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5	(resumed)	BETH FENSTERMACHER	
6		GAIL MATSON	
7		JAN McCLURE	
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P R O C E E D I N G

(Hearing resumed at 1:00 p.m.)

CHAIRMAN HONIGBERG: Mr. Aslin,
whenever you're ready.

MR. ASLIN: Thank you, Mr. Chairman.

BY MR. ASLIN:

Q Let's turn, I think, to Councilors Matson and
Bouchard for a few minutes. Good afternoon.

A (Bouchard) Good afternoon.

A (Matson) Good afternoon.

Q I understand from your testimony that the City
Council's official position in this case is
that they oppose the Project as it's currently
proposed. Is that accurate?

A (Bouchard) Correct.

A (Matson) Yes, it is.

Q And there was a vote in 2015, October 13 of
2015, to that effect?

A (Matson) Yes, there was.

CHAIRMAN HONIGBERG: Off the record
for a minute.

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

CHAIRMAN HONIGBERG: Now, Mr. Aslin,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 you may continue.

2 MR. ASLIN: Thank you.

3 BY MR. ASLIN:

4 Q So, there was a vote in 2015. Have there been
5 any subsequent votes or any changes to the
6 position of the City Council?

7 A (Matson) There has not.

8 Q Okay. And is it accurate to say that the City
9 Council's position is that burial is the
10 preferred proposal for the Project?

11 A (Matson) Yes.

12 Q If burial were to be adopted by the Applicant,
13 does the City have a proposal as to where the
14 Project should be buried?

15 A (Matson) The burial of the lines was based upon
16 their current proposal. But, during testimony
17 for the Subcommittee, which I was Chair, we had
18 asked about alternate routes altogether. 93
19 was brought up, along with other state roads,
20 but there was never any real answer relative to
21 why they couldn't utilize those roadways versus
22 coming down through the property lines -- the
23 properties, individual and/or commercial.

24 Q Okay.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 A (Bouchard) And to follow up on that, the
2 Committee did ask for the lines to be buried.
3 We did ask what that cost would be to the
4 Applicant, and we never received an answer back
5 to them, because we did -- the numbers that
6 they were given from up north, we weren't sure
7 that would apply down here, where we're mostly
8 sand.

9 So, we did ask for those numbers and what
10 it would cost to bury the lines through the 8.1
11 miles through Concord, and we have yet to
12 receive an answer.

13 Q Would it be fair to say that the City hasn't
14 come to any proposal as to a burial route,
15 because that wasn't something the Applicant was
16 interested in discussing?

17 A (Matson) That would be fair.

18 Q Okay. In your testimony, your testimony on
19 Page 6, you discuss a concern about the way
20 that the valuation of tax revenue would be
21 calculated for the Project, and a distinction
22 between the net book value methodology that's
23 been proposed by the Applicant and what the
24 Town -- or, the City would normally use, which

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 I take it is a replacement cost new/less
2 depreciation methodology. As far as I
3 understand it, the difference is really on how
4 the costs or the value of the Project is spread
5 out over time and how it depreciates. Is that
6 relatively accurate?

7 A (Matson) Yes.

8 Q Does the valuation methodology make a big
9 difference to the City?

10 A (Matson) Relative to whether we want the
11 Project at all, buried? I don't understand the
12 question. Sorry.

13 Q That's all right. You've raised this as a
14 concern that there's a difference in
15 methodology approach. But I'm trying to get an
16 understanding of what the City's -- how it
17 would impact the City, in terms of an economic
18 analysis?

19 A (Bouchard) I believe that information in our
20 testimony came from our City Assessor, Kathy
21 Temchack. And she prefers using the
22 replacement cost new/less depreciation method.
23 I believe she believes that's a fairer way to
24 assess the property. And her concern that's

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 reflected in our testimony is that the

2 Applicant has litigated other communities that
3 aren't using the net book. So, I think that
4 was the concern by our City Assessor.

5 Q Okay. So, if I understand that, the way that
6 the City would assess differs from how the
7 Applicant would propose to assess, and you
8 consider that to be a potential conflict going
9 forward?

10 A (Bouchard) I believe that is the case.

11 A (Matson) Yes.

12 Q There is also a statement in your testimony
13 that, and it's on Lines 11 through 13, that
14 discusses the concept that -- well, I'll just
15 read it, because it's easier than trying to
16 paraphrase it.

17 Starting on Line 8, the testimony
18 discusses "tax payments generated by Northern
19 Pass", and that they "could actually increase,
20 despite the declining project value, based on
21 an assumption that the annual increases to the
22 local tax rates would outpace the percentage of
23 depreciation."

24 And it goes on to say that "While this

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 could occur, it is also important to note that
2 in a period of significant overall community
3 tax base growth, the tax rate might not outpace
4 the depreciation, and Northern Pass would
5 garner a benefit that other property owners in
6 Concord would not enjoy."

7 And I was having trouble understanding
8 what you meant by that, in terms of what
9 "benefit" Northern Pass might obtain that
10 wouldn't apply to other property owners, if the
11 tax rate is not outpacing the depreciation?

12 A (Bouchard) Can you repeat your question please?

13 Q Sure. I'm trying to understand the point
14 that's being addressed here, which the
15 statement is that "Northern Pass would garner a
16 benefit that other property owners in Concord
17 would not enjoy." And it wasn't clear to me
18 what benefit you were referring to?

19 A (Bouchard) I think the City Assessor was
20 referring to the rate that the -- the utility
21 on depreciation. That that might be different
22 than what it would be on the rest of the
23 property in Concord.

24 Q Okay. So that the Project would get a benefit

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 in relation -- in the way that its valuation
2 had changed in relation to other properties
3 with the increasing tax rate?

4 A (Matson) I believe that's correct.

5 Q Okay. Now, you're both or have been on the
6 City's Northern Pass Committee. And that's a
7 committee of the City Council, is that correct?

8 A (Matson) It's a subcommittee of the City
9 Council, yes.

10 Q Is that subcommittee ongoing or did it have a
11 discrete task?

12 A (Matson) We have not concluded at this
13 particular point in time. We stopped the
14 meetings once we went with the recommendation,
15 but we also didn't have, since there was no
16 further movement at that point with the SEC
17 decisions or Northern Pass, we're letting it
18 sit for the moment until we need to continue.

19 Q Okay. And do I understand correctly then that,
20 after the vote in 2015 -- in the latter part of
21 2015, the committee has more or less been
22 inactive?

23 A (Matson) Correct.

24 Q And in your testimony, you referenced the fact

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1 that the Applicant participated with that
2 committee during the review period?

3 A (Matson) They did.

4 Q Has the City continued to have interactions
5 with the Applicant to discuss issues of concern
6 and potentially negotiating issues going
7 forward?

8 A (Matson) Not that we're aware of.

9 A (Bouchard) The committee hasn't.

10 Q Okay. The committee hasn't, and I see others
11 shaking their heads. So, the Planning
12 Department has not either, or the Conservation
13 Commission?

14 A (McClure) No.

15 Q Okay. Thank you. For the record, I see lots
16 of shaking in the negative.

17 So, would it be accurate then to say that
18 it's been about two years since communications
19 ceased between the City and the Applicant, in
20 terms of negotiating issues that may be of
21 concern?

22 A (Bouchard) I can -- we haven't done anything as
23 a committee.

24 A (Matson) Right.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. Other than the sort of big picture
2 burial, did the Committee get into questions of
3 more specific issues, maybe buffers or other
4 mitigation that might be of interest to the
5 City if the Project moved forward?

6 A (Matson) We discussed the heights of some of
7 the poles, changes between mono line and I
8 forget the other, H -- there's sort of an H
9 cross --

10 Q H-frame.

11 A (Matson) -- H-frame, and buffers as well. We
12 asked about those, and on particular, you know,
13 locations where in some instances the houses
14 were in very close proximity to where the lines
15 would be coming through. So, there would be
16 special interest with respect to buffers at
17 that particular point.

18 Q But there hasn't been any ongoing kind of
19 discussion about particular mitigation that
20 might be addressed?

21 A (Matson) We, as the subcommittee, has not had
22 anything further from Eversource regarding any
23 specific placement or changes.

24 Q Now, you also had some testimony about the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Project's impact on the rural character of
2 Concord. And -- well, I'll ask first. Are you
3 aware of Mr. Varney, the Applicants' consultant
4 who testified about orderly development of the
5 region and land use?

6 A (Matson) I reviewed his testimony, yes.

7 Q Okay. In his testimony, and here before the
8 Committee, he emphasized that, because there's
9 an existing right-of-way, an existing use of a
10 utility use, that there would be no change in
11 land use and, therefore, no impact on the land
12 use issues. And you seem to be making a
13 contrary point in your testimony.

14 But do you -- do you agree that where
15 there is an existing right-of-way and an
16 existing utility use, that there's not going to
17 be a change in use with the proposed Project?

18 A (Matson) I would disagree with that.

19 Q Okay.

20 A (Matson) You've talked about "existing lines",
21 I believe that the Hydro-Quebec Phase I and II
22 is an option for them to connect as well for an
23 alternate use that would not create the utility
24 corridor that they're currently proposing, and

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the amount of, you know, the construction and
2 disruption to the city, as well as the
3 long-term effects, you know, for the heights of
4 the poles visually.

5 When we talk about "orderly development",
6 I had a couple things. But, by our population,
7 we are the most visually affected on the entire
8 route. The rehab -- we are looking to rehab
9 the areas of the Gateway Performance District,
10 and talking about community aesthetics in the
11 Master Plan for an attractive and -- and also
12 for economic impact. And we feel that those
13 would be negatively impacted by the current
14 proposed -- the aerial proposal.

15 A (Bouchard) And even though it's the -- it's the
16 utility, Northern Pass is coming down through
17 an existing corridor, what this Project does is
18 it expands their footprint by width, taking
19 away buffers that protect homes and businesses
20 and the height of the poles. And, so, it's
21 actually going to create a visual blight for
22 people in their backyards now that might --
23 their yards might buffer the current
24 right-of-way, but the extent of the Northern

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1 Pass route will be much greater, due to not
2 only the heights of the poles, but the trees
3 and the vegetation that will be removed. So,
4 it's going to be -- visually it will be very
5 obtrusive, and especially in the Gateway area.
6 And the Gateway Area is just not a big business
7 area for the City of Concord, it's a very
8 diverse area. The Gateway also is buffered by
9 several neighborhoods, numerous neighborhoods,
10 whether it's condominiums, single-family homes
11 or apartments. And the City has worked really
12 hard to keep it a very healthy environment,
13 both for the business and for the homes.

14 And something as obtrusive as -- and the
15 visual blight of this Northern Pass crossing
16 Loudon Road from its height and its width, it
17 will be the first thing people notice, and they
18 won't be noticing the businesses. And it will
19 definitely have a negative impact on those
20 living there and their property values.

21 But for the homes that border Northern
22 Pass, it will make a huge difference for them
23 than what they have now.

24 I think Alton Woods, right, with the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 pictures we saw earlier today, show the
2 difference from when there was an existing
3 utility following the existing line, and what
4 happens when the H poles and different things
5 come up. You know, for Alton Woods, you no
6 longer notice the playground or the recreation
7 area that was in use, when you see it now, the
8 first thing you notice is "oh, my gosh, this is
9 all power lines."

10 So, it is a -- visually, it's much, much
11 different, and it's different in a negative
12 way.

13 A (McClure) Could we add something?

14 Q Absolutely.

15 A (McClure) The comment that "this Project is
16 consistent with Concord's interest in retaining
17 rural character" is really out of place,
18 because everything that the line represents is
19 completely out of character with what the City
20 has tried to preserve in Concord. Since
21 Concord is a very large city, 65 square miles,
22 we have been very intentional about keeping our
23 developed areas inside the rural -- the urban
24 growth boundary. And this Project is outside

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 the urban growth boundary, and is a scar on the
2 landscape to the rural character of our rural
3 areas that surround the City center.

4 Q And following up -- go ahead.

5 A (Tardiff) Yes. Thank you. If I could add to
6 that. Your initial question talked about or
7 asked about kind of orderly development of the
8 City. And certainly that orderly development
9 has included, for a long time here in the City
10 of Concord, conservation efforts. And as Ms.
11 McClure talked about "outside the urban growth
12 boundary", in this particular area of the City
13 where the Project is proposed, we have
14 undertaken great efforts to increase the amount
15 of conservation land out there. We have done
16 so in a way that is consistent with our Open
17 Space Plan. And certainly one of the goals
18 articulated in that plan, which is part of our
19 Master Plan, is protecting, you know, scenic
20 vistas and the landscape that are really
21 integral to the fabric of this community.

22 A (Matson) I guess I'd like to follow up with one
23 more thing with respect to that, is we have
24 completed multiple projects throughout the City

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 with the burial of our own lines, to further
2 that point of, you know, the attractiveness of
3 our City, the attempt to attract business and
4 people to come and work and live and play. And
5 we've worked very hard on those with Main
6 Street and with Penacook, the downtown Penacook
7 areas, we have buried the lines with that in
8 mind.

9 Q Okay. Thank you. With regard to the open
10 space issue that you were just raising, I
11 understand that the City has taken -- well, has
12 a set of goals to preserve open space and has
13 taken a lot of action for conservation,
14 purchasing easements and/or fee.

15 But it seems to me that there's already an
16 existing corridor there. And, so, I'm
17 interested in why this proposed Project is more
18 inconsistent with those open space goals than
19 the existing line that's already in place?

20 A (McClure) It's just a matter of scale. The
21 existing line is not viewable from many parts
22 of the City. And just backing up a little bit,
23 Concord is kind of unique. We're in the
24 valley. We have land on both sides of our

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 river. And we can see across the river from
2 one ridge on the east side, to the west, and
3 vice versa. So, when we talk about "preserving
4 our rural character", those are the views and
5 the viewsheds and the landscapes that we want
6 to protect. And the current line is not
7 visible from all of the areas that we're
8 talking about on both sides of the river, and
9 also from the City center.

10 While the new line, and the height of
11 those poles, and the extent of the
12 line, 8 miles, 250 acres, is very viewable or
13 would be very viewable, and would be in
14 contrast to what we have now, in stark
15 contrast, and would be a sharp deviation from
16 the kind of rural character and the scenic
17 views that we've been trying to protect for
18 years.

19 Q Okay. Thank you.

20 A (Tardiff) Yes. I would certainly echo those
21 remarks. And, you know, to give you a couple
22 of examples, some of the viewshed studies and
23 mapping that's been presented through others
24 indicates some of these, you know, viewshed

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1 impacts. So, for example, Diamond Hill, which
2 is all the way on our western boundary with
3 Hopkinton, that was a multiyear effort, and
4 actually supported by the people of Hopkinton
5 as well, to preserve that farm up on the hill,
6 and that has views all the way across. The
7 T.J. Boyle maps had that, I think our
8 Chesapeake Conservancy expert report also
9 covered that.

10 Carter Hill is another example, multiyear
11 effort to preserve that farm and that orchard.
12 And again, that's a very important part of the
13 community. And that has views across all the
14 way over to the Oak Hill area that would be
15 impacted by this. So, it's not just the east
16 side of the City where this corridor comes
17 through, but it extends all the way over to the
18 westernmost boundary of the City.

19 A (McClure) And just one more tidbit of
20 information. You may not be aware that we
21 actually have towers to climb on both Oak Hill
22 and Carter Hill, for the purpose of viewing
23 views and our landscape and the City, and
24 beyond.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Q Thank you. In terms of protecting those views,
2 and I did note that your open space section of
3 the Master Plan specifically has a goal of
4 maintaining and enhancing scenic views and
5 natural vistas. With regard to meeting that
6 goal, how does the City address or how does the
7 City implement that with proposed developments?
8 You know, setting aside this Project, but say
9 someone wants to bring in a new building or
10 other development in the town -- or, City?

11 A (Tardiff) Well, I think there's others on the
12 panel here who can probably address it from,
13 you know, kind of construction and large-scale
14 development point of view. But, from the
15 Conservation Commission, and in our Open Space
16 Plan, you know, we've identified areas of
17 importance, in terms of, you know, future
18 efforts. Because our views are definitely long
19 term, in terms of, you know, protecting the
20 landscape.

21 But, for example, on Oak Hill, you know,
22 that's been a long-term focus of our
23 preservation efforts, because that is -- we
24 called it an "iconic vista" or "view", and it

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 really is as you come into the City from a
2 number of different points. And, so, the top
3 of that, of Oak Hill, is preserved. And as
4 additional properties along the slopes of Oak
5 Hill have become available, and we're in
6 communication with landowners, we have actively
7 sought to protect the rest of the land out
8 there in order to preserve that view and that
9 vista from all areas of the City.

10 So, that's one example. If you look
11 through our Open Space Plan, which is an
12 attachment to our testimony, there are other
13 examples of similar hills on both sides, east
14 and west of the City, where those are -- those
15 are our goals, and we are actively attempting
16 to implement those goals.

17 A (Shank) I would add to that, if you would like?

18 Q Sure.

19 A (Shank) So, with regard to open space, the
20 areas predominantly where the line are located
21 is called our "Open Space - Residential", the
22 RO District. And the uses there are generally
23 limited to residential or agricultural-related
24 uses. There are building height restrictions.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 So, you can't go over a certain length. Can't
2 recall specifically, but most likely 35 feet
3 would probably be the maximum.

4 And with regard to views in general, there
5 are other references in our ordinances to the
6 importance of views. And specifically
7 downtown, we have a height restriction in our
8 downtown core where no building can be
9 constructed that would block views of the
10 Capitol building, as viewed from the highway
11 and other various points along the City. So,
12 there has definitely been attention paid in our
13 ordinances to restricting development to
14 preserve certain views, whether it's of the
15 Open Space District or of the Capitol building
16 in downtown Concord.

17 Q Okay. Thank you. And with regard to the
18 Residential Open Space District, the testimony
19 does include reference to the height
20 restrictions and the landscape buffer
21 requirements. I assume that would apply to any
22 new development within that district --

23 A (Shank) Correct.

24 Q -- that's subject to the City's jurisdiction.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Is there a process for a waiver from that? Is
2 it a variance or is it a special exception?

3 A (Shank) For a height restriction, it would be a
4 variance from the Zoning Board.

5 Q Okay. And in terms of landscape buffers, is
6 there a specific requirement for a certain
7 amount of buffer for a new development in that
8 district or is it --

9 A (Shank) There are specific requirements for
10 buffers on residential district boundaries.
11 But our site plan regulations have a general
12 regulation that allows the Planning Board to
13 require as conditions of approval buffers or
14 other vegetation as appropriate for the use or
15 for screening or for whatever purpose,
16 essentially.

17 So, the answer is "yes", there is specific
18 requirements in our zoning regulations with
19 regard to the width of buffers that pertain to
20 uses that are described in our ordinances, as
21 noise, odor, visual blight, or other
22 incompatible land uses with residential
23 districts. And then there's specific language
24 in our site plan regulations that does not have

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1 a specific width of a buffer, but then allows
2 the Planning Board the authority to require
3 certain widths of buffers.

4 Q So, when a project is coming before the
5 Planning Board, those would be considerations
6 and might be conditions of the approval?

7 A (Shank) Correct.

8 Q Okay.

9 A (Shank) I would just add that the conditional
10 use permit, we have a series of criteria and
11 standards that an applicant has to meet. And,
12 so, that the purpose of the conditional use
13 permit is to evaluate the impact that a use
14 might have on the abutting properties or the
15 area. So, in particular, with a conditional
16 use permit, you know, setting conditions
17 relating to those types of impacts is very
18 appropriate and something that we do all the
19 time.

20 Q Thank you. Ms. McClure and Ms. Tardiff, you
21 mentioned in your testimony a parking area on
22 Portsmouth Street for trail access that would
23 be impacted. And I couldn't quite identify it
24 myself on the map. So, I wanted to ask you if

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1 you could point it out. This may take a

2 minute, but --

3 A (McClure) It's close to where 393 is.

4 *[Court reporter interruption.]*

5 BY MR. ASLIN:

6 Q Yes. They're going to pull up a map for you in
7 just a second. I'm presuming that it's in this
8 location, since this is where the Project
9 crosses Portsmouth Street. But it wasn't
10 evident where the parking area was from this
11 map.

12 A (Fenstermacher) I can speak to that. It's
13 right where the construction pad -- the large
14 construction pad closest to 393 on the west
15 side is located.

16 Q Okay. So, on the west side of Portsmouth
17 Street, if you will?

18 A (Fenstermacher) Yes.

19 Q Okay. And is that parking area on City
20 property?

21 A (Fenstermacher) It is not. It is on property
22 owned by Unitil, and we have an easement with
23 Unitil for using it for a trail and agreement
24 with them to use it as parking.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. And are the trails -- I guess, where do
2 the trails lead into? Is that up towards the
3 west or north?

4 A (Fenstermacher) The trails go up to the north,
5 on that -- that narrow strip of land that's
6 sort of adjacent to 393, that's City-owned
7 property, goes up there, heads west, and then
8 continues on to conservation land, the Broken
9 Ground land. There's about five miles of
10 trails out there.

11 Q Okay. So, these are trails that are not within
12 the right-of-way, but on City easements?

13 A (Fenstermacher) There is a portion that goes
14 through the right-of-way. It loops around and
15 comes back to the parking lot through the
16 right-of-way. It crosses through it, and we
17 have a trail easement for that.

18 Q Okay.

19 CHAIRMAN HONIGBERG: Mr. Aslin?

20 MR. ASLIN: Yes.

21 CHAIRMAN HONIGBERG: Can you clarify
22 "west"?

23 MR. ASLIN: Yes.

24 CHAIRMAN HONIGBERG: Because I

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 believe Portsmouth Street is an east/west road.

2 So, if you're west of Portsmouth Street, I know
3 on this map we need to find where north is, but
4 I think we may be talking about a spot north of
5 Portsmouth Street near 393.

6 MR. ASLIN: You are correct.

7 CHAIRMAN HONIGBERG: Would you
8 confirm that with the people over there?

9 MR. ASLIN: I'd be happy to.

10 BY MR. ASLIN:

11 Q So, if you see in the corner the little key to
12 this map has a compass, and it appears that
13 straight up on this map would be, essentially,
14 yes, northeast. And, so, the road isn't really
15 going to the east as it goes up and to the
16 right of the page?

17 A (Fenstermacher) That's correct. I was assuming
18 north was up. So, it would be north of
19 Portsmouth Street --

20 Q Okay.

21 A (Fenstermacher) -- where the parking lot is
22 located. And the trail travels north, and does
23 a loop in the northwesterly to northeasterly
24 direction.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. Thank you.

2 A (Tardiff) And in terms of mapping on those
3 trails, I think Exhibit B is a map of
4 conservation lands. And on that map, the
5 property that's labeled "Whispering Heights",
6 which was the name of an old proposed
7 subdivision that did not go through, is the
8 area where those trails are located that are
9 accessed from that parking lot. We refer to it
10 now as "Broken Ground", because it's part of
11 the Broken Ground area of Concord, but it's
12 "Whispering Heights" on that map.

13 Q Okay. Thank you. You mentioned that this is a
14 Unitil property, and you have an easement for
15 the parking area and for access. Have you had
16 discussions with either Unitil or the Applicant
17 about impacts to that access point or
18 interference with your easement?

19 A (Fenstermacher) We had, excuse me, on a recent
20 project for the construction of the substation,
21 we had conversations with Unitil. They did
22 disrupt that parking area during construction
23 and the expansion of the lines for that
24 project. But part of the agreement was that

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 they would restore the parking lot, which they
2 have. And we've placed a trail kiosk there and
3 signage.

4 So, we've only had discussions with
5 Unitil, as far as any impacts to the trail
6 system and the parking lot in that location.

7 Q And was the access blocked for a period of time
8 when that project was constructed?

9 A (Fenstermacher) Yes, it was.

10 Q Okay. So, what's on the screen now is a page
11 out of the Open Space Plan that was attached to
12 Joint Muni Exhibit 135. And I wanted to take a
13 look at the wetlands policies here. And there
14 are three bullets under "Wetlands", under the
15 "Land Use Regulatory Policy" section. And do I
16 understand correctly this is part of the --
17 this is the Open Space Plan, which is a subset
18 of the Master Plan?

19 A (Tardiff) That the correct.

20 Q So, these would be goals of the City, and not
21 specific regulations?

22 A (Tardiff) Yes. These are overall goals. So,
23 for matters that come before the Conservation
24 Commission, we use the Open Space Plan as a

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 guide for our decision-making.

2 Q Okay. And in the first bullet here is that
3 "the City will strive for no net loss of
4 functional value of wetlands in the City and to
5 seek mitigation for unavoidable impacts." Does
6 the City have specific requirements for
7 mitigation of wetlands impacts that are
8 separate from the state requirements that DES
9 would impose?

10 A (Shank) We have requirements for wetland buffer
11 impacts. So, we allow the -- the state
12 regulates wetlands and wetlands impacts and
13 requests certain mitigation. We regulate the
14 buffers.

15 Q Okay.

16 A (Shank) And we do have regulations for how
17 much can -- what it can be disturbed for. We
18 have conditional use permits that allow -- that
19 you need to apply for to disturb the buffer for
20 pretty much any reason. And we do have
21 requirements for revegetation.

22 A (Tardiff) And, in terms of projects that come
23 before the Conservation Commission, oftentimes
24 for comment on wetlands impacts, what our role

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 is, in terms of reviewing a proposal, is to
2 look at those impacts. And we have a dialogue
3 with the landowner about those impacts and what
4 can be done to, again, avoid those impacts
5 where possible, but certainly to minimize them.

6 A (Fenstermacher) May I add one thing?

7 Q Yes.

8 A (Fenstermacher) We have, in the past, on other
9 projects where impacts to buffers are going to
10 be permanent, and they're large scale, that we
11 did come to an agreement with the property
12 owner to conserve a large portion of wetlands
13 off-site as mitigation.

14 So, it's similar to what the state
15 requires for wetlands. We did the same thing
16 for wetland buffers.

17 Q And I would presume that those mitigations
18 would be within the City limits?

19 A (Fenstermacher) Correct. It was adjacent to
20 the property.

21 Q Okay. In the context of this Project, where
22 the SEC is going to grant or deny a permit, and
23 DES has made its recommendations for a permit
24 on the wetlands impacts, is there any -- is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 there any coverage for the kinds of wetland
2 buffer impacts that the City would normally
3 seek mitigation for? Are you aware of any in
4 this process?

5 A (McClure) What do you mean by "coverage"?

6 Q In other words, hypothetically assume that the
7 Project is approved, and they have received a
8 Wetlands Permit through the SEC process and
9 they're going to mitigate those wetlands
10 impacts. Is there anything within the DES
11 process that would provide mitigation for the
12 wetland buffer impacts that the City would
13 normally impose on a project, if you know?

14 A (McClure) Not that we're aware of.

15 Q Okay.

16 A (McClure) So, you're referring to payment into
17 the ARM Fund, if the Project were to move
18 forward?

19 Q Well, as I understand, the ARM Fund would cover
20 impacts to wetlands themselves, but not to
21 wetland buffers.

22 A (McClure) Right. But payment into the ARM Fund
23 doesn't necessarily mean that Concord would
24 benefit.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Correct. Yes. And you've raised that concern
2 in your testimony as well, that the ARM Fund
3 can direct money anywhere in the state, not
4 necessarily to adjacent areas.

5 A (Shank) As far as I know, there's no
6 requirement for mitigation of the buffers
7 through DES when there's wetlands impacts,
8 which is why we have the ordinance for it. I'm
9 unaware if there are situations where, due to
10 the impact, DES might require some type of
11 additional, you know, revegetation that happens
12 to be in the buffer. But I'm not aware of any
13 specific requirement DES has pertaining to the
14 buffers.

15 Q Has the City had any discussions with the
16 Applicant about what wetland buffer impacts
17 will happen from this Project as proposed?

18 A (Shank) Yes.

19 A (Fenstermacher) Yes. Normandeau came -- yes,
20 Normandeau, the Applicants' environmental
21 consultant, came to the Conservation Commission
22 and provided an overview of the proposed
23 temporary and permanent impacts that would
24 occur within Concord.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 And I don't know if Rick may want to say
2 something.

3 A (Van de Poll) I haven't -- excuse me. I
4 haven't read anything relative to the buffers,
5 *per se*, the approach with the impacts for --
6 direct impacts to wetlands.

7 A (Tardiff) Yes. I think in our testimony we had
8 some discussion of both permanent impacts and
9 then temporary impacts, and certainly the
10 acreage was greater for temporary. But I don't
11 know that those temporary figures included a
12 numerical indicator of buffer impacts. That's
13 what I'm not sure about.

14 Q Okay.

15 A (Shank) As far as I'm aware, I don't believe
16 there's any discussion about "mitigation". Was
17 there a discussion about mitigation of
18 temporary impacts and what they were going to
19 do?

20 A (Fenstermacher) No. I don't think so.

21 A (Shank) I don't think so.

22 A (Fenstermacher) No, there was not.

23 A (Tardiff) It was as the result of reviewing
24 their information that they gave to us that we

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 realized we needed to hire our own wetlands
2 scientist to evaluate the impacts.

3 Q So, it sounds like to me that the consensus is
4 that there has not been specific discussion
5 about impacts to wetland buffers within the
6 City or any offer of mitigation of those
7 impacts, outside of the DES process, which
8 covers direct wetland impacts?

9 A (Fenstermacher) Correct.

10 A (Tardiff) I think that's correct.

11 Q You had, Ms. McClure and Ms. Tardiff, in your
12 testimony, you raised some concerns about the
13 impacts to Karner blue habitat and/or the
14 butterflies themselves. Have you had a chance
15 to review the changes that have been proposed
16 by the Project with regard to those?

17 A (McClure) Yes, I have.

18 Q Based on those changes, have they alleviated
19 some of your concerns about impacts to the
20 Karner blue?

21 A (McClure) I think they have changed the level
22 of impact there. But I observed that there's,
23 in spite of the new area that's been provided
24 for mitigation, there is no guarantee that the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Karner blue will colonize that area. And in
2 addition, the number of other species of rare
3 moths have not been examined, and are likely to
4 occur in a lot of the impacted area.

5 Q Okay. So, maybe your concerns are somewhat
6 smaller, but you still have some concerns?

7 A (Tardiff) That's correct.

8 Q Okay. Thank you.

9 A (Van de Poll) May I add a little bit to that?

10 Q Certainly.

11 A (Van de Poll) Mike Amaral, in his prefiled
12 testimony, this is -- excuse me -- SEC Docket
13 Number 2015-06, stated that "The habitat of the
14 RTE insects has been identified, however
15 surveys have not been conducted to determine
16 population numbers within the Project area.
17 The native -- The native duration and extent of
18 the Project's direct impacts on these
19 individual species have not been determined.
20 No obvious avoidance and minimization measures
21 have been undertaken or committed to by NPT.
22 Failing to provide species specific
23 information, the Persius duskywing skipper, the
24 pine pinion moth, and the frosted elfin, NPT

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[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 has not demonstrated that the proposed
2 mitigation measures for the Karner blue
3 butterfly will be effective."

