear to me exactly how they're thinking
23 about this trench, 8 to 10 feet wide, 6 feet
24 deep. It may be a V-shape, not a U-shape.

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[WITNESS: O'Donnell]

1 Q So, at this point in time, we can't analyze how
2 much avoidance can occur under their current
3 plans, because we just don't have the
4 information?

5 A No, we can't. But it's hampered by the fact
6 that we don't have a complete inventory of the
7 features. Our position is that stone walls are
8 a remaining feature of the interactions of a
9 person with the land building the wall. It's a
10 feature of the cultural landscape.

11 Q And, so, if we can't avoid it, and we're taking
12 it away altogether, we're impacting cultural
13 landscape, correct?

14 A That question is complicated.

15 Q Okay.

16 A The first one is "can it be avoided?" We're
17 not sure.

18 Q Yes.

19 A What we're saying is we don't have enough
20 information to be able to avoid in the current
21 situation.

22 The second part of your statement, which
23 is "taking it away", I think that what the
24 Applicant has been saying is everything

[WITNESS: O'Donnell]

1 that's -- they will avoid, and if not they will
2 restore. So, the question of taking it away
3 actually hasn't arisen in any of the documents
4 that I've looked at.

5 Q Uh-huh.

6 A But changing the wall, impacting the wall, is
7 impacting a feature of the cultural landscape.

8 Q So, basically, put another way, we don't have
9 an inventory.

10 A Uh-huh.

11 Q So, we don't what walls are even there to start
12 as a baseline data. Once we get the inventory,
13 we then next need to see the walls against the
14 construction plan to see what needs to be
15 avoided. And then, if they can't avoid it, we
16 need to make sure they build it with the
17 thought that it's a cultural landscaped item,
18 so it needs to be rebuilt as close in time to
19 exactly the way it looked?

20 A Correct. The term in preservation would be
21 "restoration" and "reconstruction". So,
22 "reconstruction" is a well-defined term in
23 historic preservation. It implies
24 well-documented materials available, skills and

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[WITNESS: O'Donnell]

1 knowledge available to do an accurate rebuild
2 of a feature.

3 Q Uh-huh.

4 A So, those modifiers are important to state. It
5 implies what you indicated, which is accuracy
6 of reconstruction.

7 Q Now, I believe this is Exhibit 60. Yes.
8 Exhibit 60 in front of you. If they have to go
9 on this side of the road, and they can't go on
10 the other side of the road, what would they
11 have to do to restore that wall?

12 A Well, just to start with saying it's a bit
13 speculative. The issue there would be to look
14 at the length of the wall, see if there are
15 standing portions of it that are fully built
16 up, and to reconstruct the wall as it
17 originally was, as opposed to in its partially
18 fallen down state.

19 Q Now, Exhibit 61 is a document, I have the first
20 13 pages marked, is the "2017 Stone Wall Policy
21 Guidelines". Are you familiar with that
22 document?

23 A I am not.

24 Q Oh. Okay.

[WITNESS: O'Donnell]

1 MS. SAFFO: For the record, this is a
2 February 2017 document issued by the New
3 Hampshire Department of Transportation Bureau
4 of the Environment. It's a detailed document.

5 BY MS. SAFFO:

6 Q I've put on Page 2, the Table of Contents,
7 which outlines their purpose, their policy
8 prior to 2016, the Stone Wall Policy Guidelines
9 & the Bureau of Environment, and then a
10 methodology of phased screening and evaluation,
11 and then it goes on to other topics as well,
12 and there's 15 pages there. Are you familiar
13 with anything in here?

14 A The process is not unfamiliar.

15 Q Okay.

16 A This particular document is not familiar.

17 Q Okay. So, what is the process?

18 A It looks like it's looking at an assessment of
19 the standing walls to determine feasibility of
20 rebuild.

21 Q Now, if this was a New Hampshire Department of
22 Transportation project, and not a utility
23 project, and you are coming upon a historic
24 cultural stone wall, would that affect your

[WITNESS: O'Donnell]

1 actual design to avoid it or your
2 recommendation for them?

3 A I think that your question is a bit
4 complicated. But I think what you're asking --
5 maybe you can restate it and clarify.

6 Q Let me restate it, sorry. That was a poor
7 question. As far as the Division of Historic
8 Resources, when someone comes to you from the
9 New Hampshire Department of Transportation, and
10 the State of New Hampshire what's to modify a
11 roadway. And then, through the process, you
12 learn about a stone wall, like the one we saw
13 in Exhibit 60. What does the Division of
14 Historic Resources do?

15 A It would be speculative for me to answer that,
16 I think. Appropriate practice would be walking
17 through this kind of process, --

18 Q Uh-huh.

19 A -- evaluating --

20 Q Uh-huh.

21 A -- what the wall is, where it is, if it can be
22 avoided, if it has the proper offset distance
23 from the road when the road is finished, and
24 sorting all that out and determining the way

[WITNESS: O'Donnell]

1 forward that works for, I mean, the idea
2 always, in these kinds of discussions, is to
3 find the solution that retains the historic
4 feature and provides the needed accessway for
5 the transportation corridor.

6 Q And, when you balance that on a smaller
7 project, that's one thing. But, when you're
8 balancing it for 52 miles, fair to say that's a
9 whole different workload for you?

10 A I think the level of effort is considerable,
11 and it begins with the inventory.

12 Q Okay. Which we don't have yet? I'm sorry, for
13 the record you have to answer.

14 A Correct.

15 MS. SAFFO: Thank you. No further
16 questions.

17 CHAIRMAN HONIGBERG: Is Mr. Palmer
18 here or someone from his group?

19 ADMIN. MONROE: Dr. McLaren is here.

20 CHAIRMAN HONIGBERG: Does that group
21 have any questions, Dr. McLaren?

22 DR. McLAREN: No, sir.

23 MS. SAFFO: I apologize. I realize I
24 forgot one exhibit. May I ask one more

[WITNESS: O'Donnell]

1 question?

2 CHAIRMAN HONIGBERG: Sure.

3 BY MS. SAFFO:

4 Q This is Exhibit 55, which is a New Hampshire
5 Division of Historical Resources document. Do
6 you recognize that document?

7 A No.

8 Q And, so, for the record, I think it speaks for
9 itself. But it talks about -- it's a document
10 from the Division of Historic Resources,
11 talking about "Stone walls are a New Hampshire
12 resource too often "taken for", and they say
13 "granite", "literally", and it talks about the
14 importance of stone walls, from the Division of
15 Historic Resources' purposes. That's been your
16 testimony all along, correct, that these are
17 important features?

18 A They're character-defining features of cultural
19 landscapes, which make them significant.

20 Q And also makes them a value-added item for
21 property as well, correct?

22 A I would say not "value-added", but certainly a
23 value of properties.

24 MS. SAFFO: Thank you. Thank you for

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[WITNESS: O'Donnell]

1 letting me ask that additional question.

2 CHAIRMAN HONIGBERG: It looks like
3 Ms. Crane is up.

4 (Short pause.)

5 MS. CRANE: Good morning. My name is
6 Charlotte Crane. I represent the Ashland to
7 Deerfield Non-Abutters.

8 BY MS. CRANE:

9 Q We are looking at the first page of our exhibit
10 that will be marked "59". It is a Google Earth
11 map showing a region of the Pemigewasset Valley
12 across from Ashland, a few miles south of
13 Plymouth. I want to go back and get your help
14 in understanding the Applicants' approach to
15 the inventories of historical sites that do
16 exist.

17 Is it your understanding that the
18 Applicants' historical expert started with a
19 list of addresses, and then used the
20 Applicants' other experts to determine
21 visibility, and only examined further those
22 historic sites that had visibility? Is that
23 consistent with your understanding?

24 A That seems to be the general approach used,

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[WITNESS: O'Donnell]

1 yes.

2 Q And I know that visibility is not your only
3 concern, is that correct?

4 A Correct.

5 Q Okay. But I want to talk about visibility for
6 just a minute anyway. And again, if there was
7 no visibility, there was probably no further
8 analysis of the historic site. Is that
9 consistent with your understanding?

10 A That's the way they -- that is the method that
11 they used.

12 Q Yes. Okay.

13 A They used visibility mapping to determine which
14 resources required further study in the field.

15 Q Okay. And I'm hoping that you will help me
16 understand a little bit better what they meant
17 when they filtered out historic sites for lack
18 of visibility.

19 This is very close to the same view. The
20 territory outlined in blue is more or less the
21 boundaries of the property owned by the
22 combined members of the Webster family group
23 that were included in the Southern
24 Non-Abutters.

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[WITNESS: O'Donnell]

1 Do you have an understanding of where they
2 would have made their determination of
3 visibility given a tract like this?

4 A You're asking a site-specific question. And I
5 don't have sufficient information, because your
6 image doesn't show their comparable visibility
7 map. But they used a visibility mapping
8 process that included trees and structures, as
9 well as topography, in terms of -- and
10 developing which properties were visible.

11 Q Okay. And I haven't really been able to figure
12 that out myself either. So, I do want to focus
13 on the place where there's a yellow circle,
14 which is approximately the location of the
15 Bridgewater town-maintained recreation area
16 known as "Sahegenet", where we were shown where
17 they analyzed it, a location about 5 feet above
18 the water level at that shore. And there, the
19 visibility expert concluded that there might,
20 in fact, be visibility, at least partially,
21 depending upon the vegetative buffer shown here
22 on this map, that's Page 2 of Exhibit 59, where
23 -- on the eastern shore. The towers in
24 question are marked in blue circles running

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[WITNESS: O'Donnell]

1 roughly parallel to Route 93 in this location.

2 Do you recall whether there was any
3 analysis of the visibility in relationship to
4 the toll bridge abutments that are at this
5 location?

6 A I do not recall a site-specific visibility
7 study of this area.

8 Q Okay. I want to now turn to some historic
9 views, and see if we can figure out a little
10 bit more about what the methodology might or
11 might not have been. But, first, we need to
12 get a better understanding of the topography at
13 this location.

14 This is a map that includes the contours
15 taken from the Bridgewater town maps. And the
16 river is at about 460, it was a good day. And
17 the height of land is at roughly 450 -- 540,
18 that's give or take quite a bit, as the road
19 goes along what -- these are commonly referred
20 to as the "height of land" in this area. On
21 this map, related to the property that was
22 shown earlier, there is a height that goes at
23 least to 900, and maybe further, depending upon
24 how much you want to scramble up the cliffs to

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[WITNESS: O'Donnell]

1 the left of the river, to the west of the river
2 on this map.

3 So, this is a view that was contained in a
4 post -- in a photograph that was reproduced as
5 a postcard. It was also included in a Granite
6 Monthly article in 1908. It's caption says
7 "Looking across the Pemigewasset to Ashland."
8 I want to point out that the toll bridge, which
9 no longer exists except as its abutments, is
10 marked, as is the Town of Ashland. The whole
11 point is the vista from the west side of the
12 river, to the Town of Ashland.

13 I don't know exactly where this view was
14 taken from. But my best guess is somewhere
15 within the yellow circle. And that there are a
16 number of towers that would be visible from
17 this vista on the western shore of the Pemi.
18 Does that seem plausible to you?

19 A Your depiction of it here is something you
20 created?

21 Q It is. Indeed, it started with the Project
22 maps, and I added the -- tried to locate as
23 best I could, given the current state of the
24 Project maps and the Alteration of Terrain maps

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[WITNESS: O'Donnell]

1 where the towers were likely to be.

2 A So, the depiction here shows the towers in red,
3 the former one in blue. Your toll bridge is
4 identified. And then the vantage point of this
5 1908 historic view is identified. So, your
6 question in regard to that is?

7 Q Would there be a -- if the historic expert had
8 had access to the visibility data from this
9 location, would they have been able to conclude
10 that there would be no visibility?

11 MR. NEEDLEMAN: Objection, Mr. Chair.
12 There's nothing new here. This could have and
13 should have been evaluated earlier.

14 CHAIRMAN HONIGBERG: Ms. Crane.

15 MS. CRANE: I am glad to have this
16 objection. Thank you.

17 Perhaps others in my intervenor group
18 were well aware of the questions about the
19 conclusions regarding visibility from historic
20 locations. The smaller group of individuals
21 who filed as the Webster family assumed in good
22 faith that determinations about visibility
23 would have been made by the Applicants'
24 experts.

[WITNESS: O'Donnell]

1 It wasn't until the rather confusing
2 nature of Mr. DeWan's memory lapses regarding
3 the location of the bridge and the bridge
4 abutments at Sahegenet, and his similar
5 inability to recall the current uses of another
6 historic resource, the B&M Railroad tracks,
7 that we realized that we should not have taken
8 for granted that the visibility determinations
9 would have been made in good faith.

10 We also have some doubts about the
11 way the methodology included vegetative buffers
12 at many of these locations.

13 We only became aware of these
14 potential problems with the visibility analysis
15 as the result of Mr. DeWan's direct testimony.

16 CHAIRMAN HONIGBERG: I'm not sure
17 what in that was a response to the objection.
18 Other than that you are glad to have received
19 it.

20 Can you refine what you just said
21 into a response to the objection, that this is
22 not new information, that, if it was to be
23 included, needed to be included in this
24 witness's direct testimony?

[WITNESS: O'Donnell]

1 MS. CRANE: I believe that this
2 witness had no better access to the problems
3 associated with the visibility analysis than we
4 did. And we learned of it only on cross of
5 Mr. DeWan.

6 CHAIRMAN HONIGBERG: Was Mr. DeWan
7 part of a technical session where people could
8 ask him any questions they wanted about his
9 analysis?

10 MS. CRANE: I believe that --

11 CHAIRMAN HONIGBERG: I think the
12 answer to that is "yes". I mean, if someone
13 will correct me if I'm wrong. But I believe
14 that all the witnesses appeared for technical
15 sessions where the witnesses could ask them
16 about what they had done, and so the --

17 MS. CRANE: But we couldn't
18 anticipate the memory lapses that occurred in
19 the cross-examination at that point in time.

20 CHAIRMAN HONIGBERG: Mr. Needleman.

21 MR. NEEDLEMAN: I'm going to object
22 to those characterizations.

23 CHAIRMAN HONIGBERG: Yes. I'm sorry,
24 Ms. Crane. I don't yet understand how you've

[WITNESS: O'Donnell]

1 responded to the objection. So, I'm going to
2 sustain the objection. And, if you want to
3 make an offer of proof as to what Ms.
4 O'Donnell -- what you think Ms. O'Donnell would
5 say, if you were allowed to ask the questions,
6 feel free.

7 MS. CRANE: If we continued, my only
8 question would be whether the filtering of
9 historic sites as a result of visibility was
10 something that she might have examined more
11 intensely, had she been aware?

12 CHAIRMAN HONIGBERG: Okay. Then, why
13 don't we get an answer to that question. Do
14 you understand the question, Ms. O'Donnell?

15 WITNESS O'DONNELL: Yes. I believe
16 the question is that, did I -- do I have an
17 understanding of the fact that historic sites
18 were filtered out of the visibility assessment
19 by the Applicant? Is that correct?

20 BY MS. CRANE:

21 Q And whether, had you had more information about
22 the reliability of the visibility analysis, you
23 might have addressed some of the filtered out
24 properties a little more? Or, examined that

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[WITNESS: O'Donnell]

1 part of the presentation?

2 CHAIRMAN HONIGBERG: Don't gild the
3 lily, Ms. Crane. I think she's going to give
4 you an answer.

5 **BY THE WITNESS:**

6 A Well, I think the answer to the first question
7 is, we have made statements in our testimony
8 and in our full report that, firstly, historic
9 sites are recognized as scenic in New Hampshire
10 law. And that they do then fall into the
11 visibility assessment realm. And we indicated
12 that we suggest that the durability of the
13 Project, its lifespan, calls into question
14 whether or not vegetation should be used as a
15 screen, because of the lifespan of vegetation
16 and the potential lifespan of the Project.

17 We put forward a bare-earth method,
18 because we thought it was more conservative and
19 effective. So, in a site-specific application,
20 we would suggest that there are many sites,
21 likely this one as well, that, in a bare-earth
22 analysis, would have been classified as
23 "visible" or "highly visible" to the line, as
24 proposed.

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[WITNESS: O'Donnell]

1 BY MS. CRANE:

2 Q Okay. Thank you. And this is essentially
3 another similar view from the same property. I
4 don't know that we need to look at it more
5 specifically, other than to get a sense of
6 how -- would you agree with me that
7 historically the vegetative buffers have been
8 less present, in fact, if this is a view from
9 the peaks that were pointed out on the initial
10 map?

11 A I don't have sufficient information to indicate
12 that vegetative buffers were less present
13 across history, because history is big. It's
14 many, many centuries. But it's clear to me
15 that the hill and valley landscape of New
16 Hampshire, this area and others, is covered or
17 partially covered with successional forest that
18 has regrown, because it was taken down at some
19 point in the past.

20 Q And, so, for the period of history that is
21 about 100 years, from when I understand this
22 picture was taken, you would say that the
23 vegetative buffer has varied from what it is
24 now?

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[WITNESS: O'Donnell]

1 A I'd have to look at the existing view, in
2 relationship to this historic view, to actually
3 answer that question in the affirmative.

4 Q Okay. Thanks. And I don't have that
5 available, so...

6 Moving to other concerns about historic
7 resources, can you remind me what some of the
8 concerns besides mere visibility might be?

9 MR. NEEDLEMAN: Objection. Sounds
10 like it's calling for repeating testimony.

11 MS. CRANE: Okay.

12 WITNESS O'DONNELL: I was going to
13 ask for the reframing of that question.

14 MS. CRANE: Okay.

15 WITNESS O'DONNELL: It's too broad.

16 BY MS. CRANE:

17 Q Then, I will say that, is it, in fact, true
18 that there might be concern for historic sites,
19 even if there isn't visibility, if the presence
20 of a project changes the nature of its
21 environment, such that it is unlikely to be
22 recognized as a historic site in the future?

23 A I think the way I could answer that is to say
24 that, throughout our testimony and our report,

[WITNESS: O'Donnell]

1 we talked about the impact to setting feeling
2 and association. Those are three of the seven
3 aspects of integrity that are used to measure
4 the identifiability of historic sites.

5 "Integrity" is defined as the ability to still
6 identify the site in the character and
7 qualities that it had when it became
8 historically important.

9 Q And --

10 A So, setting, feeling, and association we think
11 have a potential for impact from this Project.

12 Q And, in your experience, what happens to
13 historic sites once they lose their integrity?
14 And with each initial degradation, what is
15 likely to happen to the historic site?

16 A I think that's a question that's quite broad.
17 A simple answer might be that degradation of
18 integrity compromises the value of those
19 historic sites.

20 Q And, when the value is compromised, is the
21 owner of the site more or less likely to want
22 to reinstate its historic features?

23 A Very speculative. I don't think I'd want to
24 venture a response to that question.

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[WITNESS: O'Donnell]

1 Q Okay. Here is one identified historic
2 property. It is the former Bridgewater Train
3 Station. It is located on Route 3, immediately
4 proximate to where Transition Station 6 is
5 going to be. The expert's conclusion regarding
6 this space said that "There were no views of
7 the Project in the main public views of the
8 building."

9 I don't think I can expect you to unpack
10 what that statement actually means. Let's
11 assume that through some strange development
12 there are no views. Would you nevertheless say
13 that the industrialization represented by the
14 introduction of the Project there would change
15 whatever integrity may exist for that location
16 now?

17 A I think that question is a little too leading.
18 Could you reframe?

19 Q Can you make any conclusions about what the
20 introduction of the Project at this location
21 might mean for this historic site?

22 MR. NEEDLEMAN: Objection. Again,
23 could have and should have been included.

24 CHAIRMAN HONIGBERG: Ms. Crane.

[WITNESS: O'Donnell]

1 MS. CRANE: I believe that the exact
2 location and structure of the transition
3 station was not included until relatively
4 recently. It certainly wasn't available to me.
5 I continue to be confused about which parts of
6 this location are already owned by the
7 Applicant, which are owned by the state,
8 because of the presence of the railroad.

9 CHAIRMAN HONIGBERG: Objection
10 sustained.

11 MS. CRANE: Okay.

12 BY MS. CRANE:

13 Q I have one more historic site. These are the
14 houses on Foster Street, in Plymouth,
15 immediately adjacent to the Common Man Inn.
16 They are occupied as housing now. This is on a
17 location in Plymouth where Route 3 will be
18 under construction for a considerable period of
19 time, because there's a need for accommodating
20 both water bodies and major intersections.

21 It's my understanding that at least some
22 of these houses are now rental property. Do
23 you have any experience with what happens when
24 historic properties become rental properties?

[WITNESS: O'Donnell]

1 A Not relevant to my work.

2 Q Okay. If the prospective tenants are
3 apprehensive about access to a property, will
4 you accept that they are less likely to want to
5 rent the property?

6 A I think use of the historic property is outside
7 of the realm of the expertise that I offer
8 here.

9 Q Okay. But, if they can no longer be rented, do
10 you have any opinion, you may not, about
11 whether the landlord will continue to invest in
12 the historic site?

13 A No opinion.

14 MS. CRANE: Okay. That's all my
15 questions.

16 CHAIRMAN HONIGBERG: All right. I
17 have no other intervenor groups signed up to
18 question Ms. O'Donnell. Have we missed
19 anybody?

20 *[No verbal response.]*

21 CHAIRMAN HONIGBERG: All right.
22 Mr. Walker, Mr. Bisbee, who's going to be
23 grabbing the microphone?

24 MR. WALKER: I am.

[WITNESS: O'Donnell]

1 WITNESS O'DONNELL: Could we have a
2 short break before we start please?

3 CHAIRMAN HONIGBERG: Absolutely.
4 We'll break for ten minutes.

5 WITNESS O'DONNELL: Thank you.

6 *(Recess taken at 10:46 a.m.*
7 *and the hearing resumed at*
8 *10:58 a.m.)*

9 CHAIRMAN HONIGBERG: All right.
10 Mr. Walker, you may proceed.

11 MR. WALKER: Good morning, Ms.
12 O'Donnell.

13 WITNESS O'DONNELL: Good morning.

14 MR. WALKER: We've met before. My
15 name is Jeremy Walker. I am counsel for the
16 Applicant.

17 BY MR. WALKER:

18 Q I want to start off by making sure that we all
19 understand the limits of your testimony in this
20 case. Your review was related to the
21 aboveground historic sites only, correct?

22 A Correct.

23 Q You did not perform any assessment of
24 archeological resources?

[WITNESS: O'Donnell]

1 A We provided an overview, based on our
2 experience of archeological sensitivity on
3 projects that we've undertaken over three
4 decades.

5 Q But you did not provide an assessment or an
6 identification of archeological sites for this
7 particular project, right?

8 A No.

9 Q And you did not -- you do not offer any opinion
10 with regard to Dr. Bunker's findings in this
11 case?

12 A No.

13 Q You have reviewed, though, Ms. Widell's
14 testimony and her report or the report of the
15 Preservation Company, and her finding that this
16 Project will not have an unreasonable adverse
17 effect on historic sites. You disagree with
18 that, right?

19 A We also reviewed the Bunker materials. So, the
20 way you stated the question, it assumed we did
21 not review the Bunker materials, but we did.

22 Q But you have no opinion on the findings by
23 Dr. Bunker?

24 A No, we did not offer an opinion. And your

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1 specific question in this case was? Did I
2 review the Widell testimony and her conclusion?
3 We did.

4 Q And you disagree with her conclusion of "no
5 unreasonable adverse effect"?

6 A We do disagree.

7 Q Before I get into that, I want to ask you a
8 little bit about your experience. And you
9 are -- I understand you're the founder of
10 Heritage Landscapes. And I pulled up from your
11 website -- Dawn, if you could pull up your home
12 page from your website?

13 A That's correct. It's the home page from our
14 website.

15 Q Right. And hopefully you can read it, I can't
16 see it on my screen yet.

17 MR. WALKER: Is yours on?

18 *(Short pause.)*

19 MR. WALKER: There it goes. Thank
20 you.

21 BY MR. WALKER:

22 Q So, Ms. O'Donnell, that -- you can see the area
23 that's blown up. And it provides your overview
24 of what your company does. And it seems to me,

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[WITNESS: O'Donnell]

1 from your website, that your primary expertise
2 is in the planning and design of urban and
3 rural landscapes, is that fair? Based on this
4 description?