4 And I might just also cite in my
5 supplemental testimony, and that was Muni 142,
6 that I provided a list of other rare
7 Lepidoptera that have not been studied or
8 accounted for in their mitigation proposal for
9 the Karner blue.

10 Q Okay.

11 A (Tardiff) And if I could add just one more
12 thing. We already spoke about the fact that
13 the proposed mitigation site, it is a disturbed
14 site already. It's not an existing habitat, so
15 that would have to be restored. That may not
16 be effective.

17 But you're also, by having impacts on what
18 is existing habitat, and not a tremendous
19 amount of habitat, impacting that, and then
20 trying to create habitat on another site. I
21 mean, we're effectively creating fragmented
22 habitat for the Karner blue and these other
23 species that are dependent upon the pine
24 barrens. And that's actually contrary to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 what's in our Open Space chapter of the Master
2 Plan, which is, you know, we're trying to
3 preserve unfragmented habitat within the
4 community. So, this proposal -- the mitigation
5 proposal certainly does not do that.

6 Q Okay. Thank you. I believe, in both Ms.
7 McClure and Ms. Tardiff's testimony and Dr. Van
8 de Poll's testimony, you've made an assertion
9 that some or much of the alleged temporary
10 impacts to wetlands will actually be permanent
11 impacts. And I wanted to explore that a little
12 bit.

13 Is it -- I didn't understand your
14 testimony to be that these would be "permanent
15 impacts" in the traditional sense of
16 destruction of the wetland. But that there
17 would be some ongoing degradation of the
18 wetland over time?

19 A (Van de Poll) Part of how we determine impacts
20 is through the assessment of wetland function.
21 And, as you may or may not be aware, there are
22 at least 12 different wetland functions that
23 have been identified by the Army Corps of
24 Engineers as being pertinent to the adequate

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 functioning of a wetland system. Impacts that
2 are considered temporary sometimes impact
3 functions that are longer term, and thereby
4 cannot be defined as "temporary", since maybe
5 after several years flood storage still hasn't
6 returned or groundwater discharge by one of the
7 brooks has not returned after a tower has been
8 placed there. And on that basis, especially
9 with the tower placements, that 720 square foot
10 figure that I provided in Exhibit B under my
11 supplemental, identified sites where I felt the
12 functions of the wetlands were going to be
13 permanently impacted and never quite return to
14 how they are today.

15 Q Okay. Thank you. And you're aware that at
16 this point DES has issued a permit for those
17 impacts?

18 A (Van de Poll) Yes, I am.

19 Q And they have not -- they have characterized
20 the impacts as "temporary" as well, as the
21 Applicant, the ones that are not a permanent
22 disruption of the wetlands. And it would sound
23 like you disagree with that on some level?

24 A (Van de Poll) Yes. I have been disagreeing

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 with that for a number of years.

2 Q Okay. And I know that there was some comments
3 submitted by the City to DES during their
4 review. Did you raise this specific issue with
5 them? Anyone?

6 A (McClure) I believe we did. We'll see if we
7 can find it.

8 Q Okay. Part of what I understood your concern
9 to be is that there would be, even with timber
10 matting, there would be compaction of the
11 soils. Do you have any experience with that
12 occurring with other projects?

13 A (Van de Poll) Well, yes. I provided some of
14 that in my prefiled relative to Eversource's
15 replacement of poles in Rindge, New Hampshire,
16 and took some pictures that are part of that
17 testimony, that shows where timber mats had
18 been placed down and then removed, with the
19 subsequent loss of soil integrity, deep grooves
20 from the machinery that pulled those timber
21 mats out.

22 I have also recently visited the Turtle
23 Pond site, where they replaced a pole within
24 the last few weeks, and noted similar types of

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 effects in that deep peatland system I was
2 referring to earlier.

3 Q And is it your opinion that those impacts will
4 not be alleviated over time, that they will
5 remain?

6 A (Van de Poll) Absolutely will not. And, of
7 course, part of that has to do with the change
8 in vegetation. I found a state watch species,
9 *carex haydenii*, that requires certain types of
10 organic materials and hydrology in order to
11 exist. When a timber mat is placed over it,
12 regardless of whether it's winter or summer, it
13 will compress the peatland and change the
14 hydrology in such a way that that species will
15 not return. And I've seen that in a number of
16 the peatland areas.

17 A (Tardiff) And, in response to the first part of
18 your question, Exhibit 135, which is our joint
19 testimony dated November 15th, 2016, it is
20 Exhibit C to that, is our July -- the
21 Conservation Commission's July 25th, 2016
22 letter to DES raising our concerns. And on
23 Page 2 of that, we spoke to the fact that we
24 thought that the impacts that had been

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 described by the Applicant as "temporary", that
2 we have concerns that those would not be
3 temporary, but would, in fact, be more
4 permanent.

5 Q Okay. Thank you. Dr. Van de Poll, you raise
6 in your testimony the "scenic quality function
7 of wetlands". Is that something that is
8 recognized or considered by DES in its review
9 of wetland impacts?

10 A (Van de Poll) Yes, it is. It's one of -- it's
11 based on one of the wetland evaluation methods
12 that is recognized in rule by DES, that
13 specifically being the "New Hampshire method",
14 so-called, of which I am a co-author of, and
15 "scenic resources" or "scenic quality" is one
16 of the functions, one of the twelve functions
17 in that method.

18 Q And with regard to "scenic quality function",
19 is that the scenic quality being that there's
20 open space area or is it something beyond that?

21 A (Van de Poll) Wetlands intrinsically carry what
22 most people consider to have, you know, a
23 scenic viewshed quality to them. And as much
24 as this admittedly is a subjective evaluation,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 as you've heard in previous testimony, the
2 scenic detractors of a power line not only
3 affects upland areas, but wetlands as well, and
4 therefore have been a consideration, especially
5 in the context of open space plans for various
6 municipalities across the state.

7 Q Okay. Thank you. Part of your testimony is a
8 challenge to the wetlands mapping that was done
9 by the Applicants. And you've performed an
10 analysis that, as I understand, has two parts.
11 One was using infrared aerial photography to
12 assess areas of potential wetlands, is that
13 correct?

14 A (Van de Poll) Yes.

15 Q And that's not actually a wetlands delineation,
16 is that correct?

17 A (Van de Poll) That's correct.

18 Q It's just a method of identifying potential
19 areas?

20 A (Van de Poll) Yes.

21 Q But you calculated from that a square footage
22 of potential wetlands that you felt were not
23 identified by the Applicants?

24 A (Van de Poll) That is correct.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q And then a second part of your testimony or
2 approach was to do some site-specific checks,
3 random sampling, or perhaps not random, but a
4 sampling of areas?

5 A (Van de Poll) Yes. It was somewhat random.

6 Q Okay. And that -- you have a report that was
7 attached to your testimony in Joint Muni
8 Exhibit 142, and Exhibit C that discussed your
9 site-specific review?

10 A (Van de Poll) Yes.

11 Q Okay. And I understand that you went back and
12 did a -- that was done in March, so it was
13 somewhat winter conditions still, and you went
14 back and did a further check of those same
15 sites in June?

16 A (Van de Poll) That is correct, with the
17 exception that I also added Appleton Street to
18 that list.

19 Q Okay. And is it your over -- well, when you
20 did your site-specific review, did you -- at
21 that time were you doing a formal delineation?

22 A (Van de Poll) In the sense that I was filling
23 out Army Corps data sheets, yes.

24 Q But you weren't flagging and identifying areas?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Van de Poll) I was not flagging.

2 Q But did you actually calculate the area of the
3 wetlands in those specific locations?

4 A (Van de Poll) I did.

5 Q Okay. So, and that second part of your
6 analysis was an actual assessment of wetlands,
7 as opposed to an estimation of potential
8 wetlands?

9 A (Van de Poll) That is correct. I walked the
10 edge of what I determined to be the wetland
11 areas, whether or not they were mapped by
12 Normandeau, and calculated the approximate
13 square footage for each of those areas that
14 were not mapped.

15 Q Now, you also included in your testimony a
16 chart of the areas that you identified as
17 "potential unmapped wetlands", is that right?
18 Exhibit B?

19 A (Van de Poll) That's correct.

20 Q Now, do I understand correctly that these are
21 an itemized list of the areas that you
22 identified using the aerial photography?

23 A (Van de Poll) Aerial photography, that's
24 correct.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. And you have a column here called

2 "Reason". And I was unclear as to what that
3 was designating?

4 A (Van de Poll) So, part of the purpose of this
5 effort was to estimate potential impacts to
6 wetlands that were not recorded by Normandeau.
7 And within that, there were impacts that might
8 be associated for, under the column "Reason",
9 for the crane pads, access roads, the placement
10 of poles, the removal of poles. And that's --
11 that pretty much covers the direct potential
12 impacts that are listed there.

13 Q Okay. So, this is not a reflection of the
14 wetland itself, but of the proposed Project's
15 impact on that area that you identified?

16 A (Van de Poll) That's correct.

17 Q I see. That helps. And the two columns to the
18 left of that, "Type" -- is it --

19 A (Van de Poll) "Proposed".

20 Q "Proposed" and "actual"?

21 A (Van de Poll) Yes.

22 Q So, "proposed" is what Normandeau has put
23 forward or is that --

24 A (Van de Poll) Yes. So, Number 1, for example,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 was proposed to be a "temporary impact". And
2 it appears that a crane pad in that particular
3 location, on Wetland Map Sheet 586, would be a
4 "permanent impact" for the reasons I stated
5 earlier.

6 Q So, in that instance, is that an area where the
7 wetland was actually identified by Normandeau,
8 but you're -- and you're distinguishing that
9 it's not accurately a temporary impact?

10 A (Van de Poll) Yes. Further to the right, the
11 "Amount proposed in square feet" is equivalent
12 to the amount "actual in square feet". It's
13 just that the net additional permanent impact
14 was estimated to be 4016 [4106?] square feet.

15 Q Okay. And, so, that's why the total number
16 here is "40", whereas I think you said in your
17 testimony there are "28 errors", in terms of
18 areas that were not identified as wetlands?

19 A (Van de Poll) Yes.

20 Q Okay. So, the 28 are the ones that show "none"
21 in the "Type - Proposed" column?

22 A (Van de Poll) Right.

23 Q And "zero" in the "Amount - Proposed"?

24 A (Van de Poll) Correct.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MR. ASLIN: Okay. Thank you. All
2 right. Thank you very much. That's all the
3 questions I have.

4 CHAIRMAN HONIGBERG: Mr. Whitley, do
5 you have questions?

6 MR. WHITLEY: None, Mr. Chair.

7 CHAIRMAN HONIGBERG: I don't see
8 Ms. Fillmore. Is she here today?

9 *[No verbal response.]*

10 CHAIRMAN HONIGBERG: Ms. Boepple, do
11 you have questions?

12 MS. BOEPPLE: I just have one.

13 BY MS. BOEPPLE:

14 Q And my question is --

15 MS. BOEPPLE: Beth Boepple, for the
16 Forest Society.

17 BY MS. BOEPPLE:

18 Q My question for you is for you, Dr. Van de
19 Poll. In your experience, is it typical or is
20 it unusual for two scientists to reach such --
21 reach different findings with respect to
22 determination of wetlands or vernal pools, in
23 presumably the same geographic area?

24 A (Van de Poll) It's not uncommon to have two

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 wetland scientists disagree; we all do that.

2 But, to the scale of the difference, that's
3 unusual. That is to say, there are a number of
4 errors that I would not have expected in, say,
5 a smaller development project that I might have
6 been involved with.

7 Q And, so, do you have any conclusion you can
8 draw from that as to why there are those
9 differences here?

10 A (Van de Poll) You know, I cannot. Ms.
11 Carbonneau, at a previous hearing, indicated
12 that there were part-time employees that were
13 hired by Normandeau that helped with the
14 delineation along the corridor. So -- and I
15 don't understand the qualifications of those
16 people. I would hope that they were certified.
17 But, of course, Normandeau signed off on all of
18 the plans and -- the wetland mapping plans, and
19 therefore they're responsible for all of who
20 they hired.

21 So, again, I don't know their
22 qualifications. But my point is simply that,
23 on the very small sample set that I used in the
24 City of Concord, there were some considerable

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 errors that should give pause to the SEC.

2 MS. BOEPPLE: Thank you.

3 CHAIRMAN HONIGBERG: Which other
4 intervenor groups have questions for the panel?

5 Ms. Menard I see. Mr. Draper I see.
6 Is there anybody else?

7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: Ms. Menard, why
9 don't you go.

10 MS. MENARD: Good afternoon, Mr. Van
11 de Poll.

12 WITNESS VAN de POLL: Good afternoon.

13 MS. MENARD: A few questions on
14 behalf of the Deerfield Abutter Group.

15 BY MS. MENARD:

16 Q Most of our questions had to do with the
17 permanent compacting effect of the heavy
18 equipment that has already been covered. So, I
19 just would like to follow up with you on a
20 topic that was also touched upon most recently,
21 but in your supplemental testimony, regarding
22 the changes to wetland function.

23 When -- if you're considering all the
24 various wetland functions, you know, such as

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 water quality or habitat, etcetera, when would
2 a change to wetland functions become known and
3 be documented?

4 A (Van de Poll) It's a very good question. It
5 would depend upon the function and the amount
6 of impact. For example, wildlife function
7 might be, and as they have indicated with the
8 Karner blue mitigation proposal, immediately
9 impacted, regardless of when they go out and do
10 the construction.

11 Other things, like flood water storage,
12 may be incremental and cumulative, that may not
13 be felt until the next big flood event, shows
14 that, in fact, we have lost some flood water
15 storage through their impacts. Groundwater,
16 similar type of situation, especially at Turtle
17 Pond, when you have compaction of a site that
18 normally receives groundwater discharge that
19 feeds the wetland, and that is compacted, the
20 runoff from that site would increase. It
21 wouldn't be able to be absorbed by a more loose
22 and less compacted soil. So, again, these
23 types of things can be very difficult to
24 identify specifically, unless you're tracking

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 it very closely, like you would -- like you
2 might with the Karner blue butterfly itself.

3 Q So, what would trigger a reassessment or a
4 reevaluation of a wetland?

5 A (Van de Poll) It's a very good question. And,
6 you know, as is commonplace in our state, DES
7 oversees, with an agreement through the Army
8 Corps of Engineers, any mitigation of or
9 restoration of wetland impacts. And there are
10 certain standards that are usually written into
11 the permit conditions that require an applicant
12 to restore particular wetlands to certain types
13 of functionality.

14 Post-construction reports typically run
15 from 1 to 2 years, sometimes as much as 5
16 years. In that, there are very few details
17 about the thresholds for success versus the
18 lack of success. Army Corps typically has, for
19 example, a revegetation target of at least 65
20 to 75 percent for a given wetland site that is
21 being, say, planted out. But they don't
22 necessarily have an on-site/off-site check that
23 allows for, say, a determination of a loss of
24 flood storage or a change in the water quality.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 These types of things typically go unnoticed.

2 Q Is it fair to say that loss of wetland function
3 could occur due to a Project impact, but we
4 might not know about it until after the Project
5 has wrapped up?

6 A (Van de Poll) Absolutely. I would expect that.

7 MS. MENARD: Thank you. No further
8 questions.

9 CHAIRMAN HONIGBERG: Mr. Draper.

10 MR. DRAPER: Hello. I'm Barry
11 Draper, from the Pemigewasset River Local
12 Advisory Committee.

13 CHAIRMAN HONIGBERG: Hang on,
14 Mr. Draper. They can't see you, given where
15 they're sitting.

16 MR. DRAPER: Oh. I'm sorry.

17 CHAIRMAN HONIGBERG: I'm going to ask
18 you to come to a place where they can see you
19 without having to look over each other.

20 MR. DRAPER: I'd be glad to. I'm
21 sorry, I don't have any tadpoles though.

22 MR. OLDENBURG: He does
23 show-and-tell.

24 CHAIRMAN HONIGBERG: Off the record.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

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

3 MR. DRAPER: Hello. Now here I am.
4 Whoops. Is it on?

5 CHAIRMAN HONIGBERG: Yes, it's on.

6 MR. DRAPER: Now it's on. Can you
7 hear me better now? And I can see you better,
8 too, and I like that better. I just have one
9 question, and it's basically towards Dr. Van de
10 Poll.

11 BY MR. DRAPER:

12 Q And, number one, I've heard a lot about
13 mitigation throughout this whole project. And
14 I was wondering what you view as the biggest
15 problem with mitigation plans?

16 A (Van de Poll) It's hard to generalize, but I'd
17 say the first thing that comes to mind is the
18 fact that there is, as Laura was suggesting
19 earlier, very little checks after the permit
20 has been approved and the construction is
21 complete to ensure that the mitigation package
22 is adequate.

23 Now, I understand from the proposal that
24 Northern Pass has put forth, the Karner blue

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 checks will be very rigorous. But, in this
2 particular case, there will be virtually no
3 checks on impacts to any of the other 17
4 species of rare Lepidoptera in the pine barrens
5 habitat, which extends over 30 acres in the
6 City of Concord.

7 Q And on that same thing with these new species
8 that we're talk about, do you feel like we
9 should do a deeper study into these rare, and
10 do you have a list of them?

11 A (Van de Poll) I do. I supplied that in my
12 supplemental testimony. And I also note that,
13 in looking at Brian -- excuse me -- Tom
14 Chapman's Biological Opinion that the U.S. Fish
15 & Wildlife Service rendered on October 19th
16 this year, he stated that "This Biological
17 Opinion also satisfies compliance with
18 Section 7 of the Act", meaning the "Endangered
19 Species Act", "for the U.S. Forest Service and
20 the Army Corps of Engineers." Meaning what he
21 wrote in this Biological Opinion satisfies
22 those other agencies relative to the mitigation
23 plan.

24 I would also note that -- excuse me for a

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 minute. Anthony Tur, Tony Tur, from the U.S.
2 Fish & Wildlife Service, in correspondence with
3 Normandeau Associates, wrote in 2016 that the
4 "Biological Opinion will need to address
5 impacts to both", meaning habitat, as well
6 as -- secondary habitat, as well as primary
7 habitat, "for the Karner blue butterfly". Yet,
8 the only impacts that have been mitigated for
9 are the primary impacts. That is to say, where
10 the lupine is has been found.

11 So, whereas they reduced their impacts on
12 lupine that they found, from 7,900 and some odd
13 square feet to 1,043 square feet, they have no
14 assessment of the impacts on the nectarine
15 plants, the grasses and the shrubs that Tony
16 notes as being part of their secondary habitat.
17 And there's no mitigation for that impact
18 whatsoever.

19 I would also note that John Kanter, in one
20 of the meetings between Normandeau, John being,
21 of course, the former division head of the
22 Nongame & Endangered Species Program for this
23 state, stated, and I quote, that "the federal
24 Karner blue butterfly consultation process will

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 meet state requirements for this species", but
2 he noted that "the other state listed species
3 that are present in the Project area will need
4 to be addressed for state permitting." And
5 here again, none of those have been studied.
6 This is noted by Mike Amaral in the Arrowwood
7 report.

8 And it baffles me why the Karner blue,
9 admittedly a federally endangered species, got
10 all of the attention, relative to having ten
11 other species listed in the state that were
12 asked to be reviewed by the former Director of
13 the Nongame & Endangered Species Program.

14 Q Did you find some of those species when you did
15 your search?

16 A (Van de Poll) I did not survey for those
17 species in the Concord Pine Barrens area. But
18 I do have records that are being forwarded to
19 me from Dr. Donald Chandler, from UNH, who did
20 the study for the Army Corps National Guard
21 site in Pembroke across the river. And some of
22 those species were found. Which is why some of
23 them were noted in previous conversations with
24 Normandeau about their need to accommodate

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 impacts to those other species, like the
2 Persius duskywing, the frosted elfin, and the
3 sleepy duskywing. All three of those were
4 noted in previous conversations, yet they
5 dropped out of any mitigation package.

6 Q So, what is your suggestion? What should we
7 do?

8 A (Van de Poll) Well, again, I think -- I think
9 these things need to be studied. The impacts
10 need to be fully accounted for. It's not
11 unlike wetlands. How can we -- how can the SEC
12 provide reasonable feedback, if there is no
13 accommodation for all of the other species that
14 fit Criterion 1, 2, 3, 4, and 5 of the
15 unreasonable adverse effect criteria. Which
16 talk about rare plants and wildlife species and
17 rare natural communities, and yet Karner blue
18 is the only one that sort of made it through
19 that process.

20 MR. DRAPER: Well, there's a lot of
21 work to be done. And I thank you.

22 WITNESS VAN de POLL: Thank you, Mr.
23 Draper.

24 CHAIRMAN HONIGBERG: All right. Did

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 I miss any intervenor groups?

2 [No verbal response.]

3 CHAIRMAN HONIGBERG: All right.

4 Mr. Walker, Mr. Needleman? Mr. Needleman.

5 MR. NEEDLEMAN: Hi. My name is Barry
6 Needleman. I represent the Applicant in this
7 matter. I'm going to focus my questions toward
8 Ms. Fenstermacher and Ms. Matson, Ms. Bouchard,
9 and Ms. Shank, and then Mr. Walker will have
10 some questions for the other folks up here,
11 except for Mr. Van de Poll, which we know will
12 come a little bit later.

13 I'm not entirely certain in every
14 circumstance who the right person will be to
15 answer my questions. So, if I ask it to one
16 person, but somebody else has information,
17 please feel free to just jump in.

18 CHAIRMAN HONIGBERG: Before you
19 start, can you move that microphone just a
20 little bit closer to you? You're a little
21 faint out in the outskirts.

22 MR. NEEDLEMAN: I've never been
23 accused of being too quite. Okay. There we
24 go. Is that better? All right.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 CHAIRMAN HONIGBERG: Give it a whirl.

2 Let's see how it sounds.

3 BY MR. NEEDLEMAN:

4 Q So, a little while ago Mr. Aslin was asking
5 questions, I think it was of you, Ms. Matson,
6 regarding the Northern Pass Study Committee.
7 And I think he said at one point that he
8 believed it had been two years since the City
9 and Northern Pass had met regarding
10 "negotiating issues of concern". And I think
11 one of you said that you weren't sure, but
12 that, with respect to the Committee, that
13 sounded correct, is that right?

14 A (Matson) Our subcommittee has not met or had
15 any further discussion with Eversource or any
16 of the Applicants relative to the Project, or
17 anybody else actually from there. We met on a
18 number of occasions with stakeholders,
19 including the Applicants, and residents, as
20 well as other interested parties who felt that
21 they had an interest in the matter. And that
22 that was our primary purpose was to gather
23 information to see how it would affect the
24 City, which resulted in our recommendation to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the Council, and it was eventually voted on by
2 the Council, to ask for burial of that plan as
3 it was presented.

4 Q And I'm asking about this, because it left the
5 impression that Northern Pass and the City had
6 not generally been communicating. And I wanted
7 to make sure it was clear that, in fact, there
8 have been extensive communications between the
9 Project and the City.

10 And I wanted to put up an exhibit I think
11 that will illustrate that.

12 MR. NEEDLEMAN: If you could, Dawn.
13 Sorry. Bear with me while we pull this up.

14 BY MR. NEEDLEMAN:

15 Q This is an exhibit similar to ones we've used
16 in other circumstances. It's a summary of the
17 outreach that we've engaged with in various
18 communities.

19 And I guess I'll just pause for a minute
20 and ask, aside from your committee work, have
21 any of you been personally involved in the
22 discussions that have otherwise gone on with
23 Northern Pass and the City?

24 A (Matson) With the Applicant? I mean, we --

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Yes.

2 A (Matson) I have not had any specific
3 discussions with the Applicant since our last
4 report to the Council.

5 Q Okay.

6 A (Bouchard) I did accompany the Applicant on a
7 walk to look at where the poles would go in the
8 Alton Woods area. And I don't remember when
9 that was or if it was during when the Committee
10 was still active. But I did go with the
11 Applicant to show -- they were showing the
12 abutting neighborhood where the poles would go,
13 and so they would feel more comfortable or have
14 more information about the Northern Pass
15 Project.

16 Q Okay.

17 A (Bouchard) I'm uncertain of that date.

18 Q What I've put up is Applicants Exhibit 413.
19 This is an updated version of the Concord
20 Outreach Summary. I had presented a prior
21 version of this, which you probably weren't
22 aware of, when our Construction panel
23 testified. And one of the things it includes
24 is a list of the meetings that the Project has

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 had with City officials.

2 MR. NEEDLEMAN: And if you go over to
3 the next page, Dawn.

4 BY MR. NEEDLEMAN:

5 Q It shows that there have been a total of at
6 least 15 meetings with City officials, various
7 participants. And, in a couple of these, Mr.
8 Quinlan has directly participated. Does that
9 sound familiar to you? I'll ask you,
10 Ms. Bouchard.

11 A (Bouchard) It doesn't sound familiar. But I
12 can understand why the City staff and Northern
13 Pass would be meeting.

14 Q Okay. The other topic I wanted to ask you
15 about related to communications between the
16 Project and the City is what's been referred to
17 as an "MOU" or "memorandum of understanding".
18 And again, whoever can answer, please do. But
19 is anybody familiar with the fact that the
20 Project first contacted the City back in
21 February to see if they were interested in
22 discussing a construction MOU?

23 A (Matson) I believe we were told that there was
24 an MOU that was coming forth, and I believe

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that Danielle Pacik sent something back to you
2 just very recently.

3 Q Right. And, so, we provided a draft to the
4 City in February, and the City provided
5 comments to us. And we provided a new draft to
6 the City back in March. Does that sound right?

7 A (Matson) I don't have the dates or any of that
8 specific information. And, as I said, you
9 know, Danielle Pacik had notified us that she
10 had it, and that she was sending back, you
11 know, information back.

12 Q And, in fact, Ms. Matson, you're correct. On
13 Tuesday of this week, the Project did receive
14 back a redline version of the MOU from the
15 City. And is it your understanding that both
16 sides are continuing to try to work on this
17 MOU?

18 A (Matson) Well, the MOU -- trying to work on the
19 MOU does not indicate that the City's position
20 has changed with respect to, you know, the
21 burial or the aspect of it. It's simply an
22 attempt to work together.

23 Q Understood. And I'm not suggesting that it
24 does suggest that.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Matson) Okay.

2 Q I understand your position. Ms. Shank, let me
3 direct some questions to you. I'm looking at
4 your testimony. It's Joint Muni 133. And on
5 Page 4, at Line 8, you referenced a concern
6 regarding McKenna's Purchase, and what you said
7 was "inadequate buffering". Do you recall
8 that? It's Line 14.

9 A (Shank) Okay. I'm seeing the testimony.

10 Q Are you familiar with the communications and
11 outreach that the Project has had with the
12 folks at McKenna's Purchase?

13 A (Shank) No.

14 Q All right. I want to put an exhibit up that
15 summarizes that, and see if any of it is
16 familiar to you. I'll represent to you that
17 the Project and McKenna's have talked a fair
18 bit, including about the issue of buffering.
19 Is that something that you were aware of when
20 you wrote your testimony?

21 A (Shank) No.

22 Q Were you aware that, when Northern Pass's
23 Construction panel testified, they indicated
24 that much of the existing buffer at McKenna's

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 wouldn't be cleared. That instead it was going
2 to focus mainly on tree and shrub trimming?

3 A (Shank) My comment was not relative to the
4 existing buffering. It was relative to
5 inadequate buffering. So, even if the existing
6 buffering were to remain, it would not be
7 adequate for the height of the poles going
8 through that location.

9 Q Okay, I see. So, in other words, even if there
10 was no clearing at all, your view is that
11 that's not an adequate buffer at McKenna's?

12 A (Shank) Correct.

13 Q And, to your knowledge, is there anybody at
14 McKenna's who you've spoken to who shares that
15 view?

16 A (Shank) I know there are many in McKenna's who
17 reached out to express their concerns with the
18 Project in general. So, I specifically don't
19 know if they would share that specific view.
20 But I know there are many who have stated their
21 concern with the views and the effect on their
22 property due to the height of those poles.

23 Q But, just to be clear, nobody at McKenna's or
24 nobody responsible for managing McKenna's ever

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 said to you that the buffering is inadequate as
2 you just described?

3 A (Shank) I cannot recall if they used that
4 specific language.

5 Q You also said in your testimony regarding Alton
6 Woods that the proposed route is immediately
7 adjacent to the residential units, and that the
8 new transmission lines are in a location that
9 is currently being used for a children's play
10 area.

11 A (Shank) Right.

12 Q Do you recall that?

13 A (Shank) Yes.

14 Q And, in fact, those uses are all present today
15 with respect to the existing corridor, is that
16 right?

17 A (Shank) Correct.

18 Q And did you -- do you have any familiarity with
19 the extent of the clearing that's going to
20 occur at Alton Woods? Did you look at that in
21 particular?

22 A (Shank) I did.

23 Q Okay.

24 A (Shank) And there's actually been a significant

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 amount of clearing that's already been done
2 with the additional line that was just recently
3 put through. So, I'm not aware of what any
4 additional impact would have in addition to
5 what's just recently been done.

6 Q And I'm going to come back to that line in a
7 couple of minutes. But, with respect to the
8 illustrations on the Alteration of Terrain maps
9 that Northern Pass provided for that area, did
10 you look at that clearing or the lack of
11 clearing on those maps when you prepared your
12 testimony?

13 A (Shank) I don't believe I looked specifically
14 at Alton Woods with regard to clearing.

15 Q Okay.

16 A (Shank) I'd have to review my testimony to see
17 what specifically I said about Alton Woods.

18 Q All right. So, is your view of the buffering
19 at Alton Woods the same as your view of the
20 buffering at McKenna's, even if it were left
21 intact, it wouldn't be sufficient?

22 A (Shank) Yes.

23 Q Okay. Are you familiar with the fact that the
24 relationship between Eversource and Alton Woods

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 is governed by a joint use agreement that the
2 two parties signed?

3 A (Shank) I'm aware there is an agreement with
4 Alton Woods.

5 Q Have you ever seen that agreement before?

6 A (Shank) No.

7 Q All right. I just want to put that up quickly,
8 because it is something that we're going to
9 want to introduce. Is there anybody on the
10 panel who has actually reviewed this agreement
11 before?

12 No? Is there anybody on the panel that's
13 aware of the fact that this agreement with
14 Alton Woods allows Alton Woods to engage in
15 these uses, like the playground within the
16 right-of-way, subject to Eversource's rights to
17 continue to use the easement?