5 A Not really.

6 Q And why not?

7 A First of all, when you're looking at a website,
8 you're looking at statements that are under 50
9 words. So, they don't necessarily encapsulate
10 everything you do.

11 But, in this case, what we're indicating
12 is that we work at this intersection of
13 cultural, nature, people, and place, community
14 and land, and that we partner with our clients.
15 And it's not only planning and design. What we
16 say is "effective planning, design,
17 construction, management, and stewardship".

18 Q Okay. Fair enough. So, let me ask you then,
19 pulling up your resumé that was attached or
20 your CV that was attached to your prefiled
21 testimony.

22 MR. WALKER: And, Dawn, that's Bates
23 4538 please.

24 BY MR. WALKER:

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[WITNESS: O'Donnell]

1 Q And, on the second page of that, Ms. O'Donnell,
2 you have -- you start with a two-page list of
3 "Planning & Implementation Projects". Do you
4 see that?

5 A Yes.

6 Q And, other than this Project, the Northern Pass
7 Project, which is listed first, I did not see
8 any other project on there where you performed
9 a historic resource assessment for a proposed
10 project. Have you done that before this
11 project?

12 A The term you're using, "historic resource
13 assessment", is not necessarily the standard
14 terminology. Work scopes engage many
15 descriptions. But historic resource assessment
16 is a baseline work that's undertaken in nearly
17 every project.

18 Q Well, how about for purposes, let's say, on the
19 106 process? The historic resource assessment,
20 under the 106 process, is a defined assessment.
21 In other words, you identify properties, you
22 assess for eligibility, you assess for adverse
23 effects, and then resolution of adverse
24 effects. Is that right?

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[WITNESS: O'Donnell]

1 A Essentially, yes.

2 Q Have you done an historic resource assessment
3 under the 106 process for a proposed project,
4 prior to this one?

5 A Yes.

6 Q Okay. And have you done one for a linear
7 transmission project?

8 A No.

9 Q So, if I looked through your two pages here,
10 and you said you have done one under the 106
11 process, does that show up on your CV, on these
12 two pages?

13 A We don't usually list 106 as a component of a
14 project, because it's one piece of a scope.
15 So, we list the title of the project. But the
16 projects that we've had components of Section
17 106 compliance related to federal funding,
18 include, in Washington, D.C., St. Elizabeths,
19 the National Mall, the Jefferson Memorial,
20 Meridian Health Park, and the White House.

21 Q So, on that project, though, did you --

22 A Excuse me, I'm not finished.

23 Q No, but can I ask you about that one project,
24 since you mentioned --

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[WITNESS: O'Donnell]

1 A Well, that was five, by that's okay.

2 Q Okay. But, for those -- and, no, I appreciate
3 you pointing it out. Did you, for those,
4 perform a historic resource assessment for
5 purposes of the 106, meaning identification of
6 all historic sites, analysis of eligibility,
7 analysis of adverse effects, effects tables,
8 all of that? Did you do that for that project?

9 A What you're listing is a series of tasks that
10 accompany projects. We usually are doing one,
11 two, or three of those tasks. So, to equate
12 the three steps I believe you just spoke to to
13 all of those projects, I would need to give you
14 a little chart. So, yes, we've done assessment
15 of historic resources, and whatever is required
16 in that particular compliance arena.

17 Q Okay. So, you've done portions of those things
18 for different projects, it sounds like, is that
19 correct?

20 A Correct.

21 Q Okay. How about with regard to a linear
22 transmission project like this one? Have you
23 done a historic resource assessment?

24 A I think you just asked that two minutes ago.

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[WITNESS: O'Donnell]

1 Q Well, --

2 A Go right ahead.

3 Q And I'm sorry, I didn't get your answer, or I
4 don't remember.

5 A I said "no".

6 Q Thank you. In your prefiled testimony,
7 particularly on Page 4, Line 17, and, Dawn, if
8 you could pull that up please. Starting at
9 Line 17, you seem to have two very fundamental
10 criticisms of Ms. Widell's work, or her
11 approach in this case. The first, and you can
12 read it, but it says "inconsistent use of SEC
13 definitions and conflated terminologies limited
14 the consideration of resources to unnecessarily
15 narrow subset of National Register properties".
16 Now, we've been talking about that. That's
17 your criticism that she was limiting herself to
18 eligible or listed properties, right?

19 A Correct.

20 Q And then your second criticism is "the
21 selection of the narrow APE, also inconsistent
22 with SEC rules, further eliminated numerous
23 candidates from initial consideration". That's
24 your second primary criticism, right?

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[WITNESS: O'Donnell]

1 A Right.

2 Q So, I want to take each of these in parts. I
3 want to take first your definition of "historic
4 sites", or the definition that's used by the
5 SEC in this case, and your interpretation of
6 that and what you used in this case.

7 It's your position, you've made it clear,
8 that the SEC definition is broader than the
9 "historic site" definition used in the 106
10 process, right?

11 A We have definitely made that statement.

12 Q And you would agree that, under the 106
13 process, a historic site is "any property that
14 is listed or eligible for the National
15 Register"?

16 A Under the Section 106 process, listed or
17 eligible.

18 Q Right. So, when you came to the conclusion
19 that the SEC rule dealing with historic sites
20 should be construed more broadly, did you reach
21 that conclusion on your own or did you consult
22 with others when you came to that conclusion?

23 A Is that relevant?

24 Q It is. I'm trying to understand how you came

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[WITNESS: O'Donnell]

1 to that conclusion.

2 A We read the New Hampshire law. We looked at
3 the SEC rules. And our interpretation of the
4 construction of the sentences, and the way the
5 words are assembled, is that National Register
6 listing and eligibility is not the only value
7 being expressed.

8 Q But did you consult with anyone else? I
9 understand you --

10 A No, we did not.

11 Q Okay. Now, this is the first time or the first
12 project that you've been involved in that
13 required you to interpret and assess that SEC
14 rule?

15 A Yes.

16 Q Did you take any steps to determine how the
17 SEC, this Committee, has applied these rules in
18 the past?

19 A We did not.

20 Q Did you review -- I take it that you did not
21 review the Committee's rulemaking deliberations
22 when they were considering what that definition
23 of "historic sites" means?

24 A We reviewed the rule itself.

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[WITNESS: O'Donnell]

1 Q But not the deliberations?

2 A Not the pre-deliberations.

3 Q Have you -- and you have not reviewed prior
4 decisions by the SEC on other projects where
5 that rule was applied, right?

6 A No, we have not.

7 Q As you sit here today, would you agree that
8 reviewing those would be helpful to you?

9 A Not necessarily.

10 Q You don't think it would be helpful to
11 understand how the SEC has interpreted its rule
12 in the past?

13 A I think the interpretation of the rule for each
14 project is relevant to the project, as well as
15 the rulemaking process.

16 Q I'm not sure what you mean by that. What do
17 you mean "relevant to the rulemaking process"?

18 A I think the rule and its application to the
19 project is more central than understanding the
20 SEC's prior uses.

21 Q But you're not suggesting that the SEC would
22 apply the rule differently in one project from
23 another?

24 A The SEC may be faced with different issues

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[WITNESS: O'Donnell]

1 project by project that they need to consider.

2 Q Okay. And the reason I ask that, I mean, as a
3 lawyer, of course, I look at statutes, I look
4 at laws, I look at regulations.

5 A Sure.

6 Q I always think I know what they mean. But it's
7 usually what the judges say that, you know, I
8 have to rely on that the judges say. And, if I
9 offer an opinion, without knowing what the
10 judges have said in the past, I'm going out on
11 a limb.

12 Do you think you're going out on a limb
13 here by making an interpretation without
14 looking at how this Committee has even assessed
15 it?

16 A No, I don't.

17 Q Okay. Are you familiar with the Antrim Wind
18 Project that's gone before the SEC?

19 A It was brought up in our discussion and
20 preparation. But I am not familiar with the
21 project.

22 Q Did you look at the deliberations in that case?

23 A No, I did not.

24 Q Well, I'll represent to you that the SEC

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[WITNESS: O'Donnell]

1 Subcommittee that presided over that case
2 included Dr. Richard Boisvert. Do you know who
3 he is?

4 A Nope.

5 Q He's the Deputy Director of the New Hampshire
6 Division of Historical Resources. So, he's the
7 Deputy SHPO. And I'll represent to you, he has
8 also been on past subcommittees with the SEC
9 dealing with other infrastructure projects.
10 And, in the deliberations in that case, there
11 was some discussion of what "historic site"
12 means, under the new rule. So, under the same
13 rules that apply in this case, the 102.23.

14 MR. WALKER: And, Dawn, if you could
15 pull up --

16 BY MR. WALKER:

17 Q I'm going to show you some pages from those
18 deliberations, because Dr. Boisvert, who is the
19 Deputy SHPO in New Hampshire, had some
20 discussion of it. And particularly on Page 85,
21 and this is Applicants Exhibit 366. It's the
22 deliberations. And I will represent to you
23 that the highlighted part is from Dr. Boisvert.
24 So, Dr. Boisvert, one of the Committee members,

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[WITNESS: O'Donnell]

1 is testify -- or, testifying in
2 deliberations -- speaking in deliberations.
3 And you'll see that he says "It is important to
4 note that, for the purposes of this application
5 process, the definition of "Historic Sites" in
6 the SEC rules", the same rules that apply
7 today, "follows the definition of "Historic
8 Properties" in the federal regulations,
9 eligible for listing on the National Register."
10 You see that?

11 A I do see it.

12 MR. WALKER: And, Dawn, I'm going to
13 ask you if you could also go to Page 101, at
14 the very bottom, and it continues on to the
15 next page down.

16 BY MR. WALKER:

17 Q And, again, this is Dr. Boisvert. And, at the
18 first page it says -- Dawn, if you can go back?
19 "Historic", and he's got it in quotes, "here
20 means that whatever makes it eligible for
21 listing on the National Register." That is
22 quite different than the way you are
23 interpreting that rule, is that right?

24 A Let me suggest that you're excerpting from a

[WITNESS: O'Donnell]

1 longer deliberation, and there may be other
2 quotes that equally could be pulled from that
3 deliberation. And, yes, of course, the few
4 that you pulled are indicating eligibility for
5 the Register.

6 Q Okay. So, I understand that. And that's fair.
7 You haven't read the deliberations. But, based
8 on those two excerpts, the Deputy SHPO of this
9 state is equating the SEC rules with
10 "eligible", correct, "for the National
11 Register"?

12 A I hear what you're saying. I answered
13 previously. I will not necessarily,
14 categorically, say "correct", because I haven't
15 read all of the Deputy SHPO's quotes in this
16 document or any others.

17 Q Okay. Moving on then. Did you -- when the
18 rules became effective in December 2015, the
19 DHR also issued a Policy Memorandum talking
20 about SEC review of applications before this
21 Committee, the SEC.

22 A Uh-huh.

23 Q Have you seen that Policy Memo? Do you know
24 what I'm talking about?

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[WITNESS: O'Donnell]

1 A I think I have it.

2 Q Okay.

3 MR. WALKER: So, Dawn, if you could
4 pull that up please. And that's dated in
5 January of 2016. Applicants Exhibit 116.

6 **BY THE WITNESS:**

7 A Yes.

8 BY MR. WALKER:

9 Q You have that in front of you, Ms. O'Donnell?

10 A Correct.

11 Q Had you reviewed that prior to when you
12 rendered your opinion?

13 A It was reviewed after my direct testimony and
14 supplemental testimony.

15 Q But not before you issued your opinion?

16 A After.

17 Q Okay. Is there any reason you did not review
18 it before issuing your opinion?

19 A Just the wealth of materials to review, I
20 believe.

21 Q Fair enough. But this is the policy coming
22 from the DHR. And, if you turn to the first
23 page -- or, I'm sorry, the first paragraph of
24 Page 2 of that memo. And, in that memo, the

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1 very first sentence of that paragraph says that
2 "Throughout the SEC rules, 36 C.F.R. refers to
3 the federal regulations implementing Section
4 106 of the National Historic Preservation Act,
5 which requires federal agencies to take into
6 account the effects of their undertakings on
7 historic properties." So, again, there's a
8 reference that the SEC rules have throughout it
9 the federal regulations.

10 And, in the last sentence of that
11 paragraph, it says "With rare exception,
12 proposed energy projects seeking a certificate
13 from the SEC are reviewed under the Section 106
14 regulations." Again, more guidance from the
15 DHR equating the identification of sites under
16 the 106 process with the SEC rules. Is that
17 right?

18 A Correct. And my reading of this sentence would
19 be focused more on the "rare exception" than
20 the generic application.

21 Q Okay. Let me turn you as well to the third
22 page of that memo, the very first paragraph.
23 It states "In New Hampshire, above-ground
24 historic properties meeting the definition at

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[WITNESS: O'Donnell]

1 Site 102.23 are identified through the
2 preparation" -- oh, I'm sorry -- "preparation
3 and submission of area and individual inventory
4 forms". Now, these are the forms that have
5 been prepared in this case, and that's pursuant
6 to the 106 process, right?

7 A As it states, yes.

8 Q And the third sentence in that same paragraph,
9 it says "Information gathered and analyzed in
10 individual inventory forms and historic
11 district area forms provides a recommendation
12 of whether a property is eligible for listing
13 on the National Register of Historic Places and
14 therefore considered historic for Section 106
15 purposes". But, again, you have that reference
16 to the SEC rule, and equating with the federal
17 regulations. I realize you didn't read this.

18 A And you also have the reference in the sentence
19 to "inventory forms and historic district area
20 forms", which we've positioned in our testimony
21 as being incomplete.

22 Q Right. But that's a completely different
23 point, right? I mean, your -- the issue is,
24 those are the forms that are used in the 106

[WITNESS: O'Donnell]

1 process, and this Policy Memo from the DHR is
2 equating that to the definition under SEC
3 rules. That's --

4 A I do read that, yes.

5 Q Okay.

6 A That is what the reading is.

7 Q And I realize, since you don't know
8 Dr. Boisvert, you did not consult with him
9 before you rendered your opinion. Did you
10 consult with anyone else working at the DHR
11 with regard to --

12 A I believe we --

13 Q Well, let me just finish my question.

14 A Go right ahead.

15 Q Did you consult with anyone at the DHR with
16 regard to how that agency applies the SEC rule
17 about -- on historic sites?

18 A Not that specific issue, no.

19 Q Do you agree, sitting here now, that it would
20 have been helpful to do that?

21 A No, not necessarily.

22 Q So, let's now talk about how you identified
23 sites for purposes of your review. And I've
24 read your prefiled testimony and your

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[WITNESS: O'Donnell]

1 supplemental testimony and your report. And
2 throughout your prefiled testimony and
3 throughout your testimony before this
4 Committee, you've explained your opinion that
5 the Project is going to have a pervasive visual
6 influence. And you reference at times, and I'm
7 quoting at different times from your prefiled
8 testimony, "widespread counts of historic
9 sites" and "acreages of historic sites", as you
10 interpret the SEC definition, correct?

11 A I think you're generalizing. But I think, in
12 general, you're correct.

13 Q In your --

14 A So, you're not asking me to affirm my
15 testimony.

16 Q Well, I can turn you to those pages that talk
17 about "widespread counts" and "acreages", or,
18 you know, "acreages of historic sites", if
19 you'd like me to do that? I was just trying to
20 move us along.

21 A No. That's okay. Go ahead.

22 Q Fine. And, when you were doing this and you
23 were categorizing and identifying the number of
24 sites, did you look back at the two prior

[WITNESS: O'Donnell]

1 projects that have gone before this SEC to see
2 how many sites were identified and how that
3 process went?

4 A No.

5 Q Okay. So, I take it you have no idea how many
6 sites were identified for those projects?

7 A Which two projects are you talking about?

8 Q Antrim Wind, I'll represent to you, and then
9 another one, MVRP, Merrimack Valley Reliability
10 Project.

11 A No. We haven't looked at those.

12 Q Okay. In your Table 2, and I realize you
13 corrected it in your supplemental testimony.
14 So, let me bring that up.

15 MR. WALKER: Dawn, if you could bring
16 that up please. It's Bates 5764.

17 **BY THE WITNESS:**

18 A Yes.

19 BY MR. WALKER:

20 Q Just give me a minute to get -- so, this is
21 your Summary Table. And you've identified, for
22 this Committee and for us, 13,170 historic
23 sites that could be affected by this Project.
24 Is that right?

[WITNESS: O'Donnell]

1 A That's what the totals show.

2 Q Well, and I will represent that adds the 3,024
3 historic sites, and then you have 10,146
4 current use. And I'm going to break that apart
5 in a minute. But that totals 13,170. So,
6 that's where I'm getting that number from.

7 A Yes. That's where you're getting it from.

8 Q And that supports your opinion of the
9 widespread counts and the pervasive historic
10 sites throughout the Project area?

11 A Correct.

12 Q Now, you know that Ms. Widell and the
13 Preservation Company, in their years of work on
14 this, identified dramatically less. It was
15 somewhere around 1,284 historic sites within
16 the 1-mile APE that they used for this Project.
17 You'd agree, quite a difference from what you
18 found in this case?

19 A Under a different methodology, yes.

20 Q Right. I mean, a different methodology, for
21 one, you used a 10-mile APE, and I'll talk with
22 you about that. But also a very -- a much
23 broader definition, which you've described?

24 A We have described that in our testimony, and

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1 we've cited the text where we take that opinion
2 from.

3 Q And it's from the rule?

4 A Yes.

5 Q Now, I want to ask you about these tallies in
6 your Table 2. Because you've described earlier
7 in your testimony that you looked at these on a
8 landscape level, and then all of these
9 different categories on the landscape level,
10 you've identified them if they fit into that
11 category within a 10-mile APE. Then, you
12 tallied them up on a townwide basis. And this
13 table shows 35 towns. And I'm correct that
14 that's the 31 towns that the Project actually
15 goes through, --

16 A Host towns.

17 Q Host towns, okay. Thank you. And then four
18 additional towns that don't host the Project,
19 but are within the 1-mile APE that the Project
20 has used?

21 A Correct. The same metric used by the
22 Preservation Company.

23 Q Okay. So, let me turn you to Page 21 -- I'm
24 going to come back to this table. But Page 21

[WITNESS: O'Donnell]

1 of your report, which is Bates 5466. In the
2 middle of that page, you describe the three
3 general categories that make up your Table 2 of
4 the historic sites that you've identified, the
5 13,170. The first category is the properties
6 "eligible or listed on the National Register or
7 state register", right?

8 A You're reading it, yes.

9 Q Yes. I just want to make sure that we all
10 understand and the Committee understands, so,
11 when I go through your Table 2, we're all on
12 the same page.

13 The second category is the "additional
14 categories of resources as historic resources
15 and cultural landscapes". And down below
16 you've listed, in that same page, B1 through
17 B7. These are the graveyards, land
18 conservation, current use properties,
19 recreation lands, scenic roads, trails, and
20 public waters and such. Those -- that grouping
21 makes up your second general category, correct?

22 A Correct.

23 MR. WALKER: And then, Dawn, back up
24 to that. Right.

[WITNESS: O'Donnell]

1 BY MR. WALKER:

2 Q The third general category are "historic and
3 scenic resources identified" at what you called
4 these "community meetings"? And we can talk
5 about those, and you've already testified a bit
6 about those.

7 A Yes.

8 Q So, to make sure, turning back now to that
9 Table 2. Once you've identified a historic
10 property that fits into one of those
11 categories, you tally it up on a town by town
12 basis, and you put it into this table.

13 Correct?

14 A That's a simplification of the methodology,
15 yes.

16 Q But you did not go out and individually analyze
17 each of them to assess their eligibility or
18 whether they would be affected by the Project,
19 right?

20 A It's the Applicants' responsibility to do those
21 tasks.

22 Q Sure. But I'm just asking you how this table
23 was made up. That's what you did?

24 A We did identify them by mapping sources, and

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1 map them and count them.

2 Q Let me ask you about that. Because some of
3 these are -- you had mapping data available.
4 So, for instance, these different categories,
5 "Recreation", "Public Lakes", "Public Waters",
6 "Conservation Lands". You had mapping data
7 available, so you could look to see if they
8 were within the 10-mile APE that you're
9 applying. And, if they were, you tallied it.
10 Am I right about that?

11 A The mapping data resources are indicated for
12 each of the maps and each of the categories.
13 And, yes, if the mapping was available, we
14 mapped it and counted it.

15 Q Sure. And I'll want to ask you about some of
16 your maps after. But the "Current Use", let's
17 turn to that category. Because you'll agree
18 with me that, of the 13,170 of the widespread
19 counts and pervasive counts, 10,146 of those
20 are on this list simply by the fact that they
21 are a current use parcel, right?

22 A Yes. And they're not mapped.

23 Q Right. So, they're not mapped. And, so, you
24 include them if they are -- you looked at town

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[WITNESS: O'Donnell]

1 records. You count up the number of current
2 use parcels in that town, and you include them.
3 It has no relation to where they're located in
4 relation to the Project, whether they're within
5 1 mile, whether they're within 10 miles. If
6 they're in the town data, and they're a current
7 use parcel, you count them as an historic site
8 for purposes of this table?

9 A The data actually came from the state report on
10 current use.

11 Q But it's -- somehow you got it on a
12 town-by-town basis, right?

13 A It's in that state report --

14 Q Okay.

15 A -- on a town-by-town basis.

16 Q Thank you. But you'd agree with me that the
17 10,146 --

18 A These are within the 10-mile, that's the only
19 criteria.

20 Q They are within the 10-mile? You know that for
21 sure?

22 A They are within the 10 miles. Or, no. They're
23 within these towns.

24 Q Right.

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[WITNESS: O'Donnell]

1 A They're within these towns.

2 Q Okay. That's --

3 A There's no other filter that you can use,
4 because the report isn't specific in terms of
5 the mapping.

6 Q Okay. That's the data you had --

7 A It's a town-by-town, that's all it is.

8 Q And it's your position that current use parcels
9 qualify as a historic site under the SEC
10 definition just by virtue of them being in
11 current use, because they have a goal of
12 preserving open space, and that's valued by the
13 people of New Hampshire. Is that your
14 position?

15 A We wrote up our thinking on current use in our
16 report on Page 22, paragraph 3.

17 Q Well, and I'm taking it from that. Am I
18 paraphrasing that correctly?

19 A You're simplifying. So, that's why I'm point
20 to the report.

21 Q Okay. I'm sorry. Page 22?

22 A Paragraph 3.

23 MR. WALKER: Are you able to pull
24 that up, Dawn?

[WITNESS: O'Donnell]

1 BY MR. WALKER:

2 Q But, while she's pulling that up, and maybe she
3 can't, you can tell me, if I'm simplifying it,
4 Ms. O'Donnell, why is it that a current use
5 parcel, in your opinion, fits into the SEC
6 definition of "historic site" just by virtue of
7 it being in current use?

8 A Our thinking on this topic is that it appears
9 to us that the people of New Hampshire have
10 made individual actions that signify value.
11 And those individual actions particularly
12 revolve around the conservation of land. And
13 the current use is one of those categories.
14 The land conservation use is another of those
15 categories. And what we're saying, on Page 22,
16 is that "Current use is a *de facto* conservation
17 process by landowners that includes their
18 property in the program".

19 And what we've heard in anecdotal evidence
20 in the community meetings was that people put
21 their lands into current use because of the
22 value that they place on their land and the
23 value that it offers to the community, and
24 their intent to conserve it.

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1 Q Okay. Thank you. I mean, I think I simplified
2 it, but basically said the same thing. Which
3 is, you included it because people of New
4 Hampshire value that, and so, therefore, in
5 your opinion, historic site.

6 Let me ask you, you, in considering
7 whether to put a current use parcel or include
8 that in the 10,146 on your list, did you
9 consider how long any of those parcels had been
10 in current use?

11 A That data was not available.

12 Q Well, you understand that the current use law
13 came into effect in 1973?

14 A We did read the background of the current use
15 law, yes.

16 Q Right. So, there is no parcel in this state
17 that has been in current use for up to 50
18 years, which I understand is the eligibility
19 requirement under the 106 and the federal
20 regulations, but --

21 A I don't agree.

22 Q Okay.

23 A The 50 year rule is a guideline. And it
24 indicates the need to assess the property in

[WITNESS: O'Donnell]

1 order to determine its longevity and it's
2 value. "Significance" and "integrity" is the
3 common terminology.

4 Q That's fair enough.

5 A But the issue of current use lands, simply
6 because the law was enacted in the early '70s,
7 doesn't mean that those parcels weren't in
8 private hands and had been conserved earlier.