18 MS. PACIK: Objection. I think he's
19 asking for a legal opinion about a document.

20 MR. NEEDLEMAN: I think I'm just
21 actually asking if they have seen the document
22 and understand that's what it says. I'm not
23 asking them to draw a legal conclusion.

24 CHAIRMAN HONIGBERG: Overruled.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Which means you can answer.

2 **BY THE WITNESS:**

3 A (Shank) I'm not aware of what's in this
4 document. No, I have never seen it.

5 BY MR. NEEDLEMAN:

6 Q Are any of you familiar with the fact that
7 there has been ongoing discussions with Alton
8 Woods up through 2014? I think earlier
9 somebody spoke to that.

10 A (Shank) No. I heard -- when I spoke to the
11 landowner, he said that he hadn't talked to
12 anyone in quite some time. And I don't recall
13 exactly when that date was. It might have been
14 2014.

15 Q I wanted to ask you about that. So, it was
16 Hodges, I guess Hodges Company that you spoke
17 with?

18 A (Shank) Correct.

19 Q Okay. And they said that they had not had any
20 communications with Northern Pass since 2014 or
21 they hadn't spoken to them?

22 A (Shank) What I -- what was said to me is that
23 they "hadn't spoken in some time". And I think
24 it may have been 2014. I can't recall exactly

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the conversation. But it was a couple of years
2 they said they hadn't spoken to anyone about
3 the Northern Pass.

4 MR. NEEDLEMAN: Dawn, can you put up
5 Exhibit 423?

6 BY MR. NEEDLEMAN:

7 Q This is a letter that Northern Pass sent to the
8 Hodges Properties on May 18th, 2017 of this
9 year. When you talked to Mr. Hodges, did he
10 mention this letter?

11 A (Shank) No, he did not.

12 Q Okay. So, you're not aware of the fact that he
13 never responded to this letter?

14 A (Shank) No.

15 MR. NEEDLEMAN: And, Dawn, can you
16 put up Exhibit 422 please?

17 BY MR. NEEDLEMAN:

18 Q And this was a letter again sent to them in
19 October of this year. Did he mention this
20 letter when you spoke with him?

21 A (Shank) No, he did not.

22 Q So, you're not aware of the fact that there was
23 no response to this letter either?

24 A (Shank) No. I don't know what you're saying is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 or is not a response, because I'm not having a
2 chance to read these letters. So, I don't know
3 what is in them or anything about them.

4 Q Well, I'll represent to you that both letters
5 were sent, and that Mr. Hodges or nobody from
6 the group responded to the requests in the
7 letter.

8 A (Shank) Okay. So, do you know, did they
9 receive them?

10 Q I can only assume that they did. Unless you
11 tell me the address was wrong, I can only
12 represent to you that they were sent.

13 A (Shank) Sure.

14 Q All right. Let me move on to a different
15 topic. I think it was you, Ms. Shank, I'm not
16 sure, talked about Steeplegate Mall and
17 adoption of Mr. Baia's testimony, is that
18 right?

19 A (Shank) Correct.

20 Q Okay. Joint Muni 139 I think was the letter
21 adopting the testimony. And in it, it said
22 that "The addition of new 125-foot tall
23 structures and transmission lines within a few
24 hundred feet of the mall's main entrance drive

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 may exacerbate the mall's challenge to attract
2 new tenants, further eroding the property's
3 viability and negatively impacting the City's
4 tax base." Is that your testimony now that
5 you're adopting?

6 A (Shank) Correct.

7 Q And my understanding, based on speaking about
8 this issue with you at the technical session,
9 is that the Steeplegate Mall has been
10 experiencing financial difficulties for quite
11 some time, is that right?

12 A (Shank) I don't know if they're experiencing
13 financial difficulties. I know they have been
14 struggling with various difficulties. I don't
15 know their financial status right now.

16 Q I think you said to me that, since the time
17 you've been working for the City, which was in
18 2014, it was your understanding that they have
19 had difficulty attracting tenants?

20 A (Shank) Correct.

21 Q And I think you also told me at the technical
22 session that you've never had any experience in
23 your professional career doing work where you
24 found that the location of utility lines

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 actually interfered with a mall attracting
2 tenants, is that right?

3 A (Shank) Yes. That's a pretty specific
4 obstacle. So, no, I have not had that
5 experience.

6 Q And I think I also asked if you had any general
7 studies or assessments in this topic that could
8 shed any light on this, and you couldn't point
9 me to any, is that right?

10 A (Shank) No, that's not correct. I mentioned
11 that I reviewed a number of studies. And I
12 believe we submitted them as exhibits.

13 Q Studies showing that the location of utility
14 lines impacted a mall's ability to attract
15 tenants?

16 A (Shank) Studies showing that the location of
17 utility lines impacts a number of factors with
18 regard to redevelopment and property values.
19 So, I would, by extension, apply that to the
20 redevelopment of a specific site, like a mall.

21 Q Okay. I certainly don't remember seeing that.
22 So, if those are in the record, I'm sure Ms.
23 Pacik will point them out.

24 It's correct that there was a recent strip

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 mall development that occurred right along this
2 road near the Steeplegate Mall adjacent to the
3 lines, isn't that correct?

4 A (Shank) That's correct.

5 Q I want to put a photo of that up, if we could.
6 So, in the center top part, we see the
7 corridor, is that correct?

8 A (Shank) Correct.

9 Q And then, in the middle, along Loudon Road, and
10 adjacent to the corridor, is that, in orange,
11 is that Chipotle Mexican Grill. Is that right?

12 A (Shank) That's correct.

13 Q And also immediately to the right of that,
14 where the Visionworks store is located, I
15 think, is that new development as well?

16 A (Shank) Yes. That entire property is new
17 development.

18 Q So, and that -- all that new commercial
19 development went in when?

20 A (Shank) I think construction might have been
21 2015. It's been going on for a few years.
22 They just recently finished it, and are
23 starting on their next phase.

24 Q So, all of this new commercial development,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 which is actually closer to the line than the
2 Steeplegate Mall, wasn't adversely affected by
3 the specter of Northern Pass coming, is that
4 correct?

5 A (Shank) I would not agree with your phrasing of
6 that statement. I think the nature of the
7 development reflects the location and the, you
8 know, environment around it. I think, if this
9 were an ideal site, and we were able to sort of
10 get in on the conversation early and talk about
11 the type of development that we want to see on
12 this site, this would not necessarily be it.

13 You know, this is what they're able to put
14 here, which, in my mind, is, you know, pretty,
15 for lack of a better term, dated style of
16 commercial development that is not promoted as
17 sort of the cutting edge of planning and
18 economic development is what's able to go here.

19 I think, you know, a site like Steeplegate
20 Mall, where this entire district, really, I
21 mean, we're looking to redevelop in a way
22 that's consistent with the trends in quality
23 redevelopment, which means density, it means
24 mixed use, it means coordinated pedestrian

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 access. This is a very low-density,
2 automobile-oriented commercial type sprawl,
3 which is not really what we're promoting or
4 trying to encourage in this district or in the
5 City in general.

6 So, no -- yes, they successfully went
7 here. But is that really what we would have
8 wanted, if we were able to redevelop this in
9 sort of a modern way that follows the trends of
10 successful and sustainable economic
11 development. This type of development might
12 last for ten years. Whereas, a more
13 coordinated development that might better
14 benefit the City economically, and certainly
15 what we're hoping to attract at Steeplegate
16 Mall, would last for decades.

17 Q You just referred to this development as
18 "low-density, commercial-like sprawl". Is it
19 your testimony that this development is
20 materially different from much of the other
21 development along Loudon Road?

22 A (Shank) No. Much of Loudon Road is in need
23 of -- that's what our plan is. You know,
24 that's what we're hoping to accomplish with

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Loudon Road, is to create a vision for Loudon
2 Road that creates the type of development
3 that's higher density, that appeals to more
4 demographics of the population. I mean, I
5 think a lot of people feel it needs a bit of an
6 overhaul. And that's what the Loudon Road Road
7 Project was intended to sort of kick off.

8 And, you know, we'll certainly be doing
9 some visioning and Master Planning. We're
10 doing a new code. We'll be developing new
11 districts. I mean, there's a lot that we have
12 plans and hopes for to improve and enhance
13 Loudon Road, the existing development. And I
14 mean, it's happening very, very quickly. And
15 we've had a couple of new developments on
16 Loudon Road, where --

17 Q I'm sorry to interrupt, but I think we're well
18 beyond my question now.

19 A (Shank) Okay. I apologize. I'm trying to
20 answer --

21 MS. PACIK: I actually don't think
22 she was beyond the question, but -- the
23 question was "does she think this is good
24 development?"

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MR. NEEDLEMAN: No, that wasn't --

2 CHAIRMAN HONIGBERG: No. That was
3 not the question. The question was "whether
4 this is similar to other development along
5 Loudon Road?"

6 MS. PACIK: Okay.

7 **BY THE WITNESS:**

8 A (Shank) I would say -- I would say that it's
9 not, actually, to some degree, because a lot of
10 the development along Loudon Road is actually
11 much even smaller. This is kind of a bigger
12 strip. And there's a lot of like single --
13 single businesses, there are single structures.
14 Most of Loudon Road is single structures. In
15 this particular area, there is more strip-type
16 stuff. But most of Loudon Road is smaller,
17 single structures.

18 So, to answer your question pointedly, I
19 would say "no".

20 BY MR. NEEDLEMAN:

21 Q And you would agree with me that, whoever owns
22 and developed the Chipotle, whoever owns and
23 develops that little mall, apparently did so
24 with no concern regarding the corridor or the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 fact that Northern Pass was coming, because
2 they built these places and they're there,
3 correct?

4 A (Shank) I'm not aware of their concerns.

5 Q Ms. Matson and Ms. Bouchard, I wanted to ask
6 you a couple of questions. In your testimony,
7 Page 5, Line 19, you noted that the Concord
8 committee found that the net book value
9 methodology was improper, and you talked about
10 this a little bit this morning. Is that
11 correct?

12 A (Bouchard) That was the testimony of our City
13 Assessor to the committee. And --

14 Q I don't want to get into a debate with you
15 about the right methodology. I think we
16 understand that that's an issue of law.

17 But I wanted to ask you a couple of
18 questions about this. It's correct, I think,
19 that the City of Concord believes that Dr.
20 Shapiro's approach, our expert, is too
21 conservative. And as a result, if that
22 approach were used, the taxes that the Project
23 would pay to the City would be too low. Is
24 that essentially what you're saying?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Matson) I believe that might be the testimony
2 of the tax assessor. Yes.

3 Q I mean, it sounds to me like what you're saying
4 in your testimony is we used the wrong method.
5 It's too low. If we use your method, you get
6 more taxes, right?

7 A (Matson) That is what has been presented to us,
8 yes.

9 Q And in Dr. Shapiro's testimony, she said that,
10 based on her analysis, the value of the Project
11 in the City, if it were constructed, would be
12 just slightly under \$45 million. Does that
13 sound familiar to you?

14 A (Matson) One moment.

15 Q I can represent to you that that's what she
16 said.

17 A (Matson) Okay. Sure.

18 A (Bouchard) I think she said "30 million".

19 Q She said "44.98 million". That was in
20 Applicants Exhibit 1, in Appendix 44. If you'd
21 like to see it, I will show it to you. But I
22 want -- I mean, my question is, if we could
23 pull up Applicants Exhibit 195.

24 MR. NEEDLEMAN: And if you could zoom

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 in on that please, Dawn.

2 **BY THE WITNESS:**

3 A (Bouchard) Thank you.

4 BY MR. NEEDLEMAN:

5 Q Sure. So, these are the 2016 City tax records.

6 And my understanding is that, if the tax
7 payments as calculated by Ms. Shapiro were, in
8 fact, around 45 million, that would make
9 Northern Pass the third largest taxpayer in
10 Concord, based on these numbers. Is that fair
11 to say?

12 A (Bouchard) You know, based on the numbers that
13 you are giving us, I guess that's fair to say.

14 Q And, if it turned out that Ms. Shapiro was
15 wrong, and Concord's tax assessor was correct,
16 and, in fact, the Project should be valued at a
17 higher amount, then that may even mean that the
18 Project could become the second highest or even
19 the first highest tax entity in Concord, is
20 that right?

21 A (Bouchard) If the numbers you are giving us is
22 correct, that's right. But it doesn't take
23 into account the harm that it would do to our
24 residential property owners that are along this

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 corridor or the commercial businesses. So, the
2 lost value in their homes, the visual blight to
3 our community --

4 Q Ms. Bouchard, I --

5 A (Bouchard) I understand you're talking money,
6 but we're also talking about dollars that we
7 can't quite quantify yet.

8 Q And I understand that that's the view of some.
9 And I'm simply looking at these numbers and
10 asking you to confirm that. And this is
11 correct, right?

12 A (Bouchard) I accept the numbers you have given
13 us. I don't know if our tax assessor would
14 have a different opinion.

15 Q And if it turns out that the actual assessed
16 value is higher, then the amount of taxes that
17 Ms. Shapiro calculated would actually be higher
18 as well, which means it would be a greater
19 monetary benefit for Concord, is that correct?

20 MS. PACIK: Objection. I think he's
21 mischaracterizing the evidence of Dr. Shapiro.
22 The issue for the first year isn't in dispute.
23 The question is whether the taxes decrease
24 after the first year. And, so, the number of

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the -- the assessed value in the first year
2 isn't going to change. If it's 45 million now,
3 I don't think there's any testimony in the
4 record that it would be more than 45 million at
5 any other point.

6 MR. NEEDLEMAN: I don't think that's
7 what I said.

8 CHAIRMAN HONIGBERG: I don't know if
9 that's what the question was. Mr. Needleman.

10 MR. NEEDLEMAN: I don't think that's
11 what I said.

12 CHAIRMAN HONIGBERG: Can you rephrase
13 or restate your question?

14 MR. NEEDLEMAN: Sure. Sure.

15 BY MR. NEEDLEMAN:

16 Q So, I'm just looking at these numbers, and I'm
17 saying, if Ms. Shapiro is wrong and Concord's
18 assessor is correct, then the assessed value,
19 in the first year, would actually be higher,
20 and Concord would receive even more taxes than
21 Ms. Shapiro calculated. Is that correct?

22 MS. PACIK: And my objection stands.
23 The assessor is talking about the use of net
24 book, which is whether it should depreciate on

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 an annual basis. We're not talking about the
2 assessment in the first year.

3 CHAIRMAN HONIGBERG: Overruled. You
4 can answer.

5 **BY THE WITNESS:**

6 A (Matson) So, I guess I'm not quite
7 understanding. But, since there's a history of
8 litigation for the type of -- how these -- the
9 arrival of the amounts come to, I'm not sure
10 that I can answer the question appropriately.
11 So, you're asking us to address a number that
12 we don't, because I'm not a tax person, so we
13 know what our tax person has provided us for
14 information. You have information here, and
15 you're asking us to guess if, you know, if it
16 changes, that we will get more. If it goes
17 higher, would we get more? For what, one year?
18 And then it goes down from there. Or it gets
19 changed in litigation. I'm not sure what
20 you're asking.

21 You know, do we get a one year benefit of
22 whatever dollar amount that is?

23 **BY MR. NEEDLEMAN:**

24 Q I thought --

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Matson) I mean, is that an assessment for --

2 Q I thought I was asking something simple.

3 A (Matson) Oh.

4 Q Which is, if Ms. Shapiro is wrong, and your
5 assessor is right, Concord will get more taxes,
6 correct?

7 A (Matson) For that year.

8 Q Okay. That was it. I want to turn to you, Ms.
9 Fenstermacher. But, before I do, I want to hit
10 some of the topics that were generally covered
11 in your initial direct testimony. And I know
12 some of these questions are for you, Ms.
13 Fenstermacher. Others may be for different
14 folks.

15 When Ms. Pacik was asking you questions,
16 she focused on White Park, and asked you if you
17 had gone back and looked at White Park with
18 leaf-off conditions. Do you remember that?

19 A (Fenstermacher) Yes, I do.

20 Q And my understanding is that, when you were
21 there, you stood up on the hill so you could
22 get a view of where the transmission corridor
23 is in the distance, is that right?

24 A (Fenstermacher) Correct. I walked along a

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 pathway in the park.

2 Q And are you familiar with the fact that, from
3 that location, the line is about 2.9 miles
4 away?

5 A (Fenstermacher) Yes.

6 Q And, so, would it be correct to characterize
7 that as a "distant view", one where, even if
8 the line was built, there's no way that the
9 structures would be prominent and dominant from
10 that particular location?

11 A (Fenstermacher) They would still be visible.
12 It's a -- I mean, it's within the corridor
13 that's looked at for visual assessment. So,
14 yes.

15 Q I understand it might be visible. But you're
16 not suggesting that standing there those
17 structures would actually be prominent and
18 dominant in the view, are you?

19 A (Fenstermacher) I mean, it would break up the
20 existing ridge. Right now it's not broken up.
21 The ridge that you overlook on the east side of
22 Concord, it would be broken up by the corridor.
23 So, it may be, if that's what you're there for,
24 to look at that scenic view across the City,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 then, yes, that would disrupt that view.

2 Q So, you think from that location the
3 structures, if built, would actually be a
4 prominent feature?

5 A (Fenstermacher) It would -- yes. It would be a
6 new feature in the landscape.

7 Q And --

8 A (Tardiff) Can I just add that I think we agree
9 with that. That it would be a prominent
10 feature.

11 Q Okay. And is it your testimony that the people
12 who use White Park would somehow that their use
13 and enjoyment affected as a consequence of the
14 Project being built?

15 A (Fenstermacher) I can't characterize what
16 everybody uses that park for. But I do know
17 that that portion of the park, as you walk
18 along, you can see the views on the east side
19 of Concord, which, as Ms. McClure mentioned
20 earlier, that part of the benefits of Concord's
21 topography is that you can enjoy views all the
22 way across the city and looking at the ridge on
23 the east side of Concord. So, some members may
24 -- I mean, some users of the park may go out

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 there for the views.

2 Q I guess my question is more specific, which is
3 do you have an opinion or do you have any
4 information suggesting that any of the users of
5 White Park would somehow have an adverse -- it
6 would be an adverse effect of their use and
7 enjoyment of the park?

8 A (Fenstermacher) If they're going up there to
9 capture the views, then, yes. But I have not
10 heard any direct testimony about that.

11 Q Okay.

12 A (McClure) And if I can just add, I believe they
13 would be.

14 Q Okay. Let me ask you about the current use
15 parcel list that was put up a little while ago.
16 I guess, Ms. Fenstermacher, this would be for
17 you as well.

18 Are you familiar with the fact that, in
19 the Counsel for the Public's visual expert
20 report, T.J. Boyle, they indicated that, with
21 respect to current use parcels, there is no
22 spatial database that exists identifying those
23 parcels?

24 A (Fenstermacher) I was not aware of that. But I

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 do know that there is no spatial data

2 available.

3 Q And were you familiar with the fact that Mr.

4 DeWan and Ms. Kimball said that the absence of

5 a spatial database for these types of parcels,

6 given the kind of use -- or, the kind of work

7 that they do, makes it very challenging to use

8 those parcels in visual impact assessments? Do

9 you know they testified to that?

10 A (Fenstermacher) I do know they testified to

11 that, yes.

12 Q And my understanding is, and I'll get into this

13 in a minute, but my understanding is you're not

14 a visual impact assessor, and you haven't done

15 this kind of work before, is that right?

16 A (Fenstermacher) That is correct.

17 Q So, you don't have any basis to disagree with

18 DeWan and Kimball when they say that, is that

19 correct?

20 A (Fenstermacher) Well, I understand, looking at

21 a list of properties and being able to quickly

22 delineate which properties would be impacted.

23 They had previously done a visual impact, so

24 they had a general idea of the neighborhoods

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that the towers would be visible from. So,
2 it's pretty easy to go through that list.

3 Q But that wasn't my question. My question is,
4 as experts in that field who are saying that
5 they need a spatial database for properties,
6 and that absent one it's very difficult to use
7 these properties, you don't have any experience
8 that would suggest otherwise, do you?

9 A (Fenstermacher) I have experience in GIS
10 mapping and planning. So, it's not specific to
11 visual assessments, but that goes across the
12 board for large-scale planning. So, yes, I
13 have experience in that.

14 Q Okay. We'll leave it at that. You also said,
15 when you were talking to Ms. Pacik, that you
16 were able to look at these properties and
17 determine whether or not they had visibility of
18 the line, is that correct?

19 A (Fenstermacher) No. That's not what the
20 question was.

21 Q Okay. So, when you looked at these properties
22 then, you actually had no sense of whether they
23 would have visibility, is that right?

24 A (Fenstermacher) Right. I was able to quickly

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 parse out areas that would not have visibility,
2 and then that would allow whoever was doing the
3 study to take the reduced amount, reduce the
4 list of the number of properties to look at
5 more closely.

6 Q How were you able to do that? Were you looking
7 at some sort of viewshed map to make that
8 determination?

9 A (Fenstermacher) We had the viewshed map, and
10 I'm very familiar, with my position in the
11 City, of streets and neighborhoods. So, I am
12 an expert in that area that I was able to do
13 that quickly.

14 Q Right. But, being an expert, I think you still
15 need to know where the structures are located,
16 and the heights of the structures, and the
17 topography, to really determine whether you can
18 have visibility in a given location. Isn't
19 that correct?

20 A (Fenstermacher) Correct. But I had their
21 visual impact assessment, I had the viewshed
22 assessment from Chesapeake Conservancy and from
23 T.J. Boyle.

24 Q Okay. So, you used those viewshed maps to make

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 determinations about what you thought might be
2 visible?

3 A (Fenstermacher) Correct.

4 Q Okay. And you mentioned that you had a
5 conversation with somebody at the Department of
6 Transportation about the 393 crossing. Is it
7 your understanding that, with respect to that
8 crossing, what the Applicants have presented in
9 the Application to the Committee is what
10 they're asking the Committee to approve?

11 In other words, the Applicant -- there is
12 no change with respect to that area in terms of
13 what the Applicants are asking the Committee to
14 approve. Do you understand that?

15 A (Fenstermacher) Yes.

16 Q Okay. So, you weren't suggesting that somehow
17 there's a pending change at this point?

18 A (Fenstermacher) I'm not suggesting that, but
19 just that DOT has not determined if those
20 heights are appropriate for that location.

21 Q Somebody was asked questions about 41 Hoit
22 Road, and I can't remember who that was. Was
23 that you, Ms. Fenstermacher?

24 A (Fenstermacher) Yes.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Are you familiar with the fact that the Project
2 has actually -- I think the questions related
3 to communications that the Project has had with
4 the folks at Hoit Road, is that right?

5 A (Fenstermacher) Correct.

6 Q Are you familiar with the fact that the Project
7 has actually had multiple communications with
8 the people there, including two site visits?

9 A (Fenstermacher) They did mention that earlier
10 on in the process that someone had come and
11 done a site visit at their property.

12 Q Okay. Did you know that the residents at 41
13 Hoit Road asked the Applicants to do EMF
14 testing at their property, and the Applicant
15 did that?

16 A (Fenstermacher) No. I was not aware of that.

17 Q Did the residents at 41 Hoit Road tell you that
18 they recently called the Northern Pass Hot Line
19 with some questions, and that Northern Pass
20 returned their call, but the parties haven't
21 connected yet?

22 A (Fenstermacher) If that was after our visit in
23 October, then I have not heard that
24 information.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. And then, I just want to go to these
2 photos that we saw a little while ago about the
3 work that was done around Alton Woods. That
4 was Joint Municipal Exhibit 313.

5 And I guess let me start, I'm not sure who
6 the right person is, but what was the purpose
7 of introducing those photos? What was the
8 intention of that? Do any of you know?

9 A (Fenstermacher) Can you show us which photos
10 that you're discussing?

11 Q I don't have access to it. It's Joint
12 Municipal 313.

13 MR. NEEDLEMAN: Oh, do I? Okay.
14 There they are.

15 CHAIRMAN HONIGBERG: Like magic.

16 MS. PACIK: I'm going to object, to
17 the extent he's asking for attorney/client
18 privileged communications, I do object to that
19 line of questioning. And I would instruct my
20 witnesses not to get into that area.

21 MR. NEEDLEMAN: I'm certainly not
22 asking for that.

23 BY MR. NEEDLEMAN:

24 Q I guess I'm -- the photos were put up and they

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 were shown to you, and you were asked
2 questions. It was unclear to me what that was
3 about. But I guess I can move past there.

4 You were asked the question "who is doing
5 this work?" And no one seemed to have a clear
6 sense of that, is that correct?

7 A (Fenstermacher) It's either Unitil or
8 Eversource.

9 Q So, did any of you see these photos prior to
10 the time they were shown to you earlier today?

11 A (Shank) Yes.

12 Q And, so, when you saw them, did you make any
13 effort at that point to try to figure out who
14 was doing the work?

15 A (Shank) Yes.

16 Q And what did you learn from that effort?

17 A (Shank) So, part of the lines were an extension
18 of the PSNH, the Eversource project, that
19 happened on Portsmouth Street. And then I was
20 told, but I cannot confirm, that some of the
21 lines and some of the poles were put in by
22 Unitil.

23 Q I haven't had much time to look at this. It's
24 my understanding that this is a Unitil

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 distribution project between their Hollis
2 substation and the Broken Ground substation,
3 and that PSNH, as a result of Unitil putting
4 those lines in, had to raise a couple of
5 structures to accommodate those Unitil lines.
6 Does that sound correct to you?

7 A (Shank) No. So, part of the poles were pointed
8 out to me as new --

9 *[Court reporter interruption.]*

10 **CONTINUED BY THE WITNESS:**

11 A (Shank) -- as new Unitil poles. But I know
12 that part of the conversations that occurred
13 with Hodges were from PSNH related to the
14 Portsmouth Street Project and a new easement
15 area that was put through there, and new area
16 cleared for the PSNH line that joined from the
17 Portsmouth Street Project.

18 BY MR. NEEDLEMAN:

19 Q I'll put another exhibit up, and maybe you can
20 clarify it. Because the only information I was
21 able to get from Eversource was that this is
22 the only work they're doing in that area. But
23 let me -- let me put an exhibit up and ask you
24 about it.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 It's Exhibit 424. And I think somebody

2 said that you were unfamiliar with any

3 approvals that had been secured for doing work

4 around the Alton Woods area. Is that right?

5 A (Shank) There were no approvals that were

6 secured as part of that, that particular area.

7 Q So, this is a June 25th, 2015 [June 22, 2015?]

8 conditional approval issued by the Concord City

9 Planning Board that I'm told relates to the

10 work in this area. And I haven't had a chance

11 to look at it and correlate the two. But I'm

12 wondering if any of you are familiar with it?

13 A (Shank) Yes. This relates to their original --

14 their approval that I believe -- yes, this is

15 the approval of their substation. The area in

16 question of Alton Woods wasn't even on these

17 plans. So, it was not part of this approval.

18 It wasn't even -- it doesn't even appear on any

19 of our plans.

20 In fact, we had a complaint from an

21 abutter who felt that he was close enough that

22 he should have been notified. And we asked

23 PSNH to provide us some plans to show this area

24 and show the impacts that would occur in this

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 area, and that was very difficult to get. We
2 couldn't even get a plan. And, finally, we
3 just got something with some lines drawn on it.

4 So, the City was never submitted plans of
5 the Alton Woods site or any of that easement
6 area to show where those lines were going or
7 demonstrate any clearing or buffers or -- I
8 mean, easement area or anything like that. The
9 plans that this approval is for stopped pretty
10 much at the highway, or just crossing the
11 highway.

12 Q So, I'm going to come back to that in a minute.
13 I just want to show you another exhibit, which
14 is 425. This was an amendment on January 19th,
15 2017 to this approval. And I will again
16 indicate to you that I've spoken with
17 Eversource, who spoke with the contractors, who
18 indicate that these approvals do relate to the
19 work that was in those photographs. So, there
20 seems to be a disconnect here.

21 But I want to look at this one. And if we
22 could go over to the second page.

23 Ms. Fenstermacher, you signed this. So, what's
24 your understanding of what this is about?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) This was they had to relocate
2 the lines that were coming from the substation
3 to cross over 393. So, it was the increased
4 impact of the temporary wetland buffer --
5 temporary impacts to wetland buffers.

6 Q So, are you familiar with any other permits
7 that were secured for the work that was going
8 on in the right-of-way, like a Construction
9 Notice of Intent Permit for storm water or a
10 DES Wetlands Permit?

11 A (Shank) I would defer, if we -- I'm not sure we
12 have that as part of our file. I don't think
13 we do. I don't think that they were required
14 to provide us with any of that. And I don't
15 know that they did.

16 As Beth mentioned, the area that this
17 pertains to is the property immediately on the
18 other side of the highway and does not extend
19 into this area.

20 Q Okay.

21 A (Tardiff) Let me just add, from the
22 Conservation Commission, I know we did see
23 representatives on, I mean, definitely for the
24 substation, which we're talking about now, but

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 also for the crossing across 393, and there was
2 a pole placement on the south side of 393 as it
3 comes through. And that came in -- it was
4 within the last year. But that discussion is
5 that -- that did not extend all the way over
6 across Loudon Road, what came to us anyway.

7 Q All right. Since none of you are familiar with
8 the Wetlands Permit, I'm not going to put it in
9 front of you. But we will put it in as an
10 exhibit. It sounds like we're not going
11 resolve this issue now. We're probably just
12 going to have to agree to disagree on it.

13 A (Shank) Can I just add, though?

14 Q Sure.

15 A (Shank) A Wetland Permit is not an approval
16 from the City. So, whatever they represented
17 on their Wetland Permit does not reflect any
18 approval that the City gave them, because we
19 gave them no approval for the work that was
20 done on that property.

21 Q I understand. But the City sees the Wetlands
22 Permit, isn't that correct? It has to be
23 provided to the municipality or the town where
24 the work is being done, right?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Shank) Again, I'm not familiar with us
2 receiving that, or as the Conservation
3 Commission said.

4 Q Oh, I'm not asking you whether you received
5 that permit. I'm asking you, as a matter of
6 course, aren't Wetlands Permits provided to
7 host municipalities and towns?

8 A (Shank) Yes. We do usually see them.

9 Q Okay.

10 A (Fenstermacher) Can I just interject? We
11 receive notification for wetland buffer
12 impacts. But whether this impact -- this may
13 not have impacted any wetlands, therefore there
14 wouldn't have been a permit associated with it
15 that we would have seen.

16 CHAIRMAN HONIGBERG: Off the record.

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

19 CHAIRMAN HONIGBERG: Back on the
20 record. We'll take a ten-minute break.

21 *(Recess taken at 2:52 p.m. and*
22 *hearing resumed at 3:06 p.m.)*

23 CHAIRMAN HONIGBERG: Mr. Needleman,
24 you may continue.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MR. NEEDLEMAN: Thank you. I think
2 most of my remaining questions are for you, Ms.
3 Fenstermacher. You're the lucky one.