9 Q But they weren't -- they weren't in current
10 use?

11 A They weren't in current use. But they could
12 have been conserved.

13 Q And you make a fair point. I understand, under
14 the federal regulations, there is a 50 year
15 requirement, I call it a "requirement", you're
16 saying "that's a guideline". And there are
17 exceptions to the 50 years. So, that's a fair
18 point.

19 A Yes.

20 Q But you don't know, on the 10,146 parcels, how
21 long any of those have been in current use.
22 And I want to just pull up, you cited in your
23 testimony a guide that is issued by New
24 Hampshire.

[WITNESS: O'Donnell]

1 MR. WALKER: And, Dawn, if you could
2 pull it up.

3 BY MR. WALKER:

4 Q It's our Exhibit 330, which it's "A layperson's
5 Guide to New Hampshire Current Use", issued by
6 the Statewide Program of Action to Conserve our
7 Environment, I think it's an acronym "SPACE".
8 You cited that throughout your report, and you
9 rely on some of the data.

10 And I want to turn to Page 8 of that
11 report. And, if you look at the pie chart in
12 the upper right-hand corner, where it says
13 "Years Land Enrolled in Current Use", and I
14 understand this was in 2007, but not requiring
15 a whole lot of math here, 9 percent of the land
16 in New Hampshire that's been in current use has
17 been 16 years or more. Which, by simple math,
18 91 percent of the current use parcels at that
19 time had not even been in current use 15 years.

20 So, when you look at the age component,
21 that is not something that is critical to your
22 inclusion of these parcels on your list, right?

23 A It is not critical that it's only been in
24 current use for a period of time. What is

[WITNESS: O'Donnell]

1 important is that it's open land that is in a
2 conservation -- *de facto* conservation category.

3 Q Sure. But you're calling these "historic
4 sites". And, if I'm a landowner, and I decide
5 to put my land in current use last week, you
6 would call that an "historic site", based on
7 your methodology?

8 A I think it's about the motivation. And I think
9 that our interest in it was sparked, in part,
10 by the amount of land covered in current use.
11 Many towns -- the percentages, which we have on
12 the second chart, are 32 percent to 93 percent
13 of the land area of the town.

14 Q No, I understand. But just back to my
15 question, --

16 A And the --

17 Q I just want to get to my question.

18 A And the mean of that is 51 percent. So, half
19 of all the towns that are host towns, the
20 area -- half the area of the towns is in
21 current use.

22 Q Right. Thank you. But, again, so, if I put my
23 land in current use last week, becomes an
24 historic site under your methodology?

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[WITNESS: O'Donnell]

1 A I think what we're saying is current use is
2 worthy of looking at.

3 Q I think you're saying "yes"?

4 A Yes.

5 Q Yes. All right. Back on -- and one thing
6 that's interesting is, so, the landowner
7 controls whether his or her property goes into
8 current use. And, on Page 27 of your report,
9 Bates 5607, it's in the middle of the page.
10 And you say, that first paragraph, it says "The
11 details of the land use change tax are
12 stringent in that once land is accepted into
13 the current use program it remains."

14 That's not accurate, though, is it, Ms.
15 O'Donnell?

16 A Well, it's an excerpt, because what I'm saying
17 is there's a penalty in the next sentence.

18 Q Okay. But land does go into current use, and
19 it comes --

20 A Comes back out, sure.

21 Q Right. And I will -- and we don't have to go
22 to the report, but I will represent to you that
23 that report, that SPACE report, referred to how
24 much current use acreage is taken out. So,

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1 there's a cite to 10,000 acres being taken out
2 in 2005. So, once it's in current use, it
3 doesn't always remain in current use. That's
4 up to the individual landowner?

5 A Correct.

6 Q All right.

7 MR. WALKER: Dawn, if you could pull
8 up that report again, and Page 3.

9 BY MR. WALKER:

10 Q And I think this is in line with what you were
11 just describing, Ms. O'Donnell. Almost
12 60 percent of the land in New Hampshire is
13 estimated to be in current use. So, based on
14 your methodology, and your inclusion of these
15 current use parcels, any time the SEC Committee
16 must consider an infrastructure project or has
17 one before it, it's going to have to assess
18 about 60 percent of the property within the APE
19 of historic sites -- or, for historic sites,
20 right?

21 A You're implying that the methodology that we
22 used is transferable to the SEC's future
23 methodology. I think that what we said was
24 conservation lands, and including those in

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1 current use, need to be considered when you're
2 looking at the values of property to the people
3 of New Hampshire as historically important,
4 culturally valued.

5 Q All right. Let me take that in pieces. You're
6 not suggesting that the Committee applies its
7 rules one way for this case and then another
8 way for another case, are you?

9 A No. What we're actually saying is that, in our
10 opinion, the methodology we applied was to
11 indicate that the Applicants were incomplete in
12 their inventory, because these categories were
13 not considered in any manner, and many of those
14 properties that would have been eligible or
15 listed were also dismissed.

16 So, what we're -- what we are building
17 conceptually is a case that shows that the
18 Applicant has reduced and reduced and reduced
19 the number of properties to be considered for
20 adverse effects. And, in that process, they
21 have limited the adverse effects, because they
22 have focused it on a very, very small number of
23 properties.

24 Q But you're not saying, and I will represent to

[WITNESS: O'Donnell]

1 you, there are current use parcels that have
2 been identified by the Applicant in their
3 assessment, not just because they're in current
4 use, but there are current use parcels that are
5 identified as part of their assessment?

6 A Yes.

7 Q I mean, there would have to be, --

8 A Relatively few, yes.

9 Q -- if 60 percent is in current use. But your
10 methodology, and it is important, because your
11 opinion of unreasonable adverse effect talks
12 about "pervasive and widespread counts", 10,146
13 of those are on there just because they're
14 current use. That we can agree on?

15 A Yes.

16 Q Okay. Are you aware of any other SEC reviews
17 in New Hampshire under these new rules where
18 current use parcels were considered historic
19 sites just because they're current use?

20 A No.

21 Q I will represent to you that, in the Antrim
22 Wind Project and the MVRP Project, there were a
23 number of towns that were within the APE. And
24 we've gone through and we've looked at all the

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1 number of current use parcels. I will
2 represent to you that, in the rulemaking -- or,
3 I'm sorry, the decision for those two, and even
4 the deliberations, there is no reference to
5 current use parcels being considered simply
6 because they are in current use.

7 Do you have any reason to disagree with
8 that?

9 A No.

10 Q All right. So, let me move on. On Table 2,
11 going back to your table, there are -- it's in
12 the far right, the gray one, "Community ID
13 Historic", and you have "468" historic sites.
14 And these were identified by participants in
15 the community workshops. And I'll paraphrase
16 those workshops, tell me if I'm wrong. But you
17 held six different workshops. You were working
18 in conjunction with the T.J. Boyle, Counsel for
19 the Public's visual impact expert. And you
20 invited residents from 108 towns. And I
21 believe that's because they were within a
22 10-mile APE, is that right? Those towns that
23 were invited to come to the community
24 workshops?

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[WITNESS: O'Donnell]

1 A Yes. Let me just suggest that your subject of
2 your sentence is incorrect, because we didn't
3 invite. The Counsel for the Public invited.

4 Q Okay. All right. Thank you.

5 A And that they were the host of the meetings.

6 Q In fact, I think you explained to me at the
7 technical session that this was Public
8 Counsel's idea, not your idea?

9 A The concept of Public Counsel was to have
10 direct voice of citizens.

11 Q But that -- and Public Counsel set up these
12 community workshop meetings, and you attended,
13 along with T.J. Boyle, right?

14 A We didn't simply attend. We were actors within
15 that milieu. We were asked to aid community
16 members to walk through the process. There was
17 a script, and it was very clearly articulated.

18 Q Okay.

19 A The point was to have scenic and historic
20 resources identified by the public.

21 Q Right. And I know there were six of those
22 meetings, and I attended a few of them. And
23 I've reviewed the attendance sheets. And there
24 were some people that attended more than one

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[WITNESS: O'Donnell]

1 meeting. So, some of the participants that
2 showed up at one meeting also showed up at
3 another meeting, is that right?

4 A I haven't actually reviewed the attendance
5 sheets. So, I wouldn't be able to answer that.

6 Q Are you aware that some of those who attended
7 those meetings are also intervenors in this
8 case?

9 A I think maybe a couple of people indicated that
10 to me. But it wasn't by reviewing attendance
11 sheets.

12 Q Okay. And I'll let you describe the process to
13 me. But I understand that you, you and T.J.
14 Boyle, asked the participants to identify
15 resources that were significant to them, either
16 as a historic resource or a scenic resource.
17 So, everybody who showed up at these meetings
18 you asked them to identify within a 10-mile
19 APE, is that what you did?

20 A We gave them the maps for the 10-mile.

21 Q And then people would identify whatever
22 historic resource or scenic resources they felt
23 they were, that was important to them, what did
24 they do? They put them on the map?

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[WITNESS: O'Donnell]

1 A It could have been scenic, historic, or both.
2 And they mapped them with a unique number, and
3 they filled out a form. We had a two-sided
4 form, "scenic" on one, "historic" on the other
5 side. And there were a series of questions
6 about what it was and how they valued it.

7 Q And when people identified, they showed up on
8 your list and your tally, and I understand this
9 tally of 468 doesn't include those that were
10 identified -- identified just as "scenic", but
11 only ones that were identified as "historic" or
12 "historic and scenic"?

13 A Correct. And it also doesn't conflate multiple
14 people.

15 Q I see.

16 A So, if it's a single site, if it was
17 recommended three times, it was only counted
18 once.

19 Q Is that right? Okay.

20 A Yes.

21 Q Because I want to ask you about that, because I
22 saw some that show up on a number of different
23 ones, but --

24 A I don't think that summary is conflated.

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[WITNESS: O'Donnell]

1 Q Okay. When you considered those, that people
2 showed up and put them on your map, did you
3 consider, did you do any type of analysis of
4 the age of the resource that was identified?

5 A We were not -- we were specifically not asked
6 to filter in any way the public's views.

7 Q You were asked by Public Counsel?

8 A Public Counsel said "Just let them identify,
9 let them do the forms, and we'll counsel them
10 and we'll locate them."

11 Q Okay. So, somebody shows up, says "This is an
12 historic site. I value it." It shows up?

13 A Or scenic, or both.

14 Q Right. And I appreciate that. You didn't do
15 any filtering. So, you don't know, of these
16 468, whether they have a view of the Project
17 from where they're located?

18 A No. None of those. Again, that would be a
19 further filter.

20 Q Right. And you don't know view, you don't know
21 distance. You didn't do any assessment of
22 whether they are significant or have integrity,
23 and all the jargon that we've been using?

24 A No. Anecdotally, we did find that several that

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1 are -- that were considered in the inventory by
2 Preservation Company were also included here.
3 But we didn't do any direct. Just because we
4 knew the name, because we've read the other
5 report.

6 Q I see. So, some that Cherilyn Widell and they
7 found --

8 A The Preservation Company had done their
9 inventory on were also here.

10 Q Okay. Good. Let me show you, you provided a
11 spreadsheet from the community workshops of the
12 different resources that were identified.

13 MR. WALKER: And, Dawn, if you could
14 pull up Exhibit 369 please.

15 WITNESS O'DONNELL: This is Page 34
16 of our report?

17 MR. WALKER: I have no idea. It's
18 not in your report, actually. This is a
19 spreadsheet that was provided in a data
20 request. We've marked this as "Exhibit 360" --
21 I'm sorry, is that 360 --

22 MS. GAGNON: 369.

23 MR. WALKER: 369, sorry.

24 WITNESS O'DONNELL: So, excuse me,

[WITNESS: O'Donnell]

1 Jeremy.

2 MR. WALKER: Sure.

3 WITNESS O'DONNELL: Is there more
4 than one page of this?

5 MR. WALKER: I'm sure there is, and
6 I'll scroll down.

7 WITNESS O'DONNELL: Okay. Just so I
8 know what we're looking at.

9 MR. WALKER: Yes. No, that's fair.

10 BY MR. WALKER:

11 Q We asked in our data request to provide the
12 different community-identified resources that
13 were included in your tallies, the 468, we
14 asked for a spreadsheet, or you provided a
15 spreadsheet showing all of them. And that's
16 what this is. Do you recognize this?