4 BY MR. NEEDLEMAN:

5 Q I think you've already told us that the work
6 you did here was not meant to be a visual
7 impact assessment and not meant to comply with
8 the SEC rules, right?

9 A (Fenstermacher) Correct.

10 Q And I think you told me in your tech session
11 that what you were actually trying to do was to
12 focus on non-scenic resources or things that
13 were not covered by the SEC rules, is that
14 right?

15 A (Fenstermacher) That's correct.

16 Q And I think you also said that you primarily
17 were focusing on potential impacts from tree
18 removal in the existing right-of-way, as well
19 as the location and height of new structures,
20 right?

21 A (Fenstermacher) Correct. In addition to
22 impacts during construction.

23 Q Okay. I want to talk about, Mr. Aslin started
24 to get into this a little bit, but I want to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 follow up on the approach that you used to
2 undertake your analysis in this case. And I
3 want to start by getting a sense of the
4 information you looked at.

5 So, my understanding is that, when you
6 were looking at the current and proposed
7 structure heights along the route, you were
8 looking at the information that the Applicants
9 provided in the Application and the updates, is
10 that right?

11 A (Fenstermacher) That's correct.

12 Q And you also, I think, looked at the Wetland
13 Permit Application plans and the Alteration of
14 Terrain plans for tree clearing and things like
15 that, is that correct?

16 A (Fenstermacher) Correct.

17 Q And then, once you took all that information,
18 you and your associate, Paul Gendron, I think
19 as you described, drove around to the various
20 locations and, where you could, tried to get
21 access to the corridor and assess what these
22 impacts would look like, is that correct?

23 A (Fenstermacher) We did not go into the corridor
24 itself, but to some frontage of properties

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 along the corridor.

2 Q All right. And I think you said in some cases
3 you went down driveways and in other cases you
4 didn't, is that right?

5 A (Fenstermacher) That's correct.

6 Q And you didn't generally go onto people's
7 private property, unless you had permission to
8 do that?

9 A (Fenstermacher) Correct.

10 Q Okay. And after you went and did this field
11 assessment, you plotted the heights of the
12 existing structures and the proposed structures
13 on the Project maps, is that right?

14 A (Fenstermacher) Prior to going out in the
15 field, yes.

16 Q And then you prepared this chart that we've
17 seen of the potential impacts. And, of the 150
18 properties, you identified 92, and then you
19 rated the impacts as high, medium or low, is
20 that right?

21 A (Fenstermacher) Yes.

22 Q And, of these 92, you concluded that 46,
23 according to your approach, would have a high
24 impact, 35 a medium, and 11 a low impact, is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that right?

2 A (Fenstermacher) That sounds correct.

3 Q And, when you did this impact assessment, you
4 weren't referring in any way or relying in any
5 way on any visual methodology that other people
6 have used, like the BLM methodology, the Forest
7 Service, things like that. Is that correct?

8 A (Fenstermacher) No. We were just doing ground
9 truthing.

10 Q Okay. And this is an approach, I think you
11 said, that you use in other projects. But my
12 understanding is you've never used this
13 approach for purposes of assessing a
14 transmission line project, is that right?

15 A (Fenstermacher) I have not been involved in any
16 other transmission line projects.

17 Q All right. And we asked you --

18 MR. NEEDLEMAN: I want to pull up,
19 Dawn, one of our data requests, MG3S-D3.

20 BY MR. NEEDLEMAN:

21 Q During the course of discovery, in an effort to
22 learn more about the approach you took here, we
23 asked some questions about this. And what we
24 were interested in was getting documents or

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 other materials that you had or you used that
2 supported this assessment that led to your
3 ratings for these 92 properties. And what you
4 told us was, instead of providing documents,
5 you said "Look at", or whoever answered, said
6 "Look at the prefiled testimony of Beth
7 Fenstermacher." Do you see that?

8 A (Fenstermacher) Yes.

9 Q And earlier today, you gave some descriptions
10 of the things that you had in mind when you
11 were assessing these 92 properties and doing
12 those ratings. Do you recall that?

13 A (Fenstermacher) I do.

14 Q And the descriptions you gave actually contain
15 more information than was on the last page of
16 your Exhibit C, which is your rating sheet. Do
17 you recall that?

18 A (Fenstermacher) Yes.

19 MR. NEEDLEMAN: And, Dawn, maybe, do
20 you have access to Exhibit C? Can we put that
21 up?

22 MS. GAGNON: To what?

23 MR. NEEDLEMAN: To Ms.

24 Fenstermacher's Exhibit C, which is, I'll tell

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 you in a minute, Joint Muni 137, Exhibit C.

2 And could we go to the last page, Dawn? I
3 think it's four pages in or five maybe. One
4 more. That one.

5 BY MR. NEEDLEMAN:

6 Q So, at the bottom of this page is your color
7 key. And my understanding is that, for
8 purposes of doing your ratings, this is the
9 information that somebody would look at in
10 order to understand how it was you rated these
11 various categories. Is that right?

12 A (Fenstermacher) That was the intention, to show
13 a legend, what the colors meant.

14 Q And there was no other information anywhere in
15 your testimony or these attached documents or
16 anything that you provided to us that gave any
17 further description of how you went about doing
18 these ratings. This was it, is that right?

19 A (Fenstermacher) I'd have to look back on my
20 prefilled testimony.

21 Q Do you recall any other information, because I
22 couldn't find any?

23 A (Fenstermacher) I don't recall any off the top
24 of my head, no.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q So, for somebody who wanted to recreate your
2 work, this is all they would have to look at to
3 understand how it was you decided whether
4 something was a high or a moderate or a low, is
5 that right?

6 A (Fenstermacher) Without speaking directly to
7 me, yes.

8 Q I'm going to come back to this exhibit in a few
9 minutes. But, with respect to vegetative
10 clearing, you, in your testimony, said that, on
11 Page 4, Line 9, that you concluded that some of
12 the properties on this chart "would have an
13 increased clear view". Do you remember that?

14 A (Fenstermacher) Yes.

15 Q And I'm wondering whether you are familiar --
16 you're familiar with the testimony that
17 Mr. Bowes gave, which came in May, after you
18 prepared this chart, where he described the
19 differences between "tree removal" and "tree
20 trimming". Did you look at that testimony?

21 A (Fenstermacher) I did not.

22 Q So, prior to the time you did your work, did
23 you have an understanding of the difference
24 between "tree removal" versus "tree trimming"

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 as proposed by the Project?

2 A (Fenstermacher) No.

3 Q Did your analysis in any way account for tree
4 trimming versus tree removal?

5 A (Fenstermacher) It did not. It just looked at
6 the buffer, the quality of the buffer as it
7 existed.

8 Q All right.

9 MR. NEEDLEMAN: So, Dawn, going back
10 to Exhibit C, let's look at the first page of
11 Exhibit C.

12 BY MR. NEEDLEMAN:

13 Q In the "Comment" section, you noted that there
14 were several properties that have "Existing
15 full view, will have clearer view with the pole
16 height increase." Do you remember that?

17 A (Fenstermacher) Yes.

18 Q You also said that there were several
19 properties that had "Existing view, will have
20 full view with planned clearing and pole height
21 increase." Do you recall that?

22 A (Fenstermacher) Yes.

23 Q Now, there was no point where you actually sat
24 down and discussed with the Applicants

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 specifically what the tree clearing or tree
2 trimming was going to be at specific locations
3 along the corridor in Concord, is that right?

4 A (Fenstermacher) We were relying on the plans
5 that were submitted to us as part of the
6 Application.

7 Q Right. And, so, as a result, if the Project
8 maps weren't making those distinctions between
9 clearing and trimming, you assumed it all to be
10 clearing, is that right?

11 A (Fenstermacher) That is true, yes.

12 Q And, in fact, I think there were a couple of
13 places where you were actually confused about
14 this issue. If you look at Page 1, 14 and 16
15 Brookwood, for example, --

16 MR. NEEDLEMAN: A little higher,
17 Dawn. Up higher, 14 and 16 Brookwood.

18 BY MR. NEEDLEMAN:

19 Q Your note there was to "Clarify how many trees
20 will be removed". Is that correct?

21 A (Fenstermacher) That is correct, yes.

22 Q And I think you said the same thing further
23 down the page on 6 Fox Run. So, did you make
24 any effort to actually understand those issues

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 prior to the time you issued this report?

2 A (Fenstermacher) No. When we were doing --
3 putting this report together, it was sort of
4 potential follow-up if this Project was to move
5 forward, these are things we would like to
6 clarify more.

7 Q Okay. So, this analysis then, for purposes of
8 making determinations between high impact,
9 medium impact, low impact, and then judging the
10 visual changes, isn't distinguishing between
11 the clearing and the trimming?

12 A (Fenstermacher) That's correct.

13 Q All right. So, in your prefiled testimony, at
14 Page 6, for example, you said "Most, if not all
15 of the vegetative buffer is proposed to be
16 removed" at four locations, and those were the
17 Brookwood locations, "10, 12, 14, and 16". Do
18 you recall saying that?

19 A (Fenstermacher) Yes.

20 Q And I guess my question is, when you were
21 drafting the testimony, it sounds to me like
22 you weren't familiar with the fact that, in
23 fact, most, if not all, of the vegetative
24 buffer at 14 and 16 -- and 12 Brookwood wasn't

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 going to be removed. That was just going to be
2 trimmed. You weren't aware of that, is that
3 correct?

4 A (Fenstermacher) I was basing it on the map that
5 said "vegetative clearing".

6 Q So, then it sounds to me like the ratings that
7 you did for locations like that, where you
8 weren't aware of the difference between the
9 trimming and removal, wouldn't necessarily be
10 accurate?

11 A (Fenstermacher) I would have to revisit those.

12 Q And there were two other properties, 10 and 16
13 Brookwood, where it wasn't trimming, but there
14 was only going to be a portion of the buffer
15 that was removed. And, again, it sounds to me
16 like, based on what you've told us, that your
17 ratings for locations like that also wouldn't
18 be accurate and would probably have to be
19 revisited, is that right?

20 A (Fenstermacher) Yes.

21 Q And does your analysis in these locations in
22 any way account for any post-construction
23 landscaping that would occur, if the Applicants
24 and landowners were to agree on those types of

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 landscaping plans?

2 A (Fenstermacher) It does not. And that's why we
3 put the potential follow-up notes in there.

4 This was just, based on the plans we saw in
5 front of us, this was the information that we
6 had, and that's what we were acting on.

7 Q So, if it turns out that there are locations
8 where there is going to be a fair bit of
9 trimming, but there is then a way, doing
10 landscape planning, with the Applicant and the
11 willing landowner working together to shield
12 some of that, that's not accounted for in any
13 way in your ratings?

14 A (Fenstermacher) No. That's something that we
15 were hoping that, doing this analysis, that
16 these conversations would happen with
17 individual property owners.

18 Q And you identified -- on your chart you
19 identified 46 residential properties that have
20 a high impact, is that right?

21 A (Fenstermacher) Sounds right, yes.

22 Q And, on Page 4 of your testimony, going over to
23 Page 5, you said, after discussing the fact
24 that you had recent conversations with Alan

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Johnson about Alton Woods, you were asked "Have
2 you had any conversations with other owners of
3 property along the route?" And you responded
4 "Yes. As discussed during the technical
5 session, I also met with Mr. and Mrs. Lawrence,
6 the owners of 37 Snow Pond Road." Is that
7 right?

8 A (Fenstermacher) Correct.

9 Q So, the work that you did here, as we see in
10 Exhibit C, concluded that there were 46
11 properties that would have a high impact,
12 right?

13 A (Fenstermacher) Yes.

14 Q How many of those 46 landowners did you
15 specifically tell about your conclusion?

16 A (Fenstermacher) I was not tasked with reaching
17 out to individual property owners.

18 Q So, aside from the property owner at Snow Pond
19 Road, did you actually have discussions with
20 any of these other property owners about that
21 conclusion you reached?

22 A (Fenstermacher) When we got the opportunity to
23 speak with them, then, yes, we discussed it
24 with them.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q So, how many of the 46 did you actually tell
2 that you reached a conclusion that, if the line
3 was built, it would have this high impact?

4 A (Fenstermacher) We spoke with, I believe, four
5 people. But they had reached out to us first.

6 Q Okay. And, when you spoke to those four
7 people, did you inform them that this was the
8 conclusion you reached?

9 A Yes.

10 Q And what information did you show them that led
11 you to that conclusion or what information did
12 you share with them?

13 A (Fenstermacher) We were on their properties,
14 and we pointed out to the maps where the
15 buffers were going to be cleared.

16 Q Okay. And did they, based on the information
17 you shared, did they agree or disagree with
18 your conclusion?

19 A (Fenstermacher) They agreed. And the point of
20 discussion with them was to encourage them to
21 reach out, to have direct communication with
22 Northern Pass, to mitigate the views and
23 express their concerns directly.

24 Q And I don't know which of those four people you

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 talked to. Do you happen to know whether they
2 did reach out to Northern Pass?

3 A (Fenstermacher) I am not aware. We directed
4 them and gave them information.

5 Q Okay. And, aside from those four, the other 42
6 landowners, you didn't have these kinds of
7 conversations with?

8 A (Fenstermacher) Unless they approached us
9 individually, no.

10 Q So, I want to put up an exhibit, which is a
11 compilation. It's a chart that we put
12 together, that shows the impacts that you have
13 in your chart.

14 MR. NEEDLEMAN: I'm not sure of the
15 number of this, Dawn?

16 MS. GAGNON: 417.

17 MR. NEEDLEMAN: 417?

18 BY MR. NEEDLEMAN:

19 Q All right. So, this is our Exhibit 417. And
20 the ones in red are the properties that you
21 determined to have a high impact. And what we
22 did is we looked at, and this chart goes over
23 to the next page, --

24 MR. NEEDLEMAN: So, Dawn, if you

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 could just flip, and to the following page at
2 least, so everybody can see the complete chart.

3 BY MR. NEEDLEMAN:

4 Q These are the 92 properties. The ones in red
5 are the ones that you determined to have the
6 high impact. And what we wanted to see was, of
7 those 46 properties, how many of those property
8 owners actually intervened in this proceeding.
9 And it turns out that 3 of the 46 intervened.

10 And, in terms of providing comments to the
11 Committee, either oral or written, we were able
12 to determine that eight people provided
13 comments. And I have to tell you, I can't be
14 positive these numbers are correct, because
15 it's an enormous record, but that was our best
16 effort to figure this out.

17 Do you have any information about that,
18 about these people providing comments, aside
19 from what's in the record, based on your
20 conversations?

21 A (Fenstermacher) No. We directed them to work
22 directly with the SEC, if that's something that
23 they chose to do. We were just there to
24 provide them information.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. So, the reason I'm mentioning this is
2 because, based on what you've just said, which
3 is that there were four of these high impact
4 owners that shared your concerns, and based on
5 the information we have on this chart about
6 these people reaching out to the Committee, it
7 seems like, for the majority of these 46
8 homeowners, a significant majority, there
9 doesn't seem to be any evidence in the record
10 indicating that they share the concerns that
11 you've expressed in this chart, is that
12 correct?

13 A (Fenstermacher) It's just that perhaps they
14 didn't take the opportunity to reach out and
15 express those concerns.

16 Q That seems right. But, as far as we know,
17 there's just no evidence indicating that they
18 have those concerns, is that correct?

19 A (Fenstermacher) Not written evidence, no.

20 Q And that's actually, if you look at this list,
21 for the non-high impact properties, that's
22 actually the same for an even larger proportion
23 of those properties, is that right?

24 A (Fenstermacher) Sure. Yes.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Now, there are two properties in particular
2 that you focused on on your list, and that
3 Ms. Pacik also focused on back with the
4 Construction panel that I wanted to ask you
5 about, 61 and 67 Sanborn Road. Do you recall
6 those being on your list?

7 A (Fenstermacher) They're on my list, yes.

8 Q Now, when Ms. Pacik was questioning the
9 Construction panel, she cited to these two
10 properties as examples of houses that had been
11 purchased along the right-of-way in Concord.
12 And I think that she was pointing them out
13 because it may have been that the Applicants
14 failed to include them on their maps. Does
15 that sound right to you?

16 A (Fenstermacher) That sounds correct.

17 Q But one of the things we learned when she
18 pointed these out to us and put the exhibits up
19 was that the two properties, that the homes
20 there commenced construction after the Project
21 was announced, and they were purchased by
22 homeowners who bought the homes after the
23 Project was announced, and I think even after
24 the Application was filed. Does that sound

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 right?

2 A (Fenstermacher) It's possible. I wasn't sure
3 when these properties were purchased.

4 Q Okay. That is in the record. I think it's
5 Joint Muni 193, which Ms. Pacik put in with the
6 records for both of these properties. And I
7 didn't see anything anywhere in your assessment
8 that accounted for facts like these. In other
9 words, there was nothing in the work you did
10 that seemed to account for the fact that there
11 might be people who would purchase when the
12 view was already completely clear and when they
13 did know that the Project was coming. Is that
14 correct?

15 MS. PACIK: Objection. I think it
16 assumes facts that are not in evidence.
17 There's no evidence that those individuals knew
18 that the Project was coming.

19 MR. NEEDLEMAN: The evidence speaks
20 for itself. The house -- the exhibit Ms. Pacik
21 put in demonstrates when the house was built
22 and when it was purchased. So, nothing needs
23 to be assumed.

24 CHAIRMAN HONIGBERG: Overruled. You

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 can answer.

2 BY MR. NEEDLEMAN:

3 Q So, let me go back to my question. Do you
4 recall my question?

5 A (Fenstermacher) Can you repeat it please?

6 Q I'm going to try. I don't see anything
7 anywhere in the assessment you did that
8 accounts for properties like these two
9 properties. Where they already had an
10 unobstructed view and where people might have
11 bought the properties knowing that the Project
12 was coming. Is that correct?

13 A (Fenstermacher) We didn't individually speak
14 with property owners to determine their extent
15 of knowledge. Property owners that we did
16 speak to may not understand how to read plans
17 or understand the extent of the Project as it
18 went through. So, they may have purchased it
19 knowing that, yes, this is an existing utility
20 corridor, but, assuming that's the extent, then
21 they were fine with that.

22 But, no. We did not include that in my
23 assessments.

24 Q The reason I'm asking this question, and the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 reason I put that chart up showing who seemed
2 to participate and who didn't participate, is
3 because it seemed to me, in the work that you
4 did, that you were using "high impact" as a
5 proxy for saying "there should be concern about
6 this property". Is that what you were
7 intending to do?

8 A (Fenstermacher) We were just trying to get an
9 idea of how these properties would be impacted.
10 What property owners do with this information
11 is up to them. But it could have to do with
12 the resale value of their house, or it's
13 just -- the community at-large is what we're
14 trying to assess. That there's 46 properties
15 that are having high impacts. If they choose
16 not to reach out with those concerns, that was
17 not contemplated in my research.

18 Q Okay. Because it seems -- you would agree with
19 me that, based on the exhibit I put up a moment
20 ago with the number of people who have actually
21 affirmatively expressed concerns, there doesn't
22 seem to be much of a correlation between what
23 you say is a high impact and people expressing
24 concerns about their individual properties. Is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that fair to say?

2 A (Fenstermacher) It's fair, but I'll bring up
3 one example of a couple that were in their 90s,
4 that I spoke to them on Pembroke Road. And
5 they were not aware of the extent. We showed
6 them the before-and-after pictures that were
7 included, and they were shocked. But they're
8 90 years-old, and said, you know, "We don't
9 have energy to follow up with this." So, I'm
10 not sure how many other people along this route
11 are in the same position they are in, because
12 we didn't go individually to each and every
13 house to see what their life circumstance was
14 to determine whether or not they agreed that a
15 high impact was something that they would be
16 willing to ask on.

17 A (Tardiff) And can I just interject? On your
18 chart here, if we can scroll down to the page
19 that had the Portsmouth Street properties,
20 there is one of those properties that is
21 City-owned and managed by the Conservation
22 Commission. It is noted on here as having
23 "City trails". You have it labeled as "No
24 intervention". Of course, that's incorrect,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 because the City is an intervenor here, and
2 certainly, through the Conservation Commission,
3 we have raised our concerns about that.

4 Q Okay. I appreciate that. We can change that.
5 Like I said, we worked to compile this at the
6 last minute. It's not going to be perfect.
7 But that's noted. Thank you.

8 But, again, coming back to what you said a
9 moment ago, Ms. Fenstermacher, I think you
10 would agree with me that there has been an
11 extraordinary amount of public outreach in this
12 case, both from the Applicant and with respect
13 to the efforts the Committee has made to
14 solicit public comment and to have public
15 comment sessions. Isn't that fair to say?

16 A (Fenstermacher) I guess it's fair to say, yes.

17 Q And the only other question I had about this
18 was that, aside from those 46 who chose not to
19 get involved in some way, we also have these
20 couple of pieces of affirmative evidence,
21 right, with respect to 61 and 67 Sanborn? And,
22 in those cases, what we seem to have is willing
23 landowners who purchased, as I said, after the
24 line was announced, with a full view of the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 corridor, who ostensibly didn't have any
2 concern. So, at least based on that record,
3 one would conclude that rating those impacts as
4 "high" on your chart doesn't correlate to an
5 actual property owner concern, does it?

6 A (Fenstermacher) I don't know if I would
7 correlate that they "don't have concerns" with
8 them not intervening. They just may not
9 understand the scope. They may just
10 understand, and that's making an assumption on
11 both sides, that they know the Project's coming
12 through, but it could just mean to them "oh,
13 yes, they're using the existing utility line",
14 not that there's going to be an additional line
15 that is getting taller that is going to move
16 closer to their house.

17 Q On Page 6 of your testimony, at Lines 7 through
18 10, you discuss impacts to McKenna's Purchase.
19 And you said that "The vegetative buffer is
20 proposed for removal." Do you recall saying
21 that?

22 A (Fenstermacher) Yes.

23 Q And I think you saw earlier the outreach
24 summary that we put up with respect to the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 back-and-forth that the Project and the McKenna
2 folks have had. Do you recall that?

3 A (Fenstermacher) I believe the computer froze,
4 and I don't know if we ever actually saw that.

5 Q Okay.

6 MR. NEEDLEMAN: Can we put that back
7 up, Dawn, the McKenna's outreach summary.

8 BY MR. NEEDLEMAN:

9 Q And I think it -- take a minute to look at it,
10 I think it's probably more than one page.

11 A (Fenstermacher) Okay.

12 Q Are you at all familiar with the back-and-forth
13 that the Project and McKenna's have had?

14 A (Fenstermacher) I know there was, prior to my
15 joining the City, that there were some
16 discussions with McKenna's. But I'm not aware
17 of the extent of it.

18 Q And you said in your testimony "The vegetative
19 buffer is proposed for removal." What were you
20 basing that on?

21 A (Fenstermacher) I was utilizing the Alteration
22 of Terrain -- the Army Corps of Engineer
23 Wetland Permit Application form.

24 MR. NEEDLEMAN: All right. So, Dawn,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 can we call up, it's Applicants Exhibit 199,
2 and let's start with Sheet 608.

3 BY MR. NEEDLEMAN:

4 Q So, McKenna's Purchase actually goes across two
5 sheets, 608 and 609. We'll start with this
6 one.

7 MR. NEEDLEMAN: And, Dawn, if you can
8 go to the right side and blow that up a little
9 bit.

10 BY MR. NEEDLEMAN:

11 Q And actually, before you do, just in the
12 legend, if you look down at the bottom, in that
13 fourth column of the legend, at the bottom it
14 shows the symbol for "vegetative clearing". Do
15 you see that?

16 A (Fenstermacher) This is different. Yes. This
17 is actually different than the materials that I
18 was given.

19 Q Okay. I'm not sure what you were looking at,
20 but let me show you this, and maybe Ms. Pacik
21 can clear it up. Do you see the vegetative
22 clearing on this map?

23 A (Fenstermacher) Yes.

24 Q And this is actually the updated August 2017

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 version.

2 MR. NEEDLEMAN: So, Dawn, if you take
3 that off, and we go to the right side and blow
4 up that part of the corridor.

5 BY MR. NEEDLEMAN:

6 Q Do you see in the middle, on the bottom there,
7 there's that little blue triangle, partly
8 within the red triangle, that shows the
9 clearing along the vegetative buffer in this
10 area? Do you see that?

11 A (Fenstermacher) I do. But this differs from
12 the materials that I reviewed as part of my
13 testimony.

14 MS. PACIK: Excuse me, Mr. Chair.
15 Can I just interrupt for a second?

16 CHAIRMAN HONIGBERG: Sure.

17 MS. PACIK: Under Exhibit 201, I do
18 recall that we got the updated Project maps.
19 And I'm just curious whether these Alteration
20 of Terrain permits were also produced as an
21 exhibit to the parties in this case?

22 MR. NEEDLEMAN: I think they were all
23 provided and uploaded. And I think Mr. Aslin
24 asked that they be made available to everyone,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 including the parties recently, and I'm sure
2 they have been.

3 MS. PACIK: So, this is a -- okay.
4 Because maybe I was just looking at the
5 original set, and these are new. Okay. Thank
6 you.

7 MR. NEEDLEMAN: And I'm actually not
8 sure what "original maps" people are talking
9 about, but I guess Ms. Pacik will show us. But
10 these are the current maps that we're talking
11 about here.

12 And, Dawn, if you could go to the
13 next sheet, Sheet 609.

14 **BY THE WITNESS:**

15 A (Fenstermacher) Right. The maps that I'm
16 referring to are attached to my testimony, and
17 those show a larger extent of clearing. So,
18 that is what I referred to in my testimony.

19 BY MR. NEEDLEMAN:

20 Q Okay. I'm not sure what the clearing is there,
21 but let me come back to that.

22 So, when you look at this map, you see
23 that there's no clearing of the vegetative
24 buffer along here, is that right?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) I haven't had a chance to
2 review these maps totally, because I'm only
3 looking at the material that was provided to me
4 from the original Application.

5 Q And I'm curious. These maps were provided in
6 August. You didn't have an opportunity to take
7 a look at these prior to submitting -- prior to
8 testifying today?

9 A (Fenstermacher) I was not aware that new plans
10 were submitted for this.

11 Q Okay. Would you agree with me at least that
12 these maps on this page don't show any clearing
13 of the vegetative buffer though?

14 A (Fenstermacher) I agree. These are updated
15 maps that no longer show clearing.

16 Q So, to the extent that these are the current
17 and correct maps, your statement that "the
18 vegetative buffer by McKenna's is proposed for
19 removal" would no longer be accurate, is that
20 correct?

21 A (Fenstermacher) I agree that, yes, but it is a
22 narrow buffer, and I believe there still will
23 be visual impacts.

24 Q Now, part of the work that you did here also

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 involved the assessment of commercial

2 properties, is that right?

3 A (Fenstermacher) Correct.

4 Q And, on Page 7, Lines 8 to 10, you concluded
5 that eight commercial properties in Concord
6 would experience a high visual impact from the
7 Project, is that right?

8 A (Fenstermacher) Correct.

9 Q And then you determined that the remaining
10 commercial properties on your list would have
11 some increased visual impact due to clearing
12 and increased pole height, is that right?

13 A (Fenstermacher) That's correct.

14 Q And I think there were 44 total commercial
15 properties that you looked at, is that right?

16 A (Fenstermacher) That sounds about right.

17 Q And with respect to those 44 properties, did
18 you have conversations with any of those
19 property owners specifically related to the
20 conclusions you reached about the impacts on
21 their properties?

22 A (Fenstermacher) Not with regard to visual
23 impacts, just impacts during construction,
24 which was one of the factors that I took into

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 consideration for high impact.

2 Q How many of those 44 did you have conversations
3 with about impacts during construction?

4 A (Fenstermacher) I personally did not have one,
5 but I know one has testified, based on this
6 information, that there will be impacts to
7 their property.

8 Q That's Sabbow, right?

9 A (Fenstermacher) Correct.

10 Q Did you have personal conversations with any of
11 the other 43?

12 A (Fenstermacher) I did not.

13 Q So, as far as you know, there's no information
14 in the record as to whether these 43 property
15 owners share the conclusions that you reached
16 about the visual impacts on their property,
17 right?

18 A (Fenstermacher) There's nothing in the record,
19 but I can't assume what they feel.

20 Q Let me, Dawn -- a couple of the properties that
21 you mentioned were places like 54 Chenell
22 Drive, does that sound familiar?

23 MS. GAGNON: 59.

24 **BY THE WITNESS:**

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) Yes. That's --

2 MS. GAGNON: 59.

3 MR. NEEDLEMAN: 59. My apologies.

4 Dawn, what exhibit number is that?

5 MS. GAGNON: 420.

6 MR. NEEDLEMAN: Can we call up

7 Exhibit 420 please?

8 BY MR. NEEDLEMAN:

9 Q This is 59 Chenell Drive, which is one of the
10 places you identified. That's the Irving Oil
11 facility. And my question is, what sort of
12 impacts would you expect from the construction
13 of the transmission line at a place like the
14 Irving Oil facility?

15 A (Fenstermacher) Is that 54 Chenell?

16 Q I think it's -- I'm confused. I think it's 54
17 Chenell. I think that's what you said.

18 A (Fenstermacher) Yes. It should be 54.

19 Q Yes.

20 A (Fenstermacher) I believe there are some poles.
21 It would just be during construction that there
22 would be -- hold on one second while I look.

23 Q And when you said -- so, you're not saying
24 there's actual visual impacts that would affect

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 this business, are you?

2 A (Fenstermacher) No. It was more that during
3 construction it may interrupt operations of the
4 company.

5 Q And what did you base that on? Did you talk to
6 people at this facility?

7 A (Fenstermacher) No. It was just looking at
8 aerial photographs of how the property is laid
9 out, and where the construction pads and
10 construction access were located.

11 Q Did you have any conversations with any members
12 of the Applicant team to understand how the
13 construction would happen here in relation to
14 this facility?

15 A (Fenstermacher) No.

16 Q So, no discussions with the Applicant team and
17 no discussions with the business owner about
18 construction impacts?

19 A (Fenstermacher) No.

20 MR. NEEDLEMAN: Dawn, can I call up
21 the next one, 75 Regional Drive?

22 BY MR. NEEDLEMAN:

23 Q So, I think this is the EnergyNorth Propane
24 Services facility. And again, same question.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Are you saying that there's going to be adverse
2 visual impacts to this facility if the line is
3 constructed?

4 A (Fenstermacher) That was more of impacts for
5 construction -- during construction. And we
6 were recommending that they coordinate with the
7 owners.

8 Q And same question. Did you speak with the
9 owners about their views of the construction
10 impacts?

11 A (Fenstermacher) No, we did not.

12 Q Okay. Are you familiar with the fact that
13 there are three lines in this corridor that
14 were built in 1929, 1951, and 1966?

15 A (Fenstermacher) I'm aware there are existing
16 lines. I wasn't aware of the dates.

17 Q And are you familiar with the fact that which
18 businesses were located along this corridor
19 before the lines were built and after the lines
20 were built?

21 A (Fenstermacher) No.

22 Q So, that didn't in any way factor into the
23 analysis that you did here?

24 A (Fenstermacher) No. That was not the point of

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the exercise.

2 Q So, we did the same thing with these businesses
3 that we did with the individual properties,
4 which was to figure out which ones intervened
5 and which ones offered comments.

6 MR. NEEDLEMAN: And, Dawn, if you can
7 pull that chart up.

8 BY MR. NEEDLEMAN:

9 Q And aside from Sabbow, which we know intervened
10 in the proceeding, what we were able to
11 determine based on a review of the record is
12 that none of these other businesses intervened
13 and none of them offered any sort of comment in
14 the proceeding.

15 Do you have any reason to disagree with
16 that?

17 A (Fenstermacher) I don't see that anything was
18 submitted.

19 Q Okay. So, when you conclude that eight of
20 these businesses would experience high impacts,
21 as you define them, is it fair to say that
22 there's no evidence in the record to support
23 the argument that any of these business owners
24 actually agree with that conclusion?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) There was nothing in the
2 record, but I can't assume that they understand
3 the extent of the Project and how it impacts
4 their property.

5 Q Part of the analysis you did also looked at
6 public roads. And, on Page 8, Line 8, you
7 referred to the impacts to these roads. And
8 then, on Line 15 and 16, you identified
9 specific roads: "Mountain Road", "Snow Pond
10 Road", "Shaker Road", and "Oak Hill Road". Is
11 that correct?

12 A (Fenstermacher) That's correct.

13 Q None of these are actually designated scenic
14 roads by the City of Concord, is that right?

15 A (Fenstermacher) We don't have any designated
16 scenic roads in the City.

17 Q Okay. At the tech session, you said to me that
18 you hadn't "reviewed or considered in any way
19 the Applicants' avoidance, minimization, and
20 mitigation measures". Do you recall that?

21 A (Fenstermacher) I recall that.

22 Q So, with respect to the conclusions that you've
23 reached about impacts in your testimony, none
24 of those conclusions in any way reflect those

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 measures, is that correct?

2 A (Fenstermacher) That's correct.

3 Q And again, it's your understanding -- or,
4 should I ask -- I'll ask you, do you understand
5 it to be the Applicants' intention to work with
6 willing landowners along the corridor to try to
7 come up with planting plans if they're
8 interested in doing that?

9 A (Fenstermacher) We are very hopeful that that
10 is something that happens if this Project moves
11 forward.

12 Q Are you familiar at all with the docket that
13 was before this Committee last year, the
14 Merrimack Valley Reliability Project?

15 A (Fenstermacher) No, I'm not.

16 Q Have you gotten any understanding at all of the
17 way in which Eversource worked with abutting
18 landowners in that docket to try to do
19 screening of their property?

20 A (Fenstermacher) No, I'm not.

21 Q Okay. Just a couple of questions about the
22 Chesapeake Conservancy assessment. Page 9,
23 Line 7 to 20, you introduced a viewshed
24 analysis prepared by Chesapeake Conservancy, is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that right?

2 A (Fenstermacher) Yes.

3 Q And, as far as you a know, this analysis was
4 just looking at potential visibility, correct?

5 A (Fenstermacher) That is correct.

6 Q And it actually did this using vegetative
7 screening, is that right?

8 A (Fenstermacher) It used the LIDAR data, which
9 takes into consideration existing vegetation.

10 Q And in your testimony, on Page 9, Line 18 to
11 20, you said that, based on the analysis done
12 by Chesapeake, "there would be an additional
13 388 acres and 91 buildings that would be
14 impacted". Is that right?

15 A (Fenstermacher) Yes. That's right.

16 Q And I take it, by use of the word "impacted",
17 you mean might have some additional view if the
18 line were constructed, is that right?

19 A (Fenstermacher) Correct.

20 Q And, as far as you know, Chesapeake didn't do
21 anything to determine whether any of these
22 additional locations meet the definition of
23 "scenic resource" under the SEC rules, is that
24 right?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) That was not what they were
2 tasked to do.

3 Q And there was no analysis at all done to
4 determine whether any of these locations were
5 actually publicly accessible or not, is that
6 correct?

7 A (Fenstermacher) That is correct.

8 Q In fact, there are a lot of these locations
9 that are private buildings that actually
10 wouldn't be publicly accessible, is that right?

11 A (Fenstermacher) Yes. But we were looking on
12 the broader scope of the community as a whole.

13 Q And Chesapeake didn't perform any analysis to
14 characterize impacts, is that right?

15 A (Fenstermacher) No. That was not their goal.

16 Q And they offered no opinion whatsoever about
17 whether these visual effects that they talk
18 about would be unreasonably adverse, anything
19 like that?

20 A (Fenstermacher) They were just giving us
21 additional information that was to use better
22 information than that was used in the DeWan
23 visual analysis.

24 MR. NEEDLEMAN: Okay. Thank you.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Mr. Chair, I'm all set. But Mr. Walker is
2 going to have some questions.

3 CHAIRMAN HONIGBERG: Mr. Walker.

4 MR. WALKER: Good afternoon. My name
5 is Jeremy Walker. I am also counsel for the
6 Applicants. And my questions this afternoon
7 are directed to Ms. Tardiff and Ms. McClure.
8 And also to Dr. Van de Poll, but you'll be
9 coming back another day for those questions.

10 BY MR. WALKER:

11 Q Ms. McClure and Ms. Tardiff, in your prefiled
12 testimony you raised some general concerns
13 about impacts to the wetlands in Concord, and
14 then you also reference that you may be
15 providing more testimony in your December 30th
16 prefiled testimony. Do you recall that?

17 A (Tardiff) Yes.

18 Q And then I looked at your later testimony, your
19 December 30th testimony, and the only mention
20 of concerns to wetlands and natural resources
21 was you note that the City of Concord has
22 retained an expert witness to address those
23 issues. And I assume you're talking about Dr.
24 Van de Poll?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Tardiff) That's correct.

2 Q So, other than the general concerns that you
3 raise in your original prefiled testimony, you
4 are relying on Dr. Van de Poll for your
5 concerns about wetland impacts?

6 A (McClure) That's not entirely true. We're
7 using Dr. Van de Poll's result, and then we're
8 using our brains to understand it better
9 ourselves, because all of us on the Commission
10 have expertise in different areas of
11 evaluation.

12 Q And neither of you are wetland scientists,
13 correct?

14 A (McClure) That's correct.

15 A (Tardiff) Correct.

16 Q In your prefiled testimony, and specifically --
17 do you have your prefiled testimony in front of
18 you?

19 A (Tardiff) Yes, we do.

20 Q Just to make it easier. And I'm referring to
21 your original prefiled testimony, on Page 11.
22 And for the record, this is Joint Muni
23 Exhibit 135.

24 A (Tardiff) You said "Page 11"?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Yes. Do you have that in front of you?

2 A (Tardiff) We do.

3 Q And at the bottom of it, Line 19 and 20, you
4 note that "the proposed project will impact 35
5 wetlands totaling 51.8 acres" in Concord. You
6 see that?

7 A (Tardiff) Yes.

8 Q But you're not suggesting that the Project will
9 actually impact all of the acres, 51.8 acres,
10 are you?

11 A (Tardiff) Well, those figures I think were
12 based on information we got from the Applicant
13 when they came and met with the Conservation
14 Commission and answered some questions. So,
15 that was I think their assessment of the
16 impacts.

17 Q Well, let me just -- I'm going to refer you to
18 the Normandeau's assessment with regard to the
19 impact to the wetlands.

20 MR. WALKER: And, Dawn, if you could
21 pull up, it's the Application, Appendix 31.
22 And it's Page 4-34, APP21178. And I'll give
23 you a moment to look.

24 BY MR. WALKER:

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q And if you'll see where Concord is in the
2 middle of the page, you can't see the column
3 head now, but the actual --

4 MR. WALKER: Dawn, if you could
5 actually go back out so they can see.

6 BY MR. WALKER:

7 Q If you'll notice the columns, there is a
8 reference to "Permanent Impacts" and "Temporary
9 Impacts". And, so, the Normandeau has
10 determined that about 501 square feet, which
11 equates to about 0.01 acres of permanent impact
12 to the wetlands in Concord, and about 7.3 acres
13 of temporary impacts. Do you see that?

14 A (Tardiff) Yes. And the numbers in our prefiled
15 testimony are from the left-hand column, which
16 had the total number. So, it was a combination
17 of the permanent and the temporary. And, as
18 we've indicated in our letter to DES, I think
19 as Dr. Van de Poll has discussed, we do have
20 concerns that what would characterize as
21 "temporary" in the Applicants' --

22 Q I think there's some confusion. If you look at
23 that left-hand column, which is "Total Area",
24 that I will represent to you is the total area

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 of the wetlands within the Project right-of-way
2 in Concord. And then there is a reference to
3 the actual impact, based on Normandeau's
4 assessment.

5 So, of the 51.8 acres, only 0.01 acres,
6 which is the 501 square feet, where there will
7 be a permanent impact, and then the 319,000
8 square feet, which equates to about 7.3 acres,
9 where there will be a temporary impact,
10 according to Normandeau.

11 A (McClure) So, what you're saying is, that the
12 51.8 acres is all of the wetlands in the 252
13 acre swath of the corridor?

14 Q And I don't know the "252" number, if that's
15 the right number. But it's the Project
16 area, --

17 A (McClure) It's actually --

18 Q -- the right-of-way going in Concord.

19 A (McClure) Right. So, what we were saying in
20 our testimony is that, to our knowledge, there
21 was -- there were that many acres of wetlands
22 in the corridor that would be impacted.

23 Q Fine. That's what you were saying. And I just
24 wanted to clarify that, because, from your

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 testimony, you mentioned it will "impact the 35
2 wetlands totaling 51.8 acres". And I think
3 we're on the same page now. You're not
4 suggesting that all of those 51.8 acres will be
5 impacted by the Project?

6 A (McClure) Well, at the time, that's what we
7 thought. And, actually, we're not convinced
8 that all of these temporary impacts are not
9 permanent.

10 Q Right. And I've seen that in your testimony.
11 And is the basis for that, you're suggesting
12 that what Normandeau has assessed as temporary
13 impacts may actually be permanent impacts.
14 That's your position or your concern?

15 A (McClure) Correct.

16 Q Is that based on anything other than Dr. Van de
17 Poll's assessment?

18 A (Tardiff) Well, I think it's also based on our
19 experience, and, collectively, the members of
20 the Commission, you know, observing impacts to
21 wetlands from development over time.

22 And, you know, to use a good example,
23 recent example, this is just over the Concord
24 city boundary, in Boscawen, adjacent to some

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 conservation land. A forester was in there in
2 the last couple months, and the impacts to the
3 wet soils there is just -- is tremendous. And
4 that's -- we have seen that in areas within
5 Concord as well, and that's the concern. That
6 once you get that heavy equipment in there,
7 that it may be temporal, in terms of the time
8 that the equipment is in there and the pads are
9 in there, but there is a lasting impact on the
10 land from that work.

11 Q So, that's your general concern. But whereas
12 Dr. Van de Poll has gone in and done an
13 assessment of where he thinks temporary impacts
14 will actually be permanent impacts, you haven't
15 done that level of assessment with regard to
16 this Project, correct?

17 A (McClure) That's why we hired him.

18 Q Right. And are you aware that the Applicants
19 have defined "permanent" versus "temporary
20 impact" versus "secondary impacts", based on
21 standards set by the U.S. Army Corps, the U.S.
22 EPA, and DES?

23 A (McClure) Yes.

24 A (Tardiff) Yes.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q And you are aware that the DES has approved the
2 Project's Wetlands Application in this case,
3 correct?

4 A (Tardiff) Yes. With a lot of conditions.

5 Q And I take it you've reviewed those conditions
6 in the permit?

7 A (Tardiff) We did receive a copy of that.

8 Q And are you aware that one of the conditions
9 requires the Project to restore all temporary
10 impacts to wetlands? They must be properly
11 restored by the Applicant. Are you aware of
12 that?

13 A (Tardiff) There is a condition in there that
14 refers to "restoration", and then, of course, a
15 question is, you know, what does that
16 restoration have to look like? And restoration
17 of the surface doesn't necessarily address the
18 long-term impacts, you know, compaction of the
19 soils, those kind of impacts.

20 A (McClure) We're also aware that DES, the
21 general mandate for DES is to avoid impacts to
22 wetlands where possible, according to the
23 Applicant, and then to develop mitigation for
24 those wetlands that are going to be destroyed.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 So, there's no mandate for DES to deny a
2 project because it's going through a wetland.

3 Q Well, let me ask you actually to refer
4 particularly to the conditions dealing with
5 this.

6 MR. WALKER: Dawn, if you could pull
7 up the DES, the Exhibit 75, Page 4 please. And
8 particularly Exhibit -- or, Condition 33
9 please.

10 BY MR. WALKER:

11 Q This is the condition I was referring to, Ms.
12 Tardiff and Ms. McClure. There's a reference
13 to the Project having to "properly restore" and
14 then "monitor the temporary wetland impact
15 areas". And "if monitoring reveals that the
16 restoration [for some reason] has failed,
17 [then] remedial measures [have to be taken] to
18 reestablish those wetlands." Do you see that?

19 A (McClure) I do. I also see Number 38, that
20 says "Restoration of temporary impacts shall
21 have at least 75 percent successful
22 establishment", not 100 percent.

23 A (Tardiff) And I would just add, the issue often
24 from us, from the City's perspective, is that

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 these conditions are imposed by DES, but then
2 they don't always have the ability to come out.
3 They're not out there monitoring. So, whether
4 you're actually able to reestablish those
5 wetland functions, and particularly when you're
6 talking about compacted soils, --

7 Q Are you aware --

8 A (Tardiff) -- and I'll let Dr. Van de Poll
9 address that from a scientific perspective.
10 But it's not always possible to completely
11 remediate those impacts.

12 Q And are you aware of the various monitoring
13 requirements that the Applicant has to abide
14 by, as set forth in the DES conditions?

15 A (Tardiff) Generally, just based on reading
16 what's in there.

17 A (Van de Poll) And you --

18 Q And, actually, Dr. Van de Poll, I will ask you
19 questions. I'll have a chance to ask you
20 questions. But, today, we're just going to --

21 A (Van de Poll) But this -- your questions may
22 not relate to this particular topic, of which I
23 think pertinent information is due the SEC,
24 that is the fact that monitoring only takes

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 place at a maximum of up to five years out.

2 And yet invasive plant reintroduction on sites
3 could effectively last forever thereafter, and
4 not --

5 Q And that is something I will ask you, Dr. Van
6 de Poll.

7 *[Multiple parties speaking at*
8 *the same time.]*

9 BY MR. WALKER:

10 Q I will ask you. You'll have a chance to
11 discuss that further. I just want to make sure
12 I get through.

13 CHAIRMAN HONIGBERG: Mr. Walker, I
14 think he has something that he believes is
15 responsive to the question that you asked the
16 other witnesses. I think we should let him say
17 what he needs to say right now.

18 MR. WALKER: Fair enough.

19 **BY THE WITNESS:**

20 A (Van de Poll) Thank you. You know, again,
21 there are a number of long-term impacts that go
22 out way longer than the monitoring requirement.
23 And, even when the monitor submits a report,
24 because I have been them and done enough

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 projects where I've submitted reports and
2 remediation is required, that remediation might
3 take place once, and maybe be visited in the
4 field by a DES reviewer, and maybe not.

5 And, so, in other words, going into the
6 Project, it has to have a real merit of
7 worthiness, because after it's done, it's over,
8 and there's very little enforcement.

9 BY MR. WALKER:

10 Q Thank you.

11 A (Tardiff) I think the other thing I would add,
12 and I believe Ms. Shank spoke about this
13 earlier, is within the City, when a project
14 comes through us, through the Conservation
15 Commission, in particular, and then going to
16 the Planning Board, we're looking not just at
17 impacts to the wetlands themselves, but to the
18 wetland buffers, which I don't think are
19 addressed in the DES permit. So, those impacts
20 may not be measured here or assessed.

21 Q Do you understand that the DES regulations at
22 all deal with wetland buffers?

23 A (Tardiff) I don't think DES, on the state
24 level, deals with buffers. But that's

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 something that we've added within our City
2 regulations. So, it is definitely something
3 that is a concern to the City, and we recognize
4 that wetland buffers and protection of wetland
5 buffers are actually very important to the
6 protection of the wetlands themselves.

7 Q So, prior to when the DES issued its approval
8 of the Wetlands Application, I think you
9 testified earlier today, and it's also in your
10 prefiled testimony, the Conservation Commission
11 sent a letter to the DES with your various
12 concerns about the Project, correct?

13 A (McClure) Can you specify which letter you're
14 referring to?

15 Q Sure. I'm sorry. It's July 25th, 2016. It's
16 the letter that you attached as "Exhibit C" to
17 your prefiled testimony.

18 MR. WALKER: In fact, Dawn, if you
19 could pull it up please. It's Joint Muni
20 006080.

21 BY MR. WALKER:

22 Q Do you see it on your screen? It may be on
23 your screen by now.

24 A (Tardiff) Yes. We can see the first page on

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the screen.

2 Q Do you recall sending this letter with your
3 concerns to the DES?

4 A (Tardiff) Yes. It's signed by Mr. Christopher
5 Morgan, who is our prior Chair. But, yes, we
6 recall this letter.

7 Q Okay. And, in fact, in the very bottom
8 paragraph of that page, you note your concerns
9 that the Project applicant has failed to meet
10 the requirements that the proposed Project be
11 the one with the least impact to wetlands,
12 correct?

13 A (Tardiff) That's correct.

14 Q And this is something that the DES had before
15 it when it issued its decision, so the DES had
16 your concerns before it, correct?

17 A (Tardiff) Yes, it did.

18 Q And the DES determined that indeed the proposal
19 submitted by the Applicant is the alternative
20 with the least adverse impact to wetland areas,
21 correct?

22 A (Tardiff) I don't know if I can answer that
23 question without looking at --

24 MR. WALKER: Well, Dawn, if you could

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 pull up Exhibit 75 please again. And I'll show
2 you the DES approval. And it's Page 8, Dawn,
3 Finding 5, which is Bates APP44453.

4 BY MR. WALKER:

5 Q If you were to look at Condition 5 -- I'm
6 sorry, Finding 5 by the DES. And the very
7 first line, that "The applicant has provided
8 evidence which demonstrates that this proposal
9 is the alternative with the least adverse
10 impact to areas and environments under the
11 department's jurisdiction". Do you see that?

12 A (McClure) We do see that.

13 Q So, the DES --

14 A (McClure) So, to us what that means is that the
15 Applicant has moved access roads and pads to
16 areas that are not wetlands, to the extent that
17 they can, and still do their Project.

18 Q Right. And that's -- and indeed that's what
19 the DES has found, that this is --

20 A (McClure) But the DES hasn't said you aren't
21 destroying wetlands.

22 Q No, but that wasn't my question.

23 A (McClure) I know, but --

24 Q You raised the question about the fact as to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 whether the Applicant has established that it
2 is the alternative with the least impact, and
3 the DES had that, your concern raised before
4 it, and the DES has obviously disagreed with
5 you, correct?

6 A (McClure) I would say that the Applicant
7 created a project that DES could verify, had
8 done the least amount of damage possible, given
9 what they wanted to do there.

10 Q I assume you would agree with me that the --

11 A (McClure) According to DES rules.

12 Q Right. And I assume you would agree with me
13 that the DES likely had reviewed more
14 information about the Project, the entire
15 Project, and its impact on wetlands and natural
16 resources, than your Commission did?

17 A (Tardiff) I don't think we can speak to what
18 DES reviewed.

19 Q Fair enough. I want to talk a little bit about
20 the KBB, the Karner blue butterfly. And in
21 your prefiled testimony, you raise some general
22 concerns that you had about the impact to the
23 Karner blue butterfly habitat, namely, the wild
24 lupine, correct?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Tardiff) Correct.

2 Q And you are aware -- well, let me ask you this.

3 Are you aware that the total area of wild

4 lupine patches in the Northern Pass

5 right-of-way in Concord is approximately 28,000

6 square of wild lupine habitat?

7 A (Tardiff) if that's what's in the Application,

8 then we would have seen that at some point,

9 yes.

10 Q Okay. And I will represent to you, that is

11 what's in the Application listed by Normandeau.

12 A (Van de Poll) I might note that's an estimate.

13 Q I'm sure that is.

14 A (McClure) Are you referring to the April or the

15 December?

16 Q The prefiled testimony?

17 A (McClure) Yes.

18 Q It would have been your prefiled testimony,

19 your first set, which was actually November of

20 2016.

21 And now you're aware, I heard you -- I

22 think Ms. Tardiff mentioned today that, since

23 you've submitted your testimony, you know that

24 the Applicants have been able to further reduce

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the impact to the lupine by moving a structure
2 and a work pad. And it's now reduced to 1,043
3 square feet of temporary impact to the wild
4 lupine habitat. You're aware of that?

5 A (Tardiff) We were informed that there's been a
6 change, yes.

7 Q Okay. And are you aware of that figure, that
8 it's 1,043 square feet, of the 28,000 or so
9 square feet of habitat?

10 A (Tardiff) Yes.

11 Q And, without even considering the mitigation
12 parcel that the Project has proposed, does this
13 significantly reduced area of impact alleviate
14 some of your concerns with regard to the wild
15 lupine habitat?

16 A (Tardiff) I'm hesitant to say it. It certainly
17 doesn't eliminate those concerns, because there
18 is a limited amount of habitat for the Karner
19 blue to begin with. So, really, any impacts to
20 the habitat that remains is a concern for a
21 species that is threatened, that is really kind
22 of an important part of the City of Concord.
23 All our school children learn about the Karner
24 blue. They plant lupine in their classrooms to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 be located and try and improve habitat. So,
2 it's an important part of our city. So,
3 really, any impacts are still concerning to us.

4 Q I understand. And are you aware that the U.S.
5 Fish & Wildlife Service has recently issued its
6 Biological Opinion with regard to the KBB?

7 A (Tardiff) I haven't actually seen that.

8 Q I understand Dr. Van de Poll has seen it, and
9 he talked about it a little bit earlier. But
10 you have not seen it, correct?

11 A (McClure) Right.

12 A (Tardiff) Correct.

13 Q And do you understand what a biological opinion
14 is when the U.S. Fish & Wildlife Service issues
15 one of those?

16 A (Tardiff) I do.

17 Q Okay.

18 A (McClure) I'm not sure I do, so, obviously --

19 Q Okay. Well, and, Ms. Tardiff, I think today
20 earlier you testified that you still had some
21 concerns about the mitigation parcel being
22 fragmented, is that right?

23 A (Tardiff) Fragmented in that it's a disturbed
24 site, so it's not the acquisition -- a proposed

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 acquisition and preservation of an existing
2 habitat.

3 Q Okay. I will --

4 A (McClure) In fact, it's a very disturbed site.

5 Q Okay. And that's your opinion. I wanted to
6 show you some excerpts from the Biological
7 Opinion, just so you have some sense, knowing
8 you have not read this.

9 MR. WALKER: And, Dawn, if you could
10 pull up the Biological Opinion, which was
11 issued by the Fish & Wildlife Service just this
12 past October.

13 WITNESS VAN de POLL: Mr. Walker, if
14 you could excuse me for just a second, I want
15 to confer with the Commission members.

16 MR. WALKER: Well, and I will just
17 say this. If you don't have knowledge, and you
18 want to defer to Mr. Van de Poll, that's fine.

19 *[Witnesses conferring.]*

20 WITNESS VAN de POLL: Thank you.

21 MR. WALKER: Okay. I want to pull
22 up -- Dawn, if you could pull up Page 22 of
23 that Biological Opinion, which is 85605.

24 BY MR. WALKER:

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q And I will represent to you that there is some
2 discussion in this opinion about the Karner
3 blue butterfly by the Fish & Wildlife Service.
4 But I'm showing you -- I'm jumping right to the
5 conclusions.

6 And if you note on that page, in the very
7 first paragraph, there is a conclusion that
8 "The Project, as proposed, is not likely to
9 jeopardize the continued existence of the
10 Karner blue butterfly." You have not seen that
11 before today?

12 A (Tardiff) We have not seen this. You know, I
13 certainly defer to Dr. Van de Poll, who has
14 reviewed it. You know, I would just note that
15 the conclusion, though, by the Fish & Wildlife
16 Service that "it's not likely to jeopardize the
17 continued existence of the Karner blue
18 butterfly", I mean, "jeopardize the continued
19 existence" is a standard in the Endangered
20 Species Act. And it just means that this
21 Project is not going to drive these to
22 extinction. It doesn't mean it's not going to
23 adversely affect the species. That's my
24 understanding.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Sure. But I want to also address your comment
2 earlier with your concerns about the mitigation
3 parcel that's been proposed.

4 MR. WALKER: And, Dawn, if you could
5 turn to Page 22 please.

6 MS. GAGNON: Twenty-one?

7 MR. WALKER: Oh, I'm sorry, Dawn, 22.
8 No, it's actually -- it's the bottom paragraph
9 on Page 22.

10 WITNESS McCLURE: Mr. Walker?

11 MR. WALKER: Yes.

12 WITNESS McCLURE: We would prefer not
13 to comment on this, since we haven't read it,
14 and you're picking out comments out of the blue
15 that we've not seen and we haven't fully
16 reviewed this.

17 So, we would be happy to defer to Dr.
18 Van de Poll, who has reviewed this document.
19 And he's part of our team and he'll represent
20 our views.

21 MR. WALKER: And that's fine. And I
22 will ask Dr. Van de Poll, and I understand you
23 haven't seen this. But let me just reference a
24 couple of sentences in here, and just I want to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 ask you a couple of follow-up questions.

2 WITNESS McCLURE: We're just not
3 going to have a comment.

4 WITNESS TARDIFF: How many pages --

5 CHAIRMAN HONIGBERG: Well, why don't
6 you see what -- to the witnesses, why don't you
7 see what he asks you, and maybe you'll be able
8 to answer it. Rather than saying you're "not
9 going to answer his questions", because that's
10 not going to go over real well.

11 So, Mr. Walker, why don't you ask a
12 question, and we'll see if the witnesses have
13 an answer for you.

14 MR. WALKER: Sure.

15 BY MR. WALKER:

16 Q And I have two questions from this Biological
17 Opinion. On that Paragraph 2, at the bottom of
18 Page 22, I'll give you a moment to read that.
19 You see where it notes that "the conservation
20 of approximately 7 acres of undeveloped habitat
21 in the Concord metapopulation to have long-term
22 benefits to the Karner blue butterfly." So,
23 this is the U.S. Fish & Wildlife Service's
24 opinion with regard to that mitigation parcel,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 correct?

2 A (Tardiff) I think we'd want to read the full
3 report. That appears to be their conclusion.

4 Q Okay. And I take it you're not going to -- I
5 was going to ask you if you have any reason to
6 disagree with the U.S. Fish & Wildlife
7 Service's opinion here that this will have
8 "long-term benefits to the Karner blue
9 butterfly", the mitigation parcel?

10 A (Tardiff) I think we'd want to read the full
11 opinion and confer with Dr. Van de Poll to
12 answer that.

13 Q So, to the extent you have any opinion on this,
14 you are going to defer to Dr. Van de Poll?

15 A (Tardiff) Well, we would want to read this
16 opinion before we weigh in on it, as
17 Conservation Commission members. But, because
18 Dr. Van de Poll has reviewed it, as I
19 understand it, we will defer to him to answer
20 questions about it.

21 MR. WALKER: Just bear with me for a
22 minute.

23 BY MR. WALKER:

24 Q In your prefiled testimony, I'll move on from

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 this Biological Opinion, and I'll address all
2 of my questions to Dr. Van de Poll when we talk
3 with him next time.

4 With regard to some other general concerns
5 that you raised in your prefiled testimony on
6 behalf of the Conservation Commission, for
7 instance, fragmentation and such, you don't
8 provide any basis or detail, but I assume
9 you're relying largely on Dr. Van de Poll's
10 assessment and findings with regard to those?

11 A (Tardiff) Are you asking about the Karner blue
12 specifically or just more generally?

13 Q More generally. You made a comment, and I can
14 find it, in your prefiled testimony, you made
15 some general comments about concerns about
16 fragmentation, but you don't say much more than
17 that.

18 A (Tardiff) Can you point us to where you're
19 looking in our prefiled?

20 Q Sure. It's in your original prefiled
21 testimony, and it's on Page 16. And the
22 question is on the prior page, Page 15. It
23 says "Are there other concerns that the City of
24 Concord Conservation Commission has about the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 impacts of the Project?" And you note that you
2 have concerns that the "area will have numerous
3 significant impacts: fragmentation of wildlife
4 corridors, loss of tree cover, risk of
5 additional ATV use with attendant erosion, and
6 other impacts." But you don't provide any
7 basis for that. And I'm just asking you,
8 should I be addressing those concerns or
9 questions to Dr. Van de Poll?

10 A (Tardiff) He may well be able to weigh in from
11 his perspective. I think that listing of
12 concerns was based on discussion within the
13 Conservation Commission about the Project, was
14 based on our collective experience with dealing
15 with impacts within these types of
16 right-of-ways and other developments and what
17 they lead to. We certainly have seen a lot of
18 ATV use that comes across these types of
19 right-of-ways and then into conservation lands,
20 and does damage. So, that's been a problem
21 we've seen throughout the city. And then
22 fragmentation is addressed in our Open Space
23 Plan, so that is something that we are
24 consciously aware of. And, as we look to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 conserve parcels, one of our goals is to make
2 sure that we are preserving unfragmented
3 habitat.

4 Q So, you just summarized your testimony with
5 that, correct? I mean, as far as the concerns
6 you raised in your prefiled testimony? Because
7 there's nothing more in there, and I wanted to
8 make sure --

9 A (Tardiff) Well, you had asked me about the
10 basis for that. And the basis was certainly
11 kind of the collective areas of the
12 Conservation Commission members with these
13 types of issues.

14 MR. WALKER: Okay. Thank you.
15 Nothing further.

16 So, I should say, reserving our right
17 to bring back Dr. Van de Poll.

18 CHAIRMAN HONIGBERG: Right. I
19 wouldn't have said "you lost your chance" --

20 MR. WALKER: Right.

21 CHAIRMAN HONIGBERG: -- because you
22 misworded the end of your questioning. That
23 really wouldn't have been fair.

24 Members of the Subcommittee, who has

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 questions for the panel or who wants to start?