17 A Yes.

18 Q Did you prepare this?

19 A Megan Turner, in our office, and support staff,
20 probably Thomas --

21 *[Court reporter interruption.]*

22 **CONTINUED BY THE WITNESS:**

23 A -- Helmkamp, H-e-l-m-k-a-m-p, also worked on
24 it.

[WITNESS: O'Donnell]

1 BY MR. WALKER:

2 Q Okay. So, this is something that your company
3 prepared, based on the community resource --
4 community meetings?

5 A I actually think it was also derived from the
6 T.J. Boyle work of summarizing the meetings.

7 Q Okay. Because there --

8 A Because we had compatible roles, we didn't
9 overlap each other. But we assembled the data
10 from the community meetings between the two
11 firms.

12 Q I see. Thank you. Let me turn you to Page 3.
13 And I'm not going to go through much of this.
14 But I do want to ask you about a few of them
15 that show up on here.

16 MR. WALKER: And, actually, the
17 second one down, Dawn, if you can do the whole
18 thing?

19 MS. GAGNON: The second one down?

20 MR. WALKER: Yes. The "Conkling
21 Family Homestead", the second highlighted one.

22 MS. GAGNON: Okay.

23 BY MR. WALKER:

24 Q All right. Hopefully, you can read this. This

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[WITNESS: O'Donnell]

1 is -- I was going through and looking at this,
2 and I see on there "Conkling Family Homestead",
3 and this is in New Hampton. Somebody -- the
4 reason given, that right-hand column is the
5 reason given by the participant, and you can
6 see that -- well, I'll represent to you the
7 participant, it doesn't show up on these
8 columns, was indeed Sam Conkling. And why he
9 thought this was important, it says "I live
10 there."

11 So, Mr. Conkling comes into these
12 meetings, he says "it's historic, I live
13 there." It ends up on your list, right?

14 A Jeremy, I think there's a bit of a
15 misrepresentation of this list happening.
16 Because the right-hand columns are the -- the
17 farthest right-hand column is a write-in box.
18 But the form itself has a number of items to be
19 checked. So, this is only one --

20 Q Okay. Let me just make sure we see what the
21 right-hand column --

22 MR. WALKER: Dawn, if you can go back
23 up. And I don't have it in front of me, so we
24 can't --

[WITNESS: O'Donnell]

1 **BY THE WITNESS:**

2 A I think the right-hand column title, again,
3 you're looking at a multipage spreadsheet, so
4 the column titles are on the top. I think
5 that's the write-in --

6 BY MR. WALKER:

7 Q Well, the column title says "Reason for
8 Choosing". So, the reason -- you're saying
9 that the reason for choosing isn't your reason,
10 it is the person who filled out or identified
11 the resource?

12 A Apologies, Jeremy. We probably need the form
13 in front of us. But I think the final question
14 or one of the last questions on the form was:
15 "What reason is this place important to you?"
16 And it was -- they were able to write in their
17 reasoning.

18 Q Okay.

19 A But it was preceded by a series of other
20 questions.

21 Q Well, fair enough. For whatever reason,
22 somebody put, on this chart, the reason being
23 "I live there"?

24 A For them it was because they live there.

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[WITNESS: O'Donnell]

1 Q Yes. So, I understand. There may be other
2 reasons that may have been identified. But,
3 regardless, you didn't do any filtering, you
4 didn't do any assessment of whether the Sam
5 Conkling Family Homestead has any historic
6 significance or integrity?

7 A Not at all.

8 Q Okay. Thank you. Let me turn to Page 3 of
9 that same --

10 MR. WALKER: Or, I'm sorry, the same
11 page, Dawn, but the yellow highlighted, the
12 first one.

13 BY MR. WALKER:

14 Q "Grey Knob Camp" is on there. And it looks
15 like multiple reasons were taken and put on
16 there. But are you aware that the Grey Knob
17 Camp, and we've looked at this, this is about
18 13 miles from the proposed Project. And it's
19 also in the White Mountain National Forest,
20 therefore 13 miles from where the Project goes
21 underground. Are you aware of that?

22 A I was certainly aware that there were community
23 members from the underground portions of the
24 corridor that were present.

[WITNESS: O'Donnell]

1 Q Okay. But I guess my point is, you've got
2 somebody who has identified this camp that's 13
3 miles away from the underground section, and
4 yet you still include it on your list?

5 A We were not filtering.

6 Q Okay.

7 A This was community input, direct and valued.

8 Q Right. And it's one that makes up your tally
9 to this Committee of the pervasive number of
10 counts, right?

11 A Exactly.

12 MR. WALKER: Dawn, if you could
13 also --

14 **BY THE WITNESS:**

15 A It's also why it isn't blended in with any
16 other tally, and it says these are the
17 community inputs.

18 BY MR. WALKER:

19 Q Well, I agree. But it also is part of total
20 13,170, which shows up throughout your
21 testimony. Correct?

22 A Yes.

23 MR. WALKER: Dawn, if you could pull
24 up Page 5.

[WITNESS: O'Donnell]

1 BY MR. WALKER:

2 Q The last one I want to talk about on this is
3 Loudon Road. Loudon Road is on there. And
4 it's -- the reason given, at least on this
5 form, is "stores". Based on just that, on the
6 face of it, because it's "stores". In your
7 opinion, does that make it an historic site?

8 A It wasn't my position to judge. It was the
9 community's input.

10 Q Well, and I will represent to you that, on this
11 form, Loudon Road actually shows up two more
12 times. On Page 11, Dawn, you can see that.
13 Which suggests to me that -- right. Again, it
14 shows up. And if these are all counted in your
15 468, do you have some double or triple counting
16 in this case?

17 A Well, the Loudon Road count is likely not
18 duplicated, but the Loudon Street Concord
19 Christmas Parade is an intangible heritage
20 event that people are valuing. So that is
21 different than saying the road itself. So, we
22 did look at the titles, and we did try not to
23 conflate.

24 Q Okay. All right. Let me look at your -- I'm

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1 not going to go through all of these different
2 categories, the "Conservation Lands", the
3 "Recreation Lands" and such. But, to make sure
4 that this Committee understands what you have
5 in your report, you attached to Appendix 1 of
6 your report eight different maps. And they're
7 labeled "HL1" through "HL8".

8 MR. WALKER: I think it's CFP5700,
9 Dawn. And this is -- whoops, it's upside-down.
10 I don't know if you can --

11 WITNESS O'DONNELL: These are the
12 overall corridor maps, right?

13 MR. WALKER: Right.

14 BY MR. WALKER:

15 Q And, I won't go through each one. But, if
16 you -- they're all the same in the sense that
17 they show a corridor, they show the Project
18 corridor, and they show your 10-mile APE. And
19 then, for your different categories, your broad
20 categories that you've identified, you show
21 where they fit in on the 10 miles, correct?

22 A We show the available mapped data. And I think
23 we're clear in our text that we didn't create
24 the mapping. That it came principally from the

[WITNESS: O'Donnell]

1 New Hampshire GIS database, and it also came
2 from an historic database.

3 Q Okay. So, if I look at these, even --

4 MR. WALKER: Dawn, if you could pull
5 up HL3. So, two pages beyond.

6 BY MR. WALKER:

7 Q Just to give the Committee some sense of what
8 these show, HL3 is conserved land. So, again,
9 that's another category.

10 A And these are the mapped lands available.

11 Q Right. And you don't have, on these maps, you
12 don't have any viewshed analysis whatsoever.
13 It's just, if they show up within the 10 miles,
14 then you included it?

15 A And it's described in the report as "conserved
16 public lands and those available to the
17 public". That it's a combination of state and
18 national parks -- I may be misstating, I should
19 look at the report, and the mapping provided by
20 the New Hampshire Forest Preservation Society.

21 Q Sure. And I understand. Each one of these
22 portrays something different, as far as your
23 categories?

24 A Uh-huh.

[WITNESS: O'Donnell]

1 Q Then, the last map that you provide, HL9, --

2 MR. WALKER: Which is 5708, Dawn.

3 WITNESS O'DONNELL: Seven is the one
4 that shows the community inputs.

5 MR. WALKER: The community meetings,
6 sure.

7 BY MR. WALKER:

8 Q But 5 -- I'm sorry, HL9, this is the same
9 corridor diagram, the 10-mile APE. But what
10 you've done now is just highlighted areas with
11 potential views to the Project. And you did
12 that, and it's described in here, you do that
13 using the bare-earth modeling done by T.J.
14 Boyle?

15 A Correct.

16 Q And you used the bare-earth viewshed because
17 that's what's used for purposes of, you know,
18 information provided for the visual impact
19 analysis as it relates to the effects on
20 aesthetics, right?

21 A We used the bare-earth model, because it
22 portrays potential visibility to the Project.

23 Q Sure. But that's -- and that's used in the
24 aesthetics realm. There's nothing in the

[WITNESS: O'Donnell]

1 rules --

2 A It's the visual assessment work.

3 Q Okay. Okay. Nowhere --

4 A But, as you realize, the definition of "scenic"
5 includes the historic category.

6 Q Well, I'll ask you about that. But you used
7 this because it's part of the aesthetic
8 analysis or the visual impact?

9 A We used it, as I've stated, because it shows
10 the potential for visibility.

11 Q But you also, and in your report, and we can go
12 to it if you want, but you're critical of Ms.
13 Widell for not using a bare-earth model for her
14 assessment of historic sites?

15 A The Preservation Company and Widell considered
16 vegetation, structures, and other objects that,
17 in the lifespan of the Project, may or may not
18 remain. And we felt that the bare-earth model
19 was a more conservative approach that needed to
20 be shown.

21 Q So, that's a basis of your criticism of Ms.
22 Widell, correct?

23 A Correct.

24 Q You say in your report that "all historic sites

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1 are by definition scenic"?

2 A Well, I don't -- I think "all" maybe is a
3 misstatement, but we're --

4 Q All right. Well, let me just turn to your
5 report.

6 *[Court reporter interruption -*
7 *multiple parties speaking.]*

8 **BY THE WITNESS:**

9 A It's an excerpt.

10 BY MR. WALKER:

11 Q Well, and I'll turn to it. I'm not trying
12 to -- I'm just trying to move it along. But
13 we'll go to Page 112 of your report, which is
14 Bates 5694. And, in the middle of that page,
15 right under 2, it says "As historic sites are
16 by definition scenic". You see that?

17 A Yes. And then it's followed with the citation
18 of the "Site 301.14(a)".

19 Q Well, when you say "by definition", I assume
20 you're relying on the SEC definitions, right?

21 A Uh-huh.

22 Q And, actually, scenic resources are defined in
23 Site Rule 102.45.

24 MR. WALKER: Dawn, if you could pull

[WITNESS: O'Donnell]

1 that up please?

2 BY MR. WALKER:

3 Q And your interpretation of this is that

4 "historic sites are by definition scenic".

5 But, if you look at that, "scenic resources"

6 are "resources to which the public has a legal

7 right of access". You would agree with me that

8 not all historic sites have a legal right of --

9 a public right of access?

10 A No, they don't have an access onto the land.

11 The historic structures and historic farms are

12 often viewed from the public road.

13 Q But the --

14 A They don't get to enter.

15 Q So, if there is a historic site that does not

16 have public right of access, by this

17 definition, it's not a scenic resource, right?

18 A Can you indicate what document you're pulling

19 this from?

20 Q This is from -- I'm sorry. This is from the

21 SEC rules, Site 102.45.

22 A Okay. I have --

23 Q I have a copy.

24 A I have excerpts of it in front of me, but I

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1 don't have that section.

2 Q Okay. Well, if you look at --

3 MR. WALKER: Dawn, if you could pull
4 that up again.

5 BY MR. WALKER:

6 Q And I won't quibble with you too long here.
7 But it defines "scenic resources", meaning
8 "resources which have" -- "to which the public
9 has a legal right of access". And I just want
10 to make sure we're in agreement, that not all
11 historic sites have a legal right of access?

12 A Correct.

13 Q A public right of access?

14 A Correct.

15 Q So, not all scenic sites are historic?

16 A Correct.

17 Q Not all historic sites are scenic, by this
18 definition?

19 A By that definition.

20 Q And, also, as you go down in that
21 definition, --

22 MR. WALKER: Dawn, if you could go
23 down.

24 BY MR. WALKER:

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1 Q And I understand why you've included historic
2 sites under the scenic resource category,
3 because it's listed under as (e). It says
4 "Historic sites that possess a scenic quality".
5 So, again, that's another limitation. It has
6 to be an historic site that possesses a scenic
7 quality. Do you agree?