2 Mr. Way.

3 MR. WAY: Good afternoon, everyone.

4 *[Multiple witnesses indicating*

5 *"good afternoon".]*

6 MR. WAY: Can you hear me?

7 BY MR. WAY:

8 Q Ms. Shank, I wanted to focus on a few things
9 that we had talked about in the Gateway part of
10 Loudon Road. And one of the questions I had
11 is, so just so we collectively understand, what
12 do you consider to be the footprint of the
13 Gateway?

14 A (Shank) The Gateway is a district that's
15 outlined in our zoning. So, it's a fairly
16 large district, that covers this intersection,
17 the mall, all of D'Amante Drive, some of Sheep
18 Davis. We have -- I don't know if we have a
19 picture of our zoning map in any of the
20 exhibits, but you can see the footprint in the
21 zoning map of the city.

22 Q All right. Thank you. I notice also, too, in
23 Concord, you have pretty active economic
24 development in Concord. And you have an

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Economic Development Director. Correct?

2 A (Shank) Correct.

3 Q And I'm wondering if you've had -- how much
4 conversations that you've had with her with
5 regards to this Project and input that you've
6 received?

7 A (Shank) You mean with regard to Northern Pass?

8 Q Right.

9 A (Shank) We've talked about the Gateway
10 Performance District in particular and our
11 hopes for it. I don't -- I don't recall any
12 specific conversations about Northern Pass.
13 But we certainly have discussed our visions for
14 Loudon Road and the Gateway Performance
15 District.

16 Q And I guess, if there would be anyone that
17 would be having contact with businesses, it
18 probably would be the Economic Development
19 Director, would you agree?

20 A (Shank) Not necessarily at this point. With
21 regard to existing business or future business?

22 Q Both.

23 A (Shank) Not necessarily at this point. I mean,
24 she's been with us for six months now, and

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 she's still sort of getting her sea legs and
2 developing her plans and her strategies and all
3 that stuff. And, you know, she's got a
4 methodology, I'm not sure it's appropriate to
5 go over right now. But she's not necessarily
6 in contact with the ongoing contact with regard
7 to redevelopment or new projects coming in,
8 that would be myself and our department.

9 Q I appreciate that. Talking a little bit about
10 around the mall that we talked about. And we
11 talked about the new development of Chipotle
12 and, as I recall, it's Visionworks, that mall
13 area.

14 A (Shank) Uh-huh.

15 Q And one of the things you mentioned that caught
16 my attention was that it probably could be so
17 much more or it would be something more?

18 A (Shank) Correct.

19 Q And one of the questions I had is -- well,
20 let's look at the property. Do they -- who
21 owns the property behind that, that
22 development?

23 A (Shank) I can't recall off the top of my head.

24 I think the City may own some property, and

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 then there may just be a handful of private
2 property owners. But I really couldn't tell
3 you off the top of my head.

4 Q And this project itself, as I recall, it's been
5 in the works, and I think you even alluded to
6 it, for quite a long time.

7 A (Shank) Before I got here.

8 Q And when did it initially begin?

9 A (Shank) I don't -- I don't recall. And I will
10 confer. Does anybody? Do you know when?

11 A (Fenstermacher) Regarding which?

12 A (Shank) Well, the whole D'Amante, you know,
13 that whole site, when it started?

14 A (Fenstermacher) No.

15 A (Shank) It was before I got here. When I got
16 here, they were already in construction.

17 Q And has it always been -- the plan for it
18 always been a Chipotle and a Visionworks?

19 A (Shank) No. They never had any tenants when
20 they first started out. As far as I know, the
21 tenants came later.

22 Q And, so, I'm trying to get a sense, was there
23 any concern -- so, this was all happening
24 during the initial stages of what we're talking

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 about here. Were there concerns that you
2 received from potential tenants, from the
3 landowner, with regards to this Project?

4 A (Shank) No.

5 Q Because one of the things that we've often
6 heard is even the discussion or the threat of
7 this Project could be a discouragement. And
8 I'm trying to see if you've heard that at all?

9 A (Shank) I think any kind of obstacle or sort of
10 adverse impact, such as this type of feature,
11 is going to be a concern, when you're trying to
12 redevelop, especially when you're trying to
13 implement some kind of -- or, create a new
14 vision. You know, people are used to seeing it
15 the way it is and used to it being the way it
16 is, and it's very difficult for people to
17 imagine something different.

18 So, when a project --

19 WITNESS SHANK: I'm sorry, I'll try
20 to speak slower.

21 MR. PATNAUDE: Thank you.

22 **CONTINUED BY THE WITNESS:**

23 A (Shank) So, when a project such as this -- such
24 as that comes along, as I said, you know, it's

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 kind of -- I entered planning because I am
2 interested in promoting good community
3 development and promoting good neighborhoods
4 and places for people to walk and bike and
5 experience life, okay? And we have a term
6 called "new urbanism" or "town center
7 development", which is something that's sort of
8 happening down in Bedford, it's happening in
9 some other places, it's happening around the
10 country much more, and we haven't really seen
11 that kind of thing here in Concord much. But
12 it's something that we'd be interested in
13 promoting and in helping people to understand
14 how it could be implemented here.

15 So, when projects come in, I sat down and
16 spent a great deal of time with the various
17 property owners on Loudon Road trying to show
18 them this type of development. And they
19 basically said "Well, we don't know any
20 developers who can do this. So, we're not
21 going to do it."

22 What we're getting there is the type of
23 thing that people started doing in the '80s,
24 basically. And it's -- reading planning

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 magazines, you know, reading articles, and
2 going to conferences, all you hear about is how
3 that model of commercial development is kind of
4 a dinosaur. It's not something that we're like
5 chasing after or trying to implement anymore.

6 I mean, I just received a newsletter from
7 our development group, you know, a few months
8 ago talking about how low-density suburban
9 commercial strip development is dead. You
10 know, there's no market for it. And we
11 certainly have some commercial strip
12 developments on Loudon Road that are empty, and
13 that have been empty for a long time.

14 So, this development was new, and we got
15 people in there. How long is it going to last?
16 I don't know. You know, our vision for future
17 redevelopment of Loudon Road and for the mall,
18 it would be something more like the town center
19 or the new urbanist development. And you're
20 not going to get somebody coming in there if
21 you've got 150-foot tall poles, you know,
22 spreading across, you know, that you can see
23 from one direction and to the other. And it's
24 very difficult to get people to take a huge

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 risk like that, but that's what we're looking
2 for. Those are the type of big goals and big
3 dreams that we have for that site. And we've
4 certainly had many conversations about it.

5 I'm sorry I'm going on a little bit. But
6 there's a larger planning context, in terms of
7 good development and what we want to promote on
8 Loudon Road. Simply saying "This is what
9 exists, so this doesn't matter", is not the
10 answer and is not moving towards revitalization
11 or a continued redevelopment of Loudon Road.
12 So, --

13 Q And I think -- and I appreciate what you're
14 saying. Because I look at that area, and I see
15 a very challenging --

16 A (Shank) Yes.

17 Q -- economic development region there.

18 A (Shank) Yes.

19 Q And I think the hard part, when you look at the
20 mall, and what's been happening with the mall
21 now for years, you know, once again, that --
22 the impacts on the mall are probably more,
23 would you say, from competition, might even be
24 from the fact that downtown is resurging. But

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 you're not hearing from potential stores coming
2 or going that it's "the threat of towers"? I'm
3 trying to get a sense of how much an impact
4 this actually will have on that area, or is it
5 the fact that it's already settled in to an
6 economic development model that sort of
7 self-perpetuates?

8 A (Shank) No, I would disagree with that. I
9 think any, as I mentioned before, any type of
10 obstruction, to me, it invariably and
11 emphatically is an issue, and would be an even
12 huger challenge to get some type of investment
13 there.

14 I'm incredibly optimistic, because of the
15 location, because of the density of residential
16 development around it. It's near to an
17 interstate. You know, the closest type of
18 thing we've got is you've got something down
19 in -- up in the Tilton area, or down in sort of
20 the Hooksett, sort of even in the Bedford area.
21 We're right in the middle, and we've got all
22 these communities all around us. I'm very
23 optimistic and pretty passionate about the
24 opportunities for redevelopment of that site.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 So, for me, from a planning perspective,
2 in terms of our plans and our goals and our
3 vision, having these 150-foot tall poles, you
4 know, basically cutting across the front door
5 of this site is terrible. And should
6 definitely be underground, they shouldn't be
7 there. It's the Gateway Performance District.
8 This is the entryway to the City of Concord,
9 the capitol of New Hampshire.

10 Q And I'm sensitive to that. But that's from
11 your experience and your perspective as a
12 professional planner.

13 A (Shank) Correct.

14 Q I'm just still trying to gather the fact of
15 whether, one, things like a Chipotle and
16 Visionworks, did this play any impact in their
17 siting there? It doesn't sound like, because
18 you mentioned that it could have been something
19 else. Well, that isn't because of what we're
20 talking about here?

21 A (Shank) Well, it's hard to know what went into
22 their proformas and their investments in their
23 buildings. You know, these companies have very
24 different demographics that they put their

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 buildings in. They may put a building in sort
2 of a, I don't know what you call it, but a
3 lower type of demographic, and they're not
4 willing to invest certain types of architecture
5 or materials or layouts into that site, because
6 it doesn't warrant it because of the economic
7 potential of that. Or there may be sites that
8 are -- you know, I'm sure there's Chipotles in
9 urban locations, in cities. You know, they're
10 not just in suburban strip malls. If you get a
11 Chipotle that wants to put a new business in an
12 existing urban environment context, it's going
13 to be very different. And it's not going to be
14 that model, which is auto-oriented in a type of
15 strip site development that's only going to be
16 there for whatever, for ten years.

17 So, it's hard for me to answer that
18 question, what went into their decision about
19 how much investment they were willing to make
20 in this site, and what they thought it would
21 return for them. But there's certainly, you
22 know, enough space on some of these sites to do
23 two or three, you know, to do higher story
24 buildings or, you know, more of a

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 community-oriented space with more of a there
2 there. I mean, there's just no there there.
3 It's you drive in, you do your thing, you drive
4 out. And that's not the goal that we're aiming
5 for for Loudon Road.

6 Q All right. I appreciate that. So, we go from
7 Chipotle, the strip mall, and then we travel
8 down past -- there's a grocery store and Home
9 Depot. And have you heard anything from any of
10 the big box stores, any in the vicinity? The
11 Target mall/Best Buy mall?

12 A (Shank) No. I'm not sure if they would reach
13 out to us. I'm sure it would be a store
14 manager, if there was some kind of regional
15 person who had a concern. I mean, those are
16 existing stores that are there.

17 Q Certainly.

18 A (Shank) Would their businesses be impacted if
19 this thing was going through? I don't know the
20 answer to that. And, no, they have not reached
21 out to us.

22 Q Very good.

23 A (Shank) Not to the Planning Office, in any
24 case.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MS. WEATHERSBY: If I could just ask
2 a quick follow-up here, playing devil's
3 advocate.

4 BY MS. WEATHERSBY:

5 Q Is the damage already done? In that there's --

6 A (Shank) No.

7 Q -- so many poles and wires, and this will be
8 adding more. But there already is a lot there.

9 A (Shank) No. I am very against that kind of
10 attitude, that you -- you have to start
11 somewhere. When I went out and I saw what was
12 happening at Alton Woods --

13 *[Court reporter interruption.]*

14 **CONTINUED BY THE WITNESS:**

15 A (Shank) Yes. I think you have to start
16 somewhere. As I said, I'm very optimistic. I
17 mean, I was on Loudon Road the other day, and I
18 said "Well, I wonder what it would take to bury
19 these utilities on Loudon Road? And was that
20 considered as part of the Loudon Road Project?
21 Was this discussed? Was it a later phase? Is
22 it on anybody's radar?" Those are the
23 conversations that I'm initiating in the City.
24 You know, how do we get these, even, you know,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the poles that are on Loudon Road buried?

2 Well, there's a lot of things we can do on
3 Loudon Road. We can increase the green space.
4 We can increase the tree canopy. We can
5 prohibit drive aisles from being between the
6 buildings. We can encourage low screening.
7 There are a number of things that we can do.

8 Downtown, when we did the Main Street
9 Project, we buried all the utilities. That was
10 part of the Project. On Storrs Street, behind
11 Main Street, there are some more exciting big
12 projects coming through. And just wrapped into
13 that discussion is "how do we get these
14 utilities buried?"

15 So, if some big developer were to come
16 along and want to do something major, like a
17 town center development, with hundreds of units
18 and multiple housing types, and multiple
19 commercial or retail or restaurant type uses,
20 they would probably be saying "who do we have
21 to pay to get these utilities buried?" I mean,
22 we want to help them. We don't want to create
23 more work for them and more obstacles.

24 BY MR. WAY:

{SEC 2015-06}Day 60/Afternoon Session ONLY{11-16-17}

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q To the extent you can talk about it, I imagine
2 you probably have prospects that are in the
3 till that might have some potential. Are you
4 talking with them about this Project? Are they
5 talking with you about this Project?

6 A (Shank) Are you talking about potential
7 developers?

8 Q Potential developers.

9 A (Shank) We haven't necessarily gotten -- so,
10 part -- one thing that we're doing in the City
11 right now is we're about to kick off a new
12 update of our zoning code. And I don't know if
13 you're familiar with the concept of "form-based
14 codes". But it basically is a complete overall
15 and change in how we regulate development. So,
16 instead of having a text document with uses, it
17 will be a sort of dynamic, graphically rich
18 document, full of photos, graphics, visioning
19 type things, and with tables. And part of that
20 process is developing -- is doing outreach and
21 having charrettes with the community to develop
22 a new vision for certain areas. Because the
23 purpose of this type of code is to help
24 communities envision something new.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 So, Loudon Road and the Steeplegate Mall
2 site are part of the scope of that process.
3 And, so, as part of that, we will be having
4 these public meetings and creating this vision,
5 which is also essentially a marketing exercise,
6 to get sort of publicized that "Hey, the City
7 is interested in changing the zoning and doing
8 something cool here." And you're essentially
9 inviting a huge developer to come and say "Tell
10 us what you need, and we'll write it, and we'll
11 help you envision how to make it happen." And
12 we're not going to talk about parking
13 requirements and setbacks. And, you know,
14 we're going to talk about vision.

15 So, there is one developer who I've spoken
16 to that, in the last few months, who we've had
17 this really exciting conversation about all of
18 this stuff. And I haven't heard from them in a
19 few months, but they apparently have -- they're
20 a national or international, sort of global
21 kind of company, and they have got a lot going
22 on. But I did recently, very recently, talk to
23 their legal representation in the New England
24 area, and said "Hey, could you kind of call me

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 back and let me know where they're at at this
2 time."

3 So, we've also heard other plans for the
4 mall, which involve much less exciting
5 prospects. And we've sort of said, you know,
6 "No, we're not in favor of carving up these
7 parcels into more suburban sprawl. That's not
8 what we're interested in doing."

9 So, there have been one or two developers
10 come along and say "Hey, we want to carve out
11 this piece", and the City doesn't jump up and
12 down and say "Oh, great, an Outback Steakhouse.
13 Let's do it yesterday." No. We said, you
14 know, "We're not interested in that." We want
15 a coordinated, you know, exciting development
16 to happen here.

17 I don't know if that helped answer your
18 question.

19 Q No, it doesn't. I certainly wish you well on
20 that. As we go down further, Sabbow Company,
21 and Mike Scott testified last week, and I --
22 for whoever, I believe you've had some contact
23 with him, from the Sabbow Company?

24 A (Fenstermacher) Not direct contact.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Not direct. And are you aware of some of the
2 design plans that are being done for his
3 company?

4 A (Fenstermacher) No.

5 Q Okay. And, so, you wouldn't have any opinion
6 on whether it's an appropriate design, given
7 your efforts or, obviously, you wouldn't?

8 A (Fenstermacher) No. We haven't seen them.

9 Q All right. Thank you. Ms. McClure, sorry to
10 surprise you there, we talked a little bit
11 about White Park. And, you know, one of the
12 things you were adamant about is when we were
13 asked -- when you were asked about whether the
14 park would be adversely affected by the view.
15 And you emphatically said "yes". I remember
16 that. Why an emphatic "yes"?

17 A (McClure) Well, when we did our visioning
18 process, Vision 2020, several years ago, we did
19 outreach to the community to find out what they
20 wanted in their future community. And scenic
21 views were a big part of that. And they popped
22 up in places we didn't even expect. People
23 came and said "I really love the view when I
24 drive in to the city on -- from the Interstate

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 89, Exit 2." It wasn't -- it wasn't an area
2 that we have thought of as a "scenic view".
3 But we then explored and got many more comments
4 about how important the views in Concord were.

5 And, so, any view that is from a public
6 park, and particularly one that's used so
7 heavily, like White Park, is an important place
8 that we've been told is important to protect.
9 We've been told that by the people in Concord.

10 Q And, so, being told by the people in Concord,
11 asked specifically the question about Northern
12 Pass and whether they might be able to see it,
13 or is it just what you're assuming from your
14 discussions with them?

15 A (McClure) Yes. I think that, I mean, this goes
16 way back. The view from White Park used to be
17 a lot bigger. And there are historic papers
18 that talk about the view of the eastern ridge
19 from White Park. So, it's not that we have
20 gone out and done charrettes about Northern
21 Pass, we haven't. But we have a mandate to
22 protect scenic views in the city. And the one
23 towards the east has long been one that has
24 been sort of what we call an "iconic

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 landscape".

2 A (Tardiff) If I could just add?

3 Q Certainly.

4 A (Tardiff) I mean, that's reflected in our Open
5 Space Plan, which is attached to our prefiled
6 testimony. And that Open Space Plan, which is
7 part of our Master Plan, was the direct result
8 of this Concord 2020 Vision session, where we
9 had, you know, all kinds of public meetings,
10 and I think they're referred to as
11 "charrettes", where people came in and we sat
12 around tables with maps, and people marked
13 down, you know, these things that were
14 important to them.

15 And it was actually surprising, you know,
16 to me, at that time still a fairly new resident
17 of the city, I'd probably been here less than a
18 decade at that point. You know, for people to
19 go and remark on all these views, and the views
20 coming off of 89, Exit 2, and coming into the
21 city, that is that view. When you come down
22 the hill there, you're looking across the city,
23 and looking out toward Oak Hill. And, so,
24 that's one of the vistas that we're talking

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 about here. It's really important to the
2 people of the city, that was made clear to us.
3 And so that -- those discussions were
4 incorporated into our Master -- excuse me, Open
5 Space Plan. And there are specific references
6 in here to that Oak Hill vista, and protecting,
7 you know, both the peak and the slopes and
8 preserving those views.

9 So, that's just one of them. But, you
10 know, that was emphasized to us. And so that's
11 something that we are very mindful of as we,
12 you know, kind of think about preserving the
13 landscape in the city, you know, for all of us
14 and for the future.

15 Q So, when Ms. Shank is bringing in companies or
16 potential developers, that's going to apply to
17 them as well the views that people can see from
18 across town, lighting that might occur at
19 night, that's applying to everybody, correct?

20 A (McClure) Every Chamber of Commerce brochure
21 that has been put out has a view on it of
22 somewhere in the City of Concord: The river,
23 the ridgeline, Carter Hill Orchard, whatever.
24 It's a huge part. Our rural views and our

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 rural character is a big part of our economic
2 development as well.

3 Q And, so, I guess, I mean, part of the trick for
4 all of us here is that, if you see a tower in
5 the distance, and this one I believe would be
6 about 2.9 miles away, and I think that's what I
7 heard, at what point doesn't it have an impact?
8 That's kind of the challenge. Is it at five
9 miles away? Is it a dot on the landscape? Is
10 it pronounced? Or, as some have said, if you
11 can see it minuscule anything, that's going to
12 be a disincentive. Where do you fall on that?

13 A (McClure) You know, it's a really good
14 question, but it's a tough one. It's an
15 incremental thing. The line that went into
16 Concord on the west side of town was a -- had a
17 big impact on a lot of people. It kind of
18 popped up, and all of a sudden it was there.

19 And I don't think we want to make that
20 mistake again. We want to at least try to
21 preserve the city the way we vision it. And,
22 so, each time you say "well, I guess it's not
23 that big a deal", it becomes an incremental
24 detriment to the whole fabric of the community.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Tardiff) I would just add that, you know,
2 certainly, you know, we're aware of the fact
3 that there is an existing right-of-way. There
4 are poles out there. And what's been proposed
5 here is something of a completely different
6 scale within the city, and cutting across eight
7 miles of the city. So, where -- you know,
8 whereas now, you know, the right-of-way and
9 those poles are not ideal, and I think, in the
10 long run, you know, we'd love to see something
11 different happen.

12 But this proposal calls for poles that are
13 now going to come up above the treeline. I
14 know, from a number of studies in the record,
15 that it is going to be visible from a distance.
16 You know, and it's one thing to have our State
17 Capitol visible from different areas of the
18 city. But, you know, when we've been -- when
19 our mandate, as set forth in our Open Space
20 Plan, is to protect these vistas from different
21 areas of the city, and then we have a proposal
22 here that is going to cut across, you know, one
23 of those iconic views, I mean, that's
24 definitely a concern for us, in terms of what

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that does to the city.

2 And it's not just, you know, we do -- on
3 Oak Hill, for example, there is a tower that
4 sits up there. And when you're looking and
5 when you're coming off of, say, Exit 2 off 89,
6 and you look across, you can see -- you can see
7 that tower as you look at Oak Hill. So, I
8 mean, and that's I think beyond that three-mile
9 distance, it might be even closer to five,
10 outside that five-mile mark. So, you can see
11 it. And that's just one. You know, or there
12 may be two towers that stick up there that you
13 can see.

14 So, here we're talking about, you know, a
15 longer line of towers that's going to stick up
16 above that treeline. And, based on all the
17 studies, it will be very visible.

18 Q The trick for us is the prominence piece. Ms.
19 Shank, did you have a question -- I mean, a
20 statement?

21 A (Shank) Yes. I just wanted to say a few things
22 about your question. One being that we have --
23 we don't even -- we regulate cell towers pretty
24 hard. You know, there's a lot of regulations

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 and criteria and, you know, hoops you have to
2 jump through to do a cell tower. And they're
3 not permitted to be over 110 feet, which is
4 shorter than some of these poles.

5 And, as Kris was saying, these poles
6 are -- there are going to be multiples of them
7 across the landscape. And, so, just think of
8 like wind turbines or cell towers. You know,
9 cell towers, there's just one, and you can see
10 it from so many places. And wind turbines, you
11 can see them. How tall are they? I'm not
12 sure. But I think they're, you know, they're
13 pretty tall and you can see them. They
14 definitely cut across the landscape and affect
15 your view. And, so, I think those are some
16 examples that you can use to think of in
17 evaluating what's too much. I mean, trees are
18 typically around, you know, maybe 40 to 70 feet
19 tall. Some of these are going to be
20 potentially twice as tall as these trees,
21 depending on the topography. So, they are
22 going to stick up very high above the treeline
23 and cut across the entire landscape of Concord.

24 Q All right. Mr. Van de Poll, one thing I

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 haven't heard an awful lot about is the

2 Decommissioning Plan that's being proposed.

3 Did you take a look at that, or the proposal,

4 or do you have any thoughts or opinions?

5 A (Van de Poll) I haven't seen a decommissioning
6 plan, *per se*.

7 Q Do you have any thoughts that you would like to
8 offer with regards to the Decommissioning
9 Plan -- or, decommissioning?

10 A (Van de Poll) Not unless it relates to nuclear
11 power plants.

12 Q I'll take that as a "no". One last question.
13 I notice that you have a website for Northern
14 Pass for Concord. I'm interested in how
15 successful it's been in gathering input. I
16 notice, and I'm going to butcher your name, and
17 I'm sorry.

18 A (Fenstermacher) Use your phonetics.

19 Q Okay. I'm sorry. But I notice that it lists
20 you as one of the contacts. It lists Pam
21 Monroe as one of the contacts. I'm wondering
22 how much feedback that you've gotten? How many
23 people have expressed interest? Is that a good
24 measure?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Fenstermacher) We've received probably 10 to
2 15 emails, and that was about it, when it first
3 came out. And that was when the public
4 testimony was happening this summer. And we
5 directed people to provide that testimony to
6 the SEC.

7 MR. WAY: All right. Thank you very
8 much.

9 CHAIRMAN HONIGBERG: Ms. Weathersby.

10 MS. WEATHERSBY: Thank you. Just a
11 couple of quick follow-ups.

12 BY MS. WEATHERSBY:

13 Q Actually, this isn't a follow-up, but concerns
14 zoning and master plans. Bob Varney was
15 testifying on behalf of the Applicant, and he
16 indicated that Concord, like a number of most
17 every other town or city has no section, and
18 I'm paraphrasing, of course, has no section in
19 its Master Plan or its Zoning Ordinance
20 directly discussing transmission lines as a
21 matter of concern for that community. And he
22 concluded, for that reason, as well as some
23 other reasons, the Project doesn't conflict
24 with that town's Zoning Ordinance or Master

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Plan.

2 I believe that's true with Concord, is
3 that correct, that your --

4 A (Shank) That is correct.

5 Q And why is that?

6 A (Shank) Well, I think that points to the need
7 for the update of our Master Plan, which
8 actually was due this past year, and which
9 we're hoping to do after we do this code
10 overhaul. The Master Plan was done ten or
11 twelve years ago, 2006, I think, 2007. And I
12 have it in front of me. Hold on. 2008. This
13 type of use was just not contemplated. This is
14 not the same as a typical utility pole, which
15 is, you know, 20 or however, 40 feet tall, and
16 below the treeline. And it was just viewed in
17 our ordinance as a use that could be screened.
18 Which it can be screened, if it's going to be,
19 you know, under 50 feet, because trees grow
20 that tall, and you can provide screening for
21 them.

22 This type of a use that, when you're
23 trying to fit something in a corridor that's
24 too small for it, so you have to go up so high,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 was not something that was really contemplated.

2 We have similar problems with solar
3 panels. You know, we don't have a section
4 really that deals with regulation of solar.
5 And that's really big right now, and that's a
6 problem for us.

7 So, we need to update our Ordinance with
8 regards to newer technologies and newer
9 industries. There are more gaps than just the
10 fact that we don't talk about utility lines.
11 So, that's really the answer.

12 Q And does your new form-based zoning that's
13 about ready to come out, does that -- would it
14 even be applicable to fit in there?

15 A (Shank) We'll have to figure out how it fits
16 in. I think we certainly will have it in
17 there. It's in our existing Ordinance. So,
18 we're certainly not going to cut something out
19 that's so important, especially after this.
20 So, we'll have to fit it in there.

21 Q And, of course, you have pointed out, you know,
22 how you believe -- how the City of Concord
23 believes that the Project does conflict with
24 its Master Plan.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Shank) Correct.

2 Q And I'm not saying that it's not in there. But
3 there is no specific provision concerning
4 transmission lines. So, I just wanted to ask
5 that.

6 Dr. Van de Poll, just a couple of
7 questions. Concerning the errors that you
8 believe you were found concerning wetland
9 impacts. I believe you found 38 errors based
10 on the aerial images.

11 A (Van de Poll) Aerial photos, yes.

12 Q And you went -- I'm just trying to confirm your
13 methodology. You went out and looked at five
14 of those, and confirmed that four were indeed
15 incorrect.

16 A (Van de Poll) That's correct.

17 Q That's your conclusion. But then I heard you
18 say, and this is where the new document is
19 coming in, that you went back this past June.
20 Did you go back to those same five locations?

21 A (Van de Poll) I did. And I added Appleton
22 Street to that list, based on what I saw in the
23 aerial photograph again.

24 Q And did the four that you believe were

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 incorrect remain incorrect?

2 A (Van de Poll) Yes. Although, Portsmouth
3 Street, there was one site that I thought was
4 incorrect. And when I got there in June, there
5 was wetland mats all along the access road
6 leading to a new transmission pole. So, I
7 wasn't able to check that site.

8 Q Okay. That's a good lead-in to my next
9 question, which concerns matting and wetlands.
10 We've heard a lot of discussion today, and many
11 other days, concerning matting for construction
12 vehicles.

13 A (Van de Poll) Uh-huh.

14 Q And it just seems like it's something that must
15 come up a lot with any type of construction in
16 wetlands. And I'm wondering if you're aware of
17 any studies or other research that has
18 addressed soil compaction in wetlands as a
19 result of heavy equipment or some kind of --
20 some expertise that we could be pointed
21 towards?

22 A (Van de Poll) It's a really good question.
23 I've done some searching around for that as
24 well. And the only study I found was with in

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 regards to a pipeline corridor in Wisconsin,
2 where they looked at wetland impacts from
3 burial. And there again was related directly
4 to the change in hydrology from ditching it.
5 And, of course, this has come up with this
6 Project relative to the amount of burial --
7 buried lines that are proposed for it. And
8 I've been asked by Ms. Pacik that -- about
9 whether or not burial around Turtle Pond, where
10 those deep mucky soils are, would be a
11 preferable alternative? And I said, "well, of
12 course." You know, when I first read the
13 docket in I think it was 2010, I believe, there
14 was some claim that there was going to be a lot
15 of these HDD, horizontal directional drilling,
16 for all wetland crossing -- or, all large
17 wetland crossings and river crossings. And
18 then it kind of backed off to all major stream
19 crossings, and then it backed of to just a few
20 of the big ones. So, I -- and, to date, I'm
21 not sure how many HDD proposals there are. But
22 that would certainly be, I think, a better
23 alternative than simply laying wetland mats to
24 replace poles and put in new poles.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MS. WEATHERSBY: Okay. Thank you. I
2 have nothing further.

3 CHAIRMAN HONIGBERG: Mr. Wright.

4 DIR. WRIGHT: Good afternoon, folks.
5 Craig Wright, with the Department of
6 Environmental Services.

7 BY DIR. WRIGHT:

8 Q I have to look at your name, Ms. Fenstermacher,
9 I apologize. I'm probably not the first one.
10 Mr. Needleman asked you a number of questions
11 on your visibility assessment on residential
12 properties. And I just wanted to have one
13 follow-up question. Were the assessments of
14 high, moderate, and low your assessments or
15 were they combined assessments of you and
16 another gentleman who went out in the field
17 with you?

18 A (Fenstermacher) It was myself and the City
19 Surveyor, Paul Gendron.

20 Q So, you both collectively came up with the
21 decisions as to --

22 A (Fenstermacher) Yes. We collaborated on all
23 those findings, yes.

24 Q On all of them? It wasn't you did half and he

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 did half? It was you both did the assessment
2 on all?

3 A (Fenstermacher) We worked -- yes, sorry. Yes.
4 We worked on it together, and then we filled
5 out the table together.

6 Q Okay. It was just unclear whether it was both
7 of you or not. So, thank you. There was some
8 discussion about the single house along the
9 Phase II right-of-way. Does anybody know, was
10 that house built before or after the Phase II
11 line was constructed?

12 *[Witnesses conferring.]*

13 BY DIR. WRIGHT:

14 Q Okay. I was just curious if it came in before
15 or after the line.

16 So, does anybody know if that homeowner
17 has applied for any sort of property tax
18 abatement because of the presence of the Phase
19 II line?

20 A (Fenstermacher) Not that I'm aware of.

21 Q Okay. Wetland buffers, I guess that would go
22 to you, Ms. Tardiff and Ms. McClure. I think
23 it's fairly clear that you feel like the DES
24 decision does not address wetlands buffers,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 which is something the City of Concord would
2 normally require as part of its site
3 assessment. Is that an accurate statement?

4 A (Tardiff) I think that's right. I mean, when
5 proposals come to the City through the
6 Conservation Commission on wetlands issues, we
7 are looking both at actual wetlands impacts,
8 but also the impacts to the buffers. So, we do
9 require proponents of projects to identify the
10 impacts to both in terms of square footage.

11 Q So, is that something you require them to
12 mitigate or -- and is it something you
13 negotiate on a case-by-case basis, or is there
14 some guidelines the City normally follows in
15 those determinations?

16 A (Tardiff) I think I might defer to Planning on
17 guidelines. But, certainly, as a practical
18 matter, when a landowner or a proponent for a
19 project comes before the Conservation
20 Commission and they are presenting what the
21 impacts are to the wetlands for our
22 consideration, you know, we, on larger
23 projects, we typically schedule a site visit
24 and we go out in the field and take a look at

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 what those impacts are. And, then, yes,
2 there's a discussion of what the mitigation is,
3 and even whether changes to the proposal need
4 to be made to pull back away and out of the
5 buffer zone.

6 Q Okay. Thank you. When the -- sorry, did you
7 want to --

8 A (Tardiff) I didn't know if Planning wanted to
9 add anything on it?

10 A (Fenstermacher) I could just add something
11 really quick?

12 Q Sure. Go ahead.

13 A (Fenstermacher) That often, so, once it goes
14 through Conservation Commission, it goes to the
15 Planning Board, and we can place conditions for
16 restoration of temporary impacts.

17 And also, as I mentioned earlier, the
18 Farmwood Substation that Eversource
19 constructed, that was -- there was mitigation
20 required for impacts to wetland buffers beyond
21 the wetland impacts themselves. And the City
22 received a 12.5 acre conservation easement as
23 mitigation that was negotiated with Eversource.

24 Q Okay. Thank you.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (McClure) But I would just add that, in
2 general, we look at the buffers as much as the
3 temporary and permanent impacts. I think we
4 feel pretty strongly about our buffer
5 ordinance, and making sure that we try and keep
6 things out of the buffer, as well as the
7 wetlands themselves.

8 Q So, this is something you feel like would be
9 missed in this case if we were to move forward
10 without consideration of what you would
11 normally require as a governing body?

12 A (McClure) Correct.

13 Q Okay.

14 A (Tardiff) Correct.

15 Q When the Pembroke folks were here, they raised
16 some concerns about Wellhead Protection Areas
17 within the right-of-way. And they made some
18 comment about there may have been I think they
19 said "three City of Concord public water wells
20 that are in the public right-of-way". Is that
21 accurate, do you know?

22 A (Van de Poll) There's at least two that I know
23 of in Pembroke that are owned by the City of
24 Concord.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q Okay. But those are owned by the --

2 A (Van de Poll) Owned by the City of Concord.

3 Q Okay.

4 A (McClure) And they're near, though, where it
5 goes over the Soucook.

6 Q Okay. Do you have similar concerns -- do you
7 have similar concerns as the Town of Pembroke
8 expressed regarding those Wetland Protection
9 Areas?

10 A (McClure) We've tried to avoid any kind of
11 heavy, you know, development in areas where we
12 have our aquifers.

13 Q Okay. Mr. Van de -- Dr. Van de Poll, I know
14 you'll be rejoining us later. But I think
15 earlier today, I just wanted to follow up on
16 two things I thought I heard you say.

17 You had mentioned some impacts around some
18 recent work around Turtle Pond. And I assume
19 that's where they straightened up that --

20 A (Van de Poll) Yes.

21 Q -- utility pole that we -- when we went on our
22 site tour we saw. And I think you were kind
23 of -- is this a situation where you were
24 describing where you felt like a temporary

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 impact could, in fact, be permanent in your
2 opinion?

3 A (Van de Poll) Yes. Yes.

4 Q And how long has that construction phase been
5 over, do you know?

6 A (Van de Poll) I was there last week. And I
7 understand it took place, I believe, in
8 October, late October perhaps.

9 Does anybody know when that date was when
10 they actually did it?

11 A (Fenstermacher) There was two. They did one
12 last year.

13 A (Van de Poll) Last year.

14 A (Fenstermacher) And that was completed I
15 believe during the winter.

16 A (Van de Poll) Okay.

17 A (Fenstermacher) And, if there was an additional
18 one, it just happened recently.

19 A (Van de Poll) Yes. There was a recent one,
20 yes.

21 Q So, was that -- I assume that construction is
22 still in a monitoring phase at this point?

23 A (Van de Poll) I would imagine so.

24 Q Okay. By probably whoever did the work, --

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 A (Van de Poll) Yes.

2 Q -- or with oversight by DES, or a
3 subcontractor?

4 A (Van de Poll) Exactly. Yes. That's correct.
5 I'm sure there is.

6 Q Okay. And I think I heard you mention that you
7 felt like five years is not a sufficient period
8 of time to monitor wetlands impacts?

9 A (Van de Poll) For certain types of impacts,
10 absolutely not, no.

11 Q Is five years a standard DES condition?

12 A (Van de Poll) It is. It actually comes from
13 the Army Corps. It used to be two. And when I
14 started doing wetland science, I think it was
15 one.

16 Q Okay.

17 A (Van de Poll) Perhaps just one year.

18 Q Hypothetically, do you have a suggestion of
19 what it should be?

20 A (Van de Poll) Well, you know, one of the things
21 that is challenging for a monitor, because I do
22 a lot of that myself, is to actually be -- have
23 the resources to test what's not working
24 sufficiently. Okay. So, let's say, do you

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 have an appropriate soil compaction tool that
2 measures how the compaction is changing over
3 time? And do you have a -- can you actually do
4 some water quality testing relative to changes,
5 say, in a stream? And that's very -- it's very
6 difficult to do, for one. So, I admit that
7 that's not an easy task.

8 But it's also very challenging for the
9 regulatory agency, namely, DES, to establish
10 thresholds by which, you know, other than 75
11 percent revegetation, which tells me what?
12 Okay, could be all, you know, glossy buckthorn,
13 which is an invasive plant. Is that what they
14 want? No. They actually, you know, talk about
15 conditions reducing invasive plant species.
16 And yet that meets the satisfactory threshold
17 of 75 percent. So, it is a little bit
18 difficult.

19 The biggest change is hydrologic, you
20 know, connectivity between certain plant
21 communities, which, in this case, is an
22 exemplar natural community, and the water body
23 adjacent to it, Turtle Pond. That's the
24 biggest change. And that can be determined

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 through sort of a biodiversity assessment like
2 I was suggesting.

3 DIR. WRIGHT: Okay. Thank you very
4 much.

5 MS. WEATHERSBY: I quick follow-up to
6 that.

7 BY MS. WEATHERSBY:

8 Q Is it customary at all to go out and survey the
9 existing conditions of a wetland, when you know
10 exactly for, in this case, a pole structure is
11 going to be, and then therefore you can, when
12 you're trying to determine the remediation, you
13 have a baseline?

14 A (Van de Poll) Yes.

15 Q Is that ever done?

16 A (Van de Poll) It is done typically. I sit --
17 I'm the Site Selection Committee Chair for the
18 ARM Fund. And, of course, a big payment is
19 being proposed to go into the ARM Fund. And
20 one of the things we request of all our
21 applicants is to do a thorough assessment
22 before construction, and then project what will
23 the impacts be after construction, and then
24 correlate those two numbers to determine what

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 the appropriate mitigation will be.

2 For example, if you lose, you know, X
3 amount of flood storage, you want to make up
4 for that in your proposal to restore that in
5 another site.

6 Q And would that be a condition that you might
7 recommend should this Project be approved?

8 A (Van de Poll) I would hope that that is part of
9 the conditions that are already in play. But I
10 did not read that in the approval letter of
11 March 1.

12 Q And, so, do you think DES probably already has
13 it in there?

14 A (Van de Poll) Well, it's under the Chapter 800
15 rules that the ARM Fund has to require
16 applicants to provide that data. So, I'm
17 assuming they're going to be following the
18 Chapter 800 rules.

19 MS. WEATHERSBY: Okay. Thank you.

20 CHAIRMAN HONIGBERG: Mr. Oldenburg.

21 MR. OLDENBURG: Thank you. Good
22 afternoon, almost evening.

23 *[Multiple witnesses indicating*
24 *"good afternoon".]*

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 MR. OLDENBURG: My name is Bill

2 Oldenburg. I'm with the Department of
3 Transportation. Most of my questions relate to
4 aesthetics and orderly development. And
5 they're sort of all over the place. So, it's
6 sort of a shotgun, so hang on.

7 BY MR. OLDENBURG:

8 Q I'll start with some easy ones. In prefiled
9 testimony, I think it was Ms. Matson and
10 Ms. Bouchard, industrial zone impacts. You had
11 listed the Sabbow property, but no other real
12 properties in the industrial area. And I'm not
13 sure this is in the industrial area. But the
14 Karner blue butterfly mitigation property, if I
15 remember right, is the Chenell Drive/Regional
16 Drive area, that was a developable piece of
17 property, and now it's going to be put in
18 mitigation.

19 Does the City have any concerns about
20 taking a potential tax-paying parcel and
21 putting it in mitigation?

22 A (Matson) Technically, we're always looking for
23 businesses to come in, as we are challenged
24 with the amount of exempt properties we have

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 for, you know, just for taxation purposes. So,
2 we would always be interested in a business
3 opportunity, whereby they would have a
4 tax-paying business in there.

5 Secondly, I think some of the things that
6 we've been concerned about that have been
7 spoken to before is that that property is
8 already disturbed. So, mitigation, you know,
9 if it were undisturbed, it might be a better
10 situation. But, again, it's industrial, it's
11 an industrial area. So, maybe the land use
12 isn't the best highest use for that particular
13 property.

14 But we're also constrained by where the
15 Karner blue and the Pine Barrens are. So, you
16 know, we'll have to take a look at, you know,
17 trying to balance out needs and what we can do.

18 Q Okay. Sure. Go ahead.

19 A (Shank) May I add? So, we didn't become aware
20 of this, that they purchased this site, until
21 fairly recently. When we looked at it, we,
22 being myself and Carlos Baia, the Community
23 Development Director, were thinking "why would
24 they" -- "Why would they do this? Why would

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 they buy this parcel, one of the last few
2 remaining available parcels in this little, you
3 know, industrial area cul-de-sac for
4 development?"

5 And whereas I believe Carlos had
6 recommended a site closer to the airport, where
7 it was also contiguous with the Karner blue
8 butterfly habitat. There was another site now
9 that is opened up that is closer to those,
10 basically within the Karner blue area, very
11 close to it.

12 So, they didn't come to us and talk about
13 this at all. I think Carlos had had
14 conversations with them a long time ago, but
15 they never came back and followed up and said
16 "Well, what about this or what about this?"
17 And, so, it was just kind of a surprise to us.

18 So, yes, we were not happy that that was
19 the chosen route. And we felt that we could
20 have offered some better solutions, for them
21 and for us, if they had reached out to us and
22 had more conversations about it.

23 Q Okay. Thank you. With regards to some of the
24 pictures that are in the appendix, the aerial

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 views of like the Brookwood Drive subdivision,
2 Alton Woods, McKenna's Purchase, the house
3 that's on Snow Pond Road, all those
4 developments appear to me to be built after the
5 transmission line was in place. They go right
6 up against it. They use almost every square
7 inch of property right up against the easement.
8 They moved their houses and buildings, you
9 know, to orient it right up against that
10 easement.

11 So, I struggle with, they were built
12 knowing there's an easement there, they were
13 built with the existing line being there.
14 People purchased those properties full knowing
15 that there's the easement there and the lines
16 are there. And now just, you know, the
17 Applicant wants to upgrade their lines, and now
18 the line is an issue.

19 How do I -- how do I reconcile that fact
20 of, they went in with their eyes open, I'm
21 hoping, and now there's this -- they're
22 considering this an impact?

23 A (Bouchard) I don't -- I don't disagree with
24 that statement that the homes were there and,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 you know, that utility corridor was behind
2 them. I think what the difference is, these
3 homeowners went in with their eyes wide open
4 thinking, you know, there might be upgrades.
5 But I don't think anyone ever envisioned the
6 scale of what the Northern Pass is going to be
7 to that, to the property in that transmission
8 corridor.

9 I mean, we're talking about, you know,
10 trees, woods being gone. We're talking about
11 the width of the right-of-way getting much
12 closer to their homes. We're talking about the
13 scale and the number of poles that are -- the
14 scale and the height and the number of poles
15 are going on. So, it is probably a vision that
16 no one had on, you know, the visible blight
17 that's going to be created by this.

18 And I think, you know, people who bought
19 in that corridor, as you were saying, knew what
20 they were buying and thought upgrades would not
21 be this type of enormous project that would
22 cause so much -- would have such an impact on
23 the environment around them, and I think that's
24 the case.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 And, you know, it's 8.1 miles through
2 Concord. Concord is 42, 43,000 people. We're
3 actually -- I think we're the largest
4 population density of Northern Pass. I think
5 it's about -- we've got 36 percent of the
6 population of that, you know, of the total
7 entire line.

8 So, when you think about this 8.1 miles,
9 how many properties this is going to affect,
10 how tall these poles are, and then the crossing
11 of Loudon Road, and the impact that's going to
12 have on Loudon Road that we've been working on
13 for quite some time to improve it, not make it
14 worse, that, you know, it's hard to say -- I
15 can't see how anybody would say this is not
16 going to be a negative impact. Not just on
17 those property owners, but the entire city and
18 our vision, and where we're going, and trying
19 to have a capitol city that we're all proud of,
20 and preserving neighborhoods. Because, even
21 though one neighborhood is impacted, you know,
22 the neighborhood, you know, that might be two,
23 three blocks away is also going to be impacted,
24 because nobody wants to be associated within

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 that corridor. So, it's the scope and the
2 scale.

3 Q So, the Gateway Performance District, I'll
4 bring that up again, you know, Mr. Way touched
5 on it a little bit, and the whole Chipotle
6 development. It appears to me that, you know,
7 because I've been there, I've eaten there, that
8 the driveway has got to be in the easement, and
9 that the development of that parcel cleared
10 trees and opened up the view of the lines even
11 more. And I know there was talk about leaving
12 buffers and everything else. So, I -- but this
13 developer wasn't required to leave a buffer.

14 A (Shank) So, I actually looked at that site plan
15 and the existing conditions very closely to
16 answer that question. And in the existing
17 condition, the easement through that area,
18 there was -- there were -- it was already
19 cleared, it was already -- so, the trees that
20 were removed were already some distance away
21 from that easement. And it was very cleared
22 all around it.

23 So, requiring a buffer, I mean, it would
24 be literally located -- the trees that were

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 removed were probably like in the location of
2 the Chipotle's drive-thru, I mean they were
3 sort of farther away from -- I, at the moment,
4 can't tell you exactly how far, but there was
5 nothing immediately adjacent to that easement.

6 Q Okay.

7 A (Shank) So, it was kind of already done before
8 they even came in.

9 Q And I think it was when Mr. Needleman was
10 talking about the site that you had mentioned
11 the "next phase" of the development.

12 A (Shank) Uh-huh.

13 Q What is that?

14 A (Shank) So, there are five or six properties to
15 the east of that, and the same developers are
16 doing the same type of development. They're
17 continuing, moving it down along Loudon Road,
18 in that direction.

19 Q Okay.

20 MR. WAY: Mr. Oldenburg? Oh, okay.

21 BY CMSR. BAILEY:

22 Q Isn't that inconsistent with your beautiful
23 vision for the future?

24 A (Shank) Yes. And I let them know that.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 Q But you still -- the City has still approved
2 them --

3 A (Shank) Well, we haven't gone through with our
4 rezoning or our visioning yet. So, the
5 existing zoning allows what they're doing. So,
6 we're not going to arbitrarily say "No, this
7 doesn't fit with what everyone wants to do now.
8 You can't do it." I mean, they comply with the
9 zoning. They're not -- they don't need any
10 variances or anything like that.

11 So, until we -- until we rewrite our code
12 and come up a new vision for that area that we
13 have some basis to deny applications, so that's
14 why we're moving kind of quickly trying to get
15 all this done right now.

16 Q Okay. So, there's a vision, but it's not --
17 you can't implement it yet?

18 A (Shank) Not until we -- not until we change our
19 code.

20 CMSR. BAILEY: Okay. Thank you.

21 MR. WAY: That was my exact question.

22 Thank you.

23 **BY THE WITNESS:**

24 A (Bouchard) And, if I might add, when that

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Chipotle, the D'Amante project was done and
2 those trees were cut, I think it was a real,
3 you know, it was like this is not, you know,
4 this is, for those of us that were thinking of
5 Northern Pass, this is what this is going to
6 look like looking straight, and that we need to
7 go and be very aggressive on our vision.
8 Because, you know, it was taking us backwards,
9 not forward.

10 BY MR. OLDENBURG:

11 Q I'll put my DOT hat on for a second. If I
12 remember right, the drive to Chipotle was
13 supposed to continue and ultimately tie into
14 393 and be an exit directly off. That was the
15 vision years ago, if I remember right?

16 A (Bouchard) You are correct. Actually, and I
17 think at one point in time it was in the
18 ten-year plan, but I think there was a
19 representative from Concord that had it taken
20 out. I think it was me. But, yes.

21 Q So, there's another development that was
22 mentioned, the Cobblestone Pointe Senior
23 Village, which is -- it's right behind the Home
24 Depot, correct? And that abuts the line. Is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 that -- am I in the right spot?

2 A (Fenstermacher) Yes.

3 Q Okay. And there was a mention made that, when
4 Northern Pass came in, there would be an
5 inadequate buffer remaining. So, is that
6 development even open? And I'm curious why the
7 City didn't require that development to leave a
8 buffer?

9 A (Shank) So, again, they do have -- they were
10 required to leave a buffer, and it's a 40-foot
11 buffer. It's just, you can't buffer a 100-foot
12 tall pole. There's nothing you can do to
13 buffer something that's over 100 feet tall.

14 Q Well, there's -- there was a buffer that's
15 left, it's just --

16 A (Shank) Yes. It's buffering the existing
17 corridor effectively. It's just because of the
18 height of the poles.

19 Q Okay. That makes sense. There was another
20 mention of the impacts to 5 and 7 Old Loudon
21 Road, which is across from the Shaw's
22 development. It's the two homes on Old Loudon
23 Road. So, I have to believe that those homes
24 were there when Old Loudon Road was Loudon

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Road. And that, since the time those houses
2 were built, there's now a new six-lane road in
3 front of their house, and a Shaw's development,
4 and a mall, and a Home Depot, and a Starbucks,
5 and a Chipotle.

6 Is another line really going to be the
7 visual impact that affects this property? I
8 mean, I struggle -- this is some of the things
9 I struggle with is, is this the visual impact
10 that's going to affect the property? Or is it
11 this accumulation of years of development?

12 A (Matson) I can add -- I just want to add
13 something to it. I think, collectively, I
14 mean, when you're talking -- you're talking
15 about two buildings. But we're looking at, you
16 know, you're looking at it probably as a whole,
17 that whole particular area, we're looking to
18 upgrade and rehab, not to exacerbate. So,
19 those are the -- those are the things that
20 we're looking at.

21 Yes, there's two homes. But those lines
22 continue on, you know, within the few hundred
23 feet now we're back into McKenna's Purchase and
24 other places, which are greatly affected. It's

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 not simply that those two homes are affected,
2 it's that entire area. So, once the line comes
3 through, it will continue to have those
4 negative effects for that entire area, as it
5 develops -- as it affects our attempts to
6 develop businesses that are sustainable and
7 more forward-thinking than what we continue to
8 have at the moment. And, so, those are the
9 problems that we, as policy makers for the
10 Council, if you take a look at our Main Street,
11 that's what we're looking for. We want that
12 sustainability. We want that walkability. We
13 want the bikeability. We want people to work
14 and play and be in those areas.

15 And it's not, you know, the Chipotle, as
16 we talked about, is not -- it's not indicative
17 of what we're looking to continue with. It's
18 what we're looking to step away from. We don't
19 want people to drive in -- to drive through and
20 drive out.

21 So, we want those green spaces. And
22 that's what the -- that's what we're being told
23 people want. They want that, that type of
24 livable situation, where they can live, work,

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff|Van de Poll]

1 and play, in communities that are open and
2 welcoming.

3 So, just the two houses, I agree that
4 they're, you know, that around about that the
5 community is addressing. You know, they may
6 have gone by the wayside in terms of it's not a
7 little neighborhood anymore. But we're looking
8 towards that bigger picture of what it's
9 supposed to be.

10 Q A future highest and best use of those two
11 properties might not be as houses probably in
12 the future?

13 A (Matson) Maybe not.

14 Q Some of these questions were already asked.
15 I've got a question about the Main Street
16 Project. You had used the Main Street Project
17 as an example of undergrounding the lines. I
18 mean, that wasn't the purpose of the Main
19 Street Project, correct, to just underground
20 the line? What was the purpose of that
21 project?

22 A (Matson) The Main Street Project was a multiple
23 project. We had a lot of layers involved in
24 that. But, to start with, it was a TIGER grant

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 for -- that we received money for, but it was
2 about safety. The safety and use of that road,
3 widening the sidewalks in conjunction with
4 that, also brought in certain safety features.
5 Upgrading the levels for ADA compliance. Some
6 of those buildings were not able to be accessed
7 by wheelchairs or other people with mobility
8 issues.

9 So, we had worked extensively to try to
10 take a look at it as a whole as to what we
11 could do to (a) bring a safety factor in, but
12 (b) we also are to improve that Main Street.
13 It had been declining for some time. And now I
14 believe we've shown quite a bit of success.
15 There's been a lot of new businesses, a lot of
16 interest that has come as a result of that.

17 And part of that was burying the lines,
18 widening sidewalks, allowing people to have
19 businesses that would spill out into, you know,
20 some of the cafes and sidewalks there. And
21 that has, I mean, I've lived here for nearly 30
22 years. When I first moved here, there was
23 nothing going on on Main Street at five
24 o'clock. It was gone. There was nothing. And

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 people were going to Manchester, other places,
2 to go out at night and do things.

3 And now, you know, with Red River Theater
4 and other, you know, we've got Capitol Center
5 for the Arts that's been refurbished, and we
6 have other things that are going on now that
7 allow people to walk down there.

8 We're also working on the development of
9 the second and third stories of those
10 buildings, and really working towards having
11 companies come in and build multiuse. We have
12 a pending deal possibly with a sale of DES,
13 which we have purchased from the State as a
14 result of one of the things that we're trying
15 to do is to have a little bit of control about
16 the type of businesses that come in.

17 I think that might speak to you guys to
18 understand really what we're trying to do with
19 Loudon Road as well. We were trying to
20 encourage certain types of businesses that work
21 for our future vision. And that makes a big
22 difference to us, in terms of people living,
23 having a multiuse building, with a restaurant
24 or a business, but having apartments or condos

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 above, we're back to that walkable, livable
2 area.

3 Q But I have to believe that there was some
4 concern or anxiety by the businesses during the
5 construction?

6 A (Matson) Yes.

7 Q Because, in some cases, Main Street was closed
8 in one direction for a considerable period.

9 A (Matson) I'm sorry, keep going.

10 Q And, so, I was just -- I'm sure you heard the
11 concerns. Do you know of businesses that left
12 Main Street and blamed the project?

13 A (Matson) I do not. I don't specifically know
14 of a business that left Main Street. I
15 actually know that there were six that came in
16 midstream of the project, which was
17 encouraging. And there continues to be
18 interest.

19 Do you have any specific information?

20 Q So, that was actually going to be my next
21 question, is how many have come in now?

22 A (Matson) At least six came in during the course
23 of construction, and that was with the first
24 half, if you were talking about the street

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 being closed in one direction. There were at
2 least six during that time frame, and there may
3 be more that I don't know.

4 I don't know if anyone else can speak to
5 it?

6 A (Fenstermacher) I know that there's a boutique
7 hotel that's currently under construction at
8 Capital Commons. And that can be attributed to
9 the popularity of the Main Street redesign.

10 Q But I also know that, when Main Street was
11 closed in certain directions, a lot of traffic
12 was diverted to like State Street or Storrs
13 Street. And were there concerns from those
14 businesses or the people about the traffic
15 being diverted? Because I could see where Main
16 Street got a benefit. But those businesses
17 might not have seen a "direct" benefit, but
18 they had to deal with all the traffic.

19 A (Bouchard) I think Concord was very proactive.
20 We had a -- basically hired a PR company that
21 kept all the businesses in the Main Street
22 corridor advised what was going on. We had a
23 lot of communication. And you're right, there
24 was, during construction, some of those

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 businesses, there was some financial hardship.

2 But I think everybody recognized the value of
3 doing a facelift to Main Street to bring more
4 energy and more businesses downtown. Whether
5 it's retail, downtown living, or a different
6 type of business. And so far, it's been very
7 successful. And I have not heard any negatives
8 now that it's opening and going.

9 Q The only reason I asked that is because the
10 northern portion that's underground, they have
11 traffic concerns and they have business impact
12 concerns. And I just wanted to see what your
13 thoughts were on your specific project that you
14 underwent, how it might relate to what they're
15 going to --

16 A (Shank) I would just add that those are great
17 questions when the City Engineer comes before
18 you, because he managed the project and he
19 probably has more specific information to your
20 questions.

21 Q He'll probably get the same questions.

22 A (McClure) Could I just add something, too? You
23 know, that Main Street is an example of how the
24 City of Concord has really invested in

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 enlivening its community and creating
2 attributes and aspects that are bringing people
3 into the city.

4 And one of the aspects of that Main Street
5 Project was also to begin to open up the upper
6 floors, as I think Ms. Matson referred to. And
7 those we hope will be housing. And one of the
8 appeals to those views from those upper floors
9 is the view of that eastern ridge. And we are
10 creating places where we can see the rural
11 character of Concord from a distance. And it's
12 a real amenity to many of those upper floors
13 on -- for both businesses, but particularly for
14 housing.

15 It's already happened in the Remi
16 building, which is on the corner of Bridge and
17 Main. And I know someone who lives in one of
18 those upper apartments, and it's the view that
19 attracted them to that location.

20 Q Okay. My last questions are about the Master
21 Plan. So, I had this discussion with the folks
22 from Pembroke that were here. And we go back
23 and forth about what's in the master plan and
24 how a master plan -- I mean, how statements in

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 the master plan are used to say "this project
2 isn't what we want."

3 So, I, you know, in reading the master
4 plans, I mean, if everybody was asked the same
5 question of, you know, "What do you want your
6 town to be?" Well, everybody would live in a,
7 you know, a nice little quaint New England
8 house with a white picket fence, and there
9 would be no development, there would be no --
10 no nothing.

11 But the fact of life is is that there is.
12 There are development. You need, you know, you
13 need a grocery store, you need a place to buy
14 things. And, you know, we've seen recently,
15 with a lot of the storms, you need electricity.

16 So, how do you, you know, in a master
17 plan, I don't see what we don't want as much as
18 what we really want our vision to be. So, how
19 do I, you know, how do I reconcile the idea of
20 "this is bad for Concord", but my Master Plan
21 doesn't say "I don't want energy facilities" or
22 "I don't want this"?

23 So, it's like reading the tea leaves of
24 the plan saying, you know, how do I interpret

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1 this to say "this is bad for Concord" or "this
2 is good"?"

3 A (Tardiff) I think there's probably a number of
4 us who can speak to that. For the Conservation
5 Commission perspective, and even as a resident
6 of Concord, I live in the south end, you know,
7 I read certainly our Open Space chapter of the
8 Master Plan, but we look at the Master Plan as
9 a whole in making decisions. And we have this
10 urban growth boundary. So, there is a focus on
11 concentrating, my read of it, as concentrating
12 development within the boundaries of that urban
13 growth boundary.

14 And then, outside of that boundary, we
15 are -- the vision is to preserve and create a
16 more, you know, rural character, again, with
17 these scenic vistas, open spaces that are
18 preserved. And so that, you know, again, the
19 fabric of our community includes both. And,
20 so, for me, I live in the south end. I'm a
21 mile from downtown. I can walk downtown. And
22 there is, you know, an urban feel to living in
23 that part of the community. But I am, you
24 know, minutes away from, you know, going on the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Oak Hill Trails and experiencing those vistas,
2 or going up to Diamond Hill, hiking the trails
3 up through there, seeing across town. And we
4 have both. And that's an important part of the
5 vision of the community. And I think that is
6 embodied in the Master Plan, if you go through
7 the different chapters.

8 So, that's from the Conservation
9 Commission's perspective at least.

10 A (Fenstermacher) And I could add a little bit.
11 So, in the Open Space Plan, they talk about the
12 scenic resources, and specifically discussing
13 Oak Hill. This is just one example. Since
14 that Master Plan was published in 2008, they
15 have conserved 90 acres of land to protect
16 those views. So, they are action items that
17 the Conservation Commission and the City is
18 working on. And we do use the Open Space Plan,
19 when approaching City Council to purchase this
20 land, we reference the Master Plan.

21 So, it's used saying "this is what we
22 want, and these are the action items that we're
23 going to take to protect these views that we
24 want."

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1 And, additionally, regarding the energy,
2 there's an "Energy" chapter of the Master Plan,
3 which specifically says "support small-scale
4 local energy".

5 So, to answer your question "we need
6 energy", then we need to support small-scale
7 local, not large-scale coming in from another
8 country. So, I think that's what you could
9 look at as part of the Master Plan supporting
10 against having this large-scale energy
11 transmission coming through, and instead focus
12 on "how do we be more energy efficient in the
13 way the City operates and how we construct our
14 properties, but also "how do we bring in
15 smaller scale renewable energy within the
16 city?"