8 A Yes.

9 Q So, when you say that "all historic sites are
10 by definition scenic", you would agree with me,
11 not by this definition, not by the SEC
12 definition?

13 A I would suggest that the SEC is categorizing
14 and defining more closely. So, the use of the
15 term "all" would be incorrect. Point taken.

16 Q In your report, starting at Chapter 4, which is
17 the bulk of your report, and it starts at Page
18 38, you provide a narrative town-by-town
19 summary of the historic sites for those 35
20 towns that show up in your table.

21 A Let me suggest something, Jeremy.

22 Q Sure.

23 A You characterized it as "the bulk of the
24 report". The issue is that the town reports

[WITNESS: O'Donnell]

1 are longer.

2 Q Okay. That's fine.

3 A But that it isn't necessarily the conceptual
4 strength. I think that Chapters 1, 2, 3, and 5
5 lay out the concepts of our position.

6 Q All right. That's a fair point. I said "bulk"
7 based on the number of pages.

8 I mean, ultimately, though, your opinion
9 is based on all of the counts that show up in
10 the 35 towns, and then you go through a very
11 thorough description.

12 A Actually, our report is based on the 10-mile
13 APE, which I'm sure you'll have some questions
14 about at some point.

15 Q I do.

16 A And the towns -- we chose to map the host towns
17 and those within the 1 mile, and show them in
18 these reports as examples. Because, when
19 you're looking at the maps of the entire
20 corridor, due to the scale of the corridor, you
21 don't see the density of resources. So, our
22 conceptual point is there's a density of
23 resources that's present.

24 Q All right. I think I understood all that. Let

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1 me pull up an exhibit.

2 MR. WALKER: If you could pull up
3 368, Dawn.

4 BY MR. WALKER:

5 Q Just to make sure that I do understand what
6 you're saying. I'll represent to you, this is
7 a map showing the corridor and the host towns.
8 So, you can see there's also a legend of where
9 it's overhead and where it's underground?

10 A Correct.

11 Q And, if you look at that, you'll see that, for
12 some towns, it goes through sort of the edge of
13 the town, for instance, Pittsburg. It might go
14 through a corner of Pittsburg, or Franconia,
15 for instance. And your mapping includes all
16 the resources townwide for those towns, right?

17 A Absolutely.

18 Q Okay. So, let me look at -- I'm just going to
19 go through a couple of the towns. Let's look
20 at Pittsburg. And that's covered in Page 39
21 and 40 of your report. So, Bates 5619.

22 A And on a map.

23 Q And on a map. And we're going to get to the
24 maps. But let's look at your summary. So, for

[WITNESS: O'Donnell]

1 each of the towns, and we'll use Pittsburg as
2 an example, it provides a summary of the
3 resources that you identified in that town.
4 And, in Pittsburg, are you aware of the makeup
5 of the line, you know, what it is?

6 A Yes.

7 Q Okay. It's --

8 A Yes. Partial underground/partial overhead.

9 Q Sure. About two miles of overhead and --

10 A At the lower southwest corner.

11 Q Right. About two miles overhead and some
12 underground.

13 MR. WALKER: And, Dawn, if you could
14 pull up the map that was attached, you provided
15 in your appendix, 5710.

16 BY MR. WALKER:

17 Q And this gives -- this is your depiction of,
18 first of all, in the lower right corner, you
19 see where the route goes, and red is the
20 overhead, and then there's a very small, 3,700
21 feet, of underground in the dotted line. Do
22 you see that?

23 A Yes. This is our map.

24 Q Okay. And, in your report, we don't have to

[WITNESS: O'Donnell]

1 keep flipping back and forth, I'll represent to
2 you, in your report, in your narrative, you
3 describe that the Preservation Company and
4 Ms. Widell identified 11 historic sites that
5 could be potentially impacted within Pittsburg,
6 and they assessed those for effects?

7 A Correct.

8 Q Those were within the 1-mile APE, though. You
9 know that's how they did it. Not townwide?

10 A Yes.

11 Q Now, looking at the map, and the location of
12 the line, it's clear, and if you look at the
13 scale on the bottom, the bottom right, it's
14 clear that many areas of Pittsburg are outside
15 the 1-mile APE that Heritage -- I'm sorry,
16 Preservation Company and Ms. Widell used?

17 A And we show the 10-mile, it's the dash line
18 that's coming midway. If you look on the left
19 edge, it's about midway up.

20 Q Sure. But you would map your resources
21 townwide. So, regardless of whether they're
22 within the 1-mile, whether they're within the
23 10-mile?

24 A Absolutely. The filter is what's available and

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1 what's within the town.

2 Q And your counts on these maps don't take into
3 account any visibility, any viewshed analysis?

4 A They do not.

5 Q So, there are -- some of your counts may show
6 up on these maps with no view of the Project?

7 A That's possible.

8 Q And I will represent to you, from your
9 narrative, of your 13,170, you have 407 counts
10 from Pittsburg, 252 of those are current use
11 properties. And --

12 A And those are shown on the revised Table 2
13 chart.

14 Q Right. But the current use parcels, you don't
15 have any mapping. So, you don't know where
16 those are?

17 A No. But I'm just saying, the Chart 2 that
18 we've been looking at is by --

19 Q Table 2.

20 A -- is by town.

21 Q Right. But I guess my point is, on this map of
22 Pittsburg, where you have the line in the lower
23 left-hand portion of the town, you may have
24 current use parcels, and we know about

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1 60 percent of the town, on average, may be in
2 current use, very far corners of Pittsburg,
3 upper right-hand corner of this map, that are
4 current use, and they're on your tally?

5 A I just wanted to go back a second, Jeremy, --

6 Q Well, I just want to make sure you understand
7 that question, just so we have it.

8 A Yes.

9 Q That's a "yes". All your current use show up?

10 A No. The current use shows up on the tally, but
11 not on the mapping.

12 Q Right. And there may be current use --

13 A Because there is no mapping of current use.

14 Q And there may be current use parcels that are
15 many miles away from the corridor in Pittsburg,
16 but they show up in your tallies?

17 A Your prior question was about "visibility", and
18 supplemental testimony, Sheet 1, I don't know
19 which exhibit number it is, takes the image
20 that you showed on Map 9 and overlays it.

21 Q And I will get to that. I want to ask you
22 about those.

23 A But you were making a point about things may or
24 may not be visible. I'm just saying there's a

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1 graphic that indicates.

2 Q I understand. But we can agree, and so the
3 Committee has it, all of your numbers that show
4 up on your Table 2 have no filter for
5 visibility?

6 A No.

7 Q Okay. All right. Let me just ask you about
8 one more of these maps that you provided. And
9 it is, when you go through each town, let's go
10 to Franconia.

11 MR. WALKER: Dawn, if you could pull
12 that up please.

13 WITNESS O'DONNELL: It's an
14 underground town.

15 MR. WALKER: Right.

16 MS. GAGNON: The map?

17 MR. WALKER: Yes. The map please,
18 5725.

19 BY MR. WALKER:

20 Q So, you're right. This is underground. It's
21 5 miles, about 5 miles of underground along
22 public roads. And Ms. Widell and the
23 Preservation Company identified no historic
24 sites, aboveground historic sites that would be

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1 visually impacted in that town, because it's
2 underground. Yours, though, were townwide.
3 Your counts were townwide. You have 220
4 historic sites within the town, because they're
5 parcel -- because they're current use only.
6 So, you have 220, because they're current use.
7 You have 65 other counts of your different
8 categories. And many, you would agree with me,
9 based on the scale, many of your counts are
10 outside the 1-mile APE that's used even for
11 overhead lines, right? I mean, if you took a
12 townwide survey of all the current use parcels?

13 A Correct.

14 Q So, help me understand. How is it that a
15 current use parcel, how is that possibly, and
16 you've designated it as a historic site in this
17 town, how would a current use in Franconia,
18 where the line goes underground, and in some
19 cases many miles away, how would that be
20 impacted by --

21 A It would not.

22 Q It would not be impacted, and it certainly
23 wouldn't be adversely affected, right?

24 A Our methodology was to show the towns in a

[WITNESS: O'Donnell]

1 consistent manner along the entire corridor.

2 We recognize that eight of those towns have
3 underground portions.

4 Q But, when you look at your Table 2 and the
5 13,170, and all the current use parcels that
6 are in the towns where it's underground, those
7 should be removed. Because, like you just
8 said, can't see how they could be impacted. Is
9 that fair?

10 A I don't agree. It's the methodology that we
11 applied, and we applied consistently. We
12 described the methodology. It was to indicate
13 that there were resource categories, entire
14 categories of resources that had not been
15 considered. And we mapped those consistently
16 as examples. Not to say that those were
17 impacted by the Project, but to indicate the
18 wealth of resources that is present.

19 Q Present, even if there's no chance of them
20 being impacted?

21 A Present.

22 Q All right. Let's turn to -- you just
23 referenced that, in your supplemental
24 testimony, you provided three new exhibits

[WITNESS: O'Donnell]

1 where there -- you overlay the sites that
2 you've identified within the 10-mile APE with
3 the bare-earth viewshed. Is that fair --

4 A Correct.

5 Q -- characterize those three?

6 A Correct. So, we use the town-by-town and
7 10-mile corridor mapping.

8 Q Right.

9 A And symbols that we used at the town level, and
10 provided three maps, the north section, the
11 underground section, and the south.

12 Q Thank you. That's helpful. So, let me --

13 MR. WALKER: Dawn, if you could pull
14 up 5757.

15 BY MR. WALKER:

16 Q This is your Sheet 2, which is the Central
17 Underground portion of the route. Is that
18 right?

19 A Correct.

20 Q And, so, for the Committee's benefit, I
21 understand that the pink shading in this
22 diagram is where the Project could be in view
23 based on a bare-earth model?

24 A There's one little caveat that the mapping

[WITNESS: O'Donnell]

1 explanation indicates. When we showed the pink
2 over the top of the green, it screened the
3 conservation lands. So, we put the pink layer
4 under the green layer.

5 Q Okay. But it still shows up as pink over the
6 green?

7 A Sort of.

8 Q It's just more of a mauve color or something,
9 right?

10 A Right. Right.

11 Q So, looking at this --

12 A What this one indicates is the visibility of
13 the north and south end of the underground.

14 Q And there are still some areas, even though
15 it's underground, in the north and south, that
16 are within a bare-earth viewshed, because
17 there's a view of the overhead line outside of
18 that. Is that what you're saying?

19 A There would be -- there's a potential view
20 using a bare-earth model. I think that's the
21 way I would say it. And the reason we mapped
22 it was to show the density of the little yellow
23 triangles and dots and conservation lands, all
24 the other categories, together with the

[WITNESS: O'Donnell]

1 viewshed model. So that this viewshed model,
2 bare-earth, against the mapping of the
3 resources, is some something that the Applicant
4 has not created, because they didn't use the
5 bare-earth.

6 Q Right. And, in this, so I can understand,
7 where you have the yellow markers, which
8 identify the different historic sites, --

9 A Yes. Yellow, green, blue, all these colors on
10 the left.

11 Q Okay. Sure. But the yellow individual dots?

12 A Correct.

13 Q And I know we don't have current use on there,
14 because there's no mapping.

15 A Correct.

16 Q But you would agree with me that, particularly
17 in the middle of this section, the middle of
18 this diagram, there are a number of yellow dots
19 and triangles that represent historic sites
20 that are not even within a bare view -- or,
21 bare-earth viewshed of the Project?

22 A Correct.

23 Q They still show up and they still show up in
24 your tallies? Those weren't removed?

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1 A Yes. But the issue here, Jeremy, is that the
2 map doesn't only show visibility. It also
3 shows the density of resources. So, for
4 example, along the underground section, there
5 are a lot of these purple pentagrams, and those
6 are community-valued resources, and they're
7 layering right on top of the corridor.