17 Q Okay.

18 A (Shank) And I just wanted to add. So, Concord
19 is a city, and it's pretty dense comparatively
20 to what's around it. And even the RO District,
21 you know, the minimum lot size is two acres,
22 which is pretty small. It's not four acres or
23 ten acres or twelve acres, it's two. So, for
24 most places, that's considered "suburban". You

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1 know, even in our RO District, where we still
2 do have a lot of farms. But, in some other
3 areas, even in areas of Concord, where you have
4 no houses around. You have no development, you
5 have no houses, you have your utility corridor
6 going through a relatively unpopulated area.
7 This corridor happens to go through a lot of
8 residential suburban neighborhoods, and open
9 space areas and farms, and the center of our,
10 you know, Commercial District.

11 So, the context is not appropriate for
12 what they're trying to put there. And in
13 certain areas, you know, we're just saying
14 "bury it". We're saying put it on a road, if
15 you can. Relocate it where you need to to put
16 it on a road and bury it in a right-of-way
17 corridor of the state or, you know, some kind
18 of road right-of-way corridor. Bury it through
19 the Commercial District. We're not saying we
20 don't want any utility corridors. We're just
21 saying that, with the context and the scale of
22 our city, that that's not appropriate.

23 I've had the benefit of working on a lot
24 of different communities. And one of those was

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 in Tennessee, and I worked in a community
2 with -- in Chattanooga, Tennessee, with
3 tremendous, amazing, magnificent scenic
4 resources, but no open space plan. Not one
5 mention of environmental, conservation, or
6 natural resource conservation. There's just
7 not a stick of preservation or protection for
8 natural resources. They haven't prioritized it
9 as a community.

10 Concord is one of the -- well, so, I also
11 worked in southeast PA, where they do place a
12 strong emphasis in their master plans, and
13 there's some very prominent planning figures,
14 environmental figures from that area who have
15 written books. And, so, it's kind of a center
16 of this type of planning dialogue, and they've
17 got all the documents. They don't enforce it.
18 It's not in their ordinances.

19 I've never been in a community like
20 Concord, where they so highly prioritize open
21 space preservation and conservation, and they
22 do it. It's been made a priority at the vision
23 level, at the code level, and at the fiscal
24 level. You know, they put their money where

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1 their mouth is, and they're doing it. And that
2 does not happen in a lot of other communities.
3 So, you're saying "though everybody wants it",
4 but they're actually, you know, doing it here,
5 and like in a way that I haven't seen in any
6 other places that I've been.

7 So, maybe that helps to answer that
8 question.

9 MR. OLDENBURG: Thank you. No,
10 that's very good. Thank you very much. That's
11 all I have.

12 MS. PACIK: Excuse me, Mr. Chair, I
13 hate to interrupt. Dr. Van de Poll has a
14 meeting that he needs to leave for that I was
15 recently notified about.

16 He is coming back. So, I didn't know
17 if it would be okay to allow him to leave?

18 CHAIRMAN HONIGBERG: Yes.

19 MS. PACIK: And I do apologize for
20 the late notice.

21 CHAIRMAN HONIGBERG: It would be
22 okay -- no, it would be okay for Dr. Van de
23 Poll to leave, because I believe that there's
24 no more questions that are being directed

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 specifically at him, at least from this side of
2 the room.

3 MS. PACIK: Thank you.

4 CHAIRMAN HONIGBERG: Mr. Iacopino, do
5 you have questions for the remaining members of
6 the panel?

7 MR. IACOPINO: Yes, I do. But my
8 first question I'm going to direct first to
9 counsel for the panel.

10 Is the Wetland Buffer ordinance in
11 the record anywhere?

12 MS. PACIK: I do not know. But I can
13 put it in.

14 MR. IACOPINO: Do you know, well, is
15 the entire zoning ordinance in the record
16 anywhere? I have seen parts of it.

17 MS. PACIK: I think we've put select
18 pieces in, but we could put in the Wetlands
19 Buffer ordinance.

20 MR. IACOPINO: Mr. Chairman, I think
21 that might be helpful to the Committee to have
22 that ordinance.

23 CHAIRMAN HONIGBERG: I think Ms.
24 Pacik has already volunteered to provide it.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 MR. IACOPINO: Okay. Thank you.

2 BY MR. IACOPINO:

3 Q And, on that basis, my first question is to the
4 panel. If we assume that the Committee grants
5 the certificate, would -- I'm assuming you
6 would like to see as much of your Wetlands
7 Buffering ordinance included in the conditions
8 that may be imposed upon the Applicant for the
9 construction and operation of the power line.
10 Is that correct?

11 A (Shank) That's correct.

12 Q Okay. And, Ms. Swank, my next question -- I'm
13 sorry -- Shank, my next question is to you.
14 You mentioned that there is an ordinance under
15 consideration, a new ordinance, a new Zoning
16 Ordinance, is that right?

17 A (Witness Shank nodding in the affirmative).

18 Q And you mentioned a "visioning process" going
19 on. Exactly where is that in the process?
20 Have there been any decisions made by any of
21 the City's committees or any votes in the City
22 approving or in any way adopting any parts of a
23 new ordinance or this visioning statement that
24 I assume is going to come out?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 And I ask that because the Committee has
2 to consider the views of municipal planning
3 agencies and representatives.

4 A (Shank) Well, unfortunately, only the very
5 first decision has been made, and that is that
6 we've selected a consultant. And we're
7 under -- we're in the process of creating the
8 contract documents for them. So, the City has
9 allocated -- so, what was asked for was
10 \$200,000 and a two-year process. And what was
11 allocated was 100,000 for the first year, and
12 hopefully another hundred for the second year
13 to complete the process. So, we are in the
14 very beginning stages of the process.

15 Q And was that a decision made by the City
16 Council?

17 A (Shank) Correct.

18 Q Okay. Thank you. My next question is for Ms.
19 Fenstermacher. You referenced in direct
20 examination by Deputy City Solicitor Pacik
21 Joint Municipal Exhibit Number 159, which was a
22 spreadsheet containing the current use
23 properties. Do you recall that?

24 A (Fenstermacher) Yes.

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McClure|Shank|Tardiff]

1 Q Did you generate that spreadsheet?

2 A (Fenstermacher) I did not. Our Assessor's
3 Office did.

4 Q Okay. Do you know what they had to do to
5 generate that spreadsheet?

6 A (Fenstermacher) I do not know.

7 Q If I go to City Hall today, is that information
8 available to me?

9 A (Fenstermacher) You could request it from the
10 Assessor's Office. It may not be an immediate
11 response, but you can get that information from
12 them.

13 Q Okay. But if I -- so, what happened if
14 somebody had to go from the Assessor's Office
15 had to enter into some database that the City
16 keeps, and make some selections and print that
17 off?

18 A (Fenstermacher) They would have to do that for
19 you, yes.

20 Q Okay. Is it -- so, it's not something that I
21 might be able to do online or anything like
22 that, is that right?

23 A (Fenstermacher) Not that I'm aware of, no.

24 Q Okay. And you also relied on some Strava data

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 in your testimony. And I think -- I forget
2 what the exact number was, but you had a
3 calculation of the number of Strava bicycle
4 rides, I assume, maybe they were runs as well,
5 that occurred on three roads. Did you do
6 anything to try to determine how many
7 individual athletes were involved in that?

8 A (Fenstermacher) No. We were just using that
9 information to show that those roads are used
10 for recreational bicycling.

11 Q Do you know how many of those rides were logged
12 by Deputy Solicitor Pacik?

13 (Laughter.)

14 **BY THE WITNESS:**

15 A (Fenstermacher) Probably a lot. No.

16 MR. IACOPINO: I have no other
17 questions.

18 CHAIRMAN HONIGBERG: I have one
19 question for Ms. Bouchard, to clarify something
20 you said.

21 BY CHAIRMAN HONIGBERG:

22 Q I think you expressed concern about "widening
23 of the right-of-way". Did I hear you say that
24 correctly?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 A (Bouchard) I might have said that. I didn't
2 mean -- I didn't mean that the right-of-way is
3 "going to be widened". But the -- within the
4 existent right-of-way, the poles are moving
5 closer to the house from where they are now.

6 Q Or that more would be cleared on the edges of
7 the right-of-way?

8 A (Bouchard) Right. Not that the right-of-way is
9 expanding.

10 CHAIRMAN HONIGBERG: Okay. I just
11 wanted to make sure I understood what the
12 concern was.

13 WITNESS BOUCHARD: And my apologies
14 for not being clear.

15 CHAIRMAN HONIGBERG: There's a lot of
16 that going around.

17 Anyone else on the Committee have any
18 questions for this panel?

19 *[No verbal response.]*

20 CHAIRMAN HONIGBERG: Ms. Pacik, do
21 you have any redirect?

22 MS. PACIK: I do. And I will try to
23 make it brief with the hour.

24 **REDIRECT EXAMINATION**

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 BY MS. PACIK:

2 Q First, in terms of Interstate 393, Ms.
3 Fenstermacher, you were asked on
4 cross-examination by Attorney Needleman about
5 the 393 crossing, and whether you have accuracy
6 of the pole heights that were shown. Actually,
7 it wasn't Attorney Needleman, I apologize. It
8 was Counsel for the Public. But you had a
9 question as to whether you were wondering
10 whether the pole heights shown in the SEC
11 Application was accurate. And I think your
12 response was you thought it would be accurate.

13 In terms of the concerns about the 393
14 crossing and how they were raised, if we look
15 at what we've marked as "Joint Muni 315", and
16 we scroll down, this is a agenda item from
17 November of 2016. There's actually a
18 discussion with the DOT about the crossing of
19 393. And this is where the issue of Northern
20 Pass submitting design concepts over the
21 roadway using 115 and 155 poles was first
22 discussed. Do you see this?

23 A (Fenstermacher) Yes.

24 Q So, the concern about the crossing of 393

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 wasn't raised on its own by the City of
2 Concord, it was actually raised by the DOT in
3 November, correct?

4 A (Fenstermacher) Correct.

5 Q And we know now that the 155-foot pole actually
6 might be as high as 165. But, when you talked
7 to Mr. Suther from DOT, he referenced the fact
8 that this was the last discussion he had had
9 with Northern Pass on the crossing, correct?

10 A (Fenstermacher) That's correct.

11 Q And I think Attorney Aslin also asked you or
12 somebody asked you about the fact that DOT may
13 be asking -- or, Northern Pass may be asking
14 the Site Evaluation Committee to delegate the
15 decision of this crossing to DOT. Are you
16 familiar with that discussion today?

17 A (Fenstermacher) Yes.

18 Q Okay. Yet, in the October testimony, which is
19 Day 43, we can just go back to it, on Page 45,
20 the discussion that the Northern Pass
21 Construction Team had was not that they were
22 asking to delegate, they actually said "We will
23 not be putting up 160-foot structures in
24 Concord", and that's what they told the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Subcommittee, correct?

2 A (Fenstermacher) Correct.

3 Q And that's inconsistent with what you found out
4 from DOT, correct?

5 A (Fenstermacher) That's correct.

6 Q Okay. In terms of the discussion of master
7 plans, I think we've covered that pretty
8 extensively, but there is an ordinance in
9 Concord that actually deals with transmission
10 lines, is that correct?

11 And I think, Ms. Shank, you might be the
12 best person to address this.

13 A (Shank) That's correct.

14 Q Okay. So, even though the Master Plan doesn't
15 say "no transmission lines", first of all,
16 you'd agree that it does discourage them where
17 it says -- there's a discussion of "keeping the
18 rural nature of the community", correct?

19 A (Shank) Correct.

20 Q And then, going one step further, there's an
21 ordinance. And if we just pull up Exhibit 316,
22 and if we scroll down we can look at the "Table
23 of Principal Uses" that you talked earlier
24 about. And I have it highlighted. It's a long

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 table.

2 Okay. Here we go. And it talks about
3 regulation of "Essential public utilities and
4 appurtenances". And for most of the zoning
5 ordinances, it needs a conditional use permit,
6 correct?

7 A (Shank) That's correct.

8 Q And all of the -- at least all of the areas in
9 "Residential" require conditional use permits?

10 A (Shank) That's correct.

11 Q And the City of Concord actually dealt with
12 other transmission lines and issuing
13 conditional use permits, is that right?

14 A (Shank) Yes.

15 Q And I think before you had talked about 317
16 line, and you had mentioned that the City
17 restricted the clearing of the 100-foot
18 right-of-way to 80 feet?

19 A (Shank) That's correct. I misspoke.

20 Q Okay. Do you want to correct that?

21 A (Shank) Yes. It was ultimately narrowed to 65
22 feet.

23 Q Okay. So, the condition of allowing that line
24 was that only 65 feet of the 100-foot clearing

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 could occur?

2 A (Shank) That's correct.

3 Q And is it your recollection that the poles
4 being proposed along that line were 45 to
5 55 feet?

6 A (Shank) That's correct.

7 Q And during that review, there's also a review
8 of burying as a condition?

9 A (Shank) Yes.

10 Q Okay. In terms of discussions with Alton
11 Woods, I believe that Ms. Fenstermacher was
12 shown a couple of letters that had been sent to
13 Alton Woods. Do you recall seeing those? They
14 were put up by the Applicants?

15 A (Fenstermacher) Yes.

16 Q And, in terms of Mr. Johnson, who's the owner
17 of Hodges, statement that he "had had no recent
18 communications with Northern Pass", was he
19 talking about direct communications?

20 A (Fenstermacher) Yes. It was direct
21 communications to address his concerns from
22 their original conversations.

23 Q Okay. And the letter that you saw were generic
24 letters sent to all business owners, correct?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 A (Fenstermacher) That's correct.

2 Q There was some discussion and some questioning
3 about what the recent construction was going on
4 at Alton Woods. And I just want to clarify it,
5 and I think we will be able to at this point.

6 MS. PACIK: And if we pull up Exhibit
7 311. Sorry, I didn't notify my assistant we
8 needed that particular exhibit.

9 BY MS. PACIK:

10 Q This is an email from Alan Johnson to myself,
11 and Councilor Bouchard was copied on it. And
12 it talks about what recently happened with the
13 work. And I think, if we scroll down to my
14 email with him, where I was asking him to
15 confirm information, first of all, there were
16 two structures on the property behind Alton
17 Woods that were modified by Eversource. And if
18 we find the photograph, I believe it was --
19 well, if we actually go to the last page of
20 this, there is a photograph attached to it
21 which I had sent to him.

22 Do you see the two poles, there's a
23 three-pole structure and then a monopole behind
24 that, Ms. Shank?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 A (Shank) Yes.

2 Q And, Councilor Bouchard, you can also respond
3 if you have information to add to this. You
4 understand that those are both Eversource
5 poles?

6 A (Shank) Yes, I do.

7 Q And those were the poles that were increased in
8 height as part of the Unitil project?

9 A (Shank) Correct.

10 Q And was Mr. Johnson ever notified by either
11 Unitil or Eversource that those poles were
12 going to be replaced?

13 A (Shank) He told us that he was not.

14 Q Okay. And, in fact, when did he first find out
15 what was going on with those poles?

16 A (Shank) One of his maintenance people informed
17 him.

18 Q Okay. And that was during the construction of
19 them?

20 A (Shank) Correct.

21 Q Okay. And then behind, closer to the trees,
22 you can see some distribution lines, is that
23 correct?

24 A (Shank) Correct.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 Q And those distribution lines are the ones that
2 were recently constructed by Unitil?

3 A (Shank) Yes.

4 Q Okay. And in terms of this entire site, just
5 to confirm, a conditional use permit, as we saw
6 would be required in the Ordinance, was never
7 applied for to the City of Concord, correct?

8 A (Shank) That's right.

9 Q And that's what you're in communications now
10 with Mr. Johnson about?

11 A (Shank) Yes.

12 Q Okay. I believe that I think it was Ms.
13 Fenstermacher and also Ms. Shank were both
14 asked or talked about McKenna's Purchase, and
15 the fact that the buffer is now getting
16 modified and has been reduced, in terms of
17 which trees will be cleared. Is that correct?

18 A (Fenstermacher) Yes.

19 Q Okay. And there was a suggestion that -- or,
20 there was a question as to whether either of
21 you had had recent communications with
22 McKenna's Purchase about whether they're
23 satisfied with that change. And I believe you
24 had answered that you were not aware of any

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1 communications?

2 A (Fenstermacher) That's correct.

3 Q Okay. McKenna's Purchase, and I'll represent
4 to you, is still an intervenor in this case.

5 Are you aware of that?

6 A (Fenstermacher) No, I was not aware.

7 Q Okay. And, in fact, their attorney is sitting
8 in this courtroom right now. So, it's fair to
9 say that McKenna's Purchase has not withdrawn
10 their intervention because all of their
11 concerns have been satisfied?

12 A (Fenstermacher) Yes.

13 Q Okay. In terms of the tax impacts of this
14 Project, I'd like to ask Councilor Bouchard and
15 Councilor Matson about that. And if we turn to
16 the -- I believe it's Exhibit 318. Actually,
17 we can start with this one, which is this is
18 the supplemental testimony from Lisa Shapiro.
19 And in her analysis, for the first year of the
20 Project, if it's built as proposed, which I
21 believe Attorney Needleman had suggested would
22 be a \$45 million project, the tax benefit to a
23 property owner for each \$100,000 of assessed
24 value would be \$20. Do you see that?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 A (Matson) I do.

2 Q Okay. And are you familiar with that figure?

3 A (Matson) Yes.

4 Q Yes. What's the City Council's opinion in
5 terms of whether the tax payments from Northern
6 Pass are sufficient to warrant your support of
7 this Project?

8 A (Matson) I would say that \$20 per 100,000 would
9 be a negligible figure relative to the lasting
10 and permanent negative effects for consumers --
11 or, for the residents and for businesses, and
12 the city as a whole. As the capitol city, we
13 do have a reputation for, you know, that we
14 would look at this -- well, let me -- we
15 represent the state. And we want our city --
16 we have a lot of pride in our city, and we want
17 it to look as best possible. We also want to
18 attract businesses and residents. And, so, \$20
19 in tax relief does not seem to be a fair trade,
20 in my particular opinion.

21 Q Okay. And Attorney Needleman had also talked
22 about the fact that this Project could be a \$45
23 million project. In terms of the overall
24 assessed value in Concord, how significant is

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 \$45 million?

2 A (Matson) Again, negligible.

3 Q Okay. And he had shown you that the top
4 taxpayers, currently it would be I think the
5 third top taxpayer, is that correct?

6 A (Matson) Yes. I believe that's what he said.

7 Q And, does the fact that this would be
8 potentially the third highest paying property
9 owner in the City make any difference to you,
10 in terms of whether you would want to support
11 this type of project?

12 A (Matson) No, it does not.

13 Q Okay. Just going to have to bear with me while
14 I try to remember which other exhibit I had
15 marked.

16 Okay. And I'm just going to show you
17 Joint Muni 318 for a moment. And this is the
18 letter that Northern Pass sent to the City of
19 Concord talking about the property tax payment
20 range for what was at the time a \$30 million
21 project, which might be where you got that
22 "\$30 million" figure from. Is that correct?

23 A (Matson) Yes.

24 Q And this shows the net book value that

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 Dr. Shapiro had been advocating the use of?

2 A (Matson) Yes.

3 Q Okay. So, this shows that, even if you use net
4 book or some other type of formula, the amount
5 of the accessed value is not going to change,
6 it just wouldn't go down as significantly over
7 the years if you didn't use the net book value,
8 is that correct?

9 A (Matson) That is correct.

10 Q Okay. And for a \$30 million project, the tax
11 payment range was about \$500,000. Do you see
12 that?

13 A (Matson) I do.

14 Q Okay. And what percentage of the total budget
15 is that for Concord?

16 A (Matson) Maybe less than one percent.

17 Q Okay. And in terms of the amount of money that
18 Concord spends to purchase conservation land
19 or, for example, for the employment security
20 building, to ensure that it was developed in a
21 proper manner, how does \$500,000 compare to the
22 overall money Concord spends for conservation
23 and development?

24 A (Matson) We've spent millions.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Q Okay. In terms of White Park, I think there
2 were a couple questions about White Park and
3 the views from that area. And Ms. McClure and
4 also Ms. Fenstermacher both spoke about that.
5 If we turn to Exhibit 274, this is actually the
6 submission for the listing to the National --
7 sorry, I can't think anymore, I'm a little
8 tired -- National Register of Historic Places.
9 And this actually talks about the steep ridge,
10 the summit of which commands, has broad views
11 of the Merrimack Valley. Do you see that?

12 A (Fenstermacher) Yes.

13 Q Okay. And it was actually the scenic vistas
14 which, in part, were part of the application
15 for eligibility, is that correct?

16 A (Fenstermacher) Correct.

17 Q Okay. Ms. Fenstermacher, in terms of the
18 difference between "tree trimming" versus "tree
19 removal", and the rating of impacts to
20 properties that you reviewed, for example, in
21 Brookwood Drive, if there was tree trimming,
22 versus an entire clearing, would that result in
23 a different opinion, in terms of the impacts,
24 based on the relocation of the poles and the

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 new proposed heights of the poles?

2 A (Fenstermacher) I believe there would still be
3 an impact, because the extent of trimming could
4 still open up views to the power line behind
5 their houses. It's a pretty narrow buffer.
6 So, there's only about one or two trees that
7 create the buffer. So, trimming of any of
8 those trees will open up views.

9 Q And in terms of trimming up brush, so, for
10 example, a tree might not be trimmed, but the
11 surrounding brush might be trimmed. How much
12 of an impact would that still have on a
13 property owner?

14 A (Fenstermacher) There's some significant brush
15 that is out there that acts as sort of a wall
16 buffer to the power line easement. So, I
17 believe that there will be a pretty significant
18 impact once that's trimmed up.

19 Q And in terms of actually reaching out to
20 property owners, there was a list that was put
21 up of how many property owners may have written
22 letters to the Site Evaluation Committee or
23 intervened. And since you submitted your list,
24 you may not have necessarily reached out to

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 every single property owner. But did you have
2 an opportunity to go down to the corridor and
3 visit property owners?

4 A (Fenstermacher) Yes.

5 Q Okay. So, for example, you visited property
6 owners at Brookwood Drive?

7 A (Fenstermacher) Yes.

8 Q Okay. And how -- when you spoke to the
9 property owners at Brookwood Drive, what
10 concerns did they raise?

11 A (Fenstermacher) One property owner was very
12 concerned that it was moving closer to his
13 house. And he had written several letters to
14 the Governor and to the SEC. And he was
15 concerned about the amount of the buffer that
16 would be removed and the increased views from
17 his house.

18 Q Okay. And some people may have gone to public
19 information sessions and spoken, is that right?

20 A (Fenstermacher) Yes.

21 Q And you learned that some people did?

22 A (Fenstermacher) Yes.

23 Q And that wouldn't have been reflected on
24 Attorney Needleman's chart?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 MR. NEEDLEMAN: Objection. I think I
2 actually said it was.

3 MS. PACIK: Okay. Sorry. I didn't
4 have a good chance to go through the chart.

5 BY MS. PACIK:

6 Q And in terms of Jennifer Drive, did you visit
7 and talk to people on Jennifer Drive?

8 A (Fenstermacher) Yes. I spoke with residents of
9 two houses that abutted.

10 Q Okay. And those were two people that you saw
11 that happened to be outside?

12 A (Fenstermacher) Yes.

13 Q Okay. And both of those residents, did they
14 have concerns about the Project?

15 A (Fenstermacher) Yes. One woman was concerned
16 that she wanted to be selling her house in the
17 next couple of years, and was afraid she
18 wouldn't be able to sell it once construction
19 started and the poles were moved closer to the
20 house.

21 And another woman said she had expressed
22 concerns and had reached out to Northern Pass,
23 and had not heard anything back after multiple
24 attempts to contact them.

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McClure|Shank|Tardiff]

1 Q Okay. And are you aware that a significant
2 amount of people have, from Concord, have
3 written letters to the Site Evaluation
4 Committee expressing concern?

5 A (Fenstermacher) I am aware.

6 Q Okay. And, so, the fact that, you know, there
7 may be a significant amount of people on this
8 list that have not perhaps written letters, if
9 the list is accurate, or intervened, does that
10 indicate to you that people aren't concerned
11 about the Project?

12 A (Fenstermacher) No, it does not.

13 Q And, for example, I'd like to talk to you about
14 Hoit Road for a moment. You had a discussion
15 with the owners of Hoit Road, correct?

16 A (Fenstermacher) Yes.

17 Q And their understanding of what was going to be
18 happening in their backyard was based on
19 communications with Northern Pass in 2014-2015,
20 is that right?

21 A (Fenstermacher) Yes.

22 Q And their understanding of the Project was very
23 different than what is actually proposed today,
24 correct?

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1 A (Fenstermacher) Correct.

2 Q And what was their understanding?

3 A (Fenstermacher) They were aware that there was
4 going to be replacement of poles. But they
5 were not aware that it would be moved closer to
6 their house. And they were not aware of the
7 proposed construction pad, which would
8 eliminate the entire buffer between their house
9 and Mountain Road, and also that it would
10 require the removal of a shed.

11 Q Okay. And, so, had they maybe been more fully
12 informed, they would have intervened, fair to
13 safe?

14 A (Fenstermacher) Yes.

15 MR. NEEDLEMAN: Objection. That
16 calls for speculation.

17 CHAIRMAN HONIGBERG: Ms. Pacik.

18 MS. PACIK: I can withdraw that
19 question. How about this question?

20 BY MS. PACIK:

21 Q The fact that they did not intervene is not
22 necessarily indicative of the fact that they do
23 not have concerns?

24 MR. NEEDLEMAN: Same objection.

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 CHAIRMAN HONIGBERG: That's an
2 extremely complicated question.

3 MS. PACIK: I thought it was really
4 good.

5 CHAIRMAN HONIGBERG: Of which the
6 Subcommittee can take administrative notice.
7 The fact that someone "didn't do something" is
8 not an indication of much of anything often.

9 MS. PACIK: Thank you. I appreciate
10 that.

11 BY MS. PACIK:

12 Q Last, I just want to talk about 5 and 7 Loudon
13 Road. And if we turn to Exhibit 140 -- oh,
14 actually, let me just go through this
15 photograph briefly. There was some confusion
16 about when the most recent work happened at
17 Turtle Pond. And this is from September 27th,
18 2016. It's a photograph of the matting. And
19 has any other construction occurred at Turtle
20 Pond since then?

21 A (Fenstermacher) Yes. I believe they replaced
22 another pole closer.

23 MS. PACIK: Okay. Now going to Pages
24 51 -- or, Page 51, actually, maybe 52. There

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1 we go.

2 BY MS. PACIK:

3 Q This is Photo 51. This shows the property at 5
4 and 7 Loudon Road. Do you see that?

5 A (Fenstermacher) Yes.

6 Q And there's actually a tree buffer behind their
7 house, between the house and the corridor. Do
8 you see that?

9 A (Fenstermacher) Yes.

10 Q And if we go to the following page, which is
11 Page 52, it shows that tree buffer again.

12 MR. NEEDLEMAN: Mr. Chair, I object.
13 Was this subject of any questioning?

14 MS. PACIK: Yes.

15 CHAIRMAN HONIGBERG: I'm not sure.
16 But the area that -- it was certainly talked
17 about and the buffer around it. But I believe
18 we're talking about Old Loudon Road.

19 MS. PACIK: Yes. It was 5 and 7 Old
20 Loudon Road.

21 CHAIRMAN HONIGBERG: Yes. You didn't
22 -- the word "Old" was missing.

23 MS. PACIK: Sorry.

24 CHAIRMAN HONIGBERG: Because 5 Loudon

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
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1 Road would put us somewhere near the Merrimack
2 River, I think.

3 MS. PACIK: Okay.

4 CHAIRMAN HONIGBERG: But, yes. There
5 was a discussion about the tree buffer behind
6 Chipotle, which is essentially where this is.

7 MS. PACIK: Okay.

8 CHAIRMAN HONIGBERG: So, overruled.

9 BY MS. PACIK:

10 Q And the question that I think somebody from the
11 panel received was, you know, "there's been a
12 lot of development around this property, so why
13 should we be worried about the additional
14 changes to this property?" And that you
15 understand that the tree buffer that you can
16 see, that is between the house and the
17 transmission corridor, to the right of this
18 photograph, is going to be removed. Do you
19 understand that?

20 A (Fenstermacher) Based on the information that
21 I've reviewed, yes.

22 Q Okay. And, so, even though there's been
23 development around this particular property,
24 are the concerns you raised still valid?

[WITNESS PANEL: Bouchard|Fenstermacher|Matson|
McClure|Shank|Tardiff]

1 A (Fenstermacher) Yes.

2 MS. PACIK: Okay. I believe that is
3 it. Thank you very much.

4 CHAIRMAN HONIGBERG: All right. I
5 thank you all for your patience in answering
6 the questions.

7 What else can we do today? I think,
8 at five minutes to six, I think we're going to
9 be leaving Mr. Roberge at the alter again.

10 I guess I'll ask Ms. Pacik and the
11 others to confer with Pam about how to
12 reschedule Mr. Roberge. Tomorrow morning, to
13 me, it looks like the right time to slide him
14 in, given the other things that we have on the
15 docket.

16 Mr. Needleman.

17 MR. NEEDLEMAN: Well, I wonder if we
18 could talk about that offline?

19 CHAIRMAN HONIGBERG: Yes.

20 MR. NEEDLEMAN: Because that would
21 then press other witnesses, and that may create
22 scheduling issues for them.

23 CHAIRMAN HONIGBERG: Yes. Okay. So,
24 we'll adjourn for the day, resume tomorrow

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McClure|Shank|Tardiff]

1 morning. After we adjourn, people can have an
2 offline discussion about the schedule.

3 (Whereupon the **Day 60 Afternoon**
4 **Session** was adjourned at 5:55
5 p.m., and the hearing to resume
6 on **November 17, 2017**, commencing
7 at 9:00 a.m.)
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{SEC 2015-06}Day 60/Afternoon Session ONLY{11-16-17}

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C E R T I F I C A T E

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

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

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

**BY CHAIRMAN
HONIGBERG: [1]**
244/20
**BY CMSR.
BAILEY: [1]**
220/20
**BY DIR.
WRIGHT: [2]**
202/6 203/12
**BY MR. ASLIN:
[4]** 4/5 5/2 26/4
28/9
**BY MR.
DRAPER: [1]**
55/10
**BY MR.
IACOPINO: [1]**
241/1
**BY MR.
NEEDLEMAN:
[28]** 61/2 62/13
64/3 71/4 72/5
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98/17 104/3 107/19
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119/2 123/1 128/7
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136/21 138/7

**BY MR.
OLDENBURG: [2]**
213/6 222/9
**BY MR.
WALKER: [11]**
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BY MR. WAY: [2]
170/6 183/23
**BY MS.
BOEPPLE: [2]**
49/12 49/16
**BY MS.
MENARD: [1]**
51/14
**BY MS. PACIK:
[7]** 245/24 251/8
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264/10 265/1 266/8
**BY MS.
WEATHERSBY:
[3]** 182/3 196/11
211/6
**CHAIRMAN
HONIGBERG:
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