8 Q Okay. And that's helpful.

9 A Yes.

10 Q But, I mean, I guess my point is --

11 A So, these are summary maps. They're not trying
12 to show one thing. They're glomerations.

13 Q Right. But, again, we talked about, with
14 current use, you have a lot of conserved land
15 here in the area of the underground --

16 A There's no current use shown.

17 Q I understand. But you have here, in green,
18 "conserved public land", and there's quite a
19 bit of it shown on this, that make up your
20 counts, that even on your viewshed, your
21 bare-earth viewshed, it is not -- it's not in
22 view of the Project. And I think, like current
23 use, you would say "it can't be impacted",
24 right?

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[WITNESS: O'Donnell]

1 A I think the issue here is the -- as you know,
2 the underground portion is the nearest
3 resources.

4 Q I know. But, Ms. O'Donnell, I'm just making
5 that same point. You've included this on here,
6 it's not even in the bare-earth viewshed, --

7 A Because it's underground. Got it.

8 Q Right.

9 A I've already said "yes".

10 Q And it's not impacted, but -- okay. And you've
11 included it on this map?

12 A Yes.

13 Q And you've included it in your tally?

14 A Well, this map doesn't actually relate to the
15 tally. The town summaries are what relates to
16 the tally.

17 Q But all those --

18 A This map goes beyond the -- I just want to be
19 clear. This map goes beyond the host town
20 corridor.

21 Q But everything that shows up on this map as a
22 yellow dot --

23 A No, because some of them are outside of the
24 host towns.

[WITNESS: O'Donnell]

1 Q Okay. Fair enough.

2 A Just trying to be clear.

3 Q So, when -- let's talk about your --

4 A We mapped the 10-mile corridor, and then we
5 showed -- we portrayed the maps in GIS at the
6 town level as well.

7 Q All right. Let me -- let's turn to your use of
8 a 10-mile APE, because we've talked a lot about
9 this, and we've talked about your diagrams and
10 the 10-mile APE. And this is a -- as we talked
11 about earlier, your second -- one of your
12 fundamental criticisms of Ms. Widell's approach
13 is that she used, and I think you called it "a
14 more narrow APE than what is required in the
15 SEC rules"?

16 A Correct.

17 Q And your position is that the SEC rule
18 requires, when you're analyzing and assessing
19 impacts on historic sites, a 10-mile APE, is
20 that right?

21 A We used SEC Rule 301.05(b)(1), which states
22 requires the Applicant to identify all areas
23 where the project would be visible, "based on
24 both bare ground conditions using topographic

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1 screening only and with consideration of
2 screening by vegetation or by other factors".

3 Q And that's the basis for using your 10-mile
4 APE?

5 A It's the basis for looking -- our basis for
6 using the 10-mile APE was our review of the
7 topography of the corridor.

8 Q Okay.

9 A Understanding the form of ground, and that much
10 of this corridor aligns through valley and low
11 hillsides within a valley and mountainous
12 environment. There are, in many places along
13 the corridor, panoramic views of some
14 dimension, 360 degrees, 180 degrees.

15 Q But let me ask you to look at --

16 A So, our judgment of using the 10-mile was based
17 on the landforms that we observed.

18 Q And I know you haven't reviewed prior
19 application of the rules by the SEC. You
20 haven't reviewed prior dockets. Would it
21 surprise you that in no case utilizing these
22 rules has there been a 10-mile APE for a
23 transmission corridor?

24 A It wouldn't surprise me. But I'm not aware of

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1 it.

2 Q Let me ask you to look at the SEC Rule 301.06,
3 which is the "Effects on Historic Sites". And
4 I know you're aware of this. In subsection --

5 A Yes. We cited it in our -- I think Chapter 5.

6 Q Right. Subsection (b) discusses the
7 "Identification of all historic sites and areas
8 of potential archeological sensitivity located
9 within the area of potential effects, as
10 defined in 36 C.F.R. 800". And, in turn, the
11 area of potential effect is determined by the
12 DOE, in consultation with the State Historic
13 Preservation Officer for the 106 process.

14 Would you agree with that?

15 A You're excerpting from the rule. And I think
16 you're focusing on the 106 and the relationship
17 between the DOE and the SEC undertakings.

18 Q Right. But you would agree, that's how it
19 works under the 106 process?

20 A That's what the -- the excerpts lead to that
21 conclusion.

22 Q And, in this case, the DOE, in consultation
23 with the DHR, determined that, pursuant to that
24 regulation, the federal regulation, the APE for

[WITNESS: O'Donnell]

1 this Project would be a corridor 1 mile on
2 either side of the Project?

3 A For the Section 106 DOE process, 1 mile was
4 clearly articulated.

5 Q And that's something that the New Hampshire DHR
6 concurred with?

7 A For the 106.

8 Q Do you think they got it wrong when they came
9 up with the 1-mile APE?

10 A I think the SEC rules guide in a slightly
11 different direction.

12 Q Despite what we looked at earlier with the
13 Policy Memorandum and equating it to the 106
14 process?

15 A My opinion is that the SEC rules guide in a
16 slightly different direction. In that a
17 corridor, where I think it specifically states
18 the "size and intensity of the corridor
19 increases", I should get the citation.

20 Q Well, let me help you.

21 MR. WALKER: Dawn, if you could pull
22 up, in your report, on Page 8 of your report --

23 WITNESS O'DONNELL:

24 **BY THE WITNESS:**

{SEC 2015-06}[Day 54/Morning Session ONLY]{11-02-17}

[WITNESS: O'Donnell]

1 A Let me just suggest it's Site 301.05, under
2 "Effects on Aesthetics".

3 Q Right. And that's what I was going to. So, in
4 your report, on Page 8, it's --

5 MR. WALKER: Well, if you can't find
6 it, Dawn, I --

7 BY MR. WALKER:

8 Q -- about two-thirds of the way down, it's in
9 the last sentence of the paragraph. It says
10 "the SEC rules require a 10-mile APE" -- I'm
11 sorry -- "10-mile APE for undertakings of this
12 size to account for impacts to scenic
13 resources not the 1 mile to each side applied
14 by the Applicant". And you cite to "301.05
15 4d.2", which I think is what you were just
16 describing, right?

17 A Correct.

18 MR. WALKER: Can we go to that, Dawn,
19 Site 301, please?

20 WITNESS O'DONNELL: It's 301.05.

21 It's under the heading "Effects" --

22 MR. WALKER: Right.

23 WITNESS O'DONNELL: -- "Effects on
24 Aesthetics".

[WITNESS: O'Donnell]

1 MR. WALKER: Agree.

2 WITNESS O'DONNELL: And 4.2. And
3 it's about the selection of the area of
4 potential effect.

5 BY MR. WALKER:

6 Q Well, wait a minute. I want to ask you about
7 that, and we've lost it here on the screen.
8 You say it's a 10-mile -- it requires a 10-mile
9 APE for aesthetics?

10 A Yes. Our opinion --

11 Q So, let me just finish. I want to make sure --

12 A Go right ahead.

13 Q It actually refers, in that section -- let me
14 see where that is. It talks about an area, and
15 I'm sorry, it's in (b) (5) --

16 A We were looking at (b) (4).2.

17 Q Yes. I'm looking at --

18 A (b) (4)d.2.

19 Q I'm looking at 301.05(b) (5). It says "An
20 identification of all scenic resources within
21 the area of potential visual impact", because
22 you've been using the term "APE", which is a
23 defined term for historic sites. There is also
24 a separate defined term of "area of potential

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[WITNESS: O'Donnell]

1 visual impact".

2 A Correct.

3 Q You agree they're different?

4 A They're different.

5 Q And again, I realize that you didn't review
6 prior SEC deliberations. But I want to review
7 with you some of the comments that were made by
8 Elizabeth Muzzey during --

9 A Excuse me, Jeremy. I'm a little befuddled.
10 Because you started this with the 10-mile APE,
11 now you're off in another direction. And I'm
12 not following, --

13 Q Yes. No, no, no. This is why --

14 A I'm not following. So, --

15 Q All right.

16 A Could you be clear.

17 Q You've referred to a 10-mile APE as required by
18 the rules. I've just shown you the rule that
19 you cited talks about an "area of potential
20 visual impact" used for aesthetics. The point
21 I'm making is, the rules define an "APE" as set
22 forth for historic sites, "APE", "area of
23 potential effect". You're using "APE", and you
24 cite to a regulation that talks about "area of

[WITNESS: O'Donnell]

1 potential visual impact". And I'm asking --
2 and that's a different -- that's a different
3 term. "APE" and "area of potential visual
4 impact" is different. That's the point I'm
5 making. Would you agree with me?

6 A I think, while they may vary, they are not
7 completely separate.

8 Q Okay. By their definition, though, and this is
9 what I'm getting to. I want to ask you about a
10 prior deliberation. Because you're critical of
11 Ms. Widell for not using the 10 miles that's
12 defined as area of potential visual impact for
13 aesthetics. And you're equating it with the
14 APE that you used for historic sites. And I'm
15 going to ask you to look at the deliberations,
16 the rulemaking deliberations regarding these
17 SEC rules.

18 MR. WALKER: And, Dawn, if you could
19 pull up Exhibit 372.

20 BY MR. WALKER:

21 Q Which are, I'll represent to you, the
22 rulemaking deliberations. And I'm going to
23 show you some testimony by Elizabeth Muzzey
24 during the deliberations. Do you know who

[WITNESS: O'Donnell]

1 Elizabeth Muzzey is?

2 A No.

3 Q Elizabeth Muzzey is the Director of the
4 Division of Human Resources. So, she is our
5 State SHPO. I take it that you would agree
6 with me that her interpretation of what these
7 rules mean would inform your opinion?

8 CHAIRMAN HONIGBERG: Just before you
9 go there.

10 MR. WALKER: Sure.

11 CHAIRMAN HONIGBERG: I think you
12 misstated Ms. Muzzey's title. I think you gave
13 her title associated with "Human Resources".

14 MR. WALKER: I'm sorry, Historical
15 Resources. That would be more relevant. Thank
16 you.

17 BY MR. WALKER:

18 Q So, does that make a difference? Do you know
19 who she is?

20 A No. She holds a particular office in the
21 Historic Resources Division.

22 Q She's the State SHPO.

23 A That's right.

24 Q But you would agree with me that her

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[WITNESS: O'Donnell]

1 interpretation could inform your opinion as to
2 what an area of --

3 A It's always useful to know what others have
4 interpreted.

5 Q All right. Well, let's look at hers then. On
6 Page 16 of that transcript, and this is when
7 they're discussing this particular issue. And
8 you can read that. But she's making a point of
9 clarification during the deliberations. And it
10 says "We have an "area of visual potential
11 effect", I believe -- "potential visual
12 effect", and then we have an "area of potential
13 effect". And the phrase that incorporates
14 "visual" is used for aesthetic consideration.
15 And then the shorter "area of potential effect"
16 is used for historical considerations."

17 She's making a distinction between those
18 two, correct?

19 A I have read the text. And I think it has some
20 merit. But I don't necessarily agree with it.

21 Q Okay. Fair enough. You disagree with Director
22 Muzzey's position on that distinction. That's
23 fair.

24 A I don't think they're making a fine point.

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[WITNESS: O'Donnell]

1 They're just saying they added "visual". I
2 think one of the issues in this particular work
3 on this Project is that many of the historic
4 resources have a potential visual effect. And
5 the term "visual" is used throughout the
6 Preservation Company and Widell, the
7 Preservation Company report and Widell's
8 testimony.

9 So that the process that you've just gone
10 through to strike the word "visual" from the
11 area of potential effect is not fully relevant
12 to this case, because your -- the Applicants'
13 experts are using the term "visual" throughout.

14 Q I'm trying to understand why you use the "area
15 of potential visual impact" --

16 A In part, by reading the Widell and Preservation
17 Company work, and having their constant use of
18 "visual" in their record of how they looked at
19 the sites.

20 Q I think it's fair to say that you and Ms.
21 Widell agree -- or, disagree on the
22 interpretation of what's required under the
23 rules?

24 A Correct.

[WITNESS: O'Donnell]

1 MR. WALKER: Mr. Chairman, I probably
2 have another half hour to 45 minutes. Should
3 we break?

4 CHAIRMAN HONIGBERG: Okay. Why don't
5 we take our lunch break. And we'll resume at
6 1:30.

7 (Lunch recess taken at 12:29
8 p.m. and concludes **Day 54**
9 **Morning Session.** The hearing
10 continues under separate cover
11 in the transcript noted as
12 **Day 54 Afternoon Session ONLY.**)
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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)

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